

U.S. Customs and
Border Protection



November 16, 2018

PUBLIC VERSION

EAPA Case Number 7251

Mr. Jerry Monts de Oca
President, Worldwide Door Components, Inc.
5017 N. Coolidge Avenue
Tampa, FL 33614

Mr. Robert DeFrancesco
On behalf of Endura Products, Inc.
Wiley Rein LLP
1776 K Street, NW
Washington, DC 20006

Re: Notice of Initiation of Investigation and Interim Measures

Mr. Monts de Oca and Mr. DeFrancesco:

This letter is to inform you that U.S. Customs and Border Protection (“CBP”) has commenced a formal investigation under Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, commonly referred to as the Enforce and Protect Act (“EAPA”), into certain import transactions of Worldwide Door Components, Inc. (“Worldwide”). Specifically, CBP is investigating whether Worldwide evaded the antidumping (“AD”) order, A-570-967,¹ and countervailing duty (“CVD”) order, C-570-968,² on *Aluminum Extrusions from the People’s Republic of China* (hereinafter the “Orders”). Because the evidence thus far establishes a reasonable suspicion that Worldwide has entered merchandise into the United States through evasion, CBP has imposed interim measures pursuant to 19 C.F.R. § 165.24.

¹ *Aluminum Extrusions from the People’s Republic of China: Antidumping Order*, 76 Fed. Reg. 30650 (Dept. Commerce, May 26, 2011) (“Antidumping Order”).

² *Aluminum Extrusions from the People’s Republic of China: Countervailing Duty Order*, 76 Fed. Reg. 30653 (Dept. Commerce, May 26, 2011).

Period of Investigation

Pursuant to 19 C.F.R. § 165.2, an EAPA investigation covers “entries of alleged covered merchandise made within one year before the receipt of an allegation....” Entry is defined as “an entry for consumption, or withdrawal from warehouse for consumption, of merchandise in the customs territory of the United States.” *See* 19 C.F.R. § 165.1. CBP may, at its discretion, investigate other entries of covered merchandise and the period of investigation remains open until CBP has issued a final determination. *See* 19 C.F.R. § 165.2.

CBP received Endura Products, Inc.’s (“Endura”) properly filed allegation on July 20, 2018. Therefore, Worldwide’s entries covered by this investigation are those entries of door thresholds containing aluminum extrusions from the People’s Republic of China (“China”) that were entered for consumption, or withdrawn from warehouse for consumption, from July 20, 2017 through the pendency of this investigation. *See* 19 C.F.R. § 165.2.

Initiation

Endura alleged that Worldwide imported door thresholds containing Chinese origin aluminum extrusions into the United States without payment of requisite AD/CVD duties for merchandise covered by the orders. On August 10, 2018, the Trade Remedy Law Enforcement Directorate (“TRLED”) within CBP’s Office of Trade initiated an investigation under EAPA because the allegation submitted by Endura reasonably suggested evasion of AD and CVD duties.

Endura’s allegation provides documentation supporting Worldwide’s evasion of AD/CVD duties. Specifically, Endura’s allegation includes screenshots from Worldwide’s website, which indicate that USAWorldwide Door Components (Pinghu) Co., Ltd. (also referred to as “USA Worldwide”) is Worldwide’s Chinese manufacturing base for extrusion production lines, including Worldwide’s “4Ever Frame door jamb” and “ProT4 Aluminum Threshold.” The webpage shows photographs of the ProT4 threshold containing extruded aluminum components.³

Endura supplements the information regarding Worldwide’s Chinese manufacturing operations with public import data, indicating shipments from USA Worldwide to Worldwide in the United States. Commodity descriptions within the public data indicate that the merchandise shipped from USA Worldwide to Worldwide in the United States includes aluminum door thresholds.⁴

Because of the low prices that Worldwide charges its customers for its thresholds, Endura reasons that Worldwide’s importations of thresholds from China are entered into the United States as non-subject merchandise, and without the applicable AD/CVD duties. To support its claim, Endura submitted [

]. The [] indicates

³ *See* Allegation, at Exh. 1.

⁴ *See* Allegation, at Exh. 6 (citing [] import data for Worldwide from February 8, 2016 through July 27, 2018).

Worldwide's prices for finished door thresholds, as well as aluminum components of its door thresholds. Endura also provides a cost comparison, which indicates that Worldwide's sales prices are similar to, or lower than, Endura's costs for producing comparable items.⁵ To further support Endura's claim that Worldwide is evading AD/CVD duties, the allegation includes an affidavit attesting to a conversation between a representative from Endura and Worldwide's President and CEO, Jerry Monts de Oca. The affidavit states that Mr. Monts de Oca told Endura directly that Worldwide has been able to import large quantities of door thresholds from China because it was not paying any AD/CVD duties.⁶ According to the affidavit, Mr. Monts de Oca asserted to Endura that Worldwide is selling a "finished good" and therefore, the thresholds are not subject to the orders and therefore Worldwide is paying "zero" tariffs.

