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PUBLIC VERSION

EAPA Case Number: 7550

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Re: Notice of Determination as to Evasion

Pursuant to an examination of the record in Enforce and Protect Act (EAPA) Investigation 7550, U.S. Customs and Border Protection (CBP) has determined there is substantial evidence that Kingtom Aluminio SRL (Kingtom or the Importer) entered merchandise covered by antidumping duty (AD) order A-570-967 and countervailing duty (CVD) order C-570-968 on aluminum extrusions from China¹ into the customs territory of the United States through evasion. Substantial evidence demonstrates the Importer imported Chinese-origin extrusions that were either co-mingled or transshipped to the United States with a claimed country of origin as the Dominican Republic. As a result, no cash deposits were applied to the merchandise at the time of entry.

Background

On January 8, 2021, the Trade Remedy Law Enforcement Directorate (TRLED), within CBP's Office of Trade, acknowledged receipt of the properly filed allegation by the Alleger, a committee of domestic producers of aluminum extrusions.² TRLED found the information provided in the allegation reasonably suggested that the Importer entered covered merchandise

¹ See *Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 FR 30650 (Dept. Commerce, May 26, 2011); see also *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order*, 76 FR 30653 (Dept. Commerce, May 26, 2011) (collectively, the *Orders*).

² See email "EAPA 7550 - Receipt of Kingtom Alumino SRL," dated January 8, 2021.

into the customs territory of the United States through evasion.³ Consequently, CBP initiated an investigation against the Importer on February 2, 2021, pursuant to Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, commonly referred to as EAPA.⁴

After evaluating all the information on the record, on May 10, 2021, TRLED determined that reasonable suspicion existed that the aluminum extrusions imported into the United States from the Dominican Republic by the Importer were Chinese origin.⁵ TRLED based its determination on the information provided in the Allegation and information placed on the administrative record by CBP.⁶

On June 3, 2021, pursuant to 19 CFR 165.5, CBP sent Requests for Information (RFIs) to Kingtom, requesting information on its shipments.⁷ On June 21, 2021, CBP received an RFI response from Kingtom.⁸ On July 12, 2021, CBP sent a supplemental RFI to Kingtom.⁹ On August 2, 2021, CBP received a supplemental RFI response from Kingtom.¹⁰ On August 4, 2021, CBP issued a second supplemental RFI to Kingtom.¹¹ On August 13, 2021, CBP received a response from Kingtom.¹²

On August 8, 2021, CBP placed documents from the administrative records of EAPA Cons. Case 7348 and EAPA Cons. Case 7423 onto the administrative record of this investigation.¹³ On August 17, 2021, Kingtom timely submitted Voluntary Submissions of Factual Information (VFI) for the record.¹⁴ On August 23, 2021, the Alleger and Kingtom timely submitted rebuttal

³ See Letter from the AEFTC, “Aluminum Extrusions from the People’s Republic of China: Request for an Investigation under the Enforce and Protect Act,” dated October 5, 2020 (Allegation).

⁴ See CBP Memorandum, “Initiation of Investigation for EAPA Case Number 7550 – Kingtom Aluminio SRL,” dated February 2, 2021 (Kingtom Initiation).

⁵ See Memorandum, “Notice of Initiation of Investigation and Interim Measures - EAPA Case 7550,” dated May 10, 2021 (NOI).

⁶ *Id.*

⁷ See Memorandum to Kingtom, “EAPA Case Number 7550 Request for Information,” dated May 25, 2021 (Kingtom RFI).

⁸ See letter from Kingtom, “EAPA Case Number 7550 Request for Information,” dated May 25, 2021; *see also* letter from Kingtom, “EAPA Case No. 7550: Refiling of Kingtom Request for Information Response,” dated July 14, 2021 (collectively, Kingtom RFI Response). On July 14, 2021, Kingtom refiled its RFI response at the request of CBP due to the treatment of certain business confidential information. *See* email, “EAPA 7550 – Non-Conforming Business Confidential RFI Submission,” dated July 12, 2021; *see also* email, “EAPA 7550 – Kingtom’s Resubmission of its RFI,” dated July 14, 2021.”

⁹ See Memorandum to Kingtom, “EAPA Case Number 7550 Supplemental Request for Information,” dated July 12, 2021 (Kingtom SRFI).

¹⁰ See letter from Kingtom, “EAPA Case No. 7550: Kingtom Supplemental RFI Response,” dated August 2, 2021 (Kingtom SRFI Response).

¹¹ See Memorandum to Kingtom, “EAPA Case Number 7550 Second Supplemental Request for Information,” dated August 4, 2021 (Kingtom SRFI2).

¹² See letter from Kingtom, “EAPA Case No. 7550: Kingtom Second Supplemental RFI Response,” dated August 13, 2021 (Kingtom SRFI2 Response).

¹³ See Memorandum to the File, “Adding Certain Documents to the Administrative Record,” dated August 13, 2021 (Kingtom EAPA 7348/7423 Responses).

¹⁴ See letter from Kingtom, “EAPA Case No. 7550: Kingtom First Voluntary Submission,” dated August 17, 2021 (Kingtom VFII).

VFI; Kingtom also submitted rebuttal information to CBP's memorandum to the file.¹⁵

On August 23, 2021, CBP sent a site engagement letter to Kingtom regarding verification.¹⁶ From August 30, 2021, through September 2, 2021, CBP conducted an on-site verification of Kingtom in the Dominican Republic.¹⁷ On November 9, 2021, CBP released the verification report to parties to the investigation.¹⁸ On November 29, 2021, CBP received written arguments from Kingtom and the Alleger.¹⁹ On December 14, 2021, CBP received rebuttals to written arguments from Kingtom and the Alleger.²⁰

Period of Investigation (POI)

Pursuant to 19 CFR 165.2, entries covered by an EAPA investigation are those “entries of allegedly covered merchandise made within one year before the receipt of an allegation....” Entry is defined as an “entry, or withdrawal from warehouse for consumption, of merchandise in the customs territory of the United States.”²¹ CBP acknowledged receipt of the properly filed allegation against Kingtom on January 8, 2021.²² The entries covered by this investigation are those entered for consumption, or withdrawn from warehouse for consumption, from January 8, 2020, through the pendency of this investigation, *i.e.*, February 5, 2022.²³

Analysis

Under 19 USC 1517(c)(1)(A), to reach a 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.”²⁴ 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

¹⁵ See letter from Alleger “Aluminum Extrusions from the People’s Republic of China, EAPA Case No. 7550: Voluntary Factual Information Submission and Comments on Kingtom’s Questionnaire Responses,” dated August 23, 2020 (Alleger VFI); letter from Kingtom, “EAPA Case No. 7550: Kingtom Second Voluntary Submission,” dated August 23, 2021 (Kingtom VFI2); letter from Kingtom “EAPA Case No. 7550: Rebuttal Factual Information to CBP’s Memorandum to the File Adding Certain Documents to the Administrative Record,” dated August 23, 2021 (Kingtom VFI3).

¹⁶ See Letter to Kingtom, “Site Engagement Letter,” dated August 23, 2021.

