



C-570-955  
Section 129 Proceeding  
DS437  
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April 25, 2016

**MEMORANDUM FOR:** Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

**FROM:** Christian Marsh *CM*  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**RE:** Section 129 Proceedings: United States – Countervailing Duty  
(CVD) Measures on Certain Products from the People’s Republic  
of China (WTO DS437)

**SUBJECT:** Final Determination on the Initiation of Allegations of Export  
Restraints in *Magnesia Bricks*

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## I. SUMMARY

Section 129 of the Uruguay Round Agreements Act (URAA)<sup>1</sup> governs the actions of the Department of Commerce (the Department) following adverse World Trade Organization (WTO) dispute settlement reports. Consistent with Section 129, the Department is revising analyses underlying the determination in *Magnesia Bricks*<sup>2</sup> in accordance with the report adopted by the WTO Dispute Settlement Body (DSB) in WTO DS437.

Given the number of CVD investigations and the complexity of issues involved, the Department addressed the DSB’s findings through separate preliminary determination memoranda with respect to each of the issues addressed in DS437. On February 23, 2016, we issued the *Export Restraints Preliminary Determination* memoranda, which is relevant to this Section 129 proceeding.<sup>3</sup> Additionally, on March 11, 2016, we announced to interested parties the schedule for the submission of case and rebuttal briefs, which were due to the Department on March 25, 2016, and March 30, 2016, respectively.<sup>4</sup> On March 25, 2016, Resco Products, Inc., Magnesita

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<sup>1</sup> See 19 USC 3538(b).

<sup>2</sup> See *Certain Magnesia Carbon Bricks From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 45472 (August 2, 2010), and accompanying Decision Memorandum. *Certain Magnesia Carbon Bricks From the People’s Republic of China: Countervailing Duty Order*, 75 FR 57442 (September 21, 2010) (“*Magnesia Bricks*”).

<sup>3</sup> See Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, “Preliminary Determination Regarding Export Restraints” (February 23, 2016) (*Export Restraints Preliminary Determination*).

<sup>4</sup> See Department Memorandum, “Schedule for rebuttal factual information, written argument, and a hearing”



Refractories Company, and Harbison Walker International, Inc. (formerly ANH Refractories Company) (collectively, Petitioners) submitted a case brief commenting on the Department's *Export Restraints Preliminary Determination*.<sup>5</sup> No rebuttal briefs on this issue were submitted. On March 31, 2016, a hearing was held during which Petitioners presented the issues from their case brief.<sup>6</sup>

As discussed below, we considered all the comments filed by the interested parties. After evaluating those comments, we have determined to make no change to the analyses in the *Export Restraints Preliminary Determination*. Therefore, for this 129 proceeding, we are adopting the findings of the preliminary determination for this final determination. As explained in the *Export Restraints Preliminary Determination*, we have determined to rescind our decision to initiate on the allegations of an export restraint subsidy program in *Magnesia Bricks*.<sup>7</sup> Based on our decision to rescind the initiations on the export restraint programs at issue, we have, in turn, made changes to the net subsidy rates calculated in the CVD investigations covering *Magnesia Bricks*.

If the United States Trade Representative, after consulting with the Department and Congress, directs the Department to implement, in whole or in part, this determination, the resulting CVD rates will apply to unliquidated entries of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date on which the United States Trade Representative so directs. Because the Department's determination in this Section 129 proceeding is that there is an insufficient basis on which to initiate an investigation into the export restraint program, the Department intends to reduce all cash deposit rates in this proceeding applicable as of the day the United States Trade Representative directs us to implement by the amount attributable to the export restraint program examined in this Section 129 proceeding. *See* Section IV.B. Revised Cash Deposit Rates, *infra* (for more detail).

## II. BACKGROUND

In *Magnesia Bricks*, the Department initiated an investigation on an export restraint program concerning export quotas and imposed bidding policies on raw materials including magnesia based on evidence that, *inter alia*, these restraints had served to suppress prices in China.<sup>8</sup> Subsequent to the final determinations in *Magnesia Bricks*, the GOC requested the establishment of a Panel pursuant to Article 6 of the Dispute Settlement Understanding (DSU). Based on the GOC's request, the Dispute Settlement Body (DSB) established a Panel. The Panel issued its

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(March 11, 2016).

