90 K Street, NE
Washington, DC 20002
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Gregory S. Menegaz
Vivien Jinghui Wang
Counsel for Superior Commercial Solutions LLC
DeKieffer & Horgan, PLLC
1156 15th Street, NW
Suite 1101
Washington, DC 20005

Luke Meisner
Schagrin Associates
Counsel for Cambria Company LLC
900 7th Street, NW
Suite 500
Washington, DC 20001

Re: Enforce and Protect Act ("EAPA") Case Number 7783; *Certain Quartz Surface Products From the People's Republic of China: Antidumping and Countervailing Duty Orders*, 84 Fed. Reg. 33,053 (Dep't of Commerce July 11, 2019); Superior Commercial Solutions LLC; 19 U.S.C. § 1517

Dear Counsel:

This is in response to the request for *de novo* administrative review of a determination of evasion dated August 31, 2023, made by the Trade Remedy Law Enforcement Directorate ("TRLED"), Office of Trade ("OT"), U.S. Customs and Border Protection ("CBP"), pursuant to 19 U.S.C. § 1517(c), EAPA Case Number 7783 ("August 31 Determination").[1] The administrative review request, dated October 16, 2023, was submitted to CBP, OT, Regulations and Rulings ("RR"), by DeKieffer & Horgan, PLLC on behalf of Superior Commercial Solutions LLC ("SCS" or

[1] *See* Notice of Determination as to Evasion, EAPA Case 7783 (August 31, 2023) (Public Version), *available at* https://www.cbp.gov/document/publications/eapa-case-7783-superior-commercial-solutions-llc-notice-determination-evasion (last accessed Dec. 5, 2023).

"Importer"), pursuant to 19 U.S.C. § 1517(f) and 19 C.F.R. § 165.41(a). Cambria Company LLC ("Cambria" or "Alleger") filed a response to the administrative review request on October 31, 2023.

I. Background

Unless otherwise discussed, based on our review of the administrative record, we agree with the recitation of facts as set forth by the August 31 Determination. As such, we will not repeat the entire factual history herein.

On September 8, 2022, Cambria, a domestic producer of quartz surface products ("QSP"), filed an EAPA allegation against SCS. CBP acknowledged receipt of the allegation on October 6, 2022. On October 28, 2022, TRLED initiated a formal investigation under Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015 ("TFTEA"), in response to the allegation of evasion.[2]

Cambria alleged that it "obtained evidence that reasonably suggests that merchandise imported by SCS was Chinese quartz surface products ('QSP') that was subject to the Orders but was imported by SCS as QSP from of (*sic*) Vietnamese origin that is outside the scope of the Orders."[3] The allegation included trade data indicating that Chinese companies, Xiamen Lexiang Importing & Exporting Co., Ltd. ("Xiamen Lexiang") and Xiamen Stone Display Co., Ltd. ("Xiamen Stone Display"), exported "artificial quartz stone slab" to Cong Ty Tnhh Kales Quartz[4] ("Kales"), located in Vietnam.[5] Per the allegation, Kales then exported that same product as "artificial stone cooktops" and "artificial stone countertops" to SCS.[6] Cambria asserted that SCS imported this merchandise into the United States without declaring it as QSP from the People's Republic of China ("China"), which is subject to antidumping and countervailing duty orders (the "AD/CVD Orders") under Case Nos. A-570-084 and C-570-085.[7] As a result, SCS evaded the payment of antidumping and countervailing duties on these imports.[8]

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

> The scope of the orders covers certain quartz surface products.[15] Quartz surface products consist of slabs and other surfaces created from a mixture of materials that includes predominately silica (*e.g.*, quartz, quartz powder, cristobalite) as well as a resin binder (*e.g.*, an unsaturated

[2] Notice of Initiation of Investigation and Interim Measures – EAPA Case Number 7783 (Feb. 2, 2023) ("Notice of Initiation") (Public Version), *available at* https://www.cbp.gov/document/publications/eapa-case-7783-superior-commercial-solutions-llc-notice-initiation (last accessed Dec. 5, 2023).

[3] *See* August 31 Determination (Public Version); Quartz Surface Products from the People's Republic of China: Request for an Investigation under the Enforce and Protect Act of Superior Commercial Solutions LLC (Sept. 8, 2022) (Public Version) ("Cambria's Allegation").

[4] This company is also known as Kales Quartz Company Limited or Kales Quartz Co., Ltd. *See* Notice of Initiation (Public Version), at 3.

[5] Cambria's Allegation (Public Version), at 7–8 (summarizing a portion of the trade data provided in Exhibits 3, 8, and 9 to the allegation); *see also* August 31 Determination (Public Version).

[6] *See* Cambria's Allegation (Public Version), at 7–8; *see also* August 31 Determination (Public Version).

[7] *See* Cambria's Allegation (Public Version), at 2.

[8] *See id.*; *see also Certain Quartz Surface Products From the People's Republic of China: Antidumping and Countervailing Duty Orders*, 84 Fed. Reg. 33,053 (Dep't of Commerce July 11, 2019).

polyester). The incorporation of other materials, including, but not limited to, pigments, cement, or other additives does not remove the merchandise from the scope of the orders. However, the scope of the orders only includes products where the silica content is greater than any other single material, by actual weight. Quartz surface products are typically sold as rectangular slabs with a total surface area of approximately 45 to 60 square feet and a nominal thickness of one, two, or three centimeters. However, the scope of the orders includes surface products of all other sizes, thicknesses, and shapes. In addition to slabs, the scope of the orders includes, but is not limited to, other surfaces such as countertops, backsplashes, vanity tops, bar tops, work tops, tabletops, flooring, wall facing, shower surrounds, fire place surrounds, mantels, and tiles. Certain quartz surface products are covered by the orders whether polished or unpolished, cut or uncut, fabricated or not fabricated, cured or uncured, edged or not edged, finished or unfinished, thermoformed or not thermoformed, packaged or unpackaged, and regardless of the type of surface finish.

In addition, quartz surface products are covered by the orders whether or not they are imported attached to, or in conjunction with, non-subject merchandise such as sinks, sink bowls, vanities, cabinets, and furniture. If quartz surface products are imported attached to, or in conjunction with, such non-subject merchandise, only the quartz surface product is covered by the scope. Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise fabricated in a third country, including by cutting, polishing, curing, edging, thermoforming, attaching to, or packaging with another product, or any other finishing, packaging, or fabrication that would not otherwise remove the merchandise from the scope of the orders if performed in the country of manufacture of the quartz surface products.

The scope of the orders does not cover quarried stone surface products, such as granite, marble, soapstone, or quartzite. Specifically excluded from the scope of the orders are crushed glass surface products. Crushed glass surface products must meet each of the following criteria to qualify for this exclusion: (1) The crushed glass content is greater than any other single material, by actual weight; (2) there are pieces of crushed glass visible across the surface of the product; (3) at least some of the individual pieces of crushed glass that are visible across the surface are larger than one centimeter wide as measured at their widest cross-section (glass pieces); and (4) the distance between any single glass piece and the closest separate glass piece does not exceed three inches.