¹⁷ *Id.*; see also Memorandum, “On-Site Verification Report,” dated November 9, 2021 (Verification Report).

¹⁸ See Verification Report.

¹⁹ See letter from Alleger, “Aluminum Extrusions from the People’s Republic of China, EAPA Case No. 7550: Written Arguments of the Aluminum Extrusions Fair Trade Committee,” dated November 29, 2021; letter from Kingtom, “EAPA Case No. 7550: Kingtom Written Argument,” dated November 29, 2021.

²⁰ See letter from Alleger, “Aluminum Extrusions from the People’s Republic of China, EAPA Case No. 7550: Aluminum Extrusions Fair Trade Committee’s Response to Written Arguments,” dated December 14, 2021; letter from Kingtom, “EAPA Case No. 7550: Kingtom Response to Alleger’s Argument,” dated December 14, 2021.

²¹ See 19 USC 1517(a)(4); see also 19 CFR 165.1.

²² See email “EAPA 7550 - Receipt of Kingtom Alumino SRL,” dated January 8, 2021.

²³ See 19 CFR 165.2.

²⁴ 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)).

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.”²⁵ As discussed below, the record of this investigation indicates that covered merchandise entered the United States through evasion. Stated differently, substantial evidence indicates that the Importer’s imports were entered through evasion, resulting in the avoidance of applicable AD/CVD cash deposits or other security.

On May 26, 2011, the Department of Commerce (Commerce) issued the *Orders* on aluminum extrusions from China.²⁶ Chinese exports of aluminum extrusions to the Dominican Republic increased by 24 percent in 2017, more than 31 percent in 2018, and 14 percent in 2019.²⁷ In 2018, Kingtom opened as the first Chinese company in the Dominican Republic [DESCRIPTION].²⁸ Evidence on the record also shows that, as characterized by Kingtom, [STATEMENT FROM OFFICIAL

].²⁹ Aluminum extrusions produced in the Dominican Republic are not subject to AD or CVD applicable to Chinese-origin aluminum extrusions.³⁰ Aluminum extrusions produced in China are subject to AD duties of 86.01 and CVD of 7.37 percent.³¹ Therefore, Kingtom had sufficient reason to disguise the true country of origin of its aluminum extrusions and to claim the country of origin as the Dominican Republic. By doing so, Kingtom would be subject to zero AD/CVD duties as opposed to the AD/CVD duties applicable to aluminum extrusions from China.

Evidence on the record shows that the timing and volume of Kingtom’s shipments of extrusions to the United States directly coincide with the Dominican Republic’s recognition and initiation of trade relations with China³² and indicate a marked increase in the volume of aluminum extrusions imported into the Dominican Republic from China, which exceeds the Dominican Republic’s consumption demands.³³ Evidence in the Allegation shows that exports of aluminum extrusions from China to the Dominican Republic in 2019 was 38,618,990 pounds, which is a 10 percent increase from 2018, a 37 percent increase from 2017, and a 39 percent increase from 2016.³⁴ Additionally, in the Allegation, the Allegor states its belief, which is based on an affidavit from an industry expert, that a significant proportion of Chinese extrusions exported to

²⁵ See 19 CFR 165.1; see also 19 USC 1517(a)(5)(A).

²⁶ See the *Orders*.

²⁷ See Allegation, at 12-13 and Exhibit 9.

²⁸ See Allegation 11-12; see also Verification Report; see also EAPA Cons. Case 7348 (EAPA 7348) and EAPA Cons. Case 7423 (EAPA 7423) (collectively, EAPA 7348/7423). See Memorandum to the File “Previous EAPA Determinations,” dated March 3, 2021, at Attachment 1 (EAPA 7348 Determination of Evasion (EAPA 7348 Determination)) and Attachment 2 (EAPA 7423 Determination of Evasion (EAPA 7423 Determination)).

²⁹ See Verification Report; EAPA 7348 Determination; EAPA 7423 Determination.

³⁰ *Id.*

³¹ See *Aluminum Extrusions from the People’s Republic of China: Antidumping Duty Order*, 76 FR 30650 (Dept. Commerce, May 26, 2011); 7.37 percent is the current cash deposit rate for all-other manufacturers or exporters of covered merchandise subject to the CVD order. See *Aluminum Extrusions from the People’s Republic of China: Amended Final Affirmative Countervailing Duty Determination Pursuant to Court Decision*, 80 FR 69640 (November 10, 2015).

³² See Allegation, at 12.

³³ *Id.*

³⁴ *Id.*, at 12 and Exhibit 9.

the Dominican Republic subsequently enter the United States, either after undergoing minor alterations or through direct transshipment.³⁵

In the Allegation, the Allegor stated that at the time of its filing, Kingtom was subject to two EAPA investigations involving aluminum extrusions from the Dominican Republic to the United States, *i.e.*, EAPA Cons. Case 7348 and EAPA Cons. Case 7423.³⁶ In the Allegation, the Allegor further claimed that since those cases were initiated with CBP, *i.e.*, on October 31, 2019, and on January 27, 2019, respectively, Kingtom has begun acting as the importer of record for its shipments to the United States.³⁷ Evidence provided in the Allegation shows import data and other sources that demonstrate that former Kingtom clients are no longer being listed as importers, but are instead listed as consignees and notify parties for shipments of aluminum extrusions from the Dominican Republic.³⁸ CBP placed evidence on the record which shows that Kingtom began importing in [DATE], which corroborates the Allegor's claims, as the EAPA 7348 allegation had been filed in August 22, 2019, and since that filing and the initiation of EAPA 7348, the data shows a significant change in Kingtom's imports.³⁹

The data shows a direct correlation between the time when Kingtom began listing itself as the importer of record for its shipments to the United States, and CBP's implementation of interim measures for EAPA investigations 7348/7423.⁴⁰ Specifically, CBP issued its interim measures determination for EAPA 7348 on February 2, 2020.⁴¹ Evidence on the record shows that between [DATE] and February 2, 2020, Kingtom had [#] entries; however, since the public notification of EAPA 7348, Kingtom has had [#] entries, *i.e.*, a [DESCRIPTION].⁴² Additionally, parties to the investigation were publicly notified about EAPA 7423 on May 4, 2020, and evidence on the record shows that between [DATE] and May 4, 2020, Kingtom only had [#] entries, but has had [#] entries, *i.e.*, a [DESCRIPTION] since that date.⁴³ This correlation supports the conclusion that Kingtom became the importer of record so it could continue to do business and export aluminum extrusions of Chinese origin to the United States despite CBP's reasonable suspicion and subsequent determinations in the related EAPA investigations involving evasion in which Kingtom was the foreign manufacturer of the aluminum extrusions, *i.e.*, EAPA 7348/7423.

There is no question that Kingtom can produce aluminum extrusions; however, there is no reliable evidence on the record that demonstrates it operates at the full capacity necessary to produce the amount of aluminum extrusions to the United States that it currently exports. The questions before CBP, as presented twice before in EAPA 7348/7423 (CBP placed Kingtom's past responses and those past determinations on the record), are whether aluminum extrusions from China are being transshipped and mislabeled as originating from the Dominican Republic

³⁵ *Id.*, at 13.