<sup>5</sup> *See* Letter from the Petitioners, "Comments on the Department's Preliminary Determination Regarding Export Restraints" (March 25, 2016) (Petitioners Case Brief).

<sup>6</sup> *See* Memorandum from Mark Hoadley, "Notice of Hearing – Magnesia Carbon Bricks from the People's Republic of China, Section 129 Determination (DS437)" (March 25, 2016) and Transcript from Neal R. Gross and Co., Inc., "Hearing Transcript" (April 7, 2016).

<sup>7</sup> *See* *Export Restraints Preliminary Determination* at 8. *See also* Department Memorandum, "Net Subsidy Rates as a Result of Preliminary Analyses" (March 10, 2016).

<sup>8</sup> *See* *Certain Magnesia Carbon Bricks from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 74 FR 42858, 42860 (August 25, 2009) (*Magnesia Bricks Initiation*) and accompanying Initiation Checklist (*Magnesia Bricks Checklist*); *see also* *Magnesia Bricks Decision Memorandum* at Comment 4.

report on July 14, 2014. The Panel noted that the Appellate Body has interpreted “entrustment” and “direction” to mean “that the government gives responsibility to, or exercises its authority over, a private body” to carry out the provision of goods.<sup>9</sup> In looking at whether “adequate evidence, tending to prove or indicating” that the GOC provides a financial contribution “by entrusting” a private body to carry out the function of providing goods to domestic producers, the Panel:

{ failed } to see how the evidence presented in the applications of the existence of export restraints and their price effects indicates that the Government of China “gives responsibility” to domestic producers to carry out the function of providing goods to domestic users in China . . . . In both cases, the measure allegedly giving rise to the financial contribution is the export restraint itself. In our view, when the Government of China limits the ability of domestic producers of magnesia and coke to export those products, it does not “give responsibility” to domestic producers to do anything.<sup>10</sup>

In looking at whether “adequate evidence, tending to prove or indicating” that the GOC provides a financial contribution “by directing” a private body to carry out the function of providing goods to domestic producers, the Panel further found that:

{ t }he fact that the Government of China exercises its authority and thus engages in an act of direction with respect to the conditions under which magnesium and coke may be exported from China, is not sufficient to establish that the Government of China exercises its authority over a private body to carry out the function of providing magnesium and coke to domestic users in China. In order for a government action to constitute “direction” within the meaning of Article 1.1(a)(1)(iv) of the SCM Agreement, it is not sufficient that the action involves an exercise of authority over a private body.<sup>11</sup>

Therefore, the Panel concluded that:

. . . in sum, in the absence of any information in the applications in *Magnesia Bricks* and *Seamless Pipe* on how the Government of China “gives responsibility to” or “exercises authority over” a private body in China specifically to carry out the function of providing magnesia and coke goods to domestic users, (as distinguished from information about the application of the export restraints themselves) we consider that an unbiased, objective investigating authority would not have found that the evidence in the applications in *Magnesia Bricks* and *Seamless Pipe* is “adequate evidence tending to prove or indicating” the existence of a financial contribution in the form of a government-entrusted or government-

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<sup>9</sup> See *Panel Report* at para. 7.399.

<sup>10</sup> *Id.* at para. 7.400.

<sup>11</sup> *Id.* at para. 7.401.

directed provision of goods. Our finding is based on the particular facts of the two cases before us.<sup>12</sup>

The Department did not appeal the Panel's decision on this issue. The Appellate Body circulated its report on December 18, 2014.<sup>13</sup> Accordingly, the DSB adopted the Panel Report, as modified by the Appellate Body Report, on January 16, 2015.<sup>14</sup>

On April 16, 2015, pursuant to section 129(b) of the URAA, the U.S. Trade Representative requested that the Department issue determinations that would render the Department's actions in the investigations not inconsistent with the recommendations and rulings of the DSB.<sup>15</sup> The Department commenced section 129 proceedings for all investigations at issue on April 27, 2015.<sup>16</sup>

Based on the Panel's holding, the Department provided the petitioner in the underlying proceeding the opportunity to supplement the allegation with new factual information.<sup>17</sup> On May 11, 2015, the petitioner, joined by two other domestic producers, filed additional information.<sup>18</sup>

