



U.S. Customs and  
Border Protection

December 3, 2020

**PUBLIC VERSION**

EAPA Case Number: 7412

R. Will Planert

On behalf of Fedmet Resources Corporation, LLC

Morris, Manning and Martin LLP

1401 Eye Street, N.W.

Suite 600

Washington, D.C. 20005

Daniel Schneiderman

J. Michael Taylor

On behalf of Magnesia Carbon Brick Fair Trade Coalition

King and Spalding, LLC

1700 Pennsylvania Ave, NW

Washington, DC 20006

RE: Notice of Final Determination as to Evasion

To the Counsel and Representatives of the above-referenced Entities:

Pursuant to an examination of the record in Enforce and Protect Act (“EAPA”) Investigation 7412, U.S. Customs and Border Protection (“CBP”) has determined there is substantial evidence that Fedmet Resources Corporation, LLC (“Fedmet”) entered merchandise covered by antidumping duty (“AD”) order A-570-954 and countervailing duty (“CVD”) order C-570-955 on certain magnesia carbon brick (“MCB”) from the People’s Republic of China (“China”)<sup>1</sup> into the customs territory of the United States through evasion. Substantial evidence demonstrates that Fedmet imported Chinese-origin MCBs subject to the AD/CVD order and represented that the imported merchandise was actually a product of different chemical composition; and thus not, subject to the orders. As a result, no cash deposits were applied to the merchandise at the time of entry.

---

<sup>1</sup> See *Certain Magnesia Carbon Bricks from Mexico and the People’s Republic of China: Antidumping Duty Order*, 75 Fed. Reg. 57257 (Sept. 20, 2010). See *Certain Magnesia Carbon Bricks from the People’s Republic of China: Countervailing Duty Order*, 75 Fed. Reg. 57442 (Sept. 20, 2010).

## Background

The Trade Remedy Law Enforcement Directorate (“TRLED”), within CBP’s Office of Trade, acknowledged receipt of the properly filed allegation by the Magnesia Carbon Brick Fair Trade Coalition (“the Alleger”) against Fedmet on January 8, 2020.<sup>2</sup> In its allegation, the Alleger stated that Fedmet misidentified Pinnacle brand magnesia carbon brick, which generally is covered merchandise due to its certain (carbon or magnesia) content, as generally non-subject Bastion brand magnesia alumina carbon brick (MAC) as “Type 01” entries.<sup>3</sup>

TRLED found that the information provided in the allegation reasonably suggested that covered merchandise had been entered for consumption by Fedmet into the customs territory of the United States through evasion. Consequently, CBP initiated an investigation with respect to Fedmet on January 30, 2020, pursuant to Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, commonly referred to as the “Enforce and Protect Act” or EAPA.<sup>4</sup>

As part of the EAPA investigation process, on February 19, 2020, CBP issued a Customs Form 28 Request for Information (“CF-28”) to Fedmet.<sup>5</sup> The CF-28 requested sales, production, and factory documentation. CBP also conducted laboratory analysis on samples retrieved from the shipments identified during the initial stages of the investigation to determine the composition of the bricks imported by Fedmet and found that Fedmet’s product contained [

].<sup>6</sup> After evaluating all of the information on the record at that time, TRLED determined that reasonable suspicion existed that magnesia carbon brick imported into the United States by Fedmet was in fact incorrectly identified as non-subject magnesia alumina carbon brick. Specifically, TRLED based its determination on information provided in the allegation<sup>7</sup>; CBP’s review of documentation for Fedmet’s shipments examined prior to entering US commerce;<sup>8</sup> the analysis of the CF-28 information;<sup>9</sup> and CBP’s analysis of the chemical composition of Fedmet’s Bastion brand

---

<sup>2</sup> See MCBFTC’s EAPA Allegation (November 27, 2019) (“Allegation”) and MCBFTC’s EAPA Allegation Supplement (December 19, 2019) (“Supplement”).

<sup>3</sup> We note that United States Court of Appeals for the Federal Circuit found that Fedmet’s Bastion brand magnesia alumina carbon bricks (MAC), which contain approximately 8 to 15 percent alumina (aluminum oxide), 3 to 15 percent carbon, and 75 to 90 percent magnesia are not subject to the *Orders*. See *Fedmet Resources v. United States*, 755 F.3d 912 (CAFC 2014).

