



**U.S. Customs and
Border Protection**

PUBLIC VERSION

EAPA CASE NO. 7354

December 15, 2021

Daniel B. Pickard
Counsel to the Diamond Sawblades Manufacturers' Coalition
Wiley Rein LLP
1776 K Street NW
Washington, DC 20006
dpickard@wiley.law

[*name*]
Gogo International, Inc.
3830 Brentwood Rd NW
Suite 703
Calgary, AB T2L 2J9
Canada
[*email address*]

RE: Notice of Determination as to Evasion

To Counsel and Representatives of the Above-Referenced Entities:

Pursuant to an examination of the record in Enforce and Protect Act (EAPA) Investigation 7354, U.S. Customs and Border Protection (CBP) has determined there is substantial evidence that importer Gogo International, Inc. (Gogo) entered merchandise covered by antidumping (AD) order A-570-900 on diamond sawblades and parts thereof (diamond sawblades) from the People's Republic of China (China)¹ into the customs territory of the United States by means of evasion. Substantial evidence demonstrates that Gogo, which is located in Canada, imported diamond sawblades into the United States that were assembled in Canada by Protech Diamond Tools Inc. (Protech Canada) using Chinese-origin cores and Chinese-origin segments. Although such diamond sawblades are subject to AD order A-570-900, no cash deposits were applied to the merchandise at the time of entry.

¹ See *Diamond Sawblades and Parts Thereof From the People's Republic from China and the Republic of Korea*, 74 Fed. Reg. 57,145 (Dep't Commerce Nov. 4, 2009) (*AD Order*).

Background

On August 20, 2019, the Trade Remedy Law Enforcement Directorate (TRLED), within CBP's Office of Trade, acknowledged receipt of the properly filed allegation by the Diamond Sawblades Manufacturers' Coalition (DSMC or Alleger), an *ad hoc* coalition of producers of diamond sawblades in the United States.² TRLED found that the information provided in the allegation reasonably suggested that Gogo entered covered merchandise into the customs territory of the United States through evasion. Consequently, CBP initiated an investigation with respect to Gogo on September 11, 2019, pursuant to Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, commonly referred to as the "Enforce and Protect Act" or "EAPA."³

Because CBP could not determine whether the merchandise at issue in this EAPA investigation is covered merchandise, CBP submitted a request for a covered merchandise referral to the Department of Commerce (Commerce) on December 17, 2019.⁴ On April 28, 2021, Commerce transmitted its response to the covered merchandise referral to CBP.⁵

After evaluating all the information on the record, on May 12, 2021, TRLED determined there was reasonable suspicion that the diamond sawblades imported by Gogo into the United States from Canada consisted of Chinese-origin cores and Chinese-origin segments joined in Canada, and thus imposed interim measures.⁶ TRLED based its determination on information provided in the allegation, Gogo's responses to CBP Form 28 (CF-28) requests for information, and a letter submitted by Gogo in response to a CBP Notice of Action (CF-29), as well as Commerce's determination that diamond sawblades assembled in Canada by Protech Canada by joining Chinese cores and Chinese segments are covered merchandise.⁷ CBP issued its notice of initiation of investigation and interim measures (NOI) on May 19, 2021.⁸

On May 25 and June 8, 2021, CBP contacted Gogo via email to ask it to confirm receipt of CBP's May 19, 2021, email to parties to the investigation issuing the NOI and explaining how to

² See CBP Email, "Receipt of Properly Filed Allegation/EAPA 7354" (Aug. 20, 2019).

³ See CBP Memorandum, "Initiation of Investigation for EAPA Case Number 7354 – Gogo International, Inc" (Sep. 11, 2019).

⁴ See Letter from CBP, "Covered Merchandise Referral Request for EAPA Investigation 7354, Imported by Gogo International, Inc., and concerning the Investigation of Evasion of the Antidumping Duty Order on Diamond Sawblades and Parts Thereof from the People's Republic of China (A-570-900)" (Dec. 17, 2019) (Covered Merchandise Referral Request).

⁵ See Letter from Commerce, "Covered Merchandise Referral Regarding EAPA Investigation No. 7354" (Apr. 28, 2021) (Covered Merchandise Referral Transmission).

⁶ See CBP Emails, "EAPA 7354 – Implementation of Interim Measures" (May 12, 2021) (CBP internal notification) and "EAPA 7354 – Implementation of Interim Measures" (May 12, 2021) (notifying the Alleger and Gogo).

