UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

C-570-955
Administrative Review
POR: 01/01/2012-12/31/2012
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Office VII: GHC

October 7, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for Certain Magnesia Carbon Bricks from the People's Republic of China: Final Results of the 2012 Administrative Review

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I. SUMMARY

The Department of Commerce (the Department) determines that countervailable subsidies have been provided to producers and exporters of certain magnesia carbon bricks (MCBs) in the People's Republic of China (PRC) during the period of review (POR) January 1, 2012, through December 31, 2012. The Department describes the methodology used to determine the subsidy rates in this POR, including the application of adverse facts available (AFA), in the "Discussion of the Methodology" section of this memorandum. We recommend that you approve the positions described in that section.

The Department also analyzed the comments received regarding the *Preliminary Results*.[1] After reviewing the comments received, we made no changes to our subsidy calculations for these final results. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this review for which we received comments from parties subsequent to the *Preliminary Results*:

Comment 1: Whether the Department Should Apply Adverse Facts Available (AFA) to the Non-Mandatory Respondents

Comment 2: Whether the Department Also Should Apply the AFA Rate to the Non-Mandatory Respondents Because the Government of China (the GOC) Failed to Respond in this Administrative Review

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[1] *See Certain Magnesia Carbon Bricks From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2012*, 79 FR 32915 (June 9, 2014) (*Preliminary Results*).

II. BACKGROUND

On June 9, 2014, the Department published the *Preliminary Results*, preliminarily determining that the sole mandatory respondent, Fengchi Imp. and Exp. Co., Ltd. of Haicheng City and Fengchi Refractories Co., of Haicheng City (collectively, Fengchi) and the GOC failed to cooperate to the best of their ability in this proceeding by withholding requested information, failing to provide requested information by the established deadlines, and significantly impeding the review.[2] As a result, we applied AFA to Fengchi and the GOC in the *Preliminary Results* in determining that Fengchi received countervailable subsidies during the POR.

The Department also preliminarily determined that RHI AG and its affiliates – Liaoning RHI Jinding Magnesia Co.; RHI Refractories (Dalian) Co. Ltd.; RHI Refractories Liaoning Co., Ltd.; RHI Trading Shanghai Branch; and RHI Trading (Dalian) Co., Ltd. (collectively, the RHI companies) – timely certified that they had no shipments of subject merchandise to the United States during the POR.[3] As a result, the Department stated its preliminary intent to rescind the review with respect to the RHI companies.[4]

We invited interested parties to comment on the *Preliminary Results*.[5] On July 9, 2014, we received a timely filed joint case brief from Resco Products, Inc. (Petitioner) and a domestic producer of MCBs, Magnesita Refractories Company (Magnesita).[6] No other party filed an administrative case or rebuttal brief.

III. SCOPE OF THE ORDER

The scope of the order includes 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 these orders are currently classifiable 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 (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive.

[2] *Id.*, 79 FR at 32915, and accompanying Preliminary Decision Memorandum (PDM) at 3-4.
[3] *Id.*, 79 FR at 32915.
[4] *Id.*
[5] *Id.*, 79 FR at 32916.
[6] *See* the July 9, 2014, submission from Petitioner and Magnesita, "Petitioner's Case Brief" (Case Brief).

IV. DISCUSSION OF THE METHODOLOGY

Use of Facts Available and AFA

Sections 776(a)(1) and (2) of the Tariff Act of 1930, as amended (the Act) provide that the Department shall apply "facts otherwise available" if necessary information is not on the record or an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Furthermore, section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. In selecting an adverse inference, the Department may rely upon (1) secondary information, such as information derived from the petition, the final determination in the investigation, any previous administrative review, or (2) any other information placed on the record.[7]

Application of Total AFA to Fengchi and to the GOC

The Department selected Fengchi as a mandatory respondent in this review.[8] Having selected Fengchi as a mandatory respondent in this review, we provided the GOC with our countervailing duty (CVD) questionnaire, requesting that the GOC forward it to Fengchi.[9] On April 3, 2014, Fengchi notified the Department that it would not respond to our questionnaire or otherwise participate in this review.[10] We did not receive a response from the GOC. As a result, in the *Preliminary Results* we determined that Fengchi and the GOC failed to cooperate to the best of their ability in this proceeding, and we applied AFA in determining that Fengchi received countervailable subsidies during the POR.[11]

We continue to find that Fengchi and the GOC withheld information requested by the Department in accordance with section 776(a)(2)(A) of the Act, and also failed to provide requested information by the established deadlines in accordance with section 776(a)(2)(B) of the Act. Furthermore, by refusing to participate in this review, the Department continues to find, in accordance with section 776(a)(2)(C) of the Act, that Fengchi and the GOC significantly impeded this proceeding.

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[7] *See* section 776(b) of the Act.

[8] *See* the Department's March 20, 2014, Memorandum from Jun Jack Zhao, "Administrative Review of the Countervailing Duty Order on Certain Magnesia Carbon Bricks from the People's Republic of China: Respondent Selection" (Respondent Selection Memorandum).

[9] *See* the Department's March 20, 2014, Letter to the GOC, "Countervailing Duty Administrative Review of Certain Magnesia Carbon Bricks from the People's Republic of China: Countervailing Duty Questionnaire."

[10] *See* the April 3, 2014, Letter from Fengchi, "Magnesia Carbon Bricks from China Case No. C-570-955: Letter Regarding Questionnaire."

[11] *See Preliminary Results*, 79 FR at 32915, and accompanying PDM at 3-4.

Therefore, Fengchi's and the GOC's refusal to provide any information constitutes circumstances under which we conclude that Fengchi and the GOC failed to act to the best of their ability. As a result, pursuant to section 776(b) of the Act, the Department determined that when selecting from among the facts otherwise available, an adverse inference is warranted with respect to Fengchi and the GOC for the programs on which we initiated in this review, descriptions of which are contained in the Attachment to this memorandum.[12]

Selection of AFA Rate

In deciding the facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1)-(2) authorize us to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or, (4) any other information placed on the record. Our practice, when selecting an adverse rate from among the possible sources of information, is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."[13] The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[14]

Because the GOC failed to provide the requested information by the established deadlines, the Department does not have the necessary information on the record to determine whether the subsidies received by Fengchi constitute financial contributions and are specific within sections 771(5)(D) and 771(5A) of the Act, respectively. Therefore, the Department must base its determination on the facts otherwise available in accordance with section 776(a)(2)(B) of the Act. Consistent with its past practice, because the GOC failed to provide information concerning the alleged subsidy programs under review, the Department, as AFA, determined that these programs confer a financial contribution and benefit, and are specific pursuant to sections 771(5)(D) and 771(5A) of the Act, respectively.[15] Descriptions of the subsidy programs to which we applied our AFA methodology are included in the Attachment to this memorandum.[16]

[12] *See* the Attachment to this Memorandum, "Description of Programs Under Review and AFA Subsidy Rates."
[13] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998).
[14] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, Vol. I, at 870 (1994) (SAA), reprinted at 1994 U.S.C.C.A.N. 4040, 4199.
[15] *See e.g., Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 71 FR 11397, 11399 (March 7, 2006), unchanged in *Notice of Final Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 71 FR 38861 (July 10, 2006) (wherein the Department relied on AFA in determining that the Government of Korea directed credit to the steel industry in a manner that constituted a financial contribution and was specific to the steel industry within the meaning of sections 771(5)(D) and 771(5A)(D)(iii) of the Act, respectively).
[16] *See* the Attachment to this Memorandum, "Description of Programs Under Review and AFA Subsidy Rates."

In applying AFA to Fengchi, our recent approaches in other CVD investigations and reviews guide us.[17] Under this practice, we compute the total AFA rate for non-cooperating companies generally using program-specific rates calculated for the cooperating respondents in the instant review or in prior segments of the instant case, or calculated in prior CVD cases involving the country under review (in this case, the PRC).[18]

In these final results, we continue to find, on the basis of AFA, the countervailable subsidy rate for Fengchi is 66.27 percent *ad valorem*.[19] For the income tax rate reduction or exemption programs, we are applying an adverse inference that the non-cooperating company paid no income taxes during 2012. For programs other than those involving income tax rate reduction or exemption programs, we first apply, where available, the highest above *de minimis* subsidy rate calculated for an identical program from any segment of this proceeding. Absent such a rate, we apply, where available, the highest above *de minimis* subsidy rate calculated for a similar program from any segment of this proceeding. Absent an above *de minimis* subsidy rate calculated for the same or similar program in any segment of this proceeding, under our AFA approach, we apply the highest above *de minimis* calculated subsidy rate for the identical program from any CVD proceeding involving the country in which the subject merchandise is produced, so long as the producer of the subject merchandise or the industry to which it belongs could have used the program for which the rates were calculated.[20] Absent such a rate, we apply, where available, the highest above *de minimis* subsidy rate calculated for a similar program from any CVD proceeding involving the country in which the subject merchandise is produced, so long as the producer of the subject merchandise or the industry to which it belongs could have used the program for which the rates were calculated. Absent an above *de minimis* rate for the same or similar program from any CVD proceeding involving the same country, we apply the highest calculated rate from any program in any CVD proceeding for that country.

Corroboration of Secondary Information

Section 776(c) of the Act provides that, when we rely upon secondary information, rather than on information obtained in the course of an investigation or review, we shall, to the extent practicable, corroborate that information from independent sources that are reasonably at our disposal. Secondary information is "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."[21] We consider

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[17] *See Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Results of the Countervailing Duty Administrative Review*, 77 FR 21744 (April 11, 2012), and accompanying Issues and Decision Memorandum at "Non-Cooperative Companies" section; *see also Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 76 FR 18521 (April14, 2011) (*Aluminum Extrusions from the PRC*), and accompanying Issues and Decision Memorandum at "Application of Adverse Inferences: Non-Cooperative Companies" section; *Galvanized Steel Wire From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 17418 (March 26, 2012), and accompanying Issues and Decision Memorandum at "Non-Cooperative Companies" section.
[18] *Id.*
[19] *See* the Final AFA Calculations Memorandum.
[20] *See Aluminum Extrusions from the PRC*, and accompanying Issues and Decision Memorandum at "Application of Adverse Inferences: Non-Cooperative Companies" section.
[21] *See* SAA at 870.

information corroborated if it has probative value.[22] We corroborate secondary information, to the extent practicable, by examining the reliability and relevance of the information. The SAA emphasizes, however, that we need not prove the selected facts available are the best alternative information.[23]

Concerning the reliability aspect of corroboration, the rates relied upon were calculated in recent CVD final investigations or final results of reviews. Further, those calculated rates were based upon information about the same or similar programs. Moreover, no information was presented to call into question the reliability of these calculated rates that we are applying as AFA. Finally, unlike other types of information (*e.g.*, publicly available data on the national inflation rate of a given country or national average interest rates), there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs.

Regarding the relevance aspect of corroborating the rates selected, we consider information reasonably at our disposal to determine the relevance of information used to calculate a countervailable subsidy benefit. Where circumstances indicate the information is not appropriate as AFA, we will not use it.[24]

In the absence of record evidence concerning these programs resulting from Fengchi's decision not to participate in the review, we reviewed the information concerning PRC subsidy programs in other cases. For those programs for which the Department found a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs under review in this case. For those programs without a program-type match, we use as AFA the highest calculated subsidy rate for any PRC program from which Fengchi could receive a benefit. These rates are relevant because they are actual calculated CVD rates for a PRC program from which Fengchi could receive a benefit. Further, these rates were calculated for periods near the current POR.[25] Moreover, the failure of Fengchi to respond to our questionnaire has resulted "in an egregious lack of evidence on the record to suggest an alternative rate."[26] Due to the lack of participation by Fengchi, and the resulting lack of record information concerning its use of reviewed programs, we corroborated the rates selected to the extent practicable.[27]

