



U.S. Customs and Border Protection

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PUBLIC VERSION

EAPA Case 7818

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Midwest Livestock Systems, LLC
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Re: Notice of Determination as to Evasion

To the Counsel and Representatives of the above-referenced entities:

Pursuant to an examination of the record in Enforce and Protect Act (EAPA) investigation 7818, U.S. Customs and Border Protection (CBP) has determined that there is substantial evidence that AMVC-Midwest LLC aka Midwest Livestock Systems, LLC (Midwest Livestock or MLS) entered merchandise covered by antidumping and countervailing (AD/CVD) duty orders A-570-947 and C-570-948 (collectively, the *AD/CVD Orders*) on certain steel grating (covered merchandise)¹ into the customs territory of the United States through evasion.² Substantial evidence demonstrates that Midwest Livestock imported steel grating from the People's Republic of China (China) into the United States that was misclassified. Midwest Livestock did not declare that the merchandise was subject to the *AD/CVD Orders* on entry, and, as a result, no cash deposits were collected on the merchandise.

Background

On March 28, 2023, Hog Slat, Inc. (the *Alleger*), a domestic producer of steel grating, submitted an allegation to CBP that Midwest Livestock was evading the *AD/CVD Orders* on steel grating

¹ See 19 C.F.R. § 165.1.

² See *Certain Steel Grating from the People's Republic of China: Antidumping Duty Order*, 75 FR 43143 (Dept. of Commerce, July 23, 2010); *Certain Steel Grating from the People's Republic of China: Countervailing Duty Order*, 75 FR 43144 (Dept. of Commerce, July 23, 2010).

from China.³ The Allegation asserted that Midwest Livestock was importing Chinese-origin steel grating into the United States that was misclassified.⁴ The Allegation provided import data indicating that Midwest Livestock was importing a kind of steel grating called tri-flooring under a [description].⁵ On May 16, 2023, CBP acknowledged receipt of the Allegation.⁶

CBP found the information in the Allegation reasonably suggested that Midwest Livestock entered covered merchandise into the customs territory of the United States through evasion.⁷ Consequently, on June 7, 2023, CBP initiated an EAPA investigation pursuant to Title IV, section 421 of the Trade Facilitation and Trade Enforcement Act of 2015.⁸ After the initiation of this investigation, CBP issued CBP Form 28 (CF-28) questionnaires to Midwest Livestock concerning two of its entries from the Chinese company Bai Mu Da and requested the corresponding entry and production documentation.⁹ On July 19, 2023 and July 24, 2023, Midwest Livestock submitted its CF-28 responses.¹⁰ In its CF-28 response for entry [number]9740, Midwest Livestock provided a chart listing various invoices and product descriptions, three of which denoted tri-floors.¹¹ In its CF-28 response for entry [number]6001, Midwest Livestock provided two proforma invoices, two payment invoices, a packing list, a bill of lading, an arrival notice, and an entry/immediate delivery form that denoted that the entry contained tri-floors.¹² The entry's entry summary did not declare the tri-floors; therefore, Midwest Livestock did not pay the requisite AD/CVD amount.¹³

On August 24, 2023, CBP performed a cargo exam on Midwest Livestock entry [number]1491 from Bai Mu Da; before the cargo had formally entered, providing CBP with the

³ See Letter from Hog Slat Inc. (the Allegor), "Allegation of AD/CVD Evasion Under the Enforce and Protect Act of 2015," dated March 24, 2023 (Allegation). The Allegation's cover page was dated March 24, 2023, but it was submitted to CBP on March 28, 2023. See also Letter from the Allegor, "Supplement to Allegation of AD/CVD Evasion Under the Enforce and Protect Act of 2015," dated May 15, 2023 (Allegation Supplement). The Allegor, Hog Slat, Inc., is a domestic producer of steel grating and, thus, meets the definition of an interested party that is permitted to submit an EAPA allegation pursuant to 19 U.S.C. § 1517(a)(6)(A)(ii), 19 C.F.R. § 165.1(2), and 19 C.F.R. § 165.11(a). See Allegation at 3-4 and Attachment 1.

⁴ See Allegation.

⁵ *Id.* at 2-3, 5-10 and Attachment 3.

⁶ See 19 C.F.R. § 165.12; see also Email from CBP, "EAPA 7818 - Official Receipt of Properly Filed Allegation," dated May 16, 2023.

⁷ See 19 U.S.C. § 1517(b)(1); see also 19 C.F.R. § 165.15.

⁸ See 19 U.S.C. § 1517(b)(5); see also 19 C.F.R. § 165.13; see also CBP Memorandum, "EAPA Allegation 7818: Initiation of Investigation," dated June 7, 2023 (Initiation Memorandum).

⁹ On June 16, 2023, CBP issued two CF-28s to Midwest Livestock concerning entries [number]9740 and [number]6001. On July 19, 2023 and July 24, 2023, Midwest Livestock submitted its responses to these CF-28s. After CBP announced the EAPA investigation to Midwest Livestock, it asked Midwest Livestock to bracket its CF-28 responses. In response, Midwest Livestock submitted bracketed versions of the June 16, 2023 CF-28 questionnaires and these two CF-28 responses on November 7, 2023. See Letter from Midwest Livestock, "MLS - CF28 Response A," dated November 7, 2023 (CF-28 Response for Entry 9740); see also Letter from Midwest Livestock, "MLS - CF28 Response B," dated November 7, 2023 (CF-28 Response for Entry 6001). The two CF-28s that CBP issued are included in these CF-28 Responses.

¹⁰ *Id.*

¹¹ See CF-28 Response for Entry 9740; see also NOI at 6-7.

¹² See CF-28 Response for Entry 6001 at 40, 42, 44, 47, 49, 51, 53-55; see also Letter from CBP, "Notice of Initiation of Investigation and Interim Measures - EAPA Case 7818," dated September 12, 2023 (NOI) at 4-6.

¹³ See CF-28 Response for Entry 6001 at 48; see also NOI at 6.

opportunity to compare the cargo merchandise with Midwest Livestock's intended entry declaration.¹⁴ CBP observed multiple tri-floors in one of the entry's two containers.¹⁵ This container also included a product description affixed to its merchandise stating that it was composed of "Tri floors" and they were "Made in China."¹⁶ The entry's arrival notice, proforma invoice, and packing list indicated that the shipment only contained farrowing crates and gestation pens, both of which are steel assemblies that are designed for the purpose of containing sows and piglets or gestating sows, respectively.¹⁷ Midwest Livestock and Bai Mu Da later stated that farrowing crates can incorporate tri-floors.¹⁸ However, only the tri-floor component of any farrowing crates and gestation pens would be subject to the *AD/CVD Orders*.

While CBP found a document inside the container with a product description indicating that the container's merchandise included made-in-China tri-floors, neither the entry summary form itself nor the accompanying sales and transportation documents mentioned steel gratings or tri-floors.¹⁹ The entry summary form did not contain the Harmonized Tariff Schedule of the U.S. number (HTSUS) for steel grating, 7308.90.7000, instead it contained HTSUS numbers 9817.00.5000 and 7308.90.9590 and the respective descriptions for machinery equipment used for agricultural purposes and structures: other.²⁰ Before Midwest Livestock corrected the entry summary in response to CBP's findings in the cargo exam, the entry summary form had indicated that Midwest Livestock intended to enter the shipment as a type 01 entry that was not subject to AD/CVD.²¹ As such, CBP determined that the entry contained undeclared covered merchandise based on the results of this cargo exam. As a result of the cargo exam, Midwest Livestock changed the entry summary form to a type [#] entry.²²

Based on the discovery of these tri-floors in the cargo exam and the references to undeclared tri-floors in Midwest Livestock's CF-28 Response for Entry 9740 and CF-28 Response for Entry 6001, CBP determined that reasonable suspicion existed that Midwest Livestock imported Chinese-origin tri-floors (*i.e.*, a type of steel grating) from Bai Mu Da into the United States that had been misclassified.²³ Consequently, on September 5, 2023, CBP informed Midwest Livestock and the Alleger about the initiation of the investigation and on September 12, 2023, CBP issued a notice of initiation of investigation and interim measures (NOI) to them.²⁴ This

¹⁴ See CBP Memorandum, "Adding Information to the Administrative Record of EAPA 7818," dated September 8, 2023 (September Memorandum) at 1 and Attachments 2-9; see also NOI at 7.

