

**PUBLIC VERSION**

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Washington, DC 20002



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

February 17, 2023

**PUBLIC VERSION**

OT:RR:BSTC:CCR H328590 TNA

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Re: Enforce and Protect Act (“EAPA”) Consolidated Case Number 7673; *Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Antidumping Duty Order*, 85 Fed. Reg. 22,126 (Apr. 21, 2020); and *Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Countervailing Duty Order*, 85 Fed. Reg. 22,134 (Apr. 21, 2020); Uni Tile and Marble, Inc.; Kingway Construction and Supplies Co., Inc.; 19 U.S.C. § 1517

Dear Ms. Diaz, Mr. Tuttle, and Mr. Meisner:

This is in response to the requests for *de novo* administrative review of a determination of evasion dated October 6, 2022, made by the Trade Remedy Law Enforcement Directorate (“TRLED”), Office of Trade (“OT”), U.S. Customs and Border Protection (“CBP”), pursuant to 19 U.S.C. § 1517(c), EAPA Consolidated Case Number 7673 (“October 6th Determination”).<sup>1</sup> Uni Tile

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<sup>1</sup> See Notice of Determination as to Evasion in EAPA Consolidated Case Number 7673, dated October 6, 2022, available at: <https://www.cbp.gov/document/publications/eapa-consolidated-case-7673-various-importers-notice-final-determination>. (Last accessed November 28, 2022.)

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& Marble, Inc.’s (“Uni Tile”) request for review, dated November 4, 2022, and its supplemental submission, dated November 21, 2022, were submitted to CBP, OT, Regulations and Rulings (“RR”), by Tuttle Law on behalf of Uni Tile. Kingway Construction Supplies, Inc.’s (“Kingway”) request for review, dated November 21, 2022, was filed by Diaz Trade Law on behalf of Kingway. Both requests were filed pursuant to 19 U.S.C § 1517(f) and 19 CFR § 165.41(a). No other parties submitted requests for review. The American Kitchen Cabinets Alliance (“AKCA”) filed a response to the two requests for review on December 7, 2022.

### I. Background

Inasmuch as the facts in this case were fully set forth in the October 6th Determination, we will not repeat the entire factual history herein. In brief, according to the record evidence, on March 10, 2022, TRLED initiated a formal consolidated investigation under Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015 (“TFTEA”), in response to allegations of evasion.

On October 13, 2021, AKCA, a coalition of domestic producers of wooden cabinets and vanities, filed EAPA allegations against the following companies: Uni Tile; Kingway; Durian Kitchen Depot Inc. (“Durian”); Lonlas Building Supply Inc. (“Lonlas”); Maika’i Cabinet & Stone Inc. (“Maika’i”); and Top Kitchen Cabinet Inc. (“Top Kitchen”) (collectively the “Importers”). CBP acknowledged receipt of the allegations on November 10, 2021.

AKCA alleged that the Importers entered wooden cabinets, vanities, and wooden components thereof (“WCV”) of Chinese origin into the United States by transshipment through Malaysia, via manufacturers LLWF Cabinets and Stone (“LLWF”), MSW Building Supply Sdn. Bhd. (“MSW”), and [ MANUFACTURER ] in Malaysia, to evade the payment of antidumping and countervailing duties (“AD/CVD”) on WCV from the People’s Republic of China (“China”), as required in Case Nos. A-570-106 and C-570-107.<sup>2</sup>

The allegations of evasion pertained to the AD/CVD Orders issued by the U.S. Department of Commerce (“Commerce”) on imports of WCV from China.<sup>3</sup> Commerce defined the scope of the relevant AD/CVD Orders, in pertinent part, as follows:

The merchandise subject to this order consists of wooden cabinets and vanities that are for permanent installation (including floor mounted, wall mounted, ceiling hung or by attachment of plumbing), and wooden components thereof. Wooden cabinets and vanities and wooden components are made substantially of wood products, including solid wood and engineered wood products (including those made from wood particles, fibers, or other wooden materials such as plywood, strand board, block board, particle board, or fiberboard), or bamboo. Wooden cabinets and vanities consist of a cabinet box (which typically includes a top, bottom, sides, back, base blockers, ends/end panels, stretcher rails, toe kicks, and/or shelves) and may or may

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<sup>2</sup> See Notice of Initiation of Investigation and Interim Measures: Consolidated EAPA Case 7673, dated March 10, 2022 (“Notice of Initiation”), available at: <https://www.cbp.gov/document/publications/eapa-consolidated-case-7673-various-importers-notice-initiation-investigation>. (Last accessed November 28, 2022.)

<sup>3</sup> See *Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Antidumping Duty Order*, 85 Fed. Reg. 22,126 (Apr. 21, 2020), and *Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Countervailing Duty Order*, 85 Fed. Reg. 22,134 (Apr. 21, 2020) (“AD/CVD Orders”).

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not include a frame, door, drawers and/or shelves. Subject merchandise includes wooden cabinets and vanities with or without wood veneers, wood, paper or other overlays, or laminates, with or without non-wood components or trim such as metal, marble, glass, plastic, or other resins, whether or not surface finished or unfinished, and whether or not completed. . . .

Subject merchandise includes all unassembled, assembled and/or “ready to assemble” (RTA) wooden cabinets and vanities, also commonly known as “flat packs,” except to the extent such merchandise is already covered by the scope of antidumping and countervailing duty orders on *Hardwood Plywood from the People’s Republic of China*. . . .

Subject merchandise also includes wooden cabinets and vanities and in-scope components that have been further processed in a third country, including but not limited to one or more of the following: trimming, cutting, notching, punching, drilling, painting, staining, finishing, assembly, or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the in-scope product. . . .

Imports of subject merchandise are classified under Harmonized Tariff Schedule of the United States (HTSUS) statistical numbers 9403.40.9060 and 9403.60.8081. The subject component parts of wooden cabinets and vanities may be entered into the United States under HTSUS statistical number 9403.90.7080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.<sup>4</sup>

On March 10, 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 December 3, 2021, and notifying the parties of CBP’s decision to take interim measures based upon reasonable suspicion that the Importers entered covered merchandise into the customs territory of the United States through evasion.<sup>5</sup> The entries subject to the investigation were those entered for consumption, or withdrawn from a warehouse for consumption, from November 10, 2020, one year before receipt of the allegations, through the pendency of the investigation.<sup>6</sup> During the pertinent period of investigation, the Importers entered 521 “01” consumption entries of WCV under subheading 9403.40.9060, HTSUS, with a declared country of origin of Malaysia, into the United States.<sup>7</sup>

On October 6, 2022, TRLED concluded that, based on the record, there was substantial evidence to demonstrate that the Importers entered WCV covered by AD Order A-570-106 and CVD Order C-570-107 by falsely entering them as being of Malaysian origin under type “01” as entries not subject to an AD or CVD order.<sup>8</sup> As a result, no cash deposits or AD/CVD were

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<sup>4</sup> *Id.* (emphasis in the original and internal citations omitted).

<sup>5</sup> See Notice of Initiation, available at: <https://www.cbp.gov/document/publications/eapa-consolidated-case-7673-various-importers-notice-initiation-investigation>. (Last accessed November 28, 2022.)

<sup>6</sup> See 19 CFR § 165.2.

<sup>7</sup> See National Targeting Center (“NTAC”)’s Post Receipt Reports (December 3, 2021). A separate report was generated for each importer in this investigation; each was dated December 3, 2021.

<sup>8</sup> 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

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applied to the merchandise.<sup>9</sup> TRLED also applied adverse inferences against Durian, Lonlas, Maika'i, Top Kitchen, MSW, LLWF, and [ MANUFACTURER ] for their failure to respond to TRLED's Requests for Information ("RFIs").

On November 8, 2022, Uni Tile filed a timely Request for Administrative Review; on November 21, 2022, Uni Tile timely filed an expanded request. On November 21, 2022, Kingway filed a timely Request for Administrative Review. On November 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 H328590. On December 7, 2022, AKCA timely filed a response to Uni Tile's and Kingway's requests for administrative review, presenting its counterarguments.

## 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."<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup>

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)."<sup>13</sup> 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."<sup>14</sup>

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Summary Business Rules and Procedure Document <https://www.cbp.gov/trade/programs-administration/entry-summary/cbp-form-7501> (last visited Dec. 14, 2021).

<sup>9</sup> See October 6th Determination.

<sup>10</sup> 19 U.S.C. § 1517(c)(1).

<sup>11</sup> 19 U.S.C. § 1517(a)(5); see also 19 CFR § 165.1.

<sup>12</sup> See *Investigation of Claims of Evasion of Antidumping and Countervailing Duties, Interim Regulations*, 81 Fed. Reg. 56,477, 56,478 (Aug. 22, 2016).

<sup>13</sup> 19 C.F.R. § 165.1.

<sup>14</sup> See *Altix, Inc. v. United States*, 370 F.3d 1108, 1116 (Fed. Cir. 2004) (internal citations and quotation marks omitted).

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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. RR's determination as to evasion must be supported by substantial evidence.

### A. Uni Tile's Arguments

Uni Tile requests that we reverse the October 6th Determination of evasion, arguing that it did not enter covered merchandise into the United States through evasion. In support of this argument, Uni Tile states that TRLED did not consider the evidence in the administrative record ("Record") refuting the allegation of evasion, did not follow the "substantial evidence" standard required by 19 CFR § 165.27, and conducted the proceeding in an arbitrary and capricious manner.<sup>15</sup>

Uni Tile argues that the information upon which TRLED relied in making the October 6th 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 at 1365-1366 (Ct. Int'l Trade Oct. 29, 2021), because TRLED did not submit documents to the record in a timely fashion. Uni Tile 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 by June 21, 2022. In particular, Uni Tile argues that TRLED did not submit the documents it cited to in footnote 114 of the October 6th Determination to the Record until July 28, 2022, despite having access to them as early as December 2021, and despite these being documents on which TRLED relied to establish evasion. Uni Tile further argues that TRLED did not provide a public version of Exhibit 7 of AKCA's allegations or the alleged shipments of raw materials from third countries as required by CBP regulations.<sup>16</sup>

Uni Tile also argues that the October 6th Determination is not supported by the substantial evidence requirements of 19 U.S.C. § 1307<sup>17</sup> because neither AKCA's allegations, nor the notice of initiation of the investigation, provide such evidence. Uni Tile argues that AKCA made its allegations that [ MANUFACTURER ] is owned and/or controlled by Chinese individuals and is transshipping Chinese merchandise through Malaysia based on confidential market research that is refuted by the documentation that Uni Tile submitted. Uni Tile argues that [ MANUFACTURER'S ] January 14, 2022 responses to TRLED's CBP Form ("CF") 28<sup>18</sup> established that the production of the subject WCV occurred in Malaysia, and that TRLED's rejection of these responses further contributes to the lack of substantial evidence supporting the October 6th Determination. Uni Tile also refutes AKCA's evidence of a site visit to

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<sup>15</sup> See Uni Tile's November 21, 2022 Request for Administrative Review.

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

<sup>17</sup> Uni Tile specifically cites to 19 U.S.C. § 1307 in its request for administrative review. Because this statutory provision is a prohibition on the importation of goods made in whole or in part with forced labor, we believe that 19 U.S.C. § 1307 does not apply here, and that Uni Tile's reliance on this provision is in error. This administrative review is properly conducted under the EAPA statute, 19 U.S.C. § 1517. These points are discussed in further detail in the Analysis section below.

<sup>18</sup> A CF 28 is the form that CBP uses when requesting further information from an importer.