### **III. ISSUES ADDRESSED PURSUANT TO WTO DS437: INITIATION OF INVESTIGATION OF AN EXPORT RESTRAINT SUBSIDY PROGRAM**

#### **Issue 1: Whether the Petition Included Reasonably Available Information Indicating that the GOC Provided a Financial Contribution through its Entrustment and Direction of Private Suppliers of Magnesia and Magnesite**

##### *Comments from the Petitioners:*

- Where reasonably available information is provided to support an allegation, the Department must formally investigate the question of whether the elements necessary for the imposition of a duty exist.
- The Panel in DS437 agreed that the evidence provided in the Petition demonstrated that the GOC "exercises its authority over private entities through formal measures that induce them to change their economic behavior under penalty of law."<sup>19</sup> The Panel, however, found that

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<sup>12</sup> See Panel Report at para. 7.404.

<sup>13</sup> See *United States – Countervailing Duty Measures on Certain Products from China*, WT/DS437/AB/R (December 18, 2014) (Appellate Body Report).

<sup>14</sup> See *United States – Countervailing Duty Measures on Certain Products from China*, "Action by the Dispute Settlement Body," WT/DS437/11 (January 19, 2015).

<sup>15</sup> See Letter from Juan A. Millan, Assistant U.S. Trade Representative for Monitoring and Enforcement, April 16, 2015.

<sup>16</sup> See *Notice of Commencement of Compliance Proceedings Pursuant to Section 129 of the Uruguay Round Agreements Act*, 80 FR 23254 (April 27, 2015) (Commencement Notice).

<sup>17</sup> See the Memorandum to the File, from Eric B. Greynolds, Program Manager, Office III, Operations, "Invitation to Submit New Information Concerning Alleged Subsidies Provided in Connection with Export Restraints in the Countervailing Duty (CVD) Investigations of *Magnesia Carbon Bricks* and *Seamless Pipe*," (April 27, 2015).

<sup>18</sup> See Letter to the Department from Petitioners, "Response to Department's April 27, 2015 Invitation to Submit New Information" (May 11, 2015) (Additional Factual Information).

<sup>19</sup> See Panel Report at para. 7.401.

the evidence in the Petition did not show that the GOC exercised this authority with regard to “the function of providing goods to domestic users in China of magnesia,”<sup>20</sup> and thus, did not support a finding of financial contribution on the basis of the GOC’s entrustment and direction of private parties. Based on the Panel’s analysis, a petitioner must provide evidence of a “demonstrable link” between the government and the conduct of the private party to show how the government “gives responsibility to” or “exercises authority over” a private body to carry out the function of providing goods to domestic users.

- The Petitioners supplied reasonably available additional information showing that the GOC enforced its raw materials and iron and steel policy directives through, *inter alia*, its partial control of private enterprises, its placement of directors and senior executives at these enterprises, and through its regulatory control over raw materials, mining, and industrial policies.
- With respect to giving responsibility to, or exercising authority over, private suppliers of magnesia and magnesite, the Petitioners noted that the export restraints themselves were calibrated to take into account domestic demand and state policy objectives, and provided evidence that the GOC exercised control over private suppliers to direct the provision of goods to producers of MCBs.
- As noted in their May 11, 2015, submission, the Petitioners provided evidence that between 2003 and 2008, the Chinese magnesia and magnesite industries produced increasing quantities of raw materials despite the fact that doing so was against their financial interests. Without some form of government control or direction, magnesia and magnesite suppliers would have held back production and sales in response to depressed prices.
- While the Petitioners engaged in extensive research to provide additional information to support their allegation, the lack of transparency in GOC agencies prevents any non-Chinese source from providing all potentially relevant information. The Petitioners have provided the best information that is reasonably available, which is evidence of (1) the GOC’s ability to exercise its control over domestic magnesia and magnesite suppliers and (2) Chinese magnesia and magnesite suppliers making production and sales decisions that are contrary to the rational behavior expected in a market free of government intervention.
- Had the GOC and the respondent companies cooperated with the investigation, the Department could have further explored the exact nature and existence of the alleged financial contribution, and the rescission of the investigation regarding the alleged export restraint subsidies is not appropriate based on the initiation standard set forth in section 702(b)(1) of the Tariff Act of 1930, as amended (the Act).

**Department’s Position:** Consistent with the reasons given in the *Export Restraints Preliminary Determination*, the Department continues to determine to rescind our initiation on the allegation of a program of export restraint subsidies on raw materials in *Magnesia Bricks*.<sup>21</sup>

In response to our invitation to submit additional information in this proceeding, Petitioners submitted, among other information: (1) the GOC’s Iron and Steel Industry Development Policy

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<sup>20</sup> See *Panel Report* at para. 7.401.

<sup>21</sup> See *Export Restraints Preliminary Determination* at 8. See also Department Memorandum, “Net Subsidy Rates as a Result of Preliminary Analyses” (March 10, 2016).

(NRDC Report);<sup>22</sup> (2) a World Bank Report, entitled, “Overview of State Ownership in the Global Minerals Industry, Extractive Industries for Development Series #20;”<sup>23</sup> (3) the Measures for the Administration of Export Commodities Quotas;<sup>24</sup> (4) a publication entitled *China’s Magnesite Industry: Resources, Supply, & Global Influence*,<sup>25</sup> and (5) data from the U.S. Geological Survey.<sup>26</sup> Petitioners argue that the information provided indicated: 1) that the GOC is heavily involved in the strategic planning of the iron and steel industry, including supporting industries, such as bricks,<sup>27</sup> 2) that the GOC “controls” the iron and steel industry, including supporting industries,<sup>28</sup> 3) export quotas are linked to domestic conditions;<sup>29</sup> and 4) magnesia and magnesite suppliers continue to increase production despite depressed prices, indicating the presence of government exertion.<sup>30</sup>

As we determined in the preliminary determination, consistent with the Panel’s holding,<sup>31</sup> this information (*e.g.*, the information in the NRDC Report and from the World Bank purporting to show the control and consolidation of such steel supporting sectors as the magnesia and MCB industries, MOFTEC measures allegedly calibrated with the PRC’s domestic supply and demand conditions in mind, and U.S. Geological Survey data indicating that domestic production of magnesia increased despite the presence of export restrictions) does not show how the GOC “gives responsibility to” or “exercises authority over” the magnesia and magnesite suppliers specifically to carry out the function of providing magnesia to domestic magnesia carbon brick manufacturers. For example, although Petitioners have provided evidence that the GOC ensures adherence to its export restrictions by making violators subject to criminal prosecution,<sup>32</sup>

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<sup>22</sup> Additional Factual Information at Exhibit 1.

<sup>23</sup> Additional Factual Information at Exhibit 2.

<sup>24</sup> *Id.* at Exhibit 11.

<sup>25</sup> *Id.* at Exhibit 4.

<sup>26</sup> *Id.* at Exhibits 6 and 7.

<sup>27</sup> *See* Exhibit 1.

<sup>28</sup> *See* Exhibit 1 and Exhibit 2 at 22-24. Exhibit 2, a World Bank overview of state ownership of the global minerals industry, discusses state control of the Chinese “mining sector.” It does not reference magnesia or magnesite specifically.

<sup>29</sup> *See* Exhibit 4 and Exhibit 11 at Article 9.

<sup>30</sup> *See* Exhibits 6 and 7 at Table 1. The data provided by the U.S. Geological Survey indicates production of magnesite (from which magnesia is derived) increased steadily from 4.9 million metric tons in 2003 to 10 million metric tons in 2008. The exhibits, however, do not indicate price trends. Other information Petitioners placed on the record indicates prices may actually have risen during the period. For example, Exhibit 4, at page 1, states: “From most accounts, the situation with regard to Chinese supply has been described as one of turmoil, with prices rising, leading to improving opportunities for western producers.” As another example, Exhibit 5, entitled, “Liaoning Province’s Magnesite Export Volume Decreased and Price Increased in 2008,” concludes the average export price of magnesite shipments from Liaoning province increased 73 percent from 2007 to 2008. Petitioners’ claim that prices were decreasing over this same period of time, and that the increased production could not, therefore, be the result of a “rational market,” is apparently drawn from the inferred effects of export restraints on prices (*i.e.*, they depress prices) without reference to actual market conditions.

