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Re: Notice of Final 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 7297, U.S. Customs and Border Protection (“CBP”) has determined that there is substantial evidence that Service Metal Products (“Service Metal”), Ductilic, Inc. (“Ductilic”), Iron Mule Products, Inc. (“Iron Mule”), Missouri Pipe Fittings (“MPF”), Trupply, LLC (“Trupply”), and Norca Industrial Company, LLC (“Norca”) (collectively, “the Importers”), entered into the customs territory of the United States through evasion merchandise covered by the antidumping duty (“AD”) order A-570-814¹ on carbon steel butt-weld pipe fittings from the People’s Republic of China. Substantial evidence demonstrates that the Importers imported Chinese-origin carbon steel butt-weld pipe fittings (“CSBW pipe fittings”) that were transshipped through Cambodia and/or misclassified as merchandise other than CSBW pipe fittings. As a result, no cash deposits were applied to the merchandise.

Background

On February 13, 2019, Allied Group (“the Alleger”) submitted allegations that the Importers were evading the AD order. The Alleger alleged that the Importers entered Chinese-origin CSBW pipe fittings into the United States that were misclassified and/or transshipped through KKFF Bend (Cambodia) Co., Ltd. (“KKFF Bend”), an alleged producer of CSBW pipe fittings in Cambodia, and falsely declared as being of Cambodian origin.²

TRLED found the information provided in the allegation reasonably suggested that covered merchandise has been entered for consumption by the Importers into the customs territory of the United States through evasion.³ Consequently, CBP initiated investigations with respect to the Importers on March 21, 2019, 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.

¹ See *Anti-Dumping Duty Order and Amendment to the Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the People’s Republic of China*, 57 FR 29,702 (Dep’t Commerce July 6, 1992) (“the AD order”).

² See Allied Group’s EAPA Allegations (February 13, 2019).

³ In addition to the information provided in the allegations, in February 2019, CBP conducted a visit to KKFF Bend’s Cambodian facility. CBP issued a report on its findings, noting that during the tour of the facility, a member of the visit team asked one of the Cambodian workers if all of the finished materials were produced at KKFF Bend, and was told by the worker that most of the pipe fittings were brought in from elsewhere and finished and packed by KKFF Bend. Further, CBP was not permitted to review any purchase, production, shipping or sales documentation during the visit. See CBP Attaché Memorandum for Onsite Visit (February 26, 2019) (“Onsite Visit Memo”).

As part of the EAPA investigatory process, on April 3, 2019, CBP issued Customs Form 28 (“CF28”) questionnaires to each of the Importers, and later issued supplemental CF28 questionnaires to several of the Importers. Based on the importers’ incomplete or lack of response to the CF28s, the recorded statements of management of KKFF Bend and Qingdao KKF (identified as a Chinese company affiliated with KKFF Bend) indicating that they knowingly transship Chinese-pipe fittings through Cambodia to the United States, and CBP’s observation of minimal operations occurring at the KKFF Bend facility during its onsite visit, CBP determined there was reasonable suspicion that the Importers entered covered merchandise into the United States through evasion by means of transshipment through Cambodia, in some instances involving misclassification as well.⁴ Consequently, CBP imposed interim measures.⁵

After interim measures, on July 30, 2019, CBP sent Requests for Information (RFI) to each of the Importers. The following Importers submitted responses to their RFIs on the dates as noted: Service Metal (September 3, 2019) (“Service Metal RFI response”); Ductilic (August 27, 2019) (“Ductilic RFI response”); Iron Mule (August 26, 2019) (“Iron Mule RFI response”); MPF (August 26, 2019) (“MPF RFI response”); Trupply (August 27, 2019) (“Trupply RFI response”); and Norca (August 27, 2019) (“Norca RFI response”). In addition, Service Metal submitted additional information on October 7, 2019 (“Service Metal Supplemental RFI response”).

CBP sent an RFI to the claimed manufacturer, KKFF Bend, on July 30, 2019. After KKFF did not submit a response, CBP continued to request a response, but none was forthcoming.⁶

On, November 5, 2019, Iron Mule and MPF submitted written arguments.⁷ On November 6, 2019, Ductilic and Service Metal submitted written arguments.⁸ On November 21, 2019, the Alleger submitted its response to the aforementioned written arguments.⁹

⁴ See *Notice of Investigation and Interim Measures* (June 26, 2019) (“NOI”) at 2-3. The Alleger later provided a written transcript of the recorded statements (which were reported as having been made after an October 2018 tour of the KKFF Bend facility) it had submitted in the Allegation. See *Allied Group Audio Recording Transcripts* (July 31, 2019).

In addition, CBP noted in the NOI that Norca did not submit a CF28 response. After the issuance of the NOI, Norca indicated it had submitted a CF28, and continued to attempt to submit some documents it claimed constituted its CF28 response, but emails were not received by CBP or, if they were, contained only sample attached documents. See the November 12, 2019 memo to the record at Attachment 1 (email string ending with email sent on May 6, 2019, to Norca official, Attachment 2 (email string ending with email sent on June 28, 2019, by Norca official), Attachment 3 (email string ending with email sent on June 28, 2019, to Norca official), Attachment 4 (email string ending with email sent on August 6, 2019, by Norca official), and Attachment 5 (email sent on August 6, 2019, by Norca official). On August 19, 2019, almost two months after the issuance of the NOI, Norca finally submitted what it indicated was a complete CF28 response.

⁵ *Id.* at 3-4.

⁶ See *Emails to KKFF Bend requesting RFI response* (Sept. 5, 2019) and *FedEx Shipment 776172774349 Delivered* (Sept. 16, 2019).

⁷ See “*Iron Mule Products, Inc. Written Argument*” (Nov. 5, 2019) (“*Iron Mule Written Arguments*”) and “*Missouri Pipe Fittings Company Written Argument*” (Nov. 5, 2019) (“*MPF Written Arguments*”), respectively.

⁸ See *Submission of Written Arguments – EAPA Case No 7297 – Ductilic, Inc.* (Nov. 6, 2019) (“*Ductilic Written Arguments*”) and “*EAPA Consolidated Case Number 7297: Service Metal Products Co. Submission of Written Argument*” (Nov. 5, 2019) (“*Service Metal Written Arguments*”), respectively.

⁹ See “*Response of Allied Group to Written Arguments*” (Nov. 21, 2019) (“*Alleger Response*”).

Final Determination as to Evasion

Under 19 USC 1517(c)(1)(A), to reach a final determination as to evasion in this case, 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 of any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise.” Thus, the statute outlines three elements for CBP to address in reaching a determination: 1) whether the entries in question are covered merchandise (*i.e.*, merchandise that is subject to an AD/CVD order) when they entered into the customs territory of the United States; 2) whether such entry was made by a material false statement or act or material omission; and 3) whether there was a resulting reduction or avoidance of applicable AD/CVD cash deposits or other security. As discussed below, the record of this investigation indicates that covered merchandise entered the United States through evasion, and that there is a basis for concluding that substantial evidence indicates the Importers’ imports were merchandise entered through evasion, resulting in the avoidance of applicable AD/CVD deposits or other security.

As noted above, KKFF Bend did not provide a response to the RFI issued to it, though given multiple opportunities to do so. Furthermore, while Ductilic, Iron Mule, MPF, Trupply, and Norca submitted responses to their RFIs, each of their responses was deficient in certain respects, *see* below.

Ductilic

Ductilic states it should not be subject to this EAPA investigation because it exercised reasonable care in its decision to source CSBW pipe fittings from KKFF Bend, and because CBP has already collected the estimated duties.

