



90 K Street NE
Washington, DC 20002

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

May 1, 2023

PUBLIC VERSION

OT:RR:BSTC:PEN H329896 MF

Brian J. Murphy, Esq.
Miller & Company P.C.
Counsel for C.I.S. Investments, LLC d/b/a Triangle Metals
4929 Main Street
Kansas City, Missouri 64112

John E. Turlais
Foley & Lardner, LLP
Counsel for Flatlands Holdings, LLC d/b/a RK Supply, LLC
3000 K Street, N.W.
Suite 600
Washington, D.C. 20007-5109

Re: Enforce and Protect Act (“EAPA”) Case Number 7699; *Forged Steel Fittings From Italy and the People’s Republic of China: Antidumping Duty Orders*, 83 Fed. Reg. 60,397 (Nov. 26, 2018); and *Forged Steel Fittings From the People’s Republic of China: Countervailing Duty Order*, 83 Fed. Reg. 60,396 (Nov. 26, 2018); C.I.S. Investments, LLC d/b/a Triangle Metals; 19 U.S.C. § 1517

Dear Mr. Murphy and Mr. Turlais:

This is in response to the request for *de novo* administrative review of a determination of evasion dated December 20, 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 Case Number 7699 (“December 20th Determination”).¹ The request for review, dated February 3, 2023, was submitted to CBP, OT, Regulations and Rulings (“RR”), by Miller & Company P.C. on behalf of C.I.S. Investments, LLC d/b/a Triangle Metals (“C.I.S.” or “Importer”), pursuant to 19 U.S.C § 1517(f) and 19 CFR § 165.41(a).

¹ See Notice of Determination as to Evasion in EAPA Case Number 7699 (Public Version), dated December 20, 2022, available at <https://www.cbp.gov/document/publications/eapa-case-number-7699-cis-investments-llc-notice-determination-evasion>. (Last accessed May 1, 2023.)

PUBLIC VERSION

I. Background

Inasmuch as the facts in this case were fully set forth in the December 20th Determination, we will not repeat the entire factual history herein. In brief, according to the record evidence, on May 24, 2022, TRLED initiated a formal investigation under Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015 (“TFTEA”), in response to an allegation of evasion.²

On January 24, 2022, Flatlands Holdings, LLC d/b/a RK Supply, LLC (“RK Supply” or “Alleger”) filed an EAPA allegation against C.I.S. CBP acknowledged receipt of the allegation on January 26, 2022.

RK Supply alleged that the Importer was importing forged steel fittings (“FSF”) from the People’s Republic of China (“China”) into the United States that were transhipped through Thailand, via supplier Siam Innovation Goods Co. Ltd. (“Siam Innovation”); Sri Lanka, via supplier Eastborn Pvt. Ltd (“Eastborn”); and, Indonesia, via supplier PT Satria Tunas Persada (“Satria”), to evade the payment of antidumping and countervailing duties (“AD/CVD”) on FSF from China, under Case Nos. A-570-067 and C-570-068.³

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

The merchandise covered by this order is carbon and alloy forged steel fittings, whether unfinished (commonly known as blanks or rough forgings) or finished. Such fittings are made in a variety of shapes including, but not limited to, elbows, tees, crosses, laterals, couplings, reducers, caps, plugs, bushings, unions, and outlets. Forged steel fittings are covered regardless of end finish, whether threaded, socket-weld or other end connections.

While these fittings are generally manufactured to specifications ASME B16.11, MSS SP-79, MSS SP-83, MSS SP-97, ASTM A105, ASTM A350, and ASTM A182, the scope is not limited to fittings made to these specifications.

The term forged is an industry term used to describe a class of products included in applicable standards and does not reference an exclusive manufacturing process. Forged steel fittings are not manufactured from casting. Pursuant to the applicable specifications, subject fittings may also be machined from bar stock or machined from seamless pipe and tube.

² See Notice of Initiation of Investigation and Interim Measures: EAPA Case 7699, dated May 24, 2022 (“Notice of Initiation”), available at: <https://www.cbp.gov/document/guidance/eapa-case-number-7699-cis-investments-llc-notice-initiation-investigation-and>. (Last accessed May 1, 2023.)

³ See *Forged Steel Fittings From Italy and the People’s Republic of China: Antidumping Duty Orders*, 83 Fed. Reg. 60,397 (Nov. 26, 2018); and *Forged Steel Fittings From the People’s Republic of China: Countervailing Duty Order*, 83 Fed. Reg. 60,396 (Nov. 26, 2018) (“AD/CVD Orders”).

