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U.S. Customs and Border Protection

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Re: Enforce and Protect Act (“EAPA”) Case Number 7469; *Common Alloy Aluminum Sheet from the People’s Republic of China: Antidumping Duty Order*, 84 Fed. Reg. 2,813 (Feb. 8, 2019); and *Common Alloy Aluminum Sheet from the People’s Republic of China: Countervailing Duty Order*, 84 Fed. Reg. 2,157 (Feb. 6, 2019); AA Metals, Inc.; 19 U.S.C. § 1517

Dear Ms. Smith and Mr. Dutra:

This is in response to the request for *de novo* administrative review of a determination of evasion dated March 21, 2022, made by the Trade Remedy Law Enforcement Directorate (“TRLED”), Office of Trade (“OT”), U.S. Customs and Border Protection (“CBP”), pursuant to 19 U.S.C. § 1517(c), EAPA Case Number 7469 (“March 21st Determination”).¹ The request for review, dated May 2, 2022, was submitted to CBP, OT, Regulations and Rulings (“RR”), by Kristen S. Smith, Sandler, Travis & Rosenberg, P.A., on behalf of AA Metals, Inc. (“AA Metals” or “Importer”), pursuant to 19 U.S.C. § 1517(f) and 19 C.F.R. § 165.41(a).

I. Background

Inasmuch as the facts in this case were fully set forth in the March 21st Determination, we will not repeat the entire factual history herein.

On May 19, 2020, Texarkana Aluminum, Inc. (“TKA”) filed an amended version of an EAPA allegation (“Amended Allegation”) against AA Metals that was originally submitted on March 16, 2020. CBP acknowledged receipt of the Amended Allegation on June 17, 2020. TKA alleged that

¹ See Notice of Determination as to Evasion in EAPA Case Number 7469, dated March 21, 2022, available at: https://www.cbp.gov/document/technical-report/epa-case-7469-aa-metals-inc-notice-determination-evasion-march-21-2022?language_content_entity=en.

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AA Metals entered common alloy aluminum sheets (“CAAS”), of Chinese origin, into the United States, by transshipment through Turkey, to evade the payment of antidumping and countervailing duties (“AD/CVD”) on aluminum from the People’s Republic of China (“China”), as required in Case Nos. A-570-073 and C-570-074. Specifically, the Amended Allegation included data reflecting the importation of Chinese-origin CAAS to AA Metals’ manufacturers, Teknik Alüminyum Sanayi A.Ş. (“Teknik”) and PMS Metal Profil Alüminyum San. ve Tic. A.Ş. (“PMS”), in Turkey.² On June 30, 2020, TRLED initiated a formal investigation under Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015 (“TFTEA”), in response to allegations of evasion.

The allegation of evasion pertained to the AD/CVD Orders issued by the U.S. Department of Commerce (“Commerce”) on imports of CAAS from China. Commerce defined the scope of the relevant AD/CVD Orders, in pertinent part, as follows:

The merchandise covered by this order is 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. Common alloy sheet within the scope of this order includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, common alloy sheet is manufactured from a 1XXX-, 3XXX-, or 5XXX-series alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, common alloy sheet is produced from a 3XXX-series core, to which cladding layers are applied to either one or both sides of the core.

Common alloy sheet may be made to ASTM specification B209–14, but can also be made to other specifications. Regardless of specification, however, all common alloy sheet meeting the scope description is included in the scope. Subject merchandise includes common alloy sheet that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the common alloy sheet.

Excluded from the scope of this order is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H–19, H–41, H–48, or H–391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its movement through machines used in the manufacture of beverage cans. Aluminum can stock is properly classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.12.3045 and 7606.12.3055.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set for the above.

² See Notice of Initiation of Investigation and Interim Measures - EAPA Case 7469, dated October 5, 2020 (“Notice of Initiation”), available at: <https://www.cbp.gov/document/publications/eapa-case-number-7469-aa-metals-inc-notice-initiation-investigation-and>.