³⁶ *Id.*, at 6 and Exhibits 2 and 3.

³⁷ *Id.*, at 6-7.

³⁸ *Id.*, at 6-9 and Exhibits 4-7.

³⁹ See NTAC Report; *see also* EAPA 7348 Determination, at 11 fn 53.

⁴⁰ See Allegation. *See also* EAPA 7348 Determination and EAPA 7423 Determination of Evasion.

⁴¹ See EAPA 7348 Determination, at 4.

⁴² See NTAC Report.

⁴³ See NTAC Report.

and shipped to the U.S. customs territory, and whether aluminum extrusions from China are being comingled with aluminum extrusions produced in the Dominican Republic.⁴⁴ Both EAPA 7348/7423 involved Kingtom, the importer and manufacturer from this investigation, as the manufacturer of aluminum extrusions that exported to multiple U.S. based importers in EAPA 7348/7423.⁴⁵ In both previous investigations, CBP determined that substantial evidence existed demonstrating that the aluminum extrusions that the importers purchased from Kingtom and imported into the United States during the relevant POIs were in fact extruded in China and transshipped through the Dominican Republic. The POIs in EAPA 7348 and 7434 significantly overlap with the POI of this proceeding. The POI for EAPA 7348 was October 9, 2018, to November 19, 2020.⁴⁶ The POI for EAPA 7423 was January 10, 2019, to January 28, 2021.⁴⁷ Accordingly, EAPA 7348's POI and EAPA 7423's POI overlapped by nearly 22 months; EAPA 7423's POI and the instant case's POI overlap by 12 months, and all three cases' POIs overlap by about 11 months, *i.e.*, from January 2020 to November 2020. As a result of this overlap and the involvement of Kingtom as the reported manufacturer in both EAPA 7348/7423, CBP finds that previous EAPA cases are relevant to this investigation and has placed certain documents, including the final determinations of evasion, on the record of this proceeding.⁴⁸

Affiliation with China

Evidence submitted by Kingtom corroborates information placed on the record by the Alleger and CBP that Kingtom has significant ties to China. In its RFI responses, Kingtom indicates that is a company wholly owned by Chinese nationals located in the Dominican Republic.⁴⁹ During a site visit in 2018, Kingtom officials told U.S. government (USG) officials [STATEMENT

].⁵⁰ At verification, other Kingtom officials gave a contradictory account of why Kingtom was set up in the Dominican Republic by stating that Kingtom was established in the Dominican Republic to take advantage of the Dominican Republic-Central America Free Trade Agreement (CAFTA-DR) and low labor costs.⁵¹ Kingtom identified [NAMES] as partners of the corporation, with 85 and 15 percent voting stock, respectively.⁵² Kingtom's business registration listed both partners (*i.e.*, [NAMES]) as Chinese citizens with Dominican Republic addresses.⁵³ In addition, the registration identified Chinese citizens [NAMES] as administrators of Kingtom, and "persons authorized to sign," with Dominican Republic

⁴⁴ Note, while CBP found affirmative determinations of evasion for both EAPA 7348 and 7423, the previous determinations do not mean that CBP will automatically find evasion in a subsequent or related proceeding. Rather, each EAPA investigation is separate, and each administrative record must stand on its own.

⁴⁵ See generally EAPA 7348 Determination and EAPA 7423 Determination.

⁴⁶ See EAPA 7348 Determination.

⁴⁷ See EAPA 7423 Determination.

⁴⁸ See Kingtom Written Arguments, at 5-7.

⁴⁹ See Kingtom RFI Response; see also Kingtom Supplemental RFI Response.

⁵⁰ See Verification Report, at 2; see also EAPA 7348 Determination, at 7; see also EAPA 7423 Determination, at 6.

⁵¹ See Verification Report, at 2.

⁵² See RFI Response, at 6, Exhibits 1 and 3; see also Verification Report, at 2-3.

⁵³ See RFI Response, at Exhibit 1.

addresses.⁵⁴ Furthermore, Kingtom employed between [#] Chinese workers between 2016 and 2022.⁵⁵ Additionally, evidence on the record shows the Chinese workers’ wages were paid in Chinese currency and deposited overseas to Chinese bank accounts, because according to Kingtom, its workers “do not need local currency.”⁵⁶

Furthermore, during verification, CBP officials observed that Kingtom’s facility consists of a number of buildings that include an administration building and a dormitory for the Chinese nationals who live on site, as well as a number of buildings for packaging, production, and warehousing of materials.⁵⁷ CBP officials observed that in front of the administration building there was a bamboo garden surrounding a pond with a bridge with three flag poles flying Kingtom’s flag, Dominican Republic flag, and the People’s Republic of China (PRC) Flag.⁵⁸

Additionally, evidence on the record shows that Kingtom has in the past used suppliers of material and equipment based in [COUNTRIES].⁵⁹ CBP requested in EAPA 7348/7423 that Kingtom provide and identify all suppliers and locations.⁶⁰ Additionally, CBP requested in EAPA 7348/7423 that Kingtom provide all accounts payable records and an excel spreadsheet of all monetary transactions.⁶¹ The information provided by Kingtom in EAPA 7348/7423 is relevant to this proceeding due to the overlapping POIs and the fact that Kingtom said that it makes sales from inventory. Table 1 identifies all suppliers CBP found when reviewing Kingtom’s monetary transactions,⁶² but when CBP requested that Kingtom provide a full list its suppliers in EAPA 7348/7423 the suppliers in Table 1 were not included in the full list.⁶³ Kingtom did not provide a description for “[ITEM]” and “[ITEM],” so there is no evidence to prove what was actually supplied by these [COUNTRY] suppliers during EAPA 7348/7423. For Table 1, CBP traced all monetary transactions for all [COUNTRY] suppliers in the bank statements provided by Kingtom during the EAPA 7348/7423 investigations.⁶⁴

Table 1: CBP Trace of Suppliers from Banking Information from 7348/7423

Company Name	Description	COO	Total Amount Paid US Dollars
[]	[]	[]	[]
[]	[]	[]	[]

⁵⁴ We note [NAME] is not listed as part of Kingtom’s organizational structure; however, [NAME] is listed as Vice President of Purchasing Director and [NAME] as Administration Director. See Kingtom RFI Response, at Exhibit 3.

⁵⁵ See Kingtom RFI Response, at Exhibit 41.

⁵⁶ See Verification Report, at 17.

⁵⁷ *Id.*, at 11.

⁵⁸ *Id.*

⁵⁹ See EAPA 7348 Determination at 7-9, *see also* EAPA 7423 Determination, at 5-6.

⁶⁰ See Kingtom EAPA 7348/7423 Responses, at Attachment 1 p4.

⁶¹ *Id.*, at Attachment 1 p7.

⁶² *Id.*, at Attachment 1 Exhibit 9.

⁶³ *Id.*, at Attachment 1 p6.

⁶⁴ *Id.*, at Attachment 1 Exhibit 10.

