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U.S. Customs and Border Protection

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PUBLIC VERSION

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Re: Enforce and Protect Act (“EAPA”) Consolidated Case Number 7809; *Certain Quartz Surface Products From the People’s Republic of China: Antidumping and Countervailing Duty Orders*, 84 Fed. Reg. 33,053 (Dep’t of Commerce July 11, 2019); Legion Furniture, Inc.; 19 U.S.C. § 1517

Dear Counsel:

This is in response to the request for *de novo* administrative review of a determination of evasion dated February 9, 2024, 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 7809 (“February 9 Determination”).¹ The request for review, dated March 25, 2024, was submitted to CBP, OT, Regulations and Rulings (“RR”), by Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP, on behalf of Legion

¹ See EAPA Cons. Case 7809 – Notice of Determination as to Evason (Feb. 9, 2024) (Public Version), *available at* <https://www.cbp.gov/sites/default/files/assets/documents/2024-Feb/02-09-2024%20-%20TRLED%20-%20Determination%20as%20to%20Evasion%20%28508%20compliant%29%20-%20%287809%29%20-%20PV.pdf> (last accessed June 20, 2024).

PUBLIC VERSION

Furniture, Inc. (“Legion, or “Importer”), pursuant to 19 U.S.C. § 1517(f) and 19 C.F.R. § 165.41(a).² Cambria Company, LLC (“Cambria” or “Alleger”) did not file a response to the request for review.

I. Background

Based on our review of the administrative record, we agree with the recitation of facts as set forth in the February 9 Determination. As such, we will not repeat the entire factual history herein.

On December 21, 2022 and March 16, 2023, Cambria, a domestic producer of quartz surface products (“QSP”), filed EAPA allegations against Vanity Art LLC (“Vanity”) and Legion, respectively.³ CBP acknowledged receipt of the allegation against Vanity on January 19, 2023, and the allegation against Legion on March 20, 2023.⁴ On February 9, 2023 and April 10, 2023, respectively, TRLED initiated formal investigations under Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015 (“TFTEA”) against Vanity and Legion (collectively, “the Importers”) in response to the allegations of evasion.⁵ On May 17, 2023, TRLED consolidated both investigations under EAPA Consolidated Case No. 7809.⁶

Cambria alleged that the merchandise imported by the Importers “was Chinese quartz surface products (“QSP”) that was subject to the {antidumping and countervailing duty} Orders,” that was “incorporated into bathroom vanities in Vietnam and was declared as merchandise that is outside the scope of the Orders.”⁷ Specifically, Cambria claimed that a Vietnamese company, Phuoc Hung Joint Stock Company – Branch 1 (“Phuoc Hung-B1”), imported Chinese-origin QSP into Vietnam, attached it to cabinetry (“wooden furniture” or “WF”), and then exported the finished products as bathroom vanities to the United States.⁸ Cambria alleged that the Importers imported this merchandise into the United States without declaring it as QSP from the People’s Republic of China (“China”), which is subject to antidumping and countervailing duty orders (“AD/CVD

² See Legion’s Administrative Review Request (Mar. 25, 2024) (Public Version). As detailed below, the February 9 Determination pertained to a second importer, Vanity Art LLC (“Vanity”). See generally February 9 Determination (Public Version). With respect to Vanity, TRLED determined that there was not substantial evidence of evasion. See *id.* at 43. Consequently, Vanity did not file a request for review. As such, this decision focuses solely on the determination with regards to Legion.

³ See Quartz Surface Products from the People’s Republic of China: Request for an Investigation under the Enforce and Protect Act of Vanity Art LLC (Dec. 21, 2022) (Public Version) (“Cambria’s Vanity Allegation”); Quartz Surface Products from the People’s Republic of China: Request for an Investigation under the Enforce and Protect Act of Legion Furniture Inc. (Rev.) (Mar. 16, 2023) (Public Version) (“Cambria’s Legion Allegation”).

⁴ See TRLED’s Email Official Receipt of Allegation (Jan. 19, 2023) (Public Document); TRLED’s Email Official Receipt (Mar. 20, 2023) (Public Document).

⁵ See Notice of Initiation of Investigation and Interim Measures: EAPA Case Number 7809 (June 6, 2023) (Public Version) (“Notice of Initiation”), available at <https://www.cbp.gov/document/guidance/epa-cons-case-7809-vanity-art-llc-and-legion-furniture-inc-notice-initiation> (last accessed May 20, 2024).

⁶ TRLED’s Notice of Initiation of Investigation and Interim Measures (May 17, 2023) (Public Version), at 2.

⁷ Cambria’s Legion Allegation (Public Version), at 1; see also Quartz Surface Products from the People’s Republic of China: Cambria’s Vanity Allegation (Public Version), at 1.

⁸ See Cambria’s Legion Allegation (Public Version), at 1–2, Exs. 3, 9; Cambria’s Vanity Allegation (Public Version), at 1–2.

PUBLIC VERSION

Orders”) under Case Nos. A-570-084 and C-570-085.⁹ As a result, the Importers evaded the payment of antidumping and countervailing duties on these imports.¹⁰

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

The scope of the orders covers certain quartz surface products.¹⁵ Quartz surface products 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). 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 imported attached to, or in conjunction with, non-subject merchandise such as sinks, sink bowls, vanities, cabinets, and furniture. If quartz surface products are imported attached to, or in conjunction with, such non-subject merchandise, only the quartz surface product is covered by the scope.

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

The scope of the orders does not cover quarried stone surface products, such as granite, marble, soapstone, or quartzite. Specifically excluded from the

⁹ *See id.*

¹⁰ *See Cambria’s Legion Allegation (Public Version), at 2; Cambria’s Vanity Allegation (Public Version), at 2; see also Certain Quartz Surface Products From the People’s Republic of China: Antidumping and Countervailing Duty Orders, 84 Fed. Reg. 33,053 (Dep’t of Commerce July 11, 2019) (“AD/CVD Orders”).*

PUBLIC VERSION

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.

FN 15: 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®.¹¹

CBP issued CBP Form 28s (“CF-28”) requests for information (“RFI”) to the Importers. On March 30, 2023, Legion provided its response to the CF-28 for entry no. ending in -2682.¹² On April 17, 2023, Legion furnished its response to the CF-28 for entry no. ending in -8417.¹³

On May 17, 2023, in accordance with 19 C.F.R. § 165.24, CBP issued a Notice of Initiation of Investigation to all parties to the investigations, stating that the investigation regarding Vanity had begun on February 9, 2023 and the investigation regarding Legion had begun on April 10, 2023, and notifying the parties of CBP’s decision to take interim measures based upon reasonable suspicion that Legion and Vanity had entered covered merchandise into the customs territory of the United States through evasion.¹⁴ The entries subject to the investigations are all unliquidated entries of covered merchandise entered from January 19, 2022, through the pendency of the investigation.¹⁵

Pursuant to 19 C.F.R. § 165.5, on May 22, 2023, CBP sent additional requests for information RFIs to Legion, as well as to the presumed manufacturers of the WF containing QSP, specifically, Phuoc Hung-B1, Hong Khai Wood Co., Ltd. (“Hong Khai”) (a Vietnamese manufacturer), and Sagarit Bathroom Manufacturer Limited (“Sagarit”).¹⁶

¹¹ 84 Fed. Reg. at 33,055–56.

¹² See February 9 Determination (Public Version), at 6.

¹³ See *id.*

¹⁴ See Notice of Initiation (Public Version), at 2.

¹⁵ See *id.*; see also 19 C.F.R. § 165.2 (“In addition, at its discretion, CBP may investigate other entries of such covered merchandise.”).

¹⁶ See February 9 Determination (Public Version), at 7–8.

PUBLIC VERSION

Sagarit informed CBP that Sagarit does not produce stone countertops, or WF, but is, instead, “a trading company.”¹⁷ Sagarit explained that it is registered in Hong Kong, but its “sales and administrative office is located” in Jiangsu Province, China.¹⁸ Sagarit elaborated that it currently has affiliates registered in Shanghai and Suzhou, China.¹⁹ Sagarit further stated that its Suzhou and Shanghai-based affiliates, named Sagarit Bathroom Manufacturer Ltd. and Suzhou Sagarit U-Home Ltd., “are engaged in the **supply of counter top and ceramic sink from China to Vietnam.**”²⁰ Sagarit stated that all of the QSP it sourced from various manufacturers was ultimately made by Win Win Stone Company Ltd. (“Win Win”) (located in Vietnam).²¹ Win Win did not provide a response to the RFI issued by CBP on September 6, 2023.²²

On June 14, 2023, CBP sent RFIs to other suppliers, including [company name] (“Supplier Y”), with a deadline for each company to submit its response by July 5, 2023.²³ On July 15, 2023, Supplier Y submitted an untimely and incomplete RFI response that consisted of “a few documents with no response narrative, and no bracketing or clear labelling of the business confidential or public treatment requested for the information. . . .”²⁴ After subsequently granting Supplier Y numerous extensions through July 27, 2023, to correct various deficiencies, TRLED rejected Supplier Y’s RFI response, which was filed on July 31, 2023, four days *after* the extended deadline, as untimely pursuant to 19 C.F.R. § 165.5(c)(2).²⁵ The administrative record indicates that Legion had declared [description related to the quantity of] entries that occurred during the POI.²⁶

CBP also sampled countertops attached to WF imported by Legion in five entries, including entry no. ending in -3959.²⁷ CBP laboratories discovered that one of countertops attached to one model of WF in entry no. ending in -3959, [model no.], consisted of artificial stone predominantly comprised of quartz, with a resin binder, and, although entry no. ending in -3959 was not among the entries subject to the investigation, this model of WF is one of the four models imported by Legion during the POI that contained QSP.²⁸

¹⁷ Sagarit’s RFI Cover Letter and Narrative (June 27, 2023) (Public Version), at 6.

¹⁸ *Id.*

¹⁹ *Id.* at 6–7.

²⁰ *Id.* at 3, 9 (emphasis added).

²¹ *See* February 9 Determination (Public Version), at 8.

²² *See id.* at 21.

²³ *See id.* at 11. The other suppliers are not at issue in this *de novo* review.

²⁴ *Id.* at 13; *see also* CBP Memorandum, EAPA 7809 – Adding CBP email correspondence with Supplier Y to the Administrative Record (Aug. 8, 2023) (Public Version) (“Correspondence with Supplier Y”), at Attachment 5 and at 15–16 (Rejection of Supplier Y’s Untimely Resubmission of its RFI Response).

²⁵ *See* February 9 Determination (Public Version), at 13.

²⁶ *See generally* CBP Memorandum, EAPA 7809 – Adding Information to the Administrative Record (April 14, 2023) (Confidential Version).

²⁷ *See* February 9 Determination (Public Version), at 24 (referencing TRLED’s memo to file adding Lab Report Entry 3959 to Record (Sept. 1, 2023) (Public Version)); TRLED’s memo to file adding Lab Report Entry 9413 to Record (Sept. 1, 2023) (Public Version); TRLED’s memo to file adding Lab Report Entry 9363 to Record (Sept. 1, 2023) (Public Version); TRLED’s memo to file adding Lab Report Entry 2674 to Record (Aug. 21, 2023) (Public Version); TRLED’s memo to file adding Lab Report Entry 1617 to Record (Aug. 21, 2023) (Public Version).

²⁸ TRLED’s memo to file adding Lab Report Entry 3959 to Record (Sept. 1, 2023) (Confidential Version). *See also* NTAC Report (April 5, 2023) (Confidential Version). *But see also* 19 C.F.R. § 165.2 (“In addition, at its discretion, CBP may investigate other entries of such covered merchandise.”).

PUBLIC VERSION

CBP conducted verification activities at Hong Khai from October 25 to October 28, 2023;²⁹ a site visit to Win Win’s facility on October 25, 2023;³⁰ and verification at Phuoc Hung-B1 from November 1-2, 2023.³¹ Pursuant to the verification report, Hong Khai indicated that it did not produce entry nos. ending in -3123 and -1888, even though it was listed as the manufacturer on those entries.³² With regards to entry nos. ending in -3123 and -1888, according to Sagarit company officials, the WF in these entries were produced by Supplier Y, yet Legion told CBP that Win Win supplied the QSP.³³ When CBP asked Win Win officials if the company had ever sold QSP to Supplier Y, company officials told CBP that they had never heard of, much less sold QSP to, Supplier Y.³⁴

On February 9, 2024, TRLED found substantial evidence that Legion imported Chinese origin QSP into the United States through evasion, specifically by importing countertops containing Chinese QSP attached to WF from Vietnam without declaring the QSP components as Chinese origin.³⁵ Legion declared the merchandise as Vietnamese origin WF without separately declaring that the QSP components were subject to the AD/CVD Orders, and as a result, no cash deposits were applied at the time of entry.³⁶ Additionally, TRLED noted that it did not find evidence that any of Legion’s WF imports other than the four models identified in Legion’s RFI responses identified by the stock keeping unit (“SKU”) numbers WLF2280-B, WLF2280-PG, WLF2280-VG, and WLF2280-W contained QSP.³⁷

Moreover, TRLED applied adverse inferences to Supplier Y, finding that Supplier Y did not cooperate or comply with CBP’s request for information to the best of its ability due to its failure to submit a timely RFI response, despite having multiple opportunities to do so.³⁸ Consequently, TRLED determined that it did not have information on the record regarding Supplier Y’s source of QSP countertops, and therefore, applied adverse inferences to conclude that the QSP countertops that were attached to WF manufactured by Supplier Y were of Chinese origin.³⁹

On March 25, 2024, Legion filed a timely Request for Administrative Review. On March 27, 2024, RR sent an email to all parties to the investigation in EAPA Consolidated Case Number 7809, notifying them of the commencement of the administrative review process for Legion, and assigning RR case number H338247 to the *de novo* administrative review. Cambria did not submit a written response to Legion’s request for administrative review.

²⁹ See February 9 Determination (Public Version), at 24.

³⁰ See *id.* at 27.

³¹ See *id.* at 29.

³² Trade Regulatory Audit (“TRA”) Verification Report (Dec. 22, 2023) (Public Version), at 7.

³³ See *id.*

³⁴ TRLED’s Memo to File Adding QSP Visit to Admin Record (Dec. 8, 2023) (Public Version), at 2.