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Common alloy sheet is currently classifiable under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3090, 7606.12.6000, 7606.91.3090, 7606.91.6080, 7606.92.3090, and 7606.92.6080. Further, merchandise that falls within the scope of this order may also be entered into the United States under HTSUS subheadings 7606.11.3030, 7606.12.3030, 7606.91.3060, 7606.91.6040, 7606.92.3060, 7606.92.6040, 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.³

On October 5, 2020, TRLED issued the Notice of Initiation to all parties to the investigation, and notified the parties of CBP's decision to take interim measures based upon reasonable suspicion that the Importer entered covered merchandise into the customs territory of the United States through evasion.⁴ The entries subject to the investigation were those entered for consumption, or withdrawn from a warehouse for consumption, from June 23, 2019, one year before receipt of the allegations, through the pendency of the investigation.⁵

On May 13, 2021, CBP made a Covered Merchandise Referral to Commerce, seeking a decision by Commerce as to whether the thickness of the re-rolled merchandise was within scope. On January 21, 2022, Commerce issued its Scope Determination. On January 27, 2022, Commerce notified CBP of its Scope Determination. Commerce concluded that the aluminum re-rolled by PMS remained in scope, however the aluminum re-rolled by Teknik did not.

On March 21, 2022, TRLED concluded, based on the record evidence and Commerce's Scope Determination, that there was substantial evidence to demonstrate that AA Metals entered CAAS into the United States, manufactured by PMS, which were covered by AD/CVD Orders A-570-073 and C-570-074, by falsely entering them as Turkish, under entry type "01," as entries not subject to an AD/CVD order.⁶ As a result, no AD/CVD cash deposits were made for the merchandise.⁷ Additionally, TRLED found, based on the record evidence and Commerce's Scope Determination, that there was not substantial evidence to demonstrate that AA Metals entered CAAS, manufactured by Teknik, which were covered by the AD/CVD Orders.

On May 2, 2022, AA Metals filed a timely Request for Administrative Review, and, on May 3, 2022, RR sent an email to all parties to the investigation, notifying them of the commencement of the administrative review process and the assignment of RR case number H324959. On May 17, 2022, TKA timely filed a response to AA Metals' request for administrative review. AA Metals and TKA did not raise arguments concerning CAAS manufactured by Teknik; therefore, this *de novo* review will only address arguments concerning CAAS manufactured by PMS.

³ See *Common Alloy Aluminum Sheet From the People's Republic of China: Countervailing Duty Order*, 84 Fed. Reg. 2,157 (Feb. 6, 2019), and *Common Alloy Aluminum Sheet From the People's Republic of China: Antidumping Duty Order*, 84 Fed. Reg. 2,813 (Feb. 8, 2019) ("AD/CVD Orders").

⁴ See Notice of Initiation.

⁵ See 19 C.F.R. § 165.2.

⁶ Imports that are covered by AD/CVD orders are required to be entered as type "03" entries; entries declared as type "01" are not subject to AD/CVD orders. See CBP Entry Summary Form 7501 and Instructions and the ACE Entry Summary Business Rules and Procedure Document. <https://www.cbp.gov/trade/programs-administration/entry-summary/cbp-form-7501> (last visited Apr. 27, 2022).

⁷ See March 21st Determination (public document – No. 68).

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II. Law & Analysis

Section 517 of the Tariff Act of 1930 (“the Tariff Act”), as amended (19 U.S.C. § 1517), provides, “with respect to covered merchandise, the Commissioner shall make a determination, based on substantial evidence, with respect to whether such covered merchandise was entered into the customs territory of the United States through evasion.”⁸ The term evasion is defined as:

Except as provided in subparagraph (B), the term “evasion” refers to entering covered merchandise into the customs territory of the United States 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.⁹

Examples of evasion include, but are not limited to, misrepresentation of the merchandise’s true country of origin (e.g., through false country of origin markings on the product itself or false sales), false or incorrect shipping and entry documentation, or misreporting of the merchandise’s physical characteristics.¹⁰ Additionally, covered merchandise is defined as “merchandise that is subject to a CVD order issued under section 706, Tariff Act of 1930, as amended (19 U.S.C. § 1671e), and/or an AD order issued under section 736, Tariff Act of 1930, as amended (19 U.S.C. § 1673e).”¹¹

CBP’s EAPA determinations must be supported by substantial evidence. While substantial evidence is not defined by statute, the “substantial evidence” standard has been reviewed by the courts in relation to determinations by other agencies. “Substantial evidence requires more than a mere scintilla but is satisfied by something less than the weight of the evidence.”¹²

Therefore, CBP must determine whether a party has entered merchandise that is subject to an AD or CVD order into 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, that resulted in the reduction or avoidance of applicable AD or CVD cash deposits or duties being collected on such merchandise. Lastly, our decision herein must be supported by substantial evidence.

A. AA Metals’ Arguments

AA Metals requests that we reverse the March 21st Determination of evasion regarding CAAS sourced from PMS, arguing that it did not enter covered merchandise into the United States through evasion because the finding was made prematurely.

⁸ See 19 U.S.C. § 1517(c)(1).

⁹ See 19 U.S.C. § 1517(a)(5); see also 19 C.F.R. § 165.1.

¹⁰ See *Investigation of Claims of Evasion of Antidumping and Countervailing Duties, Interim Regulations*, 81 Fed. Reg. 56,477, 56,478 (Aug. 22, 2016).

¹¹ See 19 C.F.R. § 165.1.

¹² See *Altix, Inc. v. United States*, 370 F.3d 1108, 1116 (Fed. Cir. 2004) (internal citations and quotation marks omitted).

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AA Metals contends that Commerce's Scope Determination is not final, because AA Metals can challenge it at the U.S. Court of International Trade ("CIT").¹³ AA Metals disagrees with CBP's position that the agency cannot stay the EAPA timeline pending potential CIT litigation. It argues that CBP should have bifurcated the proceeding and stayed any determination specific to imports of PMS products.¹⁴ AA Metals states that, by issuing a determination, CBP violated AA Metals' due process rights.

Furthermore, AA Metals claims that the determination of country of origin, as Turkey, is inconsistent with CBP's rules of substantial transformation.¹⁵ First, AA Metals states that CBP's scope referral "lacked product specificity and was inconsistent with the administrative record."¹⁶ It believes Commerce should have issued a "determination on whether continuous cast coil and unwrought aluminum manufactured by casting was subject to the *Orders*," in contrast to direct chill cast aluminum.¹⁷ Instead, Commerce determined that the product imported by AA Metals, manufactured in Turkey by PMS, was not continuous cast coil or unwrought aluminum manufactured by casting.¹⁸ AA Metals maintains that the merchandise is continuous coil, and therefore, Commerce's scope determination is inconsistent with the record and not applicable.¹⁹ Second, AA Metals contends that "PMS' cold-rolling and annealing manufacturing operations alone substantially transform any non-Turkish materials into a product with a new name, use, or character."²⁰ Overall, AA Metals states that CBP based its entire decision on Commerce's Scope Determination, which is not final, and, therefore, CBP should not find that evasion occurred.

B. TKA's Arguments

TKA requests that we affirm the March 21st Determination of evasion, arguing that CBP's finding of evasion was not premature and the merchandise is covered by the AD/CVD Orders.

TKA argues that CBP was procedurally correct when it did not stay or bifurcate the proceedings. TKA states "there is no legal support for such bifurcation in the statute or regulations, and AA Metals cites none."²¹ Therefore, CBP properly proceeded once Commerce issued the Scope Determination.

Furthermore, TKA maintains that the merchandise imported from China to PMS is covered by the AD/CVD Orders, and ultimately, the merchandise that entered the United States is covered merchandise.²² TKA states that, regardless of whether the Chinese aluminum was produced using continuous casting or direct chill casting, it "it is a distinction without a difference" and covered by the AD/CVD Orders.²³ Lastly, TKA contends that the type of

¹³ See AA Metals' Request for Administrative Review (May 2, 2022) ("Request for Review").

¹⁴ *Id.*

¹⁵ See generally Request for Review.

¹⁶ *Id.* at 3.

¹⁷ *Id.* at 12.

¹⁸ *Id.*

¹⁹ See generally Request for Review.

²⁰ *Id.* at 19.

²¹ See TKA's Response to Administrative Review Request.

²² *Id.* at 5.

²³ *Id.*

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processing performed by PMS is expressly provided for in the scope of the Orders, and therefore does not remove the products at issue from being covered merchandise.²⁴ Based on the foregoing, TKA argues that the March 21st Determination should be affirmed.

C. Administrative Review Analysis

As an initial matter, pursuant to 19 U.S.C. § 1517(f)(1) and 19 C.F.R. § 165.45, upon request for administrative review, RR will apply a *de novo* standard of review under the law, based solely upon the facts and circumstances on the administrative record in the proceeding. In reaching this determination, RR reviewed: (1) the administrative record upon which the initial determination was made, as transmitted by TRLED to RR; and, (2) the timely and properly filed request for review and response. The administrative review is to be completed within 60 business days of the commencement of the review.

As discussed in more detail, below, a review of the administrative record and the Importer's request for administrative review clearly demonstrates that AA Metals entered, as type "01" consumption entries, common alloy aluminum, and therefore, AD/CVD deposits were not paid. Because they contained merchandise subject to the AD/CVD Orders, these entries should have been made as type "03" entries, indicating that they are subject to an AD/CVD order.²⁵

There is no dispute that if Chinese-manufactured finished common alloy aluminum sheets were shipped directly from China to the United States, they would fall under the AD/CVD Orders. The fact in contention is whether the aluminum of Chinese origin, which was re-rolled in Turkey, is merchandise covered by the AD/CVD Orders.

On May 13, 2021, TRLED requested a scope determination from Commerce to determine two scenarios: whether (1) Chinese-origin aluminum sheets, of a thickness a little greater than a thickness covered by the scope, if re-rolled in Turkey, to a thickness covered by the scope, are still within the scope of the AD/CVD Orders; and (2) whether Chinese-origin aluminum sheets of a thickness covered by the scope, if re-rolled in Turkey to a thickness covered by the scope, are still within the scope of the AD/CVD Orders.²⁶

In the January 21st Scope Determination, Commerce explained that it must determine "whether the product at issue is of the type described in the order, and whether the country of

²⁴ *Id.* at 7.

²⁵ *See* PMS RFI Response (public version – 27). In 2018, PMS placed three orders for Chinese-origin aluminum that was to be re-rolled in Turkey. However, due to delays, there was only one partial shipment sent to AA Metals in 2019. AA Metals provided two entry packets for these shipments and argues that its PMS-manufactured CAAS were entered outside the period of investigation. *See* Request for Review, at p.3. We note, under the regulations, CBP provides for a one-year period of investigation; however, CBP maintains the right to preserve, investigate, and impose interim measures on entries that fall outside of the period of investigation. Specifically, 19 C.F.R. § 165.2 states that, in addition to entries made within one year before receipt of an allegation, "at its discretion, CBP may investigate other entries of such covered merchandise."

²⁶ *See* Commerce's January 21, 2022, Scope Determination, p. 1-2 (Public Document – No. 61). TRLED submitted two scenarios to Commerce. The first pertained to operations conducted by Teknik, and the second to operations conducted by PMS. As stated previously, there was not a request for review related to operations performed by Teknik, therefore, we will only focus on Scenario 2, which pertains to PMS.

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origin of the product is that of the subject country.”²⁷ Commerce also noted: “regulations permit that interested parties may submit information to support their positions and/or to rebut, clarify or correct another party’s information during a proceeding.”²⁸ During its review, Commerce collected information from both AA Metals and PMS. After doing so, 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. The finished common alloy aluminum sheet further processed in Turkey and exported from Turkey to the United States in Scenario 2 is also within the scope of the Orders. Therefore, 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.²⁹

Commerce therefore clarified the scope and determined that the aluminum PMS imported into Turkey from China was in-scope, and that the operations that took place in Turkey did not take the merchandise out of scope. Additionally, the record shows that PMS conceded that “the imported Chinese-origin aluminum sheet fits the description of the scope of the Orders as to its physical specifications,” including thickness.³⁰ Purchase orders from the importation of the aluminum into Turkey show aluminum with a thickness of 6.2 mm.³¹ Furthermore, the record includes purchase orders for the importation of aluminum into the United States.³² The merchandise varies in thickness from 1.02 mm to 4.78 mm, which is within the AD/CVD Orders’ scope range.

Moreover, the purchase orders from PMS to AA Metals for goods shipped to the United States are for the 3003-aluminum series. PMS provided technical specifications of its “Alloy Cast Rolled Coils,” which designate the goods as part of the 3003 series.³³ Commerce’s AD/CVD Orders state:

Common alloy sheet within the scope of this order includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, common alloy sheet is manufactured from a 1XXX-, 3XXX-, or 5XXX-series

²⁷ *Id.* at 7.

²⁸ *Id.* at 4.

²⁹ *Id.* at 9.

³⁰ PMS Supplemental RFI Response, p. 1 (public version – No. 53).

³¹ *See generally* PMS RFI Response, Exhibit 5 (public version – No. 47).

³² *Id.* at Exhibit 4.

³³ *See* PMS RFI Response (public version – No. 47). Although AA Metals focuses on the issue of continuous casting, we do not find those arguments to be relevant to our decision. First, we see no reference to casting methods as somehow determinative in the scope section of the Orders. Second, even if the casting method is material, we note that Commerce considered this issue. The technical specifications describe the goods as “continuous cast/hot rolled coils.” However, Commerce reviewed evidence provided by all parties and determined that the merchandise entered from China was not continuous cast. Most importantly, Commerce determined that the goods in question are within the scope of the Orders. CBP’s duties are to perform a ministerial function, per determinations that come within Commerce’s purview, which does not include second-guessing Commerce’s scope determinations. Therefore, we must follow Commerce’s January 21st Scope Determination regarding the goods in question.

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alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, common alloy sheet is produced from a 3XXX-series core.³⁴

Furthermore, the record does not provide evidence that PMS's technical specification series number differs from the Aluminum Association designation or that it otherwise matches merchandise outside of the clarified scope of the AD/CVD Orders.

While AA Metals argues that Commerce failed to provide CBP with a determination as to whether continuous cast coil and unwrought aluminum are subject to the AD/CVD Orders, we find this issue is inapposite. As discussed above, the record shows that the merchandise PMS manufactured is within the scope of the AD/CVD Orders. Additionally, Commerce also explained:

...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 . . . 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.³⁵

Thus, we find that AA Metals had the opportunity, and failed, to provide evidence to Commerce or CBP that would prove that its Chinese-origin imported aluminum was not subject merchandise. Therefore, based on the record and Commerce's Scope Determination, the merchandise imported from China by PMS into Turkey is covered merchandise within the scope of the AD/CVD Orders, and it remained so, after the operations performed in Turkey.

Despite the above-quoted language, indicating that the aluminum PMS imported is common alloy, and Turkish operations do not take the products outside the scope of the AD/CVD Orders, AA Metals asks that CBP disregard Commerce's findings. However, there is no mechanism in the applicable law or regulations permitting CBP to do so. It is well established that CBP plays a "ministerial" role in enforcing AD/CVD order-related determinations issued by Commerce—CBP's role is to follow Commerce's instructions in collecting deposits of estimated duties and in assessing antidumping duties.³⁶ However, "Customs, incident to its 'ministerial' function of fixing the amount of duties chargeable, must make factual findings to determine 'what the merchandise is, and whether it is described in an order' and must decide whether to apply the order to the merchandise."³⁷ Pursuant to its ministerial function, though, CBP cannot "affect the scope of the order."³⁸ Similarly,

³⁴ See AD/CVD Orders.

³⁵ Commerce's January 21, 2022, Scope Determination, p. 8-9 (Public Document – No. 61).

³⁶ See *Mitsubishi Electronics America, Inc. v. United States*, 44 F.3d 973, 977 (Fed. Cir. 1994) ("Customs only applies antidumping rates determined by Commerce. Further, Customs has a merely ministerial role in liquidating antidumping duties. . . . Customs cannot 'modify . . . {Commerce's} determinations, their underlying facts, or their enforcement'") (citing *Royal Business Machs., Inc. v. United States*, 1 C.I.T. 80, 507 F. Supp. 1007, 1014 n.18 (Ct. Int'l Trade 1980)); see also *Fujitsu Ten Corporation of America v. United States*, 21 C.I.T. 104, 107 (1997); and *American Hi-Fi International, Inc. v. United States*, 19 C.I.T. 1340, 1342-43 (1995).

³⁷ See *LDA Incorporado v. United States*, 79 F. Supp. 3d 1331, 1339 (Ct. Int'l Trade 2015).

³⁸ *Id.*

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in the context of protests filed against the imposition of AD/CVD deposits or duties, CBP has previously declined to find that merchandise is outside the scope of an AD order where that merchandise had been previously deemed by Commerce to be within the scope of an AD or CVD order.³⁹ In so doing, CBP has determined that to do otherwise “would infringe upon Commerce’s authority to determine that a particular type of merchandise is within the class or kind of merchandise described in an existing finding of dumping and would potentially cause CBP to impermissibly alter the scope.”⁴⁰

AA Metals requests that CBP rely on the CBP regulations to determine that the goods in question were substantially transformed to effect a country-of-origin change, despite Commerce’s determination that the aluminum’s country-of-origin is China, and the processing activities performed in Turkey are not determinative. However, CBP’s regulations as to country-of-origin determinations are not relevant for purposes of determining whether merchandise falls within the scope of an AD/CVD order in a situation such as that presented here. Even if CBP were to determine that the goods qualify as of Turkish origin for customs purposes, that determination would not control. Rather, for purposes of an EAPA determination, what controls is Commerce’s determination as to whether merchandise is covered by the scope of an AD/CVD order. Here, Commerce has concluded that the goods are in-scope.⁴¹

Commerce has determined that the merchandise PMS imported from China is CAAS and that the activities performed in Turkey, prior to entry into the United States, did not take the merchandise out of the scope of the AD/CVD Orders. After receiving the January 21st Scope Determination, TRLED received unambiguous guidance from Commerce that the CAAS as described above, manufactured by PMS, are indeed within the scope of the AD/CVD Orders. As such, to disregard the January 21st Scope Determination, as requested, would impermissibly affect the scope of the AD/CVD Orders, and is not within CBP’s authority to do. Therefore, TRLED was correct in its findings in the March 21st Determination. Consequently, RR also follows Commerce’s Scope Determination and finds that merchandise imported from PMS was subject to the AD/CVD Orders.

Finally, we address AA Metals’ argument that the January 21st Scope Determination is not a final determination and therefore CBP should have stayed its proceedings. It is correct that AA Metals may contest the Commerce Scope Determination at the CIT. However, AA Metals is incorrect in its assertion that CBP may stay its EAPA timeline until litigation concludes. The statute only allows TRLED to extend its statutory deadline for 60 days under certain circumstances, or to stay the EAPA timeline if there is a referral to Commerce. Notably absent from the EAPA statute is any authority for CBP to issue a stay pending CIT litigation. Accordingly, RR does not have the authority to stay administrative review proceedings pending the outcome of such litigation, as it must operate under the strict statutory deadlines imposed by 19 U.S.C. § 1517(f)(2). Similarly, neither TRLED nor RR has the authority to bifurcate issues in a manner so as to stay a part of an EAPA proceeding, except as allowed by statute.

³⁹ See HQ H303403 (Sep. 27, 2021).

⁴⁰ *Id.*

⁴¹ Additionally, we note that Commerce is not bound by CBP rulings, as Commerce performs a distinct substantial transformation analysis when determining scope and proper country of origin for purposes of AD/CVD orders.

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Thus, while we understand that AA Metals continues to dispute Commerce's definition of the merchandise as within scope, given that Commerce reviewed evidence submitted by AA Metals and determined that PMS imported Chinese common alloy aluminum coils, which stayed in-scope after processing in Turkey, we find that TRLED correctly determined the merchandise to be within the scope of the AD/CVD Orders. The appropriate procedure to dispute Commerce's Scope Determination is via judicial review, not via the CBP administrative review process under the EAPA statute.⁴² Although we acknowledge that AA Metals has commenced such CIT review, again, RR does not have the authority to stay these administrative review proceedings pending the outcome of such litigation, as RR must operate under the strict statutory deadlines imposed by 19 U.S.C. § 1517(f)(2).⁴³

III. Decision

We conclude that the record supports a finding of evasion as defined by EAPA. Therefore, TRLED's finding of evasion stands. The record shows that AA Metals made type "01" entries of the aluminum into the United States, declared as not subject to the AD/CVD Orders. As such, AD/CVD deposits were not collected on these entries. However, because the merchandise was covered by the Orders, these entries should have been made as type "03" entries, subject to the AD/CVD Orders. It was thus incorrect, material and false for these entries to be made as type "01" entries, and without AD/CVD deposits. That the material falsehood may have occurred as a result of a mistake, or a belief that the goods were not subject to the Orders, does not mean that evasion has not occurred.⁴⁴ In our view, the record as a whole does not support AA Metals' assertions that CBP should conclude that AA Metals' entries were not subject to the AD/CVD Orders.

⁴² See 19 U.S.C. § 1517(b)(4)(D).

⁴³ However, we note that, while litigation is pending, if the CIT issues a court order enjoining liquidation, the liquidation of any entries subject to such injunction should remain suspended during the pendency of the litigation. See 19 C.F.R. § 159.12.

⁴⁴ See *Diamond Tools Tech. LLC v. United States*, LEXIS 155, 165, SLIP OP. 2021-151 (Ct. Int'l Trade 2021) (internal citations omitted) and 19 U.S.C. § 1517(a)(5)(A).

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Based upon our *de novo* review of the administrative record in this case, including the administrative record, the request for administrative review and response, the March 21st Determination of evasion under 19 U.S.C. § 1517(c) is **AFFIRMED**.

This decision does not preclude CBP or other agencies from pursuing additional enforcement actions or penalties. Pursuant to 19 C.F.R. § 165.46(a), this final administrative determination is subject to judicial review pursuant to Section 421 of EAPA.

Sincerely,

W. Richmond Beevers
Chief, Cargo Security, Carriers & Restricted Merchandise Branch
Regulations & Rulings, Office of Trade
U.S. Customs & Border Protection

Approved by:

Alice A. Kipel
Executive Director,
Regulations and Rulings, Office of Trade
U.S. Customs and Border Protection