



**PUBLIC VERSION**

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**Re: Notice of Determination as to Evasion – EAPA Case Number 7782**

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To the Counsel for the Above-Referenced Entities:

Pursuant to an examination of the record in Enforce and Protect Act (“EAPA”) case number 7782, U.S. Customs and Border Protection (“CBP”) has determined that there is substantial evidence that YVC USA, Inc. (“YVC” or “the Importer”) entered merchandise covered by antidumping duty (“AD”) order A-570-067 and countervailing duty (“CVD”) order C-570-068 (“the Orders”) into the customs territory of the United States through evasion.<sup>1</sup> Substantial evidence demonstrates that YVC imported forged steel fittings (“FSF” or “covered merchandise”) from the People’s Republic of China (“China”) into the United States after the merchandise was transshipped through Sri Lanka. The Importer did not declare that the merchandise was subject to the Orders upon entry and, as a result, no cash deposits were collected on the merchandise at the time of entry.

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<sup>1</sup> See *Forged Steel Fittings from Italy and the People’s Republic of China: Antidumping Duty Orders*, 83 FR 60397 (November 26, 2018) (“AD Order”) and *Forged Steel Fittings from the People’s Republic of China: Countervailing Duty Order*, 83 FR 60396 (November 26, 2018) (“CVD Order”). We refer to these collectively as “the Orders”.

## Background

On September 6, 2022, Flatlands Holdings, LLC d/b/a RK Supply, LLC (“RK” or “the alleged”) filed an EAPA allegation<sup>2</sup> alleging that U.S. importer YVC evaded the Orders. According to RK, Kingtrans Container Line (Shenzhen) Co. Ltd. (“Kingtrans”), a Chinese logistics and shipping company, openly advertised sending Chinese-made products to third countries to change the country-of-origin markings without any further processing.<sup>3</sup> The allegation also provided documents from Kingtrans’ website showing that Kingtrans specifically transships through Sri Lanka.<sup>4</sup> The Allegation further described a transshipment scheme in which YVC imported into the United States Chinese-origin FSF from a Sri Lankan manufacturer, Mass Steel Lanka Industries Pvt., Ltd. (“Mass Steel”), and from another Sri Lankan supplier, EFL Global, Ltd. (“EFL”).<sup>5</sup>

To support the Allegation, RK provided shipment data from [ source ] showing that for [ # ] shipments of FSF, the volume, product description, and Harmonized Tariff Schedule (“HTS”) codes of merchandise shipped by Kingtrans from China to Sri Lanka perfectly match the volumes, HTS codes, and product descriptions of shipments sent from Sri Lanka to the United States where EFL is listed as the shipper and YVC is listed as the consignee.<sup>6</sup> Similarly, the Allegation also provides [ source ] data showing that YVC appears as consignee for U.S-bound shipments of FSF from Mass Steel that have volumes, HTS codes, and product descriptions that are identical to Kingtrans shipments sent from China to Sri Lanka.<sup>7</sup>

CBP officially acknowledged receipt of the Allegation on September 21, 2022.<sup>8</sup> On October 13, 2022, CBP initiated an investigation under Title IV, Section 421, of the Trade Facilitation and Trade Enforcement Act of 2015, commonly referred to as the Enforce and Protect Act (“EAPA”).<sup>9</sup>

### *CF-28 Responses and Analysis*

CBP issued CBP Form 28 (“CF-28”) requests for information (“RFI”) to YVC for entry numbers [ # ]2789, [ # ]6886, and [ # ]2534 on October 27, 2022.<sup>10</sup> CBP did not issue CF-28s to EFL or Kingtrans, even though the Allegation identifies them as “entities involved in transshipment {of covered merchandise} for purposes of evasion for the AD/CVD Orders” because EFL and Kingtrans are not manufacturers in CBP systems.<sup>11</sup> Further, EFL already

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<sup>2</sup> See RK’s Letter, “Enforce and Protect Act (EAPA) Allegation Letter – Alleged Evasion of AD/CVD Order A-570-067 and C-570-068” dated September 6, 2022 (“the Allegation”).

<sup>3</sup> *Id.* at Exhibit E and Exhibit F.

<sup>4</sup> *Id.* at Exhibit C and Exhibit D.

<sup>5</sup> *Id.* at 2-6.

<sup>6</sup> *Id.* at 9-10, Exhibit K and Exhibit L.

<sup>7</sup> *Id.* at 11-12, Exhibit C, and Exhibit O.