³⁵ See February 9 Determination (Public Version), at 42–43 (finding additionally that “{t}here is not substantial evidence that the Chinese-origin stone countertops Vanity imported from its Vietnamese and Chinese suppliers was QSP.”).

³⁶ See *id.* at 1, 42–43.

³⁷ See *id.* at 37; see also Legion’s Administrative Review Request (Public Version), at 11 (citing the four model numbers referenced by the February 9 Determination). See also Legion’s RFI Additional Response (July 27, 2023) (Confidential Version), at Ex. D, p. 60 (providing a 2021 specifications sheet, which included information which was not bracketed for confidentiality, indicating that each of the aforementioned models contained a “QUARTZ TOP”).

³⁸ See February 9 Determination (Public Version), at 39.

³⁹ See *id.* at 39–40.

PUBLIC VERSION

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.”⁴⁰ 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.⁴¹

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.⁴²

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).”⁴³ 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.”⁴⁴

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 cash deposits or antidumping or countervailing duties being collected on such merchandise. In doing so, CBP may apply adverse inferences where they are warranted.⁴⁵ RR’s determination as to evasion must be supported by substantial evidence.

⁴⁰ 19 U.S.C. § 1517(c)(1)(A).

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

⁴² *See Investigation of Claims of Evasion of Antidumping and Countervailing Duties, Interim Regulations*, 81 Fed. Reg. 56,477, 56,478 (CBP Aug. 22, 2016). This case was initiated under CBP’s interim regulations. Subsequently, final regulations were published. *See Investigation of Claims of Evasion of Antidumping and Countervailing Duties*, 89 Fed. Reg. 19,239 (CBP March 18, 2024) (effective date, April 17, 2024). However, the new rules do not differ substantially from the interim regulations. We do note, however, that the new rules provide for the issuance of Administrative Protective Orders (“APOs”) to provide for the release of business confidential information to the parties in compliance with the U.S. Court of Appeals for the Federal Circuit’s decision in *Royal Brush Manufacturing, Inc. v. United States, Dixon Ticonderoga Company*, 75 F.4th 1250 (Fed. Cir. 2023). Legion does make arguments with regard to its inability to access certain business confidential information, which we address later in this final administrative determination.

⁴³ 19 C.F.R. § 165.1.

⁴⁴ *See Altix, Inc. v. United States*, 370 F.3d 1108, 1116 (Fed. Cir. 2004) (internal citations and quotation marks omitted).

⁴⁵ *See* 19 C.F.R. § 165.6.

PUBLIC VERSION

A. Legion's Arguments

Legion requests that we reverse the February 9 Determination, asserting that TRLED's evasion determination is without support because the merchandise Legion imported does not fall within the scope of the AD/CVD Orders as the QSP that Legion imports into the United States originates in Vietnam.⁴⁶ In the alternative, Legion argues that the finding of evasion should be limited to only certain of its entries made during the period of investigation. Legion presents five arguments supporting its request.

First, Legion contends that the four models identified as containing QSP countertops (WLF2280-B, WLF2280-PG, WLF2280-VG, WLF2280-W) were manufactured in Vietnam by Win Win, and thus, are not Chinese.⁴⁷

Second, Legion argues that the February 9 Determination is based on incorrect statements of fact and mischaracterizations.⁴⁸ For example, Legion contests TRLED's verification report, which states that Win Win informed CBP that it never sold QSP to Supplier Y.⁴⁹ Legion argues that the February 9 Determination's characterization of the discussion with Win Win is "simply not accurate" and may have resulted from a misunderstanding or mispronunciation of Supplier Y's factory name.⁵⁰

Third, Legion argues that TRLED's determination is overbroad and that any evasion determination must be limited to only the four models with QSP tops.⁵¹ Legion cites to *Ad Hoc Shrimp Trade Enforcement Committee v. United States*, 632 F. Supp. 3d 1369, 1381 (Ct. Int'l Trade 2023), in support of this contention.⁵²

Fourth, Legion argues that TRLED's remaining findings do not constitute substantial evidence.⁵³ For example, Legion disputes TRLED's conclusion that evasion occurred because Hong Khai could only provide purchase orders and delivery notes for a certain number of pieces of QSP purchased from Win Win during verification.⁵⁴ Legion asserts that the missing records do not mean that Hong Khai did not acquire the QSP from Win Win.⁵⁵

Legion next disputes TRLED's finding of evasion based upon timing discrepancies.⁵⁶ Specifically, according to TRLED, there were discrepancies in the timing of Hong Khai's QSP purchases compared with Legion's RFI responses; per Hong Khai's delivery notes, Hong Khai did not receive its first shipment of QSP with Legion SKU numbers until a certain date, but Legion told

⁴⁶ Legion's Administrative Review Request (Public Version), at 1–2, 29–30.

⁴⁷ *Id.* at 11.

⁴⁸ *See id.* at 13.

⁴⁹ *See id.* at 13–15.

⁵⁰ *See id.* at 13–15.

⁵¹ *See id.* at 2.

⁵² *See id.* at 3 n.5, 16 n.57, 27–28 (stating that "the CIT determined that TRLED's finding of evasion for over one year's worth of entries cannot stand where the record only supported a finding of evasion for one shipment of "covered merchandise"; and, "TRLED . . . appear{s} to believe the statute is broad enough for TRLED to find evasion, and impose a remedy for, over a year's worth of entries where {the importer} concedes it evaded ADDs for one shipment.").

⁵³ *See id.* at 17.

⁵⁴ *See id.* at 18.

⁵⁵ *See id.* at 19.

⁵⁶ *See id.* at 20–21.

PUBLIC VERSION

CBP that it first imported merchandise manufactured by Hong Khai with QSP attached on a different date, occurring months before Hong Khai received the QSP.⁵⁷ Legion contends that the reference to Hong Khai in one of Legion's RFI responses is a typographical error as corroborated by Legion/Sagarit's purchasing and shipping records and Customs entry documentation showing that Sagarit purchased the countertops directly from Win Win in Vietnam, where Hong Khai had no involvement in the transaction.⁵⁸

Thereafter, Legion takes aim at TRLED's contention that evasion is shown because Hong Khai could only provide purchase orders showing that it ordered quartz "countertops" from Win Win, while the pieces of QSP which Hong Khai withdrew were "backsplashes", not "countertops."⁵⁹ Legion argues that:

{t}his contention has no genuine correlation to whether the QSP tops were produced in China. In any event, all QSP purchases from Win Win Stone comprised a set consisting of: (i) a countertop, (ii) a base, and (iii) a backsplash, which is a rectangular piece approximately one inch in depth, five inches in height, that runs the length of the countertop. All three components were of the same matching pattern/grain and color for use together. Each grouping of three components was packaged and shipped in the same box to Win Win Stone's customers. In some instances, "countertops" was used on purchase orders as a shorthand reference for the "3-component sets" explained above. Conversely, Hong Khai's production staff may have identified the specific component that they sought to remove from the warehouse for use in production.⁶⁰

Fifth, Legion alleges "due process concerns" because it "was not afforded the opportunity to review confidential information on the record that led to TRLED's determination of evasion," citing to *Royal Brush Manufacturing Inc. v. United States*, 75 F.4th 1250 (Fed. Cir. 2023), to support this claim.⁶¹ In particular, Legion argues that it did not have access to certain information attached to the verification report, the specific quantities of QSP pieces that Hong Khai reported receiving from Win Win and that Hong Khai used in its production, and confidential information included in the

⁵⁷ See *id.* at 20–21.

