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*Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–570–954, C–570–955]

#### **Certain Magnesia Carbon Bricks From the People’s Republic of China: Notice of Covered Merchandise Referral and Initiation of Covered Merchandise Inquiry**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The U.S. Department of Commerce (Commerce) has received a covered merchandise referral from U.S. Customs and Border Protection (CBP) in connection with a CBP investigation concerning alleged evasion of the antidumping/countervailing duty (AD/CVD) orders on certain magnesia carbon bricks (bricks) from the People’s Republic of China (China). In accordance with 19 CFR 351.227(b)(1), Commerce is initiating a covered merchandise inquiry to determine whether the merchandise described in the referral is subject to the AD/CVD orders on bricks from China. Interested parties are invited to comment and submit factual information addressing this initiation.

**DATES:** Applicable July 20, 2022.

**FOR FURTHER INFORMATION CONTACT:** Brittany Bauer at (202) 482–3860, AD/CVD Operations Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Section 517(b)(4)(A)(i) of the Tariff Act of 1930, as amended (the Act), provides a procedure whereby if, during the course of an Enforce and Protect Act (EAPA) investigation, CBP is unable to determine whether the merchandise at issue is covered merchandise within the meaning of section 517(a)(3) of the Act, it shall refer the matter to Commerce to make such a determination. Section 517(a)(3) of the Act defines covered merchandise as merchandise that is subject to an AD order issued under section 736 of the Act or a CVD order

issued under section 706 of the Act. Section 517(b)(4)(B) of the Act states that Commerce, after receiving a covered merchandise referral from CBP, shall determine whether the merchandise is covered merchandise and promptly transmit its determination to CBP. Commerce’s regulations at 19 CFR 351.227 establish procedures for covered merchandise referrals that Commerce receives from CBP in connection with an EAPA investigation.<sup>1</sup>

On June 30, 2022, Commerce received a sufficient covered merchandise referral from CBP regarding CBP EAPA Investigation No. 7412<sup>2</sup> which concerns the AD/CVD orders on bricks from China.<sup>3</sup> Specifically, CBP explained that an allegation was filed by the Magnesia Carbon Brick Fair Trade Coalition (MCBFTC) alleging that products imported by Fedmet Resource Corporation, LLC (Fedmet) as non-subject Bastion® brand magnesia alumina carbon (MAC) bricks are instead magnesia carbon bricks which are covered by the AD/CVD orders. CBP informed Commerce that CBP is unable to determine whether certain merchandise is covered merchandise subject to the AD/CVD orders on bricks from China. Thus, CBP has requested that Commerce issue a determination as to whether products imported as non-subject Bastion® brand MAC bricks are subject to the AD/CVD orders on bricks from China.

##### **Initiation of Covered Merchandise Inquiry**

Commerce is hereby notifying interested parties that it is initiating a covered merchandise inquiry to determine whether the merchandise subject to the referral is covered merchandise within the meaning of section 517(a)(3) of the Act. Additionally, Commerce intends to

<sup>1</sup> See *Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*, 86 FR 52300, 52354–62 (September 20, 2021) (final rule promulgating the regulation establishing procedures for covered merchandise referrals).

<sup>2</sup> See CBP’s Letter, “Covered Merchandise Referral Request for EAPA Investigation 7412 (Remand Number 7703), Imported by Fedmet Resources Corporation, LLC: Antidumping and Countervailing Duty Orders on Certain Magnesia Carbon Brick from the People’s Republic of China,” dated June 30, 2022. The covered merchandise referral and any supporting documents will be made available on Enforcement and Compliance’s Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).

<sup>3</sup> See *Certain Magnesia Carbon Bricks from Mexico and the People’s Republic of China: Antidumping Duty Orders*, 75 FR 57257 (September 20, 2010); see also *Certain Magnesia Carbon Bricks from the People’s Republic of China: Countervailing Duty Order*, 75 FR 57442 (September 21, 2010).

provide interested parties with the opportunity to participate in this segment of the proceeding, including through the submission of comments and factual information, and, if appropriate, verification. In accordance with 19 CFR 351.227(m)(2), Commerce is initiating a single inquiry regarding the merchandise described in the covered merchandise referral on the record of the AD proceeding. Upon issuance of a final covered merchandise determination, Commerce will include a copy of the determination on the record of the CVD proceeding.

In accordance with 19 CFR 351.227(d)(1), within 30 days of the date of publication of this notice, interested parties are permitted one opportunity to submit comment and factual information addressing the initiation. Within 14 days of the filing of such comments, any interested party is permitted one opportunity to submit comment and factual information to rebut, clarify, or correct factual information submitted by the other interested parties.

In accordance with 19 CFR 351.227(d)(2), following initiation of a covered merchandise inquiry, Commerce may also issue questionnaires and verify submissions received, where appropriate. Commerce may limit issuance of questionnaires to a reasonable number of respondents. Questionnaire responses are due on the date specified by Commerce. Within 14 days after a questionnaire response has been filed with Commerce, an interested party other than the original submitter is permitted one opportunity to submit comment and factual information to rebut, clarify, or correct factual information contained in the questionnaire response. Within seven days of the filing of such rebuttal, clarification, or correction, the original submitter is permitted one opportunity to submit comment and factual information to rebut, clarify, or correct factual information submitted in the interested party’s rebuttal, clarification, or correction.

