Certain Magnesia Carbon Bricks From China and Mexico

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

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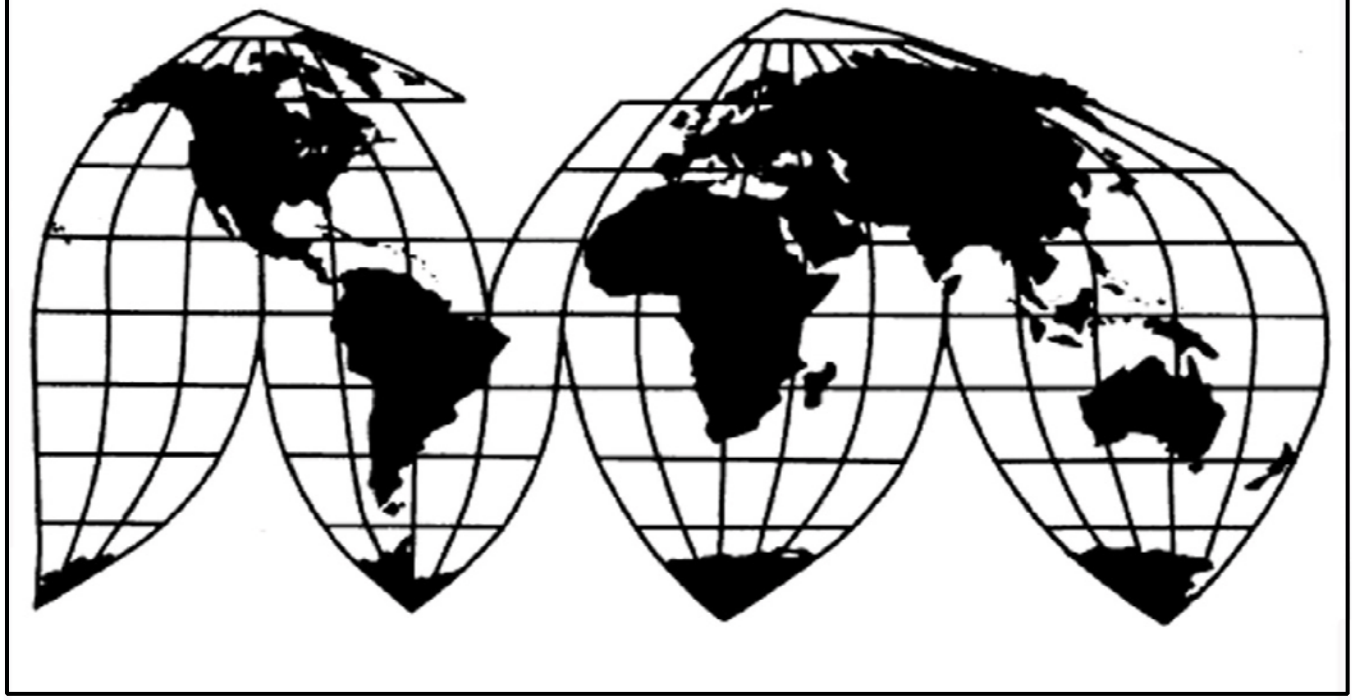
U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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Note.–Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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 (Final)

CERTAIN MAGNESIA CARBON BRICKS FROM CHINA AND MEXICO

DETERMINATIONS

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b)) and 19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China and Mexico of certain magnesia carbon bricks, provided for in subheadings 6902.10.10, 6902.10.50, 6815.91.99, and 6815.99.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be subsidized by the Government of China and to be sold in the United States at less than fair value (LTFV).[2] [3]

BACKGROUND

The Commission instituted these investigations effective July 29, 2009, following receipt of a petition filed with the Commission and Commerce by Resco Products Inc., Pittsburgh, PA. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of certain magnesia carbon bricks from China were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. § 1671b(b)) and that imports of certain magnesia carbon bricks from China and Mexico were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing 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 April 23, 2010 (75 FR 21346). The hearing was held in Washington, DC, on July 27, 2010, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

[2] The Commission also finds that imports subject to Commerce's affirmative critical circumstances determination are not likely to undermine seriously the remedial effect of the antidumping duty order on China.

[3] Chairman Deanna Tanner Okun, and Commissioners Daniel R. Pearson and Shara L. Aranoff determine 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 an industry in the United States is not 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.

VIEWS OF THE COMMISSION

Based on the record in the final phase of these investigations, we find that an industry in the United States is materially injured[1] or threatened with material injury[2] by reason of imports of magnesia carbon bricks ("MCBs" or "MCB") from China that are 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 sold in the United States at less than fair value. We also determine that critical circumstances do not exist with respect to the subject imports from China covered by the Department of Commerce's ("Commerce") affirmative critical circumstances determination.

I. BACKGROUND

The antidumping and countervailing duty petitions in these investigations were filed on July 29, 2009, by Resco Products, Inc. ("Resco"), a domestic producer of MCBs.[3] Representatives of the petitioner and ANH Refractories Company ("ANH"), also a domestic producer, appeared at the hearing accompanied by counsel. Resco filed prehearing and posthearing briefs, and ANH filed a posthearing brief. Chinese producer RHI Refractories Liaoning Co. Ltd., Mexican producer RHI-Refmex S.A. de C.V. ("RHI-Refmex"), and importer Veitsch-Radex America, Inc. (collectively, the "RHI Respondents") appeared at the hearing and were represented by counsel; they also filed joint prehearing and posthearing briefs. Importer Vesuvius USA Corporation and Chinese producer Yingkou Bayuquan Refractories Co., Ltd. (collectively, the "Vesuvius Respondents") filed joint prehearing and posthearing briefs.

Domestic firms that account for the vast majority of domestic production of MCBs – Resco, ANH, and Magnesita Refractories – provided financial and trade information to the Commission.[4] The Commission also received questionnaire responses from importers representing 60 percent of U.S. imports from China and 100 percent of imports from Mexico.[5] Seven Chinese producers, which are estimated to have accounted for approximately *** percent of Chinese exports of MCBs to the United States during 2009, returned questionnaires providing information to the Commission.[6] The Commission also received a completed questionnaire from the only Mexican producer of the subject product, RHI-Refmex.[7]

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[1] Commissioner Charlotte R. Lane, Commissioner Irving A. Williamson, and Commissioner Dean A. Pinkert determine that a domestic industry is materially injured by reason of subject imports of MCBs from China and Mexico.

[2] Chairman Deanna Tanner Okun, Commissioner Daniel R. Pearson, and Commissioner Shara L. Aranoff determine that an industry in the United States is threatened with material injury by reason of subject imports from China and that an industry in the United States is not materially injured or threatened with material injury by reason of subject imports from Mexico. They join the Commission opinion through Section V(B), except as noted herein. See Separate and Dissenting Views of Chairman Deanna Tanner Okun, Commissioner Daniel R. Pearson, and Commissioner Shara L. Aranoff.

[3] Petition at 2.

[4] Confidential Staff Report, INV-HH-080 (August 13, 2010) ("CR"), Public Staff Report ("PR") at VI-1. The three firms accounted for *** percent of domestic production in 2009. CR/PR at III-1.

[5] CR/PR at IV-1.

[6] CR at VII-3, PR at VII-2.

[7] CR at VII-7, PR at VII-5.

II. 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."[8] 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 {w}hole 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."[9] 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 . . . ."[10]

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.[11] No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.[12] The Commission looks for clear dividing lines among possible like products and disregards minor variations.[13] Although the Commission must accept the determination of Commerce as to the scope of the imported merchandise that is subsidized or sold at less than fair value,[14] the Commission determines what domestic product is like the imported articles Commerce has identified.[15] The Commission must base its domestic like product determination on the record in these investigations. The Commission is

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[8] 19 U.S.C. § 1677(4)(A).

[9] 19 U.S.C. § 1677(4)(A).

[10] 19 U.S.C. § 1677(10).

[11] 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).

[12] See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

[13] 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.").

[14] 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).

[15] 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).

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.[16]

B. Product Description

Commerce in its final determinations defined the scope of the imported merchandise under investigation 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 antioxidants 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).[17]

As Commerce indicated in its final determinations, the merchandise at issue in these investigations consists of certain 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.[18] Refractory products 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.[19] The scope of the investigations includes only chemically bonded MCBs in which the magnesia component is at least 70 percent and the carbon levels range up to 30 percent.[20]

MCBs are used in steel production as refractory linings for ladles, electric arc furnaces, and basic oxygen furnaces. They are used to line lower sidewalls, upper sidewalls, slag lines, and roofs of ladles and ladle metallurgy furnaces involved in steel production where MCBs come in contact with both molten steel and molten slag.[21] Ladles account for the largest share of MCBs used by the steel industry, followed by electric arc furnaces. Basic oxygen furnaces account for a relatively small share of MCB sales.[22] MCBs are consumed in the steelmaking process and their rate of replacement depends upon the application.[23]

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[16] 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).

[17] Certain Magnesia Carbon Bricks from the People's Republic of China; Final Determination of Sales at Less Than Fair Value and Critical Circumstances, 75 Fed. Reg. 45467 (Aug. 2, 2010); Certain Magnesia Carbon Bricks From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 75 Fed. Reg. 45472 (Aug. 2, 2010); Certain Magnesia Carbon Bricks from Mexico: Notice of Final Determination of Sales at Less Than Fair Value, 75 Fed. Reg. 45097 (Aug. 2, 2010). The subject merchandise is provided for under subheadings 6902.10.1000, 6902.10.5000, 6815.91.0000, 6815.99.2000 and 6815.99.4000 of the Harmonized Tariff Schedule of the United States (HTS).

[18] CR at I-9, PR at I-8.

[19] CR at I-9, PR at I-8.

[20] See CR at I-7, PR at I-6.

[21] CR at I-9, PR at I-8.

[22] CR at I-9 n.14, PR at I-8. n.14; Conference Tr. at 24.

[23] Conference Tr. at 55.

C. Analysis and Conclusion

In the preliminary phase of these investigations, the Commission defined a single like product that was coterminous with the scope of the investigations as defined by Commerce.[24] The Commission found that the record indicated that MCBs are not used interchangeably with other refractory products.[25] The Commission noted that, compared with other refractory products, MCBs have distinct uses, differ in physical characteristics, are priced higher, and may require different production processes.[26] Based on this evidence and absent any arguments to the contrary, the Commission defined the domestic like product as consisting of all MCBs.[27]

In this final phase of the investigations, Petitioner Resco maintains the Commission should again define a single like product that is coterminous with Commerce's scope.[28] The RHI Respondents indicate that they accept the definition of the domestic like product defined by the Commission in the preliminary phase of the investigations, although they note that refractory bricks of different compositions are competitive with MCBs in some applications.[29] No party, however, objects to defining the domestic like product as coterminous 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.[30] Other types of refractory brick also have high thermal resistance and some 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.[31]

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.[32]

Channels of distribution. The record indicates that MCBs, as well as other refractory bricks, are sold directly to the end users, steel producers.[33]

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 often differ.[34]

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.[35]

Price. The average unit net sales value for U.S.-produced MCBs in 2009 was $*** per ton, $150-$500 more per ton than other refractory products.[36]

Conclusion. Given MCBs' distinct uses, distinct physical characteristics, limited interchangeability with other refractory products, higher prices, and generally distinct production

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[24] Certain Magnesia Carbon Bricks From China and Mexico, Inv. Nos. 701-TA-468 and 731-TA-1166-1167 (Preliminary), USITC Pub. 4100 (Sept. 2009) ("USITC Pub. 4100")at 7.

[25] USITC Pub. 4100 at 6-7.

[26] USITC Pub. 4100 at 6-7.

[27] USITC Pub. 4100 at 6-7.

[28] Resco's Prehearing Brief at 4-5.

[29] RHI Respondents' Prehearing Brief at 8.

[30] CR at I-9, PR at I-8.

[31] CR at I-9, PR at I-8.

[32] CR at I-9, PR at I-8. The RHI Respondents note that other refractory bricks may be competitive with MCBs for some applications. RHI Respondents' Prehearing Brief at 8.

[33] CR/PR at II-1 and Table II-1.

[34] Conference Tr. at 47-48, 62-63 (Mazard, Copp).

[35] Conference Tr. at 47 (Mazard).

[36] See CR/PR at Table C-1; Conference Tr. at 48 (Mazard).

processes, we again define the domestic like product as MCBs that are within the scope of the investigations.

III. DOMESTIC INDUSTRY

A. In General

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."[37] 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 also 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.[38] Exclusion of such producers is within the Commission's discretion based upon the facts presented in each investigation.

B. Background

In the preliminary phase of these investigations, the Commission considered whether to exclude *** as related parties from the definition of the domestic industry.[39] Both had imported subject merchandise during the period examined.[40] The Commission, however, declined to exclude either company as a related party.[41]

In the final phase of the investigations, the same two U.S. producers, ***, reported that they imported subject MCBs during the period examined.[42] Thus, they may be excluded from the industry if appropriate circumstances exist.[43] Resco argues that appropriate circumstances do not exist to exclude *** from the definition of the domestic industry in the final phase of the investigations.[44] It contends that the Commission should not exclude ***.[45] The RHI Respondents agree with Resco, arguing that although *** imported subject MCBs from China during the period, their primary interests still lie in domestic production, and therefore they should not be excluded from the domestic industry.[46]

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[37] 19 U.S.C. § 1677(4)(A).
[38] 19 U.S.C. § 1677(4)(B).
[39] USITC Pub. 4100 at 8.
[40] USITC Pub. 4100 at 7.
[41] USITC Pub. 4100 at 8.
[42] CR/PR at Table III-5a.
[43] 19 U.S.C. § 1677(4)(B).
[44] Resco's Prehearing Brief at 6-8. Resco did not address ***.
[45] Resco's Prehearing Brief at 6.
[46] RHI Respondents' Prehearing Brief at 11.

C. Analysis and Conclusion

*** domestic producer of MCBs, accounting for approximately *** of all domestic production in 2009.[47] Its importations were greatest during 2008, and its imports of subject merchandise as a ratio to domestic production were relatively modest, peaking in 2009 at *** percent.[48] The record therefore indicates that its primary interest lies in domestic production. That it is the *** and that it *** in these investigations further indicate that its primary interest has remained that of a domestic producer. Additionally, *** does not appear to have been shielded from any injury from the subject imports as a result of its importations, as it did ***.[49] [50] We therefore do not exclude *** from the domestic industry under the statute's related party provision.[51]

*** accounted for *** percent of domestic production in 2009.[52] The ratio of its imports to its production fell from *** percent in 2007 to just *** percent in 2009.[53] The *** amounts that it imported, the fact that its importations ***, and its status as *** all suggest that its primary interest lies in domestic production. *** also reported *** than the industry as a whole, suggesting that it was not shielded from the effects of the subject imports.[54] We therefore find that it is not appropriate to exclude *** from the definition of the domestic industry as a related party.

Accordingly, we define the domestic industry as all U.S. producers of MCBs.

IV. 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.[55] 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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[47] CR/PR at Table III-1.

[48] CR/PR at Table III-5.

[49] CR/PR at Table VI-2.

[50] Consistent with her practice in past investigations and reviews, Commissioner 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.

[51] Commissioner Pinkert has considered the financial performances of *** and *** in these final phase investigations as a factor in determining whether to exclude either company from the domestic industry. He has done so because the Commission gathered data on each company's combined subject import and domestic production operations as well as its domestic production operations alone. CR/PR at Table VI-2, Table C-4; CR at VI-12 to VI-13, nn.11 &14, PR at VI-3, nn.11 &14. He finds that the operating margin for each company's combined subject import/domestic operations does not differ sufficiently from the margin for its domestic operations to conclude that either company derived a substantial benefit from subject imports.

[52] CR/PR at Table III-1.

[53] CR/PR at Table III-5a.

[54] CR/PR at Table VI-2.

[55] 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;[56]
(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.[57]

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.[58] Only a "reasonable overlap" of competition is required.[59]

B. Parties' Arguments

The RHI Respondents argue that there was only limited competition between the subject imports from China and Mexico during the period because they were sold in different geographic markets.[60] According to the RHI Respondents, *** percent of subject imports from Mexico were concentrated in the Southwest and Southeast.[61] The RHI Respondents maintain that the limited pricing data for subject imports from Mexico also confirm the limited competition between subject imports from the two countries.[62] They also contend that subject imports from Mexico entered the market in far smaller volumes than those from China.[63]

Petitioner Resco disagrees with the RHI Respondents, arguing that the geographic markets of the subject imports and the domestic like product overlap. It asserts that the geographic market for MCBs from both China and Mexico is the entire continental United States.[64]

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[56] 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).

[57] 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).

[58] See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

[59] 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.").

[60] RHI Respondents' Prehearing Brief at 12-13.

[61] RHI Respondents' Prehearing Brief at 13 and Exhibit 4.

[62] RHI Respondents' Prehearing Brief at 9-10.

[63] RHI Respondents' Prehearing Brief at 12.

[64] Resco's Prehearing Brief at 14.

C. Discussion

In these investigations, the threshold criterion for cumulation is satisfied because the petitioner filed the antidumping duty petitions with respect to China and Mexico, as well as the countervailing duty petition with respect to China, on the same day. None of the cumulation exceptions apply.[65] 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.

Fungibility. The record indicates a reasonable degree of fungibility among the subject imports from each country and the domestic like product. The questionnaire responses show that market participants perceive domestic MCBs and the subject imports to be interchangeable. Nine of ten responding purchasers indicated that subject imports from China are always or frequently interchangeable with subject imports from Mexico.[66] Sixteen of nineteen responding purchasers indicated that subject imports from China are always or frequently interchangeable with domestic MCBs, and ten of twelve responding purchasers indicated that subject imports from Mexico are always or frequently interchangeable with domestic MCBs.[67] Further, six of seven responding importers indicated that subject imports from China are always interchangeable with subject imports from Mexico.[68]

Geographic Overlap. The RHI Respondents contend that Mexican MCBs are sold to end users in the Central Southwest and Southeast regions of the United States, while subject imports from China serve the North Central portion of the United States where steel production is concentrated.[69] Subject imports from China and domestic MCBs compete nationwide, however, and thus there is an overlap in sales in the Southwest and Southeast.[70]

Furthermore, the record indicates that purchasers of Mexican MCBs are located in areas other than the Central Southwest and Southeast. MCBs are purchased by large steel companies, but the sales are typically made at the steel plant level.[71] The seven firms that purchased Mexican product reported a total of sixteen plant locations, many of which are located in the Midwest (seven plants in Ohio, Illinois, Michigan, Indiana, and Kentucky) and Northeast (three plants in Pennsylvania).[72] Only two plants of the responding purchasers that purchased subject imports from Mexico were located in the Central Southwest (Texas and Arizona), and only four plants were located in the Southeast (Alabama, North Carolina and South Carolina).[73] We therefore conclude that there is a sufficient geographic overlap between the subject imports from China and Mexico and the domestic product for purposes of finding a reasonable overlap of competition.

Simultaneous Presence in the Market. Domestically produced MCBs were present in the market throughout the period for which information was gathered, as were subject imports from China and Mexico.[74] Further, the pricing data indicate that subject imports were sold in all quarters for which data

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[65] See 19 U.S.C. § 1677(7)(G)(ii).

[66] CR/PR at Table II-8.

[67] CR/PR at Table II-8.

[68] CR/PR at Table II-8.

[69] Respondents have not suggested that the U.S. market for MCBs should be divided into regional markets under the regional industry provision, 19 U.S.C.§ 1677(4)(C).

[70] ***, indicate their sales are nationwide. Questionnaire Responses at III-11; CR/PR at Table IV-1.

[71] Tr. at 160 (Beschel).

[72] CR at II-7, PR at II-5.

[73] CR at II-7, PR at II-5.

[74] See CR/PR at Tables IV-2a and IV-3a. Respondents' argument that the volume of subject imports from Mexico was too low to be cumulated is incorrect for purposes of our analysis of present material injury. RHI Respondents' Prehearing Brief at 12-13. Assuming that imports are not negligible under the statute, consideration of whether the volume of subject imports from one country is smaller than that from another subject country is not

were collected.[75] We therefore conclude that domestically produced MCBs and subject imports from China and Mexico were simultaneously present in the United States.

Channels of Distribution. Virtually all shipments of domestically produced merchandise and all of the subject imports were shipped directly to end users.[76]

Conclusion. Questionnaire responses indicate that the domestic like product and subject imports from China and Mexico are generally interchangeable and were sold in overlapping geographic markets and through the same channels of distribution during the period examined. 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.

V. MATERIAL INJURY BY REASON OF SUBJECT IMPORTS [77]

A. Legal Standards

In the final phase of antidumping and countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured or threatened with material injury by reason of the imports under investigation.[78] 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.[79] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[80] In assessing whether 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.[81] 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."[82]

Although the statute requires the Commission to determine whether the domestic industry is "materially injured by reason of" unfairly traded imports,[83] 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.[84] 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

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permissible. The URAA removed "negligibility" as an exception to cumulation in this context. See, e.g. SAA at 847, 849.

[75] See CR/PR at Tables V-1 to V-6.

[76] CR/PR at II-1.

[77] Negligibility under 19 U.S.C. § 1677(24) is not an issue in these investigations, and no party made arguments concerning this issue. Based on importer questionnaire responses, during the most recent 12-month period preceding the filing of the petition for which data are available (July 2008 - June 2009), subject imports from China accounted for *** percent of total imports of MCBs, and subject imports from Mexico accounted for *** percent of total imports of MCBs. CR at IV-8, PR at IV-5.

[78] 19 U.S.C. §§ 1671d(b), 1673d(b).

[79] 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 ... and explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B).

[80] 19 U.S.C. § 1677(7)(A).

[81] 19 U.S.C. § 1677(7)(C)(iii).

[82] 19 U.S.C. § 1677(7)(C)(iii).

[83] 19 U.S.C. §§ 1671d(a), 1673d(a).

[84] 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'd, 944 F. Supp. 943, 951 (Ct. Int'l Trade 1996).

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.[85]

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 non-subject 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.[86] In performing its examination, however, the Commission need not isolate the injury caused by other factors from injury caused by unfairly traded imports.[87] 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 non-

[85] 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).

[86] SAA" 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.

[87] 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, Invs. 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.").

subject imports, which may be contributing to overall injury to an industry.[88] It is clear that the existence of injury caused by other factors does not compel a negative determination.[89]

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."[90] [91] Indeed, the Federal Circuit has examined and affirmed various Commission methodologies and has disavowed "rigid adherence to a specific formula."[92]

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 non-subject 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 non-subject imports.[93] The additional "replacement/benefit" test looked at whether non-subject 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 non-subject imports or other factors to subject imports.[94] Accordingly, we do not consider

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[88] S. Rep. 96-249 at 74-75; H.R. Rep. 96-317 at 47.

[89] 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.").

[90] 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.

[91] Commissioner Pinkert does not join this paragraph or the following three 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 when considering present material injury, to undertake a particular kind of analysis of non-subject imports, albeit without reliance upon presumptions or rigid formulas. 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.

[92] 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.").

[93] Mittal Steel, 542 F.3d at 875-79.

[94] 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).

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 non-subject 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.[95] [96]

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.[97] Congress has delegated this factual finding to the Commission because of the agency's institutional expertise in resolving injury issues.[98]

B. Conditions of Competition and the Business Cycle

The following conditions of competition inform our analysis in the final phase of these investigations.

1. Demand Considerations

MCBs are mainly used in the production of steel, and therefore demand for MCBs is driven by the level of steel production.[99] In the United States, raw steel production fluctuated between January 2007 and August 2008, increasing overall by 14.9 percent, and then decreased 56.2 percent between August 2008 and April 2009.[100] Between April 2009 and April 2010, steel production increased 83.0 percent.[101] Nonetheless, domestic steel production has yet to return to its pre-recession level of early 2008.[102]

Apparent U.S. consumption of MCBs followed a path similar to that of steel production, increasing *** percent between 2007 and 2008, and then declining *** percent between 2008 and 2009.[103] In January-March 2010, apparent U.S. consumption was *** percent higher than during the

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

[96] 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 non-subject countries that accounted for substantial shares of U.S. imports of subject merchandise (if, in fact, there were large non-subject 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 non-subject imports.

[97] We provide in our respective discussions of volume, price effects, and impact a full analysis of other factors alleged to have caused any material injury experienced by the domestic industry.

[98] 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.").

[99] CR at II-14, PR at II-9; Conference Tr. at 31, 34 (Magrath); Tr. at 124 (Brown); Tr. at 239 (Beschel).

[100] CR at II-14, PR at II-9.

[101] CR at II-14, PR at II-9.

[102] See CR/PR at Fig. II-1.

[103] CR at II-14, PR at II-10.

same period of 2009.[104] Given the level of apparent U.S. consumption in the first quarter of 2010, it appears that demand for MCBs has recovered more quickly than steel production.

2. Supply Conditions

Both domestic producers and importers make most of their sales directly to end users. The domestic producers often sell MCBs as part of a package of refractory products.[105]

The domestic industry was the largest source of supply for the U.S. market during the period examined, although its share of the market declined. Domestic producers' U.S. market share decreased from *** percent in 2007 to *** percent in 2008, and then to *** percent in 2009.[106] It was *** percent in interim 2009 (January-March 2009) and *** percent in interim 2010 (January-March 2010).[107] U.S. producers' production capacity was unchanged at *** short tons during the period examined and exceeded domestic demand.[108]

The U.S. market share of cumulated subject imports increased overall from *** percent in 2007 to *** percent in 2008 and *** percent in 2009, and was *** percent in interim 2009 and *** percent in interim 2010.[109] Nonsubject imports generally declined and served a relatively small portion of the market, accounting for no more than *** percent of U.S. apparent consumption throughout the period examined.[110] China and Mexico are the largest foreign suppliers of MCBs to the United States, accounting for *** percent and *** percent, respectively, of the quantity of total imports in 2009.[111]

3. Substitutability and Other Factors

The parties disagreed as to whether MCBs are commodity products. Resco claims that they are commodity-type products, as price is a "paramount factor in purchasing decisions" provided that availability is equal and suppliers meet basic quality standards.[112] Resco acknowledges, however, that it uses about 150 different formulations for MCBs and that it sells MCBs in about 3,000 different shapes.[113] Nonetheless, it reports that about half of the market consists of standardized shapes and sizes of MCBs.[114] The Vesuvius and RHI Respondents argue that the price-to-performance ratio, rather than price alone, is the primary factor in MCB purchasing decisions, and thus MCB is not a commodity-type product.[115]

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[104] CR at II-14, PR at II-10.

[105] CR at V-2, PR at V-1; Conference Tr. at 47, 62-63 (Mazard, Copp). Some MCB sales also take place as part of cost-per-ton or cost-per-heat programs. These are referred to as "program sales" or "project sales," and may include other related services such as installation and technical assistance, in which case these types of contracts may also be called "full-line service" arrangements. These sales, however, accounted for a relatively small portion of the domestic sales during the period, and importers entered into these agreements as well. CR at III-5 n.10, PR at III-3 n.10; CR/PR at V-2, n.5.

[106] CR/PR at Table IV-4a.

[107] CR/PR at Table IV-4a.

[108] CR/PR at Table III-2a.

[109] CR/PR at Table IV-4a.

[110] CR/PR at Table IV-4a.

[111] CR/PR at Table IV-2a.

[112] Resco's Prehearing Brief at 14.

[113] Conference Tr. at 50, 72 (Brown).

[114] Conference Tr. at 52 (Brown).

[115] RHI Respondents' Prehearing Brief at 17; Vesuvius Respondents' Prehearing Brief at 2.

For products of the same type, there is a relatively high degree of substitutability between the domestic like product and subject imports.[116] Nine of ten responding purchasers indicated that subject imports from China are always or frequently interchangeable with subject imports from Mexico.[117] Sixteen of nineteen responding purchasers indicated that subject imports from China are always or frequently interchangeable with domestic MCBs, and ten of twelve responding purchasers indicated that subject imports from Mexico are always or frequently interchangeable with domestic MCBs.[118]

Purchasers are sensitive to price to some degree, and 9 of 20 purchasers reported that they usually or always purchase the lowest-priced MCBs.[119] Purchasers indicated that price is second only to quality in purchasing decisions.[120] Purchasers reported that the level of performance of MCBs relative to price was their paramount consideration, and they try to achieve the lowest overall cost per ton of steel produced rather than simply purchase the lowest priced MCBs.[121] MCBs generally make up a small share of the final cost of steel products that they are used to produce. Nine purchasers reported cost shares of 2 percent or less, although one purchaser reported a cost share of 10 percent.[122] Due to its low cost share in its end use and the lack of commercially viable substitutes, demand for MCBs is relatively inelastic.[123]

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 2007-2009.[124] Raw material costs increased by 26 percent between 2007 and 2008, but they have since decreased and were 9.4 percent lower in the first quarter of 2010 than the first quarter of 2009.[125] [126]

C. Volume of Subject Imports[127]

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."[128]

Subject imports were already present in substantial volumes and market share at the beginning of the period and remained a significant presence in the U.S. market throughout the period. The quantity of subject imports in the U.S. market increased by *** percent from *** short tons in 2007 to *** short tons in 2008, before falling to *** short tons in 2009.[129] They were higher in interim 2010, at *** short tons,

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[116] CR at II-19, PR at II-13.
[117] CR/PR at Table II-8.
[118] CR/PR at Table II-8.
[119] CR at II-21, PR at II-14.
[120] CR/PR at Tables II-6 and II-7.
[121] Tr. at 158-59 (Beschel), 229 (Thomas). Virtually all purchasers reported that the price performance ratio for MCBs was very important. CR at II-22, PR at II-15.
[122] CR at II-17, PR at II-11.
[123] CR at II-31, PR at II-21.
[124] CR/PR at V-1.
[125] CR/PR at V-1.
[126] Chairman Deanna Tanner Okun, Commissioner Daniel R. Pearson, and Commissioner Shara L. Aranoff do not join the remainder of this opinion.
[127] 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. See CR at IV-3, n.7, PR at IV-1 n.7.
[128] 19 U.S.C. § 1677(7)(C)(i).
[129] See CR/PR at Table IV-2a.

than in interim 2009, at *** short tons.[130] U.S. shipments of subject imports increased their market share from *** percent in 2007 to *** percent in 2008 and *** percent in 2009.[131]

Subject imports increased their share of the U.S. market both when apparent U.S. consumption was increasing (from 2007 to 2008) and when it was declining (from 2008 to 2009).[132] Nonsubject imports, however, generally trended downward.[133] Their market share was *** percent in 2007, *** percent in 2008, and *** percent in 2009.[134]

The significant increase in subject imports' market share came almost entirely at the expense of the domestic industry, as subject imports increasingly displaced domestic shipments in the U.S. market. The U.S. producers' market share decreased from *** percent in 2007 to *** percent in 2008 and *** percent in 2009.[135] Their market share recovered to *** percent in interim 2010 from *** percent in interim 2009.[136]

The increasing presence of subject imports in the U.S. market during the period of investigation is also apparent when subject imports are considered relative to U.S. production. The ratio of subject imports to domestic production was *** percent in 2007, *** percent in 2008, and *** percent in 2009, before falling to *** percent in interim 2010 from *** percent in interim 2009.[137]

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 that the increase in subject import shipments and market share over the period examined was significant.[138]

D. Price Effects of the Subject Imports

Section 771(C)(ii) of the Act provides as follows with respect to evaluating the price effects of subject imports:

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[130] See CR/PR at Table IV-2a.
[131] CR/PR at Table IV-4a.
[132] See CR/PR at Table C-1.
[133] See CR/PR at Table C-1.
[134] CR/PR at Table IV-4a.
[135] See CR/PR at Table IV-4a.
[136] See CR/PR at Table IV-4a.
[137] CR/PR at Table IV-5a.
[138] In final phase investigations, the statutory provision governing the Commission's treatment of post-petition information, 19 U.S.C. § 1677(7)(I), states that "the Commission shall consider whether any change in the volume, price effects, or impact of imports of the subject merchandise since the filing of the petition in an investigation . . . is related to the pendency of the investigation and, if so, the Commission may reduce the weight accorded to the data for the period after the filing of the petition in making its determination of material injury . . . ." The petitions, as noted above, were filed July 29, 2009. Prior to the filing of the petitions, subject imports had steadily increased their U.S. market share; however, subject imports' market share, in terms of quantity, declined in the second half of 2009 to *** percent from *** percent in the first half of 2009, and was lower in interim 2010 at *** percent than in interim 2009 at *** percent. Although subject imports increased from *** short tons in the first half of 2009 to *** short tons in the second half, this increase slowed significantly between the interim periods, and the increase in U.S. consumption outstripped the increase in shipments of subject imports. CR/PR at Table IV-5b. Subject imports were only *** percent higher in interim 2010 (*** short tons) than in interim 2009 (*** short tons), while apparent U.S. consumption was *** percent higher in interim 2010 than in interim 2009. CR/PR at Table IV-5a and Table IV-4a. We thus find that the filing of the petitions had an effect on the subject imports' market share in this investigation, particularly in the first quarter of 2010, as shipments of subject imports did not increase as quickly as apparent U.S. consumption. Accordingly, we reduce the weight we accord to trends in the data after the filing of the petition.

> 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.[139]

As addressed in section V.B.3 above, the record indicates that there is a relatively high degree of substitutability between subject imports and the domestic like product, with purchasers generally using them interchangeably.[140] Price is an important consideration for purchasers.[141]

The Commission collected quarterly f.o.b. pricing data for five MCB products.[142] Three domestic producers, nine 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 during the period examined, January 2007 through March 2010.[143] Subject imports undersold the domestic like product in 77 of 91 quarterly pricing comparisons by an average margin of 15.6 percent.[144] Underselling margins ranged from 1.0 percent to 35.1 percent.[145] Given the consistent underselling by the subject imports, we find that underselling was significant during the period examined.

Prices for domestically produced MCBs generally increased as the domestic industry's input costs increased during the period examined. Weighted-average sales prices for the five U.S.-produced pricing products selected by the Commission increased by 10.0 percent, 20.8 percent, 28.9 percent, 31.3 percent and 25.4 percent between the first quarter of 2007 and the first quarter of 2010.[146] The weighted-average sales prices for pricing products 2, 4 and 5 imported from China and Mexico increased by smaller margins, with the exception of subject imports of product 1, which increased by a greater amount than the U.S.-produced product.[147] Prices for subject imports of product 3 fell overall during the period.[148] In light of the increase in prices for U.S.-produced MCBs, we do not find significant price depression by reason of subject imports.

We do find, however, that subject import competition has suppressed domestic like product prices during the period examined to a significant degree. Although domestic producers were able to increase prices over the period examined, they were not always able to increase them sufficiently to fully cover increased COGS.

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[139] 19 U.S.C. § 1677(7)(C)(ii).

[140] CR/PR at Table II-8. See also CR at II-19, PR at II-13 (high degree of substitutability).

[141] CR/PR at Table II-6.

[142] CR at V-5, PR at V-3. 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 corresponds to Resco's brand Nuline 10-99. Product 2 is resin-bonded magnesia carbon brick for electric arc furnaces with a carbon content of 15 percent, fused grain and antioxidant additions that corresponds to Resco's brand Nuline 15 DF. Product 3 is resin-bonded magnesia carbon brick for steel ladles with a carbon content of 8 percent, 50 percent sintered and 50 percent fused grain, and antioxidant additions that corresponds to RHI's brand Ancarbon AC51 CE. Product 4 is resin-bonded magnesia carbon brick for steel ladles with a carbon content of 10 percent, fused grain and antioxidant additions that corresponds to RHI's brand Ancarbon AC72 CE. Product 5 is resin-bonded magnesia carbon brick for steel ladles with a carbon content of 13 percent, fused grain and antioxidant additions that corresponds to Resco's brand Nuline 2-99.

[143] CR at V-5, PR at V-3. The Commission's pricing data accounted for approximately *** percent of U.S. producers' shipments of MCBs, *** percent of U.S. shipments of subject imports from China, and *** percent of U.S. shipments of subject imports from Mexico during the period examined. CR at V-6, PR at V-3 to V-4.

[144] CR/PR at Table V-19.

[145] CR/PR at Table V-19.

[146] CR/PR at Table V-6.

[147] CR/PR at Table V-6.

[148] CR/PR at Table V-6.

