C-570-955
Administrative Review
POR: 01/01/2016-12/31/2016
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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 2016 Countervailing Duty Administrative Review

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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 January 1, 2016, through December 31, 2016, period of review (POR) for the Companies Subject to Review.[3] Accordingly, we are rescinding this administrative review, pursuant to 19 CFR 351.213(d)(3).

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:

Comment: Treatment of Fedmet

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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 Harbison Walker International, Inc.

[2] *See Certain Magnesia Carbon Bricks from the People's Republic of China: Preliminary Results of the Countervailing Duty Administrative Review; 2016*, 83 FR 51444, (October 11, 2018) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).

[3] 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).

II. Background

On November 31, 2017, Commerce initiated the seventh administrative review of MCBs from China.[4] On October 11, 2018, Commerce published the *Preliminary Results* of the administrative review. On December 4, 2018, Commerce placed certain U.S. Customs and Border Protection (CBP) entry summary packages with respect to Fedmet on the record of this administrative review, and invited comments from interested parties.[5] Between December 14, 2018, and December 21, 2018, the petitioners and Fedmet submitted timely comments on the CBP Entry Package Memorandum.[6]

On January 28, 2019, Commerce tolled the deadlines in this case and for the final results by 40 days.[7] On March 5, 2019, Commerce extended the deadline for these final results to May 7, 2019.[8] Between March 7, 2019, and March 19, 2019, the petitioners and Fedmet timely submitted case and rebuttal briefs.[9] No other parties submitted case or rebuttal briefs.

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

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

[5] *See* Memorandum, "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).

[6] *See* Letter from the petitioners, "Certain Magnesia Carbon Bricks From The People's Republic of China: Comments Regarding The CBP Entry Summary Packages," dated December 14, 2018 (Petitioners' December 14, 2018 Submission); *see also* Letter from Fedmet, "Magnesia Carbon Bricks from the People's Republic of China, Case No. C-570-955: Comments on CBP Entry Summary Packages), dated December 14, 2018 (Fedmet's December 14, 2018 Submission); and Letter from Fedmet, "Magnesia Carbon Bricks from the People's Republic of China, Case No. C-570-955; Response to Petitioner's Comments on Entry Documentation," dated December 21, 2018 (Fedmet's December 21, 2018 Submission).

[7] *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. As a result, all deadlines in this segment of the proceeding have been extended by 40 days.

[8] *See* Memorandum, "Administrative Review of the Countervailing 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.

[9] *See* Letter from the petitioners, "Certain Magnesia Carbon Bricks from the People's Republic of China: Petitioners' Case Brief," dated March 7, 2019 (Petitioners' Case Brief); *see also* Letter from Fedmet, "Magnesia Carbon Bricks from the People's Republic of China, Case Nos. A-570-954, C-570-955: Rebuttal Brief," dated March 19, 2019 (Fedmet's Rebuttal Brief).

States (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive.

IV. Rescission of Administrative Review

The following companies are subject to this administrative review: Fedmet, Fengchi, and RHI Refractories. In the *Preliminary Results*, based on no-shipment certifications that were confirmed by CBP, and on CBP data that we relied on for purposes of respondent selection, we found that none of these companies had reviewable entries, shipments, or sales of the subject merchandise to the United States during the POR.[10] With respect to Fengchi and RHI Refractories, no party commented on our preliminary no-shipments finding, nor has any party submitted record evidence that would call this finding into question. Therefore, for these final results, we continue to find that Fengchi and RHI Refractories had no reviewable entries during the POR.

With respect to Fedmet, as described above, we placed certain entry summary packages obtained from CBP on the record of this review and interested parties submitted comments on this information. As discussed below in the section, "Discussion of the Issue: Treatment of Fedmet," we continue to find that Fedmet also did not have reviewable entries, shipments, or sales of subject merchandise to the United States during the POR.

It is Commerce's practice to rescind an administrative review of a countervailing duty (CVD) order, pursuant to 19 CFR 351.213(d)(3), when there are no reviewable entries of subject merchandise during the POR for which liquidation is suspended.[11] Normally, upon completion of an administrative review, the suspended entries are liquidated at the assessment rate calculated for the review period.[12] Therefore, for an administrative review to be conducted, there must be a reviewable, suspended entry that Commerce can instruct CBP to liquidate at the newly calculated assessment rate.[13] Accordingly, in the absence of suspended entries of subject merchandise during the POR for this administrative review, we are rescinding this administrative review of the CVD order on MCBs from China.[14]

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[10] *See Preliminary Results* at the section, "Preliminary Intent to Rescind the Administrative Review."
[11] *See*, *e.g.*, *Certain Welded Carbon Steel Standard Pipe and Tube from Turkey: Notice of Final Rescission of Countervailing Duty Administrative Review, In Part*, 77 FR 6542 (February 8, 2012) and accompanying IDM at 2; *Certain Magnesia Carbon Bricks from the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2014*, 82 FR 4300 (January 13, 2017) (*China MCBs 2014 AR*).
[12] *See* 19 CFR 351.212(b)(1).
[13] *See China MCBs 2014 AR*.
[14] *See* 19 CFR 351.213(d)(3).

V. Discussion of the Issue: Treatment of Fedmet

The petitioners' Case Brief:

- 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 tap hole bricks that are expressly excluded from the scope.[15]
- 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 merchandise and are not "tap hole" bricks or shaped like tap hole bricks.[16]
- Fedmet acknowledges that the bricks at issue are of a brand which is subject merchandise and are of a shape which is subject.[17]
- Although Fedmet argues that the bricks at issue are not subject merchandise because they are too large to be an 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.[18] There is no basis for Commerce to conclude that these bricks fall outside the scope of the order because of their purportedly large size.[19]
- Because Fedmet had subject entries during the POR, Commerce should assign to Fedmet a countervailing duty deposit rate based on total adverse facts available.[20] The entry package placed on the record by Commerce demonstrates that Fedmet imports mislabeled MCBs to avoid duties.[21] Commerce should refer this matter and all relevant information from the record of this review to CBP for further investigation.[22]

Fedmet's Rebuttal Case Brief:

- The entries found in the CBP Entry Package Memorandum consist of non-subject merchandise, and the petitioners do not dispute this, with the exception of one entry.[23]
- The petitioners do not dispute that tap hole bricks are outside the scope of the order, which has been confirmed in multiple scope determinations by Commerce.[24]

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[15] Tap holes are not bricks because they are generally rectangular-shaped products whereas tap hole sleeve systems are tubular products used to form and surround the tap hole. *See* Petitioners' Case Brief at 2, citing the petitioners' December 14, 2018, submission at Attachment 1; *see also* CBP Entry Package Memorandum; *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 Issues and Decision Memorandum (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). Moreover, Fedmet's product catalog confirms that its own tap hole products are tubular. *Id.*, citing the petitioners' December 14, 2018 Submission at Attachment 1, page 9.

[16] *See* Petitioner's Case Brief at 2, citing Fedmet's December 21, 2018 Submission at 2.

[17] *See* Petitioner's Case Brief at 3, citing Fedmet's December 21, 2018 Submission at 2.

[18] *Id*.

[19] *Id*.

[20] *Id*.

[21] *See* Petitioner's Case Brief at 3, citing CBP Entry Package Memorandum.

[22] *Id*.

[23] *See* Fedmet's Rebuttal Brief at 2, citing CBP Entry Package Memorandum.

[24] *See* Fedmet's Rebuttal Brief at 2, citing, *e.g.*, *Mexico LTFV Determination* at Comment 1; *see also Certain Magnesia Carbon Bricks from the People's Republic of China: Final Determination of Sales at Less Than Fair*

- The petitioners have misconstrued Fedmet's product 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.[25] 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.[26] For the single entry in question, the commercial invoice, bill of lading, certificate of origin, and the packing list clearly describe the merchandise as a type of non-subject merchandise, not as MCBs.[27]
- 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.[28] It is Commerce's well-established practice to assign antidumping duty (AD) and countervailing duty deposit rates to foreign producers and exporters, not to U.S. importers.[29] As such, apart from the issue of whether Fedmet's entry constitutes subject merchandise, the petitioners' request that Commerce assign AD and CVD deposit rates to Fedmet is without legal basis and should be rejected.[30]

Commerce's Position: We agree with Fedmet and conclude that it had no shipments of subject merchandise into the United States during the POR. The entry documentation provided by CBP, in particular the Form 7501 entry summary and commercial invoice, indicates that the entry in question physically differs from subject merchandise.[31] No other record information calls this into question. However, the core of the petitioners' concerns is that not all of Fedmet's subject merchandise has been properly reported to CBP, and that a particular entry was improperly entered in the United States. Our examination of the instant record does not support the petitioners' argument that improperly labeled subject merchandise entered the United States during the POR. As such, these concerns are best addressed directly under CBP's authority under section 592 of the Tariff Act of 1930, as amended, to investigate fraud, gross negligence, and negligence.[32] In addition, on the matter of the CBP irregularities alleged by the petitioners, Commerce takes such allegations seriously, and coordinates with CBP to ensure enforcement of our proceedings. Furthermore, Commerce fully complies with each CBP request for information, in accordance with U.S. law.[33]

Moreover, 19 CFR 351.213(b) states that Commerce may conduct an administrative review of requested "individual exporters or producers."[34] There is no record information that Fedmet is

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Value and Critical Circumstances, 75 FR 45467 (August 2, 2010) (*China LTFV Determination*) and accompanying IDM at Comment 5; and Vesuvius Scope Ruling.

25 *See* Fedmet's Rebuttal Brief at 3.

26 *Id*.

27 *See* Fedmet's Rebuttal Brief at 3, citing CBP Entry Package Memorandum.

28 *See* Fedmet's Rebuttal Brief at 4, citing Letter from Fedmet, "Magnesia Carbon Bricks from the People's Republic of China, Case No. C-570-955: No Shipments Certification," dated November 27, 2017; *see also* Letter from Fedmet, "Magnesia Carbon Bricks from the People's Republic of China, Case No. C-570-955: Questionnaire Response," dated April 30, 2018 at 1.

29 *See* Fedmet's Rebuttal Brief at 4.

30 *Id*.

31 *See* CBP Entry Package Memorandum.

32 *See Globe Metallurgical Inc., v. United States*, 722 F. Supp. 2d 1372, 1381 (Court of International Trade 2010).

33 *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.

34 *See* 19 CFR 351.213(b).

an exporter or producer of MCBs. As such, it is unclear how Commerce would assign a CVD rate to Fedmet in this review.

VI. Recommendation

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

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Agree Disagree

5/7/2019

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Signed by: JEFFREY KESSLER
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance