



U.S. Customs and Border Protection

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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
Wiley Rein, LLP
1776 K Street NW
Washington, DC 20006

Re: Notice of Final Determination as to Evasion

Dear Mr. Monts de Oca and Mr. DeFrancesco:

Pursuant to an examination of the record in Enforce and Protect Act (“EAPA”) Investigation Number 7251, U.S. Customs and Border Protection (“CBP”) has determined that there is substantial evidence that Worldwide Door Components, Inc. (“Worldwide”) entered into the customs territory of the United States through evasion merchandise covered by antidumping duty (“AD”) order A-570-967¹ and countervailing duty (“CVD”) order A-570-968² on *Aluminum Extrusions from the People’s Republic of China* (hereinafter the “Orders”). Substantial evidence demonstrates that Worldwide imported Chinese-origin aluminum extrusions into the United States and entered the merchandise “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.

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

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

Background

On August 10, 2018, CBP initiated an investigation pursuant to Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, commonly referred to as the “Enforce and Protect Act” or “EAPA.” On July 20, 2018, CBP acknowledged receipt of an allegation, properly filed by Endura Products, Inc. (“Endura”), a U.S. producer of a domestic like product. The allegation, which was filed on July 5, 2018, reasonably suggested that Worldwide evaded the payment of cash deposits on entries of aluminum extrusions produced in China. In its allegation, Endura claimed that Worldwide imported door thresholds containing Chinese-origin aluminum extrusions into the United States without payment of the requisite AD and CVD duties for merchandise covered by the orders.³ In accordance with 19 C.F.R. § 165.2, this investigation covers entries that were entered for consumption, or withdrawn from a warehouse for consumption, from July 20, 2017, one year before receipt of the allegation, through the pendency of the investigation. At CBP’s discretion, CBP may investigate other entries of covered merchandise and the period of investigation remains open until CBP has issued a final determination.

The scope of the orders state, in relevant part, that subject merchandise “may be identified with reference to their end use, such as fence posts, electrical conduits, *door thresholds* (emphasis added), carpet trim, or heat sinks (that do not meet the finished heat sink exclusionary language).”⁴ The Orders also state that imports of the subject merchandise may be classifiable under subheading 7610.10.00 of the Harmonized Tariff Schedule of the United States (HTSUS), which covers imports of doors, windows and their frames and thresholds for doors. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the orders is dispositive.

On November 16, 2018, CBP issued a formal notice of initiation of investigation (“NOI”) and notified the interested parties of CBP’s decision to impose interim measures in accordance with 19 C.F.R. § 165.24 based upon a reasonable suspicion that Worldwide had entered covered merchandise into the customs territory of the United States through evasion. In reaching its decision to impose interim measures, CBP relied on information provided by Endura in its allegation, as well as CBP data which corroborated Endura’s claims.

In its allegation, Endura provided public import data detailing imports to Worldwide from USA Worldwide Door Components (Pinghu) Co. Ltd. (“USA Worldwide”) in China.⁵ Commodity descriptions within the public import data indicate that the merchandise shipped from USA Worldwide to Worldwide in the United States included aluminum door thresholds. Endura’s allegation includes screenshots from Worldwide’s website, which indicates that USA Worldwide is Worldwide’s Chinese manufacturing base for extrusion product lines, including Worldwide’s “4Ever Frame door jamb” and “ProT4 Aluminum Threshold.”⁶ The webpage posts photographs of the ProT4 threshold containing extruded aluminum components.

³ See Allegation at 2.

⁴ See *Antidumping Duty Order* at 30651, *Countervailing Duty Order* at 30654.

⁵ See Allegation, Exh. 6. (citing [] import data for Worldwide from February 8, 2016 through July 27, 2018).

⁶ See Allegation, Exh. 1.

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 paying the applicable AD/CVD duties. To support its claim, Endura submitted [

]. The [] indicates Worldwide's prices for finished door thresholds, as well as aluminum components of its door thresholds. Endura also provided a cost comparison, which indicates that Worldwide's sales prices are similar to, or lower than, Endura's production costs for comparable items.⁷ 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.⁸ 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 Worldwide is paying "zero" tariffs.

Based on the evidence above, CBP found that it had reasonable suspicion that Worldwide was evading the AD and CVD orders on aluminum extrusions by importing door thresholds containing aluminum extrusions manufactured in China, and failing to pay the requisite AD/CVD deposits upon entry into the United States.

Final Determination as to Evasion

19 CFR §165.27(a) requires CBP to "make a determination based on substantial evidence as to whether covered merchandise was entered into the customs territory of the United States through evasion." "Covered merchandise" is defined by 19 CFR §165.1 as "merchandise that is subject to a CVD order and/or an AD order." As discussed below, the record of this investigation indicates that substantial evidence exists to determine that Worldwide entered covered merchandise into the United States through evasion, defined as entering merchandise "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.

In its submission of written arguments, Worldwide contends that because there is "no credible basis for determining that Worldwide entered covered merchandise through evasion, the finding of evasion is not supported by substantial evidence in the record," and CBP must issue a negative determination of evasion.⁹ In support of this claim, Worldwide cites to its interpretation of the plain reading of the scope of the orders in asserting that "its multi-component finished door thresholds containing aluminum extrusions as parts are excluded from the Orders as 'finished

⁷ *See* Allegation, Attachment A.

⁸ *See* Allegation, Exh. 5, citing a declaration from Bruce E. Procton, President, Endura Products.

⁹ *See* Written Argument of Worldwide Door Components, Inc. EAPA Investigation 7251, May 6, 2019, at 3. ("Worldwide Written Arguments").

merchandise.”¹⁰ However, the scope of the orders clearly indicates that subject merchandise may be identified with reference to its end use, such as door thresholds, and that subject merchandise falls under HTSUS subheading 7610.10. Substantial evidence exists that Worldwide entered door thresholds containing aluminum extrusions produced in China that would fall under HTSUS subheading 7610.10 during the period of investigation.¹¹

Further, as Worldwide was a participant in the original U.S. Department of Commerce (“Commerce”) investigation process and requested and received a separate AD rate, under A-570-967-028, for its subject merchandise, it should be aware that the original petition expressly included door thresholds in the scope of the investigation.¹² In its written arguments, Endura notes that the petition specified that “subject extrusions may be identified as other goods, such as door thresholds” and also described the uses of subject aluminum extrusions, noting, for instance, that “aluminum extrusions are incorporated into window and door frames and sills, curtain walls, thresholds, and gutters.”¹³ In addition, one of the exhibits to the petition that listed examples of subject merchandise provided “door thresholds” as a specific example of “[a]luminum extrusions that are also identified as other goods.”¹⁴ Endura also notes that Commerce observed that in response to a supplemental questionnaire in the original investigation, the petitioner explained that it “clarified that certain covered extrusions may be final, finished goods in and of themselves.” Thus, they would be identified according to function or use in providing proposed scope language clarifying the coverage of door thresholds among other types of products.¹⁵

Worldwide also claims to have acted in good faith by seeking and acting in accordance with guidance from CBP in determining whether its door thresholds were within the scope of the orders.¹⁶ Specifically, Worldwide avers that it sought and followed the recommendations of CBP, which [

[]¹⁷ Worldwide’s query was in reference to entry number []4834, entered on [], which, according to Worldwide, was [

[]¹⁸ In seeking to amend the entry, Worldwide sought the assistance of CBP to []. On May 23, 2016, Worldwide corresponded via email to [

¹⁰ *Id.* at 4.

¹¹ AD Order at 30651.

¹² See Written Arguments of Endura Products, Inc. for EAPA Investigation 7251, at 2 (May 6, 2019) (“Endura Written Arguments”); see also Letter from Michael J. Heaney, Sr. Int’l Trade Compliance Analyst, to James Maeder, Assoc. Dep’y Asst. Sec’y, re: *Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People’s Republic of China: Final Scope Rulings on Worldwide Door Components Inc., MJB Wood Group Inc., and Columbia Aluminum Products Door Thresholds* (Dec. 19, 2018) (“Door Thresholds Scope Ruling”).

¹³ *Id.* at 9.

¹⁴ *Id.*

¹⁵ Endura Written Arguments at 9-10 (quoting Door Thresholds Scope Ruling at 35 (quoting Petitioner’s April 9, 2010 Scope Letter at Attachment 3)).

¹⁶ See Worldwide Written Arguments at 3.

¹⁷ *Id.* at 5.

¹⁸ See Worldwide Submission of Factual Information, April 8, 2019, detailing email exchange with [].

The email correspondence included Worldwide's argument for

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However, on June 23, 2016, CBP issued to Worldwide a "Request for Information" under standard CBP Form 28 ("CF-28"), requesting that Worldwide provide documentation for entry []4818, which included [] door thresholds from China classified under HTSUS subheading 7610.10.²² Subsequently, on June 28, 2016, CBP issued a standard CBP Form 29 ("CF-29") to Worldwide, proposing to [] []4834 and []4818 [].²³ In the CF-29, CBP noted that []

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Finally, on July 12, 2016, CBP issued a follow-up "Request for Information" under standard Form 28 ("CF-28") to Worldwide

]. In the CF-28, CBP stated that

"[

.]"²⁴

In its written arguments, Worldwide contends that since no formalized notice of "action taken" on the entries in question was issued, CBP "evidently" agreed with Worldwide's position that its

¹⁹ *Id.*

²⁰ *Id. see also Rubbermaid Commercial Prods. LLC v. United States*, Slip Op. 15-79, 2015 WL 4478225 (Ct. Int'l Trade July 22, 2015).

