

## Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina O'Hern at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: March 9, 2010.

**Tracey L. Thompson,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-954]

#### **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**

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

**DATES:** *Effective Date:* March 12, 2010.

**SUMMARY:** The Department of Commerce ("Department") preliminarily determines that certain magnesia carbon bricks ("bricks") from the People's Republic of China ("PRC") are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("Act"), for the period of investigation ("POI") January 1, 2008, through June 30, 2009. The estimated margins of sales at LTFV are shown in the "Preliminary Determination" section of this notice. Interested parties are invited to comment on this preliminary determination.

**FOR FURTHER INFORMATION CONTACT:** Paul Walker or Dana Griffies, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482-0413 or (202) 482-3032, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Initiation**

On July 29, 2009, the Department received a petition concerning imports of bricks from the PRC filed by Resco Products, Inc. ("Petitioner"). See "Petition for the Imposition of Antidumping Duties: Certain Magnesia Carbon Bricks from the People's Republic of China," dated July 29, 2009. The Department initiated this

investigation on August 25, 2009. *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) ("Initiation").

On September 22, 2009, the United States International Trade Commission ("ITC") issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the PRC of bricks. *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).

##### **Respondent Selection**

In the *Initiation*, the Department stated that it intended to select respondents based on quantity and value ("Q&V") questionnaires. *See Initiation*, 74 FR at 42856. On August 19, 2009, the Department requested Q&V information from 35 companies that the Petitioner identified as potential exporters, or producers, of bricks from the PRC. *See Memo to the File*, dated September 10, 2009. Additionally, the Department also posted the Q&V questionnaire for this investigation on its Web site at <http://ia.ita.doc.gov/ia-highlights-and-news.html>.

The Department received timely Q&V responses from sixteen exporters/producers that shipped merchandise under investigation to the United States during the POI.

On October 6, 2009, the Department selected Dalian Mayerton Refractories Co., Ltd. and Liaoning Mayerton Refractories Co., Ltd. (collectively, "Mayerton") and RHI Refractories Liaoning Co., Ltd. ("RHI") as mandatory respondents in this investigation, based on their volume of U.S. entries of bricks during the POI. *See Memorandum to James Doyle, Office Director, Office 9, from Paul Walker, Analyst, through Scot T. Fullerton, Program Manager, regarding the "Investigation of Magnesia Carbon Bricks from the People's Republic of China: Respondent Selection," dated October 6, 2009 ("Respondent Selection Memo").* The Department sent its antidumping duty questionnaire to Mayerton and RHI on October 6, 2009. Between October 27, 2009, and February 26, 2010, Mayerton and RHI responded to the Department's original and supplemental questionnaires.

##### **Separate Rate Applications**

Between October 12, 2009, and October 27, 2009, in addition to those

filed by Mayerton and RHI, we received timely filed separate-rate applications ("SRA") from twelve companies: Dashiqiao City Guancheng Refractor Co., Ltd.; Fengchi Imp. And Exp. Co., Ltd. Of Haicheng City; Jiangsu Sujia Group New Materials Co. Ltd.; Liaoning Fucheng Refractories Group Co., Ltd.; Liaoning Fucheng Special Refractory Co., Ltd.; Liaoning Jiayi Metals & Minerals Co., Ltd.; Yingkou Bayuquan Refractories Co., Ltd.; Yingkou Dalmond Refractories Co., Ltd.; Yingkou Guangyang Co., Ltd.; Yingkou Kyushu Refractories Co., Ltd.; Yingkou New Century Refractories Ltd.; and Yingkou Wonjin Refractory Material Co., Ltd. ("Separate Rate Respondents"). One company, RHI Refractories (Dalian) Co., Ltd., submitted a separate rate application, however, a careful review of that application indicates that it did not sell the merchandise under consideration. Therefore, we have not considered the separate rate application of RHI Refractories (Dalian) Co., Ltd.

##### **Surrogate Country and Surrogate Value Comments**

On November 13, 2009, the Department determined that India, the Philippines, Indonesia, Colombia, Thailand, and Peru are countries comparable to the PRC in terms of economic development. *See August 19, 2009, Letter to All Interested Parties, regarding "Antidumping Duty Investigation of Magnesia Carbon Bricks from the People's Republic of China,"* attaching October 28, 2009, Memorandum to Scot T. Fullerton, Program Manager, Office 9, AD/CVD Operations, from Kelly Parkhill, Acting Director, Office for Policy, regarding "Request for List of Surrogate Countries for an Antidumping Duty Investigation of Magnesia Carbon Bricks from the People's Republic of China" ("Surrogate Country List").

