



U.S. Customs and Border Protection

PUBLIC VERSION

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Re: Notice of Initiation of Investigation and Interim Measures - EAPA Cons. Case 7348

To the Counsel and Representatives of the above-referenced entities:

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 Global Aluminum Distributor, LLC (Global Aluminum), Florida Aluminum Extrusion, LLC (Florida Aluminum), and Hialeah Aluminum Supply, Inc. (Hialeah Aluminum) (collectively, the Importers). CBP is investigating whether the Importers evaded antidumping duty (AD) and countervailing duty (CVD) orders A-570-967 and C-570-968¹ on aluminum extrusions from the People's Republic of China (China) when importing aluminum extrusions into the United States. Because evidence supports a reasonable suspicion that the Importers entered covered merchandise into the customs territory of the United States through evasion, CBP has imposed interim measures.²

¹ See *Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 FR 30650 (Dept. Commerce, May 26, 2011); see also *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order*, 76 FR 30653 (Dept. Commerce, May 26, 2011) (collectively, the *Orders*).

² See 19 USC 1517(e); see also 19 CFR 165.24.

Period of Investigation

Pursuant to 19 CFR 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, or withdrawal from warehouse for consumption, of merchandise in the customs territory of the United States.”³ CBP acknowledged receipt of the properly filed allegation against the Importers on October 9, 2019.⁴ These three investigations are now consolidated as discussed further below, and the entries covered by the consolidated investigation are those entered for consumption, or withdrawn from warehouse for consumption, from October 9, 2018, through the pendency of this investigation.⁵

Initiation

On October 31, 2019, the Trade Remedy Law Enforcement Directorate (TRLED), within CBP’s Office of Trade, initiated this investigation under EAPA as a result of an allegation submitted by Ta Chen International Inc. (Ta Chen)⁶ on evasion of antidumping duties by the Importers.⁷ In the allegation, the Ta Chen asserts that the Importers evaded the Orders by importing Chinese-origin aluminum extrusions into the United States that were transshipped through the Dominican Republic.⁸

Ta Chen alleges that the Importers import aluminum profiles from Kingtom Alumino SRL (Kingtom) in the Dominican Republic. Ta Chen argues that Kingtom is a Chinese company operating in the Dominican Republic with all equipment, office staff and management (*i.e.*, a

³ See 19 USC 1517(a)(4); *see also* 19 CFR 165.1.

⁴ See email “Receipt of EAPA Allegation 7348: Transshipment / Aluminum Extrusions through Dominican Republic,” dated October 7, 2019; *see also* email “Receipt of EAPA Allegation 7349: Transshipment / Aluminum Extrusions through Dominican Republic,” dated October 7, 2019; *see also* email “Receipt of EAPA Allegation 73501: Transshipment / Aluminum Extrusions through Dominican Republic,” dated October 7, 2019.

⁵ See 19 CFR 165.2.

⁶ Ta Chen is an importer of Chinese aluminum extrusions, and thus, pursuant to 19 CFR 165.1(1), meets the definition of an interested party that is permitted to submit an EAPA allegation.

⁷ See CBP Memorandum, “Initiation of Investigation for EAPA Case Number 7348 – Global Aluminum Distributor, LLC,” dated October 31, 2019 (Global Aluminum Initiation); *see also* CBP Memorandum, “Initiation of Investigation for EAPA Case Number 7349 – Florida Aluminum Extrusion, LLC,” dated October 31, 2019 (Florida Aluminum Initiation); *see also* CBP Memorandum, “Initiation of Investigation for EAPA Case Number 7350 – Hialeah Aluminum Supply, Inc.,” dated October 31, 2019 (Hialeah Aluminum Initiation).

⁸ See Letter from the Allegers, “Supplemental allegation concerning evasion by Global Aluminum, Florida Aluminum, and Hialeah Aluminum of the China AD/CVD Orders on Aluminum Extrusions and failure to report the correct country of origin as China thereby thwarting key trade policies/efforts of the U.S. Administration,” dated August 22, 2019 (Allegation) at 1-2. The allegor is an importer of Chinese aluminum extrusions, and thus, pursuant to 19 CFR 165.1(1), meets the definition of an interested party that is permitted to submit an EAPA allegation. We note that an allegation was filed on July 11, 2019, but TRLED requested by phone that the allegation be revised to address deficiencies. See Letter from the Allegers, “Evasion of the China AD/CVD Orders on Aluminum Extrusions and Failure to Report the Correct Country of Origin as China Thereby Thwarting Key Trade Policies/Efforts of the U.S. Administration,” dated July 11, 2019.

total of 70 employees) from China.⁹ Ta Chen claims that Minfa Aluminum, one of the largest extruders in China, owns Kingtom.¹⁰ Ta Chen also claims the head engineer of Kingtom worked at Minfa Aluminum for over 25 years.¹¹

Ta Chen provided record evidence that shows Kingtom's exports of aluminum extrusions to United States exceed its production capacity.¹² An affidavit by an aluminum expert, [], observed during a [] that Kingtom had only three ingots of 99.9 percent aluminum on its floor, about 15,000 lbs.¹³ Kingtom also had 15-20 bales of scrap aluminum that were mostly made of aluminum extrusions.¹⁴ In total, the aluminum expert, [], claims that the aforementioned volumes of raw material are not enough to manufacture the billet quantities required to produce Kingtom's average monthly exports of aluminum extrusions to the United States.¹⁵ The aluminum expert, [], alleges that to maintain the inventory level required to keep prices at Kingtom's levels (*i.e.*, low), Kingtom would require near daily deliveries of raw materials.¹⁶ Ta Chen claims that Kingtom recognizes its vulnerability to CBP investigations due to its transshipment of covered Chinese aluminum extrusions and that it is looking for suppliers of raw materials.¹⁷

Ta Chen claims that there are differences in wrapping and labeling of finished aluminum extrusions in Kingtom's staging area.¹⁸ Ta Chen claims that if the finished aluminum extrusions were produced by Kingtom then all the PVC wrapping and label types would be the same and the fact that they are different is consistent with transshipment practices.¹⁹ The aluminum expert, [], states that if Kingtom was the actual producer then all of the labeling would be the same.²⁰ Ta Chen further claims that Kingtom has four extruding presses and that during his [] one was operational, one was down for repairs, and two sat idle.²¹ Additionally, Ta Chen claims that Kingtom's billet cast house was not in operation, nor was Kingtom's small smelter, which means Kingtom could not have been casting much, if any, of its aluminum billets.²² Finally, Ta Chen claims that Kingtom is located in a free trade zone in the Dominican Republic, which has little regulations, thus facilitating its ability to transship aluminum extrusions.²³

⁹ See Allegation, at 4.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*, at 4 and Exhibit 1.

¹⁴ *Id.*

¹⁵ *Id.*, at 4 and Exhibit 1 attachment 5.

¹⁶ *Id.*, at 4 and Exhibit 1.

¹⁷ *Id.*, at 4.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*, at Exhibit 1.

²¹ *Id.*, at 4.

²² *Id.*, at 4-5.

²³ *Id.*, at 5.

Ta Chen avers that Kingtom's processing (*e.g.*, painting, coating) is not a substantial transformation and therefore does not change the aluminum extrusions' country-of-origin.²⁴ Ta Chen points out that U.S. country-of-origin rules require manufacturing operations to effect a "substantial transformation." Ta Chen also points out CBP has found that painting, coating, and/or re-rolling of metal do not constitute substantial transformation that would change country-of-origin.²⁵ As a result of these factors, Ta Chen contends that the aluminum extrusions are still of Chinese-origin and subject to the *Orders*.²⁶

Ta Chen also avers that pricing is about 13-15 percent lower than domestic producer [] and 3-8 percent lower than other foreign producers [].²⁷ Ta Chen claims that TRLED found in EAPA Case 7251 that low prices compared to the rest of the U.S. market can reasonably suggest AD/CVD duty evasion.²⁸ Therefore, Ta Chen concludes that the evidence reasonably suggests that the Importers are transshipping Kingtom's Chinese-origin aluminum extrusions through the Dominican Republic to the United States to avoid paying antidumping duties.

Initiation Assessment

TRLED 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."²⁹ 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."³⁰ 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 Ta Chen's claims, including Kingtom's ownership, its lack of raw materials, its lack of production during a site visit, the differences in wrapping and labeling of finished aluminum

²⁴ *Id.*

²⁵ *Id.*, citing HQ 5599511, HQ 555881, and HQ 734301.

²⁶ *Id.*, at 7.

²⁷ *Id.*

²⁸ *Id.*

²⁹ See 19 CFR 165.15(b); *see also* 19 USC 1517(b)(1).