<sup>31</sup> *See Panel Report* at para. 7.400 (“In our view, when the Government of China limits the ability of domestic producers of magnesia . . . to export those products, it does not ‘give responsibility’ to domestic producers to do anything.”).

<sup>32</sup> *See* Additional Factual Submission at 5 and Exhibit 1, which references the NRDC Report at Chapter IX. This is the same NRDC policy referred to in the *Seamless Pipe* allegation that was rejected by the Panel as insufficient evidence in support of its allegation.

consistent with the Panel's holding,<sup>33</sup> we continue to find that Petitioners have not provided sufficient information indicating that the GOC "exercises its authority" over the domestic producers to carry out the function of providing goods to domestic users in the PRC. In addition, although some of the evidence provided by Petitioners demonstrates that there is an "exercise of authority" over the conditions of export of magnesia,<sup>34</sup> the evidence does not indicate control over or encouragement towards the function of providing goods to domestic users in China of magnesia.<sup>35</sup> Moreover, evidence indicating that domestic production increased is not adequate to support an allegation of entrustment and direction in light of the Panel's finding that "when the Government of China limits the ability of domestic producers of magnesia . . . to export those products, it does not "give responsibility" to domestic producers to do anything."<sup>36</sup> For all these reasons and particularly in light of the Panel's findings, the evidence does not provide a "demonstrable link between the government and the conduct of the private party."<sup>37</sup>

Petitioners also argue that they provided the best information that was reasonably available to them. They argue that the lack of transparency in GOC agencies prevents any non-Chinese source from providing all potentially relevant information. However, the Department has not requested for the Petitioners to provide *all* potentially relevant information. In any event, section 702 of the Act states that a countervailing duty proceeding shall be initiated whenever an interested party files a petition, on behalf of an industry, which alleges the elements necessary for the imposition of the duty imposed, and which is accompanied by information reasonably available to the petitioner *supporting these allegations*. As discussed above, the information that was reasonably available to the Petitioners did not support their allegation of a financial contribution for export restraints of raw materials. Therefore, in light of the Panel's holding,<sup>38</sup> the evidence provided by Petitioners is not "adequate evidence tending to prove or indicating" the existence of a financial contribution in the form of a government-entrusted or government-directed provision of goods.

This finding is restricted to this segment of the proceeding based on the evidence submitted on the record of the investigation and on the record of this 129 proceeding. To the extent that Petitioners identify additional evidence related to an export restraint program, Petitioners may submit such evidence in subsequent segments of this proceeding consistent with the Department's normal rules. *See, e.g.*, 19 CFR 351.301(c)(2)(iv)(B).

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<sup>33</sup> *See Panel Report* at para 7.401 (finding that evidence that the GOC "exercises its authority over the private entities through formal measures that induce them to change their economic behavior under penalty of law," does not demonstrate that the exercise of authority occurs in respect of the function of providing goods to domestic users in China of magnesia).

<sup>34</sup> *See, e.g.*, Additional Factual Information at Exhibit 4 and Exhibit 11.

<sup>35</sup> *See Panel Report* at para. 7.401 ("The fact that the Government of China exercises its authority and thus engages in an act of direction with respect to the conditions under which magnesium . . . may be exported from China, is not sufficient to establish that the Government of China exercises authority over a private body to carry out the function of providing magnesium . . . to domestic users of coke.").

<sup>36</sup> *Id.* at para. 7.400.

<sup>37</sup> *See Id.* at para. 7.402.

<sup>38</sup> *See Id.* at para. 7.404.

