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Re: Enforce and Protect Act (“EAPA”) Case Number 7550; *Aluminum Extrusions from the People’s Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011) and *Aluminum Extrusions from the People’s Republic of China: Countervailing Duty Order*, 76 FR 30653 (May 26, 2011); Kingtom Aluminio SRL; 19 U.S.C. § 1517

Dear Counselors:

This is in response to a request for *de novo* administrative review of a determination of evasion dated February 4, 2022, made by the Trade Remedy Law Enforcement Directorate (“TRLED”), Office of Trade (“OT”), U.S. Customs and Border Protection (“CBP”), pursuant to 19 U.S.C. § 1517(c), in EAPA Case Number 7550 (hereinafter referred to as the “February 4 Determination”).¹ The request for review, dated March 21, 2022, was submitted to CBP OT Regulations and Rulings (“RR”) by Morris, Manning & Martin, LLP, on behalf of Kingtom Aluminio SRL (“Kingtom”), pursuant to 19 U.S.C. § 1517(f) and 19 CFR § 165.41(a). Kingtom’s request for administrative review was submitted to RR within 30 business days after the issuance of the initial determination of evasion, consistent with 19 CFR § 165.41(d).²

¹ See Confidential Document No. 86: Notice of Determination as to Evasion, dated February 4, 2022.

² Due to a spam filter placed on the EAPA-FAD inbox, wherein Kingtom’s submission of a request for administrative review was blocked from receipt, the existence of the submission by Kingtom was not discovered until April 1, 2022, upon receipt of an e-mail sent directly to an RR attorney, to inquire about the status of the submission. At that time, the filter issue was discovered and corrected.

I. Background

Inasmuch as the facts in this case were fully set forth in the February 4 Determination, we will not repeat the entire factual history herein.

In brief, according to the record evidence, on February 2, 2021, TRLED initiated an investigation under Title IV, section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, in response to an allegation of evasion.

On October 5, 2020, Aluminum Extrusions Fair Trade Committee (“AEFTC”) filed an EAPA allegation against Kingtom. CBP acknowledged receipt of the properly filed allegation on January 8, 2021. AEFTC alleged that Kingtom was importing Chinese-origin aluminum extrusions into the United States by transshipment through the Dominican Republic to evade the payment of antidumping and countervailing (“AD/CV”) duties on aluminum extrusions from the People’s Republic of China (“China”) pursuant to Case Nos. A-570-967 and C-570-968.³

The allegation of evasion pertained to the AD/CV duty orders issued by the U.S. Department of Commerce (“Commerce”) on imports of aluminum extrusions from China.⁴

Commerce defined the scope of the relevant AD/CVD Orders, in pertinent part, as follows:

The merchandise covered by the order is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). Specifically, the subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 1 contains not less than 99 percent aluminum by weight. The subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 3 contains manganese as the major alloying element, with manganese accounting for not more than 3.0 percent of total materials by weight. The subject merchandise is made from an aluminum alloy with an Aluminum Association series designation commencing with the number 6 contains magnesium and silicon as the major alloying elements, with magnesium accounting for at least 0.1 percent but not more than 2.0 percent of total materials by weight, and silicon accounting for at least 0.1 percent but not more than 3.0 percent of total materials by weight. The subject aluminum extrusions are properly identified by a four-digit alloy series without either a decimal point or leading letter. Illustrative examples from among the

³ See Confidential Document No. 9: Notice of Initiation of Investigation and Interim Measures, dated May 10, 2021.

⁴ See *Aluminum Extrusions from the People’s Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011); see also *Aluminum Extrusions from the People’s Republic of China: Countervailing Duty Order*, 76 FR 30653 (May 26, 2011) (collectively the “AD/CVD Orders”).

approximately 160 registered alloys that may characterize the subject merchandise are as follows: 1350, 3003, and 6060.

Aluminum extrusions are produced and imported in a wide variety of shapes and forms, including, but not limited to, hollow profiles, other solid profiles, pipes, tubes, bars, and rods. Aluminum extrusions that are drawn subsequent to extrusion (“drawn aluminum”) are also included in the scope.

Aluminum extrusions are produced and imported with a variety of finishes (both coatings and surface treatments), and types of fabrication. The types of coatings and treatments applied to subject aluminum extrusions include, but are not limited to, extrusions that are mill finished (*i.e.*, without any coating or further finishing), brushed, buffed, polished, anodized (including bright-dip anodized), liquid painted, or powder coated. Aluminum extrusions may also be fabricated, *i.e.*, prepared for assembly. Such operations would include, but are not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched, bent, stretched, knurled, swedged, mitered, chamfered, threaded, and spun. The subject merchandise includes aluminum extrusions that are finished (coated, painted, *etc.*), fabricated, or any combination thereof.

