



MEMORANDUM

TO: Members of the Aluminum Foil Container Manufacturers Association

FROM: John M. Herrmann
Paul C. Rosenthal
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DATE: December 30, 2024

RE: Disposable Aluminum Containers, Pans, Trays, and Lids: Cash Deposit Rates, Timing for Duty Collection, and Circumvention Considerations

On May 16, 2024, the Aluminum Foil Container Manufacturers Association (“AFCMA”) and many of its individual member companies filed antidumping and countervailing duty petitions requesting relief from unfairly traded imports of disposable aluminum containers, pans, trays, and lids (“disposable aluminum containers”) from China. Following below is a summary of the antidumping and countervailing duty rates that currently apply to imports of disposable aluminum containers, the rates that will be announced in the Commerce Department’s final determinations (which we expect to be issued on or about March 5, 2025), the periods during which such rates will affect U.S. imports of disposable aluminum containers, as well as circumvention and evasion activities and the timing of any such remedies that the Commerce Department may establish.

What Are the Currently Applicable Antidumping and Countervailing Duty Rates?

On October 22, 2024, Commerce issued an affirmative preliminary countervailing duty determination assigning Henan Aluminium – the only Chinese producer or exporter selected as a mandatory respondent that cooperated initially with the Commerce Department’s investigation – a subsidy rate of 78.12 percent. This rate also applies to “all other” Chinese exporters or producers, except for Zhejiang Acumen Living Technology, which was assigned a rate of 312.91 percent.

Following Commerce’s affirmative preliminary countervailing duty determination, Henan Aluminium withdrew its participation in that investigation and refused to schedule an opportunity for Commerce officials to conduct an on-site verification of its books and records.

As a result, we expect that Commerce’s final countervailing duty determination, which is due to be issued on or about March 5, 2025, will assign to Henan Aluminium and Zhejiang Acumen a subsidy rate of 312.91 percent. We also expect that the subsidy margin assigned by the Commerce Department to “all other” Chinese producers and exports will be substantial and will exceed the 78.12 percent margin established in the Commerce Department’s preliminary determination.

With respect to antidumping duties, the Commerce Department announced its preliminary determination on December 20, 2024. Because no Chinese producer or exporter that was selected to be individually examined cooperated with the agency's investigation, Commerce assigned to all of the largest Chinese exporters and producers an antidumping duty rate 287.43 percent, the highest rate alleged in AFCMA's petition. Other smaller Chinese exporters and producers that were not selected for individual examination, but that did submit cursory documentation establishing some level of cooperation in Commerce's antidumping investigation, were assigned a dumping margin of 193.90 percent. The Commerce Department published a notice of its preliminary determination in the Federal Register on Monday, December 30, 2024, and that date is determinative for the collection of preliminary duties and the retroactive collection of estimated duties due to the agency's affirmative, preliminary critical circumstances determination (more on this below). We expect the Commerce Department will continue to rely on these same rates in its final antidumping determination, which is expected to be announced on or about March 5, 2025.

When Must U.S. Importers Pay Cash Deposits to U.S. Customs and Border Protection ("CBP")?

The Commerce Department also reached preliminary affirmative critical circumstances determinations in the countervailing duty and antidumping investigations that apply to all imports of disposable aluminum containers from China. As a result, under the CVD investigation, U.S. importers owe cash deposits of CVD duties on imports of disposable aluminum containers from China that entered the United States on or after July 28, 2024. Similarly, with respect to the antidumping investigation, U.S. importers owe cash deposits of AD duties on imports of disposable aluminum containers from China that entered the United States on or after October 1, 2024.

From July 28, 2024 through March 5, 2025 (the likely final determination), U.S. importers of disposable aluminum containers will owe cash deposits of countervailing duties on their imports of disposable aluminum containers at the rate of 78.12 percent, unless the foreign producer/exporter is Zhejiang Acumen Living Technology, in which case the rate is 312.91 percent.

Similarly, with respect to antidumping duties, U.S. importers will owe cash deposits on imports of disposable aluminum containers from China that entered the United States on or after October 1, 2024 at a rate of 287.43 percent for the large Chinese manufacturers and 193.90 for other smaller Chinese exporters and producers. These cash deposits will be **in addition to** the countervailing duty rates, meaning U.S. importers will be required to pay cash deposits at a rate of **at least 270 percent** on all imports of disposable aluminum containers that entered the United States on or after October 1, 2024, and this rate is likely to increase to **greater than 300 percent** by early March 2025 when Commerce announces its final determinations.

These rates will remain in place until at least the fall of 2027, when the Commerce Department would likely issue the final results of any administrative review of the AD/CVD orders on disposable aluminum containers from China that may be requested by a Chinese producer or U.S. importer.

Who Is Responsible for Paying Cash Deposits / Duties to CBP?

Under U.S. law, the importer of record is liable to CBP for antidumping and countervailing duty cash deposits and final assessed duties.

Foreign producers and exporters are not permitted to reimburse U.S. importers for antidumping and countervailing duties under U.S. law. Reimbursing antidumping and countervailing duties can result in substantial increases in liability for the U.S. importer.

Prospects for Additional Duty Liability by U.S. Importers Pursuant to Circumvention / Evasion Proceedings

The deadline for Commerce to issue its final determinations in the antidumping and countervailing duty investigations is March 5, 2025. Given the complete lack of cooperation by Chinese producers and exporters, Commerce is unlikely to extend this deadline and may even accelerate it.

AFCMA and its members are aware of Chinese producers and exporters moving equipment and shipping aluminum coils to third countries in an attempt to circumvent the antidumping and countervailing duty proceedings. As of today, the country accounting for the largest circumvention and evasion activity is Vietnam, but other countries are involved as well. AFCMA intends to pursue all possible means to enforce the antidumping and countervailing duty cash deposit requirements on disposable aluminum containers.

One such avenue to address imports of disposable aluminum containers from third countries manufactured using equipment moved from China and/or using Chinese coils is through a circumvention inquiry conducted by the Commerce Department. If Commerce reaches an affirmative circumvention determination, the same AD/CVD duty rates that apply to imports from China will also apply to imports from the circumventing countries (i.e., Vietnam).

Further, Commerce has the discretion to apply AD/CVD duties retroactively to imports of disposable aluminum containers from a circumventing country. As a result, even those disposable aluminum containers from, for example, Vietnam, that are being imported now (December 2024) may be subject to the same AD/CVD duties being assigned to Chinese imports, if Commerce makes an affirmative circumvention determination.

In addition, AFCMA has received information about Chinese producers and exporters transshipping disposable aluminum containers manufactured in China through third countries – and claiming those third countries as the country of manufacture. The party responsible for any penalties or other actions taken by CBP on such fraudulent activities **is the U.S. importer**, not the foreign manufacturer/exporter. AFCMA intends to pursue vigorously any U.S. importer responsible for entering Chinese-origin containers that are transshipped through a third country in order to evade the assessment of AD/CVD duties. There is also precedent for CBP to pursue the principals of any entities that are engaged in such fraudulent activities.