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C.J. Erickson, Esq.
Cowan, Liebowitz & Latman, P.C.
Counsel for Florida Aluminum
Extrusion, LLC
114 West 47th Street
New York, NY 10036-1525

Alberto Castañer, Esq.
Castañer & Cia P.S.C.
Counsel for H&E Home
Mai Center, Marginal Kennedy
771 Calle 1, Suite 204
San Juan, PR 00920

Jennifer Diaz, Esq.
Diaz Trade Law, P.A.
Counsel for Global Aluminum
Distributor, LLC
12700 Biscayne Blvd, Suite 301
North Miami, FL, 33181

Beth Ring, Esq.
Sandler, Travis & Rosenberg, P.A.
Counsel for Industrias Feliciano
Aluminum, Inc., JL Trading Corp., and
Puertas y Ventanas, J.M., Inc.
675 Third Avenue, Suite 1805-6
New York, NY 10017

Lizbeth Levinson, Esq.
Brittney Powell, Esq.
Fox Rothschild LLP
Counsel for Classic Metals Suppliers
1030 15th Street, NW Suite 380 East
Washington, D.C. 20005

Robert DeFrancesco, Esq.
Elizabeth Lee, Esq.
Wiley Rein LLP
Counsel for Aluminum Extrusions Fair
Trade Committee
1776 K Street, NW
Washington, D.C. 20006

Re: Enforce and Protect Act (“EAPA”) Consolidated Case Number 7423; *Aluminum Extrusions from the People’s Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011) and *Aluminum Extrusions from the People’s Republic of China: Countervailing Duty Order*, 76 FR 30653 (May 26, 2011); Florida Aluminum Extrusion, LLC; Global Aluminum Distributor, LLC; Classic Metals Suppliers; Industrias Feliciano Aluminum, Inc.; JL Trading Corp.; Puertas y Ventanas, J.M., Inc.; H&E Home; 19 U.S.C. § 1517

Dear Counselors:

This is in response to seven requests for *de novo* administrative review of a determination of evasion dated January 28, 2021, 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 EAPA Consolidated Case Number 7423 (hereinafter referred to as the “January 28 Determination”).¹ The requests for review, all dated March 12, 2021, were submitted to CBP OT Regulations and Rulings (“RR”) by Cowan, Liebowitz & Latman, P.C., on behalf of Florida Aluminum Extrusion, LLC (“Florida Aluminum”); Diaz Trade Law, P.A., on behalf of Global Aluminum Distributor, LLC (“Global Aluminum”); Fox Rothschild LLP, on behalf of Classic Metals Suppliers (“Classic Metals”); Castañer & Cia P.S.C. on behalf of H&E Home; and, Sandler, Travis & Rosenberg, P.A. on behalf of Industrias Feliciano Aluminum, Inc. (“Industrias Feliciano”), JL Trading Corp. (“JL Trading”), and Puertas y Ventanas, J.M., Inc. (“Puertas y Ventanas”) (collectively, “Importers”), pursuant to 19 U.S.C. § 1517(f) and 19 CFR § 165.41(a). All of the Importers’ requests for administrative review were submitted to RR within 30 business days after the issuance of the initial determination of evasion, consistent with 19 CFR § 165.41(d).²

I. Background

Inasmuch as the facts in this case were fully set forth in the January 28 Determination, we will not repeat the entire factual history herein.

In brief, according to the record evidence, on January 27, 2020, TRLED initiated an investigation under Title IV, section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, in response to an allegation of evasion.

On December 16, 2019, Aluminum Extrusions Fair Trade Committee (“AEFTC”) filed separate EAPA allegations against the Importers. CBP acknowledged receipt of the properly filed allegations on January 10, 2020. AEFTC alleged that the Importers were importing Chinese-origin aluminum extrusions into the United States by transshipment through the Dominican Republic to evade the payment of antidumping and countervailing (“AD/CV”) duties on aluminum extrusions from the People’s Republic of China (“China”) pursuant to Case Nos. A-570-967 and C-570-968.³

The allegation of evasion pertained to the AD/CV duty orders issued by the U.S. Department of Commerce (“Commerce”) on imports of aluminum extrusions from China.⁴

Commerce defined the scope of the relevant AD/CV duty orders, in pertinent part, as follows:

¹ See Notice of Determination as to Evasion, dated January 28, 2021.

