



February 27, 2024

EAPA Case Number 7801

PUBLIC VERSION

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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 7801, U.S. Customs and Border Protection (“CBP”) has determined there is substantial evidence that Minth Mexico Coatings, S.A. de C.V. (“MMC”) evaded the antidumping (“AD”) and countervailing duty (“CVD”) orders A-570-967 and C-570-968, respectively, on aluminum extrusions from the People’s Republic of China¹ by entering into the customs territory of the United States Chinese-origin aluminum extrusions but not declaring them as subject to those AD/CVD orders. Specifically, the record of the investigation indicates that MMC imported aluminum extrusion automotive parts from Chinese suppliers that were transshipped through Mexico but failed to declare them as subject to the AD/CVD Orders. As a result, no cash deposits were applied to the merchandise at the time of entry.

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

Background

Allegation and Initiation

The Aluminum Extrusions Fair Trade Committee (“AEFTC”) alleged that MMC has been importing extruded aluminum automotive parts from China into Mexico, repackaging those parts in Mexico, and then importing them into the United States on behalf of a U.S. affiliate, Minth Tennessee International, LLC (“Minth Tennessee”). AEFTC claims the extruded aluminum automotive parts are subject to the scope of the AD/CVD Orders but are imported without the payment of AD/CVD duties through declaration of an incorrect country of origin (*i.e.*, Mexico).²

AEFTC states that many aluminum automotive parts are covered under the scope of the AD/CVD Orders, citing numerous U.S. Department of Commerce (“Commerce”) scope rulings. AEFTC refers to Commerce scope rulings finding that certain waist finishers, belt moldings, outer waist belts, automotive frame crossmembers, aluminum tube and block assemblies for automotive heating and cooling systems, subparts for metal bushings used in automotive suspension systems, automotive trim kits, and assembled motor cases are covered under the scope of the AD/CVD Orders.³ AEFTC also notes that the scope of the AD/CVD Orders covers aluminum extrusions of various shapes and forms, extrusions that have undergone various types of fabrication processes, aluminum extrusion components that are attached with other components, and aluminum extrusions that may be identified with reference to their end use or may be described at the time of importation as parts for final finished products that are assembled after importation.⁴ AEFTC further notes the scope includes the aluminum extrusion components that are attached to form subassemblies, *i.e.*, partially assembled merchandise, even while the non-aluminum extrusion components of subassemblies are not covered.⁵ In short, AEFTC concludes “{a}utomotive parts that are aluminum extrusions that have been fabricated, are subassemblies containing extruded components, and/or are extrusions prepared for assembly” are covered by the scope of the AD/CVD Orders, regardless of whether “they may be identified with reference to their end use (*e.g.*, automotive parts, automotive trim, window trim) or may be described as parts for automobiles that are assembled after importation...”⁶

AEFTC provides shipment information for January 2021 through March 2022 from [[data source](#)], which it states indicate MMC imported aluminum automotive parts from China.⁷

AEFTC also provides shipment information for January 2020 through April 2022 from [[data source](#)] that AEFTC states supports concluding MMC imported such parts into the United States from Mexico, acting as the importer for its own Mexican exports.⁸

² *See generally*, Request for an Investigation under the Enforce and Protect Act, dated December 2, 2022 (“Allegation”).

³ *Id.* at 5-6 and Exhibits 6, 10, 11, 12, 13 and 14.

⁴ *Id.* at 6 and Exhibit 1.

⁵ *Id.* at 6-7 and Exhibit 1.

⁶ *Id.* at 7.

⁷ *Id.* at 4-5, Exhibit 5, and Exhibit 8.

⁸ *Id.* at 9-11 and Exhibit 7. Although those data identify the affiliated company Minth Tennessee as the “buyer,” AEFTC states that in the automotive industry, the Mexican manufacturer, or its U.S. affiliate, typically acts as the importer of goods entered into the United States. AEFTC notes that the “Incoterm” column in the shipment data in