⁵⁸ See *id.* at 22. See also February 9 Determination at 41 (Confidential Version) ("(2) In addition to the discrepancy in the quantity of QSP Hong Khai received, there is also a discrepancy in the timing of Hong Khai's QSP purchases, compared with Legion's RFI responses. According to Hong Khai's delivery notes, Hong Khai did not receive its first shipment of QSP with Legion SKU numbers and the customer ID for Legion until [date]. This is inconsistent with Legion's RFI responses and its customs entry declarations because Legion told CBP that it first imported an entry of WF manufactured by Hong Khai with QSP attached on [date] and told CBP that Win Win manufactured the QSP. Thus, Legion told CBP that it received a shipment of WF made by Hong Khai with QSP components attached made by Win Win [#] months before Hong Khai received QSP ordered to the specifications of Legion's WF from Win Win. Notably, the WF in this entry would have been shipped even before the date of importation because it takes time for merchandise to be transported across the Pacific Ocean").

⁵⁹ See Legion's Administrative Review Request (Public Version), at 24–25. See also February 9 Determination (Confidential Version), at 41 ("[#] of pieces of QSP Hong Khai withdrew from inventory for production were backsplashes, even though Hong Khai could only provide POs showing that it ordered quartz countertops from Win Win . . ."). (Emphasis in original.)

⁶⁰ See Legion's Administrative Review Request (Public Version), at 24–25.

⁶¹ *Id.* at 28–29.

PUBLIC VERSION

allegation.⁶² As a result, Legion avers that it was unable to dispute or explain alleged discrepancies or offer a “contrary presentation of the facts.”⁶³

For these reasons, Legion requests that the February 9 Determination be reversed.⁶⁴

B. Cambria’s Arguments

Cambria did not submit a response to Legion’s request for administrative review.

III. Administrative Review Analysis

Pursuant to 19 U.S.C. § 1517(f)(1) and 19 C.F.R. § 165.45, upon request for administrative review, RR will apply a *de novo* standard of review under the law, based solely upon the facts and circumstances on the administrative record in the proceeding. In making our determination, we reviewed the following materials: (1) the administrative record upon which the February 9 Determination was made, as provided to RR by TRLED; and (2) the timely and properly filed request for review.

For the reasons outlined below, RR hereby determines that the record demonstrates that Legion entered covered merchandise by means of material and false information, by: failing to declare imports as containing QSP subject to the AD/CVD Orders; incorrectly entering merchandise as QSP from Vietnam (rather than China), on type “01” consumption entries instead of on type “03” AD/CVD entries; and, omitting the relevant AD/CVD case numbers from the entry summary documentation.⁶⁵

- A. There is substantial record evidence that the WF containing QSP imported by Legion included covered merchandise.

The record provides substantial evidence that Legion entered Chinese-origin QSP (*i.e.*, merchandise covered by the AD/CVD Orders), as QSP from Vietnam, into the United States. Legion did not make AD/CVD deposits on these shipments, and declared them as type “01” entries, that are not subject to AD/CVD duties. This was false and, thus, the record supports a finding of evasion.

There is no dispute that at issue are four models of WF imported by Legion and containing QSP; the only dispute is as to whether the QSP in those models was of Chinese or Vietnamese origin. We find that substantial evidence supports a conclusion that at least some of Legion’s entries contained Chinese origin QSP. Furthermore, Legion has been unable to provide evidence linking its entries of these WF models with QSP produced in Vietnam.

⁶² See *id.* at 28–30.

⁶³ *Id.* at 28–30.

⁶⁴ *Id.* at 29–30.

⁶⁵ See, e.g., Legion’s CF-28 Response 3 (June 16, 2023) (Confidential Version), at 126–28 (providing CBP Form 7501 for entry no. ending in -2682).

PUBLIC VERSION

1. There is record evidence that Legion imported four models of WF containing QSP.

The scope of the AD/CVD Orders provides that QSP “consist{s} 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).”⁶⁶ In addition, QSP is “covered by the orders whether or not they are imported attached to, or in conjunction with, non-subject merchandise such as sinks, sink bowls, vanities, cabinets, and furniture.”⁶⁷ Further, the scope of the AD/CVD Orders “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.”⁶⁸

According to a CBP lab test conducted as part of the EAPA investigation, the lab test indicated that the sample described as “VANITY TOP{,}” and composed of “BLUE LIMESTONE QUARTZ TOP” in part consisted of “an artificial stone consisting of approximately [#]% quartz, [#]% amorphous materials and [#]% resin (organic binders).”⁶⁹ The commercial invoice for entry no. ending in -3959 contained the following general description: “SHIPPING MARK WOODEN FURNITURE . . .” which was not bracketed for confidentiality.⁷⁰

Furthermore, Legion has acknowledged importing merchandise containing QSP during the POI. Specifically, Legion’s RFI response shows that it imported four models of WF that contain QSP: WLF2280-B, WLF2280-PG, WLF2280-VG, WLF2280-W.⁷¹ In fact, Legion’s 2021 specifications sheet identifies these four models as containing a “quartz top.”⁷² As explained previously, the scope of the Orders defines quartz as “predominantly silica.”⁷³ Indeed, one of those models, [model no.], is the same one tested by the CBP laboratory and confirmed to be QSP as described by the scope of the Orders.⁷⁴ Thus, these are the four models at issue herein.

Importantly, Legion admitted multiple times that it did not know where Sagarit sourced the QSP and WF from; for example, in its Supplemental RFI response, Legion stated “{w}e order from Sagarit, but we didn’t know which factory they use for production our products (*sic*).”⁷⁵ And, in its Second Supplemental RFI response, Legion stated “Sagarit uses which manufacturer to make Legion’s products, Legion doesn’t know (*sic*).”⁷⁶ Legion later reiterated this admission in its Written Arguments submitted prior to the issuance of the February 9 Determination, stating, “Legion always places order to Sagarit U-Home Limited directly, Legion didn’t know they are trading company

⁶⁶ 84 Fed. Reg. at 33,055.

⁶⁷ *Id.* at 33,055–56.

⁶⁸ 84 Fed. Reg. at 33,055–56.

⁶⁹ See TRLED’s Memo to File Adding Lab Report Entry 3959 to Record (Confidential Version), at 1–3.

⁷⁰ See Hong Khai CBP Verification Exhibit 8 Pre-select or Surprise Sales Trace 5 (Nov. 13, 2023) (Confidential Version), at 36.

⁷¹ See Legion’s RFI Additional Response (Confidential Version), at Ex. D at 60 (providing a 2021 specifications sheet, which included information indicating that each of the aforementioned models contained a “QUARTZ TOP”).

⁷² See *id.*

⁷³ 84 Fed. Reg. at 33,055.

⁷⁴ See TRLED’s Memo to File Adding Lab Report Entry 3959 to Record (Confidential Version), at 1–3.

⁷⁵ Legion’s Supp. RFI Response Corrected (Aug. 31, 2023) (Public Version), at 7.

⁷⁶ Legion’s Second Supp. RFI Response Corrected (Sept. 27, 2023) (Public Version), at 7.

PUBLIC VERSION

which have 2-5 manufacturers to make its products, so didn't know Sagarit relationships with these manufacturers. Legion didn't ask and Sagarit didn't share this information which manufacturer processes Legion's products (*sic*).⁷⁷

2. There is record evidence that the four models of WF containing QSP entered by Legion incorporated QSP of Chinese origin.

As addressed above, Legion imported four models of WF that contained QSP as described by the scope of the Orders, into the United States during the POI. Therefore, a determination as to evasion with respect to those four models turns upon whether the QSP in those models was of Chinese origin. Legion ordered all of the merchandise from Sagarit, a trading company located in China, but claims that the QSP attached to the WF was manufactured in Vietnam.⁷⁸ The record, however, does not contain evidence to establish that the QSP was produced in Vietnam. Rather, the record contains substantial evidence that the origin of the QSP is China. We explain below.

- a. There is insufficient record evidence that the QSP in the four models imported by Legion was produced in Vietnam.

Legion's claim that the QSP in the four models was produced by Win Win, a Vietnamese manufacturer, is not supported by the administrative record. Firstly, Sagarit has acknowledged that it does not have manufacturing capabilities but that it sourced QSP and WF with QSP from Hong Khai.⁷⁹ Secondly, Hong Khai's RFI response states that it sourced the QSP from Win Win, a Vietnamese producer, as Hong Khai does not have the capability to produce QSP at its facilities in Vietnam, which was confirmed during the verification visit.⁸⁰ Thus, a review of Win Win's production capabilities to confirm these claims is required.

TRLED did confirm that Win Win had some QSP production capabilities; however, the record clearly demonstrates that Win Win's capacity was insufficient to cover all of the QSP in the four models of WF that Legion imported into the United States during the POI.⁸¹ Specifically, Win Win only had one production line for QSP, a fact corroborated by a video provided by Legion.⁸² Win Win, however, failed to respond to the RFI issued during the course of the investigation, which specifically asked about the existence of production records.⁸³ As such, there are no production records from Win Win within the administrative record to demonstrate that such minimal machinery is sufficient to produce the amount of QSP needed to fulfill orders from Legion as well as the other companies sourcing from Win Win.⁸⁴ Furthermore, the video submitted by Legion showed minimal production of QSP, with few employees present. In contrast, the video showed a greater number of

⁷⁷ Legion's Written Arguments (Jan. 17, 2024) (Public Version), at 14.

⁷⁸ See Legion's Administrative Review Request (Public Version), at 11.

⁷⁹ Sagarit's RFI Response, Cover Letter and Narrative (June 27, 2023) (Public Version), at 19.

⁸⁰ See generally TRA's Verification Report (Public Version).

⁸¹ See TRLED's Memo to File Adding QSP Visit to Administrative Record (Confidential Version).

⁸² See *id.* See also Legion's RFI Additional Response (July 20, 2023) (Confidential Version), at Ex. H (video showing the processing of QSP at Win Win).

⁸³ See RFI for QSP Supplier 1 (Sept. 6, 2023) (Public Version), at 9.

⁸⁴ There are no production records for Win Win within the record that were provided by Legion, Sagarit, or Hong Khai and dated during the POI. There is one page of production records provided by Legion that might be from Win Win, but no manufacturer is designated on the page and the dates are from before the POI. See Legion's Second Supp. RFI Response Corrected (Public Version), at Ex. F.

PUBLIC VERSION

employees present for purposes of polishing and finishing operations.⁸⁵ Additionally, TRLED's site visit to Win Win also revealed the presence of a quartz slab that was produced by a different entity.⁸⁶ There is also very little evidence regarding Win Win on the record, as Win Win failed to respond to the RFI issued by CBP during the course of the investigation.⁸⁷

It is also evident from the record that the QSP ostensibly produced by Win Win was meant to fulfill orders for more than just those of Legion. Win Win was also supplying significant amounts of QSP for a different U.S. Importer during the POI, as demonstrated during the verification visit to Hong Khai.⁸⁸ The fact that Win Win was supplying other U.S. importers, indicates that Win Win required an even greater production capacity than merely producing amounts to fulfill those orders of QSP meant for Legion. However, the few figures found within the record that might help to discern Win Win's production capacity—due to the lack of production records from Win Win—already bear significant discrepancies. By way of example, in addition to the lack of production records from Win Win, Hong Khai was also unable to provide enough delivery notes or purchase orders to equal the amount of QSP Hong Khai claimed to have purchased from Win Win.⁸⁹ Further, the QSP purchase orders from Hong Khai that are attributed to merchandise shipped to Legion only account for just over half of the amount of QSP that Sagarit claimed to have exported to Legion.⁹⁰ This presents a problem for tracing the origin of the QSP used by Hong Khai to produce the WF sold to Legion, given that Sagarit has expressly stated that *all* of the QSP Sagarit supplied during the POI was manufactured by Win Win.⁹¹ Thus, the record evidence leaves a significant gap, with large portions of the QSP purchased by Legion not traceable to Win Win, despite claims that Win Win produced all of it. Nor is the QSP traceable to any other Vietnamese manufacturer of QSP.

At the same time, CBP's verification visit revealed that Hong Khai did not segregate out countertops made by different manufacturers nor different countertop materials kept in inventory and used for the manufacture of WF, and the employees present could not identify which slabs might be QSP.⁹² This inability to identify which slabs consist of what materials and which slabs are used for which WF further strengthens a finding that Win Win did not manufacture all of the QSP at issue in this EAPA investigation. Additionally, the origin of the QSP used in those entries purportedly manufactured for Legion by Supplier Y remains, at best, unknown, as Win Win indicated it did not know about Supplier Y, despite Sagarit's claiming that Win Win supplied all of the QSP used to fulfill Legion's orders.⁹³ Thus, this compounds the problem of accurately tracing the origin of the QSP used for Legion's importations of WF. We also note that the burden of being able to document the claimed value, origin, classification and duty rates for an importation rest with

⁸⁵ See Legion's RFI Additional Response (Confidential Version), Ex. H (video showing the processing of QSP at Win Win).

⁸⁶ See TRLED's Memo to File Adding QSP Visit to Administrative Record (Confidential Version), 1-2.

⁸⁷ See RFI for QSP Supplier 1 (Public Version). See also February 9 Determination (Public Version), at 21.

⁸⁸ See generally Hong Khai's CBP Verification Ex. 1 (Nov. 13, 2023) (Confidential Version).

⁸⁹ Compare Hong Khai's Supp. RFI Response (Oct. 19, 2023) (Confidential Version) at, Ex. S-5 with TRA Verification Report (Confidential Version), at Attachment IX and Hong Khai's CBP Verification Ex. 1 (Nov. 13, 2023) (Confidential Version).

⁹⁰ Compare Hong Khai's CBP Verification Ex. 1 (Confidential Version) with Sagarit's RFI Response (Confidential Version), at Ex. 3.

⁹¹ See Sagarit's RFI Response (Public Version), at 19-20.

⁹² See TRA Verification Report (Public Version), at 3-6.

⁹³ Compare TRLED's Memo to File Adding QSP Visit to Administrative Record (Public Version), at 2 with Sagarit's RFI Response, Cover Letter and Narrative (Public Version), at 19-20.

PUBLIC VERSION

the importer, and not with CBP. Here, Legion has not even come close to establishing Vietnamese origin for the QSP in the WF it imported during the POI—the record simply does not demonstrate that which Legion has claimed.

- b. There is substantial record evidence linking the QSP used for the four models to Chinese manufacturers.

Sagarit, the company through which Legion ordered the WF containing QSP, is “a trading company” that is registered in Hong Kong, China, and has “sales and administrative office {} located” in Jiangsu Province, China, and affiliates registered in China, specifically, Shanghai and Suzhou.⁹⁴ Sagarit further stated that its Suzhou and Shanghai-based affiliates, Sagarit Bathroom Manufacturer Ltd. and Suzhou Sagarit U-Home Ltd., “are engaged in the **supply of counter top and ceramic sink from China to Vietnam.**”⁹⁵

The record evidence indicates that the four models of WF containing QSP that Legion imported (WLF2280-B, WLF2280-PG, WLF2280-VG, and WLF2280-W) are sufficiently linked to Sagarit’s Chinese affiliates. Specifically, the record is replete with email communications between Legion’s owner and one of the Chinese manufacturers of QSP affiliated with Sagarit regarding the sales of WF models that include QSP.⁹⁶ Furthermore, emails that Legion itself placed on the record provide evidence that it imported WF that contained Chinese-origin QSP. These emails include the following:

- an October 12, 2022 email from Legion’s Owner to a Chinese manufacturer affiliated with Sagarit ordering model number “WLF2280-B with Top”;
- a January 5, 2022 email from the Chinese manufacturer affiliated with Sagarit to Legion’s Owner concerning the sale of model number “2280-B”;
- a December 31, 2022 email from the Chinese manufacturer affiliated with Sagarit to Legion’s Owner concerning model number “WLF2280”;
- a December 22, 2021 email from Legion’s Owner to the Chinese manufacturer affiliated with Sagarit ordering model numbers “WLF2280-VG” and “WLF2280-B”;
- and,
- a February 16, 2023 email from Legion’s Owner to the Chinese manufacturer affiliated with Sagarit ordering model numbers “WLF2280-W-With Top” and “WLF2280-PG-WITH TOP.”⁹⁷

Moreover, information that Legion placed on the record reveals that Sagarit’s Chinese affiliate Suzhou Sagarit U-Home Limited, which “is engaged in the **supply of counter top and ceramic sink from China to Vietnam,**”⁹⁸ issued invoices and packing lists to Legion for the purchase of model numbers “WLF2280-PG with Quartz Top,” “WLF2280-B with Quartz Top” and

⁹⁴ Sagarit’s RFI Response Cover Letter and Narrative (Public Version), at 3, 6–7; *see also* February 9 Determination (Public Version), at 8.

⁹⁵ Sagarit’s RFI Response, Cover Letter and Narrative (Public Version), at 3, 9 (emphasis added).

⁹⁶ *See* Sagarit’s RFI Response (Confidential Version), Part 3, at Ex. III-7c, at 12–15, 17, Part 4, at Ex. III-7e, at 5. *See also* Legion’s RFI Response (June 22, 2023) (Confidential Version), at 1, 4, 5 and Ex. B, at 30.

⁹⁷ Legion’s Supp. RFI Response Corrected (Confidential Version), at 103–04, 107–08, 111–12, 115, 120–21.

⁹⁸ Sagarit’s RFI Response, Cover Letter and Narrative (Public Version), at 3, 9.

PUBLIC VERSION

“WLF2280-W with Quartz Top.”⁹⁹ The record also shows that Sagarit’s Chinese affiliate, Sagarit Bathroom Manufacturer Ltd., issued invoices and packing lists to Legion for the purchase of model numbers “WLF2280-W with Quartz Top” and “WLF2280-B-QZ.” Along with the above, the record contains spreadsheets of Legion’s own purchases from Sagarit organized by model, which include the aforementioned model numbers and model number “WLF2280-PG.”¹⁰⁰ As discussed above, TRLED determined that all of these model numbers contain QSP.¹⁰¹ There is no evidence to the contrary, and Legion does not dispute this fact.

Finally, it is very clear from the record that Legion recognizes that Sagarit is a Chinese company and that, while the record does not indicate that Legion ever visited any of the purported WF and/or QSP manufacturers in Vietnam prior to this EAPA case, Legion did visit manufacturers in China as part of a visit to Sagarit before placing initial orders.¹⁰²

Therefore, the combined dearth of, and discrepant, information regarding the volume of QSP production in Vietnam, coupled with Legion’s direct communications discussing orders of WF containing QSP with manufacturers in China, demonstrates that there is sufficient evidence to find that at least some of the QSP included in the WF imported by Legion into the United States was of Chinese origin.

3. There is substantial record evidence that Legion entered covered merchandise by evasion.

Finally, there is substantial evidence that Legion entered covered merchandise by means of material and false documents or electronically transmitted data or information, written statements, or material omissions that resulted in AD/CVD cash deposits not being applied with respect to covered merchandise. Legion incorrectly entered the four models at issue on type “01” consumption entries instead of on type “03” AD/CVD entries.¹⁰³ In other words, the entries should have been declared as subject to AD/CVD deposits/duties, but they were not. These constitute false statements that are also material because the applicable cash deposits and antidumping and countervailing duties were not paid.

Legion also omitted Case Nos. A-570-084 and C-570-085 from the entry summary documentation.¹⁰⁴ The omission of Case Nos. A-570-084 and C-570-085 from the entry summary documentation is material because it interfered with the government’s ability to accurately track imports of QSP from China, to collect the applicable antidumping and countervailing duties and/or

⁹⁹ Legion’s RFI Additional Response (Public Version), at 69, 71; Legion’s Corrected RFI Additional Response (Aug. 2, 2023) (Public Version), at 70–71; Legion Second Supp. RFI Response Corrected (Public Version), at 26–27, 29, 33–42; Legion’s Supp. RFI Response Corrected (Confidential Version), at 50, 53–59, 65, 67–73, 79–83, 468, 482–91, 505–10.

¹⁰⁰ See Legion’s Second Supp. RFI Response Corrected (Public Version), at 15–16, 20–21. See also Legion’s Supp. RFI Response Corrected (Public Version), at 43–45, 47–48, 60–64, 145, 147, 298, 398–99, 404, 406–07, 409, 411–12, 428–33, 439–40, 446–47, 449–50, 452–55, 546–47, 549, 551–52, 554, 614–15.

¹⁰¹ See TRLED’s Memo to File Adding Lab Report Entry 3959 to Record (Public Version). See also Legion’s RFI Additional Response (Confidential Version), at Ex. D at 60 (providing a 2021 specifications sheet, which included information indicating that each of the aforementioned models contained a “QUARTZ TOP”).

¹⁰² See Legion’s Second Supp. RFI Response Corrected (Public Version), at 7.

¹⁰³ See February 9 Determination (Public Version), at 3, 6–7; Legion’s CF-28 Response 3 (Confidential Version), at 126–28 (providing CBP Form 7501 for entry no. ending in -2682).

¹⁰⁴ See, e.g., Legion’s CF-28 Response 3 (Confidential Version), at 126–28 (providing CBP Form 7501 for entry no. ending in -2682).

PUBLIC VERSION

deposits due, and to determine and assess antidumping and countervailing duties. Thus, Legion entered covered merchandise by means of material and false documents or electronically transmitted data or information, written statements, or material omissions that resulted in AD/CVD cash deposits not being applied with respect to the merchandise.

Consequently, Legion entered the merchandise through evasion.

B. TRLED’s application of adverse inferences was warranted because Supplier Y failed to cooperate and comply to the best of its ability with CBP’s requests for information.

As detailed above, the administrative record in this case supports a finding of evasion, and RR’s determination is based solely on the evidence in the record. However, inasmuch as Legion has raised this issue, RR notes that TRLED was warranted in its application of adverse inferences to Supplier Y for its failure to submit timely, compliant, and complete RFI responses, despite multiple opportunities to do so. These actions amount to a failure to cooperate to the best of the company’s ability, which, pursuant CBP’s authority under EAPA, may result in the application of adverse inferences.

CBP has statutory authority “to collect and verify additional information” to make its evasion determinations.¹⁰⁵ CBP can gather information in various ways, including, but not limited to, “issuing a questionnaire with respect to such covered merchandise” to importers, foreign producers or exporters, and foreign governments, among others.¹⁰⁶ Here, CBP sought to collect and verify information from Supplier Y to analyze whether evasion had occurred.

Pursuant to 19 C.F.R. § 165.6(a):

{i}f the party to the investigation that filed an allegation, the importer, or the foreign producer or exporter of the covered merchandise fails to cooperate and comply to the best of its ability with a request for information made by CBP, CBP may apply an inference adverse to the interests of that party in selecting from among the facts otherwise available to make the determination as to evasion pursuant to § 165.27 and subpart D of this part.¹⁰⁷

Additionally, 19 C.F.R. § 165.6(c) provides that CBP may use an adverse inference against an importer, the foreign manufacturer, or an exporter of covered merchandise irrespective of whether another party involved in the same transaction provided the information requested by CBP.¹⁰⁸ In other words, CBP may apply an adverse inference to a party for its failure to cooperate regardless of whether the information being sought exists elsewhere on the record.¹⁰⁹

In this case, TRLED sought to determine whether the QSP tops attached to WF manufactured by Supplier Y was of Chinese origin, but Supplier Y repeatedly failed to submit a

¹⁰⁵ 19 U.S.C. § 1517(c)(2).

¹⁰⁶ *Id.* at § 1517(c)(2)(A).

¹⁰⁷ *See also* 19 U.S.C. § 1517(c)(3)(A) (providing CBP authority to apply an adverse inference to certain uncooperative parties or persons).

¹⁰⁸ *See also id.* § 1517(c)(3)(B) (same).

¹⁰⁹ *See also CEK Grp. LLC v. United States*, 633 F. Supp. 3d 1369, 1379 (Ct. Int’l Trade 2023) (finding that “whether a gap exists is not necessarily determinative” to CBP’s decision to apply adverse inferences).

PUBLIC VERSION

timely, compliant, and complete RFI response, despite the numerous extensions that TRLED granted.¹¹⁰ As a result, TRLED determined that it did not have information on the record regarding Supplier Y's source of QSP countertops, and therefore, applied adverse inferences to conclude that the QSP countertops that were attached to WF manufactured by Supplier Y were of Chinese-origin.¹¹¹ Under such circumstances, CBP may apply adverse inferences to an interested party, importer, foreign producer or exporter, or foreign government where such party "has failed to cooperate by not acting to the best of {its} ability to comply with a request for information."¹¹² Accordingly, TRLED's application of adverse inferences to Supplier Y was warranted.

In addition, TRLED found that the following information indicates that quartz tops attached to WF manufactured by Supplier Y were of Chinese origin:

- (1) Sagarit told CBP that it sold Chinese-origin stone countertops comprised of agglomerated stone to Supplier Y;
- (2) When CBP visited Win Win's facility in Tan Uyen, Vietnam, Win Win company officials told CBP that they had never heard of, much less sold QSP to, Supplier Y;
- (3) No information on the record of this investigation identifies any possible Vietnamese source of QSP, except for Win Win;
- (4) CBP has found transshipment of Chinese QSP in past EAPA investigations; and,
- (5) Legion purchased all the WF produced by Supplier Y through Sagarit, a Hong Kong, China-based trading company.¹¹³

In sum, TRLED appropriately exercised its authority in its application of adverse inferences to Supplier Y in selecting from among the facts otherwise available to make the determination as to evasion. However, as stated above, RR's administrative review determination is based solely on the facts of record. As such, we also do not need to address Legion's claim—made only in the Administrative Review Request—that a miscommunication *may have* occurred during the verification visit at Win Win regarding Supplier Y due to a potential mispronunciation of Supplier Y's name, an allegation that is not supported by the administrative record.

C. Legion's claims of procedural violations do not negate the finding of substantial evidence of evasion.

Legion raises two other arguments, regarding alleged procedural and legal errors, both of which are without merit.

¹¹⁰ February 9 Determination (Public Version), at 39–40.

¹¹¹ *See id.*

¹¹² 19 U.S.C. § 1517(c)(2)(A), (3)(A); *see also* 19 C.F.R. § 165.6(a); *All One God Faith, Inc. v. United States*, 589 F. Supp. 3d 1238, 1251 (Ct. Int'l Trade 2022) (finding that "CBP's application of adverse inferences was not arbitrary, capricious, or an abuse of discretion").

¹¹³ February 9 Determination (Public Version), at 39–40.

PUBLIC VERSION

First, Legion avers that TRLED’s determination is overbroad and that any evasion determination must be limited to only the subject four models with QSP tops.¹¹⁴ This argument is unpersuasive. As an initial matter, the February 9 Determination found substantial evidence of evasion only as to the four model numbers enumerated herein and this determination continues to affirm that finding – that is, we find evasion only as to those four models. Pursuant to 19 U.S.C. § 1517(d), only those entries that contain covered merchandise are subject to an EAPA investigation. Therefore, an entry made by Legion that does not include any of the four models is not subject to this investigation. Regardless, as the U.S. Court of International Trade (“CIT”) has recognized recently, CBP is not required to conduct an entry-by-entry review under the EAPA statute.¹¹⁵ Rather, CBP must determine whether there is substantial evidence within the administrative record, as a whole, that evasion has occurred.¹¹⁶ As detailed above, a review of the record establishes that Legion had entries during the period of investigation that included covered merchandise (*i.e.*, QSP from China).¹¹⁷ If, indeed, some entries that were considered subject to the investigation are believed not to contain covered merchandise, as the CIT has explained, the proper recourse to challenge CBP’s assignment of duties on an entry-by-entry basis is via a protest pursuant to 19 U.S.C. § 1514, after review of the determination of evasion is completed.¹¹⁸

Second, Legion alleges “due process concerns” because it “was not afforded the opportunity to review confidential information on the record that led to TRLED’s determination of evasion,” citing to *Royal Brush* to support this claim.¹¹⁹ Specifically, Legion claims that it did not have access to confidential information, including certain information attached to the verification report, the specific quantities of QSP pieces that Hong Khai reported receiving from Win Win and that Hong Khai used in its production, and confidential information included in the allegation.¹²⁰ As a result, Legion avers that it was unable to dispute or explain alleged discrepancies or offer a “contrary presentation of the facts” and, thus, RR must “overturn” the February 9 Determination.¹²¹ This argument lacks merit.

