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

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Sunset Review
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December 1, 2015

MEMORANDUM TO: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

FROM: James Maeder
Senior Director, Office I
Antidumping and Countervailing Duty Operations

RE: Issues and Decision Memorandum for the Final Results of the Expedited First Sunset Review of the Countervailing Duty Order on Certain Magnesia Carbon Bricks from the People's Republic of China

SUMMARY

We have analyzed the responses of interested parties in the expedited sunset review of the *CVD Order* on certain magnesia carbon bricks (MCBs) from the People's Republic of China (PRC).[1] 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 that we address in this expedited sunset review:

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
2. Net Countervailable Subsidy Likely to Prevail
3. Nature of the Subsidies

Background

On September 21, 2010, the Department of Commerce (the Department) published the *CVD Order* on MCBs from the PRC.[2] On, August 3, 2015, the Department initiated the first sunset review of the *CVD Order* pursuant to section 751(c)(2) of the Tariff Act of 1930, as amended, (the Act) and 19 CFR 351.218(c).[3] The Magnesia Carbon Bricks Fair Trade Committee (the

[1] *See Certain Magnesia Carbon Bricks from the People's Republic of China: Countervailing Duty Order*, 75 FR 57442 (September 21, 2010) (*CVD Order*).
[2] *See CVD Order*.
[3] *See Initiation of Five-Year "Sunset" Reviews*, 80 FR 45945 (August 3, 2015).

Committee) timely filed a notice of intent to participate in the review on August 18, 2015 in accordance with 19 CFR 351.218(d)(1).[4] The Committee is an *ad hoc* association of three U.S. producer of MCBs: Resco Products, Inc., Magnesita Refractories Company, and Harbison Walker International, Inc.[5] On September 2, 2015, the Department received a substantive response from the Committee, in accordance with 19 CFR 351.218(d)(3)(i).[6] The Department did not receive a response from the Government of the PRC (GOC) or any PRC producers or exporters of subject merchandise.

In accordance with section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B)(2) and (C)(2), because there are inadequate responses from respondent interested parties, the Department is conducting an expedited (120-day) sunset review of the *CVD Order*.

History of the Order

On September 21, 2010 the Department published the *CVD Order* on MCBs from the PRC.[7] In the *Final Determination* of the subject CVD investigation,[8] covering the calendar year 2008, the Department found a net countervailable subsidy rate of 24.24 percent *ad valorem* for RHI Refractories Liaoning Co., Ltd. (RHIL) as well as its cross-owned affiliates RHI Refractories (Dalian) Co., Ltd. (RHID) and Liaoning RHI Jinding Magnesia Co., Ltd. (RHIJ) (collectively, RHI); 253.87 percent *ad valorem* for Liaoning Mayerton Refractories (LMR) and its cross-owned affiliate Dalian Mayerton Refractories Co. Ltd. (DMR) (collectively, Mayerton); and 24.24 percent *ad valorem* for “All-Others.”

We found the following programs countervailable for RHI in the original investigation:

1. Value-Added Tax (VAT) Rebates on Purchases of Domestically Produced Equipment
2. Location-Based Income Tax Reduction Programs for Foreign Invested Enterprises (FIEs)
3. Local Income Tax Exemption and Reduction Programs for “Productive” FIEs
4. Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment
5. Provision of Electricity for Less than Adequate Remuneration (LTAR)
6. Export Restraints for Raw Materials

We determined the following programs were not used by RHI during the POI:

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[4] *See* Letter to the Department, “First Five-Year (“Sunset”) Review of Countervailing Duty Order on Magnesia Carbon Bricks From The People’s Republic of China: Domestic Industry’s Notice of Intent to Participate In Sunset Review,” (August 18, 2015) (Notice of Intent to Participate).
[5] *Id.*
[6] *See* Letter to the Department, “Five-Year (‘Sunset’) Review Of Countervailing Duty Order On Certain Magnesia Carbon Bricks From The People’s Republic of China: Domestic Industry’s Substantive Response,” (September 2, 2015) (the Committee’s Substantive Response).
[7] *See CVD Order*.
[8] *See Certain Magnesia Carbon Bricks From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 32362 (August 2, 2010) (*Final Determination*) and accompanying Issues and Decision Memorandum (IDM).

