



## U.S. Customs and Border Protection

December 11, 2018

### **PUBLIC VERSION**

EAPA Cons. Case Number 7227

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c/o The Aluminum Extrusions Fair Trade Committee  
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Mr. Ping Lam  
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Ms. Jenny Hue Ho  
Owner  
Fair Importing Corporation  
Flushing, NY 11358

### **Re: Notice of Final Determination as to Evasion**

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Mr. Price, Mrs. Ho and Mr. Lam:

Pursuant to an examination of the record in Enforce and Protect Act (“EAPA”) Investigation Number 7227, U.S. Customs and Border Protection (“CBP”) has determined that there is substantial evidence that Sun Bright International Corporation (“Sun Bright”) and Fair Importing Corporation (“Fair Importing”) (collectively, the “Importers”) entered merchandise covered by antidumping duty (“AD”) order A-570-967,<sup>1</sup> and countervailing duty (“CVD”) order C-570-968,<sup>2</sup> into the customs territory of the United States through evasion. Substantial evidence demonstrates that the Importers imported into the United States aluminum extrusions from the

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<sup>1</sup> See *Aluminum Extrusions from the People’s Republic of China: Antidumping Duty Order*, 76 Fed. Reg. 30,650 (Dep’t Commerce, May 26, 2011) (“AD Order”).

<sup>2</sup> See *Aluminum Extrusions from the People’s Republic of China: Countervailing Duty Order*, 76 Fed. Reg. 30,653 (Dep’t Commerce, May 26, 2011) (“CVD Order”).

People's Republic of China ("China") that were transshipped through Malaysia. The Importers did not declare that the merchandise was subject to AD and CVD orders upon entry and, as a result, no cash deposits were collected on the merchandise.

## **Background**

The Aluminum Extrusions Fair Trade Committee ("AEFTC")<sup>3</sup> submitted two separate allegations that reasonably suggested that Sun Bright and Fair Importing were evading the payment of cash deposits on imports of certain shipments of aluminum extrusions covered by the AD and CVD orders (A-570-967 and C-570-968, respectively) on aluminum extrusions from China. Specifically, the AEFTC alleged that Sun Bright and Fair Importing were evading the AD and CVD orders by importing into the United States aluminum extrusions that were produced in China and transshipped through Malaysia and falsely declaring Malaysia as the country of origin.<sup>4</sup>

In the allegations, as support for the alleged transshipment scheme, the AEFTC provided an email exchange between Qingdao ZHV International Logistics Co., Ltd. ("ZHV"), a Chinese freight forwarder, and a foreign investigator. ZHV stated in the email exchange that it ships products from Foshan, China to Port Kelang, Malaysia, where it changes the container and then re-exports the product to third countries.<sup>5</sup> As part of the email exchange, ZHV responded to the investigator's request for examples of successful transshipments by providing a Certificate of Origin that indicated Malaysia as the country of origin for a shipment of covered merchandise.<sup>6</sup> Using public manifest data, the AEFTC linked the Certificate of Origin to a shipment of aluminum extrusions exported by CK Aluminium from Port Kelang, Malaysia and imported into the United States by "Sunbright Industry" in New York.<sup>7</sup> AEFTC also asserted that CK Aluminium does not appear to be a producer of aluminum extrusions, providing photographs from Google Maps of the facilities located at the address listed for CK Aluminium in the public manifest data.<sup>8</sup>

On February 5, 2018, CBP initiated two investigations pursuant to Title IV, section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, commonly referred to as the "Enforce

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<sup>3</sup> The individual members of the AEFTC are: Aerolite Extrusion Company; Alexandria Extrusion Company; William L. Bonnell Company, Inc. ("Bonnell"); Frontier Aluminum Corporation; Futura Industries Corporation ("Futura"); Extrusion North America at Hydro ("Hydro"); Kaiser Aluminum Corporation; Profile Extrusion Company; and Western Extrusions Corporation. The AEFTC noted that while Futura remains a member of AEFTC, Bonnell acquired Futura in early 2017, and Futura is now a wholly-owned subsidiary of Bonnell. In addition, in October 2017, Norsk Hydro ASA acquired Orkla ASA's 50 percent ownership in Sapa AS, giving Norsk Hydro ASA full ownership of Sapa AS. Sapa AS changed its name to Hydro Extruded Solutions AS and is now a business unit within Norsk Hydro ASA called Extruded Solutions. Further, Benada Aluminum of Florida, Inc., while an original member of the petitioning Committee, has left the Aluminum Extruders Council and is no longer a member of the AEFTC.

<sup>4</sup> See Allegations for Sun Bright and Fair Importing, at 1 and 6-13 (Jan. 9, 2018).

<sup>5</sup> *Id.* at Exh. 4.

<sup>6</sup> *Id.* at Exh. 6.

<sup>7</sup> *Id.* at Exh. 7.

<sup>8</sup> *Id.* at Exh. 9.

and Protect Act” or “EAPA.”<sup>9</sup> Subsequent to initiating these investigations, CBP issued separate requests for information (“RFIs”), and follow-up RFIs, to Sun Bright and Fair Importing via CBP Form 28s (“CF-28”) regarding certain entries of the aluminum extrusions obtained from CK Aluminium. The CF-28s requested that the Importers provide substantive documents concerning the importation of aluminum extrusions from CK Aluminium. In their CF-28 responses and follow-up responses, the Importers provided contact information for CK Aluminium’s management, the manufacturer’s purchase orders for raw materials, mill certificates identifying the aluminum as 6063 alloy, invoices for three aluminum extrusion machines, and photographs depicting the interior of the manufacturing facility and the aluminum extrusion machines.<sup>10</sup>

On March 6, 2018, CBP officials in Malaysia conducted a site visit of CK Aluminium’s address to verify the structures shown in the Google Maps photographs provided in the allegations. The photographs taken by CBP document the limited infrastructure of the facilities pictured in the allegations, and suggest that CK Aluminium is not a legitimate manufacturer of aluminum extrusions.<sup>11</sup> Specifically, the CBP photographs do not reconcile with information provided by the Importers in their CF-28 responses and follow-up responses. Although the photographs submitted by the Importers show the interior of a manufacturing facility, it is apparent from CBP’s exterior photographs of the actual structures that the Importers’ photographs do not align. Significantly, the CBP exterior photographs depict a facility too small to house three [ ] extruding machines, [ ] employees, [ ] metric tons of scrap aluminum, and [ ] metric tons of aluminum ingot, as claimed by the Importers in their CF-28 responses and follow-up responses.<sup>12</sup> CBP’s exterior photographs also show insufficient infrastructure requirements, as the facility is lacking in electrical input and furnaces for the process of melting and extruding large volumes of aluminum.

Given the absence of any evidence to support the production of aluminum extrusions at CK Aluminium’s address in Malaysia, and the Importers’ confirmation that the imported aluminum extrusions consisted of series 6 aluminum, which is covered by the AD and CVD orders on aluminum extrusions from China,<sup>13</sup> CBP found there was reasonable suspicion that the Importers evaded AD and CVD duties by entering into the United States subject merchandise transshipped from China through CK Aluminium and declaring it to be of Malaysian origin. On May 14, 2018, in accordance with 19 C.F.R. §165.24, CBP issued a notice of initiation of investigation to all interested parties with CBP’s decision to take interim measures, based upon a reasonable suspicion that the Importers entered covered merchandise into the customs territory of the United

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<sup>9</sup> See Memorandum to the File on Initiation of EAPA Investigation Case Number 7227 (Feb. 5, 2018) (Sun Bright) and Memorandum to the File on Initiation of EAPA Investigation Case Number 7228 (Feb. 5, 2018) (Fair Importing).

<sup>10</sup> See CF-28 response from Sun Bright (Mar. 14, 2018); First CF-28 response from Fair Importing (Mar. 19, 2018); CF-28 follow-up response from Sun Bright (Apr. 13, 2018); CF-28 follow-up response from Fair Importing (Apr. 16, 2018); and Second CF-28 response from Fair Importing (May 1, 2018).

<sup>11</sup> See CBP Attaché Memorandum for On-Site visit and photographs (Mar. 6, 2018).

<sup>12</sup> See CF-28 response from Sun Bright; First CF-28 response from Fair Importing; CF-28 follow-up response from Sun Bright; and CF-28 follow-up response from Fair Importing.

<sup>13</sup> See CF-28 follow-up response from Sun Bright and CF-28 follow-up response from Fair Importing, at mill certificates.

States through evasion.<sup>14</sup> The Notice of Interim Measures summarized the basis for CBP's finding of reasonable suspicion as to evasion, and listed the interim measures that CBP applied against Sun Bright's and Fair Importing's imports of aluminum extrusions from China.<sup>15</sup> As explained in the Notice of Interim Measures, CBP consolidated the investigations on the two importers into a single investigation covering both importers, pursuant to 19 CFR §165.13.<sup>16</sup>

On July 5, 2018, Fair Importing voluntarily submitted factual information.<sup>17</sup> CBP issued separate RFIs to Sun Bright and Fair Importing on August 1, 2018, and to CK Aluminium on August 6, 2018. Fair Importing timely filed a response to the RFI on August 23, 2018.<sup>18</sup> However, neither Sun Bright nor CK Aluminium submitted responses to the RFIs. The substance of Fair Importing's voluntary factual information submission and its RFI response, as they pertain to this final determination as to evasion, are addressed below.

### **Final Determination as to Evasion**

Under 19 U.S.C. §1517(c)(1)(A), to reach a final determination as to evasion in this case, CBP must:

make a determination, based on substantial evidence, with respect to whether such covered merchandise entered into the customs territory of the United States through evasion.

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 of any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the covered merchandise.”<sup>19</sup> Thus, CBP must reach a determination as to whether merchandise subject to an AD or CVD order was entered into the United States by the importer and such entry was made by a material and false information, statement, or act, or any material omission, that resulted in the reduction or avoidance of applicable AD or CVD cash deposits or other security.

Substantial evidence on the record of this investigation supports a determination that the Importers' entries of aluminum extrusions from their supplier, CK Aluminium, were made by material false statements or acts, and material omissions, that resulted in the avoidance of applicable cash deposits required under AD order A-570-967 and CVD order C-570-968. Specifically, the aluminum extrusions imported by the Importers, and declared to be of

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<sup>14</sup> See Notice of Initiation of Investigation and Interim Measures (May 14, 2018) (available at <https://www.cbp.gov/document/report/eapa-case-number-7227-sun-bright-international-corporation-notice-investigation-and>) (“Notice of Interim Measures”).

<sup>15</sup> *Id.* at 5.

<sup>16</sup> *Id.* at 5-6.

<sup>17</sup> See Fair Importing Voluntary Factual Information Submission (July 5, 2018).

<sup>18</sup> See Fair Importing RFI Response (Aug. 23, 2018). While the initial deadline for Fair Importing to file its RFI response was August 16, 2018, Fair Importing requested an extension to file its response on August 14, 2018. On August 14, 2018, CBP granted an extension until August 24, 2018 for Fair Importing to respond to the RFI.

<sup>19</sup> See 19 C.F.R. § 165.1.

Malaysian origin, were actually Chinese-origin aluminum extrusions that were transshipped through Malaysia. The Importers did not declare that the merchandise was subject to the AD and CVD orders on aluminum extrusions from China upon entry and, as a result, no cash deposits were collected on the merchandise.

On August 1, 2018, CBP issued separate RFIs to Sun Bright and Fair Importing, and on August 6, 2018, CBP issued a RFI to CK Aluminium. Neither Sun Bright nor CK Aluminium responded to the RFIs. While Fair Importing did submit a response to the RFI, its response was woefully incomplete. Significantly, Fair Importing's RFI response did not contain any information to substantiate its declared country of origin, Malaysia, or its contention that CK Aluminium manufactured or was capable of manufacturing the aluminum extrusions imported by Fair Importing.

As an initial matter, CBP requested in the RFI that Fair Importing identify the source of records and information used to file CBP entries and pay for the imported merchandise. Fair Importing responded that all such information had been provided by [ ] or possibly Ping Lam.<sup>20</sup> Previously, Fair Importing stated that it believed Ping Lam, aka Billy PC Lam, had incorporated Sun Bright and [ ], who it believed was [ ] brother, placed orders on behalf of Fair Importing.<sup>21</sup> Similarly, in response to a question in the RFI concerning Fair Importing's contact with CK Aluminium, Fair Importing stated that there is no direct contact or relationship between Fair Importing and CK Aluminium, and that all factory and supplier documentation supplied in response to the CF 28 had been provided by [ ].<sup>22</sup>

Moreover, in its RFI response, Fair Importing failed to provide much of the documentation requested by CBP. For instance, CBP requested that Fair Importing provide, for several entries, a complete entry package to enable CBP to trace the imported merchandise through any middleman suppliers to the manufacturer source and the true country of origin. For five of the requested entries, Fair Importing provided only limited documentation, *i.e.*, CBP Forms 3461 and 7501; invoices and packing lists indicating CK Aluminium as the seller and Fair Importing as the buyer; and, for some entries, an arrival notice/freight invoice from the freight forwarder, an invoice and packing list from CK Aluminium, a bill of lading, and/or Import Security Filing (ISF),<sup>23</sup> and no documentation for the other two requested entries. Additionally, Fair Importing indicated that certain documentation was "{p}ending," and responded that documentation regarding movement through inventory was "N/A – SEGREGATED ON DOCK" without explaining the meaning of that phrase.<sup>24</sup>

Fair Importing's RFI response lacks a substantial portion of the information that CBP requested with respect to Fair Importing's imports of the covered merchandise. In response to CBP's request in the RFI for a narrative explanation of its importation process, Fair Importing merely

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<sup>20</sup> See Fair Importing RFI Response, at 4.

<sup>21</sup> See Fair Importing Voluntary Factual Information Submission, at 1-2.

<sup>22</sup> See Fair Importing RFI Response, at 14.

<sup>23</sup> *Id.* at attachments containing documentation for Entry [ ]-0837, Entry [ ]-2460, Entry [ ]-2882, Entry [ ]-4151, and Entry [ ]-6214.

<sup>24</sup> *Id.* at 11-13.

stated that it sent orders to either [ ] or Ping Lam, and that payments were made through a [ ].<sup>25</sup> Fair Importing also provided no evidence that it ordered the aluminum extrusions that it imported into the United States. Rather, Fair Importing explained that it had no direct contact with CK Aluminium and instead relied upon [ ] to place orders with CK Aluminium on its behalf.<sup>26</sup>

Fair Importing also failed to provide any evidence that it paid for the imported aluminum extrusions, as the limited domestic payment information it submitted did not reflect any such payments. Fair Importing neither furnished any documentation related to the payments made by this [ ] nor identified it. In response to requests for accounts payable records and monetary transactions between Fair Importing and parties involved in obtaining the aluminum extrusions, Fair Importing referred to a two-page spreadsheet listing debits with dates in 2017.<sup>27</sup> With regard to CBP's request for information related to bank accounts, Fair Importing provided some documentation (*i.e.*, bank statements and canceled checks) related to domestic payments, but this documentation was incomplete as it did not cover the entire requested period and did not include any payment documentation for the imported aluminum extrusions.<sup>28</sup> Fair Importing also failed to provide the full financial records requested by CBP in the RFI.

Sun Bright closed its warehouse in 2015 and rented a desk at 52-35 74<sup>th</sup> Street, Elmhurst, NY 11373 from [ ], a New York fabricator and supplier of parts for doors and windows.<sup>29</sup> The sales documentation (*i.e.*, sales contract, invoice, packing list, and bill of lading) contained in Sun Bright's CF-28 response confirm that Sun Bright used this address.<sup>30</sup> Fair Importing reported that 52-35 74<sup>th</sup> Street, Elmhurst, NY 11373 is also the address at which it was registered.<sup>31</sup> Fair Importing stated that [ ], and that [ ] provides support to Fair Importing on an as-needed basis.<sup>32</sup> In addition, Fair Importing reported that [ ] is its president and [ ], and also an employee of [ ].<sup>33</sup> As noted above, Fair Importing reported that [ ], the [ ] of Ping Lam (who in turn is associated with Sun Bright), placed orders on Fair Importing's behalf; that there is no direct contact or relationship between Fair Importing and CK Aluminium; and that [ ] had provided Fair Importing with all factory and supplier documentation for its CF 28 response. The co-location of Sun Bright, Fair Importing, and [ ], [ ] roles in both Fair Importing and [ ], and [ ] involvement in importing the covered merchandise on behalf of Fair Importing indicate that these three businesses were coordinating their imports of Chinese aluminum extrusions through Malaysia.

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<sup>25</sup> *Id.* at 2.

<sup>26</sup> *See also* Fair Importing Voluntary Factual Information Submission, at 2.

<sup>27</sup> *See* Fair Importing RFI Response, at 9 and attachment "Fair Importing GL Payments 2017."

<sup>28</sup> *Id.* at attachments containing bank statements and check images.

<sup>29</sup> *See* Fair Importing Voluntary Factual Information Submission, at 1.

<sup>30</sup> *See* CF-28 response from Sun Bright.

<sup>31</sup> *See* Fair Importing Voluntary Factual Information Submission, at 1.

<sup>32</sup> *See* Fair Importing RFI Response, at 6.

<sup>33</sup> *Id.*, at 1 and 3 and Fair Importing Voluntary Factual Information Submission, at 2.

