

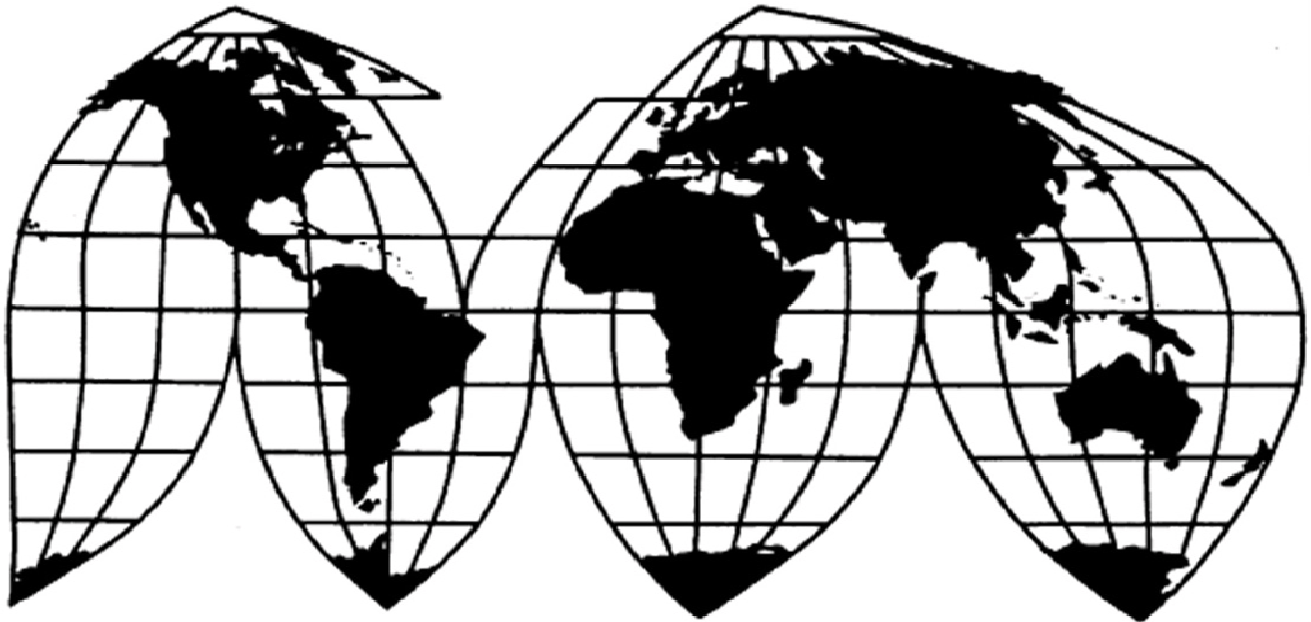
# **Certain Magnesia Carbon Bricks From China and Mexico**

Investigation Nos. 701-TA-468 and 731-TA-1166-1167  
(Preliminary)

**Publication 4100**

**September 2009**

**U.S. International Trade Commission**



Washington, DC 20436

# U.S. International Trade Commission

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Washington, DC 20436  
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## TABLE OF CONTENTS

	<i>Page</i>
<b>Determination</b> .....	1
<b>Views of the Commission</b> .....	3
<b>Separate and dissenting views of Chairman Shara L. Aranoff, Vice Chairman Daniel R. Pearson, and Commissioner Deanna Tanner Okun</b> .....	23
<b>Part I: Introduction</b> .....	I-1
Background .....	I-1
Statutory criteria and organization of the report .....	I-1
Statutory criteria .....	I-1
Organization of the report .....	I-2
U.S. market summary .....	I-2
Summary data and data sources .....	I-3
Previous and related Title VII investigations .....	I-3
Nature and extent of alleged subsidies and sales at LTFV .....	I-3
Alleged subsidies .....	I-3
Alleged sales at LTFV .....	I-4
The subject merchandise .....	I-4
Commerce’s scope .....	I-4
Tariff treatment .....	I-4
The product .....	I-6
Description and applications .....	I-6
Manufacturing processes .....	I-9
Domestic like product issues .....	I-11
<b>Part II: Conditions of competition in the U.S. market</b> .....	II-1
U.S. market characteristics .....	II-1
Channels of distribution .....	II-1
Supply and demand considerations .....	II-1
Supply .....	II-1
Demand .....	II-4
Substitutability issues .....	II-6
Factors affecting purchasing decisions .....	II-6
Comparison of the U.S. produced and imported MCB .....	II-7
<b>Part III: U.S. producers’ production, shipments, and employment</b> .....	III-1
U.S. producers .....	III-1
U.S. capacity, production, and capacity utilization .....	III-2
U.S. producers’ shipments .....	III-2
U.S. producers’ inventories .....	III-4
U.S. producers’ imports and purchases .....	III-4
U.S. employment, wages, and productivity .....	III-5

## TABLE OF CONTENTS

	<i>Page</i>
<b>Part IV: U.S. imports, apparent consumption, and market shares</b> .....	IV-1
U.S. importers .....	IV-1
U.S. imports .....	IV-1
Cumulation considerations .....	IV-4
Negligibility .....	IV-4
Apparent U.S. consumption .....	IV-5
U.S. market shares .....	IV-5
Ratio of imports to U.S. production .....	IV-7
 <b>Part V: Pricing and related information</b> .....	 V-1
Factors affecting prices .....	V-1
Raw material costs .....	V-1
U.S. inland transportation costs .....	V-1
Pricing practices .....	V-1
Pricing methods .....	V-1
Lead times .....	V-2
Sales terms and discounts .....	V-2
Price data .....	V-2
Price trends .....	V-3
Price comparisons .....	V-5
Lost sales and lost revenues .....	V-6
 <b>Part VI: Financial experience of U.S. producers</b> .....	 VI-1
Background .....	VI-1
Operations on MCB .....	VI-1
Capital expenditures and research and development expenses .....	VI-4
Assets and return on investment .....	VI-4
Capital and investment .....	VI-5
Actual negative effects .....	VI-5
Anticipated negative effects .....	VI-5
 <b>Part VII: Threat considerations and information on nonsubject countries</b> .....	 VII-1
The industry in China .....	VII-2
The industry in Mexico .....	VII-4
U.S. importers' inventories of MCB .....	VII-5
U.S. importer's current orders .....	VII-5
Antidumping and countervailing duty investigations in third-country markets .....	VII-5
Information on producers in nonsubject countries .....	VII-5

## TABLE OF CONTENTS

	<i>Page</i>
<b>Appendixes</b>	
A. <i>Federal Register</i> notices .....	A-1
B. Conference witnesses .....	B-1
C. Summary data .....	C-1

**Note.**—Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.





## UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation Nos. 701-TA-468 and 731-TA-1166-1167 (Preliminary)

### CERTAIN MAGNESIA CARBON BRICKS FROM CHINA AND MEXICO

#### DETERMINATIONS

On the basis of the record<sup>1</sup> developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a) and 19 U.S.C. § 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured,<sup>2</sup> or threatened with material injury<sup>3</sup> by reason of imports from China and Mexico of certain magnesia carbon bricks, provided for in subheadings 6902.10.10, 6902.10.50, 6815.91.00, and 6815.99.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV) and subsidized by the Government of China.

#### COMMENCEMENT OF FINAL PHASE INVESTIGATION

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in these investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) and 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

#### BACKGROUND

On July 29, 2009, a petition was filed with the Commission and Commerce by Resco Products Inc., Pittsburgh, PA, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of certain magnesia carbon bricks from China and LTFV imports of certain magnesia carbon bricks from China and Mexico. Accordingly, effective July 29, 2009,

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<sup>1</sup> The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

<sup>2</sup> Commissioner Charlotte R. Lane, Commissioner Irving A. Williamson, and Commissioner Dean A. Pinkert determine that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of certain magnesia carbon bricks from China and Mexico.

<sup>3</sup> Chairman Shara L. Aranoff, Vice Chairman Daniel R. Pearson, and Commissioner Deanna Tanner Okun determine that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of certain magnesia carbon bricks from China and determine that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Mexico of certain magnesia carbon bricks.

the Commission instituted countervailing duty investigation No. 701-TA-468 (Preliminary) and antidumping duty investigation Nos. 731-TA-1166-1167 (Preliminary). Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of August 10, 2009 (74 FR 39969). The conference was held in Washington, DC, on August 19, 2009, and all persons who requested the opportunity were permitted to appear in person or by counsel.

## VIEWS OF THE COMMISSION

Based on the record in the preliminary phase of these investigations, we find that there is a reasonable indication that an industry in the United States is materially injured<sup>1</sup> or threatened with material injury<sup>2</sup> by reason of imports of magnesia carbon bricks (“MCBs”) from China that are allegedly sold in the United States at less than fair value and subsidized by the Government of China and imports of MCBs from Mexico that are allegedly sold in the United States at less than fair value.

### I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping and countervailing duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured or threatened with material injury, or that the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.<sup>3</sup> In applying this standard, the Commission weighs the evidence before it and determines whether “(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”<sup>4</sup>

### II. BACKGROUND

The antidumping and countervailing duty petitions in these investigations were filed on July 29, 2009, by Resco Products, Inc. (“Resco”). Two Chinese producers, Yingkou Bayuquan Refractories Co., Ltd. and RHI Refractories Liaoning Co., Ltd., and one Mexican producer, RHI-Refmex S.A. de C.V., entered appearances as respondents. Three importers, S & S Intersource LLC, Vesuvius USA Corporation, and Veitsch-Radex America, Inc. also entered appearances as respondents.

Resco filed a postconference brief, and Vesuvius USA Corporation and Yingkou Bayuquan Refractories Co., Ltd. (collectively, the “Vesuvius Respondents”) filed a joint postconference brief. RHI Refractories Liaoning Co., Ltd., RHI-Refmex S.A. de C.V., and Veitsch-Radex America, Inc. (collectively, the “RHI Respondents”) also filed a joint postconference brief. Representatives of Resco and importers Fedmet Resources and S & S Intersource appeared at the staff conference.

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<sup>1</sup> Commissioner Charlotte R. Lane, Commissioner Irving A. Williamson, and Commissioner Dean A. Pinkert determine that there is a reasonable indication that a domestic industry is materially injured by reason of subject imports of MCBs from China and Mexico.

<sup>2</sup> Chairman Shara L. Aranoff, Vice Chairman Daniel R. Pearson, and Commissioner Deanna Tanner Okun determine that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of subject imports from China and that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of subject imports from Mexico. They join the Commission opinion through Section VI(B), except as noted herein. *See* Separate and Dissenting Views of Chairman Shara L. Aranoff, Vice Chairman Daniel R. Pearson, and Commissioner Deanna Tanner Okun.

<sup>3</sup> 19 U.S.C. §§ 1671b(a), 1673b(a) (2000); *see also American Lamb Co. v. United States*, 785 F.2d 994, 1001-04 (Fed. Cir. 1986); *Aristech Chem. Corp. v. United States*, 20 CIT 353, 354-55 (1996). No party argued that the establishment of an industry is materially retarded by reason of the allegedly unfairly traded imports.

<sup>4</sup> *American Lamb Co.*, 785 F.2d at 1001; *see also Texas Crushed Stone Co. v. United States*, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

There are four firms currently producing MCBs in the United States; three responded to Commission questionnaires with usable data.<sup>5</sup> The questionnaire responses cover more than \*\*\* percent of domestic production and shipments of MCBs during 2008.<sup>6</sup> The Commission has relied on questionnaire responses rather than official import statistics because the official statistics are derived from “basket” categories that include imports other than the subject merchandise.<sup>7</sup> Questionnaire responses were received from 16 importers representing 80 percent of total U.S. imports from China and virtually all imports from Mexico.<sup>8</sup> The Commission received usable foreign producer questionnaire responses from seven Chinese producers, estimated to account for approximately \*\*\* percent of Chinese exports of MCBs to the United States during the period examined.<sup>9</sup> The Commission also received a completed questionnaire from the only Mexican producer of the subject product, RHI-Refmex S.A.<sup>10</sup>

### III. DOMESTIC LIKE PRODUCT

#### A. In General

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”<sup>11</sup> Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Tariff Act”), defines the relevant domestic industry as the “producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”<sup>12</sup> In turn, the Tariff Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation ... .”<sup>13</sup>

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.<sup>14</sup> No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.<sup>15</sup> The Commission looks for clear dividing lines among possible like products and disregards minor

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<sup>5</sup> Confidential Staff Report (“CR”), INV-GG-076 (Sept. 8, 2009), as amended by INV-GG-077, at VI-1; Public Staff Report (“PR”) at VI-1. Resco, ANH Refractories, Inc. (“ANH”), and LWB Refractories (“LWB”) all responded to the questionnaires. Id.

<sup>6</sup> CR at VI-1; PR at 1.

<sup>7</sup> CR at IV-3, PR at IV-1.

<sup>8</sup> CR/PR at IV-1.

<sup>9</sup> CR at VII-3, PR at VII-1.

<sup>10</sup> CR at VII-5, PR at VII-4.

<sup>11</sup> 19 U.S.C. § 1677(4)(A).

<sup>12</sup> 19 U.S.C. § 1677(4)(A).

<sup>13</sup> 19 U.S.C. § 1677(10).

<sup>14</sup> See, e.g., Cleo, Inc. v. United States, 501 F.3d 1291, 1299 (Fed. Cir. 2007); NEC Corp. v. Department of Commerce, 36 F. Supp. 2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including the following: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes, and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455 n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

<sup>15</sup> See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

variations.<sup>16</sup> Although the Commission must accept the U.S. Department of Commerce (“Commerce”) determination as to the scope of the imported merchandise that is subsidized or sold at less than fair value,<sup>17</sup> the Commission determines what domestic product is like the imported articles Commerce has identified.<sup>18</sup> The Commission must base its domestic like product determination on the record in these investigations. The Commission is not bound by prior determinations, even those pertaining to the same imported products, but may draw upon previous determinations in addressing pertinent domestic like product issues.<sup>19</sup>

## **B. Product Description and Analysis**

In its notices of initiation, Commerce defined the imported merchandise within the scope of these investigations as follows:

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, antioxidants can be added to the mix from trace amounts to 15 percent by weight as various metals, metal alloys, and metal carbides).<sup>20</sup>

MCBs are refractory products that are made from a combination of magnesia and carbon. Refractory products maintain their strength at high temperatures because they are made from specialized materials. Accordingly, they are used to provide thermal and corrosion resistance in operations involving high temperatures and harsh operating conditions, such as in the production of iron and steel.<sup>21</sup> The scope of the investigations includes only chemically bonded MCBs in which the magnesia content is at least 70 percent and the carbon content ranges up to 30 percent.

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<sup>16</sup> Nippon, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; see also S. Rep. No. 96-249 at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

<sup>17</sup> See, e.g., USEC, Inc. v. United States, 34 Fed. Appx. 725, 730 (Fed. Cir. 2002) (“The ITC may not modify the class or kind of imported merchandise examined by Commerce.”); Algoma Steel Corp. v. United States, 688 F. Supp. 639, 644 (Ct. Int’l Trade 1988), aff’d, 865 F.3d 240 (Fed. Cir.), cert. denied, 492 U.S. 919 (1989).

<sup>18</sup> Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (the Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); Cleo, 501 F.3d at 1298 n.1 (“Commerce’s {scope} finding does not control the Commission’s {like product} determination.”); Torrington, 747 F. Supp. at 748-52 (affirming the Commission’s determination defining six like products in investigations where Commerce found five classes or kinds).

<sup>19</sup> See, e.g., Acciai Speciali Terni S.p.A. v. United States, 118 F. Supp. 2d 1298, 1304-05 (Ct. Int’l Trade 2000); Nippon, 19 CIT at 455; Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1169 n.5 (Ct. Int’l Trade 1988); Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1087-88 (Ct. Int’l Trade 1988).

<sup>20</sup> CR at I-5, PR at I-4. Notices of Initiation, 74 Fed. Reg. 42852, 42858 (Aug. 25, 2009). The subject merchandise is provided for under subheadings 6902.10.10., 6902.10.50., 6815.91.00., and 6815.99.00 of the Harmonized Tariff Schedules of the United States (HTS).

<sup>21</sup> CR at I-7, PR at I-6.

MCBs are used to line lower sidewalls, upper sidewalls, slag lines, and roofs of ladles and ladle metallurgy furnaces involved in steel production and refining, where MCBs come in contact with both molten steel and molten slag.<sup>22</sup> Ladles used in steel production are by far the largest application for MCBs, followed by electric arc furnaces.<sup>23</sup> MCBs are also used to line basic oxygen furnaces in integrated steel mills and electric arc furnaces in non-integrated steel mills.<sup>24</sup> MCBs are consumed in the steelmaking process and need to be replaced every 4 to 12 days, depending upon the application.<sup>25</sup>

Petitioner Resco argues for a single like product that would be coterminous with Commerce's scope of investigation.<sup>26</sup> It maintains that other types of refractory bricks are not interchangeable with MCBs. According to Resco, refractory bricks have specific formulations that result in unique chemical and physical characteristics, and each is used for particular applications based upon these characteristics.<sup>27</sup>

No other party objects to defining the domestic like product as coterminous with the scope of subject merchandise and to not expanding the like product to include other refractory products such as fired magnesite, fired bauxite, magnesia dolomite, and magnesia alumina graphite bricks. Based on the factors normally considered, as discussed below, we define the domestic like product as MCBs, a category that is coextensive with the scope of the investigations.

**Physical Characteristics and Uses.** MCBs are used to line lower sidewalls, upper sidewalls, slag lines, and roofs of ladles and ladle furnaces involved in steel production, where they come in contact with both molten steel and molten slag.<sup>28</sup> Other types of refractory brick also have high thermal resistance and are used in steelmaking applications, but MCBs are considered to be the most durable refractory bricks on the market for ladle linings, especially around the slag line.<sup>29</sup>

**Interchangeability.** Other refractory bricks are not used interchangeably with MCBs, because MCBs have certain physical and chemical properties that are required for more demanding applications.<sup>30</sup> Although respondents note that other types of refractory bricks may be used instead of MCBs in some circumstances, other refractory bricks are not typically used interchangeably with MCBs.<sup>31</sup>

**Channels of distribution.** The record indicates that MCBs and other refractory bricks are sold directly to the end users, steel producers.<sup>32</sup>

**Common Manufacturing Facilities, Production Processes, and Production Employees.** MCBs and other refractory bricks are made by the same manufacturers, but the manufacturing processes for MCBs and other refractory bricks may differ.<sup>33</sup>

**Producer/Customer Perceptions.** MCBs are perceived to be a distinct refractory product. Producers display MCBs separately from other refractory bricks in company brochures, on their websites, on pricing materials, and in purchase orders and technical guidelines.<sup>34</sup>

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<sup>22</sup> CR at I-7, PR at I-6.

<sup>23</sup> Transcript of Staff Conference of August 19, 2009 ("Tr") (Copp) at 24.

<sup>24</sup> Petitioner's Postconference Brief (Pet. Br.) at Exhibit 8.

<sup>25</sup> Tr. at 55 (Brown).

<sup>26</sup> Pet. Br. at 4.

<sup>27</sup> Petition at 10.

<sup>28</sup> CR at I-7, PR at I-6.

<sup>29</sup> CR at I-7, PR at I-6.

<sup>30</sup> CR at I-7, PR at I-6.

<sup>31</sup> RHI Respondents' Br. at 3.

<sup>32</sup> CR/PR at II-1 and Table II-1.

<sup>33</sup> Tr. at 47-48, 62-63 (Mazard, Copp). For instance, fired bricks require very high temperature count and dolomite bricks must be immediately packaged because they decompose when exposed to the atmosphere. Id.

<sup>34</sup> Tr. at 47 (Mazard).

**Price.** The average unit net sales value for U.S.-produced MCBs in 2008 was \$\*\*\* per ton.<sup>35</sup> The record indicates that MCBs are \$150-\$500 more per ton than other refractory products.<sup>36</sup>

**Conclusion.** The record indicates that MCBs are not used interchangeably with other refractory products. Compared with other refractory products, MCBs have distinct uses, differ in physical characteristics, are priced higher, and are made by different production processes. Based on this evidence and absent any arguments to the contrary,<sup>37</sup> we define the domestic like product as consisting of MCBs, a category that is coextensive with the scope of investigation.

#### IV. DOMESTIC INDUSTRY

The domestic industry is defined as the domestic “producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”<sup>38</sup> In defining the domestic industry, the Commission’s general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market. Based on our definition of the domestic like product, we define the domestic industry as all domestic producers of MCBs.

We must determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to 19 U.S.C. § 1677(4)(B). Subsection 1677(4)(B) allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers.<sup>39</sup> Exclusion of such producers is within the Commission’s discretion based upon the facts presented in each investigation. In these investigations, two U.S. producers, \*\*\*, reported that they imported subject MCBs during the period examined.<sup>40</sup> Thus, they may be excluded from the industry if appropriate circumstances exist.<sup>41</sup>

The RHI Respondents urge the Commission to exclude \*\*\* from the definition of the domestic industry because it is a significant importer.<sup>42</sup> Resco argues that \*\*\* should not be excluded as a related party because it is \*\*\*.<sup>43</sup>

\*\*\* domestic producer of MCBs, accounting for approximately \*\*\* of all domestic production in 2008.<sup>44</sup> \*\*\*.<sup>45</sup> Although its importing activity was most extensive toward the end of the period and in \*\*\* in particular,<sup>46</sup> the record indicates that its primary interest lies in domestic production. Its ratio of

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<sup>35</sup> See CR/PR at Table C-1.

<sup>36</sup> Tr. at 48 (Mazard).

<sup>37</sup> The RHI Respondents argue that other types of refractory bricks are competitive with MCBs. RHI Respondents’ Br. at 3. They do not argue, however, that the domestic like product should be defined more broadly to include such products. We remind the parties that, pursuant to rule 207.20(b), the written comments on draft questionnaires in the final phase of the investigations must propose and identify any specific additional data that a party wishes the Commission to gather concerning a possible broader definition of the domestic like product.

<sup>38</sup> 19 U.S.C. § 1677(4)(A).

<sup>39</sup> 19 U.S.C. § 1677(4)(B).

<sup>40</sup> CR/PR at Table III-5.

<sup>41</sup> 19 U.S.C. § 1677(4)(B).

<sup>42</sup> RHI Respondents’ Br. at 5-6.

<sup>43</sup> Pet. Br. at 5-8.

<sup>44</sup> CR/PR at Table III-1.

<sup>45</sup> CR/PR at Table III-5. \*\*\* imported \*\*\* short tons in 2006, \*\*\* short tons in 2007, \*\*\* short tons in 2008, and \*\*\* short tons in the first six months of 2009 (interim 2009). Id.

<sup>46</sup> CR/PR at Table III-5.

subject imports to domestic production was a modest \*\*\* percent in 2008.<sup>47</sup> \*\*\* also supports the petition.<sup>48</sup> These facts support the conclusion that its primary interest has remained that of a domestic producer.

Furthermore, despite the fact that \*\*\* was the \*\*\* importer during the period,<sup>49</sup> it does not appear to have benefitted from its importing activity or been shielded thereby from any injury from the subject imports.<sup>50 51</sup> \*\*\*.<sup>52</sup> It also did \*\*\*.<sup>53</sup> We therefore do not exclude \*\*\* from the domestic industry under the statute's related party provision.

\*\*\* explained that \*\*\*.<sup>54</sup> \*\*\* accounted for \*\*\* percent of domestic production in 2008.<sup>55</sup> Its ratio of imports to production fell during the period from \*\*\* percent in 2006 to just \*\*\* percent in first half of 2009 (interim 2009).<sup>56</sup> The \*\*\* amounts that it imported, the \*\*\* in the level of its imports, and the fact that it has \*\*\* the subject imports all suggest that its primary interest lies in domestic production. \*\*\* also generally reported \*\*\* than the industry as a whole, suggesting that it was not shielded from the effects of the subject imports.<sup>57</sup> We therefore find that it is not appropriate to exclude \*\*\* from the definition of the domestic industry as a related party.

For the reasons discussed above, we do not exclude either related party and define the domestic industry to include all domestic producers of MCBs.

## V. CUMULATION

### A. Legal Framework

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports, section 771(7)(G)(i) of the Tariff Act requires the Commission to cumulate subject imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and the domestic like product in the U.S. market.<sup>58</sup> In assessing whether subject imports compete with each other and with the domestic like product, the Commission has generally considered four factors, including the following:

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<sup>47</sup> CR/PR at Table III-5.

<sup>48</sup> CR/PR at Table III-1.

<sup>49</sup> See CR/PR at Table IV-1.

<sup>50</sup> Consistent with her practice in past investigations and reviews, Chairman Aranoff does not rely on individual-company operating income margins, which reflect a domestic producer's financial operations related to production of the domestic like product, in assessing whether a related party has benefitted from importation of subject merchandise. Rather, she determines whether to exclude a related party based principally on its ratio of subject imports to domestic production and whether its primary interests lie in domestic production or importation.

<sup>51</sup> For purposes of the preliminary phase of these investigations, Commissioner Pinkert does not rely upon financial performance as a factor in determining whether there are appropriate circumstances to exclude related parties from the domestic industry. See Allied Mineral Products v. United States, 28 C.I.T. 1861, 1865-67 (2004). For the final phase of these investigations, Commissioner Pinkert invites the parties to provide any information they may have with respect to whether these companies are benefitting financially from their status as related parties.

<sup>52</sup> CR/PR at Table VI-2.

<sup>53</sup> CR/PR at Table VI-2.

<sup>54</sup> CR/PR at Table III-5; Tr. at 64 (Brown). \*\*\* imported \*\*\* short tons in 2006, \*\*\* short tons in 2007, \*\*\* short tons in 2008, and \*\*\* short tons in interim 2009. CR/PR at Table III-5.

<sup>55</sup> CR/PR at Table III-1.

<sup>56</sup> CR/PR at Table III-5.

<sup>57</sup> CR/PR at Table VI-2.

<sup>58</sup> 19 U.S.C. § 1677(7)(G)(i).



- (1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;<sup>59</sup>
- (2) the presence of sales or offers to sell in the same geographic markets of subject imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
- (4) whether the subject imports are simultaneously present in the market.<sup>60</sup>

Although no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.<sup>61</sup> Only a “reasonable overlap” of competition is required.<sup>62</sup>

## **B. Discussion**

In these investigations, the threshold criterion for cumulation is satisfied because the petitioner filed the antidumping duty petitions with respect to both China and Mexico, as well as the countervailing duty petition with respect to China, on the same day. None of the cumulation exceptions apply.<sup>63</sup> Subject imports from China and Mexico are therefore eligible for cumulation. We consequently examine whether there is a reasonable overlap of competition between subject imports from China and Mexico, as well as between subject imports and the domestic like product.

Petitioner Resco urges the Commission to cumulate subject imports from China and Mexico because there is a reasonable overlap of competition.<sup>64</sup> The RHI Respondents question the geographic overlap of the subject imports, arguing that subject imports from Mexico and China do not compete with each other because they are sold in different geographic markets.<sup>65</sup> They contend that MCBs from

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<sup>59</sup> Commissioner Lane notes that, with respect to fungibility, her analysis does not require such similarity of products that a perfectly symmetrical fungibility is required, and she notes that this factor would be better described as an analysis of whether subject imports from each country and the domestic like product could be substituted for each other. See Separate Views of Commissioner Charlotte R. Lane, Certain Lightweight Thermal Paper from China, Germany, and Korea, Invs. Nos. 701-TA-451 and 731-TA-1126 to 1128 (Prelim.), USITC Pub. 3964 (Nov. 2007).

<sup>60</sup> See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Invs. Nos. 731-TA-278 to 280 (Final), USITC Pub. 1845 (May 1986), aff'd, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int'l Trade), aff'd, 859 F.2d 915 (Fed. Cir. 1988).

<sup>61</sup> See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

<sup>62</sup> The Statement of Administrative Action (“SAA”) states that “the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition.” SAA on Uruguay Round Agreements Act (“URAA”), H.R. Rep. 103-316, Vol. I at 848 (1994) (citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int'l Trade 1988)), aff'd, 859 F.2d 915 (Fed. Cir. 1988). See also, e.g., Goss Graphic Sys., Inc. v. United States, 33 F. Supp. 2d 1082, 1087 (Ct. Int'l Trade 1998) (“cumulation does not require two products to be highly fungible”); Wieland Werke, AG, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

<sup>63</sup> See 19 U.S.C. § 1677(7)(G)(ii).

<sup>64</sup> Pet. Br. at 13-19.

<sup>65</sup> RHI Respondents’ Br. at 7-8.

Mexico are trucked into the United States and that high transportation costs relative to value limit the geographic reach of MCBs from Mexico to the Southeast and Southwest regions of the United States.<sup>66</sup>

**Fungibility.** The record indicates a reasonable degree of fungibility among the subject imports from each country and the domestic like product. Market participants perceive domestic MCBs and the subject imports to be interchangeable. All responding producers and over two-thirds of importers indicated that subject imports from each country are always or frequently interchangeable with domestically produced MCBs.<sup>67</sup> All responding producers and six of seven responding importers indicated that subject imports from China are always or frequently interchangeable with subject imports from Mexico.<sup>68</sup>

**Geographic Overlap.** As noted, the RHI Respondents contend that Mexican MCBs are sold to end users in the Southwest and Southeast, while subject imports from China serve the North Central portion of the United States where steel production is concentrated.<sup>69</sup> The information on the record in this preliminary phase of the investigations indicates that subject imports from Mexico are limited to the Southwest and Southeast, but subject imports from China are also sold in those regions, suggesting an overlap of competition.<sup>70</sup> We intend to examine this issue more fully in any final phase of the investigations.

**Simultaneous Presence in Market.** The domestic product and subject imports from each country were present in each year and most quarters of the period of investigation and in both interim periods.<sup>71</sup> Therefore, we conclude that domestically produced MCBs and subject imports from China and Mexico were simultaneously present in the United States.

**Channels of Distribution.** Virtually all U.S. shipments of domestically produced merchandise and subject imports were made directly to end users by domestic producers and importers.<sup>72</sup>

**Conclusion.** Questionnaire responses indicate that the domestic like product and subject imports from China and Mexico are generally interchangeable, are sold through the same channels of distribution, and have been sold in overlapping geographic markets during the period of investigation. We thus find a reasonable overlap of competition between the domestic like product and subject imports from China and Mexico and cumulate the subject imports for purposes of assessing material injury.

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<sup>66</sup> RHI Respondents' Br. at 7-8.

<sup>67</sup> CR/PR at Table II-2.

<sup>68</sup> CR/PR at Table II-2. See also Tr. 34, 37 (Magrath).

<sup>69</sup> RHI Respondents' Br. at 7.

<sup>70</sup> \*\*\*. \*\*\* Questionnaire response at III-11. The largest importer of MCBs from China, \*\*\*, indicated that \*\*\*, suggesting that it sells them in the Southeast and Southwest. \*\*\* Questionnaire response at III-11.

<sup>71</sup> Pricing data indicate that subject imports from Mexico were present in the U.S. market in 9 of 14 quarters for which pricing data were collected, while subject imports from China and domestic MCBs were present in all 14 quarters for which pricing data were collected. See CR/PR at Tables V-1 and V-2.

<sup>72</sup> CR/PR at II-1.

## VI. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS<sup>73</sup>

### A. Legal Standards

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of the imports under investigation.<sup>74</sup> In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.<sup>75</sup> The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”<sup>76</sup> In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.<sup>77</sup> No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>78</sup>

Although the statute requires the Commission to determine whether there is a reasonable indication that the domestic industry is “materially injured by reason of” unfairly traded imports,<sup>79</sup> it does not define the phrase “by reason of,” indicating that this aspect of the injury analysis is left to the Commission’s reasonable exercise of its discretion.<sup>80</sup> In identifying a causal link, if any, between subject imports and material injury to the domestic industry, the Commission examines the facts of record that relate to the significance of the volume and price effects of the subject imports and any impact of those imports on the condition of the domestic industry. This evaluation under the “by reason of” standard must ensure that subject imports are more than a minimal or tangential cause of injury and that there is a sufficient causal, not merely a temporal, nexus between subject imports and material injury.<sup>81</sup>

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<sup>73</sup> Negligibility under 19 U.S.C. § 1677(24) is not an issue in these investigations, and no party made any arguments concerning this issue. Based on importer questionnaire responses, subject imports from China accounted for \*\*\* percent and subject imports from Mexico accounted for \*\*\* percent of total U.S. imports of MCBs, by quantity, for the period July 2008 to June 2009, the most recent 12-month period preceding the filing of the petitions for which questionnaire data are available. CR at IV-7, PR at IV-5.

<sup>74</sup> 19 U.S.C. §§ 1671b(a), 1673b(a).

<sup>75</sup> 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each {such} factor ... {a}nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B).

<sup>76</sup> 19 U.S.C. § 1677(7)(A).

<sup>77</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>78</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>79</sup> 19 U.S.C. §§ 1671b(a), 1673b(a).

<sup>80</sup> Angus Chemical Co. v. United States, 140 F.3d 1478, 1484-85 (Fed. Cir. 1998) (“{T}he statute does not ‘compel the commissioners’ to employ {a particular methodology}.”), aff’g 944 F. Supp. 943, 951 (Ct. Int’l Trade 1996).

<sup>81</sup> The Federal Circuit, in addressing the causation standard of the statute, observed that “{a}s long as its effects are not merely incidental, tangential, or trivial, the foreign product sold at less than fair value meets the causation requirement.” Nippon Steel Corp. v. USITC, 345 F.3d 1379, 1384 (Fed. Cir. 2003). This was further ratified in Mittal Steel Point Lisas Ltd. v. United States, 542 F.3d 867, 873 (Fed. Cir. 2008), where the Federal Circuit, quoting Gerald Metals, Inc. v. United States, 132 F.3d 716, 722 (Fed. Cir. 1997), stated that “this court requires evidence in the record ‘to show that the harm occurred “by reason of” the LTFV imports, not by reason of a minimal or tangential contribution to material harm caused by LTFV goods.’” See also Nippon Steel Corp. v. United States, 458 F.3d 1345, 1357 (Fed. Cir. 2006); Taiwan Semiconductor Industry Ass’n v. USITC, 266 F.3d 1339, 1345 (Fed. Cir. 2001).

In many investigations, there are other economic factors at work, some or all of which may also be having adverse effects on the domestic industry. Such economic factors might include nonsubject imports; changes in technology, demand, or consumer tastes; competition among domestic producers; or management decisions by domestic producers. The legislative history explains that the Commission must examine factors other than subject imports to ensure that it is not attributing injury from other factors to the subject imports, thereby inflating an otherwise tangential cause of injury into one that satisfies the statutory material injury threshold.<sup>82</sup> In performing its examination, however, the Commission need not isolate the injury caused by other factors from injury caused by unfairly traded imports.<sup>83</sup> Nor does the “by reason of” standard require that unfairly traded imports be the “principal” cause of injury or contemplate that injury from unfairly traded imports be weighed against other factors, such as nonsubject imports, which may be contributing to overall injury to an industry.<sup>84</sup> It is clear that the existence of injury caused by other factors does not compel a negative determination.<sup>85</sup>

Assessment of whether material injury to the domestic industry is “by reason of” subject imports “does not require the Commission to address the causation issue in any particular way” as long as “the injury to the domestic industry can reasonably be attributed to the subject imports” and the Commission “ensure{s} that it is not attributing injury from other sources to the subject imports.”<sup>86 87</sup> Indeed, the

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<sup>82</sup> Statement of Administrative Action (“SAA”) on Uruguay Round Agreements Act (“URAA”), H.R. Rep. 103-316, Vol. I at 851-52 (1994) (“{T}he Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports.”); S. Rep. 96-249 at 75 (1979) (the Commission “will consider information which indicates that harm is caused by factors other than less-than-fair-value imports.”); H.R. Rep. 96-317 at 47 (1979) (“in examining the overall injury being experienced by a domestic industry, the ITC will take into account evidence presented to it which demonstrates that the harm attributed by the petitioner to the subsidized or dumped imports is attributable to such other factors;” those factors include “the volume and prices of nonsubsidized imports or imports sold at fair value, contraction in demand or changes in patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry”); accord Mittal Steel, 542 F.3d at 877.

