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DEPARTMENT OF COMMERCE

International Trade Administration

A-570-832

Pure Magnesium from the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Antidumping Duty Administrative Review and Notice of Amended Final Results of the 2009-2010 Antidumping Duty Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: On May 21, 2015, the United States Court of International Trade (“CIT” or “Court”) sustained the Final Remand Results¹ issued by the Department of Commerce (“Department”) concerning the 2009-2010 administrative review of the antidumping duty order on pure magnesium from the People's Republic of China.² In the Final Remand Results, the Department changed the data source for inland freight and selected different financial statements for the calculation of the surrogate financial ratios, while it continued to find that the untimely and thus previously rejected factual information was irrelevant and showed no “fraud” on the part of the respondent, Tianjin Magnesium International Co., Ltd. (“TMI”).

Consistent with the decision of the United States Court of Appeals for the Federal Circuit (“CAFC”) in *Timken*,³ as clarified by *Diamond Sawblades*,⁴ the Department is notifying the public that the final judgment in this case is not in harmony with the Department's final results

¹ See *Final Results of Redetermination Pursuant to Court Remand*, Court Order No. 12-00006, Slip Op. 13-9 (CIT 2013), dated January 22, 2013 (“Final Remand Results”).

² See *US Magnesium LLC v. United States*, Court Order No. 12-00006, Slip Op. 15-47 (CIT May 21, 2015) (“*TMI IP*”).

³ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (“*Timken*”).

⁴ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (“*Diamond Sawblades*”).

of the administrative review of the antidumping duty order on pure magnesium from the People's Republic of China covering the period of review ("POR") from May 1, 2009, through April 30, 2010.⁵

EFFECTIVE DATE: May 31, 2015

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SUPPLEMENTARY INFORMATION:

Background

On December 9, 2011, the Department issued the *Final Results*.⁶ US Magnesium LLC ("USM") challenged certain aspects of the Department's *Final Results*. On January 22, 2013, the Court remanded the *Final Results* to the Department: (1) to consider whether previously rejected factual information contained *prima facie* evidence of fraud by TMI in accordance with the factors outlined in *Home Products*,⁷ and (2) to explain its rationale for selecting Infobanc data based on substantial evidence on the record or, alternatively, to select a new surrogate value for truck freight.⁸ Additionally, the Department requested a voluntary remand to reconsider: (1) the selection of Hindalco Industries Limited's ("Hindalco") financial statements for calculating surrogate financial ratios, and (2) USM's claim that the Department made errors when

⁵ See *Pure Magnesium from the People's Republic of China: Final Results of the 2009-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 76 FR 76945 (December 9, 2011) and accompanying Issues and Decision Memorandum ("*Final Results*").

⁶ See *Final Results*.

⁷ See *Home Prods. Int'l v. United States*, 633 F.3d 1369 (Fed. Cir. 2011) ("*Home Products*").

⁸ See *US Magnesium LLC v. United States*, Court Order No. 12-00006, Slip Op. 13-9 (CIT January 22, 2013) ("*TMI I*").

calculating the surrogate value for labor.⁹

In accordance with *TMI I*, the Department opened the administrative record to accept the previously rejected factual information and concluded that this factual information did not demonstrate *prima facie* evidence of fraud by TMI.¹⁰ The Department also determined that the Infobanc data did not constitute the best information available to value truck freight and, instead, selected World Bank data for the Final Remand Results.¹¹ Additionally, the Department selected Madras Aluminum Company's financial statements to value the surrogate financial ratios. Lastly, the Department corrected errors in its calculation of the labor rate.¹² On May 21, 2015, the Court entered judgement sustaining the Final Remand Results entirely.

Timken Notice

In *Timken*, 893 F.2d at 341, as clarified by *Diamond Sawblades*, the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended ("the Act"), the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The Court's judgment in *TMI II* sustaining the Final Remand Results constitutes a final decision of the Court that is not in harmony with the Department's *Final Results*. This notice is published in fulfillment of the publication requirement of *Timken*.

Amended Final Results

Because there is now a final court decision, the Department is amending the *Final Results* with respect to the surrogate value for truck freight and financial ratios, in addition to correcting

⁹ *Id.*

¹⁰ *See* Final Remand Results.

¹¹ *Id.*

¹² *Id.*

the errors in its calculation of the labor rate. The revised weighted-average dumping margin for TMI during the period May 1, 2009, through April 30, 2010, is as follows:

Weighted-Average Dumping Margin:

Exporter	Weighted-Average Dumping Margin (percent)
TMI	51.26

Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the Court's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct U.S. Customs and Border Protection to assess antidumping duties on unliquidated entries of subject merchandise exported by the above listed exporter at the rate listed above.

Cash Deposit Requirements

Since the *Final Remand Results*, the Department has established a new cash deposit rate for TMI.¹³ Therefore, the cash deposit rate for TMI does not need to be updated as a result of these amended final results.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e), 751(a)(1), and 777(i)(1) of the Act.

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

May 29, 2015
Date

¹³ See *Pure Magnesium From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 94 (January 2, 2014); *Pure Magnesium From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 26541 (May 8, 2015).

