

EAPA Investigation Number 7412 (Remand Number 7703): Fedmet Resource Corporation (Notice of Covered Merchandise Referral, June 30, 2022)

Concerning the Investigation of Evasion of the Antidumping and Countervailing Duty Orders on Certain Magnesia Carbon Bricks (“MCB”) from the People’s Republic of China (A-570-954 and C-570-955).

On January 30, 2020, CBP initiated EAPA Investigation Number 7412 based on a properly filed allegation that reasonably suggested that Fedmet Resources Corporation, LLC (“Fedmet”) entered merchandise into the customs territory of the United States through evasion of the AD and CVD orders on magnesia carbon brick from the People’s Republic of China (“China”).

Specifically, the allegation claimed that Fedmet imported Pinnacle brand MCB, which is covered merchandise and declared such MCBs as non-subject Bastion brand magnesia alumina carbon bricks (“MAC”). The entries were filed as “Type 01” instead of “Type 03.”

Following the investigation, on December 3, 2020, CBP determined that substantial evidence demonstrated that Fedmet falsely declared MCBs as non-subject MAC bricks and failed to pay AD/CVD duties on the merchandise. Further, CBP determined that all merchandise that Fedmet entered as Bastion MAC brick during the period of investigation was subject to the AD/CVD rates applicable to magnesia carbon bricks from China. CBP relied on the results of laboratory tests conducted by CBP Laboratory and Scientific Services (“LSS”) which analyzed the chemical composition of the imported bricks to determine the relative content of magnesium oxide, aluminum oxide, and carbon.

On April 13, 2021, CBP Regulations and Rulings affirmed CBP’s December 3, 2020’s Determination as to Evasion. Fedmet appealed the determination of evasion to the Court of International Trade (“CIT”) with Fedmet Resource Corporation v. United States, No. 21-00248. On January 6, 2022, the CIT granted CBP’s motion for voluntary remand. On remand, Fedmet challenged the testing and reporting methods that the lab utilized on product samples acquired during the EAPA investigation. Upon further review, CBP found that it was unable to determine whether the imported magnesia carbon bricks constitutes covered merchandise within the meaning of 19 U.S.C. § 1517(a)(3).

The scope of the AD and CVD orders on magnesia carbon bricks from China 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).” CBP is unable to determine whether Fedmet’s bricks tested by LSS during the investigation, qualify as MCBs covered by the scope of the applicable AD and CVD orders.

CBP requests a determination from the Department of Commerce (“Commerce”) on whether the chemical composition of the bricks sampled during the investigation would place the product within the scope of the AD and CVD Orders. Such a determination will assist the administrative remand proceedings pursuant to litigation regarding a determination of evasion for imports of magnesia carbon bricks issued in EAPA Investigation Number 7412.

If you have any questions specific to EAPA Investigation Number 7412 (Remand Number 7703), please contact CBP at eapallegations@cbp.dhs.gov, and include EAPA Investigation Number 7412 (Remand Number 7703) in the subject line of the message. For any questions specific to the scope referral and its procedures, please contact Commerce at the Customs and Border Protection Liaison Unit, Enforcement and Compliance, International Trade Administration, at (202) 482-0984.