¹⁵ See September Memorandum at Attachment 4, which contains pictures of the tri-floors that were in container number [number]. On page two of attachment 4, a five-digit portion on the container number, "[number]", can be observed on the container's right wall. This corresponds to the second container's full number, [number].

¹⁶ *Id.* at Attachment 4, pages 1-2; see also NOI at 7. To be specific, it stated 6 pieces and 31 pieces of two respective sizes of recessed tri-floor, which equals the 37 recessed tri-floors.

¹⁷ See September Memorandum at Attachments 2, 5; see also NOI at 7; see also Midwest Livestock RFI at 30; see also Midwest Livestock Supplemental RFI at 25.

¹⁸ See Bai Mu Da Supplemental RFI at 4; see also Midwest Livestock RFI at 26; see also Midwest Livestock Supplemental RFI at 24.

¹⁹ *Id.*

²⁰ *Id.*; see also *AD/CVD Orders*.

²¹ See September Memorandum at Attachments 2, 5; see also NOI at 7.

²² See Midwest Livestock Supplemental RFI at Attachment 14.23.

²³ See NOI.

²⁴ *Id.*; see also CBP Email, "CBP EAPA Investigation 7818 – Notice of Initiation of Investigation and Interim Measures," dated September 5, 2023.

notice detailed the evidence behind CBP’s decision to initiate the investigation and to impose interim measures based on a reasonable suspicion of evasion.²⁵ It also informed Midwest Livestock and the Allegor that the entries covered by the investigation are those entered for consumption, or withdrawn from warehouse for consumption, from May 16, 2022, through the pendency of this investigation.²⁶ As part of interim measures, CBP suspended the liquidation of Midwest Livestock’s entries from Bai Mu Da that entered after the initiation of the investigation pursuant to its authority under 19 U.S.C. § 1517(e).

In September 2023, November 2023, and December 2023, CBP issued requests for information (RFI) to Midwest Livestock, Bai Mu Da, and to Midwest Livestock’s customs broker, [company name] ([name] or Customs Broker).²⁷ CBP subsequently received each party’s corresponding RFI response.²⁸ In addition, on January 12, 2024, CBP added a memorandum to the case record composed of research results, such as website screenshots and entry documents.²⁹ CBP did not receive written arguments from Midwest Livestock or the Allegor.

Analysis as to Evasion

Under 19 U.S.C. § 1517(c)(1)(A), to reach a determination as to evasion in this case, 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 of any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the covered

²⁵ *Id.*; see also 19 U.S.C. § 1517(e); see also 19 C.F.R. § 165.24.

²⁶ See 19 C.F.R. § 165.2. Entries covered by the investigation include entries up to one year prior to the date CBP officially received the Allegation.

²⁷ See Letter from CBP, “EAPA Case 7818: Request for Information from Midwest Livestock Systems, LLC,” dated September 12, 2023; see also Letter from CBP, “EAPA Case 7818 - Request for Information from Bai Mu Da LLC,” dated September 12, 2023 (RFI Issued to Bai Mu Da); see also Letter from CBP, “CBP Request for Information from Broker,” dated November 7, 2023; see also Letter from CBP, “EAPA Case 7818: Supplemental Request for Information for Midwest Livestock,” dated November 7, 2023; see also Letter from CBP, “EAPA Case 7818: Supplemental Request for Information for Bai Mu Da LLC,” dated November 8, 2023; see also Letter from CBP, “EAPA Case 7818: Supplemental Request for Information for Midwest Livestock,” dated December 19, 2023; see also Letter from CBP, “EAPA Case 7818: Supplemental Request for Information for Bai Mu Da LLC,” dated December 20, 2023. [company name]’s precursor was [company name].

²⁸ See Letter from Midwest Livestock, “EAPA Case 7818: Response to request for information,” dated October 24, 2023 (Midwest Livestock RFI); see also Letter from Bai Mu Da, “Re: response to request for information,” dated October 25, 2023 (Bai Mu Da RFI); see also Letter from Bai Mu Da, “Bai Mu Da-RFI RESPONSE,” dated November 26, 2023 (Bai Mu Da Supplemental RFI); see also Letter from Midwest Livestock, “EAPA Case 7818: Response to request for information,” dated November 30, 2023 (Midwest Livestock Supplemental RFI); see also Letter from the Customs Broker, “Response to Request for Information dated November 7, 2023,” dated December 12, 2023 (Customs Broker RFI); see also Letter from Bai Mu Da, “Bai Mu Da-RFI RESPONSE,” dated January 5, 2024 (Bai Mu Da 2nd Supplemental RFI); see also Letter from Midwest Livestock, “EAPA Case 7818: Response to request for information,” dated January 11, 2024 (Midwest Livestock 2nd Supplemental RFI).

²⁹ See CBP Memorandum, “Adding Information to the Administrative Record of EAPA 7818,” dated January 12, 2024 (January Memorandum).

merchandise.”³⁰ As discussed below, substantial evidence on the record indicates that some of Midwest Livestock’s entries from Bai Mu Da were entered through evasion. Further, evidence shows that Midwest Livestock and Bai Mu Da were working as affiliated entities.

The initial RFIs that CBP issued to Midwest Livestock and Bai Mu Da explained that the definition of affiliates included:

- (1) members of a family;
- (2) an officer or director of an organization and that organization;
- (3) partners;
- (4) employers and employees;
- (5) any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and that organization;
- (6) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and
- (7) any person who controls any other person and that other person.³¹

Bai Mu Da was established in China in July 2014.³² [name] is its general manager and owns 80 percent of Bai Mu Da; his [name] owns the remaining 20 percent.³³ Bai Mu Da claimed the following about its company structure:

- “No, Bai Mu Da LLC is NOT part of a group.”³⁴
- “No, we are not under ‘common Control {sic}.”³⁵
- “We don’t have affiliates.”³⁶
- “No, we are NOT affiliated with Midwest {Livestock}.”³⁷

Midwest Livestock likewise asserted that it “purchases material from Bai Mu Da LLC. There is no further affiliation.”³⁸ However, Midwest Livestock provided several independent contractor agreements between [name] and Midwest Livestock dating back to [year].³⁹ Regarding this arrangement, Bai Mu Da stated:

[name] is receiving monthly {sic} stipend – [amount] for each Month) from Midwest {Livestock}. [name] work {sic} as an independent contractor who will

³⁰ See 19 C.F.R. § 165.1; see also 19 U.S.C. § 1517(a)(5)(A). According to 19 U.S.C. § 1517(a)(3), “The term ‘covered merchandise’ means merchandise that is subject to— (A) an antidumping duty order issued under section 1673e of this title; or (B) a countervailing duty order issued under section 1671e of this title.”

³¹ See Midwest Livestock RFI at 15; see also RFI Issued to Bai Mu Da at 10.

³² See Bai Mu Da RFI at 2 and Attachment 1.

³³ *Id.* at 3-4.

³⁴ *Id.* at 4.

³⁵ *Id.*

³⁶ *Id.* at 5.

³⁷ *Id.* at 4.

³⁸ See Midwest Livestock RFI at 18.

³⁹ *Id.*; see also Midwest Livestock Supplemental RFI at 2, 24 and Exhibits 14.29-14.34.

help Midwest {Livestock} locate sources of products, maintain relationship with suppliers, arrange shipping, assisting MLS Staff traveling to China, etc.⁴⁰

Although these agreements state that Bai Mu Da is an independent contractor, multiple other items of record evidence indicate that [name] is an employee of Midwest Livestock. For example, in an [

description of events

] that—

[

description of events

]”⁴¹

In a response email, [name] implicitly agreed and stated “[conversation]”⁴² Notably, these emails indicate that [description] from Midwest

Livestock, which are more consistent with an employee’s benefits rather than those of an independent contractor. Furthermore, these emails indicate that [

description

], and so contradicts Midwest Livestock’s statement that “2018 commenced the beginning of the work with [name].”⁴³

Moreover, Midwest Livestock *directly* affirmed that [name] was a Midwest Livestock employee in two instances. First, Midwest Livestock’s [title] told its customs broker on August 28, 2023 that “[description]”⁴⁴

Corroborating that, Midwest Livestock told CBP in November 2023 that “[name] has been in Beatrice, NE for the previous two weeks to discuss future gating designs,” which is consistent with [description].⁴⁵ Second, in response to a [

description

], Midwest Livestock stated “[

description

]”⁴⁶ Because

Midwest Livestock stated that [description] is a Midwest Livestock employee.

