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Re: Enforce and Protect Act (“EAPA”) Consolidated Case Number 7348; *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; Hialeah Aluminum Supply, Inc.; 19 U.S.C. § 1517

Dear Mr. Erickson, Ms. Diaz, Ms. Levinson, Ms. Powell, and Mr. Dutra:

This is in response to three requests for *de novo* administrative review of a determination of evasion dated November 2, 2020, made by the Trade Remedy & Law Enforcement Directorate (“TRLED”), Office of Trade (“OT”), U.S. Customs and Border Protection

(“CBP”), pursuant to 19 U.S.C. § 1517(c), in Enforce and Protect Act (“EAPA”) Consolidated Case Number 7348 (hereinafter referred to as the “November 2 Determination”).¹ The requests for review, all dated December 16, 2020, 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”); and, Fox Rothschild LLP, on behalf of Hialeah Aluminum Supply, Inc. (“Hialeah”) (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 C.F.R. § 165.41(d).²

I. Background

Inasmuch as the facts in this case were fully set forth in the November 2 Determination, we will not repeat the entire factual history herein.

In brief, according to the record evidence, on October 31, 2019, 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 July 11, 2019, Ta Chen International LLC (“Ta Chen”) filed separate EAPA allegations against the Importers.³ CBP acknowledged receipt of the properly filed allegations on October 9, 2019.⁴ Ta Chen 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-570-968.⁵

The allegation of evasion pertained to the antidumping and countervailing duty orders issued by the U.S. Department of Commerce (“Commerce”) on imports of aluminum extrusions from China.⁶

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 November 2, 2020.

² The foreign manufacturer, Kingtom Aluminio SRL (“Kingtom”) also submitted a Request for Administrative Review on December 16, 2020. Pursuant to 19 U.S.C. § 1517(f)(1) and 19 C.F.R. § 165.41(a), only parties to the investigation may file a request for administrative review. As Kingtom, by definition, is not a party to the investigation, its request for administrative review was rejected by RR on December 17, 2021, the date upon which RR commenced its administrative review.

³ Ta Chen supplemented those separate EAPA allegations on August 22, 2019.

⁴ Although the November 2 Determination states that acknowledgment of the receipt of the allegations occurred on October 7, 2019, the notifications on the administrative record state the date of acknowledgment is October 9, 2019. See e.g. Email to Jeremy Dutra from EAPA ALLEGATIONS mailbox acknowledging receipt of EAPA allegation, dated October 9, 2019.

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

⁶ 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, swaged, 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 February 5, 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 three investigations into a single investigation, EAPA Consolidated Case 7348.⁷ The entries subject to the investigation were those entered for consumption, or withdrawn from a warehouse for consumption, from October 9, 2018, one year before receipt of the allegation, through the pendency of the investigation.⁸ 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.⁹

On November 2, 2020, TRLED issued the November 2 Determination. TRLED found substantial evidence¹⁰ to demonstrate that aluminum extrusions entered into the customs territory of the United States by the Importers was of Chinese-origin and transshipped

⁷ See Notice of Initiation of Investigation and Interim Measures. Available at: <https://www.cbp.gov/sites/default/files/assets/documents/2020-Mar/TRLED%20-%20Notice%20of%20Initiation%20and%20Interim%20Measures%20%28Cons%20Case%207348%29%2850%20compliant%29%20-%20PV.pdf>.

⁸ 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.

⁹ The record evidence supporting the finding of reasonable suspicion is discussed in the Notice of Initiation and Interim Measures.

