



**UNITED STATES DEPARTMENT OF COMMERCE**  
**International Trade Administration**

Washington, D. C. 20230

A-570-954

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September 7, 2016

**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 the Preliminary Results of the 2014-  
2015 Antidumping Duty Administrative Review: Magnesia  
Carbon Bricks from the People's Republic of China

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Summary

The Department of Commerce (“the Department”) is conducting an administrative review of the antidumping duty (“AD”) order on magnesia carbon bricks (“MCBs”) from the People’s Republic of China (“PRC”). The period of review (“POR”) is September 1, 2014, through August 31, 2015. The Department preliminarily determines that Fengchi Imp. and Exp. Co., Ltd of Haicheng City (“Fengchi”) and RHI Refractories Liaoning Co., Ltd. (“RHI”) had no reviewable shipments of subject merchandise during the POR. The Department is also preliminarily rescinding this review with respect to Fedmet Resources Corporation (“Fedmet”).

If we adopt these preliminary results 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. We invite interested parties to comment on these preliminary results. Unless extended, we intend to issue final results no later than 120 days from the date of publication of our preliminary results, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the “Act”).



## Case History

On September 30, 2015, the Department received a request from Petitioner<sup>1</sup> to conduct an administrative review of the antidumping duty order on MCBs from the PRC for 18 companies. On November 9, 2015, the Department initiated this review based on these review requests.<sup>2</sup>

On December 8, 2015, RHI submitted its claim of no shipments.<sup>3</sup> On December 9, 2015, Yingkou Bayuquan Refractories Co., Ltd. (“BRC”), Fedmet, Fengchi, Fengchi Mining Co., Ltd. of Haicheng City, and Fengchi Refractories Co., of Haicheng City submitted certified responses stating they made no entries, exports, or sales of subject merchandise into the United States during the POR.<sup>4</sup> The Department queried CBP for respondent selection purposes. On December 22, 2015, the Department placed a memorandum on the record stating that CBP indicated there were no subject entries of MCBs from the PRC during the POR and invited parties to comment.<sup>5</sup> On January 5, 2016, Petitioner submitted comments asking the Department to confirm with CBP whether there were shipments of the subject merchandise during the POR.<sup>6</sup> On January 25, 2016, the Department made a no shipments inquiry to CBP to confirm whether any of the companies subject to this review exported MCBs from the PRC.<sup>7</sup> In response to that request, CBP provided certain entry packages concerning Fedmet.<sup>8</sup>

## Scope of the Order

The scope of the order includes certain chemically-bonded (resin or pitch), MCBs 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, MCBs 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 MCBs that are the subject of this order are currently classifiable under subheadings 6902.10.1000, 6902.10.5000, 6815.91.0000, 6815.99.2000, and 6815.99.4000 of the Harmonized Tariff Schedule of the United States (“HTSUS”). While HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive.

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<sup>1</sup> The Petitioner is the Magnesia Carbon Bricks Fair Trade Committee, an *ad hoc* association comprised of the following three U.S. producers of MCBs: Resco Products, Inc.; Magnesita Refractories Company; and Harbison Walker International, Inc. (hereinafter “Petitioner”).

<sup>2</sup> See *Initiation of Antidumping Duty Administrative Reviews*, 80 FR 69193 (November 9, 2015) (“*Initiation Notice*”).

<sup>3</sup> See No Shipments Certification submitted by RHI, dated December 8, 2015.

<sup>4</sup> See No Shipments Certifications submitted by BRC, Fengchi, Fengchi Mining Co., Ltd. of Haicheng City, Fengchi Refractories Co., of Haicheng City, and Fedmet, dated December 9, 2015.

<sup>5</sup> See Memorandum to the File, dated December 22, 2015 (“CBP Respondent Selection Data”).

<sup>6</sup> See “Certain Magnesia Carbon Bricks From The People’s Republic of China: Comments On The CBP Information,” dated January 5, 2016.

<sup>7</sup> See Customs Inquiry, dated February 12, 2016 (“CBP No Shipment Inquiry”).

<sup>8</sup> See Memorandum to the File, dated May 9, 2016 (“CBP Entry Packages”).

## DISCUSSION OF THE METHODOLOGY

### Non-Market Economy Status

In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is a non-market economy (“NME”) country shall remain in effect until revoked by the Department. The Department considers the PRC to be an NME country.<sup>9</sup> Therefore, we continue to treat the PRC as an NME country for purposes of these preliminary results.

