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U.S. Department of Homeland Security
Washington, DC 20229

U.S. Customs and Border Protection

January 27, 2021

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OT:RR:BSTC:PEN H315691 AEB

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Re: Enforce and Protect Act (“EAPA”) Case Number 7401; *Circular Welded Carbon Steel Pipes and Tubes From Thailand*, 51 Fed. Reg. 8341 (March 11, 1986); Blue Pipe Steel Center Company Limited; 19 U.S.C. § 1517

Dear Mr. Lomloy, Mr. DeFrancesco, and Mr. Meisner:

This determination is issued in response to a request for *de novo* administrative review of a determination of evasion, dated September 11, 2020, made by the Trade Remedy Law Enforcement Directorate (“TRLED”), Office of Trade (“OT”), U.S. Customs and Border Protection (“CBP”), pursuant to 19 U.S.C. § 1517(c), in Enforce and Protect Act (“EAPA”) Case Number 7401 (hereinafter referred to as the “September 11 Determination”).¹ The request for review, dated October 23, 2020, was submitted to CBP OT Regulations and Rulings (“RR”) by

¹ See Notice of Final Determination as to Evasion, dated September 11, 2020.

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Blue Pipe Steel Center Company Limited (“Blue Pipe”), pursuant to 19 U.S.C. § 1517(f) and 19 CFR § 165.41.

I. Background

Inasmuch as the facts in this case were fully set forth in the September 11 Determination, we will not repeat the entire factual history herein.

In brief, on November 8, 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 October 4, 2019, Independence Tube Corporation (“Independence”) and Southland Tube, Incorporated (“Southland”), which are Nucor Companies, and Wheatland Tube Company (“Wheatland”) (jointly “Petitioners”) filed an EAPA allegation against Blue Pipe. CBP acknowledged receipt of the properly filed allegation on October 18, 2019. Petitioners alleged that Blue Pipe was importing circular welded carbon steel pipes and tubes, specifically, standard pipe, from Thailand into the United States, but, in doing so, was avoiding the payment of antidumping (“AD”) duties on standard pipe from Thailand, Case No. A-549-502.² According to trade data³ supplied in support of the allegation, the alleged evasion involved importations by Blue Pipe, from Saha Thai Public Company Ltd. (“Saha Thai”), of products that were dual stenciled, indicating that the products met the standards of both American Society for Testing and Materials (“ASTM”) A53, “standard pipe,” and American Petroleum Institute (“API”) 5L, which certifies a type of “line pipe.”

As such, the allegation of evasion pertained to the antidumping duty order issued by the U.S. Department of Commerce (“Commerce”) covering imports of certain standard pipe from Thailand (“AD Order”).⁴

Commerce defined the scope of the relevant AD Order, as follows:

The products covered by this order are certain welded carbon steel pipes and tubes from Thailand. The subject merchandise has an outside diameter of 0.375 inches or more, but not exceeding 16 inches. These products, which are commonly referred to in the industry as “standard pipe” or “structural tubing,” are hereinafter designated as “pipe and tube.” The merchandise is classifiable under the Harmonized Tariff Schedule (HTS) item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, and 7306.30.5090. Although the HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of the order remains dispositive.

² See Notice of Initiation of Investigation, dated February 13, 2020.

³ See Letter from the allegers, “Circular Welded Carbon Steel Pipes and Tubes from Thailand: Request for an Investigation under the Enforce and Protect Act” (October 4, 2019) (“EAPA Allegation”).

⁴ See *Circular Welded Carbon Steel Pipes and Tubes From Thailand*, 51 Fed. Reg. 8341 (March 11, 1986).

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The entries subject to the EAPA investigation were those entered for consumption, or withdrawn from a warehouse for consumption, from October 18, 2018, one year before receipt of the allegation, through the pendency of the investigation. TRLED included twenty subject entries when initially requesting information from Blue Pipe during the course of the investigation.⁵

A Commerce final scope ruling,⁶ issued on June 30, 2020, confirmed that dual stenciled pipe compliant with both standard pipe and line pipe specifications, such as ASTM A53 and API 5L, respectively, falls within the scope of the AD Order.

On September 11, 2020, TRLED issued the September 11 Determination. TRLED found that substantial evidence⁷ demonstrated that Blue Pipe misrepresented dual stenciled pipe imported from Thailand into the U.S. customs territory as Type 01, rather than as Type 03, entries.⁸ Because Blue Pipe did not declare that the merchandise was subject to the AD Order upon entry, no cash deposits were collected on the merchandise.⁹

II. Discussion

A. Administrative Review and Standard of Review

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

⁵ See Request for Information to Importer with regard to Enforce and Protect Act (EAPA) investigation of whether Blue Pipe Steel Center Company Limited evaded the Antidumping (AD) duties by entering into the United States misclassified standard pipe as “line pipe” without declaring the merchandise as subject to AD Order A-549-502 for Certain Circular Welded Carbon Steel Pipe and Tubes from Thailand, Appendix (Feb. 29, 2020).

⁶ See U.S. Dep’t of Com., Int’l Trade Admin., A-549-502, Antidumping Duty Order on Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Scope Ruling on Line Pipe and Dual-Stenciled Standard and Line Pipe (Jun. 30, 2020) (“Scope Ruling”).

⁷ 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)).

⁸ Entry Type “03” is the code that CBP requires importers to use to designate an entry as subject to antidumping duties; the instructions for CBP Form 7501 (Entry Summary) clearly state that code 03 shall be used for entries subject to an AD order.

⁹ See September 11 Determination at 2.

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(1) Determination of Evasion

(A) In general

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

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

(5) Evasion

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

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

Therefore, CBP must determine whether a party has entered merchandise that is subject to an AD or countervailing duty (“CVD”) order into the United States for consumption by means of any document or electronically transmitted data or information, written or oral statement, or act, that is material and false, or any omission that is material, that resulted in the reduction or avoidance of applicable AD or CVD cash deposits or duties being collected on such merchandise.

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

¹¹ *See* 19 CFR § 165.1.

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C. Blue Pipe's Arguments

Blue Pipe requests that we reverse the September 11 Determination of evasion, arguing that Blue Pipe did not enter covered merchandise into the United States through evasion, because Blue Pipe did not know until Commerce's later-in-time final scope ruling that the merchandise in question was within the relevant AD Order's scope.

Blue Pipe also argues that CBP's reliance on Commerce's June 30, 2020 scope determination on dual stenciled pipe was unreasonable, as that scope determination is currently before the U.S. Court of International Trade ("CIT").¹² As such, in Blue Pipe's view, CBP may only rely upon Commerce's AD Order language, which did not explicitly decide the coverage of dual stenciled pipes.¹³

Notwithstanding the scope determination's pending litigation status, Blue Pipe argues that even if the scope determination is upheld, CBP's reliance on that June 30, 2020 scope ruling would still be inappropriate with respect to the EAPA investigation's earlier entries, which began on October 18, 2018.¹⁴ Specifically, Blue Pipe notes that its importations of dual stenciled products, as discussed *supra*, met both requirements of A53, "standard pipe," and API 5 L "line pipe," and occurred between the end of 2018 and the beginning of 2020.¹⁵ Since Commerce's scope ruling never found line pipe to be in the AD Order's scope, Blue Pipe asserts that those dual stenciled products cannot fall under the AD Order.¹⁶

Further, Blue Pipe also cites to a Commerce regulation, 19 CFR § 351.225(l)(3), concerning liquidation suspension for entries occurring after a scope proceeding initiation date. Based on this regulation, Blue Pipe asserts that importers should not be required to provide cash deposits from the scope inquiry's initiation date for products subject to the inquiry, even when that inquiry finds that the scope indeed covers those products.¹⁷ Blue Pipe then cites to the portion of *Sunpreme Inc. v. United States*, 946 F.3d 1300, 1319 (Fed. Cir. 2020), in which the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit") stated that "Commerce may not suspend liquidation in a manner that causes merchandise that previously entered *not* subject to duties to be retroactively brought within the scope of duty orders."¹⁸

As discussed *supra*, Blue Pipe also notes that Commerce's scope ruling explicitly reaffirmed that single stenciled line pipes or API 5 L pipes are outside the scope of the AD Order. Though not explicitly argued, it would appear that Blue Pipe suggests that this single stencil reaffirmation should support Blue Pipe's claimed basis for believing its importations to fall outside the AD Order's scope. This dovetails with the remainder of Blue Pipe's non-evasion argument. In particular, Blue Pipe argues that since CBP never detained any of Blue Pipe's dual stenciled

¹² See Blue Pipe Review Request at 6-7; see also *Saha Thai Steel Pipe Public Company Limited v. United States*, U.S. Court of International Trade Docket No. 20-00133 (filed July 17, 2020).

¹³ See Blue Pipe Review Request at 7.

¹⁴ See *id.* at 5.

¹⁵ See *id.* at 7.

¹⁶ See *id.* at 6.

¹⁷ See *id.* at 8.

¹⁸ See *id.*; see also *Sunpreme Inc. v. United States*, 946 F.3d 1300, 1319 (Fed. Cir. 2020); see also *United Steel & Fasteners, Inc. v. United States*, 203 F. Supp. 3d 1235, 1255 (Ct. Int'l Trade 2017).

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products as falling under the AD Order, Blue Pipe had no reason to believe that such entries were subject to the Order.¹⁹ Further, since Commerce had not yet ruled in its scope inquiry that dual stenciled products were subject to the Order, Blue Pipe believes it would be unreasonable to expect anyone to treat such products as subject to the Order.²⁰

In summary, in Blue Pipe's view, the information asymmetry that existed prior to the June 30, 2020 Commerce scope ruling prevented Blue Pipe from having the state of mind necessary to file false entries for its dual stenciled products imported before the scope inquiry's initiation date, November 22, 2019. As such, Blue Pipe believes its imports did not involve evasion of the AD Order, and CBP should reverse its September 11 Determination of evasion.

D. Petitioners' Arguments

Petitioners argue that Blue Pipe mischaracterizes the divide between EAPA investigations and Commerce scope proceedings, as the former's statute empowers CBP to suspend liquidation and collect AD/CVD cash deposits upon finding the evasion that the Petitioners – based on the imported products' timing and nature – argue occurred.

With respect to the imported products' timing, the Petitioners note that Blue Pipe's appearance as the importer of record ("IOR") for Saha Thai-manufactured dual stenciled pipe, as Type 01 entries – instead of Type 03 entries – coincided with the projected antidumping duty rate increase in November of 2018.²¹ Petitioners further note that, after CBP started its EAPA investigation in November 2019, concurrently with Commerce's self-initiated scope inquiry, Blue Pipe's Type 01 entries began declining, as Saha Thai resumed direct shipments of merchandise.²² By February of 2020 – after the CBP EAPA investigation began – Petitioners describe Blue Pipe's shipments as all but disappearing, ostensibly replaced by Saha Thai's direct shipments to the same U.S. customers.²³ In summary, the Petitioners characterize the shifts to and from Blue Pipe, in light of the EAPA investigation's and scope inquiry's periods of coverage, as a clear indication of evasion of the AD Order.

As to the products' nature, Petitioners are unpersuaded by Blue Pipe's reliance on the dual stenciled pipe's having at least a "line" component. To that point, Petitioners argue that meeting both "line" and "standard" pipe specifications is no defense, given that the scope inquiry decided that such dual stenciled products are covered by the AD Order.²⁴ Further, in Petitioners' view, the time period between the scope inquiry's initiation and ultimate outcome provides no safe harbor for Blue Pipe to import pipe that ultimately falls under the AD Order. Instead, Petitioners read Commerce's regulations as empowering the continuation – not merely the start – of

¹⁹ See Blue Pipe Review Request at 8-9.

²⁰ See *id.* at 9.

²¹ See Letter from Petitioners to U.S. Customs & Border Protection, re: *HQ Case No. H314591, Administrative Review of EAPA Case No. 7401, Investigation Into Blue Pipe Steel Center Company Limited: Petitioners' Response to Request for Administrative Review* (Nov. 10, 2020) ("Petitioners' Response") at 3; see also September 11 Determination at 7-8; see generally Scope Ruling.

²² See Petitioners' Response at 3; see also September 11 Determination at 7-8.

²³ See Petitioners' Response at 4; see also September 11 Determination at 5.

²⁴ See Petitioners' Response at 5.

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suspension of liquidation based on an affirmative scope ruling.²⁵ Petitioners' reading of Commerce's regulations dovetails with the balance of their arguments concerning the distinctive nature of EAPA investigations and Commerce scope proceedings.

In contrast to Blue Pipe's position, Petitioners view the demarcation between EAPA investigations and scope proceedings as empowering CBP to suspend liquidation or require cash deposits in a way that decides an order's application while respecting Commerce's interpretive responsibilities.²⁶ This view relies in part on *Sunprime Inc. v. United States*, 946 F.3d 1300, 1321-22 (Fed. Cir. 2020), for the proposition that CBP can and must determine an AD order's applicability in the first instance.²⁷ Further, Petitioners argue that this obligation at importation does not impinge upon Commerce's determination or any subsequent scope rulings, even if such later scope decisions supersede CBP's initial decision.²⁸

Petitioners further characterize CBP's and Commerce's enforcement as complementary by describing CBP's EAPA authority to combat evasion as both consistent with, and supportive of, CBP's general statutory obligation to make determinations on goods entered into the United States.²⁹ For example, the EAPA statute defines "covered merchandise" investigated for evasion as merchandise subject to an antidumping or countervailing duty order, designations that flow with CBP's statutory obligation to decide whether such designations apply.³⁰ Consequently, CBP must have the authority to determine whether the imported dual stenciled pipe was "covered merchandise" that violates Commerce's AD Order through evasion. Also, to address such evasion, the EAPA statute provides explicit authority for CBP to extend or suspend liquidation, collect cash deposits, or act otherwise to protect the revenue of the United States.³¹

In Petitioners' view, none of the above CBP enforcement responses to evasion stands in contradiction to Commerce's scope rulings. First, Commerce's purpose in such scope rulings is to clarify its AD order coverage over particular articles, and that clarification does not mean entries of products before the ruling are out of the order's scope.³² In support of that perspective, Petitioners note that Commerce's regulations provide for scope rulings that can either direct CBP to continue or cease suspension depending on the scope ruling's inclusion or exclusion, respectively, of the relevant product.³³ In the case of a scope ruling that finds inclusion, those regulations further instruct CBP to suspend liquidation and require cash deposits in the instances where CBP has not yet done so, starting from the scope proceeding's initiation.³⁴ Petitioners argue that neither regulation removes products eventually found to be in the scope of an AD order from the coverage of such an order.³⁵

²⁵ See *id.* at 6.

²⁶ See *id.* at 7-8.

²⁷ See *id.* at 8; see also 19 U.S.C. § 1484(a)(2)(C); see also *Sunprime Inc. v. United States*, 946 F.3d 1300, 1317, 1321-22 (Fed. Cir. 2020).

²⁸ See Petitioners' Response at 8-9.

²⁹ See *id.* at 9; see also 19 U.S.C. § 1517(c)(1)(A).

³⁰ See Petitioners' Response at 9; see also 19 U.S.C. § 1517(a)(3).

³¹ See Petitioners' Response at 9-10; see also 19 U.S.C. § 1517(e).

³² See Petitioners' Response at 10; see also 19 C.F.R. § 351.225(a).

³³ See Petitioners' Response at 10; see also 19 C.F.R. § 351.225(l)(3).

³⁴ See *id.*

³⁵ See Petitioners' Response at 10.

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In addition to EAPA’s complementary AD enforcement authority, Petitioners rebut Blue Pipe’s position against the pre-scope proceeding’s initiation suspension of liquidation by highlighting the clear coverage by the AD Order of Blue Pipe’s dual stenciled pipe. First, Petitioners disagree with Blue Pipe and argue that Commerce never found pre-initiation entries outside the AD Order’s scope.³⁶ Next, Petitioners reason that EAPA authorities complementing AD enforcement logically not only support EAPA’s enforcement but also lack the inconsistency Blue Pipe claims to exist in this matter. Specifically, Commerce’s confirmation of dual stenciled standard and line pipe as under the AD Order does not detract from CBP’s suspension of liquidation of entries going back to the start of the EAPA investigation’s inquiry.³⁷ Petitioners argue that CBP’s decision was clearly correct, even before the scope inquiry’s start, because the AD Order’s plain language covers all circular welded carbon steel pipe and tubes from Thailand with an outside diameter of 0.375 inches or more, which is what Blue Pipe imported.³⁸ As to the “line” component of the dual stenciled pipe, Petitioners address that point by noting that the AD Order carries no “line pipe specification” exception for Thailand, as AD orders have done for other countries.³⁹ In Petitioners’ view, that omission further supports CBP’s deciding that the dual stenciled pipe falls under the AD Order.

Petitioners also characterize the later scope inquiry as merely confirming what CBP correctly decided based on a clear application of the AD Order’s scope. Again, in Petitioners’ view, Commerce’s scope ruling regulations provide no basis for CBP to decide the matter differently or to decline to suspend liquidation before the scope inquiry’s initiation.⁴⁰ Once more, those regulations specify *continuing* suspensions pending a preliminary or final ruling, and only starting suspension on the date of initiation in cases where there has been no previous suspension.⁴¹ A scenario wherein suspensions are continued mirrors the facts in both the instant EAPA case and the case underlying the Federal Circuit decision in *Sunpreme*.⁴² In *Sunpreme*, the liquidation suspension began prior to Commerce’s final scope ruling, but the Federal Circuit still held that CBP has the express authority to determine the initial “yes-or-no” suspension question.⁴³ The court reasoned that to decide otherwise would empower individuals to request scope inquiries and escape initial enforcement until a final scope decision.⁴⁴

The Petitioners also describe the record CBP relied upon for its enforcement as one of substantial evidence, because of the cargo exams, lab tests, import shifts, and the eventual Commerce scope ruling.⁴⁵ And, while that scope ruling is currently under judicial review, Petitioners argue that this procedural posture does not diminish the ruling’s utility.⁴⁶ First, the ruling merely confirms

³⁶ See Petitioners’ Response at 12; see also Blue Pipe Review Request at 10.

³⁷ See Petitioners’ Response at 12.

³⁸ See *id.* at 13; see also Scope Ruling at 5.

³⁹ See Petitioners’ Response at 13; see also Scope Ruling at 11, 16.

⁴⁰ See Petitioners’ Response at 14.

⁴¹ See *id.* at 15.

⁴² See *id.*; see also generally *Sunpreme*, 946 F.3d 1300.

⁴³ See *Sunpreme* at 1317, 1320-22.

⁴⁴ See *id.* at 1316-17.

⁴⁵ See Petitioners’ Response at 16.

⁴⁶ See *id.*

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the AD Order's plain language which clearly covers Blue Pipe's imported pipe.⁴⁷ Second, even while under judicial review, the scope ruling is a presumably lawful determination that does not bar CBP's consideration thereof in CBP's exercise of its own authority to enforce the AD Order.⁴⁸ With respect to the latter point, to reason otherwise in Petitioners' view would empower importers to cast doubt on potentially appropriate scope rulings through legal challenge.⁴⁹ Notwithstanding a future judicial remedy from such litigation, 19 U.S.C. § 1517 still allows CBP's independent determination, if not superseded by a contrary scope ruling from Commerce.⁵⁰ In Petitioners' view, the demarcation between CBP's and Commerce's complementary authorities allows for a judicial challenge to Commerce's scope ruling without affecting CBP's determination.⁵¹

Petitioners further argue that Blue Pipe's reliance on a Commerce scope ruling that inherently weakens Blue Pipe's case makes it less likely that Blue Pipe had a reasonable belief in its import classifications and likelier that Blue Pipe made false statements.⁵² That ruling confirms that dual stenciled products are under the AD Order and does not transform an in-scope product into an out-of-scope product.⁵³ Additionally, Blue Pipe cannot argue that the scope ruling's language bars CBP's liquidation suspension as a retroactive decision, given that Blue Pipe's products were covered by the scope even before the scope proceeding began.⁵⁴ Nor can Blue Pipe convincingly describe the import shifts to Saha Thai's U.S. customers after the EAPA investigation began and Saha Thai's antidumping duty rates increased in a manner connoting a reasonable belief.⁵⁵ Instead, as the AD Order's language plainly covers the dual stenciled pipe's standard pipe specification component (confirmed in CBP's lab testing), and the AD Order lacks a dual stenciled pipe exception, the scope was and is clear.⁵⁶ Given these facts, Petitioners conclude that the record is lacking for Blue Pipe to claim a reasonable belief in reading the scope otherwise. Even if such reasonable belief existed, Petitioners argue that such a subjective understanding would have been irrelevant in light of the necessity to still file Type 03 entries.⁵⁷

Finally, Petitioners assail Blue Pipe's claim that if CBP believed Blue Pipe's products to be subject to the AD Order, then CBP should have either questioned or stopped dual stenciled products at entry. In Petitioners' view, the customs laws⁵⁸ provide a clear obligation for the importer to ensure that CBP has – as opposed to requiring CBP to identify – the data needed to properly assess duties.⁵⁹ Petitioners conclude by arguing that Blue Pipe's behavior in light of that obligation and the objective facts provides a basis for CBP to consider further enforcement

⁴⁷ *See id.*; *see also* September 11 Determination at 7-8.

⁴⁸ *See* Petitioners' Response at 16.

⁴⁹ *See id.* at 17.

⁵⁰ *See id.*

⁵¹ *See id.*

⁵² *See id.* at 18.

⁵³ *See id.*

⁵⁴ *See id.*

⁵⁵ *See id.* at 18-19.

⁵⁶ *See id.* at 19.

⁵⁷ *See id.*

⁵⁸ *See* 19 U.S.C. § 1484.

⁵⁹ *See* Petitioners' Response at 20.

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under 19 U.S.C. § 1592 or 18 U.S.C. § 1001, for potential penalties or false statements, respectively.⁶⁰

E. 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, 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 September 11 Determination was made by TRLED; and (2) the timely and properly filed request for review and response. The Office of Trade, Regulations and Rulings, 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.⁶¹

The term “covered merchandise” means 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).⁶²

“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.”⁶³

A review of the administrative record supports the September 11 Determination that Blue Pipe engaged in evasion by entering into the customs territory of the United States, from Thailand, dual stenciled pipe, meeting both standard pipe ASTM A53 specifications and line pipe API 5L specifications, as Entry Type 01 rather than Entry Type 03. Such designation at entry was materially false, in that it failed to indicate that the pipe was merchandise covered by the AD Order; the false designation also led to the non-collection of AD duty deposits. The record evidence includes copies of lab reports, customs entries, images, financial statements, mill tests, a Commerce ruling, among other documentation, all indicating that Blue Pipe’s merchandise at

⁶⁰ *See id.*

⁶¹ *See* 19 U.S.C. § 1517(a)(5)(A).

⁶² *See* 19 U.S.C. § 1517(a)(3) and 19 C.F.R. § 165.1.

⁶³ *See Altx, Inc. v. United States*, 370 F.3d 1108, 1116 (Fed. Cir. 2004) (internal citations and quotation marks omitted).

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issue met the definition of standard pipe, per the AD Order, and thus, should have been entered into the United States from Thailand as Type 03 instead of Type 01.

Although we below (in section 1.) discuss the information provided with Petitioners' allegation, that information is not necessary to, and is not the basis for, our conclusion in this administrative review. The basis for our determination is set forth in sections 2. and 3., below. Nevertheless, we discuss the evidence supplied with the allegation because it further supports our conclusion, and also relates to the issue of lack of knowledge/intent, raised by Blue Pipe. Because the EAPA statute does not require knowledge or intent, it is our view that the issue of lack of knowledge or intent is irrelevant herein. For purposes of a thorough analysis of all points raised by Blue Point, however, we will briefly address the issue.

1. The evidence provided with the allegation supports a finding of evasion.

The Petitioners' allegation cited trade data, marketing advertisements, government agency materials, and other documents in support of the claim that Blue Pipe evaded the AD Order when importing Saha Thai's dual stenciled circular welded pipe into the United States as line pipe under Entry Type 01, instead of as standard pipe under Entry Type 03. The allegation cited the AD Order's scope, which includes circular welded carbon steel pipe, commonly known as "standard pipe."⁶⁴ The bill of lading data provided showed "STEEL PIPE" in Saha Thai's commodity descriptions until April 2018, the time when the description changed to also include "LINE."⁶⁵ The April 2018 start for purported line pipe entries coincided with Commerce's March 2018 decision to review Wheatland Tube LLC's (one of the Petitioners) particular market situation ("PMS") allegation against Thai steel pipe.⁶⁶ The allegation also cited to U.S. International Trade Commission data which showed a spike in Thai line pipe U.S. consumption in November 2018, immediately following the increase in the dumping margin determined by Commerce for Saha Thai the preceding October.⁶⁷ This spike coincided with a dive in U.S. consumption of Thai standard pipe, the subject of the AD Order.⁶⁸ November 2018 is also when bill of lading data indicated that Blue Pipe began its role as the IOR for standard pipe manufactured by Saha Thai.⁶⁹

