



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

C-570-955  
AR: 08/02/2010-12/31/2010  
Public Document  
AD/CVD 6: TP

**MEMORANDUM TO:** Paul Piquado  
Assistant Secretary  
for Import Administration

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

**SUBJECT:** Decision Memorandum for Preliminary Results of Countervailing  
Duty Administrative Review: Certain Magnesia Carbon Bricks  
from the People's Republic of China

---

## SUMMARY

In response to requests from interested parties, the Department of Commerce (Department) is conducting the administrative review of the countervailing duty (CVD) order on certain magnesia carbon bricks (MCBs) from the People's Republic of China (PRC), covering the period of review (POR) of August 2, 2010, through December 31, 2010. The Department has preliminarily determined that the application of adverse facts available (AFA) is necessary because the two mandatory respondents each failed to cooperate to the best of their ability in this proceeding. The Department also intends to rescind the review of seven companies that certified they made no shipments of subject merchandise to the United States during the POR. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries of subject merchandise during the POR.

Unless extended, we will issue final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).



## BACKGROUND

On September 21, 2010, we published the CVD order on MCBs from the PRC.<sup>1</sup> On September 2, 2011, we published a notice of opportunity to request an administrative review of the CVD order on MCBs from the PRC.<sup>2</sup> On September 30, 2011, we received timely requests for an administrative review of this CVD order in accordance with 19 CFR 351.213(b) from Fengchi Imp. and Exp. Co., Ltd. of Haicheng City and Fengchi Refractories Co., of Haicheng City (collectively, Fengchi), and U.S. importer Vesuvius USA Corporation (Vesuvius) for subject merchandise it imported from PRC exporter, Yingkou Bayuquan Refractories Co., Ltd. (BRC).<sup>3</sup> Also on September 30, 2011, the Department received a timely request for an administrative review of 129 companies, including Fengchi and BRC, from Resco Products, Inc. (Petitioner).<sup>4</sup>

On October 31, 2011, we initiated an administrative review of the CVD order on MCBs from the PRC for 129 companies.<sup>5</sup> On November 22, 2011, we released CBP data, covering POR imports of MCBs from the PRC, to interested parties and invited parties to comment on the data.<sup>6</sup> The Department received no shipment certifications from the following companies: ANH (Xinyi) Refractories (ANH);<sup>7</sup> RHI-Refractories Asia Pacific Pte. Ltd., RHI Refractories (Dalian) Co. Ltd., RHI Refractories Liaoning Co., Ltd., RHI Trading Shanghai Branch, and RHI Trading (Dalian) Co., Ltd. (RHI companies);<sup>8</sup> Fengchi;<sup>9</sup> and Yingkou New Century Refractories Ltd. (NCR).<sup>10</sup> BRC and Fengchi withdrew their self-requests for review on January 27, 2012 and January 30, 2012, respectively.<sup>11</sup>

---

<sup>1</sup> See Certain Magnesia Carbon Bricks from the People's Republic of China: Countervailing Duty Order, 75 FR 57442 (September 21, 2010).

<sup>2</sup> See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review, 76 FR 54735 (September 2, 2011).

<sup>3</sup> See Letter to the Department from Fengchi "Certain Magnesia Carbon Bricks from the People's Republic of China: Request for Administrative Review of Countervailing Duty Order (8/2/10-12/31/10)," dated September 30, 2011; see also Letter to the Department from Vesuvius and BRC "Certain Magnesia Carbon Bricks from the People's Republic of China: Request for Administrative Review of Countervailing Duty Order (8/2/10-12/31/10)," dated September 30, 2011.

<sup>4</sup> See Letter to the Department from Petitioner "Certain Magnesia Carbon Bricks from the People's Republic of China: Countervailing Duty Administrative Review" Re: Review Initiation Request, dated September 30, 2011.

<sup>5</sup> See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part, 76 FR 67133, 67139-40 (October 31, 2011) (Initiation Notice).

