



U.S. Customs and Border Protection

October 23, 2017

PUBLIC VERSION

EAPA Case Number 7204

Thai Tieu
American Pacific Rubber, Inc.
6841 McDivitt Drive
Suite C
Bakersfield, CA 93313

Re: Notice of initiation of an investigation and interim measures taken as to American Pacific Rubber, Inc. concerning evasion of the antidumping duty order on Oil Country Tubular Goods from the Socialist Republic of Vietnam

Mr. Tieu,

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 American Pacific Rubber, Inc. (“APAC”). Specifically, CBP is investigating whether APAC has evaded the Antidumping (“AD”) Order on Oil Country Tubular Goods (“OCTG”) from the Socialist Republic of Vietnam (“Vietnam”), A-552-817, with its entries of merchandise into the United States. *See Certain Oil Country Tubular Goods from India, the Republic of Korea, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Antidumping Orders; and Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less than Fair Value*, 79 Fed. Reg. 53,691 (Dep’t. Commerce Sept. 10, 2014). Because evidence establishes reasonable suspicion that APAC has entered merchandise into the United States through evasion, CBP has taken the interim measures described below against APAC.

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.” *See* 19 C.F.R. §165.1. Aztec

Manufacturing Partnership, Ltd. (“Aztec”) filed its allegation on June 21, 2017. On June 26, 2017, CBP acknowledged receipt of the properly filed allegation. Therefore, APAC’s entries covered by this investigation are those that entered for consumption, or withdrawals from warehouse for consumption, from June 26, 2016, through the pendency of this investigation.

Initiation

On July 18, 2017, the Trade Remedy Law Enforcement Directorate (TRLED) within CBP’s Office of Trade initiated an investigation under EAPA, determining that the allegation submitted by Aztec reasonably suggested evasion of AD duties. Aztec alleged that APAC evaded the AD Order on OCTG, A-552-817, by importing into the United States steel pup joints produced in Vietnam and declaring them as “upper extension nipples” and not subject to the AD order. *See* Allegation, at 2 (June 21, 2017). Aztec is a “domestic manufacturer of OCTG, which is a family of iron and steel tubular products used in oil wells that includes casing, tubing, couplings, and plain-end drill pipe.” *See id.* at 1. Pup joints are “short lengths of seamless or welded steel tubing primarily used to adjust the length of an oil or gas tubing string or to place down-hole tools.” *Id.* If APAC’s entries of upper extension nipples were actually pup joints as alleged, they would fall within the scope of the AD order on OCTG from Vietnam, A-552-817, which has a Vietnam-wide cash deposit rate of 111.47%.

Aztec’s allegation outlines several factors supporting the initiation of this investigation. First, Aztec noted that former customers of the company had informed it that they could purchase “UPM” marked pup joints at significantly less cost than Aztec’s pup joints. *Id.* at 2. Aztec discovered that UPM was the marking of Ultra Pipe Manufacturing Co. Ltd. (“UPM”), a purported pipe manufacturer in Vietnam. *Id.* Aztec found no website for UPM, but discovered a significant UPM presence on *Alibaba.com*. *See id.* at 8; and Addendum to Allegation, at Exh. 1 (providing a screenshot of *Alibaba.com* website page for United Pipe Manufacturing Co., Ltd.). On this website, UPM listed Steven Sheo, Sales Manager, as the company’s point of contact. *See* Addendum to Allegation, at Exh. 2 (providing a screenshot of *Alibaba.com* website page for Steven Sheo). Mr. Sheo’s LinkedIn page described him as sales manager for “Ultra Pipe MFG Vietnam,” and identified a company location in Tay Ninh, Vietnam. *See* Addendum to Allegation, at Exh. 3 (providing a screenshot of LinkedIn page webpage for Steven Sheo).

Aztec also determined through analyzing public export data that between April 12, 2016 and June 7, 2017, UPM made 11 ocean freight shipments to the United States. *See* Allegation, at 8; and Exh. C (providing Import Genius export data for UPM covering the period from April 12, 2016 to June 7, 2017). All 11 shipments were consigned to APAC, whose address was listed on the ocean bills of lading as 6841 McDivitt Drive, Suite C, Bakersfield, CA 93313. *Id.* In total, 901 “packages” of merchandise described as upper extension nipples were shipped from UPM to APAC with a cumulative weight of over 900 metric tons. *Id.* at 9. No shipments were described as pup joints or classified under the correct Harmonized Tariff Schedule of the United States (“HTSUS”) subheading for pup joints, nor were any reported as subject to the AD order on OCTG. *Id.*

Aztec’s subsequent review of APAC’s public import data revealed 11 shipments corresponding directly to the UPM exports, linked by the respective shipment weights. *See id.*; and Exh. D

(providing Import Genius import data for APAC covering the period from April 12, 2016 to June 7, 2017). Like the exports, the imported commodities for these 11 shipments were described as upper extension nipples. No shipments were described as pup joints, nor were any reported as subject to the AD order on OCTG.

