Bearings and Parts Thereof From France: Preliminary Results of Changed-Circumstances Review, 74 FR 60242 (November 20, 2009). We received case briefs and rebuttal briefs from The Timken Company and NTN/SNR. We did not hold a hearing as none was requested.

Scope of the Order

The products covered by the order are ball bearings and parts thereof. These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 3926.90.45, 4016.93.10, 4016.93.50, 6909.19.50.10, 8431.20.00, 8431.39.00.10, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.35, 8482.99.25.80, 8482.99.65.95, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.93.30, 8708.93.60.00, 8708.99.06, 8708.99.31.00, 8708.99.40.00, 8708.99.49.60, 8708.99.58, 8708.99.80.15, 8708.99.80.80, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, 8803.90.90, 8708.30.50.90, 8708.40.75.70, 8708.40.75.80, 8708.50.79.00, 8708.50.89.00, 8708.50.91.50, 8708.50.99.00, 8708.70.60.60, 8708.80.65.90, 8708.93.75.00, 8708.94.75, 8708.95.20.00, 8708.99.55.00, 8708.99.68, and 8708.99.81.80.

Although the HTSUS item numbers above are provided for convenience and customs purposes, the written description of the scope of the order remains dispositive.

The size or precision grade of a bearing does not influence whether the bearing is covered by the order. The order covers all the subject bearings and parts thereof (inner race, outer race, cage, rollers, balls, seals, shields, *etc.*) outlined above with certain limitations. With regard to finished parts, all such parts are included in the scope of the order. For unfinished parts, such parts are included if they have been heat-treated or if heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by the order are those that will be subject to heat treatment after importation. The ultimate application of a bearing also does not influence whether the bearing is covered by the order. Bearings designed for highly specialized applications are not excluded. Any of the subject bearings, regardless of whether they may ultimately be utilized in aircraft, automobiles, or other equipment, are within the scope of the order.

Analysis of Comments Received

The issues raised in the case briefs by parties in this review are addressed in the Issues and Decision Memorandum from John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, dated concurrently with this notice (Decision Memorandum), which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. The Decision Memorandum, which is a public document, is on file in the Central Records Unit, main Department of Commerce building, Room 1117, and is accessible on the Web at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Changed-Circumstances Review

For the reasons stated in the preliminary results and in the Decision Memorandum, we continue to find that post-acquisition SNR is the successor-in-interest to pre-acquisition SNR and, as a result, should be accorded the same treatment as pre-acquisition SNR. We will instruct U.S. Customs and Border Protection to collect cash deposits at 13.32 percent, the weighted-average percentage dumping margin we found for pre-acquisition SNR in the most recently completed review. *See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Review in Part*, 72 FR 58053, 58054 (October 12, 2007).

Notification

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is published in accordance with sections 751(b)(1) and 777(i) of the Act and 19 CFR 351.216 and 351.221.

Dated: June 10, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix

1. Successorship
2. Briefing Schedule
3. Filing of Factual Submissions

[FR Doc. 2010–14795 Filed 6–17–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–832]

Pure Magnesium From the People's Republic of China: Preliminary Results of the 2008–2009 Antidumping Duty Administrative Review

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

SUMMARY: In response to requests from interested parties, the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on pure magnesium from the People's Republic of China ("PRC"), covering the period May 1, 2008, through April 30, 2009.

We have preliminarily determined that the respondent in this administrative review has made sales in the United States at prices below normal value during the period of review ("POR"). We have also preliminarily determined that two companies for which a review was requested have not been responsive and, thus, have not demonstrated entitlement to a separate rate. As a result, we have preliminarily determined that they are part of the PRC–Wide Entity and have assigned them the PRC–Wide Entity rate. If these preliminary results are adopted in the final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who submit comments are requested to submit with each argument a summary of the argument. We intend to issue the final results no later than

120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act").

DATES: *Effective Date:* June 18, 2010.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Eugene Degnan, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4243 and (202) 482–0414, respectively.

Background

On May 12, 1995, the Department published in the **Federal Register** the antidumping duty order on pure magnesium from the PRC.[1] On May 1, 2009, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on pure magnesium from the PRC for the period May 1, 2008, through April 30, 2009.[2] On May 28, 2009, in accordance with 19 CFR 351.213(b)(2), Tianjin Magnesium International, Co. Ltd. ("TMI"), a foreign exporter of the subject merchandise, requested the Department to review its sales of subject merchandise. On May 29, 2009, US Magnesium LLC ("Petitioner") requested that the Department conduct an administrative review of the exports of subject merchandise of TMI, Tianjin Xianghaiqi Resources Import & Export Trade Co., Ltd. ("TXR"), and Pan Asia Magnesium Co., Ltd. ("Pan Asia"). On the same date, Alcoa Inc. and Alumax Mill Products (collectively, "Alcoa"), a domestic interested party, requested a review of TXR. On June 24, 2009, the Department initiated an administrative review of the order on pure magnesium from the PRC for the POR with respect to TMI, TXR and Pan Asia.[3]

On August 3, 2009, Trade Bridge, counsel for TXR and Pan Asia, withdrew its representation for these companies. On August 4, 2009, the Department issued its antidumping duty questionnaire to TMI, TXR, and Pan Asia by FedEx. TXR received and signed for the hard copy of the Department's questionnaire on August 7, 2009, and Pan Asia received and signed for the hard copy of the Department's questionnaire on August 8, 2009.[4] However, neither TXR, nor Pan Asia responded to the Department's antidumping duty questionnaire. On September 1, 2009, TMI timely submitted its Section A questionnaire response ("TMI's AQR"). On September 15, 2009, TMI submitted its Section C questionnaire response ("TMI's CQR") and on September 29, 2009, TMI submitted its D questionnaire response ("TMI's DQR"). On November 10, 2009, Petitioner submitted comments on TMI's AQR, CQR, and DQR. On December 23, 2009, the Department issued its first supplemental questionnaire to TMI. On January 12, 2010, Petitioner requested that the Department conduct verification of TMI in accordance with 19 CFR 351.307(b)(1)(iv). On February 9, 2010, TMI submitted its response to the Department's sections A, C, and D supplemental questionnaire ("TMI's 1st SQR"). On March 31, 2010, the Department issued the second supplemental questionnaire to TMI and the Department received a response on April 12, 2010.

On September 15, 2009, the Department requested that import Administration's Office of Policy provide a list of surrogate countries for this review.[5] On October 13, 2009, the Office of Policy issued its list of surrogate countries.[6] On October 16, 2009, the Department issued a letter to interested parties seeking comments on surrogate country selection and surrogate values ("SV5"). On October 30, 2009, Petitioner and TMI submitted comments on surrogate country selection ("Petitioner's Surrogate Country Selection Letter" and "TMI's Surrogate Country Selection Letter," respectively). On November 12, 2009, Petitioner and TMI submitted SV comments ("Petitioner's SV Comments" and "TMI's SV Comments," respectively). On November 25, 2009, Petitioner submitted rebuttal SV comments. On November 27, 2009, TMI submitted rebuttal SV comments. On December 7, 2009, TMI submitted additional SV comments.

On January 6, 2010, the Department extended the time period for completion of the preliminary results of this review by 120 days until May 31, 2010.[7]

On February 18, 2010, the Department requested that CBP provide entry documentation for certain of TMI's transactions during the POR.[8]

As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. As a result, the revised deadline for the preliminary results of this administrative review became June 7, 2010.[9]

Verification

As provided in section 782(i)(3) of the Act, we verified the information from TMI upon which we have relied in making our preliminary results of review from April 19, 2010 to May 6, 2010. The Department's verification report is on the record of this review in the Central Records Unit, Room 1117 of the main Department building.[10] We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by the respondent.

Period of Review

The POR is May 1, 2008, through April 30, 2009.

[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).

[2] *See* Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review, 74 FR 20278 (May 1, 2009).

[3] *See* Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part. 74 FR 30052 (June 24, 2009).

[4] *See* Memorandum to the file, "Pure Magnesium from the People's Republic of China, Tianjin Xianghaiqi Resources Import and Export Trade Co., Ltd. ("TXR") and Pan Asia Magnesium Co., Ltd. ("Pan Asia"): Transmittal of FEDEX Receipt Documentation," dated May 11, 2010.

[5] *See* Memorandum to Kelly Parkhill, Acting Director, Office of Policy, "Antidumping Duty Administrative Review of Pure Magnesium from the People's Republic of China: Surrogate-Country Selection," dated September 15, 2009.

[6] *See* Memorandum from Kelly Parkhill, Acting Director, Office of Policy, "Request for a list of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Pure Magnesium ("Pure Magnesium") from the People's Republic of China, dated October 13, 2009 ("Surrogate Country List").

[7] *See* Pure Magnesium from the Peoples Republic of China: Extension of Time for the Preliminary Results of the Antidumping Duty Administrative Review 75 FR 2108 (January 14, 2010).

[8] *See* Memorandum to Alice Buchanan, Acting Director, AD/CVD/Revenue Policy & Programs, Office of International Trade, U.S. Customs and Border Protection, "Request for U.S. Entry Documents—Pure Magnesium from People's Republic of China—A–570–832," dated February 18, 2010.

[9] *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

[10] *See* Memorandum to the File "Antidumping Duty Administrative Review of Pure Magnesium From the People's Republic of China: Verification of the Sales and Factors of Production ("FOP") of Tianjin Magnesium Industries ("TMI")," dated June 7, 2010.

Scope of Order

Merchandise covered by the order is pure magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of the order. Pure 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 magnesium is used as an input in producing magnesium alloy. Pure magnesium encompasses products (including, but not limited to, butt ends, stubs, crowns and crystals) with the following primary magnesium contents:

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

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

(3) Products 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 (generally referred to as "off-specification pure" 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 the order are alloy primary magnesium (that meets specifications for alloy magnesium), primary magnesium anodes, granular primary magnesium (including turnings, chips and powder) having a maximum physical dimension (*i.e.,* length or diameter) of one inch or less, secondary magnesium (which has pure primary magnesium content of less than 50% by weight), and remelted magnesium whose pure primary magnesium content is less than 50% by weight.

Pure magnesium products covered by the order are currently classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 8104.11.00, 8104.19.00, 8104.20.00, 8104.30.00, 8104.90.00, 3824.90.11, 3824.90.19 and 9817.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Non-Market Economy Country Status

The Department has treated the PRC as a non-market economy ("NME") country in all past antidumping duty investigations and administrative reviews and continues to do so in this case.[11] The Department has previously examined the PRC's market economy status and determined that NME status should continue for the PRC.[12] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority.[13] No interested party to this proceeding has contested such treatment. Accordingly, we calculated normal value ("NV") using a factors of production ("FOP") methodology in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV on the NME producer's FOPs. The Act further instructs that valuation of the FOPs shall be based on the best available information in a surrogate market-economy country or countries considered to be appropriate by the Department.[14] When valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market-economy countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.[15] Further, the Department normally values all FOPs in a single surrogate country.[16] The sources of SVs are discussed under the "Normal Value" section below and in the Factor Valuation Memorandum, which is on file in the Central Records Unit, Room 1117 of the main Department building.[17]

In examining which country to select as its primary surrogate country for this proceeding, the Department first determined that India, the Philippines, Indonesia, Colombia, Thailand, and Peru are countries comparable to the PRC in terms of economic development.[18] In Petitioner's Surrogate Country Selection Letter, Petitioner contends that the Department should continue to select India as the surrogate country for this administrative review, as it has in previous segments of this proceeding. In addition, Petitioner maintains that to the best of its knowledge, there are no magnesium producers currently operating in any of the six countries identified in the Surrogate Country Memorandum.[19] Petitioner states that Southern Magnesium & Chemicals Ltd. ("Southern Magnesium"), which is located in India, has either downsized or ceased its magnesium production operations.[20] Petitioner argues, however, that India is a significant producer of aluminum and the Department has "routinely determined that aluminum is a product comparable to magnesium production."[21] Petitioner states that India has five major producers of aluminum.[22] Additionally, Petitioner contends that the Department determined that zinc is the only other merchandise that the Department has found to be comparable to magnesium,[23] and India is a significant producer of zinc.[24] Finally, Petitioner

[11] *See* 771(18)(C) of the Act; *see, e.g.,* Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 76336 (December 16, 2008) ("Pure Magnesium 06–07"); and Frontseating Service Valves From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances, 74 FR 10886 (March 13, 2009).

[12] *See* Memorandum from the Office of Policy to David M. Spooner, Assistant Secretary for Import Administration, The People's Republic of China (PRC) Status as a Non-Market Economy (NME), dated May 15, 2006. This document is available online at *http://ia.ita.doc.gov/download/prc-nme-status/prc-nme-status-memo.pdf.*

[13] *See* section 771(18)(C)(i) of the Act.

[14] *See* section 773(c)(1) of the Act.

[15] *See* section 773(c)(4) of the Act.

[16] *See* 19 CFR 351.408(c)(2).

