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PUBLIC VERSION

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RE: EAPA Consolidated Investigation 7730: Notice of Determination as to Evasion

To the Counsel and Representatives of the above-referenced Entities:

Pursuant to an examination of the record in consolidated Enforce and Protect Act (EAPA) Investigation 7730, U.S. Customs and Border Protection (CBP) has determined there is substantial evidence that the importers under investigation entered merchandise covered by the antidumping (AD) and countervailing duty (CVD) orders on steel grating¹ from the People's Republic of China (China), A-570-947 and C-570-948 (the *Orders*),² into the customs territory of the United States through misclassification. Specifically, we find that substantial evidence demonstrates that Double L Group, LLC (Double L) and Manufacturing Network Inc. (MNI) (collectively the Importers), evaded the *Orders* by entering Chinese-origin steel grating into the United States and misclassifying it as non-covered merchandise. As a result, no cash deposits were applied to the steel grating at the time of entry.

Background

Hog Slat, Inc. (Hog Slat), a domestic manufacturer of steel grating, filed separate EAPA

¹ Parties in this investigation use several different terms to refer to steel grating such as tribar flooring, steel creep flooring, steel flooring, *etc.* These terms are synonymous, and for ease of reference, we have only used steel grating, tribar flooring or covered merchandise throughout this memorandum.

² See *Certain Steel Grating from the People's Republic of China: Antidumping Duty Order*, 75 Fed. Reg. 43,143 (Dept. of Commerce, July 23, 2010); *Certain Steel Grating from the People's Republic of China: Countervailing Duty Order*, 75 Fed. Reg. 43,144 (Dept. of Commerce, July 23, 2010) (collectively, the *Orders*).

allegations against the Importers on April 18, 2022.³ On June 29, 2022, CBP acknowledged receipt of the properly filed Allegations against the Importers (the Allegations).⁴ Consistent with 19 C.F.R. § 165.22, the entries covered by the period of investigation (POI) are those entered for consumption, or withdrawn from warehouse for consumption, from June 29, 2021, through the pendency of this investigation.⁵ CBP found the information provided in the Allegations reasonably suggested that the Importers entered covered merchandise into the customs territory of the United States through evasion. Consequently, CBP initiated EAPA investigations on July 21, 2022.⁶

After evaluating all of the record information, on October 19, 2022, CBP determined that reasonable suspicion of evasion existed, particularly through importers mislabeling covered merchandise as non-covered merchandise when it was entered into the United States.⁷ Specifically, CBP based this determination on information introduced through the course of the investigation, including information provided in the Allegations, as well as information and discrepancies contained in the Importers' CF28 responses.⁸ Consequently, CBP issued the Notice of Initiation of Investigation and Interim Measures (NOI) on October 26, 2022.⁹

After the NOI, CBP issued requests for information (RFI) to the Importers, pursuant to 19 C.F.R. § 165.5.¹⁰ In the RFIs, CBP requested the following information from the Importers: (1) information about each company's corporate structure and affiliations; (2) information about each company's accounting and financial practices; (3) information about their procurement and sales practices; and (4) reconciliations, to tie their financial statements to their sales of covered merchandise.¹¹ The Importers provided timely responses to the RFIs.¹²

³ See Hog Slat's Letters, "Allegation of AD/CVD Evasion Under the Enforce and Protect Act of 2015," dated April 18, 2022; and "Allegation of AD/CVD Evasion Under the Enforce and Protect Act of 2015," dated April 18, 2022 (we note that each letter is identical, and collectively refer to them as the Allegations).

⁴ See CBP's Email, "EAPA 7730 & 7731: Receipt of the Allegations," dated June 29, 2022.

⁵ See 19 C.F.R. § 165.22. Entry is defined as an "entry for consumption, or withdrawal from warehouse for consumption, of merchandise in the customs territory of the United States." See 19 C.F.R. § 165.1.

⁶ See CBP's Memorandum, "EAPA Allegations 7730 and 7731: Initiation of Investigations," dated July 21, 2022 (Initiation Memo).

⁷ See CBP's Email, "EAPA 7730: Interim Measures," dated October 19, 2022.

⁸ See CBP's Letter, "Notice of Initiation of Investigation and Interim Measures: Consolidated EAPA Case 7730," dated October 26, 2022 (the NOI).

⁹ See, generally, the NOI.

¹⁰ See CBP's Letter, "Consolidated EAPA Case 7730: Request for Information from Double L Group, LLC," dated November 3, 2022; CBP's Letter, "Consolidated EAPA Case 7730: Request for Information from Manufacturing Network, Inc.," dated November 3, 2022.

¹¹ *Id.*

¹² See Double L's Letter, "EAPA Case No. 7730: Response to Request for Information from Double L," dated November 21, 2022 (Double L's RFI Response); MNI's Letter, "EAPA Consol. Case No. 7730 – Initial RFI Response," dated December 6, 2022 (MNI's RFI Response).

On January 25, 2023, CBP issued a supplemental RFI (SRFI) to Double L,¹³ to which it timely responded.¹⁴ On March 7, 2023, CBP issued a second SRFI to Double L,¹⁵ to which it timely responded.¹⁶

On January 25, 2023, CBP issued an SRFI to MNI, with a due date of February 8, 2023.¹⁷ On February 6, 2023, MNI requested an extension to respond to the SRFI,¹⁸ which CBP granted in full, making the new due date February 22, 2023.¹⁹ On February 22, 2023, MNI submitted its response to the SRFI.²⁰

On March 7, 2023, CBP issued a second SRFI to MNI, which was due by March 10, 2023.²¹ On March 8, 2023, MNI requested a two-week extension to respond to the Second SRFI.²² On March 9, 2023, CBP granted a partial extension, making the new due date March 17, 2023.²³ On March 16, 2023, after discussing MNI's Second SRFI with MNI's counsel via phone, CBP granted an additional seven-day extension, thereby granting MNI's initial 14-day extension request in full, with an updated deadline of March 24, 2023.²⁴ On March 24, 2023, MNI submitted its response to the second SRFI.²⁵

On March 29, 2023, CBP issued a third SRFI to MNI, with a due date of April 5, 2023.²⁶ On April 3, 2023, MNI requested an extension of two weeks to respond to the SRFI.²⁷ On April 4, 2023, CBP granted a partial extension until April 7, 2023.²⁸ On April 5, 2023, MNI requested an extension to respond to the SRFI until April 12, 2023.²⁹ On April 7, 2023, CBP granted that

¹³ See CBP's Letter, "Consolidated EAPA Case 7730: Supplemental Request for Information," dated January 25, 2023.

¹⁴ See Double L's Letter, "EAPA Case No. 7730: Response to Request for Information from Double L," dated February 22, 2023 (Double L's SRFI Response).

¹⁵ See CBP's Letter, "Consolidated EAPA Case 7730: Supplemental Request for Information," dated March 7, 2023.

¹⁶ See Double L's Letter, "EAPA Case No. 7730: Response to Request for Information from Double L," dated March 8, 2023 (Double L's Second SRFI Response).

¹⁷ See CBP's Letter, "Consolidated EAPA Case 7730: Supplemental Request for Information," dated January 25, 2023 (MNI's SRFI).

¹⁸ See MNI's Letter, "MNI Extension Request for Supplemental RFI Response," dated February 6, 2023 (MNI's February 6 Extension Request).

¹⁹ See CBP's Email, "EAPA Cons 7730: MNI SRFI Extension," dated February 7, 2023.

²⁰ See MNI's Letter, "EAPA Consol. Case No. 7730 – Supplemental RFI Response," dated February 22, 2023 (MNI's SRFI Response).

²¹ See CBP's Letter, "Consolidated EAPA Case 7730: Supplemental Request for Information," dated March 7, 2023 (MNI's Second SRFI).

²² See MNI's Letter, "MNI Extension Request for Supplemental RFI Response," dated March 8, 2023 (MNI's March 8 Extension Request).

²³ See CBP's Email, "EAPA Cons 7730 – Extension Request," dated March 9, 2023.

²⁴ See CBP's Email, "EAPA Cons 7730 – Extension," dated March 16, 2023.

