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

January 18, 2023

OT:RR:BSTC:CCR H327962 AFM

PUBLIC VERSION

Phoenix Metal Co., Ltd.
Shandong Sunshell Svay Rieng SEZ
Phum Chrey Thom, Sangkat Prey Anhkunh
Bavet City, Svay Rieng Province, Cambodia

Nicholas J. Birch
On behalf of the Cast Iron Soil Pipe Institute
Schagrin Associates
900 Seventh Street NW, Suite 500
Washington, DC 20001

Re: Enforce and Protect Act (“EAPA”) Consolidated Case Number 7621; *Cast Iron Soil Pipe from the People’s Republic of China: Antidumping Duty Order*, 84 FR 19035 (May 3, 2019), and *Cast Iron Soil Pipe from the People’s Republic of China: Countervailing Duty Order*, 84 FR 19039 (May 3, 2019); Phoenix Metal Co., Ltd.; 19 U.S.C. § 1517

Dear Ms. Li and Mr. Birch:

This is in response to the request for *de novo* administrative review of a determination of evasion dated September 6, 2022, 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 Consolidated Case Number 7621 (“September 6th Determination”).¹ The request for review, dated October 19, 2022, was submitted to CBP, OT, Regulations and Rulings (“RR”), by Linghong Li on behalf of Phoenix Metal Co., Ltd. (“Phoenix” or “Importer”), pursuant to 19 U.S.C § 1517(f) and 19 C.F.R. § 165.41(a).

I. Background

Inasmuch as the facts in this case were fully set forth in the September 6th Determination, we will not repeat the entire factual history herein.

On July 14, 2021, the Cast Iron Soil Pipe Institute (“Alleger”) filed an EAPA Allegation against Granite Plumbing Products LLC (“Granite Plumbing”) and Little Fireflies International Co. (“Little Fireflies”), asserting that Granite Plumbing and Little Fireflies evaded antidumping and countervailing duty (“AD/CVD”) payments on entries of Chinese-origin cast iron soil pipe

¹ See Notice of Determination as to Evasion in EAPA Consolidated Case Number 7621, dated September 6, 2022, available at: <https://www.cbp.gov/document/publications/eapa-consolidated-case-7621-granite-plumbing-products-llc-little-fireflies>.

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(“CISP”).² CBP acknowledged receipt of these allegations on August 13, 2021.³ TRLED initiated a formal investigation under Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015 (“TFTEA”), on September 3, 2021, in response to allegations of evasion, consolidating EAPA Case Nos. 7623 and 7621 into EAPA Consolidated Case No. 7621 (“EAPA Cons. Case No. 7621”),⁴ and issued a notice of investigation to the parties on December 9, 2021.⁵ The period of investigation (“POI”) was identified as August 13, 2020 through the pendency of the EAPA Cons. Case 7621 investigation.⁶

On February 15, 2022, Alleger filed an additional EAPA allegation against Phoenix (“Phoenix Allegation”), asserting that Phoenix imported CISP, of Chinese origin, into the United States, by transshipment through Cambodia, to evade AD/CVD payments on CISP from the People’s Republic of China (“China”), as required under Case Nos. A-570-079 and C-570-080 (“the Orders”).⁷

CBP acknowledged receipt of the Phoenix Allegation on February 17, 2022.⁸ On February 28, 2022, TRLED initiated a formal investigation of Phoenix, in response to allegations of evasion, under EAPA Case No. 7708.⁹

The allegation of evasion pertained to the Orders issued by the U.S. Department of Commerce (“Commerce”) on imports of CISP from China. Commerce defined the scope of the relevant Orders, in pertinent part, as follows:

The merchandise covered by this order is cast iron soil pipe, whether finished or unfinished, regardless of industry or proprietary specifications, and regardless of wall thickness, length, diameter, surface finish, end finish, or stenciling. The scope of this order includes, but is not limited to, both hubless and hub and spigot cast iron soil pipe. Cast iron soil pipe is nonmalleable iron pipe of various designs and sizes. Cast iron soil pipe is generally distinguished from other types of nonmalleable cast iron pipe by the manner in which it is connected to cast iron soil pipe fittings.

Cast iron soil pipe is classified into two major types—hubless and hub and spigot. Hubless cast iron soil pipe is manufactured without a hub, generally in compliance with Cast Iron Soil Pipe Institute (CISPI) specification 301 and/or American Society

² Letter from the Alleger, “Cast Iron Soil Pipe: Request for an Investigation under the Enforce and Protect Act,” dated July 14, 2021 (“Granite Plumbing Allegation”); Letter from the Alleger, “Cast Iron Soil Pipe: Request for an Investigation under the Enforce and Protect Act,” dated July 14, 2021 (“Little Fireflies Allegation”).

³ See 19 C.F.R. § 165.12; email from CBP, “Receipt of Properly Filed Allegation,” dated August 13, 2021 (Granite Plumbing); email from CBP, “Receipt of Properly Filed Allegation (Little Fireflies International Co.),” dated August 27, 2021 (clarifying allegation against Little Fireflies was received).

⁴ See 19 U.S.C. § 1517(b)(5); see also 19 C.F.R. § 165.13; CBP Memorandum, “Initiation of Consolidated Investigation for EAPA Case 7621,” dated September 3, 2021 (“Initiation”).

⁵ CBP Memorandum, “Notice of Initiation of Investigation and Interim Measures – EAPA Cons. Case 7621,” dated December 9, 2021.

⁶ *Id.* at 2. See 19 C.F.R. § 165.2; 19 C.F.R. § 165.13.

⁷ See Letter from the Alleger, “Cast Iron Soil Pipe: Request for an Investigation under the Enforce and Protect Act,” dated February 15, 2022.

⁸ See 19 CFR § 165.12; see also email from CBP, “EAPA 7708: Official Receipt – Phoenix Metal,” dated February 17, 2022.

⁹ Memorandum, TRLED, “Initiation of Investigation for EAPA Case 7708,” dated February 28, 2022.

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for Testing and Materials (ASTM) specification A888, including any revisions to those specifications. Hub and spigot pipe has one or more hubs into which the spigot (plain end) of a fitting is inserted. All pipe meeting the physical description set forth above is covered by the scope of this order, whether or not produced according to a particular standard.

The subject imports are currently classified in subheading 7303.00.0030 of the Harmonized Tariff Schedule of the United States (HTSUS): Cast iron soil pipe. The HTSUS subheading and specifications are provided for convenience and customs purposes only; the written description of the scope of this order is dispositive.¹⁰

On March 28, 2022, TRLED issued the Notice of Initiation (“NOI”) to Phoenix and Alleger, consolidating EAPA Case No. 7708 into EAPA Cons. Case No. 7621, and notified Phoenix and Alleger of CBP’s decision to take interim measures against Phoenix based upon reasonable suspicion that Phoenix entered covered merchandise into the customs territory of the United States through evasion.¹¹ Therefore, the POI for the EAPA Cons. Case No. 7621 investigation was applied to EAPA Case No. 7708.¹²

On September 6, 2022, TRLED concluded, based on the record evidence, that there was substantial evidence to demonstrate that Phoenix made entries of Chinese-origin CISP into the United States that were covered by the Orders, by falsely entering the CISP as Cambodian, under entry type “01,” a code for entries not subject to AD/CVD duties.¹³

On October 19, 2022, Phoenix filed a timely Request for Administrative Review,¹⁴ and, on October 20, 2022, 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 H327962.¹⁵ On November 3, 2022, Alleger timely filed a response to Phoenix’s request for administrative review.¹⁶

¹⁰ *Cast Iron Soil Pipe from the People’s Republic of China: Antidumping Duty Order*, 84 FR 19035 (May 3, 2019); *Cast Iron Soil Pipe from the People’s Republic of China: Countervailing Duty Order*, 84 FR 19039 (May 3, 2019).

¹¹ See “Notice of Initiation of Investigation and Interim Measures – EAPA Cons. Case 7621,” dated March 28, 2022, available at: <https://www.cbp.gov/document/publications/eapa-cons-case-7621-phoenix-metal-co-ltd-notice-initiation-investigation-and#:~:text=EAPA%20Cons.%20Case%207621%3A%20Phoenix%20Metal%20Co.%2C%20Ltd.,of%20Investigation%20and%20Interim%20Measures%2C%20March%2028%2C%202022%29>.

¹² See 19 U.S.C. § 1517(b)(5)(B); see also 19 C.F.R. § 165.2; 19 C.F.R. § 165.13.

¹³ Notice of Determination as to Evasion, dated September 6, 2022 (“September 6th Determination”). 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 AD/CVD orders. See CBP Entry Summary Form 7501 and Instructions and the ACE Entry Summary Business Rules and Process Document, at <https://www.cbp.gov/trade/programs-administration/entry-summary/cbp-form-7501> (last visited Nov. 22, 2022).

¹⁴ “EAPA Case No. 7621 – Phoenix Request for Administrative Review,” dated October 19, 2022 (“Phoenix Request”).

¹⁵ TRLED also determined that Granite Plumbing and Little Fireflies evaded AD/CVD payments. See September 6th Determination, at 35. Granite Plumbing and Little Fireflies did not file a request for administrative review of the September 6th Determination.

¹⁶ “HQ Case Number H327962, Cast Iron Soil Pipe: Alleger’s Response to Phoenix Metal’s Request for Administrative Review,” dated November 3, 2022.

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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.”¹⁷ 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.¹⁸

Examples of evasion “include, but are not limited to, the misrepresentation of the merchandise’s true country of origin (*e.g.*, through fraudulent 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.”¹⁹ 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).”²⁰

CBP’s EAPA determinations must be supported by substantial evidence. 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.”²¹

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 electronically transmitted data or information, written or oral statement, or act, that is material and false, or any omission that is material, that resulted in the reduction or avoidance of applicable AD or CVD cash deposits or duties being collected on such merchandise. Lastly, our decision herein must be supported by substantial evidence.

Adverse inferences may also be applied to find evasion, pursuant to 19 C.F.R. § 165.6, if a party to the investigation “fails to cooperate and comply to the best of its ability with a request for information made by CBP”²² or based on previous CBP determinations involving evasion of AD/CVD orders or “any other available information.”²³

¹⁷ See 19 U.S.C. § 1517(c)(1).

¹⁸ See 19 U.S.C. § 1517(a)(5); see also 19 C.F.R. § 165.1.

¹⁹ See *Investigation of Claims of Evasion of Antidumping and Countervailing Duties, Interim Regulations*, 81 Fed. Reg. 56,477, 56,478 (Aug. 22, 2016).

²⁰ See 19 C.F.R. § 165.1.

²¹ See *AltX, Inc. v. United States*, 370 F.3d 1108, 1116 (Fed. Cir. 2004) (internal citations and quotation marks omitted).

²² 19 C.F.R. § 165.6(a).

²³ 19 C.F.R. § 165.6(b).

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A. Phoenix's Arguments

Phoenix requests that we reverse the September 6th Determination of evasion regarding CISP transshipped from China, arguing that it did not enter covered merchandise into the United States through evasion because the CISP was made in Cambodia. Phoenix argues that TRLED failed to meet due process requirements by imposing interim measures against Phoenix 29 calendar days prior to notifying Phoenix and the other parties of the initiation of the investigation, thus not allowing Phoenix to defend itself against the allegations of evasion and to protect its interests regarding the imported merchandise and the relationships and contracts Phoenix had with customers in the United States.²⁴ Phoenix also comments that because CBP marked “most” information as business confidential in CBP’s April 2022 memoranda, and those memoranda were added to the administrative records of EAPA Cons. Case No. 7621 and EAPA Case 7624 (including information from EAPA Cons. Case Nos. 7454 and 7455²⁵ and other information),²⁶ it was unable to meaningfully respond to the information contained in those memoranda.²⁷

Next, Phoenix contends that it cooperated with CBP in this EAPA investigation to the best of Phoenix’s abilities and provided CBP with sufficient information to show that Phoenix did not engage in evasion of the Orders.²⁸ Phoenix admits that it did not supply some documents requested by CBP but asserts that the Regulatory Audit and Agency Advisory Services (“RAAAS”) Verification Report (“Verification Report”) did not indicate that the verifiers requested bank statements from Lino Metal Corp. or Lino International, Inc., companies also owned by Ms. Li (the owner of Phoenix),²⁹ and that CBP needed to explain the reason why it wanted Lino Metal bank statements, asserting that “multiple cross-checks to verify respondent documentation” has been rejected by the U.S. Court of International Trade (“CIT”).³⁰

Phoenix also argues that an investigation by Commerce determined that the “Dalian Metal companies were *trading companies only*, which exported CISP produced by three unaffiliated suppliers” and that this should “trump” CBP’s claim that Dalian I/E Co., Ltd. and Dalian Metal FTZ, affiliates of Phoenix based in China, produced CISP and that “Ms. Li may have owned HiCreek’s facilities and machinery all along.”³¹ Phoenix claims to have rented HiCreek’s facilities and purchased HiCreek’s machinery for Phoenix production.³² Phoenix argues that the “steel pipe” which Phoenix’s documents show was imported from China to Cambodia, and which TRLED noted could

²⁴ Phoenix Request, at 5, 9-13.

²⁵ See TRLED Memo to File, Adding Information to the Administrative Records of EAPA Consolidated Case 7621 and EAPA Case 7624 (April 20, 2022).

²⁶ See TRLED Memo to File, Adding Information to the Administrative Records of EAPA Consolidated Case 7621 and EAPA Case 7624 (April 21, 2022).

²⁷ Phoenix Request, at 5.

²⁸ *Id.* at 13-19.

²⁹ See Phoenix RFI Response (April 26, 2022), at 4; *see also* September 6th Determination, at 3, 8.

³⁰ Phoenix Request, at 14 (citing *Linyi Chengen Imp. & Exp. Co. v. United States*, 433 F. Supp. 3d 1278, 1286 (Ct. Int'l Trade 2020)).

³¹ *Id.* at 14-15 (emphasis included in Phoenix Request). Phoenix is referring here to Cambodian company HiCreek Plumbing Co., Ltd. (“HiCreek”). *See* September 6th Determination, at 3.

³² *See* RAAAS Verification Report, EAPA 7621 (July 22, 2022) (“RAAAS Verification Report”), at 3; Phoenix Request, at 4.

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translate to “finished soil pipe” in Khmer,³³ was not finished soil pipe, but rather, scraps of raw materials, which Phoenix provided photos of and explanations for in previous responses to CBP.³⁴

Phoenix asserts that there is not substantial evidence on the record to support CBP’s “theory” that Phoenix may have commingled soil pipe from China and Cambodia and entered it into the United States.³⁵ Consequently, Phoenix argues that TRLED has not borne its burden to prove by substantial evidence that Phoenix evaded the Orders.³⁶ Further, Phoenix argues that no evasion has occurred if a producer legitimately produced merchandise at issue in a country not subject to AD/CVD orders,³⁷ and that the burden is on CBP to trace the merchandise at issue back to China to properly determine that evasion occurred.³⁸

Phoenix goes on to discuss CBP’s site visit of Phoenix’s facilities and the resulting Verification Report.³⁹ Phoenix explains that it had ceased production for a period once it was notified of this EAPA investigation and restarted production so that CBP could conduct a verification visit (the “Verification Visit”).⁴⁰ Phoenix submits that the resulting CBP verification “demonstrates the limitations of on-site verifications” and that the record does not contain the “significant and material evidence” that it contends is required “to support many of CBP’s observations.”⁴¹

Phoenix opines that the role of the Verification Visit should have been to verify information which was on the record prior to the visit.⁴² Consequently, Phoenix claims that disclosing production worksheets for CBP’s verification of Phoenix’s production quantities during the visit, and Ms. Li’s refusal to provide CBP with copies of the production worksheets thereafter, was appropriate.⁴³ However, Phoenix claims that it “offered” the requested production worksheets to CBP following verification.⁴⁴ Phoenix further justifies its conduct by explaining that the way CBP conducted the Verification Visit, including what Phoenix found to be unclear roles of CBP officials present at the Verification Visit, made Ms. Li cautious about providing information to CBP for fear that the verifiers were “spies.”⁴⁵ Additionally, Phoenix expresses that it was overwhelmed by the number of verifiers, despite CBP’s notice to expect up to eight verifiers, and believes that CBP would not have reduced the number of verifiers for the Verification Visit if Phoenix had made such a request.⁴⁶ Phoenix goes on to claim that CBP presented an inaccurate account of the Verification

³³ See September 6th Determination, at 27-28.

³⁴ Phoenix Request, at 15 (citing to Phoenix RFI Exhibit II-4, dated April 26, 2022; Phoenix RFI Response, at 20, dated April 26, 2022; Phoenix Supplemental RFI Response at 22-25, dated June 3, 2022; Phoenix Exhibits, Exhibit S-IV-2, dated June 3, 2022).

³⁵ *Id.* at 19 (citing September 6th Determination, at 33).

³⁶ *Id.* at 19.

³⁷ *Id.* at 7, 26.

³⁸ *Id.* at 19, 26-27.

³⁹ *Id.* at 19-26.

⁴⁰ *Id.* at 19.

⁴¹ *Id.* at 20 (citing to *Cowan v. Bunting Glider Co.*, 159 Pa. Super. 573, 575-76 (1946); Popper, Andrew F., *et al.*, *Administrative Law, A Contemporary Approach*, 4th ed. (2021) at 498-499; *Tarpley v. Hornyak*, 174 S.W.3d 736, 749 (Tenn. Ct. App. 2004)).

⁴² *Id.* at 22.

⁴³ *Id.*

⁴⁴ *Id.* at 22-23 (citing to email from CBP re: Verification Exhibits (June 28, 2022)).

⁴⁵ *Id.* at 20-23.

⁴⁶ *Id.* at 23; Phoenix Metal Engagement Letter, dated June 3, 2022.

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Visit.⁴⁷ Specifically, Phoenix objects to CBP's noting in its Verification Report the quantity and presence of garbage bags, packing supplies, and pig iron in the production facility, CBP's comments on production documents and an employment agreement, CBP's summarization of statements by Ms. Li, and how CBP chose to conduct interviews.⁴⁸ Phoenix argues that the documents provided by Cambodia's Ministry of Commerce (the "Ministry") during CBP's Verification Visit "constitute unshakeable and substantial evidence of Phoenix's raw material purchases and production of CISP."⁴⁹

B. Alleger's Arguments

Alleger requests that we affirm the September 6th Determination of evasion, arguing that the record supports that Phoenix transshipped CISP from China through Cambodia and entered that CISP into the United States. Alleger argues that Phoenix is another company in a chain utilized and formed by Ms. Li which continues shifting importer of record names each time CBP catches on, to perpetuate the transshipment of merchandise that is imported into the United States in violation of the Orders.⁵⁰ Alleger echoes TRLED's finding that the importer of record for Phoenix's entries was switched to Camellia Casting once Phoenix became aware of CBP's investigation into Phoenix, and noting that Ms. Li did not disclose Camellia Casting as a Phoenix affiliate during the investigation.⁵¹

In response to Phoenix's argument that CBP "initiated a secret investigation" into Phoenix,⁵² Alleger asserts that TRLED was not able to disclose its initiation of an investigation prior to issuing a preliminary determination due to CBP regulations and that such timing arguments have previously been rejected by RR and the CIT.⁵³ Additionally, Alleger claims that Phoenix took language verbatim from a court brief for many of its arguments and argues that CBP should not condone "such apparently unethical appropriation," or should reject Phoenix's request for administrative review if Phoenix, who has not disclosed representation, is represented by the counsel which wrote the court brief.⁵⁴

Alleger argues that Phoenix did not cooperate with CBP to the best of its ability due to Phoenix's failure to provide bank account statements and production-related documents to CBP, to allow for the interview of two of Phoenix's workers during CBP's Verification Visit, and to disclose Camellia Casting as a Phoenix affiliate.⁵⁵ Alleger opines that Phoenix did not provide adequate justifications for these asserted failures to cooperate and that these issues inhibited CBP's ability to fully investigate Phoenix.⁵⁶ Alleger also contends that the request for bank records that TRLED asked Phoenix to provide was reasonable as TRLED had discovered that not all relevant sales were reported by Phoenix and Lino when such information was previously requested.⁵⁷ Additionally, as to Phoenix's complaints regarding how TRLED conducted the verification process, Alleger asserts "it

⁴⁷ *Supra* Phoenix Request, at 25.

⁴⁸ *Supra* Phoenix Request, at 23-25.

⁴⁹ *Id.* at 26.

⁵⁰ *See* HQ Case Number H327962, Cast Iron Soil Pipe: Alleger's Response to Phoenix Metal's Request for Administrative Review, dated November 3, 2022, at 2-11.

⁵¹ *Id.* at 9-10.

⁵² *Supra* Phoenix Request for Administrative Review, at 2.

⁵³ *Supra* Alleger's Response to Phoenix Metal's Request for Administrative Review, at 16-18.

⁵⁴ *Id.* at 17, footnote 107.

⁵⁵ *Id.* at 18-19.

⁵⁶ *Id.* at 19-23.

⁵⁷ *Id.* at 21.

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is not given to the respondent to direct how CBP will conduct its EAPA investigations or verifications” and suggests that Ms. Li’s conduct during the verification process contributed to the “tense atmosphere” of which Phoenix complains.⁵⁸

Alleger calls Phoenix’s concerns about spies during the Verification Visit “paranoid” and suggests that the anxiety Alleger believes Ms. Li displayed indicates that Phoenix and Lino may be involved in illegal activity beyond what was being looked into in this investigation.⁵⁹ Alleger further finds Phoenix’s reference to a 1946 case⁶⁰ is not on point to address Phoenix’s issues with how CBP went about verification, as in contrast to a judge or similar role acting as a “trier of fact,” Alleger contends that CBP is “the investigative agency” tasked with obtaining information for, developing, and reviewing the record, as well as determining what the record shows.⁶¹

Accordingly, Alleger contends that CBP properly applied adverse inferences against Phoenix.⁶² However, Alleger avers that substantial evidence exists without the application of adverse inferences and that such evidence was properly analyzed by TRLED to conclude that Phoenix evaded the Orders.⁶³ Alleger argues that the possible production of some merchandise in a country not subject to AD/CVD orders does not preclude a finding that merchandise was entered into the United States through evasion,⁶⁴ the record shows that not all merchandise Phoenix entered into the United States was produced by Phoenix, and that the burden is not on CBP to trace Phoenix entries back to China for a finding of evasion.⁶⁵ Alleger also argues that Phoenix’s purchase documentation shows that Phoenix purchased “finished soil pipe” rather than raw materials,⁶⁶ further demonstrated by a document’s description for a raw material translating as “finished soil pipe.”⁶⁷

Alleger asserts that Phoenix’s explanation of Commerce’s finding on Lino’s affiliates is incorrect and that the finding may not overcome “CBP’s obligation to address the record” before it.⁶⁸ Finally, Alleger responds to Phoenix’s arguments about the conclusions Phoenix believed TRLED was attempting to draw by noting materials present and absent during the Verification Visit in the Verification Report by stating these were merely observations on the part of TRLED with no conclusions drawn.⁶⁹ As to the documents CBP obtained from the Ministry, Alleger contends that these records demonstrated that Phoenix had failed to fully respond to CBP’s requests for information (“RFIs”) and had not reported some sales.⁷⁰

⁵⁸ *Id.* (citing Phoenix Request, at 25).

⁵⁹ *Id.* at 22-23.

⁶⁰ *See* Phoenix Request, at 20 (quoting *Cowan v. Bunting Glider Co.*, 159 Pa. Super. 573, 575-76 (1946)).

⁶¹ *Supra* Alleger’s Response to Phoenix Metal’s Request for Administrative Review, at 23.

⁶² *Id.* at 23, 27.

⁶³ *Id.* at 24.

⁶⁴ *Id.* at 24-25.

⁶⁵ *Id.* at 25.

⁶⁶ *Id.* at 14 (citing to September 6th Determination, at 27).

⁶⁷ *Id.* at 26 (citing to September 6th Determination, at 27).

⁶⁸ *Id.* at 28-29.

⁶⁹ *Id.* at 29-30.

⁷⁰ *Id.* at 13.

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C. Administrative Review Analysis

As an initial matter, 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 reaching this determination, RR reviewed: (1) the administrative record upon which the initial determination was made, as transmitted by TRLED to RR; and, (2) the timely and properly filed request for review and response. The administrative review is to be completed within 60 business days of the commencement of the review.

As discussed in more detail below, a review of the administrative record, the Importer's request for administrative review, and the Alleger's response, clearly demonstrates that Phoenix entered, as type "01" consumption entries, CISP, and therefore, AD/CVD deposits were not paid. Because those entries contained merchandise subject to the Orders (namely, Chinese-origin CISP), these entries should have been made as type "03" entries, indicating that they are subject to an AD/CVD order. It was material and false for the entries to be made as type "03" and such false entry resulted in non-payment of AD/CVD deposits. Additionally, we find that adverse inferences were properly applied against Phoenix. However, there is substantial evidence on the record to determine that Phoenix evaded the Orders without the need to apply adverse inferences.

i. Phoenix's Production Capacity

A factory worker told CBP that Phoenix possesses molds for [SIZES] pipes,⁷¹ indicating that Phoenix would only be able to produce pipes in those sizes. However, the Verification Report noted, and underlying documentation shows, that Phoenix imported [SIZE] pipes into the United States.⁷² The Report also noted that only [#] patterns accompanied the machine transfer from HiCreek to Phoenix for the [TYPE] machines used in the production of CISP.⁷³ From the interview of the factory worker and what RAAAS noted based on the factory tour, neither of those patterns appears to have been for [SIZE] pipes. CBP also asked Ms. Li about the production of [SIZE] pipes which were listed as part of Phoenix's product line in its supplemental RFI responses,⁷⁴ to which no response other than accusing the verification team of being spies was recorded.⁷⁵ This unwarranted accusation that the verifiers were spies and apparent failure to respond to the verifiers' question is one example of an instance in which Phoenix did not cooperate to the best of its ability.

Phoenix had provided a description of the production process,⁷⁶ which was used by CBP during the verification process.⁷⁷ This description did not detail the mold sizes Phoenix used. However, Phoenix stated in an RFI response that it produces [SIZES] pipes.⁷⁸ Ms.

⁷¹ RAAAS Verification Report, at 6.

⁷² RAAAS Verification Report, at 6; *see also, e.g.* Phoenix Exhibits, Exhibit S-III-2-T1, dated June 3, 2022; Phoenix RFI Exhibits, Exhibit III-1, dated April 26, 2022; Phoenix Exhibits, Exhibit S-III-2-T2, dated June 3, 2022; Phoenix Exhibits, Exhibit S-III-2-T8, dated June 3, 2022; Phoenix RFI Exhibits, Exhibit III-1, dated April 26, 2022; Phoenix RFI Exhibits, Exhibit III-2-2, dated April 26, 2022.

⁷³ RAAAS Verification Report, at 6.

⁷⁴ Phoenix Supplemental RFI Response, at 7, dated June 3, 2022.

⁷⁵ RAAAS Verification Report, at 4.

⁷⁶ Phoenix Exhibits, Exhibit S-IV-2, dated June 3, 2022.

⁷⁷ RAAAS Verification Report, at 5.

⁷⁸ Phoenix Supplemental RFI Response, at 7, dated June 3, 2022.