³⁰ See 19 CFR 165.1; *see also* 19 USC 1517(a)(5)(A).

extrusions, the lack of substantial transformation of extrusions at the factory, and the comparatively low market prices, reasonably suggest that the Importers attempted to evade the *Orders* through the transshipment of Chinese-origin aluminum extrusions through the Dominican Republic. Consequently, TRLED initiated three investigations pursuant to 19 USC 1517(b)(1) and 19 CFR 165.15.³¹

Interim Measures

Not later than 90 calendar days after initiating an investigation under EAPA, TRLED will decide based on the record of the investigation if there is reasonable suspicion that merchandise covered by the AD/CVD orders was entered into the United States through evasion. Therefore, CBP need only have sufficient evidence to support a reasonable suspicion that merchandise covered by an AD or CVD order was entered into the United States by the importer 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 USC 1517(e) and 19 CFR 165.24. As explained below, CBP is imposing interim measures because there is a reasonable suspicion that the importers entered covered merchandise into the United States through evasion by means of transshipment through the Dominican Republic.³²

CF-28 Responses

On November 19, 2019, and November 20, 2019, as part of the EAPA investigation process, CBP issued CBP Form 28, Request for Information (CF-28) questionnaires to the Importers' concerning certain entries.³³ Florida Aluminum and Global Aluminum submitted their CF-28 responses on December 10, 2019, and January 6, 2020, respectively.³⁴ On December 17, 2019, CBP issued a supplemental questionnaire to Florida Aluminum as it failed to submit a complete response to the CF-28.³⁵ On January 8, 2020, Florida Aluminum submitted is supplemental response.³⁶ Hialeah Aluminum Supply failed to respond to the CF-28.

In their CF-28 responses, Global Aluminum and Florida Aluminum indicated they purchased Kingtom-exported aluminum extrusions from the Dominican Republic, which aligns with the Allegation.³⁷ Although Global Aluminum and Florida Aluminum provided most of the

³¹ See 19 CFR 165.11; see also 19 CFR 165.15(2). See Florida Aluminum Initiation; see also Global Aluminum Initiation; see also Hialeah Aluminum Initiation.

³² See 19 CFR 165.24(a).

³³ See CF-28 sent to Global Aluminum, dated November 19, 2019; see also CF-28 sent to Hialeah Aluminum, dated November 19, 2019; see also CF-28 sent to Florida Aluminum, dated November 20, 2019.

³⁴ See Florida Aluminum Response to CF-28, dated December 10, 2019; see also Global Aluminum Response to CF-28, dated January 6, 2020.

³⁵ See CF-28 Supplemental sent to Florida Aluminum, dated December 17, 2019.

³⁶ See Florida Aluminum CF-28 Supplemental Response, dated January 8, 2020.

³⁷ See Global Aluminum Response to CF-28, dated January 6, 2020; see also Florida Aluminum Response to CF-28, dated December 10, 2019; see also Florida Aluminum CF-28 Supplemental Response, dated January 8, 2020.

requested information, CBP requested from Global Aluminum and Florida Aluminum to “provide complete production records, including stamped timecards and work orders” for the entries under question.³⁸ Both Global Aluminum and Florida Aluminum provided [

].³⁹ Neither importer provided any other production records from Kingtom for the entries under review, [

].⁴⁰ Therefore, neither Global Aluminum nor Florida Aluminum provided connections and/or paper trails for the production of the Kingtom aluminum extrusions to the imports they received.

Additionally, the Mill Test Certificates for the aluminum ingots provided by Kingtom [

].⁴¹ The Mill Test Certificates have [] of the Mill Test Certificates are from the reported [] ingot manufacturers.⁴² Kingtom’s reported production process has no reference to raw [] nor was [] observed during the onsite visit.⁴⁴ Kingtom’s reported first step in the production process is [].⁴⁵ Additionally, there were [] documents in the CF-28s that demonstrated Kingtom is in the business of [].⁴⁶

Other Record Evidence

On January 28, 2020, CBP added a memorandum to the administrative record pertaining to a site visit that U.S. government officials conducted at Kingtom on [].⁴⁷ In the report, personnel observed the following:

- []

³⁸ *Id.*

³⁹ See Global Aluminum Response to CF-28, dated January 6, 2020; see also Florida Aluminum CF-28 Supplemental Response, dated January 8, 2020.

⁴⁰ See Global Aluminum Response to CF-28, dated January 6, 2020; see also Florida Aluminum Response to CF-28, dated December 10, 2019; see also Florida Aluminum CF-28 Supplemental Response, dated January 8, 2020.

⁴¹ See Global Aluminum Response to CF-28, dated January 6, 2020; see also Florida Aluminum CF-28 Supplemental Response, dated January 8, 2020.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ See Global Aluminum Response to CF-28, dated January 6, 2020; see also Florida Aluminum Response to CF-28, dated December 10, 2019; see also Florida Aluminum CF-28 Supplemental Response, dated January 8, 2020; see also Memorandum to the File “Attaché Report,” dated January 28, 2020.

⁴⁵ See Global Aluminum Response to CF-28, dated January 6, 2020; see also Florida Aluminum Response to CF-28, dated December 10, 2019; see also Florida Aluminum CF-28 Supplemental Response, dated January 8, 2020.

⁴⁶ *Id.*

⁴⁷ See Memorandum to the File “Attaché Report,” dated January 28, 2020.

- []⁴⁸
- []⁴⁹
- []⁵⁰
- []⁵¹
- []⁵²
- []⁵³

U.S. Government officials clearly observed a [

]. Given the reported quantities Kingtom is exporting to the United States, it seems suspicious that there would be no production at its facilities at the time of two different site visits.⁵⁴

On January 29, 2020, CBP added an additional memorandum to the administrative record pertaining to a news report about Kingtom.⁵⁵ The report states that the Dominican Republic welcomes its first Chinese-owned company, *i.e.*, Kingtom.⁵⁶ This news article is consistent with company officials statements to the U.S. government officials that [

].⁵⁷ Taken together, these items create reasonable suspicion that Kingtom’s purpose is to evade the Chinese AD and CVD Orders on aluminum extrusions.

In summary, CBP was unable to corroborate the Importers’ claims that the aluminum extrusions they imported were manufactured in the Dominican Republic. As discussed above, the Importers submitted documents with multiple deficiencies in their CF-28 responses or did not respond at all and a site visit [] confirmed the lack of production capacity.

Enactment of Interim Measures

⁴⁸ *Id.*, at 2.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ See Memorandum to the File “Attaché Report,” dated January 28, 2020; *see also* Allegation, at Exhibit 1.

⁵⁵ See Memorandum to the File “News Report,” dated January 29, 2020.

⁵⁶ *Id.*

⁵⁷ See Memorandum to the File “Attaché Report,” dated January 28, 2020.

Based on the information described above, TRLED finds that reasonable suspicion exists that the aluminum extrusions that the Importers imported into the United States from the Dominican Republic may be of Chinese-origin and should have been subject to AD/CVD duties.

As interim measures, unliquidated entries of aluminum extrusions subject to this investigation will be rate-adjusted to reflect that they are subject to the AD/CVD orders on aluminum extrusions from China and cash deposits will be owed. CBP will also suspend the liquidation for any entry that has entered on or after October 31, 2019, the date of initiation for this investigation, as well as extend the period for liquidation for all unliquidated entries that entered before that date.⁵⁸ Additionally, “live entry” is required for all future imports for the Importers meaning that all entry documents and cash deposits must be provided before cargo is released by CBP into 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 evaluate the continuous bonds for the Importers to determine their sufficiency, among other measures, as needed. Finally, CBP may pursue additional enforcement actions, as provided by law, consistent with 19 USC 1517(h).

Consolidation of the Investigations

TRLED is consolidating the three investigations on Global Aluminum, Florida Aluminum, and Hiealeah Aluminum into a single investigation covering all three importers. The new consolidated case number will be EAPA Consolidated Case 7348, 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 CFR 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, all three importers are alleged to have entered suspected aluminum extrusions from the Dominican Republic that are covered by the same AD/CVD orders. The Importers’ entries also fall within a common period of investigation. Moreover, the Importers have a common supplier in the Dominican Republic. Because factors warranting consolidation are present in these investigations, CBP is consolidating them and providing this notice pursuant to 19 CFR 165.13(c). We note that the deadlines for the consolidated investigation will be set from the date of initiation of all of the allegations, which is October 31, 2019.⁵⁹

For any future submissions or factual information that you submit to CBP pursuant to this consolidated EAPA investigation, please provide a business confidential version and a public version to CBP, as well as public versions to the parties to this investigation, sent to the email addresses of the parties identified at the top of this notice.⁶⁰

⁵⁸ See 19 CFR 165.24(b)(1)(i) and (ii).

⁵⁹ See 19 CFR 165.13(a); see also 19 USC 1517(b)(5)(B).

⁶⁰ See 19 CFR 165.4; see also 19 CFR 165.23(c); see also 19 CFR 165.26.

Should you have any questions regarding this investigation, you may contact us at eapallegations@cbp.dhs.gov with “EAPA Case 7348” 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,

Victoria Cho

Victoria Cho
Acting Director, Enforcement Operations Division
Trade Remedy & Law Enforcement Directorate
CBP Office of Trade