



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

June 14, 2023

EAPA CASE NO. 7722

PUBLIC VERSION

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RE: EAPA 7722: Notice of Determination as to Evasion

To the Counsel and Representatives of the above-referenced Entities:

Pursuant to an examination of the record in Enforce and Protect Act (EAPA) Investigation 7722, U.S. Customs and Border Protection (CBP) has determined there is substantial evidence that Vanguard Trading Company LLC (the Importer) entered merchandise covered by antidumping (AD) and countervailing duty (CVD) orders A-570-084 and C-570-085 (*AD/CVD Orders*), on quartz surface products (QSP) from the People's Republic of China (China)¹ into the customs territory of the United States through evasion. Specifically, CBP determined that there is substantial evidence that the Importer misclassified the subject Chinese-origin QSP by describing the merchandise as “artificial marble and/or artificial stone” when that merchandise should properly be described as QSP. This merchandise is covered by the *AD/CVD Orders* because this “artificial marble and/or artificial stone” is in fact engineered quartz.

I. Background & Procedural History (Pre-Interim Measures)

Allegation and Initiation

¹ See *Certain Quartz Surface Products from the People's Republic of China: Antidumping and Countervailing Duty Orders*, 84 Fed. Reg. 33053 (July 11, 2019) (the *AD/CVD Orders*).

On July 21, 2022, the Trade Remedy Law Enforcement Directorate (TRLED), within CBP’s Office of Trade, acknowledged receipt of the properly filed Allegation² by Cambria Company LLC (*Alleger*)³ against the Importer.⁴ Subsequently, on August 11, 2022,⁵ CBP initiated an investigation pursuant to Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, commonly referred to as EAPA. In its Allegation, the *Alleger* asserts that information available to it reasonably suggests that the Importer evaded the *AD/CVD Orders* by failing to declare that the slab products it is importing are actually QSP from China.⁶ Specifically, the Allegation suggests that the Importer imports merchandise as “artificial marble and/or artificial stone” when that merchandise should properly be described as QSP, subject to the *AD/CVD Orders*.⁷

The *Alleger* provided evidence that the Importer imports a brand of engineered countertop surfaces named Lucciare (also known as FriTech),⁸ manufactured by a Chinese producer named Foshan Monica Quartz Stone Co. Ltd. (Chinese Supplier1) and exported to the Importer by a Chinese logistics company, Shenzhen Guangmaoxin Import and Export (Chinese Supplier2).⁹ The *Alleger* indicated that the Importer appears to be declaring this product as artificial marble, according to data from [name].¹⁰

Lucciare is a brand of engineered countertop surfaces that is a registered trademark of a company named Ciotolo, Inc. (Ciotolo).¹¹ Ciotolo also has a trademark application for Syntek Marble.¹² Greta Ma, the managing director of a company named Ameri Home Designs (AHD), lists herself on LinkedIn as the general manager of the Lucciare brand of products.¹³ The *Alleger* further showed a connection between the Lucciare products and AHD through an invoice for the sale of Lucciare products that lists AHD as the seller.¹⁴

Although Ciotolo appears to be registered as a New Jersey based corporation, an individual named Greta Ma is listed as its Managing Director, with a California address, on the Syntek Marble trademark application.¹⁵ Lucciare’s profile on LinkedIn and its website lists its address

² See “Quartz Surface Products from the People’s Republic of China: Request for an Investigation under the Enforce and Protect Act of Vanguard Trading Co.” (Allegation), dated July 11, 2022.

³ The *Alleger* is a domestic producer of QSP and the petitioner before the U.S. Department of Commerce (DOC) and the U.S. International Trade Commission (ITC) in the original AD/CVD investigations; therefore, the *Alleger* is an interested party as defined by 19 USC 1517(a)(6) and 19 CFR 165.1.

⁴ See July 21, 2022, email entitled “EAPA 7722 - Receipt of Properly Filed Allegation.”

⁵ See CBP Memorandum title, “Initiation of Investigation for EAPA Case Number 7722 – Vanguard Trading Company LLC.,” dated August 11, 2022.

⁶ The *Alleger* initially filed three separate allegations against U.S. importers Ameri Home Designs, Inc., Ciotolo Inc., and Vanguard Trading Co. However, the *Alleger* voluntarily withdrew the two allegations against Ameri Home Designs and Ciotolo Inc.

⁷ See Allegation.

⁸ *Id.* at Exhibit 7.

⁹ *Id.* at Exhibits 12, 15, and 18.

¹⁰ *Id.* at Exhibits 12 and 18.

¹¹ *Id.* at 6 and Exhibit 5.

¹² *Id.* at 6 and Exhibit 4. Syntek Marble’s patent application shows a direct connection between AHD and Ciotolo.

¹³ *Id.* at 6 and Exhibits 8 and 9.

¹⁴ *Id.* at 7 and Exhibit 10.

¹⁵ *Id.* at Exhibits 3 and 4.

as 533 Airport Blvd, Suite 400, Burlingame, CA 94010 (Burlingame address).¹⁶ This address is also associated with AHD and Ciotolo, depending on the source documents, and is the address listed for the Importer in the [name] trade data.¹⁷ The Burlingame address is a “virtual office space” located at the Airport Corporate Center in Burlingame, CA, and it can be rented by numerous parties at the same time.¹⁸ As a result, the Allegation suggests that Ciotolo, AHD, and the Importer are all interconnected companies and may be acting in concert to evade the *AD/CVD Orders*; in addition, and as described below, they seem to have a connection to Chinese Supplier1 as well.

The Alleger claimed that Chinese Supplier1, a known Chinese producer of QSP, is producing the Lucciare product. An individual named Mr. Jinpan Chen is listed on LinkedIn as the R&D engineer for Chinese Supplier1 and as a consultant for products development and business strategy for Lucciare brand products.¹⁹ Mr. Chen is based in Foshan, Guangdong Province, China, and applied for the patent for the FriTech product sold by Lucciare.²⁰ The Alleger claimed that Chinese Supplier2, which is listed in the [name] trade data as the producer of the “artificial marble” being imported by the Importer, must only be a logistics company, while Chinese Supplier 1 is the actual producer. Chinese Supplier2’s only export history in [name] involves shipping “artificial marble” to this specific Importer, and the company has no internet presence.²¹ The Alleger averred that Chinese Supplier2 is being used by Chinese Supplier1 to ship “artificial marble and/or artificial stone” to the United States so as to obscure the true identity of the producer of the merchandise.²²

Although AHD markets a countertop material under the Lucciare brand called “FriTech” as a completely new and different material from QSP, the Alleger stated that the Lucciare products look the same as QSP and appear to be covered by the scope of the *AD/CVD Orders*.²³ According to Lucciare’s website and the patent application, the brand’s products are primarily made from fritted sand, which is a byproduct of iron and steel production.²⁴ The fritted sand consists of 60% to 80% silica (*SiO2*).²⁵ In total, the patent for the FriTech products states that product is comprised of the following raw materials in parts by mass:²⁶

- “60-80 parts of fritted sand;
- 10-30 parts of quartz powder;
- 9-14 parts of terephthalic unsaturated polyester resin;
- 0.6-1 parts of curing agent;
- 0.8-1 parts of coupling agent;
- 0.5-1 parts of pigment paste;

¹⁶ *Id.* at Exhibit 6 and 7.

¹⁷ *Id.* at Exhibit 12 and 18.

¹⁸ *Id.* at 7 and Exhibit 14.

¹⁹ *Id.* at 8 and Exhibits 15-16.

²⁰ *Id.* at 8 and Exhibits 16-17.

²¹ *Id.* at 8.

²² *Id.*

²³ *Id.* at 9.

²⁴ See the Allegation at 2 and 10. See also, Entry 7687 CF-28 Responses at 18 for the FriTech Surface brochure.

²⁵ *Id.* at 10 and Exhibit 17.

²⁶ *Id.* at 10 and Exhibit 17. see also, Entry 7687 CF-28 Responses for Patent Application US 2020/0299188 A1 (Sep. 24, 2020).

0.1-1 parts of pigment powder.”

Furthermore, the patent states that the fritted sand is comprised of the following chemical components as mass percent:²⁷

“Al ₂ O ₃	1-10%
SiO ₂	60-80%
Fe ₂ O ₃	0.1-0.5%
CaO	5-10%
MgO	2-5%
K ₂ O	0.2-4%
Na ₂ O	5-15%
TiO ₂	0.1-2%”

“Preferably, the fritted sand comprises the fritted sand of 8-16 mesh, 16-26 mesh, 26-40 mesh, 40-70 mesh, 70-120 mesh and/or 120-200 mesh.... Preferably, the fritted sand is obtained by melting tailing quartz, coal gangue, limestone, sodium feldspar and potassium feldspar in a mass ratio of 7-10:4-6: 1-2: 1-3: 1-3 at a high temperature of 1200° C.-1400° C., and then quenching in chilled water.”²⁸

Because quartz powder is pure silica and is combined with the fritted sand, which contains a large amount of silica, and a resin binder is added, the Lucciare countertops/slabs are covered by the scope of the *AD/CVD Orders*.

The U.S. Department of Commerce’s (DOC) scope in the *AD/CVD Orders*²⁹ states:

The scope of the orders cover certain quartz surface products.* Quartz surface products consist of slabs and other surfaces created from a mixture of materials that include predominately silica (e.g., quartz, quartz powder, cristobalite) as well as a resin binder (e.g., an unsaturated polyester). The incorporation of other materials, including, but not limited to, pigments, cement, or other additives does not remove the merchandise from the scope of the orders. However, the scope of

the orders only includes products where the silica content is greater than any other single material, by actual weight. Quartz surface products are typically sold as rectangular slabs with a total surface area of approximately 45 to 60 square feet and a nominal thickness of one, two, or three centimeters. However, the scope of the orders includes surface products of all other sizes, thicknesses, and shapes. In addition to slabs, the scope of the orders includes, but is not limited to, other surfaces such as countertops, backsplashes, vanity tops, bar tops, work tops, tabletops, flooring, wall facing, shower surrounds, fireplace surrounds, mantels, and tiles. Certain quartz surface products are covered by the orders whether polished or unpolished, cut or uncut, fabricated or not fabricated, cured or

²⁷ *Id.*

²⁸ *Id.*

²⁹ See *AD/CVD Orders*.

uncured, edged or not edged, finished or unfinished, thermoformed or not thermoformed, packaged or unpackaged, and regardless of the type of surface finish.

In addition, quartz surface products are covered by the orders whether or not they are imported attached to, or in conjunction with, non-subject merchandise such as sinks, sink bowls, vanities, cabinets, and furniture. If quartz surface products are imported attached to, or in conjunction with, such non-subject merchandise, only the quartz surface product is covered by the scope.

Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise fabricated in a third country, including by cutting, polishing, curing, edging, thermoforming, attaching to, or packaging with another product, or any other finishing, packaging, or fabrication that would not otherwise remove the merchandise from the scope of the orders if performed in the country of manufacture of the quartz surface products.

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

* Quartz surface products may also generally be referred to as engineered stone or quartz, artificial stone or quartz, agglomerated stone or quartz, synthetic stone or quartz, processed stone or quartz, manufactured stone or quartz, and Bretonstone®.³⁰

Therefore, to be considered QSP, a product must contain a “mixture of materials that includes predominately silica (*e.g.*, quartz, quartz powder, cristobalite) as well as a resin binder (*e.g.*, an unsaturated polyester). The incorporation of other materials, including, but not limited to, pigments, cement, or other additives does not remove the merchandise from the scope of the orders. However, the scope of the *AD/CVD Orders* only includes products where the silica content is greater than any other single material, by actual weight.”³¹

Although the Lucciare products appear to be covered by the scope, the Alleger stated that it believes no *AD/CVD* duties are being collected for this product because the product is specifically being marketed as an alternative to “traditional quartz surface{s}” and because the

³⁰ The language following the asterisk appears as a footnote in the scope of the *AD/CVD Orders*.

³¹ *Id.* at 3 and Exhibit 1.

[name] trade data indicates it is being manifested as “artificial marble” instead of as QSP.³² The Allegor argued the evidence described above reasonably suggests that QSP subject to the *AD/CVD Orders* has entered into the United States through evasion.

In assessing the claims made and evidence provided in the Allegation, TRLED found that the Allegation reasonably suggested that the Importer engaged in attempts to evade the *AD/CVD Orders* by failing to declare the merchandise imported as covered by the *AD/CVD Orders*. Specifically, the Allegor submitted documentation reasonably available to support these claims, including the [name] trade data showing shipments from Chinese Supplier2 to the Importer; evidence that the imported products are likely produced by Chinese Supplier1; documents linking Chinese Supplier1 to Mr. Chen, Mr. Chen to Lucciare, and Lucciare to Ms. Ma and AHD (indicating these companies may be acting in concert to avoid the *AD/CVD* duties for these products); documents showing a common Burlingame address for AHD, Ciotolo and the Importer; and evidence that the Lucciare brand FriTech products are primarily produced from fritted sand and quartz powder with a resin binder added, making the FriTech products comprised of predominantly silica by weight and indicating that the imported products are covered by the scope of the *AD/CVD Orders*.³³

CBP Form 28 (CF-28) Responses

On August 29, 2022, CBP issued a CF-28 Request for Information to the Importer for entry number [number]7687 (entry 7687),³⁴ followed by a second CF-28 for entry number [number]9748³⁵ (entry 9748) on August 30, 2022. In the CF-28 requests, CBP asked the Importer to provide the following information:

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

Entry 7687 Response

On August 30, 2022, CBP timely received the CF-28 response for entry 7687,³⁶ with the following documents included: CBP Form (CF) 7501 (Customs entry form) declaring A grade artificial marble classified under HTS 6802.99.0060 with the total invoice value of [number]; CF 3461 (Customs release form); commercial invoice, dated January 20, 2022, from Chinese Supplier2 listing the artificial marble material as Melody and Rhapsody; packing list; Bill of

³² *Id.* at 11 and Exhibit 7.

³³ *Id.* at 2, 10 and Exhibit 17. *See also*, Entry 7687 CF-28 Responses for Patent Application US 2020/0299188 Al.

³⁴ *See* August 29, 2022, Entry 7687 CF-28 Request.

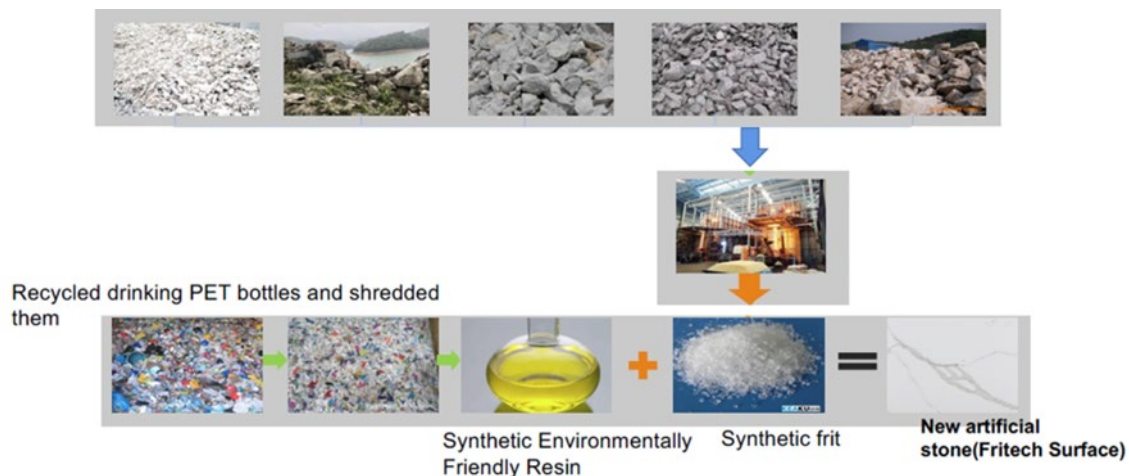
³⁵ *See* August 29, 2022, Entry 9748 CF-28 Request.

³⁶ *See* August 30, 2022, and September 30, 2022, Entry 7687 CF-28 Responses (Entry 7687 CF-28 Responses).

Lading (BOL) identifying Chinese Supplier2 as the shipper and stating for delivery of goods apply to Starlink Freight System SFO Inc. (Starlink Freight), issued in Hong Kong and dated February 11, 2022; and the Starlink Freight issued arrival notice, indicating the goods were consigned to the Importer and addressed to the attention of [name]. On the entry filed with CBP, the Importer is listed as the importer of record and Chinese Supplier2 is listed as the manufacturer.

On September 30, 2022, the Importer sent CBP additional product information for entry 7687 on the nature of the product and how it is made. The documents provided included a document titled “Concept Explanation the different (*sic*) of Fritech Surface and Quartz Slab and Recycle glass which listed in Anti-Dumping,” which included reference to a patent pending called “An Environment friendly Artificial Stone with Low Cost and High Strength and A Preparation Method Thereof” (“Preparation Method Thereof”) and discussed how FriTech Products are made and their material composition³⁷ and a FriTech Surfaces product brochure listing the names and product numbers for countertop/slab products under the Lucciare, Polarstone³⁸ and [name] brand collections.³⁹ Although these documents that the Importer provided described the manufacturing process, the Importer did not provide the requested affidavit statement from the manufacturer; therefore, based on the documents provided, CBP could not determine the actual manufacturer of the products being imported.

The below flow chart from the CF-28 response shows how Lucciare Organic Engineered Stone is made.⁴⁰



The flow chart describes how the waste ores such as Sodium feldspar, Potash feldspar, wollastonite, coal gangue and Sandstone (top row) are melted at a high temperature, then

³⁷ See Entry 7687 CF-28 Responses. Note the Allegor provided a copy of this patent application referenced in Exhibit 17 of the Allegation.

³⁸ See Entry 7687 CF-28 Responses. In the Allegation at Exhibit 15, a Stone World news article entitled “Designing Own Machinery to Produce Quartz Products,” discusses the fact that Chinese Supplier1 “sells its products to North America through its affiliated brand of PolarStone U.S.”

³⁹ See Entry 7687 CF-28 Responses.

⁴⁰ *Id.*

essentially the suitable particles are crushed into frit sand and frit powder. So even though the intermediate product is called “synthetic frit,” the flow chart shows that the frit sand comes from natural materials and is largely made of silica, meaning that the end product is covered by the *AD/CVD Orders*.⁴¹

In sum, the documents provided in entry 7687 suggested that the products entered are FriTech products and that the products are composed of a mixture of materials that includes predominately silica with a resin binder.⁴² Furthermore, the FriTech patent indicates that the surface products are made with a resin binder, quartz powder, and fritted sand, which has a silica (SiO₂) content of 60%-80%.⁴³ Therefore, the FriTech products under the “Preparation Method Thereof” patent fall within the scope definition of the *AD/CVD Orders* because the product’s content includes mostly silica by weight (*i.e.*, the combination of fitted sand (mostly silica) and quartz powder (all silica)) and a resin binder.⁴⁴

Entry 9748 Response

On September 30, 2022, CBP received the CF-28 response from the Importer’s counsel for entry 9748.⁴⁵ The response included purchase orders (POs) from [name] with the vendor listed as [name];⁴⁶ an arrival notice from Starlink Freight to the Importer, indicating the goods were consigned to the Importer and addressed to the attention of [name]; an arrival notice/chargeable items form for [number]; bill of lading for [number]; an invoice and packing list from [name]; a [name] product data sheet; a [name] fabrication and installation manual; a [name] health product declaration; a [name] safety data sheet; and a payment invoice for ocean freight charges. The Importer did not provide the affidavit statement from the manufacturer requested by CBP; therefore, CBP was not able to ascertain who actually manufactured the products being imported.⁴⁷

The [name] PO number [number], dated January 18, 2021, indicates that the product being imported is “Bianca Sabia ½’x30’x144, veined acrylic sheet ([number]), Lighter color for [letter],” with a value of [number] from the vendor [name]. [name] is listed as being located at [address] (Zhuhai address). Additionally, the PO revealed that another U.S.

