



C-570-955  
Sunset Review  
**Public Document**  
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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 Review of the Countervailing Duty Order on Certain  
Magnesia Carbon Bricks from the People's Republic of China

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## I. SUMMARY

We have analyzed the substantive response of the domestic interested parties in the second sunset review of the countervailing duty (CVD) order covering certain magnesia carbon bricks (bricks) from the People's Republic of China (China).<sup>1</sup> We did not receive a response from the Government of China (GOC) or from any other interested party. Accordingly, we conducted an expedited (120-day) sunset review 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).<sup>2</sup> We find that revocation of the *Order* would be likely to lead to continuation or recurrence of a countervailable subsidy at the levels indicated in the "Final Results of Review" section of this memorandum. 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 a countervailable subsidy
2. Net countervailable subsidy likely to prevail
3. Nature of the subsidy

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<sup>1</sup> See *Certain Magnesia Carbon Bricks from the People's Republic of China: Countervailing Duty Order*, 75 FR 57442 (September 21, 2010) (*Order*).

<sup>2</sup> Commerce normally will conduct an expedited sunset review where respondent interested parties provide an inadequate response. See *Procedures for Conducting Five-year (Sunset) Reviews of Antidumping and Countervailing Duty Orders*, 70 FR 62061 (October 28, 2005).



## II. BACKGROUND

On January 4, 2021, Commerce published the notice of initiation of the second sunset review of the *Order*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).<sup>3</sup>

Commerce received a notice of intent to participate from Magnesia Carbon Bricks Fair Trade Committee (the Committee), an *ad hoc* association of U.S. producers of magnesia carbon bricks, within the deadline specified in 19 CFR 351.218(d)(1)(i).<sup>4</sup> The Committee claimed interested party status under section 771(9)(E) of the Act, as a trade or business association a majority of whose members manufacture, produce, or wholesale a domestic like product in the United States and stated that each member of the Committee is a manufacturer of the domestic like product and thus, are domestic interested parties pursuant to section 771(9)(C) of the Act.<sup>5</sup>

Commerce received a substantive response from the Committee<sup>6</sup> within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no substantive response from any other domestic or interested parties in this proceeding, nor was a hearing requested.

On February 22, 2021, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from respondent interested parties.<sup>7</sup> As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of this *Order*.

## III. HISTORY OF THE ORDER

On August 2, 2010, Commerce published its final determination that countervailable subsidies are being provided to producers and exporters of bricks from China.<sup>8</sup> We applied 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.”<sup>9</sup>

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<sup>3</sup> See *Initiation of Five-Year (Sunset) Review*, 86 FR 60 (January 4, 2021).

<sup>4</sup> See Committee’s Letter, “Second Five-Year (“Sunset”) Review the 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,” dated January 14, 2021.

<sup>5</sup> *Id.*

<sup>6</sup> See Committee’s Letter, “Second Five-Year (Sunset) Review of the Countervailing Duty Order On Magnesia Carbon Bricks From The People’s Republic Of China: Domestic Industry’s Substantive Response,” dated February 2, 2021 (Domestic Interested Parties’ Substantive Response).

<sup>7</sup> See Commerce’s Letter, “Sunset Reviews Initiated on January 4, 2021,” dated February 22, 2021.

<sup>8</sup> 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).

<sup>9</sup> See *Final Determination and Order*, 75 FR at 57443.

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:

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 China CVD investigations for all of the programs listed above.

Since implementing the *Order*, Commerce has conducted two administrative reviews.<sup>10</sup> Commerce has not conducted any new shipper reviews, circumvention determinations, or

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<sup>10</sup> See *Certain Magnesite Carbon Bricks from the People’s Republic of China: Final Results of and Final Partial Rescission of Countervailing Duty Administrative Review; 2010*, 78 FR 22235 (April 15, 2013) (applying subsidy rates of 262.80 percent to the non-cooperating mandatory respondents Fengchi Imp. and Exp. Co., Ltd. of Haicheng City and Fengchi Refractories Co., of Haicheng City (collectively, Fengchi) and Yingkou Bayuquan Refractories Co. Ltd., and 24.24 percent for all non-selected respondents. See also *Certain Magnesite 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) (finding a subsidy rate of 66.27 percent for Fengchi based on AFA, and applying the all others rate of 24.24 percent from the underlying investigation to the remaining companies subject to the review).

changed circumstances determinations. This is the second sunset review of the *Order*.<sup>11</sup> The first sunset review maintained that revocation of the *Order* would be likely to lead to continuation or recurrence of countervailable subsidies.

Subsequent to the continuation of the *Order*, Commerce implemented a section 129 determination and revised its final determination in the underlying investigation finding revised subsidy rates of 3.00 percent for RHI, 232.63 percent for Mayerton, and 3.00 percent for all others.<sup>12</sup>

#### IV. SCOPE OF THE *ORDER*

The merchandise subject to the *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 the *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.