On December 24, 2009, Petitioner and RHI submitted surrogate country comments. No other interested parties commented on the selection of a surrogate country. For a detailed discussion of the selection of the surrogate country, *see* "Surrogate Country" section below.

On December 3, 2009, and December 10, 2009, the Department extended until January 7, 2010, the deadline for interested parties to submit surrogate value information. Rebuttal comments were due no later than January 12, 2010. Consequently, between January 8, 2010, and February 26, 2010, interested parties submitted surrogate value comments and multiple rounds of surrogate value rebuttal comments.

### Postponement of Preliminary Determination

Pursuant to section 733(c) of the Act and 19 CFR 351.205(f)(1), the Department extended the preliminary determination by 50 days. The Department published a postponement of the preliminary determination on December 17, 2009. *See Certain Magnesia Carbon Bricks from the People's Republic of China and Mexico: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 74 FR 66954 (December 17, 2009). As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for the preliminary determination of this investigation is now March 3, 2010. *See Memorandum to the Record regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm,"* dated February 12, 2010.

### Postponement of Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters, who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months. On February 17, 2010, and on March 3, 2010, RHI and Mayeton, respectively, requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days. At the same time, RHI requested that the Department extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a six-month period. In accordance with section 735(a)(2) of the Act and 19 CFR 351.210(b)(2), because

(1) our preliminary determination is affirmative, (2) the requesting exporters account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting this request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

### Period of Investigation

The POI is January 1, 2009, through June 30, 2009. *See* 19 CFR 351.204(b)(1).

### Scope of Investigation

Imports covered by this investigation consist 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 anti-oxidants are present (for example, anti-oxidants 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, and 6815.99 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

In accordance with the preamble to our regulations, we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation*. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997); *see also Initiation*, 74 FR at 42853.

On September 8, 2009, Pilkington North America Inc. ("PNA"), a U.S. importer of bricks from the PRC and Mexico, filed comments concerning the scope of this investigation and the concurrent antidumping duty investigation of bricks from Mexico and the countervailing duty investigation of bricks from the PRC. 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. The petitioner did not comment on PNA's submission. On February 24, 2010, the Department issued a memorandum confirming that ceramic bonded magnesia bricks are not included in the scope of the investigations. *See Memorandum entitled "Certain Magnesia Carbon Bricks from the People's Republic of China and Mexico: Scope Comments,"* dated February 24, 2010.

### Non-Market Economy Country

For purposes of initiation, Petitioner submitted LTFV analyses for the PRC as a non-market economy ("NME"). *See Initiation*, 74 FR at 42855. The Department considers the PRC to be a NME country. *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 30758, 30760 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 60632 (October 25, 2007) ("CFS Paper"). In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. No party has challenged the designation of the PRC as an NME country in this investigation. Therefore, we continue to treat the PRC as an NME country for purposes of this preliminary determination and calculated normal value in accordance with Section 773(c) of the Act, which applies to all NME countries.

### Surrogate Country

When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production ("FOP") valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOP, the Department shall utilize, to the extent possible, the prices or costs of FOP in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise.

As noted above, the Department determined that India, the Philippines, Indonesia, Colombia, Thailand, and Peru are countries comparable to the PRC in terms of economic development. See Surrogate Country List. The sources of the surrogate values we have used in this investigation are discussed under the "Normal Value" section below.

Based on publicly available information placed on the record, the Department determines India to be a reliable source for surrogate values because India is at a comparable level of economic development, pursuant to section 773(c)(4) of the Act, is a significant producer of subject merchandise, and has publicly available and reliable data. Moreover, we note that Petitioner and RHI both argued in their surrogate country comments that India should be selected as the surrogate country. Accordingly, the Department has selected India as the surrogate country for purposes of valuing the factors of production ("FOPs") because it meets the Department's criteria for surrogate country selection.

#### Affiliations

Section 771(33) of the Act, provides that: The following persons shall be considered to be 'affiliated' or 'affiliated persons':

(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(B) Any officer or director of an organization and such organization.

(C) Partners.

(D) Employer and employee.

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization.

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(G) Any person who controls any other person and such other person.

Additionally, section 771(33) of the Act stipulates that: "For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person."

Based on Mayerton's statements<sup>1</sup> that it is affiliated with its U.S. sales office, Mayerton Refractories USA LLC ("MRU"), and based on the evidence presented in their questionnaire responses, we preliminarily find that

Mayerton is affiliated with MRU, which was involved in Mayerton's sales process, pursuant to sections 771(33)(E), (F) and (G) of the Act.

Based on RHI's statements<sup>2</sup> that they are affiliated with its U.S. sales office, Veitsch Radex America Inc., and based on the evidence presented in their questionnaire responses, we preliminarily find that RHI is affiliated with Veitsch Radex America Inc., which was involved in RHI's sales process, pursuant to sections 771(33)(E), (F) and (G) of the Act.

#### Separate Rates

In proceedings involving NME countries, there is a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. See *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039, 55040 (September 24, 2008) ("PET Film"). It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. See *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("Sparklers"); see also *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("Silicon Carbide"), and section 351.107(d) of the Department's regulations. However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate rate analysis is not necessary to determine whether it is independent from government control. In this investigation, one company, Mayerton, provided evidence that it was wholly owned by individuals or companies located in market economies in their separate rate application. Therefore, because Mayerton is wholly foreign-owned and the Department has no evidence indicating that it is under the control of the government of the PRC, a separate rates analysis is not necessary to determine whether Mayerton is independent from government control. See *Narrow Woven Ribbons with Woven Selvage from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and*

*Postponement of Final Determination*, 75 FR 7244 (February 18, 2010) (determining that the respondent was wholly foreign-owned and, thus, qualified for a separate rate). Accordingly, the Department has preliminarily granted a separate rate to Mayerton.

In the *Initiation*, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME investigations. See *Initiation*, 74 FR at 42857. The process requires exporters and producers to submit a separate-rate status application. The Department's practice is discussed further in *Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries*, (April 5, 2005), ("Policy Bulletin"), available at <http://ia.ita.doc.gov/policy/bull05-1.pdf>.<sup>3</sup>

We have considered whether each PRC company that submitted a complete application or complete Section A Response as a mandatory respondent, is eligible for a separate rate. Although the Petitioner argues that RHI should not be eligible for a separate rate because of government pricing guidelines, we note that the Department's separate rate test is not concerned, in general, with macroeconomic/border-type controls, e.g., export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. See *Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order*, 75 FR 8301 (February 24, 2010) and accompanying Issues and Decision Memorandum at Comment 1.

To establish whether a firm is sufficiently independent from government control of its export

<sup>3</sup> The *Policy Bulletin* states: "{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation." See *Policy Bulletin* at 6.

<sup>1</sup> See, e.g., Mayerton's October 27, 2009, Separate Rate Application at 4.

<sup>2</sup> See, e.g., RHI's October 27, 2009, Separate Rate Application at 8.

activities to be entitled to a separate rate, the Department analyzes each entity exporting the merchandise under investigation under a test arising from *Sparklers*, as further developed in *Silicon Carbide*. In accordance with the separate rate criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

#### 1. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. See *Sparklers*, 56 FR at 20589.

The evidence provided by RHI and the Separate Rate Respondents supports a preliminary finding of *de jure* absence of governmental control based on the following: 1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; 2) the applicable legislative enactments decentralizing control of the companies; and 3) other formal measures by the government decentralizing control of companies, *i.e.*, each company's SRA submission, dated October 12, 2009, through October 27, 2009, where each separate-rate respondent stated that it had no relationship with any level of the PRC government with respect to ownership, internal management, and business operations.

#### 2. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. See *Silicon Carbide*, 59 FR at 22586–87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the*

*People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

We determine that, for RHI and the Separate Rate Respondents, the evidence on the record supports a preliminary finding of *de facto* absence of governmental control based on record statements and supporting documentation showing the following: (1) Each exporter sets its own export prices independent of the government and without the approval of a government authority; (2) each exporter retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) each exporter has the authority to negotiate and sign contracts and other agreements; and (4) each exporter has autonomy from the government regarding the selection of management. See, *e.g.*, RHI's October 27, 2009, Separate Rate Application at 13–20.

The evidence placed on the record of this investigation by RHI and the Separate Rate Respondents, demonstrates an absence of *de jure* and *de facto* government control with respect to each of the exporter's exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. As a result, we have granted the Separate Rate Respondents a margin based on the experience of the mandatory respondents and excluding any *de minimis* or zero rates or rates based on total adverse facts available ("AFA") for the purposes of this preliminary determination.

#### Application of Adverse Facts Available, the PRC-Wide Entity and PRC-Wide Rate

The Department has data that indicate there were more exporters of bricks from the PRC than those indicated in the response to our request for Q&V information during the POI. See Respondent Selection Memorandum. We issued our request for Q&V information to 35 potential Chinese exporters of the merchandise under investigation, in addition to posting the Q&V questionnaire on the Department's Web site. While information on the record of this investigation indicates that there are other exporters/producers of bricks in the PRC, we received only sixteen timely filed Q&V responses. Although all exporters were given an

opportunity to provide Q&V information, not all exporters provided a response to the Department's Q&V letter. Therefore, the Department has preliminarily determined that there were exporters/producers of the merchandise under investigation during the POI from the PRC that did not respond to the Department's request for information. We have treated these PRC exporters/producers, as part of the PRC-wide entity because they did not qualify for a separate rate. See, *e.g.*, *Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Preliminary Partial Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China*, 70 FR 77121, 77128 (December 29, 2005), unchanged in *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006).

Section 776(a)(2) of the Act provides that, if an interested party (A) Withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Information on the record of this investigation indicates that the PRC-wide entity was non-responsive. Certain companies did not respond to our questionnaire requesting Q&V information or the Department's request for more information. As a result, pursuant to section 776(a)(2)(A) of the Act, we find that the use of facts available ("FA") is appropriate to determine the PRC-wide rate. See *Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 4986, 4991 (January 31, 2003), unchanged in *Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116, 37120 (June 23, 2003).

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See Statement of Administrative Action*, accompanying the Uruguay Round Agreements Act ("URAA"), H.R. Rep. No. 103-316, 870 (1994) ("SAA"); *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000). We find that, because the PRC-wide entity did not respond to our requests for information, it has failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

When employing an adverse inference, section 776(b) of the Act indicates that the Department may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate for adverse facts available ("AFA"), the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. It is the Department's practice to select, as AFA, the higher of the (a) highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation. *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Quality Steel Products from the People's Republic of China*, 65 FR 34660 (May 31, 2000) and accompanying Issues and Decision Memorandum at Comment 1. As AFA, we have preliminarily assigned to the PRC-wide entity a rate of 349.00 percent, a rate calculated in the petition which is higher than the highest rate calculated for either of the cooperative respondents. *See Initiation*. The Department preliminarily determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA.

### Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent

sources reasonably at its disposal. Secondary information is described as "information derived from the petition that gave rise to the investigation or review, the final determination concerning merchandise subject to this investigation, or any previous review under section 751 concerning the merchandise subject to this investigation."<sup>4</sup> To "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. Independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.<sup>5</sup>

The AFA rate that the Department used is from the Petition. Petitioner's methodology for calculating the United States price and NV in the Petition is discussed in the *Initiation*. To corroborate the AFA margin that we have selected, we compared this margin to the margins we found for the respondents. We found that the margin of 349.00 percent has probative value because it is in the range of the model-specific margins that we found for the mandatory respondent, RHI. *See Memorandum to the File*, through Scot T. Fullerton, Program Manager, Office 9, from Paul Walker, Senior Analyst, "Investigation of Magnesia Carbon Bricks from the People's Republic of China: RHI Refractories Liaoning Co., Ltd.," dated concurrently with this notice ("RHI Analysis Memo"). Accordingly, we find that the rate of 349.00 percent is corroborated within the meaning of section 776(c) of the Act.

### Margin for the Separate Rate Companies

The Department received timely and complete separate rate applications from

the Separate Rate Respondents, who are exporters/producers of bricks from the PRC, and were not selected as a mandatory respondent in this investigation. Through the evidence in their applications, these companies have demonstrated their eligibility for a separate rate. *See the "Separate Rates" section above*. Consistent with the Department's practice, as the separate rate, we have established a margin for the Separate Rate Respondents based on the rates we calculated for the mandatory respondents, excluding any rates that are zero, *de minimis*, or based entirely on AFA.<sup>6</sup> The companies receiving this rate are listed in the "Preliminary Determination" section of this notice.

### Date of Sale

Section 351.401(i) of the Department's regulations state that, "[i]n identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business." In *Allied Tube*, the Court of International Trade ("CIT") noted that a party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to "satisf[y]" the Department that "a different date better reflects the date on which the exporter or producer establishes the material terms of sale." *See Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d at 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)) ("*Allied Tube*"). Additionally, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. *See* 19 CFR 351.401(i); *see also Allied Tube*, 132 F. Supp. 2d at 1090-1092. The date of sale is generally the date on which the parties agree upon all substantive terms of the sale. This normally includes the price, quantity, delivery terms and payment terms. *See Carbon and Alloy Steel Wire Rod from Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review*, 72 FR 62824 (November 7, 2007) and accompanying Issue and Decision

<sup>4</sup> *See Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate From the People's Republic of China*, 73 FR 6479, 6481 (February 4, 2008), quoting SAA at 870.

<sup>5</sup> *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

<sup>6</sup> *See, e.g., Preliminary 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*, 71 FR 77373, 77377 (December 26, 2006) ("PSF"), unchanged in *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 (April 19, 2007).