²¹ *Id.*

²² See Customs Form 28, issued to Worldwide June 23, 2016.

²³ See Customs Form 29, issued to Worldwide June 28, 2016.

²⁴ See Customs Form 28, issued to Worldwide July 12, 2016.

door thresholds are excluded from the scope of the orders.²⁵ Worldwide bases this on the erroneous supposition that the entries were []. However, as indicated in the CF-29 issued by CBP on June 28, 2016, [

.²⁶ Further, for entries []4834 and []4818, [

].²⁷

Worldwide's assertion that it exercised reasonable, even "extraordinary" care by seeking and acting in accordance with guidance from CBP and Commerce on the entry of its door thresholds containing aluminum thresholds from China does not align with the record of this investigation.²⁸ First, [

]. Further, CBP has ruled that multi-component door thresholds containing aluminum extrusions are classified under HTSUS subheading 7610.10, as the essential character of the threshold is imparted by the aluminum extrusion.²⁹ This formal ruling was issued on February 10, 2011. While the classification ruling is not determinative of scope, it at least acknowledges CBP's ambiguity on the matter, and provides the opportunity for importers of multi-component door thresholds entered under HTSUS 7610.10 the opportunity to seek clarification from Commerce through a formal scope ruling request. Worldwide did not avail itself to this opportunity until August, 2017, and continued to enter subject merchandise without the requisite AD/CVD duty deposits.

Worldwide correctly asserts that CBP maintains a 'ministerial function of fixing 'the amount of duty to be paid' on subject merchandise," and that "Customs makes factual findings to ascertain what the merchandise is, and whether it is described in an order."³⁰ CBP exercised its ministerial function by determining in its June 28, 2016 CF-29 and July 12, 2016 CF-28 that [

The February 10, 2011 CBP ruling at least raised doubt about whether multi-composite door thresholds were within the scope, and negates Worldwide's contention that a "plain reading of the scope" excludes Worldwide's multi-composite door thresholds from the scope of the Orders. By neglecting to heed the language in CBP's 2011 classification ruling and [

], as outlined in the June 28, 2016 CF-29 and July 12, 2016 CF-28, as well as language submitted during the original petition process to explicitly include finished door thresholds within the scope of the orders, it is difficult to allow that Worldwide exercised reasonable, much less "extraordinary," care in determining whether or not its multi-component door thresholds containing aluminum extruded in China were within the scope of the orders.

²⁵ See Worldwide Written Arguments at 8.

²⁶ See Customs Form 29, issued to Worldwide June 28, 2016.

²⁷ *Id.*

²⁸ See Worldwide Written Arguments at 5.

²⁹ See Endura Allegation, Exh. 2, submitting CBP Ruling N142677.

³⁰ See Worldwide Written Arguments at 7.

Second, Worldwide avers that it acted in good faith by seeking guidance from Commerce via its submission of a scope ruling request. However, Worldwide did not file a formal Commerce scope request until August 7, 2017, which is more than six years after the issuance of the orders, and more than one year after CBP's action and guidance to Worldwide indicating that []. Worldwide itself participated in the original AD investigation and was on notice as to the scope language of the investigations and final orders to include door thresholds. Further, Worldwide's Chinese manufacturer, USA Worldwide, requested and received a separate rate in the original AD investigation for subject merchandise.³¹ USA Worldwide's separate rate, which it had until recently, covered all subject merchandise and did not distinguish among the different merchandise containing aluminum extrusions and shipped to Worldwide in the United States.³²

The record evidence in this investigation indicates that Worldwide did not adequately or timely avail itself to language in the original AD investigation and Commerce's final scope determination indicating that door thresholds with an extruded aluminum component is within the scope of the orders. Nor did Worldwide adhere to guidance from CBP indicating that [

]. Thus, Worldwide's contention that good faith, plain reading of the scope of the orders does not align with the record of this investigation as to evasion.

