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October 1, 2012

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 Antidumping
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 antidumping duty order on certain magnesia carbon bricks from the People's Republic of China ("PRC"), covering the period March 12, 2010, through August 31, 2011. The Department has preliminarily determined that during the period of review ("POR") respondents in this proceeding have made sales of subject merchandise at less than normal value ("NV").

The Department is also preliminarily rescinding this review for those exporters that indicated they made no entry of subject merchandise during the POR. Furthermore, we determine that 121 companies for which a review was requested have not demonstrated entitlement to a separate rate.¹ As a result, we have preliminarily determined that they are part of the PRC-wide entity, and are subject to the PRC-wide entity's rate. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results.

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).

¹ See Appendix I.



BACKGROUND

On September 20, 2010, we published in the *Federal Register* the antidumping duty orders on magnesia carbon bricks from Mexico and the PRC.² On September 2, 2011, we published a notice of opportunity to request an administrative review of the antidumping duty order on magnesia carbon bricks from the PRC.³ On September 30, 2011, we received a timely request for an administrative review of this antidumping duty order in accordance with 19 CFR 351.213(b) from Fengchi Imp. and Exp. Co., Ltd. of Haicheng City (“Fengchi”) and its affiliated producer Fengchi Refractories Co., of Haicheng City. Also on September 30, 2011, we received a timely request from Vesuvius USA Corporation (“Vesuvius”), a U.S. importer of the subject merchandise, for an administrative review of subject merchandise exported by Yingkou Baynquan Refractories Co., Ltd. (“BRC”) and imported by Vesuvius. Finally, 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”), the petitioner in the underlying investigation. On October 31, 2011, we initiated an administrative review of the antidumping duty order on magnesia carbon bricks from the PRC for 129 companies.⁴

On November 9, 2011, we released to interested parties CBP data covering POR imports of magnesia carbon bricks from the PRC, and invited these parties to comment on the Department’s selection of respondents for individual examination.⁵ Between November 2011 and January 2012, we received comments and rebuttal comments from BRC, Fengchi, and Petitioner on respondent selection. On December 30, 2011, we received separate rate certifications from Fengchi and BRC. On January 30, 2012, Vesuvius filed a request to withdraw its review request for BRC for which the Department initiated a review. However, because Petitioner also requested a review with respect to BRC, BRC remains under review. On February 22, 2012, we released to interested parties revised CBP data covering POR imports of magnesia carbon bricks from the PRC, and invited parties to comment on respondent selection. On February 27 and 28, 2012, Fengchi and Petitioner submitted additional comments on respondent selection, respectively. On March 13, 2012, we selected Fengchi and BRC for individual examination in this review.⁶ On March 14, 2012, we sent the antidumping duty questionnaires to Fengchi and BRC.

On March 27, 2012, BRC stated that it would not respond to the Department’s antidumping duty questionnaire,⁷ and subsequently did not respond to the questionnaire. Between April 25, 2012,

² See *Certain Magnesia Carbon Bricks From Mexico and the People’s Republic of China: Antidumping Duty Orders*, 75 FR 57257 (September 20, 2010) (“Order”).

³ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 76 FR 54735 (September 2, 2011).

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 76 FR 67133 (October 31, 2011) (“Initiation Notice”).

⁵ See Department’s Memorandum, re: “Magnesia Carbon Bricks from the People’s Republic of China: Customs Data of U.S. Imports of Magnesia Carbon Bricks,” dated November 9, 2011.

⁶ See Department’s Memorandum, re: “First Administrative Review of Magnesia Carbon Bricks from the People’s Republic of China: Selection of Mandatory Respondent and Response to Interested Parties’ Comments,” dated March 13, 2012.

⁷ See BRC’s letter, dated March 27, 2012.

and September 12, 2012, Fengchi responded to the Department's original and three of four supplemental questionnaires. On May 10, 2012, we extended the time limit for the preliminary results of review by 120 days allowed under section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("Act") to October 1, 2012.⁸ On August 29, 2012, and again on September 17, 2012, Fengchi indicated that it would not respond to the Department's supplemental questionnaire regarding Fengchi's sales of certain magnesia alumina carbon bricks ("MACBs"), and ultimately failed to respond to the questionnaire.⁹

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.

DISCUSSION OF THE METHODOLOGY

Non-Market-Economy Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy ("NME") country.¹⁰ In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority.

⁸ See *Certain Magnesia Carbon Bricks From the People's Republic of China: Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review*, 77 FR 27428 (May 10, 2012).

⁹ See Fengchi's letters, dated August 29, 2012 and September 17, 2012.

¹⁰ See, e.g., *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 30758, 30760 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 60632 (October 25, 2007).

Separate Rate

There is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate.¹¹ In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings.¹² It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in *Sparklers*,¹³ as amplified by *Silicon Carbide*.¹⁴ However, if the Department determines that a company is wholly foreign-owned or located in a market economy ("ME"), then a separate rate analysis is not necessary to determine whether it is independent from government control.¹⁵

In this administrative review, only two entities, Fengchi and BRC, submitted separate rate information. The remaining companies under review did not provide either a separate rate application or separate rate certification, as applicable. Therefore, the Department preliminarily determines that there were exports of merchandise under review from PRC exporters that did not demonstrate their eligibility for separate rate status. As a result, the Department is treating these PRC exporters as part of the PRC-wide entity.¹⁶ Additionally, we only received a complete response to Section A of the NME antidumping questionnaire from Fengchi, which contained information pertaining to the company's eligibility for a separate rate.

Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.¹⁷

The evidence provided by Fengchi supports a preliminary finding of *de jure* absence of government control based on the following: (1) an absence of restrictive stipulations associated

¹¹ See *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079, 53082 (September 8, 2006); *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China*, 71 FR 29303, 29307 (May 22, 2006).

¹² See *Initiation Notice*, 76 FR at 67133-34.

¹³ See *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*").

¹⁴ See *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994). ("*Silicon Carbide*").

¹⁵ See, e.g., *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007) ("*Wax Candles from the PRC*").

¹⁶ See "PRC-Wide Entity" section below.

¹⁷ See *Sparklers*, 56 FR at 20589.

with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of the companies.¹⁸

Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.¹⁹

The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control over export activities which would preclude the Department from assigning separate rates. For Fengchi, we determine that the evidence on the record supports a preliminary finding of *de facto* absence of government control based on record statements and supporting documentation showing the following: (1) the respondent sets its own export prices independent of the government and without the approval of a government authority; (2) the respondent retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) the respondent has the authority to negotiate and sign contracts and other agreements; and (4) the respondent has autonomy from the government regarding the selection of management.²⁰

The evidence placed on the record of this review by Fengchi demonstrates an absence of *de jure* and *de facto* government control with respect the company's exports of the merchandise under review, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. Therefore, we are preliminarily granting Fengchi a separate rate.

Because BRC did not respond to the antidumping duty questionnaire once it was selected as a mandatory respondent, which includes questions required to determine its eligibility for a separate rate as a mandatory respondent, the Department preliminarily finds that BRC has not demonstrated entitlement to a separate rate, and is therefore also a part of the PRC-wide entity.

PRC-Wide Entity

As discussed above, in this administrative review we limited the selection of respondents using CBP import data.²¹ In this case, we made available to the companies who were not selected, the SRA and SRC, which were put on the Department's website.²² Because certain parties for which

¹⁸ See Fengchi's Section A questionnaire response, dated April 25, 2012.

¹⁹ See *Silicon Carbide*, 59 FR at 22586-87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

²⁰ See Fengchi's Section A questionnaire response, dated April 25, 2012.

²¹ See Department's respondent selection memorandum, dated March 13, 2012..

²² See *Initiation Notice*.

a review was requested did not apply for separate rate status, they did not demonstrate eligibility for a separate rate and effectively became part of the PRC-wide entity, which is considered to be part of this review.²³ We continue to use the PRC-wide rate determined in the original investigation, the petition rate of 236.00 percent.²⁴ We have preliminarily determined that 121 companies did not demonstrate their eligibility for a separate rate and are properly considered part of the PRC-wide entity.²⁵ Specifically, 120 companies under review did not submit either separate rate applications or certifications as required, and are a part of the PRC-wide entity.

Fengchi

As noted above, on March 14, 2012, we sent the antidumping duty questionnaire to Fengchi. On March 30, 2012, the Department issued a preliminary scope ruling that MACBs are within the scope of the *Order*.²⁶ On April 18, 2012, after the Department issued the preliminary ruling that the MACBs are in-scope merchandise, ANH Refractory Company (“ANH”), a domestic producer of the subject merchandise, argued that the Department should require Fengchi to report all sales of subject merchandise, including MACBs.²⁷ On April 23, 2012, Fengchi responded that the scope ruling was only preliminary and 19 CFR 351.225(i) allows the review of sales of products only if the final in-scope ruling is made on those products within 90 days of initiation of an administrative review.²⁸ Fengchi also claimed that it was too burdensome to collect the requested data regarding its MACB sales within the timeframe of this administrative review.²⁹ Subsequently, Fengchi submitted its original questionnaire response reporting only a single sale of subject merchandise and made no mention of information regarding its MACBs sales to the Department on April 27, 2012.³⁰

Between April and June 2012, Petitioner and ANH submitted extensive comments on deficiencies in Fengchi’s questionnaire responses, to which Fengchi responded. On July 2, 2012, the Department issued a final scope ruling that certain MACBs are within the scope of the *Order*.³¹ Between July and September 2012, we issued four supplemental questionnaires to Fengchi to address certain deficiencies in its questionnaire responses. On August 3, 2012, based on the latest data which we obtained from CBP regarding Fengchi for the POR, the Department issued a questionnaire requesting that Fengchi confirm whether it had reported all sales of subject merchandise, including MACBs, and to revise the sales and factor information Fengchi had previously reported if Fengchi did not include all such information.³²

²³ See, e.g., *Honey From the People's Republic of China: Preliminary Results of Review*, 77 FR 46699, 46700 (August 6, 2012); *Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 64930, 64933 (November 6, 2006).

²⁴ See *Certain Magnesite Carbon Bricks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances (“Final LTFV Determination”)*, 75 FR 45468 (August 2, 2010)

²⁵ See Appendix I.

²⁶ See Department’s memorandum, re: “Certain Magnesite Carbon Bricks From the People's Republic of China and Mexico: Preliminary Scope Ruling - Fedmet Resources Corporation”, dated March 30, 2012.

²⁷ See ANH’s submission, dated April 18, 2012.

²⁸ See Fengchi’s response, dated April 23, 2012.

²⁹ See *id.*

³⁰ See Fengchi’s Section C&D questionnaire response, dated April 27, 2012.

³¹ See Department’s memorandum, re: “Certain Magnesite Carbon Bricks From the People's Republic of China and Mexico: Final Scope Ruling - Fedmet Resources Corporation”, dated July 2, 2012.

³² See Department’s supplemental questionnaire, dated August 3, 2012.

