



## U.S. Customs and Border Protection

October 9, 2019

### **PUBLIC VERSION**

EAPA Cons. Case Number: 7257

Sydney H. Mintzer  
Michael A. Leibner  
On behalf of Prime Stainless Products, LLC  
Mayer Brown LLP  
1999 K Street, NW  
Washington, DC 20006

Paula M. Connelly  
On behalf of H & H Machine Co.  
100 Trade Center, Suite G-700  
Woburn, MA 01801

Daniel Pickard  
On behalf of Core Pipe Products, Inc.  
Wiley Rein LLP  
1776 K Street, NW  
Washington, DC 20006

### **Re: Notice of Final Determination as to Evasion**

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Dear Mr. Mintzer, Mr. Leibner, Ms. Connelly, and Mr. Pickard:

Pursuant to an examination of the record in Enforce and Protect Act (“EAPA”) Investigation Cons. 7257, U.S. Customs and Border Protection (“CBP”) has determined that there is substantial evidence that Prime Stainless Products, LLC (“Prime Stainless”) and H & H Machine Co. (“H & H”), entered into the customs territory of the United States through evasion merchandise covered by the antidumping duty (“AD”) order A-570-064<sup>1</sup> and the countervailing duty (“CVD”) order C-570-065.<sup>2</sup> Substantial evidence demonstrates that Prime Stainless and H & H imported stainless steel flanges made in China by the transshipping of those products through the Philippines and falsely declaring the country of origin. As a result, no cash deposits were posted.

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<sup>1</sup> See *Stainless Steel Flanges from the People’s Republic of China: Antidumping Duty Order*, 83 FR 37468 (“Flanges AD”) (Aug. 1, 2018).

<sup>2</sup> See *Stainless Steel Flanges from the People’s Republic of China: Countervailing Duty Order*, 83 FR 26006 (“Flanges CVD”) (June 5, 2018).

## Background

In response to allegations filed by Core Pipe Products, Inc. (“Core Pipe”), CBP initiated investigations with respect to Prime Stainless and H & H, on August 30, 2018 and September 13, 2018, respectively, 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. As part of the EAPA investigatory process, on October 12, 2018, CBP issued Prime Stainless and H & H each a CBP Form (“CF”) 28 on entries that are subject to this EAPA investigation, requesting standard sale, production, and factory documentation. H & H Machine failed to provide a response to the CF28. Prime Stainless provided sales-related documentation in its response to the CF28, but did not provide the requested production and factory documentation. On November 13, 2018, CBP conducted an unannounced site visit to EN Corporation (ENC), the Philippines exporter, during which it observed production capabilities, finished goods inventory, and packing operations.<sup>3</sup>

On November 28, 2018 CBP issued a Notice of Investigation and Interim Measures to Prime Stainless and H & H.<sup>4</sup> In that Notice CBP concluded that several factors supported a reasonable suspicion that covered merchandise entered into the United States through evasion by means of transshipment through the Philippines:

- The presence of boxed Chinese-origin flanges<sup>5</sup> at ENC facilities with no visible country of origin markings is consistent with the transshipment scheme alleged by Core Pipe, especially given that the U.S. market accounts for [ ] percent of ENC’s shipments of stainless steel flanges;
- ENC’s statements conceding shipments of Chinese flanges to the United States after cash deposits were owed. Also, in its initial Prior Disclosure, as an U.S. importer, regarding the importation of such Chinese-origin flanges, ENC provided evidence of the type of transshipment scheme outlined by Core Pipe in its allegations; and
- The absence of CF28 response information relating to ENC production facilities (*e.g.*, production capacity) prevented CBP from confirming that the flanges in question were produced in the Philippines.<sup>6</sup>

The AD<sup>7</sup> and CVD<sup>8</sup> scopes define covered merchandise as “certain stainless steel flanges, whether unfinished, semi-finished, or finished (certain forged stainless steel flanges)” that are forged in China. The order further states that, “the country of origin for certain forged stainless steel flanges, whether unfinished, semi-finished, or finished is the country where the flange was

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<sup>3</sup> See Notice of Initiation of Investigation and interim measures taken as to Prime Stainless Products, LLC and to H & H Machine Co. concerning evasion of the antidumping and countervailing duty orders on stainless steel flanges from the People’s Republic of China (December 6, 2018) (“NOI”) at 2-7.

