



U.S. Customs and
Border Protection

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PUBLIC VERSION

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Re: Notice of initiation of investigation and interim measures taken as to Prime Stainless Products, LLC and to H&H Machine Co. concerning evasion of the antidumping and countervailing duty orders on stainless steel flanges from the People's Republic of China

Dear Sirs:

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 Prime Stainless Products, LLC ("Prime Stainless") and H&H Machine Co. ("H&H Machine"). Specifically, CBP is investigating whether Prime Stainless and H&H Machine have evaded the antidumping duty ("AD") order A-570-064¹ and the countervailing duty ("CVD") order C-570-065² on stainless steel flanges from the People's Republic of China ("China") with entries of stainless steel flanges into the United States. Because evidence establishes a reasonable suspicion that Prime Stainless and H&H Machine have entered merchandise into the United States through evasion, CBP has imposed interim measures.

¹ See *Stainless Steel Flanges from the People's Republic of China: Antidumping Duty Order*, 83 FR 37468 (Aug. 1, 2018).

² See *Stainless Steel Flanges from the People's Republic of China: Countervailing Duty Order*, 83 FR 26006 (June 5, 2018).

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. CBP acknowledged receipt of the properly filed allegation against Prime Stainless on August 9, 2018, and acknowledged receipt of the properly filed allegation against H&H Machine on August 22, 2018.³ Because these two investigations are now consolidated as discussed further below, CBP is hereby extending the scope of the investigation for H&H Machine to align with that for Prime Stainless, and the entries covered by the consolidated investigation are those entered for consumption, or withdrawn from warehouse for consumption, from August 9, 2017, through the pendency of this investigation. *See* 19 C.F.R. § 165.2.

Initiation

On August 30, 2018, 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 Core Pipe Products, Inc. (“Core Pipe”), as to evasion of antidumping and countervailing duties by Prime Stainless. On September 13, 2018, TRLED initiated an investigation under EAPA as the result of an allegation submitted by Core Pipe as to evasion of antidumping and countervailing duties by H&H Machine.⁴ Core Pipe alleges that Prime Stainless and H&H Machine evaded AD order A-570-064⁵ and CVD order C-570-065⁶ on stainless steel flanges from China by importing certain covered merchandise, *i.e.* flanges forged in China that are transshipped through an intermediary supplier in the Philippines, EN Corporation (“ENC”).⁷ The description of the alleged transshipment scheme follows.

³ *See* Receipt Notification Email from EAPA Investigation 7257, Regarding Prime Steel to Dan Pickard, Wiley Rein LLP (Aug. 9, 2018); and Receipt Notification Email from EAPA Investigation 7264, Regarding H&H Machine to Dan Pickard, Wiley Rein LLP (Aug. 22, 2018), respectively.

⁴ *See* Memorandum to Carrie L. Owens, Director, Enforcement Operations Division, “Initiation of Investigation for EAPA Case Number 7257” (Nov. 7, 2018) (“Prime Stainless Initiation”) and Memorandum to Carrie L. Owens, Director, Enforcement Operations Division, “Initiation of Investigation for EAPA Case Number 7264” (Nov. 15, 2018) (“H&H Machine Initiation”), respectively.

⁵ *See Stainless Steel Flanges from India: Antidumping Duty Order*, 83 FR 50639, (Dept. Commerce Oct. 9, 2018).

⁶ *See Stainless Steel Flanges from India: Countervailing Duty Order*, 83 FR 50336, (Dept. Commerce Oct. 5, 2018).

⁷ Core Pipe also alleged that Prime Stainless and H&H Machine were evading duties associated with the AD and CVD orders on stainless steel flanges from India. *See* Core Pipe’s Allegation against Prime Stainless (July 31, 2018) (“Prime Stainless Allegation”) and Core Pipe’s Allegation against H&H Machine (Aug. 13, 2018) (“H&H Machine Allegation”). However, CBP did not initiate the investigations based on these allegations relating to India due to the lack of sufficient information in Core Pipe’s allegations regarding the alleged transshipment of Indian-origin flanges. *See* Prime Stainless Initiation at 4, n. 11; and H&H Machine Initiation at 4, n. 11. Subsequently, Core Pipe submitted additional information pertaining to its allegations; with regard to Prime Stainless. *See* Core Pipe’s Market Research Company Information (June 28, 2018), Supplemental Affidavit (Sept. 17, 2018), and Public Summary of Exhibit II (Oct. 16, 2018) (“Prime Stainless Allegation”). With regard to H&H Machine, *see* Core

Core Pipe notes that, for purposes of the AD/CVD orders on subject merchandise from China, “the country of origin for certain forged stainless steel flanges, whether unfinished, semi-finished, or finished is the country where the flange was forged.”⁸ In other words, stainless steel flanges forged in China and further processed in a third country before exportation to the United States would remain subject to the AD/CVD orders.

Core Pipe asserts that the ENC facility in the Philippines, [REDACTED], is a Philippine-registered manufacturer of stainless steel fittings and flanges. According to a market research report, while run by [REDACTED], the Philippines facility undertook a variety of manufacturing processes, including, forging. The market research report states that currently, ENC imports Chinese crude and finished stainless steel forged flanges into the Philippines and exports finished stainless steel forged flanges to the United States claiming Philippines as the country of origin in order to evade the AD/CVD orders.⁹

In an affidavit, [REDACTED] stated that ENC was not run profitably as a forger and, as such, incurred significant debt.¹⁰ The affidavit states that ENC decided to focus upon finishing Chinese forgings because this operation was more profitable than forging. The [REDACTED] further stated that ENC is re-exporting semi-finished and finished Chinese stainless steel flanges to the United States with a “Made in the Philippines” designation. The [REDACTED] based this on [REDACTED]

[REDACTED]. [REDACTED] confirmed to the [REDACTED] that these shipments were destined for ENC.

Core Pipe further supports this allegation of transshipment with trade data related to imports and exports by ENC. The market researcher reviewed ENC import and export records from January 2017 to February 2018, sourced by [REDACTED], and found that all of ENC’s imports of stainless steel forged flanges during this period were from China.¹¹ The market research report further states that according to a source from [REDACTED] these imported flanges were considered to be “crude” and “still to be finished and/or made part of other pipe products.” The same trade records showed that most of ENC’s stainless steel forged flanges were exported to the United States. Lastly, of [REDACTED] bills of lading relating to ENC exports of

Pipe’s Market Research Company Information (June 28, 2018), Supplemental Affidavit (Sept. 17, 2018), and Public Summary of Exh. II (Oct. 16, 2018).

⁸ See Prime Stainless Initiation, at 2 (citing Prime Stainless Allegation, at 4), and H&H Machine Initiation, at 2 (citing H&H Machine Allegation, at 4).

⁹ See Prime Stainless Initiation, at 2 (citing Prime Stainless Allegation at Exhibit 2), and H&H Machine Initiation, at 2 (citing H&H Machine Allegation at Exh. 2).

¹⁰ See Prime Stainless Initiation at 2 (citing Email from Dan Pickard regarding Allegation Supplement (Sept. 17, 2018) containing an attached affidavit; and H&H Machine Initiation, at 2 (citing Email from Dan Pickard regarding Allegation Supplement (Sept. 17, 2018) containing an attached affidavit).

¹¹ *Id.*

stainless steel forged flanges to the United States, all indicated country of origin as the Philippines.¹² Core Pipe also submitted trade data from [] indicating that Prime Stainless and H&H Machine imported stainless steel forged flanges from ENC with a country of origin as the Philippines in 2018.¹³

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 covered merchandise.” *See* 19 C.F.R. §165.1. Thus, the allegation must reasonably suggest not only that merchandise subject to an AD and/or CVD 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 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 Prime Stainless and H&H Machine have entered merchandise through evasion of AD order A-570-064 and CVD order C-570-065 by importing Chinese flanges that were likely transshipped through the Philippines. Core Pipe provided reasonably available documents and other information to support its arguments regarding the likelihood of transshipment and/or attempt to evade detection through misrepresentation of the true country of origin. The interviews and analysis detailed in the market research report, as well as observations made at [], reasonably suggested that ENC did not forge onsite in the Philippines and, instead, ENC likely sourced forged flanges, with no country of origin markings, from Chinese suppliers for transshipment to the United States.¹⁴ Consequently, TRLED determined that the allegations reasonably suggest that Prime Stainless and H&H Machine entered covered merchandise into the United States through evasion by a material false statement or act, or material omission, and initiated investigations pursuant to 19 U.S.C. §1517(b)(1).¹⁵

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

¹² *See* Prime Stainless Initiation, at 2-3 and n. 9 (citing Prime Stainless Allegation at Exh. 2, Fig. 1); and H&H Machine, at 2-3 and footnote 9 (citing H&H Machine Allegation at Exh. 2, Fig. 1).

¹³ *See* Prime Stainless Initiation, at 3 (citing Prime Stainless Allegation, at 7); and H&H Machine Initiation, at 3 (citing H&H Machine Allegation at 7).

¹⁴ *See* Prime Stainless Initiation, at 3; and H&H Machine Initiation, at 3.

¹⁵ *See* Prime Stainless Initiation and H&H Machine Initiation, respectively.

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 AD or CVD 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 or CVD 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 Prime Stainless and H&H Machine entered covered merchandise into the United States through evasion by means of transshipment through the Philippines. *See* 19 C.F.R. § 165.24(a).

Entry Summary Reviews

As part of the EAPA investigatory process, on October 12, 2018, CBP issued Prime Stainless and H&H Machine each a Customs Form (“CF”) 28 on entries []3553 and []3116, respectively, entries that are both subject to this EAPA investigation. CBP requested standard sale, production, and factory documentation in these requests.¹⁶

H&H Machine failed to provide a response to the CF28. Prime Stainless provided a response to the CF28, but while that response contained sales-related documentation, it did not contain the requested production and factory documentation.¹⁷ The lack of response by H&H and the deficient response by Prime Stainless precluded CBP from corroborating the country of origin of the merchandise in either above-noted entry.

Foreign Site Visit to ENC

On November 13, 2018, CBP conducted a site visit to ENC in the Philippines to confirm production capabilities.¹⁸ ENC is located at Rosario, Cavite, in the Cavite Export Processing foreign trade zone. The self-identified General Manager gave the CBP team a factory tour, covering multiple facilities in the zone. He indicated the company employees over [] employees, approximately [] of whom are involved in the production of stainless steel flanges, including those working at the steel mill, casting, forging, machining, heat treatment, quality control, and packing stages.

CBP noticed [] of equipment on the premises, including some machinery that the team observed was engaged in the forging and machining of stainless steel flanges and other products (*e.g.*, butt-weld pipe fittings). ENC officials indicated its stainless steel forged flanging production capacity is [] per month, but that actual production of flange forgings was only [] per month and that finished flange output is [] tons per

¹⁶ *See* CF28 Requests to Prime Stainless (Oct. 12, 2018) and H&H Machine (Oct. 12, 2018).

¹⁷ *See* Prime Stainless CF28 Response (Nov. 12, 2018).

¹⁸ *See* Memorandum to Carrie L. Owens, Director, Enforcement Operations Division, TRLED (Nov. 20, 2018) (“Site Visit Memo”).

month.¹⁹ While these claimed capacity and production figures could accommodate the volume of stainless steel flanges imported by Prime Stainless and H&H Machine from ENC during the period of investigation,²⁰ CBP cannot corroborate these claimed production figures due to the lack of production and factory information regarding ENC that was provided in response to the CF28s, as noted above.

In addition to the lack of documentation noted above, in the finished goods physical inventory, CBP observed flanges that the company officials said were made in China, and which officials explained are not supposed to be shipped to the United States. The General Manager referred to special markings on certain boxes that contained flanges made in China, a signal to workers not to use those flanges for shipments to the United States. Nothing on the boxes identified their intended destination. He noted such markings were instituted after company officials realized that ENC had continued to ship Chinese-forged stainless steel flanges to the United States while the AD/CVD investigations were underway.²¹ The General Manager stated the company had been confused about when such deposits actually would be required for China-origin stainless steel flanges. The General Manager stated that [] filed a Prior Disclosure in October 2018 after [] discovered that ENC had shipped Chinese flanges to the United States for which the importer of record ([]) had not paid AD/CVD deposits.²²

The CBP team further observed that inventory dated back to [] and some of the stock cards said “import” on the last line, while others said “transfer.” The General Manager said he did not know what “import” meant, but that “transfer” meant the stock came from the [] plant. CBP also observed inventory currently being packed into plain wooden boxes in the packing area. The boxes were not obviously marked with the end-user’s information nor the country of origin of the merchandise. We note that Section 304, Tariff Act of 1930, as amended (19 U.S.C. § 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the United States “shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or container) will permit in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article.”

CBP further observed that the amount of merchandise being packed while onsite appeared to be low when compared to their claimed production levels.²³

¹⁹ *Id.*, at 2-3.

²⁰ See Evasion National Targeting and Analysis (“Evasion NTAG”) Report for Prime Stainless (Nov. 26, 2018) and Evasion NTAG Report for H&H Machine (Nov. 26, 2018). Those stainless steel flange capacity and production figures provided by the ENC officials also exceed the total U.S. import volumes of stainless steel flanges by a considerable amount. See Total Imports of ENC Stainless Steel Flanges (Nov. 27, 2018).

²¹ See Site Visit Memo, at 4.

²² See Site Visit Memo at 5-6. See also “[] Prior Disclosure / Stainless Flanges (Oct. 14, 2018).

²³ See Site Visit Memo, at 4.

In conclusion, several factors support a reasonable suspicion that Prime Stainless and H&H Machine entered covered merchandise into the United States through evasion by means of transshipment through the Philippines. First, the presence of boxed Chinese-origin flanges at ENC facilities with no visible country of origin markings is consistent with the transshipment scheme alleged by Core Pipe, especially given that the U.S. market accounts for [] percent of ENC's shipments of stainless steel flanges.²⁴ Also, ENC's statements conceding shipments of Chinese flanges to the United States after cash deposits were owed and the Prior Disclosure by the U.S. importer regarding the importation of such Chinese-origin flanges provides evidence of the type of transshipment scheme outlined in the Allegation. Finally, the absence of CF28 response information relating to ENC production facilities (*e.g.*, capacities) prevents CBP from confirming that the flanges in question were produced in the Philippines, as was indicated in the import documentation for the entries in question.

Interim Measures

As CBP is undertaking interim measures, unliquidated entries of stainless steel flanges under this investigation that entered the United States as not subject to antidumping duties will be rate-adjusted to reflect that they are subject to the AD and CVD orders on stainless steel flanges from China and cash deposits are owed. Additionally, "live entry" is required for all future imports for Prime Stainless and H&H Machine, 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 refiling of entries that are within the entry summary rejection period. CBP will also suspend the liquidation for any entry that has entered on or after August 30, 2018, the earlier date of initiation for the investigations incorporated into this consolidated investigation (*see* below); 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 the continuous bonds for Prime Stainless and H&H Machine to determine their sufficiency, among other measures, as needed. Finally, CBP may pursue additional enforcement actions, as provided by law, consistent with 19 U.S.C. §1517(h).

²⁴ *See* Site Visit Memo, at 2.

Consolidation of the Investigations

CBP is consolidating the two investigations on Prime Stainless and H&H Machine into a single investigation covering both importers. The new consolidated case number will be EAPA Consolidated Case No. 7257, and a single administrative record will be maintained. At its discretion, CBP may consolidate multiple allegations against one or more importers into a single investigation, pursuant to 19 C.F.R. §165.13(b), which stipulates that:

The factors that CBP may consider {in consolidating multiple allegations} include, but are not limited to, whether the multiple allegations involve: 1) relationships between the importers; 2) similarity of covered merchandise; 3) similarity of AD/CVD orders; and 4) overlap in time periods of entries of covered merchandise.

In these investigations, both importers are alleged to have entered suspected Chinese-origin stainless steel flanges, from the Philippines, covered by a single AD order and a single CVD order. Moreover, each allegedly imported covered stainless steel flanges during the period of investigation from the same Philippine exporter. Because factors warranting consolidation are present in these investigations, CBP is consolidating them and providing this notice pursuant to 19 C.F.R. §165.13(c). We note that the deadlines for the consolidated investigation will be set from the date of initiation of the first of the allegations, which is August 30, 2018. *See, e.g.*, 19 C.F.R. §165.13(a).

For any future submissions or factual information that you submit to CBP pursuant to this consolidated EAPA investigation, please provide a public version to CBP, as well as to Mr. Daniel Pickard, counsel for Core Pipe, at DPickard@wileyrein.com, Mr. Michael Sharkey, of Prime Stainless, at michael@primestainlessproducts.com, and Mr. Jeffrey A. Hunt, of H&H Machine, at virginiasales@aol.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 eapallegations@cbp.dhs.gov. Please include “EAPA Cons. Case Number 7257” 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,



Carrie L. Owens
Director of Enforcement Operations
Trade Remedy & Law Enforcement Directorate
Office of Trade