From 2007 to 2009, the domestic industry's net sales values increased by a smaller percentage than its unit COGS. The domestic industry's unit COGS increased by $***, or *** percent, from 2007 to 2009.[149] The average unit COGS was $***, or *** percent, lower in interim 2010 than in interim 2009.[150] These increases in unit COGS were largely attributable to increased raw material costs.[151] The domestic producers' unit net sales value increased by $***, or *** percent, from 2007 to 2009, and was $***, or *** percent, lower in interim 2010 than in interim 2009.[152] As a result of the larger increases in unit COGS, the domestic industry's COGS-to-net sales ratio increased overall from *** percent in 2007 to *** percent in 2009.[153]

The price suppressing effects of the subject imports are most apparent in 2008, when demand remained relatively strong. As subject imports increased to their highest annual level in 2008 in terms of quantity, the domestic industry's unit COGS increased by $*** per short ton, or *** percent, from 2007 to 2008, yet the industry's unit net sales value increased by only $*** per short ton, or *** percent.[154] As a result, the domestic industry's COGS-to-net sales ratio increased from *** percent in 2007 to *** percent in 2008.[155] This occurred as the domestic industry increased its U.S. shipments and at a time when apparent U.S. consumption was increasing by *** percent – before the *** percent drop in apparent U.S. consumption that occurred in 2009.[156]

The rise in the COGS-to-net sales ratio, combined with the surge in subject imports, indicates that by 2008, due to the significant volumes of lower-priced subject imports entering the U.S. market, the domestic producers were unable to raise their prices sufficiently to fully cover increased costs. Although there are indications that the cost-price squeeze eased during the latter half of 2009 and the first quarter of 2010 as raw material cost increases subsided, the industry suffered from reduced profitability during 2008 and 2009 due to its inability to raise prices.[157] Accordingly, we find that the subject imports had significant price suppressing effects.[158]

In light of the above, we find that the significant volume of subject imports, through their significant underselling during the period examined, had a significant adverse effect on domestic producers' prices by preventing price increases that otherwise would have occurred.

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[149] CR/PR at Tables VI-1a and C-1.

[150] CR/PR at Table VI-1a. Unit COGS was $*** in 2007, $*** in 2008, $*** in 2009, $*** in interim 2009, and $*** in interim 2010. Id. Unit net sales value was $*** in 2007, $*** in 2008, $*** in 2009, $*** in interim 2009, and $*** in interim 2010. CR/PR at Table V1-1a.

[151] CR/PR at Table VI-1a.

[152] CR/PR at Tables VI-1a and C-1.

[153] CR/PR at Table VI-1a.

[154] See CR/PR at Table VI-1a.

[155] CR/PR at Table VI-1a.

[156] CR/PR at Table C-1.

[157] See CR/PR at Table VI-2.

[158] Additional support for our finding of adverse price effects by subject imports is provided by the confirmed lost sales alleged by the ***. CR at V-20, PR at V-12. Six purchasers agreed or at least partly agreed that domestic producers lost $5.0 million in sales to the subject imports during the period examined. Id. None of the domestic producers' five lost revenue allegations, however, was confirmed. Id.

E. Impact of the Subject Imports[159]

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."[160] 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."[161]

We have carefully examined the performance of the domestic industry producing MCBs, the effects of the subject imports, and the impact of the recession and resulting downturn in consumption. We find that the domestic industry's performance was materially and adversely affected by the subject imports over the period examined. As a result of the significant volumes of subject imports and their significant underselling, the domestic industry experienced declines in market share, employment, and capacity utilization in 2008 when apparent U.S. consumption was relatively strong. These declines predate the recession-driven decline in consumption, as well as the filing of the petitions. Furthermore, the industry was unable to increase its prices sufficiently to fully cover its increased costs due to the increased presence of subject imports, resulting in steep declines in operating income, return on investment, and capital expenditures.

The domestic industry's production, shipment, and sales data reflect substantial declines from 2007 and 2009, although the declines were most pronounced after the impact of the recession was felt in 2009. Nonetheless, the subject imports' impact on the industry's production and shipments is evident from 2007 through 2009.[162] The industry's production fell from 73,552 short tons in 2007 to 72,258 short tons in 2008 and 49,997 short tons in 2009.[163] Its production was 82.2 percent higher in interim 2010, at 17,286 short tons, than in interim 2009, at 9,485 short tons, reflecting an improvement in demand as well as the impact of the filing of the petitions.[164] The industry's U.S. shipments increased from 59,403 short tons in 2007 to 63,789 short tons in 2008, before falling to 42,243 short tons in 2009, but they were higher in interim 2010, at 15,198 short tons, than in interim 2009, at 8,989 short tons.[165]

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[159] In its final determination of sales at less than fair value for China, Commerce found the following weighted-average dumping margins: 128.10 percent for fourteen specific producer and exporter combinations and 236.00 percent for all others. CR at I-7, PR at I-5; 75 Fed. Reg. 45471 (Aug. 2, 2010). With respect to Mexico, Commerce found a weighted average margin of dumping of 57.90 percent for RHI–Refmex S.A. de C.V. and all others. CR at I-6, PR at I-4; 75 Fed. Reg. 45098 (Aug. 2, 2010).

[160] 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.")

[161] 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).

[162] For instance, due to the *** percent increase in subject imports from 2007 to 2008, the domestic industry's U.S. shipments increased by just *** percent when apparent consumption increased by *** percent. Similarly, U.S. shipments fell by *** percent from 2008 to 2009, when apparent U.S. consumption fell by *** percent and subject imports fell by only *** percent. See CR/PR at Table C-1.

[163] CR/PR at Table III-2a.

[164] CR/PR at Table III-2a.

[165] CR/PR at Table III-3a. Domestic producers' inventories increased absolutely and relative to production from 2007 to 2009. Inventories were higher in interim 2010 than in interim 2009. CR/PR at Table III-4a.

Domestic production capacity remained unchanged during the period at 114,241 short tons.[166] The industry's rate of capacity utilization, however, decreased from 64.4 percent in 2007 to 63.3 percent in 2008 and 43.8 percent in 2009.[167] Its capacity utilization was higher in interim 2010, at 60.5 percent, than in interim 2009, at 33.2 percent.[168]

The domestic industry's number of production and related workers declined from 110 in 2007 to 102 in 2008 and then to 92 in 2009.[169] Wages paid fell slightly from $6.44 million in 2007 to $6.42 million in 2008 and 5.2 million in 2009.[170] Productivity increased from 307.7 short tons per 1,000 hours to 318.3 short tons per 1,000 hours in 2008, before declining to 279.3 short tons per 1,000 hours in 2009.[171]

The domestic industry's share of apparent U.S. consumption fell both when apparent U.S. consumption was increasing and when it was decreasing. Its market share fell from *** percent in 2007 to *** percent in 2008 and then to just *** percent in 2009 as the subject imports continued to undersell and capture market share.[172] The domestic industry was able to recover some market share in interim 2010, when apparent U.S. consumption increased by *** percent over interim 2009, as shipments of subject imports did not increase as much as domestic producers' shipments.[173] The domestic industry's market share was *** percent in interim 2009 and *** percent in interim 2010.[174]

The quantity of U.S. producers' net sales decreased during the period, particularly from 2008 to 2009.[175] Although the value of U.S. producers' net sales increased from 2008 to 2009, that increase was attributable to increased unit values, which, as noted above, reflected the rise in raw material costs for MCBs. The industry's net sales value increased from $*** million in 2007 to $*** million in 2008 and then fell to $*** million in 2009, but it was $*** million in interim 2009 and $*** million in interim 2010.[176]

The domestic industry's operating income and operating income margin fell in 2008, even though apparent U.S. consumption of MCBs increased *** percent over 2007.[177] The industry's operating income fell by almost half from 2007 to 2008, from $*** million in 2007 to $*** million in 2008. It further declined to $*** million in 2009. Apparent U.S. consumption rose sharply during the first quarter of 2010, allowing U.S. producers to earn an operating income of $*** million in interim 2010, as compared to $*** in interim 2009.[178] The industry's operating income margin also declined from *** percent in 2007 to *** percent in 2008, before increasing slightly to *** percent in 2009. The operating income margin was *** percent in interim 2009, but *** percent in interim 2010.[179]

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[166] CR/PR at Table III-2a.
[167] CR/PR at Table III-2a.
[168] CR/PR at Table III-2a.
[169] CR/PR at Table III-6a.
[170] CR/PR at Table III-6a.
[171] CR/PR at Table III-6a.
[172] CR/PR at Table IV-4a.
[173] See CR/PR at Table IV-4a. Similarly, the industry recovered market share in the second half of 2009 relative to the first half as apparent U.S. consumption increased by over *** percent in quantity terms. See CR/PR at IV-4b.
[174] CR/PR at Table IV-4a.
[175] See CR/PR at Table VI-1a. Although the decrease in net sales can, to some extent, be attributed to the steady decline in export shipments during 2007-09 and demand during 2008-09, subject imports contributed significantly to this decrease, as indicated by the domestic industry's loss of market share. See CR/PR at Tables III-3a, IV-3a, C-1. Exports accounted for *** percent of U.S. producers' total shipments in 2009 and *** percent in interim 2010. Exports decreased by *** percent from 2007 to 2009 and increased by *** percent between the interim periods. CR at III-5, PR at III-3.
[176] CR/PR at Table VI-1a.
[177] CR/PR at Table IV-1a, C-1.
[178] CR/PR at Tables VI-1a, C-1.
[179] CR/PR at Tables VI-1, C-1.

The domestic industry's capital expenditures declined from $*** in 2007 to $*** in 2008, before increasing slightly to $*** in 2009. Capital expenditures were higher in interim 2010, at $***, than in interim 2009, at $***.[180] The industry's return on investment declined from *** percent in 2007 to *** percent in 2008 and *** percent in 2009.[181]

Although the domestic industry was able to raise its prices overall from 2007 to 2009, as discussed previously, unit COGS and the COGS-to-net sales ratio increased during the period. The increase in the COGS-to-net sales ratio occurred because, from 2007 to 2009, there was a cost-price squeeze in which the domestic industry was unable to raise prices sufficiently to cover costs. The decrease in operating income was primarily attributable to the increase in net sales values being insufficient to compensate for the industry's increasing costs from 2007 to 2009.[182] Although respondents argue that the domestic industry was able to fully pass through its increasing raw material costs to purchasers, the record does not support this argument.[183] We find that the domestic industry's inability to increase its prices sufficiently led to its reduced profitability.

We have considered whether there are other factors that may have adversely affected the domestic industry during the period examined.[184] We have already noted that nonsubject imports had a small and declining presence during the period.[185]

We acknowledge, as respondents argue, that the recession, which caused a substantial decline in apparent U.S. consumption in 2009, adversely impacted the industry. For this reason, the period 2007 to 2008 is notable, because it preceded both the downturn (and later increase) in demand and the filing of the petition and was therefore unaffected by those events. Consumption was increasing from 2007 to 2008, but low-priced subject imports increased even faster and as a result gained significant market share. The ratio of subject imports to domestic production also increased greatly. Even though domestic producers increased U.S. sales and shipments in response to increased demand, they nevertheless lost some market share to the lower-priced subject imports. The upward trend in subject imports in 2007-2008 coincided with an increase in domestic producers' COGS-to-net sales ratio and a decline in profitability and return on investment.

We also disagree with respondents' conclusion that the domestic industry's improved performance during the second half of 2009 and interim 2010 despite the continued presence of a significant volume of subject imports indicates that subject imports were not a cause of injury to the

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[180] CR/PR at Table VI-4. Research and development expenses decreased from $*** in 2007 to $*** in 2008 and *** in 2009. They were slightly higher in interim 2010, at $***, than in interim 2009, at $***. CR/PR at Table VI-4. Similarly, as noted above, total raw material and direct labor costs declined by $*** from 2007 to 2009, while net sales fell by $***. From 2007 to 2008, raw material and direct labor costs increased by $***, but net sales increased by only $***. From 2008 to 2009, raw materials and direct labor declined by $***.

[181] CR/PR at Table VI-5.

[182] CR at VI-14, PR at VI-4; CR/PR at Table VI-3.

[183] RHI Respondents' Prehearing Brief at 35-39. We note that the raw materials component of COGS as a percentage of net sales increased from *** percent in 2007 to *** percent in 2008, before falling to *** percent in 2009. CR/PR at Table VI-1a. During 2007-2008, when both sales values and costs increased, the increase in total net sales of $*** was less than the increase in raw material costs of $*** and COGS of $***. Moreover, from 2008 to 2009, the decline in net sales of $*** outstripped the decline in raw material costs and COGS of $*** and $***, respectively. See CR/PR at Table VI-1a. Similarly, as noted above, total raw material and direct labor costs declined by $*** from 2007 to 2009, while net sales fell by $***. From 2007 to 2008, raw materials and direct labor increased by $***, but net sales increased by only $***. From 2008 to 2009, raw materials and direct labor declined by $***.

[184] Commissioner Pinkert notes that nonsubject imports never accounted for more than *** percent of apparent U.S. consumption at any time during the period examined in these investigations. Therefore, one of the threshold considerations 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.

[185] See CR/PR at Table IV-4a.

domestic industry.[186] We have placed greater emphasis on data for full years than we have for quarterly data in assessing the state of the domestic industry and the effects of the subject imports, and we are reluctant to give weight to partial year comparisons that are comparing different parts of a year, particularly when the partial year data largely reflect the period after the filing of the petitions. The full-year data for the 2007-2009 period make plain that the industry was suffering from reduced production, U.S. shipments, and market share. Given that the subject imports continued to gain market share and continued to undersell the domestic product during 2009, it is clear that they continued to impact the domestic industry adversely.[187] [188]

The respondents additionally point out that the decline in the domestic industry's export shipments may have caused lower domestic production and capacity utilization, but the domestic industry's reduced exports do not diminish the effects of the subject imports during the period.[189]

For the reasons discussed above, we conclude that there is a causal nexus between the subject imports and the diminished performance of the domestic industry, which reflects a domestic industry that is materially injured by reason of subject imports.

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[186] RHI Respondents' Prehearing Brief at 47-49; Vesuvius Respondents' Prehearing Brief at 4-5.

[187] CR/PR at II-1. Respondents allege that sales of MCBs for linings of basic oxygen furnaces constitute a market in which domestic producers are insulated from import competition. RHI Respondents' Prehearing Brief at 20. That portion of the market, however, accounts for only 5 to 10 percent of sales of MCBs, and the evidence indicates that imports also compete there. CR at IV-9, PR at IV-5; Resco's Posthearing Brief, Exhibit 6, at 1.

[188] See RHI'S Prehearing Brief at 44-47. The domestic industry was able to return to profitability only in the second half of 2009, when apparent U.S. consumption grew rapidly and the effects of the petition were felt as the domestic industry's COGS reversed its upward path and began declining. The domestic industry improved from a *** position in the first half of 2009 to profitability in the second half of that year when apparent consumption increased by over *** percent in quantity terms. Also during this period, unit COGS declined by a greater percentage than net sales values, resulting in a drop in the COGS-to-net sales ratio from *** percent to *** percent. See CR/PR at Tables IV-4b and VI-2. See also CR at VI-14 to VI-15, PR at VI-4 (noting that the reduction in net costs/expenses led to improved profitability in the second half of 2009 and first quarter of 2010). The domestic industry's COGS-to-net sales ratio remained above the level of 2007, and its market share remained below the 2007 level, indicating continued material injury due to the subject imports. Similarly, in interim 2010, which covers only three months of data, apparent U.S. consumption rebounded sharply, increasing by almost *** percent in terms of quantity over the same three months in 2009, resulting in the domestic industry's U.S. shipments increasing 69.1 percent. At the same time, the domestic industry's unit COGS fell by 8.7 percent and net sales values went down more slowly. See CR/PR at Table C-1. Even with the increase in apparent U.S. consumption and easing of raw material prices in the second half of 2009, the industry continued to experience an elevated COGS-to-net sales ratio and reduced profitability and market share during 2009 due to the effects of the subject imports. CR/PR at Tables IV-4b and VI-1b.

[189] See CR/PR at Table C-1. Export shipments fell by *** short tons from 2007-2008, resulting in lower net sales for the domestic industry. However, U.S. shipments of subject imports increased by 6,706 short tons from 2007 to 2008, and therefore were a significant factor in reducing the domestic industry's production, capacity utilization rate and sales, regardless of the effects of the industry's reduced exports. Id.

VI. CRITICAL CIRCUMSTANCES

In its final antidumping duty determinations concerning MCBs from China, Commerce found that critical circumstances exist with respect to a number of subject producers/exporters.[190] Because we have determined that the domestic industry is materially injured by reason of subject imports from China, we must further determine "whether the imports subject to the affirmative [Commerce critical circumstances] determination . . . are likely to undermine seriously the remedial effect of the antidumping order to be issued."[191] The SAA indicates that the Commission is to determine "whether, by massively increasing imports prior to the effective date of relief, the importers have seriously undermined the remedial effect of the order."[192]

The statute further provides that in making this determination the Commission shall consider, among other factors it considers relevant –

> (I) the timing and the volume of the imports,
> (II) a rapid increase in inventories of the imports, and
> (III) any other circumstances indicating that the remedial effect of the antidumping order will be seriously undermined.[193]

In considering the timing and volume of subject imports, the Commission's practice is to consider import quantities prior to the filing of the petition with those subsequent to the filing of the petition[194] using monthly statistics on the record regarding those firms for which Commerce has made an affirmative critical circumstance determination.[195]

Resco urges the Commission to make an affirmative critical circumstances finding. It argues that the Commission should base its critical circumstances determination on import trends for the seven-month pre-petition period of January 2009 through July 2009 and a post-petition period of August 2009 through February 2010.[196] It maintains that the Commission should use the same period as Commerce because this would allow consideration of the maximum amount of data that could be collected.[197] It adds that a surge in subject imports from China occurred in the two months prior to Commerce issuing its preliminary determination in March 2010 and evaluating import trends over the seven-month periods makes this apparent.[198]

We are not, however, persuaded by Resco's argument that we should diverge from our normal practice of relying on data gathered for the six-month periods immediately preceding and following the

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[190] Final Determination, 75 Fed. Reg. at 45469.

[191] 19 U.S.C. § 1673d(b)(4)(A)(i).

[192] SAA at 877.

[193] 19 U.S.C. § 1673d(b)(4)(A)(ii).

[194] The legislative history for the critical circumstances provision indicates that the provision was designed "to deter exporters whose merchandise is subject to an investigation from circumventing the intent of the law by increasing their exports to the United States during the period between initiation of an investigation and a preliminary determination by [Commerce]." ICC Industries, Inc. v. United States, 812 F.2d 694, 700 (Fed. Cir. 1987), quoting H.R. Rep. No. 317, 96th Cong., 1st Sess. 63 (1979).

[195] See Certain Lined School Paper Supplies from China, India, and Indonesia, USITC Pub. 3884 at 47; Carbozole Violet Pigment from China and India, Inv. Nos. 701-TA-437 and 731-TA-1060 and 1061 (Final), USITC Pub. 3744 (December 2004) at 26; Certain Frozen Fish Fillets from Vietnam, Inv. No. 731-TA-1012 (Final), USITC Pub. 3617 (August 2003) at 20-22.

[196] Resco's Prehearing Brief at 60.

[197] Resco's Prehearing Brief at 60.

[198] Resco's Prehearing Brief at 60.

filing of the petition.[199] The traditional six-month period and the seven-month period show similar trends, and there is no compelling reason to depart from our usual practice.[200] Based on a comparison of subject import volumes over the six-month periods before and after the petition's filing in July 2009, we find no massive increase in imports prior to the effective date of relief that could seriously undermine the remedial effect of the order. Although monthly imports from China *** in the six months after the filing of the petitions than in the prior six months, the increase was commensurate with the rapid increase in apparent U.S. consumption during the second half of 2009 as a result of the recovery in steel production.[201] Thus, the record reflects no massive increase in subject import volume subsequent to the petition's filing.

Inventory data confirm the lack of any massive increase in subject imports that could seriously undermine the remedial effect of the order. Indeed, the record shows that importers' end-of-period inventories of subject merchandise from China in interim 2010 were lower than end-of-the period inventories in interim 2009, which is inconsistent with the conclusion that U.S. importers were stockpiling MCBs from China after the filing of the petition in July 2009.[202]

We therefore determine that critical circumstances do not exist with respect to the subject imports from China covered by Commerce's affirmative critical circumstances determination, and we make a negative critical circumstances determination.

CONCLUSION

For the foregoing reasons, and based on the record in the final phase of these investigations, we find that an industry in the United States is materially injured by reason of imports of MCBs from China that are sold in the United States at less than fair value and subsidized by the Government of China and by imports of MCBs from Mexico that are sold in the United States at less than fair value. We also determine that critical circumstances do not exist with respect to the subject imports from China covered by Commerce's affirmative critical circumstances determination.

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[199] Compare Certain Brake Drums and Rotors from China, Inv. No. 731-TA-744 (Final), USITC Pub. 3035 (April 1997) at 19 n.109 with Steel Concrete Reinforcing Bars from Turkey, Inv. Nos. 731-TA-745 (Final), USITC Pub. 3034 (April 1997) at 34.

[200] See CR/PR at Table IV-6.

[201] See CR/PR at Table IV-4b (*** percent increase in apparent U.S. consumption during the second half of 2009 over the first half). See also CR/PR at Fig. II-1 (indicating recovery in steel production in second half of 2009).

[202] See CR/PR at Table VII-3 (indicating slight decline in importers' inventories of MCBs from China).

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

Based on the record in the final phase of these investigations, we find 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 subsidized by the government of China and sold in the United States at less than fair value (LTFV). We further determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports of MCBs from Mexico that are 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 present material injury and threat of material injury by reason of the subject imports.

The Commission has essentially complete data coverage for the domestic industry.[1] 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 2009,[2] and from a single subject producer in Mexico that accounted for approximately 100 percent of Mexican export shipments to the United States during the period examined.[3] When appropriate, we have relied on the facts otherwise available, including information available from published sources and information submitted in these investigations.[4]

[1] CR at III-1, PR at III-1. The three firms that provided complete questionnaire responses accounted for *** percent of reported 2009 domestic MCB production.

[2] CR at VII-3, PR at VII-2. These responses from producers in China are believed to account for approximately *** percent of China's 2008 MCB capacity.

[3] CR at VII-7, PR at VII-5. The responding producer in Mexico, RHI-Refmex S.A. de C.V. ("Refmex"), accounted for approximately 100 percent of Mexican production during the period examined.

[4] 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 MATERIAL INJURY BY REASON OF CUMULATED SUBJECT IMPORTS FROM CHINA AND MEXICO[5]

Based on the record in the final phase of these investigations, we find that an industry in the United States is not materially injured by reason of cumulated subject imports from China and Mexico.

A. Volume of the 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."[6]

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.[7] In an environment of rising demand,[8] the cumulated volume of subject imports increased from 2007 to 2008.[9] While this increase in subject import volume was at a rate higher than the increase in apparent U.S. consumption, subject imports' small gain in market share was largely at the expense of nonsubject imports.[10] As demand collapsed in late 2008, subject import volumes decreased from 2008 to 2009.[11] Despite this decrease in volume, subject imports gained market share due to a larger decline in U.S. producers' shipments.[12] As market conditions began to improve in the second half of 2009 and the first quarter of 2010, a sharp improvement in apparent U.S. consumption became evident.[13] Apparent U.S. consumption was *** percent higher in January-March 2010 ("interim 2010") compared with January-March 2009 ("interim

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[5] 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 petitions 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 from each subject country is thus well above the statute's three percent negligibility level. CR at IV-8, PR at IV-5.

[6] 19 U.S.C. § 1677(7)(C)(i).

[7] We evaluate the volume of subject imports using U.S. shipments of subject imports. Because the Harmonized Tariff Schedule numbers applicable to MCBs are basket categories that include products outside the scope of these investigations, questionnaire data are the best data available for measuring the volume of imports. Questionnaire data may understate import volumes because not all importers responded to the questionnaire. Importer questionnaire data represents 60 percent of total imports from China and 100 percent of total imports from Mexico. CR at IV-1, PR at IV-1. Based on questionnaire responses, the volume of shipments of cumulated subject imports was *** short tons in 2007, *** short tons in 2008, and *** short tons in 2009. Apparent U.S. consumption was *** short tons in 2007, *** short tons in 2008, and *** short tons in 2009. CR/PR at Tables IV-3a, IV-3b, IV-4a, and IV-4b.

[8] Apparent U.S. consumption increased from *** short tons in 2007 to *** short tons in 2008. CR/PR at Table IV-3a.

[9] Cumulated subject imports increased from *** short tons in 2007 to *** short tons in 2008. Ibid.

[10] From 2007 to 2008, the market share of subject imports measured by quantity made modest gains from *** percent to *** percent, as the domestic industry's market share declined from *** percent to *** percent and the already small share held by nonsubject imports declined from *** percent to *** percent. CR/PR at Table C-1.

[11] The volume of shipments of cumulated subject imports declined from *** short tons in 2008 to *** short tons in 2009. CR/PR at Table IV-3a.

[12] The market share, based on quantity, held by subject imports was *** percent in 2008 and *** percent in 2009. CR/PR at Table C-1.

[13] Ibid.

2009").[14] Subject imports on a cumulated basis were *** percent higher, or *** short tons in interim 2010, compared with *** short tons in interim 2009.[15] The market share of subject imports on a cumulated basis was actually lower in interim 2010 compared with interim 2009.[16] We find that the volume of subject imports on a cumulated basis was significant in absolute terms and relative to apparent U.S. consumption and production during the period examined.

B. Price Effects of the 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.[17]

Subject imports and domestic MCBs appear to be highly substitutable[18] and most sales of both the domestic like product and subject imports are made directly to end users.[19] With regard to substitutability, a majority of purchaser questionnaire respondents considered subject imports to be "always" or at least "frequently" interchangeable with the domestic product.[20] MCB demand elasticity is low as a result of the limited substitutability of other products for MCBs and the low cost share of MCBs in steel production.[21]

Petitioner, respondents, and purchasers all indicated that price is an important factor in purchasing decisions.[22] The Commission collected quarterly pricing data for five products: two specifications of MCB for electric arc furnaces and three MCB specifications for use in ladles. Reported pricing data accounted for approximately *** percent of U.S. producers' shipments of MCBs, 60.2

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[14] Apparent U.S. consumption was *** short tons in interim 2010 compared with *** short tons in interim 2009. Ibid.

[15] Ibid.

[16] Ibid. The market share of subject imports on a cumulated basis was lower in interim 2010, at *** percent, compared with *** percent in interim 2009. Domestic producers' market share was *** percent in interim 2010 compared with *** percent in interim 2009, while nonsubject imports' market share in those periods remained at *** percent.

[17] 19 U.S.C. § 1677(7)(C)(ii).

[18] CR at II-19, PR at II-13.

[19] From January 2007 through March 2010, over 99 percent of shipments of U.S. product and over 98 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/PR at Table II-1.

[20] Sixteen of 19 responding purchasers viewed subject imports from China as either "always" or "frequently" interchangeable with the domestic like product. Nine of 11 responding importers viewed subject imports from Mexico as either "always" or frequently" interchangeable with the domestic like product. CR/PR at Table II-8.

[21] CR at II-31, PR at II-21.

[22] CR/PR at Tables II-6, II-7, CR at II-24, PR at II-16. There is some evidence in the record, however, that other factors are also important considerations for purchasers. For example, the price to performance ratio, a measurement of the cost per ton of steel produced or the cost per heat as compared to price alone, was rated "very important" by 19 of 20 purchasers. CR at II-22, PR at II-14.

percent of U.S. shipments of subject imports from China, and *** percent of U.S. shipments of subject imports from Mexico during the period examined.[23]

Taken as a whole, the pricing data show significant underselling by subject imports. Instances of overselling were largely limited to the beginning of the period examined.[24] Specifically, subject imports undersold the domestic like product in 77 of 91 pricing comparisons (approximately 85 percent) for products 1 through 5, with margins ranging from 1.0 to 35.1 percent.[25] Subject imports from China undersold the domestic like product in 59 of 65 quarterly pricing comparisons by margins ranging from 2.3 to 35.1 percent.[26] Subject imports from Mexico undersold the domestic like product in 18 of 26 quarterly pricing comparisons by margins ranging from 1.0 to 28.7 percent.[27] Given the consistency of the underselling margins and the substitutability of domestic and imported products, we find significant price underselling by subject imports from China and Mexico compared with the price of the domestic like product.

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 the five U.S.-produced MCB products increased by 10.0 percent to 31.3 percent. Weighted-average sales prices for products imported from China also increased for four of the five pricing products by 6.1 percent to 32.7 percent, and prices for two of the three products imported from Mexico increased by *** percent to *** percent.[28] Because prices for the domestic like product generally increased during the period examined, we do not find that cumulated subject imports from China and Mexico significantly depressed prices of the domestic like product.

We have also considered whether subject imports from China and Mexico suppressed prices of the domestic like product to a significant degree. There is little indication that subject imports suppressed domestic producer prices during the period examined, as changes in prices charged by the domestic industry largely tracked changes in the industry's costs. During the period examined, the domestic industry's cost of goods sold ("COGS") was largely affected by increases in raw material prices, specifically the price of magnesia. For the three year period between 2007 and 2009, the industry's COGS to net sales ratio fluctuated and increased overall by a modest *** percentage points.[29] On a per unit basis, the domestic industry's COGS increased from 2007 to 2009, primarily as a result of changes in raw material costs.[30] While the industry increased the unit value of its net sales in 2008, the increases were not quite sufficient to offset rising costs. By 2009, however, the ratio of COGS to sales had declined,[31] and by the first quarter of 2010, unit COGS was lower than the 2008 and 2009 ratios. Moreover, we note that in the most recent period, January-March 2010, the industry reported its lowest

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[23] CR at V-6, PR at V-3-V-4.

[24] Imports of product *** from China oversold domestically-produced MCBs in *** 2007 and in *** 2008. Imports of product *** from China oversold domestically-produced MCBs in *** 2007 and *** 2007. Imports of product *** from Mexico oversold domestically produced MCBs in *** 2007. Imports of product *** oversold domestically produced MCBs in *** 2007, and in *** 2008. In addition, imports of product *** from Mexico oversold the domestically-produced product in *** 2009. CR/PR at Tables V-1-V-5.

[25] CR/PR at Table V-7, CR at V-18, PR at V-4.

[26] CR/PR at Table V-7, CR at V-18, PR at V-11.

[27] Ibid.

[28] CR/PR at Table V-6.

[29] CR/PR at Tables VI-1a and C-1. The COGS-to-net-sales ratio was *** percent in 2007, *** percent in 2008, *** percent in 2009, *** percent in interim 2009, and *** percent in interim 2010.

[30] CR/PR at Tables VI-1a, C-1, CR at VI-1, PR at VI-1. Unit COGS per ton was $*** in 2007, $*** in 2008, $*** in 2009, $*** in interim 2009, and $*** in interim 2010.

[31] Ibid. The unit value of net sales per ton was $*** in 2007, $*** in 2008, $*** in 2009, $*** in interim 2009, and $*** in interim 2010.

COGS to net sales ratio as a result of costs decreasing faster than net sales unit values.[32] Based on the record, we do not find that the domestic industry is currently experiencing a cost-price squeeze as a result of significant underselling by subject imports. Therefore, we do not find that subject imports prevented price increases, which otherwise would have occurred during the period examined, to a significant degree.

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 non-price factors seem to be of primary importance to other purchasers.[33] With regard to lost sales and lost revenue, of the 33 lost sales allegations totaling $29.7 million and five lost revenue allegations totaling $448,827, *** lost sales allegations were partially or completely confirmed (totaling $***) and *** lost revenue allegations *** confirmed.[34] Considering that the value of net sales for the domestic industry averaged about $*** per year,[35] the value of those confirmed allegations is not significant and does not indicate any unusual pricing disadvantage experienced by the domestic industry in this competitive marketplace. Moreover, the fact that *** lost revenue allegations were confirmed supports our conclusion that subject imports had no price-suppressing effects. In particular, of the three responding U.S. producers, ***, only the smallest producer, ***,[36] reported that it had to either reduce prices or roll back announced price increases.[37]

Accordingly, although subject imports undersold the domestic product, the record does not indicate that subject imports had any significant price suppressing or depressing effects. Thus, we conclude that subject imports did not have a significant adverse effect on domestic prices during the period examined.

C. Impact of the Subject Imports on the Domestic Industry[38]

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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[32] The ratio of COGS to sales was lower in interim 2010, at *** percent, compared to interim 2009, at *** percent. Ibid.

[33] Information on the reasons for switching from domestic sources of supply to subject import sources differed among purchasers. 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 ***. CR at V-24, PR at V-13. One purchaser explained that it began to source MCBs from China after its domestic supplier stated that it was not particularly interested in supplying the purchaser with MCBs and would be focusing its business on other products. CR at V-26, PR at V-14. As a result, the purchaser reportedly paid *** percent more for MCBs from China. CR at V-27, PR at V-14.

[34] CR/PR at Tables V-8 and V-9. We note also that *** purchasers involved in the lost sales allegations disagreed with the allegations.

[35] CR/PR at Table VI-1a. Net sales values were $*** in 2007, $*** in 2008, and $*** in 2009.

[36] CR/PR at Table III-1.

[37] CR at V-20, PR at V-12.

[38] We have considered the magnitude of the dumping margins found by Commerce. In its final determinations of sales at LTFV, Commerce issued weighted-average LTFV margins ranging from 128.10 to 236.00 percent with respect to imports from China, and 57.90 percent with respect to subject imports from Mexico. CR/PR at Tables I-2 and I-3. Commerce calculated final countervailable subsidy rates of 24.24 percent to 253.87 percent based on its identification of the following government programs alleged in the petition to have provided countervailable subsidies to producers of MCBs in China: VAT rebates on Purchases of Domestically Produced Equipment; Location-Based Income Tax Reduction Programs for FIEs; Local Income Tax Exemption and Reduction Programs for "Productive" FIEs; Income Tax Credits for FIEs Purchasing Domestically Produced Equipment; Provision of Electricity for LATR; and Export Restraints on Raw Materials. CR/PR at Table 1-1, CR at I-5, PR at I-4.

industry."[39] 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."[40]

The domestic industry's performance declined over the period examined according to most measures. From 2007 to 2008, during a period of rising apparent U.S. consumption[41] and with constant production capacity, domestic MCB production decreased by 1.8 percent, resulting in a slight decline in capacity utilization of 1.1 percentage points.[42] Despite this decline in production, domestic producers were able to increase the quantity and value of U.S. shipments[43] and to decrease inventories as a ratio to shipments.[44] Although operating income remained positive, it declined, due principally to increases in the cost of goods sold related to raw material price increases,[45] and increases in selling, general and administrative expenses.[46] At the same time, despite a decline in the number of production and related workers of 7.2 percent (or 8 workers), productivity increased by 3.4 percent.[47]

An unprecedented drop in demand occurred in the last quarter of 2008. As previously mentioned, demand for MCBs depends greatly upon steel production.[48] Raw steel production registered an increase early in 2007 and remained at levels approaching ten million tons of steel produced per month until the last quarter of 2008. Raw steel production then experienced a precipitous decline that reached its bottom in early 2009.[49] These dramatic changes in underlying demand resulted in a *** percent drop in domestic MCB consumption from 2008 to 2009.[50] Between the same years, domestic production decreased by

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[39] 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.").

[40] 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 Pub. 3155 at 25 n.148 (Feb. 1999).

[41] The quantity of apparent U.S. consumption rose from *** short tons in 2007 to *** short tons in 2008. CR/PR at Table C-1.

[42] U.S. producers' capacity was 114,241 short tons in each full year of the period examined. Production was 73,552 short tons in 2007 and 72,258 short tons in 2008. Capacity utilization was 64.4 percent in 2007 and 63.3 percent in 2008. Domestic producers lost 1.2 percentage points of market share to subject imports in 2008. Ibid.

[43] U.S. shipment quantities were 59,403 short tons in 2007 and 63,789 short tons in 2008. U.S. shipment values were $62.6 million in 2007 and $76.6 million in 2008. CR/PR at Table C-1. The quantity of total net sales registered a decrease from 2007 to 2008 as a result of a decline in the quantity of ***. *** totaled *** short tons in 2007 and *** in 2008. CR/PR at Table C-1. Exports accounted for *** percent of U.S. producers' total shipments in 2007, *** percent in 2008, *** percent in 2009, *** percent in interim 2009, and *** percent in interim 2010. CR/PR at Table III-3a. The decline in export shipments mirrored the decline in global crude steel production. CR/PR at Figure II-2, CR/PR at Table C-1.

[44] CR/PR at Table C-1. The ratio of inventories to total shipments was *** percent in 2007, and *** percent in 2008. Ending inventories increased irregularly from 8.0 million short tons in 2007 to 7.3 million short tons in 2008 and to 8.6 million short tons in 2009. Such inventories were 8.5 million short tons in interim 2010 compared with 6.8 million short tons in interim 2009. CR/PR at Table C-1.

[45] Per-ton raw material costs increased by 26.1 percent between 2007 and 2008 and by a further 8.4 percent in the first quarter of 2009. CR/PR at Table V-1a.

[46] Operating income was $*** in 2007 and $*** in 2008. The cost of goods sold increased from $*** in 2007 to $*** in 2008 and selling, general and administrative expenses increased from $*** in 2007 to $*** in 2008. CR/PR at Table VI-1a.

[47] CR/PR at Table C-1. Productivity, measured in short tons per hour, was 307.7 in 2007 and 318.3 in 2008.

[48] CR at II-14, PR at II-9.

[49] CR/PR at Figure II-1.

[50] CR/PR at Table C-1.