<sup>6</sup> See Memorandum to the File "Certain Magnesia Carbon Bricks from the People's Republic of China: Customs Data of U.S. Imports of Certain Magnesia Carbon Bricks," dated November 22, 2011.

<sup>7</sup> See Letter to the Department from ANH "Administrative Review of Countervailing Duty Order on Magnesia Carbon Bricks from the People's Republic of China: Notification of No Shipments During the Period of Review," dated November 29, 2011.

<sup>8</sup> See Letter to the Department from RHI "Magnesia Carbon Bricks from China: Rebuttal Comments on CBP Data," dated December 13, 2011.

<sup>9</sup> See Letter to the Department from Fengchi "Certain Magnesia Carbon Bricks from the People's Republic of China, Case No. C-570-955: Certification of No Shipments," dated December 20, 2011.

<sup>10</sup> See Letter to the Department from NCR "Administrative Review of Countervailing Duty Order on Magnesia Carbon Bricks from the People's Republic of China: Notification of No Shipments During the Period of Review," dated December 23, 2011.

<sup>11</sup> See Letter to the Department from Fengchi "Certain Magnesia Carbon Bricks from the People's Republic of China: Withdrawal of Request for CVD Administrative Review (08/02/10 — 12/31/10)," dated January 27, 2012; see also Letter to the Department from Vesuvius and BRC "Certain Magnesia Carbon Bricks from the People's Republic of China: Withdrawal of Request for CVD Administrative Review (08/02/10 — 12/31/10)," dated January 30, 2012.

On February 21, 2012, we selected BRC and Fengchi for individual examination in this review.<sup>12</sup> We sent a CVD questionnaire to Government of the PRC (GOC) on February 21, 2012, with instructions to forward the questionnaire to BRC and Fengchi.<sup>13</sup> In a March 27, 2012, letter, the GOC informed the Department that the legal representatives for both mandatory respondents notified the GOC that they were not going to respond to the Department's 1<sup>st</sup> AR CVD Questionnaire; therefore, the GOC indicated that it also would not respond to the Department's questionnaire.<sup>14</sup> BRC informed the Department directly, on March 27, 2012, that it would not respond to the 1<sup>st</sup> AR CVD Questionnaire.<sup>15</sup> In a March 29, 2012, submission in response to the Department's questionnaire, Fengchi stated that, because it had no entries, exports, or sales of subject merchandise to the United States during the POR, there was no basis to conduct a review of Fengchi and, thus, the Department should rescind the administrative review of the company.<sup>16</sup> Because Fengchi claims it did not have entries or sales during the POR, the company stated that its letter to the Department should be considered a complete 1<sup>st</sup> AR CVD Questionnaire response.<sup>17</sup> Fengchi further stated that even though the entry data from CBP appears to show entries of subject merchandise by Fengchi, the company was not in a position to account for these seemingly erroneous entry data.<sup>18</sup>

Petitioner filed a letter on March 28, 2012, untimely withdrawing its requests for reviews of all companies except BRC and Fengchi, the mandatory respondents.<sup>19</sup> Because Petitioner did not demonstrate that extraordinary circumstances prevented it from timely withdrawing its request for review, we have rejected Petitioner's untimely withdrawal. On May 23, 2012, we extended the time limit for the preliminary results of review by 120 days, as provided under section 751(a)(3)(A) of the Act, to October 1, 2012.<sup>20</sup>

On June 20, 2012, we placed CBP information on the record regarding Fengchi's apparent entries during the POR and requested comments from interested parties.<sup>21</sup> In its comments to the Department's June 20, 2012, memorandum, Fengchi explained that its entries were incorrectly

---

<sup>12</sup> See Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, "Administrative Review of the Countervailing Duty Order on Certain Magnesia Carbon Bricks (MCBs) from the People's Republic of China: Respondent Selection Memorandum," dated February 21, 2012.