The products subject to the scope are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under the following subheading: 6810.99.0010. Subject merchandise may also enter under subheadings 6810.11.0010, 6810.11.0070, 6810.19.1200, 6810.19.1400, 6810.19.5000, 6810.91.0000, 6810.99.0080, 6815.99.4070, 2506.10.0010, 2506.10.0050,

> 2506.20.0010, 2506.20.0080, and 7016.90.10. The HTSUS subheadings set forth above are provided for convenience and U.S. Customs purposes only. The written description of the scope of the orders is dispositive.
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> FN 15: Quartz surface products may also generally be referred to as engineered stone or quartz, artificial stone or quartz, agglomerated stone or quartz, synthetic stone or quartz, processed stone or quartz, manufactured stone or quartz, and Bretonstone®.[9]

On November 3 and November 4, 2022, TRLED issued CF-28 Requests for Information to SCS regarding four entries of QSP, requesting the corresponding entry and production documentation for each entry.[10] SCS timely submitted responses to each of the CF-28 requests and provided most of the information TRLED requested.[11] SCS, however, did not provide the following materials that TRLED had requested or explain why it did not produce them in its CF-28 Response: (1) Customs clearance records for raw materials imported into the country of manufacture; (2) certificates of origin for both the imported raw materials and the finished products; (3) stamped timecards from the factory; (4) a description of the equipment used in production; (5) a description of the production capacity of all equipment used in production; (6) a photograph of each piece of equipment and a flowchart of the manufacturing process; (7) color photographs of the exterior of the manufacturing facility with address and street signs to show its location; (8) packaging costs; (9) factory inspection report conducted by the importer or its agent.[12]

On November 30, 2022 and December 29, 2022, TRLED added two memoranda to the administrative record (the "November 2022 Memorandum" and the "December 2022 Memorandum," respectively).[13] The memoranda contained TRLED's research results, including website screenshots and entry documentation, regarding Kales and its affiliation with other exporters and manufacturers of QSP in Vietnam and China, specifically, Engga Company Limited ("Engga") in Vietnam, Strry Manufacturing Company Limited ("Strry") in Vietnam, New Quartz Material Co., Ltd. ("New Quartz") in Vietnam, Fonka Company Limited ("Fonka") in Vietnam, Xiamen Gofor Stone Co., Ltd. ("Xiamen Gofor Stone") in China, Xiamen Stone Display in China, and Xiamen Lexiang in China.[14]

On February 2, 2023, in accordance with 19 C.F.R. § 165.24, CBP issued a Notice of Initiation to all parties to the investigation, stating that the investigation had begun on October 28, 2022, and notifying the parties of CBP's decision to take interim measures based upon reasonable suspicion that the Importer had entered covered merchandise into the customs territory of the United States through evasion.[15] The entries subject to the investigation are all unliquidated entries of covered merchandise entered from October 6, 2021 through the pendency of the investigation.[16]

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[9] 84 Fed. Reg. at 33,055–56.
[10] August 31 Determination (Public Version).
[11] *See id.*
[12] *See id.*
[13] *See id.*
[14] *See id.*
[15] *See* Notice of Initiation (Public Version).
[16] *See id.* at 2 n.9; *see also* 19 C.F.R. § 165.2 ("In addition, at its discretion, CBP may investigate other entries of such covered merchandise.").

On February 3, 2023, TRLED issued Request for Information ("RFI") questionnaires to SCS, Kales, Engga, Strry, and Xiamen Stone Display.[17] Xiamen Stone Display did not respond to TRLED's RFI questionnaire.[18] On April 25, 2023, TRLED issued Supplemental RFIs to SCS, Kales and Engga (together),[19] and Strry.[20]

According to Kales/Engga's and Strry's RFI Responses, Strry purchased raw materials to produce quartz slabs in Vietnam and provided the quartz slabs it produced to Kales/Engga to perform additional processing steps in Vietnam.[21] Kales/Engga claimed that it purchased [Material] and performed further processing steps to produce the covered merchandise it sold to the United States.[22]

In order to confirm each exporter's claim that it produced QSP in Vietnam, TRLED sought to conduct on-site verifications of Kales/Engga's and Strry's respective facilities in Vietnam.[23] Initially, Kales/Engga and Strry consented to the verifications, which were scheduled to take place during June 22–23 and June 26–30, 2023.[24] TRLED also requested that certain individuals attend the verifications in-person to explain the companies' procedures and records and to answer TRLED's questions.[25] On June 9, 2023, however, Kales/Engga and Strry submitted the following communication to TRLED: "With limited prospect of remaining in business in the foreseeable future, and in consideration of the resource constraints, including an inability to cover overheads,

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[17] *See* August 31 Determination (Public Version); SCS RFI Questionnaire (Feb. 3, 2023) (Public Version); Kales RFI Questionnaire (Feb. 3, 2023) (Public Version); Engga RFI Questionnaire (Feb, 3, 2023) (Public Version); Strry RFI Questionnaire (Feb. 3, 2023) (Public Version); Xiamen Stone Display RFI (Feb. 3, 2023) (Public Document).

[18] *See* August 31 Determination (Public Version); Memorandum from EAPA Investigations, Enforcement Operations Division, TRLED, Office of Trade, U.S. Customs and Border Protection, to The File, *Adding Information to the Administrative Record* (June 14, 2023) (Public Version), at Attach. 15 (CBP emails to Xiamen Stone Display dated February 21 and February 24, 2023, stating that CBP did not receive the company's RFI response by the deadline, and ultimately providing "a final opportunity" to submit the response by March 2, 2023) (Public Document).

[19] TRLED issued a Supplemental RFI Questionnaire to Kales and Engga jointly because those companies submitted a consolidated RFI Response due to their relationship, their affiliated status, and the fact that the name of Engga was later changed to Kales. *See* Kales/Engga's RFI Response (Mar. 2, 2023) (Public Version), at 2–3. Additionally, Kales and Engga share the same tax identification number (0201979561), indicating that they are the same entity. *See* Memorandum from EAPA Investigations, Enforcement Operations Division, TRLED, Office of Trade, U.S. Customs and Border Protection, to The File, *Adding Information to the Administrative Record* (Nov. 30, 2022) (Public Version), at Attach. 2 (providing screenshots of websites pertaining to Kales and Engga). Thus, as is stated in the RFI Response, Engga and Kales "are actually the same company." Kales/Engga's RFI Response (Public Version), at 4. Accordingly, Kales and Engga will be referred to as "Kales/Engga" for the remainder of this final administrative determination.

[20] *See* August 31 Determination (Public Version); SCS Supp. RFI Questionnaire (Apr. 25, 2023) (Public Version); Kales/Engga Supp. RFI Questionnaire (Apr. 25, 2023) (Public Version); Strry Supp. RFI Questionnaire (Apr. 25, 2023) (Public Version).

[21] *See* August 31 Determination (Public Version), at 23 (citing Kales/Engga's RFI Response (Public Version), at 9; Strry's RFI Response (Mar. 2, 2023) (Public Version), at 6, 11); *see also* Strry's RFI Response (Public Version), at 10 (stating that "Strry only purchased raw materials related to QSP rather than finished products during the stated period."). In its RFI Response, SCS stated that it "only recently became aware of the fact that Strry Manufacturing Company [Description of Material]," and referred CBP to Kales/Engga's and Strry's RFI Responses for further information regarding the production process. SCS's RFI Response (Business Confidential Version), at 33–34.

