

Dated: May 14, 2010.

P. Michael Payne,

Chief, Permits, Conservation and Education
Division, Office of Protected Resources,
National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-954]

Certain Magnesita Carbon Bricks From the People's Republic of China: Notice of Preliminary Affirmative Determination of Critical Circumstances

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

DATES: *Effective Date:* May 20, 2010.

FOR FURTHER INFORMATION CONTACT: Paul Walker at (202) 482-0413, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Background

On March 12, 2010, the Department of Commerce ("Department") published in the **Federal Register** its preliminary determination in the antidumping duty investigation of certain magnesita carbon bricks ("bricks") from the People's Republic of China ("PRC"). See *Certain Magnesita Carbon Bricks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 75 FR 11847 (March 12, 2010) ("Preliminary Determination"). On April 21, 2010, the Department published in the **Federal Register** its amended preliminary determination in the antidumping duty investigation of bricks from the PRC. See *Certain Magnesita Carbon Bricks From the People's Republic of China: Amended Preliminary Determination of Sales at Less Than Fair Value*, 75 FR 20813 (April 21, 2010).

On April 15, 2010, Petitioner¹ filed a timely critical circumstances allegation, pursuant to 19 CFR 351.206, alleging that critical circumstances exist with respect to imports of the merchandise under consideration. On April 23, 2010, RHI Refractories Liaoning Co., Ltd ("RHI"), a mandatory respondent in this investigation, submitted comments on Petitioner's critical circumstances allegation. On April 27, 2010, RHI submitted information on its exports

from January 2009 through February 2010, as requested by the Department.

In accordance with 19 CFR 351.206(c)(1), when a critical circumstances allegation is filed 30 days or more before the scheduled date of the final determination (as was done in this case), the Department will issue a preliminary finding whether there is a reasonable basis to believe or suspect that critical circumstances exist. Because the critical circumstances allegation in this case was submitted after the *Preliminary Determination*, the Department will normally issue its preliminary findings of critical circumstances not later than 30 days after the allegation was filed. See 19 CFR 351.206(c)(2)(ii).

Legal Framework

Section 733(e)(1) of the Tariff Act of 1930, as amended ("Act"), provides that the Department, upon receipt of a timely allegation of critical circumstances, will determine whether there is a reasonable basis to believe or suspect that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and, (B) there have been massive imports of the subject merchandise over a relatively short period.

Further, 19 CFR 351.206(h)(1) provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that, "{i}n general, unless the imports during the 'relatively short period' * * * have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive." 19 CFR 351.206(i) defines "relatively short period" generally as the period starting on the date the proceeding begins (i.e., the date the petition is filed) and ending at least three months later. This section of the regulations further provides that, if the Department "finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely," then the

Department may consider a period of not less than three months from that earlier time. See 19 CFR 351.206(i).

Allegation

In its allegation, Petitioner contends that, based on the dumping margins assigned by the Department in the *Preliminary Determination*, importers knew or should have known that the merchandise under consideration was being sold at less than fair value ("LTFV"). Petitioner also contends that, based on the preliminary determination of injury by the U.S. International Trade Commission ("ITC"), there is a reasonable basis to impute importers' knowledge that material injury is likely by reason of such imports. In its allegation, Petitioner included import statistics for the four different harmonized tariff subheadings provided in the scope of this investigation for the period February 2009 through December 2009. See letter from Petitioner, regarding "Allegation of Critical Circumstances," dated April 15, 2010 ("Petitioner's Allegation"), at 3-4.

Analysis

In determining whether the above statutory criteria have been satisfied in this case, we examined: (1) The evidence presented in Petitioner's April 15, 2010, allegation; (2) evidence obtained since the initiation of this investigation; and (3) the ITC's preliminary injury determination.

History of Dumping

In determining whether a history of dumping and material injury exists, the Department generally has considered current or previous antidumping duty orders on subject merchandise from the country in question in the United States and current orders in any other country.² In its April 15, 2010, submission, Petitioner made no statement concerning a history of dumping bricks from the PRC. However, the ITC notes in its preliminary determination that there are antidumping orders in the European Union and Turkey on bricks from the PRC, dated October 6, 2005 and

² See, e.g., *Certain Oil Country Tubular Goods From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination*, 74 FR 59117, 59119 (November 17, 2009) ("OCTG Prelim") unchanged in *Certain Oil Country Tubular Goods From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010).

¹ Resco Products, Inc.

September 1, 2007, respectively.³ There is no evidence on the record that these orders are not still in place. Therefore, the Department finds that there is a history of injurious dumping of the merchandise under consideration from the PRC pursuant to section 733(e)(1)(A)(i) of the Act.

