



U.S. Customs and
Border Protection

PUBLIC VERSION

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EAPA Case Number: 7412

Mark J. Mattar, President
Fedmet Resources Corporation, LLC
1000 N. West Street, Suite 1200, #889
Wilmington, DE 19801

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 Initiation of Investigation and Interim Measures – EAPA Case 7412

Dear Mr. Mattar, Mr. Schneiderman, and Mr. Taylor:

This letter is to inform you that U.S. Customs and Border Protection (“CBP”) has commenced a formal investigation under Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, commonly referred to as the Enforce and Protect Act (“EAPA”), for Fedmet Resources Corporation, LLC. (“Fedmet”). Specifically, CBP is investigating whether Fedmet has evaded antidumping duty (“AD”) order A-570-954¹ and countervailing duty (“CVD”) order C-570-955² on certain magnesia carbon brick (“MCB”) from the People’s Republic of China (“China”), by misidentifying covered merchandise and entering the covered merchandise as “Type 01” entries, thus avoiding AD/CVD cash deposits. Because evidence establishes a

¹ See *Certain Magnesia Carbon Bricks From Mexico and the People’s Republic of China: Antidumping Duty Order*, 75 Fed. Reg. 57257 (Sept. 20, 2010).

² See *Certain Magnesia Carbon Bricks From the People’s Republic of China: Countervailing Duty Order*, 75 Fed. Reg. 57442 (Sept. 20, 2010).

reasonable suspicion that Fedmet has entered merchandise into the United States through evasion, CBP has imposed interim measures.

Period of Investigation

Pursuant to 19 C.F.R. § 165.2, entries covered by an EAPA investigation are those “entries of allegedly covered merchandise made within one year before the receipt of an allegation....” Entry is defined as an “entry for consumption, or withdrawal from warehouse for consumption, of merchandise in the customs territory of the United States.” 19 C.F.R. § 165.1. The Magnesia Carbon Brick Fair Trade Coalition (“MCBFTC”) filed the allegation on November 27, 2019 with a supplement to the allegation on December 19, 2019.³ CBP acknowledged receipt of the properly filed allegation against Fedmet on January 8, 2020.⁴ As such, the entries covered by the investigation are those entered for consumption, or withdrawn from warehouse for consumption, from January 8, 2019, through the pendency of this investigation. *See* 19 C.F.R. § 165.2. In addition, 19 C.F.R. § 165.2 also provides that, at its discretion, CBP may investigate other entries of such covered merchandise.

Initiation

On January 30, 2020, the Trade Remedy Law Enforcement Directorate (“TRLED”), within CBP’s Office of Trade, initiated an investigation under EAPA as the result of an allegation submitted by the MCBFTC as to evasion of antidumping duties.⁵ The MCBFTC alleged that Fedmet evaded AD order A-570-954 and CVD order C-570-955 on certain magnesia carbon brick (“MCB”) from China by misidentifying covered merchandise as consumption type “01” entries. Specifically, the allegation claimed that Pinnacle, Fedmet’s signature brand of MCB, was imported and misidentified as Fedmet’s Bastion brand, which is magnesia alumina carbon brick (“MAC”) that is not within the scope of the orders.⁶

The orders describe MCBs as having at least 70 percent magnesia (“MgO”), carbon levels ranging from trace amounts to 30 percent and various metals, and metal alloys from trace amounts to 15 percent.⁷ Bastion bricks are defined as containing 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.⁸

³ *See* MCBFTC’s EAPA Allegation (November 27, 2019) (“Allegation”) and MCBFTC’s EAPA Allegation Supplement (December 19, 2019) (“Supplement”).

⁴ *See* the January 8, 2020, Receipt Notification Emails to J. Michael Taylor of King and Spalding for EAPA Allegations 7412 (“Fedmet”).

⁵ *See* CBP Memorandum, “Initiation of Investigation for EAPA Case Number 7412 – Fedmet Resources Corporation, LLC,” dated January 30, 2020 (“Fedmet Initiation”).

⁶ *See* Allegation, at 3 and Supplement, at 2.

⁷ MCBs are classified under HTS 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”).

⁸ *See Certain Magnesia Carbon Bricks From the People’s Republic of China and Mexico: Notice of Court Decision Not in Harmony With Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision*, 80 FR 34899 (Dept. Commerce June 18, 2015) (“MAC from China Not in Harmony With Final Scope”). *See also* “Final Scope determination on Certain Magnesia Carbon Bricks from the People’s Republic of China (C-570-955),” message number 5211303, dated July 30, 2015.