[22] *See* SCS's Administrative Review Request (Business Confidential Version), at 4–5.

[23] *See* August 31 Determination (Public Version).

[24] *See id.*; *see also* Kales/Engga's Supp. RFI Response (May 15, 2023) (Public Version), at 1 (including TRLED's verification request); Strry's Supp. RFI Response (May 15, 2023) (Public Version), at 1 (same).

[25] *See* Kales/Engga's Supp. RFI Response (Public Version), at 1; Strry's Supp. RFI Response (Public Version), at 1.

the Companies have decided to not participate in the scheduled verifications in the above-captioned EAPA Investigation."[26]

On June 14, 2023, TRLED added a third memorandum to the record (the "June 2023 Memorandum") that contained, *inter alia*, prior EAPA determinations issued by TRLED, screenshots of websites pertaining to exporters and producers of QSP, entry documentation, information regarding the QSP production process, emails to Xiamen Stone Display, emails between SCS and Kales, various Issues and Decision memoranda issued by Commerce, and higher-resolution photographs from SCS's CF-28 response.[27]

On August 31, 2023, TRLED found that there was substantial evidence that SCS had imported QSP from China "by undervaluation and/or transshipment through Vietnam."[28] Additionally, TRLED applied adverse inferences to Kales/Engga and Strry, finding their submissions to be unreliable as "demonstrated by the submission of material false statements, fraudulent documentation, the omission of material facts, and the fact that the information was not verified."[29] Consequently, TRLED concluded that all of SCS's entries of QSP into the United States from Kales/Engga and Strry were of Chinese origin.[30]

On October 16, 2023, SCS timely filed an administrative review request. On October 17, 2023, RR sent an email to all parties to the investigation, notifying them of the commencement of the administrative review process and the assignment of RR case number H335041. On October 31, 2023, Cambria timely submitted a response to SCS's administrative review request, presenting its counterarguments.

II. Law & Analysis

Section 517 of the Tariff Act of 1930 ("the Tariff Act"), as amended (19 U.S.C. § 1517), provides, "with respect to covered merchandise, the Commissioner shall make a determination, based on substantial evidence, with respect to whether such covered merchandise was entered into the customs territory of the United States through evasion."[31] The term evasion is defined as:

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

[26] Letter from counsel for Kales, Engga, and Strry to TRLED, *EAPA Case No. 7783 – Foreign Manufacturers Notice of Intent Not To Participate in Verification* (June 9, 2023) (Public Document), at 1. *See also* SCS's Administrative Review Request (Public Version), at 9–10 (discussing Kales/Engga's and Strry's withdrawal of permission for CBP to conduct on-site verifications).
[27] *See* Memorandum from EAPA Investigations, Enforcement Operations Division, TRLED, Office of Trade, U.S. Customs and Border Protection, to File (June 14, 2023) (Public Version).
[28] August 31 Determination (Public Version), at 1.
[29] *See id.* at 38.
[30] *See id.* (emphasis added).
[31] 19 U.S.C. § 1517(c)(1).

> applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise.[32]

Examples of evasion include, but are not limited to, misrepresentation of the merchandise's true country of origin (*e.g.*, through false country of origin markings on the product itself or false sales), false or incorrect shipping and entry documentation, or misreporting of the merchandise's physical characteristics.[33]

Additionally, covered merchandise is defined as "merchandise that is subject to a CVD order issued under section 706, Tariff Act of 1930, as amended (19 U.S.C. § 1671e), and/or an AD order issued under section 736, Tariff Act of 1930, as amended (19 U.S.C. § 1673e)."[34] While "substantial evidence" is not defined by statute, the "substantial evidence" standard has been reviewed by the courts in relation to determinations by other agencies. "Substantial evidence requires more than a mere scintilla but is satisfied by something less than the weight of the evidence."[35]

Therefore, CBP must determine whether a party has entered merchandise that is subject to an AD or CVD order into the United States for consumption by means of any document or electronically transmitted data or information, written or oral statement, or act, that is material and false, or any omission that is material, that resulted in the reduction or avoidance of applicable cash deposits or antidumping or countervailing duties being collected on such merchandise. In doing so, CBP may apply adverse inferences where they are warranted.[36] RR's determination as to evasion must be supported by substantial evidence.

A. SCS's Arguments

SCS requests that we reverse the August 31 Determination, asserting that TRLED's evasion determination is "deficient," "based on a complete misunderstanding of the record," and "suffers from grave procedural deficiencies" that prejudiced SCS.[37] SCS presents six arguments supporting its request.

First, SCS avers that TRLED used "confidential information against SCS" to impose interim measures and find substantial evidence of evasion.[38] SCS disputes TRLED's assertion that SCS had access to a significant portion of the confidential information underlying the August 31 Determination as "patently incorrect," and maintains that TRLED's use of such information deprived SCS of its procedural due process rights.[39] SCS cites to judicial precedent from the U.S. Supreme Court and the U.S. Court of Appeals for the Federal Circuit ("CAFC") to support this claim, including the CAFC's decision in *Royal Brush Manufacturing v. United States*, 75 F.4th 1250 (Fed. Cir. 2023).[40] Relatedly, SCS argues that TRLED impeded SCS's ability to understand and confirm the cited confidential information and any related discussion in its submission to RR because

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[32] 19 U.S.C. § 1517(a)(5); *see also* 19 C.F.R. § 165.1.
[33] *See Investigation of Claims of Evasion of Antidumping and Countervailing Duties, Interim Regulations*, 81 Fed. Reg. 56,477, 56,478 (CBP Aug. 22, 2016).
[34] 19 C.F.R. § 165.1.
[35] *See Altx, Inc. v. United States*, 370 F.3d 1108, 1116 (Fed. Cir. 2004) (internal citations and quotation marks omitted).
[36] *See* 19 C.F.R. § 165.6.
[37] SCS's Administrative Review Request (Oct. 16, 2023) (Public Version), at 13–14.
[38] *Id.* at 14.
[39] *Id.* at 14–15.
[40] *See id.* at 15–16.