²⁵ See MNI's Letter, "EAPA Consol. Case No. 7730 – Supplemental RFI Response," dated March 24, 2023 (MNI's Second SRFI Response).

²⁶ See CBP's Letter, "Consolidated EAPA Case 7730: Supplemental Request for Information," dated March 29, 2023 (MNI's Third SRFI).

²⁷ See MNI's Letter, "MNI Extension Request for Supplemental RFI Response," dated April 3, 2023 (MNI's April 3 Extension Request).

²⁸ See CBP's Email, "EAPA Cons 7730 – Extension," dated April 4, 2023.

²⁹ See MNI's Letter, "MNI Second Extension Request for Third Supplemental RFI Response," dated April 5, 2023 (MNI's April 5 Extension Request).

request for an extension in full.³⁰ On April 12, 2023, MNI submitted its response to the third SRFI.³¹

In addition, pursuant to 19 C.F.R. § 165.5, on October 28, 2022, CBP issued RFIs to the foreign manufacturers listed in CBP data, Kunlong International Co., Ltd. (Kunlong), Qingdao Regio Trading Co., Ltd. (Regio), Qingdao Soty International Co., Ltd. (Soty), and Qingdao Yilian Machinery Industry Co., Ltd. (Yilian).³² In the RFIs, CBP requested the following information from the foreign manufacturers: (1) information about each company’s corporate structure and affiliations; (2) information about each company’s accounting and financial practices; (3) information about their procurement and sales practices; (4) information concerning their production process and purchase of raw materials; and (5) reconciliations, to tie their financial statements to their production and sales of steel grating.³³ Kunlong, Regio, Soty, and Yilian submitted timely responses.³⁴

Double L submitted voluntary factual information on February 6, 2023.³⁵ On April 7, 2023, Double L submitted written arguments.³⁶ On April 24, 2023, CBP extended the time for the determination as to evasion.³⁷ On May 24, 2023, MNI submitted written arguments.³⁸ On June 7, 2023, Hog Slat submitted rebuttal written arguments.³⁹

Analysis

Under 19 U.S.C. § 1517(c)(1)(A), to reach a determination as to evasion, CBP must “make a determination, based on substantial evidence, with respect to whether such covered merchandise entered into the customs territory of the United States through evasion.”⁴⁰ “Covered merchandise” is defined as “merchandise that is subject to a CVD order... and/or an AD

³⁰ See CBP’s Email, “EAPA Cons 7730 – Extension,” dated April 7, 2023.

³¹ See MNI’s Letter, “EAPA Consol. Case No. 7730 – Third Supplemental RFI Response,” dated April 12, 2023 (MNI’s Third SRFI Response).

³² See CBP’s Letter, “EAPA Cons Case 7730 – Request for Information from Kunlong International Co., Ltd.,” dated November 17, 2022; CBP’s Letter, “EAPA Cons Case 7730 – Request for Information from Qingdao Regio Trading Industry Co., Ltd.,” dated November 17, 2022; CBP’s Letter, “EAPA Cons Case 7730 – Request for Information from Qingdao Soty International Co., Ltd.,” dated November 17, 2022; and CBP’s Letter, “EAPA Cons Case 7730 - Request for Information from Qingdao Yilian Machinery Industry Co., Ltd.,” dated October 28, 2022. Double L reported its manufacturer was Yilian, and MNI indicated its manufacturers were Kunlong, Regio and Soty.³³ *Id.*

³⁴ See Kunlong’s Letter, “EAPA Consol. Case No. 7730 – Initial RFI Response,” dated December 28, 2022; Regio’s Letter, “EAPA Consol. Case No. 7730 – Initial RFI Response,” dated December 28, 2022; Soty’s Letter, “EAPA Consol. Case No. 7730 – Initial RFI Response,” dated December 28, 2022; and Yilian’s Letter, “EAPA Case No. 7730: Response to Request for Information from Qingdao Yilian,” dated November 29, 2022.

³⁵ See Double L’s Letter, “Cons. EAPA Case No. 7730: Identification and Analysis of Out-of-Scope Merchandise,” dated February 6, 2023.

³⁶ See Double L’s Letter, “Brief of Double L in EAPA Cons Case No. 7730,” dated April 7, 2023 (Double L’s Written Arguments).

³⁷ See CBP’s Memorandum, “EAPA Consolidated Case 7730: Notice of Extension of Determination as to Evasion,” dated April 24, 2023 (Extension Memorandum).

³⁸ See MNI’s Letter, “EAPA Consol. Case No. 7730 – Written Argument,” dated May 24, 2023 (MNI’s Written Arguments).

³⁹ See Hog Slat’s Letter, “Hog Slat’s Rebuttal Brief in EAPA Consol. Case No. 7730,” dated June 7, 2023 (Hog Slat’s Rebuttal Written Arguments).

⁴⁰ See also 19 C.F.R. § 165.27(a) (implementing 19 U.S.C. § 1517).

order.”⁴¹ “Evasion” is defined as “the entry of covered merchandise into the customs territory of the United States for consumption by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material, 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.”⁴² As discussed below, substantial evidence indicates the Importers entered covered merchandise through evasion.

A previous EAPA investigation, EAPA 7474, concerned products identical to those under consideration in this investigation, tribar flooring, *i.e.*, steel grating. The determination of evasion in EAPA 7474 underwent an administrative review and litigation. In addition, parties to EAPA 7474 requested a scope ruling from the Department of Commerce concerning their tribar flooring. The determination of evasion in EAPA 7474, its administrative review, and Commerce’s scope ruling all found that tribar flooring, the same product entered by Double L and MNI in the instant investigation, was covered merchandise. Subsequent litigation regarding EAPA 7474 before the Court of International Trade sustained CBP’s determination of evasion in that investigation. Below we describe how EAPA 7474 informs this case and discuss further in depth the determination that Double L’s and MNI’s merchandise is covered by the *Orders* and that it was entered through evasion.

A. Summary of applicable previous cases concerning steel grating

During the course of this investigation, and especially in written arguments, interested parties have made references in various submissions to a previous steel grating EAPA investigation, EAPA 7474, and its subsequent administrative review.⁴³ Concurrent to the EAPA 7474 investigation, the U.S. Department of Commerce (Commerce) conducted a scope inquiry on steel grating, which was requested by interested parties to the EAPA 7474 investigation. Because our determination of evasion relies, in part, on these cases, we provide a brief summary of each case below for ease of reference.

Steel Grating Scope Ruling

The two U.S. importers under investigation in EAPA 7474, Ikadan System USA, Inc. (Ikadan) and Weihai Gaosai Metal Product Co., Ltd. (Gaosai) independently submitted scope inquiries to Commerce concerning their tribar flooring for pig farrowing crates at issue in EAPA 7474. Commerce conducted its scope inquiry parallel to, but separately from, the EAPA 7474 investigation, and on May 11, 2021, Commerce issued the Steel Grating Scope Ruling.⁴⁴ In that decision, Commerce found that tribar flooring, even when it is a part of a farrowing flooring

⁴¹ See 19 C.F.R. § 165.1.

⁴² *Id.*

⁴³ EAPA 7474 and the subsequent administrative review were subject to litigation at the CIT, which was resolved after the submission of written arguments in this case. As we rely, in part, on the CIT’s ruling for this case, we have included it as well in this section.

⁴⁴ See Memorandum to Scot Fullerton, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Certain Steel Grating from the People’s Republic of China: Scope Ruling on Pig Farrowing Crates and Farrowing Floor Systems,” dated May 11, 2021 (the Steel Grating Scope Ruling), which is found in the Allegations at Attachment 5.

system or a pig farrowing crate, is covered by the *Orders*.⁴⁵ Commerce also found that cast-iron flooring and other components of the pig farrowing crate are outside of the scope of the *Orders*.⁴⁶

EAPA 7474 Determination

On June 21, 2021, CBP issued the EAPA 7474 Determination, finding there was substantial evidence that Ikadan and Gaosai evaded the *Orders* by entering steel grating from China into the United States and failing to declare it as covered by the *Orders*.⁴⁷ These importers filed scope inquiries with Commerce during the EAPA 7474 investigation and Commerce addressed the inquiries in the Steel Grating Scope Ruling discussed above.⁴⁸

In the EAPA 7474 Determination, CBP found that the importers' RFI responses showed that tribar floors are {a part} of the farrowing crate systems being imported into the United States and that the importers regularly import tribar floors, listing them under the description "parts for farrowing crates" rather than separately listing the tribar floors and declaring them as subject to the *Orders*.