### Companies That Did Not Establish Their Eligibility for a 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.<sup>10</sup> In the *Initiation Notice*, the Department notified parties of the application process by which exporters may obtain separate rates.<sup>11</sup> 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 rule, the Department analyzes each exporting entity in an NME country under the test established in *Sparklers*, as amplified by *Silicon Carbide*.<sup>12</sup> However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate rate analysis is not necessary to determine whether it is independent from government control.<sup>13</sup> The rate applicable to the PRC-wide entity is 236.00 percent.

Because Fengchi Mining Co., Ltd. of Haicheng City; Fengchi Refractories Co., of Haicheng City; Dashiqiao City Guancheng Refractor Co., Ltd.; Jiangsu Sujia Group New Materials Co., Ltd.; Liaoning Fucheng Refractories Group Co., Ltd.; Liaoning Fucheng Special Refractory Co., Ltd.; Liaoning Jiayi Metals & Minerals Co., Ltd.; Puyang Refractories Group Co., Ltd.; BRC;<sup>14</sup> Yingkou Dalmond Refractories Co., Ltd.; Yingkou Guangyang Co., Ltd., Yingkou Jiahe Refractories Co. Ltd.; Yingkou Kyushu Refractories Co., Ltd.; Yingkou New Century Refractories Ltd.; and Yingkou Wonjin Refractory Material Co., Ltd. have not established their

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<sup>9</sup> See, e.g., *Certain Polyester Staple Fiber from the People’s Republic of China: Preliminary Results of the Antidumping Duty Administrative Review; 2012-2013*, 79 FR 43395 (July 25, 2014) unchanged in *Certain Polyester Staple Fiber from the People’s Republic of China: Final Results of the Antidumping Duty Administrative Review; 2012–2013*, 80 FR 4542 (January 28, 2015).

<sup>10</sup> 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).

<sup>11</sup> See *Initiation Notice*, 80 FR at 69194-95.

<sup>12</sup> 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*”) and *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*”).

<sup>13</sup> 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).

<sup>14</sup> Although BRC submitted a no shipments certification, it remains part of the PRC-wide entity. See *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, 22231 (April 15, 2013).

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.

#### Preliminary Determination of No Shipments

RHI and Fengchi received separate rates in prior segments of this proceeding.<sup>15</sup> On December 8, 2015, RHI submitted its claim of no shipments. On December 9, 2015, Fengchi submitted its no shipments claim. The Department sent inquiries to CBP to confirm the companies' submissions,<sup>16</sup> and CBP did not provide any information to contradict those claims. However, consistent with the Department's practice in NME cases, the Department finds that it is appropriate not to rescind the review for these companies in these circumstances, but rather to complete the review with respect to Fengchi and RHI and issue appropriate instructions to CBP based on the final results of the review.<sup>17</sup>

#### Preliminary Partial Rescission of Review

In its No Shipment Certification, Fedmet stated that it is not a PRC producer or exporter of the subject merchandise but a U.S. importer.<sup>18</sup> Fedmet cited its entry of appearance and application for business proprietary access to demonstrate its status as an importer.<sup>19</sup> Based on the information available, the Department preliminarily determines that Fedmet's entries will be subject to the appropriate exporter's cash deposit requirements and assessment rates, as outlined below. Accordingly, we are preliminarily rescinding this review for Fedmet.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department will issue the final results of this administrative review within 120 days of publication of these preliminary results. The assessment of antidumping duties on entries of merchandise covered by this review and future deposits of estimated duties shall be based on the final results of this review.

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<sup>15</sup> See *Certain Magnesia Carbon Bricks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances*, 75 FR 45468, 45470 (Aug. 2, 2010); *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).

<sup>16</sup> See Customs No Shipments Inquiry, dated February 12, 2016.

<sup>17</sup> See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694, 65694–95 (October 24, 2011).

<sup>18</sup> See Fedmet's No Shipments Certification, dated December 9, 2015.

<sup>19</sup> *Id.* See also "Magnesia Carbon Bricks from the People's Republic of China, Case No. A-570-954: Entry of Appearance and APO Application," dated November 10, 2015.

**RECOMMENDATION**

We recommend applying the above methodology for these preliminary results.

Agree  Disagree

Paul Piquado  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

1 SEPTEMBER 2016  
Date