

DEPARTMENT OF COMMERCE
International Trade Administration
C-570-955

Certain Magnesia Carbon Bricks From the People's Republic of China: Final Affirmative
Countervailing Duty Determination

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

SUMMARY: The Department of Commerce (the Department) has reached a final determination
that countervailable subsidies are being provided to producers/exporters of magnesia carbon
bricks (MCBs) from the People's Republic of China (PRC). For information on the estimated
subsidy rates, see the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: (Insert date of publication in the Federal Register.)

FOR FURTHER INFORMATION CONTACT: Summer Avery or Toni Page, AD/CVD
Operations, Office 6, Import Administration, International Trade Administration, U.S.
Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW, Washington,
DC 20230; telephone: (202) 482-4052 or (202) 482-1398, respectively.

SUPPLEMENTARY INFORMATION:

Case History

The following events have occurred since the preliminary determination. See Certain
Magnesia Carbon Bricks From the People's Republic of China: Preliminary Negative
Countervailing Duty Determination, 74 FR 68241 (December 23, 2009) (Preliminary
Determination).

On January 7, 2010, Petitioner¹ submitted a letter, in accordance with section 705(a)(1)
of the Tariff Act of 1930, as amended (the Act), requesting alignment of the final countervailing
duty (CVD) determination with the final antidumping duty (AD) determinations of MCBs from

¹ The Petitioner in the instant investigation is Resco Products Inc.

the PRC and Mexico. On January 28, 2010, the Department aligned the final CVD determination with the final determinations in the companion AD investigations of MCBs from the PRC and Mexico. See Certain Magnesia Carbon Bricks From the People's Republic of China: Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determinations, 75 FR 4528 (January 28, 2010).

On January 22, 2010, the GOC filed a request for a hearing for the instant investigation.

The Department issued three supplemental questionnaires to the Government of the People's Republic of China (GOC) on December 8, 2009, February 22, 2010, and March 26, 2010, respectively. The GOC submitted responses on January 5, 2010, March 15, 2010, March 22, 2010, and April 2, 2010.

The Department issued two supplemental questionnaires to Liaoning Mayerton Refractories (LMR) and its cross-owned affiliate Dalian Mayerton Refractories Co. Ltd. (DMR) (collectively, Mayerton) on December 8, 2009 and February 22, 2010, respectively. Mayerton submitted a response on January 5, 2010 for the first supplemental questionnaire but did not respond to the Department's second supplemental questionnaire. On April 1, 2010, Mayerton filed a letter with the Department informing us that that they would no longer be participating in this investigation.

The Department issued two supplemental questionnaires to 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) on December 8, 2009 and February 22, 2010, respectively. RHI submitted responses to the Department's questionnaires on January 5, 2010, March 15, 2010, and March 22, 2010. Public versions of all questionnaires and responses, as well as the various memoranda cited below, are available in the

Department's Central Records Unit (CRU), Room 1117 in the HCHB building of the Commerce Department.

From May 4 through May 7, 2010, we conducted verification of the questionnaire responses submitted by RHI. We issued the verification report for RHI on June 1, 2010. See Memorandum to the File from Toni Page and Summer Avery, International Trade Analysts, Verification of the Questionnaire Responses Submitted by RHI Refractories Liaoning Co., Ltd., RHI Refractories (Dalian) Co., Ltd., and Liaoning RHI Jinding Magnesia Co., Ltd. (June 1, 2010).

On May 6, 2010, the Department issued its post-preliminary determination regarding two programs, "Export Restraints of Raw Materials" and the "Provision of Electricity for Less than Adequate Remuneration." See Countervailing Duty Investigation of Certain Magnesia Carbon Bricks from the People's Republic of China: Post-Preliminary Determination (May 6, 2010).

The Department received case briefs from Petitioner, the GOC, and RHI on June 10, 2010 and rebuttal briefs from the same parties on June 17, 2010. On June 17, 2010, the GOC withdrew its hearing request.