After reviewing Fair Importing’s RFI response, which was largely incomplete, CBP finds that Fair Importing failed to show that it ordered and paid for the aluminum extrusions that it imported into the United States. Fair Importing’s failure to provide such information prevented CBP from being able to trace the imported merchandise back to the manufacturing source and the true country of origin. Fair Importing also did not provide any evidence to demonstrate that CK Aluminium was capable of producing the imported aluminum extrusions at its address in Malaysia, or to establish that Malaysia was the true country of origin of the aluminum extrusions. In addition, Sun Bright and CK Aluminium failed to provide any response to the RFIs issued after the Notice of Interim Measures. With respect to CK Aluminium, CBP’s attempts during this investigation to contact CK Aluminium via email and postal delivery service have gone unanswered, and the phone and fax lines that the Importers provided for CK Aluminium were disconnected. Therefore, we find that Sun Bright, Fair Importing, and CK Aluminium failed to cooperate to the best of their abilities to provide the information requested by CBP.

Pursuant to 19 U.S.C. §1517(c)(3) and 19 C.F.R. §165.6, CBP may apply an adverse inference if the party to the investigation that filed an allegation, the importer, or the foreign producer or exporter of the covered merchandise fails to cooperate and comply to the best of its ability with a request for information made by CBP. In applying an adverse inference against an eligible party, CBP may select from the facts otherwise available to make a final determination as to evasion pursuant to 19 U.S.C. §1517(c)(1)(A) and 19 C.F.R. §165.27. Moreover, an adverse inference may be used with respect to U.S. importers, foreign producers, and manufacturers “without regard to whether another person involved in the same transaction or transactions under examination has provided the information sought....” *See* 19 U.S.C. 1517(c)(3)(B).

In this case, neither Sun Bright nor CK Aluminium responded to CBP’s RFIs, and Fair Importing failed to respond to the best of its ability. As the alleged foreign manufacturer failed to respond to any of CBP’s requests for information, CBP may apply adverse inferences and infer that it is not a manufacturer and, instead, based on the information provided by the alleger, CK Aluminium is transshipping Chinese-origin aluminum extrusions through Malaysia. Moreover, the failure of the Importers to respond to the best of their abilities also supports the application of adverse inferences. Therefore, CBP is applying adverse inferences. In relying upon an adverse inference for failure to respond to the RFIs, or failure to cooperate and comply to the best of one’s ability with a request for information, CBP will look at the facts otherwise available. We find that all entries of aluminum extrusions made by the Importers during the period of investigation were Chinese and transshipped through Malaysia. Therefore, they are subject to the China-wide entity rate for the AD order on aluminum extrusions from China and the all others rate for the CVD order on aluminum extrusions from China. At present, these rates are 86.01 percent and 7.37 percent, respectively.<sup>34</sup>

Pursuant to 19 C.F.R. §165.27, based on the full record of this investigation, CBP determines that there is substantial evidence that the Importers entered covered merchandise into the United

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<sup>34</sup> *See* Cash deposit instructions for aluminum extrusions from the People’s Republic of China (A-570-967), Msg. No. 8218305 (Aug. 6, 2018) and Notice of Second Amended Final Determination in the Countervailing Duty Investigation of Aluminum Extrusions from the People’s Republic of China (C-570-968), Msg. No. 5317319 (Nov. 13, 2015), respectively (available at <https://aceservices.cbp.dhs.gov/adcvdweb>).

States through evasion. The facts of the transshipment scheme, as set forth above demonstrate that during the period of investigation, the Importers entered aluminum extrusions from Malaysia that originated from China. As such, the aluminum extrusions imported by the Importers are covered by AD order A-570-967 and CVD order C-570-968.

**Actions Taken Pursuant to the Affirmative Determination of Evasion**

In light of CBP's determination that Sun Bright and Fair Importing entered merchandise into the customs territory of the United States through evasion, and pursuant to 19 U.S.C. §1517(d) and 19 C.F.R. §165.28, CBP will continue to suspend or extend the liquidation, as applicable, until instructed to liquidate these entries. For future entries of aluminum extrusions from Malaysia involving CK Aluminum, CBP will continue to require live entry, which requires that the Importers post the applicable cash deposits prior to the entry's release into U.S. commerce. Finally, CBP will continue to evaluate the Importers' continuous bonds in accordance with CBP's policies, and will continue to require single transaction bonds as appropriate. None of the above actions preclude CBP or other agencies from pursuing additional enforcement actions or penalties.

Sincerely,



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