<sup>13</sup> See Letter from the Department to the GOC "First Administrative Review of the Countervailing Duty Order on Certain Magnesia Carbon Bricks from the People's Republic of China," dated February 21, 2012 (1<sup>st</sup> AR CVD Questionnaire).

<sup>14</sup> See Letter to the Department from the GOC "GOC Notice of Review Status - First Administrative Review of the Countervailing Duty Order on Certain Magnesia Carbon Bricks from the People's Republic of China (POR: 8/2/10-12/31/10)," dated March 27, 2012.

<sup>15</sup> See Letter to the Department from Vesuvius and BRC "Countervailing Duty Order on Certain Magnesia Carbon Bricks from the People's Republic of China; Administrative Review (8/2/10-12/31/10)," dated March 27, 2012.

<sup>16</sup> See Letter to the Department from Fengchi "Countervailing Duty Order on Certain Magnesia Carbon Bricks from the People's Republic of China; Administrative Review (8/2/10-12/31/10)," dated March 29, 2012, at 1-2.

<sup>17</sup> *Id.* at 2.

<sup>18</sup> *Id.* at 3-4.

<sup>19</sup> See Letter to the Department from Petitioner "Administrative Review of Countervailing Duty Orders on Certain Magnesia Carbon Bricks from the People's Republic of China (8/2/2010-12/31/2010): Withdrawal of Request for Review," dated March 28, 2012.

<sup>20</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations "Certain Magnesia Carbon Bricks from the People's Republic of China: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review," dated May 23, 2012.

<sup>21</sup> See Memorandum to All Interested Parties "Magnesia Carbon Bricks from the People's Republic of China (C-570-955): Requests for Entry Summaries from U.S. Customs and Border Patrol (CBP)," dated June 20, 2012.

categorized as subject merchandise by CBP.<sup>22</sup> Fengchi argued that the description of the merchandise in these documents supports its claim that the company did not have entries of subject merchandise during the POR.<sup>23</sup> In its comments, Petitioner contended that the entry summaries and other documents placed on the record by the Department indicate that Fengchi's POR entries were indeed of subject merchandise.<sup>24</sup> Petitioner further argued that the Department should submit another query to CBP to ensure that all shipments of MCBs entered during the POR are accounted for and are liquidated at the correct rate.<sup>25</sup>

Because the CBP information placed on the record by the Department indicates that Fengchi's entries were suspended under the CVD order as subject merchandise and CVD cash deposits were collected, we found that Fengchi should have responded to the original 1<sup>st</sup> AR CVD Questionnaire, and we provided Fengchi another opportunity to respond.<sup>26</sup> On August 16, 2012, Fengchi submitted a letter objecting to the Department's request to provide a response to the 1<sup>st</sup> AR CVD Questionnaire.<sup>27</sup> Fengchi argues that it was correct when it stated in its March 29, 2012, letter that it did not have any entries of subject merchandise during the POR.<sup>28</sup> Fengchi contends that at the time the questionnaire was issued (February 21, 2012), there was an ongoing scope inquiry regarding magnesia carbon bricks with added alumina.<sup>29</sup> According to Fengchi, the Department's regulations provide that the Department may incorporate the results of a scope determination in an ongoing administrative review only when the final scope determination is issued within 90 days of the initiation of the review.<sup>30</sup> Fengchi notes that this CVD review was initiated on October 31, 2011, and the final scope determination was issued on July 2, 2012.<sup>31</sup> Fengchi adds that the Department's regulation further specifies that when a final scope determination is issued more than 90 days after the initiation of the review, the Department may still consider sales of the product that was the subject of the scope determination, but it will do so on the basis of non-adverse facts available.<sup>32</sup> Fengchi points out that the Department did not request that Fengchi respond to the 1<sup>st</sup> AR CVD Questionnaire until August 15, 2012, a

---

<sup>22</sup> See Letter to the Department from Fengchi "Countervailing Duty Order on Certain Magnesia Carbon Bricks from the People's Republic of China; Administrative Review (8/2/10-12/31/10)," dated July 2, 2012.

