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May 7, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Certain Magnesia Carbon Bricks from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the Seventh Antidumping Duty Administrative Review: 2016-2017

I. SUMMARY

The Department of Commerce (Commerce) analyzed the comments submitted by the Magnesia Carbon Bricks Fair Trade Committee[1] (the petitioners) and Fedmet Resources Corporation (Fedmet) in the seventh administrative review of certain magnesia carbon bricks (MCBs) from the People's Republic of China (China). As a result of our analysis, we made no changes to the *Preliminary Results*,[2] and continue to find that there is no evidence of reviewable entries, shipments, or U.S. sales of subject merchandise during the September 1, 2016, through August 31, 2017, period of review (POR) for the Companies Subject to Review.[2] Accordingly, we are issuing a "no shipments" final results of this administrative review.

We recommend that you approve the position described in the "Discussion of the Issue" section of this memorandum. Below is the issue for which we have received comments and rebuttal comments from the interested parties:

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[1] The Magnesia Carbon Bricks Fair Trade Committee is an *ad hoc* association comprised of three U.S. producers of subject bricks: Resco Products, Inc.; Magnesita Refractories Company; and HarbisonWalker International, Inc.
[2] *See Certain Magnesia Carbon Bricks from the People's Republic of China; Preliminary Results of the Antidumping Duty Administrative Review; 2016-2017*, 83 FR 51435 (October 11, 2018) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum.
[2] The following companies are subject to this administrative review: Fedmet Resources Corporation (Fedmet); Fengchi Imp. and Exp. Co., Ltd. of Haicheng City, Fengchi Mining Co., Ltd. of Haicheng City, and Fengchi Refractories Co. of Haicheng City (collectively, Fengchi); and RHI Refractories Liaoning Co., Ltd. (RHI Refractories) (collectively, Companies Subject to Review)

Comment: Treatment of Fedmet

II. BACKGROUND

On November 13, 2017, Commerce initiated the seventh administrative review of MCBs from China.[3] On October 11, 2018, Commerce published the *Preliminary Results* of this administrative review. On January 28, 2019, Commerce tolled the deadlines in this case and the final results by 40 days.[4] On March 5, 2019, Commerce extended the deadline for the final results to May 7, 2019.[5] Between March 7 and 19, 2019, interested parties submitted case and rebuttal briefs.[6]

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 this order 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.

IV. FINAL DETERMINATION OF NO SHIPMENTS

The following companies are subject to this administrative review: Fedmet; Fengchi Imp. and Exp. Co., Ltd. of Haicheng City, Fengchi Mining Co., Ltd. of Haicheng City, and Fengchi Refractories Co., of Haicheng City (collectively, Fengchi); and RHI Refractories Liaoning Co., Ltd. (RHI).[7] In the *Preliminary Results*, we found that none of these companies had reviewable entries, shipments, or sales of the subject merchandise to the United States during the period of

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[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 52268 (November 13, 2017) (*Initiation Notice*).

[4] *See* Memorandum to the Record, from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[5] *See* "Administrative Review of the Antidumping Duty Order on Certain Magnesia Carbon Bricks from the People's Republic of China: Extension of Deadline for the Final Results," dated March 5, 2019.

[6] *See* Letter from the petitioners', "Certain Magnesia Carbon Bricks from the People's Republic of China: Petitioners' Case Brief," dated March 7, 2019 (the Petitioners' Brief); Fedmet's March 19, 2019 submission (Fedmet's Rebuttal Brief).

[7] *See Initiation Notice*.

review (POR).[8] With respect to Fengchi and RHI, no party commented on our preliminary finding of no shipments, nor has any party submitted record evidence which would call this finding into question. Therefore, for these final results, we continue to find that Fengchi and RHI had no shipments of subject merchandise during the POR. With respect to Fedmet, we placed certain entry packages obtained from Customs and Border Protection (CBP) on the record of this review, and interested parties submitted comments on this information.[9] As discussed below, we continue to find that Fedmet also did not have any reviewable entries during the POR.

V. DISCUSSION OF THE ISSUE

Comment: Treatment of Fedmet

The Petitioners' Arguments

- Fedmet repeatedly has insisted that it neither exported nor imported any merchandise subject to this review, and the only magnesia carbon product that Fedmet imported into the United States consisted of taphole bricks that are expressly excluded from the scope. Tapholes are not bricks because they are generally rectangular-shaped products whereas taphole sleeve systems are tubular products used to form and surround the taphole. [10] Moreover, Fedmet's product catalog confirms that its own taphole products are tubular.[11]
- However, the CBP entry documents placed on the record by Commerce contradict Fedmet's representations that certain entries are non-subject merchandise, according to the CBP form 7501. In fact, these entries are for a brand of MCBs which are subject and are not taphole bricks or shaped like taphole bricks.[12]
- Fedmet acknowledges that the bricks at issue are of a brand which is subject and are of a shape which is subject.[13]
- Although Fedmet argued that the bricks at issue are not subject because they are too large to be a MCB, there is no language in the scope of the order establishing a size restriction; nor does Fedmet cite any scope ruling regarding such a size restriction.[14] There is no basis for Commerce to conclude that these bricks fall outside the scope of the order because of their purportedly large size.[15]