<sup>4</sup> *Id.* at 8.

<sup>5</sup> See EN Corp Site Visit Memo at 4.

<sup>6</sup> *Id.* at 7.

<sup>7</sup> See Flanges AD at 37469

<sup>8</sup> See Flanges CVD at 26007

forged. Subject merchandise includes stainless steel flanges as defined above that have been further processed in a third country.” Processing stainless steel flanges outside of the country of manufacture does not remove them from of the scope.

After issuing the interim measures decision, CBP sent multiple Requests for Information (RFI) to Prime Stainless, H & H, and ENC. Prime Stainless and H & H Machine each submitted RFI responses in January 2019 and April 2019, and ENC submitted RFI responses in February 2019 and April 2019. Between May 22 and May 24, 2019, CBP conducted an onsite verification at the ENC facility located in Cavite Economic Processing Zone, Rosario, Cavite, the Philippines, in order to “determin{e} whether the foreign manufacturer produced/manufactured sufficient quantities of stainless steel flanges to export to the United States” and to review factual information associated with “{t}he scope of the EAPA investigation” which “included H & H and Prime Stainless entries with entry dates from August 9, 2017, through the pendency of the EAPA investigation.”<sup>9</sup>

During the verification trip, CBP interviewed company officials about their operations and record keeping practices. The verification team toured the manufacturers’ facilities. With analysis of ENC’s departmental procedures in addition to the testimony provided by ENC staff, CBP was able to identify instances where imported quantities of Chinese stainless steel flanges were repackaged, and exported to the United States as goods produced in the Philippines. The verification team was able to provide evidence that ENC was not able to produce enough flanges to complete export orders. Also identified were significant time gaps in ENC’s production process of the stainless steel flanges.<sup>10</sup>

Subsequent to CBP’s issuance of the ENC Verification Report,<sup>11</sup> Core Pipe, Prime Stainless, and H & H each submitted written arguments.<sup>12</sup> In addition, each of those parties submitted responses to written arguments.<sup>13</sup>

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<sup>9</sup> See U.S. Customs and Border Protection Office of Trade Verification Report Enforcement and Protect Act Consolidated Case Number: 7257 (“ENC Verification Report”) (July 11, 2019) at 2-3.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> See Written Arguments of Core Pipe Products, Inc. (August 5, 2019) (“Core Pipe Written Arguments”), Written Arguments of Prime Stainless Products, LLC (August 5, 2019; resubmitted August 13, 2019) (“Prime Stainless Written Arguments”), and Submission of Written Arguments EAPA Consolidated Case Number 7257 – H & H Machine Company (August 5, 2019; resubmitted August 13, 2019) (“H & H Machine Written Arguments”), respectively.

<sup>13</sup> See EAPA Cons. Case Number 7257, Consolidated Investigation Into Prime Stainless Products, LLC and H & H Machine Co.: Response to Written Arguments of Core Pipe Products, Inc. (August 27, 2019) (“Core Pipe Response to Written Arguments”), Prime Stainless Products, LLC’s Response to Written Arguments Submitted by Core Pipe Products Inc., (August 20, 2019) (“Prime Stainless Response to Written Arguments”), and Submission of Response to Submission of Written Arguments filed by Core Pipe EAPA Consolidated Case Number 7257 – H & H Machine Company (August 18, 2019) (“H & H Machine Response to Written Arguments”), respectively.