## Issue 2: Whether the GOC Provided a Direct Financial Contribution through State-Owned Enterprises

### *Comments from the Petitioners:*

- The Petitioners submitted reasonably available information to show that the GOC provides a financial contribution through its state-owned domestic producers. The Department’s *Preliminary Determination*, however, found that there was insufficient evidence that the GOC “exercises its authority” over these domestic producers. The Department’s analyses failed to consider that in the PRC the “domestic producers” of raw materials are SOEs and, therefore, *are* the authorities capable of providing a financial contribution.
- Information submitted by the Petitioners shows that the GOC controls the PRC mining and mineral sector (which includes the production of magnesia and magnesite) and that SOEs under the GOC’s control provide raw materials to domestic producers of MCBs.
- Majority government-owned companies are authorities within the meaning of section 771(5)(B) of the Act and are capable of providing a financial contribution. Because SOEs in the PRC supply domestic MCB producers with inputs, the GOC provides a financial contribution to domestic MCB producers.
- According to a May 2011 World Bank report, the PRC mining sector is still largely under state control, and the GOC manages the mining sector through SOEs that are active in both mining and trading. Indeed, the GOC controls the sector so completely that in 2007 and 2008, the GOC’s State Council and State Assets Administration implemented a consolidation plan to restructure the fragmented mining and mineral industry in the PRC.
- The GOC appoints the directors on the board and the senior executives of most major companies in the mining and metal sectors, and they are mostly high ranking government officials. This is an important link in the way the GOC controls these companies. The GOC maintains firm control over this sector because it is considered too important to the development and economy of the country. As a result, the commercial objectives and profit goals of the companies might not always be in line with the GOC’s political agenda.
- The GOC at the local and provincial levels also exerts control over the mining sector through its ownership of mineral resources and SOEs within these jurisdictions. For example, the General Office of the People’s Government of Liaoning Province protects the mineral resources within its jurisdiction by using export controls and by combatting magnesite export smuggling activities. The Liaoning provincial government’s control over the mining sector is of particular importance to MCB production because this province has most of the PRC’s magnesite resources, and the PRC has the world’s largest share of magnesite deposits.
- Record evidence reasonably available to the Petitioners shows that the GOC implements its export restraint policy through SOEs that it controls and owns, and the Department has consistently found that majority state-owned enterprises in the PRC are vested with governmental authority. As explained in the *Preamble*, the Department’s longstanding practice is to treat “most government-owned corporations as the government itself.”<sup>39</sup> Accordingly, the Petitioners provided sufficient information confirming that the GOC “gives responsibility” to SOEs to carry out the function of providing goods to domestic users in the PRC, and the initiation of the export restraint allegation was appropriate.

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<sup>39</sup> *Countervailing Duties; Final Rule*, 63 FR 65348, 65402 (November 25, 1998).

## Department's Position:

Within the context of this Section 129 proceeding, the allegation pertaining to an export restraint subsidy program which the Department is analyzing is limited to whether or not a financial contribution existed on the basis of “entrustment and direction.”<sup>40</sup> Indeed, in our memo soliciting new factual information from Petitioners, we requested for Petitioners “to submit additional information in support of their export restraint allegations.”<sup>41</sup> In the Petition, Petitioners’ allegation of financial contribution stated: “[b]y restraining exports of magnesia the GOC entrusts or directs domestic suppliers to provide magnesia to domestic customers as described in Section 771(5)(D)(iii) of the Act.”<sup>42</sup> The initiation checklist initiated an investigation on export restraints on the same basis.<sup>43</sup> The Panel’s finding that the United States acted inconsistently with its WTO obligations was based on the absence of information “‘tending to prove or indicating’ the existence of a financial contribution in the form of a government-entrusted or government-directed provision of goods.”<sup>44</sup> Therefore, here, the Department’s examination of information is limited to whether or not additional information supported an allegation of the GOC “entrusting or directing” domestic suppliers to provide magnesia to domestic customers. As discussed above, the information provided by the Petitioners does not support an initiation on this basis.

Moreover, the allegation that SOE domestic producers of raw materials are “authorities” under the terms of the Act, and the evidence submitted in support, is a different allegation of financial contribution. A determination whether such entities are public bodies that possess, exercise or are vested with government authority is a different inquiry from the question of whether the government exercises authority over an entity to carry out a particular function. It would be inappropriate to conduct such an analysis in this Section 129 proceeding given the limited nature of the Department’s inquiry in accordance with the Panel’s findings.

As discussed above, the Department’s finding in this Section 129 proceeding does not foreclose the opportunity for Petitioners to submit evidence and argument related to the provision of inputs by SOEs in future segments of this proceeding consistent with the Department’s normal rules. *See, e.g.,* 19 CFR 351.301(c)(2)(iv)(B).

