



November 6, 2020

PUBLIC VERSION

EAPA Cons. Case Number: 7335

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RE: Notice of Determination as to Evasion

Dear Counsel and/or Representatives for the above-referenced Entities:

Pursuant to an examination of the record in Enforce and Protect Act (EAPA) consolidated case number 7335, U.S. Customs and Border Protection (CBP) has determined that there is substantial evidence that Norca Industrial Company, LLC (Norca) and International Piping & Procurement Group, LP (IPPG) (collectively, the Importers) entered merchandise covered by antidumping duty (AD) order A-570-814¹ on certain carbon steel butt-weld pipe fittings (CSBW pipe fittings or covered merchandise) from the People's Republic of China (China) into the customs territory of the United States through evasion. Substantial evidence demonstrates that Norca and IPPG

¹ See *Antidumping 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 Fed. Reg. 29,702 (Dep't Commerce, Jul. 6, 1992) (*Order*).

imported CSBW pipe fittings into the United States from China that were transshipped through Vietnam. The Importers did not declare that the merchandise was subject to AD order A-570-814 upon entry and, as a result, no cash deposits were applied to the merchandise at the time of entry.

Background

On October 9, 2019, Allied Group (Allied), a U.S. producer of CSBW pipe fittings, submitted allegations to CBP that Norca and IPPG were evading the AD order on CSBW pipe fittings from China by importing into the United States Chinese-origin CSBW pipe fittings that were transshipped through Vietnam.² According to Allied, Norca and IPPG shifted their imports of covered merchandise from Alliance Fittings Industry (AFI), a Malaysian company, to BW Fittings Co., Ltd (BW Fittings) in Vietnam after the U.S. Department of Commerce found that CSBW pipe fittings from China that underwent minor processing in Malaysia or were marked with “Malaysia” as the country of origin were circumventing the AD order on CSBW pipe fittings from China.³ Allied provided data suggesting that Norca and IPPG shifted their imports of CSBW pipe fittings from AFI to BW Fittings in 2018.⁴ Allied claimed that Haitian Pipe Fittings Co. Ltd. (HPCO), a Chinese producer of CSBW pipe fittings, was transshipping covered merchandise through BW Fittings, and provided photographs from HPCO’s website showing the same individual promoting fittings from both HPCO and BW Fittings.⁵ Additionally, Allied and Allied Canada officials provided affidavits regarding their communications with HPCO/BW Fittings’ sales manager and their visits to BW Fittings in Vietnam as evidence that BW Fittings was not producing CSBW pipe fittings in Vietnam, but transshipping them from China to the United States.⁶ On October 15, 2019, CBP acknowledged receipt of the properly filed allegations against Norca and IPPG.⁷

CBP found that the information in the allegations reasonably suggested that Norca and IPPG entered covered merchandise for consumption into the customs territory of the United States through evasion. Consequently, on November 5, 2019, CBP initiated EAPA investigations pursuant to Title IV, section 421 of the Trade Facilitation and Trade Enforcement Act of 2015.⁸ After the initiation of these investigations, CBP issued Customs Form 28 (CF28) questionnaires to Norca and IPPG regarding certain entries of CSBW pipe fittings and requested the

² See Allied’s EAPA allegations for Norca and IPPG, both entitled, “Allegation of Duty Evasion under the Enforcement and Protect Act of 2015,” (Oct. 9, 2019) (Allegations).

³ *Id.* at 1-2 and Exhibit 3 (containing, *inter alia*, *Carbon Steel Butt-Weld Pipe Fittings From the People’s Republic of China: Final Affirmative Determination of Circumvention of the Antidumping Duty Order*, 84 Fed. Reg. 29,164 (Dep’t Commerce, June 21, 2019) and accompanying Issues and Decision Memorandum).

⁴ *Id.* at Exhibit 2 and Attachment A (data from [] showing imports from Malaysia and Vietnam, respectively).

⁵ *Id.* at 1 and Exhibit 1.

⁶ *Id.* at Attachments B, C, and D and accompanying exhibits.

⁷ See 19 CFR 165.12; *see also* CBP emails acknowledging receipt of EAPA Case Nos. 7335 and 7336 (Oct. 15, 2019).

⁸ See 19 USC 1517(b)(1); *see also* 19 CFR 165.15; *see also* CBP Memoranda, “Initiation of Investigation for EAPA Case Number 7335” (Nov. 5, 2019) and “Initiation of Investigation for EAPA Case Number 7336” (Nov. 5, 2019) for Norca and IPPG, respectively.

corresponding entry and production documentation.⁹ On January 9, 2020, CBP conducted an on-site visit at BW Fittings' facility in Vietnam.¹⁰

After evaluating the information on the record, CBP determined that reasonable suspicion existed that at least some of the CSBW pipe fittings imported by Norca and IPPG into the United States from BW Fittings were manufactured in China and, therefore, should have been subject to AD duties. Accordingly, on February 3, 2020, CBP implemented interim measures against Norca and IPPG,¹¹ and on February 10, 2020, CBP issued a notice of investigation and interim measures to the Importers and Allied.¹² This notice informed Norca, IPPG, and Allied of the initiation of the investigations against the Importers and of CBP's decision to impose interim measures based upon a reasonable suspicion that the Importers entered covered merchandise into the customs territory of the United States through evasion.¹³ The notice also informed the Importers and Allied of the consolidation of the two investigations, and that the entries covered by the consolidated investigation are those entered for consumption, or withdrawn from warehouse for consumption, from October 15, 2018 through the pendency of this investigation.¹⁴

As part of interim measures, CBP suspended the liquidation of Norca's and IPPG's entries that entered on or after November 5, 2019, the date of initiation of the two investigations incorporated into the consolidated investigation, and extended the period for liquidation for all unliquidated entries that entered before that date.¹⁵

On February 14, 2020, CBP issued requests for information (RFIs) to Norca, IPPG, and BW Fittings, requesting information about the Importers' entries of CSBW pipe fittings and BW Fittings' production process and sales of CSBW pipe fittings to the Importers.¹⁶ Norca

⁹ See CF28 issued to Norca for entry number []0705 (Nov. 20, 2019); Norca CF28 Response (Dec. 9, 2019) (Norca CF28 Response); CF28 issued to IPPG for entry number []3703 (Nov. 21, 2019); IPPG CF28 Response (Dec. 16, 2019) (IPPG Response); Supplemental CF28 issued to Norca (Dec. 18, 2019); Norca CF28 Supplemental Response (Jan. 3, 2020) (Norca Supplemental CF28 Response); Supplemental CF28 issued to IPPG (Jan. 7, 2020); and IPPG CF28 Supplemental Response (Jan. 14, 2020) (IPPG Supplemental CF28 Response).

¹⁰ See CBP Interoffice Memorandum from the Regional CBP Attaché to the Executive Director of the Trade Remedy Law Enforcement Division (Jan. 15, 2020) (On-Site Visit Report).

¹¹ See CBP Email Implementing Interim Measures (Feb. 3, 2020).

¹² See CBP Memorandum, "Notice of Initiation of Investigation and Interim Measures – EAPA Cons. Case 7335" (Feb. 10, 2020) (Notice of Initiation and Interim Measures).

¹³ *Id.*; see also 19 USC 1517(e); see also 19 CFR 165.24.

¹⁴ See Notice of Initiation and Interim Measures at 2 and 10; see also 19 USC 1517(b)(5); see also 19 CFR 165.13; see also 19 CFR 165.2.

¹⁵ See 19 USC 1517(e); see also 19 CFR 165.24(b)(1).

¹⁶ See Memorandum to Norca, "Request for Information to Importer with regard to Enforce and Protect Act investigation of whether Norca Industrial Company, LLC has evaded the antidumping duty order on carbon steel butt-weld pipe fittings from the People's Republic of China, A-570-814, with entries of merchandise into the United States" (Feb. 14, 2020) (CBP RFI to Norca); Memorandum to IPPG, "Request for Information to Importer with regard to Enforce and Protect Act investigation of whether International Piping & Procurement Group, LP has evaded the antidumping duty order on carbon steel butt-weld pipe fittings from the People's Republic of China, A-570-814, with entries of merchandise into the United States" (Feb. 14, 2020) (CBP RFI to IPPG); and Memorandum to BW Fittings, "Request for Information to Claimed Manufacturer with regard to Enforce and Protect Act Investigation of whether Norca Industrial Company, LLC and International Piping & Procurement Group, LP have evaded the antidumping duty order on certain carbon steel butt-weld pipe fittings from the People's Republic of China, A-570-814, with entries of merchandise into the United States" (Feb. 14, 2020) (CBP RFI to BW Fittings).

responded to the RFI on April 14, 2020,¹⁷ IPPG submitted its RFI response on June 1, 2020,¹⁸ and BW Fittings responded to the RFI on April 20, 2020.¹⁹

CBP issued supplemental RFIs to Norca on April 21, 2020 and May 29, 2020,²⁰ to which Norca responded on May 5, 2020 and June 22, 2020, respectively.²¹ CBP also issued a supplemental RFI to BW Fittings on May 27, 2020,²² to which BW Fittings responded on June 24, 2020.²³

In addition, on March 10, 2020, Norca and BW Fittings collectively filed a letter requesting that CBP withdraw the Notice of Initiation and Interim Measures with respect to Norca and withdraw the RFIs issued by CBP.²⁴ Norca and BW Fittings collectively filed another letter on April 6, 2020 asking that CBP amend or clarify the Notice of Initiation and Interim Measures.²⁵ On April 20, 2020, Allied filed a response to Norca and BW Fittings' request to modify the Notice of Initiation and Interim Measures.²⁶ Finally, on August 20, 2020, Norca filed written arguments.²⁷

¹⁷ See Letter from Norca, "EAPA Inv. No. 7335: Re-Submission of Norca Industrial Company, LLC's Response to February 14, 2020 Request for Information" (Apr. 14, 2020) (Norca RFI Response).

¹⁸ See Letter from IPPG (Jun. 1, 2020) (IPPG RFI Response).

¹⁹ See Letter from BW Fittings, "EAPA Inv. No. 7335: Submission of BW Fittings Co., Ltd Response to February 14, 2020 Request for Information" (Apr. 20, 2020) (BW Fittings RFI Response).

²⁰ See Memorandum to Norca, "Supplemental Request for Information to Importer with regard to Enforce and Protect Act investigation of whether Norca Industrial Company, LLC has evaded the antidumping duty order on carbon steel butt-weld pipe fittings from the People's Republic of China, A-570-814, with entries of merchandise into the United States" (Apr. 21, 2020) (CBP Supplemental RFI to Norca) and Memorandum to Norca, "Supplemental Request for Information to Importer with regard to Enforce and Protect Act investigation of whether Norca Industrial Company, LLC has evaded the antidumping duty order on carbon steel butt-weld pipe fittings from the People's Republic of China, A-570-814, with entries of merchandise into the United States" (May 29, 2020) (CBP Second Supplemental RFI to Norca).

²¹ See Letter from Norca, "EAPA Inv. No. 7335: Norca Industrial Company, LLC's Response to April 21, 2020 Supplemental Request for Information" (May 5, 2020) (Norca Supplemental RFI Response) and Letter from Norca, "EAPA Inv. No. 7335: Norca Industrial Company, LLC's Response to April 21, 2020 Supplemental Request for Information" (Jun. 22, 2020) (Norca Second Supplemental RFI Response).

²² See Memorandum to BW Fittings, "Supplemental Request for Information to Claimed Manufacturer with regard to Enforce and Protect Act investigation of whether Norca Industrial Company, LLC and International Piping & Procurement Group, LP have evaded the antidumping duty order on carbon steel butt-weld pipe fittings from the People's Republic of China, A-570-814, with entries of merchandise into the United States" (May 27, 2020) (CBP Supplemental RFI to BW Fittings).

²³ See Letter from BW Fittings, "EAPA Inv. No. 7335: Submission of BW Fittings Co., Ltd Response to March 27, 2020 Request for Information" (Jun. 24, 2020) (BW Fittings Supplemental RFI Response).

²⁴ See Letter from Norca and BW Fittings, "EAPA Inv. No. 7335, Norca and BFW, Carbon Steel Butt-Weld Pipe Fittings From Vietnam" (Mar. 10, 2020).

²⁵ See Letter from Norca and BW Fittings, "EAPA Inv. No. 7335: Request to Amend or Clarify Notice of Interim Measures to Permit Norca Industrial Company, LLC ("Norca") to Enter Vietnam-Origin Carbon Steel Butt-Weld Fittings from BW Fittings Co., Ltd. of Vietnam Without Deposit of AD/301 Tariffs Applicable to China-Origin Fittings" (Apr. 6, 2020).

²⁶ See Letter from Allied, "Response to Written Arguments by Norca and BWF Requesting Modification of Interim Measures" (Apr. 20, 2020).

²⁷ See Letter from Norca, "EAPA Inv. No. 7335: Norca Industrial Company, LLC's Comments on the Investigation" (Aug. 20, 2020).

Analysis

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.”²⁸ 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.”²⁹ As discussed below, substantial evidence on the record of this investigation supports a determination that Norca’s and IPPG’s imports of covered merchandise entered the United States through evasion, resulting in the avoidance of applicable AD deposits or other security.

The merchandise covered by AD order A-570-814 is “carbon steel butt-weld pipe fittings, having an inside diameter of less than 14 inches, imported in either finished or unfinished form. These formed or forged pipe fittings are used to join sections in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other fastening methods (*e.g.*, threaded, grooved, or bolted fittings).”³⁰ Based on the scope of the AD order, rough, unfinished (or semi-finished) CSBW pipe fittings from China that undergo finishing processes (*e.g.*, re-forming, sizing, shot blasting, cleaning, machine beveling, grinding, die stamping or painting processes) in a third country would remain country of origin China upon importation into the United States. Conversely, if seamless carbon steel pipe is transformed into a rough shape (*e.g.*, elbow or tee) or steel plate is transformed into a rough cap through a cold- or hot-forming process, the country in which the seamless carbon steel pipe or steel plate is made into CSBW pipe fittings would confer country of origin. Thus, to determine whether Norca and IPPG imported CSBW pipe fittings into the United States from China that were transshipped through Vietnam by BW Fittings, CBP examined, among other things, the information provided in the RFI responses regarding the raw materials and production processes utilized by BW Fittings in Vietnam to produce the CSBW pipe fittings. To the extent that BW Fittings’ raw materials were rough or semi-finished pipe fittings from China on which BW Fittings performed finishing processes (*e.g.*, beveling, sand blasting, marking, painting, and packing), the CSBW pipe fittings produced by BW Fittings in Vietnam would be considered country of origin China, and would be included in the scope of the AD order. However, to the degree that BW Fittings produced CSBW pipe fittings from seamless pipe and/or steel plate from China by forming the materials, and then performing finishing processes, the CSBW pipe fittings would be considered country of origin Vietnam, and would not be subject to the AD order.

BW Fittings’ profile indicates that the company was established in 2018.³¹ BW Fittings provided an agreement consisting of [

²⁸ Substantial evidence is not defined in the statute. However, the Federal Circuit has stated that “substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *See A.L. Patterson, Inc. v. United States*, 585 Fed. Appx. 778, 781-782 (Fed. Cir. 2014) (quoting *Consol. Edison Co. of N.Y. v. NLRB*, 305 U.S. 197, 229 (1938)).