² The foreign manufacturer, Kingtom Aluminio SRL (“Kingtom”) submitted an Endorsement of the Importers’ Requests for Administrative Review (“Endorsement”) on March 12, 2021. Pursuant to 19 CFR § 165.45, the *de novo* review is limited to the administrative record upon which the initial determination was made, timely and properly filed requests and responses filed by parties to the investigation and any additional information RR might request from parties to the investigation pursuant to 19 CFR § 165.44. As Kingtom’s submitted Endorsement does not fall within any of those categories, it was not reviewed and considered as part of this *de novo* review; however, to preserve the issue in the event of judicial review, the Endorsement was placed on the record for that limited purpose. See RR’s email to counsel for Kingtom, dated March 15, 2021.

³ See Notice of Initiation of Investigation and Interim Measures, dated February 5, 2020.

⁴ See *Aluminum Extrusions from the People’s Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011); see also *Aluminum Extrusions from the People’s Republic of China: Countervailing Duty Order*, 76 FR 30653 (May 26, 2011).

The merchandise covered by the order is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). Specifically, the subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 1 contains not less than 99 percent aluminum by weight. The subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 3 contains manganese as the major alloying element, with manganese accounting for not more than 3.0 percent of total materials by weight. The subject merchandise is made from an aluminum alloy with an Aluminum Association series designation commencing with the number 6 contains magnesium and silicon as the major alloying elements, with magnesium accounting for at least 0.1 percent but not more than 2.0 percent of total materials by weight, and silicon accounting for at least 0.1 percent but not more than 3.0 percent of total materials by weight. The subject aluminum extrusions are properly identified by a four-digit alloy series without either a decimal point or leading letter. Illustrative examples from among the approximately 160 registered alloys that may characterize the subject merchandise are as follows: 1350, 3003, and 6060.

Aluminum extrusions are produced and imported in a wide variety of shapes and forms, including, but not limited to, hollow profiles, other solid profiles, pipes, tubes, bars, and rods. Aluminum extrusions that are drawn subsequent to extrusion (“drawn aluminum”) are also included in the scope.

Aluminum extrusions are produced and imported with a variety of finishes (both coatings and surface treatments), and types of fabrication. The types of coatings and treatments applied to subject aluminum extrusions include, but are not limited to, extrusions that are mill finished (*i.e.*, without any coating or further finishing), brushed, buffed, polished, anodized (including bright-dip anodized), liquid painted, or powder coated. Aluminum extrusions may also be fabricated, *i.e.*, prepared for assembly. Such operations would include, but are not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched, bent, stretched, knurled, swedged, mitered, chamfered, threaded, and spun. The subject merchandise includes aluminum extrusions that are finished (coated, painted, *etc.*), fabricated, or any combination thereof.

Subject aluminum extrusions may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, window frames, door frames, solar panels, curtain walls, or furniture. Such parts that otherwise meet the definition of aluminum extrusions are included in the scope. The scope includes the aluminum extrusion components that are attached (*e.g.*, by welding or fasteners) to form subassemblies, *i.e.*, partially assembled merchandise unless imported as part of the finished goods ‘kit’ defined further below. The scope does not include the non-aluminum extrusion components of subassemblies or subject kits.

Subject extrusions may be identified with reference to their end use, such as fence posts, electrical conduits, door thresholds, carpet trim, or heat sinks (that do not meet the finished heat sink exclusionary language below). Such goods are subject merchandise if they otherwise meet the scope definition, regardless of whether they are ready for use at the time of importation.

...

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (“HTS”): 7604.21.0000, 7604.29.1000, 7604.29.3010, 7604.29.3050, 7604.29.5030, 7604.29.5060, 7608.20.0030, and 7608.20.0090. The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99 as well as under other HTS chapters. In addition, fin evaporator coils may be classifiable under HTS numbers: 8418.99.80.50 and 8418.99.80.60. While HTS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

On May 4, 2020, in accordance with 19 CFR § 165.24, CBP issued the Notice of Initiation of Investigation and Interim Measures (“Notice of Initiation”) to all parties to the investigation, notifying the parties of CBP’s decision to take interim measures based upon reasonable suspicion that the Importers entered covered merchandise into the customs territory of the United States through evasion and that CBP was consolidating all seven investigations into a single investigation, EAPA Consolidated Case 7423.⁵ The entries subject to the investigation were those entered for consumption, or withdrawn from a warehouse for consumption, from January 10, 2019, one year before receipt of the allegations, through the pendency of the investigation.⁶ TRLED concluded that, based on the record evidence, there was reasonable suspicion that the Importers had entered covered merchandise into the customs territory of the United States through evasion, and, therefore, imposed interim measures.⁷

On January 28, 2021, TRLED issued the January 28 Determination. TRLED found substantial evidence⁸ to demonstrate that aluminum extrusions entered into the customs territory of the United States by the Importers was of Chinese-origin and transshipped

⁵ See Notice of Initiation of Investigation and Interim Measures. Available at: <https://www.cbp.gov/sites/default/files/assets/documents/2020-May/TRLED-Notice-of-Interim-Measures-05-04-20-Cons-Case-7423-PV.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.

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)).

through the Dominican Republic. No AD/CV cash deposits had been made for entries of the merchandise since the importer claimed the Dominican Republic as the country of origin and the merchandise was declared as entry type 01 (Consumption) instead of entry type 03 (Consumption - Antidumping/Countervailing Duty).⁹

On March 12, 2021, the Importers all filed timely Requests for Administrative Review and on March 16, 2021, RR sent an email to all parties to the investigation notifying them of the commencement of the administrative review process pursuant to 19 CFR § 165.41 and the assignment of RR case number H317423. On March 30, 2021, AEFTC filed a timely response to the Importers' requests for administrative review presenting its counterarguments.

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 19 CFR § 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

⁹ See January 28 Determination. Available at: <https://www.cbp.gov/sites/default/files/assets/documents/2021-Apr/01-28-2021%20-%20TRILED%20-%20Final%20Determination%20-%20%28Cons%20Case%207423%29%20%28508%20compliant%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 CV duty 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 CV cash deposits or duties being collected on such merchandise.

In the event that an alleging party, an importer, or a foreign producer or exporter of the covered merchandise fails to cooperate and comply to the best of its ability in responding to CBP’s requests for information, adverse inferences may be applied by selecting among other facts available within the administrative record when making a determination as to evasion pursuant to 19 CFR § 165.27.

C. Classic Metals’s Arguments

Classic Metals requests that we reverse the January 28 Determination of evasion, arguing that Classic Metals did not enter covered merchandise into the United States through evasion because the subject entries of aluminum extrusions imported into the United States by Classic Metals were manufactured in the Dominican Republic. Classic Metals specifically incorporates by reference some of the arguments presented by Industrias Feliciano, JL Trading, and Puertas y Ventanas in their joint Request for Administrative Review as well as some of the arguments presented by Global Aluminum in its Request for Administrative Review.

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.

Classic Metals reiterates throughout their Request for Administrative Review that the level of redactions within the administrative record and the January 28 Determination has made it impossible to meaningfully respond to the allegations of discrepancies which CBP uses to find substantial evidence of evasion. Classic Metals claims that the level of redactions deprives the Importers of procedural due process as they cannot adequately respond to the cited evidence of evasion.

Classic Metals argues that CBP misunderstands the aluminum extrusion process and that Kingtom's aluminum extrusion presses have the capability of producing aluminum profiles with a wider diameter than CBP believes is possible and provides an explanation for how that process works. Classic Metals further states that CBP is relying more upon AEFTC's expert, whose qualifications have not been disclosed to the Importers, rather than the documentation provided by Kingtom as to its production capabilities. Classic Metals claims that CBP has noted discrepancies in the documentation without showing how those discrepancies would lead to a finding of transshipment of Chinese-origin aluminum extrusions.

Classic Metals also argues that CBP misread the monthly production and sales documentation in analyzing the different numbers provided by Kingtom. Namely, the daily production records were used to calculate the theoretical production volume as requested in the Supplemental Request for Information ("RFI"); however, CBP did not ask how Kingtom calculated the theoretical production volume. At the same time, Classic Metals claims that CBP conflates the amount of aluminum ingot and scrap purchased as the amount of aluminum ingot and scrap used, when those numbers are not the same because Kingtom uses scrap created during the aluminum extrusion process for later production and, therefore, does not need to purchase as much aluminum scrap.

Classic Metals argues that Kingtom's ties to China do not constitute substantial evidence of evasion because that conclusion is only based upon (1) Kingtom's ownership by Chinese citizens; (2) the nationality of some employees; (3) that Kingtom sourced some supplies from China (which were not aluminum extrusions, ingot, or scrap); and, (4) that Kingtom sourced some equipment from China. These four reasons do not support the finding that Kingtom commingled Chinese aluminum extrusions in its shipments to the United States.

Classic Metals then reviews the evidence regarding Kingtom's production capacity that shows the capability to manufacture aluminum extrusions in the amount that was exported. Classic Metals argues that CBP cannot use the possibility of commingling Chinese-origin aluminum extrusions with those produced by Kingtom to find substantial evidence of evasion. Moreover, Classic Metals states that the other discrepancies noted in the January 28 Determination are insignificant and/or easily explained despite CBP's failure to ask follow up questions in order to receive clarification.

Based on the foregoing, Classic Metals argues that evasion did not occur, and the January 28 Determination must be reversed.

D. Florida Aluminum's Arguments

Florida Aluminum requests that we reverse the January 28 Determination of evasion, arguing that Florida Aluminum did not enter covered merchandise into the United States through evasion because the subject entries of aluminum extrusions imported into the United States by Florida Aluminum were manufactured in the Dominican Republic. Florida Aluminum incorporates by reference all of the arguments made by the other Importers in their Requests for Administrative Review.

Florida Aluminum notes that there is no allegation that Kingtom does not have the production capacity necessary to produce the amount of aluminum extrusions it exported. Rather, Florida Aluminum claims that CBP has made the determination of evasion based upon alleged discrepancies between documents provided by Florida Aluminum and those provided by Kingtom. Florida Aluminum analyzes the January 28 Determination to show that the documentation is accurate, and no discrepancies exist.

Based on the foregoing, Florida Aluminum argues that evasion did not occur, and the January 28 Determination must be reversed.

E. Global Aluminum's Arguments

Global Aluminum requests that we reverse the January 28 Determination of evasion, arguing that Global Aluminum did not enter covered merchandise into the United States through evasion because the subject entries of aluminum extrusions imported into the United States by Global Aluminum were manufactured in the Dominican Republic. Global Aluminum incorporates by reference all of the arguments made by the other Importers in their Requests for Administrative Review.

Global Aluminum examines the different sections of the January 28 Determination which provide the reasoning for the finding of substantial evidence of evasion. With regard to the first section, Global Aluminum argues that Kingtom's ownership by Chinese citizens and employment of Chinese citizens is irrelevant to the issue of transshipment. With regard to the aluminum extrusion press capacity issues as noted in the second section, Global Aluminum reiterates classic Metals's arguments regarding CBP's misunderstanding of the possible dimensions that Kingtom's aluminum extrusion presses can produce as well as the claims regarding the accuracy of Kingtom's documentation. With regard to the third section, Global Aluminum argues that CBP improperly conflates Kingtom's monthly sales volume with the monthly theoretical production volume to find a discrepancy that does not exist as those figures represent two different values. With regard to the fourth section, Global Aluminum argues that the different site visit reports are a snapshot of a single day and time at Kingtom, and not reflective of actual production capabilities. The fifth section of the January 28 Determination discusses discrepancies within the record and Global Aluminum claims that these discrepancies provide no probative evidence of transshipment. Global Aluminum argues that these discrepancies do not hinder CBP's ability to analyze Kingtom's production operations or capacity and could have been explained if CBP had asked for clarification.