1. Provision of Land-Use Rights to SOEs for LTAR
2. Two Free/Three Half Program for FIEs
3. Income Tax Reductions for Export-Oriented FIEs
4. Preferential Income Tax Policy for Enterprises in the Northeast Region
5. Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China
6. Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment
7. Preferential Tax Programs for Enterprises Recognized as High or New Technology Enterprises
8. Northeast Revitalization Program and Related Provincial Policies
9. The State Key Technology Renovation Project Fund
10. Famous Brands Programs
11. Grants to Companies for "Outward Expansion" and Export Performance in Guangdong Province
12. Fund for Supporting Technological Innovation for Technological Small- and Medium-Sized Enterprises (SMEs)
13. Development Fund for SMEs
14. Fund for International Market Exploration by SMEs
15. Zhejiang Province Program to Rebate Antidumping Costs

Mayerton was assigned as adverse facts available (AFA) the highest calculated rate in any segment of the proceeding or the highest rate calculated for the same or similar program in other PRC CVD investigations for all of the programs listed above.

Since the issuance of the *CVD Order*, two administrative reviews have been completed. The first administrative review covered the period from August 2, 2010 through December 31, 2010. During this administrative review, both the mandatory respondents and the GOC failed to provide information requested by the Department. As a result, the Department determined a countervailable subsidy rate of 262.80 percent for Fengchi Imp. and Exp. Co., Ltd. of Haicheng City and Fengchi Refractories Co., of Haicheng City (collectively, Fengchi) and Yingkou Bayuquan Refractories Co., Ltd. (Yingkou).[9] The Department determined a countervailable subsidy rate of 24.24 percent, which was applicable to the all-others rate applicable to the remaining companies under review.[10]

On October 31, 2012, we initiated the second administrative review for calendar period 2011, but we ultimately rescinded this review based on timely requests from interested parties.[11]

The third administrative review period covered calendar year 2012. During this administrative review, we again did not receive a response from the sole mandatory company respondent, Fengchi, nor did we receive a response from the GOC. Because these parties failed to cooperate to the best of their ability in this review, we applied AFA and determined a countervailable

[9] *See Certain Magnesia Carbon Bricks from the People's Republic of China: Final Results and Final Partial Rescission of Countervailing Duty Administrative Review; 2010*, 78 FR 22235 (April 15, 2013).
[10] *Id.*
[11] *See Certain Magnesia Carbon Bricks from the People's Republic of China: Notice of Rescission of Countervailing Duty Administrative Review; 2011*, 78 FR 7752 (February 4, 2013).

subsidy rate of 66.27 percent for Fengchi and a 24.24 percent *ad valorem* rate for "All-Others."[12] In addition, we rescinded the review with respect to RHI AG and its affiliates Liaoning RHI Jinding Magnesia Co., RHI Refractories (Dalian) Co., Ltd. ; RHI Refractories (Dalian) Co., Ltd.; RHI Refractories Liaoning Co, Ltd.; RHI Trading Shanghai Branch; and RHI Trading (Dalian) Co., Ltd.[13]

On October 30, 2014, we initiated the fourth administrative review for calendar period 2013, but we ultimately rescinded this review based on a lack of suspended entries for companies subject to review.[14]

On November 2, 2015, a fifth administrative review period covering calendar year 2014 was initiated.[15] There have not been any new shipper reviews or changed circumstance reviews. This is the first sunset review of the *CVD Order*.

Scope of the Order

The merchandise subject to this *CVD Order* 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 this order 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.

Scope Rulings

On May 3, 2011, we issued a scope ruling, where we found that certain tap hole sleeves were not within the scope of the order.[16]

The following scope rulings were issued in 2012. On March 30, 2012, we found Fedmet Resources Corporation's (Fedmet's) carbon bricks to be within the scope of the order.[17] On July 2, 2012, we found Fedmet's Bastion magnesia alumina carbon bricks to be within the scope of