²⁹ *See* 19 CFR 165.1; *see also* 19 USC 1517(a)(5)(A).

³⁰ *See Order*, 57 Fed. Reg. at 29,703.

³¹ *See* BW Fittings RFI Response at Exhibit 2.

[]].³² The [] and noted the []. The [] and contained the []. BW Fittings reported that it is fully owned by [], a Chinese company.³³

In its RFI response, BW Fittings provided the following information about its production process:³⁴

- From September 2018 to June 2019, BW Fittings performed finishing processes to rough fittings, namely, beveling, sand blasting, marking, painting, and packing, although it did not indicate that it had a painting machine. BW Fittings provided written production procedures for four types of CSBW pipe fittings (elbow, tee, reducer, and cap) for this time period that did not specify any cutting or cold/hot-forming processes. Illustrations and photographs indicated that the raw materials being used were rough fittings.
- From June 2019 to September 2019, BW Fittings added heat treatment and hot shaping to the processes described for the prior period, although it did not indicate that it had a painting machine. BW Fittings provided written production procedures for this time period for four types of CSBW pipe fittings (elbow, tee, reducer, and cap); illustrations and photographs indicated once again that the raw material materials being used were rough fittings.
- From September 2019 to present, BW Fittings added cutting and forming to the processes described for the two prior periods. BW Fittings did not provide written production procedures for this time period, but illustrations and photographs indicated that it used steel tubes/pipes and steel plates as the raw materials.³⁵

In its RFI response, BW Fittings stated that it “imported rough and seamless pipe products from China” during the POI to produce the finished CSBW pipe fittings sold to the Importers, and that “[r]ough products are also known as forgings or stamping parts.”³⁶

In its supplemental RFI response, BW Fittings reported that it used “roughs” as the raw material from October 2018 to June 2019, and seamless pipe as the raw material from June 2019 onward.³⁷ BW Fittings also stated that the terms “rough and stamping part are the same.... They are both created after long pipe is cut into {a} short piece of long pipe and then gone through {a} hot/cold forming process to create {a} rough form of elbow, tee, reducer....”³⁸

³² *Id.* at Exhibit 20.

³³ *Id.* at 9.

³⁴ *Id.* at Exhibit 3.

³⁵ Steel tubes/pipes are used to produce elbows, tees, and reducers, and steel plates are used to produce caps.

³⁶ See BW Fittings RFI Response at 15.

³⁷ See BW Fittings Supplemental RFI Response at 8.

³⁸ *Id.* at 13.

BW Fittings provided a chart (hereinafter referred to as “Raw Material Type Chart”) listing its sales contract numbers with Norca and IPPG, the Importers’ associated purchase order numbers, and the type of raw material used to make CSBW pipe fittings sold to Norca and IPPG during the POI.³⁹ The listed raw materials were either “rough” fittings (described primarily as “stamping parts” or “semi-finished carbon steel butt-weld fittings”) or “seamless steel pipes.” Using the production and sales/entry documents submitted by BW Fittings and the Importers in their RFI responses, CBP linked the information in this chart to (1) the entry numbers for Norca’s and IPPG’s imports of covered merchandise during the POI⁴⁰ and (2) the raw material suppliers’ sales contracts and commercial invoices to BW Fittings.

The raw material sales contracts and invoices submitted by BW Fittings showed that BW Fittings’ Chinese suppliers of raw materials used to make CSBW pipe fittings during the POI were Haitian Pipe Fittings Co., Limited (HPCO) and Asia Piping Manufacturing Group Limited (Asia Piping).⁴¹ BW Fittings reported that HPCO [

].⁴² The product descriptions on the raw material sales contracts and invoices were either written out as “rough fittings” or presented in a numeric format. The written-out descriptions consisted of the rough fitting type (*e.g.*, “rough elbow,” “rough cap,” “rough red” (“reducer”), or “rough tee”); the outside diameter (OD) in inches; and wall thickness (WT) as standard (STD), extra heavy (XH), extra extra heavy (XXH), *etc.*⁴³ Thus, it was clear that the raw material invoices with written descriptions were for rough fittings. Regarding the numeric descriptions, these had either two or three dimensions listed, *e.g.*, 325*9.5*215, depending on the product.⁴⁴ CBP asked BW Fittings to explain what the dimensions represented, and in response, BW Fittings indicated that two of them referred to the outer diameter and wall thickness, but did not explain what the third dimension meant.⁴⁵ Unlike the written-out product descriptions, it was unclear what products the numeric descriptions actually represented.

Based on our analysis of the information described above, along with the production and sales/entry documentation submitted in the RFI responses, CBP made the following findings:

- To discern the meaning of the numeric raw material descriptions, CBP reviewed the product code list provided by BW Fittings for products it produced and sold during the POI.⁴⁶ CBP identified numeric product descriptions in the product code list as “raw material specifications” that corresponded to finished product specifications.⁴⁷ CBP found that all the

³⁹ See BW Fittings RFI Response at Exhibit 21.

⁴⁰ Based on CBP data, Norca’s and IPPG’s entries of covered merchandise during the POI totaled [] and [], respectively. See DC NTAC Report for Norca (Oct. 24, 2019) and DC NTAC Report for IPP (Oct. 24, 2019); CBP Supplemental RFI to Norca at 6; and CBP Second Supplemental to Norca RFI at 3. CBP was able to match [] of the [] entries to the information contained in Exhibit 21 of BW Fittings RFI Response.