On October 26, 2021, CBP's office of Regulations & Rulings issued the Administrative Review of EAPA 7474 affirming the EAPA 7474 Determination.⁴⁹ The Administrative Review of EAPA 7474 found that the administrative record contains substantial evidence that entries of tribar flooring, *i.e.*, steel grating, were made by Ikadan and Gaosai during the POI that were not declared as subject to the *Orders*, which constitutes evasion as defined by EAPA.

Ikadan and Gaosai challenged the EAPA 7474 Determination and the Administrative Review of EAPA 7474 at the Court of International Trade (CIT). On June 13, 2023, the CIT issued its decision in *Ikadan*.⁵⁰ The CIT ruled on several issues in those cases, but, as particularly relevant here, sustained CBP's determination that Ikadan's and Gaosai's imported tribar flooring constituted steel grating covered by the *Orders* (and thus, was covered merchandise) and upheld the determination of evasion.⁵¹

⁴⁵ *Id.* at 15.

⁴⁶ *Id.*

⁴⁷ See "Notice of Determination as to Evasion," dated June 21, 2021 (the EAPA 7474 Determination).

⁴⁸ Because the Steel Grating Scope Ruling was issued by Commerce after the record had closed in EAPA 7474, CBP did not place this ruling on the administrative record because regulatory timeframes for considering new factual information did not allow for the regulated amount of time for comments, nor would it have allowed CBP to issue the determination as to evasion in accordance with statutory deadlines. In sum, the Steel Grating Scope Ruling played no part in CBP's decision in the EAPA 7474 Determination before remand occurred in the related litigation.

⁴⁹ See Memorandum, "Enforce and Protect Act ('EAPA') Consolidated Case Number 7474; *Certain Steel Grating from the People's Republic of China: Antidumping Duty Order*, 75 Fed. Reg. 43,143 (July 23, 2010) and *Certain Steel Grating from the People's Republic of China: Countervailing Duty Order*, 75 Fed. Reg. 43,144 (July 23, 2010); *Ikadan System USA, Inc. and Weihai Gaosai Metal Product Co., Ltd.*; 19 U.S.C. § 1517," dated October 26, 2023 (the Administrative Review of EAPA 7474).

⁵⁰ See *Ikadan System USA, Inc. v. United States*, No. 21-00592, 2023 WL 3962058 (Ct. Int'l Trade June 13, 2023) (*Ikadan*).

⁵¹ *Id.* at 24.

B. Double L

After analyzing Double L's RFI responses, we find that substantial evidence demonstrates that Double L entered Chinese-origin steel grating without classifying it as covered merchandise and paying the applicable AD/CVD duties which constitutes evasion as defined by EAPA.

The physical characteristics of the tribar floors Double L entered from China are consistent with the characteristics of steel grating in the *Orders* because they are composed of parallel galvanized woven steel wire or round bars (tribar) connected by welded crossbars,⁵² while the *Orders* indicate covered steel grating is described as "two or more pieces of steel, including load-bearing pieces and cross pieces, joined by any assembly process."⁵³ Double L does not contest that its tribar floors are of Chinese-origin or that these tribars floor are covered merchandise.⁵⁴ Furthermore, evidence on the record indicates that Double L entered the Chinese-origin steel grating into the United States as type 01 entries and evaded the payment of AD/CVD duties on steel grating from China.⁵⁵ The steel grating that Double L entered during the POI should have been subject to the AD/CVD rates on steel grating from China. Double L's entries of steel grating covered by this EAPA investigation will be subject to the China-wide entity rate for the *Orders*.

C. MNI

MNI indicated that its tribar floors are manufactured in China from steel rods that are welded together, and then legs and trusses are welded onto the steel rod configuration. The physical characteristics of MNI's tribar flooring are consistent with the characteristics of steel grating covered by the *Orders* because it is composed of parallel galvanized round bars (tribar) connected by welded crossbars,⁵⁶ while the *Orders* indicate covered steel grating is described as "two or more pieces of steel, including load-bearing pieces and cross pieces, joined by any assembly process."⁵⁷ MNI further indicated that it imports these floors from certain Chinese producers to be used in conjunction with pig farrowing systems.⁵⁸ MNI also stated that its tribar floors are the same product CBP investigated in EAPA 7474, and thus, the same product at issue in the Steel Grating Scope Ruling.⁵⁹ MNI's admission that its tribar flooring is the same product described in the Allegations, Steel Grating Scope Ruling, the EAPA 7474 Determination, the Administrative Review of EAPA 7474, and *Ikadan*, indicates that MNI's entries contain covered merchandise.⁶⁰ MNI did not declare its entries as subject to the AD/CVD order and pay requisite

⁵² See Double L's RFI Response at Exhibit 26; Double L's website found in the Allegations at Attachment 8.C.

⁵³ See the *Orders*.

⁵⁴ See Double L's Written Arguments at 9.

⁵⁵ See Double L's NTAC Report.

⁵⁶ See MNI's CF28 Response at 4.

⁵⁷ See the *Orders*.

⁵⁸ See MNI's CF28 Response, dated September 28, 2022 (MNI's CF28 Response) at 2 – 3. Although CBP issued two CF28s to MNI, asking identical questions in each, MNI provided one response to these two questionnaires.

⁵⁹ See the EAPA 7474 Determination and the Steel Grating Scope Memorandum.

⁶⁰ *Id.*

cash deposits.⁶¹ After evaluating MNI’s RFI responses, we find that substantial evidence demonstrates that MNI entered Chinese-origin steel grating without classifying it as covered merchandise and paying the applicable AD/CVD duties, which constitutes evasion as defined by EAPA. MNI made entries for a variety of pig farrowing crate components. Its entries of steel grating covered by this EAPA investigation will be subject to the China-wide entity rate for the *Orders*. From the universe of MNI’s entries during the POI, a few will be subject to the China-wide entity rate for the *Orders* based on adverse inferences, as discussed below.

MNI’s Request for Information

MNI was asked to provide a product list of all products it imported from China during the POI, and to provide the product code and a narrative description for each product.⁶² MNI’s RFI Response did not provide the clarity for the products imported. For example, MNI’s RFI Response contains a list of products MNI imported from China during the POI.⁶³ A comparison between this list and the invoices provided by MNI for what it purports to be non-covered merchandise entered during the POI indicates a disconnect between the description on the invoices and the list of products MNI imported from China during the POI.⁶⁴ As an illustration, invoice [number], for entry [number]0746 (Entry 0746), listed three items: “[general product name], [general product name], and [general product name].”⁶⁵ The freight invoice for Entry 0746 indicates these items were “[general product name].”⁶⁶ However, none of these four phrases – “[general product name], [general product name], [general product name], and [general product name]” – appear in the list of products MNI imported from China during the POI.⁶⁷ The list of products provided by MNI appears to be all of the different components which comprise a pig farrowing crate system, in addition to other parts which do not appear to be pig farrowing crate components.⁶⁸

Record evidence further adds to the confusion of the description of MNI’s imports. The Allegations indicate that steel grating can be sold as a standalone product, or as part of a package of components, used to construct a range of swine products such as farrowing systems, farrowing crates, nursery flooring systems, and nursery confinement systems.⁶⁹ MNI’s own website indicates it sells a complete line of swine equipment systems and components such as farrowing crates, breeding stalls, and nursery barns, a component of which is steel grating.⁷⁰ As such, the generic descriptions such as “[general product name], [general product name], [general product name], and [general product name]” on MNI’s invoices may indicate covered merchandise is included in the entry. Given the disparity between the broad descriptions on MNI’s invoices and the list of specific parts it imports and given CBP’s need for more definitive descriptions of the products included in MNI’s entries, we issued a SRFI to MNI to address this issue.

⁶¹ See MNI’s NTAC Report.

⁶² See MNI’s Initial RFI at “Part IV: Sales,” question 8.

⁶³ See MNI’s RFI Response at Exhibit IV-3.

⁶⁴ *Id.* at Exhibits IV-3 and IV-7.

⁶⁵ *Id.* at Exhibit IV-7.

⁶⁶ *Id.*

⁶⁷ *Id.* at Exhibit IV-3.

⁶⁸ *Id.*

⁶⁹ See, e.g., the Allegations at 3.

⁷⁰ *Id.*, at Exhibit 7(b).

MNI's Supplemental Request for Information

MNI's SRFI contained three questions, and with respect to MNI's entry descriptions, requested as follows:

For the covered merchandise with respect to the entry numbers listed in **APPENDIX I**, please provide the following documents:

- Sales-negotiation correspondence
- Price Lists
- Customer contracts
- Purchase orders from customers
- Order confirmations
- Country of origin certificates
- Invoices
- Purchase order to Chinese Manufacturer from MNI
- CBP Form 7501
- CBP Form 3461
- Packing lists
- Inspection certificates, mill certifications
- Shipping documents such as freight bills, bills of lading and airway bills
- U.S. Customs entry documents
- Sales journal pages recording the selected sale
- Accounts receivable page showing the corresponding sales journal information (or summary information) pertaining to the selected sale
- Records of payment such as canceled checks, letters of credit, debit/credit memos, bank deposit slips and/or bank statements
- Accounts receivable ledger pages
- Cash receipts journals
- General Ledger pages

Documents for each selected sale should be grouped together in chronological order and labeled with the document type in English (*e.g.*, "Invoice"). Any documents in a foreign language must be completely translated into English. Also, if an affiliated party is involved in the chain of distribution, please incorporate affiliated party documents in the attachment submitted.⁷¹

As noted above, MNI requested an extension of time to respond to the SRFI, and stated in its request that a two-week extension would "allow fulsome time for MNI to gather the requested documentation."⁷² CBP granted this extension request in full.⁷³

⁷¹ See MNI's SRFI (emphasis not added). Appendix I contained a list of MNI's POI entries, broken out by entry line, so that CBP could determine which line items contained covered merchandise.

⁷² See MNI's February 6 Extension Request.

⁷³ See CBP's Email, "EAPA Cons 7730: MNI SRFI Extension," dated February 7, 2023.

MNI's SRFI Response did not provide all the requested documents. MNI provided documents for certain entries it deemed to be covered merchandise, but for the majority of entries, MNI explained that it only provided the commercial invoice to demonstrate the entries did not contain covered merchandise.⁷⁴ The commercial invoices provided in MNI's SRFI Response contained various generic descriptions such as:

- [general product name] (invoice [number])⁷⁵
- [general product name] (invoice [number])
- [general product name] (invoice [number])
- [general product name] (invoice [number])
- [specific product name] (invoice [number])
- [general product name] (invoice [number])
- [specific product name] (invoice [number])
- parts for [general product name] (invoice [number]).⁷⁶

Some invoices simply contain part numbers without a description, such as invoice [number].⁷⁷

As noted above, the generic descriptions on MNI's invoices such as [general product name] do not allow CBP to determine whether covered merchandise is a specific part that is included in a particular entry. In sum, MNI's SRFI Response was not responsive to our request for information because it continued to provide generic descriptions of its entered merchandise, and based on the information provided by MNI, there is no way for CBP to determine whether these entries contain covered merchandise. In an attempt to again clarify the specific merchandise being entered, CBP issued a second SRFI.

MNI's Second Supplemental Request for Information

To obtain more specific descriptions of MNI's entered merchandise, CBP requested additional information from MNI, issuing a two-question second SRFI on March 7, 2023. CBP requested the following information (in question 2) with respect to the entries at issue:

An examination of Exhibit 2 of your February 22, 2023, submission indicates that the invoices for certain entries do not list the specific merchandise covered by the entry. Some invoices simply list the merchandise as [general product name and invoice number] or [general product name and invoice number]. As a result, CBP cannot determine if these entries contain covered merchandise.

For the [number] entry lines which MNI claims do not contain covered merchandise listed in Exhibit 2, please submit:

- MNI's purchase order to the manufacturer;
- the invoice from the manufacturer to MNI;

⁷⁴ See MNI's SRFI Response at 6 and Exhibit 2.

⁷⁵ There are approximately a hundred invoices with this description.

⁷⁶ *Id.* at Exhibit 2.

⁷⁷ *Id.*

- the purchase order from the U.S. customer to MNI;
- the invoice from MNI to the U.S. customer; and,
- the 7501.

Please group these documents by entry number.⁷⁸

On March 8, 2023, MNI requested a two-week extension, until March 24, 2023, to respond to the second SRFI, and requested CBP modify the second SRFI to request less information.⁷⁹ CBP declined MNI’s request to modify the questionnaire. This was CBP’s second request for this information, and CBP had already reduced the number of documents requested for each entry from twenty to five.⁸⁰ CBP granted an extension, in part, on March 9, 2023,⁸¹ and on March 16, 2023, CBP granted an additional week of time for MNI to respond to the questionnaire, until March 24, 2023, as MNI originally requested.⁸²

On March 22, 2023, MNI submitted its response early “in order to support CBP’s ability to consider MNI’s request for reporting modification in response to question 2 of the supplemental questionnaire.”⁸³ MNI also indicated that it did not respond to CBP’s request for documents because it would be “burdensome.”⁸⁴ In fact, MNI submitted no documentation, despite being provided two extensions for it to do so. Instead, MNI provided a chart which provided additional but very limited descriptions for its entries. For example, [general product name], [general product name], [general product name], [general product name], and [general product name] were all simply described by MNI as “[general product name],” but MNI did not provide the twice requested documentation to support its assertion that the entries in question do not contain covered merchandise.⁸⁵

CBP notified MNI at the outset of this investigation that:

CBP must conduct this proceeding in accordance with statutory and regulatory deadlines. If you are unable to respond completely to every question in the attached RFI by the established deadline, or are unable to provide all requested supporting documentation by the same date, you must notify the official in charge and submit a request for an extension of the deadline for all or part of the RFI response. If you require an extension for only part of your response, such a request should be submitted separately from the portion of your response filed under the current deadline. Statements included within an RFI response regarding a respondent’s ongoing efforts to collect part of the requested information and promises to supply such missing information when available in the future, do not substitute for a written extension request.⁸⁶

⁷⁸ See MNI’s Second SRFI.

⁷⁹ See MNI’s March 8 Extension Request.

⁸⁰ See MNI’s SRFI and MNI’s Second SRFI for a comparison.

⁸¹ See CBP Email, “EAPA Cons 7730 – Extension Request,” dated March 9, 2023.

⁸² See CBP Email, “EAPA Cons 7730 – Extension,” dated March 16, 2023.

⁸³ See MNI’s Second RFI Response.

⁸⁴ *Id.*

⁸⁵ *Id.* In fact, MNI described all entries as “[general product name].” *Id.* MNI’s chart of products imported during the POI from China indicate [number] different products which include the word [specific product name], but none of these descriptions were used in the chart submitted in MNI’s Second SRFI Response. See MNI’s RFI Response.

⁸⁶ See MNI’s RFI at “Extension Requests.”

Although MNI requested extensions to respond to the second SRFI, extensions which CBP granted, MNI did not provide the requested information, nor did it submit an additional extension request. Although MNI did not indicate it was continuing to make ongoing efforts to gather the information requested to be supplied at a later date, MNI attempted to grant itself an extension by not providing the information and reiterating a request to modify the questionnaire.

Consequently, the record continued to be deficient with respect to whether MNI's entries contained covered merchandise. In a final attempt to bring this matter to a close, CBP issued a third SRFI.