[12] *See Certain Magnesia Carbon Bricks from the People's Republic of China: Final Results and Final Rescission, in Part, of Countervailing Duty Administrative Review; 2012,* 79 FR 62101 (October 16, 2014).
[13] *Id.*
[14] *See Certain Magnesia Carbon Bricks from the People's Republic of China: Notice of Rescission of Countervailing Duty Administrative Review*, 80 FR 51536 (August 25, 2015).
[15] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 80 FR 69193 (November 9, 2015).
[16] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary, "Certain Magnesia Carbon Bricks from Mexico and the People's Republic of China: Vesuvius USA Corporation Final Scope Ruling" (May 3, 2011).
[17] *See Notice of Scope Rulings*, 77 FR 50084 (August 20, 2012).

the order.[18] This decision was reversed by the ruling of the Court of Appeals for the Federal Circuit that Fedmet's Bastion magnesia alumina carbon bricks are not within scope.[19] On July 26, 2012, we found that certain burned magnesite bricks and burned magnesia dolomite were not within the scope of the order.[20] Finally, on October 31, 2012, we found that certain tap hole sleeve systems are not within the scope of the order. [21]

DISCUSSION OF THE ISSUES

In accordance with section 751(c)(1) of the Act, the Department is conducting this sunset review to determine whether revocation of the *CVD Order* would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that in making this determination the Department shall consider: 1) the net countervailable subsidy determined in the investigation and any subsequent reviews, and 2) whether any changes in the programs which gave rise to the net countervailable subsidy have occurred that are likely to affect the net countervailable subsidy.

Pursuant to section 752(b)(3) of the Act, the Department shall provide to the International Trade Commission (ITC) the net countervailable subsidy likely to prevail if the *CVD Order* were revoked. In addition, consistent with section 752(a)(6) of the Act, the Department shall provide to the ITC information concerning the nature of the subsidy and whether it is a subsidy described in Article 3 or Article 6.1 of the 1994 World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (ASCM).

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Domestic Interested Parties' Comments

The Committee argues that revocation of the *CVD Order* would likely lead to a continuation or recurrence of countervailable subsidies because countervailable subsidy programs continued after the issuance of the order. The Committee states that no party provided any evidence during the administrative reviews of this order to demonstrate that the countervailable subsidy programs have expired or been terminated.[22]

The Committee argues that "for companies that have not been subject to an administrative review, the Department should find that the likely countervailing duty rate in the event of revocation of the order are those set forth in the countervailing duty order." [23] The Committee argues that the appropriate rates are 24.24 percent for RHI Refractories Liaoning Co., 253.87 percent for Liaoning Mayerton Refractories/Dalian Mayerton Refractories Co., Ltd., and 24.24

[18] *See Notice of Scope Rulings*, 78 FR 9370 (February 8, 2013).
[19] *See Certain Magnesia Carbon Bricks from the People's Republic of China and Mexico: Notice of Court Decision Not in Harmony With Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision*, 80 FR 34899 (June 18, 2015).
[20] *See Notice of Scope Rulings*, 78 FR 9370 (February 8, 2013).
[21] *See Notice of Scope Rulings*, 78 FR 32373 (May 30, 2013).
[22] *See* The Committee's Substantive Response at 8.
[23] *Id.* at 9-10.

percent for All-Others.[24] The Committee argues that for Fengchi Imp. And Exp./Fengshi Refractories Co. (Fengshi) and Yingkou Bayuquan Refractories Co. (Yingkou Bayuquan), the appropriate rates are the rates calculated in an administrative review. Those rates are 262.80 percent for Yingkou Bayuquan and 66.27 percent for Fengshi.[25]

Department's Position:

Section 752(b)(1) of the Act directs the Department, in determining the likelihood of continuation or recurrence of a countervailable subsidy, to consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether there has been any change in a program found to be countervailable that is likely to affect that net countervailable subsidy. According to the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), the Department will consider the net countervailable subsidies in effect after the issuance of the order and whether the relevant subsidy programs have been continued, modified, or eliminated.[26] The SAA adds that continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies.[27] Additionally, the presence of programs that have not been used, but also have not been terminated without residual benefits or replacement programs, is also probative of the likelihood of continuation or recurrence of a countervailable subsidy.[28] Where a subsidy program is found to exist, the Department will normally determine that revocation of the *CVD Order* is likely to lead to continuation or recurrence of a countervailable subsidy regardless of the level of subsidization.[29]

