



A-570-954
3rd Administrative Review
POR: 9/1/12 – 8/31/13
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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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; 2012-2013

SUMMARY

In response to requests from interested parties, the Department of Commerce (the “Department”) is conducting the third administrative review of the antidumping duty order on certain magnesia carbon bricks (“bricks”) from the People’s Republic of China (“PRC”) for the period of review (“POR”) September 1, 2012, through August 31, 2013. The Department preliminarily determines that Fengchi Imp. and Exp. Co., Ltd. of Haicheng City (“Fengchi”) had no shipments during the POR, and that the PRC-wide entity sold merchandise at below normal value.

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 intend to 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

In September 2013, the Department received timely requests from interested parties to conduct an administrative review of the antidumping duty order on bricks from the PRC. Based upon these requests, on November 8, 2013, the Department published a notice of initiation of an administrative review.¹ Fengchi submitted a timely certification of no shipments. On January 31, 2014, Resco Products, Inc. (“Petitioner”) and Magnesita Refractories Company (“Magnesita”) timely withdrew their request for an administrative review for all but two

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 78 FR 67104 (November 8, 2013) (“*Initiation Notice*”).



companies. Based on the other outstanding review request, there are five companies that are currently under review.

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.

Preliminary Finding of No Shipments

In a prior segment Fengchi received a separate rate.² In this segment, Fengchi submitted a timely filed certification that it had no shipments of subject merchandise to the United States during the POR.³ Moreover, we did not receive information from CBP that contradicted Fengchi’s claim of no shipments during the POR. Therefore, we preliminarily determine that Fengchi had no shipments of subject merchandise during the POR.

Consistent with the recently announced refinement to its assessment practice in non-market economy (“NME”) cases, the Department will not rescind the review in these circumstances, but rather, complete the review with respect to Fengchi and issue appropriate instructions to CBP based on the final results of the review.⁴ Specifically, because there is no record evidence of shipments for Fengchi, and because Fengchi has a separate rate from a prior segment, consistent with the *NME Reseller Policy*, Fengchi preliminarily retained its separate rate. Furthermore, pursuant to the *NME Reseller Policy*, when the Department makes a determination that a company under review had no shipments during the POR, any suspended entries that entered under that company’s case number and which was subject to that company’s cash deposit requirements will be liquidated at the rate for the NME-wide entity. Therefore, if the Department continues to find after the preliminary results that there were no shipments for Fengchi in the final results, we will instruct CBP to liquidate any existing suspended entries of

² See *Certain Magnesia Carbon Bricks From the People’s Republic of China: Antidumping Duty Administrative Review; 2010–2011*, 77 FR 61394 (October 9, 2012), unchanged in *Certain Magnesia Carbon Bricks From the People’s Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review; 2010–2011*, 78 FR 22230 (April 15, 2013).

³ See Fengchi’s letter dated January 2, 2014.

⁴ See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011) (“*NME Reseller Policy*”); see also *Certain Cut-to-Length Carbon Steel Plate From the People’s Republic of China: Preliminary Results of Antidumping Administrative Review and Preliminary Determination of No Shipments*, 77 FR 47593 (August 9, 2012).

subject merchandise entered under the case numbers for Fengchi at the rate for the PRC-wide entity.⁵

Non-Market Economy Status

In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the Department. The Department considers the PRC to be an NME country.⁶ Therefore, we continue to treat the PRC as an NME country for purposes of these preliminary results.

Separate Rates

Pursuant to section 771(18)(C)(i) of the Act, a designation of a country as an NME remains in effect until it is revoked by the Department. Accordingly, there is a rebuttable presumption that all companies in an NME proceeding are subject to government control, and thus, should be assessed a single antidumping duty rate.⁷ 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.⁸ 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 proceeding under the test established in *Sparklers*,⁹ as amplified by *Silicon Carbide*.¹⁰ However, if the Department determines that a company is wholly foreign-owned by individuals or companies located in a market economy ("ME"), then an analysis of the *de jure* and *de facto* criteria is not necessary to determine whether it is independent from government control.¹¹

⁵ See *NME Reseller Policy*.

⁶ See, e.g., *Certain Polyester Staple Fiber from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review*, 77 FR 39990 (July 6, 2012) unchanged in *Certain Polyester Staple Fiber from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2010-2011*, 78 FR 2366 (January 11, 2013).

⁷ 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) ("*Lined Paper*"); *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) ("*Sawblades*").

⁸ See *Initiation Notice*, 78 FR at 67104.

⁹ 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*"), as amplified by *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*"), and 19 CFR 351.107(d).

¹⁰ See *Silicon Carbide*, 59 FR at 22585.

¹¹ See, e.g., *Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011*, 78 FR 9493 (February 6, 2013), and accompanying Decision Memorandum at 9, unchanged in final results, 78 FR 35249 (June 12, 2013); *Certain Pneumatic Off-the-Road Tires from the People's Republic of China, Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 9278, 9284 (February 20, 2008), unchanged in final affirmative determination, 73 FR 40485 (July 15, 2013).

In order to demonstrate separate-rate status eligibility, the Department normally requires entities, for whom a review was requested, and who were assigned a separate rate in a previous segment of this proceeding, to submit a separate rate certification stating that they continue to meet the criteria for obtaining a separate rate.¹² For entities that were not assigned a separate rate in the previous segment of a proceeding, to demonstrate eligibility, the Department requires a separate rate application.

PRC-Wide Entity

For the remaining five companies subject to this review,¹³ we preliminarily determine that only Fengchi demonstrated its eligibility for a separate rate in a prior segment because no other company submitted a separate rate application and certification that it was sufficiently free from government control.

Fedmet stated that, although the *Initiation Notice* included Fedmet as a producer of subject merchandise, it is not a PRC producer but a U.S. importer of subject merchandise.¹⁴ Fedmet provided information from this and a previous segment to demonstrate its status as an importer. Accordingly, we are preliminarily rescinding this administrative review for Fedmet.

Because Puyang, Fengchi Mining Co., Ltd. of Haicheng City, and Fengchi Refractories Corp. have not established their eligibility for a separate rate, the Department preliminarily determines that they will continue to be considered part of the PRC-wide entity. Further, the Department preliminarily assigns the PRC-wide entity a rate of 236.00 percent, the only rate ever determined for the PRC-wide entity in this proceeding.

Recommendation

We recommend applying the above methodology for these preliminary results.

Agree Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

29 SEPTEMBER 2014
(Date)

¹² See *Initiation Notice*, 78 FR at 46567.

¹³ Fedmet Resources Corporation (“Fedmet”), Puyang Refractory Co., Ltd. (“Puyang”), Fengchi Imp. and Exp. Co., Ltd. of Haicheng City (“Fengchi”), Fengchi Mining Co., Ltd. of Haicheng City, and Fengchi Refractories Corp.

¹⁴ See Letter to the Department from Fedmet, “Magnesia Carbon Bricks from the People’s Republic of China, Case No. A-570-954: Entry of Appearance and APO Application” (November 18, 2013).