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Sunset Review
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DATE December 1, 2015

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

FROM: Gary Taverman *ST*
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

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

Summary

In the first sunset review of the antidumping duty (“AD”) orders covering certain magnesia carbon bricks (“MCBs”) from Mexico and the People’s Republic of China (“PRC”)¹, the Magnesia Carbon Bricks Fair Trade Committee (“Petitioners”),² an interested party under section 771(9)(C) of the Tariff Act of 1930, as amended (the “Act”), submitted adequate substantive responses.³ No respondent interested party submitted a substantive response. In accordance with our analysis of the Substantive Responses, we recommend adopting the positions described below. The following is a complete list of issues in this sunset review for which we received substantive responses:

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

¹ See *Notice of Antidumping Duty Order: Certain Magnesia Carbon Bricks from Mexico and the People's Republic of China: Antidumping Orders*, 75 FR 57257 (September 20, 2010) (“Orders”).

² An *ad hoc* association comprised of the following three U.S. producers of MCBs: Resco Products, Inc. (“Resco”), Magnesita Refractories Company, and Harbison Walker International, Inc.

³ See *Five-Year (“Sunset”) Review of Antidumping Duty Order On Certain Magnesia Carbon Bricks from the People’s Republic of China: Domestic Industry’s Substantive Response* (September 2, 2015); *Five-Year (“Sunset”) Review of Antidumping Duty Order On Certain Magnesia Carbon Bricks from Mexico: Domestic Industry’s Substantive Response* (September 2, 2015) (together, “Substantive Responses”).



Background

On August 3, 2015, the Department of Commerce (the “Department”) published a notice of initiation of the sunset reviews of the AD orders on MCBs from Mexico and the PRC.⁴ On August 18, 2015, Petitioners filed a letter of intent to participate in these sunset reviews.⁵ On September 2, 2015, Petitioners filed Substantive Responses in the sunset reviews within the 30-day deadline, as specified in 19 CFR 351.218(d)(3)(i).⁶ The Department did not receive a response from any respondent interested party in these sunset reviews. On November 11, 2015, the Department released Customs and Border Protection data covering imports of MCBs over a six year period.⁷ No party commented on this data. Consequently, the Department conducted an expedited (120-day) sunset review consistent with 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).

Scope of the Orders

Imports covered by the *Orders* consist of certain chemically bonded (resin or pitch), MCBs 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, MCBs 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 anti-oxidants 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 MCBs 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 6815.99.4000 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.

History of the Orders

On August 18, 2009, the Department initiated an AD investigation on MCBs from Mexico and the PRC.⁸ On March 12, 2010, the Department preliminarily determined that MCBs were being sold in the United States at less than fair value (“LTFV”).⁹ The Department completed the

⁴ See *Initiation of Five-Year (“Sunset”) Review*, 80 FR 45945 (August 3, 2015).

⁵ See Letter to the Secretary from Petitioners, Five-Year Sunset Review of the Antidumping Duty Order on Certain Magnesia Carbon Bricks from the People’s Republic of China - Notice of Intent to Participate in Review (August 18, 2015); Letter to the Secretary from Petitioners, Five-Year Sunset Review of the Antidumping Duty Order on Certain Magnesia Carbon Bricks from Mexico - Notice of Intent to Participate in Review (August 18, 2015).

⁶ See Substantive Responses.

⁷ See Memo to the File, from Paul Walker, Program Manager, Office V, “Expedited Sunset Reviews of the Antidumping Duty Orders on Certain Magnesia Carbon Bricks from the People’s Republic of China and Mexico: Import Data for Certain Magnesia Carbon Bricks,” dated November 17, 2015 (“Import Data Memo”).

⁸ See *Certain Magnesia Carbon Bricks from the People’s Republic of China and Mexico: Initiation of Antidumping Duty Investigations*, 74 FR 42852 (August 25, 2009).

