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EAPA Case Number 7734

PUBLIC VERSION

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RE: Notice of Determination as to Evasion

To the Counsel and Representatives of the Above-Referenced Entities:

After an examination of the record in Enforce and Protect Act (“EAPA”) Investigation 7734, U.S. Customs and Border Protection (“CBP”) has determined there is substantial evidence that Fortress Iron, LP, also referred to or doing business under the names Fortress Fence Products and Fortress Building Products (“Fortress”) evaded the antidumping (“AD”) and countervailing duty (“CVD”) orders A-570-967 and C-570-968, respectively, on aluminum extrusions from the People’s Republic of China¹ by entering into the customs territory of the United States Chinese-origin aluminum extrusions but not declaring them as subject to those AD/CVD orders. Specifically, the record of the investigation indicates that Fortress imported aluminum extrusion fence components from Chinese suppliers that did not meet the requirements of the products excluded from the aforementioned AD/CVD orders but did not declare them as subject to the orders. As a result, no cash deposits were applied to the merchandise at the time of entry.

¹ See *Aluminum Extrusions From the People’s Republic of China*, 76 Fed. Reg. 30,650 (May 26, 2011) (“AD Order”) and *Aluminum Extrusions From the People’s Republic of China*, 76 Fed. Reg. 30,653 (May 26, 2011) (“CVD Order”), respectively (collectively, AD/CVD orders).

Background

Allegation and Initiation

The Aluminum Extrusions Fair Trade Committee (“AEFTC”) alleged that Fortress entered Chinese-origin aluminum extrusions into the United States that are subject to the AD/CVD orders without declaring them subject to those orders or paying the required AD/CVD cash deposits,² and the Trade Remedy Law Enforcement Directorate (“TRLED”) within CBP’s Office of Trade acknowledged receipt of the properly filed EAPA allegation on September 26, 2022.³ On October 18, 2022, based on the information in the Allegation summarized below, TRLED initiated an investigation under EAPA against Fortress.⁴

AEFTC submitted documentation reasonably available to it to substantiate its claim that Fortress imported aluminum fence merchandise from Chinese suppliers that were covered merchandise, and that Fortress’s offers to downstream customers were at prices too low to reflect the substantial AD/CVD duties that would be applicable to the covered merchandise. AEFTC noted many aluminum fence products have been found to be covered by the scope of the AD/CVD orders,⁵ and [data source] shipment information indicates Fortress was a recipient of shipments of “aluminum fence,” “aluminum railing,” “aluminum railing panel,” and “aluminum post” products from various Chinese suppliers.⁶

Regarding pricing being too low to reflect AD/CVD duties, AEFTC:

a) noted examples cited by an industry participant indicating a downstream U.S. customer, Lowe’s Companies, Inc. (“Lowe’s”), offered prices for aluminum fence components imported by Fortress that were considerably below prices offered by Lowe’s for comparable merchandise from domestic supplier [company name], despite the substantial AD/CVD duties on Fortress products;

b) included documentation received from a [company name] customer, [company name], with the pricing of fence panels from Fortress in [month] 2020 priced significantly below that of a [merchandise] offered by [company name];⁷ and

² See *Aluminum Extrusions from the People’s Republic of China: Request for an Investigation under the Enforce and Protect Act*, submitted on May 18, 2022, but dated May 17, 2022 (“Allegation”). See also *Aluminum Extrusions from the People’s Republic of China: Supplement to Request for an Investigation under the Enforce and Protect Act*, submitted September 13, 2022, but dated September 12, 2022 (“Supplement to Allegation”); and two emails from AEFTC correcting a typographical error in the Supplement to Allegation that are included in a document dated September 23, 2022.

³ See the email from TRLED to counsel for AEFTC dated September 26, 2022.

⁴ See the October 18, 2022, Initiation of Investigation for EAPA Case Number 7734 – Fortress Iron, LP (“Initiation”).

⁵ *Id.* at 4. See also Allegation at 8-12, Exhibit 2, and Exhibits 5 through 10. We note that CBP mistakenly referenced in Initiation that Exhibits 5 through 13 contain Commerce scope rulings covering aluminum fence products, when it was only Exhibits 5 through 10 that directly relate to such products.

⁶ See Initiation at 4. See also Allegation at 7-8 and Exhibit 2.

⁷ See Initiation at 4. See also Allegation at 12-14 and Exhibit 2.

c) provided an analysis containing an [sale information] obtained [business entity] from a proxy Chinese supplier for such merchandise, and, even employing conservative assumptions (e.g., no attempt to account for brokerage and handling expenses, or movement expenses incurred within the United States, or any possible markups by Fortress), that analysis supports the conclusion that the ultimate offer price by Lowe’s for the Fortress product does not reflect the substantial AD/CVD duties to which shipments from the Chinese suppliers to Fortress would be subject.⁸

Furthermore, CBP confirmed that the importer entered merchandise during the EAPA period of investigation (i.e., September 26, 2021, forward) as country of origin China and under an Harmonized Tariff Schedule of the United States (“HTSUS”) number associated with extruded aluminum fence components covered by the scope of the AD/CVD orders and did not pay AD/CVD duties/deposits on those entries.⁹

Consequently, there was sufficient evidence to reasonably suggest that AD/CVD duties were not being paid on subject entries of aluminum extrusions from China imported by Fortress, and TRLED initiated the investigation for Fortress’s imports of covered merchandise that were alleged to be entered for consumption into the customs territory of the United States through evasion, pursuant to 19 USC 1517(b)(1).

Notice of Initiation and Interim Measures

CBP subsequently considered whether reasonable suspicion existed that Fortress entered covered merchandise for consumption into the customs territory of the United States through evasion. At various points during 2022, both before and after the initiation of this EAPA investigation, a Center of Excellence and Expertise (“CEE”) examined entry documentation for several Fortress entries of merchandise. In each instance, the documentation indicated some of the identified merchandise were aluminum fence components packaged and shipped as bulk package combinations of parts, rather than as individual “finished goods kits,” which are packaged containing all types of parts that (including, for example necessary attachment items) are required to fully assemble a finished fence.¹⁰ Further support for that conclusion resulted from physical examination of merchandise in one of those entries, and subsequent laboratory testing also confirmed the merchandise was of a grade of aluminum covered by the scope of the AD/CVD orders.¹¹

Fortress did not contest that merchandise associated with the entries in question was in fact extruded aluminum fence parts, but, rather, continued to claim those parts were imported as

⁸ See Initiation at 4. See also Supplement to Allegation at 3-4 and Exhibit 1.

⁹ See NTAC Report documentation dated September 30, 2022.

¹⁰ See Notice of Initiation of Investigation and Interim Measures: EAPA Case 7734 (“NOI”), dated January 24, 2023, at 4-6, which discusses the following Fortress entries: [number]9195 (“entry 9195”), [number]8191 (“entry 8191”), [number]9665 (“entry 9665”), and [number]0672 (“entry 0672”). “Finished goods kits” are explicitly excluded from the scope of the AD/CVD orders (see NOI at 4 (footnote 15), which cites the AD/CVD orders.

¹¹ *Id.* at 5 (narrative discussion of entry 8191, and footnote 21).

“finished goods kits” and, therefore, specifically excluded from AD/CVD orders.¹² However, the CEE’s analysis of the entry documentation had confirmed that the merchandise was not being entered as “finished goods kits,” but rather separately as fence parts, which would make the extruded aluminum fence merchandise subject to the AD/CVD orders. Furthermore, that conclusion was further supported by additional information obtained from the importer in a CF28 response. Specifically, an exhibit in the CF28 response for one of the entries contains a Fortress purchase order for products purchased from the Chinese supplier that contains three-line items with item numbers that match the model numbers on Lowe’s website pages for individual Fortress fence component parts offered for sale by Lowe’s. In other words, Lowe’s appears to be selling Fortress aluminum fence component parts, and those parts are the same model of parts that Fortress had ordered from and received from a Chinese supplier.¹³

Based on the record evidence referenced in the Initiation and the additional information discussed in the NOI, CBP determined that reasonable suspicion exists that Fortress entered covered merchandise for consumption into the customs territory of the United States through evasion, and such covered merchandise should have been subject to the applicable AD and CVD duties on aluminum extrusions from China. Therefore, CBP imposed interim measures on Fortress’s imports of aluminum extrusions from China into the United States pursuant to this investigation.¹⁴

Requests for Information

After the issuance of the NOI and implementation of interim measures, CBP, pursuant to 19 CFR 165.23, sent Requests for Information (“RFIs”) to Fortress and to three of its major suppliers in [location] ([company name] (“Supplier One”), [company name] (“Supplier Two”), and [company name] (“Supplier Three”)).¹⁵

¹² *Id.* at 5 (narrative discussion and footnote 23), citing to a November 14, 2022, letter submitted by Fortress. The scope language for the AD/CVD orders “excludes finished goods containing aluminum extrusions that are entered unassembled in a ‘finished goods kit.’” *See* the AD/CVD orders referenced above. The scope states the following regarding what constitutes a “finished good kit”:

A finished goods kit is understood to mean a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled “as is” into a finished product. An imported product will not be considered a “finished goods kit” and therefore excluded from the scope of the Order merely by including fasteners such as screws, bolts, *etc.* in the packaging with an aluminum extrusion product.”

See the AD/CVD orders.

¹³ *See* NOI at 5 (narrative and footnote 29), citing Exhibit A of Fortress’s December 6, 2022, CF28 response for entry 0672 and a CEE document dated December 8, 2022, containing Lowe’s website screenshots. Please note that footnote 29 of the NOI a) incorrectly refers to the CF28 response date as December 7, 2022, but the CF28 response was in fact dated December 6, 2022, as indicated in footnote 24 of the NOI; and b) incorrectly refers to the Lowe’s website screenshots as dated December 7, 2022, when they are in fact dated December 8, 2022.

¹⁴ *Id.* at 7. *See also* 19 USC 1517(e); *see also* 19 CFR 165.24.

¹⁵ Supplier Two indicated in its RFI response, which is referenced below, that [company name] was its previous name, and that it is now known as [company name].

Fortress submitted its responses to its January 31, 2023, RFI on February 8, 2023 (“Fortress February 8 RFI”), March 3, 2023 (“Fortress March 3 RFI response”), and March 6, 2023 (“Fortress March 6 RFI response”). CBP requested additional information from Fortress relating to the Fortress February 8 RFI response, which Fortress submitted on February 16, 2023 (“Fortress February 16 Supp RFI response”). CBP issued another supplemental RFI to Fortress, and Fortress submitted its response on April 4, 2023 (“Fortress April 4 Supp RFI response”). CBP issued an additional supplemental RFI to Fortress, and Fortress submitted its response on April 27, 2023 (“Fortress April 27 Supp RFI response”).

Supplier One and Supplier Two each submitted their initial responses to their respective February 9, 2023, RFIs on March 13, 2023, and Supplier Three submitted its initial response to its February 17, 2023, RFI on March 21, 2023. Despite each of the suppliers having been given multiple deadline extensions, each of their RFI responses were missing requested information and public summaries of bracketed and redacted information. Consequently, on March 22, 2023, CBP rejected each of those supplier RFI responses, giving each party additional time to resubmit adequate responses, and noting this was their last opportunity to do so. On April 4, 2023, Supplier Two submitted its revised RFI response (“Supplier Two RFI response”). On April 5, 2023, Supplier One submitted its revised RFI response (“Supplier One RFI response”). On April 6, 2023, Supplier Three submitted its revised RFI response (“Supplier Three RFI response”).

CBP issued a supplemental RFI to Supplier One, which submitted responses to that RFI on May 4, 2023 (“Supplier One May 4 Supp RFI response”) and May 8, 2023 (“Supplier One May 8 Supp RFI response”). On May 18, 2023, Fortress submitted rebuttal information in response to Supplier One May 8 Supp RFI response (“Fortress Supplier One Rebuttal Info”).

Importer New Factual Information and Alleged Rebuttal Information

On May 8, 2023, Fortress made a voluntary submission of factual information (“Fortress NFI”).¹⁶ On May 18, 2023, AEFTC submitted rebuttal information in response to the Fortress NFI submission (“AEFTC Rebuttal Info”).

Written Argument and Rebuttal to Written Argument

On May 26, 2023, following a request from Fortress that the deadline for written arguments be extended, TRLED extended the deadline for written arguments from parties to the investigation to June 15, 2023, and extended the deadline for responses to written arguments from parties to the investigation to June 30, 2023.¹⁷ On June 15, 2023, Fortress submitted written arguments,¹⁸ and on June 30, 2023, AEFTC submitted response to written arguments.¹⁹

¹⁶ On May 9, 2023, Fortress requested that CBP accept additional new factual information for the record, but CBP rejected that information as untimely. See May 10, 2023, email to counsel for Fortress.

¹⁷ See May 26, 2023, email to counsel for Fortress and AEFTC.

¹⁸ See Fortress Iron, LP Written Arguments, dated June 15, 2023 (“Fortress Written Arguments”).

¹⁹ See Aluminum Extrusions from the People’s Republic of China: Response to Written Arguments, dated June 30, 2023 (“AEFTC Response to Written Arguments”). Note that page references to AEFTC Response to Written Arguments are to the page number of the written arguments section of the submission, not the page number of the overall PDF document within which that section appears.

Analysis

Under 19 USC 1517(c)(1)(A), to reach a determination as to evasion, CBP must “make a determination, based on substantial evidence, with respect to whether such covered merchandise entered into the customs territory of the United States through evasion.” Evasion is defined as “the entry of covered merchandise into the customs territory of the United States for consumption by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material, and that results in any cash deposit or other security or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise.”²⁰ As discussed below, the record of this investigation contains substantial evidence supporting a determination that covered merchandise entered the United States through evasion, resulting in the avoidance of applicable AD/CVD deposits or other security.

“Finished Goods Kits” Exclusion Claim

Fortress has not argued that the entries that CBP identified as subject to this EAPA investigation did not contain aluminum extrusions. Rather, as discussed below, Fortress has claimed that such extruded aluminum fence parts imported during the period of investigation are not covered by the scope of the AD/CVD orders because they are part of “finished goods kits,” and such “finished goods kits” are explicitly excluded from the AD/CVD orders. As noted above, “finished goods kits” are specifically excluded from the scope of the AD/CVD orders on aluminum extrusions.²¹ However, the mere presence of an assortment of parts/components and associated items is not sufficient for the merchandise to be classified as a “finished goods kit” that would exclude it from the scope of the applicable AD/CVD orders.²²

“Finished Goods Kits” Analysis

CBP finds that Fortress imported aluminum extrusion fence merchandise that was not entered as part of a “finished goods kit.” The merchandise in the POI entries examined by CBP are not

²⁰ See 19 CFR 165.1.

²¹ The scope language for the AD/CVD orders “excludes finished goods containing aluminum extrusions that are entered unassembled in a ‘finished goods kit.’” See the AD/CVD orders referenced above. The scope states the following regarding what constitutes a “finished good kit”:

A finished goods kit is understood to mean a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled “as is” into a finished product. An imported product will not be considered a “finished goods kit” and therefore excluded from the scope of the Order merely by including fasteners such as screws, bolts, *etc.* in the packaging with an aluminum extrusion product.”

See the AD/CVD orders.

²² See the AD/CVD orders, specifically the “finished goods kit” exclusion language in the scope indicating “{a}n imported product will not be considered a ‘finished goods kit’ and therefore excluded from the scope of the Order merely by including fasteners such as screws, bolts, *etc.* in the packaging with an aluminum extrusion product.”

“finished goods kits” based on the simple language of the scope exclusion. First, if a specific entry were to contain a “finished goods kit” or multiple “finished goods kits,” the number of such kits should be evident from the documentation associated with the entry.²³ However, the documentation associated with the entries not only make no references to a specified number of kits of any kind, but they also do not make references to any type of kit or other specifically identified collection of all the parts necessary to fully assemble an imported product into a fence. The key to determining whether imported merchandise is excluded from the order as kits is how the merchandise is entered into the United States, as well as if the parts/components are capable of being assembled into a fence without further processing such as cutting or punching. In an entry are capable of being divvied up into complete “kits” after entry. As discussed below, while it is conceivable that some entries might have contained an adequate assortment of items that could later be divvied up into a “kit” or “kits” from which a fence could be constructed, they were not entered into the United States as “kits” of any kind, and, furthermore, the record indicates various Fortress fence parts require further processing, including cutting and drilling, during the fence assembly process, which is not consistent with the requirements of a “finished goods kit” as described by the scope exclusion²⁴

The information submitted by Fortress demonstrates that its merchandise was not imported as kits. Fortress states in its RFI submission that “[description of business practice

].”²⁵ That document refers to individual items, with no reference to the word “system,” and no reference to the word “kit” or “kits” where it would refer to the necessary range of parts/components/fasteners fully required to construct a complete fence.²⁶ This is consistent with CBP’s conclusion in its NOI regarding the individual entries examined by CBP during 2022 that the items imported did not constitute “finished goods kits.”²⁷

In response to CBP’s request that Fortress “provide all catalogs and brochures” that Fortress and its affiliates issued covering the merchandise in question it sold in the United States, as well as

²³ The language of the finished goods kit exclusion references certain basic requirements of such a kit, as noted above, including most obviously that a “finished goods kit” be identifiable as “*an imported product*” (emphasis added). Commerce noted in its July 22, 2014 Dynasty Final Scope Ruling, finding certain aluminum fence merchandise to not constitute “finished goods kits,” that “[w]hile Dynasty states that only the labeling and packaging of the products need to be modified to be considered a complete fence system, we find that the invoice provided merely lists the fence parts included in the shipment; there is no clear evidence that the shipment contained all of the parts necessary to fully assemble a complete fence system, *or that the parts comprised a specified number of complete fence systems.*” See Allegation at Exhibit 5 (Dynasty Final Scope Ruling) at page 13 (emphasis added).

²⁴ There is additional evidence the products entered were not entered as “finished goods kits” but, rather, as individual parts/components. The individual parts and components are consistently itemized and priced in entry-related documentation (*e.g.*, invoices) individually, by part/component. Also, to the extent that the disposition of the merchandise after entry might shed some light on how the merchandise was imported, as noted in the NOI Lowe’s was offering individual Fortress fence parts for sale, and there is no indication in documentation examined on the record that Fortress’s U.S. customers either ordered or received the imported merchandise in the form of kits of any kind, even in instances where they ordered parts/components designed for the same fencing system brand (*e.g.*, Athens).

²⁵ See Fortress March 6 RFI response at 6, referencing Exhibit III.12.

²⁶ *Id.* at Exhibit III.12. The word kit [description of company documentation], but not in reference to any overall combination of items that would be required as part of a “finished goods kit.”

²⁷ See NOI at 6.

copies of “internet-based advertising” used by Fortress and its affiliates referencing such merchandise, Fortress provided a “composite” of such information in an exhibit consisting of 462 pages (including exhibit cover page).²⁸ That exhibit contains many brochures for different Fortress aluminum fence systems, such as Athens Residential, Athens A2 Commercial, AL13 Home, *etc.*, including assembly instructions for assembly. Interspersed between such brochures are additional pages relating to design, testing, safety, and other aspects of the Fortress fence products.²⁹ “Finished goods kits,” as defined by the AD/CVD orders scope exclusion, cannot contain parts that require further processing such as cutting or punching, and multiple Fortress brochures identify saws and/or drills as required equipment for fence/railing assembly.³⁰ Some of the assembly instructions in the brochures make references to cutting and drilling when “necessary,” “required,” or when “recommended,”³¹ and numerous other references to cutting and drilling in product brochure pages contain no such qualifications.³² Saws and drills are identified as required for assembly because it is evident that assembling the fencing and railing do necessitate cutting and drilling (akin to “punching”) of individual parts.

In response to a request that it explain its “financial accounting practices regarding the valuation methodologies for raw materials, work-in-process, finished goods inventories, and cost of goods sold,” Fortress stated that it “[

description of business practice

].”³³ Based on entry-specific documentation, Fortress ordered individual items in bulk, not kits. Fortress provided no documentation indicating it inventoried any purchases as “kits” or under other such terminology referring to a consolidated grouping of parts and other components necessary for the construction of a complete fence, as opposed to individual items such as specific aluminum extrusion fence parts.

When it comes to Fortress’s own sales, evidence on the record indicates that Fortress sold merchandise that it had imported to U.S. customers as individual parts, not as “finished goods kits.” The documents referring to Fortress’s transactions with its customers identifies individual items, with individual valuations for each item, and separately measured volume for the quantities of each item, with no references to “kit” or “kits” or other such terminology.³⁴

²⁸ See Fortress March 3 RFI response at 45, referencing Exhibit IV.6. This compares to two pages of brochure pages provided with the 2014 CF29 information. See November 14, 2022, Fortress Letter, at Exhibit C (and within that exhibit, the January 24, 2014, Akerman firm letter on behalf of Fortress to CBP concerning CF29 action, at the first two pages of Exhibit E after the cover page). Those two pages contain very little information regarding the merchandise, and no references to instructions regarding assembly of fence products. *Id.*

²⁹ See Fortress March 3 RFI response at Exhibit IV.6.

³⁰ *Id.* at Exhibit IV.6, pages 7, 71, 127, 157, 199, 220, 268, 309, and 439 (saw), and pages 71, 127, 157, 199, 214, 220, 268, 309, and 439 (drill).

³¹ See *e.g.* Fortress March 3 RFI response at Exhibit IV.6, pages 77 and 79.

³² See *e.g.* Fortress March 3 RFI response at Exhibit IV.6 pages 7, 9, 10, 70, 73, 75, 109, 116, 118, 122, 123, 126, 135, 136, 137, 149, 156, 161, 166, 170, 173, 177, 179, 186, 219, 224, 229, 236, 243, 266, 275, 276, 284, 289, 295, 296, 302, 304, 440, and 442 (cutting), and pages 10, 70, 80, 83, 85, 109, 115, 126, 130, 132, 134, 156, 164, 165, 174, 175, 184, 187, 188, 201, 202, 219, 227, 234, 241, 244, 267, 271, 273, 279, 284, 288, 294, 299, 305, 306, and 443 (drilling).

³³ See Fortress March 3 RFI response at 25.

³⁴ See Fortress March 6 RFI response, Fortress April 4 Supp RFI response, and Fortress April 27 RFI response at various entry-specific exhibits. See also the references in the NOI to additional entries examined by CBP.

Regardless of how Fortress sold merchandise, the issue at hand is how the merchandise was imported, and Fortress repeatedly claims that it is importing “finished goods kits” rather than individual parts/components/fasteners. For example, Fortress has indicated that:

- a) its imports of the aluminum extrusion fence products are outside the scope of the AD/CVD orders because they constitute “finished goods kits, and that it received guidance in 2014 from CBP that its “fence systems” were excluded because they constituted finished goods kits and were not subject to AD/CVD duties;³⁵
- b) its imports of the aluminum extrusion fence products are imported as “finished fence systems,” and that “the {Chinese} manufacturer also date stamps each product, and packages and labels the finished fence systems for shipment, which are included and the panels along with all other parts necessary for a finished fence system are prepared for shipping.”³⁶
- c) it purchases “[description of merchandise]” from “[description of sellers]”.³⁷
- d) a specific entry contained “[description of merchandise].”³⁸

Fortress argues that CBP has in the past determined that its products are finished goods kits and are not subject to the Orders. Fortress points to a CF29 action from 2014 it attached to a November 14, 2022, letter directed to the Center that states “{t}he fence in its imported condition is a system kit with all parts necessary and no additional work needed for assembly,” and that “{t}his would exclude the fencing from AD/CVD.”³⁹ That exhibit contains additional information that presumably relates to the four entries under examination at the time.⁴⁰ However, even if some of the information for those entries was comparable to that for POI entries, the 2014 CF29 merchandise can be distinguished from POI merchandise, as discussed below, and in any case, the results of a CF29 action are only binding on the entries covered by that action.⁴¹ The packing lists for the POI entries examined by CBP indicate that at the time of importation, they were packaged as bulk shipments of individual parts and other components. Those parts and components may be designated for use under standardized fence systems, such

³⁵ See NOI at 6 (narrative and footnote 23), citing a document dated November 14, 2022, Fortress Letter.

³⁶ *Id.* at 6 (narrative and footnotes 25 and 27), citing the narratives of the December 6, 2022, CF28 responses for two entries.

³⁷ See Fortress March 3 RFI response at 12.

³⁸ See Fortress March 6 RFI response at 8, in reference to entry 7988.

³⁹ See November 14, 2022, Fortress Letter, at Exhibit C.

⁴⁰ *Id.* The shipment documentation included in the exhibit, however, appears to pertain to just one of the entries. We note that narrative in Exhibit C refers to the merchandise in question as “fencing” and some documentation (*e.g.*, product brochure pages) refer specifically to “railing.” *Id.* In this final determination, we refer to terms “fence” and “fencing” even where those terms encompass products that may have been identified as “railing.” The products are similar enough in terms of their production and properties, with regard to the issue of coverage under the AD/CVD orders. Also, as noted above, the Allegation and the Initiation included references to merchandise identified as “aluminum railing,” as did the NOI (*see* NOI at 3). Fortress frequently refers to railing and rail parts as akin to fencing and fence parts. *See e.g.* Fortress Written Arguments at 36 (“...the instruction manual for the Athens fence line states that installation requires posts, rails, and Poly-Loc Clips”).

⁴¹ See 19 USC 1625 (“Within 90 days after the date of issuance of any interpretive ruling (including any ruling letter, or internal advice memorandum) or protest review decision under this chapter with respect to any customs transaction, the Secretary shall have such ruling or decision published in the Customs Bulletin or shall otherwise make such ruling or decision available for public inspection.”) A CF29 action cannot be considered an interpretive ruling if it is not subject to being made available for public inspection, as it is only visible to the party involved and CBP.

as Fortress’s Athens brand fence system, but they were not entered as an individual kit, nor does the documentation mention any specific “kits” at all.

In Fortress April 4 Supp RFI response, Fortress provided an additional discussion of its aluminum fence sales and imports in the context of the “finished goods kits” issue. Fortress stated it “offers lines of aluminum fencing that, as demonstrated on its website, is finished fencing, ready to install, and requires no further processing.” Fortress states that “[description of business practice], and that “[

[description of business practice].”⁴² However, customers can buy individual parts, as is clear from the Lowe’s website referenced in the NOI.⁴³ As noted by AEFTC, Fortress’s representations to customers that its individual parts are “made to be used with...compatible components (sold separately)” is an admission that such parts/components are being offered and sold separately, not as parts of kits.⁴⁴

Fortress refers to an exhibit in its April 4 Supp RFI response that it claims is “[description of company documentation].”⁴⁵ Also, Fortress refers to the CF29 issued by CBP in 2014, which in its conclusion only states “{t}he fence in its imported condition is a system kit with all parts necessary and no additional work needed for assembly,” and that “{t}his would exclude the fencing from AD/CVD.” Fortress claims this “[

[description of business practice].”⁴⁶ As discussed above, however, the parts and components are imported in bulk, and itemized individually on packing lists and invoices, regardless of whether one might be able to assemble a finished fence or fences from the parts and other components that happened to be present in an entry.

Finally, in that April 4 Supp RFI response, Fortress stated that “[description of business practice],” that “[description of business practice],” and that “[description of business practice]

].”⁴⁷ Whether or not [reference to entities] manufactures [reference to merchandise] for a [description of merchandise] the Athens product line, that has no bearing on how the

⁴² See Fortress April 4 Supp RFI response at 2-3.

⁴³ See NOI at 6. Note that [reference to business activity] during the POI, over [value] of which Fortress characterized as [aspect of merchandise]. See Fortress March 6 RFI response at Exhibit IV.10.

⁴⁴ See AEFTC Rebuttal Info at 2-3, citing Fortress NFI at 8. Although what is relevant is how the merchandise was imported by Fortress, not how it was delivered to or used by Fortress’s U.S. customers (who in many instances were themselves resellers such as [company name]), if aluminum extrusion fence merchandise were being offered by Fortress or its U.S. customers to other customers as individual parts/components, that would suggest they were entered into the United States as individual parts/components, rather than entered as “finished goods kits” and then disaggregated into individual parts/components.

⁴⁵ See Fortress April 4 Supp RFI response at 2-3, citing Exhibit 1.

⁴⁶ *Id.* at 3.

⁴⁷ *Id.* at 5.

merchandise is entered into the United States in a specific entry. And as noted, the products that are shipped and entered are parts and components that are separately itemized and priced, and while they are designed for particular brand (*e.g.*, Athens) fence systems, they are not entered as “finished goods kits” as defined by the scope of the AD/CVD orders. merchandise entered are not complete “systems” or “kits” such that complete combination of parts/components might qualify as a “finished goods kit.”⁴⁸

In its April 27 Supp RFI response, Fortress stated, with regard to its sales related to several entries of merchandise from its suppliers, that Fortress’s “[business practice],” and that “[

business practice].⁴⁹ However, the purchase orders and invoices for such products contain no reference to kits or otherwise specifically-identified groupings of products/components, but, rather, list individually itemized and priced parts and components.⁵⁰ For one entry discussed in that response, Fortress states the merchandise imported represents a “[

description of merchandise].” In these latter situations, Fortress states it “[business practice],” that “[aspect of business practice]

].”⁵¹ Like Fortress’s other examined POI entries, however, the documentation for this entry contains no evidence of any specific “kits” being entered, as opposed to assortments of individual parts/components, and as noted elsewhere, additional cutting and drilling is performed during the final fence assembly process for Fortress’s fence systems.

In its voluntary submission of new factual information, Fortress reiterated points regarding CBP’s 2014 CF29, which it stated followed various exchanges between Fortress and CBP referenced in the November 14, 2022 Letter.⁵² Fortress stated that “CBP provided a written determination that Fortress’s merchandise (aluminum fencing comprised of panels, gates, posts, caps, *i.e.*, all the parts necessary to fully assemble a finished fence system and required no further fabrication) were finished goods kits that were excluded from the scope of the {AD/CVD} Orders,” and claims that “[comparison of business practices]

⁴⁸ Note that Commerce’s July 22, 2014 final Dynasty Scope Ruling, involving aluminum fence parts and the AD/CVD orders in question, referenced another such scope ruling, Commerce’s December 13, 2014 Final Origin Scope Ruling, as citing the fact “that each product is shipped in separate boxes, and each separately itemized on the invoice” as among the reasons for its ruling finding the merchandise to not qualify as a finished goods kit and to be covered by the scope of the orders. *See* Allegation at Exhibit 5. Also, as noted above, some of the parts entered by Fortress require further processing (*e.g.*, cutting and/or drilling) before they can be used to assemble a fence.

⁴⁹ *See e.g.* Fortress April 27 Supp RFI response at 4, referencing entry 5082.

⁵⁰ *See e.g.* Fortress March 6 RFI response at Exhibit IV.8, for entry 5082.

⁵¹ *See* Fortress April 27 Supp RFI response at 9-10.

⁵² *See* Fortress NFI at 1-2. Fortress also claims CBP should correct its description of the November 14, 2022, memorandum that appears in the TRLED memorandum of December 27, 2022, memorandum to the file, to make it clear that November 14, 2022, was correspondence between Fortress’s counsel and Fortress. *Id.* at 2-3. However, as noted above, TRLED already provided a clarification, the Memorandum to the File, dated February 10, 2023.

].”⁵³ The 2014 CF29 action has no specific precedential value for the POI entries, but in any case, the 2014 CF29 entries can be distinguished from the POI entries. While the 2014 CF29 action concluded the merchandise under examination in each entry in question met the requirements of “finished goods kits” as defined by the scope exclusion language, that is not the case for the POI entries examined by CBP as, for example, the product brochure information provided by Fortress in this investigation indicates that parts require cutting and/or drilling during the fence assembly process.

Elsewhere in the voluntary submission of new factual information, Fortress continues to claim that it imports “finished goods kits,” but these claims are followed by references to Fortress’s *sales*, rather than its *imports*.⁵⁴ Later in the same paragraph, Fortress returns to discussing entries, claiming that “[a]s imported, the entire finished fence system kit is included in the container upon import.”⁵⁵ However, nowhere on the record has Fortress demonstrated that any of its entries, as *imported*, constituted “an entire finished system kit,” or any type of “kit”, for that matter, and even if a specific fence or multiple number of fences could be assembled from the parts and other components in an entry, that would not demonstrate a container containing all such items constitutes a container of a “kit” or “kits.”⁵⁶

Fortress also claims that the way it “[^{business practice}]” its imported aluminum extrusions distinguishes it from others “in the industry,” which “import fence products as individual aluminum components or extrusions rather than systems.”⁵⁷ Even assuming that Fortress directs how the items are to be loaded in specific containers, it is not evident, from the POI entries analyzed in this investigation, that each entry contains all the parts necessary to assemble a specific fence. But even if it were assumed that they were, it is evident from Fortress’s own statements that the items are not imported as specific, individual “finished goods kits.” Fortress states that it “[^{business practice}

].”⁵⁸ Fortress’s entry-specific documentation consistently identifies individual parts/components referenced in bulk, not as “kits” or “systems,” which, even assuming everything is necessary for construction of a fence or fences, may apply to an indeterminable number of ultimately assembled fences. However, if actual kits are being imported, they should be distinguished from each other, and their overall number identified in the entry documentation. But that is not the case here. Furthermore, given various Fortress parts require additional cutting and/or drilling during the fence assembly process, the imported merchandise cannot qualify for the “finished goods kits” scope exclusion even if it had been imported in some form of “kit”.

⁵³ See Fortress NFI at 2.

⁵⁴ *Id.* at 4.

⁵⁵ *Id.*

⁵⁶ Later in the submission, Fortress claims CBP erred in its statement in the NOI regarding Entry 9665 and Entry 0672 that there was only one reference to “kits” in the narrative portions of the CF28 responses for those entries (see Fortress NFI at 7), which CBP noted was only a description of what Fortress stated it sells in the U.S. market (see NOI at 6). Fortress claims there was another reference to “kits,” but it is just another reference to “fence systems” which it states it sells in the U.S. market. See Fortress NFI at 7. The fence systems Fortress describes are standardized products, such as the Athens brand, where individual pieces of that brand are to be used together. The importation of specific parts of a particular brand does not make that importation a “kit”, let alone a “finished goods kit.”

⁵⁷ See Fortress NFI at 6.

⁵⁸ *Id.* at 6 (emphasis in the original).

Finally, in its NFI submission, Fortress alludes to CBP’s reference in its NOI of a specific imported part model to a specific part model offered by Lowe’s on its website for sale. Rather than acknowledging that this is evidence consistent with the conclusion that Fortress imports individual fence parts, or proposing some other explanation why Lowe’s offers individual Fortress fence parts for sale, Fortress repeats that Fortress “imports all the parts necessary to install a finished fence system” and discusses how it warns customers about mixing Fortress and non-Fortress parts when constructing a fence. Fortress notes that the Lowe’s website indicates that “the product description for the Athens Square Fence Post expresses that it is to be used with the coordinating Fortress products.”⁵⁹ This does not address the issue of what Fortress was importing in specific entries, and it constitutes additional evidence that what is meant by Fortress “fence systems” are standardized sets of parts that are marketed under a specific brand name (e.g., Athens) that may be purchased individually and used together, rather than individual “finished goods kits” that each contain all the necessary parts/components to assemble a particular fence without additional processing such as cutting or drilling.

Undervaluation of Entries

During this investigation, it was discovered that Fortress had undervalued various entries. During its review of sales documents in the Supplier One RFI response, CBP noted invoices with [business practice].⁶⁰ Supplier One indicated in a later response that [aspect of business practice].⁶¹ Supplier One later submitted a chart with purchase orders for shipments with loading dates dated [date] through [date] that contained [business practice]. The [business practice] in the chart totaled approximately \$[#] thousand, including some shipments with loading dates prior to the POI.⁶² In its NFI submission, Fortress identified [details of business practice] containing such [business practice], with invoice dates [time period].⁶³ Fortress later referenced two of the purchase orders identified by Supplier One that involved shipments that “were loaded outside the POI.”⁶⁴ Regardless of the specific loading dates for a few of the purchase orders, it is evident that [business practice] were not reported to CBP at the time of entry for various POI entries, which represents an undervaluation of the entered value of such entries.

Misidentification of Suppliers

Fortress misidentified the [company reference] information on many of its entries.⁶⁵ Fortress blames [entities] for these mistakes, and appears to suggest that they resulted from “[general description of mistakes],” such as “[example of mistakes],”⁶⁶

⁵⁹ *Id.* at 8, citing Exhibit V.1.

⁶⁰ See Supplier One RFI response at Exhibit 7 (pages 3, 5, and 7), Exhibit 8 (page 4), Exhibit 9 (page 3), and Exhibit 10 (page 3). For each of these exhibits, the cover page is considered page 1.

⁶¹ See Supplier One May 4 Supp RFI response at 3-6 and Exhibits 1 and 2. See also Supplier One May 8 Supp RFI response in general.

⁶² See Supplier One May 8 Supp RFI response at Exhibit 3.

⁶³ See Fortress NFI at 10 and Exhibit VII.1.

⁶⁴ See Fortress Supplier One Rebuttal Info at 9.

⁶⁵ See Fortress February 8 RFI response and Fortress February 16 RFI response.

⁶⁶ See Fortress February 16 RFI response at 9-10.

but the differences between [company reference] identified in entries and what Fortress during this EAPA investigation acknowledged were actual [company reference] are more substantial than “[general description of mistakes]” such as “[example of mistakes].”⁶⁷

Other IORs

CBP is applying the final determination of evasion to the following in addition to Fortress:

[company names] as Fortress indicated that all were “[business activity].”⁶⁸

Summary of Extent of Evasion

CBP finds that Fortress imported subject extruded aluminum fence merchandise into the United States through evasion. The record evidence does not support a finding they entered as part of “finished goods kits,” but, rather, as aluminum extrusion fence merchandise subject to the AD/CVD orders. In addition to misclassifying entries as non-subject, Fortress magnified the extent of evasion by undervaluing some of that merchandise.

Fortress Written Arguments and AEFTC Response to Written Arguments

In summary, Fortress divides its arguments into three prongs: first, that the record demonstrates there was no evasion because the imported merchandise in question was excluded from the AD/CVD orders and no material and false statement or omission was made by Fortress; second, that CBP’s imposition of interim duties is not supported by the record because the imported merchandise is outside the scope of the order and because Fortress properly relied on a CBP decision finding it had been importing excluded “finished goods kits”; and third, because no application of adverse inferences is warranted.⁶⁹

CBP does not conclude that adverse inferences are warranted, and therefore does not further address the third prong of Fortress’s argument. As for the second prong, CBP has addressed the issues relating to the scope of the AD/CVD orders and the 2014 CF29 action in the analysis section above.

Turning to the first prong of Fortress’s arguments, Fortress references the statutory requirement for a finding of evasion, arguing that “{t}he record demonstrates that there was no evasion as defined by EAPA because the merchandise was excluded from the scope of the orders and no material and false statement or omission was made by Fortress.”⁷⁰ Fortress argues that it was

⁶⁷ See Fortress February 16 RFI response at 6-9. For example, the [company reference] originally identified as [company name] was clarified in Fortress’s response to instead involve, “[company names]” *Id.* at 7.

⁶⁸ See Fortress March 3 RFI response at 10. Note that the first entity in this list has [reference to aspect of particular company name] for Fortress Iron, LP.

⁶⁹ See Fortress Written Arguments at 2 (“Table of Contents”), at 18-20 (“Summary of Arguments”), at 20-46 generally (“Arguments”), and at 46-47 (“Conclusion and Request”).

⁷⁰ See e.g. Fortress Written Arguments at Table of Contents.

reasonably relying on CBP’s 2014 CF29 finding when reporting its later entries of aluminum extrusion fence merchandise.

Fortress argues that that extruded aluminum fence products it imported during the POI, when not [category of merchandise], were entered as “finished goods kits” and therefore do not constitute covered merchandise. As discussed in the analysis above, CBP has determined that Fortress imported aluminum extrusions were not entered as finished goods kits.

Next, Fortress claims CBP cannot use this EAPA investigation to argue aluminum fence system kits were meant to be covered by the scope of the AD/CVD orders, because “the petitioner {in the underlying Commerce AD/CVD investigations} intended to exclude aluminum fencing systems in kit form, and the Department of Commerce unequivocally agreed, explicitly determining that unassembled fence kits containing aluminum extrusions that contained all the components for the finished product are excluded from the scope.”⁷¹ CBP notes that “finished goods kits,” as defined in the scope of the AD/CVD orders, were excluded from the scope, and CBP does not claim that “finished goods kits” should now be covered by the scope of the orders. However, as discussed in the analysis above, what Fortress characterizes as POI entries of “finished goods kits” do not meet the requirements of such merchandise, as defined by the scope of the AD/CVD orders.

Fortress also discusses several CBP and Commerce rulings regarding the “wide variety of kit forms.”⁷² Fortress notes that “CBP considered an aircraft imported in three kits containing approximately 750 parts, with a wingspan of 22 feet, to be imported in ‘kit form’ despite the one plane being imported in three kits.”⁷³ This ruling pre-dated the AD/CVD orders in question by over one decade, but putting that aside, the ruling refers to a “kit form” for a single aircraft constituted by three distinct “kits.”⁷⁴ The entries by Fortress, in contrast, contain no reference to any kits of any type, and no way to define how many “kits” of any form are represented by the multitude of each individual part/component type. Fortress refers to Commerce’s scope rulings in which Commerce concluded the merchandise imported in separate packaging constituted a kit in certain circumstances, such as where the product contains large pieces and potentially different configurations, which would make them difficult to contain in a single package.⁷⁵ CBP does not claim that a single “finished goods kit” must be contained in one single package, or even in one single shipping container. However, Fortress’s entry documentation does not indicate that the merchandise was entered as kits.⁷⁶

⁷¹ *Id.* at 22-23.

⁷² *Id.* at 27.

⁷³ See Fortress Written Arguments at 27-28, citing Customs CROSS Ruling b82676.

⁷⁴ See Customs CROSS Ruling b82676.

⁷⁵ See Fortress Written Arguments at 28, citing Final Scope Ruling on Eran Light Poles (April 17, 2017) and Final Scope Ruling on Phoenix Folding Doors (Feb. 22, 2021).

⁷⁶ Fortress claimed in its “Facts” section of its written arguments that “although perhaps not as easily discernible to the naked eye as a kit with all parts contained in a box that a person can physically hold, these fence system kits, which sometimes take up entire containers, when viewed as a whole, contain all parts necessary to assemble a finished fence system.” See Fortress Written Arguments at 13. However, as noted, the entry related documentation for the examined POI entries do not identify particular “kits” in its entry related documentation for the POI entries examined, and Fortress has not tried to claim that each individual entry represents a specific number of “finished goods kits.”

Fortress states the scope rulings cited by AEFTC in its allegation are distinguishable from Fortress's situation. Fortress states those rulings concern "forms of importation where the importer imports the posts, panels, and gates separately from each other and then unpacked, rearranged, supplemented parts, and repackaged the merchandise, before selling a complete kit to the end user."⁷⁷ Fortress identifies these as five specific scope rulings included in the Allegation.⁷⁸ Comparing the products described in those rulings (as summarized by Fortress) and Fortress's entered products, a common theme is that, whether described as in kit form (as was the case for the Commerce scope ruling products) or containing no such references to kit form, (as was the case for Fortress), the merchandise as entered did not constitute a "packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching." In the case of Fortress, there were not discrete packaged combinations of parts, and some parts required cutting and/or drilling by the party assembling a fence. Fortress also claims that it "does not import posts, panels, and gates in bulk and separately from each other," because "each purchase order, invoice, and packing list contains posts and panels, and when gates are included, the gates are imported with the posts and panels."⁷⁹ Even if such parts are imported "together" in the same entry, they are, as noted above, segregated by part/component type, with respect to pricing and even physically, with specifically calculated cubic feet measurements for each individual part/component, and there is no "combination" of different parts/components into kits.

Fortress states that "{a}s described in the Record {of the EAPA investigation}, [description of merchandise]."⁸⁰ At no time has Fortress explained on the record how many actual "finished goods kits" are represented in each specific examined entry, or whether all the parts/components listed in each specific entry were identified as part of a specific "finished goods kit." In fact, throughout the sale and importation process, there appears to be no reference to "kits" at all. Fortress states that "{a}t the time of importation, Fortress does not repackage or add additional components before sending the fence system kit to the customer because the kit contains all the parts necessary and because of Fortress's efforts to comply with CBP's determination in the 2014 CF29."⁸¹ Even if it is true that Fortress does not repackage or add additional components before its customers receive the merchandise, that does not establish that the merchandise entered as "finished goods kits." If all such merchandise were received by the Fortress U.S. customer as it was entered into the United States, they would be received as shipments of multiple parts/components in bulk, not as finished goods kits, and, as the record indicates, they may be sold as parts/components rather than kits (*see e.g.* references to Lowe's website, both above and in the NOI).

⁷⁷ See Fortress Written Arguments at 29.

⁷⁸ *Id.* at 30, citing the Dynasty Final Scope Ruling (July 22, 2014) ("Dynasty Scope Ruling") (Allegation Exhibit 5); the Ameristar Kitted Fences Final Scope Ruling (Aug. 15, 2012) ("Ameristar Kitted Fences Scope Ruling") (Allegation Exhibit 6); the Origin Final Scope Ruling (Dec. 13, 2011) ("Origin Scope Ruling") (Allegation Exhibit 8); the Ameristar Preliminary Scope Ruling (June 1, 2012) ("Ameristar Scope Ruling") (Allegation Exhibit 7), and the American Fence Manufacturing Company Fence Sections, Posts and Gates Scope Ruling (Dec. 2, 2011) ("American Fence Parts Scope Ruling") (Allegation Exhibit 10).

⁷⁹ *Id.* at 31.

⁸⁰ *Id.* at 33.

⁸¹ *Id.* at 33-34.

Fortress claims that “[business practice],” and without “[business practice]”

].”⁸² However, for the entry in question, none of the documentation refers to kits of any kind, include fence parts in bulk, and, furthermore, as noted above, Fortress’s product catalogs indicate some parts require cutting and/or drilling by the end user to assemble a fence.

Fortress further argues that even if the merchandise in question were incorrectly determined to have been subject to the AD/CVD orders, it was not “entered via a statement or act that is material and false, or any omission that is material.”⁸³ Fortress claims this is so “because the filling out of entry documents pursuant to specific written direction by CBP through its 2014 CF29 does not constitute evasion,” and that, “{o}n the contrary, it constitutes Fortress’s ‘reasonable care,’ as required by CBP regulations.”⁸⁴ Fortress states the CIT in Diamond Tools II “opined that filling out import documentation based on a valid agency decision that was in effect at the time of importation which explicitly and clearly indicated that the merchandise was outside of the scope of the Orders does not, in accordance with statutory construction, comprise a material and false statement or omission.”⁸⁵ Fortress claims that its representation of the merchandise subject to the EAPA investigation as constituting excluded finished goods kits “reflected an accurate understanding and obedience of the 2014 CF29 written direction from CBP,” given the merchandise subject to the EAPA investigation was identical in all material aspects to the products associated with the 2014 CF29 directive.⁸⁶

As an initial matter, the CF29 action cannot be considered an interpretative ruling (*i.e.*, having precedential effect for entries not referenced in that document) because it was not subject to being made available for public inspection, and it was only visible to the party involved and CBP.⁸⁷ But even if the CF29 action had precedential effect for this case, the extent to which Fortress has not demonstrated the merchandise subject to the 2014 CF29 was the same as the merchandise subject to this EAPA investigation. In addition, as also noted, documentation examined by CBP during this EAPA investigation identifies one very pertinent difference from the documentation included in the documentation submitted by Fortress relating to the 2014 CF29, namely, that some parts require additional cutting and/or drilling. Furthermore, the 2014 CF29 decision, did not explain the basis for finding that the merchandise in each entry met the requirements of the “finished goods kits” exclusion. That is not the case for the entries during the POI that are under examination, which have been shown to not qualify for the “finished goods kits” exclusion. Finally, Fortress’s argument that it did not make false statements is

⁸² *Id.* at 34.

⁸³ *Id.* at 37.

⁸⁴ *Id.* at 37.

⁸⁵ *Id.* at 38.

⁸⁶ *Id.* at 39.

⁸⁷ Under 19 USC 1625, “{w}ithin 90 days after the date of issuance of any interpretive ruling (including any ruling letter, or internal advice memorandum) or protest review decision under this chapter with respect to any customs transaction, the Secretary shall have such ruling or decision published in the Customs Bulletin or shall otherwise make such ruling or decision available for public inspection.”

inapposite. The statutory language does not require CBP to consider the importer's state of mind at the time of importation and CBP may find that false statements were made regardless of whether there is a good faith disagreement as to whether an AD/CVD order is applicable.⁸⁸

Fortress argues that “the 2014 CF29 was an agency decision following deliberations on the Fortress products that reviewed Fortress’s merchandise, which is identical to those subject to this EAPA investigation, and the method of packaging, invoicing, and importing.”⁸⁹ However, Fortress’s claim that CBP’s 2014 CF29 ruling has more precedential relevance than Commerce’s 2006 IDM referenced in the Diamond Tools CIT rulings is unfounded. CBP’s CF29 ruling does not have any precedential relevance outside of the entries referenced in that document, as noted above. In this EAPA investigation, no referral for scope rulings is even necessary, given, based on “the specific facts of the case,” it is obvious no “finished goods kits,” or kits of any kind, were imported by Fortress in the POI entries in question, and given further processing such as cutting and/or drilling are required for some parts.

Fortress states that while CBP “may change its mind,” it “may only do so pursuant to notice and comment procedures under 19 U.S.C. 1625(c)(2),” and “CBP has not undertaken the required notice and comment procedures, and as a result, Fortress may still rely on the 2014 CF29.”⁹⁰ As noted, the 2014 CF29 Notice of Action was not an interpretive ruling as discussed in the references to section 1625 and, therefore, there was no need for CBP to take any of the steps noted by Fortress. The 2014 CF29 only applied to the entries identified in that ruling, and CBP properly examined POI entries to determine whether, among other things, aluminum extrusion fence merchandise in each entry could be considered to have been entered as part of “finished goods kits.” As noted above, CBP has determined that during the POI, Fortress imported aluminum extrusions subject to the AD/CVD orders, and that Fortress did not pay the required AD/CVD cash deposits for such merchandise.

Finally, Fortress states Commerce’s scope rulings involving “kitted fences” did not affect CBP’s “clear determination in the 2014 CF29” because “those scope rulings are distinguishable from Fortress’s case.”⁹¹ Commerce’s fence scope rulings have been discussed above, and do not support Fortress’s claim that the aluminum fence products it imported during the POI constituted “finished goods kits.”

Actions Taken Pursuant to the Affirmative Determination of Evasion

In light of CBP’s determination that Fortress entered covered merchandise into the customs territory of the United States through evasion, and pursuant to 19 USC 1517(d) and 19 CFR 165.28, CBP will suspend or continue to suspend the entries subject to this investigation until instructed to liquidate these entries. For those entries previously extended in accordance with the interim measures, CBP will rate adjust and change those entries to type 03 and continue suspension until instructed to liquidate these entries. CBP will also evaluate Fortress’s

⁸⁸ See *Ikadan Sys. USA, Inc. v. United States*, No. 21-00592, 2023 WL 3962058, at *7 (Ct. Int’l Trade June 13, 2023) (“EAPA read as a whole supports CBP’s strict liability interpretation of the definition of evasion.”).

⁸⁹ See Fortress Written Arguments at 40.

⁹⁰ *Id.* at 41.

⁹¹ *Id.* at 42.

continuous bonds in accordance with CBP's policies and may require single transaction bonds as appropriate. In addition, CBP will apply these actions not only to Fortress Iron, LP, also referred to or doing business under the names Fortress Fence Products and Fortress Building Products, but also to any additional IOR numbers relating to [company names]. None of the above actions precludes CBP or other agencies from pursuing additional enforcement actions or penalties.

Sincerely,

A handwritten signature in blue ink, appearing to read "Victoria Cho".

Victoria Cho
Acting Director, Enforcement Operations Division
Trade Remedy Law Enforcement Directorate
Office of Trade