TRLED did not disclose to SCS its own confidential information in the August 31 Determination.[41] As such, SCS demands that RR "declare EAPA Inv. 7783 null and void," and suggests that RR "develop adequate regulations" to safeguard the due process rights of parties subject to EAPA investigations.[42]

Second, SCS claims that TRLED violated CBP's regulations and practice by failing to serve SCS with the public version of the June 2023 Memorandum.[43] SCS argues that prior to the issuance of the June 2023 Memorandum, TRLED had a practice of serving documents on the parties by uploading submissions to the "EAPA web-portal," and then notifying the parties, by email, of those uploads.[44] By contrast, TRLED uploaded the June 2023 Memorandum to the portal but did not notify the parties by email about the document.[45] SCS describes TRLED's actions as "arbitrary" and "unjustified," and asserts that SCS was "profoundly prejudiced " as a result, because it "could have perhaps filed rebuttal comments" to the June 2023 Memorandum by the regulatory deadline.[46] SCS further argues that it is not reasonable to require counsel "to log onto the CMS System every single day to confirm whether new documents are placed on the record by TRLED," and that TRLED did not notify the parties of changes to its prior practice as required by law.[47]

Third, SCS contends that TRLED failed to notify SCS of the EAPA allegation in a timely manner and that TRLED did not make a public version of the administrative record available until after it imposed interim measures.[48] SCS alleges that TRLED first alerted SCS of the EAPA investigation 140 days after the allegation was submitted, "took 28 days to 'accept' the filed allegation," and engaged in a "90-day secret investigation" before imposing interim measures.[49] SCS disputes TRLED's response that neither the EAPA statute nor the EAPA regulations require TRLED to notify the parties of an EAPA allegation prior to the issuance of the Notice of Initiation and interim measures.[50] Citing to U.S. Supreme Court precedent, SCS claims that TRLED's failure to notify SCS of the EAPA allegation at an earlier time violated "the fundamental due process requirement," which is "the opportunity to be heard at a meaningful time and in a meaningful manner."[51] SCS maintains that earlier notification of the EAPA investigation "would have allowed SCS to rebut the allegation at a meaningful time and stop importing additional alleged-covered (*sic*) merchandise," as intended by the EAPA statute.[52]

Fourth, SCS argues that TRLED erred in finding Kales/Engga's and Strry's raw material purchase documents unreliable.[53] SCS contends that TRLED's determination is "based on a grave misunderstanding of the record," and that the comparison of Kales/Engga's documents to Strry's

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[41] *See id.* at 22–24.
[42] *Id.* at 16.
[43] *See id.* at 16–19.
[44] *Id.* at 16–17. SCS also criticizes the functionality of the portal for not generating automated email notifications to the users. *See id.* at 16.
[45] *See id.* at 17.
[46] *Id.* at 17, 19; *see also id.* at 18.
[47] *Id.* at 17–18.
[48] *See id.* at 20-22.
[49] *Id.* at 20.
[50] *See id.*
[51] *Id.* (emphasis in original) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (internal quotation marks and citations omitted).
[52] SCS's Administrative Review Request (Public Version), at 20; *see also id.* at 21–22.
[53] *See id.* at 24–27.

documents "is misapplied."[54] SCS further asserts that TRLED did not inform Kales/Engga and Strry of any inconsistencies in their submitted data, and thus deprived them of the opportunity to clarify and correct the information through a supplemental RFI.[55]

Fifth, SCS claims that TRLED had no legal basis to find that SCS entered covered merchandise by means of a false statement or omission because the EAPA statute requires "some level of culpability" to demonstrate falsity.[56] SCS cites to *Diamond Tools Technology LLC v. United States*, 609 F. Supp. 3d 1378 (Ct. Int'l Trade 2022), in support of this assertion.[57] SCS also claims that, because SCS "exercised reasonable care" in declaring the QSP as Vietnamese-origin on type "01" entries, it "did not intentionally or negligently enter covered merchandised by an act that is material and false, or any omission that is material."[58]

Sixth, SCS asserts that TRLED's application of adverse inferences was unreasonable and that CBP cannot apply an adverse inference to uncooperative parties where such application "harms only SCS, a cooperating respondent."[59] SCS requests that RR "revert TRLED's determination in this aspect and if warranted, apply adverse inferences against the Exporters on all their future shipments regardless of whether the purchaser is SCS or any other U.S. importer."[60]

For these reasons, SCS requests that the August 31 Determination be reversed.

B. Cambria's Arguments

Cambria requests that RR affirm the August 31 Determination, providing several bases in support of its position.

First, Cambria asserts that the administrative record demonstrates substantial evidence of evasion for SCS's entries of QSP during the period of investigation ("POI").[61] According to Cambria, "the record evidence indisputably shows that 'a large proportion' of the Vietnamese exporters' shipments to SCS were Chinese-origin QSP subject to the AD/CVD orders," and that this evidence comes from documents and information submitted by Kales/Engga.[62] Additionally, TRLED was unable to correct discrepancies and verify the information Kales/Engga and Strry submitted when the companies refused to permit TRLED to conduct on-site verifications.[63] As result of this non-cooperation, TRLED properly applied adverse inferences to find that all of the QSP entered during the POI was from China.[64]

Second, Cambria avers that the procedural arguments raised by SCS are outside the purview of RR's review under the EAPA statute, and, thus, should be dismissed.[65] Nonetheless, these claims

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[54] *Id.* at 25; *see also id.* at 26.
[55] *See id.* at 26–27.
[56] *Id.* at 27.
[57] *See id.*
[58] *Id.* at 28.
[59] *Id.* at 30 (emphasis in original); *see also id.* at 14, 29.
[60] *Id.* at 30 (emphasis in original).
[61] *See* Cambria's Response (Public Document), at 6–8.
[62] *Id.* at 6.
[63] *See id.* at 6–7.
[64] *See id.* at 6–8.
[65] *See id.* at 9–10.

lack merit and should be disregarded because: (1) SCS misconstrues the *Royal Brush* decision, which did not find redactions of information on their own to violate an interested party's right to due process, and, regardless, SCS had access to the confidential information in this EAPA investigation; (2) CBP is not required to notify parties of potential EAPA investigations at the time an allegation is submitted or when CBP initiates an investigation; and (3) neither the EAPA statute nor the regulations promulgated thereunder require CBP to notify parties by email every time documents are uploaded to the EAPA docket, and that TRLED's "courtesy" of doing so did not transform such action into a practice.[66]

Third, Cambria argues that TRLED properly applied adverse inferences only to the non-cooperating parties (the Vietnamese exporters), and the fact that the adverse inferences have a collateral negative effect on SCS does not invalidate their application.[67] Cambria also asserts that the inference that all QSP shipped by Kales/Engga and Strry is from China is adverse to the interests of the companies "because it will dissuade future potential customers from importing QSP from these Vietnamese exporters, as it may expose them to potential AD/CVD liability."[68]

Fourth, Cambria contends that TRLED correctly concluded that SCS made false statements when it declared the country of origin of the QSP it entered from Kales/Engga to be Vietnam and did not declare such imports to be covered merchandise subject to the AD/CVD Orders.[69] Cambria states that SCS's reliance on *Diamond Tools* "is misplaced due to the unique facts of that case," and points to the recent decision by the U.S. Court of International Trade ("CIT") in *Ikadan System United States, Inc. v. United States*, 639 F. Supp. 3d 1339, 1354 (Ct. Int'l Trade 2023), which held that the EAPA statute supports a strict liability interpretation for evasion determinations.[70]

For these reasons, Cambria requests that the August 31 Determination be affirmed.

III. Administrative Review Analysis

Pursuant to 19 U.S.C. § 1517(f)(1) and 19 C.F.R. § 165.45, upon request for administrative review, RR will apply a *de novo* standard of review under the law, based solely upon the facts and circumstances on the administrative record in the proceeding. In making our determination, RR reviewed the following materials: (1) the administrative record upon which the August 31 Determination was made, as provided to RR by TRLED; and (2) the timely and properly filed request for review and response.

