

U.S. Customs and
Border Protection



May 14, 2018

PUBLIC VERSION

EAPA Cons. Case Number 7227

Mr. Ping Lam
Chairman of the Board
Sun Bright International Corporation
5235 74th Street
Elmhurst, NY 11373

Ms. Jenny Hue Ho
Owner
Fair Importing Corporation
Flushing, NY 11358

Re: Notice of Initiation of Investigation and Interim Measures

Mr. Lam and Ms. Ho:

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”), into certain import transactions of Sun Bright International Corporation (“Sun Bright”) and Fair Importing Corporation (“Fair Importing”) (hereafter referred to, collectively, as the “Importers”). Specifically, CBP is investigating whether the Importers have evaded the antidumping duty (“AD”) order, A-570-967,¹ and countervailing duty (“CVD”) order, C-570-968,² on *Aluminum Extrusions from the People’s Republic of China* (hereinafter the “Orders”). Because the evidence thus far establishes reasonable suspicion that the Importers have entered merchandise into the United States through evasion, CBP has imposed interim measures pursuant to 19 CFR

¹ *Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 FR 30,650 (Dep’t Commerce, May 26, 2011).

² *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order*, 76 FR 30,653 (Dep’t Commerce, May 26, 2011).

§165.24. Finally, CBP is consolidating the two investigations (one for each importer) into a single investigation, referenced as “EAPA Cons. Case Number 7227” pursuant to 19 CFR §165.13.

Period of Investigation

Pursuant to 19 CFR § 165.2, an EAPA investigation covers “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 CFR § 165.1. CBP may, at its discretion, investigate other entries of covered merchandise and the period of investigation remains open until CBP has issued a final determination. *See* 19 CFR § 165.2.

The Aluminum Extrusions Fair Trade Committee (“AEFTC”) initially filed two allegations, separately identifying and alleging Sun Bright and Fair Importing as importers evading AD and CVD duties on aluminum extrusions subject to the respective orders. At CBP’s discretion, multiple allegations against one or more importers may be consolidated into a single investigation. *See* 19 CFR § 165.13(a). CBP has determined that the individual allegations against Sun Bright and Fair Importing meet the criteria to consolidate under 19 CFR § 165.13(b). In this case, AEFTC filed both of its allegations on January 9, 2018, and CBP acknowledged receipt of the properly filed allegations on January 12, 2018. Therefore, the Importers’ entries covered by this investigation are those entries of aluminum extrusions that were entered for consumption, or withdrawn from warehouse for consumption, from January 12, 2017, through the pendency of this investigation. *See* 19 CFR § 165.2.

Initiation

On February 5, 2018, the Trade Remedy Law Enforcement Directorate (“TRLED”) within CBP’s Office of Trade initiated an investigation under EAPA. On May 14, 2018, TRLED determined that the allegations submitted by AEFTC, and consolidated by CBP, reasonably suggested evasion of AD/CVD duties. AEFTC alleged that the Importers imported Chinese origin aluminum extrusions into the United States that were transshipped through Malaysia and falsely declared as being of Malaysian origin upon entry into the United States. The Importers did not declare the goods as subject to AD or CVD orders and filed Type 01 entries, which are not subject to AD or CVD orders. As a result, the Importers did not deposit the applicable AD/CVD duties.

AEFTC’s allegations describe and provide supporting documentation for the existence of a transshipment scheme in which the Importers were engaged. Specifically, AEFTC submitted evidence obtained in an investigation in [] that ultimately linked Sun Bright with a freight forwarding company in China, Qingdao ZHV International Logistics Co., Ltd. (“ZHV”) and Malaysian manufacturer CK Aluminium Enterprise (“CK Aluminium”) to falsify the country of origin of Chinese aluminum extrusions. *See* Allegation at 7. The scheme is documented in an email exchange, obtained by AEFTC and submitted as evidence to support the allegations, between ZHV Logistics and a company [], working on behalf of [] to investigate transshipment of Chinese aluminum extrusions into []

from third countries. *See id.*, at Exh. 4. The [] requested that ZHV Logistics explain its capabilities with respect to avoiding [] AD duties on Chinese extrusions. ZHV Logistics explained 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. *Id.*

