



A-201-837, A-570-954  
Sunset Reviews  
**Public Document**  
E&C/OII: AW

May 3, 2021

**MEMORANDUM TO:** Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance

**FROM:** James Maeder  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Issues and Decision Memorandum for the Expedited Second  
Sunset Reviews of the Antidumping Duty Orders on Certain  
Magnesia Carbon Bricks from Mexico and the People's Republic  
of China

---

## I. SUMMARY

We have analyzed the substantive responses of the domestic interested parties in the second sunset reviews of the antidumping duty (AD) orders covering certain magnesia carbon bricks (MCBs) from Mexico and the People's Republic of China (China).<sup>1</sup> No other interested party submitted a substantive response. Accordingly, we conducted expedited (120-day) sunset reviews pursuant to section 751(c)(3)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.218(e)(1)(ii)(C)(2). We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this sunset review for which we received a substantive response:

1. Likelihood of continuation or recurrence of dumping
2. Magnitude of the dumping margins likely to prevail

## II. BACKGROUND

On January 4, 2021, Commerce published the notice of initiation of the second sunset reviews of the *AD Orders*, pursuant to section 751(c) of the Act.<sup>2</sup> In January 2021, Commerce received notices of intent to participate within the 15-day deadline specified in 19 CFR 351.218(d)(1)(i) from the Magnesia Carbon Bricks Fair Trade Committee (the Committee), an association comprised of three U.S. producers of MCBs: Resco Products, Inc.; Magnesita Refractories

---

<sup>1</sup> See *Certain Magnesia Carbon Bricks from Mexico and the People's Republic of China: Antidumping Duty Orders*, 75 FR 57257 (September 20, 2010) (*AD Orders*).

<sup>2</sup> See *Initiation of Five-Year (Sunset) Reviews*, 86 FR 60 (January 4, 2021).



Company; and HarbisonWalker International, Inc.<sup>3</sup> The Committee claimed interested party status under section 771(9)(E) of the Act, as each member of the Committee is a manufacturer of the domestic like product.

On February 2, 2021, Commerce received adequate substantive responses to the notice of initiation from the Committee within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).<sup>4</sup> We received no substantive responses from respondent interested parties with respect to any of the orders covered by these sunset reviews.

On February 22, 2021, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive adequate substantive responses from respondent interested parties.<sup>5</sup> As a result, pursuant to 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted expedited (120-day) sunset reviews of the *AD Orders*.

### III. SCOPE OF THE *ORDERS*

The scope covered by the *AD Orders* includes certain chemically-bonded (resin or pitch), magnesia carbon bricks with a magnesia component of at least 70 percent magnesia (MgO) by weight, regardless of the source of raw materials for the MgO, with carbon levels ranging from trace amounts to 30 percent by weight, regardless of enhancements (for example, magnesia carbon bricks can be enhanced with coating, grinding, tar impregnation or coking, high temperature heat treatments, anti-slip treatments or metal casing) and regardless of whether or not antioxidants are present (for example, antioxidants can be added to the mix from trace amounts to 15 percent by weight as various metals, metal alloys, and metal carbides). Certain magnesia carbon bricks that are the subject of these orders are currently classifiable under subheadings 6902.10.1000, 6902.10.5000, 6815.91.0000, 6815.99.2000 and 6815.99.4000 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive.

### IV. HISTORY OF THE *ORDERS*

On August 2, 2010, Commerce published its final determinations in the less-than-fair-value (LTFV) investigations of MCBs from China and Mexico.<sup>6</sup> On September 20, 2010, Commerce published the *AD Orders*.<sup>7</sup> Commerce found the following weighted-average dumping margins in the LTFV investigations:

---

<sup>3</sup> See Committee's Letter, "Domestic Industry's Notice of Intent To Participate In Sunset Review," dated January 14, 2021; see also "Domestic Industry's Notice of Intent To Participate In Sunset Review," dated January 14, 2021.

<sup>4</sup> See Committee's Letter, "Domestic Industry's Substantive Response," dated February 2, 2021 (China Substantive Response); see also Committee's Letter, "Domestic Industry's Substantive Response," dated February 2, 2021 (Mexico Substantive Response).

<sup>5</sup> See Commerce's Letter, "Sunset Reviews Initiated on January 4, 2021," dated February 22, 2021.

