

*Fair Value: Carbazole Pigment 23 from India*, 69 FR 67306, 67307 (November 17, 2007).

With respect to WJMP, the voluntary respondent in this proceeding, the Department did not individually examine its exports of merchandise under investigation in the *PC Strand CVD Preliminary Determination*. As a result, WJMP is captured under the "All Others" rate, which is an average of the companies examined in *PC Strand CVD Preliminary Determination*. 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 WJMP, indicated above, minus the amount determined to constitute an export subsidy in the "All Others" rate.

With respect to Fasten Group I&E, the separate rate company, we note that the rate applied in this proceeding as a separate rate is derived from the calculated rate received by Xinhua Metal. Therefore, because Xinhua Metal received export subsidies in *PC Strand CVD Preliminary Determination*, 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 Xinhua Metal, as indicated above, minus the amount determined to constitute an export subsidy.

#### International Trade Commission Notification

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

#### Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven business days after the date on which the final verification report is issued in this proceeding and rebuttal briefs limited to issues raised in case briefs and must be received no later than five business days after the deadline date for case briefs. See 19 CFR 351.309(c)(i) and (d). A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department.

This summary should be limited to five pages total, including footnotes.

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

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

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

Dated: December 17, 2009.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-570-955]

#### Certain Magnesia Carbon Bricks From the People's Republic of China: Preliminary Negative Countervailing Duty Determination

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

**SUMMARY:** The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are not being provided to producers and exporters of Certain Magnesia Carbon Bricks (Bricks) from the People's Republic of China (PRC).

**DATES:** *Effective Date:* December 23, 2009.

**FOR FURTHER INFORMATION CONTACT:** Toni Page and Summer Avery, AD/CVD Operations, Office 6, Operations, Import Administration, U.S. Department of Commerce, Room 7867, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482-1398 and (202) 482-4052, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Case History

On July 29, 2009, the Department received a countervailing duty (CVD) petition concerning Bricks from the People's Republic of China filed in proper form by Resco Products, Inc. (Petitioner). This investigation was initiated on August 18, 2009. See *Certain Magnesia Carbon Bricks from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 74 FR 42858 (August 25, 2009) (*Initiation Notice*), and accompanying Initiation Checklist.<sup>1</sup> On September 15, 2009, the Department selected Liaoning Mayerton Refractories Co., Ltd. (LMR) and RHI Refractories Liaoning Co., Ltd. (RHIL) as mandatory respondents in this investigation. See Memorandum from the Team through Barbara Tillman, Director, Office 6, Operations, to John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, Re: Respondent Selection (September 15, 2009).

On September 15, 2009, we issued the initial CVD questionnaire to the Government of the People's Republic of China (GOC), LMR, and RHIL.

On October 2, 2009, pursuant to section 703(c)(1)(A) of the Tariff Act of 1930 as amended (the Act) and 19 CFR 351.205(e), the Department postponed the deadline for the preliminary determination by 55 days to no later than December 16, 2009. See *Certain Magnesia Carbon Bricks From the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 74 FR 51558 (October 7, 2009).

On November 5, 2009, the GOC submitted a response to the initial CVD questionnaire (GOC Questionnaire Response). Also on November 5, 2009, LMR submitted a response for itself and for its affiliate Dalian Mayerton Refractories Co. Ltd. (DMR) (collectively, the Mayerton Companies) (Mayerton Questionnaire Response);

<sup>1</sup> A public version of this document and all public Departmental memoranda are on file in the Central Records Unit (CRU), room 1117 in the main building of the Department.

and RHIL submitted a response for itself and for its affiliates RHI Refractories (Dalian) Co., Ltd. (RHI Dalian) and Liaoning RHI Jinding Magnesia Co., Ltd. (RHI Jinding) (collectively, the RHI Companies) (RHI Questionnaire Response).

On November 17, 2009, the Department sent a letter to the Mayerton Companies requesting the sales information for its companies. The Mayerton Companies submitted the requested sales information on November 20, 2009 (Mayerton Sales Submission). In addition, Petitioner filed comments regarding the questionnaire responses on November 24, 2009. On November 30, 2009, the Department sent a letter requesting the Mayerton Companies to submit their tax information for the 2007 tax year. The Mayerton Companies submitted the requested information on December 4, 2009 (Mayerton Tax Submission).

On December 8, 2009, we issued supplemental questionnaires to the GOC and the respondent companies, for which responses are not due until after the preliminary determination. On December 14, 2009, counsel for Petitioner met with Department officials. See Memorandum to the File through Barbara E. Tillman, Director, Office 6, from Toni Page, Case Analyst, Re: Meeting with Counsel for Petitioners: Countervailing Duty Investigation on Certain Magnesia Carbon Bricks from the People's Republic of China (December 14, 2009). Also on December 14, 2009, Petitioner submitted further information regarding the provision of preferential loans to the Bricks industry. According to Petitioner's information, the Bricks under investigation are considered to be refractory materials featuring fine-composition and irregularity. These refractory materials are identified as a supported project in the Directory Catalogue on Readjustment of Industrial Structure (Version 2005), Decree of the National Development and Reform Commission, No. 40. See Petitioner's December 14, 2009 Comments.

### Scope of the Investigation

Imports covered by this investigation consist of certain chemically bonded (resin or pitch), magnesia carbon bricks with a magnesia component of at least 70 percent magnesia (MgO) by weight, regardless of the source of raw materials for the MgO, with carbon levels ranging from trace amounts to 30 percent by weight, regardless of enhancements, (for example, magnesia carbon bricks can be enhanced with coating, grinding, tar impregnation or coking, high temperature heat treatments, anti-slip

treatments or metal casing) and regardless of whether or not anti-oxidants are present (for example, antioxidants can be added to the mix from trace amounts to 15 percent by weight as various metals, metal alloys, and metal carbides).

Certain magnesia carbon bricks that are the subject of this investigation are currently classifiable under subheadings 6902.10.10.00, 6902.10.50.00, 6815.91.00.00, and 6815.99 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive.

### Scope Comments

In accordance with the Preamble to the Department's regulations, we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of that notice. See *Initiation Notice*, 74 FR at 42858; see also, *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). On September 8, 2009, Pilkington North America Inc. (PNA), a U.S. importer of Bricks from China and Mexico, submitted comments on the records of the instant CVD investigation, the antidumping duty (AD) investigation of Bricks from the PRC, and the AD investigation of Bricks from Mexico. In its submission, PNA requested that the Department amend the scope to exclude ceramic bonded magnesia bricks with or without trace amounts of carbon. The Department is currently evaluating PNA's comments and will issue its decision regarding the scope of the investigations prior to the preliminary determinations in the companion AD investigations due on January 5, 2010.

### Injury Test

Because the PRC is a "Subsidies Agreement Country" within the meaning of section 701(b) the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry. On September 29, 2009, the ITC published its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of allegedly subsidized imports of Bricks from the PRC. See *Certain Magnesia Carbon Bricks From China and Mexico Determinations*, 74 FR 49889 (September 29, 2009); and

*Certain Magnesia Carbon Bricks From China and Mexico (Preliminary)*, USITC Pub. 4100, Inv. Nos. 701-TA-468 and 731-TA-1166-1167 (September 2009).

### Application of the Countervailing Duty Law to Imports From the PRC

On October 25, 2007, the Department published *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from the PRC*), and the accompanying Issues and Decision Memorandum (CFS Decision Memorandum). In *CFS from the PRC*, the Department found that, "given the substantial differences between the Soviet-style economies and the PRC's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from the {PRC}." See CFS Decision Memorandum at Comments 1 and 6.

The Department has subsequently affirmed its decision to apply the CVD law to the PRC, most recently in *Certain Oil Country Tubular Goods From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination*, 74 FR 64045 (December 7, 2009), and the accompanying Issues and Decision Memorandum.

### Period of Investigation

The period for which we are measuring subsidies, *i.e.*, the period of investigation (POI), is January 1, 2008 through December 31, 2008.

### Subsidy Valuation Information

#### Allocation Period

Under 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the average useful life (AUL) of the renewable physical assets used to produce the subject merchandise. Pursuant to 19 CFR 351.524(d)(2), there is a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (IRS Tables), as updated by the Department of Treasury. For the subject merchandise, the IRS Tables prescribe an AUL of 15 years. As no interested party has claimed that the AUL of 15 years is unreasonable, we are allocating non-recurring subsidies over a period of 15 years.

Further, for non-recurring subsidies, we have applied the "0.5 percent expense test" described in 19 CFR

351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the sales (total sales or total export sales, as appropriate) for the same year. If the amount of subsidies is less than 0.5 percent of the relevant sales, then the benefits are allocated to the year of receipt rather than allocated over the AUL period.

In accordance with the Department's practice, we have determined that we will identify and measure subsidies in the PRC beginning on the date of the country's accession to the World Trade Organization (WTO), *i.e.* December 11, 2001. *See, e.g., Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 70961 (November 24, 2008) (*Line Pipe from the PRC*), and accompanying Issues and Decision Memorandum (Line Pipe Decision Memorandum) at "Allocation Period" section and Comment 18.

#### *Benchmarks for Short-Term RMB Denominated Loans*

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." Normally, the Department uses comparable commercial loans reported by the company for benchmarking purposes. *See* 19 CFR 351.505(a)(3)(i). If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that we "may use a national interest rate for comparable commercial loans." *See* 19 CFR 351.505(a)(3)(ii).

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. For the reasons explained in *CFS from the PRC*, loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market. *See CFS Decision Memorandum at Comment 10.* Because of this, any loans received by respondents from private Chinese or foreign-owned banks within China would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). Similarly, the significant intervention of the government within the Chinese banking sector prevents the use of a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special

difficulties inherent in using a Chinese benchmark for loans, the Department is selecting an external market-based benchmark interest rate. The use of an external benchmark is consistent with the Department's practice. For example, in *Softwood Lumber from Canada*, the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada. *See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada*, 67 FR 15545 (April 2, 2002) (*Softwood Lumber from Canada*), and accompanying Issues and Decision Memorandum at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

We are calculating the external benchmark using the regression-based methodology first developed in *CFS from the PRC* and more recently updated in *Lightweight Thermal Paper from the People's Republic of China*. *See CFS Decision Memorandum at Comment 10; see also Lightweight Thermal Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*LWTP from the PRC*) and accompanying Issues and Decision Memorandum (LWTP Decision Memorandum) at "Benchmarks and Discount Rates" section. This benchmark interest rate is based on the inflation-adjusted interest rates of countries with per capita gross national incomes (GNIs) similar to the PRC, and takes into account a key factor involved in interest rate formation, *i.e.* quality of a country's institutions, that is not directly tied to the state-imposed distortions in the PRC banking sector discussed above.

Following the methodology developed in *CFS from the PRC* and as updated by *LWTP from the PRC*, we first determined which countries are similar to the PRC in terms of GNIs, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. The PRC falls in the lower-middle income category, a group that includes 55 countries as of July 2008. As explained in *OCTG from the PRC*, this pool of countries captures the broad inverse relationship between income and interest rates. *See Certain Oil Country Tubular Goods From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination*, 74 FR 47210, 47216 (September 15,

2009) (*OCTG from the PRC*), unchanged in final determination.