Subject aluminum extrusions may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, window frames, door frames, solar panels, curtain walls, or furniture. Such parts that otherwise meet the definition of aluminum extrusions are included in the scope. The scope includes the aluminum extrusion components that are attached (*e.g.*, by welding or fasteners) to form subassemblies, *i.e.*, partially assembled merchandise unless imported as part of the finished goods ‘kit’ defined further below. The scope does not include the non-aluminum extrusion components of subassemblies or subject kits.

Subject extrusions may be identified with reference to their end use, such as fence posts, electrical conduits, door thresholds, carpet trim, or heat sinks (that do not meet the finished heat sink exclusionary language below). Such goods are subject merchandise if they otherwise meet the scope definition, regardless of whether they are ready for use at the time of importation.

...

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (“HTS”): 7604.21.0000, 7604.29.1000, 7604.29.3010, 7604.29.3050, 7604.29.5030, 7604.29.5060, 7608.20.0030, and 7608.20.0090. The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99 as well as under other HTS chapters. In addition, fin evaporator coils may be classifiable under HTS numbers: 8418.99.80.50 and 8418.99.80.60. While HTS subheadings are provided for convenience and

customs purposes, the written description of the scope of the order is dispositive.

On May 10, 2021, in accordance with 19 CFR § 165.24, CBP issued the Notice of Initiation of Investigation and Interim Measures (“Notice of Initiation”) to all parties to the investigation, notifying the parties of CBP’s decision to take interim measures based upon reasonable suspicion that Kingtom entered covered merchandise into the customs territory of the United States through evasion.⁵ The entries subject to the investigation were those entered for consumption, or withdrawn from a warehouse for consumption, from January 8, 2020, one year before receipt of the allegation, through the pendency of the investigation.⁶ CBP concluded that, based on the record evidence, there was reasonable suspicion that Kingtom had entered covered merchandise into the customs territory of the United States through evasion, and, therefore, imposed interim measures.⁷ From August 30, 2021 through September 2, 2021, CBP conducted an on-site verification visit at Kingtom’s manufacturing facility and summarized the findings in an On-Site Verification Report, dated November 9, 2021 (“Verification Report”).⁸

On February 4, 2022, CBP issued the February 4 Determination. CBP found substantial evidence⁹ to demonstrate that aluminum extrusions entered into the customs territory of the United States by Kingtom were of Chinese origin and transshipped through the Dominican Republic.¹⁰ No AD/CVD cash deposits had been made for entries of the merchandise because the importer claimed the Dominican Republic as the country of origin and the merchandise was declared as entry type “01” (Consumption) instead of entry type “03” (Consumption - Antidumping/Countervailing Duty).¹¹

On March 21, 2022, Kingtom filed a timely Request for Administrative Review, and on April 5, 2022, RR sent an email to all parties to the investigation notifying them of the commencement of the administrative review process pursuant to 19 CFR § 165.41 and the

⁵ See Notice of Initiation of Investigation and Interim Measures (public version). Available at: <https://www.cbp.gov/trade/trade-enforcement/tftea/eapa/notices-action>.

⁶ 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.

⁷ The record evidence supporting the finding of reasonable suspicion is discussed in the Notice of Initiation.

⁸ See Confidential Document No. 81: Verification Report.

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 February 4 Determination (public version). Available at: <https://www.cbp.gov/sites/default/files/assets/documents/2022-Feb/02-05-2022%20-%20TRLED%20-%20Determination%20of%20Evasion%20%28508%20compliant%29%20-%20%287550%29%20-%20PV.pdf>.

¹¹ Imports that are covered by AD/CVD orders are required to be entered as type “03” entries; entries declared as type “01” are not subject to AD/CVD. See CBP Entry Summary Form 7501 and Instructions and the ACE Entry Summary Business Rules and Procedure Document <https://www.cbp.gov/trade/programs-administration/entry-summary/cbp-form-7501> (last visited June 15, 2022).

assignment of RR case number H324349.¹² On April 19, 2022, AEFTC filed a timely response to Kingtom's request for administrative review.