With regard to reasonable care, Ductilic notes that after becoming acquainted with KKFF Bend by some unsolicited emails and an invitation to meet KKFF Bend staff at a trade show, Ductilic received a product catalog from KKFF Bend outlining its production process in Cambodia. Subsequently, Ductilic notes, communications with KKFF Bend ensued regarding product information and pricing and, when negotiations became serious, Ductilic insisted that KKFF Bend provide an ISO certificate, mill test certificates, and a sample for evaluation.¹⁰ Ductilic also claims it was informed by KKFF Bend that KKFF Bend had passed a 2016 European Union inspection of its facilities, and that Ductilic had been informed of others U.S. importers sourcing pipe fittings from KKFF Bend, one of which Ductilic was told had visited the KKFF Bend factory.¹¹

¹⁰ *See* Ductilic Written Arguments at 2, citing Appendix 4 of Ductilic RFI response.

¹¹ *Id.* at 2.

Ductilic also argues the EAPA investigation should be terminated with respect to Ductilic because it has made payment to CBP of the estimated antidumping duties, and that final assessment is pending the completion of an administrative review of the AD order by the U.S. Department of Commerce.¹² Ductilic argues that because evasion under the EAPA statute and regulation “result{ } in any cash deposit or other security or many {sic} amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise,” that evasion has not occurred, given Ductilic has paid the cash deposit for the entry in question.¹³

Ductilic also states that in the event that CBP’s EAPA investigation determines the merchandise in question originated in Cambodia, then Ductilic can file a protest seeking a refund on the antidumping duties deposited.¹⁴

The Alleger responded that the evidence compiled by it and CBP shows clearly that KKFF Bend and the investigated importers are engaged in duty evasion, and that CBP should continue to make a finding of evasion in this consolidated investigation, as it did in connection with the imposition of interim measures.¹⁵ The Alleger stated that its allegation included references to firsthand evidence at the KKFF Bend facility in Cambodia indicating the absence of production, including minimal quantity of raw material that had accumulated dust, equipment not in use, employees engaged in marking and painting finished and unfinished butt-weld pipe fittings rather than production of butt-weld pipe fittings, and absence of noise or metal shavings or scrap that would be indicative of any kind of production operation.¹⁶ The Alleger also alluded to the verbal conveyance by KKFF Bend’s general manager that KKFF Bend knowingly imports Chinese fittings into Cambodia for re-export to the United States and elsewhere and falsely declares such imports as raw materials.¹⁷

The Alleger also refers to evidence from CBP’s on-site visit, as referenced in the Onsite Visit Memo, of the absence of production capability at the KKFF Bend facility. This includes CBP references to observations that the laboratory equipment was covered and not in use, that employees were primarily involved in finishing and packing rather than production, and that other employees appeared unable to use the production equipment or to even remove materials from containers.¹⁸ The Alleger states that KKFF Bend’s refusal to provide to CBP order, sales, and production documentation also suggest the company and its U.S. importers are involved in duty evasion.¹⁹

¹² *Id.* at 2-3.

¹³ *Id.* at 3.

¹⁴ *Id.* at 2.

¹⁵ *See* Alleger Response at 1 and 10.

¹⁶ *Id.* at 2-3, citing an affidavit from [] (“affidavit”) and various other exhibits in the Allegation.

¹⁷ *Id.* at 3, citing the affidavit from the Allegation.

¹⁸ *Id.* at 3-4, citing Onsite Visit Memo at 1-4.

¹⁹ *Id.* at 4, citing Onsite Visit Memo at 4.

The Allegor states that documentation submitted to CBP by Ductilic that were provided to Ductilic by KKFF Bend should not be considered, given KKFF Bend itself did not respond to CBP's requests for information, and that were CBP to consider such information would amount to condoning KKFF Bend's lack of cooperation, potentially encouraging similar conduct by producers and exporters in other EAPA investigations.²⁰

The Allegor rejects Ductilic's claim that it be excluded from the investigation because it paid a cash deposit and can be held accountable for its entry based on the oral liquidation/protest process, because Ductilic did not exercise reasonable care when importing from KKFF Bend, and should be subject to additional investigations and enforcement actions that may arise from CBP's final determination in this EAPA investigation.²¹ The Allegor argues that Ductilic has in fact acknowledged that its conduct satisfied the statutory definition of evasion, having stated in its written argument that it had falsely declared Cambodia as the country of origin at the time of the entry and had not paid the required cash deposit until a later time, after CBP's demand for such a deposit.²²

Analysis: As indicated previously, the observations of [] at the KKFF Bend facility that fittings were not being manufactured and that minimal raw materials were present were confirmed by CBP during its own site visit, during which virtually no manufacturing was occurring, and during which one of the company's workers indicated most of the company's pipe fittings were brought in from elsewhere and finished and packed by KKFF Bend.²³ While those observations by [] and by CBP covered limited periods of time, and were limited to areas that the visitors were able to view, KKFF Bend's later failure to respond to CBP's RFI, which requested sales and production documentation covering the period of investigation, supports concluding KKFF Bend was not the manufacturer of the fittings it shipped to the importer. Furthermore, nothing the importer provided in its own RFI response supports concluding that KKFF Bend produced the fittings in question, and the importer had earlier failed to provide such production documentation in response to the CF28 it was sent by CBP.²⁴ In addition, the recorded statements of KKFF Bend and Qingdao KKF management indicating that they knowingly transship Chinese-pipe fittings through Cambodia to the United States supports concluding the fittings were actually manufactured in China, and therefore would be subject to AD duties for which the importer did not pay cash deposits at the time of entry.

²⁰ *Id.* at 5.

²¹ *Id.* at 9.

²² *Id.* at 9-10.

²³ *See* NOI at 4.

²⁴ As noted in the NOI, “[b]ecause of the deficiencies {in Ductilic’s CF28 responses}, including redacted shipping information, CBP could not confirm where the merchandise was actually produced.” *See* NOI at 4. CBP has also noted discrepancies in Ductilic’s RFI response as well, including inconsistencies in data on country of origin certificate for Invoice 180503 versus data on the commercial invoice, packing list, bill of lading, and CF7501 for that transaction, as well as documents that fail to identify the identity of parties (*e.g.*, seller or party performing production processes) or the location of production processes referenced in various documents.

In short, substantial evidence demonstrates that the importer imported Chinese-origin CSBW pipe fittings that were transshipped through Cambodia and/or misclassified as merchandise other than CSBW pipe fittings, that such country-of-origin and product classification information provided at the time of entry was false, and that required cash deposits related to the AD order were not paid at that time. Given neither KKFF Bend (which did not respond to the RFI) nor the importer (which failed to provide requested production documentation demonstrating who produced the merchandise, and whose responses contained other deficiencies, as noted above) cooperated to the best of their abilities, the application of adverse inferences is warranted, as noted below. Furthermore, because EAPA does not have a knowledge requirement for evasion as defined under 19 CFR 165.1, there is no requirement that the importer know of the material or false statement and, thus, CBP does not need to determine any level of culpability, only that evasion occurred with entry.

Iron Mule

Iron Mule argues that production and transaction documents on the administrative record demonstrate that Cambodia is the country of origin of the CSBW pipe fittings it imported from KKFF Bend. Specifically, Iron Mule states that commercial invoices, packing lists, and bills of lading for the equipment purchased by KKFF Bend show production capacity, citing documentation and photographs submitted in the Iron Mule CF28 Response,²⁵ and that production records, commercial invoices, packing lists and bills of lading of raw materials demonstrate that production occurred from the raw materials that KKFF Bend purchased from China.²⁶ Iron Mule also states that CBP's reliance in the NOI on a Panjiva report indicating Qingdao KKFF Bend in China indicates exports of fitting rather than raw materials is contradicted by the documents on the record indicating such raw materials were shipped from China to KKFF Bend in Cambodia.²⁷

Iron Mule also argues the Alleger did not present credible evidence that KKFF Bend exported or Iron Mule imported merchandise covered by the AD order. Iron Mule characterizes the Alleger's claims in this regard as speculative in nature, rather than constituting substantial evidence. Specifically, Iron Mule dismisses various assertions made in the affidavit submitted in the allegation as unconvincing: 1) references to large quantities of butt-weld pipe fittings at KKFF Bend being unmarked, but the absence of specific evidence they were made in China; 2) references to observations of forming equipment not in use and to minimal activities by KKFF Bend employees, but ignoring various possible reasons why that might have been the case during the individual's visit; 3) the claim that significant raw materials were not seen, but absence of evidence that the individual had asked to see raw materials or that such raw materials may not have been stored elsewhere than the areas observed by the individual; and 4) references to the absence of metal shavings and scrap, with no explanation why the cleanliness of a plant can be attributed to the lack of production of CSBW pipe fittings.²⁸

²⁵ See Iron Mule Written Arguments at 6-8, citing Iron Mule CF28 response at various pages.

²⁶ *Id.* at 8-16, citing Exhibit A (which contains various pages duplicated from Iron Mule CF28 response).

²⁷ *Id.* at 25.

²⁸ *Id.* at 17-20.

Iron Mule also challenges the relevance of the audio recording provided by the Alleger, claiming the transcript of the meeting does not constitute substantial evidence of evasion. Iron Mule argues that various responses of the KKFF Bend official suggest he did not understand various questions, that the KKFF Bend official actually stated foreign officials could come and review KKFF Bend's facility and records, and that the official's comments regarding the propensity of Cambodian customs officials to be more likely to check what KKFF Bend is importing when there is greater variety (*e.g.*, fittings as well as pipes) rather than less (*e.g.*, just pipes) does not support concluding an evasion scheme existed.²⁹

Iron Mule claims the information gathered and observations made during CBP's site visit does not constitute evidence of evasion. Iron Mule notes that CBP indicated KKFF Bend has production capacity, and that the production stations were in operation during the visit. Iron Mule states that KKFF Bend's refusal to allow review of order, sales, and production records during the visit was not unusual, especially given the absence of the owner/general manager and the surprise nature of the visit by CBP. Iron Mule states that while CBP was refused access to such documentation in another EAPA investigation, CBP nevertheless did not make an affirmative final determination of evasion, citing in part the presence of such documentation later on the record of the investigation.³⁰ Finally, Iron Mule downplays CBP's observations during its site visit 1) of rust on certain surfaces, 2) of most containers being unmarked, 3) of the absence of protective gear for workers, and 4) difficulty in handling of some raw material equipment, arguing these are not a basis for concluding production of fittings had not been occurring at KKFF Bend.³¹

In addition, Iron Mule states that its misclassification of imported products did not constitute a misstatement of fact that is material to the investigation of evasion because the country of origin of the merchandise is Cambodia, which is not subject to the AD order.³²

Iron Mule states that for CBP to conclude that Iron Mule evaded AD duties, it must find that there is substantial evidence of such evasion. Iron Mule states this requires CBP to determine that the record taken as a whole, by a reasonable mind, would support the determination that the CSBW fittings imported by Iron Mule were not manufactured in Cambodia, but instead were manufactured in China and transshipped through Cambodia, and that there was some material false statement, act, or omission, that lead to that import resulting in the reduction or avoidance

²⁹ *Id.* at 20-23.

³⁰ *Id.* at 15-16, citing "Notice of Final Determination as to Evasion, EAPA Investigation 7270 (Newtrend USA)," (September 25, 2019) at 6 and 8. TRLED notes that while the refusal to provide documentation was at the initial onsite visit in that investigation, the foreign supplier provided order, sales, and production records to TRLED in its RFI response that was followed by verification of that supplier, as noted on page 4 of the aforementioned final determination. In this EAPA investigation involving foreign supplier KKFF Bend, however, as noted above, KKFF Bend did not provide an RFI response and no subsequent verification therefore was conducted.

³¹ *Id.* at 23-25.

³² *Id.* at 25-26.

of antidumping duties.³³ Iron Mule concludes that, based on the evidence it discussed in its written arguments, CBP should determine that there is not substantial evidence demonstrating that Iron Mule transshipped Chinese CSBW fittings through Cambodia and that Iron Mule did not enter covered merchandise into the United States through evasion during the period of investigation.³⁴

The Alleger responded that the evidence compiled by it and CBP shows clearly that KKFF Bend and the investigated importers are engaged in duty evasion, and that CBP should continue to make a finding of evasion in this consolidated investigation, as it did in connection with the imposition of interim measures.³⁵ The Alleger stated that its allegation included references to firsthand evidence at the KKFF Bend facility in Cambodia indicating the absence of production, including minimal quantity of raw material that had accumulated dust, equipment not in use, employees engaged in marking and painting finished and unfinished butt-weld pipe fittings rather than production of butt-weld pipe fittings, and absence of noise or metal shavings or scrap that would be indicative of any kind of production operation.³⁶ The Alleger also alluded to the verbal conveyance by KKFF Bend's general manager that KKFF Bend knowingly imports Chinese fittings into Cambodia for re-export to the United States and elsewhere and falsely declares such imports as raw materials.³⁷

The Alleger also refers to evidence from CBP's on-site visit, as referenced in the Onsite Visit Memo, of the absence of production capability at the KKFF Bend facility. This includes CBP references to observations that the laboratory equipment was covered and not in use, that employees were primarily involved in finishing and packing rather than production, and that other employees appeared unable to use the production equipment or to even remove materials from containers.³⁸ The Alleger states that KKFF Bend's refusal to provide to CBP order, sales, and production documentation also suggest the company and its U.S. importers are involved in duty evasion.³⁹

The Alleger states that documentation submitted to CBP by Iron Mule that were provided to Iron Mule by KKFF Bend should not be considered, given KKFF Bend itself did not respond to CBP's requests for information, and that were CBP to consider such information would amount to condoning KKFF Bend's lack of cooperation, potentially encouraging similar conduct by producers and exporters in other EAPA investigations.⁴⁰

³³ *Id.* at 2-5.

³⁴ *Id.* at 26.

³⁵ *See* Alleger Response at 1 and 10.

³⁶ *Id.* at 2-3, citing an affidavit from [] ("affidavit") and various other exhibits in the Allegation.

³⁷ *Id.* at 3, citing the affidavit from the Allegation.

³⁸ *Id.* at 3-4, citing Onsite Visit Memo at 1-4.

³⁹ *Id.* at 4, citing Onsite Visit Memo at 4.

⁴⁰ *Id.* at 5.

The Alleger states that even if CBP did consider information provided by KKFF Bend through Iron Mule, there are serious questions about the veracity and completeness of this information. For example, the invoices submitted by Iron Mule that the importer claims show KKFF Bend purchased production equipment in 2013 do not appear to be genuine, given they do not identify the entity from which KKFF Bend purportedly purchased the equipment.⁴¹ The Alleger argues that whether or not KKFF Bend actually purchased the equipment, and whether or not photographs of equipment of unclear origin submitted by Iron Mule actually show KKFF Bend equipment,⁴² the fact remains that CBP, during its site visit, noted equipment was not in use and KKFF Bend's employees were not involved in production activities.

The Alleger argues that information submitted by Iron Mule pertaining to supposed purchases of raw materials by KKFF Bend are also problematic, and fail to undermine the aforementioned first-hand observations regarding the lack of raw materials at the KKFF Bend facility.⁴³ Furthermore, the Alleger states the KKFF Bend documentation provided by Iron Mule purports to demonstrate actual production of just one butt-weld pipe fitting product, which the Alleger states could not reasonably be the basis for CBP's entire determination regardless of what may or may not have happened to these individual fittings.⁴⁴ The Alleger concludes that the limited information provided by Iron Mule, even if taken at face value as actual KKFF Bend sales and production documentation, does not remotely undermine the significance of the overwhelming evidence demonstrating that KKFF Bend is not engaged in the actual production of CSBW pipe fittings.⁴⁵

Analysis: As indicated previously, the observations of [] at the KKFF Bend facility that fittings were not being manufactured and that minimal raw materials were present were confirmed by CBP during its own site visit, during which virtually no manufacturing was occurring, and during which one of the company's workers indicated most of the company's pipe fittings were brought in from elsewhere and finished and packed by KKFF Bend.⁴⁶ While those observations by [] and by CBP covered limited periods of time, and were limited to areas that the visitors were able to view, KKFF Bend's later failure to respond to CBP's RFI, which requested sales and production documentation covering the period of investigation, supports concluding KKFF Bend was not the manufacturer of the fittings it shipped to the importer. Furthermore, nothing the importer provided in its own RFI response supports concluding that KKFF Bend produced the fittings in question, and the importer had earlier failed to provide such production documentation in response to the CF28 it was sent by CBP.⁴⁷ In addition, the recorded statements of KKFF Bend and Qingdao KKF

⁴¹ *Id.* at 6, citing Iron Mule Written Arguments at 6-8 and Iron Mule's redacted resubmission of its CF28 Response (August 8, 2019) ("Iron Mule CF28 Response") at Exhibit 1.

⁴² *Id.* at 6, citing Iron Mule CF28 Response at Exhibit 1.

⁴³ *Id.* at 6-7.

⁴⁴ *Id.* at 7, citing Iron Mule Written Arguments at 9-16.

⁴⁵ *Id.* at 7.

⁴⁶ *See* NOI at 4.

⁴⁷ As noted in the NOI, "{b}ecause of the deficiencies" in Iron Mule's initial and supplemental CF28 response submissions, "CBP could not confirm where the merchandise was actually produced." *See* NOI at 5. CBP notes

management indicating that they knowingly transship Chinese-pipe fittings through Cambodia to the United States supports concluding the fittings were actually manufactured in China, and therefore would be subject to AD duties for which the importer did not pay cash deposits at the time of entry.

Finally, as acknowledged by Iron Mule, that importer had misclassified entries of CSBW pipe fittings under incorrect HTSUS numbers, which have not been associated with merchandise subject to the AD order, rather than the correct ones, which have been associated with merchandise subject to the AD order. Although the scope of AD/CVD orders is not defined based on HTSUS numbers, those classifications are instrumental in the enforcement of such orders, and such misclassifications therefore result in the avoidance of required duties.

In short, substantial evidence demonstrates that the importer imported Chinese-origin CSBW pipe fittings that were transshipped through Cambodia and/or misclassified as merchandise other than CSBW pipe fittings, that such country-of-origin and product classification information provided at the time of entry was false, and that required cash deposits related to the AD order were not paid at that time. Given neither KKFF Bend (which did not respond to the RFI) nor the importer (which failed to provide requested production documentation demonstrating who produced the merchandise, and whose responses contained other deficiencies, as noted above) cooperated to the best of their abilities, the application of adverse inferences is warranted, as noted below. Furthermore, because EAPA does not have a knowledge requirement for evasion as defined under 19 CFR 165.1, there is no requirement that the importer know of the material or false statement and, thus, CBP does not need to determine any level of culpability, only that evasion occurred with entry.

MPF

MPF argues that production and transaction documents on the administrative record demonstrate that Cambodia is the country of origin of the CSBW pipe fittings it imported from KKFF Bend. Specifically, MPF states that commercial invoices, packing lists, and bills of lading for the equipment purchased by KKFF Bend show production capacity, citing documentation and photographs submitted in the MPF CF28 Response,⁴⁸ and that production records, commercial invoices, packing lists and bills of lading of raw materials demonstrate that production occurred from the raw materials that KKFF Bend purchased from China.⁴⁹ MPF also states that CBP's reliance in the NOI on a Panjiva report indicating Qingdao KKFF Bend in China indicates exports of fitting rather than raw materials is contradicted by the documents on the record indicating such raw materials were shipped from China to KKFF Bend in Cambodia.⁵⁰

that documentation regarding the production of the goods and raw materials that were submitted in the Iron Mule's CF28 response had redacted information, and did not indicate the party performing the production steps nor the location of production. CBP also notes that the Iron Mule RFI response did not include country of origin documentation.

⁴⁸ See Missouri Pipe Written Arguments at 6-8, citing MPF CF28 Response at various pages.

⁴⁹ *Id.* at 8-17, citing Exhibit A (which contains various pages duplicated from Missouri Pipe CF28 response).

⁵⁰ *Id.* at 27.

MPF also argues the Alleger did not present credible evidence that KKFF Bend exported or MPF imported merchandise covered by the AD order. MPF characterizes the Alleger's claims in this regard as speculative in nature, rather than constituting substantial evidence. Specifically, MPF dismisses various assertions made in the affidavit submitted in the allegation as unconvincing: 1) references to large quantities of butt-weld pipe fittings at KKFF Bend being unmarked, but the absence of specific evidence they were made in China; 2) references to observations of forming equipment not in use and to minimal activities by KKFF Bend employees, but ignoring various possible reasons why that might have been the case during the individual's visit; 3) the claim that significant raw materials were not seen, but absence of evidence that the individual had asked to see raw materials or that such raw materials may not have been stored elsewhere than the areas observed by the individual; and 4) references to the absence of metal shavings and scrap, with no explanation why the cleanliness of a plant can be attributed to the lack of production of CSBW pipe fittings.⁵¹

MPF also challenges the relevance of the audio recording provided by the Alleger, claiming the transcript of the meeting does not constitute substantial evidence of evasion. MPF argues that various responses of the KKFF Bend official suggest he did not understand various questions, that the KKFF Bend official actually stated foreign officials could come and review KKFF Bend's facility and records, and that the official's comments regarding the propensity of Cambodian customs officials to be more likely to check what KKFF Bend is importing when there is greater variety (*e.g.*, fittings as well as pipes) rather than less (*e.g.*, just pipes) does not support concluding an evasion scheme existed.⁵²

MPF claims the information gathered and observations made during CBP's site visit does not constitute evidence of evasion. MPF notes that CBP indicated KKFF Bend has production capacity, and that the production stations were in operation during the visit. MPF states that KKFF Bend's refusal to allow review of order, sales, and production records during the visit was not unusual, especially given the absence of the owner/general manager and the surprise nature of the visit by CBP. MPF states that while CBP was refused access to such documentation in another EAPA investigation, CBP nevertheless did not make an affirmative final determination of evasion, citing in part the presence of such documentation later on the record of the investigation.⁵³ Finally, MPF downplays CBP's observations during its site visit 1) of rust on certain surfaces, 2) of most containers being unmarked, 3) of the absence of protective gear for

⁵¹ *Id.* at 18-21.