⁷ See CBP Memorandum, "Notice of Initiation of Initiation *{sic}* of Investigation and Interim Measures – EAPA Case 7354" (May 19, 2021).

⁸ *Id.*; see also CBP Memorandum, "Adding Information to the Administrative Record of EAPA Case 7354" (Aug. 30, 2021) (CBP August 30, 2021, Memorandum) at Attachment 1 (email issuing the NOI to the parties to the investigation and informing them of the availability of the administrative record).

access the administrative record in this EAPA investigation.⁹ Gogo did not reply to either email or otherwise contact CBP.

On June 23, 2021, pursuant to 19 C.F.R. § 165.23(a), CBP issued a request for information (RFI) to Gogo.¹⁰ In the RFI, CBP requested information from Gogo regarding its corporate structure and affiliations, its accounting and financial practices, and its practices with respect to sales, purchases, and importation of covered merchandise. The RFI issued to Gogo also requested documentation for selected entries of covered merchandise and a reconciliation of Gogo's sales of covered merchandise to its financial statements. Additionally, pursuant to 19 C.F.R. § 165.23(a), CBP issued an RFI to Protech Canada on June 23, 2021.¹¹ In that RFI, CBP requested information regarding Protech Canada's corporate structure and affiliations, its accounting and financial practices, and its production process and sales practices for the covered merchandise sold to Gogo, as well as production and sales documentation for the covered merchandise and a reconciliation of its sales of covered merchandise to its financial statements.

In the emails transmitting the RFIs to Gogo and Protech Canada, CBP asked that each entity confirm receipt,¹² but neither Gogo nor Protech Canada did so. On June 25, 2021, CBP requested that Gogo's broker forward the NOI and Gogo RFI to Gogo,¹³ which its broker did that same day.¹⁴ On June 28, 2021, CBP forwarded the NOI and Protech Canada RFI to Protech Canada using the email address that Gogo's broker had used to forward the NOI and Gogo RFI to Gogo.¹⁵ On July 6, 2021, CBP sent the RFIs to Gogo and Protech Canada via FedEx;¹⁶ both RFIs were delivered on July 7, 2021.¹⁷ Neither Gogo nor Protech Canada responded to the RFIs.

Finally, on August 5, 2021, CBP contacted Gogo once more concerning the availability of the administrative record.¹⁸ Gogo did not respond to CBP's email or otherwise contact CBP.

No parties to the investigation submitted written arguments.

Analysis as to Evasion

Under 19 U.S.C. § 1517(c)(1)(A), to reach a determination as to evasion, CBP must "make a determination, based on substantial evidence, with respect to whether such covered merchandise

⁹ See CBP August 30, 2021, Memorandum at Attachments 2 and 3, respectively (emails to Gogo following up on CBP's May 19, 2021, email and the corresponding delivery receipts).

¹⁰ See CBP Letter to Gogo, "EAPA 7354 Request for Information" (Jun. 23, 2021); see also CBP August 30, 2021, Memorandum at Attachment 5 (email transmitting the RFI to Gogo and the corresponding delivery receipt).

¹¹ See CBP Letter to Protech Canada, "EAPA 7354 - Request for Information" (Jun. 23, 2021); see also CBP August 30, 2021, Memorandum at Attachment 4 (email transmitting the RFI to Protech Canada and the corresponding delivery receipt).

¹² See CBP August 30, 2021, Memorandum at Attachments 4 and 5.

¹³ *Id.* at Attachment 6 (email to Gogo's broker asking it to forward the NOI and Gogo RFI to Gogo).

¹⁴ *Id.* at Attachment 7 (email from Gogo's broker to Gogo forwarding the NOI and Gogo RFI).

¹⁵ *Id.* at Attachment 8 (email forwarding the NOI and Protech Canada RFI to Protech Canada at the email address used by Gogo's broker and the corresponding delivery receipt).

¹⁶ *Id.* at Attachment 9 (notifications showing shipment by FedEx of the RFIs to Gogo and Protech Canada).

¹⁷ *Id.* at Attachment 10 (notifications showing delivery by FedEx of the RFIs to Gogo and Protech Canada).

¹⁸ See CBP Email, "EAPA 7354 Administrative Record" (Aug. 5, 2021).

entered into the customs territory of the United States through evasion.”¹⁹ “Covered merchandise” is defined as “merchandise that is subject to a CVD order... and/or an AD order.”²⁰ “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.”²¹

Substantial evidence on the record of this investigation supports a determination that Gogo entered covered merchandise into the United States through evasion, resulting in the avoidance of applicable AD deposits or other security. As explained in the NOI, DSMC submitted a declaration from the [*title*] of [*company*], a [*country*] producer of diamond sawblades, noting the massive inventory of Chinese diamond sawblades [*verb*] by [*person(s)*] at Protech Canada; the absence of diamond core or diamond segment production equipment at Protech Canada; the large inventory of diamond sawblades at Protech Diamond USA/Protech Diamond Tools USA (Protech USA); and statements by [*company's*] customers that Protech Canada and Protech USA are selling Chinese diamond sawblades in the United States as products of Canada.²² DSMC also provided information from a supplemental questionnaire response filed by Protech Canada in a Commerce proceeding noting that the equipment at Protech Canada’s facility included a brazing machine, a laser welder machine, and other machines used in painting and/or etching diamond sawblades, and that Protech Canada attaches Chinese-made segments to Chinese-made steel cores to produce finished diamond sawblades.²³

Additionally, as discussed in the NOI, Gogo’s responses to CBP Form 28 (CF-28) requests for information included documentation showing that the merchandise Gogo imported into the United States consisted of diamond sawblades that were assembled at Protech Canada’s facility in Canada using Chinese-origin segments and Chinese-origin cores.²⁴ In particular, both of Gogo’s CF-28 responses contained documentation demonstrating that Protech Canada had sourced steel cores and diamond segments from [*company*

¹⁹ See also 19 C.F.R. § 165.27(a) (implementing 19 U.S.C. § 1517).

²⁰ See 19 C.F.R. § 165.1.

²¹ *Id.*

²² See NOI at 2-4 (citing Letter from DSMC, “Diamond Sawblades and Parts Thereof from the People’s Republic of China: Request for an Investigation under the Enforce and Protect Act” (Jul. 11, 2019) (Allegation) at 6-7 and Exhibit 4 (Declaration of [*name, title*] of [*company*]).

²³ *Id.* at 2-3 (citing Allegation at 6, 9 and Exhibit 1 (excerpts from Protech Canada’s June 13, 2019, supplemental questionnaire response in Commerce’s anti-circumvention inquiry on Chinese cores and segments joined into diamond sawblades in Canada by Protech Canada, at 4-5 and 15-16)).

²⁴ *Id.* at 4-5 (citing CF-28s issued to Gogo for entry numbers [#]1803 (Jul. 2, 2019) and [#]8001 (Oct. 10, 2019) and Gogo CF-28 Responses for entry numbers [#]1803 (Aug. 12, 2019) (CF-28 Response for entry [#]1803) and [#]8001 (Oct. 31, 2019) (CF-28 Response for entry [#]8001)).

], located in [*place*], China.²⁵ Gogo’s CF-28 responses also indicated that Protech Canada’s production process begins with diamond segments and blank steel cores.²⁶

The scope of the AD order on diamond sawblades from China states that “semi-finished diamond sawblades, including diamond sawblade cores and diamond sawblade segments” are subject to the order.²⁷ Although semi-finished diamond sawblades are subject to the AD order, CBP could not determine whether the merchandise at issue in this EAPA investigation is covered merchandise. Therefore, as explained in the NOI, CBP submitted a covered merchandise referral request to Commerce.²⁸ In its determination, Commerce informed CBP that diamond sawblades assembled in Canada by Protech Canada by joining Chinese cores and Chinese segments are covered merchandise, while diamond sawblades joined in Canada by Protech Canada from either non-Chinese segments or non-Chinese cores are not covered merchandise.²⁹ Commerce also noted that Protech Canada and Gogo are affiliated.³⁰

Further, as discussed in the NOI, CBP considered information in a letter submitted by Gogo in response to a Notice of Action (CF-29) that CBP issued to Gogo.³¹ In that letter, Gogo stated that [#] of the [#] entries of diamond sawblades at issue in the CF-29 consisted, at least in part, of diamond sawblades assembled from Chinese-origin cores and Chinese-origin segments and that it would [*action*].³²

Finally, as noted above, Gogo and Protech Canada did not respond to the RFIs issued by CBP. Therefore, neither Gogo nor Protech Canada provided any evidence that the diamond sawblades imported by Gogo from Protech Canada into the United States were not covered merchandise.

Based on the record of this investigation, CBP determines that there is substantial evidence demonstrating that Gogo entered covered merchandise into the United States through evasion. As discussed above, the Alleger provided a declaration from the [*title*] of [*company*], a [*country*] producer of diamond sawblades, attesting to the lack of diamond core or diamond sawblade production equipment at Protech Canada, large inventories of diamond sawblades at Protech Canada and Protech USA, and statements by [*company*] customers that

²⁵ *Id.* at 5 (citing CF-28 Response for entry [#]1803 at 10-19 and 57-58 and CF-28 Response for entry [#]8001 at 12-35 and 61-78). In the NOI, CBP inadvertently referred to this company as [*incorrect name*].

²⁶ *Id.* (citing CF-28 Response for entry [#]1803 at 20-37 and CF-28 Response for entry [#]8001 at 38-55).

²⁷ See *AD Order*, 74 Fed. Reg. at 57,145.

²⁸ See NOI at 5-6 (citing Covered Merchandise Referral Request).

²⁹ *Id.* at 6 (citing Covered Merchandise Referral Transmission at Attachment 1 (Commerce Memorandum, “Diamond Sawblades and Parts Thereof from the People’s Republic of China: Notification of the Final Scope Determination and Response to Covered Merchandise Referral” (Apr. 27, 2021)), pages 2-3). Additionally, Commerce informed CBP that diamond sawblades made by joining Chinese cores and non-Chinese segments are not eligible for certification, and therefore are subject to cash deposits and suspension of liquidation, and that diamond sawblades made by joining non-Chinese cores and Chinese segments are eligible for certification. *Id.*

³⁰ *Id.* (citing Covered Merchandise Referral Transmission at Attachment 2 (Commerce Memorandum, “Antidumping Duty Order on Diamond Sawblades and Parts Thereof from the People’s Republic of China, Enforcement and Protect Act (EAPA) Investigation No. 7354: Final Scope Ruling” (Apr. 27, 2021)), page 3).

³¹ *Id.* at 7 (citing Letter from Gogo, “Gogo International, Inc. Response to February 10, 2020, Notice of Proposed Action” (Mar. 30, 2020) (Gogo March 30, 2020, Letter)).

³² *Id.* (citing Gogo March 30, 2020, Letter at 2-3).

Protech Canada and Protech USA are selling Chinese diamond sawblades in the United States as products of Canada. The Alleger also submitted portions of a supplemental questionnaire response from a Commerce proceeding in which Protech Canada stated that it attaches Chinese-made segments to Chinese-made cores to produce finished diamond sawblades. Moreover, in its CF-28 responses, Gogo submitted documentation showing that Protech Canada purchased steel cores and diamond segments from a Chinese supplier and that Protech Canada's diamond sawblade production process commences with steel cores and diamond segments. Finally, in a letter submitted to CBP in response to a CF-29 regarding [#] entries of diamond sawblades that Gogo imported into the United States, Gogo acknowledged that [#] of those entries consisted, at least to some extent, of diamond sawblades made from Chinese-origin cores and Chinese-origin segments. Pursuant to Commerce's determination in the covered merchandise referral, diamond sawblades assembled in Canada by Protech Canada by joining Chinese cores and Chinese segments are covered merchandise subject to AD order A-570-900. Accordingly, CBP determines that substantial evidence exists that all of Gogo's imports of diamond sawblades from Protech Canada during the period of investigation entered the United States through evasion, because no AD duties were paid at the time of entry on the diamond sawblades, which are subject to the China-wide entity rate for the *AD Order*.

Actions Taken Pursuant to the Affirmative Determination as to Evasion

In light of CBP's determination that Gogo entered merchandise into the customs territory of the United States through evasion, and pursuant to 19 U.S.C. § 1517(d) and 19 C.F.R. § 165.28, CBP will suspend or continue to suspend the liquidation for all entries imported by Gogo that are subject to EAPA investigation 7354 until instructed to liquidate these entries. For those entries previously extended in accordance with the interim measures, CBP will rate adjust and change those entries to type 03 and continue suspension until instructed to liquidate those entries. CBP will also evaluate Gogo's continuous bonds in accordance with CBP's policies and may require single transaction bonds as appropriate. None of the above actions precludes CBP or other agencies from pursuing additional enforcement actions or penalties.

Sincerely,



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