MNI's Third Supplemental Request for Information

Because of MNI's deficient response to the second SRFI, CBP issued a third SRFI on March 29, 2023, and made the modification requested by MNI for the second SRFI. CBP issued a one question SRFI to MNI requesting that:

With respect to the entry numbers, listed in **APPENDIX I (attached)**, which is a shortened version of "3-22-2023 – MNI – Second Supp RFI Response Exhibit 1 – (Cons 7730) – BC.xlsx", please provide the following documents for the listed entries:

- Sales-negotiation correspondence
- Customer contracts
- Customer purchase orders from customers
- Order confirmations
- Purchase order to Chinese Manufacturer from MNI
- CBP Form 7501
- CBP Form 3461
- Invoices from Manufacturers
- Packing lists
- Country of origin certificates
- Inspection certificates, mill certifications
- Shipping documents such as freight bills, bills of lading and airway bills

Documents for each selected sale should be grouped together in chronological order and labeled with the document type in English (*e.g.*, "Invoice"). Any documents in a foreign language must be completely translated into English. Also, if an affiliated party is involved in the chain of distribution, please incorporate affiliated party documents in the attachment submitted.⁸⁷

While the number of requested documents for each entry increased between the second and third SRFIs, the number of entry line items greatly decreased, from [number] entry line items in the second SRFI to [number] entry line items in the third SRFI.⁸⁸

⁸⁷ See MNI's Third SRFI.

⁸⁸ *Id.*

On April 3, 2023, MNI requested an extension and noted that this would “allow fulsome time for MNI to gather the requested documentation.”⁸⁹ On April 4, 2023, CBP granted a partial extension for MNI to respond, and noted that CBP has been requesting this same information from MNI since January 25, 2023, granted MNI extensions each time it requested an extension to respond, modified the questionnaires, and CBP did not intend to grant further extensions for MNI to gather the requested information.⁹⁰ Nevertheless, on April 5, 2023, MNI requested an additional extension, noting one of its ten employees was occupied with a personal issue and was unable to assist in the response,⁹¹ and CBP granted MNI’s requested extension in full on April 7, 2023.⁹²

On April 12, 2023, MNI submitted its response and provided the requested documentation for most entry line items included in the third SRFI.⁹³ However, for several entries, MNI did not submit the requested documentation, as outlined below:

Entry 1157 – According to MNI’s second SRFI response, Entry [number]1157 (Entry 1157) has an entry date of [date], and the invoice number (“load payment invoice”) is [number].⁹⁴ In response to our request for information on Entry 1157, MNI submitted invoice [number] and a 7501 for Entry [number]0167 (Entry 0167), with an entry date of [date].⁹⁵ In addition, the other documents supplied by MNI for entry 1157 match that of Entry 0167, such as mill certificates, inspection certificates and photographs. Because MNI supplied documentation for Entry 0167, and not Entry 1157 as requested, we find MNI’s Third SRFI response to not be responsive to our request for information for Entry 1157.

Entry 1173 – For Entry [number]1173 (Entry 1173), MNI submitted documents identical to those submitted for Entry 1157.⁹⁶ As noted above, however, those documents apply to Entry 0167 and not Entry 1173, or Entry 1157. As the documentation submitted for Entry 1173 applies to Entry 0167, we find MNI did not provide the requested documentation for Entry 1173.

Entry 1207 – For Entry [number]1207 (Entry 1207), MNI submitted documents identical to those submitted for Entry 1157.⁹⁷ As noted above, however, those documents apply to Entry 0167 and not for Entry 1207, Entry 1173, or Entry 1157. As the documentation submitted for Entry 1207 applies to Entry 0167, we find MNI did not provide the requested documentation for Entry 1207.

⁸⁹ See MNI’s April 3 Extension Request.

⁹⁰ See CBP’s Email, “EAPA Cons 7730 – Extension,” dated April 4, 2023.

⁹¹ See MNI’s April 5 Extension Request.

⁹² See CBP’s Email, “EAPA Cons 7730 – Extension,” dated April 7, 2023.

⁹³ See MNI’s Third SRFI Response.

⁹⁴ See MNI’s Second SRFI at Exhibit 2.

⁹⁵ See MNI’s Third SRFI Response at Appendix I, “Entry Ending in 1157.”

⁹⁶ *Id.* at “Entry Ending in 1157” and “Entry Ending in 1173.”

⁹⁷ *Id.* at “Entry Ending in 1157,” “Entry Ending in 1173,” and “Entry Ending in 1207.”

Entry 8781 – According to MNI’s second SRFI response, Entry [number]8781 (Entry 8781) has an entry date of [date], and the invoice number is [number].⁹⁸ In response to our request for information on Entry 8781, MNI submitted invoice [number] and a 7501 for Entry [number]0663 (Entry 0663), with an entry date of [date].⁹⁹ In addition, the other documents supplied by MNI for entry 8781 match that of Entry 0663, such as mill certificates, inspection certificates and photographs. Because MNI supplied documentation for Entry 0663, and not Entry 8781 as requested, we find MNI’s Third SRFI response to not be responsive to our request for information for Entry 8781.

Entry 8799 – For Entry [number]8799 (Entry 8799), MNI submitted documents identical to those submitted for Entry 8781.¹⁰⁰ As noted above, however, those documents apply to Entry 0663 and not Entry 8799, or Entry 8781. As the documentation submitted for Entry 8799 applies to Entry 0663, we find MNI did not provide the requested documentation for Entry 8799.

In sum, rather than submitting the requested documentation for Entry 1157, Entry 1173, and Entry 1207, MNI instead submitted documentation for Entry 0167. In addition, rather than submitting the requested documentation for Entry 8781 and Entry 8799, MNI instead submitted documentation for Entry 0663.

Application of Adverse Inferences to MNI for Certain Entries

In making an evasion determination, 19 U.S.C. § 1517(c)(2) provides CBP the authority to “collect such additional information as is necessary to make the determination through such methods as the Commissioner considers appropriate, including by ... issuing a questionnaire with respect to such covered merchandise to” the importer alleged to have engaged in evasion and the foreign producer of the covered merchandise. Further, 19 U.S.C. § 1517(c)(3) discusses the use of adverse inferences by CBP, stating that if CBP finds that a party “has failed to cooperate by not acting to the best of the party or person’s ability to comply with a request for information, the Commissioner may, in making a determination {of evasion}, use an inference that is adverse to the interests of that party or person in selecting from among the facts otherwise available to make the determination.”¹⁰¹ Additionally, regulation provides that if “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...”¹⁰² Thus, both the statute and implementing regulations are clear that CBP may apply an adverse inference to a party which does not, to the best of its ability, respond to CBP’s RFIs.

CBP issued an RFI and three SRFIs to MNI to determine which of its entries contained covered merchandise, and MNI failed to respond adequately to the four requests for information. MNI

⁹⁸ See MNI’s Second SRFI at Exhibit 2.

⁹⁹ See MNI’s Third SRFI Response at Appendix I, “Entry Ending in 1157.”

¹⁰⁰ *Id.* at “Entry Ending in 1157” and “Entry Ending in 1173.”

¹⁰¹ See 19 U.S.C. § 1517(c)(3).

¹⁰² See 19 C.F.R. § 165.6(a).

was fully aware of what was requested of it, because CBP already requested identical information in the initial RFI, to which MNI responded, providing the requested documentation for certain entries. MNI had also provided such information in its CF28 response.

In MNI's CF28 Response, MNI provided documentation indicating which entries contained covered merchandise and which did not, such as emails, ordering information, and schematics.¹⁰³ Several invoices were provided in the CF28 response, and the invoices issued by MNI to the final customers labelled clearly what the entry contains, for example, invoice [number] clearly indicates it is for [specific product name].¹⁰⁴ Other invoices from the actual suppliers to MNI were less clear, for example, two of the three invoices for load number [number] listed [general product name] and one indicated it is for [specific product name].¹⁰⁵ MNI provided additional documentation that indicated which of the entries were covered and which were not, so although certain invoices listed [general product name], CBP was able to determine they did not contain covered merchandise. In sum, MNI's CF28 Response provided evidence that MNI is capable of providing the information requested by CBP to determine which entries contained covered merchandise.

In MNI's RFI Response, it provided information on certain entries it stated contained covered merchandise, providing photographs, schematics, inspection reports and entry documentation to supports its assertions.¹⁰⁶ For other entries which MNI claimed did not contain covered merchandise, MNI provided less information. For example, documentation for Entry 0746 contained a freight invoice, bill of lading, and email indicating the entry contained [general product name].¹⁰⁷ The invoice and packing list indicated Entry 0746 contained [general product names].¹⁰⁸ An invoice from [company name] indicated that [general product names] are kinds of [general product name].¹⁰⁹ MNI stated that the cast iron portion of a farrowing crate is where the sow stands and that the piglets stand on the tribar flooring, therefore, tribar flooring is a [general product name].¹¹⁰ Given that documentation for Entry 0746 indicated it contained [general product name], this is an example of an entry where CBP requires additional information in order to determine whether it contained covered merchandise.

From January 25, 2023, when CBP issued the first SRFI, until April 7, 2023, when MNI submitted its final response, 72 days elapsed. During that time period, CBP provided MNI with the extensions it requested, extensions it claimed would allow it time to fully respond to our SRFIs. In the Second SRFI, CBP warned MNI that the generic descriptions on its invoices did not allow CBP to determine whether the entry contained covered merchandise. CBP modified the third SRFI to comport with MNI's requests for a modification. CBP even extended the investigation by 60 days to allow MNI more time to respond to the SRFIs, and for CBP to analyze MNI's responses.¹¹¹ In the end, MNI's Third SRFI was only partially complete and the

¹⁰³ See MNI's CF28 Response.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ See MNI's RFI Response at Exhibit IV-6.

¹⁰⁷ *Id.* at Exhibit IV-7.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ See MNI's CF28 Response at 4.

¹¹¹ See Extension Memorandum.

answers it provided to questions did not fully or accurately supply the information requested. More specifically, MNI selectively provided information for certain entries, but not others.

The failure of MNI to fully respond to the SRFIs precludes CBP from performing the necessary analysis of the requested documents to determine whether the entries in question contain covered merchandise. While CBP requested information on certain MNI entries, for some of those entries, MNI provided information on wholly different entries making those specific responses to CBP's inquiries unreliable. Therefore, consistent with 19 U.S.C. § 1517(c)(3)(A) and 19 C.F.R. § 165.6, we have drawn inferences adverse to MNI's interests for failing to cooperate to the best of its ability in responding to the SRFIs. In applying adverse inferences, CBP selects from among the available facts in a manner adverse to MNI's interests to determine that certain MNI entries are Chinese-origin covered steel grating, specifically, Entry 1157, Entry 1173, Entry 1207, Entry 8781, and Entry 8799.

The record indicates that pig farrowing crates, which can also be called gestation stalls, are designed to hold a sow and her piglets. The crate is an enclosure which provides a short-term living space for the sow and piglets and consists of a steel frame, a floor, perimeter panels to enclose the area, and a feeder, although there may be different configurations depending on an end customer's needs. According to the Allegations and the Steel Grating Scope Ruling, which MNI admits properly describe its merchandise, part of the floor of a farrowing crate is the tribar flooring at issue in this investigation.¹¹² In sum, tribar flooring is an integral part of a pig farrowing crate and is the specific flooring component used for piglets. MNI's use of generic terms in its description of merchandise contained in its entries, as listed on its invoices and entry documentation, which are synonyms for pig farrowing crates does not inform CBP of whether the specific entries contain tribar flooring.

MNI did not provide the thrice requested information for certain entries in order for CBP to determine whether tribar flooring was included in the entries. Given that MNI refused to provide information regarding the specific components included in Entry 1157, Entry 1173, Entry 1207, Entry 8781, and Entry 8799 despite multiple requests for this information, CBP finds that MNI failed to cooperate to the best of its ability. To determine the contents of these entries, CBP is drawing inferences adverse to MNI in selecting from among the available facts on the record. Specifically, CBP is applying an inference adverse to MNI to find that Entry 1157, Entry 1173, Entry 1207, Entry 8781, and Entry 8799 contain covered merchandise based on evidence from the Allegations, the Steel Grating Scope Ruling, MNI's CF28 Response, and MNI's RFI Response that indicates these entries contain farrowing crates and that tribar flooring is an integral part of farrowing crates. Even though provided ample opportunities, MNI has failed to provide information that would enable CBP to determine that these entries do not contain tribar flooring.

¹¹² See Steel Grating Scope Ruling at 3; Allegations at 4 – 7; MNI's CF28 Response at 3 – 4.

Issues Raised by Interested Parties

A. Whether tribar flooring is the only farrowing crate component covered by the Orders

Double L's Comments: Double L argues that the *Orders* do not cover any product other than tribar flooring.¹¹³ Double L contends that the Steel Grating Scope Ruling makes clear that the non-steel pig farrowing crate components imported by Double L – cast-iron flooring, plastic or metal clips, holders, rods, bars, brackets and various kits – are excluded based solely on the language of the *Orders* and the physical characteristics of these products.¹¹⁴ As such, Double L asserts that only the tribar portion of its flooring system under consideration is covered by the *Orders*.¹¹⁵

Hog Slat's Rebuttal Comments: Hog Slat agrees with Double L's concession that the *Orders* apply to the tribar flooring at issue in this investigation.¹¹⁶ Hog Slat claims that Double L's analysis is consistent with the EAPA 7474 Determination and the Steel Grating Scope Ruling, covering essentially identical products to the merchandise at issue in this investigation that were entered by other U.S. importers.¹¹⁷ For these reasons, Hog Slat submits that CBP should continue to find that Double L engaged in evasion by entering covered merchandise into the customs territory of the United States without paying the applicable AD/CVD duties.¹¹⁸

CBP's Position: Consistent with the plain language of the *Orders* and bolstered by the Steel Grating Scope Ruling, CBP finds that the tribar flooring portion of farrowing crates and farrowing crate parts entered by Double L and MNI during the POI is covered merchandise.

B. Whether tribar flooring is covered by the Orders

MNI's Comments: MNI maintains that the Steel Grating Scope Ruling, the EAPA 7474 Determination, and the Administrative Review of EAPA 7474 were incorrectly decided, and that tribar flooring is a further manufactured downstream product not covered by the *Orders*.¹¹⁹ MNI contends that the *Orders* do not specifically include downstream products such as pig farrowing crates or farrowing floor systems.¹²⁰ MNI argues that the U.S. Court of Appeals for the Federal Circuit (CAFC) has held that “orders may be interpreted as including subject merchandise only if they contain language that specifically includes the subject merchandise or may be reasonably interpreted to include it.”¹²¹ MNI asserts that the scope of *Orders* does not automatically include

¹¹³ See Double L's Written Arguments at 3 – 5, citing, generally, the Steel Grating Scope Ruling.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ See Hog Slat's Rebuttal Written Arguments at 2 – 3.

¹¹⁷ *Id.* at 3, citing the Steel Grating Scope Ruling and the EAPA 7474 Determination.

¹¹⁸ *Id.*

¹¹⁹ See MNI's Written Arguments at 2 – 3.

¹²⁰ *Id.*

¹²¹ *Id.*, citing *Duferco Steel, Inc. v. United States*, 296 F.3d 1087, 1089 (CAFC 2002).

downstream products as found in *Trendium* and *Stein*.¹²² MNI reasons that CBP should conclude that it did not evade the *Orders*, as its tribar flooring is simply not covered merchandise.¹²³

Hog Slat's Rebuttal Comments: Hog Slat notes that MNI's written arguments do not contest the coverage of tribar flooring as a standalone product under the *Orders*.¹²⁴ Hog Slat disagrees with MNI's contention that tribar flooring escapes the ambit of the *Orders* by virtue of being shipped together with other components, in the same package or set of materials, to form a downstream product.¹²⁵ Hog Slat claims that although MNI is correct that an order's scope language does not automatically include downstream products, it is also the case that products are not automatically excluded from a scope if they are packaged together with other components to form a downstream product.¹²⁶ Hog Slat observes that the International Trade Commission (ITC), in its original injury investigation, identified the covered merchandise as a "downstream steel product," whose common end uses include "flooring," just like MNI's tribar flooring.¹²⁷ Hog Slat maintains that both CBP and Commerce previously analyzed and dismissed similar arguments in prior proceedings involving identical merchandise and determined that the tribar flooring at issue remains covered by the *Orders*.¹²⁸

CBP's Position: CBP disagrees with MNI's contention that its tribar flooring (*i.e.*, steel grating), is not covered merchandise. CBP and Commerce have both found that tribar flooring is covered by the *Orders*, even if it is a component of pig farrowing crates, as summarized below. As noted above, CBP's finding of evasion in *Ikadan* involving tribar flooring portions of pig farrowing crates was sustained by the CIT in the context of a similar investigation reviewed on appeal.