Aztec also arranged for a third party to purchase [] UPM-marked steel pup joints in the United States. *See* Allegation, at 9-10 and Exh. F (providing an invoice for the purchase from Aztec). Aztec's customers informed it that APAC did not sell pup joints directly to U.S. end-users. *See* Allegation, at 9. Rather, APAC sold to distributors who then sold the UPM pup joints directly to end-users in Texas and Oklahoma as follows: Dandy Specialties (distributor within TX), A.E. Robertson Inc. (TX), OWI Sales, Inc. (TX), and Spicer & Sandburg, Inc. (OK). *See id.*, at 9 and Exh. E (providing a diagram of product flow of UPM pup joints). Aztec purchased the [] UPM pup joints using the third-party from Dandy Specialties, who had sourced them through its distributor, Netco Energy Products, Inc. ("Netco"), of San Angelo, Texas. *Id.*, at 9. Netco was a national distributor of OCTG and had previously asked Aztec for a quote for pup joints. It was during a site visit to Netco's facility where Aztec employees first saw pup joints stenciled with the marking "UPM" first-hand. *See id.* at 10. Aztec noted that in searching the public import data it did not find any imports by Netco or Dandy Specialties for UPM's pup joints, confirming they were not importers. *Id.*

Accompanying the purchased pup joints were three "mill inspection certificates," dated November 12, 2015, August 20, 2016, and December 29, 2016, respectively. *See id.* at 9, and Exh. B (providing the mill inspection certificates). The certificates were on UPM letterhead and included an inspection seal from a gauging operator in Tay Tinh, Vietnam. *Id.* The certificates specifically described the commodities they covered as pup joints. There was no mention of upper extension nipples on the certificates. They certified the pup joints were made to API specifications and APAC was identified as the intended recipient. Thus, Aztec was able to purchase steel pup joints marked as UPM with mill test certificates showing UPM was the manufacturer during the prior year when APAC was importing what it declared as other products from UPM, such as upper extension nipples and not steel pup joints.

Per the invoice that accompanied the [] pup-joints purchased by Aztec, Aztec discovered the end-user sale price for each pup joint were, in its opinion, low in comparison to its own manufacturing costs for pup joints. *See* Allegation, at 10. Moreover, Aztec asserts that the UPM-marked pup joints were not of inferior quality, an observation also shared by its other customers who had purchased the UPM-marked pup joints. *Id.* The low price of the UPM pup joints, combined with their indistinguishable quality, led Aztec to conclude AD cash deposits were not posted at the time of importation. *See* Allegation, at 11.

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." *See* 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 merchandise.” *See* 19 C.F.R. §165.1. Thus, the allegation must reasonably suggest not only that merchandise subject to an AD and/or countervailing (“CVD”) duty order 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 and/or CVD duty cash deposits or other security.

In its allegation, Aztec provided evidence to reasonably suggest that merchandise was entered through evasion by a material false statement or act, or material omission that resulted in the reduction or avoidance of applicable AD cash deposits or other security. Information obtained by Aztec reasonably suggested APAC imported UPM pup joints into the United States. The import data linked UPM’s 11 exports to APAC’s 11 imports. APAC was the only company listed as a consignee for UPM’s exports, and from April 12, 2016, UPM only shipped merchandise described as “upper extension nipples.” Thus, Aztec provided evidence to reasonably suggest that APAC was importing merchandise manufactured by UPM for the period April 12, 2016, to present.

With respect to establishing the proper classification of that merchandise, an Aztec employee observed UPM marked pup joints, which would be within the scope of the AD order, at the Netco facility. Thereafter, Aztec arranged to purchase UPM pup joints from Dandy Specialties and distributed by APAC’s distributor, Netco. The mill inspection certificates accompanying the purchase verified that these pup joints would be within the scope of the AD order if originating from Vietnam. Given that UPM shipped only to APAC within the last year and at least two of the mill inspection certificates for the pup joints were issued within that timeframe, this suggests that UPM likely shipped covered merchandise to the United States during the timeframe APAC was importing its merchandise and declaring it to be “upper extension nipples.” TRLED determined that the allegation reasonably suggested that covered merchandise entered the customs territory of the United State through evasion, by a material false statement or act, or material omission that resulted in the reduction or avoidance of applicable AD cash deposits and duties. Hence, on July 18, 2017, TRLED initiated an investigation pursuant to 19 U.S.C. §1517(b)(1).

Interim Measures

Not later than 90 calendar days after initiating an investigation under EAPA, CBP will decide based on the investigation whether there is reasonable suspicion that such covered merchandise was entered into the customs territory of the United States through evasion. Therefore, CBP need only have sufficient evidence to support a reasonable suspicion that merchandise subject to an AD duty or CVD 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 AD duty or CVD 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 APAC entered covered merchandise into the customs territory of the United States through evasion. *See* 19 C.F.R. §165.24(a).

After initiation of the investigation, CBP performed three cargo exams of APAC's entries imported from UPM, and found that they each contained merchandise subject to the AD order on OCTG from Vietnam, A-552-817. The first cargo exam of APAC entry []8914 was conducted on August 22, 2017. CBP physically examined each case/box within the shipment, and took multiple photos of the merchandise and packaging material. The commercial invoice, packing list, and bill of lading accompanying the shipment identified Vietnam as the country of origin, UPM as the manufacturer, and described the merchandise as upper extension nipples, matching how the merchandise was declared in the public export/import data provided by Aztec in its allegation. Further, the entry was filed as a Type 01 entry, indicating there was no merchandise subject to an AD order, and the merchandise was classified under HTSUS subheading 8413.91.9080, "Parts of pump, other." Finally, the steel tubing was marked as American Petroleum Institute ("API") "L80."

The second cargo exam of APAC entry []0357 was conducted on August 31, 2017. CBP took photos of the merchandise and packaging. The commercial invoice, packing list, and bill of lading accompanying the shipment identified Vietnam as the country of origin, UPM as the manufacturer, and described the merchandise as upper extension nipples. As with the first shipment above, the entry was filed as a Type 01 entry, and the merchandise was classified under HTSUS subheading 8413.91.9080, "Parts of pump, other." Upon examination, CBP discovered that the shipment contained steel tubing marked with either API "L80" or "J55" markings. Further, the tubes marked with "L80" markings were painted red and contained additional "UPM 5CT" markings. The tubes with "J55" markings were painted green, and contained additional "UPM 5CT" markings.

The third cargo exam of merchandise in APAC entry []3112 was conducted on September 1, 2017. CBP took photos of the merchandise and packaging. The commercial invoice, packing list, and bill of lading accompanying the shipment identified Vietnam as the country of origin, UPM as the manufacturer, and described the merchandise as upper extension nipples. As with the two shipments above, the entry was filed as a Type 01 entry, and the merchandise was classified under HTSUS subheading 8413.91.9080, "Parts of pump, other." Upon examination, CBP discovered the shipment contained steel tubing marked with either API "L80" or "J55" markings. As with entry []0357, the tubes marked with "L80" markings were painted red and contained additional "UPM 5CT" markings. The tubes with "J55" markings were painted green, and contained additional "UPM 5CT" markings.

The merchandise covered by the AD order on OCTG are:

hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than case iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (e.g., whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached.

See Certain Oil Country Tubular Goods from India, the Republic of Korea, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Antidumping Orders; and Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less than Fair Value, 79 Fed. Reg. 53,691 (Dep't. Commerce Sept. 10, 2014). OCTG is produced according to standards and specifications published by a number of organizations, including the API. *See Certain Oil Country Tubular Goods Tubular Goods from India, Korea, Philippines, Taiwan, Thailand, Turkey, Ukraine, and Vietnam*, (Inv. Nos. 701-TA-499-500 and 731-TA-1215-1217 and 1219-1223 (Final), USITC Publication 4489, at 30 (Sept. 2014). OCTG is usually produced in accordance with API specification 5CT, which encompasses 11 separate grades of casing and tubing, including grades "L80" and "J55." *See id.*, at 30 and I-19. As Aztec noted in its allegation, pup-joints are "short lengths of seamless or welded steel tubing primarily used to adjust the length of an oil or gas tubing string or to place down-hole tools." Allegation, at 2. Since the steel tubing in APAC's imports from Vietnam were marked with grades determined to fall within the scope of the OCTG order, CBP determined the tubing were covered by the AD order on OCTG from Vietnam.