⁴¹ See BW Fittings RFI Response at Exhibit 6.

⁴² *Id.* at 9-11.

⁴³ *Id.* at Exhibit 6. For examples of the written out format, see, *e.g.*, HPCO invoice number 18112201 dated November 22, 2018 and Asia Piping invoice number 19072601 dated July 26, 2019.

⁴⁴ *Id.*; for this numeric example, see Asia Piping invoice number 19110701 dated November 7, 2019.

⁴⁵ See BW Fittings Supplemental RFI Response at 7-8.

⁴⁶ See BW Fittings RFI Response at 5 and Exhibit 5.

⁴⁷ For the example cited above, 325*9.5*215 corresponded with the finished product specification CON RED 12”x10” STD (concentric reducer 12”x10” standard wall thickness)).

raw material specifications in BW Fittings’ product code list were numeric descriptions; none were written-out descriptions such as “rough tee” or “rough elbow,” which CBP had expected to see in the list because many of the raw material invoices submitted by BW Fittings had raw material product specifications designated in the written-out format.

- Since BW Fittings indicated that its product code list contained all products produced and sold during the POI, and BW Fittings admitted to using rough fittings in its production process from October 2018 through September 2019 (or June 2019, as later claimed), CBP concluded that the numeric descriptions in the product code list and on the raw material invoices were for rough fittings. As further support for this conclusion, when CBP reviewed BW Fittings’ production records, CBP identified, for different fittings, the same numeric descriptions on 2018 raw materials requisitions for rough fittings as on the 2019 raw material invoices with numeric product descriptions.⁴⁸
- A majority of the raw material suppliers’ sales contracts and commercial invoices to BW Fittings showed that BW Fittings purchased “rough fittings” (*i.e.*, raw materials with written-out descriptions, such as “rough elbow,” “rough tee,” *etc.*) from its Chinese raw material suppliers. The raw material invoices with written descriptions which linked to POI entries had dates ranging from 2018 through August 2019,⁴⁹ and were consistent with the “rough” fittings purchases reported in BW Fittings’ Raw Material Type Chart.⁵⁰ CBP also identified raw material sales contracts and invoices which showed that BW Fittings purchased “rough fittings” in late December 2019 and January 2020.⁵¹
- The remaining raw material sales contracts and commercial invoices designated BW Fittings’ purchases using numeric product descriptions and corresponded with BW Fittings’ claimed purchases of “seamless steel pipe” as shown in the Raw Material Type Chart. These raw material invoices with numeric descriptions had dates from August 2019 through December 2019.⁵² However, even though BW Fittings claimed in the Raw Material Type Chart that these raw material purchases consisted of seamless pipe, CBP had concluded that the numeric descriptions on raw material invoices were actually for rough fittings, as explained above. Thus, CBP could not confirm that these raw material purchases consisted of seamless pipe as claimed by BW Fittings.⁵³
- In a supplemental RFI response, CBP asked BW Fittings to clarify how it used the bend-saw machines (for cutting long pipe) in the production process from September 2019 forward,

⁴⁸ See BW Fittings RFI Response at Exhibit 6 (raw materials invoices) and Exhibit 16 (raw materials requisitions).

⁴⁹ See BW Fittings RFI Response at Exhibit 6.

⁵⁰ CBP linked the raw material sales contracts and invoices with written-out descriptions for “rough” fittings to entries by Norca and IPPG of CSBW pipe fittings which occurred between the beginning of the POI (specifically, the first such entry was on []) and the latter part of 2019 (specifically, []).

⁵¹ See BW Fittings RFI Response at Exhibit 6, specifically, Asia Piping raw material sales contract and invoice 19123101 dated December 31, 2019 and Asia Piping raw material sales contract and invoice 20011901 dated January 19, 2020.

⁵² *Id.* at Exhibit 6.

⁵³ CBP linked the raw material sales contracts and invoices with numeric descriptions to entries of CSBW pipe fittings by the Importers which occurred during the latter part of the POI (specifically, from [] through []).

since CBP did not identify any purchases of [] among the raw material invoices submitted by BW Fittings in Exhibit 6, and to provide any raw material invoices for [] seamless pipe not previously provided.⁵⁴ In response, BW Fittings stated that it already provided purchase documents for imported long pipe or seamless pipe in Exhibit 6, and directed CBP to the chart in Exhibit S10 listing the raw material invoices for seamless pipe.⁵⁵ Exhibit S10 was titled, in part, “The List of Purchasing Long Pipe in the Exhibit 6.” However, CBP found that some of the raw material purchasing contracts listed in Exhibit S10 were those with written descriptions for rough fittings, and some of these were even dated well before BW Fittings reportedly had the capability to perform cutting and forming of seamless pipe.⁵⁶ As a result, the information in Exhibit S10 contradicts BW Fittings’ statements about its production processes and also the raw material contracts and invoices themselves, on which CBP found no evidence of long seamless pipe (or steel plate) purchases.