<sup>8</sup> See CBP email, “Official Receipt of EAPA Allegation 7782” dated September 21, 2022.

<sup>9</sup> See CBP Memorandum, “Initiation of Investigation for EAPA 7782” dated October 13, 2023.

<sup>10</sup> See CBP Form 28 Request for Information (“CF-28”) for entry [ # ]2789, CF-28 for entry [ # ]6886, and CF-28 for entry [ # ]2534 issued to YVC on October 27, 2022 (collectively, “the CF-28s”).

<sup>11</sup> See CBP Memorandum, “EAPA 7782 – Adding EFL RFI to the Administrative Record” dated October 13, 2022 (“EFL RFI Memo”) at Attachment 1. EFL is a named supplier/manufacturer in the Allegation for EAPA 7782. See

provided CBP with information about its role in transshipment of covered merchandise to YVC in its RFI response in EAPA 7699 and CBP placed this information on the record of EAPA 7782 in a memo to the file, as explained in more detail below.<sup>12</sup>

In the CF-28s, CBP requested a detailed factory profile for the supplier with information about manufacturing capacity, number of employees, raw material consumption, and employee attendance records to tie production to the individual workers' attendance at the factory. CBP also requested information about raw material suppliers, equipment, photos of equipment in use, and a sufficient description of the production process to tie the supplier's purchase of raw materials and its equipment to production of FSF.<sup>13</sup> YVC failed to provide all the requested information as detailed below.

On December 7, 2022, YVC submitted its responses to the CF-28s.<sup>14</sup> YVC provided a copy of Mass Steel's business registration in a foreign language with a partial English translation stating that Mass Steel was first registered with the Sri Lankan Registrar General of Companies on November 30, 2018. However, there is untranslated text on this business registration,<sup>15</sup> even though CBP requested that all documents in any language other than English be fully translated.<sup>16</sup> YVC also provided a partial factory profile for Mass Steel stating that Mass Steel was first "set up" in 2019<sup>17</sup> and produces butt-weld pipe fittings, forged steel fittings, and valves. Although the Importer provided monthly employee attendance records indicating which days some employees worked during several months, these timecards have no specific information about production, such as what equipment each worker operated, that would be necessary to tie them to the production of FSF for these entries.<sup>18</sup>

YVC also provided an incomplete response to CBP's request for a detailed explanation of the manufacturing process. Specifically, YVC explained that "the process of manufacturing forged steel fittings include {sic}: cutting and heating billets, put pressure on heated billets under dies into desired shape, trimming and shot blasting. Then machine forged blank fittings for net shape and dimensions."<sup>19</sup> Although this description explains that dies are used to put pressure on billets and shape them, it is not clear from this description of the production process what equipment is used for shot blasting, trimming, cutting, heating billets, or forging them into the desired dimensions.

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*also* Allegation at 4. Although EFL is named as a manufacturer/supplier in EAPA 7699, EFL is not a manufacturer in CBP data.

<sup>12</sup> *Id.* at Attachment 1. EFL is a named supplier/manufacturer in the Allegation for EAPA 7782.

<sup>13</sup> *See* CF-28s.

<sup>14</sup> *See* email from [ name ] "RE: [ # ]6886 and [ # ]2534" dated December 7, 2022 ("CF-28 Response for entries -6886 and -2534") and email from [ name ] "Re: [ # ]2789" dated December 7, 2022 ("CF-28 Response -2789"). (We refer to these collectively as "the CF-28 Responses"). Although the CF-28s were sent to YVC on October 27, 2022, with instructions to provide the requested information within 30 days. YVC submitted its responses later than instructed by CBP.

<sup>15</sup> *See* CF-28 Response for entries -6886 and -2534 and CF-28 Response -2789 at "Business License."

<sup>16</sup> *See* CF-28s.

<sup>17</sup> *Id.* at "Mass Steel Business License".

<sup>18</sup> *See* CF-28 Response for entries -6886 and -2534 and CF-28 Response -2789 at "Working Timecard."

<sup>19</sup> *Id.* at "Mass Steel Profile."

To summarize, YVC's responses lacked information necessary to tie the FSF imported under these entries to any production of FSF at Mass Steel, or anywhere else in Sri Lanka.

### *Research Conducted by CBP*

On October 13, 2022, CBP placed the entirety of EFL's response to CBP's RFI in EAPA 7699 on the record of this investigation.<sup>20</sup> EAPA 7699 was an investigation into an allegation that a different importer evaded the Orders through a similar scheme involving transshipment through Sri Lanka.<sup>21</sup> However, the RFI response from EAPA 7699 is applicable to EAPA 7782 because it includes packing lists, bills of lading, commercial invoices, and a Sri Lankan customs declaration form showing that EFL transported Chinese-origin FSF from China to Sri Lanka on behalf of Kingtrans and then re-exported the merchandise to YVC in the United States.<sup>22</sup> Information from CBP systems also shows that YVC did not declare [description] imports of FSF as [nationality]-origin during the period from [month] through [month], but instead declared several shipments as Sri Lankan-origin during that period. One recent shipment of FSF declared as Sri Lankan-origin by YVC is entry number [ # ]4596 with a declared value of \$[ # ] and a volume of [ # ]kg imported on [date] and with Mass Steel declared as the manufacturer.<sup>23</sup> CBP matched the shipment declared as Chinese-origin in export declarations to Sri Lankan customs import declarations for which the goods subsequently imported into the United States under entry number [ # ]4596.<sup>24</sup> Comparison of the Sri Lankan export documents in EFL's RFI response with U.S. Customs import documents from CBP systems shows that while EFL declared to Sri Lankan Customs that the merchandise was Chinese-origin,<sup>25</sup> YVC declared its importation as Sri Lankan-origin to CBP.<sup>26</sup>

As part of its RFI response in EAPA 7699, as mentioned above, EFL also provided CBP with a Sri Lankan import declaration, bills of lading, and packing list for this shipment, and these documents show that, before exporting the merchandise to YVC, EFL imported this merchandise from China through Kingtrans.<sup>27</sup> Therefore, the documents from EFL and the information from CBP systems appears to confirm almost every claim in the Allegation because these documents indicate that:

1. YVC imported covered merchandise from Mass Steel and declared it as Sri Lankan-origin in entry [ # ]4596.<sup>28</sup>
2. Entry [ # ]4596 is the same merchandise (matching the [description], merchandise description, and HS code) that EFL declared as Chinese-origin to Sri Lankan

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<sup>20</sup> See EFL RFI Memo at Attachment 1.

<sup>21</sup> See CBP Notice of Determination as to Evasion – EAPA Case Number 7699 (December 20, 2022), available at <https://www.cbp.gov/document/publications/eapa-case-number-7699-cis-investments-llc-notice-determination-evasion>.

<sup>22</sup> See EFL RFI Memo at Attachment 1.

<sup>23</sup> See TRLED Memorandum, "Adding CBP Data to the Administrative Record" dated December 12, 2022 ("12-12 Memo") at Attachment 1 and EFL RFI Memo at Attachment 1, pages 5/9 and 9/9.

<sup>24</sup> See EFL RFI Memo at Attachment 1, page 5/9 and 12-12 Memo at Attachment 1.

<sup>25</sup> See EFL RFI Memo at Attachment 1, page 5/9.

<sup>26</sup> See 12-12 Memo at Attachment 1.

<sup>27</sup> See EFL RFI Memo at Attachment 1, page 7/9-9/9.

<sup>28</sup> See 12-12 Memo at Attachment 1.

customs in its export declaration and bills of lading. YVC is the consignee for EFL's export shipment, and the volume and value are [ description ] to the declared volume and value of YVC's entry number [ # ]4596.<sup>29</sup> Therefore, YVC is the importer of record for a U.S. entry with [ description ] volume, value, and HS code to an export shipment of Chinese covered merchandise from EFL to consignee YVC.

3. Kingtrans shipped the identical merchandise from China to Sri Lanka before EFL exported it to YVC.

This information indicated that YVC imported Chinese-origin FSF transshipped by Kingtrans into the United States, but YVC declared it as Sri Lankan-origin. Because YVC did not declare [ description ] imports of FSF as [ description ], and because information from the Allegation and CBP systems showed that Kingtrans sent several other shipments of Chinese-origin FSF to Sri Lanka that match the volumes, values, and HTS numbers of U.S.-bound shipments from Sri Lanka to YVC, CBP found there was reasonable suspicion that YVC entered covered merchandise into the customs territory of the United States through evasion.

