

Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Ave., NW, Washington, DC 20230, telephone: (202) 482-3338.

#### SUPPLEMENTARY INFORMATION:

##### Background

On February 2, 2009, the U.S. Department of Commerce (“the Department”) published a notice of initiation of the administrative review of the countervailing duty order on hot-rolled carbon steel products from India covering the period January 1, 2008, through December 31, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 5821 (February 2, 2009). The preliminary results are currently due no later than September 2, 2009.

##### Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (“the Act”), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested. Section 751(a)(3)(A) of the Act further states that if it is not practicable to complete the review within the time period specified, the administering authority may extend the 245-day period to issue its preliminary results to up to 365 days.

Due to the complexity of the issues in this administrative review, such as the number of programs under review during the POR, we have determined that it is not practicable to complete the preliminary results within the 245-day period. Therefore, in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the preliminary results of the review by 120 days. The preliminary results are now due no later than December 31, 2009. The final results continue to be due 120 days after publication of the preliminary results.

This notice is issued and published in accordance with section 751(a)(3)(A) of the Act.

Dated: August 19, 2009.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. E9-20501 Filed 8-24-09; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-570-955]

#### **Certain Magnesia Carbon Bricks from the People's Republic of China: Initiation of Countervailing Duty Investigation**

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

**DATES:** *Effective Date:* August 25, 2009.

**FOR FURTHER INFORMATION CONTACT:** Justin Neuman, Toni Page, or Nicholas Czajkowski; AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, D.C. 20230; telephone: (202) 482-0486, (202) 482-1398, or (202) 482-1395 respectively.

#### SUPPLEMENTARY INFORMATION:

##### The Petitions

On July 29, 2009, the Department of Commerce (the Department) received countervailing duty (CVD) and antidumping (AD) petitions concerning imports of certain magnesia carbon bricks (magnesia carbon bricks) from the People's Republic of China (PRC) filed in proper form by Resco Products, Inc. (Petitioner), domestic producers of magnesia carbon bricks. *See* “Petition for the Imposition of Countervailing Duties: Certain Magnesia Carbon Bricks from the People's Republic of China” (CVD PRC Petition). On August 3, 2009, the Department spoke via telephone with petitioner to request additional information and clarification of certain areas of the CVD petition involving countervailable subsidy allegations. *See* Memorandum from Mark Hoadley, Program Manager, AD/CVD Operations, Office 6, to the File, “CVD Petition for Investigation of Magnesia Carbon Bricks from the People's Republic of China (PRC): Phone Call with Counsel for Petitioner” dated August 4, 2009. Based on the Department's requests, the Petitioner timely filed additional information on August 7, 2009. On August 4 and 12, 2009, the Department issued additional requests for information and clarification of certain areas of the CVD PRC Petition. Based on the Department's requests, Petitioner timely filed additional information pertaining to the CVD PRC Petition on August 10 and 14, 2009, (hereinafter, Supplement to the CVD PRC Petition dated August 10, 2009 and Second Supplement to the CVD PRC Petition, dated August 14, 2009).

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), Petitioner alleges that producers/exporters of magnesia carbon bricks in the PRC received countervailable subsidies within the meaning of section 701 and 771(5) of the Act, and that imports from these exporters/producers materially injure, or threaten material injury to, an industry in the United States.

The Department finds that Petitioner filed this CVD PRC Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act, and Petitioner has demonstrated sufficient industry support with respect to the countervailing duty investigation that it is requesting the Department to initiate (see “Determination of Industry Support for the CVD Petition” below).

##### Period of Investigation

The anticipated period of investigation (POI) is calendar year 2008. *See* 19 CFR 351.204(b)(2).

##### Scope of Investigation

The products covered by this investigation are magnesia carbon bricks from the PRC. For a full description of the scope of the investigation, please see the “Scope of Investigation” in Appendix I to this notice.

