



U.S. Customs and Border Protection

PUBLIC VERSION

September 12, 2023

Midwest Livestock Systems, LLC
aka AMVC-Midwest LLC
3600 N. 6th Street
Beatrice, NE 68310

Hog Slat, Inc.
c/o Gregory S. McCue
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RE: Notice of Initiation of Investigation and Interim Measures - EAPA Case 7818

To Mr. McCue and the Representative of Midwest Livestock Systems, LLC:

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). Specifically, CBP is investigating whether Midwest Livestock Systems, LLC aka AMVC-Midwest LLC¹ (Midwest Livestock) evaded antidumping duty (AD) and countervailing duty (CVD) orders A-570-947 and C-570-948,² by entering into the United States Chinese-origin steel grating in the form of “tri-bar flooring” that was not declared as covered merchandise. Based on a review of available information, CBP has determined that there is reasonable suspicion of evasion of AD/CVD duties by Midwest Livestock; therefore, CBP has imposed the interim measures outlined below.

Period of Investigation

Pursuant to 19 CFR 165.2, entries covered by an EAPA investigation “are those entries of allegedly covered merchandise made within one year before the receipt of an allegation”³

¹ The Allegation and Minnesota’s, Iowa’s, and Nebraska’s Secretary of State websites indicate that AMVC, LLC is Midwest Livestock’s parent company and that AMVC-Midwest LLC is an alternate name for Midwest Livestock Systems, LLC. 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) at 4-5 and Attachments 9-10; 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) at Attachment A.

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) (collectively, the *Orders*).

³ See 19 CFR 165.2.

Entry is defined as an “entry for consumption, or withdrawal from warehouse for consumption, of merchandise in the customs territory of the United States.”⁴ Hog Slat Inc. (the Alleger) filed an EAPA allegation against Midwest Livestock on March 28, 2023.⁵ On May 16, 2023, CBP acknowledged receipt of the properly filed EAPA allegation.⁶ Therefore, the entries covered by the period of investigation (POI) are those entered for consumption, or withdrawn from warehouse for consumption, from May 16, 2022, through the pendency of this investigation.⁷

Initiation

CBP will initiate an investigation if it determines that “{t}he information provided in the allegation...reasonably suggests that the covered merchandise has been entered for consumption into the customs territory of the United States through evasion.”⁸ Evasion is defined as “the entry of covered merchandise into the customs territory of the United States for consumption by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material, and that results in any cash deposit or other security or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the covered merchandise.”⁹ Thus, the allegation must reasonably suggest not only that merchandise covered by an AD and/or CVD order was entered into the customs territory of the United States by the importer alleged to be evading, but also that such entry was made with a material false statement or act, or material omission, that resulted in the reduction or avoidance of applicable AD and/or CVD cash deposits or other security.

In assessing the claims made and evidence provided in the Allegation, CBP found that the information provided by the Alleger reasonably suggests that Midwest Livestock is evading the *Orders* through the misclassification of steel grating from China and has failed to report the merchandise as covered by the *Orders*.¹⁰ On June 7, 2023, the Trade Remedy Law Enforcement Directorate, within CBP’s Office of Trade, initiated an investigation under EAPA as a result of the Allegation submitted by the Alleger regarding the evasion of AD/CVD duties by Midwest Livestock.¹¹

In its Allegation, the Alleger states that Midwest Livestock entered covered steel grating from China, specifically “tri-bar flooring,” either as a standalone product or as part of a package of components used to construct swine products (*e.g.*, farrowing crates and gestation pens), and that Midwest Livestock has done so without payment of applicable AD/CVD duties.¹²

⁴ See 19 CFR 165.1.

⁵ See Allegation. The Allegation was dated March 24, 2023, but it was submitted to CBP on March 28, 2023. See also Allegation Supplement.

⁶ See CBP Email, “EAPA 7818 – Official Receipt of Properly Filed Allegation,” dated May 16, 2023.

⁷ See 19 CFR 165.22.

⁸ See 19 CFR 165.15(b).

⁹ See 19 CFR 165.1.

¹⁰ See CBP’s Memorandum, “EAPA Allegation 7818: Initiation of Investigation,” dated June 7, 2023.

¹¹ *Id.*

¹² The Alleger uses the term “tri-bar flooring” in the Allegation as an umbrella term encompassing the pertinent steel grating products imported by Midwest Livestock. The Alleger contends these products may also be referred to as “MLS tri-flooring,” “tri-flooring,” or by other trade names. Also, MLS is Midwest Livestock’s acronym for itself. See Allegation at 2, 5, and at Attachment 8, page 2.

The Alleger contends that the plain language of the scope of the *Orders* covers “certain steel grating, consisting of two or more pieces of steel, including load-bearing pieces and cross pieces, joined by any assembly process...”¹³ According to the Alleger, Midwest Livestock’s tri-bar flooring satisfies this definition, consisting of two or more pieces of steel that are joined together by welding. The Alleger further notes that Midwest Livestock’s tri-bar flooring does not meet any of the exclusions contained within the scope of the *Orders*; namely, it is not “expanded metal grating” or “plank type safety grating.”¹⁴

The Alleger notes that both CBP and the U.S. Department of Commerce (Commerce) have already determined that tri-bar flooring is covered merchandise under the *Orders*.¹⁵ According to the Alleger, these determinations apply both to tri-bar flooring imported as a standalone product, and also to tri-bar flooring imported as part of an assembly to construct a range of different swine products (in this case, farrowing systems, farrowing crates, nursery flooring systems, and nursery confinement systems).¹⁶ The Alleger notes that Midwest Livestock imports, markets, and sells these products.¹⁷

The Alleger observes that Midwest Livestock’s website and marketing materials indicate it supplies its “customers with equipment, systems, supplies, and replacement parts for swine, dairy, and poultry barns.”¹⁸ Among these materials, the Alleger remarks that Midwest Livestock’s product catalog offers “Tri-Floor All Metal Flooring” described as “an extra heavy duty hot-dipped galvanized creep flooring,” which is a form of steel grating and, thus, subject to the *Orders*.¹⁹ The Alleger further noted that “Midwest Livestock also offers certain downstream products that include this imported tri-bar flooring, such as farrowing crates and gestation pens.”²⁰ Thus, the Alleger claims that Midwest Livestock is an importer and seller of multiple products containing covered merchandise.

The Alleger provided an affidavit indicating that Midwest Livestock’s current U.S. pricing for tri-bar flooring wiring is not feasible without AD/CVD evasion.²¹ The Alleger provided an

¹³ See Allegation at 6; see also the *Orders*. The Alleger notes that the International Trade Commission’s Final Report provides additional confirmation that the importers’ tri-bar flooring is covered merchandise. See Allegation at 7-8, citing *Certain Steel Grating from China, Investigation Nos. 701-TA-465 and 731-TA-1161 (Final)*, Publication 6148 (July 2010) (*ITC Final Report*). The *ITC Final Report* may be found in Attachment 12 of the Allegation.

¹⁴ See Allegation at 6-7; see also the *Orders*.

¹⁵ See Allegation at 2, 8-9, citing CBP’s Letter, “Notice of Determination as to Evasion,” dated June 21, 2021 (EAPA Consolidated Case 7474); Commerce Memorandum to Scot Fullerton, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Certain Steel Grating from the People’s Republic of China: Scope Ruling on Pig Farrowing Crates and Farrowing Floor Systems,” dated May 11, 2021; and CBP’s Letter, “Notice of Initiation of Investigation and Interim Measures, Consolidated Case No. 7730,” dated October 26, 2022. These three documents may be found in Attachments 4-6 of the Allegation.

¹⁶ *Id.*

¹⁷ *Id.* at 3 and Attachments 7-8, 10-11.

¹⁸ *Id.* at 4-5, and Attachments 8-9.

¹⁹ *Id.* at 5-6 and Attachments 10-11.

²⁰ *Id.*

²¹ *Id.* at Attachment 7.

example of [SITUATION DESCRIPTION].²² In this example, the Allegor describes how [

EVENT DESCRIPTION

].²³ The Allegor notes that [SITUATION DESCRIPTION].²⁴ The Allegor also notes that the applicable cash deposit rates typically are 62.46 percent (CVD all-others rate) to 145.18 percent (AD China-wide rate), and as such, should be adding approximately 200 percent to Midwest Livestock's prices, if they are paying cash deposits.²⁵

The Allegor submitted import trade data which indicates that Midwest Livestock entered [DESCRIPTION] quantities of covered merchandise.²⁶ The Allegor provided an affidavit which indicates that [PROCEDURE DESCRIPTION], according to the Allegor's understanding of the commercial marketplace.²⁷ Multiple [SITUATION DESCRIPTION].²⁸ Thus, record evidence indicates that Midwest Livestock is entering covered merchandise.

Interim Measures

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

CF28 Responses and Analysis

On June 16, 2023, CBP issued CBP Form 28 (CF28) requests for information to Midwest Livestock on a December 2022 entry, [#]6001, and a March 2023 entry, [#]9740.²⁹ In these CF28s, CBP requested documentation pertaining to the merchandise's raw materials, production, sales, transportation, and payment. Midwest Livestock submitted its responses to these CF28s on July 19, 2023, and July 24, 2023.³⁰

²² *Id.* at 10-11 and Attachment 7.

²³ *Id.*

²⁴ *Id.*

²⁵ *See the Orders.*

²⁶ *See Allegation at 2-3 and Attachment 3.*

²⁷ *Id.* at 2-3 and Attachments 3 and 7.

²⁸ *Id.* at Attachment 3.

²⁹ *See Midwest Livestock's CF28 responses, dated July 19, 2023, and July 24, 2023 (CF28 Responses).*

³⁰ *Id.*

Midwest Livestock's CF28 responses indicate that they imported the covered merchandise from Bai Mu Da LLC (Bai Mu Da) in China. It appears that many of the documents and explanations contained in Midwest Livestock's CF28 responses were provided by Bai Mu Da. In its explanations, Bai Mu Da stated:

Tri Floors are carbon steel floors decks {sic}, will be install{ed} in pig farrowing barns.... Ductile Wedge and Bolts are used to fasten pens to Concrete Slats inside pig barns. Ductile Wedge are made of ductile, ductile will be melted then inject{ed} into molds, then a T shipe {sic} of ductile wedge is the final product.... Tri Floor facotry {sic} can produce [#] tons per day; The ductile factory can process Ductile Wedges about [#] pcs per day{.}

Ductile wedges are listed in the same proforma invoice as tri-floors.³² Bai Mu Da sources its ductile wedges from a factory named [COMPANY NAME]. As noted, Bai Mu Da stated that its ductile wedges were “made of ductile.” Elsewhere in the CF28 response, a material test report referred to ductile wedges as “Cast Iron T wedge{s}” that were composed of QT450-10, which is a category of ductile iron.³³ As such, Bai Mu Da's references to material made out of “ductile” indicate that they are composed of cast iron. Notably, entry 6001's invoices list denotes three invoices for ductile floors.³⁴ Thus, ductile floors appear to be floors that are composed of ductile cast iron and so are not covered by the scope of the *Orders* on steel grating.

In contrast, entry 6001's invoices list also denotes three invoices for tri floors.³⁵ Bai Mu Da sources its tri-floors from a factory named [COMPANY NAME].³⁶ Bai Mu Da's explanation for entry 6001 quoted above confirmed that its tri-floors are composed of carbon steel.³⁷ Entry 6001's proforma invoices and packing lists indicated that the tri-floor's material was Q235, which is a Chinese steel category.³⁸ As such, its tri-floors are composed of an in-scope material. Furthermore, the fact that Bai Mu Da lists tri-floors covered by the *Orders* separate from ductile floors that are not covered by the *Orders* indicates that Bai Mu Da distinguishes between the two kinds of flooring.

Entry 6001's proforma invoice contained four photographs of entry 6001's tri-floors. Although these photographs were black and white and fairly small, the tri-floors depicted in them have the same appearance as several of the Allegation's steel grating photographs.³⁹ In particular, the proforma invoice's top tri-floor photograph appears to depict steel grating with two or more intersecting pieces of Q235 steel, including load-bearing pieces and cross pieces that are joined

³¹ *Id.*

³² *Id.*

³³ *Id.*; see also CBP Memorandum, “Adding Information to the Administrative Record of EAPA 7818,” dated September 8, 2023 (September Memorandum) at Attachment 1 concerning QT450-10.

³⁴ See CF28 Responses at Invoices Group 142 and Invoices Group 145.

³⁵ *Id.* at Invoices Group 144 and Invoices Group 145.

³⁶ *Id.*

³⁷ *Id.*

³⁸ See September Memorandum at Attachment 1 concerning Q235 steel.

³⁹ See Allegation at Attachment 1, pages 1, 5, and Attachment 4, page 14.

together.⁴⁰ As such, the tri-floors' material and depiction correspond to covered steel grating as described in the *Orders*.⁴¹

Midwest Livestock's CF28 response contained a purchase order indicating that the tri-floor factory purchased seamless pipes, square tubes, and round rods.⁴² Because tri-floors are composed of multiple pieces of steel, the factory appears to have manufactured its tri-floors by joining some combination of these pipes, tubes, and rods.⁴³ This is corroborated by the photographs of tri-floor in the previously mentioned Bai Mu Da invoice, which showed tri-floor composed of two or more intersecting pieces of Q235 steel.⁴⁴ It is further corroborated by photographs that a CBP official took of Bai Mu Da's tri-floors, which are discussed in this notice's Cargo Exam section.⁴⁵ These photographs show tri-floor composed of two or more intersecting pieces of Q235 steel.⁴⁶ Additionally, it is relevant that these intersecting pieces of steel were joined. The scope of the *Orders* state that steel grating consists of "two or more pieces of steel, including load-bearing pieces and cross pieces, joined by any assembly process...."⁴⁷ Regarding its joining method, Bai Mu Da provided a photograph of a welding machine and a production flow chart showing that the factory welds the parts together after it cuts them and/or punches holes in them (such as for bolts).⁴⁸

Entry 6001's bills of lading, arrival notice, and entry/immediate delivery form denote that the shipment contained tri-floors.⁴⁹ The above evidence indicates that Midwest Livestock entered tri-floors covered by the *Orders* into the United States, and entry 6001's entry summary indicates that Midwest Livestock did not pay AD/CVD duties.

Midwest Livestock's CF28 responses indicate that Midwest Livestock paid Bai Mu Da for the tri-floors. The CF28 responses provided two payment invoices for entry 6001's tri-floors. These invoices' total amounts, \$[#] and \$[#], were also listed in a larger chart of invoices. In this chart, the \$[#] amount was part of Invoices Group 144's total, \$[#]. The [#] amount was part of Invoices Group 145's total, \$[#]. Bai Mu Da provided two "[FORM NAME]" forms for the [BANK NAME]. These forms indicate that Midwest Livestock paid Bai Mu Da \$[#] on [DATE], 2022 and \$[#] on [DATE], 2022.

Midwest Livestock also paid Bai Mu Da for the tri-floors listed on three additional invoices. Entry 9740's documents included invoice number [#], which indicated it was composed of various gestation pen parts, such as feed tubes and gates. This invoice number and its product description ("additional parts") were listed in the chart Invoices Group 147. This chart also listed six other invoice numbers and their product descriptions, three of which denoted that they

⁴⁰ See CF28 Responses. The proforma invoice states "Material: Q235." Q235 is a type of steel. Therefore, the intersecting pieces, load-bearing pieces, and cross pieces are Q235 steel.

⁴¹ See Allegation at Attachments 2A-2B; see also the *Orders*.

⁴² *Id.*; see also the *Orders*.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ See September Memorandum at Attachment 4.

⁴⁶ *Id.* at Attachments 2, 4.

⁴⁷ See the *Orders*.

⁴⁸ See CF28 Responses

⁴⁹ *Id.*

contained “Tri Floors.” Invoice number [#]’s total amount, \$[#], was part of Invoices Group 147’s total amount, \$[#]. Midwest Livestock provided a bank receipt indicating that it paid Bai Mu Da’s bank the corresponding \$[#] amount.

Cargo Exam

On August 24, 2023, a CBP official conducted a cargo exam on Midwest Livestock entry [#]1491 from Bai Mu Da.⁵⁰ The entry’s arrival notice and freight forwarder invoice indicated that the entry contained two containers.⁵¹ Upon entering the first container, [CONTAINER #], the CBP official observed that it did not contain tri-floors but rather what Bai Mu Da described as “Feeder Gate.”⁵² The CBP official entered the second container, [CONTAINER #], and observed that it contained multiple pieces of tri-floor.⁵³ This container also had a piece of paper affixed to its merchandise stating that the container included 37 pieces of recessed tri-floor and an unstated number of “Tri floors,” all of which were “Made in China.”⁵⁴ As previously noted, Bai Mu Da stated that its tri-floors are made from carbon steel.⁵⁵ The tri-floors in the cargo exam photographs appear to be multiple pieces of steel, including load-bearing pieces and cross pieces, that were joined together by welding.⁵⁶ CBP concluded after the cargo exam that the shipment contained tri-bar floors made from carbon steel.