Additionally, Global Aluminum claims that nothing in the record indicates the presence of Chinese aluminum extrusions or Kingtom's purchase of aluminum ingots or scrap from China. Global Aluminum also makes arguments regarding the level of redaction of different documents by CBP and how those redactions have deprived the Importers of the ability to adequately respond to the finding of evasion, thus depriving them of their procedural due process rights. Finally, Global Aluminum identifies several arguments that it made during the course of the investigation which were not addressed by CBP in the January 28 Determination.

Based on the foregoing, Global Aluminum argues that evasion did not occur, and the January 28 Determination must be reversed.

F. H&E Home's Arguments

H&E Home requests that we reverse the January 28 Determination of evasion, arguing that H&E Home did not enter covered merchandise into the United States through evasion because the subject entries of aluminum extrusions imported into the United States by H&E Home were manufactured in the Dominican Republic. H&E Home makes several of the same arguments that the other Importers included in their Requests for Administrative Review and specifically incorporates by reference some of the arguments made by the other Importers.

H&E Home reiterates the arguments of the other Importers that Kingtom's ties to China as noted in the January 28 Determination do not constitute substantial evidence of evasion. Citing to Classic Metals's Request for Administrative Review H&E Home also reiterates the arguments regarding the capability of the aluminum extrusion presses to produce aluminum profiles that are wider than the billet and press. H&E Home also claims that the site visit reports are only a snapshot of one day and not substantial evidence of evasion.

H&E Home claims that CBP has ignored evidence on the record that would indicate no evasion has occurred, including the import and export statistics provided by the Importers, and reiterates the argument that the redactions in the January 28 Determination have made it impossible for the Importers to meaningfully respond to the purported evidence of evasion.

Based on the foregoing, H&E Home argues that evasion did not occur, and the January 28 Determination must be reversed.

G. Industrias Feliciano, JL Trading, and Puertas y Ventanas's Arguments

Industrias Feliciano, JL Trading, and Puertas y Ventanas request that we reverse the January 28 Determination of evasion, arguing that they did not enter covered merchandise into the United States through evasion because the subject entries of aluminum extrusions they imported into the United States were manufactured in the Dominican Republic. Industrias Feliciano, JL Trading, and Puertas y Ventanas make several of the same arguments that the other Importers included in their Requests for Administrative Review and specifically incorporate by reference some of the arguments made by Classic Metals and Global Aluminum.

These Importers first reiterate the arguments in the other Requests for Administrative Review that Kingtom's ties to China are not evidence of evasion. Additionally, these Importers claim that the January 28 Determination cites only to the allegation and its exhibits when looking at the increase in importations of aluminum extrusions into the Dominican Republic from China while ignoring the data submitted by the Importers. Industrias Feliciano, JL Trading, and Puertas y Ventanas state that there is no evidence in the record showing that Kingtom purchased and imported aluminum extrusions from China. Rather, they argue that rebuttal evidence submitted by the Importers shows that the majority of the Chinese aluminum extrusions imported into the Dominican Republic did not enter Free Trade Zones, within which Kingtom operates.

Second, these Importers reiterate the arguments regarding the site visit reports and that they are not indicative of Kingtom's production capacity and capability. Industrias Feliciano, JL Trading, and Puertas y Ventanas also claim that the government's site visit occurred prior to the initiation of the EAPA investigation and, therefore, was improperly conducted. As Kingtom produces aluminum extrusions to order, these Importers argue that the observations of the allegor and the government during one day is not evidence of evasion as production levels vary based upon the orders received by Kingtom.

Industrias Feliciano, JL Trading, and Puertas y Ventanas also state that Kingtom has provided all requested documentation and has demonstrated where all of its raw materials were imported from. According to them the record does not support CBP's findings of discrepancies in the documents provided by Kingtom and the Importers.

Industrias Feliciano, JL Trading, and Puertas y Ventanas further make similar arguments to those of the other importers regarding the level of redactions within the January 28 Determination which make it impossible for them to meaningfully respond and, thus, constitute a violation of their procedural due process rights. These Importers also detail parts of the record refuting a finding of evasion which CBP did not address in the January 28 Determination.