<sup>83</sup> SAA at 851-52 (“{T}he Commission need not isolate the injury caused by other factors from injury caused by unfair imports.”); Taiwan Semiconductor Industry Ass’n v. USITC, 266 F.3d 1339, 1345 (Fed. Cir. 2001) (“{T}he Commission need not isolate the injury caused by other factors from injury caused by unfair imports ... . Rather, the Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports.” (emphasis in original)); Asociacion de Productores de Salmon y Trucha de Chile AG v. United States, 180 F. Supp. 2d 1360, 1375 (Ct. Int’l Trade 2002) (“{t}he Commission is not required to isolate the effects of subject imports from other factors contributing to injury” or make “bright-line distinctions” between the effects of subject imports and other causes.); see also Softwood Lumber from Canada, Inv. Nos. 701-TA-414 and 731-TA-928 (Remand), USITC Pub. 3658 at 100-01 (Dec. 2003) (Commission recognized that “{i}f an alleged other factor is found not to have or threaten to have injurious effects to the domestic industry, i.e., it is not an ‘other causal factor,’ then there is nothing to further examine regarding attribution to injury”), citing Gerald Metals, Inc. v. United States, 132 F.3d 716, 722 (Fed. Cir. 1997) (the statute “does not suggest that an importer of LTFV goods can escape countervailing duties by finding some tangential or minor cause unrelated to the LTFV goods that contributed to the harmful effects on domestic market prices.”).

<sup>84</sup> S. Rep. 96-249 at 74-75; H.R. Rep. 96-317 at 47.

<sup>85</sup> See Nippon Steel Corp., 345 F.3d at 1381 (“an affirmative material-injury determination under the statute requires no more than a substantial-factor showing. That is, the ‘dumping’ need not be the sole or principal cause of injury.”).

<sup>86</sup> Mittal Steel, 542 F.3d at 877-78; see also id. at 873 (“While the Commission may not enter an affirmative determination unless it finds that a domestic industry is materially injured ‘by reason of’ subject imports, the Commission is not required to follow a single methodology for making that determination ... . {and has} broad discretion with respect to its choice of methodology.”) citing United States Steel Group v. United States, 96 F.3d 1352, 1362 (Fed. Cir. 1996) and S. Rep. 96-249 at 75.

<sup>87</sup> Commissioner Pinkert does not join this paragraph or the following four paragraphs. He points out that the Federal Circuit, in Bratsk, 444 F.3d 1369, and Mittal, held that the Commission is required, in certain circumstances (continued...)

Federal Circuit has examined and affirmed various Commission methodologies and has disavowed “rigid adherence to a specific formula.”<sup>88</sup>

The Federal Circuit’s decisions in Gerald Metals, Bratsk, and Mittal Steel all involved cases where the relevant “other factor” was the presence in the market of significant volumes of price-competitive nonsubject imports. The Commission interpreted the Federal Circuit’s guidance in Bratsk as requiring it to apply a particular additional methodology following its finding of material injury in cases involving commodity products and a significant market presence of price-competitive nonsubject imports.<sup>89</sup> The additional “replacement/benefit” test looked at whether nonsubject imports might have replaced subject imports without any benefit to the U.S. industry. The Commission applied that specific additional test in subsequent cases, including the Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago determination that underlies the Mittal Steel litigation.

Mittal Steel clarifies that the Commission’s interpretation of Bratsk was too rigid and makes clear that the Federal Circuit does not require the Commission to apply an additional test nor any one specific methodology; instead, the court requires the Commission to have “evidence in the record ‘to show that the harm occurred ‘by reason of’ the LTFV imports,’” and requires that the Commission not attribute injury from nonsubject imports or other factors to subject imports.<sup>90</sup> Accordingly, we do not consider ourselves required to apply the replacement/benefit test that was included in Commission opinions subsequent to Bratsk.

The progression of Gerald Metals, Bratsk, and Mittal Steel clarifies that, in cases involving commodity products where price-competitive nonsubject imports are a significant factor in the U.S. market, the Court will require the Commission to give full consideration, with adequate explanation, to non-attribution issues when it performs its causation analysis.<sup>91 92</sup>

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<sup>87</sup> (...continued)

when considering present material injury, to undertake a particular kind of analysis of nonsubject imports. Mittal explains as follows:

What Bratsk held is that “where commodity products are at issue and fairly traded, price-competitive, non-subject imports are in the market,” the Commission would not fulfill its obligation to consider an important aspect of the problem if it failed to consider whether non-subject or non-LTFV imports would have replaced LTFV subject imports during the period of investigation without a continuing benefit to the domestic industry. 444 F.3d at 1369. Under those circumstances, Bratsk requires the Commission to consider whether replacement of the LTFV subject imports might have occurred during the period of investigation, and it requires the Commission to provide an explanation of its conclusion with respect to that factor.

542 F.3d at 878.

<sup>88</sup> Nucor Corp. v. United States, 414 F.3d 1331, 1336, 1341 (Fed. Cir. 2005); see also Mittal Steel, 542 F.3d at 879 (“Bratsk did not read into the antidumping statute a Procrustean formula for determining whether a domestic injury was ‘by reason’ of subject imports.”).

<sup>89</sup> Mittal Steel, 542 F.3d at 875-79.

<sup>90</sup> Mittal Steel, 542 F.3d at 873 (quoting from Gerald Metals, 132 F.3d at 722), 875-79 & n.2 (recognizing the Commission’s alternative interpretation of Bratsk as a reminder to conduct a non-attribution analysis).

<sup>91</sup> Commissioner Lane also refers to her dissenting views in Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, China, Thailand, and the United Arab Emirates, Inv. Nos. 731-TA-1131-1134 (Final), USITC Pub. 4040 (Oct. 2008), for further discussion of Mittal Steel.

<sup>92</sup> To that end, after the Federal Circuit issued its decision in Bratsk, the Commission began to present published information or send out information requests in final phase investigations to producers in nonsubject countries that accounted for substantial shares of U.S. imports of subject merchandise (if, in fact, there were large nonsubject import suppliers). In order to provide a more complete record for the Commission’s causation analysis, these requests typically seek information on capacity, production, and shipments of the product under investigation in the major source countries that export to the United States. The Commission plans to continue utilizing published or requested information in final phase investigations in which there are substantial levels of nonsubject imports.

The question of whether the material injury threshold for subject imports is satisfied notwithstanding any injury from other factors is factual, subject to review under the substantial evidence standard. Congress has delegated this factual finding to the Commission because of the agency's institutional expertise in resolving injury issues.<sup>93 94</sup>

As noted above, the Commission has nearly complete data coverage for the domestic industry. The Commission also received completed questionnaire responses from 16 importers that accounted for 80 percent of subject imports from China and all subject imports from Mexico.<sup>95</sup> The Commission received foreign producer questionnaires from the only producer of MCBs in Mexico and seven subject producers in China that accounted for an estimated \*\*\* percent of exports of MCBs from China in 2008.<sup>96</sup> For the reasons stated below, we find a reasonable indication that the domestic industry producing MCBs is materially injured by reason of subject imports from China and Mexico.

## **B. Conditions of Competition and the Business Cycle**

The following conditions of competition inform our analysis of whether there is a reasonable indication of material injury by reason of subject imports.

### **1. Demand Considerations**

MCBs are used in the production of steel, and therefore demand for MCBs is closely related to the level of steel production.<sup>97</sup> The parties agree that the overall level of steel production is a good indicator of demand for MCBs.<sup>98</sup> The monthly index of U.S. raw steel production fluctuated modestly between January 2006 and August 2008, increasing or decreasing in any month by no more than 13 percent relative to January 2006, and increased overall by only 3 percent.<sup>99</sup> The index then dropped by 48 percent from August 2008 to June 2009.<sup>100</sup>

Similarly, total apparent U.S. consumption of MCBs increased by \*\*\* percent between 2006 and 2008, with most of the increase occurring during 2007-2008, then decreased by \*\*\* percent between interim 2008 and interim 2009.<sup>101</sup> Apparent U.S. consumption decreased slightly from \*\*\* short tons in 2006 to \*\*\* short tons in 2007, before increasing by \*\*\* percent to \*\*\* short tons in 2008.<sup>102</sup>

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<sup>93</sup> Mittal Steel, 542 F.3d at 873; Nippon Steel Corp., 458 F.3d at 1350, citing U.S. Steel Group, 96 F.3d at 1357; S. Rep. 96-249 at 75 (“The determination of the ITC with respect to causation is ... complex and difficult, and is a matter for the judgment of the ITC.”).

<sup>94</sup> We provide in the discussion of impact in section VI.E. below an analysis of other factors, such as the economic recession, that could have caused any material injury experienced by the domestic industry.

<sup>95</sup> CR/PR at IV-1.

<sup>96</sup> CR at VII-3, VII-5, PR at VII-2, VII-4.

<sup>97</sup> CR at II-6, PR at II-4; Tr. at 31, 34 (Magrath).

<sup>98</sup> Tr. at 31, 126, 134 (Magrath, Koenig, Planert).

<sup>99</sup> CR at II-6, Figs. II-1 and II-2, PR at II-4, Figs. II-1 and II-2.

<sup>100</sup> CR at II-6, PR at II-4.

<sup>101</sup> CR/PR at Table C-1.

<sup>102</sup> CR/PR at Table IV-4.

Demand collapsed as a result of a steep worldwide recession in approximately the fourth quarter of 2008.<sup>103</sup> As a result, apparent U.S. consumption fell by over \*\*\* percent from interim 2008 to interim 2009.<sup>104</sup>

## 2. Supply Conditions

Both domestic producers and importers make most of their sales directly to end users.<sup>105</sup> Twenty-five purchasers are estimated to account for 75 percent of all purchases of MCBs.<sup>106</sup> The domestic producers often sell MCBs as part of a package of refractory products; such package sales account for about half of domestic producers' MCB sales.<sup>107</sup>

The domestic industry was the largest source of supply for the U.S. market during the period of investigation, with the exception of interim 2009 when subject imports surpassed the quantity supplied by U.S. producers. Domestic producers' U.S. market share was \*\*\* percent in 2006, \*\*\* percent in 2007, and \*\*\* percent in 2008. The industry's share was \*\*\* percent in interim 2008, but only \*\*\* percent in interim 2009.<sup>108</sup> U.S. producers' production capacity was unchanged at 160,903 short tons during the period examined and exceeded domestic demand.<sup>109</sup>

The U.S. market share of cumulated subject imports increased overall from \*\*\* percent in 2006 to \*\*\* percent in 2008 and was \*\*\* percent in interim 2009 and \*\*\* percent in interim 2008.<sup>110</sup> China is reported to have almost \*\*\* of global capacity for production of MCBs.<sup>111</sup> Nonsubject imports accounted for less than \*\*\* percent of total imports throughout the period examined and were not a significant factor in the U.S. market.<sup>112</sup>

## 3. Product Considerations

There is a high degree of substitutability between the domestic like product and subject imports.<sup>113</sup> All three responding domestic producers reported that the domestic like product and subject imports from China and Mexico are always or frequently interchangeable. Seven of ten responding importers reported that the domestic like product and subject imports from China are always or frequently interchangeable, and six of seven responding importers reported that the domestic like product and subject imports from Mexico are always or frequently interchangeable.<sup>114</sup>

Resco indicated that it uses about 150 different formulations for MCBs and that it sells MCBs in about 3,000 different shapes.<sup>115</sup> Nonetheless, about half of the market consists of standardized shapes

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<sup>103</sup> Tr. at 27-29 (Copp).

<sup>104</sup> CR/PR at Table C-1.

<sup>105</sup> CR/PR at II-1.

<sup>106</sup> CR/PR at II-1.

<sup>107</sup> Tr. at 47, 62-63 (Mazard, Copp).

<sup>108</sup> CR/PR at Table IV-4.

<sup>109</sup> In 2008, the domestic producers' production capacity was equal to \*\*\* percent of apparent U.S. consumption. See CR/PR at Tables III-2, IV-4.

<sup>110</sup> CR/PR at Table IV-4.

<sup>111</sup> CR at VII-2, PR at VII-1.

<sup>112</sup> CR/PR at Table IV-4.

<sup>113</sup> CR at II-8, PR at II-6.

<sup>114</sup> CR/PR at Table II-2.

<sup>115</sup> Tr. at 50, 72 (Brown).

and sizes of MCBs.<sup>116</sup> Price is often the most important factor in purchasing decisions,<sup>117</sup> but testimony at the staff conference by Resco's and respondents' representatives indicated that technical services can be important to some purchasers.<sup>118</sup> Subject imports and the domestic product may also have different lead times for MCBs that are made to order.<sup>119</sup>

#### 4. Other Conditions

The MCB industry is a mature industry with few recent technological changes, and there have not been any significant recent technological changes in steel production, which is the primary downstream use for MCBs.<sup>120</sup> Magnesia is the primary raw material used in the production of MCBs, and raw material costs accounted for approximately 74 percent of U.S. producers' total cost of goods sold ("COGS") during 2006-2008.<sup>121</sup> Per unit raw material costs fell by 2 percent between 2006 and 2007, but then increased by 26 percent between 2007 and 2008 and by 9 percent from interim 2008 to interim 2009.<sup>122</sup> \*\*\* increased over the period.<sup>123</sup> \*\*\*.<sup>124</sup> <sup>125</sup>

##### C. Volume of Subject Imports<sup>126</sup>

Section 771(7)(C)(i) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."<sup>127</sup>

Subject imports were already present in substantial volumes and market share at the beginning of the period and were a significant presence in the U.S. market throughout the period. The quantity of subject imports in the U.S. market stood at \*\*\* short tons in 2006; it decreased by \*\*\* percent to \*\*\* short tons in 2007, increased by \*\*\* percent to \*\*\* short tons in 2008, and decreased by \*\*\* percent from \*\*\* short tons to \*\*\* short tons between interim 2008 and interim 2009.<sup>128</sup>

U.S. shipments of subject imports, however, increased throughout 2006-2008, with the majority of the increase occurring during 2007-2008, before decreasing from interim 2008 to interim 2009. U.S. shipments of subject imports totaled \*\*\* short tons in 2006; they increased by \*\*\* percent to \*\*\* short tons in 2007, increased again by \*\*\* percent to \*\*\* short tons in 2008, and decreased by \*\*\* percent from \*\*\* short tons to \*\*\* short tons between interim 2008 and interim 2009.<sup>129</sup>

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<sup>116</sup> Tr. at 52 (Brown).

<sup>117</sup> Tr. at 67 (Brown).

<sup>118</sup> Tr. at 69-70 (Brown).

<sup>119</sup> See CR at V-2 to V-3, PR at V-2.

<sup>120</sup> Tr. at 55-56 (Brown).

<sup>121</sup> CR/PR at V-1.

<sup>122</sup> CR/PR at V-1.

<sup>123</sup> CR/PR at V-1. \*\*\*. Id.

<sup>124</sup> CR/PR at V-1.

<sup>125</sup> Chairman Shara L. Aranoff, Vice Chairman Daniel R. Pearson, and Commissioner Deanna Tanner Okun do not join the remainder of this opinion.

<sup>126</sup> We base our analysis of subject import volume on importers' questionnaire responses, which were received from all firms believed to be large importers of MCBs from China and Mexico. As noted, the official statistics are derived from basket categories that include imports other than the subject merchandise. See CR at IV-3, n.6, PR at IV-1 n.6.

<sup>127</sup> 19 U.S.C. § 1677(7)(C)(i).

<sup>128</sup> See CR/PR at Table IV-2.

<sup>129</sup> See CR/PR at Table IV-3.



Because there were virtually no nonsubject imports in the U.S. market, the significant increase in subject import market share came almost entirely at the expense of the domestic industry as subject imports increasingly displaced domestic shipments from the U.S. market. Subject imports increased their share of the U.S. market from\*\*\* percent to \*\*\* percent during 2006-2008 and to \*\*\* percent during interim 2009, while U.S. producers' market share decreased from \*\*\* percent to \*\*\* percent during 2006-2008 and further decreased to \*\*\* percent during interim 2009.<sup>130</sup>

The increasing presence of subject imports in the U.S. market during the period of investigation is also apparent when considered relative to U.S. production. The ratio of subject imports to domestic production was \*\*\* percent in 2006; it decreased to \*\*\* percent in 2007 before increasing to \*\*\* percent in 2008 and \*\*\* percent in interim 2009.<sup>131</sup>

For purposes of the preliminary phase of these investigations, we find that the volume and market share of the subject imports were significant during the period of investigation both in absolute terms and relative to consumption and production in the United States. We also find the increase in subject import shipments and market share over the period examined to be significant.

#### **D. Price Effects of the Subject Imports**

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of subject imports, the Commission shall consider whether – (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.<sup>132</sup>

As addressed in section V.B.3 above, the record indicates that there is a high degree of substitutability between subject imports and the domestic like product.<sup>133</sup> Price is an important consideration for most purchasers.<sup>134</sup>

The Commission collected quarterly f.o.b. pricing data for three MCB products.<sup>135</sup> Three domestic producers, 11 importers of MCBs from China, and one importer of MCBs from Mexico provided usable pricing data for sales of the requested products, although not all firms reported pricing for all products for all quarters.<sup>136</sup> The pricing data accounted for 24.8 percent of U.S. producers'

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<sup>130</sup> See CR/PR at Table IV-4.

<sup>131</sup> CR/PR at Table IV-5.

<sup>132</sup> 19 U.S.C. § 1677(7)(C)(ii).

<sup>133</sup> See also CR at II-8, PR at II-6.

<sup>134</sup> Tr. at 66-67 (Brown) (70 percent of customers reported price to be the most important consideration).

<sup>135</sup> CR at V-5, PR at V-2. Product 1 is resin bonded, magnesia-carbon brick for electric arc furnaces with a carbon content of 13 percent, fused grain and antioxidant additions that correspond to Resco's brand Nuline 10-99, with the following dimensions: 13½ x 6 x 3 No. 1 key. Product 2 is resin bonded, magnesia-carbon brick for ladles with a carbon content of 10 percent, fused grain and antioxidant additions that correspond to Resco's brand Maxline 10 DFZ with the following dimensions: SU 6 x 60 x 100 mm. Product 3 is resin bonded, magnesia-carbon brick for ladles with a carbon content of 10 percent, fused grain and antioxidant additions that correspond to Resco's brand Maxline 10 AFX, with the following dimensions: 7 x (6-5½) x 3 inch mini key.

<sup>136</sup> CR at V-4, PR at V-2 to V-3. Some importers reported that the product categories did not precisely match the products that they were selling. Resco and one of the respondents indicated, however, that the products were competitive and that it may be difficult to establish pricing categories that are more representative of competition than pricing product 2 given the variety of mixes and shapes of MCBs. See CR at V-5, PR at V-2 to V-3. In any final phase investigations, the parties are encouraged in written comments on draft questionnaires to propose any pricing products that they believe will more accurately reflect competition in the MCB market.

shipments of MCBs, 17.2 percent of U.S. shipments of subject imports from China, and \*\*\* percent of U.S. shipments of subject imports from Mexico in 2008.<sup>137</sup> Subject imports undersold the domestic like product in 39 of 41 quarterly pricing comparisons by an average margin of 12.8 percent.<sup>138</sup> Underselling margins ranged from 0.8 percent to 32.1 percent.<sup>139</sup> Given the consistent underselling by the subject imports, we find that underselling was significant during the period examined.

Prices for both the domestically produced products and subject imports increased during the period. Weighted-average sales prices for the two U.S.-produced MCBs selected by the Commission increased by 4.4 percent and 15.2 percent, respectively. The increase in the weighted-average sales prices for the same products imported from China and Mexico ranged between 10.9 percent and 28.7 percent.<sup>140</sup> In light of this information, we do not find the existence of significant price depression by reason of subject imports.

We do find some evidence, however, that subject import competition may have suppressed domestic like product prices during the period examined. Although domestic producers were able to increase prices to some extent over the period examined, they were not always able to increase them sufficiently to cover increased COGS. Domestic producers' unit net sales value increased by \$\*\*\*, or \*\*\* percent, from 2006 to 2008, and was \$\*\*\*, or \*\*\* percent, higher in interim 2009 than in interim 2008.<sup>141</sup> The domestic industry's unit COGS increased by \$\*\*\*, or \*\*\* percent, from 2006 to 2008.<sup>142</sup> The average unit COGS was \$\*\*\*, or \*\*\* percent, higher in interim 2009 than in interim 2008.<sup>143</sup> These increases in unit COGS were largely attributable to increased raw material costs.<sup>144</sup> Despite the rise in its sales values, the domestic industry's margins were squeezed.

The domestic industry's COGS to net sales ratio decreased from \*\*\* percent in 2006 to \*\*\* percent in 2007, but then increased to \*\*\* percent in 2008.<sup>145</sup> Notably, the increase in the COGS/net sales ratio occurred in 2008, when U.S. shipments of the subject imports increased the most.<sup>146</sup> The ratio was lower in interim 2009, at \*\*\* percent, than in interim 2008, at \*\*\* percent.<sup>147</sup> We intend to examine further the extent to which subject imports are suppressing price increases in any final phase investigations.

We have also examined the lost sales and lost revenue allegations made by the \*\*\*. All three indicated that they had lost sales to the subject producers, but \*\*\* indicated that they had not lowered prices in response to the subject imports.<sup>148</sup> The \*\*\* lost sales allegations totaled \$\*\*\*, and the \*\*\* lost

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<sup>137</sup> CR at V-5, PR at V-2.

<sup>138</sup> CR/PR at Table V-4.

<sup>139</sup> CR/PR at Table V-4. Data for products 2 and 3 were combined because \*\*\*. The underselling data without \*\*\* for products 2 and 3 show underselling and pricing trends that are similar to those with \*\*\* combined data included. CR at V-5 n.10, V-10 n.11, PR at V-3 n.10, V-5 n.11.

<sup>140</sup> CR at V-5, Fig. V-1, PR at V-3, Fig. V-1.

<sup>141</sup> CR/PR at Tables VI-1, C-1.

<sup>142</sup> CR/PR at Tables VI-1, C-1.

<sup>143</sup> CR/PR at Table VI-1. Unit COGS was \$\*\*\* in 2006, \$\*\*\* in 2007, \$\*\*\* in 2008, \$\*\*\* in interim 2008, and \$\*\*\* in interim 2009. Id. Unit net sales value was \$\*\*\* in 2006, \$\*\*\* in 2007, \$\*\*\* in 2008, \$\*\*\* in interim 2008, and \$\*\*\* in interim 2009. CR/PR at Table VI-1.

<sup>144</sup> CR/PR at Table VI-1. As noted, \*\*\*. CR/PR at V-1.

<sup>145</sup> CR/PR at Table VI-1.

<sup>146</sup> See CR/PR at Table C-1.

<sup>147</sup> CR/PR at Table VI-1.

<sup>148</sup> CR/PR at V-11, PR at V-6.

revenue allegations totaled \$\*\*\*.<sup>149</sup> Although \*\*\* lost revenue allegation was confirmed,<sup>150</sup> lost sales accounting for a large share (\$\*\*\* million) of the alleged lost sales were confirmed.<sup>151</sup> We also note that \*\*\* purchasers involved in lost sales allegations did not respond to at least some of the Commission staff's attempts to confirm the allegations.<sup>152</sup>

In light of the above, we find a reasonable indication that the significant volume of subject imports during the period examined had a significant adverse effect on domestic producers' prices.

#### **E. Impact of the Subject Imports**<sup>153</sup>

Section 771(7)(C)(iii) of the Act provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry."<sup>154</sup> These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development, and factors affecting domestic prices. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."<sup>155</sup>

Based on the record in the preliminary phase of these investigations, we find that the domestic industry's performance was adversely affected by the subject imports over the period examined. Domestic industry production declined 3.4 percent between 2006 and 2008, from 72,895 short tons in 2006 to 70,441 short tons in 2008, and was 57.1 percent lower in interim 2009, at 17,412 short tons, than in interim 2008, at 40,633 short tons.<sup>156</sup> Domestic production capacity remained unchanged during the period at 160,903 short tons.<sup>157</sup> The industry's rate of capacity utilization decreased from 45.3 percent in 2006 to 43.8 percent in 2008, a decline of 1.5 percentage points; it was 28.9 percentage points lower in interim 2009, at 21.6 percent, than in interim 2008, at 50.5 percent.<sup>158</sup>

The domestic industry's U.S. shipments decreased from 59,180 short tons in 2006 to 58,074 short tons in 2007, before increasing to 62,470 short tons in 2008, an overall increase of 5.6 percent, but they were 53.6 percent lower in interim 2009, at 16,284 short tons, than in interim 2008, at 35,111 short tons.<sup>159</sup>

Despite the increase in its U.S. shipments, the domestic industry's share of apparent U.S. consumption decreased from \*\*\* percent in 2006 to \*\*\* percent in 2007 and \*\*\* percent in 2008. The

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<sup>149</sup> CR at V-11, PR at V-6.

<sup>150</sup> CR/PR at Table V-6, CR at V-17, PR at V-7 to V-8. It is notable that, although one purchaser indicated that \*\*\* CR at V-16, PR at V-7.

<sup>151</sup> CR at V-12, PR at V-6; CR/PR at Tables V-8, V-9.

<sup>152</sup> CR/PR at Table V-5.

<sup>153</sup> Commerce initiated the antidumping duty investigations based on estimated dumping margins of 112 to 349 percent for MCBs from China and estimated margins of 153 percent to 295 percent for MCBs from Mexico. 74 Fed. Reg. 42852, 42856 (Aug. 25, 2009).

<sup>154</sup> 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.")

<sup>155</sup> 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851, 885; Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386, 731-TA-812-813 (Prelim.), USITC Pub. 3155 at 25 n.148 (Feb. 1999).

<sup>156</sup> CR/PR at Table III-2.

<sup>157</sup> CR/PR at Table III-2.

<sup>158</sup> CR/PR at Table III-2.

<sup>159</sup> CR/PR at Table III-3. Domestic producers' inventories fell, both absolutely and relative to production, from 2006 to 2008. Inventories were lower in interim 2009 than in interim 2008. CR/PR at Table III-4.

2008 level was \*\*\* percentage points lower than that of 2006.<sup>160</sup> The domestic industry lost further market share in interim 2009, as shipments of subject imports did not decline as much as domestic producers' shipments in the face of declining demand. The industry's market share was \*\*\* percent in interim 2008, but only \*\*\* percent in interim 2009.<sup>161</sup>

The quantity of U.S. producers' net sales was relatively stable during 2006-08, but decreased significantly between the interim periods. Although the value of U.S. producers' net sales increased throughout the period of investigation, this increase was almost entirely attributable to increased unit values, which, as noted above, reflected the rise in raw material costs for MCBs. Although domestic prices were rising, they did not increase sufficiently to offset increased raw material costs.

The industry's net sales value increased from \$\*\*\* million in 2006 to \$\*\*\* million in 2007 and \$\*\*\* million in 2008, an overall increase of 18.1 percent, but was 50.1 percent lower in interim 2009, at \$\*\*\* million, than in interim 2008, at \$\*\*\* million.<sup>162</sup>

As a result, the domestic industry's operating income and operating margins fell in 2008 even though apparent U.S. consumption of MCBs increased \*\*\* percent over 2007.<sup>163</sup> The industry's operating income increased from \$\*\*\* million in 2006 to \$\*\*\* million in 2007, but then dropped to \$\*\*\* million in 2008. The industry earned an operating income of \$\*\*\* in interim 2008, but a \$\*\*\* operating loss in interim 2009.<sup>164</sup> The industry's operating income margin increased from \*\*\* percent in 2006 to \*\*\* percent in 2007, but then fell to \*\*\* percent in 2008 despite the increase in apparent U.S. consumption. The operating income margin also fell from \*\*\* percent of sales in interim 2008 to \*\*\* percent in interim 2009.<sup>165</sup>

Domestic industry employment declined from 109 workers in 2006 to 102 workers in 2008.<sup>166</sup> It was 28.7 percent lower in interim 2009, at 78 workers, than in interim 2008, at 110 workers.<sup>167</sup>

The domestic industry's capital expenditures declined from \$\*\*\* in 2006 to \$\*\*\* in 2007 and \$\*\*\* in 2008, a level \*\*\* percent lower than that in 2006. Capital expenditures were \*\*\* percent lower in interim 2009, at \$\*\*\*, than in interim 2008, at \$\*\*\*.<sup>168</sup> The industry's return on investment increased from \*\*\* percent in 2006 to \*\*\* percent in 2007, before falling to \*\*\* percent in 2008.<sup>169</sup>

For purposes of these preliminary phase investigations, we find a causal nexus between the increasing subject imports and the deteriorating condition of the domestic industry. Subject imports increased their already substantial market share during the period at the expense of domestic producers. Subject imports consistently undersold the domestic like product<sup>170</sup> and appear to have played a role in the cost-price squeeze experienced by domestic producers during the period examined. As a result, domestic producers were unable to increase prices sufficiently to fully cover increasing COGS despite increased demand during much of the period. Thus, we conclude that, for purposes of the preliminary

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<sup>160</sup> CR/PR at Table IV-4.

<sup>161</sup> CR/PR at Table IV-4.

<sup>162</sup> CR/PR at Table VI-1. On a quantity basis, the domestic industry's net sales only increased slightly from \*\*\* short tons in 2006 to \*\*\* short tons in 2008. Id.

<sup>163</sup> CR/PR at Table IV-4.

<sup>164</sup> CR/PR at Tables VI-1, C-1.

<sup>165</sup> CR/PR at Tables VI-1, C-1.

<sup>166</sup> CR/PR at Table III-6.

<sup>167</sup> CR/PR at Table III-6. Hours worked increased from 226,000 in 2006 to 227,000 in 2008, and were 78,000 in interim 2009 compared with 122,000 in interim 2008. Id. Labor productivity in short tons per 1,000 hours decreased from 322.5 short tons in 2006 to 310.3 short tons in 2008. Id. It was 33.0 percent lower in interim 2009, at 223.2 short tons, than in interim 2008, at 333.1 short tons. Id.

<sup>168</sup> CR/PR at Table VI-4. Research and development expenses decreased from \$\*\*\* in 2006 to \$\*\*\* in 2008, and were lower in interim 2009, at \$\*\*\*, than in interim 2008, at \$\*\*\*. CR/PR at Table VI-4.

<sup>169</sup> CR/PR at Table VI-5.

<sup>170</sup> CR/PR at Table IV-4.

phase of these investigations, the subject imports are having a significant adverse impact on the domestic industry.

We have considered whether there are other factors that may have adversely affected the domestic industry during the period examined. We acknowledge, as respondents argue,<sup>171</sup> that the severe recession, beginning in 2008 and continuing into 2009, is likely to have adversely impacted the industry.<sup>172</sup> In any final phase of these investigations, we intend to explore further the role that any changes in demand played in the performance of the domestic industry in order to ensure that we do not attribute to subject imports the effects of any adverse demand conditions.<sup>173 174</sup>

For the reasons discussed above, we conclude for purposes of these preliminary phase investigations that there is a causal nexus between the subject imports and the declining performance of the domestic industry, which demonstrates a reasonable indication that the domestic industry is materially injured by reason of subject imports.

## CONCLUSION

For the foregoing reasons, and based on the record in the preliminary phase of these investigations, we find that there is a reasonable indication that an industry in the United States is materially injured<sup>175</sup> by reason of imports of MCBs from China that are allegedly sold in the United States at less than fair value and allegedly subsidized by the Government of China and by imports of MCBs from Mexico that are allegedly sold in the United States at less than fair value.

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<sup>171</sup> RHI Respondents' Br. at 23-24.

<sup>172</sup> The industry experienced a reduced operating income ratio of \*\*\* percent and an elevated COGS/net sales ratio of \*\*\* percent in interim 2008. CR/PR at Table C-1. The recession and the resulting decline in demand, however, began in the second half of 2008. See CR/PR at Table IV-4 (majority of apparent U.S. consumption in 2008 occurred in first six months of year). See also CR/PR at Fig. II-2. This information indicates that the recession and declining demand likely were not responsible for the deteriorating financial condition of the domestic industry in 2008, given that they occurred later in 2008 and would have affected only the second half of the year.

<sup>173</sup> We also recognize, and the parties agree, that nonsubject imports were not a significant factor in the U.S. market during the period, inasmuch as they were estimated to account for no more than \*\*\* percent of total imports of MCBs over the period examined.

<sup>174</sup> Commissioner Pinkert notes that there is some question on the record of these preliminary investigations as to whether MCBs constitute a commodity product and thus whether the first threshold consideration for the analysis required by the Federal Circuit in Bratsk and Mittal is satisfied. See Tr. at 51-53 (Brown, Magrath); Vesuvius Respondents' Br. at 6-7; RHI Respondents' Br. at 13-14. In any event, nonsubject imports never accounted for more than \*\*\* percent of apparent U.S. consumption at any time during the period of investigation. Thus, the second threshold consideration for the analysis required by Bratsk and Mittal (whether price-competitive non-subject imports were a significant factor in the U.S. market) is not satisfied.

<sup>175</sup> Chairman Shara L. Aranoff, Vice Chairman Daniel R. Pearson, and Commissioner Deanna Tanner Okun determine that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of subject imports from China and that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of subject imports from Mexico. See Separate and Dissenting Views of Chairman Shara L. Aranoff, Vice Chairman Daniel R. Pearson, and Commissioner Deanna Tanner Okun.



**SEPARATE AND DISSENTING VIEWS OF CHAIRMAN SHARA L. ARANOFF, VICE CHAIRMAN DANIEL R. PEARSON, AND COMMISSIONER DEANNA TANNER OKUN**

Based on the record in the preliminary phase of these investigations, we find that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of certain magnesia carbon bricks (MCBs) from China that are allegedly subsidized by the government of China and sold in the United States at less than fair value (LTFV). We further determine that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of certain magnesia carbon bricks from Mexico that are allegedly sold in the United States at LTFV.

We join the Commission's Views with respect to background, domestic like product, domestic industry, cumulation for purposes of our material injury analysis, legal standards, and conditions of competition. We write separately, however, with respect to our analysis of reasonable indication of material injury and threat of material injury by reason of the subject imports.

The Commission has essentially complete data coverage for the domestic industry.<sup>1</sup> The Commission also received completed questionnaire responses from seven subject producers in China that accounted for an estimated \*\*\* percent of Chinese export shipments to the United States in 2008<sup>2</sup> and from a single subject producer in Mexico that accounted for approximately \*\*\* percent of Mexican exports during the period examined.<sup>3</sup> When appropriate, we have relied on the facts otherwise available, including information available from published sources and information submitted in these investigations.<sup>4</sup>

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<sup>1</sup> CR at III-1, PR at III-1.

<sup>2</sup> CR at VII-3, PR at VII-2.

<sup>3</sup> CR at VII-5, PR at VII-4.

<sup>4</sup> Commissioner Okun notes that the statute authorizes the Commission to take adverse inferences, but such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination. See 19 U.S.C. § 1677e. She generally gives credence to the facts supplied by the participating parties and certified by them as true, but bases her decision on the evidence as a whole, and does not automatically accept participating parties' suggested interpretations of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. "In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive." SAA at 869.

## I. NO REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS FROM CHINA AND MEXICO<sup>5</sup>

### A. Volume of Subject Imports

In evaluating the volume of subject imports, section 771(7)(C)(i) of the Tariff Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”<sup>6</sup>

Subject imports were in the U.S. market in substantial volumes on a cumulated basis throughout the period examined, never accounting for less than \*\*\* of the market. The cumulated volume of subject imports, however, was relatively unchanged from 2006 to 2007, and increased from 2007 to 2008, as apparent U.S. consumption rose.<sup>7</sup> While the increase in the cumulated volume of subject imports from 2007 to 2008 was at a rate higher than the increase in apparent U.S. consumption, subject imports’ small gains in market share was at the expense of both the domestic industry and nonsubject imports.<sup>8</sup> Moreover, the steady increases in the ratio of cumulated subject imports to U.S. production was the result of decreases in domestic production from 2006 to 2008, as well as the increase in the volume of subject imports on a cumulated basis from 2007 to 2008.<sup>9</sup>

The first half of 2009, however, saw a sharp decline in apparent U.S. consumption caused by the falloff in domestic steel production.<sup>10</sup> Apparent U.S. consumption was \*\*\* percent lower in interim 2009 compared with interim 2008.<sup>11</sup> Accordingly, subject imports on a cumulated basis were \*\*\* percent lower, or \*\*\* short tons in interim 2009 compared with \*\*\* short tons in interim 2008.<sup>12</sup> We recognize that the market share of subject imports on a cumulated basis was higher in interim 2009 compared with

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<sup>5</sup> Negligibility under 19 U.S.C. § 1677(24) is not an issue in these investigations. Questionnaire data indicate that from July 2008 to June 2009, which is the most recent 12-month period preceding the filing of the petition for which data were available, subject imports from China accounted for \*\*\* percent of total U.S. imports of MCBs, while subject imports from Mexico accounted for \*\*\* percent of total U.S. imports of MCBs. The volume of subject imports is thus well above the statute’s three percent negligibility level. CR at IV-7, PR at IV-5.

