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Re: Enforce and Protect Act (“EAPA”) Case Number 7297; *Certain Carbon Steel Butt-Weld Pipe Fittings from the People’s Republic of China: Antidumping Duty Order*, 57 FR 29702 (July 6, 1992); Norca Industrial LLC; 19 U.S.C. § 1517

Dear Messrs. Koenig and Trendl:

This is in response to a request for *de novo* administrative review of a determination of evasion dated January 22, 2020, made by the Trade Remedy & Law Enforcement Directorate (“TRLED”), Office of Trade (“OT”), U.S. Customs and Border Protection (“CBP”), pursuant to 19 U.S.C. § 1517(c), in Enforce and Protect Act (“EAPA”) Case Number 7297 (hereinafter referred to as the “January 22 Determination”).¹ The request for review, dated March 5, 2020, was submitted to CBP OT Regulations and Rulings (“RR”) by Squire Patton Boggs (US) LLP, on behalf of Norca Industrial LLC (“Norca”), pursuant to 19 U.S.C. § 1517(f) and 19 CFR § 165.41(a).

I. Background

Inasmuch as the facts in this case were fully set forth in the January 22 Determination, we will not repeat the entire factual history herein.

In brief, according to the record evidence, on March 21, 2019, TRLED initiated a formal investigation under Title IV, section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, in response to an allegation of evasion.

¹ See Notice of Final Determination as to Evasion, dated January 22, 2020.

On February 13, 2019, Allied Group (“Allied”) had filed separate EAPA allegations against six (6) different importers, including Norca.² CBP acknowledged receipt of the properly filed allegations on February 28, 2019. Allied alleged that Norca and the other importers were importing Chinese-origin carbon steel butt-weld pipe fittings (“CSBW pipe fittings”) into the United States by transshipment through Cambodia to evade the payment of antidumping (“AD”) duties on CSBW pipe fittings from the People’s Republic of China (“China”), Case No. A-570-814.³

The allegation of evasion pertained to the antidumping duty order issued by the U.S. Department of Commerce (“Commerce”) on imports of CSBW pipe fittings from China.⁴

Commerce defined the scope of the relevant AD duty order as follows:

The product covered by this order is certain 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). Carbon steel butt-weld pipe fittings are currently classified under subheading 7307.93.30 of the harmonized tariff schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

On June 26, 2019, in accordance with 19 CFR § 165.24, CBP issued the Notice of Initiation and Interim Measures to all interested parties, notifying the parties of CBP’s decision to take interim measures based upon reasonable suspicion that the six importers, including Norca, entered covered merchandise into the customs territory of the United States through evasion and that CBP was consolidating all six investigations into a single investigation, EAPA Consolidated Case 7297.⁵ The entries subject to the investigation were those entered for consumption, or withdrawn from a warehouse for consumption, from February 28, 2018, one year before receipt of the allegation, through the pendency of the investigation.⁶ TRLED concluded that, based on the record evidence, there was reasonable suspicion that Norca had entered covered merchandise into the customs territory of the United States through evasion, and imposed interim measures.⁷

² The other importers are: Service Metal Products; Ductilic, Inc.; Iron Mule Products, Inc.; Missouri Pipe Fittings; and, Trupply, LLC. None of the other importers filed a Request for Administrative Review.

³ See Notice of Investigation and Interim Measures, dated June 26, 2019.

⁴ 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 29702 (July 6, 1992).

⁵ See Notice of Initiation and Interim Measures. Available at:

<https://www.cbp.gov/sites/default/files/assets/documents/2019-Jul/TRLED%20-%20Notice%20of%20Investigation%20and%20Interim%20Measures%20-%20EAPA%207297%20-%20PV.pdf>

⁶ See 19 CFR § 165.2. While the regulations set forth which entries CBP will specifically investigate, interim measures can be applied to all unliquidated entries.