RR hereby determines that the record demonstrates that SCS evaded the AD/CVD Orders by entering Chinese-origin QSP that was transshipped through Vietnam into the United States. To render this determination, RR relies only on information that SCS itself either initially placed on the record or subsequently included and discussed in its administrative review request, which shows multiple instances of imports by SCS of Chinese-origin QSP during the POI, and SCS's admission as to having made such imports.

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[66] *Id.* at 9–16.
[67] *See id.* at 16–17.
[68] *Id.* at 16.
[69] *See id.* at 18–19.
[70] *See id.* at 19–21.

Rather than contesting the record evidence of importation of covered merchandise which was entered without AD/CVD deposits, SCS instead raises a variety of claims, essentially as defenses, to argue that RR should find that evasion did not occur. SCS's claims do not form a valid basis for ignoring the evidence that SCS provided to CBP, which clearly demonstrates that SCS entered covered merchandise by means of material and false information, by incorrectly entering merchandise as QSP from Vietnam (rather than China), on type "01" consumption entries instead of on type "03" AD/CVD entries, and omitting the relevant AD/CVD case numbers from the entry summary documentation.[71]

Below, we first briefly discuss the record evidence, and then explain why SCS's arguments fail.

A. There is substantial record evidence that SCS entered covered merchandise through evasion.

As SCS concedes in its administrative review request,[72] the record provides substantial evidence that SCS entered Chinese-origin QSP (*i.e.*, merchandise covered by the AD/CVD Orders) that was transshipped through Vietnam into the United States. SCS did not make AD/CVD deposits on these shipments, and declared them as type "01" entries, that are not subject to AD/CVD duties. This was false and, thus, the record supports a finding of evasion.

The scope language provides that QSP "consist{s} of slabs and other surface products created from a mixture of materials that includes predominantly silica (*e.g.*, quartz, quartz powder, cristobalite) as well as a resin binder (*e.g.*, an unsaturated polyester)."[73] Subject merchandise is not limited strictly to natural quartz, however:

> Quartz surface products may also generally be referred to as engineered stone or quartz, artificial stone or quartz, agglomerated stone or quartz, synthetic stone or quartz, processed stone or quartz, manufactured stone or quartz, and Bretonstone®.[74]

The scope of the AD/CVD Orders also covers "slabs" and "other surfaces such as countertops, backsplashes, vanity tops, bar tops, work tops, tabletops, flooring, wall facing, shower surrounds, fire place surrounds, mantels, and tiles."[75]

The QSP imported by SCS fits within this scope language. In its CF-28 Response, SCS included a description of the products it imported from Kales/Engga and Strry, which were described as "[Product]," composed of [Description of Material].[76] Additionally, the commercial

[71] *See* August 31 Determination (Public Version), at 49; SCS's Administrative Review Request (Public Version), at 28.
[72] *See* SCS's Administrative Review Request (Public Version), at 5, 24, 29–30.
[73] 84 Fed. Reg. at 33,055.
[74] *Id.* at 33,056 n.15.
[75] *Id.* at 33,055.
[76] SCS's CF-28 Response for Entry 9051 (Business Confidential Version), at Ex. 10; *see also* SCS's CF-28 Response for Entry 3193 (Business Confidential Version), at Ex. 5; SCS's CF-28 Response for Entry 6816 (Business Confidential Version), at 6; SCS's CF-28 Response for Entry 6873 (Business Confidential Version), at Ex. 6.

invoices and packing lists in SCS's CF-28 Response describe the merchandise as [Products] and [Product].[77]

Additionally, SCS admits in its administrative review request that the QSP it imported from Kales/Engga was of Chinese origin.[78] As detailed below, the administrative record, including business confidential information that SCS itself initially placed on the record or subsequently provided in its administrative review request, substantiates this admission.

In particular, as SCS discussed in its administrative review request, Exhibit 24 to Kales/Engga's RFI Response shows that [#] of [#] shipments by Kales/Engga to SCS contained [Product], and provides the commercial invoice numbers for those shipments.[79] RR's finding of substantial evidence of evasion rests on these acknowledged shipments. Indeed, SCS expressly acknowledged and discussed this evidence in its request for review, and neither questioned its accuracy nor argued that such shipments did not contain covered merchandise.[80] To the extent that SCS may claim that [#] of [#] shipments is not substantial, we disagree. This constitutes a significant portion of shipments during the POI. Further, as discussed below, RR does not need to address whether the other [#] shipments contained Vietnamese-origin or Chinese-origin slabs.

Moreover, SCS's submissions to CBP confirm the fact that SCS's entries of QSP from Kales/Engga contained [Product]. For example, in its CF-28 Response for Entry 0661, SCS provided a commercial invoice and a detailed packing list for Invoice No. [Number], which is a commercial invoice number listed in Exhibit 24.[81] SCS provided additional documentation relating to Invoice No. [Number] in its RFI Response that further substantiates SCS's importation of this merchandise.[82]

In sum, there is substantial evidence that SCS imported QSP from China into the United States. SCS's imports of QSP fit within the plain language of the scope of the AD/CVD Orders, and, thus, are covered merchandise under the EAPA statute.

Furthermore, there is substantial evidence that SCS entered covered merchandise by means of material and false documents or electronically transmitted data or information, written statements, or material omissions that resulted in AD/CVD cash deposits not being applied with respect to the covered merchandise. SCS incorrectly entered the products at issue on type "01" consumption entries instead of on type "03" AD/CVD entries.[83] In other words, the entries should have been declared as subject to AD/CVD deposits/duties, but they were not. These constitute

[77] *See* SCS's CF-28 Response for Entry 9051 (Business Confidential Version), at Exs. 15, 16; SCS's CF-28 Response for Entry 3193 (Business Confidential Version), at Ex. 8; SCS's CF-28 Response for Entry 6816 (Business Confidential Version), at Ex. 12; SCS's CF-28 Response for Entry 6873 (Business Confidential Version), at Ex. 9. *See also* Cambria's Allegation (Public Version), at Ex. 3 (describing SCS's entries from Kales/Engga as "artificial quartz stone cooktop" and "countertops made of artificial stone").
[78] *See* SCS's Administrative Review Request (Public Version), at 5, 24, 29–30.
[79] *See id.* at 5.
[80] *See* SCS's Administrative Review Request (Business Confidential Version), at 5, 11.
[81] *See* SCS's CF-28 Response (Business Confidential Version), at Ex. 16.
[82] *See* SCS's RFI Response (Business Confidential Version), at Ex. 27.
[83] *See* August 31 Determination (Public Version), at 49; SCS's Administrative Review Request (Public Version), at 28.

false statements that are also material because the applicable cash deposits and antidumping and countervailing duties were not paid.

SCS also omitted Case Nos. A-570-084 and C-570-085 from the entry summary documentation.[84] The omission of Case Nos. A-570-084 and C-570-085 from the entry summary documentation is material because it interfered with the government's ability to accurately track imports of QSP from China, to collect the applicable antidumping and countervailing duties due, and to determine and assess future antidumping and countervailing duties.

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

Consequently, SCS entered the merchandise through evasion.

B. Although not necessary for RR's finding of evasion, TRLED's application of adverse inferences was warranted because Kales/Engga and Strry failed to cooperate and comply to the best of their abilities with CBP's requests for information.

As detailed above, the administrative record in this case supports a finding of evasion, and RR's determination is based solely on the evidence in the record. However, inasmuch as SCS has raised this issue, RR notes that TRLED was warranted in its application of adverse inferences to Kales/Engga and Strry for their refusals to permit TRLED to conduct on-site verifications of the companies' facilities in Vietnam. These refusals amount to a failure to cooperate to the best of the companies' abilities, which, pursuant CBP's authority under EAPA, may result in the application of adverse inferences.

CBP has statutory authority "to collect and verify additional information" to make its evasion determinations.[85] CBP can gather information in various ways, including, but not limited to, by "conducting verifications, including on-site verifications, of any relevant information."[86]

Pursuant to 19 C.F.R. § 165.6(a):

> {i}f a party to the investigation that filed an allegation, the importer, or the foreign producer or exporter of the covered merchandise fails to cooperate and comply to the best of its ability with a request for information made by CBP, CBP may apply an inference adverse to the interests of that party in selecting from among the facts otherwise available to make the determination as to evasion pursuant to 165.27 and subpart D of this part.[87]

Additionally, under 19 C.F.R. § 165.5(c), CBP may use an adverse inference against an importer, the foreign manufacturer, or an exporter of covered merchandise irrespective of whether another party

[84] *See, e.g.*, SCS's CF-28 Response for Entry 9051 (Public Version) (providing entry documentation); SCS's CF-28 Response for Entry 3193 (Public Version) (same); SCS's CF-28 Response for Entry 6873 (Public Version) (same).
[85] 19 U.S.C. § 1517(c)(2).
[86] *Id.* at § 1517(c)(2).
[87] *See also* 19 U.S.C. § 1517(c)(3)(A) (providing CBP with authority to apply to certain uncooperative parties or persons).

involved in the same transaction provided the information requested by CBP.[88] In other words, CBP may apply an adverse inference to a party for its failure to cooperate regardless of whether the sought-after information exists elsewhere on the record.[89]

In this case, TRLED determined that on-site verifications of Kales/Engga's and Strry's facilities in Vietnam were necessary to confirm the information that had been placed on the administrative record.[90] Despite initially agreeing to the verifications, Kales/Engga and Strry subsequently rescinded consent to permit CBP to conduct verifications in this EAPA investigation.[91] These refusals amount to a failure to cooperate and comply to the best of their abilities with CBP's requests for information. Under these circumstances, CBP may apply adverse inferences to an interested party, importer, foreign producer or exporter, or foreign government where such party "has failed to cooperate by not acting to the best of {its} ability to comply with a request for information."[92] Accordingly, TRLED's application of adverse inferences to Kales/Engga and Strry was warranted.

SCS does not contest the accuracy of the information Kales/Engga and Strry provided to TRLED or the fact that the companies refused to consent to on-site verifications by CBP.[93] Nor does SCS challenge TRLED's authority to apply adverse inferences to Kales/Engga and Strry.[94] Instead, SCS contends that TRLED's application of adverse inferences was unreasonable and that CBP cannot apply an adverse inference to uncooperative parties where such application "harms only SCS, a cooperating respondent."[95]

SCS's argument is unpersuasive. The EAPA statute and the regulations promulgated thereunder do not require CBP to ensure that a cooperative party will not experience collateral consequences for another party's failure to cooperate.[96] To the contrary, the CIT recently held that the EAPA statute "permits Customs to draw an adverse inference against a non-cooperating party 'without regard to whether another person involved in the same transaction or transactions under examination has provided the information sought.'"[97] In that case, the CIT also upheld the "collateral consequences" to an importer that resulted from CBP's proper application of adverse

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[88] *See also* 19 U.S.C. § 1517(c)(3)(B) (same).
[89] *See also CEK Grp. LLC v. United States*, 633 F. Supp. 3d 1369, 1379 (Ct. Int'l Trade 2023) (finding that "whether a gap exists is not necessarily determinative" to CBP's decision to apply adverse inferences).
[90] *See* August 31 Determination (Public Version), at 29 ("Due to Kales/Engga's and Strry's claims that they produced QSP in Vietnam, CBP decided that a verification was needed and planned to verify the information on the case record at Kales/Engga and Strry's facilities in Vietnam during June 22-23 and June 26-30, 2023.") (citing email from CBP to counsel for SCS, Kales/Engga, Strry, and Cambria, *EAPA 7783 – Extension of Written Arguments Deadline* (June 2, 2023) (Public Document)).
[91] *See* Letter from counsel for Kales/Engga and Strry to TRLED, *EAPA Case No. 7783 – Foreign Manufacturers Notice of Intent Not To Participate in Verification* (Public Document), at 1; SCS's Administrative Review Request (Public Version), at 9–10.
[92] 19 U.S.C. §§ 1517(c)(2)(A), (3)(A); *see also* 19 C.F.R. § 165.6(a); *All One God Faith, Inc. v. United States*, 589 F. Supp. 3d 1238, 1251 (Ct. Int'l Trade 2022) (finding that "CBP's application of adverse inferences was not arbitrary, capricious, or an abuse of discretion").
[93] *See generally* SCS's Administrative Review Request (Public Version).
[94] *See id.* at 29–31.
[95] *See* SCS's Administrative Review Request (Public Version), at 30 (emphasis in original); *see also id.* at 14, 29.
[96] *See generally* 19 U.S.C. § 1517(c); 19 C.F.R. 165.5; 19 C.F.R. § 165.6.
[97] *Skyview Cabinet USA, Inc. v. United States*, Ct. No. 1:22-cv-00080, 2023 Ct. Intl. Trade LEXIS 95, at *28 (Ct. Int'l Trade June 20, 2023) (quoting 19 U.S.C. § 1517(c)(3)(B)).

inferences to a non-cooperating manufacturer, where the importer did not provide any information that would lessen the impact of the adverse inferences.[98]

Moreover, the CAFC has rejected arguments similar to the one made by SCS, in the context of AD/CVD investigations and administrative reviews. In *Mueller Commercial De Mexico v. United States*, 753 F.3d 1227 (Fed. Cir. 2014), the CAFC stated that, under 19 U.S.C. § 1677e(b), "we do not bar Commerce from drawing adverse inferences against a non-cooperative party that have collateral consequences for a cooperating party."[99] The CAFC further held that Commerce may apply an adverse inference that was directly "contrary to the interest" of a non-cooperating party, but which may have a negative impact on another party.[100] Likewise, in *Fine Furniture (Shanghai) Ltd. v. United States*, 748 F.3d 1365 (Fed. Cir. 2014), the CAFC upheld Commerce's application of adverse inferences to the Government of China, even though that remedy "collaterally reache{d} Fine Furniture," a cooperating party that had benefitted from the governmental subsidies at issue in that case.[101]