30.8 percent, resulting in a decline in capacity utilization of 19.5 percentage points.[51] The quantity and value of U.S. shipments both declined and the ratio of inventories to shipments increased. Operating income decreased but remained positive.[52] The number of production related workers, hours worked, and wages paid all declined.[53] Unit labor costs per short ton increased as hourly wages rose and productivity declined.[54]

An examination of annual trends masks the changes that began in the second half of 2009. As a result of improvements in underlying demand that began in April 2009,[55] domestic MCB demand was stronger in the second half of the year.[56] Cumulated subject imports, which declined overall from their 2008 level, were concentrated in the second half of the year.[57] Domestic production was also heavily concentrated in the second half of the year.[58] The domestic producers operating income changed from *** in the first half of 2009, to *** in the second half of 2009, and the ratio of operating income to sales changed from ***.[59]

The improvement in MCB demand that began in April 2009 continued in the first quarter of 2010. U.S. consumption quantity was *** percent greater in interim 2010 than the level of consumption one year earlier.[60] Although subject import volume was *** percent greater, subject imports lost *** percentage points of market share to the domestic industry in interim 2010.[61] Domestic production was 82.2 percent higher and the rate of capacity utilization was 27.3 percentage points higher, as compared with the first quarter of 2009.[62] In addition, the quantity of U.S. shipments was 69.1 percent higher.[63] The domestic industry's employment indicators also demonstrated improvement in the most recent period.[64] In fact, the level of employment exceeded that of any full year for which data were collected.[65]

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[51] Domestic production was 72,258 short tons in 2008 and 49,997 short tons in 2009. Capacity utilization was 63.3 percent in 2008 and 43.8 percent in 2009. CR/PR at Table C-1. From 2008 to 2009 the quantity of subject imports fell but because this decline was less than the decline in the size of the U.S. market, the domestic producers lost 7.4 percentage points of market share to subject imports. CR/PR at Table C-1.

[52] CR/PR at Table VI-1a.

[53] The number of production and related workers was 102 in 2008, and 92 in 2009. Hours worked totaled 227,000 in 2008, and 179,000 in 2009. Wages paid were $6.4 million in 2008, and $5.2 million in 2009. CR/PR at Table C-1.

[54] Hourly wages steadily rose from $26.95 in 2007, to $28.28 in 2008, and to $29.05 in 2009. Productivity initially increased from 307.7 short tons in 2007 to 318.3 short tons in 2008 before declining to 279.3 short tons in 2009. CR/PR at Table C-1.

[55] CR/PR at Figure II-1.

[56] Based on questionnaire data that provided U.S. shipments of imports, apparent U.S. consumption was *** short tons in January-June 2009 and *** short tons in July-December 2009. CR/PR at Table IV-3b.

[57] Cumulated subject imports totaled *** short tons in January-June 2009 and nearly double that amount, *** short tons in July-December 2009. CR/PR at Table IV-5b.

[58] U.S. production was 17,576 short tons in January-June 2009 and 32,416 short tons in July-December of that year. CR/PR at Table IV-5b.

[59] CR/PR at Table VI-1b.

[60] Apparent U.S. consumption was *** short tons in interim 2010, compared with *** short tons in interim 2009. CR/PR at Table C-1.

[61] Ibid.

[62] Production by U.S. producers was *** short tons in interim 2010, compared with *** short tons in interim 2009. Capacity utilization was 60.5 percent in interim 2010 and 33.2 percent in interim 2009. Ibid.

[63] The quantity of U.S. shipments was 15,198 short tons in interim 2010, compared with 8,989 short tons in interim 2009. Ibid.

[64] Hours worked totaled 62,000 in interim 2010, and 39,000 in interim 2009. Wages paid were $1.8 million in interim 2010, and $1.1 million in interim 2009. Ibid.

[65] The number of production and related workers was 112 in interim 2010 and 83 in interim 2009. Ibid.

We note further that the domestic industry experienced its *** operating income as a ratio to net sales in ***, while the volume of subject imports by quantity was increasing.[66]

In sum, we do not find a sufficient causal link between cumulated subject imports and the current condition of the domestic industry. As discussed above, U.S. shipments increased in spite of increases in subject imports and the market share held by such imports from 2007 to 2008. Operating income as a share of net sales was positive in every year and the domestic industry's *** operating income as a ratio to net sales was achieved *** even as the volume of subject imports increased.[67] As explained above, we also do not find that subject imports had a significant adverse effect on domestic prices in the form of price depression or price suppression, despite significant underselling. The domestic industry was able to raise prices to cover most of its increased costs, even as subject imports increased.

Accordingly, although indicators of the industry's condition are generally unfavorable, the factors described above indicate that the subject imports are not contributing significantly to the domestic industry's condition. Therefore, we find that the record does not demonstrate the requisite causal nexus between the subject imports and the condition of the domestic industry. For these reasons we find that subject imports are not having a significant adverse impact on the domestic industry.

For the foregoing reasons, and based on the record in the final phase of these investigations, we find that an industry in the United States is not materially injured by reason of imports of MCBs from China that have been found by Commerce to be subsidized by the government of China and by imports of MCBs from China and Mexico that have been found by Commerce to be sold in the United States at less than fair value.

II. 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.[68]

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

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[66] CR/PR at Tables IV-2a, C-1. The domestic industry's operating income as a ratio to net sales was *** in interim 2010, compared with *** in interim 2009. The quantity of cumulated subject imports was *** short tons in interim 2010, compared with *** short tons in interim 2009.

[67] CR/PR at Table C-1. If the domestic industry maintains the rate of shipments that it reported in the first quarter of 2010, (15,198 short tons), it can be expected to ship 60,792 short tons in the full year 2010, a quantity that exceeds the amount shipped in 2007 and 2009.

[68] 19 U.S.C. 1677(7)(H) (emphasis added).

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 domestic prices of that merchandise.[69] In these investigations, examination of these and other factors lead us to conclude that we should not exercise our discretion to cumulate subject imports from China with subject imports from Mexico.

First, subject imports from China and Mexico are not increasing at similar rates in the U.S. market. Although shipments of subject imports from both China and Mexico increased overall during the three calendar years of the period examined, significant differences exist in the trends between years. In particular, between 2007 and 2008, shipments of imports from China, already at a high level, increased markedly by 21.4 percent, while over that period, shipments of imports from Mexico, which were at a much lower level, actually declined slightly.[70] Subsequently, between 2008 and 2009, the trends were different as well, with shipments of imports from China falling notably, whereas shipments of imports from Mexico nearly doubled.[71] Second, data on actual prices and shipment unit values indicate that, generally, imports from Mexico were sold at a price point that was higher than the prices of imports from China.[72] [73]

Third, although we agree with our colleagues that there was sufficient geographic overlap between the subject imports for purposes of cumulating such imports in determining whether present material injury exists, we note that, nonetheless, imports from Mexico were significantly more concentrated geographically than were imports from China. A substantial majority (74 percent) of imports from Mexico were concentrated in the Southeast and Central Southwest regions of the United States (and none in the Pacific region), whereas imports from China were shipped by ocean vessel to both the east and west coasts, as well as to the north central region of the country.[74]

Finally, the record indicates that the Chinese and Mexican industries would be differently motivated when considering whether to ship to the United States in the imminent future. Between 2007 and 2009, the Chinese industry, which was many times larger than the Mexican industry to begin with,

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[69] 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).

[70] CR/PR at Table IV-3a. Shipments of imports from China increased from *** short tons in 2007 to *** short tons in 2008. By contrast, shipments of imports from Mexico declined from *** short tons in 2007 to *** short tons in 2008, or by *** percent.

[71] CR/PR at Table IV-3a. Shipments of imports from China declined sharply from *** short tons in 2008 to *** short tons in 2009, or by *** percent. Shipments of imports from Mexico rose sharply from *** short tons in 2008 to *** short tons in 2009, or by *** percent.

[72] CR/PR at Figures V1-V-5. For example, in 2009 the unit value of shipments of imports from China was $1,018 per ton, and that of shipments of imports from Mexico was $*** per ton. This relationship among the two sources remained the same throughout the three calendar years of the period examined. CR/PR at Table C-1.

[73] Although pricing comparisons for imports from Mexico are fewer owing to the low volume of imports from Mexico during the period, margins of underselling were more sporadic and generally smaller for imports from Mexico than for imports from China. Overall, for imports from Mexico, underselling occurred in 18 of 26 quarters, or 69 percent of the time, as opposed to imports from China that undersold in 59 of 65 quarters, or 91 percent of the time. CR/PR at Table V-7. Where imports from Mexico were sold in significant volumes (e.g., product 4 in calendar year 2009), underselling margins were less than 10 percent. CR/PR at Table V-4.

[74] Prehearing brief of RHI-Refmex S.A. de C.V., RHI Refractories Liaoning Co., Ltd. and Veitsch-Radex America, Inc. ("RHI Respondents' Prehearing Brief") at Exhibit 4; CR at IV-7, PR at IV-4.

grew rapidly.[75] As Chinese production grew, home market shipments declined and export shipments increased.[76] The Mexican industry, on the other hand, which was limited to a single firm (Refmex), did not add significantly to its capacity during the period examined, adding only *** tons of capacity between 2007 and 2008 in response to growing home market demand.[77] In addition, unlike Mexico, China faces significant barriers to its MCB exports, in the form of antidumping duties, in important non-U.S. markets, such as Turkey and the European Union.[78] Further, the record indicates that Refmex has more incentive to ship to its home market than to the U.S. market because, during the period examined, operating margins were consistently higher on its Mexican sales than on its U.S. sales.[79] A similar conclusion cannot be drawn, however, for the Chinese industry, as the record lacks conclusive evidence on demand conditions and price levels in the Chinese home market.[80]

Accordingly, these differing trends in import volumes, and distinctions in pricing strategies, industry size, geographic concentration of imports, 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. Thus, in determining whether 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. Threat of Material Injury By Reason of Subject Imports

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."[81] The Commission may not make such a determination "on the basis of mere conjecture or supposition," and considers the threat factors "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.[82] In making our determinations, we consider all statutory threat factors that are relevant to these investigations.[83]

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[75] Reported Chinese capacity increased from 369,485 short tons in 2007 to 538,700 short tons in 2009, an increase of 45.8 percent. CR/PR at Table VII-1.

[76] Reported Chinese capacity increased from 369,485 short tons in 2007 to 538,700 short tons in 2009, an increase of 45.8 percent. Reported Chinese total export shipments increased from 205,873 short tons in 2007 to 219,772 short tons in 2009 and home market shipments declined from 38,983 short tons in 2007 to 32,061 short tons in 2009. CR/PR at Table VII-1.

[77] The capacity of the Mexican producer increased from *** short tons in 2007 to *** short tons in 2008, and then remained at that level in 2009. CR/PR at Table VII-2.

[78] CR at VII-12, PR at VII-6.

[79] Posthearing brief of RHI-Refmex S.A. de C.V., RHI Refractories Liaoning Co., Ltd. and Veitsch-Radex America, Inc. ("RHI Respondents' Posthearing Brief) at Exhibit J.

[80] See, *e.g.*, RHI Respondents' Prehearing Brief at Exhibit 29 (Chinese demand for steel expected to grow by 5 to 8 percent in 2010, but down from 19 percent in the first nine months of 2009); Resco's Posthearing Brief at Exhibit 11 (documenting steel price declines in China).

[81] 19 U.S.C. § 1677(7)(F)(ii).

[82] Ibid.

[83] 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,

1. Threat of Material Injury By Reason of Subject Imports From China

The volume of subject imports from China was substantial throughout the period examined, first increasing from 34,613 short tons in 2007 to 41,701 short tons in 2008, before declining to slightly below its 2007 level in 2009.[84] By 2009, subject imports from China had captured substantial market share from the domestic industry and nonsubject imports as the market shares of those sources declined.[85] The domestic industry's overall loss of market share to subject imports was due primarily to the rapid increase in subject imports from China, as the overall presence in the market of subject imports from China increased by 8.3 percentage points over the three calendar years.

With regard to current production capacity for MCBs in China, we note first that the Commission's coverage of the Chinese industry, which is by far the largest MCB industry in the world, is not appreciably better than the coverage in the preliminary phase of these investigations. Of the 35 firms identified by the petitioner as producing MCBs in China, the Commission received data from only seven.[86] Although these firms' responses, based on their own estimates, accounted for approximately *** of Chinese exports to the United States in 2009, they also accounted for only *** percent of total Chinese capacity, based on 2008 data.[87] As a result, record data on excess capacity in the Chinese industry are likely considerably understated.[88]

> (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.

[84] CR/PR at Table IV-2a. During the first three months of 2010, subject imports were*** short tons compared with *** short tons during the same period in 2009. Ibid.

[85] The market share of subject imports from China increased from *** percent in 2007 to *** percent in 2009. During that same period, the market share of domestic producers declined from *** percent to *** percent and the market share of nonsubject imports fell from *** percent to *** percent. CR/PR at Table C-1.

[86] CR at VII-3, PR at VII-2.

[87] Ibid.

[88] The RHI respondents argued that the data the Commission received were from the subset of Chinese firms that exported to the United States during the period examined, and implied that the remaining firms, given that they were not export-oriented, had little incentive to respond to the Commission's questionnaire. RHI Respondents' Posthearing Brief, Appendix at p. 37. Whether or not these firms were export-oriented, we note that because these firms did not respond to the questionnaire, we lack information on the amount of excess capacity of these firms, and

Based on data from the firms that did respond to the questionnaire, reported Chinese production capacity rose markedly during the period examined, increasing over *** percent between 2007 and 2008, and is expected to continue to rise significantly in 2011.[89] Responding firms, moreover, reported substantial excess capacity; in 2009, they operated at a capacity utilization rate of only 46.7 percent; thus, they had excess capacity of approximately 287,000 short tons,[90] the equivalent of more than three times total U.S. consumption in 2009. Moreover, due to the low response rate among Chinese producers, our data on the excess capacity of the Chinese industry are likely significantly understated.

In addition, available data indicate that the Chinese industry became more export-oriented during the period examined. Despite the existence of a rapidly growing steel industry in China, between 2007 and 2009 the share of shipments of the responding Chinese producers going to the home market declined steadily, with exports accounting for more than 87 percent of shipments in 2009.[91] Although the U.S. market accounted for a relatively small share of total export shipments by reporting firms (around 10 percent), we note that, since 2007, the Chinese industry has become subject to antidumping duty orders in the European Union and in Turkey.[92] Thus, going forward, the U.S. market will likely be relatively more attractive to the Chinese industry than alternative export markets.[93] Further, with regard to inventories held in the United States by U.S. importers, such inventories, although they did not increase appreciably between 2007 and 2009, were substantial in relation to preceding-period shipments and apparent U.S. consumption.[94] Finally, there is a significant potential for product shifting within the Chinese industry, as six of the seven responding firms noted that they produced, or had the capability of producing, other products on the same equipment and machinery used to produce MCBs.[95]

Accordingly, we find that the substantial volume of imports from China during the period examined, significant levels of excess capacity in the Chinese industry (particularly compared with the size of the U.S. market), the industry's increasing focus on export markets, the high level of inventories held in the United States, the presence of barriers to Chinese exports in important third country markets, and a potential for product shifting, 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, as noted *supra*, the record suggests that price is

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thus their theoretical ability to increase production of MCBs.

[89] Reported capacity in China increased from 369,485 short tons in 2007 to 538,808 short tons in 2008, before remaining virtually constant in 2009. Reported capacity is expected to increase slightly to 549,452 short tons in 2010, and increase again more substantially to 636,862 short tons in 2011. CR/PR at Table VII-1.

[90] Ibid.

[91] The share of home market shipments in total shipments by reporting Chinese producers declined from 15.9 percent in 2007 to 12.7 percent in 2009. At the same time, the share of export shipments in total shipments increased from 83.9 percent in 2007 to 87.1 percent in 2009. These ratios are not projected to change significantly in 2011 from their 2009 levels. Ibid.

[92] CR at VII-12, PR at VII-6.

[93] Responding producers noted that, besides the European Union, they sold to 20 other export destinations during the period examined. CR at VII-4, n.11; PR at VII-3, n.11. The record lacks evidence, however, as to the relative volumes sold to these markets compared with the European market, demand conditions in those markets, or price levels in those markets, that would permit us to determine whether these markets would be attractive destinations for Chinese exporters compared with the U.S. market.

[94] U.S. importers' end-of-period inventories of imports from China increased from 20,677 short tons in 2007 to 21,137 short tons in 2009. The 2009 total was 63.9 percent of preceding-period U.S. shipments and was *** percent of apparent U.S. consumption. CR/PR at Tables VII-3 and C-1.

[95] CR at VII-6, PR at VII-3.

an important factor in purchasing decisions.[96] This suggests that subject imports from China are at least moderately substitutable with the domestic like product.[97] Second, as measured by apparent U.S. consumption, demand for MCBs rose moderately between 2007 and 2008, but then dropped sharply, by *** percent, in 2009. Consumption was markedly higher in interim 2010 than in interim 2009;[98] however, the data suggest that the MCB market may have recovered faster than the raw steel market.[99]

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 or suppressed during the period examined. Thus, as explained above, we determine that subject imports did not have a significant adverse effect on domestic prices during the period examined. Nonetheless, we have found that, among other factors, the substantial excess capacity in the Chinese industry and its consistent and increasing focus on export markets during the period examined indicate the likelihood of increased subject imports in the absence of import relief. We find that it is likely that given that (1) Chinese MCBs are consistently priced below the domestic like product, (2) price is an important factor in purchasing decisions, and (3) underselling margins generally increased toward the end of the period examined (at least until the petitions were filed), U.S. purchasers would likely purchase subject imports from China in preference to the domestic like product and this purchasing pattern would likely result in price depression and/or price suppression.[100] Consequently, in light of consistent underselling and the price sensitivity of the domestic like product, 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 is beginning to recover, and that such prices are likely to increase demand for further imports.

Finally, we note that in the preliminary phase of these investigations we determined that the domestic industry was vulnerable to material injury from likely substantially increased volumes of subject imports from China, because the market conditions that had allowed the domestic industry to avoid such injury during the period examined had deteriorated. Those market conditions have now improved sufficiently so that we can no longer make that determination. In particular, as noted above, MCB consumption has begun to recover from its low point in calendar year 2009. MCB consumption was nearly *** percent higher in the first quarter of 2010 than in the comparable period of 2009 and, if annualized such consumption would slightly exceed consumption in 2008, which was the peak year of the period examined.

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[96] CR/PR at Table II-3, CR at II-20-II-24, PR at II-13-II-16. Nineteen out of 20 responding purchasers reported that price was "very important" in their purchasing decisions. The same proportion of purchasers reported that it was "very important" that product quality met industry expectations. Purchasers were unanimous in reporting that reliability of supply was "very important" in their purchasing decisions.

Resco indicated that price is an important, and many times the only, factor that customers consider when making their purchasing decisions. According to Resco, the market price is not the deciding factor for less than 30 percent of its customers. 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-24, PR at II-16.

[97] CR at II-19, PR at II-13. The final staff report suggests that there is a high degree of substitutability between domestically produced MCB and MCB imported from China.

[98] Apparent U.S. consumption first increased markedly from *** short tons in 2007 to *** short tons in 2008, and then declined sharply to *** short tons in 2009. Apparent U.S. consumption was *** short tons in January-March 2010 compared with *** short tons in January-March 2009. CR/PR at Table C-1.

[99] CR/PR at Figures II-1, II-2, CR at II-14, PR at II-9.

[100] Between the third quarter of 2008 and the third quarter of 2009, underselling margins of imports from China increased for four of the five products examined. CR/PR at Tables V-1 through V-5. The petitions in these investigations were filed in July 2009.

Although to some extent the improving demand environment makes the industry appear less vulnerable than it was in the preliminary phase, there are still troubling signs that indicate that the likely increased volumes of low-priced subject imports from China would nonetheless have a significant impact on the domestic MCB industry. First, as noted above, the fortunes of the MCB industry are very closely linked to the health of the U.S. steel industry. In that regard, it is significant that, although MCB consumption has begun to recover to pre-recession levels, raw steel production has not yet regained its levels of 2007 and 2008, and anecdotal evidence on the prospects for a full recovery in the steel industry is mixed at best.[101] Moreover, inventories of Chinese product were significant in relation to preceding-period U.S. shipments throughout the period, particularly in 2009.[102] Finally, to the extent the demand environment for MCBs continues to improve, this will likely provide further incentive for Chinese exporters to increase their shipments to the U.S. market and continue to undersell significantly the domestic like product in the absence of import relief. In that event, the domestic industry would likely experience significantly reduced profitability due to significantly depressed or suppressed prices as well as reduced production, shipments, market share, and employment.

In considering whether the domestic industry is threatened with material injury by reason of subject imports from China, we have also considered the extent to which other factors are likely to contribute to future injury in order to ensure that we do not attribute future injury from other factors to subject imports. In this final phase of these investigations, we have examined the role of nonsubject imports in the U.S. MCB market. 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.[103] Thus, we conclude that, in the imminent future, nonsubject imports would not capture market share from the domestic industry to the same extent as subject imports from China. Similarly, for reasons outlined below we conclude that, in the imminent future, subject imports from Mexico would not capture market share from the domestic industry to the same extent as subject imports from China.

Consequently, we find that there is a causal nexus between subject imports from China and a likely imminent adverse impact on the domestic industry, which demonstrates that the domestic MCB industry is threatened with material injury by reason of subject imports from China.

2. No Threat of Material Injury By Reason of Subject Imports From Mexico

Based on an evaluation of the statutory threat factors that are relevant to these investigations, we determine that the domestic industry producing MCBs is not threatened with material injury by reason of subject imports from Mexico.

We do not find that subject imports of MCBs from Mexico entered the United States during the period examined at such a significant rate of increase in volume or market share to indicate the likelihood of substantially increased imports. We have found that the volume and market share of cumulated subject imports are significant in absolute terms and relative to apparent U.S. consumption and production. But, as discussed below, although subject imports from Mexico increased from 2008 to 2009, and in interim

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[101] CR/PR at Figure II-1; Resco's Prehearing Brief at Exhibit 19.

[102] U.S. importers' end-of-period inventories of imports from China increased from 20,677 short tons in 2007 to 21,137 short tons in 2009. The 2009 total was 63.9 percent of preceding-period U.S. shipments and was *** percent of apparent U.S. consumption. CR/PR at Tables VII-3 and C-1.

[103] U.S. shipments of imports from nonsubject sources declined from *** short tons in 2007 to *** short tons in 2008, and then increased only slightly, to *** short tons, in 2009. Their market share declined from *** percent in 2007 to *** percent in 2008, before recovering to *** percent in 2009, for an overall decline of *** percentage points. CR/PR at Table C-1.

2010 when compared to interim 2009,[104] we do not expect such imports to increase in the imminent future so as to constitute a threat of material injury.

Subject imports from Mexico were present in the U.S. market at a stable level and accounted for a small share of U.S. consumption in both 2007 (*** short tons; *** percent share) and 2008 (*** short tons; *** percent share.)[105] In 2009 and interim 2010, subject imports from Mexico increased from these lower levels, to capture shares of ***. Petitioner argued that these trends indicate that the Mexican industry became increasingly export- oriented during the period examined.[106] The Mexican producer Refmex explained that this increase in the second half of 2009 and early 2010 was due to the need to supply certain customers temporarily with Mexican MCBs until both Chinese and European product produced by related companies could be approved by those customers.[107] Accordingly, we do not find that the events of late 2009 and early 2010 presage a future surge in subject imports from Mexico. Moreover, data suggest that the industry in Mexico is not especially export-oriented, with U.S. exports accounting for *** percent and *** percent of total shipments in 2007 and 2008, increasing to *** percent in 2009. Interim 2010 shipments showed a slight decline, at *** percent, compared to interim 2009, at *** percent. Projections are for the share going to the U.S. market to decline markedly, which is consistent with record evidence that the Mexican industry faces more favorable market conditions in its home market.[108]

Current production capacity for MCBs in Mexico, accounted for by the sole producer Refmex, totaled *** short tons in 2008 and 2009. While it is projecting a small increase in production in 2010 over 2009, at *** short tons compared to *** short tons in 2009, the company is also reporting that its capacity to produce MCBs will decrease to approximately *** short tons in 2010 and 2011.[109] While we have placed only limited weight on this projection, given the theoretical ability of Refmex to shift capacity between subject and nonsubject products, we do not find that this excess capacity will enter the U.S. market in significant volumes in the imminent future. We note that Refmex's order books for 2010 and early 2011 suggest strong and growing home market demand in the steel, cement, and other industries, a trend we find likely to continue in the imminent future.[110]

Petitioners have also argued that an order on subject imports from China in the absence of one on subject imports from Mexico would create a scenario in which RHI would ship larger quantities of MCBs from Mexico to the United States and fill the resulting gap in the Mexican market with product from its related production facilities in China.[111] We do not find evidence that any such action is imminent. Aside from petitioner's speculation, the record contains no evidence that it would make economic sense for RHI to incur double shipping costs - China to Mexico and Mexico to United States - and RHI has provided credible evidence that it would be more economical to serve the U.S. market from its European plants.[112]

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[104] CR/PR at Table IV-3a.

[105] CR/PR at Table C-1.

[106] Resco's Posthearing Brief at p. 13, (brief cites to Hearing Transcript at 258:4-7, generally).

[107] CR at VII-8, n. 24; PR at VII-5, n. 24. ***.

[108] RHI Respondents' Posthearing Brief , p. 25.

[109] CR/PR at Table VII-2. Refmex produces both MCBs and other magnesia-based products in its plant such as bricks for the cement industry. Hearing transcript, p. 174 (Beschel). Production of the subject MCBs accounts for under ** percent of total production at that plant. CR at VII-7 and n. 15, PR at VII-5, and n. 15

[110] RHI Respondents' Posthearing Brief, pp. 23-24.

[111] Resco's Prehearing Brief, p. 45, Hearing transcript, pp. 54-55, 82-84.

[112] Hearing transcript, pp. 219-221, and RHI Respondents' Postbearing Brief, pp. 26-30. RHI has four MCB production plants located in Austria and Germany. RHI's European MCB operations are reported to account for ***. CR at VII-13, PR at VII-8. According to RHI, these plants are operating at between *** percent capacity utilization, and lead times are between *** weeks, as opposed to *** weeks for RHI's MCB producers in China and Mexico. RHI Respondents' Posthearing Brief, Appendix, p. 33.

Further, RHI is the sole domestic supplier in Mexico and is located near its principal customers, an advantage that would be lost if imports from China were to supplant Mexican production.[113]

Given the circumstances under which the increase in subject imports occurred, no evidence of an imminent increase in capacity or a change away from its home market focus, and no indication that Refmex is likely to shift shipments of Chinese MCBs to and from the Mexican market in the absence of an antidumping duty order on subject imports from Mexico, we conclude that the volume of subject imports from Mexico is not likely to increase substantially in the imminent future.

We recognize that subject imports from Mexico undersold the domestic like product in 18 of 26 possible comparisons with margins of up to 28.7 percent.[114] However, despite the significant underselling, as noted above we have found that because domestic prices increased during the period examined, and changes in domestic producers' prices closely tracked increases in the cost of goods sold (largely reflecting higher raw material prices for magnesia), subject imports did not significantly depress or suppress prices of the domestic like product. Given the generally low volume of imports from Mexico and our finding that significant increased imports from Mexico are not imminent, we find that the record does not support a finding of likely significant price effects in the imminent future by reason of subject imports from Mexico.

In evaluating the likely impact on the domestic industry of the subject imports from Mexico, we take into consideration that we do not find the domestic industry to be vulnerable or that cumulated subject imports are currently having a significant adverse impact on the domestic industry. Thus, we cannot conclude that any change is imminent that would cause the small volume of subject imports from Mexico entering at prices that undersell but do not suppress or depress prices for domestic MCBs in the U.S. market to have a likely imminent adverse impact on the domestic industry.

In light of these considerations, we conclude that the domestic industry is not threatened with material injury by reason of subject imports from Mexico.

[113] Ibid. We note that the domestic producer Resco also argued that RHI could move production equipment to Mexico (Hearing transcript, p. 267 (Mazard), an action that we do not find plausible in the imminent future given the costs and other impracticalities detailed by RHI. RHI Respondents' Postbearing Brief, p. 11, Appendix A, pp. 33-34, Exhibit C, Hearing transcript, p. 194 (Beschel).

[114] CR/PR at Table V-7, CR at V-18, PR at V-11.

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 ("MCBs")[1] from China and by reason of LTFV imports of MCBs from Mexico. Information relating to the background of the investigations is provided below.[2]

Effective date	Action
July 29, 2009	Petition filed with Commerce and the Commission; institution of the Commission's investigation
August 19, 2009	Commerce's notices of initiation
September 14, 2009	Commission's preliminary determinations
December 23, 2009	Commerce's preliminary negative countervailing duty determination
March 11, 2010	Commerce's preliminary antidumping duty determination (Mexico)
March 12, 2010	Commerce's preliminary antidumping duty determination (China)
April 23, 2010	Commission's scheduling of its final phase investigations (75 FR 21346)
July 27, 2010	Commission's hearing[1]
August 2, 2010	Commerce's final antidumping and countervailing duty determinations (China LTFV, 75 FR 45468), (China CVD, 75 FR 45472), (Mexico, 75 FR 45097)
August 26, 2010	Commission's vote
September 7, 2010	Commission's determination to Commerce
[1] App. B is contains the list of witnesses appearing at the hearing.	

[1] See the section entitled "The Subject Merchandise" in *Part I* of this report for a complete description of the merchandise subject to these investigations.

[2] *Federal Register* notices cited in the tabulation are presented in app. A.

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.*

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, 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

MCBs generally are 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 MCBs are ANH, Magnesita Refractories ("Magnesita") (previously reporting as LWB Refractories ("LWB")), and Resco, while leading producers of MCBs outside the United States include Mayerton Refractories, RHI Refractories Liaoning, Wonjin Worldwide, and Yingkou Bayuquan of China and RHI-Refmex ("Refmex") of Mexico. The leading U.S. importers of MCBs from China are Veitsch-Radex America, Inc., Fedmet, ANH, and Mayerton, while the leading importer of MCBs from Mexico is Veitsch-Radex. Leading importers of MCBs from nonsubject countries (primarily Austria, Germany, and the Slovak Republic) include Veitsch-Radex and U.S. Steel.

Apparent U.S. consumption of MCBs totaled approximately *** short tons ($***) in 2009. Currently, four firms are known to produce MCBs in the United States. U.S. producers' U.S. shipments of MCBs totaled 42,243 short tons ($53.9 million) in 2009, and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value. U.S. shipments of imports from subject sources totaled 36,552 short tons ($37.4 million) in 2009 and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value. U.S. imports from nonsubject sources totaled *** short tons ($***) in 2009 and accounted for *** percent of apparent U.S. consumption by quantity and 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 MCBs during 2009. U.S. imports from China are based on questionnaire responses from 12 firms that accounted for approximately *** percent of Chinese MCB imports. U.S. imports from Mexico are based on one firm that accounted for approximately 100 percent of Mexican MCB imports. Data regarding the Chinese industry are based on seven foreign producer questionnaire responses that accounted for *** percent of Chinese MCB production. Data regarding the Mexican industry are based on one foreign producer questionnaire response that accounted for 100 percent of Mexican MCB production. Information with respect to other foreign industries is drawn from public sources.

PREVIOUS AND RELATED TITLE VII INVESTIGATIONS

MCBs have not been the subject of any prior countervailing/antidumping duty investigations in the United States**.**

NATURE AND EXTENT OF SUBSIDIES AND SALES AT LTFV

Subsidies

On August 2, 2010, Commerce published a notice in the *Federal Register* of its final affirmative determination of countervailable subsidies for producers and exporters of MCBs from China.[3] In its notice, Commerce identified the following government programs alleged in the petition to have provided countervailable subsidies to producers of MCBs in China:

- VAT Rebates on Purchases of Domestically Produced Equipment
- Location-Based Income Tax Reduction Programs for FIEs
- Local Income Tax Exemption and Reduction Programs for "Productive" FIEs
- Income Tax Credits for FIEs Purchasing Domestically Produced Equipment
- Provision of Electricity for LATR
- Export Restraints on Raw Materials

Table I-1
MCBs: Commerce's final countervailable subsidy rate with respect to imports from China

Manufacturer/Exporter	Net Countervailable Subsidy Rate (*percent ad valorem*)
RHI	24.24
Mayerton	253.87
All others	24.24

Source: *Certain Magnesia Carbon Bricks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 45472, August 2, 2010.

Sales at LTFV

On August 2, 2010, Commerce published notices in the *Federal Register* of its final determination of sales at LTFV with respect to imports from Mexico.[4] Table I-2 presents Commerce's dumping margins with respect to imports of MCBs from Mexico.

Table I-2
MCBs: Commerce's final weighted-average LTFV margins with respect to imports from Mexico

Manufacturer/Exporter	Margin (*percent ad valorem*)
RHI-Refmex S.A. de C.V.	57.90
All others	57.90

Source: *Certain Magnesia Carbon Bricks from Mexico: Notice of Final Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 45097, August 2, 2010.

[3] *Certain Magnesia Carbon Bricks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 45472, August 2, 2010.

[4] *Certain Magnesia Carbon Bricks from Mexico: Notice of Final Determination of Sales at Less Than Fair Value*, 75 FR 45097, August 2, 2010.

On August 2, 2010, Commerce published notices in the *Federal Register* of its final determination of sales at LTFV with respect to imports from China.[5] Table I-3 presents Commerce's dumping margins with respect to imports of MCBs from China.

Table I-3
MCBs: Commerce's final weighted-average LTFV margins with respect to imports from China

Producer/Exporter	Margin (*percent ad valorem*)
RHI Refractories Liaoning Co., Ltd.	128.10
Dashiqiao City Guancheng Refractory Co., Ltd.	128.10
Fengchi Imp. and Exp. Co., Ltd. of Haicheng City	128.10
Jiangsu Sujia Group New Materials Co., Ltd.	128.10
Liaoning Fucheng Refractories Group Co., Ltd.	128.10
Liaoning Fucheng Special Refractory Co., Ltd.	128.10
Liaoning Jiayi Metals and Minerals Co., Ltd.	128.10
Yingkou Bayuquan Refractories Co., Ltd.	128.10
Yingkou Dalmond Refractories Co., Ltd.	128.10
Yingkou Guangyang Co., Ltd.	128.10
Yingkou Jiahe Refractories Co., Ltd.	128.10
Yingkou Kyushu Refractories Co., Ltd.	128.10
Yingkou New Century Refractories, Ltd.	128.10
Yingkou Wonjin Refractory Material Co., Ltd.	128.10
All others	236.00

Source: *Certain Magnesia Carbon Bricks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances*, 75 FR 45468, August 2, 2010.

[5] *Certain Magnesia Carbon Bricks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances*, 75 FR 45468, August 2, 2010.

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).[6]

Tariff Treatment

During the period examined, MCBs have 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 MCBs, including refractory blocks, tiles, and other refractory products), and under HTS subheading 6902.10.50, other refractory bricks. MCBs may also enter under HTS tariff line 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, articles of stone or other mineral substances, not elsewhere specified or included, not containing magnesite, dolomite, or chromite.[7] Table I-4 presents current tariff rates for MCBs.

[6] Ibid.
[7] Ibid.

Table I-4
MCBs: Tariff rates, 2010

HTS provision	Article description	General[1]	Special[2]	Column 2[3]
		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	([4])	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	([4])	2.2 ¢/kg
6815.99.40.00	Other	Free	([4])	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_2O_3:			
6902.10.10.00	Magnesite bricks.....	Free	([4])	13%
6902.10.50.00	Other.....	Free	([4])	30%

[1] Normal trade relations, formerly known as the most-favored-nation duty rate.
[2] Special rates not applicable when General rate is free.
[3] Applies to imports from a small number of countries that do not enjoy normal trade relations duty status.
[4] General note 3(c)(i) defines the special duty program symbols enumerated for this provision.

Source: Harmonized Tariff Schedule of the United States (2010).

THE PRODUCT

Description and Applications

MCBs are a refractory[8] 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.[9] MCBs may contain other substances such as antioxidants that range from trace amounts to 15 percent by weight.

MCBs are considered to be the most durable refractory brick on the market for furnaces and ladle linings, especially around the slag line.[10] While other refractory bricks, such as fired magnesite[11], fired bauxite, magnesia dolomite,[12] and magnesia alumina graphite bricks, may be used in place of MCBs, these alternatives do not have the same physical characteristics of MCBs, are easily differentiated by price, and their uses are not perceived by the steel producers as substitutable.[13] MCBs are used to line the lower sidewalls, upper sidewalls, slag lines, and roofs of ladles[14] and ladle metallurgy furnaces involved in steel production and refining where it comes in contact with both molten steel and molten slag. Furthermore, MCBs are also used to line basic oxygen furnaces ("BOF") and for electric arc furnaces ("EAF").[15]

MCBs are produced in a large number of grades with different levels of magnesia, carbon, and different contributions of additives depending upon the intended specific applications.[16] MCBs are 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),[17] good resistance to slags, and low vulnerability to degradation by iron oxide and alkalies. 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 in greater vulnerability to wear. Therefore, the quality of magnesia selected for use in MCBs should have overall low levels of impurities to minimize the reducing effects of carbon. Heat treatments on the magnesia raw

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[8] 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).

[9] Petition, CVD Vol. I, p. 5.

[10] Conference transcript, p. 46 (Mazard).

[11] Fired magnesite brick is 98 percent magnesite and is heated to 2900 degrees Fahrenheit, giving the brick a ceramic bond. This brick is typically used in non-steel contact areas and electric furnaces and in basic oxygen furnaces of non-steel contact. Hearing transcript, p. 95 (Copp).

[12] Dolomite brick can be burned or resin bonded. In the steel industry dolomite brick is typically burned and is used in producing a different chemistry of steel than when using MCBs. Hearing transcript, p. 96 (Copp).

[13] Conference transcript, p. 45 (Mazard).

[14] Ladles used in steel production are the largest users of MCBs, 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).

[15] Troell, Peter T., "Evolution of Magnesia-Carbon Refractories," *Ceramic Industry*, Feb. 1995, Vol. 144, Issue 2.

[16] There are at least eight different grades of magnesia and four different grades of graphite. Conference transcript, p. 110 (B. Stein).

[17] MCBs with 90 to 95 percent magnesia have 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.

materials can cause the magnesia to be either fused[18] or sintered,[19] which alter the performance of MCBs in their application. Sintered magnesia is used in a range of market applications and has a high melting point while fused magnesia is considered to maintain strength and corrosion resistance as well as chemical stability thereby enhancing the performance of MCBs.[20] The carbon in MCBs prevents liquid slag from penetrating and eroding the bricks. The high carbon content of MCBs 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.[21] 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.[22] The high thermal conductivity results in reduced thermal stresses within the brick and faster cooling of the MCBs between heats.[23] High temperature stability of MCBs 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 bricks.[24] MCB quality can be further enhanced with the combination of other treatments[25] such as pitch or resin impregnation,[26] metal casing,[27] and high-temperature treatments[28] resulting in a broad range of product options to suit a variety of demanding steel applications.[29]

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.[30] 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.[31] Package orders, as opposed to individual orders for MCBs, are determined based on customer preferences.[32]

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

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[18] 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.

[19] 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.

[20] Landy, Richard A., "Magnesia Refractories," *Refractories Handbook*, ed. Schacht, Charles A. 2004, pp. 111–113.

[21] Troell, Peter T., "Evolution of Magnesia-Carbon Refractories," *Ceramic Industry*, Feb. 1995, Vol. 144, Issue 2.

[22] Troell, Peter T., "Evolution of Magnesia-Carbon Refractories," *Ceramic Industry*, Feb. 1995, Vol. 144, Issue 2.

[23] Harbison-Walker Co., "Refractory Raw Materials," p. CR-3.

[24] Harbison-Walker Co., "Refractory Raw Materials," p. CR-3.

[25] Conference transcript, p. 44 (Mazard).

[26] Pitch or resin impregnation fills in the voids of the brick, making is less porous and increasing the carbon in the brick resulting in better steel slag resistance. E-mail from ***.

[27] Metal casings on MCBs increase strength and improve corrosion resistance in areas of the furnace where mechanical equipment can corrode MCBs that are not plated. Metal cased MCBs are not used in ladles used for steel production. E-mail from ***.

[28] High-temperature treatments decrease the porosity of the MCBs resulting in increased resistance to steel slag penetration. E-mail from ***.

[29] Troell, Peter T., "Evolution of Magnesia-Carbon Refractories," Ceramic Industry, Feb. 1995, Vol. 144, Issue 2.

[30] Conference transcript, p. 55 (Brown).

[31] Conference transcript, p. 47 (Mazard).

[32] Conference transcript, p. 91 (Copp).

various performance requirements of the different areas of the steel furnaces or ladle.[33] More specifically, MCBs are 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[34] are less aggressive and will wear out at lower rates.[35] MCBs 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.[36] An example of a refractory-lined ladle is shown in Figure I-1.

Manufacturing Processes

The raw materials used to make magnesite for MCBs are: (1) fired magnesia produced from natural magnesium carbonate; (2) sea-water magnesium produced by firing magnesium hydroxide extracted from sea water;[37] or (3) brine magnesia produced from high-salt concentration from deep water wells. These raw materials are sintered magnesia, while fused magnesia is produced by melting the sintered magnesia.

After processing to produced sintered or fused magnesia, it is then crushed, ground, and screened.[38] 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 MCBs.[39] The basic production process is as shown in Figure I-2.

[33] 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).

[34] During production, there is steel within the ladle as well as residue that are generated from the metallurgical process, which is called slag, and is, in a sense, liquid glass. Different bricks line different parts of the ladle. However, MCBs tend to be the most expensive brick and are used near the slag area since that is where a lot of fluid reactions take place. The lining in that area has to be designed in a way that the slag will react least with the lining. This helps promote even wear during steel production, thereby generating the highest ladle performance level for the steel producer. Hearing transcript, p. 96 (Copp); 99 (Richter).

[35] Conference transcript, pp. 44–45 (Mazard).

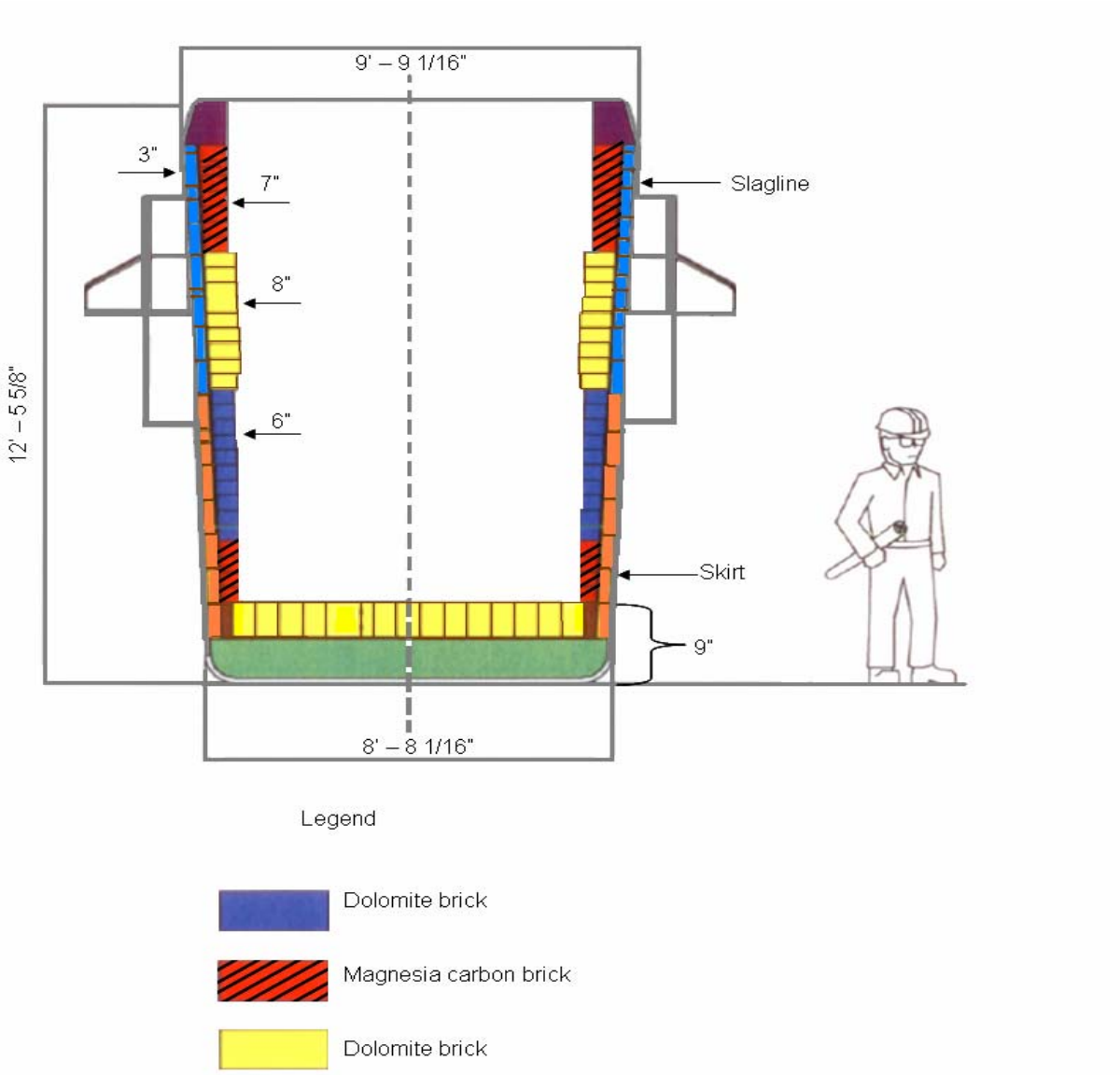
[36] Conference transcript, p. 46 (Mazard).

[37] 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.

[38] 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.

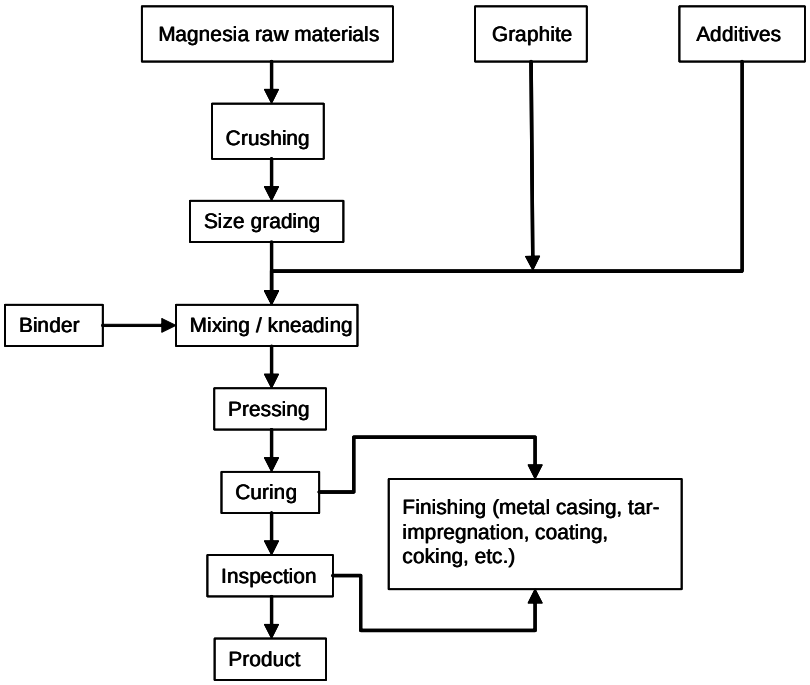
[39] Landy, Richard A., "Magnesia Refractories," *Refractories Handbook*, ed. Schacht, Charles A. 2004, pp. 132–133.

Figure I-1
Refractory-lined ladle



Source: Resco.

Figure I-2
MCBs production process



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

The magnesia is mixed with other materials, including pitch, binders, carbon, and other metallic additives specific to the brick being made.[40] 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)[41] and the isostatic press.[42] Once the bricks are pressed they are heated in batch or tunnel ovens to set resin binds. Finally, the bricks are packaged for shipment.[43]

The shape and density of the MCBs are major factors in determining resistance to degradation and operational life of the bricks.[44] 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.[45] 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.[46] 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.[47] 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.[48] 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.[49]

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[40] 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.

[41] 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 .

[42] 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.

[43] Carniglia, Stephen C. & Gordon L. Barna, *Handbook of Industrial Refractories Technology, Principles, Types, Properties and Applications,* 1992, pp. 515-516 and e-mail from ***.

[44] Conference transcript, p. 177 (B. Stein).

[45] Conference transcript, pp. 110–111 (B. Stein) and Petitioner's postconference brief, exh. 1, pp. 12-13.

[46] Conference transcript, p. 124 (Conrad).

[47] Conference transcript, pp. 110–111 (B. Stein).

[48] Conference transcript, p. 115 (B. Stein).

[49] Conference transcript, p. 124 (Conrad).

Petitioner disputes that the friction press makes a denser MCB than the hydraulic press and claims that the hydraulic press has the capability and efficiency to make MCBs that are 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 efficience 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."[50]

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.[51] Respondents agree with the petitioner's definition of domestic like product; however, the respondent RHI notes that other refractory brick may be competitive with MCBs.[52]

[50] Petitioner's postconference brief, exh. 1, pp. 12–13.

[51] Hearing transcript, pp. 50-51 (Mazard)

[52] The alternatives include dolomite refractory bricks, magnesite refractory bricks, bauxite refractory bricks, and alumina-magnesia refractory bricks. Respondent RHI's prehearing brief, p. 8.

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

U.S. MARKET CHARACTERISTICS

The majority of MCBs in the United States are sold to steel manufacturers. Three producers account for *** domestic sales and two importers accounted for *** of sales of imported MCBs from China in 2009. The third-largest importer of MCBs from China in 2009 was ***. Importer Veitsch-Radex, which is related to Mexican MCB producer Refmex, accounted for *** imports of MCBs from Mexico.

Two of three responding U.S. producers reported selling MCBs nationally and one producer (***) reported selling MCBs. to all regions except ***. Six of nine responding importers reported selling imported Chinese MCBs nationally. Of the remaining three importers, all three reported selling to the Northeast, two to the Southeast and Midwest, and one to the Central. Veitsch-Radex reported selling *** of its MCBs from Mexico to the Southeast and Central Southwest regions during the year ending June 2009 due to high U.S. inland transportation costs.[1] Resco argued that it ships nationwide, including plants in the southwest, such as the Gerdau Ameristeel plant in Midlothian, Texas.[2]

CHANNELS OF DISTRIBUTION

Almost all MCBs from every source are sold directly to end users.[3] As shown in table II-1, in each period, over 99 percent of shipments of U.S. product and over 98 percent of imports from China were to end users. *** reported U.S. shipments of MCBs imported from Mexico and nonsubject countries 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 MCBs sold in the United States is sold to approximately 25 end users.[4]

[1] Hearing transcript, p. 172 (Garcia) and Veitsch-Radex's prehearing brief, exh. 4. ***. ***. Respondent Veitsch-Radex's prehearing brief, p. 4, and its August 18, 2010 submission.

[2] Hearing transcript, p. 264 (Mazard).

[3] RMA factbook 2009, p. 3. (*See* petition, p. 21 and exh. 5.)

[4] Petition, p. 9.

Table II-1
MCBs: U.S. producers' and importers' U.S. shipments of MCB, by sources and channels of distribution, 2007-09, and January-March 2010

Item	Period			
	2007	2008	2009	Jan.-Mar. 2010
Share of reported shipments (*percent*)				
Domestic producers' U.S. shipments of MCBs to:				
Distributors	0.6	0.3	0.1	0.0
End users	99.4	99.7	99.9	100.0
U.S. importers' U.S. shipments of MCBs from China to:				
Distributors	0.3	1.2	1.2	0.0
End users	99.7	98.8	98.8	100.0
U.S. importers' U.S. shipments of MCBs from Mexico to:				
Distributors	***	***	***	***
End users	***	***	***	***
U.S. importers' U.S. shipments of MCBs from all other countries to:				
Distributors	***	***	***	***
End users	***	***	***	***

Note.–Data for domestic producers include only U.S. commercial shipments.

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

PURCHASER CHARACTERISTICS

Purchaser questionnaires were sent to 35 purchasers of MCBs identified by U.S. producers and importers.[5] Twenty purchasers responded to the purchaser questionnaire. Of the 20 purchasers responding to the questionnaire, 18 firms identified themselves as end users. Since 2007, purchasers have increasingly used "full line supply" contracts instead of purchasing bricks individually, which eliminates the need to maintain inventories or technical refractory staff on hand.[6]

All twenty purchasers reported their purchases of MCBs produced in the United States, China, Mexico, and nonsubject countries (table II-2). Responding firms reported purchases totaling 83,804 tons ($78.9 million) in 2007; 89,896 tons ($102.7 million) in 2008; and 62,746 tons ($71.0 million) in 2009.

[5] Purchaser questionnaires were sent to both firms and separate plants identified in preliminary phase questionnaires. Responses received from purchasers, however, were entirely on firm-level, not plant-level bases.

[6] Respondent RHI's postconference brief, p. 14. For more regarding full line supply contracts, see *Part V: Pricing and Related Information*.

Table II-2
MCBs: Quantity and unit value of purchases from the United States, subject countries, and nonsubject countries, 2007-09 and January-March 2010

Source	2007	2008	2009	Jan.-Mar. 2010
	Quantity *(short tons)*			
U.S.	54,066	56,227	33,815	15,874
China	28,169	32,185	27,857	9,428
Mexico	649	625	590	374
Nonsubject[1]	919	859	484	181
Total	83,804	89,896	62,746	25,857
	Unit value *(dollars per ton)*			
U.S.	1,015	1,205	1,193	1,112
China	789	1,038	1,051	1,054
Mexico	1,148	1,095	1,334	1,231
Nonsubject[1]	1,125	979	1,190	1,210

[1] Nonsubject countries include Germany, India, Japan, Korea, the Slovak Republic, Turkey, and the UK.

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

Reported purchases accounted for approximately 78 percent of apparent consumption during 2009 on a quantity basis (approximately 76 percent on a value basis).[7]

Purchasers were also asked about changes in the relative shares of MCBs bought from different countries in the last three years. Table II-3 lists the changes each purchaser has made in its sourcing decisions regarding MCBs during 2007-08 and 2008-09, based on relative shares of purchases. It shows the dynamics of the purchasing decisions made on a firm-by-firm basis. Between 2007 and 2009, the share of a firm's purchases of MCBs imported from China increased for 10 purchasers and decreased for 6 purchasers. The share of a firm's purchases of MCBs imported from Mexico increased for 4 purchasers and decreased for 3 purchasers.

Table II-3
MCBs: Changes in shares of purchases attributable to the United States, China, Mexico, and nonsubject sources, 2007-08 and 2008-09, by purchaser

* * * * * * *

Additionally, purchasers were asked in general how their sourcing pattern changed since 2007.[8] Four firms reported decreasing their purchases of MCBs from domestic producers (citing increasing prices, poor performance and service, and decreased steel production), while two firms reported an increase in purchases from domestic sources (citing service, delivery, and duties on imports). Two firms

[7] Some purchasers did not provide data on their annual purchases, so these data are at least slightly understated. In addition, data do not include direct imports of MCBs

[8] Not all purchasers reported their purchase values, but all 20 reported general trends in purchasing patterns. Some purchasers' responses did not entirely match the purchase share data they reported.

reported that their purchase of MCBs from domestic producers fluctuated based on steel production levels, and ten firms reported that their purchase of MCBs from domestic sources remained constant.

Three firms reported decreasing their purchases of MCBs from Chinese producers (citing lack of service and deliveries, suppliers going out of business, duties, and decreased steel production), while five firms reported increasing their purchases from Chinese sources (citing lower prices; better quality, performance, and service; and one purchaser's steel production shifting from a closed plant to one that used a Chinese MCB supplier). Five firms reported that their purchases of MCBs from Chinese producers fluctuated (citing changes in price and in steel production), and the remaining seven reported that their purchases of MCBs from Chinese sources remained constant. Four purchasers reported buying MCBs from only one country (all four purchased solely from China) due to quality, price (including total cost per ton), and service.

Two firms reported decreasing their purchase of MCBs from Mexican producers (citing duties, delivery delays, and decreased steel demand), while one firm reported an increase in purchases from Mexican sources (citing purchases from a new supplier). No firms reported fluctuations in their purchases of MCBs from Mexican producers, and eleven firms reported that their purchases of MCBs from Mexican sources remained constant (with six of these firms reporting that they purchased minimal or no product from Mexico).

With respect to MCBs from nonsubject countries, three firms reported increased purchases from nonsubject countries (citing low prices (Korea), trial purchases from new suppliers to improve performance and cost (the UK and the Slovak Republic), and purchases of European manufactured Basic Oxygen Furnace ("BOF") lining and Magnesita (Brazil) ladle trial). No firms reported decreasing purchases from nonsubject countries.[9] Two firms reported fluctuations in their purchases of MCBs from nonsubject countries (citing changes in steel production and trial purchases). Six firms reported that their purchases of MCBs from nonsubject countries remained constant, although most of these firms reported no purchases from nonsubject countries.

Four of 20 responding purchasers reported that they had made significant changes to their purchasing patterns in the last three years, with three explaining those changes. One firm changed suppliers after the preliminary duties were imposed, one firm changed its purchasing frequency from annual to quarterly, and one firm reported that ***.[10] Overall, purchasers keep very small levels of inventories of MCBs on hand, approximately 3 percent of yearly purchases. Seven purchasers do not maintain inventories of MCB, whereas 12 do (see table II-4).

[9] *** did, however, have a decline in the share of nonsubject purchases, as shown in table II-3.

[10] A fourth firm responded that it made significant changes to its purchasing frequency depending on finished product supply and demand.

Table II-4
MCBs: Quantity of inventories held by purchasers as a share of yearly purchases, by source, 2007-09 and January-March 2010

Source	2007	2008	2009	Jan.-Mar. 2010
	Shares *(percent)*			
United States	2.3	1.6	2.1	0.8
China	4.0	4.5	4.9	2.5
Mexico	5.2	1.2	3.5	1.0
Nonsubject[1]	5.2	4.3	2.6	0.7
Total	2.8	2.6	3.3	1.4

[1] Nonsubject countries include Turkey and Japan.

Note.–These numbers are minimum inventory shares, as *** reported incorrect inventory data which were not included in this tabulation, and *** only reported data for 2010. *** data, which included only inventories of MCBs manufactured in China, also are not included in the data set.

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

Purchasers have plants located across the United States. The states in which the greatest number of plants are located are Illinois (six plants), Pennsylvania (five plants), and Ohio (five plants). Respondents argued that most firms that purchase Mexican product are located in the Southwest, Southeast, or lower Midwest.[11] However, the seven purchasers that purchased Mexican product reported a total of 16 plant locations, most of which are located in the Midwest (seven plants located in Ohio, Illinois, Michigan, Indiana, and Kentucky), Southeast (four plants located in Alabama, North Carolina, and South Carolina), and Northeast (three plants located in Pennsylvania). In contrast to the respondents' claim, only two plants of the responding purchasers that purchased Mexican product were located in the Central Southwest (Texas and Arizona).

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 MCBs to the U.S. market. 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 switch production between the subject product and alternate products; supply responsiveness is constrained by the somewhat limited ability to use inventories.

[11] Conference transcript, p. 161 (Thomas).

Industry capacity

The industry's level of unused capacity with which U.S. producers could increase production of MCBs in response to a price change is relatively large. While total industry capacity has remained unchanged since 2007, U.S. producers' capacity utilization decreased from 64.4 percent in 2007 to 43.8 percent in 2009 but was 60.5 percent in the first quarter of 2010, compared with 33.2 percent in the first quarter of 2009.[12]

Alternative markets

U.S. producers have the ability to divert a moderate amount of shipments to or from alternative markets in response to changes in the price of MCBs. Exports by the U.S. producers, as a share of total shipments, decreased irregularly from *** percent in 2007 to *** percent in 2009, on a quantity basis, but were *** percent in interim 2010, compared with *** percent in the same period of 2009.

Inventory levels

Data indicate that U.S. producers have a somewhat limited ability to use inventories to increase shipments of MCBs to the U.S. market, as the majority of producers' shipments normally come from their inventories that are held for specific customers. The ratio of end-of-period inventories to total shipments for the U.S. producers decreased from 10.8 percent in 2007 to 10.1 percent in 2008 before increasing to 17.6 percent in 2009. This ratio was much lower in the first quarter of 2010 (12.1 percent), compared with the first quarter of 2009 (17.1 percent).

Production alternatives

*** of *** U.S. producers (***) indicated that they produce products other than MCBs on the equipment and machinery that are used to produce MCBs. Producers indicated that they can produce products such as dolomite brick, alumina magnesia carbon brick, and fired brick in addition to MCBs.

Subject Imports from China

Based on questionnaire responses of six Chinese producers of MCB, Chinese producers have the ability to respond to changes in demand with large changes in the quantity of shipments of MCBs to the U.S. market.[13] The main contributing factors to the high degree of responsiveness of supply are the availability of unused capacity, the existence of alternate markets, the ability to produce alternate products, and available inventories.

[12] Since MCBs are produced on machinery and equipment that is used to produce other types of bricks, capacity and capacity utilization figures for MCBs are subject to fluctuations based on the production mix.

[13] Chinese producers' exports to the United States represented 73.1 percent of total reported U.S. imports from China in 2009.

Industry capacity

Chinese producers' level of unused capacity indicates that they could increase production of MCBs in response to a price change. Chinese producers' capacity utilization decreased from 67.9 percent in 2007 to 46.7 percent in 2009 and was 54.6 percent in the first quarter of 2010, compared with 36.2 percent in the first quarter of 2009.

Alternative markets

Available data indicate that subject producers in China are able to divert shipments to or from their home market and alternative markets to the United States in response to changes in the price of MCBs in the United States. Shipments of MCBs from China to non-U.S. markets (both exports to alternative markets and shipments to their home market) remained at approximately 90 percent of total shipments in 2007 to 2009 on a quantity basis, but were *** percent in interim 2010, compared with *** percent in the same period of 2009. Responding foreign producers reported shipping to markets throughout the world including Europe, Asia, South Africa, the Middle East, North America, and South America.

Inventory levels

Data indicate that Chinese producers and importers of MCBs from China have a large ability to use inventories as a means of increasing shipments of MCBs to the U.S. market. The ratio of end-of-period inventories to total shipments for the Chinese producers decreased irregularly from 6.6 percent in 2007 to 6.4 percent in 2009 and was *** percent in interim 2010, compared with *** percent in interim 2009. Importers' inventories of Chinese MCBs decreased from 65.9 percent of U.S. import shipments of Chinese MCBs in 2007 to 63.9 percent in 2009, and were 41.7 percent in interim 2010 compared to 60.4 percent in interim 2009.[14] Larger inventories of MCBs allow importers to maintain just-in-time delivery schedules of imported MCBs for their U.S. customers.[15]

Production alternatives

Six Chinese producers indicated that they are able to switch production between MCBs and other products in response to a relative change in prices. One of these producers reported that switching production to aluminum magnesium carbon brick, magnesium lime carbon brick, and magnesium spinel carbon brick could be done at any time at no additional cost and can be produced on the same production line as MCBs. Two producers reported that they could switch production among MCB, alumina magnesia carbon brick, and alumina silica carbon brick.

[14] More than *** of this inventory is held by ***. Respondent RHI notes that "relatively high inventory ratios are prevalent throughout the U.S. import trade," as purchasers "value very highly MCB suppliers' delivery time and reliability of supply." Respondent RHI's prehearing brief, p. 61.

[15] Hearing transcript, p. 92 (Richter).

Subject Imports from Mexico

Based on available information, the sole Mexican producer, Refmex, which is owned by RHI, has the ability to respond to changes in demand with *** changes in the quantity of shipments of MCBs to the U.S. market.[16] The main contributing factors to the *** degree of responsiveness of supply are ***.

Industry capacity

The Mexican producer's level of unused capacity indicates that it could increase production of MCBs in response to a price change. The Mexican producer's capacity utilization decreased from *** percent in 2007 to *** percent in 2009. Capacity utilization was *** percent in interim 2010, compared with *** percent in interim in 2009.

Respondent RHI reported that "capacity {it} firmly had available for the manufacture of MCBs is currently in 2010 being used to manufacture other refractories, in particular burned bricks for the cement industry," in particular Mexico-headquartered cement producer Cemex. At Refmex's Ramos Arizpe plant, lead times have doubled, from eight to 16 weeks, and it projects to be at full capacity through 2011.[17]

Alternative markets

Available data indicate that the Mexican producer has the ability to divert shipments to or from its home market and alternative markets to the United States in response to changes in the price of MCBs in the United States. Shipments of MCBs from Mexico to non-U.S. markets (both exports to alternative markets and shipments to the home market, which accounted for *** of Refmex's shipments) decreased from *** percent of total shipments in 2007 to *** percent in 2009, and were *** percent in interim 2010 compared to *** percent in interim 2009. Refmex also exports to ***. Refmex reported that its shipments to the United States will decrease to *** percent of production for 2010 and *** percent in 2011, compared with *** percent in 2009 due to a "dramatic rebound in production for the Mexican market."[18]

Inventory levels

Data indicate that the Mexican producer and importer have a moderate-to-large ability to use inventories as a means of increasing shipments of MCBs to the U.S. market. The ratio of end-of-period inventories to total shipments for the Mexican producer increased from *** percent in 2007 to *** percent in 2009 and was *** percent in interim 2010, compared with *** percent in interim 2009. RHI reported that this increase in Mexican-held inventories is held to serve the home market.[19] Importers' inventories of Mexican MCBs decreased from *** percent of U.S. import shipments of Mexican MCBs in 2007 to *** percent in 2009, and were *** percent in interim 2010 compared to *** percent in interim 2009.[20] Respondent RHI argued that this level of inventories should be gauged in relation to rising U.S.

[16] One Mexican producer responded to the foreign producers' questionnaire. Its exports to the United States represented *** reported U.S. imports from Mexico in 2009.

[17] Hearing transcript, pp. 173-174 (Garcia).

[18] Respondent RHI's prehearing brief, exh. 4.

[19] Ibid.

[20] ***.

demand for MCBs and that the inventories in the most recent period are ***.[21] Furthermore, RHI argued that comparatively high inventory ratios reflect importers' different "circumstances of sale" and that the ratio of imports to inventory for Mexico in interim 2010 is in line with that for non-subject imports.[22] Lastly, RHI argued that it would not abandon its home-market customers which purchase MCBs and other products, especially considering that it earns significantly larger profits on its sales of MCBs in Mexico than on MCB sales to the United States.[23]

Production alternatives

***.

Nonsubject Imports

MCBs are supplied to the United States from a number of countries. According to purchaser questionnaire responses, MCBs were imported from Germany, India, Japan, Korea, the Slovak Republic, Turkey, and the UK since 2007. Respondent RHI noted that it has made some of its capacity in Europe available to service the market in the United States, in particular for subject product.[24] In addition, Magnesita has its headquarters, owns a large magnesite mine, and has the capability of exporting MCBs from Brazil, ***.[25]

Demand

U.S. Demand

Based on available information, it is likely that any change in the price level of MCBs will result in a small change in the quantity of MCBs demanded. The main contributing factors are the lack of substitute products and the small cost share of MCBs 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.[26] Thus, demand for MCBs depends greatly upon steel production.

As seen in figure II-1, raw steel production fluctuated between January 2007 and August 2008, increasing overall by 14.9 percent and then decreasing 56.2 percent between August 2008 and April 2009. Between April 2009 and April 2010, steel production increased 83.0 percent, but was still 7.8 percent lower than in January 2007. In July, the *Wall Street Journal* reported that "Steel prices tumbled in June, and U.S. steel mills are responding by cutting production. Earlier this year, they were ramping

[21] Respondent RHI's prehearing brief, exh. 4.

[22] Ibid.

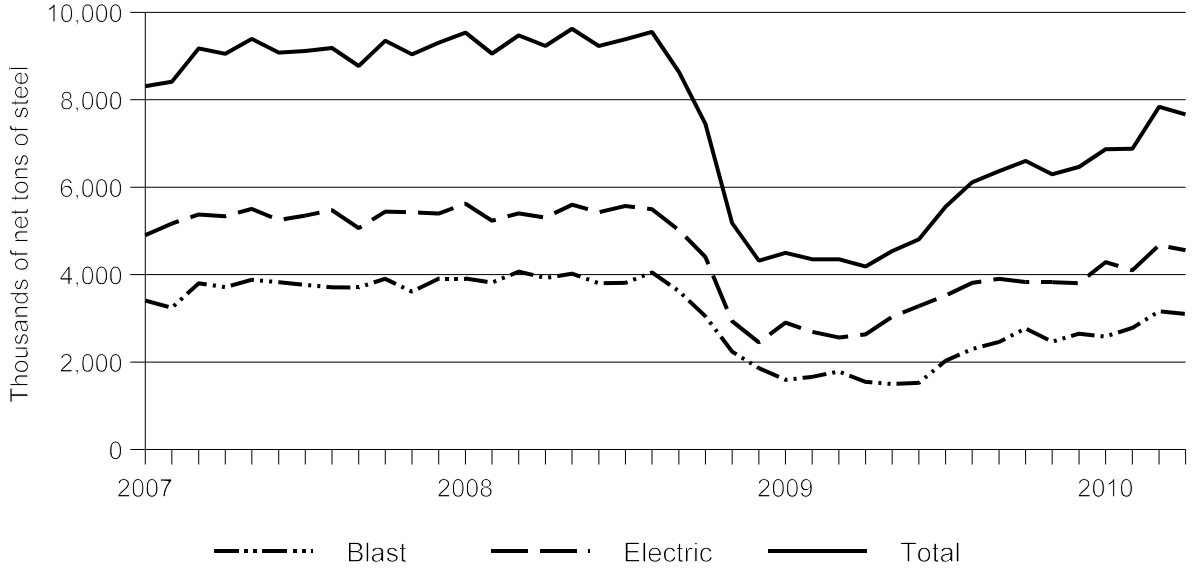
[23] Respondent RHI's prehearing brief, p. 62.

[24] Hearing transcript, p. 205 (Beschel).

[25] Hearing transcript, p. 166 (Beschel) and conference transcript, p. 58 (Brown).

[26] *See* Part I and conference transcript, p. 13 (Brown).

Figure II-1
Pig iron and raw steel production, by month, January 2007-April 2010



Source: American Iron and Steel Institute.

up capacity to meet the growth in demand they hoped would emerge from the economic recovery. Instead, demand has been spotty."[27] However, it further reported that prices will likely increase after August when demand traditionally tends to increase. By comparison, demand for MCBs increased from 2007 to late 2008 and then decreased during late 2008 and early 2009. Available data indicate that total U.S. apparent consumption of MCBs increased *** percent between 2007 and 2008 but decreased *** percent between 2008 and 2009. Apparent consumption was *** percent higher in January-March 2010 than the same period one year earlier.

Most market participants confirmed these fluctuating trends. One domestic producer, 5 of 10 responding importers, and 10 of 18 responding purchasers indicated that demand for MCBs had fluctuated since January 2007. Additionally, 2 of 3 responding U.S. producers, 5 of 10 responding importers, and 5 of 18 responding purchasers indicated that demand for MCBs in the United States has decreased. In contrast, two purchasers indicated that demand had increased and one purchaser reported no change in demand.

Purchasers were asked how demand for their end-use product had changed since 2007 and how this had affected their MCB consumption. Eleven of 18 responding purchasers reported fluctuating demand for these products, four reported no change, and three reported that demand decreased. A majority (12 of 17) of responding purchasers reported that changes in demand for their products affected their demand for MCBs. When asked if the change in demand had affected their willingness to accept price increases or had any other effect on the prices of MCBs, 6 of 15 purchasers responded affirmatively. ***. ***.

Purchasers were also asked if their firms had experienced any routine or non-routine downtimes since 2007. Thirteen of 19 responding purchasers reported routine downtimes; purchasers reported that furnace relines using MCBs may take place three to four times per year, but also that routine downtime is planned so the downtime does not affect their ability to meet demand. Four of eight responding

[27] "Industry Cuts Back as Steel Prices Fall," *Wall Street Journal*, July 6, 2010.

purchasers reported non-routine downtimes. Specifically, one purchaser reported extended production outages in 2009, one firm reported a plant closure in 2008, and a third firm reported that it has had unscheduled downtimes, but that these have not significantly affected any of the three firms' ability to meet demand.

Substitute Products

Two producers, three importers, and four purchasers listed substitutes for MCB, including alumina magnesia carbon brick, burned magnesite, dolomite brick, magnesia alumina carbon brick, magnesia chrome brick, and magnesium oxide brick (without carbon). Among producers, *** reported that direct bonded magnesia chrome can be used in Electric Arc Furnace ("EAF") slaglines and ladle slaglines and that burned magnesite can be used in EAF linings, whereas *** reported that dolomite brick use is limited to steel ladle applications. Importer *** reported that dolomite bricks and alumina magnesia carbon brick were substitutes for ladle applications, and that magnesia chrome was a substitute in both ladle and EAF applications. Importer *** reported that burned dolomite brick is used in certain steel bar mills and magnesia chrome brick is used in some ultra low carbon and stainless steels. Importer *** stated that alumina magnesia carbon brick and magnesia alumina carbon brick can be substitutes only by end users' condition and request, not by the supplier's decision. Among purchasers, *** reported that dolomite brick is cheaper and works better. *** reported that direct bonded magnesite brick and magnesium oxide brick (without carbon) were older technologies and performed poorly. *** stated that magnesium chrome brick is a substitute for MCBs. Two of the three purchasers which reported substitutes noted that changes in the prices of these substitutes do not affect the price of MCBs.