CBP will initiate an investigation if it determines that "[t]he information provided in the allegation...reasonably suggests that covered merchandise has been entered for consumption into the customs territory of the United States through evasion. *See* 19 C.F.R. § 165.15(b). 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 or 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 covered merchandise." *See* 19 C.F.R. § 165.1. Thus, the allegation must reasonably suggest not only that merchandise subject to an AD and/or CVD duty order was entered into the United States by the importer alleged to be evading, but that such entry was made by a material false statement or act, or material omission, that resulted in the reduction or avoidance of applicable AD and/or CVD duty cash deposits or other security. The evidence provided by Endura reasonably suggests that Worldwide imported door thresholds containing aluminum extrusions manufactured in China.

Products imported by Worldwide door Components, Inc. are door thresholds containing aluminum extrusions from China. The dispositive written description of the merchandise covered by A-570-967 and C-570-968 corresponds to the physical description and characteristics of the merchandise imported by Worldwide. The AD and CVD orders cover:

aluminum extrusions which shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying equivalents)...Subject extrusions may be identified with reference to their end use, such as fence posts, electrical conduits, **door thresholds**, carpet trim or heat sinks....Such goods are subject merchandise if they otherwise meet the scope definition, regardless of whether they are ready for use at the time of importation.⁷

⁵ *See* Allegation, Attachment A.

⁶ *See* Allegation, Exh. 5, citing a declaration from Bruce E. Procton, President, Endura Products.

⁷ *Antidumping Order*, 76 Fed. Reg. at 30650 (emphasis added).

Such goods are subject merchandise “if they otherwise meet the scope definition, regardless of whether they are ready for use at the time of importation.”⁸ Thus, it argues that door thresholds are explicitly included within the scope of these orders.

In its allegation, Endura provides evidence to support its claim that Worldwide Door Components, Inc. is importing subject merchandise without paying requisite AD/CVD duty deposits. In support of its claim, Endura references Worldwide’s website, which indicates that its Chinese supplier, USA Worldwide (Pinghu) manufactures door thresholds composed of aluminum extrusions. Endura submits public source data to confirm USA Worldwide shipments of aluminum thresholds to Worldwide. Endura also provides a [] from Worldwide that shows sales of door thresholds at prices that reasonably suggest that Worldwide is not paying AD/CVD duties on the imported products. Further, the allegation references a discussion between Endura and Worldwide’s president and CEO, Jerry Monts de Oca, in which Mr. Monts de Oca expressly states that Worldwide pays “zero” duties on its imports of door thresholds from China. For the foregoing reasons, TRLED determined on November 8, 2018, that the allegation reasonably suggests that Worldwide entered covered merchandise into the customs territory of the United States through evasion by a material false statement or act, or material omission, and initiated an investigation pursuant to 19 U.S.C. § 1517(b)(1).

Interim Measures

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

CBP data support Endura’s claim that Worldwide is not declaring its merchandise as subject to the orders. CBP data indicates that Worldwide had more than [] entry lines involving door thresholds imported from China, entered under the Harmonized Tariff Schedule of the United States subheading [] subject to the orders, nor did Worldwide pay any AD or CVD deposits upon entry of the merchandise.⁹

In statements made to Endura and referenced in the allegation, Worldwide contends that the thresholds it imports from China are specifically excluded from the scope of the orders under language that, “excludes finished merchandise containing aluminum extrusions as parts that are

⁸*Id.* 76 Fed. Reg. at 30651.

⁹*See* CBP’s Import Data for Worldwide, Nov. 14, 2018.

fully assembled and completed at the time of entry, such as finished windows with glass, doors with glass or vinyl, picture frames with glass pane and backing material, and solar panels.”¹⁰ However, in contesting Worldwide’s assertion, Endura submitted CBP rulings on tariff classification of aluminum door thresholds from China. The rulings consider merchandise similar to the door thresholds imported by Worldwide. In Ruling N142677, issued February 10, 2011, CBP determined that door thresholds made up of composite materials, including an aluminum extrusion, a PVC extrusion and an extruded PVC substrate, are to be classified as aluminum under HTS 7610.10.0020, as it is the aluminum component of the completed threshold that imparts the essential character of the product.¹¹ CBP Ruling N289949, issued September 29, 2017, reiterates the 2011 ruling that completed door thresholds containing aluminum and plastic or wood components are classifiable under HTS 7610.10.0020.¹²

The ruling further advises that the thresholds containing aluminum extrusions from China may be subject to antidumping and countervailing duties. Although CBP plays a ministerial role in enforcing AD/CVD orders determined by Commerce and does not make scope determinations, the rulings are significant in that they align the composite thresholds with the scope language, which states that “subject merchandise entered as parts of other aluminum products may be classifiable under the following Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99.”¹³ While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive. Endura contends that the written description expressly and plainly includes door thresholds, such as those exported by USA Worldwide (Pinghu) to Worldwide in the United States, to be within the scope of the orders.¹⁴

