



A-570-954
Administrative Review
POR: 9/1/18 – 8/31/19
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July 21, 2020

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of the 2018-
2019 Antidumping Duty Administrative Review: Certain
Magnesia Carbon Bricks from the People's Republic of China

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) *Order*¹ on certain magnesia carbon bricks (magnesia carbon bricks) from the People's Republic of China (China) covering the period of review (POR) September 1, 2018 through August 31, 2019.² This administrative review covers 17 companies.³ We preliminarily find that Fedmet Resources Corporation (Fedmet) had no shipments of subject merchandise during the POR. We also preliminarily determine that the 16 other companies for which a review was initiated have not demonstrated their eligibility for separate rate and are, therefore, part of the China-wide entity.

II. BACKGROUND

On September 30, 2019, the petitioner⁴ requested that Commerce conduct an administrative review of the AD order on magnesia carbon bricks with respect to 17 companies.⁵ On November

¹ See *Certain Magnesia Carbon Bricks from Mexico and the People's Republic of China: Antidumping Duty Orders*, 75 FR 57257 (September 20, 2010) (*Order*).

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 61011 (November 12, 2019) (*Initiation Notice*).

³ *Id.*

⁴ The petitioner is the MC Bricks Committee, an *ad hoc* association comprised of three U.S. producers of magnesia carbon bricks: Resco Products, Inc.; Magnesita Refractories Company; and Harbison Walker International, Inc.

⁵ See MC Bricks Committee's Letter, "Certain Magnesia Carbon Bricks from The People's Republic of China: Request for Administrative Review," dated September 30, 2019.

12, 2019, Commerce published in the *Federal Register* the notice of initiation of the administrative review.⁶

On December 11, 2019, we extended the deadline for filing no shipment statements, separate rate applications (SRAs) and separate rate certifications (SRCs).⁷ On December 18, 2019, we received a timely no shipment certification from Fedmet.⁸ We did not receive a no shipment statement, SRA, or SRC from any of the other companies under review.⁹

On May 11, 2020, we requested that the U.S. Customs and Border Protection (CBP) confirm whether Fedmet made any shipments of subject merchandise to the United States during the POR.¹⁰ On July 9, 2020 we received a memorandum from CBP indicating that it found no evidence of shipments of magnesia carbon bricks from China exported by Fedmet during the POR.¹¹

III. SCOPE OF THE ORDER

The *Order* covers 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 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.

⁶ See *Initiation Notice*, 84 FR at 61011.

⁷ See Memorandum, “Magnesia Carbon Bricks from the People’s Republic of China: Extension of Deadlines,” dated December 11, 2019.

⁸ See Fedmet’s Letter, “Magnesia Carbon Bricks from the People’s Republic of China, Case No. A-570-954: No Shipments Certification,” dated December 18, 2019 (Fedmet No Shipment Certification).

⁹ In addition to Fedmet, the other companies subject to review are: Dandong Xinxing Carbon Co., Ltd.; Fengchi Imp. and Exp. Co., Ltd.; Fengchi Imp. and Exp. Co., Ltd. of Haicheng City; Fengchi Mining Co., Ltd. of Haicheng City; Fengchi Refractories Co., of Haicheng City; Haicheng Donghe Taidi Refractory Co., Ltd.; Henan Xintuo Refractory Co., Ltd.; Liaoning Fucheng Refractories; Liaoning Zhongmei High Temperature Material Co., Ltd.; Liaoning Zhongmei Holding Co., Ltd.; RHI Refractories Liaoning Co., Ltd.; Shenglong Refractories Co., Ltd.; Tangshan Strong Refractories Co., Ltd.; The Economic Trading Group of Haicheng Houying Corp. Ltd.; Yingkou Heping Samwha Minerals, Co., Ltd.; and Yingkou Heping Sanhua Materials Co., Ltd. (collectively, companies subject to review).

¹⁰ See Memorandum, “Certain Magnesia Carbon Bricks from China (A-570-954),” dated July 9, 2019.

¹¹ See Memorandum, “Certain Magnesia Carbon Bricks from China (A-570-954),” dated July 9, 2019 (CLU No Shipment Memorandum).

IV. DISCUSSION OF THE METHODOLOGY

Preliminary Determination of No Shipments

On December 16, 2019, we placed CBP entry data for the POR on the record of this review, and we provided interested parties an opportunity to comment.¹² We did not receive comments on the CBP data from any party. On December 18, 2019, Fedmet certified that it had no shipments, sales or entries of merchandise subject to this review.¹³

Commerce sent an inquiry to CBP requesting that they inform us if there was any information contrary to the data showing no shipments of subject merchandise.¹⁴ CBP confirmed that it did not receive any shipment of subject merchandise during the POR.¹⁵ Based on the record evidence submitted, we preliminarily determine that Fedmet had no shipments during the POR.

We find that it is not appropriate to rescind the review with respect to Fedmet at this time, consistent with our practice in non-market economy (NME) cases. We will complete the review with respect to Fedmet and issue appropriate instructions to CBP based on the final results of the review.¹⁶ Should evidence contrary to Fedmet's no shipment claims arise, we will revisit this issue in the final results.

Non-Market Economy Country Status

Commerce considers China to be an NME country.¹⁷ In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat China as an NME country for purposes of these preliminary results.