[17] *See* Memorandum to the File, "2008–2009 Administrative Review of the Antidumping Duty Order on Pure Magnesium from the People's Republic of China: Factor Valuation Memorandum for the Preliminary Results," dated June 7, 2010 ("Factor Valuation Memorandum").

[18] *See* Surrogate Country List.

[19] *See* Petitioner's Surrogate Country Selection Letter, at 3.

[20] *See* 2002 Annual Report of Southern Magnesium, contained in Petitioner's Surrogate Country Selection Letter, at 3 and Exhibit 2.

[21] *See* Petitioner's Surrogate Country Selection Letter, at 4, citing Pure Magnesium 06–07 and accompanying Issues and Decision Memorandum at Comment 6.D.

[22] *See* Petitioner's Surrogate Country Selection Letter, at 4, citing The Mineral Industry of India—2007, at Table 2, U.S. Geological Survey ("USGS"), contained in Exhibit 3; also citing USGS Minerals Yearbook Zinc—2006 at Table 16, contained in Exhibit 4.

[23] *See* Petitioner's Surrogate Country Selection Letter, at 5, citing Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation, 66 FR 49347 (September 27, 2001), at Comment 1.

[24] *See* Petitioner's Surrogate Country Selection Letter, at 5, citing USGS Minerals Yearbook, Zinc—2007, at Table 2, contained in Exhibit 3. *See also* USGS 2007 Minerals Yearbook, Zinc (Advance Release), at Table 13, contained in Exhibit 4.

contends that India is the best available surrogate country for this proceeding because India is known to have complete, up-to-date, and reliable publicly available information for all raw material FOPs.[25] Petitioner states that India is the only potential surrogate country that can be a source for surrogate financial ratios because India is a significant producer of aluminum and zinc.[26]

In TMI's Surrogate Country Selection Letter, TMI contends that India is the most appropriate surrogate country for the PRC in this review.[27] TMI reiterates the reasons that the Department articulated in its determination to use India as the appropriate surrogate country in the 2006–2007 administrative review of pure magnesium from the PRC: (1) India is a significant producer of comparable merchandise; (2) India is at a level of economic development comparable to the PRC; and (3) the Department has reliable data to use from India.[28] Both Petitioner and TMI submitted Indian sourced data to value FOPs.

After evaluating interested parties' comments, the Department has determined that India is the appropriate surrogate country to use in this review in accordance with section 773(c)(4) of the Act. The Department based its decision on the following facts: (1) India is at a level of economic development comparable to that of the PRC; (2) India is a significant producer of comparable merchandise, *i.e.,* aluminum and zinc; and (3) India provides the best opportunity to use quality, publicly available data to value the FOPs. All the data submitted by both Petitioner and TMI for our consideration as potential SVs and surrogate financial ratios are sourced from India. Finally, on the record of this review, we have usable SV data (including financial data) from India, but no such surrogate data from other potential surrogate country.

Therefore, because India best represents the experience of producers of comparable merchandise operating in a surrogate country, we have selected India as the surrogate country and, accordingly, have calculated NV using Indian prices to value TMI's FOPs, when available and appropriate. We have obtained and relied upon publicly available information wherever possible.

In accordance with 19 CFR 351.301 (c)(3)(ii), interested parties may submit publicly available information to value the FOPs within 20 days after the date of publication of the preliminary results of review.[29]

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both dejure and defacto governmental control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from the Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China, 56 FR 20588 (May 6, 1991) ("Sparklers"), as further developed in Notice of Final Determination of Sales at Less Than Fair Value. Silicon Carbide From the People's Republic of China, 59 FR 22585 (May 2, 1994) ("Silicon Carbide"). However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate rate analysis is not necessary to determine whether it is independent from government control.

Separate Rate Recipients

TMI is the only responsive respondent in this administrative review. TMI reported that it is a wholly Chinese-owned company. Therefore, the Department must analyze whether it can demonstrate the absence of both dejure and defacto government control over export activities. Because neither TXR nor Pan Asia responded to the Department's questionnaire, these companies did not provide separate rate information to demonstrate their eligibility for separate-rate status. As a result, the Department is treating these companies as part of the PRC–Wide Entity.

a. Absence of De Jure Control

The Department considers the following dejure criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.[30]

The evidence provided by TMI supports a preliminary finding of dejure absence of government control based on the following: (1) An absence of restrictive stipulations associated with its business and export licenses; (2) applicable legislative enactments decentralizing control of companies; and (3) formal measures by the government decentralizing control of companies.[31]

b. Absence of De Facto Control

Typically, the Department considers four factors in evaluating whether each respondent is subject to defacto government control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[32] The Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of governmental control,

[25] *See* Petitioner's Surrogate Country Selection Letter, at 5–6.

[26] Id.

[27] *See* TMI's Surrogate Country Selection Letter at 1.

[28] *See id.* at 3, citing, Pure Magnesium from the People's Republic of China: Preliminary Results of 2007–2008 Antidumping Duty Administrative Review, 74 FR 27090 (June 8, 2009); Pure Magnesium 06–07; and Pure Magnesium from the People's Republic of China: Final Results of 2004–2005 Antidumping Duty Administrative Review, 71 FR 61019 (October 17, 2006).

[29] In accordance with 19 CFR 351.301(c)(1), for the final determination of this review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301 (c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept the submission of additional, previously absent-from-the-record alternative SV information pursuant to 19 CFR 351.301(c)(1). See Glycine from the People's Republic of China: Final Results of Antidumping Duly Administrative Review and Final Rescission, in Part, 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

[30] Sparklers, 56 FR at 20589.

[31] *See* Foreign Trade Law of the People's Republic of China, contained in TMI's AQR, at Exhibit A–2; see also Regulations of the People's Republic of China on Company Registration contained in TMI's AQR at Exhibit A–5.

[32] *See* Silicon Carbide, 59 FR at 22587; *see* also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China, 60 FR 22544, 22545 (May 8, 1995).

which would preclude the Department from assigning separate rates.

The evidence provided by TMI supports a preliminary finding of defacto absence of government control based on the following: (1) The absence of evidence that the export prices are set by or are subject to the approval of a government agency; [33] (2) the respondent has authority to negotiate and sign contracts and other agreements; [34] (3) the respondent has autonomy from the government in making decisions regarding the selection of management; [35] and (4) the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[36]

Therefore, the evidence placed on the record of this review by TMI demonstrates an absence of dejure and defacto government control with respect to TMI's exports of the merchandise under review, in accordance with the criteria identified in Sparklers and Silicon Carbide. Accordingly, we have determined that TMI has demonstrated its eligibility for a separate rate.