The allegor supports its claim that Fedmet is evading the orders by documenting Fedmet's response to a Department of Commerce's ("Commerce") administrative review of Fedmet's shipments of MCBs during the review period from September 2014 through August 2019.⁹ In its response, Fedmet certified that it did not have any shipments of covered merchandise during the review period. However, the MCBFTC submitted evidence that Fedmet did import MCB as evidenced by the covered merchandise found at their customers' locations within the United States.¹⁰ An affidavit from a []¹¹ in addition to photos of the Pinnacle brand MCB, taken in [], on pallets destined for the [],¹² provided insights to the possible evasion scheme.

According to [] data, the last time that Fedmet imported [] entries with an HTS number that [] was in [].¹³ Consequently, it is reasonable to be suspicious about the origins of the product in the photos since Fedmet had not declared [] subject to AD/CVD duties under the [] since [].¹⁴

Further, the photos suggest that upon arrival to the U.S. location, pallets of Pinnacle brand bricks were []. Subsequently, the pallets were []. However, the pallets continued to have the [] designation. MCBFTC maintained that this information indicated that Fedmet imported Pinnacle brand MCBs with a Chinese origin although Fedmet claimed no knowledge of inconsistencies in markings on the pallets used during their importations.¹⁵

MCBFTC further asserted that laboratory testing completed on bricks from the [] pallets contained only minuscule amounts of alumina, and therefore, would not qualify as MACs.¹⁶ Consequently, the bricks would be subject to the AD/CVD orders for magnesia carbon bricks.¹⁷

The Coalition noted that bricks entered in [] were delivered on pallets from a U.S. location.¹⁸ The entry data indicated that the country of origin was China with a destination to the United States, but the merchandise was labeled "Bastion-MACs."¹⁹ Further, the Coalition noted that the trade data was not enough to explain the volume of bricks and pallet count. Fedmet was believed to be the importer because Bastion is a brand specific to Fedmet.²⁰ This false statement,

⁹ See Allegation, at 3 and 4 and Supplement, at 1 and 2.

¹⁰ See Allegation, at 6.

¹¹ See Allegation, at Exhibit 3, p 51.

¹² *Id.*

¹³ See Memo to the File, (May 1, 2020).

¹⁴ See *Id.*

¹⁵ See Allegation, at Exhibit 6 (providing Fedmet's Questionnaire Response, dated May 1, 2018).

¹⁶ See Allegation, at Exhibit 5.

¹⁷ *Id.*

¹⁸ See Allegation, at Exhibit 7.

¹⁹ See *Id.*, at Exhibit 7.

²⁰ *Id.*

misidentifying MBCs from China as MACs evidences a reasonable suspicion that Fedmet has entered covered merchandise into the United States through evasion.²¹

On January 8, 2020, CBP acknowledged receipt of MCBFTC's properly filed EAPA allegation concerning evasion by Fedmet. CBP will initiate an investigation if it determines that "{t}he information provided in the allegation... reasonably suggests that the covered merchandise has been entered for consumption into the customs territory of the United States through evasion." 19 C.F.R. §165.15 (b). 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 covered merchandise." 19C.F.R. §165.1. Thus, the allegation must reasonably suggest not only that merchandise subject to AD and CVD orders was entered into the United States by the importer alleged to be evading, but that such entry was made by a material false statement or act, or material omission, that resulted in the reduction or avoidance of applicable AD/CVD cash deposits or other security.

In assessing the totality of circumstances and evidence provided in the allegation, we find that the allegation reasonably suggests that Fedmet has entered merchandise through evasion of AD order A-570-954 and CVD order C-570-955 by importing goods that were likely misidentified MCB from China.

Interim Measures

Not later than 90 calendar days after initiating an investigation under EAPA, CBP will decide based upon the record of the investigation if there is reasonable suspicion that such covered merchandise was entered into the United States through evasion. Therefore, CBP need only have sufficient evidence to support a reasonable suspicion that merchandise subject to an antidumping and/or countervailing duty order was entered into the United States by the importer alleged to be evading by a material false statement or act, or material omission, that resulted in the reduction or avoidance of applicable antidumping or countervailing duty cash deposits or other security. If reasonable suspicion exists, CBP will impose interim measures pursuant to 19 U.S.C. § 1517(e) and 19 C.F.R. § 165.24. As explained below, CBP is imposing interim measures because there is a reasonable suspicion that Fedmet entered covered merchandise into the United States through evasion by means of misidentification of subject merchandise. *See* 19 C.F.R. § 165.24(a).