- BW Fittings initially indicated that until September 2019, it used rough fittings as the raw materials and performed finishing processes to produce CSBW pipe fittings, and then in September 2019, it started using seamless pipe and steel plate as its raw materials when it added cutting and forming to its production processes. Later, BW Fittings stated that it started using seamless pipe as the raw material in June 2019, although it did not provide any updates to the description of its production capabilities. Meanwhile, in the agreement provided by BW Fittings, [

] indicates [

].⁵⁷ As such, the [] appears to contradict the timelines that BW Fittings provided with respect to the description of its claimed production procedures.

As discussed above, BW Fittings first reported that it was using rough fittings as the raw material from 2018 through September 2019, and then began using seamless pipe and steel plate as its raw materials from September 2019 onward. BW Fittings subsequently reported in its supplemental RFI response that it only used rough fittings as the raw material through June 2019, and then switched to using seamless pipe in June 2019. Notwithstanding the different timelines reported by BW Fittings, many of the raw material sales contracts and commercial invoices provided by BW Fittings clearly contained written descriptions for “rough” fittings, and BW Fittings clearly described its production process as using rough fittings to produce CSBW pipe fittings for a part of the POI. Also, BW Fittings’ purchases of rough fittings in late December 2019 and January 2020 are inconsistent with its claimed production process of using seamless pipe (and steel plate) as the raw material beginning in September 2019 (or June 2019, as later reported).

⁵⁴ See CBP Supplemental RFI to BW Fittings at 3.

⁵⁵ See BW Fittings Supplemental RFI Response at 8 and Exhibit S10.

⁵⁶ *Id.* at Exhibit S10; *see also* BW Fittings RFI Response at Exhibit 6. For examples of contracts listed on Exhibit S10 for rough fittings, *see* raw material contract numbers 18122701 dated December 27, 2018; 19011701 dated January 17, 2019; 19021401 dated February 14, 2019; and 19030701 dated March 7, 2019.

⁵⁷ See BW Fittings RFI Response at Exhibit 20.

As for BW Fittings' assertions that it began using seamless pipe to produce CSBW pipe fittings in either June 2019 or September 2019, CBP did not identify any raw material documentation to support the purchase of any seamless pipe (or steel plate) by BW Fittings during the POI. Aside from the raw material invoices with written descriptions that were obviously for rough fittings, CBP determined that the raw material invoices with numeric product descriptions, which had dates from August 2019 through December 2019, were also for rough fittings, as explained above. In sum, all the raw material invoices on the record of this investigation, whether having written-out or numeric descriptions, establish that BW Fittings purchased Chinese-origin rough fittings, and there is no evidence of BW Fittings purchasing seamless pipe or steel plate as the raw material to produce CSBW pipe fittings during the POI. Regardless of whether BW Fittings performed finishing processes on the Chinese-origin rough fittings, the rough fittings from China purchased by BW Fittings are covered by AD order A-570-814, and thus, the CSBW pipe fittings sold by BW Fittings to Norca and IPPG and imported into the United States are subject to AD duties.

Beyond the information discussed above with respect to BW Fittings' production processes and its use of rough fittings to produce the finished CSBW pipe fittings imported by Norca and IPPG, CBP identified other discrepancies and issues with the information on the record of this investigation, as detailed below:

- CBP identified multiple sales contracts from BW Fittings to Norca with fine print indicating that transshipment was "To be Allowed."⁵⁸
- The raw material sales contracts and invoices with written descriptions for rough fittings submitted in BW Fittings' RFI response did not contain sufficient information for BW Fittings' raw material suppliers to fulfill the orders. Therefore, CBP determined that BW Fittings must be transmitting additional information to Asia Piping that was not outlined on the invoices/sales contracts provided to CBP, which means that the record lacks crucial information regarding the raw materials used to make the CSBW pipe fittings imported by Norca and IPPG. For example, the outer diameters are generally listed as whole numbers (*e.g.*, 1", 2", 3", *etc.*), even though half-inch outer diameter increments are common for smaller fittings. Additionally, elbows come in combinations of long radius/short radius and 45/90/180 degrees, and reducers come in combinations of concentric/eccentric plus the wider outer diameter and smaller outer diameter inherent to the fittings, yet none of these details are noted for the elbows and reducers on the raw material sales contracts/invoices with written descriptions. Moreover, there is a [] in unit price variation for line items with the identical description; for example, on Asia Piping invoice 19123101, the unit price varied from [] per unit for all rough elbows, OD 1" (one inch), and STD WT.⁵⁹

⁵⁸ See Norca Supplemental RFI Response at Exhibit B19 and Norca Second Supplemental RFI Response at Section 2 and Section 3. For examples, see Norca Supplemental RFI Response at Exhibit B19_5092 for BW Fittings sales contract number SC-BW190049 and Exhibit B19_5050 for BW Fittings sales contract number SC/BW-190007, and Norca Second Supplemental RFI Response at Section 2, Segment 002 for BW Fittings sales contract number SC-BW190050.

⁵⁹ See BW Fittings RFI Response at Exhibit 6.