[ MANUFACTURER'S ] production facility by arguing that there is no evidence that the investigator went inside the factory, and thus could not have witnessed the activity inside.<sup>19</sup>

In addition, Uni Tile notes and responds to each of the deficiencies that TRLED found with respect to Uni Tile's responses to the CF 28's request for information. These responses are the same as the responses provided in Uni Tile's June 21, 2022 Voluntary Submission of Factual Information.

Uni Tile argues that the October 6th Determination is contrary to law because it held that the care standard of 19 U.S.C. § 1592 preempts the statutory definition of diversion in 19 U.S.C. § 1307.<sup>20</sup> Uni Tile also argues that, in the October 6th Determination, "TRLED states that the reasonable care standard does not apply to the determination of diversion under 19 U.S.C. § 1517. This statement is contrary to law."<sup>21</sup>

Uni Tile further argues that TRLED's lack of notification in CBP's Automated Commercial Environment ("ACE") denied Uni Tile equal protection of the laws. In particular, Uni Tile argues that although CBP publishes notice of AD/CVD orders in the ACE broker module to inform brokers and importers of the requirement to deposit AD/CVD, no such notice is published relating to the potential diversion of merchandise imported from third countries. As a result, Uni Tile argues that CBP has imposed a greater burden on the importer and/or its broker to determine the likelihood of evasion. Uni Tile argues that without the implementation of a procedure in the broker module in ACE to identify the HTSUS subheadings potentially subject to evasion of an AD/CVD order, CBP's subsequent assessment of AD/CVD on the Uni Tile entries is contrary to the Equal Protection clause, is contrary to law, and is illegal, null, and void.<sup>22</sup>

## B. Kingway's Arguments

Kingway requests that RR reverse the October 6th Determination and argues that Kingway did not enter covered merchandise into the United States through evasion. Kingway argues that it relied upon a broker, [ BROKER NAME ], who contacted Kingway and stated that he knew of factories which could produce wooden cabinetry products in Malaysia. Kingway asserts that [ BROKER NAME ] assisted Kingway in finding a new factory because he wanted new clients for his logistics business. As a result, Kingway began purchasing from [ MANUFACTURER ] through [ BROKER NAME ]. Kingway further notes that its personnel were unable to travel to Malaysia to visit the factory due to the ongoing COVID-19 pandemic and associated travel restrictions. As a result, [ BROKER NAME ] sent Kingway the products' certificates of origin and photographs of the factory that were presented in Kingway's response to the RFI. Kingway argues that it took all possible steps to exercise reasonable care, which are similar to the steps that all responsible importers take to verify origin.<sup>23</sup>

Kingway asserts that its supplier, [ MANUFACTURER ], was also the manufacturer of the subject cabinets, and that the WCV were manufactured at [ MANUFACTURER'S ] facility in Malaysia. In support of this argument, Kingway cites the Malaysian address and phone number

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<sup>19</sup> *Id.*

<sup>20</sup> *See* Uni Tile's Request for Administrative Review, Appeal Supplement, dated November 21, 2022, at page 2.

<sup>21</sup> *Id.* at 22-23.

<sup>22</sup> *Id.*

<sup>23</sup> *See* Kingway's November 21, 2022 Request for Administrative Review.

of [ MANUFACTURER'S ] facility. As part of Exhibit A to its arguments, Kingway also attached a report from the [ SOURCE ], which provided further details about [ MANUFACTURER ], such as its address and officers. In addition, Kingway submitted photographs of both the inside and outside of [ MANUFACTURER'S ] manufacturing facility.<sup>24</sup>

Lastly, Kingway asserts that it had a good faith belief in the Malaysian origin of the WCV. Kingway argues that it received a certificate of origin listing Malaysia as the country of origin; the lead time for production was much longer than when Kingway ordered merchandise from China; the quality of the Malaysian products appears to be slightly inferior and the quality varied more than Chinese products due to the establishment of a new factory and the training of new workers; cabinet production in Malaysia is more expensive than cabinet production in China; Kingway received detailed factory operation information, detailed employee timecards, raw material purchase orders, and detailed machinery and production process information; [ MANUFACTURER ] supplies many other U.S. cabinetry businesses and was well recommended; Kingway ordered samples from [ MANUFACTURER ] directly for quality checks prior to placing orders; and that [ BROKER NAME ] had invited Kingway to visit the Malaysian factory, even though Kingway was unable to visit due to the ongoing COVID-19 pandemic.<sup>25</sup>

### C. AKCA's Arguments

AKCA requests that we affirm the October 6th Determination of evasion. AKCA argues that CBP's finding of evasion was based on substantial evidence and that applying AD/CVD to the applicable entries made during the period of investigation ("POI") is consistent with the statutory and regulatory authority provided to CBP.<sup>26</sup>

AKCA asserts that the record's substantial evidence demonstrates that the logistics company, Shenzhen Ark Cross-Border Logistics Co., Ltd. ("Ark Trans"), was orchestrating a wide-ranging scheme of evasion through its connections and affiliations with Chinese manufacturers, Malaysian companies, and U.S. importers, and that Uni Tile and Kingway failed in their attempts to detract from this evidence. For example, while Uni Tile extensively cited information that [ MANUFACTURER ] provided in Uni Tile's voluntary submission, AKCA argues that the information in this submission failed to show that the merchandise shipped to Uni Tile was produced in Malaysia. AKCA argues that Kingway's attempts to detract from the substantial evidence also do little to negate the record's evidence. Finally, AKCA argues that neither Uni Tile nor Kingway responded to the import and export data that CBP obtained and placed on the record. AKCA asserts that CBP rightly found that this trade data "directly refutes the evidence presented in Uni Tile's and Kingway's RFI responses" because CBP was able to trace the export shipments from certain companies to certain places, which were then re-exported during the POI.<sup>27</sup>

AKCA also refutes Kingway's claims to have exercised reasonable care by stating that these claims are both belied by the record and irrelevant because culpability is not a factor to be

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *See* Alleger's Response to Requests for Administrative Review, dated December 7, 2022.

