



**PUBLIC VERSION**

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[  
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RE: Notice of Initiation of Investigation and Interim Measures – EAPA Case 7354

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To Counsel and Representatives of the Above-Referenced Entities:

This purpose of this notice 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 importer Gogo International, Inc. (Gogo). CBP is investigating whether Gogo evaded antidumping (AD) order A-570-900 on diamond sawblades and parts thereof (diamond sawblades) from the People's Republic of China (China)<sup>1</sup> when importing diamond sawblades into the United States. CBP has imposed interim measures on Gogo because evidence supports a reasonable suspicion that Gogo entered merchandise covered by the AD order into the customs territory of the United States by means of evasion.<sup>2</sup>

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<sup>1</sup> 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*).

<sup>2</sup> See 19 USC 1517(e); see also 19 CFR 165.24.

## **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.”<sup>3</sup> CBP acknowledged receipt of the properly filed allegation against Gogo on August 20, 2019.<sup>4</sup> Thus, the entries covered by this EAPA investigation are those entered for consumption, or withdrawn from warehouse for consumption, from August 20, 2018 through the pendency of this investigation.

## **Initiation**

On September 11, 2019, the Trade Remedy Law Enforcement Directorate (TRLED) within CBP’s Office of Trade initiated an investigation under EAPA<sup>5</sup> as a result of the allegation submitted by the Diamond Sawblades Manufacturers’ Coalition (DSMC), an *ad hoc* coalition of producers of diamond sawblades in the United States, regarding the evasion of AD duties by Gogo.<sup>6</sup> In its allegation, DSMC asserted that Gogo, which is located in Canada, is evading AD order A-570-900 by transshipping Chinese-origin diamond sawblades in two ways. First, DSMC alleged that Gogo acts as the importer of record for Chinese-origin diamond sawblades that are wholly manufactured in China, transshipped through Canada, and presented as Canadian-origin goods upon importation into the United States. Second, DSMC claimed that an affiliate of Gogo, Protech Diamond Tools Inc. (Protech Canada), attaches Chinese-origin segments and Chinese-origin cores to assemble diamond sawblades in Canada, which Gogo then imports into the United States.<sup>7</sup>

To support its allegation, DSMC submitted a declaration from [ ], a [ ] producer of diamond sawblades. According to the declarant, [ ] the Protech Canada facility in Calgary, Canada described a inventory of Chinese diamond sawblades.<sup>8</sup> Based on firsthand information from [ ], the Protech Canada facility does not have any diamond core or diamond segment production equipment.<sup>9</sup>

DSMC also claimed that Protech Canada admitted that the only equipment on site at Protech Canada is a brazing machine, a laser welder machine, and other machines used in painting and/or etching diamond sawblades.<sup>10</sup> DSMC argued that no diamond sawblade manufacturing occurs at

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<sup>3</sup> See 19 USC 1517(a)(4); see also 19 CFR 165.1.

<sup>4</sup> See CBP Email, “Receipt of Properly Filed Allegation/EAPA 7354” (Aug. 20, 2019).

<sup>5</sup> See CBP Memorandum, “Initiation of Investigation for EAPA Case Number 7354 – Gogo International, Inc” (Sep. 11, 2019).

<sup>6</sup> See 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).

<sup>7</sup> See Allegation at 4.

<sup>8</sup> *Id.* at 6 and Exhibit 4 (Declaration of [ ]).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 6, citing Protech Canada’s June 13, 2019 supplemental questionnaire response in the Department of Commerce’s anti-circumvention inquiry on Chinese cores and segments joined into finished diamond sawblades in Canada by Protech Canada (excerpts attached at Exhibit 1 of Allegation), at pages 15-16.

Protech Canada; instead, the facility contains only a brazing machine that can be used for re-tipping blades, but is not capable of producing the diamond sawblade inventory that [ ] described.<sup>11</sup>

DSMC also asserted that [ ] the Protech Diamond USA/Protech Diamond Tools USA (Protech USA) facility indicated that it has a large inventory of diamond sawblades.<sup>12</sup> DSMC alleged that the Protech USA facility does not manufacture diamond segments or diamond cores and does not have a laser welding operation, yet Protech USA is selling its products as if they were made in Canada.<sup>13</sup> DSMC argued that Protech Canada also reported that Gogo sells “made in Canada” diamond sawblades to Protech USA and that Gogo imports these products into the United States.<sup>14</sup>

Regarding the claim that Gogo transships diamond sawblades wholly manufactured in China through Canada, DSMC alleged that Protech Canada only began joining Chinese segments and cores in May 2018, and that Protech Canada only has four employees.<sup>15</sup> Given the large inventories of Chinese diamond sawblades that [ ] at Protech Canada, the absence of diamond core or diamond segment production equipment at Protech Canada, the large inventory of diamond sawblades at Protech USA, and statements by [ ] customers that Protech USA is selling Chinese product as “made in Canada,” DSMC alleged that reasonably available information suggests that Gogo, as importer of record, has evaded the AD order on Chinese diamond sawblades by transshipping such merchandise through Canada in a deliberate attempt to escape payment of AD duties.<sup>16</sup>

With respect to the allegation that Gogo is evading the AD order by importing into the United States Chinese-origin diamond sawblades that undergo minor processing in Canada, DSMC asserted that Protech Canada reported that it attaches Chinese-made segments to Chinese-made steel cores, and based on firsthand information from [ ], Protech Canada does not have core or segment facilities.<sup>17</sup> Therefore, DSMC argued, the Chinese-origin cores and Chinese-origin segments are simply joined at the Canadian facility and the simple process of attaching parts together does not make the diamond sawblades Canadian in origin.<sup>18</sup>

### *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.”<sup>19</sup> 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

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<sup>11</sup> *Id.* at 6 and Exhibit 4.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 6-7 and Exhibit 4.

<sup>14</sup> *Id.* at 7 and Exhibit 1, pages 5 and 23.

<sup>15</sup> *Id.* at 8 and Exhibit 1, pages 15 and 31.

<sup>16</sup> *Id.* at 8.

<sup>17</sup> *Id.* at 8-9, Exhibit 1, pages 4-5, and Exhibit 4.

<sup>18</sup> *Id.* at 9.

<sup>19</sup> See 19 CFR 165.15(b); see also 19 USC 1517(b)(1).

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.”<sup>20</sup> Thus, the allegation must reasonably suggest not only that the importer alleged to be evading entered merchandise subject to an AD and/or CVD order into the United States, 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 assessing the claims made and evidence provided in the allegation, TRLED found that the allegation reasonably suggested that Gogo entered merchandise covered by AD order A-570-900 into the customs territory of the United States through evasion. Specifically, the declaration from [ ] regarding the large inventories of Chinese diamond sawblades that were [ ] at Protech Canada, the absence of Canadian production operational resources, the large inventory of diamond sawblades at Protech USA, statements by [ ] customers that Protech USA is selling Chinese product as “made in Canada,” and Gogo’s importation of these products into the United States indicate possible evasion.

For the reasons previously set forth, TRLED initiated an investigation under the authority of 19 USC 1517(b)(1) on Gogo’s imports of diamond sawblades that are alleged to be entered for consumption into the customs territory of the United States through evasion.<sup>21</sup>

### **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 an AD or CVD order was entered into the United States through evasion. CBP need only have sufficient evidence to support a reasonable suspicion that the importer alleged to be evading entered merchandise covered by an AD or CVD order into the United States by a material false statement or act, or material omission, that resulted in the reduction or avoidance of applicable AD or CVD cash deposits or other security. 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 reasonable suspicion that Gogo entered covered merchandise into the United States through evasion by means of transshipment.<sup>22</sup>

### *CF-28 Responses*

On October 10, 2019, CBP issued a CBP Form 28 (CF-28) request for information to Gogo for entry number [ ]8001 dated [ ].<sup>23</sup> CBP requested that Gogo provide the purchase order, commercial invoice, bill of lading, and payment information for the imported merchandise, as well as full production records (raw material invoices, processing records, *etc.*),

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<sup>20</sup> See 19 CFR 165.1; *see also* 19 USC 1517(a)(5)(A).

<sup>21</sup> *See also* 19 CFR 165.15.

<sup>22</sup> *See* 19 CFR 165.24(a).

<sup>23</sup> *See* CF-28 issued to Gogo for entry number [ ]8001 (Oct. 10, 2019).

a factory profile, and a description of the production equipment, among other information. Gogo submitted its CF-28 response to CBP on October 31, 2019.<sup>24</sup>

In addition, CBP reviewed Gogo's response to a CF-28 that was issued prior to initiation of the EAPA investigation for an entry made during the period of investigation. Specifically, CBP reviewed Gogo's August 12, 2019 response to the CF-28 issued on July 2, 2019 for entry number [ ]1803.<sup>25</sup> The CF-28 for this entry requested nearly all the same information as the CF-28 for entry number [ ]8001.

The documentation provided in both CF-28 responses showed 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. In particular, both of Gogo's CF-28 responses contained documentation demonstrating that Protech Canada had sourced steel cores and diamond segments from [ ], located in [ ], China.<sup>26</sup> Additionally, Gogo's CF-28 responses indicated that Protech Canada's production process [ ].<sup>27</sup>

#### *Covered Merchandise Referral*

Section 517(b)(4)(A) of the Tariff Act of 1930, as amended (the Act) states that “{i}f the {CBP} Commissioner receives an allegation... and is unable to determine whether the merchandise at issue is covered merchandise, the Commissioner shall—(i) refer the matter to the administering authority to determine whether the merchandise is covered merchandise pursuant to the authority of the administering authority under title VII.”<sup>28</sup> Section 517(a)(3) of the Act defines “covered merchandise” as “merchandise that is subject to (A) an antidumping duty order issued under section {736 of the Act} or (B) a countervailing duty order issued under section {706 of the Act}.”

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.<sup>29</sup> 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. Thus, CBP submitted a request for a covered merchandise referral to the

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<sup>24</sup> See Gogo CF-28 Response for entry number [ ]8001 (Oct. 31, 2019).

<sup>25</sup> See CF-28 issued to Gogo for entry number [ ]1803 (Jul. 2, 2019) and Gogo CF-28 Response for entry number [ ]1803 (Aug. 12, 2019).

<sup>26</sup> See Gogo CF-28 Response for entry number [ ]1803 (Aug. 12, 2019) (Production Records and Raw Material Origins; Bills of Lading for [ ]) and Gogo CF-28 Response for entry number [ ]8001 (Oct. 31, 2019) (Production Records and Raw Materials Origins; Canada Import Documents from China).

<sup>27</sup> See Gogo CF-28 Response for entry number [ ]1803 (Aug. 12, 2019) and Gogo CF-28 Response for entry number [ ]8001 (Oct. 31, 2019) (Factory Profile and Equipment).

<sup>28</sup> See also 19 CFR 165.16(a), which states that a “referral is required if at any point after receipt of an allegation, CBP cannot determine whether the merchandise described in an allegation is properly within the scope of an antidumping or countervailing duty order.”

<sup>29</sup> See *AD Order*, 74 Fed. Reg. at 57,145.

Department of Commerce (Commerce) on December 17, 2019.<sup>30</sup> Specifically, CBP requested that Commerce determine whether diamond sawblades assembled in Canada using diamond sawblade cores and diamond sawblade segments in the following three scenarios are covered merchandise subject to the *AD Order*:

Scenario 1: Core and segments both sourced from China; joined in Canada.

Scenario 2: Core sourced from China and segments not sourced from China; joined in Canada.

Scenario 3: Segments sourced from China and core not sourced from China; joined in Canada.

As a result of the covered merchandise referral, the deadlines in this EAPA investigation were stayed pending Commerce's issuance of a determination.<sup>31</sup> On April 28, 2021, Commerce transmitted the results of its determination to CBP,<sup>32</sup> and indicated that its determination was based on the final determination in its anti-circumvention proceeding for Protech Canada; the final results of its changed circumstances review for Protech Canada; and its final scope ruling on diamond sawblades from China in this EAPA investigation.<sup>33</sup> Commerce informed CBP that diamond sawblades assembled in Canada by Protech Canada by joining Chinese cores and Chinese segments (scenario 1) are covered merchandise (*i.e.*, subject to the AD order), while diamond sawblades joined in Canada by Protech Canada from either non-Chinese segments or non-Chinese cores (scenarios 2 and 3) are not covered merchandise.<sup>34</sup> Further, in the final results of Commerce's changed circumstances review for Protech Canada, which Commerce relied upon in making its determination in the covered merchandise referral, Commerce found that Protech Canada and Gogo are affiliated.<sup>35</sup>

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<sup>30</sup> 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). CBP submitted an initial request to Commerce for a covered merchandise referral in this EAPA investigation on November 26, 2019.

<sup>31</sup> See 19 CFR 165.16(d).

<sup>32</sup> See Letter from Commerce, "Covered Merchandise Referral Regarding EAPA Investigation No. 7354" (Apr. 28, 2021) (Covered Merchandise Referral Transmission).

<sup>33</sup> See Covered Merchandise Referral Transmission at Attachment 1 (Memorandum from Commerce, "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) (Notification Memorandum), citing *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Determination of Anti-Circumvention Inquiry*, 85 Fed. Reg. 9,737 (Dep't Commerce Feb. 20, 2020); *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review*, 85 Fed. Reg. 86,905 (Dep't Commerce Dec. 31, 2020) (*Protech CCR Final*); and 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) (Final Scope Ruling)).

<sup>34</sup> See Covered Merchandise Referral Transmission at Attachment 1 (Notification Memorandum), pages 2-3. In addition, Commerce determined that products under scenario 2 are not eligible for certification, and therefore, are subject to cash deposits and suspension of liquidation, and products under scenario 3 are not covered merchandise and are eligible for certification. *Id.* at 3.

<sup>35</sup> See Covered Merchandise Referral Transmission at Attachment 2 (Final Scope Ruling), page 3, citing *Protech CCR Final*, 85 Fed. Reg. at 86,905.

### *Other Record Evidence*

Separate from the EAPA investigation, counsel for Gogo submitted a letter on March 30, 2020<sup>36</sup> in response to a Notice of Action (CF-29) that CBP issued to Gogo.<sup>37</sup> In this letter, Gogo informed CBP 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 [ ].<sup>38</sup>

In conclusion, the record evidence supports a reasonable suspicion that Gogo imported diamond sawblades into the United States that were joined in Canada at Protech Canada's facility from Chinese-origin segments and Chinese-origin cores. Pursuant to Commerce's determination in the covered merchandise referral, such diamond sawblades are covered merchandise subject to the *AD Order*.

### *Enactment of Interim Measures*

Based on the record evidence, CBP determines that reasonable suspicion exists that Gogo imported diamond sawblades into the United States made in Canada by Protech Canada using Chinese-origin cores and Chinese-origin segments that are subject to AD order A-570-900 on diamond sawblades from China. Therefore, CBP is imposing interim measures on Gogo's imports of diamond sawblades into the United States pursuant to this investigation.<sup>39</sup> 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 September 11, 2019, 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 September 11, 2019, 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.<sup>40</sup>

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 Gogo's continuous bonds to determine their sufficiency. Finally, CBP may pursue additional enforcement actions, as provided by law, consistent with 19 USC 1517(h).

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<sup>36</sup> See Letter from Gogo, "Gogo International, Inc. Response to February 10, 2020 Notice of Proposed Action" (Mar. 30, 2020) (Gogo March 30, 2020 Letter).

<sup>37</sup> *Id.* at Attachment 1.

<sup>38</sup> *Id.* at 2-3.

<sup>39</sup> See 19 USC 1517(e); *see also* 19 CFR 165.24.

<sup>40</sup> *See also* 19 CFR 165.24(b)(1)(i-iii).

For future submissions or factual information that you submit to CBP pursuant to this EAPA investigation, please provide a public version with a public summary<sup>41</sup> using the EAPA Case Management System (CMS), found at <https://eapallegations.cbp.gov>. All public versions will be accessible to the parties to the investigation via the CMS. Should you have any questions regarding this investigation, you may contact us at [eapallegations@cbp.dhs.gov](mailto:eapallegations@cbp.dhs.gov) with “EAPA Case 7354” 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/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

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<sup>41</sup> See 19 CFR 165.4; *see also* 19 CFR 165.23(c); *see also* 19 CFR 165.26.