Based on the foregoing, Industrias Feliciano, JL Trading, and Puertas y Ventanas argue that evasion did not occur, and the January 28 Determination must be reversed.

H. AEFTC's Arguments

AEFTC requests that we affirm the January 28 Determination of evasion, arguing that substantial evidence exists to show that evasion occurred due to the transshipment of Chinese-origin aluminum extrusions to the United States through the Dominican Republic.

AEFTC first argues that the use of non-disclosure agreements between the Importers and Kingtom has improperly allowed them to circumvent the lack of an administrative protective order provision in the EAPA regulations by giving the Importers access to the business confidential versions of Kingtom's documentation, which has placed AEFTC at a disadvantage. AEFTC states that the Importers' Requests for Administrative Review should be rejected and resubmission required with all of Kingtom's business confidential information stricken from the record.

AEFTC then claims that, despite the Importers' non-compliance with the EAPA regulations, the record evidence supports CBP's finding of evasion. The record evidence shows that Kingtom's aluminum extrusion presses did not have the capability of producing the size of the aluminum extrusion profiles it exported to the United States. While Classic Metals has provided an explanation of how Kingtom's aluminum extrusion presses are capable of producing wider aluminum profiles than the billets from which they are extruded or the diameter of the actual press, AEFTC notes that this process is not explained anywhere within the publicly available administrative record prior to the submission of the Request for Administrative Review and Classic Metals has only cited to Kingtom's Exhibit 24 of their RFI Response. Exhibit 24 is redacted in its entirety as business confidential. AEFTC claims that CBP's determination regarding Kingtom's inability to extrude aluminum profiles of the diameter that they were exporting is based upon the only available explanation in the record, not a misunderstanding of the aluminum extrusion process as argued by Classic Metals.

AEFTC also argues that the evidence shows that Kingtom does not have the capacity to produce the number of aluminum extrusions it exported to the United States. AEFTC examines the amounts of primary aluminum and aluminum scrap purchased by Kingtom in relation to how much finished aluminum extrusions it exported to show that the numbers do not align. AEFTC then moves on to the site visits conducted to show that CBP properly relied upon those observations to find Kingtom lacked the production capacity to produce the quantities of aluminum extrusions that were imported into the United States. At the same time, AEFTC states that the Importers have not provided sources to support their claims regarding lead times and how transshipping aluminum extrusions from China would take significantly longer.

Finally, AEFTC claims that Kingtom's ties to China are relevant to the determination of evasion. Specifically, AEFTC notes that, in addition to Kingtom's Chinese ownership and the use of Chinese-origin equipment, the Dominican Republic established diplomatic ties with China at the same time that Kingtom began exporting aluminum extrusions to the United States and that an increase of Chinese aluminum extrusions exports to the Dominican Republic occurred. Furthermore, AEFTC claims that the Importers' argument that a breakdown between imports of Chinese aluminum extrusions into both the free trade zones and the commerce of the Dominican Republic demonstrates that transshipment has not occurred does not hold up as there are other ways Chinese aluminum extrusions could make their way into the free trade zone where Kingtom is located. AEFTC argues that direct imports from China to the free trade zones are not the only way transshipment could occur.

Based on the foregoing, AEFTC argues that evasion did occur, and the January 28 Determination must be affirmed.

I. Administrative Review Analysis

Pursuant to 19 U.S.C. § 1517(f)(1) and 19 CFR § 165.45, the Office of Trade, Regulations and Rulings ("RR"), will apply a *de novo* standard of review under the law, based solely upon the facts and circumstances on the administrative record in the proceeding. In making our determination, we reviewed: (1) the entire administrative record upon which the January 28

Determination was made by TRLED; and (2) the timely and properly filed requests for review and responses. OT, RR, did not request additional written information from the parties to the investigation pursuant to 19 CFR § 165.44. Pursuant to 19 CFR § 165.45, our administrative review of this case has been completed in a timely manner, within 60 business days of the commencement of the review.