<sup>6</sup> See *Certain Magnesia Carbon Bricks from Mexico: Notice of Final Determination of Sales at Less Than Fair Value*, 75 FR 45097 (August 2, 2010); see also *Certain Magnesia Carbon Bricks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances*, 75 FR 45468 (August 2, 2010).

<sup>7</sup> See *Orders*, 75 FR 57257.

Exporter/Producer	Weighted-Average Margin (percent)
<b>Mexico<sup>8</sup></b>	
RHI-Refmex S.A. de C.V	57.90
All Others	57.90
<b>PRC<sup>9</sup></b>	
RHI Refractories Liaoning Co., Ltd	128.10
Dashiqiao City Guancheng Refractor Co., Ltd	128.10
Fengchi Imp. And Exp. Co., Ltd. of Haicheng City	128.10
Jiangsu Sujia Group New Materials Co. Ltd	128.10
Liaoning Fucheng Refractories Group Co., Ltd	128.10
Liaoning Fucheng Special Refractory Co., Ltd	128.10
Liaoning Jiayi Metals & Minerals Co., Ltd	128.10
Yingkou Bayuquan Refractories Co., Ltd	128.10
Yingkou Dalmond Refractories Co., Ltd	128.10
Yingkou Guangyang Co., Ltd	128.10
Yingkou Jiahe Refractories Co., Ltd	128.10
Yingkou Kyushu Refractories Co., Ltd	128.10
Yingkou New Century Refractories Ltd	128.10
Yingkou Wonjin Refractory Material Co., Ltd	128.10
PRC-Wide Entity	236.00

Since the continuation of the *AD Orders* as a result of the final affirmative determinations in the first sunset reviews,<sup>10</sup> Commerce has: (1) initiated, but rescinded, four administrative reviews of

---

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> See *Certain Magnesia Carbon Bricks from Mexico and the People's Republic of China: Continuation of Antidumping Duty Orders and Countervailing Duty Order*, 81 FR 7502 (February 12, 2016) (*Continuations*).

the order on MCBs from China;<sup>11</sup> and (2) initiated, but rescinded, three administrative reviews with respect to the order on MCBs from Mexico.<sup>12</sup>

Since the continuation of the *AD Orders* as a result of the final affirmative determinations in the first sunset reviews,<sup>13</sup> Commerce has conducted one scope inquiry, determining that certain magnesia alumina carbon bricks are in scope when they contain less than five percent added alumina.<sup>14</sup> Commerce has not issued any anti-circumvention or changed circumstances determinations related to the *AD Orders*.

## V. LEGAL FRAMEWORK

In accordance with section 751(c)(1) of the Act, Commerce is conducting these sunset reviews to determine whether revocation of the *AD Orders* would be likely to lead to a continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, Commerce shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the period before and the period after the issuance of the AD orders.

In accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the SAA,<sup>15</sup> the House Report,<sup>16</sup> and the Senate Report,<sup>17</sup> Commerce's determinations of likelihood of recurrence will be made on an order-wide, rather than a company-specific, basis.<sup>18</sup> In addition, Commerce normally determines that revocation of an AD order is likely to lead to continuation or recurrence of dumping when: (a) dumping continued at any level above *de minimis* after the issuance of the order; (b) imports of the subject merchandise ceased after the issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.<sup>19</sup>

---

<sup>11</sup> See *Magnesia Carbon Bricks from the People's Republic of China: Final Results and Partial Rescission of the Antidumping Duty Administrative Review; 2014-2015*, 82 FR 1695 (January 6, 2017); see also *Certain Magnesia Carbon Bricks from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2016-2017*, 84 FR 20857 (May 13, 2019); *Certain Magnesia Carbon Bricks from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments, In Part; 2017-2018*, 85 FR 9735 (February 20, 2020); and *Certain Magnesia Carbon Bricks from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018-2019*, 86 FR 6300 (January 21, 2021).

<sup>12</sup> See *Certain Magnesia Carbon Bricks from Mexico: Rescission of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 10744 (February 15, 2017); see also *Certain Magnesia Carbon Bricks from the People's Republic of China: Rescission of Antidumping Duty Administrative Review*, 82 FR 12550 (March 6, 2017); and *Certain Magnesia Carbon Bricks from Mexico: Rescission of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 6838 (February 15, 2018).