Fair Value Comparisons

To determine whether sales of pure magnesium to the United States by TMI were made at NV, we compared Export Price ("EP") to NV, as described in the "Export Price" and "Normal Value" sections of this notice.

Export Price

In accordance with section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, we have used EP for TMI's U.S. sales because the subject merchandise was sold directly to the unaffiliated customers in the United States prior to importation and because Constructed Export Price was not otherwise warranted.

We have based the EP on delivered prices to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we have made deductions from the starting price for movement expenses, including expenses for foreign inland freight from the plant to the port of exportation, domestic brokerage and handling, international freight, marine insurance, brokerage and handling expenses incurred in the U.S., U.S. customs duty, freight from the U.S. port to the customer, rebanding, inventory and warehouse handling expenses. TMI neither reported nor claimed other adjustments to EP.[37]

Normal Value

Section 773(c)(1) of the Act provides that, the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME country and the Department finds that the available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. When determining NV in an NME context, the Department will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. The Department's questionnaire requires that TMI provide information regarding the weighted-average FOPs across all of the company's plants that produce the subject merchandise, not just the FOPs from a single plant. This methodology ensures that the Department's calculations are as accurate as possible.[38]

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to find an appropriate SV to value FOPs, but when a producer sources an input from a market economy and pays for it in market-economy currency, the Department may value the factor using the actual price paid for the input.[39] TMI reported that it did not purchase inputs from market-economy suppliers for the production of the subject merchandise.[40]

We calculated NV based on FOPs in accordance with section 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). The FOPs include but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. The Department used FOPs reported by TMI for materials, energy, labor, by-products, and packing.

TMI stated that it generates three by-products during the production process: magnesium waste, cement clinker and coal tar.[41] TMI requested a by-product offset for all three products. However, TMI failed to establish that the magnesium waste and cement clinker generated during the course of production has commercial value.[42] Therefore, for these preliminary results, we have granted TMI a by-product offset solely for coal tar.[43]

Factor Valuations

In accordance with section 773(c) of the Act, the Department calculated NV based on FOPs reported by TMI for the POR. To calculate NV, the Department multiplied the reported per-unit factor consumption quantities by publicly available Indian SVs. In selecting the SVs, the Department considered the quality, specificity, and contemporaneity of the data. The Department adjusted input prices by including freight costs to make them delivered prices, as appropriate. Specifically, the Department added to Indian import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory of production. This adjustment is in accordance with the decision of the U.S. Court of Appeals for the Federal Circuit in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–08 (Fed. Cir. 1997). A detailed description of all SVs used to value TMI's reported FOPs may be found in the Factor Valuation Memorandum.

The Department calculated SVs for the majority of reported FOPs purchased from NME sources using the contemporaneous, weighted-average unit import value derived from the Monthly Statistics of the Foreign Trade of India, as published by the Directorate General of Commercial Intelligence and

[33] *See* TMI's AQR, at 7; *see* also the contract and the purchase order between TMI and a U.S. Customer contained in TMI's AQR at Exhibit A–6. See also TMI's 1st SQR at 19–22 and Exhibit SA–7a and SA–7b.

[34] *See* TMI's AQR, at 7–8.

[35] *See* TMI's AQR at 8.

[36] *See* TMI's AQR at 9–10.

[37] *See* Memorandum to the File "Analysis Memorandum for the Preliminary Results of the 2008–2009 Administrative Review of Pure Magnesium from the People's Republic of China: Tianjin Magnesium International Co., Ltd. ("TMI")" ("TMI's Analysis Memorandum"), dated June 7, 2010.

[38] *See e.g.,* Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China, 68 FR 61395 (October 28, 2003), and accompanying Issue and Decision Memorandum at Comment 19.

[39] *See* 19 CFR 351.408(c)(1); see also Shakeproof Assembly Components, Div. of Ill. *Tool Works, Inc.* v. *United States, 268 F.3d 1376, 1382–1383* (Fed. Cir. 2001) (affirming the Department's use of market-based prices to value certain FOPs).

[40] *See* TMJ's DQR at D–5.

[41] *Id.* at D–13–15 and Exhibits D–8 through D–10.

[42] *See* TMI's Verification Report, section XVI, "By-Products."

[43] *See* TMI s Analysis Memorandum at 4.

Statistics of the Ministry of Commerce and Industry, Government of India in the World Trade Atlas ("WTA"), available at *http://www.gtis.comlwta.htm* ("WTA Indian Import Statistics").[44] WTA Indian Import Statistics were reported in U.S. dollars[45] and are contemporaneous with the POR to calculate SVs for TMI's material inputs. In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, SVs which are non-export average values, most contemporaneous with the period of review, product-specific, and tax-exclusive.[46]

In those instances where the Department could not obtain publicly available information contemporaneous with the POR with which to value FOPs, the Department adjusted the publicly available SVs using the Indian Wholesale Price Index, as published in the International Financial Statistics of the International Monetary Fund.[47]

Furthermore, with regard to Indian import-based SVs, we have disregarded prices that we have reason to believe or suspect may be subsidized, such as those from Indonesia, South Korea, and Thailand. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.[48] We are also guided by the statute's legislative history that explains that it is not necessary to conduct a formal investigation to ensure that such prices are not subsidized.[49] Rather, the Department was instructed by Congress to base its decision on information that is available to it at the time it is making its determination. In accordance with the foregoing, we have not used prices from these countries in calculating the Indian import-based SVs.

The Department used WTA Indian Import Statistics to calculate SVs for raw materials, packing materials and by-products including ferrosilicon, fluorite powder, sulphur powder, sulfuric acid, magnesium metal waste, magnesium waste, coal tar, plastic bags, steel bands and plastic bands.

For dolomite, we continue to find, as we did in the previous segments of this proceeding, that it is reasonable to conclude that WTA data represent prices of imported dolomite in the high-end, value-added product range while the dolomite used to produce subject merchandise is the high-bulk, low-value commodity.[50] Therefore, as in the 2006–07 administrative review, we have preliminarily determined to use the audited financial statements of Indian producers submitted on the record of this review as the basis of the SV for dolomite.[51] TMI placed the audited financial statements of four companies on the record covering the period April 1, 2008 through March 31, 2009: Madras Cements Ltd. ("Madras Cements"), Tata Sponge Iron Ltd. ("Tata Sponge Iron"), The Bisra Stone Lime Company Ltd. ("Bisra"), and Steel Authority of India, Limited ("SAIL").[52] In examining these financial statements, we have determined that the prices reflected in the financial statements of Madras Cements and Tata Sponge Iron represent the best available information on the record with which to value dolomite. Both of these financial statements are fully legible and generally contemporaneous with the POR. The companies were both profitable and did not receive subsidies that the Department has found to be countervailable and would otherwise taint the prices of materials that it sold or consumed. However, we have determined not to rely on Bisra's financial statements because Bisra was unprofitable. Consequently, we cannot determine whether Bisra's dolomite sales prices represent market prices or were made below market value. Additionally, we have determined not to use SAIL's audited financial statements because SAIL received loans from the Steel Development Fund,[53] which the Department has previously determined are countervailable.[54] Because the dolomite prices recorded on SAIL's financial statements reflect SAIL's consumption of raw materials produced in captive mines,[55] these prices have been tainted by the subsidies reflected on its financial statements.[56] Therefore, we have determined the SV of dolomite based on the simple average of domestic prices for dolomite provided in the audited financial statements of Madras Cements and Tata Sponge Iron.

We valued flux No. 2, which consists of magnesium chloride, potassium chloride and sodium chloride, using data from Chemical Weekly. We consider both Chemical Weekly and WTA Indian Import Statistics to be reliable sources and, as such, the Department has used them in past cases to value chemical component inputs. In the instant case, however, we have determined that Chemical Weekly is the best available information for valuing flux because the quantity of the total imports of magnesium chloride in the WTA Indian Import Statistics is very small and, thus, does not appear to represent commercial quantities.[57]

TMI requested that the Department offset its NV for three by-products generated in the course of the production process: Coal tar, magnesium waste and cement clinker.[58] At verification, TMI established that its producers sold coal tar in arm's length transactions and received payments for those sales.[59] However, none of the parties placed a SV for coal tar on the record of this review. Therefore, for the preliminary results, we will value coal tar using HTS 2706, Tar Distilled From Coal, Lignite Or Peat and Other Minerals,[60] and will ask parties to

[44] *See* Factor Valuation Memorandum.

[45] The import data obtained from the WTA as published by Global Trade Information Services began identifying the original reporting currency for India as the U.S. dollar. See Memorandum to the file, "Indian Import Statistics Currency Denomination in the World Trade Atlas," dated March 29, 2010.

[46] *See, e.g.,* Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam, 69 FR 42672, 42682 (July 16, 2004), unchanged in Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam, 69 FR 71005 (December 8, 2004).

[47] *See* Factor Valuation Memorandum.

[48] *See* Final Results Of Redetermination Pursuant To Court Remand, dated February 25, 2010, *Jinan Yipin Corp., Ltd.* v. *United States, 637 F. Supp. 2d 1183 (CIT 2009). See* also Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review, 70 FR 54007, 54011 (September 13, 2005), unchanged in Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the First Administrative Review, 71 FR 14170 (March 21, 2006); and China Nat'l Mach. *Import & Export Corp.* v. *United States, 293 F. Supp. 2d 1334 (CIT 2003), affirmed 104 Fed. Appx. 183 (Fed. Cir. 2004).*

[49] *See* H.R. Rep. No. 100–576 at 590 (1988).

[50] *See* Pure Magnesium 06–07, and accompanying Issues and Decision Memorandum at Comment 1. In addition, see TMI's SV Comments at Exhibits SV–2C and SV–2D, which respectively contain, British Geological Survey (2006): Dolomite and A Review of the Dolomite and Limestone Industry in South Africa Report R43/2003.

[51] *Id.*

[52] *See* TMI's SV Comments at Exhibits SV–2f through SV–2i.

[53] *See* TMI's SV Comments at Exhibit SV–2i, at page 50 and 103.

[54] *See, e.g.,* Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Countervailing Duty Administrative Review, 73 FR 40295 (July 14, 2008).

[55] *See* TMI's SV Comments at Exhibit SV–2i, at page 12.

[56] *See* TMI's SV Comments at Exhibit SV–2i, at page 50 and 103.

[57] *See* Factor Valuation Memorandum.

[58] *See* TMI's DQR at D–13 to D–15.

[59] *See* TMI Verification Report at section XVI, "By-Products."

[60] *See* Factor Valuation Memorandum.

comment on the record concerning the appropriate SV for coal tar for the final results. For magnesium waste and cement clinker, TMI reported a three-party arrangement whereby the magnesium producers provide the by-product to a freight provider in return for offsets to the money owed to that freight provider by the magnesium producer for previous services rendered.[61] However, TMI could not demonstrate actual payment received for these by-products and, therefore, failed to establish that its by-products for magnesium waste and cement clinker have commercial value.[62] Specifically, TMI was unable to show receipts that its freight provider received from the purchaser to demonstrate that the by-products of magnesium waste and cement clinker have commercial value. Therefore, the Department has preliminarily determined not to grant TMI a by-product offset for magnesium waste and cement clinker.

For direct labor, indirect labor, and packing labor, consistent with 19 CFR 351.408(c)(3), the Department used the PRC regression-based wage rate as reported on Import Administration's Web site.[63] Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, the Department has applied the same wage rate to all skill levels and types of labor reported by TMI.

We valued electricity using the updated electricity price data for small, medium, and large industries, as published by the Central Electricity Authority, an administrative body of the Government of India, in its publication titled Electricity Tariff & Duty and Average Rates of Electricity Supply in India, dated March 2008.[64] These electricity rates represent actual country-wide, publicly available information on tax-exclusive electricity rates charged to small, medium, and large industries in India. We did not inflate this value because utility rates represent current rates, as indicated by the effective dates listed for each of the rates provided.

To value steam coal, we used steam coal prices from the December 12, 2007, CIL's Coal Pricing Circular. *See* CIL: S&M: GM(F): Pricing 1124, dated 12 December 2007).[65] Since TMI reports using non-coking coal with a useful heat value of 5500 kcal/kg,[66] we calculated the SV for steam coal by averaging the prices of grades B and C steam coal from the December 12, 2007, CIL Coal Pricing Circular.[67] We did not inflate this value to the current POR because the steam coal rates represent the rates that were in effect until October 16, 2009,[68] and are, therefore, contemporaneous with the POR. Finally, we have applied an additional fixed surcharge of 165 rupees ("Rs.")/metric ton ("MT") to our calculation of the average of B and C grades of steam coal.

We valued truck freight expenses using an Indian per-unit average rate calculated from data on the following Web site: *http://www.infobanc.com/logistics/logtruck.htm*.[69] The logistics section of this Web site contains inland freight truck rates between many large Indian cities. We did not inflate this rate since it is contemporaneous with the POR.

We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in India. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in India that is published in Doing Business 2010: India, published by the World Bank.[70]

We valued marine insurance using the price quote retrieved from RJG Consultants, online at *http://www.rjgconsultants.com/163.html,* a market-economy provider of marine insurance.[71] We did not inflate this rate since it is contemporaneous with the POR

19 CFR 351.408(c)(4) directs the Department to value overhead, general, and administrative expenses ("SG&A"), and profit using non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country. In this administrative review, Petitioner placed the 2008–2009 financial statements on the record for one Indian producer of aluminum products—National Aluminum Company Limited ("NALCO"), and one producer of zinc products—Hindustan Zinc Limited ("Hindustan Zinc"). TMI placed the 2008–2009 financial statements on the record for five Indian producers of aluminum products: Madras Aluminum Company Ltd. ("MALCO"), HINDALCO Industries Limited ("HINDALCO"), Century Extrusions Ltd. ("Century"), Sudal Industries Ltd. ("Sudal"), and Bhoruka Aluminum ("Bhoruka").

For the following reasons, we have determined not to rely on the 2008–2009 audited financial statements of MALCO, HINDALCO, Hindustan Zinc, NALCO, Century and Bhoruka as surrogate financial statements under 19 CFR 351.408(c)(4). First, we determined not to rely on MALCO's audited financial statements because MALCO suspended production of aluminum and alumina in November 2008, seven months into its fiscal year (and the POR).[72] In addition, since it suspended aluminum and alumina production, it switched the use of its power generation from captive consumption to external sales.[73] As a result, the financial statements do not reflect the cost experience of producing a product comparable to the subject merchandise for five months of the POR.

Second, we have determined not to rely on the financial statements of HfNDALCO, NALCO, and Century because the record indicates that during this period these companies received subsidies the Department has previously determined to be countervailable. Congress indicated that the Department should "avoid using any prices which it had reason to believe or suspect may be dumped or subsidized prices." [74] Consistent with this Congressional directive, the Department's practice is to not use financial statements of a company that we have reason to believe or suspect may have received subsidies, where there are other sufficient reliable and representative data on the record for purposes of calculating the surrogate financial ratios, because the financial statements of companies receiving actionable subsidies are less representative of the financial experience of the relevant industry than the ratios derived from financial statements that do not contain evidence

[61] *See* TMI Verification Report at section XVI, "By-Products."

[62] *See* TMI Verification Report at section XVI, "By-Products."

[63] *See* "Expected Wages of Selected NME Countries," revised in December 2009, available at *http://ia.ita.doc.gov/wages/07wages/final/final-2009-2007-wages.html.* The source of these wage-rate data is the Yearbook of Labour Statistics 2007, ILO (Geneva: 2008), Chapter 5B: Wages in Manufacturing. The years of the reported wage rates are from 2006 and 2007.

[64] *See* Factor Valuation Memorandum.

[65] *See* Factor Valuation Memorandum.

[66] TMI's DQR at D–12. See also Annexure X of CIL's Coal Pricing Circular in the Factor Valuation Memorandum (identifying the range of kcal/kg in each grade of coal).

[67] *See* Factor Valuation Memorandum.

[68] *See http://www.coalindia.in/Business.aspx?tab=2.*

[69] See Factor Valuation Memorandum.

[70] *See* Factor Valuation Memorandum.

[71] *See* Factor Valuation Memorandum.

[72] *See* The Madras Aluminum Company Limited, 49th Annual report 2008–09, at 4, contained in TMI's SV Comments at Exhibit SV–11D. MALCO's fiscal year coincides with the POR.

[73] *See id.* at 4.

[74] Omnibus Trade and Competitiveness Act of 1988, H.R. Rep. No. 576, 100th Cong., 2nd Sess., at 59091 (1988).

of subsidization.[75] In this case, HINDALCO's 2008–2009 financial statements indicate that HINDALCO received benefits under the Duty Free Import Entitlement Scheme ("EPCG Scheme").[76] Similarly, NALCO's financial statements indicate that NALCO received benefits under the Duty Entitlement Pass Book ("DEPB Premium") [77] and obtained EPCG licenses.[78] Century's audited financial statements demonstrated that it also received benefits under the EPCG Scheme.[79] India's EPCG Scheme and DEPB Premiums each have been found by the Department to provide a countervailable subsidy.[80] Third, we rejected Bhoruka's audited financial statements because they did not show a profit for the 2008–2009 fiscal years.[81] The Department has an established practice of not relying on financial statements that are unprofitable.[82] Fourth, we have determined not to use the 2008–2009 financial statements of Hindustan Zinc because Hindustan Zinc has four captive mines and did not include the cost of materials produced on its income statement.[83]

As a result, we have preliminarily determined to use the 2008–2009 audited financial statements of Sudal as the basis of the financial ratios in this review. Sudal is a secondary aluminum extrusion manufacturer that used, purchased, or imported aluminum metals as raw materials to manufacture aluminum extrusions and fabricated products; [84] Sudal earned a profit; [85] and there is no record evidence to indicate that it received benefits that the Department has determined to be countervailable.[86] Further, its audited financial statements are complete and are sufficiently detailed to disaggregate materials, labor, overhead, and SG&A expenses.[87]

While the Department has not previously determined whether the production process for extruded aluminum is similar to that of pure magnesium for purposes of calculating surrogate financial ratios, we find that it is the best available information on the record. While it is the Department's practice to reject financial statements of surrogate producers whose production process is not comparable to the respondent's production process when better information is available,[88] there is insufficient evidence to conclude in this case that production processes at issue are too dissimilar for purposes of using the Sudal financial statements. Accordingly, we invite parties to provide additional information and explanation on the record concerning the comparability of the manufacturing process for pure magnesium and extruded aluminum products, and to provide additional suitable financial statements from Indian producers of comparable merchandise.

For a complete listing of all the inputs and a detailed discussion about our SV selections, see the Factor Valuation Memorandum.

Currency Conversion

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

Use of Facts Available and Adverse Facts Available ("AFA")

Section 776(a) of the Act provides that the Department shall apply "facts otherwise available" if (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information supplied if it can do so without undue difficulties. Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

[75] *See* Certain Steel Threaded Rod from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 8907 (February 27, 2009), and accompanying Issues and Decision Memorandum at Comment 1; Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 40485 (July 15, 2008) ("OTR Tires") at Comment 17A; Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 52049 (September 12, 2007) at Comment 2, citing Freshwater Crawfish Tail Meat From the People's Republic of China: Notice of Final Results And Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 19174 (April 17, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

[76] *See* Annual Report 2008–2009, Hindalco Industries Limited, at 91 contained in TMI's SV Comments at Exhibit SV–11E.

[77] *See* 28th Annual Report 2008–2009, National Aluminum Company Limited, at 71 contained in Petitioner's SV Comments at Exhibit 5.

[78] *See id.* at 72.

[79] *See* Century Extrusion Limited, Twenty First Annual Report 2008–2009, at pages 35 and 41, in TMJ's SV Comments at Exhibit SV–11B.

[80] *See e.g.,* Certain Iron-Metal Castings From India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review, 64 FR 61592 (November 12, 1999), unchanged in Certain Iron-Metal Castings from India: Final Results of Countervailing Duty Administrative Review, 65 FR 31515 (May 18, 2000); *see also http://ia.ita.doc.gov/esel/eselframes.html;* and Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from India, 71 FR 45034 (August 8, 2006), and accompanying Issues and Decision Memorandum at "Benchmarks for Loans and Discount Rate."

[81] *See* 29th Annual Report 2008–09, Bhoruka Aluminum Limited, at 31 contained in TMI's SV Comments at Exhibit SV–11C.

[82] *See* OTR Tires at Comment 17A.

[83] *See* Annual Report 2008–09, Hindustan Zinc Limited, at 61, 79 and 93, contained in Petitioner's SV Comments at Exhibit 6.

[84] Annual Report 2008–2009, Sudal Industries Limited, at 33 contained in TMI's SV Comments at Exhibit SV–1 1A.

[85] *See* Annual Report 2008–2009, Sudal Industries Limited, at 19 contained in TMI's SV Comments at Exhibit SV–1 1A. See also Century Extrusions Ltd., at 33 contained in TMI's SV Comments at Exhibit SVI1B.

[86] *See id.*

[87] *See id.* See also the appropriate schedules to the financial statements as indicated on page 33 for Century and page 19 for Sudal.

[88] *See, e.g.,* Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 6836 (February 9, 2005), and accompanying Issues and Decision Memorandum at Comment 1.

Application of Total AFA to the PRC-Wide Entity

Because TXR and Pan Asia did not respond to the Department's antidumping duty questionnaire, we preliminarily determine that these companies' withheld information requested by the Department in accordance with sections 776(a)(2)(A) and (B) of the Act. Furthermore, these companies' refusal to participate in the review significantly impeded the proceeding in accordance with section 776(a)(2)(C) of the Act. Specifically, had TXR and Pan Asia participated in the review, the Department would have determined whether they were entitled to a separate rate and calculated company specific dumping margins for these companies.

Thus, because there is no information on the record demonstrating TXR's or Pan Asia's entitlement to a separate rate in accordance with section 776(a) of the Act, the Department has preliminarily treated these companies as part of the PRC-Wide Entity.

Further, because these parties did not respond to the Department's antidumping questionnaire and are part of the PRC-Wide Entity, the Department is basing the dumping margin of the PRC-Wide Entity on the facts otherwise available on the record. Furthermore, the PRC-Wide Entity's refusal to provide the requested information constitutes circumstances under which it is reasonable to conclude that less than full cooperation has been shown.[89] Hence, pursuant to section 776(b) of the Act, the Department has determined that, when selecting from among the facts otherwise available, an adverse inference is warranted with respect to the PRC-Wide Entity.

Selection of AFA Rates

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(l) provide that the Department may rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. The Department's practice is to select an AFA rate that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner" and that ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.[90] Specifically, the Department's practice in reviews, in selecting a rate as total AFA, is to use the highest rate on the record of the proceeding which, to the extent practicable, can be corroborated (assuming the rate is based on secondary information).[91] The Court of International Trade and the Court of Appeals for the Federal Circuit have affirmed decisions to select the highest margin from any prior segment of the proceeding as the AFA rate on numerous occasions.[92] Therefore, as AFA, the Department has preliminarily assigned the PRC–Wide Entity a dumping margin of 111.73 percent. This margin is the highest calculated rate for a respondent on the record of any segment of the proceeding.[93]

Corroboration of Secondary Information

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.[94] Corroborate means that the Department will satisfy itself that the secondary information to be used has probative value.[95] To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.[96] Independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.[97]

The 111.73 percent AFA rate is the highest calculated rate on the record of any segment of the proceeding.[98] No additional information has been presented in the current review which calls into question the reliability of the information. This rate was calculated for a mandatory respondent in the 06–07 administrative review of pure magnesium and was assigned to TMI as AFA in the last completed segment of the proceeding. Thus, we have determined this information continues to be reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin

[89] *See Nippon Steel Corporation* v, *United States, 337 F.3d 1373, 1383 (Fed. Cir. 2003),* where the Court of Appeals for the Federal Circuit provided an explanation of the "failure to act to the best of its ability" standard noting that the Department need not show intentional conduct existed on the part of the respondent, but merely that a "failure to cooperate to the best of a respondent's ability" existed (*i.e.*, information was not provided "under circumstances in which it is reasonable to conclude that less than full cooperation has been shown").

[90] *See* Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8911 (February 23, 1998); *see* also Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review, 70 FR 69937, 69939 (November 18, 2005) and the SAA at 870.

[91] *See* Glycine from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 74 FR 15930, 15934 (April 8, 2009), unchanged in Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 41121 (August 14, 2009); see also *Fujian Lianfu Forestry Co., Ltd.* v. *United States, 638 F. Supp. 2d 1325, 1336 (CIT August 10, 2009)* ("Commerce may, of course, begin its total AFA selection process by defaulting to the highest rate in any segment of the proceeding, but that selection must then be corroborated, to the extent practicable.").

[92] *See e.g. NSK Ltd.* v. *United States, 346 F. Supp. 2d 1312, 1335 (Ct. Int'l Trade 2004)* (affirming a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in the investigation); *Kompass Food Trading International* v. *United States, 24 CIT 678, 683–84 (2000)* (affirming a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd.* v. *United States, 360 F. Supp. 2d 1339, 1348 (Ct. Int'l Trade 2005)* (affirming a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

[93] *See* Pure Magnesium 06–07.

[94] *See* SAA at 870.

[95] *See id.*

[96] *See* Tapered Roller Bearings and Parts Thereof Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof From Japan: Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996), unchanged in Tapered Roller Bearings and Parts Thereof Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part, 62 FR 11825 (March 13, 1997).

[97] *See* Notice of Preliminary Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan, 68 FR 35627, 35629 (June 16, 2003), unchanged in Notice of Final Determination of Sales at Less Than Fair Value: High and Ultra High Voltage Ceramic Station Post Insulators from Japan, 68 FR 62560 (November 5, 2003); and Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada, 70 FR 12181, 12183–84 (March 11, 2005).

