



A-570-053/C-570-054
A-570-073/C-570-074
Changed Circumstances Reviews
Public Document
E&C/Office VI: JAD

September 10, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Initiation and Preliminary Determination of the Changed
Circumstances Reviews Regarding Successor-In-Interest Analysis:
Certain Aluminum Foil/Common Alloy Aluminum Sheet from the
People's Republic of China

I. SUMMARY

The Department of Commerce (Commerce) is conducting changed circumstances reviews (CCRs) of the antidumping duty (AD) and countervailing duty (CVD) orders on certain aluminum foil (aluminum foil) and common alloy aluminum sheet (aluminum sheet) from the People's Republic of China (China). As a result of our analysis, we recommend preliminarily determining that Shanghai Huafon Aluminium Corporation (Shanghai Huafon) is the successor-in-interest to Huafon Nikkei Aluminium Corporation (Huafon Nikkei) and, accordingly, that Shanghai Huafon should be assigned the cash deposit rates established for Huafon Nikkei for purposes of the AD and CVD orders on aluminum foil and aluminum sheet from China.

II. BACKGROUND

On April 19, 2018, Commerce published in the *Federal Register* the AD and CVD orders on aluminum foil from China, which included Huafon Nikkei.¹ Pursuant to the *Aluminum Foil Orders*, Commerce assigned Huafon Nikkei an AD cash deposit rate, adjusted for a subsidy

¹ See *Certain Aluminum Foil from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 83 FR 17362 (April 19, 2018) (*Aluminum Foil AD Order*); see also *Certain Aluminum Foil from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 83 FR 17360 (April 19, 2018) (*Aluminum Foil CVD Order*) (collectively, *Aluminum Foil Orders*).

offset, of 73.66 percent, based on the non-selected respondent rate,² and the all-others subsidy rate of 18.62 percent.³

Commerce published in the *Federal Register* the AD and CVD orders on common alloy aluminum sheet from China on February 8, 2019 and February 6, 2019, respectively.⁴ Pursuant to the *Aluminum Sheet Orders*, Commerce assigned Huafon Nikkei an AD cash deposit rate, adjusted for a subsidy offset, of 49.85 percent, based on the non-selected respondent rate,⁵ and the all-others subsidy rate of 50.75 percent.⁶

On June 12, 2019, Shanghai Huafon informed Commerce that, as of September 25, 2018, Huafon Nikkei changed its name to “Shanghai Huafon Aluminium Corporation.”⁷ Shanghai Huafon stated the change was in name only; all other former business operations remained unchanged.⁸ Shanghai Huafon requested that Commerce conduct CCRs and find that Shanghai Huafon is the successor-in-interest to Huafon Nikkei, and that it be subject to Huafon Nikkei’s AD margins and CVD subsidy rates for aluminum foil and aluminum sheet from China.⁹

After finding that Shanghai Huafon did not address the good cause requirement in its initial request, pursuant to 19 CFR 351.216(c), Commerce issued a letter to Shanghai Huafon requesting that it demonstrate good cause.¹⁰ On July 8, 2019, Shanghai Huafon filed its response.¹¹ On July 17, 2019, Commerce extended the time period for determining whether to initiate and/or issue simultaneous preliminary determinations by 45 days, until September 10, 2019.¹²

² See *Aluminum Foil AD Order*, 83 FR at 17363.

³ See *Aluminum Foil CVD Order*, 83 FR at 17361.

⁴ See *Common Alloy Aluminum Sheet from the People’s Republic of China: Antidumping Duty Order*, 84 FR 2813 (February 8, 2019) (*Aluminum Sheet AD Order*); see also *Common Alloy Aluminum Sheet from the People’s Republic of China: Countervailing Duty Order*, 84 FR 2157 (February 6, 2019) (*Aluminum Sheet CVD Order*) (collectively, *Aluminum Sheet Orders*).

⁵ See *Aluminum Sheet AD Order*, 84 FR at 2814.

⁶ See *Aluminum Sheet CVD Order*, 84 FR at 2158.

⁷ See Shanghai Huafon’s Letter, “Aluminum Foil from the People’s Republic of China: Request for Changed Circumstances Review,” dated June 12, 2019; see also Shanghai Huafon’s Letter, “Common Alloy Aluminum Sheet from the People’s Republic of China: Request for Changed Circumstances Review,” dated June 12, 2019 (collectively, CCRs Requests).

⁸ See CCRs Requests at 2-3.

⁹ *Id.*

¹⁰ See Letter from Commerce, “Antidumping/Countervailing Duty Investigations of Aluminum Foil and Sheet from China: Request for Changed Circumstances Review,” dated July 1, 2019.

¹¹ See Letter from Shanghai Huafon, “Aluminum Foil from the People’s Republic of China and Common Alloy Aluminum Sheet from the People’s Republic of China: Response to Request for Additional Information – Good Cause,” dated July 8, 2019 (Good Cause Response).

¹² See Letter from Commerce, “*Changed Circumstances Reviews: Extension of Initiation Deadline*,” dated July 17, 2019.

III. SCOPE OF THE ORDERS

1. *Aluminum Foil Orders*

The merchandise covered by these orders is aluminum foil having a thickness of 0.2 mm or less, in reels exceeding 25 pounds, regardless of width. Aluminum foil is made from an aluminum alloy that contains more than 92 percent aluminum. Aluminum foil may be made to ASTM specification ASTM B479, but can also be made to other specifications. Regardless of specification, however, all aluminum foil meeting the scope description is included in the scope, including aluminum foil to which lubricant has been applied to one or both sides of the foil.

Excluded from the scope of these orders is aluminum foil that is backed with paper, paperboard, plastics, or similar backing materials on one side or both sides of the aluminum foil, as well as etched capacitor foil and aluminum foil that is cut to shape.

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 forth above. The products under these orders are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7607.11.3000, 7607.11.6000, 7607.11.9030, 7607.11.9060, 7607.11.9090, and 7607.19.6000. Further, merchandise that falls within the scope of this proceeding may also be entered into the United States under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3045, 7606.12.3055, 7606.12.3090, 7606.12.6000, 7606.91.3090, 7606.91.6080, 7606.92.3090, and 7606.92.6080.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these orders is dispositive.

2. *Aluminum Sheet Orders*

The merchandise covered by these 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. Common alloy sheet within the scope of these orders 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 these orders if performed in the country of manufacture of the common alloy sheet.

Excluded from the scope of these orders 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 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.

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 these orders 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 these orders is dispositive.

IV. GOOD CAUSE

Section 751(b)(4) of the Tariff Act of 1930, as amended, and 19 CFR 351.216(c) state that, “in the absence of good cause shown,” the Secretary of Commerce may not review a final AD or CVD determination less than 24 months after the date of publication of the notice of final determination or notice of suspension of an investigation. The final determinations of the AD/CVD investigations of aluminum foil and aluminum sheet from China published on March 5, 2018 (and the amended final determinations on April 19, 2018) and November 15, 2018, respectively.¹³

Shanghai Huaфон asserts that good cause exists to initiate these CCRs. Specifically, Shanghai Huaфон states that aside from the name change, it made no changes with respect to production, employees, management, or business relationships.¹⁴ Further, Shanghai Huaфон states that Commerce has previously found in similar situations that a name change, with no further

¹³ See *Certain Aluminum Foil from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 83 FR 9282 (March 5, 2018); and *Aluminum Foil Orders*; see also *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); and *Countervailing Duty Investigation of Common Alloy Aluminum Sheet From the People’s Republic of China: Final Affirmative Determination*, 83 FR 57427 (November 15, 2018).

¹⁴ See Good Cause Response at 2 (citing *Bulk Aspirin from the People’s Republic of China; Initiation of Changed Circumstances Antidumping Duty Administrative Review*, 67 FR 39344 (June 7, 2002); *Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Initiation of Changed Circumstances Antidumping Duty Administrative Review*, 66 FR 12460 (February 27, 2001); and *Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Passenger Vehicle and Light Truck Tires From the People’s Republic of China*, 81 FR 44588 (July 8, 2018)).

changes in the company's operations, constitutes good cause pursuant to 19 CFR 351.216(c) to initiate a CCR.¹⁵

Here, we consider Shanghai Huaфон's original request and its July 8, 2019 response as sufficient to perform the successor-in-interest analysis and find that it demonstrated "good cause" to initiate these CCRs within 24 months of the issuance of the AD and CVD final determinations. Thus, because Shanghai Huaфон has submitted information showing that there was a change in name only and that other aspects of the company remain the same, we find that good cause has been shown pursuant to 19 CFR 351.216(c) to initiate the CCRs. Moreover, we find that Shanghai Huaфон has provided information that is sufficient to issue a preliminary determination in these CCRs.

V. SUCCESSOR-IN-INTEREST DETERMINATION

In determining whether a change in a company and its relationship with outside entities results in a new company that is not a successor to the pre-change company for cash deposit purposes, Commerce examines a number of factors including, but not limited to: changes in structure, management, production facilities, supplier relationships, and customer base.¹⁶ Although no single, or even several, of these factors will necessarily provide a dispositive indication of succession, generally, Commerce will consider a company to be a successor if its resulting operation is not materially dissimilar to that of its predecessor.¹⁷ Thus, if the "totality of circumstances" demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the prior company, Commerce will assign the new company the cash deposit rate of its predecessor.¹⁸

In its questionnaire response, Shanghai Huaфон detailed the following regarding the company's operations:

1. *Management*

The record shows that, on September 25, 2018, the Shanghai Administration for Industry and Commerce approved the name change to Shanghai Huaфон.¹⁹ Concerning management, the record indicates that Shanghai Huaфон's management is virtually identical to Huaфон Nikkei.²⁰ Senior managers from Huaфон Nikkei continue to serve in essentially the same positions as in Shanghai Huaфон.²¹ Based on this information, we

¹⁵ *Id.*

¹⁶ *See, e.g., Ball Bearings and Parts Thereof from France: Final Results of Changed-Circumstances Review*, 75 FR 34688 (June 18, 2010), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

¹⁷ *See, e.g., Fresh and Chilled Atlantic Salmon from Norway; Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9980 (March 1, 1999).

¹⁸ *See, e.g., id.* at 9980; and *Brass Sheet and Strip from Canada: Final Result of Administrative Review*, 57 FR 20461 (May 13, 1992), and accompanying IDM at Comment 1.

¹⁹ *See* CCRs Requests at 2-3

²⁰ *Id.* at Attachments 3 and 4.

²¹ *Id.*

preliminarily determine that Shanghai Huaфон has essentially the same management since before the name change.

2. *Production Facilities*

Shanghai Huaфон explains that there has been no change in the production facilities as a result of the name change.²² The production facilities are located in same location and employ approximately the same level of employees.²³ In addition, the name change announcement states that the production facilities of the company remain unchanged.²⁴ The record shows that the only amendments to the Articles of Association concern the name change.²⁵ Therefore, based on record evidence, we preliminarily determine that Shanghai Huaфон's production facilities and scope of business have remained unchanged since before the change of name.

3. *Supplier Relationships*

Shanghai Huaфон states that there has been no material change to its supplier relationships.²⁶ The major production input suppliers to the company are substantially the same before and after the name change.²⁷ Therefore, based on the record evidence, we preliminarily determine that Shanghai Huaфон's supplier relationships remain essentially the same since before the change of name.

4. *Customer Base*

Shanghai Huaфон states that there has been no material change to the customer base.²⁸ Shanghai Huaфон provides a list of major customers of the company before and after the name change, which confirms the statement.²⁹ Therefore, based on this information, we preliminarily determine that Shanghai Huaфон's customer base remains substantially the same since before the name change.

For the reasons discussed above, we preliminarily find that Shanghai Huaфон has provided sufficient evidence, based on the totality of the circumstances under Commerce's successor-in-interest criteria, to demonstrate that Shanghai Huaфон's management and business relations are virtually identical to those of Huaфон Nikkei, before the name change, with respect to the merchandise under review. Moreover, we preliminarily find that Shanghai Huaфон's production facilities, supplier relationships, and customer base with regard to the merchandise under review are substantially the same as Huaфон Nikkei before the name change. Thus, we recommend that Commerce preliminarily find that Shanghai Huaфон is the successor-in-interest to Huaфон Nikkei

²² *Id.*

²³ *Id.* at Attachment 3.

²⁴ *Id.* at 3-4 and Attachment 2.

²⁵ *Id.* at Attachment 5.

²⁶ *Id.* at 4.

²⁷ *Id.* at Attachment 3.

²⁸ *Id.* at 4.

²⁹ *Id.* at Attachment 3.

and the rates assigned to Huaфон Nikkei should be the rates for Shanghai Huaфон as a result of our successor-in-interest finding.

VI. RECOMMENDATION

For the reasons explained above, we preliminarily determine that Shanghai Huaфон has shown good cause to initiate the CCRs and provided sufficient evidence to find Shanghai Huaфон as the successor-in-interest to Huaфон Nikkei. We also preliminarily recommend that Huaфон Nikkei’s current cash deposit rates be applied to Shanghai Huaфон.

Agree

Disagree

9/10/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance