



**U.S. Customs and  
Border Protection**

**PUBLIC VERSION**

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VIA EMAIL

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Re: EAPA Consolidated Case No. 7675 - Notice of Determination as to Evasion

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To Mr. Huang and Counsel for the above-referenced Entities:

Pursuant to an examination of the record in Enforce and Protect Act (“EAPA”) Consolidated Case 7675, U.S. Customs and Border Protection (“CBP”) has reached a determination in terms of whether Acmetex, Inc. (“Acmetex”) and/or New Fire Co., Ltd. (“New Fire”) entered merchandise covered by antidumping duty (“AD”) and countervailing duty (“CVD”) orders A-570-038 and C-570-039, respectively, on amorphous silica fabric (“silica fabric”) from the People’s Republic of China (“China”).

CBP determines there is substantial evidence that importer Acmetex entered merchandise covered by AD/CVD orders (the “Orders”) by importing silica fabric from China into the customs territory of the United States by means of evasion. Substantial evidence demonstrates that Acmetex misrepresented the country of origin in at least one instance and misclassified covered silica fabric as “glass cloth fiber” and/or transshipped covered silica fabric from China through Canada to the United States without declaring it as covered merchandise or paying relevant AD and CVD duties.<sup>1</sup>

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<sup>1</sup> See AMI’s EAPA allegation at 1 pertaining to Acmetex, dated October 18, 2021 (“Acmetex allegation”).

CBP determines that there is not substantial evidence that importer New Fire entered covered merchandise into the customs territory of the United States through evasion. Specifically, CBP finds that there is not substantial evidence on the record to support a conclusion that New Fire imported Chinese-origin silica fabric into the United States by purportedly misclassifying silica fabric as “glass cloth fiber”<sup>2</sup> to circumvent the Orders during the period covered by the EAPA investigation.

## **I. Background**

On October 18, 2021, Auburn Manufacturing, Inc. (“AMI”), a domestic producer of silica fabric,<sup>3</sup> filed EAPA allegations through its counsel. AMI claimed Acmetex evaded the Orders<sup>4</sup> on silica fabric produced in China by misclassifying covered silica fabric as “glass cloth fiber” and/or transshipping covered silica fabric from China through Canada to the United States without declaring it as covered merchandise or paying relevant AD and CVD duties.<sup>5</sup> AMI also alleged that New Fire evaded the aforementioned orders by falsely declaring covered silica fabric as “glass cloth fiber.”<sup>6</sup> AMI asserted that because this glass fiber cloth purportedly did not contain a minimum of 90 percent silica by nominal weight, it would not be covered by the scope.<sup>7</sup>

Among other technical criteria, according to the AD and CVD orders cited above, the covered merchandise includes the following:

The merchandise covered by these AD and CVD orders include woven (whether from yarns or rovings) industrial grade amorphous silica fabric, which contains a minimum of 90 percent silica (SiO<sub>2</sub>) by nominal weight, and a nominal width in excess of 8 inches. The orders cover industrial grade amorphous silica fabric regardless of other materials contained in the fabric, regardless of whether in roll form or cut-to-length, regardless of weight, width (except as noted above), or length. The orders cover industrial grade amorphous silica fabric regardless of whether the product is approved by a standards testing body (such as being Factory Mutual (FM) Approved), or regardless of whether it meets any governmental specification.<sup>8</sup>

### *Allegations and Initiation*

AMI asserted that Acmetex, which is located in Canada, has been evading the AD and CVD orders by claiming that it imports non-subject fiberglass fabric (a/k/a glass fiber cloth) rather than silica fabric, which is covered merchandise. AMI executed an [ ] search and

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<sup>2</sup> See AMI’s EAPA allegation pertaining to New Fire, dated October 18, 2021 (“New Fire allegation”).

<sup>3</sup> As a U.S. producer, AMI meets the definition of an interested party that may file an EAPA allegation, pursuant to 19 CFR 165.1(2).

<sup>4</sup> See Acmetex Allegation; See also New Fire allegation.

<sup>5</sup> See Acmetex allegation at 1.

<sup>6</sup> See New Fire allegation at 1.

<sup>7</sup> See Acmetex allegation and New Fire allegation at 4.