Imputed Knowledge of Injurious Dumping

In determining whether an importer knew or should have known that the exporter was selling subject merchandise at LTFV and that there was likely to be material injury by reason of such sales, the Department must rely on the facts before it at the time the determination is made. The Department generally bases its decision with respect to knowledge on the margins calculated in the preliminary determination and the ITC's preliminary injury determination.

The Department normally considers margins of 25 percent or more for export price sales and 15 percent or more for constructed export price sales sufficient to impute importer knowledge of sales at LTFV.⁴ The Department preliminarily determined margins of 130.96 percent for the non-selected separate rate applicants, 236.00 percent for the PRC-wide entity, 129.17 percent for RHI, and 132.74 percent for Liaoning Mayerton Refractories Co., Ltd. and Dalian Mayerton Refractories Co., Ltd. (collectively, "Mayerton"). Therefore, as we preliminarily determined margins greater than 25 percent for all producers and exporters, we preliminarily find, with respect to all producers and exporters, that there is a reasonable basis to believe or suspect that importers knew, or should have known, that exporters were selling subject merchandise at LTFV.

In determining whether an importer knew or should have known that there was likely to be material injury caused by reason of such imports, the Department normally will look to the preliminary injury determination of the ITC. If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute

importer knowledge that material injury is likely by reason of such imports.⁵ Here, the ITC found that "there is a reasonable indication that an industry in the United States is materially injured, or threatened with material injury by reason of imports from China and Mexico of certain magnesia carbon bricks. * * *"⁶ Therefore, the Department preliminarily finds that there is a reasonable basis to believe or suspect that importers knew or should have known that there was likely to be material injury by reason of sales at LTFV of subject merchandise from the PRC.

Massive Imports Over a Relatively Short Period

Pursuant to 19 CFR 351.206(h)(2), the Department will not consider imports to be massive unless imports in the comparison period have increased by at least 15 percent over imports in the base period. The Department normally considers a "relatively short period" as the period beginning on the date the proceeding begins and ending at least three months later. See 19 CFR 351.206(i). For this reason, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the "base period") to a comparable period of at least three months following the filing of the petition (*i.e.*, the "comparison period"). *Id.*

In its April 15, 2010, allegation, Petitioner maintained that importers, exporters, or foreign producers gained knowledge that this proceeding was possible when they filed the Petition on July 29, 2009. See Petitioner's Allegation at 4. Petitioner also included in its allegation U.S. import data, which used a five-month base period (March 2009 through July 2009) and a five-month comparison period (August 2009 through December 2009) in showing whether imports were massive. The Department, however, has used a seven-month base and comparison period in its analysis, the maximum amount of data which could be collected.⁷

Based on the date the Petition was filed, *i.e.*, July 29, 2009, the Department agrees with Petitioner that at this time

importers, exporters, or producers knew or should have known an antidumping duty investigation was likely, and therefore July falls within the base period.

A. RHI

The Department requested monthly shipment information from RHI, a mandatory respondent in this investigation. We determine that, based on a seven-month comparison period, RHI's imports were massive. Specifically, RHI's import data show an increase of greater than 15 percent of brick imports from the PRC from the base to the comparison period.⁸ Thus, pursuant to 19 CFR 351.206(h), we determine that this increase, being greater than 15 percent, shows that imports in the comparison period were massive for RHI.

B. Mayerton

In this investigation, the Department selected Mayerton and RHI as mandatory respondents.⁹ After the *Preliminary Determination*, on April 1, 2010, Mayerton stated that it would no longer participate in the instant investigation. See letter from Mayerton, regarding "Withdrawal by Mayerton of Further Participation in the Investigation," dated April 1, 2010. Because Mayerton is no longer participating in this investigation, we were unable to obtain shipment data from Mayerton for purposes of our critical circumstances analysis, and thus, there is no verifiable information on the record with respect to its export volumes.

Section 776(a)(2) of the Act provides that, if an interested party or any other person (A) withholds information that has been requested by the administering authority or the Commission under this title, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding under the Act, or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the

³ See *Certain Magnesia Carbon Bricks From China and Mexico*, Investigation Nos. 701-TA-468 and 731-TA-1166-1167 (Preliminary), USITC Publication 4100 (September 2009), at VII-5.

⁴ See, e.g., *Affirmative Preliminary Determination of Critical Circumstances: Magnesium Metal From the People's Republic of China*, 70 FR 5606, 5607 (February 3, 2005) ("Magnesium Metal CC Prelim"), unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Magnesium Metal From the People's Republic of China*, 70 FR 9037 (February 24, 2005).

⁵ See *Magnesium Metal CC Prelim*, 70 FR at 5607.

⁶ See *Investigation Nos. 701-TA-468 and 731-TA-1166-1167 (Preliminary) Certain Magnesia Carbon Bricks From China*, 74 FR 49889 (September 29, 2009).

⁷ See, e.g., *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber From the People's Republic of China*, 72 FR 19690, 19692 (April 19, 2007).