<sup>6</sup> 19 U.S.C. § 1677(7)(C)(i).

<sup>7</sup> This volume discussion is based on the shipments of subject imports. CR/PR at Table IV-3. Because the Harmonized Tariff Schedule numbers applicable to MCBs are basket categories, questionnaire data are the best data available for measuring the volume of imports. Questionnaire data may understate import volumes because not all importers responded. Based on questionnaire responses, the volume of shipments of subject imports was \*\*\* short tons in 2006, \*\*\* short tons in 2007, and \*\*\* short tons in 2008. CR/PR at Table C-1. Apparent U.S. consumption was \*\*\* short tons in 2006, \*\*\* short tons in 2007, and \*\*\* short tons in 2008. *Id.*

<sup>8</sup> The market share of subject imports measured by quantity made small gains each year from \*\*\* percent in 2006, to \*\*\* percent in 2007, and to \*\*\* percent in 2008. The domestic industry’s market share declined from \*\*\* percent in 2006, to \*\*\* percent in 2007, and was \*\*\* percent in 2008. Nonsubject imports were nearly completely replaced in the market as their already small market share declined from \*\*\* percent in 2006 to \*\*\* percent in 2008. CR/PR at Table C-1.

<sup>9</sup> The ratio of cumulated subject imports to U.S. production rose from \*\*\* percent in 2006 to \*\*\* percent in 2008 and was higher in interim 2009 at \*\*\* percent compared with interim 2008 at \*\*\* percent. CR/PR at Table IV-5.

<sup>10</sup> CR at II-6, PR at II-4-II-6, CR/PR at Figures II-1 and II-2.

<sup>11</sup> Apparent U.S. consumption was \*\*\* short tons in interim 2009 compared with \*\*\* short tons in interim 2008. CR/PR at Table C-1.

<sup>12</sup> CR/PR at Table C-1.



interim 2008, but place less weight on this interim period shift in market share as the U.S. market was in flux.<sup>13</sup>

For purposes of the preliminary phase of these investigations, we find that the volume of subject imports on a cumulated basis is significant, both in absolute terms and relative to consumption and production in the United States.

## **B. Price Effects of Subject Imports**

In evaluating the price effects of the subject imports, section 771(7)(C)(ii) of the Tariff Act provides that the Commission shall consider whether –

(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.<sup>14</sup>

Subject imports and domestic MCBs appear to be highly substitutable and most sales of both the domestic like product and subject imports are made directly to end users.<sup>15</sup> With regard to substitutability, a majority of questionnaire respondents considered subject imports to be “always” or at least “frequently” interchangeable with the domestic product.<sup>16</sup> Both petitioner and respondents indicated that price is an important factor in purchasing decisions, although respondents also indicated that non-price factors may be equally important in some instances.<sup>17</sup>

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<sup>13</sup> CR/PR at Table C-1. The market share of subject imports on a cumulated basis was higher in interim 2009, at \*\*\* percent compared with \*\*\* percent in interim 2008. *Id.* Domestic producers' market share was \*\*\* percent in interim 2009 compared with \*\*\* percent in interim 2008, while nonsubject imports' market share in those periods were \*\*\* percent and \*\*\* percent, respectively. *Id.* Resco argues that "the abrupt slowdown caused large amounts of Chinese products to be either caught on the water or in the importers' inventories." Transcript, p. 28 (Copp). Respondents counter that "subject imports responded remarkably rapidly, given the long lead times for imports, to the collapse in demand for MCBs triggered by the recession." Post-conference brief of Vesuvius and Bayuguan, p. 10.

<sup>14</sup> 19 U.S.C. § 1677(7)(C)(ii).

<sup>15</sup> From January 2006 through June 2009, over 99 percent of shipments of U.S. product and over 90 percent of imports from China were made to end users. In addition, \*\*\* reported U.S. shipments of imports from Mexico and from nonsubject sources were to end users. CR at II-1 and II-8, PR at II-1 and II-6, CR/PR at Table II-1.

<sup>16</sup> All three responding producers viewed subject imports from China and from Mexico as either “always” or “frequently” interchangeable with the domestic like product. Seven of 10 importers viewed imports from China and 6 of 7 importers viewed imports from Mexico as either “always” or “frequently” interchangeable. CR/PR at Table II-2.

<sup>17</sup> CR at II-8 and II-9, PR at II-6-II-7, CR/PR at Table II-3. Nine of 17 responding importers and two of three responding producers reported that non-price factors were either “sometimes” or “never” important in their sales.

Resco indicated that price is an important, and many times the only, factor that customers consider when making their purchasing decisions. CR at II-8, PR at II-6-II-7. According to Resco, the market price is not the deciding factor for less than 30 percent of its customers. CR at II-8, PR at II-6-II-7. Respondents indicated that while price is important to their customers, their customers are more concerned with finding suppliers who bring new ideas and new abilities through technology and service to lower their costs of producing steel. CR at II-9, PR at II-6-II-7.

The Commission collected quarterly pricing data for three products: one specification of MCB for electric arc furnaces and two MCB sizes for use in ladles.<sup>18</sup> The subject imports were priced lower than domestic MCBs in all but two quarters for all products.<sup>19</sup> Subject imports from China undersold the domestic like product in 27 of 28 quarterly pricing comparisons by margins ranging from 0.8 to 21.0 percent.<sup>20</sup> Subject imports from Mexico undersold the domestic like product in 12 of 13 quarterly pricing comparisons by margins ranging from 4.7 to 32.1 percent.<sup>21</sup> Given the consistency of the underselling margins and the substitutability of domestic and imported products, we find significant price underselling by the subject imports from China and Mexico compared with the price of the domestic like product.

We give limited weight, however, to these price comparisons because of the numerous reports of confusion among questionnaire respondents over how to report pricing data. First, \*\*\* was unable to provide separate data for pricing products 2 and 3, and second, multiple questionnaire respondents reported difficulty in identifying which of their own available products corresponded most closely with the pricing products.<sup>22</sup> In addition, due to the limited presence of subject imports from Mexico in the U.S. market, very little data were available for pricing of subject imports from Mexico.<sup>23</sup>

The lost sales and lost revenue data provide some support for the proposition that certain purchasers are switching from domestic to subject sources based on price, but other purchasers claim to be focused on non-price factors. With regard to lost sales and revenue, of the 15 lost sales allegations totaling \$4.7 million and four lost revenue allegations totaling \$419,547, \*\*\* lost sales allegations were confirmed totaling \*\*\* and \*\*\* lost revenue allegations \*\*\* confirmed.<sup>24</sup> One purchaser that responded to the lost sales allegations reported that it shifted MCB purchases from U.S. producers to subject imports from China in \*\*\*.<sup>25</sup> Four purchasers identified non-price factors as the reason for their shift away from domestically-produced MCBs.<sup>26</sup>

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<sup>18</sup> The specification of the products were the following: Product 1-- resin bonded, magnesia-carbon brick for electric arc furnaces with a carbon content of 13 percent, fused grain and antioxidant additions that correspond to Resco's brand Nuline 10-99, with the following dimensions: 13 ½ x 6 x 3 No. 1 key; Product 2-- Resin bonded, magnesia-carbon brick for ladles with a carbon content of 10 percent, fused grain and antioxidant additions that correspond to Resco's brand Maxline 10 DFZ with the following dimensions: SU 6 x 60 x 100 mm; Product 3-- Resin bonded, magnesia-carbon brick for ladles with a carbon content of 10 percent, fused grain and antioxidant additions that correspond to Resco's brand Maxline 10 AFX, with the following dimensions: 7 x (6-5 ½) x 3 inch mini key. CR at V-3, PR at V-2.

<sup>19</sup> In one quarter, \*\*\*, imports from China were priced \*\*\* percent higher than domestically-produced MCBs and in one quarter, (\*\*\*) imports from Mexico were priced \*\*\* percent higher than domestically-produced MCBs. CR/PR at Table V-1.

<sup>20</sup> CR at V-10, PR at V-5, CR/PR at Table V-4.

<sup>21</sup> CR at V-10, PR at V-5, CR/PR at Table V-4.

<sup>22</sup> Transcript at 81-82, (Fetzer), CR at V-4-V-5, PR at V-II-V-III.

<sup>23</sup> Data for Mexico were reported \*\*\*. CR at V-5, PR at V-3. Respondents suggest that "available quarterly pricing data for Mexico are so limited, both in terms of the total volumes and in terms of the number of quarters for which data are reported, that no meaningful analysis of quarterly prices of subject imports from Mexico is possible." Post-conference brief of Vesuvius and Bayuquan, p.17, fn.66. In any final phase of these investigations, we will solicit parties' comments on the appropriate products for use in quarterly price comparisons, in order to mitigate any future confusion over the pricing items.

<sup>24</sup> CR/PR at Table V-5 and V-6. We note, however, that \*\*\* purchasers involved in lost sales allegations did not respond to the Commission staff's attempts to confirm the allegations and \*\*\* purchasers involved in the lost sales allegations disagreed with the allegations. Id.

<sup>25</sup> CR at V-14, PR at V-7.

<sup>26</sup> CR at V-14-V-17, PR at V-6-V-8.

We have also examined pricing trends. Prices for both the domestically produced product and subject imports increased during the period examined. Depending on the product in question, weighted-average sales prices for U.S.-produced MCBs increased by 4.4 percent to 15.2 percent while weighted-average sales prices for products imported from China and Mexico increased by 10.9 percent to 28.7 percent.<sup>27</sup> Prices for all pricing products (product 1 and products 2 and 3 combined), followed similar trends.<sup>28</sup> Prices for the domestically produced products peaked in the last quarter of 2008 and the first quarter of 2009. While prices in the second quarter of 2009 were lower than prices during 2008 they were higher than prices during 2006 and 2007.<sup>29</sup> Because prices for the domestic like product generally increased during the period examined, we conclude that subject imports did not have significant price-depressing effects.

There also is little indication that subject imports suppressed domestic producer prices during the period examined, as changes in prices the domestic industry charged largely, but not entirely, tracked changes in the industry's costs. On a per unit basis, the domestic industry's cost of goods sold (COGS) increased from \$\*\*\* in 2006 to \$\*\*\* in 2008, or by \*\*\* percent, primarily as a result of changes in raw material costs.<sup>30</sup> While the industry increased the unit value of its net sales, the increases were not quite sufficient to offset rising costs.<sup>31</sup> Nevertheless, for the three year period between 2006 and 2008, the industry's COGS/net sales ratio fluctuated between years and increased by less than one percentage point, which does not indicate that prices were suppressed to a significant degree.<sup>32</sup> We, furthermore, note that the industry's COGS/sales ratio was lower in interim 2009, at \*\*\* percent, than in interim 2008, at \*\*\* percent.<sup>33</sup>

Based on the foregoing, we find for purposes of the preliminary phase of these investigations that the significant cumulated volume of subject imports consistently undersold the domestic like product, but has not yet had a significant adverse effect on domestic prices.

### **C. Impact of Subject Imports on the Domestic Industry<sup>34</sup>**

In examining the impact of subject imports, section 771(7)(C)(iii) of the Tariff Act provides that the Commission "shall evaluate all relevant economic factors which have a bearing on the state of the

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<sup>27</sup> CR at V-5, PR at V-3, CR/PR at Table V-3.

<sup>28</sup> CR/PR at Figure V-1.

<sup>29</sup> CR/PR at Tables V-1 and V-2.

<sup>30</sup> CR at VI-4, PR at VI-2. Unit COGS was \$\*\*\* in 2006, \$\*\*\* in 2007, \$\*\*\* in 2008, and \$\*\*\* in interim 2009 compared with \$\*\*\* in interim 2008. CR/PR at Tables VI-1 and C-1.

<sup>31</sup> CR/PR at Tables VI-1 and C-1. The unit value of net sales was \$\*\*\* in 2006, \$\*\*\* in 2007, \$\*\*\* in 2008, and \$\*\*\* in interim 2008 and \$\*\*\* in interim 2009.

<sup>32</sup> CR/PR at Tables VI-1 and C-1. The COGS-to-net-sales ratio was \*\*\* percent in 2006, \*\*\* percent in 2007, and \*\*\* percent in 2008.

<sup>33</sup> CR/PR at Tables VI-1 and C-1.

<sup>34</sup> Commerce initiated an antidumping duty investigation based on estimated dumping margins of 112 to 349 percent for MCBs from China and of 153 to 295 percent for MCBs from Mexico. Commerce initiated a countervailing duty investigation on MCBs from China based on allegations of various loan subsidy programs, the provision of inputs for less than adequate remuneration, export restraints on raw materials, tax benefit programs, Northeast revitalization program and related provincial policies, direct grants as well as grants for expansion and export performance, preferential loans to the MCB industry, cash grant programs, and a provincial program to rebate antidumping costs. CR at I-4-I-5, PR at I-3-I-4.

industry.”<sup>35</sup> These factors include output, sales, inventories, ability to raise capital, research and development, and factors affecting domestic prices. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>36</sup>

Based on the record of these preliminary phase investigations, we find that the domestic industry’s performance was mixed over the period examined, with positive changes in most factors relating to U.S. shipments and financial indicators, and negative changes relating to production, capacity utilization, and employment. From 2006 to 2008, while the U.S. producers’ capacity to produce MCBs remained constant, domestic production of MCBs decreased by 3.4 percent,<sup>37</sup> and the already low capacity utilization declined steadily from 45.3 percent in 2006 to 43.8 percent in 2008.<sup>38</sup> The number of production and related workers declined by 7.2 percent and productivity declined by 3.8 percent from 2006 to 2008.<sup>39</sup> Despite the declines in production, however, domestic producers were able to increase their U.S. shipments by 5.6 percent<sup>40</sup> and to decrease their inventories as a ratio to shipments from 2006 to 2008, as apparent U.S. consumption increased.<sup>41</sup>

The domestic industry’s financial indicators – specifically, net sales measured by value and operating income – increased overall from 2006 to 2008.<sup>42</sup> The domestic industry was profitable in each full year of the period, with operating income fluctuating between years and increasing from \$\*\*\* in 2006 to \$\*\*\* in 2008.<sup>43</sup> Operating income as a share of net sales remained positive from 2006 to 2008, increasing from \*\*\* percent in 2006 to \*\*\* percent in 2007, and returning in 2008 to \*\*\* percent.<sup>44</sup> The domestic industry as a whole did not become unprofitable until the first half of 2009 when demand from

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<sup>35</sup> 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 885 (“In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.”).

<sup>36</sup> 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851, 885; Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386, 731-TA-812-813 (Preliminary), USITC Publication 3155 at 25 n.148 (Feb. 1999).

<sup>37</sup> CR/PR at Table III-2. Domestic production of MCBs decreased from 72,895 short tons in 2006 to 71,125 short tons in 2007 and to 70,441 short tons in 2008. Production was 17,412 short tons in interim 2009 compared with 40,633 short tons in interim 2008. Id.

<sup>38</sup> CR/PR at Table III-2. Capacity utilization was 45.3 percent in 2006, 44.2 percent in 2007, 43.8 percent in 2008, 50.5 percent in interim 2008 and 21.6 percent in interim 2009.

<sup>39</sup> CR/PR at Table C-1.

<sup>40</sup> U.S. shipments were 59,181 short tons in 2006, 58,074 short tons in 2007, and 62,470 short tons in 2008. U.S. shipments were 16,284 short tons in interim 2009 compared with 35,111 short tons in interim 2008. CR/PR at Table III-3.

<sup>41</sup> CR/PR at Table III-4. The ratio of inventories to total shipments was \*\*\* percent in 2006, \*\*\* percent in 2007, and \*\*\* percent in 2008. The ratio was \*\*\* percent in interim 2008 compared with \*\*\* percent in interim 2009.

<sup>42</sup> CR/PR at Tables VI-1 and C-1. The domestic industry’s quantity of net sales was \*\*\* short tons in 2006, \*\*\* short tons in 2007, and \*\*\* short tons in 2008. The total value of the industry’s net sales was \$\*\*\* in 2006, \$\*\*\* in 2007, and \$\*\*\* in 2008. In interim 2008, total net sales were \*\*\* short tons (\*\*\*), compared with \*\*\* short tons (\*\*\*) in interim 2009.

<sup>43</sup> Operating income was \$\*\*\* million in 2006, \$\*\*\* million in 2007, and \$\*\*\* million in 2008. The domestic industry experienced a \$\*\*\* operating loss in interim 2009 compared with operating income of \$\*\*\* in interim 2008. CR/PR at Tables VI-1 and C-1.

<sup>44</sup> CR/PR at Tables VI-1 and C-1.

its customers in the steel industry collapsed.<sup>45</sup> Even with the unprecedented drop in demand, \*\*\*.<sup>46</sup> For these reasons, we find that the domestic industry has not yet experienced material injury by reason of subject imports on a cumulated basis.

Moreover, we do not find a sufficient causal link between subject imports on a cumulated basis and the current condition of the domestic industry. As discussed above, cumulated subject imports made only small gains in U.S. market share, particularly as apparent U.S. consumption and U.S. shipments increased from 2007 to 2008. Despite consistent underselling, the prices of subject imports did not appear to suppress domestic prices for MCBs.<sup>47</sup> The domestic industry was able to raise prices to cover most of its increased costs, even as subject imports increased from 2007 to 2008. In fact, it was not until domestic demand collapsed that the domestic industry became \*\*\*. Indeed, the significant decline in apparent U.S. consumption that began in the fourth quarter of 2008 and continued in the first half of 2009 likely had a role in the domestic industry's negative financial performance at the end of the period examined.

For the foregoing reasons, and based on the record in the preliminary phase of these investigations, we find that there is no reasonable indication that an industry in the United States is materially injured by reason of cumulated subject imports of MCBs from China and Mexico that are allegedly sold in the United States at less than fair value and are allegedly subsidized by the Government of China.

## II. REASONABLE INDICATION OF THREAT OF MATERIAL INJURY

### A. Cumulation

For a determination of threat of material injury by reason of subject imports, section 771(7)(H) of the Tariff Act of 1930 provides that to the extent practicable, the Commission may cumulatively assess the volume and price effects of imports of the subject merchandise from all countries with respect to which –

- (i) petitions were filed under section 1671a(b) or 1673a(b) of this title on the same day.
- (ii) investigations were initiated under section 1671a(a) or 1673a(a) of this title on the same day, or
- (iii) petitions were filed under section 1671a(b) or 1673a(b) of this title and investigations were initiated under section 1671a(a) or 1673a(a) of this title on the same day,

if such imports compete with each other and with domestic like products in the United States market.<sup>48</sup>

Cumulation for determining threat of material injury, in contrast to cumulation for material injury, is within the discretion of the Commission. In exercising that discretion, the Commission has traditionally considered factors such as (1) whether the imports are increasing at similar rates in the same markets, (2) whether the imports have similar margins of underselling, and (3) the probability that imports will enter the United States at prices that would have a depressing or suppressing effect on

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<sup>45</sup> Operating losses as a share of net sales was \*\*\* percent in interim 2009 compared with operating income as a share of net sales of \*\*\* percent in interim 2008. CR/PR at Table C-1.

<sup>46</sup> CR/PR at Tables VI-1 and VI-2.

<sup>47</sup> CR/PR at Table C-1.

<sup>48</sup> 19 U.S.C. 1677(7)(H) (emphasis added).

domestic prices of that merchandise.<sup>49</sup> In these investigations, examination of these factors lead us to conclude that we should not exercise our discretion to cumulate subject imports from China with subject imports from Mexico.

In particular, subject imports from China and Mexico are not increasing at similar rates in the U.S. market. Shipments of subject imports from China increased steadily and substantially from 2006 to 2008.<sup>50</sup> Shipments of subject imports from Mexico, on the other hand, fell rapidly, by more than half, over the period examined, particularly between 2006 and 2007.<sup>51</sup> Moreover, the Chinese industry expanded rapidly between 2006 and 2008, whereas the size of the Mexican industry remained static over that period,<sup>52</sup> indicating that the Chinese industry would have a greater incentive to ship to the United States in the imminent future than would the Mexican industry.<sup>53</sup> These differing trends in imports, industry size, and incentive to ship to the U.S. market indicate that, in the absence of antidumping and countervailing duty orders in these investigations, imports from subject sources would likely compete differently in the U.S. market.

Accordingly, in determining whether there is a reasonable indication that an industry in the United States is threatened with material injury by reason of subject imports, we do not exercise our discretion to cumulate subject imports from China with subject imports from Mexico, and conduct separate threat of material injury analyses regarding each of these subject countries.

## **B. Reasonable Indication of Threat of Material Injury by Reason of Subject Imports from China**

Section 771(7)(F) of the Tariff Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”<sup>54</sup> The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors

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<sup>49</sup> See Torrington Co. v. United States, 790 F. Supp. 1161, 1172 (Ct. Int’l Trade 1992) (affirming Commission’s determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries), aff’d without opinion, 991 F.2d 809 (Fed. Cir. 1993); Metallverken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (Ct. Int’l Trade 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (Ct. Int’l Trade 1988).

<sup>50</sup> CR/PR at Table IV-3. Shipments of subject imports from China increased from 32,976 short tons in 2006 to 36,184 short tons in 2007, or by 9.7 percent, but then increased more markedly to 42,072 short tons in 2008, or by 16.3 percent.

<sup>51</sup> CR/PR at Table IV-3. Subject imports from Mexico declined sharply from \*\*\* short tons in 2006 to \*\*\* short tons in 2007, or by \*\*\* percent, and then declined an additional \*\*\* percent in 2008 to \*\*\* short tons.

<sup>52</sup> Reported Chinese capacity increased from 327,363 short tons in 2006 to 369,463 short tons in 2007, and then more sharply to 520,272 short tons in 2008. The capacity of the Mexican producer remained constant over that period at \*\*\* short tons. CR/PR at Tables VII-1 and VII-2.

<sup>53</sup> The different pricing strategies of the subject imports also indicates the different incentives the subject sources have in selling to the U.S. market. Examination of unit value data on imports suggests that during the period examined, subject imports from China occupied one price point, the U.S. industry a much higher one, and subject imports from Mexico a price point somewhere in between. For example, in 2008 the unit value of U.S. shipments was \$1,226 per short ton, that of shipments of imports from China was \$901 per ton, and that of shipments of imports from Mexico was \$\*\*\* per ton. This relationship among the three sources remained the same throughout the period examined. CR/PR at Table C-1.

<sup>54</sup> 19 U.S.C. § 1677(7)(F)(ii).

“as a whole” in making its determination whether dumped or subsidized imports are imminent and whether material injury by reason of subject imports would occur unless an order is issued.<sup>55</sup> In making our determinations, we consider all statutory threat factors that are relevant to these investigations.<sup>56</sup>

The volume of subject imports from China was substantial and increased overall from 40,441 short tons in 2006 to 44,891 short tons in 2008.<sup>57</sup> By 2008, subject imports from China had captured substantial market share from the domestic industry, subject imports from Mexico and nonsubject imports as the market shares of those sources declined.<sup>58</sup> Thus, the domestic industry’s overall loss of market share to subject imports was due entirely to the rapid increase in subject imports, and subject imports’ overall presence in the market increased by 5.8 percentage points.

With regard to production capacity for MCBs in China, as an initial matter we note that the information the Commission has on the Chinese industry, while not comprehensive, is fairly extensive for a preliminary phase investigation. Petitioner Resco identified 35 MCB producers in China.<sup>59</sup> Seven of these firms responded to the Commission questionnaire, and these responses are estimated to account

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<sup>55</sup> Id.

<sup>56</sup> These factors are as follows:

- (I) if a countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement) and whether imports of the subject merchandise are likely to increase,
- (II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports,
- (III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,
- (IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices and are likely to increase demand for further imports,
- (V) inventories of the subject merchandise,
- (VI) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products;
- (VIII) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and ,
- (IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).

19 U.S.C. § 1677(7)(F)(i). This investigation does not involve an agricultural product, so statutory threat factor (VII) is not implicated. As no one has argued that the domestic industry is currently engaging or will imminently engage in any efforts to develop a derivative or more advanced version of the domestic like product, statutory threat factor (VIII) is not implicated.

<sup>57</sup> CR/PR at Table IV-2. During the first six months of 2009, subject imports were \*\*\* short tons compared with \*\*\* short tons during the same period in 2008. Id.

<sup>58</sup> The market share of subject imports from China increased from \*\*\* percent in 2006 to \*\*\* percent in 2008. During that same period, the market share of domestic producers declined from \*\*\* percent to \*\*\* percent, the market share of subject imports from Mexico declined from \*\*\* percent to \*\*\* percent, and the market share of nonsubject imports fell from \*\*\* percent to \*\*\* percent. CR/PR at Table C-1.

<sup>59</sup> CR at VII-3, PR at VII-2.

for approximately \*\*\* of Chinese exports to the United States in 2008.<sup>60</sup> Based on data from these firms, reported Chinese production capacity rose markedly during the period examined, increasing over \*\*\* percent between 2007 and 2008, and is not expected to shrink appreciably in 2009 and 2010.<sup>61</sup> These firms, moreover, reported ample excess capacity; in 2008, they operated at a capacity utilization rate of only 62.9 percent, or approximately 193,000 short tons.<sup>62</sup> Assuming that other non-responding Chinese firms have similar amounts of excess capacity, and taking the responding firms' estimate of their share in total production at face value, as of the end of 2008 there was approximately 288,000 short tons of excess capacity in China, which is nearly \*\*\* apparent U.S. consumption in that year, a level we find to be significant.<sup>63</sup>

Moreover, to the extent the excess capacity would be utilized, much of the new production will be devoted to export markets as reporting Chinese producers became increasingly export-oriented during the period examined.<sup>64</sup> Although the U.S. market accounted for a relatively small share of total export shipments by the Chinese industry, we note that since 2007, the Chinese industry has been subject to antidumping orders in the European Union and in Turkey.<sup>65</sup> Thus, going forward, the U.S. market will be more attractive to the Chinese industry than alternative export markets. In addition, with regard to inventories held in the United States by U.S. importers, such inventories increased from 2006 to 2008, and by the end of the period were significant in relation to preceding-period shipments and apparent U.S. consumption.<sup>66</sup> We find that the rising trend in the volume of imports from China during the period examined, substantial excess capacity in the Chinese industry, the industry's consistent focus on export markets, the high level of inventories held in the United States, and the presence of significant barriers to Chinese exports in third country markets indicate the likelihood of substantially increased subject imports in the absence of import relief.

With regard to likely price effects, we evaluate the likely underselling and price effects in light of key conditions of competition in the U.S. market. First, although information at this preliminary stage of the investigations is limited, the record suggests that price is an important factor in purchasing decisions, although non-price factors may be equally important in some instances.<sup>67</sup> This suggests that subject imports from China are likely highly substitutable with the domestic like product. Second, as measured

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<sup>60</sup> CR at VII-3, PR at VII-2.

<sup>61</sup> Reported capacity in China increased from 327,363 short tons in 2006 to 369,463 short tons in 2007, and increased more sharply, to 520,272 short tons, in 2008. Reported capacity is expected to decline slightly to 503,332 short tons in 2009, and increase slightly to 513,012 short tons in 2010. CR/PR at Table VII-1.

<sup>62</sup> CR/PR at Table VII-1.

<sup>63</sup> CR/PR at Table C-1. Apparent U.S. consumption in 2008 was \*\*\* short tons.

<sup>64</sup> The share of exports in total shipments by reporting Chinese producers first declined very slightly from 70.7 percent in 2006 to 70.5 percent in 2007, and then increased to 76.0 percent in 2008. CR/PR at Table VII-1.

<sup>65</sup> CR at VII-9, PR at VII-7.

<sup>66</sup> U.S. importers' end-of-period inventories increased from 24,279 short tons in 2006 to 25,373 short tons in 2007, and then increased again to 27,527 short tons in 2008. The 2008 total was 65.4 percent of preceding-period U.S. shipments and was \*\*\* percent of apparent U.S. consumption. CR/PR at Tables VII-3 and C-1.

<sup>67</sup> CR at II-8 and II-9, PR at II-6-II-7, CR/PR at Table II-3. Nine of 17 responding importers and two of three responding producers reported that non-price factors were either "sometimes" or "never" important in their sales.

Resco indicated that price is an important, and many times the only, factor that customers consider when making their purchasing decisions. CR at II-8, PR at II-6-II-7. According to Resco, the market price is not the deciding factor for less than 30 percent of its customers. CR at II-8, PR at II-6-II-7. Respondents indicated that while price is important to their customers, their customers are more concerned with finding suppliers who bring new ideas and new abilities through technology and service to lower their costs of producing steel. CR at II-9, PR at II-6-II-7.



by apparent U.S. consumption, demand for MCBs decreased, but only slightly, from 2006 to 2007, before rising, by \*\*\* percent, from 2007 to 2008. Consumption was substantially lower in interim 2009 than in interim 2008, however, and full-year 2009 consumption is likely to be substantially lower than 2008 levels.<sup>68</sup>

We have found that subject imports from China undersold domestic MCBs to a significant degree and that, notwithstanding this underselling, prices for the domestic like product were not depressed during the period examined. As explained above, however, the record does not contain sufficient evidence of price suppression, and therefore we do not conclude that subject imports had a significant adverse effect on domestic prices during the period examined. We have found that, among other factors, the substantial excess capacity in the Chinese industry and its consistent focus on export markets during the period examined indicate the likelihood of increased subject imports in the absence of import relief. Even though demand is currently weak, we find that it is likely that, given the fact that Chinese MCBs are consistently priced below the domestic like product, and given the importance of price in purchasing decisions, those purchasers that are in the market for MCBs would likely purchase the Chinese product. This purchasing pattern would likely result in either price depression or suppression. Consequently, in light of consistent underselling, we determine that imports of the subject merchandise are entering at prices that are likely imminently to have a significant depressing or suppressing effect on domestic prices in a market where U.S. demand was lower at the end of the period than at the beginning, and that such prices are likely to increase demand for further imports.

Finally, and most important, although we believe the domestic industry has not yet experienced material injury by reason of subject imports, the market conditions that allowed the domestic industry to avoid such injury have deteriorated. While steady to slightly increasing demand from 2006 to 2008 cushioned the impact of subject imports, demand was substantially lower in interim 2009 compared to the corresponding period of 2008.<sup>69</sup> Indeed, the domestic industry faces a much different environment in 2009 and 2010 than it did at the beginning of the period examined. Demand for MCBs has recently fallen dramatically due to the severe slump in the steel industry.<sup>70</sup> Further evidence of the industry's vulnerability is found in the fact that inventories of Chinese product held in the United States increased steadily over the period examined, peaking in 2008, and were significant in relation to preceding-period U.S. shipments throughout the period, particularly so in interim 2009.<sup>71</sup> Accordingly, based on our consideration of the record and the recent developments in the marketplace in particular, we find that the domestic industry is vulnerable to material injury from likely substantially increased volumes of subject imports.

Because of worsening demand conditions, the domestic industry is no longer shielded from the impact of subject imports, which are likely to increase significantly in volume and continue to undersell significantly the domestic like product in the absence of import relief. The domestic industry would

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<sup>68</sup> Apparent U.S. consumption first decreased slightly from \*\*\* short tons in 2006 to \*\*\* short tons in 2007, and then rose to \*\*\* short tons in 2008. Apparent U.S. consumption was \*\*\* short tons in January-June 2009 compared with \*\*\* short tons in January-June 2008. CR/PR at Table C-1.

<sup>69</sup> Apparent U.S. consumption first decreased slightly from \*\*\* short tons in 2006 to \*\*\* short tons in 2007, and then rose to \*\*\* short tons in 2008. Apparent U.S. consumption was \*\*\* short tons in January-June 2009 compared with \*\*\* short tons in January-June 2008. CR/PR at Table C-1.

<sup>70</sup> CR at II-5-II-6, PR at II-4.

<sup>71</sup> CR/PR at Table VII-3. Inventories of imports from China held by U.S. importers increased from 24,279 short tons in 2006 to 27,527 short tons in 2008. Such imports declined as a ratio to preceding-period U.S. shipments of imports from 73.6 percent in 2006 to 65.4 percent in 2008. That ratio, however, was 73.4 percent in January-June 2009 compared with 46.1 percent in January-June 2008.

likely experience significantly reduced profitability due to significantly depressed or suppressed prices as well as reduced production, shipments, market share, and employment

We also find that subject imports will have negative effects on the development and production efforts of the domestic industry. From 2006 to 2008, steady to slowly rising demand mitigated the impact of subject imports, and allowed the domestic industry to maintain its profitability even as it lost market share. This trend did not continue in the interim 2009 period, however, as demand dropped, the market share of imports from China continued to increase, and the domestic industry experienced declining financial performance, moving into a \*\*\*. As subject imports are likely to continue to increase in the imminent future in the absence of import relief, the domestic industry will lose not only market share, but sales volumes as well. Given the clear link between production volumes and profitability, if volumes fall further the domestic industry will experience further declines in operating income, and will likely experience declines in employment, returns on assets, and in its ability to maintain and upgrade production facilities.

In considering whether the domestic industry is threatened with material injury by reason of subject imports, we have also considered the extent to which other factors are likely to contribute to injury to ensure that we do not attribute injury from other factors to subject imports. As discussed above, we find that reduced demand for MCBs is likely to render the industry more vulnerable to the effects of imports. With regard to the current demand environment, we note that Chinese import market share increased in interim 2009, indicating that imports from China, given their lower prices, were taking market share from domestic product in an environment of rapidly weakening demand.<sup>72</sup> In any final phase of these investigations, we intend to explore further the role that any changes in demand would play in the performance of the domestic industry in order to ensure that we do not attribute to subject imports the effects of any future adverse demand conditions. Further, nonsubject imports are not a significant factor in the MCB market, inasmuch as during the period examined they never exceeded \*\*\* percent of the U.S. market and their volumes declined in both absolute volume and market share.<sup>73</sup> Thus, there is no indication that, in the imminent future, nonsubject imports would capture market share from the domestic industry to the same extent as subject imports.

Consequently, we conclude for purposes of the preliminary phase of these investigations that there is a causal nexus between the subject imports and a likely imminent adverse impact on the domestic industry, which demonstrates a reasonable indication that the domestic industry is threatened with material injury by reason of subject imports.

### **C. No Reasonable Indication of Threat of Material Injury by Reason of Subject Imports from Mexico**

Based on an evaluation of the statutory threat factors that are relevant to this investigation, we determine that there is no reasonable indication that the domestic industry producing MCBs is threatened with material injury by reason of subject imports from Mexico.

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<sup>72</sup> Demand for MCBs, as measured by apparent U.S. consumption, was \*\*\* short tons in January-June 2009, compared with \*\*\* short tons in January-June 2008. Industry profitability, as measured by the ratio of operating income to net sales, was \*\*\* percent in January-June 2009, compared with \*\*\* percent in January-June 2008. CR/PR at Table C-1.

<sup>73</sup> U.S. shipments of imports from nonsubject sources declined from \*\*\* short tons in 2006 to \*\*\* short tons in 2007, and then declined again, to \*\*\* short tons, in 2008. Their market share declined from \*\*\* percent in 2006 to \*\*\* percent in 2007, and then even further to \*\*\* percent in 2008, for an overall decline of \*\*\* percentage points. CR/PR at Table C-1.

In the absence of an antidumping duty order, we find that substantially increased imports of the subject merchandise from Mexico into the United States are not imminent for a number of reasons. First, subject imports from Mexico did not increase at a significant rate on either an absolute or relative basis during the period examined.<sup>74</sup> In fact, the volume of subject imports from Mexico declined \*\*\* from 2006 to 2007, before it recovered \*\*\* in 2008. Such imports decreased from \*\*\* short tons in 2006 to \*\*\* short tons in 2007 and then rose to \*\*\* short tons in 2008.<sup>75</sup> Consequently, as apparent U.S. consumption increased from 2006 to 2008, the market penetration of the subject imports from Mexico fell, indicating that the Mexican producer was gradually withdrawing from what was, at the time, a growing market, preferring to concentrate, as discussed below, on its home market.<sup>76</sup>

Second, reported capacity in Mexico from the lone Mexican producer RHI-Refmex S.A. de C.V. (Refmex), was stable from 2006 to 2008 and is projected to remain stable through 2010.<sup>77</sup> Moreover, the industry in Mexico producing subject merchandise is small and does not have substantial unused capacity. As of the end of 2008, Refmex reported unused capacity of only \*\*\* and projects excess capacity in 2009 and 2010 of no more than approximately \*\*\* short tons.<sup>78</sup> Consequently, the projected unused capacity of the reporting producer in Mexico does not indicate that the subject industry is capable of increasing its shipments to the United States to a level that would exceed \*\*\* percent of current (2008) U.S. consumption, even assuming it had an incentive to do so.

