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U.S. Customs and Border Protection

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EAPA Case 7470: Notice of Final Determination as to Evasion

Dear Counsel for the Above-Referenced Entities:

Pursuant to an examination of the record in Enforce and Protect Act (EAPA) Investigation Number 7470, U.S. Customs and Border Protection (CBP) has determined that there is not substantial evidence that AA Metals, Inc. (AA Metals) entered into the customs territory of the United States, through evasion, merchandise covered by antidumping duty (AD) order A-570-073 and countervailing duty (CVD) order C-570-074¹ on common alloy aluminum sheet (aluminum sheet or covered merchandise) from the People's Republic of China (China). Specifically, CBP finds that there is not substantial evidence on the record that demonstrates AA Metals imported Chinese-origin aluminum sheet into the United States that was transshipped through the United Arab Emirates (UAE), and then classified as merchandise not subject to the *Orders* during the period covered by this EAPA investigation.

Background

Texarkana Aluminum, Inc. (referred to hereafter as TKA) filed an EAPA allegation alleging the evasion of AD/CVD duties by AA Metals on March 16, 2020,² and supplemented the allegation on June 23, 2020.³ CBP acknowledged receipt of the properly filed Allegation on June 17, 2020.⁴ On June 30, 2020, CBP initiated an investigation regarding the evasion of AD/CVD

¹ See *Common Alloy Aluminum Sheet from the People's Republic of China: Antidumping Duty Order*, 84 FR 2813 (Dep't of Commerce, February 8, 2019); *Common Alloy Aluminum Sheet from the People's Republic of China: Countervailing Duty Order*, 84 FR 2157 (Dep't of Commerce, February 6, 2019) (collectively, the *Orders*).

² 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 Allegation.

³ See TKA's supplement to the Allegation submitted on June 23, 2020 (Allegation Supplement).

⁴ See Email acknowledging receipt of the Allegation, "Receipt of EAPA Allegation 7470: Common Alloy Aluminum Sheet from China through the United Arab Emirates," dated June 17, 2020.

duties by AA Metals.⁵ Pursuant to 19 CFR 165.2, entries covered by this investigation are those entered for consumption, or withdrawn from a warehouse for consumption, from June 17, 2019, one year before receipt of the allegation, through the pendency of the investigation.

The Allegation and Allegation Supplement reasonably suggest that AA Metals evaded the payment of AD/CVD cash deposits on entries of Chinese-origin aluminum sheet. 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.⁶ According to TKA, the painting or coating of Chinese aluminum sheet does not change the country of origin from China to the UAE.⁷

TKA notes that AA Metals imported the painted Chinese aluminum sheet from a UAE company, United Metal Coating, LLC (UMC).⁸ TKA submitted an affidavit indicating that 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.⁹ Moreover, TKA provided information which indicates that UMC is not an integrated aluminum mill, and thus, does not have the capability to produce aluminum sheet; it only has a painting operation.¹⁰ 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.¹¹

As additional evidence that UMC exported 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, 2017,¹² and in response, Chinese exports of aluminum sheet to the United States declined while imports from the UAE rose.¹³ TKA demonstrated that 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.¹⁴ TKA argues that because of duty evasion, the UAE's AUVs dropped below those of China and the rest of the

⁵ See Memorandum, "Initiation of Investigation for EAPA Case Number 7470," dated June 30, 2020 (Initiation Memo).

⁶ See Allegation at 6.

⁷ *Id.* TKA noted 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." See the *Orders*.

⁸ See Allegation at 6.

⁹ *Id.* at 6 and Exhibit 11.

¹⁰ Exhibits 7 and 12.

¹¹ *Id.* at Exhibit 12.

¹² 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).

¹³ See Allegation at 4 – 5, Exhibits 8 and 9.

¹⁴ See Allegation at 5 – 6.

world from 2019 onward.¹⁵ TKA argues that AA Metals is attempting to mask its evasion using confidential bills of lading.¹⁶

On October 5, 2020, CBP issued a formal notice of initiation (NOI) based on record information that reasonably suggests covered merchandise was entered for consumption into the customs territory of the United States through evasion and notified the interested parties of CBP's decision to initiate an investigation in accordance with 19 CFR 165.15(d)(1).¹⁷ CBP did not impose interim measures in accordance with 19 CFR 165.24.