Rate for Non-Selected Companies Under Review

In accordance with section 777A(e)(2) of the Act, we employed a limited examination methodology, as we lacked the resources to examine all 129 companies requested for review. We selected Fengchi as the sole mandatory respondent. Neither the statute nor our regulations

[22] *Id.*
[23] *Id.* at 869.
[24] *See Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996).
[25] *See Certain Magnesia Carbon Bricks from the People's Republic of China: Final Results of and Final Partial Rescission of Countervailing Duty Administrative Review; 2010*, 78 FR 22235, 22236 (April 15, 2013) (*Magnesia Carbon Bricks 2010 Final*), and accompanying Issues and Decision Memorandum at 3-6.
[26] *See Shanghai Taoen Int'l Trading Co., Ltd. v. United States*, 360 F. Supp. 2d 1339, 1348 (Ct. Int'l Trade 2005).
[27] For a detailed discussion of the AFA rates selected for each program under review, *see* the Final AFA Calculations Memorandum.

directly address the establishment of a rate to be applied to individual companies not selected for individual examination where we limited our examination in an administrative review pursuant to section 777A(e)(2) of the Act. Our practice in cases involving limited selection based on exporters accounting for the largest volumes of trade is to look to section 705(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an investigation. Section 705(c)(5)(A)(i) of the Act provides that in investigations the Department is not to calculate an all-others rate using any zero or *de minimis* margins or any margins based entirely on facts available. Section 705(c)(5)(A)(ii) of the Act also provides that, where all margins are zero rates, *de minimis* rates, or rates based entirely on facts available, we may use "any reasonable method" for assigning the rate to non-selected respondents. In this instance, we assigned a rate for the sole mandatory respondent, Fengchi, based entirely upon AFA.

As discussed above, the RHI companies filed a no shipments certification. To date, we have not received any information that contradicts this claim. Therefore, we determine that the RHI Companies had no shipments of subject merchandise to the United States during the POR. Consequently, we rescinded the review of the RHI companies.

Regarding the remaining companies for which we initiated a review and which did not file a no shipments certification, we will assign to their entries of subject merchandise made during the POR the all others rate from the investigation. We determine that the companies under review that have not submitted a no-shipments certification made some shipments of subject merchandise to the United States during the POR. Accordingly, and consistent with the guidance provided in section 705(c)(5)(A)(ii) of the Act, we are assigning the all others rate from the investigation, *i.e.*, 24.24 percent *ad valorem*, to the remaining companies under review because the rate determined for the sole mandatory respondent in the final results of this review, Fengchi, is based entirely upon facts available. We consider the use of the all others rate from the investigation, which was based upon a calculated rate for one of the mandatory respondents in the investigation, to be a "reasonable method" for calculating the rate applicable to the remaining companies under review because it represents the only rate in the history of the CVD order on MCBs from the PRC that is not zero, *de minimis*, or based entirely upon facts available.[28]

V. DISCUSSION OF THE ISSUES

Comment 1: Whether the Department Should Apply AFA to the Non-Mandatory Respondents

Petitioner and Magnesita:

- The Department's *Initiation Notice* for this review stated that if a producer or exporter named in the *Initiation Notice* had no exports, sales, or entries of subject merchandise during the POR, they must notify the Department within 60 days of publication of the *Initiation Notice* in the *Federal Register*.[29]

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[28] *See Certain Magnesia Carbon Bricks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 45472, 45474 (August 2, 2010) (*Magnesia Carbon Bricks Final*) (calculating rate for RHI Refractories Liaoning Co., Ltd. and its cross-owned affiliates, RHI Refractories (Dalian) Co., Ltd. and Liaoning RHI Jinding Magnesia Co., Ltd., based on partial AFA).
[29] *See* Case Brief at 3.