⁹ See *Certain Magnesia Carbon Bricks from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 11847 (March 12, 2010). See *Certain Magnesia Carbon Bricks from Mexico: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 11517 (March 11, 2010).

investigations and published the final determinations of sales at LTFV in the *Federal Register* on August 2, 2010. For Mexico, the Department calculated a company-specific weighted-average dumping margin of 57.90 percent, and an all others rate of 57.90 percent.¹⁰ For the PRC, the Department calculated a final company-specific weighted-average dumping margin of 128.10 percent, as well as the PRC wide-rate of 236.00 percent.¹¹ On September 20, 2010, the Department published the orders on MCBs from the PRC and Mexico.¹² Since the issuance of the *Orders*, the Department has completed two administrative reviews¹³ and initiated, but rescinded, two administrative reviews with respect to the order on MCBs from the PRC.¹⁴ In the two completed administrative reviews, the Department determined a final company-specific weighted-average dumping margin of 236.00 percent in one review, as well as a PRC-wide rate of 236.00 percent in both reviews.¹⁵ The Department has initiated, but rescinded, three administrative reviews with respect to the order on MCBs from Mexico.¹⁶ Finally, the Department has issued five scope rulings with respect to these *Orders*.¹⁷

The Department is conducting the first sunset review of the orders on MCBs from Mexico and the PRC. The *Orders* remain in effect for all manufacturers, producers, and exporters of MCBs from Mexico and the PRC.

¹⁰ See *Certain Magnesite Carbon Bricks from Mexico: Notice of Final Determination of Sales at Less Than Fair Value*, 75 FR 45097 (August 2, 2010) (“*Mexico Final*”).

¹¹ See *Certain Magnesite 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) (“*PRC Final*”).

¹² See *Orders*.

¹³ See *Certain Magnesite Carbon Bricks from the People’s Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 22230 (April 15, 2013) (“*PRC 2010-2011 Final Results*”); *Certain Magnesite Carbon Bricks from the People’s Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 19961 (April 14, 2015) (“*PRC 2012-2013 Final Results*”).

¹⁴ See *Certain Magnesite Carbon Bricks from the People’s Republic of China: Rescission of Antidumping Duty Administrative Review, 2011-1012*, 78 FR 34036 (June 6, 2013); *Certain Magnesite Carbon Bricks from the People’s Republic of China: Rescission of Antidumping Duty Administrative Review, 2013-2014*, 80 FR 27146 (May 12, 2015).

¹⁵ See *PRC 2010-2011 Final Results; PRC 2012-2013 Final Results*.

¹⁶ See *Certain Magnesite Carbon Bricks from Mexico: Notice of Rescission of Antidumping Duty Administrative Review*, 76 FR 78885 (December 20, 2011); *Certain Magnesite Carbon Bricks from Mexico: Notice of Rescission of Antidumping Duty Administrative Review*, 78 FR 75543 (December 12, 2013); *Certain Magnesite Carbon Bricks from Mexico: Notice of Rescission of Antidumping Duty Administrative Review; 2013-2014*, 79 FR 73545 (December 11, 2014).

¹⁷ See Memorandum to Christian Marsh, Deputy Assistant Secretary, “*Certain Magnesite Carbon Bricks from Mexico and the People’s Republic of China: Vesuvius USA Corporation Final Scope Ruling*” (May 3, 2011); the Department’s letter to S&S Refractories, “*Antidumping and Countervailing Duty Orders on Certain Magnesite Carbon Bricks from the People’s Republic of China and Mexico: Scope Ruling Request*” (January 17, 2012); Memorandum to Christian Marsh, Deputy Assistant Secretary, “*Certain Magnesite Carbon Bricks from the People’s Republic of China and Mexico: Final Scope Ruling- Fedmet Resources Corporation*” (July 2, 2012), amended by *Certain Magnesite 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); Memorandum to Christian Marsh, Deputy Assistant Secretary, “*Certain Magnesite Carbon Bricks from the People’s Republic of China and Mexico: Ceramark Technology Inc. Scope Ruling* (July 26, 2012); the Department’s letter to Duferco Steel, Inc., “*Antidumping and Countervailing Duty Orders on Certain Magnesite Carbon Bricks from the People’s Republic of China and Mexico: Scope Ruling Request*” (October 31, 2012).

