



U.S. Customs and Border Protection

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RE: Notice of Initiation of Investigation and Interim Measures: EAPA Case 7734

Dear Counsel and/or Representatives for the Above-Referenced Entities:

This letter is to inform you that U.S. Customs and Border Protection (“CBP”) has commenced a formal investigation under Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act (“TFTEA”) of 2015, commonly referred to as the Enforce and Protect Act (“EAPA”). Specifically, CBP is investigating whether 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 United States Chinese-origin aluminum extrusions but not declaring them as subject to those AD/CVD orders. Based on a review of information on the record, CBP has determined that there is reasonable suspicion of evasion of AD/CVD duties by Fortress; therefore, CBP has imposed the interim measures outlined below.

Period of Investigation

Pursuant to 19 CFR 165.2, entries covered by an EAPA investigation “are those entries of allegedly covered merchandise made within one year before the receipt of an allegation”²

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).

² See 19 CFR 165.2.

Entry is defined as an “entry for consumption, or withdrawal from warehouse for consumption, of merchandise in the customs territory of the United States.”³ As noted in the initiation memorandum for Fortress, the Aluminum Extrusions Fair Trade Committee (“AEFTC”) filed an EAPA allegation against the importer.⁴ On September 26, 2022, CBP acknowledged receipt of the properly filed EAPA allegation.⁵ Therefore, the entries covered by the period of investigation (“POI”) are those entered for consumption, or withdrawn from warehouse for consumption, on September 26, 2021, through the pendency of this investigation.⁶

Initiation

As noted above, 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. On October 18, 2022, based on the information in the Allegation summarized below, the Trade Remedy Law Enforcement Directorate (“TRLED”), within CBP’s Office of Trade, initiated an investigation under EAPA for Fortress.⁷

TRLED will initiate an investigation if it determines that “{t}he information provided in the allegation...reasonably suggests that the covered merchandise has been entered for consumption into the customs territory of the United States through evasion...”⁸ 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 covered merchandise.”⁹ Thus, the allegation must reasonably suggest not only that merchandise subject to an AD and/or CVD order was entered into the United States by the importer alleged to be evading, but that such entry was made by a material false statement or act, or material omission, that resulted in the reduction or avoidance of applicable AD and/or CVD cash deposits or other security.

In assessing the claims made and evidence provided in the allegation, TRLED found that information provided by AEFTC reasonably suggested that Fortress has engaged in attempts to evade the aforementioned AD/CVD orders through failure to declare entries of aluminum extrusions as subject to the AD/CVD orders. Evidence submitted by AEFTC supporting its allegation of evasion by Fortress is summarized below.

³ See 19 CFR 165.1.

⁴ See the October 18, 2022, *Initiation of Investigation for EAPA Case Number 7734 – Fortress Iron, LP* (“Initiation”), which references the following allegation documents: *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”); *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.

⁵ See the email from TRLED to counsel for AEFTC dated September 26, 2022.

⁶ See 19 CFR 165.22.

⁷ See *Fortress Initiation*.

⁸ See 19 CFR 165.15(b)(2).

⁹ See 19 CFR 165.1 (setting forth the definition of “evasion” used here); see also 19 USC 1517(a)(5).

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,¹⁰ 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.¹¹ 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];¹² and c) provided an analysis starting with 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.¹³ In fact, CBP confirmed that the importer entered merchandise during the EAPA period of investigation as country of origin [country] 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 [business activity] on those entries.¹⁴ Consequently, there was sufficient evidence to reasonably suggest that AD/CVD duties are not being paid on subject entries of aluminum extrusions from China imported by Fortress.

Interim Measures

Not later than 90 calendar days after initiating an investigation under EAPA, CBP will decide based on the record evidence if there is reasonable suspicion that such merchandise covered by the AD/CVD orders was entered into the United States through evasion. CBP need only have sufficient evidence to support a reasonable suspicion that the importer alleged to be evading entered merchandise covered by an AD and/or CVD order into the customs territory of the United States by a materially false statement or act, or material omission, that resulted in the reduction or avoidance of applicable AD and/or CVD cash deposits or other security. If reasonable suspicion exists, CBP will impose interim measures pursuant to 19 USC 1517(e) and 19 CFR 165.24. As explained below, CBP is imposing interim measures because, based on the

¹⁰ See *Initiation* at 4. See also *Allegation* at 8-12, Exhibit 2, and Exhibits 5 through 13.

¹¹ See *Initiation* at 4. See also *Allegation* at 7-8 and Exhibit 2.

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

¹³ See *Initiation* at 4. See also *Supplement to Allegation* at 3-4 and Exhibit 1.

¹⁴ See NTAC Report documentation dated September 30, 2022.

record evidence, there is reasonable suspicion that Fortress entered covered merchandise into the customs territory of the United States through evasion.

In early 2022, prior to AEFTC’s filing of its EAPA Allegation, a Center of Excellence and Expertise (“CEE”) examined entry documentation for Fortress entry [number]9195 with entry date [date]. The importer had identified China as the country of origin of the merchandise. The importer did not declare the merchandise as subject to AD/CVD duties under the aluminum extrusion orders, and, as discussed below, later claimed, in a submission made to the CEE, both that CBP informed them in 2014 such merchandise was excluded from the scope of those AD/CVD orders, and that such merchandise qualifies as “finished goods kits” excluded from the AD/CVD orders. “Finished goods kits” are specifically excluded from the scope of the AD/CVD orders on aluminum extrusions.¹⁵ However, the U.S. Department of Commerce (“Commerce”) in previous scope rulings involving extruded aluminum fence components has found that shipments of such components and associated items (*e.g.*, fasteners) did not constitute “finished goods kits” and thus were subject to AD/CVD.¹⁶ The CEE found that the invoice and packing list for the aforementioned entry indicated the merchandise in the entry included major fence component pieces (*e.g.*, [products]), and some additional items that presumably could be

¹⁵ 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.

¹⁶ *See, e.g.*, the November 2, 2022, CBP Form 29 (CF29) document, which indicates by reference to Commerce scope ruling CBP message number 1355307, dated December 21, 2011, that the merchandise does not fit within the finished goods kit exclusion because they do not contain all of the items necessary to fully assemble a final finished product. This message number 1355307 refers to the scope ruling dated December 13, 2011, addressing the request made by importer Ameristar Fence Products; that scope ruling appears as Exhibit 9 in the Allegation.

Commerce provided further clarification regarding “finished goods kits” in scope rulings *See, e.g.*, the December 2, 2011, American Fence Manufacturing Company scope ruling (“AFMC scope ruling”), appearing as Exhibit 10 in the Allegation (finding the merchandise in question was subject to the AD/CVD orders “because they fit the description of the subject merchandise and because they do not meet the criteria for the finished products exclusion or the finished goods kit or exclusion; *i.e.*, they do not contain, at the time of importation, all of the necessary parts to fully assemble a final finished good,” and noting that “{b}ecause AFMC’s bulk pickets and fence posts (with or without caps) meet the description of the subject merchandise and do not meet the definition of finished goods kits, as defined by the plain language of the scope, the Department has determined that the individual pickets and posts constitute subject merchandise”). The Ameristar Fence Products scope ruling referenced above contains comparable language (finding the merchandise covered by the scope of the orders “because they fit the description of the subject merchandise and because they do not meet the criteria for the finished products exclusion or the finished goods kit exclusion; *i.e.*, they do not contain, at the time of importation, all of the necessary parts to fully assemble a final finished good”). *See* Allegation at Exhibit 9.

used to construct a fence (*e.g.*, [[products](#)]).¹⁷ However, CBP found that the entry documentation indicates the shipment did not include the requisite combinations of parts that would constitute “finished goods kits” under the scope of the AD/CVD orders, as clarified and confirmed by Commerce in multiple scope rulings. As evident from the invoice and packing list, the imported merchandise was entered into the United States as bulk package combinations of parts (*i.e.*, all imported fence poles packaged together) rather than “finished goods kits” containing all types of parts that (including, for example, necessary attachment items “such as screws, bolts, *etc.*”) are required to fully assemble a final finished good, *i.e.* a fence. As such, the CEE concluded that Fortress’s “{a}luminum extruded fence parts are subject to AD/CVD cases A-570-967 and C-570-968.”¹⁸ The importer challenged the CEE’s conclusion, based on guidance it claims it received from CBP in 2014 indicating its “fence systems” were not covered by the scope of the AD/CVD orders.¹⁹

In August 2022, still prior to AEFTC’s filing of its EAPA Allegation, CBP conducted a cargo exam of a Fortress shipment into Mobile, Alabama (entry [[number](#)]8191), entry date [[date](#)], containing aluminum fence components. The importer had identified China as the country of origin of the merchandise. Based on physical examination of the merchandise and review of documentation associated with the entry (*e.g.*, the packing list), CBP notes that the individual parts are each packaged in bulk, rather than packaged together with the requisite combination of parts that would constitute a “finished goods kit” that could be used to fully assemble a final finished good, such as a fence.²⁰ Therefore, based on the language of the scope of the AD/CVD orders and Commerce’s previous scope rulings, CBP determined the imported merchandise did not constitute “finished goods kits;” therefore, the merchandise is covered by the scope of the AD/CVD orders.²¹ As a result, the CEE rejected the entry.²² Fortress continued to claim to the CEE that its imports of the aluminum extrusion products in question are outside the scope of the AD/CVD orders because they constitute “finished goods kits.”²³

On November 7, 2022, after the initiation of this EAPA investigation, CBP issued a CBP Form 28 (CF28) Request for Information to Fortress for two entries that were made after the initiation of the EAPA investigation, in [[month](#)] 2022 (lead entry [[number](#)]9665 (“entry 9665”) and

¹⁷ See, *e.g.*, the invoice and packing list, attached to a TRLED memorandum dated December 23, 2022.

¹⁸ See the November 2, 2022, CF29 document.

¹⁹ See, *e.g.*, the February 4, 2014, memorandum from Fortress, attached in turn to a TRLED memorandum dated December 27, 2022. See also the additional discussion below.

²⁰ See the August 1, 2022, Cargo Exam documents.

²¹ See, *e.g.*, AFMC scope ruling. CBP also conducted laboratory examination of merchandise from the shipment, during which it concluded that the merchandise was extruded aluminum and of a grade covered by the scope of the AD/CVD orders. See the August 25, 2022, Lab Report for entry 8191. A laboratory examination was made of certain other merchandise, which was found not to be covered by the scope of the AD/CVD orders. See the August 25, 2022, Lab Report for entry [[number](#)]8209.

²² See the September 22, 2022, CF29 document.

²³ See the November 14, 2022, letter and accompanying exhibits submitted by Fortress. Fortress argues 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. *Id.* However, Commerce has authority over interpretation of the scope, and, in any case, the guidance to which Fortress refers related to merchandise entered many years prior to the POI of this EAPA investigation. Furthermore, there is no basis for concluding the merchandise associated with the CBP interaction in 2014, whatever it may have been, is identical to the merchandise that has been entered during the POI of this investigation.

associated entry [number]0672 (“entry 0672”). These entries contained merchandise that had been assigned an HTSUS classification number which includes aluminum extrusion fence components. On December 6, 2022, the importer submitted responses to the CF28 request.²⁴ The narrative descriptions of production processes indicate that the entries contain aluminum fence components, which Fortress claims are shipped from China as “fence systems.”²⁵ The entry-related documentation (*e.g.*, packing lists) in the responses refer to individual line items of specific parts and associated items comparable to those of the entries referenced above.²⁶ The only reference to “kits” in the narrative responses are in the importer’s discussions of what it sells in the U.S. market: “These systems are prefabricated, and ready to install kits, meant to be used as a system to provide safe, quality and long lasting systems under warranty.” When referencing the merchandise produced by the Chinese manufacturer and imported by Fortress, Fortress refers to “finished fence system.”²⁷ The response also indicates that the manufacturer used extrusions in its process, and there is nothing in the response to suggest that the grade of the aluminum used was such to exclude the merchandise from the scope of the AD/CVD orders.²⁸ In short, the entries contained separately packaged fence components, and no indication that they were imported as “finished goods kits.” As such, CBP finds that the entries contained aluminum extrusions from China, covered by the AD/CVD orders, and thus should have been filed as subject to AD/CVD.

Furthermore, Exhibit A of the CF28 response for entry 0672 contains a Fortress purchase order (number [number]) for products purchased from the Chinese supplier that contains [purchase order product details] the model numbers on Lowe’s website pages for individual Fortress fence components offered for sale by Lowe’s).²⁹ In other words, Lowe’s appears to be selling Fortress aluminum fence component parts, and those parts are [merchandise detail] that Fortress had ordered from a Chinese supplier. This supports the conclusion that aluminum fence components obtained by Fortress from China were not being imported as “finished goods kits” as described by the scope.

Analysis

As discussed above, physical and documentary examination of aluminum fence components referenced in various Fortress entries indicate that the imported merchandise consisted of China-origin extruded aluminum products covered by the scope of the AD/CVD orders, and that such merchandise was not imported as “finished good kits” excluded from the scope of the AD/CVD orders. Consequently, such merchandise is covered by the AD/CVD orders, and Fortress should

²⁴ See the December 6, 2022, CF28 response documents and videos.

²⁵ See the narrative portions of the CF28 response documents (narrative and exhibits were provided for each of the two entries covered by the CF28).

²⁶ See, *e.g.*, the packing lists and invoices included in the responses for each of the two entries, which appear in each of the Exhibit E documents provided for each entry.

²⁷ The CF28 narrative responses state specifically that “the 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.” See the narrative portions of the CF28 response documents.

²⁸ *Id.*

²⁹ See the December 7, 2022, CF28 response for that entry at Exhibit A, and the CEE document dated December 7, 2022, containing Lowe’s website screenshots obtained by the CEE, respectively.

have declared the merchandise in question as subject to the AD/CVD orders and paid the required AD/CVD cash deposits.

Enactment of Interim Measures

Based on the record evidence described above, CBP determines that reasonable suspicion exists that Fortress imported aluminum extrusions into the United States from China and should have declared the merchandise at time of entry as covered by the AD/CVD orders and paid the required AD/CVD cash deposits, but failed to do so. Therefore, CBP is imposing interim measures pursuant to this investigation.³⁰

Specifically, in accordance with 19 USC 1517(e)(1-3), CBP shall:

- (1) suspend the liquidation of each unliquidated entry of such covered merchandise that entered on or after October 18, 2022, the date of the initiation of the investigations;
- (2) pursuant to the Commissioner's authority under 19 USC 1504(b), extend the period for liquidating each unliquidated entry of such covered merchandise that entered before October 18, 2022, the date of the initiation of the investigation; and
- (3) pursuant to the Commissioner's authority under 19 USC 1623, take such additional measures as the Commissioner determines necessary to protect the revenue of the United States, including requiring a single transaction bond or additional security or the posting of a cash deposit with respect to such covered merchandise.³¹

In addition, CBP will require live entry and reject any entry summaries that do not comply with live entry and require refile of entries that are within the entry summary rejection period. CBP will also evaluate Fortress's continuous bonds to determine their sufficiency. Finally, CBP may pursue additional enforcement actions, as provided by law, consistent with 19 USC 1517(h).

Any future submissions or factual information that you submit to CBP pursuant to this EAPA investigation must be made electronically using EAPA's case management system (CMS) at <https://eapallegations.cbp.gov/>. To the extent possible, please ensure that all documents are in a text searchable format, especially if submitting Adobe pdf documents.

³⁰ See 19 USC 1517(e); *see also* 19 CFR 165.24.

³¹ *See also* 19 CFR 165.24(b)(1)(i-iii).

Should you have any questions regarding this investigation, please feel free to contact us at epallegations@cbp.dhs.gov, with steve.d.bezircanian@cbp.dhs.gov and somboun.dauble@cbp.dhs.gov copied. Please include "EAPA Case 7734" in the subject line of your email. Additional information on this investigation, including the applicable statute and regulations, may be found on CBP's website at: <https://www.cbp.gov/trade/trade-enforcement/tftea/eapa>.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kristina Horgan', with a stylized flourish at the end.

Kristina Horgan
Acting Director, Enforcement Operations Division
Trade Remedy Law Enforcement Directorate
CBP Office of Trade