However, as evidenced by Endura’s submission of [], and confirmed with CBP data, Worldwide has not submitted cash deposits on its imports of aluminum door thresholds from USA Worldwide. Further, CBP has determined in rulings N142677 and N289949 that finished door thresholds containing aluminum extrusions are to be considered as products of aluminum. CBP issued these rulings in accordance with the General Rules of Interpretation (GRI’s). Goods consisting of more than one material or component, which are classifiable under two or more headings, are classified according to the principles of GRI 3. Specifically, GRI 3(b) states that composite goods consisting of different materials shall be classified according to the material which gives them their essential character. CBP has consistently determined that the essential character of composite door thresholds, such as those imported by Worldwide, is imparted by the aluminum component, and is thus considered an aluminum product, classified under 7610.10.0020. As the essential component of the product is an aluminum extrusion from China, the merchandise aligns with the scope language, which explicitly includes door thresholds as subject merchandise.

Worldwide President and CEO Jerry Monts de Oca made a unilateral determination that Worldwide’s imports of door thresholds were not subject to the scope, and therefore it would pay

¹⁰ *Antidumping Order*, 76 Fed. Reg. at 30651.

¹¹ See Allegation, Exh. 2

¹² See Allegation, Exh. 3.

¹³ See Allegation, at 5.

¹⁴ See Allegation, at 7.

“zero” duty deposits on its imports from USA Worldwide. Worldwide filed a scope clarification with Commerce on August 3, 2017, asking Commerce to exclude its imports from China of door thresholds containing aluminum extrusions from the scope of the orders. As the issue remains pending before Commerce, Worldwide continues to enter the merchandise without applicable AD/CVD duties.

The Federal Circuit has explained that, “[i]mporters cannot circumvent antidumping orders by contending that their products are outside the scope of existing orders when such orders are clear as to their scope.”¹⁵ Thus, Worldwide’s contention that the scope is unclear neither makes it unclear nor requires that CBP permit merchandise to come in without the required cash deposits. CBP will continue to administer the orders to include door thresholds at the AD/CVD rates determined by Commerce. The orders expressly include door thresholds as merchandise subject to A-570-967 and C-570-968. As such, CBP will require all applicable AD/CVD duty deposits upon the entry of these door thresholds.

The evidence provided by Endura in its allegation reasonably suggests that Worldwide is importing door thresholds from aluminum profiles extruded in China, and subject to the scope of A-570-967 and C-570-968. CBP data corroborates Endura’s public-source research indicating that Worldwide entered such merchandise without paying the requisite AD and CVD duty deposits upon entry. Further, applicable case law affirms that importers cannot avoid antidumping orders by contending that their products are outside the scope of the order, as Mr. Monts de Oca has done regarding Worldwide’s imports of door thresholds. TRLED thus concludes that based on the record evidence there is a reasonable suspicion that Worldwide has entered covered merchandise into the customs territory of the United States through evasion. *See* 19 U.S.C. § 1517(e); 19 C.F.R. §165.24(a).

As interim measures, CBP is directing that all unliquidated entries of imported merchandise under this investigation that entered the United States as not subject to AD/CVD duties will be rate-adjusted to reflect that they are subject to the AD/CVD orders on aluminum extrusions from China and cash deposits are now required. Additionally, “live entry” is required for all future imports of aluminum door thresholds from China, meaning that all entry documents and duties must be provided before cargo is released by CBP into the U.S. commerce. CBP will reject any entry summaries and require a refile for those that are within the entry summary reject period; suspend the liquidation for any entry that has entered on or after August 10, 2018, the date of initiation of this investigation; as well as extend the period for liquidation for all unliquidated entries that entered before that date. *See* 19 CFR § 165.24(b)(1)(i) and (ii). Further, CBP will evaluate Worldwide’s continuous bonds and will require single transaction bonds as appropriate.

For any future submission or factual information that you submit to CBP pursuant to this EAPA investigation, please provide a public version to CBP, as well as to Mr. Robert DeFrancesco, counsel for Endura, at trade@wileyrein.com. *See* 19 C.F.R. §§ 165.4, 165.23(c), and 165.26. Should you have any questions regarding this investigation, please feel free to contact us at epaallegations@cbp.dhs.gov.

¹⁵ *See AMS Assocs. v. United States*, 737 F.3d 1338, 1344 (Fed. Cir. 2013)

Please include “EAPA Case Number 7251” in the subject line of your email. Additional information on these investigations, including the applicable statute and regulations, may be found on CBP's website at: <https://www.cbp.gov/trade/trade-enforcement/tftea/enforce-and-protect-act-eapa>.

Sincerely,

A handwritten signature in black ink that reads "Carrie L. Owens". The signature is written in a cursive, flowing style.

Carrie L. Owens
Director
Enforcement Operations Division
Trade Remedy Law Enforcement Directorate
Office of Trade