Petitioners also alleged that Saha Thai's products did not include out-of-scope line pipe, based on Saha Thai's web advertising, agency questionnaire responses, and sampled products. The allegation noted that Saha Thai's internet advertising lacked line pipe and instead promoted black steel pipe, galvanized steel pipe, furniture steel pipe, and blue-painted steel pipe.⁷⁰ The allegation further noted that the products advertised on Saha Thai's website did not refer to the applications typically associated with traditional line pipe (i.e., oil and gas pipelines).⁷¹ Petitioners also pointed out that Saha Thai's July 2018 response in Commerce's administrative

⁶⁴ The AD Order cites certain Harmonized Tariff Schedule of the United States ("HTSUS") subheadings, which are provided with the caveat that such HTSUS subheadings are not alone dispositive. *See* EAPA Allegation at 2.

⁶⁵ *See* EAPA Allegation at pp. 5, 9, Exhibit 3.

⁶⁶ *See id.* at 8-9, Exhibit 5.

⁶⁷ *See id.* at 9, Exhibit 6.

⁶⁸ *See id.*

⁶⁹ *See id.* at 5, Exhibit 3.

⁷⁰ *See id.* at 12, Exhibit 8.

⁷¹ *See id.* at 13.

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review did not include line pipe products, nor any evidence of line pipe production capability.⁷² Further, the Petitioners claimed they found no API 5L line pipe certification listed for Saha Thai within the API's Thailand certifications.⁷³ In addition, they alleged that Saha Thai's [DOCUMENT NAME] suggested to customers that its products met line pipe requirements, but those [DOCUMENT NAME] lacked metrics necessary for such compliance.⁷⁴ Finally, samples the Petitioners claimed to be imported from Saha Thai showed several inconsistencies with line pipe concerning stencil repetition, lack of proper corrosion protection, threading, coupling, and thickness/weight per foot.⁷⁵ The documents supporting the allegations for each of these criteria appeared in slides that documented and provided color images to contrast between the proper API standards and the Saha Thai products. These inconsistencies with API line pipe criteria undercut the [DOCUMENT NAME] which appeared to suggest that Saha Thai pipe's stenciling included API 5L standards.⁷⁶

2. CBP's September 11 Determination finding evasion is correct.

As discussed, Blue Pipe mainly relies on the subject pipe's dual stenciling (ASTM A53, "standard pipe," and API 5L "line pipe") to justify its Type 01 entries of such merchandise. However, evidence from the original allegation and a further amplified record developed by CBP's TRLED, supports a conclusion that, regardless of intention, Blue Pipe's failure to declare the dual stenciled pipe as Type 03 constituted evasion of the AD Order.

In Blue Pipe's and Saha Thai's responses to TRLED's RFI (Request for Information) questionnaires in the EAPA investigation, both parties denied being affiliated, while Saha Thai also denied any direct contact with Blue Pipe's U.S. customers.⁷⁷ However, those same responses also showed over [QUANTITY] percent of Saha Thai's 2018 shipments going to the same [QUANTITY] U.S. customers that Blue Pipe supplied after becoming the IOR for Saha Thai's pipes.⁷⁸ Blue Pipe's and Saha Thai's responses also showed consistent ASTM A53/API 5L descriptions on purchase orders, again from the same [QUANTITY] U.S. customers to Blue Pipe, on purchase orders from Blue Pipe to Saha Thai, and on both invoices and mill certificates from Blue Pipe to those U.S. customers.⁷⁹

The question of whether Blue Pipe and Saha Thai are (or were) affiliated is not a factor in our ultimate conclusion in this administrative review. Whether the two companies are affiliated or not, the record is clear that Saha Thai was the manufacturer⁸⁰ for the Blue Pipe imports which are the subject of this EAPA investigation. We note, however, that the history of importations of Saha Thai-manufactured pipe, and the concomitant declaring of such merchandise to CBP,

⁷² See *id.* at 14-15, Exhibit 12.

⁷³ See *id.* at 16, Exhibit 14.

⁷⁴ See *id.* at 17, Exhibit 16.

⁷⁵ See *id.* at 17-18, Exhibit 17.

⁷⁶ See *id.* at 17, Exhibit 16.

⁷⁷ See Blue Pipe RFI Response at 13, 19 (Apr. 24, 2020); see also Saha Thai RFI Response (May 4, 2020) at 2-4, 6.

⁷⁸ See Blue Pipe RFI Response at Attachments 2, 3, 5, Exhibit 5; see also Saha Thai RFI Response at 19.

⁷⁹ See Blue Pipe RFI Response; see also Saha Thai RFI Response; see also Saha Thai Supplemental Response (Jun. 3, 2020).

⁸⁰ See September 11 Determination at 5.

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appear to undercut Blue Pipe's arguments as to lack of intent. That said, since the issue of good faith or intent is not generally germane to an EAPA investigation,⁸¹ this administrative review determination finding evasion does not rely on the timing of the imports in question or the shifts in patterns of trade.