<sup>4</sup> See also 19 USC 1517(b)(1); see also 19 CFR 165.15; see also CBP Memorandum, “Initiation of Investigation for EAPA Case Number 7412 – Fedmet,” dated January 30, 2020.

<sup>5</sup> See CF-28 Request to Fedmet (February 19, 2020)(“CF-28”). CEE Fedmet CF-28 Response Re\_ Entry number [ ]2093

<sup>6</sup> See Laboratory Reports, “CEE-IMM- Entry Number [ ]4450 ([ ]) Fedmet,” “CEE-IMM- Entry Number [ ]1996 ([ ]) Fedmet and “CEE-IMM- Entry Number [ ]5315 ([ ]) (Lab Reports).”

<sup>7</sup> See allegation and Supplement.

<sup>8</sup> See Cargo Exam Documents, “CEE-IMM- Entry Number [ ]4450 Fedmet” “CEE-IMM- Entry Number [ ]1959 Fedmet,” “CEE-IMM- Entry Number [ ]1996 Fedmet “CEE-IMM- Entry Number [ ]1702 Fedmet and “CEE-IMM- Entry Number [ ]5315 Fedmet (Cargo Exams).”

<sup>9</sup> See CF-28. CEE Fedmet CF-28 Response Re\_ Entry number [ ]2093

magnesia alumina carbon brick.<sup>10</sup> Consequently, CBP imposed interim measures on May 6, 2020.<sup>11</sup>

On May 29, 2020, CBP sent Requests for Information (“RFI”s) to Fedmet<sup>12</sup> and to Fedmet’s U.S. customers, [ ] on June 2, 2020.<sup>13</sup> Fedmet responded on July 24, 2020,<sup>14</sup> and the end user [ ] responded on June 12, 2020.<sup>15</sup> No response was received from [ ]. On June 4, 2020, CBP issued RFIs to the foreign manufacturers [

].<sup>16</sup> The companies’ responses were emailed to CBP on July 24, 2020 by Fedmet’s counsel.<sup>17</sup>

Fedmet submitted voluntary factual information on August 19, 2020<sup>18</sup> and its written arguments on September 16, 2020.<sup>19</sup> On October 1, 2020, the Alleger submitted a rebuttal response to Fedmet’s written arguments.<sup>20</sup>

## Analysis

Under 19 USC 1517(c)(1)(A), to reach a final determination as to evasion, CBP must “make a determination, based on substantial evidence, with respect to whether such covered merchandise entered into the customs territory of the United States through evasion.” Evasion is defined as “the entry of covered merchandise into the customs territory of the United States for consumption by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material, and that results in any cash deposit or other security or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise.”

Fedmet misidentified Pinnacle brand magnesia carbon brick, which generally is covered merchandise due to its certain (carbon or magnesia) content, as generally non-subject Bastion brand magnesia alumina carbon brick (MAC) as “Type 01” entries.<sup>21</sup>

---

<sup>10</sup> See Lab Reports.

<sup>11</sup> See Memorandum “Notice of Initiation of Investigation and Interim Measures for EAPA Case Number 7412 – Fedmet” (“NOI”).

<sup>12</sup> See Fedmet RFI.

<sup>13</sup> See [ ] RFIs.

<sup>14</sup> See Fedmet RFI Response.

<sup>15</sup> See [ ] RFI Responses.

<sup>16</sup> See [ ] RFIs.

<sup>17</sup> See [ ] RFI Responses.

<sup>18</sup> See Fedmet Voluntary Factual Information.

<sup>19</sup> See Fedmet Written Arguments.

<sup>20</sup> See Alleger’s Rebuttal Response to Fedmet’s Written Arguments.

<sup>21</sup> We note that United States Court of Appeals for the Federal Circuit found that Fedmet’s Bastion brand magnesia alumina carbon bricks (MAC), which contain approximately 8 to 15 percent alumina (aluminum oxide), 3 to 15 percent carbon, and 75 to 90 percent magnesia are not subject to the *Orders*. See *Fedmet Resources v. United States*, 755 F.3d 912 (CAFC 2014).

