

UNITED STATES COURT OF INTERNATIONAL TRADE

ALUMINUM EXTRUSIONS FAIR TRADE COMMITTEE,	:	
	:	
Plaintiff,	:	
	:	Before: Richard K. Eaton, Judge
v.	:	
	:	Court No. 22-00236
UNITED STATES,	:	
	:	
Defendant,	:	
	:	
and	:	
	:	
KINGTOM ALUMINIO S.R.L.,	:	
	:	
Defendant-Intervenor.	:	

MEMORANDUM OPINION AND ORDER

[Plaintiff’s motion for a preliminary injunction is granted.]

Dated: December 22, 2022

Robert E. DeFrancesco, III, Wiley Rein LLP, of Washington, D.C., for Plaintiff Aluminum Extrusions Fair Trade Committee. With him on the brief were *Elizabeth S. Lee* and *Claire M. Webster*.

Brady W. Mills, Morris, Manning & Martin LLP, of Washington, D.C., for Defendant-Intervenor Kingtom Alumínio S.R.L. With him on the brief were *Donald B. Cameron*, *Julie C. Mendoza*, *R. Will Planert*, *Mary S. Hodgins*, *Eugene Degnan*, *Edward J. Thomas, III*, *Jordan L. Fleischer*, and *Nicholas C. Duffey*.

Eaton, Judge: Plaintiff Aluminum Extrusions Fair Trade Committee (“Plaintiff”), a coalition of domestic aluminum extrusion producers, commenced this action pursuant to the

Enforce and Protect Act (“EAPA”).¹ *See* Compl. ¶¶ 1, 3, ECF No. 5. Plaintiff challenges U.S. Customs and Border Protection’s (“Customs”) determination that substantial record evidence does not support a finding that Defendant-Intervenor Kingtom Aluminio S.R.L. (“Kingtom”)² imported Chinese-origin aluminum extrusions into the United States through evasion. *See* Notice of Final Determination as to Evasion, EAPA Case No. 7550 (June 29, 2022), PR 81, ECF No. 21 (“Final Evasion Determination”).

Before the court is Plaintiff’s partial consent Motion for Preliminary Injunction (“Motion”). *See* Mot. for Prelim. Injunction, ECF No. 8. By its Motion, Plaintiff seeks an order enjoining Customs from causing or permitting liquidation³ of certain of Kingtom’s unliquidated entries during the pendency of this litigation, including any appeals. A temporary restraining order is currently in place. *See* Order (Aug. 18, 2022), ECF No. 15.

Defendant the United States, on behalf of Customs, has consented to the terms of the injunction as proposed by Plaintiff, without conceding any likelihood of Plaintiff’s success on the merits. *See* Motion at 6-7.

Defendant-Intervenor Kingtom opposes the Motion. *See* Opp’n Mot. for Prelim. Injunction, ECF No. 16 (“Kingtom’s Response”).

¹ The EAPA was enacted as part of the Trade Facilitation and Trade Enforcement Act of 2015, Pub. L. No. 114-125, § 421, 130 Stat. 122, 161 (2016), which added section 517 to the Tariff Act of 1930. The EAPA is codified at 19 U.S.C. § 1517. All references to the U.S. Code are to the 2018 edition unless otherwise specified.

² Kingtom is a manufacturer and exporter of aluminum extrusions in the Dominican Republic. The company began “acting as the importer of record for its shipments to the United States” in late 2019. *See* Notice of Initial Determination as to Evasion, EAPA Case No. 7550 (Feb. 4, 2022) at 5, PR 69, ECF No. 21 (“Initial Evasion Determination”).

³ Liquidation is defined as “the final computation or ascertainment of duties.” 19 C.F.R. § 159.1 (2020).

The court has jurisdiction under 19 U.S.C. § 1517(g) and 28 U.S.C. § 1581(c).⁴ For the following reasons, the court grants Plaintiff's Motion.

BACKGROUND

I. EAPA Legal Framework

Under the EAPA, Customs determines whether an importer has entered covered merchandise into the customs territory of the United States through evasion. *See* 19 U.S.C. § 1517(c). “Covered merchandise” is merchandise that is subject to an antidumping or countervailing duty order. *Id.* § 1517(a)(3). As defined by the statute, “evasion” means

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.