II. Law and 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."¹³ 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.¹⁴

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.¹⁵

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)."¹⁶ 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."¹⁷

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

¹² Kingtom's initial request for administrative review exceeded the thirty (30)-page limit set forth in 19 CFR § 165.41. Given the technical difficulties experienced by RR in receiving the original submission and the need for a swift resubmission, Kingtom was granted a short extension to shorten the submission to the required page limit, which extension was met.

¹³ 19 U.S.C. § 1517(c)(1).

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

¹⁵ *See Investigation of Claims of Evasion of Antidumping and Countervailing Duties, Interim Regulations*, 81 Fed. Reg. 56,477, 56,478 (Aug. 22, 2016).

¹⁶ 19 CFR § 165.1.

¹⁷ *See Altx, Inc. v. United States*, 370 F.3d 1108, 1116 (Fed. Cir. 2004) (internal citations and quotation marks omitted).

avoidance of applicable AD or CVD cash deposits or duties being collected on such merchandise. Lastly, our decision herein must be supported by substantial evidence.

A. Kingtom's Arguments

Kingtom requests that we reverse the February 4 Determination of evasion, arguing that Kingtom did not enter covered merchandise into the United States through evasion because the subject entries of aluminum extrusions imported into the United States by Kingtom were manufactured in the Dominican Republic.

Kingtom argues that the administrative record contains no actual evidence of evasion and that the February 4 Determination instead relies solely upon adverse inferences due to CBP's finding that Kingtom did not cooperate to the best of its ability during the investigation. As a result, Kingtom claims that the February 4 Determination completely ignores all the record evidence supporting Kingtom's position that evasion could not have possibly occurred given the amount of documentation showing that Kingtom has the capacity and did produce all of the aluminum extrusions it exported to the United States during the period of investigation ("POP"). Further, Kingtom posits that CBP's reliance on adverse inferences is misplaced due to a misunderstanding of the record evidence submitted by Kingtom and CBP's own failure to follow up with clarifying questions during the investigation.

Specifically, Kingtom points to its location within a Foreign Trade Zone ("FTZ") and to the practice of the Dominican Customs Authority, Direccion General de Aduanas ("DGA"), of inspecting every imported shipment into the FTZ, to show that Kingtom did not import—and that it was physically impossible for Kingtom to import—finished aluminum extrusions from China into its factory. As proof, Kingtom states that it provided import data certified by DGA to prove that transshipment did not occur; however, CBP ignored this data.

Kingtom then discusses the perceived discrepancies noted by CBP in the February 4 Determination and the Verification Report and explains how those discrepancies do not actually exist when examining the record more closely. For example, Kingtom also sells its aluminum extrusions domestically in the Dominican Republic, in addition to those it exports to the United States. Therefore, the total sales from Kingtom in a given month would not necessarily match the total amount of exports to the United States. At the same time, Kingtom also provided updated documents throughout the investigation and corrected some errors it discovered in its documentation. Nonetheless, Kingtom argues that CBP misread these documents or compared figures incorrectly and took the perceived discrepancies to mean that Kingtom did not cooperate to the best of its ability during the investigation. Kingtom further states that any alleged discrepancies in the records of the prior EAPA cases involving Kingtom are irrelevant to the application of adverse inferences to the extent those alleged discrepancies occurred with entries that happened on dates prior to the POI in this EAPA case.

Kingtom also claims that CBP mischaracterized what occurred during the verification trip in order to support the finding of evasion. Kingtom noted these mischaracterizations in its written arguments submitted prior to the end of the investigation; however, CBP did not appear to consider these explanations in the February 4 Determination. Those explanations involved how Kingtom may have made sales from inventory and whether Kingtom

“deleted” all records prior to 2020, as well as the issues encountered with workers during the verification visit. Kingtom explained that sales from inventory would mean sending a customer with multiple orders part of a later order with an earlier order upon the customer’s request; that Kingtom did not delete all pre-2020 records and provided several to CBP, some of which are referenced in the February 4 Determination; and, that even if there are issues with the workers at Kingtom, the record does not indicate that any of those workers communicated information to CBP that supports a finding that Kingtom was engaged in evasion.

Finally, even if evasion is determined to have occurred, Kingtom argues that the record demonstrates that some portion of the aluminum extrusions have a verifiable origin of the Dominican Republic and are not covered by the AD/CVD Orders.

Based on the foregoing, Kingtom argues that evasion did not occur, and the February 4 Determination must be reversed.

B. AEFTC’s Arguments

AEFTC requests that we affirm the February 4 Determination of evasion, arguing that substantial evidence exists to show that evasion occurred due to the transshipment of Chinese-origin aluminum extrusions to the United States through the Dominican Republic.