Commerce has issued several scope rulings since the issuance of the *Order* including:

- Final Scope Ruling on Request from Vesuvius USA Corporation - finding that certain tap hole sleeve systems are not within the scope.<sup>13</sup>
- Final Scope Ruling on Request from S&S Refractories, LLC - finding that certain tap hole sleeve systems are not within the scope.<sup>14</sup>

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<sup>11</sup> See *Certain Magnesia Carbon Bricks from the People's Republic of China: Final Results of Expedited First Sunset Review of the Countervailing Duty Order*, 80 FR 75971 (December 7, 2015); see also *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).

<sup>12</sup> See *Implementation of Determinations Pursuant to Section 129 of the Uruguay Round Agreements Act*, 81 FR 37180 (June 9, 2016).

<sup>13</sup> See Memorandum, "Certain Magnesia Carbon Bricks from Mexico and the People's Republic of China: Vesuvius USA Corporation Final Scope Ruling," dated May 3, 2011.

<sup>14</sup> See Commerce's Letter, "Antidumping and Countervailing Duty Orders on Certain Magnesia Carbon Bricks from the People's Republic of China and Mexico: Scope Ruling Request," dated January 17, 2012.

- Final Scope Ruling on Request from Fedmet Resources Corporation - finding that Fedmet's Bastion magnesia alumina carbon bricks are within the scope, reversed by Fedmet Resources Corp. v. United States, 755 F.3d 912, 923 (Fed. Cir. 2014).<sup>15</sup>
- Final Scope Ruling on Request from Ceramark Technology Inc. - finding that certain burned magnesite bricks and burned magnesia dolomite bricks are not within the scope.<sup>16</sup>
- Final Scope Ruling on Request from Duferco Steel Inc. - finding that certain tap hole sleeve systems are not within the scope.<sup>17</sup>
- Final Scope Ruling on Request from S&S Refractories - finding that certain magnesia alumina carbon bricks are in scope when they contain less than five percent added alumina.<sup>18</sup>

## V. LEGAL FRAMEWORK

In accordance with section 751(c)(1) of the Act, Commerce conducted this sunset review to determine whether revocation of the *Order* would likely lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, Commerce 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, Commerce shall provide the ITC with the net countervailable subsidy likely to prevail if the order were revoked. In addition, consistent with section 752(a)(6) of the Act, Commerce shall provide the ITC with 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 Agreement on Subsidies and Countervailing Measures (SCM).

## VI. DISCUSSION OF THE ISSUES

Below we address the comments of the domestic interested parties.

### 1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

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<sup>15</sup> 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) (finding, pursuant to the Federal Circuit's decision, that Fedmet's Bastion magnesia alumina carbon bricks are not within the scope).

<sup>16</sup> See Memorandum, "Certain Magnesia Carbon Bricks from the People's Republic of China and Mexico: Ceramark Technology Inc. Scope Ruling," dated July 26, 2012.

<sup>17</sup> See Commerce's Letter, "Antidumping and Countervailing Duty Orders on Certain Magnesia Carbon Bricks from the People's Republic of China and Mexico: Scope Ruling Request," dated October 31, 2012.

<sup>18</sup> See Memorandum, "Certain Magnesia Carbon Bricks from the People's Republic of China and Mexico: Final Scope Ruling – S&S Refractories," dated June 7, 2017.

## Domestic Interested Parties' Comments<sup>19</sup>

Citing section 752(b)(1) of the Act, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA),<sup>20</sup> and the *Policy Bulletin*,<sup>21</sup> the domestic interested parties assert that an affirmative determination of continuation or recurrence is warranted because the subsidies at issue in the original investigation remain in existence and have not been terminated or suspended. Further, they note that the investigation rates remain in place for all exporters, because no administrative reviews or new shipper reviews of the *Order* have been conducted since the conclusion of the first sunset review and thus, there is no basis to reach a different conclusion in the second sunset review.

## Commerce's Position:

As stated above, in determining the likelihood of continuation or recurrence of a countervailable subsidy, section 752(b)(1) of the Act directs Commerce 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 SAA, Commerce will consider the net countervailable subsidies in effect after the issuance of an order and whether the relevant subsidy programs have been continued, modified, or eliminated.<sup>22</sup> The SAA further states that continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies.<sup>23</sup> The presence of programs that have not been used, but have not been terminated without residual benefits or replacement programs, is also probative of the likelihood of continuation or recurrence of a countervailable subsidy.<sup>24</sup> Where a subsidy program is found to exist, Commerce will normally determine that revocation of the relevant order would likely to lead to continuation or recurrence of a countervailable subsidy, regardless of the level of subsidization.<sup>25</sup>

In the investigation, Commerce found that countervailable subsidies were being provided to Chinese exporters and producers of bricks under the programs listed above. As indicated above, Commerce found that countervailable subsidies continue to exist in two administrative reviews and the first sunset review of the *Order*. No party submitted evidence to demonstrate that these countervailable programs have expired or been terminated, and there is no information on the record of this proceeding indicating any changes to the programs found countervailable during the investigation. Absent argument or evidence to the contrary, we find that these countervailable programs continue to exist and be used. Therefore, Commerce determines that there is a likelihood of continuation or recurrence of countervailable subsidies because the record

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<sup>19</sup> See Domestic Interested Parties' Substantive Response at 3-7.