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<sup>40</sup> Section 771(5)(B)(iii) of the Act.

<sup>41</sup> *See* Memorandum to the File, “Invitation to Submit New Information Concerning Alleged Subsidies Provided in Connection with Export Restraints in the Countervailing Duty (CVD) Investigations of *Magnesia Carbon Bricks* and *Seamless Pipe*” (April 27, 2015) at 2.

<sup>42</sup> *See* “Petition for the Imposition of Countervailing Duties: Certain Magnesia carbon Bricks from the People’s Republic of China,” Volume II-A at 22-23.

<sup>43</sup> *See* Magnesia Bricks Checklist at 9.

<sup>44</sup> *See Panel Report* at para. 7.404.

#### IV. FINAL DETERMINATION

As explained in *Export Restraints Preliminary Determination* and further explained above, if the United States Trade Representative, after consulting with the Department and Congress, directs the Department to implement this determination, the Department will make the changes described below to the CVD rates determined in the *Magnesia Bricks* investigation as well as the cash deposit rates in effect as of the day the United States Trade Representative directs us to implement.

##### A. Revised Investigation Rates

As part of this section 129 proceeding, the Department will revise the CVD rates in the *Magnesia Bricks* investigation as follows:

| <b>Respondent</b>  | <b>Total Rate<br/>(With Export<br/>Restraint<br/>Rate)<br/>(percent)</b> | <b>Export<br/>Restraint Rate<br/>from<br/>Investigation<br/>(percent)</b> | <b>Total Rate<br/>(Without Export<br/>Restraint Rate)<br/>(percent)</b> |
|--|--|---|---|
| RHI Refractories Liaoning Co., Ltd. and RHI Refractories (Dalian) Co., Ltd. (collectively, RHI)              | 24.24  | 21.24   | 3.00  |
| Liaoning Mayerton Refractories Co., Ltd. and Dalian Mayerton Refractories Co., Ltd. (collectively, Mayerton) | 253.87   | 21.24   | 232.63  |
| All-Others   | 24.24  | 21.24   | 3.00  |

##### B. Revised Cash Deposit Rates

As part of this section 129 proceeding, the Department will revise the CVD cash deposit rates in effect as of the day the United States Trade Representative directs us to implement by the amount attributable to the export restraint program examined in this Section 129 proceeding. The period of review of the Department's most recently completed administrative review in this proceeding was calendar year 2012.<sup>45</sup> That review covered 132 producers/exporters, including RHI and Mayerton, referred to above. Cash deposit instructions based on the results of that review became effective October 16, 2014. Those cash deposit rates will be revised as follows:

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<sup>45</sup> *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).

| Respondent   | Total Rate<br>(With Export<br>Restraint<br>Rate)<br>(percent) | Export<br>Restraint Rate<br>from<br>Administrative<br>Review<br>(percent) | Total Rate<br>(Without Export<br>Restraint Rate)<br>(percent) |
|--|---|---|---|
| Fengchi Imp. and Exp. Co., Ltd.<br>of Haicheng City and Fengchi<br>Refractories Co., of Haicheng<br>City     | 66.27   | 21.24   | 45.03   |
| 130 other producers/exporters<br>covered by the 2012<br>administrative review, including<br>RHI and Mayerton | 24.24   | 21.24   | 3.00  |

For all producers/exporters not covered by the 2012 administrative review, the cash deposit rate will be the "all-others" rate established in the investigation without the export restraint rate. As noted above, this rate is 3.00 percent.

In accordance with sections 129(b)(4) and 129(c)(1)(B) of the URAA, we will instruct CBP to continue to suspend liquidation of all imports of the product at issue from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date on which the U.S. Trade Representative so directs us. CBP shall require a cash deposit equal to the revised cash deposit rates as described above. The suspension of liquidation instructions will remain in effect until further notice.

## VI. RECOMMENDATION

In light of the report adopted by the DSB in WTO DS437 and based on our analysis of the comments received, we recommend adopting the positions described above, which will render our determination in *Magnesia Bricks* not inconsistent with the recommendations and rulings of the DSB.

Agree  Disagree

  
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 Paul Piquado  
 Assistant Secretary  
 for Enforcement and Compliance

26 APRIL 2016  
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 (Date)