As the Department has stated in other sunset determinations, two conditions must be met in order for a subsidy program not to be included in determining the likelihood of continued or recurring subsidization: (1) the program must be terminated; and (2) any benefit stream must be fully allocated.[30] The Department has further stated that, in order to determine whether a program has been terminated, the Department will consider the legal method by which the government eliminated the program and whether the government is likely to reinstate the program.[31] The Department normally expects a program to be terminated by means of the same legal mechanism used to institute it.[32] Where a subsidy is not bestowed pursuant to a statute, regulation or decree, the Department may find no likelihood of continued or recurring

[24] *Id.* at 10.
[25] *Id*.
[26] *See* SAA, H. Doc. No. 316, 103d Cong., 2d Session, Vol. 1 (1994) at 888.
[27] *Id.*
[28] *See, e.g.*, *Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil: Final Results of Full Sunset Review of Countervailing Duty Order*, 75 FR 75455 (December 3, 2010) and accompanying IDM at Comment 1.
[29] *Id*.
[30] *See, e.g.*, *Preliminary Results of Full Sunset Review: Certain Corrosion-Resistant Carbon Steel Flat Products from France*, 71 FR 30875 (May 31, 2006) and accompanying IDM at 5-7, unchanged in *Corrosion-Resistant Carbon Steel Flat Products From France; Final Results of Full Sunset Review*, 71 FR 58584 (October 4, 2006).
[31] *See, e.g.*, *Fresh and Chilled Atlantic Salmon From Norway: Final Results of Full Third Sunset Review of Countervailing Duty Order*, 76 FR 70411 (November 14, 2011) and accompanying IDM at Comment 1.
[32] *See, e.g.*, *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from India*, 66 FR 49635 (September 28, 2001) and accompanying IDM at Comment 7.

subsidization if the subsidy in question was a one-time, company-specific occurrence that was not part of a broader government program.[33]

Although the Department has completed two administrative reviews since issuance of the *CVD Order*, there is no information indicating changes in the programs found countervailable during the investigation. Moreover, neither the GOC nor other respondent interested parties participated in this sunset review. Based on the facts on the record, the Department determines that there is a likelihood of continuation or recurrence of countervailable subsidies.[34]

2. Net Countervailable Subsidy Likely to Prevail

Domestic Interested Parties' Comments

The Committee states that the Department should use the rates from the original investigation and the subsequent reviews. Specifically, the Committee argues that "for companies that have not been subject to an administrative review, the Department should find that the likely countervailing duty rate in the event of revocation of the order are those set forth in the countervailing duty order." [35] The Committee argues that the appropriate rates are 24.24 percent for RHI Refractories Liaoning Co., 253.87 percent for Liaoning Mayerton Refractories/Dalian Mayerton Refractories Co., Ltd., and 24.24 percent for All-Others.[36] The Committee argues that for Fengchi Imp. and Exp./Fengshi Refractories Co. (Fengshi) and Yingkou Bayuquan Refractories Co. (Yingkou Bayuquan), the appropriate rates are the rates calculated in an administrative review. Those rates are 262.80 percent for Yingkou Bayuquan and 66.27 percent for Fengshi.[37]

Department's Position:

Consistent with the SAA and legislative history, the Department normally will provide the ITC with the net countervailable subsidy that was determined in the investigation as the subsidy rate likely to prevail if the order is revoked, because it is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place.[38] Section 752(b)(l)(B) of the Act provides, however, that the Department will consider whether any change in the program which gave rise to the net countervailable subsidy determination in the investigation or subsequent reviews has occurred that is likely to affect the net countervailable subsidy.

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[33] *See, e.g.*, *Stainless Steel Plate in Coils from Belgium: Final Results of Full Sunset Review and Revocation of the Countervailing Duty Order*, 76 FR 25666 (May 5, 2011) and accompanying IDM at Comment 1.
[34] We note that the Department's determination concerning the "Export Restraints for Raw Materials" program from the investigation has been subject to an ongoing dispute at the World Trade Organization. *See United States – Countervailing Duty Measures On Certain Products from China*, WT/DS437/R (July 14, 2014). Notwithstanding any final disposition of this dispute, the net subsidy rate calculated for RHI and Mayerton is above *de minimis*. *See Final Determination* and accompanying IDM at 10-12.
[35] The Committee's Substantive Response at 9-10.
[36] *Id.* at 10.
[37] *Id*.
[38] *See* SAA at 890, and H.R. Rep. No. 103-826 (1994) (House Report) at 64.