Id. § 1517(a)(5)(A). Customs' regulations describe the requirements for filing allegations of evasion and requests for investigation, the investigation procedures, and administrative review of determinations as to evasion of antidumping or countervailing duty orders. *See* 19 C.F.R. § 165.0 (2020).

Customs' Office of Trade handles EAPA cases. In particular, the Trade Remedy Law Enforcement Directorate, within the Office of Trade, investigates allegations of evasion and makes an initial determination as to whether evasion has occurred. *See id.* § 165.1 (defining “TRLED”); *see also* 19 U.S.C. § 1517(e)(1)-(3) (providing for interim measures). Then, upon timely request,

⁴ “The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section . . . 517 of the Tariff Act of 1930 [codified at 19 U.S.C. § 1517].” 28 U.S.C. § 1581(c).

the Regulations and Rulings office (also a part of Customs' Office of Trade) conducts an administrative review of the initial evasion determination. *See* 19 C.F.R. § 165.1 (defining "Regulations and Rulings"); *see also id.* §§ 165.41 (requests for review of initial determination), 165.45 (Regulations and Rulings applies de novo standard of review). The initial determination by the Trade Remedy Law Enforcement Directorate and the final determination by Regulations and Rulings are subject to review by this Court. *Id.* § 165.46(a)-(b); *see also* 19 U.S.C. § 1517(g).

Under the statute, a party that alleged evasion or a party found to have entered covered merchandise through evasion may seek judicial review of the determination by the Trade Remedy Law Enforcement Directorate under § 1517(c) and the administrative review by Regulations and Rulings under § 1517(f) "to determine whether the determination [under subsection (c)] and review [under subsection (f)] [are] conducted in accordance with" these subsections. 19 U.S.C. § 1517(g)(1). This Court "shall examine . . . whether [Customs] fully complied with all procedures under subsections (c) and (f)" and "whether any determination, finding, or conclusion is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *Id.* § 1517(g)(2).

It is worth noting that evasion determinations in EAPA cases are distinct from dumping or subsidization determinations in trade remedy cases. In trade remedy cases, the U.S. Department of Commerce ("Commerce") and the U.S. International Trade Commission (the "Commission") make findings that result in a determination as to whether antidumping or countervailing duties are imposed on U.S. imports, and the rate of any such duties. *See* 19 U.S.C. §§ 1671 (countervailing duties), 1673 (antidumping duties). In addition, in trade remedy cases such a determination can have a future effect because an affirmative determination sets the tariff not only for the period of investigation or review, but for future entries, subject to later reviews.

EAPA cases, which fall under Customs' jurisdiction, are a means of enforcing antidumping and countervailing duty orders. That is, in evasion cases Customs determines whether an importer has entered merchandise that is subject to an antidumping and/or countervailing duty order through evasion, thereby avoiding payment of duties owed under the order(s). *See id.* § 1517(b)-(c). But these cases result in increased duties only for the entries made by evasion during the period of investigation.

The EAPA provides that Customs and Commerce will cooperate in some circumstances. For example, if Customs receives an allegation of evasion but is unable to determine whether the merchandise at issue is "covered merchandise," the statute requires Customs to refer the question to Commerce. *See* 19 U.S.C. § 1517(b)(4); *see also* 19 C.F.R. § 165.16(a)-(c). Commerce then determines whether the merchandise is covered by an order and transmits its determination to Customs, which places Commerce's determination on the record of the EAPA investigation. *See* 19 C.F.R. § 165.16(e). Additionally, the EAPA statute provides that if Customs ultimately makes an affirmative evasion determination, it must notify Commerce and ask Commerce to identify the applicable antidumping or countervailing duty assessment rates for entries subject to Customs' determination (or if such an assessment rate is not available, the cash deposit rate to be applied to the entry until an assessment rate becomes available). *See* 19 U.S.C. § 1517(d)(1)(C); *see also id.* § 1517(d)(2)(A) (providing that upon receiving a notification of an affirmative evasion determination from Customs, Commerce "shall promptly provide to [Customs] the applicable cash deposit rates and antidumping or countervailing duty assessment rates and any necessary liquidation instructions."). Notwithstanding this cooperation between Commerce and Customs, it is Customs that is solely responsible for investigating allegations and determining whether evasion has occurred.