<sup>13</sup> See *Continuations*, 81 FR 7502.

<sup>14</sup> See Memorandum, "Final Scope Ruling – S&S Refractories," dated June 7, 2017.

<sup>15</sup> See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) (SAA).

<sup>16</sup> See H. Rep. No. 103-826, pt. 1 (1994), reprinted in 1994 U.S.C.A.N. 3773 (1994) (House Report).

<sup>17</sup> See S. Rep. No. 103-412 (1994) (Senate Report).

<sup>18</sup> See SAA at 879; see also House Report at 56.

<sup>19</sup> See SAA at 889-890; see also House Report at 63-64; Senate Report at 52; and *Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871, 18872 (April 16, 1998) (*Policy Bulletin*).

Alternatively, Commerce normally will determine that revocation of an AD order is not likely to lead to continuation or recurrence of dumping where dumping was eliminated after issuance of the order and import volumes remained steady or increased.<sup>20</sup>

Furthermore, as a base period of import volume comparison, it is Commerce's practice to use the one-year period immediately preceding the initiation of the investigation, rather than the level of pre-order import volumes, as the initiation of the investigation may dampen import volumes and, thus, skew the comparison.<sup>21</sup> When analyzing import volumes for second and subsequent sunset reviews, the Department's practice is to compare import volumes during the year preceding initiation of the underlying investigation to import volumes since the issuance of the last continuation notice.<sup>22</sup>

In addition, section 752(c)(3) of the Act states that Commerce shall provide to the ITC the magnitude of the margin of dumping that is likely to prevail if the order were revoked. Generally, Commerce selects the weighted-average dumping margins from the final determination in the original investigation, as these rates are the only calculated rates that reflect the behavior of exporters without the discipline of an order in place.<sup>23</sup> In certain circumstances, however, a more recently calculated rate may be more appropriate (e.g., "if dumping margins have declined over the life of an order and imports have remained steady or increased, {Commerce} may conclude that exporters are likely to continue dumping at the lower rates found in a more recent review").<sup>24</sup> Finally, pursuant to section 752(c)(4)(A) of the Act, a margin of dumping likely to prevail of "zero or *de minimis* shall not by itself require" Commerce to determine that revocation of an AD order would not be likely to lead to a continuation or recurrence of sales at LTFV.

Regarding the margin of dumping likely to prevail, in the *Final Modification for Reviews*, Commerce announced that in five-year (*i.e.*, sunset) reviews it will not rely on weighted-average dumping margins that were calculated using the zeroing methodology.<sup>25</sup> However, Commerce explained in the *Final Modification for Reviews* that it "retain{s} the discretion, on a case-by-case basis, to apply an alternative methodology, when appropriate" in both investigations and administrative reviews pursuant to section 777A(d)(1)(B) of the Act.<sup>26</sup> In the *Final Modification for Reviews*, Commerce stated that "only in the most extraordinary circumstances" would it rely on margins other than those calculated and published in prior determinations.<sup>27</sup> Commerce

---

<sup>20</sup> See SAA at 889-890; see also House Report at 64.

<sup>21</sup> See *Stainless Steel Bar from Germany; Final Results of the Sunset Review of the Antidumping Duty Order*, 72 FR 56985 (October 5, 2007), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

<sup>22</sup> See *Ferrovanadium from the People's Republic of China and the Republic of South Africa: Final Results of the Expedited Second Sunset Reviews of the Antidumping Duty Orders*, 79 FR 14216 (March 13, 2014), and accompanying IDM.

<sup>23</sup> See SAA at 890; see also *Persulfates from the People's Republic of China: Notice of Final Results of Expedited Second Sunset Review of Antidumping Duty Order*, 73 FR 11868 (March 5, 2008), and accompanying IDM at Comment 2.

<sup>24</sup> See SAA at 890-91.

<sup>25</sup> See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101, 8102-3 (February 14, 2012) (*Final Modification for Reviews*).

<sup>26</sup> *Id.* at 8105-6.