⁵² *Id.* at 22-25.

⁵³ *Id.* at 17-18, citing "Notice of Final Determination as to Evasion, EAPA Investigation 7270 (Newtrend USA)," (September 25, 2019) at 6 and 8. TRLED notes that while the refusal to provide documentation was at the initial onsite visit in that investigation, the foreign supplier provided order, sales, and production records to TRLED in its RFI response that was followed by verification of that supplier, as noted on page 4 of the aforementioned final determination. In this EAPA investigation involving foreign supplier KKFF Bend, however, as noted above, KKFF Bend did not provide an RFI response and no subsequent verification therefore was conducted.

workers, and 4) difficulty in handling of some raw material equipment, arguing these are not a basis for concluding production of fittings had not been occurring at KKFF Bend.⁵⁴

In addition, MPF states that its misclassification of imported products did not constitute a misstatement of fact that is material to the investigation of evasion because the country of origin of the merchandise is Cambodia, which is not subject to the AD order.⁵⁵

MPF states that for CBP to conclude that MPF evaded AD duties, it must find that there is substantial evidence of such evasion. MPF states this requires CBP to determine that the record taken as a whole, by a reasonable mind, would support the determination that the CSBW fittings imported by MPF were not manufactured in Cambodia, but instead were manufactured in China and transshipped through Cambodia, and that there was some material false statement, act, or omission, that lead to that import resulting in the reduction or avoidance of antidumping duties.⁵⁶ MPF concludes that, based on the evidence it discussed in its written arguments, CBP should determine that there is not substantial evidence demonstrating that MPF transshipped Chinese CSBW fittings through Cambodia and that MPF did not enter covered merchandise into the United States through evasion during the period of investigation.⁵⁷

The Alleger responded that the evidence compiled by it and CBP shows clearly that KKFF Bend and the investigated importers are engaged in duty evasion, and that CBP should continue to make a finding of evasion in this consolidated investigation, as it did in connection with the imposition of interim measures.⁵⁸ The Alleger stated that its allegation included references to firsthand evidence at the KKFF Bend facility in Cambodia indicating the absence of production, including minimal quantity of raw material that had accumulated dust, equipment not in use, employees engaged in marking and painting finished and unfinished butt-weld pipe fittings rather than production of butt-weld pipe fittings, and absence of noise or metal shavings or scrap that would be indicative of any kind of production operation.⁵⁹ The Alleger also alluded to the verbal conveyance by KKFF Bend's general manager that KKFF Bend knowingly imports Chinese fittings into Cambodia for re-export to the United States and elsewhere and falsely declares such imports as raw materials.⁶⁰

The Alleger also refers to evidence from CBP's on-site visit, as referenced in the Onsite Visit Memo, of the absence of production capability at the KKFF Bend facility. This includes CBP references to observations that the laboratory equipment was covered and not in use, that employees were primarily involved in finishing and packing rather than production, and that other employees appeared unable to use the production equipment or to even remove materials

⁵⁴ *Id.* at 25-26.

⁵⁵ *Id.* at 27-28.

⁵⁶ *Id.* at 2-5.

⁵⁷ *Id.* at 28.

⁵⁸ *See* Alleger Response at 1 and 10.

⁵⁹ *Id.* at 2-3, citing an affidavit from [] (“affidavit”) and various other exhibits in the Allegation.

⁶⁰ *Id.* at 3, citing the affidavit from the Allegation.

from containers.⁶¹ The Alleger states that KKFF Bend's refusal to provide to CBP order, sales, and production documentation also suggest the company and its U.S. importers are involved in duty evasion.⁶²

The Alleger states that documentation submitted to CBP by MPF that were provided to MPF by KKFF Bend should not be considered, given KKFF Bend itself did not respond to CBP's requests for information, and that were CBP to consider such information would amount to condoning KKFF Bend's lack of cooperation, potentially encouraging similar conduct by producers and exporters in other EAPA investigations.⁶³

The Alleger states that even if CBP did consider information provided by KKFF Bend through MPF, there are serious questions about the veracity and completeness of this information. For example, the invoices submitted by MPF that the importer claims show KKFF Bend purchased production equipment in 2013 do not appear to be genuine, given they do not identify the entity from which KKFF Bend purportedly purchased the equipment.⁶⁴ The Alleger argues that whether or not KKFF Bend actually purchased the equipment, and whether or not photographs of equipment of unclear origin submitted by MPF actually show KKFF Bend equipment,⁶⁵ the fact remains that CBP, during its site visit, noted equipment was not in use and KKFF Bend's employees were not involved in production activities.

The Alleger argues that information submitted by MPF pertaining to supposed purchases of raw materials by KKFF Bend are also problematic, and fail to undermine the aforementioned first-hand observations regarding the lack of raw materials at the KKFF Bend facility.⁶⁶ The Alleger notes KKFF Bend purportedly imported raw materials from its affiliate in China, calling into question the nature of these imports and the reliability of the commercial documents associated with them.⁶⁷ Furthermore, the Alleger states the KKFF Bend documentation provided by MPF purports to demonstrate actual production of just one butt-weld pipe fitting product, which the Alleger states could not reasonably be the basis for CBP's entire determination regardless of what may or may not have happened to these individual fittings.⁶⁸ The Alleger concludes that the limited information provided by MPF, even if taken at face value as actual KKFF Bend sales and production documentation, does not remotely undermine the significance of the overwhelming evidence demonstrating that KKFF Bend is not engaged in the actual production of CSBW pipe fittings.⁶⁹

⁶¹ *Id.* at 3-4, citing Onsite Visit Memo at 1-4.

⁶² *Id.* at 4, citing Onsite Visit Memo at 4.

⁶³ *Id.* at 5.

⁶⁴ *Id.* at 6, citing MPF Written Arguments at 6-8 and MPF's redacted resubmission of its CF28 Response (August 8, 2019) ("MPF CF28 Response") at Exhibit 2.

⁶⁵ *Id.* at 6, citing MPF CF28 Response at Exhibit 1.

⁶⁶ *Id.* at 6-7.

⁶⁷ *Id.* at 7, citing MPF Written Arguments at Exhibit A.

⁶⁸ *Id.* at 7, citing MPF Written Arguments at 9-17.

⁶⁹ *Id.* at 7.

Analysis: As indicated previously, the observations of [] at the KKFF Bend facility that fittings were not being manufactured and that minimal raw materials were present were confirmed by CBP during its own site visit, during which virtually no manufacturing was occurring, and during which one of the company's workers indicated most of the company's pipe fittings were brought in from elsewhere and finished and packed by KKFF Bend.⁷⁰ While those observations by [] and by CBP covered limited periods of time, and were limited to areas that the visitors were able to view, KKFF Bend's later failure to respond to CBP's RFI, which requested sales and production documentation covering the period of investigation, supports concluding KKFF Bend was not the manufacturer of the fittings it shipped to the importer. Furthermore, nothing the importer provided in its own RFI response supports concluding that KKFF Bend produced the fittings in question, and the importer had earlier failed to provide such production documentation in response to the CF28 it was sent by CBP.⁷¹ In addition, the recorded statements of KKFF Bend and Qingdao KKF management indicating that they knowingly transship Chinese-pipe fittings through Cambodia to the United States supports concluding the fittings were actually manufactured in China, and therefore would be subject to AD duties for which the importer did not pay cash deposits at the time of entry.

Finally, as acknowledged by MPF, that importer had misclassified entries of CSBW pipe fittings under incorrect HTSUS numbers, which have not been associated with merchandise subject to the AD order, rather than the correct ones, which have been associated with merchandise subject to the AD order. Although the scope of AD/CVD orders is not defined based on HTSUS numbers, those classifications are instrumental in the enforcement of such orders, and such misclassifications therefore result in the avoidance of required duties.

In short, substantial evidence demonstrates that the importer imported Chinese-origin CSBW pipe fittings that were transshipped through Cambodia and/or misclassified as merchandise other than CSBW pipe fittings, that such country-of-origin and product classification information provided at the time of entry was false, and that required cash deposits related to the AD order were not paid at that time. Given neither KKFF Bend (which did not respond to the RFI) nor the importer (which failed to provide requested production documentation demonstrating who produced the merchandise, and whose responses contained other deficiencies, as noted above) cooperated to the best of their abilities, the application of adverse inferences is warranted, as noted below. Furthermore, because EAPA does not have a knowledge requirement for evasion as defined under 19 CFR 165.1, there is no requirement that the importer know of the material or false statement and, thus, CBP does not need to determine any level of culpability, only that evasion occurred with entry.

Trupply

⁷⁰ See NOI at 4.

⁷¹ As noted in the NOI, “[b]ased on the information in the CF-28 responses [of MPF], CBP could not confirm where the merchandise was actually produced.” See NOI at 5. CBP has also noted discrepancies in MPF's responses as well, including the fact that production documents provided do not indicate the party performing the production steps nor the location of production.

As noted above, Trupply did not submit written arguments. Consequently, no responses to written arguments pertain to Trupply.

Analysis: As indicated previously, the observations of [] at the KKFF Bend facility that fittings were not being manufactured and that minimal raw materials were present were confirmed by CBP during its own site visit, during which virtually no manufacturing was occurring, and during which one of the company's workers indicated most of the company's pipe fittings were brought in from elsewhere and finished and packed by KKFF Bend.⁷² While those observations by [] and by CBP covered limited periods of time, and were limited to areas that the visitors were able to view, KKFF Bend's later failure to respond to CBP's RFI, which requested sales and production documentation covering the period of investigation, supports concluding KKFF Bend was not the manufacturer of the fittings it shipped to the importer. Furthermore, nothing the importer provided in its own RFI response supports concluding that KKFF Bend produced the fittings in question, and the importer had earlier failed to provide such production documentation in response to the CF28 it was sent by CBP.⁷³ In addition, the recorded statements of KKFF Bend and Qingdao KKF management indicating that they knowingly transship Chinese-pipe fittings through Cambodia to the United States supports concluding the fittings were actually manufactured in China, and therefore would be subject to AD duties for which the importer did not pay cash deposits at the time of entry.

In short, substantial evidence demonstrates that the importer imported Chinese-origin CSBW pipe fittings that were transshipped through Cambodia and/or misclassified as merchandise other than CSBW pipe fittings, that such country-of-origin and product classification information provided at the time of entry was false, and that required cash deposits related to the AD order were not paid at that time. Given neither KKFF Bend (which did not respond to the RFI) nor the importer (which failed to provide requested production documentation demonstrating who produced the merchandise, and whose responses contained other deficiencies, as noted above) cooperated to the best of their abilities, the application of adverse inferences is warranted, as noted below. Furthermore, because EAPA does not have a knowledge requirement for evasion as defined under 19 CFR 165.1, there is no requirement that the importer know of the material or false statement and, thus, CBP does not need to determine any level of culpability, only that evasion occurred with entry

Norca

⁷² See NOI at 4.

⁷³ As noted in the NOI, even though Trupply "provided entry summary documents upon receiving the second {CF28} request for information from the Center, and some additional information from KKFF Bend in a subsequent response," CBP determined that "{b}ased on the information in the responses, CBP could not confirm where the merchandise was actually produced." See NOI at 5. CBP has also noted discrepancies in Trupply's RFI response as well, including the failure to provide country of origin certificates or numerous requested production records (*e.g.*, purchase orders, materials invoices, freight bills, and time and wage cards for employees involved in the production process).

As noted above, Norca did not submit written arguments. Consequently, no responses to written arguments pertain to Norca.

Analysis: As indicated previously, the observations of [] at the KKFF Bend facility that fittings were not being manufactured and that minimal raw materials were present were confirmed by CBP during its own site visit, during which virtually no manufacturing was occurring, and during which one of the company's workers indicated most of the company's pipe fittings were brought in from elsewhere and finished and packed by KKFF Bend.⁷⁴ While those observations by [] and by CBP covered limited periods of time, and were limited to areas that the visitors were able to view, KKFF Bend's later failure to respond to CBP's RFI, which requested sales and production documentation covering the period of investigation, supports concluding KKFF Bend was not the manufacturer of the fittings it shipped to the importer. Furthermore, while the importer's RFI response and CF28 response contain some documentation identified as KKFF's and relating to production, the importer's submissions in their totality do not support determining the fittings in question were produced by KKFF Bend.⁷⁵ In addition, the recorded statements of KKFF Bend and Qingdao KKF management indicating that they knowingly transship Chinese-pipe fittings through Cambodia to the United States supports concluding the fittings were actually manufactured in China, and therefore would be subject to AD duties for which the importer did not pay cash deposits at the time of entry.

In short, substantial evidence demonstrates that the importer imported Chinese-origin CSBW pipe fittings that were transshipped through Cambodia, that such country-of-origin and product classification information provided at the time of entry was false, and that required cash deposits related to the AD order were not paid at that time. Given neither KKFF Bend (which did not respond to the RFI) nor the importer (which failed to provide requested production documentation demonstrating who produced the merchandise, and whose responses contained other deficiencies, as noted above) cooperated to the best of their abilities, the application of adverse inferences is warranted, as noted below. Furthermore, because EAPA does not have a knowledge requirement for evasion as defined under 19 CFR 165.1, there is no requirement that the importer know of the material or false statement and, thus, CBP does not need to determine any level of culpability, only that evasion occurred with entry.

Service Metal

Service Metal argues that because the documentation made available to it by KKFF Bend indicated that the fittings imported by Service Metal were of Cambodian origin and were not,

⁷⁴ See NOI at 4.

⁷⁵ CBP has noted discrepancies in Norca's responses, including the fact that the documentation regarding production of the goods that were submitted in Norca CF28 response did not indicate the party performing the production steps nor the location of production. With regard to the Norca RFI response, discrepancies include Norca's failure to provide documentation to support its payment to KKFF Bend for the imported merchandise, and the absence of the identity of the shipper of raw materials issued to KKFF Bend from the bill of lading.

therefore, merchandise covered under the AD order, and given the substantial evidence requirement for a finding of evasion, CBP must make a negative determination of evasion and not impose penalties on Service Metal.⁷⁶ Service Metal states it was cooperative during the EAPA investigation, and even [] once it learned []⁷⁷ and undertook [].⁷⁸ Service Metal also states that “{t}o the extent that CBP makes a negative final determination of evasion, []”⁷⁹

Service Metal states nothing in the Alleger’s allegation supports an affirmative final determination of evasion of the AD order by Service Metal. Service Metal states the allegation does not indicate the pipe fittings imported by Service Metal were made in China, and even acknowledges that some of KKFF Bend’s fittings did not originate in China, which undermines any conclusion that 100 percent of Service Metal’s imports from KKFF Bend evaded the order.⁸⁰ Service Metal also states it “adopts the arguments made by” MPF and Iron Mule “to the extent they raise the significant inadequacies in the allegations” made by the Alleger.⁸¹

Service Metal also claims “{t}he information gathered during CBP’s site visit does not support an affirmative determination of evasion under the substantial evidence standard.”⁸² Service Metal states the record indicates it [] at the time of the CBP’s site visit.⁸³ Service Metal argues documentation from its CF28 and RFI responses show that []⁸⁴

Service Metal states that CBP confirmed on its site visit that KKFF Bend had been producing pipe fittings and that it was capable of doing so.⁸⁵ Service Metal also claims “the fact that []” is “a reasonable explanation for any decreased activity at the KKFF {Bend} plant” during CBP’s visit.⁸⁶

⁷⁶ See Service Metal Written Arguments at 1-2. Service Metal also states that “{t}o the extent that CBP makes a negative final determination of evasion, []” *Id.* at 15.