<sup>27</sup> *Id.*

considered under the EAPA statute. AKCA argues that it is doubtful that Uni Tile and Kingway had no sense of the evasion that was occurring. Kingway’s “reasonable care” consisted of relying upon a broker that contacted Kingway to initiate a business relationship and “assisted Kingway in finding a new factory because {he} wanted new clients for his logistics business.” AKCA argues that the record evidence shows that the three Malaysian companies involved in the transshipment scheme were connected to a Chinese WCV producer and were all owned and controlled by the same individual, i.e., [ BROKER NAME ]. AKCA notes that [ BROKER NAME ] is also connected to the company Ark Trans, the company about which CBP placed evidence on the record showing involvement in a scheme regarding Malaysian and Chinese companies evading AD/CVD orders concerning other products.<sup>28</sup>

AKCA argues that Ark Trans’ website contains detailed information regarding how the company engages in transshipment and duty evasion. Moreover, in conversations with AKCA’s foreign market researcher, [ BROKER NAME ] easily and openly divulged that his Malaysian companies transship merchandise produced in China to the United States. Given the brazenly open nature of the evasion scheme, AKCA argues that even a small amount of diligence would have uncovered the evasion scheme to Uni Tile and Kingway.<sup>29</sup>

Finally, AKCA asserts that CBP’s use of confidential information did not violate due process. AKCA argues there is no merit to Uni Tile’s claim that the October 6th Determination cited import data that was “not previously in the record, thereby preventing Uni Tile from investigating these allegations and presenting rebuttal documentation voluntarily submitted on June 21, 2022.” To the contrary, AKCA asserts that CBP had placed this information on the record on December 3, 2021, and described it as “Import data from CBP systems for importer, shipper, country, and HTSUS -- generally dated FY2016 through FY2021.” Citing a number of court cases, AKCA states that the U.S. Court of International Trade has repeatedly rejected claims that are similar to Uni Tile’s, while also holding that due process does not require that U.S. importers have access to proprietary information during an EAPA investigation. All that is required of CBP is to provide a public summarization of the confidential information, and CBP provided such a summary of the relevant data in this investigation.<sup>30</sup>

#### D. 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 October 6th Determination was made, as indexed and provided to RR by TRLED; and (2) the timely and properly filed requests for review and response.

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* See also Diamond Tools Tech. LLC v. United States, 545 F. Supp. 3d 1324, 1343 (Ct. Int’l Trade 2021) (“DTT USA has not demonstrated that due process requires that it receive access to proprietary information during the EAPA investigation.”); Royal Brush Mfg., Inc. v. United States, 483 F. Supp. 3d 1294, 1308 (Ct. Int’l Trade 2020) (“To be clear, the court does not hold that Royal Brush is entitled to receive business confidential information. Congress has not mandated that Royal Brush be afforded such access and Royal Brush has not shown that due process requires it.”).



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The purpose of this *de novo* review is to analyze the October 6th Determination and the accompanying administrative record to determine whether substantial evidence of evasion exists. Our review of the administrative record and both Uni Tile's and Kingway's requests for administrative review clearly indicates that WCV were entered as type "01" consumption entries and, therefore, AD/CVD were not paid.<sup>31</sup> Here, there is no dispute that if Chinese-manufactured WCV were shipped directly from China to the United States, the WCV would fall under the AD/CVD Orders. There is also no dispute that the importers' entries were entered as classified under subheading number, 9403.40.9060, HTSUS, and, again, if of Chinese origin, are within the scope of the AD/CVD Orders. The only fact in contention is whether the WCV at issue are, in fact, of Chinese origin, and if TRLED properly found evasion through transshipment. Thus, so long as the WCV are considered covered merchandise under the applicable AD/CVD Orders, their entry during the period of investigation without proper declaration as 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 that substantial evidence in the record demonstrates that evasion occurred, as we explain below.

It is worth noting that Uni Tile provides contradictory arguments with respect to both the statutes at issue in this case, and with respect to the standard at issue. In its request for administrative review, Uni Tile first argues that the October 6th Determination is contrary to law because it holds that the care standard of 19 U.S.C. § 1592 preempts the statutory definition of diversion in 19 U.S.C. § 1307.<sup>32</sup> Later in the same submission, Uni Tile argues that "TRLED states that the reasonable care standard does not apply to the determination of diversion under 19 U.S.C. § 1517. This statement is contrary to law."<sup>33</sup>

In response, we emphasize that in EAPA cases, the standard is one of evasion, and not diversion as Uni Tile argues. In addition, 19 U.S.C. § 1307 is a statute that prohibits the importation of merchandise produced with forced labor, which is not at issue in this matter. Furthermore, 19 U.S.C. § 1307 does not use the term "diversion." In contrast, this administrative review is predicated on the authority found in 19 U.S.C. § 1517, which defines a standard of evasion, rather than of diversion.<sup>34</sup> As a result, our analysis will be under 19 U.S.C. § 1517 and the standard of evasion.<sup>35</sup>

The evidence of evasion in this case is cumulative and substantial, as thoroughly discussed in the October 6th Determination. For the WCV to be considered outside the scope of the AD/CVD Orders, the products would need to be manufactured in Malaysia. Here, Uni Tile and Kingway each failed to provide adequate and reliable evidence that the WCV they imported into the United States were manufactured in Malaysia. We discuss each of these failures in turn.

In both its response to the CF 28 and in its request for administrative review, Kingway submitted photographs of [ MANUFACTURER'S ] Malaysian factory where it claimed the subject WCV were manufactured. Many of the photographs in both submissions were the same. Several photographs show the exterior of a building that Kingway claims to be the factory at issue. A

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<sup>31</sup> See Uni Tile's and Kingway's RFI Responses; *see also*, 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 Dec. 14, 2021).