Many of these countries reported lending and inflation rates to the International Monetary Fund and they are included in that agency's international financial statistics (IFS). With the exceptions noted below, we have used the interest and inflation rates reported in the IFS for the countries identified as "lower-middle income" by the World Bank. First, we did not include those economies that the Department considered to be non-market economies for antidumping (AD) purposes for any part of the years in question (Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan). Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. Specifically, Jordan reported a deposit rate, not a lending rate, and the rates reported by Ecuador and East Timor are dollar-denominated rates; therefore, the rates for these three countries have been excluded. Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate, we have also excluded any countries with aberrational or negative real interest rates for the year in question. *See Memorandum to File from Nicholas Czajkowski, International Trade Compliance Analyst, Re: Preliminary Determination Calculations Loan Benchmark Analysis (December 16, 2009).*

The resulting inflation-adjusted benchmark lending rates are provided in the calculation memorandum for the Mayerton Companies. *See Memorandum from Nicholas Czajkowski, International Trade Compliance Analyst, Re: Preliminary Determination Calculations for Liaoning Mayerton Refractories Co., Ltd. and Dalian Mayerton Refractories Co. Ltd. (December 16, 2009) (Mayerton Companies Calculation Memorandum).* Because these are inflation-adjusted benchmarks, it is necessary to adjust the interest payments made by the Mayerton Companies for inflation. This was done using the PRC inflation figure as reported in the IFS.

#### *Discount Rates*

The lending rates reported in the IFS represent short- and medium-term lending. However, there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, the

Department has developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates. See *Light-Walled Rectangular Pipe and Tube From the People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR 35642 (June 24, 2008) (*LWRP from the PRC*), and accompanying Issues and Decision Memorandum (LWRP Decision Memorandum) at Comment 12, "Discount Rate" section. In *Citric Acid from the PRC*, this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where n equals or approximates the number of years of the term of the loan in question. See *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) (*Citric Acid from the PRC*), and accompanying Issues and Decision Memorandum (Citric Acid Decision Memorandum) at Comment 14.

#### *Attribution of Subsidies*

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii) provides that when two or more corporations with cross-ownership produce the subject merchandise, the Department will attribute subsidies received by either or both corporations to the products produced by both corporations. Moreover, under 19 CFR 351.525(b)(6)(iv), when there is cross-ownership between an input supplier and a downstream producer, and production of the input is primarily dedicated to production of the downstream product, the Department will attribute subsidies received by the input supplier to the combined sales of the input and downstream products produced by both corporations (excluding the sales between the two corporations).

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common

ownership of two (or more) corporations. The Preamble to the Department's countervailing duty regulations also states, "[I]n certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership." See *Countervailing Duties: Final Rule*, 63 FR 65348, 65401 (November 25, 1998). The Court of International Trade (CIT) has further upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits. See *Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600–603 (CIT 2001).

#### *Cross-Ownership*

##### The Mayerton Companies

As discussed above, we selected Liaoning Mayerton Refractories Co., Ltd. (*i.e.* LMR) as a mandatory respondent in the instant investigation. LMR reported that it is affiliated with Dalian Mayerton Refractories Co., Ltd. (*i.e.* DMR). Since both companies produce subject merchandise, the Mayerton Companies submitted a response to the Department's questionnaires providing both DMR's and LMR's information. In these responses, DMR and LMR reported that each company is affiliated with numerous companies. Among the other affiliated companies, according to the Mayerton Questionnaire Response, Mayerton Refractories China Ltd. (MRC) is a Chinese company involved in domestic sales (but not production) of Bricks, and thus did not sell Bricks to the United States. Accordingly, the Mayerton companies did not provide a questionnaire response for MRC. We have asked follow-up questions regarding MRC in our supplemental questionnaire.

The Mayerton Questionnaire Response indicates that a single foreign (*i.e.*, non-Chinese) parent company is the majority shareholder in each company.<sup>2</sup> See Memorandum from Summer Avery, International Trade Compliance Analyst, Re: Cross-Ownership of Mayerton Refractories Co., Ltd. and Dalian Mayerton Refractories Co. Ltd. (December 16, 2009) (Mayerton Companies Cross-Ownership Memorandum). In addition, the legal representative for LMR and DMR is the same individual. Other business proprietary information on the record of this proceeding indicates cross-ownership between LMR and

<sup>2</sup> The ownership percentages are proprietary. See Mayerton Companies' Cross-Ownership Memorandum.

DMR. See Mayerton Questionnaire Response at Exhibit 1 and Exhibit 9(a). See also Mayerton Companies Cross-Ownership Memorandum. Therefore, pursuant to 19 CFR 351.525(b)(6)(vi), we preliminarily determine that DMR and LMR are cross-owned.

##### The RHI Companies

As discussed above RHI Refractories Liaoning Co., Ltd. (*i.e.* RHIL) was selected as a mandatory respondent in the instant investigation. RHIL reported that it is affiliated with RHI Refractories (Dalian) Co., Ltd. (*i.e.* RHI Dalian) and Liaoning RHI Jinding Magnesia Co., Ltd. (*i.e.* RHI Jinding). Therefore, the RHI Questionnaire Response covers RHIL, RHI Dalian, and RHI Jinding. The RHI Questionnaire Response reported that each company is affiliated with numerous companies. However, of these affiliated companies, the RHI Companies reported that only RHIL and RHI Dalian are involved in the sale and production of subject merchandise. We have asked follow-up questions regarding the other affiliated companies in our supplemental questionnaire.