## Final Determination as to Evasion

Under 19 U.S.C. 1517(c)(1)(A), to reach a final determination as to evasion in this case, CBP must, “make a determination, based on substantial evidence, with respect to whether such covered merchandise entered into the customs territory of the United States through evasion.” Evasion is defined as “the entry of covered merchandise into the customs territory of the United States for consumption by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material and that results in any cash deposit or other security of any amount of applicable antidumping or 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 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 there is a basis for concluding that substantial evidence indicates Prime Stainless’ imports and H & H’s imports were merchandise entered through evasion, resulting in the avoidance of applicable AD/CVD deposits or other security.

### *Whether the Entries in Question are Covered Merchandise When Entered into the United States*

Substantial evidence on the record demonstrates that Prime Stainless and H & H Machine imported covered merchandise into the customs territory of the United States. Both Prime Stainless and H & H Machine entered Chinese forged flanges into the United States as non-subject Philippines products through ENC, their foreign supplier.<sup>14</sup> CBP verified that ENC sourced Chinese-origin forged flanges.<sup>15</sup> The scope of the orders<sup>16</sup> governing the imports of Chinese origin flanges, covers flanges forged in China, regardless of various finishing operations that might be performed on such flanges in a third country before export to the United States.<sup>17</sup>

During the verification of ENC, CBP examined four invoices covering sales of flanges by ENC to Prime Stainless or H&H. Relevant verification findings for each of the invoices are discussed below.

For one invoice (N-1803022) involving flanges imported by H&H, CBP noted that “[p]roduction records showed that ENC did not produce enough quantity of certain goods to fulfill all quantities invoiced on N-1803022.”<sup>18</sup> Production and shipment

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<sup>14</sup> See Prime Stainless Written Arguments at 1; H & H Written Arguments at 4-5

<sup>15</sup> See ENC Verification Report

<sup>16</sup> See Flanges ADD at 37469; Flanges CVD at 26007

<sup>17</sup> See Flanges ADD (Aug. 1, 2018) and Flanges CVD (June 5, 2018)

<sup>18</sup> See ENC Verification Report at 21.

information examined at verification was found to “suggest that ENC did not produce enough quantity of certain goods to fulfill its invoice N-180322.”<sup>19</sup> More importantly, CBP actually “identified stainless steel flanges ENC had imported from China to fulfill quantities on invoice N-1803022.”<sup>20</sup> This conclusion was based on examination of other production and shipment information relating to the invoice indicating not only that some of the flanges were of “Chinese origin,” but also “substantiat{ing} that ENC purchased stainless steel flanges straight from a Chinese manufacturer.”<sup>21</sup>

For another invoice (N-1802018) involving flanges imported by H & H, CBP noted that the production records provided by ENC at verification indicated that the final products for shipment had been produced prior to the receipt of raw materials supposedly used for their production.<sup>22</sup> Furthermore, the analysis of the relevant production documentation was limited due to ENC’s failure to provide “mill certificates substantiating the raw material transferred to ENC” from the supplier, and the absence of a “summary of incoming raw material packing list substantiating the supplier heat number or description of materials of weight,” two deficiencies CBP noted were the “key factors” that “explain why there were missing heat numbers in the daily production output reports.”<sup>23</sup> In addition to such discrepancies in production related to the invoice, CBP also identified actual “instances where ENC did not produce enough quantity of certain goods to fulfill its invoice N-1802018.”<sup>24</sup> Specifically, “{t}he Drilling output quantities for heat numbers [ ] ([ ] pieces) and [ ] ([ ] pieces)” were “lower than the shipped quantities as documented on the accompanying packing list for invoice N-1809016” that “related to heat number [ ] ([ ] pieces) and [ ] ([ ] pieces).<sup>25</sup> Given that a) ENC sold more flanges to H&H for invoice N-1802018 than it produced, b) ENC was found to have shipped Chinese-origin flanges for other invoices (*see* the discussions of invoice N-1803022, above, and of invoice N-1802018, below), c) ENC did not assert that it had sourced any of the stainless steel flanges covered under the invoices reviewed at verification from any source other than China or its own output, and d) CBP did not obtain any evidence of any other source for the flanges, it is reasonable to conclude that at least some of the flanges associated with invoice N-1802018 were of Chinese origin.