In the e-mail exchange, the [] investigator asked ZHV Logistics for examples of successful transshipments. The ZHV Logistics representative responded with a Certificate of Origin, indicating Malaysia as the country of origin for a shipment of covered merchandise. Utilizing public sources of import and export data, AEFTC was able to correlate the Certificate of Origin to a shipment exported by CK Aluminium from Port Kelang, Malaysia and imported into the United States by “Sunbright Industry” in New York.³ The allegations assert that the Importers have been importing aluminum extrusions from CK Aluminium since at least 2012, with the most recent shipment occurring in December 2017. *See id.*, at Exh. 7 (providing [] import data for the Sunbright companies from 2012 - present).

Finally, the allegations contend that according to publicly available images, the facility located at the CK Aluminium’s Malaysian address listed on [] is not sufficiently equipped with the necessary extrusion presses, space requirements, or infrastructure to produce the aluminum profiles shipped to Sun Bright. *See Allegations*, at Exh. 9 (providing a photograph of the building from Google Maps). The photograph depicts a relatively small two-story structure, with a single bay door, and a single electricity junction box on the exterior.

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 CFR §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 CFR §165.1. Thus, the allegation must reasonably suggest not only that merchandise subject to an AD and/or 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 allegations, AEFTC provided evidence to reasonably suggest that the Importers entered merchandise through evasion by a material false statement or act, or material omission that resulted in the reduction or avoidance of applicable AD and CVD cash deposits or other security. Information obtained by AEFTC reasonably suggested the Importers imported aluminum

³ As identified in each allegation, Sun Bright originally registered its principal place of business in New York at 151 Gardner Ave, Brooklyn, New York. *See Allegation*, at Exh. 10 (providing Sun Bright Corporate Registration). From late 2014 to 2017, Sun Bright used the names Our Bright and Sunbright Industry on shipping documents to import the transshipped aluminum extrusions, but the companies’ addresses were changed to 5235 74th Street, Elmhurst, NY 11373. *Id.*, at Exh. 7; *see also* Sun Bright International Corp., Buzzfile, *Id.* at Exh. 11. In 2017, Sun Bright registered another entity in New York named Fair Importing Corp. at the same address (*i.e.*, 5235 74th Street, Elmhurst, NY 11373). *See* Fair Importing Corp. Corporate Registration, *Id.* at Exh. 12.

extrusions into the United States, and import data linked a falsified Certificate of Origin to a shipment of aluminum extrusions from the Malaysian manufacturer to Sun Bright as part of a scheme to transship Chinese origin aluminum extrusions through the Malaysian manufacturer to the Importers subject to the allegations. Thus, AEFTC provided evidence to reasonably suggest that the Importers were evading AD and CVD duties, for which no cash deposits were made, by entering the transshipped subject Chinese merchandise acquired via CK Aluminum and declaring it to be of Malaysian origin. For the foregoing reasons, TRLED determined on May 14, 2018, that the allegation reasonably suggest that Importers entered covered merchandise into the customs territory of the United States through evasion by a material false statement or act, or material omission, and 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 order was entered into the United States by the importer(s) alleged to be evading 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. If reasonable suspicion exists, CBP will impose interim measures pursuant to 19 U.S.C. §1517(e) and 19 CFR § 165.24. As explained below, CBP is imposing interim measures because there is a reasonable suspicion that the importers (both Sun Bright and Fair Importing) entered covered merchandise into the customs territory of the United States through evasion. *See* 19 CFR § 165.24(a).

Subsequent to the initiation of the investigation, CBP issued separate requests for information to both of the Importers, via CBP Form 28 (“CF-28”), Request for Information. The CF-28s requested the Importers to provide business profile information for CK Aluminium, including the names of corporate officers and employees, production capacity, invoices for raw materials used in production, production processes at the manufacturing facility and mill certificates indicating the elemental composition of the aluminum used for producing the extrusions. *See* CF-28, issued Feb. 14, 2018, (requesting substantive documents related to the import of aluminum extrusions by the Importers from CK Aluminium). In response, the Importers provided contact information for the manufacturer’s management, including telephone and fax numbers, as well as a company email address. The Importers’ responses also included the manufacturer’s purchase orders for raw materials, mill certificates identifying the aluminum as [], an invoice for [] aluminum extrusion machines, and photographs depicting the interior of the manufacturing facility and the aluminum extrusion machines.