On July 21, 2020, CBP issued Customs Form 28 (CF-28) to AA Metals, requesting various information including invoices, packing slips, bills of ladings, sources of raw materials, mill test certificates, *etc.* for period of investigation (POI) entries from UMC.¹⁸ AA Metals provided complete CF-28 responses related to the production of the entries at issue and UMC's factory in general.¹⁹ The documentation provided by AA Metals indicated that the aluminum sheet was manufactured in [countries] for the entries at issue.²⁰ UMC's production records trace foreign manufacturers' coil numbers and UMC's assigned coil numbers through various documents, which allowed CBP to determine the country of origin of the aluminum sheet for the entries at issue.²¹

After the NOI, CBP issued Requests for Information (RFIs) to AA Metals and UMC.²² On December 28, 2020, both AA Metals²³ and UMC²⁴ submitted RFI responses. On January 15, 2021, AA Metals made two timely submissions of voluntary factual information.²⁵ On March 8, 2021, CBP issued supplemental RFIs to AA Metals and UMC.²⁶ On March 17, 2021, UMC submitted a supplemental RFI response.²⁷ On March 23, 2021, AA Metals submitted a

¹⁵ See Allegation at 5 – 6, Exhibit 9.

¹⁶ See Allegation Supplement at 1 and Exhibit 15.

¹⁷ See NOI.

¹⁸ See CF28 issued by CBP on July 21, 2020.

¹⁹ See AA Metal's CF28 Response, dated August 31, 2020.

²⁰ *Id.*

²¹ *Id.*

²² See CBP's Letter to AA Metals, "Enforce and Protect Act Investigation 7470: Request for Information Concerning Whether AA Metals, Inc. Evaded the Antidumping and Countervailing Duty Orders on Common Alloy Aluminum Sheet from the People's Republic of China, A-570-073 and C-570-074," dated November 24, 2020; CBP's Letter to UMC, "Enforce and Protect Act Investigation 7470: Request for Information from the Foreign Producer Concerning Whether AA Metals, Inc. Evaded the Antidumping and Countervailing Duty Orders on Common Alloy Aluminum Sheet from the People's Republic of China, A-570-073 and C-570-074, dated November 24, 2020.

²³ See AA Metals' Letter, "AA Metals, Inc.'s Response to Request for Information – Importer Questionnaire," dated December 28, 2020 (AA Metals' RFI Response).

²⁴ See UMC's Letter, "Response to Common Alloy Aluminum Sheet Through the UAE United Metal Coating, LLC Identified Manufacturer Request for Information," dated December 28, 2020 (UMC's RFI Response).

²⁵ See AA Metals' Letters, "AA Metals, Inc.'s New Factual Information Submission," dated January 15, 2021. One submission contains the business confidential version of UMC's RFI response, and the other contains various documents in the U.S. Department of Commerce's and International Trade Commission's AD/CVD investigations on Chinese aluminum sheet, aluminum sheet standards, and information from CBP.

²⁶ See CBP's Letter to AA Metals, "Enforce and Protect Act Investigation 7470: Supplemental Request for Information," dated March 8, 2021; CBP's Letter to UMC, "Enforce and Protect Act Investigation 7470: Supplemental Request for Information," dated March 8, 2021.

²⁷ See UMC's Letter, "Supplemental Response to Common Alloy Aluminum Sheet Through the UAE United

supplemental RFI response.²⁸ Finally, on April 9, 2021, AA Metals submitted written arguments.²⁹ The allegor, TKA, did not submit written arguments.