## Lab Test Results

The AD/CVD order covers MCBs that contain at least 70 percent magnesia (“MgO”), carbon ranging from trace amounts to 30 percent and various metals, and metal alloys from trace amounts to 15 percent.<sup>22</sup> The AD/CVD order excludes MACs, which contain approximately 8 to 15 percent alumina, 3 to 15 percent carbon, 75 to 90 percent magnesia, in addition to small amounts of silicon dioxide, calcium oxide, iron oxide, and titanium dioxide.<sup>23</sup>

In response to the February 19, 2020 CF-28 for entry [ ]2093, Fedmet stated that it only imported Bastion brand MAC bricks from China into the United States. The CF-28 identified four lot numbers, [ ] for US imports of Bastion bricks. The two lot numbers [ ] from Fedmet’s CF-28 response, received by CBP April 15, 2020, matched the purchase order [ ] later provided by the end user [ ] in response to CBP’s RFI questionnaire dated [ ]. [ ] furnished photo evidence of [ ] in its inventory. CBP found that the bricks’ description reported in [ ], in addition to CBP’s lab analysis, differed greatly from the chemical composition and product identification that Fedmet reported in its CF-28 response. The chemical analysis conducted by CBP compared to Fedmet’s chemical composition breakdown, illustrated evidence of the system of misidentification between the Pinnacle and Bastion bricks.

As the charts show below, while Fedmet’s purported specification sheet indicates that bricks it imports into the United States under 4 lot numbers have a chemical composition consistent with its Bastion brand MAC bricks (8 to 15 percent alumina, 3 to 15 percent carbon, and 75 to 90 and percent magnesia).

Fedmet's Response to CF-28:<sup>24</sup>

Sample	Label	MgO	Carbon	Alumina	Product Name
1	[ ]	[ ]	[ ]	[ ]	Bastion [ ]
2	[ ]	[ ]	[ ]	[ ]	Bastion [ ]
3	[ ]	[ ]	[ ]	[ ]	Bastion [ ]
4	[ ]	[ ]	[ ]	[ ]	Bastion [ ]

<sup>22</sup> See *Certain Magnesia Carbon Bricks from Mexico and the People’s Republic of China: Antidumping Duty Order*, 75 Fed. Reg. 57257 (Sept. 20, 2010). See *Certain Magnesia Carbon Bricks from the People’s Republic of China: Countervailing Duty Order*, 75 Fed. Reg. 57442 (Sept. 20, 2010).

<sup>23</sup> Definition MAC.

<sup>24</sup> See CF-28 Response.

However, independent testing by CBP indicates Fedmet misidentified the chemical composition of their bricks. CBP's analysis of the lab results, indicate that [ ] of the four sampled lot numbers are within the scope for the AD/CVD Order on MCB from China.<sup>25</sup>

CBP Lab Results:<sup>26</sup>

Sample	Label	MgO	Carbon	Alumina	Product Name on [ ] PO
1	[ ]	[ ]	[ ]	[ ]	Bastion [ ]
2	[ ]	[ ]	[ ]	[ ]	Pinnacle [ ]
3	[ ]	[ ]	[ ]	[ ]	Pinnacle [ ]
4	[ ]	[ ]	[ ]	[ ]	Pinnacle [ ]

Further, contrary to Fedmet's claim that it only sells Bastion brand MAC bricks to U.S. customers, after reviewing sales documentation obtained from its customer [ ], CBP found that Fedmet had only one sale of Bastion brand MAC brick to that customer, and the rest were Pinnacle brand MCBs.

Mislabeled Entries

In its response to CBP's questionnaire, [ ] submitted evidence that supported the allegor's claim that Fedmet relabeled shipments of magnesia carbon brick as magnesia alumina carbon brick to avoid payment of AD/CVD deposits.<sup>27</sup> [ ]

[ ] captured two lines of Bastion brand bricks and two lines of Pinnacle brand bricks.<sup>28</sup> Furthermore, [ ] of the PO's lines had handwritten instructions that read, "Re-label all pallets" or some variation, on either the packing list or the warehouse/trucker release form.<sup>29</sup> Similarly, in its RFI response, Fedmet included a packing list, which included Pinnacle Mag Carbon bricks with instructions that pallets should be re-labelled.<sup>30</sup> Fedmet changing of merchandise descriptions from products that would fall within the scope of the AD order to ones that would fall outside of the scope of the AD order goes beyond inadvertent misreporting, and instead evidences evasion of the applicable order.

