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

U.S. Customs and Border Protection

October 26, 2021

**PUBLIC DOCUMENT**

OT:RR:BSTC:PEN H319936 BEK

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Re: Enforce and Protect Act ("EAPA") Consolidated Case Number 7474; *Certain Steel Grating from the People's Republic of China: Antidumping Duty Order*, 75 FR 43143 (July 23, 2010) and *Certain Steel Grating from the People's Republic of China: Countervailing Duty Order*, 75 FR 43144 (July 23, 2010); Ikadan System USA, Inc. and Weihai Gaosai Metal Product Co., Ltd.; 19 U.S.C. § 1517

Dear Messrs. Rucker, Heffner, and Simmons:

This is in response to the requests for *de novo* administrative review of a determination of evasion dated June 21, 2021, made by the Trade Remedy & Law Enforcement Directorate ("TRLED"), Office of Trade ("OT"), U.S. Customs and Border Protection ("CBP"), pursuant to 19 U.S.C. § 1517(c), in Enforce and Protect Act ("EAPA") Consolidated Case Number 7474 (hereinafter referred to as the "June 21 Determination").[1] The requests for review, dated August 3, 2021, were submitted to CBP OT Regulations and Rulings ("RR") by Faegre Drinker Biddle & Reath LLP, on behalf of Ikadan System USA, Inc. ("Ikadan") and Weihai Gaosai Metal Product Co., Ltd. ("Gaosai"), pursuant to 19 United States Code ("U.S.C.") § 1517(f) and 19 Code of Federal Regulations ("CFR") § 165.41(a).

[1] *See* Notice of Determination as to Evasion in EAPA Consolidated Case Number 7474, dated June 21, 2021.

## I. Background

Inasmuch as the facts in this case were fully set forth in the June 21 Determination, we will not repeat the entire factual history herein.

In brief, according to the record evidence, on June 16, 2020, TRLED initiated a formal consolidated investigation under Title IV, section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, in response to allegations of evasion.

On March 27, 2020, Hog Slat, Inc. ("Hog Slat") filed an EAPA allegation against Ikadan. Hog Slat supplemented its allegation against Ikadan on April 29, 2020 and included Gaosai as an additional importer. CBP acknowledged receipt of the properly filed allegations on May 26, 2020. Hog Slat alleged that Ikadan and Gaosai (collectively "Importers") were importing certain steel grating ("steel grating") of Chinese origin, specifically galvanized steel Tri-Bar Floor product ("tribar floors") into the United States by transshipment through South Korea and/or misclassification to evade the payment of antidumping ("AD") and countervailing ("CV") duties on steel grating from the People's Republic of China ("China") as required in Case Nos. A-570-947 and C-570-948.[2]

The allegation of evasion pertained to the antidumping and countervailing duty orders issued by the U.S. Department of Commerce ("Commerce") on imports of steel grating from China.[3]

Commerce defined the scope of the relevant AD and CV duty orders as follows:

> The products covered by this order are certain steel grating, consisting of two or more pieces of steel, including load–bearing pieces and cross pieces, joined by any assembly process, regardless of: (1) size or shape; (2) method of manufacture; (3) metallurgy (carbon, alloy, or stainless); (4) the profile of the bars; and (5) whether or not they are galvanized, painted, coated, clad or plated. Steel grating is also commonly referred to as "bar grating," although the components may consist of steel other than bars, such as hot–rolled sheet, plate, or wire rod.
>
> The scope of this order excludes expanded metal grating, which is comprised of a single piece or coil of sheet or thin plate steel that has been slit and expanded and does not involve welding or joining of multiple pieces of steel. The scope of this order also excludes plank type safety grating which is comprised of a single piece or coil of sheet or thin plate steel, typically in thickness of 10 to 18 gauge, that has been pierced and cold formed, and does not involve welding or joining of multiple pieces of steel.

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[2] *See* Notice of Initiation of Investigation and Interim Measures for Ikadan Systems USA, Inc. and Notice of Initiation of Investigation for Weihai Gaosai Metal Product Co., Ltd. - EAPA Consolidated Case 7474 dated September 18, 2020 ("Notice of Initiation").

[3] *See Certain Steel Grating from the People's Republic of China: Antidumping Duty Order*, 75 FR 43143 (July 23, 2010) and *Certain Steel Grating from the People's Republic of China: Countervailing Duty Order*, 75 FR 43144 (July 23, 2010).

> Certain steel grating that is the subject of this order is currently classifiable in the Harmonized Tariff Schedule of the United States ("HTSUS") under subheading 7308.90.7000. While the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

On September 18, 2020, in accordance with 19 CFR § 165.24, CBP issued the Notice of Initiation to all parties to the investigation, and notified the parties of CBP's decision to take interim measures based upon reasonable suspicion that Ikadan and Gaosai, as the importers of record, entered covered merchandise into the customs territory of the United States through evasion.[4] The entries subject to the investigation were those entered for consumption, or withdrawn from a warehouse for consumption, from May 26, 2019, one year before receipt of the allegations, through the pendency of the investigation.[5] TRLED concluded that, based on the record evidence, there was reasonable suspicion that Ikadan and Gaosai had entered covered merchandise into the customs territory of the United States through evasion, and imposed interim measures.[6]

On November 23, 2020, Gaosai filed a request for a scope ruling with Commerce, requesting a determination of whether tribar floors are covered merchandise and subject to the AD/CV duty orders on steel grating from China.[7] On May 11, 2021, Commerce published its scope ruling.[8] However, the administrative record in this EAPA investigation had already closed and, due to regulatory timeframes, TRLED did not add the scope ruling to the administrative record.

On June 21, 2021, TRLED issued the June 21 Determination. TRLED found substantial evidence[9] to demonstrate that Ikadan and Gaosai entered tribar floors that were covered by antidumping duty order A-570-947 and countervailing duty order C-570-948 by falsely entering the tribar floors as type "01" entries not subject to an AD and/or CV duty order. As a result, no cash deposits were applied to the merchandise.[10]

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[4] *See* Notice of Initiation. Available at: https://www.cbp.gov/sites/default/files/assets/documents/2020-Nov/09-18-2020%20-%20TRLED%20-%20Notice%20of%20Initiation%20and%20Interim%20Measures%20%28508%20Compliant%29%20-%20%28Cons%20Case%207474%29%20-%20PV.pdf.

[5] *See* 19 CFR § 165.2. While the regulations set forth which entries CBP will specifically investigate, interim measures can be applied to all unliquidated entries.

[6] The record evidence supporting the finding of reasonable suspicion is discussed in the Notice of Initiation.

[7] *See Certain Steel Grating from the People's Republic of China: Request for Scope Ruling on Pig Farrowing Crates and on Farrowing Floor Systems*, dated November 23, 2020. Commerce rejected the initial scope ruling request but accepted an amended scope ruling request from Gaosai on February 4, 2021.

[8] *See* June 21 Determination, page 8, fn. 60.

[9] Substantial evidence is not defined in the statute. The U.S. Court of Appeals for the Federal Circuit has stated that "substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *A.L. Patterson, Inc. v. United States*, 585 Fed. Appx. 778, 781-82 (Fed. Cir. 2014) (quoting *Consol. Edison Co. of N.Y. v. NLRB*, 305 U.S. 197, 229 (1938)).

[10] *See* June 21 Determination, available at: https://www.cbp.gov/sites/default/files/assets/documents/2021-Jun/06-21-2021%20-%20TRLED%20-%20Notice%20of%20Determination%20as%20to%20Evasion%20%28508%20compliant%29%20-%20%287474%29%20-%20PV_0.pdf.

On August 3, 2021, Ikadan and Gaosai filed timely Requests for Administrative Review and on the same day 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 H319936. On August 17, 2021, Hog Slat filed a timely response to the Importers' requests for administrative review presenting its counterarguments. As part of its response to the Importers' requests for administrative review, Hog Slat divulged the contents of Commerce's scope ruling. The Importers' submitted an objection and requested that Hog Slat's response be stricken. Hog Slat filed a response to this objection. For purposes of this *de novo* review, the outcome of Commerce's scope ruling has not been considered due to its absence from the administrative record.

## II. Discussion

### A. Administrative Review and Standard of Review

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

### B. Law

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

> (1) Determination of Evasion
>
> (A) In general
> Except as provided in subparagraph (B), not later than 300 calendar days after the date on which the Commissioner initiates an investigation under subsection (b) with respect to covered merchandise, the Commissioner shall make a determination, based on substantial evidence, with respect to whether such covered merchandise was entered into the customs territory of the United States through evasion.

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

> (5) Evasion
>
> (A) In general
> Except as provided in subparagraph (B), the term "evasion" refers to entering covered merchandise into the customs territory of the United States by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material, and that results in any cash deposit or other security or any

> amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise.

*See also* 19 CFR § 165.1.

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

Covered merchandise is defined as "merchandise that is subject to a CVD order issued under section 706, Tariff Act of 1930, as amended (19 U.S.C. § 1671e), and/or an AD order issued under section 736, Tariff Act of 1930, as amended (19 U.S.C. § 1673e)."[12]

Therefore, CBP must determine whether a party has entered merchandise that is subject to an AD or CV duty 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 CV duty cash deposits or duties being collected on such merchandise.

### C. Ikadan and Gaosai's Arguments[13]

Ikadan and Gaosai request that we reverse the June 21 Determination of evasion, arguing that they did not enter covered merchandise into the United States through evasion because the finding is not based upon substantial evidence.

First, the Importers examine the basis upon which Hog Slat's allegations of evasion rest, arguing that, since CBP determined that there was no evidence of either misclassification or transshipment, the investigation needed to end there. Instead, the Importers state that CBP allowed the investigation to morph into a collateral scope proceeding, which is typically under the exclusive purview of Commerce. Upon determining that the bases of the allegation were not supported by the evidence, the Importers claim that CBP should have yielded to the scope inquiry that Commerce was conducting independent of the EAPA investigation. Commerce's scope inquiry was initiated by Gaosai due to CBP's refusal to make a scope referral as part of the EAPA investigation as CBP found such a referral unnecessary in order to determine that the tribar floors were merchandise covered by the AD/CV duty orders.

Further, as Commerce's scope ruling was not placed on the administrative record due to its issuance after the closing of the record by TRLED, Ikadan and Gaosai argue that CBP's

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[11] *See Investigation of Claims of Evasion of Antidumping and Countervailing Duties, Interim Regulations*, 81 Fed. Reg. 56477, 56478 (August 22, 2016).
[12] *See* 19 CFR § 165.1.
[13] Although Ikadan and Gaosai submitted separate requests for administrative review, they advance the same arguments almost verbatim and, in the interest of brevity, summarization of their arguments is combined herein.

own analysis was too conclusory to stand on its own to find substantial evidence of evasion, noting that CBP ignored many of the arguments made by Gaosai in its scope ruling request to Commerce that the farrowing crates and farrowing flooring systems fall outside of the scope of the AD/CV duty orders. They argue that at most CBP only has made a determination that the tribar floors are covered merchandise (a determination the Importers continue to dispute), rather than a finding of substantial evidence of evasion. Additionally, even if there is a legitimate determination that the tribar floors are covered merchandise, Ikadan and Gaosai argue that there can be no finding of evasion in the EAPA investigation as the scope issue was not resolved until Commerce issued its ruling. Therefore, any entry of tribar floors without the payment of AD/CV duties was reasonable until that time.

Rather, by making a finding of evasion without Commerce first issuing a scope ruling, the Importers claim that CBP's determination has the effect of retroactively applying AD/CV duties to merchandise that the Importers had reasonably assumed were outside of the scope of those orders, citing *United Steel & Fasteners, Inc. v. United States* in support of this argument.[14] Ikadan and Gaosai further cite *Trans Texas Tire, LLC v. United States* and *Tai-Ao Aluminum (Taishan) Co. v. United States* to demonstrate that Commerce must provide adequate notice to parties prior to retroactively applying AD/CV duties.[15] The Importers state that CBP has acted in a similar manner by applying AD/CV duties retroactively here, which the Courts have forbidden in the context of scope rulings by Commerce.

