



U.S. Customs and  
Border Protection

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**PUBLIC VERSION**

EAPA Case Number 7204

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**Re: Notification of Final Determination as to Evasion**

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Dear Mr. Mojica and Mr. Cox:

Pursuant to an examination of the record in Enforce and Protect Act (“EAPA”) Investigation Number 7204, U.S. Customs and Border Protection (“CBP”) has determined that there is substantial evidence that American Pacific Rubber, Inc. (“APAC”) entered merchandise covered by antidumping duty (“AD”) order A-552-817 into the customs territory of the United States through evasion. Specifically, substantial evidence demonstrates that APAC imported oil country tubular goods (“OCTG”) manufactured by Ultra Pipe Manufacturing Co. (“UPM”) in Vietnam, but did not declare the AD order upon entry; and, as a result, no cash deposits were applied to the merchandise.

Background

On July 18, 2017, CBP initiated an investigation pursuant to Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, commonly referred to as “EAPA.” The allegation submitted by Aztec Manufacturing Partnership Ltd. (“Aztec”) reasonably suggested APAC evaded the payment of cash deposits on imports of certain steel tubular goods covered by

AD order A-552-817 on OCTG from Vietnam. *See* Allegation at 1. Based on the record, CBP determined that there was a reasonable suspicion that APAC entered covered merchandise into the customs territory of the United States through evasion.

On October 23, 2017, in accordance with 19 C.F.R. §165.24, CBP issued a notice of initiation of investigation to the interested parties. *See Notice 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* (Oct. 23, 2017) (available at <https://www.cbp.gov/trade/trade-enforcement/tftea/enforce-and-protect-act-eapa/notices-action>) (hereinafter “Notice of Interim Measures”). The Notice of Interim Measures summarized the basis for CBP’s reasonable suspicion of evasion, including findings made during cargo examinations, and listed the interim measures applied against APAC. *Id.* at 4. Specifically, the cargo examinations were performed on steel tubing imported by APAC from UPM, the manufacturer, which was classified under subheading 8413.91.9080, HTSUS. This subheading provides for “Pumps for liquids . . . : Parts: Of pumps: Other: Other” and entered as non-subject merchandise.<sup>1</sup> Further results of the cargo exams are discussed in detail in the analysis for the final determination, provided below.

The OCTG at issue consist of “pup joints,” which are carbon steel tubes varying from 2 to 12 feet in length, and are used in the oil and gas industry to adjust the length of well casing or tubing strings (hereinafter “OCTG pup joints”). *See* Allegation at 2. The OCTG pup joints are hollow steel casing or tubing products of circular cross-section, manufactured in lengths of 2, 3, 4, 6, 8, 10 or 12 feet, to American Petroleum Institute (“API”) standard 5-CT, which is the industry standard for OCTG casing and tubing.<sup>2</sup> The dispositive written description of the merchandise covered by A-552-817 corresponds to the physical description and characteristics of the OCTG pup joints. The AD order covers

OCTG, which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast 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. The scope of the order also covers OCTG coupling stock. Excluded from the scope of the order are: casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

*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*

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<sup>1</sup> “Non-subject merchandise” refers to goods that were entered without the importer declaring that they were subject to the applicable AD order (and no cash deposits were applied).

<sup>2</sup> “API Specification 5CT, ISO 11960:2011 Petroleum and natural gas industries — Steel pipes for use as casing or tubing for wells.” American Petroleum Institute, available at [www.api.org](http://www.api.org).

*at Less than Fair Value*, 79 Fed. Reg. 53,691 (Dep't. Commerce Sept. 10, 2014). In the Notice of Interim Measures, pursuant to the cargo examinations, CBP determined that the OCTG pup joints are actually steel tubing, of grades falling within the AD order on OCTG from Vietnam, and therefore, covered merchandise. Prior to making this determination, CBP also considered a response received from APAC on October 26, 2017, to address CBP's request for information sent on September 14, 2017 via a CBP Form-28. While APAC's response asserted that the merchandise fell outside the scope of the AD order, it neither contained information that was contrary to the physical description and characteristics of the merchandise at issue nor did it explain why the merchandise would be outside of the scope of the AD order.

#### Final Determination as to Evasion

Under 19 U.S.C. §1517(c)(1)(A), to reach a final determination of 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 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, CBP must reach a determination as to whether merchandise subject to an AD or countervailing ("CVD") order was entered into the United States by the importer and such entry was made by a material false statement or act, or material omission that resulted in the reduction or avoidance of applicable AD/CVD cash deposits or other security.

Substantial evidence on the record of this investigation supports a determination that APAC's imports of OCTG from UPM in Vietnam were made by materially false statements or acts and material omissions that resulted in the avoidance of applicable AD cash deposits required under A-552-817. In entering the OCTG pup joints classified under a provision of the HTSUS that provides for "parts of pumps" and identifying the tubing as "upper extension nipples," rather than as OCTG casing and tubing, APAC misclassified the merchandise and failed to identify the pup joints as merchandise subject to the AD order on OCTG casing and tubing from Vietnam, and thus evaded the AD duties prescribed by the order. Such evasion is manifest from the results of cargo examinations and based upon our review of the other information that APAC submitted during the course of the investigation.

Subsequent to receipt of the allegation, CBP conducted three cargo examinations on shipments from UPM to APAC. The shipments examined by CBP officers correspond to the shipping, entry and commercial documents listed in the table below.

Bill of Lading (House Bill)	Commodity Description	Country of Origin	Invoice	Entry Number
LGB1707025SG	Upper Extension Nipple	Vietnam	[ ]	[ ]8914
LGB1707031SG	Upper Extension Nipple	Vietnam	[ ]	[ ]0357
LGB1708016SG	Upper Extension Nipple	Vietnam	[ ]	[ ]3112

Photographs of the merchandise were taken by CBP officers conducting the exam. *See* “APAC Entry Documents and Pictures Taken by CBP of Merchandise Corresponding to Entry [ ]8914,” (Aug. 22, 2017); “Entry [ ]0357,” (Aug. 31, 2017); and “Entry [ ]3112” (Sept. 1, 2017). The markings on the merchandise identify UPM as the manufacturer and indicate that the OCTG pup joints were steel tubing produced to API standard (5CT) and/or grade of API 5CT (J55 or L80). Conformity with this API standard means that the OCTG pup joints are produced to specification for OCTG casing and tubing and fall within the dispositive written description of the scope of the order, as stated in the background discussion, above. The corresponding documents submitted by APAC for entry of the merchandise, including ocean bills of lading, commercial invoices and packing lists, also indicate that the OCTG pup joints were produced by UPM in Vietnam under API 5CT standards, in lengths of 2 to 12 feet.

All of the merchandise contained in the three shipments subject to the cargo examinations was entered with a classification under subheading 8413.91.9080, HTSUS, which applies to parts of pumps, and described on the entry documents as “Upper Extension Nipples.” The classification and description are misleading because the OCTG pup joints imported by APAC are not actually upper extension nipples. Upper extension nipples are generally defined within the industry as short threaded tubes used in pumps and manufactured to a specification. These are not considered as OCTG and would be exempt from the scope of the order. *See* Allegation at 2. However, the OCTG pup joints APAC imported are considered OCTG, based on the applicable API standard, and they would appear to be misclassified under subheading 8413.91.9080, HTSUS, as it has not been demonstrated that they are for use in pumps. CBP has also consistently ruled that steel pipe and tube in excess of 12 inches in length are not classifiable as, *inter alia*, nipples under other HTSUS provisions.<sup>3</sup>

