



## PUBLIC VERSION

January 23, 2024

[ names ]

On behalf of Suzhou Quality Import and Export Co.  
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Suzhou Industrial Park, Suzhou, Jiangsu, China

[ email addresses ]

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Re: EAPA Case No. 7811 - Notice of Determination as to Evasion

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To Representatives of the above-referenced Entities:

Pursuant to an examination of the record in Enforce and Protect Act (“EAPA”) Case 7811, U.S. Customs and Border Protection (“CBP”) has reached a determination as to whether Suzhou Quality Import and Export Co. entered merchandise covered by the antidumping (“AD”) and countervailing duty (“CVD”) orders A-570-967 and C-570-968, respectively, on aluminum extrusions from the People’s Republic of China (“China”).<sup>1</sup>

CBP determined there is substantial evidence that importer Suzhou Quality Import and Export Co. (“Suzhou Quality” or “the Importer”) entered covered merchandise for consumption into the customs territory of the United States through evasion. Specifically, Suzhou Quality imported into the United States Chinese-origin aluminum extrusions but not did not enter these extrusions as subject to the AD/CVD orders.

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<sup>1</sup> See *Aluminum Extrusions From the People’s Republic of China*, 76 Fed. Reg. 30,650 (May 26, 2011) (“AD Order”) and *Aluminum Extrusions From the People’s Republic of China*, 76 Fed. Reg. 30,653 (May 26, 2011) (“CVD Order”), respectively (collectively, AD/CVD orders).

## Background

### *Allegation and Initiation*

As noted in the initiation memorandum for Suzhou Quality, the Aluminum Extrusions Fair Trade Committee (“AEFTC”) filed an EAPA allegation against the Importer.<sup>2</sup> On February 28, 2023, CBP acknowledged receipt of the properly filed EAPA allegation.<sup>3</sup>

AEFTC alleged that Suzhou Quality entered Chinese-origin aluminum extrusions into the United States that are subject to the *AD/CVD orders* without declaring them subject to those orders or paying the required *AD/CVD* cash deposits.<sup>4</sup> On March 21, 2023, based on the information in the Allegation summarized below, the Trade Remedy Law Enforcement Directorate (“TRLED”) within CBP’s Office of Trade, initiated an EAPA investigation against Suzhou Quality.<sup>5</sup>

AEFTC noted the U.S. Department of Commerce has determined many aluminum fence products are covered by the scope of the *AD/CVD orders*, and [ data source ] shipment information indicates Suzhou Quality shipped to the United States products labeled as “aluminum fence” and “aluminum fence and posts.”<sup>6</sup> AEFTC also noted such products are typically made from aluminum extrusions, and not from aluminum alloys which are excluded from the *AD/CVD orders*.<sup>7</sup> As discussed below, AEFTC also provided evidence for concluding *AD/CVD* duties were not paid on entries of such aluminum extrusion merchandise imported by Suzhou Quality. AEFTC provided evidence that [ company name ], which, based on information provided by AEFTC, is [ company relationship ], gave [ business term and action ] for aluminum fence components that are too low to reflect the substantial *AD/CVD* duties that would be applicable given the [ business term and action ], even when the analysis uses conservative assumptions (*i.e.*, not accounting for U.S. brokerage and handling expenses or normal U.S. duties, each of which would contribute to differences between [ business terms ]).<sup>8</sup> As noted in the Initiation, given the information available to the Allegor relating to Suzhou Quality customers, it was reasonable for AEFTC to identify Suzhou Quality as the U.S. importer for its own exports from China, as it is not unusual for foreign entities to register as U.S. importers.<sup>9</sup> Finally, CBP confirmed that the Importer entered merchandise during the EAPA period of investigation (POI) as country of origin [ location ] and under a Harmonized Tariff Schedule of the United States (“HTSUS”) number associated with extruded aluminum fence components covered by the scope

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<sup>2</sup> See the March 21, 2023, document named Initiation of Investigation for EAPA Case Number 7811 – Suzhou Quality Import and Export Co. (“Initiation”); see also Aluminum Extrusions from the People’s Republic of China: Request for an Investigation under the *Enforce and Protect Act*, submitted on January 17, 2023, but dated January 13, 2023 (“Allegation”).

<sup>3</sup> See the email from TRLED to counsel for AEFTC dated February 28, 2023.