AEFTC acknowledges that MMC possesses production capacity in Mexico to manufacture millions of extruded aluminum automotive parts each year. However, AEFTC provides an analysis that it claims demonstrates the production capacity of MMC in Mexico is insufficient to fulfill its contractual commitments to buyers that attach such parts to automobiles assembled in the United States, and that those parts are aluminum extrusions.⁹ The AEFTC analysis was made in a declaration by [name], identified as [title and employer], in which the declarant states [company name] “operates a [description of commercial activity] Minth Group Limited (“Minth Group”), and that “{t}he [merchandise] is produced from aluminum extrusions.” The declarant “believe{s} that a significant amount of imports” described in the aforementioned [data source] Mexico export data “are extruded automotive trim.” The declarant notes that “{t}hese types of products are nearly always produced from aluminum extrusions,” which the declarant claims to know because [description of commercial activity].” The declarant indicates that as [description of commercial activity], so Minth Mexico Coating’s products must be aluminum extrusions.” The declarant bases this conclusion on his belief that “[presumed business decisions].”¹⁰

Although AEFTC acknowledges that Minth Mexico Coatings possesses production capacity in Mexico to manufacture millions of such extruded aluminum automotive parts each year, AEFTC argues that the production capacity of Minth Mexico Coatings in Mexico is insufficient to fulfill contractual commitments to buyers that attach such parts to U.S.-assembled automobiles. The declarant indicates the Minth Group’s annual contractual obligations to North American automotive manufacturing facilities is 10.3 million parts per year, of which 6.52 million are for U.S. automotive plants and 3.75 million are for Mexican automotive plants. The declarant further argues that even if the entire 3.75 million parts per year supplied to Mexican plants are supplied by Chinese production, Minth Mexico Coatings does not have sufficient production capacity in Mexico to account for the 6.52 million parts per year supplied to U.S. plants. The declarant notes that while the nameplate capacity of Minth Mexico Coatings has been estimated at well in excess of 6.52 million parts per year, its actual production capabilities are only between 5 and 6 million parts per year.¹¹

In support of its claim of transshipment by Minth Mexico Coatings, AEFTC also cites conclusions in a declaration of [name, title, employer], identified as a “third-party consultant who has conducted an investigation of the Mexican

Exhibit 7 of the allegation lists “DDP (Delivered Duty Paid)” for the shipments exported from Mexico by Minth Mexico Coatings, supporting a conclusion that Minth Mexico Coatings, rather than U.S. automotive producers, may have acted as the importer of record on entries filed with CBP. *Id.* at 9-10 and Exhibits 7 and 8.

⁹ *Id.* at 13-16 and Exhibit 8.

¹⁰ *Id.* at Exhibit 8. AEFTC notes that Minth Mexico Coatings and Minth Tennessee are subsidiaries of the Minth Group. *Id.* at 2, 4 and Exhibit 2.

¹¹ *Id.* at 13-16 and Exhibit 8. [name] references to MMC’s production capacity are based on the analysis of the third-party consultant statement in Exhibit 4, which indicates that, based on [sources of information], that company was only producing about 20,000 parts per day in first half of 2021, even though its nameplate capacity was several times greater. *Id.* at 14 and Exhibit 4.

operations of Minth Group companies for the purpose of determining if any of these companies import Chinese-origin aluminum extrusions from Mexico.”¹² This third-party consultant claims there is evidence of transshipment by Minth Mexico Coatings, based on statements obtained from various [sources of information], as discussed below. These sources, and corresponding statements, are the following:

“A [source of information] explained that a large proportion of Minth Mexico Coatings’ aluminum parts, including extruded aluminum parts, were received in an area identified as “pass-through.” These parts were taken from containers received from China, inspected and repackaged for shipment to final clients. According to this source, the final clients were mostly [customer information]. According to this source, a small proportion of the aluminum parts received in the pass-through area required some minor reprocessing, such as polishing or reapplying of coatings, at the coatings plant in Aguascalientes before being repackaged with the rest of the parts and sent to final clients. The [source of information] said that all of these parts were usually imported from Minth’s subsidiaries in China in situations in which no local production of such components existed or when the output of the local plants in Aguascalientes was insufficient.”¹³

“A [source of information] corroborated the statements made by the [source of information] and indicated that the aluminum parts and most of the other components repackaged in the pass-through area were imports from China, with little or no input from local manufacturing.”¹⁴

“Furthermore, [source of information] said to [source of information] that Minth Mexico Coatings was misclassifying some of the imports received at the plant. The source [activities of source of information]

[business activity]. After [business activity], the source noted that both plants were importing some parts - including aluminum extrusions - [business activity]. According to the source, the [interaction with entity]

[business activity]. The issue was reported to the logistics group’s top leadership in China, but the problem had not been fully resolved when [business activity]

[merchandise and description]

[] in the pass-through area.”¹⁵

“According to [sources of information]

¹² *Id.* at 7-9 and Exhibit 4.