⁷⁷ *Id.* at 15, citing Service Metal RFI Response at 7.

⁷⁸ *Id.* at 15, citing Service Metal RFI Response at 23-25.

⁷⁹ *Id.* at 15.

⁸⁰ *Id.* at 14-15.

⁸¹ *Id.* at 15.

⁸² *Id.* at 12.

⁸³ *Id.*

⁸⁴ *Id.* at 12-13, citing Service Metal RFI Response at 7 and Exhibit 37, and the supplemental portion of Service Metal’s CF28 Responses submitted in business confidential and redacted public version form on Aug. 22, 2019 (“Service Metal CF28 Responses”) at Exhibit 3.

⁸⁵ *Id.* at 13, citing Onsite Visit Memo at 1 and 3.

⁸⁶ *Id.* at 13.

Service Metal states that KKFF Bend’s refusal during the CBP site visit to provide purchase, production, shipping, and sales documentation” can be reasonably explained by the reason provided by KKFF Bend at the time, *i.e.*, that its general manager was not at the factory at the time.⁸⁷ Service Metal notes that such KKFF Bend documentation was subsequently placed on the record of the EAPA investigation by importers subject to the investigation, including Service Metal.⁸⁸

Service Metal states that various types of documents provided by KKFF Bend to Service Metal indicated the country of origin of the imported fittings was Cambodia. Service Metal indicates some documents show KKFF Bend is capable of producing such fittings (*i.e.*, production facility photographs and production diagrams, documentation of KKFF capital equipment purchases, and a “Pressure Equipment Directive Certificate indicating authorization to issue certificates of specific product controls in accordance to a European requirement) and other documents indicate KKFF Bend produced such fittings for actual transactions (*i.e.*, certificates of origin, bills of lading, and mill test certificates).⁸⁹ Service Metal indicates some of this documentation originated with or were stamped by Cambodian authorities (*i.e.*, certificates of origin for the final merchandise, and some of the sales documentation associated with KKFF Bend purchase of equipment).⁹⁰ Service Metal states that such information provided by KKFF to Service Metal for two entry numbers that were subject to the CF28 request allows CBP to trace the production of the imported pipe fittings.⁹¹ Service Metal argues that the types of KKFF Bend documentation submitted by Service Metal in this EAPA investigation are similar to those provided to CBP in EAPA Case No. 7270, in which CBP found in its final determination that the U.S. importer did not evade the AD/CVD orders in question.⁹²

Service Metal also states that it reasonably believed that the KKFF Bend fittings originated in Cambodia, given it expressly told KKFF that it would not accept merchandise produced in China, that KKFF confirmed the merchandise it was supplying originated in Cambodia, [

], and that KKFF Bend provided the requested certificates of origin and documentation that its mill had International Standards Organization and Pressure Equipment Directive certifications.⁹³ Service Metal indicated that it understood that [].⁹⁴ Service Metal

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.* at 3-4, citing various documents in Service Metal RFI Response and in Service Metal CF28 Responses.

⁹⁰ *Id.* at 4.

⁹¹ *Id.* at 5-6, citing various documents in Service Metal CF28 Responses, including raw material invoices, production records, final product invoices and transportation-related documents, and worker timecards.

⁹² *Id.* at 10, citing “Notice of Final Determination as to Evasion, EAPA Inv. 7270 (Newtrend USA)” (Sept. 25, 2019) at 6.

⁹³ *Id.* at 6-7, citing Service Metal RFI Response at 5-7 and Exhibits 5, 7, and 8.

⁹⁴ *Id.* at 7-8, citing Exhibits 5, 6, 7, and 9.

concludes that it “reasonably believed the pipe fittings KKFF Bend sold it had been manufactured in Cambodia, and that KKFF Bend was a quality and reliable manufacturer.”⁹⁵

Service Metal states that to the extent that KKFF [], Cambodia would be considered the country of origin, and the products would not be subject to the AD order, and therefore not evidence of evasion of that order.⁹⁶ Service Metal states KKFF provided to it information indicating the manufacturing processes performed in Cambodia used to transform the inputs into pipe fittings.⁹⁷ While Service Metal acknowledges that it had [

], Service Metal claims that [].⁹⁸ Consequently, Service Metal argues, there is no evidence that Service Metal purposefully misclassified any merchandise. Service Metal also argues that nothing in the EAPA statute or implementing regulations directs that misclassification is a basis for an affirmative finding of evasion, and that the scope of the order is its narrative description, not HTSUS classifications, indicating errors in HTSUS classification are not relevant with respect to evasion of an order.⁹⁹

Service Metal concludes that CBP must fully consider the evidence on the record and may not discount the information submitted by Service Metal and other interested parties in favor of the speculation in the allegation or information learned in the onsite visit [], and that such evidence provided by KKFF Bend to Service Metal and submitted on the record indicates the pipe fittings imported by Service Metal were manufactured by KKFF in Cambodia. Consequently, Service Metal notes, there is no basis for a final determination of evasion or the imposition of any penalties on Service Metal.¹⁰⁰

The Alleger responded that the evidence compiled by it and CBP shows clearly that KKFF Bend and the investigated importers are engaged in duty evasion, and that CBP should continue to make a finding of evasion in this consolidated investigation, as it did in connection with the imposition of interim measures.¹⁰¹ The Alleger stated that its allegation included references to firsthand evidence at the KKFF Bend facility in Cambodia indicating the absence of production, including minimal quantity of raw material that had accumulated dust, equipment not in use, employees engaged in marking and painting finished and unfinished butt-weld pipe fittings rather than production of butt-weld pipe fittings, and absence of noise or metal shavings or scrap that would be indicative of any kind of production operation.¹⁰² The Alleger also alluded to the verbal conveyance by KKFF Bend’s general manager that KKFF Bend knowingly imports

⁹⁵ *Id.* at 8.

⁹⁶ *Id.* at 8-9.

⁹⁷ *Id.* at 9, citing the supplemental portion of Service Metal CF28 Responses at Exhibit 5.

⁹⁸ *Id.* at 11.

⁹⁹ *Id.* at 11-12.

¹⁰⁰ *Id.* at 16.

¹⁰¹ *See* Alleger Response at 1 and 10.

¹⁰² *Id.* at 2-3, citing an affidavit from [] (“affidavit”) and various other exhibits in the Allegation.

Chinese fittings into Cambodia for re-export to the United States and elsewhere and falsely declares such imports as raw materials.¹⁰³

The Alleger also refers to evidence from CBP's on-site visit, as referenced in the Onsite Visit Memo, of the absence of production capability at the KKFF Bend facility. This includes CBP references to observations that the laboratory equipment was covered and not in use, that employees were primarily involved in finishing and packing rather than production, and that other employees appeared unable to use the production equipment or to even remove materials from containers.¹⁰⁴ The Alleger states that KKFF Bend's refusal to provide to CBP order, sales, and production documentation also suggest the company and its U.S. importers are involved in duty evasion.¹⁰⁵

The Alleger states that documentation submitted to CBP by Service Metal that were provided to Service Metal by KKFF Bend should not be considered, given KKFF Bend itself did not respond to CBP's requests for information, and that were CBP to consider such information would amount to condoning KKFF Bend's lack of cooperation, potentially encouraging similar conduct by producers and exporters in other EAPA investigations.¹⁰⁶

The Alleger states that even if CBP did consider information provided by KKFF Bend through Service Metal, there are serious questions about the veracity and completeness of this information. For example, the documentation Service Metal states was issued by or stamped by Cambodian government authorities is suspect, the Alleger argues, given the evidence indicating KKFF Bend has engaged in bribery of Cambodian government officials in connection with the duty evasion scheme.¹⁰⁷ The Alleger also notes that the worker timecard information cited by Service Metal does not reveal anything of value in this proceeding, given both [] and CBP observed that KKFF Bend employees were not involved in production of butt-weld pipe fittings.¹⁰⁸

The Alleger rejects Service Metal's claim that it "reasonably believed the pipe fittings KKFF Bend sold it had been manufactured in Cambodia," and indicated Service Metal did not meet the reasonable care standard required of importers under 19 U.S.C. § 1484. The Alleger states that the assurances purportedly sought by Service Metal from KKFF Bend (*e.g.*, "asking KKFF Bend to produce certificates of origin, as well as documentation that its mill in Cambodia has International Standards Organization and Pressure Equipment Directive certifications") do not rise to the level of reasonable care.¹⁰⁹

¹⁰³ *Id.* at 3, citing the affidavit from the Allegation.

¹⁰⁴ *Id.* at 3-4, citing Onsite Visit Memo at 1-4.

¹⁰⁵ *Id.* at 4, citing Onsite Visit Memo at 4.

¹⁰⁶ *Id.* at 5.

¹⁰⁷ *Id.* at 5-6, citing Service Metal Written Arguments at 4-7 and Allegation at Exhibit 4.

¹⁰⁸ *Id.* at 7.

¹⁰⁹ *Id.* at 8, citing Service Metal Written Arguments at 6-7.

Analysis: CBP notes that Service Metal [

]. However, in its subsequent written argument on the record of this EAPA investigation, as noted above, Service Metal claims the fittings subject to the EAPA investigation originated in Cambodia and that [] do not constitute evasion of the AD order on CSBW Pipe Fittings from China [

]. The [

], and CBP here focuses on Service Metal's claims in its written argument.

As indicated previously, the observations of [] at the KKFF Bend facility that fittings were not being manufactured and that minimal raw materials were present were confirmed by CBP during its own site visit, during which virtually no manufacturing was occurring, and during which one of the company's workers indicated most of the company's pipe fittings were brought in from elsewhere and finished and packed by KKFF Bend.¹¹⁰ While those observations by [] and by CBP covered limited periods of time, and were limited to areas that the visitors were able to view, KKFF Bend's later failure to respond to CBP's RFI, which requested sales and production documentation covering the period of investigation, supports concluding KKFF Bend was not the manufacturer of the fittings it shipped to the importer. Furthermore, nothing the importer provided in its own RFI response supports concluding that KKFF Bend produced the fittings in question, and the importer had earlier failed to provide such production documentation in response to the CF28 it was sent by CBP.¹¹¹ In addition, the recorded statements of KKFF Bend and Qingdao KKF management indicating that they knowingly transship Chinese-pipe fittings through Cambodia to the United States supports concluding the fittings were actually manufactured in China, and therefore would be subject to AD duties for which the importer did not pay cash deposits at the time of entry.

Finally, [

]. Although the scope of AD/CVD orders is not defined based on HTSUS numbers, those classifications are instrumental in the enforcement of such orders, and such misclassifications therefore result in the avoidance of required duties.

¹¹⁰ See NOI at 4.

¹¹¹ As noted in the NOI, the Service Metal CF28 response was "incomplete" and "CBP could not confirm where the merchandise was actually produced." See NOI at 5. CBP has also noted discrepancies in Service Metal's RFI response, including Service Metal's failure to provide requested production records for all importations from KKFF Bend during the period of investigation of pipe fittings, including CSBW pipe fittings, and the absence of country of origin certificates for many entries of CSBW pipe fittings imported from KKFF Bend during that period.

In short, substantial evidence demonstrates that the importer imported Chinese-origin CSBW pipe fittings that were transshipped through Cambodia and/or misclassified as merchandise other than CSBW pipe fittings, that such country-of-origin and product classification information provided at the time of entry was false, and that required cash deposits related to the AD order were not paid at that time. Given neither KKFF Bend (which did not respond to the RFI) nor the importer (which failed to provide requested production documentation demonstrating who produced the merchandise, and whose responses contained other deficiencies, as noted above) cooperated to the best of their abilities, the application of adverse inferences is warranted, as noted below. Furthermore, because EAPA does not have a knowledge requirement for evasion as defined under 19 CFR 165.1, there is no requirement that the importer know of the material or false statement and, thus, CBP does not need to determine any level of culpability, only that evasion occurred with entry

Summary for All Importers

Pursuant to 19 U.S.C. §1517(c)(3) and 19 C.F.R. §165.6, CBP may apply an adverse inference if the party to the investigation that filed an allegation, the importer, or the foreign producer or exporter of the covered merchandise fails to cooperate and comply to the best of its ability with a request for information made by CBP. In applying an adverse inference against an eligible party, CBP may select from the facts otherwise available to make a final determination as to evasion pursuant to 19 U.S.C. §1517(c)(1)(A) and 19 C.F.R. §165.27. Moreover, an adverse inference may be used with respect to U.S. importers, foreign producers, and manufacturers “without regard to whether another person involved in the same transaction or transactions under examination has provided the information sought....” See 19 U.S.C. 1517(c)(3)(B).

In this case, KKFF Bend did not respond to CBP’s RFI. As the alleged foreign manufacturer failed to respond to CBP’s multiple requests for information, CBP may apply adverse inferences and infer that it is not a manufacturer and, instead, based on the information provided by the Alleger, KKFF Bend has been participating in the transshipment of Chinese-origin CSBW pipe fittings through Cambodia. Moreover, the failure of the Importers to respond to the best of their abilities also supports the application of adverse inferences, as discussed in the analysis sections for each importer above. Therefore, CBP is applying adverse inferences. In relying upon an adverse inference for failure to respond to the RFIs, or failure to cooperate and comply to the best of one’s ability with a request for information, CBP will look at the facts otherwise available. On the basis of the aforementioned analysis, CBP determines that substantial evidence exists demonstrating that the CSBW pipe fittings entered by the Importers during the period of investigation for which the claimed manufacturer was KKFF were Chinese and transshipped through Cambodia, and in some instances had been misclassified as product other than CSBW pipe fittings.

Actions Taken Pursuant to the Affirmative Determination of Evasion

In light of CBP’s determination that the Importers entered 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 entries imported by Ductilic, Iron Mule, MPF, Trupply, Norca, and Service Metal that has entered on or after March 21, 2019, the date of initiation. CBP will continue to 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 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,

Victoria Cho

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