¹⁰ 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 (antidumping and countervailing duty).¹¹

On December 16, 2020, the Importers all filed timely Requests for Administrative Review¹² and on December 17, 2020, RR sent an email to all parties to the investigation notifying them of the commencement of the administrative review process pursuant to 19 C.F.R. § 165.41 and the assignment of RR case number H315648.¹³ On January 6, 2021, Ta Chen filed a timely response to the Importers' requests for administrative review presenting its counterarguments. Global Aluminum also filed a timely response to Florida Aluminum and Hialeah's requests for administrative review on that day.¹⁴

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

¹¹ See November 2 Determination. Available at:

<https://www.cbp.gov/sites/default/files/assets/documents/2020-Dec/11-02-2020%20-%20TRLED%20-%20Final%20Determination%20%28Cons%20Case%207348%29%28508%20compliant%29%20.%20PV.pdf>.

¹² Prior to the deadline to submit requests for administrative review, counsel for Global Aluminum and Hialeah submitted separate requests for the release of certain business confidential information which was supplied by those parties but redacted from the public version of the November 2 Determination. Those requests were submitted to both RR and TRLED and neither office responded to those requests.

¹³ We note that on January 26, 2021, counsel for Hialeah emailed RR on behalf of all three Importers to request a meeting to discuss any outstanding questions prior to the issuance of a Final Administrative Determination. On January 27, 2021, RR denied the Importers' request for a meeting during the administrative review process citing 19 C.F.R. § 165.41(f) and 19 C.F.R. § 165.44.

¹⁴ Both responses were initially rejected for non-compliance with 19 C.F.R. § 165.41(f). Both Ta Chen and Global Aluminum provided the needed information to ensure compliance with the regulations within the timeframe set forth by RR.

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

(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.¹⁵

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).”¹⁶

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.

¹⁵ See *Investigation of Claims of Evasion of Antidumping and Countervailing Duties, Interim Regulations*, 81 Fed. Reg. 56477, 56478 (August 22, 2016).

¹⁶ See 19 CFR § 165.1.

C. Florida Aluminum's Arguments

Florida Aluminum requests that we reverse the November 2 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 argues that the record evidence shows that Kingtom had the production capacity necessary to produce the amount of aluminum extrusions it exported and did actually produce the aluminum extrusions in the Dominican Republic. 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 for which CBP never sought clarification. Florida Aluminum further avers that CBP misreads the production and sales volume documentation provided by Kingtom to find discrepancies that do not exist. Specifically, the amount of aluminum extrusions that are produced by Kingtom in a given month is not the same as the amount of aluminum extrusions exported by Kingtom in the same month, as aluminum extrusions are not immediately shipped upon production. Therefore, CBP relying on the failure of those two numbers to match in order to find a discrepancy that calls into question Kingtom's production capacity is not valid. Florida Aluminum also points to other ways discrepancies may have arisen, such as not accounting for differences in rounding in conversions between metric tons and pounds (*i.e.* not rounding to the same decimal) and not accounting for the daily changes in exchange rates between the U.S. dollar and Dominican peso.

Throughout its Request for Administrative Review, Florida Aluminum notes that CBP improperly finds that Kingtom did not cooperate and comply to the best of its ability in responding to requests for information as CBP never requested the information it states Kingtom failed to provide. Florida Aluminum argues that CBP cannot make such a finding of a lack of cooperation and apply adverse inferences when CBP never requested the information claimed to be missing from the record. Furthermore, due to the level of redaction of business confidential information in the November 2 Determination, Florida Aluminum is unaware of several of these alleged discrepancies and is unable to adequately respond, which Florida Aluminum claims is a violation of its procedural due process rights. Florida Aluminum avers that Kingtom has provided all of the information regarding its suppliers that CBP has requested and that, while Kingtom has purchased equipment and chemical additives used for manufacturing aluminum extrusions from China, CBP has not pointed to any record evidence showing that the aluminum ingot or aluminum scrap purchased by Kingtom originated in China.