<sup>32</sup> See Uni Tile's Request for Administrative Review, Appeal Supplement, dated November 21, 2022, at page 2.

<sup>33</sup> *Id.* at 22-23.

<sup>34</sup> See 19 U.S.C. § 1517 and 19 CFR § 165.1.

<sup>35</sup> We will address the pre-emption argument later in our decision.

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number of the photographs show the interior of a building and various people at different machines. Kingway argues that these photographs show the Malaysian factory's employees and machinery and, as such, constitute evidence of Malaysian production and a lack of evasion. Uni Tile also submitted similar photographs in response to the CF 28 and in its Voluntary Submission of Information; Uni Tile also made similar arguments regarding these photographs constituting evidence of Malaysian production.

Notwithstanding Uni Tile's and Kingway's claims to the contrary, these photographs are neither reliable nor do they constitute substantial evidence of production in Malaysia. We note that these photographs are inconsistent with respect to how the employees are dressed and how they operate the equipment. In addition, the layouts of the machines in these photographs do not conform to Kingway's and Uni Tile's descriptions of the production process. For example, these photographs show certain pieces of equipment in close proximity to each other, when Kingway and Uni Tile describe the manufacturing process as using these pieces of equipment in the different steps of production—steps that are not consecutive and separated by other large machines.<sup>36</sup> These photographs also lack information about when and where they were taken, such as a time and date stamp. As such, we can determine little about their provenance. Without a larger context in which to frame these photographs, these photographs, by themselves, provide little evidence to show production. As such, we find that these photographs do not definitively show production at Malaysian factories.

CBP's visits to the locations where Kingway and Uni Tile claimed that production was taking place in Malaysia also contradict the importers' arguments that production of the subject WCV occurred in Malaysia. In particular, CBP's attaché in Malaysia conducted three site visits: one to MSW's registered business address; one to the business address given in the CF 28 responses as the current address for [ MANUFACTURER ] and LLWF; and one to [ MANUFACTURER'S ] previous business address.

At MSW's address, CBP's attaché noted four different buildings at the address, but no one was present at the gate of the business. The attaché also could not hear any manufacturing activity coming from any of the buildings. Photographs from the visit, placed on the record, show no visible sign of activity. As a result, no factory at this location could be confirmed.

Next, the attaché visited [ ADDRESS ], the current business address for [ MANUFACTURER ] and LLWF that Kingway provided in its January 17, 2022 response to CBP's CF 28.<sup>37</sup> Uni Tile also provided the same documentation and the same address for [ MANUFACTURER ] and LLWF in its January 17, 2022 response to the CF 28.<sup>38</sup> When the attaché arrived, he could not find a building corresponding with this address. After searching the entire street, the closest address he could find was [ ADDRESS ]. The attaché asked a woman who came out of that address whether the address for which he was looking existed; she responded that she had not heard of that address. As a result, no factory at this location could be confirmed. In addition, this visit made clear that both Uni Tile and Kingway provided CBP with the incorrect address of the companies they claimed produced the subject WCV in Malaysia.

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<sup>36</sup> See, e.g., Kingway's CF 28 Responses, dated January 17, 2022, Uni Tile's CF 28 Responses, dated January 17, 2022.

<sup>37</sup> See Kingway's January 17, 2022 CF 28 Response at page 2.

<sup>38</sup> See Uni Tile's January 17, 2022 CF 28 Response at page 3.

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The attaché's third site visit was to [ MANUFACTURER'S ] previous address at [ ADDRESS ]. There, the attaché noted a large building with a faded sign out front of the building that bore [ MANUFACTURER'S ] name. The attaché's photographs from this address at the third site match the building and manufacturing facilities on [ MANUFACTURER'S ] website; however, the production pictures submitted with the various CF 28 responses contain different photographs with windows that are located in different areas of the buildings. As a result, there is no way to confirm that production took place at [ MANUFACTURER'S ] previous Malaysian address, either.

Each of these items speaks to Uni Tile's and Kingway's misrepresentation of the country of origin of the WCV.

In addition, some of the documents that Kingway provided contradict Kingway's claims that the WCV were manufactured in Malaysia. For example, a number of the invoices that Kingway submitted as part of its request for administrative review of the October 6th Determination specifically show WCV components of Chinese origin being shipped into Malaysia for [ MANUFACTURER ]. Bank statements submitted with these invoices show Kingway's payments to Chinese banks for these items. Lastly, Bills of Lading submitted with these documents show that these items were shipped from China to Malaysia on January 18, 2021, with the Chinese producer that [ MANUFACTURER ] had paid for the materials as consignor and [ MANUFACTURER'S ] as the consignee, then from Malaysia to the United States on March 6, 2021, with [ MANUFACTURER'S ] as the consignor and Kingway as the consignee. These same invoices, bank statements and Bills of Lading were submitted as part of Kingway's January 17, 2022 submission to TRLED to substantiate Kingway's claims that the subject WCV were manufactured in Malaysia during the POI.<sup>39</sup>

Furthermore, like the photographs, some of the documents provided to CBP to support the claims of production in Malaysia, are of questionable credibility. For example, Kingway's January 17, 2022 submission contained documents such as invoices and employee timecards that were also submitted as part of Uni Tile's response to the CF 28.<sup>40</sup> That is, the same invoices and timecards were submitted in both instances, despite the companies' claims that these documents substantiated different importations of WCV. In addition, the submitted timecards had clearly been changed, as they showed that white-out had been applied and new information written over the original information.<sup>41</sup> No production records for MSW were produced.<sup>42</sup> In addition, while Kingway provided some orders from [ MANUFACTURER ] showing orders of items such as drawers and doors that could be used in the production of WCV, these documents did not show from where these items actually originated.<sup>43</sup> The same is true of the work orders that Kingway submitted, which are nearly identical to the ones submitted by Uni Tile.<sup>44</sup> As such, we find these production records insufficient to determine that production of the subject WCV occurred in Malaysia.