Scope of Investigation

The merchandise under investigation consists of 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 investigation are currently classifiable under subheadings 6902.10.1000, 6902.10.5000, 6815.91.0000, 6815.99.2000 and 6815.99.4000² 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 Comments

On September 8, 2009, Pilkington North America Inc. (PNA), a U.S. importer of magnesia bricks from the People’s Republic of China (PRC) and Mexico, filed timely comments concerning the scope of the AD and CVD investigations of certain magnesia carbon bricks from the PRC and the AD investigation of certain magnesia carbon bricks from Mexico. See Letter from Pilkington North America Inc. Re: Scope Comments (September 8, 2009).

In its submission, PNA requested that the Department amend the scope of these investigations to exclude ceramic bonded magnesia bricks with or without trace amounts of carbon or clarify that this product is outside the scope of these investigations. According to PNA, the ceramic bonded magnesia bricks it imports are clearly not within the intended scope of these investigations. Petitioner did not submit comments on PNA’s submission; however, in a telephone conversation with a Department official Petitioner stated that it agreed that the bricks at issue were outside the scope of these investigations. See Memorandum to the File, through Tom Gilgunn, Program Manager, Office 6, from Summer Avery, International Trade Analyst, Re: Import Administration Countervailing Duty Investigation of Certain Magnesia Carbon Bricks from the People’s Republic of China: Scope Comments (February 16, 2010).

After reviewing PNA’s comments, the Department determined that the scope of these investigations does not include the bonded MCBs imported by PNA. However, because the

² In the Preliminary Determination, we included HTSUS subheading 6815.99 in our description of the scope of the investigation. Subsequently, we determined that all of the ten-digit subheadings under subheading 6815.99 must be used instead. Accordingly, the appropriate HTSUS ten-digit subheadings have been listed.

language in the scope is clear that only chemically bonded magnesia carbon bricks are covered, the Department concluded that it was not necessary to amend or clarify the existing scope language in these investigations in response to PNA's request. See Memorandum from John M. Anderson, Acting Deputy Assistant Secretary Re: Certain Magnesia Carbon Bricks from the People's Republic of China and Mexico: Scope Comments (February 24, 2010).

A respondent in the companion AD investigation of MCBs from Mexico, RHI-Refmex S.A. de C.V. (Refmex), argued in its case brief that the Department should expressly hold that resin-bonded magnesia carbon functional refractory products, as opposed to magnesia carbon brick products, are not within the scope of the MCBs under investigation. The Department has decided not to amend the scope of the MCB investigations to include a specific exclusion for such products because the current description of the scope of these investigations adequately limits the scope to bricks. A full summary of Refmex's comments and the Department's position are at Comment 1 of the Issues and Decision Memorandum for the AD Mexico investigation and Comment 5 of the Issues and Decision Memorandum for the AD PRC investigation. See Issues and Decision Memorandum for Certain Magnesia Carbon Bricks From Mexico: Final Determination of Sales at Less Than Fair Value and Issues and Decision Memorandum for Certain Magnesia Carbon Bricks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value (July 26, 2010).

Analysis of Subsidy Programs and Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the Memorandum to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, from Edward C. Yang, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled "Issues and Decision Memorandum for the Final Affirmative Countervailing Duty Determination: Certain Magnesia Carbon Bricks from the

People’s Republic of China,” dated concurrently with this notice (hereinafter, Decision Memorandum), which is hereby adopted by this notice. Attached to this notice as an Appendix is a list of the issues that parties have raised and to which we have responded in the Decision Memorandum. The Decision Memorandum also contains a complete analysis of the programs covered by this investigation, and the methodologies used to calculate the subsidy rates. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the CRU. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at <http://ia.ita.doc.gov/frn/>. The paper copy and electronic version of the Decision Memorandum are identical in content.