Here, TRLED properly applied adverse inferences to Kales/Engga and Strry, the companies that exported QSP to SCS during the POI. While such application does not result in EAPA liability as to Kales/Engga and Strry specifically, this does not mean that the adverse inferences themselves are not contrary to the companies' interests. As TRLED explained, an adverse inference that China is the country of origin of all of the QSP that Kales/Engga and Strry export "remains regardless of the QSP's change in geographic location or ownership."[102] Thus, the adverse inference "would necessarily impact downstream importers" of Kales/Engga and Strry[103] by affecting the exporters' abilities to ship QSP into the United States without potentially incurring AD/CVD liability and EAPA liability. In short, Kales/Engga and Strry will no longer be able to "avoid the adverse inferences permitted by statute simply by selecting an unrelated importer."[104]

Additionally, as TRLED pointed out, SCS bears the responsibility "for providing CBP with all information necessary to establish the correct duty amounts for its imports."[105] Here, SCS failed to uphold this duty by failing to "provide the correct duty amount upon entry for those QSP entries or for any of the other entries at issue."[106] Thus, similar to the importer in *Skyview*, SCS failed to provide information that would lessen the impact of adverse inferences against its own interests.[107]

Finally, SCS's argument that CBP should not apply adverse inferences to all of SCS's entries of QSP exported by Kales/Engga and Strry would necessitate an entry-by-entry review of SCS's entries to determine which specific entries contain covered merchandise. The issue of entry-by-entry duty assignment is not the proper subject of an EAPA administrative review as to whether

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[98] *Id.* at *31.
[99] *See Mueller Commercial De Mexico*, 753 F.3d at 1236.
[100] *Id.*; *see also Fine Furniture (Shanghai) Ltd. v. United States*, 748 F.3d 1365 (Fed. Cir. 2014); *KYD, Inc. v. United States*, 607 F.3d at 768 (finding that Commerce's may sometimes use the adverse inference that was used to calculate the rate of a non-cooperating party to calculate the rate of a cooperating party and thus have collateral consequences for the cooperating party).
[101] *Fine Furniture (Shanghai) Ltd.*, 748 F.3d at 1373.
[102] August 31 Determination (Public Version), at 42.
[103] *Id.*
[104] *KYD, Inc. v. United States*, 607 F.3d 760, 768 (Fed. Cir. 2010).
[105] August 31 Determination (Public Version), at 42.
[106] *Id.*
[107] *Skyview Cabinet USA, Inc.*, Ct. No. 1:22-cv-00080, 2023 Ct. Intl. Trade LEXIS 95, at *31.

substantial evidence of evasion exists, which is the situation here. As the CIT has recognized recently, CBP is not required to conduct an entry-by-entry review under the EAPA statute.[108] Rather, CBP must determine whether there is substantial evidence within the administrative record, as a whole, that evasion has occurred.[109] A review of the record establishes that SCS had multiple entries during the POI that definitively included covered merchandise (*i.e.*, QSP from China).[110] Thus, even without the use of adverse inferences, the finding of substantial evidence of evasion stands. If, indeed, some entries are ultimately proven not to contain subject merchandise, as the CIT has explained, the proper recourse to challenge CBP's assignment of duties on an entry-by-entry basis is via a protest under 19 U.S.C. § 1514, after review of the determination of evasion is completed.[111]

In sum, TRLED appropriately exercised it authority in its application of adverse inferences to Kales/Engga and Strry in selecting from among the facts otherwise available to make the determination as to evasion. RR also agrees with the manner in which TRLED applied adverse inferences to conclude that all of SCS's entries of QSP from Kales/Engga and Strry contained Chinese-origin QSP, *i.e.*, covered merchandise. However, as stated above, RR's administrative review determination is based solely on the facts of record.

C. SCS's other claims lack merit.

SCS makes four other arguments, regarding alleged procedural and legal errors, all of which are without merit.

First, SCS incorrectly avers that the EAPA statute requires intent or culpability.[112] The EAPA statute requires only that there be a material false statement, document or omission, which led to the non-payment or underpayment of antidumping and/or countervailing duties. Indeed, evasion:

> {r}efers to entering covered merchandise into the customs territory of the United States by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material, and that results in any cash deposit or other security or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise.[113]

"Culpability" and "intent" do not appear in this definition. Moreover, the CIT has recently held that "EAPA read as a whole supports CBP's strict liability interpretation of the definition of evasion."[114] Thus, EAPA liability does not require intent or culpability. It does not matter, under the EAPA statute, whether SCS actually knew that a significant portion of its shipments contained Chinese-

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[108] *See Ikadan*, 639 F. Supp. 3d at 1354.
[109] *See* 19 U.S.C. § 1517(f)(1); 19 C.F.R. § 165.45.
[110] *See supra* at 11–13.
[111] *See Ikadan*, 639 F. Supp. 3d at 1354. Putting this aside, Kales/Engga's and Strry's refusal to allow CBP to perform an on-site verification would render impossible such an entry-by-entry review. *See* Letter from counsel for Kales, Engga, and Strry to TRLED, *EAPA Case No. 7783 – Foreign Manufacturers Notice of Intent Not To Participate in Verification* (Public Document), at 1; August 31 Determination (Public Version), at 29.
[112] *See* SCS's Administrative Review Request (Public Version), at 14, 27–29.
[113] 19 U.S.C. § 1517(a)(5)(A).
[114] *Ikadan*, 639 F. Supp. 3d at 1349.

origin QSP covered by the AD/CVD Orders. Under the EAPA statute, what matters is that SCS incorrectly, *i.e.*, falsely, declared the shipments to be NOT covered by the AD/CVD Orders when in fact they were covered. SCS's argument that it exercised reasonable care also fails. Regardless of whether an importer exercised reasonable care, such exercise is not a defense as to a finding of evasion under EAPA.

Second, SCS erroneously argues that it was deprived of its "regulatory right to file rebuttal factual information" because TRLED's service of the June 2023 Memorandum was deficient, unreasonably requiring counsel "to log onto the CMS System every single day to confirm whether new documents are placed on the record by TRLED to utilize the time provided under 19 C.F.R. § 165.23(c)(2) to file rebuttal information."[115] Contrary to SCS's insinuation, attorneys have a duty to regularly monitor the docket in their cases, and "{i}t is black letter law that '{c}ounsel may not shift that burden {of monitoring the status of counsel's cases} by relying upon a notice from the court.'"[116] SCS cannot shift its burden to monitor the docket to CBP.

Third, SCS asserts that it was deprived of "the opportunity to be heard at a meaningful time" because TRLED did not provide timely notification of the EAPA allegation or a public version of the allegation to SCS until after interim measures were imposed.[117] This claim lacks merit because CBP has only a limited obligation by law to provide notification to parties of the existence of an EAPA investigation. The EAPA statute contains only one notification requirement regarding determinations, which pertains to allegers and not importers:

> Not later than 5 business days after making a determination under paragraph (1) with respect to covered merchandise, the Commissioner—
>
> (A) shall provide to each interested party that filed an allegation under paragraph (2) of subsection (b) that resulted in the initiation of an investigation under paragraph (1) of that subsection with respect to such covered merchandise a notification of the determination; and
>
> (B) may provide to importers, in such manner as the Commissioner determines appropriate, information discovered in the investigation that the Commissioner determines will help educate importers with respect to importing merchandise into the customs territory of the United States in accordance with all applicable laws and regulations.[118]

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[115] SCS's Administrative Review Request (Public Version), at 16–19.