For the remaining invoice (N-1803023) examined at verification involving flanges imported by H&H, CBP identified inexplicable variations in item descriptions and sizes between different stages of the production process.<sup>26</sup> In fact, analysis of the production and shipment information revealed “that ENC started the forging process” for the heat number in question “on a completely

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<sup>19</sup> *Id.* at 13.

<sup>20</sup> *Id.* at 21.

<sup>21</sup> *Id.* at 11-12.

<sup>22</sup> *Id.* at 14.

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

<sup>24</sup> *Id.* at 13.

<sup>25</sup> *Id.* at 13-14.

<sup>26</sup> *Id.* at 21.

different product..., size, and description than that invoiced on N-1803023.”<sup>27</sup> At the very least, this calls into question the Philippine origin of the flanges.

With regard to the invoice (N-1802018) examined at verification involving flanges imported by Prime Stainless, CBP concluded not only that “ENC did not produced enough quantity of certain goods to fulfil all quantities invoiced on N-1802018,”<sup>28</sup> but also that it “identified stainless steel flanges ENC had imported from China to fulfill quantities” identified on that invoice.<sup>29</sup> That conclusion is based upon analysis of production and shipment information demonstrating not only that some of the flanges were sourced from China,<sup>30</sup> but also that the limited documentation provided “does not support that anything was produced by ENC” for the invoice in question.<sup>31</sup>

Both Prime Stainless and H & H Machine claimed that ENC demonstrated production capability as demonstrated by the mill certificates. However, as noted above, the verification report noted ENC could not produce sufficient quantities to fill the orders of the importers in this case. More generally, at the verification, CBP was not able to trace production from the acquisition of raw materials to finished goods (flanges). CBP lacked access to records that support ENC’s statement of sufficient production quantities of flanges for export to the United States. At various points of the investigations, ENC officials confirmed that the travel sheet was used to denote production of flanges destined for the United States. Travel sheet were identified as the primary means that flange production was tracked and documented by ENC. Travel sheets were not provided during the verification trip for the invoices reviewed by CBP.<sup>32</sup> H & H acknowledged in their written arguments that some travel sheets were not available during verification.<sup>33</sup>

The travel sheets might have substantiated production of stainless steel flanges during the period of investigation. ENC’s travel sheets accompany the flanges through the production cycle. Company officials reported that they did not have an Enterprise Resource Planning (ERP) system to manage its production data.<sup>34</sup> All their production records are tracked by hand-written documents, inclusive of the travel sheets. In essence, these sheets would have proven critical to help substantiate the actual production of the exported flanges. Throughout the interview portion of the verification process, it was evident that ENC’s employees knew how essential documentation, specifically the travel sheets, were to employment. Leaders throughout various stages of the production process reported that travel sheets were used since the beginning of their employment and they never missed completing a single report.<sup>35</sup> Because ENC did not maintain

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<sup>27</sup> *Id.* at 15.

<sup>28</sup> *Id.* at 22.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 12.

<sup>31</sup> *Id.* at 13.

<sup>32</sup> *See* ENC Verification Report at 10.

<sup>33</sup> *See* H & H Written Arguments at 17.

<sup>34</sup> *See* ENC Verification Report at 9.

<sup>35</sup> *Id.* at 5-9.

adequate records to document its production, CBP was unable to determine whether the flanges ENC supplied to Prime Stainless and H & H were forged by ENC in Philippines or produced in China.

Consistent with CBP's findings, in their written arguments both Prime Stainless and H & H acknowledged that some of the fittings they imported from ENC were of Chinese origin<sup>36</sup>. Prime Stainless did not dispute in its written arguments that ENC was unable to produce the amount of flanges imported by Prime Stainless. H & H, however, claimed in its written arguments, that the vast majority of its imports from ENC were of Philippine – origin flanges. That claim is not substantiated by information from the record,<sup>37</sup> as a result, CBP could not corroborate production figures that would be required for such a claim.<sup>38</sup> In any case, it is undisputed that at least some of the flanges sourced from ENC by the importers were of Chinese origin.

Statements by various interested parties on the record further support a conclusion that H & H and Prime Stainless were importing flanges subject to the AD and CVD orders<sup>39</sup>. After the initiation of the investigations against Prime Stainless and H & H Machine, ENC filed an initial prior disclosure (PD), acknowledging that it, as a United States importer, had entered Chinese-origin flanges without identifying them as subject to the AD and CVD orders on stainless steel flanges from China<sup>40</sup>. In addition to referencing its own entries, that initial prior disclosure also listed entries that ENC had exported to other importers.<sup>41</sup>

Prime Stainless claimed that it filed a perfected PD. However, Prime Stainless never filed a perfected PD with CBP during the investigation. Also, H & H claimed that ENC's PD would have covered its entries, however, ENC's PD was never perfected during this investigation.

*Whether the Entry of the Merchandise was Made by a Material False Statement or Act or Material Omission*

Substantial evidence on the record demonstrates that Prime Stainless and H & H Machine entered covered merchandise by means of false statements or omissions. Prime Stainless and H & H Machine made false statements to CBP when it entered covered merchandise as type 01 entries instead of type 03. Further, the country of origin for their imports of stainless steel flanges was reported to be the Philippines.

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<sup>36</sup> See Prime Stainless Written Arguments at 1; H & H Written Arguments at 4-5.

<sup>37</sup> See ENC Verification Report at 19

<sup>38</sup> *Id.*

<sup>39</sup> See ENC Verification Report; Prime Stainless Written Arguments at 1; H & H Written Arguments at 4-5; Core Pipe Written Arguments.

<sup>40</sup> See H & H Written Arguments at 4-5.

<sup>41</sup> *Id.* at 3.

*Whether There was a Resulting Reduction or Avoidance of Applicable AD/CVD Cash Deposits or Other Security*

Because substantial evidence on the record demonstrates that Prime Stainless and H & H Machine entered covered merchandise into the customs territory of the United States through evasion, identifying flanges as country of origin Philippines when in fact the country of origin was China, both importers consequently avoided the payment of the applicable AD/CVD cash deposits or security.<sup>42</sup>

On the basis of the aforementioned analysis, CBP determines that substantial evidence demonstrates that Prime Stainless and H & H Machine imported into the United States Chinese-origin stainless steel flanges and claimed that the merchandise was Philippine-origin. Prime Stainless and H & H Machine did not declare that the merchandise was subject to AD and CVD orders upon entry and, as a result, the requisite cash deposits were not collected on the merchandise.

**Actions Taken Pursuant to the Affirmative Determination of Evasion**

In light of CBP's determination that Prime Stainless and H & H entered merchandise into the customs territory of the United States through evasion, and pursuant to 19 U.S.C. §1517(d) and 19 C.F.R. §165.28, CBP will continue to suspend the liquidation for any entry imported by Prime Stainless or H & H, assembled, shipped or otherwise processed by ENC, that has entered on or after August 30, 2018, 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. As required at interim measures, CBP will continue to require live entry for future entries, 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,

*Regina Walton*

Regina Walton  
Acting Director of Enforcement Operations  
Trade Remedy & Law Enforcement Directorate  
Office of Trade

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<sup>42</sup> See NOI at 2-7; ENC Verification Report; Prime Stainless Written Arguments at 1; H & H Machine Written Arguments at 4-5; Core Pipe Written Arguments.