The RHI Companies' questionnaire response indicates that a company named RHI AG is the ultimate majority shareholder in RHIL, RHI Dalian, and RHI Jinding.<sup>3</sup> See Memorandum from Summer Avery, International Trade Compliance Analyst, Re: Cross-Ownership of RHI Refractories Liaoning Co., Ltd., RHI Refractories (Dalian) Co., Ltd., and Liaoning RHI Jinding Magnesia Co., Ltd. (December 16, 2009) (RHI Companies Cross-Ownership Memorandum). In addition, the RHI Companies stated in their questionnaire response that RHI AG has indirect majority voting ownership interest in all of the RHI affiliates. See RHI Questionnaire Response at III–2. See also RHI Companies Cross-Ownership Memorandum. Therefore, pursuant to 19 CFR 351.525(b)(6)(ii), we preliminarily determine that RHIL and RHI Dalian are cross-owned and, pursuant to 19 CFR 351.525(b)(6)(iv), RHIL, RHI Dalian, and RHI Jinding are cross-owned.

##### *Denominator*

When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, the Department considered the basis for respondents' receipt of benefits under each program at issue. We have preliminarily found that the benefits received by the Mayerton Companies and the RHI Companies under the programs found

<sup>3</sup> The ownership percentages are proprietary. See RHI Companies Cross-Ownership Memorandum.

countervailable were not tied to export performance or to the production of a particular product. As such, for subsidies received by the Mayerton Companies and the RHI Companies, we are using that company's sales (and those of its cross-owned affiliates where applicable) of all products as the denominator in our calculations. *See* 19 CFR 351.525(b)(3).

As discussed in the "Cross-Ownership" section above regarding the Mayerton Companies, LMR is cross-owned with DMR, a producer of subject merchandise that received benefits that were not tied to export performance or to the production of a particular product. As such, for benefits received by LMR or DMR, we are using total sales of all products by LMR and DMR (less any internal sales between LMR and DMR) as the denominator in our calculations. *See* 19 CFR 351.525(b)(6)(iv).

As discussed in the "Cross-Ownership" section above regarding the RHI Companies, RHIL, RHI Dalian, and RHI Jinding are cross-owned and each received benefits that were not tied to export performance or to the production of a particular product. As such, for benefits received by RHIL or RHI Dalian, which both produce the subject merchandise, we are using total sales of all products by RHIL and RHI Dalian (less any internal sales) as the denominator in our calculations. *See* 19 CFR 351.525(b)(6)(ii). For benefits received by RHI Jinding, we are using total sales of all products by RHIL, RHI Dalian, and RHI Jinding (less any internal sales) as the denominator in our calculations, because RHI Jinding is an input supplier, and the input is primarily dedicated to the production of the subject merchandise. *See* 19 CFR 351.525(b)(6)(iv).

## Analysis of Programs

### I. Programs Preliminarily Determined To Be Countervailable

#### A. VAT Rebates on Purchases of Domestically Produced Equipment

As outlined in GUOSHUIFA (1999) No. 171, Notice of the State Administration of Taxation Concerning the Trial Administrative Measures on Purchase of Domestically Produced Equipment by Foreign Invested Enterprises (FIEs), the GOC refunds FIEs with the value added tax (VAT) on purchases of certain domestic equipment produced if the purchases are within the enterprise's investment amount and if the equipment falls under a tax-free category. Article 3 specifies that this program is limited to FIEs with completed tax registrations and with

foreign investment in excess of 25 percent of the total investment in the enterprise. Article 4 defines the type of equipment eligible for the VAT exemption, which includes equipment falling under the Encouraged and Restricted B categories listed in the Notice of the State Council Concerning the Adjustment of Taxation Policies for Imported Equipment (No. 37 (1997)) and equipment for projects listed in the Catalogue of Key Industries, Products and Technologies Encouraged for Development by the State. To receive the rebate, an FIE must meet the requirements above and, prior to the equipment purchase, bring its "Registration Handbook for Purchase of Domestically Produced Equipment by FIEs" as well as additional registration documents to the taxation administration for registration. After purchasing the equipment, FIEs must complete a Declaration Form for Tax Refund (or Exemption) of Exported Goods, and submit it with the registration documents to the tax administration. The Department has previously found this program to be countervailable. *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 54367, 54379 (September 19, 2008), results unchanged in the final determination.

The RHI Companies reported receiving VAT rebates on their purchases of domestically produced equipment under this program in several years. The Mayerton Companies reported that they did not use this program. We preliminarily determine that the rebate of the VAT paid on purchases of domestically produced equipment by FIEs confers a countervailable subsidy. The rebates are a financial contribution in the form of revenue foregone by the GOC and they provide a benefit to the recipients in the amount of the VAT rebate. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1). We further preliminarily determine that the VAT rebates are contingent upon the use of domestic over imported goods and, hence, specific under section 771(5A)(C) of the Act.

Normally, we treat exemptions from indirect taxes and import charges, such as VAT rebates, as recurring benefits, consistent with 19 CFR 351.524(c)(1), and allocate these benefits only in the year that they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the

capital structure or capital assets of a firm, the Department may treat it as a non-recurring benefit and allocate the benefit to the firm over the AUL. *See* 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

As discussed above, the RHI Companies reported receiving VAT rebates on its purchases of domestically produced capital equipment under this program in several years since the December 11, 2001 cut-off date for subsidies. Because these rebates are tied to capital equipment purchases, we find it appropriate to treat them as non-recurring benefits consistent with 19 CFR 351.524(c)(2)(iii).