The entry’s arrival notice, proforma invoice, and packing list indicated that the shipment only contained farrowing crates and gestation pens.⁵⁷ None of the entry documents contained any mention of steel gratings or tri-floors.⁵⁸ The entry summary form did not contain the U.S. Harmonized Tariff Schedule code (HTSUS) for steel grating, 7308.90.7000, instead it contained HTSUS numbers 9817.00.5000 and 7308.90.9590.⁵⁹ The form also indicates that the importer intended to enter the shipment as a type 01 entry that was not subject to AD/CVD duties.⁶⁰ Based on the results of this cargo exam, CBP has determined that this entry contained covered merchandise.

Miscellaneous

On June 14, 2023, the Alleger submitted publicly available information to CBP for the administrative record of the investigation.⁶¹ Specifically, this factual information was the U.S. Court of International Trade’s decision in *Ikadan System USA, Inc., et al. v. United States*

⁵⁰ See September Memorandum at Attachments 2-9.

⁵¹ *Id.* at Attachments 2, 5.

⁵² *Id.* at Attachment 3.

⁵³ *Id.* at Attachment 4. On page two of attachment 4, a five-digit portion on the container number, “[#]”, can be observed on the container’s right wall. This corresponds to the second container’s full number, [CONTAINER #].

⁵⁴ *Id.* at Attachment 4, pages 1-2. Specifically, it stated 6 pieces and 31 pieces of two respective sizes of recessed tri-floor.

⁵⁵ See CF-28 Responses.

⁵⁶ See September Memorandum at Attachment 4. Welding beads are visible in the photographs on pages 2-5, 8.

⁵⁷ *Id.* at Attachments 2, 5.

⁵⁸ *Id.*

⁵⁹ *Id.*; see also the Orders.

⁶⁰ See September Memorandum at Attachments 2, 5.

⁶¹ See Letter from the Alleger, “Submission of CIT Decision in *Ikadan System USA, Inc., et al. v. United States*,” dated June 14, 2023; see also 19 CFR 165.23(b).

(Ikadan). *Ikadan* pertained to a previous EAPA investigation (EAPA Consolidated Case 7474) that had the same product and the same Allegor as this investigation.

Enactment of Interim Measures

Based on the record evidence described above, CBP determines that reasonable suspicion exists that Midwest Livestock entered steel grating in the form of “tri-bar flooring” into the United States from China and did not declare it as covered merchandise that should have been subject to the *Orders*. Therefore, CBP is imposing interim measures pursuant to this investigation.⁶² Specifically, in accordance with 19 USC 1517(e)(1-3), CBP shall:

- (1) suspend the liquidation of each unliquidated entry of such covered merchandise that entered on or after June 7, 2023, the date of the initiation of the investigations;
- (2) pursuant to the Commissioner’s authority under 19 USC 1504(b), extend the period for liquidating each unliquidated entry of such covered merchandise that entered before the date of the initiation of the investigation: June 7, 2023; and
- (3) pursuant to the Commissioner’s authority under 19 USC 1623, take such additional measures as the Commissioner determines necessary to protect the revenue of the United States, including requiring a single transaction bond or additional security or the posting of a cash deposit with respect to such covered merchandise.⁶³

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

Any future submissions or factual information that you submit to CBP pursuant to this EAPA investigation must be made electronically using EAPA’s case management system (CMS, also known as the EAPA Portal) at <https://eapallegations.cbp.gov/>. Please note that CBP is requiring that all documents submitted via the CMS are made text searchable, especially if those documents are submitted as PDFs.

⁶² See 19 USC 1517(e); see also 19 CFR 165.24.

⁶³ See also 19 CFR 165.24(b)(1)(i-iii).

Should you have any questions regarding this investigation, you may contact us at eapallegations@cbp.dhs.gov and include “EAPA Investigation 7818” in the subject line of your email. Additional information on this investigation, including the applicable statute and regulations, may be found on CBP’s website at: <https://www.cbp.gov/trade/trade-enforcement/tftea/eapa>.

Sincerely,

A handwritten signature in blue ink, appearing to read "Victoria Cho".

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