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Inv. Nos. 701-TA-591 and 731-TA-1399 (Prelim.)

NONCONFIDENTIAL VERSION

**Business Information deleted from
pp. 2, 6-9, 12, 14-18, 20-21, 23, 26 and Exs. 1 and 5**

December 28, 2017

VIA ELECTRONIC FILING AND HAND DELIVERY

The Honorable Lisa R. Barton
Secretary
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

Re: Investigation of Common Alloy Aluminum Sheet from China – Post-Conference
Brief of NMMA, RVIA and CE Smith

Dear Secretary Barton,

On behalf of the Nation Marine Manufacturers Association, the Recreational Vehicle Manufacturers Association and C.E. Smith Company, Inc., we whereby submit the enclosed Post-Conference Brief for consideration by the International Trade Commission (the “Commission”) in making its preliminary determination in the antidumping and countervailing duty investigation on Common Alloy Aluminum Sheet from China.

Pursuant to 19 C.F.R. §§ 201.6, 207.3 (2017), we hereby request that the Commission afford confidential treatment to the information in the attached brief designated as confidential business information. Such information includes domestic industry, importer, purchaser and Chinese exporter proprietary financial, production and sales data, as well as other information released to this firm under administrative protective order ("APO"). Disclosure of this information would cause substantial commercial and competitive harm to our clients and the other parties subject to the APO. Our clients consent to the release of information contained in this submission to the extent required by the Commission under a valid APO.

A nonconfidential version of this Post-Conference Brief will be filed in accordance with Commission rules, and this brief has been served as reflected in the attached certificate of service. Please do not hesitate to contact the undersigned with any questions.

Sincerely,



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PUBLIC SERVICE LIST

**Common Alloy Aluminum Sheet from the People's Republic of China
Inv. Nos. 701-TA-591 and 731-TA-1399 (Prelim.)**

I, Jeffrey S. Grimson, certify that a copy of the attached submission was served this 27th day of December 2017 by hand delivery on the following:

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Jeffrey S. Grimson

CERTIFICATE OF COMPLETENESS AND ACCURACY

**COMMON ALLOY ALUMINUM SHEET FROM
THE PEOPLE'S REPUBLIC OF CHINA
INV. NOS. 701-TA-591 AND 731-TA-1399 (PRELIM.)**

City of Washington)
)
District of Columbia) ss


I, Kristin H. Mowry, an attorney with Mowry & Grimson, PLLC, counsel to the National Marine Manufacturers Association, the Recreational Vehicle Industry Association and C.E. Smith Company, certify that (1) I have read the attached submission, (2) based on the information provided to me by the aforementioned entities, the information contained herein is accurate and complete to the best of my knowledge, and (iii) in accordance with 19 C.F.R. 201.6(b)(3)(iii), the confidential information contained in this submission is not available in substantially identical form to the public.

Date: 12/27/17

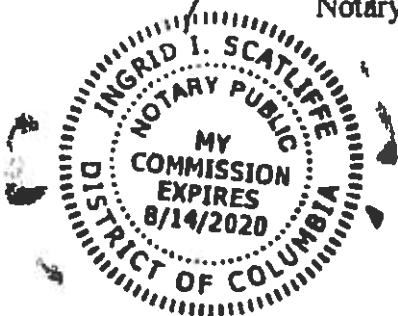


Kristin H. Mowry

Signed and Sworn Before Me this 27th day of December 2017



Notary Public



BEFORE THE
UNITED STATES INTERNATIONAL TRADE COMMISSION

**COMMON ALLOY ALUMINUM SHEET FROM THE PEOPLE'S REPUBLIC OF
CHINA**
INVESTIGATION NOS. 701-TA-591 AND 731-TA-1399 (PRELIMINARY)

POST-CONFERENCE BRIEF
ON BEHALF OF THE NATIONAL MARINE MANUFACTURERS ASSOCIATION,
THE RECREATIONAL VEHICLE INDUSTRY ASSOCIATION AND C.E. SMITH
COMPANY

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December 27, 2017

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I. INTRODUCTION

There is no escaping the fact that the genesis of this investigation is unusual – the first self-initiated investigation by the Department of Commerce, for a countervailing duty case since 1991 and for an antidumping case since 1985.¹ On behalf of the National Marine Manufacturers Association, the Recreational Vehicle Industry Association and C.E. Smith Company we appeared at the Commission’s Staff Conference to remind the Commission that context matters and we present this post-conference brief in opposition to the imposition of antidumping and countervailing duties.² Counsel for the companies in support of this investigation erroneously claimed that we stated that self-initiated cases were only for “mom and pop” companies or that we otherwise challenged the standards for self-initiation.³ The context we provided in the Staff Conference was that the Secretary of Commerce himself testified at his confirmation hearing that he believed self-initiation to be a useful tool, referring specifically to “industries that have a lot of small companies” and sympathizing that it would be very hard for those companies to get the data together and to get the funding together to bring a case.

Given the disparity between what the Secretary claimed to be the target beneficiaries of self-initiation and the actual companies claimed to be assisted in this case, we simply asked the Commission to probe into why that is.⁴ Indeed, the Commission staff did survey the panel of

¹ See Common Alloy Aluminum Sheet From the People’s Republic of China: Initiation of Less-Than-Fair-Value and Countervailing Duty Investigations, 82 Fed. Reg. 57214 (Dep’t Commerce Dec. 4, 2017) and accompanying initiation memo (“Initiation Memo”); Self-Initiation of Countervailing Duty Investigation: Certain Softwood Lumber Products from Canada, 56 Fed. Reg. 56055 (Dep’t Commerce Oct. 31, 1991); Dynamic Random Access Memory Semiconductors of 256 Kilobits and Above From Japan: Initiation of Antidumping Duty Investigation, 50 Fed. Reg. 51450 (Dep’t Commerce Dec. 17, 1985).

² The National Marine Manufacturers Association and the Recreational Vehicle Industry Association sign on to the nonconfidential version of this post-conference brief.

³ Common Alloy Aluminum Sheet from China, Conf. Tr. at 157 (Dec. 21, 2017) (“Conf. Tr.”) (Mr. Rosenthal).

⁴ Id. at 15 (Ms. Mowry). In response to press reports regarding Ms. Mowry’s opening remarks, a Commerce Department spokesman responded that “Trying to bully Secretary Ross with an incendiary complaint is an act of desperation.” World Trade Online (Exhibit 1). We apologize if the United States Secretary of Commerce felt bullied by our remarks before the Commission Staff. However, we intend to continue zealously representing our

witnesses in support of duties whether they contend that the domestic industry is being injured, to which they each replied affirmatively.⁵ None explained why they could not file a case in the normal course or the extraordinary resort to self-initiation was necessary. The context that is missing however, relates to those producers in the domestic industry that did not appear at the Staff Conference. Not present at the Staff Conference were other domestic producers such as [], companies which have officially [] this investigation.⁶

Finally, it is critical to note that the involvement and contribution of downstream consumers of the domestic like product is not “legally irrelevant” for the purposes of the Commission’s injury analysis.⁷ That claim is simply false. That the short-cut proceeding of a preliminary investigation does not include questionnaires to Purchasers does not mean that input of Purchasers at this stage is irrelevant. Indeed, there is no better suited company than an end user to address issues of demand, constraints on supply, availability of domestically-produced product and product characteristics, all factors the Commission must take into account when examining the domestic industry.

II. LEGAL STANDARD

In the preliminary phase of an investigation, the Commission must determine whether, based upon the record evidence available at the time, there is a “reasonable indication” that a domestic industry is materially injured or threatened with material injury by reason of the

clients who are, in this case, United States manufacturers representing billions of dollars of economic activity far in excess of that contributed by the domestic CAAS producers.

⁵ Conf. Tr. at 106-107 (Multiple).

⁶ U.S. Producers’ QR of [] at I-3.

⁷ Conf. Tr. at 160 (Mr. Rosenthal).

allegedly unfairly traded imports.⁸ In applying this legal standard, the Commission weighs the evidence before it and determines whether “(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”⁹ The purpose of preliminary determinations is to avoid the cost and disruption to trade caused by unnecessary investigations and that the “reasonable indication” standard requires more than a finding that there is a “possibility” of material injury.¹⁰

The Commission’s regulations state that “[s]ubsequent to institution of an investigation pursuant to section 207.12, the Director shall conduct such investigation as the Director deems appropriate. Information adduced in the investigation shall be placed on the record.”¹¹ Section 207.12 makes clear that the Commission’s obligation is the same whether a petition has been filed in accordance with section 207.10 or the “administering authority has commenced an investigation under section 702(a) or section 732(a) of the Act”.¹² In response to Mr. Corkran’s query we simply state that the Commission is bound to apply the same rigorous analysis to the data presented it by the Department as it would a submission made by a private party.¹³ Neither the statute, nor the Commission’s regulations establish separate legal standards for an investigation commenced by the Department. If, as is the situation here, the case is meritless then the Commission must terminate it despite the fact that it was self-initiated.

⁸ 19 U.S.C. §§ 1671b(a), 1673b(a); see also e.g., Certain Colored Synthetic Organic Oleoresinous Pigment Dispersions from India, Inv. Nos. 701-TA-436 and 731-TA-1042 (Preliminary), USITC Pub. 3615 at 3 (July 2003) (“Certain Colored Pigment from India”); Am. Lamb Co. v. United States, 785 F.2d 994, 998 (Fed. Cir. 1986).

⁹ Certain Colored Pigment from India, USITC Pub. 3615 at 3 (citing American Lamb Co., 785 F.2d at 1001).

¹⁰ Am. Lamb Co., 785 F.2d at 1000.

¹¹ 19 C.F.R. § 207.13

¹² 19 C.F.R. § 207.12

¹³ Conf. Tr. at 153 (D. Corkran)

As detailed below, the record as a whole fails to demonstrate this statutory standard for an affirmative preliminary determination. As such, the Commission must make a negative preliminary injury and threat determination.

III. CAN STOCK PRODUCERS SHOULD BE INCLUDED IN THE DOMESTIC INDUSTRY

The domestic industry argues that the Commission define the domestic like product as Common and Alloy Aluminum Sheet (“CAAS”) coextensive with the scope.¹⁴ The Department should reject this argument and instead find that can stock, which is excluded from the scope, be included in the domestic industry definition.

The scope presented by the Department reads as follows:

The merchandise covered by these investigations 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 investigations 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 investigations if performed in the country of manufacture of the common alloy sheet.

Excluded from the scope of these investigations 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

¹⁴ Id. at 53 (J. Herrmann).

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.

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 investigations 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 investigations is dispositive.¹⁵

The Tariff Act defines the term “domestic like product” to mean “a product which is like, or . . . most similar in characteristics and uses” to the relevant imported products.¹⁶ The Commission generally considers the following factors in its like product analysis: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) common manufacturing facilities, production processes and production employees; (5) customer and producer perception of the products; and (6) price.¹⁷ The like product determination is a factual analysis applied on a case-by-case basis.¹⁸ Applying these factors, the Commission should decline to find that can stock is a separate domestic like product.

At the outset, we note that the aluminum can stock issue in this investigation resembles a key scope issue another aluminum investigation: whether ultra-thin aluminum foil should be treated as a separate like product. In that case, the domestic industry, represented by the same law firm, vigorously argues that the ultra-thin gauge, smooth-surface foil product should be

¹⁵ Common Alloy Aluminum Sheet from the People's Republic of China: Initiation of Less-Than-Fair-Value and Countervailing Duty Investigations, 82 Fed. Reg. 57,214, 57,218-9 (Dec. 4, 2017).

¹⁶ 19 U.S.C. §§ 1677(4)(A), (10).

¹⁷ Aluminum Foil from China, Inv. Nos. 701-TA-570, 731-TA-1346, USITC Pub. 4684 at 5, n. 11 (May 2017) (Preliminary).

¹⁸ See, e.g., Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 14 CIT 648, 650-51, 747 F. Supp. 744, 748-49 (1990).

included as the same domestic like product. Interestingly, in the current investigation, the domestic industry takes the opposite position, suggesting that a similarly relatively thinner gauge product that is otherwise covered by the scope be treated as a separate like product.

It is clear from the response data that domestic production of can stock [] in-scope CAAS [] as noted in the chart below.

Chart I Aggregated Domestic Producer Data¹⁹

	2014	2015	2016
[]			
[]			

One domestic producer reported overall production ranging between [] during the POI.²⁰ Of that production [] over the entire POI, and [].²¹ The producer reported [] of other out of scope products such as aluminum foil, aluminum plate or other products. A similar dynamic plays out in many of the other U.S. Producers' questionnaire responses. We urge the Commission to avoid the inconsistency inherent in the domestic industry's like product argument and include can stock within the domestic industry. The like product analysis compels this outcome.

The above chart likely explains [] if can stock was included in the Commerce scope. Slicing and dicing the scope and then convincing

¹⁹ Compiled from U.S. Producer QRs.

²⁰ U.S. Producer QR of []

] at II-3a.

²¹ Id.

the Secretary of Commerce to start a case that []
should not change the rigor of the Commission's inquiry into the proper domestic industry.

Indeed, domestic producer []

].²²

[]²³ []

]²⁴ []

].²⁵ When referring to operations performed
on in-scope merchandise in a third-country, the scope states that "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 investigations if performed in the
country of manufacture of the CAAS."²⁶ [] therefore confirms that can stock
and CAAS can be produced on the same production equipment and that the only differentiating
operations []

]. [] production of can stock as well as []

] must be

considered by the Commission when assessing the health of the domestic industry.

²² U.S. Producers' QR of [] at III-16 and II-17.

²³ Id. at II-3e.

²⁴ Id. at II-13.

²⁵ See id. at II-3a.

²⁶ Commerce Initiation Notice at 57,219; see also U.S. Producers' Q'naire at 2.

A. Physical Characteristics and Uses

Can stock is made of aluminum (between 0.2 mm and 0.292 mm) which, like other CAAS products, falls within the continuum of gauges (6.3mm or less, but greater than 0.2 mm) covered by the scope of the current investigation.²⁷ At the preliminary staff conference, expert witnesses from the domestic industry testified that can stock is a thinner gauge product with a uniform surface quality.²⁸ But can stock meets the minimum gauge threshold (above 0.2mm) of in-scope CAAS. The domestic producers do not claim that other in-scope CAAS does not have a uniform surface quality.

Furthermore, the domestic industry claims that can stock tends to be thinner but fails to provide any supporting details. For example, no record information establishes a clear dividing line in the thickness of can stock versus other aluminum sheet products. The lack of a clear cut off line undermines the argument that can stock possesses distinct physical characteristics. When considering whether can stock qualifies as a separate like product, the Commission should consider its overlap with, not deviation from the gauge range (6.3 mm or less, but greater than 0.2 mm) covered by the scope of the investigation. The mere fact that a scope exclusion for can stock was required is suggestive of a high level of similarity between the products, such that a customs officer would have trouble distinguishing the two at a port of entry.

B. Manufacturing Facilities

With respect to manufacturing facilities, production processes, and employees, the domestic industry has reported the ability to shift production among aluminum products of varying thicknesses, the primary alleged distinction for can stock, in some cases crossing the boundaries between []:

²⁷ Id.

²⁸ Conf. Tr. at 22-23 (Stemple).

- []²⁹
- []³⁰
- []³¹
- []³²

[] domestic producer questionnaire responses included an [] response to question II-3e.³³ []

].³⁴

The flexibility of aluminum rolling assets is consistent with the domestic industry's testimony during the aluminum foil investigation. For instance, Mr. Roush testified that JW Aluminum produces thinner and thicker gauge products in the same facilities, with the same production equipment, and with the same employees, the only difference being "the number of passes you take on the rolling operations, the cold mills."³⁵ Further, Mr. McCarter testified that such conversion can be done quickly and inexpensively.³⁶

The record of the current investigation, corroborated by the ongoing foil investigation, establishes the domestic industry's ability to produce a wide range of gauges. Notably, at the preliminary staff conference, the expert witnesses of the domestic industry did not deny their ability to shift between products, although they might have chosen to produce can stock at

²⁹ U.S. Producers' QR of [] at II-3e.

³⁰ U.S. Producers' QR of [] at II-3e.

³¹ U.S. Producers' QR of [] at II-3e.

³² U.S. Producers' QR of [] at II-3e.

³³ U.S. Producers' QRs of []

at Question II-3e.

³⁴ U.S. Producers' QR of [] at II-3e.

³⁵ Aluminum Foil from China, Inv. 701-TA-570 and 731-TA-1346 (Prelim.), Conference Transcript at 53 (Mar. 30, 2017), excerpts included as Exhibit 2 ("Foil Conf. Tr.").

³⁶ Foil Conf. Tr. at 56 (L. McCarter).

separate facilities.³⁷ Additionally, separate production facilities does not necessarily lead to the conclusion that the equipment is fundamentally different. Mr. Chevalier testified that, “{w}e produce common alloy sheet at our fully integrated facility in Hammond, Indiana, where we are one of the largest employers. We add further value to the common alloy sheet we manufacture at our painting facilities in Fairland, Indiana, and Beech Bottom, West Virginia.”³⁸ Aluminum sheet produced in Hammond and painted elsewhere in Indiana is not necessarily any different from aluminum sheet produced in Hammond and painted in West Virginia.³⁹ The key is the specific machinery at these facilities.

In the aluminum foil case many of these same domestic producers claimed the ability to make ultra-thin gauge foil which has tight tolerances because of its use in food, medical and other packaging applications. It strains credulity that these same producers would be unable to meet the “uniform surface quality” of can stock yet be able to produce ultra-thin foil. The shift between aluminum sheet and foil crosses a wider gap of product differences. Further, one industry expert sought to distinguish can stock from the other segments of aluminum sheets because it requires specialized cold rolling.⁴⁰ However, in the aluminum foil investigation, the domestic industry insists on including ultra-thin gauge from thicker foil products as the same domestic like product despite its different cold rolling requirements. The Commission should consider the inconsistencies in the domestic industry’s propositions in two closely related investigations.

³⁷ Conf. Tr. at 93 (L. McCarter).

³⁸ Id. at 46 (P.H. Chevalier).

³⁹ See also id. at 44 (B. Landa) (“The vast majority of the aluminum can sheet sold by Novelis is manufactured at a completely different facility, our Logan aluminum rolling mill in Kentucky, a joint venture we operate with Tri-Arrows Aluminum, Inc.”) (emphasis supplied).

⁴⁰ Id. at 22 (L. Stemple).

C. Interchangeability

As discussed above, aluminum can stock fits in the thickness range of the products under investigation. Furthermore, they are the products of fundamentally similar manufacturing facilities and processes. One domestic industry expert argued that can stock is used in one application, whereas the other sheet products serve “a wide range of industrial applications.”⁴¹ Testimony at the staff conference suggests that the end use for a broad spectrum of in-scope CAAS products is preordained when it leaves the producer’s facility.⁴² Mr. Chevalier testified about a special slitting process for gutters.⁴³ Should gutter stock be carved out as well because it has an identifiable end-use? It has unique physical characteristics in that it is cut narrowly and comes in a spools of a specific weight range.⁴⁴ It is not interchangeable because it has a different surface quality after it is painted.⁴⁵ Mr. Chevalier’s testimony suggests that a narrow set of fabricators purchase this product and that it is generally not purchased by distributors.⁴⁶ The production of gutter stock requires painting facilities that make the surface distinct from other in-scope merchandise.⁴⁷ Clearly, customers perceive these products differently as they are purpose built for a specific application. The Department of Commerce has not announced a carve out for gutter stock, or the various other distinct end-uses identified at the conference.⁴⁸ Carving up the like product on the basis of end-use would present the Commission and the Commission Staff with an impossible task and result in an investigation that touches on certain segments of an

⁴¹ Id. at 22 (L. Stemple).

⁴² See, e.g., id. at 94 (L. McCarter) (referencing aerospace markets, gutter market and building products

⁴³ Conf. Tr. at 47 (P.H. Chevalier) (“For example, we supply customers with relatively small narrow coils consisting of 250 to 400 pounds of common alloy sheet that had been painted for use in fabricating gutters and downspouts.”).

⁴⁴ Id.

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ E.g. automotive stock, braising sheet, gutter stock

industry, but fails to capture others. The Commission should avoid the temptation to treat can stock in this manner and include it in the domestic industry definition.

D. Channels of Distribution

With respect to the channels of distribution, aluminum can stock is sold to specific end-users that do not differ structurally from sales to end users who are OEMs of other products, such as boats or recreational vehicles.

E. Producer and Customer Perception

Can stock has an identifiable product name, much like “fin stock” in the aluminum foil case, but has fewer distinguishing features from other in-scope CAAS and appears to mainly be excluded because it tends to be thinner and it is sold to important domestic beer companies.⁴⁹ Neither of these facts establishes a meaningful product or customer perception difference from other in-scope CAAS. CAAS is used by many nationally known brands of boats and recreational vehicles. That a few beer companies appear to have negotiated a scope carve out does not establish that this product is made by an entirely different domestic industry.

F. Price

With respect to price, aluminum can stock also falls within the continuum of prices at which other aluminum sheet products are sold.⁵⁰ The pricing patterns also resemble the comparison of ultra-thin gauge and other aluminum foil products in the foil investigation, where the domestic industry argues:

While thinner gauge Aluminum Foil used in {flexible packaging} generally tends to fall on the high end of the pricing **spectrum** due to the costs associated with the additional number of rolling passes required to reduce the Aluminum Foil to a thin gauge, there is no evidence that the prices at which Aluminum Foil for use in

⁴⁹ Scope Comments submitted to the Department of Commerce by the Beer Institute (included as Exhibit 3)

⁵⁰ U.S. Producers’ QR of [] at II-7, II-13 ([

].

{ these } applications { are } **fundamentally** different from the prices at which other Aluminum Foil is sold.⁵¹

Here, the domestic industry appears to be applying a different pricing test. Although aluminum can stock fits squarely in the pricing range of other aluminum sheet products, the domestic industry focuses on the insignificant differences. At the staff conference, no industry expert was able to articulate a clear dividing line between the pricing pattern of aluminum can stock and that of other aluminum sheet products. This confirms the overlapping of these products within the continuum of prices and disproves the domestic industry's argument that aluminum can stock should be treated as a separate like product.

As Mr. Cannistra noted in his closing arguments there are three reasons why a petitioner, or in this case the Department, would seek a scope exclusion: 1) business in that segment is robust and its inclusion would weaken the industry's injury argument; 2) the U.S. Producers import the product and do not want to impose antidumping or countervailing duties on their own operations; and/or 3) the product is truly distinct.⁵² While these motivations may overlap, the only valid justification for such an exclusion is number 3 and it is the Commission's duty to determine if that is the case, in accordance with the statute.⁵³

IV. THE DOMESTIC INDUSTRY IS NOT INJURED OR THREATENED WITH INJURY BY REASON OF IMPORTS OF COMMON ALLOY STEEL SHEET FROM CHINA

The Department has not adduced sufficient evidence to show that the domestic industry is injured by reason of imports of the merchandise under consideration. The volume and pricing data submitted by the Department contain numerous flaws that require the Commission to rely

⁵¹ The Aluminum Association Trade Enforcement Working Group's Foil Post-Conference Brief at 9, Certain Aluminum Foil from the People's Republic of China, Inv. Nos. 701-TA-570 and 731-TA-1346 (Apr. 4, 2017) (Nonconfidential Version) (emphasis supplied) (internal citations omitted), included as Exhibit 4

⁵² Conf. Tr. at 162-63 (D. Cannistra)

⁵³ 19 U.S.C. §§ 1677(4)(A), (10).

on the data collected in the questionnaire responses.⁵⁴ The official statistics relied on by the Department suffer from three issues. First, the official import statistics are over inclusive. Second, there appear to be aberrational data points in the official data which the Department relied upon. Third, the domestic industry data may not include can stock despite its potential inclusion within the domestic industry definition and potential inclusion within the import data. In light of these issues, the Commission should adhere to its usual practice rely on data collected in the questionnaire responses.

The data collected in the importer questionnaire responses (as of responses released by December 26) accounts for roughly [] of the official statistics across the period.⁵⁵ This level of coverage is consistent with other investigations where the Commission has chosen to rely on questionnaire data. It is all the more important here, where the domestic industry has confirmed the Commission's concern regarding the potential for over inclusion in the official statistics. Mr. Hermann noted at the conference that, "We believe that some of the official import statistics reflecting imports from China under the tariff classifications that we've identified include a very small portion of nonsubject merchandise."⁵⁶ This minimizes the uncertainty inherent in customs data and discounts the precision of the Commission's questionnaire process. The questionnaire responses reflect a detailed review of company records based on the specific product description offered by the Commission, while the official statistics are inherently less focused.

This first issue leads directly to the second, flaws in the data. Where the Commission can ask questionnaire respondents follow-up questions and generally ensure the integrity of that data set, there is no such remedy for the official statistics. A review of the data supporting the

⁵⁴ See, e.g., Conf. Tr. at 113 (K. Mowry) ("A number of countries have AUVs during one or more periods that run into the thousands. This is either an extremely specialized product or erroneous data.").

⁵⁵ Compiled data excludes Importer QRs of [].

⁵⁶ Conf. Tr. at 61 (J. Hermann).

Department's self-initiation shows inter alia, imports from Singapore ranging in average unit value from \$2,916 to \$2.69 per kilogram, imports from Malta consistently topping \$300 per kilogram and world high of \$3,240 for imports from Costa Rica.⁵⁷ Based on the record available at this stage it is difficult to know how these inconsistencies might have impacted the calculations presented by the Department.

Finally, the official statistics do not include information related to imports of can stock. The scope presented by the Department specifically excludes can stock and notes that it is generally classified under HTS codes 7606.12.3045 and 7606.12.3055.⁵⁸ The data collected by the Department in its initiation document does not include these tariff headings. The questionnaires issued by the Commission collect this information from both U.S. Producers⁵⁹ and U.S. Importers⁶⁰ allowing the Commission to engage in a broader analysis of the industry. For these reasons the Commission should utilize official questionnaire responses to analyze the injury factors.

A. As is Demonstrated by the Lost Sales/Lost Revenue Responses, the Volume of Imports of Subject Merchandise is Not Displacing U.S. Production

The statute directs the Commission to determine whether the volume of subject imports, and any increase in that volume during the POI, is significant, absolutely or relative to production or consumption in the United States.⁶¹ The questionnaire data collected by the Commission show that U.S. production has []⁶² The [] in imports from China has occurred in the context of generally increasing demand.⁶³

⁵⁷ Initiation Memo at Ex. 16 (Public Version).

⁵⁸ Initiation Memo at Ex. 1A, Attach. 1 (Public Version).

⁵⁹ U.S. Producers' Q'naire at II-13.

⁶⁰ U.S. Importers' Q'naire at II-5c, II-6c.

⁶¹ 19 U.S.C. § 1677(7)(C)(i).

⁶² See Chart I, supra.

⁶³ Initiation Mem. at 12 (Public Version).

In this context, U.S. producers have focused their investments and energy in sectors they find attractive.⁶⁴ U.S. Producers lament their inability to make capital investments⁶⁵ Yet they []⁶⁶ This trend is corroborated by importer []⁶⁷

The standard is not whether "...China is a standout above any other import source."⁶⁸ The standard is whether imports from China, specifically, are displacing U.S. production. Based on the Lost Sales/Lost Revenue Questionnaire Responses released by the Commission through December 22, the evidence overwhelmingly demonstrates that the allegations were either completely denied or grossly overstated. As illustrated in Exhibit 5, the vast majority of the lost sales/lost revenue allegations are either disproven or unproven.

Several allegations were completely and irrefutably denied. With respect to [] of largest allegations of lost sales of [] was flatly denied by [] as the company stated it did not purchase material from China at all. Similarly, allegations regarding purchases by [] and [] were also proven false as those companies denied making purchases of Chinese product. For [] and [], companies where purchases from China were made, these companies denied

⁶⁴ Conf. Tr. at 95 (B. Landa) ("So we invested in these automotive assets, and it's a profitable market.").

⁶⁵ Id. at 43 (B. Landa) ("there is no business justification to continue making the investments necessary to strengthen and even maintain those operations.").

⁶⁶ Email Amendment to U.S. Producers' QR of [] – ITC Doc No.632406 ("[]").

⁶⁷ U.S. Importers' QR of [] at 30.

⁶⁸ Conf. Tr. at 87 (B. Hudgens).

the allegation and confirmed that []. Finally, [] denied the allegation of lost revenue.

Several responses to the allegations are wholly unreliable and must be disregarded by the Commission because []. As demonstrated in Exhibit 5, the responses of [] must be disregarded as their reported purchases from China “instead of” U.S. produced product [].

Finally, while certain of the responses may be relied upon by the domestic producers as “proven”, they are in fact proven at a tiny fraction of the alleged amount of lost sales. For example, although [] alleged lost sales of [] to its customer [

[] Similarly, [] alleged a lost sale of [].

Based on the foregoing the Commission should find that the volume of imports from China is not causing injury to the domestic industry.

B. Pricing of Subject Imports Has Not Caused a U.S. Pricing Collapse

The statute provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether

- (1) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and
- (2) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have

occurred, to a significant degree.⁶⁹

The Department submits that imports from China have undersold domestic production and depressed prices on the basis of official import statistics.⁷⁰ Data collected by the Department, however, suggests that the price differentials are [] than those identified by the Department and that the Department's analysis discounts the role of non-subject imports.

The following chart presents a comparison between the data collected by the Commission and the data presented by the Department.

Chart II AUV Comparison⁷¹

AUV Category (\$/lb.)	2014	2015	2016
[]			
Official Statistics – China (Census)	1.17	1.15	0.99
[]			
[]			
[]			

Given the clear data issues with official statistics, and the fundamentally different picture that the importer questionnaire data paints,⁷² the Commission was right to question the domestic industry regarding the role of non-subject imports.⁷³ The domestic industry responded that,

⁶⁹ 19 U.S.C. § 1677(7)(C)(ii).

⁷⁰ Initiation Memo at 9 (Public Version).

⁷¹ Compiled from Importer QRs and Initiation Memo at 9 (Proprietary Document), Ex. 16 (Public Version).

⁷² We note that domestic production [

]. See Table I. This not only provides evidence of a lack of any causal link between subject imports and the condition of the domestic industry but it also provides further reason not to rely on the official import statistics where, as here, importer questionnaire coverage is both adequate in volume terms and isolated to the scope of this case.

Any shifts in market share cannot be attributed to import pricing, nor can they be attributed directly to the pricing of imports from China. The Department states in the initiation memo that U.S. consumption [] during the POI.⁷⁶ During the POI imports from China, Canada, Bahrain and many others have also increased.⁷⁷ U.S. shipments []⁷⁸ This trend comports with the idea that domestic producers have been, of their own choice, []. Their claimed inability to expand to other products cannot be explained by low-priced Chinese imports since the AUV of third-country imports is even lower, as discussed above.

B. U.S. Pricing Is Subject to Exogenous Factors That Do Not Impact Import Pricing

One factor that the Commission must consider with respect to pricing is the difference between the price of raw materials in the United States and abroad. When U.S. producers source aluminum ingot they must pay a MidWest premium which is “designed to compensate ingot sellers for warehousing and transportation costs but has fluctuated wildly due to speculation by professional investors.”⁷⁹ Domestic producers readily admit that the Midwest Premium affects the price of CAAS in this way. Mr. Stemple testified that the Midwest Premium “will fluctuate” and accordingly “sales prices will fluctuate up or down depending upon that movement in cost.”⁸⁰ Mr. McCarter echoed these sentiments noting that there was a wide variation in the

⁷⁶ Initiation Mem. at 9 (Proprietary Document).

⁷⁷ Id. at Ex. 16 (Public Version).

⁷⁸ See Chart I, supra.

⁷⁹ Conf. Tr. at 116 (K. Mowry).

⁸⁰ Id. at 71 (L. Stemple).

impact of the Mid West premium.⁸¹ Domestic producers recognize that U.S. prices for raw materials []⁸²

Exhibit 6 attached here shows just how wildly this pricing component has fluctuated over time. The exhibit contains two graphs, one showing the Midwest Price compared to the LME price and the second showing the differential graphed over the same time period.⁸³ These graphs clearly show that the Midwest Premium spiked in between the end of 2013 and the beginning of 2015, becoming especially acute during the end of 2014, timed almost exactly when subject imports from China increased.⁸⁴ The resulting divergence between the LME price and the Midwest Price would have a disproportionate impact on U.S. producers. This Midwest Premium is a sunk cost for domestic producers subject to the whim of commodity traders that domestic producers have no control over in the current market environment. The Chinese producers, meanwhile, are not subject to this component of cost.⁸⁵ At the start of the POI, the Midwest premium was at a historic high of over 24 cents - a cost that was not bourn by the Chinese producers and therefore not reflected in import pricing. The Commission must consider this element of the market as it makes both its pricing and causation findings.

C. The U.S. Industry Has Limited Capacity to Supply Certain Segments of the U.S. Market

The U.S. industry lacks the ability to supply certain segments of the U.S. market due to production and capacity constraints. First, domestic producers confirmed that the ability of wide

⁸¹ Id. at 71 (L. McCarter) (explaining that he can “remember a 2-cent premium, and its gone significantly higher than that.”).

⁸² U.S. Producers’ QR of [] at IV-17; see also, U.S. Producers’ QR of [] at IV-17.

⁸³ See Exhibit 2

⁸⁴ Conf. Tr. at 62-63 (M. Comly).

⁸⁵ Id. at 70 (L. Stemple).

width material is extremely limited, with only Constellium producing “wide roof coil.”⁸⁶ Not only are there few domestic companies producing wide-width product, but there is also a limited inventory for manufacturers to draw from if their Chinese supply source is eliminated. Specifically, the domestic industry confirmed that it no longer maintains inventories of CAAS in order to meet customer’s needs for the product on short notice. For boatbuilders and RV manufacturers seeking to maintain a steady supply of raw materials secure from disruption, such a statement is alarming to say the least and is reason enough for any prudent American manufacture to diversify supply to China or other sources.

Taken together these conditions of competition make clear that the domestic industry suffers from certain structural disadvantages that foreign producers do not encounter and have made business decisions that have directly impacted their competitiveness in this market. These factors negatively impact U.S. competitiveness, but have nothing to do with import pricing from China. While producers operating on equal footing should be able to capture a representative share of a growing market, the U.S. industry has been hampered not by unfair imports from China, but rather by a structural disadvantage of operating under the MidWest Premium versus global raw material costs combined with decisions to focus capital investment in other sectors of the aluminum market.

VI. IMPACT – THE DOMESTIC INDUSTRY HAS NOT SHOWN INJURY BY REASON OF SUBJECT IMPORTS

A. The Inclusion of Can Stock Producers in the Domestic Industry Data Will Show the Actual Level of Import Penetration

The Commission must take into account that fact that the Department’s initiation letter included limited volume information that does not accurately reflect the full domestic industry and therefore overstates the level of import penetration. First, the submission by the Department

⁸⁶ Id. at 69 (L. Stemple).

of information compiled by counsel for the domestic industry appears to be based on the assumption that can stock would be excluded from the scope and the domestic product definition.⁸⁷ Second, the data covers [] producers that counsel for the domestic industry believe account for more than [] percent of the industry.⁸⁸ This second element is also impacted by the failure to account for can stock as an element of the domestic industry. The Commission has before it enough data to make a finding on import penetration based on the full domestic industry definition and data submitted in questionnaire responses regarding import data. The resulting analysis will show a much less dire picture than what counsel to the domestic industry have presented to the Department.

B. The Presence of Non-Subject Imports and High Level of Substitution Break the Causal Link to Imports from China

The Commission's obligation to conduct a "but-for" analysis that specifically evokes non-subject imports through the Gerald Metals, Bratsk, Mittal line of cases is triggered in markets "involving commodity products in which non-~~{less than fair value}~~ imported goods are present in the market."⁸⁹ Commodity products are "merchandise that is 'interchangeable regardless of its source.'"⁹⁰ Common alloy aluminum sheet is produced under "strict specifications" that "create a market in which the product is interchangeable regardless of source."⁹¹

⁸⁷ Initiation Memo at Exhibit 1A – Attachment 9, fn 1 (Public Version).

⁸⁸ Id. at 8 (Proprietary Document).

⁸⁹ Mittal Steel Point Lisas Ltd. v. United States, 542 F.3d 867, 876 (2008) ("Mittal").

⁹⁰ Changzhou Trina Solar Energy Co. v. United States ITC, 100 F. Supp. 3d 1314, 1332 (2015) ("Changzhou Trina") (citation omitted).

⁹¹ See Initiation Memo at 7 (Public Version); see also Conf. Tr. at 159 (J. Herrmann) ("like other flat-rolled metal products, common alloy sheet is generally interchangeable, whether produced in China or the United States."); id. at 160 (P. Rosenthal).

Contrary to Mr. Rosenthal's contention at the conference, Bratsk has not been overturned by Mittal and remains good law.⁹² The Commission is "required to give full consideration to the causation issue and to provide a meaningful explanation of its conclusions."⁹³ This includes a responsibility to "consider potential alternative causes of harm in its . . . analysis."⁹⁴ The Mittal case did not materially alter the "but-for" standard, but merely clarified that "{t}he focus of the 'but-for' analysis is on the cause of injury in the past, not the prospect of effectiveness in the future."⁹⁵

The Court of International Trade recognized that the Federal Circuit in Mittal was concerned that "when reviewing the conditions of a domestic industry for a commodity product, an overwhelming presence of price competitive and interchangeable non-subject imports in the market during the period of investigation might escape the ITC's proper consideration."⁹⁶ Although the ITC is not required to consider whether subject imports would be replaced by non-subject imports following the imposition of an antidumping order, nonetheless, as part of its "but-for" analysis:

if there is non-subject merchandise present in the market that competes with subject imports, or record evidence that might supply some other reason for the cause of injury to the domestic industry, the ITC must take it into account.⁹⁷

Counsel for the domestic industry have affirmatively stated that this market behaves in this manner. During testimony Mr. Rosenthal stated that end users

can get that product from Korea and Greece as well as China. Not only does that indicate that the product is pretty I think interchangeable, but it shows that they are not going to be without an ability to get materials, because they can go to

⁹² See Conf. Tr. at 159 (P. Rosenthal).

⁹³ Mittal, 542 F.3d at 878.

⁹⁴ LG Electronics, Inc. v. U.S. Int'l Trade Comm'n, 26 F. Supp. 3d 1338, 1351 (2014). (citing Mittal, 542 F.3d at 878).

⁹⁵ Mittal, 542 F.3d at 876.

⁹⁶ Changzhou Trina, 100 F. Supp. 3d at 1322.

⁹⁷ Id. at 1333-34 (citing Mittal, 542 F.3d at 878).

Korea or they can go to Greece, they can go to the other U.S. producer, and by the way, they can also go to China.⁹⁸

Market participants clearly perceive CAAS as a fully interchangeable product and the Commission is therefore bound to examine the role that non-subject imports play in this market in line with the legal standard announced in the Gerald Metals, Bratsk and Mittal.

VII. SUBJECT IMPORTS DO NOT THREATEN THE DOMESTIC INDUSTRY

In the preliminary phase of an investigation, the statute directs the Commission to determine whether there is a reasonable indication that an industry in the United States is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of subject imports would occur unless an order is issued or a suspension agreement is accepted.”⁹⁹ “The statute ... requires a causal link between a threat of material injury finding and subject imports.”¹⁰⁰ In this case, there is no basis for an affirmative preliminary threat finding.

A. Domestic Industry is at Capacity

Statements made at the hearing suggest that the industry is at or nearly at capacity already. This makes the threat of injury from residual inventory of merchandise that is allegedly traded at unfair levels minimal. There is also evidence from the lost sale and lost revenue responses the indicated purchasers are turning to imports in an effort to diversify supply.

⁹⁸ Conf. Tr. at 160 (P. Rosenthal).

⁹⁹ 19 U.S.C. § 1677(7)(F); see also Prestressed Concrete Steel Wire Strand from China, Inv. Nos. 701-TA-464 and 731-TA-1160, USITC Pub. 4086 at 12 (July 2009) (Prelim.).

¹⁰⁰ Celanese Chems. Ltd. v. United States, 31 CIT 279, 313 (Ct. Int'l Trade 2007).

- Lost Sales and Lost Revenue Questionnaire Response of []¹⁰¹
- Lost Sales and Lost Revenue Questionnaire Response of []¹⁰²
- Lost Sales and Lost Revenue Questionnaire Response of []¹⁰³
- U.S. Importers' Questionnaire Response of []¹⁰⁴

These responses weigh against a finding of threat from future imports.

B. The Recently Passed Tax Bill Will Provide Significant Advantages to U.S. Industry

The recently signed tax bill has broad implications for the American economy which are only beginning to be fully understood. What is known, is that there are specific provisions that will significantly aid domestic producers. Chief among these is a revised corporate tax rate. Also included, and perhaps more significant for these proceedings, are expensing provisions that may apply to capital investment. Mr. McCarter testified that he has “investment plans on the table right now waiting for an affirmative action out of this group, and we are going to do our darnedest to put this country in a good position as we go forward.”¹⁰⁵ The tax bill should significantly aid him in this pursuit even without the imposition of trade remedies. The Commission must also consider the impact of the tax law on the demand side of the equation.

¹⁰¹ Lost Sale and Lost Revenue QR of [] at 4c

¹⁰² Lost Sale and Lost Revenue QR of [] at 4c.

¹⁰³ Lost Sale and Lost Revenue QR of [] at 2.

¹⁰⁴ U.S. Importers' QR of [] at III-14.

¹⁰⁵ Conf. Tr. at 91 (L. McCarter).

The reduction of the tax rate does not only benefit these producers directly, but improves the condition of their customers as well.

VIII. CONCLUSION

For the foregoing reasons, NMMA, RVIA and C.E. Smith Company, Inc. submit that the Commission should reach a negative determination and terminate this investigation because there is no reasonable indication of injury of threat thereof to the domestic industry by reason of subject imports.

Respectfully submitted,



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Exhibit 1

Exhibit Not Susceptible to Public Summary

Exhibit 2

UNITED STATES INTERNATIONAL TRADE COMMISSION

**In the Matter of:
ALUMINUM FOIL FROM CHINA**

**) Investigation Nos.:
) 701-TA-570 AND 731-TA-1346 (PRELIMINARY)**

REVISED AND CORRECTED

**Pages: 1 – 191
Place: Washington, D.C.
Date: Thursday, March 30, 2017**

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UNITED STATES OF AMERICA
BEFORE THE
INTERNATIONAL TRADE COMMISSION

IN THE MATTER OF:) Investigation Nos.:
ALUMINUM FOIL FROM CHINA) 701-TA-570 AND 731-TA-1346
) (PRELIMINARY)

Main Hearing Room (Room 101)
U.S. International Trade
Commission
500 E Street, SW
Washington, DC
Thursday, March 30, 2017

The meeting commenced pursuant to notice at 9:30 a.m.,
before the Investigative Staff of the United States
International Trade Commission, Michael Anderson, Director
of Investigations, presiding.

1 MR. ENCK: Can you make thin and the thicker gauge
2 on the same machinery and equipment, the same facilities?

3 MR. RUDISILL: This is Murray Rudisill. Yes, my
4 experience is that you can make the products either through
5 continuous casting processes or DC casting processes within
6 the subject products that we're talking about.

7 MR. ENCK: So you can make foil less than triple
8 zero three inches thick, and make the thin evaporator
9 components on the same equipment?

10 MR. ROUSH: Yes. It's just a matter of the number
11 of passes you take on the rolling operations, the cold
12 mills.

13 MR. ENCK: Can you use different alloys on the
14 same machinery and equipment? Does it matter what the alloy
15 is?

16 MR. RUDISILL: You can use different alloys on the
17 same type of machinery. And for the most part, these alloys
18 are interchangeable within the scope of the products that
19 we're talking about here. These alloys are interchangeable
20 for DC casting or CC casting. Sometimes they'll have a
21 little bit of a different chemistry to achieve the same
22 desired end process, but there are equivalent ways to
23 produce products under each process.

24 MR. MCCARTER: This is Lee McCarter. I would just
25 add on to that, as well, you know for capacity utilization

1 results, but I'd say it's a little tougher to produce the
2 lighter gauges versus the thicker gauges.

3 MR. ENCK: Okay.

4 MR. ROSENTHAL: Mr. Enck, I wanted--Paul
5 Rosenthal--I just wanted to fast-forward to some of this
6 because I don't think there's any question that the domestic
7 industry can produce all the gauges and have produced many
8 hundreds of millions of tons of thinner gauge product.

9 Where the Chinese have been so devastating is
10 that they're offering this product which requires increased
11 passes that you would think would be more costly to produce,
12 but at lower prices. That's why they've been so effective
13 at penetrating the market in this product.

14 MS. LANDA: Mr. Enck, just to add to that point.
15 For the thinner gauges really we haven't seen--we get passed
16 on quoting. I mean that's the level of uncompetitiveness
17 that we see today.

18 So just to expand, per Paul's guidance here, so
19 the reason we are passed on quoting is because the pricing
20 of the Chinese imports at those thin gauges are so extremely
21 low that we're just not even in the ballpark.

22 MR. ROUSH: This is Chester Roush. I think, you
23 know, it's fair to say that it's easy to allocate that
24 capacity too thick or thin, but to the point the price
25 points are so low that it doesn't make economic sense for us

1 to produce those very thin gauges.

2 MR. ENCK: What sort of costs are we dealing with
3 when it comes to converting your capacity to thick or thin?
4 Is that something you can do pretty quickly?

5 MR. MCCARTER: This is Lee McCarter. Yes, we can.

6 MR. ENCK: Is there any seasonality to the
7 industry? Do you, especially the thin products used in air
8 conditioning, or is it pretty steady over quarter by
9 quarter?

10 MR. MCCARTER: This is Lee McCarter again.
11 Generally speaking, you know, our plants will run heavier,
12 let's just say in the months of February through November.
13 So more in line with some seasonal aspects of that, but
14 those eight-week period of time in the wintertime allows us
15 for the maintenance and repairs that are required to sustain
16 the equipment.

17 So there is some seasonality, but--and it depends
18 on end use, whether it be in for example in the container
19 side as you think about the holiday periods of time, and pie
20 pans, and turkey pans, and so forth, or the HVAC time of the
21 year. But remember those HVAC units are built in advance of
22 what you would think a hot season would be.

23 MS. LANDA: This is Beatriz Landa. Just to expand
24 on that response, I think the seasonality with proper
25 inventory management, there's no reasons we couldn't serve

Exhibit 3

WILMERHALE

December 18, 2017

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Case Nos. A-570-073, C-570-074
Total Number of Pages: 8
Investigation
(AD POI: 04/01/17-09/30/17)
(CVD POI: 01/01/16-12/31/16)
E&C AD/CVD Offices

PUBLIC DOCUMENT

VIA ACCESS

The Honorable Wilbur L. Ross, Jr.
Secretary of Commerce
Attention: Enforcement and Compliance
APO/Dockets Unit, Room 18022
U.S. Department of Commerce
14th Street and Constitution Avenue, NW.
Washington, DC 20230

**Re: *Common Alloy Aluminum Sheet from the People's Republic of China:*
Comments on Scope**

Dear Secretary Ross:

On behalf of The Beer Institute, we hereby provide comments concerning the scope of
the Department's antidumping and countervailing duty investigations into Common Alloy

Wilmer Cutler Pickering Hale and Dorr LLP, 1875 Pennsylvania Avenue NW, Washington, DC 20006
Beijing Berlin Boston Brussels Denver Frankfurt London Los Angeles New York Palo Alto Washington

WILMERHALE

The Honorable Wilbur L. Ross, Jr.
December 18, 2017
Page 2

Aluminum Sheet from the People's Republic of China.¹ This submission is timely filed pursuant to the Department's initiation notice.²

The Beer Institute, based in Washington, D.C., is a national trade association for the American brewing industry, representing both large and small brewers, as well as importers and industry suppliers. The organization, founded in 1862 as the U.S. Brewers Association and reorganized as the Beer Institute in 1986, represents the beer industry before Congress, state legislatures, and public forums across the United States. The Beer Institute is committed to developing sound public policy, focusing on community involvement and personal responsibility.

In its notice of initiation, the Department stated that it would exclude "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" from the scope of the investigation.³ The Beer Institute strongly supports the Department's action. The notice of initiation describes the scope of the exclusion as follows:

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.

¹ Any factual information in this submission is submitted under 19 C.F.R. § 351.102(21)(ii).

² See "Common Alloy Aluminum Sheet From the People's Republic of China: Initiation of Less-Than-Fair-Value and Countervailing Duty Investigations," 82 Fed. Reg. 57214 (Dep't Commerce Dec. 4, 2017).

³ *Id.* at 57219.

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December 18, 2017
Page 3

The Beer Institute agrees with the Department that aluminum can stock is properly classified under HTSUS subheadings 7606.12.3045 and 7606.12.3055. However, aluminum can stock may also be properly classified under HTSUS subheading 7606.12.3090. That HTSUS subheading, “Aluminum plates, sheets and strip, of a thickness exceeding 0.2 mm, with a thickness of 6.3 mm or less, Other,” is often used to import aluminum can stock. In particular, the “Other” subheading, 7606.12.3090, is often used to import *tab* stock that is used in the production of beverage cans. Although aluminum tab sheet and end sheet have the same chemical composition and physical characteristics, can manufacturers purchase and rely on aluminum tab sheet of a particular width and thickness that is imported under HTSUS 7606.12.3090. To meet the Department’s goal of excluding can stock including that which is suitable for use in the manufacture of tabs used to open such cans, this additional HTSUS subheading should necessarily be excluded from the scope of this investigation.

The Beer Institute therefore respectfully requests that the Department clarify, before the investigation progresses further, that aluminum can stock can be, and is, imported under HTSUS subheading 7606.12.3090, in addition to subheadings 7606.12.3045 and 7606.12.3055. This clarification would be consistent with the Department’s interest in excluding aluminum can stock from the scope of this investigation and will mitigate the risk of confusion among importers, Customs and Border Protection agents, and the public more broadly in the event the Department ultimately imposes antidumping or countervailing duty orders. As the Department has

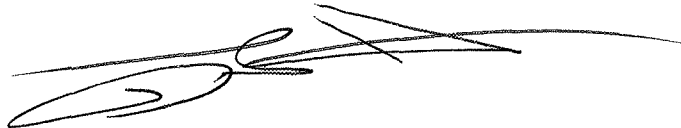
WILMERHALE

The Honorable Wilbur L. Ross, Jr.
December 18, 2017
Page 4

recognized, resolving product coverage issues such as these “early in a proceeding reduces costs for all parties by diminishing the necessity for later changed circumstances reviews or scope inquiries.”⁴

This submission is being served in accordance with the attached certificate of service.
Please contact us if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to be a cursive or stylized script, likely representing David J. Ross and David M. Horn.

David J. Ross
David M. Horn

Counsel to The Beer Institute

⁴ “Antidumping Duties; Countervailing Duties,” Final rule, 62 Fed. Reg. 27296, 27323 (Dep’t Commerce May 19, 1997).

COMPANY CERTIFICATION

I, **Mary Jane Saunders, Vice President and General Counsel**, currently employed by **The Beer Institute**, certify that I prepared or otherwise supervised the preparation of the attached submission of **Comments on Scope, filed on December 18, 2017**, pursuant to the antidumping and countervailing duty investigations of **Common Alloy Aluminum Sheet from People's Republic Of China (Case Nos. A-570-073 and C-570-074)**. I certify that the public information and any business proprietary information of The Beer Institute contained in this submission is accurate and complete to the best of my knowledge. I am aware that the information contained in this submission may be subject to verification or corroboration (as appropriate) by the U.S. Department of Commerce. I am also aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. Government. In addition, I am aware that, even if this submission may be withdrawn from the record of the AD/CVD proceeding, the U.S. Department of Commerce may preserve this submission, including a business proprietary submission, for purposes of determining the accuracy of this certification. I certify that a copy of this signed certification will be filed with this submission to the U.S. Department of Commerce.

Signature: Mary Jane Saunders

Date: 12/18/17

REPRESENTATIVE CERTIFICATION

I, **David M. Horn**, with **Wilmer Cutler Pickering Hale and Dorr LLP**, counsel to **The Beer Institute**, certify that I have read the attached submission of **Comments on Scope, filed on December 18, 2017**, pursuant to the antidumping and countervailing duty investigations of **Common Alloy Aluminum Sheet from the People's Republic of China (Case Nos. A-570-073 and C-570-074)**. In my capacity as counsel and preparer of this submission, I certify that the information contained in this submission is accurate and complete to the best of my knowledge. I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. Government. In addition, I am aware that, even if this submission may be withdrawn from the record of the AD/CVD proceeding, the U.S. Department of Commerce may preserve this submission, including a business proprietary submission, for purposes of determining the accuracy of this certification. I certify that a copy of this signed certification will be filed with this submission to the U.S. Department of Commerce.

Signature: _____

Date: _____

12/18/17

PUBLIC CERTIFICATE OF SERVICE

A-570-073

**Common Alloy Aluminum Sheet from the People's Republic of China
Investigation**

I, David M. Horn of Wilmer Cutler Pickering Hale and Dorr LLP, hereby certify that a copy of this submission was served via first class mail this 18th day of December 2017:

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David M. Horn

PUBLIC CERTIFICATE OF SERVICE

C-570-074

**Common Alloy Aluminum Sheet from the People's Republic of China
Investigation**

I, David M. Horn of Wilmer Cutler Pickering Hale and Dorr LLP, hereby certify that a
copy of this submission was served via first class mail this 18th day of December 2017:

Liu Fang
First Secretary
Embassy of the People's Republic of China
Economic and Commercial Office
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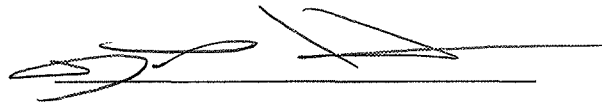
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David M. Horn

Exhibit 4



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Inv. Nos. 701-TA-570 and 731-TA-1346 (Prelim.)

NONCONFIDENTIAL VERSION

**Confidential Business Information deleted from pp. 5, 8, 10-34,
37-42, 44-45, 47-50 and Exhibits 2-3, 6-8, 10-12, 14-19, 22**

April 5, 2017

VIA ELECTRONIC FILING AND HAND DELIVERY

The Honorable Lisa R. Barton
Secretary
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

Re: Investigation of Aluminum Foil from the People's Republic of China – Post-
Conference Brief

Dear Secretary Barton,

On behalf of the Flexible Packaging Association's U.S. Aluminum Foil Converters Committee*, Galex, Inc., Manakin Industries, LLC, Luoyang Wanji Aluminium Processing Co., Ltd., Kunshan Aluminium Co., Ltd, Jiangsu Zhongji Lamination Materials Co., (HK) Ltd., Jiangsu Zhongji Lamination Materials Co., Ltd. and Jiangsu Zhongji Lamination Materials Stock Co., Ltd., we hereby submit this Post-Conference Brief for consideration by the International Trade Commission (the "Commission") in making its preliminary determination in the

* The Flexible Packaging Association's U.S. Aluminum Foil Converters Committee signs on to the nonconfidential version of this brief.

NONCONFIDENTIAL VERSION

**Business Proprietary Information Deleted from Pages 4, 5, 8, 10-34,
37-42, 44-45, 47-50 and Exhibits 2-3, 6-8, 10-12, 14-19, 22**

BEFORE THE

UNITED STATES INTERNATIONAL TRADE COMMISSION

**CERTAIN ALUMINUM FOIL FROM THE PEOPLE'S REPUBLIC OF CHINA
INVESTIGATION NOS. INV. NOS. 701-TA-570 AND 731-TA-1346 (PRELIMINARY)**

POST-CONFERENCE BRIEF

**ON BEHALF OF THE FLEXIBLE PACKAGING ASSOCIATION'S U.S. ALUMINUM
FOIL CONVERTERS COMMITTEE, GALEX, INC., MANAKIN INDUSTRIES, LLC,
LUOYANG WANJI ALUMINIUM PROCESSING CO., LTD., KUNSHAN ALUMINIUM
CO., LTD, JIANGSU ZHONGJI LAMINATION MATERIALS CO., (HK) LTD.,
JIANGSU ZHONGJI LAMINATION MATERIALS CO., LTD. AND JIANGSU
ZHONGJI LAMINATION MATERIALS STOCK CO., LTD.**

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principals of the firm admitted to the D.C.
Bar.

April 4, 2017

F. Evidence of Different Channels of Distribution

As observed at the conference, “{a}luminum foil is sold in many different distribution channels to food and medical package manufacturers, spoolers and grocery stores.”³² For ultra-thin products, the channel of distribution is to convertors.³³ As a representative of the Chinese industry observed, “a majority of our customers only purchase light-gauged foil.”³⁴ For thicker products, on the other hand, fin stock foil is sold for industrial and automobile applications.³⁵ Ultra-thin gauge foil would not be suitable for such applications. Regardless, as discussed herein, the overwhelming evidence is that ultra-thin gauge foil is a separate like product based on the totality of the factors examined by the Commission. After all, no single factor in a like product analysis is dispositive.³⁶ Thus, regardless of whether the ultra-thin gauge foil is sold at different channels of distribution, the other evidence is so overwhelming to show the distinctions between ultra-thin gauge foil that the Commission should find a separate like product.

In sum, the record demonstrates that ultra-thin gauge foil is a separate like product. Industry experts and the EU agree that there is a bright-line division between foil at the ultra-thin gauges and foil above this line. The Commission should make a separate like product determination with respect to aluminum foil in gauges below 0.0003”.

III. THE DOMESTIC INDUSTRY IS NOT INJURED OR THREATENED WITH INJURY BY REASON OF IMPORTS OF CHINESE ULTRA-THIN GAUGE ALUMINUM FOIL

Once the Commission finds, based on the above analysis, that ultra-thin gauge foil is a separate like product, it should then make a separate injury determination for this product. The

³² Conf. Tr. at. 136 (Garcia).

³³ *Id.* at. 124 (Morrison).

³⁴ *Id.* at. 124 (Morrison).

³⁵ *Id.* at 135 (Garcia).

³⁶ See, e.g., Glycine from Japan and Korea, Inv. Nos. 731-TA-1112-13, USITC Pub. 3980 at 4-5 (Final) (Jan. 2008).

Exhibit 5

**Exhibit Not Susceptible to
Public Summary**

Exhibit 6

LME Ingot Price v. LME Ingot + Mid West Premium Price

