



U.S. Customs and
Border Protection

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EAPA Case 7469: Notice of 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 7469, U.S. Customs and Border Protection (CBP) has determined that there is 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).

I. Background

Texarkana Aluminum, Inc. (referred to hereafter as TKA) filed an EAPA allegation on March 16, 2020 and amended the allegation on May 19, 2020.² CBP acknowledged receipt of the properly filed allegation on June 17, 2020.³ Pursuant to 19 CFR 165.2, entries covered by this investigation are those entered for consumption, or withdrawn from a warehouse for consumption, from June 17, 2019, one year before receipt of the Allegation, through the pendency of the investigation.

On June 30, 2020, CBP initiated an investigation under EAPA as the result of the Allegation

¹ See *Common Alloy Aluminum Sheet from the People's Republic of China: Antidumping Duty Order*, 84 FR 2813 (Department of Commerce, February 8, 2019); *Common Alloy Aluminum Sheet from the People's Republic of China: Countervailing Duty Order*, 84 FR 2157 (Department 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. On May 22, 2020, TKA submitted a supplement to its allegation. For ease of reference, we refer to these submissions as the "Allegation."

³ See Email acknowledging receipt of EAPA Allegation 7469, "Receipt of EAPA Allegation 7469: Common Alloy Aluminum Sheet from China through Turkey," dated June 17, 2020.

submitted by TKA regarding the evasion of AD/CVD duties by AA Metals.⁴ The Allegation contends that Chinese-origin aluminum sheet underwent minor processing, *i.e.*, re-rolling, by Teknik Alüminyum Sanayi A.Ş. (Teknik) and PMS Metal Profil Alüminyum San. ve Tic. A.Ş. (PMS) in Turkey. The Allegation then asserts that AA Metals entered this re-rolled Chinese-origin aluminum sheet from Teknik and PMS into the United States and falsely declared it as Turkish-origin.

On July 21, 2020, CBP issued a CF28 to AA Metals, requesting various information including invoices, packing slips, bills of lading, sources of raw materials, mill test certificates, *etc.* for entries during the period of investigation (POI) from Turkey.⁵ AA Metals responded to the CF28 on August 31, 2020.⁶

After evaluating all the information on the record, CBP determined there was reasonable suspicion that AA Metals entered Chinese-origin aluminum sheet into the customs territory of the United States through evasion. On October 5, 2020, CBP issued a formal notice of initiation (NOI) and imposed interim measures and notified the interested parties of CBP's decision to initiate an investigation in accordance with 19 CFR 165.15(d)(1).⁷

After the NOI, CBP issued Requests for Information (RFIs) to AA Metals and its manufacturers of aluminum sheet, Teknik and PMS.⁸ On December 28, 2020, both AA Metals⁹ and Teknik¹⁰ submitted timely RFI responses. On January 15, 2021, AA Metals made a timely submission of voluntary factual information.¹¹ On February 5, 2021, PMS submitted its RFI response.¹² CBP issued supplemental RFIs to AA Metals, Teknik and PMS.¹³ Between March 10 - 23, 2021, AA

⁴ See Memorandum, "Initiation of Investigation for EAPA Case Number 7469," dated June 30, 2020.

⁵ See CF28 issued by CBP on July 21, 2020 (CF28).

⁶ See AA Metals' CF28 Response, dated August 31, 2020 (CF28 Response).

⁷ See "Notice of Initiation of Investigation and Interim Measures - EAPA Case 7469," dated October 5, 2020 (NOI).

⁸ See CBP's Letter to AA Metals, "Enforce and Protect Act Investigation 7469: 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 18, 2020; CBP's Letter to Teknik, "Enforce and Protect Act Investigation 7469: 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; CBP's Letter to PMS, "Enforce and Protect Act Investigation 7469: Request for Information," dated December 22, 2020.

⁹ See AA Metals' Letter, "EAPA Case Number: 7469, AA Metals, Inc.'s Response to Request for Information – Importer Questionnaire," dated December 28, 2020 (AA Metals' RFI Response).

¹⁰ See Teknik's Letter, "EAPA Case Number: 7469, Teknik Alüminyum Sanayi A.Ş.'s Response to Request for Information – Producer Questionnaire," dated December 28, 2020.

¹¹ See AA Metals' Letter, "EAPA Case Number: 7469, AA Metals, Inc.'s Voluntary Factual Information Submission," dated January 15, 2021.

¹² See PMS' Letter, "Enforce and Protect Act Investigation Case No. 7469: Response to Request for Information," dated February 5, 2021 (PMS' RFI Response).

¹³ See CBP's Letter to AA Metals, "Enforce and Protect Act Investigation 7469: Supplemental Request for Information," dated March 1, 2021; CBP's Letter to Teknik, "Enforce and Protect Act Investigation 7469: Supplemental Request for Information," dated March 8, 2021; CBP's Letter to PMS, "Enforce and Protect Act Investigation 7469: Supplemental Request for Information," dated March 1, 2021.

Metals,¹⁴ Teknik¹⁵ and PMS¹⁶ submitted timely supplemental RFI responses.

On March 29, 2021, CBP extended the deadline for the determination as to evasion by 60 days.¹⁷ Thus, in accordance with 19 CFR 165.22(c), CBP has already extended the deadline to complete this investigation to 360 days, the maximum amount of time provided by the EAPA regulations. CBP intends to complete this investigation in the time allowed by its regulations.

On May 13, 2021, CBP made a Covered Merchandise Referral to the U.S. Department of Commerce (Commerce).¹⁸ On May 20, 2021, AA Metals submitted comments on the Covered Merchandise Referral.¹⁹ On January 21, 2022, Commerce issued its Scope Determination.²⁰ On January 27, 2022, Commerce notified CBP of its Scope Determination.²¹

On February 7, 2022, AA Metals and TKA submitted written arguments.²² On February 11, 2022, AA Metals submitted rebuttal written arguments.²³ TKA did not submit rebuttal written arguments.

II. Analysis

Under 19 USC 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 entered into the customs territory of the United States through evasion.”²⁴ “Covered merchandise” is defined as “merchandise that is subject to a CVD order... and/or an AD order.”²⁵ “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

¹⁴ See AA Metals’ Letter, “EAPA Case Number: 7469, AA Metals, Inc.’s Response to Supplemental Request for Information,” dated March 12, 2021 (AA Metals’ Supp RFI Response).

¹⁵ See Teknik’s Letter, “EAPA Case Number: 7469, Teknik Alüminyum Sanayi A.Ş.’s Response to Supplemental Request for Information,” dated March 23, 2021.

¹⁶ See PMS’ Letter, “Enforce and Protect Act Investigation Case No. 7469: Supplemental Request for Information,” dated March 10, 2021.

¹⁷ See CBP’s Letter, “EAPA Case 7469: Notice of Extension of Determination as to Evasion,” dated March 29, 2021.

¹⁸ See CBP’s Letter, “Covered Merchandise Referral Request for EAPA Investigation 7469, Imported by AA Metals, Inc.: Antidumping and Countervailing Duty Orders on Common Alloy Aluminum Sheet from the People’s Republic of China,” dated May 13, 2021 (Covered Merchandise Referral).

¹⁹ See AA Metals’ Letter “EAPA Case Number: 7469, Objection of AA Metals, Inc. and Teknik Alüminyum Sanayi A.Ş. to CBP’s Covered Merchandise Referral Request,” dated May 20, 2021.

²⁰ See Commerce Memorandum, “Antidumping and Countervailing Duty Orders on Common Alloy Aluminum Sheet from the People’s Republic of China, Enforcement and Protect Act Investigation No. 7469: Notification of the Final Scope Determination and Response to Covered Merchandise Referral,” dated January 21, 2022 (Scope Determination).

²¹ See Commerce Letter, “Covered Merchandise Referral Regarding EAPA Investigation No. 7469,” dated January 27, 2022.

²² See AA Metals’ Letter, “EAPA Case Number 7469; Written Argument,” dated February 7, 2022 (AA Metals’ Written Arguments); TKA’s Letter, “EAPA Case No. 7469: Written Comments by Texarkana Aluminum, Inc.,” dated February 7, 2022 (TKA’s Written Arguments).

²³ See AA Metals’ Letter, “EAPA Case Number 7469; AA Metals, Inc.’s Response to Written Argument,” dated February 11, 2022 (AA Metals’ Rebuttal Arguments).

²⁴ See also 19 CFR 165.27(a) (implementing 19 USC 1517).

²⁵ See 19 CFR 165.1.

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.”²⁶ As discussed below, the record of this investigation contains substantial evidence supporting a determination that AA Metals entered covered merchandise into the United States through evasion, which was manufactured by PMS.

Covered Merchandise Referral to Commerce

As noted above, on May 13, 2021, CBP made a Covered Merchandise Referral to Commerce with respect to this investigation. 19 CFR 165.16(a) provides 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.”

The scope of the *Orders* covers “aluminum common alloy sheet (common alloy sheet), which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width.”²⁷ AA Metals’ suppliers, PMS and Teknik, stated they sourced some of their aluminum sheet from China, and rerolled this aluminum sheet in Turkey, before selling it to AA Metals.²⁸ The thickness of the Chinese-origin aluminum sheet re-rolled by PMS and Teknik was very close to the maximum thickness of aluminum sheet covered by the scope of the *Orders*.²⁹ As CBP could not determine whether this re-rolled Chinese-origin aluminum sheet was covered merchandise, we referred the matter to Commerce.

The Covered Merchandise Referral indicated that AA Metals purchased Chinese-origin aluminum sheet which was re-rolled in Turkey before shipment to the United States.³⁰ In the Covered Merchandise Referral, CBP described two scenarios, each applicable to a specific Turkish manufacturer. For Scenario 1, AA Metals’ affiliate, Teknik, purchased Chinese-origin aluminum sheet of a thicknesses a little greater than covered by the scope which it re-rolled in Turkey to a thickness covered by the scope, and then exported this aluminum sheet to AA Metals.³¹ For Scenario 2, PMS purchased Chinese-origin aluminum sheet of a thickness covered by the scope which it rerolled in Turkey to a thickness also covered by the scope, and then exported this aluminum sheet to AA Metals.³² As CBP was unable to determine whether the merchandise covered by Scenarios 1 and 2 were covered by the *Orders*, CBP made a covered merchandise referral to Commerce.³³ As such, the authority to make a scope determination with respect to Scenarios 1 and 2 rests with Commerce.

²⁶ *Id.*

²⁷ *See* the *Orders*.

²⁸ *See* Covered Merchandise Referral at 2.

²⁹ *Id.*

³⁰ *See* Covered Merchandise Referral at 2.

³¹ *Id.*, citing AA Metals’ RFI Response at 42 - 43; AA Metals’ Supp RFI Response at 5, 7 - 9, and Exhibits 6 and 7.C.

³² *Id.*, citing PMS’ RFI Response at 1.

³³ *See* Covered Merchandise Referral.

On January 21, 2022, Commerce rendered its Scope Determination. In its ruling, Commerce made two decisions with respect to the two scenarios provided by CBP. We discuss each ruling and the interested parties' comments below.

Commerce's Scope Determination

With respect to Scenario 1, Commerce examined the plain language of the scope of the *Orders* and the description of the product for which Commerce was asked to issue a scope ruling.³⁴ Commerce found that the scope language is unambiguous and dispositive that merchandise in Scenario 1 is not covered merchandise. Commerce explained that the "scope of the *Orders* requires that both the aluminum sheet input exported from China to Turkey, and the common alloy aluminum sheet further processed in Turkey and exported to the United States, meet the physical description of the scope of the *Orders* in order for Commerce to determine that the finished common alloy aluminum sheet in Scenario 1 is within the scope of the *Orders*."³⁵ For Scenario 1, because the aluminum sheet input exported from China to Turkey does not meet the thickness requirement specified in the scope of the *Orders*, the scope requirements that both the aluminum sheet input produced in China and the common alloy aluminum sheet further processed by Teknik does not meet the physical characteristics of the scope of the *Orders*.³⁶ Therefore, Commerce found the aluminum sheet manufactured by Teknik from re-rolled Chinese-origin aluminum sheet is not covered merchandise.

With respect to Scenario 2, Commerce examined the plain language of the scope of the *Orders* and the description of the product for which Commerce was asked to issue a scope ruling and found that the merchandise in Scenario 2 is covered merchandise.³⁷ Commerce determined that the aluminum sheet exported from China to Turkey in Scenario 2 meets the physical description of the scope of the *Orders* as flat-rolled aluminum sheet having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width.³⁸ Specifically, Commerce noted that the common alloy aluminum sheet in Scenario 2 satisfies the scope requirements that both the aluminum sheet input produced in China and the finished common alloy aluminum sheet further processed in Turkey and exported from Turkey to the United States meet the physical characteristics of the scope of the *Orders*.³⁹ As such, Commerce found the aluminum sheet manufactured by PMS from re-rolled Chinese-origin aluminum sheet is covered merchandise.

AA Metals' Entries Manufactured by Teknik

Comments: AA Metals contends that the administrative record in this proceeding is consistent with Commerce's determination.⁴⁰ Consequently, AA Metals argues that CBP must find that AA Metals' imports from Teknik are not covered merchandise which evaded the *Orders*.⁴¹

³⁴ See Scope Determination at 7.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 9.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ See AA Metals' Written Arguments at 12 - 14.

⁴¹ *Id.*

CBP's Position: Consistent with Commerce's Scope Determination, we find that AA Metals' imports of aluminum sheet from Teknik are not covered by the *Orders*.⁴² As such, we find this merchandise did not enter the United States through evasion.

AA Metals' Entries Manufactured by PMS

Comments: AA Metals argues that Commerce failed to render a determination as to whether continuous cast coil and unwrought aluminum manufactured by casting were subject to the *Orders*.⁴³ Instead, AA Metals alleges that Commerce determined that the product AA Metals imported, which it claims was manufactured in Turkey by PMS, was not continuous cast coil and unwrought aluminum manufactured by casting.⁴⁴ AA Metals contends that Commerce's determination is inconsistent with the record before Commerce and CBP, and thus, is not in accordance with law.⁴⁵

AA Metals asserts that the administrative record before CBP demonstrates that the PMS product imported by AA Metals was manufactured in Turkey from inputs of Chinese aluminum cast coil.⁴⁶ AA Metals claims that PMS's manufacturing operations substantially transforms any non-Turkish origin raw materials into Turkish origin cold rolled aluminum coil. According to AA Metals, consistent with Commerce's previous determinations, court cases and CBP rulings, the country of origin of AA Metals' cold rolled aluminum coil imported from PMS is Turkey.⁴⁷

TKA argues that AA Metals imported covered merchandise, *i.e.*, aluminum sheet within the scope of the *Orders*, into the United States and falsely declared that merchandise to be of Turkish origin instead of Chinese origin, which resulted in AA Metals not paying the required duties under the *Orders*.⁴⁸ According to TKA, substantial evidence demonstrates that AA Metals evaded the *Orders*, and given the plain language of the *Orders*, as well as the representations by Teknik and PMS during the investigation, there can be no doubt that AA Metals always knew it was evading the *Orders* through its scheme.⁴⁹

⁴² Although we find that this merchandise if not covered by the Chinese *Orders*, this merchandise is covered by the recent Turkish AD/CVD orders. See *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 (Department of Commerce, April 27, 2021); *Common Alloy Aluminum Sheet from Bahrain, India, and the Republic of Turkey: Countervailing Duty Orders*, 86 FR 22144 (Department of Commerce, April 27, 2021).

⁴³ We note that although AA Metals has raised this issue with respect to cast coils, we note the scope covers coils or cut-to-length sheets.

⁴⁴ See AA Metals' Written Arguments at 16 - 18.

⁴⁵ *Id.*

⁴⁶ See AA Metals' Written Arguments at 18 - 24.

⁴⁷ See AA Metals' Written Arguments at 24 - 29, citing, *e.g.*, *Stainless Steel Sheet and Strip in Coils from Taiwan*, 71 FR 7519 (Department of Commerce, February 13, 2006) and accompanying Issues and Decision Memo at Comment 10; *Ferrostaal Metals Corp. v. United States*, 664 F. Supp. 535, 537 (CIT 1987); and CBP Ruling N316839 (January 28, 2021).

⁴⁸ See TKA's Written Arguments at 1 - 3.

⁴⁹ *Id.*

TKA respectfully submits that in addition to the remedies outlined in 19 USC 1517(d)(1)(A)-(D), CBP should exercise its discretion and take the additional enforcement measures against AA Metals outlined in 19 USC 1517(d)(1)(E).⁵⁰ With respect to TKA's arguments that CBP should exercise its discretion and take the additional enforcement measures, we intend to refer this matter to other parts of CBP for appropriate action.

AA Metals attempts to rebut TKA's argument that AA Metals directed PMS to use covered merchandise.⁵¹ AA Metals asserts that the record indicates that PMS requested AA Metals' assistance in purchasing cast coil, and that TKA misrepresents the input in question.⁵²

CBP's Position: Consistent with Commerce's Scope Determination, we find that AA Metals' imports of aluminum sheet from PMS are covered by the *Orders*.

AA Metals has raised arguments to CBP concerning Commerce's findings on Scenario 2. However, it is unclear as to why AA Metals has raised these arguments to CBP when the authority to make a determination regarding whether the merchandise in Scenario 2 is covered merchandise rests with Commerce, and not CBP. Assuming, *arguendo*, that Commerce had not addressed AA Metals' concerns, CBP does not have the authority to disturb Commerce's decision. As such, we find AA Metals' arguments concerning Commerce's Scope Determination to be moot with respect to this investigation and initial finding of evasion.

Moreover, while we do not have Commerce's record before us, an examination of the Scope Determination appears to indicate that AA Metals raised the same arguments with Commerce that it raised with CBP, and that Commerce addressed these arguments. Specifically, the Scope Determination states:

AA Metals claims that, while the common alloy aluminum sheet exported from Turkey to the United States meets the physical description of the scope of the *Orders*, the aluminum sheet input exported from China to Turkey is non-scope merchandise for two reasons: (1) it is "continuous cast coil {and} unwrought aluminum which is manufactured by casting" without a flat-rolling process, whether hot- or cold-rolling; and (2) it does not meet certain temper standards of the Aluminum Association. AA Metals also explains that the four-digit Aluminum Association number for common alloy aluminum sheet is irrelevant in determining whether unwrought aluminum falls under the scope of the *Orders* because unwrought aluminum is not a rolled product. We disagree with AA Metals.

Information provided by AA Metals in the initial and supplemental responses indicates that the aluminum coil exported from China to Turkey is flat-rolled aluminum sheet having a thickness of 6.3 mm or less, but greater than 0.2 mm, not continuous cast coil and unwrought aluminum manufactured by casting. Aluminum alloy castings are designated with three digits and the decimal digit zero, which indicates castings (xxx.0), whereas wrought aluminum alloy products are designated with four digits with no decimal digit (xxxx). Although the scope of the *Orders* does not explicitly define

⁵⁰ *Id.*

⁵¹ See AA Metals' Rebuttal Arguments at 2 - 3.

⁵² *Id.* at 3 - 5.

wrought aluminum alloy sheet, the ITC final determination states that common alloy aluminum sheet is “a thin wrought aluminum product that is produced *via* a rolling process.” AA Metals’ supplemental response indicates that a thin wrought aluminum sheet is produced *via* a rolling process. In Scenario 2, the Chinese aluminum coil that entered Turkey is identified with a four-digit designation with no decimal digit zero (xxxx), which indicates that the product is flat-rolled aluminum sheet, not continuous cast coil. Purchase documents for the Chinese aluminum coil do not otherwise indicate that the Chinese aluminum coil is continuous cast coil. AA Metals did not point to any information in purchase documents to support its claim that the Chinese aluminum coil is continuous cast coil.⁵³

As noted above, CBP finds that AA Metals’ imports of aluminum sheet from PMS are covered by the *Orders*. As such, when AA Metals entered this merchandise into the United States and declared it as type 01 instead of type 03, AA Metals made a materially false statement with respect to the country of origin.

Miscellaneous Issues

Interested parties submitted comments in their written arguments which do not necessarily fit within the “Analysis” section above. We discuss these issues below.

Miscellaneous Issue 1: AA Metals’ Ability to Respond to Record information for the Determination as to Evasion

Comments: Citing *Royal Brush*, AA Metals argues that if CBP utilizes record information that is not publicly available to AA Metals, this information must be disclosed to AA Metals so that it is provided an opportunity to review, rebut, and comment upon the information.⁵⁴ AA Metals contends that CBP’s determination as to evasion must be solely based upon facts made available to AA Metals and that failure to do so amounts to a violation of AA Metals’ procedural due process rights.⁵⁵

CBP’s Position: Our determination as to evasion is not based on any information which has not been made available to AA Metals. As such, there is no record information to disclose to AA Metals for it to review, rebut or comment upon.

Miscellaneous Issue 2: Use of Adverse Inferences in the Determination as to Evasion

Comments: AA Metals asserts that it and Teknik have fully cooperated and complied to the best of their abilities with CBP’s requests for information.⁵⁶ Therefore, AA Metals claims that

⁵³ See Scope Determination at 8 - 9 (footnotes omitted).

⁵⁴ See AA Metals’ Written Arguments at 32 - 34, citing *Royal Brush Manufacturing, Inc. v United States*, 483 F. Supp. 3d 1294 (CIT 2020) (*Royal Brush*).

⁵⁵ *Id.*

⁵⁶ See AA Metals’ Written Arguments at 34 - 35.

the application of adverse inferences, pursuant to 19 CFR 165.6, are not appropriate against AA Metals or Teknik for the determination as to evasion.⁵⁷

CBP's Position: We have not applied adverse inferences to AA Metals or Teknik in the determination as to evasion.

Miscellaneous Issue 3: Placement of Commerce's Documents on the Record

Comments: AA Metals contends that CBP must place the entirety of Commerce's record on the instant proceeding.⁵⁸ According to AA Metals, CBP has the authority to place information on the record of a proceeding after the deadline for voluntary factual information has passed.⁵⁹ AA Metals asserts that due process requires the Commerce investigation to be placed on this record for the consideration of CBP and any subsequent administrative review process and/or litigation.⁶⁰

CBP's Position: 19 CFR 165.16(a) states that a covered merchandise referral to Commerce is required if "CBP cannot determine whether the merchandise described in an allegation is properly within the scope of an antidumping or countervailing duty order." In this investigation, CBP was unable to determine whether the two scenarios described in the Covered Merchandise Referral were covered merchandise, and thus, submitted a covered merchandise referral to Commerce.⁶¹ 19 CFR 165.16(e) states that "CBP will place the determination by the Department of Commerce on the administrative record of CBP's proceeding and will electronically notify the parties to the investigation." Consistent with 19 CFR 165.16(e), CBP has placed Commerce's Scope Determination on the record of this investigation.

The EAPA regulations are silent with respect to Commerce's record but are specific with respect to Commerce's Scope Determination. Both AA Metals and TKA were parties to Commerce's proceeding, and thus, due process was provided to AA Metals in that proceeding.⁶² Commerce's decision is unambiguous, and it is unclear as to why CBP would need extraneous information beyond the Scope Determination. As such, we have not requested that Commerce provide its record so that we may place it on the record of this investigation.

Miscellaneous Issue 4: Sufficiency of the Allegation

Comments: AA Metals argues that Teknik is a privately owned company incorporated under Turkish law and has no relationship with the Chinese government or other Chinese entities.⁶³ AA Metals points to the administrative record and argues that it demonstrates that the Chinese government had no ownership or influence on Teknik's operations before or after AA Metals acquired the company. According to AA Metals, since its inception, Teknik has been a private

⁵⁷ *Id.*

⁵⁸ See AA Metals' Written Arguments at 31.

⁵⁹ *Id.*, citing 19 CFR 165.23(c)(1).

⁶⁰ *Id.*

⁶¹ See Covered Merchandise Referral.

⁶² See Scope Determination.

⁶³ See AA Metals' Written Arguments at 5 - 7.

company incorporated under the laws of Turkey, and production, sales and business operations take place in Turkey.⁶⁴

AA Metals asserts that import data on Chinese aluminum sheet provides no insight as to whether the merchandise in question was transshipped. Citing *Columbia Forest*, AA Metals argues that the Court found that export and import data alone were not sufficient for Commerce to initiate a minor alternation circumvention inquiry.⁶⁵ Citing *Inmax*, AA Metals contends that production and exports naturally flow to companies or countries with lower AD duty rates.⁶⁶ According to AA Metals, following the imposition of the *Orders*, a shift away from covered merchandise from China is unsurprising and AA Metals' imports from Turkey make sense considering AA Metals' investment in its affiliated Turkish producer which had no AD duty rates.⁶⁷

AA Metals claims that CBP improperly relied upon AA Metals' use of manifest confidentiality to support TKA's assertions that "AA Metals is attempting to mask its evasion by . . . using confidential bills of lading."⁶⁸ AA Metals asserts there is no evidence in the record to support the allegation that AA Metals is "attempting to mask evasion" by use of manifest confidentiality.⁶⁹ AA Metals claims that some of the behaviors it engaged in are a reflection of the aggressive market which the *Orders* created.⁷⁰

CBP's Position: In its written arguments, AA Metals made several contentions with respect to the adequacy of the Allegation with respect to the NOI and interim measures. While we have not relied upon the Allegation in making the determination as to evasion, including Teknik's ownership, trade statistics and AA Metals' use of manifest confidentiality, we disagree that this information did not provide a basis to find a reasonable suspicion of evasion, as discussed below.

With respect to AA Metals' arguments concerning Teknik's ownership and relationships, this information has not been considered in the determination as to evasion. With regard to AA Metals' arguments concerning trade data, this information has also not been relied upon in the determination as to evasion. However, as discussed in the NOI, we did not rely on trade data alone in reaching the decision to impose interim measures. For example, we provided AA Metals and Teknik an opportunity to provide information demonstrating a Turkish country of origin *via* a CF28, but as discussed in the NOI, the CF28 Response contained numerous deficiencies.⁷¹ In another example, the Allegation contained affidavits concerning the purpose of AA Metals use of manifest confidentiality which were corroborated by AA Metals own submissions.⁷² In sum, CBP finds that the information provided in the Allegation, along with other record information, provided a basis to find a reasonable suspicion that evasion was occurring in the NOI.

⁶⁴ *Id.*

⁶⁵ See AA Metals' Written Arguments at 7 - 10, citing *Columbia Forest Prods. v. United States*, 399 F. Supp. 3d 1283, 1295 (CIT 2019) (*Columbia Forest*).

⁶⁶ *Id.*, citing *Inmax SDN v. United States*, 277 F. Supp. 3d 1367 (CIT 2017) (*Inmax*).

⁶⁷ *Id.*

⁶⁸ See AA Metals' Written Arguments at 10 - 12, citing Initiation Memo at 3 - 4.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ See NOI at 6 - 8.

⁷² See, e.g., Allegation at Exhibits 10, 11 & 25; AA Metals' RFI Response at 2.

Miscellaneous Issue 5: AA Metals' Request to Stay the Determination as to Evasion

Comments: AA Metals argues that CBP cannot issue a final determination in the instant proceeding until Commerce's Scope Determination is complete, which they appear to interpret to mean until any timeframe to bring suit has passed and any ongoing litigation has concluded.⁷³ Any determination by CBP that relies on Commerce's Scope Determination related to PMS' product would be premature and a violation of AA Metals' due process rights.

CBP's Position: The statute and regulations do not permit EAPA to indefinitely extend its deadlines based on speculations as to the actions of interested parties, *i.e.*, whether those parties request an administrative review or pursue litigation at the CIT.

Miscellaneous Issue 6: Bifurcation of the Investigation

Comments: AA Metals requests that CBP bifurcate this investigation.⁷⁴ AA Metals claims that CBP has the ability to render a determination for each scenario listed in the Covered Merchandise Referral. More specifically, CBP should divide this investigation into two parts to render a determination on the imports from Teknik, which Commerce found to be not covered by the *Orders*, but stay any determination on the imports from PMS, pending litigation. AA Metals also argues that CBP should then lift the interim measures imposed on imports from Teknik, as they have created an undue burden on AA Metals.

CBP's Position: This investigation contains an unusual fact pattern. CBP made a covered merchandise referral to Commerce for two separate scenarios, and each scenario was specific to an individual manufacturer. Commerce then rendered a different decision for each scenario, specific to each of the manufacturers. In this case, CBP has made a negative finding of evasion with respect to one of the manufacturers, Teknik, while making a positive finding of evasion for the other manufacturer, PMS. In this way CBP has taken the unusual step of bifurcating the investigation. However, as discussed in the comment above, CBP does not have the authority to indefinitely extend the determination as to evasion based on actions interested parties may or may not take. In sum, CBP will not issue a partial determination as to evasion for AA Metals, and partially end interim measures, but instead CBP will fully complete the investigation of AA Metals. The interim measures end when the investigation and/or litigation are completed, which is dependent on the actions of the interested parties.

Summary

Based on the record evidence and Commerce's Scope Determination discussed above, CBP finds that AA Metals' imports of aluminum sheet manufactured by PMS are covered by the *Orders*, and that AA Metals' imports of aluminum sheet manufactured by Teknik are not covered by the *Orders*. CBP determines that substantial evidence exists demonstrating that AA Metals misrepresented the country of origin of their imports of aluminum sheet produced by PMS by claiming Turkey rather than China as the country of origin. CBP also determines that substantial

⁷³ See AA Metals' Written Arguments at 29 - 30.

⁷⁴ See AA Metals' Written Arguments at 30 - 31.

evidence does not exist to demonstrate that AA Metals misrepresented the country of origin of their imports of aluminum sheet produced by Teknik.

III. Actions Taken Pursuant to the Affirmative Determination of Evasion

In light of CBP's determination that AA Metals entered merchandise into the customs territory of the United States through evasion, and pursuant to 19 USC 1517(d) and 19 CFR 165.28, CBP will suspend or continue to suspend the liquidation for all entries imported by AA Metals which have been manufactured by PMS subject to EPA investigation 7469 and continue suspension 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 these entries. With respect to AA Metals' entries which were manufactured by Teknik, in light of CBP's determination that there is not substantial evidence these entries entered the territory of the United States through evasion during the period of this investigation, CBP will reverse any actions taken with respect to those entries subject to this investigation. CBP will also evaluate AA Metals' 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,

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

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