AEFTC claims that the record evidence shows that Kingtom’s aluminum extrusion presses did not have the capability of producing the quantity of aluminum extrusions it exported to the United States and that the requirements of an FTZ does not mean that Kingtom did not transship and commingle Chinese-origin aluminum extrusions with those produced at the factory. AEFTC argues that the DGA data is not enough to prove that transshipment did not occur, especially when coupled with the discrepancies found within the documentation provided by Kingtom and Kingtom’s destruction of pre-2020 records. Furthermore, AEFTC argues that Kingtom may have purchased Chinese-origin aluminum extrusions from another Dominican company which had initially imported them and, even though those would have been domestic purchases, those aluminum extrusions would still have a Chinese-origin and considered transshipped.

AEFTC then notes that the record evidence demonstrates Kingtom did not have the capacity to produce the volumes of aluminum extrusions it exported as the Verification Report includes tables comparing the press capacity listed in Kingtom’s software with the actual weight of sales and exports for given months and shows an absolute difference between press capacity and actual sales and exports. Although the numbers are redacted, AEFTC states that this absolute difference indicates Kingtom must be supplementing its production with Chinese-origin aluminum extrusions. AEFTC also claims that Kingtom’s ties to China are relevant to the determination of evasion. Specifically, AEFTC notes that, in addition to Kingtom’s Chinese ownership and the employment of Chinese workers who are paid in Chinese currency, CBP officials also saw a bamboo garden and a Chinese flag flying at Kingtom’s facility during the verification visit.

Finally, AEFTC argues that adverse inferences were properly applied to Kingtom as the February 4 Determination identifies several discrepancies in the record and the record

evidence demonstrates that CBP gave Kingtom opportunities to correct issues identified in Kingtom's initial Request for Information ("RFI") response but that Kingtom failed to do so. Instead, Kingtom submitted voluntary factual information after the deadline for such submissions and that information further contradicted Kingtom's prior submissions in EAPA Cons. Case Nos. 7348 and 7423. AEFTC states that the reliance on the Verification Report was proper and that CBP was correct to not place weight on the explanations provided by Kingtom in its later written arguments. At the same time, AEFTC posits that Kingtom's claims regarding the alleged destruction of pre-2020 records are also unavailing and further bolster the use of adverse inferences in the February 4 Determination. AEFTC argues that, coupled with the issues related to the documentation, Kingtom's actions during the verification visit demonstrate a lack of cooperation that warrants the application of adverse inferences. Further, due to commingling, AEFTC argues that all of Kingtom's shipments to the United States would be subject to the AD/CVD Orders.

Based on the foregoing, AEFTC argues that evasion did occur, and the February 4 Determination must be affirmed.

C. Administrative Review Analysis

As an initial matter, pursuant to 19 U.S.C. § 1517(f)(1) and 19 CFR § 165.45, upon request for administrative review, RR will apply a *de novo* standard of review under the law, based solely upon the facts and circumstances on the administrative record in the proceeding. In making our determination, we reviewed: (1) the administrative record, as provided to us by TRLED, upon which the February 4 Determination was made; and (2) the timely and properly filed request for review and response to the request for review.

The outcome in this case rests primarily on whether the record shows that Kingtom had the production capability and *did* produce all of the aluminum extrusions that it imported into the United States and, if so, is the evidence on the record sufficiently reliable to support this conclusion. Kingtom provided a significant amount of documentation regarding its production and business practices and hosted a verification visit by CBP officials. The February 4 Determination, however, discounted most, if not all, of the documentation and explanations provided by Kingtom. The February 4 Determination, instead, found that Kingtom failed to cooperate to the best of its ability and, thus, the determination applied adverse inferences and relied on other parts of the record to find evasion. Based on our *de novo* review of the record in this case, we do not believe that Kingtom's actions warranted the application of adverse inferences and the discounting of the information Kingtom provided during the course of the investigation.¹⁸ The record shows Kingtom's active participation throughout the investigation and a willingness to provide additional information voluntarily. This *de novo* review, therefore, relies on information and explanations provided by Kingtom that we view to be sufficiently credible and reliable, in combination with the on-site observations of CBP's verification team. As a result, this has created a situation where we cannot sustain the finding of evasion, as explained below.

¹⁸ The administrative record does not contain any instances where Kingtom refused to provide requested information to CBP that Kingtom would otherwise have access to but did not provide.