PUBLIC VERSION

All types of fittings are included in the scope regardless of nominal pipe size (which may or may not be expressed in inches of nominal pipe size), pressure rating (usually, but not necessarily expressed in pounds of pressure/PSI, *e.g.*, 2,000 or 2M; 3,000 or 3M; 6,000 or 6M; 9,000 or 9M), wall thickness, and whether or not heat treated.

Excluded from this scope are all fittings entirely made of stainless steel. Also excluded are flanges, butt weld fittings, butt weld outlets, nipples, and all fittings that have a maximum pressure rating of 300 pounds of pressure/PSI or less.

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

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

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

Subject carbon and alloy forged steel fittings are normally entered under Harmonized Tariff Schedule of the United States (HTSUS) 7307.99.1000, 7307.99.3000, 7307.99.5045, and 7307.99.5060. They also may be entered under HTSUS 7307.92.3010, 7307.92.3030, 7307.92.9000, and 7326.19.0010. The HTSUS subheadings and specifications are provided for convenience and customs purposes; the written description of the scope is dispositive.⁴

On May 24, 2022, in accordance with 19 CFR § 165.24, CBP issued a Notice of Initiation to all parties to the investigation, stating that the investigation had begun on February 16, 2022, and notifying the parties of CBP's decision to take interim measures based upon reasonable suspicion that the Importer entered covered merchandise into the customs territory of the United States through evasion.⁵ The entries subject to the investigation are all unliquidated entries of covered merchandise entered from June 1, 2019, through the pendency of the investigation.⁶

⁴ *Id.*

⁵ *See* Notice of Initiation.

⁶ *See* 19 CFR § 165.2 (“In addition, at its discretion, CBP may investigate other entries of such covered merchandise.”).

PUBLIC VERSION

On December 20, 2022, TRLED found that there was substantial evidence that the FSF imported by C.I.S. from Sri Lanka, Indonesia, and Thailand were of Chinese origin and described by the scope of the AD/CVD Orders. The FSF were entered into the customs territory of the United States as type “01” consumption entries.⁷ As a result, no cash deposits or AD/CVD were applied to the merchandise.⁸ TRLED applied adverse inferences against Siam Innovation, Eastborn, and Satria for their failure to respond to TRLED’s Requests for Information (“RFIs”). TRLED also applied adverse inferences against C.I.S. to find evasion.

On February 3, 2023, C.I.S. filed a timely Request for Administrative Review. On February 6, 2023, RR sent an email to all parties to the investigation, notifying them of the commencement of the administrative review process and the assignment of RR case number H329896. RK Supply did not file a response to C.I.S.’s request for administrative review.

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.”⁹ 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.¹⁰

Examples of evasion include, but are not limited to, misrepresentation of the merchandise’s true country of origin (*e.g.*, through false country of origin markings on the product itself or false sales), false or incorrect shipping and entry documentation, or misreporting of the merchandise’s physical characteristics.¹¹

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).”¹² While “substantial evidence” is not defined by statute, the “substantial evidence” standard has been reviewed by the

⁷ Imports that are covered by AD/CVD orders are required to be entered as type “03” entries; entries declared as type “01” are not subject to payment of AD/CVD. *See* CBP Entry Summary Form 7501 and Instructions and the ACE Entry Summary Business Rules and Procedure Document <https://www.cbp.gov/trade/programs-administration/entry-summary/cbp-form-7501> (Last accessed May. 1, 2023).

⁸ *See* December 20th Determination (Public Version).

⁹ 19 U.S.C. § 1517(c)(1).

¹⁰ 19 U.S.C. § 1517(a)(5); *see also* 19 CFR § 165.1.

¹¹ *See Investigation of Claims of Evasion of Antidumping and Countervailing Duties, Interim Regulations*, 81 Fed. Reg. 56,477, 56,478 (Aug. 22, 2016).

¹² 19 C.F.R. § 165.1.

PUBLIC VERSION

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.”¹³

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. In doing so, CBP may apply adverse inferences where they are warranted.¹⁴ RR’s determination as to evasion must be supported by substantial evidence.

A. C.I.S.’s Arguments

C.I.S. requests that we reverse the December 20th Determination, arguing that certain merchandise that it imported, even if from China, constituted non-covered merchandise that was not subject to the AD/CVD Orders. In support of this argument, C.I.S. states that TRLED did not consider the evidence in the administrative record (“Record”) refuting the allegation of evasion and asserts that “the administrative record includes evidence that certain merchandise imported by {importer} from the {three named manufacturers} ... constitutes non-covered merchandise which is not subject to the FSF Orders.”¹⁵ On this basis, C.I.S. concludes that the December 20th Determination should be reversed at least with respect to the non-covered merchandise.¹⁶

C.I.S. states that “{t}here is a lack of substantial evidence to apply the determination to non-covered merchandise which has not been substantiated to be covered merchandise.” Moreover, C.I.S. asserts that “{t}here is a lack of substantial evidence supporting the application of the EAPA measures to merchandise which is clearly outside the scope of FSF Orders and fails to qualify as ‘covered merchandise.’”¹⁷ Referencing the scope language within the AD/CVD Orders, C.I.S. notes that the administrative record demonstrates “the purchase, manufacture, import and sale of “butt weld fittings,” “butt weld outlets,” “nipples,” “stainless steel fittings, fittings made to API standards, and malleable iron pipe fittings which are plainly outside the scope of the FSF Orders as non-covered merchandise.”¹⁸ C.I.S.’s scope argument extends to all three of the manufacturers addressed by name in the December 20th Determination.

C.I.S. contends that the determination includes no support for applying the affirmative evasion determination to C.I.S.’s entries from [Company Name],¹⁹ an entity not specifically addressed in the December 20th Determination. Additionally, C.I.S. notes that [Company Name] was not the subject of any RFI inquiries by CBP until the issuance of CBP’s final questionnaire, the Second Supplemental RFI.²⁰

¹³ See *Altex, Inc. v. United States*, 370 F.3d 1108, 1116 (Fed. Cir. 2004) (internal citations and quotation marks omitted).

¹⁴ See 19 C.F.R. 165.6.

¹⁵ Request for Administrative Review, February 3, 2023 at 2–3.

¹⁶ *Id.* at 3.

¹⁷ *Id.* at 4–5.

¹⁸ *Id.* at 6.

¹⁹ *Id.* at 13–14.

²⁰ *Id.* at 14.

PUBLIC VERSION

C.I.S. also argues that the information upon which TRLED relied in making the December 20th Determination violates the procedural due process requirements of the Fifth and Fourteenth Amendments, as applied in *Royal Brush Mfg., Inc. v. United States*, 545 F. Supp. 3d 1357, 1365-66 (Ct. Int'l Trade Oct. 29, 2021).²¹ C.I.S. specifically points to TRLED's use of undisclosed Siam Innovation import and export data.²² Additionally, C.I.S. refers to TRLED's reliance upon an unnamed source who "told CBP that it had no records," which indicated that an entity was "not a legitimate manufacturer."²³ C.I.S. argues that as a result of this lack of access to the full record, it was prevented from presenting rebuttal information or documentation in its voluntary submission of information and thus requests that TRLED's determination of evasion be reversed in its entirety.

As such, C.I.S. requests that the December 20th Determination be reversed.

B. RK Supply, LLC's Arguments

The allegor in this case, RK Supply, did not file a response to C.I.S.'s request for review of TRLED's December 20th Determination.

III. Administrative Review Analysis

As an initial matter, pursuant to 19 U.S.C. § 1517(f)(1) and 19 CFR § 165.45, upon request for administrative review, RR will apply a *de novo* standard of review under the law, based solely upon the facts and circumstances on the administrative record in the proceeding. In making our determination, we reviewed: (1) the administrative record upon which the December 20th Determination was made, as provided to RR by TRLED; and, (2) the timely and properly filed request for review.

The purpose of this *de novo* review is to analyze the December 20th Determination and the accompanying administrative record to determine whether substantial evidence of evasion exists. As discussed in greater detail below, based on our review of the administrative record and C.I.S.'s request for administrative review, there is substantial evidence that FSF from China described by the scope of the AD/CVD Orders were entered as type "01" consumption entries and, that, AD/CVD were not paid.²⁴ There is no dispute that Chinese-manufactured FSF transshipped to the United States would fall under the AD/CVD Orders. There is substantial evidence that FSF imported by C.I.S., and sourced from the three entities named in the December 20th Determination, were described by the scope of the AD/CVD Orders. However, our review also indicates that merchandise other than FSF and/or FSF excluded from the scope of the AD/CVD Orders was imported on entries at issue in the investigation. Other facts in contention are (1) whether some of the fittings at issue, even if of Chinese origin, are outside the scope of the AD/CVD Orders, and (2) whether it was proper for TRLED to extend its finding that [company name] and three additional [country] manufacturers not named in the December 20th Determination engaged in transshipment.

²¹ *Id.* at 14–15.

²² *Id.* at 14.

²³ *Id.*

²⁴ See C.I.S.'s RFI Responses; *see also*, CBP Entry Summary Form 7501 and Instructions and the ACE Entry Summary Business Rules and Procedure Document.

