



DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-073, C-570-074]

Common Alloy Aluminum Sheet from the People's Republic of China: Initiation of Circumvention Inquiry of the Antidumping and Countervailing Duty Orders; Aluminum Sheet Further Processed in the Republic of Korea

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from the Aluminum Association Common Alloy Aluminum Sheet Trade Enforcement Working Group and its individual members (the domestic industry), the U.S. Department of Commerce (Commerce) is initiating a company-specific circumvention inquiry to determine whether imports of common alloy aluminum sheet (CAAS) from the Republic of Korea (Korea) produced by Gwangyang Aluminum Industries Co., Ltd. (Gwangyang Aluminum), which is completed or assembled using non-subject flat rolled aluminum having a thickness greater than 6.3 millimeters (mm) produced by Henan Mingtai Aluminum Industry Co., Ltd. (Henan Mingtai) or Zhengzhou Mingtai Industry Co., Ltd. (Zhengzhou Mingtai) in the People's Republic of China (China), is circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on CAAS from China.

DATES: Applicable [Insert date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Frank Schmitt, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4880.

SUPPLEMENTARY INFORMATION:

Background

On May 23, 2023, the domestic industry¹ filed a circumvention inquiry request alleging that CAAS from Korea produced by Gwangyang Aluminum, assembled or completed using flat rolled aluminum having a thickness greater than 6.3 mm (aluminum plated) produced by Henan Mingtai² in China, is circumventing the AD and CVD orders on CAAS from China³ and, accordingly, should be included in the scope of the *Orders*.⁴ The domestic industry alleges that the further processing in Korea is minor or insignificant and otherwise meets the circumvention criteria set forth in section 781(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.226(i).

Scope of the *Orders*

The merchandise covered by the *Orders* 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. A full description of the scope of the *Orders* is provided in the Initiation Checklist.⁵

¹ The individual members of the Aluminum Association Common Alloy Aluminum Sheet Trade Enforcement Working Group are: Arconic Corporation; Commonwealth Rolled Products, Inc.; Constellium Rolled Products Ravenswood, LLC; Jupiter Aluminum Corporation; JW Aluminum Company; and Novelis Corporation.

² Commerce previously determined that Henan Mingtai and Zhengzhou Mingtai are a single entity. *See Antidumping Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and Postponement of Final Determination*, 83 FR 29088 (June 2022, 2018), and accompanying Preliminary Decision Memorandum at 19, unchanged at *Antidumping Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Affirmative Final Determination of Sales at Less-Than-Fair Value*, 83 FR 57421 (November 15, 2018). Accordingly, for the purposes of this circumvention inquiry, we will consider aluminum plate produced by Henan Mingtai and Zhengzhou Mingtai (collectively, Mingtai).

³ *See Common Alloy Aluminum Sheet from the People's Republic of China: Countervailing Duty Order*, 84 FR 2157 (February 6, 2019); and *Common Alloy Aluminum Sheet from the People's Republic of China: Antidumping Duty Order*, 84 FR 2813 (February 8, 2019) (collectively, *Orders*).

⁴ *Id.*

⁵ *See* Checklist, "Common Alloy Aluminum Sheet from the People's Republic of China," dated concurrently with, and hereby adopted by, this notice (Initiation Checklist).

Merchandise Subject to the Circumvention Inquiry

The circumvention inquiry covers CAAS from Korea produced by Gwangyang Aluminum, assembled or completed using flat rolled aluminum having a thickness greater than 6.3 mm produced by Mingtai in China, and exported to the United States.

Statutory and Regulatory Framework

Section 351.226(d) of Commerce's regulations states that if Commerce determines that a request for a circumvention inquiry satisfies the requirements of 19 CFR 351.226(c), then Commerce "will accept the request and initiate a circumvention inquiry." Section 351.226(c)(1) of Commerce's regulations, in turn, requires that each request for a circumvention inquiry allege "that the elements necessary for a circumvention determination under section 781 of the Act exist" and be "accompanied by information reasonably available to the interested party supporting these allegations." The domestic industry alleged circumvention pursuant to section 781(b) of the Act (merchandise completed or assembled in other foreign countries).

Section 781(b)(1) of the Act provides that Commerce may find circumvention of an AD or CVD order when merchandise of the same class or kind subject to the order is completed or assembled in a foreign country other than the country to which the order applies. In conducting circumvention inquiries, under section 781(b)(1) of the Act, Commerce relies on the following criteria: (A) merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of an antidumping or countervailing duty order or finding; (B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which is subject to the order or merchandise which is produced in the foreign country that is subject to the order; (C) the process of assembly or completion in the foreign country referred to in section (B) is minor or insignificant; (D) the value of the merchandise produced in the foreign country to which the AD or CVD order applies is a significant portion of the total value of the

merchandise exported to the United States; and (E) the administering authority determines that action is appropriate to prevent evasion of such order or finding.

In determining whether or not the process of assembly or completion in a third country is minor or insignificant under section 781(b)(1)(C) of the Act, section 781(b)(2) of the Act directs Commerce to consider: (A) the level of investment in the foreign country; (B) the level of research and development in the foreign country; (C) the nature of the production process in the foreign country; (D) the extent of production facilities in the foreign country and (E) whether or not the value of processing performed in the foreign country represents a small proportion of the value of the merchandise imported into the United States. However, no single factor, by itself, controls Commerce's determination of whether the process of assembly or completion in a third country is minor or insignificant.⁶ Accordingly, it is Commerce's practice to evaluate each of these five factors as they exist in the third country, depending on the totality of the circumstances of the particular circumvention inquiry.⁷

In addition, section 781(b)(3) of the Act sets forth additional factors to consider in determining whether to include merchandise assembled or completed in a third country within the scope of an AD and/or CVD order. Specifically, Commerce shall take into account such factors as: (A) the pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the merchandise is affiliated with the person who, in the third country, uses the merchandise to complete or assemble the merchandise which is subsequently imported into the United States; and (C) whether imports of the merchandise into the third country have increased after the initiation of the investigation that resulted in the issuance of such order or finding.

Analysis

⁶ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, Vol. 1 (1994), at 893.

⁷ See *Uncovered Innerspring Units from the People's Republic of China: Final Affirmative Determination of Circumvention of the Antidumping Duty Order*, 83 FR 65626 (December 21, 2018), and accompanying Issues and Decision Memorandum at 4.

Based on our analysis of the domestic industry's circumvention request, we determine that the domestic industry satisfied the criteria under 19 CFR 351.226(c); thus, pursuant to 19 CFR 351.226(d)(1)(ii), we have accepted the request and are initiating the requested circumvention inquiry.⁸

The domestic industry requests that Commerce initiate this inquiry on a company-specific basis, with respect to Gwangyang Aluminum only. The information provided by the domestic industry is centered on Gwangyang Aluminum and does not warrant initiating this circumvention inquiry on a country-wide basis. Therefore, Commerce is initiating this circumvention inquiry with respect to Gwangyang Aluminum.

Commerce intends to establish a schedule for questionnaires and comments on the issues related to this inquiry. A company's failure to respond completely to Commerce's requests for information may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act.

Suspension of Liquidation

Pursuant to 19 CFR 351.226(l)(1), Commerce will notify U.S. Customs and Border Protection (CBP) of its initiation of the requested circumvention inquiry and direct CBP to continue the suspension of liquidation of entries of products subject to the circumvention inquiry that were already subject to the suspension of liquidation under the *Orders* and to apply the cash deposit rates that would be applicable if the products were determined to be covered by the scope of the *Orders*. Should Commerce issue a preliminary or final circumvention determination, Commerce will follow the suspension of liquidation rules under 19 CFR 351.226(l)(2)-(4).

Notification to Interested Parties

In accordance with 19 CFR 351.226(d) and section 781(b) of the Act, Commerce determines that the domestic industry's request for a circumvention inquiry satisfies the requirements of 19 CFR 351.226(c). Accordingly, Commerce is notifying all interested parties

⁸ See Initiation Checklist.

of the initiation of this circumvention inquiry to determine whether CAAS from Korea produced by Gwangyang Aluminum, assembled or completed using aluminum plate produced by Mingtai in China, and exported to the United States, is circumventing the *Orders*. We included a description of the products that are subject to the circumvention inquiry, and an explanation of the reasons for Commerce's decision to initiate this inquiry, in the accompanying Initiation Checklist.⁹ In accordance with 19 CFR 351.226(e)(1), Commerce intends to issue its preliminary determination in this circumvention proceeding no later than 150 days from the date of publication of this notice in the *Federal Register*.

This notice is published in accordance with section 781(b) of the Act and 19 CFR 351.226(d)(1)(ii).

Dated: July 7, 2023.

Lisa W. Wang,
Assistant Secretary
for Enforcement and Compliance.

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⁹ *Id.*