<sup>8</sup> See *Certain Amorphous Silica Fabric From the People's Republic of China: Antidumping Duty Order*, 82 Fed. Reg. 14,314 (Mar. 17, 2017); *Certain Amorphous Silica Fabric From the People's Republic of China: Countervailing Duty Order*, 82 Fed. Reg. 14,316 (Mar. 17, 2017), respectively.

discovered that Acmetex appeared to be importing glass fiber cloth from New Fire for many years.<sup>9</sup> Based on the same trade data source, AMI also claimed that New Fire is the “exporter and non-resident importer.”<sup>10</sup> AMI asserted that New Fire, which is located in China, had been evading the AD and CVD orders by claiming to import fiberglass fabric rather than covered silica fabric. [ [database](#) ] trade data further suggested that New Fire had been importing and exporting glass fiber cloth for many years.<sup>11</sup>

AMI [ [contacted](#) ] a purchaser of silica fabric from New Fire. As reflected in the declaration of Kathie Leonard, President and CEO of AMI, AMI's [ [contact took action](#) ].<sup>12</sup> In summary, New Fire offered to sell high silica fabric products 0300S02 and 0300S04 to [ [AMI's contact](#) ].<sup>13</sup> As part of the discussions, the representative from New Fire indicated that New Fire is selling [ [amount of product in place because of government action](#) ].<sup>14</sup> Although the New Fire representative recommended that [ [AMI's contact](#) ] purchase [ [product](#) ],<sup>15</sup> [ [AMI's contact](#) ] persisted that [ [product description](#) ] was needed.<sup>16</sup> The representative from New Fire recommended bringing in the product from Canada. Subsequently, the New Fire representative indicated “we have a corporation in [ [Place](#) ],” leading AMI to believe that New Fire was advocating that [ [AMI's contact](#) ] purchase [ [product](#) ] from [ [company](#) ] in [ [Place](#) ], which in turn would evade the Orders [ [description of evasion scheme](#) ].<sup>17</sup>

In subsequent conversations, the New Fire representative offered [ [AMI's contact](#) ] the [ [product dimensions and pricing](#) ].<sup>18</sup> The New Fire representative then added: [ [description of business process](#) ],<sup>19</sup> leading AMI to believe that New Fire would [ [description of evasion scheme](#) ], in order to evade the AD and CVD orders. In a later communication, the New Fire representative stated “[ [description of business activity](#) ].” The New Fire representative [ [product information](#) ]. She said she would [ [description of business activity](#) ].<sup>20</sup> Based on New Fire’s reference to having a corporation in Canada, AMI alleged Acmetex is evading the AD and CVD orders by misclassifying covered silica fabric or transshipping covered silica fabric through Canada to the United States.

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<sup>9</sup> See Acmetex allegation at 4 and Exhibit 1, [ [database](#) ] data supplied by AMI.

<sup>10</sup> See New Fire allegation at 2 and Exhibit 1, [ [database](#) ] data supplied by AMI.

<sup>11</sup> *Id.*

<sup>12</sup> See New Fire Allegation at 4 and Exhibit 2; see also Acmetex allegation at 5 and Exhibit 2.

<sup>13</sup> See Acmetex allegation at 5, Exhibits 3-4; see also New Fire allegation at 5 and Exhibits 3 -4, Product brochures New Fire supplied to [ [AMI's contact](#) ].

<sup>14</sup> See Acmetex allegation at 5, Exhibit 5 (Attachment 9); see also New Fire allegation at 4 and Exhibits 5. (Attachment 1).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 5, [ [website](#) ]

<sup>19</sup> See Acmetex allegation at 5, Exhibit 5 (Attachment 10); see also New Fire allegation at 4 and Exhibits 5. (Attachment 2).

<sup>20</sup> See New Fire allegation at 5.

AMI asserted that the New Fire representative [ [assertion regarding business activity](#) ] allegedly lower silica content fabric from a U.S. company, Techniweld USA LLC (“Techniweld”).<sup>21</sup> Because New Fire [ [description of business activity](#) ] of Techniweld material, AMI believed Techniweld sold covered merchandise in the United States [ [business activity](#) ]. As such, AMI attempted to determine whether Techniweld actually offered a lower silica product (up to 90% silica content) for sale in the United States. Based on research, AMI concluded Techniweld was selling what it claimed to be a “fiberglass” fabric that was in fact high silica fabric.

[ [AMI's contact](#) ] provided other research findings as well,<sup>22</sup> namely, suggested affiliation between Acmetex and New Fire based on website and address linkage; the name of a New Fire corporate shareholder with affiliation to other Chinese entities, some of whom reportedly share an address with New Fire; suggestion that a Chinese entity named [ [company](#) ] provides [ [product](#) ] for sale as well;<sup>23</sup> and comparison of photos that showed a [ [description of a place](#) ] that [ [AMI's Contact](#) ] determined to be “identical” to the [ [picture](#) ] shown on the Chinese [ [company](#) ] website and the [ [picture](#) ] shown on the website of [ [company name](#) ] - a company linked to director of [ [company](#) ].<sup>24</sup>

In addition to higher silica content fabric, AMI noted that New Fire’s website indicated that it sells a lower silica content fabric.<sup>25</sup> According to AMI, the product codes and physical characteristics were similar to New Fire’s high silica products. According to Ms. Leonard, this close comparison is not possible due to the inverse relationship of silica content and weight, a mid-silica product must weigh more than a high-silica product.<sup>26</sup> Consequently, AMI asserted that no difference exists between the two products – high silica fabric and lower silica fabric that New Fire imports. AMI speculated that New Fire changed the specification sheet to indicate that the silica content and the service temperature are different.

Based on the recommendation from New Fire that [ [AMI's contact](#) ] purchase [ [product](#) ] from its corporation in Canada, coupled with Acmetex’s [ [company relationship](#) ], AMI believed that Acmetex was purchasing covered silica fabric from New Fire and exporting it to the United States without declaring it as covered merchandise or paying relevant AD and CVD duties. AMI also alleged that New Fire may be importing covered silica fabric directly into the United States and not paying the relevant AD and CVD duties.

On December 22, 2021, CBP’s Trade Remedy Law Enforcement Directorate (“TRLED”) initiated EAPA investigation 7675 for Acmetex<sup>27</sup> and con for New Fire<sup>28</sup> because AMI’s allegations and supporting evidence reasonably suggested that Acmetex had evaded AD order A-570-038 and CVD order C-570-039 by importing Chinese-origin silica fabric into the United

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<sup>21</sup> *Id.* and Exhibit 5 (Attachment 1).

<sup>22</sup> *See* Acmetex allegation at 5-6 and Exhibit 5 (Attachments 1-10).

<sup>23</sup> *See* New Fire allegation at 5, website: [ [link](#) ].

<sup>24</sup> *Id.* at 6 and Exhibit 5 (Attachment 8)

<sup>25</sup> *See* New Fire allegation at 5 and Exhibit 6.

<sup>26</sup> *Id.* and Exhibit 2.

<sup>27</sup> *See* Initiation Memo (Acmetex), dated December 22, 2021.

<sup>28</sup> *See* Initiation Memo (New Fire), dated December 22, 2021.

States that was misclassified and/or transshipped through Canada and by failing to declare the merchandise was subject to the AD/CVD orders.

TRLED also found the allegations reasonably suggested that New Fire had evaded the same AD/CVD orders by importing Chinese-origin silica fabric into the United States that was misclassified. Specifically, AMI submitted documentation reasonably available to it, including company-specific shipment data sourced from [ [database](#) ] a sworn declaration from the President and CEO of AMI regarding the technical specifications of silica fabric, and a sworn declaration from a research and investigations firm containing information regarding New Fire sales and the apparent affiliations between Acmetex and New Fire.

#### *CF-28 Responses*

After initiation of these EAPA investigations, CBP issued Customs Form 28 (CF-28) to Acmetex for two entries made during the period of investigation, specifically, entry numbers [ [prefix](#) ]7126 and [ [prefix](#) ]0469. Subsequently, on February 8, 2022, CBP received notification from Acmetex advising that it had incorrectly declared entry number [ [prefix](#) ]7126 with Canada as country of origin (“COO”) under the Harmonized Tariff Schedule of the United States (“HTSUS”) heading [ [classification # and description](#) ], which covers certain fiberglass fabrics with country of origin China, which are generally subject to the AD/CVD Orders. Acmetex’s broker confirmed that the COO was incorrectly declared, and a Post-Summary Correction (“PSC”) would be requested to revise the entry. No other entries were entered under HTSUS subheading [ [classification #](#) ] and as COO Canada during the period of investigation.

Acmetex provided a timely formal response to the CF-28s on March 2, 2022, and March 4, 2022.<sup>29</sup> Among its responses and in addition to providing technical specifications for the composition of each entry, Acmetex specified that it purchased finished fiber glass cloth, which could be subject to the Orders depending on the silica content, from New Fire for entry number [ [prefix](#) ]7126 and the same product from [ [company name](#) ] for entry number [ [prefix](#) ]0469.<sup>30</sup> For both entries, Acmetex acted as Importer of Record (“IOR”) in the sale of these products to other entities. Notably, Acmetex failed to produce information regarding its manufacturers’ processes, production, and financial transactions. Acmetex indicated that “it just purchase the finished fabrics from the manufacture as is, manufacture don’t give their production and financial information to us.”<sup>31</sup>

CBP also issued CF-28s to New Fire for entries of fiberglass cloth made during the period of investigation. New Fire responded timely to the CF-28s on February 8, 2022, and February 9, 2022.<sup>32</sup> New Fire’s responses consisted of technical data contained in a single spreadsheet for each entry, including product name, the number of yarns per centimeter, dimensions, and value.

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<sup>29</sup> See Acmetex’s CF-28 Responses for entry numbers [ [prefix](#) ]0469 (Mar. 2, 2022) and [ [prefix](#) ]7126 (Mar. 4, 2022).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> See New Fire’s CF-28 Responses for entry numbers [ [prefix](#) ]7376 (Feb. 8, 2022) and [ [prefix](#) ]1292 (Feb. 9, 2022).

### *Cargo Examination*

On April 13, 2022, CBP conducted a cargo examination of New Fire's entry number [ ]2480 for the specific purpose of securing samples of merchandise imported by New Fire in order to conduct laboratory analysis of product composition, including silica content. Results of the analysis were not made available until after the issuance of the Notice of Investigation. Details of the analysis are discussed below.

### *Notices of Investigation*

On March 28, 2022, after evaluating all the information placed on the record up to that point, TRLED determined that while AMI's allegations and limited supporting evidence reasonably suggested that Acmetex and New Fire may have entered covered merchandise for consumption into the customs territory of the United States through evasion, there was insufficient record evidence to support a finding of reasonable suspicion of evasion. As such and in accordance with 19 CFR 165.15(d)(1), TRLED issued a Notice of Investigation ("NOI") without the imposition of interim measures to all parties to the investigation.<sup>33</sup>

### *Consolidation of Investigations*

Pursuant to 19 C.F.R. § 165.13(b) and as explained in the NOI, CBP also notified parties to the investigation of its decision to consolidate the investigations because factors warranting consolidation were present in the investigations of Acmetex and New Fire. In particular, both importers had entered merchandise covered by the same AD/CVD orders, the entries by these importers fell within a common period of investigation, and imports during the period of investigation originated from the same Chinese exporter. Thereafter, EAPA Investigation Case Numbers 7675 and 7676 were collectively referred to as EAPA Investigation Consolidated Case Number 7675.

### *Requests for Information*

On April 14, 2022, CBP issued a Request for Information ("RFI") to both Acmetex and New Fire.<sup>34</sup> The importers were instructed to respond to their respective RFIs by April 28, 2022. Acmetex was granted two RFI extension requests and had requested a third extension request prior to its decision to no longer participate in the investigation.<sup>35</sup> Shanghai-based New Fire was granted a total of four RFI extension requests,<sup>36</sup> largely due to China's decision to impose a significant citywide lockdown of Shanghai ("Shanghai Lockdown") as a part of a "zero-tolerance approach to COVID-19."<sup>37</sup>

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<sup>33</sup> See Notice of Investigation, dated March 28, 2022.

<sup>34</sup> See CBP Correspondence, "New Fire RFI" and "Acmetex RFI," dated April 14, 2022.

<sup>35</sup> See Acmetex's RFI Extension Request, dated April 22, 2022; 2nd RFI Extension Request, dated May 9, 2022; and 3rd RFI Extension Request, dated May 23, 2022; See also Acmetex's "Notice of Nonparticipation," dated May 25, 2022.

<sup>36</sup> See New Fire's "RFI Extension Request," dated April 16, 2022; New Fire's 2nd RFI Extension Request, dated May 9, 2022; New Fire's 3rd RFI Extension Request, dated May 23, 2022; and New Fire's 4th RFI Extension Request, dated June 6, 2022.

<sup>37</sup> See Department of State Bulletin, "China Travel Advisory," dated August 19, 2022; see also "New Fire – Supplement to 4th Extension," dated June 10, 2022.

### New Fire

Despite the need for multiple extension requests due to the Shanghai Lockdown, New Fire's RFI responses were timely and responsive.<sup>38</sup> In its responses, New Fire reported that it is a trading company and does not manufacture or maintain inventory. Reportedly, New Fire is owned by [ names and percentages ].<sup>39</sup> New Fire stated that Shanghai-based Ganzhou Yiyao Composite Material Co., Ltd. (Yiyao) is the manufacturer of the merchandise and Shanghai Qiyichi Insulation Material Co., Ltd. (Qiyichi) is the seller of merchandise produced by Yiyao. These companies are owned by [ names and percentages ], which are the same owners as New Fire.<sup>40</sup>

New Fire reported that its accounting system included only one accounting book with detailed sub-accounts.<sup>41</sup> New Fire stated that although Yiyao and Qiyichi are two separate entities, Yiyao does not have independent financial statements.<sup>42</sup> New Fire also reported that Yiyao has not prepared independent tax returns and all of Yiyao's costs and expenses are included in Qiyichi's financial statements.<sup>43</sup> According to New Fire, Yiyao was started only as a production unit for Qiyichi in the first quarter of 2021.

According to New Fire's product list, it sells only [ # ] products that contain over 90 percent silica content by weight and subject to the AD/CVD orders: [ product # ] and [ product # ]. New Fire indicated it does not have written policies or procedures related to AD/CVD. However, New Fire reported that since 2016, its employees have been aware of the AD/CVD orders on "amorphous silica fabric with over 90 percent silica content by weight" and these products are "not allowed to be exported to the United States, whether directly or through a third country."<sup>44</sup> As a result, New Fire indicated it does not sell subject merchandise to the United States.

New Fire's production process begins with a customer order to New Fire, which New Fire sends as a production order to Qiyichi. Qiyichi sends the production order to Yiyao. Yiyao collects yarn from Qiyichi and manufactures, packages the goods and delivers to Qiyichi. New Fire pays for the goods and collects the payment from the customer. Qiyichi is responsible for maintaining the inventory list.<sup>45</sup> According to the information New Fire provided, high silica products subject to the Order [ product # ] and [ product # ] were sold to the [ region ] market only during the period of investigation ("POI"). According to New Fire, neither Yiyao nor Qiyichi produced these [ # ] high silica products. New Fire stated that only [ # ] of high silica were made during the POI; these sales were valued at [ price ] and sold to non-U.S. clients.

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<sup>38</sup> See New Fire's Partial RFI Response, dated May 12, 2022; New Fire's "Partial RFI Response (Exhibits 6-4 A and B)," dated May 26, 2022; New Fire's Partial RFI Response (Resubmission), dated June 10, 2022; New Fire's Initial RFI Supplemental Exhibits and associated submissions, dated June 13, 2022; New Fire's Response to First Supplemental RFI, dated July 29, 2022; New Fire's 2nd Supplemental RFI Response, dated August 26, 2022.

<sup>39</sup> See New Fire's Partial RFI Response (Resubmission) at 8, 10.

<sup>40</sup> *Id.* at 8, 10.

<sup>41</sup> *Id.* at 13-17.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 4.

<sup>45</sup> *Id.* at 11 and Exhibits 2-7-1, 2-7-2.



the two invoices and are reflected in the following chart. The difference, while minor, indicates that Acmetex tampered with the invoices that New Fire provided:

Submitted to CBP by Acmetex		Provided by New Fire	
Product Description	Unit Price	Product Description	Unit Price

New Fire provided a list of merchandise sold to Acmetex under entry numbers [ prefix ] 7126 and [ prefix ] 7301 which included a column showing all products contained exactly [ # ] percent silica. New Fire also provided a certificate of conformance which shows that the products tested contained [ # ] percent silica. However, CBP noted the certificate of conformance: 1) did not identify the merchandise tested or identify a matching purchase order/invoice number; 2) did not match the certificates of conformance provided to support the individual entries; and 3) the date of manufacture identified [ date ] was inconsistent with the entry dates [ dates ].

New Fire also provided a list of products sold to Acmetex with a note indicating that products it sold to Acmetex contain less than [ # ] percent SiO2 content.<sup>53</sup> New Fire supplied the following information regarding its exports to Acmetex:

- No stock or inventory list is maintained by New Fire because all purchases are made after they obtain the orders from customers.<sup>54</sup>
- New Fire provided lab tests conducted by [ company name ] on July 18, 2022.<sup>55</sup> Tests were conducted on samples of [ product name ] obtained from customers [ company name ], respectively. Based on the results, the silica content of [ product description ] percent and [ product description ] percent, respectively.

## II. Determination as to Evasion, Analysis, and Actions Taken

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.”<sup>56</sup> “Covered merchandise” is defined as “merchandise that is subject to a CVD order... and/or an AD order.”<sup>57</sup> “Evasion” is defined as “the entry of covered merchandise into the customs territory

<sup>53</sup> *Id.* at 15.

<sup>54</sup> *Id.* at 10.

<sup>55</sup> *Id.* at Exhibit 6-1.

<sup>56</sup> See also 19 C.F.R. § 165.27(a) (implementing 19 U.S.C. § 1517).

<sup>57</sup> See 19 C.F.R. § 165.1.

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>58</sup> As discussed below, based on the application of adverse inference, the record of this investigation contains substantial evidence supporting a determination that Acmetex entered covered merchandise into the United States through evasion, resulting in the avoidance of applicable AD/CVD cash deposits or other security. However, there is not substantial evidence of evasion to support a similar conclusion for New Fire.

### *New Fire*

To determine whether New Fire was misclassifying merchandise, CBP acquired the following [ # ] samples of merchandise imported by New Fire:

Sample	Measurement(s)

These samples were received by CBP’s Laboratories and Scientific Services (“LSS”) Directorate for analysis on April 25, 2022. However, results of the analysis were not available until May 19, 2022. Silica content testing on the samples from entry number [ prefix ]2480 revealed the shipment had [ # ] percent silica content and therefore not subject to A-570-038 and C-570-039. In the testing, LSS used methods ASTM D578 and ASTM E1621 to test the silica content.

### *Written Arguments*

On September 16, 2022, TRLED received New Fire’s written arguments. New Fire argued that AMI mischaracterized communications between [ AMI’s contact ] and New Fire’s representative, which were described from AMI’s perspective. According to New Fire, AMI’s contact inquired about high silica products with product codes [ # ] and [ # ], which are the only two high silica models that New Fire sells. However, New Fire asserted, despite the AMI contact’s persistence on purchasing high silica products, that its representative repeatedly advised that “New Fire could not sell that product to the U.S. customer due to the Orders.”<sup>59</sup> According to New Fire, AMI’s contact also requested samples and provided an address within the United States, but New Fire’s representative informed AMI’s contact that high silica samples could not be sent to the United States. New Fire stated that its representative then told [ AMI’s contact ] that high silica product samples could be sent to [location], and [ business activity and location ].<sup>60</sup>

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<sup>58</sup> *Id.*

<sup>59</sup> See New Fire’s Submission of Written Comments, dated September 15, 2022.

<sup>60</sup> *Id.* at 5.

New Fire argued that in later correspondence, [ AMI's contact ] mentioned that his client purchased products from [ company ] “to which the New Fire representative responded that New Fire sells [ product type ] products to [ company ].”<sup>61</sup> According to New Fire, additional attempts by the AMI contact to persuade New Fire’s representative were unsuccessful; “no sale or sample of high silica fabrics” were sent to the United States. New Fire asserted that it “has an internal policy of not selling any high silica products containing more than 90% content to the United States – even to its long-standing customers.”<sup>62</sup> New Fire provided several other arguments in response to AMI allegations, including an explanation regarding New Fire’s alleged sales of high silica products to the United States to Techniweld purportedly misclassified as lower silica products. New Fire asserted that it provided a complete list of sales to Techniweld from [ date range ], which showed sales of only lower silica products.

In its response to New Fire’s written argument, AMI argues that CBP should apply adverse inferences to New Fire due to discrepancies, omissions, and/or inaccuracies in their submissions.<sup>63</sup>

#### CBP’s Position:

After careful consideration of the record evidence in totality, CBP determines that there is not substantial evidence that importer New Fire entered covered merchandise into the customs territory of the United States through evasion. The LSS reports above concludes that samples tested by CBP were out of scope of the Orders. As stated in its RFI responses above, New Fire only produced and sold to non-U.S. markets during the POI. Specifically, CBP finds that substantial evidence on the record does not support a conclusion that New Fire imported Chinese-origin silica fabric into the United States by purportedly misclassifying silica fabric as “glass cloth fiber”<sup>64</sup> to evade the Orders during the period covered by the EAPA investigation.

CBP also agrees with New Fire that it “fully cooperated to the best of its ability to respond all questions issued by CBP in a complete and accurate manner.” Moreover, based on the evidence of record, CBP finds that New Fire cooperated in responding to CBP’s RFIs and supplemental RFIs; therefore, the application of adverse inferences is not appropriate in this EAPA investigation for New Fire.

#### Negative Determination of Evasion for **New Fire**

In light of CBP’s determination that New Fire did not enter Chinese-origin silica fabric subject to the Orders into the customs territory of the United States through evasion during the period of this investigation, pursuant to 19 CFR 165.27(c), CBP will reverse any actions taken with respect to entries covered by the EAPA investigation. However, this determination does not preclude CBP or other agencies from pursuing other enforcement actions or penalties as necessary.

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<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 6.

<sup>63</sup> See AMI’s Response to New Fire Written Argument, dated October 3, 2022.

<sup>64</sup> See New Fire allegation.

*Acmetex*

Despite providing CF-28 responses, submitting three extension requests to respond to CBP's April 14, 2022 RFI, and securing representation, thereby suggesting it would cooperate with the investigation, on May 25, 2022, Acmetex filed a "Notice of Withdrawal," informing TRLED it would no longer participate.<sup>65</sup> Subsequently, Acmetex's newly acquired counsel withdrew representation on June 9, 2022.<sup>66</sup> Nevertheless, TRLED continued its attempts to correspond with Acmetex and provide appropriate servicing as necessary. However, since its notice that it would no longer participate in the investigation, TRLED has received no further communication from Acmetex. As such CBP finds that Acmetex failed to cooperate by not acting to the best of the party or person's ability to comply with CBP's requests for information. As a result, CBP was not able to obtain information regarding the origin or the composition of Acmetex's imports. Such facts were critical to the investigation of whether Acmetex engaged in evasion. As such, CBP determines that the application of adverse inferences is appropriate and is drawing inferences that are adverse to the interests of Acmetex from facts otherwise available on the record.

While there was sufficient evidence to reasonably suggest Acmetex was engaging in evasion, leading TRLED to issue the March 2022 NOI, TRLED stopped short of enacting interim measures to afford all parties an opportunity to respond to RFIs. For instance, New Fire's active participation proved beneficial to CBPs understanding of its operations. However, Acmetex forfeited an equal opportunity to explain its business processes, product composition, financial records, shipment details, and how it conducts sales, particularly sales from Canada to the United States. Moreover, Acmetex did not submit additional factual information and written arguments to counter AMI's allegations. As a result of this, there is a gap on the record as to the production information and contents of the "glass fiber cloth" imported by Acmetex.

In relying upon an adverse inference for the failure to cooperate and comply to the best of one's ability with a request for information, "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>67</sup> Moreover, an adverse inference may be used with respect to U.S. importers, foreign producers, and manufacturers "without regard to whether another person involved in the same transaction or transactions under examination has provided the information sought..."<sup>68</sup> CBP is drawing adverse inferences from the following facts and concludes that Acmetex engaged in evasion.

Prior to terminating its participation in the investigation Acmetex provided responses to CBP's CF-28 requests pertaining to entry numbers [ prefix ]7126 and [ prefix ]0469.<sup>69</sup> Acmetex specified that it purchased finished fiber glass cloth from New Fire for entry number [ prefix ]7126 and the same product from [ company name ] for entry number [ prefix ]0469. This finished fiber glass cloth could be subject to the Orders depending on the silica content. However, there is insufficient evidence to suggest that any

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<sup>65</sup> See Acmetex's "Notice of Nonparticipation," dated May 22, 2022.

<sup>66</sup> See Brittany Powell, Esq.'s Withdrawal of Appearance (Corrected).

<sup>67</sup> See 19 C.F.R. § 165.6(a).

<sup>68</sup> See 19 USC 1517(c)(3)(B).

<sup>69</sup> *Id.*

merchandise purchased from New Fire is subject to the Orders. Specifically, the evidence provided by New Fire suggests it sells only [ # ] products that contain over 90 percent silica content by weight and subject to the Orders: [ product codes ]. As noted above, only a small quantity of these products were sold and only in the [ region ] market. New Fire also indicated it does not have written policies or procedures related to AD/CVD. However, New Fire reported that since 2016, its employees have been aware of the AD/CVD orders on “amorphous silica fabric with over 90 percent silica content by weight” and these products are “not allowed to be exported to the United States, whether directly or through a third country.”<sup>70</sup> As a result, New Fire indicated it does not sell subject merchandise to the United States.

However, Acmetex did not purchase products solely from New Fire. As noted above, according to its CF-28 response, Acmetex purchased products classified under HTSUS [ # ] and [ # ] from [ company name ] as well. In fact, data from CBP systems shows that Acmetex has imported a total of [ # ] potentially subject entries classified under these HTSUS codes with COO as China from [ # ] entities in addition to New Fire during the period of investigation.<sup>71</sup> Given Acmetex’s failure to participate in the investigation, Acmetex failed to produce any evidence of whether these other entries were subject to the Orders. And as such, CBP is relying on the information provided in the allegation that Acmetex misclassified covered silica fabric as “glass cloth fiber” and/or transshipped covered silica fabric from China through Canada to the United States without declaring it as covered merchandise.

Moreover, there is insufficient evidence to identify the specific manufacturing source of the products Acmetex purchased given the number of Chinese-based manufacturers it utilized during the period of investigation. For the two entries identified above from New Fire and [ company name ], Acmetex acted as Importer of Record (“IOR”) in the sale of these products to other entities. Notably, Acmetex failed to produce information regarding its manufacturers’ processes, production, and financial transactions. Acmetex indicated that “it just purchase the finished fabrics from the manufacture as is, manufacture don’t give their production and financial information to us.”<sup>72</sup>

TRLED further found Acmetex misrepresented the country of origin in at least one instance. Prior to responding to CF-28s for two entries made during the period of investigation, CBP received an email notification from a broker on behalf of Acmetex advising of an incorrectly declared COO for entry number [ prefix ]7126.<sup>73</sup> The broker reported that Acmetex had listed Canada as COO, when in fact, the true COO was China. As a result, Acmetex failed to declare that this merchandise associated with this entry was subject to the Orders nor were the requisite cash deposits collected on the covered merchandise.

In addition, there is evidence provided by New Fire that Acmetex altered one or more sales invoices. In its September 16, 2022, written argument pertaining to Acmetex, alleged AMI provided the following conclusory argument:

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<sup>70</sup> *Id.* at 4.

<sup>71</sup> See “EAPA Post Receipt Report,” dated December 9, 2021.

<sup>72</sup> *Id.*

<sup>73</sup> See Acmetex’s COO Email, dated February 8, 2022.

Acmetex's failure to respond necessitates that TRLED draw an adverse inference against Acmetex using the information provided in the underlying allegation and other information uncovered during CBP's investigation. As such, TRLED should find that Acmetex misclassified its merchandise as less than 90% silica content.<sup>74</sup>

As discussed above, TRLED is applying adverse inferences to Acmetex:

Drawing inferences adverse to Acmetex from the record information described above, TRLED determines that substantial evidence exists that Acmetex misclassified covered silica fabric as "glass cloth fiber" and/or transshipped covered silica fabric from China through Canada to the United States without declaring it as covered merchandise or paying relevant AD and CVD duties.

Pursuant to the Affirmative Determination of Evasion for **Acmetex**

In light of CBP's determination that Acmetex entered covered 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 shall:

- (1) suspend or continue to suspend the liquidation of each unliquidated entry of such covered merchandise that entered on or after December 22, 2021, the date of the initiation of the investigation. CBP will suspend the entries subject to this investigation until instructed to liquidate these entries;
- (2) pursuant to the Commissioner's authority under 19 U.S.C. § 1504(b), extend or continue to extend the period for liquidating each unliquidated entry of such covered merchandise that entered before December 22, 2021, the date of the initiation of the investigation; CBP will rate adjust and change those entries to type 03 and continue suspension until instructed to liquidate these entries; and
- (3) pursuant to the Commissioner's authority under 19 U.S.C. § 1623, take such additional measures as the Commissioner determines necessary to protect the revenue of the United States, including requiring a single transaction bond or additional security or the posting of a cash deposit with respect to such covered merchandise.<sup>75</sup>

In addition, CBP will require live entry, requiring cash deposits to be posted prior to release of merchandise from CBP custody. CBP will reject any entry summaries that do not comply with live entry procedure and require refile of entries that are within the entry summary rejection period. CBP will also evaluate Acmetex's continuous bonds to determine their sufficiency. Finally, CBP may pursue additional enforcement actions, as provided by law, consistent with 19 U.S.C. § 1517(h).

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<sup>74</sup> See AMI's Written Argument Against Acmetex, dated September 16, 2022.

<sup>75</sup> See also 19 C.F.R. § 165.24(b)(1)(i)-(iii).

Sincerely,

A handwritten signature in black ink, appearing to read "Brian M. Hoxie". The signature is written in a cursive style with a large initial "B" and "H".

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