In certain circumstances, Commerce may issue a preliminary determination as to whether there is a reasonable basis to believe or suspect that the product that is subject to the covered merchandise inquiry is covered by the scope of the order. Pursuant to 19 CFR 351.227(c), Commerce intends to issue a final determination within 120 days of the publication of this notice (this deadline may be extended if Commerce determines that good cause exists to warrant an extension). Promptly after publication of Commerce’s final determination, Commerce will convey a

copy of the final determination in the manner prescribed by section 516A(a)(2)(A)(ii) of the Act to all parties to the proceeding and Commerce will transmit its final determination to CBP in accordance with section 517(b)(4)(B) of the Act.<sup>4</sup>

Pursuant to 19 CFR 351.227(d)(5), during the pendency of this proceeding, Commerce may rescind, in whole or in part, a covered merchandise inquiry. Situations in which Commerce may rescind a covered merchandise inquiry include if CBP withdraws its covered merchandise referral or if Commerce determines that it can address CBP's covered merchandise referral in another segment of the proceeding. In accordance with 19 CFR 351.227(c)(3), Commerce may align the deadlines of this covered merchandise inquiry with the deadlines of another segment of the proceeding if it determines it is appropriate to do so.

Parties are hereby notified that this may be the only notice that Commerce publishes in the **Federal Register** concerning this covered merchandise referral. Except as indicated below, interested parties that wish to participate in this segment of the proceeding and receive notice of the final determination, must submit their letters of appearance as discussed below. Further, any representative of an interested party desiring access to business proprietary information in this segment of the proceeding must file an application for access to business proprietary information under administrative protective order (APO), as discussed below.

### Scope of the AD/CVD Orders

The merchandise covered by the orders are 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 subject to the AD/CVD orders 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.

### Merchandise Subject to the Covered Merchandise Inquiry

The covered merchandise inquiry will address whether the scope covers products imported by Fedmet as non-subject Bastion® brand MAC bricks. Pursuant to 19 CFR 351.227(m)(1), Commerce will consider, based on the available record evidence, whether the final determination in the covered merchandise inquiry should be applied on a (i) producer-specific, exporter-specific, importer-specific basis, or some combination thereof; or (ii) on a country-wide basis, regardless of the producer, exporter, or importer, to all products from the same country with the same relevant physical characteristics as the product at issue.

### Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's ACCESS, unless an exception applies.<sup>5</sup> An electronically filed document must be received successfully in its entirety by the applicable deadline. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information until further notice.<sup>6</sup> Each submission must be placed on the record of the segment of the proceeding for the AD order (A-570-954), ACCESS Covered Merchandise Inquiry segment "EAPA-7412."

### Suspension of Liquidation

In accordance with 19 CFR 351.227(l)(1), Commerce will notify CBP of the initiation of the covered merchandise inquiry and direct CBP to continue to suspend liquidation of

<sup>5</sup> See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011), as amended in *Enforcement and Compliance: Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS is found at <https://access.trade.gov/help.aspx> and a handbook is found at <https://access.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf>.

<sup>6</sup> See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19*, 85 FR 17006 (March 26, 2020); see also *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19: Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

entries of products subject to the covered merchandise inquiry that were already subject to the suspension of liquidation, and to apply the cash deposit rate that would be applicable if the product were determined to be covered by the scope of the orders. Should Commerce issue preliminary or final covered merchandise determinations, Commerce will follow the suspension of liquidation rules under 19 CFR 351.227(l)(2)-(4). In accordance with 19 CFR 351.227(l)(5), nothing in this section affects CBP's authority to take any additional action with respect to the suspension of liquidation or related measures.

### Notification to Interested Parties

Interested parties that wish to participate in this segment of the proceeding and be added to the public service list for this segment of the proceeding must file a letter of appearance in accordance with 19 CFR 351.103(d)(1), with one exception: the relevant parties to CBP's EAPA investigation publicly identified by CBP in the covered merchandise referral referenced above are not required to submit a letter of appearance, and will be added to the public service list for this segment of the proceeding by Commerce.

Commerce placed an APO on the record on July 11, 2022.<sup>7</sup> Commerce intends to place the business proprietary versions of the documents contained in the covered merchandise referral on the record of this proceeding in ACCESS.

Representatives of interested parties must submit applications for disclosure under the APO in accordance with the procedures outlined in Commerce's regulations at 19 CFR 351.305. Those procedures apply to this segment of the proceeding, with one exception: APO applicants representing the parties that have been identified by CBP as an importer in the covered merchandise referral (referenced above) are exempt from the additional filing requirements for importers pursuant to 19 CFR 351.305(d).

This notice is issued and published pursuant to section 517(b)(4) of the Act and 19 CFR 351.227(b).

Dated: July 15, 2022.

### Alex Villanueva,

Senior Director, Office I, Antidumping and Countervailing Duty Operations.

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<sup>7</sup> See Memorandum, "Request for Establishment of Administrative Protective Order Certain Magnesia Carbon Bricks from the People's Republic of China (A-570-954)," dated July 11, 2022.

<sup>4</sup> See 19 CFR 351.227(e)(2).