Additionally, the Importers argue that CBP has misinterpreted and mischaracterized the record evidence by treating farrowing crates and tribar floors as synonymous and considering tribar floors to be a necessary part of the farrowing crate system. The Importers state that the record evidence shows that not all imports of farrowing crates include tribar floors. Indeed, Ikadan specifically stated in its responses to requests for information that only two of its entries during the period of investigation included imports of tribar floors and Gaosai states that the entry documentation it provided in response to requests for information demonstrate which entries contained tribar flooring. By applying AD/CV duties to all entries that include farrowing crates, CBP will unlawfully collect those duties on merchandise that is outside of the scope of the orders.

Finally, the Importers argue that CBP failed to provide appropriate public summaries of the business confidential documents in violation of their procedural due process rights. The lack of appropriate public summaries has prevented Ikadan and Gaosai from ascertaining what CBP considers covered merchandise for the purpose of applying AD/CV duties.

Based on the foregoing, Ikadan and Gaosai argue that evasion did not occur and the June 21 Determination should be reversed.

### D. Hog Slat's Arguments

Hog Slat requests that we affirm the June 21 Determination of evasion, arguing that CBP's finding of evasion with respect to Ikadan and Gaosai's imports of tribar floors was based on

[14] *See United Steel & Fasteners, Inc. v. United States*, 947 F.3d 794 (Fed. Cir. 2020).
[15] *See Trans Texas Tire, LLC v. United States*, No. 19-00188, 2021 WL 1978841 (Ct. Int'l Trade May 18, 2021). *See also Tai-Ao Aluminum (Taishan) Co. v. United States*, 983 F.3d 487 (Fed. Cir. 2020).

substantial evidence and that applying AD/CV duties to the applicable entries made during the period of investigation is consistent with the statutory and regulatory authority provided to CBP.

Hog Slat specifically argues that there was no requirement for CBP to make a scope referral to Commerce, as CBP was able to determine, on its face, that the tribar floors fall within the scope of the AD/CV duty orders. The June 21 Determination clearly shows that CBP examined a voluminous record in coming to the conclusion that the tribar floors are subject to the AD/CV duty orders on steel grating from China and Hog Slat lists the myriad of documents CBP examined in order to reach that finding. Further, Hog Slat notes that 19 U.S.C. §1517(d) specifically allows for the retroactive application of AD/CV duties to entries that are encompassed by the EAPA investigation.

Finally, Hog Slat argues that Ikadan and Gaosai's procedural due process rights were not violated and, even if that was the case, the only question up for review is whether there is substantial evidence of evasion.

Based on the foregoing, Hog Slat argues that the June 21 Determination should be affirmed.

### E. Administrative Review Analysis

Pursuant to 19 U.S.C. § 1517(f)(1) and 19 CFR § 165.45, the Office of Trade, Regulations and Rulings ("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 entire administrative record upon which the June 21 Determination was made by TRLED; and (2) the timely and properly filed requests for review and responses. OT, RR, did not request additional written information from the parties to the investigation pursuant to 19 CFR § 165.44. Pursuant to 19 CFR § 165.45, our administrative review of this case has been completed in a timely manner, within 60 business days of the commencement of the review.

The term "evasion" under the EAPA 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.[16]

The term "covered merchandise" means merchandise that is subject to a countervailing duty order issued under section 706, Tariff Act of 1930, as amended (19 U.S.C. § 1671e), and/or an antidumping duty order issued under section 736, Tariff Act of 1930, as amended (19 U.S.C. § 1673e).[17]

"Substantial evidence" is not defined by statute. However, the "substantial evidence" standard has been reviewed by the courts in relation to determinations by other agencies.

[16] *See* 19 U.S.C. § 1517(a)(5)(A).
[17] *See* 19 U.S.C. § 1517(c)(1) and 19 CFR § 165.1.

"Substantial evidence requires more than a mere scintilla, but is satisfied by something less than the weight of the evidence."[18] While some evidence may detract from the determination, so long as the finding is reasonable and supported by the record as a whole, the June 21 Determination must be affirmed.[19]

Preliminarily, the purpose of this *de novo* review is to analyze the June 21 Determination and the accompanying administrative record to determine whether substantial evidence of evasion exists. The Importers' arguments regarding the unlawfulness of CBP continuing to investigate whether evasion occurred after determining there was not substantial evidence of misclassification and transshipment (*i.e.*, the bases upon which Hog Slat alleged evasion of the AD/CV duties occurred)[20] and violation of their procedural due process rights[21] are outside of the purview of this *de novo* review.

A review of the administrative record and the Importers' requests for administrative review clearly indicate that tribar floors were entered as type "01" entries and, therefore, the applicable AD/CV duties owed on steel grating were not paid.[22] Both of the Importers acknowledge in their requests for administrative review that subject entries contained tribar flooring. Specifically, Gaosai states that Entry No. XXX-XXXX027-4 contained tribar flooring[23] and Ikadan states that Entry Nos. XXXXXXX7668 and XXXXXXX1304 contained tribar flooring.[24] The entry documents provided by the Importers in response to the Requests for Information corroborate those statements.[25]

So long as the tribar floors are considered covered merchandise under the applicable AD/CV duty orders, their entry during the period of investigation without proper declaration as type "03" entries and payment of the AD/CV duties owed constitutes evasion under the EAPA statute and implementing regulations. The substantial evidence in the record demonstrates that evasion occurred. Ikadan and Gaosai have tried to skirt a finding of evasion by arguing first that CBP does not have the ability to determine that tribar floors are covered merchandise without Commerce's opinion in a scope ruling and second, that *even if* the tribar floors are covered merchandise, AD/CV duties are not owed on entries of tribar floors until Commerce issues a scope ruling. These arguments fail.

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

[19] *See Nucor Corp. v. United States,* 34 C.I.T. 70, 72 (2010) (citing *Nippon Steel Corp. v. United States,* 458 F.3d 1345, 1352 (Fed. Cir. 2006)).

[20] It is unclear from the administrative record that CBP concluded that there was not substantial evidence of misclassification or transshipment prior to determining that there was substantial evidence that evasion occurred by other means.

[21] The Court of International Trade ("CIT") has recently opined on the rights of parties in EAPA investigations to have access to business confidential information. In *Royal Brush Mfg., Inc. v. United States*, Ct. No. 19-00198, Slip Op. 20-171, the CIT found that a party is only entitled to public summaries of the business confidential information pursuant to 19 CFR § 165.4(a)(1) and (e). The parties do not otherwise have a right to review business confidential information as the statute and regulations do not provide for such. Regardless, the ability of RR to opine on whether procedural due process violations occurred in this case is not contemplated by the statute or implementing regulations.

[22] *See* Ikadan's Request for Administrative Review, page 12. *See, e.g.,* Ikadan's RFI Response Exhibit 17.2. *See also* Gaosai's Request for Administrative Review, page 13. *See, e.g.,* Gaosai's RFI Response Exhibit WG-15.

[23] *See* Gaosai's Request for Administrative Review, Attachment 1, page 2.

[24] *See* Ikadan's Request for Administrative Review, Attachment 1, page 1.

[25] *See* Gaosai's RFI Response Exhibit WG-15 Entry 1.5 and Ikadan's RFI Response Exhibits 17.2 and 17.5.

First, 19 U.S.C. § 1517(b)(4) and 19 CFR 165.16(a) only require a scope referral to Commerce when CBP cannot determine whether the merchandise described in the allegation is covered merchandise under the AD and/or CV duty orders at issue. CBP found that it was able to determine that tribar floors are covered merchandise based upon the contents of the record without a scope referral to Commerce and explained the reasoning behind this finding in the June 21 Determination. Specifically, CBP found, based upon the evidence in the administrative record, that the way the tribar floors are constructed would place them within the scope of the AD/CV duty orders and that no exclusions apply to the tribar floors.[26] Nothing in the record indicates that such a finding by CBP without referring the matter to Commerce was improper. Therefore, we find that such a scope referral to Commerce was not needed and CBP acted within its authority in determining that the tribar floors are within the scope of the AD/CV duty orders.