Memorandum at Comment 1; *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000) and accompanying Issues and Decision Memorandum at 2. Date of Sale; Comment 1.

Mayerton reported that the date of sale was determined by the invoice issued by the affiliated importer to the unaffiliated United States customer. In this case, as the Department found no evidence contrary to Mayerton's claims that invoice date was the appropriate date of sale, the Department used invoice date as the date of sale for this preliminary determination. *See, e.g.*, Mayerton's October 27, 2010 submission.

RHI reported that the date of sale was determined by the invoice issued to the unaffiliated United States customer. In this case, as the Department found no evidence contrary to RHI's claims that invoice date was the appropriate date of sale, the Department used invoice date as the date of sale for this preliminary determination. *See, e.g.*, RHI's February 5, 2010 submission at 10.

#### Fair Value Comparison

To determine whether sales of bricks to the United States by Mayerton and RHI were made at LTFV, we compared constructed export price ("CEP") to NV, as described in the "U.S. Price" and "Normal Value" sections of this notice.

In addition to selling bricks to unaffiliated customers, RHI claimed that it consumes some subject merchandise in the U.S. market under "Full Line Service Contracts." Under these contracts, RHI or its affiliates ship bricks as part of broader service agreements with their customers. RHI did not include bricks shipped in conjunction with these service contracts in its sales listings. RHI claimed that the bricks quantity shipped in these instances constitute a relatively small percentage of the total bricks shipped to U.S. customers during the POI. RHI also claimed that, in fulfilling these contracts, it does not generate invoices specifying a quantity or price for the bricks shipped, and thus does not record sales of bricks in its accounting system. Rather, customers pay RHI or its affiliates based on other terms specified in the contracts.

Our analysis of the information RHI provided, including examples of Full Line Service Contracts, supports RHI's representations regarding the difficulty of assigning values to bricks shipped in the fulfillment of these contracts. Based on this analysis and RHI's claim that the shipment of bricks under these contracts

constitutes a relatively small percentage of the total bricks shipped to U.S. customers during the POI, we have preliminarily excluded bricks shipped under these circumstances in the U.S. market from our margin analysis. We will examine these transactions further after this preliminary determination and at verification.

#### U.S. Price

In accordance with section 772(b) of the Act, we based the U.S. price for Mayerton's and RHI's sales on CEP because these sales were made by their respective affiliates who purchased the merchandise under investigation produced by Mayerton and RHI. In accordance with section 772(c)(2)(A) of the Act, we calculated CEP by deducting, where applicable, the following expenses from the gross unit price charged to the first unaffiliated customer in the United States: foreign movement expenses, and U.S. movement expenses, including U.S. duties, brokerage and handling, and warehousing costs. Further, in accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), where appropriate, we deducted from the starting price the following selling expenses associated with economic activities occurring in the United States: credit expenses and other indirect selling expenses. In addition, pursuant to section 772(d)(3) of the Act, we made an adjustment to the starting price for CEP profit. We based movement expenses on either surrogate values or actual expenses. For details regarding our CEP calculations, and for a complete discussion of the calculation of the U.S. price for Mayerton and RHI, *see* Memorandum to the File, through Scot T. Fullerton, Program Manager, Office 9, from Paul Walker, Senior Analyst, "Investigation of Magnesite Carbon Bricks from the People's Republic of China: Dalian Mayerton Refractories Co., Ltd. and Liaoning Mayerton Refractories Co., Ltd. (collectively, "Mayerton")," dated concurrently with this notice ("Mayerton Analysis Memo"); *see also* RHI Analysis Memo.

#### Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using a FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on FOPs because the presence of government controls on various aspects of non-market economies renders price

comparisons and the calculation of production costs invalid under the Department's normal methodologies. *See, e.g.*, *Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China*, 71 FR 19695, 19703 (April 17, 2006) ("CLPP") unchanged in *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079 (September 8, 2006).

#### Factor Valuation Methodology

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by Mayerton and RHI. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available surrogate values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. *See, e.g.*, *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 67 FR 72139 (December 4, 2002) and accompanying Issues and Decision Memorandum at Comment 6; and *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 31204 (June 11, 2001) and accompanying Issues and Decision Memorandum at Comment 5. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997). For a detailed description of all surrogate values used for Mayerton and RHI, *see* Memorandum to the File through Scot Fullerton, Program Manager, Office 9, from Paul Walker, Senior Case Analyst, "Investigation of Magnesite Carbon Bricks from the People's Republic of China: Surrogate Factor Valuations for the Preliminary Results," dated concurrently with this notice ("Surrogate Values Memo").

For this preliminary determination, in accordance with the Department's practice, we used data from Indian



Import Statistics and other publicly available Indian sources in order to calculate surrogate values for Mayerton and RHI's raw materials, packing, by-products, and energy. In selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, surrogate values which are non-export average values, most contemporaneous with the POI, product-specific, and tax-exclusive. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004). The record shows that data in the Indian Import Statistics, as well as those from the other Indian sources, are contemporaneous with the POI, product-specific, and tax-exclusive. *See* Surrogate Values Memo. In those instances where we could not obtain publicly available information contemporaneous to the POI with which to value factors, we adjusted the surrogate values using, where appropriate, the Indian Wholesale Price Index ("WPI") as published in the *International Financial Statistics* of the International Monetary Fund. *See, e.g., PSF*, 71 FR at 77380 and *CLPP*, 71 FR at 19704.

Furthermore, with regard to the Indian import-based surrogate values, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004) and accompanying Issues and Decision Memorandum at Comment 7. Further, guided by the legislative history, it is the Department's practice not to

conduct a formal investigation to ensure that such prices are not subsidized. *See* Omnibus Trade and Competitiveness Act of 1988, Conference Report to accompany H.R. Rep. 100-576 at 590 (1988), *reprinted in* 1988 U.S.C.C.A.N. 1547, 1623-24; *see also CFS Paper*. Rather, the Department bases its decision on information that is available to it at the time it makes its determination. *See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 24552, 24559 (May 5, 2008), unchanged in *PET Film*. Therefore, we have not used prices from these countries in calculating the Indian import-based surrogate values. Additionally, we disregarded prices from NME countries. Finally, imports that were labeled as originating from an "unspecified" country were excluded from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies. *Id.*

For direct, indirect, and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate as reported on Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in October 2009. *See 2009 Calculation of Expected Non-Market Economy Wages*, 74 FR 65092 (December 9, 2009), and <http://ia.ita.doc.gov/wages/index.html>. The source of these wage-rate data on the Import Administration's Web site is the *Yearbook of Labour Statistics 2005*, ILO (Geneva: 2007), Chapter 5B: Wages in Manufacturing. Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by the respondents.

We valued diesel using the June 2007 diesel prices across four Indian cities from the Indian Oil Corporation. Since the rates are not contemporaneous with the POI, we inflated the values using the WPI. *See* Surrogate Values Memo.

We valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication titled *Electricity Tariff & Duty and Average Rates of Electricity Supply in India*, dated March 2008. These electricity rates represent actual country-wide, publicly available information on tax-exclusive electricity rates charged to industries in India. As the rates listed in this source became effective on a variety of different dates,

we are not adjusting the average value for inflation.

Because water is essential to the production process of the merchandise under consideration, the Department considers water to be a direct material input, not overhead, and valued water with a surrogate value according to our practice. *See Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings from the People's Republic of China*, 68 FR 61395 (October 28, 2003) and accompanying Issues and Decision Memorandum at Comment 11. The Department valued water using data from the Maharashtra Industrial Development Corporation (<http://www.midindia.orgwww.midcindia.org>) since it includes a wide range of industrial water tariffs. This source provides 386 industrial water rates within the Maharashtra province from April 2009 through June 2009, of which 193 were for the "inside industrial areas" usage category and the other 193 were for the "outside industrial areas" usage category. Because the data are contemporaneous with the POI, we are not adjusting the average value for inflation.

We valued natural gas using April through June 2002 data from the Gas Authority of India Ltd. ("GAIL"). Since the rates are not contemporaneous with the POI, we inflated the values using the WPI. *See* Surrogate Values Memo.

We valued truck freight expenses using a per-unit average rate calculated from data on the infobanc Web site: <http://www.infobanc.com/logistics/logtruck.htm>. The logistics section of this Web site contains inland freight truck rates between many large Indian cities. Since this value is not contemporaneous with the POI, we inflated the rate using WPI.

We continued our recent practice to value brokerage and handling using a simple average of the brokerage and handling costs that were reported in public submissions that were filed in three antidumping duty cases. Specifically, we averaged the public brokerage and handling expenses reported by Navneet Publications (India) Ltd. in the 2007-2008 administrative review of certain lined paper products from India, Essar Steel Limited in the 2006-2007 antidumping duty administrative review of hot-rolled carbon steel flat products from India, and Himalaya International Ltd. in the 2005-2006 administrative review of certain preserved mushrooms from India. *See* Surrogate Values Memo. Since the resulting value is not

contemporaneous with the POI, we inflated the rate using the WPI.

To value factory overhead, selling, general, and administrative ("SG&A") expenses, and profit, the Department used the audited financial statements of Maithan Ceramic Limited and Raasi Refractories Limited. We note that both financial statements are contemporaneous to the POI, and both companies produce the merchandise under consideration.

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

#### Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information upon which we will rely in making our final determination.

#### Combination Rates

In the *Initiation*, the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. See *Initiation* at 42857. This practice is described in the *Policy Bulletin*.

#### Preliminary Determination

Preliminary weighted-average dumping margins are as follows:

Exporter	Producer	Weighted-average margin
RHI Refractories Liaoning Co., Ltd .....	RHI Refractories Liaoning Co., Ltd .....	304.67
Liaoning Mayerton Refractories Co., Ltd .....	Liaoning Mayerton Refractories Co., Ltd .....	132.74
Dalian Mayerton Refractories Co., Ltd .....	Dalian Mayerton Refractories Co., Ltd .....	132.74
Dashiqiao City Guancheng Refractor Co., Ltd .....	Dashiqiao City Guancheng Refractor Co., Ltd .....	218.71
Fengchi Imp. And Exp. Co., Ltd Of Haicheng City .....	Fengchi Refractories Co., of Haicheng City .....	218.71
Jiangsu Sujia Group New Materials Co. Ltd .....	Jiangsu Sujia Group New Materials Co. Ltd .....	218.71
Liaoning Fucheng Refractories Group Co., Ltd .....	Liaoning Fucheng Refractories Group Co., Ltd .....	218.71
Liaoning Fucheng Special Refractory Co., Ltd .....	Liaoning Fucheng Special Refractory Co., Ltd .....	218.71
Liaoning Jiayi Metals & Minerals Co., Ltd .....	Liaoning Jiayi Metals & Minerals Co., Ltd .....	218.71
Yingkou Bayuquan Refractories Co., Ltd .....	Yingkou Bayuquan Refractories Co., Ltd .....	218.71
Yingkou Dalmond Refractories Co., Ltd .....	Yingkou Dalmond Refractories Co., Ltd .....	218.71
Yingkou Guangyang Co., Ltd .....	Yingkou Guangyang Co., Ltd .....	218.71
Yingkou Kyushu Refractories Co, Ltd .....	Yingkou Kyushu Refractories Co, Ltd .....	218.71
Yingkou New Century Refractories Ltd .....	Yingkou New Century Refractories Ltd .....	218.71
Yingkou Wonjin Refractory Material Co., Ltd .....	Yingkou Wonjin Refractory Material Co., Ltd .....	218.71
PRC-wide Entity .....	.....	349.00

#### Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

#### Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct CBP to suspend liquidation of all entries of subject bricks from the PRC as described in the "Scope of Investigation" section, entered, or withdrawn from warehouse, for consumption from Mayerton and RHI, the Separate Rate Respondents, and the PRC-wide entity on or after the date of publication of this notice in the **Federal Register**.

The Department has determined in *Certain Magnesite Carbon Bricks from the People's Republic of China: Preliminary Negative Countervailing Duty Determination*, 74 FR 68241 (December 23, 2009) ("CVD PRC Bricks Prelim"), that the product under investigation, exported and produced by Mayerton and RHI, did not benefit from an export subsidy. Normally, where the product under investigation is also subject to a concurrent countervailing duty investigation, we instruct CBP to require an antidumping cash deposit or posting of a bond equal to the weighted-average amount by which the NV

exceeds the EP, minus the amount determined to constitute an export subsidy in the companion countervailing duty investigation. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 From India*, 69 FR 67306, 67307 (November 17, 2004). However, in this case, because Mayerton and RHI, did not benefit from an export subsidy, we will instruct CBP to require an antidumping cash deposit or posting of a bond equal to the weighted-average amount by which the NV exceeds the CEP, as indicated above.

With respect to the Separate Rate Companies in this investigation, we will instruct CBP to require an antidumping cash deposit or the posting of a bond for each entry equal to the weighted-average amount by which the NV exceeds U.S. price, as indicated above.

For all other entries of bricks from the PRC, the following cash deposit/bonding instructions apply: (1) For all PRC exporters of bricks which have not received their own rate, the cash-deposit or bonding rate will be the PRC-wide rate; (2) for all non-PRC exporters of bricks from the PRC which have not received their own rate, the cash-deposit or bonding rate will be the rate applicable to the exporter/producer combinations that supplied that non-PRC exporter. This suspension of

liquidation will remain in effect until further notice.

#### International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at less than fair value. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of bricks, or sales (or the likelihood of sales) for importation, of the merchandise under investigation within 45 days of our final determination.

#### Public Comment

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.