- Accordingly, the companies that did not file a no-shipments certification did not meet the Department's deadlines for filing either a no shipments certification or a separate rate application.[30]
- In the *Preliminary Results*, the Department stated that "{w}e assume that the companies under review that have not submitted a no shipments certification made some shipments of subject merchandise to the United States during the POR."[31]
- Therefore, the companies that did not meet the deadline for certifying no shipments, whom are presumed to have made shipments during the POR, are equally guilty of having "failed to cooperate to the best of their ability in this proceeding." Consequently, the Department must consider them to be uncooperative respondents subject to an adverse inference in the same manner as Fengchi and the GOC.[32]
- Although the Department has the discretion to use "any reasonable method" to calculate the rate applicable to the remaining companies under review, it also is reasonable for the Department to assign the companies that did not submit a no-shipments certification or separate rate application a rate based on total AFA.

Department's Position: The Department disagrees with Petitioner and Magnesita. As discussed above in "Use of Facts Available and AFA," the application of AFA is warranted when a party withholds requested information, fails to provide such information by the established deadline, or significantly impedes a proceeding and that party does not act to the best of its ability. For the companies that did not submit a no-shipments certification or a separate-rate application, the application of AFA is not warranted.

The companies identified by Petitioner and Magnesita have not withheld requested information, failed to provide requested information by the established deadlines, or significantly impeded the proceeding. These companies were not required to submit a no shipments certification or a separate rate application. Rather, such companies may choose to submit a no shipments certification in order to avoid being subject to the review. If these companies had submitted a no-shipments certification and U.S. Customs and Border Protection data did not contradict that certification, similar to the RHI companies, the Department would have rescinded the review with respect to them. Moreover, respondents in CVD proceedings are not required to submit separate-rate applications or certifications; the concept of separate rates is applicable only in antidumping proceedings involving subject merchandise from nonmarket economy countries. The non-selected companies identified by Petitioner and Magnesita were otherwise not required to submit information for this review (*e.g.*, no quantity and value questionnaires were issued). Thus, the Department finds that it is not appropriate to apply AFA to those companies that did not submit a no-shipments certification or a separate-rate application.

Turning to Petitioner's and Magnesita's argument with respect to the calculation of the rate applicable to the remaining companies under review, the Department declines to depart from its established practice. As explained above, in accordance with section 777A(e)(2)(A)(ii) of the Act, we employed a limited examination methodology and selected Fengchi as the sole

[30] *Id*.
[31] *Id*.
[32] *Id*.

mandatory respondent.[33] Neither the statute nor our regulations directly address how to establish a rate to be applied to companies that were not selected for individual examination in an administrative review where we limited our examination based on section 777A(e)(2)(A)(ii) of the Act. Therefore, our practice is to look to section 705(c)(5) of the Act for guidance, which provides instructions for calculating an all others rate in investigations. Section 705(c)(5)(A)(i) of the Act provides the general rule for calculating the all-others rate, explaining the rate should be an amount equal to the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding zero or *de minimis* rates or rates based entirely upon facts available. Section 705(c)(5)(A)(ii) of the Act contains the exception to the general rule and explains that, if all rates established for exporters or producers individually examined are zero, *de minimis*, or based entirely upon facts available, the Department may rely upon "any reasonable method" to calculate the all-others rate, including averaging the weighted average rates for companies individually examined. Consistent with our past practice,[34] we consider the use of the all-others rate from the investigation of 24.24 percent,[35] which was based upon a calculated rate for one of the mandatory respondents in the investigation, to be a reasonable method for calculating the rate applicable to the remaining companies under review because it represents the only rate in the history of the CVD order on MCBs from the PRC that is not zero, *de minimis*, or based entirely upon facts available.