This particular administrative record benefits immensely from the verification trip conducted by CBP during the investigation. During that visit, CBP officials verified all of the equipment which Kingtom had listed as present in its supplemental RFI Exhibit 78.¹⁹ Further, CBP officials verified that Kingtom had the ability to finish the aluminum extrusions with either anodization or a powder coating and pack the completed aluminum extrusions for shipping.²⁰ Finally, the CBP officials confirmed, through watching demonstrations, that Kingtom could produce aluminum extrusions of the dimensions that were imported into the United States.²¹ The Verification Report does not state that any of the observed equipment appeared inoperable or otherwise dormant and unused for a significant period of time or should otherwise not be taken into account when calculating Kingtom's aluminum extrusion production capacity. Therefore, the verification trip confirmed that Kingtom had the capability to produce aluminum extrusions at a specific total capacity, which Kingtom claimed as approximately 36,000 tons per year.²²

During the verification visit, CBP officials reviewed the production documents for several different months and compared those monthly production numbers to Kingtom's monthly sales and export numbers for the same month.²³ While there is a fundamental difference between the nature of these figures, as items are not necessarily produced in the same month in which they are sold and/or exported, the numbers calculated by the verification team show that Kingtom produced more aluminum extrusions by weight in all but one of those months than it sold or exported. Furthermore, for that one month, the amount produced in the preceding month was nearly double the amount that was sold or exported. At the same time, Kingtom's Monthly Production Reports demonstrate that an amount of inventory remained at the end of any given month,²⁴ waiting while the remaining parts of orders were produced prior to shipment.²⁵ Given that: 1) actual production was observed, 2) the presence of claimed machinery was verified, 3) the ability of the equipment to manufacture the products exported to the United States was verified, 4) monthly production reports were provided, and 5) the differences between production versus sales/export figures have been explained, we find substantial evidence demonstrating that Kingtom produced aluminum extrusions in the Dominican Republic during the period of investigation in sufficient quantities to support the non-subject imports claimed to be imported into the United States.

Differences between production and sales/export figures are expected. Kingtom provided the maximum production capacity for each aluminum extrusion press in response to the

¹⁹ See Verification Report, page 11 (public version).

²⁰ See *id.*, page 12.

²¹ See *id.*

²² See *id.* See also Confidential Document No. 41: Kingtom's RFI Response, page 2, and RFI Response Exhibit 27, Production Capacity. Certain RFI Response Exhibits are in the same document file. RFI Response Exhibit 27 is part of Confidential Document No. 41.

²³ See *id.*, pages 13-15.

²⁴ See Confidential Document No. 46: Kingtom's Supplemental RFI Response, Exhibit 51, Monthly Production Reports.

²⁵ See footnote 94 of Kingtom's Request for Administrative Review. In light of these records, we do not agree with the conclusions in the February 4 Determination, regarding the absence of evidence as to sales from inventory; the production reports clearly show some inventory remaining each month. However, because inventory is measured at a specific point in time, and finished goods inventory is not necessarily maintained in a condition packed ready for shipment, the fact that no packaged inventory was observed during the verification visit does not discredit the production reports.

RFIs,²⁶ and the numbers reflected as the total maximum capacity were only exceeded by one aluminum extrusion press in two of the reviewed months. This, however, is not fatal to Kingtom's production capacity assertions, as Kingtom explained in RFI Response Exhibit 27, Production Capacity, that

[i]n actual production, the production capacity of each machines (*sic*) also depends on the technician's skill in addition to the size and thickness of the extrusions. If the technician's skill is good, the production output can be higher. If the size and thickness of extrusion is beyond the normal size and thickness, the output will be more than theoretical output. If the size and thickness of extrusion is smaller than the normal size and thickness, the output will be less than theoretical output.

The production data measures output in kilograms. Therefore, Kingtom's explanation regarding possible differences in production amounts helps to counter the perceived anomaly of those two months in comparison to the rest of the aluminum extrusion presses, which did not exceed the given maximum production capabilities in any of the months reviewed during the verification visit. Given these explanations provided by Kingtom and the weight of the evidence as a whole showing that Kingtom produced aluminum extrusions in the quantities that it sold and exported to the United States, the small anomalies discussed above do not rise to a level of substantial evidence that evasion has occurred.