Furthermore, evidence on this administrative record shows that Kingtom is a company owned by Chinese nationals, located in the Dominican Republic, run by Chinese workers, using Chinese supplies, Chinese equipment, and Chinese raw materials, which allows for potential transshipment or commingling of Chinese aluminum extrusions. Therefore, for the aforementioned reasons, CBP finds that Kingtom has definitive ties to China, and moreover, CBP is not able to confirm what Kingtom purchases from China, because of the conflicting information provided by Kingtom in the three investigations.

Kingtom's Sales Process

CBP is unable to confirm what Kingtom's sales process is or rely on Kingtom's RFI explanations of its sale process, which is at the core of an EAPA investigation to determine if evasion is occurring. Evidence on the record shows that Kingtom on no less than three occasions reported to CBP that its sales process was to produce merchandise to order. Knowing whether Kingtom's sales are produced to order versus from inventory is important, because it helps determine the origin of its reported aluminum extrusions. For example, if an item is sold from inventory, the origin of the aluminum extrusions would be unknown and would require tracing by either figuring out the supplier or matching to Kingtom's production records. In EAPA 7348/7423 Kingtom provided evidence that it produces its aluminum extrusions to order.⁷¹ Additionally, in EAPA 7348/7423, the importer, Global Aluminum Distributor, LLC, provided an affidavit stating [DESCRIPTION].⁷² In the Kingtom RFI Response for this investigation, Kingtom provided a flow chart showing that the sales process consists solely of producing to order.⁷³ At verification, CBP officials asked about the sales processes and was told that:

The sales process begins when a customer [DESCRIPTION] to place an order. Kingtom sends customers [DESCRIPTION], which is [DESCRIPTION]. Once [DESCRIPTION], the order is sent to the [DESCRIPTION].⁷⁴

There is no explanation or source documentation on record in any of Kingtom's RFI responses either in this proceeding or EAPA 7348/7423 showing that sales from inventory were part of Kingtom's sales process. However, at verification, while discussing a topic other than the company's sales process, [NAME] (Vice-President of Sales) stated (unsolicited) that "occasionally they get calls from customers to purchase from inventory."⁷⁵ But in its RFI, Kingtom stated that it does not have a catalog of products that it manufactures, as it manufactures to its customer's drawings.⁷⁶ Kingtom submitted no evidence on the record to indicate how a customer would know how to order from inventory. Further, there is no evidence to indicate what "occasionally means," as it could mean 49 percent of the time or one percent of the time. [NAME] statements contradict the evidence so far on the record regarding

⁷¹ See Kingtom EAPA 7348/7423 Responses, at Attachment 1, at 4.

⁷² See EAPA 7423 Determination, at 11.

⁷³ See Kingtom RFI Response, at Exhibit 18.

⁷⁴ See Verification Report, at 5.

⁷⁵ See Verification Report, at 6.

⁷⁶ See Kingtom RFI Response, at 14.

Kingtom's sales processes, and casts doubt on all information that Kingtom submitted asserting that it does not keep inventory and its sales are made to order in accordance with customer specifications.

Nevertheless, Kingtom argued that CBP has known about Kingtom's sales from inventory all along.⁷⁷ As described above, evidence on the record shows this is the third EAPA investigation involving Kingtom with no explanation or source documentation explaining its inventory sales process. Rather, a Kingtom official made a comment about sales from inventory at verification and Kingtom argues its financial statements contain a line item that shows it has sales from inventory. However, this line item alone is merely an accounting procedure and does not constitute sufficient evidence to demonstrate that Kingtom articulated clearly to CBP that it engages in sales from inventory, as there is no further evidence on the record that gives indication of the meaning of the line items in Kingtom's financial statements. Further, none of the sales documentation reviewed by CBP indicated sales from inventory. Based on evidence from the record and Kingtom's repeated insistence that its sales process consists of producing to order, CBP could equally expect that this line item relates to goods that were sold and produced to order but had not shipped to the customer yet. This expectation is in line with what CBP officials observed during verification, *i.e.*, goods already sold to a customer awaiting shipment.⁷⁸

Additionally, in accordance with 19 CFR 165.5, Kingtom could have placed evidence on the record or explained at any point prior to verification that it also had a sales process for making sales from inventory. CBP notes that it found in EAPA7348/7423 that it was possible Kingtom made sales from inventory, but there was no evidence on the record to support this.⁷⁹ An after-the-fact explanation in its written arguments in this proceeding, as the result of CBP noting the sales process issue in its verification report, is unavailing and indicative of Kingtom trying to correct after the fact that it failed to provide CBP documentation regarding that it had sales from inventory. Therefore, CBP does not have sufficient evidence to determine which sales by Kingtom were produced to order or were sold from inventory. The statements during verification, and Kingtom's statement that its financial statements demonstrate sales from inventory, without further support in sales documentation or any other document indicating that Kingtom maintains inventory, suggests that information that Kingtom submitted regarding its sales and inventory processes is unreliable.

The result is that CBP is unable to confirm what Kingtom's sales process is or rely on Kingtom's RFI explanations of its sale process, which is at the core of an EAPA investigation to determine if evasion is occurring. Stated in more detail, maintaining inventory would support the conclusion that Kingtom would have an opportunity to sell Chinese extrusions or, at the very least, to supplement its orders with co-mingled Chinese aluminum extrusions. This would serve as further evidence supporting a determination as to evasion, because the production quantities that Kingtom sold are in question. Further, the inability of CBP to determine Kingtom's sales process, after reviewing all the evidence before it, would support a determination that Kingtom failed to act to the best of its ability it responding to CBP questions and support the application of adverse inferences.

⁷⁷ See Kingtom Written Arguments, at 29-30.

⁷⁸ See Verification Report, at 9.

⁷⁹ See EAPA 7348 Determination, at 12-13; *see also* EAPA 7423 Determination, at 11-12.

Production Records

In EAPA 7348/7423, at CBP's request, Kingtom provided mold and die information, as well as an example of a production record for each mold/die in Exhibit S-10 of its EAPA 7348/7423 supplemental response.⁸⁰ The production record provided for each mold/die are signed and is a form in a spreadsheet layout consisting of a number of cells to record information, such as:

[DESCRIPTION OF CELLS

].⁸¹ A review of these production records shows substantial inconsistencies with information Kingtom reported in EAPA 7348/7423. Here are some examples of the discrepancies found in the prior investigations:

- The production records for molds [#] and [#] list extrusion machine number [#] and are dated [DATE] and [DATE], respectively.⁸² Kingtom reported that extrusion machine No. [#] began operation in [DATE].⁸³ This means Kingtom provided production records that are signed, dated, and state “[DESCRIPTION]” for an aluminum extrusion press that was [DESCRIPTION] during the period recorded on the production records.
- The production records for molds [#] and [#] list extrusion machine [#] and are dated [DATE] and [DATE], respectively.⁸⁴ Kingtom reported that extrusion machine [#] began operation in [DATE].⁸⁵ This means Kingtom provided production records that are signed, dated, and state “[DESCRIPTION]” for an aluminum extrusion press that was [DESCRIPTION] during the period recorded on the production records.
- The production record for mold [#] lists extrusion machine [#] dated [DATE].⁸⁶ Kingtom reported that extrusion machine [#] began operation in [DATE].⁸⁷ This means Kingtom provided production records that are signed, dated, and state “[DESCRIPTION]” for an aluminum extrusion press that was [DESCRIPTION] during the period recorded on the production record.