Apart from offering a different approach, Petitioner and Magnesita have not argued that the Department's approach is unreasonable. Indeed, Petitioner and Magnesita acknowledge that the Department enjoys discretion in filling this statutory gap. Accordingly, the Department declines to depart from its established practice.

Comment 2: Whether the Department Also Should Apply the AFA Rate to the Non-Mandatory Respondents Because the GOC Failed to Respond in this Administrative Review

Petitioner and Magnesita:

- In CVD reviews, the companies selected for individual examination and the government are both required to respond to requests for information, and the Department never received a response from the GOC in this review.[36]
- Had the GOC responded to the Department's questionnaire, it would be reasonable to rely on information supplied by the GOC for the non-mandatory respondents and, perhaps in conjunction with the original investigation on MCBs from the PRC, to derive an all others rate.[37]

[33] *See* Respondent Selection Memorandum at 4-5.
[34] *See, e.g., Certain Magnesia Carbon Bricks From the People's Republic of China: 2010 Countervailing Duty Administrative Review*, 77 FR 61397 (October 9, 2012) and accompanying PDM at 10, unchanged in *Magnesia Carbon Bricks 2010 Final*.
[35] *See Magnesia Carbon Bricks Final*, 75 FR at 45474 (calculating rate for RHI Refractories Liaoning Co., Ltd. and its cross-owned affiliates, RHI Refractories (Dalian) Co., Ltd. and Liaoning RHI Jinding Magnesia Co., Ltd., based on partial AFA).
[36] *See* Case Brief at 4.
[37] *Id*.

- Because both the GOC failed to participate in any way in this review, all companies for which a review was requested that did not meet the deadline for certifying no shipments should also receive a rate based on AFA.
- Accordingly, because of the GOC's failure to respond to the Department's questionnaire, the AFA rate of 66.27 percent for Fengchi should apply to all non-mandatory respondents in this review.[38]

Department's Position: The Department disagrees with Petitioner and Magnesita. As discussed above in "Use of Facts Available and AFA," the application of AFA is warranted when a party withholds requested information, fails to provide such information by the established deadline, or significantly impedes a proceeding and that party does not act to the best of its ability. The GOC's failure to respond to the Department's questionnaire does not warrant the application of AFA with respect to companies not selected for individual examination. The GOC was only asked to provide information concerning the use of the subsidy programs under review by Fengchi, not all other companies.[39] Put another way, the GOC was never asked to provide information about the companies not selected for individual examination, such that the GOC's failure to respond would not give rise to circumstances supporting the application of AFA. Therefore, the GOC's failure to cooperate does not warrant the application of the AFA rate to the non-selected companies.

Finally, the GOC's failure to respond to the Department's request for information does not affect the Department's calculation of the rate assigned to companies not selected for individual examination. As explained in the Department's Position to Comment 1 of this memorandum, under the facts of this review, the Department may use any reasonable method to calculate the rate at issue. In these final results, the Department followed its practice, and Petitioner and Magnesita have not argued that practice is unreasonable. Based upon that, and the Department's reasoning set out above, the Department declines to depart from its practice.

[38] *Id*.

[39] *See*, *e.g.*, the Department's March 20, 2014, Letter to the GOC, "Countervailing Duty Administrative Review of Certain Magnesia Carbon Bricks from the People's Republic of China: Countervailing Duty Questionnaire," at II-1 and II-2.

VI. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final results of this administrative review in the *Federal Register*.

Agree ✓ Disagree ______

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

7 October 2014
Date

ATTACHMENT

Description of Programs Under Review and AFA Subsidy Rates

Provision of Land-Use Rights to State-Owned Enterprises ("SOEs") for Less Than Adequate Remuneration (LTAR)

Description: The GOC, either at the national or local level, is the ultimate owner of all land in China.

Provision of Electricity for LTAR

Description: The GOC, through the National Development and Reform Commission ("NDRC"), regulates the power rates for certain industries, including the MCB industry.

Export Restraints of Raw Materials

Description: The GOC restrains exports of various raw materials, including magnesia.

