



U.S. Customs and Border Protection

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VIA EMAIL

Jeremy Dutra, Esq.
Squire Patton Boggs (US), LLP
2550 M Street, NW
Washington, DC 20037
jeremy.dutra@squirepb.com

Xiangming “Jack” Cheng
AA Metals, Inc.
11616 Landstar Blvd.
Orlando, FL 32824
Jack.Cheng@AAMetals.Com

Notice of Initiation of Investigation and Interim Measures - EAPA Case 7469

Dear Counsel and/or Representatives for 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 (TFTEA) of 2015, commonly referred to as the Enforce and Protect Act (EAPA). Specifically, CBP is investigating whether AA Metals, Inc. (AA Metals)¹ evaded antidumping duty (AD) order A-570-073 and countervailing duty (CVD) order C-570-074² by entering into the United States Chinese-origin common alloy aluminum sheet (aluminum sheet) that was transshipped through Turkey after minor processing, and was misclassified as non-subject merchandise not subject to the *Orders*. Based on a review of available information, CBP has determined that there is a reasonable suspicion of evasion of AD/CVD duties by AA Metals, and CBP has initiated the interim measures outlined below.

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”³

¹ AA Metals, Inc. also does business as Alpha Industrials Corporation, collectively we refer to these two companies as AA Metals.

² See *Common Alloy Aluminum Sheet from the People’s Republic of China: Antidumping Duty Order*, 84 FR 2813 (Dep’t Commerce February 8, 2019); *Common Alloy Aluminum Sheet from the People’s Republic of China: Countervailing Duty Order*, 84 FR 2157 (Dep’t Commerce February 6, 2019) (collectively, the *Orders*).

³ See 19 CFR § 165.2.

Entry is defined as an “entry for consumption, or withdrawal from warehouse for consumption, of merchandise in the customs territory of the United States.”⁴ Texarkana Aluminum, Inc. (referred to hereafter as TKA) filed an EAPA allegation on March 16, 2020, and amended the allegation on May 19, 2020.⁵ CBP acknowledged receipt of the properly filed allegation on June 17, 2020.⁶ The entries covered by the investigation are those entered for consumption, or withdrawn from warehouse for consumption, from June 17, 2019, through the pendency of this investigation.⁷

Initiation

TKA filed an allegation that AA Metals, as an importer, has entered aluminum sheet through evasion of the *Orders*.⁸ On March 21, 2019, the Trade Remedy Law Enforcement Directorate (TRLED), within CBP’s Office of Trade, initiated an investigation under EAPA as the result of the allegation submitted by TKA regarding the evasion of AD/CVD duties by AA Metals.⁹ TKA alleged that AA Metals entered Chinese-origin aluminum sheet into the United States that was transshipped through Turkey after minor processing and falsely declared as Turkish-origin.

Description of the Alleged Transshipment Scheme

TKA contends that AA Metals purchased aluminum sheet covered by the scope of the *Orders* from Chinese producers for shipment to the United States, after being re-rolled to a thinner thickness in Turkey.¹⁰ More specifically, TKA argues that the aluminum sheet purchased by AA Metals from China is within the thickness covered by the scope, *i.e.*, a thickness of 6.3 millimeters (mm) or less, but greater than 0.2 mm, and is rerolled to thicknesses still within the thickness range covered by the scope. TKA asserts that AA Metals was able to enlist at least [] Chinese aluminum sheet producers, [

], in its scheme.¹¹ According to TKA, AA Metals imported the re-rolled Chinese aluminum sheet from Turkish producers PMS Metal Profil Alüminyum San. ve Tic. A.Ş. (PMS) and Teknik Alüminyum Sanayi A.Ş. (Teknik).¹² Finally, TKA alleges AA Metals

⁴ See 19 CFR § 165.1.

⁵ See TKA’s EAPA allegation submitted on March 16, 2020. On May 19, 2020, TKA amended several portions of its March 16, 2020, EAPA allegation. On May 20, 2020, TKA submitted a revised Exhibit 8 to its allegation. For ease of reference, we refer to these submissions as the Turkey Allegation. On May 22, 2020, TKA submitted a supplement to its Turkey Allegation (Turkey Allegation Supplement).

⁶ See Email acknowledging receipt of EAPA Allegation 7469, “Receipt of EAPA Allegation 7469: Common Alloy Aluminum Sheet from China through Turkey,” dated June 17, 2020.

⁷ See 19 CFR 165.2.

⁸ See, generally, Turkey Allegation.

⁹ See Memorandum, “Initiation of Investigation for EAPA Case Number 7469,” dated June 30, 2020 (Turkey Initiation Memo).

¹⁰ See Turkey Allegation at Exhibit 16 (which contains a letter from [], that states AA Metals approached it, its affiliates, and other Chinese aluminum mills to purchase direct chill cast aluminum sheet for shipment to Turkey for Teknik to re-roll into lighter gauges).

¹¹ *Id.* at Exhibits 10, 11 and 17 – 19.

¹² AA Metals purchased Teknik with financing from [], thus, AA Metals and Teknik are affiliates.

created false documentation concerning the country of origin, and therefore, the applicability of AD/CVD duties.¹³

TKA argues that any re-rolling of Chinese aluminum sheet by Teknik and PMS into thinner thicknesses does not change the essential nature of the aluminum sheet, and thus, does not effect a substantial transformation that would change the country of origin from China to Turkey.¹⁴ TKA notes that the U.S. International Trade Commission (ITC) specifically recognized that “{t}he desired characteristics of aluminum are determined prior to the casting stage,” and that the rolling process merely reduces the thickness of the aluminum sheet.¹⁵ TKA also notes that the *Orders* specifically state that they cover “common alloy sheet that has been further processed in a third country, including . . . any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the common alloy sheet.”¹⁶ Therefore, TKA contends that any re-rolling of Chinese aluminum sheet in Turkey to a thickness covered by the *Orders* does not change the country of origin from China to Turkey.

TKA first became aware of AA Metals’ alleged evasion scheme through [redacted]. Specifically, [redacted], which submitted affidavits that indicated AA Metals purchased covered aluminum sheet from Chinese suppliers, supplied the aluminum sheet to Turkish re-rollers, and then claimed to CBP that the aluminum sheet was Turkish-origin to avoid AD/CVD duties.¹⁷ Moreover, TKA submitted an affidavit from [redacted] which indicates that AA Metals approached Chinese aluminum sheet producers to buy covered merchandise for shipment to Turkey to be re-rolled into thicknesses still within the scope of the *Orders* for shipment to the United States.¹⁸

TKA provided a description of the production process, discussed at length in the ITC Report, which indicates the processes for manufacturing aluminum sheet consists, generally, of three distinct stages: (1) smelting and refining aluminum, (2) casting aluminum into semi-finished forms, and (3) rolling semi-finished forms into aluminum sheet.¹⁹ Following the production of molten aluminum with the desired properties, the molten aluminum is cast into a semi-finished form that can enter a rolling process, the most common of which are continuous casting and direct chill casting. Direct chill casting requires more energy, has higher production costs, and produces a higher-quality product when compared to continuous casting.²⁰

¹³ *Id.* at 3.

¹⁴ *Id.* at 7, citing, *e.g.*, 19 CFR § 102.11; *Texas Instruments, Inc. v. United States*, 681 F.2d 778, 782 (1982); CBP Ruling HQ W968318 (October 2, 2006).

¹⁵ *Id.* at 7 and Exhibit 7 (Common Alloy Aluminum Sheet from China, Investigation Nos. 701-TA-591 and 731-TA-1399, Publication 4861 (January 2019) (ITC Report)) at I-14 and I-17.

¹⁶ *See the Orders.*

¹⁷ *See Turkey Allegation at Exhibit 10 (affidavit from [redacted]) and Exhibit 11 (affidavit from [redacted])*.

¹⁸ *Id.* at Exhibit 12 (affidavit from [redacted]).

¹⁹ *Id.* at Exhibit 7 (ITC Report) at I-14.

²⁰ *Id.* at I-14 and I-15.

TKA asserts that neither PMS, nor Teknik, are capable of producing direct chill cast aluminum sheet.²¹ However, TKA notes that Teknik exports significant quantities of direct chill cast aluminum sheet to the United States, and the only way it, or any Turkish producer, could do so would be to purchase direct chill cast aluminum and roll it to a thinner thickness.²² Moreover, TKA provided record evidence that PMS []²³

As additional evidence that Turkish re-rollers are exporting Chinese-origin aluminum sheet to the United States, TKA provided import statistics of Chinese and Turkish aluminum sheet. The U.S. Department of Commerce (Commerce) commenced AD/CVD investigations on against Chinese aluminum sheet on December 4, 2017,²⁴ and in response, Chinese exports of aluminum sheet to the United States declined while imports from Turkey rose.²⁵ Importantly, Turkey's average unit values (AUVs), *i.e.*, the price of the aluminum sheet per kilogram, tended to follow the AUVs of other countries until 2019, when the *Orders* were imposed.²⁶ TKA argues that because of duty evasion, Turkey's AUVs dropped below those of China and the rest of the world from 2019 onward.²⁷ Despite the increasing imports of aluminum sheet from Turkey, and despite the information placed on the record by TKA which demonstrates that AA Metals purchases aluminum sheet from Turkey, TKA is unable to demonstrate that AA Metals had entries in 2019 and 2020 using public sources such as Datamyne. The supplemental information submitted by TKA demonstrates that AA Metals is attempting to mask its evasion by changing designations on its price lists and using confidential bills of lading.²⁸

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

²¹ *Id.* at 6 – 7, Exhibit 12 (affidavit from [] which indicates there are no direct chill cast producers in Turkey, and specifically, PMS and Teknik produce only continuous cast aluminum sheet), Exhibit 21 (pages from PMS' website discussing its production processes, which indicates it only has three continuous casting lines and makes no mention of direct chill casting production), and Exhibit 22 (pages from Teknik's website discussing its production processes, which indicates it only produces continuous cast aluminum sheet and makes no mention of direct chill casting production).

²² *Id.* at 7, Exhibits 12 and 23. Exhibit 23 contains multiple exclusion requests filed by AA Metals for duty exclusions under section 232 of the Trade Expansion Act of 1962, as amended, that indicates AA Metals imports direct chill cast aluminum sheets from Teknik, which it is not capable of producing.

²³ *Id.* at Exhibit 11, Attachment A. In fact, [] *Id.*

²⁴ See, e.g., *Common Alloy Aluminum Sheet from the People's Republic of China: Initiation of Less-Than-Fair Value and Countervailing Duty Investigations*, 82 FR 57214 (Dept. of Commerce December 4, 2017).

²⁵ *Id.* at 4 – 5, Exhibits 8 and 9.

²⁶ See the *Orders*.

²⁷ See Turkey Allegation at 5 – 6, Exhibit 9.

²⁸ See Turkey Allegation Supplement at 1 and Exhibit 25. Exhibit 25 of the Turkey Allegation Supplement contains TKA's analysis of two of AA Metals' price lists which indicate it []

[] Moreover, Exhibit 25 indicates that AA Metals now designates its bills of lading as confidential so that its shipment information will not be publicly available from subscription sources such as Datamyne. *Id.*; see also <https://www.cbp.gov/trade/automated/electronic-vessel-manifest-confidentiality>.

²⁹ See 19 CFR §165.15(b).

“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.”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 its allegations, TKA provided affidavits which detailed AA Metals’ practice of purchasing Chinese-origin aluminum sheet from companies in Turkey.³¹ TKA also provided trade data which indicates that after the Commerce commenced AD/CVD investigations with respect to Chinese aluminum sheet, Chinese exports of aluminum sheet to the United States declined while imports from Turkey rose while the AUVs dropped to below those of China and the rest of the world.³² According to information provided by TKA, the foreign producers do not have the capabilities to produce some or all of the aluminum sheet they exported to the United States. Specifically, TKA provided information that PMS and Teknik are not capable of producing direct chill cast aluminum sheet, although they export it to the United States.³³ With respect to masking using confidential bills of lading, we note TKA provided evidence of AA Metals’ purchases of Turkish aluminum sheet during the POI.³⁴ In addition, CBP placed on the record of this investigation evidence that [

] .³⁵ Regarding TKA’s claim that the rerolling of the Chinese-origin aluminum sheet in Turkey would not change the country of origin, we agree. The scope of the *Orders* states that: “{s}ubject merchandise includes common alloy sheet that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the common alloy sheet.” As such the further processing of already subject Chinese-origin aluminum sheet in Turkey does not change the country of origin.

In assessing the totality of circumstances and evidence provided in the allegation, TRLED found that the allegation reasonably suggests that AA Metals entered covered merchandise into the customs territory of the United States by means of evasion. Specifically, TRLED found that AA Metals has engaged in attempts to evade the *Orders* by importing Chinese-origin aluminum sheet into United States *via* Turkey and failed to declare such merchandise as subject to the *Orders*. Consequently, TRLED initiated an investigation of AA Metals’ entries from Turkey under the authority of 19 USC 1517(b)(1) and 19 CFR 165.15.³⁶

³⁰ See 19 USC §1517(a)(5); see also 19 CFR §165.1 (setting forth the definition of “evasion”).

³¹ See Turkey Allegation at Exhibits 10 – 12. In Exhibit 15, TKA provided evidence that a Teknik employee admitted the company purchases Chinese aluminum sheet and re-rolls the aluminum sheet.

³² See Turkey Allegation at 5 – 6, Exhibit 8 and 9.

³³ See Turkey Allegation at 6 – 7, Exhibits 11, 12 and 21 – 23; Turkey Allegation Supplement.

³⁴ See Turkey Allegation at Exhibits 14 & 15.

³⁵ See EAPA Post Receipt Report, dated June 30, 2020.

³⁶ See Turkey Initiation Memo.

Interim Measures

Not later than 90 calendar days after initiating an investigation under EAPA, CBP will decide based on the record of the investigation if there is reasonable suspicion that such covered merchandise was entered into the United States through evasion. 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 based on the evidence of record there is reasonable suspicion that AA Metals entered covered merchandise into the customs territory of the United States through evasion by means of transshipment through Turkey and not classifying it as covered merchandise.³⁷

Importer's Response to the CF28

CBP issued a questionnaire to AA Metals *via* CBP Form 28 (CF28), requesting various information including invoices, packing slips, bills of lading, sources of raw materials, mill test certificates, *etc.* for POI entries from Turkey.³⁸ As outlined below, AA Metals' response to the CF28 contains multiple discrepancies and is not complete, therefore, we are unable to rely on the information contained in the CF28 response to determine where the imported aluminum sheet was actually manufactured.³⁹

AA Metals provided information related to the production of the entries at issue, and Teknik's factory in general. However, it is unclear how certain documents submitted by AA Metals in its response tie to one another based on the dates of the documents. On [], AA Metals issued a purchase order for [] from [], for Teknik's production of aluminum sheet, and [] issued AA Metals an invoice for [] on [].⁴⁰ However, the bill of lading indicates the [] shipped on [], several days before the invoice was issued.⁴¹ Moreover, according to the [] mill certificates submitted by AA Metals, the [] were produced by [], on [], [], [] and [].⁴² Based on these dates, it appears that some of the [] were produced before AA Metals placed an order, or after the ship date. While it is possible that [] from inventory, it would not be possible for [] to produce [] after it shipped them (*i.e.*, the [] were shipped [], but were produced on []).

In addition, AA Metals did not provide information to tie the purchases of the [] to the entry in question. AA Metals did not include the first page of any of the [] mill certificates, thus, they are incomplete.⁴³ We note the [] found on the partial mill certificates do not tie to either Teknik's production

³⁷ See 19 USC § 1517(e); 19 CFR § 165.24(a).

³⁸ See CF28 issued by CBP on July 21, 2020 (CF28).

³⁹ See AA Metals' CF28 Response, dated August 31, 2020 (CF28 Response).

⁴⁰ See CF28 Response.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

records or to the invoice from Teknik to AA Metals for aluminum sheet.⁴⁴ As such, while the mill certificates appear to be from [], there is no way to tie the country of origin of the [] to Teknik's production records, and therefore, to the entries in question.

Furthermore, an examination of the invoice from [] to AA Metals for the [] and the purported Turkish customs declaration for the [] indicate the two documents list different [].⁴⁵ Moreover, the bill of lading and the customs declaration indicate different [].⁴⁶ An examination of the proof of payment submitted by AA Metals is for a different [] than is recorded on either the invoice from [] to AA Metals or the customs declaration.⁴⁷ As such, it is unclear how the invoice for [], the Turkish customs declaration, and proof of payment tie to one another as each document lists a different [], as appropriate.

AA Metals' CF28 Response is incomplete in several ways. The CF28 requests that complete production records, including stamped time cards and work orders, are provided and translated into English. AA Metals only provided a single form titled "Factory Production Records" for certain days in [].⁴⁸ While it is unclear what these forms represent because they are not translated in English, we speculate they represent production quantities of different types of aluminum sheet produced on specific days, and not the complete production records requested. Also, other documents provided by AA Metal are not translated, such as the customs declaration and certain invoices.⁴⁹ In addition to the invoice from [] to AA Metals, AA Metals provided other invoices for [] issued to Teknik rather than itself.⁵⁰ It is unclear what these invoices represent because they are not translated, nor did AA Metals include any mill certificates to accompany these invoices which would indicate the country of origin.⁵¹ Additionally, no proof of payment was provided for these invoices, so the record contains no information as to what entity paid for these raw materials.

Furthermore, the CF28 requests that if the foreign producer is related to the importer, to "explain how this relationship affects the price paid or payable."⁵² As noted above, based on the invoice it appears that AA Metals purchased [], but Teknik paid for the [], according to the proof of payment.⁵³ Furthermore, Teknik purchased raw materials from other companies, based on the invoices, although no proof of payment was submitted.⁵⁴ As such, AA Metals and Teknik appear to have an intertwined system of sourcing and paying for raw materials. However, AA Metals provided no explanation of this intertwined sourcing and payment for raw materials, nor did it provide any explanation as to how prices would be set

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* The proof of payment appears to be from [], and not from [].

⁴⁸ See CF28 Response.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² See CF28.

⁵³ *Id.*

⁵⁴ *Id.*

transshipped through Turkey and should have been subject to the *Orders*. Therefore, CBP is imposing interim measures pursuant to this investigation.⁶² Specifically, in accordance with 19 USC 1517(e)(1-3), CBP shall:

- (1) suspend the liquidation of each unliquidated entry of such covered merchandise that entered on or after June 30, 2020, the date of the initiation of the investigation;
- (2) pursuant to the Commissioner's authority under section 504(b), extend the period for liquidating each unliquidated entry of such covered merchandise that entered before the date of the initiation of the investigation June 30, 2020; and
- (3) pursuant to the Commissioner's authority under section 623, take such additional measures as the Commissioner determines necessary to protect the revenue of the United States, including requiring a single transaction bond or additional security or the posting of a cash deposit with respect to such covered merchandise.⁶³

In addition, CBP will require live entry and 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 AA Metal's continuous bonds to determine their sufficiency. Finally, CBP may pursue additional enforcement actions, as provided by law, consistent with 19 USC 1517(h).

For any future submissions 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. Dutra, counsel for TKA, at jeremy.dutra@squirepb.com, and the respective email address for AA Metals referenced above (unless an alternative address is provided at a later date).⁶⁴ Should you have any questions regarding this investigation, please feel free to contact us at epallegations@cbp.dhs.gov. Please include "EAPA Case 7469" 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/trade-enforcement/tftea/enforce-and-protect-act-eapa>.

Sincerely,



Brian M. Hoxie
Director, Enforcement Operations Division
Trade Remedy Law Enforcement Directorate
CBP Office of Trade

⁶² See 19 USC 1517(e); see also 19 CFR 165.24.

⁶³ See also 19 CFR 165.24(b)(1)(i-iii).

⁶⁴ See 19 CFR § 165.4, 165.23(c), and 165.26.