Petitioner indicates that while conceptually there is substitutability between MCBs and some of these products, none of these products provide the performance, the cost effectiveness, the safety, the reliability, or the consistency of MCBs.[28]

Cost Share

MCBs generally make up a small share of the final cost of steel products that it is used to produce. Responding producers and importers indicated that the value of MCBs as a share of the cost of steel production is 2 percent or less. Nine purchasers reported cost shares of 2 percent or less, and one purchaser reported a cost share of 10 percent.

In addition, purchasers were asked what portion of the cost of a full and partial reline would be accounted for by MCBs. Nineteen purchasers reported that the cost shares of complete reline of a steel furnace or refining vessel would range from 20 to 100 percent, with an average cost share of approximately 82 percent for a BOF, 52 percent for an EAF, and 50 percent for a ladle.[29] Seventeen purchasers reported shares of their demand for MCBs that is due to full relines, partial relines, and other uses. Based on a simple average, full relines account for approximately 64 percent of demand for MCBs, partial relines account for approximately 28 percent, and other uses account for the remainder.

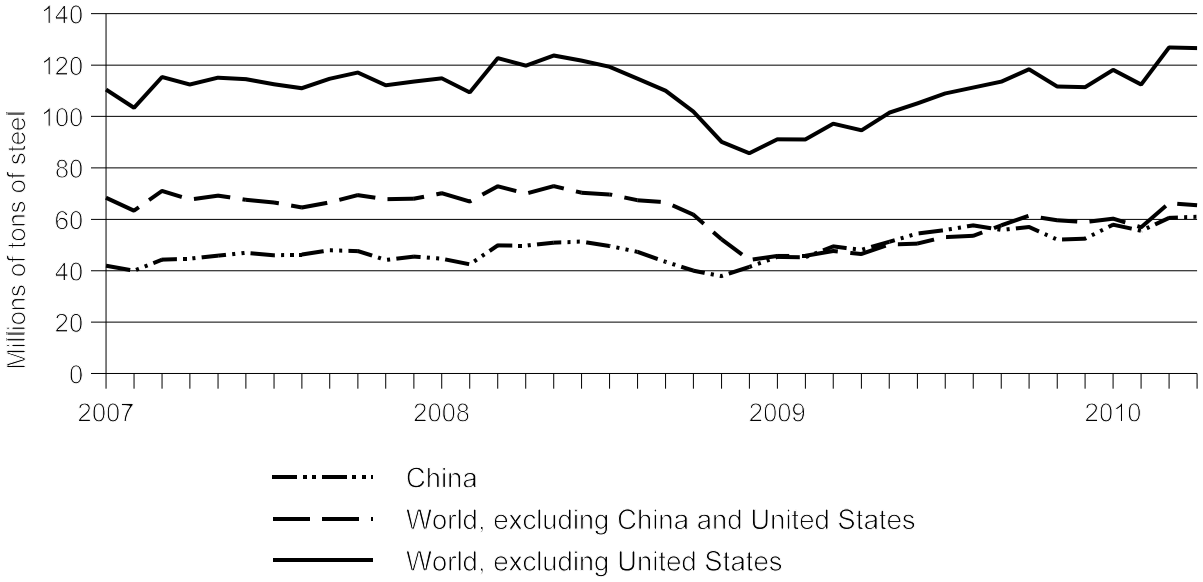
[28] Conference transcript, p. 77 (Brown), hearing transcript, pp. 98 (Copp), 98-99 (Richter), and 116 (Magrath).

[29] MCBs typically last for 10,000-40,000 heats in a BOF, 400-1,000 heats in an EAF, and 50-150 heats in a ladle. Hearing transcript, p. 68 (Brown).

Demand Outside the United States

Two producers (***) and four importers *** reported that demand for MCBs. outside the United States has decreased since 2007, while one producer and one importer reported fluctuating demand. Additionally, two importers (***) noted increasing demand outside the United States since 2007. Four responding purchasers reported that demand outside the United States for MCBs has fluctuated since 2007, two purchasers reported an increase, and one reported that there had been no change. Among those reporting changes, three purchasers noted that increased Chinese production of steel had increased demand outside the United States for MCB, and two reported that MCB demand depends on world steel production. Included in figure II-2 are crude steel production data for China, all countries except China and the United States, and all countries except the United States. Steel production outside the United States followed a similar trend to that in the United States, decreasing in the second half of 2008, but not falling as dramatically as U.S. steel production. In total, U.S. steel production decreased 36.3 percent between 2008 and 2009. Outside the United States, steel production only decreased by 5.9 percent, buoyed by a 13.9 percent increase in steel production in China. Accordingly, China's share of non-U.S. steel production has increased from 38.0 percent in January 2007 to 48.2 percent in April 2010. Since the end of 2008, non-U.S. steel production has been generally increasing, achieving greater production in March 2010 than any other month since January 2007.

Figure II-2
Non-U.S. crude steel production outside the United States, by month, January 2007-April 2010



Source: World Steel Association.

Demand for MCBs outside the United States reportedly follows a similar path. Respondent RHI asserted that Chinese consumption of MCBs has been increasing with the growth of the Chinese steel

industry.[30] Petitioner Resco argued, however, that expected capacity increases in China will exceed the rate of growth of demand for MCBs.[31] Respondent RHI argued that demand for MCBs in Mexico has increased in 2010, noting a 13.5-percent per year growth rate in 2010. This is compared with a 19-percent decrease in 2009.[32]

SUBSTITUTABILITY ISSUES

The degree of substitution between domestic and imported MCB depends upon such factors as relative prices, quality (e.g., performance, life of refractory lining, 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.

Knowledge of Country Sources

Purchasers were asked to indicate the countries of origin for MCBs for which they have actual marketing/pricing knowledge. Seventeen of 20 responding purchasers were familiar with U.S.-produced MCB, 17 were familiar with those from China, 8 were familiar with those from Mexico, and 11 were familiar with those from other countries, including Brazil, Turkey, Germany, Korea, India, Japan, the Slovak Republic, Poland, and the UK.

Purchasers were also asked how frequently they and their customers made purchasing decisions based on the country of origin or the manufacturer of MCBs. The majority of purchasers reported that they and their customers rarely or never make MCB purchasing decisions based on country of origin. Most purchasers reported that they at least sometimes make an MCB purchasing decisions based on the manufacturer, but that their customers less often make a decision based on the manufacturer of the MCB (table II-5).

Table II-5
MCBs: Purchaser responses to questions regarding the origin of their purchases

Purchaser/customer decision	Always	Usually	Sometimes	Rarely	Never
Purchaser makes purchase decision based on country of origin	1	1	1	6	11
Purchaser makes purchase decision based on the manufacturer	4	3	5	2	6
Purchaser's customer makes purchase decision based on country of origin	0	0	1	3	12
Purchaser's customer makes purchase decision based on the manufacturer	0	1	2	2	13

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

[30] Respondent RHI's prehearing brief, p. 5.

[31] Hearing transcript, p. 56 (Mazard).

[32] "Steel production to grow 13.5% in 2010: Canacero," *El Semanario*, June 18, 2010, submitted as respondent RHI's prehearing brief, exh. 24.

Factors Affecting Purchasing Decisions

Major Factors in Purchasing

Purchasers were asked to identify the three major factors considered by their firm in deciding from whom to buy MCBs (table II-6). Quality was reported to be one of top three factors by all 20 of the responding purchasers,[33] while price was reported to be one of top three factors by 19 firms. Quality was the most-frequently cited most important factor (12 purchasers), price was the most frequently reported second most important factor (11 purchasers), and availability and service were the most frequently reported third most important factor (4 purchasers each).

Table II-6
MCBs: Ranking factors used in purchasing decisions, as reported by U.S. purchasers

Factor	Number of firms reporting			
	First	Second	Third	Total
Quality	12	6	3	21[(1)]
Price	7	11	1	19
Availability	1	1	4	6
Service	0	1	4	5
Technical support	0	1	2	3
Reliability	0	0	3	3
Delivery, delivery terms, lead times	0	0	3	3

[1] *** reported two aspects of quality that it considers to be the two most important factors: product performance and product quality/consistency.

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

When asked how often they purchase the MCBs that are offered at the lowest price, 20 purchasers responded: 1 firm indicated "always," 8 firms indicated "usually," 5 firms indicated "sometimes," 4 firms indicated "rarely," and 2 firms indicated "never." Twelve purchasers listed reasons why they purchased higher-priced MCBs even though lower-priced MCBs were available. Reasons indicated by purchasers included: quality, service, delivery, and availability of brick. Most firms did not specify the country of origin of the higher-priced MCBs that they purchased.

Importance of Specified Purchase Factors

Twenty purchasers were asked to rate the importance of 15 factors when making their purchasing decisions (table II-7). The factors listed as "very important" by all 20 responding firms were product consistency and reliability of supply. The factors listed as "very important" by at least half of the responding firms were price (19 firms); quality meets industry expectations (19 firms); availability (18 firms); technical support/service (14 firms); quality exceeds industry expectations (13 firms); delivery time and discounts offered (11 firms); and delivery terms and packaging (10 firms).

[33] One of the purchasers reported product performance and product quality/consistency as its top two factors; we classified both under quality.

Table II-7
MCBs: Importance of factors as reported by U.S. purchasers

Factor	Very important	Somewhat important	Not important
	Number of firms responding		
Availability	18	2	0
Delivery terms	10	7	3
Delivery time	11	9	0
Discounts offered	11	8	1
Extension of credit	5	7	8
Minimum quantity requirements	4	8	8
Packaging	10	8	2
Price	19	1	0
Product consistency	20	0	0
Product range	7	9	4
Quality meets industry expectations	19	1	0
Quality exceeds industry expectations	13	7	0
Reliability of supply	20	0	0
Technical support/service	14	5	1
U.S. transportation costs	9	8	3
Other[1]	2	0	0

[1] Other includes: consignment inventories and product performance.

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

Additionally, purchasers were asked specifically how important the price-performance ratio is for the MCBs that they purchase in terms of cost per ton of steel produced or cost per heat, as compared to price alone. Nineteen of 20 purchasers reported that the price-performance ratio was "very important." In fact, *** reported that the ratio was "very, very important." The final purchaser, ***, reported that this ratio is only "somewhat important" compared to price alone.

Factors Determining Quality

Purchasers were asked to identify the factors that determine the quality of MCBs. Purchasers reported numerous specific factors including: performance (including density, durability of the brick, life of the refractory lining, wear rate, product consistency, resistance to erosion, vertical cracks, and whether it was fused vs. burned), dimensions of the bricks (e.g., consistent size and shape), chemistry (e.g., grades of magnesite, level of anti-oxidants, and carbon level and grade), and other factors such as packaging, installation ease, and safety.

Certification/Qualification Issues

Purchasers were asked if they require certification or prequalification of their suppliers. Nineteen of 20 responding purchasers reported that they required prequalification, with all 19 of these firms requiring it for all of their purchases. Purchasers noted that qualification often entails checking references, price review, product review, and/or running trials on new products. Purchasers reported a

large range of times to certify or qualify a new supplier: 4 firms reported qualification times of 3 to 30 days, 6 firms reported qualification times of 60 to 90 days, 5 firms reported qualification times of 100 to 180 days, and 2 firms reported qualification times of 360 days or greater.

Six of 15 responding purchasers reported that one or more firms had failed to qualify. Of the six, three purchasers listed two U.S. producers or distributors of domestic MCBs as failing to qualify as follows (reasons are identified in parentheses): North American Refractories Company ("NARCO," which is now part of ANH) ("too high in price compared to Chinese until present, where we have changed back," and "did not perform in ladle"), and Magnesita ("poor performance and service, too high in price" and "performance, service, and price").[34] Four purchasers listed the following foreign producers or importers of MCBs from China as failing to qualify: NARCO ("did not perform in ladle"), PRCO ("was not comfortable with quality and was not able to provide answers to all technical questions"), Vesuvius ("unsafe installation process"), and Veitsch-Radex[35] (poor "delivery quality").

Supply Sources

Eleven purchasers reported contacting between one and three suppliers for their MCB needs, and eight purchasers reported contacting four or more suppliers. Half of the purchasers (10 of 20) noted changing suppliers since 2007. A number of different MCB suppliers were added or dropped by individual purchasers. Among those added were RHI, Refrako, Magnesita, Mayerton, and Wonjin. Among those dropped were Vesuvius, Orind USA, and S&S Intersource. Eight purchasers reported that they became aware of new suppliers since 2007.

Supplier Perceptions

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 daily on-site interaction with the customer and understanding what its goals and expectations are in the current environment, price is increasingly becoming the only differentiating factor.[36] Petitioner reported that "value buyers" for which price is not the deciding factor make up less than 30 percent of the market.[37] 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.[38] 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.[39]

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[34] Additionally, one purchaser, ***, listed Orind U.S.A. as a firm that failed to qualify. It did not specify the origin of the MCB that it tested. It reported that Orind U.S.A. failed to qualify because of "poor quality and service." Orind provided an importer's questionnaire response in the preliminary phase of these investigations, but not in the final phase. Mr. Beschel of RHI testified that Orind has a "horrible facility" in China, and "their quality has been going up and going down." Hearing testimony, p. 224 (Beschel).

[35] Veitsch-Radex imports product from both China and Mexico.

[36] Conference transcript, pp. 66-67 (Brown).

[37] Conference transcript, p. 67 (Brown).

[38] Ibid.

[39] Conference transcript, p. 157 (B. Stein and Conrad).

Comparison of U.S.-Produced and Imported MCB

In order to determine whether U.S.-produced MCBs can generally be used in the same applications as imports from China and Mexico, U.S. producers, importers, and purchasers were asked whether the products can "always," "frequently," "sometimes," or "never" be used interchangeably. In general, most responding U.S. producers, importers, and purchasers reported that MCBs from identified sources were "always" interchangeable. As shown in table II-8, all three responding producers and six of eight responding importers indicated that MCBs produced in the United States and imported from China and Mexico can "always" be used interchangeably; the other importers reported that U.S. and Chinese and U.S. and Mexican product were "sometimes" interchangeable. *** reported that different grades of raw materials can affect the chemistry of the MCB, resulting in decreased performance of the brick. One importer did not compare the MCBs among different countries, but reported that interchangeability depends on the source of the raw materials. Petitioner stated that all countries produce MCBs to the same standards and grades and that the limited range of forms that petitioner imports from China is for commodity products.[40]

Table II-8
MCBs: 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				Number of U.S. purchasers reporting			
	A	F	S	N	A	F	S	N	A	F	S	N
U.S. vs. subject countries:												
U.S. vs. China	3	0	0	0	6	0	2	0	10	6	3	0
U.S. vs. Mexico	3	0	0	0	6	0	1	0	7	3	2	0
U.S. vs. nonsubject countries:												
U.S. vs. Brazil	3	0	0	0	2	0	1	0	3	1	1	0
U.S. vs. other nonsubject	2	0	0	0	5	0	1	0	4	4	0	0
Subject country comparisons:												
China vs. Mexico	3	0	0	0	6	0	1	0	7	2	1	0
Nonsubject country comparisons:												
China vs. Brazil	1	0	0	0	2	0	1	0	3	1	0	0
China vs. other nonsubject	2	0	0	0	5	0	1	0	4	4	0	0
Mexico vs. Brazil	1	0	0	0	2	0	1	0	3	0	1	0
Mexico vs. other nonsubject	2	0	0	0	5	0	1	0	4	1	1	0
Brazil vs. other nonsubject	2	0	0	0	4	0	1	0	3	1	0	0

Note.--A = Always, F = Frequently, S = Sometimes, N = Never.

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

[40] Petitioner's postconference brief, pp. 14-15.

A majority of responding purchasers also reported that the U.S. and subject product was "always" interchangeable. Specifically, 10 of 19 responding purchasers reported that product from the United States and China was "always" interchangeable and 7 of 12 responding purchasers reported that product from the United States and Mexico was "always" interchangeable. Purchasers reported a number differences between U.S. and Chinese product. One purchaser noted that the Chinese MCB was of a higher quality and that China offers a wider range of products. Another purchaser stated that U.S.-produced MCBs and MCBs produced in China are not the same size, while a third reported differences in product specifications and quality. With respect to differences between U.S. and Mexican product, one purchaser reported different sizing while another purchaser noted that it does not perform any product trials or accept any MCBs from Mexico. In comparing MCBs from China with MCBs from Mexico, one firm reported that Chinese product was better quality and had better delivery time than Mexican product. With respect to MCBs from Brazil, one purchaser noted that it was unable to procure MCBs from Brazil because Brazil is running at full capacity. Only 1 of 20 responding purchasers noted that it only buys MCBs from a single source.

The perceived level of differences other than price varied substantially among U.S. producers, importers, and purchasers. As indicated in table II-9, all three responding U.S. producers reported that there were either "sometimes" or "never" differences other than price between MCBs produced domestically, and those imported from China and Mexico. In contrast, most importers (seven of nine that provided a response) reported there were "always" or "frequently" differences other than price between MCBs produced in the United States and that imported from China or Mexico. Additionally, a majority of purchasers reported that there were either "always" or "frequently" differences other than price between MCBs produced in the United States and in China (12 of 19 purchasers), and between MCBs produced in the United States and in Mexico (8 of 13 purchasers). When comparing MCBs from China with MCBs from Mexico, 8 of 10 responding purchasers noted that were either "sometimes" or "never" differences other than price.

Differences other than price reported by purchasers included: technical support; technology; service; transportation network; and availability. Chinese product was reported to be superior to the U.S. product with better access to raw materials, quality, consistent delivery, stable long-term pricing, and a wider range of product. Mexico was reported to have lower quality and poorer delivery than U.S. product. Finally, one firm reported that differences are based on producer rather than country of origin.

Petitioner Resco argued that purchasers have increasingly made MCBs more commodity-like in terms of pricing, since suppliers of MCBs imported from China have leveled the playing field with respect to quality, delivery, performance, and service within the past 10 years.[41] Respondent RHI asserted that similar MCBs from different suppliers perform differently when actually used in making steel. Consequently, it is unknown whether one supplier's MCBs will increase or reduce costs until an actual test run is performed.[42]

Ten of 17 responding purchasers noted that they have commingled MCBs from different sources, though most purchasers stated that this was atypical. Only 2 of the 10 purchasers that had commingled MCBs did not report that it was an uncommon practice or describe the instances when it might occur. One other purchaser stated that it does not commingle MCBs from different suppliers, but that its supplier may commingle MCBs from different sources. Reasons reported by the seven remaining purchasers for commingling MCBs from different sources were: running out of inventory, transitioning from one supplier to another, lack of availability, and using newly-sourced MCBs in trial runs.

[41] Hearing transcript, pp. 103-107 (Brown, Magrath, and Richter) and Petitioner's prehearing brief, pp. 13-14.

[42] Hearing transcript, pp. 158-160 (McPhie).

Table II-9
MCBs: 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				Number of U.S. purchasers reporting			
	A	F	S	N	A	F	S	N	A	F	S	N
U.S. vs. subject countries:												
U.S. vs. China	0	0	2	1	***	***	***	***	8	4	5	2
U.S. vs. Mexico	0	0	2	1	2	4	0	2	5	3	3	2
U.S. vs. nonsubject countries:												
U.S. vs. Brazil	0	0	1	0	1	3	0	0	2	0	3	0
U.S. vs. other nonsubject	0	0	1	1	1	2	1	2	1	3	2	1
Subject country comparisons:												
China vs. Mexico	0	0	1	2	1	4	0	2	1	1	5	3
Nonsubject country comparisons:												
China vs. Brazil	0	0	0	1	0	3	0	0	1	0	3	0
China vs. other nonsubject	0	0	0	2	1	2	0	2	1	2	2	2
Mexico vs. Brazil	0	0	0	1	0	3	0	0	0	1	3	0
Mexico vs. other nonsubject	0	0	0	2	1	2	0	2	1	1	2	1
Brazil vs. other nonsubject	0	0	0	2	0	2	0	2	1	0	2	0

Note.--A = Always, F = Frequently, S = Sometimes, N = Never.

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

Factor Comparisons

Purchasers were asked to compare MCBs produced in the United States, subject countries, and nonsubject countries with respect to the same 15 different attributes previously presented in table II-7. A summary of responses is tabulated in table II-10. The majority of firms comparing products from the United States and China reported that the products were comparable for all factors except delivery time, for which the U.S. product was reported to be superior; and price, for which the Chinese product was reported to be superior (i.e., the price of Chinese product is generally lower). Most firms comparing products from the United States and Mexico reported that the products were comparable for all factors except delivery time and reliability of supply, for which the U.S. product was reported superior; and price, for which the Mexican product was reported to be superior. Most firms comparing products from the United States and nonsubject countries reported that the products were comparable for all factors except availability, delivery time, and technical support/service, for which the U.S. product was reported to be superior; and price, for which the nonsubject product was reported to be superior.

Table II-10
MCB: Comparisons of U.S. product, product from subject countries, and product from other countries, as reported by U.S. purchasers

Factor	U.S. vs. China			U.S. vs. Mexico			U.S. vs. nonsubject[2]		
	S	C	I	S	C	I	S	C	I
	Number of firms responding								
Availability	5	9	2	3	7	1	3	2	0
Delivery terms	3	13	0	3	8	0	2	3	0
Delivery time	12	4	0	7	4	0	3	2	0
Discounts offered	1	11	4	1	8	2	1	3	1
Extension of credit	1	15	0	1	10	0	1	4	0
Minimum quantity requirements	3	11	2	2	9	0	1	4	0
Packaging	3	13	0	4	7	0	1	4	0
Price[1]	0	4	12	0	5	6	1	1	3
Product consistency	2	13	1	4	7	0	1	4	0
Product range	3	12	1	3	8	0	2	3	0
Quality meets industry expectations	2	14	0	3	8	0	1	4	0
Quality exceeds industry expectations	4	12	0	4	7	0	1	4	0
Reliability of supply	5	10	1	6	5	0	2	3	0
Technical support/service	6	10	0	5	6	0	3	2	0
U.S. transportation costs[1]	2	13	1	3	8	0	0	5	0

Factor	China vs. Mexico			China vs. nonsubject[3]			Mexico vs. nonsubject[4]		
	S	C	I	S	C	I	S	C	I
Availability	3	9	0	0	3	0	0	1	0
Delivery terms	1	11	0	0	3	0	0	1	0
Delivery time	4	7	1	0	3	0	0	1	0
Discounts offered	1	10	0	0	3	0	0	1	0
Extension of credit	0	12	0	0	3	0	0	1	0
Minimum quantity requirements	2	10	0	0	3	0	0	1	0
Packaging	1	10	1	0	3	0	0	1	0
Price[1]	4	8	0	0	3	0	0	1	0
Product consistency	3	9	0	0	3	0	0	1	0
Product range	1	11	0	0	3	0	0	1	0
Quality meets industry expectations	1	11	0	0	3	0	0	1	0
Quality exceeds industry expectations	3	8	1	0	3	0	0	1	0
Reliability of supply	3	8	1	0	3	0	0	1	0
Technical support/service	2	9	1	0	3	0	0	1	0
U.S. transportation costs[1]	2	9	1	0	3	0	0	1	0

[1] A rating of superior means that the price/U.S. transportation cost is generally lower. For example, if a firm reported "U.S. superior," it meant that the price of U.S. product is generally lower than the price of the imported product.
[2] The nonsubject countries included in these comparisons were Europe, Korea, the Slovak Republic, and Turkey.
[3] The nonsubject countries included in these comparisons were Korea, Germany, and Turkey.
[4] The nonsubject country included in these comparisons was Germany.

Note.--S=first listed country's product is superior; C=both countries' products are comparable; I=first listed country's product is inferior.

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

ELASTICITY ESTIMATES

U.S. Supply Elasticity[43]

The domestic supply elasticity for MCB measures the sensitivity of the quantity supplied to changes in the U.S. market price of MCBs. The elasticity of domestic supply depends on several factors including the level of excess capacity, the ease with which producers can alter capacity, producers' ability to shift to and from production of other products, the availability of inventories, and the availability of alternative markets for U.S.-produced MCBs.

In the short term, the domestic industry has a high degree of responsiveness to changes in prices. Supply responsiveness is enhanced by the availability of unused capacity, the existence of alternate markets, and the ability to switch from producing alternate products; supply responsiveness is constrained by the somewhat limited ability to use inventories, and is likely in the range of 5 to 7. Petitioner agreed with staff's estimate of supply elasticity.[44]

U.S. Demand Elasticity

The U.S. demand elasticity for MCBs measures the sensitivity of the overall quantity demanded to a change in the U.S. market price of MCB, and is likely to be low, in the range of -0.25 to -0.5. This estimate is driven by factors discussed earlier, such as the very low cost share of MCBs in steel production and the limited substitutability of other products for MCBs. Petitioner agreed that demand elasticity is likely to be low due to the low cost share of MCBs in the cost of producing steel.[45]

Substitution Elasticity

The elasticity of substitution depends upon the extent of product differentiation between the domestic and imported products.[46] Product differentiation, in turn, depends upon such factors as quality, shapes, availability, and conditions of sale. Based on the above data, substitution elasticity between domestic and imported MCBs is moderate to high, and is likely to be in the range of 3 to 5. Petitioner disagreed with staff's estimate of substitution elasticity, due to its position that MCBs are commodity-like. It believes substitutability to be very high, but did not provide an estimate.[47]

---

[43] A supply function is not defined in the case of a non-competitive market.

[44] Petitioner's prehearing brief, pp. 24-25.

[45] Ibid., pp. 23-24.

[46] The substitution elasticity measures the responsiveness of the relative U.S. consumption levels of the subject imports and the domestic like product to changes in their relative prices. This reflects how easily purchasers switch from the U.S. product to the subject product (or vice versa) when prices change.

[47] Petitioner's prehearing brief, p. 25.

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 MCBs during 2009.

U.S. PRODUCERS

The Commission sent producer questionnaires to four firms identified as U.S. producers of MCBs by the petitioners. Three firms submitted questionnaire responses.[1] Presented in table III-1 is a list of current domestic producers of MCBs and each company's position on the petition, production location(s), related and/or affiliated firms, and share of reported production of MCBs in 2009. Three firms, ANH, Magnesita, and Resco, accounted for *** percent of reported 2009 domestic production of MCBs.

Three 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
MCBs: U.S. producers, positions on the petition, U.S. production locations, related and/or affiliated firms, and shares of 2009 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	***	***
Magnesita	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.

[1] ***.

U.S. CAPACITY, PRODUCTION, AND CAPACITY UTILIZATION

U.S. producers' capacity, production, and capacity utilization data for MCBs are presented in tables III-2a and II-2b. These data show capacity to produce MCBs remained steady from 2007 to 2009 and during the interim periods January-March 2009 and January-March 2010. Production of MCBs decreased by 32.0 percent from 2007 to 2009 and increased by 82.2 percent between the interim periods. Capacity utilization decreased by 20.6 percentage points from 2007 to 2009, and increased by 27.3 percentage points between the interim periods.[2]

Table III-2a
MCBs: U.S. capacity, production, and capacity utilization, 2007-09, January-March 2009, and January-March 2010

Item	Calendar year			January-March–	
	2007	2008	2009	2009	2010
Capacity[1] (*short tons*)	114,241	114,241	114,241	28,585	28,585
Production (*short tons*)	73,552	72,258	49,997	9,485	17,286
Capacity utilization (*percent*)	64.4	63.3	43.8	33.2	60.5

[1] ***. Data reflect revisions by ***.

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

Table III-2b
MCBs: U.S. capacity, production, and capacity utilization, January-June 2009, and July-December 2009

Item	2009	
	January-June	July-December
Capacity[1] (*short tons*)	57,120	57,120
Production (*short tons*)	17,576	32,416
Capacity utilization (*percent*)	30.8	56.7

[1] ***. Data reflect revisions by ***.

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

[2] ***.

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 MCBs since January 1, 2007.[3] *** reported the following changes:

* * * * * * *[4]

*** also reported that raw material costs went up due to the Chinese magnesia producers being required to stop production while the Olympics were held in Beijing, and due to increasing export license fees.[5] *** reported the following changes:[6]

* * * * * * *[7]

*** 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 MCBs. ***.[8] ***.[9]

U.S. PRODUCERS' SHIPMENTS

U.S. producers sell MCBs individually but also ship them as part of "project" sales packages. Project sales packages include total refractory needs for a given ladle, furnace, or steel plant, and can include a range of related services.[10] Data on domestic producers' shipments of MCBs are presented in tables III-3a and III-3b. U.S. shipments accounted for *** percent of U.S. producers' total shipments of MCBs in 2009, and *** percent in interim 2010. There was no reported internal consumption. Transfers to related firms accounted for *** percent of U.S. producers' total shipments of MCBs in 2008, 2009, and interim 2009. U.S. shipments decreased by 28.9 percent from 2007 to 2009, and increased by 69.1 percent between the interim periods. The unit value of U.S. shipments increased by 21.1 percent from 2007 to 2009, and decreased by 5.6 percent in the interim periods. Exports of MCBs were reported by ***. These exports decreased by *** percent from 2007 to 2009, and increased by *** percent between the interim periods. Exports accounted for *** percent of U.S. producers' total shipments during 2009, and *** percent in interim 2010. The export markets listed included ***.

[3] ***.
[4] ***.
[5] Hearing transcript, pp. 90-91 (Brown).
[6] ***.
[7] ***.
[8] ***.
[9] Resco reported ***. Resco producer questionnaire, p. 6, II-4.
[10] ANH's posthearing brief, pp. 3, 8. ***.

Table III-3a
MCBs: U.S. producers' shipments, by types, 2007-09, January-March 2009, and January-March 2010

Item	Calendar year			January-March–	
	2007	2008	2009	2009	2010
			Quantity (*short tons*)		
Commercial shipments	***	***	***	***	***
Transfers to related firms	***	***	***	***	***
U.S. shipments	59,403	63,789	42,243	8,989	15,198
Export shipments	***	***	***	***	***
Total shipments	***	***	***	***	***
			Value (*1,000 dollars*)		
Commercial shipments	***	***	***	***	***
Transfers to related firms	***	***	***	***	***
U.S. shipments	62,611	76,612	53,933	11,558	18,449
Export shipments	***	***	***	***	***
Total shipments	***	***	***	***	***
			Unit value (*per short ton*)		
Commercial shipments	***	***	***	***	***
Transfers to related firms	***	***	***	***	***
U.S. shipments	1,054	1,201	1,277	1,286	1,214
Export shipments	***	***	***	***	***
Total shipments	***	***	***	***	***
			Share of quantity (*percent*)		
Commercial shipments	***	***	***	***	***
Transfers to related firms	***	***	***	***	***
U.S. shipments	***	***	***	***	***
Export shipments	***	***	***	***	***
Total shipments	100.0	100.0	100.0	100.0	100.0

[1] Not applicable.

Note.–Because of rounding, figures may not add to the totals shown.

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

Table III-3b
MCBs: U.S. producers' shipments, by types, January-June 2009, and July-December 2009

Item	2009	
	January-June	July-December
	Quantity (*short tons*)	
Commercial shipments	***	***
Transfers to related firms	***	***
U.S. shipments	16,651	25,592
Export shipments	***	***
Total shipments	***	***
	Value (*1,000 dollars*)	
Commercial shipments	***	***
Transfers to related firms	***	***
U.S. shipments	21,252	32,681
Export shipments	***	***
Total shipments	***	***
	Unit value (*per short ton*)	
Commercial shipments	***	***
Transfers to related firms	***	***
U.S. shipments	1,276	1,277
Export shipments	***	***
Total shipments	***	***
	Share of quantity (*percent*)	
Commercial shipments	***	***
Transfers to related firms	***	***
U.S. shipments	***	***
Export shipments	***	***
Total shipments	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.

U.S. PRODUCERS' INVENTORIES

Data collected in these investigations on domestic producers' end-of-period inventories of MCBs are presented in tables III-4a and III-4b. Domestic producers' inventories increased by 6.7 percent from 2007 to 2009, and increased by 23.7 percent in interim 2010 compared with interim 2009.[11] U.S. producers' inventories were equivalent to between *** and *** percent of U.S. producers' total shipments during 2007 to March 2010. *** accounted for *** percent of the inventories held at the end of March 2010.[12]

Table III-4a
MCBs: U.S. producers' end-of-period inventories, 2007-09, January-March 2009, and January-March 2010

Item	Calendar year			January-March–	
	2007	2008	2009	2009	2010
Inventories (*short tons*)	8,042	7,334	8,585	6,840	8,461
Ratio to production (*percent*)	10.9	10.1	17.2	18.0	12.2
Ratio to U.S. shipments (*percent*)	13.5	11.5	20.3	19.0	13.9
Ratio to total shipments (*percent*)	***	***	***	***	***

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

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

Table III-4b
MCBs: U.S. producers' end-of-period inventories, January-June 2009, and July-December 2009

Item	2009	
	January-June	July-December
Inventories (*short tons*)	6,416	8,585
Ratio to production (*percent*)	18.3	13.2
Ratio to U.S. shipments (*percent*)	19.3	16.8
Ratio to total shipments (*percent*)	***	***

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

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

[11] 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).

[12] ***.

U.S. PRODUCERS' IMPORTS AND PURCHASES

Two of the four U.S. producers, ***, reported that they directly imported MCBs from *** during the period of review. U.S. producers' imports of MCBs are presented in tables III-5a and III-5b.[13]

***.

Table III-5a
MCBs: U.S. producers' imports, 2007-09, January-March 2009, and January-March 2010

* * * * * * *

Table III-5b
MCBs: U.S. producers' imports, January-June 2009, and July-December 2009

* * * * * * *

U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

U.S. producers' aggregate employment data for MCBs are presented in tables III-6a and III-6b. From 2007 to 2009, U.S. MCB producers reported a decrease in the number of production and related workers , and reported an increase in interim 2010 compared with interim 2009. *** accounted for the largest share of the decrease in number of employees from 2007 to 2009, and *** accounted for the majority of the increase in interim 2010.[14] Productivity fell irregularly from 2007 to 2009 by 9.2 percent and increased by 14.6 percent in interim 2010 compared with interim 2009. Resco reported that it reduced it's work week at the Hammond plant by 20 percent, and made similar cuts in salaried personnel and benefits at both Hammond and the Pittsburgh headquarters.[15] Resco executives took a 65 percent reduction in compensation and benefits beginning in mid-2008.[16] ANH reported that in 2009 it had to lay off 50 hourly workers at its White Cloud, MI, plant, and an additional 100 sales and administrative employees primarily at its Pittsburgh headquarters.[17] After the imposition of the preliminary duties, ANH was able to rehire 50 production employees for two extra shifts at the White Cloud plant.[18]

[13] ***.

[14] 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).

[15] Hearing transcript, p. 33 (Brown).

[16] Hearing transcript, p. 50 (Mcgrath).

[17] Hearing transcript, pp. 61-62 (Richter).

[18] Hearing transcript, p. 64 (Richter).

Table III-6a
MCBs: U.S. producers' employment-related data, 2007-09, January-March 2009, and January-March 2010

Item	Calendar year			January-March–	
	2007	2008	2009	2009	2010
Production and related workers (PRWs)	110	102	92	83	112
Hours worked by PRWs (*1,000 hours*)	239	227	179	39	62
Wages paid to PRWs (*1,000 dollars*)	6,441	6,420	5,200	1,102	1,823
Hourly wages	$26.95	$28.28	$29.05	$28.26	$29.40
Productivity (*short tons produced per 1,000 hours*)	307.7	318.3	279.3	243.2	278.8
Unit labor costs (*per short ton*)	$87.57	$88.85	$104.01	$116.18	$105.46
Source: Compiled from data submitted in response to Commission questionnaires.					

Table III-6b
MCBs: U.S. producers' employment-related data, January-June 2009, and July-December 2009

Item	2009	
	January-June	July-December
Production and related workers (PRWs)	78	106
Hours worked by PRWs (*1,000 hours*)	72	112
Wages paid to PRWs (*1,000 dollars*)	2,117	3,299
Hourly wages	$29.40	$29.46
Productivity (*short tons produced per 1,000 hours*)	244.1	289.4
Unit labor costs (*per short ton*)	$120.45	$101.77
Source: Compiled from data submitted in response to Commission questionnaires.		

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

U.S. IMPORTERS

Importer questionnaires were sent to 27 firms believed to be importers of subject MCBs, as well as to all U.S. producers of MCBs.[1] Usable questionnaire responses were received from 12 companies,[2] [3] representing 60 percent of total imports from China and 100 percent of total imports from Mexico.[4] Table IV-1 lists all responding U.S. importers of MCBs from China, Mexico, and other sources, their locations, and their shares of reported U.S. imports in 2009. In 2009, the largest importer of MCBs, in each instance, from China, Mexico, and other sources ***.[5] [6]

Table IV-1
MCBs: U.S. importers, source(s) of imports, U.S. headquarters, and shares of imports in 2009

* * * * * * *

U.S. IMPORTS

U.S. imports are based on questionnaire responses.[7] Tables IV-2a and IV-2b present data for U.S. imports of MCBs from China, Mexico, and all other sources. China is the largest foreign supplier of MCBs to the United States, accounting for *** percent of the quantity of total imports in 2009, and *** percent of the value. Mexico is the second-largest foreign supplier of MCBs to the United States, accounting for *** percent of the quantity of total imports in 2009 and *** percent of the value.[8]

---

[1] 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 2007.