PUBLIC VERSION

As long as the FSF are considered covered merchandise under the applicable AD/CVD Orders, the failure to enter FSF on type “03” AD/CVD entries and without deposit or payment of the AD/CVD owed constitutes evasion under the EAPA statute and implementing regulations. We find substantial evidence in the record that evasion occurred with respect to entries of FSF that C.I.S. sourced from two of the foreign suppliers named in the December 20th Determination, as we explain below. However, we also find that the broad application of adverse inferences against C.I.S. to conclude that merchandise sourced from all suppliers in Thailand, Indonesia, and Sri Lanka and imported into the United States without the payment of AD/CVD constitutes evasion was not supported by substantial evidence. Further, the application of adverse inferences against several manufacturers/shippers is insufficient to warrant a finding of evasion. There is also record evidence that C.I.S. imported merchandise other than FSF and/or FSF specifically excluded from the scope of the AD/CVD Orders, regardless of foreign supplier. We now elaborate on these findings individually.

A. The broad application of adverse inferences to find evasion by C.I.S. on all exports from Sri Lanka, Indonesia, and Thailand, regardless of supplier, was not supported by substantial evidence.

As a preliminary matter, it is necessary to clarify the appropriate scope of the adverse inferences which can be applied in this matter. TRLED’s application of adverse inferences encompasses not only the non-responsive manufacturers from which it requested RFIs, but the importer, C.I.S.²⁵ Based on such inferences, TRLED’s finding of transshipment extended to all entries sourced from any manufacturer operating within Thailand, Sri Lanka, and Indonesia, from which C.I.S. imported FSF during the period of investigation. We disagree with such a finding, as discussed more fully below.

19 CFR 165.6(a), provides, in part, as follows:

If the party to the investigation that filed an allegation, the importer, or the foreign producer or exporter of the covered merchandise fails to cooperate and comply to the best of its ability with a request for information made by CBP, CBP may apply an inference adverse to the interests of that party in selecting from among the facts otherwise available to make the determination as to evasion pursuant to 165.27 and subpart D of this part.

However, there is no record evidence that C.I.S. failed to cooperate and comply to the best of its ability with a request for information made by CBP. In fact, there is record evidence to the contrary.

In determining the applicability of adverse inferences to C.I.S., TRLED noted that there were identical heat numbers and chemical compositions listed on certain mill certificates associated with the supposed Thai and Sri Lankan manufacturers. This led to a conclusion that this constitutes evidence of the fraudulent preparation of documents.²⁶ However, this conclusion assumes such corresponding data points are impossible and is not based on expert testimony, affidavits or any

²⁵ See December 20th Determination (Public Version) at 23 (“The provision of fraudulent or misleading information is clearly noncompliant with CBP’s EAPA investigation and further supports the application of adverse inferences against CIS and the other entities.”).

²⁶ *Id.* at 22.

PUBLIC VERSION

other type of evidence corroborating this finding. As such, RR is unwilling to rely on these facts as evidence of a failure to fully cooperate.

Additionally, even if RR agreed that these mill certificates were prepared fraudulently, to view C.I.S. as responsible for these purportedly false documents without any additional evidence showing the Importer's involvement in such a scheme, and to construe this as a failure to fully cooperate, is in our view inconsistent with the record when considered as a whole. C.I.S., which the December 20th Determination does not credit with possessing any expertise in milling, was far more likely to have received these documents from their apparent suppliers and submitted them to CBP as part of a good faith effort to comply with CBP's CF-28 request. As such, adverse inferences are, if at all necessary, limited to the three named manufacturers who failed to respond to CBP's Requests for Information.

With respect to the question of general non-compliance, the December 20th Determination notes instances where C.I.S. failed to provide information.²⁷ While there is a dearth of case law addressing the appropriateness of the application of adverse inferences under 19 U.S.C. § 1517(c)(3), in *Nippon Steel Corporation v. United States*,²⁸ the Federal Circuit offered some commentary regarding the largely analogous adverse facts provision in 19 U.S.C. § 1677e(b). In *Nippon*, the Federal Circuit found that Commerce is "required to examine respondents' actions and assess the extent of respondents' abilities, efforts, and cooperation in responding to Commerce's request for information."²⁹ Here, these documents would normally be created by, and constitute proprietary information belonging to, the purported manufacturers. As such, C.I.S.'s failure to furnish such documents cannot be understood as a failure of the Importer to comply to the best of its ability, especially considering the significant amounts of supplier documentation that it did in fact provide. Regarding the request for sales correspondence in the supplemental RFI, C.I.S. appears to have cooperated, irrespective of TRLED's misgivings regarding the level of detail in C.I.S.'s response.³⁰

Lastly, there is no record evidence indicating that any of these companies is related to C.I.S. through ownership, corporate structure, overlapping corporate staff, or otherwise. Therefore, there is insufficient record evidence to impute the conduct of the non-cooperating respondents to C.I.S.