<sup>4</sup> See Allegation.

<sup>5</sup> See Initiation.

<sup>6</sup> See Initiation at 4. See also Allegation at 6-12, Exhibit 2, and Exhibits 5 through 10.

<sup>7</sup> See Initiation at 4. See also Allegation at 8 and Exhibit 2.

<sup>8</sup> See Initiation at 4. See also Allegation at 6, 13-16, Exhibit 2, and Exhibit 19.

<sup>9</sup> See Initiation at 4.

of the AD/CVD orders, and [ *business activity* ] on those entries.<sup>10</sup> Consequently, there was sufficient evidence to reasonably suggest that AD/CVD duties were not being paid on subject entries of aluminum extrusions from China imported by Suzhou Quality.

### *CF28*

On December 7, 2022, CBP’s Center of Excellence and Expertise (“CEE”) issued a Customs Form 28 (“CF28”) to Suzhou Quality covering entry number [ *number* ]6142 (“Entry 6142”).<sup>11</sup> At the time of entry, Suzhou Quality had identified Entry 6142, whose merchandise entered during [ *month* ] 2022, during the POI, as including merchandise classifiable under the basket category HTSUS number 7610.90.0080 (which includes aluminum extrusion fence parts), with country of origin [ *location* ].<sup>12</sup> Suzhou Quality had also reported this as a type [ *#* ] entry, not subject to the aluminum extrusion AD/CVD orders.<sup>13</sup> The CF28 requested that the Importer provide “photographs of all items included in this shipment,” and that a “complete entry packet {was} required (invoices, packing lists, mill test certificates).” The CF28 also noted that “if metal is poured at a different location than the forming,” then mill test certificates should be provided “from both mills (melt and pour and forming mills).” In addition, the CF28 indicated that a response to the request for information was expected within 30 days of the request, subject to possible change through interaction between the Importer (or its representative) and CBP.<sup>14</sup>

On January 17, 2023, the CBP official identified on the CF28 and an individual named [ *name* ], with email address [ *email address* ], engaged in an email exchange regarding the CF28 for Entry 6142 and Entry 1980.<sup>15</sup> The CBP official noted that no CF28 response had been provided for Entry 6142 or for Entry 1980, and that the required documents should be uploaded into the Automated Commercial Environment (“ACE”) Document Image System (“DIS”) as soon as possible. The official also warned that “{f}ailure to respond may result in liquidated damages.” [ *name* ] responded that she is “the point of contact for this issue,” that she had “reached out to the {I}mporter of record again,” and that she hoped for a response by the end of the day January 18, 2023, having warned the Importer the information was past due.<sup>16</sup> [ *name* ] noted that she believed “there were delays due to the holidays and office closures.”<sup>17</sup>

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<sup>10</sup> See Initiation at 4. See also NTAC Report documentation dated March 14, 2023.

<sup>11</sup> On the same day, the CEE issued a CF28 to Suzhou Quality for another entry, [ *number* ]1980 (“Entry 1980”). That entry occurred just prior to the beginning of the POI of this EAPA investigation. The discussion here focuses primarily on the POI Entry 6142, but there were no substantive differences in the documentation provided for both entries.

<sup>12</sup> See the entry summary information for Entry 6142, which TRLED accessed in ACE on April 10, 2023.

<sup>13</sup> Id.

<sup>14</sup> See December 7, 2022, CF28 for Entry 6142.

<sup>15</sup> See January 17, 2023, email exchanges involving those parties.

<sup>16</sup> Id.

<sup>17</sup> Id.

Later that day, CBP issued CF29s Notice of Action for each of the two aforementioned entries. Those CF29s indicated the entries were changed to reflect that the merchandise was subject to the AD/CVD order duties.<sup>18</sup> The CF29s referenced a lack of response to the CF28.<sup>19</sup>

On February 1, 2023, [ name ] contacted the aforementioned CBP official, indicating that documentation for Entry 6142 and Entry 1980 had been uploaded to CBP systems.<sup>20</sup> The documents relating to Entry 6142, an entry initially examined by the CEE that entered during the POI of this EAPA investigation, include the following:

- a) the original CF28 form, now signed by someone named “[ name ]” and identified as a sales manager;
- b) a proforma invoice and packing list, both of which are not dated, and both of which reference Suzhou Quality as the seller and another entity, [ company name ], with an unspecified role (presumably buyer or consignee);
- c) a chart with 14-line items containing chemical content information and repeated references to grade [ number]; and
- d) six pages with photos of assorted fence parts and components.<sup>21</sup>

The proforma invoice and packing list in the CF28 response for Entry 6142 contain separate line items for multiple numbers of [ products ], [ products ], [ products ], and [ products ], and both documents state the following: “[ product and description

].” The proforma invoice contains individual line items for each type of part/component, with individual unit prices per part/component and individual dollar values for the total volume of each type of part/component. The proforma invoice and the packing list both, in a note “E”, describe the packaging as follows: “[ description

].” The packing list indicates the entire volume of the shipment, covering the [ # ] packs of different parts/components, encompassed [ # ] cubic meters.<sup>22</sup>

The first page of the photographs in the CF28 response states the following: “[ reference to products ].”<sup>23</sup> In addition, one of the other pages with photographs explains:

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<sup>18</sup> See the respective CF29 documents for Entry 6142 and Entry 1980, both dated January 17, 2023.

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

<sup>20</sup> See the February 1, 2023, email from said party to the aforementioned CBP official. See also the February 1, 2023, CF28 response documents extracted by TRLED from CBP systems (“CF28 Response”) for each of the two entries.

<sup>21</sup> See the February 1, 2023, CF28 Response for Entry 6142.

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

<sup>23</sup> *Id.*

“[ descriptions of products ],<sup>24</sup>

The photographs show different types of parts grouped and even packaged separately from others.<sup>25</sup>

Finally, the party that appears to be the ultimate consignee or customer, as noted above, is identified on the proforma invoice and packing list as [ company name ].<sup>26</sup>

On April 3, 2023, an individual named [ name ], with email address [ email address ], provided the CBP official with two mill test certificates the sender indicated relate to the two entries in question (*i.e.*, Entry 6142 and Entry 1980); the certificates are identified as those of a firm called [ company name ], with the following address: “[ address ].”<sup>27</sup> Each of the two certificates identifies the “material” as [ number ], which is a 6000 series aluminum grade, explicitly covered by scope of the AD/CVD orders.<sup>28</sup>

#### *Five Rejected Entries*

Soon after the Importer failed to meet the deadline for submitting its CF28 responses for Entry 6142 and Entry 1980, the CEE rejected five other entries from the Importer that exhibited the same general fact pattern (HTSUS, country of origin, and entry type) as Entry 6142. The rejection of those entries was acknowledged in an email from [ name ], employed by the customs broker [ company name ].<sup>29</sup> [ name ] later submitted a letter from Suzhou Quality, containing photographs and illustrations of fence material, and claiming the merchandise associated with the rejected entries was not subject to the AD/CVD orders.<sup>30</sup> That letter claims “the fully assembled aluminum fence{s} exported are not subject” to the AD/CVD orders because they are “finished goods” and do not require “further finishing or fabrication, such as cutting or punching.”<sup>31</sup> It states each product “is finished” and that the customer “only need sell or install it into {the} ground” without the need of “any further process.”<sup>32</sup> In short, Suzhou Quality claims its entries are excluded from the AD/CVD orders under the “finished goods kits” exclusion referenced in the scope of those orders, which are discussed below.<sup>33</sup>

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

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

<sup>26</sup> *Id.*

<sup>27</sup> See April 3, 2023, email from [ name ] and attachments.

<sup>28</sup> *Id.* See also the AD/CVD orders, for scope language, and the ASM International document included on the record of this investigation that is dated April 10, 2023.

<sup>29</sup> See January 9, 2023, email acknowledgement from [ name ] to the aforementioned CBP officer, which notes in the subject line the following entries: [ number ]7949 (“Entry 7949”), [ number ]8095 (“Entry 8095”), [ number ]0542 (“Entry 0542”), [ number ]5697 (“Entry 5697”), and [ number ]9101 (“Entry 9101”). All five of these entries occurred during the POI for this EAPA investigation.

<sup>30</sup> See January 18, 2023, email with attachments from [ name ].