Discussion of the Issues

Legal Framework

In accordance with section 751(c)(1) of the Act, the Department conducted this sunset review to determine whether revocation of the *Orders* would likely lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, the Department 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 periods before, and the periods after, the issuance of the *Orders*.

In accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action, H.R. Doc. 103-316, vol. 1 (1994) (“SAA”),¹⁸ the House Report, H. Rep. No. 103-826, pt. 1 (1994) (“House Report”),¹⁹ and the Senate Report, S. Rep. No. 103-412 (1994) (“Senate Report”), the Department’s determinations of likelihood will be made on an order-wide, rather than company-specific, basis.²⁰ In addition, the Department normally determines that revocation of an AD order is likely to lead to continuation or recurrence of dumping when, among other scenarios: (a) dumping continued at any level above *de minimis* after the issuance of the order; (b) imports of the subject merchandise ceased after issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.²¹ Alternatively, the Department may determine that revocation of an AD order is not likely to lead to continuation or recurrence of dumping where dumping margins declined or were eliminated and import volumes remained steady or increased after issuance of the order.²² In addition, as a base period of import volume comparison, it is the Department’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 an investigation may dampen import volumes, and thus, skew comparison.²³

Further, section 752(c)(3) of the Act states that the Department shall provide to the U.S. International Trade Commission (“ITC”) the magnitude of the margin of dumping likely to prevail if the order were revoked. Generally, the Department selects the dumping margins from the final determination in the original investigation, as this is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place.²⁴ However, in certain circumstances, a more recently calculated rate may be more appropriate (*e.g.*, “if dumping

¹⁸ Reprinted in 1994 U.S.C.C.A.N. 4040 (1994).

¹⁹ Reprinted in 1994 U.S.C.C.A.N. 3773 (1994).

²⁰ See SAA at 879, and House Report at 56.

²¹ See SAA at 889-90, House Report at 63-64, and Senate Report at 52.

²² See SAA at 889-90, and House Report at 63.

²³ See, *e.g.*, *Small Diameter Graphite Electrodes from the People’s Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 79 FR 26208 (May 7, 2014) and accompanying Issues and Decision Memorandum at 8; see also *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 at Comment 1.

²⁴ 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 Issues and Decision Memorandum at Comment 2.

margins have declined over the life of an order and imports have remained steady or increased, {the Department} may conclude that exporters are likely to continue dumping at the lower rates found in a more recent review.”²⁵

In 2012, the Department announced it was modifying its practice in sunset reviews such that it will not rely on weighted-average dumping margins that were calculated using the methodology found to be World Trade Organization (“WTO”)-inconsistent.²⁶ In the *Final Modification for Reviews*, the Department stated that “only in the most extraordinary circumstances” would it rely on margins other than those calculated and published in prior determinations.²⁷ The Department 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 total adverse facts available, and dumping margins where no offsets were denied because all comparison results were positive.”²⁸

Finally, pursuant to section 752(c)(4)(A) of the Act, a dumping margin of zero or *de minimis* shall not by itself require the Department to determine that revocation of an AD order would not be likely to lead to a continuation or recurrence of sales at LTFV.²⁹ Our analysis of the Petitioners’ comments follows.

Analysis

1. *Likelihood of Continuation or Recurrence of Dumping*

Petitioners’ Arguments:

Dumping is likely to continue or recur if the *Orders* are revoked. In this review, an affirmative determination of continuation or recurrence is warranted because dumping continued at a level above *de minimis* after the issuance of the order or the suspension agreement.³⁰

Regarding Mexico, the Department has not conducted an administrative review of the order, and therefore the finding of dumping during the original investigation is the best available evidence of whether dumping is likely to continue or recur if the order is revoked. For the PRC, the

²⁵ See SAA at 890-91.