- The record contains further evidence that additional information must have been communicated between BW Fittings and Asia Piping that was not provided to CBP. Specifically, during CBP’s on-site visit to BW Fittings in January 2020, CBP requested that BW Fittings provide documentation for [] shipments of “semi-finished” CSBW pipe fittings from China.⁶⁰ CBP observed that the raw material invoices provided in response to CBP’s request at the on-site visit contained more details for the products than the same raw material invoice numbers submitted in BW Fittings’ RFI response, which had written descriptions for “rough” fittings and less details for the products.⁶¹
- BW Fittings did not provide any Chinese certificates of origin for the raw materials it obtained from its suppliers, despite CBP’s requests for this information.⁶² However, in its RFI responses, Norca provided a signed statement from BW Fittings dated February 22, 2020, in which BW Fittings stated that all the raw materials were imported from China, and that it did not have certificates of origin for imported steel pipe raw materials, because Vietnamese Customs does not require them.⁶³ This statement does not align with the thorough documentation that CBP reviewed from Vietnamese Customs for the arrival of the production equipment from China; further, this statement was only in reference to BW Fittings’ purported purchases of “pipe” and did not address country of origin certificates for the rough fittings imported from China.
- CBP identified vast inconsistencies between the equipment purchase documentation provided in the Importers’ CF28 responses and BW Fittings’ RFI response, which calls into question the veracity of the information provided by BW Fittings. The CF28 responses included invoices from [], BW Fittings’ parent company in China, as well as packing lists, bills of lading, and Vietnamese Customs documents.⁶⁴ The invoices showed that [] provided all machinery to BW Fittings at no cost, as the payment terms stated “{no} payment due to investment under capital.” The CF28 responses contained copies of [] invoice numbers BWIMEQ-190001 through 190006 with dates in April 2018 and May 2018, and the documents showed that the machinery arrived in Vietnam between April 2018 and June 2018. The six equipment invoices provided in the CF28 responses covered all the machinery on the equipment list⁶⁵ except for a shot blasting machine and furnace. In its RFI response, BW Fittings also provided invoices from [] for machinery at no cost, packing lists, bills of lading, and Vietnamese Customs documents.⁶⁶ However, although the RFI response included [] invoice numbers BWIMEQ-190002 through BWIMEQ-190006, the dates on the invoices ranged from June 2019 through August 2019, and the equipment listed on the invoices differed from the equipment listed on the same-numbered invoices in the CF28 responses. Additionally, the documentation in the RFI response for invoice numbers BWIMEQ-190002 through BWIMEQ-190006 indicated that the machinery arrived in Vietnam between June 2019 and September 2019, and none of the bills of lading or container numbers matched those in the CF28 responses. BW Fittings’ RFI

⁶⁰ See On-Site Visit Report at 3 and Attachment 3.

⁶¹ *Id.* at Attachment 3 and BW Fittings’ RFI Response at Exhibit 6.

⁶² See CBP RFI to Norca at 9; CBP RFI to IPPG at 9; and CBP RFI to BW Fittings at 5.

⁶³ See, e.g., Norca RFI Response at Exhibit B19.

⁶⁴ See documents in Norca Supplemental CF28 Response and IPPG Supplemental CF28 Response.

⁶⁵ See, e.g., BW Fittings RFI Response at Exhibit 2.

⁶⁶ See BW Fittings RFI Response at Exhibit 18.

response also included documentation for an additional five shipments of equipment from [redacted], which consisted of invoices and arrival documents dating back to 2018. Due to the various differences between the equipment purchase documentation provided in the CF28 responses and BW Fittings' RFI response, CBP cannot determine which set of documents is authentic.

- Furthermore, BW Fittings' RFI response included documents that were not provided in the CF28 responses for the purchase of equipment from AFI in Malaysia in June 2018.⁶⁷ Commingled with the AFI equipment purchase documents were bills of lading and Vietnamese Customs documents showing the shipment of semi-finished seamless fittings from AFI to BW Fittings in April 2018 that were not provided by BW Fittings with its raw material purchases.⁶⁸ Both factors lend credence to information provided in the Allegations, specifically, data suggesting that the Importers shifted their business from AFI to BW Fittings after the Department of Commerce's determination of circumvention with respect to CSBW pipe fittings from China through Malaysia, and the information regarding a pallet of finished fittings from AFI that was observed during a 2018 visit to BW Fittings' facility in Vietnam.⁶⁹
- BW Fittings' production records contain various discrepancies that cast doubt on their authenticity, as they do not appear to be representative of BW Fittings' actual production experience. BW Fittings provided 2018 and 2019 raw materials requisitions that were dated on Sundays and also 2018 and 2019 product process flow cards with production stages that were signed off on Sundays, even when BW Fittings' employee timecards prove that there were no employees working.⁷⁰ In addition, the record contains 2019 product process flow cards which show that BW Fittings employees signed off on cutting and forming processes during the time period in which BW Fittings admitted to using rough fittings as the raw material.⁷¹ To cite a specific example, for Norca entry number [redacted]0929 dated [redacted], Norca submitted BW Fittings documentation showing that production had occurred in October 2019.⁷² In this instance, many of the product process flow cards pertaining to that entry had work signed off on October 6 and/or October 13, 2019, despite those dates being Sundays and the October 2019 timecards showing that no production employees had worked on those dates. Also, based on BW Fittings' Raw Material Type Chart, BW Fittings reportedly used seamless pipe as the raw materials to produce the merchandise for this entry.⁷³ However, while all of the product process flow cards were

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ See Allegations at 2, Exhibit 2 and Attachment A (data from [redacted] showing imports from Malaysia and Vietnam, respectively), Attachment C (affidavit), and Attachment C, Exhibit 4 (photograph of pallet of fittings from Alliance Fittings).