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[8] *See Preliminary Results* at "Preliminary Determination of No Shipments."
[9] *See* Memo to the File, "Placement of U.S. Customs and Border Protection (CBP) Entry Summary Packages Regarding Fedmet Resources Corporation on the Record of the Administrative Review," dated December 4, 2018 (CBP Entry Package Memorandum); the petitioners' December 14, 2018 submission; Fedmet's December 14, 2018 submission.
[10] *See* the Petitioners' Brief at 2, citing the Petitioners' December 14, 2018 submission at Attachment 1; *see also* CBP Entry Package Memo; *Certain Magnesia Carbon Bricks from Mexico: Notice of Final Determination of Sales at Less Than Fair Value*, 75 FR 45097 (August 2, 2010) (*Mexico LTFV Determination*) and accompanying IDM at Comment 1; and "Certain Magnesia Carbon Bricks from Mexico and the People's Republic of China: Vesuvius USA Corporation Final Scope Ruling," dated May 3, 2011 (Vesuvius Scope Ruling).
[11] *See* the Petitioners' Brief at 2, citing the Petitioners' December 14, 2018 submission at Attachment 1, page 9.
[12] *See* the Petitioners' Brief at 2.
[13] *Id*. at 3, citing Fedmet's December 21, 2018 submission at 2.
[14] *Id*.
[15] *Id*.

- Because Fedmet had subject entries during the POR, Commerce should assign to Fedmet an antidumping duty deposit rate based on total adverse facts available.[16] The entry package placed on the record by Commerce demonstrates that Fedmet imports mislabeled MCBs to avoid duties.[17] Commerce should refer this matter and all relevant information from the record of this review to CBP for further investigation.[18]

Fedmet's Arguments

- The entries found in the CBP Entry Package Memo consist of non-subject merchandise, and the petitioners do not dispute this, with the exception of one entry.[19]
- The petitioners do not dispute that tapholes are outside the scope of the order, which has been confirmed in multiple scope determinations by Commerce.[20]
- The petitioners have misconstrued Fedmet's brochure, and have assumed the brand name is determinative of whether or not the merchandise is within the scope of the order, and not the physical characteristics of the product.[21] The brand name the petitioners cite refers to the type of material of which the product is composed, and does not distinguish between MCBs and non-subject merchandise.[22] For the single entry in question, the commercial invoice, bill of lading, certificate of origin, the packing list clearly describe the merchandise as a type of non-subject merchandise, not as MCBs.[23]
- As explained previously, Fedmet is neither a producer nor an exporter of MCBs from China, nor does Fedmet have facilities for producing MCBs in the United States or anywhere else in the world.[24] It is Commerce's well-established practice to assign antidumping duty (AD) and countervailing duty (CVD) deposit rates to foreign producers and exporters, not to importers.[25] As such, apart from the issue of whether Fedmet's entry constitutes subject merchandise, the petitioners' request that Commerce assign AD and CVD duty deposit rates to Fedmet is without legal basis and should be rejected.[26]

Commerce's Position: We agree with Fedmet and conclude that it had no shipments during the POR. The entry documentation provided by CBP indicates that the entry in question is non-subject merchandise.[27] No other record information calls this into question. However, the core of the petitioners' concerns is that not all subject merchandise has been properly reported to CBP and that an entry was improperly entered in the United States. As such, these concerns are best

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[16] *Id*.
[17] *Id*., citing CBP Entry Package Memorandum.
[18] *Id*.
[19] *See* Fedmet's Rebuttal Brief at 2, citing CBP Entry Package Memo.
[20] *Id*., citing, *e.g.*, *Mexico LTFV Determination* at Comment 1; *Certain Magnesia Carbon Bricks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances*,75 FR 45467 (August 2, 2010) (*China LTFV Determination*) and accompanying IDM at Comment 5; and Vesuvius Scope Ruling.
[21] *Id*. at 3.
[22] *Id*.
[23] *Id*., citing CBP Entry Package Memo.
[24] *Id*. at 4, citing Fedmet's November 27, 2017 submission; Fedmet's August 30, 2018 submission.
[25] *Id*.
[26] *Id*.
[27] *See* CBP Entry Package Memorandum.

addressed directly under CBP's authority under section 592 of the Act to investigate fraud, gross negligence, and negligence.[28] In addition, on the matter of the alleged customs irregularities, Commerce takes such allegations seriously, and we share with CBP any such evidence gathered in the course of our proceedings. Furthermore, Commerce fully complies with each CBP request for information, in accordance with U.S. law.[29]

Moreover, section 351.213(b) states that Commerce may conduct an administrative review of requested "individual exporters or producers."[30] There is no record information that Fedmet is an exporter or producer of MCBs. As such, it is unclear how Commerce would assign AD or CVD rates to Fedmet in this review.

Therefore, because we determine there are no shipments of subject merchandise by any of the exporters and/or producers subject to this review, we are issuing a "no shipments" final results determination for this administrative review.

VI. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above position. If accepted, we will publish the final results of review in the *Federal Register*.

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Agree Disagree

X ________________________

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

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[28] *See Globe Metallurgical Inc., v. United States*, 722 F. Supp. 2d 1372, 1381 (CIT 2010).
[29] *See*, *e.g.*, *Dynamic Random Access Memory Semiconductors from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 76 FR 2336 (January 13, 2011) and accompanying IDM at Comment 4.
[30] *See* section 351.213(b).