II. Procedural Background

Here, on January 8, 2021, Customs received an allegation filed by Plaintiff domestic producers that Kingtom imported Chinese-origin aluminum extrusions into the United States by fraudulently transshipping them through the Dominican Republic to evade applicable antidumping and countervailing duties.⁵

On May 2, 2021, in response to Plaintiff's allegation, the Trade Remedy Law Enforcement Directorate initiated EAPA Investigation Number 7550. The investigation covered entries, imported by Kingtom, that were "entered for consumption, or withdrawn from warehouse for consumption, from January 8, 2020, [one year before receipt of the allegation,] through the pendency [*i.e.*, conclusion] of this investigation, *i.e.*, February 5, 2022."⁶ Notice of Initial Determination as to Evasion, EAPA Case No. 7550 (Feb. 4, 2022) at 3, PR 69, ECF No. 21 ("Initial Evasion Determination").

Upon completion of its investigation, the Trade Remedy Law Enforcement Directorate determined that Kingtom had entered covered merchandise through evasion during the investigation period. *See* Initial Evasion Determination at 21; *see also* 19 U.S.C. § 1517(c)(1).

⁵ Antidumping and countervailing duty orders on aluminum extrusions from the People's Republic of China have been in place since 2011. *See Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 Fed. Reg. 30,650 (Dep't Commerce May 26, 2011); *Aluminum Extrusions From the People's Republic of China: Countervailing Duty Order*, 76 Fed. Reg. 30,653 (Dep't Commerce May 26, 2011).

⁶ The court notes that the language of the proposed injunction, as agreed to by Customs, would cover "entries that were entered, or withdrawn from warehouse for consumption, on or after January 8, 2020, up to and including the date of the final and conclusive court decision in this litigation, including all appeals and remand proceedings." Motion at 1-2. As shall be seen, in keeping with its statutory analysis, the court has adjusted this language to conform to the scope of the entries covered by the investigation and subject to Customs' determination, *i.e.*, those "entered for consumption, or withdrawn from warehouse for consumption, from January 8, 2020, through the pendency [*i.e.*, conclusion] of this investigation, *i.e.*, February 5, 2022." Initial Evasion Determination at 3.

As is its statutory right under the EAPA, Kingtom requested an administrative review of the determination by the office of Regulations and Rulings. *See* Final Evasion Determination at 1; *see also* 19 U.S.C. § 1517(f). On June 29, 2022, after de novo review, Regulations and Rulings reversed the Trade Remedy Law Enforcement Directorate’s evasion determination, finding that substantial record evidence did not support a finding of evasion as to Kingtom. *See* Final Evasion Determination at 11.

The Plaintiff domestic producers timely commenced this action to contest Regulations and Rulings’ final negative evasion determination, and shortly thereafter filed its Motion seeking injunctive relief. *See* Compl. ¶ 1; *see also* Motion at 1-2. A temporary restraining order was issued to enjoin liquidation while the court considered the Motion. *See* Order (Aug. 18, 2022).

DISCUSSION

Injunctive relief is an “extraordinary remedy.” *See Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982) (citation omitted). To prevail on its Motion, Plaintiff must show (1) that it would be immediately and irreparably injured absent the injunction; (2) that there is a likelihood of success on the merits; (3) that the balance of equities tips in Plaintiff’s favor; and (4) that the public interest would be better served by the relief requested. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

As this Court has observed, “before issuing a preliminary injunction inquiry must first be made as to the nature of the administrative determination under judicial consideration.”⁷ *Am.*

⁷ There is some question as to whether cases making a distinction between investigations and reviews in trade remedy cases remain good law. This is because in both investigations and reviews a domestic plaintiff would lose a major part of their case should liquidation occur while it was pending. *See Zhejiang Native Produce & Animal By-Prod. Imp. &*

Spring Wire Corp. v. United States, 7 CIT 2, 6, 578 F. Supp. 1405, 1408 (1984). Here, the nature of the EAPA determination is one that either does or does not impose increased duties on entries entered through evasion during a discrete period of time, *i.e.*, from January 8, 2020, until February 5, 2022. By their nature, then, EAPA determinations are distinct from trade remedy cases. The EAPA is administered by Customs, whereas the trade remedy laws are administered by Commerce and the Commission. The EAPA authorizes the investigation and determination of evasion, whereas the trade remedy laws authorize the investigation and determination of dumping or subsidization. EAPA determinations are reviewed by this Court under the arbitrary and capricious standard of review, whereas trade remedy determinations are generally reviewed according to the substantial evidence standard. Most importantly, the effect of an EAPA determination is limited by time, whereas a trade remedy determination is not time limited.⁸

Another important further distinction is that the EAPA does not contain explicit statutory authority for the granting of an injunction against liquidation. By way of contrast, the governing statute for trade remedy cases does provide for a statutory injunction against liquidation. *Compare* 19 U.S.C. § 1516a(c)(2) (providing that this Court “may enjoin the liquidation of some or all entries of merchandise covered by a determination of [the Secretary of the Treasury], [Commerce] or the Commission, upon a request by an interested party for such relief and a proper showing that the requested relief should be granted under the circumstances”), *with* 19 U.S.C. § 1517(g)

Exp. Corp. v. United States, 39 CIT __, __, 61 F. Supp. 3d 1358, 1368 (2015). (“[I]rreparable harm can be shown irrespective of whether the results of an investigation are negative or affirmative, find sales at [less than fair value], or whether the injunction is sought by foreign producers or exporters, or by domestic producers. In each of these cases, without injunctive relief, the parties face the prospect of losing the only remedy they have with respect to merchandise liquidated prior to a court ruling.”).

⁸ Of course, a later administrative review in a trade remedy case has the effect of time limiting the rate determined by an order or a review of that order.

(providing for judicial review of EAPA determinations by this Court, with no mention of the opportunity to seek an injunction).

Absent specific statutory provision in the EAPA authorizing the court to grant an injunction against liquidation, Plaintiff's Motion will be decided pursuant to the court's equity powers. *See* 28 U.S.C. § 1585 (endowing the Court with "all the powers in law and equity" possessed by district courts); *id.* § 2643(c)(1) ("[T]he Court of International Trade may . . . order any other form of relief that is appropriate in a civil action, including, but not limited to . . . injunctions"). "[T]he grant or denial of a preliminary injunction remains a matter for the trial court's discretion, which is exercised in conformity with historic federal equity practice." 11A CHARLES ALAN WRIGHT, ET AL., FEDERAL PRACTICE AND PROCEDURE § 2947 (3d ed. 2022) (footnote omitted).

When considering the four-factor preliminary injunction test, "the most compelling reason in favor of entering a[n injunction] order is the need to prevent the judicial process from being rendered futile by defendant's action or refusal to act." *Id.* § 2947. With respect to irreparable and immediate injury, the court must consider whether liquidation of the unliquidated subject entries prior to the court's ruling on the merits of Plaintiff's claims would "impair the court's ability to grant an effective remedy." *Id.* § 2948.1 ("Only when the threatened harm would impair the court's ability to grant an effective remedy is there really a need for preliminary relief.").

As to a likelihood of success on the merits, "[s]ince *Winter*, [the Federal Circuit has] held that the party seeking the injunction must be able to 'demonstrate that it has at least a fair chance of success on the merits for a preliminary injunction to be appropriate.'" *Silfab Solar, Inc. v. United States*, 892 F.3d 1340, 1345 (Fed. Cir. 2018) (affirming denial of preliminary injunction in Section 301 case) (quoting *Wind Tower Trade Coal. v. United States*, 741 F.3d 89, 96 (Fed. Cir. 2014)); *see also Qingdao Taifa Grp. Co. v. United States*, 581 F.3d 1375, 1381 (Fed. Cir. 2009).

Nonetheless, courts have recognized a “sliding scale” approach when considering injunction applications. Under the sliding scale approach, “the more the balance of irreparable harm inclines in the plaintiff’s favor, the smaller the likelihood of prevailing on the merits he need show in order to get the injunction.” *Qingdao*, 581 F.3d at 1378-79 (quoting *Kowalski v. Chicago Tribune Co.*, 854 F.2d 168, 170 (7th Cir. 1988)).

As to the two other factors, the court must consider the balance of hardships by comparing the hardship on the Plaintiff domestic producers, should the injunction be denied, and the severity of the impact on Kingtom, the only party that opposes the Motion, should the injunction be granted. *See* WRIGHT, ET AL. § 2948.2.

And finally, the court must take into account the public interest. *See Wages & White Lion Invs., L.L.C. v. FDA*, 16 F.4th 1130, 1143 (5th Cir. 2021) (“The public interest is in having governmental agencies abide by the federal laws that govern their existence and operations.”) (citation and quotation marks omitted); *see also Lands Council v. Cottrell*, 731 F. Supp. 2d 1074, 1092 (D. Idaho 2010) (noting the “failure to provide for an injunction would undermine the public’s interest in ensuring that executive agencies follow the laws that govern their conduct.”).

A. Immediate and Irreparable Injury

Plaintiff domestic producers argue that “without the requested relief, [they] will be immediately and irreparably injured” because “if [the subject] entries are not suspended and [are] liquidated without paying the [antidumping and countervailing] duties . . . , Plaintiff will not be able [to] litigate this appeal, thereby undermining the relief owed to the domestic industry.” Motion at 2, 4. Plaintiff points out that Customs’ final negative evasion determination only covers the subject entries, which were made during a specific time frame. *See* Motion at 2-3. Absent an injunction, those entries might liquidate without antidumping and countervailing duties (which

Plaintiff claims are owed), and, thus, Plaintiff would be deprived of the judicial remedy provided for in the EAPA. For Plaintiff, “[l]iquidating the subject entries prior to the resolution of this proceeding could render Plaintiff’s claims moot if it eliminates Plaintiff’s only available remedy in an action contesting the results of a final determination.” Motion at 3 (citing *Zenith Radio Corp. v. United States*, 710 F.2d 806, 810 (Fed. Cir. 1983)).

In response, Kingtom asserts that Customs’ evasion determination is like a decision in an antidumping investigation, in that Plaintiff will not be deprived of meaningful judicial review of its claims. Apparently discounting the possibility of the entries being liquidated, Kingtom asserts that “[i]f this Court were to reverse [Customs’] final determination, the [interim] measures in place prior to [Regulations and Rulings’] reversal would be reinstated and Kingtom’s entries would once again be subject to duties applicable to entries of aluminum extrusions from China.” Kingtom’s Response at 5. Moreover, without citation, Kingtom asserts that Plaintiff “would retain a continuing remedy for future entries.” Kingtom’s Response at 6. In other words, for Kingtom, an affirmative evasion determination has prospective effect in that it would apply not only to the subject entries, but to future entries, too.

The court finds that Plaintiff has sufficiently shown that it will be immediately and irreparably injured if the subject entries liquidate before a final court decision is made in this case. First, Kingtom is right that, should the negative evasion determination be reversed by the court, the subject entries would again be “subject to duties applicable to entries of aluminum extrusions from China.” Kingtom’s Response at 5. What Kingtom does not address is the question of what happens if the subject entries are liquidated during the pendency of this action, thus eliminating the only relief Plaintiff domestic producers seek—liquidation with dumping and countervailing duties. This is why an injunction is needed—to preserve Plaintiff’s sole remedy. *See* WRIGHT, ET

AL. § 2947 (“[T]he most compelling reason in favor of entering a[n injunction] order is the need to prevent the judicial process from being rendered futile by defendant’s action or refusal to act.”). Second, Kingtom does not support with statutory or case law the proposition that, should it prevail, Plaintiff would gain prospective relief. In other words, there does not appear to be any law that supports the conclusion that an affirmative evasion determination has future effect. Rather, the language of the EAPA and applicable regulations support the conclusion that an affirmative evasion determination affects solely the entries that are investigated by Customs and are subject to the resulting determination.

A review of the statute makes this all clear. Should Plaintiff prevail on the merits of its claims, and, on remand, Customs makes an affirmative evasion determination, the provisions of subsection (d) of the EAPA would apply. Under subsection (d)(1), Customs “shall” take certain actions if it makes an affirmative evasion determination. These actions include “suspend[ing] the liquidation of *unliquidated entries* of . . . covered merchandise *that are subject to the determination,*” and that entered the United States within a specific time frame, *i.e.*, “on or after the date of the initiation of the investigation . . . with respect to such covered merchandise and on or before the date of the determination.” 19 U.S.C. § 1517(d)(1)(A)(i) (emphasis added).

In other words, should Customs ultimately make an affirmative evasion determination here, it would be required to suspend liquidation with respect to unliquidated entries subject to that determination. In the context of this case, “unliquidated entries of . . . covered merchandise that are subject to the determination” means any of the subject entries remaining unliquidated that entered from January 8, 2020, through February 5, 2022. If the subject entries are already liquidated by the time judicial review is complete, there will be no merchandise for Customs to liquidate and apply the higher duties to.