²⁶ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101, 8103 (February 14, 2012) (“*Final Modification for Reviews*”).

²⁷ *Id.*

²⁸ *Id.*

²⁹ See *Folding Gift Boxes from the People’s Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 72 FR 16765 (April 5, 2007) and accompanying Issues and Decision Memorandum at Comment 1.

³⁰ See Substantive Responses at 4-6.

Department has completed two administrative reviews of the order and found dumping by respondents in each review period.³¹

Because the Petitioners believe that subject imports from Mexico and the PRC declined significantly after the issuance of the *Orders*, an affirmative determination of continuation or recurrence likely also would be warranted under either subparagraph (b) or (c) as specified in the Department's *Sunset Policy Bulletin*. Petitioners note that the relevant import data are not available to them because the subject merchandise may be imported under basket HTSUS categories containing non-subject merchandise. Relevant import data may be placed on the record of this review if sufficient exporters participate in this review and provide the quantity and value information required by 19 CFR 351.218(d)(3)(iii).

Department's Position: As discussed above, sections 752(c)(1)(A) and (B) of the Act instruct the Department to consider: (1) the weighted-average dumping margins determined in the investigation and subsequent reviews; and (2) the volume of imports of the subject merchandise for the period before and after the issuance of the AD order when determining whether revocation of the order would be likely to lead to continuation or recurrence of dumping. The Department's determination concerning whether revocation of an AD order is likely to lead to continuation or recurrence of dumping is based, in part, upon the guidance provided in the SAA. One consideration is whether the Department has continued to find dumping above *de minimis* levels in administrative reviews subsequent to imposition of the orders.³² According to the SAA and the House Report, "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."³³ According to the SAA, "{d}eclining 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."³⁴ We find that revocation of the *Orders* would likely result in the continuation of dumping in the United States due to the continued existence of dumping margins and a significant decline in import volume since the issuance of the *Orders*.

In the original PRC investigation, the Department applied weighted-average dumping margins ranging from 128.10 to 236.00 percent.³⁵ In subsequent PRC administrative reviews, the Department applied weighted-average dumping margins of 236.00 percent.³⁶ The Department also calculated a weighted-average margin of 57.90 percent for the mandatory respondent and subsequently applied that margin to all others in the Mexican MCBs investigation.³⁷ Therefore, all dumping margins determined in this proceeding have been above *de minimis* levels.

³¹ See *Policies Regarding the Conduct of Five Year ("Sunset") Reviews of Antidumping And Countervailing Duty Orders; Policy Bulletin 98:3*, 63 FR 18871, 18872 (April 16, 1998) ("*Sunset Policy Bulletin*").

³² See SAA at 890.

³³ *Id.*; see also House Report, at 63-64.

³⁴ See SAA at 889.

³⁵ See *PRC Final*, 75 FR 45471.

³⁶ See *PRC 2010-2011 Final Results*, 78 FR 22231; *PRC 2012-2013 Final Results*, 80 FR 19962.

³⁷ See *Mexico Final*, 75 FR 45101.

In addition, pursuant to section 752(c)(1)(B) of the Act, the Department considered the volume of imports of the subject merchandise in determining whether revocation of the *Orders* would likely lead to continuation or recurrence of dumping. Petitioners state that if companies continue to dump after issuance of the order, the Department should conclude that revocation of the order would likely lead to a continuation or recurrence of dumping.³⁸

Petitioners correctly note that the relevant HTSUS categories are basket categories which contain non-subject merchandise. As such, the Department has not relied upon these basket HTS categories, but instead analyzed data from Customs and Border Protection (“CBP”) covering “Type 3” entries (*i.e.*, entries subject the AD liability), and company specific data, from 2009 to 2014. This information demonstrates that, following the issuance of the *Orders*, imports of MCBs from the PRC and Mexico fell significantly over a period of time.³⁹ This data shows a low level of imports during the sunset period compared to pre-*Orders* quantities.⁴⁰