Examination of Entry

CBP conducted a cargo examination on an entry of potentially covered merchandise entered by Fedmet during our period of investigation. On February 13, 2020, CBP examined entry []2093, imported by Fedmet with a bill of conveyance departure date of [].²² The shipment was discharged at and examined in Washington State. The arrival notice identified

²¹ *See* Allegation, at Exhibit 3.

²² *See* Entry Summary Re_Entry number []2093.

the merchandise as Bastion Magnesia Alumina Carbon Bricks with a piece count of [].²³ Upon examination of the shipment, CBP discovered that the shipment contained pallets of black bricks separated by lot codes. Photographs and samples were taken for lab analysis.²⁴ The samples [], [] [] and [] taken from this entry bore its respective lot code.²⁵

CF-28 Responses

On February 19, 2020, as part of the EAPA investigation process, CBP issued a CF-28 questionnaire to the importer concerning a previously identified entry.²⁶ Fedmet submitted its response on April 24, 2020.²⁷ In its CF-28 response, Fedmet provided requested documentation pertaining to the entry in question. This documentation indicated that the imported merchandise was Fedmet's magnesia alumina carbon (non-subject) bricks that were exported from China, which aligned with the photographic evidence from the cargo exam conducted on February 13, 2020.²⁸ Fedmet did not provide the requested importer of record copy of the commercial invoice for the shipment.²⁹ Also, Fedmet failed to furnish assembly or production records maintained on the factory floor by the production manager.³⁰ Additionally, for the entry referenced in the CF-28, there was a failure to provide the time cards for the employees that were working during the time the bricks were manufactured.³¹

Documentation of the breakdown by percent of the chemical components of each style of brick in this shipment was also requested. The CF-28 identified five Bastion refractory bricks identified by lot codes. Fedmet's documentation indicated that brick one, labeled as [], contained [] MgO, [] AlO, and [] Carbon. Brick two was labeled as [], consisted of [] MgO, [] AlO, and [] Carbon. The third brick, labeled as [], contained [] MgO, [] AlO, and [] Carbon. Brick four was labeled [] with a composition of [] MgO, [] AlO, and [] Carbon. The fifth brick labeled as [] had [] MgO, [] AlO, and [] Carbon.³² However, these percentages do not align with the results of laboratory report from April 9, 2020 as discussed below³³

CBP Laboratory Analysis and Report

²³ *Id.*

²⁴ See Cargo Exam Photos Re_Fedmet ("Photos"); Cargo Exam Photos 1 Re_Fedmet ("Photos #1"); Cargo Exam Photos 2 Re_Fedmet ("Photos # 2"); Cargo Exam Photos 3 Re_Fedmet ("Photos #3"); and Cargo Exam Photos 4 Re_Fedmet ("Photos #4").

²⁵ See Photos #1, Photos #2, Photos #3, and Photos #4.

²⁶ See CF28 request dated February 19, 2020.

²⁷ See CF28 response dated April 24, 2020.

²⁸ See Photos *et al.*

²⁹ See CF28 response to question 5.

³⁰ See CF28 response to question 7.

³¹ See CF28 response to question 8.

³² See CF28 response to question 11, and supporting documentation named Chemical Breakdown.

³³ See LSS Lab Report Re_Fedmet Brick Samples dated April 9, 2020 ("Lab Report") and Additional Lab Results Re_Fedmet Brick Samples ("Additional Report").

On April 9, 2020, CBP furnished a report summarizing the chemical composition of the samples taken and identified by Fedmet as Bastion brand bricks.³⁴ The first brick sample labeled as [redacted], had a composition of [redacted] MgO, [redacted] Carbon, and [redacted] alumina. Brick two, labeled [redacted], measured at [redacted] MgO, [redacted] Carbon, and [redacted] alumina. The third brick sample was labeled [redacted], contained approximately [redacted] MgO, and [redacted] Carbon with [redacted] alumina. The last sample, [redacted], contained [redacted] MgO, [redacted] Carbon, and [redacted] alumina.³⁵

The CF-28 responses provided by Fedmet do not align with the lab results. For example, the lab determined that “Brick 3”, which is labeled as [redacted] has a MgO content of [redacted] and a carbon content of [redacted].³⁶ Fedmet’s inspection report for [redacted] shows that the [redacted] brick is [redacted] MgO and [redacted] carbon.³⁷ Fedmet’s specifications as submitted in the CF-28, call for carbon to be between 6-8% in the [redacted] brick.³⁸ Thus, the actual carbon content of Brick 3 analyzed by the lab falls outside of Fedmet’s own requirements for MAC bricks.