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

On January 19, 2023, Suzhou Quality submitted into the CBP system entry packages for each of the five entries, which included the following information: entry summary (CF7501), Customs release form (CF3461), commercial invoice, packing list, and other shipping documents.<sup>34</sup> For each entry, the documentation references only one line item of merchandise, “[ product ],” with the exception of the CF3461 for four of the five entries, within each of which a single line item refers to “[ products ].”<sup>35</sup> There is no indication in any of the documents in these entry packages that all parts required for a finished goods kit are present, which is a requirement for the “finished goods kits” that are excluded from the order (see discussion below), and no reference to the word “kit” or other narrative suggesting the merchandise might constitute a “finished goods kit.”<sup>36</sup>

On January 30, 2023, the CEE requested information from Suzhou Quality regarding these entries.<sup>37</sup> In response, on February 1, 2023, [ name ] provided answers and a document he referred to as a “mill certificate.”<sup>38</sup> What [ name ] referred to as a mill certificate more appropriately appears to be no more than a chart with multiple lines of chemical content information, and in each instance reference the same 6000 series grade that was identified for Entry 6142.<sup>39</sup> In that response, Suzhou Quality acknowledges that “the panels and gates” it is importing “are extruded material,”<sup>40</sup> albeit in the context of finished good kits excluded from the AD/CVD orders.

Later, [ name ], identified as a [ job title ], also employed by [ compay name ], submitted five actual mill test certificates to CBP, indicating they relate to the five rejected entries. Each of these five certificates references the same firm ([ company name ]) and firm address as that identified in the certificates submitted for Entry 6142 and Entry 1980, and each identify the “material” as [ number ], which is a 6000 series aluminum grade covered by the scope of the AD/CVD orders.<sup>41</sup>

### *Notice of Initiation of Investigation and Interim Measures*

As discussed below, while Suzhou Quality did not deny that it was importing Chinese-origin aluminum extrusion fence parts/components, it claimed the imported merchandise was not subject to the AD/CVD orders.

Regarding the country of origin, Suzhou Quality did not claim that any of the products associated with the seven entries in question were not Chinese in origin, and as discussed above, it

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<sup>34</sup> See the January 19, 2023, email from [ name ], and the respective January 19, 2023, sets of documents for Entry 7949, Entry 8095, Entry 0542, Entry 5697, and Entry 9101.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> See January 30, 2023, email from the aforementioned CBP official to [ name ].

<sup>38</sup> See February 1, 2023, email with attachments from [ name ].

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> See April 3, 2023, email with attachments from [ name ]. These mill certificates were also submitted via ACE.

described products in those entries using aluminum fence parts/components terminology. In addition, as noted above, information provided by Suzhou Quality identifies the grade of aluminum for the merchandise as one in the 6000 series, which is a series that the scope of the AD/CVD orders explicitly identifies as covered. Furthermore, [ name ] acknowledged in the February 1, 2023, submission that for the five rejected entries, “the panels and gates are extruded material,” and Suzhou Quality did not provide any information suggesting the fence parts included in Entry 6142 (or Entry 1980, which is outside the POI of this investigation) were anything other than extruded material, which is explicitly covered by the AD/CVD orders unless subject to an exclusion referenced in the scope of the AD/CVD orders: the beginning of the scope indicates “{t}he merchandise covered by the order is aluminum extrusions...,” and later, the scope indicates “{s}ubject 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,” and that “{s}uch parts that otherwise meet the definition of aluminum extrusions are included in the scope.”<sup>42</sup>

Suzhou Quality claimed the aluminum extrusion fence/component parts originating in China that were included in the seven entries are not subject to the AD/CVD orders because it was importing “finished goods kits,” which are specifically excluded from the scope of the AD/CVD orders on aluminum extrusions. The scope language for the AD/CVD orders “excludes finished goods containing aluminum extrusions that are entered unassembled in a ‘finished goods kit.’”<sup>43</sup> Regarding what constitutes a “finished goods kit,” the scope states the following:

A finished goods kit is understood to mean a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled “as is” into a finished product. An imported product will not be considered a “finished goods kit” and therefore excluded from the scope of the Order merely by including fasteners such as screws, bolts, etc. in the packaging with an aluminum extrusion product.”<sup>44</sup>