Use of Adverse Facts Available

For purposes of this final determination, we continue to rely on facts available and have drawn adverse inferences, in accordance with sections 776(a) and (b) of the Act, with regard to RHI’s receipt of countervailable subsidies under the “Provision of Electricity for Less than Adequate Remuneration” and “Export Restraints of Raw Materials” programs. In addition, pursuant to sections 776(a)(2)(A) and (C) of the Act, we have based the CVD rate for Mayerton on facts otherwise available and drawn adverse inferences. A full discussion of our decision to apply adverse facts available (AFA) is presented in the Decision Memorandum in the section “Application of Facts Available, Including the Application of Adverse Inferences,” as well as the Department’s positions in Comment 6: Whether the Use of Facts Available with Adverse Inferences Is Warranted For the Export Restraint Subsidy and Comment 8: Whether the Department Correctly Applied AFA and Treated the Provision of Electricity as a Countervailable Subsidy in the Decision Memorandum.

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we have calculated an individual rate for the mandatory respondent still participating in this investigation, RHI. Section 705(c)(5)(A)(i) of the Act states that for companies not investigated, we will determine an “all others” rate equal to the weighted-average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and de minimis countervailable subsidy rates, and any rates determined entirely under section 776 of the Act. In this investigation, the Department selected two mandatory respondents to review. Because there is only one respondent in this investigation for which the Department has calculated a company-specific rate, consistent with our practice and section 705(c)(5)(A)(i) of the Act, its rate serves as the “all others” rate. See, e.g., Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand, 66 FR 50410, 50411 (October 3, 2001); and Final Affirmative Countervailing Duty Determination: Pure Magnesium From Israel, 66 FR 49351, 49353 (September 27, 2001). As discussed above, mandatory respondent Mayerton withdrew from the instant investigation. As discussed in the Decision Memorandum, for each program examined in this investigation, we have made the adverse inference that Mayerton benefitted from the program and calculated a rate accordingly.

| Exporter/Manufacturer | Net Countervailable Subsidy Rate |
|------------------------------|---|
| RHI | 24.24 % <u>ad valorem</u> |
| Mayerton | 253.87 % <u>ad valorem</u> |
| All Others | 24.24 % <u>ad valorem</u> |

In accordance with section 705(c)(1)(C) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all imports of the subject merchandise from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The suspension of liquidation will remain in

effect until further notice.

If the International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a countervailing duty order and order CBP to continue the suspension of liquidation of entries of MCBs and to require a cash deposit on all such entries equal to the subsidy rate listed above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all deposits or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an APO, without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/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 violation which is subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the

Act.

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

July 26, 2010

Date

Appendix

List of Comments and Issues in the Decision Memorandum

- Comment 1: Whether the Department Has the Authority to Apply the CVD Law to the PRC While Treating the PRC as A Non-Market Economy In The Parallel Antidumping Investigation
- Comment 2: Whether the Simultaneous Application of the CVD Law and the Antidumping Non-Market Economy Methodology in This Case Would Lead to Impermissible Double Remedies
- Comment 3: Whether the Department's Application of Countervailing Duties to a Non-Market Economy Country Violates the Administrative Procedures Act
- Comment 4: Whether the Department's Decision to Initiate an Investigation of Export Restraints at Issue Was Contrary to Law and Unsupported by Fact
- Comment 5: Whether the Export Restraints at Issue Can be Found to Confer a Financial Contribution to the Industry Producing MCBs
- Comment 6: Whether the Use of Facts Available with Adverse Inferences Is Warranted For the Export Restraint Subsidy
- Comment 7: Whether the Department Should Adjust the Manner It Calculates the Export Restraints Benefit
- Comment 8: Whether the Department Correctly Applied AFA and Treated the Provision of Electricity as a Countervailable Subsidy
- Comment 9: Whether the Provision of Electricity Is Specific and Provides a Financial Contribution
- Comment 10: Whether the Department Should Use RHI's Revised 2008 Sales Amount in the Department's Final Calculations
- Comment 11: Whether the Department Should Examine Income Tax Credits for Purchases of Domestically Produced Equipment in Detail
- Comment 12: Whether the Department Should Apply AFA with Respect to VAT Rebates Associated with RHI's Purchases of Domestically Produced Equipment
- Comment 13: Whether the Department Should Apply Total AFA When Assigning Mayerton's Final Countervailing Duty Rate

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