In addition, RFI responses from the manufactures [ ] highlighted several additional deficiencies. Some of the language in the RFI responses from the Fedmet and foreign manufacturers were very similar. For example, Fedmet, [ ]

<sup>25</sup> See *Certain Magnesia Carbon Bricks from Mexico and the People's Republic of China: Antidumping Duty Order*, 75 Fed. Reg. 57257 (Sept. 20, 2010). See *Certain Magnesia Carbon Bricks from the People's Republic of China: Countervailing Duty Order*, 75 Fed. Reg. 57442 (Sept. 20, 2010).

<sup>26</sup> See Lab Reports. LSS Lab Report Re\_Fedmet Brick Samples

<sup>27</sup> See [ ] RFI Response.

<sup>28</sup> See [ ] RFI Response.

<sup>29</sup> See [ ] RFI Response.

<sup>30</sup> See Fedmet RFI response at exhibit 9.

[ ] all responded that they had not exported MCBs to Fedmet since 2011.<sup>31</sup> However, commercial invoices related to [ ] sales transactions show Fedmet as the recipient of MCBs to locations in [ ].<sup>32</sup> Consequently, its original claims that that [ ] and Fedmet had no transactions involving MCBs were incorrect.

Contrary to Fedmet's, [ ] statement of not exporting MCBs to Fedmet since 2011, [ ] supplied CBP an itemized listing of merchandise it purchased from Fedmet, showing Fedmet sold MCB to [ ].<sup>33</sup> [ ] from Fedmet, which was inclusive of [ ] of Pinnacle brand bricks and [ ] of Bastion brand bricks.<sup>34</sup> Fedmet sold specifically to [ ] Pinnacle 9S10, Pinnacle 5S7, Pinnacle 8S10, Pinnacle 7S7, and Pinnacle 8S12DSR, identified as a refractory brick/ladle brick.<sup>35</sup> The merchandise offering was supported by Fedmet's Product Sheet from its website.<sup>36</sup>

Additionally, the purchase orders (POs) between Fedmet and the foreign manufacturers identified purchase agreements for Bastion MAC bricks.<sup>37</sup> Specifically, the quality type designation on submitted Certificates of Quality and Product Inspection Reports identified the bricks as Bastion, Bastion [ ] or Bastion [ ].<sup>38</sup> A certificate for lot number [ ] provided by [ ]<sup>39</sup> described merchandise as "Pinnacle Mag-Carbon Brick," and then described the quality of the brick as "Bastion-[ ]"<sup>40</sup>

Thus, evidence on the record shows that [ ] sold MCBs to Fedmet during the period of investigation (POI). The lot numbers assigned by Fedmet indicates that it bought Chinese-origin MCB during the POI, and the certificates of quality indicate Chinese producers sold MCB to Fedmet during the POI.

### End Uses of MCB and MAC Bricks

The information obtained from Fedmet's U.S. customers show that Pinnacle brand MCBs that were [ ] from [ ].<sup>41</sup> This contradicts

---

<sup>31</sup> See Foreign Manufacturer RFI Response.

<sup>32</sup> See Foreign Manufacturer RFI Response.

<sup>33</sup> See [ ] RFI Response.

<sup>34</sup> See Foreign Manufacturer RFI Response. Fedmet assigned purchase order numbers to MAC brick purchases from its Chinese suppliers, [ ], with brick lot numbers or batch numbers. Two digit identifiers, [ ] were used to identify the manufacturer of the goods. Lot numbers from [ ] sold by Fedmet were identified in sales records to US customer [ ].

<sup>35</sup> See [ ] RFI Response.

<sup>36</sup> See Fedmet's Product Sheet.

<sup>37</sup> See Foreign Manufacturer RFI Response.

<sup>38</sup> See Foreign Manufacturer RFI Response.

<sup>39</sup> See Foreign Manufacturer RFI Response.

<sup>40</sup> See Foreign Manufacturer RFI Response.

<sup>41</sup> See [ ] RFI Response.

Fedmet's claims that it did not sell MCBs to its U.S. customers.<sup>42</sup> Evidence on the record indicated Fedmet marketed its Pinnacle brand as an MCB.<sup>43</sup> [ ] provided [ ] JPG pictures of wrapped Pinnacle bricks, complete with the identifying labels in their June 12, 2020, RFI submission.<sup>44</sup> According to [ ], Pinnacle and Bastion bricks were purchased for specific usage.<sup>45</sup> Fedmet's price quote to [ ]<sup>46</sup> itemized prices for specific usage of Pinnacle bricks and Bastion bricks. The usage include Pinnacle brick [ ]; Pinnacle brick [ ]; Pinnacle brick [ ] and Bastion brick [ ].<sup>47</sup> The chemical and physical properties of the bricks were included with the quote and physical properties of each Pinnacle brick met the description of an MCB in the scope of the order.<sup>48</sup> However, the Bastion bricks sold to [ ] actually qualified as MAC and thus were excluded from the order.

There were also inconsistencies between the naming of the Bastion bricks. CBP reviewed in Fedmet's product descriptions. Fedmet's promotional material listed two versions of Bastion bricks, Bastion and Bastion IP.<sup>49</sup> Fedmet's product brochure for Pinnacle brick included Pinnacle series 5, 6, 7, and 8.<sup>50</sup> Further, documentation provided by [ ] confirm purchases of Fedmet's Pinnacle [ ] series bricks on POs and warehouse release forms.<sup>51</sup> The [ ] series [ ] in Fedmet's marketing brochures.<sup>52</sup>

In its RFI response, Fedmet maintained that it did not sell MCBs to its U.S. customers.<sup>53</sup> However, according to [ ], it confirmed purchases of Pinnacle brand MCB bricks from Fedmet, negating Fedmet's statements that it did not sell Pinnacle brand MCB which are subject to the AD/CVD orders.<sup>54</sup> Also, [ ] furnished data sheets from Fedmet with the chemical composition of Pinnacle and Bastion bricks purchased from Fedmet that indicate that the pinnacle and bastion brand bricks qualify as MCBs under the scope.<sup>55</sup>

CBP's review of Fedmet's entries made during this investigation<sup>56</sup> furthered showed discrepancies in Fedmet's marketing and brochure items. Fedmet entry showed Bastion brand bricks imported with the description, [ ], listed on the pallet markings.<sup>57</sup> Fedmet's RFI response referencing [ ] indicates that the

---

<sup>42</sup> See Fedmet RFI Response.

<sup>43</sup> See [ ] RFI Response.

<sup>44</sup> See [ ] RFI Response.

<sup>45</sup> See [ ] RFI Response.

<sup>46</sup> See [ ] RFI Response.

<sup>47</sup> See [ ] RFI Response.

<sup>48</sup> See [ ] RFI Response.

<sup>49</sup> See [ ] RFI Response.

<sup>50</sup> See [ ] RFI Response.

<sup>51</sup> See [ ] RFI Response.

<sup>52</sup> See Fedmet's Product Sheet.

<sup>53</sup> See Fedmet RFI Response.

<sup>54</sup> See Fedmet RFI Response.

<sup>55</sup> See [ ] RFI Response.

<sup>56</sup> See Fedmet RFI Response.

<sup>57</sup> See Fedmet RFI Response.

formula is designated for “Bastion Magnesia Alumina Carbon Brick” noting the “Slag Line High Wear Area;”<sup>58</sup> however, diagrams showing what type of bricks are used at the slag line, identify that an MCB is used in this area.<sup>59</sup> This further shows that Fedmet failed to accurately report its imports when its subject merchandise. Fedmet actually advertised and sold to its customer MCBs, which was misleading and subject to the AD/CVD orders.