However, the mere presence of an assortment of parts/components and associated items is not sufficient for the merchandise to be classified as a “finished goods kit,” as is evident from additional language in the scope of the AD/CVD orders: “{a}n imported product will not be considered a ‘finished goods kit’ and therefore excluded from the scope of the Order merely by including fasteners such as screws, bolts, etc. in the packaging with an aluminum extrusion product.”<sup>45</sup>

Regarding the five rejected entries (Entries 7949, 8095, 0542, 5697, and 9101), the descriptions of the imported merchandise do not support Suzhou Quality’s claim that it was importing “finished goods kits.” As discussed above, the typical general description of the imported

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<sup>42</sup> See the scope of the AD/CVD orders references above.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

merchandise that appears on the documentation submitted by Suzhou Quality refers simply to “[ product ],” and where more detail does appear, on the CBP Customs release form, the reference is to “[ products ].” As is evident from the discussion above, there are no references to a range of parts and associated items, such as fasteners, that, based on the language of the scope exclusion in question, would be necessary, but not sufficient, for the imported merchandise to be collectively classified as a “finished goods kit.” Furthermore, as noted above, the documentation submitted by Suzhou Quality that it claims are associated with the entries in question do not even make any reference to “kit” or other terminology that would suggest that the merchandise represents a set of items.

For Entries 6142 and 1980, despite references to the word “kit” on the proforma invoices and packing lists, those specific entry package documents, as well as other information on the record for those entries suggest the imported merchandise was entered into the United States as bulk package combinations of individual types of parts, rather than as a “finished goods kit.”<sup>46</sup> For example, considering the documentation for Entry 6142:

a) Both the proforma invoice and the packing list<sup>47</sup> not only list each of the individual types of parts/components and accessories on different line items, but they identify different net weights, gross weights, unit prices, and total prices for each type individually.<sup>48</sup>

b) It is not evident that the parts/components and accessories identified in the proforma invoice and the packing list constitute all of the items needed “to fully assemble a final finished good;” for example, the Fence Workshop Kit that TRLED located contains a broader array of parts/components and accessories than those listed in the Suzhou Quality proforma invoice and packing list,<sup>49</sup> and, furthermore, as AEFTC has noted, the U.S. Department of Commerce ruled, citing language from the scope of the orders, that an imported product will not be considered a “finished goods kit” and excluded from the scope merely by

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<sup>46</sup> As an initial point, Suzhou Quality failed to respond in a timely fashion to the CEE’s request for information about this entry and did not request additional time to submit the information prior to the passing of the deadline. Nevertheless, we are considering the information that Suzhou Quality submitted subsequent to the CEE’s issuance of the CF29 citing that non-response when advising that the entry was to be converted to Type 03 subject to AD/CVD duties.

<sup>47</sup> Although it is unclear whether the proforma invoice and the packing list are specific to Entry 6142, given the lack of details, such as date and failure to detail the role of [ company name ] in the transaction, for purposes of this analysis, CBP will assume the information in those documents does relate to the transaction in question.

<sup>48</sup> There is no indication that Suzhou Quality segregated the items and weights and values for individual types of items for Customs purposes. Also, TRLED located via the Internet an example of an aluminum fence “kit” being offered by another entity within the United States; that “kit” lists the individual parts and accessories in detail, but identifies a single price for the overall kit, rather than referencing individual value subtotals for each individual item. See Fence Workshop Kit document, dated April 11, 2023.

<sup>49</sup> Note that CBP is not concluding that the Fence Workshop Kit identified by TRLED itself would even qualify as a “finished goods kit” were it to be imported into the United States but, rather, that it possesses physical properties and sale description information of some form of actual fence kit.



including fasteners such as screws, bolts, *etc.* in the packing with an aluminum extrusion product.<sup>50</sup>

c) As noted above, both the proforma invoice and the packing list state, “Package as photo,” and, also noted above, the only photographs provided by the Importer with the proforma invoice and packing list contain what appear to be packaged individual types of items that are packaged separately from each other, rather than being together in a “packaged combination” as required for “finished goods kits” excluded from the scope of the AD/CVD orders.<sup>51</sup>

d) As noted above, the packing list refers to [ # ] cubic feet as the “cubic” measurement covering all the listed items, but there is no photograph or documentary evidence of a single package or other container containing all the items that is of any dimension, let alone [ # ] cubic feet.

As discussed above, a documentary examination of aluminum fence components referenced in the various Suzhou Quality entries indicate that the imported merchandise consisted of Chinese-origin extruded aluminum products covered by the scope of the AD/CVD orders, and that such merchandise was not imported as “finished good kits” excluded from the scope of the AD/CVD orders. Consequently, CBP found that there was reasonable suspicion that such merchandise is covered by the AD/CVD orders, and Suzhou Quality should have declared the merchandise in question as subject to the AD/CVD orders and paid the required AD/CVD cash deposits. Consequently, CBP imposed interim measures on Suzhou Quality’s imports of aluminum extrusions from China pursuant to the investigation.<sup>52</sup>

## **Post-Interim Measures**

### *Requests for Information*

On July 6, 2023, CBP issued via email a request for information (“RFI”) to Suzhou Quality in relation to various of its U.S. entries.<sup>53</sup> Suzhou Quality failed to respond by the July 20, 2023,

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<sup>50</sup> See Allegation at 10 (footnote 30), referencing Ameristar Kitted Fences Final Scope Ruling at 6, attached in the Allegation at Exhibit 6. That ruling found “that the kitted fence does not meet the description of the ‘finished goods kit’ because it does not contain all of the parts necessary to fully assemble a final finished fence system and consists solely of subject aluminum extrusions (*i.e.*, fence posts, pickets and rails) and fasteners (screws and grommets).” See the Allegation at Exhibit 6 (final page).

<sup>51</sup> As in the case of the proforma invoice and packing list, CBP is assuming in this analysis, for the sake of argument, that the photos provided by the importer are representative of the shipment in question, even though there is no evidence that those photographs were taken of the actual shipment products/packaging associated with the entered merchandise.

<sup>52</sup> See “Notice of Initiation of Investigation and Interim Measures: EAPA Case 7811,” dated June 27, 2023 (“NOI”).

<sup>53</sup> See “Request for Information to Importer regarding Enforce and Protect Act investigation,” transmitted via an email from Steve Bezirgianian to representatives of Suzhou Quality, both dated July 6, 2023. For its emails to Suzhou Quality, CBP used email addresses provided by Customs brokers for Suzhou Quality. See CBP/broker email exchange documents dated June 13, 2023 and June 28, 2023. CBP had earlier emailed the public version of

deadline. On July 21, 2023, CBP again via email requested a response to that RFI, with a new deadline of July 28, 2023,<sup>54</sup> but received no response. On August 3, 2023, CBP tried to send the RFI to Suzhou Quality via Federal Express, with a response deadline of August 17, 2023. CBP used an address and phone number consistent with shipment-specific information on the record of the investigation, but Federal Express was unable to deliver the document despite its attempt to do so.<sup>55</sup>

#### *Additional Submissions*

On October 10, 2023, AEFTC submitted new factual information.<sup>56</sup>

Neither party to the investigation submitted written arguments.

#### **Analysis**

Because Suzhou Quality never responded to CBP's RFI (which CBP sent multiple times using multiple methods), CBP's ability to obtain information for its investigation was impeded significantly. EAPA's regulations at 19 C.F.R. § 165.6(a) state 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 RFI 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...."<sup>57</sup> Because Suzhou Quality failed to respond to CBP's RFI in the multiple instances described above, CBP finds that Suzhou Quality has not cooperated and complied with CBP's RFI during the underlying investigation to the best of its ability. The evidence on the administrative record amounts to substantial evidence of evasion, as Suzhou Quality provided no clarification or rebuttal of that evidence though given multiple opportunities to participate in the investigation process. As discussed below, CBP is drawing inferences adverse to Suzhou Quality from the information submitted to CBP in the Allegation and other information obtained during CBP's investigation.<sup>58</sup>

Under 19 U.S.C. § 1517(c)(1)(A), to reach a final 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." 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 of any amount of applicable antidumping or

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the NOI to two of those email addresses provided by one of the brokers, as well as to counsel to AEFTC. *See* TRLED email to parties to the investigation dated June 27, 2023.

<sup>54</sup> *See* the email from Steve Bezirgianian to representatives of Suzhou Quality, dated July 20, 2023.

<sup>55</sup> *See* the redated August 3, 2023, version of the RFI, and the August 28, 2023, memorandum to the file.

<sup>56</sup> *See* "Aluminum Extrusions from the People's Republic of China: Voluntary Factual Information Submission." Note that the date on the cover letter of the submission is October 9, 2023.