To the extent the December 20th Determination relied on adverse inferences against C.I.S. to find evasion regardless of supplier in Thailand, Sri Lanka, and Indonesia, we find that said reliance was not supported by substantial evidence.³¹

²⁷ Regarding Eastborn, the determination indicates that C.I.S. failed to provide turnaround times on orders, capacity information, or employee timecards. As to Siam Innovation and the Thai manufacturer, C.I.S. did not directly state their production capacities, and C.I.S. did not provide a description of the Thai manufacturer's turnaround time. Regarding Satria, C.I.S. was unable to provide a list of company officials and their nationality, a business registration, employee timecards, and turnaround times on orders. See December 20th Determination (Public Version) at 3, 4.

²⁸ 337 F.3d 1373 (Fed Cir. 2003).

²⁹ *Id.* at 1382.

³⁰ December 20th Determination at 9 (Public Version).

³¹ See *id.* at 21.

PUBLIC VERSION

B. There is substantial evidence that the FSF imported into the United States by C.I.S. that were exported by Siam Innovation Goods (Thailand) and Eastborn (Sri Lanka) were “covered merchandise.”

1. Siam Innovation Goods (Thailand)

Siam Innovation did not respond to the RFI, nor did the supposed Thai manufacturer, [company name]. Siam Innovation’s failure to respond demonstrated a lack of cooperation warranting the application of adverse inferences against the company.³² However, the application of such inferences is unnecessary to find evasion, as CBP investigators were able to uncover critical information regarding Siam Innovation during their visit to Thailand.

Unambiguous record evidence demonstrating transshipment was uncovered as a result of CBP’s investigative efforts. Specifically, trade data directly evidences the exportation of scope merchandise from China to the Kingdom of Thailand and the re-exportation of that same merchandise to the United States within a short timeframe.³³ The quantity of covered merchandise (as measured in pounds) imported from China by Siam Innovation was exactly equal to that which was exported to the United States during the period of review. Individual shipments show the same pattern. For example, a review of [description] data of [co.] reveals that [#] kilograms (kilos) of HS Code [#] merchandise was [desc. of business activity] into [country] on [date], and then [desc. of business act.] [timeframe] later. Then, on [date], [#] kilos of HS Code [#] merchandise were [activity] into [country] and [activity] [timeframe] later. We have identified [#] [activity] and [activity] of HS Code [#] merchandise in [desc.] quantities, and within [timeframe] days, as reported in the [desc.] documents.³⁴ This evidence was buttressed by additional indicia of a lack of institutional capacity on the part of Siam Innovation. Specifically, the firm’s address in Thailand was found to be an apparently unoccupied building whose mailbox was overflowing with mail.³⁵ Therefore, TRLED’s determination of evasion (with respect to Siam Innovation Goods’ exportation of covered merchandise) was predicated upon substantial evidence.

C.I.S. entered covered merchandise by means of material and false documents or electronically transmitted data or information, written statements, or material omissions that resulted in AD/CVD cash deposits not being applied with respect to the merchandise. The FSF were incorrectly entered on type “01” consumption entries instead of on type “03” AD/CVD entries. These constitute false statements that are also material because the applicable antidumping and countervailing duties were not paid. C.I.S. also omitted Case Nos. A-570-067 and C-570-068 from the entry summary documentation. The omission of Case Nos. A-570-067 and C-570-068 from the entry summary documentation is material because it interfered with the government’s ability to accurately track imports of FSF, to collect the applicable antidumping and countervailing duties due, and to determine and assess future antidumping and countervailing duties. Consequently, C.I.S. entered the merchandise through evasion.

³² See December 20th Determination (Public Version) at 7.

³³ See CBP Memorandum, “Trade Data and Site Visit” April 15, 2022 at 1, 7.

³⁴ See *id.* at 10. [description of information contained within source]. See *id.*

³⁵ See *id.* at 1, 4–6.

PUBLIC VERSION

Based on the above, we conclude that the record supports a finding of evasion as defined by EAPA; therefore, the finding of evasion by C.I.S. stands as to the entries of covered merchandise from Siam Innovation, based on substantial evidence in the record.