<sup>27</sup> *Id.* at 8102-3 and 8107-10.

further stated that, apart from the “most extraordinary circumstances,” it would “limit its reliance to margins determined or applied during the five-year sunset period that were not determined in a manner found to be WTO-inconsistent” and that it “may also rely on past dumping margins that were not affected by the WTO-inconsistent methodology, such as dumping margins recalculated pursuant to Section 129 proceedings, dumping margins determined based on the use of adverse facts available, and dumping margins where no offsets were denied because all comparison results were positive.”<sup>28</sup>

## **VI. DISCUSSION OF THE ISSUES**

Below we address the comments of the domestic interested party.

### **1. Likelihood of Continuation or Recurrence of Dumping**

#### Interested Party Comments<sup>29</sup>

With respect to Mexico, the Committee notes that no administrative reviews have been conducted since the first sunset review. Therefore, according to the Committee, every Mexican exporter remains subject to a high dumping margin. Accordingly, the Committee argues that dumping would continue if the order were revoked.

With respect to the volume of imports from Mexico, the Committee asserts that imports either ceased or declined significantly after issuance of the order in 2010.<sup>30</sup> For this reason as well, the Committee states that Commerce should conclude that dumping would continue if the order were revoked.

With respect to China, the Committee notes that since the first sunset review, dumping margins have only increased, because exporters which formerly qualified for separate rates failed to show continued eligibility for separate-rate status and are now part of the China-wide entity.<sup>31</sup> Accordingly, the Committee argues that dumping would continue if the order was revoked, because the current high dumping margins deter dumping from continuing.

With respect to the volume of imports from China, the Committee asserts that imports either ceased or declined significantly after issuance of the order in 2010.<sup>32</sup> For this reason as well, the Committee states that Commerce should conclude that dumping would continue if the order were revoked.

#### Commerce’s Position:

As explained in the “Legal Framework” section above, Commerce’s determinations of whether the revocation of the order would likely lead to the continuation of dumping will be made on an

---

<sup>28</sup> *Id.*

<sup>29</sup> See Mexico Substantive Response at 4-5; see also China Substantive Response at 3-6.

<sup>30</sup> See Mexico Substantive Response at 5.

<sup>31</sup> See China Substantive Response at 4.

<sup>32</sup> *Id.* at 5-6.

order-wide basis.<sup>33</sup> In addition, Commerce normally will determine that revocation of an AD order is likely to lead to continuation or recurrence of dumping where: (a) dumping continued at any level above *de minimis* after the issuance of the order; (b) imports of the subject merchandise ceased after the issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.<sup>34</sup> According to the SAA, existence of dumping margins after the order “is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were removed. If imports cease after the order is issued, it is reasonable to assume that the exporters could not sell in the United States without dumping and that, to reenter the U.S. market, they would have to resume dumping.”<sup>35</sup> In addition, “declining import volumes accompanied by the continued existence of dumping margins after the issuance of the order may provide a strong indication that, absent an order, dumping would be likely to continue, because the evidence would indicate that the exporter needs to dump to sell at pre-order volumes.”<sup>36</sup> Alternatively, the legislative history provides that declining (or no) dumping margins accompanied by steady or increasing imports may indicate that foreign companies do not have to dump to maintain market share in the United States and that dumping is less likely to continue or recur if the order were revoked.<sup>31</sup>

In the LTFV investigations for both China and Mexico, Commerce found dumping at above *de minimis* levels and assigned weighted-average dumping margins of 236.00 percent for Chinese and up to 57.90 percent for Mexican subject exporters/producers. Thus, any entries of subject merchandise into the United States after the issuance of the *AD Orders* were subject to above *de minimis* AD rates. Also noted above, Commerce has conducted no administrative reviews of these orders and, therefore, these margins remain in effect for all companies. In the instances where dumping margins continue to exist and there is a significant decline in import volumes, “it is reasonable to assume that dumping would continue if the discipline of the order were removed.”<sup>37</sup>

Additionally, we examined the statistics placed on the record by the Committee with respect to imports of the subject merchandise for the year prior to the initiation of the investigations and since the issuance of the most recent continuation notice, pursuant to section 752(c)(1)(B) of the Act.<sup>38</sup> These data show substantially decreased import volumes from China and Mexico and when comparing the import volumes during the relevant periods.<sup>39</sup> Given the continued existence of above *de minimis* margins calculated without zeroing since the imposition of the *AD Orders* and the overall decrease in the volume of imports, we determine that it is unlikely that producers of subject merchandise in China and Mexico would be able to sell at pre-order

---

<sup>33</sup> See SAA at 879.