¹³ *Id.* at Exhibit 4 at paragraph 6.

¹⁴ *Id.* at Exhibit 4 at paragraph 7.

¹⁵ *Id.* at Exhibit 4 at paragraph 8.

], a noticeable volume of automotive pieces is received at Minth Mexico Coatings. The automotive pieces are shipped from “Minth China,” as identified by the [individuals]. [individuals], however, could not determine if these aluminum parts are extruded aluminum parts or other aluminum parts that are also received at Minth Mexico Coatings from Minth China. [individuals] can only effectively differentiate between raw aluminum and packaged pieces but could not provide additional details on the content of the boxes containing packaged pieces. [individuals] believed that the United States was the final destination for most of the automotive pieces received and processed at Minth Mexico Coatings. [individuals] suspected that some of the pieces were re-packaged before being sent to the United States, although [clarification regarding individuals].”¹⁶

In addition, [name] noted that there was an instance where [company and activity] a [company] contract [merchandise] to Minth Mexico Coatings. In that instance, the contract was “for the exact same parts for all bidders” and “[claimed business activity],” Minth Mexico Coatings was nevertheless awarded the contract. [name] states that “[information source and presumed business activity].”¹⁷

The Trade Remedy Law Enforcement Directorate (“TRLED”) within CBP’s Office of Trade acknowledged receipt of the properly filed EAPA allegation on February 2, 2023.¹⁸ On February 24, 2023, for the reasons described below, TRLED initiated an investigation under EAPA against MMC.¹⁹

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.”²⁰ Under 19 C.F.R. §165.15(b), CBP will initiate an investigation if it determines that, upon considering the allegation, as supported by evidence reasonably available to the allegor, “{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.”²¹

In reviewing the claims made and evidence provided in the Allegation, TRLED found that the Allegation reasonably suggested that Minth Mexico Coatings has engaged in attempts to evade the

¹⁶ *Id.* at Exhibit 4 at paragraph 9.

¹⁷ *Id.* at Exhibit 8 at paragraph 26. The [copy. name] vehicles cited as being built using parts sourced from Minth Mexico Coatings were identified as being assembled in the United States. *See* Allegation at Exhibit 8 (Attachment 1).

¹⁸ *See* the email from TRLED to counsel for AEFTC dated February 2, 2023.

¹⁹ *See* the February 24, 2023, Initiation of Investigation for EAPA Case Number 7801 – Minth Mexico Coatings, S.A. de C.V. (“Initiation”).

²⁰ *See* 19 C.F.R. § 165.1; *see also* 19 U.S.C. §1517(a)(5).

²¹ *See also* 19 U.S.C. § 1517(b)(1).

AD/CVD Orders by transshipping of Chinese-origin aluminum extrusions through Mexico and failing to declare the merchandise as covered by the AD/CVD Orders. Specifically, AEFTC submitted documentation reasonably available to it indicating Minth Mexico Coatings exports to, and imports into, the United States substantial volumes of aluminum extrusion automotive parts, as well as information which supports the conclusion that Minth Mexico Coatings imports such parts from China. Furthermore, AEFTC provided declarations from [sources of information] that, collectively, contain references to statements from multiple individuals [sources of information] suggesting that Minth Mexico Coatings has been transshipping such Chinese-origin aluminum extrusion automotive parts through Mexico to the United States with either no or insubstantial further processing performed in Mexico.²²

Bolstering CBP's decision to initiate an investigation, CBP reviewed data from its own systems that indicated that, during the period of investigation ("POI"), which is from February 2, 2022, forward, Minth Mexico Coatings, acting as importer for extrusions shipped to the United States, had entries of merchandise under an HTSUS number that would include aluminum extrusion automotive parts, and which were identified by the importer at time of entry as [entry information details] and as [entry information detail].²³

For the reasons noted above, CBP initiated an investigation under the authority of 19 U.S.C. §1517(b)(1) for MMC's imports of covered merchandise that are alleged to be entered for consumption into the customs territory of the United States through evasion.²⁴

Subsequent to the initiation, CBP obtained additional international trade information that relate to Minth Mexico Coatings. That source indicated the data it provided to CBP covers both imports to, and exports, from Minth Mexico Coatings for the period [time period] for harmonized tariff code 8708.29. Regarding imports into Mexico, the data include [numeric description] of imported shipment line items reflecting almost [number] pieces that are classified under 8-digit tariff codes including automotive parts and as originating from China.²⁵

Based on record evidence, CBP determined that evidence reasonably suggested MMC imported from Mexico aluminum extrusions that may have been transshipped from China and covered by the AD/CVD Orders. The aforementioned information from the Allegation cited in the Initiation Memo analysis,²⁶ along with the information from CBP's own systems that was also noted in that analysis, provided a basis for this EAPA investigation.²⁷ Furthermore, as noted above, additional international trade transaction information obtained by CBP indicated that MMC has been importing into Mexico from China significant quantities of merchandise classified under

²² See Initiation at 5.

²³ *Id.* See also February 10, 2023, NTAC Receipt Report.

²⁴ See Initiation at 6. See also 19 C.F.R. § 165.15.

²⁵ See the March 29, 2023, International Trade Transaction Information document CBP created from the source information. CBP also issued to MMC two Customs Form 28 ("CF28") requests for information pertaining to two U.S. entries by MMC, but these played no role in the decision whether to continue the investigation. See Notice of Initiation of Investigation – EAPA Case 7801 ("NOI"), dated May 30, 2023, at 7.

²⁶ See Initiation Memo at 5.

²⁷ *Id.*

tariff classifications that include aluminum extrusion auto parts. Consequently, on May 30, 2023, TRLED issued notification of its decision to initiate an investigation.²⁸

Requests for Information

After the issuance of the NOI, CBP, pursuant to 19 C.F.R. § 165.23, sent Requests for Information (“RFIs”) to MMC and eight suppliers in China and one supplier in [location], as detailed below.

On June 16, 2023, CBP issued an RFI to MMC, and MMC submitted its response on June 30, 2023 (“MMC June 30 RFI response”) and July 26, 2023 (“MMC July 26 RFI response”). On September 5, 2023, CBP issued a supplemental RFI to MMC, and MMC submitted its response on September 27, 2023 (“MMC Supp RFI response”). On October 24, 2023, CBP issued an additional supplemental RFI to MMC, and MMC submitted its response on October 27, 2023 (“MMC Additional Supp RFI response”).

On July 12, 2023, CBP issued RFIs to the following eight Chinese suppliers of MMC:

- [company name] (“Supplier One”)
- [company name] (“Supplier Two”)
- [company name] (“Supplier Three”)
- [company name] (“Supplier Four”)
- [company name] (“Supplier Five”)
- [company name] (“Supplier Six”)
- [company name] (“Supplier Seven”)
- [company name] (“Supplier Eight”)

Each of the Chinese suppliers, other than Supplier Five, submitted their RFI responses on August 17, 2023 (“Supplier One RFI response,” “Supplier Two RFI response,” “Supplier Three RFI response,” “Supplier Four RFI response,” “Supplier Six RFI response,” “Supplier Seven RFI response,” and “Supplier Eight RFI response,” respectively). On September 25, 2023, supplemental RFIs were issued to Supplier One, Supplier Two, Supplier Three, Supplier Six, and Supplier Eight, and they submitted their responses on October 2, 2023 (“Supplier One Supp RFI response,” “Supplier Two Supp RFI response,” “Supplier Three Supp RFI response,” “Supplier Six Supp RFI response,” and “Supplier Eight Supp RFI response,” respectively).

Supplier Five submitted an RFI response on August 11, 2023, but it was rejected due to failure to follow filing requirements.²⁹ Supplier Five submitted a revised response on August 15, 2023 (“Supplier Five August 15 RFI response”), and after CBP requested a more complete response, Supplier Five provided additional information on September 7, 2023 (“Supplier Five September 7 RFI response”) which CBP accepted.

On August 31, 2023, CBP issued an RFI to [company name] (“Supplier Nine”), the supplier in [location]. Supplier Nine submitted its response on September 25, 2023 (“Supplier

²⁸ See NOI at 7-8.

²⁹ See the August 11, 2023, email from TRLED to a representative of Supplier Five.

Nine RFI response”). On October 25, 2023, CBP issued a supplemental RFI to Supplier Nine. Supplier Nine submitted its response on November 1, 2023 (“Supplier Nine Supp RFI response”).

The RFIs were issued by CBP to help it examine the extent to which MMC engaged in evasion of the AD/CVD orders in question. The only evidence of evasion identified in RFI responses was first referenced by MMC in its part I narrative of MMC July 26 RFI response at 4, where MMC stated that “{f}or the relatively small quantity of shipments that were China origin, and for which MMC was the U.S. importer of record, MMC regrets this inadvertent error in not declaring such parts as subject to the AD/CVD orders at the time of entry,” and that “MMC stands ready to pay the applicable cash deposits on such past shipments during the POI, for which AD/CVDs should have been declared at entry.” In a chart presented on pages 3-4 of that response which MMC states reflects “goods exported to the United States and imported by MMC during the POI,” MMC indicates the value of the “revenue” of the covered merchandise was [value], which MMC stated represented only [number] percent of the total value of goods exported by and imported by MMC during the POI. In Attachment I-2 of MMC Supp RFI response, the importer identified the entries in question that pertained to what it identified as covered merchandise. On October 12, 2023, CBP placed on the record information relating to the MMC entries that MMC had acknowledged contained merchandise subject to the Chinese AD/CVD orders (“Certain MMC Entry Data”). In Certain MMC Entry Data, TRLED noted that “{t}he total value for those entries...is a few times greater than the ‘revenue’ identified for those entries in pages 3-4 of the Part I narrative” of MMC July 26 response.

Verification of MMC

On November 13-16, 2023, CBP conducted a verification of MMC in Mexico. MMC submitted the verification exhibits on November 29, 2023.³⁰ CBP completed its verification report, dated December 20, 2023,³¹ and released the public version to the parties to the investigation on December 26, 2023.

CBP confirmed during verification that merchandise in MMC entries valued at \$[number] was subject to the AD/CVD orders,³² which, as noted above, had been stated by MMC in its initial RFI response. CBP identified a few inconsistencies and discrepancies which it recorded in the MMC Verification Report, such as an example of a U.S. entry for which different sales documentation identified different countries of origin for the non-covered merchandise in question.³³ As described in the MMC Verification Report and based on information contained in the verification exhibits, CBP finds that there was substantial evidence of evasion for the aforementioned entries in the value of \$[number], which MMC does not dispute.

³⁰ Verification exhibits will be referenced as follows: verification exhibit 1 will be referenced as VE#1, verification exhibit 2 will be referenced as VE#2, and so on.

³¹ See “U.S. CUSTOMS AND BORDER PROTECTION OFFICE OF TRADE ON-SITE VERIFICATION REPORT ENFORCEMENT AND PROTECT ACT CASE NUMBER: 7801,” dated December 20, 2023 (“MMC Verification Report”).

³² See MMC Verification Report at 6 and Attachment V.

³³ *Id.* at 15.

Written Argument and Rebuttal to Written Argument

On September 29, 2023, CBP extended the deadlines for parties to submit written arguments and responses to written arguments,³⁴ and on December 26, 2023, CBP established those deadlines as January 8, 2024, and January 23, 2024, respectively.³⁵ CBP later extended those deadlines to January 11, 2024, and January 26, 2024, respectively.³⁶

On January 11, 2024, MMC submitted written arguments.³⁷ On January 26, 2024, AEFTC submitted a response to written arguments.³⁸

Analysis

Under 19 U.S.C. § 1517(c)(1)(A), to reach a determination as to evasion, CBP must “make a determination, based on substantial evidence, with respect to whether such covered merchandise entered into the customs territory of the United States through evasion.” Evasion is defined as “the entry of covered merchandise into the customs territory of the United States for consumption by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material, and that results in any cash deposit or other security or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise.”³⁹ As discussed below, the record of this investigation contains substantial evidence supporting a determination that MMC entered covered merchandise into the United States through evasion, resulting in the avoidance of applicable AD/CVD deposits or other security.

As noted above, MMC acknowledged in an RFI response that it had erred in not declaring some merchandise it entered as subject to the AD/CVD orders, and MMC states that the MMC Verification Report indicates “MMC has given corrective instructions to its personnel and any future shipment will be made with applicable cash deposits paid at entry.”⁴⁰ MMC states CBP confirmed MMC’s admission that the errors only amounted to imported merchandise valued at \$[number].⁴¹ MMC notes that “during the on-site verification, MMC provided supporting documents and a detailed reconciliation to confirm the highly limited nature of these subject shipments.”⁴² MMC indicates it explained during verification that it erred in not declaring these goods as subject to the AD/CVD orders because it did not have a designated AD/CVD system, due to the fact that only a tiny portion of its overall business related to aluminum extrusion parts that it imported from China and later imported into the United States.⁴³ MMC states that it had

³⁴ See TRLED email dated September 29, 2023.

³⁵ See TRLED email dated December 26, 2023.

³⁶ See TRLED email dated January 4, 2024.

³⁷ See “Minth Mexico Coatings, S.A. de C.V.’s Written Argument,” dated January 11, 2024 (“MMC Written Argument”).

³⁸ See “Aluminum Extrusions from the People’s Republic of China: Response to Written Arguments,” dated January 26, 2024 (“AEFTC Response to Written Argument”).

³⁹ See 19 C.F.R. § 165.1.

⁴⁰ See MMC Written Argument at 1, citing Verification Report at 16.

⁴¹ *Id.*

⁴² *Id.* at 2, citing Verification Report at 16 and Attachment V.

⁴³ *Id.* at 3, citing Verification Report at 16.

noted that over [#] percent of the aluminum extrusion products it imported into the United States had been extruded and manufactured by MMC, and that the tiny portion that was manufactured in China was “only for [business activity associated with merchandise].”⁴⁴ MMC states that it noted to CBP at verification that it would pay the AD/CVD duties in the future if it is the importer of record for shipments of covered merchandise.⁴⁵ MMC concludes that CBP “should follow the Verification Report, confirm the evasion as to the limited group of identified entries, and take no other additional measures against MMC.”⁴⁶

AEFTC states MMC acknowledged it engaged in evasion,⁴⁷ and then counters what it characterizes as “MMC’s requests for leniency,” asserting that the record of the investigation demonstrates “MMC’s evasion scheme is much more extensive than the level of evasion to which it admits,” and concluding CBP “should reject MMC’s requests for leniency and instead should apply the full range of remedies provided in the EAPA statute.”⁴⁸

With regard to the extent of MMC evasion, AEFTC states it presented evidence in its allegation that MMC has only two aluminum presses. Additionally, AEFTC presented a sworn affidavit from an industry figure showing MMC did not have the capacity to produce all the aluminum extrusions to which it was committed to produce under numerous contracts with automotive producers, resulting in a gap of several million pieces of extruded aluminum automotive components that MMC likely has been sourcing from China.⁴⁹ AEFTC indicates it is not plausible that MMC would have contracted with customers to supply a greater quantity of extrusions that it could produce, unless it could purchase extrusions at the last minute from an unaffiliated local supplier, which AEFTC states is highly unlikely given that these kinds of agreements with Tier 1 suppliers usually call for customized extrusions that fit only on that Tier 1 supplier’s automobiles, or unless it could arrange for a backup from its Chinese affiliates, which also produces aluminum extrusions.⁵⁰ AEFTC states a [source of information] indicated the latter was occurring during and prior to [time period], citing statements referenced in the Allegation.⁵¹ AEFTC also challenges what it characterizes as MMC’s effort at verification to claim much of the aluminum parts it supplies are stamped rather than extruded,⁵² a claim AEFTC states MMC made in its written arguments.⁵³ AEFTC notes that an industry expert cited in the Allegation indicated the vast majority of aluminum automotive parts MMC imports are aluminum extrusions,⁵⁴ and AEFTC rejects the conclusion in the MMC Verification

⁴⁴ *Id.* at 2, citing MMC July 26 RFI response at 3-4.

⁴⁵ *Id.* at 3, citing Verification Report at 16.

⁴⁶ *Id.* at 4.

⁴⁷ See AEFTC Response to Written Argument at 1. *See also* AEFTC Response to Written Argument at 3-6. Note that page references to AEFTC Response to Written Argument are to the page number appearing on the document itself, not the page numbers of the submitted PDF document (*e.g.*, this reference to page 1 is to the fifth page of the PDF as a whole).

⁴⁸ *Id.* at 1.

⁴⁹ *Id.* at 6, citing the Allegation at 14 and Exhibit 8.

⁵⁰ *Id.* at 7.

⁵¹ *Id.* at 7-8, citing Exhibit 4.

⁵² *Id.* at 9, citing Verification Report at 14.

⁵³ *Id.* at 8-9, citing MMC Written Argument at 1-2.

⁵⁴ *Id.* at 9-10, citing the Allegation at Exhibit 8.

Report that the merchandise associated with a sample shipment were stamped based solely on an indication from documentation that the merchandise was flat.⁵⁵

AEFTC contends MMC's request that CBP simply levy duties on the entries identified at verification as having involved evasion should be rejected, and that MMC's calls for leniency are self-serving, given there were apparently at least eleven instances of evasion as identified by the record, and given there is evidence, as noted above, of more substantial amounts of evasion by MMC.⁵⁶ AEFTC states CBP should exercise all the tools available to it to address evasion, including suspending liquidation of unliquidated entries of covered merchandise that enter on or after the date of the initiation of the investigation, extending the period for liquidating unliquidated entries of covered merchandise, notifying Commerce of the determination and requesting that Commerce identify the applicable AD/CVD assessment rates, assessing duties on the covered merchandise in accordance with instructions received from Commerce, and taking such additional enforcement measures as the Commissioner deems appropriate (including, but not limited to, initiating Customs penalty proceedings under 19 U.S.C. § 1592 or penalties and seizure under 19 U.S.C. § 1595a; requiring "live entry," where the importer must post the applicable cash deposits prior to the release of merchandise into U.S. commerce; and referring the record to U.S. Immigration and Customs Enforcement for civil or criminal investigation).⁵⁷

AEFTC argues that such a full range of enforcement measures is necessary because there is a substantial risk of lost revenue, because CBP did not impose interim measures and has not been scrutinizing MMC's imports since the outset of the investigation, and because there is a possibility that MMC is a) commingling non-Mexican (*e.g.*, Chinese) parts with Mexican parts (thereby avoiding AD/CVD duties), and b) misrepresenting the origin of the aluminum extrusions to its OEM customers in Mexico and thereby causing the vehicles produced in Mexico to violate regional content requirements under the United States-Mexico-Canada Agreement ("USMCA").⁵⁸ AEFTC also states the CBP verification team only toured a portion of the storage warehouse where MMC-produced parts from China were stored, not the storage warehouse as a whole, where MMC might have co-mingled Mexican automotive parts with automotive parts from other countries, including China.⁵⁹

Finally, AEFTC states that CBP should require MMC to correct the public version of the verification exhibits, and CBP itself should amend the public version of its verification report, to provide "meaningful information" in the public versions of those documents so that the parties can provide full comments on the key issues in the investigation.⁶⁰ With regard to this issue, the public versions of the verification exhibits and the verification report contain public summaries consistent with CBP's practice in other EAPA investigations.

AEFTC is correct that evidence on the record demonstrates MMC engaged in evasion of the AD/CVD orders, a conclusion that MMC does not seem to dispute. However, CBP did not

⁵⁵ *Id.* at 9, citing Verification Report at 14.

⁵⁶ *Id.* at 11-12.

⁵⁷ *Id.* at 10-11.

⁵⁸ *Id.* at 12-13.

⁵⁹ *Id.* at 12-13, citing Verification Report at 10.

⁶⁰ *Id.* at 1 and 13-16.

identify additional examples of evasion beyond those identified by MMC in an RFI response, which were examined by CBP during verification.⁶¹ AEFTC’s claim that there is evidence on the record of this EAPA investigation of additional evasion of the AD/CVD orders by MMC is not supported by the record, as discussed below.

The eyewitness observations of transshipment that AEFTC cites from its Allegation, by [sources of information], if they occurred, would have been at least [time period] prior to the beginning of the POI of this investigation.⁶² As for AEFTC’s claim that MMC’s shipments exceed its Mexican production capacity by several million parts per year because MMC only has two aluminum extrusion lines, that claim is unfounded, as the verification team noted there were [number and type] lines, [number] of which they observed in operation, and [number and description] at the time of the verification.⁶³ Furthermore, CBP noted that MMC’s estimated annual production capacity for just [number and type of lines] was [number] pieces,⁶⁴ which *exceeds* by over [number] the 2022 sales quantity of [number] pieces.⁶⁵ CBP determined the 2022 contract volume was [number] pieces,⁶⁶ which exceeds the estimated production capacity by approximately [number] pieces, and as noted above, AEFTC states it is implausible that a supplier would contract to provide more than it is able to supply; however, the [number] pieces production capacity estimate does not include either the production capacity of [manufacturing equipment] or the merchandise available to MMC from foreign suppliers located in multiple foreign countries, including but not limited to China.⁶⁷

Furthermore, as noted in the verification report, “{a} contract won does not mean that all items on the contract are [aspect of],”⁶⁸ meaning that not all the quantity agreed upon in some extended-period contracts need actually have been ultimately ordered by the buyer and supplied by the seller. In addition, some of MMC’s shipments were not imported into the United States, but went to other locations (*e.g.*, to plants in Mexico),⁶⁹ so aluminum extrusion automotive parts imported from China need not have ended up in U.S. entries, and as noted above, CBP did not find at verification any evidence of entries with merchandise that evaded the AD/CVD orders other than those that MMC had identified in an RFI response.⁷⁰ Finally, AEFTC’s analysis in its Allegation and in its Response to Written Argument comparing estimated production capacity to estimated shipments appears to assume that MMC acted as the importer for all entries of aluminum extrusions it shipped from Mexico to the United States, but there is no evidence on the record of this EAPA investigation supporting this conclusion.

⁶¹ See Verification Report at 16 and Attachment V.

⁶² See *e.g.* AEFTC Response to Written Argument at 8.

⁶³ See Verification Report at 3, 7, and 8.

⁶⁴ *Id.* at 10.

⁶⁵ *Id.* at 12.

⁶⁶ *Id.* at 12.

⁶⁷ See *e.g.* Supplier Nine RFI response at 21 (citing Attachment III-4) and 26 (citing Attachment IV-1).

⁶⁸ See Verification Report at 12.

⁶⁹ See *e.g.* Verification Report at 12, 13, and 14.

⁷⁰ Furthermore, the extent to which regional content requirements under the USMCA may or may not be violated by MMC is not pertinent with respect to a finding of evasion in this EAPA investigation, which involves AD/CVD duties, but in any case, the record of this EAPA investigation does not appear to contain evidence of any such USMCA violations.

Regarding the verification storage warehouse tour alluded to by AEFTC, CBP notes that the verification team toured “only the area” of that “[company name] storage warehouse” in which “they stored MMC parts.”⁷¹ The verification report notes that “MMC stated that this area of [company name],” which is [company name and description], “is used as a warehouse for MMC.”⁷² It is possible that aluminum extrusions from China may have been located in other portions of that [company name] facility, or, for that matter, in other areas in the country of Mexico, but CBP verification teams decide how to allocate their limited time for touring facilities, and the record does not contain evidence of specific transshipment of aluminum extrusions by MMC other than certain merchandise associated with the entries referenced above.

Although CBP did not find evidence of evasion beyond the few entries identified by MMC, a finding of substantial evidence of evasion is not dependent on the overall number of entries or volume of merchandise in question. Given MMC has evaded the AD/CVD orders, and there is a risk of additional evasion associated with MMC aluminum extrusions, measures beyond those just addressing the entries identified by MMC and CBP are warranted.

Summary of Extent of Evasion

CBP finds that MMC imported covered aluminum extrusions into the United States through evasion. As noted above, MMC identified the entries in question, and acknowledged evasion occurred.

Actions Taken Pursuant to the Affirmative Determination of Evasion

In light of CBP’s determination that MMC entered covered merchandise into the customs territory of the United States through evasion, and pursuant to 19 U.S.C. § 1517(d) and 19 C.F.R. § 165.28, CBP shall:

- (1) suspend or continue to suspend the liquidation of each unliquidated entry of such covered merchandise that entered on or after February 24, 2023, the date of the initiation of the investigation. CBP will suspend the entries subject to this investigation until instructed to liquidate these entries;
- (2) pursuant to the Commissioner’s authority under 19 U.S.C. § 1504(b), extend or continue to extend the period for liquidating each unliquidated entry of such covered merchandise that entered before February 24, 2023, the date of the initiation of the investigation; CBP will rate adjust and change those entries to type 03 and continue suspension until instructed to liquidate these entries; and
- (3) pursuant to the Commissioner’s authority under 19 U.S.C. § 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.⁷³

⁷¹ See Verification Report at 10.

⁷² *Id.*

⁷³ See also 19 C.F.R. § 165.24(b)(1)(i)-(iii).

Finally, CBP may pursue additional enforcement actions, as provided by law, consistent with 19 U.S.C. § 1517(h).

Sincerely,



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