<sup>23</sup> Id.

<sup>24</sup> See Letter to the Department from Petitioner "Administrative Review of the Countervailing Duty Order on Certain Magnesia Carbon Bricks from the People's Republic of China (8/2/10-12/31/10): Comments on Additional CBP Data," dated July 2, 2012 at 1.

<sup>25</sup> Id. at 3.

<sup>26</sup> See Letter from the Department to Fengchi "First Administrative Review of the Countervailing Duty Order on Certain Magnesia Carbon Bricks from the People's Republic of China: Deficiency Letter Regarding Inadequate Questionnaire Response," dated August 15, 2012. The Department issued a similar letter to the GOC, explaining that the GOC was also required to respond to the initial CVD questionnaire. See Letter from the Department to the GOC "First Administrative Review of the Countervailing Duty Order on Certain Magnesia Carbon Bricks from the People's Republic of China: Fengchi Imp. and Exp. Co., Ltd. of Haicheng City's Inadequate Questionnaire Response," dated August 15, 2012.

<sup>27</sup> See Letter to the Department from Fengchi "Countervailing Duty Order on Certain Magnesia Carbon Bricks from the People's Republic of China; Administrative Review (8/2/10-12/31/10)," dated August 16, 2012.

<sup>28</sup> Id. at 2.

<sup>29</sup> Id.

<sup>30</sup> Id. at 3-4. The regulation at issue reads as follows: "If, within 90 days of the initiation of a review of an order or a suspended investigation under this subpart, the Secretary issues a final ruling that a product is included within the scope of the order or suspended investigation that is the subject of the review, the Secretary, where practicable, will include sales of that product for purposes of the review and will seek information regarding such sales." See 19 CFR 351.225(1)(4).

<sup>31</sup> See Letter to the Department from Fengchi "Countervailing Duty Order on Certain Magnesia Carbon Bricks from the People's Republic of China; Administrative Review (8/2/10-12/31/10)," dated August 16, 2012, at 2.

<sup>32</sup> Id. at 4 (citing 19 CFR 351.225(1)(4)).

month after the final scope determination and 289 days after initiation of this review.<sup>33</sup> Fengchi concludes that the Department's August 15, 2012, request to answer the 1<sup>st</sup> AR CVD Questionnaire is in violation of the express language of the applicable regulation.<sup>34</sup> Moreover, Fengchi contends that the Department's request to answer the questionnaire places an unfair and unreasonable burden on the company, by requiring it to attempt to undergo a complete CVD review in an eight-month time frame.<sup>35</sup>

Additionally, both Fengchi and the GOC filed extension requests on August 16, 2012.<sup>36</sup> In response, the Department extended the deadline for filing the 1<sup>st</sup> AR CVD Questionnaire responses for both Fengchi and the GOC until October 1, 2012.<sup>37</sup> On August 29, 2012, Fengchi informed the Department that it would not respond to the Department's 1<sup>st</sup> AR CVD Questionnaire,<sup>38</sup> for the same reasons explained in its August 16, 2012, letter. Subsequently, on September 11, 2012, the Department issued letters to both Fengchi and the GOC providing both parties a final opportunity to respond to the Department's 1<sup>st</sup> AR CVD Questionnaire.<sup>39</sup> These letters provided them with a final opportunity to respond to the questionnaire and re-confirmed that the deadline to respond to the 1<sup>st</sup> AR CVD Questionnaire, October 1, 2012, was still in effect.<sup>40</sup> Neither Fengchi nor the GOC filed a CVD questionnaire response prior to the deadline for these preliminary results.

## 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

---

<sup>33</sup> *Id.* at 5.

<sup>34</sup> *Id.* at 6.

<sup>35</sup> *Id.* at 3.