Final Determination as to Evasion

Under 19 CFR 165.27(a), CBP must “make a determination based on substantial evidence as to whether covered merchandise was entered into the customs territory of the United States through evasion.” “Covered merchandise” is defined by 19 CFR 165.1 as “merchandise that is subject to a CVD order... and/or an AD order.” As discussed below, the record of this investigation indicates that substantial evidence does not exist to determine that AA Metals entered covered merchandise into the customs territory of the United States through evasion, defined as entering 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

UMC

Because this EAPA investigation concerns the transshipment of Chinese-origin aluminum sheet through the UAE, CBP’s CF-28s, RFIs and supplemental RFIs focused on whether AA Metals imported into the United States Chinese-origin aluminum sheet from UMC. UMC stated it is not a producer of aluminum sheet but performs further manufacturing to aluminum sheet such as painting, coating, and slitting.³¹ Because UMC does not produce its own aluminum sheet, it sources aluminum sheet from producers/suppliers in various countries, including China.³² UMC provided original source documents and screen shots from its Microsoft Dynamics AX accounting software which trace the purchase of Chinese-origin aluminum sheet (in coils), UMC’s production of painted/coated/slit aluminum sheet, and the sale of aluminum sheet to UMC’s customers.³³ We performed step-by-step purchase/production/sale traces for UMC’s Chinese-origin aluminum sheet to determine whether it entered the United States, and detail an example trace below.

We examined the purchase of UMC’s Chinese-origin aluminum sheet by scrutinizing the e-mail correspondence for price negotiations between UMC and Supplier A, and found that the correspondence ties to the purchase order UMC issued to Supplier A through UMC’s purchase

Metal Coating, LLC Identified Manufacturer Request for Information,” dated March 17, 2021 (UMC’s Supplemental RFI Response).

²⁸ See AA Metals’ Letter, “AA Metals, Inc.’s Response to Supplemental Request for Information,” dated March 23, 2021 (AA Metals’ Supplemental RFI Response).

²⁹ See AA Metals’ Letter, “EAPA Case Number 7470; AA Metals, Inc.’s Written Argument,” dated April 9, 2021 (AA Metals’ Written Arguments).

³⁰ See 19 CFR 165.1.

³¹ See UMC’s RFI Response at 32, Exhibit 21(a).

³² *Id.* at Exhibit 26.

³³ *Id.* at Exhibits 21 – 23; UMC’s Supplemental RFI Response at Exhibits S1-1(a – h).

order number.³⁴ The mill certificates for this purchase indicate the aluminum sheet was produced by a Chinese producer.³⁵ The packing list, prepared by the Chinese producer, ties to the mill certificates through the purchase order number from the Chinese producer to Supplier A, pallet numbers (which in later documents are recorded as coil numbers), and lot numbers, as well as noting delivery to UMC.³⁶ The invoice from Supplier A to UMC ties to the packing list through the container numbers and the quantity.³⁷ We also examined other documents supplied by UMC such as shipping documents like bills of lading, UAE Customs forms, as well as payment documents, all of which tie to UMC's purchase of Chinese aluminum sheet.³⁸

To examine UMC's processing of the Chinese-origin aluminum sheet, for this particular purchase, we tied the purchase order from Supplier A, discussed in the paragraph above, to screen shots of UMC's accounting software that indicate which coils of Chinese-origin aluminum sheet were pulled from inventory for each production order.³⁹ UMC tracks its production through the production order number.⁴⁰ For this particular order, the accounting system indicated the final customer was [company] located in [country].⁴¹ In addition to examining electronic records, we also examined printed and hand-written source documents such as daily entry and exit reports, as well as production reports.⁴² We traced information such as coil numbers and customer names through these documents.⁴³ The exit and production reports also indicate that UMC [uses certain record keeping practices], and thereafter, uses that designation in certain sales documents.⁴⁴

To examine UMC's sales records of Chinese-origin aluminum sheet, we looked at the hand-written packing report which includes certain specifications of the aluminum sheet such as [specifications], including UMC's coil number.⁴⁵ These details tie the packing report to the packing list included with the shipment, and invoice. For this particular sale, the sales and shipping documents indicate the Chinese-origin aluminum sheet was delivered to [company in country].⁴⁶ In sum, we conducted purchase/production/sale traces for each of UMC's purchases of Chinese-origin aluminum sheet, and our traces indicate that UMC's Chinese-origin aluminum sheet was not sold to AA Metals and did not enter the United States. We found that UMC's Chinese-origin aluminum sheet was sold to customers in the UAE, Oman and Saudi Arabia.⁴⁷

³⁴ See UMC's RFI Response at Exhibit 27(f) at "Sales-negotiation correspondence" and "Purchase Order." UMC refers to this company as "supplier 6" in its RFI response.

