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Re: Enforce and Protect Act ("EAPA") Case Number 7722; *Certain Quartz Surface Products From the People's Republic of China: Antidumping and Countervailing Duty Orders*, 84 Fed. Reg. 33,053 (Dep't of Commerce July 11, 2019); Vanguard Trading Company LLC; 19 U.S.C. § 1517

Dear Counsel:

This is in response to the request for *de novo* administrative review of a determination of evasion dated June 14, 2023, 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), EAPA Case Number 7722 ("June 14 Determination").[1] The request for review, dated July 28, 2023, was submitted to CBP, OT, Regulations and Rulings ("RR"), by Balance Law Firm and Diaz Trade Law, P.A. on behalf of Vanguard Trading Company LLC ("Vanguard," "VTC," or "Importer"), pursuant to 19 U.S.C. § 1517(f) and 19 C.F.R. § 165.41(a). Cambria Company LLC ("Cambria" or "Alleger") filed a response to the request for review on August 15, 2023.[2]

I. Background

Based on our review of the administrative record, we agree with the recitation of facts as set forth by the June 14 Determination. As such, we will not repeat the entire factual history herein.

On July 11, 2022, Cambria filed an EAPA allegation against Vanguard. CBP acknowledged receipt of the allegation on July 21, 2022. On August 11, 2022, TRLED initiated a formal investigation under Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015 ("TFTEA"), in response to an allegation of evasion.[3]

Cambria alleged that it "obtained information that reasonably suggests that merchandise imported by VTC was Chinese quartz surface products ('QSP') that was subject to the Orders but was imported by VTC as 'artificial marble' that is outside the scope of the Orders."[4] Cambria claimed that the merchandise included a brand of engineered quartz countertop surfaces that is manufactured by a Chinese producer, Foshan Monica Quartz Stone Co., Ltd. ("Foshan"), and exported by a Chinese logistics company, Shenzhen Guandmaozin Import and Export.[5] Cambria alleged that this merchandise is actually QSP from China that is subject to antidumping and countervailing duty orders (the "AD/CVD Orders") under Case Nos. A-570-084 and C-570-085, and that Vanguard evaded the payment of antidumping and countervailing duties on these imports.[6]

The allegation of evasion pertained to the AD/CVD Orders issued by the U.S. Department of Commerce ("Commerce") on imports of QSP from China. Commerce defined the scope of the AD/CVD Orders as follows:

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[1] *See* Notice of Determination as to Evasion, EAPA Case 7722 (June 14, 2023) (Public Version), *available at* https://www.cbp.gov/document/publications/eapa-case-7722-vanguard-trading-company-llc-notice-determination-evasion-june (last accessed Oct. 20, 2023).

[2] Pursuant to CBP's regulations, RR rejected Vanguard's August 17, 2023 submission, which was filed after Cambria filed its response to the request for administrative review. As RR explained, absent a request from CBP for additional information under 19 C.F.R. § 165.44 during the review process, additional written information from the parties will not be accepted. *See also* 19 C.F.R. § 165.41(d) (providing the deadline for submission of a request for administrative review); 19 C.F.R. § 165.42 (providing the deadline for submission of a response to a request for administrative review).

[3] *See* Notice of Initiation of Investigation and Interim Measures: EAPA Case Number 7722 (Aug. 11, 2022) ("Notice of Initiation") (Public Version), *available at* https://www.cbp.gov/document/publications/eapa-case-7722-vanguard-trading-company-llc-notice-initiation-investigation (last accessed Oct. 20, 2023).

[4] Quartz Surface Products from the People's Republic of China: Request for an Investigation under the Enforce and Protect Act of Vanguard Trading Co. (July 11, 2022) (Public Version) ("Cambria's Allegation"), at 1–3, 9–11.

[5] *See* June 14 Determination (Public Version), at 2. Cambria explained that Jinpan Chen, the Research and Development Engineer for Foshan, applied for the patent for the FriTech™ product sold by Lucciare®. *See id.* at 3.

[6] *See* Cambria's Allegation (Public Version), at 1–3, 9–11; *see also Certain Quartz Surface Products From the People's Republic of China: Antidumping and Countervailing Duty Orders*, 84 Fed. Reg. 33,053 (Dep't of Commerce July 11, 2019) ("AD/CVD Orders").

The scope of the orders covers certain quartz surface products.[15] Quartz surface products consist of slabs and other surfaces created from a mixture of materials that includes predominately silica (*e.g.*, quartz, quartz powder, cristobalite) as well as a resin binder (*e.g.*, an unsaturated polyester). The incorporation of other materials, including, but not limited to, pigments, cement, or other additives does not remove the merchandise from the scope of the orders. However, the scope of the orders only includes products where the silica content is greater than any other single material, by actual weight. Quartz surface products are typically sold as rectangular slabs with a total surface area of approximately 45 to 60 square feet and a nominal thickness of one, two, or three centimeters. However, the scope of the orders includes surface products of all other sizes, thicknesses, and shapes. In addition to slabs, the scope of the orders includes, but is not limited to, other surfaces such as countertops, backsplashes, vanity tops, bar tops, work tops, tabletops, flooring, wall facing, shower surrounds, fire place surrounds, mantels, and tiles. Certain quartz surface products are covered by the orders whether polished or unpolished, cut or uncut, fabricated or not fabricated, cured or uncured, edged or not edged, finished or unfinished, thermoformed or not thermoformed, packaged or unpackaged, and regardless of the type of surface finish.

* * *

The scope of the orders does not cover quarried stone surface products, such as granite, marble, soapstone, or quartzite. Specifically excluded from the scope of the orders are crushed glass surface products. Crushed glass surface products must meet each of the following criteria to qualify for this exclusion: (1) The crushed glass content is greater than any other single material, by actual weight; (2) there are pieces of crushed glass visible across the surface of the product; (3) at least some of the individual pieces of crushed glass that are visible across the surface are larger than one centimeter wide as measured at their widest cross-section (glass pieces); and (4) the distance between any single glass piece and the closest separate glass piece does not exceed three inches.

The products subject to the scope are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under the following subheading: 6810.99.0010. Subject merchandise may also enter under subheadings 6810.11.0010, 6810.11.0070, 6810.19.1200, 6810.19.1400, 6810.19.5000, 6810.91.0000, 6810.99.0080, 6815.99.4070, 2506.10.0010, 2506.10.0050, 2506.20.0010, 2506.20.0080, and 7016.90.10. The HTSUS subheadings set forth above are provided for convenience and U.S. Customs purposes only. The written description of the scope of the orders is dispositive.

FN 15: Quartz surface products may also generally be referred to as engineered stone or quartz, artificial stone or quartz, agglomerated stone or quartz,

> synthetic stone or quartz, processed stone or quartz, manufactured stone or quartz, and Bretonstone®.[7]

In response to the allegation, on August 29 and August 30, 2022, TRLED issued CF-28 Requests for Information to Vanguard for entry 7687 and entry 9748, respectively, requesting the following for each entry:

> The commodity imported is classified as Other Stone/6.5%. Customs and Border Protection is requesting technical literature, diagrams, photographs, brochures, and/or other pertinent information. Provide a manufacturer's affidavit with the description of the product and the manufacturing process. Provide entry transaction information including the original commercial invoice, proof of payment, Purchase Order and all Bills of Lading (Master and Through Bills of Lading). Explain why the product being imported is not subject to the ADCVD Cases A-570-084/C-570-085 for Quartz Surface Products from China.[8]

Vanguard timely submitted responses to each of these CF-28 requests. With respect to entry 7687, Vanguard provided the following materials: a CF 7501 (Customs entry form); a CF 3461 (Customs release form); a commercial invoice date January 20, 2022 from a Chinese supplier listing the artificial marble material as Melody and Rhapsody; a packing list; a Bill of Lading dated February 11, 2022, listing a Chinese supplier as the shipper; the issued arrival notice; additional product information for the merchandise in entry 7687 and how it is made; an informational packet that mentioned a patent application for a brand of artificial stone under the patent name, "An Environment-friendly Artificial Stone with Low Cost and High Strength and A Preparation Method Thereof"; and a product brochure listing names and product numbers.[9] For entry 9748, Vanguard provided: purchase orders; an arrival notice; an invoice and packing list; a product data sheet; a fabrication and installation manual; a health declaration related to the product; a safety data sheet; a payment invoice for ocean freight charges; and a patent application from the World Intellectual Property Organization ("WIPO") for the merchandise in this entry.[10] Vanguard, however, did not provide the requested affidavit statement from the manufacturer for either entry.[11] As a result, TRLED was unable to determine the actual manufacturer of the products being imported.[12]

On November 17, 2022, in accordance with 19 C.F.R. § 165.24, CBP issued a Notice of Initiation to all parties to the investigation, stating that the investigation had begun on August 11, 2022, and notifying the parties of CBP's decision to take interim measures based upon reasonable suspicion that the Importer had entered covered merchandise into the customs territory of the

[7] 84 Fed. Reg. at 33,055–56.
[8] June 14 Determination (Public Version) (providing language from the CF-28 requests).
[9] *See id.* at 6–7.
[10] *See id.* at 7.
[11] *See id.*
[12] *See id.* As discussed below, however, the CF-28 Responses did confirm that Vanguard's imports were of Chinese origin. *See infra* at 14.

United States through evasion.[13] The entries subject to the investigation are all unliquidated entries of covered merchandise entered from July 21, 2021 through the pendency of the investigation.[14]

On December 2, 2022, TRLED issued a Request for Information ("RFI") questionnaire to Vanguard.[15] On December 6, 2022, January 18, 2023, and January 19, 2023, TRLED sent RFI questionnaires to several Chinese suppliers.[16] On February 13, 2023, TRLED issued a Supplemental RFI to Vanguard.[17] Only Vanguard and one Chinese supplier (Chinese Supplier3) submitted responses to the post-initiation RFIs.[18] As detailed below, these responses were inadequate, with Vanguard and Chinese Supplier3 refusing to provide the information TRLED requested.[19]

On June 14, 2023, TRLED found that there was substantial evidence that the merchandise Vanguard imported from China was QSP as described by the scope of the AD/CVD Orders. TRLED applied adverse inferences to Vanguard because Vanguard and all of the Chinese suppliers failed to respond to TRLED's post-initiation RFIs.[20] As a result of the lack of cooperation, the record contained gaps that required TRLED to select from facts otherwise available on the record in making its evasion determination.[21]

Specifically, TRLED considered information provided in the allegation, which TRLED found was further supported by Vanguard's CF-28 Responses.[22] TRLED determined that based on the information provided by Vanguard in its CF-28 Responses, Vanguard's imports from China were comprised predominately of silica, by weight, and therefore, constituted covered merchandise.[23]

TRLED also dismissed as "unreliable," test reports Vanguard submitted purportedly showing that the imports were not comprised predominately of silica, because they could not be corroborated or substantiated with other information on the record.[24]

Further, TRLED found that Vanguard misclassified merchandise described as "artificial marble and/or artificial stone"[25] and entered it into the customs territory of the United States on

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[13] *See* Notice of Initiation (Public Version).
[14] *See id.* at 2; *see also* 19 C.F.R. § 165.2 ("
merchandise.").
[15] *See* Importer RFI Questionnaire (Dec. 2, 2022) (Public Version).
[16] *See* Chinese Supplier2 RFI Questionnaire (Dec. 6, 2022); Chinese Supplier3 RFI Questionnaire (Jan. 18, 2023); Chinese Supplier4 RFI Questionnaire (Jan, 18, 2023); Chinese Supplier 5 RFI Questionnaire (Jan. 18, 2023); Chinese Supplier1 RFI Questionnaire (Jan. 19, 2023); FedEx Shipment Receipts for the Request for Information to the Administrative Record (Apr. 17, 2023) (Public Version) (collecting FedEx shipment receipts for the RFI questionnaires sent to several Chinese suppliers). TRLED also sent a follow-up email to Chinese Supplier2 regarding its RFI. *See also* CBP Follow-Up Email, EAPA 7722: Mfg. RFI Questionnaire, to Chinese Supplier2 (Jan. 13, 2023).
[17] Importer Supplemental RFI Questionnaire (Feb. 6, 2023) (Public Version).
[18] *See infra* at 10–11.
[19] *See id.*
[20] *See* June 14 Determination (Public Version).
[21] *See id.*
[22] *See id.*
[23] *See id.*
[24] *Id.*
[25] *Id.*

type "01" consumption entries.[26] As a result, no cash deposits or antidumping or countervailing duties were applied to the merchandise.[27]

On July 28, 2023, Vanguard timely filed a Request for Administrative Review. On August 1, 2023, RR sent an email to all parties to the investigation, notifying them of the commencement of the administrative review process and the assignment of RR case number H333474. On August 15, 2023, Cambria timely submitted a response to Vanguard's request for administrative review, presenting its counterarguments.

II. Law & Analysis

Section 517 of the Tariff Act of 1930 ("the Tariff Act"), as amended (19 U.S.C. § 1517), provides, "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."[28] The term evasion is defined as:

> 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.[29]

Examples of evasion include, but are not limited to, 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.[30]

Additionally, 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)."[31] While "substantial evidence" is not defined by statute, 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."[32]

Therefore, CBP must determine whether a party has entered merchandise that is subject to an AD or CVD order into the United States for consumption by means of any document or

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[26] Imports that are covered by AD/CVD orders are required to be entered as type "03" entries; entries declared as type "01" are not subject to payment of antidumping or countervailing duties. *See* CBP Entry Summary Form 7501 and Instructions and the ACE Entry Summary Business Rules and Procedure Document, *available at* https://www.cbp.gov/trade/programs-administration/entry-summary/cbp-form-7501 (last accessed Oct. 20, 2023).
[27] *See* June 14 Determination (Public Version).
[28] 19 U.S.C. § 1517(c)(1).
[29] 19 U.S.C. § 1517(a)(5); *see also* 19 C.F.R. § 165.1.
[30] *See Investigation of Claims of Evasion of Antidumping and Countervailing Duties, Interim Regulations*, 81 Fed. Reg. 56,477, 56,478 (CBP Aug. 22, 2016).
[31] 19 C.F.R. § 165.1.
[32] *See Altx, Inc. v. United States*, 370 F.3d 1108, 1116 (Fed. Cir. 2004) (internal citations and quotation marks omitted).

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 cash deposits or antidumping or countervailing duties being collected on such merchandise. In doing so, CBP may apply adverse inferences where they are warranted.[33] RR's determination as to evasion must be supported by substantial evidence.

A. Vanguard's Arguments

Vanguard requests that we reverse the June 14 Determination, asserting that TRLED's evasion determination is without support because the merchandise Vanguard imported does not fall within the scope of the AD/CVD Orders. Vanguard presents five arguments supporting its request.

First, Vanguard claims that TRLED improperly determined that the surface products Vanguard imported into the United States are covered merchandise. Vanguard states that the "[i]ndependent laboratory results" it obtained and submitted to CBP present "prima facie evidence" demonstrating that Vanguard's imports do not contain "chief weight silica," and thus, are not subject to the AD/CVD Orders.[34]

Second, Vanguard argues that TRLED "prematurely issued a determination of evasion, improperly applying adverse inferences."[35] Vanguard contends that TRLED improperly applied adverse inferences to Vanguard for failing to "fully respond to the numerous overreaching and overbroad requests for information," which Vanguard deems to be irrelevant to the evasion determination.[36]

Third, Vanguard asserts that TRLED "failed to act according to the regulations" by not directing a covered merchandise referral to Commerce.[37] Vanguard states that it was "forced to react" to TRLED's decision not to direct a covered merchandise referral by filing a scope ruling application with Commerce during the course of TRLED's investigation.[38] Vanguard also asserts that CBP cannot proceed with its EAPA case while a scope proceeding is pending before Commerce.

Fourth, Vanguard contends that TRLED improperly denied Vanguard's request to include in the administrative record Vanguard's "Supplemental Authority" filing, which pertains to the *Federal Register* notice of the scope ruling application submitted by Vanguard to Commerce.[39] Vanguard submitted its "Supplemental Authority" filing to TRLED on July 6, 2023, after TRLED issued its June 14 Determination.[40] Vanguard claims that this submission does not constitute new factual information, but instead is "supplemental authority," and that "publication of the same in the *Federal Register* means that CBP must take notice of this proceeding."[41] Vanguard also cites to 19 C.F.R. § 352.102(b)(21), Commerce's regulation that defines factual information in the context of

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[33] *See* 19 C.F.R. § 165.6.
[34] Vanguard's Administrative Review Request (July 28, 2023) (Public Document), at 11–12.
[35] *Id.*
[36] *Id.* at 12.
[37] *Id.* at 11.
[38] *Id.* at 12.
[39] *See id.* at 11.
[40] *See id.* at 10–11.
[41] *Id.*

AD/CVD proceedings, as support for its argument that the scope ruling application is not factual information.[42] Vanguard thus urges RR to consider this information.

Fifth, Vanguard avers that CBP "fail[ed] to provide due process to Vanguard" by not disclosing confidential information that was "gathered and used in this investigation[,] along with an opportunity for Vanguard to address such information, and if necessary, place rebuttal facts on record to such information."[43] Specifically, Vanguard claims that "CBP relied upon certain lab tests, of which the unredacted versions were not disclosed to Vanguard during the course of the EAPA matter."[44] Vanguard asserts that it "believes CBP's lab tests to be in error, but which Vanguard was unable to effectively comment upon because the unredacted version of such CBP lab test reports were 'hidden' from Vanguard."[45] Vanguard argues that, per *Royal Brush Manufacturing, Inc. v. United States*, 75 F.4th 1250 (Fed. Cir. 2023), the U.S. Court of Appeals for the Federal Circuit mandated that such action constitutes a due process violation that renders an EAPA action "moot" and requires that the EAPA case be terminated or sent back to the investigatory level.[46]

For these reasons, Vanguard requests that the June 14 Determination be reversed.

B. Cambria's Arguments

Cambria requests that we affirm the June 14 Determination, providing several bases in support of its position.

First, Cambria states that CBP properly rejected Vanguard's request to place on the record Commerce's initiation of a scope proceeding for certain mineral-based slabs.[47] Cambria avers that "Vanguard's last-minute filing of a scope ruling request with Commerce should be viewed for what it is — a transparent attempt to delay the EAPA investigation and avoid the consequences of an affirmative determination of evasion."[48] Cambria argues that Vanguard "cites no relevant authority from the EAPA statute or CBP's regulations to support its arguments that the scope ruling application it attempted to submit was not new factual information," and instead relies on regulations governing Commerce's AD/CVD proceedings.[49] Even assuming that Commerce's regulations apply to CBP's EAPA investigations, Cambria contends that CBP properly rejected the notice of the scope ruling application because it contains new factual information.[50]

Second, Cambria asserts that CBP was not obligated to make a covered merchandise referral to Commerce because the record provided substantial evidence demonstrating that Vanguard imported in-scope merchandise.[51] Cambria adds that any lack of evidence as to this finding is the result of Vanguard's and the Chinese suppliers' refusals to provide the information CBP had

[42] *See id.* at 10–11.
[43] *Id.* at 9–10.
[44] *Id.* at 10.
[45] *Id.*
[46] *Id.*
[47] *See* Cambria's Response (Public Document), at 10.
[48] *Id.* at 10–11.
[49] *Id.* at 10–11.
[50] *See id.* at 10–12.
[51] *See id.* at 10, 12.

requested.[52] Cambria also discusses judicial precedent that establishes CBP's "independent authority to interpret and apply the scope of AD/CVD orders to particular entries of merchandise."[53]

Third, Cambria avers that TRLED properly applied adverse inferences in its finding of evasion because Vanguard and the Chinese suppliers failed to cooperate to the best of their abilities with CBP's informational requests.[54] This non-cooperation resulted in factual gaps in the administrative record.[55] Cambria further argues that the U.S. Court of International Trade has upheld CBP's authority to apply adverse inferences under such circumstances.[56]

Fourth, Cambria argues that the *Royal Brush* decision "does not mandate a reversal of CBP's affirmative determination" of evasion.[57] Cambria asserts that "CBP did not rely on any confidential information to reach its final determination of evasion," or its decision to apply adverse inferences, and that all such evidence "was public and accessible to Vanguard."[58] Moreover, Cambria states that "sending this matter back to the administrative level to allow Vanguard to rebut the confidential information would be futile as there is no confidential information that Vanguard needs to rebut."[59] In the event that CBP concludes that a protective order needs to be issued in accordance with *Royal Brush*, Cambria requests that the matter be sent back to the administrative level and not reversed and terminated.[60]

For these reasons, Cambria requests that the June 14 Determination be affirmed.

III. Administrative Review Analysis

Pursuant to 19 U.S.C. § 1517(f)(1) and 19 C.F.R. § 165.45, upon request for administrative review, 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 the following materials: (1) the administrative record upon which the June 14 Determination was made, as provided to RR by TRLED; and (2) the timely and properly filed request for review and response.

The purpose of this *de novo* review is to analyze the June 14 Determination and the accompanying administrative record to determine whether substantial evidence of evasion exists. The outcome of this administrative review rests on whether Vanguard's imports of what was purported to be artificial marble and/or artificial stone constitute covered merchandise under EAPA.[61] For the reasons outlined below, we find that there is substantial evidence that the merchandise described as artificial marble and/or artificial stone imported by Vanguard was QSP

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[52] *See id.* at 12–13.
[53] *Id.* at 13–15 (citing *Sunpreme, Inc. v. United States*, 946 F.3d 1300 (Fed. Cir. 2020)).
[54] *See* Cambria's Response (Public Document), at 13–15.
[55] *See id.* at 15–16.
[56] *See id.* at 15–16 (citing *All One God Faith, Inc. v. United States*, 589 F. Supp. 3d 1238 (Ct. Int'l Trade 2022)).
[57] *Id.*
[58] *Id.* at 17–18.
[59] *Id.* at 18 n.71.
[60] *See id.*
[61] Vanguard does not dispute that the country of origin of the entered merchandise is China. *See* Vanguard's Administrative Review Request (Public Document), at 13. Information in Vanguard's CF-28 Responses also shows that China is the country of origin for the imports at issue. *See* Vanguard's Entry 7687 CF-28 Response (Aug. 30, 2022) (Public Version); Vanguard's Entry 9748 CF-28 Response (Sept. 30, 2022) (Public Version).

from China which was subject to the AD/CVD Orders, and thus, covered merchandise under EAPA.

Moreover, Vanguard entered covered merchandise by means of material and false documents or electronically transmitted data or information, written statements, or material omissions by entering the merchandise on type "01" consumption entries instead of on type "03" AD/CVD entries and omitting the relevant AD/CVD case numbers from the entry summary documentation. These false statements and omissions are material because the applicable cash deposits and antidumping and countervailing duties were not paid, and Vanguard interfered with the government's ability to accurately track imports of QSP from China, to collect the applicable antidumping and countervailing duties due, and to determine and assess future antidumping and countervailing duties.

In sum, Vanguard entered the merchandise through evasion.

A. TRLED's application of adverse inferences was warranted based on Vanguard's and the foreign suppliers' failure to cooperate and comply to the best of their abilities with CBP's requests for information.

Vanguard and the Chinese suppliers refused to respond to CBP's post-initiation requests for information, and therefore, failed to cooperate and comply to the best of their abilities with CBP's informational requests. Accordingly, under the EAPA statute and regulations, TRLED's application of adverse inferences was warranted. Regardless, as is further detailed below, the administrative record on its own supports a finding of evasion.