CBP also conducted cargo exams and tested several pipes in two Blue Pipe entries.⁸² CBP's lab reports found physical properties in the pipe samples consistent with ASTM A53 and API 5L PSP 1 Pipe Grade A requirements, as the samples' dual stenciling indicated.⁸³ Blue Pipe also declared both of those entries as Type 01.⁸⁴ The above TRLED review of Blue Pipe's customs documents, business records, and physical products would all seem to indicate that Blue Pipe wanted to convey a sense of belief that the dual stenciled product was outside the AD Order's scope. However, although Commerce's June 2020 final scope ruling found that "line pipe" is not subject to the AD Order, it confirmed that dual stenciled line pipe from Thailand does fall within the AD Order's scope.⁸⁵

As TRLED noted in its determination, EAPA lacks a knowledge requirement in the 19 CFR § 165.1 definition of evasion.⁸⁶ Commerce's final scope ruling confirmed that Blue Pipe's dual stenciled pipe entries fall under the AD Order. As such, Blue Pipe, regardless of intention, should have entered the dual stenciled pipe as Type 03, and should have posted the appropriate cash deposits. Blue Pipe's failure to do so led TRLED to determine that the record contained substantial evidence that Blue Pipe evaded the AD Order.

Thus, pursuant to 19 U.S.C. § 1517(d) and 19 CFR § 165.28, CBP suspended the liquidation for all Blue Pipe entries subject to this EAPA investigation from October 18, 2018 through September 11, 2020, continuing that suspension until instructed to liquidate those entries.⁸⁷ Further, going forward, CBP will rate adjust and change to Type 03, all extended and unliquidated subject merchandise entries. Finally, CBP decided to require single transaction bonds as appropriate, and examine the importer's continuous bond sufficiency.

3. The record as a whole contains substantial evidence of evasion.

Both Saha Thai and Blue Pipe answered questions posed by CBP during the course of the EAPA investigation. Those responses provide full support for TRLED's September 11 Determination.

⁸¹ We use the qualifier "generally" only because we do not address herein the situation where clerical error is alleged and whether the question of good faith or intention would be relevant in such a case. The issue of clerical error is not before us in this case; thus, in this case, the issue of intent/knowledge is irrelevant.

⁸² See September 11 Determination at 4; see also Cargo Exam Documents, "CEE-BM-Entry Number [ENTRY NUMBER]7277 ((A), (B), (C)) Blue Pipe (Dec. 20, 2019)" and "CEE-BM-Entry Number [ENTRY NUMBER]2107 ((A), (B), (C)) Blue Pipe (Cargo Exams) (Dec. 20, 2019)"; see also Laboratory Reports, "CEE-BM- Entry Number [ENTRY NUMBER]7277 ([LAB REPORT], [LAB REPORT], [LAB REPORT]) Blue Pipe (Apr. 13, 2020)" and "CEE-BM- Entry Number [ENTRY NUMBER]2107 ([LAB REPORT], [LAB REPORT], [LAB REPORT]) Blue Pipe (Apr. 10, 2020; Apr. 13, 2020)" ("Lab Reports").

⁸³ See Lab Reports.

⁸⁴ See Cargo Exams; see also Lab Reports; see also September 11 Determination at 6.

⁸⁵ See Scope Ruling at 1; see also September 11 Determination at 5.

⁸⁶ See September 11 Determination at 7.

⁸⁷ See September 11 Determination at 8.

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Further argument presented to us after the September 11 Determination has failed to advance Blue Pipe's position and has ultimately cemented the record's substantial evidence of evasion.

First, the record is abundantly clear that Saha Thai manufactures pipe that meets the specifications of standard pipe. It appears that no party disputes this fact. The only questions remaining for resolution are whether the pipe imported by Blue Pipe during the period in question also meets the specifications for line pipe, and if it does, whether that fact somehow is a sufficient defense to a finding of evasion of the relevant AD Order.

Blue Pipe's and Saha Thai's responses to CBP's questions posed during the EAPA investigation showed that Blue Pipe picked up Saha Thai's customer base for steel pipe, consistently listing ASTM A53/API 5L descriptions in Blue Pipe's, Saha Thai's, and the customers' business records. CBP's cargo exams and lab tests of Blue Pipe's entries confirmed the ASTM A53/API 5 L description. In other words, the pipe met both standards. Commerce's final scope ruling confirmed that such dual stenciled products fall within the scope of the relevant AD Order. However, even without the confirmation by Commerce, TRLED correctly found that the pipe entries which were subject to the EAPA investigation, because they met the specifications for standard pipe, were covered by the AD Order and should have been declared as Type 03 entries, for which AD duty deposits should have been made.

Blue Pipe has sought administrative review of TRLED's September 11 Determination, claiming that the determination erroneously applied Commerce's final scope ruling. However, Blue Pipe misapprehends the final scope ruling, CBP's antidumping duty order enforcement authorities, and the distinction between Commerce's enforcement and CBP's EAPA investigations.

First, Blue Pipe claims that, even relying on Commerce's June 30, 2020 final scope ruling – which is in litigation at the CIT – still means that no liquidation suspension should occur for entries between October 18, 2018 and November 22, 2019.⁸⁸ To support this claim, Blue Pipe again relies on the “line pipe” portion of its A53/API 5L dual stenciling, combined with Commerce's decision that line pipe is not covered by the AD Order. However, in addition to Commerce's clear scope ruling finding dual stenciled pipe to be covered by the AD Order, we note that Commerce never provided an exception or exclusion for dual stenciled pipe from coverage by this AD Order. Thus, we agree with TRLED that, because the pipe at issue clearly met the specifications for standard pipe, it fit within the AD Order's language and scope. The fact that it may also have met the specifications for line pipe did not mean that it was somehow no longer standard pipe.