Third, the subject industry in Mexico became less and less export oriented during the period examined. By 2008, its exports accounted for only \*\*\* percent of its total shipments, indicating that it currently intends to focus on the Mexican market.<sup>79</sup> Although the United States was Refmex' most important export market during the period, in light of its increased focus on its home market we do not find that Refmex is likely to devote its unused capacity or shift its consistent shipment patterns to increase shipments substantially to the United States in the absence of an antidumping duty order.<sup>80</sup> We further observe that, although U.S. importers' inventories of subject imports from Mexico were \*\*\* as a share of preceding-period shipments, their absolute levels were minimal.<sup>81</sup> Finally, we note that the Mexican industry is not faced with any barriers in third-country markets. Consequently, we conclude that the volume of subject imports, which was declining and not significant during the period examined, is not likely to increase substantially in the imminent future.

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<sup>74</sup> CR/PR at Tables IV-2, IV-4, IV-5.

<sup>75</sup> CR/PR at Table IV-2. The volume of subject imports from Mexico was slightly higher in interim 2009 than in interim 2008, but was still at a level far below that at the start of the period examined. Id.

<sup>76</sup> Market penetration of subject imports from Mexico decreased from \*\*\* percent in 2006 to \*\*\* percent in 2007 and then dropped further to \*\*\* percent in 2008. CR/PR at Table IV-8.

<sup>77</sup> CR/PR at Table VII-2. Reported production capacity in Mexico remained at \*\*\* through the period examined.

<sup>78</sup> CR/PR at Table VII-2.

<sup>79</sup> CR/PR at Table VII-2. The share of exports in Refmex' total shipments declined from \*\*\* percent in 2006 to \*\*\* percent in 2008.

<sup>80</sup> With regard to Refmex' projections of shipments to the United States in calendar years 2009 and 2010, we note that the projected shipment levels are within the range of those with regard to which we found no reasonable indication of injury during the period examined. CR/PR at table VII-2.

<sup>81</sup> CR/PR at Table VII-3. U.S. importers' end-of-period inventories of imports from Mexico increased from \*\*\* short tons in 2006 to \*\*\* short tons in 2008. As a ratio to preceding-period shipments, these inventories increased from \*\*\* percent in 2006 to \*\*\* percent in 2008. These inventories totaled \*\*\* short tons in interim 2009 compared with \*\*\* short tons in interim 2008.

As discussed above, we recognize that subject imports from Mexico undersold the domestic product in the majority of possible quarterly price comparisons. We also noted, however, that because prices for the domestic like product generally increased during the period examined, subject imports did not have significant price-depressing effects, nor did they have price-suppressing effects during the period examined.<sup>82</sup> Given the low volumes of imports from Mexico during the period examined, and our finding that significant increased imports from Mexico are not imminent, we find that subject imports from Mexico likely will not affect prices for the domestic like product negatively in the imminent future, as subject imports did not do so in a significant manner during the period examined.<sup>83</sup> Therefore, we conclude that subject imports from Mexico will likely not have significant price-depressing or price-suppressing effects in the imminent future which would be likely to increase demand for further imports.

In evaluating the likely impact on the domestic industry of subject imports from Mexico, we note that, as explained above, we cannot conclude that the cumulated subject imports, let alone subject imports from Mexico, are currently having a significant adverse impact on the domestic industry. Moreover, as discussed above, we find that in the imminent future the subject imports from Mexico will not likely increase substantially in volume or begin to have significant price-suppressing effects. Thus, despite our finding that the domestic industry is vulnerable to future injury from subject imports from China, we find that further imports from Mexico are not imminent and that material injury by reason of subject imports from Mexico would not occur in the absence of an antidumping duty order. Accordingly, we determine that there is no reasonable indication that the domestic industry is threatened with material injury by reason of subject imports from Mexico.

### III. CONCLUSION

For the foregoing reasons, we determine that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of certain magnesia carbon bricks from China that are allegedly subsidized by the government of China and sold in the United States at LTFV. We further determine that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of certain magnesia carbon bricks from Mexico that are allegedly sold in the United States at LTFV.

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<sup>82</sup> CR/PR at Tables V-1, V-2, and V-4.

<sup>83</sup> We note further that petitioner \*\*\*. CR/PR at Table V-6.

## PART I: INTRODUCTION

### BACKGROUND

These investigations result from a petition filed on July 29, 2009, with the U.S. Department of Commerce (“Commerce”) and the U.S. International Trade Commission (“USITC” or “Commission”) by Resco Products Inc., (Resco) Pittsburgh, PA. The petition alleges that an industry in the United States is materially injured and threatened with material injury by reason of subsidized and less-than-fair-value (“LTFV”) imports of certain magnesia carbon bricks (“MCB”)<sup>1</sup> from China and by reason of LTFV imports of MCB from Mexico. Information relating to the background of the investigations is provided below.<sup>2</sup>

Effective date	Action
July 29, 2009	Petition filed with Commerce and the Commission; institution of Commission investigations (74 FR 39969, August 10, 2009)
August 19, 2009	Commission’s conference <sup>1</sup>
August 25, 2009	Commerce’s notice of initiation of antidumping duty investigations (74 FR 42852); Commerce’s notice of initiation of countervailing duty investigation (74 FR 42858)
September 11, 2009	Commission’s vote
September 14, 2009	Commission determinations transmitted to Commerce
September 21, 2009	Commission views transmitted to Commerce

<sup>1</sup> A list of witnesses appearing at the conference is presented in app. B.

### STATUTORY CRITERIA AND ORGANIZATION OF THE REPORT

#### Statutory Criteria

Section 771(7)(B) of the Tariff Act of 1930 (the “Act”) (19 U.S.C. § 1677(7)(B)) provides that in making its determinations of injury to an industry in the United States, the Commission--

*shall consider (I) the volume of imports of the subject merchandise, (II) the effect of imports of that merchandise on prices in the United States for domestic like products, and (III) the impact of imports of such merchandise on domestic producers of domestic like products, but only in the context of production operations within the United States; and. . . may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports.*

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<sup>1</sup> See the section entitled “The Subject Merchandise” in *Part I* of this report for a complete description of the merchandise subject to these investigations.

<sup>2</sup> *Federal Register* notices cited in the tabulation are presented in appendix A.

Section 771(7)(C) of the Act (19 U.S.C. § 1677(7)(C)) further provides that--

*In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States is significant.*

...

*In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether . . . (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.*

...

*In examining the impact required to be considered under subparagraph (B)(i)(III), the Commission shall evaluate (within the context of the business cycle and conditions of competition that are distinctive to the affected industry) all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to*

...

*(I) actual and potential declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity, (II) factors affecting domestic prices, (III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, (IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and (V) in {an antidumping investigation}, the magnitude of the margin of dumping.*

### **Organization of the Report**

*Part I* of this report presents information on the subject merchandise, alleged subsidies and dumping margins, and domestic like product. *Part II* of this report presents information on conditions of competition and other relevant economic factors. *Part III* presents information on the condition of the U.S. industry, including data on capacity, production, shipments, inventories, and employment. *Parts IV and V* present the volume and pricing of imports of the subject merchandise, respectively. *Part VI* presents information on the financial experience of U.S. producers. *Part VII* presents the statutory requirements and information obtained for use in the Commission's consideration of the question of threat of material injury, as well as information regarding nonsubject countries.

### **U.S. MARKET SUMMARY**

MCB generally is used to provide thermal and corrosion resistance in a variety of settings, primarily in the production of iron and steel. The leading U.S. producers of MCB are ANH, LWB Refractories (LWB), and Resco, while leading producers of MCB outside the United States include RHI Refractories Liaoning, Mayerton, and Jiangsu Suja of China and RHI-Refmex of Mexico. The leading U.S. importers of MCB from China are Veitsch-Radex, Mayerton, and Fedmet, while the leading

importer of MCB from Mexico is Veitsch-Radex. Leading importers of MCB from nonsubject countries (primarily Germany and the United Kingdom) include Veitsch-Radex and Vesuvius.

Apparent U.S. consumption of MCB totaled approximately \*\*\* short tons \$\*\*\* in 2008. Currently, four firms are known to produce MCB in the United States. U.S. producers' U.S. shipments of MCB totaled 62,470 short tons (\$76.6 million) in 2008, and accounted for \*\*\* percent of apparent U.S. consumption by quantity and \*\*\* percent by value. U.S. shipments of imports from subject sources totaled 43,837 short tons (\$39.6 million) in 2008 and accounted for \*\*\* percent of apparent U.S. consumption by quantity and \*\*\* percent by value. U.S. imports from nonsubject sources totaled \*\*\* short tons (\$\*\*\*) in 2008 and accounted for \*\*\* percent of apparent U.S. consumption by quantity and \*\*\* percent by value.

## SUMMARY DATA AND DATA SOURCES

A summary of data collected in the investigations is presented in appendix C, table C-1. Except as noted, U.S. industry data are based on questionnaire responses of three firms that accounted for \*\*\* percent of U.S. production of MCB during 2008. U.S. imports from China and Mexico are based on questionnaire responses from 16 firms and one firm, respectively. Data regarding the Chinese industry are based on seven foreign producer questionnaire responses, data regarding the Mexican industry are based on one foreign producer questionnaire response, while information with respect to other foreign industries is drawn from public sources.

## PREVIOUS AND RELATED TITLE VII INVESTIGATIONS

MCB has not been the subject of any prior countervailing/antidumping duty investigation(s) in the United States.

## NATURE AND EXTENT OF ALLEGED SUBSIDIES AND SALES AT LTFV

### Alleged Subsidies

On August 25, 2009, Commerce published a notice in the *Federal Register* of the initiation of its countervailing duty investigation on MCB from China.<sup>3</sup> In its notice, Commerce identified the following government programs alleged in the petition to have provided countervailable subsidies to producers of MCB in China:

- Provision of inputs for less than adequate remuneration
- Export restraints of raw materials
- Tax benefit programs
- Northeast revitalization program and related provincial policies
- Direct Grants
- Grants to companies for “outward expansion” and export performance in Guangdong province
- Preferential loans and directed credit to the magnesia carbon brick industry
- Cash grant programs
- Zhejiang Province program to rebate antidumping costs.

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<sup>3</sup> *Certain Magnesia Carbon Bricks from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 74 FR 42858, August 25, 2009.

## **Alleged Sales at LTFV**

On August 25, 2009, Commerce published a notice in the *Federal Register* of the initiation of its antidumping duty investigations on MCB from China<sup>4</sup> and Mexico.<sup>5</sup> Commerce has initiated antidumping duty investigations based on estimated dumping margins of 112 percent to 349 percent for MCB from China and 153 percent to 295 percent for MCB from Mexico.

## **THE SUBJECT MERCHANDISE**

### **Commerce's Scope**

Commerce has defined the imported merchandise subject to these investigations as:

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, antioxidants can be added to the mix from trace amounts to 15 percent by weight as various metals, metal alloys, and metal carbides).<sup>6</sup>

### **Tariff Treatment**

During the period examined, MCB has been classified in the Harmonized Tariff Schedule of the United States (HTS) under subheading 6902.10.10, magnesite bricks (which also contains products other than MCB, including refractory blocks, tiles and other refractory products), and under HTS subheading 6902.10.50, other refractory bricks. MCB may also enter under HTS subheading 6815.91.00, articles of stone or other mineral substances, not elsewhere specified or included, containing magnesite, dolomite or chromite, or HTS subheading 6815.99.10, articles of stone or other mineral substances, not elsewhere specified or included, not containing magnesite, dolomite, or chromite.<sup>7</sup> Table I-1 presents current tariff rates for MCB.

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<sup>4</sup> *Certain Magnesia Carbon Bricks from the People's Republic of China and Mexico: Initiation of Antidumping Duty Investigations*, 74 FR 42852, August 25, 2009.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*



**Table I-1**  
**MCB: Tariff rates, 2009**

HTS provision	Article description	General <sup>1</sup>	Special <sup>2</sup>	Column 2 <sup>3</sup>
		Rates (percent ad valorem)		
6815	Articles of stone or of other mineral substances (including carbon fibers, articles of carbon fibers and articles of peat), not elsewhere specified or included:			
6815.91.00.00	Containing magnesite, dolomite or chromite	Free	( <sup>4</sup> )	30%
6815.99	Other:			
6815.99.20.00	Talc, steatite and soapstone, cut or sawed, or in blanks, crayons, cubes, disks or other forms.....	Free	( <sup>4</sup> )	2.2 ¢/kg
6815.99.40.00	Other .....	Free	( <sup>4</sup> )	30%
6902	Refractory bricks, blocks, tiles and similar refractory ceramic constructional goods, other than those of siliceous fossil meals or similar siliceous earths:			
6902.10	Containing by weight, singly or together, more than 50 percent of the elements magnesium, calcium or chromium, expressed as MgO, CaO or Cr <sub>2</sub> O <sub>3</sub> :			
6902.10.10.00	Magnesite bricks.....	Free	( <sup>4</sup> )	13%
6902.10.50.00	Other.....	Free	( <sup>4</sup> )	30%
<sup>1</sup> Normal trade relations, formerly known as the most-favored-nation duty rate. <sup>2</sup> Special rates not applicable when General rate is free. <sup>3</sup> Applies to imports from a small number of countries that do not enjoy normal trade relations duty status. <sup>4</sup> General note 3(c)(i) defines the special duty program symbols enumerated for this provision.				
Source: Harmonized Tariff Schedule of the United States (2009).				

## THE PRODUCT

### Description and Applications

MCB is a refractory<sup>8</sup> product made mostly from a combination of magnesia and carbon that provides thermal and corrosion resistance in operations involving high temperatures and harsh operating conditions, such as in the production of steel. The scope of this case consists of chemically bonded MCBs where the magnesia component amounts to at least 70 percent and the carbon levels range from trace amounts to 30 percent.<sup>9</sup> MCB may contain other substances such as antioxidants that range from trace amounts to 15 percent by weight.

MCB is considered to be the most durable refractory brick on the market for furnaces and ladle linings, especially around the slag line.<sup>10</sup> While other refractory bricks, such as fired magnesite, fired bauxite, magnesia dolomite, and magnesia alumina graphite bricks, may be used in place of MCB, these alternatives do not have the same physical characteristics of MCB, are easily differentiated by price, and their uses are not perceived by the steel producers as substitutable.<sup>11</sup> MCB is used to line the lower sidewalls, upper sidewalls, slag lines, and roofs of ladles<sup>12</sup> and ladle metallurgy furnaces involved in steel production and refining where it comes in contact with both molten steel and molten slag. Furthermore, MCB is also used to line basic oxygen furnaces (BOF) and for electric arc furnaces (EAF).<sup>13</sup>

MCB is produced in a large number of grades with different levels of magnesia, carbon, and different contributions of additives depending upon the intended specific applications.<sup>14</sup> MCB is characterized by its high heat resistance (it has a high melting point, which varies depending on the amount and type of impurity within the grain of the brick),<sup>15</sup> good resistance to slags and possesses low vulnerability to degradation by iron oxide and alkalis. Unlike most other refractory products, MCB degradation can occur within the refractory structure itself as a result of high-temperature reactions. The degradation can disrupt the brick structure through the loss of the carbon bond, resulting greater vulnerability to wear. Therefore, the quality of magnesia selected for use in MCB should have overall low levels of impurities to minimize the reducing effects of carbon. Heat treatments on the magnesia raw materials can cause the magnesia to be either fused<sup>16</sup> or sintered,<sup>17</sup> which alter the performance of MCB in its application. Sintered magnesia is used in a range of market applications and has a high melting

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<sup>8</sup> Refractories are heat-resistant materials that line high-temperature furnaces, ladles, and other processing units. In addition to being heat-resistant, refractories also withstand physical wear and corrosion by chemical agents. The Refractories Institute, <http://www.refractoriesinstitute.org> (accessed August 12, 2009).

<sup>9</sup> Petition, CVD Vol. I, p. 5.

<sup>10</sup> Conference transcript, p. 46 (Mazard).

<sup>11</sup> Conference transcript, p. 45 (Mazard).

<sup>12</sup> Ladles used in steel production are the largest users of MCB, followed by electric arc furnaces. Sales for basic oxygen furnaces constitute a small portion of the MCB market since steel manufacturing practices have extended the life of MCB applications. Conference transcript, p. 24 (Brown).

<sup>13</sup> Troell, Peter T., "Evolution of Magnesia-Carbon Refractories," *Ceramic Industry*; Feb. 1995, Vol. 144, Issue 2.

<sup>14</sup> There are at least eight different grades of magnesia and four different grades of graphite. Conference transcript, p. 110 (B. Stein).

<sup>15</sup> MCB with 90 to 95 percent magnesia has a melting point of 3,980 degrees Fahrenheit while pure magnesia (100 percent) melts at 5,070 degrees Fahrenheit. Harbison-Walker Co., "Refractory Raw Materials," p. CR-3.

<sup>16</sup> Magnesia is said to be fused when the heat treatment during the production process becomes molten. Landy, Richard A., "Magnesia Refractories," *Refractories Handbook*, ed. Schacht, Charles A. 2004, p. 111.

<sup>17</sup> Sintering refers to the process of forming objects from a metal powder by heating the powder at a temperature below its melting point. When the powder is compacted into the desired shape and heated, *i.e.*, sintered, for up to three hours, the particles composing the powder join together to form a single solid object. Landy, Richard A., "Magnesia Refractories," *Refractories Handbook*, ed. Schacht, Charles A. 2004, p. 111.

point while fused magnesia is considered to maintain strength and corrosion resistance as well as chemical stability thereby enhancing the performance of MCB.<sup>18</sup> The carbon in MCB prevents liquid slag from penetrating and eroding the brick. The high carbon content of MCB is achieved by adding carbon in such forms as pitch or graphite with natural flake graphite the most common. Graphite purity is also important in determining stability and performance in high-temperature environments.<sup>19</sup> Natural flake graphite is one of the widely used carbons because of its high oxidation resistance, which contributes to the reduced erosion rates, and its ability to impart high thermal conductivity to the brick.<sup>20</sup> The high thermal conductivity results in reduced thermal stresses within the brick and faster cooling of the MCB between heats.<sup>21</sup> High temperature stability of MCB also is achieved through the addition of additives, such as powdered metals (aluminum, magnesium, and silicon), to enhance resistance to oxidation as these metals consume oxygen that would otherwise oxidize with the carbon, thereby increasing the strength of the brick.<sup>22</sup> MCB quality can be further enhanced with the combination of other treatments<sup>23</sup> such as pitch or resin impregnation,<sup>24</sup> metal casing,<sup>25</sup> and high-temperature treatments<sup>26</sup> resulting in a broad range of product options to suit a variety of demanding steel applications.<sup>27</sup>

The refractory brick market is a mature industry and there have not been any major breakthroughs in steel production and processing or in the refractory and MCB markets.<sup>28</sup> Refractory products are frequently sold independently of other refractory brick for a ladle, or as part of a package from a single vendor including all of the bricks necessary to line a ladle.<sup>29</sup> Package orders, as opposed to individual orders for MCB, are determined based on customer preferences.<sup>30</sup>

Most steel producing companies use several types of refractory brick to line their furnaces and ladles. A variety of refractory products are used because rates of wear and replacement of the refractory bricks vary significantly based on the type of steel being produced, individual furnaces used, and the various performance requirements of the different areas of the steel furnaces or ladle.<sup>31</sup> More specifically, MCB is only used in the most demanding areas of the furnace or ladles which is principally along the slag lines and at the top of the steel vessel where active chemical processes are taking place and impurities and waste tend to aggregate. Other less costly products are used at the bottom and lower sides of the furnace or ladles where slag conditions are less aggressive and will wear out at lower rates.<sup>32</sup>

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<sup>18</sup> Landy, Richard A., "Magnesia Refractories," *Refractories Handbook*, ed. Schacht, Charles A. 2004, pp. 111–113.

<sup>19</sup> Troell, Peter T., "Evolution of Magnesia-Carbon Refractories," *Ceramic Industry*, Feb. 1995, Vol. 144, Issue 2.

<sup>20</sup> *Ibid.*

<sup>21</sup> Harbison-Walker Co., "Refractory Raw Materials," p. CR-3.

<sup>22</sup> *Ibid.*

<sup>23</sup> Conference transcript, p. 44 (Mazard).

<sup>24</sup> Pitch or resin impregnation fills in the voids of the brick, making it less porous and increasing the carbon in the brick resulting in better steel slag resistance. E-mail from \*\*\*.

<sup>25</sup> Metal casings on MCBs increase strength and improve corrosion resistance in areas of the furnace where mechanical equipment can corrode MCB that is not plated. Metal cased MCB are not used in ladles used for steel production. E-mail from \*\*\*.

<sup>26</sup> High-temperature treatments decrease the porosity of the MCB resulting in increased resistance to steel slag penetration. E-mail from \*\*\*.

<sup>27</sup> Troell, Peter T., "Evolution of Magnesia-Carbon Refractories," *Ceramic Industry*, Feb. 1995, Vol. 144, Issue 2.

<sup>28</sup> Conference transcript, p. 55 (Brown).

<sup>29</sup> Conference transcript, p. 47 (Mazard).

<sup>30</sup> Conference transcript, p. 91 (Copp).

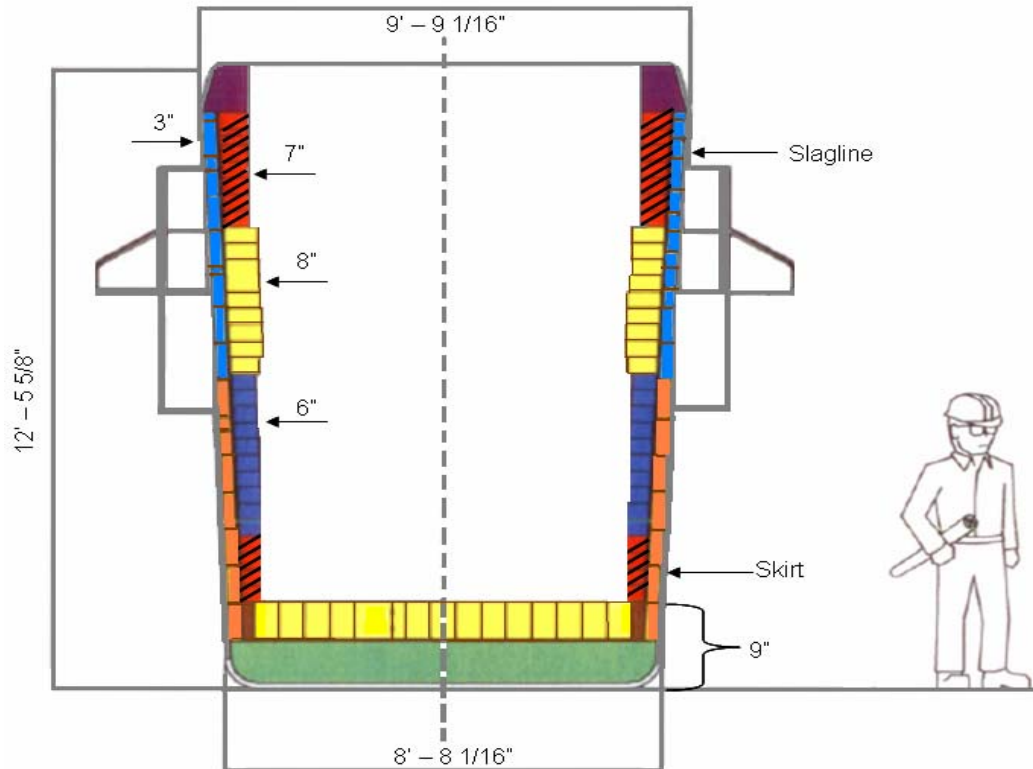
<sup>31</sup> The type of steel being produced and the specific production methods associated with the product determine how frequently the lining of a ladle is replaced. Conference transcript, p. 53 (Brown).

<sup>32</sup> Conference transcript, pp. 44-45 (Mazard).

MCB and the other refractory bricks are strategically placed in the ladle so that the overall wear on the ladle is even and the ladle lining provides the lowest cost per ton of steel produced for refractories.<sup>33</sup>

An example of a refractory-lined ladle is shown in Figure I-1:

**Figure I-1**  
**Refractory-lined ladle**



Legend

-  Dolomite brick
-  Magnesia carbon brick
-  Dolomite brick

Source: Petitioners' postconference brief, exh. 2, p. 1.

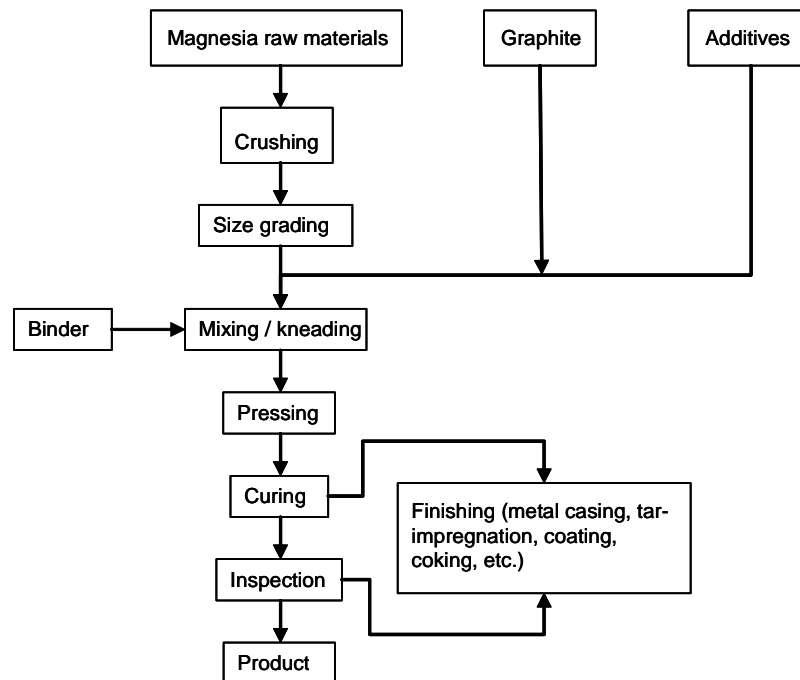
<sup>33</sup> Conference transcript, p. 46 (Mazard).

## Manufacturing Processes

The raw materials used to make magnesite for MCB are: (1) fired magnesia produced from natural magnesium carbonate; (2) sea-water magnesium produced by firing magnesium hydroxide extracted from sea water;<sup>34</sup> or (3) brine magnesia produced from high-salt concentration from water deep wells. These raw materials are sintered magnesia, while fused magnesia is produced by melting the sintered magnesia.

After processing to produce sintered or fused magnesia, it is then crushed, ground, and screened.<sup>35</sup> It must be reduced to the appropriate size to satisfy the specific requirements of the brick being produced. Magnesia that has been ground and screened is moved to holding bins or hoppers; each bin or hopper is weighed and separated into batches that are specific to the brands and chemical formulations of the different types of MCB.<sup>36</sup> The basic production process is as shown in Figure I-2:

**Figure I-2**  
**MCB production process**



Source: Petition, CVD Vol. I, p. 7.

<sup>34</sup> The supply of seawater magnesium is virtually limitless, producing high-purity magnesium oxide. The largest seawater facilities are located in Japan, Great Britain, the United States, and Israel. Landy, Richard A., "Magnesia Refractories," *Refractories Handbook*, ed. Schacht, Charles A. 2004, pp. 132–133.

<sup>35</sup> The raw material is crushed in jaw crushers, gyratory and cone crushers; intermediate pulverizers, such as cage disintegrators and hammer mills; and fine grinding mills, such as rod mills and ball mills.

<sup>36</sup> Landy, Richard A., "Magnesia Refractories," *Refractories Handbook*, ed. Schacht, Charles A. 2004, pp. 132–133.

The magnesia is mixed with other materials, including pitch, binders, carbon, and other metallic additives specific to the brick being made.<sup>37</sup> When mixing is complete, the material is transported to a press for forming into individual shaped bricks. MCBs are molded in a wide variety of sizes depending on the specific application and the configuration of the furnace or ladle lining for which they are designed. There are several methods of pressing and manufacturing facilities differ with regard to the type of press used. Presses include the uniaxial press (such as a mechanical press, friction press, or a hydraulic press)<sup>38</sup> and the isostatic press.<sup>39</sup> Once the bricks are pressed they are heated in batch or tunnel ovens to set resin binds. Finally, the bricks are packaged for shipment.<sup>40</sup>

The shape and density of the MCB are major factors in determining resistance to degradation and operational life of the brick.<sup>41</sup> Density is determined, for the most part, by the type of press used in production. Refractory producers in the United States, the European Union, and Mexico tend to use the hydraulic press, while the friction press is more common among Chinese producers.<sup>42</sup> The hydraulic press uses the force of a hydraulic piston to press and de-air the mix in one stroke. Hydraulic presses are a newer technology requiring fewer workers and are useful in the production of very large brick shapes.<sup>43</sup> A friction press, presses the mix with frequent strokes in order to de-air the mix and results in a MCB of higher density compared to the hydraulic press according to respondents at the staff conference.<sup>44</sup> While the disparity in density of the refractory brick produced from the two presses may differ by a few percent, the difference in the brick's resistance to wear and its operational life is more significant.<sup>45</sup> Furthermore, although a friction press requires more manpower than a hydraulic press, the respondents claim that friction presses can change their brick molds more quickly and produce another size, shape, or quality grade that the customer may require.<sup>46</sup>

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<sup>37</sup> The most common type is a muller mixer, a mixing bowl fitted with wheels that rotate while the mixer bowl revolves or the rotating wheels revolve while the mixer bowl is stationary. This equipment produces a kneading action to the materials in which the portion of the materials directly under the wheels is squeezed and pressed producing a "de-airing" action. Another mixer type is one that has a bowl fitted with a high-intensity rotor, ribbon blades, or screw. These mixers usually produce a uniform mix faster than the muller type, but the de-airing is not as good.

<sup>38</sup> A uniaxial press can apply force to a brick through a number of different methods. Pressure is applied in one direction to achieve uniform density and a homogeneous micro-structure on a variety different presses. A mechanical press uses a ram to compact the brick against a stationary mold, and it uses the compacted brick thickness itself to control the final movement of the press without independent control of the compacting force. A friction press uses a flywheel driven at a preset speed to drive a ram to compact the brick. A friction press uses the energy contained in the flywheel to control the thickness of the brick without independent control of the brick thickness. A hydraulic press uses pressure to force a ram against the brick. Brick thickness is controlled by a rigid stop to control the travel of the ram. Carniglia, Stephen C. and Gordon L. Barna, *Handbook of Industrial Refractories Technology, Principles, Types, Properties and Applications*, 1992, pp. 508-510 .

<sup>39</sup> The isostatic press can be used to produce difficult refractory geometries such as nozzles, shrouds, and diffusers for certain BOF applications. In isostatic pressing a preformed body is hermetically wrapped in a flexible metal foil or polymeric bag and placed in a vessel which is then filled with oil under pressure to form the complex design.

<sup>40</sup> Carniglia, Stephen C. & Gordon L. Barna, *Handbook of Industrial Refractories Technology, Principles, Types, Properties and Applications*, 1992, pp. 515-516 and e-mail from \*\*\*.

<sup>41</sup> Conference transcript, p. 177 (B. Stein).

<sup>42</sup> Conference transcript, pp. 110–111 (B. Stein) and Petitioner's postconference brief, exh. 1, pp. 12-13.

<sup>43</sup> Conference transcript, p. 124 (Conrad).

<sup>44</sup> Conference transcript, pp. 110-111 (B. Stein).

<sup>45</sup> Conference transcript, p. 115 (B. Stein).

<sup>46</sup> Conference transcript, p. 124 (Conrad).

Petitioner disputes that the friction press makes a denser MCB than the hydraulic press and claim that the hydraulic press has the capability and efficiency to make MCB that is just as dense. In this regard, petitioner states:

“Petitioner also submits that there is absolutely no basis in fact or data to support Respondents’ comments at the conference that a friction screw press can somehow make a denser MCB than a hydraulic press. This urban legend was debated and put to bed at least 25 years ago. Friction screw presses are less costly to install than the more sophisticated and automated hydraulic presses. The friction screw press is generally more labor intensive and typically does not have any automation, that is, the mold is hand fed with the MCB mix and the friction pressing is controlled by an operator who, at best guesses at the density of the MCB . The idea that one could somehow use lower grade raw materials and press a denser MCB product on a friction press that could compete with higher purity and quality raw materials used in MCB on a hydraulic press is ludicrous. Hydraulic presses have the capability and the efficiency to make just as dense MCB as a friction screw press by utilizing multiple strokes in the press-pause cycle of the pressing process. In general, hydraulic presses can make a higher quality MCB than those made on friction presses.”<sup>47</sup>

### **DOMESTIC LIKE PRODUCT ISSUES**

No issues with respect to domestic like product have been raised in these investigations. The petitioner proposes that the domestic like product is co-extensive with the scope of the petition.<sup>48</sup> Respondents agree with the petitioner’s definition of domestic like product for purposes of the preliminary determination;<sup>49</sup> however, the respondent RHI notes that other refractory brick may be competitive with MCB.<sup>50</sup>

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<sup>47</sup> Petitioner’s postconference brief, exh. 1, pp. 12–13.

<sup>48</sup> Petitioner’s postconference brief, p. 4.

<sup>49</sup> Conference transcript, p. 142 (Levinson) and (Mendoza), p. 143 (Thomas).

<sup>50</sup> Respondent RHI’s postconference brief, p. 3.





## **PART II: CONDITIONS OF COMPETITION IN THE U.S. MARKET**

### **U.S. MARKET CHARACTERISTICS**

Two of three responding U.S. producers and seven of 12 responding importers reported selling MCB nationally. One responding U.S. producer (\*\*\*) reported selling MCB to all regions except \*\*\*. The remaining responding five importers reported selling to various regions except for the Rocky Mountains and the Northwest. Four importers reported selling to the Midwest and four importers reporting selling to the Northeast.

### **CHANNELS OF DISTRIBUTION**

Almost all MCBs from all sources are sold directly to end users.<sup>1</sup> As shown in table II-1, in each period, over 99 percent of shipments of U.S. product and over 90 percent of imports from China were made to the end users. \*\*\* reported U.S. shipments of U.S. imports from Mexico and countries other than China and Mexico were to end users. Petitioner indicates that all major domestic and foreign producers, including Chinese producers, compete for critical large volume accounts in the steel industry and approximately 75 percent of all MCB sold in the United States is sold to about 25 end users.<sup>2</sup>

### **SUPPLY AND DEMAND CONSIDERATIONS**

#### **Supply**

##### **U.S. Supply**

Based on available information, U.S. MCB producers have the ability to respond to changes in demand with large changes in the quantity of shipments of U.S.-produced MCB to the U.S. market. The main contributing factors to the high degree of responsiveness of supply are the availability of unused capacity, existence of alternate markets, and the ability to produce alternate products; supply responsiveness is constrained by the somewhat limited ability to use inventories.

##### ***Industry capacity***

U.S. producers' capacity utilization decreased from 45.3 percent in 2006 to 43.8 percent in 2008. This level of capacity utilization indicates that U.S. producers have unused capacity with which they could increase production of MCB in the event of a price change.

##### ***Alternative markets***

Exports by the U.S. producers, as a share of total shipments, decreased from \*\*\* percent in 2006 to \*\*\* percent in 2008. These data indicate that U.S. producers have the ability to divert shipments to or from alternative markets in response to changes in the price of MCB.

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<sup>1</sup> RMA factbook 2009, p. 3. (*See* petition, p. 21 and exh. 5).

<sup>2</sup> Petition, p. 9.

Table II-1

**MCB: U.S. producers' and importers' U.S. shipments of MCB, by sources and channels of distribution, 2006-08, and January-June 2009**

Item	Period			
	2006	2007	2008	Jan.-June 2009
<b>Share of reported shipments (percent)</b>				
<b>Domestic producers' U.S. shipments of MCB to:</b>				
Distributors	0.8	0.6	0.4	0.2
End users	99.2	99.4	99.6	99.8
<b>U.S. importers' U.S. shipments of MCB from China:</b>				
Distributors	9.1	1.4	2.3	3.3
End users	90.9	98.6	97.7	96.7
<b>U.S. importers' U.S. shipments of MCB from Mexico:</b>				
Distributors	***	***	***	***
End users	***	***	***	***
<b>U.S. importers' U.S. shipments of MCB from all other countries to:</b>				
Distributors	***	***	***	***
End users	***	***	***	***
Note.—Data for domestic producers include only U.S. commercial shipments.				
Source: Compiled from data submitted in response to Commission questionnaires.				

### *Inventory levels*

The ratio of end-of-period inventories to total shipments for the U.S. producers decreased from 12.3 percent in 2006 to 9.6 percent in 2008. These data indicate that U.S. producers have a somewhat limited ability to use inventories as a means of increasing shipments of MCB to the U.S. market.

### *Production alternatives*

\*\*\* of \*\*\* responding U.S. producers indicated that they produce products other than MCB on the equipment and machinery that is used to produce MCB. Producers indicated that they can produce products such as dolomite brick, alumina magnesia carbon brick, and fired brick.

## **Subject Imports from China**

Based on available information, Chinese producers have the ability to respond to changes in demand with large changes in the quantity of shipments of MCB to the U.S. market.<sup>3</sup> The main contributing factors to the high degree of responsiveness of supply are the availability of unused capacity, the existence of alternate markets, and the ability to produce alternate products; supply responsiveness is constrained by the somewhat limited ability to use inventories.

### ***Industry capacity***

Chinese producers' capacity utilization decreased from 79.6 percent in 2006 to 62.9 percent in 2008. This level of capacity utilization indicates that Chinese producers have unused capacity with which they could increase production of MCB in the event of a price change.

### ***Alternative markets***

Shipments of MCB from China to markets other than the United States (both exports to alternative markets and shipments to their home market) decreased from approximately 90.5 percent of total shipments in 2006 to 88.5 percent in 2008. Thus, available data indicate that subject producers in China have the ability to divert shipments to or from their home market and alternative markets in response to changes in the price of MCB.

### ***Inventory levels***

The ratio of end-of-period inventories to total shipments for the Chinese producers increased from 5.2 percent in 2006 to 6.6 percent in 2008. These data indicate that Chinese producers have a somewhat limited ability to use inventories as a means of increasing shipments of MCB to the U.S. market.

### ***Production alternatives***

Six of seven responding Chinese producers indicated that they produce products other than MCB on the equipment and machinery that is used to produce MCB. These producers indicated that they can produce products such as alumina silicate carbon bricks and alumina magnesia carbon brick.

## **Subject Imports from Mexico**

Based on available information, the Mexican producer has the ability to respond to changes in demand with large changes in the quantity of shipments of MCB to the U.S. market.<sup>4</sup> The main contributing factors to the high degree of responsiveness of supply are the availability of unused capacity and the existence of alternate markets or inventories; supply responsiveness is constrained by an inability to produce alternate products.

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<sup>3</sup> Six Chinese producers responded to the foreign producers' questionnaire. Their exports the U.S. represented 69 percent of total reported U.S. imports from China in 2008.

<sup>4</sup> One Mexican producer responded to the foreign producers' questionnaire. Its exports the U.S. represented \*\*\* reported U.S. imports from Mexico in 2008.

### ***Industry capacity***

The Mexican producer's capacity utilization increased from \*\*\* percent in 2006 to \*\*\* percent in 2008. This level of capacity utilization indicates that the Mexican producer has unused capacity with which it could increase production of MCB in the event of a price change.

### ***Alternative markets***

Shipments of MCB from Mexico to markets other than the United States (both exports to alternative markets and shipments to the home market) increased from approximately \*\*\* percent of total shipments in 2006 to \*\*\* percent in 2008. Thus, available data indicate that the Mexican producer has the ability to divert shipments to or from its home market and alternative markets in response to changes in the price of MCB.

### ***Inventory levels***

The ratio of end-of-period inventories to total shipments for the Mexican producer increased from \*\*\* percent in 2006 to \*\*\* percent in 2008. These data indicate that the Mexican producer has an ability to use inventories as a means of increasing shipments of MCB to the U.S. market.

### ***Production alternatives***

The Mexican producer indicated that it \*\*\* products other than MCB on the equipment and machinery that is used to produce MCB.

## **Demand**

Based on available information, it is likely that any change in the price level of MCB will result in a small change in the quantity of MCB demanded. The main contributing factors are the lack of substitute products and the small cost share of MCB in its end-use products.

### **Demand Characteristics**

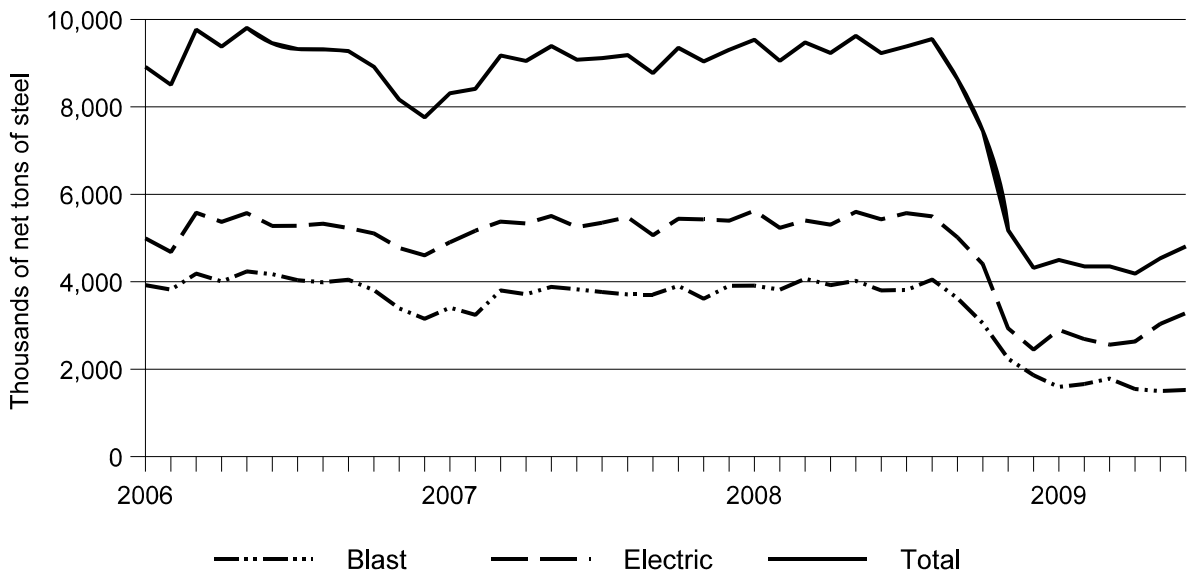
As described in more detail in Part I, MCB is used by steel producers for lining electric arc furnaces, basic oxygen furnaces, steel transfer ladles, and steel processing ladles.<sup>5</sup> Thus, demand for MCB depends upon steel production.

Demand for MCB increased from 2006 to late 2008 and then decreased during late 2008 and early 2009. As seen in figure II-1, raw steel production fluctuated between January 2006 and August 2008, increasing overall by 7 percent and then decreasing by 50 percent between August 2008 and June 2009. Steel production from blast furnaces decreased by 62 percent between August 2008 and June 2009, while steel production from electric arc furnaces decreased by 40 percent during the same time period. Similarly, as seen in figure II-2, the monthly index of raw steel production fluctuated between January 2006 and August 2008, increasing overall by 3 percent and then decreasing by 48 percent between August 2008 and June 2009. By comparison, available data indicate that total apparent U.S. consumption of MCBs increased by 9 percent between 2006 and 2008 and decreased by 46 percent between interim 2008 and interim 2009.

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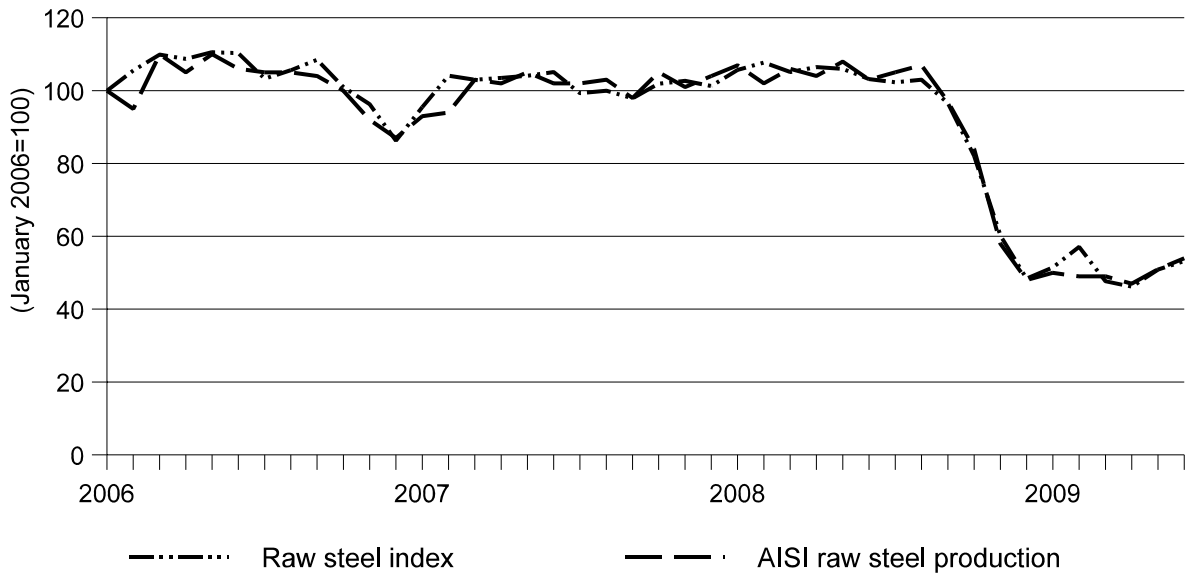
<sup>5</sup> See Part I and conference transcript, p. 13 (Brown).

**Figure II-1**  
**Pig iron and raw steel production, by month, January 2006 to June 2009**



Source: American Iron and Steel Institute.

**Figure II-2**  
**Indices of raw steel production, by month, January 2006 to June 2009**



Source: Federal Reserve.

Two of three responding U.S. producers and four of 11 responding importers indicated that demand for MCB in the United States has decreased since 2006 and five of eleven importers indicated that demand either had fluctuated or not changed during that period. The remaining responding U.S. producer and two remaining responding importers indicated that demand had increased since 2006.

### **Substitute Products**

Two of three responding producers and nine of 13 responding importers indicated that there are no substitutes for MCB. The remaining U.S. producer and importers indicated that products such as dolomite brick, burned magnesite bricks, magnesia chrome brick, magnesium chrome, and alumina magnesia carbon brick may be used as substitutes, although both responding producers and all seven responding importers indicated that changes in the prices of these substitutes do not affect the price for MCB. Petitioner indicates that while conceptually there is substitutability between MCB and some of these products, none of these products provide the performance, the cost effectiveness, the safety, the reliability, or the consistency of MCB.<sup>6</sup> Two importers indicated that while MCB is often the best product to use, for some applications alternative products can be used as substitutes.<sup>7</sup>

### **Cost Share**

MCB generally makes up a small share of the final cost of steel products that it is used to produce. Responding producers and importers indicated that value of MCB as a share of the cost of steel production is 2 percent or less.<sup>8</sup>

## **SUBSTITUTABILITY ISSUES**

The degree of substitution between domestic and imported MCB depends upon such factors as relative prices, quality (e.g., grade standards, reliability of supply, defect rates, etc.), and conditions of sale (e.g., price discounts/rebates, lead times between order and delivery dates, payment terms, product services, etc.). Based on available data, staff believes that there is a high degree of substitutability between domestically produced MCB and MCB imported from China and Mexico.

### **Factors Affecting Purchasing Decisions**

Petitioner indicated that price is an important, and many times the only, factor that customers consider when making their purchasing decisions. Petitioner also stated that although it attempts to differentiate its products by providing augmented services such as being with the customer every day in its shop and understanding what its goals and expectations are in the current environment, price is becoming more and more the only differentiating factor.<sup>9</sup> Petitioner reported that “value buyers” for which price is not the deciding factor make up less than 30 percent of the market.<sup>10</sup> Petitioner stated that these customers tend to have longer vision and want a domestic MCB industry, but that this type of customer is becoming increasingly rare because the steel industry is presently under terrible pressure.<sup>11</sup> Respondents indicated that while price is important to their customers, their customers are more

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<sup>6</sup> Conference transcript, p. 77 (Brown).

<sup>7</sup> Conference transcript, pp. 169-171 (Conrad), p. 171 (B. Stein).

<sup>8</sup> Also, see conference transcript, p. 75 (Brown), p. 76 (McGrath), and p. 169 (Thomas).

<sup>9</sup> Conference transcript, pp. 66-67 (Brown).

<sup>10</sup> Conference transcript, p. 67 (Brown).

<sup>11</sup> Ibid.

concerned with finding suppliers who bring new ideas and new abilities through technology and service to lower their costs of producing steel.<sup>12</sup>

### **Comparison of U.S.-Produced and Imported MCB**

In order to determine whether U.S.-produced MCB can generally be used in the same applications as imports from China and Mexico, and U.S. producers and U.S. importers were asked whether the products can “always,” “frequently,” “sometimes,” or “never” be used interchangeably. As shown from table II-2, two of three responding producers and at least one half of responding importers indicated that MCB produced in the United States and imported from China and Mexico are “always” used interchangeably and all responding producers and at least 70 percent of responding importers reported that they are at least “frequently” used interchangeably. One importer (\*\*\*) stated that every supplier has special product formulations for different applications and that raw material from every magnesite mine is different. Another importer (\*\*\*) reported that the MCB from its Chinese producer out-performed other Chinese-produced MCB and that no U.S. MCB has been accepted by its customer. Another importer (\*\*\*) indicated that MCB produced in different countries can be using different grades of raw material can affect the chemistry and result with problems in service. All responding producers and at least two-thirds of importers reported that MCB produced in the United States and imported from nonsubject countries are “always” used interchangeably; the same is true for imports from China, Brazil, and Mexico compared to imports from other countries.

As indicated in table II-3, two of three responding U.S. producers and at least one-half of responding importers indicated that differences other than price between MCB produced in the United States and imported from China and Mexico were at most “sometimes” a significant factor in their sales. Petitioner stated that all countries produce MCB to the same standards and grades and that the limited range of forms that petitioner imports from China is for commodity products.<sup>13</sup>

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<sup>12</sup> Conference transcript, p. 157 (B. Stein and Conrad).

<sup>13</sup> Petitioner’s postconference brief, pp. 14-15.

**Table II-2**

**MCB: Perceived interchangeability between MCB produced in the United States and in other countries, by country pairs**

Country pair	Number of U.S. producers reporting				Number of U.S. importers reporting			
	A	F	S	N	A	F	S	N
<b>U.S. vs. subject countries:</b>								
U.S. vs. China	2	1	0	0	5	2	3	0
U.S. vs. Mexico	2	1	0	0	5	1	1	0
<b>U.S. vs. nonsubject countries:</b>								
U.S. vs. Brazil	2	0	0	0	4	1	1	0
U.S. vs. Other nonsubject	2	0	0	0	5	1	1	0
<b>Subject country comparisons:</b>								
China vs. Mexico	2	1	0	0	5	1	1	0
<b>Nonsubject country comparisons:</b>								
China vs. Brazil	2	0	0	0	4	1	1	0
China vs. Other nonsubject	2	0	0	0	5	1	1	0
Mexico vs. Brazil	2	0	0	0	4	1	1	0
Mexico vs. Other nonsubject	2	0	0	0	5	1	1	0
Brazil vs. Other nonsubject	2	0	0	0	4	1	1	0
Note.--A = Always, F = Frequently, S = Sometimes, N = Never.								
Source: Compiled from data submitted in response to Commission questionnaires.								



**Table II-3**

**MCB: Perceived differences other than price between MCB produced in the United States and in other countries, by country pairs**

Country pair	Number of U.S. producers reporting				Number of U.S. importers reporting			
	A	F	S	N	A	F	S	N
<b>U.S. vs. subject countries:</b>								
U.S. vs. China	0	1	1	1	5	0	3	2
U.S. vs. Mexico	0	1	1	1	3	0	2	2
<b>U.S. vs. nonsubject countries:</b>								
U.S. vs. Brazil	0	0	1	1	2	0	2	2
U.S. vs. Other nonsubject	0	0	1	1	2	1	2	2
<b>Subject country comparisons:</b>								
China vs. Mexico	0	0	0	2	2	0	2	2
<b>Nonsubject country comparisons:</b>								
China vs. Brazil	0	0	0	2	1	0	2	2
China vs. Other nonsubject	0	0	0	2	2	0	2	2
Mexico vs. Brazil	0	0	0	2	1	0	2	2
Mexico vs. Other nonsubject	0	0	0	2	2	0	2	2
Brazil vs. Other nonsubject	0	0	0	2	1	0	2	2
Note.--A = Always, F = Frequently, S = Sometimes, N = Never.								
Source: Compiled from data submitted in response to Commission questionnaires.								



## PART III: U.S. PRODUCERS' PRODUCTION, SHIPMENTS, AND EMPLOYMENT

The Commission analyzes a number of factors in making injury determinations (see 19 U.S.C. §§ 1677(7)(B) and 1677(7)(C)). Information on the alleged margins of dumping and countervailing duties was presented earlier in this report and information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V. Information on the other factors specified is presented in this section and/or Part VI and (except as noted) is based on the questionnaire responses of three firms that accounted for \*\*\* percent of U.S. production of MCB during 2008.

### U.S. PRODUCERS

The Commission sent producer questionnaires to four firms identified as U.S. producers of MCB by the petitioners. Three firms submitted questionnaire responses.<sup>1</sup> Presented in table III-1 is a list of current domestic producers of MCB and each company's position on the petition, production location(s), related and/or affiliated firms, and share of reported production of MCB in 2008. Three firms, ANH, LWB, and Resco, accounted for \*\*\* percent of reported 2008 domestic production of MCB.

Two U.S. producers are related to foreign producers of the subject merchandise and two are related to U.S. importers of the subject merchandise. In addition, as discussed in greater detail below, two U.S. producers directly import the \*\*\*.

**Table III-1**

**MCB: U.S. producers, positions on the petition, U.S. production locations, related and/or affiliated firms, and shares of 2008 reported U.S. production**

Firm	Position on petition	U.S. production location(s)	Related and/or affiliated firms	Share of production (percent)
ANH	Support	White Cloud, MI	***	***
LWB	Support	York, PA	***	***
TYK	Support	Clairton, PA	***	***
Resco	Petitioner	Hammond, IN	***	***
Note.—Because of rounding, shares may not total to 100.0 percent.				
Source: Compiled from data submitted in response to Commission questionnaires.				

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<sup>1</sup> \*\*\*.

## U.S. CAPACITY, PRODUCTION, AND CAPACITY UTILIZATION

U.S. producers' capacity, production, and capacity utilization data for MCB are presented in table III-2. These data show capacity to produce MCB remained steady from 2006 to 2008 and between the interim periods January-June 2008 and January-June 2009. Production of MCB decreased by 3.4 percent from 2006 to 2008 and further decreased by 57.1 percent between the interim periods. Capacity utilization decreased by 1.5 percentage points from 2006 to 2008, and further decreased by 28.9 percentage points between the interim periods.<sup>2</sup>

**Table III-2**  
**MCB: U.S. capacity, production, and capacity utilization, 2006-08, January-June 2008, and January-June 2009**

Item	Calendar year			January-June--	
	2006	2007	2008	2008	2009
Capacity ( <i>short tons</i> )	160,903	160,903	160,903	80,451	80,451
Production ( <i>short tons</i> )	72,895	71,125	70,441	40,633	17,412
Capacity utilization ( <i>percent</i> )	45.3	44.2	43.8	50.5	21.6

Source: Compiled from data submitted in response to Commission questionnaires.

U.S. producers were asked if they had experienced any plant openings, relocations, expansions, acquisitions, consolidations, closures, or prolonged shutdowns because of strikes or equipment failure; curtailment of production because of shortages of materials; or any other change in the character of their operations or organization relating to the production of MCB since January 1, 2006. \*\*\* did not report any such changes.<sup>3</sup> \*\*\* reported the following:

\* \* \* \* \*

\*\*\* reported the production of other products on the same equipment and machinery and using the same production and related workers employed in the production of MCB. \*\*\*.

## U.S. PRODUCERS' SHIPMENTS

Data on domestic producers' shipments of MCB are presented in table III-3. U.S. shipments accounted for \*\*\* percent of U.S. producers' total shipments of MCB in 2008, and \*\*\* percent in interim 2009. There was no reported internal consumption. Transfers to related firms accounted for \*\*\* percent of U.S. producers' total shipments of MCB in both 2008 and interim 2009. U.S. shipments increased by 5.6 percent from 2006 to 2008, and decreased by 53.6 percent between the interim periods. The unit value of U.S. shipments increased by 17.1 percent from 2006 to 2008, and by 11.0 percent in the interim periods. Exports of MCB were reported by \*\*\*. These exports decreased by \*\*\* percent from 2006 to 2008, and decreased by \*\*\* percent between the interim periods. Exports accounted for \*\*\* percent of U.S. producers' total shipments during 2008, and \*\*\* percent in interim 2009. The export markets listed included \*\*\*.

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<sup>2</sup> \*\*\*.

<sup>3</sup> \*\*\*.

<sup>4</sup> \*\*\*.

Table III-3

MCB: U.S. producers' shipments, by types, 2006-08, January-June 2008, and January-June 2009

Item	Calendar year			January-June--	
	2006	2007	2008	2008	2009
<b>Quantity (short tons)</b>					
Commercial shipments	***	***	***	***	***
Transfers to related firms	***	***	***	***	***
U.S. shipments	59,180	58,074	62,470	35,111	16,284
Export shipments	***	***	***	***	***
Total shipments	***	***	***	***	***
<b>Value (1,000 dollars)</b>					
Commercial shipments	***	***	***	***	***
Transfers to related firms	***	***	***	***	***
U.S. shipments	61,937	62,549	76,558	41,284	21,251
Export shipments	***	***	***	***	***
Total shipments	***	***	***	***	***
<b>Unit value (per short ton)</b>					
Commercial shipments	\$***	\$***	\$***	\$***	\$***
Transfers to related firms	***	***	***	***	***
U.S. shipments	1,047	1,077	1,226	1,176	1,305
Export shipments	***	***	***	***	***
Total shipments	***	***	***	***	***
<b>Share of quantity (percent)</b>					
Commercial shipments	***	***	***	***	***
Transfers to related firms	***	***	***	***	***
U.S. shipments	***	***	***	***	***
Export shipments	***	***	***	***	***
Total shipments	100.0	100.0	100.0	100.0	100.0
<sup>1</sup> Not applicable. Note.—Because of rounding, figures may not add to the totals shown. Source: Compiled from data submitted in response to Commission questionnaires.					

## U.S. PRODUCERS' INVENTORIES

Data collected in these investigations on domestic producers' end-of-period inventories of MCB are presented in table III-4. Domestic producers' inventories decreased by 21.9 percent from 2006 to 2008, and decreased by 20.8 percent in interim 2009 compared with interim 2008.<sup>5</sup> U.S. producers' inventories were equivalent to between \*\*\* and \*\*\* percent of U.S. producers' total shipments during 2006 to June 2009. \*\*\* accounted for \*\*\* percent of the inventories held at the end of June 2009.<sup>6</sup>

**Table III-4**

**MCB: U.S. producers' end-of-period inventories, 2006-08, January-June 2008, and January-June 2009**

Item	Calendar year			January-June--	
	2006	2007	2008	2008	2009
Inventories ( <i>short tons</i> )	8,754	7,528	6,838	7,865	6,231
Ratio to production ( <i>percent</i> )	12.0	10.6	9.7	9.7	17.9
Ratio to U.S. shipments ( <i>percent</i> )	14.8	13.0	10.9	11.2	19.1
Ratio to total shipments ( <i>percent</i> )	***	***	***	***	***

Note.—Partial-year ratios are based on annualized production and shipments.

Source: Compiled from data submitted in response to Commission questionnaires.

## U.S. PRODUCERS' IMPORTS AND PURCHASES

Two of the four U.S. producers, \*\*\*, reported that they directly imported MCB from \*\*\* during the period of review. U.S. producers' imports of MCB are presented in table III-5.<sup>7</sup>

**Table III-5**

**MCB: U.S. producers' imports, 2006-08, January-June 2008, and January-June 2009**

\*   \*   \*   \*   \*   \*   \*

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<sup>5</sup> Resco reported it currently has about 30 days of inventory and that half of its shipments come out of stock and half of them are made to order. Conference transcript, pp. 59-60 (Brown).

<sup>6</sup> \*\*\*.

<sup>7</sup> There were no reported purchases of MCB made by U.S. producers of MCB.

## U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

U.S. producers' aggregate employment data for MCB are presented in table III-6. In the aggregate, U.S. MCB producers reported a decrease in the number of production and related workers employed in the manufacture of MCB from 2006 to 2008, and in interim 2009 compared with interim 2008. \*\*\* accounted for the major share of the decrease in number of employees from 2006 to 2008, and \*\*\* accounted for the majority of the decrease in interim 2009.<sup>8</sup> Productivity fell in 2007 and then rose in 2008 for an overall decrease of 3.8 percent, and decreased by 33.0 percent in interim 2009 compared with interim 2008.

**Table III-6**

**MCB: U.S. producers' employment-related data, 2006-08, January-June 2008, and January-June 2009**

Item	Calendar year			January-June--	
	2006	2007	2008	2008	2009
Production and related workers (PRWs)	109	110	102	110	78
Hours worked by PRWs ( <i>1,000 hours</i> )	226	239	227	122	78
Wages paid to PRWs ( <i>1,000 dollars</i> )	6,081	6,441	6,420	3,460	2,095
Hourly wages	\$26.91	\$26.95	\$28.28	\$28.36	\$26.86
Productivity ( <i>short tons produced per 1,000 hours</i> )	322.5	297.6	310.3	333.1	223.2
Unit labor costs ( <i>per short ton</i> )	\$83.42	\$90.56	\$91.14	\$85.15	\$120.32

Source: Compiled from data submitted in response to Commission questionnaires.

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<sup>8</sup> Resco reported that in addition to employee layoffs, its top four executives attending the conference have taken a 65 percent compensation reduction since the middle of 2008. Conference transcript, p. 18 (Brown).





## PART IV: U.S. IMPORTS, APPARENT CONSUMPTION, AND MARKET SHARES

### U.S. IMPORTERS

Importer questionnaires were sent to 46 firms believed to be importers of subject MCB, as well as to all U.S. producers of MCB.<sup>1</sup> Usable questionnaire responses were received from 16 companies,<sup>2</sup> representing 80 percent of total imports from China and approximately 100 percent of total imports from Mexico.<sup>3</sup> Table IV-1 lists all responding U.S. importers of MCB from China, Mexico, and other sources, their locations, and their shares of U.S. imports in 2008. In 2008, the largest importer of MCB from China was \*\*\*, the largest importer of MCB from Mexico was \*\*\*,<sup>4</sup> and the only importer of MCB from other sources was \*\*\*.<sup>5</sup>

### U.S. IMPORTS

U.S. imports are based on questionnaire responses.<sup>6</sup> Table IV-2 presents data for U.S. imports of MCB from China, Mexico, and all other sources. China is the largest foreign supplier of MCB to the United States, accounting for \*\*\* percent of the quantity of total imports in 2008, and \*\*\* percent of the value. Mexico is the second-largest foreign supplier of MCB to the United States, accounting for \*\*\* percent of the quantity of total imports in 2008 and \*\*\* percent of the value.<sup>7</sup>

From 2006 to 2008, the quantity and value of imports of MCB from China increased by 11.0 percent and 38.0 percent, respectively, then decreased by 59.4 percent and 56.3 percent, respectively, in interim 2009 compared with interim 2008. The unit value of imports of MCB from China increased by 24.4 percent from 2006 to 2008, and increased by 7.5 percent in interim 2009 compared with interim 2008. From 2006 to 2008, the quantity and value of imports of MCB from Mexico decreased by \*\*\*

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<sup>1</sup> The Commission sent questionnaires to those firms identified in the petition, along with firms that, based on a review of data provided by U.S. Customs and Border Protection (“Customs”), may have imported at least 100,000 kilograms or greater than one percent of total imports under HTS subheading 6902.10.10 in any one year since 2006.

<sup>2</sup> The Commission received an unusable questionnaire response from the firm \*\*\*, a customs broker. \*\*\*. The Commission received a questionnaire response from \*\*\*, which reported imports of “taphole sleeves,” which are excluded from the scope, therefore this questionnaire response was not used. The Commission received questionnaire responses from 15 firms that reported that they did not import MCB during the period examined. Those firms are: \*\*\*.

<sup>3</sup> Coverage for Chinese imports is derived from Petitioner’s estimate of total imports of MCB. Petition, exh. 3.

<sup>4</sup> \*\*\*.

<sup>5</sup> Only two firms reported imports from sources other than China and Mexico, \*\*\*.

<sup>6</sup> MCB is classifiable in the Harmonized Tariff Schedule of the United States (“HTS”) under subheadings 6815.91.00, 6815.99.00, 6902.10.10, and 6902.10.50. These HTS subheadings are residual or “basket” subheadings covering MCB and other products.

Chinese respondents report that the importer questionnaires received by the Commission provide good coverage and appear to account for all of the known major U.S. importers of subject imports, but do not have good coverage of nonsubject imports. Vesuvius and Yangkou Bayuquan’s postconference brief, pp. 8, 10-11. Respondent RHI reports that the data for U.S. producers is reasonably complete, but that imports of subject and nonsubject MCB are understated. Respondent RHI’s postconference brief, p. 12, fn. 34. Petitioner also reports that questionnaire responses understate the volume of U.S. imports, but argues that the data received renders the methodological problem moot because the volume shows imports to be significant. Petitioner’s postconference brief, pp.17-18.

Commission staff believes that coverage for subject and nonsubject imports, while understated, is good. \*\*\*.

<sup>7</sup> The remainder comes from \*\*\*.

Table IV-1

## MCB: U.S. importers, source(s) of imports, U.S. headquarters, and shares of imports in 2008

Firm	Headquarters	Source of imports	Share of 2008 imports (percent)			
			China	Mexico	Other	Total
ANH	Moon Township, PA	***	***	***	***	***
Anker	Turtle Creek, PA	***	***	***	***	***
Fedmet	East Amherst, NY	***	***	***	***	***
Imacro	Burlington, Ontario	***	***	***	***	***
Mayerton	Chicago, IL	***	***	***	***	***
McKeown	Round Rock, TX	***	***	***	***	***
Orind	Trafford, PA	***	***	***	***	***
Resco	Pittsburgh, PA	***	***	***	***	***
RCL	Clifton, NH	***	***	***	***	***
S&S Intersource	Mars, PA	***	***	***	***	***
Starex	Lincolnshire, IL	***	***	***	***	***
United	Warren, OH	***	***	***	***	***
Vesuvius	Pittsburgh, PA	***	***	***	***	***
Veitsch-Radex	Burlington, Ontario	***	***	***	***	***
Wonjin Europe	Velsen-Noord, the Netherlands	***	***	***	***	***
Worldwide	Tarentum, PA	***	***	***	***	***
Total			100.0	100.0	100.0	100.0
Note.—Because of rounding, figures may not add to the totals shown.						
Source: Compiled from data submitted in response to Commission questionnaires.						

percent and \*\*\* percent, respectively, then increased by \*\*\* percent and \*\*\* percent in interim 2009 compared with interim 2008. The unit value of imports of MCB from Mexico increased by \*\*\* percent from 2006 to 2008, and increased by \*\*\* percent in interim 2009 compared with interim 2008. The quantity and value of imports from other countries decreased by \*\*\* percent and by \*\*\* percent, respectively, from 2006 to 2008, and increased by \*\*\* percent and \*\*\* percent in interim 2009 compared with interim 2008. The unit value of imports of MCB from other sources increased by \*\*\* percent from 2006 to 2008, and increased by \*\*\* percent in interim 2009 compared with interim 2008.

Table IV-2

MCB: U.S. imports, by sources, 2006-08, January-June 2008, and January-June 2009

Source	Calendar year			January-June	
	2006	2007	2008	2008	2009
<b>Quantity (short tons)</b>					
China	40,441	38,337	44,891	26,780	10,879
Mexico	***	***	***	***	***
Subtotal	***	***	***	***	***
Nonsubject	***	***	***	***	***
Total	***	***	***	***	***
<b>Value (1,000 dollars)<sup>1</sup></b>					
China	26,546	26,939	36,643	20,642	9,014
Mexico	***	***	***	***	***
Subtotal	***	***	***	***	***
Nonsubject	***	***	***	***	***
Total	***	***	***	***	***
<b>Unit value (per short ton)<sup>1</sup></b>					
China	\$656	\$703	\$816	\$771	\$829
Mexico	***	***	***	***	***
Subtotal	***	***	***	***	***
Nonsubject	***	***	***	***	***
Average	***	***	***	***	***
<b>Share of quantity (percent)</b>					
China	***	***	***	***	***
Mexico	***	***	***	***	***
Subtotal	***	***	***	***	***
Nonsubject	***	***	***	***	***
Total	***	***	***	***	***
<b>Share of value (percent)</b>					
China	***	***	***	***	***
Mexico	***	***	***	***	***
Subtotal	***	***	***	***	***
Nonsubject	***	***	***	***	***
Total	***	***	***	***	***
<sup>1</sup> Landed, U.S. port of entry, duty-paid.					
Source: Compiled from data submitted in response to Commission questionnaires.					

## CUMULATION CONSIDERATIONS

In assessing whether subject imports are likely to compete with each other and with the domestic like product with respect to cumulation, the Commission generally has considered the following four factors: (1) the degree of fungibility, including specific customer requirements and other quality-related questions; (2) presence of sales or offers to sell in the same geographic markets; (3) common channels of distribution; and (4) simultaneous presence in the market. Channels of distribution and fungibility (interchangeability) are discussed in Part II of this report.

Petitioner has argued that U.S. imports of MCB from China and Mexico should be cumulated. It reports that substitutability between domestic and subject imports is high and that imports from China and Mexico are interchangeable.<sup>8</sup> The Petitioner argues that the geographic market for the Chinese product is national, and acknowledges that imports from Mexico enter largely through the Southwestern and Southeastern regions of the United States, but that \*\*\*.<sup>9</sup> Chinese, Mexican, and U.S. producers of MCB sell the majority of their product to end users.<sup>10</sup> The petitioner also argues that imported MCB was present in the U.S. market simultaneously with U.S.-produced MCB.<sup>11</sup>

Chinese respondents have argued that decumulation is not warranted based upon the current record and recommend that the Commission conduct its threat analysis on a cumulated basis.<sup>12</sup> However, the Chinese respondents conclude that the threat analysis does not change for China regardless of whether the data are viewed cumulatively or on a decumulated basis. Mexican respondents have argued that there is insignificant overlap between imports of MCB from Mexico and China, because the Mexican MCB is sold in different geographic markets and in insignificant quantities. Imports of Mexican MCB are transported overland to the Southeastern and Southwestern states and a few lower Midwestern states, whereas imports of MCB from China travel by ocean vessel to ports along both the east and west coasts and the north central region of the country.<sup>13</sup> However, Mexican respondents conclude that the outcome is the same whether imports from China and Mexico are cumulated or decumulated.<sup>14</sup>

## NEGLIGIBILITY

The statute requires that an investigation be terminated without an injury determination if imports of the subject merchandise are found to be negligible.<sup>15</sup> Negligible imports are generally defined in the Tariff Act of 1930, as amended, as imports from a country of merchandise corresponding to a domestic like product where such imports account for less than 3 percent of the volume of all such merchandise imported into the United States in the most recent 12-month period for which data are available that precedes the filing of the petition or the initiation of the investigation. However, if there are imports of such merchandise from a number of countries subject to investigations initiated on the same day that individually account for less than 3 percent of the total volume of the subject merchandise, and if the imports from those countries collectively account for more than 7 percent of the volume of all such merchandise imported into the United States during the applicable 12-month period, then imports

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<sup>8</sup> Petitioner's postconference brief, p. 14.

<sup>9</sup> Petitioner's postconference brief, p. 15.

<sup>10</sup> Table II-1.

<sup>11</sup> Petitioner's postconference brief, p. 16.

<sup>12</sup> Respondents Vesuvius' and Yingkou Bayuquan's postconference brief, p. 28, fn. 93.

<sup>13</sup> Respondent RHI's postconference brief, p. 7.