<sup>36</sup> See Letter to the Department from Fengchi "Countervailing Duty Order on Certain Magnesia Carbon Bricks from the People's Republic of China; Administrative Review (8/2/10-12/31/10)," dated August 16, 2012; see also Letter to the Department from the GOC "GOC Response to Department's Revised Scope QRE Demand – First Administrative Review of the Countervailing Duty Order on Certain Magnesia Carbon Bricks (MCB) from the People's Republic of China (POR: 8/2/10-12/31/10)," dated August 22, 2012.

<sup>37</sup> See Letter from the Department to Fengchi "First Administrative Review of the Countervailing Duty Order on Certain Magnesia Carbon Bricks from the People's Republic of China: Fengchi's Extension Request," dated August 28, 2012; see also Letter from the Department to the GOC "First Administrative Review of the Countervailing Duty Order on Certain Magnesia Carbon Bricks from the People's Republic of China: The Government of China's Extension Request," dated August 28, 2012.

<sup>38</sup> See Letter to the Department from Fengchi "Countervailing Duty Order on Certain Magnesia Carbon Bricks from the People's Republic of China; Administrative Review (8/2/10-12/31/10)," dated August 29, 2012.

<sup>39</sup> See Letter from the Department to Fengchi "First Countervailing Duty Administrative Review of Certain Magnesia Carbon Bricks from the People's Republic of China," dated September 11, 2012; see also Letter from the Department to the GOC "First Countervailing Duty Administrative Review of Certain Magnesia Carbon Bricks from the People's Republic of China," dated September 11, 2012.

<sup>40</sup> *Id.* at 2.

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

## **DISCUSSION OF THE METHODOLOGY**

### Use of Facts Available and Adverse Facts Available

Sections 776(a)(1)-(2) of the Act provides 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.<sup>41</sup>

### *Application of Total AFA to BRC and Fengchi*

As explained above, the Department selected BRC and Fengchi as mandatory respondents. On March 27, 2012, BRC stated in a letter to the Department that it would not respond to the CVD questionnaire for the POR. Accordingly, we preliminarily determine that BRC withheld information requested by the Department in accordance with section 776(a)(2)(A) of the Act. BRC 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 the review, BRC significantly impeded the proceeding in accordance with section 776(a)(2)(C) of the Act. Specifically, had BRC participated in the review, the Department would have calculated a CVD rate for the company as appropriate.

Also as discussed above, Fengchi stated in its August 29, 2012, letter that it would not respond to the Department’s 1<sup>st</sup> AR CVD Questionnaire. According to Fengchi, the Department’s regulations provide that the Department may incorporate the results of a scope determination in an ongoing administrative review only when the final scope determination is issued within 90 days of the initiation of the review. Fengchi notes that the final scope determination was issued 245 days after the initiation of the instant review, on July 2, 2012, and that the Department’s request to submit a questionnaire response based on sales of magnesia carbon bricks with added alumina came an additional 44 days later on August 15, 2012. Further, Fengchi argues that the Department’s request places an unfair burden on the company, by requiring it to undergo a complete CVD review in a seven-month time frame. As such, Fengchi requests the Department withdraw its request to respond to the 1<sup>st</sup> AR CVD Questionnaire with respect to magnesia carbon bricks with added alumina.

---

<sup>41</sup> See section 776(b) of the Act.

The Department disagrees with Fengchi's interpretation of 19 CFR 351.225(1)(4). The Department continues to consider the information requested relevant to its analysis and to interpret the relevant regulation as providing it with the authority to make that request. Specifically, the Department interprets 19 CFR 351.225(1)(4) to mean that where the Department determines there is not sufficient time in the review for parties to provide the necessary information, it may use non-adverse facts available in its determination. However, where the Department determines there is sufficient time and thus requests that parties provide such information, the Department may use facts available with an inference that is adverse to the interests of those parties who fail to cooperate to the best of their ability in providing such information. The Department recognizes that the final scope ruling was made more than 90 days after the initiation of this review. However, the Department has determined that there is sufficient time in the review for parties to provide the necessary information, and Fengchi has been provided ample time to respond to this questionnaire. The Department has extended the deadline for responding to the questionnaire until October 1, 2012, 47 days after the issuance of the Department's August 15, 2012, letter. Notably, the parties were provided 37 days to respond when the questionnaire was initially released on February 21, 2012.<sup>42</sup> In light of the time afforded to Fengchi, the Department finds that Fengchi had sufficient time to review all of its records and all of its entries of subject merchandise made during the POR and to submit a questionnaire response; however, it has failed to do so to date.

As discussed above, the Department has given Fengchi a final opportunity to submit a response by October 1, 2012. The Department notes that the deadline for the preliminary results of this administrative review is also October 1, 2012. Because the response due date and the deadline for the preliminary results are the same day, we are preliminarily applying facts available to Fengchi in accordance with section 776(a)(2)(A) of the Act for its decision to withhold information requested by the Department prior to these preliminary results. Furthermore, Fengchi's initial refusal to participate in the review has significantly impeded the proceeding in accordance with section 776(a)(2)(C) of the Act. Specifically, had the company participated in the review, the Department would have analyzed whether Fengchi had received countervailable subsidies and calculated CVD rates, as appropriate.

Because neither company responded to the Department's 1<sup>st</sup> AR CVD Questionnaire, their refusal to provide any information constitutes circumstances under which the Department must conclude that these respondents failed to act to the best of their ability. Hence, pursuant to section 776(b) of the Act, the Department has determined that, when selecting from among the facts otherwise available, an adverse inference is warranted with respect to BRC and Fengchi in these preliminary results. Importantly, should Fengchi fully and completely respond to the CVD questionnaire by the October 1, 2012, deadline, the Department intends to issue post-preliminary results. The Department may revisit its determination to apply AFA to Fengchi at that time.

### *Selection of AFA Rate*

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1)-(2) authorize the Department 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. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the rate is sufficiently adverse

---

<sup>42</sup> See 1<sup>st</sup> AR CVD Questionnaire at 2.

“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.”<sup>43</sup> 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.”<sup>44</sup>

In applying AFA to BRC and Fengchi, we are guided by the Department’s approach in recent CVD investigations and reviews.<sup>45</sup> Under this practice, the Department computes 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).

In these preliminary results, for the income tax rate reduction or exemption programs, we are applying an adverse inference that the non-cooperating companies paid no income taxes during 2010. For programs other than those involving income tax rate reduction or exemption programs, we have first sought to 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 have applied, 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, the Department applies the highest above *de minimis*, calculated subsidy rate for any 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.<sup>46</sup> We preliminarily determine on the basis of AFA, the countervailable subsidy rate for BRC and Fengchi to be 262.80 percent *ad valorem*.<sup>47</sup>

### *Corroboration of Secondary Information*

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the

---

<sup>43</sup> 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); see also Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, Vol. I, at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199.

<sup>44</sup> See SAA at 870.

<sup>45</sup> See, e.g., 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 (April 4, 2011), and accompanying Issues and Decision Memorandum (Aluminum Extrusions from the PRC Decision Memorandum) at “Application of Adverse Inferences: Non-Cooperative Companies” section; see also 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.

<sup>46</sup> See Aluminum Extrusions from the PRC Decision Memorandum at “Application of Adverse Inferences: Non-Cooperative Companies” section; see also Lightweight Thermal Paper From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 57323 (October 2, 2008), and accompanying Issues and Decision Memorandum at “Selection of the Adverse Facts Available Rate” section.

<sup>47</sup> See Memorandum to Nicholas Czajkowski, Acting Program Manager AD/CVD Operations, Office 6, “Application of Adverse Facts Available Rates for Preliminary Results of the Countervailing Duty Administrative Review of Certain Magnesia Carbon Bricks from the People’s Republic of China,” dated October 1, 2012 (MCBs 1<sup>st</sup> AR Prelim AFA Memorandum).

extent practicable, corroborate that information from independent sources that are reasonably at its 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.”<sup>48</sup> The Department considers information to be corroborated if it has probative value.<sup>49</sup> To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information.<sup>50</sup>

With regard to the reliability aspect of corroboration, we note that the rates on which we are relying were calculated in recent CVD final investigations or final results of review. Further, the calculated rates were based upon information about the same or similar programs. Moreover, no information has been presented that calls into question the reliability of these calculated rates that we are applying as AFA. Finally, unlike other types of information, such as 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.