Other actions required by subsection (d) also could not be completed. For example, Customs “shall” (1) notify Commerce of the affirmative determination, (2) ask Commerce for the applicable duty rate for these unliquidated entries, and (3) “require the posting of cash deposits and assess duties” on those entries. 19 U.S.C. § 1517(d)(1)(C)-(D). Notifying Commerce as to the affirmative determination and requesting applicable duty rates would serve little purpose, however, if the entries subject to that determination were already liquidated, nor could Customs require the posting of cash deposits on those entries.⁹

Because, here, liquidation prior to a decision by the court would effectively eliminate Plaintiff’s right to judicial review of the contested determination by eliminating the only meaningful relief sought by Plaintiff, the immediate and irreparable injury factor favors granting an injunction.

B. Likelihood of Success on the Merits

As noted, under the “sliding scale” approach, “the more the balance of irreparable harm inclines in the plaintiff’s favor, the smaller the likelihood of prevailing on the merits he need show in order to get the injunction.” *Qingdao*, 581 F.3d at 1378-79 (citation omitted). Nonetheless, for relief to be granted, Plaintiff must show “at least a fair chance of success on the merits for a preliminary injunction to be appropriate.” *Silfab Solar*, 892 F.3d at 1345 (citation omitted).

⁹ While it may be possible for the court to order reliquidation of any liquidated entries subject to an affirmative evasion determination using its equitable powers, this procedure would be cumbersome and is not yet settled law. *See In re Section 301 Cases*, 45 CIT __, __, 524 F. Supp. 3d 1355, 1374 n.4 (2021) (Barnett, J., dissenting); *compare Home Prods. Int’l, Inc. v. United States*, 43 CIT __, 405 F. Supp. 3d 1368 (2019), *appeal dismissed*, 846 F. App’x 890 (Fed. Cir. 2021), *with Mid Continent Steel & Wire, Inc. v. United States*, 44 CIT __, __, 427 F. Supp. 3d 1375, 1382 (2020) and *Best Mattresses Int’l Co. v. United States*, 46 CIT __, __, 557 F. Supp. 3d 1338, 1344 (2022).

Plaintiff claims that Customs “exceeded [its] authority in interpreting the scope of the antidumping and countervailing duty orders at issue and concluding that Kingtom did not evade the Orders.” Motion at 5. Briefing on the merits of Plaintiff’s claims in this case has not begun, so the precise contours of Plaintiff’s argument are not known to the court. Based on the allegations in the complaint, however, there have been several EAPA investigations involving the same merchandise and parties in which Customs has asked for voluntary remand and/or reversed itself, which suggests that Customs is still developing its understanding of the scope of its authority under the law. *See, e.g., Glob. Aluminum Distrib. LLC v. United States*, 46 CIT ___, 585 F. Supp. 3d 1352 (2022) (sustaining uncontested final determination in EAPA Investigation No. 7348 after voluntary remand); *see also* Order, *H&E Home, Inc. v. United States*, Consol. Court No. 21-00337, (U.S. Ct. Int’l Trade Sept. 7, 2022), ECF No. 70 (granting motion for voluntary remand in EAPA Investigation No. 7423, the results of which are pending). Indeed, briefing in this case will be scheduled only after the results of voluntary remand in *H&E Home, Inc. v. United States*, Consol. Court No. 21-00337 have been filed with the Court. *See* Order (Oct. 25, 2022), ECF No. 28. Given this uncertainty, it cannot be said at this time that Plaintiff does not have a “fair chance” of success on the merits. Thus, Plaintiff has made a sufficient showing on this factor, which, considered together with the irreparable injury factor discussed above, weighs in favor of granting the injunction.

C. Balance of Hardships

Next, the court considers the balance of hardships on the parties. As discussed, Plaintiff faces the potential loss of its ability to obtain a judicial remedy if the preliminary injunction does not issue. For its part, Kingtom claims that if the injunction issues, *i.e.*, if liquidation is enjoined, the company will suffer hardship because, notwithstanding its negative Final Evasion

Determination, Customs has continued to issue liquidated damages notices, demanding payment of unpaid antidumping and countervailing duties on the subject entries.¹⁰ Kingtom’s Resp. at 7 (“[Customs’] premature and repeated issuances of liquidated damages notices and its refusal to cease their issuance until the Court permits the entries to be liquidated has caused, and continues to cause, a great deal of hardship for Kingtom.”). Further, Kingtom worries that Customs might bring a collection action against it.¹¹ *Id.* (“Following the denial of Kingtom’s numerous petitions against [the liquidated damages] notices, [Customs] may proceed with collection efforts in federal court, which could result in the seizure of Kingtom’s shipments at port and prevent the importation of Kingtom merchandise into the United States.”).