Our conclusion is further buttressed by the total lack of any record evidence of any imports by Kingtom into the Dominican Republic, during the relevant period of investigation, of aluminum extrusions manufactured in China.²⁷ We also note that the record does not show that Kingtom sourced any aluminum ingots or scrap, the main raw materials from which aluminum extrusions are created, from China.²⁸

The February 4 Determination lists sourcing information provided by Kingtom in two prior EAPA investigations, which information was placed on the record in this investigation due to the overlapping POIs.²⁹ We do not opine on the question of whether such incorporation was appropriate. However, we note that the sourcing information does not provide evidence of evasion. Rather, it demonstrates that Kingtom sourced materials and equipment from many countries, [country] among them. However, and most notably, the items sourced from [country] were [items].³⁰ Therefore, if anything, the sourcing information supports Kingtom's position and does not provide evidence of evasion. The February 4 Determination also points out that, in the POI for this case, there is evidence of

²⁶ See Confidential Document No. 60: Kingtom's Supplemental RFI Response Exhibit 78, Updated Equipment List.

²⁷ The Allegation only provided overall import data of aluminum extrusions from other countries, including China, into the Dominican Republic. It does not show Kingtom as the importer of such goods into the Dominican Republic. See Confidential Document No. 1: AEFTC's Allegation Against Kingtom, dated October 5, 2020, Exhibit 15. Kingtom also stated in the RFI Response that it did not import any aluminum extrusions from China into the Dominican Republic. See Public Document No. 25: Kingtom's RFI Response, page 15.

²⁸ See Public Document No. 25: Kingtom's RFI Response, pages 2-3.

²⁹ See Confidential Document No. 86: February 4 Determination, pages 7-9.

³⁰ See *id.*

Kingtom's sourcing of raw materials from China. But raw materials are not covered by the AD/CVD Orders. Thus, this evidence cannot be used to support a finding of evasion.

Indeed, there is no dispute that Kingtom has connections to China. However, the fact that Kingtom admittedly employs Chinese workers, has Chinese ownership, and sources [items] from China is not evidence of evasion. This is especially so in the face of documented and observed significant manufacturing of aluminum extrusions, during the period of investigation in this case, by Kingtom, in the Dominican Republic.

The February 4 Determination focuses greatly on certain observations made by CBP and incidents which occurred during the verification visit, including communications with former workers who were apparently terminated by Kingtom for speaking to CBP officials, and questions over employee wage distribution practices, as well as on other purported discrepancies within the record.³¹ We agree that the intimidation and otherwise questionable treatment of workers raises serious concerns. However, given the absence of evidence that the presence of the workers on-site was in any way fictitious, and the absence of any assertion that pertinent information was withheld or falsified by the workers,³² we do not find that those observations and incidents rise to the level of undermining the facts relevant to the question presented in this case: whether evasion of AD/CV duties occurred. Nor do we find that other purported discrepancies noted in the February 4 Determination,³³ to the extent they might exist,³⁴ have sufficient bearing on Kingtom's production capability and actual production, which are the determinative factors in this case, to overcome the substantial evidence demonstrating actual and significant production in the Dominican Republic.

Therefore, based upon the documentation and information provided in the administrative record in EAPA Case No. 7550, there is not substantial evidence to support a finding of evasion as to Kingtom. As a result, we do not find it necessary to address the remaining arguments made by Kingtom in its Request for Administrative Review.

III. Decision

Based upon our *de novo* review of the administrative record in this case, including the timely and properly filed request for administrative review and response, the February 4 Determination of evasion under 19 USC § 1517(c) is REVERSED.

³¹ See generally Confidential Document No. 81: Verification Report.

³² Although the Verification Report states that the allegedly fired workers spoke to CBP officials after they had been fired, there is no indication that the workers made any claims to suggest that pertinent information had been withheld or falsified.

³³ For example, the February 4 Determination found Kingtom's assertions—that it manufactures to order—to be discredited by a single statement made by a Kingtom employee during the verification visit that, sometimes, customers call asking to place an order from inventory. Such a statement does not necessarily contradict Kingtom's made-to-order assertions, as explained by Kingtom. Moreover, even if it is a contradiction, the existence of some sales from inventory does not equate to substantial evidence of evasion.

³⁴ Most of the alleged discrepancies discussed at page 15 of the February 4 Determination, for instance, are not in fact discrepancies, as thoroughly explained by Kingtom at pages 23 through 30 of its Request for Administrative Review.

Public Version

This determination is being transmitted to TRLED so that TRLED can determine whether the interim measures should be modified, consistent with this decision. TRLED may also take any other appropriate action consistent with this decision.

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

Sincerely,

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

Approved by:

Alice A. Kipel
Executive Director,
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