<sup>14</sup> *Ibid.*, p. 8.

<sup>15</sup> Sections 703(a)(1), 705(b)(1), 733(a)(1), and 735(b)(1) of the Act (19 U.S.C. §§ 1671b(a)(1), 1671d(b)(1), 1673b(a)(1), and 1673d(b)(1)).

from such countries are deemed not to be negligible.<sup>16</sup> Imports from China accounted for \*\*\* percent of total imports of MCB by quantity during July 2008 - June 2009. Imports from Mexico accounted for \*\*\* percent of total imports of MCB by quantity during July 2008 - June 2009.

### **APPARENT U.S. CONSUMPTION**

Data concerning apparent U.S. consumption of MCB during the period of investigation shown in table IV-3 and figure IV-1 are based on questionnaire responses. The quantity of apparent U.S. consumption increased by \*\*\* percent from 2006 to 2008, and then decreased by \*\*\* percent in interim 2009 compared with interim 2008. The steel industry is the sole end-use market for MCB, where they are used for the linings of ladles, electric arc furnaces, and basic oxygen furnaces.<sup>17</sup> The strong demand for MCB stopped around the fourth quarter of 2008 with the onset of the recession and the steep decline in U.S. steel production.<sup>18</sup> Steel production declined by 50 percent in the first half of 2009 compared with the same period in 2008.<sup>19</sup>

### **U.S. MARKET SHARES**

U.S. market share data are presented in table IV-4. The quantity of the U.S. producers' market share decreased by \*\*\* percentage points from 2006 to 2008 and by was \*\*\* percentage points lower in interim 2009 compared with interim 2008. In contrast, the share of subject imports from China increased from \*\*\* percent in 2006 to \*\*\* percent in 2008, on the basis of quantity, and increased from \*\*\* percent in interim 2008 to \*\*\* percent in interim 2009. The share of subject imports from Mexico decreased from \*\*\* percent in 2006 to \*\*\* percent in 2008, then increased from \*\*\* percent in interim 2008 to \*\*\* percent in interim 2009. Nonsubject imports' market share decreased from \*\*\* percent in 2006 to \*\*\* percent in 2008, and decreased to less than \*\*\* percent in interim 2009 compared with \*\*\* percent in interim 2008.

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<sup>16</sup> Section 771(24) of the Act (19 U.S.C. § 1677(24)).

<sup>17</sup> Conference transcript, p. 13 (Brown) and p. 119 (J.Stein).

<sup>18</sup> Petitioner's postconference brief, p. 9.

<sup>19</sup> Respondent Vesuvius' and Yingkou Bayuquan's postconference brief, p. 6. Respondent RHI's postconference brief, p. 10.

**Table IV-3**

**MCB: U.S. shipments of domestic product, U.S. shipments of imports, and apparent U.S. consumption, 2006-08, January-June 2008, and January-June 2009**

Item	Calendar year			January-June	
	2006	2007	2008	2008	2009
<b>Quantity (short tons)</b>					
U.S. producers' U.S. shipments	59,180	58,074	62,470	35,111	16,284
U.S. shipments of imports from-- China	32,976	36,184	42,072	26,899	15,682
Mexico	***	***	***	***	***
Subtotal	***	***	***	***	***
Nonsubject countries	***	***	***	***	***
Total U.S. import shipments	***	***	***	***	***
Apparent U.S. consumption	***	***	***	***	***
<b>Value (1,000 dollars)</b>					
U.S. producers' U.S. shipments	61,937	62,549	76,558	41,284	21,251
U.S. shipments of imports from-- China	25,460	30,057	37,905	23,323	15,329
Mexico	***	***	***	***	***
Subtotal	***	***	***	***	***
Nonsubject countries	***	***	***	***	***
Total U.S. import shipments	***	***	***	***	***
Apparent U.S. consumption	***	***	***	***	***
Note.--Because of rounding, figures may not add to the totals shown.					
Source: Compiled from data submitted in response to Commission questionnaires.					

**Figure IV-1**

**MCB: Apparent U.S. consumption, by sources, 2006-08, January-June 2008, and January-June 2009**

\* \* \* \* \*

**Table IV-4**

**MCB: U.S. consumption and market shares, 2006-08, January-June 2008, and January-June 2009**

\* \* \* \* \*

## RATIO OF IMPORTS TO U.S. PRODUCTION

Information concerning the ratio of imports to U.S. production of MCB is presented in table IV-5. Imports from China were equivalent to 55.5 percent of U.S. production during 2006, decreased to 53.9 percent during 2007, then increased to 63.7 percent in 2008, and were 62.5 percent in interim 2009 compared with 65.9 percent in interim 2008. Imports from Mexico were equivalent to \*\*\* percent of U.S. production during 2006, decreased to \*\*\* percent during 2007, then increased to \*\*\* percent in 2008, and were \*\*\* percent in interim 2009 compared with \*\*\* percent in interim 2008 .

**Table IV-5**

**MCB: U.S. production, U.S. imports, and ratios of imports to U.S. production, 2006-08, January-June 2008, and January-June 2009**

Item	Calendar year			January-June	
	2006	2007	2008	2008	2009
<b>Quantity (<i>short tons</i>)</b>					
U.S. production	72,895	71,125	70,441	40,633	17,412
Imports from:					
China	40,441	38,337	44,891	26,780	10,879
Mexico	***	***	***	***	***
Subtotal	***	***	***	***	***
Nonsubject countries	***	***	***	***	***
Total imports	***	***	***	***	***
<b>Ratio of U.S. imports to production (<i>percent</i>)</b>					
Imports from:					
China	55.5	53.9	63.7	65.9	62.5
Mexico	***	***	***	***	***
Subtotal	***	***	***	***	***
Nonsubject countries	***	***	***	***	***
Total imports	***	***	***	***	***
Note.—Because of rounding, figures may not add to the totals shown.					
Source: Compiled from data submitted in response to Commission questionnaires.					





## **PART V: PRICING AND RELATED INFORMATION**

### **FACTORS AFFECTING PRICES**

#### **Raw Material Costs**

Raw material costs accounted for approximately 74 percent of the total cost of goods sold for U.S. producers during 2006 to 2008. Per unit raw material costs fell by 2 percent between 2006 and 2007 and then increased by 26 percent between 2007 and 2008 and by 9 percent in interim 2009 compared to interim 2008. Magnesia is the main raw material used to produce MCB. Petitioner indicates that it purchases \*\*\* used in the production of MCB. Petitioner's prices for \*\*\*.<sup>1</sup> \*\*\*.<sup>2</sup> \*\*\*.<sup>3</sup> In February 2008, the Freedonia Group projected that the price of refractories made of magnesite and chrome would increase by 18 percent between 2006 and 2011 and by 15 percent between 2011 and 2016.<sup>4</sup>

#### **U.S. Inland Transportation Costs**

Transportation costs for U.S. inland shipments of MCB generally account for a small-to-moderate share of the delivered price of these products. U.S. producers reported that the costs ranged from 4 to 7 percent of the delivered price for MCB, while U.S. importers reported that the costs ranged from 2 to 14 percent of the delivered price for MCB.

### **PRICING PRACTICES**

#### **Pricing Methods**

All producers reported using transaction-by-transaction negotiations for some of their sales of MCB, with one producer (\*\*\*) reporting using a price list and another (\*\*\*) reporting using contracts. Most importers reported that the prices that they charge for their sales are determined using transaction-by-transaction negotiations, although a few reported using contracts and price lists. The remaining responding producers and importers make their sales on both f.o.b. and delivered bases. Both responding producers and four of 12 importers reported that at least 50 percent of their sales of MCB were from inventory. Seven of 12 responding importers reported that at least 95 percent of their sales are made to order.

One of two responding producers and seven of 14 responding importers reported making at least 69 percent of their sales on a short-term contract basis, with these contracts lasting from three months to one year. Four of 14 responding importers reported making at least 75 percent of their sales on a spot basis. One producer (\*\*\*) and two importers (\*\*\*) reported making about one-half of their sales on a long-term contract basis, with \*\*\*'s contracts lasting two to three years and \*\*\*'s contracts lasting 6 months to one year.

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<sup>1</sup> Petitioner's postconference brief, pp. 5-6 and exh. 12.

<sup>2</sup> Staff telephone interview with \*\*\*, September 2, 2009.

<sup>3</sup> Ibid.

<sup>4</sup> Industry Study 2309: Refractories, The Freedonia Group, Inc. (February 2008), pp. 25-26 and table II-4, attached in Exhibit S-4 of Petitioner's Responses to Questions Regarding Additional Subsidy Allegations, August 7, 2009.

## Lead Times

U.S. producers reported lead times from inventory ranging from one to three days and lead times for sales of product-to-order of one to eight weeks. Lead times for delivery for all but one responding U.S. importer ranged from one day to one week on sales from inventory and most importers reported lead times on sales of product produced-to-order ranging from 8 to 14 weeks. All but one responding producer and all responding importers reported that they generally arrange for the transportation to their customers' locations. Both responding U.S. producers and five of 14 responding importers reported making at least 60 percent of their sales within 101 to 1,000 miles of their storage or production facilities. Three of 14 responding importers reported making all of their sales over 1,000 miles from their storage or production facilities and five of 14 responding importers reported making at least 60 percent of their sales within 1,000 miles of their storage or production facilities.

## Sales Terms and Discounts

One of three responding producers and 8 of 14 responding importers indicated that they do not offer discounts for their sales of MCB. The other remaining producers and importers reported the use of quantity discounts, annual volume discounts, or providing discounts on a case-by-case basis. Two of three reporting producers and two of 12 importers reported making all of their sales of MCB on an f.o.b basis. Seven of 12 responding importers reported using a delivered basis for at least most of their shipments.

## PRICE DATA

The Commission requested U.S. producers and importers of MCB to provide quarterly data for the total quantity and f.o.b. value of MCB that was shipped to unrelated customers in the U.S. market during January 2006-June 2009. The products for which pricing data were requested are as follows:

***Product 1.***--Resin bonded, magnesia-carbon brick for electric arc furnaces with a carbon content of 13 percent, fused grain and antioxidant additions that correspond to Resco's brand Nuline 10-99, with the following dimensions: 13½ x 6 x 3 No. 1 key.

***Product 2.***--Resin bonded, magnesia-carbon brick for ladles with a carbon content of 10 percent, fused grain and antioxidant additions that correspond to Resco's brand Maxline 10 DFZ with the following dimensions: SU 6 x 60 x 100 mm.

***Product 3.***--Resin bonded, magnesia-carbon brick for ladles with a carbon content of 10 percent, fused grain and antioxidant additions that correspond to Resco's brand Maxline 10 AFX, with the following dimensions: 7 x (6-5½) x 3 inch mini key.

Three U.S. producers, 11 importers of MCB from China, and one importer of MCB from Mexico provided usable pricing data for sales of the requested products, although not all firms reported pricing for all products for all quarters. Pricing data reported by these firms accounted for approximately 24.8 percent of U.S. producers' shipments of MCB, 17.2 percent of U.S. shipments of subject imports from China, and \*\*\* percent of U.S. shipments of subject imports from Mexico in 2008.

Several importers of Chinese MCB reported price data for products that did not exactly meet the specifications of one of these price products, but they felt were competitive with one of the specified

products.<sup>5</sup> Petitioner indicates that in these cases, reported product descriptions differed from the specified product descriptions by only \*\*\* and that such small differences would not have any meaningful impact on product prices.<sup>6</sup> Vesuvius and Yingkou Bayuquan respondents cited the difficulty that questionnaire respondents had in identifying which of their products conformed most closely to the price products as one among several reasons why the Commission should regard the apparent absolute margins of underselling with some caution.<sup>7</sup> However, they also indicated that quarterly pricing data as a whole confirm the trends evident from import shipment unit value data and regarding product 2, that given the vast diversity of products and the degree to which this mix is customized to particular customers' requirements, it may be difficult to establish pricing categories that will be more representative of actual competition than product 2.<sup>8</sup> RHI respondents indicated that prices reported by importers may vary substantially and differ materially from prices reported by petitioner and possibly other domestic producers because the pricing product descriptions were most vague in describing the composition of the products, where variations will have a significant impact on price.<sup>9</sup>

### Price Trends

Price data are shown in tables V-1 to V-2 and figure V-1. Data for products 2 and 3 are combined since \*\*\*, was unable to provide separate data for the two products.<sup>10</sup>

Weighted-average sales prices for U.S.-produced MCB increased by 4.4 percent to 15.2 percent, while weighted-average sales prices for products imported from China and Mexico increased by 10.9 percent to 28.7 percent (see table V-3).

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<sup>5</sup> For product 1, \*\*\* reported data for a product specified as “resin bonded MC, elec.-arc furnace, carbon \*\*%, fused grain, \*\*\*, 18x6x3 key. \*\*\* reported data for “EAF MCB, \*\*\*. \*\*\* reported data for a product for which “shape and quality used for comparison is similar to the requested example.” \*\*\* indicated that “\*\*\* has reasonably comparable specifications for Products 1 and 2 as demonstrated in the product specifications below. In addition, since \*\*\* product sizes do not match the sizes selected in the pricing categories, \*\*\* has provided quantities and values that combine all sizes of the relevant specification. Although prices vary on a per piece basis because of size differences, there is no significant difference among sizes on a per-ton basis. \*\*\* reported data for a product with the “same dimensions but carbon contents of \*\*\*.”

For product 2, \*\*\* reported data for a product specified as “resin bonded MC, ladles, carbon \*\*%, fused grain, \*\*\*.” \*\*\* indicated that it does not “have exact knowledge of RESCO products but our MCB slag lines are with \*\*\*. \*\*\* indicated that “shape is the same, but quality may differ slightly due to lack of mix details” for the product for which it provided data. As noted for product 1, \*\*\* has provided quantities and values that combine all sizes of the relevant specification. \*\*\* indicated that the product it provided data for had the “same dimensions but carbon contents of \*\*\*.”

For product 3, \*\*\* provided data for a product for which, “shape is a mini-key in similar style but not exact shape.”

<sup>6</sup> Petitioner's postconference brief, exhibit 1, p. 6.

<sup>7</sup> Respondent Vesuvius and Yingkou Bayuquan's postconference brief, p. 17.

<sup>8</sup> Ibid., p. 17 and 19, fn. 69.

<sup>9</sup> Respondent RHI's postconference brief, p. 19.

<sup>10</sup> \*\*\*.

Price trends and margins of underselling and overselling are similar for products 2 and 3 combined (with \*\*\* data included), as they are for products 2 and 3 separately (without \*\*\* data). However, the relative quantities reported by U.S. producers and importers (excluding \*\*\*), for products 2 and 3 were different. For U.S. producers (not including \*\*\*), quantities reported for product 3 were more than \*\*\* times those reported for product 2 (and no sales of product 2 were reported for 2006). However, for imports, quantities reported were much higher for product 2 than product 3. For China, quantities reported for product 2 were about \*\*\* times those reported for product 3 (this does not include \*\*\*). Data for Mexico were reported \*\*\*.

Table V-1

MCB: Weighted-average f.o.b. prices and quantities of domestic and imported product 1<sup>1</sup> and margins of underselling/(overselling), by quarters, January 2006-June 2009

\* \* \* \* \*

Table V-2

MCB: Weighted-average f.o.b. prices and quantities of domestic and imported products 2<sup>1</sup> and 3<sup>2</sup> (combined) and margins of underselling/(overselling), by quarters, January 2006-June 2009

Period	United States		China			Mexico		
	Price (per ton)	Quantity (tons)	Price (per ton)	Quantity (tons)	Margin (percent)	Price (per ton)	Quantity (tons)	Margin (percent)
<b>2006:</b>								
Jan.-Mar.	\$***	***	\$936	1,052	***	\$***	***	***
Apr.-June	***	***	920	1,102	***	***	***	***
July-Sept.	***	***	912	1,362	***	-	0	-
Oct.-Dec.	***	***	898	1,263	***	-	0	-
<b>2007:</b>								
Jan.-Mar.	***	***	914	1,731	***	-	0	-
Apr.-June	***	***	939	1,643	***	-	0	-
July-Sept.	***	***	929	1,659	***	***	***	***
Oct.-Dec.	***	***	958	1,195	***	***	***	***
<b>2008:</b>								
Jan.-Mar.	***	***	986	1,835	***	-	0	-
Apr.-June	***	***	1,035	1,546	***	***	***	***
July-Sept.	***	***	1,079	1,463	***	***	***	***
Oct.-Dec.	***	***	1,090	890	***	***	***	***
<b>2009:</b>								
Jan.-Mar.	1,204	139	1,100	884	***	-	0	-
Apr.-June	***	***	1,099	1,108	***	-	0	-

<sup>1</sup> Product 2: Resin bonded, magnesia-carbon brick for ladles with a carbon content of 10 percent, fused grain and antioxidant additions that correspond to Resco's brand Maxline 10 DFZ with the following dimensions: SU 6 x 60 x 100 mm.

<sup>2</sup> Product 3: Resin bonded, magnesia-carbon brick for ladles with a carbon content of 10 percent, fused grain and antioxidant additions that correspond to Resco's brand Maxline 10 AFX, with the following dimensions: 7 x (6-5½) x 3 inch mini key.

Source: Compiled from data submitted in response to Commission questionnaires.

**Figure V-1**  
**MCB: Weighted-average f.o.b. prices and quantities of domestic and imported product, by quarters, January 2006-June 2009**

\* \* \* \* \*

Source: Tables V-1 to V-2.

**Table V-3**  
**MCB: Summary of weighted-average f.o.b. prices for products 1, 2, and 3 from the United States, China, and Mexico**

Item	Number of quarters	Low price (per ton)	High price (per ton)	Change in price <sup>1</sup> (percent)
<b>Product 1</b>				
United States	14	1,007	1,376	15.2
China	14	889	1,368	10.9
Mexico	***	***	***	***
<b>Products 2 and 3</b>				
United States	14	966	1,226	4.4
China	14	898	1,100	17.4
Mexico	***	***	***	***
<sup>1</sup> Percentage change from the first quarter in which price data were available to the last quarter in which price data were available, based on unrounded data.				
Source: Compiled from data submitted in response to Commission questionnaires.				

### Price Comparisons

Margins of underselling and overselling for the period are presented in table V-4.<sup>11</sup> As can be seen from the table, prices for MCB imported from China were below those for U.S.-produced MCB in 27 of 28 instances; margins of underselling ranged from 0.8 to 21.0 percent. In the remaining instance, prices for MCB from China were 27.5 percent above prices for the domestic product. Prices for MCB imported from Mexico were below those for U.S.-produced MCB in 12 of 13 instances; margins of underselling ranged from 4.7 to 32.1 percent. In the remaining instance, prices for MCB from Mexico were 22.8 percent above prices for the domestic product.

<sup>11</sup> The following are the results if price data for products 2 and 3 are not combined (thus excluding \*\*\* data for these products). Prices for MCB imported from China were below those for U.S.-produced MCB in 33 of 36 instances; margins of underselling ranged from 0.2 to 25.3 percent. Prices for MCB imported from China were higher in 3 instances, with margins of overselling ranging from 0.9 to 27.5 percent. Prices for MCB imported from Mexico were below those for U.S.-produced MCB in 10 of 11 instances; margins of underselling ranged from 0.4 to 29.6 percent. Prices for MCB imported from Mexico were higher in one instance with a margin of overselling of 22.8 percent.

**Table V-4**

**MCB: Instances of underselling/overselling and the range and average of margins, January 2006-June 2009<sup>1</sup>**

Source	Underselling			Overselling		
	Number of instances	Range (percent)	Average margin (percent)	Number of instances	Range (percent)	Average margin (percent)
China	27	0.8 to 21.0	11.1	1	-	27.5
Mexico	12	4.7 to 32.1	16.7	1	-	22.8
<b>Total</b>	<b>39</b>	<b>0.8 to 32.1</b>	<b>12.8</b>	<b>2</b>		<b>25.1</b>

<sup>1</sup> Based on data for products 2 and 3 combined.

Source: Compiled from data submitted in response to Commission questionnaires.

**LOST SALES AND LOST REVENUES**

The Commission requested U.S. producers of MCB to report any instances of lost sales or revenues they experienced due to competition from imports of MCB from China and/or Mexico during January 2006-June 2009. Petitioner provided both allegations of lost sales and revenues in the petition. Of the two responding non petitioning U.S. producers (\*\*\*) and (\*\*\*), neither reported that it had to either reduce prices or roll back announced price increases. One of these producers (\*\*\*) indicated that \*\*\*. However, both of these producers indicated that they had lost sales of MCB to imports from China and Mexico and provided lost sales allegations. The 15 lost sales allegations totaled \$4.7 million and involved 4,482 tons and the four lost revenues allegations totaled \$419,547 and involved 1,335 tons of MCB.<sup>12</sup> Staff contacted 14 purchasers and a summary of the information obtained follows (tables V-5 and V-6).

**Table V-5**

**MCB: U.S. producers' lost sales allegations**

\* \* \* \* \*

**Table V-6**

**MCB: U.S. producers' lost revenue allegations**

\* \* \* \* \*

S&S Intersource indicates that it is important to examine whether the lost sales and revenue allegations involve integrated steel mill or steel mills with electric arc furnaces.<sup>13</sup> S&S Intersource feels that many of Resco's long term relationships were with integrated steel mills selling BOF linings and the ladles in those BOF plants, and that if "ET Works, Fairfield, Granite City, the big mills on the lakes in Michigan, and Sparrows Point" represent a significant portion of Resco's customer base, they lost volume

<sup>12</sup> Any pre-petition allegations submitted in petitioner's producer questionnaire response were not included or verified.

<sup>13</sup> Conference transcript, pp. 116-117 (J. Stein).

because the steel mills that they serve shut down.<sup>14</sup> Of the purchasers named in lost sales and lost revenue allegations, \*\*\* are integrated steel mills. \*\*\*.

\*\*\* indicated that the company could only track transactions \*\*\* for the lost sales allegation made by \*\*\* and involving \*\*\* and that it was possible that he company purchased product originating from the alleged source \*\*\*. \*\*\*.<sup>15</sup> \*\*\*.<sup>16</sup> After further checking \*\*\* records, \*\*\* indicated that prior to \*\*\* did not purchase the product from \*\*\*.<sup>17</sup>

\*\*\* agreed with the two lost sales allegation involving his firm made by \*\*\*, but indicated that the alleged prices were higher. \*\*\*.

\*\*\* disagreed with the sales allegation made by \*\*\* involving \*\*\* tons of MCBs. \*\*\*. \*\*\* indicated that the decision to purchase from a Chinese source was based more on technical specifications rather than price. \*\*\* indicated that his firm reviewed the technical specifications and decided that the Chinese brick formulation best suited its operational parameters. He indicated that the prices quoted by the Chinese supplier were about \*\*\* percent below the price quoted by the U.S. supplier, but that this is not a true comparison because the brick specifications were not the same resulting in one of the main reasons for the difference in price. \*\*\* indicated that the U.S. supplier is a key supplier to his business and that in 2008 \*\*\*.

\*\*\* disagreed with the lost allegation made by \*\*\*. \*\*\* indicated that the sale was lost due to service issues, not price.

\*\*\* disagreed with the lost sales allegation involving \*\*\*. They indicated that this was a trial order. They also indicated that the price provided in the allegation is comparable to those offered by other suppliers of U.S.-produced MCB and imports of MCB except for \*\*\*.

Regarding the lost sales allegation made by \*\*\* indicated his firm had purchased MCB from \*\*\*, and has preferred to source its material inputs domestically. \*\*\* approached \*\*\* and stated that it was not particularly interested in supplying \*\*\* with magnesia brick. \*\*\* indicated that \*\*\*. He indicated that only after \*\*\* informed his company of its decision to not actively solicit its business did his company seek to source magnesia brick from other vendors and in this case a Chinese vendor. \*\*\* indicated that his current price from his suppliers of Chinese-origin magnesia bricks is approximately \*\*\* percent higher than the price at which it was procuring bricks from \*\*\*.

\*\*\* indicated that he purchased both U.S.-produced MCB and MCB imported from Mexico. \*\*\*.<sup>18</sup> He also currently purchases MCB from \*\*\* (the U.S. producer that made the lost sales allegation), \*\*\*. He indicated that “price was not the bottom line” in making his purchase decision, but that price, quality, and service all are important factors. He indicated that he strives for \*\*\* and that imports of MCB from Mexico are priced “a little lower” than from other sources. He indicated that service is good from \*\*\*. He also indicated that part of his decision to purchase from \*\*\* is based on the relationship and familiarity he has with the company \*\*\*. He indicated that \*\*\* has higher-priced products than \*\*\* and that its service is not as good as other suppliers since it does not have \*\*\*. He also indicated that he never relies totally on one supplier and that he never purchases MCB \*\*\*.

\*\*\* indicated that he had purchased or considered quotes for MCB imported from China for some but not all of the products listed in the lost revenue allegation made by \*\*\*. For the \*\*\* products specified in the allegation, \*\*\* indicated that he did not consider any quotes for MCB imported from China and only considered quotes for domestically produced MCB. For the other products mentioned in the allegation, he indicated that the alleged quotes for the imported product were pretty close to the actual

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<sup>14</sup> Transcript, pp. 119-120 (Joseph Stein). S&S Intersource also indicated that in some cases Resco may have had a terrible payment history with some mills and indicated that it would provide details in a postconference submission. However, S&S Intersource did not make a postconference submission.

<sup>15</sup> Staff telephone interview with \*\*\*, August 14, 2009.

<sup>16</sup> E-mail from \*\*\*, August 17, 2009.

<sup>17</sup> E-mail from \*\*\*, August 24, 2009.

<sup>18</sup> \*\*\*.

quotes. Although he has purchased MCB imported from China, he indicated that he will only use domestically produced magnesia carbon bricks in some parts of his furnace \*\*\*.<sup>19</sup> \*\*\* indicated that because of \*\*\*, he currently requires various suppliers to \*\*\* indicated that the quality of the product is the most important factor in determining from what source he will purchase and that service and price are equally considered as the second-most important factors in determining a purchase. He indicated that he typically \*\*\*, and that quality and service for U.S.-produced MCB and MCB imported from China are comparable.

\*\*\* agreed with the lost sales allegation made by \*\*\* involving his firm. However, he indicated that the alleged competing prices were larger. \*\*\*. All of these revised prices were below the alleged rejected U.S. prices for each of these products.

\*\*\* indicated that he did not recognize the quantities or dollar amounts regarding the two lost revenue allegations involving his company made by \*\*\*. He indicated that he purchases some refractories from \*\*\*, but the date provided and the large dollar amounts are not familiar to him. \*\*\* is unaware of any domestic suppliers that are losing sales or revenue regarding any recent/current purchases.

In a staff interview on August 26, 2009, \*\*\* indicated that \*\*\* could neither confirm nor deny the lost sales allegation involving \*\*\* made by \*\*\* because the company does not keep records in a way that would allow it to confirm or deny the allegation.

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<sup>19</sup> Staff telephone interview with \*\*\*, August 11, 2009.



## PART VI: FINANCIAL EXPERIENCE OF U.S. PRODUCERS

### BACKGROUND

Three U.S. firms provided usable financial data on their operations producing MCB.<sup>1</sup> These reported data are believed to represent over \*\*\* percent of U.S. MCB production during 2008.

### OPERATIONS ON MCB

Income-and-loss data for the reporting U.S. producers of MCB are presented in table VI-1. The quantity, value, and average unit value (“AUV”) of total net sales increased from 2006 to 2007. Although the quantity of total net sales declined \*\*\* from 2007 to 2008, sales value increased because of \*\*\* higher average unit values. In interim 2009 compared with interim 2008, total net sales were \*\*\* lower (down \*\*\* percent and \*\*\* percent by quantity and value, respectively because of the falloff in raw steel production) although sales unit values were higher. The absolute values of the cost of goods sold (“COGS”) and selling, general, and administrative (“SG&A”) expenses followed the trend of sales, increasing from 2006 to 2008, and were lower in interim 2009 than in interim 2008. The AUV of COGS declined from 2006 to 2007 (unlike sales, which rose) but was \*\*\* higher in 2008 from 2007; it was greater in interim 2009 than in interim 2008 (like sales).<sup>2</sup> The COGS-to-sales ratio declined between 2006 and 2007 but increased in 2008 for a net gain of about \*\*\* over the level in 2006; the ratio was \*\*\* lower in interim 2009 than in interim 2008. The AUV of SG&A expenses rose \*\*\* from 2006 to 2007 and rose once more in 2008 from 2007; it was \*\*\* higher in interim 2009 than interim 2008 and led to the industry’s \*\*\*. The SG&A expense-to-sales ratio was \*\*\* lower in 2008 compared to 2006 but was \*\*\* higher in interim 2009 than in interim 2008.<sup>3</sup> For the three firms together, operating income \*\*\* from 2006 to 2007 as sales increased due to demand from steel industry end users and costs did not increase proportionately, but operating income fell back in 2008 to nearly the level in 2006. One factor accounting for the increase in operating income between 2006 and 2008 was that \*\*\*. Operating income was \*\*\* lower (\*\*\*) in interim 2009 compared with interim 2008 because \*\*\*; moreover, \*\*\*. Net income before taxes and cash flow increased from 2006 to 2007 and fell in 2008; net income was negative in 2008 and both interim periods. Cash flow was \*\*\* in interim 2008 and negative in interim 2008.<sup>4</sup>

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<sup>1</sup> The firms are: ANH, LWB, and Resco. TYK America \*\*\*. Letter from TYK America, Inc., August 10, 2009. Each of the reporting firms has a fiscal year that ends on or about December 31. There are minor differences between data reported in the trade and financial sections of the Commission’s producers’ questionnaire, which are attributable to rounding.

<sup>2</sup> During the period for which data were collected COGS was primarily affected by changes in raw material costs. The average unit value (“AUV”) of sales was higher in 2007 compared with 2006 while the AUVs of raw materials and COGS were lower; sales AUV was higher in 2008, nearly matched by the increase in the AUV of raw materials in that year compared with 2007 (the increase in the AUV of total COGS exceeded that of sales in 2008 because other factory costs and direct labor also increased). Finally, the sales AUV was \*\*\* higher in interim 2009 compared to interim 2008, and the increase in sales AUV was \*\*\* greater than the increase in the AUVs of raw materials or total COGS.

<sup>3</sup> The SG&A expense-to-sales ratio and AUVs were \*\*\* for the 2006-08 period for \*\*\*, but these measures were \*\*\*. \*\*\*.

<sup>4</sup> Net income before taxes is calculated after deducting interest charges (the largest single item) and other expenses and adding other income items to operating income. Cash flow is the sum of net income plus depreciation. \*\*\*. U.S. producers’ questionnaire responses, III-11.

**Table VI-1**  
**MCB: Results of operations of U.S. producers, 2006-08, January-June 2008, and January-June 2009**

\* \* \* \* \*

Raw materials utilized in the production of MCB include such inputs as magnesite, aluminum and silicon powdered metal, carbon, and resin.<sup>5</sup> COGS were mostly affected by changes in raw material costs. Raw material costs declined \*\*\* from 2006 to 2007 but rose in absolute value, as a percentage of net sales, and on a per-unit basis from 2007 to 2008. On a per-unit basis, raw material costs were higher in interim 2009 than in interim 2008 (the absolute value and ratio to sales, however, were lower). Raw material costs also increased as a share of total COGS, from \*\*\* percent in 2006 to \*\*\* percent in 2008 and were \*\*\* percent in interim 2009 (\*\*\* than \*\*\* in interim 2008. Raw material costs averaged \$\*\*\* per short ton of sales in 2008 for the three reporting U.S. producers (up \*\*\* from \$\*\*\* per short ton in 2006, and ranged from \$\*\*\* to \$\*\*\* per short ton of sales on a firm-by-firm basis.<sup>6</sup> Raw material costs increased further in 2009, averaging nearly \$\*\*\* for the three firms together and ranging from \$\*\*\* to \$\*\*\*. Resco stated that in order to reduce raw material input costs, it began reclaiming unused brick to use in MCB mixes as a replacement for higher priced virgin materials, as well as processing “spent linings” from steelmakers in 2006.<sup>7</sup> Resco alleges that export restraints in China on magnesia raw materials have restricted supply and resulted in higher prices in the United States.<sup>8</sup>

Table VI-2 depicts operating data for MCB on a firm-by-firm basis.

**Table VI-2**  
**MCB: Selected results of operations of U.S. producers, by firm, 2006-08, January-June 2008, and January-June 2009**

\* \* \* \* \*

ANH, which produces MCB at White Cloud, MI, \*\*\*. It was \*\*\* of the periods for which data were gathered—\*\*\*. The quantity and value of ANH’s sales \*\*\* between 2006 and 2007 and \*\*\* in 2008, but were \*\*\* in interim 2009 (\*\*\* than in interim 2008.<sup>9</sup> Its operating income margin \*\*\* in 2008 from 2007 \*\*\*. ANH reported \*\*\*.<sup>10</sup>

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<sup>5</sup> Natural gas and electricity also are used in the production process. Petition, exh. 11. Also, *see* Petitioner’s postconference brief, exh. 1, pp. 5-6 and exh. 12 (\*\*\*).

<sup>6</sup> Calculated from the questionnaire responses of the three firms, III-11. The upward price trend for magnesia raw materials during 2005-08 is depicted in exh. 12 of petitioner’s postconference brief, \*\*\*. Reportedly, purchases \*\*\*. Staff interview with \*\*\*, September 2, 2009.

<sup>7</sup> Conference transcript, p. 54 (Brown). Also, \*\*\*. Resco’s U.S. producers’ questionnaire response, IV-15, and Petitioner’s postconference brief, exh. 1, p. 7. \*\*\*.

<sup>8</sup> Resco argues that its profitability declined as prices could not be increased to keep up with escalating Chinese raw material costs for key inputs of MCB (magnesia and graphite), while imports of MCB were selling at less than fair value. Conference transcript, p. 38 (Magrath) and Petitioner’s postconference brief, exh. 12. Additionally Resco referred to U.S. proposed consultations on Chinese export restraints under Section 301 (USTR filing with the WTO in June 2009) and a private lawsuit alleging price fixing by an export cartel. Conference transcript, p. 38 (Magrath). *See* Resco’s responses to Commerce’s questions regarding additional subsidy allegations, letter dated August 7, 2009, pp. 3-5; Freedomia Refractory Industry Study 2008, exh. S-4; and Expert Report Concerning Damages, exh. S-5.

<sup>9</sup> ANH \*\*\*. EDIS document 409563.

<sup>10</sup> In 2008, ANH reported \*\*\*.

LWB produces MCB at its plant in York, PA (\*\*\* of that plant's production). In 2008, LWB was the \*\*\*. It was \*\*\* of the periods for which data were collected; its operating income margin \*\*\*. The value and AUV of LWB's sales increased between 2006 and 2008. Although its sales in interim 2009 were lower than in interim 2008, the average unit value of its sales was greater. The AUVs of LWB's sales and COGS \*\*\*.

Resco is the \*\*\*. Unlike \*\*\*. Resco's total net sales value rose from 2006 to 2008, but was \*\*\*. The increase between 2006 and 2007 was from \*\*\*. Resco's \*\*\*.<sup>11</sup> Its SG&A expenses are \*\*\*. Starting in July 2008, Resco cut costs at its Hammond, IN, plant through \*\*\*. Resco \*\*\*.<sup>12</sup>

Each of the responding firms provided a breakdown between fixed costs and variable costs<sup>13</sup> in their questionnaire response. For the three firms together, fixed costs accounted for about \*\*\* percent of COGS and \*\*\* percent of SG&A expenses in 2008.<sup>14</sup> While the fixed cost portion of COGS seems very low, it should be noted that raw materials costs, chiefly forms of magnesia, accounted for about \*\*\* percent of total COGS in 2008. Based on the breakdown between fixed and variable costs, the breakeven point, which is the quantity sold where total revenues and total costs are equal,<sup>15</sup> can be calculated for the five firms. That point was \*\*\* short tons in 2008 and constituted nearly \*\*\* percent of the reported production of the three firms together in 2008; only \*\*\* percent of its production in 2008, the year in which \*\*\*. The breakeven points of \*\*\* in 2008 were \*\*\* and \*\*\* percent, respectively.

A variance analysis for the operations of U.S. producers of MCB is presented in table VI-3. The information for this variance analysis is derived from table VI-1.<sup>16</sup> The analysis shows that the increase of \$\*\*\* in the operating income from 2006 to 2008 was attributable to the favorable price variance (unit sales values increased) that was greater than the unfavorable net cost/expense variance (unit costs increased). Operating income fell by nearly \$\*\*\* between interim 2008 and interim 2009 because a

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<sup>11</sup> Resco's raw material costs are \*\*\*. However, there appear to be \*\*\*.