Commerce found that tribar flooring is covered merchandise. The tribar flooring at issue in the Steel Grating Scope Ruling is described as a series of parallel, galvanized cut-to-length steel wire rods or round bars (tribars) connected by welded crossbars with truss supports that have been welded onto the crossbars (also referred to as steel decking).¹²⁹ The Steel Grating Scope Ruling also states that tribar flooring may have legs made of flat steel angles at its corners,¹³⁰ is specifically designed for farrowing crates,¹³¹ and is imported into the United States either with the pig farrowing crate or as part of a flooring system (without the crate).¹³²

CBP determined that tribar flooring (*i.e.*, steel grating), is covered merchandise in EAPA 7474. In the EAPA 7474 Determination, CBP stated that:

¹²² *Id.*, citing *Trendium Pool Prods., Inc. v. United States*, 399 F. Supp. 3d 1335 (CIT 2019) (*Trendium*) and *Stein Industries v. United States*, 365 F. Supp. 3d 1364 (CIT 2019) (*Stein*).

¹²³ *Id.*

¹²⁴ See Hog Slat's Rebuttal Written Arguments at 5 – 6.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*, citing *Certain Steel Grating from China*, Investigation Nos. 701-TA-465 and 731-TA-1161 (Final), dated July 2010 (*ITC Report*), which may be found in the Allegations at Attachment 10.

¹²⁸ *Id.*, citing the EAPA 7474 Determination and the Steel Grating Scope Ruling.

¹²⁹ See the Steel Grating Scope Ruling at 12.

¹³⁰ *Id.* at 3.

¹³¹ *Id.* at 13.

¹³² *Id.* at 4.

After reviewing all the evidence on the record, CBP found that the tribar floors portion of the imported farrowing crate systems is covered merchandise. Because CBP determined that the evidence on the record clearly demonstrated that the tribar floors properly fell within the scope of the AD/CVD orders, CBP was not required to make a scope referral to {Commerce} in this investigation.¹³³ CBP determined that the galvanized tribar floors fell within the scope of the AD/CVD orders because the tribar floors are a product of two or more pieces of steel joined together by welding. The scope of the AD/CVD orders covers “certain steel grating, consisting of two or more pieces of steel, including load-bearing pieces and cross pieces, joined by any assembly process...;” thus, the tribar floors meet the scope definition. Also, the scope does not include any exclusions that apply to the tribar floors.¹³⁴

With respect to MNI’s additional arguments concerning the coverage of downstream products, as found in *Trendium* and *Stein*, Commerce found in the Steel Grating Scope Ruling that the downstream products in those cases underwent extensive modifications, rendering them outside the scopes of those orders, whereas tribar flooring did not undergo a transformation to the extent that it is no longer covered by the *Orders*.¹³⁵ Commerce’s scope ruling therefore further supports CBP’s independent determination that the merchandise at issue is covered within the plain language of the *Orders*.

In sum, the CIT sustained CBP’s determination in EAPA 7474 that tribar flooring is covered by the *Orders*—a determination that was based on the same analysis that CBP is conducting in the instant case: comparing the merchandise at issue and its production process to the scope language contained in the *Orders*.¹³⁶

C. If Double L exercised reasonable care when importing

Double L’s Comments: Double L argues that it employs a multi-layered approach to ensure reasonable care when importing products, such as employing individuals with significant importing backgrounds, customs brokers, and counsel.¹³⁷ Double L notes that, in its RFI responses, it indicated that it maintains a tariff classification database and specifically evaluates and scores vendors on several customs compliance criteria, including the accuracy of entry documents provided by the vendor.¹³⁸

Noting the complexities concerning the Steel Grating Scope Ruling and current litigation with respect to the EAPA 7474 Determination and the Administrative Review of EAPA 7474, Double L argues there is no basis for a penalty or other enforcement action against it, especially considering the substantial resources it devotes to customs compliance, and that it may have

¹³³ CBP is not required to initiate a scope referral to the Department of Commerce. Rather, CBP will initiate a referral only if the Agency is unable to determine whether the imported merchandise properly falls within the scope of the relevant AD/CVD order. See 19 C.F.R. § 165.15(a); see also 19 C.F.R. § 165.16.

¹³⁴ See the EAPA 7474 Determination at 8 (citations omitted).

¹³⁵ *Id.* at 14.

¹³⁶ *Id.* at 24.

¹³⁷ See Double L’s Written Arguments at 6 – 9.

¹³⁸ *Id.*, citing Double L’s RFI Response at 8 – 9.

inadvertently, but reasonably, arrived at a conclusion or result different from that arrived at by CBP and Commerce with respect to covered merchandise.¹³⁹ In addition, Double L contends that should CBP find evasion under EAPA's broad definition of that term, it should not be subject to any additional penalty actions that might accompany such a finding.¹⁴⁰

Hog Slat's Rebuttal Comments: Hog Slat takes no position on whether the activities described in Double L's written arguments rise to the level of reasonable care, nor does Hog Slat opine on whether CBP should undertake additional investigations or enforcement actions against Double L.¹⁴¹

Hog Slat disagrees with Double L that there is ambiguity in the scope of the *Orders* and asserts that the *Orders* are relatively simple and clearly apply to the tribar flooring product described by Double L.¹⁴² Hog Slat states that the ITC characterized the covered merchandise in similar terms to the language used by Double L to describe its own tribar flooring product.¹⁴³ Moreover, Hog Slat asserts that, given that the instant investigation covers merchandise entered into the United States after the EAPA 7474 Determination on essentially identical tribar flooring products, Double L was provided with notice beyond the clear language of the *Orders* that its tribar flooring was covered merchandise.¹⁴⁴ Hog Slat claims that pending litigation on EAPA 7474 does not prove that the scope of the *Orders* is unclear.¹⁴⁵

CBP's Position: While Double L is required to exercise reasonable care in making entry, a finding of evasion under EAPA does not require CBP to consider an importer's state of mind at the time of entry.¹⁴⁶ Accordingly, we have made no determination as to whether Double L took reasonable care in making its entries in coming to our determination of evasion. Per 19 U.S.C. § 1517(h), CBP, or other agencies, is not precluded from pursuing additional enforcement actions or penalties, as appropriate.

D. Whether MNI's actions lacked intent and materiality

MNI's Comments: According to MNI, it had no reason to know that its tribar steel flooring was covered steel grating and classified its entries under HTSUS 7308.90.9590.¹⁴⁷ MNI maintains there was no intent to evade AD/CVD duties because: (a) neither the Commerce Petition or the ITC investigation indicated the *Orders* were intended to cover downstream products; and (b) the only notice MNI had indicated that its entries were not covered merchandise because it received a CF28 in [year] to which it responded and received no feedback from CBP, leading MNI to believe its entries were properly made.¹⁴⁸

¹³⁹ *Id.*, citing the Steel Grating Scope Ruling, the EAPA 7474 Determination and the Administrative Review of EAPA 7474.

¹⁴⁰ *Id.*

¹⁴¹ See Hog Slat's Rebuttal Written Arguments at 3 – 4.

¹⁴² *Id.*

¹⁴³ *Id.*, citing the *ITC Report* at 5.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ See 19 U.S.C. § 1517(a)(5).

¹⁴⁷ See MNI's Written Arguments at 4 – 7.