Blue Pipe's reliance on Commerce regulations and Federal Circuit case law also fails to establish a bar to CBP's liquidation suspension before Commerce's final scope ruling.

⁸⁸ Blue Pipe argues that because the scope ruling is currently subject to judicial review, it is improper for CBP to rely on that ruling. We disagree. To ignore the ruling would be to allow entities to game the system and delay a ruling's applicability, something that the Federal Circuit recognized should be guarded against. Moreover, while Commerce's ruling provides additional support for our finding of evasion, our finding can also rest solely on CBP's independent conclusion that the pipe meets the specifications for standard pipe and thus is covered by the AD Order.

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Specifically, assuming *arguendo*, that the cited regulations apply in the context of a CBP investigation under EAPA,⁸⁹ Commerce's regulations themselves provide for scope rulings that can either direct CBP to continue or cease suspension depending on the scope ruling's inclusion or exclusion, respectively, of the relevant product. CBP, pursuant to its independent EAPA authorities, and separate from the Commerce scope proceeding, had suspended liquidation of entries going back to October 18, 2018. Hence, the regulations, even if applicable, do not support Blue Pipe's position but instead support CBP's position.

With respect to the Federal Circuit's decision in *Sunpreme*, Blue Point's reliance thereon misapprehends the decision. The facts and rationale of that case support CBP's instant EAPA decision. First, in *Sunpreme*, just as here, the suspension of liquidation by CBP began prior to Commerce's final scope ruling. The court upheld such action by CBP. Further, in its rationale, the court concluded that CBP is obligated to make an initial decision as to whether imported goods are covered by an AD order; to decide otherwise would allow individuals to escape initial enforcement until a final scope ruling. In other words, the court acknowledged that CBP has an independent obligation to initially determine the applicability of an AD order; that determination remains valid unless and until Commerce or a court disagrees. As such, the *Sunpreme* decision clearly recognizes that CBP has the authority to suspend liquidation and require cash deposits on entries that occurred prior to initiation of the Commerce scope proceeding.⁹⁰

The Federal Circuit's reasoning dovetails with the complementary nature between CBP's and Commerce's enforcement of an AD order. In contrast, Blue Pipe has advanced an argument suggesting that only Commerce's explicit suspension should govern, basically ignoring CBP's separate authorities under EAPA (as well as other statutory provisions).

It further appears that, notwithstanding the chronology of Blue Pipe's imports, the physical nature of the dual stenciled pipe products, and the clarity of Commerce's final scope ruling, Blue Pipe is still trying to rely on a purported subjective belief in the propriety of importation of dual stenciled products as Type 01 entries. As TRLED stated, the EAPA statute and regulations lack a knowledge requirement, which makes Blue Pipe's subjective belief irrelevant. Rather, what is relevant is that Blue Pipe imported dual stenciled pipe during the EAPA investigation's period of examination, declaring such entries as Type 01, and thus, not covered by the AD Order, and not depositing any AD duties on such entries. The declaration was false because such dual stenciled products are covered by the AD Order. Moreover, we note that Commerce "flagged" the coverage issue as early as July 29, 2019, thus detracting from Blue Pipe's position that its alleged subjective belief means that the requirement to deposit AD duties should start no earlier than

⁸⁹ We explicitly take no position in this administrative review determination as to whether the cited regulations are applicable or not, as it is unnecessary to do so to reach our determination.

⁹⁰ Blue Point also argues that, because CBP had not previously detained the dual stenciled shipments, this supports Blue Point's claim that it had a reasonable basis to declare the entries as Type 01. Such an argument totally ignores the fact that an importer has the obligation to exercise reasonable care and correctly declare information to CBP. That Blue Point's false declarations made it difficult for CBP to identify the evasion does not mean that CBP somehow agreed with the false designations. Moreover, in *Sunpreme*, several years had gone by before CBP required in-scope merchandise that was being entered as Type 01 to be entered as Type 03; the fact that CBP had not done so sooner did not serve as a bar to the court's affirmance of the suspension of liquidation prior to Commerce's scope ruling.

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November 22, 2019. Further, as discussed above, other facts of record also detract from Blue Pipe's arguments on this issue.

Based on the documentation and information provided within the record, there is substantial evidence that Blue Pipe evaded the deposit of antidumping duties by entering covered merchandise by means of material and false statements.

III. Conclusion

Based upon our *de novo* review of the administrative record in this case, including the timely and properly filed request for administrative review, and response thereto, the September 11 Determination of evasion under 19 U.S.C. § 1517(c) is AFFIRMED.

This determination is being transmitted to TRLED so that TRLED can determine whether the interim measures should be modified, consistent with this decision. TRLED may also take any other appropriate action consistent with this decision.

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

Sincerely,

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

Approved by:

Alice A. Kipel
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