Fedmet’s original scope provides for MAC bricks with 8 to 15% alumina. The technical specifications of the Bastion brand brick has approximately 10% alumina.³⁹ Only one Bastion model brick is listed on Fedmet’s website, indicating there are no other models.⁴⁰ Several models of the Pinnacle brick appear on their website, with ranges from 0.1 to 1.0% alumina. As a result, Brick 3’s [redacted] alumina count appears to cause one to question its designation as a MAC brick. The discrepancies in the Fedmet inspection report and the lab analysis constitute a “reasonable suspicion” that Fedmet is importing bricks intended for use as Pinnacle, and describing them as “Bastion.”

Enactment of Interim Measures

Based on the information described above, TRLED determined that reasonable suspicion exists that the MCB that Fedmet imported into the United States from China, was in fact misidentified and entered as MAC brick, thus evading the orders on magnesia carbon bricks from China. The information described above, creates the reasonable suspicion for CBP to conclude that the magnesia alumina carbon brick imported by this importer into the United States was in fact magnesia carbon brick and should have been subject to AD/CVD duties.

Therefore, TRLED is imposing interim measures pursuant to this investigation.⁴¹ Specifically, in accordance with 19 USC 1517(e)(1-3), CBP shall:

- (1) suspend the liquidation of each unliquidated entry of such covered merchandise that entered on or after January 30, 2020, the date of the initiation of the investigation;
- (2) pursuant to the Commissioner’s authority under section 504(b), extend the period for

³⁴ See Lab Report.

³⁵ *Id.*

³⁶ *Id.*

³⁷ See CF28 response to question 11, and supporting documentation named Chemical Breakdown.

³⁸ See CF28 response to question 12, and supporting documentation named Product Inspection Report.

³⁹ See Fedmet Website Information Bulletin for Magnesia Alumina Carbon Brick-Bastion Brand.

⁴⁰ See Allegation, at Exhibit 4, p 71.

⁴¹ See 19 USC 1517(e); see also 19 CFR 165.24.

liquidating each unliquidated entry of such covered merchandise that entered before the date of the initiation of the investigation; and
(3) pursuant to the Commissioner's authority under section 623, take such additional measures as the Commissioner determines necessary to protect the revenue of the United States, including requiring a single transaction bond or additional security or the posting of a cash deposit with respect to such covered merchandise.⁴²

In addition, CBP will require live entry and reject any entry summaries that do not comply, and require refile of entries that are within the entry summary rejection period. CBP will also evaluate the Importers' continuous bonds to determine sufficiency. Finally, CBP may pursue additional enforcement actions, as provided by law, consistent with 19 USC 1517(h). Additionally, "live entry" is required for all future imports for Fedmet's MAC bricks from China, meaning that all entry documents and duties must be provided before cargo is released by CBP into the U.S. commerce. CBP will reject any entry summaries that do not comply with live entry, and require refile of entries that are within the entry summary rejection period; suspend the liquidation for any entry that has entered on or after January 30, 2020, the date of initiation of this investigation; as well as extend the period for liquidation for all unliquidated entries that entered before that date. *See* 19 C.F.R. § 165.24(b)(1)(i) and (ii). For any entries that have liquidated and for which CBP's reliquidation authority has not yet lapsed, CBP will reliquidate those entries accordingly. CBP will also evaluate Fedmet's continuous bond to determine its sufficiency, among other measures, as needed.

For any future submissions or factual information that you submit to CBP pursuant to this EAPA investigation, please provide a public version to CBP, as well as to Mr. J. Michael Taylor, counsel for MCBFTC, at jmtaylor@kslaw.com. *See* 19 C.F.R. §§ 165.4, 165.23(c), and 165.26. Should you have any questions regarding this investigation, please feel free to contact us at evallegations@cbp.dhs.gov. Please include "EAPA Case Number 7412" in the subject line of your email. Additional information on this investigation, including the applicable statute and regulations, may be found on CBP's website at: <https://www.cbp.gov/trade/tradeenforcement/tftea/enforce-and-protect-act-eapa>.

Sincerely,



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

⁴² *See also* 19 CFR 165.24.