⁸ See Memo to The File, from Dana Griffies, Import Policy Analyst, through Scot T. Fullerton, Program Manager, regarding "Investigation of Magnesia Carbon Bricks From the People's Republic of China: Critical Circumstances Analysis," dated concurrently with this Memo ("Critical Circumstances Memo").

⁹ See Memorandum to James C. Doyle, Director, Office IX, from Paul Walker, Senior Case Analyst, through Scot Fullerton, Program Manager, Office IX, regarding "Antidumping Duty Investigation of Certain Magnesia Carbon Bricks From the People's Republic of China," dated October 6, 2009.

Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title. Furthermore, section 776(b) of the Act provides that, if a party has failed to act to the best of its ability, the Department may apply an adverse inference.

Thus, for the purposes of critical circumstances, we have applied adverse facts available ("AFA") to Mayerton in accordance with sections 776(a) and (b) of the Act. Accordingly, as AFA we preliminarily find that there were massive imports of merchandise from Mayerton.

C. Separate Rate Applicants

As noted above, we requested seven months of shipment information from RHI, a mandatory respondent in this investigation, and determined that RHI's imports were massive. Because it has been the Department's practice to conduct its massive imports analysis of separate rate companies based on the experience of investigated companies,¹⁰ we did not request monthly shipment information from the separate rate applicants. The Department has relied upon RHI's import data in determining whether there have been massive imports for the separate rate companies. Accordingly, based on RHI's import data, we find that imports in the post-petition period were massive for those companies because RHI's import volume is greater than 15 percent when comparing the base period to the comparison period. *See* Critical Circumstances Memo. Thus, pursuant to 19 CFR 351.206(h), we determine that this increase, being greater than 15 percent, shows that imports in the comparison period were massive for the separate rate companies.

D. PRC-Wide Entity

Because the PRC-wide entity did not cooperate with the Department by not responding to the Department's antidumping questionnaire, we were unable to obtain shipment data from the PRC-wide entity for purposes of our critical circumstances analysis, and thus there is no verifiable information on the record with respect to its export volumes.

Section 776(a)(2) of the Act provides that, if an interested party or any other person (A) withholds information that has been requested by the administering authority or the Commission under this title, (B) fails to provide such information by the deadlines for submission of the information or in the

form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding under the Act, or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title.

Furthermore, section 776(b) of the Act provides that, if a party has failed to act to the best of its ability, the Department may apply an adverse inference. The PRC-wide entity did not respond to the Department's request for information. Thus, we are using facts available, in accordance with section 776(a) of the Act, and, pursuant to section 776(b) of the Act, we also find that AFA is warranted because the PRC-wide entity has not acted to the best of its ability in not responding to the request for information. Accordingly, as AFA we preliminarily find that there were massive imports of merchandise from the PRC-wide entity.¹¹

Critical Circumstances

Record evidence indicates that importers of the merchandise under consideration knew, or should have known, that exporters were selling the merchandise at LTFV, and that there was likely to be material injury by reason of such sales. In addition, record evidence indicates that RHI, Mayerton, the separate rate applicants and the PRC-wide entity had massive imports during a relatively short period. Therefore, in accordance with section 733(e)(1) of the Act, we preliminarily find that there is reason to believe or suspect that critical circumstances exist for imports of subject merchandise from RHI, Mayerton, the separate rate applicants and the PRC-wide entity in this antidumping duty investigation.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary determination.

Public Comment

As noted in the *Preliminary Determination*, case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven business days after the date on which the final verification report is issued in this proceeding. Rebuttal briefs limited to issues raised in case briefs must be received no later than five business days

after the deadline date for case briefs. *See* 19 CFR 351.309(c)(i) and (d). A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

Suspension of Liquidation

With respect to the RHI, Mayerton, the separate rate applicants and the PRC-wide entity, in accordance with section 733(e)(2)(A) of the Act, we will direct CBP to suspend liquidation of all unliquidated entries of bricks from the PRC that were entered, or withdrawn from warehouse, for consumption on or after December 14, 2010, which is 90 days prior to March 12, 2010, the date of publication in the **Federal Register** of our *Preliminary Determination* in this investigation.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 351.206(c)(2)(ii).

Dated: May 13, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XW51

Marine Mammals; File No. 15537

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Institute for Marine Mammal Studies (IMMS), P.O. Box 207, Gulfport, MS 39502 (Dr. Moby Solangi, Responsible Party), has applied in due form for a permit to obtain stranded, releasable California sea lions (*Zalophus californianus*) from the National Marine Mammal Stranding Response Program for the purposes of public display.

DATES: Written or telefaxed comments must be received on or before June 21, 2010.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713-2289; fax (301) 713-0376; and

¹⁰ *See, e.g., OCTG*, 74 FR at 59121.

¹¹ *See OCTG*, 74 FR at 59121.