



U.S. Customs and Border Protection

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VIA EMAIL

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Notice of Initiation of Investigation - EAPA Case 7470

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 the United Arab Emirates (UAE) after minor processing, and was misclassified as non-subject merchandise not subject to the *Orders*. Because evidence reasonably suggests that AA Metals entered covered merchandise for consumption into the customs territory of the United States through evasion, CBP is issuing a formal notice of investigation.

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*).

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 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filed allegation on June 17, 2020.⁶ The entries covered by the investigation are those entered for consumption, or withdrawn from warehouse for consumption, from June 17, 2019, through the pendency of this investigation.⁷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, 2020, 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 and CVD duties by AA Metals.⁹ TKA alleged that AA Metals entered Chinese-origin aluminum sheet into the United States that was transshipped through the UAE after minor processing and falsely declared as being UAE-origin.

Description of the Alleged Transshipment Scheme

TKA contends that AA Metals purchased aluminum sheet covered by the scope of the *Orders* from a Chinese producer for shipment to the United States, after being painted in the UAE.¹⁰ TKA asserts that AA Metals was able to enlist at least [] Chinese aluminum sheet producer, [], in its scheme.¹¹ According to TKA, AA Metals imported the painted Chinese aluminum sheet from a UAE company, United Metal Coating, LLC (UMC). Finally, TKA alleges AA Metals created false documentation concerning the country of origin, and therefore, the applicability of AD/CVD duties.¹²

³ See 19 CFR § 165.2.

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 UAE Allegation. On May 23, 2020, TKA submitted a supplement to its UAE Allegation (UAE Allegation Supplement).

⁶ See Email acknowledging receipt of EAPA Allegation 7470, “Receipt of EAPA Allegation 7470: Common Alloy Aluminum Sheet from China through the United Arab Emirates,” dated June 17, 2020.

⁷ See 19 CFR 165.2.

⁸ See, generally, UAE Allegation.

⁹ See Memorandum, “Initiation of Investigation for EAPA Case Number 7470,” dated June 30, 2020 (UAE Initiation Memo).

¹⁰ See UAE Allegation at 6.

¹¹ *Id.*; see also Exhibits 10 – 12.

¹² *Id.* at 6.

TKA argues that any painting or coating of Chinese aluminum sheet does not change the country of origin from China to the UAE.¹³ TKA 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.”¹⁴ Therefore, TKA contends that any painting or coating of Chinese aluminum sheet in the UAE does not change the country of origin from China to the UAE.

TKA first became aware of AA Metal’s alleged evasion scheme through []. Specifically, [], who submitted an affidavit that indicated AA Metals purchased covered aluminum sheet from Chinese suppliers, supplied the aluminum sheet to UMC, and then claimed to CBP that the aluminum sheet was UAE-origin to avoid AD/CVD duties.¹⁵

TKA asserts that UMC is not an integrated mill, and thus, does not have the capability to produce aluminum sheet; it only has a painting operation.¹⁶ According to TKA, the UAE does not have the capacity to produce aluminum sheet because the country’s only aluminum producer, Emirates Global Aluminum, is an upstream producer of primary aluminum (*i.e.*, aluminum ingots); it does not produce downstream semi-finished products like aluminum sheet.¹⁷

As additional evidence that UMC is exporting painted Chinese-origin aluminum sheet to the United States, TKA provided import statistics of Chinese and UAE aluminum sheet. The U.S. Department of Commerce (Commerce) commenced AD/CVD investigations of Chinese aluminum sheet on December 4, 2017,¹⁸ and in response, Chinese exports of aluminum sheet to the United States declined while imports from the UAE rose.¹⁹ Importantly, the UAE’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.²⁰ TKA argues that because of duty evasion, the UAE’s AUVs dropped below those of China and the rest of the world from 2019 onward.²¹ Despite the increasing imports of aluminum sheet from the UAE, and despite the information placed on the record by TKA which demonstrates that AA Metals purchases aluminum sheet from the UAE, 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 using confidential bills of lading.²²

¹³ *Id.*

¹⁴ *See the Orders.*

¹⁵ *See UAE Allegation at Exhibit 11 (affidavit from []).*

¹⁶ *Id.* at Exhibits 7 and 12.

¹⁷ *Id.* at Exhibit 12.

¹⁸ *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).

¹⁹ *See UAE Allegation at 4 – 5, Exhibits 8 and 9.*

²⁰ *See the Orders.*

²¹ *Id.* at 5 – 6, Exhibit 9.

²² *See UAE Allegation Supplement at 1 and Exhibit 15.* Moreover, Exhibit 15 indicates that AA Metals now designates its bills of lading as confidential so that its shipment information will not be publicly available from

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.”²³ 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.”²⁴ 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 allegation, TKA provided an affidavit which detailed AA Metals’ practice of purchasing Chinese-origin aluminum sheet from UMC.²⁵ TKA also provided trade data which indicates that after Commerce commenced AD/CVD investigations with respect to Chinese aluminum sheet, Chinese exports of aluminum sheet to the United States declined while imports from the UAE rose and the AUVs from these countries dropped to below those of China and the rest of the world.²⁶ TKA provide information from UMC’s website that UMC does not produce any aluminum sheet it only paints aluminum sheet.²⁷ With respect to masking using confidential bills of lading, we placed on the record of this investigation data from [] that indicates []²⁸.

In assessing the totality of circumstances and evidence provided in the allegation, TRLED found that the allegation reasonably suggest 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* the UAE and failed to declare such merchandise as subject to the *Orders*. Consequently, TRLED initiated an investigation of AA Metals entries from the UAE under the authority of 19 USC 1517(b)(1) and 19 CFR 165.15.²⁹

Importer’s Response to the CF28

CBP issued questionnaires to AA Metals *via* CBP Form 28 (CF28), requesting various information including invoices, packing slips, bills of ladings, sources of raw materials, mill test

subscription sources such as Datamyne. *Id.*; see also <https://www.cbp.gov/trade/automated/electronic-vessel-manifest-confidentiality>.

²³ See 19 CFR §165.15(b).

²⁴ See 19 USC §1517(a)(5); see also 19 CFR §165.1 (setting forth the definition of “evasion”).

²⁵ See UAE Allegation at Exhibit 11.

²⁶ See UAE Allegation at 4 – 6, Exhibits 8 and 9.

²⁷ See UAE Allegation at Exhibits 7 and 12.

²⁸ See EAPA Post Receipt Report, dated June 30, 2020.

²⁹ See UAE Initiation Memo.

certificates, *etc.* for POI entries from the UAE.³⁰ AA Metals provided information related to the production of the entries at issue and UMC's factory in general.³¹ The documentation which AA Metals furnished for the entries at issue shows that the aluminum sheet was manufactured in India by [] and in Bahrain by [].³² UMC's production records trace foreign manufacturers' coil numbers and UMC's assigned coil numbers through various documents, which allow us to determine the country of origin of the aluminum sheet for the entries at issue.³³

According to 19 CFR 165.15(d)(1), CBP will issue notification of its decision to initiate an investigation to all parties to the investigation no later than 90 calendar days after the decision has been made, and the actual date of initiation will be specified therein. Based on the information described herein, TRLED has initiated an investigation concerning the evasion of the *Orders*. The information in the allegation all reasonably suggests that AA Metals entered covered merchandise for consumption into the customs territory of the United States through evasion, and thus, such covered merchandise should have been subject to the applicable AD and CVD duties on aluminum sheet from China. If, during this investigation, CBP determines that substantial evidence of evasion exists, CBP will take appropriate measures to protect the revenue.

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).³⁴ Should you have any questions regarding this investigation, please feel free to contact us at eapallegations@cbp.dhs.gov. Please include "EAPA Case 7470" 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

³⁰ See CF28 issued by CBP on July 21, 2020.

³¹ See AA Metal's CF28 Response, dated August 31, 2020.

³² *Id.*

³³ *Id.*

³⁴ See 19 CFR § 165.4, 165.23(c), and 165.26.