[2] *** submitted questionnaire responses in the preliminary phase investigations, but have not responded in the final phase investigations. In the preliminary phase, these firms accounted for *** percent of reported imports in 2008.

[3] The Commission received questionnaire responses from two firms that reported that they did not import MCBs during the period examined. Those firms are: ***.

[4] Coverage for Chinese imports is derived from Petitioner's estimate of total imports of MCBs. Petition, exh. 3.

[5] ***.

[6] Four firms reported imports from sources other than China and Mexico: ***.

[7] MCBs are 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 MCBs and other products.

Commission staff believes that coverage for subject imports from Mexico to be excellent, while subject imports from China and nonsubject imports, while understated, are good. ***.

[8] The remainder comes from ***.

Table IV-2a
MCBs: U.S. imports, by sources, 2007-09, January-March 2009, and January-March 2010

Source	Calendar year			January-March	
	2007	2008	2009	2009	2010
			Quantity (*short tons*)		
China	34,613	41,701	33,643	5,620	6,210
Mexico	***	***	***	***	***
Subtotal	***	***	***	***	***
Nonsubject	***	***	***	***	***
Total	***	***	***	***	***
			Value (*1,000 dollars*)[1]		
China	24,105	33,822	27,083	4,786	4,966
Mexico	***	***	***	***	***
Subtotal	***	***	***	***	***
Nonsubject	***	***	***	***	***
Total	***	***	***	***	***
			Unit value (*per short ton*)[1]		
China	$696	$811	$805	$852	$800
Mexico	***	***	***	***	***
Subtotal	***	***	***	***	***
Nonsubject	***	***	***	***	***
Average	***	***	***	***	***
			Share of quantity (*percent*)		
China	84.1	93.1	87.6	82.6	68.8
Mexico	***	***	***	***	***
Subtotal	***	***	***	***	***
Nonsubject	***	***	***	***	***
Total	***	***	***	***	***
			Share of value (*percent*)		
China	81.2	92.3	82.6	79.4	60.2
Mexico	***	***	***	***	***
Subtotal	***	***	***	***	***
Nonsubject	***	***	***	***	***
Total	***	***	***	***	***

[1] Landed, U.S. port of entry, duty-paid.

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

Table IV-2b
MCBs: U.S. imports, by sources, January-June 2009, and July-December 2009

Source	2009	
	January-June	July-December
	Quantity (*short tons*)	
China	10,776	22,867
Mexico	***	***
Subtotal	***	***
Nonsubject	***	***
Total	***	***
	Value (*1,000 dollars*)[1]	
China	8,754	18,259
Mexico	***	***
Subtotal	***	***
Nonsubject	***	***
Total	***	***
	Unit value (*per short ton*)[1]	
China	$812	$798
Mexico	***	***
Subtotal	***	***
Nonsubject	***	***
Average	***	***
	Share of quantity (*percent*)	
China	86.4	88.6
Mexico	***	***
Subtotal	***	***
Nonsubject	***	***
Total	***	***
	Share of value (*percent*)	
China	82.7	82.8
Mexico	***	***
Subtotal	***	***
Nonsubject	***	***
Total	100.0	100.0

[1] Landed, U.S. port of entry, duty-paid.

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

From 2007 to 2009, the quantity of imports of MCBs from China decreased by 2.8 percent while the value increased by 12.4 percent. The quantity and value of imports of MCBs from China during interim 2010 increased by 10.5 percent and 3.8 percent, respectively, compared with interim 2009. The unit value of imports of MCBs from China increased by 15.7 percent from 2007 to 2009, and decreased by 6.1 percent in interim 2010 compared with interim 2009. From 2007 to 2009, the quantity and value of imports of MCBs from Mexico increased by *** percent and *** percent, respectively, then increased by *** percent and *** percent in interim 2010 compared with interim 2009. The unit value of imports of MCBs from Mexico increased by *** percent from 2007 to 2009, and decreased by *** percent in interim 2010 compared with interim 2009. The quantity of imports from other countries decreased by *** percent while the value decreased by *** percent from 2007 to 2009,. The quantity and value of imports from other countries increased by *** percent and *** percent in interim 2010 compared with interim 2009. The unit value of imports of MCBs from other sources increased by *** percent from 2007 to 2009, and increased by *** percent in interim 2010 compared with interim 2009.

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 MCBs 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.[9] The Petitioner argued that the geographic market for the Chinese product is national, and acknowledges that imports from Mexico enter largely through the Central Southwestern and Southeastern regions of the United States, but that ***.[10] Chinese, Mexican, and U.S. producers of MCBs sell the majority of their product to end users.[11] The petitioner also argued that imported MCBs were present in the U.S. market simultaneously with U.S.-produced MCBs.[12]

RHI argued that there is insignificant overlap between imports of MCBs from Mexico and China, because the Mexican MCBs are sold in different geographic markets and in insignificant quantities.[13] Mexican MCBs are transported overland to the Central Southeastern and Southwestern states and a few lower Midwestern states, whereas imports of MCBs from China travel by ocean vessel to ports along both the east and west coasts and the north central region of the country.[14] RHI further points out that the Commission's pricing product information shows limited competition between MCB imports from Mexico and imports from China and U.S. MCBs. Products 1-5 cover nearly 80 percent of subject imports from China, but only *** percent of imports from Mexico.[15]

[9] Petitioner's prehearing brief, p. 9.
[10] Petitioner's prehearing brief, p. 10.
[11] Table II-1.
[12] Petitioner's prehearing brief, p. 11.
[13] Respondent RHI's prehearing brief, pp. 12-13
[14] Respondent RHI's prehearing brief, p. 13.
[15] Respondent RHI's prehearing brief, p. 14.

NEGLIGIBILITY

The statute requires that an investigation be terminated without an injury determination if imports of the subject merchandise are found to be negligible.[16] 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 from such countries are deemed not to be negligible.[17] Imports from China accounted for *** percent of total imports of MCBs by quantity during July 2008-June 2009. Imports from Mexico accounted for *** percent of total imports of MCBs by quantity during July 2008-June 2009.

APPARENT U.S. CONSUMPTION

Data concerning apparent U.S. consumption of MCBs during the period of investigation shown in tables IV-3a, and IV-3b, and figure IV-1 are based on questionnaire responses. The quantity of apparent U.S. consumption decreased by *** percent from 2007 to 2009, and then increased by *** percent in interim 2010 compared with interim 2009. The steel industry is the end-use market for MCBs, where they are used for the linings of ladles, electric arc furnaces, and basic oxygen furnaces.[18] Ladles are the largest user of MCBs, followed by electric arc furnaces. Basic oxygen furnaces account for about 5 to 10 percent of demand due to process control techniques like slag splashing and the growth of mini-mills.[19] The strong demand for MCBs stopped around the fourth quarter of 2008 through the first half of 2009, and then began to recover in the second half of 2009 through the first quarter of 2010.[20] Steel production declined by roughly 50 percent from roughly October 2008 through June 2009.[21] Full year 2009 steel production was down 36 percent compared with full year 2008 production figures.[22]

[16] 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)).

[17] Section 771(24) of the Act (19 U.S.C. § 1677(24)).

[18] Hearing transcript, p. 36 (Copp).

[19] Ibid.

[20] Hearing transcript, p. 23 (Thomas) and p. 157 (Beschel).

[21] Respondent RHI's posthearing brief, appendix, p. 11.

[22] World Steel Association.

Table IV-3a
MCBs: U.S. shipments of domestic product, U.S. shipments of imports, and apparent U.S. consumption, 2007-09, January-March 2009, and January-March 2010

Item	Calendar year			January-March	
	2007	2008	2009	2009	2010
	Quantity (*short tons*)				
U.S. producers' U.S. shipments	59,403	63,789	42,243	8,989	15,198
U.S. shipments of imports from–					
China	31,387	38,102	33,090	8,013	10,198
Mexico	***	***	***	***	***
Subtotal	***	***	***	***	***
Nonsubject countries	***	***	***	***	***
Total U.S. import shipments	***	***	***	***	***
Apparent U.S. consumption	***	***	***	***	***
	Value (*1,000 dollars*)				
U.S. producers' U.S. shipments	62,611	76,612	53,933	11,558	18,449
U.S. shipments of imports from--					
China	27,155	35,542	33,676	8,028	11,092
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.

Table IV-3b
MCBs: U.S. shipments of domestic product, U.S. shipments of imports, and apparent U.S. consumption, January-June 2009, and July-December 2009

Item	2009	
	January-June	July-December
	Quantity (*short tons*)	
U.S. producers' U.S. shipments	16,651	25,592
U.S. shipments of imports from–		
China	14,398	18,692
Mexico	***	***
Subtotal	***	***
Nonsubject countries	***	***
Total U.S. import shipments	***	***
Apparent U.S. consumption	***	***
	Value (*1,000 dollars*)	
U.S. producers' U.S. shipments	21,252	32,681
U.S. shipments of imports from--		
China	14,048	18,665
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
MCBs: Apparent U.S. consumption, by sources, 2007-09, January-March 2009, and January-March 2010

* * * * * * *

Source: Table IV-3a.

U.S. MARKET SHARES

U.S. market share data are presented in tables IV-4a and IV-4b. The quantity of the U.S. producers' market share decreased by *** percentage points from 2007 to 2009 and was *** percentage points higher in interim 2010 compared with interim 2009. In contrast, the share of subject imports from China increased from *** percent in 2007 to *** percent in 2009, on the basis of quantity, and decreased from *** percent in interim 2009 to *** percent in interim 2010. The share of subject imports from Mexico increased from *** percent in 2007 to *** percent in 2009, and increased from *** percent in interim 2009 to *** percent in interim 2010. Nonsubject imports' market share decreased from *** percent in 2007 to *** percent in 2009, and held level at *** percent in interim 2009 and 2010.

Table IV-4a
MCBs: U.S. consumption and market shares, 2007-09, January-March 2009, and January-March 2010

* * * * * * *

Table IV-4b
MCBs: U.S. consumption and market shares, January-June 2009, and July-December 2009

* * * * * * *

RATIO OF IMPORTS TO U.S. PRODUCTION

Information concerning the ratio of imports to U.S. production of MCBs is presented in tables IV-5a and IV-5b. Imports from China were equivalent to 47.1 percent of U.S. production during 2007 and steadily increased to 67.3 percent in 2009, but were 35.9 percent in interim 2010 compared with 59.2 percent in interim 2009. Imports from Mexico were equivalent to *** percent of U.S. production during 2007 and steadily increased to *** percent during 2009, but were *** percent in interim 2010 compared with *** percent in interim 2009.

Table IV-5a
MCBs: U.S. production, U.S. imports, and ratios of imports to U.S. production, 2007-09, January-March 2009, and January-March 2010

Item	Calendar year			January-March	
	2007	2008	2009	2009	2010
	Quantity (*short tons*)				
U.S. production	73,552	72,258	49,997	9,485	17,286
Imports from:					
China	34,613	41,701	33,643	5,620	6,210
Mexico	***	***	***	***	***
Subtotal	***	***	***	***	***
Nonsubject countries	***	***	***	***	***
Total imports	***	***	***	***	***
	Ratio of U.S. imports to production (*percent*)				
Imports from:					
China	47.1	57.7	67.3	59.2	35.9
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.

Table IV-5b
MCBs: U.S. production, U.S. imports, and ratios of imports to U.S. production, January-June 2009, and July-December 2009

Item	2009	
	January-June	July-December
U.S. production	17,576	32,416
Imports from:		
China	10,776	22,867
Mexico	***	***
Subtotal	***	***
Nonsubject countries	***	***
Total imports	***	***
Imports from:		
China	61.3	70.5
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.

CRITICAL CIRCUMSTANCES

On April 15, 2010, the Petitioner filed a timely critical circumstances allegation with respect to imports of MCBs from China. Petitioner contends that based on the preliminary dumping margins assigned by Commerce, importers know or should have known that imports of MCBs from China were being sold at less than fair value. Petitioner also contends that based on the Commission's preliminary affirmative determination, there is a reasonable basis to impute importers' knowledge that material injury is likely by reason of imports of MCBs from China. RHI argued that the increase in imports from the pre-petition period to the post-petition period was not in response to the filing of the petition, but in response to the recovery of the U.S. steel industry and the associated rebound in MCB demand.[23] Commerce issued a final affirmative critical circumstances determination in conjunction with its less than fair value determination.[24] Table IV-6 presents RHI's monthly exports to the United States provided to Commerce for the seven-month period prior to the filing of the petition on July 29, 2009 and the seven-month period following the filing of the petition.[25]

Table IV-6
MCBs: RHI Liaoning's and RHI Dalian's exports to the United States subject to Commerce's critical circumstances determination, by month, January 2009 - February 2010

* * * * * * *

[23] Respondent RHI's prehearing brief, p. 68.

[24] *Certain Magnesia Carbon Bricks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances*, 75 FR 45468, August 2, 2010.

[25] These data were provided by RHI.

PART V: PRICING AND RELATED INFORMATION

FACTORS AFFECTING PRICES

Raw Material Costs

Magnesia is the main raw material used to produce MCB. According to ***, magnesite accounts for *** percent of the cost of raw materials in producing MCB.[1] Petitioner indicates that it purchases *** used in the production of MCB. Raw material costs accounted for approximately 74.3 percent of the total cost of goods sold for U.S. producers from January 2007 to March 2010. Per-ton raw material costs increased by 26.1 percent between 2007 and 2008 and by a further 8.4 percent in the first quarter of 2009. These costs have since decreased and were 9.4 percent lower in the first quarter of 2010 compared to the same time period in 2009, however were still 77.5 percent of the cost of goods sold that quarter. Between January 2007 and June 2008, the price of all types of magnesia increased steadily, but have decreased since that time.[2] 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.[3] All producers and importers reported increasing raw material costs since 2007, and all expect further increases in the price of magnesite.

U.S. Inland Transportation Costs

Transportation costs for U.S. inland shipments of MCBs 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 MCBs (with a simple average of 5.3 percent), while U.S. importers reported that the costs ranged from 2 to 15 percent of the delivered price for MCBs (with a simple average of *** percent).

Other Refractory Products and Services

Respondent RHI estimated that 50 percent of MCB purchasers buy MCBs as part of an entire lining for a ladle or furnace. For these sales, MCBs are purchased on the basis of the package, not just the price of the MCBs included within the package.[4] Nearly all purchasers (19 of 20) reported buying MCBs from suppliers that also supply them with other refractory products.

An increasing proportion of MCB sales take place as part of a cost-per-ton or cost-per-heat program. These may be referred to in the industry as “program sales” or “project sales,” and may include other related services such as installation and technical assistance, in which case these types of contracts

[1] ***.

[2] Prices petitioner paid for ***. Staff telephone interview with ***, September 2, 2009. ***. Email from ***, June 23, 2010.

[3] 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. Respondent RHI contends that this report was published before the recession in the United States, and thus, any forecasts of prices of inputs to the steel industry is irrelevant. Respondent RHI’s prehearing brief, app. A.

[4] Respondent RHI’s postconference brief, pp. 14-15.

may also be called "full-line service" arrangements.[5] Six of 20 responding purchasers (***) reported purchasing MCBs via cost-per-ton or cost-per-heat programs. Additionally, ANH reported sales to *** on a project sale basis, with ***.[6]

PRICING PRACTICES

Pricing Methods

Two of the three producers reported using transaction-by-transaction negotiations for some of their sales of MCB, with one (***) also using contracts. One producer (***) reported using a price list. Most (8 of 11) importers reported that sales prices are determined using transaction-by-transaction negotiations, while 6 reported using contracts. Two of three producers and *** responding importers make their sales on an f.o.b. basis, whereas one producer and *** importers typically sell on a delivered basis. Of the responding firms, only *** do not typically arrange freight. Nearly all (19 of 20) purchasers reported that purchasing MCBs usually involves negotiations with suppliers.

Producer Resco reported selling ***[7] ***.[8] Four importers reported selling on a long-term contract basis with contracts that last one to five years: ***.[9] *** and *** responding importers reported that prices for long-term contracts can be renegotiated within the contract period. Also, *** and *** responding importers reported that only prices are fixed in long-term contracts. Two of the five importers and *** reported that meet-or-release clauses were not typically included in long-term contracts. Four of eight responding importers reported making at least 69 percent of their sales on a short-term contract basis, with these contracts lasting between 3 and 12 months. Three of 10 responding importers and *** producers reported that only prices were fixed for these contracts and that pricing could be negotiated for *** producers and four of the 10 responding importers. *** are the only firms which typically include meet-or-release clauses in their short-term contracts.

Lead Times

One of two responding producers and three of eight responding importers reported that at least 80 percent of their sales of MCBs were from inventory.[10] Six of nine responding importers reported that all of their sales are on a made-to-order basis. U.S. producers reported lead times from inventory ranging from one to three days and lead times for sales of produced-to-order MCBs of one to two days to two to three weeks. Delivery lead times for all but one responding U.S. importer ranged from one to seven days on sales from inventory; importers that reported lead times for sales of made-to-order MCBs ranged from two to four months. The two responding U.S. producers reported making *** of their sales within 101 to 1,000 miles of their storage or production facilities. Importer *** ships all of its MCBs more than 1,000

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[5] Hearing transcript, p. 250 (Beschel). Determining the specific price of a MCB as part of project sales is an extremely difficult task to perform. The individual parts of the contract are not separately priced or invoiced, so producer ANH, ***, was unable to formulate specific pricing and value data for these sales. Hearing transcript, p. 132 (Richter). These data, which represent *** percent of ANH's total shipments throughout the period under examination were not included in the data set of this investigation. Producer ANH's posthearing brief, p. 3. ***.

[6] Producer ANH's posthearing brief, exh. 2.

[7] Since the preliminary phase of these investigations, producer LWB has changed its name to Magnesita.

[8] *** did not report ***.

[9] ***.

[10] The other responding producer reported an even split between made-to-order and inventory sales.

miles from its storage facility and importer *** ships all of its MCBs between 100 and 1,000 miles from its storage facility; the other five responding importers ship to purchasers located a variety of distances from the importers' storage facilities. Based on a simple average, importers shipped approximately 21 percent to a destination less than 100 miles from its storage facility, 48 percent between 100 and 1,000 miles, and 31 percent more than 1,000 miles.

Sales Terms and Discounts

Two producers and *** responding importers indicated that they typically do not offer discounts for their sales of MCBs beyond that which may be provided for in their sales terms for early payment. *** include price discounts when conducting negotiations. *** offer annual volume discounts. Sales terms are net 30 days for all responding producers and importers, ***. Two producers and three importers (including ***) offer small discounts for early payments.

PRICE DATA

The Commission requested U.S. producers and importers of MCBs to provide quarterly data for the total quantity and f.o.b. value of MCBs that they shipped to unrelated customers in the U.S. market during January 2007-March 2010. 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.
>
> ***Product 2***.--Resin-bonded, Magnesia Carbon Brick for electric arc furnaces with a carbon content of 15 percent, fused grain and antioxidant additions that correspond to Resco's brand Nuline 15 DF.
>
> ***Product 3***.--Resin-bonded, Magnesia Carbon Brick for steel ladles with a carbon content of 8 percent, 50 percent sintered and 50 percent fused grain, and antioxidant additions that correspond to RHI's brand Ancarbon AC51 CE.
>
> ***Product 4***.--Resin-bonded, Magnesia Carbon Brick for steel ladles with a carbon content of 10 percent, fused grain and antioxidant additions that correspond to RHI's brand Ancarbon AC72 CE.
>
> ***Product 5.***--Resin-bonded, Magnesia Carbon Brick for steel ladles with a carbon content of 13 percent, fused grain and antioxidant additions that correspond to Resco's brand Nuline 2-99.

Three U.S. producers, nine 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.[11] [12] Pricing data reported by these firms accounted for

[11] Due to a variety of specific chemistries for MCBs, some producers and importers reported data for products that did not exactly meet the product specifications but were competitive with the specified product. When this occurred, these firms reported how their products differed from the definition of the pricing product. Differences noted by these firms include: *** reported product 3 had a 12-percent carbon content; producer *** product 1 was not 100-percent fused grain and product 4 had an 11-percent carbon content; *** product 1 was its ***, product 2 was its ***, and product 5 was its ***; *** product 2 was an EAF brick, and had a 10-percent carbon content with

(continued...)

approximately *** percent of U.S. producers' shipments of MCB, 60.2 percent of U.S. shipments of subject imports from China, and *** percent of U.S. shipments of subject imports from Mexico during January 2007-March 2010.[13]

Price Trends

Pricing data are shown in tables V-1 to V-5 and figures V-1 to V-5. In general, prices for MCBs produced domestically increased over the period. Weighted-average sales prices for the five U.S.-produced MCB pricing products increased by 10.0 to 31.3 percent (table V-6). Prices for domestically produced product 1 peaked in the second quarter of 2009, then decreased to 2008 levels in the final three quarters of the period examined. Prices for domestically produced product 2 increased until the third quarter of 2008, and remained at approximately that level until the first quarter of 2010, when prices were 7.8 percent lower than the fourth quarter of 2009. Pricing for the other domestically produced pricing products generally increased throughout the period examined.

Weighted-average sales prices for products imported from China also increased for four of the five pricing products (by 6.1 to 32.7 percent) and two of the three products imported from Mexico (by *** to *** percent). See table V-6 for detailed information. Prices of product 1 imported from China generally increased from the first quarter of 2007 to the first quarter of 2010, with the exception of the third quarter of 2009, ***. Prices of product 2 imported from China declined from the first quarter of 2007 to the second quarter of 2007, increased until the fourth quarter of 2008, and have remained near, but slightly below that level since that time. Prices for product 3 imported from China first decreased until the first quarter of 2008, then increased to a peak in the fourth quarter of 2008, and has generally declined since that time (with the exception of a 2.6 percent increase in the first quarter of 2010). Prices of products 4 and 5 imported from China generally increased from the first quarter of 2007 to the first quarter of 2010.

Prices for product 2 imported from Mexico increased irregularly from the fourth quarter of 2007 to the third quarter of 2008, declined until the first quarter of 2009, increased in the second quarter of 2009, and have declined since that time. Prices for products 3 imported from Mexico generally declined from the first quarter of available data to the last quarter, as did the prices of product 4 from Mexico from the first quarter of 2008 to the first quarter of 2010. The prices of product 4 were lowest in 2007, however.

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[11] (...continued)
fused grain and anti-oxidants, product 4 was for a steel ladle, and had a 10-percent carbon content with fused grain and anti-oxidants, and product 5 had a 12-percent carbon content with fused grain and anti-oxidants; and *** product 1 was its ***, product 2 included its ***, and product 5 included its ***.

[12] In the prehearing report, pricing data for ***. Upon further investigation by staff, the pricing product for which ***. E-mail from ***. This data was not included in this final version of the staff report.

[13] Pricing data do not include prices for MCBs that were sold as part of cost-per-ton, cost-per-heat, or full-line service contracts. ***.

Table V-1
MCBs: Weighted-average f.o.b. prices and quantities of domestic and imported product 1[1] and margins of underselling/(overselling), by quarters, January 2007-March 2010

Period	United States		China		
	Price (*per ton*)	Quantity *(tons)*	Price (*per ton*)	Quantity *(tons)*	Margin (*percent*)
2007: Jan.-Mar.	$***	***	$837	737	***
Apr.-June	***	***	837	693	***
July-Sept.	***	***	924	977	***
Oct.-Dec.	***	***	934	1,046	***
2008: Jan.-Mar.	***	***	952	1,436	***
Apr.-June	***	***	1,018	1,457	***
July-Sept.	***	***	1,024	1,496	***
Oct.-Dec.	***	***	1,031	634	***
2009: Jan.-Mar.	***	***	1,061	672	***
Apr.-June	***	***	***	***	***
July-Sept.	***	***	825	1,650	***
Oct.-Dec.	***	***	***	***	***
2010: Jan.-Mar.	***	***	***	***	***

[1] 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.

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

Table V-2
MCBs: Weighted-average f.o.b. prices and quantities of domestic and imported product 2[1] and margins of underselling/(overselling), by quarters, January 2007-March 2010

Period	United States		China			Mexico		
	Price (*per ton*)	Quantity *(tons)*	Price (*per ton*)	Quantity *(tons)*	Margin (*percent*)	Price (*per ton*)	Quantity *(tons)*	Margin (*percent*)
2007:								
Jan.-Mar.	$***	***	$1,044	812	***	--	0	--
Apr.-June	***	***	933	848	***	--	0	--
July-Sept.	***	***	1,011	962	***	--	0	--
Oct.-Dec.	***	***	998	1,207	***	$***	***	***
2008:								
Jan.-Mar.	***	***	1,056	1,564	***	***	***	***
Apr.-June	***	***	1,054	1,880	***	--	0	--
July-Sept.	***	***	1,113	1,619	***	***	***	***
Oct.-Dec.	***	***	1,124	836	***	***	***	***
2009:								
Jan.-Mar.	***	***	1,120	1,188	***	***	***	***
Apr.-June	***	***	1,094	1,047	***	***	***	***
July-Sept.	***	***	1,088	1,346	***	***	***	***
Oct.-Dec.	***	***	1,082	1,743	***	***	***	***
2010:								
Jan.-Mar.	***	***	1,107	1,935	***	***	***	***

[1] Product 2: Resin-bonded, Magnesia Carbon Brick for electric arc furnaces with a carbon content of 15 percent, fused grain and antioxidant additions that correspond to Resco's brand Nuline 15 DF.

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

Table V-3
MCBs: Weighted-average f.o.b. prices and quantities of domestic and imported product 3[1] and margins of underselling/(overselling), by quarters, January 2007-March 2010

Period	United States		China			Mexico		
	Price (*per ton*)	Quantity *(tons)*	Price (*per ton*)	Quantity *(tons)*	Margin (*percent*)	Price (*per ton*)	Quantity *(tons)*	Margin (*percent*)
2007: Jan.-Mar.	$***	***	$***	***	***	$***	***	***
Apr.-June	***	***	***	***	***	***	***	***
July-Sept.	***	***	***	***	***	***	***	***
Oct.-Dec.	***	***	***	***	***	--	0	--
2008: Jan.-Mar.	***	***	***	***	***	--	0	--
Apr.-June	***	***	861	418	***	--	0	--
July-Sept.	1,285	94	***	***	***	--	0	--
Oct.-Dec.	***	***	***	***	***	--	0	--
2009: Jan.-Mar.	1,065	96	***	***	***	--	0	--
Apr.-June	***	***	***	***	***	--	0	--
July-Sept.	***	***	896	807	***	***	***	***
Oct.-Dec.	***	***	***	***	***	***	***	***
2010: Jan.-Mar.	***	***	***	***	***	--	0	--

[1] Product 3: Resin-bonded, Magnesia Carbon Brick for steel ladles with a carbon content of 8 percent, 50 percent sintered and 50 percent fused grain, and antioxidant additions that correspond to RHI's brand Ancarbon AC51 CE.

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

Table V-4
MCBs: Weighted-average f.o.b. prices and quantities of domestic and imported product 4[1] and margins of underselling/(overselling), by quarters, January 2007-March 2010

Period	United States		China			Mexico		
	Price (*per ton*)	Quantity *(tons)*	Price (*per ton*)	Quantity *(tons)*	Margin (*percent*)	Price (*per ton*)	Quantity *(tons)*	Margin (*percent*)
2007: Jan.-Mar.	$***	***	$866	1,357	***	$***	***	***
Apr.-June	***	***	899	1,061	***	--	0	--
July-Sept.	***	***	***	***	***	***	***	***
Oct.-Dec.	***	***	***	***	***	--	0	--
2008: Jan.-Mar.	***	***	***	***	***	***	***	***
Apr.-June	***	***	1,032	1,793	***	***	***	***
July-Sept.	***	***	***	***	***	***	***	***
Oct.-Dec.	***	***	1,084	881	***	***	***	***
2009: Jan.-Mar.	***	***	1,099	955	***	***	***	***
Apr.-June	***	***	1,078	1,272	***	***	***	***
July-Sept.	***	***	1,102	1,371	***	***	***	***
Oct.-Dec.	***	***	1,116	1,540	***	***	***	***
2010: Jan.-Mar.	***	***	1,115	1,523	***	***	***	***

[1] Product 4: Resin-bonded, Magnesia Carbon Brick for steel ladles with a carbon content of 10 percent, fused grain and antioxidant additions that correspond to RHI's brand Ancarbon AC72 CE.

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

Table V-5
MCBs: Weighted-average f.o.b. prices and quantities of domestic and imported product 5[1] and margins of underselling/(overselling), by quarters, January 2007-March 2010

Period	United States		China			Mexico		
	Price (*per ton*)	Quantity *(tons)*	Price (*per ton*)	Quantity *(tons)*	Margin (*percent*)	Price (*per ton*)	Quantity *(tons)*	Margin (*percent*)
2007:								
Jan.-Mar.	$***	***	$889	795	***	--	0	--
Apr.-June	***	***	1,075	930	***	--	0	--
July-Sept.	***	***	931	1,126	***	--	0	--
Oct.-Dec.	***	***	999	1,039	***	--	0	--
2008:								
Jan.-Mar.	***	***	1,002	1,334	***	--	0	--
Apr.-June	***	***	***	***	***	--	0	--
July-Sept.	***	***	***	***	***	--	0	--
Oct.-Dec.	***	***	1,015	581	***	--	0	--
2009:								
Jan.-Mar.	***	***	***	***	***	--	0	--
Apr.-June	***	***	1,033	862	***	$***	***	***
July-Sept.	***	***	1,035	1,267	***	--	0	--
Oct.-Dec.	***	***	1,096	1,039	***	--	0	--
2010:								
Jan.-Mar.	***	***	***	***	***	--	0	--

[1] Product 5: Resin Bonded, Magnesia Carbon Brick for steel ladles with a carbon content of 13 percent, fused grain and antioxidant additions that correspond to Resco's brand Nuline 2-99.

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

Figure V-1
MCBs: Weighted-average f.o.b. prices and quantities of domestic and imported product 1, by quarters, January 2007-March 2010

* * * * * * *

Figure V-2
MCBs: Weighted-average f.o.b. prices and quantities of domestic and imported product 2, by quarters, January 2007-March 2010

* * * * * * *

Figure V-3
MCBs: Weighted-average f.o.b. prices and quantities of domestic and imported product 3, by quarters, January 2007-March 2010

* * * * * * *

Figure V-4
MCBs: Weighted-average f.o.b. prices and quantities of domestic and imported product 4, by quarters, January 2007-March 2010

* * * * * * *

Figure V-5
MCBs: Weighted-average f.o.b. prices and quantities of domestic and imported product 5, by quarters, January 2007-March 2010

* * * * * * *

Table V-6
MCBs: Summary of weighted-average f.o.b. prices for products 1-5 from the United States, China, and Mexico

Item	Number of quarters	Low price (*per ton*)	High price (*per ton*)	Change in price[1] (*percent*)
Product 1				
United States	13	1,138	1,464	10.0
China	13	825	1,110	32.7
Product 2				
United States	13	1,142	1,506	20.8
China	13	933	1,124	6.1
Mexico	***	***	***	***
Product 3				
United States	13	886	1,285	28.9
China	13	769	1,217	(2.9)
Mexico	***	***	***	***
Product 4				
United States	13	934	1,270	31.3
China	13	866	1,116	28.7
Mexico	***	***	***	***
Product 5				
United States	13	978	1,250	25.4
China	13	889	1,097	23.4
Mexico	***	***	***	***

[1] 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: Tables V-1 to V-5.

Price Comparisons

Margins of underselling and overselling for the period are presented in table V-7. As can be seen from the table, prices for MCBs imported from China were below those for U.S.-produced MCBs in 59 of 65 instances; margins of underselling ranged from 2.3 to 35.1 percent. In the remaining six instances, prices for MCBs from China were 1.7 to 13.0 percent above prices for the domestic product. Prices for MCBs imported from Mexico were below those for U.S.-produced MCBs in 18 of 26 instances; margins of underselling ranged from 1.0 to 28.7 percent. In the remaining eight instances, prices for MCBs from Mexico were 0.4 to 43.0 percent above prices for the domestic product.

Table V-7
MCBs: Number of quarters of underselling and (overselling) and highest and lowest margins of underselling and (overselling), by product number, January 2007-March 2010

Product and Country	Number of quarters of underselling	Number of quarters of (overselling)	Margins of underselling			Margins of (overselling)		
			Average (*percent*)	Range (*percent*)		Average (*percent*)	Range (*percent*)	
				Min	Max		Min	Max
China								
1	13	0	22.6	11.3	35.1	--	--	--
2	13	0	21.1	9.2	28.2	--	--	--
3	9	4	16.9	4.0	25.6	(7.1)	(1.7)	(13.0)
4	13	0	8.2	3.3	12.2	--	--	--
5	11	2	11.1	2.3	18.2	(4.6)	(1.7)	(7.4)
Subtotal	59	6	16.1	2.3	35.1	(6.3)	(1.7)	(13.0)
Mexico								
2	9	0	22.5	15.2	28.7	--	--	--
3	2	3	6.8	5.2	8.3	(41.9)	(40.0)	(43.0)
4	7	4	4.9	1.0	10.6	(10.3)	(0.4)	(25.0)
5	0	1	--	--	--	***	***	***
Subtotal	18	8	13.9	1.0	28.7	***	***	***
Total	**77**	**14**	**15.6**	**1.0**	**35.1**	*******	*******	*******

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

LOST SALES AND LOST REVENUES

The Commission requested U.S. producers of MCBs to report any instances of lost sales or revenues they experienced due to competition from imports of MCBs from China and/or Mexico during January 2007-March 2010. Petitioner provided allegations of both lost sales and lost 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 MCBs to imports from China and Mexico and provided lost sales allegations. The 33 lost sales allegations totaled $29.7 million and involved 22,662 tons and the 5 lost revenues allegations totaled $448,827 and involved 1,575 tons of MCB.[14] Staff contacted 22 purchasers and a summary of the information obtained follows (tables V-8 and V-9). Six purchasers, accounting for 4,118 tons and $5.0 million of the lost sales allegations, indicated that they agreed or partly agreed with the lost sales allegations. *** of the 3 firms named in the lost revenues allegations fully confirmed the allegations.

[14] Any allegations submitted in petitioner's producer questionnaire response were not included or verified if they occurred before the filing of the petition.

Table V-8
MCBs: U.S. producers' lost sales allegations

* * * * * * *

Table V-9
MCBs: U.S. producers' lost revenue allegations

* * * * * * *

In his testimony at the preliminary conference, Joseph Stein of S&S Intersource indicated that it is important to examine whether the lost sales and revenue allegations involve integrated steel mill or steel mills with electric arc furnaces.[15] S&S Intersource indicated 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 because the steel mills that they serve shut down.[16] 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 the company purchased product originating from the alleged source ***. ***.[17] ***.[18] After further checking *** records, *** indicated that prior to *** did not purchase the product from ***.[19]

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

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

*** disagreed with the lost sales allegation made by *** involving *** tons of MCBs. *** indicated he was able to identify the supplier (***) by the product code provided in the allegation and that he contacted them and they were able to share more detail involving the allegation. *** indicated that the decision to purchase from a Chinese source was based more on technical specifications than on 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 ***.

***.

***. 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 MCBs and imports of MCBs except for ***.

*** disagreed with the lost sales allegations, stating, "***."

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[15] Conference transcript, pp. 116-117 (J. Stein).

[16] Transcript, pp. 119-120 (J. Stein). S&S Intersource also indicated that in some cases Resco may have had a unreliable 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.

[17] Staff telephone interview with ***, August 14, 2009.

[18] E-mail from ***, August 17, 2009.

[19] E-mail from ***, August 24, 2009.

*** indicated that he had purchased or considered quotes for MCBs 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 MCBs 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 quotes. Although he has purchased MCBs imported from China, he indicated that he will only use domestically produced magnesia carbon bricks in some parts of his furnace ***.[20] *** indicated that because of various surcharges passed onto his company by suppliers in the past, 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 MCBs and MCBs imported from China are comparable.

Regarding a lost sales allegation, *** indicated that his firm had purchased MCBs ***, 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 magensia bricks is approximately *** percent higher than the price at which it was procuring bricks from ***.

*** indicated that he purchased both U.S.-produced MCBs and MCBs imported from Mexico. ***.[21] He also currently purchases MCBs 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 "price equality" among his suppliers and that imports of MCBs 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 a local person to provide service. He also indicated that he never relies totally on one supplier and that he never purchases MCBs ***.

***.

*** agreed with the lost sales allegation involving his firm. However, he indicated that the alleged competing prices were higher. ***. 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. 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. With respect to the *** allegation, he partially agreed with the allegation, stating that the domestic price was exact, the actual competing import price was $100 lower than alleged, and the quantity would only be reached if *** was utilizing 100 percent of its capacity. The actual quantity would be 40 to 50 percent of the allegation.[22]

***.

*** disagreed with the lost sales allegation. He stated, "***."

---

[20] Staff telephone interview with ***, August 11, 2009.

[21] ***.

[22] Staff telephone interview with ***, June 16, 2010. For calculation purposes, 50 percent of the quantity and value of the allegation was considered confirmed.

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

*** agreed with the lost sales allegations. He noted that in the "***."

*** disagreed with the lost sales allegation, explaining that he did not receive any quotes from domestic or importing companies on the date specified.

PART VI: FINANCIAL EXPERIENCE OF U.S. PRODUCERS

BACKGROUND

Three U.S. firms provided usable financial data on their operations producing MCBs.[1] These reported data are believed to represent the vast majority of U.S. production of MCBs in 2009.

OPERATIONS ON MCBs

Income-and-loss data for the reporting U.S. producers of MCBs are presented in tables VI-1a and VI-1b, and are briefly described here.

- Total net sales quantity declined *** from 2007 to 2008 and was *** lower in 2009. Total net sales value increased *** from 2007 to 2008 and fell *** in 2009. The average unit value ("AUV") of total net sales increased from 2007 to 2009. In January-March 2010 compared to the same period in 2009, the quantity and value of total net sales were *** greater although sales AUV was lower. In 2009, total net sales were *** greater in July-December than in January-June.

- 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 2007 to 2008, decreasing in 2009, but higher in January-March 2010 than in January-March 2009. From 2007 to 2008, the dollar value increase of raw materials and of total COGS was greater than the dollar value increase of sales. From 2008 to 2009, the dollar value decrease of raw materials and of total COGS was less than the dollar value decrease of sales. The AUV of COGS rose from 2007 to 2009; it was greater in January-March 2009 than in January-March 2010.[2] The COGS-to-sales ratio increased between 2007 and 2008 and declined *** in 2009. That ratio was lower in January-March 2010 than in January-March 2009. The AUV of SG&A expenses rose *** from 2007 to 2008 and rose once more in 2009 from 2008. It was smaller in January-March 2010 than January-March 2009 because of the ***. The SG&A expense-to-sales ratio remained on relatively the same level during 2007-09 and was *** smaller in January-March 2010 than in January-March 2009. The absolute values of COGS and SG&A expenses were greater in the July-December 2009 period than in the January-June 2009 period because of higher sales quantity, although the dollar value increase of COGS and SG&A expenses was less than the dollar value increase of sales. AUVs and ratios for these two cost categories were *** lower because of higher sales volume.

- For the three firms together, operating income fell *** from 2007 to 2009 following the trend in sales; over the three year period, the value of sales declined more than did the values of COGS and SG&A expenses . Operating income was *** higher in January-March 2010 compared with

[1] The firms are: ANH, Magnesita (previously reporting as LWB), and Resco. TYK America ***. Letter from TYK America, Inc., June 7, 2010 (EDIS document 430866). 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. Commission staff verified the questionnaire response of ANH on July 1-2, 2010 (*see* Verification Report, EDIS document 429326).

[2] COGS was primarily affected by changes in raw material costs. The average unit value ("AUV") of sales was higher in 2008 compared with 2007 as were the AUVs of raw materials and COGS. Sales AUV was higher in 2009 and increased more than did COGS or raw materials.

the same period in 2009 partly because of improved profit margins and partly because sales volume was greater.[3] Comparing January-March 2009 and the same period in 2010, although sales AUV was less, so were the AUVs of raw materials, total COGS, and SG&A expenses. All of the operating income reported by the firms in 2009 occurred during July-December 2009.

- Net income before taxes (NIBT) and cash flow fell from 2007 to 2009. NIBT was negative in 2008 and 2009 but was *** higher and positive in interim 2010 compared with interim 2009 when NIBT was negative. Cash flow fell *** from 2007 to 2008 and declined in 2009 from 2008. Except for the January-March 2009 period when cash flow was negative, it was positive in other periods investigated.[4] Although not shown in table VI-1b, NIBT and cash flow was positive in July-December 2009, offsetting the loss and negative cash flow recorded by the three firms in January-June 2009.

Table VI-1a
MCBs: Results of operations of U.S. producers, 2007-09, January-March 2009, and January-March 2010

* * * * * * *

Table VI-1b
MCBs: Results of operations of U.S. producers, January-June 2009 and July-December 2009

* * * * * * *

Raw materials utilized in the production of MCBs include such inputs as magnesite, aluminum and silicon powdered metal, carbon, and resin.[5] COGS were mostly affected by changes in raw material costs. Raw material costs generally followed sales quantity–they rose in absolute value, as a percentage of net sales, and on a per-unit basis from 2007 to 2008 and fell in dollar amounts in 2009 (as a percentage of sales and AUV, raw material costs remained on about the same level in 2009 from 2008). On a per-unit basis and as a ratio to total net sales, raw material costs were higher in interim 2009 than in interim 2010. Raw material costs also increased as a share of total COGS, from *** percent in 2007 to *** percent in 2008 and were 74.4 percent in 2009. Raw material costs averaged $*** per short ton of sales in 2009 for the three reporting U.S. producers (up *** from $*** per short ton in 2007, and ranged from $*** to $*** per short ton of sales on a firm-by-firm basis.[6] Raw material costs were higher in January-June 2009, averaging nearly $*** for the three firms together and ranging from $*** to $***, than during July-December 2009, when they averaged $***.[7]

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

[3] Also, *see* variance analysis in table VI-3.

[4] 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 of the three firms.

[5] Costs and sales values of MCBs may vary in a wide range because of the use of different grades of magnesite and other inputs. *See* Petitioner's postconference brief, exh. 1, pp. 5-6 and exh. 12 (***). Natural gas and electricity also are used in the production process. Such costs are usually classified in other factory costs because they are not a direct raw material cost.

[6] Calculated from the questionnaire responses of the three firms. 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.

[7] Magnesita reported ***.

linings" from steelmakers in 2006.[8] ***. Resco alleges that export restraints in China on magnesia raw materials have restricted supply and resulted in higher prices in the United States.[9]

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

Table VI-2
MCBs: Selected results of operations of U.S. producers, by firm, 2007-09, January-March 2009, January-March 2010, January-June 2009, and July-December 2009

* * * * * * *

ANH, which produces MCBs at its White Cloud, MI facility, ***. It was *** of the periods for which data were gathered (***). The quantity and value of ANH's sales *** between 2007 and 2009, but were *** in interim 2010 compared with interim 2009.[10] Its operating income margin *** from 2007 to 2009. ANH reported ***.[11]

Magnesita produces MCBs at its plant in York, PA (*** of that plant's production). In 2009, Magnesita was the ***. It was *** of the periods for which data were collected; its operating income margin ***.

Resco is the ***. Unlike ***. Resco's total net sales value fell from 2007 to 2009, but was ***. Resco's operating income increased between 2007 (***) and 2008 (***) as Resco's ***. Resco's ***.[12] Its SG&A expenses are ***. Starting in July 2008, Resco cut costs at its Hammond, IN, plant through ***.[13] Resco ***.[14]

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[8] Conference transcript, p. 54 (Brown). Also, ***. Resco's U.S. producers' questionnaire response, IV-15, and petitioner's postconference brief, exh. 1, p. 7. ***. See the differences in raw materials AUVs for the three firms in table VI-2.

[9] 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 MCBs (magnesia and graphite), while imports of MCBs were selling at less than fair value. Conference transcript, p. 38 (Magrath) and petitioner's postconference brief, exh. 12. Additionally Resco stated that export restrictions by China have increased raw material costs.

With regard to export restrictions, the United States requested consultations with China on June 23, 2009, on the issue of China's restraints on the export from China of various forms of raw materials, including inputs to MCBs. In its request for consultation, the United States cited 32 measures through which China allegedly imposes export restraints and noted that there appear to be additional unpublished restrictive measures (WTO dispute settlement case DS394). A similar request for consultations also was made by the European Communities on June 23, 2009 (WTO case DS395), and by Mexico on August 21, 2009 (WTO case DS 398). On July 2, 2009, the European Communities requested to join the consultations and on July 6, 2009, Canada, Mexico, and Turkey requested to join the consultations with a number of other WTO members reserving their rights on this issue. The United States requested the establishment of a panel on November 4, 2009, and a single panel was established on December 21, 2009 to hear the three complaints. The panel members were composed on March 29, 2010. See, WTO, dispute settlement–the disputes–DS394, DS395, and DS398. In a communication of May 18, 2010, the panel issued a preliminary ruling on its terms of reference and scope of products. See, WT/ DS394/9, WT/DS395/9, WT/DS398/8, China–measures related to the exportation of various raw materials, communication from the panel, 18 May 2010. EDIS document 431598.

[10] See earlier note in table VI-1 regarding ANH's ***.

[11] In 2009, ANH reported ***. For further information on *** imports, *see* Tables III-5a and III-5b.

[12] Resco's raw material costs are ***.

[13] In its questionnaire response, Resco presented a table of its income statement with the cost savings added back. A comparison of that table with the results of operations indicates that Resco ***.

[14] In 2008, Resco reported ***. For further information on *** imports, *see* Tables III-5a and III-5b.

Each of the responding firms provided a breakdown between fixed costs and variable costs[15] in their questionnaire response in the preliminary phase of these investigations. Assuming that the cost structure described in 2008 remains the same in 2009, fixed costs accounted for about *** percent of COGS (mainly in the category of "other factory costs") and *** percent of SG&A expenses. 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 2009. 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,[16] can be calculated for the three firms. That point was equivalent to *** short tons in 2009 and constituted *** percent of the reported production of the three firms together in that year. This number is smaller than the breakeven tonnage calculated in the preliminary phase investigations (for 2008) because the calculated fixed costs are smaller although the unit contribution margin is greater.

A variance analysis for the operations of U.S. producers of MCBs is presented in table VI-3. The information for this variance analysis is derived from tables VI-1a and VI-1b.[17] The analysis shows that the decrease of $*** in the operating income from 2007 to 2009 was attributable to the favorable price variance (unit sales values increased) that was less than the combined unfavorable net cost/expense variance (unit costs increased) and volume variance (sales volume fell). Operating income was nearly $*** higher in interim 2010 than in interim 2009 because an unfavorable price variance (unit prices decreased) was overwhelmed by a favorable variance on net cost/expense (unit costs and expenses decreased). Between January-June 2009 and July-December 2009, data reported by the three firms indicated an increase in total operating income was due to an unfavorable price variance that was overwhelmed by a favorable variance on net cost/expense.

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[15] 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 all 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 were split on the nature of other factory costs: ***. In 2009, 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 2009.

[16] 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.

[17] 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 or expense (cost/expense) variance (in the case of the cost of sales and SG&A expense variance), and a volume variance. The sales or cost/expense variance is calculated as the change in unit price or per-unit cost/expense times the new volume, while the volume variance is calculated as the change in volume times the old unit price or per-unit cost/expense. 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 volume components of the net sales, COGS, and SG&A expense variances. The overall volume component of the variance analysis is generally small.

Table VI-3
MCBs: Variance analysis on the operations of U.S. producers, 2007-09, and January-March 2009 to January-March 2010, and January-June 2009 to July-December 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 in the preliminary phase of these investigations that its capital expenditures in 2006 and 2007, ***.[18] ANH reported *** R&D expenses ***.[19] Magnesita stated that ***. Resco stated that its ***.[20] Resco's R&D expenses ***.[21]

Table VI-4
MCBs: Capital expenditures and research and development expenses of U.S. producers, 2007-09, January-March 2009, January-March 2010, January-June 2009, and July-December 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 MCBs for reporting U.S. producers increased by nearly *** percent from 2007 to 2009, led by cash and equivalents and by raw materials and work-in-process inventories, which together ***. ROI, which is calculated as the ratio of operating income to total assets, therefore followed the trend of operating income, which fell from 2007 to 2009.

Table VI-5
MCBs: The value of assets and return on investment of U.S. producers, fiscal years 2007-09

* * * * * * *

[18] In its final phase questionnaire, ANH stated that ***. ANH questionnaire response, III-13c. In its posthearing brief, ANH stated that ***. ANH's posthearing brief, p. 2.

[19] In its questionnaire response, ANH stated ***.

[20] 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 MCBs production due to increasing demand from steel producers. It claimed that low-priced imports from China and Mexico captured the increased volume of MCBs, and that the press sits uninstalled and unused. Conference transcript, p. 19 (Brown). Reportedly, the hydraulic press ***. Resco's posthearing brief exh. 3, p. 4. In the preliminary phase investigations, Resco also stated that ***. Resco's U.S. producers' questionnaire response and posthearing brief, exh. 3, pp. 10-11.

[21] Resco stated ***. Resco's U.S. producers' questionnaire response.

CAPITAL AND INVESTMENT

The Commission requested U.S. producers of MCBs to describe any actual or potential negative effects of imports of MCBs 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: ***.[22]

Magnesita: ***.

Resco: ***.

Anticipated Negative Effects

ANH: ***.

Magnesita: ***.
***.
***.

Resco: ***.

[22] ANH ***.

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[1]--
>
> (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

[1] 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).[2]

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

China is the largest producer of MCBs in the world.[3] ***.[4] The Chinese MCB industry relies on rich, high-grade magnesia reserves to produce its MCBs.[5] 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.[6]

The Commission requested data from the 35 firms that were listed in the petition as producing MCBs in China during the period of the investigation. The Commission received a response from seven firms,[7] and data regarding the Chinese industry are based on these questionnaire responses. The responses are believed to account for approximately *** percent of Chinese export shipments to the United States in 2009, and *** percent of China's 2008 MCB capacity. Respondents stated that in order

[2] 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."

[3] Respondent RHI's posthearing brief, appendix p. 36.

[4] ***.

[5] http://www.fengchi.com.cn/en/jj.htm, retrieved September 1, 2009.

[6] http://indmin.com/Article/2259762/Channel/0/Magnesia-make-over-a-global-review.html, retrieved September 2, 2009.

[7] Producers in China that submitted foreign producer questionnaire responses were: ***. *** submitted questionnaire responses in the preliminary phase investigations, but have not responded in the final phase investigations. In the preliminary phase, these firms reported a combined 2008 MCB capacity of *** short tons and combined MCB production of *** short tons.

to meet the demand of China's large and growing steel industry, the majority of the Chinese MCB industry is not export-oriented. They stated that the questionnaire responses received by the Commission do not include full coverage of the Chinese MCB industry, but reflect the subset of Chinese MCB producers that export to the United States.[8]

Table VII-1 presents information on the Chinese industry's MCB operations. Chinese capacity increased from 2007 to 2009, remained level between the interim periods, and is projected to increase in both 2010 and 2011.[9] Chinese production increased irregularly from 2007 to 2009, was higher in interim 2010 than in interim 2009, and is projected to increase in both 2010 and 2011. Chinese capacity utilization decreased from 2007 to 2009, but was higher in interim 2010 compared with interim 2009. Chinese producers projected capacity utilization in 2010 and 2011 to be at 2007-08 levels. The share of Chinese shipments sold to its home market ranged from 12.9 percent to 16.1 percent during 2007 to 2009.[10] The majority of Chinese producer export shipments was to countries other than the United States.[11] Respondents reported that demand in the third-country markets is projected to continue growing at a higher rate than demand in the United States, and because those markets are cheaper to ship to, it is unlikely that the Chinese producers would seek additional sales in the United Sates.[12] Chinese total exports as a share of its total shipments ranged from 83.9 percent to 87.1 percent during 2007-09.

In the most recent fiscal year, Chinese producers of MCBs estimated that the share of their total sales represented by sales of MCBs, based on quantity, is as follows: ***.

Six Chinese producers of MCBs reported that they produce, or have the capability to produce, other products on the same equipment and machinery used to produce MCBs: ***.[13]

[8] Respondent RHI's posthearing brief, appendix p. 37.

[9] ***.

[10] RHI estimates the Chinese steel industry's total demand for MCBs in 2009 ranged from *** to ***. Respondent RHI's posthearing brief, appendix p. 36.

[11] These other export markets include: ***.

[12] Respondent RHI's posthearing brief, appendix, p. 38.

[13] RHI Liaoning questionnaire response, II-5.

Table VII-1
MCBs: Chinese production capacity, production, shipments, and inventories, 2007-09, January-March 2009, January-March 2010, and projected 2010-11

Item	Actual experience					Projections	
				January-March			
	2007	2008	2009	2009	2010	2010	2011
	Quantity (*short tons*)						
Capacity[1]	369,485	538,808	538,700	133,176	133,864	549,452	636,862
Production	251,008	306,495	251,395	48,216	73,105	340,130	379,056
End of period inventories	16,213	18,323	16,221	23,486	25,241	28,360	16,917
Shipments							
Internal/transfers	591	381	407	0	11	0	0
Home market	38,983	40,309	32,061	5,804	8,294	49,846	50,536
Exports to–							
The United States	23,791	30,148	24,594	5,112	3,577	12,244	9,971
All other markets	182,082	232,964	195,178	32,388	50,496	264,534	329,993
Total exports	205,873	263,112	219,772	37,499	54,074	276,778	339,964
Total shipments	245,447	303,803	252,240	43,054	62,379	326,624	390,500
	Ratios and shares (*percent*)						
Capacity utilization	67.9	56.9	46.7	36.2	54.6	61.9	59.5
Inventories to production	6.5	6.0	6.5	12.2	8.6	8.3	4.5
Inventories to total shipments	6.6	6.0	6.4	13.6	10.1	8.7	4.3
Share of total quantity of shipments:							
Internal/transfers	0.2	0.1	0.2	0.0	0.0	0.0	0.0
Home market	15.9	13.3	12.7	13.5	13.3	15.3	12.9
Exports to–							
The United States	9.7	9.9	9.8	11.9	5.7	3.7	2.6
All other markets	74.2	76.7	77.4	75.2	81.0	81.0	84.5
All export markets	83.9	86.6	87.1	87.1	86.7	84.7	87.1

[1] ***.

Note. –Because of rounding, figures may not add to the totals shown.

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

THE INDUSTRY IN MEXICO

The Commission requested data from the only MCB producer in Mexico, RHI-Refmex S.A. de D.V. ("Refmex")[14]. The Commission received a response from Refmex, which accounted for 100 percent of Mexican production and approximately 100 percent of Mexican exports during the period of investigation.

Refmex has one production plant that produces MCBs in Mexico. The Ramos Arizpe plant produces magnesia-based products such as unfired MCBs, fired MCBs, alumina magnesia carbon bricks, unshaped magnesia products, mixes, mortars, concrete, and tobholes. Production of unfired magnesia bricks, including both MCBs and aluminum magnesia carbon bricks, accounts for under *** percent of the total production at that plant.[15] Refmex's Tlalnepantla de Baz plant produces silica products such as unshaped refractory products, tondish mixes, baurish mixes, mortars, concretes, fire clay bricks, bauxite bricks, high-alumina bricks, and insulation fire bricks.[16] Due to the risk of contamination, production of silica and magnesia products cannot be mixed at the same plant.[17] Refmex reported that the recession in Mexico was not as deep as in the United States, and its Mexican customers, the cement industry in particular, continued to do well.[18] Refmex switched capacity that had previously been used to produce subject MCBs to the production of burned bricks for the cement industry[19] and other refractories. Refmex reported that its MCB production is at maximum capacity to serve the Mexican market, where sales are typically more profitable than exports.[20]

Table VII-2 presents information on Refmex's MCB operations in Mexico.[21] Refmex's capacity *** from 2007 to 2008, then *** from 2008 to 2009 and during the interim periods. Refmex's capacity is projected to *** during full year 2010 and 2011. [22] Refmex's production of MCBs *** percent from 2007 to 2009 and was ***. Refmex's production is expected to ***. Refmex's capacity utilization *** percent in 2007 to *** percent in 2009. Interim 2010 capacity utilization stood at *** percent compared with *** percent in interim 2009. Capacity utilization for both full year 2010 and 2011 is projected to be *** percent.

The volume of Refmex's shipments to its home market ranged from a low of *** percent in 2009 to *** percent in 2008. The *** of Refmex's exports was exported to the United States.[23] These exports *** percent from 2007 to 2009 and *** as a share of Refmex's total shipments from *** percent in 2007 to *** percent in 2009.[24] Refmex reports that its U.S. exports are concentrated among customers in the

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[14] ***.

[15] Respondent RHI's posthearing brief, appendix, p. 22. ***. Refmex questionnaire response, p. 8, II-7.

[16] Hearing transcript, pp. 170-171 (Garcia).

[17] Hearing transcript, pp. 214-215 (Garcia).

[18] Hearing transcript, pp. 172-173 (Garcia).

[19] Refmex reported it has an alliance with the major Mexican cement producer Cemex to supply its kilns in Mexico, the Caribbean, Central America, and South America. Hearing transcript, p. 173 (Garcia).

[20] Respondent RHI's posthearing brief, p. 11.

[21] Refmex's reported capacity data was revised from the data reported in the preliminary investigation (***). Refmex reported the adjustment was made to account for typical product mix. Hearing transcript, p. 185 (Malashevich).

[22] Refmex currently has five hydraulic presses. Hearing transcript, p. 214 (Garcia).

[23] The other export markets are ***.

[24] ***. Respondent RHI's posthearing brief, appendix p. 15, fn. 28.

Central Southwest and Southeast regions and only ships to northern steel producers in unusual circumstances.[25] Refmex's shipments to other countries *** from *** percent of total shipments in 2007 to *** percent of total shipments in 2009.[26]

Table VII-2
MCBs: Mexican production capacity, production, shipments, and inventories, 2007-09, January-March 2009, January-March 2010, and projected 2010-11

* * * * * * *

U.S. IMPORTERS' INVENTORIES OF MCBS

Eight U.S. importers reported inventories of imports of MCBs from China during the period for which data were collected, one firm reported inventories from Mexico, and two firms reported inventories from other countries.[27] Data collected in these investigations on U.S. importers' end-of-period inventories of MCBs are presented in table VII-3. Inventories from China and Mexico *** irregularly from 2007 to 2009, but were *** in interim 2010 than in interim 2009. Petitioners argued that increases in subject imports were a result of stockpiling of inventories in anticipation of the orders.[28] Respondents argue that the long supply chain and lead times involved with importing from China require that importers maintain significant inventories in order to compete with domestic producers.[29]

U.S. IMPORTERS' CURRENT ORDERS

Three U.S. importers reported imports or the arrangement of imports of MCBs of *** short tons from China and *** short tons from Mexico after March 31, 2010.[30]

ANTIDUMPING AND COUNTERVAILING DUTY INVESTIGATIONS IN THIRD-COUNTRY MARKETS

On October 6, 2005, the European Commission imposed antidumping duties on imports of MCBs from China that vary for six manufacturers and are fixed at 39.9 percent for all other companies.[31] These duties were to expire in October 2010; however Magnesita requested a review of the order on July 8, 2010, and therefore the duties remain in place until the review is complete.[32] On September 1, 2007, Turkey imposed antidumping duties ($145/ton) on imports of MCBs from China.[33]

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[25] Respondent RHI's prehearing brief, p. 13. However, seven U.S. purchasers of Mexican MCBs reported plant locations in the Midwest (seven plants), Southeast (four plants), and Northeast (three plants).

[26] Data do not include project sales.

[27] The following firms reported inventories from China: ***.

[28] Hearing transcript, p. 58 (Mazard).

[29] Respondents Vesuvius' and Yingkou Bayuquan's posthearing brief, p. 5.

[30] Those firms are ***.

[31] 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.

[32] Hearing transcript, p. 55 (Mazard).

[33] Petitioner's postconference brief, p. 29, exh. 7.

Table VII-3
MCBs: U.S. importers' end-of-period inventories of imports, 2007-09, January-March 2009, and January-March 2010

Source	Calendar year			January-March	
	2007	2008	2009	2009	2010
Imports from China:					
Inventories (*short tons*)	20,677	21,958	21,137	19,353	17,008
Ratio to imports (*percent*)	59.7	52.7	62.8	86.1	68.5
Ratio to U.S. shipments of imports (*percent*)	65.9	57.6	63.9	60.4	41.7
Imports from Mexico:					
Inventories (*short tons*)	***	***	***	***	***
Ratio to imports (*percent*)	***	***	***	***	***
Ratio to U.S. shipments of imports (*percent*)	***	***	***	***	***
Imports from subject sources:					
Inventories (*short tons*)	***	***	***	***	***
Ratio to imports (*percent*)	***	***	***	***	***
Ratio to U.S. shipments of imports (*percent*)	***	***	***	***	***
Imports from all other sources:					
Inventories (*short tons*)	***	***	***	***	***
Ratio to imports (*percent*)	***	***	***	***	***
Ratio to U.S. shipments of imports (*percent*)	***	***	***	***	***
Imports from all sources:					
Inventories (*short tons*)	***	***	***	***	***
Ratio to imports (*percent*)	***	***	***	***	***
Ratio to U.S. shipments of imports (*percent*)	***	***	***	***	***

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.

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.'"[34]

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 approximately 15 percent and as much as 30 percent of the European and NAFTA markets.[35] RHI AG is also the parent company of RHI Refractories Liaoning Co., Ltd. (China) and RHI-Refmex (Mexico). RHI has MCB production plants in Duisburg, Germany; Veitsch, Germany; and Carinthia, Austria.[36] Magnesita has MCB production plants in Hagen and Oberhausen, Germany, as well as its MCB plant in York, PA.[37] Finally, Refratechnik Cement GmbH produces MCBs in a plant located in Gottingen, Germany. ***.[38]

Brazil

Magnesita Refractarios 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.[39] In September 2008, Magnesita purchased U.S. MCB producer LWB, making Magnesita the world's third-largest producer of refractory brick products.[40] Magnesita has exported *** MCBs to North America. The company has made a ***.[41] The vast majority of Magnesita's MCB sales have been inside South America during the period of investigation.

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[34] 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).

[35] http://www.referenceforbusiness.com/history2/68/RHI-AG.html, retrieved August 21, 2009.

[36] Petitioner stated during the hearing that RHI has production capacity in Canada; however, respondents claim that Canadian production capacity does not exist. Hearing transcript, p. 113 (Magrath) and p. 273 (McPhie). Commission staff is not aware of any MCB production capacity in Canada, however, staff notes that Veitsch-Radex's importing operations are headquartered in Burlington, Ontario, Canada.

[37] Petitioner's postconference brief, exh. 1 and exh. 14.

[38] Staff telephone interview with ***.

[39] http://wrightreports.ecnext.com/coms2/reportdesc_COMPANY_C07621060, retrieved August 21, 2009.

[40] http://www.wealth.bloomberg.com/apps/news?pid=conewsstory&tkr=GPIX:LX&sid=aYtSKEDpAhug, retrieved August 27, 2009.

[41] E-mail correspondence with Magnesita, August 28, 2009.

APPENDIX A

FEDERAL REGISTER NOTICES

Oregon Resource Advisory Council (SEORAC) will meet as indicated below:

DATES: The meeting will begin at 7 p.m. (Pacific Daylight Time) on May 6, 2010.

ADDRESSES: The SEORAC will meet by teleconference. For a copy of material to be discussed or the conference call number, please contact the BLM Vale District; information below.

FOR FURTHER INFORMATION CONTACT: Mark Wilkening, Public Affairs Officer, BLM Vale District Office, 100 Oregon Street, Vale, Oregon 97918, or by telephone at (541) 473–6218.

SUPPLEMENTARY INFORMATION: The SEORAC will conduct a public meeting by teleconference to discuss and come to consensus on contents of a letter to be sent to the Oregon/Washington BLM State Director on the Final Environmental Impact Statement for Vegetation Treatments Using Herbicides on BLM Lands in Oregon. The conference call meeting is open for the public to access by telephone. Public comment is scheduled from 7:45 to 8 p.m. (Pacific Daylight Time) May 6, 2010. For a copy of the information distributed to the SEORAC members please contact Mark Wilkening, Public Affairs Officer, BLM Vale District Office, 100 Oregon Street, Vale, Oregon 97918, or by telephone at (541) 473–6218.

Larry Frazier,

Acting District Manager, Vale District Office.

[FR Doc. 2010–9430 Filed 4–22–10; 8:45 am]

BILLING CODE 4310–33–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–130 (Third Review)]

Chloropicrin From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on chloropicrin from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on July 1, 2009 (74 FR 31760) and determined on October 15, 2009 that it would conduct a full review (74 FR 55065, October 26, 2009). Notice of the scheduling of the Commission's review and of a public hearing 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** on October 15, 2009 (74 FR 55065). Counsel for the three domestic producers of chloropicrin offered to submit written testimony in lieu of an oral hearing presentation. In connection with the offer of written testimony, counsel indicated a willingness to respond to written questions of the Commissioners by a date to be set by the Commission. No other party filed a request to appear at the hearing. Consequently, the public hearing in connection with the review, scheduled to begin at 9:30 a.m. on February 18, 2010, at the U.S. International Trade Commission Building was cancelled.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on April 19, 2010. The views of the Commission are contained in USITC Publication 4142 (April 2010), entitled *Chloropicrin from China: Investigation No. 731–TA–130 (Third Review).*

By order of the Commission.

Issued: April 19, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–9403 Filed 4–22–10; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–468 and 731–TA–1166–1167 (Final)]

Certain Magnesia Carbon Bricks From China and Mexico

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of a countervailing duty investigation and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of a countervailing duty investigation No. 701–TA–468 (Final) and antidumping investigation Nos. 731–TA–1166–1167 (Final) under sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)) (the Act) to determine whether 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 subsidized imports from China or less-than-fair-value imports from China or 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.[1]

For further information concerning the conduct of this phase of the investigations, hearing procedures, 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 C (19 CFR part 207).

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

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.—The final phase of these investigations is being scheduled as a result of a negative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China of certain magnesia carbon bricks, and affirmative preliminary determinations that imports of certain

[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise 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 antioxidants 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)."

magnesia carbon bricks from China and Mexico are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on July 29, 2009, by Resco Products Inc., Pittsburgh, PA.

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

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 the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on July 13, 2010, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on July 27, 2010, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before July 19, 2010. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on July 22, 2010, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is July 20, 2010. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is August 3, 2010; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before August 3, 2010. On August 19, 2010, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before August 23, 2010, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also 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).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's 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 207.21 of the Commission's rules.

By order of the Commission.

Issued: April 19, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–9405 Filed 4–22–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–244 (Third Review)]

Natural Bristle Paint Brushes From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of a full five-year review concerning the antidumping duty order on natural bristle paint brushes from China.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on natural bristle paint brushes from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review 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, D, E, and F (19 CFR part 207).

Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 1, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 18, 2010.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign–Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230–0002, and in the "Reading Room" section of the Board's website, which is accessible via www.trade.gov/ftz. For further information, contact Elizabeth Whiteman at Elizabeth.Whiteman@trade.gov or (202) 482–0473.

Dated: July 21, 2010.

Andrew McGilvray

Executive Secretary.

[FR Doc. 2010–18956 Filed 7–30–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

(A–201–837)

Certain Magnesia Carbon Bricks from Mexico: Notice of Final Determination of Sales at Less Than Fair Value

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

SUMMARY: The Department of Commerce determines that certain magnesia carbon bricks (bricks) from Mexico are being, or are likely to be, sold in the United States at less–than-fair–value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown in the "Final Determination Margins" section of this notice.

EFFECTIVE DATE: (August 2, 2010.)

FOR FURTHER INFORMATION CONTACT: David Goldberger or Katherine Johnson, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4136 and (202) 482–4929, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 11, 2010, the Department of Commerce (Department) published in the **Federal Register** the preliminary determination of sales at LTFV in the antidumping duty investigation of certain magnesia carbon bricks from Mexico. *See Certain Magnesia Carbon Bricks from Mexico: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 11517 (March 11, 2010) (*Preliminary Determination*).

On April 9, 2010, the Department issued a post–preliminary determination analysis for the respondent in this investigation, RHI–Refmex S.A. de C.V. (Refmex) in which the Department applied a quarterly costing methodology to recalculate the cost of production (COP). *See* Memorandum entitled "Cost of Production and Constructed Value Calculation Adjustments for the Post–Preliminary Analysis RHI–Refmex S.A. de C.V.," dated April 7, 2010; and Memorandum entitled "Post–Preliminary Determination Analysis Utilizing Quarterly Cost Methodology for Refmex," dated April 9, 2010. Based on the data and methodology described in these memoranda, we calculated a post–preliminary dumping margin for Refmex of 50.28 percent.

During April and May 2010, we verified the sales and COP questionnaire responses of Refmex. During May 2010, we issued the COP, U.S. sales, and home market sales verification reports. *See* Memorandum to the File entitled "Verification of the Cost Response of RHI–Refmex S.A. de C.V. in the Antidumping Duty Investigation of Certain Magnesia Carbon Bricks from Mexico," dated May 10, 2010 (CVR); Memorandum to the File entitled "Verification of the CEP Sales Response of RHI–Refmex S.A. de C.V.," dated May 12, 2010 (CEPVR); and Memorandum to the File entitled "Verification of the Home Market Sales Response of RHI–Refmex S.A. de C.V.," dated June 1, 2010 (HMVR).

On June 8 and June 15, 2010, respectively, the petitioner in this investigation, Resco Products Inc, and Refmex each submitted case and rebuttal briefs.

Period of Investigation (POI)

The POI is July 1, 2008, to June 30, 2009. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition. *See* 19 CFR 351.204(b)(1).

Scope of Investigation

The merchandise under investigation consists 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 antioxidants 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 6902.10.1000, 6902.10.5000, 6815.91.0000, 6815.99.2000, and 6815.99.4000[1] 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.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs submitted by the parties to this investigation are addressed in the "Issues and Decision Memorandum for the Final Determination in the Less–Than-Fair–Value Investigation of Certain Magnesia Carbon Bricks from Mexico" from Edward C. Yang, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration (Decision Memo), dated July 26, 2010, which is hereby adopted by this notice. A list of the issues that parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in the Decision Memo, which is on file in the Central Records Unit, Room 1117 of the Commerce Department. In addition, a complete version of the Decision Memo

[1] In the *Preliminary Determination*, we included HTSUS subheading 6815.99 in our description of the scope of the investigation. Subsequently, we determined that all of the ten-digit subheadings under this subheading must be used instead. Accordingly, the HTSUS ten-digit subheadings have been listed.

can be accessed directly on the Web at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Verification

As provided in section 782(i) of the Act, we verified the sales and COP information submitted by Refmex for use in our final determination. We used standard verification procedures including an examination of relevant accounting and production records, and original source documents provided by the respondent. Our sales and cost verification results are outlined in separate verification reports. *See* CEPVR, HMVR, and CVR. The verification reports are on file and available in the Central Records Unit, Room 1117 of the Commerce Department.

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we have made certain changes to the margin calculations for Refmex. For a discussion of these changes, *see* the "Margin Calculations" section of the Decision Memo.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all imports of subject merchandise that are entered or withdrawn from warehouse, for consumption on or after March 11, 2010, the date of publication of the preliminary determination in the **Federal Register**. We will instruct CBP to continue to require a cash deposit or the posting of a bond for all companies based on the estimated weighted–average dumping margins shown below. The suspension of liquidation instructions will remain in effect until further notice.

Final Determination Margins

We determine that the weighted–average dumping margins are as follows:

Manufacturer/Exporter	Weighted–Average Margin (percent)
RHI–Refmex S.A. de C.V.	57.90
All Others	57.90

All–Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated "All Others" rate shall be an amount equal to the weighted average of the estimated weighted–average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. Refmex is the only respondent in this investigation for which the Department calculated a company–specific rate. Therefore, for purposes of determining the all–others rate and pursuant to section 735(c)(5)(A) of the Act, we are using the weighted–average dumping margin calculated for Refmex, as referenced above. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Italy*, 64 FR 30750, 30755 (June 8, 1999); and *Coated Free Sheet Paper from Indonesia: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 72 FR 30753, 30757 (June 4, 2007), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from Indonesia*, 72 FR 60636 (October 25, 2007).

Disclosure

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

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our final determination. As our final determination is affirmative, the ITC will determine within 45 days whether imports of the subject merchandise are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Return or Destruction of Proprietary Information

This notice will serve as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 735(d) and 777(i) of the Act.

Dated: July 26, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix--Issues in Decision Memo

Comments

Comment 1: Exclusion of Functional Magnesia Carbon Brick Products from the Scope
Comment 2: CEP Offset
Comment 3: Adjustments to COP Data
Comment 4: Treatment of Full Line Service Contract Transactions
Comment 5: Movement Expenses
Comment 6: Home Market Price Adjustments
Comment 7: Adjustments to U.S. Sales Prices
Comment 8: Indirect Selling Expenses Incurred in Mexico

[FR Doc. 2010–18925 Filed 7–30–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XX95

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that an Exempted Fishing Permit (EFP) application contains all of the required information and warrants further consideration. This EFP would allow four commercial fishing vessels to fish outside of the limited access scallop days-at-sea (DAS) program and the sea scallop access area regulations in support of research conducted by the

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–954]

Certain Magnesia Carbon Bricks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances

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

DATES: *Effective Date:* August 2, 2010.