Uni Tile argues that the findings of AKCA's Foreign Market Researcher regarding transshipment and lack of production in Malaysia are contradicted by these production documents, timecards, photographs and list of mechanical equipment. We disagree. As discussed above, these

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<sup>39</sup> See Kingway's January 17, 2022 CF 28 Response at pages 39-41, 44, 89.

<sup>40</sup> See Kingway's January 17, 2022 CF 28 Response; Uni Tile's January 17, 2022 CF 28 Response.

<sup>41</sup> *Id.*

<sup>42</sup> See the October 6th Determination at page 3.

<sup>43</sup> See Uni Tile's January 17, 2022 CF 28 Response at page 14.

<sup>44</sup> See Kingway's January 17, 2022 CF 28 Response at page 12.

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documents do not establish production in Malaysia; nor do they contradict the allegations of transshipment, for all of the reasons stated above.

In contrast to the dearth of evidence as to production in Malaysia, the record does contain significant evidence pointing to transshipment of WCV from China into Malaysia and then to the United States. Trade data in the record, which was obtained from the [ SOURCE ], shows imports of WCV being exported from China to Malaysia by [ MANUFACTURER ].<sup>45</sup> Export data provided by [ SOURCE ] shows those exact quantities of those exact items being exported from Malaysia to the United States within a few weeks, also with [ MANUFACTURER ] listed as the exporter.<sup>46</sup> The number of items or containers of items being imported into the United States exactly match the number of items or containers being exported in each instance. This happened close to 60 times for Uni Tile's imports and 14 times for Kingway's imports<sup>47</sup> – which is too many times to be a coincidence. There can be no other conclusion than that [ MANUFACTURER ] transshipped these items through Malaysia and their country of origin was misrepresented on entry into the United States.

In addition, there is much evidence on the record showing that LLWF, MSW, and [ MANUFACTURER ], the three alleged manufacturers of the subject merchandise, are related entities. CBP obtained information about these three companies from the [ SOURCE ]. This information showed that all three share employees, directors, shareholders and addresses. For example, [ MANUFACTURER ] shares two Malaysian addresses with LLWF, and [ DIRECTOR NAME ] is the director (or co-director) for all three companies. As another example, Kingway's broker, [ BROKER NAME ], is the owner of MSW.

CBP also obtained information linking [ BROKER NAME ], the broker who approached Kingway and Uni Tile to solicit their business, to Ark Trans, a logistics company located in China. Ark Trans' website lists contact information for [ BROKER NAME ], including a phone number that is also the number for a Chinese producer, [ PRODUCER NAME ]. Ark Trans' email addresses and invoice numbers also appear on documentation throughout the record. CBP's review of Ark Trans' website found numerous and open references to evading antidumping and countervailing duties by transshipping Chinese goods through Malaysia.<sup>48</sup>

Furthermore, [ BROKER NAME ] also has ties to [ MANUFACTURER ], LLWF and MSW. As discussed above, the invoices, payments to Chinese banks and Bills of Lading between China, Malaysia and the United States show that [ MANUFACTURER ] in particular has ties to Chinese manufacturers and imported WCV from China into Malaysia before exporting them from Malaysia to the United States.<sup>49</sup> This also supports a conclusion of evasion. The manufacturers' ties to Ark Trans, coupled with Ark Trans' statements regarding its AD/CVD evasion, further support a finding of substantial evidence of evasion.

Uni Tile argues that the reasonable care standard for filing of entries applies to 19 U.S.C. § 1517. In doing so, Uni Tile argues that in the October 6th Determination, "TRLED states that the

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<sup>45</sup> See TRLED's July 27, 2022 CBP Memo to the File: Trade Data.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*; see also October 6th Determination at Attachment 1.

<sup>48</sup> See TRLED's February 8, 2022 Memo to File: Malaysian Companies Memo, at Attachment 3 (containing screen shots of Ark Trans' website).

<sup>49</sup> See Kingway's January 17, 2022 CF 28 Response at pages 39-41, 44, 89.

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reasonable care standard does not apply to the determination of diversion under 19 U.S.C. § 1517. This statement is contrary to law.” Kingway argues that the assessment of antidumping and countervailing duties under 19 U.S.C. § 1517 does not take precedence over an importer’s obligation to exercise reasonable care in the filing of entries, and that it exercised reasonable care in receiving a production photograph of the production equipment at [ MANUFACTURER ], in placing its orders, and in receiving confirmation of those orders from [ MANUFACTURER ].

In response, we note that the October 6th Determination does not have a direct statement regarding reasonable care under 19 U.S.C. § 1517. As such, Uni Tile’s argument in this regard is inaccurate. However, the October 6th Determination did state that:

EAPA does not have a knowledge requirement for evasion as defined under 19 CFR 165.1, nor is there any requirement that an importer know of the material or false statement. In other words, whether an importer exercised reasonable care is irrelevant for the purposes of EAPA. Therefore, CBP does not need to determine any level of culpability, only that evasion occurred with entry.<sup>50</sup>

In reviewing 19 U.S.C. § 1517, we again note that subsection (a)(5), which also appears in the first paragraph of this determination’s “Law and Analysis” section, lacks a reasonable care requirement. The definition of “evasion” in 19 CFR 165.1 mirrors the definition found in 19 U.S.C. § 1517. As a result, we find that evasion can occur regardless of whether reasonable care was exercised. Indeed, 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.<sup>51</sup>

Similarly, Kingway’s arguments regarding its reliance on information from its customs broker suggest a misunderstanding by Kingway of the legal responsibilities of an importer when it does business with CBP. Like Uni Tile, Kingway contends that it hired a broker to exercise reasonable care. While we appreciate Kingway’s and Uni Tile’s separate attempts to cooperate with CBP’s investigation, these companies, prior to importing goods into the United States, had the responsibility of verifying their supply chains and cannot now feign ignorance. The long-standing Customs Modernization Act fundamentally altered the relationship between importers and CBP, shifting to the importer the legal responsibility for declaring the value, classification, and rate of duty applicable to entered merchandise. 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 Uni Tile, 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. This is especially true in a case such as this one, where even a minimal internet search would likely have uncovered [ BROKER NAME ]’s affiliation with Ark Trans, as well as uncovered that company’s ongoing transshipment schemes.