Two Free/Three Half Program for Foreign-Invested Enterprises

Description: Under the "Two Free, Three Half" program, a Foreign-Invested Enterprise ("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.

Income Tax Reductions for Export-Oriented FIEs

Description: A FIE may continue to pay half of its applicable income tax rate following the expiration of the "Two Free, Three Half" program if exports constitute 70 percent of the company's sales.

Preferential Income Tax Policy for Enterprises in the Northeast Region

Description: Under the Northeast Tax Preference Policy, enterprises located in several provinces and municipalities in Northeast China can significantly reduce their tax liability. Enterprises located in Liaoning, Jilin and Heilongjiang Provinces may: (1) reduce the depreciation life of fixed assets by up to 40 percent for tax purposes; and (2) shorten the amortization period of intangible assets by up to 40 percent for tax purposes. A significant number of magnesia carbon brick producers are located in Liaoning Province and would qualify for the Northeast Tax Preference Policy.

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

Description: Under the this program, the GOC has directed provincial and local governments to forgive the tax arrears, including interest and penalties on overdue taxes, of enterprises (both state-owned and private) located in the old industrial bases of Northeast China.

Location-Based Income Tax Reduction Programs for FIEs

Description: 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. FIEs are eligible for further 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. Some Chinese magnesia carbon brick producers are FIEs within these locations and likely received benefits under the program.

Local Income Tax Exemption and Reduction Programs for "Productive" FIEs

Description: Under Article 9 of the FIE Tax Law, local provinces authorize their own tax exemptions and reductions of local income taxes for "productive" FIEs. Some Chinese magnesia carbon brick producers likely benefited from this subsidy program.

Domestic Preference Tax Benefits

- Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment

- Income Tax Credits for FIEs Purchasing Domestically Produced Equipment

- VAT Rebates on Purchases of Domestically Produced Equipment

Description: The GOC provides tax refunds, reductions and exemptions to certain enterprises on the condition that those enterprises purchase domestic goods rather than imported goods, including equipment and machinery. These same subsidies are likely available to FIEs that purchase domestically produced machinery and equipment. Producers of MCBs likely benefit from this program, because they purchase domestic machinery and equipment.

Preferential Tax Programs for Enterprises Recognized as High or New Technology Enterprises

Description: The GOC provides tax benefits to enterprises recognized as high or new technology enterprises established in state high or new technology development zones, and for advanced technology enterprises invested in and operated by foreign businesses. These benefits include: reduced income tax rate of 15 percent and additional tax preferences administered by the governments of the development zones. Several producers of MCBs are located in various high technology zones.

Northeast Revitalization Program and Related Provincial Policies

Description: This program was established to revitalize designated provinces in Northeast China, including Liaoning Province. In furtherance of this program, the GOC established a special bank called the Northeast Revitalization Bank, which provides financial support, tax incentives, low-cost credit, and export credits to companies in this region. In addition, the Liaoning Provincial Government provides discounted loans and loan interest subsidies to private enterprises that take part in industries encouraged by GOC industrial policies. There are several magnesia carbon brick producers that are located in Liaoning Province.

The State Key Technology Renovation Project Fund

Description: Under this program, certain companies receive reimbursements to recover the interest incurred in financing specific technological renovation projects, with grants being disbursed as either "project investment facility" grants or "loan interest grants." The Fund was created to promote: 1) technological renovation in key industries, enterprises and products; 2) facilitation of technology upgrades; 3) improvement of product structure; 4) improvements in quality; 5) increased supply; 6) expansion of domestic demand; and 7) continuous and healthy development of the state economy. The GOC has identified the domestic ceramics industry (which includes MCBs) as one of the primary targets for the Fund.