##### Comments on Scope of Investigation

During our review of the CVD PRC Petition, we discussed the scope with Petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments by September 8, 2009.<sup>1</sup> Comments should be addressed to Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determinations.

<sup>1</sup> September 8, 2009 is the first business day after twenty calendar days from the signature date of this notice.

## Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department held consultations with the government of the PRC (hereinafter, the GOC) with respect to the CVD PRC Petition on August 7, 2009. See Memorandum to the File, *Countervailing Duty Petitions on Certain Magnesia Carbon Bricks from the People's Republic of China: Consultations with the Government of the People's Republic of China*, on file in the Central Records Unit (CRU), Room 1117 of the main Department of Commerce building.

## Determination of Industry Support for the CVD Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The United States International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (see section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this

may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (Ct. Int'l Trade 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 644 (Ct. Int'l Trade 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioner does not offer a definition of domestic like product distinct from the scope of the investigations. Based on our analysis of the information submitted on the record, we have determined that magnesia carbon bricks constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, see Countervailing Duty Investigation Initiation Checklist: Magnesia Carbon Bricks from the PRC (CVD Initiation Checklist) at Attachment II, Analysis of Industry Support for the Petitions Covering Certain Magnesia Carbon Bricks from the People's Republic of China and Mexico, dated concurrently with this notice and on file in the CRU, Room 1117 of the main Department of Commerce building.

In determining whether Petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the CVD PRC Petition with reference to the domestic like product as defined in the "Scope of Investigations," Appendix I of this notice. To establish industry support, Petitioner provided its own 2008 production of the domestic like product, as well as the production of the two supporters of the CVD PRC Petition, and compared this to the estimated total production of the domestic like product for the entire domestic industry. See the CVD PRC Petition, at Exhibits 2–4, Supplement to the CVD PRC Petition, dated August 10, 2009, at 8–12, and Exhibits R2–R–6, and Second Supplement to the CVD PRC Petition, dated August 14, 2009, at 1–2. Petitioner estimated total 2008 production of the domestic like product based on its own production data, data from the two

supporters of the CVD PRC Petition, and knowledge of the U.S. industry. See the CVD PRC Petition, at Exhibits 2–4, Supplement to the CVD PRC Petition, dated August 10, 2009, at 8–12, and Exhibits R2–R–6, and Second Supplement to the CVD PRC Petition, dated August 14, 2009, at 1–2; see also CVD Initiation Checklist at Attachment II.

Our review of the data provided in the CVD PRC Petition, the supplemental submissions, and other information readily available to the Department indicates that Petitioner has established industry support. First, the CVD PRC Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (e.g., polling). See section 702(c)(4)(D) of the Act, see also CVD Initiation Checklist at Attachment II. Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the CVD PRC Petition account for at least 25 percent of the total production of the domestic like product. See CVD Initiation Checklist at Attachment II. Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the CVD PRC Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the CVD PRC Petition. Accordingly, the Department determines that the CVD PRC Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. See *id.*

The Department finds that Petitioner filed the CVD PRC Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the countervailing investigation that it is requesting the Department to initiate. See *id.*

## Injury Test

Because the PRC is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from the PRC

materially injure, or threaten material injury to, a U.S. industry.

### **Allegations and Evidence of Material Injury and Causation**

Petitioner alleges that imports of magnesia carbon bricks from the PRC are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the domestic industry producing magnesia carbon bricks. In addition, Petitioner alleges that subsidized imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

Petitioner contends that the industry's injured condition is illustrated by reduced market share, underselling and price depressing and suppressing effects, increased import penetration, lost sales and revenue, reduced production, reduced capacity utilization, reduced shipments, reduced employment, and overall poor financial performance. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* CVD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Petitions Covering Certain Magnesia Carbon Bricks from the People's Republic of China and Mexico.

### **Initiation of Countervailing Duty Investigation**

Section 702(b)(1) of the Act requires the Department to initiate a CVD proceeding whenever an interested party files a CVD petition on behalf of an industry that: (1) alleges the elements necessary for an imposition of a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to the petitioners supporting the allegations.

