



U.S. Customs and
Border Protection

May 11, 2020

PUBLIC VERSION

EAPA Case Number: 7311

Daniel Weir
Apec International LLC
967 Gardenview Office Parkway, Suite 11
Creve Coeur, MO 63141

Jeffrey Grimson
Jill Cramer
On behalf of Concannon Corporation
Mowry & Grimson, PLLC
5335 Wisconsin Avenue, NW
Suite 810
Washington, DC 20015

RE: Notice of Final Determination as to Evasion

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

Pursuant to an examination of the record in Enforce and Protect Act (EAPA) Investigation 7311, U.S. Customs and Border Protection (CBP) has determined there is substantial evidence that Concannon Corporation (Concannon) entered merchandise covered by antidumping duty (AD) order A-570-051 and countervailing duty order (CVD) C-570-052 on certain hardwood plywood products (plywood) from the People's Republic of China (China)¹ into the customs territory of the United States through evasion. Substantial evidence demonstrates that Concannon imported Chinese-origin plywood that was transshipped through Vietnam. As a result, no cash deposits were applied to the merchandise at the time of entry.

Background

The Trade Remedy Law Enforcement Directorate (TRLED), within CBP's Office of Trade, acknowledged receipt of the properly filed allegation by Apec International LLC (the *Alleger*) against Concannon on June 17, 2019.² In its allegation, the *Alleger* stated that Concannon

¹ See *Certain Harwood Plywood from the People's Products Republic of China: Antidumping Duty Order*, 83 FR 504 (January 4, 2018) (AD Order); see also *Certain Hardwood Plywood Products from the People's Republic of China: Countervailing Duty Order*, 83 FR 513 (January 4, 2018) (CVD Order).

² See email from CBP dated, June 17, 2019, acknowledging receipt of the *Alleger's* allegation.

evaded the AD/CVD orders on plywood from China by importing plywood that was manufactured in China but transshipped through Vietnam.

TRLED found the information provided in the allegation reasonably suggested that covered merchandise had been entered for consumption by Concannon into the customs territory of the United States through evasion. Consequently, CBP initiated an investigation with respect to Concannon on July 9, 2019, pursuant to Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, commonly referred to as the “Enforce and Protect Act” or EAPA.³

As part of the EAPA investigation process, CBP issued a Customs Form 28 Request for Information (CF-28) to Concannon on August 8, 2019. The CF-28 requested sales, production, and factory documentation. CBP also conducted a site visit of the facilities of Concannon’s manufacturer, [redacted], in Vietnam on September 18, 2019.⁴ After evaluating all of the information on the record, TRLED determined that reasonable suspicion existed that plywood imported into the United States from Vietnam by Concannon was in fact manufactured in China. Specifically, TRLED based its determination on information provided in the allegation; CBP’s observations of dormant production equipment and lack of packing supplies at the facility in Vietnam; CBP data indicating Concannon’s import history from [redacted]; and CBP data indicating Concannon’s imports from the manufacturer are significantly more than the manufacturer’s stated production capacity.⁵ Consequently, CBP imposed interim measures on October 19, 2019.⁶

On October 24, 2018, CBP subsequently sent Requests for Information (RFIs) to Concannon and the manufacturer, [redacted].⁷ Concannon responded on November 19, 2019, and the manufacturer responded on November 26, 2019.⁸ On December 30, 2019, CBP issued supplemental RFIs to Concannon and the manufacturer and issued initial RFIs to four of the manufacturer’s suppliers.⁹ Concannon submitted its supplemental RFI response on January 20,

³ See CBP Memorandum initiating EAPA Investigation 7311, dated July 9, 2019.

⁴ See Memorandum from CBP Attaché to Executive Director, TRLED dated September 22, 2019 (Onsite Visit Memorandum).

⁵ See CBP letter, “Notice of Initiation of Investigation and Interim Measures – EAPA Case 7311,” dated October 19, 2019, (NOI) at 5.

⁶ *Id.* at 6.

⁷ See CBP Memorandum, “Request for Information to Identified Manufacturer/Supplier with regards to Enforce and Protect Act (EAPA) investigation of whether Concannon Corporation has evaded the Antidumping and Countervailing Duty Orders on certain hardwood plywood products from the People’s Republic of China, A-570-051 and C-570-052, with entries of merchandise into the United States,” dated October 24, 2019 (Manufacturer RFI Questionnaire).

⁸ See Letter from Concannon, “EAPA Case Number 7311: Concannon Corporation Response to Request for Information,” dated November 19, 2019 (Concannon RFI Response); see also Letter from the Manufacturer, “EAPA Case Number 7311: Submission of the Business Confidential Document and Public Versions of [redacted] Responses,” dated November 26, 2019 (Manufacturer RFI Response).