On August 9, 2012, Fengchi submitted comments on the Department's request, and again argued that Fengchi should not be required to report MACBs sales according to its interpretation of 19 CFR 351.225(l) and because the request was unreasonable given the burden and time required to gather the information.³³ We considered Fengchi's comments and reiterated the request for all sales of subject merchandise, including MACBs, on August 10, 2012, and extended the deadline for Fengchi to submit the requested information by seven days.³⁴ On August 14, 2012, Fengchi again objected to the Department's request for information, stating that the request is contrary to the Department's regulations and reporting MACBs sales is prejudicial and not practical in this review, and requested a meeting with the Department.³⁵ On August 22, 2012, counsel for Fengchi met with Department officials to discuss the inclusion of MACBs sales in this review.³⁶ On August 23, 2012, Petitioner submitted comments arguing that the Department has the authority to request the specific information, as the information sought by the questionnaire addresses both the universe of sales made by Fengchi as well as the *bona fide* nature of Fengchi's single reported sale of subject merchandise, and that Fengchi's arguments concerning the impracticability of the request are without merit.³⁷ Also on August 23, 2012, we extended the deadline to respond to our August 3, 2012, questionnaire for a second time by an additional 14 days.³⁸ On August 28, 2012, Department officials spoke with counsel for Fengchi via telephone, indicating that the Department was willing to work with Fengchi to accommodate any additional time that Fengchi believed was needed to comply with the Department's request for information on MACBs sales.³⁹ On August 29, 2012, Fengchi again requested that the Department not require Fengchi to report its MACBs sales and stated that it had determined not to respond to the Department's questionnaire.⁴⁰ On August 31, 2012, counsel for Petitioner and ANH also met with Department officials to discuss the inclusion of MACBs sales in this review.⁴¹ Between September 5 and 13, 2012, ANH and Petitioner submitted additional comments regarding Fengchi's refusal to provide its MACBs sales information. On September 7, 2012, the Department issued a final letter to Fengchi requesting that it respond to the August 3, 2012, questionnaire and extended the deadline for response for a third time by ten days.⁴² Finally, on September 17, 2012, Fengchi again stated that it has determined to adhere to its decision not to respond to the Department's request.⁴³

Use of Facts Available and Adverse Facts Available ("AFA")

Section 776(a) of the Act provides that the Department shall apply "facts otherwise available" if (1) necessary information is not on the record or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the

³³ See Fengchi's comments, dated August 9, 2012.

³⁴ See Department's response letter, dated August 10, 2012.

³⁵ See Fengchi's objection letter, dated August 14, 2012.

³⁶ See Department's *ex-parte* meeting memorandum, dated August 24, 2012.

³⁷ See Petitioner's comments, dated August 23, 2012.

³⁸ See Department's extension letter, dated August 23, 2012.

³⁹ See Department's memorandum to file, dated October 1, 2012.

⁴⁰ See Fengchi's response letter, dated August 29, 2012.

⁴¹ See Department's *ex-parte* meeting memorandum, dated September 6, 2012.

⁴² See Department's second response letter, dated September 7, 2012.

⁴³ See Fengchi's final response letter, dated September 17, 2012.

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. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Application of Total AFA to Fengchi

As discussed above, Fengchi stated in its August 29, 2012, letter that it would not respond to the Department's August 3, 2012, supplemental 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 alumina carbon bricks came an additional 32 days later on August 3, 2012. Further, Fengchi argues that the Department's request places an unfair burden on the company, by requiring it to undergo a complete a review in a seven-month time frame. As such, Fengchi requests the Department withdraw its request to respond to the August 3, 2012, supplemental questionnaire.

The Department disagrees with Fengchi's interpretation of 19 CFR 351.225(l)(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(l)(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 September 17, 2012, 45 days after the issuance of the Department's August 3, 2012 supplemental questionnaire. Notably, the parties were provided 37 days to respond when the full antidumping duty questionnaire was initially released on March 14, 2012. 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.

By refusing to respond to our request for all sales of subject merchandise, including MACBs, Fengchi leaves the Department unable to determine the extent of subject merchandise sales it

made and the extent of any dumping during the POR. Accordingly, we preliminarily determine that Fengchi withheld information requested by the Department and failed to respond within the established deadlines in accordance with sections 776(a)(2)(A) and (B) of the Act and Fengchi significantly impeded the proceeding in accordance with section 776(a)(2)(C) of the Act.⁴⁴

Fengchi's refusal to provide information constitutes circumstances under which the Department can conclude that Fengchi has not cooperated to the best of its ability.⁴⁵ Hence, pursuant to section 776(b) of the Act, the Department has preliminarily determined that it must rely on facts otherwise available in order to determine a weighted-average dumping margin for Fengchi. Further, when selecting from among the facts otherwise available, the Department has preliminarily determined that an adverse inference is warranted with respect to Fengchi because it has withheld information and significantly impeded the proceeding.