The Department has examined the CVD PRC Petition on magnesia carbon bricks from the PRC and finds that it complies with the requirements of section 702(b)(1) of the Act. Therefore, in accordance with section 702(b)(1) of the Act, we are initiating a CVD investigation to determine whether producers/exporters of magnesia carbon bricks in the PRC receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, *see* CVD Initiation Checklist.

We are including in our investigation the following programs alleged in the CVD PRC Petition to provide

countervailable subsidies to producers/exporters of the subject merchandise:

- A. Provision of Inputs for Less Than Adequate Remuneration (LTAR)
  - 1. Provision of Land–Use Rights to State–Owned Enterprises (SOEs) for LTAR
  - 2. Provision of Electricity at LTAR
- B. Export Restraints of Raw Materials
- C. Tax Benefit Programs
  - 1. Two Free/Three Half Program for Foreign–Invested Enterprises (FIEs)
  - 2. Income Tax Reductions for Export–Oriented FIEs
  - 3. Preferential Income Tax Policy for Enterprises in the Northeast Region
  - 4. Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China
  - 5. Location–Based Income Tax Reduction Programs for FIEs
  - 6. Local Income Tax Exemption and Reduction Programs for “Productive” FIEs
  - 7. Domestic Preference Tax Benefits
    - a. Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment
    - b. Income Tax Credits for FIEs Purchasing Domestically Produced Equipment
    - c. VAT Rebates on Purchases of Domestically Produced Equipment
  - 8. Preferential Tax Programs for Enterprises Recognized as High or New Technology Enterprises
- D. Northeast Revitalization Program and Related Provincial Policies
  - a. E. Direct Grants
    - 1. The State Key Technology Renovation Project Fund
    - 2. Famous Brands Programs
- F. Grants to Companies for “Outward Expansion” and Export Performance in Guangdong Province
- G. Preferential Loans and Directed Credit to the Magnesia Carbon Brick Industry
- H. Cash Grant Programs
  - 1. Fund for Supporting Technological Innovation for Technological Small– and Medium–Sized Enterprises (SMEs)
  - 2. Development Fund for SMEs
  - 3. Fund for International Market Exploration by SMEs
- I. Zhejiang Province Program to Rebate Antidumping Costs
 

For further information explaining why the Department is investigating these programs, *see* CVD Initiation Checklist.

We are not including in our investigation the following programs alleged to benefit producers/exporters of the subject merchandise in the PRC:

  - A. Provision of Water for Less Than Adequate Remuneration

B. Provision of Natural Gas for Less Than Adequate Remuneration

C. VAT and Tariff Exemptions for Purposes of Fixed Assets Under the Foreign Trade Development Fund Program

D. Shenzhen City Program to Rebate Antidumping Costs

For further information explaining why the Department is not initiating an investigation of these programs, *see* CVD Initiation Checklist.

### **Respondent Selection**

For this investigation, the Department intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POI (*i.e.*, calendar year 2008). We intend to release the CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO within five days of the announcement of the initiation of this investigation. Interested parties may submit comments regarding the CBP data and respondent selection within seven calendar days of publication of this notice. We intend to make our decision regarding respondent selection within 20 days of publication of this notice.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Department's website at <http://ia.ita.doc.gov/apo>.

### **Distribution of Copies of the CVD Petition**

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), a copy of the public version of the CVD PRC Petition has been provided to the representatives of the GOC. Because of the particularly large number of producers/exporters identified in the CVD PRC Petition, the Department considers the service of the public version of the petition to the foreign producers/exporters satisfied by the delivery of the public version to the GOC, consistent with 19 CFR 351.203(c)(2).

### **ITC Notification**

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

### **Preliminary Determination by the ITC**

The ITC will preliminarily determine, within 45 days after the date on which the petition was filed, whether there is a reasonable indication that imports of subsidized magnesia carbon bricks from the PRC materially injure, or threaten material injury to, a U.S. industry. *See*

section 703(a)(2) of the Act. A negative ITC determination will result in the investigation being terminated; see section 703(a)(1) of the Act. Otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: August 18, 2009.

**Carole Showers,**

*Acting Deputy Assistant Secretary for Policy and Negotiations.*

## Appendix I

### Scope of the Investigation

Imports covered by this petition consist of certain chemically bonded (resin or pitch), magnesia carbon bricks with a magnesia component of at least 70 percent magnesia ("MgO") by weight, regardless of the source of raw materials for the MgO, with carbon levels ranging from trace amounts to 30 percent by weight, regardless of enhancements, (for example, magnesia carbon bricks can be enhanced with coating, grinding, tar impregnation or coking, high temperature heat treatments, anti-slip treatments or metal casing) and regardless of whether or not anti-oxidants are present (for example, antioxidants can be added to the mix from trace amounts to 15 percent by weight as various metals, metal alloys, and metal carbides). Certain magnesia carbon bricks that are the subject of this investigation are currently classifiable under subheadings 6902.10.10.00, 6902.10.50.00, 6815.91.00.00, and 6815.99 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XR07

#### Endangered Species; File No. 14396

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

**ACTION:** Notice; receipt of application.

**SUMMARY:** Notice is hereby given that the Delaware Department of Natural Resources and Environmental Control-Division of Fish and Wildlife, Dover, Delaware, has applied in due form for a permit to take shortnose sturgeon

(*Acipenser brevirostrum*) for purposes of scientific research.

**DATES:** Written, telefaxed, or e-mail comments must be received on or before September 24, 2009.

**ADDRESSES:** The application and related documents are available for review by selecting "Records Open for Public Comment" from the Features box on the Applications and Permits for Protected Species (APPS) home page, <https://apps.nmfs.noaa.gov/index.cfm>, and then selecting File No. 14396 from the list of available applications. These documents are also available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713-2289; fax (301)713-0376; and Northeast Region, NMFS, Protected Resources Division, 55 Great Republic Drive, Gloucester, MA 01930; phone (978)281-9300; fax (978)281-9333.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713-0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is [NMFS.Pr1Comments@noaa.gov](mailto:NMFS.Pr1Comments@noaa.gov). Include in the subject line of the e-mail comment the following document identifier: File No. 14396.

**FOR FURTHER INFORMATION CONTACT:** Malcolm Mohead or Kate Swails, (301)713-2289.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222-226).

The applicant is seeking a five-year scientific research permit to conduct a study of shortnose sturgeon in the Delaware River. The primary study objective would be to locate and document nursery areas, individual movement patterns, seasonal

movements, home ranges, and habitats of juvenile shortnose sturgeon through the use of telemetry. This focus would be in association with an ongoing Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) study with similar objectives. Up to 200 shortnose sturgeon would be weighed, measured, examined for tags, marked with Passive Integrated Transponder (PIT) tags and Floy tags, and released. Up to 15 early stage juvenile shortnose sturgeon would also be anesthetized and implanted with acoustic transmitters if they are of suitable size. A total of one unintentional mortality is requested over the five year term of the project which is scheduled to take place from March 1 to December 15.

Dated: August 19, 2009.

**P. Michael Payne,**

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

[FR Doc. E9-20491 Filed 8-24-09; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XQ20

#### Incidental Takes of Marine Mammals During Specified Activities; Marine Geophysical Survey in the Northeast Pacific Ocean, August-October, 2009

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

**ACTION:** Notice; issuance of incidental take authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to Lamont-Doherty Earth Observatory (L-DEO), a part of Columbia University, to take small numbers of marine mammals, by Level B harassment only, incidental to conducting a marine seismic survey in the northeast Pacific Ocean.

**DATES:** Effective August 19, 2009 through October 13, 2009.

**ADDRESSES:** A copy of the IHA and the application are available by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225 or by telephoning the