It does seem peculiar that Commerce should seek liquidated damages with respect to entries which Customs itself has found were not entered through evasion. These demands for liquidated damages, however, are not a part of the subject matter of this case. On the other hand,

¹⁰ To be clear, Customs is not requiring cash deposits on Kingtom’s entries made following the period of investigation. *See* Kingtom’s Resp. at 11.

¹¹ As described in its brief, Kingtom has filed petitions to contest Customs’ claims for liquidated damages, which Customs has denied. For example, in a letter dated August 5, 2022, Customs denied Kingtom’s petition on the grounds that the EAPA investigation was “currently ongoing,” apparently unaware that its own Regulations and Rulings office had issued the negative Final Evasion Determination more than one month earlier on June 29, 2022. *See* Kingtom’s Resp., attach. III at 2 (“As this EAPA investigation is *currently ongoing*, and final determination as to whether Kingtom entered covered merchandise into the United States through evasion has not been issued, no protest or petition will be considered until after completion of the proceeding or the applicable AD/CVD . . . is paid.” (emphasis added)). The court trusts that this is an instance of the left hand not knowing what the right hand is doing. Though the court is not persuaded by the argument that these denials tip the balance of hardships in Kingtom’s favor for purposes of the Motion, that is not to say the company is necessarily without recourse. Customs’ denials of Kingtom’s petitions are agency actions that might be subject to challenge in this Court. *See* 28 U.S.C. § 1581(i)(1)(B), (D) (granting “the Court of International Trade . . . exclusive jurisdiction of any civil action commenced against the United States, its agencies, or officers, that arises out of any law of the United States providing for . . . [the] administration and enforcement” of “tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue.”).

as noted, relief for Plaintiff can only be obtained from the court in this lawsuit, and without an injunction, Plaintiff stands to lose the benefit of any relief achieved through this lawsuit. Therefore, the balance of hardships weighs in favor of granting the injunction.

D. Public Interest

Ensuring that government agencies comply with the law and interpret the statutes they administer uniformly and fairly serves the public interest. *See Lands Council*, 731 F. Supp. 2d at 1092; *see also Wages & White Lion Invs.*, 16 F.4th at 1143. Because here liquidation could render judicial review ineffectual, the court finds that this factor weighs in favor of granting the injunction.

CONCLUSION AND ORDER

Based on the foregoing, and all other papers and proceedings herein, it is hereby

ORDERED that Plaintiff's Motion for a preliminary injunction is **GRANTED**; it is further

ORDERED that Defendant the United States, together with the delegates, officers, agents, and employees of the United States Customs and Border Protection ("U.S. CBP"), shall be, and are hereby, **ENJOINED**, pending a final and conclusive court decision in this litigation, including all appeals and remand proceedings, from causing or permitting liquidation of unliquidated entries of aluminum extrusions from the Dominican Republic that:

- were subject to Enforce and Protect Act Investigation Number 7550, Letter from Brian M. Hoxie, Director, Enforcement Operations Division, Trade Remedy & Law Enforcement Directorate, CBP Office of Trade, re: *Notice of Final Determination as to Evasion* (Feb. 4, 2022), and the subsequent *de novo* administrative review, Letter from Wiley R. Beevers, Chief, Cargo Security, Carriers & Restricted Merchandise Branch, Regulations & Rulings, Office of Trade, U.S. CBP, re: *Enforce and Protect Act ("EAPA") Case Number 7550; Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011) and *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order*, 76 FR 30653 (May 26, 2011); *Kingtom Aluminio SRL*; 19 U.S.C. § 1517 (June 29, 2022);

- were entered, or withdrawn from warehouse for consumption, on or after January 8, 2020, through February 5, 2022;
- were imported by Kingtom Aluminio S.R.L.;
- remain unliquidated as of 5:00 p.m. on the day the Court enters this order on the docket in this case; it is further

ORDERED that this injunction shall dissolve upon entry of a final court decision in this litigation, including all appeals and remand proceedings, and that the entries covered by this injunction shall be liquidated in accordance with that final decision; and it is further

ORDERED that the temporary restraining order issued on August 18, 2022, ECF No. 15, is lifted.

/s/ Richard K. Eaton

Judge

Dated: December 22, 2022
New York, New York