After applying the 0.5 percent test pursuant to 19 CFR 351.524(b)(2), we found that the VAT rebates received over the years should be allocated over time. *See* Memorandum from Nicholas Czajkowski, International Trade Compliance Analyst, Re: Preliminary Determination Calculations for RHI Refractories Liaoning Co., Ltd., RHI Refractories (Dalian) Co., Ltd., and Liaoning RHI Jinding Magnesia Co., Ltd. (December 16, 2009) (RHI Companies Calculation Memorandum). To calculate the countervailable subsidy for the RHI Companies, we used our standard methodology for non-recurring benefits. *See* 19 CFR 351.524(b) and the "Allocation Period" section of this notice. Specifically, we used the discount rate described above in the "Benchmarks and Discount Rates" section to calculate the amount of the benefit attributable to the POI. We divided the benefits attributable to the POI by the appropriate denominator (*see* the "Denominator" section above) to calculate the countervailable subsidy of 0.51 percent *ad valorem* exists for the RHI Companies. *See* RHI Companies Calculation Memorandum.

#### B. Location-Based Income Tax Reduction Programs for FIEs

The GOC provides a complex system of tax benefits to FIEs operating in Special Economic Areas such as coastal economic zones, export processing zones, and economic and technological development zones. For example, although the standard corporate income tax rate during the POI was 30 percent, FIEs located in the designated economic zones pay income tax at a reduced rate of either 15 or 24 percent. FIEs are also eligible for further income tax reductions if they are located in "Old Urban Districts" or "Coastal Economic Zones" and are engaged in (1) technology or knowledge intensive projects; (2) long-term projects with foreign investment; or (3) energy resource development, transportation

and port construction projects. See the GOC Questionnaire Response at Exhibit D1 (FIE Tax Law at Article 7).

The GOC reports that RHIL is located in Yingkou Economic Development Zone, and the applicable tax rate for RHIL under this program was less than the standard PRC corporate income tax rate. See the GOC Questionnaire Response at page 5, and the RHI Questionnaire Response at Appendix 1. The Mayerton Companies did not use this program.

We preliminarily determine that the exemption or reduction in the income tax paid by FIEs in specially designated geographic areas under this program confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue foregone by the GOC and it provides a benefit to the recipients in the amount of the tax savings. See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also preliminarily determine that the exemption/reduction is limited to enterprises located in designated geographical regions and, hence, is specific under section 771(5A)(D)(iv) of the Act. The Department also found this program to be countervailable in the CFS investigation. See *Coated Free Sheet Paper From the People's Republic of China: Amended Preliminary Affirmative Countervailing Duty Determination*, 72 FR 17484, 17494 (April 9, 2007) (*CFS Amended Preliminary*), results unchanged in *CFS from the PRC*.

To calculate the benefit from this program to the RHI Companies, we treated the income tax exemption claimed by RHIL as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of tax savings, we multiplied RHIL's taxable income by the standard income tax rate for corporations (*i.e.*, 30 percent) and subtracted that actual amount of income tax paid by RHIL. In accordance with 19 CFR 351.525(b)(6)(i), we attributed the benefit received to the combined sales of RHIL and RHI Dalian. Additional information on this calculation is provided in the calculation analysis memorandum for the RHI Companies. See RHI Companies Calculation Memorandum. On this basis, we preliminarily determine a countervailable subsidy of 0.34 percent *ad valorem* for the RHI Companies for this program.

### C. Local Income Tax Exemption and Reduction Programs for "Productive" FIEs

Pursuant to Article 9 of the FIE Tax Law and Article 71 of Decree 85 of the

Council of 1991, local provinces can establish eligibility criteria and administer the application process for local income tax reductions or exemptions for FIEs, effectively extending the tax exemptions or reductions that are provided to FIEs by the national "Two Free, Three Half" program.<sup>4</sup> In its questionnaire response, the RHI Companies reported that RHIL participated in this program but none of the other cross-owned RHI Companies in the group did. The GOC confirmed that RHIL received benefits under this program during the POI. See the GOC Questionnaire Response at pages 41–42. The Mayerton Companies reported that they did not use this program. The GOC confirmed that the Mayerton Companies did not receive benefits under this program during the POI. See the GOC Questionnaire Response at pages 41–42.

We preliminarily determine that the exemption or reduction in the local income tax paid by "productive" FIEs under this program confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue foregone by the government and it provides a benefit to the recipients in the amount of the tax savings. See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also preliminarily determine that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, "productive" FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act. The Department has also found this program to be countervailable in the CFS investigation. See *CFS Amended Preliminary*, 72 FR at 17494, results unchanged in *CFS from the PRC*.

To calculate the benefit from this program to the RHI Companies, we treated the income tax exemption claimed by RHIL as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of tax savings, we compared the tax rate paid (1.5 percent) to the rate that would have been paid by RHIL otherwise (the standard local rate is 3 percent) and multiplied the difference by RHIL's taxable income. In accordance with 19 CFR 351.525(b)(6)(i), we attributed the benefit received to the combined sales of RHIL and RHI Dalian. Additional

<sup>4</sup> Under the "Two Free, Three Half" program, an FIE that is productive and scheduled to operate for not less than ten years may be exempted from income tax in the first two years of profitability and pay only half of their applicable income taxes for the next three years. The Department has previously found this program to be countervailable. See, *e.g.*, CFS Decision Memorandum, Line Pipe Decision Memorandum, Citric Acid Decision Memorandum, and LWTP Decision Memorandum.

information on this calculation is provided in the calculation analysis memorandum for the RHI Companies. See RHI Companies Calculation Memorandum. On this basis, we preliminarily determine a countervailable subsidy of 0.03 percent *ad valorem* for the RHI Companies.

### D. Income Tax Credits for FIEs Purchasing Domestically Produced Equipment

The Circular of the Ministry of Finance and the State Administration of Taxation of the People's Republic of China on Distribution of Interim Measures Concerning the Reduction and Exemption of Enterprise Income Tax for Investment in Domestic Equipment for Technological Renovation (CAISHUZI (1999) (209)) and Circular of the Ministry of Finance and the State Administration of Taxation on Enterprise Income Tax Credits for Purchases of Domestic Equipment by Foreign Invested Enterprises and Foreign Enterprises (CAISHUI (2000) No. 49) permit FIEs to obtain tax credits of up to 40 percent of the purchase value of domestically produced equipment. Specifically, the tax credit is available to FIEs and foreign-owned enterprises whose projects are classified in either the Encouraged or Restricted B categories of the Catalogue of Industrial Guidance for Foreign Investment. The credit can be taken for domestically produced equipment so long as the equipment is not listed in the Catalogue of Non-Duty-Exemptible Articles of Importation.

The Department has previously found this program to be countervailable. See, *e.g.*, *Citric Acid*, 73 FR at 54371 (September 19, 2008), results unchanged in the final determination. For this preliminary determination, we find that income tax credits for the purchase of domestically produced equipment are countervailable subsidies. The tax credits are a financial contribution in the form of revenue foregone by the government and provide a benefit to the recipients in the amount of the tax savings. See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We further determine that these tax credits are contingent upon use of domestic over imported goods and, hence, are specific under section 771(5A)(C) of the Act.

The RHI Companies reported receiving income tax credits on domestically purchased equipment under this program. To calculate the benefit for this program, we treated the income tax savings as a recurring benefit, consistent with 19 CFR 351.524(c)(1). Based on the information

in the RHI Questionnaire Response, it appears that the RHI Companies claimed through subsequent tax returns these income credits under this program prior to the POI and that none of the credits were carried forward into the tax returns filed in the POI. Accordingly, we determine that the RHI Companies did not receive benefits under this program during the POI.

#### E. Preferential Loans and Directed Credit to the Magnesia Carbon Brick Industry

The Department is examining whether Bricks producers receive preferential lending through state-owned commercial banks (SOCBs) or policy banks. Information on the record of this investigation demonstrates that the GOC has highlighted and supported the development of Bricks production and that GOC directives in this regard include financing support.

As in *Tires from the PRC*<sup>5</sup> and *OCTG from the PRC*,<sup>6</sup> the Department considered Decision of the State Council on Promulgating the “Interim Provisions on Promoting Industrial Structure Adjustment” for Implementation (No. 40 (2005) of the State Council) (Decision No. 40) and the Directory Catalogue on Readjustment of Industrial Structure (Version 2005) (Directory Catalogue). Consistent with *Tires from the PRC* and *OCTG from the PRC*, the Department finds that the GOC relied on Decision No. 40 and the Directory Catalogue in order to achieve the objectives of the Eleventh Five-Year Plan. On August 7, 2009, Petitioners placed excerpts from Decision No. 40 on the record of this investigation. For the preliminary determination, we are placing Decision No. 40 and the Directory Catalogue in their entirety on the record of this investigation. See Memorandum to File from Summer Avery, Office 6, Operations, Re: Policy Lending Documents of the Government of the People’s Republic of China (December 16, 2009).

Decision No. 40 makes clear that the State, at all levels, has the ability and means to implement measures to encourage specific projects. We note

<sup>5</sup> See *Certain New Pneumatic Off-the-Road Tires From the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 73 FR 40480 (July 15, 2008), and the accompanying Issues and Decision Memorandum at “Government Policy Lending” section.

<sup>6</sup> See *OCTG from the PRC* at 47217–47218, unchanged in final determination. See *Certain Oil Country Tubular Goods from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination*, 74 FR 64045 (December 7, 2009).

that Decision No. 40 is explicit in its mandate for the State at all levels:

The people’s governments of all provinces, autonomous regions, and municipalities directly under the Central Government shall take the promotion of industrial structure adjustment as an important reform and development task at present and within a period in the future lay emphasis on implementation and shall, in accordance with the “Interim Provisions” formulate specific measures, rationally guide the investment directions, encourage and support the development of advanced production capacities, restrict and eliminate outdated production capacities. All relevant administrative departments shall speed up the formulation and amendment of policies on public finance, taxation, credit, land, import, export, etc., effectively intensify the coordination and cooperation with industrial policies, and further improve and promote the policy system on industrial structure adjustment.

Decision No. 40 at para. 2. Moreover, Decision No. 40 calls for strengthening financing (among other benefits) to encouraged projects listed in the Directory Catalogue. Specifically, Article 17 of Decision No. 40 states:

The encouraged investment projects shall be examined, approved, ratified or archived in accordance with the relevant provisions of the state on investment administration. All financial institutions shall provide credit supports in compliance with credit principles. The equipment shall be imported within the total amount of investments for the importer’s own use. Except for the commodities listed in the “Catalogue of Non-tax Free Imported Commodities for Domestic Investment Projects (Amended in 2000)” promulgated by the Ministry of Finance, the abovementioned equipment shall still be exempted from customs duties and import value-added tax, and shall, after the new provisions such as the catalogue of investment projects exempted from no tax have been promulgated, be governed by such new provisions. As for other preferential policies on encouraged industry projects, the relevant provisions of the state shall apply.

Decision No. 40 at Article 17. These provisions detail an active role for the State in implementing industrial policies, whether through industrial policy coordination or through the guidance of financial resources towards those projects or products that the State encourages, including Bricks which are explicitly designated to be an “encourage industry” in section VII (21) of the Directory Catalogue, “Production of refractory materials featuring fine-composition and irregularity.” See Petitioners December 14, 2009 Comments.

As described above, Decision No. 40 makes it clear that the State, at all levels, has the ability and means to implement measures, including

directing financial resources such as credit, in order to develop specific projects or products in various industries. We note that several provincial and local five year plans covering areas where our respondents and their cross-owned companies are located refer to the goal of encouraging the production and development of magnesia products. In particular, the 11th Yingkou Economic and Social Development Five-Year Plan specifically “calls for the development of magnesia bricks of high quality.” See the GOC Questionnaire Response at Exhibit P–13.

Only the Mayerton Companies had outstanding loans from state-owned commercial banks (SOCBs) during the POI. Therefore, on the basis of the record information described above, we preliminarily determine that the GOC has a policy in place to encourage the development of production of Bricks through policy lending. Loans to Bricks producers from policy banks and SOCBs in the PRC constitute a direct financial contribution from the government, pursuant to section 771(5)(D)(i) of the Act, and they provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans (see section 771(5)(e)(2) of the Act). Finally, we determine that the loans are *de jure* specific because of the GOC’s policy, as illustrated in the government directive and plans, to encourage and support the growth and development of the Bricks industry.

To calculate the benefit under the policy lending program, we compared the amount of interest that the Mayerton companies paid on their outstanding loans from SOCBs to the amount they would have paid on comparable commercial loans. See “Subsidies Valuation—Benchmarks Rates” section above. Most of the details about these loans are business proprietary; for a more complete discussion see Mayerton Companies Calculation Memorandum. We summed the benefit attributable to the POI and divided this amount by the Mayerton Companies’ total sales. See the “Subsidies Valuation—Denominator” section above. On this basis, we calculated a total net subsidy rate of 0.07 percent *ad valorem* for the Mayerton Companies.

#### III. Programs Preliminarily Determined To Be Not Used

We preliminarily determine that the RHI Companies and the Mayerton Companies did not apply for or receive benefits during the POI under the programs listed below. Because of the

complicated cross-ownership issues in this investigation, we are continuing to gather information concerning the reported non-use of these programs by all companies that may be cross-owned within each company group.

A. *Provision of Land-Use Rights to State-Owned Enterprises (SOEs) for Less Than Adequate Remuneration*

B. *Two Free/Three Half Program for Foreign-Invested Enterprises (FIEs)*

C. *Income Tax Reductions for Export-Oriented FIEs*

D. *Preferential Income Tax Policy for Enterprises in the Northeast Region*

E. *Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China*

F. *Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment*

G. *Preferential Tax Programs for Enterprises Recognized as High or New Technology Enterprises*

H. *Northeast Revitalization Program and Related Provincial Policies*

I. *The State Key Technology Renovation Project Fund*

J. *Famous Brands Programs*

K. *Grants to Companies for "Outward Expansion" and Export Performance in Guangdong Province*

L. *Fund for Supporting Technological Innovation for Technological Small- and Medium-Sized Enterprises (SMEs)*

M. *Development Fund for SMEs*

N. *Fund for International Market Exploration by SMEs*

O. *Zhejiang Province Program to Rebate Antidumping Costs*

IV. *Programs for Which We Need Additional Information*

A. *Provision of Electricity for Less Than Adequate Remuneration*

The Department initiated on the GOC's provision of electricity at less than adequate remuneration (LTAR). Under this program, the GOC provides electricity to SOEs and special industrial sectors, and/or certain provincial, municipal and local governments provide electricity at preferential rates to entice investors to locate to certain zones. Petitioner alleged that the National Development and Reform Commission (NDRC) establishes rates that do not reflect true market prices, and that the GOC caps prices charged to end-users and provides direct energy subsidies to special industrial sectors.

The GOC, RHI Companies, and Mayerton Companies reported in their

respective questionnaire responses that no benefits were provided under this program. According to the GOC, there are no price preferences for the Bricks industry and each respondent paid rates under the "Large Scale Industry" classification. See the GOC

Questionnaire Response at page 9. The Department has requested that the GOC provide the additional information needed to complete our analysis of whether this program provides a countervailable subsidy to the RHI Companies or the Mayerton Companies.

B. *Export Restraints of Raw Materials*

Under this program, Petitioner alleged that the GOC has established export quotas and a minimum acceptable export sales price (*i.e.*, export restraints)<sup>7</sup> for a number of raw materials, including three types of magnesia used in the production of Bricks. Essentially, Petitioner has alleged that export restraints on raw materials such as magnesia artificially increase the domestic supply of the raw materials, thereby decreasing the price of raw materials available to PRC manufacturers. All PRC exporters of magnesia are subject to these export restraints, including the affiliated and unaffiliated magnesia suppliers of the RHI Companies and the Mayerton Companies. Under this system, the GOC appears to rank "bids" received from exporters by price and quantity and then awards exporting rights to the companies that can command the highest export prices.

In its response, the GOC has stated that there is no basis under WTO rules to treat export restraints as a countervailable program as such restraints cannot constitute a government-entrusted or government-directed provision of goods and therefore do not constitute financial contributions under Article 1.1.(a) of the Subsidy and Countervailable Measures Agreement. Moreover, the GOC reported that the purpose of setting export quotas for magnesia is to help regulate an exhaustible natural resource and protect the environment, as processing magnesia is an energy-intensive, high-polluting activity. Although the GOC maintains multiple factors affect magnesia production, the GOC also

concedes that elimination of the export quota on magnesia "could have a variety of short term effects related to production and consumption patterns in domestic and overseas markets." See the GOC Questionnaire Response at page 26.

The Department has issued a supplemental questionnaire requesting that the GOC fully describe and document the process whereby it determined that magnesia should be subject to an export quota as well as what factors it considers in setting that export quota and minimum acceptable export price. In addition, our supplemental questions to the responding companies request that each provide complete volume and value information regarding the domestic purchases of magnesia during the POI as well as other information relevant to our analysis.

#### Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by the respondents prior to making our final determination.

#### Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have determined individual rates for The Mayerton Companies and The RHI Companies. Section 705(c)(5)(A)(i) provides that the all others rate will generally be an amount equal to the weighted average countervailable subsidy rates established for exporters or producers individually investigated, excluding any zero or *de minimis* countervailable subsidy rates and any rates determined entirely on the basis of the facts available. In this case, however, the countervailable subsidy rates for all of the individually investigated exporters or producers are *de minimis*. Section 705(c)(5)(A)(ii) provides that, when this is the case, the administering authority may use any reasonable method to establish the all others rate, including averaging the weighted average countervailable subsidy rates determined for the exporters and producers individually examined. Thus, to calculate the all-others rate, we weight-averaged the individual rates of the Mayerton Companies and the RHI Companies based on each company's respective sales during the POI. These rates are summarized in the table below:

<sup>7</sup>The U.S. Trade Representative requested a WTO panel against the GOC over export restraints on raw materials (including magnesia) on June 23, 2009. See *WTO Dispute Settlement Proceeding Regarding China - Measures Related to the Exportation of Various Raw Materials*, 74 FR 32218 (July 7, 2009).

Producer/exporter	Subsidy rate
The Mayerton Companies (Dalian Mayerton Refractories Co., Ltd. and Liaoning Mayerton Refractories Co., Ltd.).	<i>de minimis</i> percent <i>ad valorem</i> .
The RHI Companies (RHI Refractories Liaoning Co., Ltd., RHI Refractories (Dalian) Co., Ltd., and Liaoning RHI Jinding Magnesia Co., Ltd.).	<i>de minimis</i> percent <i>ad valorem</i> .
All Others .....	<i>de minimis</i> percent <i>ad valorem</i> .

Because all of the rates are *de minimis*, we preliminarily determine that no countervailable subsidies are being provided to the production or exportation of certain magnesia carbon bricks in the PRC. As such, we will not direct U.S. Customs and Border Protection to suspend liquidation of entries of certain magnesia carbon bricks from the PRC.

### ITC Notification

In accordance with section 703(f) 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 relating 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 administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

### Disclosure and Public Comment

In accordance with 19 CFR 351.224(b), the Department will disclose to the parties the calculations for this preliminary determination within five days of its announcement. Case briefs for this investigation must be submitted no later than one week after the issuance of the last verification report. See 19 CFR 351.309(c) (for a further discussion of case briefs). Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the deadline for submission of case briefs. See 19 CFR 351.309(d). A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

In accordance with 19 CFR 351.310(c), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on

this preliminary determination. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties will be notified of the schedule for the hearing and parties should confirm the time, date, and place of the hearing 48 hours before the scheduled time. Requests for a public hearing should contain: (1) Party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

This determination is issued and published pursuant to sections 703(f) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: December 16, 2009.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-863]

#### Seventh Administrative Review of Honey from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind, In Part

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

**SUMMARY:** The Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on honey from the People's Republic of China ("PRC"), covering the period of review ("POR") of December 1, 2007, through November 30, 2008. As discussed below, we have preliminarily determined to rescind this administrative review because we have found the sales made by Dongtai Peak Honey Industry Co., Ltd. ("Dongtai Peak") that entered during the POR were not *bona fide*. In addition, we have

preliminarily determined to apply adverse facts available ("AFA") with respect to the PRC-wide entity which includes Anhui Native Produce Import and Export Corp. ("Anhui Native"), as it failed to cooperate to the best of its ability and impeded the proceeding. We are also preliminarily finding that Qinquangdao Municipal Dafeng Industrial Co., Ltd. ("QMD"), Inner Mongolia Youth Trade Development Co., Ltd. ("Inner Mongolia"), and Wuhu Qinshgi Tangye ("Wuhu Qinshgi") did not demonstrate their eligibility for a separate rate and thus are considered to be part of the PRC-wide entity. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on appropriate entries of subject merchandise during the POR for which importer-specific assessment rates are above *de minimis*. Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** December 23, 2009.

**FOR FURTHER INFORMATION CONTACT:** Blaine Wiltse, 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) 482-6345.

### SUPPLEMENTARY INFORMATION:

#### Background

On December 19, 2008, we received a request from Dongtai Peak, and on December 31, 2008, we received a request from Petitioners<sup>1</sup> to conduct administrative reviews for a total of 38 companies.<sup>2</sup> On February 2, 2009, the

<sup>1</sup> The petitioners are the members of the American Honey Producers Association and the Sioux Honey Association (hereinafter referred to as "Petitioners").

<sup>2</sup> Alfred L. Wolff (Beijing) Co., Ltd., Anhui Honghui Foodstuff (Group) Co., Ltd., Anhui Native Produce Imp & Exp Corp., Cheng Du Wai Yuan Bee Products Co., Ltd., Chengdu Stone Dynasty Art Stone, Dongtai Peak Honey Industry Co., Ltd., Eurasia Bee's Products Co., Ltd., Fresh Honey Co., Ltd. (formerly Mgl. Yun Shen), Golden Tadco Int'l., Hangzhou Golden Harvest Health Industry Co., Ltd., Haoliluck Co., Ltd., Hubei Yusun Co., Ltd., Inner Mongolia Altin Bee-Keeping, Inner Mongolia Youth Trade Development Co., Ltd., Jiangsu Kanghong Natural Healthfoods Co., Ltd., Jiangsu Light Industry Products Imp & Exp (Group) Corp., Jilin

Continued