⁴¹ *Id.* for FriTech Surface brochure. *See also* Allegation at Exhibit 17 for the Patent Application US 2020/0299188 A1.

⁴² *See* Entry 7687 CF-28 Responses.

⁴³ *See* Entry 7687 CF-28 Responses; *see also* Allegation at Exhibit 17.

⁴⁴ *See* Allegation at Exhibit 17,

⁴⁵ *See* September 30, 2022, Entry 9748 CF-28 Response (Entry 9748 CF-28 Response). In addition to the CF-28 questions asked for entry 7687, this CF-28 also requested that the Importer “Please provide a clear and concise breakdown of this product’s material composition.”

⁴⁶ *See* Entry 9748 CF-28 Response.

⁴⁷ CBP reporting requirements for CBP forms 3461 and 7501 allow the manufacturer name to be either the exporter of the goods or the actual producer of the goods. The affidavit would have clarified which entity was the actual manufacturer of the goods vs. a third-party exporter.

importer, [name and number] issued a PO to [style letter] for the merchandise in the entry.

However, the CF-28 response also included commercial invoice number [number] and a packing list, with PO number [number] listed on each document, both dated March 11, 2021. These documents were issued by [name], which is located at the same Zhuhai address as [name], with the buyer listed as the Importer, the information “to [location],” and the total value of [number]. The entry information declared to CBP showed the Importer as importer of record and listed the manufacturer as [name]. Thus, the CF-28 response showed numerous entities involved in the same transaction as suppliers, obfuscating where the goods come from and what the goods actually are made of.

In this entry package, regarding the nature of the goods, the Importer provided a patent from the World Trade Organization, published February 4, 2021, for a product entitled “Artificial Agglomerate Stone Article comprising Synthetic Silicate Granules, with an SiO₂ content between 52% and 60% by weight,” (WTO patent), along with the [name] fabrication and installation manual, health product declaration, and safety data sheet. The Summary section of the WTO patent includes this information,⁴⁸ which again suggest the products being imported are mainly comprised of silica by weight:

- 30 Thus, in a first aspect, the invention is concerned with synthetic silicate granules comprising:
- 52.50 - 59.80 wt.% of SiO₂,
 - 33.50 - 41.10 wt.% of Al₂O₃, and
 - 0.30 - 3.10 wt.% of Na₂O,

Furthermore, the product in the patent is described as “related to materials for construction, decoration and architecture, made of artificial agglomerate stone, as well as to their manufacture and fabrication. Particularly, the invention falls within the technological field of artificial stone articles composed of inorganic fillers selected from stone, stone-like or ceramic materials, and a hardened organic resin, manufactured by a process which includes vacuum vibrocompaction and hardening of unhardened agglomerate mixtures.”⁴⁹

Overall, in response to both CF-28s, the Importer provided documents showing that the products being imported in each entry are made of predominantly silica by weight and contains resin binders;⁵⁰ thus, the products meet the description to be within the scope of the *AD/CVD Orders*. The Importer provided no explanation or evidence contrary to the information provided in the patents to counter CBP’s understanding of the products being imported. For entry 7687, the FriTech products’ “Preparation Method Thereof” indicates that merchandise falls within the scope definition of the *AD/CVD Orders* because the products’ content includes a resin binder and

⁴⁸ See Entry 9748 CF-28 Response at 13-40 for Patent Application WO 2021/019020 A1 (04 February 2021 (04.02.2021)).

⁴⁹ *Id.*

⁵⁰ *Id.* at 13-40 for Patent Application WO 2021/019020 A1 (04 February 2021 (04.02.2021)). See also Entry 7687 CF-28 Responses and Allegation at Exhibit 17.

mostly silica by weight (*i.e.*, the combination of fritted sand (mostly silica) and quartz powder (all silica)).⁵¹ For entry 9748, the WTO patent provided with the CF-28 response demonstrates that the imported product contains a resin binder and a majority of silica by weight, based on a review of the patent language, meaning the resulting product would be covered by the scope of the *AD/CVD Orders*.⁵²

The documents provided for both CF-28 responses also cast doubt on the identity of the ultimate producer of the products being made in China, but there is no dispute the products are manufactured in China. For example, the BOL and the arrival notice for entry 9748 indicates two different shippers/suppliers, [name and name],⁵³ sharing a common Zhuhai address. The PO number listed on one arrival notice is [name] and the description of the goods is listed as “B- Grade reinforced artificial stone.” However, another document in the CF-28 response for the same entry listed the PO number as [number], with the description of the goods as Bianca Sabia ½’x30’x144’ veined acrylic sheet ([number]), Lighter color for [letter]. Finally, a third shipping document listed the PO number as [number], with the description of the goods as “acrylic solid surface.” Confusingly, the commercial invoice and the packing list from [name] indicated the total value of [number] for the products matching PO number [number], which is different from the value indicated in the PO [number], which reflects [number].⁵⁴

Therefore, both entries appeared to be comprised of covered merchandise that entered the United States without payment of the applicable *AD/CVD* duties.

II. Notice of Initiation of Investigation and Interim Measures

Based on the record evidence as of November 17, 2022, CBP determined that reasonable suspicion existed that the Importer entered merchandise covered by the *AD/CVD Orders* into the customs territory of the United States through evasion. Specifically, the information on the record suggested that the Importer imported merchandise described as “artificial marble and/or artificial stone,” when that merchandise should properly be described as QSP and is covered by the *AD/CVD Orders*, because the product’s content meets the definition of the scope of the *AD/CVD Orders*. Therefore, CBP imposed interim measures on the Importer’s imports of “artificial marble and/or artificial stone” to the United States pursuant to the investigation.⁵⁵

In accordance with 19 USC 1517(e)(1)-(3), CBP suspended the liquidation of each unliquidated entry of covered merchandise that entered on or after August 11, 2022, the date of the initiation of the investigation; extended the period for liquidating each unliquidated entry of covered merchandise that entered before August 11, 2022; and took additional measures necessary to protect the revenue of the United States, including requiring a single transaction bond or

⁵¹ See Entry 7687 CF-28 Responses; *see also* Allegation at Exhibit 17.

⁵² See Entry 9748 CF-28 Response at 13-40.

⁵³ See CBP Nov. 4th Memo, at Attachment 1 for the NSF International Certificate.

⁵⁴ See September 30, 2022, Entry 9748 CF-28 Response.

⁵⁵ See CBP email title, “EAPA Investigation 7722: Implementing Interim Measures on Quartz Surface Products,” dated November 9, 2022. *See also*, CBP letter title, “Notice of Initiation of Investigation and Interim Measures - EAPA Case 7722” (NOI), dated November 17, 2022.

requiring the posting of a cash deposit with respect to covered merchandise.⁵⁶ On November 17, 2022, parties to the investigation were notified that CBP had commenced a formal EAPA investigation regarding the Importer and that the aforementioned interim measures had been enacted.

III. Actions Taken After the Imposition of Interim Measures

Requests for Information

To provide the Importer and the Chinese suppliers an opportunity to clarify the type of merchandise they imported to the United States, CBP issued RFI questionnaires to the Importer,⁵⁷ Chinese Supplier1,⁵⁸ Chinese Supplier2,⁵⁹ [name] or Chinese Supplier3,⁶⁰ [name] (Chinese Supplier4)⁶¹ and [name] (Chinese Supplier5).⁶² CBP issued an RFI questionnaire to the Importer on December 2, 2022, and to Chinese Supplier2 on December 6, 2022, and then issued RFI questionnaires to Chinese Supplier1 on January 19, 2023, and Chinese Supplier 3, Chinese Supplier4 and Chinese Supplier5 on January 18, 2023, via FedEx.⁶³

The RFI questionnaire asked the Importer to provide information regarding any relationships it had with other companies, such as the Chinese suppliers; to provide information about its operations, including information about its suppliers' production capabilities and an explanation of the Importer's sales process; to provide product brochures and other marketing materials; and to explain the range and types of products sold and the product codes associated with them. The RFIs issued to the Chinese suppliers, requested similar information as well as information regarding their production capabilities, raw material purchases, inventories, a list and description of all significant inputs used to produce the merchandise at issue, and monthly inventory movement schedules for the three most significant direct material inputs.

CBP sent these questionnaires to fully understand the nature of the merchandise being imported into the United States. The information sought by the RFIs was highly relevant to questions such as who the actual manufacturers are; the nature of the FriTech's fritted sand, which was claimed

⁵⁶ See 19 USC 1623 and 19 CFR 165.24(b)(1)(i)-(iii).

⁵⁷ See CBP email title, "EAPA 7722: Importer RFI Questionnaire," dated December 2, 2022.

⁵⁸ See CBP memorandum to the file, dated April 17, 2023 (CBP April 17th Memo), attachment 1 for FedEx receipt.

⁵⁹ See CBP email to Chinese Supplier2 title, "EAPA 7722: Mfg. RFI Questionnaire," dated December 6, 2023. See also CBP email title, "EAPA 7722: Mfg. RFI Questionnaire," dated January 13, 2023.

⁶⁰ See CBP email to Chinese Supplier3 title, "EAPA 7722: CBP Granting the Extension of Time to Receive the Supplier RFI Response," dated February 28, 2023.

⁶¹ See CBP April 17th Memo.

⁶² *Id.*

⁶³ See CBP's RFI questionnaire to the Importer, "EAPA 7722 Request for Information (RFI)," dated December 2, 2022; CBP's RFI questionnaire to the Chinese Supplier1, "EAPA 7722 - Request for Information (RFI)," dated January 19, 2023; CBP's RFI questionnaire to Chinese Supplier2, "EAPA 7722 Request for Information (RFI)," dated December 6, 2022 (and CBP January 13, 2023, follow up email "EAPA 7722: Mfg. RFI Questionnaire," in addition to FedEx a transmission of the RFI copy, dated January 23, 2023); CBP's RFI questionnaire to Chinese Supplier3, "EAPA 7722 Request for Information (RFI)," dated January 18, 2023; CBP's RFI questionnaire to Chinese Supplier4, "EAPA 7722 Request for Information (RFI)," dated January 18, 2023; and CBP's RFI questionnaire to Chinese Supplier5, "EAPA 7722 Request for Information (RFI)," dated January 18, 2023 (collectively CBP's RFI questionnaires).

to be the primary input of the finished products; the nature of the products produced under the WTO patent; and whether the Chinese suppliers were exporting FriTech or WTO patent-produced goods for the exported products or were instead simply using regular raw quartz materials.

The Importer's RFI Response

On December 28, 2022, CBP received a request for an extension to submit the Importer RFI response from the original deadline of January 5, 2023, to the new deadline of January 19, 2023. Accordingly, CBP granted the extension request, and CBP timely received the RFI response from the Importer on January 19, 2023.⁶⁴

The Importer responded to CBP's RFI questionnaire with the following statement to almost each and every question posed:

“As discussed further herein, {the Importer} did not import any covered merchandise into the U.S. since July 21, 2021. These questions are directed to the role of the company in the manufacture, sale, and distribution of the covered merchandise. Accordingly, this question does not apply, and no further answer is being provided.”⁶⁵

CBP issued a supplemental RFI to the Importer on February 6, 2023,⁶⁶ to provide the Importer with another opportunity to respond to CBP's original RFI questions. In its February 13, 2023, response to CBP's supplemental RFI, the Importer maintained that the information being requested would not be needed for any purpose by CBP; therefore, it was not being provided.⁶⁷ Without providing any of the evidence or supporting documentation requested by CBP, the Importer insisted that the EAPA investigation should cease because the goods in question are not QSP as defined in the scope of the *AD/CVD Orders* and insisted that the products being imported are a different type of surface product made from silicates and frits.

“As will be discussed herein, most of the requests in this supplemental request for information {are} irrelevant and provide no useful information with respect to the EAPA determination. A number of facts are not in dispute. The goods were produced in China and were claimed to have been a product of China at the time of entry. There is no issue as to a false declaration of origin. The sole “circumvention” turns on the question as to the classification of the goods and whether they fall within the scope of the order. In other words, this EAPA action turns on one point: whether the goods are in scope or are not in scope. Any other information is irrelevant and thus is not needed by CBP for any purpose. Accordingly, any request seeking information unrelated to the nature of the goods is overbroad and unnecessary.”⁶⁸

⁶⁴ See the Importer's RFI response title, “Response to Request for Information — EAPA Case Number 7722, Vanguard Trading Company LLC,” dated January 19, 2023 (Jan. 19th Importer's RFI response).

⁶⁵ See the Importer's Jan. 19th RFI response at 3.

⁶⁶ See CBP's Supp. RFI questionnaire, “Supplemental Request for Information,” February 6, 2023.

⁶⁷ See the Importer's RFI “Response to Supplemental Request for Information,” dated February 13, 2023.

⁶⁸ *Id.*

In all the RFI questionnaires issued, CBP clearly informed the RFI questionnaire recipients that, if they failed to provide the necessary information, CBP might apply an inference adverse to their interests in selecting from among the facts otherwise available on the record to make the determination as to evasion.⁶⁹

Chinese-Supplier3 RFI Response

On March 6, 2023, Chinese Supplier3 responded to CBP's RFI questionnaire⁷⁰ stating that "they did not export any covered merchandise to the U.S. since July 21, 2021, and echoed the definition of the covered merchandise." Chinese Supplier3 maintained that, as it demonstrated in the [name] Safety Data Sheet,⁷¹ the product exported by Chinese Supplier3 is not subject the AD/CVD orders on QSP from China. In its RFI response, Chinese Supplier3 clarified to CBP that Guang Relang New Material Technology Co., Ltd. was formerly known as [name].⁷² Before receiving this information, CBP originally issued separate RFIs to [] Chinese Supplier3 and [name] Chinese Supplier5. Since Chinese Supplier3's RFI response revealed that Chinese Supplier5 is the same entity, for the remainder of this notice, CBP will consolidate Chinese Supplier5 into Chinese Supplier3 and only refer to one response for Chinese Supplier3.

The [name] safety data sheet provided in the CF-28 response identified the product they supplied as [name] 100% Acrylic Solid Surface and details a different supplier's name, [name] in Guangdong, China, as the source of the product and a different importer's name, [name, address and email

] rather than the importer and supplier named in the Allegation and asked about in the RFI questionnaire.⁷³ However, it also supplied the WTO patent, which indicated that the surface products being imported to the United States in that entry were made predominantly of silica and a resin binder.⁷⁴ Because Chinese Supplier3 provided contradictory evidence on the record and did not fully answer CBP's RFI questionnaires or explain the contradictions, CBP has to rely on the patent formula for the product's composition.⁷⁵

⁶⁹ See 19 CFR 165.6. See also CBP's RFI questionnaires.

⁷⁰ See Chinese Supplier3 RFI, "Response to Request for Information — EAPA Case Number 7722, [name]," dated March 6, 2023 (Chinese Supplier3 March 6th RFI Response). See also CBP email title, "'EAPA 7722: CBP Granting the Extension of Time to Receive the Supplier RFI Response," dated February 28, 2023.

⁷¹ See also Entry 9748 CF-28 Response.

⁷² See Chinese Supplier3 March 6th RFI Response. According to the NSF International certificate, Guang Relang New Material Technology Co., Ltd is also doing business as (dba) Durasein, Prima Decora. See November 4, 2022, CBP memorandum to the file (CBP Nov, 4th Memo).

⁷³ See Entry 9748 CF-28 Response.

⁷⁴ *Id.*

⁷⁵ See Chinese Supplier3 March 6th RFI Response. See also Entry 9748 CF-28 Response.

All the RFI questionnaire responses from Chinese Supplier3 lacked the essential facts to counter evidence that evasion was occurring. One of the following statements was provided to almost each and every question that CBP posed:⁷⁶

“As discussed further herein, {Chinese Supplier3} did not export any covered merchandise to the U.S. since July 21, 2021. These questions are directed to the role of the company in the manufacture, sale and distribution of the covered merchandise. Accordingly, this question does not apply, and no further answer is being provided.”

or

“As discussed further herein, {Chinese Supplier3} did not export or sell any covered merchandise into the U.S. since July 21, 2021. These questions are expressly directed to covered merchandise. As {Chinese Supplier3} did not sell covered merchandise, the response to this question is not relevant and no further information is to be provided.”

Other RFI Responses

CBP did not receive any RFI responses from Chinese Supplier1, Chinese Supplier2, and Chinese Supplier4 [name], despite CBP providing several opportunities to reply.⁷⁷ CBP asked these Chinese suppliers to provide complete and detailed narrative responses to each of the RFI questions. CBP expressly explained in the RFI questionnaire that CBP was seeking the information to understand their products and production processes so that CBP could make a determination as to evasion.

Importer’s Request for Action and Voluntary Submission of Factual Information (VFI)⁷⁸

On February 27, 2023, the Importer voluntarily submitted the following information: a test report from the ([name and location]) claiming to show the characteristics of the slab subject to this EAPA investigation;⁷⁹ data from the RRUFF Project Website and a brochure explaining the RFUFF project, which provides spectral data for a number of materials including [material type] showing that the material of chief weight has the structure [formula]; and information about the Amphibole Group of Silicates discussing [material type].

In its submission, the Importer expressed that CBP should seek DOC confirmation as to whether such goods are covered by the scope of the *AD/CVD Orders* and maintained that the subject of this EAPA action is outside the scope of the *AD/CVD Orders*.⁸⁰ The Importer stated that the only issue before CBP is whether or not such goods are covered by the scope of the *AD/CVD*

⁷⁶ See Chinese Supplier3 March 6th RFI Response.

⁷⁷ See CBP’s RFI questionnaires.

⁷⁸ See the Importer’s “Request for Action and Voluntary Submission of Factual Information (VFI)— EAPA Case Number 7722, Vanguard Trading Company LLC,” dated February 27, 2023.

⁷⁹ Note, CBP was unable to take a sample of the Importer’s products because no entries were imported into the United States after the investigation was initiated.

⁸⁰ *Id.*

Orders, because the Importer claimed that the product it was importing was not predominately composed of silica by weight, but rather was composed of other substances including certain silicates that made it outside the scope of the *AD/CVD Orders*. Lastly, the Importer stated that silica is not synonymous with silicate; silica is only one of many silicates. It is the silicate with the chemical formula SiO₂ and can be found in both the crystalline and amorphous form. That the two (silica and silicate) have similar names does not mean that they are the same. The Importer also stated that there is no dispute that these goods are of Chinese origin.⁸¹

After reviewing the information placed on the record by the Importer, CBP has no way of knowing if the test report that the Importer submitted as part of the VFI is the same for the FriTech patented product subject to this EAPA investigation. The product referred to in the test report was described as FriTech [[color and number](#)]. This product number was not listed in the FriTech product brochure provided to CBP in the investigation, and CBP found that neither the FriTech product information nor the WTO patent provided mentioned [[material type](#)] as one of the components. Record evidence regarding the composition of the fritted sand used in the Importer's imported FriTech product shows that it contains up to 80% silica;⁸² therefore, any artificial marble or artificial stone slabs made from FriTech product specifications and/or the WTO patent would be predominately silica by weight, have resin binders, and are covered by the scope of the *AD/CVD Orders*.