The term “evasion” under the 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

“Substantial evidence” is not defined by statute. However, the “substantial evidence” standard has been reviewed by the courts in relation to determinations by other agencies. “Substantial evidence requires more than a mere scintilla, but is satisfied by something less than the weight of the evidence.”¹⁴ While some evidence may detract from the determination, so long as the finding is reasonable and supported by the record as a whole, the January 28 Determination must be affirmed.¹⁵

Preliminarily, the purpose of this *de novo* review is to analyze the January 28 Determination and the accompanying administrative record to determine whether substantial evidence of evasion exists. The Importers’ arguments regarding violation of their procedural due process rights are outside of the purview of this *de novo* review.¹⁶ Similarly, consideration of AEFTC’s arguments regarding the propriety of the Importers and Kingtom sharing business confidential information with one another during the investigation and period of review as a part of this *de novo* review is not contemplated by the statute and implementing regulations.

The core of this case rests with whether Kingtom actually produced aluminum extrusions in the quantity at which it exported them to the United States. While there is no disagreement

¹² See 19 U.S.C. § 1517(a)(5)(A).

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

¹⁴ See *Altix, Inc. v. United States*, 370 F.3d 1108, 1116 (Fed. Cir. 2004) (internal citations and quotation marks omitted).

¹⁵ See *Nucor Corp. v. United States*, 34 C.I.T. 70, 72 (2010) (citing *Nippon Steel Corp. v. United States*, 458 F.3d 1345, 1352 (Fed. Cir. 2006)).

¹⁶ The Court of International Trade (“CIT”) has recently opined on the rights of parties in EAPA investigations to have access to business confidential information. In *Royal Brush Mfg., Inc. v. United States*, Ct. No. 19-00198, Slip Op. 20-171, the CIT found that a party is only entitled to public summaries of the business confidential information pursuant to 19 CFR § 165.4(a)(1) and (e). The parties do not otherwise have a right to review business confidential information as the statute and regulations do not provide for such. Regardless, the ability of RR to opine on whether procedural due process violations occurred in this case is not contemplated by the statute or implementing regulations.

that Kingtom had the ability to produce aluminum extrusions,¹⁷ the administrative record does not support a finding that Kingtom produced all of the aluminum extrusions that it exported to the United States during the period of investigation.

Although Kingtom provided photographs and videos of its facilities, a review of them does not indicate production levels that would match the amount of aluminum extrusions exported. Specifically, the several minutes long videos do not evidence a significant number of employees working different machines and also show some equipment sitting idle.¹⁸ In addition, U.S. Government officials observed minimal production during their site visit.¹⁹

Furthermore, Kingtom's daily production records corroborate that the aluminum extrusion presses did not operate at anywhere near full capacity.²⁰ A comparison of Kingtom's equipment list with the daily production records also calls into question the veracity of the documents provided, as the equipment list indicates that additional aluminum extrusion presses were added but do not always appear on the daily production records in the months they purportedly went into use and sometimes the presses seem to appear in the production records months earlier than the equipment list indicates they began operation.²¹ At the same time, Kingtom's mold information indicates the use of specific aluminum extrusion presses on dates *preceding* when Kingtom's equipment list states those presses went into operation.²² The mold information contains additional data which does not align with that in the production records, including work group numbers that do not appear on the production records and, at times, stating the mold was used on days/shifts where the production records indicate no such production occurred.²³

While the record might suggest that Kingtom had the *ability* to manufacture aluminum extrusions in the quantities it exported, the evidence within the record does not demonstrate that Kingtom actually *did* manufacture aluminum extrusions in those quantities. Moreover, of the Importers who provided affidavits of site visit observations, none indicate that any of those site visits were done for the express purpose of making independent determinations that Kingtom was actually producing aluminum extrusions in an amount that would equal its *total* sales, as opposed to merely being capable of producing the amount of aluminum extrusions that the *individual importer* intended to order.²⁴ In fact, some of those site visits appear to be conducted for reasons other than determining whether Kingtom could produce enough aluminum extrusions to fill an individual importer's orders even if Kingtom's full production capacity was contemplated.²⁵ Classic Metals's RFI Response stated that production capacity was considered but that no site visit reports are generated by the

¹⁷ See January 28 Determination, page 17.