³⁵ *Id.* at "Mill certificate."

³⁶ *Id.* at "Packing List," "Mill Certificates."

³⁷ *Id.* at "Packing List" and "Invoice."

³⁸ *Id.* at "All Pertinent transportation Documents," "Customs Declaration Documents," "Payment for freight," and "Payment Documentation."

³⁹ See, e.g., UMC's Supplemental RFI Response at Exhibit S1-1(a).

⁴⁰ See UMC's RFI Response at 21.

⁴¹ See, e.g., UMC's Supplemental RFI Response at Exhibit S1-1(a).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* at S1-2.

Recently the U.S. Department of Commerce published AD/CVD orders on aluminum sheet from various countries.⁴⁸ Some of UMC's suppliers of aluminum sheet are located in these countries.⁴⁹ We note that the scopes of these orders include "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."⁵⁰ In other words, the processing UMC performs on aluminum sheet, painting/coating/slitting, does not render a change in the country of origin. CBP finds that [using certain record keeping practices] UMC declares that the aluminum sheet it exports is of UAE-origin. Although for this final determination we find that UMC has not transshipped Chinese-origin aluminum sheet, it may have sold aluminum sheet from other countries with AD/CVD orders in place to AA Metals, and the correct duties may not have been paid on this covered merchandise. We intend to refer this matter to the Base Metals Center for possible additional revenue collection.

AA Metals

We reviewed extensive documentation provided by AA Metals as a [company function] and its purchases of aluminum sheet from UMC.⁵¹ We find that AA Metals' submissions in this investigation are consistent with the submissions and documents provided by UMC and note no discrepancies between the documents and RFI responses of UMC and AA Metals. As such, we find that AA Metals' submissions support our finding that it did not engage in evasion by importing Chinese-origin aluminum sheet from UMC.

In conclusion, based on an examination of the information on the record, CBP finds that substantial evidence does not exist to determine that AA Metals entered Chinese-origin aluminum sheet into the customs territory of the United States through evasion during the period of this EAPA investigation. As explained above, CBP's review of extensive production-, sales-, and purchase-related documentation showed that the aluminum sheet sold by UMC to AA Metals is not of Chinese origin.

Arguments by AA Metals

The bulk of AA Metals' Written Arguments concern the documentation provided by UMC and AA Metals, and we agree with their contentions that AA Metals did not engage in evasion, as discussed above. However, we note that AA Metals included some additional arguments unrelated to the final determination in its Written Arguments, which CBP addresses below.

AA Metals asserts that CBP's reliance on import statistics in the initiation is unreliable and not

⁴⁸ See *Common Alloy Aluminum Sheet from Bahrain, India, and the Republic of Turkey: Countervailing Duty Orders*, 86 FR 22144 (April 27, 2021); *Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, India, Indonesia, Italy, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and the Republic of Turkey: Antidumping Duty Orders*, 86 FR 22139 (April 27, 2021).

⁴⁹ See UMC's RFI Response at Exhibit 26.

⁵⁰ See, e.g., *Common Alloy Aluminum Sheet from Bahrain, India, and the Republic of Turkey: Countervailing Duty Orders*, 86 FR 22144 (April 27, 2021) at the Appendix.

⁵¹ See, generally, AA Metal's RFI Response, AA Metals' Supplemental RFI Response.

specific to AA Metals.⁵² CBP did not rely on trade statistics alone as evidence of evasion, as discussed in the NOI.⁵³ In making a determination to initiate this investigation, CBP relied on several company-specific affidavits concerning AA Metals behavior in the marketplace which “indicated AA Metals purchased covered aluminum sheet from Chinese suppliers {and} supplied the aluminum sheet to UMC,” as well as import statistics.⁵⁴ Moreover, we have not relied upon trade statistics as an indication of evasion in this negative final determination as to evasion.

AA Metals argues that the company-specific evidence of transshipment in the allegation is based upon unsubstantiated statements from unknown sources and/or documentation.⁵⁵ As noted above, CBP relied upon several affidavits, including one from [person].⁵⁶ In addition, despite AA Metals’ description of the affidavits, certain key facts from the affidavits were affirmed by UMC’s RFI Response.⁵⁷ For example, AA Metals supplied UMC with Chinese-origin aluminum sheet.⁵⁸ Moreover, CBP partially relies on affidavits in many cases when determining whether to initiate an EAPA investigation because evasion, by its nature, is not public and only certain individuals or companies in a specific market may have access to such knowledge. Again, although we disagree with AA Metals’ characterization of the affidavits used to initiate this investigation, we do not find substantial evidence exists on the record of this investigation to find that AA Metals engaged in evasion.

Citing, 19 USC 1517(e) and 19 CFR 165.24(c), AA Metals notes that the standard of evidence for CBP’s imposition of interim measures is CBP’s reasonable suspicion of evasion, and contends that the NOI is devoid of any establishment of reasonable suspicion.⁵⁹ As stated in the NOI, we did not impose interim measures in this investigation.⁶⁰ However, as discussed in the NOI, the record of this investigation contained a reasonable suspicion of evasion such that CBP had enough evidence to continue the investigation without imposing interim measures. AA Metals also contends it was unable to participate in the investigation until the initiation.⁶¹ CBP’s EAPA regulations do not allow for public participation in EAPA investigations until the public is notified of the initiation.⁶² Thereafter AA Metals was afforded an opportunity to participate in this investigation.

According to AA Metals, CBP improperly relied upon AA Metals’ use of manifest confidentiality to support TKA’s allegation that “AA Metals is attempting to mask its evasion using confidential bills of lading.”⁶³ CBP notes that the quote is TKA’s description of AA Metals’ practice of using confidential bills of lading.⁶⁴ Moreover, CBP made no finding with

⁵² See AA Metals’ Written Arguments at 5 to 7.

⁵³ See NOI at 4.

⁵⁴ *Id.* at 3; UMC’s RFI Response at Exhibit 26.

⁵⁵ See AA Metals’ Written Arguments at 7 – 8.

⁵⁶ See Allegation at Exhibit 11.

⁵⁷ See UMC’s RFI Response at Exhibit 26.

⁵⁸ *Id.*

⁵⁹ See AA Metals’ Written Arguments at 18 – 20.

⁶⁰ See NOI at 5.

⁶¹ See AA Metals’ Written Arguments at 18 – 19.

⁶² See 19 CFR 165.15 (d)(1).

⁶³ See AA Metals’ Written Arguments at 8 – 10.

⁶⁴ See NOI at 3; Allegation Supplement at 1.

respect to confidential bills of lading.⁶⁵ Therefore, we disagree with AA Metals that CBP relied on TKA's statements with respect to manifest confidentiality in the NOI.

Finally, AA Metals claims that CBP's final determination must be solely based upon facts made available to AA Metals because a failure to do so amounts to a violation of its due process rights.⁶⁶ However, we have not relied upon any of the information AA Metals contends would violate its due process rights, *i.e.*, certain information found in the allegation, and have only relied upon the submissions made by AA Metals and UMC in this final determination.

Actions Taken Pursuant to the Negative Determination of Evasion

In light of CBP's determination that AA Metals did not enter Chinese-origin aluminum sheet into the customs territory of the United States through evasion during the period of this investigation, pursuant to 19 CFR 165.27(c), CBP will reverse any actions taken with respect to entries covered by the EAPA investigation. However, as noted above, UMC may have sold aluminum sheet from countries with AD/CVD orders in place to AA Metals, and we intend to refer this matter to the Base Metals Center for possible additional revenue collection. This does not preclude CBP or other agencies from pursuing other enforcement actions or penalties.

Sincerely,



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

⁶⁵ See NOI at 4.

⁶⁶ See AA Metals' Written Arguments at 20 – 23.