In *Royal Brush*, the U.S. Court of Appeals for the Federal Circuit (“Federal Circuit”) held that due process required that the importer in that case have access to the information the agency had relied upon, which was unknown to the importer, in reaching the determination that Royal Brush had engaged in evasion under EAPA, including information that was determined to be business confidential, and was therefore originally withheld.¹²² Here, in addition to voluminous information that is publicly available, RR primarily relies on confidential information to which Legion did, and does, have access, in our determination of evasion. Indeed, RR describes evidence that is publicly available or that Legion had knowledge of or that Legion itself has placed on the record.

Specifically, as detailed above, Legion had access to the four model numbers of WF containing QSP that Legion imported into the United States, which TRLED (and now RR) finds

¹¹⁴ Legion’s Administrative Review Request (Public Version), at 26.

¹¹⁵ See *Ikadan Sys. United States, Inc. v. United States*, 639 F. Supp. 3d 1339, 1354 (Ct. Int’l. Trade 2023).

¹¹⁶ See 19 U.S.C. § 1517(f)(1); 19 C.F.R. § 165.45.

¹¹⁷ See, e.g., TRA’s Verification Report (Public Version), at 7.

¹¹⁸ See *Ikadan*, 639 F. Supp. 3d at 1354.

¹¹⁹ See Legion’s Administrative Review Request (Public Version), at 28–29.

¹²⁰ See *id.* at 28–30.

¹²¹ *Id.* at 28–30.

¹²² See *Royal Brush*, 75 F.4th at 1257–59; see also *Doty v. United States*, 53 F.3d 1244, 1251 (Fed. Cir. 1995) (“The agency’s . . . withholding of the evidence on which {it} purported to rely . . . w{as} . . . egregiously removed from the fairness required of an agency in its administrative responsibilities. . .”).

PUBLIC VERSION

contained covered merchandise. In fact, Legion itself placed that information on the record. Moreover, Legion knows and provides the real identity of Supplier Y in its request for administrative review, and is clearly aware of the underlying facts regarding Supplier Y's non-compliance with TRLED's requests for information, as well as with Sagarit's and Win Win's statements regarding Supplier Y.¹²³ Legion also has access to the emails that were exchanged between Legion's Owner and the Chinese manufacturers of the covered merchandise.¹²⁴ Indeed, Legion itself placed some of these emails onto the administrative record.¹²⁵ Also, Legion provided the video of Win Win and was ostensibly aware of Win Win's production capacity limitations as a result of having such information.¹²⁶

Legion raises two other concerns with respect to TRLED's February 9 Determination—specifically, TRLED's reliance on an alleged timing discrepancy, and TRLED's observations regarding back splashes versus countertops which signaled an inconsistency. TRLED noted these discrepancies, among many other facts and factors, in its determination of evasion. Legion attempts to explain these discrepancies. Although these discrepancies, particularly the timing discrepancy, support a finding of evasion, RR does not base this determination on those factors or the facts related thereto. RR specifically does not rely on the facts or arguments related to the alleged discrepancies in dates, or the items in which the QSP was used, in reaching our conclusion. In our view, even without those facts, the cumulative evidence cited herein is more than sufficient to establish substantial evidence of evasion.

Lastly, although the specific quantities of QSP (which were reported as having been used by Hong Khai in manufacturing the WF) were not available to Legion, this determination summarizes the information by providing the percentage discrepancy. The magnitude of the discrepancy—approximately 50 percent—between the QSP possibly traceable to Win Win and the actual quantity used, is the information upon which RR relies, and not on the specific numbers. RR acknowledges that small differences might be attributed to some misplaced documents, but a difference of just under fifty percent (*i.e.*, the underlying documentation allows for the possible tracing of just over half of the QSP apparently produced by Win Win and supplied to Hong Khai), supports a conclusion that Win Win could not have supplied, from its Vietnamese production, all of the QSP used in the four models imported by Legion. Moreover, this is but one factor relied upon by RR. In our view, even without this one factor, the cumulative evidence on the record is sufficiently substantial to support our finding of evasion.

In sum, in this determination, RR's decision includes primarily information to which Legion had and has access. We also cannot at this time cure any procedural due process violation that may have occurred prior to this *de novo* review, given that third parties provided confidential information

¹²³ See Legion's Administrative Review Request (Confidential Version), at 4, 11. See also Correspondence with Supplier Y (Public Version), at Attachment 5 (Rejection of Supplier Y's Untimely Resubmission of its RFI Response), p. 15–17. See also TRLED's Memo to File Adding QSP Visit to Admin Record (Public Version), at 2. See also Legion's Supp. RFI Response Corrected (Confidential Version), at 103–04, 107–08, 111–12, 115, 120–21.

¹²⁴ See Sagarit's RFI Response (Confidential Version), Part 3, at Ex. III-7c, at 12–15, 17, Part 4, at Ex. III-7e, at 5. See also Legion's RFI Response (Confidential Version), at 1, 4, 5, Ex. B, at 30; Legion's Administrative Review Request (Public Version), at 3.

¹²⁵ See Legion's Supp. RFI Response Corrected (Confidential Version), at 103–04, 107–08, 111–12, 115, 120–21.

¹²⁶ See Legion's RFI Additional Response (Confidential Version), at Ex. H.

PUBLIC VERSION

when there was no administrative protective order in place.¹²⁷ Therefore, this case is distinguishable from the situation in *Royal Brush*.

Regardless, Legion’s contention that a procedural due process violation warrants the reversal of the February 9 Determination is not supported by *Royal Brush*. The Federal Circuit did not overturn the finding of evasion in *Royal Brush*; rather, the case was remanded back to CBP to cure the defect and allow the importer a chance for rebuttal of the information once an administrative protective order was put in place.¹²⁸ This would be the appropriate course should it be determined that Legion did not have access to information ultimately used against it that materially affected its ability to defend itself.

IV. Decision

Based upon our *de novo* review of the administrative record in this case, including the request for administrative review, the February 9 Determination of evasion under 19 U.S.C. § 1517(c) is **AFFIRMED**.

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

Sincerely,

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

Approved by:

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

¹²⁷ See *Investigation of Claims of Evasion of Antidumping and Countervailing Duties, Interim Regulations*, 81 Fed. Reg. 56,477, 56,478 (CBP Aug. 22, 2016). This case was initiated under CBP’s interim regulations. Subsequently, final regulations were published. See *Investigation of Claims of Evasion of Antidumping and Countervailing Duties*, 89 Fed. Reg. 19,239 (CBP March 18, 2024) (effective date, April 17, 2024). This investigation was initiated on April 10, 2023, over a year before the effective date of the new regulations. See Notice of Initiation (Public Version).

¹²⁸ See *Royal Brush*, 75 F.4th at 1262-63.