<sup>20</sup> See Statement of Administrative Action accompanying the URAA, H.R. Doc. 103-316, vol. 1 (1994) (SAA) at 888.

<sup>21</sup> See *Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*; *Policy Bulletin*, 63 FR 18871 (April 16, 1998) (*Policy Bulletin*).

<sup>22</sup> See SAA at 888.

<sup>23</sup> *Id.*

<sup>24</sup> 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.

<sup>25</sup> *Id.*

indicates that the subsidy programs found countervailable during the investigation continue to exist and be used.

## 2. Net Countervailable Subsidy Rates Likely to Prevail

### Domestic Interested Parties' Comments<sup>26</sup>

The domestic interested parties assert that, consistent with the SAA and the *Policy Bulletin*, Commerce will normally select the rate determined in the original investigation, as that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place. The domestic interested parties further assert there is no indication that any of the programs providing countervailable subsidies in the underlying investigation were terminated or that benefits ceased following the issuance of the *Order*. Accordingly, the domestic interested parties argue that pursuant to the principles set forth in the SAA, Commerce should report the rates from the original investigation, as amended by the section 129 proceeding.

### Commerce's Position:

Consistent with the SAA and legislative history, Commerce will normally 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, as noted by the domestic interested parties, it is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place.<sup>27</sup> While section 752(b)(1)(B) of the Act provides that Commerce will consider whether any change in the programs 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, no evidence has been provided that would warrant making a change to the net countervailable subsidy rate found in the investigation. Therefore, in this sunset review, we determine the company-specific countervailable subsidy rates likely to prevail are the rates assigned in the *Order*, as amended by the section 129 proceeding. The countervailable subsidy rates, which Commerce determines are likely to prevail upon revocation of the *Order*, are provided in the "Final Results of Review" section of this memorandum.

## 3. Nature of the Subsidies

In accordance with section 752(a)(6) of the Act, Commerce is providing the following information to the ITC concerning the nature of these subsidy programs and whether these programs constitute subsidies that fall within Article 3 or Article 6.1 of the World Trade Organization Agreement on Subsidies and Countervailing Measures (SCM Agreement). We note that Article 6.1 of the SCM Agreement expired, effective January 1, 2000.

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<sup>26</sup> See Domestic Interested Parties' Substantive Response at 7-8.

<sup>27</sup> See SAA at 890.

### *Article 6.1 Subsidies*

The following programs do not fall within the meaning of Article 3.1 of the SCM Agreement. However, they could be subsidies described in Article 6.1 of the SCM Agreement if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the SCM Agreement. The subsidies could also 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.

1. VAT Rebates on Purchases of Domestically Produced Equipment
2. Location-Based Income Tax Reduction Programs for 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 (LTAR)
6. Export Restraints for Raw Materials
7. Provision of Land-Use Rights to SOEs for LTAR
8. Two Free/Three Half Program for FIEs
9. Income Tax Reductions for Export-Oriented FIEs
10. Preferential Income Tax Policy for Enterprises in the Northeast Region
11. Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China
12. Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment
13. Preferential Tax Programs for Enterprises Recognized as High or New Technology Enterprises
14. Northeast Revitalization Program and Related Provincial Policies
15. The State Key Technology Renovation Project Fund
16. Famous Brands Programs
17. Grants to Companies for “Outward Expansion” and Export Performance in Guangdong Province
18. Fund for Supporting Technological Innovation for Technological SMEs
19. Development Fund for SMEs
20. Fund for International Market Exploration by SMEs
21. Zhejiang Province Program to Rebate Antidumping Costs



## VII. FINAL RESULTS OF REVIEW

Commerce determines that revocation of the *Order* on certain magnesia carbon bricks from China would be likely to lead to the continuation or recurrence of countervailable subsidies at the rates listed below:

Producer/Exporter	Ad Valorem 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)	3.00
Liaoning Mayerton Refractories (LMR) and Dalian Mayerton Refractories Co. Ltd. (DMR) (collectively, Mayerton)	232.63
All Others	3.00

## VIII. RECOMMENDATION

Based on our analysis of the substantive response received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish these final results of this expedited sunset review in the *Federal Register* and notify the ITC of our findings.

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Agree

\_\_\_\_\_  
Disagree

5/3/2021

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Signed by: CHRISTIAN MARSH

Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance