



## U.S. Customs and Border Protection

### **PUBLIC VERSION**

October 15, 2019

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Re: Notice of Initiation of Investigation and Interim Measures - EAPA Case 7311

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

This letter is to inform you that U.S. Customs and Border Protection (CBP) has commenced a formal investigation of Concannon Corporation (Concannon) under Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, commonly referred to as the Enforce and Protect Act (EAPA). Specifically, CBP is investigating whether Concannon has evaded antidumping duty (AD) order A-570-051 and countervailing duty order (CVD) C-570-052<sup>1</sup> on Certain Hardwood Plywood Products (plywood) from the People's Republic of China (China) by entering into the United States plywood of Chinese-origin (covered merchandise) and claiming Vietnam as country of origin. Because evidence establishes a reasonable suspicion that Concannon has entered covered merchandise into the United States through evasion, CBP has imposed interim measures.<sup>2</sup>

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

<sup>2</sup> See 19 USC 1517(e); see also 19 CFR 165.24.

## **Period of Investigation**

Pursuant to 19 CFR 165.2, entries covered by an EAPA investigation are those “entries of allegedly covered merchandise made within one year prior to the receipt of an allegation ....” Entry is defined as an “entry for consumption, or withdrawal from warehouse for consumption of merchandise in the customs territory of the United States.”<sup>3</sup> Apec International LLC (Apec) filed the allegation on May 10, 2019.<sup>4</sup> CBP acknowledged receipt of the properly filed allegation against Concannon on June 17, 2019.<sup>5</sup> As such, the entries covered by the investigation are those entered for consumption, or withdrawn from warehouse for consumption, from June 18, 2018, through the pendency of this investigation.<sup>6</sup>

## **Initiation**

On July 9, 2019, the Trade Remedy Law Enforcement Directorate (TRLED) within the CBP Office of Trade initiated an EAPA investigation as the result of an allegation submitted by Apec.<sup>7</sup> Apec alleges that Concannon evaded AD order A-570-051 and CVD order C-570-052 on plywood from China by transshipping covered merchandise through Vietnam. According to Apec, Concannon imports covered merchandise from [ ]. In support of its allegation, Apec submitted videos taken at [ ] facility outside of Hanoi, Vietnam.<sup>8</sup> The videos depict workers at [ ] unloading what looks to be covered merchandise at the [ ] facility. The shipping container is labeled, [ ], an international shipper that routes between China and Vietnam. The videos also illustrate the existence of equipment used for the unloading, storage, repackaging and redelivery of covered merchandise. The videos do not show or indicate the presence of any equipment that is used in the production or finishing of plywood.

### *Initiation Assessment*

TRLED will initiate an investigation if it determines that “[t]he information provided in the allegation ... reasonably suggests that the covered merchandise has been entered for consumption into the customs territory of the United States through evasion.”<sup>9</sup> 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 covered merchandise.”<sup>10</sup> Thus, the allegation must reasonably suggest not only that merchandise subject to an AD and/or CVD order was entered into the United States by the importer alleged to be evading, but that such entry was made by a material false statement or

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<sup>3</sup> See 19 CFR 165.1.

<sup>4</sup> See Apec’s EAPA Allegation, dated May 10, 2019 (Allegation).

<sup>5</sup> See email from CBP dated, March 18, 2019 acknowledging receipt of Apec’s allegation.

<sup>6</sup> See 19 CFR 165.2.

<sup>7</sup> See TRLED’s Memo initiating EAPA Investigation 7311 (July 9, 2019).

<sup>8</sup> See videos submitted by Apec with allegation. The videos capture a [ ] sign upon entry.

<sup>9</sup> See 19 CFR 165.15(b); see also 19 USC 1517(b)(1).

<sup>10</sup> See 19 CFR 165.1; see also 19 USC 1517(a)(5)(A).

act, or material omission, that resulted in the reduction or avoidance of applicable AD and/or CVD cash deposits or other security.

We find that the allegation reasonably suggests that Concannon has engaged in attempts to evade AD/CVD orders A-570-051 and C-570-052 by transshipping covered merchandise through Vietnam. In viewing the videos described above, it appears that the [ ] facility does not have the equipment required to produce plywood in the quantities imported by Concannon and that workers at [ ] are unloading, storing, and repackaging finished, covered merchandise for re-shipment. We find these videos to be meaningful evidence of evasion because they show workers at the manufacturing facility in Vietnam to be unloading products that could be cores from another producer. Furthermore, the videos show an international shipping company delivering the products, which suggests they are of non-Vietnamese origin. As such, the videos reasonably suggest that the facility may be a transshipment point for covered merchandise, rather than a production facility. Thus, the evidence Apec submitted reasonably suggests Concannon may be evading AD/CVD orders on covered merchandise by transshipping through Vietnam.

### **Interim Measures**

Not later than 90 calendar days after initiating an investigation under EAPA, TRLED will decide based upon the record of the investigation if there is reasonable suspicion that merchandise covered by the AD/CVD orders was entered into the United States through evasion. If reasonable suspicion exists, CBP will impose interim measures pursuant to 19 USC 1517(e) and 19 CFR 165.24. As explained below, CBP is imposing interim measures because there is reasonable suspicion that Concannon entered covered merchandise into the customs territory of the United States through evasion by means of transshipment through Vietnam.

#### *CF-28 Responses*

On August 8, 2019, as part of the EAPA investigation process, CBP issued a CBP Form 28, Request for Information (CF-28) to Concannon. CBP requested supporting documentation for entry [ ]0285, *i.e.*, commercial invoice, purchase order for raw materials, production records, certificate of origin, *etc.* On August 30, 2019, counsel for Concannon requested an extension. On September 13 and 30, 2019, the company submitted its CF-28 responses.<sup>11</sup> The commercial invoice from [ ] indicates that for entry no. [ ]0285, Concannon purchased [ ] cubic meters or [ ] of [ ].<sup>12</sup> The bill of lading showed that the shipment of [ ] cubic meters of plywood was contained in [ ] and on board the vessel on [ ];<sup>13</sup> CBP data showed it entered the United States on [ ].<sup>14</sup> For payment, Concannon sent a wire transfer to the bank, [ ] off-shore affiliated trading company, [ ]

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<sup>11</sup> See Letters from Concannon, “Re: Response to CF28 Issued for Entry No. [ ]0285,” dated September 13, 2019 (CF-28 First Response) and, “Re: Follow Up to September 13, 2019 Response to CF28 Issued for Entry No. [ ]0285,” dated September 30, 2019 (CF-28 Second Response).

<sup>12</sup> See CF-28 First Response at Exhibit 5.

<sup>13</sup> *Id.* at Exhibit 1.

<sup>14</sup> See CBP data.

].<sup>15</sup> In the CF-28 Second Response, Concannon submitted [ ] purchase orders for [ ] for the production associated with the [ ] shipment.<sup>16</sup> It also contained the production records for [ ], factory layout, production steps, and truck invoice.<sup>17</sup>

In evaluating the veracity of the CF-28 responses, a CBP subject matter expert explained that poplar is heavily plantation grown and harvested in China and a species not native to Vietnam; in addition, birch/poplar plywood are primarily Chinese-origin products.<sup>18</sup> Therefore, reasonable suspicion is raised that the cores contain Chinese wood and thus may not be of Vietnamese origin. Overall, this discrepancy contributes to reasonable suspicion regarding the actual sources of [ ] raw materials.

*Preliminary Onsite Visit to [ ] facility in Vietnam*

On September 18, 2019, CBP conducted a preliminary onsite visit to the facility and met with [ ] director and general manager.<sup>19</sup> The director stated that facility currently has [ ] for plywood production. The company employs approximately [ ] full-time workers, [ ] days a week, with [ ] shifts per day. The director stated that [ ] does not import plywood, but said that [ ] are imported from China and used to finish the top veneer. The director added that the center cores are made of [ ] and are either made in-house or purchased from an unaffiliated Vietnamese company [ ]. Since [ ], [ ] has exported [ ] customer in the United States. The director indicated that the company's production capacity was approximately [ ] containers of plywood per month. She stated that [ ] does not purchase finished plywood from other companies; and only cores from [ ]. She provided sample lists and photos of all containers shipped by [ ] in [ ]. A total of [ ] containers were listed for [ ].<sup>20</sup>

In the Onsite Visit Memorandum, the CBP Attaché noted the following: the [ ] was not in operation on the day of the visit; the [ ] was covered in spider webs and company officials said that it was last used a month ago during the rainy season; and the quality control/packing area did not have the necessary supply of cardboard packaging; however, the pallets of finished plywood were wrapped in cardboard.<sup>21</sup> Because of the unused equipment, lack of packing materials, and the level of production described by the director, the CBP Attaché recommended further investigation into [ ] purchases of raw materials, semi-finished cores, and production capacity.<sup>22</sup>

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<sup>15</sup> *Id.* at Exhibit 2.

<sup>16</sup> *See* CF-28 Second Response at Exhibit 1.

<sup>17</sup> *Id.* at Exhibits 2 and 3.

<sup>18</sup> *See* Memorandum to the File, "Plywood Information," dated October 7, 2019.

<sup>19</sup> *See* Memorandum from Robert Thommen, Regional CBP Attaché to Deborah Augustin, Executive Director, Trade Remedy Law Enforcement Division, dated September 22, 2019 (Onsite Visit Memorandum).

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

<sup>21</sup> *See* Onsite Visit Memorandum at 3.

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

*Other Record Evidence*

An analysis of CBP data indicates that Concannon's [

. Concannon has not had [ ]  
]. In comparison, Concannon's [ ]  
].

Specifically, [

. As of [

]. Prior to

<sup>23</sup>

As noted in the Onsite Visit Memorandum, the director of [ ] stated that for the month of [ ] there were only [ ] shipments to the United States; however, allowing for shipment time between Vietnam and the United States, CBP data shows that Concannon imported [

], more than double what the director of [ ] reported. Furthermore, [ ] director also stated that the company's production capacity is [ ] containers per month, which is approximately [ ] cubic meters per month.<sup>24</sup> In a 12 month comparison, [ ],<sup>25</sup> Concannon imported [ ] from [ ]. [ ] presumed 12 month production at full capacity is [ ]. This include numerous shipments from [ ] to Concannon far exceeding that monthly capacity: [ ] in [ ], and [ ] in [ ]. All of these imports are significantly more than the company's stated production capacity.

In summary, the allegation's videos of [ ] employees unloading center cores not manufactured at [ ] facility; the CF-28's purchase orders for wood species not native to Vietnam, yet common to China, and payments made to a [ ] business entity; the CBP Attaché's observation of dormant production equipment and lack of packing supplies; CBP data indicating that Concannon's imports of [ ] plywood declined while its imports of [ ] plywood increased exponentially; and the fact that CBP data shows Concannon's imports from [ ] are significantly more than its stated production capacity all support a reasonable suspicion that the plywood imported by Concannon from [ ] may have originated in China and been transshipped through Vietnam to avoid paying AD/CVD duties on imports to the United States.

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<sup>23</sup> See CBP Data.

<sup>24</sup> Trade statistics in the Allegation and information from CF-28 indicates a conversion rate of 45 cubic meter per 40-foot container.

<sup>25</sup> Concannon did not have any import from [ ] during the month of [ ].

### *Enactment of Interim Measures*

Because of the reasons stated above, TRLED finds that there is reasonable suspicion Concannon entered covered merchandise into the customs territory of the United States through evasion by means of transshipment through Vietnam.

As interim measures, CBP is directing all unliquidated entries subject to this investigation be rate-adjusted in accordance with the AD and CVD orders on plywood from China and that AD/CVD cash deposits are owed. Additionally, “live entry” will be required for all future imports by Concannon beginning on the date of this notice, meaning that all entry documents and duties must be provided before cargo is released by CBP into U.S. commerce. CBP will reject any entry summaries that do not comply with live entry and require refiling of entries that are within the entry summary rejection period; suspend the liquidation for any entry that has entered on or after July 9, 2019, the date of initiation of this investigation; and extend the period for liquidation for all unliquidated entries that entered before that date.<sup>26</sup> CBP will also evaluate Concannon’s continuous bond and will require single transaction bonds, as appropriate. Finally, CBP may pursue additional enforcement actions, as provided by law, consistent with 19 USC 1517(h).

For any future submissions or factual information to CBP pursuant to this EAPA investigation, please provide a business confidential version and public version to CBP, in addition to providing public versions to all parties to this investigation, including Mr. Weir at [danielkweir@gmail.com](mailto:danielkweir@gmail.com) and Bryan Concannon at [bryanc@concannonlbr.com](mailto:bryanc@concannonlbr.com).<sup>27</sup> Should you have any questions regarding this investigation, please feel free to contact us at [epallegations@cbp.dhs.gov](mailto:epallegations@cbp.dhs.gov). Please include “EAPA Case Number 7311” in the subject line of your email. Additional information on this investigation, including the applicable statute and regulations, may be found on CBP’s EAPA website, <https://www.cbp.gov/trade/trade-enforcement/tftea/enforce-and-protect-act-eapa>.

Sincerely,

*Regina Walton*

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

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<sup>26</sup> See 19 CFR 165.24(b)(1)(i) and (ii).

<sup>27</sup> See 19 CFR 165.4, 165.23(c), and 165.26.