U.S. Department of Homeland Security
Washington, DC 20229

U.S. Customs and Border Protection

March 21, 2023

PUBLIC VERSION

OT:RR:BSTC:CCR H329043 JLE

Luke A. Meisner, Esq.
Schagrin Associates
Counsel to Cambria Company, LLC
900 Seventh Street, NW
Suite 500
Washington, DC 20001

Jennifer Diaz, Esq.
Diaz Trade Law, P.A.
Counsel to KAT Specialities, Inc., and Kingway Construction Supplies, Inc.
12700 Biscayne Boulevard
Suite 401
North Miami, FL 33181

Re: Enforce and Protect Act ("EAPA") Consolidated Case Number 7657; KAT Specialties, Inc. and Kingway Construction Supplies, Inc.; *Certain Quartz Surface Products from the People's Republic of China: Antidumping and Countervailing Duty Orders,* 84 Fed. Reg. 33,053 (July 11, 2019); 19 U.S.C. § 1517

Dear Ms. Diaz and Mr. Meisner:

This is in response to requests for *de novo* administrative review of a determination of evasion dated November 7, 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), in Enforce and Protect Act ("EAPA") Cons. Case Number 7657 (hereinafter referred to as the "November 7th Determination").[1] The requests for review, both dated December 20, 2022, were filed by counsel on behalf of two importers, KAT Specialties, Inc. ("KAT") and Kingway Construction Supplies, Inc. ("Kingway"), pursuant to 19 U.S.C. § 1517(f) and 19 CFR § 165.41(a).

[1] *See* Notice of Final Determination of Evasion in EAPA Cons. Case Number 7657 (Nov. 7, 2022), available at: https://www.cbp.gov/trade/trade-enforcement/tftea/eapa/recent-eapa-actions/eapa-action-notice-determination-evasion-eapa-case-7657-quartz-surface-products.

I. Background

Inasmuch as the facts in this case were fully set forth in the November 7th Determination, we will not repeat the entire factual history herein. In brief, according to the record evidence, on February 8, 2022, TRLED initiated a investigation under Title IV, section 421 of the Trade Facilitation and Trade Enforcement Act of 2015 ("TFTEA"), in response to allegations of evasion.

On July 27, 2021, and November 26, 2021, Cambria Company LLC ("Cambria") filed EAPA allegations against Big D, LLC ("Big D"), Colorquartz New York, Inc. ("Colorquartz"), Cumberland Cabinet and Design, Inc. ("Cumberland"), Durian Kitchen Depot, Inc. ("Durian"), Flowery Stone, Inc. ("Flowery Stone"), KAT, Kingway, Nio Kitchen Depot, Inc. ("Nio"), Nomadic Barters, Inc. ("Nomadic"), and Opaly USA LLC ("Opaly"), as well as several of their doing-business-as ("d/b/a") names, Artist Kitchen and Stone, Inc. ("Artist Kitchen"), MS Stone Co., Ltd. ("MS Stone"), and Nio Home Depot Inc. ("Nio Home Depot) (collectively referred to as the "Importers"). CBP acknowledged receipt of the properly filed allegations on October 13, 2021, and December 1, 2021. Cambria alleged that the Importers entered quartz surface products ("QSP") from the People's Republic of China ("China") into the United States by transshipment through Malaysia to evade the payment of appropriate duties pursuant to the antidumping and countervailing duty ("AD/CVD") orders (collectively, "the Orders") on Chinese-origin QSP, as required in Case Nos. A-570-084 and C-570-085.[2]

Commerce defined the scope of the Orders as follows:

> The scope of the orders covers certain quartz surface products.{[3]} Quartz surface products consist of slabs and other surfaces created from a mixture of

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[2] *See* Cambria's Letter, "Quartz Surface Products from the People's Republic of China: Request for an Investigation under the Enforce and Protect Act of Colorquartz New York Inc.," dated July 27, 2021 ("Allegation 7657"); Cambria's Letter, "Quartz Surface Products from the People's Republic of China: Request for an Investigation under the Enforce and Protect Act of Durian Kitchen Depot Inc.," dated July 27, 2021 ("Allegation 7658"); Cambria's Letter, "Quartz Surface Products from the People's Republic of China: Request for an Investigation under the Enforce and Protect Act of Cumberland Cabinet and Design Inc.," dated July 27, 2021 ("Allegation 7665"); Cambria's Letter, "Quartz Surface Products from the People's Republic of China: Request for an Investigation under the Enforce and Protect Act of Kat Specialties, Inc.," dated July 27, 2021 ("Allegation 7666"); Cambria's Letter, "Quartz Surface Products from the People's Republic of China: Request for an Investigation under the Enforce and Protect Act of Nomadic Barters Inc.," dated July 27, 2021 ("Allegation 7667"); Cambria's Letter, "Quartz Surface Products from the People's Republic of China: Request for an Investigation under the Enforce and Protect Act of Opaly USA LLC," dated July 27, 2021 ("Allegation 7668"); Cambria's Letter, "Quartz Surface Products from the People's Republic of China: Request for an Investigation under the Enforce and Protect Act of Flowery Stone Inc.," dated July 27, 2021 ("Allegation 7671"); Cambria's Letter, "Quartz Surface Products from the People's Republic of China: Request for an Investigation under the Enforce and Protect Act of Kingway Construction Supplier Inc.," dated July 27, 2021 ("Allegation 7672"); and Cambria's Letter, "Quartz Surface Products from the People's Republic of China: Request for an Investigation under the Enforce and Protect Act of Nio Kitchen Depot Inc.," dated November 26, 2021 ("Allegation 7700") (collectively, the "Allegations"). *See also Certain Quartz Surface Products from the People's Republic of China: Antidumping and Countervailing Duty Orders*, 84 Fed. Reg. 33,053 (July 11, 2019).

[3] 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®.

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

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

The products subject to the scope are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under the following subheading: 6810.99.0010. Subject merchandise may also enter under subheadings 6810.11.0010, 6810.11.0070, 6810.19.1200, 6810.19.1400, 6810.19.5000, 6810.91.0000, 6810.99.0080, 6815.99.4070, 2506.10.0010, 2506.10.0050,

> 2506.20.0010, 2506.20.0080, and 7016.90.10. The HTSUS subheadings set forth above are provided for convenience and U.S. Customs purposes only. The written description of the scope of the orders is dispositive.

On February 8, 2022, in accordance with 19 CFR § 165.24, CBP issued the Notice of Initiation ("NOI") to all interested parties, and notified the parties of CBP's decision to take interim measures based upon reasonable suspicion that Big D, Coorquartz, Cumberland, Durian, Flowery Stone, KAT, Kingway, Nio, Nomadic, and Opaly, as the importers of record, entered covered merchandise into the customs territory of the United States through evasion.[4] The entries subject to the investigation were those entered for consumption, or withdrawn from a warehouse for consumption, from October 13, 2020, one year before receipt of the allegations,[5] through the pendency of the investigation.[6] TRLED concluded that, based on the record evidence, there was reasonable suspicion that the Importers had entered covered merchandise into the customs territory of the United States through evasion.

On November 7, 2022, TRLED issued the November 7th Determination. TRLED found substantial evidence to demonstrate that the Importers entered certain QSP from China that were covered by AD/CVD Case Nos. A-570-084 and C-570-085 and misidentified the products as of Malaysian origin. As a result, no AD/CVD cash deposits were paid on the merchandise upon entry.[7]

On December 20, 2022, KAT[8] and Kingway[9] filed timely Requests for Administrative Review. On December 22, 2022, RR sent an email to all parties to the investigation, notifying them of the commencement of the administrative review process and the assignment of RR case number H329043.[10] On Janurary 9, 2023, Cambria timely filed a response to KAT's and Kingway's requests for administrative review, presenting its counterarguments.[11] For purposes of our decision, we have reviewed the record as initially transmitted to us by TRLED, as well as the requests for administrative review and response.

II. Discussion

a. Law

Title 19 U.S.C. § 1517(c)(1) provides, in relevant part, as follows:

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[4] *See* Notice of Initiation of Investigation and Interim Measures (February 8, 2022)("Notice of Initiation"), available at: https://www.cbp.gov/sites/default/files/assets/documents/2022-Feb/02-08-2022%20-%20TRLED%20-%20NOI%20%28508%20compliant%29-%20%28Cons%207657%29%20-%20PV.pdf.

[5] *Id.*

[6] *See* 19 CFR § 165.2 (entries covered by the Period of Investigation ("POI") include entries made within one year prior to the date CBP officially received the allegations, which was October 13, 2022); *see also,* 19 U.S.C. § 1517(b)(5) and 19 CFR § 165.13 (concerning the consolidation of allegations).

[7] *See* November 7th Determination.

[8] KAT's Request for Administrative Review (Dec. 20, 2022).

[9] Kingway's Request for Administrative Review (Dec. 20, 2022).

[10] Commencement of Review – EAPA 7657 (H329043) (Dec. 22, 2022).

[11] Alleger's Response to Request for Administrative Review (Jan. 9, 2023).

(1) Determination of Evasion

(A) In general
Except as provided in subparagraph (B), not later than 300 calendar days after the date on which the Commissioner initiates an investigation under subsection (b) 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.

The term evasion is defined in 19 U.S.C. § 1517(a)(5), as follows:

(5) Evasion

(A) In general

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.[12]

Examples of evasion could include, but are not limited to, the 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.[13]

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)."[14]

While substantial evidence is not defined by statute, the "substantial evidence" standard has been reviewed by the courts in relation to determinations by other agencies. "Substantial evidence requires more than a mere scintilla, but is satisfied by something less than the weight of the evidence."[15] The U.S. Court of Appeals for the Federal Circuit has also stated that "substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[16]

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[12] *See also* 19 CFR § 165.1.
[13] *See Investigation of Claims of Evasion of Antidumping and Countervailing Duties, Interim Regulations*, 81 Fed. Reg. 56,477, 56,478 (Aug. 22, 2016).
[14] *See* 19 CFR § 165.1.
[15] *See Altx, Inc. v. United States*, 370 F.3d 1108, 1116 (Fed. Cir. 2004)(internal citations and quotation marks omitted).
[16] *A.L. Patterson, Inc. v. United States*, 585 Fed. Appx. 778, 781-82 (Fed. Cir. 2014)(quoting *Consol. Edison Co. of N.Y. v. NLRB*, 305 U.S. 197, 229 (1938)).

Therefore, CBP must determine whether a party has entered merchandise that is subject to an AD or CVD order 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, 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. RR's determination as to evasion must be supported by substantial evidence.

b. KAT's Arguments

KAT requests that we "rescind"[17] its involvement regarding the November 7th Determination of evasion, arguing that it used reasonable care in determining country of origin. KAT asserts that it "should not be a party to the investigation" because it exercised reasonable care in determining country of origin and had a good faith belief that the subject merchandise was of Malaysian origin.[18] KAT argues that, due to its use of reasonable care, it did not engage in evasion by making material false statements or material omissions in its entry documents.[19]

KAT also notes "that unlike the majority of the parties to the investigation, KAT substantively responded to all required requests for information."[20] Therefore, KAT requests we find it to be an "innocent party"[21] in the investigation and "rescind"[22] the November 7th Determination as it applies to KAT.

c. Kingway's Arguments

Kingway requests that RR "reverse" the November 7th Determination and argues that Kingway's use of reasonable care means it did not make material false statements or material omissions.[23] Kingway argues that its reliance on its broker, an industry expert, adhered to CBP's reasonable care mandate and thus, Kingway should not be a party to this investigation.[24] Kingway asserts that, due to the travel restrictions caused by the COVID-19 pandemic, it was unable to travel to the factories at issue and instead relied on documentation and photographs provided by its U.S. licensedbroker.[25] Due to these circumstances, Kingway argues that it did not engage in evasion through material false statements or material omissions in its entry documents.[26]

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[17] *See* KAT's Administrative Review Request at 12 (public document).
[18] *Id.* at 11.
[19] *Id.*
[20] *Id.* at 8.
[21] *Id.* at 12.
[22] *Id.*
[23] *Id.* at 2.
[24] *See* Kingway's Administrative Review Request at 1-2 (public document).
[25] *Id. See also* Kingway's Written Arguments at 8.
[26] *Id.*

Additionally, Kingway states that "it was part of a minority of parties who meaningfully and in good faith responded to the EAPA investigation" requests for information and in submitting additional information.[27] Thus, Kingway requests we find it to be an "entirely innocent party"[28] in the investigation and "rescind"[29] the November 7th Determination as it applies to Kingway.

d. Cambria's Arguments

Cambria requests that we affirm the November 7th Determination of evasion, concluding that neither KAT's nor Kingway's arguments "detract from the agency's conclusion that they evaded the AD/CVD orders;"[30] instead, they assert their use of reasonable care to negate their involvement, which is irrelevant.

Cambria argues that Shenzhen Ark Cross-Border Logistics Co., Ltd. ("Ark Trans"), the freight forwarding company used by the Importers, including Kingway, details on its website how it "succesfully engages in transshipment and duty evasion."[31] Cambria notes that even though Kingway used a broker, due to the "open nature of the evasion scheme" Kingway should have known evasion would occur.[32] However, Cambria further argues that KAT's and Kingway's knowledge is irrelevant, as there is no knowledge requirement per 19 CFR § 165.1.[33] Additionally, Cambria argues that CBP has previously rejected similar arguments relating to a knowledge requirement and reasonable care defenses.[34] Therefore, Cambria requests that we affirm the November 7th Determination.

e. Administrative Review Analysis

Pursuant to 19 U.S.C. § 1517(f)(1) and 19 CFR § 165.45, upon a request for administrative review, CBP will apply a *de novo* standard of review and will render a determination appropriate under the law according to the specific facts and circumstances on the record. For that purpose, CBP will review the administrative record, as provided to RR by TRLED, upon which the initial determination was made, the timely and properly filed request(s) for review and response(s), and any additional information that CBP requested pursuant to 19 CFR § 165.44. The administrative review will be completed within 60 business days of the commencement of the review.

i. Elements of Evasion

Preliminarily, we note that neither KAT nor Kingway argues that evasion did not occur. Nevertheless, we shall address the elements required by the statute to support a finding of evasion. We conclude that the record supports a finding of evasion.

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[27] *Id.* at 2.
[28] *Id.* at 15.
[29] *Id.* at 16.
[30] Alleger's Response to Request for Administrative Review at 7-8 (public document).
[31] *Id.* at 9.
[32] *Id.*
[33] *See generally id.*
[34] *Id.*

As stated previously, evasion occurs when an importer enters 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.[35]

First, to constitute "covered merchandise," the entered merchandise must fall within the scope of Commerce's Orders regarding QSP. According to the Orders,

> {QSP} consist of slabs and other surfaces created from a mixture of materials that includes predominately silica (*e.g.,* quartz, quartz powder, cristobalite) as well as a resin binder (*e.g.,* an unsaturated polyester)… {t}he products subject to the scope are currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") under the following subheading: 6810.99.0010.[36]

Records for the entry provided by KAT in response to CBP's CF-28 request for information include [commercial document description][37] Additionally, the [material description].[38] Kingway provided documentation that lists [merchandise description][39] Moreover, KAT's and Kingway's entry documentation [commercial document description].[40] Neither KAT nor Kingway claims that the products which they imported are not of the type covered by the Orders. Therefore, we find there is substantial evidence that the merchandise entered by both importers is covered merchandise as defined by the Orders.

Second, the merchandise must be shown to be of Chinese origin. As thoroughly discussed in the November 7th Determination, the record demonstrates that, as to the Malaysian manufacturers used by KAT and Kingway to purportedly produce QSP, Ever Stone and MSW, there is a lack of evidence of any production capabilities, and the alleged producers are associated with Chinese companies.[41] TRLED issued several RFIs to the

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[35] *See* 19 CFR § 165.1.
[36] 84 Fed. Reg. 33,053.
[37] *See* KAT – CF28 Response (business confidential).
[38] *Id.*
[39] *See* Kingway – CF28 Response (public document) and Kingway RFI Response, pgs. 241-243 (business confidential).
[40] *See* KAT – CF28 Request (public document) and KAT – RFI Response, Part III Sales Question 10, pg. 3 (business confidential). *See also* Kingway – CF28 Request (public document) and Kingway – RFI Response, pg. 241 (business confidential).
[41] *See* Site Visit I (public document); *see also* Site Visit II (public document); and *see generally* November 7th Determination.

manufacturers, including Ever Stone and MSW. After the manufacturers failed to respond, TRLED applied adverse inferences in making its determination of evasion.[42]

Regarding Ever Stone, the key facts supporting our determination of a lack of production in Malaysia, are as follows. KAT stated [description of third-party company's role in production process][43] As stated previously, [description of commercial documents]. CBP conducted a site visit to Ever Stone's two listed locations, both in Klang, Selangor.[44] One was the location of a different business.[45] The second appeared to be an office building with no capability for QSP production.[46] We find that there is no indication that Ever Stone had manufacturing capabilities. On the other hand, [company name and role] is a known exporter of QSP from China and was included in the original investigation conducted by the Department of Commerce, with its own assigned rate.[47] Given the lack of production capacity by Ever Stone and the fact that [description of company] for the importations at issue, we find there is substantial evidence to indicate that Ever Stone's Malaysian address was exploited [company name] to misrepresent Chinese-origin QSP as Malaysian.

Regarding MSW, its ties to Ark Trans support the determination of evasion. Ark Trans, a Chinese company, coordinates and controls the activities of certain Malaysian manufacturers, as well as certain U.S. importers.[48] Ark Trans, according to its own website, specializes in helping Chinese companies to evade AD/CVD duties, and provides a range of services to help companies accomplish the evasion of duties.[49] Further, the Ark Trans website advertises that Ark Trans owns warehouses and factories in Malaysia which offer transshipment services, including providing a Malaysian certificate of origin and delivery to the United States, and that it also partners with other Malaysian companies to import QSP into Malaysia to be repackaged for export to the United States.[50] Record information indicates that these companies coordinate evasion activities through shared employees, managers, and owners, and that the individual at the head of Ark Trans is Mr. Huang Jianmin ("Mr. Huang"), who is also the owner of MSW.[51] CBP conducted a site visit at MSW's address and found four buildings at the location with no one present and could not hear any manufacturing activity.[52] Furthermore, Kingway provided [

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[42] On March 14, 2022, TRLED sent an RFI to each of the manufacturers, including Ever Stone and MSW. Ever Stone and MSW did not submit responses by the deadline. As a result, TRLED applied adverse inferences to them. We note, RR does not rely on adverse inferences for our determinations finding evasion by KAT and Kingway. Instead, we find that there is substantial evidence on the record that supports the conclusion that MSW and Ever Stone lack manufacturing capabilities.

[43] *See* KAT – RFI at 30 (business confidential).

[44] *See* Site Visit II (public document).

[45] *Id.*; *see also* November 7th Determination at 27.

[46] *Id.*

[47] *See* 84 FR 33,053.

[48] *See* November 7th Determination. at 8.

[49] *See* Malaysian Companies Memo at 272, 274 (public document).

[50] *Id.*

[51] *See* NOI at 27 – 30.

[52] *See* Site Visit I (public document).

commercial document
description].[53] When examining other entry packages, CBP found entries made using a [document
description].[54] Thus, we find that the record supports the conclusions that MSW and Ark Trans, a self-professed evader of AD/CVD orders, are both owned by Mr. Huang, and MSW's Malaysian facility appears not to be engaging in any manufacturing activities. Therefore, we find there is substantial evidence to indicate that MSW was used to transship Chinese-origin QSP through Malaysia.

Based on the above, we find that the Malaysian so-called manufacturers which KAT and Kingway listed on their entry documentation did not manufacture the QSP at issue and instead were used to misrepresent covered merchandise as of Malaysian-origin to evade AD/CVD duties.

The record shows that KAT and Kingway made type "01"[55] entries of QSP into the United States, declared as not subject to the AD/CVD Orders. The record also shows that the country of origin for the entries was declared to be Malaysia.[56] Because these entries contained Chinese-origin rather than Malaysian-origin QSP, they should have been made as type "03" entries, subject to the AD/CVD Orders.[57] It was material and false for these entries to be made as type "01" entries. Furthermore, given the lack of production in Malaysia, it was also false for the country of orgin to be declared as Malaysia. In our view, substantial evidence on the record supports a finding that the entries in question were subject to the AD/CVD Orders, for all of the reasons noted above.[58]

Therefore, we find that, because KAT's and Kingway's entries of QSP contained covered merchandise subject to the scope of the Orders, were falsely made as type "01" entries (*i.e.*, as not subject to the AD/CVD Orders), were falsely declared to contain Malaysian-origin merchandise, and the applicable AD/CVD duties were not deposited or paid, pursuant to 19 U.S.C. § 1517, evasion has occurred.

ii. <u>Purported Exercise of Reasonable Care</u>

KAT and Kingway argue that they used reasonable care and good faith when determining the merchandise's country of origin and therefore did not make false statements or material omissions. These arguments are unpersuasive, as discussed below.

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[53] *See* Kingway – CF28 (public document).
[54] November 7th Determination at 26.
[55] *See* Response to RFI Exhibits Part III Sales Question 10 US Customs Entry Docs, Entry Summary XXX-XXX780-3 (Apr. 10, 2021). *See also* Kingway – RFI Response – Cons 7657, Entry Summary XXX-XXXX130-7 (June 10, 2021).
[56] *Id.*
[57] *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 visited Apr. 15, 2022).
[58] *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 visited Apr. 15, 2022).

Every importer is required to exercise reasonable care in making and completing entry. This is a long-existing and separate requirement under the U.S. customs laws, as set forth in 19 U.S.C. § 1484. EAPA, on the other hand, requires CBP to determine that evasion has occured when an importer has entered 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 resulted 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.[59] EAPA does not require CBP to collect evidence or make a finding about an importer's state of mind at the time of entry.[60] Moreover, we note that the rules of construction in both the EAPA statute and regulations make clear that the EAPA provisions are in addition to other provisions of law.[61]

In light of the legal framework discussed above, Kingway's arguments regarding its reliance on information from its customs broker are misplaced. Kingway explains that options for personally inspecting manufacturing operations were limited due to COVID-19-related travel restrictions. Therefore, Kingway considered that merely hiring a broker was sufficient for purposes of demonstrating that it exercised reasonable care. However, both Kingway and KAT—*prior to importing goods into the United States*—had the responsibility of verifying their supply chains and understanding the country of origin of the goods they were importing. The long-standing Customs Modernization Act[62] fundamentally altered the relationship between importers and CBP, shifting to the importer the legal responsibility for correctly declaring the value, classification, and rate of duty applicable to entered merchandise. As such, the responsibility of verifying the production capabilities of KAT's and Kingway's supply chains fell upon those companies. Reliance on a third-party broker does not obviate this responsibility.

Additionally, Kingway and KAT argue that CBP has to make a finding that the importers did not make material false statements because they did not *know* that their merchandise was subject to the Orders. This is a burden that the plain language of EAPA does not impose on CBP. Not only is such analysis not required by the EAPA statute, it also would curtail CBP's ability to administer EAPA investigations in the swift and efficient manner that Congress mandated.[63]

A requirement to analyze the importer's state of mind is inconsistent with the express language of EAPA. As stated above, the statute makes clear that the provisions of EAPA are in addition to other provisions of law, including 19 U.S.C. § 1592. Pursuant to 19 U.S.C. § 1592, CBP already has the authority to investigate importers that make false

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[59] *See* 19 CFR § 165.1.
[60] *See* 19 U.S.C. § 1517(a)(5).
[61] *See* 19 U.S.C. § 1517(h), which states, "No determination under subsection (c), review under subsection (f), or action taken by the Commissioner pursuant to this section shall preclude any individual or entity from proceeding, or otherwise affect or limit the authority of any individual or entity to proceed, with any civil, criminal, or administrative investigation or proceeding pursuant to any other provision of Federal or State law, including sections 592 and 596."
[62] *See* Pub. L. 103–182, 107 Stat. 2057 (Dec. 8, 1993).
[63] *See* H.R. Rep. No. 114-114 (2015) at 387.

statements to CBP with culpability, i.e., negligence, gross negligence, and fraud.[64] EAPA provides for something different – it gives CBP the authority to investigate and take action when an inporter fails to make AD/CVD payments because of a material false statement or material omission.

The legislative history of EAPA indicates that Congress intended EAPA to be an additional tool in CBP's enforcement authorities to address AD/CVD evasion. The purpose of EAPA was to prevent evasion by allowing CBP to take swift action against allegations of evasion. In passing the EAPA, Congress recognized the negative impact that evasion had on enforcement of AD/CVD laws and the challenges experienced by CBP to collect the duties, stating that "CBP does not currently adequately protect the United States from evasion of {AD/CVD} orders" and that the statute would provide CBP "tools to counteract the detrimental effect" of evasion.[65] Congress noted that "timely collection of the antidumping and countervailing duties owed on evading imports is as important or even more important than having the parties involved in evasion subject to penalties or criminal liability."[66] Congress also emphasized the importance of requiring CBP to act quickly when investigating evasion:

> There appears to be growing consensus that {EAPA} is the appropriate way to address allegations of evasion. Prior efforts to require Customs to enforce these allegations by using existing statutory provisions (e.g., Section 516 of the Tariff Act of 1930) have failed by not requiring Customs to act on a petition within a fixed period of time. The longer Customs takes, the more entries are liquidated—that they become final, and any additional duties owing are foregone.[67]

Establishing scienter requires time and investigative resources that the EAPA statute did not provide to CBP.[68] Requiring CBP to build evidence during the investigation as to the importer's state of mind or level of knowledge at the time of importation would conflict with the clear pronouncements by Congress on the purpose of the EAPA statute – for CBP to take swift action against evasion and to collect antidumping and countervailing duties owed. Congress did not mandate that CBP evaluate the importer's scienter or level of culpability.

Pursuant to 19 U.S.C. § 1484, the importer of record must use reasonable care in making entry. CBP provides the trade community with an expansive explanation of what steps should be taken to ensure compliance with customs laws, *prior to importation*. Therefore, the onus was on Kingway and KAT, as the importers of record, to ensure accuracy in the information that was declared to CBP. This is a responsibility that cannot be outsourced, not even to a licensed broker. In addition, as stated above, whether an importer of record exercised "reasonable care" is not dispositive in determining whether evasion occurred.

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[64] Compare 19 U.S.C. § 1592(a) with 19 U.S.C. § 1517(a)(5).
[65] S. Rep. No. 114-45 (2015) at 37.
[66] H.R. Rep. No. 114-114 (2015) at 85.
[67] H.R. Rep. No. 114-114 (2015) at 387.
[68] *See* 19 U.S.C. § 1517(c) (requiring CBP to reach a final determination of evasion in 300 calendar days).

iii. Conclusion

For KAT and Kingway to obtain a reversal of the determination of evasion, they needed to provide evidence that their entries of QSP were of Malaysian origin and not transshipped from China. As indicated above, and undisputed by KAT and Kingway, the evidence shows that the QSP was sourced from China and received by transshipment warehouses in Malaysia before being transshipped to the United States. Ultimately, KAT's and Kingway's allegations that they exercised reasonable are irrelevant to whether evasion occurred because there is no such defense under EAPA.

We find that the administrative record contains substantial evidence that covered merchandise was entered by KAT and Kingway during the POI, by means of material false statements and without payment of the applicable AD/CVD duties. The entries of QSP should have been made as type "03" entries, subject to the Orders. Instead, they were made as type "01" entries. It was material and false for these entries to be made as type "01" entries, and by misrepresention of the covered merchandise as Malaysia-origin.[69] Because KAT's and Kingway's entries of QSP, subject to the scope of the Orders, were made as type "01" entries, and the applicable AD/CVD deposits were not paid, we conclude that, pursuant to 19 U.S.C. § 1517, evasion has occurred.

III. Decision

Based upon our *de novo* review of the administrative record in this case, including the timely and properly filed requests for administrative review and response, the November 7th Determination of evasion under 19 U.S.C. § 1517(c) is **AFFIRMED**.

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

Sincerely,

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

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[69] *See id.,* and 19 U.S.C. § 1517(a)(5)(A). We also note that neither KAT nor Kingway asserts that there was a clerical error, for which the EAPA statute does carve out an exception.

Approved by:

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