With respect to the relevance aspect of corroborating the rates selected, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Where circumstances indicate that the information is not appropriate as AFA, the Department will not use it.<sup>51</sup>

In the absence of record evidence concerning these programs resulting from the non-cooperative companies’ decision not to participate in the review, we have reviewed the information concerning PRC subsidy programs in other cases. For those programs for which the Department has 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 the programs for which there is no program-type match, we have selected the highest calculated subsidy rate for any PRC program from which the non-cooperative companies could receive a benefit to use as AFA. The relevance of these rates is that they are actual calculated CVD rates for a PRC program from which the non-cooperative companies could actually receive a benefit. Further, these rates were calculated for periods close to the POR in the instant case. Moreover, the failure of these companies to respond to requests for information has “resulted in an egregious lack of evidence on the record to suggest an alternative rate.”<sup>52</sup> Due to the lack of participation by the non-cooperative companies and the resulting lack of record information concerning their use of programs under review, the Department has corroborated the rates it selected to the extent practicable.

For a detailed discussion of the AFA rates selected for each program under review, see Application of Adverse Facts Available Rates Memorandum.<sup>53</sup>

---

<sup>48</sup> See SAA at 870.

<sup>49</sup> Id.

<sup>50</sup> Id. at 869.

<sup>51</sup> See Fresh Cut Flowers From Mexico: Final Results of Antidumping Duty Administrative Review, 61 FR 6812, 6814 (February 22, 1996).

<sup>52</sup> See Shanghai Taoen Int’l Trading Co., Ltd. v. United States, 360 F. Supp. 2d 1339, 1348 (Ct. Int’l Trade 2005).

<sup>53</sup> See MCBs 1<sup>st</sup> AR Prelim AFA Memorandum.

## Rate for Non-Selected Companies Under Review

In accordance with section 777A(e)(2) of the Act, the Department employed a limited examination methodology, as it did not have the resources to examine all companies for which a review request was made. We selected Fengchi and BRC as the mandatory respondents in this review. The statute and the Department's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for individual examination where the Department limited its examination in an administrative review pursuant to section 777A(e)(2) of the Act. The Department's practice in cases involving limited selection based on exporters accounting for the largest volumes of trade has been 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 instructs that we are 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 have assigned rates for the selected mandatory respondents, Fengchi and BRC, based entirely upon adverse facts available.

As discussed above, ANH, the five RHI companies, and NCR filed no-shipment certifications. We submitted no-shipment inquiries to CBP for these companies on September 19, 2012. We have not received any information to date from CBP to contradict the claims by these three companies of no sales, shipments, or entries of subject merchandise to the United States during the POR. Because these companies timely filed their no-shipment certifications and CBP has confirmed their claims, we preliminarily intend to rescind the review of these companies. Absent any evidence of shipments being placed on the record, we intend to rescind the administrative reviews for these companies in the final results of this review.

With respect to the remaining companies for which we initiated reviews and which did not file no-shipment certifications, we will assign to entries made by such companies the all-others rate from the investigation. The Department assumes that the companies under review which have not submitted no-shipment certifications made some shipments during the POR. Accordingly, and consistent with section 705(c)(5)(A)(ii), we are assigning the all-others rate from the investigation to the remaining companies under review because the rates determined for the mandatory respondents in the preliminary results of this review are 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.

**CONCLUSION**

We recommend applying the above methodology for these preliminary results.

  
\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

  
\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Import Administration

1 OCTOBER 2012  
\_\_\_\_\_  
Date