Separate Rates

Commerce maintains a rebuttable presumption that all companies within an NME country are subject to government control, and thus, should be assessed a single AD rate.¹⁸ In the *Initiation Notice*, Commerce notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings.¹⁹ It is Commerce's policy to assign all

¹² See Memorandum, "Ninth Administrative Review of Certain Magnesia Carbon Bricks from the People's Republic of China: Customs Data of U.S. Imports," dated December 16, 2019 (CBP Entry Documentation).

¹³ See Fedmet No Shipments Certification.

¹⁴ See CBP message no. 0132403, dated May 11, 2020

¹⁵ See CLU No Shipment Memorandum

¹⁶ See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694, 65694-65695 (October 24, 2011).

¹⁷ *Id.*

¹⁸ 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); and *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).

¹⁹ See *Initiation Notice*, 84 FR at 61011.

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, Commerce analyzes each exporting entity in an NME country under the test established in *Sparklers*,²⁰ as developed further in *Silicon Carbide*.²¹ However, if Commerce determines that a company is wholly foreign-owned by individuals or companies located in a market economy country, then a separate rate analysis is not necessary to determine whether it is independent from government control.²²

Commerce continues to evaluate its practice with regard to the separate rates analysis in light of the diamond sawblades from China AD proceeding, and its determinations therein.²³ In particular, in litigation involving the diamond sawblades from China proceeding, the Court of International Trade (the Court) found Commerce's existing separate rates analysis deficient in the circumstances of that case, in which a government-owned and controlled entity had significant ownership in the respondent exporter.²⁴ Following the Court's reasoning, in recent proceedings, we have concluded that, where a government entity holds a majority ownership share, either directly or indirectly, in the respondent exporter, the majority ownership holding in and of itself means that the government exercises, or has the potential to exercise, control over

²⁰ 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).

²¹ See *Silicon Carbide*, 59 FR at 22586.

²² See, e.g., *Certain New 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 *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sale at Less than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008).

²³ See *Final Results of Redetermination pursuant to Advanced Technology & Materials Co., Ltd., et al. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) (*Advanced Technology I*), and available at <http://enforcement.trade.gov/remands/12-147.pdf>, *aff'd Advanced Technology & Materials Co., Ltd., et al. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013), *aff'd Advanced Technology & Materials Co., Ltd., et al. v. United States*, Case No. 2014-1154 (Fed. Cir. 2014); and *Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 77098 (December 20, 2013), and accompanying Preliminary Decision Memorandum (PDM) at 7, unchanged in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014), and accompanying Issues and Decision Memorandum at Comment 1.

²⁴ See, e.g., *Advanced Technology I*, 885 F. Supp. 2d at 1349 (CIT 2012) ("The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it."); *id.*, at 1351 ("Further substantial evidence of record does not support the inference that SASAC {state-owned assets supervision and administration commission}'s 'management' of its 'state-owned assets' is restricted to the kind of passive-investor de jure 'separation' that Commerce concludes") (footnotes omitted); *id.*, at 1355 ("The point here is that 'governmental control' in the context of the separate rate test appears to be a fuzzy concept, at least to this court, since a 'degree' of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to 'day-to-day decisions of export operations,' including terms, financing, and inputs into finished product for export"); and *id.*, at 1357 ("AT&M itself identifies its 'controlling shareholder' as CISRI {owned by SASAC} in its financial statements and the power to veto nomination does not equilibrate the power of control over nomination") (footnotes omitted).

the company's operations generally.²⁵ This may include control over, for example, the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with normal business practices, we would expect any majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profit distribution of the company.

Companies Not Receiving a Separate Rate

In this review, no company submitted an SRA or SRC. As such, we have not granted any company a separate rate.

All companies subject to this review, with the exception of the Fedmet – for which we made a preliminary no shipment determination – are considered part of the China-wide entity. These companies are listed in the Attachment to this memorandum. Because a review was not requested of the China-wide entity, the pre-existing China-wide rate of 236.00 percent²⁶ will apply to these companies' entries of the subject merchandise into the United States during the POR.

V. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

Agree

Disagree

7/21/2020

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Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

²⁵ See *Carbon and Certain Alloy Steel Wire Rod From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 79 FR 53169 (September 8, 2014), and accompanying PDM at 5-9.

²⁶ See *Order*.

ATTACHMENT

List of Companies Failing To Demonstrate Eligibility for a Separate Rate

1. Dandong Xinxing Carbon Co., Ltd.
2. Fengchi Imp. and Exp. Co., Ltd.
3. Fengchi Imp. and Exp. Co., Ltd. of Haicheng City
4. Fengchi Mining Co., Ltd. of Haicheng City
5. Fengchi Refractories Co., of Haicheng City
6. Haicheng Donghe Taidi Refractory Co., Ltd.
7. Henan Xintuo Refractory Co., Ltd.
8. Liaoning Fucheng Refractories
9. Liaoning Zhongmei High Temperature Material Co., Ltd.
10. Liaoning Zhongmei Holding Co., Ltd.
11. RHI Refractories Liaoning Co., Ltd.
12. Shenglong Refractories Co., Ltd.
13. Tangshan Strong Refractories Co., Ltd.
14. The Economic Trading Group Of Haicheng Houying Corp. Ltd.
15. Yingkou Heping Samwha Minerals, Co., Ltd.
16. Yingkou Heping Sanhua Materials Co., Ltd.