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<sup>50</sup> See October 6th Determination at page 22.

<sup>51</sup> 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.”

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Next, we address Uni Tile's argument that although CBP publishes notice of AD/CVD orders in the ACE broker module to inform brokers and importers of the requirement to deposit AD/CVD, no such notice is published relating to the potential diversion<sup>52</sup> of merchandise imported from third countries. Uni Tile argues that this lack of notice in ACE imposes a greater burden on the importer or its broker to determine the likelihood of evasion. Uni Tile further argues that without the implementation of a notice procedure in the broker module in ACE to identify the HTSUS subheadings potentially subject to evasion of an AD/CVD order, CBP's subsequent assessment of AD/CVD is contrary to the Equal Protection clause and contrary to law.

In response, we note several points. First, AD/CVD orders are country-specific as to the origin of merchandise, not as to the country of last export. Second, the notice procedures required by 19 U.S.C. § 1517 and 19 CFR part 165 do not require publication in ACE of notices of EAPA investigations or of findings of evasion. CBP has complied with the requirements of the appropriate statutory and regulatory sections. As required under EAPA, Uni Tile and Kingway both received notice of the investigation and of TRLED's determination of evasion consistent with the timeline required by the EAPA statute. Furthermore, the AD/CVD Orders were published in the *Federal Register*, where they are available for each importer to access. In addition, the importer of record, either in person or via an agent authorized by the importer, must use reasonable care in filing entries, such that CBP can assess proper duties on the merchandise and determine whether any other section of law applies.<sup>53</sup> This responsibility has remained constant since the passage of the Customs Modernization Act, discussed above. Given how publicly available the AD/CVD Orders are, as well as the legal responsibility of the importer, an importer cannot shift the burden to CBP and place a non-existent requirement on CBP to publish additional information in ACE, to avoid that responsibility.

Next, we address Uni Tile's claims that it was denied due process because TRLED did not place documents on the record in a timely fashion. In particular, Uni Tile argues that TRLED added Uni Tile's and Kingway's NTAC Reports, both dated December 3, 2021, to the record late. Uni Tile also argues that TRLED did not provide a public version of Exhibit 7 of AKCA's allegations as required under CBP regulations. In support of these arguments, Uni Tile 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.<sup>54</sup> 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."<sup>55</sup>

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 Uni Tile's due process rights were not infringed by a lack of access to the record. Uni Tile's initial allegation that a public version

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<sup>52</sup> Once more, we note that Uni Tile uses the term diversion, as it did above in the context of its arguments under 19 U.S.C. § 1307. Again, we note that this is the incorrect terminology, as the proper standard is evasion, under 19 U.S.C. § 1517.

<sup>53</sup> See 19 U.S.C. § 1484(1)(1).

<sup>54</sup> See *Royal Brush Mfg., Inc. v. United States*, 545 F. Supp. 3d 1357 at 1365-1366 (Ct. Int'l Trade Oct. 29, 2021).

<sup>55</sup> *Id.* at 1366, 1369.

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of Exhibit 7 of AKCA's allegations was not provided<sup>56</sup> is contradicted by its later arguments that a public version was provided but that it was blank except for the heading.<sup>57</sup> In these later arguments, Uni Tile argues that 19 C.F.R. § 165.4(b) requires that the public version sufficiently describe the redacted information in order for a party to be able to provide a response.<sup>58</sup> We note that both the NTAC reports and Exhibit 7 had the public summaries required by 19 CFR § 165.4 and *Royal Brush*. The NTAC reports' public summary contained a statement in bold saying that the "Document [was] Not Capable of Public Summary – Import Data." A second statement just below it stated that it contained "Import data from CBP systems for importer, shipper, country, and HTSUS – generally dated FY2016 through FY2021." The public statement for Exhibit 7 of the AKCA allegation reads, "Findings of Foreign Market Researcher." Each of these statements gives Uni Tile notice about the document it summarizes. Furthermore, each of these documents contains proprietary information to which the *Royal Brush* decision makes clear that Uni Tile is not entitled. As such, we find that the public summaries of these documents meet the requirements of 19 C.F.R. § 165.4.

Moreover, these documents were available to Uni Tile months before TRLED rendered its determination. Uni Tile, by its own admission, was given access to the NTAC reports cited in Footnote 114 of the October 6th Determination, during the POI.<sup>59</sup> Pursuant to 19 C.F.R. 165.23(c)(1), if CBP places new information on the record more than 200 days after the initiation of the investigation, the parties will be given a chance to provide a rebuttal to this information.<sup>60</sup> In this case, the document at issue was placed on the record more than 200 days after the initiation of investigation on December 2, 2021. As a result, Uni Tile had the right to submit rebuttal comments. On August 1, 2022, TRLED extended the statutory deadline for submission of written arguments until August 11, 2022, with responses to written arguments due August 26, 2022.<sup>61</sup> On August 11, 2022, the Alleger and Kingway submitted timely written arguments; on August 16, 2022, Uni Tile submitted timely written arguments.<sup>62</sup> On August 26, 2022, the Alleger submitted timely written rebuttal arguments; on August 31, 2022, Kingway submitted timely written rebuttal arguments.<sup>63</sup> As a result, Uni Tile had ample opportunities to respond to the NTAC reports, and its claims of denial of due process are unfounded.

Uni Tile argues that [ MANUFACTURER'S ] January 14, 2022 responses to TRLED's CF 28 established that the production of the subject WCV occurred in Malaysia, and that TRLED's rejection of these responses contributes to the lack of substantial evidence supporting the October 6th Determination.<sup>64</sup> However, Uni Tile also states that it subsequently supplied responses to this rejection in its June 21, 2022 Voluntary Submission of Information.<sup>65</sup> Thus, Uni Tile had an opportunity to respond to TRLED's rejections, on the record; this Uni Tile response also provided TRLED the opportunity to consider Uni Tile's arguments in coming to the October 6th Determination.

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<sup>56</sup> See Uni Tile's Supplemental Appeal/ Request for Administrative Review, dated November 11, 2022, at 2.

<sup>57</sup> *Id.* at page 10.

<sup>58</sup> *Id.* at page 10.

<sup>59</sup> In its arguments, Uni Tile says these documents were submitted to the Administrative Record in July 2022. See Uni Tile's Supplemental Appeal/Request for Administrative Review, dated November 11, 2022, at page 2.

<sup>60</sup> See 19 C.F.R. § 165.23(c)(1).

<sup>61</sup> See October 6th Determination at page 7.

<sup>62</sup> *Id.* at 7-8.

<sup>63</sup> *Id.* at 8.

<sup>64</sup> See Uni Tile's November 21, 2022 Supplemental Request for Review at page 14.

<sup>65</sup> *Id.* at 14.

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In addition, Uni Tile's June 21, 2022 Voluntary Submission of Factual Information noted and responded to each of the deficiencies that TRLED found with respect to Uni Tile's CF 28 responses. Uni Tile provided new pictures, such as new pictures of the machinery that TRLED stated was missing, or new pictures showing dust collection machines. Uni Tile also submitted items such as summaries of the machinery and production capacity, as well as new timecards. Uni Tile repeated those responses in its November 21, 2022 Supplemental Request for Review, and argued that those responses were provided to establish that TRLED's rejection of the initial responses was erroneous and not based on substantial evidence.

Given that Uni Tile submitted the same information and pictures in its November 21, 2022 Supplemental Request for Review as in its June 21, 2022 Voluntary Submission of Factual Information, we reiterate the conclusions we came to above. The submitted timecards had clearly been changed, for example, as they showed that white-out had been applied and new information written over the original information, and the photographs were often inconsistent and insufficient to show production in Malaysia.

Finally, we touch upon Uni Tile's arguments regarding the purported insufficiency of the evidence supporting TRLED's decision to initiate the EAPA investigation, which needs only to be supported by a reasonable suggestion of evasion.<sup>66</sup> Uni Tile thus errs in claiming that TRLED's ultimate decision is somehow flawed since neither the allegation nor the notice of initiation was supported by substantial evidence. However, substantial evidence is not a statutory standard, either for an EAPA allegation or for a notice of initiation. Furthermore, RR reviews whether substantial evidence supports the finding of evasion. We believe that the record amply supports such a finding.

For Uni Tile and Kingway to overcome the evidence of evasion discussed above, they needed to provide evidence demonstrating that their entries of WCV, which were allegedly manufactured by [ MANUFACTURER ], MSW and LLWF, were in fact of Malaysian origin and not merely transshipped from China. As indicated above, the evidence shows that WCV were sourced from China and received by [ MANUFACTURER ] and the other manufacturers in Malaysia before being transshipped to the United States. There is also an absence of contradictory reliable evidence that would demonstrate production of WCV in Malaysia.<sup>67</sup>

The record shows that Uni Tile made 178 type "01"<sup>68</sup> entries, and Kingway made 68 type "01" entries of the WCV into the United States, declared as not subject to the AD/CVD Orders.<sup>69</sup> These entries should have been made as type "03" entries, subject to the AD/CVD Orders. It was material and false for these entries to be made as type "01" entries. That the material falsehood may have occurred as a result of a mistake does not mean that evasion has not occurred -- a falsity within the meaning of the EAPA statute can occur as a result of a mistake.<sup>70</sup> In our view, the record as a

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<sup>66</sup> See 19 U.S.C. §1517(b).

<sup>67</sup> Although RR does rely on adverse inferences for our determination, we note that our conclusion as to the insufficiency of evidence as to production in Malaysia is further supported by TRLED's adverse inferences against some of the manufacturers. On March 25, 2022, TRLED sent an RFI to each of the manufacturers. [ MANUFACTURER ], LLWF and MSW did not submit responses by the deadline. As a result, TRLED applied adverse inferences to them.

<sup>68</sup> See NTAC's Post Receipt Report for Uni Tile & Marble, Inc. (December 3, 2021) at page 1.

<sup>69</sup> See NTAC's Post Receipt Report for Kingway Construction & Supplies (December 3, 2021) at page 1.

<sup>70</sup> See *id.*, and 19 U.S.C. § 1517(a)(5)(A).



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whole does not support Kingway's and Uni Tile's assertions that CBP should conclude that the entries in question were not subject to the AD/CVD Orders, for all of the reasons noted above.

Because Uni Tile's and Kingway's entries of WCV, subject to the scope of the AD/CVD Orders, were made as type "01" entries, and the applicable AD/CVD were not deposited or paid, we conclude that, pursuant 19 U.S.C. § 1517, evasion by Uni Tile and Kingway has occurred.

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 Uni Tile and Kingway stands.

**III. Decision**

Based upon our *de novo* review of the administrative record in this case, including the requests for administrative review and response, as to Uni Tile and Kingway, the October 6th Determination of evasion under 19 U.S.C. § 1517(c) is **AFFIRMED**. RR makes no decision as to any other importers, since no requests for review were filed as to any other importers.

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

Sincerely,

Jacinto P. Juarez, Jr., for  
W. Richmond Beevers  
Chief, Cargo Security, Carriers & Restricted Merchandise Branch  
Regulations & Rulings, Office of Trade  
U.S. Customs and Border Protection

Approved by:

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Alice A. Kipel  
Executive Director,  
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U.S. Customs and Border Protection