When analyzing the CF-28 responses, CBP determined that there exist significant discrepancies between the photographs of the manufacturing facility submitted by the Importers and the on-site photographs taken by CBP in Malaysia. On March 6, 2018, CBP officials in Malaysia conducted an on-site verification of the manufacturer’s address to independently verify the structure exhibited in the Google Maps photographs provided in the allegation. *See* CBP photographs (displaying the facility identified in the Allegation, Exh. 9, Mar. 19, 2018). The evidence documents the limited infrastructure of the facility, and suggests that CK Aluminium is not a

legitimate manufacturer of aluminum extrusions. *Id.* at 9. 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 facility that the Importers' photographs do not align. Significantly, the CBP exterior photographs depict a facility incapable of housing [] extruding machines, [] employees, [] metric tons of scrap aluminum, and a [] metric ton ingot of [] aluminum, as claimed by the Importers in their CF-28 responses. *See* CF-28 response from Sun Bright (March 13, 2018) and Fair Importing (March 20, 2018). 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.

The Importers also confirmed in their CF-28 responses that the imported merchandise is aluminum extrusions made of Series 6 aluminum, as identified by the mill certificates provided to CBP, and this series is subject to the Chinese AD and CVD orders. *See Aluminum Extrusions from the People's Republic of China*, 76 Fed. Reg. 30,650 (Dep't Commerce May 26, 2011) (AD Order); *Aluminum Extrusions from the People's Republic of China*, 76 Fed. Reg. 30,653 (Dep't Commerce May 26, 2011) (CVD Order). Given this confirmation from the Importers and the absence of any evidence to support that there is manufacturing capacity at the manufacturer's address in Malaysia, there is reasonable suspicion as to evasion based on the alleged transshipment scheme described above. It should be noted that, subsequent to the CF-28 responses submitted by the Importers, CBP attempted via email, telephone, fax, and postal service, to contact management officials at the alleged Malaysian manufacturing facility to request a formal production verification visit. CBP discovered that the phone and fax lines had been disconnected, and there have been no email or postal service acknowledgements of CBP's requests to date.

As interim measures, CBP is directing that all unliquidated entries of imported 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/CVD orders on aluminum extrusions from China and cash deposits are now required. Additionally, "live entry" is required for all future imports from the Importers, 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 February 5, 2018, 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 CFR § 165.24(b)(1)(i) and (ii). Further, CBP will evaluate the Importers' continuous bonds and will require single transaction bonds as appropriate.

Consolidation of the Investigations

CBP is consolidating the two investigations on each importer into a single investigation covering both importers. The new consolidated case number will be EAPA Consol. Case No. 7227, 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:

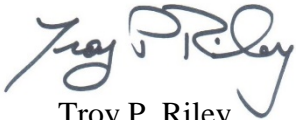
The factors that CBP may consider {in consolidating multiple allegations} include, but are not limited to, whether the multiple allegations involve: 1) relationships between the importers; 2) similarity of covered merchandise; 3) similarity of AD/CVD orders; and 4) overlap in time periods for entries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

In these investigations, both importers imported aluminum extrusions from Malaysia, covered by the same AD/CVD orders. Moreover, each imported covered merchandise during the period of investigation. Further, both imported from the same Malaysian manufacturer. 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). Finally, in 2017, Sun Bright registered Fair Importing Corporation at its same address (*i.e.*, 5235 74th Street, Elmhurst, NY 11373). *See* Fair Importing Corp. Corporate Registration, *Id.* at Exh. 12. These facts support the consolidation of these investigations.

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. Alan Price, counsel for AEFTC, at trade@wileyrein.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 Cons. Case Number 7227” 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,



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