With regard to the site visits, Florida Aluminum argues that the minimal production seen by CBP and Ta Chen during their visits does not demonstrate that Kingtom was unable to produce aluminum extrusions at the rate shown by their production records. Those visits only took place on one day and the production records provided span several months. All site visits found no less than three (3) aluminum extrusion presses at the manufacturer, which would provide Kingtom with the production capacity to create aluminum extrusions

at the rate demonstrated by the production records.¹⁷ Additionally, the theoretical production volume provided by Kington in its Supplemental Response is based upon the daily production numbers provided by Kington in response to the initial RFIs and would not be the same as the total production capacity of the equipment as found on the Equipment List provided by Kington.¹⁸

Finally, Florida Aluminum argues that it used reasonable care in its importation of aluminum extrusions from Kington and that CBP has made no allegation that Florida Aluminum failed to meet the reasonable care standards in this case.

Based on the foregoing, Florida Aluminum argues that evasion did not occur and the November 2 Determination must be reversed.

D. Hialeah's Arguments

Hialeah requests that we reverse the November 2 Determination of evasion, arguing that Hialeah did not enter covered merchandise into the United States through evasion because the subject entries of aluminum extrusions imported into the United States by Hialeah were manufactured in the Dominican Republic. Hialeah's arguments are significantly similar to those made by Florida Aluminum in its Request for Administrative Review.

Hialeah argues that CBP has improperly applied adverse inferences in this case based on alleged discrepancies between documentation provided by Kington and Hialeah that are both minor and easily explained. Hialeah argues that the minimal discrepancies "do not impugn the overall reliability of the information provided by Kington or Hialeah, or serve as an example that Kington did not respond to the best of its ability."¹⁹ Rather, Hialeah claims that these minor differences show the forthcomingness of Hialeah and Kington as they provided those documents maintained in the normal course of business.

Hialeah also reiterates the argument that CBP misread the monthly production and sales documentation in analyzing the different numbers provided by Kington. Namely, the daily production records were used to calculate the theoretical production volume as requested in the Supplemental RFI; however, CBP never asked how Kington calculated the theoretical production volume but then applied adverse inferences as such an explanation was not furnished by Kington along with those production figures. Hialeah argues that CBP cannot apply adverse inferences in such an instance as there is no indication that Kington failed to cooperate and comply to the best of its ability in responding to a request for information that was not specifically made.

Hialeah further reiterates the inability to determine what all of the allegations of discrepancies are due to the redactions in the November 2 Determination and avers that Kington provided all of the requested information. Hialeah argues that the

¹⁷ Florida Aluminum notes that the Attaché Report detailing the site visit by CBP was redacted in full but believes it would confirm the presence of at least three (3) aluminum extrusion presses.

¹⁸ See Florida Aluminum's Request for Administrative Review, page 23.

¹⁹ See Hialeah's Request for Administrative Review, page 9.

documentation and responses provided by Kingtom do not evidence a failure to cooperate and comply to the best of its ability to respond to requests for information and that CBP cannot apply adverse inferences in this instance.

Hialeah then reviews the evidence regarding Kingtom's production capacity that shows the capability to manufacture aluminum extrusions in the amount that was exported. Hialeah additionally notes that CBP never provided a public summary of the Attaché Report as required by 19 C.F.R. § 165.4(e) and that CBP again failed to request specific information regarding employee hours that it then noted as another example of Kingtom's failure to cooperate and comply to the best of its ability in order to support the application of adverse inferences.

Finally, Hialeah argues that Kingtom's ties to China do not constitute substantial evidence of evasion as the reasoning 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.

Based on the foregoing, Hialeah argues that evasion did not occur and the November 2 Determination must be reversed.

E. Global Aluminum's Arguments

Global Aluminum requests that we reverse the November 2 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 makes several of the same arguments that Florida Aluminum and Hialeah included in their Requests for Administrative Review.