Each of the three entries were filed as non-subject merchandise and APAC incorrectly classified the steel tubing under HTSUS 8413.91.9080, "Parts of pumps, other." However, the merchandise was actually steel tubing, of grades falling within the AD order on OCTG from Vietnam, manufactured by UPM, and is therefore covered merchandise. This determination was further supported by a UPM mill inspection certificate ("certificate") provided by APAC subsequent to the three cargo exams. On September 14, 2017, CBP issued a proposed Customs Form ("CF") 29 to APAC requesting additional information for the merchandise. As part of its response, on October 6, 2017, APAC provided CBP a copy of the certificate that described the merchandise as 'pup joints.' The certificate also showed that the chemical composition of the 'pup joints' or steel tubing fell within the scope of the AD order on OCTG from Vietnam. The certificate was dated [], and corresponded to the tubing contained in Entry []8914 by matching the heat number listed on the certificate, [], with the line-item descriptions of the merchandise on the commercial invoice and packing list associated with this entry.

In its CF29 response cover letter, APAC asserted that the merchandise fell outside the scope of the AD order on OCTG from Vietnam; however, it did not specifically state what the merchandise was nor why it fell outside the scope. APAC attached a brief description of the manufacturing process and end-use of the merchandise. It also attached an API specification sheet for nipples and couplings, along with a nipple measurement sheet on [] letterhead. However, it did not articulate which API nipple or coupling specification the merchandise fell within, nor did it provide any measurements for the merchandise consistent with the measurement sheet for nipples. Thus it is unclear if APAC is asserting this merchandise is upper extension nipples. In fact, as discussed above, the other documentation it provided in the CF29 response, including the mill certificate, along with the commercial invoices and packing lists support the conclusion that this is merchandise that falls within the AD order on OCTG from Vietnam. Therefore, APAC provided insufficient information supporting its assertion that the merchandise fell outside the scope of the AD order.

These entries establish the pattern of evasion alleged by Aztec in its allegation. This evidence, along with the information provided in the allegation, establishes a reasonable suspicion that APAC entered merchandise into the United States through evasion. For this reason, CBP is implementing interim measures provided below.

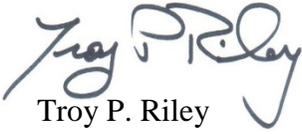
In addition to the three cargo exams described above, CBP conducted four other cargo exams of APAC's entries from three different Chinese manufacturers and shippers. Additional information was necessary to determine whether these entries also contained merchandise subject to the AD order on OCTG, or any other AD/CVD order from China. Therefore, on September 14, 2017, CBP issued a proposed CF29 to APAC requesting additional information for the merchandise similar to but distinct from the proposed CF29 described in the previous paragraph. On September 29, 2017, CBP also formally requested that APAC return samples of the merchandise for testing by CBP's Laboratories and Scientific Services Division. On October 4, 2017, APAC provided an incomplete response to the proposed CF29. Subsequently, CBP reiterated its request for specific documentation, namely mill inspection certificates for the merchandise under review. The requested samples were provided to CBP and are being tested. CBP will continue to evaluate all information provided by APAC, or otherwise obtained by CBP, along with any lab results to investigate the evasion scheme identified in the allegation, as well as any other type of AD/CVD evasion that may exist.

As interim measures, CBP is directing that all unliquidated entries of subject merchandise under this investigation that entered the United States as not subject to AD duties will be rate-adjusted to reflect that they are subject to the AD order on OCTG from Vietnam and cash deposits are now owed. Additionally, "live entry" is required for all future imports from APAC, 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 and require a refile for those that are within the entry summary reject period; suspend the liquidation for any entry that has entered on or after July 18, 2017, 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). Further, CBP will evaluate APAC's continuous bond and will require single transaction bonds as appropriate.

For any future submission 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. Richard Mojica, counsel for Aztec, at rmojica@milchev.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 epaallegations@cbp.dhs.gov.

Please include “EAPA Case Number 7204” in the subject line of your email. Additional information on these investigations, including the applicable statute and regulations, may be found on CBP's website at: <https://www.cbp.gov/trade/trade-enforcement/tftea/enforce-and-protect-act-eapa>.

Sincerely,

A handwritten signature in black ink, appearing to read "Troy P. Riley". The signature is stylized with a large, sweeping initial "T" and "R".

Troy P. Riley
Executive Director
Trade Remedy & Law Enforcement Directorate
Office of Trade