¹⁸ See Kingtom's RFI Response, Exhibit 30.

¹⁹ See Attaché Report. See also Kingtom Visit, July 31, 2019.

²⁰ See Kingtom's RFI Response, Exhibit 21.

²¹ See Kingtom's RFI Response, Exhibit 19. *Contra.* Kingtom's RFI Response, Exhibit 21.

²² See Kingtom's Supplemental RFI Response, Exhibit S-10. *Contra.* Kingtom's RFI Response, Exhibit 19.

²³ See Kingtom's Supplemental RFI Response, Exhibit S-10. *Contra.* Kingtom's RFI Response, Exhibit 21.

²⁴ See Florida's Supplemental RFI Response, Section D. See also Global Aluminum's Supplemental RFI Response, Section D.

²⁵ See Global Aluminum's Supplemental RFI Response, Exhibits G and H and Global Aluminum's Voluntary Submission, Exhibit A.

company.²⁶ There is no indication of what production capacity was considered (*i.e.*, total production capacity or production capacity for Classic Metals’s individual orders). At the same time, while some Importers claim to have visited Kingtom, even on multiple occasions, no summaries of those visits were provided during the course of the investigation beyond a sentence or two in response to the RFIs or as part of a separate submission.²⁷ While Kingtom may have produced *some* of the aluminum extrusions it exported to the United States, the record does not support a finding that Kingtom produced *all* of the aluminum extrusions it exported.

Given that the administrative record does not provide enough evidence to support the Importers’ claims of Kingtom’s actual production in relation to the quantity of aluminum extrusions sold, the question of where the aluminum extrusions may have otherwise come from arises. In this case, Kingtom does have strong ties to China. The record evidence shows that Kingtom is both owned by Chinese citizens and employs many Chinese citizens. Kingtom has also sourced both supplies and equipment from China. Furthermore, Kingtom was established and began operations around the same time that the Dominican Republic established diplomatic ties with China.²⁸ The record does not indicate that Kingtom has any such ties to other countries not subject to the AD/CV duty orders, nor does the record indicate Kingtom having ties to other aluminum extrusion manufacturers in the Dominican Republic who could have supplied additional merchandise to cover the full amount exported. Therefore, when looking at the totality of the circumstances regarding evidence of Kingtom’s actual production levels coupled with Kingtom’s affiliations with China, a finding of evasion due to the commingling of Chinese-origin aluminum extrusions with Dominican Republic-origin aluminum extrusions is supported by substantial evidence in the record. There is more than a “mere scintilla” of evidence to support this finding of evasion.²⁹

As a result of these findings, we do not find it necessary to address the remaining arguments made by the Importers in their Requests for Administrative Review. We also note that documents from EAPA Cons. Case 7348 were only considered to the extent they were properly added to the EAPA Cons. Case 7423 administrative record.

Therefore, based upon the documentation and information provided in the administrative record in EAPA Cons. Case No. 7423, there is substantial evidence to support a finding of evasion as to the Importers.

III. Decision

Based upon our *de novo* review of the administrative record in this case, including the timely and properly filed requests for administrative review and responses, the January 28 Determination of evasion under 19 USC § 1517(c) is AFFIRMED.

²⁶ See Classic Metals’s RFI Response, Pages 19-20.

²⁷ See Industrias Feliciano’s RFI Response, Page 11; JL Trading’s RFI Response, Page 12; and, Puertas y Ventanas’s RFI Response, Page 11. See also H&E Home’s Submission of Supplemental Voluntary Factual Information, Page 2.

²⁸ See AEFTC’s Allegation, page 7. See also AEFTC’s Allegation, Exhibit 5.

²⁹ See *Altx*, 370 F.3d at 1116 (Fed. Cir. 2004) (internal citations and quotation marks omitted).

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,

Paul Pizzeck
Chief, Penalties Branch, Regulations & Rulings
Office of Trade
U.S. Customs & Border Protection

Approved by:

Joanne R. Stump
Acting Executive Director, Regulations & Rulings
Office of Trade
U.S. Customs & Border Protection