Famous Brands Programs

Description: The GOC operates a program to support the development of famous brands and export brands that allow recipient companies to receive preference in obtaining loans as well as discounted interest rates. Other benefits include the Export Brands Development Fund to develop and promote designated exports; preferential funding for research and development projects; support for technology to strengthen the competitiveness of famous brand exports; special assistance for domestic brand name enterprises to establish state-level research and development centers; simplified loan application procedures; and easy access to export credit insurance. In addition to the central program established by the GOC, provincial and local governments also offer their own famous brands programs. Over 925 brands have received the designation of "famous brand," including at least one producer of MCBs.

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

Description: Guangdong Province provides grants to private enterprises to "expand outward" by developing foreign economic and trade activities, including export activities. These funds can be used for (i) market exploration; (ii) export credit insurance; (iii) loan interest on offshore processing trade projects; (iv) export research and development; (v) responding to antidumping duty cases; (vi) export rebate account loan payments; and (vii) an outward-oriented enterprises development fund.

Preferential Loans and Directed Credit to the Magnesia Carbon Brick Industry

Description: Pursuant to its industrial policies, the GOC subsidizes magnesia carbon brick producers through the issuance of preferential loans and directed credit. This lending takes place through state-owned commercial banks (SOCBs) that make loans based on political directives from the central or provincial governments, rather than creditworthiness or other market-based factors. Preferential loans and directed credit have generally gone to SOEs and to industries favored by the GOC on non-commercial terms.

Shenzhen City and Zhejiang Province Program to Rebate Antidumping Costs

Description: The Department investigated this provincial program in OTR Tires from the PRC, Circular Welded Pipe from the PRC, and Laminated Woven Sacks from the PRC. The Shenzhen WTO Office has a fund to reimburse up to 30 percent of legal fees to companies located in Guangdong Province that are facing anti-dumping investigations abroad. A similar program exists in Zhejiang Province.

Cash Grant Programs

- Fund for Supporting Technological Innovation for Technological Small- and Medium-Sized Enterprises (SMEs)
- Development Fund for SMEs
- Fund for International Market Exploration by SMEs

Description: The GOC provides a variety of direct subsidy grants to magnesia carbon brick producers that include grants for state-owned enterprises operating at a loss, technology and research development, export promotion, and exploration of international markets.

AFA Subsidy Rates

	Program Name	Rate
	Direct Tax Programs	
1	"Two Free, Three Half" Tax Exemption for FIEs	25.00%
2	Income Tax Reductions for Export-Oriented Enterprises	
3	Preferential Income Tax Policy for Enterprises in the Northeast Region	
4	Preferential Tax Programs for Enterprises Recognized as High or New Technology Enterprises	
5	Location-Based Income Tax Reduction Programs for Productive FIEs	
6	Local Income Tax Exemption and Reduction Programs for Productive FIEs	
	Other Income Tax Programs	
7	Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China	0.51%
8	Income Tax Credits for FIEs Purchasing Domestically-Produced Equipment	0.51%
9	Income Tax Credits for Domestically-Owned Companies Purchasing Domestically-Produced Equipment	0.51%
	Indirect Tax Programs	
10	Value-Added Tax Rebates on Purchases of Domestically-Produced Equipment	0.51%
	Loan Programs	
11	Preferential Loans and Directed Credit to the Magnesia Carbon Brick Industry	10.54%
	Export Restraints	
12	Export Restraints of Raw Materials	21.24%
	LTAR Programs	
13	Provision of Electricity for LTAR	2.12%
14	Provision of Land -Use Rights to SOEs for LTAR	2.55%
	Grant Programs	
15	Northeast Revitalization Program and Related Provincial Policies	2.05%
16	State Key Technology Renovation Project Fund	0.55%
17	Famous Brands Programs	0.55%
18	Development Fund for SMEs	0.55%
19	Fund for International Market Exploration by SMEs	0.55%
20	Shenzhen City and Zhejiang Province Program to Rebate Antidumping Costs	0.55%
21	Grants to Companies for "Outward Expansion" and Export Performance in Guangdong Province	0.08%
22	Fund for Supporting Technological Innovation for Technological SMEs	0.02%
		66.27%