#### *Notice of Initiation of Investigation and Interim Measures*

On January 19, 2023, CBP issued a notice of investigation and interim measures to the parties to the investigation. Based upon the evidence provided in the Allegation, the CF-28 responses, and the additional research described above, CBP determined that there was reasonable suspicion that YVC entered covered merchandise into the customs territory of the United States through evasion and therefore, imposed interim measures.<sup>30</sup>

#### *Other Research Conducted by CBP*

On February 2, 2023, CBP placed on the record of this investigation, a memorandum to the file with screenshots of Mass Steel's public website.<sup>31</sup> This website shows that Mass Steel advertises itself as a manufacturer of forged steel fittings and confirms that the company's physical address is 117/108 Meethota Mulla Rd., Kolonnawa, Sri Lanka and the company's email address is [Masssteellk@hotmail.com](mailto:Masssteellk@hotmail.com). The website also shows what appears to be an office with desks in the background behind a sign behind the company's name, but it has no images of any production equipment.<sup>32</sup>

#### *Requests for Information*

CBP issued RFIs to YVC<sup>33</sup> and Mass Steel on January 31, 2023.<sup>34</sup>

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<sup>29</sup> See EFL RFI Memo at Attachment 1, page 5/9 and 12-12 Memo at Attachment 1.

<sup>30</sup> See CBP's Letter, "Re: Notice of Initiation of Investigation and Interim Measures – EAPA Case Number 7782" dated January 19, 2023 ("NOI").

<sup>31</sup> See CBP Memorandum, "Memo Adding Mass Steel Website to the File" dated February 2, 2023 ("Mass Steel MTF").

<sup>32</sup> *Id.*

<sup>33</sup> See CBP's Letter to YVC, "RE: EAPA 7782 – Request for Information" dated January 31, 2023 ("YVC RFI").

<sup>34</sup> See CBP's Letter to Mass Steel, "RE: EAPA 7782 – Request for Information" dated January 31, 2023 ("Mass Steel RFI").

YVC provided its response to the RFI on March 16, 2023.<sup>35</sup> Mass Steel acknowledged receipt of CBP's RFI,<sup>36</sup> but never provided a response.<sup>37</sup> In its RFI response, YVC stated explicitly that it purchased FSF from China saying: “{d}uring the period of investigation, YVC imported three kinds of merchandise products from China: [ product ], [ product ], and [ product ],”<sup>38</sup> YVC also explained in its RFI response that it specifically sourced FSF from [ Company Name ] (“the Chinese Supplier”), stating:

In July 2021, [ company ] {“domestic purchaser”}, who always purchased valves from YVC wanted YVC to help him find a factory that would supply FSF. As {domestic purchaser} is YVC's most important client, YVC agreed to his request and asked {the Chinese Supplier} if it could supply FSF. After receiving a positive answer, YVC sent Request For Quote to {the Chinese supplier}. After some communications and negotiation, it was decided that {the Chinese Supplier} would supply the FSF for {domestic purchaser} and deliver it to YVC's Houston warehouse. YVC then transferred the whole package to {domestic purchaser}. YVC charged only [ percent range ] as an agency fee.<sup>39</sup>

Although YVC's Customs Entry Form 7501s show that YVC declared its FSF as Sri Lankan-origin and not subject to AD/CVD duties,<sup>40</sup> for every entry of FSF, YVC provided documents showing that it ordered products that fall within the written scope of the Orders from the Chinese Supplier. These documents included emails documenting sales negotiations,<sup>41</sup> purchase orders,<sup>42</sup> and sales confirmations<sup>43</sup> for the purchase of covered merchandise from the Chinese Supplier. YVC also supported its statement that the Chinese Supplier was the true manufacturer of these

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<sup>35</sup> See YVC's Letter, “RE: EAPA Investigation of Forged Steel Fittings from the People's Republic of China: Initial RFI Response of YVC USA Inc.” dated March 16, 2023 (“RFI Response”). YVC initially submitted its response on March 10, 2023, but CBP rejected YVC's initial filing and set a deadline of March 16, 2023 for YVC resubmit its corrected response. (See CBP email, “EAPA 7782: Rejecting YVC's RFI response” dated March 13, 2023). The original due date for YVC to submit its response to the RFI was February 21, 2023. However, YVC requested several extensions and CBP granted three extensions to the deadline for YVC to submit its response. YVC was unable to respond to the original deadline in part because the Importer did not obtain counsel until February 14, 2023 (See YVC email, “Re: Entry of Notice of Appearance” dated February 14, 2023 and YVC email, “Re: Forged Steel Fittings from the People's Republic of China: Extension Request for Initial RFI Response” dated February 14, 2023). CBP granted the final extension request setting March 10, 2023 as the final due date for YVC to respond to the RFI in an email on March 3, 2023, See CBP email, “EAPA 7782: YVC's third Extension Request”. YVC's corrected RFI response was timely filed. See CBP Memorandum, “Explaining Refiling of YVC's RFI Response Resubmission” dated March 17, 2023.

<sup>36</sup> See Mass Steel email, “Request for Information from Mass Steel” dated February 3, 2023 (“Mass Steel RFI Receipt”).

<sup>37</sup> See CBP email, “EAPA 7782 – Request for Information from Mass Steel” dated February 22, 2023. In this email, CBP reminded Mass Steel of the deadline and provided another opportunity for Mass Steel to respond, but CBP never received a reply.

<sup>38</sup> See RFI Response at 11.

<sup>39</sup> *Id.* at 12.

<sup>40</sup> *Id.* at 337/538, 377/538 441, 450/538, and 460/538.

<sup>41</sup> *Id.* at pages 413-414/538.

<sup>42</sup> *Id.* at Exhibit 16-3, pages 415-419/538, 421-422/538, and 443-444/538.

<sup>43</sup> *Id.* at pages 419-420.

items with documents including commercial invoices,<sup>44</sup> packing lists,<sup>45</sup> and test certificates<sup>46</sup> issued by the Chinese supplier with the Chinese Supplier's name and address in China. These documents confirm that these items were manufactured in the Chinese Supplier's Chinese facility and meet the written description of FSF in the Orders. The Importer also provided proof of payment to the Chinese Supplier for these shipments.<sup>47</sup> In summary, YVC does not dispute that evasion occurred and in fact, provided extensive evidence of evasion in its RFI responses.

YVC also acknowledged that it did not require a factory profile from the manufacturer or verify production capabilities.<sup>48</sup> The Importer further acknowledged that it does not have any training, policies, or procedures in place to ensure compliance with CBP's statutory and regulatory obligations or to prevent transshipment of covered merchandise for subsequent importation into the United States without the payment of applicable AD/CVD.<sup>49</sup>

YVC contends that one entry it imported from the Chinese supplier, entry number [ # ]9302 consisted entirely of [ Product ] falling under HTSUS 7307923010 that are outside the scope of the Orders.<sup>50</sup> YVC supported this contention with packing lists, purchase orders, commercial invoices, and certificates of compliance from the Chinese supplier. These documents all show that the merchandise imported under this entry consisted of [ Product ] outside the scope of the Orders. Therefore, CBP does not consider the merchandise in this entry to constitute covered merchandise for purposes of this investigation.<sup>51</sup>

#### *Supplemental RFI*

On April 4, 2023, CBP sent YVC a second or 'supplemental' RFI (SRFI).<sup>52</sup> On April 25, 2023, YVC submitted its response to the SRFI.<sup>53</sup> In its response, YVC explained that it was not even aware that Sri Lanka was the declared country of origin for its entries of covered merchandise and that the Chinese Supplier "provided all the customs declaration information and documents to the customs broker. {The Chinese Supplier} declared the country of origin as Sri Lanka and the manufacturer as Mass Steel. YVC was not aware of this declaration."<sup>54</sup> YVC further stated that it provided the Chinese Supplier with YVC's importer of record number. YVC claimed that it "believed that the only thing YVC needed to do was pay {the Chinese Supplier} timely."<sup>55</sup>

In summary, YVC did not dispute that evasion occurred in its SRFI and RFI responses. However, YVC claimed in its SRFI response that it had no knowledge of this evasion because the Chinese Supplier used YVC's importer of record number to file these entries.

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<sup>44</sup> *Id.* at pages 329/538.

<sup>45</sup> *Id.* at pages 307-309/538, 347-350/538, and 367-370/538.

<sup>46</sup> *Id.* at pages 394-411/538, 490-496/538.

<sup>47</sup> *Id.* at pages 388/538, 392-393/538, 488-489/538

<sup>48</sup> *Id.* at 18.

<sup>49</sup> *Id.* at 18-19.

<sup>50</sup> *Id.* at 19/538.

<sup>51</sup> *Id.* at 263/538-271/538.

<sup>52</sup> See CBP Letter, "EAPA 7782 – Supplemental Request for Information" dated April 4, 2023 ("SRFI").

<sup>53</sup> See YVC Letter, "RE: EAPA Investigation of Forged Steel Fittings from the People's Republic of China: Supplemental RFI Response of YVC USA Inc.," dated April 25, 2023 ("SRFI Response").

<sup>54</sup> *Id.* at 1.

<sup>55</sup> *Id.* at 1.

### *Voluntary Factual Information*

The deadline for parties to the investigation to submit voluntary factual information, pursuant to 19 C.F.R. § 165.23(c)(1) was May 1, 2023, but none of the parties to the investigation provided CBP with any voluntary factual information.

### *Written Arguments*

On May 31, 2023, YVC submitted written arguments.<sup>56</sup> YVC argued:

In this investigation, YVC did not knowingly enter the merchandise in an attempt to evade antidumping or countervailing duties. YVC did not address or handle the customs documentation, but instead allowed its business partner {the Chinese Supplier} to fill out the relevant forms relating to the shipment due to the [description] status of the delivery. YVC believed that it was complying with all pertinent regulations and that its supplier was fulfilling the transaction in an honest and forthcoming fashion. After all, it was {the Chinese Supplier} that was responsible for the payment of the tariffs according to the terms of delivery. YVC did not become aware of the misrepresentation of the country of origin or of the manufacturer reported to CBP until the onset of this evasion investigation.

This statute requires a material falsehood or omission for there to be a finding of evasion. *See Diamond Tools Tech. LLC v. United States*, 545 F. Supp. 3d 1324, 1351-1353 (Ct. Int'l Trade October 29, 2021). False is defined as “Untrue (false statement)... deceitful (a false witness)... not genuine; inauthentic (false coinage)... What is false can be so by intent, by accident, or by mistake ... wrong; erroneous (false step)...” *False*, Black’s Law Dictionary (11<sup>th</sup> Ed. 2019). Omission is defined as “a failure to do something, ... the state of having been left out or of not having been done ... something that is left out, left undone, or otherwise neglected.” *Omission*, Black’s Law Dictionary (11<sup>th</sup> Ed. 2019). In *Diamond Tools Tech.*, CBP initially found that the plaintiff had evaded the order by failing to provide clear documentation or labeling to distinguish the country of origin of its imports, and that this commingling of subject and non-subject merchandise created the opportunity to evade duties. *Diamond Tools Tech. LLC*, 545 F. Supp. 3d 1324, 1351. The Court disagreed with CBP, finding that the plaintiff’s failure to distinguish did not constitute a material and false statement or a material omission, since it was not erroneous, untrue, or deceitful. *Id.* at 1352-1353. Here, YVC did not make a material omission or falsehood since it was operating under the belief that the correct country of origin and manufacturer were being identified in the customs documentation that was submitted by {the Chinese Supplier}.<sup>57</sup>

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<sup>56</sup> See YVC’s Letter, “Re: EAPA Investigation of Forged Steel Fittings from the People’s Republic of China: Written Arguments” dated May 31, 2023 (“Written argument”). The allegor did not submit a response to YVC’s written arguments.

<sup>57</sup> *Id.* at 6-7 and *Diamond Tools Tech LLC v. United States*, 545 F. Supp 3d 1324, 1351-1353 (Court of international Trade October 29, 2021).



**CBP’s Position:** The circumstances in this investigation are dissimilar to those in the EAPA 7184 where the investigation involved a narrow issue of an importer following Commerce’s statements regarding a proper country of origin methodology in a case of third country assembly. That is not an issue here, where the importer just purports to place all responsibility on the manufacturer. And regardless, the Importer’s arguments are misplaced. EAPA is a strict liability statute and as such, the state of mind of the importer is not relevant to the determination of evasion.<sup>58</sup>

In addition, another relevant prior EAPA investigation is EAPA Case 7657, in which the U.S. importers Kingway Construction Supplies, Inc. (“Kingway”) and KAT Specialties, Inc. (“KAT”) argued in their request for administrative review that they did not make false statements to CBP because a broker filed entries on their behalf.<sup>59</sup> This is a similar argument to the one YVC made in this case. In EAPA 7657, CBP determined that “the onus was on Kingway and KAT, as the importers of record, to ensure the accuracy in the information that was declared to CBP. This is responsibility that cannot be outsourced, even to a licensed broker.”<sup>60</sup>

### **Analysis as to Evasion**

Under 19 U.S.C. § 1517(c)(1)(A), to reach a determination as to evasion, 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.” 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 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.”<sup>61</sup> Covered merchandise is defined as “merchandise that is subject to an antidumping duty order...or a countervailing duty order...”<sup>62</sup> Per the applicable Order, in this investigation, the covered merchandise is:

... carbon and alloy forged steel fittings, whether unfinished (commonly known as blanks or rough forgings) or finished. Such fittings are made in a variety of shapes including, but not limited to, elbows, tees, crosses, laterals, couplings, reducers, caps, plugs, bushings, unions, and outlets. Forged steel fittings are covered regardless of end finish, whether threaded, socket-weld or other end connections. While these fittings are generally manufactured to specifications ASME B16.11, MSS SP- 79, MSS SP-83, MSS SP-97, ASTM A105, ASTM A350 and ASTM A182, the scope is not limited to fittings made to these specifications. The term forged is an industry term used to describe a class of products included in applicable

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<sup>58</sup> See *Ikadan System USA, Inc. v. United States*, Slip Op. 23-88 at 16-18.

<sup>59</sup> See CBP’s Letter, “RE: Enforce and Protect Act (“EAPA”) Consolidated Case Number 7657; KAT Specialties, Inc. and Kingway Construction Supplies, Inc.” (“EAPA 7657 Determination”); *Certain Quartz Surface Products from the People’s Republic of China: Antidumping and Countervailing Duty Orders*, 84 Fed. Reg. 33,053 (July 11, 2019); 19 U.S.C. § 1517 at 6.

<sup>60</sup> See EAPA 7657 Determination at 12.

<sup>61</sup> See 19 C.F.R. § 165.1; see also 19 U.S.C. §1517(a)(5)(A).

<sup>62</sup> See 19 U.S.C. § 1517(a)(3); see also 19 C.F.R. § 165.1.

standards and does not reference an exclusive manufacturing process. Forged steel fittings are not manufactured from casting. Pursuant to the applicable specifications, subject fittings may also be machined from bar stock or machined from seamless pipe and tube.

All types of fittings are included in the scope regardless of nominal pipe size (which may or may not be expressed in inches of nominal pipe size), pressure rating (usually, but not necessarily expressed in pounds of pressure/PSI, *e.g.*, 2,000 or 2M; 3,000 or 3M; 6,000 or 6M; 9,000 or 9M), wall thickness, and whether or not heat treated. Excluded from this scope are all fittings entirely made of stainless steel. Also excluded are flanges, butt weld fittings, butt weld outlets, nipples, and all fittings that have a maximum pressure rating of 300 pounds of pressure/PSI or less.

Also excluded are fittings certified or made to the following standards, so long as the fittings are not also manufactured to the specifications of ASME B16.11, MSS SP-79, MSS SP-83, MSS SP-97, ASTM A105, ASTM A350 and ASTM A182:

- American Petroleum Institute (API) 5CT, API 5L, or API 11B
- Society of Automotive Engineering (SAE) J476, SAE J514, SAE J516, SAE J517, SAE J518, SAE J1026, SAE J1231, SAE J1453, SAE J1926, J2044 or SAE AS 35411
- Underwriter’s Laboratories (UL) certified electrical conduit fittings
- ASTM A153, A536, A576, or A865
- Casing Conductor Connectors 16–42 inches in diameter made to proprietary specifications
- Military Specification (MIL) MIL-C-4109F and MIL-F-3541
- International Organization for Standardization (ISO) ISO6150-B

To be excluded from the scope, products must have the appropriate standard or pressure markings and/or be accompanied by documentation showing product compliance to the applicable standard or pressure, *e.g.*, “API 5CT” mark and/or a mill certification report.<sup>63</sup>

### *Adverse Inferences*

EAPA’s regulations at 19 C.F.R. § 165.6(a) state that 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 {...}”<sup>64</sup> Because Mass Steel failed to respond to CBP’s RFI despite the opportunities to respond described above, in spite of acknowledging receipt of the RFI, Mass Steel has not cooperated or complied with this investigation to the best of its ability.<sup>65</sup> Due to Mass Steel’s non-response, CBP did not have information on the record about its production capacity or a

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<sup>63</sup> See the Orders.

<sup>64</sup> See 19 C.F.R. § 165.6(a). See also 19 U.S.C. § 1517(c)(3)(A).

<sup>65</sup> See Mass Steel RFI, Mass Steel RFI Receipt, and RFI Reminder to Mass Steel.

complete list of plant equipment used in FSF production at Mass Steel, and CBP officials were not able to verify the information YVC provided through on-site verifications.<sup>66</sup> Therefore, CBP is drawing inferences adverse to Mass Steel from facts available on the record, including information from the Allegation, from EFL's RFI response in EAPA 7699, and from CBP's examination of YVC's RFI responses and data from CBP systems to make a determination as to evasion with respect to Mass Steel.

#### *Evidence from YVC's RFI Responses*

YVC acknowledged purchasing FSF from the Chinese Supplier.<sup>67</sup> YVC also provided commercial invoices,<sup>68</sup> packing lists,<sup>69</sup> and test certificates<sup>70</sup> from the Chinese supplier that show the Chinese Supplier provided pipe fittings that meet the written description of FSF in the Orders to YVC. The Importer also provided emails documenting sales negotiations,<sup>71</sup> purchase orders,<sup>72</sup> and sales confirmations<sup>73</sup> for the purchase of covered merchandise from the Chinese Supplier. YVC further provided proof of payment to the Chinese Supplier for these shipments.<sup>74</sup> YVC also furnished Customs Entry Form 7501s showing that this merchandise was nonetheless declared as Sri Lankan-origin and not subject to AD/CVD duties.<sup>75</sup>

Further, YVC acknowledges that it "only did business with the Chinese Supplier" and "[  
*description of business relationship* ] with Mass Steel. The invoices issued from Mass Steel Lanka Industries Pvt., Ltd. existed because the Chinese Supplier used YVC's Importer of Record number to generate import documents, but [ *description of business transaction* ] to Mass Steel."<sup>76</sup> Thus, YVC acknowledged in its RFI responses that the FSF it imported as type 01 entries (i.e., not subject to AD/CVD duties) with Sri Lanka as the country of origin and Mass Steel as the declared manufacturer were in fact, manufactured by the Chinese Supplier.

Although YVC claimed that all materially false statements about these entries were made by the Chinese Supplier, this does not change the fact that YVC acted as the importer of record for these entries without making any effort to ensure that the correct country of origin was declared and that applicable AD/CVD were paid. As explained above, YVC admitted in RFI responses that it imported covered merchandise from China without paying applicable AD/CVD duties.

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<sup>66</sup> CBP only conducts verifications at the facilities of foreign suppliers at the invitation and with the cooperation of the foreign suppliers.

<sup>67</sup> See RFI Response at 11 and 12.

<sup>68</sup> *Id.* at pages 329/538.

<sup>69</sup> *Id.* at pages 307-309/538, 347-350/538, and 367-370/538.

<sup>70</sup> *Id.* at pages 394-411/538, 490-496/538.

<sup>71</sup> *Id.* at pages 413-414/538.

<sup>72</sup> *Id.* at Exhibit 16-3, pages 415-419/538, 421-422/538, 443-444/538

<sup>73</sup> *Id.* at pages 419-420.

<sup>74</sup> *Id.* at pages 388/538, 392-393/538, and 488-489/538.

<sup>75</sup> *Id.* at 337/538, 377/538 441, 450/538, and 460/538.

<sup>76</sup> See SRFI Response at 1.

## Determination as to Evasion

Based on the facts described above, CBP determines that substantial evidence exists that the FSF imported by YVC with a declared origin of Sri Lanka were in fact, Chinese-origin and subject to the Orders on FSF from China (A-570-067 and C-570-068). CBP also determines that one entry, entry number [ # ]9302 consisted entirely of [ product ] falling under HTSUS 7307923010 that are outside the scope of the Orders.<sup>77</sup> Furthermore, evidence on the record indicates that YVC entered the Chinese-origin FSF into the customs territory of the United States as type 01 entries, thereby evading payment of duties on FSF from China.<sup>78</sup> Because YVC did not declare that the merchandise was subject to the Orders at time of entry, the requisite AD/CVD cash deposits were not collected on the covered merchandise.

## Actions Taken Pursuant to the Affirmative Determination as to Evasion

In light of CBP's determination that the Importer entered merchandise into the customs territory of the United States through evasion, and pursuant to 19 U.S.C. § 1517(d) and 19 C.F.R. § 165.28, CBP will suspend or continue to suspend the liquidation for all entries imported by the Importer that are subject to EAPA investigation case 7722 and continue suspension until instructed to liquidate these entries. For those entries previously extended in accordance with the interim measures, CBP will rate adjust and change those entries to type 03 and continue suspension until instructed to liquidate these entries. CBP will also evaluate the Importer's continuous bonds in accordance with CBP's policies and may require single transaction bonds as appropriate. None of the above actions preclude CBP or other agencies from pursuing additional enforcement actions or penalties.<sup>79</sup>

Sincerely,



Victoria Cho, Acting Director  
Enforcement Operations Division  
Trade Remedy Law Enforcement Directorate  
CBP Office of Trade

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<sup>77</sup> See RFI Response at 19/538.

<sup>78</sup> 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>.

<sup>79</sup> See 19 U.S.C. § 1517(h).