⁷ The record evidence supporting the finding of reasonable suspicion is discussed in the Notice of Initiation and Interim Measures.

On January 22, 2020, TRLED issued the January 22 Determination. TRLED found substantial evidence⁸ to demonstrate that CSBW pipe fittings entered into the customs territory of the United States by Norca for which the claimed manufacturer was KKFF Bend (Cambodia) Co., Ltd. (“KKFF Bend”) were Chinese-origin and transshipped through Cambodia. No cash deposits were applied to the merchandise since the importer claimed Cambodia as the country of origin and the merchandise was declared as entry type 01 (consumption) instead of entry type 03.⁹

II. Discussion

A. Administrative Review and Standard of Review

Pursuant to 19 U.S.C. § 1517(f)(1) and 19 CFR § 165.45, upon a request for administrative review, CBP will apply a *de novo* standard of review and will render a determination appropriate under the law according to the specific facts and circumstances on the record. For that purpose, CBP will review the entire administrative record upon which the initial determination was made, the timely and properly filed request(s) for review and responses, and any additional information that was received pursuant to § 165.44. The administrative review will be completed within 60 business days of the commencement of the review.

B. Law

Title 19 U.S.C. § 1517(c)(1) provides, in relevant part, as follows:

(1) Determination of Evasion

(A) In general

Except as provided in subparagraph (B), not later than 300 calendar days after the date on which the Commissioner initiates an investigation under subsection (b) with respect to covered merchandise, the Commissioner shall make a determination, based on substantial evidence, with respect to whether such covered merchandise was entered into the customs territory of the United States through evasion.

The term evasion is defined in 19 U.S.C. § 1517(a)(5), as follows:

(5) Evasion

⁸ Substantial evidence is not defined in the statute. The U.S. Court of Appeals for the Federal Circuit has stated that “substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *A.L. Patterson, Inc. v. United States*, 585 Fed. Appx. 778, 781-82 (Fed. Cir. 2014) (quoting *Consol. Edison Co. of N.Y. v. NLRB*, 305 U.S. 197, 229 (1938)).

⁹ See January 22 Determination, available at:

<https://www.cbp.gov/sites/default/files/assets/documents/2020-Mar/TRLED%20-%20Notice%20of%20Final%20Determination%20%28Corrected%29%28508%20compliant%29%20-%20January%2022%2C%202020%20-%20%287297%29%20-%20PV.pdf>.

(A) In general

Except as provided in subparagraph (B), the term “evasion” refers to entering covered merchandise into the customs territory of the United States by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material, and that results in any cash deposit or other security or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise.

See also 19 CFR § 165.1.

Examples of evasion could include, but are not limited to, the misrepresentation of the merchandise’s true country of origin (e.g., through false country of origin markings on the product itself or false sales), false or incorrect shipping and entry documentation, or misreporting of the merchandise’s physical characteristics.¹⁰

Covered merchandise is defined as “merchandise that is subject to a CVD order issued under section 706, Tariff Act of 1930, as amended (19 U.S.C. 1671e), and/or an AD order issued under section 736, Tariff Act of 1930, as amended (19 U.S.C. 1673e).”¹¹

Therefore, CBP must determine whether a party has entered merchandise that is subject to an AD or CVD order into 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, that resulted in the reduction or avoidance of applicable AD or CVD cash deposits or duties being collected on such merchandise.

C. Norca’s Arguments

Norca requests that we reverse the January 22 Determination of evasion, arguing that Norca did not enter covered merchandise into the United States through evasion because the subject entries of CSBW pipe fittings imported into the United States by Norca were manufactured in Cambodia.

