



U.S. Customs and  
Border Protection

**PUBLIC DOCUMENT**

**EAPA Case Number: 15134**

October 17, 2016

Roger B. Schagrin  
Counsel to Wheatland Tube Company  
900 7<sup>th</sup> St., NW, Ste. 500  
Washington, DC 20001

**Re: Non-initiation of investigation against U.S. Importer NEXTracker as to evasion of AD/CVD Orders concerning Circular Welded Carbon Quality Steel Pipe from China**

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Dear Mr. Schagrin,

On October 7, 2016, the Trade Remedy Law Enforcement Directorate (TRLED), in the U.S. Customs and Border Protection (CBP), Office of Trade determined that EAPA Case Number 15134, submitted by Wheatland Tube Company against NEXTracker, does not satisfy the criteria set forth in 19 C.F.R. § 165.15(b) for initiation of an investigation by CBP. The allegation does not reasonably suggest that covered merchandise entered the customs territory of the United States through evasion. Therefore, an EAPA investigation has not been initiated.

On September 14, 2016, Wheatland Tube filed an allegation with CBP, alleging that NEXTracker imported more than 4,764 metric tons of circular welded pipe (CWP) from China that was exported by Suzhou Baojia New Energy. On September 16, 2016, CBP notified Wheatland Tube that CBP was in receipt of a properly filed allegation and assigned it EAPA case number 15134. In the allegation, Wheatland asserted that this imported CWP is subject to the AD/CVD orders on CWP from China. Wheatland further alleged that NEXTracker “is importing this Chinese CWP ... at prices well below those necessary to reflect the applicable cash deposit rates and eventual duty assessment.” In support of the allegation, Wheatland attached a spreadsheet purporting to include data showing the quantity of “Welded Tube” imported by NEXTracker from the shipper, Suzhou Baojia New Energy, and the dates of arrival. However, no pricing data was provided to support the allegation that NEXTracker imported “at prices well below those necessary to reflect the applicable cash deposit rates and eventual duty assessment.”

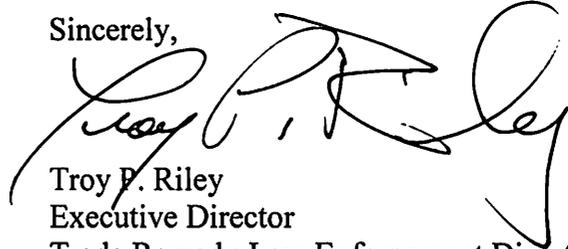
On October 3, 2016, subsequent to meeting with staff from the Office of Trade to discuss its concerns, Wheatland provided a supplemental submission with import data from Panjiva showing that since November 2015 NEXTracker imported 56,773.9 metric tons (“MT”) of “WELDED TUBE” from China. Further, Wheatland provided import data from the U.S. International Trade Commission’s (“ITC”) Dataweb showing the aggregate monthly import volumes into the United States of CWP from China from September 2015 through July 2016 and their average unit values (“AUVs”), as well as import volumes from the U.S. Department of Commerce’s (“DOC”) Steel Import Monitoring and Analysis for August and September 2016. It was unclear from these submissions under which Harmonized Tariff Schedule of the United States (“HTSUS”) subheadings the CWP was imported. Based upon this data, Wheatland concluded that NEXTracker imported “nearly seventy-five percent” of all CWP under these subheadings during the applicable time period. Finally, Wheatland used the country-wide AUVs for imports under certain HTSUS subheadings and estimated that the AD/CVD cash deposit requirements for NEXTracker, using an overall AUV average amount of \$1,435.88 per MT, would total \$81,520,508 on all entries since November 2015. Thus, Wheatland asserted that “it defies credulity and commercial reality to accept that NEXTracker paid more than \$81.5 million in cash deposits on CWP from China...” *Id.* Therefore, Wheatland based its allegation on the supposition that “[t]he only plausible explanation is that such CWP was entered without paying the required cash deposits as a means of evading the AD/CVD orders.” *Id.*

CBP will initiate an investigation if CBP 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.” *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 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.” *See* 19 C.F.R. § 165.1. Thus, the allegation must reasonably suggest not only that merchandise subject to an AD/CVD 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/CVD cash deposits or other security.

In this case, the allegation reasonably suggests that NEXTracker imported merchandise from China that may be subject to AD/CVD orders. But the allegation does not reasonably suggest that merchandise was entered through evasion. Evidence of importation, without more, is not sufficient to raise a reasonable suspicion of evasion. Wheatland’s evasion allegation is premised upon Wheatland’s own calculation of what it believed would have been the AD/CVD duties owed by NEXTracker based on aggregate AUV data (*i.e.*, data not specific to NEXTracker), concluding that it was not a “commercial reality” for NEXTracker to have paid that amount of AD/CVD duties. However, it provided no evidence, beyond its mere supposition, to reasonably suggest that NEXTracker’s entries were made 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. Such assumptions proffered by Wheatland, without more, do not reasonably suggest that NEXTracker entered covered merchandise through evasion. For these reasons,

TRLED determined on October 7, 2016, that the allegation did not reasonably suggest that covered merchandise entered the customs territory of the United States through evasion, pursuant to 19 USC §1517(b)(1). As such, an EAPA investigation has not been initiated, but you may resubmit the allegation through CBP's e-Allegations Online Trade Violation Reporting System portal, at <https://eallegations.cbp.gov/Home/Index2> and CBP will proceed accordingly.

Sincerely,

A handwritten signature in black ink, appearing to read "Troy P. Riley". The signature is fluid and cursive, with a large initial "T" and "R".

Troy P. Riley  
Executive Director  
Trade Remedy Law Enforcement Directorate