¹⁴⁸ *Id.*

MNI reasons that CBP should find no evasion because there is no evidence that MNI made a “material and false” statement, or a “material” omission.¹⁴⁹ MNI argues that in *Diamond Tools* the CIT held that the EAPA statute requires at least some indication of intent or culpability.¹⁵⁰ MNI claims that in the instant investigation, and in *Diamond Tools*, the only purported evidence of evasion is that MNI allegedly selected an incorrect entry type, constituting a *per se* false statement.¹⁵¹

Hog Slat’s Rebuttal Comments: Hog Slat maintains CBP should reject MNI’s argument that CBP’s correspondence and subsequent actions, or inactions, are indicative of CBP’s legal position as to whether MNI’s tribar flooring is covered merchandise.¹⁵² According to Hog Slat, the very purpose of this investigation is to examine whether MNI’s tribar flooring entries are covered merchandise, and thus, subject to AD/CVD duties.¹⁵³ Hog Slat maintains it is unreasonable and illogical for MNI to assert that it had a reasonable basis to believe that its tribar flooring was somehow not covered by the *Orders* because CBP is only now investigating whether MNI’s tribar flooring is covered merchandise.¹⁵⁴

Hog Slat argues that the statutory definition of “evasion” does not include any intentionality requirement.¹⁵⁵ Hog Slat reasons that the definition of “evasion” is satisfied when, as a matter of fact, covered merchandise is entered into the United States through, *inter alia*, an act that is material and false or an omission that is material, that results in the non-payment of otherwise applicable AD/CVD duties.¹⁵⁶ Hog Slat contends that MNI’s reliance on the *Diamond Tools* case does not advance its arguments because the facts in *Diamond Tools* are somewhat unique. Hog Slat observes that in Commerce’s diamond sawblades investigation it issued a scope ruling indicating that country of origin should be determined by the location of where the diamond sawblade segments are joined to the diamond sawblade cores,¹⁵⁷ and then later in a different scope ruling found that diamond sawblades made in Thailand from Chinese cores and segments were circumventing the order on diamond sawblades from China, effectively reversing its earlier determination.¹⁵⁸ Hog Slat notes that the Court opined that the two rulings by Commerce created a situation where the importer could not have made the “false statement” or “material omission” necessary for evasion because, at the time of the entries, Commerce had unambiguously stated that the relevant merchandise was outside the scope of the order at issue in that investigation.¹⁵⁹ Hog Slat remarks that the facts in *Diamond Tools* are quite different from the current investigation because there has never been any clear exclusion that resulted in the removal of

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*, citing *Diamond Tools Technology LLC v. United States*, 545 F. Supp. 3d 1324 (CIT 2021); and *Diamond Tools Technology LLC v. United States*, No. 20-00060, 2022 WL 17730761, (CIT 2022) (collectively, *Diamond Tools*).

¹⁵¹ *Id.*

¹⁵² See Hog Slat’s Rebuttal Written Arguments at 6 – 9.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ See Hog Slat’s Rebuttal Written Arguments at 6, citing 19 U.S.C. § 1517(a)(5)(A).

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at 7, citing *Diamond Tools* at 1351 – 1352.

¹⁵⁸ *Id.*, citing *Diamond Tools* at 1330 – 1331.

¹⁵⁹ *Id.*

MNI's tribar flooring from the *Orders*, such that MNI had reasonable basis to believe that no duties were owed.¹⁶⁰ For these reasons, Hog Slat claims, the *Diamond Tools* case is inapposite.

CBP's Position: As discussed above, the plain language of EAPA does not require CBP to analyze whether the importer acted with intent or knowledge when making false statements that resulted in avoiding the payment of AD/CVD.¹⁶¹ As such, MNI's arguments that it did not act intentionally are inapposite. As noted above, CBP finds that MNI's imports of steel grating are covered by the *Orders*. As such, when MNI entered this merchandise into the United States and declared it as type 01 instead of type 03, the latter of which would denote that it is subject to AD/CVD but the former of which would not, MNI made a false statement. This false statement was materially false because it resulted in MNI failing to pay the applicable AD/CVD duties.

Moreover, MNI claims it was notified by CBP that its entries were properly made, because after receiving a CF28 and responding, CBP took no actions on the entries in question. The record contains no information as to why a CF28 was issued to MNI in [year], but it may not have been at all related to whether AD/CVD duties were due. To start, the CF28 referenced by MNI was only 18 words long, stating: “[three short questions].” This is in stark contrast to the more detailed CF28s issued in this investigation which were 243 words long. MNI did not provide anything from the manufacturer in its response to the [year] CF28, nor did it provide any invoices, packing lists, or purchase orders, nor was it asked to. Nowhere in MNI's response to the [year] CF28 does it indicate the flooring at issue is described as steel grating or tribar flooring. In response to the [year] CF28, MNI provided prior CBP rulings for two flooring products which are dissimilar to flooring made of steel grating. Importantly, the fact that CBP did not take any further actions on these two entries in [year] does not absolve MNI from performing its due diligence to ensure reasonable care in making entries.

E. If tribar flooring is not outside the scope of the *Orders*, CBP should issue a determination for MNI limited to entries it identified as covered merchandise

MNI's Comments: According to MNI, it has willingly and actively participated in this EAPA investigation, including providing detailed sales information for over 62 entries of covered and non-covered merchandise.¹⁶² MNI maintains that, should CBP make an affirmative finding of evasion, it must limit its determination and application of duties to only those entries of covered merchandise identified in MNI's Second SRFI Response.¹⁶³

Hog Slat's Rebuttal Comments: Hog Slat defers to CBP to appropriately identify which of MNI's entries contain the covered merchandise.¹⁶⁴ According to Hog Slat, such entries may include tribar flooring entered as a standalone product, or tribar flooring packaged with other components to form certain downstream products.¹⁶⁵ For any entries containing tribar flooring,

¹⁶⁰ *Id.* at 8.

¹⁶¹ See *Ikadan Sys. USA, Inc. v. United States*, No. 21-00592, 2023 WL 3962058, at *7 (Ct. Int'l Trade June 13, 2023) (“EAPA read as a whole supports CBP's strict liability interpretation of the definition of evasion.”).

¹⁶² See MNI's Written arguments at 7 – 8.

¹⁶³ *Id.*, citing MNI's Second SRFI Response at Exhibit 1.

¹⁶⁴ See Hog Slat's Rebuttal Written Arguments at 9.

¹⁶⁵ *Id.*

Hog Slat respectfully submits that such entries should be subject to proper treatment under the *Orders*.¹⁶⁶

CBP's Position: MNI provided information purporting to show which of its entries were covered by the *Orders* and which were not. CBP analyzed the information provided by MNI and finds that certain of its entries are covered merchandise. However, CBP does not agree with MNI's identification of which entries contain covered merchandise. As discussed above in the "MNI" section, CBP applied adverse inferences to MNI because it did not cooperate to the best of its ability in providing information on certain entries so that CBP could determine if those entries did, in fact, contain covered merchandise.

Actions Taken Pursuant to the Affirmative Determination of Evasion

In light of CBP's determination that the Importers entered covered merchandise into the customs territory of the United States through evasion, and pursuant to 19 U.S.C. § 1517(d) and 19 C.F.R. § 165.28, CBP will suspend or continue to suspend the liquidation of all entries imported by the Importers that are subject to EAPA consolidated investigation 7730 and continue suspension until instructed by the Department of Commerce to liquidate these entries. For those entries previously extended in accordance with the interim measures, CBP will rate adjust and change those entries to type 03 and continue suspension until instructed by the Department of Commerce to liquidate these entries. CBP will also continue to evaluate the Importers' continuous bonds in accordance with CBP's policies and may require single transaction bonds as appropriate. None of the above actions precludes CBP or other agencies from pursuing additional enforcement actions or penalties.¹⁶⁷

Sincerely,



Victoria Cho
Acting Director, Enforcement Operations Division
Trade Remedy Law Enforcement Directorate
Office of Trade

¹⁶⁶ *Id.*, citing 19 C.F.R. § 165.28.

¹⁶⁷ *See* 19 U.S.C. 1517(h).