These discrepancies in Kingtom's production records are significant for several reasons, even though they occurred during the POIs for EAPA 7348/7423 and not during this investigation's POI. As an initial matter, these production records draw into question whether Kingtom's production records at that time were fraudulent, because the equipment list shows Kingtom “produced” aluminum extrusions on machines that were [STATUS]. Given these

⁸⁰ See Kingtom EAPA 7348/7423 Responses, at Attachment 2.

⁸¹ See Kingtom EAPA 7348/7423 Responses, at Attachment 2, Exhibit S-10.

⁸² *Id.*

⁸³ See Kingtom EAPA 7348/7423 Responses, at Attachment 1, Exhibit 11; *see also* Kingtom RFI Response, at Exhibit 28.

⁸⁴ *Id.*

⁸⁵ See Kingtom EAPA 7348/7423 Responses, at Attachment 1, Exhibit 11; *see also* Kingtom RFI Response, at Exhibit 28.

⁸⁶ See Kingtom EAPA 7348/7423 Responses, at Attachment 2, Exhibit S-10.

⁸⁷ See Kingtom EAPA 7348/7423 Responses, at Attachment 1, Exhibit 11; *see also* Kingtom RFI Response, at Exhibit 28.

discrepancies, either the documents that Kingtom provided for when the machines became operational are incorrect or the production records that Kingtom provided are incorrect. These production records are signed and have [DESCRIPTION] in the upper left corner. The number of the production records, from the sample requested, with these discrepancies indicates that neither the listed machines nor the dates were mere clerical errors. Furthermore, if these documents are accurate, it means that these extrusion machines were [DESCRIPTION] Kingtom's Dominican facility.

Regardless of the reason for the inconsistencies and the timing of them, these inconsistencies are evidence of two important and critical conclusions. First, they show that Kingtom has a history of submitting highly inaccurate, possibly fraudulent, submissions riddled with contradictions. This casts doubt on all Kingtom submissions in this proceeding, which CBP officials attempted to verify onsite in August 2021. The inconsistencies also suggest that Kingtom could have falsified records for CBP's benefit at verification, which is supported by Kingtom's admission at verification of destroying records before January 2020, as discussed below.⁸⁸

Second, these records indicate that Kingtom did not produce all the aluminum extrusions it previously reported to CBP, due to inconsistent reporting of the dates when the extrusion machine [STATUS] and the dates of production; they also support the conclusion that Kingtom could have made sales from inventory. However, there is no evidence on the record to show if Kingtom has an inventory turnover rate or what it might be, because Kingtom previously described its sales process as "made to order." Although at verification Kingtom officials stated that some sales were made from inventory, CBP did not see any unpackaged inventory in its warehouses. In other words, at the time CBP conducted the verification, all products present at the factory were sold, packaged, and ready to be shipped. As a result, CBP was unable to verify that any one entry was made entirely of produced-to-order aluminum extrusions or aluminum extrusions that were sold from inventory.

Finally, in RFIs sent to Kingtom in this investigation, CBP requested that Kingtom provide all production records and all invoices related to 26 entries that CBP had selected.⁸⁹ Kingtom provided the requisite information in its RFI responses; however, when comparing the production records to the sales invoices for the same entries, CBP discovered numerous discrepancies and inconsistencies.⁹⁰ The reported quantity and the reported weight for all [#] line items in the invoices received differ from the quantity and the reported weight in the corresponding production records.⁹¹ Further, in a number of instances Kingtom did not even provide the requested production record or the production record provided did not match the invoice. The difference in amounts in Kingtom's recent production records and its sales documents shows that, if accurate, Kingtom did not produce all the extrusions they shipped to the United States, because Kingtom sold more extrusions to the United States than what's documented in its production records.

⁸⁸ See Verification Report.

⁸⁹ *Id.*

⁹⁰ See Kingtom RFI Response, at Exhibit 33 and Appendix I.

⁹¹ *Id.*

Furthermore, CBP questions the number of employees needed to produce comparable amounts of extrusions in this proceeding. Breaking the data down to a monthly comparison shows that during the months of January 2019 to December 2019, Kingtom’s average exports were [#] kg a month and from January 2020 to July 2020, the exports were [#] kg a month, which are comparable amounts; however, during those corresponding time periods Kingtom hired [#] employees in 2019, and from January to July 2020 it hired [#] employees.⁹² There is no evidence on the record to explain why to export comparable amounts of aluminum extrusions, Kingtom would need to hire almost twice as many people as it had hired the year before, especially when the time-sheets provided to CBP by Kingtom did not indicate that hiring additional workers resulted in the increase of overall hours worked at the factory. The much larger number of hires in 2020, which is within the start of POI of January 8, 2020, in this present investigation, to produce the same amount of aluminum extrusions raises significant questions about whether Kingtom had the labor sufficient to produce the extrusions it did in 2019 and 2020. This is significant because to produce the same amount of aluminum extrusions as it did in 2019 in 2020, Kingtom theoretically would require the same number of employees it had in 2019, not more. This also supports a finding of evasion because the increased number of employees needed to produce the same amount of aluminum extrusions insinuates that Kingtom did not have enough employees before to produce the aluminum extrusions it sold to the United States and that it supplemented the aluminum extrusions it produced with aluminum extrusions of Chinese origin.

Therefore, the evidence from EAPA 7348/7423 and the significant number of discrepancies provided in this investigation—including the revelation of the usage of inventory for sales—supports a determination of evasion based on substantial evidence and the application of adverse inferences.

Reliability of submissions

Evidence on the record shows that Kingtom has a history of providing inaccurate information and not acting to the best of its ability in complying with CBP’s requests for information.⁹³ Evidence on the record shows that Kingtom has submitted to CBP inaccurate information filled with discrepancies in the past.⁹⁴ In this investigation, CBP continues to find discrepancies among Kingtom’s submissions.⁹⁵

⁹² *Id.* Of note again is that numbers hired between Jan. – Jul. 2020 is still more than the number of employees hired in 2017, 2018, and 2019, combined

⁹³ See EAPA Determination 7348; *see also* EAPA Determination 7423.

⁹⁴ See EAPA Determination 7348; *see also* EAPA Determination 7423.

⁹⁵ CBP notes that Kingtom would attempt to “correct” some of these issues in its submissions of VFI. However, CBP takes issue with these submissions for several reasons. For starters, these “corrections” happened in Kingtom’s fourth to sixth submissions. *See generally* Kingtom VFI1; Kingtom VFI2, and Kingtom VFI3. CBP gave Kingtom the opportunity to correct the issues identified in the Kingtom RFI Response by issuing a supplemental RFI, which Kingtom timely submitted but failed to spot any of the discrepancies listed. Secondly, the timing of the submissions was after day 200 and was made one week before CBP’s verification of Kingtom; this appears to be almost a subversion of the proceeding by amending the record by providing “rebuttal information” related to information placed on the record by CBP. Thirdly, the information submitted in the “rebuttal information” has discrepancies with what Kingtom submitted in Kingtom’s RFI responses in EAPA 7348/7423. *See* Kingtom EAPA 7348/7423 Responses. As a result, evidence on the record clearly shows it took Kingtom multiple submissions, meaning CBP

- In this investigation, CBP requested in the RFI for Kingtom to provide all production records and to provide all invoices related to 26 entries that CBP had selected.⁹⁶ As detailed above, a comparison of the submitted information shows discrepancies in the reported quantity and the reported weight for all [#] line items in the invoices received and the corresponding production records.⁹⁷
- Kingtom's total sales per month were compared to total sales per region and resulted in a difference of [#] kg when those numbers should have been the same.⁹⁸
- Kingtom's list of reported monthly sales were compared to its reported monthly production amounts and resulted in a difference of [#] kg, when those values should have been the same.⁹⁹
- Kingtom's list of sales was compared to Kingtom's monthly export volume of covered merchandise and resulted in a difference of [#] kg. These values should have been the same.¹⁰⁰
- Kingtom's monthly production sales were compared to its monthly export volume of the covered merchandise and resulted in a difference of [#] kg, when those numbers should have been the same.¹⁰¹
- Kingtom's list of sales was compared to its revised reconciliation worksheet for a difference of [#] kg, when those numbers should be the same.¹⁰²
- Kingtom's list of sales was compared to Kingtom's list of U.S. customers and resulted in difference of [#] kg and \$[#], when those numbers should be the same.¹⁰³

During verification, CBP made the following findings:

- Company officials told CBP officials at verification a story about how the company was established that differed than the one they told to U.S. government officials in 2018.¹⁰⁴ Specifically, Kingtom originally told CBP officials that it established itself in the Dominican Republic due to the AD/CVD duties on Chinese aluminum extrusions and was now telling CBP that it was due to CAFTA-DR and low labor costs.¹⁰⁵ This change in explanation changes the reason why Kingtom was established, as one is based on the knowledge and specific avoidance of AD/CVD duties and the other makes it solely an economic decision.
- CBP officials were unable to verify Kingtom's bank account information as submitted in its RFI responses. CBP was unable to do so because Kingtom claimed that it no longer

has multiple versions of certain documents on the record, to provide "true and accurate" information on the record, despite the company certifying to the contrary in all its earlier submissions; hence, this is further evidence that Kingtom failed to act to the best of its ability.

⁹⁶ See Kingtom RFI Response, at Exhibit 33 and Appendix I.

⁹⁷ *Id.*

⁹⁸ See Kingtom SRFI2 Response, at Exhibit 77.

⁹⁹ See Kingtom SRFI2 Response, at Exhibit 77 compared to Kingtom RFI Response, at Exhibit 24.

¹⁰⁰ See Kingtom SRFI2 Response, at Exhibit 77 compared to Kingtom RFI Response, at Exhibit 35.

¹⁰¹ See Kingtom SRFI Response, at Exhibit 24 compared to Kingtom RFI Response, at Exhibit 35.

¹⁰² See Kingtom SRFI2 Response, at Exhibit 77 compared to Kingtom RFI Response, at Exhibit 46.

¹⁰³ See Kingtom SRFI2 Response, at Exhibit 77 compared to Kingtom RFI Response, at Exhibit 50.

¹⁰⁴ See Verification Report, at 2.

¹⁰⁵ *Id.*

used the services of [NAME] or [NAME], and Kingtom did not provide original source documents from those banks.¹⁰⁶ Kingtom officials stated they stopped using the banks due to “bad service” being provided.¹⁰⁷

- CBP officials were unable to verify the allocation payments, *i.e.*, how much of the payment was for supplies versus wages, to [NAME]; therefore, CBP could not distinguish between payments for raw material supplies versus employee salaries.¹⁰⁸
- For Work Order 1, reviewed by CBP during the verification, [DESCRIPTION] than were [DESCRIPTION] per the documents provided during the verification.¹⁰⁹
- For Work Order 6, [DESCRIPTION] than were [DESCRIPTION].¹¹⁰
- In its description of its sales process in its submissions, Kingtom did not state that it sold product from inventory like it stated to CBP officials at verification.¹¹¹
- For Work Order 7, [DESCRIPTION] than were [DESCRIPTION] per the documents provided during the verification.¹¹²
- For Work Order 8, [DESCRIPTION] than were [DESCRIPTION] per the documents provided during the verification.¹¹³
- For Work Order 10, [DESCRIPTION] than were [DESCRIPTION] per the documents provided during our verification.¹¹⁴
- CBP reviewed the lease agreement for the Kingtom factory in the Dominican Republic and identified the lessor as Dominican company [NAME]; however, CBP was unable to verify payments to the referenced lessor in the financial documents provided by Kingtom.¹¹⁵
- Kingtom failed to provide a sample report from its facial recognition machine for CBP officials to review as requested.¹¹⁶ The facial recognition machine is one of the ways that Kingtom claims it uses to keep track of local employees’ timecards. Failure to provide a sample report calls into question Kingtom’s time keeping for the local employees. In other words, Kingtom’s failure to provide the facial recognition reports to corroborate the employee timecards indicates that the factory may not have been operating at the capacity Kingtom claimed it was. This is an important fact in assisting CBP to determine Kingtom’s ability to produce the amounts of aluminum extrusions that Kingtom claimed it was producing in the Dominican Republic.
- CBP officials noted discrepancies between Kingtom’s unaudited financial statements of 2019 and 2020 and their respective Statements of Financial Position.¹¹⁷

¹⁰⁶ *Id.*, at 5.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*, at 17.

¹⁰⁹ *Id.*, at 7.

¹¹⁰ *Id.*, at 8.

¹¹¹ *Id.*, at 8.

¹¹² *Id.*, at 8.

¹¹³ *Id.*, at 8.

¹¹⁴ *Id.*, at 9.

¹¹⁵ *Id.*, at 13.

¹¹⁶ *Id.*, at 16.

¹¹⁷ *Id.*, at 10-11.

- CBP was unable to verify Kingtom’s original-source paper attendance records for Kingtom’s employees, because company officials said they throw them away once they enter the values into Excel.¹¹⁸
- Although Kingtom officials said at verification that they have two 12-hour shifts per day, six days per week, when CBP officials reviewed the January 2020 local attendance sheet, it had no hours recorded for a night shift.¹¹⁹ CBP officials were told that the shift change for the day shift was at 7 pm, meaning Kingtom’s day shift was from 7 am to 7 pm and its night shift was from 7 pm to 7 am.¹²⁰
- During the verification, when asked by CBP officials, Kingtom officials and their counsel could not provide a clear explanation of how Kingtom pays its employees because its pay distribution procedures and explanations were inconsistent.¹²¹ CBP officials eventually observed how Kingtom pays wages to local workers. The procedure CBP officials observed had no accountability or a way to trace those payments, which was contradictory to statements made by Kingtom officials earlier that same day.¹²²

In EAPA 7348/7423’s determinations as to evasion, CBP found a significant number of discrepancies in the information submitted by Kingtom.¹²³ Because the POIs overlap with this investigation, the information Kingtom provided in the previous investigation remains applicable here. It appears that Kingtom provided different versions of documents to CBP in response to same requests, and, as a result, CBP has multiple versions of the same documents on the record across three investigations, which includes discrepancies across investigations and exhibits regarding Kingtom’s sales volumes and production quantities. At verification Kingtom admitted to deleting records prior to January 2020.¹²⁴ Kingtom’s stated deletion of its original source records from before January 2020 is problematic because copies of such records previously submitted to CBP in EAPA 7348 and 7423, *e.g.*, production records, financial records, sales records, were placed the record of this investigation. In other words, Kingtom deleted records that were previously submitted to CBP during EAPA investigations 7348 and 7423. Furthermore, despite Kingtom’s claims to the contrary that it had pre-2020 records available to review, CBP officials asked at verification to see pre-2020 records, but Kingtom officials did not provide those to CBP because Kingtom advised CBP officials that such records were unavailable because Kingtom deleted them. The relevant portions of the conclusions made by CBP in the Verification Report are summarized below:

- “calculations are estimated amounts since Kingtom did not have records prior to January 2020 during our on-site verification.”¹²⁵
- “[**NAME**] only had payroll records for the years 2020 and 2021 (refer to verification Exhibit 16 – Sales and Payroll Production Payroll 2020, and verification Exhibit 17 – Sales and Payroll Production Payroll 2021). During the interview, he stated

¹¹⁸ *Id.*, at 16.

¹¹⁹ *Id.*, at 16.

¹²⁰ *Id.*, at 18.

¹²¹ *Id.*, at 18.

¹²² *Id.*, at 18.

¹²³ See EAPA Determination 7348; see also EAPA Determination 7423.

¹²⁴ See Verification Report, at 4.

¹²⁵ *Id.*, at 13.

there is no set time he retains the excel {(i.e., Microsoft Excel spreadsheets)}¹²⁶ employee attendance records; sometimes he keeps the records for two years. We noted the earliest records [NAME] had on his shared drive were for January 2020.”¹²⁷

- “We were not able to verify the 2019 financial statements information, nor any information previously submitted to CBP in other proceedings for completeness.”¹²⁸

The aforementioned items in the Verification Report are the result of CBP officials specifically requesting to review information from Kingtom before January 2020 and being unable to do so because Kingtom said the information was unavailable because Kingtom deleted them. Evidence on the record shows that there are entries into the United States with Kingtom acting as the importer of record in 2019, which means that as an importer of record, Kingtom was required to maintain such records under relevant CBP recordkeeping regulations.¹²⁹ Kingtom’s failure to maintain such records indicates that it is withholding information from CBP in the possibility of getting a favorable outcome from this investigation. Considering the above, CBP finds that Kingtom’s records are unreliable, and as a result, CBP cannot trust its production records to substantiate Kingtom’s claims that it produced all the aluminum extrusions it exported to the United States.

Most importantly, at verification, Kingtom engaged in a campaign of intimidation to prevent Kingtom factory employees from speaking to U.S. Government officials during verification. Evidence on the record shows that Kingtom officials used minders whose apparent purpose was to intimidate workers into silence while talking to U.S. Government officials during verification.¹³⁰ Such intimidation tactics were observed by all the members of the CBP team, many of whom were later approached by Kingtom’s workers,¹³¹ and confirmed by the statements of the local workers to CBP officials at the end of verification. Specifically, eight local workers approached CBP officials and stated that they were instructed by their supervisors not to speak to CBP officials or risk retaliation.¹³² Evidence on the record supports this threat was real, and indeed carried out, as during verification CBP found out that these workers were terminated from employment for speaking to CBP officials.¹³³ CBP officials observed an armed guard from the factory gate being escorted by a Chinese group leader back to the section of the factory where the eight terminated workers were from.¹³⁴ Such observations and interactions cannot be ignored or dismissed given the serious nature of them. Furthermore, such tactics impeded CBP’s ability to conduct a proper investigation as it prevented CBP from getting a true and accurate picture of

¹²⁶ Kingtom used to maintain all records in Excel before it overhauled its accounting system. *Id.*, at 4. Company officials continue to enter all employees’ timecard data into an Excel employee attendance sheet and discard the original paper documents. *Id.*, at 16.

¹²⁷ *Id.*, at 16-17.

¹²⁸ *Id.*, at

¹²⁹ See NTAC report.

¹³⁰ See Verification Report, at 15.

¹³¹ *Id.*, at 15.

¹³² *Id.*, at 18-19.

¹³³ *Id.*

¹³⁴ *Id.* CBP disagrees with Kingtom that CBP should have informed its counsel immediately of the incident so it could defuse the situation. As tensions raised during the matter at issue, CBP officials at the verification acted to the best of their ability to stay safe and exercised discretion in a manner they deemed appropriate for how they interpreted the situation. To CBP’s knowledge, the Kingtom counsel’s presence at the company was for the purposes of advising his client, *i.e.*, Kingtom, on all legal matters related to the EAPA verification.

the inner workings of a company from primary sources, *e.g.*, the local factory workers. Also, these tactics are a way of withholding information from CBP in the attempt to get a favorable outcome.

EAPA regulation at 19 CFR 165.6(a) states:

If . . . the importer, or the foreign producer or exporter of the covered merchandise fails to cooperate and comply to the best of its ability with a request for information made by CBP, CBP may apply an inference adverse to the interests of that party in selecting from among the facts otherwise available to make the determination as to evasion. . . .

CBP finds that Kingtom failed to act to the best of its ability in this EAPA investigation by Kingtom's failure to cooperate with CBP at verification as described in detail in the above paragraph. Due to Kingtom's failure to cooperate during the verification, CBP was not able to verify or confirm whether the extrusions were produced on site in the Dominican Republic or imported from China. As a result, CBP is applying adverse inferences in drawing conclusions from other information on the record. CBP is relying on information in the Allegation that suggests that extrusions are imported from China.¹³⁵ Specifically, the import data provided by the Alleger in the Allegation shows Chinese aluminum extrusions are being imported into the Dominican Republic.¹³⁶ Other evidence on the record obtained from Kingtom, shows that Kingtom imports various raw materials and supplies from companies based in China, but CBP was unable to determine what actually is being imported because of Kingtom's failure to provide a consistent list of suppliers and a list of imported items.¹³⁷ Further, Kingtom only provided evidence of bulk payments to Chinese companies, and CBP was unable either to trace these payments in bank statements provided by Kingtom or when reviewing Kingtom's records at verification.¹³⁸ Based on all this information, CBP infers that the aluminum extrusions that Kingtom imports into the United States are of Chinese origin.

CBP finds that there is substantial evidence on the record that Kingtom did not produce all of the aluminum extrusions it imported: 1) Kingtom failed to provide accurate information overall, 2) Kingtom failed on numerous occasions to provide source documents substantiating its RFI submissions to CBP officials at verification, 3) Kingtom deliberately destroyed records prior to January 2020, which were relevant to this proceeding and past EAPA investigations; and 4) Kingtom company officials obstructed verification by conducting a campaign of worker intimidation. Overall, Kingtom's actions have prevented CBP from attaining a full and complete understanding of Kingtom's operations in the Dominican Republic.¹³⁹ As a result, CBP continues to find that Kingtom transshipped aluminum extrusions that were produced in China and transshipped to the United States through the Dominican Republic.