Application of Total AFA to the PRC-Wide Entity

In the *Initiation Notice*, the Department stated that if one of the companies for which this review was initiated "does not qualify for a separate rate, all other exporters of Certain Magnesia Carbon Bricks from the PRC that have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity."⁴⁶ As noted above, 120 companies under review did not provide separate rate information or a certification, and have not qualified for separate rates. Further, the Department preliminarily determines that BRC is not eligible for a separate rate because it has not provided the information requested to support its claim to separate rate status. Therefore, the PRC-wide entity is under review.

The PRC-wide entity, including BRC, withheld information requested by the Department and failed to respond within the established deadlines in accordance with sections 776(a)(2)(A) and (B) of the Act. Furthermore, the PRC-wide entity's refusal to participate in the review significantly impeded the proceeding in accordance with section 776(a)(2)(C) of the Act.

Because the PRC-wide entity, including BRC, did not respond to the Department's antidumping questionnaire, the Department must rely on facts otherwise available to assign a weighted-average dumping margin to the PRC-wide entity in accordance with section 776(a) of the Act. Further, the Department finds that the PRC-wide entity's failure to provide the requested information constitutes circumstances under which the Department concludes that less than full cooperation has been shown. Hence, pursuant to section 776(b) of the Act, the Department has preliminarily determined that, when selecting from among the facts otherwise available, an adverse inference is warranted with respect to the PRC-wide entity.

⁴⁴ While we are cognizant of Petitioner and ANH's arguments regarding the *bona fide* nature of Fengchi's single reported magnesia carbon brick sale, given the number and volume of Fengchi's unreported subject MACBs sales and its refusal to cooperate, the Department is applying AFA to Fengchi, which renders the *bona fide* issue moot.

⁴⁵ See *Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8911 (February 23, 1998); see also *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review*, 70 FR 69937, 69939 (November 18, 2005), and *Uruguay Round Agreements Act, Statement of Administrative Action*, H.R. Doc. No. 103-316, vol. 1, at 870 (1994) ("SAA").

⁴⁶ See *Initiation Notice*, 75 FR at 67142, footnote 4.

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) 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 information placed on the record. In reviews, the Department normally selects as AFA the highest rate determined for any respondent in any segment of the proceeding.⁴⁷ The Court of International Trade (“CIT”) and the Court of Appeals for the Federal Circuit (“Federal Circuit”) have consistently upheld the Department’s practice.⁴⁸ The Department’s practice, when selecting an AFA rate from among the possible sources of information, has been 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.”⁴⁹ 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.”⁵⁰ In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent’s commercial activity, selecting the highest prior margin reflects a “common sense inference that the highest prior margin is the most probative evidence of current rates because, if it were not so, the importer, knowing the rule, would have produced current information showing the respondent’s rate to be less.”⁵¹ Consistent with the statute, court precedent, and its normal practice, the Department has assigned as AFA the petition rate of 236.00 percent to Fengchi and the PRC-wide entity, including BRC. This is the rate assigned to the PRC-wide entity in the final determination of the antidumping investigation as AFA, and the rate currently applicable to the PRC-wide entity.⁵² Further, Fengchi currently has a cash deposit rate of 128.10 percent, and we also find that the rate of 236.00 percent for use as AFA is appropriate for Fengchi in that it is sufficient to ensure that Fengchi does not benefit from failing to cooperate in our review by refusing to respond to the Department’s request for complete information regarding its sales of subject merchandise.