In accordance with section 774 of the Act, and if requested, we will hold a public hearing, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we intend to hold the hearing shortly after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Ave, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice. See 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: March 3, 2010.

**Carole A. Showers,**

*Acting Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2010-5277 Filed 3-11-10; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-893]

#### Fourth Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results, Preliminary Partial Rescission of Antidumping Duty Administrative Review and Intent Not To Revoke, In Part

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

**SUMMARY:** The Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on certain frozen warmwater shrimp ("shrimp") from the People's Republic of China

("PRC"), covering the period of review ("POR") of February 1, 2008, through January 31, 2009. As discussed below, the Department preliminarily determines that certain respondents in this review made sales in the United States at prices below normal value ("NV"). If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the POR for which importer-specific assessment rates are above *de minimis*.

**DATES:** *Effective Date:* March 12, 2010.

**FOR FURTHER INFORMATION CONTACT:** Robert Palmer or Irene Gorelik, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-9068 and (202) 482-6905, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Department received timely requests from both Petitioners,<sup>1</sup> domestic interested parties ("DP"),<sup>2</sup> and certain PRC companies, in accordance with 19 CFR 351.213(b), during the anniversary month of February, for administrative reviews of the antidumping duty order on certain warmwater shrimp from the PRC. On March 26, 2009, the Department initiated an administrative review of 483 producers/exporters of subject merchandise from the PRC.<sup>3</sup> See *Notice of Initiation of Administrative Reviews and Requests for Revocation in Part of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam and the People's Republic of China*, 74 FR 13178 (March 26, 2009) ("*Initiation*"). However, after accounting for duplicate names and additional trade names associated with certain exporters, the number of companies upon which we initiated is actually 477 companies/groups.<sup>4</sup>

<sup>1</sup> The petitioners are the members of the Ad Hoc Shrimp Trade Action Committee (hereinafter referred to as "Petitioners").

<sup>2</sup> The domestic interested parties are the American Shrimp Processors Association and the Louisiana Shrimp Association.

<sup>3</sup> See *Initiation* for a listing of these companies.

<sup>4</sup> The duplicated companies were: Sanya Dongji Aquatic Products Co., Ltd.; Sanya Shengda Seafood Co., Ltd.; Yangjiang Jiangcheng Huanghai Marine Food Enterprises Co., Ltd.; Yangxi Add Host Aquatic Product Processing Factory; Yantai Aquatic Products Supplying and Marketing Co., Aquatic Products Haifa Food Branch; and Yantai Aquatic Products Supplying and Marketing Co., Aquatic Products Fazhan Branch.

Between April 15, 2009, and April 27, 2009, the following companies submitted "no shipment certifications"<sup>5</sup>: Allied Pacific Group, Gallant Ocean (Lianjiang), Ltd.; Gallant Ocean (Nanhai), Ltd.; Shantou Yelin Frozen Seafood Co., Ltd. (doing business as ("d.b.a") Shantou Yelin Quick-Freeze Marine Products Co., Ltd.); Fuqing Yihua Aquatic Food Co., Ltd.; Fuqing Minhua Trade Co., Ltd.; and Yangjiang City Yelin Hoitat Quick Frozen Seafood Co., Ltd.

On February 24, 2010, the Department received comments from DP regarding certain surrogate values and the issue of duty adsorption. However, because of the close proximity to the preliminary results, we are unable to take DP's comments into consideration for the preliminary results. DP's comments will be considered for purposes of the final results of this review.

#### Respondent Selection

On May 29, 2009, in accordance with section 777A(c)(2) of the Tariff Act of 1930, as amended ("Act"), the Department selected Hilltop International ("Hilltop") and Zhanjiang Regal Integrated Marine Resources Co., Ltd. ("Regal") for individual examination in this review, since they were the two largest exporters by volume during the POR, based on CBP data of U.S. imports. See Memorandum to James Doyle, Director, Office IX, from Irene Gorelik, Senior International Trade Analyst, Office IX, "Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Selection of Respondents for Individual Review," dated May 29, 2009.

#### Questionnaires

On June 1, 2009, the Department issued its initial non-market economy ("NME") antidumping duty questionnaire to the mandatory respondents Hilltop and Regal. Hilltop and Regal responded to the Department's initial and subsequent supplemental questionnaires between July 2009 and February 2010.

#### Surrogate Country and Surrogate Values

On July 10, 2009, the Department sent interested parties a letter requesting comments on the surrogate country and information pertaining to valuing factors of production ("FOPs"). On September 4, 2009, Hilltop submitted surrogate value comments regarding various

<sup>5</sup> Companies have the opportunity to submit statements certifying that they did not ship the subject merchandise to the United States during the POR.