2. Eastborn (Sri Lanka)

Eastborn requested an extension after being sent an RFI, but ultimately did not respond. This failure to respond demonstrated a lack of cooperation warranting the application of adverse inferences to Eastborn.³⁶

Despite Eastborn's failure to fully cooperate to the best of its ability, another entity provided information implicating Eastborn's role in the evasion. EFL Global Ltd. ("EFL"), an admitted freight forwarder and separate entity utilized by Eastborn, did respond to the RFI. EFL's submission included a declaration to Sri Lankan Customs, a packing list, a commercial invoice, and a sea waybill, all indicating the exportation of covered merchandise "24718 FORGED STEEL FITTINGS" from Shanghai, China, by Kingtrans.³⁷ All of these documents named Eastborn as the notify party³⁸ or as being responsible for financial settlement, and Eastborn's freight forwarder EFL as being the consignee.³⁹ Similar to the unambiguous data confirming Siam Innovation's transshipment of Chinese goods, these documents alone satisfy the requirement of substantial evidence. Moreover, the allegor provided TRLED with a material test report for FSF purchased from Eastborn. While the test was labeled as originating from Eastborn, it was signed by [name], an employee of Jiangsu Forged Steel Fittings, Ltd. ("Jiangsu"), a Chinese producer subject to the AD/CVD Orders.⁴⁰

Additional evidence indicating a lack of Eastborn's institutional manufacturing capacity was also revealed during CBP's investigation. Internet research by TRLED on August 17, 2022, led to the discovery of a website for an Italian tire company with an affiliate in Sri Lanka containing a photograph identical, except for the sign in front of the building, to the photograph of Eastborn's purported facility included within C.I.S.'s⁴¹ CF-28 submission. In response to the First Supplemental RFI, C.I.S. appears to acknowledge that these photos were, in fact, photos from a different company's website because "the exterior of the {actual} factory was less presentable for print and promotion."⁴²

Based on the unambiguous record evidence provided by EFL demonstrating the receipt of Chinese FSF by Eastborn, the additional indicia of a lack of institutional manufacturing capacity on the part of Eastborn, and the application of adverse inferences, TRLED's determination of evasion

³⁶ See December 20th Determination (Public Version) at 7.

³⁷ EFL's Letter, "Response to Document Request {sic} EAPA 7699" (hereinafter "EFL's RFI Response") submitted July 25, 2022 at 21–24. According to RK Supply, Kingtrans Container Line (Shenzhen) Co. Ltd., a Chinese logistics and shipping company, openly advertised sending Chinese-made products to third countries in South and Southeast Asia to change the country-of-origin markings without any further processing. See December 20th Determination (Public Version) at 2.

³⁸ See EFL's RFI Response at 21–23.

³⁹ *Id.* at 24.

⁴⁰ See RK Supply Allegation Letter (hereinafter, Allegation Letter) at 10; Allegation Letter Exhibit I at 3.

⁴¹ See CBP Memorandum "Adding Information to the Administrative Record of EAPA Case Number 7699" dated August 24, 2022 ("Eastborn Photo Memo").

⁴² See Supplemental RFI Response at 14.

PUBLIC VERSION

(with respect to Eastborn’s exportation of covered merchandise) is fully supported by substantial evidence.

C.I.S. entered covered merchandise by means of material and false documents or electronically transmitted data or information, written statements, or material omissions that resulted in AD/CVD cash deposits not being applied with respect to the merchandise. The FSF were incorrectly entered on type “01” consumption entries instead of on type “03” AD/CVD entries. These constitute false statements that are also material because the applicable antidumping and countervailing duties were not paid. C.I.S. also omitted Case Nos. A-570-067 and C-570-068 from the entry summary documentation. The omission of Case Nos. A-570-067 and C-570-068 from the entry summary documentation is material because it interfered with the government’s ability to accurately track imports of FSF, to collect the applicable antidumping and countervailing duties due, and to determine and assess future antidumping and countervailing duties. Consequently, C.I.S. entered the merchandise through evasion.

Based on the above, we conclude that the record supports a finding of evasion as defined by EAPA; therefore, TRLED’s finding of evasion by C.I.S. stands as to the entries of covered merchandise from Eastborn.

C. There is not substantial evidence that the FSF imported into the United States by C.I.S. that were exported by Satria (Indonesia) and other foreign suppliers were “covered merchandise.”

1. Satria (Indonesia)

Satria did not respond to the RFI. This failure to respond demonstrated a lack of cooperation warranting the application of adverse inferences to Satria.