[116] *Rockwell Automation, Inc. v. United States*, 7 F. Supp. 3d 1278, 1295 (Ct. Int'l Trade 2014) (quoting *Washington Int'l Ins. Co. v. United States*, 793 F. Supp. 1091, 1093 (Ct. Int'l Trade 1992)); *see also Fairey v. Tucker*, 567 U.S. 924, 928 (finding that the *pro se* litigant "was derelict in his duty to monitor the docket" in that case); *Prior Prods., Inc. v. S.W. Wheel NCL Co.*, 805 F.2d 543, 546 ("An attorney has a responsibility to monitor proceedings with some degree of diligence."); *Guillot v. Sec'y of HHS*, No. 03-0775V, 2012 U.S. Claims LEXIS 1070, at *21 (Fed. Cl. Aug. 15, 2012) ("Petitioners have a responsibility to monitor the case docket for new activity through the Public Access to Court Electronic Records (PACER) system. Their failure to do so and the consequent failure to comply with issued orders were omissions that fell within the realm of petitioners reasonable control.").

[117] *See* SCS's Administrative Review Request (Public Version), at 20–22.

[118] 19 U.S.C. § 1517(c)(4) (emphases added).

CBP's regulations state that the agency will, in general, "issue notification of its decision to initiate an investigation to all parties to the investigation no later than 95 calendar days after the decision has been made," and that such notification "will occur no later than five business days after interim measures are taken pursuant to § 165.24."[119] Moreover, nothing in the EAPA statute or the regulations promulgated thereunder affirmatively requires CBP to inform importers of a potential EAPA investigation before CBP finds "reasonable suspicion" of evasion and imposition of interim measures not later than 90 days after initiating an investigation.[120]

Consistent with its EAPA statutory authority, on January 26, 2023 (*i.e.*, 90 days after deciding to initiate an EAPA investigation in this case), TRLED notified the parties, including SCS, of the initiation of this EAPA investigation.[121] On February 2, 2023, five business days later, TRLED provided the Notice of Investigation to the parties, which further explained TRLED's decision to initiate the EAPA investigation and impose interim measures.[122] Thus, TRLED timely notified SCS of the initiation of the investigation in accordance with CBP's regulations.[123]

Indeed, the CIT has recently considered identical arguments to those raised by SCS here: "that the interim measures are invalid because {Customs} neither gave timely notice to Plaintiffs of the ongoing EAPA investigation and impending interim measures nor provided Plaintiffs a timely opportunity to rebut and defend against the evasion allegation and imposition of the interim measures."[124] The CIT held that because the plaintiffs failed to meet their burden of establishing a protected interest, "the court need not consider their argument that due process entitled them to notice of interim measures."[125] The situation present in the instant case is the same — CBP followed its obligations under the EAPA statute and regulations, and SCS has not satisfied its burden of establishing a protected interest that would give rise to a due process claim.

Fourth, SCS's contention that TRLED's use of confidential information to impose interim measures and to issue the August 31 Determination violated SCS's procedural due process rights also fails.[126] In *Royal Brush*, the CAFC held that due process required that the importer in that case have access to the information the agency had relied upon in reaching the determination that Royal Brush had engaged in evasion under EAPA, including information that was determined to be business confidential and was therefore originally withheld.[127]

By contrast, here, RR does not rely on confidential information to which SCS did not have access to reach our determination of evasion. Rather, RR relies only on evidence that SCS itself

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[119] 19 C.F.R. § 165.15(d)(1).
[120] *See* 19 U.S.C. § 1517(e); 19 C.F.R. § 165.15(d)(1).
[121] *See* August 31 Determination (Public Version), at 43.
[122] *See id.*
[123] Even if CBP had, in fact, simply failed to follow a procedural requirement, such failure would not void subsequent action by CBP in this EAPA investigation unless SCS is able to demonstrate substantial prejudice, which it has not done. *See Dixon Ticonderoga Co. v. United States*, 468 F.3d 1353, 1355 (Fed. Cir. 2006) (finding that "simple failure of an agency to follow a procedural requirement does not void subsequent agency action.").
[124] *Am. Pac. Plywood, Inc. v. United States*, Consol. Ct. No. 20-03914, 2023 Ct. Intl. Trade LEXIS 98, at *13 (Ct. Int'l Trade June 22, 2023) (internal citations omitted).
[125] *Id.* at *21.
[126] *See* SCS's Administrative Review Request (Public Version), at 14–16.
[127] *See Royal Brush Mfg., Inc.*, 75 F.4th at 1257–59; *see also Doty v. United States*, 53 F.3d 1244, 1251 (Fed. Cir. 1995) ("The agency's . . . withholding of the evidence on which {it} purported to rely . . . w{as} . . . egregiously removed from the fairness required of an agency in its administrative responsibilities. . . .").

initially placed on the administrative record and information that SCS included and discussed in its administrative review request.[128] Further, we note that, during the preparation of its CF-28 Response, SCS solicited, received, and reviewed information from Kales/Engga (including business confidential information), which SCS subsequently submitted to CBP.[129] Moreover, SCS entered into a Joint Defense Agreement with the exporters that "allows {for} exchanges of certain confidential information" between them, including granting SCS [Description of Agreement].[130]

In sum, in this determination, RR relies only on information to which SCS had and has access. Therefore, this case is unlike the situation in *Royal Brush*, and CBP did not violate SCS's "procedural due process right under the Fifth Amendment of the Constitution,"[131] because SCS has access to the information underlying CBP's determination finding substantial evidence of evasion.[132] Further, contrary to SCS's assertion, *Royal Brush* does not require RR to declare this EAPA investigation as "null and void."[133] There is nothing in the *Royal Brush* decision that reaches this conclusion, and SCS provides no authority to support such an argument. In sum, the facts underlying *Royal Brush* are distinguishable from those present here.

[128] *See supra* at 11–13; SCS's Administrative Review Request (Business Confidential Version), at 5–7, 11, 19, 24–26 (citing to, discussing, and bracketing business confidential information submitted by the exporters in their respective RFI and Supplemental RFI responses).
[129] *See* SCS's RFI Response (Business Confidential Version), at 33–34; August 31 Determination (Public Version), at 44.
[130] SCS's Administrative Review Request (Business Confidential Version), at 23 n.5, 28.
[131] SCS's Administrative Review Request (Public Version), at 14.
[132] *C.f. Royal Brush Mfg., Inc.*, 75 F.4th at 1257–59.
[133] SCS's Administrative Review Request (Public Version), at 16.

IV. Decision

Based upon our *de novo* review of the administrative record in this case, including the administrative review request and response thereto, the August 31 Determination of evasion under 19 U.S.C. § 1517(c) is **AFFIRMED**.

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

Sincerely,

JACINTO P JUAREZ JR
Digitally signed by JACINTO P JUAREZ JR
Date: 2024.01.11 15:55:17 -05'00'

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

Approved by:

ALICE A KIPEL
Digitally signed by ALICE A KIPEL
Date: 2024.01.11 16:53:51 -05'00'

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