Furthermore, the propriety of CBP's decision not to make a scope referral to Commerce aside, the retroactive application of AD/CV duties to the entries subject to the EAPA investigation is permitted under the statute and implementing regulations. EAPA provides CBP with the authority to impose interim measures, including extending or suspending liquidation, collecting cash deposits, and taking other steps deemed necessary to protect the revenue of the United States and to protect domestic industry during the pendency of an EAPA investigation.[27] As such, CBP properly exercised that authority in this EAPA investigation and, pursuant to 19 U.S.C. § 1517(e), imposed interim measures on the subject entries to ensure protection of the revenue of the United States in the event that substantial evidence of evasion is found. After review of the evidence, CBP determined that tribar floors, on their face, constitute covered merchandise under the subject AD/CV duty orders and CBP, therefore, properly utilized its EAPA authority to protect the revenue and domestic industry through the imposition of interim measures.

The United States Court of Appeals for the Federal Circuit's *en banc* decision in *Sunpreme Inc. v. United States*[28] provides a relevant analogy to this case, where entries were already subject to suspension prior to the initiation of a scope inquiry by Commerce. The *Sunpreme en banc* decision held that the regulation relevant therein governing scope decisions by Commerce calls for the continuation of the suspension of liquidation for merchandise already subject to suspension of liquidation.[29] CBP has the independent authority pursuant to EAPA to investigate allegations of evasion and to impose interim measures designed to protect the revenue of the United States.[30] Those interim measures include extending or suspending the liquidation of unliquidated entries.[31] Here, the tribar floors were already subject to a lawful suspension and extension of liquidation when Commerce began its independent scope inquiry at the behest of Gaosai, due to the interim measures imposed by CBP pursuant to its independent authority during the pendency of the EAPA investigation.

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[26] *See* June 21 Determination, page 8.
[27] *See* 19 U.S.C. § 1517(e).
[28] 946 F.3d 1300 (Fed. Cir. 2020)(*en banc*).
[29] *See* 19 CFR § 351.225(l)(1). *See also Sunpreme*, 946 F.3d at 1316.
[30] *See* 19 U.S.C. § 1517(b) and (e).
[31] *See* 19 U.S.C. § 1517(e)(1) and (2).

The Importers' reliance upon *United Steel* is misplaced as that case involved retroactive application of AD duties to the date of issuance of the AD order twenty years earlier.[32] The retroactive application of AD/CV duties in this case only encompasses those entries made eligible and subject to suspension by the EAPA statute. Further, the Court of International Trade recently recognized the limitations that *Sunpreme* placed on the finding in *United Steel* as the retroactive application of AD duties in *United Steel* were not suspended at all prior to Commerce's scope ruling.[33] Therefore, *even if* the outcome of the EAPA investigation hinged on a scope ruling by Commerce, the date of the scope ruling would not govern which subject entries would require payment of AD/CV duties as argued by the Importers. The subject AD/CV duties would either apply to all subject entries or none of them; there is no scenario where only some of the subject entries would be subject to the AD/CV duty orders. Thus, we find that all entries of tribar floors that have been suspended or extended as a result of this EAPA investigation, regardless of the date of entry, are covered merchandise.

The Importers' argument that CBP has applied an overly broad interpretation of which entries include tribar floors does not have any bearing on whether there is substantial evidence of evasion. The administrative record contains substantial evidence that entries of covered merchandise were made by the Importers during the period of investigation and were not declared as subject to the AD/CV duty orders. This constitutes evasion as defined by EAPA and the finding of substantial evidence of evasion stands, notwithstanding the Importers' argument concerning the number of entries subject to AD/CV duties included during the period of investigation.

## III. Decision

Based upon our *de novo* review of the administrative record in this case, including the timely and properly filed requests for administrative review and response, the June 21 Determination of evasion under 19 USC § 1517(c) is AFFIRMED.

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

Sincerely,

Paul Pizzeck

Digitally signed by Paul Pizzeck
Date: 2021.10.26 07:23:36 -05'00'

Paul Pizzeck
Chief, Penalties Branch, Regulations & Rulings
Office of Trade
U.S. Customs & Border Protection

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[32] *See* 947 F.3d at 798.

[33] *See TMB 440AE, Inc. v. United States*, 2020 Ct. Intl. Trade LEXIS 177, SLIP OP. 2020-169, 2020 WL 7009680, at *29-30.

Approved by:

JOANNE R STUMP

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Joanne R. Stump
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