In order to make a determination in this review, it is necessary to analyze the nature of the merchandise that Vanguard imported. Indeed, CBP has statutory authority "to collect and verify additional information" to make its evasion determinations.[62] CBP can gather information in various ways, including, but not limited to, "issuing a questionnaire with respect to such covered merchandise" to importers, foreign producers or exporters, and foreign governments, among others.[63]

Here, after initiating the investigation, TRLED issued RFI questionnaires to Vanguard and several Chinese suppliers of QSP,[64] asking for the following information: (1) identification of the producers of the merchandise at issue; (2) a list and description of the significant inputs used to manufacture the merchandise at issue; (3) raw material purchases; (4) production capabilities; (5) inventories; (6) monthly inventory movement schedules for the top three direct material inputs; (7) Vanguard's relationships with Chinese suppliers of the merchandise at issue; (8) an explanation of Vanguard's sales process; (9) product brochures and other marketing materials; and (10) an explanation of the range of products, the types of products sold, and the associated product codes.[65]

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[62] 19 U.S.C. § 1517(c)(2).
[63] *Id.* at § 1517(c)(2)(A).
[64] *See* June 14 Determination (Public Version), at 11; Importer RFI Questionnaire (Public Version); FedEx Shipment Receipts for the Request for Information to the Administrative Record (Public Version).
[65] *See* June 14 Determination (Public Version), at 11.

Not a single recipient of the RFIs provided the information that CBP requested. In fact, only two -- Vanguard and Chinese Supplier3 -- provided any response at all. But even these responses demonstrate a failure to cooperate and comply with CBP's post-initiation RFIs.

Vanguard responded to almost every question in the December 2 Importer RFI in the following manner:

> As discussed further herein, VTC did not import any covered merchandise into the U.S. since July 21, 2021. These questions are directed to the role of the company in the manufacture, sale, and distribution of the covered merchandise. Accordingly, this question does not apply, and no further answer is being provided.[66]

Similarly, in response to the January 18 RFI questionnaire, Chinese Supplier3 stated that it "did not export any covered merchandise to the U.S. since July 21, 2021. These questions are directed to the role of the company in the manufacture, sale and distribution of the covered merchandise. Accordingly, this question does not apply, and no further answer is being provided."[67]

On February 6, 2023, TRLED issued a Supplemental RFI to Vanguard, thereby providing the Importer with a second opportunity to comply with the request for information.[68] TLRED also warned Vanguard that a failure to cooperate and respond to the RFI may result in the application of adverse inferences.[69]

Once again, Vanguard refused to respond, claiming that the Supplemental RFI is "irrelevant and thus is not needed by CBP for any purpose" because the EAPA determination "turns on one point: whether the goods are in scope or are not in scope."[70] Vanguard also claimed that its imports were not covered merchandise because they did not contain silica as the primary component and that CBP should direct a covered merchandise referral to Commerce and suspend the EAPA investigation pending Commerce's determination.[71]

Pursuant to 19 C.F.R. § 165.6(a):

> [i]f a party to the investigation that filed an allegation, 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 pursuant to 165.27 and subpart D of this part.[72]

Further, 19 C.F.R. § 165.5(c) provides that CBP may use an adverse inference against an importer, the foreign manufacturer, or an exporter of covered merchandise irrespective of whether

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[66] Vanguard's RFI Response (Jan. 19, 2022) (Public Version), at 3–16.
[67] Chinese Supplier3's RFI Response (Mar. 6, 2023) (Public Version), at 3–19.
[68] Vanguard's Supplemental RFI Response (Feb. 13, 2023) (Public Document), at 2–3 (providing TRLED's Supplemental RFI questions).
[69] *See generally id.*
[70] *Id.* at 2; *see also id.* at 3–4.
[71] *See id.* at 1–4.
[72] *See also* 19 U.S.C. § 1517(c)(3)(A) (providing CBP authority to apply to certain uncooperative parties or persons).

another party involved in the same transaction provided the information requested by CBP.[73] In other words, CBP may apply an adverse inference to a party for its failure to cooperate regardless of whether the sought after information exists elsewhere on the record.[74]

Vanguard's and the Chinese suppliers' refusals to respond to CBP's December 2, December 6, January 18, and January 19 RFIs and the Supplemental RFI amount to a failure to cooperate and comply to the best of their abilities with CBP's requests for information. As the U.S. Court of International Trade has recognized, it is not for Vanguard or the Chinese suppliers "to decide which information and questions are necessary to the investigation, nor may [the parties] communicate their objection by refusing to respond to TRLED."[75] Under these circumstances, CBP may apply adverse inferences to an interested party, importer, foreign producer or exporter, or foreign government where such party "has failed to cooperate by not acting to the best of [its] ability to comply with a request for information."[76]

TRLED's application of adverse inferences to Vanguard was warranted. Moreover, the information that was not provided is information that was necessary for CBP to probe into the question of the composition of the products at issue to assist CBP in determining whether the products were made of predominately silica, and thus subject to the AD/CVD Orders. However, we note that TRLED found, and we agree, that even without resorting to adverse inferences, the record contains substantial evidence of evasion, as discussed below. The record shows that Vanguard's imports contained in-scope merchandise. The entries were not declared as such subject to the AD/CVD Orders, which led to non-payment of duties.

B. There is substantial record evidence that Vanguard entered covered merchandise through evasion.

Here, Vanguard's and the Chinese suppliers' non-cooperation resulted in a dearth of record information. As such, RR must gap-fill with otherwise available information. In this review, otherwise available information equates to the Allegation and Vanguard's earlier CF-28 Responses. Even based on this limited available information, the administrative record provides substantial evidence that the merchandise Vanguard imported was subject to the AD/CVD Orders, and thus, covered merchandise under EAPA. Therefore, while the application of adverse inferences is warranted here, the record on its own supports a finding of evasion even without such application.

The scope language provides that subject merchandise must include "predominately silica (*e.g.*, quartz, quartz powder, cristobalite) as well as a resin binder (*e.g.*, an unsaturated polyester)" to be covered by the AD/CVD Orders.[77] Additionally, "the scope of the orders only includes products where the silica content is greater than any other single material, by actual weight."[78] Subject merchandise is not limited strictly to "quartz," however:

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[73] *See also* 19 U.S.C. § 1517(c)(3)(B) (same).
[74] *See also CEK Grp. LLC v. United States*, 633 F. Supp. 3d 1369, 1379 (Ct. Int'l Trade 2023) (finding that "

[75] *Id.*
[76] 19 U.S.C. §§ 1517(c)(2)(A), (3)(A); *see also* 19 C.F.R. § 165.6(a); *All One God Faith, Inc.*, 589 F. Supp. 3d at 1251 (finding that ").
[77] 84 Fed. Reg. at 33,055–56.
[78] *Id.*

> Quartz surface products may also generally be referred to as engineered stone or quartz, artificial stone or quartz, agglomerated stone or quartz, synthetic stone or quartz, processed stone or quartz, manufactured stone or quartz, and Bretonstone®.[79]

The artificial stone that Vanguard imported on entry 7687 and entry 9748 fit within this language. For example, in its CF-28 Response for Entry 7687, Vanguard provided documentation for its imports of one brand of artificial stone.[80] Included therein was an informational packet that mentioned a patent application for a brand of artificial stone under the patent name, "An Environment-friendly Artificial Stone with Low Cost and High Strength and A Preparation Method Thereof." [81]

Cambria provided the actual patent application in its allegation.[82] The patent application states that such artificial stone is comprised of the following raw materials, in parts, by mass:[83]

fritted sand	60-80 parts
quartz powder	10-30 parts
terephthalic unsaturated polyester resin	9-14 parts
curing agent	0.6-1 parts
coupling agent	0.8-1 parts
pigment paste	0.5-1 parts
pigment powder	0.1-1 parts[84]

As these data indicate, the primary raw materials of the artificial stone are fritted sand and quartz powder. Quartz powder is essentially pure silica, meaning that 10-30 parts of the raw materials for this brand of artificial stone are 99 percent silica.[85] Thus, the chemical composition of fritted sand must be evaluated to determine whether the artificial stone in question is in-scope merchandise. This information also appears in the patent application.

Specifically, the patent application shows that, by mass percent, fritted sand consists of 60 percent to 80 percent silica. Put another way, the fritted sand consists predominately of silica:

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[79] *Id.* at 33,056 n.15.
[80] Vanguard's Entry 7687 CF-28 Response (Aug. 30, 2022) (Public Version).
[81] *Id.*
[82] *See* Cambria's Allegation (Public Version), at Ex. 17 (providing the U.S. Patent Application Publication for artificial stone, Pub. No.: US 2020/0299188 A1, filed on May 7, 2019) (Public Document)).
[83] Since gravitational force is not a relevant factor herein, we conclude that "mass" and "weight" can be used interchangeably for purposes of our analysis (and nothing in the record contradicts such a conclusion). *See, e.g.*, National Aeronautics and Space Administration, Pub. *Mass vs. Weight Introduction* (2011), *available at* https://www.nasa.gov/wp-content/uploads/2011/10/591747main_MVW_Intro.pdf (last accessed Oct. 20, 2023). Further, because the number of parts of fritted sand and quartz powder far exceed any other component of the artificial stone, individually or cumulatively, mathematically, these two components make up the majority of the artificial stone by weight.
[84] *See* Cambria's Allegation (Public Version), at Ex. 17.
[85] *See* Cambria's Allegation (Public Version), at 10; *see also* June 14 Determination (Public Version), at 4.

Al_2O_3	1-10%
SiO_2[86]	60-80%
Fe_2O_3	0.1-0.5%
CaO	5-10%
MgO	2-5%
K_2O	0.2-4%
Na_2O	5-15%
TiO_2	0.1-2%[87]

As shown above, the patent application makes clear that silicon dioxide (SiO_2), also known as silica, is the primary component of the top two components of the artificial stone: fritted sand and quartz powder. Taking the most conservation approach — a minimum quartz powder content of 10 parts with 99 percent silica and fritted sand that has a minimum silica content of 60 percent — silica comprises more than half of the content of the artificial stone discussed in the patent:

Scenario 1:

a. Total parts of artificial stone: 108 parts[88]
b. Silica parts of fritted sand: 48 silica parts (80 parts x 60% silica content)
c. Silica parts of quartz powder: 9.99 silica parts (10 parts x 99% silica content)
d. Number of silica parts of artificial stone: 57.99 silica parts (b + c)
e. Percentage of silica parts in the artificial stone: **53.7%** (d ÷ a)

Scenario 2:

a. Total parts of artificial stone: 88 parts[89]
b. Silica parts of fritted sand: 36 silica parts (60 parts x 60% silica content)
c. Silica parts of quartz powder: 9.99 silica parts (10 parts x 99% silica content)
d. Number of silica parts of artificial stone: 45.99 silica parts (b + c)
e. Percentage of silica parts in the artificial stone: **52.3%** (d ÷ a)

Therefore, the artificial stone described by Vanguard's CF-28 Response for Entry 7687, which specifically references this patent application, consists predominately of silica and includes a resin binder.

Vanguard's CF-28 Response for Entry 9748 provides additional evidence that Vanguard's imports of artificial stone constituted covered merchandise.[90] The CF-28 Response for Entry 9748 includes an international patent issued by WIPO for a second brand of artificial stone described as, "Artificial Agglomerate Stone Article comprising Synthetic Silicate Granulates."[91] The WIPO patent

[86] Silica is denoted by the chemical symbol SiO_2.
[87] *See* Cambria's Allegation (Public Version), at Ex. 17 (U.S. patent application) (Public Document)).
[88] The total number of parts (108) represents an aggregation of 80 parts fritted sand, 10 parts quartz powder, 14 parts terephthalic unsaturated polyester resin, 1 part curing agent, 1 part coupling agent, 1 part pigment paste, 1 part pigment powder. *See* Cambria's Allegation (Public Version), at Ex. 17.
[89] The total number of parts (88) represents an aggregation of 60 parts fritted sand, 10 parts quartz powder, 14 parts terephthalic unsaturated polyester resin, 1 part curing agent, 1 part coupling agent, 1 part pigment paste, 1 part pigment powder. *See* Cambria's Allegation (Public Version), at Ex. 17.
[90] *See* Vanguard's Entry 9748 CF-28 Response (Sept. 30, 2022) (Public Version).
[91] *See id.* (enclosing WIPO Patent No. WO 2021/019020 A1) (Public Document)).

states, "[t]hus, in a first aspect, the invention is concerned with synthetic silicate granules comprising: 52.50 – 59.80 wt.% of SiO_2, 33.50 – 41.10 wt.% of Al_2O_3, and 0.30 – 3.10 wt.% of Na_2O, based on the weight of the synthetic silicate granules."[92] The WIPO patent also provides a "preferred embodiment" for the silicate granules, whereby silica contributes an even higher percentage, by weight: 56.90 – 59.80 wt.% of SiO_2, 33.50 – 40.10 wt.% of Al_2O_3, and 0.90 – 3.10 wt.% of Na_2O.[93] In short, the WIPO patent shows that the brand of artificial stone that Vanguard imported into the United States on entry 9748 was composed predominately of silica, by weight.

Despite its repeated refusals to respond to TRLED's RFIs seeking more information on product composition, Vanguard later submitted a "Request for Action and Voluntary Submission of Factual Information."[94] In the VFI, Vanguard included test reports from two independent labs in the United States.[95] In its Administrative Review Request, Vanguard claims that these reports provide a "sophisticated analysis" of its imports and "conclude that the slab at issue is not chief weight silica," and that "CBP has refused to address this critical allegation in any manner. . . ."[96]

Contrary to Vanguard's assertions, TRLED did, in fact, consider these lab reports in its evasion determination, but was unable to confirm their veracity due to Vanguard's failure to cooperate with CBP's post-initiation requests for information.[97] As TRLED explained:

> Regarding the VFI submission, CBP finds that the test report in this submission is unreliable because the product sampled appears to be different from the product subject to this EAPA investigation. Because the Importer did not provide responses to CBP's RFI questionnaires, CBP has no way of corroborating that the tested merchandise included in the report is the same as the merchandise imported by the Importer during the period of investigation under HTS 6810.99.0080.[98]

TRLED also observed that the product number referred to in the test report was not included in the product brochure that Vanguard submitted during the course of the EAPA investigation.[99] TRLED further noted that the content of the tested product in Vanguard's VFI submission did not match the product content listed in the patents that were enclosed with the CF-28 Responses.[100] As a result of these inconsistencies, TRLED was unable to confirm that the test reports actually related to the product Vanguard entered into the United States.[101] Therefore, TRLED properly concluded that the reports are "unreliable."[102] Indeed, there is nothing in the record that would support a conclusion that these lab reports are even relevant.

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[92] *Id.* at 4.
[93] *See id.* at 7.
[94] *See* Vanguard's Request for Action and Voluntary Submission of Factual Information (Feb. 27, 2023) (Public Version) ("VFI").
[95] *See id.*
[96] Vanguard's Administrative Review Request (Public Document), at 12.
[97] *See* June 14 Determination (Public Version), at 19.
[98] *Id.*
[99] *See id.* at 15, 19.
[100] *See id.* at 15, 19.
[101] *See id.* at 15, 19.
[102] *Id.* at 19.

Additionally, the record evidence shows that the country of origin of the merchandise Vanguard imported into the United States is China. Vanguard does not dispute this fact.[103] Here, Vanguard's CF-28 Responses for Entry 7687 and Entry 9749 show the country of origin as "CN," *i.e.*, China.[104] Additionally, the 7501 Entry Summary Form in Vanguard's CF-28 Response for Entry 7687 describes the imports as an "Article of China," "Stone, Other, Worked, Not Flat."[105] Likewise, the port of loading is China in the "Arrival Notice/Chargeable Items" document in Vanguard's CF-28 Response for Entry 9748.[106] Trade data included in the allegation also show China as the "shipment origin."[107]

In sum, based on the information that Vanguard itself placed on the administrative record, there is substantial evidence that Vanguard imported QSP from China, into the United States. Vanguard's imports of QSP fit within the plain language of the scope of the AD/CVD Orders, and thus, are covered merchandise under EAPA.

Moreover, there is substantial evidence that Vanguard entered covered merchandise by means of material and false documents or electronically transmitted data or information, written statements, or material omissions that resulted in AD/CVD cash deposits not being applied with respect to the merchandise. Vanguard incorrectly entered the products at issue on type "01" consumption entries instead of on type "03" AD/CVD entries. In other words, the entries should have been declared as subject to AD/CVD deposits/duties, but they were not. These constitute false statements that are also material because the applicable cash deposits and antidumping and countervailing duties were not paid.

Further, Vanguard omitted Case Nos. A-570-084 and C-570-085 from the entry summary documentation. The omission of Case Nos. A-570-084 and C-570-085 from the entry summary documentation is material because it interfered with the government's ability to accurately track imports of QSP from China, to collect the applicable antidumping and countervailing duties due, and to determine and assess future antidumping and countervailing duties.

Thus, Vanguard entered covered merchandise by means of material and false documents or electronically transmitted data or information, written statements, or material omissions that resulted in AD/CVD cash deposits not being applied with respect to the merchandise.

Consequently, Vanguard entered the merchandise through evasion.

C. Vanguard's claims of procedural violations lack merit.

Vanguard makes three procedural arguments, all of which are without merit.

First, Vanguard avers that TRLED "failed to act according to the regulations" by not directing a covered merchandise referral to Commerce to determine whether Vanguard's imports

[103] *See* Vanguard's Administrative Review Request (Public Document), at 13.
[104] *See* Vanguard's Entry 7687 CF-28 Response (Public Version); 9748 CF-28 Response (Public Version).
[105] Vanguard's Entry 7687 CF-28 Response (Public Version).
[106] Vanguard's Entry 9748 CF-28 Response (Public Version).
[107] Cambria's Allegation (Public Version), at Ex. 18.

were covered by the scope of the AD/CVD Orders, based on their silica content.[108] Specifically, Vanguard argues that:

> Independent laboratory results obtained by VTC and submitted to CBP have both concluded that the slab at issue is not chief weight silica and critically, CBP engaged in an overly simplified review of the facts without considering all of the facts nor without a discussion or review of the facts by the masters of the scope – the Department of Commerce.[109]

Contrary to Vanguard's position, it was not necessary for CBP to refer the matter to Commerce for a covered merchandise determination. CBP was (and remains) able to review the language of the Orders, analyze the nature of the merchandise and its silica content, and reach an independent conclusion as to whether the merchandise at issue constituted covered merchandise, based on its silica content.[110] As such, no referral to Commerce was required. Vanguard also appears to claim that CBP should suspend its proceeding while Commerce considers the scope issue. This is incorrect — only if CBP requests a covered merchandise determination from Commerce are the deadlines in the EAPA proceeding stayed;[111] here, CBP did not refer the matter to Commerce.

Second, Vanguard erroneously argues that TRLED erred by rejecting the July 6, 2023 "Supplemental Authority" submission regarding the *Federal Register* notice of Vanguard's scope ruling application to Commerce because it "is not new factual information but instead is a legal determination akin to a Court or Administrative decision" of which CBP must take notice.[112] As an initial matter, a notice advising that Vanguard has applied for a scope ruling is not a legal determination and is not the same as a court or administrative decision — it merely is a notice that a party is seeking an administrative decision from a government agency. Vanguard is essentially arguing that a party's complaint is the equivalent of a judge's (or an agency's) decision — clearly, such an argument has no merit. Furthermore, Vanguard's July 6, 2023 submission exceeded the deadline for the voluntary submission of factual information provided by 19 C.F.R. § 165.23(c)(2), which requires parties to submit such information no later than 200 calendar days after CBP initiates the investigation.[113] In fact, Vanguard did not submit the "Supplemental Authority" filing until July 6, 2023, more than three weeks after TRLED issued the June 14 Determination.[114] Thus, TRLED properly rejected Vanguard's submission as untimely and did not include it as part of the administrative record. As a result, the submission is not being considered by RR.[115] And RR will

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[108] Vanguard's Administrative Review Request (Public Document), at 11.
[109] *Id.*
[110] *C.f. Sunpreme Inc.*, 946 F.3d at 1317 ("While Customs may not expand or alter the scope of such orders, its authority and responsibility to determine whether they apply does not dissipate simply because an order lacks perfect clarity.").
[111] *See* 19 C.F.R. § 165.16(d).
[112] Vanguard's Administrative Review Request (Public Document), at 7; *see also id.* at 10–11. Vanguard's July 6 submission is not part of the administrative record, which had closed prior to TRLED's issuance of the June 14 Determination. Accordingly, RR never received nor had access to the submission.
[113] The deadline for the voluntary submission of factual information was February 27, 2023, *i.e.*, 200 calendar days after CBP initiated this EAPA investigation on August 11, 2022.
[114] *See id.* at 10–11.
[115] *See* 19 C.F.R. § 165.45 (limiting RR's review and determination "to the specific facts and circumstances on the record") (emphasis added). *See also* 19 C.F.R. § 165.41(f) ("Each request for review must be based solely on the facts already upon the administrative record in the proceeding. . . .") (emphasis added).

continue to disregard such information to the extent that Vanguard has attempted to introduce it through its request for administrative review.

Vanguard's Administrative Review Request describes the scope ruling application discussed in the "Supplemental Authority" submission.[116] This description suggests that it contains new factual information:

> In this case, as discussed in the Voluntary Factual Information and in response to the Supplemental Request for Information, and as further detailed in the scope ruling submitted to the Department, there is prima facie evidence that the merchandise subject to this investigation is not within the scope of the Orders because a sophisticated analysis demonstrates that such merchandise is not chief weight silica.[117]

This statement indicates that the scope ruling application contains new factual information that is "further detailed" in Vanguard's submission to Commerce. Because Vanguard's submission of this new factual information was untimely, TRLED properly rejected it.

Further, Vanguard's reliance on Commerce's regulation, 19 C.F.R. § 351.102(b)(21), to support its argument that the scope ruling application did not constitute new factual information is misplaced.[118] Neither Commerce's regulations nor its definition of factual information in the context of its AD/CVD proceedings govern CBP or its EAPA investigations. Thus, those regulations do not apply here.

Third, Vanguard claims that "CBP relied upon certain lab tests, of which the unredacted versions were not disclosed to Vanguard during the course of the EAPA matter."[119] As a result, Vanguard argues that it was not afforded due process by the EAPA procedures, and that, pursuant *Royal Brush*, such action renders this EAPA action "moot" and requires it to be dismissed or sent back to the administrative level.[120] None of these assertions withstands scrutiny.

In *Royal Brush*, the U.S. Court of Appeals for the Federal Circuit held that due process required that the importer in that case, have access to the information the agency had relied upon in reaching the determination that Royal Brush had engaged in evasion under EAPA, including information that was determined to be business confidential and was therefore originally withheld.[121] By contrast, here, CBP did not rely on its lab tests or any other confidential information to reach a determination of evasion. In fact, CBP relied only on evidence that was public and accessible to Vanguard — much of which Vanguard itself placed on the administrative record — to find that the imports at issue were QSP from China and thus, in-scope merchandise. Therefore, this case is unlike the situation in *Royal Brush*, and CBP did not "fail to provide due process to Vanguard" because Vanguard had access to (and, in fact, controlled) the information underlying CBP's

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[116] *See id.* at 12.
[117] *Id.* at 12 (emphasis added).
[118] *See id.* at 10–11.
[119] *Id.* at 10.
[120] *Id.*
[121] *See Royal Brush Mfg., Inc.*, 75 F.4th at 1257–59; *see also Doty v. United States*, 53 F.3d 1244, 1251 (Fed. Cir. 1995) ("The agency's . . . withholding of the evidence on which [it] purported to rely . . . w[as] . . . egregiously removed from the fairness required of an agency in its administrative responsibilities. . . .").

determination finding substantial evidence of evasion.[122] Further, contrary to Vanguard's assertion, *Royal Brush* does not require RR to terminate an EAPA action, nor does it require that RR send the matter back to TRLED. There is nothing in the *Royal Brush* decision that reaches this conclusion, and Vanguard provides no authority supporting it. In sum, the facts underlying *Royal Brush* are distinguishable from those present here and Vanguard's characterizations regarding what the decision would require in this case are not accurate.

IV. Decision

Based upon our *de novo* review of the administrative record in this case, including the request for administrative review, the June 14 Determination of evasion under 19 U.S.C. § 1517(c) is **AFFIRMED**.

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

Sincerely,

JACINTO P JUAREZ JR
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[122] *C.f. Royal Brush Mfg., Inc.*, 75 F.4th at 1257–59.