Finally, on December 19, 2018, Commerce issued its final scope ruling ("Door Threshold Scope Ruling") on Worldwide's door thresholds.³³ In its ruling, Commerce determined that the extruded aluminum components in Worldwide's door thresholds "may be described as parts for final finished products, *i.e.*, parts for doors, which are assembled after importation (with additional components) to create the final finished product, and otherwise meet the definition of in-scope merchandise."³⁴ The December 19, 2018 ruling reiterated Commerce's clear intent to include multi-component door thresholds within the scope of the orders. Moreover, the Door Threshold Scope Ruling indicated that

{t}he scope of the *Orders* also expressly covers aluminum extrusions that may be identified with reference to their end-use, such as door thresholds:

{S}ubject extrusions may be identified with reference to their end use, such as fence posts, electrical conduits, door thresholds, carpet trim, or heat sinks (that do not meet the finished heat sink

³¹ See Endura Written Arguments at 12.

³² *Id.* at 12-13, detailing the sixth administrative review of the AD Order, under which Commerce determined that USA Worldwide Door Components (PINGHU) Co., Ltd. did not demonstrate its eligibility for a separate rate and is now considered part of the China-wide entity. Accordingly, CBP issued liquidation instructions providing that all shipments of aluminum extrusions from China exported by USA Worldwide and the other companies found to be part of the China-wide entity that were entered, or withdrawn from warehouse, for consumption during the period of review at issue, *i.e.*, May 1, 2016 through April 30, 2017, shall be assessed an AD liability equal to 86.01 percent of the entered value of subject merchandise.

³³ See Memorandum from Michael J. Heaney, Senior Int'l Trade Compliance Analyst, to James Maeder, Associate Deputy Assistant Sec'y, re: *Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People's Republic of China: Final Scope Rulings on Worldwide Door Components Inc., MJB Wood Group Inc., and Columbia Aluminum Products Door Thresholds* (Dec. 19, 2018) ("Door Thresholds Scope Ruling").

³⁴ *Id.* at 33.

exclusionary language below). 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.

Thus, the plain language of the scope of the *Orders* specifies that ‘door thresholds’ are included within the scope ‘if they otherwise meet the scope definition, regardless of whether they are ready for use at the time of importation.’ In light of the above, we find that... Worldwide’s ... door thresholds are within the scope of the *Orders*.³⁵

Commerce further clarified that Worldwide’s reliance on *Rubbermaid* as to a “plain reading of the scope” is invalid, as the products involved in the *Rubbermaid* decision were not

specifically described within the *Orders* as either in-scope, or outside-scope. Because those products were not specifically identified in the scope language, the determinations involved an analysis as to whether the scope exclusion for finished merchandise applied. Here, based on the specific inclusion of ‘door thresholds’ within the scope of the *Orders*, we agree with the petitioner that the finished merchandise scope exclusion is inapplicable with respect to the products at issue in these scope requests.³⁶

Commerce issued its scope ruling in accordance with 19 C.F.R. § 351.225(k)(1), which indicates that Commerce only has to examine “{t}he descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary {of Commerce} (including prior scope determinations) and the {U.S. International Trade} Commission.” In other words, as stated by Endura, “Commerce found that the meaning and scope of the Orders is clear, and that door thresholds are and always have been covered by the scope. The Court of Appeals for the Federal Circuit ... has made clear that Commerce is not required to initiate a formal scope inquiry ‘when the meaning and scope of an existing {AD/CVD} order is clear.’”³⁷

In conclusion, the record contains substantial evidence that the door thresholds shipped by USA Worldwide to the United States and imported by Worldwide were entered into the customs territory of the United States without the requisite AD and CVD duties. Therefore, pursuant to 19 CFR §165.27(a), CBP finds that there is substantial evidence that Worldwide entered covered merchandise into the customs territory of the United States through evasion, and that such imports are covered by AD order A-570-967 and CVD order C-570-968.

Actions Taken Pursuant to the Affirmative Determination of Evasion

In light of CBP’s determination that Worldwide 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 will continue to suspend the liquidation for any entry of multi-component door thresholds containing aluminum extrusions imported by Worldwide from China that entered on

³⁵ *Id.* at 34.

³⁶ *Id.* at 37.

³⁷ See Endura Written Arguments at 10.

or after August 10, 2018, the date of initiation of this investigation. CBP will continue to extend the period for liquidation for all unliquidated entries that entered before that date until instructed to liquidate these entries. For future entries, CBP will continue to require live entry, which requires that the importers post the applicable cash deposits prior to the release. Finally, CBP will evaluate the continuous bond of the importer in accordance with CBP's policies, and may require single transaction bonds as appropriate. None of the above actions precludes CBP or other agencies from pursuing additional enforcement actions or penalties.

Sincerely,

Regina Walton

Regina Walton
Acting Director, Enforcement Operations Division
Trade Remedy & Law Enforcement Directorate
CBP Office of Trade