<sup>12</sup> In 2008, Resco reported \*\*\*. Calculated from Resco's \*\*\* questionnaire responses.

<sup>13</sup> Raw material costs are "variable costs" (i.e., the dollar value varies directly with production and the AUV of a variable cost stays the same unless the underlying cost of the input changes). The dollar value of "fixed costs" stays the same but the AUV changes with variations in how the fixed costs are absorbed by changes in production. While the absolute value of fixed costs remains the same, the AUVs of fixed costs varies inversely with production changes—they rise when production falls and decrease with production increases. Variable costs increase or decrease with changes in production although the AUV of variable costs stays the same with changes in production. \*\*\* of the reporting firms stated that raw material costs are variable costs and \*\*\* classified direct labor as a variable cost. Other factory costs include both fixed costs (depreciation, insurance, plant management) and variable costs (indirect materials, electricity, utility charges). The three reporting firms \*\*\* but were split on the nature of other factory costs—\*\*\*. In 2008, the fixed cost component accounted for \*\*\* percent of other factory costs. SG&A expenses also have fixed and variable components. About \*\*\* percent of total SG&A expenses were estimated to be fixed costs in 2008.

<sup>14</sup> Compiled from data submitted in response to Commission questionnaires.

<sup>15</sup> The breakeven point, or the point to which sales/production can fall before the firm loses money, can be calculated as sales minus variable costs minus fixed costs equals zero. Sales minus variable costs is the contribution margin. Rearranging the equation, the quantity at the breakeven point equals fixed costs in dollars divided by the unit contribution margin. The validity of this calculation depends upon a number of crucial assumptions. See, Charles T. Horngren, George Foster, Srikant M. Datar, *Cost Accounting: A Managerial Emphasis* (New Jersey: Prentice Hall, 9<sup>th</sup> Ed, 1997), p. 60.

<sup>16</sup> A variance analysis is calculated in three parts: sales variance, cost of sales variance, and SG&A expense variance. Each part consists of a price variance (in the case of the sales variance) or a cost variance (in the case of the cost of sales and SG&A expense variance) and a volume variance. The sales or cost variance is calculated as the change in unit price times the new volume, while the volume variance is calculated as the change in volume times the old unit price. Summarized at the bottom of the table, the price variance is from sales; the cost/expense variance is the sum of those items from COGS and SG&A variances, respectively, and the volume variance is the sum of the lines under price and cost/expense variance. The volume component of price variance is nearly always negative because of the way in which the spreadsheet is constructed.

favorable price variance (unit prices increased) was overwhelmed by unfavorable variances on net cost/expense (unit costs and expenses increased) and volume.

**Table VI-3**

**MCB: Variance analysis on the operations of U.S. producers, 2006-08, and January-June 2008 to January-June 2009**

\* \* \* \* \*

### CAPITAL EXPENDITURES AND RESEARCH AND DEVELOPMENT EXPENSES

Each of the U.S. producers was asked about the nature of their capital expenditures and research and development (“R&D”) expenses (table VI-4). ANH reported that \*\*\*. LWB stated that \*\*\*. Resco stated that its \*\*\*.<sup>17</sup> Resco’s R&D expenses \*\*\*.<sup>18</sup>

**Table VI-4**

**MCB: Capital expenditures and research and development expenses of U.S. producers, 2006-08, January-June 2008, and January-June 2009**

\* \* \* \* \*

### ASSETS AND RETURN ON INVESTMENT

Data on the U.S. producers’ total assets and their return on investment (“ROI”) are presented in table VI-5. Total assets utilized in the production, warehousing, and sale of MCB for reporting U.S. producers increased by \*\*\* percent from 2006 to 2008 led by \*\*\*, which nearly \*\*\*. ROI, which is calculated as the ratio of operating income to total assets, therefore followed the trend of operating income, and was higher in 2007 from 2006 but fell back in 2008 to nearly the level it had been in 2006.

**Table VI-5**

**MCB: The value of assets and return on investment of U.S. producers, fiscal years 2006–08**

\* \* \* \* \*

Two asset management ratios, which measure how effectively the firm is managing its assets, may also be calculated from these data. These ratios assist in answering the question of whether a firm’s types and amounts of assets assist its current and projected sales. The ratios examined here are: (1) the inventory turnover ratio; and (2) days sales outstanding.

The inventory turnover ratio is defined as sales divided by average inventories of finished goods. As a rough approximation, this measures the number of times per year that inventory is turned over or sold. A low number suggests that a firm is holding excess or unproductive inventory (unproductive inventory represents low return). For the three firms together this ratio was \*\*\* times in 2008, up from \*\*\* times and \*\*\* times in 2006 and 2007, respectively. The increase in the ratio is due to the increase in

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<sup>17</sup> Resco stated at the staff conference that it planned to install a hydraulic press at Hammond in 2006 to prepare for a potential increase in MCB production due to increasing demand from steel producers. It claimed that low-priced imports from China and Mexico captured the increased volume of MCB, and that the press sits uninstalled and unused. Conference transcript, p. 19 (Brown). Resco also stated that \*\*\*. Resco’s U.S. producers’ questionnaire response, III-14.

<sup>18</sup> Resco stated \*\*\*. Resco’s U.S. producers’ questionnaire response, III-14.

sales value and the decline in value of inventories during the three full years. For \*\*\* the increase was greater than the industry average—\*\*\* in 2008 from 2006, respectively, while the ratio for \*\*\*.<sup>19</sup>

Days sales outstanding (“DSO”), which is also called the average collection period, may be used to evaluate accounts receivable. It is defined as accounts receivable divided by average sales per day (or annual total net sales divided by 365 days). The DSO may be evaluated with respect to the firm’s credit terms because if the customer is paying later than the contractual terms,<sup>20</sup> it deprives the producer of funds. Or, late payment may signal that the customer is in financial distress although this does not seem to be the case here. For the MCB industry, this ratio was \*\*\* days in 2008 down from \*\*\* days in 2006. For \*\*\*.

## **CAPITAL AND INVESTMENT**

The Commission requested U.S. producers of MCB to describe any actual or potential negative effects of imports of MCB from China on their firms’ growth, investment, ability to raise capital, development and production efforts, or the scale of capital investments. Their responses are shown below.

### **Actual Negative Effects**

**ANH:** \*\*\*.

**LWB:** \*\*\*.

**Resco:** \*\*\*.

### **Anticipated Negative Effects**

**ANH:** \*\*\*.

**LWB:** \*\*\*.

**Resco:** \*\*\*.<sup>21</sup>

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<sup>19</sup> Each of the responding U.S. producers provided data for their inventories of raw materials and work-in-process goods together as of the end of their fiscal year. For the industry as a whole, the ratio of this category to sales increased during 2006 to 2008, from an average of \*\*\* percent to \*\*\* percent. The ratio \*\*\* between the three firms. For ANH the ratio was \*\*\* percent in 2006, 2007, and 2008, respectively. For LWB, the ratio was \*\*\* percent and for Resco, the ratio was \*\*\* percent in 2006, 2007, and 2008, respectively. Calculated from U.S. producers’ questionnaire responses, III-11 and III-13. \*\*\*.

<sup>20</sup> \*\*\*. U.S. producers’ questionnaire responses of the three firms, IV-5.

<sup>21</sup> \*\*\*.



## **PART VII: THREAT CONSIDERATIONS AND INFORMATION ON NONSUBJECT COUNTRIES**

Section 771(7)(F)(i) of the Act (19 U.S.C. § 1677(7)(F)(i)) provides that--

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the subject merchandise, the Commission shall consider, among other relevant economic factors<sup>1</sup>--

(I) if a countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement), and whether imports of the subject merchandise are likely to increase,

(II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports,

(III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,

(IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices, and are likely to increase demand for further imports,

(V) inventories of the subject merchandise,

(VI) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products,

(VII) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission

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<sup>1</sup> Section 771(7)(F)(ii) of the Act (19 U.S.C. § 1677(7)(F)(ii)) provides that “The Commission shall consider [these factors] . . . as a whole in making a determination of whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted under this title. The presence or absence of any factor which the Commission is required to consider . . . shall not necessarily give decisive guidance with respect to the determination. Such a determination may not be made on the basis of mere conjecture or supposition.”

under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both),

(VIII) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and

(IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).<sup>2</sup>

Information on the nature of the alleged subsidies was presented earlier in this report; information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V; and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in Part VI. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows. Also presented in this section of the report is information obtained for consideration by the Commission on nonsubject countries and the global market.

## THE INDUSTRY IN CHINA

\*\*\*. \*\*\*.<sup>3</sup> The Chinese MCB industry relies on rich, high-grade magnesia reserves to produce its MCB.<sup>4</sup> Together, China, North Korea, and Russia account for nearly 75 percent of global magnesia production capacity. China has been described as a mainstay of world supply of magnesia with changes in Chinese exports of magnesia affecting worldwide refractory access to magnesia through tightened supply and rising prices.<sup>5</sup>

The Commission requested data from the 35 firms that were listed in the petition as producing MCB in China during the period of the investigation. The Commission received a response from seven firms,<sup>6</sup> and data regarding the Chinese industry are based on the seven foreign producer questionnaires received. These responses are believed to account for approximately \*\*\* percent of Chinese export shipments to the United States in 2008.

Table VII-1 presents information on the Chinese industry's MCB operations. Chinese capacity and production both increased from 2006 to 2008, then decreased between the interim periods, and were projected to decrease in 2009 and increase in 2010. Chinese capacity utilization decreased steadily from 2006 to 2008, then decreased in interim 2009 compared with interim 2008. Chinese producers projected

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<sup>2</sup> Section 771(7)(F)(iii) of the Act (19 U.S.C. § 1677(7)(F)(iii)) further provides that, in antidumping investigations, ". . . the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other WTO member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry."

<sup>3</sup> \*\*\*.

<sup>4</sup> <http://www.fengchi.com.cn/en/jj.htm>, retrieved September 1, 2009.

<sup>5</sup> <http://indmin.com/Article/2259762/Channel/0/Magnesia-make-over-a-global-review.html>, retrieved September 2, 2009.

<sup>6</sup> Producers in China that submitted foreign producer questionnaires were: \*\*\*.



Table VII-1

MCB: Chinese production capacity, production, shipments, and inventories, 2006-08, January-June 2008, January-June 2009, and projected 2009-10

Item	Actual experience					Projections	
	2006	2007	2008	January-June		2009	2010
				2008	2009		
<b>Quantity (short tons)</b>							
Capacity <sup>1</sup>	327,363	369,463	520,272	259,831	251,361	503,332	513,012
Production	260,724	282,780	327,464	172,908	112,638	274,227	352,041
End of period inventories	13,759	20,481	21,653	21,355	20,085	23,210	23,745
Shipments							
Home market	77,515	81,472	78,341	41,361	30,326	62,374	87,615
Exports to--							
The United States	25,054	30,462	37,499	19,572	10,196	21,533	27,887
All other markets	161,969	164,506	210,323	111,307	73,934	190,839	233,479
Total exports	187,022	194,968	247,822	130,879	84,129	212,372	261,366
Total shipments	264,538	276,440	326,162	172,240	114,455	274,746	348,981
<b>Ratios and shares (percent)</b>							
Capacity utilization	79.6	76.5	62.9	66.5	44.8	54.5	68.6
Inventories to production	5.3	7.2	6.6	6.2	8.9	8.5	6.7
Inventories to total shipments	5.2	7.4	6.6	6.2	8.8	8.4	6.8
Share of total quantity of shipments:							
Home market	29.3	29.5	24.0	24.0	26.5	22.7	25.1
Exports to--							
The United States	9.5	11.0	11.5	11.4	8.9	7.8	8.0
All other markets	61.2	59.5	64.5	64.6	64.6	69.5	66.9
All export markets	70.7	70.5	76.0	76.0	73.5	77.3	74.9
<sup>1</sup> *** Note. – Because of rounding, figures may not add to the totals shown. Source: Compiled from data submitted in response to Commission questionnaires.							

a decrease in capacity utilization in 2009 and an increase in 2010. The share of Chinese shipments sold to its home market ranged from 24.0 percent to 29.5 percent during 2006 to 2008. The majority of Chinese producer export shipments was to countries other than the United States.<sup>7</sup> Chinese total exports as a share of its total shipments ranged from 70.5 percent to 76.0 percent during 2006-08.

In the most recent fiscal year, Chinese producers of MCB estimated that the share of their total sales represented by sales of MCB, based on quantity, is as follows: \*\*\*.

Six Chinese producers of MCB reported that they produce other products on the same equipment and machinery used to produce MCB: \*\*\*.

## THE INDUSTRY IN MEXICO

The Commission requested data from the one MCB producer in Mexico, RHI-Refmex S.A. de D.V.(Refmex)<sup>8</sup>. The Commission received a response from Refmex, which accounted for 100 percent of Mexican production and approximately \*\*\* percent of Mexican exports during the period of investigation.

Table VII-2 presents information on Refmex's MCB operations in Mexico. Refmex's capacity \*\*\* from 2006 to 2008 and during January-June 2009 and was projected to \*\*\* through 2010. Refmex's production of MCB \*\*\* percent from 2006 to 2008 and \*\*\* percent between the interim periods. Refmex's production is expected to \*\*\*. Refmex's capacity utilization \*\*\* percent in 2006 to \*\*\* percent in 2008. Capacity utilization in 2009 is projected to be \*\*\* percent.

The volume of Refmex's shipments to its home market ranged from a low of \*\*\* percent in 2006 to \*\*\* percent in interim 2008. The \*\*\* of Refmex's exports was exported to the United States.<sup>9</sup> These exports \*\*\* percent from 2006 to 2008 and \*\*\* as a share of Refmex's total shipments from \*\*\* percent in 2006 to \*\*\* percent in 2008.<sup>10</sup> Refmex's shipments to other countries \*\*\* from \*\*\* percent of total shipments in 2006 to \*\*\* percent of total shipments in 2008. RHI Refmex \*\*\* produce other products on the same machinery and equipment used to produce MCB.

**Table VII-2**

**MCB: Mexican production capacity, production, shipments, and inventories, 2006-08, January-June 2008, January-June 2009, and projected 2009-10**

\* \* \* \* \*

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<sup>7</sup> These other export markets include: \*\*\*.

<sup>8</sup> \*\*\*.

<sup>9</sup> The other export markets are \*\*\*.

<sup>10</sup> \*\*\*. Respondent RHI's postconference brief, p. 12.

## **U.S. IMPORTERS' INVENTORIES OF MCB**

Eleven U.S. importers reported inventories of imports of MCB from China during the period for which data were collected, one firm reported inventories from Mexico, and two firms reported inventories from other countries.<sup>11</sup> Data collected in these investigations on U.S. importers' end-of-period inventories of MCB are presented in table VII-3. Inventories from China and Mexico \*\*\* from 2006 to 2008 then \*\*\* between the interim periods.

## **U.S. IMPORTERS' CURRENT ORDERS**

Ten U.S. importers reported imports or the arrangement of imports of MCB of 6,626 short tons from China and \*\*\* short tons from Mexico after June 30, 2009.<sup>12</sup>

## **ANTIDUMPING AND COUNTERVAILING DUTY INVESTIGATIONS IN THIRD-COUNTRY MARKETS**

On October 6, 2005, the European Commission imposed antidumping duties on imports of MCB from China that vary for six manufacturers and are fixed at 39.9 percent for all other companies.<sup>13</sup> On September 1, 2007, Turkey imposed antidumping duties (\$145/ton) on imports of MCB from China.<sup>14</sup>

## **INFORMATION ON PRODUCERS IN NONSUBJECT COUNTRIES**

In assessing whether the domestic industry is materially injured or threatened with material injury "by reason of subject imports," the legislative history states "that the Commission must examine all relevant evidence, including any known factors, other than the dumped or subsidized imports, that may be injuring the domestic industry, and that the Commission must examine those other factors (including non-subject imports) 'to ensure that it is not attributing injury from other sources to the subject imports.'"<sup>15</sup>

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<sup>11</sup> The following firms reported inventories from China: \*\*\*.

<sup>12</sup> Those firms are \*\*\*.

<sup>13</sup> On August 12, 2009, the EC amended the margin for Yingkou Bayuquan Refractories to zero percent and the margin for Dashiquiao Sanqiang Refractory to 14.4 percent. Respondent Vesuvius' and Yingkou Banuquan's postconference brief, exh.9.

<sup>14</sup> Petitioner's postconference brief, p. 29, exh. 7.

<sup>15</sup> Mittal Steel Point Lisas Ltd. v. United States, Slip Op. 2007-1552 at 17 (Fed. Cir., Sept. 18, 2008), quoting from Statement of Administrative Action on Uruguay Round Agreements Act, H.R. Rep. 103-316, Vol. I at 851-52; see also Bratsk Aluminum Smelter v. United States, 444 F.3d 1369 (Fed. Cir. 2006).

Table VII-3

MCB: U.S. importers' end-of-period inventories of imports, 2006-08, January-June 2008, and January-June 2009

Source	Calendar year			January-June	
	2006	2007	2008	2008	2009
Imports from China:					
Inventories ( <i>short tons</i> )	24,279	25,373	27,527	24,788	23,029
Ratio to imports ( <i>percent</i> )	60.0	66.2	61.3	46.3	105.8
Ratio to U.S. shipments of imports ( <i>percent</i> )	73.6	70.1	65.4	46.1	73.4
Imports from Mexico:					
Inventories ( <i>short tons</i> )	***	***	***	***	***
Ratio to imports ( <i>percent</i> )	***	***	***	***	***
Ratio to U.S. shipments of imports ( <i>percent</i> )	***	***	***	***	***
Imports from subject sources:					
Inventories ( <i>short tons</i> )	***	***	***	***	***
Ratio to imports ( <i>percent</i> )	***	***	***	***	***
Ratio to U.S. shipments of imports ( <i>percent</i> )	***	***	***	***	***
Imports from all other sources:					
Inventories ( <i>short tons</i> )	***	***	***	***	***
Ratio to imports ( <i>percent</i> )	***	***	***	***	***
Ratio to U.S. shipments of imports ( <i>percent</i> )	***	***	***	***	***
Imports from all sources:					
Inventories ( <i>short tons</i> )	***	***	***	***	***
Ratio to imports ( <i>percent</i> )	***	***	***	***	***
Ratio to U.S. shipments of imports ( <i>percent</i> )	***	***	***	***	***
Note.—Because of rounding, figures may not add to the totals shown. Partial-year ratios are based on annualized import and shipment data.					
Source: Compiled from data submitted in response to Commission questionnaires.					

## Europe

RHI AG (Austria) is the world's largest manufacturer of heat-resistant refractory products, and is said to account for a global refractories market share of some 15 percent and as much as 30 percent of the European and NAFTA markets.<sup>16</sup> RHI AG is also the parent company of RHI Refractories Liaoning Co., Ltd. (China) and RHI-Refmex (Mexico). RHI has MCB producing plants in Duisburg, Germany; Veitsch, Germany, and Carinthia, Austria. According to counsel for RHI, \*\*\*.<sup>17</sup> LWB has MCB producing plants in Hagen and Oberhausen, Germany, as well as its MCB plant in York, PA.<sup>18</sup> Finally, Refratechnik Cement GmbH produces MCB in a plant located in Gottingen, Germany. \*\*\*.<sup>19</sup>

## Brazil

Magnesita Refractorios SA (Magnesita) is reported to be the largest producer of refractory products, including brick, in Brazil. A profile of Magnesita's activities indicated that the company sells and distributes heat-resistant products used in the construction of high temperature industrial furnaces. Products include a full range of refractory bricks, paste, mortar, cement and concrete. In addition to its home market and South American sales, Magnesita also exports its products to Europe, Asia and Latin America.<sup>20</sup> In September 2008, Magnesita purchased U.S. MCB producer LWB, making Magnesita the world's third-largest producer of refractory brick products.<sup>21</sup> Magnesita has exported \*\*\* MCB to North America. The company has made a \*\*\*.<sup>22</sup> The vast majority of Magnesita's MCB sales have been inside South America during the period of investigation.

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<sup>16</sup> <http://www.referenceforbusiness.com/history2/68/RHI-AG.html>, retrieved August 21, 2009.

<sup>17</sup> Staff telephone interview with \*\*\*.

<sup>18</sup> Petitioner's postconference brief, exh. 1 and exh. 14.

<sup>19</sup> Staff telephone interview with \*\*\*.

<sup>20</sup> [http://wrightreports.ecnext.com/coms2/reportdesc\\_COMPANY\\_C07621060](http://wrightreports.ecnext.com/coms2/reportdesc_COMPANY_C07621060), retrieved August 21, 2009.

<sup>21</sup> <http://www.wealth.bloomberg.com/apps/news?pid=conewsstory&tkr=GPIX:LX&sid=aYtSKEDpAhug>, retrieved August 27, 2009.

<sup>22</sup> E-mail correspondence with LWB, August 28, 2009.



**APPENDIX A**  
***FEDERAL REGISTER* NOTICES**





("IA") and Ineos opposed Sinochem's petition.

On June 1, 2009, the Commission determined to review the RID in its entirety and requested briefing on certain questions. The Commission determined to extend the target date to August 3, 2009, to accommodate its review.

Having examined the record of this investigation, including the ALJ's RID and the submissions of the parties, the Commission has determined to reverse the conclusion of nonobviousness of claim 1 of the '276 patent in the RID. In so finding, the Commission has determined to rely on certain party admissions and other evidence as to the state of the prior art. The Commission majority has determined to take no position on the RID's conclusions relating to obviousness arguments based on prior art references identified in the Commission's remand instructions, including the RID's conclusions on whether arguments as to those references have been waived. The Commission has also determined not to rely on the RID's conclusions as to anticipation and waiver of anticipation arguments. The Commission has further determined to deny Sinochem's motion to strike portions of Ineos's response to its written submission and for leave to file a reply to that submission. The Commission has determined also to deny Sinochem's motion to conform pleadings to evidence taken. These findings terminate the Commission's investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Rule 210.45 of the Commission's Rules of Practice and Procedure (19 CFR Part 210.45).

By order of the Commission.  
Issued: August 4, 2009.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E9-19015 Filed 8-7-09; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-676]

### In the Matter of Certain Lighting Control Devices Including Dimmer Switches and Parts Thereof; Notice of Commission Decision Not To Review an Initial Determination Terminating the Investigation Based on a Consent Order

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 8) granting the joint motion of complainant Lutron Electronics Co., Inc. ("Lutron") and respondent Universal Smart Electric Corp. ("Universal") to terminate the investigation based on a consent order.

**FOR FURTHER INFORMATION CONTACT:** Daniel E. Valencia, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-1999. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on May 11, 2009, based on a complaint filed by Lutron of Coopersburg, Pennsylvania. 74 FR 21820 (May 11, 2009). The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain lighting control devices including dimmer switches and parts thereof by reason of infringement of United States Patent Nos. 5,637,930 and 5,248,919 as well as U.S. Trademark

Registration No. 3,061,804. The complaint named Universal of Irvine, California as the sole respondent.

On July 8, 2009, Universal and Lutron jointly filed a motion pursuant to Commission rule 210.21(c) (19 CFR 210.21(c)) for termination of the investigation based on a consent order. The Commission investigative attorney supported the motion.

On July 14, 2009, the ALJ issued the subject ID granting the joint motion to terminate. The ALJ found that the consent order stipulation submitted with the joint motion complied with the requirements of Commission rule 210.21 (19 CFR 210.21). The ALJ also concluded that there is no evidence that termination of this investigation would be contrary to the public interest. No petitions for review of this ID were filed.

Having examined the record of this investigation, the Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: August 4, 2009.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E9-19021 Filed 8-7-09; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-468 and 731-TA-1166-1167 (Preliminary)]

### Certain Magnesia Carbon Bricks From China and Mexico

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of antidumping and countervailing duty investigations and scheduling of preliminary phase investigations.

**SUMMARY:** The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase countervailing duty investigation No. 701-TA-468 (Preliminary) and antidumping duty investigation Nos. 731-TA-1166-1167 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of

an industry in the United States is materially retarded, by reason of imports from China and Mexico of certain magnesia carbon bricks ("MCB"), provided for in subheadings 6902.10.10, 6902.10.50, 6815.91.00 and 6815.99.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of China, and sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 702(c)(1)(B) or 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) or 1673a(c)(1)(B)), the Commission must reach a preliminary determination in these investigations in 45 days, or in this case by September 14, 2009. The Commission's views are due at Commerce within five business days thereafter, or by September 21, 2009.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

**DATES:** *Effective Date:* July 29, 2009.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Haines (202-205-3200), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

**SUPPLEMENTARY INFORMATION:**

*Background.*—These investigations are being instituted in response to a petition filed on July 29, 2009, by Resco Products, Inc., (Pittsburgh, PA).

*Participation in the investigations and public service list.*—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations

have the right to appear as parties in Commission countervailing duty and antidumping duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Conference.*—The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on August 19, 2009, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Elizabeth Haines (202-205-3200) not later than August 14, 2009, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

*Written submissions.*—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before August 24, 2009, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic

means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

*Authority:* These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: July 30, 2009.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

**William R. Bishop,**

*Acting Secretary to the Commission.*

[FR Doc. E9-19061 Filed 8-7-09; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

[USITC SE-09-023]

### Government in the Sunshine Act Meeting Notice

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** August 18, 2009 at 2 p.m.

**PLACE:** Room 101, 500 E Street, SW., Washington, DC 20436, *Telephone:* (202) 205-2000.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda for future meetings: None.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701-TA-458 and 731-TA-1154 (Final) (Certain Kitchen Appliance Shelving and Racks from China)—briefing and vote. (The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before August 31, 2009.)

5. Outstanding action jackets: None.  
In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting,

**III. State Advisory Committee Issues**

- Arizona SAC;
- Hawaii SAC;
- Michigan SAC;
- Utah SAC;
- Indiana SAC;
- Nebraska SAC;
- South Dakota SAC.

**IV. Program Planning**

- Update on National Civil Rights Conference.

**V. Adjourn****CONTACT PERSON FOR FURTHER**

**INFORMATION:** Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376-8582. TDD: (202) 376-8116.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Pamela Dunston at least seven days prior to the meeting at 202-376-8105. TDD: (202) 376-8116.

Dated: August 21, 2009.

**David Blackwood,**

*General Counsel.*

[FR Doc. E9-20613 Filed 8-21-09; 4:15 pm]

**BILLING CODE 6335-01-P**

**DEPARTMENT OF COMMERCE****International Trade Administration**

**Proposed Information Collection; Comment Request; Procedures for Importation of Supplies for Use in Emergency Relief Work**

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before *October 26, 2009*.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be

directed to Hardeep K. Josan, Office of the Chief Counsel for Import Administration, Room 3622, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone: 202-482-0835; [hardeep.josan@mail.doc.gov](mailto:hardeep.josan@mail.doc.gov).

**SUPPLEMENTARY INFORMATION:****I. Abstract**

The regulations (19 CFR 358.101 through 358.104) provide procedures for requesting the Secretary of Commerce to permit the importation of supplies, such as food, clothing, and medical, surgical, and other supplies, for use in emergency relief work free of antidumping and countervailing duties.

**Authority:** 19 U.S.C. 1318(a). There are no proposed changes to this information collection.

**II. Method of Collection**

Three copies of the request must be submitted in writing to the Secretary of Commerce, Attention: Import Administration, Central Records Unit, Room 1870, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

**III. Data**

*OMB Control Number:* 0625-0256.

*Form Number(s):* None.

*Type of Review:* Regular submission.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 5.

*Estimated Time per Response:* 2.

*Estimated Total Annual Burden*

*Hours:* 10.

*Estimated Total Annual Cost to Public:* \$143.20.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 19, 2009.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E9-20346 Filed 8-24-09; 8:45 am]

**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE****International Trade Administration**

**[A-570-954, A-201-837]**

**Certain Magnesia Carbon Bricks from the People's Republic of China and Mexico: Initiation of Antidumping Duty Investigations**

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

**EFFECTIVE DATE:** August 25, 2009.

**FOR FURTHER INFORMATION CONTACT:**

Terre Keaton Stefanova at (202) 482-1280 or David Goldberger at (202) 482-4136 (Mexico), AD/CVD Operations, Office 2; Jerry Huang at (202) 482-4047 or Paul Walker at (202) 482-0413 (China), AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:****The Petitions**

On July 29, 2009, the Department of Commerce (the "Department") received petitions concerning imports of certain magnesia carbon bricks ("magnesia carbon bricks") from the People's Republic of China ("PRC") and Mexico filed in proper form 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 ("AD PRC Petition"); Petition for the Imposition of Antidumping Duties: Certain Magnesia Carbon Bricks from Mexico, dated July 29, 2009 ("AD Mexico Petition") (collectively, the "Petitions"). On August 4 and 12, 2009, the Department issued additional requests for information and clarification of certain areas of the Petitions. Based on the Department's requests, Petitioner timely filed additional information pertaining to the Petitions on August 10 and 14, 2009 (hereinafter, "Supplement to the AD PRC Petition," and "Supplement to the AD Mexico Petition," both dated August 10, 2009, and "Second Supplement to the AD PRC Petition," and "Second Supplement to the AD Mexico Petition,"

both dated August 14, 2009). The period of investigation (“POI”) for the PRC is January 1, 2009, through June 30, 2009. The POI for Mexico is July 1, 2008, through June 30, 2009. See 19 CFR 351.204(b)(1).

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the “Act”), Petitioner alleges that imports of magnesia carbon bricks from the PRC and Mexico are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that Petitioner filed the Petitions on behalf of the domestic industry because Petitioner is an interested party, as defined in section 771(9)(C) of the Act, and has demonstrated sufficient industry support with respect to the antidumping duty investigations that Petitioner is requesting the Department to initiate (see “Determination of Industry Support for the Petitions” section below).

#### Scope of Investigations

The products covered by these investigations are magnesia carbon bricks from the PRC and Mexico. For a full description of the scope of the investigations, please see the “Scope of Investigations,” in Appendix I of this notice.

#### Comments on Scope of Investigations

During our review of the Petitions, we discussed the scope with Petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments by September 8, 2009.<sup>1</sup> Comments should be addressed to Import Administration’s APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determinations.

<sup>1</sup> September 8, 2009, is the first business day after twenty calendar days from the signature date of this notice.

#### Comments on Product Characteristics for Antidumping Duty Questionnaires

We are requesting comments from interested parties regarding the appropriate physical characteristics of magnesia carbon bricks to be reported in response to the Department’s antidumping questionnaires. This information will be used to identify the key physical characteristics of the merchandise under consideration in order to more accurately report the relevant factors and costs of production, as well as to develop appropriate product comparison criteria.

Interested parties may provide information or comments that they believe are relevant to the development of an accurate listing of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: 1) general product characteristics; and 2) the product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, while there may be some physical product characteristics utilized by manufacturers to describe magnesia carbon bricks, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in product matching. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the antidumping duty questionnaires, we must receive comments at the above-referenced address by September 8, 2009. Additionally, rebuttal comments must be received by September 15, 2009.

#### Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing

support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the “industry” as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (“ITC”), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (see section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department’s determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (Ct. Int’l Trade 2001), citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (Ct. Int’l Trade 1988), *aff’d* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation” (i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioner does not offer a definition of domestic like product distinct from the scope of the investigations. Based on our analysis of the information submitted on the record, we have determined that magnesia carbon bricks constitute a single domestic like product and we have analyzed industry support in terms

of that domestic like product. For a discussion of the domestic like product analysis in this case, see Antidumping Duty Investigation Initiation Checklist: Magnesia Carbon Bricks from the PRC (“PRC Initiation Checklist”) at Attachment II, Analysis of Industry Support for the Petitions Covering Certain Magnesia Carbon Bricks from the People’s Republic of China and Mexico, and Antidumping Duty Investigation Initiation Checklist: Magnesia Carbon Bricks from Mexico (“Mexico Initiation Checklist”) at Attachment II, Analysis of Industry Support for the Petitions Covering Certain Magnesia Carbon Bricks from the People’s Republic of China and Mexico, dated concurrently with this notice and on file in the Central Records Unit (“CRU”), Room 1117 of the main Department of Commerce building.

In determining whether Petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the “Scope of Investigations”, in Appendix I of this notice. To establish industry support, Petitioner provided its own 2008 production of the domestic like product, as well as the production of the two supporters of the Petitions, and compared this to the estimated total production of the domestic like product for the entire domestic industry. See Petitions, at Exhibits 2–4, Supplement to the AD PRC Petition, Supplement to the AD Mexico Petition, dated August 10, 2009, at 8–12, and Exhibits R2–R–6, Second Supplement to the AD PRC Petition, and Second Supplement to the AD Mexico Petition, dated August 14, 2009, at 1–2. Petitioner estimated total 2008 production of the domestic like product based on its own production data, data from the two supporters of the Petitions, and knowledge of the U.S. industry. See Petitions, at Exhibits 2–4, Supplement to the AD PRC Petition, Supplement to the AD Mexico Petition, dated August 10, 2009, at 8–12, and Exhibits R2–R–6, Second Supplement to the AD PRC Petition, and Second Supplement to the AD Mexico Petition, dated August 14, 2009, at 1–2; see also PRC Initiation Checklist at Attachment II, and Mexico Initiation Checklist at Attachment II.

Our review of the data provided in the Petitions, supplemental submissions, and other information readily available to the Department indicates that Petitioner has established industry support. First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the

domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (e.g., polling). See section 732(c)(4)(D) of the Act; see also PRC Initiation Checklist at Attachment II, and Mexico Initiation Checklist at Attachment II. Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product. See PRC Initiation Checklist at Attachment II, and Mexico Initiation Checklist at Attachment II. Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions. Accordingly, the Department determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. See *id.*

The Department finds that Petitioner filed the Petitions on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the antidumping duty investigations that it is requesting the Department initiate. See *id.*

#### **Allegations and Evidence of Material Injury and Causation**

Petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (“NV”). In addition, Petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

Petitioner contends that the industry’s injured condition is illustrated by reduced market share, underselling and price depressing and suppressing effects, increased import penetration, lost sales and revenue, reduced production, reduced capacity utilization, reduced shipments, reduced employment, and overall poor financial performance. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate

evidence and meet the statutory requirements for initiation. See PRC Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Petitions Covering Certain Magnesia Carbon Bricks from the People’s Republic of China and Mexico, and Mexico Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Petitions Covering Certain Magnesia Carbon Bricks from the People’s Republic of China and Mexico.

#### **Allegations of Sales at Less Than Fair Value**

The following is a description of the allegations of sales at less than fair value upon which the Department based its decision to initiate these investigations of imports of magnesia carbon bricks from the PRC and Mexico. The sources of data for the deductions and adjustments relating to the U.S. price, the factors of production (for the PRC) and constructed value (“CV”) (for Mexico) are also discussed in the country-specific initiation checklists. See PRC Initiation Checklist and Mexico Initiation Checklist.

#### **U.S. Price**

##### *The PRC*

For the PRC, Petitioner calculated export price (“EP”) based on documentation of actual sales and offers for sale obtained from a confidential source. See PRC Initiation Checklist; see also AD PRC Petition at Exhibit 11, and Second Supplement to the AD PRC Petition, dated August 14, 2009, at 4. Petitioner made adjustments for distributor mark-ups, international freight and U.S. movement expenses. See PRC Initiation Checklist; see also Second Supplement to the AD PRC Petition, at Exhibit R–11.

##### *Mexico*

For Mexico, Petitioner based U.S. price on POI prices of magnesia carbon bricks produced by the Mexican manufacturer RHI–Refmex S.A. de C.V. (“RHI–Refmex”). Petitioner substantiated the U.S. prices used with affidavits from persons who obtained the information. Petitioner believes that these prices include selling expenses incurred by RHI–Refmex’s U.S. affiliate but conservatively assumed such expenses to be zero in its calculation of net U.S. price. Petitioner deducted, where appropriate, freight expenses (U.S. inland freight), but made no other adjustments. See Mexico Initiation Checklist; see also AD Mexico Petition

at 15, Supplement to the AD Mexico Petition, at 21 and Exhibits R–8, R–10 and R–11, and Second Supplement to the AD Mexico Petition, at 3.