⁹ See CBP Memorandum, “Supplemental Request for Information to Importer with regards to Enforce and Protect Act (EAPA) investigation of whether Concannon Corporation has evaded the Antidumping and Countervailing Duty Orders on certain hardwood plywood products from the People’s Republic of China, A-570-051 and C-570-052, with entries of merchandise into the United States,” dated December 30, 2019 (Concannon Supplemental RFI Questionnaire); see also CBP Memorandum, “Supplemental Request for Information to Identified Manufacturer/Supplier concerning Enforce and Protect Act (EAPA) investigation of whether Concannon

2020.¹⁰ The manufacturer and its four suppliers originally submitted their supplemental RFI and RFI responses on January 23 and 24, 2020. However, CBP rejected the submissions and requested that each company resubmit both a business confidential and public version of the responses properly bracketed pursuant to 19 CFR 165.4.¹¹ CBP received a revised supplemental RFI response from the manufacturer and initial RFI responses from its four suppliers on February 12, 2020.¹² On February 3, 2020, CBP notified the parties to the investigation that verification of the manufacturer and its suppliers in Vietnam was canceled.

Concannon submitted a challenge to the Alleger's legal standing on November 26, 2019, and additional factual information on January 27, 2020.¹³ Concannon submitted its written arguments on February 24, 2020.¹⁴ The Alleger did not submit any arguments.

Analysis

Under 19 USC 1517(c)(1)(A), to reach a final determination as to evasion, CBP must "make a determination, based on substantial evidence, with respect to whether such covered merchandise entered into the customs territory of the United States through evasion." Evasion is defined as "the entry of covered merchandise into the customs territory of the United States for consumption by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material, and that results in any cash deposit or other security or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise." Thus, the statute outlines three elements for CBP to address in reaching a determination: 1) whether the entries in question are covered merchandise (*i.e.*, merchandise that is subject to an AD/CVD order) when they entered into the customs territory of the United States; 2) whether such entry

Corporation has evaded the Antidumping and Countervailing Duty Orders on certain hardwood plywood products from the People's Republic of China, A-570-051 and C-570-052, with entries of merchandise into the United States," dated December 30, 2019 (Manufacturer Supplemental RFI Questionnaire); *see also* RFI questionnaires to four suppliers were similarly titled Memorandum, "Request for Information to Identified Manufacturer/Supplier concerning Enforce and Protect Act (EAPA) investigation of whether Concannon Corporation has evaded the Antidumping and Countervailing Duty Orders on certain hardwood plywood products from the People's Republic of China, A-570-051 and C-570-052, with entries of merchandise into the United States," dated December 30, 2019 (These questionnaires will be respectively referred to as Supplier 1, 2, 3, and 4 RFI Questionnaire).

¹⁰ *See* Letter from Concannon, "EAPA Case Number 7311: Concannon Corporation Response to the Supplemental Request for Information," dated January 20, 2020 (Concannon Supplemental RFI Response).

¹¹ *See* Email from CBP to Manufacturer titled, "EAPA Case No. 7311 – Request for Business Confidential Treatment," dated February 3, 2020; *see also* emails to four suppliers were similarly titled, "EAPA Case No. 7311 – Request for Business Confidential Treatment," dated February 3, 2020 (These emails will be respectively referred to as Supplier 1, 2, 3, and 4 Bracketing Emails).

¹² *See* Letter from the Manufacturer, "EAPA Case Number 7311: Submission of the Business Confidential Document and Public Versions of []'s Responses to the Supplemental Manufacturer Request for Information," received February 12, 2020 (Manufacturer Supplemental RFI Response).

¹³ *See* Letter from Concannon, "EAPA Case Number 7311: Concannon Corporation Objection to Legal Standing of Alleger Apec International LLC," dated November 26, 2019; *see also* Letter from Concannon, "EAPA Case Number 7311: Concannon Corporation Additional Information to Supplemental Response to Request for Information," dated January 27, 2020.

¹⁴ *See* Letter from Concannon, "EAPA Case Number 7311: Concannon Corporation Submission of Written Argument," dated February 24, 2020 (Concannon Written Argument).

was made by a material false statement or act or material omission; and 3) whether there was a resulting reduction or avoidance of applicable AD/CVD cash deposits or other security. As discussed below, the record of this investigation indicates that covered merchandise entered the United States through evasion, and that substantial evidence indicates Concannon's imports were merchandise entered through evasion, resulting in the avoidance of applicable AD/CVD deposits or other security.

Concannon argues that documentation provided by the importer, the manufacturer [redacted], and CBP's observations of production during its initial site visit demonstrates that the country of origin of the imported plywood was Vietnam. Therefore, Concannon asserts it did not import covered merchandise through evasion. However, contrary to Concannon's contention, the manufacturer failed to provide sufficient evidence of its production and production capacity. In its supplemental RFI response, the manufacturer stated that it, "[redacted]."¹⁵

Further, the manufacturer stated its inability to, "[redacted]."¹⁶

The manufacturer's responses included the following additional deficiencies:

- The manufacturer provided a list of all suppliers/manufacturers for birch veneers, core, and core veneer; however, the product descriptions lacked specific details, *i.e.*, size and dimension.¹⁷
- The manufacturer provided a list of raw material purchases. However, half of those purchases did not have corresponding invoice numbers, which limits CBP's ability to verify the transaction through the manufacturer's accounting system.¹⁸
- CBP requested, but the manufacturer did not provide, sufficient documentation related to its birch veneers, cores, and core veneer purchases.¹⁹ Specifically, the manufacturer did not provide purchase orders, accounting records, proof of payments with corresponding amounts debited on the bank statements, or any other relevant records showing the transport of raw materials to the manufacturer's factory from its suppliers' locations.
- CBP requested that the manufacturer provide full production traces from raw material purchases to the shipment of finished goods for specific containers with U.S. entry dates on [redacted], [redacted], [redacted], and [redacted].²⁰ The manufacturer failed to provide complete documentation as requested in its initial and supplemental RFI responses. Instead, the manufacturer provided documents related to an invoice from [redacted] (Supplier 1) dated [redacted], for the purchase of core; an invoice from [redacted] dated [redacted], for the purchase of birch veneer; and an invoice from [redacted] (Supplier 2) dated [redacted], for the purchase of veneer.²¹ However, the manufacturer failed to

¹⁵ See Manufacturer Supplemental RFI Response at 25.

¹⁶ *Id.* at 16.

¹⁷ See Manufacturer RFI Response at Appendix 18.

¹⁸ *Id.* at Appendix 21.

¹⁹ See Manufacturer Supplemental RFI Response at 23.

²⁰ See Manufacturer RFI Questionnaire at 4.

²¹ See Manufacturer Supplemental RFI Response at Appendices 15.1, 15.2, and 15.3.

provide an explanation of how these invoices tie to the production of the specific entries CBP identified.

- CBP issued RFI questionnaires to four of the manufacturer’s major suppliers and each company failed to provide complete responses. This information was vital to our analysis of whether the production of raw materials took place in Vietnam and whether the raw materials the manufacturer claimed were sourced in Vietnam were actually delivered to the manufacturer and used in its production process. CBP requested, but Supplier 1 [], Supplier 3 [], and Supplier 4 [] failed to provide, information on their production process, with supporting documentation, *i.e.*, production and packing machinery, employee records, breakdown of inventory, production records, and financial records. Supplier 2 [], a trading company, failed to provide a summary of all the countries and source suppliers of raw materials, core veneers, cores, birch veneers, and finished goods. Supplier 2 did not provide its customer list nor its financial records.

Concannon argues that the manufacturer provided detailed production capacity calculations showing the per-day capacity at its facility and that the records were ready to be verified by CBP.²² In order for a verification to take place, CBP requested that the manufacturer answer a series of questions to outline its manufacturing process. We requested that the manufacturer explain each manufacturing process and provide the number of raw materials that went into each step and the corresponding output before initiating the next production process, and to provide supporting documentation.²³ Further, we requested that the manufacturer provide a detailed explanation tying raw material purchases to the production records, and then to total finished products by the manufacturer and to container numbers sold to Concannon.²⁴ As stated above, the manufacturer responded that, “{it} [

].”²⁵ The manufacturer further stated that “{its} []”.²⁶

CBP’s standard verification protocols are to evaluate and verify whether the information collected by CBP in the course of an EAPA investigation is accurate. To do this effectively, CBP must be able to, among other things, trace a manufacturer’s raw material purchases to its accounting system; through the production process, *i.e.*, starting inventory, work-in-progress, ending inventory, and finished goods, *etc.*; and, for instances in which the manufacturer was identified as the exporter, exportation to the U.S. importer. Taking into consideration the statements by the manufacturer, the multiple deficiencies in the manufacturer’s questionnaire responses, and the failure of its suppliers to provide complete RFI responses, CBP determined that it could not verify the accuracy or the validity of the information submitted by the

²² See Concannon’s Written Argument at 24; *see also* Manufacturer RFI Response at Appendix 14; *see also* Manufacturer Supplemental RFI Response at Appendix 9.

²³ See Manufacturer Supplemental RFI Questionnaire at 5.

²⁴ *Id.*

²⁵ See Manufacturer Supplemental RFI Response at 25.

²⁶ *Id.*

manufacturer and its suppliers. The “production records” that the manufacturer submitted at Appendix 9 were [] that it claimed corresponded to the containers selected by CBP. The production [] that the manufacturer provided have no validity if they cannot be traced through the books and records that the company maintains in the ordinary course of business. The manufacturer already acknowledged that it [].²⁷ Therefore, CBP determined that there was no viable avenue to ensure the accuracy of the information, and that the administrative record of this investigation did not contain sufficient information to permit a verification.

Further, Concannon argues that CBP “unlawfully” initiated this case based on the statement by the Allegor that it was a “wholesaler.” The Allegor submitted copies of CBP Form 7501 confirming its status as an interested party due to its status as an importer of covered merchandise.²⁸ Therefore, Concannon’s argument for dismissal has no merit.

Final Determination as to Evasion

Pursuant to 19 USC 1517(c)(3) and 19 CFR 165.6, CBP may apply an adverse inference if the party to the investigation that filed an allegation, the importer, or the foreign producer or exporter of the covered merchandise fails to cooperate and comply to the best of its ability with an RFI made by CBP. In applying an adverse inference against a party, CBP may use the facts otherwise available to make a final determination as to evasion pursuant to 19 USC 1517(c)(1)(A) and 19 CFR 165.27. Moreover, an adverse inference may be used with respect to U.S. importers, foreign producers, and manufacturers “without regard to whether another person involved in the same transaction or transactions under examination has provided the information sought....”²⁹

Based on the aforementioned analysis, CBP determines that the failure of the manufacturer and its suppliers to provide requested information establishing the total production of plywood in Vietnam demonstrates they did not act to the best of their abilities in this EAPA investigation, justifying the application of adverse inferences under 19 USC 1517(c)(3). As a result, CBP will apply adverse inferences to its final determination in this case.

Furthermore, their failure to submit sufficient information and cooperate to the best of their abilities means that [] was unable to prove that it produced the merchandise under investigation. Since the record does not contain sufficient evidence to support that [] produced the merchandise under investigation, CBP will select from the facts otherwise available and infer that the merchandise imported to the United States was produced in China, as maintained by information submitted by the Allegor. The Allegor asserted that Supplier 2 [], a major supplier, imported hardwood plywood made in China and unloaded the material at [] facilities.³⁰ The allegation, included videos depicting workers at [] unloading

²⁷ *Id.* at 25 – 26.

²⁸ See Memorandum to File, “Allegor Standing,” dated December 5, 2019.

²⁹ See 19 USC 1517(c)(3)(B).

³⁰ See Apec’s EAPA Allegation, dated May 10, 2019 (Allegation).

what appears to be covered merchandise at [] facility.³¹ The allegation also included trade data showing Supplier 2 importing plywood (HTS 44123900) from Chinese sources.³² Accordingly, evidence on the record indicates that the plywood originated in China.

Therefore, based on the evidence on the record, CBP finds that the manufacturer, [], has been transshipping Chinese-origin plywood through Vietnam. The aforementioned failure of the manufacturers and its suppliers to respond to the best of their abilities supports the application of adverse inferences. In relying upon an adverse inference for failure to respond to the RFIs, or failure to cooperate and comply to the best of one's ability with an RFI, CBP will look at the facts otherwise available. Here, CBP selects and relies on the information that indicates the plywood originated from China. Based on the aforementioned analysis, CBP determines that substantial evidence exists demonstrating that the plywood entered by Concannon during the period of investigation was of Chinese-origin and transshipped through Vietnam, and is subject to the China-wide entity rate for the AD order and the all-others rate for the CVD order on plywood from China.

Actions Taken Pursuant to the Affirmative Determination of Evasion

In light of CBP's determination that Concannon entered merchandise into the customs territory of the United States through evasion, and pursuant to 19 USC 1517(d) and 19 CFR 165.28, CBP will continue to suspend the liquidation for any entry imported by Concannon on or after July 9, 2019, the date of initiation. CBP will continue to extend the period for liquidation for all unliquidated entries that entered before that date until instructed to liquidate these entries. For future entries, CBP will continue to require live entry, which requires that the importers post the applicable cash deposits prior to the release. Finally, CBP will evaluate the continuous bond of the importer in accordance with CBP's policies, and may require single transaction bonds as appropriate. None of the above actions precludes CBP or other agencies from pursuing additional enforcement actions or penalties.

Sincerely,



Brian M. Hoxie
Director, Enforcement Operations Division
Trade Remedy Law Enforcement Directorate
Office of Trade

³¹ See Allegation and NOI at 2.

³² See Apec's Supplemental Information to Allegation, dated October 3, 2019.