Specifically, Norca argues that it did not import Chinese-origin CSBW pipe fittings into the U.S. and that the evidence supports this contention. Norca states that it has provided documentation to show that the CSBW pipe fittings were produced by KKFF Bend in Cambodia. Norca claims that CBP did not appear to have any concerns with the documents provided in response to the request for information, nor did CBP provide any follow-up questions to Norca to allow an opportunity for Norca to address any concerns. Furthermore, Norca argues that only one shipment of CSBW pipe fittings was ordered from KKFF Bend and that there are no ties between that one shipment and the determination of evasion. Norca alleges that the adverse inferences, which Norca argues

¹⁰ *See Investigation of Claims of Evasion of Antidumping and Countervailing Duties, Interim Regulations*, 81 Fed. Reg. 56477, 56478 (August 22, 2016).

¹¹ *See* 19 CFR § 165.1.

are based upon KKFF Bend's failure to cooperate in the EAPA investigation, are not substantial evidence that those CSBW pipe fittings imported by Norca are not manufactured by KKFF Bend in Cambodia.

Additionally, Norca presents two arguments not related to the determination of evasion: (1) that the initiation of the EAPA investigation as to Norca was unlawful as Norca fully and timely cooperated in responding to CBP's requests for information; and, (2) that the actions taken by CBP as a result of the EAPA investigation and the subsequent determination of evasion are vague and require clarification.

D. Allied's Arguments

Allied requests that we affirm the January 22 Determination of evasion, arguing that substantial evidence exists to show that evasion occurred in Norca's importation of CSBW pipe fittings from KKFF Bend.

Specifically, Allied highlights the documents and other evidence upon which CBP relied in reaching a final determination of evasion as to Norca and argues that Norca is unable to refute the substantial evidence of evasion found in these documents. Additionally, Allied argues that those documents which Norca produced that come from KKFF Bend should not be considered as KKFF Bend failed to participate in the EAPA investigation. Even taking those KKFF Bend documents in account, however, Allied claims that Norca is unable to show that KKFF Bend is a *bona fide* producer of CSBW pipe fittings in Cambodia and, therefore, Norca engaged in duty evasion.

E. Administrative Review Analysis

The term "evasion" under EAPA refers to entering covered merchandise into the customs territory of the United States by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material, and that results in any cash deposit or other security or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise.¹²

The term "covered merchandise" means merchandise that is subject to a countervailing duty order issued under section 706, Tariff Act of 1930, as amended (19 U.S.C. § 1671e), and/or an antidumping duty order issued under section 736, Tariff Act of 1930, as amended (19 U.S.C. § 1673e).¹³

Preliminarily, the purpose of this *de novo* review is to analyze the January 22 Determination of evasion. The purported unlawfulness of both Norca's inclusion in the EAPA investigation and the vagueness of the remedies imposed as a result of the EAPA investigation is outside of the purview of this *de novo* review.

¹² See 19 U.S.C. § 1517(a)(5)(A).

¹³ See 19 U.S.C. § 1517(c)(1) and 19 CFR § 165.1.

The only argument remaining is that CBP did not base the final determination of evasion as to Norca on substantial evidence as Norca provided documents to show that the CSBW pipe fittings were made in Cambodia and that Norca otherwise fully responded to the request for information and the CBP Form 28 (“CF28”) questionnaire. We find this argument unpersuasive.

The administrative record shows that CBP received an allegation of evasion from Allied, which included statements about a site visit conducted by Allied personnel in connection with a trial purchase order placed by Allied in October 2018. During that site visit, Allied personnel observed large quantities of finished and semi-finished CSBW pipe fittings from China.¹⁴ Allied personnel also confirmed with management of both KKFF Bend and Qingdao KKF—identified as a Chinese company affiliated with KKFF Bend—that they knowingly transship Chinese-origin CSBW pipe fittings through Cambodia to the United States.¹⁵ During CBP’s later site visit, it was confirmed by an employee that most of the pipe fittings were brought in from elsewhere and finished and packed by KKFF Bend.¹⁶ CBP personnel also observed minimal operations at the KKFF Bend facility and were not permitted to review any purchase, production, shipping or sales documentation during the site visit.¹⁷ The evidence contained within the administrative record led CBP to find that Norca engaged in AD duty evasion. Line 2 of the consumption entry (XXX-XXXX001-2) dated 3/20/18 should have been covered by the AD rate of 182.90% per AD order A-570-814 for CSBW pipe fittings classified under subheading 7307.93.3040, HTS, resulting in a significant loss of revenue.¹⁸

Norca did not provide sufficient documentation, whether generated by itself or KKFF Bend, to counter the findings of the EAPA investigation. As discussed in the January 22 Determination, the documents submitted by Norca do not indicate the location of production nor the party performing the production steps for the CSBW pipe fittings.¹⁹ Furthermore, many of the documents significantly pre-date the shipment at issue in this EAPA investigation and do not appear related to the argument at hand. Finally, despite Norca’s attestations that its shipment of CSBW pipe fittings were manufactured by KKFF Bend in Cambodia, the responses to the CF28 questionnaire demonstrate that Norca conducted no site visit or other verification process to ensure the manufacturing occurs in Cambodia prior to placing the order. In fact, Norca admits to placing “one trial order” with KKFF Bend after meeting the management team at an industry show in Germany.²⁰ Norca later explains that an audit and site visit would only occur after a successful initial trial order is completed and Norca wishes to continue to do business with that manufacturer, which did not occur upon completion of the trial order from

¹⁴ See Allied Group’s EAPA Allegations (February 13, 2019).

¹⁵ See *Id.* The same person acts as a manager for both companies. Allied canceled its purchase order with KKFF Bend as a result of this site visit and management meeting.

¹⁶ See January 22 Determination, page 2, footnote 3.

¹⁷ See *Id.*

¹⁸ See Norca Request for Information, Exhibit #19-A. See also Regulatory Audit and Agency Advisory Services Summary of Facts/Analysis-RE Enforce and Protect Act Consolidated Case Number 7297: Norca Industrial Company, LLC, dated December 19, 2019, page 4.

¹⁹ See January 22 Determination, page 17, footnote 75.

²⁰ See Norca Request for Information Narrative, dated August 27, 2019, page 5.

KKFF Bend.²¹ Therefore, Norca never conducted a site visit of KKFF Bend in connection with the trial order it placed with the company.

It is our position that, even without adverse inferences, the record fully and adequately supports the finding that the CSBW pipe fittings are of Chinese origin and were transshipped through Cambodia to evade the payment of AD duties upon importation into the United States from Cambodia via Singapore. Nonetheless, the record supports the use of adverse inferences inasmuch as Norca failed to cooperate in the investigation to the best of its ability and provide all requested documentation and information to CBP. As an example, Norca unilaterally decided certain information requested on the CF28 was not applicable to the EAPA investigation and declined to provide an answer. In addition, the evidence Norca provided in its response to the CF28 was silent as to the actual manufacturing of the CSBW pipe fittings as Norca did not seek any further information from KKFF Bend. CBP reasonably filled those evidentiary gaps with adverse inferences in reaching its final determination of evasion.

Norca cannot prove that KKFF Bend specifically produced the “trial shipment” of CSBW pipe fittings in Cambodia. The evidence supports the final determination of evasion as to Norca.

III. Decision

Based upon our *de novo* review of the administrative record in this case, including the timely and properly filed request for administrative review and response, the January 22 Determination of evasion under 19 USC § 1517(c) is AFFIRMED.

This decision does not preclude CBP or other agencies from pursuing additional enforcement actions or penalties. Pursuant to 19 CFR § 165.46(a), this final administrative determination is subject to judicial review pursuant to section 421 of EAPA.

Sincerely,

Jacinto P. Juarez, Jr.
Acting Chief, Penalties Branch, Regulations & Rulings
Office of Trade
U.S. Customs & Border Protection

Approved by:

Joanne R. Stump
Deputy Executive Director, Regulations & Rulings
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²¹ See *Id.*, page 13.