[98] *See* Pure Magnesium 06–07.

and determine an appropriate margin.[99] Similarly, the Department does not apply a margin that has been discredited.[100] To assess the relevancy of the rate used, the Department compared the transaction-specific margins calculated for TMI in the instant administrative review with the 111.73 percent rate calculated in the 06–07 review of pure magnesium. The Department found that the 111.73 percent margin was within the range of the margins calculated on the record of the instant administrative review. Since the 111.73 percent margin is within the range of transaction-specific margins on the record of this administrative review, the Department has determined that the 111.73 percent margin continues to be relevant for use as an AFA rate for the PRC–Wide Entity in this administrative review.

As the adverse margin is both reliable and relevant, the Department has determined that it has probative value. Accordingly, the Department has determined that this rate meets the corroboration criterion established in section 776(c) of the Act.

Duty Absorption

Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. *See also*, 19 CFR 351.213(j). On July 24, 2009, Petitioner requested that the Department determine whether TMI had absorbed antidumping duties for U.S. sales of pure magnesium made during the POR. Since the instant review was initiated more than four years after publication of the pure magnesium order, this request is untimely and, as such, we have not conducted a duty absorption analysis.

Weighted-Average Dumping Margins

The preliminary weighted-average dumping margin is as follows:

MAGNESIUM METAL FROM THE PRC

Exporter	Weighted-average margin (percentage)
Tianjin Magnesium International Co. Ltd	15.23
PRC-Wide Entity **	111.73

** Pan Asia and TXR are part of this PRC-Wide Entity.

Disclosure

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of these preliminary results.[101] If a hearing is requested, the Department will announce the hearing schedule at a later date. Interested parties may submit case briefs and/or written comments no later than seven days after the release of the verification report issued in this review.[102] Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than five days after the time limit for filing the case briefs.[103] Further, we request that parties submitting written comments provide the Department with an additional electronic copy of those comments on a CD–ROM. The Department intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in all comments, and at a hearing, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.[104] For assessment purposes, we calculated importer- or customer-specific assessment rates for merchandise subject to this review. We calculated an ad valorem rate for each importer or customer by dividing the total dumping margins for reviewed sales to that party by the total entered value associated with those transactions. For duty assessment rates calculated on this basis, we will direct CBP to assess the resulting ad valorem rate against the entered customs values for the subject merchandise. Where appropriate, we calculated a per-unit rate for each importer or customer by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit rate against the entered quantity of the subject merchandise. Where an importer- or customer-specific assessment rate is de minimis (*i.e.*, less than 0.50 percent) in accordance with the requirement of 19 CFR 351.106(c)(2), the Department will instruct CBP to assess that importer's or customer's entries of subject merchandise without regard to antidumping duties. We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity at the PRC-wide rate we determine in the final results of this review. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For TMI, which has a separate rate, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or de minimis, zero cash deposit will be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the exporter-specific rate; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 111.73 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of

[99] *See* Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin).

[100] *See D & L Supply Co.* v. *United States, 113 F.3d 1220, 1221 (Fed. Cir. 1997)* (ruling that the Department will not use a margin that has been judicially invalidated).

[101] *See* 19 CFR 351.310(c).

[102] *See* 19 CFR 351.309(c)(ii).

[103] *See* 19 CFR 351.309(d).

[104] *See* 19 CFR351.212(b).

antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

Dated: June 7, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–14391 Filed 6–17–10; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–821]

Polyethylene Retail Carrier Bags from Thailand: Rescission of Antidumping Duty Administrative Review in Part

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

SUMMARY: On September 22, 2009, in response to requests from interested parties, the Department of Commerce published a notice of initiation of administrative review of the antidumping duty order on polyethylene retail carrier bags from Thailand. The period of review is August 1, 2008, through July 31, 2009. The Department of Commerce is rescinding this review in part.

EFFECTIVE DATE: June 18, 2010.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0410.

SUPPLEMENTARY INFORMATION:

Background

On September 22, 2009, in response to requests from the Polyethylene Retail Carrier Bag Committee and its individual members, Hilex Poly Co., LLC, and Superbag Corporation (the petitioners) and by Thai Plastic Bags Industries Co., Ltd., the Department of Commerce (the Department) published a notice of initiation of administrative review of the antidumping duty order on polyethylene retail carrier bags from Thailand. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 48224 (September 22, 2009). On April 19, 2010, the petitioners withdrew their request for an administrative review of Landblue (Thailand) Co., Ltd. (Landblue).

Rescission of Review in Part

In accordance with 19 CFR 351.213(d)(1), the Department will rescind an administrative review "if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. The Secretary may extend this time limit if the Secretary decides that it is reasonable to do so." Although we did not receive the petitioners' withdrawal letter within the 90-day time limit, we determine that it is reasonable to accept this letter of withdrawal because we have not expended significant resources in the conduct of this review and because we received no other requests for the review of Landblue. Accordingly, the Department is rescinding this review in part with respect to Landblue pursuant to 19 CFR 351.213(d)(1). The Department intends to issue appropriate assessment instructions to U.S. Customs and Border Protection 15 days after the date of publication of this notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's assumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

We are issuing and publishing this rescission in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: June 10, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–14799 Filed 6–17–10; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–839]

Carbazole Violet Pigment 23 from India: Rescission of Countervailing Duty Administrative Review

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

EFFECTIVE DATE: June 18, 2010.

FOR FURTHER INFORMATION CONTACT: Myrna Lobo or Milton Koch, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2371 or (202) 482–2584, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 2009, the Department published a notice of opportunity to request an administrative review of the countervailing duty order on Carbazole Violet Pigment 23(CVP–23) from India. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 74 FR 62743 (December 1, 2009). On December 31, 2009, we received a request from Meghmani Pigments requesting an administrative review of the countervailing duty order on CVP–23 from India for the period January 1, 2008 through December 31, 2008. In its request, Meghmani Pigments noted that it was formerly known as Alpanil Industries, Ltd. and that its name change to Meghmani Pigments occurred effective April 9, 2009, a date subsequent to the requested period of review. In accordance with 19 CFR 351.221(c)(1)(i), the Department published a notice initiating an administrative review of the countervailing duty order on CVP- 23 from India. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part, and Deferral of Initiation of Administrative Review*, 75 FR 4770 (January 29, 2010).

Rescission of Countervailing Duty Administrative Review

The Department's regulations provide that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation. See 19 CFR 351.213 (d)(1). On