Global Aluminum examines the three sections of the November 2 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 site visit reports as noted in the second section, Global Aluminum reiterates the arguments of Florida Aluminum regarding CBP and Ta Chen's observations being a snapshot of a single day and time at Kingtom and not reflective of actual production capabilities. Additionally, Global Aluminum claims that nothing in the record indicates the presence of Chinese aluminum extrusions. The third section of the November 2 Determination discusses the discrepancies within the record and Global Aluminum claims that these discrepancies provide no probative evidence of transshipment. These discrepancies would not hinder CBP's ability to analyze Kingtom's production operations or capacity and could have been explained if CBP had asked for clarification. These discrepancies do not show that Kingtom failed to cooperate and comply to the best of its ability in responding to CBP's requests for information and, therefore, the application of adverse inferences is not supported by the record.

Global Aluminum also identifies several arguments that it made during the course of the investigation, which were not addressed by CBP in the November 2 Determination.

In its response to Florida Aluminum and Hialeah's Requests for Administrative Review, Global Aluminum cited CBP's communications with Ta Chen prior to the acceptance of the allegations of evasion, attaches Kington's Request for Administrative Review as an exhibit, and avers that the exhibit further responds to other issues raised in Florida Aluminum and Hialeah's Requests for Administrative Review and provides more clarification regarding Ta Chen's communication with CBP prior to the acceptance of the allegations of evasion. The exhibit expands upon several of the arguments advanced by Florida Aluminum and Hialeah, such as those regarding Kington's production capacity and that CBP's application of adverse inferences is not supported by the record.

Based on the foregoing, Global Aluminum argues that evasion did not occur and the November 2 Determination must be reversed.

F. Ta Chen's Arguments

Ta Chen requests that we affirm the November 2 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.

Ta Chen argues that the application of adverse inferences was appropriate given the discrepancies found within the documents provided by the Importers and Kington and the lack of an explanation for these discrepancies on the record. Ta Chen argues that the discrepancies must have been explained on the record and cannot rely on "facts" or interpretations not found within the record.²⁰ These discrepancies include issues regarding whether Kington fully identified all of its suppliers. CBP applying adverse inferences based upon the number of inconsistencies was proper.

Ta Chen further argues that the Importers are viewing all of Kington's ties to China in a vacuum as opposed to looking at the entire picture, which creates an environment where transshipment and commingling is more likely. Ta Chen believes the Importers are attempting to minimize the differences in observations made during the different site visits and that both CBP and Ta Chen observing low production on their respective site visits indicates that Kington was transshipping or commingling Chinese-origin aluminum extrusions. Ta Chen further notes that the daily production records provided were monthly overviews created in Excel and provided no other supporting evidence of production levels.

Based on the foregoing, Ta Chen argues that evasion did occur and the November 2 Determination must be affirmed.

²⁰ See Ta Chen's Response, page 3.

G. Administrative Review Analysis

Pursuant to 19 U.S.C. § 1517(f)(1) and 19 C.F.R. § 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 November 2 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 C.F.R. § 165.44. Pursuant to 19 C.F.R. § 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.²¹

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).²²

“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.”²³ While some evidence may detract from the determination, so long as the finding is reasonable and supported by the record as a whole, the November 2 Determination must be affirmed.²⁴

Preliminarily, the purpose of this *de novo* review is to analyze the November 2 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 is outside of the purview of this *de novo* review.²⁵

²¹ See 19 U.S.C. § 1517(a)(5)(A).

²² See 19 U.S.C. § 1517(c)(1) and 19 CFR § 165.1.

²³ See *Altx, Inc. v. United States*, 370 F.3d 1108, 1116 (Fed. Cir. 2004) (internal citations and quotation marks omitted).

²⁴ 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)).

²⁵ 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 C.F.R. § 165.4(a)(1) and (e). The parties do not otherwise have a right to review business confidential information as the statute and regulation 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.

The core of this case rests with whether Kingtonm actually produced aluminum extrusions in the quantity at which it exported them to the United States. While there is no disagreement that Kingtonm had the ability to produce aluminum extrusions,²⁶ the administrative record does not support a finding that Kingtonm produced all of the aluminum extrusions that it exported to the United States during the period of investigation.

Although Kingtonm has 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 videos do not evidence a significant number of employees working different machines and also shows some equipment sitting idle in the several minutes long video.²⁷ In addition, U.S. Government officials observed minimal production during their site visit.²⁸ Furthermore, Kingtonm's daily production records corroborate that the aluminum extrusion presses did not operate at anywhere near full capacity.²⁹ A comparison of Kingtonm'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 appear on the daily production records in the months they purportedly went into use and, when an additional aluminum extrusion press was added on the daily production records, it was one with a different production capacity than the equipment log indicates was added.³⁰ While the record might suggest that Kingtonm had the *ability* to manufacture the aluminum extrusions in the quantities it exported, the evidence within the record does not demonstrate that Kingtonm actually *did* manufacture aluminum extrusions in those quantities. Furthermore, despite the Importers' different site visits to Kingtonm, those affidavits do not indicate that any of those site visits were done for the express purpose of making independent determinations that Kingtonm 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.³¹ In fact, some of those site visits appear to be conducted for reasons other than determining whether Kingtonm could produce enough aluminum extrusions to fill an individual importer's orders even if Kingtonm's full production capacity was contemplated.³² While Kingtonm may have produced *some* of the aluminum extrusions it exported to the United States, the record does not support a finding that Kingtonm produced *all* of the aluminum extrusions it exported.

Given that the administrative record does not provide enough evidence to support the Importers' claims of Kingtonm's actual production in relation to the quantity sold, the question of where the aluminum extrusions may have otherwise come from arises. In this case, Kingtonm does have strong ties to China. The record evidence shows that Kingtonm is both owned by Chinese citizens and employs many Chinese citizens. Kingtonm has also sourced both supplies and equipment from China. The record does not indicate that

²⁶ See November 2 Determination, page 17.

²⁷ See Kingtonm's RFI Response, Exhibit 30.

²⁸ See Attaché Report.

²⁹ See Kingtonm's RFI Response, Exhibit 21.

³⁰ See Kingtonm's RFI Response, Exhibit 19. *Contra*. Kingtonm's RFI Response, Exhibit 21.

³¹ See Florida's Supplemental RFI Response, Section D. *See also* Global Aluminum's Supplemental RFI Response, Section D.

³² See Global Aluminum's Supplemental RFI Response, Exhibits G and H and Global Aluminum's Voluntary Submission, Exhibit A. *See also* Hialeah's RFI Response, Appendix F.

Kington has any such ties to other countries not subject to the AD/CV duty orders, nor does the record indicate Kington 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 Kington's actual production levels coupled with Kington'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.³³

It is our position that, even without adverse inferences, the record fully and adequately supports the finding that Kington commingled Chinese-origin aluminum extrusions with aluminum extrusions it produced in the Dominican Republic before exporting shipments to the United States. As such, we will not address whether the November 2 Determination properly applied adverse inferences.

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 and Global Aluminum's Response to Florida Aluminum and Hialeah's Requests for Administrative Review.³⁴ We also note that, while a separate EAPA case is currently ongoing involving Kington and two of the Importers, none of the documentation provided to TRLED in EAPA Cons. Case No. 7423 has been reviewed or added to the administrative record in this case.

Therefore, based upon the documentation and information provided in the administrative record in EAPA Cons. Case No. 7348, 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 November 2 Determination of evasion under 19 USC § 1517(c) is AFFIRMED

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

Sincerely,

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

³³ See *Altex*, 370 F.3d at 1116 (Fed. Cir. 2004) (internal citations and quotation marks omitted).

³⁴ As a separate matter, the arguments raised by Global Aluminum in its Response to Florida Aluminum and Hialeah's Request for Administrative Review have not been considered in this Final Administrative Determination to the extent that they were not initially raised in either of those Requests and/or were contained within the previously rejected Request for Administrative Review by Kington.

Approved by:

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