Therefore, although the SAA and House Report provide that the Department normally will select a rate from the investigation, this rate may not be the most appropriate if, for example, the rate was derived (in whole or part) from subsidy programs which were found in subsequent reviews to be terminated, there has been a program-wide change, or the rate ignores a program found to be countervailable in a subsequent administrative review.[39]

In determining whether company-specific, net countervailable subsidy rates are likely to prevail, the Department has started with the rates found in the original investigation. As there is no information suggesting changes in the programs found countervailable during the investigation, we do not need to adjust the rates from the investigation to account for additional subsidies, program-wide changes or terminated programs.

Consistent with section 752(b)(3) of the Act, the Department will report to the ITC the net countervailable subsidy rates from the original investigation as indicated in the section entitled "Final Results of Review."

3. Nature of the Subsidies

Consistent with section 752(a)(6) of the Act, the Department is providing the following information to the ITC concerning the nature of the subsidies and whether the subsidies are subsidies as described in Article 3 or Article 6.1 of the ASCM. We note that Article 6.1 of the ASCM expired effective January 1, 2000.

Subsidies

The following programs do not fall within the meaning of Article 3.1 of the ASCM, but could be subsidies as described in Article 6.1 of the ASCM if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the ASCM. The subsidies could also could fall within the meaning of Article 6.1 if they constitute debt forgiveness, grants to cover debt repayment, or subsidies to cover operating losses sustained by an industry or enterprise. However, there is insufficient information on the record of this review for the Department to make such a determination. We are, in any case, providing the ITC with the following program descriptions:

1. *Export Restraints of Raw Materials:* The GOC restrains exports of various raw materials including magnesia, by setting quotas for exports and imposes bidding policies on raw materials used in production. By restricting exports, the GOC is suppressing the prices of magnesia sold to domestic magnesia carbon brick manufacturers.

2. *VAT Rebates on Purchases of Domestically Produced Equipment:* The GOC provides tax refunds, reductions and exemptions to certain enterprises on the condition that those enterprises purchase domestic goods rather than imported goods, including equipment and machinery.

[39] *See, e.g., Stainless Steel Sheet and Strip in Coils From the Republic of Korea: Final Results of Expedited Second Sunset Review,* 75 FR 6210 l (October 7, 2010) and accompanying IDM at Comment 2.

3. *Location-Based Income Tax Reduction Programs for FIEs:* The GOC established this program to revitalize designated provinces in Northeast China, including Liaoning Province. In furtherance of this program, the GOC established a special bank called the Northeast Revitalization Bank, which provides financial support, tax incentives, low-cost credit, and export credits to companies in this region.

4. *Local Income Tax Exemption and Reductio*n *Programs for "Productive" FIEs:* The GOC allows FIEs located in special designated locations to pay income tax at reduced rates.

5. *Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment:* The GOC offers preferential income tax policies to domestic enterprises that upgrade their manufacturing operations with Chinese-made equipment. Domestic enterprises that upgrade technology consistent with the GOC industrial policies may deduct 40 percent of the cost of equipment from their next year's income tax obligation.

6. *Government Provision of Electricity for LTAR:* The GOC provides electricity to carbon brick manufacturers at less than adequate remuneration.

FINAL RESULTS OF REVIEW

The Department finds that revocation of the *CVD Order* would be likely to lead to continuation or recurrence of countervailable subsidies at the rates listed below:

Manufacturers/Exporters	Net countervailable subsidy rate (percent)
RHI Refractories Liaoning Co., Ltd. (RHIL), RHI Refractories (Dalian) Co., Ltd. (RHID) and Liaoning RHI Jinding Magnesia Co., Ltd. (RHIJ) (collectively, RHI)	24.24
Liaoning Mayerton Refractories (LMR) and Dalian Mayerton Refractories Co. Ltd. (DMR) (collectively, Mayerton)	253.87
All-Others	24.24

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 the final results of this review in the *Federal Register*, and notify the ITC of our findings.

AGREE ✓ DISAGREE ____________

Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

12/1/15
Date