Likewise, Fedmet’s three ladle (Aluminum - Killed Casting, Stainless Transfer Ladle, and Silicon Killed Casting Ladle) brochures<sup>60</sup> place Pinnacle bricks and Fedmet’s Durachrome brand bricks marketed for the basic and acid slag-line respectively.<sup>61</sup> Further evidence surfaced from a consumer of Fedmet’s bricks that describe Pinnacle 8 bricks as having the properties exclusive to usage in electric furnace hotspots, electric furnace sidewalls, and BOF working lining.<sup>62</sup> The general failure of Fedmet to identify accurately its products into the United States, and misrepresenting its merchandise to its customer, it actually sold “covered merchandise,” misidentified it as “non-covered” merchandise.

Moreover, the chemical analysis of bricks sold to [ ] was, MgO [ ], CaO [ ], SiO<sub>2</sub> [ ], Al<sub>2</sub>O<sub>3</sub> [ ], and Carbon [ ], which is consistent with the properties of magnesia carbon brick.<sup>63</sup> The documentation [ ] associated with this transaction indicates that Fedmet delivered Pinnacle 8S10 bricks described as “mag carbon brick” [ ].<sup>64</sup> The commercial invoice generated to fill [ ] issued to Fedmet describe purchase of Bastion 8S106-DSR from the foreign manufacturer.<sup>65</sup> This transaction provides additional proof of the differences between bricks Fedmet ordered from the manufacturer and what they delivered to their customer.<sup>66</sup>

Overall, Fedmet misrepresented and falsified, Pinnacle MCBs as Bastion MACs, so the products fall outside the scope of the AD/CVD orders, which goes beyond inadvertent misreporting, and instead evidences evasion of the applicable AD/CVD orders. Moreover, Fedmet incorrectly advertised and sold chemical compositions of MCBs, under the label Bastion to its U.S. customer, shows evidence of evasion of the applicable duties owed.

### **Final Determination as to Evasion**

Based on the aforementioned analysis of relevant evidence, CBP determines that substantial evidence exists demonstrating that, by means of material false statements or omissions, Fedmet entered misidentified magnesia carbon brick as non-subject magnesia alumina carbon brick and failed to pay AD/CVD duties on the merchandise that was subject to the AD/CVD orders.

---

<sup>58</sup> See Fedmet RFI Response at exhibit 9.

<sup>59</sup> See Product Sheet at 5-7.

<sup>60</sup> See *id.*

<sup>61</sup> See Fedmet RFI Response.

<sup>62</sup> See Fedmet RFI Response. Fedmet also maintained that MAC bricks were not promoted for use in electric arc furnaces (“EAF”) or basic oxygen furnaces (“BOF”). However, their furnace brochures do not list Bastion brand MAC bricks in the diagrams of the furnaces.

<sup>63</sup> See Fedmet RFI Response.

<sup>64</sup> See Fedmet RFI Response.

<sup>65</sup> See Fedmet RFI Response.

<sup>66</sup> See Fedmet RFI Response.

Because Fedmet's Pinnacle brand of magnesia carbon brick, described as Bastion brand magnesia alumina carbon brick, was entered as "Type 01" to avoid AD/CVD cash deposits, all subject merchandise that Fedmet entered as Bastion MAC brick during the POI is subject to the AD/CVD rates from certain magnesia carbon brick from China. Because Fedmet did not declare that the merchandise was subject to the AD/CVD orders upon entry, the requisite cash deposits were not collected on the merchandise.

### **Actions Taken Pursuant to the Affirmative Determination of Evasion**

In light of CBP's determination that Fedmet entered merchandise into the customs territory of the United States through evasion, and pursuant to 19 USC 1517(d) and 19 CFR 165.28, CBP will continue to suspend the liquidation for any entry imported by Fedmet on or after January 30, 2020, the date of initiation. CBP will continue to extend the period for liquidation for all unliquidated entries that entered before that date until instructed to liquidate these entries. For future entries, CBP will continue to require live entry, which requires that the importers post the applicable cash deposits prior to the release. Finally, CBP will evaluate the continuous bond of the importer in accordance with CBP's policies, and may require single transaction bonds as appropriate. None of the above actions precludes CBP or other agencies from pursuing additional enforcement actions or penalties.

Sincerely,



Brian M. Hoxie  
Director, Enforcement Operations Division  
Trade Remedy Law Enforcement Directorate  
Office of Trade