Bai Mu Da did not have any customers other than Midwest Livestock nor did it attempt to obtain other customers like an independent company would be expected to do. Bai Mu Da itself stated

⁴⁰ See Bai Mu Da RFI at 11. Midwest Livestock’s bank statements reflected similar payment amounts, which were labeled as “[description].” They indicate that Midwest Livestock paid [description] and were in addition to other Midwest Livestock payments to [description]

[description]. See Midwest Livestock RFI at Attachments A1-A21.

⁴¹ See Midwest Livestock 2nd Supplemental RFI at Attachment 15.22.

⁴² *Id.*

⁴³ See Midwest Livestock Supplemental RFI at 24 and Attachment 14.29.

⁴⁴ See September Memorandum at Attachment 8, page 1.

⁴⁵ See Midwest Livestock Supplemental RFI at 16.

⁴⁶ See Customs Broker RFI at Exhibit E, page 7101.

“We only have Midwest as customer {sic}” and “Bai Mu Da have no {sic} attempts to find other customers.”⁴⁷ CBP’s entry information likewise indicated that Bai Mu Da has [name] exported to Midwest Livestock.⁴⁸ Although Bai Mu Da was the supplier and Midwest Livestock was ostensibly its customer, Midwest Livestock explained that there were “{n}o negotiations involved” in its product quotes with Bai Mu Da, which indicates that the companies were not in competition and negotiating on behalf of their own individual company interests; rather, the companies appear to be working in concert as if they have affiliated interests.⁴⁹ Finally, [

description of events

].⁵⁰

Because [name] is simultaneously Midwest Livestock’s employee and Bai Mu Da’s general manager and majority owner, Midwest Livestock and Bai Mu Da are affiliated companies.⁵¹ Furthermore, Midwest Livestock and Bai Mu Da are also affiliated companies because record evidence indicates that [name]/Bai Mu Da is under the control of [name]/Midwest Livestock. For example, record emails indicate that [description], which denotes [name] had supervisory control and expected [name] to fulfill employee responsibilities.⁵² Correspondingly, the independent contractor agreements denote under their [description]{{}}⁵³

In the initial RFIs that CBP issued to Midwest Livestock and Bai Mu Da, CBP explained the definition of affiliates; therefore, Midwest Livestock and Bai Mu Da both received information informing them about the various ways CBP considers that companies could be affiliated. Midwest Livestock and Bai Mu Da both answered questions related to CBP’s questions about affiliation. Despite being informed of CBP’s definition of “affiliation,” Midwest Livestock and Bai Mu Da both denied their affiliation. Therefore, in light of the evidence described above, CBP finds that they made false statements with respect to their affiliation. As such, Midwest Livestock and Bai Mu Da failed to cooperate and comply to the best of their abilities with CBP’s request for information.

Record evidence indicates that Bai Mu Da did not manufacture the tri-floors but instead purchased them from the Chinese factory [code].⁵⁴ Bai Mu Da then coordinated the shipping, export declaration, and HTSUS classification of the tri-floors and of various other kinds of

⁴⁷ See Bai Mu Da RFI at 10; see also Bai Mu Da Supplemental RFI at 5.

⁴⁸ See January Memorandum at Attachments 23-25.

⁴⁹ See Midwest Livestock RFI at 24.

⁵⁰ See Bai Mu Da Supplemental RFI at Attachment 4, page 56.

⁵¹ See Bai Mu Da RFI at 3-4.

⁵² See Bai Mu Da Supplemental RFI at Attachment 4.

⁵³ See Midwest Livestock RFI at Attachment A66, page 4; see also Midwest Livestock Supplemental RFI at Attachments 14.29-14.34.

⁵⁴ See Bai Mu Da RFI at 4, 7-10, 13, 15-16.

merchandise not covered by the *AD/CVD Orders*.⁵⁵ As noted, tri-floors are a kind of steel grating and, therefore, covered by the scope of the *AD/CVD Orders* on steel grating from China. The scope of the *AD/CVD Orders* states:

The products covered by this order are certain steel grating, consisting of two or more pieces of steel, including load-bearing pieces and cross pieces, joined by any assembly process, regardless of: (1) size or shape; (2) method of manufacture; (3) metallurgy (carbon, alloy, or stainless); (4) the profile of the bars; and (5) whether or not they are galvanized, painted, coated, clad or plated. Steel grating is also commonly referred to as ‘bar grating,’ although the components may consist of steel other than bars, such as hot-rolled sheet, plate, or wire rod....⁵⁶

Further, CBP and Commerce have determined that tri-bar flooring is subject to the *AD/CVD Orders*:

Steel grating is a major component of the tri-bar truss floor. Moreover, steel grating imparts to the tri-bar truss floor its essential character, namely a surface for supporting and distributing the weight of objects resting upon it. This characteristic is entirely consistent with subject steel grating. Additionally, it is noteworthy that the petitioners explained in the Petition that subject steel grating is a product that can serve as flooring. Lastly, Commerce previously determined that additional features that do not change the primary nature of an “in-scope” product do not serve to move that product outside of the scope of an order. Based on the forgoing, we find that the steel grating does not lose its identity when supported by a truss and legs such that it is no longer subject steel grating. ... {Additionally,} {s} imply placing a section of cast-iron flooring between two tri-bar truss flooring sections to form a farrowing flooring system (the cast-iron flooring is not fixed to the tri-bar truss flooring) does not change the fact that the tri-bar truss floor and cast iron floor are unique products. Even though these products function together as a flooring system, we find they are treated as distinct items and that they continue to retain their individual character even when combined into a flooring system.⁵⁷

Midwest Livestock’s and Bai Mu Da’s descriptions of tri-floors and photographs of tri-floors correspond to the scope’s description of steel grating. For example, Midwest Livestock stated that its “[description]” which indicates that the tri-floors consist “of two of more pieces of steel.”⁵⁸ Bai Mu Da similarly stated that “Tri Floors are carbon steel floors decks {sic}” composed of “a combination {of} tri bars, rod, and hexagon bars.”⁵⁹ Photographs from the August 24, 2023 cargo exam indicate that these steel bars included cross

⁵⁵ *Id.* at 10, 12; *see also* Bai Mu Da Supplemental RFI at Attachments 3, 5-7; *see also* Midwest Livestock Supplemental RFI at 10-11 and Attachments 14.1-14.28; *see also* Midwest Livestock 2nd Supplemental RFI at 10-11. In its supplemental RFI response, Midwest Livestock stated that in addition to [description] participated in the classification of the merchandise.

⁵⁶ *See AD/CVD Orders*; *see also* Allegation at Attachments 2A-2B.

⁵⁷ *See* Allegation at 9 and Attachment 5.

⁵⁸ *See* Midwest Livestock RFI at 26.

⁵⁹ *See* Bai Mu Da RFI at 13; *see also* NOI at 5; *see also* CF-28 Response for Entry 6001.

pieces joined in an intersecting pattern.⁶⁰ Bai Mu Da stated that the “factory use {sic} welding machine to weld them together.”⁶¹

Because tri-floors are a kind of flooring, they are implicitly designed to be load-bearing. As such, Midwest Livestock noted that tri-floors are “specifically designed with a heat mat indentation for the piglets to stay warm on...”⁶² Furthermore, Bai Mu Da stated, “All products on the list were shipped to US. The production name ‘Tri’ or ‘Tri Floors’, suggesting the covered merchandise,” which appears to acknowledge that the tri-floors are covered by the *AD/CVD Orders*.⁶³ Thus, Midwest Livestock’s statements, Bai Mu Da’s statements, and photographs from the August 24, 2023, cargo exam all support that tri-floors are covered merchandise.⁶⁴

Before CBP’s August 24, 2023 cargo exam, Midwest Livestock did not declare tri-floors in any of its POI entries.⁶⁵ However, after the cargo exam Midwest Livestock told CBP that it entered tri-floors totaling \$[#], along with non-subject merchandise, for just six entries out of all the entries that Midwest Livestock has entered since the beginning of the POI. The six entries that Midwest Livestock admitted contained tri-floors are the following:⁶⁶

	Entry Numbers	Invoice Numbers	Tri-Floor Values
1	[#]4262	[#]	[#]
2	[#]6001	[#]	[#]
3	[#]7363	[#]	[#]
4	[#]1491	[#]	[#]
5	[#]5278	[#]	[#]
6	[#]7373	[#]	[#]
Total:			\$[#]

It is notable that, with the exception of the tri-floors in entry number [number]4262 (*i.e.*, invoice number [#]) (which Midwest Livestock admitted to in its initial RFI response), the table’s other five entries contained tri-floors that Midwest Livestock initially concealed from CBP in entry summaries but eventually admitted to. These five entries are the same entries that CBP had discovered as containing tri-floors in the CF-28 responses and in the August 24, 2023, cargo exam.⁶⁷ Thus, Midwest Livestock did not admit to tri-floors beyond the tri-floors that CBP discovered in the CF-28 responses and the cargo exam, other than invoice number [#].

⁶⁰ See September Memorandum at Attachments 2, 4; *see also* NOI at 6-7.

⁶¹ See Bai Mu Da RFI at 13.

⁶² See Midwest Livestock Supplemental RFI at 22.

⁶³ See Bai Mu Da RFI at 17.

⁶⁴ In addition, Midwest Livestock’s statements, Bai Mu Da’s statements, and the cargo exam photographs also indicate that the tri-floors did not conform to the scope’s exclusions for expanded metal grating and plank type safety grating. See CF-28 Response for Entry 6001; *see also* Midwest Livestock RFI at 26; *see also* Bai Mu Da RFI at 9, 13-14; *see also* September Memorandum at Attachments 2-9; *see also AD/CVD Orders*; *see also* Allegation at Attachments 2A-2B.

⁶⁵ See January Memorandum at Attachment 23.

⁶⁶ See Midwest Livestock RFI at 25 and Attachments A58-A62.

⁶⁷ See CF28 Response for Entry 6001; *see also* CF28 Response for Entry 9740; *see also* September Memorandum at Attachments 2-9.

Nevertheless, Midwest Livestock's and Bai Mu Da's other actions after the CF-28 responses and cargo exam during investigation proceedings indicate that they did not admit to the full extent of the tri-floors. Specifically, Midwest Livestock and Bai Mu Da repeatedly made material false statements (*e.g.*, stating that it lacked the requested documents, some of which were later provided) and withheld documents that CBP requested, such as purchase orders, drawings, quotation documents, and correspondence. These actions effectively concealed evidence that CBP needed to conduct its investigation.

Midwest Livestock and Bai Mu Da offered various soon-to-be discussed excuses for why they could not provide certain documents that CBP requested in CF-28 requests and requests for information, however, they did not offer the same excuses for certain other documents that they did provide. Among these documents that Midwest Livestock and Bai Mu Da provided, Midwest Livestock and Bai Mu Da included entry summaries, entry/immediate delivery forms, proforma invoices, packing lists, and bills of lading for each of the POI entries.⁶⁸ These documents did not list tri-floors beyond the six entries that Midwest Livestock already admitted as containing tri-floors (as identified in the table of six entries above) and many of them merely described the entries' contents as gestation pens or farrowing crates, which are not covered merchandise.⁶⁹ However, the omission of additional tri-floor references in these documents is not conclusive. Midwest Livestock's and Bai Mu Da's false statements and attempts to withhold certain documents cast serious doubt on the accuracy and validity of the documents that Midwest Livestock and Bai Mu Da did provide.

Correspondingly, some of these documents demonstrate notable omissions. For example, CBP observed tri-floors in its August 24, 2023 cargo exam; however, the entry documents that correspond to the shipment omitted any mention of these tri-floors, merely listing the shipment's contents as "gestation pens" and "farrowing crates," before they were corrected.⁷⁰ As such, these entry documents were not reliable with respect to tri-floors. Specifically, the entry documents included an entry summary, an arrival notice/invoice, an invoice/debit note, a proforma invoice, and a packing list.⁷¹ These are mostly the same document types that Midwest Livestock provided for its other entries. Thus, the fact that the POI entries' documents do not state that they contain tri-floors when the cargo exam showed that the entry indeed contained tri-floors casts doubt on whether Midwest Livestock's other entries (*i.e.*, those entries entered between May 16, 2022, and the cargo exam conducted in August 2023) contain tri-floors.

In another example, entry [**number**]4262's entry summary, entry/immediate delivery form, proforma invoice, packing list, bill of lading, and arrival notice/freight invoice all indicated that the entry *solely* contained gestation pens and ductile floors.⁷² None of these documents mentioned tri-floors.⁷³ However, Bai Mu Da later acknowledged in its RFIs that this entry

⁶⁸ See Midwest Livestock Supplemental RFI at Attachments 14.1-14.28; *see also* Bai Mu Da Supplemental RFI at Attachment 12.

⁶⁹ See Midwest Livestock Supplemental RFI at Attachments 14.1-14.28.

⁷⁰ See September Memorandum at Attachments 2, 4. The cargo exam pertained to entry [**number**]1491. The cargo exam documents also included an arrival notice/invoice and an invoice/debit note from the freight forwarder.

⁷¹ *Id.*

⁷² See Midwest Livestock Supplemental RFI at Attachment 14.6.

⁷³ *Id.*

contained tri-floors.⁷⁴ Therefore, this entry's documents were also unreliable and cast doubt on the entry documents for Midwest Livestock's other POI entries as well.

These entry documents often contained very general product descriptions, therefore, CBP asked Midwest Livestock for documents that would have specifically indicated what Midwest Livestock instructed Bai Mu Da to order from the Chinese factory, such as Midwest Livestock's purchase orders and quotation requests. As explained later, purchase orders and quotation requests contained more detailed descriptions of the merchandise that Midwest Livestock was ordering. Procedurally speaking, Bai Mu Da requested merchandise from the Chinese factory based on the purchase orders received from Midwest Livestock. As such, Bai Mu Da said that “the Tri Floors are customed *sic* made for each order, we work strictly on Purchase Orders.”⁷⁵ In its initial RFI response, Midwest Livestock likewise indicated that it created a “[description]”.⁷⁶ Although CBP requested these purchase orders, Midwest Livestock did not provide any of them in its initial RFI response.⁷⁷

CBP requested the purchase orders again in its supplemental RFI, and in response Midwest Livestock contradicted its previous statement and claimed that it “does not send any ‘MLS Purchase Orders’ to [name], only approved PIs {proforma invoices}.”⁷⁸ However, this claim is demonstrably false. Bai Mu Da submitted three purchase orders in its initial RFI response.⁷⁹ These purchase orders had Midwest Livestock's company name and address printed in the header; they also denoted “PURCHASE ORDER” under that header and indicated they were issued “To: Bai Mu Da LLC {.”⁸⁰ These purchase orders also had a unique purchase order number printed in the right corner.⁸¹ Two of these purchase orders contained a handwritten PI number in addition to the purchase order number.⁸² CBP had these corresponding PI documents, which contained PI numbers printed in the right corner.⁸³ Many of the PIs referenced a purchase order number ([description]) that was different and was in addition to the PI number.⁸⁴ These two separate but corresponding PI and purchase order numbers corroborate that purchase orders exist in addition to PIs. The fact that Bai Mu Da had several purchase orders that were from Midwest Livestock corroborates that Midwest Livestock does issue purchase orders to them. As such, Midwest Livestock provided a false statement by claiming that it did not issue purchase orders to [name]. Furthermore, Midwest Livestock did not provide any of the requested purchase orders in its supplemental RFI response.

⁷⁴ See Bai Mu Da RFI at 4.

⁷⁵ See Bai Mu Da RFI at 8. Bai Mu Da similarly said “{w}e only work with Purchase order type sales.”

⁷⁶ See Midwest Livestock RFI at 21.

⁷⁷ *Id.* at 21, 23.

⁷⁸ See Midwest Livestock Supplemental RFI at 24.

⁷⁹ See Bai Mu Da RFI at Attachment 6, pages 25, 31, 38.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.* at Attachment 5, page 1, and Attachment 6, pages 25, 38. For example, purchase orders 276425 and 276429 referenced PI No.'s 211-230510 and 213-230522, respectively.

⁸³ See Midwest Livestock RFI at Attachment A58, A62; see also Bai Mu Da Supplemental RFI at Attachment 8.

⁸⁴ See Bai Mu Da Supplemental RFI at Attachment 8.

CBP subsequently asked Midwest Livestock for the purchase orders a third time and pointed out that it already had a couple of the purchase orders that Midwest Livestock sent to [name].⁸⁵ In response, Midwest Livestock again changed its answer and stated that it “does not issue a Purchase Order Directly to [name]” but that “{t}he internal MLS Purchase Orders are issued by members of the MLS Purchase Team. This is an internal process only.”⁸⁶ Midwest Livestock then acknowledged sending a few purchase orders to [name] and stated “[name] does receive some of the MLS internal Purchase Order{s}.”⁸⁷ However, because Midwest Livestock was still sending the purchase orders to [name], this statement corroborates that the purchase orders are not actually an internal document. The purchase orders denote that they are “To: Bai Mu Da LLC”, which also indicates that they are not internal documents.⁸⁸ Finally, Midwest Livestock’s customs broker provided [#] additional Midwest Livestock purchase orders in its RFI response, which further corroborates that they were not internal documents.⁸⁹ Thus, Midwest Livestock provided a false statement to CBP when it claimed that its purchase orders were internal documents. Furthermore, Midwest Livestock provided two purchase orders in its second supplemental RFI response; however, it did not provide the remaining purchase orders.⁹⁰ As such, Midwest Livestock withheld the rest of its purchase orders and so failed to cooperate and comply to the best of its ability with CBP’s request for information.

CBP also requested purchase orders that Bai Mu Da sent to the Chinese factory.⁹¹ In response, Bai Mu Da sent documents to CBP that it claimed were “Purchase Order{s} to Factories{.}”⁹² However, the documents that Bai Mu Da sent were instead proforma invoices that the factory issued to Bai Mu Da.⁹³

CBP also requested quotation documents. A quotation document is a list of merchandise that a party would like its supplier to provide prices on. In this case, Midwest Livestock submits requests for quotation and drawings of the desired products to Bai Mu Da.⁹⁴ Bai Mu Da would then “request quotation from a factory in China.”⁹⁵ After Bai Mu Da heard back from the factory, it would provide Midwest Livestock with the factory’s quotation.⁹⁶ Midwest Livestock affirmed that a “[description]” was created [description].⁹⁷ The quotation was based on the merchandise’s [description]:

⁸⁵ See Midwest Livestock 2nd Supplemental RFI at 12.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ See Bai Mu Da RFI at Attachment 6, pages 25, 31, 38; see also Midwest Livestock 2nd Supplemental RFI at Attachments 15.13-15.14.

⁸⁹ See Customs Broker RFI at Exhibit E, pages 1410, 1996, 1998, 2000. Page 1410 is an email from [description]”

Pages 1996, 1998, and 2000 are purchase orders.

⁹⁰ See Midwest Livestock 2nd Supplemental RFI at Attachments 15.13-15.14.

⁹¹ See Bai Mu Da Supplemental RFI at 2.

⁹² *Id.*

⁹³ *Id.* at Attachment 9.

⁹⁴ *Id.* at 24; see also Bai Mu Da RFI at 8. Bai Mu Da stated it would “only provide quotation when we receive a Request for Quotation.”

⁹⁵ *Id.*

⁹⁶ See Midwest Livestock RFI at 24; see also Bai Mu Da RFI at 8.

⁹⁷ See Midwest Livestock RFI at 24.

[description]”⁹⁸

Therefore, the quotation documents and the drawings likely denoted exactly what Midwest Livestock ordered from the Chinese factory. As such, CBP requested the requests for quotation and [description] from Midwest Livestock.⁹⁹ Midwest Livestock responded that the [description] occurred over [name] and that “[name] routinely deletes all of the [name] messages and files that are sent by [name] to [name].”¹⁰⁰ They also claimed to “have no records beyond that process.”¹⁰¹ Likewise, Bai Mu Da asserted that “Request for quotation was done by skype calls. I don’t have any copy to provide.”¹⁰² However, the following emails, analyzed together, contradict Midwest Livestock’s and Bai Mu Da’s claims that quotation solely occurred over Skype calls and that no quotation documents exist:

- On [description of events]”¹⁰³
- On [description of events]”¹⁰⁴
- On [description of events]”¹⁰⁵
- In an [date] email, with the subject line “[description of events]”¹⁰⁶ In [description of events]”¹⁰⁷

Based on the statements in these emails, quotations exist in [description] and were not merely conveyed audibly. As such, Midwest Livestock and Bai Mu Da provided false statements to CBP concerning these documents, withheld them from CBP, and so failed to cooperate and comply to the best of their abilities with CBP’s request for information.¹⁰⁸

⁹⁸ *Id.* at 21.

⁹⁹ *See* Midwest Livestock 2nd Supplemental RFI at 16.

¹⁰⁰ *Id.* at 13, 16. Midwest Livestock said they occurred in “a face to face conversation{.}”

¹⁰¹ *Id.* at 16.

¹⁰² *See* Bai Mu Da 2nd Supplemental RFI at 5.

¹⁰³ *See* Bai Mu Da Supplemental RFI at Attachment 4, page 2.

¹⁰⁴ *Id.* at Attachment 4, page 13.

¹⁰⁵ *Id.* at Attachment 4, page 28.

¹⁰⁶ *Id.* at Attachment 4, page 43.

¹⁰⁷ *Id.*

¹⁰⁸ Midwest Livestock and Bai Mu Da did not provide quotation documents other than those referenced or included in their emails.

Midwest Livestock stated that “There are no ‘kits’ ordered with different products. There are variances in the different designs (size, gauge, finish, etc.) that causes different prices for similar functions of the same type of product.”¹⁰⁹ Because of the merchandise’s customized nature, Midwest Livestock would have conveyed the requested specifications to Bai Mu Da and the China factory through drawings and requests for quotation. Midwest Livestock affirmed that “Very detailed drawings are provided by AMVC Midwest LLC to Bai Mu Da for the requested items.”¹¹⁰ Therefore, CBP also requested these drawings for the POI entries’ merchandise.

In its initial RFI, Midwest Livestock provided three one-page drawings of a [**description of product**].¹¹¹ In its supplemental RFI, Midwest Livestock stated that the “Drawings and Proforma Invoices that are sent by email are deleted shortly after being sent or received...”¹¹² Although claiming to delete the drawings, Midwest Livestock provided 16 pages of drawings of tri-floors [**description**].¹¹³ As such, Midwest Livestock had provided some of the drawings but many of the drawings for POI entries’ merchandise remained outstanding. Therefore, CBP again requested the rest of the drawings.¹¹⁴ In response, Midwest Livestock provided a one-page drawing of a barn layout and claimed:

In the previous RFI, Midwest Livestock’s reference to drawings is referring to barn layouts. In these prints it shows a 2D model of the overall barn, room, and penning layout to ensure that everything is going to fit together within the barn. These are not 3D drawings of a specific product. [**name**] makes all of the design and production prints in 3D to tell the manufacturer what to make. These designs use the same style product design and the layout tells [**name**] the lengths they need to be.¹¹⁵

However, this statement was directly contradicted by the fact that Midwest Livestock already provided a few product-specific drawings, namely a [**description**], and tri-floors.¹¹⁶ The statement was also contradicted by a [**date**] email in which [

description]¹¹⁷ As such, Midwest Livestock made a material false statement concerning its drawings, withheld its remaining drawings from CBP, and failed to cooperate and comply to the best of its ability with CBP’s request for information.

CBP also asked Bai Mu Da to provide the drawings for the POI entries’ merchandise.¹¹⁸ Bai Mu Da responded that “... the drawings Bai Mu Da has are property of the factories. I have no right

¹⁰⁹ See Midwest Livestock Supplemental RFI at 22.

¹¹⁰ See Midwest Livestock RFI at 24-25. Midwest Livestock also said it “provides drawings of desired products.”

¹¹¹ *Id.* at 25 and Attachments A63-A65.

¹¹² See Midwest Livestock Supplemental RFI at 15.

¹¹³ *Id.* at 22-23 and Attachment 14.35.

¹¹⁴ See Midwest Livestock 2nd Supplemental RFI at 16-17.

¹¹⁵ *Id.*

¹¹⁶ See Midwest Livestock RFI at 25 and Attachments A63-A65; see also Midwest Livestock Supplemental RFI at Attachment 14.35.

¹¹⁷ See Bai Mu Da Supplemental RFI at Attachment 4, page 1.

¹¹⁸ *Id.* at 3.

to disclose these drawings.”¹¹⁹ CBP then requested the remaining drawings again and pointed out that Bai Mu Da already provided two pages of drawings in its previous response.¹²⁰ Bai Mu Da did not provide any further drawings and responded, “I deeply regret that I displayed drawings of my suppliers in the initial REI {sic} response {.”¹²¹

CBP also pointed out that Midwest Livestock provided drawings to Bai Mu Da and requested those drawings from Bai Mu Da as well.¹²² Bai Mu Da responded that “These drawings are property of MLS, I am not allowed to disclose these drawings.”¹²³ In spite of this refusal, Bai Mu Da provided two additional one-page drawings of [description].¹²⁴ Nevertheless, most of the China factory’s and Midwest Livestock’s drawings remained outstanding and so Bai Mu Da failed to cooperate and comply to the best of its ability with CBP’s requests for this information.

As noted, Midwest Livestock also claimed that “[name] makes all of the design and production prints in 3D to tell the manufacturer what to make. These designs use the same style product design and the layout tells [name] the lengths they need to be.”¹²⁵ Therefore, CBP asked Bai Mu Da for these drawings.¹²⁶ Bai Mu Da/[name] responded, “I don’t have an engineering background; I did not actually draw the drawing. I rely on the factories to do the drawings.”¹²⁷ However, this statement directly contradicts Midwest Livestock’s assertion that Bai Mu Da “makes all of the design and production prints in 3D to tell the manufacturer what to make.”¹²⁸ Moreover, the following email statements demonstrate that [name] creates at least some of the drawings and has an engineering background:

- On [description of events].”¹²⁹
- On [description of events].”¹³⁰
- On [description of events].”¹³¹
- On [description of events].”¹³²
- On [description of events].”¹³³

¹¹⁹ *Id.*

¹²⁰ See Bai Mu Da 2nd Supplemental RFI at 1.

¹²¹ *Id.*

¹²² *Id.* at 2.

¹²³ *Id.*

¹²⁴ *Id.* at Attachments 7-8.

¹²⁵ See Midwest Livestock 2nd Supplemental RFI at 16-17.

¹²⁶ See Bai Mu Da 2nd Supplemental RFI at 2.

¹²⁷ *Id.*

¹²⁸ See Midwest Livestock 2nd Supplemental RFI at 16-17.

¹²⁹ See Bai Mu Da RFI at Attachment 6, page 35.

¹³⁰ See Bai Mu Da Supplemental RFI at Attachment 4, page 18.

¹³¹ *Id.* at Attachment 4, page 58.

¹³² See Bai Mu Da RFI at Attachment 6, page 29.

¹³³ *Id.* at Attachment 6, page 35.

- On August 28, 2023, [**name**] told the customs broker that “ [**description of events**]”¹³⁴

Thus, this email evidence and Midwest Livestock’s statement “[**name**] makes all of the design and production prints in 3D” indicates that Bai Mu Da made a material false statement when it said that [**name**] did not create any drawings and did not have an engineering background.

In its initial RFI, CBP requested Bai Mu Da’s correspondence with Midwest Livestock concerning the POI entries. In response, Bai Mu Da provided seven emails with Midwest Livestock.¹³⁵ In its supplemental RFI, CBP requested the rest of the correspondence and Bai Mu Da responded with [#] additional emails spanning [#] months from [**date range**].¹³⁶ Nevertheless, these emails referenced only a small portion of the [**description**] pertaining to the POI entries’ merchandise and so were incomplete.¹³⁷ Bai Mu Da claimed the emails were incomplete because “I might have deleted the email. I have limited space in my Hotmail email storage, there were times that the space was full and I couldn’t receive any email.”¹³⁸ However, Bai Mu Da’s other false statements cast this claim into serious doubt.

CBP also asked Bai Mu Da for their correspondence with the freight forwarder. Bai Mu Da’s [**name**] claimed he lost his old cell phone and bought a new cell phone on June 5, 2023.¹³⁹ He also claimed he bought a new laptop at about the same time, on June 18, 2023.¹⁴⁰ As such, he asserted that all instant messages with the freight forwarder before those dates were lost. CBP asked for receipts to substantiate his new cell phone and laptop. He provided a photograph of a cell phone box he claimed was his but did not provide a receipt.¹⁴¹ He also provided an untranslated receipt for the laptop.¹⁴² [**name**] did not comment on whether he retained the old laptop and so could access correspondence from it. Notably, these two events occurred after the last Midwest Livestock entry and before CBP conducted the August 24, 2023 cargo exam, which was when Midwest Livestock and Bai Mu Da became aware CBP was examining its practices and presumably altered their behavior. Thus, Bai Mu Da did not substantiate that it could not obtain and could not provide the instant messages before June 2023.

Bai Mu Da provided two pages of instant messages with the freight forwarder after June 2023.¹⁴³ These instant messages were in Chinese, so CBP asked Bai Mu Da to translate them.¹⁴⁴ Bai Mu Da refused to translate the messages and claimed that the freight forwarder would not permit

¹³⁴ See September Memorandum at Attachment 8, page 1.

¹³⁵ See Bai Mu Da RFI at Attachment 6.

¹³⁶ See Bai Mu Da Supplemental RFI at Attachment 4. One of these emails was a duplicate email.

¹³⁷ *Id.*

¹³⁸ See Bai Mu Da RFI at 5.

¹³⁹ See Bai Mu Da Supplemental RFI at 2.

¹⁴⁰ *Id.*

¹⁴¹ See Bai Mu Da 2nd Supplemental RFI at 1 and Attachment 3.

¹⁴² *Id.* at 2 and Attachment 4.

¹⁴³ See Bai Mu Da Supplemental RFI at 2 and Attachment 5.

¹⁴⁴ See Bai Mu Da 2nd Supplemental RFI at 3.

their translation.¹⁴⁵ However, Bai Mu Da’s claim is unpersuasive because they already sent the untranslated messages to CBP and had the ability to translate them without again consulting the freight forwarder. [name] previously worked as an interpreter and composed Bai Mu Da’s RFI responses in English.¹⁴⁶ Additionally, Bai Mu Da bracketed the untranslated messages, so if they were concerned about disclosure, they could have again bracketed the translated messages. As such, no legitimate reason existed for Bai Mu Da’s refusal to translate the instant messages. As a result, CBP determines that Bai Mu Da failed to cooperate and comply to the best of its ability with CBP’s request for information.

CBP also asked Midwest Livestock to provide its correspondence pertaining to the POI entries. In its initial RFI response, Midwest Livestock did not attach any of the requested correspondence and merely stated that “[name] handles all correspondence with Bai Mu Da via Skype.”¹⁴⁷ Conversely, CBP received some of the emails it requested from Bai Mu Da, some of which were between [name] and [name].¹⁴⁸ As such, these emails directly contradict Midwest Livestock’s claim that all of its correspondence with Bai Mu Da occurred via Skype. Thus, Midwest Livestock made a material false statement to CBP.

In its supplemental RFI, CBP asked Midwest Livestock for the correspondence again and pointed out that Bai Mu Da provided some emails with them.¹⁴⁹ Midwest Livestock then changed its earlier stance and claimed:

Most of the correspondence between [name] and [name] are by [description]. Drawings and Proforma Invoices that are sent by email are deleted shortly after being sent or received to prevent hackers or malware from being getting {sic} attached to these emails- malware being a major concern with this type of communication and clause {sic} for such actions.... All SMS messages and files sent through [name] have been deleted to minimize [name] names being shared and/o {sic} used by unauthorized persons in China and the USA.... Midwest Livestock is informed and believes that [name] has retained the emails concerning each of the POI entries in Appendix I and will be providing copies of all of the correspondence....¹⁵⁰

Regarding these deleted drawings and proforma invoices, Midwest Livestock specified that “All emails with correspondence or attachments with information on the equipment listed on the Proforma Invoice are deleted.”¹⁵¹ However, online evidence indicates that Midwest Livestock’s purported practice of deleting these emails is false. Specifically, the website of the U.S. Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency, along with several other websites on the administrative record, indicate that malware, viruses, trojan horses, and worms come from malicious websites, malicious software, and unfamiliar email

¹⁴⁵ *Id.*

¹⁴⁶ See Bai Mu Da RFI at 2; see also Bai Mu Da Supplemental RFI at 4.

¹⁴⁷ See Midwest Livestock RFI at 23. Midwest Livestock later confirmed that “[name] is the only MLS employee that communicates with [name] through [name].” See Midwest Livestock 2nd Supplemental RFI at 13.

¹⁴⁸ See Bai Mu Da RFI at Attachment 6; see also Bai Mu Da Supplemental RFI at Attachment 4.

¹⁴⁹ See Bai Mu Da RFI at Attachment 6; see also Midwest Livestock Supplemental RFI at 14-15.

¹⁵⁰ See Midwest Livestock Supplemental RFI at 15.

¹⁵¹ See Midwest Livestock 2nd Supplemental RFI at 14.

senders and “are activated when you open or click a link contained in an email message.”¹⁵² However, Midwest Livestock and Bai Mu Da were the creators of these emails and attached files that Midwest Livestock is purportedly deleting shortly after their transmission. In other words, Midwest Livestock did not open or download emails and attached files from an unfamiliar email sender, website, or software. In fact, [name] has been a friend of [name] since they met in China in 2010 and Midwest Livestock has imported from Bai Mu Da since [year].¹⁵³ Therefore, Midwest Livestock and Bai Mu Da have a trusted, long-standing relationship. As such, CBP finds that Midwest Livestock’s claim about its email deletion policy is without merit. Even if it was somehow true, Midwest Livestock did not provide CBP with the POI emails that did not have attachments. Therefore, Midwest Livestock failed to cooperate and comply to the best of its ability with CBP’s request for information.

As noted in the preceding quotation, Midwest Livestock attempted to direct CBP to obtain the requested correspondence from the customs broker instead. CBP did receive emails between the customs broker and Midwest Livestock or Bai Mu Da in the customs broker’s RFI response.¹⁵⁴ However, that response did not contain the emails CBP needed between Midwest Livestock and Bai Mu Da, which could have shed light on the POI entries’ contents.¹⁵⁵ As such, CBP asked Midwest Livestock a third time for all its POI correspondence with Bai Mu Da. Midwest Livestock responded that:

[name] has deleted all communication on [name] with [name] that occurred before [date]. There has not been any new Orders placed by [name] for MLS after [date], so there are no [name] communications from [name] to [name]. There have been no email communications-(through the MLS Server) between [name] and [name] for Orders and shipments that have been placed after [date]. Attached is a folder that has the emails from [date range] that [name] has sent and received regarding MLS equipment orders and the shipping logistics.¹⁵⁶

Midwest Livestock submitted the response containing these emails on January 11, 2024.¹⁵⁷ The emails are dated over a [#]-day span and the earliest ones ([date]) date as much as [#]-days before the submission date.¹⁵⁸ These [#]- and [#]-day email retention periods appear to account for Midwest Livestock’s assertion that “[name] routinely deletes emails and [name] communications 30-45 days after the matter that was addressed was completed or cancelled.”¹⁵⁹ However, these emails’ retention over their [#]- or [#]- day periods directly contradicts Midwest Livestock’s earlier assertion that “Emails on the server are not kept past two weeks prior.”¹⁶⁰ Midwest Livestock provided two other emails in its January 11, 2024, RFI

¹⁵² See January Memorandum at Attachment 28. The Cybersecurity and Infrastructure Security Agency’s website address is [cisa.gov](https://www.cisa.gov) in the attachment.

¹⁵³ See Bai Mu Da Supplemental RFI at 4, 8; see also January Memorandum at Attachment 25, page 3.

¹⁵⁴ See Customs Broker RFI.

¹⁵⁵ *Id.*

¹⁵⁶ See Midwest Livestock 2nd Supplemental RFI at 13-14.

¹⁵⁷ *Id.* at 1 and Attachment 15.21.

¹⁵⁸ *Id.* at 13-14 and Attachment 15.21.

¹⁵⁹ See Midwest Livestock 2nd Supplemental RFI at 14.

¹⁶⁰ See Midwest Livestock Supplemental RFI at 16.

response that were also dated long past this purported two-week retention period and that appear to have been retained since then on their server. These two emails were dated [**date range**] and detailed an exchange between [**names of people**].¹⁶¹ Even if Midwest Livestock’s two-week or 30-45 day retention periods exist, which CBP does not concede, Midwest Livestock still did not provide any emails to CBP that it sent or received and then retained within two-weeks or 30-45 days of when CBP requested those emails in the preceding initial and supplement RFIs.¹⁶² In addition, some emails in Midwest Livestock’s January 11, 2024, RFI response [**description**], which contradicts their earlier claim that emails with attached files were “deleted shortly after being sent or received {.”¹⁶³ Thus, Midwest Livestock made material false statements to CBP concerning their email retention policy to avoid providing CBP with the requested emails and so failed to cooperate and comply to the best of its ability with CBP’s requests for information.

Although Midwest Livestock ultimately provided some emails, these emails were dated from [**date range**] and so only covered a small portion of the POI.¹⁶⁴ Midwest Livestock did not provide any emails to Bai Mu Da and from Bai Mu Da dating from the beginning of the POI on May 16, 2022 to [**date**]. Therefore, CBP finds that Midwest Livestock failed to cooperate and comply to the best of its ability with CBP’s request for information.

Because Midwest Livestock claimed that most of its correspondence with Bai Mu Da was conducted via [**description**], CBP requested screenshots substantiating each of these [**description**] during a portion of the POI, [**date range**].¹⁶⁵ In response, Midwest Livestock provided one [**description of event**] days before they drafted their 2nd Supplemental RFI response in January 2024.¹⁶⁶ As such, Midwest Livestock did not provide any screenshots within the requested period.¹⁶⁷

Adverse Inferences

CBP’s regulations at 19 C.F.R. § 165.6(a) state that if “the importer, or the foreign producer or exporter of the covered merchandise fails to cooperate and comply to the best of its ability with a request for information made by CBP, CBP may apply an inference adverse to the interests of that party in selecting from among the facts otherwise available to make the determination as to evasion....”¹⁶⁸ The importer, Midwest Livestock, and the exporter of the covered merchandise, Bai Mu Da, both failed to cooperate and comply to the best of their abilities with CBP’s requests for information in multiple instances. These instances included Midwest Livestock’s and Bai Mu Da’s failure to provide all, or even most of, the requested purchase orders, drawings,

¹⁶¹ See Midwest Livestock 2nd Supplemental RFI at Attachment 15.22.

¹⁶² See Midwest Livestock RFI; see also Midwest Livestock Supplemental RFI.

¹⁶³ See Midwest Livestock Supplemental RFI at 15-16; see also Midwest Livestock 2nd Supplemental RFI at Attachment 15.21.

¹⁶⁴ Midwest Livestock 2nd Supplemental RFI at Attachment 15.21.

¹⁶⁵ *Id.* at 13.

¹⁶⁶ *Id.* at 13-14 and Attachment 15.20.

¹⁶⁷ *Id.*

¹⁶⁸ See also 19 U.S.C. § 1517(c)(3)(A).

quotation documents, and correspondence in response to CBP's repeated requests for these items. Bai Mu Da also refused to translate its instant messages in response to CBP's request.

CBP's regulations state that "Any interested party that provides a material false statement or makes a material omission or otherwise attempts to conceal material facts at any point in the proceedings may be subject to adverse inferences (see § 165.6)...."¹⁶⁹ As noted, Midwest Livestock and Bai Mu Da provided several material false statements. These instances included Midwest Livestock's and Bai Mu Da's material false statements pertaining to their affiliation status, purchase orders, drawings, quotation documents, and correspondence. These false statements cast doubt on the accuracy and reliability of the documents they provided and impeded CBP's ability to gather information for its investigation. Based on these material false statements, CBP finds that Midwest Livestock and Bai Mu Da have not cooperated and complied to the best of their ability with CBP's requests for information during the investigation.

Therefore, CBP is drawing an inference that is adverse to the interests of Midwest Livestock and Bai Mu Da by inferring that a proportion of the farrowing crates' and gestation pens' values that Midwest Livestock entered during the period of investigation, but before the August 24, 2023 cargo exam, were composed of tri-floors. CBP is applying the proportion to certain POI entries before the August 24, 2023 cargo exam because that was when Midwest Livestock became aware that CBP was monitoring its shipments' contents and HTSUS classifications.¹⁷⁰

CBP is applying the proportion to the farrowing crates' and gestation pens' value rather than to the POI entries' total value because record evidence indicates that Midwest Livestock entered tri-floors under farrowing crate and gestation pen product descriptions. Bai Mu Da facilitated the shipping and classification of farrowing crates, gestation pens, tri-floors, and other miscellaneous merchandise it exported to Midwest Livestock.¹⁷¹ Bai Mu Da specified that:

There are orders they {the tri-floors} were shipped as part of farrowing crates. Also, there is an order shipped as Tri Floors. When shipping tri floor products, if there are other farrowing crates parts – (the crate sides, doors, tops, posts, etc.) get {sic} loaded into the same container, I tend to group the tri floors with farrowing crate. And declare as Farrowing Crates. Because the US customer buys the farrowing crate as a whole system. Also, in a pig production mind set, tri floors are a component to farrowing crate.¹⁷²

Midwest Livestock and Bai Mu Da further specified that tri-floors are only used in "farrowing barns" and "[description]."¹⁷³ However, it is noteworthy that neither Midwest Livestock nor Bai Mu Da provided documentation substantiating their statements that only farrowing crates incorporated tri-floors. Record evidence in EPA

¹⁶⁹ See 19 C.F.R. § 165.5(b)(3).

¹⁷⁰ See September Memorandum at 1 and Attachments 2-9.

¹⁷¹ See Bai Mu Da RFI at 11-12; see also Bai Mu Da Supplemental RFI at 4; see also Midwest Livestock Supplemental RFI at 10. In its supplemental RFI response, Midwest Livestock stated that in addition to [description] participated in the classification of the merchandise.

¹⁷² See Bai Mu Da RFI at 12.

¹⁷³ See Bai Mu Da Supplemental RFI at 4; see also Midwest Livestock RFI at 26; see also Midwest Livestock Supplemental RFI at 24.

consolidated case 7730 indicated that the steel grating at issue, also known as “tribar flooring,” could be included as part of “gestation stalls”, which was used as another term for farrowing crates in that case.¹⁷⁴ Furthermore, Bai Mu Da admitted that it exported tri-floors in a shipment that contained gestation pens.¹⁷⁵ Notably, that entry’s documents indicated that it contained gestation pens and ductile floors but contained no mention of farrowing crates or tri-floors.¹⁷⁶ Because tri-floors have been included in at least one shipment under the gestation pen description, CBP is applying the proportion to the values of gestation pens as well as farrowing crates.¹⁷⁷

To determine the proportion amount, CBP identified two entries where Bai Mu Da shipped tri-floors to Midwest Livestock under the description of gestation pens and/or farrowing crates.¹⁷⁸ Using these entries’ documents, CBP calculated the value of the tri-floors in proportion to the values of the gestation pens and/or farrowing crates. In entry [#]4262, the amount attributable to tri-floors was \$[#] and the amount described as gestation pens was \$[#].¹⁷⁹ In entry [#]1491, the amount attributable to tri-floors was \$[#] and the amount described as gestation pens and farrowing crates was \$[#].¹⁸⁰ These figures indicated that 10.8366 percent of the entries’ farrowing crate and gestation pen values was attributable to tri-floors.¹⁸¹ CBP then applied the 10.8366 percent proportion of tri-floors to the farrowing crates’ and gestation pens’ values in the following 17 entries listed below.¹⁸²

	Entry Number	Value of the Entries’ Farrowing Crates & Gestation Pens (\$)	Proportion Attributed to Tri-Floors (\$)
1	[#]3157	[#]	[#]
2	[#]3736	[#]	[#]
3	[#]3140	[#]	[#]
4	[#]4775	[#]	[#]
5	[#]5632	[#]	[#]
6	[#]5996	[#]	[#]

¹⁷⁴ See EAPA Consolidated Case 7730’s Determination Notice at 16, which can be found at

<https://www.cbp.gov/document/publications/eapa-con-case-7730-double-l-group-llc-and-manufacturing-network>.

¹⁷⁵ See Bai Mu Da Supplemental RFI at 4; see also Midwest Livestock Supplemental RFI at Attachment 14.6, which contains entry [#]4262’s documents and was the shipment of gestation pens/tri-floors that Bai Mu Da was referring to.

¹⁷⁶ See Midwest Livestock Supplemental RFI at Attachment 14.6.

¹⁷⁷ These documents included entry summaries, entry/immediate delivery forms, invoices, packing lists, and bills of lading.

¹⁷⁸ See Midwest Livestock Supplemental RFI at Attachment 14.6; see also September Memorandum at Attachment 2. These were entries [#]4262 and [#]1491.

¹⁷⁹ See Midwest Livestock Supplemental RFI at Attachment 14.6; see also Bai Mu Da Supplemental RFI at Attachment 8, page 1. These figures were rounded to the nearest dollar.

¹⁸⁰ See September Memorandum at Attachment 2; see also Midwest Livestock Supplemental RFI at Attachment 14.23.

¹⁸¹ [#] ÷ [#] = 10.8366 percent.

¹⁸² See Midwest Livestock Supplemental RFI at Attachments 14.1-14.22 for the entry documents listing farrowing crates and/or gestation pens. See January Memorandum at Attachments 23-25 for the entries’ total values. CBP multiplied the figures in the Total Entry Value (\$) column by 10.8366 percent to obtain the figures in the Proportion Attributable to Tri-Floors (\$) column. These 17 entries are in addition to the six entries that Midwest Livestock already admitted contained tri-floors.

7	[	#	7711		[#]	[#]
8	[	#	9659		[#]	[#]
9	[	#	9287		[#]	[#]
10	[	#	10970		[#]	[#]
11	[	#	12414		[#]	[#]
12	[	#	12406		[#]	[#]
13	[	#	13255		[#]	[#]
14	[	#	13453		[#]	[#]
15	[	#	15920		[#]	[#]
16	[	#	18130		[#]	[#]
17	[	#	19740		[#]	[#]
Totals					[#]	[#]

As indicated in the above chart, CBP is applying AD/CVD to the \$[#] attributed to tri-floors. This amount is in addition to the \$[#] in tri-floors that Midwest Livestock already admitted entering.¹⁸³ Therefore, CBP is applying AD/CVD to a total tri-floor value of \$[#]. Additionally, although CBP is applying adverse inferences, they are not necessary to CBP’s determination that substantial evidence of evasion is present on the record because Midwest Livestock and Bai Mu Da already acknowledged that some of the POI entries contained tri-floors.¹⁸⁴

Determination as to Evasion

In conclusion, the previously discussed facts on the record establish that Chinese-origin steel grating, also known as tri-floors, was misclassified as farrowing crates and gestation pens and entered into the customs territory of the United States. Furthermore, evidence on the record indicates that Midwest Livestock subsequently entered Chinese-origin steel grating into the United States as type 01 entries that evaded the payment of AD/CVD duties on steel grating from China.¹⁸⁵ CBP determines that substantial evidence exists demonstrating that, by means of material false statements or material omissions, Midwest Livestock entered Chinese-origin steel grating that was misclassified into the United States. The steel grating that Midwest Livestock entered is subject to the AD/CVD rates on steel grating from China.¹⁸⁶ Because Midwest Livestock did not declare that the merchandise was subject to the *AD/CVD Orders* on entry, the requisite cash deposits were not collected on the merchandise.

Actions Taken Pursuant to the Affirmative Determination as to Evasion

In light of CBP’s determination that substantial evidence demonstrates that Midwest Livestock entered covered merchandise into the customs territory of the United States through evasion, and

¹⁸³ See Midwest Livestock RFI at 25 and Attachments A58-A62; see also Bai Mu Da RFI at 12 and Attachment 6.

¹⁸⁴ *Id.*

¹⁸⁵ Entry type “01” is the code that CBP requires importers use to designate a standard consumption entry that is not subject to AD/CVD duties. See <https://www.cbp.gov/trade/automated/ace-transaction-details>.

¹⁸⁶ Midwest Livestock’s entries of steel grating/tri-floors from China are subject to the “PRC-Wide Entity” rate of 145.18 percent for AD case A-570-947 and the “All Others” rate of 62.46 percent for CVD case C-570-948. These two rates equal a combined rate of 207.64 percent. See *AD/CVD Orders*.

pursuant to 19 U.S.C. § 1517(d) and 19 C.F.R. § 165.28, CBP will suspend or continue to suspend the entries subject to this investigation, until instructed to liquidate. For those entries previously extended in accordance with Interim Measures, CBP will rate adjust and change those entries to type 03 and continue suspension until instructed to liquidate these entries.¹⁸⁷ Finally, CBP will continue to evaluate Midwest Livestock's continuous bonds in accordance with CBP's policies and will require single transaction bonds as appropriate. None of the above actions preclude 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
Director
Enforcement Operations Division
Trade Remedy Law Enforcement Directorate
CBP Office of Trade

¹⁸⁷ Entry type "03" is the code that CBP requires importers use to designate a consumption – Antidumping/ Countervailing Duty entry as subject to AD and/or CVD duties. The instructions for CBP Form 7501 (Entry Summary) state that code 03 shall be used for entries subject to AD/CVD duties. See <https://www.cbp.gov/trade/automated/ace-transaction-details>.