<sup>34</sup> See SAA at 889-890; see also House Report at 63-64; and Senate Report at 52.

<sup>35</sup> See SAA at 890.

<sup>36</sup> *Id.* at 889; see also House Report at 63, and Senate Report at 52.

<sup>37</sup> See SAA at 890.

<sup>38</sup> See China Substantive Response at Attachment 2.

<sup>39</sup> See China Substantive Response at Attachments 2-4; see also Mexico Substantive Response at Attachment 2.

volumes without dumping.<sup>40</sup> Accordingly, we determine that dumping would likely continue or recur if the *AD Orders* were revoked.<sup>41</sup>

## 2. Magnitude of the Dumping Margins Likely to Prevail

### Interested Party Comments<sup>42</sup>

The Committee asserts that, pursuant to the principles set forth in the SAA and *Policy Bulletin*, Commerce should report the margins of dumping determined in the LTFV investigations.<sup>43</sup>

### Commerce's Position:

Section 752(c)(3) of the Act provides that Commerce shall provide to the ITC the magnitude of the margin of dumping that is likely to prevail if the *Orders* were revoked. Commerce's preference is to select a rate from the investigation because it is the only calculated rate that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order in place.<sup>44</sup> However, Commerce may provide a more recently calculated margin for a particular company, where declining (or zero or *de minimis*) dumping margins are accompanied by steady or increasing imports, which would reflect that the exporter is likely to dump at a lower rate found in a more recent review. Similarly, if an exporter chooses to increase dumping to increase or maintain market share, Commerce may provide the ITC with an increased margin that is more representative of that exporter's behavior in the absence of an order.<sup>45</sup> As indicated in the Legal Framework section *supra*, Commerce's current practice is to not rely on weighted average dumping margins calculated using the zeroing methodology, in accordance with the *Final Modification for Reviews*.<sup>46</sup>

The rates calculated in the LTFV investigations were not calculated using zeroing and, thus, these dumping margins are consistent with the practice stipulated in the *Final Modification for Reviews*. Therefore, we determine that revocation of the *AD Orders* would likely lead to continuation or recurrence of dumping at the magnitude of weighted-average margins up to 236.00 percent for China and up to 57.90 percent for Mexico. Accordingly, pursuant to section

---

<sup>40</sup> See SAA at 889 (explaining that "declining import volumes accompanied by the continued existence of dumping margins after the issuance of an order may provide a strong indication that, absent an order, dumping would be likely to continue, because the evidence would indicate that the exporter needs to dump to sell at pre-order volumes").

<sup>41</sup> See SAA at 890 (explaining that "{i}f companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were removed").

<sup>42</sup> See China Substantive Response at 6-7; and Mexico Substantive Response at 5-6.

<sup>43</sup> See SAA at 890; see also *Policy Bulletin*, 63 FR at 18873 (section II.B.1); and *Prestressed Concrete Steel Wire Strand from the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order*, 80 FR 43063 (July 21, 2015), and accompanying IDM at Comment 2.

<sup>44</sup> See SAA at 890; see also *Policy Bulletin*, 63 FR at 18873 (section II.B.1); and *Prestressed Concrete Steel Wire Strand from the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order*, 80 FR 43063 (July 21, 2015), and accompanying IDM at Comment 2.

<sup>45</sup> See section 752(c)(3) of the Act; see also *Clad Steel Plate from Japan: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 83 FR 22008 (May 11, 2018), and accompanying IDM at Comment 2.

<sup>46</sup> See *Final Modification for Reviews*, 77 FR at 8103.



752(c)(3) of the Act, Commerce will provide the ITC with the margins from the final determinations as the margins of dumping likely to prevail if the *AD Orders* were revoked.

## VII. FINAL RESULTS OF SUNSET REVIEWS

Commerce determines that revocation of the *AD Orders* would be likely to lead to the continuation or recurrence of dumping, and that the magnitude of the margins of dumping likely to prevail if the *AD Orders* were revoked would be margins up to 236.00 percent for China and up to 57.90 percent for Mexico.

## VIII. RECOMMENDATION

Based on our analysis of the substantive responses received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish these final results of these expedited sunset reviews in the *Federal Register*.



\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

5/3/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh

Acting Assistant Secretary

for Enforcement and Compliance