⁷⁰ See Norca CF28 Response (2019 production documents with Sundays listed); IPPG CF28 Response (2019 production documents with Sundays listed); Norca Supplemental CF28 Response (timecard for May 2019); IPPG Supplemental CF28 Response (timecards for June 2019 and July 2019); BWF RFI Response at Exhibit 16 (2018 and 2019 production documents with Sundays listed and timecards for October 2019 through December 2019); and Norca Supplemental RFI Response at Exhibits A6 A8 B19G (timecards for October 2018 through December 2018 and June 2019 through September 2019).

⁷¹ *Id.*

⁷² See Norca RFI Response at Exhibit B19 and Norca Supplemental RFI Response at Exhibit B19_5092.

⁷³ *Id.*; see also BW Fittings RFI Response at Exhibit 21.

signed and dated by an employee indicating that cutting had occurred, both the raw material requisitions and the product process flow cards showed that shorter-length materials (which would not have requiring cutting) were withdrawn from the warehouse. Furthermore, on the October 2019 timecards, none of the employees' job descriptions indicated cutting or forming, which contradicts BW Fittings' claimed production processes for that time period.

- A comparison of the raw material documentation provided in the CF28 responses to the documentation provided in the RFI responses for the same entries reveals that the documents submitted in the CF28 responses are not authentic. As a result, CBP cannot confirm that other documentation provided by BW Fittings and the Importers is reliable. At issue are Asia Piping raw material invoice numbers 19011001⁷⁴ and 19051001⁷⁵ and associated documents. The dates of the invoices in the CF28 responses are March 27, 2019 and May 17, 2019, respectively, while the respective RFI-provided versions are dated January 10, 2019 and May 10, 2019; as evidenced by all Asia Piping raw material invoices provided in the RFI responses, including the two invoices at issue, the invoice numbers for the CF28-provided versions are inconsistent with Asia Piping's date-based invoice numbering convention. Also, the CF28-provided versions of the invoices were for long seamless pipe, while the versions in the RFI responses were for rough fittings, which corresponds with BW Fittings' production capabilities at the time of purchase of these raw materials. In addition, the formatting of the two invoices (and associated packing lists) in the CF28 responses was not consistent with the Asia Piping raw material invoices (and associated packing lists) provided in the RFI responses, including the two invoices at issue. Moreover, the associated packing lists in the CF28 responses did not list the number of pieces and weights for each container, while those in the RFI responses contained this information, which is standard practice for international shipment packing lists. Finally, the total amounts on the invoices provided in the CF28 responses did not link to BW Fittings' accounts payable records,⁷⁶ whereas the RFI-submitted versions did. In conclusion, based on CBP's comparison of these documents, CBP believes that the versions submitted in the CF28 responses are fake.

As explained in detail above, there is no evidence on the record of this investigation that BW Fittings actually purchased seamless pipe or steel plate as the raw material to produce CSBW pipe fittings during the POI. Rather, the information on the record demonstrates that BW Fittings purchased Chinese-origin rough fittings, which are covered by AD order A-570-814, to produce the finished CSBW pipe fittings imported by Norca and IPPG during the POI. Based on this information, and considered in totality with the numerous other discrepancies on the record of this investigation that are described above, CBP determines that the record contains substantial evidence of evasion. Specifically, CBP determines that substantial evidence of evasion exists because the CSBW pipe fittings entered by Norca and IPPG during the POI were Chinese-origin CSBW pipe fittings covered by AD order A-570-814 that were transshipped by

⁷⁴ See Norca CF28 Response and BW Fittings RFI Response at Exhibit 6.

⁷⁵ See IPPG CF28 Response and BW Fittings RFI Response at Exhibit 6.

⁷⁶ See BW Fittings RFI Response at Exhibit 13.

BW Fittings through Vietnam, and no AD cash deposits were applied to the covered merchandise at the time of entry.⁷⁷

Actions Taken Pursuant to the Affirmative Determination as to Evasion

In light of CBP's determination that substantial evidence demonstrates that the Importers entered covered merchandise into the customs territory of the United States through evasion, and pursuant to 19 USC 1517(d) and 19 CFR 165.28, CBP will suspend or continue to suspend the liquidation of all entries imported by the Importers, that are subject to EAPA Cons. Case Number 7335, until instructed to liquidate these entries. For those entries previously extended in accordance with the interim measures, CBP will rate adjust and change those entries to type 03 and continue suspension until instructed to liquidate these entries. CBP will continue to evaluate the Importers' continuous bonds in accordance with CBP's policies, and will continue to require single transaction bonds as appropriate. None of the above actions precludes CBP or other agencies from pursuing additional enforcement actions or penalties.

Sincerely,



Brian M. Hoxie
Director, Enforcement Operations Division
Trade Remedy Law Enforcement Directorate
CBP Office of Trade

⁷⁷ EAPA does not have a knowledge requirement for evasion as defined under 19 CFR 165.1, nor is there any requirement that an importer know of the material or false statement. Therefore, CBP does not need to determine any level of culpability, only that evasion occurred with entry.