¹³⁵ See Allegation.

¹³⁶ *Id.*, at Exhibit 4.

¹³⁷ See Verification Report; *see also* Kingtom RFI Response, at Exhibit 38; *see also* Kingtom EAPA 7348/7423 Responses.

¹³⁸ *Id.*

¹³⁹ As a result of our application of adverse inferences, CBP disagrees with Kingtom that no reasonable mind could conclude that Kingtom transshipped or commingled Chinese-origin aluminum extrusions. *See* Kingtom Written Arguments, at 3-7. CBP also disagrees with Kingtom that the Alleger failed to identify substantial evidence or that there are no discrepancies on the record that warrant disregarding submitted and verified information of evasion. *See* Kingtom Written Arguments, at 7-24.

Written Arguments

The issue of Kingtom's capacity to produce aluminum extrusions as argued by the Alleger¹⁴⁰ and Kingtom¹⁴¹ is complicated. The Alleger provided affidavits from U.S. industry experts that shows that Kingtom should not be capable of producing the amount of extrusions it exported to the United States.¹⁴² The Alleger also provided evidence that Kingtom does not have the capacity to produce all the extrusions it exported.¹⁴³ The Alleger submitted an affidavit from [**NAME AND TITLE**], which reflects [**TIME**] experience and knowledge of the aluminum extrusion industry [**LOCATION**].¹⁴⁴ He observed that Kingtom did not have the appropriate extrusion presses running to produce the sizes of aluminum profiles it would later export to the United States. [**NAME**] explains that extrusion presses are capable of producing extrusion profiles that are approximately 1.5 inches smaller than the diameter of the press.¹⁴⁵ However, Kingtom claimed that its presses could produce extrusions greater than the diameter of the press.¹⁴⁶ Conversely, the quantity and sizes of Kingtom's extrusion presses are corroborated in an affidavit submitted by [**NAME AND TITLE**], an aluminum extruder with facilities in [**LOCATION**]. [**NAME**] detailed his observations of Kingtom's facilities after a site visit, and, based on his knowledge of the aluminum extrusion industry, he determined that Kingtom would be unable to produce all the aluminum extrusions sizes and quantities that it claimed it could produce.¹⁴⁷ [**NAME**] is a member of the Aluminum Extruders Council and has been manufacturing since [**DATE**].¹⁴⁸ [**NAME**] has more than [**#**] years of experience in the aluminum extrusion industry, thus accrediting his expertise in the industry.¹⁴⁹

At verification, CBP officials observed that Kingtom has the capability to produce aluminum extrusions from a number of selected molds.¹⁵⁰ The molds chosen were some of the largest aluminum extrusions that were reportedly being produced on those machines, *i.e.*, had some of the largest diameters for those machines.¹⁵¹ As stated in the Verification Report, Kingtom was able to produce in front of CBP officials the extrusions from the selected molds on the reported machines.¹⁵² As a result, Kingtom appears capable of producing aluminum extrusions from the molds it claims with the machines observed at verification.¹⁵³

Regarding the issue of maximum capacity, CBP reviewed Kingtom's capacity by taking information that was verbally provided to us by Kingtom's Vice President of Sales, [**NAME**

¹⁴⁰ See Alleger Written Arguments.

¹⁴¹ See Kingtom Written Arguments.

¹⁴² See generally Allegation and Alleger VFI.

¹⁴³ See Allegation, at Exhibit 12.

¹⁴⁴ *Id.*, at Exhibit 12.

¹⁴⁵ *Id.*

¹⁴⁶ See generally Kingtom RFI Response and Kingtom SRFI Response.

¹⁴⁷ *Id.*, at 17-18, and Exhibit 13.

¹⁴⁸ *Id.*, at Exhibit 13.

¹⁴⁹ *Id.*, at Exhibit 13.

¹⁵⁰ See Verification Report, at 12.

¹⁵¹ See Kingtom Supplemental Response, at Exhibit 66.

¹⁵² See Verification Report, at 12.

¹⁵³ *Id.*

],¹⁵⁴ and based on other information provided by Kingtom.¹⁵⁵ Nevertheless, CBP found a number of issues surrounding Kingtom’s production records and its sales records, as discussed in detail above, which draws into question Kingtom’s ability to produce aluminum extrusions in the quantities it claimed to have produced during the POI.¹⁵⁶ As a result, there is no reliable evidence on the record to substantiate Kingtom’s claims; as such, CBP determines that Kingtom did not produce all of the aluminum extrusions it exported during the POI.

Additionally, although Kingtom argued that CBP should strike certain statements from the Verification Report, CBP has not altered the report placed on the record. The Verification Report released to parties was the result of the collaboration of all nine government officials that attended verification. All nine government officials agree that the report released to parties is a true and accurate account of what was observed, verified, and happened at verification.

Determination as to Evasion

The previously discussed facts on the record establish that there is substantial evidence that Chinese-origin aluminum extrusions were transshipped through the Dominican Republic and imported into the United States. Furthermore, evidence on the record indicates that Kingtom subsequently entered the Chinese-origin aluminum extrusions into the United States as type 01 entries that evaded the payment of AD/CVD duties on aluminum extrusions from China.¹⁵⁷ CBP determines that substantial evidence exists demonstrating that, by means of material false statements or material omissions, Kingtom entered Chinese-origin aluminum extrusions that were transshipped through the Dominican Republic into the United States. The aluminum extrusions that Kingtom entered from itself during the period of investigation are subject to the AD/CVD rates on aluminum extrusions from China.¹⁵⁸

Actions Taken Pursuant to the Affirmative Determination as to Evasion

In light of CBP’s determination that substantial evidence demonstrates that the Importer 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 entries subject to this investigation, until instructed to liquidate. For those entries previously extended in accordance with 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 Importer’s 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.

¹⁵⁴ *Id.*

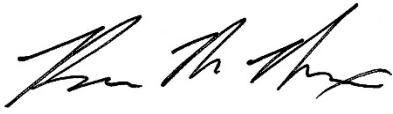
¹⁵⁵ *Id.*

¹⁵⁶ See Kingtom RFI Response, at Exhibit 41.

¹⁵⁷ Entry type “01” is the code that CBP requires importers use to designate a standard consumption entry that is not subject to AD/CVD duties. See <https://www.cbp.gov/trade/automated/ace-transaction-details>.

¹⁵⁸ Kingtom’s entries are subject to the “China-Wide Entity” rate of 86.01 percent for AD case A-570-967 and the “All-Others” rate of 7.37 percent for CVD case C-570-968. See the *Orders*; see also *Aluminum Extrusions from the People’s Republic of China: Amended Final Affirmative Countervailing Duty Determination Pursuant to Court Decision*, 80 FR 69640 (November 10, 2015).

Sincerely,

A handwritten signature in black ink, appearing to read "Brian M. Hoxie". The signature is fluid and cursive, with the first name being the most prominent.

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