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Li's interaction with RAAAS when questioned about the [SIZE] pipes and the fact that RAAAS did not note that it witnessed the presence of [SIZE] molds, demonstrates that Phoenix does not possess molds to make [SIZE] pipes. Phoenix provided certificates of origin,⁷⁹ purchase orders,⁸⁰ commercial invoices,⁸¹ and packing lists⁸² showing that it imported [SIZE] CISP into the United States. However, there is no evidence in the record that Phoenix can produce [SIZE] CISP. Therefore, the lack of any evidence that the [SIZE] CISP imported into the United States was made at the Phoenix facility in Cambodia (or at any other factory in Cambodia), coupled with Ms. Li's significant ties to China and companies in China who manufacture and/or otherwise participate in transactions involving Chinese-origin CISP, discussed above, indicate that the [SIZE] CISP Phoenix imported into the United States was not of Cambodian origin as claimed upon entry, and in all likelihood was transshipped from China, as more fully discussed below.

Phoenix provided bills of lading showing that it purchased and imported orders of "steel pipe" of unknown sizes from China into Cambodia.⁸³ TRLED noted that "steel pipe" can mean "finished soil pipe" in Khmer.⁸⁴ Phoenix does not dispute the word meaning/translation issue. Instead, Phoenix argues that it provided pictures of scrap iron and steel which it claims was the imported "steel pipe", rather than CISP.⁸⁵ Such pictures are not probative without any linkage between the pictures and the bills of lading. Furthermore, it is illogical that scrap iron and steel would be imported under the label of steel *pipe*. Moreover, this argument does not explain where or how any [SIZE] CISP Phoenix entered into the United States was manufactured. Ms. Li informed CBP that her only customers are in the United States.⁸⁶ Therefore, Phoenix's failure to demonstrate that it can produce [SIZE] CISP in its Cambodia facility, the documented imports of "steel pipe" from China into Cambodia, and Ms. Li's significant ties to China, demonstrate that the "steel pipe" Phoenix imported from China to Cambodia was Chinese-origin CISP, whose true country of origin was misrepresented,⁸⁷ and that the Chinese-origin CISP was transshipped from Cambodia and entered into the United States without AD/CVD duties applied, constituting an evasion of the Orders.

⁷⁹ See, e.g., Phoenix Exhibits, Exhibit S-III-2-T1, dated June 3, 2022; Phoenix RFI Exhibits, Exhibit III-1, dated April 26, 2022; Phoenix RFI Exhibits, Exhibit III-2-2, dated April 26, 2022; Phoenix RFI Exhibits, Exhibit III-2-3, dated April 26, 2022; Phoenix RFI Exhibits, Exhibit III-2-4, dated April 26, 2022.

⁸⁰ See, e.g., Phoenix Exhibits, Exhibit S-III-2-T2, dated June 3, 2022; Phoenix Exhibits, Exhibit S-III-2-T8, dated June 3, 2022; Phoenix RFI Exhibits, Exhibit III-2-3, dated April 26, 2022; Phoenix RFI Exhibits, Exhibit III-2-3, dated April 26, 2022; Phoenix RFI Exhibits, Exhibit III-2-4, dated April 26, 2022.

⁸¹ See, e.g., Phoenix RFI Exhibits, Exhibit III-1, dated April 26, 2022; Phoenix RFI Exhibits, Exhibit III-2-2, dated April 26, 2022; Phoenix RFI Exhibits, Exhibit III-2-3, dated April 26, 2022; Phoenix RFI Exhibits, Exhibit III-2-4, dated April 26, 2022.

⁸² See, e.g., Phoenix RFI Exhibits, Exhibit III-1, dated April 26, 2022; Phoenix RFI Exhibits, Exhibit III-2-2, dated April 26, 2022; Phoenix RFI Exhibits, Exhibit III-2-3, dated April 26, 2022; Phoenix RFI Exhibits, Exhibit III-2-4, dated April 26, 2022.

⁸³ Phoenix Exhibits, Exhibit S-V-1-3, dated June 3, 2022.

⁸⁴ September 6th Determination, at 27-28.

⁸⁵ Phoenix Request, at 15 (citing to Phoenix RFI Exhibit II-4, dated April 26, 2022; Phoenix RFI Response, at 20, dated April 26, 2022; Phoenix Supplemental RFI Response at 22-25, dated June 3, 2022; Phoenix Exhibits, Exhibit S-IV-2, dated June 3, 2022).

⁸⁶ RAAAS Verification Report, at 3.

⁸⁷ See *Investigation of Claims of Evasion of Antidumping and Countervailing Duties, Interim Regulations*, 81 Fed. Reg. 56,477, 56,478 (Aug. 22, 2016).

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TRLED requested production capacity information on Phoenix's machines in TRLED's first RFI.⁸⁸ Phoenix provided information on the machines' production capacity.⁸⁹ However, despite the fact that CBP informed Phoenix that CBP required copies of production records to be provided during the Verification Visit,⁹⁰ Phoenix refused to provide the requested documents.⁹¹ Thereafter, RAAAS attempted to verify Phoenix's production capacity by comparing Phoenix's electricity usage with its reported monthly production.⁹² Ms. Li refused to provide two electricity bills at verification.⁹³ Additionally, Ms. Li refused to provide spreadsheets that showed production by product so that RAAAS could evaluate Phoenix's production capabilities.⁹⁴ Consequently, RAAAS was unable to verify Phoenix's production capacity.⁹⁵

Phoenix instead places a great deal of weight on the documents provided by the Ministry to CBP.⁹⁶ The Verification Report summarizes that the Ministry representative stated that the Ministry reviews companies, "looks at production and origin," "conducted inspections of Phoenix," and signs Phoenix's certificates of origin.⁹⁷ No further detail was provided in the Verification Report on how the Ministry inspects Phoenix, but the Ministry did provide documents pertaining to Phoenix.⁹⁸ However, neither this explanation of the Ministry's actions nor the documents the Ministry presented to CBP provide enough information about the Ministry's verification process for CBP to accept the documents the Ministry provided as proof of Phoenix's production capabilities. Therefore, documents provided to CBP by the Ministry cannot be relied upon as "unshakeable and substantial evidence of Phoenix's raw material purchases" in the way that Phoenix claims.⁹⁹ Consequently, due to Phoenix's lack of cooperation, CBP is unable to verify Phoenix's production with the documents Phoenix provided, and Phoenix's refusal to provide the requested production documents also indicates obfuscation by Phoenix in entering CISP into the United States whose true country of origin it falsely represented as Cambodia rather than China and upon which it consequently did not pay the relevant AD/CVD duties.

ii. CBP's Verification Visit

1. *Results of Verification Visit*

As discussed above, TRLED requested information on the production capacity of Phoenix's machines¹⁰⁰ and received information on the machines' production capacity from Phoenix prior to the Verification Visit.¹⁰¹ CBP thereafter told Phoenix to be prepared to provide

⁸⁸ Phoenix RFI (March 29, 2022), at 13.

⁸⁹ Phoenix RFI Response (April 26, 2022), at 9-10; Phoenix Exhibit II-3 (April 26, 2022).

⁹⁰ Phoenix Metal Engagement Letter, dated June 3, 2022.

⁹¹ RAAAS Verification Report, EAPA 7621 (July 22, 2022), at 9-10.

⁹² RAAAS Verification Report, at 9; RAAAS Verification Report, Attachment 8.

⁹³ RAAAS Verification Report, at 9.

⁹⁴ RAAAS Verification Report, at 9-10.

⁹⁵ RAAAS Verification Report, at 9.

⁹⁶ *Supra* Phoenix Request, at 26.

⁹⁷ RAAAS Verification Report, at 15.

⁹⁸ RAAAS Verification Report, at 15-16.

⁹⁹ *Supra* Phoenix Request, at 26.

¹⁰⁰ Phoenix Metal RFI (March 29, 2022), at 13.

¹⁰¹ Phoenix Metal RFI Response (April 26, 2022), at 9-10; Phoenix Exhibit II-3 (April 26, 2022).

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copies of production records during the Verification Visit.¹⁰² TRLED was attempting to verify information on the record and Phoenix was put on notice that the verifiers would ask to view and receive copies of such production records. Upon Phoenix's refusal to provide the requested production documents during the Verification Visit, CBP expressed to Ms. Li that CBP was unable to verify Phoenix's production quantities.¹⁰³ Phoenix was uncooperative by refusing to provide these requested documents during the Verification Visit. Thereafter, TRLED did not include in the administrative record, certain documents that Phoenix attempted to provide on an untimely basis because those documents were not provided to or reviewed by RAAAS during the Verification Visit, despite CBP's having clearly requested that such documents be made available for review during the Verification Visit.¹⁰⁴ Those documents may have contained the production worksheets that Ms. Li refused to provide during the Verification Visit and claims to have "offered" to CBP later.¹⁰⁵ Documents that are not present in the administrative record cannot be considered during this administrative review. Consequently, Phoenix's lack of cooperation by refusing to provide requested documents during the Verification Visit has led to an absence of record information to support Phoenix's claims as to production in Cambodia.

Regarding the number of CBP verifiers, CBP notified Phoenix that it should expect up to eight CBP officials at the Verification Visit.¹⁰⁶ Ms. Li acknowledged this.¹⁰⁷ This advance notice shows that CBP was transparent about how many bona fide CBP officials to expect for the Phoenix Verification Visit. Therefore, Phoenix had no reason to believe the verifiers were spies and such a groundless concern does not excuse Ms. Li's conduct and refusal to cooperate by failing to provide the requested documents during the Verification Visit.

Additionally, during the Verification Visit, Phoenix's external accountants and Ms. Li informed CBP that it is Ms. Li who passes along raw material purchase invoices "and/or documents" to the accountants for recording in Phoenix's general ledger and accounting system.¹⁰⁸ When asked, Phoenix's external accountants stated they did not have a current general ledger to provide to CBP during the Verification Visit,¹⁰⁹ further demonstrating that Ms. Li is in control of what information is entered into Phoenix's accounting records. This, along with the fact that CBP could not trace purchases and transactions in the general ledgers for 2021 and 2022,¹¹⁰ or accompanying raw material inventory,¹¹¹ suggests that the general ledgers are not reliable means with which to verify Phoenix's raw material purchases. Finally, there is no evidence to support Phoenix's assertion that CBP inappropriately conducted its Verification Visit or did not accurately record its observations or conversations with Ms. Li in the Verification Report.

¹⁰² Phoenix Metal Engagement Letter, dated June 3, 2022.

¹⁰³ RAAAS Verification Report, EAPA 7621 (July 22, 2022), at 9-10.

¹⁰⁴ Email from CBP re: Verification Exhibits (June 28, 2022).

¹⁰⁵ Phoenix Request, at 22-23.

¹⁰⁶ Phoenix Metal Engagement Letter, dated June 3, 2022.

¹⁰⁷ Phoenix Request, at 23.

¹⁰⁸ *Supra* RAAAS Verification Report, at 8; 15.

¹⁰⁹ RAAAS Verification Report, at 7.

¹¹⁰ *See, e.g.*, RAAAS Verification Report, at 15.

¹¹¹ *See, e.g.*, RAAAS Verification Report, at 10.

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2. *Phoenix's Behavior During the Verification Visit*

The Verification Report shows that Ms. Li was visibly upset at times during the Verification Visit,¹¹² refused to provide some requested documents,¹¹³ and was present during the interviews of Phoenix factory workers,¹¹⁴ all of which may have contributed to the employees' observed unease. Additionally, Ms. Li restarted Phoenix's production for the purpose of hosting CBP for the Verification Visit,¹¹⁵ and brought previously laid off employees back to work in the facility for the Verification Visit.¹¹⁶ Therefore, since the point of initiating production was to assist CBP in verifying Phoenix's production of CISP rather than to create CISP for an order, it should not have mattered when CBP requested to interview individuals during the Verification Visit. Additionally, the Verification Report notes that most employees did not appear to be busy,¹¹⁷ and thus presumably had the time for interviews. Therefore, Phoenix's attempts to excuse Ms. Li's and Phoenix's lack of cooperation during the Verification Visit are unavailing.

iii. Bank Records & Camellia Casting

TRLED requested bank documents in an RFI.¹¹⁸ Phoenix supplied balance sheets in response,¹¹⁹ but did not provide bank statements to corroborate that Phoenix purchased the production machinery it claims it used to produce the CISP it imported into the United States.¹²⁰ Phoenix's failure to supply the requested bank records resulted in TRLED's finding that it was unable to verify through bank statements that the production machinery was purchased by Phoenix.¹²¹ As the balance sheets that Phoenix provided were documents created by Phoenix, they are not an objective metric for showing all of Phoenix's transactions that occurred in a given time period, as items may easily be omitted or amounts adjusted. Bank statements are prepared by the bank and as such are an objective way to show what amounts went in and out of a given bank account in a specific time period.¹²² Because the record shows that Phoenix has used several bank accounts for its transactions¹²³ and has several affiliates¹²⁴ whose accounts or names have been on Phoenix's transactions,¹²⁵ it was reasonable for TRLED to request the bank account statements of Phoenix's affiliates to attempt to verify Phoenix's transactions and their amounts. Phoenix's failure to provide the requested bank statements shows that Phoenix did not cooperate to the best of its ability with this investigation.

Additionally, due to Phoenix's refusal to provide the bank statements that TRLED requested, there is insufficient evidence to determine the timing or parameters of Phoenix's ownership of production machinery or the manufacturing facility. Phoenix's assertions

¹¹² See RAAAS Verification Report, EAPA 7621 (July 22, 2022) ("RAAAS Verification Report"), at 4, 9.

¹¹³ *Id.* at 9.

¹¹⁴ *Id.* at 6.

¹¹⁵ Phoenix Request, at 19; RAAAS Verification Report, at 5.

¹¹⁶ RAAAS Verification Report, at 6-7; Phoenix Request, at 24.

¹¹⁷ RAAAS Verification Report, at 5.

¹¹⁸ Phoenix Metal RFI (March 29, 2022), at 12, 15-16, 21.

¹¹⁹ Phoenix Metal RFI Response (April 26, 2022), at Exhibits II-1-2, II-1-3.

¹²⁰ *Supra* September 6th Determination, at 22-23.

¹²¹ RAAAS Verification Report (July 22, 2022), at 4.

¹²² See *generally* September 6th Determination, at 22.

¹²³ See RAAAS Verification Report (July 22, 2022), at 8-9.

¹²⁴ See RAAAS Verification Report (July 22, 2022), at 2.

¹²⁵ See RAAAS Verification Report (July 22, 2022), at 11-12.

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notwithstanding, the records provided by Phoenix are insufficient to establish that Phoenix did not own HiCreek's machinery prior to starting Phoenix Metal.¹²⁶ Although RAAAS reported that the machinery purchase was recorded as assets in Phoenix Metal's general ledger and balance sheet, RAAAS was unable to locate any bank statement records of any payment from Phoenix Metal to HiCreek for the machinery.¹²⁷ There is also insufficient evidence to find that Phoenix did not own HiCreek's facilities prior to starting Phoenix Metal, as RAAAS noted that Phoenix Metal reported only paying for the [BILLS] for the HiCreek facilities,¹²⁸ rather than normal rental payments.

As to Phoenix's relationship with Camellia Casting,¹²⁹ in its initial RFI, TRLED asked Phoenix about its business relationships.¹³⁰ Phoenix did not disclose a relationship with Camellia Casting in its RFI response or at any other point during the investigation. Phoenix also does not dispute or address its relationship with Camellia Casting in its request for review. However, the Ministry provided documents to CBP for CISP orders Phoenix was processing prior to CBP's March 28, 2022 NOI, notifying Phoenix of interim measures.¹³¹ Information in those documents match Camellia Casting entries into the United States after March 28, 2022.¹³² The last entries into the United States listing Phoenix as the importer were on [DATE], 2022,¹³³ before Phoenix was notified of the interim measures. One of the Camellia Casting shipments matching documents provided by the Ministry for Phoenix CISP orders entered the United States after the interim measures and prior to Phoenix's April 26, 2022 RFI response.¹³⁴ Further, Camellia Casting's first six entries are recorded in Phoenix's general ledger,¹³⁵ demonstrating that all six began as Phoenix entries and were later changed to Camellia Casting entries. This indicates that Phoenix had a relationship with Camellia Casting such that Camellia Casting took over Phoenix's shipments to evade the interim measures CBP placed on Phoenix. Additionally, Phoenix's failure to disclose its relationship with Camellia Casting shows that Phoenix attempted to hide information from CBP during this investigation. As Camellia Casting took over Phoenix entries, and the CISP in those entries was entered into the United States without the application of AD/CVD duties, Phoenix's failure to report its relationship with Camellia Casting was a material omission¹³⁶ that contributes to a finding that Phoenix evaded the Orders.

iv. Commerce Report

The May 3, 2019 Commerce AD order ("Commerce Order"), which both parties reference, lists Dalian Lino F.T.Z. Co., Ltd, Dalian Metal I/E Co., Ltd, and Dinggin Hardware (Dalian) Co., Ltd as exporters of CISP from China,¹³⁷ but not as CISP producers. However, the fact that the

¹²⁶ September 6th Determination, at 23.

¹²⁷ RAAAS Verification Report (July 22, 2022), at 4.

¹²⁸ RAAAS Verification Report (July 22, 2022), at 4.

¹²⁹ See September 6th Determination, at 20-22; Alleger's Response to Phoenix Metal's Request for Administrative Review, at 18-19.

¹³⁰ See generally Phoenix RFI, dated March 29, 2022.

¹³¹ See Phoenix Verification Exhibit 6, dated June 30, 2022.

¹³² See Phoenix Verification Exhibit 6, dated June 30, 2022; TRLED Memo to the File, Attachment 4, dated July 6, 2022.

¹³³ TRLED Memo to the File, Attachment 1, dated July 6, 2022.

¹³⁴ See Phoenix Metal RFI Response (April 26, 2022).

¹³⁵ Phoenix Exhibits, Exhibit S-IV-4, dated June 3, 2022.

¹³⁶ See 19 U.S.C. § 1517(a)(5); see also 19 C.F.R. § 165.1.

¹³⁷ Cast Iron Soil Pipe From the People's Republic of China: Antidumping Duty Order, 84 Fed. Reg. 19,035, 19,036 (Dep't Commerce May 3, 2019).

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Commerce Order lists the Lino/Dalian companies as CISP exporters, but does not include the companies in the producer list, does not mean that Phoenix produced all of the CISP it imported into the United States in its Cambodia facility. Ms. Li currently or previously owned several companies based in China.¹³⁸ EAPA Cons. Case No. 7454,¹³⁹ as well as the present EAPA Cons. Case No. 7621 investigation, have demonstrated Ms. Li's connections to, and/or ownership of, companies in China and the United States which TRLED found evaded the Orders,¹⁴⁰ and which did not request administrative review. An exhibit submitted in EAPA Case Nos. 7454 & 7455, incorporated within the record in this case, shows that Ms. Li's LinkedIn profile stated that Dalian Metal, another company owned by Ms. Li,¹⁴¹ produced CISP.¹⁴² Ms. Li does not explain why or how this evidence, discussed in the September 6th Determination,¹⁴³ does not negate Phoenix's claim that the Commerce Order somehow proves that the Dalian companies are not CISP producers. Therefore, Ms. Li's own profile and her connections in China show that Phoenix could have easily evaded the Orders, regardless of whether one of the Lino/Dalian companies or another Chinese company produced the CISP at issue.

Phoenix has not demonstrated that it has the capacity or capability in its Cambodia facility to produce all of the CISP it entered into the United States. The Commerce Order does not demonstrate Phoenix's production capabilities or capacities and is therefore insufficient evidence to overcome CBP's evidence that Phoenix does not have the capacity or capability to produce all of the CISP it entered into the United States.

Further, the Commerce Order is effective as of May 3, 2019,¹⁴⁴ meaning that Commerce investigated these Dalian companies prior to May 3, 2019. In contrast, CBP's EAPA Cons. Case No. 7621 investigation covers the POI beginning August 13, 2020, through the pendency of this investigation.¹⁴⁵ Therefore, Commerce and CBP evaluated the role of the Lino/Dalian companies at different periods of time such that Commerce's finding and CBP's findings on these companies may be different but not contradictory.

v. Application of Adverse Inferences

An application of adverse inferences is not necessary to find evasion here, given the lack of evidence of Phoenix's ability to produce [size] CISP or produce in Cambodia the amount of CISP it entered into the United States. However, Phoenix did not cooperate to the best of its ability in this investigation when it refused to provide requested production and bank documents and failed to disclose its relationship to Camellia Casting. Therefore, application of adverse inferences is proper, and we apply adverse inferences to conclude that all CISP that Phoenix entered into the United States during the POI was subject to the Orders. However, we reiterate

¹³⁸ Phoenix Request, at 4.

¹³⁹ TRLED Notice of Determination as to Evasion, EAPA Consolidated Case 7454, dated February 8, 2021.

¹⁴⁰ Phoenix Request, at 1; September 6th Determination, at 8.

¹⁴¹ See Phoenix RFI Response (April 26, 2022), at 4; see also September 6th Determination, at 8, 23.

¹⁴² See TRLED Memo to the File, dated April 20, 2022, Attachment 20, Letter from the Alleger, "EAPA Case Nos. 7454 & 7455, Cast Iron Soil Pipes and Cast Iron Soil Pipe Fittings: Submission of Factual Information" (September 8, 2020), at Exhibit 6.

¹⁴³ September 6th Determination, at 23.

¹⁴⁴ Cast Iron Soil Pipe From the People's Republic of China: Antidumping Duty Order, 84 Fed. Reg. 19,035, 19,036 (Dep't Commerce May 3, 2019).

¹⁴⁵ CBP Memorandum, "Notice of Initiation of Investigation and Interim Measures – EAPA Cons. Case 7621," dated December 9, 2021.

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that we also conclude that substantial evidence of evasion exists, even without application of adverse inferences.

vi. Phoenix's Due Process Claims

For the sake of completeness, we also briefly address Phoenix's due process arguments and the Alleger's allegation that Phoenix plagiarized or failed to disclose counsel. Phoenix claims that it was a violation of Phoenix's due process rights for CBP to not provide the notice of initiation of this EAPA investigation to the parties for 29 calendar days.¹⁴⁶ Phoenix also believes that the business confidential marking of some information in CBP's April 2022 memoranda precluded Phoenix from providing a meaningful response to those documents.¹⁴⁷ Alleger suggests that Phoenix has plagiarized in its request for review or has, alternatively, failed to disclose counsel.¹⁴⁸

We note that the CIT has opined on the rights of parties in EAPA investigations to have access to business confidential information and has found that the lack of access to confidential information is not a due process issue.¹⁴⁹ In *Royal Brush Mfg., Inc.*, the CIT found that a party is only entitled to public summaries of the business confidential information, pursuant to 19 C.F.R. § 165.4(a)(1) and (e). The parties do not otherwise have a right to review business confidential information, as the statute and regulations do not provide for such. RR has no reason to question TRLED's procedures regarding public summaries in this case.

We also note that 19 U.S.C. § 1517(e) provides CBP with 90 calendar days after initiation of an investigation to determine whether there is a reasonable suspicion of evasion and to apply interim measures against merchandise suspected of being covered by an AD/CVD order. The statute also provides guidance on the time periods to which various interim measures can be applied. Here, CBP initiated an investigation on February 28, 2022,¹⁵⁰ and issued the NOI on March 28, 2022, which alerted the parties of CBP's decision to take interim measures against Phoenix CISP.¹⁵¹ Therefore, CBP met its statutory requirements to determine whether to take interim measures against Phoenix in less than the 90 calendar days it was given to make such a decision. *See also* 19 C.F.R. § 165.15(d), setting forth timing requirements for the notice of initiation, which CBP also met herein.

As to the Alleger's claim of potential plagiarism or failure to disclose counsel, we do not believe such issues to be germane to the issue which RR is charged with deciding herein, namely, whether substantial evidence in the record supports a finding of evasion.

¹⁴⁶ *See supra* Phoenix Request, at 9-13.

¹⁴⁷ *Id.* at 5.

¹⁴⁸ *Supra* Alleger's Response to Phoenix Metal's Request for Administrative Review, at 17, footnote 107.

¹⁴⁹ *See Royal Brush Mfg., Inc. v. United States*, 545 F. Supp. 3d 1357 at 1369 (Ct. Int'l Trade Oct. 29, 2021) (rejecting a similar claim and holding that CBP's withholding of confidential information does not violate a respondent's due process rights where "CBP has complied with 19 C.F.R. § 165.4 by providing necessary public summaries of the confidential information....").

¹⁵⁰ Memorandum, TRLED, "Initiation of Investigation for EAPA Case 7708," dated February 28, 2022.

¹⁵¹ *See* "Notice of Initiation of Investigation and Interim Measures – EAPA Cons. Case 7621," dated March 28, 2022, available at: <https://www.cbp.gov/document/publications/eapa-cons-case-7621-phoenix-metal-co-ltd-notice-initiation-investigation-and#:~:text=EAPA%20Cons.%20Case%207621%3A%20Phoenix%20Metal%20Co.%2C%20Ltd.,of%20Investigation%20and%20Interim%20Measures%2C%20March%2028%2C%202022%29>.

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III. Decision

We conclude that the record supports a finding of evasion as defined by EAPA. Therefore, TRLED's finding of evasion stands. The record shows that Phoenix imported CISP into the United States which it declared to be of Cambodian origin, entered as type "03," on which it did not make AD/CVD deposits. The record also shows that Phoenix did not have the production capacity or capability at its Cambodia facility to make all of the CISP it imported into the United States; the evidence is particularly strong as to the lack of production capability with respect to [SIZE] CISP.¹⁵² The record also shows that Phoenix imported CISP from China into Cambodia. Additionally, Phoenix only conducts business with U.S. customers.¹⁵³ Therefore, any CISP that Phoenix imported from China and exported from Cambodia would have only gone to Phoenix's U.S. customers. As discussed above, Phoenix entered [SIZES] CISP into the United States that it did not declare as subject to the Orders. Therefore, Phoenix falsely entered CISP, resulting in non-payment of AD/CVD.

The record also shows that Phoenix did not cooperate to the best of its ability, allowing for the application of adverse inferences to find that all Phoenix entries subject to this EAPA Cons. Case No. 7621 contained CISP from China subject to the Orders. As discussed above, Phoenix demonstrated its failure to cooperate by: (1) falsely claiming that scrap iron and steel that were imported from China to Cambodia with import documents on which the product description translates to "finished soil pipe" were not the same CISP products that Phoenix entered into the United States without payment of AD/CVD duties, thereby misrepresenting the CISP's true country of origin, (2) failing to provide requested production documents to aid in the false representation of Phoenix's CISP as Cambodian rather than Chinese-origin, and (3) omitting the material fact of Phoenix's relationship with Camellia Casting.¹⁵⁴

¹⁵² The evidence is also lacking as to production of [SIZE] CISP, but the evidence is unclear as to whether any such CISP was sold into the United States.

¹⁵³ RAAAS Verification Report, at 3.

¹⁵⁴ See 19 U.S.C. § 1517(a)(5); 19 C.F.R. § 165.1; *Investigation of Claims of Evasion of Antidumping and Countervailing Duties, Interim Regulations*, 81 Fed. Reg. 56,477, 56,478 (Aug. 22, 2016).

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Based upon our *de novo* review of the administrative record in this case, including the administrative record as transmitted to RR by TRLED, the request for administrative review and response, the September 6th 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 EAPA.

Sincerely,

W. Richmond Beevers
Chief, Cargo Security, Carriers & Restricted Merchandise Branch
Regulations & Rulings, Office of Trade
U.S. Customs & Border Protection

Approved by:

Alice A. Kipel
Executive Director,
Regulations and Rulings, Office of Trade
U.S. Customs and Border Protection