It should also be noted that there is no factual support for APAC’s assertion that the OCTG pup joints were specifically excluded from the scope of the order because the order “covers only casing, tubing and coupling stock, and not coupling blanks or couplings.” *See* “APAC Proposed CF29 Response” (Oct. 6, 2017). Specifically, APAC failed to define how its imported merchandise would qualify as “upper extension nipples” (or any other type of nipple or unattached coupling) and failed to demonstrate why merchandise that is manufactured to the API specification for OCTG casing and tubing should be excluded from the scope of the order for OCTG. Conversely, documentation provided by APAC demonstrates that the merchandise was

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<sup>3</sup> CBP only classifies steel pipe sections referred to as “nipples” as such if under 12 inches in length. *See, e.g.*, HQ 951940 (July 31, 1992) and NY H83011 (July 20, 2001). According to these rulings, lengths of steel tubing or pipe greater than 12 inches are not considered to be nipples.

produced to API 5CT standards for OCTG casing and tubing, in lengths that the API has defined as pup joints. CBP has precluded this type of casing and tubing from being classified as couplings.

In responding to Requests for Information (RFIs) from CBP, APAC provided parts listings, purchase orders, mill inspection certificates, commercial invoices, packing lists, and bills of lading to corroborate the description, dimensions, and API specifications of the OCTG pup joints. *See* “APAC Responses to RA RFI” (Dec. 22, 2017). The entry numbers and information contained in the documents and corresponding Entry Summaries are listed in the table below.

Entry Number	Invoice Description	Mill Certificate Description	Mill Certificate API Standard	HTSUS Classification as Entered
[ <b>11103</b>	Upper Extension Nipple	Pup Joints	5CT	8413.91.9080
[ <b>12024</b>	Upper Extension Nipple	Pup Joints	5CT	8413.91.9080
[ <b>14485</b>	Upper Extension Nipple	Pup Joints	5CT	8413.91.9080
[ <b>15031</b>	Upper Extension Nipple	Pup Joints	5CT	8413.91.9080
[ <b>10427</b>	Upper Extension Nipple	Pup Joints	5CT	8413.91.9080
[ <b>14364</b>	Upper Extension Nipple	Pup Joints	5CT	8413.91.9080
[ <b>13726</b>	Upper Extension Nipple	Pup Joints	5CT	8413.91.9080
[ <b>19672</b>	Upper Extension Nipple	Pup Joints	5CT	8413.91.9080
[ <b>18715</b>	Upper Extension Nipple	Pup Joints	5CT	8413.91.9080
[ <b>11402</b>	Upper Extension Nipple	Pup Joints	5CT	8413.91.9080
[ <b>10390</b>	Upper Extension Nipple	Pup Joints	5CT	8413.91.9080
[ <b>11641</b>	Upper Extension Nipple	Pup Joints	5CT	8413.91.9080
[ <b>10625</b>	Upper Extension Nipple	Pup Joints	5CT	8413.91.9080

The table above depicts discrepancies between APAC’s invoice description of the merchandise as “upper extension nipples” and classification of the merchandise under HTSUS Heading 8413, which contrast with the actual physical characteristics and chemical composition of the merchandise as determined by APAC’s RFI responses. The documentation submitted in the RFI responses supports the allegation that the merchandise imported by APAC aligns with the dispositive written description of the merchandise covered under the order. Specifically, the

parts lists, purchase orders, and mill inspection certificates submitted by APAC identify “pup joints” in lengths of 2 to 12 feet and manufactured to varying grades of API 5-CT standard for OCTG casing and tubing.

Subsequent to the RFI responses, APAC voluntarily submitted factual information that it alleged to be support for its assertion that the OCTG pup joints are correctly described as “upper extension nipples.” APAC did not cite to any information related to the scope of the AD order itself, and merely relied upon CBP administrative rulings on classification under the HTSUS: NY N004702 (Jan. 12, 2007); NY J81708 (Mar. 27, 2003); NY I84020 (Aug. 2, 2002); and NY 870188 (Jan. 14, 1992). *See* “APAC Factual Submission” (Jan. 9, 2018). APAC contends that these rulings are applicable to the class and kind of merchandise it imported from UPM, and characterizes the OCTG pup joints as nipples, connectors, or couplings that are excluded from the scope of the order.<sup>4</sup> However, the rulings do not support that contention because they pertain to merchandise that is clearly distinguishable from the OCTG pup joints imported by APAC.

The rulings introduced by APAC to establish that the OCTG pup joints are nipples excluded from the AD order actually apply to a class or kind of merchandise that consists of either: (a) lengths of steel pipe that are “seamless cold-drawn alloy steel pipe that is threaded on one end and fitted on the other end with a wing union nut;” or (b) pipe nipples measuring less than 12 inches in length. NY N004702 applies to surface pipelines which carry oil, water or gas from the well to the production facility, and are produced to specifications other than API 5-CT. NY J81708 and NY I 84020 apply to pipe nipples measuring less than 12 inches in length. The OCTG pup joints are materially different from the merchandise covered by the above rulings because the OCTG pup joints are made to OCTG specifications for casing and tubing, are used in the OCTG casing string in drilling for oil and gas, and they exceed 12 inches in length. *See also* Aztec Response to APAC 1-9-18 Factual Information Submission (Feb. 5, 2018). Accordingly, APAC has neither established that the OCTG pup joints are nipples nor that they should be otherwise considered as excluded from the scope of the AD order.

The documentation submitted by APAC throughout the course of this investigation consistently supports that the OCTG pup joints are manufactured to the API standard for OCTG casing and tubing, which falls within the scope of the AD order. Further, the physical exams conducted by CBP on the OCTG pup joints, and the associated mill test certificates, indicate that the OCTG pup joints are not specifically excluded from the scope of the order because they are not: (i) casing or tubing containing 10.5 percent or more by weight of chromium; (ii) drill pipe; (iii) unattached couplings; or (iv) unattached thread protectors.<sup>5</sup> The OCTG pup joints are thus, covered by AD order.

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<sup>4</sup> In support of its claim that pup joints are outside the scope of the AD order, APAC cites a preliminary AD order from the Canadian International Trade Tribunal, which specifically excludes drill pipe, pup joints, coupling and coupling stock from the scope of the Canadian order for OCTG from Vietnam. *See* APAC Factual Submission (Jan. 9, 2018). This citation is not pertinent to our determination as the AD orders implemented by the Government of Canada have no bearing on the applicability of the U.S. AD order on these goods.

<sup>5</sup> These four exclusions that are specifically enumerated in the AD order. *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).

Pursuant to 19 C.F.R. §165.27, based on the full record in this investigation, CBP determines that there is substantial evidence that APAC entered covered merchandise into the United States through evasion. The facts described above provide substantial evidence that the OCTG pup joints imported by APAC from Vietnam were steel OCTG tubing that was misidentified as upper extension nipples, misclassified under subheading 8413.91.9080, HTSUS, and entered into the customs territory of the United States without the cash deposits prescribed under the AD order for OCTG from Vietnam. As the manufacturer, UPM, has not been granted a separate AD rate, and APAC's entries are subject to the Vietnam-wide rate of 111.47. *See Antidumping Duty Order on Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam (A-552-817)*, Msg. No. 4261304 (Sept. 18, 2014) (available at <http://adcvd.cbp.dhs.gov/adcvdweb/>).

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

In light of CBP's determination that APAC 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 the liquidation for any entry that has entered on or after July 18, 2017, the date of initiation of this investigation until suspension is lifted for these entries. CBP will also continue to extend the period for liquidation for all unliquidated entries that entered before that date until instructed to liquidate these entries. For future entries, CBP will continue to require live entry, which requires that the importer post the applicable cash deposits prior to the entry's release. Finally, CBP will evaluate the continuous bond of the importer in accordance with CBP's policies, and require single transaction bonds as appropriate. None of the above actions preclude CBP or other agencies from pursuing additional enforcement actions or penalties.

Sincerely,



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