

1 **UNITED STATES DISTRICT COURT**  
2 **EASTERN DISTRICT OF MICHIGAN**  
3 **SOUTHERN DIVISION**

AL NOOR ALAILI TRADING CO., LLC, a  
Dubai Limited Liability Company,

Plaintiff,

- vs -

UNITED STATES OF AMERICA; UNITED  
STATES CUSTOMS AND BORDER  
PROTECTION; MICHAEL GEORGE,  
Individually and in his Official Capacity;  
KENNETH L. DUKE, Individually and in his  
Official Capacity; CANNON-MUSKEGON  
CORPORATION, a Michigan Corporation;  
and JOHN DOES I-XXX.

Defendants.

CASE NO.

**COMPLAINT**  
**AND**  
**JURY DEMAND**

- Honorable -

4 **HADOUSCO. | PLLC**

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14  
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22  
23 **PLAINTIFF'S COMPLAINT FOR VIOLATION OF FIFTH AMENDMENT DUE**  
24 **PROCESS, WRONGFUL SEIZURE, GROSS NEGLIGENCE, BREACH OF**  
25 **CONTRACT, NEGLIGENCE AND CIVIL CONSPIRACY**  
26

1       **NOW COMES** the Plaintiff AL NOOR ALAILI TRADING CO. LLC (“**ANATCO**”) by  
2 and through its attorneys HADOUSCO. |PLLC, and the ASSOCIATE ATTORNEYS OF  
3 MICHIGAN, PLC for their Complaint against the Defendants UNITED STATES OF  
4 AMERICA; UNITED STATES CUSTOMS AND BORDER PROTECTION; CANNON  
5 MUSKEGON CORPORATION; MICHAEL GEORGE; KENNETH L. DUKE; and JOHN  
6 DOES I-XXX alleging the following:

7    **INTRODUCTORY STATEMENT**

8           This is an action brought by ANATCO for the recovery of export goods seized by the  
9 United States Customs and Border Protection (“CBP”) in violation of the Due Process Clause of  
10 the Fifth Amendment. This is further an action for breach of contract (alternatively, negligence)  
11 against the exporter Cannon Muskegon Corporation (“Cannon”) and for gross negligence against  
12 the individual customs agents who carried out the illegal and unconstitutional seizure.

13           ANATCO is a Dubai based trading company (stockist) engaged in the supply of energy  
14 inputs including specialty steel and alloy to commercial users. It competes in tender offers for  
15 supply contracts to public utilities and engages in routine commercial trading activities in the  
16 United Arab Emirates and the European Union. During the first quarter of 2009 the Dubai  
17 Electricity and Water Authority (“DEWA”) issued a Tender invitation for the supply of “Pulse  
18 Type Self-Inconel Pipes Ingot Alloy for ‘G’ Stations Gas Turbines at Jebel Ali.” This required  
19 IN 738 alloy, a type of alloy Cannon produces. ANATCO became aware of the DEWA Tender  
20 and sought to acquire IN 738 alloy for resale to DEWA or to one or more of the companies  
21 competing in the DEWA Tender (that would supply DEWA).

22           ANATCO contracted with Cannon to purchase 22,000 kilograms of the IN 738 alloy the  
23 DEWA Tender called for. ANATCO paid Cannon approximately \$730,000 (inclusive of  
24 insurance, freight forwarding costs, etc.) to acquire the alloy. Upon payment, Cannon materially  
25 breached several of the duties it owed to ANATCO.

26           The ANATCO alloy was detained/seized by CBP while purportedly en route to the sea  
27 carrier (the alloy was detained/seized in two different shipments occurring on May 12, 2009 and  
28 May 19, 2009). The detention/seizure was absent probable cause and unconstitutional under the  
29 Fifth Amendment. At the time of the detention/seizure, CBP did not provide ANATCO with any  
30 facts or evidence whatsoever to establish probable cause for the seizure and to date is unable to  
31 do so.

1 CBP attempts to establish probable cause **post-detention/seizure** by insisting that  
2 ANATCO knowingly provided allegedly “false information” (which they did **not**) regarding the  
3 ultimate consignee of the alloy. This, CBP asserts, evidenced ANATCO’s plan to divert the  
4 shipment of alloy to Iran. These allegations are unsupported by the documentary evidence.

5 The allegedly “false” information CBP contends that ANATCO provided was a statement  
6 certifying DEWA as the ultimate consignee of the alloy. This contention is contradicted by: (1)  
7 the Bills of Lading which identify ANATCO as the ultimate consignee of the alloy; and (2) the  
8 fact that it was **the CBP seizure which prevented** ANATCO from supplying DEWA with the  
9 alloy it purchased from Cannon (whether by direct sale to DEWA or to one or more of the  
10 companies that would supply DEWA).

11 After a year long “investigation,” CBP remains unable to establish a nexus between what  
12 it alleges is a discrepancy regarding the ultimate consignee of the alloy and an alleged plot to  
13 divert the alloy to Iran. This is because none exists. The lead investigator, Department of  
14 Homeland Security/Immigration and Customs Enforcement Agent Michael George has been  
15 unable to develop or produce any credible or tangible evidence against ANATCO. After a full  
16 year of “investigating” Agent George can do nothing except **nakedly** assert: “We believe that  
17 you intended on diverting the shipments to Iran in violation of U.S. law.”

18 The initial detention/seizure was absent probable cause and illegal and unconstitutional  
19 under the Fifth Amendment. Despite its year long “investigation,” CBP has been unable to  
20 produce any credible evidence against ANATCO to support its contention that ANATCO  
21 planned to divert the shipment of alloy to Iran. This is because none exists. Accordingly, the  
22 continued detention of the ANATCO alloy is illegal, unconstitutional, and **unjust**.

### 23 **JURISDICTION AND VENUE**

24 1. ANATCO files this action for violations of Due Process under the Fifth  
25 Amendment to the United States Constitution.

26 2. This Court has subject matter jurisdiction over ANATCO’s claims for violations  
27 of federal Constitutional Rights pursuant to Article 3 of the United States Constitution, 28 U.S.C.  
28 §§1331, 1332, 1346(b)(1), and 1350.

29 3. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(b) and 1355(b)(1)(A),  
30 inasmuch as the unconstitutional, unlawful, and wrongful conduct alleged was committed in this  
31 District, and one or more of the defendants reside in this District.

1 4. This Court has supplemental jurisdiction over ANATCO's pendent state law  
2 claims pursuant to 28 U.S.C. § 1367 and under the doctrine of pendent jurisdiction as set forth in  
3 United Mine Workers v. Gibbs, 383 U.S. 715 (1966).

4 **PARTIES**

5 5. At all times pertinent to this Complaint, ANATCO was a Dubai limited liability  
6 company organized under the laws of the Emirate of Dubai and the United Arab Emirates.

7 6. At all times pertinent to this Complaint, the Defendant United States Customs and  
8 Border Protection was an agency of the federal government of the United States of America.

9 7. At all times pertinent to this Complaint, Defendant Cannon Muskegon Company  
10 was a Michigan corporation organized under the laws of the State of Michigan and doing  
11 business therein.

12 8. At all times pertinent to this Complaint, Defendant Michael George was an  
13 agent/employee of the United States of America residing in the State of Michigan. Defendant  
14 George is named in his individual and official capacities.

15 9. At all times pertinent to this Complaint, Defendant Kenneth Duke was an  
16 agent/employee of the United States of America residing in the State of Michigan. Defendant  
17 Kenneth Duke is named in his individual and official capacities.

18 10. The Defendant John Does are individuals whose exact identities are unknown to  
19 ANATCO. The Defendant John Does may be agents, associates, employees, partners, and/or  
20 shareholders of Cannon Muskegon Company or its affiliates. The Defendant John Does may  
21 further be agents and/or employees of Customs and Border Protection, the Department of  
22 Homeland Security, and/or Immigration and Customs Enforcement. City of Dearborn Heights.  
23 At all times time pertinent to this Complaint, the Defendant John Does acted outside the scope of  
24 their employment/lawful authority. The Defendant John Does are sued in their official and  
25 individual capacities. At such times when the identity of the Defendant John Does are known to  
26 ANATCO, ANATCO will substitute the real party in interest for the named Defendant John Doe.

27 **FACTUAL BACKGROUND**

28 **A. The ANATCO – Cannon Transaction**

29 11. ANATCO incorporates, re-alleges, and adopts by reference paragraphs 1-10 as  
30 though fully set forth herein.

1           12. ANATCO is a Dubai based trading company (i.e., a stockist, a company that  
2 stocks goods for general resale) specializing in the supply of energy inputs including specialty  
3 steel and alloy to commercial users for projects in the United Arab Emirates and the European  
4 Union.

5           13. As part of its routine business activities, ANATCO receives invitations to submit  
6 tenders (i.e., bids) to supply materials for various projects in the United Arab Emirates (i.e.,  
7 supply contracts).

8           14. As part of its routine business activities, ANATCO buys (at wholesale) and sells  
9 (at a markup/retail) energy inputs for use in the United Arab Emirates and the European Union.

10           15. In or about 2009, ANATCO became aware of Tender No. CE/0165/2009 issued  
11 by the Dubai Electricity and Water Authority (“DEWA”) for the supply of “Pulse Type Self-  
12 Inconel Pipes Ingot Alloy for ‘G’ Stations Gas Turbines at Jebel Ali” (the “ DEWA Tender”).

13 **See Exhibit 1 – The DEWA Tender.**

14           16. The DEWA Tender called for the supply of IN 738 alloy (the type of alloy  
15 ANATCO ordered from Cannon). ANATCO sought to acquire this alloy then sell it directly to  
16 DEWA or to one or more of the companies that would supply DEWA (i.e., the companies who  
17 participated in the DEWA Tender). Since ANATCO did not stock IN 738 alloy, it required its  
18 own supplier of the alloy.

19           17. Cannon is a producer of IN 738 alloy. After confirming that Cannon could supply  
20 the IN 738 alloy, ANATCO submitted a Purchase Order to Cannon on April 21, 2010 requesting  
21 22,000 kilograms of IN 738 alloy for a contract sum of \$614,675.60. **See Exhibit 2 – The**  
22 **ANATCO Purchase Order.**

23           18. Cannon responded to the ANATCO Purchase Order by written correspondence  
24 dated April 21, 2009 whereby Cannon informed ANATCO that it required the name of the end  
25 user of the alloy as well as a signed affidavit affirming that the alloy would not be re-exported to  
26 an embargoed country. **See Exhibit 3 – Cannon Correspondence dated April 21, 2009.**

27           19. As a trading company, ANATCO frequently acquires products for resale to as-  
28 yet, **unascertained** buyers in the United Arab Emirates market. In the instant case though,  
29 ANATCO anticipated that DEWA would be the end user of the alloy it purchased from Cannon  
30 (whether by resale directly to DEWA or to one of the companies that would supply DEWA).

1           20. ANATCO responded to the Cannon Correspondence the very **next day**,  
2 identifying DEWA as the proposed end user of the alloy. ANATCO stated that the end user of  
3 the alloy would be “Dubai Electricity and water dept, workshop.” ANATCO further stated that  
4 the alloy would only be used for “Investment casting industry in power plant & Elect & Water,  
5 Dubai. UAE” and explicitly **warranted** it would **not** sell the alloy, directly or indirectly, to an  
6 embargoed country. **See Exhibit 4 – ANATCO’s April 2009 Certification.**

7           21. On or about April 27, 2009, Cannon accepted the ANATCO Purchase Order by  
8 invoicing ANATCO for the alloy requested by its Purchase Order. **See Exhibit 5 – Cannon**  
9 **Invoice.**

10           22. Cannon’s acceptance of the ANATCO Purchase Order and its enumerated terms  
11 was further evidenced by Tony Sirianni’s signed acknowledgment of the same on May 6, 2009<sup>1</sup>.  
12 **See Exhibit 2 – ANATCO Purchase Order.** (The ANATCO Purchase Order and the Cannon  
13 Invoice, collectively, comprise the “Purchase Agreement”).

14           23. The material terms of the Purchase Agreement were:

- 15           - ANATCO would purchase 22,000 kilograms of IN 738 alloy from Cannon
- 16           for \$627,220.00 less a 2% **prepayment** discount of \$12,544.40 for a net
- 17           amount due of \$614,675.60
- 18           - The net amount due would be payable 50% in advance and 50% prior to
- 19           shipment of the alloy.
- 20           - Econocaribe Consolidators, Inc. would ship the goods.
- 21           - Cannon would deliver the goods to ANATCO within four (4) weeks.
- 22           - Delivery would be Cost and Freight (CFR) and Freight on Board (FOB)
- 23           Muskegon.

24           24. Cannon placed the following warranty and disclaimer on its Invoice:

25           “THESE COMMODITIES, TECHNOLOGY OR SOFTWARE WERE  
26           EXPORTED FROM THE UNITED STATES IN ACCORDANCE WITH  
27           THE EXPORT (EAR) ADMINISTRATIVE REGULATIONS.  
28           DIVERSION CONTRARY TO U.S. LAW PROHIBITED.”

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<sup>1</sup> At the time, Tony Sirianni was Cannon’s Vice President of Sales and Marketing.

1           25.    The Purchase Agreement was supplemented by an Advance Payment Agreement  
2 (in lieu of Letter of Credit terms<sup>2</sup>), which set forth the terms and conditions of ANATCO's  
3 advance payment for the alloy. **See Exhibit 6 – Advance Payment Agreement.**

4           26.    Cannon **accepted** the terms of the Advance Payment Agreement  
5 contemporaneous with its acceptance of the ANATCO Purchase Order and in the same manner  
6 as it had accepted the ANATCO Purchase Order (by Tony Sirianni's signed acknowledgment on  
7 May 6, 2009). **See Exhibit 6 – Advance Payment Agreement.**

8           27.    The Advance Payment Agreement provided that Cannon was required to provide  
9 ANATCO with the following documents after shipping the alloy<sup>3</sup>:

- 10           1.    Original Bill of Lading (3 originals and 2 copies);
- 11           2.    Original Commercial Invoice (4 originals and 2 copies);
- 12           3.    Original Packing List (4 originals and 2 copies)
- 13           4.    Certificate(s) of Origin (U.S.A.) (1 original and 2 copies)
- 14           5.    Manufacturer's Certificates of Compliance (confirming the quality and  
15                quantity of the goods shipped) (2 originals and 2 copies)
- 16           6.    Manufacturer's Certification Chemical analysis and GDMS Analytical  
17                Report Certificates (1 original and 2 copies)
- 18           7.    Certificates affirming/attesting that Cannon has shipped the goods in strict  
19                compliance with the terms of the Letter of Credit and will replace any

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<sup>2</sup> A Letter of Credit is a common arrangement to secure the parties' performance under a contract for the sale and purchase of goods internationally. Under a Letter of Credit arrangement, an Importer (i.e., a buyer) would obtain a Letter of Credit from its bank indicating that the funds to pay the Exporter (i.e., a seller) for the goods were available/deposited at the buyer's bank. The Letter of Credit would state the terms and conditions for payment to the seller—typically that the seller provide documents evidencing shipment of the buyer's goods in compliance with the parties' contract (e.g., Bill of Lading, Inspection Certificates, Proof of Insurance, etc.). The seller would present the requisite documents to its bank, which in turn would provide these to the buyer's bank in exchange for the buyer's payment to the seller. In the instant case a Letter of Credit did not issue because Cannon indicated this would have delayed the shipment (ANATCO needed to secure the alloy for resale in connection with the DEWA Tender relatively quickly) and Cannon enticed ANATCO with a 2% prepayment discount in lieu of Letter of Credit terms.

<sup>3</sup> Cannon would subsequently breach this Agreement by failing to provide ANATCO with the requisite documents and stating that another party was responsible for providing one or more of the documents.

1 defective and/or short supplied item, if any, on demand and free of cost (1  
2 original and 2 copies).

3 8. Bureau Veritas Pre-shipment Inspection Certificates certifying the quality,  
4 quantity, description, packaging, and loading of the goods (at ANATCO's  
5 cost) (2 originals and 2 copies).

6 9. Proof of 100% marine full-coverage insurance (at ANATCO's cost).

7 28. On May 11, 2009, ANATCO paid Cannon approximately \$400,000.00 via wire  
8 transfer to Cannon's PNC bank account. Cannon confirms this. **See Exhibit 7 – Payment**  
9 **Confirmation.**

10 29. Prior to shipping the alloy, Cannon unilaterally breached the Purchase Agreement  
11 by substituting Hapag-Lloyd as the shipper even though the Purchase Agreement expressly  
12 required Cannon to ship the goods through Econocaribe Consolidators, Inc. Cannon did not  
13 provide ANATCO with adequate notice or reason for this substitution.

14 30. Cannon provided ANATCO with a Bill of Lading dated May 12, 2009 evidencing  
15 the purported shipment of a container of 15 packages of alloy. The Bill listed Hapag-Lloyd c/o  
16 Canadian Pacific Rail as the consignee and indicated that the container would ship from  
17 Montreal, Quebec, Canada on May 16, 2009. **See Exhibit 8 – Bill of Lading dated May 12,**  
18 **2009.**

19 31. On or about May 12, 2009, CBP detained/seized the first container of alloy.

20 32. Cannon did not notify ANATCO of the detention/seizure.

21 33. Cannon demanded the second installment payment from ANATCO.

22 34. On May 14, 2009, ANATCO paid Cannon approximately \$330,000.00 via wire  
23 transfer to Cannon's PNC bank account. Cannon confirms this. **See Exhibit 7 – Payment**  
24 **Confirmation.**

25 35. As of May 14, 2009, Cannon had not indicated that there had been any problem or  
26 issue with CBP regarding the purported May 12th shipment.

27 36. On May 15, 2009, the day after receiving the second installment payment from  
28 ANATCO, Cannon notified ANATCO that the first container of alloy had been detained/seized  
29 by customs.

30 37. ANATCO **instructed** Cannon **not to ship the second container** of alloy until the  
31 CBP issue regarding the first container was resolved.



1 38. Cannon shipped the second container of alloy.

2 39. On or about May 19, 2009, CBP detained/seized the second container of alloy.

3 40. Cannon provided ANATCO with a subsequent Bill of Lading dated May 19,  
4 2009 evidencing the purported shipment of a container of 14 packages of alloy. The Bill listed  
5 Hapag-Lloyd c/o Canadian National Rail as the consignee and indicated that the container would  
6 ship from Halifax, Nova Scotia, Canada on May 27, 2009. **See Exhibit 9 – Bill of Lading dated**  
7 **May 19, 2009.**

8 41. At no time between Cannon's purported May 12th shipment and ANATCO's  
9 May 14th payment did anybody from Cannon or CBP alert ANATCO to any issue or problem  
10 with the May 12th shipment.

11 42. As of the dates of the detention/seizure of both containers of alloy, CBP had  
12 conducted **no investigation** whatsoever to warrant a seizure of the ANATCO alloy.

13 43. As of the date of either detention/seizure, CBP had **no probable cause** to seize  
14 the ANATCO alloy.

15 44. On or about June 1, 2009, ANATCO provided Cannon with a subsequent  
16 Certificate of Compliance affirming its awareness and compliance with "United States export  
17 laws and regulations" (particularly the prohibition on sale, transshipment, and/or re-exportation  
18 to "embargo countries" including Iran). Because the seizure rendered ANATCO incapable of  
19 selling the alloy to DEWA or to the companies that would supply DEWA, ANATCO did not  
20 identify an end user. ANATCO did however; certify that the alloy would be used in the United  
21 Arab Emirates. **See Exhibit 10 – ANATCO's June 2009 Certification.**

22 45. Upon information and belief, Cannon acted in concert with one or more CBP/ICE  
23 Agents to facilitate and/or further the illegal and unconstitutional seizure of the ANATCO alloy.

24 **B. CBP's Wrongful Seizure**

25 46. ANATCO incorporates, re-alleges, and adopts by reference paragraphs 1-45 as  
26 though fully set forth herein.

27 47. CBP detained/seized both containers of the ANATCO alloy (assuming Cannon  
28 really shipped the alloy in the containers).

29 48. Department of Homeland Security/Immigration and Customs Enforcement  
30 ("ICE") Agent Michael George ("Agent George") identified his self as the investigatory point of  
31 contact regarding the seizure.

1           49.     Agent George **delayed** his purported “investigation” causing the ANATCO alloy  
2 to be detained by CBP for over **one year**.

3           50.     As part of this “investigation,” Agent George questioned ANATCO’s managing  
4 director Ansar Uddin at length **without enlisting a translator**<sup>4</sup>.

5           51.     Agent George asked Mr. Uddin questions about his family history and the  
6 proposed end use of the alloy.

7           52.     Mr. Uddin informed Agent George that ANATCO had **initially** sought to acquire  
8 the alloy for resale to DEWA or to one or more of the companies that would supply DEWA  
9 pursuant to the DEWA Tender. However, since the CBP detention/seizure eliminated that  
10 possibility, Mr. Uddin informed Agent George that ANATCO would hold the alloy in its general  
11 stock for resale in the United Arab Emirates. **At no time whatsoever did Mr. Uddin or anyone**  
12 **from ANATCO indicate that the alloy would be sold, transshipped, or re-exported to Iran;**  
13 and to date, **no evidence** of the foregoing exists.

14          53.     Agent George enlisted a “foreign counterpart,” Nasir Khan, to question ANATCO  
15 regarding the end use of the alloy. Mr. Khan visited ANATCO and met with Mr. Uddin. Mr.  
16 Uddin told Mr. Khan exactly what he told Agent George—that initially, ANATCO had intended  
17 to sell the alloy to DEWA or to one or more companies that would supply DEWA but now  
18 planned to hold the alloy in its general stock for resale in the United Arab Emirates.

19          54.     Mr. Uddin provided Mr. Khan with a tour of ANATCO’s warehouse where it  
20 housed its stock.

21          55.     Throughout 2009 and early 2010, Agent George repeatedly assured ANATCO  
22 that he was conducting an “investigation” and that the matter would be resolved **soon**.

23          56.     Throughout 2009 and early 2010, Agent George and fellow ICE Agent Kenneth  
24 Duke (“Agent Duke”) (**federal** agents) sent Mr. Uddin a series of emails instructing him not to  
25 contact Cannon (a **private** company) anymore. One such email sent by Agent George on July  
26 20, 2009 went so far as to **affirmatively advocate legal issues** on behalf of Cannon:

27                 “[T] he first shipment was only detained for inspection on the 16<sup>th</sup> which is no  
28 cause for concern for Tony to cancel the second order they had prepared for you.  
29 Most shipments on hold are usually released in a few days. How was Cannon to  
30 know that your containers would be on hold for such an extended period of time?”

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<sup>4</sup> Mr. Uddin is a Bangladeshi National who is barely English proficient.

1 **See Exhibit 11 – Agent George Email on July 20, 2009.**

2 57. Upon information and belief, Agents Duke and George (**federal** agents acting  
3 ostensibly in their official capacities) instructed ANATCO to refrain from contacting Cannon (a  
4 **private** company) to deter ANATCO from pursuing viable remedies against Cannon. Upon  
5 further information and belief, Agents Duke and George had done so at Cannon’s behest.

6 58. In an email correspondence to Mr. Uddin dated March 15, 2010, Agent George  
7 stated that CBP seized the ANATCO alloy because ANATCO (Mr. Uddin) knowingly provided  
8 “false information” regarding the ultimate consignee. This, admittedly, was the **sole** basis for the  
9 seizure. **See Exhibit 12 – Agent George Email on March 15, 2010.** Agent George asserts this  
10 allegedly “false information” as the only proof that ANATCO allegedly planned to divert the  
11 shipment of alloy to Iran. **Id.** Agent George did not then and does not now possess a scintilla of  
12 evidence to support this baseless allegation.

13 59. To date, Agent George has provided **zero** facts in support of his baseless  
14 allegation. **Id.** Agent George’s allegation that ANATCO (Mr. Uddin) supplied knowingly false  
15 information ultimate consignee is unsupported by the documentary evidence. The Bills of  
16 Lading establish that ANATCO identified itself as the ultimate consignee. Indisputably,  
17 ANATCO is a trading company. The only reasonable inference then is that failing a sale to  
18 DEWA or to a DEWA supplier (which would be the case because of the CBP seizure) ANATCO  
19 would hold the alloy in its general stock for resale in the United Arab Emirates in a manner  
20 pursuant to United States export laws (as certified by ANATCO in its Second Certification).

21 **See Exhibit 10 – ANATCO’s June 2009 Certification.**

22 60. By CBP’s **own** actions, ANATCO was prevented from supplying DEWA with the  
23 alloy it purchased from Cannon. CBP now attempts to justify its illegal and unconstitutional  
24 seizure by alleging that ANATCO provided them with knowingly “false information” regarding  
25 the ultimate consignee.

26 61. On May 27, 2010, **over one year** from the initial detention/seizure, ANATCO  
27 received a Notice of Seizure and Information for Claimants from CBP (the “Notice of Seizure”).

28 **See Exhibit 13 – CBP Notice of Seizure.**

29 62. The Notice of Seizure was **devoid** of any factual basis or probable cause upon  
30 which the ANATCO alloy was seized. **Id.**

1 63. The Notice of Seizure merely cited the laws it alleges ANATCO violated: CFR  
2 Section 764.2(g)(1)(ii) (misrepresentation and concealment of facts) and 31 CFR 560  
3 (prohibition on sale to Iran). The balance of the laws cited by CBP were to enabling statutes  
4 and/or statutes from which the power to seize derives. **Id.**

5 64. On June 9, 2010, CBP requested that ANATCO submit an Election of  
6 Proceedings form indicating whether ANATCO would: (1) take no action; (2) submit a petition  
7 for administrative relief; (3) abandon the seized property; or (4) submit a request for a judicial  
8 referral. **Failing this, CBP indicated that it would treat two emails from the barely English-**  
9 **proficient Mr. Uddin as ANATCO's "petition" for relief.**

10 65. ANATCO subsequently sought counsel to recover its illegally and  
11 unconstitutionally seized property and has filed this action to remedy this manifest injustice.

12 **COUNT ONE**  
13 **VIOLATION OF THE FIFTH AMENDMENT**  
14 **Due Process**

15 - United States, United States Customs and Border Protection, Agent Duke, and Agent George -  
16

17 66. ANATCO incorporates, re-alleges, and adopts by reference paragraphs 1-65 as  
18 though fully set forth herein.

19 67. ANATCO was the lawful owner of the alloy seized by CBP as herein described.

20 68. CBP detained/seized the ANATCO alloy without conducting any prior  
21 investigation.

22 69. CBP detained/seized the ANATCO alloy absent probable cause to do so.

23 70. CBP did not provide ANATCO with any probable cause or material facts to  
24 justify the seizure at the time of the initial detention/seizure.

25 71. To date, CBP has not provided ANATCO with any probable cause or material  
26 facts to justify its seizure and is unable to do so.

27 72. By CBP's own admission, the **sole** basis for the seizure was ANATCO's inability  
28 to identify an ultimate consignee/end user of the alloy. CBP contends that ANATCO provided  
29 knowingly "false information" by affirming that the DEWA would be the ultimate consignee.  
30 This contention is unfounded and refuted by: (1) the Bills of Lading which indicate that  
31 ANATCO was the ultimate consignee of the alloy; and (2) the fact that it was the CBP seizure  
32 which prevented ANATCO from selling the alloy it purchased from Cannon to DEWA or a  
33 DEWA supplier.

1           73. To date CBP has produced absolutely no evidence to support its contention that  
2 ANATCO has violated United States export laws and regulations. The underlying basis for this  
3 seizure is admittedly the baseless allegation by Agent George (who may be acting at Cannon's  
4 behest) that ANATCO planned to divert the shipment of alloy to Iran. CBP's sole proof of this  
5 is Agent George's insistence that ANATCO allegedly provided knowingly "false information"  
6 regarding the ultimate consignee/end user of the alloy.

7           74. Even if a discrepancy regarding the end user of the alloy existed, which there did  
8 not, this would not in and of itself establish a nexus between such discrepancy and Agent  
9 George's ludicrous charge that ANATCO planned to divert the shipment of alloy to Iran. **If  
10 anything, Agent George has established a nexus based solely on the ethnicity/nationality of  
11 the buyer.**

12           75. CBP's failure to conduct a reasonable investigation regarding the ANATCO alloy  
13 prior to detaining/seizing the alloy is illegal and unconstitutional under the Fifth Amendment.

14           76. CBP's unreasonable delay in conducting its "investigation" violated ANATCO's  
15 right to Due Process under the Fifth Amendment.

16           77. CBP's failure to enlist a translator to aid in communicating with Mr. Uddin (who  
17 is barely English proficient) during its "investigation" violated ANATCO's right to Due Process  
18 under the Fifth Amendment.

19           78. CBP's continued detention of the ANATCO alloy is illegal and unconstitutional  
20 under the Fifth Amendment.

21           79. Unless the Court orders CBP to immediately release the ANATCO alloy,  
22 ANATCO will continue to suffer manifest injustice.

23           80. As a consequence of CBP's unconstitutional seizure of the ANATCO alloy,  
24 ANATCO has been deprived of approximately \$730,000.00 in capital, has suffered damages  
25 including, without limitation, the loss of multiple business opportunities, corporate earning  
26 capacity, and the impairment of goodwill.

27           81. As further consequence of these Constitutional violations, ANATCO seeks relief  
28 as set forth more specifically in the section of this Complaint entitled "Prayer For Relief."  
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**COUNT TWO**  
**WRONGFUL SEIZURE**

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3 - United States, United States Customs and Border Protection, Agent Duke, and Agent George -

4 82. ANATCO incorporates, re-alleges, and adopts by reference paragraphs 1-81 as  
5 though fully set forth herein.

6 83. Agents George and/or Duke seized the ANATCO alloy absent probable cause or  
7 reasonable investigation under the pretext of United States customs law enforcement.

8 84. The seizure carried out by Agent(s) George and/or Duke transcended the scope of  
9 their lawful authority to enforce United States customs laws.

10 85. Because of this wrongful seizure, ANATCO has suffered damages including,  
11 without limitation, the loss of multiple business opportunities, corporate earning capacity, and  
12 the impairment of goodwill.

13 86. As further consequence of CBP's wrongful seizure, ANATCO seeks relief as set  
14 forth more specifically in the section of this Complaint entitled "Prayer For Relief."

15  
16 **COUNT THREE**  
17 **GROSS NEGLIGENCE**

18 - Agent Duke and Agent George -

19 87. ANATCO incorporates, re-alleges, and adopts by reference paragraphs 1-86 as  
20 though fully set forth herein.

21 88. In connection with their duties and responsibilities as Department of Homeland  
22 Security/Immigration and Customs Enforcement agents Agent Duke and Agent George owed a  
23 duty of care to companies and individuals, including ANATCO, who rely on the integrity of the  
24 United States, its agents, and its rule of law to transact business within its borders.

25 89. Agent Duke and Agent George breached the duty of care owed to ANATCO by  
26 seizing the ANATCO alloy absent probable cause or reasonable pre-detention/seizure  
27 investigation.

28 90. Agent Duke and Agent George further breached the duty of care owed to  
29 ANATCO by failing to conduct a reasonable post-detention/seizure investigation regarding the  
30 ANATCO alloy.

31 91. Agent Duke and Agent George further breached the duty of care owed to  
32 ANATCO by unreasonably delaying their "investigation."

33 92. Agent Duke and Agent George further breached the duty of care owed to  
ANATCO by failing to enlist a translator to aid in communicating with Mr. Uddin.

1           93. Agent Duke and Agent George further breached the duty of care owed to  
2 ANATCO by bringing baseless and defamatory allegations of impropriety against ANATCO.  
3 These allegations include each and every **alleged** violation of the laws CBP cites to in its Notice  
4 of Seizure.

5           94. Agent Duke and Agent George further breached the duty of care owed to  
6 ANATCO by **advocating on behalf of a private company** (Cannon) while acting ostensibly in  
7 their official capacities.

8           95. As a result of the foregoing, Agent Duke and Agent George directly and  
9 proximately caused ANATCO to suffer damages.

10          96. Agent Duke and Agent George's conduct as described herein was reckless and  
11 amounted to gross negligence.

12          97. Agent Duke and Agent George's conduct as described herein demonstrated their  
13 deliberate indifference to a substantial likelihood that their conduct would cause ANATCO to  
14 suffer considerable damages.

15          98. Agent Duke and Agent George's conduct as described herein transcended the  
16 scope of their lawful authority to enforce United States customs laws.

17          99. Agent Duke and Agent George's conduct as described herein constituted an  
18 egregious violation of ANATCO's right to Due Process under the Fifth Amendment.

19          100. Agent Duke and Agent George are therefore liable to ANATCO in their  
20 individual capacities for compensatory and exemplary damages in an amount to be proven at  
21 trial.

22          101. Because of Agent Duke and Agent George's gross negligence, ANATCO has  
23 suffered damages including, without limitation, the loss of multiple business opportunities,  
24 earning capacity, and goodwill impairment.

25          102. As further consequence of Agent Duke and Agent George's gross negligence,  
26 ANATCO seeks relief as set forth more specifically in the section of this Complaint entitled  
27 "Prayer For Relief."  
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**COUNT FOUR**  
**BREACH OF CONTRACT/  
BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING**  
**Purchase Agreement and Advance Payment Agreement**  
- Cannon -

103. ANATCO incorporates, re-alleges, and adopts by reference paragraphs 1-102 as though fully set forth herein.

104. Cannon entered into a Purchase Agreement to sell 22,000 kilograms of IN 738 alloy to ANATCO for a contract sum of \$614,675.60.

105. The Purchase Agreement was supplemented by the Advance Payment Agreement, which set forth a list of critical documents Cannon would be required to provide to ANATCO.

106. In addition to its duties under the foregoing Agreements, Cannon owed ANATCO a duty of good faith and fair dealing.

107. Cannon breached the contractual duties it owed ANATCO by:

1. Unilaterally substituting Hapag-Lloyd as the shipper.
2. Failing to adequately and timely provide ANATCO with the Bills of Lading as per the terms of the Purchase Agreement and the Advance Payment Agreement.
3. Failing to adequately and timely provide ANATCO with the Certificates of Origin as per the terms of the Purchase Agreement and the Advance Payment Agreement.
4. Failing to adequately and timely provide ANATCO with the Beneficiary Certificate of Compliance (item 7 under paragraph 19 above) as per the terms of the Purchase Agreement and the Advance Payment Agreement.
5. Failing to timely inform and/or notify ANATCO that one or more of the shipments of alloy would be investigated and/or seized by CBP.
6. Failing to adequately protect ANATCO's property interests.
7. Ignoring ANATCO's repeated inquiries regarding the status of its shipments and wholly failing to aid/assist ANATCO in resolving the issue with CBP thereby prejudicing ANATCO's ability to expeditiously resolve the matter with CBP.



1           8.     Enlisting the **federal** Agent(s) Duke and/or George to advocate on their  
2                         behalf to deter/discourage ANATCO from corresponding with and/or  
3                         seeking legal recourse against Cannon.

4           108.   Because of Cannon’s breach of the contractual duties it owed to ANATCO,  
5 ANATCO has suffered damages including, without limitation, the loss of multiple business  
6 opportunities, earning capacity, and goodwill impairment.

7           109.   As further consequence of Cannon’s breach of its contractual duties, ANATCO  
8 seeks relief as set forth more specifically in the section of this Complaint entitled “Prayer For  
9 Relief.”

10   **COUNT FIVE**  
11   **NEGLIGENCE**

12   - Cannon -

13           110.   ANATCO incorporates, re-alleges, and adopts by reference paragraphs 1-109 as  
14 though fully set forth herein.

15           111.   In the event that no breach of contract action is sustained, this count is pled in the  
16 alternative.

17           112.   Cannon entered into a contract with ANATCO to deliver 22,000 kilograms of IN  
18 738 alloy.

19           113.   ANATCO prepaid Cannon for the foregoing alloy.

20           114.   Cannon owed a duty of care to ANATCO.

21           115.   Cannon knew or should have known that the May 12, 2009 shipment of alloy had  
22 been detained/held by CBP.

23           116.   Cannon breached the duty of care owed ANATCO by demanding and/or  
24 accepting payment from ANATCO for a second shipment of alloy when Cannon knew that the  
25 first shipment had been detained/held by CBP.

26           117.   Cannon further breached the duty of care owed ANATCO by shipping the second  
27 container of alloy when Cannon knew that the first shipment had been detained/held by CBP.

28           118.   Cannon further breached the duty of care owed ANATCO by shipping the second  
29 container of alloy when ANATCO expressly requested Cannon to refrain from shipping this  
30 container because of the customs hold placed on the first shipment.

31           119.   Cannon further breached the duty of care owed ANATCO by failing to promptly  
32 and adequately alert ANATCO to the foregoing.

1 120. Cannon further breached the duty of care owed ANATCO by failing to aid/assist  
2 ANATCO with the CBP detention, hold, and subsequent seizure in any meaningful way.

3 121. Cannon further breached the duty of care owed by enlisting the **federal** ICE  
4 Agents to advocate on their behalf to deter/discourage ANATCO from corresponding with  
5 and/or seeking legal recourse against Cannon

6 122. Because of Cannon's negligence, ANATCO has suffered damages including,  
7 without limitation, the loss of multiple business opportunities, earning capacity, and goodwill  
8 impairment.

9 123. As further consequence of Cannon's breach of its contractual duties, ANATCO  
10 seeks relief as set forth more specifically in the section of this Complaint entitled "Prayer For  
11 Relief."

12 **COUNT SIX**

13 **CIVIL CONSPIRACY/CONCERT OF ACTION**

14 - Cannon, Agent Duke, Agent George, and John Does -

15 (Collectively, the "Conspirator Defendants")

16 124. ANATCO incorporates, re-alleges, and adopts by reference paragraphs 1-123 as  
17 though fully set forth herein.

18 125. Upon information and belief, Cannon acted in concert and pursuant to a common  
19 design with CBP, Agent Duke, Agent George, and/or one or more John Does to further and/or  
20 facilitate the illegal and unconstitutional seizure of the ANATCO alloy for pecuniary or similar  
21 gain.

22 126. Cannon received approximately \$730,000.00 in funds from ANATCO while upon  
23 information and belief it was acting in concert with CBP to further and/or facilitate an imminent  
24 seizure of the ANATCO alloy.

25 127. Upon further information and belief Cannon hoped to reacquire the ANATCO  
26 alloy at a forfeiture auction/sale for considerably less than fair market value.

27 128. This is evidenced by:

- 28 1. Cannon's repayment inducement to ANATCO.
- 29 2. Cannon's blatant disregard for the terms and provisions of the Purchase  
30 Agreement and the Advance Payment Agreement.
- 31 3. Cannon's subsequent refusal to meaningfully aid/assist ANATCO  
32 regarding the CBP "investigation."

- 1 4. Cannon's shipment of the second container of alloy (despite its knowledge  
2 that a customs hold was placed on the first container and ANATCO's  
3 request to delay the shipment of the second container).
- 4 5. The "detention" of **both** containers of alloy, the first of which shipped  
5 May 12, 2009 and the second on May 19, 2009—containers intended to  
6 forward via separate rail carriers and separate ships.
- 7 6. The multiple emails sent to ANATCO by Agent Duke and Agent George  
8 (**federal** employees acting ostensibly in their official capacities)  
9 **instructing** ANATCO/Mr. Uddin to stop contacting Cannon (a **private**  
10 enterprise).
- 11 7. Agent Duke and Agent George's advocacy on Cannon's behalf regarding  
12 legal issues while acting ostensibly in their official capacities.

13 129. This is evidenced by Cannon's insistence that ANATCO tender pre-payment for  
14 the alloy. This is further evidenced by Cannon's failure to alert ANATCO to the customs hold  
15 on the first container of alloy until after it had received the second installment payment.  
16 Cannon's refusal to aid/assist ANATCO in any meaningful way is further evidence of this.

17 130. Because of the foregoing conspiracy, ANATCO has suffered damages including,  
18 without limitation, the loss of multiple business opportunities, corporate earning capacity, and  
19 the impairment of goodwill.

20 131. As further consequence of the foregoing conspiracy, ANATCO seeks relief as set  
21 forth more specifically in the section of this Complaint entitled "Prayer For Relief."

#### **PRAYER FOR RELIEF**

22  
23 **WHEREFORE**, ANATCO respectfully request this Honorable Court grant Judgment in  
24 their favor and against Defendants for the following:

- 25 1. A judgment against the United States and CBP for the unconstitutional  
26 and wrongful seizure of the ANATCO alloy;
- 27 2. A declaration and/or order requiring CBP to immediately release the  
28 ANATCO alloy;
- 29 3. An award of compensatory and punitive damages against Cannon, Agent  
30 Duke, and Agent George in an amount to be proven at trial; and

1 4. Such other and further relief as may be just, proper and allowable,  
2 including, attorneys' fees pre-judgment and post-judgment interest and  
3 costs of this suit.  
4

5 **RESPECTFULLY SUBMITTED this 31st day of August, 2010**

6  
7 **HADOUSCO. PLLC**

8  
9  
10 **/s/Nemer N. Hadous**

11 **Nemer N. Hadous**

12 16030 Michigan Avenue

13 Suite 200

14 Dearborn, Michigan 48126

15 **ATTORNEY FOR PLAINTIFF**  
16  
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19

20 **ORIGINAL** of the foregoing filed this 31st day of August 2010 with:

21  
22 **Clerk of the Court**

23 **United States District Court, Eastern District of Michigan**  
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