



U.S. Customs and
Border Protection

PUBLIC VERSION

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Re: Notice of Initiation of Investigation and Interim Measures - EAPA Case 7550

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), against Kingtom Aluminio SRL (Kingtom). CBP is investigating whether Kingtom 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 Kingtom entered covered merchandise into the customs territory of the United States through evasion, CBP has imposed interim measures.²

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

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.

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

allegation against Kingtom on January 8, 2021.⁴ The entries covered by this investigation are those entered for consumption, or withdrawn from warehouse for consumption, from January 8, 2020, through the pendency of this investigation.⁵

Initiation

On February 2, 2021, 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 the Aluminum Extrusions Fair Trade Committee (AEFTC or *Alleger*)⁶ concerning the evasion of antidumping duties by Kingtom.⁷ In the allegation, the AEFTC asserts that Kingtom evaded the Orders by importing Chinese-origin aluminum extrusions into the United States that were transshipped through the Dominican Republic.⁸ The *Alleger* contends that Kingtom has neither the capability to produce the types of extrusions it is exporting to the United States, nor the capacity to produce the volume of extrusions it is shipping, and is therefore, at least in part, transshipping the subject merchandise to the United States by incorrectly identifying the merchandise as a product of the Dominican Republic, thereby evading AD/CVD duties on aluminum extrusions from China.⁹

The AEFTC submitted evidence reasonably available to it in order to substantiate its allegation that Kingtom engaged in evasion of AD/CVD duties. The AEFTC states that at the time of filing Kingtom was subject to two EAPA investigations involving aluminum extrusions from the Dominican Republic to the United States, *i.e.*, EAPA Consolidated (Cons.) Case 7348 and EAPA Cons. Case 7423.¹⁰ The AEFTC claims that since those cases have been filed with CBP,

⁴ See email "EAPA 7550 - Receipt of Kingtom Alumino SRL," dated January 8, 2021.

⁵ See 19 CFR 165.2.

⁶ The individual members of the AEFTC are as follows: Aerolite Extrusion Company; Alexandria Extrusion Company; William L. Bonnell Company, Inc. ("Bonnell"); Frontier Aluminum Corporation; Futura Industries Corporation ("Futura"); Extrusion North America at Hydro ("Hydro"); Kaiser Aluminum Corporation; Profile Extrusion Company; and Western Extrusions Corporation. The AEFTC notes that while Futura remains a member of the AEFTC, Bonnell acquired Futura in early 2017, and Futura is now a wholly owned subsidiary of Bonnell. In addition, in October 2017, Norsk Hydro ASA acquired Orkla ASA's 50 percent ownership in Sapa AS, giving Norsk Hydro ASA full ownership of Sapa AS. Sapa AS changed its name to Hydro Extruded Solutions AS and is now a business unit within Norsk Hydro ASA called Extruded Solutions. Further, Benada Aluminum of Florida, Inc. was an original member of the petitioning AEFTC but has left the Aluminum Extruders Council and is no longer a member of the AEFTC.

The AEFTC is a committee of domestic producers of aluminum extrusions and qualifies as an interested party under 19 CFR 165.1(4), as a "trade or business association a majority of the members of which manufacture, produce, or wholesale a domestic like product in the United States." In addition, the individual members of the AEFTC are U.S. producers of domestic aluminum extrusions and are interested parties pursuant to 19 CFR 165.1(2). Accordingly, the AEFTC is authorized to file this request under 19 CFR 165.11(a).

⁷ See CBP Memorandum, "Initiation of Investigation for EAPA Case Number 7550 – Kingtom Alumino SRL," dated February 2, 2021 (Kingtom Initiation).

⁸ See Letter from the AEFTC, "Aluminum Extrusions from the People's Republic of China: Request for an Investigation under the Enforce and Protect Act," dated October 5, 2020 (Allegation).

⁹ *Id.*

¹⁰ *Id.*, at 6 and Exhibits 2-3.

Kingtom has begun acting as the importer of record for shipments to the United States¹¹ The AEFTC provided import data and other sources showing that former Kingtom clients are no longer listed as importers but are now listed as consignees and notify parties for shipments of aluminum extrusions from the Dominican Republic.¹² Therefore, the information reasonably available to the AEFTC supports its allegation that Kingtom is acting as its own importer of record for its shipments.¹³

Furthermore, the Allegor asserts that Kingtom appears to have neither the capacity to produce the types of extrusions it is exporting to the United States, nor the capacity to produce the volume of extrusions it is shipping; therefore, Kingtom must, at least in part, be transshipping subject Chinese-origin aluminum extrusions to the United States and falsely declaring the merchandise as a product of the Dominican Republic.¹⁴ The AEFTC submitted reasonably available evidence to substantiate the Allegation against Kingtom. First, the AEFTC submitted an affidavit from [NAME], which reflects [TIME] experience and knowledge of the aluminum extrusion industry [LOCATION].¹⁵ In the affidavit, [NAME] indicated that [DESCRIPTION]. Upon inspection of Kingtom's infrastructure, [NAME] observed that, at the time of [NAME] visit [DATE], Kingtom's cast house, where primary aluminum and scrap would be remelted and cast into billets for pressing, was not running.¹⁶ Further, [NAME] observed that Kingtom did not have the appropriate extrusion presses running to produce the sizes of aluminum profiles it was later exporting to the United States. Specifically, [NAME] noted that Kingtom had only three extrusion presses, of which only two were running, and 3 cast house tables capable of producing billets for 4-, 5-, and 6-inch extrusion presses. Accordingly, at the time of [NAME] visit, Kingtom did not have an active cast house, and its limited line of extrusion presses were capable only of producing small aluminum profiles, up to 4.5 inches in diameter.¹⁷

[NAME] explains that extrusion presses are capable of producing extrusion profiles that are approximately 1.5 inches smaller than the diameter of the press. Therefore, Kingtom's largest press, viewed by [NAME AND TIME] would be capable of extruding 4.5 inch diameter profiles.¹⁸ However, [NAME] provided [INFORMATION] that indicate that Kingtom is selling profiles [NAME] that are 7 inches in diameter.¹⁹ As such, Kingtom would need a 9-inch, or larger, press to produce this item.

¹¹ *Id.*, at 6-7.

¹² *Id.*, at 6-9 and Exhibits 4-7.

¹³ *Id.*, at 8-9.

¹⁴ *Id.*, at 10 and Exhibits 7, 12, and 13.

¹⁵ *Id.*, at Exhibit 12.

¹⁶ *Id.*, at 15 and Exhibit 12.

¹⁷ *Id.*, at 16 and Exhibit 12.

¹⁸ *Id.*, at 16-17 and Exhibit 12.

¹⁹ *Id.*, at 17 and Exhibit 12.

The quantity and sizes of Kingtom's extrusion presses are corroborated in an affidavit submitted by [NAME], an aluminum extruder with facilities in [LOCATION].²⁰ [NAME] is a member of the Aluminum Extruders Council and has been manufacturing since [DATE].²¹ [NAME] has more than [#] years of experience in the aluminum extrusion industry, thus accrediting [NAME] expertise in the industry.²² [NAME and DATE] visited Kingtom's facility and identified 7 extrusion presses, the largest being an 8-inch press, which was not running at the time of the visit. [NAME] indicated that only Kingtom's 4-inch and 5-inch pressed appeared to be running.²³ As noted above, even if Kingtom's 8-inch press had been active at the time of [NAME and DATE], it would still not be large enough to produce the 7-inch profiles Kingtom sold [NAME and DATE].

Further, [NAMES] indicated that, at the time of their respective visits, Kingtom appeared to lack the paint lines required to paint the products it was exporting.²⁴ As of [DATE] Kingtom had one vertical paint line running with the capability to paint 20-25 foot length profiles.²⁵ According to [NAMES], to serve the Florida market with exports of aluminum extrusions for the production of patio enclosures, for which Kingtom was in the market and exporting such materials, Kingtom would require a paint line capable of painting profiles up to 40 feet in length.²⁶

Regarding Kingtom's overall production capacity, both [NAME] attest to Kingtom's limited number of presses and the activity of those presses during their respective visits. Specifically, [NAME] indicates, based on [NAME] experience and at the time of [NAME] [DATE] visits, Kingtom possessed the capacity to ship approximately 280,000 pounds of extrusions per press per month.²⁷ This calculation is based on several factors, including the limited number and sizes of active press, standard maintenance downtime, the rate of scrap that is produced from extruding the aluminum through the presses, plus downstream scrap, which reduces the total extrusion output quantity.²⁸ However, according to the Allegation, in May 2018, Kingtom shipped over 670,000 pounds of profiles.²⁹ This is approximately [#] percent beyond [NAME] calculated maximum output for Kingtom during this period. [NAME] further indicates that Kingtom is currently selling approximately 1 million pounds of profiles per month to the Puerto Rican market alone.³⁰ Again, even with Kingtom's later additional presses viewed during [NAME and DATE], Kingtom would not be reasonably expected to produce this quantity given the limited number of total presses, much

²⁰ *Id.*, at 17-18 and Exhibit 13.

²¹ *Id.*, at Exhibit 13.

²² *Id.*, at Exhibit 13.

²³ *Id.*, at 17-18 and Exhibit 13.

²⁴ *Id.*, at Exhibits 12 and 13.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*, at 23 and Exhibit 12.

²⁸ *Id.*, at 21 and Exhibit 12.

²⁹ *Id.*

³⁰ *Id.*, at 22 and Exhibit 14.

less the presses that were active at Kingtom's facility during [NAME] visit. Further, in the [DATE] period from [DATES], Kingtom's two active presses could produce approximately [#] pounds of extrusions per month.³¹ During that time span, however, Kingtom exported 5,319,211 pounds of extrusions,³² approximately [#] percent beyond Kingtom's calculated capacity.

The Allegation also calls into question Kingtom's production capacity based on available raw materials. Because there is no primary aluminum production in the Dominican Republic and there is also very little scrap aluminum in the Dominican Republic, both inputs must be imported.³³ The evidence indicates that Kingtom has been exporting a significantly greater volume of extrusions than it could have produced even assuming that Kingtom was consuming all of the imports of primary aluminum and scrap into the Dominican Republic.³⁴

The typical proportions of the "charge" required to produce a billet in a cast house are approximately 69 percent scrap aluminum, 30 percent primary aluminum, and 1 percent additional alloying elements.³⁵ To produce about 500,000 pounds worth of extruded aluminum profiles, you would need about 600,000 pounds of billets.³⁶ This means that there is almost a 17 percent scrap loss rate in the production of extrusions from billets.

According to [NAME] data submitted in the Allegation, Kingtom exported approximately 1,897,624 pounds of extruded aluminum products to the United States in the second quarter of 2018, *i.e.*, its first quarter of operation. According to [NAME] declaration, Kingtom must have been importing raw materials in preparation to begin production well before operations started.³⁷ Based on the ratios discussed above, it would take approximately 2,277,149 pounds of billet (which would require 1,571,233 pounds of scrap aluminum and 683,145 pounds of primary aluminum) to produce the quantity of extrusions that Kingtom exported during that timeframe. However, based on ComTrade import statistics from the first quarter of 2018, the entirety of the Dominican Republic imported only approximately 730,402 pounds of scrap aluminum and 647,118 pounds of primary aluminum in that timeframe.³⁸

Finally, the Allegation offers evidence that scrutinizes Kingtom's pricing structure, indicating that Kingtom is selling its merchandise at below market value, giving further indication that Kingtom is importing and transshipping Chinese-origin aluminum extrusions. As support, the AEFTC provides a cost model analysis of products similar to those that Kingtom appears to have

³¹ *Id.*, at 23 and Exhibit 14.

³² *Id.*, at 23 and Exhibit 4, showing public import data from [NAME].

³³ *Id.*, at 25 and Exhibit 12.

³⁴ *Id.*, at 26-27.

³⁵ *Id.*, at 25 and Exhibit 12.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*, at Exhibit 15. Data in kilograms are adjusted to pounds by a rate of 1 kilogram to 2.20462 pounds. These calculations are based on import statistics into the Dominican Republic in the first quarter of 2018 for primary aluminum and scrap aluminum.

sold to the U. S. market.³⁹ The consumption rates in this cost model are based on [**INFORMATION**], which are reflective of extruder rates in the Caribbean region and also uses actual Dominican Republic inputs and costs to calculate what the production cost would be in the Dominican Republic.⁴⁰ In other words, the cost model reflects what it would cost an extruder in the Dominican Republic to produce the extruded aluminum profiles Kingtom is selling. This cost model suggests that Kingtom is selling its products at prices substantially lower than its fully loaded costs by margins ranging from [#] percent.⁴¹ As such, and as articulated in the Allegation, Kingtom’s sales prices are not economically sustainable. Further, this suggests that Kingtom is able to maintain these artificially low prices because it is supplementing its production with transshipped Chinese product, which is also supported by the evidence detailed above.⁴²

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.”⁴³ 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.”⁴⁴ 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 through evasion, but that such entry was made by a material false statement or act, or material omission, which resulted in the reduction or avoidance of applicable AD and/or CVD cash deposits or other security.

In assessing the AEFTC’s claims, including Kingtom’s import and export history, the lack of raw materials, its lack of production during the affiants’ site visits, the lack of ability to paint finished aluminum extrusions, the lack of substantial transformation of extrusions at the factory, and the comparatively low market prices, the Allegation reasonably suggests that Kingtom evaded the *Orders* through the transshipment of Chinese-origin aluminum extrusions through the Dominican Republic. Consequently, TRLED initiated an investigation pursuant to 19 USC 1517(b)(1) and 19 CFR 165.15.⁴⁵

³⁹ *Id.*, at 27-28.

⁴⁰ *Id.*, at 27.

⁴¹ *Id.*, at 28.

⁴² *Id.*

⁴³ See 19 CFR 165.15(b); see also 19 USC 1517(b)(1).

⁴⁴ See 19 CFR 165.1; see also 19 USC 1517(a)(5)(A).

⁴⁵ See 19 CFR 165.11; see also 19 CFR 165.15(2). See Kingtom Initiation.

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. 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 importer entered covered merchandise into the United States through evasion by means of transshipment through the Dominican Republic.⁴⁶

Previous Determinations

CBP may obtain information necessary to carry out its functions and duties related to EAPA and may obtain information from its own files and from other agencies of the U.S. Government pursuant to 19 CFR 165.5. As such, on March 3, 2021, CBP added a memorandum to the administrative record containing two previous EAPA determinations as to evasion related to Kingtom.⁴⁷ In those determinations, CBP found:

- Kingtom officials told U.S. government officials [STATEMENT FROM COMPANY OFFICIALS].⁴⁸
- The evidence on the administrative records showed that Kingtom was a Chinese-owned company, located in the Dominican Republic, run by Chinese workers, using a large number of Chinese supplies, Chinese equipment, and Chinese raw materials, which allowed for potential transshipment or comingling of Chinese aluminum extrusions.⁴⁹
- There were numerous discrepancies with Kingtom’s production records and the capabilities of its press machines, which cast doubt on its ability to manufacture the extrusions it reportedly produced and exported to the United States.⁵⁰
- Evidence on the record showed that Kingtom had a number of months during the POI where its total sales volume exceeded its theoretical production volume.⁵¹
- There were contradictory observations from site visits, leaving CBP unable to determine with certainty: 1) Kingtom’s production capacity based on available raw materials; 2) Kingtom’s usual operation production schedule (Kingtom and Importers claimed Kingtom operated at a high level of production capacity, *i.e.* [DESCRIPTION], when they visited, even though when the aluminum extrusions experts and USG officials visited, they

⁴⁶ See 19 CFR 165.24(a).

⁴⁷ See Memorandum to the File “Previous EAPA Determinations,” dated March 3, 2021.

⁴⁸ *Id.*, at Attachment 1 at 4-5 and Attachment 2 at 6-7.

⁴⁹ *Id.*, at Attachment 1 at 5-6 and Attachment 2 at 6-7.

⁵⁰ *Id.*, at Attachment 2 at 8-10.

⁵¹ *Id.*, at Attachment 1 at 12-13 and Attachment 2 at 10-12.

found [DESCRIPTION] production.); and 3) Kingtom’s production capabilities, regarding the diameter of the aluminum extrusions that Kingtom was able to produce.⁵²

Overall, Kingtom’s submissions were highly inaccurate and riddled with contradictions that cast the reliability of all its submissions in doubt—even suggesting possible fraud. As a result, the case records provided substantial evidence that Kingtom was unable to produce all of the aluminum extrusions it reported. As such, CBP determined twice that Kingtom’s imports into the United States were evading the *Orders* by transshipment.

Enactment of Interim Measures

Based on the record evidence—the two past EAPA determinations as to evasion combined and evaluated in comparison with the evidence in the Allegation—CBP has determined that reasonable suspicion exists that the aluminum extrusions produced by Kingtom and entered into the customs territory of the United States by Kingtom are, at least in part, transshipped from China, and thus, are evading the *Orders* on aluminum extrusions from China. Therefore, TRLED is imposing interim measures pursuant to this investigation.⁵³ 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 February 2, 2021, 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; 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.⁵⁴

In addition, CBP will require live entry and reject any non-compliant entry summaries, as well as require re-filing of entries that are within the entry summary rejection period. CBP will also evaluate Kingtom’s continuous bonds to determine 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 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.⁵⁵

⁵² *Id.*, at Attachment 1 at 8-11 and Attachment 2 at 12-13.

⁵³ See 19 USC 1517(e); *see also* 19 CFR 165.24.

⁵⁴ *See also* 19 CFR 165.24.

⁵⁵ See 19 CFR 165.4; *see also* 19 CFR 165.23(c) and 19 CFR 165.26.

Should you have any questions regarding this investigation, you may contact us at eapallegations@cbp.dhs.gov with “EAPA Case 7550” 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,

A handwritten signature in black ink, appearing to read "Brian M. Hoxie". The signature is fluid and cursive, with the first name being the most prominent.

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