SUMMARY: On March 12, 2010, the Department of Commerce (the "Department") published the *Preliminary Determination* of sales at less than fair value ("LTFV") in the antidumping investigation of magnesia carbon bricks ("bricks") from the People's Republic of China ("PRC").[1] On April 21, 2010, the Department published the *Amended Preliminary Determination* in the antidumping investigation of bricks from the PRC.[2] On May 20, 2010, the Department published the *Preliminary Critical Circumstances Determination* in the antidumping investigation of bricks from the PRC.[3] The period of investigation ("POI") is January 1, 2009—June 30, 2009. Based on our analysis of the comments received, we have made changes to the margin calculation for RHI Refractories Liaoning Co., Ltd. ("RHI"). We continue to find that bricks from the PRC are being, or are likely to be, sold in the United States at LTFV as provided in section 735 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins of sales at LTFV are shown in the "Final Determination Margins" section of this notice.

FOR FURTHER INFORMATION CONTACT: Paul Walker or Dana Griffies, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0413 or (202) 482–3023, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 2010, Liaoning Mayerton Refractories Co., Ltd. and Dalian Mayerton Refractories Co., Ltd. (collectively, "Mayerton") stated that it would no longer participate in the investigation.[4]

For RHI, the Department conducted sales verification from April 12–16, 2010 and factors of production ("FOP") verification May 17–20, 2010.[5] For Yingkou New Century Refractories Ltd. ("New Century") and Fengchi Import & Export Co., Ltd. of Haicheng City ("Fengchi"), the Department conducted separate rates verifications on May 21, and May 24, 2010, respectively.[6] *See* the "Verification" section below for additional information.

Between June 14, 2010 and July 14, 2010, the Department placed labor wage rate data on the record and invited parties to comment on the Department's labor wage rate methodology.[7]

Between June 18, 2010 and July 16, 2010, we received case and rebuttal briefs from the Petitioner,[8] the government of the PRC ("GOC") and RHI.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the "Investigation of Magnesia Carbon Bricks from the People's Republic of China: Issues and Decision Memorandum for the Final Determination" ("I&D Memo"), dated concurrently with this notice and which is hereby adopted by this notice. A list of the issues which parties raised, and to which we respond in the I&D Memo, are attached to this notice as Appendix I. The I&D Memo is a public document and is on file in the Central Records Unit ("CRU"), Room 1117, and is accessible on the World Wide Web at *http://trade.gov/ia/index.asp.* The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of information on the record of this investigation, we have made changes to RHI's margin calculation for the final determination. For the final determination, we have adjusted the surrogate value for fused magnesia to exclude certain aberrational data and adopted a new methodology for calculating the surrogate value for labor.[9] In addition, we have applied certain discounts that RHI reported to its sales database.[10]

Regarding Mayerton, for the final determination, we have applied total adverse facts available ("AFA") for its failure to participate and included it as part of the PRC-wide entity. For more information *see* the "Mayerton" section below.

Scope of Investigation

The merchandise under investigation consists 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 antioxidants 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

[1] *See Certain Magnesia Carbon Bricks from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 75 FR 11847 (March 12, 2010) ("*Preliminary Determination*").

[2] *See Certain Magnesia Carbon Bricks from the People's Republic of China: Amended Preliminary Determination of Sales at Less Than Fair Value,* 75 FR 20813 (April 21, 2010) ("*Amended Preliminary Determination*").

[3] *See Certain Magnesia Carbon Bricks from the People's Republic of China: Notice of Preliminary Affirmative Determination of Critical Circumstances,* 75 FR 28237 (May 20, 2010) ("*Preliminary Critical Circumstances Determination*").

[4] *See* Mayerton's April 1, 2010 letter at 1.

[5] For sales, we conducted verification of RHI's North American affiliates, Veitsch Radix America, Inc. (incorporated in Canada) ("VRC") and Veitsch Radix America, Inc. (incorporated in the U.S.) ("VRA"), which handled all of RHI's POI sales. *See* Memo to the File, through Scot T. Fullerton, Program Manager, from Paul Walker and Dana Griffies, Case Analysts, "Investigation of Magnesia Carbon Bricks from the People's Republic of China: Sales Verification of Veitsch Radix America, Inc.," dated June 10, 2010 ("VRC Verification Report"). For FOPs, we conducted verification of RHI, which produced the merchandise under consideration. *See* Memo to the File, through Scot T. Fullerton, Program Manager, from Paul Walker and Dana Griffies, Case Analysts, "Investigation of Magnesia Carbon Bricks from the People's Republic of China: Factors of Production Verification of RHI Refractories Liaoning Co., Ltd.," dated June 11, 2010 ("RHI Verification Report").

[6] *See* Memo to the File, through Scot T. Fullerton, Program Manager, from Paul Walker and Dana Griffies, Case Analysts, "Investigation of Magnesia Carbon Bricks from the People's Republic of China: Verification of Yingkou New Century Refractories Ltd.," dated June 10, 2010 ("New Century Verification Report"); Memo to the File, through Scot T. Fullerton, Program Manager, from Paul Walker and Dana Griffies, Case Analysts, "Investigation of Magnesia Carbon Bricks from the People's Republic of China: Verification of Fengchi Import & Export Co., Ltd. of Haicheng City," dated June 11, 2010 ("Fengchi Verification Report").

[7] *See* the memoranda to the file dated June 15, 2010, June 22, 2010, July 6, 2010 and July 14, 2010.

[8] The petitioner is Resco Products, Inc. (hereinafter referred to as the "Petitioner").

[9] *See* I&D Memo at Comment 1a & 1b; *see also* Memorandum to the File from Paul Walker, Case Analyst, through Scot T. Fullerton, Program Manager, "Magnesia Carbon Bricks from the People's Republic of China: Surrogate Values for the Final Determination," dated concurrently with this notice.

[10] *See* I&D Memo at Comment 2b.

investigation are currently classifiable under subheadings 6902.10.1000, 6902.10.5000, 6815.91.0000, 6815.99.2000 and 6815.99.4000 [11] 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.

Use of Facts Available

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

Section 782(c)(1) of the Act provides that if an interested party "promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information in the requested form and manner, together with a full explanation and suggested alternative form in which such party is able to submit the information," the Department may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) if: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Furthermore, section 776(b) of the Act states that if the administering authority finds that an interested party has not acted to the best of its ability to comply with a request for information, the administering authority may, in reaching its determination, use an inference that is adverse to that party. The adverse inference may be based upon: (1) The petition, (2) a final determination in the investigation under this title, (3) any previous review under section 751 of the Act or determination under section 753 of the Act, or (4) any other information placed on the record.

Mayerton

As noted above, Mayerton withdrew from the instant investigation. By ceasing to participate in the investigation, Mayerton prevented the Department from verifying the accuracy of its information as provided by section 782(i) of the Act, and thus, failed to demonstrate eligibility for a separate rate.[12] Therefore, Mayerton is considered to be part of the PRC-wide entity. Due to its failure to act to the best of its ability in responding to the Department's requests for information, we find that Mayerton, as part of the PRC-wide entity, significantly impeded the Department's proceeding.[13] Accordingly, we have assigned the PRC-wide rate margin to Mayerton of 236.00 percent. For a discussion of the PRC-wide entity's rate, *see* the "PRC-wide Entity" and "Corroboration" sections, below.

Verification

As provided in section 782(i) of the Act, we conducted verification of the information submitted by RHI, New Century and Fengchi for use in our final determination.[14] We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by the respondents.

Surrogate Country

In the *Preliminary Determination,* we stated that we selected India as the appropriate surrogate country to use in this investigation for the following reasons: (1) It is a significant producer of comparable merchandise; (2) it is at a similar level of economic development pursuant to 773(c)(4) of the Act; and (3) we have reliable data from India that we can use to value the factors of production.[15] For the final determination, we received no comments and made no changes to our findings with respect to the selection of a surrogate country.

Critical Circumstances

In the *Preliminary Critical Circumstances Determination,* the Department determined that, in accordance with section 733(e)(1) of the Act, critical circumstances exists with respect to RHI, the separate rate respondents [16] and the PRC-wide entity (which includes Mayerton).[17]

No other information has been placed on the record since the *Preliminary Critical Circumstances Determination* to contradict the information upon which we based our finding that critical circumstances exist, nor has any party commented on our preliminary critical circumstances finding. Therefore, for the final determination, in accordance with section 735(a)(3) of the Act, we continue to find that critical circumstances exist with respect to RHI, the separate rate respondents and the PRC-wide entity (including Mayerton).

Separate Rates

In proceedings involving non-market-economy ("NME") countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an investigation in an NME country this single rate unless an exporter can

[11] In the *Preliminary Determination,* we included HTSUS subheading 6815.99 in our description of the scope of the investigation. Subsequently, we determined that all of the ten-digit subheadings under subheading 6815.99 must be used instead. Accordingly, the appropriate HTSUS ten-digit subheadings have been listed.

[12] *See* Section 776(a)(2)(D) of the Act.

[13] *See* Sections 776(a)(2)(C) and (D) and 776(b) of the Act; *see also Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 14514, 14516 (March 31, 2009).

[14] *See* VRC Verification Report, RHI Verification Report, New Century Verification Report and Fengchi Verification Report.

[15] *See Preliminary Determination* at 11848–49.

[16] As noted in the "Separate Rates" section below, these include Dashiqiao City Guancheng Refractor Co., Ltd.; Fengchi; Jiangsu Sujia Group New Materials Co. Ltd.; Liaoning Fucheng Refractories Group Co., Ltd.; Liaoning Fucheng Special Refractory Co., Ltd.; Liaoning Jiayi Metals & Minerals Co., Ltd.; Yingkou Bayuquan Refractories Co., Ltd.; Yingkou Dalmond Refractories Co., Ltd.; Yingkou Guangyang Co., Ltd.; Yingkou Kyushu Refractories Co, Ltd.; New Century; Yingkou Wonjin Refractory Material Co., Ltd.; and Yingkou Jiahe Refractories Co., Ltd.

[17] *See Preliminary Critical Circumstances Determination* at 28239.

demonstrate that it is sufficiently independent so as to be entitled to a separate rate.[18] In the *Preliminary Determination,* we found that Dashiqiao City Guancheng Refractor Co., Ltd.; Fengchi Imp. and Exp. Co., Ltd. of Haicheng City; Jiangsu Sujia Group New Materials Co. Ltd.; Liaoning Fucheng Refractories Group Co., Ltd.; Liaoning Fucheng Special Refractory Co., Ltd.; Liaoning Jiayi Metals & Minerals Co., Ltd.; Yingkou Bayuquan Refractories Co., Ltd.; Yingkou Dalmond Refractories Co., Ltd.; Yingkou Guangyang Co., Ltd.; Yingkou Kyushu Refractories Co, Ltd.; Yingkou New Century Refractories Ltd.; and Yingkou Wonjin Refractory Material Co., Ltd., demonstrated their eligibility for, and were hence assigned, separate-rate status. In the *Amended Preliminary Determination,* we found that Yingkou Jiahe Refractories Co., Ltd. demonstrated its eligibility for, and was hence assigned, separate-rate status. No party has commented on the eligibility of these companies for separate rate status. Consequently, for the final determination, we continue to find that the evidence placed on the record of this investigation by these companies demonstrates both a *de jure* and *de facto* absence of government control with respect to their exports of the merchandise under investigation. Thus, we continue to find that the separate rate companies are eligible for separate-rate status.

While the Petitioner has commented on RHI's eligibility for a separate rate, which we have addressed in Comment 3 of the I&D Memo, we continue to find that RHI is eligible for a separate rate. Accordingly, for the final determination, we continue to find that the evidence placed on the record of this investigation by RHI demonstrates both a *de jure* and *de facto* absence of government control with respect to its exports of the merchandise under investigation.[19] Thus, we continue to find that RHI is eligible for separate-rate status.

PRC-wide Entity

In the *Preliminary Determination,* we treated PRC exporters/producers that did not respond to the Department's request for information, as part of the PRC-wide entity because they did not demonstrate that they operate free of government control. No additional information has been placed on the record with respect to these entities after the *Preliminary Determination.* The PRC-wide entity, and Mayerton, have not provided the Department with the requested information; therefore, pursuant to section 776(a)(2)(A) of the Act, the Department continues to find that the use of facts available is appropriate to determine the PRC-wide rate. Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information.[20] We find that, because the PRC-wide entity, and Mayerton, did not respond to our request for information, they have failed to cooperate to the best of their ability. Therefore, the Department finds that, in selecting from among the facts otherwise available, an adverse inference is appropriate for the PRC-wide entity. Because we begin with the presumption that all companies within a NME country are subject to government control, and because only the companies listed under the "Final Determination Margins" section below have overcome that presumption, we are applying a single antidumping rate, *i.e.,* the PRC-wide rate, to all other exporters of the merchandise under consideration from the PRC. Such companies, including Mayerton, did not demonstrate entitlement to a separate rate.[21] The PRC-wide rate applies to all entries of the merchandise under consideration, except for those companies which have received a separate rate.

Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described as "information derived from the petition that gave rise to the investigation or review, the final determination concerning merchandise subject to this investigation, or any previous review under section 751 concerning the merchandise subject to this investigation."[22] To "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. Independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.[23]

The AFA rate that the Department used is from the Petition, however, we have updated the labor wage rate used to calculate the Petition rates. The Department's practice is not to recalculate dumping margins provided in petitions, but rather to corroborate the applicable petition rate when applying that rate as adverse facts available.[24] In the instant case, however, the surrogate wage rate used in the Petition was based upon the Department's methodology that the Federal Circuit found unlawful in *Dorbest II.*[25] In light of the Federal Circuit decision to invalidate the wage rate methodology, the Department has adjusted the petition rate using the surrogate value for labor used in this final determination.

Petitioner's methodology for calculating the United States price and normal value in the Petition is discussed in the *Initiation Notice.*[26] To corroborate the AFA margin that we have selected, we compared this margin to the margins we found for RHI. We found that the margin of 236.00 percent has probative value because it is in the range of the model-specific margins that

[18] *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"), and 19 CFR 351.107(d).

[19] *See* I&D Memo at Comment 3.

[20] *See* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 103–316, vol. 1, at 870 (1994) ("SAA").

[21] *See, e.g., Synthetic Indigo from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value,* 65 FR 25706, 25707 (May 3, 2000).

[22] *See* SAA at 870.

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

[24] *See Certain Steel Grating from the People's Republic of China: Final Determination of Sales at Less than Fair Value,* 75 FR 32366 (June 8, 2010) and accompanying Issues and Decision Memorandum at Comment 2.

[25] *See* Comment 1b below.

[26] *See Certain Magnesia Carbon Bricks from the People's Republic of China and Mexico: Initiation of Antidumping Duty Investigations,* 74 FR 42852 (August 25, 2009) ("*Initiation Notice*").

we found for RHI.[27] Accordingly, we find that the rate of 236.00 percent is corroborated within the meaning of section 776(c) of the Act.

Final Determination Margins

We determine that the following percentage weighted-average margins exist for the following entities for the POI:

Exporter	Producer	Weighted-average margin
RHI Refractories Liaoning Co., Ltd	RHI Refractories Liaoning Co., Ltd	128.10
Dashiqiao City Guancheng Refractor Co., Ltd	Dashiqiao City Guancheng Refractor Co., Ltd	128.10
Fengchi Imp. And Exp. Co., Ltd. of Haicheng City	Fengchi Refractories Co., of Haicheng City	128.10
Jiangsu Sujia Group New Materials Co., Ltd	Jiangsu Sujia Group New Materials Co., Ltd	128.10
Liaoning Fucheng Refractories Group Co., Ltd	Liaoning Fucheng Refractories Group Co., Ltd	128.10
Liaoning Fucheng Special Refractory Co., Ltd	Liaoning Fucheng Special Refractory Co., Ltd	128.10
Liaoning Jiayi Metals & Minerals Co., Ltd	Liaoning Jiayi Metals & Minerals Co., Ltd	128.10
Yingkou Bayuquan Refractories Co., Ltd	Yingkou Bayuquan Refractories Co., Ltd	128.10
Yingkou Dalmond Refractories Co., Ltd	Yingkou Dalmond Refractories Co., Ltd	128.10
Yingkou Guangyang Co., Ltd	Yingkou Guangyang Co., Ltd	128.10
Yingkou Jiahe Refractories Co., Ltd	Yingkou Jiahe Refractories Co., Ltd	128.10
Yingkou Kyushu Refractories Co, Ltd	Yingkou Kyushu Refractories Co, Ltd	128.10
Yingkou New Century Refractories Ltd	Yingkou New Century Refractories Ltd	128.10
Yingkou Wonjin Refractory Material Co., Ltd	Yingkou Wonjin Refractory Material Co., Ltd	128.10
PRC-wide Entity*		236.00

* This rate also applies to Liaoning Mayerton Refractories Co., Ltd. and Dalian Mayerton Refractories Co., Ltd.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with section 351.224(b) of the Department's regulations.

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, and consistent with our finding of critical circumstances for RHI, the separate rate companies and the PRC-wide entity, pursuant to section 733(e)(2) of the Act, we will instruct U.S. Customs and Border Protection ("CBP") to continue to suspend liquidation of all entries of the merchandise under consideration from the PRC entered, or withdrawn from warehouse, for consumption on or after December 12, 2009, which is 90 days prior to the date of publication of the *Preliminary Determination*.[28] CBP shall continue to require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown above. These instructions suspending liquidation will remain in effect until further notice.

Additionally, the Department determined in its final determination for the companion countervailing duty ("CVD") investigation that RHI's merchandise benefited from export subsidies.[29] Therefore, we will instruct CBP to require a cash deposit or posting of a bond equal to the weighted-average amount by which normal value exceeds U.S. price for RHI, as indicated above, minus the amount determined to constitute an export subsidy.[30]

With respect to the companies receiving a separate rate, we note that the rate applied in this proceeding as a separate rate is the calculated rate received by RHI. In the companion countervailing duty investigation, the Department found that RHI merchandise benefited from export subsidies during the POI, and, consequently, all other exporters (besides RHI and Mayerton) were found to have benefited from export subsidies based upon RHI results. Therefore, we will instruct CBP to require a cash deposit or posting of a bond equal to the weighted-average amount by which normal value exceeds U.S. price for RHI, as indicated above, minus the amount determined to constitute an export subsidy.

With respect to the PRC-wide entity, as AFA, we applied to highest rate form the petition that we were able to corroborate. *See* the "Corroboration" section above. We note that, although in the companion countervailing duty investigation the Department found that all other exporters (besides RHI and Mayerton) were found to have benefited from export subsidies, because we have applied AFA to the PRC-wide entity, we will not instruct CBP to deduct any export subsidy from the PRC-wide entity's cash deposit rate.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, within 45 days the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the merchandise under consideration. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative protective order ("APO") of their responsibility concerning the

[27] *See* Memorandum to the File, through Scot T. Fullerton, Program Manager, from Paul Walker, Case Analyst, "Investigation of Magnesia Carbon Bricks from the People's Republic of China: RHI Refractories Liaoning Co., Ltd.," dated concurrently with this notice.

[28] Correction to an inadvertent error in the date listed in the *Preliminary Critical Circumstances Determination.*

[29] *See Certain Magnesia Carbon Bricks from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* dated concurrently with this notice.

[30] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 from India,* 69 FR 67306, 67307 (November 17, 2004).

disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination and notice are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: July 26, 2010.

Ronald K. Lorentzen,

Acting Deputy Assistant Secretary for Import Administration.

APPENDIX I

Comment 1: Surrogate Values
  a. Magnesia
  b. Labor
Comment 2: Deductions to Gross Unit Price
  a. Indirect Selling Expenses
  b. Discounts
Comment 3: RHI's Separate Rate
Comment 4: Service Contracts
Comment 5: Exclusion of Resin-bonded Magnesia Carbon Functional Refractory Products from the Scope
Comment 6: Double Remedy
Comment 7: FOP Allocation Ratio

[FR Doc. 2010–18938 Filed 7–30–10; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–955]

Certain Magnesia Carbon Bricks From the People's Republic of China: Final Affirmative Countervailing Duty Determination

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

SUMMARY: The Department of Commerce (the Department) has reached a final determination that countervailable subsidies are being provided to producers/exporters of magnesia carbon bricks (MCBs) from the People's Republic of China (PRC). For information on the estimated subsidy rates, see the "Suspension of Liquidation" section of this notice.

DATES: *Effective Date:* August 2, 2010.

FOR FURTHER INFORMATION CONTACT: Summer Avery or Toni Page, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4052 or (202) 482–1398, respectively.

SUPPLEMENTARY INFORMATION:

Case History

The following events have occurred since the preliminary determination. *See Certain Magnesia Carbon Bricks From the People's Republic of China: Preliminary Negative Countervailing Duty Determination,* 74 FR 68241 (December 23, 2009) (*Preliminary Determination*).

On January 7, 2010, Petitioner [1] submitted a letter, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the Act), requesting alignment of the final countervailing duty (CVD) determination with the final antidumping duty (AD) determinations of MCBs from the PRC and Mexico. On January 28, 2010, the Department aligned the final CVD determination with the final determinations in the companion AD investigations of MCBs from the PRC and Mexico. *See Certain Magnesia Carbon Bricks From the People's Republic of China: Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determinations,* 75 FR 4528 (January 28, 2010).

On January 22, 2010, the GOC filed a request for a hearing for the instant investigation.

The Department issued three supplemental questionnaires to the Government of the People's Republic of China (GOC) on December 8, 2009, February 22, 2010, and March 26, 2010, respectively. The GOC submitted responses on January 5, 2010, March 15, 2010, March 22, 2010, and April 2, 2010.

The Department issued two supplemental questionnaires to Liaoning Mayerton Refractories (LMR) and its cross-owned affiliate Dalian Mayerton Refractories Co. Ltd. (DMR) (collectively, Mayerton) on December 8, 2009 and February 22, 2010, respectively. Mayerton submitted a response on January 5, 2010 for the first supplemental questionnaire but did not respond to the Department's second supplemental questionnaire. On April 1, 2010, Mayerton filed a letter with the Department informing us that that they would no longer be participating in this investigation.

The Department issued two supplemental questionnaires to RHI Refractories Liaoning Co., Ltd. (RHIL) as well as its cross-owned affiliates RHI Refractories (Dalian) Co., Ltd. (RHID) and Liaoning RHI Jinding Magnesia Co., Ltd. (RHIJ) (collectively, RHI) on December 8, 2009 and February 22, 2010, respectively. RHI submitted responses to the Department's questionnaires on January 5, 2010, March 15, 2010, and March 22, 2010. Public versions of all questionnaires and responses, as well as the various memoranda cited below, are available in the Department's Central Records Unit (CRU), Room 1117 in the HCHB building of the Commerce Department.

From May 4 through May 7, 2010, we conducted verification of the questionnaire responses submitted by RHI. We issued the verification report for RHI on June 1, 2010. *See* Memorandum to the File from Toni Page and Summer Avery, International Trade Analysts, Verification of the Questionnaire Responses Submitted by RHI Refractories Liaoning Co., Ltd., RHI Refractories (Dalian) Co., Ltd., and Liaoning RHI Jinding Magnesia Co., Ltd. (June 1, 2010).

On May 6, 2010, the Department issued its post-preliminary determination regarding two programs, "Export Restraints of Raw Materials" and the "Provision of Electricity for Less than Adequate Remuneration." *See Countervailing Duty Investigation of Certain Magnesia Carbon Bricks from the People's Republic of China: Post-Preliminary Determination* (May 6, 2010).

The Department received case briefs from Petitioner, the GOC, and RHI on June 10, 2010 and rebuttal briefs from the same parties on June 17, 2010. On June 17, 2010, the GOC withdrew its hearing request.

Scope of Investigation

The merchandise under investigation consists 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 antioxidants 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 6902.10.1000, 6902.10.5000, 6815.91.0000,

[1] The Petitioner in the instant investigation is Resco Products Inc.

6815.99.2000 and 6815.99.4000 [2] of the Harmonized Tariff Schedule of the United States ("HTSUS"). While HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive.

Scope Comments

On September 8, 2009, Pilkington North America Inc. (PNA), a U.S. importer of magnesia bricks from the People's Republic of China (PRC) and Mexico, filed timely comments concerning the scope of the AD and CVD investigations of certain magnesia carbon bricks from the PRC and the AD investigation of certain magnesia carbon bricks from Mexico. *See* Letter from Pilkington North America Inc. Re: Scope Comments (September 8, 2009).

In its submission, PNA requested that the Department amend the scope of these investigations to exclude ceramic bonded magnesia bricks with or without trace amounts of carbon or clarify that this product is outside the scope of these investigations. According to PNA, the ceramic bonded magnesia bricks it imports are clearly not within the intended scope of these investigations. Petitioner did not submit comments on PNA's submission; however, in a telephone conversation with a Department official, Petitioner stated that it agreed that the bricks at issue were outside the scope of these investigations. *See* Memorandum to the File, through Tom Gilgunn, Program Manager, Office 6, from Summer Avery, International Trade Analyst, Re: Import Administration Countervailing Duty Investigation of Certain Magnesia Carbon Bricks from the People's Republic of China: Scope Comments (February 16, 2010).

After reviewing PNA's comments, the Department determined that the scope of these investigations does not include the bonded MCBs imported by PNA. However, because the language in the scope is clear that only chemically bonded magnesia carbon bricks are covered, the Department concluded that it was not necessary to amend or clarify the existing scope language in these investigations in response to PNA's request. *See* Memorandum from John M. Anderson, Acting Deputy Assistant Secretary Re: Certain Magnesia Carbon Bricks from the People's Republic of China and Mexico: Scope Comments (February 24, 2010).

[2] In the *Preliminary Determination,* we included HTSUS subheading 6815.99 in our description of the scope of the investigation. Subsequently, we determined that all of the ten-digit subheadings under subheading 6815.99 must be used instead. Accordingly, the appropriate HTSUS ten-digit subheadings have been listed.

A respondent in the companion AD investigation of MCBs from Mexico, RHI–Refmex S.A. de C.V. (Refmex), argued in its case brief that the Department should expressly hold that resin-bonded magnesia carbon functional refractory products, as opposed to magnesia carbon brick products, are not within the scope of the MCBs under investigation. The Department has decided not to amend the scope of the MCB investigations to include a specific exclusion for such products because the current description of the scope of these investigations adequately limits the scope to bricks. A full summary of Refmex's comments and the Department's position are at Comment 1 of the Issues and Decision Memorandum for the AD Mexico investigation and Comment 5 of the Issues and Decision Memorandum for the AD PRC investigation. *See* Issues and Decision Memorandum for Certain Magnesia Carbon Bricks From Mexico: Final Determination of Sales at Less Than Fair Value and Issues and Decision Memorandum for Certain Magnesia Carbon Bricks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value (July 26, 2010).

Analysis of Subsidy Programs and Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the Memorandum to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, from Edward C. Yang, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled "Issues and Decision Memorandum for the Final Affirmative Countervailing Duty Determination: Certain Magnesia Carbon Bricks from the People's Republic of China," dated concurrently with this notice (hereinafter, *Decision Memorandum*), which is hereby adopted by this notice. Attached to this notice as an Appendix is a list of the issues that parties have raised and to which we have responded in the *Decision Memorandum.* The *Decision Memorandum* also contains a complete analysis of the programs covered by this investigation, and the methodologies used to calculate the subsidy rates. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at *http://ia.ita.doc.gov/frn/.* The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Use of Adverse Facts Available

For purposes of this final determination, we continue to rely on facts available and have drawn adverse inferences, in accordance with sections 776(a) and (b) of the Act, with regard to RHI's receipt of countervailable subsidies under the "Provision of Electricity for Less than Adequate Remuneration" and "Export Restraints of Raw Materials" programs. In addition, pursuant to sections 776(a)(2)(A) and (C) of the Act, we have based the CVD rate for Mayerton on facts otherwise available and drawn adverse inferences. A full discussion of our decision to apply adverse facts available (AFA) is presented in the *Decision Memorandum* in the section "Application of Facts Available, Including the Application of Adverse Inferences," as well as the Department's positions in Comment 6: Whether the Use of Facts Available with Adverse Inferences Is Warranted For the Export Restraint Subsidy and Comment 8: Whether the Department Correctly Applied AFA and Treated the Provision of Electricity as a Countervailable Subsidy in the *Decision Memorandum.*

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we have calculated an individual rate for the mandatory respondent still participating in this investigation, RHI. Section 705(c)(5)(A)(i) of the Act states that for companies not investigated, we will determine an "all others" rate equal to the weighted-average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 of the Act. In this investigation, the Department selected two mandatory respondents to review. Because there is only one respondent in this investigation for which the Department has calculated a company-specific rate, consistent with our practice and section 705(c)(5)(A)(i) of the Act, its rate serves as the "all others" rate. *See, e.g., Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand,* 66 FR 50410, 50411 (October 3, 2001); and *Final Affirmative Countervailing Duty Determination: Pure Magnesium From Israel,* 66 FR 49351, 49353 (September 27, 2001). As discussed above, mandatory respondent Mayerton

withdrew from the instant investigation. As discussed in the *Decision Memorandum,* for each program examined in this investigation, we have made the adverse inference that Mayerton benefitted from the program and calculated a rate accordingly.

Exporter/ manufacturer	Net countervailable subsidy rate
RHI	24.24% *ad valorem.*
Mayerton	253.87% *ad valorem.*
All Others	24.24% *ad valorem.*

In accordance with section 705(c)(1)(C) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all imports of the subject merchandise from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The suspension of liquidation will remain in effect until further notice.

If the International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a countervailing duty order and order CBP to continue the suspension of liquidation of entries of MCBs and to require a cash deposit on all such entries equal to the subsidy rate listed above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all deposits or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an APO, without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/ destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: July 26, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix—List of Comments and Issues in the Decision Memorandum

Comment 1: Whether the Department Has the Authority to Apply the CVD Law to the PRC While Treating the PRC as A Non-Market Economy In The Parallel Antidumping Investigation

Comment 2: Whether the Simultaneous Application of the CVD Law and the Antidumping Non-Market Economy Methodology in This Case Would Lead to Impermissible Double Remedies

Comment 3: Whether the Department's Application of Countervailing Duties to a Non-Market Economy Country Violates the Administrative Procedures Act

Comment 4: Whether the Department's Decision to Initiate an Investigation of Export Restraints at Issue Was Contrary to Law and Unsupported by Fact

Comment 5: Whether the Export Restraints at Issue Can be Found to Confer a Financial Contribution to the Industry Producing MCBs

Comment 6: Whether the Use of Facts Available with Adverse Inferences Is Warranted For the Export Restraint Subsidy

Comment 7: Whether the Department Should Adjust the Manner It Calculates the Export Restraints Benefit

Comment 8: Whether the Department Correctly Applied AFA and Treated the Provision of Electricity as a Countervailable Subsidy

Comment 9: Whether the Provision of Electricity Is Specific and Provides a Financial Contribution

Comment 10: Whether the Department Should Use RHI's Revised 2008 Sales Amount in the Department's Final Calculations

Comment 11: Whether the Department Should Examine Income Tax Credits for Purchases of Domestically Produced Equipment in Detail

Comment 12: Whether the Department Should Apply AFA with Respect to VAT Rebates Associated with RHI's Purchases of Domestically Produced Equipment

Comment 13: Whether the Department Should Apply Total AFA When Assigning Mayerton's Final Countervailing Duty Rate

[FR Doc. 2010–18939 Filed 7–30–10; 8:45 am]

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APPENDIX B

HEARING WITNESSES

CALENDAR OF PUBLIC HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject:	Certain Magnesia Carbon Bricks from China and Mexico
Inv. Nos.:	701-TA-468 and 731-TA-1166-1167 (Final)
Date and Time:	July 27, 2010 - 9:30 a.m.

Sessions were held in connection with these investigations in the Main Hearing Room (room 101), 500 E Street, S.W., Washington, D.C.

CONGRESSIONAL APPEARANCE:

The Honorable Peter J. Visclosky, U.S. Representative, 1st District, Indiana

EMBASSY APPEARANCE:

Embassy of Mexico
Washington, D.C.

Salvador Behar, Legal Counsel for International Trade

OPENING REMARKS:

Petitioner (**Camelia C. Mazard**, Doyle, Barlow & Mazard, PLLC)
Respondents (**Ritchie T. Thomas**, Squire, Sanders & Dempsey L.L.P.)

In Support of the Imposition of
Antidumping and Countervailing Duty Orders:

Doyle, Barlow & Mazard PLLC
Washington, D.C.
on behalf of

Resco Products, Inc.

William K. Brown, President and Chief Executive Officer,
Resco Products, Inc.

Rick Copp, Vice President of Sales and Marketing,
Resco Products, Inc.

Dr. Patrick J. Magrath, Economic Consultant,
Georgetown Economic Services

Camelia C. Mazard)
Robert W. Doyle) – OF COUNSEL
Andre P. Barlow)

Cadence Global Strategies, PLLC
Washington, D.C.
on behalf of

ANH Refractories Company ("ANH")

Tomas Richter, Senior Manager of Marketing, North
American Refractories Company

Stephen Claeys) – OF COUNSEL

In Opposition to the Imposition of
Antidumping and Countervailing Duty Orders:

Squire, Sanders & Dempsey L.L.P.
Washington, D.C.
on behalf of

RHI-Refmex S.A. de C.V.
RHI Refractories Liaoning Co., Ltd.
Veitsch-Radex America, Inc.

Martin Beschel, Commercial Director, Steel Americas, Veitsch-Radex America, Inc.

Victor Garcia, Director General, RHI-Refmex S.A. de C.V.

Bruce Malashevich, President and CEO, Economic Consulting Services, LLC

Alex Cook, Economist, Economic Consulting Services, LLC

Ritchie T. Thomas)
Cathy Kettlewell) – OF COUNSEL
Iain R. McPhie)

REBUTTAL/CLOSING REMARKS:

Petitioners (**Camelia C. Mazard**, Doyle, Barlow & Mazard, PLLC)
Respondents (**Iain R. McPhie**, Squire, Sanders & Dempsey L.L.P.)

APPENDIX C

SUMMARY DATA

Table C-1
MCB: Summary data concerning the U.S. market, 2007-09, January-March 2009, and January-March 2010

(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)

	Reported data					Period changes			
				January-March					Jan.-March
Item	2007	2008	2009	2009	2010	2007-09	2007-08	2008-09	2009-10
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	31,387	38,103	33,090	8,013	10,198	5.4	21.4	-13.2	27.3
Value	27,155	35,542	33,676	8,028	11,092	24.0	30.9	-5.3	38.2
Unit value	$865	$933	$1,018	$1,002	$1,088	17.6	7.8	9.1	8.6
Ending inventory quantity	20,677	21,958	21,137	19,353	17,008	2.2	6.2	-3.7	-12.1
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	***	***	***	***	***	***	***	***	***

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Table C-1--Continued
MCB: Summary data concerning the U.S. market, 2007-09, January-March 2009, and January-March 2010

(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)

	Reported data					Period changes			
				January-March					Jan.-March
Item	2007	2008	2009	2009	2010	2007-09	2007-08	2008-09	2009-10
U.S. producers':									
Average capacity quantity	114,241	114,241	114,241	28,585	28,585	0.0	0.0	0.0	0.0
Production quantity	73,552	72,258	49,997	9,485	17,286	-32.0	-1.8	-30.8	82.2
Capacity utilization (1)	64.4	63.3	43.8	33.2	60.5	-20.6	-1.1	-19.5	27.3
U.S. shipments:									
Quantity	59,403	63,789	42,243	8,989	15,198	-28.9	7.4	-33.8	69.1
Value	62,611	76,612	53,933	11,558	18,449	-13.9	22.4	-29.6	59.6
Unit value	$1,054	$1,201	$1,277	$1,286	$1,214	21.1	13.9	6.3	-5.6
Export shipments:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	8,042	7,334	8,585	6,840	8,461	6.7	-8.8	17.1	23.7
Inventories/total shipments (1)	***	***	***	***	***	***	***	***	***
Production workers	110	102	92	83	112	-16.2	-7.2	-9.8	35.3
Hours worked (1,000s)	239	227	179	39	62	-25.1	-5.0	-21.1	59.0
Wages paid ($1,000s)	6,441	6,420	5,200	1,102	1,823	-19.3	-0.3	-19.0	65.4
Hourly wages	$26.95	$28.28	$29.05	$28.26	$29.40	7.8	4.9	2.7	4.1
Productivity (tons/1,000 hours)	307.7	318.3	279.3	243.2	278.8	-9.2	3.4	-12.3	14.6
Unit labor costs	$87.57	$88.85	$104.01	$116.18	$105.46	18.8	1.5	17.1	-9.2
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.

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.

Table C-21
MCBs: Combined operations for U.S. producers, 2007-09, January-March 2009, and January-March 2010

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