<sup>57</sup> *See also* 19 USC 1517(c)(3)(A).

<sup>58</sup> *See* 19 USC 1517(c)(3)(B)-(C); *see also* 19 CFR 165.6(c); *see also* Allegation.

countervailing duties being reduced or not being applied with respect to the merchandise.”<sup>59</sup> As discussed in this determination and in the NOI, the record of this investigation contains evidence that aluminum extrusion fence components subject to the AD/CVD orders were entered by Suzhou Quality into the United States through evasion, resulting in the avoidance of applicable AD/CVD cash deposits or other security, and, based on the application of adverse inferences as a result of Suzhou Quality’s failure to cooperate in the investigation, CBP concludes there is substantial evidence of evasion.

CBP finds that Suzhou Quality entered covered merchandise into the United States through evasion. As noted in the NOI and detailed above, documentary examination of aluminum fence components referenced in various Suzhou Quality entries indicate that the imported merchandise consisted of China-origin extruded aluminum products covered by the scope of the AD/CVD orders, and that such merchandise was not imported as “finished good kits” excluded from the scope of the AD/CVD orders. CBP requested information in an RFI issued to Suzhou Quality after the imposition of interim measures. CBP gave Suzhou Quality multiple opportunities to submit a response and the agency indicated if Suzhou Quality “fail{ed} to cooperate and comply to the best of {its} with this request, CBP may apply an inference adverse to Suzhou Quality and select from among the facts otherwise available to make the determination as to evasion pursuant to 19 CFR 165.27.”<sup>60</sup> However, Suzhou Quality failed to submit an RFI response.

Pursuant to 19 U.S.C. §1517(c)(3) and 19 C.F.R. 165.6, CBP may apply an adverse inference if the party to the investigation that filed an allegation, the importer, or the foreign producer or exporter of the covered merchandise fails to cooperate and comply to the best of its ability with an RFI made by CBP. In applying an adverse inference against an eligible party, CBP may use the facts otherwise available to make a final determination as to evasion pursuant to 19 U.S.C. § 1517(c)(1)(A) and 19 C.F.R. 165.27. Moreover, an adverse inference may be used with respect to U.S. importers, foreign producers, and manufacturers “without regard to whether another person involved in the same transaction or transactions under examination has provided the information sought....” *See* 19 U.S.C. § 1517(c)(3)(B).

In this case, Suzhou Quality did not respond to CBP’s RFI. Given this failure on the part of the Importer, CBP concludes it did not cooperate with CBP’s information requests to the best of its ability. As a result, CBP will draw inferences to the interests of Suzhou Quality, relying on the existing information on the record, as summarized in the NOI and discussed above.

### **Determination as to Evasion**

Based on the totality of information contained in the administrative record, as referenced in the NOI and Suzhou Quality’s subsequent failure to respond to the RFI, CBP determines there is substantial evidence that Suzhou Quality evaded the AD/CVD orders by importing aluminum extrusions of Chinese origin into the United States by declaring the covered merchandise as type

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<sup>59</sup> *See* 19 CFR 165.1; *see also* 19 USC 1517(a)(5)(A).

<sup>60</sup> *See* cover letter to RFI.

01 consumption entries and failing to pay the required AD/CVD cash deposits on such subject merchandise.<sup>61</sup>

### **Actions Taken Pursuant to the Affirmative Determination as to Evasion**

In consideration of CBP's determination that substantial evidence demonstrates that the Importer entered covered merchandise into the customs territory of the United States through evasion, and pursuant to 19 U.S.C. § 1517(d) and 19 CFR 165.28, CBP will suspend or continue to suspend the entries covered by this investigation, until instructed to liquidate. For those entries previously extended in accordance with Interim Measures, CBP will rate adjust and change those entries to type 03 and continue suspension until instructed to liquidate these entries. CBP may also evaluate the Importer's continuous bond in accordance with CBP's policies. None of the above actions precludes CBP or other agencies from pursuing additional enforcement actions or penalties.

Sincerely,



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

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<sup>61</sup> Entry type "01" is the code that CBP requires importers use to designate a standard consumption entry that is not subject to AD/CVD duties. *See* <https://www.cbp.gov/trade/automated/ace-transaction-details>.