The Department preliminarily determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA. The Department’s reliance on the AFA rate

⁴⁷ See, e.g., *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 68 FR 19504, 19507 (April 21, 2003).

⁴⁸ See *KYD, Inc. v. United States*, 607 F.3d 760, 766-67 (Fed. Cir. 2010) (“KYD”); *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990) (“Rhone Poulenc”); *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in a less-than-fair-value (LTFV) investigation); *Kompass Food Trading Int’l v. United States*, 24 CIT 678, 684 (2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd. v. United States*, 360 F. Supp. 2d 1339, 1348 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

⁴⁹ See SAA at 870.

⁵⁰ See *id.*; see also *Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910, 76912 (December 23, 2004), and *D&L Supply Co. v. United States*, 113 F.3d 1220, 1223 (Fed. Cir. 1997).

⁵¹ See *KYD*, 607 F.3d at 766 (citing *Rhone Poulenc*, 899 F.2d at 1190) (original emphasis).

⁵² See *Final LTFV Determination*, 75 FR, at 45471.

for the PRC- wide entity from the original investigation to determine an AFA rate for Fengchi is subject to the requirement to corroborate secondary information.⁵³

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 extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as 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 of the Act concerning the subject merchandise.⁵⁴ To corroborate means that the Department will satisfy itself that the secondary information to be used has probative value.⁵⁵ To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.⁵⁶ Independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.⁵⁷

The Department has corroborated the 236.00 percent rate, the petition rate applied to the PRC-wide entity in the investigation. Specifically, to assess the probative value of the total AFA rate selected for the PRC-wide entity in the investigation, the Department compared this 236.00 percent rate to model-specific margins of the cooperating mandatory respondent in the investigation. This rate from the petition was corroborated in the investigation in which the Department found that the 236.00 percent rate for the PRC-wide entity was in the range of the highest model-specific margins calculated in the investigation.⁵⁸

Here the Department finds the PRC-wide entity rate to be corroborated. The Department finds this rate to be reliable and relevant, because it (1) was applied as the PRC-wide entity rate in the immediately investigation, and (2) was corroborated in a prior segment using model-specific margins of the cooperating respondent in that investigation.

With respect to whether the 236.00 percent rate is relevant to Fengchi in this review, we first compared the average unit values for five of Fengchi's entries of subject merchandise, which we obtained from CBP, to the U.S. price used in the petition as the basis for the 236.00 percent rate.

⁵³ See section 776(c) of the Act and the "Corroboration of Facts Available" section below.

⁵⁴ See SAA.

⁵⁵ See *id.*

⁵⁶ See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

⁵⁷ See SAA at 870; see also *Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada*, 70 FR 12181, 12183 (March 11, 2005).

⁵⁸ See *Final LTFV Determination*, 75 FR, at 45470, 45471.

We found the U.S. price from the petition is within the range of the average unit values for Fengchi's entries, and, therefore, is relevant to Fengchi's for this POR. With respect to normal value, we then compared the usage rates for the main factors of production ("FOP") that were the basis for the 236.00 percent rate, to the usage rates for the same FOPs reported in Fengchi's Section D database. We found that the usage rates that were the basis for the normal value of the 236.00 percent rate from the petition were sufficiently corroborated by FOP information submitted by Fengchi in the course of this administrative review, as the usage rates from the petition rate for these main inputs fell within the range of the usage rates submitted by Fengchi in the current review. Therefore, we find that the normal value from the petition is relevant to Fengchi for this POR. In sum, we find that the 236.00 rate from the petition is relevant to Fengchi for this POR because the net U.S. price and normal value are relevant to Fengchi.

As a result of the above analysis, the Department finds that the AFA rate of 236.00 percent for Fengchi is reliable and relevant, and has probative value as the AFA rate for Fengchi in these preliminary results. Because these are the preliminary results of review, the Department will consider all rates on the record at the time of the final results of review for the purpose of determining the most appropriate weighted-average dumping margin for the PRC-wide entity and Fengchi.⁵⁹

Export Subsidy Adjustment

In addition, given that both Fengchi and the PRC-wide entity received an adverse facts available rate based on information contained in the Petition, we are unable to account for export subsidies in the margin calculation program by adjusting U.S. price. For Fengchi, which received an AFA rate based on information contained in the petition, as an extension of the adverse inference found necessary pursuant to section 776(b) of the Act, the Department has adjusted Fengchi's AD cash deposit and assessment rate by the lowest export subsidy rate for any party in the CVD investigation or for Fengchi's preliminary results in the concurrent CVD review. The Department arrived at the export subsidy adjustment for the PRC-wide entity, as an extension of the adverse inference found necessary pursuant to section 776(b) of the Act, by adjusting the PRC-wide entity's AD cash deposit and assessment rate by the lowest export subsidy rate for any party in the CVD investigation.

⁵⁹ See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation*, 65 FR 1139, 1141 (January 7, 2000), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value; Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation*, 65 FR 42669 (July 11, 2000).

Appendix I

Anyang Rongzhu Silicon Industry Co., Ltd.
Bayuquan Refractories Co., Ltd.
Beijing Tianxing Ceramic Fiber Composite Materials Corp.
Changxing Magnesium Furnace Charge Co., Ltd.
Changxing Wangfa Architectural & Metallurgical Materials Co., Ltd.
Changxing Zhicheng Refractory Material Factory
China Metallurgical Raw Material Beijing Company
China Quantai Metallurgical (Beijing) Engineering & Science Co., Ltd.
Chosun Refractories
Cimm Group of China
CNBM International Corporation
Dalian Dalmond Trading Co., Ltd.
Dalian F.T.Z. Maylong Resources Co., Ltd.
Dalian Huayu Refractories International Co., Ltd.
Dalian LST Metallurgy Co., Ltd.
Dalian Mayerton Refractories Ltd.
Dalian Morgan Refractories Ltd.
Dashiqiao Bozhong Mineral Products Co., Ltd.
Dashiqiao City Guangcheng Refractory Co., Ltd.
Dashiqiao Jia Sheng Mining Co., Ltd.
Dashiqiao Jinlong Refractories Co., Ltd.
Dashiqiao RongXing Refractory Material Co., Ltd.
Dashiqiao Sanqiang Refractory Material Co., Ltd.
Dashiqiao Yutong Packing Factory
Dengfeng Desheng Refractory Co., Ltd.
DFL Minmet Refractories Corp.
Duferco BarInvest SA Beijing Office
Duferco Ironet Shanghai Representative Office
Duferco SA
Eastern Industries & Trading Co., Ltd.
Fengchi Mining Co., Ltd of Haicheng City
Fengchi Refractories Co., Haicheng City
Fengchi Refractories Corp.
Haicheng City Qunli Mining Co., Ltd.
Haicheng City Xiyang Import & Export Corporation
Haicheng Donghe Taidi Refractory Co., Ltd.
Haicheng Ruitong Mining Co., Ltd.
Haiyuan Talc Powder Manufacture Factory
Henan Boma Co. Ltd.
Henan Kingway Chemicals Co., Ltd.
Henan Tagore Refractories Co., Ltd.
Henan Xinmi Changzixing Refractories, Co., Ltd.
Hebei Qinghe Refractory Group Co. Ltd

Huailin Refractories (Dashiqiao) Pte. Ltd.
Jiangsu Sujia Group New Materials Co., Ltd
Jiangsu Sujia Joint-Stock Co., Ltd.
Jinan Forever Imp. & Emp. Trading Co., Ltd.
Jinan Linqun Imp. & Emp. Co. Ltd.
Jinan Ludong Refractory Co., Ltd.
Kosmokraft Refractory Limited
Kuehne & Nagel Ltd. Dalian Branch Office
Lechang City Guangdong Province SongXin Refractories Co., Ltd.
Liaoning Fucheng Refractories Group Co., Ltd.
Liaoning Fucheng Special Refractory Co., Ltd.
Liaoning Jiayi Metals & Minerals Ltd.
Liaoning Jinding Magnesite Group
Liaoning Mayerton Refractories Co., Ltd.
Liaoning Mineral & Metallurgy Group Co., Ltd.
Liaoning Qunyi Group Refractories Co., Ltd.
Liaoning Qunyi Trade Co., Ltd.
Liaoning RHI Jinding Magnesis Co., Ltd.
LiShuang Refractory Industrial Co., Ltd.
Lithomelt Co., Ltd.
Luheng Refractory Co., Ltd.
Luoyang Refractory Group Co., Ltd.
Mayerton Refractories
Minsource International Ltd.
Minteq International Inc.
National Minerals Co., Ltd.
North Refractories Co., Ltd.
Orestar Metals & Minerals Co., Ltd.
Oreworld Trade (Tangshan) Co., Ltd.
Puyang Refractories Co., Ltd.
Qingdao Almatris Co., Ltd. (HQ)
Qingdao Almatris Co., Ltd. (Manufacturing)
Qingdao Almatris Trading Co., Ltd. (Sales Office)
Qingdao Blueshell Import & Export Corp.
Qingdao Fujing Group Co., Ltd.
Qingdao Huierde International Trade Co., Ltd.
Rongyuan Magnesite Co., Ltd. of Dashiqiao City
Shandong Cambridge International Trade Inc.
Shandong Lunai Kiln Refractories Co., Ltd.
Shandong Refractories Corp.
Shanxi Dajin International (Group) Co., Ltd.
Shanxi Xinrong International Trade Co. Ltd.
Shenyang Yi Xin Sheng Lai Refractory Materials Co., Ltd.
Shinagawa Rongyuan Refractories Co., Ltd.
Sinosteel Corporation
SMMC Group Co., Ltd.

Tangshan Success Import & Export Trading Co., Ltd.
Tianjin New Century Refractories, Ltd.
Tianjin New World Import & Export Trading Co., Ltd.
Tianjin Weiyuan Refractory Co., Ltd.
Vesuvius Advanced Ceramics (Suzhou) Co. Ltd.
Wonjin Refractories Co., Ltd.
Xiyuan Xingquan Forsterite Co., Ltd.
Yanshi City Guangming High-Tech Refractories Products Co., Ltd.
YHS Minerals Co., Ltd.
Yingkou Bayuquan Refractories Co., Ltd.
Yingkou Dalmond Refractories Co., Ltd.
Yingkou Guangyang Refractories Co., Ltd.
Yingkou Guangyang Refractories Co., Ltd. (YGR)
Yingkou Heping Samwha Minerals Co., Ltd.
Yingkou Jiahe Refractories Co., Ltd.
Yingkou Jinlong Refractories Group
Yingkou Kyushu Refractories Co., Ltd.
Yingkou Qinghua Group Imp. & Emp. Co., Ltd.
Yingkou Qinghua Refractories Co., Ltd.
Yingkou Sanhua Refractory Materials Co., Ltd.
Yingkou Tianrun Refractory Co., Ltd.
Yingkou Wonjin Refractory Material Co., Ltd.
Yingkou Yongji Mag Refractory, Ltd.
Yixing Runlong Trade Co., Ltd.
Yixing Xinwei Leeshing Refractory Material Co., Ltd.
Yixing Zhenqiu Charging Ltd.
Zhejiang Changxing Guangming Special Refractory Material Foundry, Co., Ltd.
Zhejiang Deqing Jinlei Refractory Co., Ltd.
Zhejiang Huzhou Fuzilin Refractory Metals Group Co., Ltd.
Zhengzhou Anec Industrial Co., Ltd.
Zhengzhou Huachen Refractory Co., Ltd.
Zibo Lianzhu Refractory Materials Co., Ltd.