*Importer's Written Arguments and Response to Written Arguments*⁸³

The Importer's written arguments were received timely on April 17, 2023; however, CBP rejected the submission because it contained new factual information.⁸⁴ The revised written arguments were received from the Importer on May 15, 2023,⁸⁵ asserting that CBP is ignoring its obligations under 19 CFR 165.16 to refer matters to DOC for a scope ruling where merchandise in question does not clearly fall within the scope of an AD/CVD order.⁸⁶ The Importer argued that CBP's failure to make such a referral ultimately renders a continuation of the current EAPA investigation legally unsupportable. The Importer asserted that CBP refusing to request a DOC scope ruling has subject the Importer to an unwarranted and unlawful EAPA investigation. The Importer also asserted that CBP must consider all relevant facts and not only those facts which support CBP's inaccurate assumptions.⁸⁷

The Importer maintained that the product imported is not predominantly silica by weight, but rather is composed of other substances including certain silicates. The Importer repeated its VFI

⁸¹ *Id.* at 2 and 3.

⁸² See Alleger's "Response to Written Comments," dated May 15, 2023, at 2. See also, Entry 7687 CF-28 Responses, Allegation at Exhibit 17, and Entry 9748 CF-28 Response.

⁸³ See the Importer's "Response to Written Arguments — EAPA Case Number 7722, Vanguard Trading Company LLC.," dated May 2, 2023.

⁸⁴ See CBP rejection email title, "EAPA 7722 - Rejection of Vanguard's Written Arguments and Rebuttal Argument," dated May 11, 2023.

⁸⁵ See the Importer's email, "EAPA 7722 - Resubmission of Vanguard's Written Arguments (BCI and Public Version)," dated May 15, 2023. See also, April 17, 2023, "Written Arguments, EAPA Case Number 7722 — Vanguard Trading Company LLC" (collectively, the Importer's May 15th Written Argument).

⁸⁶ *Id.*

⁸⁷ *Id.* at 3.

arguments that silica is not synonymous with silicate and just because the two (silica and silicate) have similar names, does not mean that they are the same. The Importer cited its VFI document where it provided a test report from the [name and location], for the product it claims it is importing.⁸⁸ That report shows that the quartz component (silica) for that tested product was [number change to number]. In contrast, the [material type from number change to number].⁸⁹ The Importer claimed this is as prima facie evidence that the slabs that are the subject of this EAPA investigation are outside of the scope of the *AD/CVD Orders*. The Importer asserts this was further supported in the VFI, which provided further information about silicates.⁹⁰

The Importer argued that its degree of cooperation with this EAPA investigation is not relevant, and stated that the Alleger undoubtedly will make an argument that CBP should make adverse inferences because the Importer did not fully respond to the numerous overreaching and overbroad requests for information.⁹¹ In the rebuttal comment, the Importer claimed that they did not respond to the RFI questions because they are irrelevant as they have no bearing on the ultimate outcome.⁹² The Importer asserted that CBP can only take adverse inferences when critical facts are missing. In this case, the Importer argues that the only critical fact is whether the product in question is covered by the scope of the *AD/CVD Orders*.⁹³ The Importer also argues that the issue as to scope is not delegated to CBP, and as such, CBP cannot take an adverse inference on such an issue, but rather must defer to DOC.⁹⁴

CBP's Position

CBP is not required to initiate a scope referral to the DOC. Rather, CBP will initiate a referral only if the Agency is unable to determine whether the imported merchandise properly falls within the scope of the relevant AD/CVD order.⁹⁵ Based on the evidence on the record, as described in this notice, CBP has determined that the FriTech product being imported as artificial marble and artificial stone is covered by the scope of the *AD/CVD Orders* because the patent information regarding the composition of the material shows that the imported FriTech product is composed predominately of silica as discussed above;⁹⁶ thus, the FriTech surface products are covered by the scope of the *AD/CVD Orders*.⁹⁷ CBP notified parties to the investigation at the NOI stage of this EAPA investigation that the evidence on the record leads CBP to determine that the artificial marble and artificial stone being entered by the Importer are covered by the

⁸⁸ See the Importer's VFI at Exhibit A.

⁸⁹ *Id.* at 3.

⁹⁰ *Id.*

⁹¹ See the Importer's May 15th Written Argument at 5.

⁹² See the Importer's "Response to Written Arguments, EAPA Case Number 7722 -- Vanguard Trading Company LLC", dated May 2, 2023.

⁹³ *Id.*

⁹⁴ See the Importer's May 15th Written Argument at 5.

⁹⁵ See 19 CFR 165.15(a); see also 19 CFR 165.16.

⁹⁶ See Alleger's "Response to Written Comments," dated May 15, 2023, at 2. See also, Entry 7687 CF-28 Responses for FriTech Surface product brochure and the Patent Application US 2020/0299188 A1.

⁹⁷ See the Allegation at Exhibit 17.

scope of the *AD/CVD Orders*, and the Importer and Chinese suppliers provided no further information afterwards to allow CBP to make any other determination.

*Alleger's Written Arguments and the Response to Written Comments*⁹⁸

In its written arguments,⁹⁹ the Alleger argued that CBP should make a final affirmative determination of evasion based on the record of this investigation. Because multiple parties failed to cooperate during this investigation by not providing complete RFI responses to CBP, the agency should apply an adverse inference to these parties in reaching its final determination as to evasion.¹⁰⁰ Even setting aside the non-cooperation, the record contains substantial evidence that the goods are covered by the scope of the *AD/CVD Orders*. In particular, the descriptions of the FriTech products from the company websites as well as the patents that have been published for this product all unequivocally state that the product is predominately made of SiO₂ – *i.e.*, silica and not silicates.¹⁰¹ Furthermore, the Importer itself concedes that most of the salient facts in this investigation “are not in dispute.”¹⁰² This includes the fact that the “goods were produced in China and were claimed to have been a product of China at the time of entry” by the Importer. Indeed, the only question is “whether the goods are in scope or are not in scope.”¹⁰³ Since the Importer and its suppliers failed to provide complete responses to CBP’s RFIs, there is no relevant evidence on the record supporting the Importer’s contention that the products are not predominately composed of silica.¹⁰⁴ Thus, there is substantial evidence that the products are covered by the *AD/CVD Orders*.¹⁰⁵

CBP's Position

CBP determines that adverse inferences can be applied in this investigation and that there is substantial evidence of evasion of the *AD/CVD Orders* even absent the application of adverse inferences.

Adverse Inferences

In making an evasion determination, EAPA provides CBP the authority to “collect such additional information as is necessary to make the determination through such methods as the Commissioner considers appropriate, including by... issuing a questionnaire with respect to such covered merchandise to” the importer alleged to have engaged in evasion and the foreign producer of the covered merchandise.¹⁰⁶ The EAPA regulations provide that to obtain “information necessary to carry out its functions and duties... CBP may employ any means authorized by law,” which as noted in the statute, includes the issuance of questionnaires to

⁹⁸ See Alleger’s “Response to Written Comments,” dated May 15, 2023,

⁹⁹ See Alleger’s “Written Arguments,” dated April 17, 2023.

¹⁰⁰ *Id.* at 9.

¹⁰¹ See Alleger’s “Response to Written Comments,” dated May 15, 2023. at 3.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ See the Importer’s May 15th Written Argument at 3.

¹⁰⁶ See 19 USC 1517(c)(2).

interested parties.¹⁰⁷ Furthermore, 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....”¹⁰⁸

Under 19 USC 1517(c)(3), CBP may apply adverse inferences if CBP finds that a party “has failed to cooperate by not acting to the best of the party or person’s ability to comply with a request for information, the Commissioner may, in making a determination {of evasion}, use an inference that is adverse to the interests of that party or person in selecting from among the facts otherwise available to make the determination.” Additionally, the EAPA regulations provide that if “the importer, or the foreign producer or exporter of the covered merchandise fails to cooperate and comply to the best of its ability with a request for information made by CBP, CBP may apply an inference adverse to the interests of that party in selecting from among the facts otherwise available to make the determination as to evasion...”¹⁰⁹

As discussed above, the foreign suppliers were provided with every opportunity to respond to their RFI questionnaires. In addition, CBP mailed via FedEx¹¹⁰ the hard copies of the RFIs along with a copy of the public version of the NOI to each of the suppliers. Nevertheless, Chinese Supplier1, Chinese Supplier2, and Chinese Supplier4 never responded to their RFIs. While the Importer and Chinese Supplier3 ostensibly “responded” to the RFIs that CBP sent them, in actuality both parties merely stated that none of CBP’s questions were valid so they would not answer them and did not provide the information requested by CBP.¹¹¹

In this investigation, CBP attempted to obtain information to conduct an investigation from the Importer and the Chinese suppliers failed to cooperate to the best of their abilities by not responding to CBP’s requests for information. In this case, none of the parties to the investigation respond to the RFIs to the best of their abilities—three of the Chinese suppliers did not respond at all, and the Importer and Chinese Supplier3 (which CBP learned Chinese Supplier5 turned into) did not provide any of the detailed information requested by CBP. As a result, CBP finds that the Importer, Chinese Supplier1, Chinese Supplier2, Chinese Supplier3, and Chinese Supplier4 all failed to act to the best of their abilities in this EAPA investigation by their lack of cooperation and responsiveness to CBP’s requests for information pertaining to the importation, acquisition, production, sale, and purchase of covered merchandise exported to the United States. All parties to the investigation failed to provide documentary evidence that would substantiate and/or corroborate the Importer’s reported imports of artificial marble and artificial stone as not being subject to the *AD/CVD Orders*. As a result of this lack of cooperation, the record does not contain information to corroborate the Importer’s claims. Therefore, consistent with 19 USC 1517(c)(3)(A) and 19 CFR 165.6, CBP will apply inferences adverse to the

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *See* 19 CFR 165.27.

¹¹⁰ *See* CBP April 17th Memo.

¹¹¹ *See* Chinese Supplier3 March 6th RFI Response.

interests of the above listed non-cooperating parties in this investigation and accordingly select from facts otherwise available on the record in making the determination as to evasion.

In selecting from among the facts otherwise available, CBP finds that the Importer entered Chinese-origin QSP that was misclassified, based on the information provided in the Allegation, which is further supported by information contained in the CF-28 responses. As mentioned above, QSP is defined by the scope of the *AD/CVD Orders* and consists of surfaces in which silica (SiO₂) is mixed with a resin binder. The silica content must be greater than any other single material by weight.¹¹² Both the Allegation and the CF-28 responses show that the products being imported by the Importer from these Chinese suppliers are made in accordance with patents that show that surface products contain predominantly silica by weight and a resin binder. There is also no indication on the record that the products being imported qualify for an exception to the scope of the *AD/CVD Orders*.

Regarding the VFI submission, CBP finds that the test report in this submission is unreliable because the product sampled appears to be different from the product subject to this EAPA investigation. Because the Importer did not provide responses to CBP's RFI questionnaires, CBP has no way of corroborating that the tested merchandise included in the report is the same as the merchandise imported by the Importer during the period of investigation under HTS 6810.99.0080. CBP notes that the content of the tested material in the VFI submission does not match the patent descriptions of the content of the goods, as provided in the CF-28 responses. Finally, the record clearly establishes and there is no dispute on the record that the products are made in China and are being declared as Chinese origin. Therefore, in drawing adverse inferences as described above from the facts otherwise available on the record, CBP determines that the products being imported by the Importer are misclassified and that the Importer failed to declare that the Chinese-origin artificial stone and artificial marble is QSP subject to the *AD/CVD Orders*, because it contains a mixture of predominantly silica with a resin binder, which means it is within the scope of the *AD/CVD Orders*.

IV. Determination as to Evasion

Under 19 CFR 165.27(a) and 19 USC 1517(c)(1)(A), CBP must “make a determination based on substantial evidence as to whether covered merchandise was entered into the customs territory of the United States through evasion.” “Covered merchandise” is defined by 19 CFR 165.1 as “merchandise that is subject to a CVD order... and/or an AD order.” “Evasion” is defined as entering covered merchandise “into the customs territory of the United States for consumption by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material, and that results in any cash deposit or other security or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the covered merchandise.”¹¹³ As discussed throughout this memo, the record of this investigation indicates that substantial evidence exists to determine that the Importer failed to declare Chinese-origin QSP and entered such QSP into the customs territory of the United States through evasion.

¹¹² See *AD/CVD Orders*.

¹¹³ See 19 CFR 165.1.

The evidence on the record demonstrates that the Importer imports merchandise as artificial stone and artificial marble when that merchandise should properly be described as QSP and is covered by the *AD/CVD Orders* because it contains a mixture of materials that includes predominantly silica with a resin binder fitting the definition of the scope of the *AD/CVD Orders*. Because of the lack of cooperation in this investigation, CBP is drawing adverse inferences, relying on information from the Allegation and the CF-28 responses to determine that the merchandise being imported by the Importer is QSP covered by the *AD/CVD Orders*. Specifically, the Importer provided no explanation or evidence contrary to the information provided on the record to refute CBP's understanding of the composition of the products being imported. Instead, both the WTO patent and the FriTech patent on the record show that these surface products meet the definition of the scope of the *AD/CVD Orders* because the products include predominantly silica by weight with a resin binder.

V. Actions Taken Pursuant to the Affirmative Determination of Evasion

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

Sincerely,



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