Thus, based on the data on the record, the Department finds that imports decreased after the issuance of the *Orders* and that dumping continued at levels above *de minimis*.⁴¹ This indicates that PRC and Mexico exporters have not been able to maintain pre-investigation import levels without selling merchandise at dumped prices.⁴² Moreover, respondent interested parties have not participated in this sunset review. Therefore, given that: (1) dumping has continued following the issuance of the *Orders*, (2) import volumes declined after the issuance of the *Orders*, (3) respondent interested parties have not participated in these sunset reviews, and (4) we have no argument or evidence to the contrary, we find that dumping is likely to continue or recur if the *Orders* were revoked.

In sum, and pursuant to section 752(c)(1) of the Act, because evidence on the record indicates that dumping has continued at levels above *de minimis* during the period of the sunset reviews, and the Department has found dramatically lower import volumes in the four years examined in comparison to pre-initiation import volumes, we determine that revocation of the *Orders* is likely to lead to continuation or recurrence of dumping.

2. *Magnitude of the Margins Likely to Prevail*

Petitioners’ Arguments:

Petitioners argue that, consistent with the Department’s normal practice, the Department should find that the magnitude of the margin of dumping that is likely to prevail is identical to the margins determined to exist in the original investigation.

³⁸ See Substantive Responses at 6.

³⁹ See Import Data Memo.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² See, e.g., *Barium Chloride from the People’s Republic of China: Final Results of Expedited Fourth Sunset Review of the Antidumping Duty Order*, 80 FR 36973 (June 29, 2015); see also *Non-Malleable Cast Iron Pipe Fittings from the People’s Republic of China: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order*, 78 FR 72639 (December 3, 2013).

Department's Position: Section 752(c)(3) of the Act provides that the Department will report to the ITC the magnitude of the margin likely to prevail if the order were revoked. Normally, the Department will select a margin from the final determination in the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place.⁴³

The Department has determined that the weighted-average dumping margins established in the investigation of MCBs from Mexico and the PRC are the most likely to prevail if the *Orders* were revoked. In these sunset reviews, the Department has relied on weighted-average dumping margins that were not affected by the methodology addressed in the *Final Modification for Reviews*.⁴⁴ Specifically, in the LTFV investigation of MCBs from the PRC, the Department calculated a weighted-average dumping margin for one mandatory respondent and found the other mandatory respondent to be part of the PRC-wide entity.⁴⁵ We based the PRC-wide entity's margin upon an adjusted rate from the petition.⁴⁶ In the LTFV investigation of MCBs from Mexico, the Department calculated company-specific weighted-average dumping margins for mandatory respondents.⁴⁷ As a result, we will report to the ITC the weighted-average dumping margins listed in the "Final Results of Review" section below.

Final Results of Review

We determine that revocation of the *Orders* on MCBs from Mexico and the PRC would likely lead to continuation or recurrence of dumping and that the magnitude of the margin of dumping likely to prevail would be weighted-average margins up to 57.90 percent for Mexico and up to 236 percent for the PRC.⁴⁸

⁴³ See SAA at 890.

⁴⁴ See *Final Modification for Reviews*, 77 FR 8101, 8103. We note that the calculated dumping margins in both the PRC and Mexico investigations were not affected by a WTO-inconsistent methodology. The Department announced that its modification to the calculation of weighted-average dumping margins in antidumping duty investigations applied in investigations as of February 22, 2007. See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification*, 71 FR 77722 (December 27, 2006); *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margins in Antidumping Investigations; Change in Effective Date of Final Modification*, 72 FR 3783 (January 26, 2007).

⁴⁵ See *PRC Final*.

⁴⁶ *Id.*, at 45470.

⁴⁷ See *Mexico Final*.

⁴⁸ See *Mexico Final and PRC Final*.

Recommendation

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

✓ _____
Agree Disagree

Christian Marsh
Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

12/1/15
(Date)