### Normal Value

#### *The PRC*

Petitioner states that the PRC is a non–market economy (“NME”) country and no determination to the contrary has been made by the Department. See AD PRC Petition, at 14. In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product for the PRC investigation is appropriately based on factors of production valued in a surrogate market–economy country in accordance with section 773(c) of the Act. In the course of the PRC investigation, all parties, including the public, will have the opportunity to provide relevant information related to the issue of the PRC’s NME status and the granting of separate rates to individual exporters.

Petitioner contends that India is the appropriate surrogate country for the PRC because: 1) it is at a level of economic development comparable to that of the PRC; and 2) it is a significant producer of comparable merchandise; and 3) information required to calculate unit factor costs and financial ratios is readily available. See AD PRC Petition at 14–16, and Exhibit 10. Based on the information provided by Petitioner, we believe that it is appropriate to use India as a surrogate country for initiation purposes. After initiation of the investigation, interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value factors of production within 40 days after the date of publication of the preliminary determination.

Petitioner calculated the NV and dumping margins using the Department’s NME methodology as required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. Petitioner calculated NV based on its own consumption rates for producing magnesia carbon bricks in 2008. See AD PRC Petition at 17, and Exhibit 12. In calculating NV, Petitioner based the quantity of each of the inputs used to manufacture and pack magnesia carbon bricks in the PRC on its own industry

knowledge and production experience during the POI. See AD PRC Petition at 17, and Exhibit 12. Petitioner states that the actual usage rates of the foreign manufacturers of magnesia carbon bricks are not reasonably available; however, Petitioner notes that to the best of Petitioner’s knowledge, the production of magnesia carbon bricks in China relies on similar basic manufacturing processes as in the United States. See AD PRC Petition at 17.

Petitioner determined the consumption quantities of all raw materials and packing materials based on its own production experience. See AD PRC Petition at 17, and Exhibit 12. Petitioner valued the factors of production based on reasonably available, public surrogate country data, specifically, Indian import statistics from the World Trade Atlas (“WTA”). See Supplement to the AD PRC Petition, at Exhibit R–8. Petitioner excluded from these import statistics imports from countries previously determined by the Department to be NME countries and from Indonesia, the Republic of Korea, and Thailand as the Department has previously excluded prices from these countries because they maintain broadly available, non–industry-specific export subsidies. See *id.* In addition, the Petitioner made currency conversions, where necessary, based on the POI–average rupee/U.S. dollar exchange rate, as reported on the Department’s website. See Supplement to the AD PRC Petition, at 16 and Exhibit R–8. Petitioner determined labor costs using the labor consumption, in hours, derived from its own experience. See AD PRC Petition at Exhibit 12. Petitioner valued labor costs using the Department’s NME Wage Rate for the PRC at <http://ia.ita.doc.gov/wages/05wages/05wages-051608.html>. See Supplement to the AD PRC Petition, at Exhibit R–8. For purposes of initiation, the Department determines that the surrogate values used by Petitioner are reasonably available and, thus, acceptable for purposes of initiation.

Petitioner determined electricity costs using the electricity consumption, in kilowatt hours, derived from its own experience. See AD PRC Petition at Exhibit 12. Petitioner valued electricity using the Indian electricity rate reported by the Central Electric Authority of the Government of India. See Supplement to the AD PRC Petition, at 16 and Exhibit R–8.

Petitioner determined natural gas costs using the natural gas consumption derived from its own experience. See AD PRC Petition at Exhibit 12. Petitioner valued natural gas using

Indian import statistics from WTA. See Supplement to the AD PRC Petition, at Exhibit R–8.

Petitioner based factory overhead, selling, general and administrative (“SG&A”), and profit on data from IFGL Refractories Ltd. (“IFGL”), a producer of refractory products, for the fiscal year April 2007 through March 2008. See AD PRC Petition at Exhibit 13. Petitioner states that, as a manufacturer of non–subject products within the same general category of merchandise as magnesia carbon bricks, IFGL’s main operation in India can be considered a reasonable surrogate. See Supplement to the AD PRC Petition, at 17–18. Therefore, for purposes of the initiation, the Department finds Petitioner’s use of IFGL’s unconsolidated financial ratios appropriate.

#### *Mexico*

Petitioner calculated NV for magnesia carbon bricks using CV because Petitioner was unable to obtain home market or third country prices. See AD Mexico Petition at 13.

Pursuant to section 773(e) of the Act, CV consists of the cost of manufacturing (“COM”), SG&A expenses, packing expenses, and profit. In calculating COM and packing, Petitioner based the quantity of each of the inputs used to manufacture and pack magnesia carbon bricks in Mexico on its own production experience during 2008. See AD Mexico Petition at 14, and Exhibits 9 and 11, Supplement to the AD Mexico Petition, at Exhibit R–9, and Second Supplement to the AD Mexico Petition, at Exhibit R–14. Petitioner notes that, to the best of its knowledge, the magnesia carbon bricks manufacturing process in Mexico is very similar to its magnesia carbon bricks manufacturing process. Accordingly, Petitioner states that it is reasonable to estimate the Mexican producer’s usage rates based on its own usage rates experienced in producing magnesia carbon bricks. Petitioner also states that certain “brands” (*i.e.*, models) of RHI–Refmex’s magnesia carbon bricks are identical or very similar to its corresponding brands in terms of quantity and type of raw materials used, energy consumed, and the composition of the finished product. See AD Mexico Petition at 14 and 15, and Supplement to the AD Mexico Petition, at 14 and Exhibit R–9.

Petitioner multiplied the usage quantities of the inputs used to manufacture and pack magnesia carbon bricks by the Mexican values of those inputs based on publicly available data. See AD Mexico Petition, at 15 and Exhibit 10, Supplement to the AD Mexico Petition, at Exhibit R–8, and

Second Supplement to the AD Mexico Petition, at Exhibit R-14.

Raw materials (e.g., magnesite) are significant inputs used in the production of magnesia carbon bricks. Petitioner determined the consumption quantities of all raw materials and packing materials based on its own production experience. See AD Mexico Petition, at 14, and Exhibits 9 and 11, and Supplement to the AD Mexico Petition, at Exhibit R-9. Petitioner valued all raw materials and packing materials using Mexican import statistics as reflected in the WTA data for the period from June 2008 through May 2009, the most recent data available. Petitioner excluded from these import statistics imports from countries previously determined by the Department to be NME countries and from India, Indonesia, the Republic of Korea, and Thailand, as the Department has previously excluded prices from these countries because they maintain broadly available, non-industry-specific export subsidies. See AD Mexico Petition at Exhibit 10, and Supplement to the AD Mexico Petition, at Exhibit R-8.

Petitioner determined labor costs using the labor consumption in hours derived from its own experience. Petitioner relied on Mexican wage rate data available from the Import Administration website at <http://ia.ita.doc.gov/wages> to determine the average wage rate in Mexico. See AD Mexico Petition at 15, and Supplement to the AD Mexico Petition, at 17.

Petitioner determined the costs of electricity and natural gas using consumption amounts derived from its own experience. Petitioner valued electricity using the POI Mexican electricity rates for medium-sized enterprises reported by the Mexico Secretary of Energy at <http://www.sener.gob.mx>. Petitioner converted the Mexican electricity rates into U.S. dollars using the Department's POI exchange rates. Petitioner valued natural gas using Mexican import statistics as reflected in the WTA data for the period from June 2008 through May 2009, the most recent data available. See AD Mexico Petition at Exhibit 10, and Supplement to the AD Mexico Petition, at 18 and Exhibit R-8.

To calculate factory overhead, SG&A expenses, and profit, Petitioner relied on the financial statements of a Mexican producer of ceramic products, Grupo Lamosa, S.A.B. de C.V., a company that produces products in the same general category of merchandise as magnesia carbon bricks. See Supplement to the AD Mexico Petition, at Exhibit R-8, and Second Supplement to the AD Mexico

Petition, at Exhibit R-13. See also Mexico Initiation Checklist.

#### Fair-Value Comparisons

Based on the data provided by Petitioner, there is reason to believe that imports of magnesia carbon bricks from the PRC and Mexico are being, or are likely to be, sold in the United States at less than fair value. Based on a comparison of U.S. prices and NV calculated in accordance with section 773(c) of the Act, the estimated dumping margins for magnesia carbon bricks from the PRC range from 112 percent to 349 percent. See PRC Initiation Checklist. Based on a comparison of U.S. price and CV calculated in accordance with section 773(a)(4) of the Act, the estimated dumping margins for magnesia carbon bricks from Mexico range from 153 percent to 295 percent. See Mexico Initiation Checklist; see also Supplement to the AD Mexico Petition, at Exhibit R-10, and Second Supplement to the AD Mexico Petition, at Exhibit R-14 and R-15.

#### Initiation of Antidumping Investigations

Based upon the examination of the Petitions on magnesia carbon bricks from the PRC and Mexico, the Department finds that the Petitions meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of magnesia carbon bricks from the PRC and Mexico are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

#### Targeted-Dumping Allegations

On December 10, 2008, the Department issued an interim final rule for the purpose of withdrawing 19 CFR 351.414(f) and (g), the regulatory provisions governing the targeted-dumping analysis in antidumping duty investigations, and the corresponding regulation governing the deadline for targeted-dumping allegations, 19 CFR 351.301(d)(5). See *Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations*, 73 FR 74930 (December 10, 2008). The Department stated that “{w}ithdrawal will allow the Department to exercise the discretion intended by the statute and, thereby, develop a practice that will allow interested parties to pursue all statutory

avenues of relief in this area.” See *id.* at 74931.

In order to accomplish this objective, if any interested party wishes to make a targeted-dumping allegation in any of these investigations pursuant to section 777A(d)(1)(B) of the Act, such allegations are due no later than 45 days before the scheduled date of the country-specific preliminary determination.

#### Respondent Selection

##### The PRC

For this investigation, the Department will request quantity and value information from all known exporters and producers identified with complete contact information in the AD PRC Petition. The quantity and value data received from NME exporters/producers will be used as the basis to select the mandatory respondents.

The Department requires that the respondents submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. See *Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 73 FR 10221, 10225 (February 26, 2008); *Initiation of Antidumping Duty Investigation: Certain Artist Canvas From the People's Republic of China*, 70 FR 21996, 21999 (April 28, 2005). The Department will post the quantity and value questionnaire along with the filing instructions on the Import Administration website at <http://ia.ita.doc.gov/ia-highlights-and-news.html>, and a response to the quantity and value questionnaire is due no later than September 10, 2009. Also, the Department will send the quantity and value questionnaire to those PRC companies identified in the AD PRC Petition, at Exhibit 9.

##### Mexico

For this investigation, the Department intends to select respondents based on U.S. Customs and Border Protection (“CBP”) data for U.S. imports under the Harmonized Tariff Schedule of the United States (“HTSUS”) numbers 6902.10.10.00 and 6902.10.50.00, the two HTSUS categories most specific to the subject merchandise, during the POI. We intend to release the CBP data under Administrative Protective Order (“APO”) to all parties with access to information protected by APO within five days of publication of this **Federal Register** notice and make our decision regarding respondent selection within

20 days of publication of this notice. The Department invites comments regarding the CBP data and respondent selection within ten days of publication of this **Federal Register** notice.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Department's website at <http://ia.ita.doc.gov/apo>.

### Separate Rates

In order to obtain separate-rate status in NME investigations, exporters and producers must submit a separate-rate status application. See our practice, described in Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries, dated April 5, 2005 ("Separate Rates and Combination Rates Bulletin"), available on the Department's website at <http://ia.ita.doc.gov/policy/bull05-1.pdf>. Based on our experience in processing the separate-rate applications in previous antidumping duty investigations, we have modified the application for this investigation to make it more administrable and easier for applicants to complete. See, e.g., *Initiation of Antidumping Duty Investigation: Certain New Pneumatic Off-the-Road Tires From the People's Republic of China*, 72 FR 43591, 43594-95 (August 6, 2007). The specific requirements for submitting the separate-rate application in this investigation are outlined in detail in the application itself, which will be available on the Department's website at <http://ia.ita.doc.gov/ia-highlights-and-news.html> on the date of publication of this initiation notice in the **Federal Register**. The separate-rate application will be due 60 days after publication of this initiation notice. For exporters and producers who submit a separate-rate status application and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for consideration for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents. As noted in the "Respondent Selection" section above, the Department requires that respondents submit a response to both the quantity and value questionnaire and the separate rate application by the respective deadlines in order to receive consideration for separate-rate status. The quantity and value questionnaire will be available on the Department's website at <http://ia.ita.doc.gov/ia-highlights-and-news.html> on the date of

the publication of this initiation notice in the **Federal Register**.

### Use of Combination Rates in an NME Investigation

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. The Separate Rates and Combination Rates 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 Separate Rates and Combination Rates Bulletin at 6 (emphasis added).

### Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public versions of the Petitions have been provided to the representatives of the Governments of the PRC and Mexico. Because of the large number of producers/exporters identified in the AD PRC Petition, the Department considers the service of the public version of the AD PRC Petition to the foreign producers/exporters satisfied by the delivery of the public version to the Government of the PRC, consistent with 19 CFR 351.203(c)(2).

### ITC Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

### Preliminary Determinations by the ITC

The ITC will preliminarily determine, no later than September 14, 2009,

whether there is a reasonable indication that imports of magnesia carbon bricks from the PRC and Mexico are materially injuring, or threatening material injury to a U.S. industry. A negative ITC determination with respect to any country will result in the investigation being terminated for that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: August 18, 2009.

**Carole Showers,**

*Acting Deputy Assistant Secretary for Policy and Negotiations.*

### Appendix I

#### Scope of the Investigations

Imports covered by this petition 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, antioxidants can be added to the mix from trace amounts to 15 percent by weight as various metals, metal alloys, and metal carbides). Certain magnesia carbon bricks that are the subject of this investigation are currently classifiable under subheadings 6902.10.10.00, 6902.10.50.00, 6815.91.00.00, 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.

[FR Doc. E9-20494 Filed 8-24-09; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-533-821]

#### Hot-Rolled Carbon Steel Products from India: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review

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

**FOR FURTHER INFORMATION CONTACT:** Gayle Longest, AD/CVD Operations,



Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Ave., NW, Washington, DC 20230, telephone: (202) 482-3338.

**SUPPLEMENTARY INFORMATION:**

**Background**

On February 2, 2009, the U.S. Department of Commerce (“the Department”) published a notice of initiation of the administrative review of the countervailing duty order on hot-rolled carbon steel products from India covering the period January 1, 2008, through December 31, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 5821 (February 2, 2009). The preliminary results are currently due no later than September 2, 2009.

**Extension of Time Limit for Preliminary Results**

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (“the Act”), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested. Section 751(a)(3)(A) of the Act further states that if it is not practicable to complete the review within the time period specified, the administering authority may extend the 245-day period to issue its preliminary results to up to 365 days.

Due to the complexity of the issues in this administrative review, such as the number of programs under review during the POR, we have determined that it is not practicable to complete the preliminary results within the 245-day period. Therefore, in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the preliminary results of the review by 120 days. The preliminary results are now due no later than December 31, 2009. The final results continue to be due 120 days after publication of the preliminary results.

This notice is issued and published in accordance with section 751(a)(3)(A) of the Act.

Dated: August 19, 2009.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. E9-20501 Filed 8-24-09; 8:45 am]

**BILLING CODE 3510-DS-S**

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[C-570-955]

**Certain Magnesia Carbon Bricks from the People’s Republic of China: Initiation of Countervailing Duty Investigation**

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

**DATES:** *Effective Date:* August 25, 2009.

**FOR FURTHER INFORMATION CONTACT:** Justin Neuman, Toni Page, or Nicholas Czajkowski; AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, D.C. 20230; telephone: (202) 482-0486, (202) 482-1398, or (202) 482-1395 respectively.

**SUPPLEMENTARY INFORMATION:**

**The Petitions**

On July 29, 2009, the Department of Commerce (the Department) received countervailing duty (CVD) and antidumping (AD) petitions concerning imports of certain magnesia carbon bricks (magnesia carbon bricks) from the People’s Republic of China (PRC) filed in proper form by Resco Products, Inc. (Petitioner), domestic producers of magnesia carbon bricks. *See* “Petition for the Imposition of Countervailing Duties: Certain Magnesia Carbon Bricks from the People’s Republic of China” (CVD PRC Petition). On August 3, 2009, the Department spoke via telephone with petitioner to request additional information and clarification of certain areas of the CVD petition involving countervailable subsidy allegations. *See* Memorandum from Mark Hoadley, Program Manager, AD/CVD Operations, Office 6, to the File, “CVD Petition for Investigation of Magnesia Carbon Bricks from the People’s Republic of China (PRC): Phone Call with Counsel for Petitioner” dated August 4, 2009. Based on the Department’s requests, the Petitioner timely filed additional information on August 7, 2009. On August 4 and 12, 2009, the Department issued additional requests for information and clarification of certain areas of the CVD PRC Petition. Based on the Department’s requests, Petitioner timely filed additional information pertaining to the CVD PRC Petition on August 10 and 14, 2009, (hereinafter, Supplement to the CVD PRC Petition dated August 10, 2009 and Second Supplement to the CVD PRC Petition, dated August 14, 2009).

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), Petitioner alleges that producers/exporters of magnesia carbon bricks in the PRC received countervailable subsidies within the meaning of section 701 and 771(5) of the Act, and that imports from these exporters/producers materially injure, or threaten material injury to, an industry in the United States.

The Department finds that Petitioner filed this CVD PRC Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act, and Petitioner has demonstrated sufficient industry support with respect to the countervailing duty investigation that it is requesting the Department to initiate (see “Determination of Industry Support for the CVD Petition” below).

**Period of Investigation**

The anticipated period of investigation (POI) is calendar year 2008. *See* 19 CFR 351.204(b)(2).

**Scope of Investigation**

The products covered by this investigation are magnesia carbon bricks from the PRC. For a full description of the scope of the investigation, please see the “Scope of Investigation” in Appendix I to this notice.

**Comments on Scope of Investigation**

During our review of the CVD PRC Petition, we discussed the scope with Petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments by September 8, 2009.<sup>1</sup> Comments should be addressed to Import Administration’s APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determinations.

<sup>1</sup> September 8, 2009 is the first business day after twenty calendar days from the signature date of this notice.

## Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department held consultations with the government of the PRC (hereinafter, the GOC) with respect to the CVD PRC Petition on August 7, 2009. See Memorandum to the File, *Countervailing Duty Petitions on Certain Magnesia Carbon Bricks from the People's Republic of China: Consultations with the Government of the People's Republic of China*, on file in the Central Records Unit (CRU), Room 1117 of the main Department of Commerce building.

## Determination of Industry Support for the CVD Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The United States International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (see section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this

may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (Ct. Int'l Trade 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 644 (Ct. Int'l Trade 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioner does not offer a definition of domestic like product distinct from the scope of the investigations. Based on our analysis of the information submitted on the record, we have determined that magnesia carbon bricks constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, see *Countervailing Duty Investigation Initiation Checklist: Magnesia Carbon Bricks from the PRC (CVD Initiation Checklist)* at Attachment II, Analysis of Industry Support for the Petitions Covering Certain Magnesia Carbon Bricks from the People's Republic of China and Mexico, dated concurrently with this notice and on file in the CRU, Room 1117 of the main Department of Commerce building.

In determining whether Petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the CVD PRC Petition with reference to the domestic like product as defined in the "Scope of Investigations," Appendix I of this notice. To establish industry support, Petitioner provided its own 2008 production of the domestic like product, as well as the production of the two supporters of the CVD PRC Petition, and compared this to the estimated total production of the domestic like product for the entire domestic industry. See the CVD PRC Petition, at Exhibits 2-4, Supplement to the CVD PRC Petition, dated August 10, 2009, at 8-12, and Exhibits R2-R-6, and Second Supplement to the CVD PRC Petition, dated August 14, 2009, at 1-2. Petitioner estimated total 2008 production of the domestic like product based on its own production data, data from the two

supporters of the CVD PRC Petition, and knowledge of the U.S. industry. See the CVD PRC Petition, at Exhibits 2-4, Supplement to the CVD PRC Petition, dated August 10, 2009, at 8-12, and Exhibits R2-R-6, and Second Supplement to the CVD PRC Petition, dated August 14, 2009, at 1-2; see also CVD Initiation Checklist at Attachment II.

Our review of the data provided in the CVD PRC Petition, the supplemental submissions, and other information readily available to the Department indicates that Petitioner has established industry support. First, the CVD PRC Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling). See section 702(c)(4)(D) of the Act, see also CVD Initiation Checklist at Attachment II. Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the CVD PRC Petition account for at least 25 percent of the total production of the domestic like product. See CVD Initiation Checklist at Attachment II. Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the CVD PRC Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the CVD PRC Petition. Accordingly, the Department determines that the CVD PRC Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. See *id.*

The Department finds that Petitioner filed the CVD PRC Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the countervailing investigation that it is requesting the Department to initiate. See *id.*

## Injury Test

Because the PRC is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from the PRC

materially injure, or threaten material injury to, a U.S. industry.

### Allegations and Evidence of Material Injury and Causation

Petitioner alleges that imports of magnesia carbon bricks from the PRC are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the domestic industry producing magnesia carbon bricks. In addition, Petitioner alleges that subsidized imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

Petitioner contends that the industry's injured condition is illustrated by reduced market share, underselling and price depressing and suppressing effects, increased import penetration, lost sales and revenue, reduced production, reduced capacity utilization, reduced shipments, reduced employment, and overall poor financial performance. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* CVD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Petitions Covering Certain Magnesia Carbon Bricks from the People's Republic of China and Mexico.

### Initiation of Countervailing Duty Investigation

Section 702(b)(1) of the Act requires the Department to initiate a CVD proceeding whenever an interested party files a CVD petition on behalf of an industry that: (1) alleges the elements necessary for an imposition of a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to the petitioners supporting the allegations.

The Department has examined the CVD PRC Petition on magnesia carbon bricks from the PRC and finds that it complies with the requirements of section 702(b)(1) of the Act. Therefore, in accordance with section 702(b)(1) of the Act, we are initiating a CVD investigation to determine whether producers/exporters of magnesia carbon bricks in the PRC receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, *see* CVD Initiation Checklist.

We are including in our investigation the following programs alleged in the CVD PRC Petition to provide

countervailable subsidies to producers/exporters of the subject merchandise:

- A. Provision of Inputs for Less Than Adequate Remuneration (LTAR)
  - 1. Provision of Land–Use Rights to State–Owned Enterprises (SOEs) for LTAR
  - 2. Provision of Electricity at LTAR
- B. Export Restraints of Raw Materials
- C. Tax Benefit Programs
  - 1. Two Free/Three Half Program for Foreign–Invested Enterprises (FIEs)
  - 2. Income Tax Reductions for Export–Oriented FIEs
  - 3. Preferential Income Tax Policy for Enterprises in the Northeast Region
  - 4. Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China
  - 5. Location–Based Income Tax Reduction Programs for FIEs
  - 6. Local Income Tax Exemption and Reduction Programs for “Productive” FIEs
  - 7. Domestic Preference Tax Benefits
    - a. Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment
    - b. Income Tax Credits for FIEs Purchasing Domestically Produced Equipment
    - c. VAT Rebates on Purchases of Domestically Produced Equipment
  - 8. Preferential Tax Programs for Enterprises Recognized as High or New Technology Enterprises
- D. Northeast Revitalization Program and Related Provincial Policies
  - a. E. Direct Grants
    - 1. The State Key Technology Renovation Project Fund
    - 2. Famous Brands Programs
- F. Grants to Companies for “Outward Expansion” and Export Performance in Guangdong Province
- G. Preferential Loans and Directed Credit to the Magnesia Carbon Brick Industry
- H. Cash Grant Programs
  - 1. Fund for Supporting Technological Innovation for Technological Small- and Medium–Sized Enterprises (SMEs)
  - 2. Development Fund for SMEs
  - 3. Fund for International Market Exploration by SMEs
- I. Zhejiang Province Program to Rebate Antidumping Costs
 

For further information explaining why the Department is investigating these programs, *see* CVD Initiation Checklist.

We are not including in our investigation the following programs alleged to benefit producers/exporters of the subject merchandise in the PRC:

  - A. Provision of Water for Less Than Adequate Remuneration

B. Provision of Natural Gas for Less Than Adequate Remuneration

C. VAT and Tariff Exemptions for Purposes of Fixed Assets Under the Foreign Trade Development Fund Program

D. Shenzhen City Program to Rebate Antidumping Costs

For further information explaining why the Department is not initiating an investigation of these programs, *see* CVD Initiation Checklist.

### Respondent Selection

For this investigation, the Department intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POI (*i.e.*, calendar year 2008). We intend to release the CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO within five days of the announcement of the initiation of this investigation. Interested parties may submit comments regarding the CBP data and respondent selection within seven calendar days of publication of this notice. We intend to make our decision regarding respondent selection within 20 days of publication of this notice.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Department's website at <http://ia.ita.doc.gov/apo>.

### Distribution of Copies of the CVD Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), a copy of the public version of the CVD PRC Petition has been provided to the representatives of the GOC. Because of the particularly large number of producers/exporters identified in the CVD PRC Petition, the Department considers the service of the public version of the petition to the foreign producers/exporters satisfied by the delivery of the public version to the GOC, consistent with 19 CFR 351.203(c)(2).

### ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

### Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the petition was filed, whether there is a reasonable indication that imports of subsidized magnesia carbon bricks from the PRC materially injure, or threaten material injury to, a U.S. industry. *See*

section 703(a)(2) of the Act. A negative ITC determination will result in the investigation being terminated; see section 703(a)(1) of the Act. Otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: August 18, 2009.

**Carole Showers,**

*Acting Deputy Assistant Secretary for Policy and Negotiations.*

## Appendix I

### Scope of the Investigation

Imports covered by this petition 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, antioxidants can be added to the mix from trace amounts to 15 percent by weight as various metals, metal alloys, and metal carbides). Certain magnesia carbon bricks that are the subject of this investigation are currently classifiable under subheadings 6902.10.10.00, 6902.10.50.00, 6815.91.00.00, 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.

[FR Doc. E9-20493 Filed 8-24-09; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XR07

#### Endangered Species; File No. 14396

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

**ACTION:** Notice; receipt of application.

**SUMMARY:** Notice is hereby given that the Delaware Department of Natural Resources and Environmental Control-Division of Fish and Wildlife, Dover, Delaware, has applied in due form for a permit to take shortnose sturgeon

(*Acipenser brevirostrum*) for purposes of scientific research.

**DATES:** Written, telefaxed, or e-mail comments must be received on or before September 24, 2009.

**ADDRESSES:** The application and related documents are available for review by selecting "Records Open for Public Comment" from the Features box on the Applications and Permits for Protected Species (APPS) home page, <https://apps.nmfs.noaa.gov/index.cfm>, and then selecting File No. 14396 from the list of available applications. These documents are also available for review upon written request or by appointment in the following office(s):

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 Northeast Region, NMFS, Protected Resources Division, 55 Great Republic Drive, Gloucester, MA 01930; phone (978)281-9300; fax (978)281-9333.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713-0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is [NMFS.Pr1Comments@noaa.gov](mailto:NMFS.Pr1Comments@noaa.gov). Include in the subject line of the e-mail comment the following document identifier: File No. 14396.

**FOR FURTHER INFORMATION CONTACT:** Malcolm Mohead or Kate Swails, (301)713-2289.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222-226).

The applicant is seeking a five-year scientific research permit to conduct a study of shortnose sturgeon in the Delaware River. The primary study objective would be to locate and document nursery areas, individual movement patterns, seasonal

movements, home ranges, and habitats of juvenile shortnose sturgeon through the use of telemetry. This focus would be in association with an ongoing Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) study with similar objectives. Up to 200 shortnose sturgeon would be weighed, measured, examined for tags, marked with Passive Integrated Transponder (PIT) tags and Floy tags, and released. Up to 15 early stage juvenile shortnose sturgeon would also be anesthetized and implanted with acoustic transmitters if they are of suitable size. A total of one unintentional mortality is requested over the five year term of the project which is scheduled to take place from March 1 to December 15.

Dated: August 19, 2009.

**P. Michael Payne,**

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

[FR Doc. E9-20491 Filed 8-24-09; 8:45 am]

BILLING CODE 3510-22-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XQ20

#### Incidental Takes of Marine Mammals During Specified Activities; Marine Geophysical Survey in the Northeast Pacific Ocean, August-October, 2009

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

**ACTION:** Notice; issuance of incidental take authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to Lamont-Doherty Earth Observatory (L-DEO), a part of Columbia University, to take small numbers of marine mammals, by Level B harassment only, incidental to conducting a marine seismic survey in the northeast Pacific Ocean.

**DATES:** Effective August 19, 2009 through October 13, 2009.

**ADDRESSES:** A copy of the IHA and the application are available by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225 or by telephoning the

**APPENDIX B**  
**CONFERENCE WITNESSES**



## CALENDAR OF THE PUBLIC CONFERENCE

Those listed below appeared as witnesses at the United States International Trade Commission's conference held in connection with the following investigations:

**Subject:** Certain Magnesia Carbon Bricks from China and Mexico  
**Investigation No.:** 701-TA-468 & 731-TA-1166-1167 (Preliminary)  
**Date and Time:** August 19, 2009 - 9:30 am

The conference was held in Room 101 (Main Hearing Room) of the United States International Trade Commission Building, 500 E Street, SW, Washington, DC.

### **In Support of the Imposition of Antidumping and Countervailing Duties:**

Doyle, Barlow & Mazard  
Washington, DC  
on behalf of

Resco Products, Inc.

**William K. Brown**, President and CEO, Resco Products, Inc.  
**Richard W. Copp**, Vice President of Sales and Marketing, Resco Products, Inc.  
**Tim Powell**, Vice President of Finance and Chief Financial Officer, Resco Products, Inc.  
**John Castilano**, Chief Operating Officer, Resco Products, Inc.  
**Dr. Patrick J. Magrath**, Georgetown Economic Services

**Camelia Mazard** - OF COUNSEL  
**Andre P. Barlow**  
**Robert W. Doyle, Jr.**

### **In Opposition to the Imposition of Antidumping and Countervailing Duties:**

Garvey, Schubert, Barer  
Washington, DC  
on behalf of

Fedmet Resources Corp.  
S&S Intersource, LLC

**James Conrad**, Vice President of Refractory Technology, Fedmet Resources  
**Brian J. Stein**, President, S&S Intersource  
**Joseph Stein**, President, S&S Intersource

**Lizbeth R. Levinson** - OF COUNSEL  
**Ronald M. Wisla**

**In Opposition to the Imposition of Antidumping and Countervailing Duties:—Continued**

Squire, Sanders & Dempsey  
Washington, DC  
on behalf of

RHI-Refmex S.A. de C.V.  
RHI Refractories Liaoning Co. Ltd.  
Veitsch-Radex America, Inc.

**Ritchie T. Thomas - OF COUNSEL**  
**Peter J. Koenig**

Troutman Sanders  
Washington, DC  
on behalf of

Vesuvius USA Corp.  
Yingkou Bayuquan Refractories Co. Ltd.

**Julie C. Mendoza - OF COUNSEL**  
**Donald B. Cameron**  
**R. Will Planert**  
**Mary S. Hodgins**



**APPENDIX C**  
**SUMMARY DATA**



Table C-1

MCB: Summary data concerning the U.S. market, 2006-08, January-June 2008, and January-June 2009

(Quantity=short tons, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per short ton; period changes=percent, except where noted)

Item	Reported data					Period changes			
	2006	2007	2008	January-June		2006-08	2006-07	2007-08	Jan.-June
				2008	2009				2008-09
U.S. consumption quantity:									
Amount	***	***	***	***	***	***	***	***	***
Producers' share (1)	***	***	***	***	***	***	***	***	***
Importers' share (1):									
China	***	***	***	***	***	***	***	***	***
Mexico	***	***	***	***	***	***	***	***	***
Subtotal	***	***	***	***	***	***	***	***	***
All other sources	***	***	***	***	***	***	***	***	***
Total imports	***	***	***	***	***	***	***	***	***
U.S. consumption value:									
Amount	***	***	***	***	***	***	***	***	***
Producers' share (1)	***	***	***	***	***	***	***	***	***
Importers' share (1):									
China	***	***	***	***	***	***	***	***	***
Mexico	***	***	***	***	***	***	***	***	***
Subtotal	***	***	***	***	***	***	***	***	***
All other sources	***	***	***	***	***	***	***	***	***
Total imports	***	***	***	***	***	***	***	***	***
U.S. shipments of imports from:									
China:									
Quantity	32,976	36,184	42,072	26,899	15,682	27.6	9.7	16.3	-41.7
Value	25,460	30,057	37,905	23,323	15,329	48.9	18.1	26.1	-34.3
Unit value	\$772	\$831	\$901	\$867	\$978	16.7	7.6	8.5	12.7
Ending inventory quantity	24,279	25,373	27,527	24,788	23,029	13.4	4.5	8.5	-7.1
Mexico:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
Subtotal:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
All other sources:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
All sources:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***

Table continued on next page.

Table C-1--Continued

MCB: Summary data concerning the U.S. market, 2006-08, January-June 2008, and January-June 2009

(Quantity=short tons, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per short ton; period changes=percent, except where noted)

Item	Reported data					Period changes			
	2006	2007	2008	January-June		2006-08	2006-07	2007-08	Jan.-June 2008-09
				2008	2009				
U.S. producers':									
Average capacity quantity . . . . .	160,903	160,903	160,903	80,451	80,451	0.0	0.0	0.0	0.0
Production quantity . . . . .	72,895	71,125	70,441	40,633	17,412	-3.4	-2.4	-1.0	-57.1
Capacity utilization (1) . . . . .	45.3	44.2	43.8	50.5	21.6	-1.5	-1.1	-0.4	-28.9
U.S. shipments:									
Quantity . . . . .	59,181	58,074	62,470	35,111	16,284	5.6	-1.9	7.6	-53.6
Value . . . . .	61,937	62,549	76,558	41,284	21,251	23.6	1.0	22.4	-48.5
Unit value . . . . .	\$1,047	\$1,077	\$1,226	\$1,176	\$1,305	17.1	2.9	13.8	11.0
Export shipments:									
Quantity . . . . .	***	***	***	***	***	***	***	***	***
Value . . . . .	***	***	***	***	***	***	***	***	***
Unit value . . . . .	***	***	***	***	***	***	***	***	***
Ending inventory quantity . . . . .	8,754	7,528	6,838	7,865	6,231	-21.9	-14.0	-9.2	-20.8
Inventories/total shipments (1) . . . . .	***	***	***	***	***	***	***	***	***
Production workers . . . . .	109	110	102	110	78	-6.3	0.9	-7.2	-28.7
Hours worked (1,000s) . . . . .	226	239	227	122	78	0.4	5.8	-5.0	-36.1
Wages paid (\$1,000s) . . . . .	6,081	6,441	6,420	3,460	2,095	5.6	5.9	-0.3	-39.5
Hourly wages . . . . .	\$26.91	\$26.95	\$28.28	\$28.36	\$26.86	5.1	0.2	4.9	-5.3
Productivity (tons/1,000 hours) . . . . .	322.5	297.6	310.3	333.1	223.2	-3.8	-7.7	4.3	-33.0
Unit labor costs . . . . .	\$83.42	\$90.56	\$91.14	\$85.15	\$120.32	9.3	8.6	0.6	41.3
Net sales:									
Quantity . . . . .	***	***	***	***	***	***	***	***	***
Value . . . . .	***	***	***	***	***	***	***	***	***
Unit value . . . . .	***	***	***	***	***	***	***	***	***
Cost of goods sold (COGS) . . . . .	***	***	***	***	***	***	***	***	***
Gross profit or (loss) . . . . .	***	***	***	***	***	***	***	***	***
SG&A expenses . . . . .	***	***	***	***	***	***	***	***	***
Operating income or (loss) . . . . .	***	***	***	***	***	***	***	***	***
Capital expenditures . . . . .	***	***	***	***	***	***	***	***	***
Unit COGS . . . . .	***	***	***	***	***	***	***	***	***
Unit SG&A expenses . . . . .	***	***	***	***	***	***	***	***	***
Unit operating income or (loss) . . . . .	***	***	***	***	***	***	***	***	***
COGS/sales (1) . . . . .	***	***	***	***	***	***	***	***	***
Operating income or (loss)/ sales (1) . . . . .	***	***	***	***	***	***	***	***	***

(1) "Reported data" are in percent and "period changes" are in percentage points.  
(2) Undefined.

Note.--Financial data are reported on a fiscal year basis and may not necessarily be comparable to data reported on a calendar year basis. Because of rounding, figures may not add to the totals shown. Unit values and shares are calculated from the unrounded figures.

Source: Compiled from data submitted in response to Commission questionnaires.