Evidence was proffered by the Alleger in the form of a Facebook profile showing that Peter Setyawan, who is employed by Satria, has a single Facebook “friend”, Allen Fang, an employee of Jiangsu, a Chinese producer subject to the AD/CVD Orders.⁴³ The Alleger also provided a Google Street View screenshot of Satria’s address showing a small bamboo building which TRLED reasonably concluded is not large enough to house manufacturing or testing facilities.⁴⁴ Additionally, CBP’s investigation failed to find any physical facilities which could have housed an operation of the scale necessary to produce the FSF supposedly produced by Satria.⁴⁵ Moreover, the local population was unfamiliar with the existence of the firm or its operations.⁴⁶ Lastly, information provided by [description of source] indicated that the [source] lacked any [description of records] by Satria and [description of records].⁴⁷

Though this information clearly indicates a lack of institutional capacity to manufacture FSF at the purported factory site, it is devoid of any meaningful connection to China and does not comprise substantial evidence of evasion. Even the application of adverse inferences is insufficient

⁴³ Allegation Letter at 13.

⁴⁴ *Id.*

⁴⁵ See CBP Memorandum, “Site visit to PT Satria Tunas Persada” dated May 2022.

⁴⁶ *Id.*

⁴⁷ See CBP Memorandum “Adding Information to the Administrative Record of EAPA Case Number 7699” dated August 26, 2022 (“August 26 Memo”).

PUBLIC VERSION

to enable a finding of evasion. There are simply no indicia that this manufacturer was in receipt of Chinese merchandise falling within the scope of the AD/CVD Orders. The sole link to China, the Facebook connection between Peter Setyawan and Allen Fang, is so minimal in nature that it cannot, in our view, in and of itself, support an adverse inference of evasion.

Therefore, we find that the determination of transshipment of FSF exported by Satria was not predicated upon substantial evidence.

Consequently, there is no indication that the entries of FSF sourced from Satria were incorrectly entered as type “01” consumption entries. As such, there is no evidence of material falsehoods and no basis for a finding of evasion under EAPA. While we do conclude that there is a lack of evidence of manufacturing in Indonesia, we do not believe the evidence allows us to make the leap that the merchandise supplied by Satria is of Chinese origin and covered by the AD/CVD Orders.

Based on the above, we conclude that the record does not support a finding of evasion as defined by EAPA; therefore, the finding of evasion by C.I.S. for entries of FSF exported by Satria does not stand.

2. [company name] & Other [country] Entities⁴⁸

At least four entities not specifically referenced in the December 20th Determination fall under the scope of TRLED’s universal finding of evasion with respect to manufacturers located in Thailand, Sri Lanka, and Indonesia: [company name], [company name], [company name], and [company name]. Critically, none of these companies was sent an RFI. Moreover, none of these companies was the subject of any inquiries directed to C.I.S. in either the initial or Supplemental RFI.

It was not until the Second Supplemental RFI was sent to C.I.S. that inquiries regarding any entries of [company name] products were made.⁴⁹ There were no inquiries made regarding [company name], [company name], or [company name] at any time during the investigation. No evidence in support of a finding of evasion on the part of [company name] was revealed by the Second Supplemental Request. Further, in the December 20th Determination, there are no references to record evidence that support a finding of evasion against [company name].

As such, there is no record evidence in support of finding evasion on the part of [company name] or the above-mentioned [country] entities. Because no inquiries were directed to any of these companies, there is also no basis for the application of adverse inferences against them. Therefore, the only potential basis for a finding of transshipment by these companies would be through adverse inferences as applied to C.I.S. itself.

As explained earlier, the application of adverse inferences to these entries via C.I.S. is unwarranted. However, even if we were to apply adverse inferences against C.I.S., this could not lead to a finding of evasion as to products of [company name], [company name], [company name], or [company name]. There are simply no indicia that any of these manufacturers was in receipt of

⁴⁸ See EAPA Post Receipt Report (7699).

⁴⁹ Second Supplemental RFI at 10.

PUBLIC VERSION

Chinese merchandise falling within the scope of the AD/CVD Orders or had any other ties to China which would indicate even the possibility that transshipment occurred.

Therefore, the determination of transshipment of FSF exported by all four of these entities was not predicated upon substantial evidence.

Consequently, there is no indication that the entries of FSF sourced from any of these entities were incorrectly entered as type “01” consumption entries. As such, there is also no evidence of material falsehoods and no basis for a finding of evasion under EAPA.

Based on the above, we conclude that the record does not support a finding of evasion as defined by EAPA; therefore, the finding of evasion by C.I.S. for entries of FSF exported by these entities and additional entities for which no specific findings were delineated in the December 20th Determination does not stand.

D. There is record evidence that C.I.S. imported merchandise other than FSF and/or FSF specifically excluded from the scope of the AD/CVD Orders, regardless of foreign supplier.

Finally, we address C.I.S.’s claim that it imported significant portions of non-covered merchandise in entries that the December 20th Determination concluded as being exclusively comprised of covered merchandise. We have opted against a systematic analysis of all line items in all entries and instead have evaluated portions of two individual entries made by the two purported manufacturers named in the December 20th Determination for which such an analysis is necessary.

Our review of entry [#]5335 indicates that certain merchandise sourced from Siam Innovation did fall outside the scope of the AD/CVD Orders. Specifically, invoice line items 026-040 refer to a variety of stainless steel (“SS”) products, all of which are expressly excluded from the AD/CVD Orders.

Our review of entry [#]7100 indicates that certain merchandise sourced from Eastborn did fall outside the scope of the AD/CVD Orders. Specifically, invoice line items 001-037 refer to a variety of nipples, all of which would fall outside the scope of the AD/CVD Orders.⁵⁰

Consequently, there is no indication that the above-mentioned line items sourced from either of these manufacturers were incorrectly entered as type “01” consumption entries. As such, there was no evidence of material falsehoods and no basis for a finding of evasion under EAPA.

Based on the above, we conclude that the record does not support a finding of evasion as defined by EAPA; therefore, TRLED’s finding of evasion by C.I.S. with regard to non-covered merchandise imported alongside covered merchandise does not stand. Only the portions of the entries that are covered merchandise are subject to AD/CV duties.

⁵⁰ C.I.S.’s Letter “RE: CBP Form 28 Request for Information” (dated April 5, 2022), Exhibit A at 2–6.

PUBLIC VERSION

E. C.I.S. was not denied due process.

Finally, we address C.I.S.'s claims that it was denied due process because TRLED denied C.I.S. access to Siam Innovation's import and export records, knowledge of the parameters CBP used for its data query, and any information about the unnamed source relied on by CBP in its December 20th Determination. In support of these arguments, C.I.S. cites *Royal Brush v. United States*. There, the court examined an EAPA case presenting similar due process claims around public summaries of confidential documents required by 19 C.F.R. § 165.4.⁵¹ The court found that "CBP has shared information with Royal Brush consistent with its regulation and in a manner that balances the need to disclose evidence against an importer with the need to protect certain information from unauthorized disclosure," and concluded that "CBP has complied with 19 C.F.R. § 165.4 by providing necessary public summaries of the confidential information."⁵²

In the present case, we find that TRLED provided public summaries consistent with the requirements of 19 C.F.R. § 165.4, as stated by *Royal Brush*, and that C.I.S.'s due process rights were not infringed by a lack of access to the record. We note that the April 15 TRLED memorandum had the public summaries required by 19 CFR § 165.4 and *Royal Brush*. The TRLED memorandum's public summary contained a statement saying that the document is "Business Confidential in its Entirety, Not Susceptible to Public Summary." A second statement described the attachment, noting that it "contains import and export data for Siam Innovation Goods obtained from the [source]." Each of these statements gives C.I.S. notice about the document the statement summarizes. Furthermore, these documents contain proprietary information to which the *Royal Brush* decision makes clear that C.I.S. is not entitled. As such, we find that the public summaries of these documents meet the requirements of 19 C.F.R. § 165.4.

IV. Decision

Based upon our *de novo* review of the administrative record in this case, including the request for administrative review, with respect to C.I.S. entries of FSF from Eastborn and Siam Innovation Goods, the December 20th Determination of evasion under 19 U.S.C. § 1517(c) is **AFFIRMED**.

With respect to C.I.S. entries of FSF from Satria, [company name], [company name], [company name], and [company name] the December 20th Determination of evasion under 19 U.S.C. § 1517(c) is **REVERSED**.

To the extent C.I.S. entries included merchandise other than FSF and/or FSF specifically excluded from the scope of the AD/CVD Orders, regardless of foreign supplier in Sri Lanka, Indonesia, and Thailand, the December 20th Determination of evasion under 19 U.S.C. § 1517(c) is **REVERSED**.

Therefore, the December 20th Determination is **AFFIRMED in part** and **REVERSED in part**.

⁵¹ See *Royal Brush Mfg., Inc. v. United States*, 545 F. Supp. 3d 1357, 1365-66 (Ct. Int'l Trade Oct. 29, 2021).

⁵² *Id.* at 1366, 1369.

PUBLIC VERSION

A copy of this determination is being provided to TRLED so that the interim measures may be modified consistent with this decision. TRLED may also take any other appropriate actions consistent with this decision.

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

Sincerely,

Jacinto P. Juarez, Jr.
Supervisory Attorney-Advisor
Regulations and Rulings, Office of Trade
U.S. Customs and Border Protection

Approved by:

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