



U.S. Customs and Border Protection

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PUBLIC VERSION

EAPA Case Number: 7189

Robert W. Snyder
On behalf of Aspects Furniture International, Inc.
Law Offices of Robert W. Snyder
6 Morgan, Suite 114
Irvine, California 92618

J. Michael Taylor
On behalf of the American Furniture Manufacturers Committee for Legal Trade
King & Spalding LLP
1700 Pennsylvania Avenue, NW, 2nd Floor
Washington, D.C. 20006

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 7189, U.S. Customs and Border Protection (“CBP”) has determined that there is substantial evidence that Aspects Furniture International, Inc. (“Aspects”) entered into the customs territory of the United States through evasion merchandise covered by the antidumping duty (“AD”) order A-570-890 on wooden bedroom furniture from the People’s Republic of China (“China”).¹ Substantial evidence demonstrates that Aspects imported Chinese-origin wooden bedroom furniture for which the manufacturers and/or merchandise were misidentified at the time of entry, and as a result, there was evasion of AD cash deposits.

Background

Initiation of Investigation

On May 9, 2017, the Trade Remedy Law Enforcement Directorate (TRLED), Office of Trade, initiated an investigation under EAPA as the result of an allegation submitted by the American Furniture Manufacturers Committee for Legal Trade (“AFMC”), as to evasion of antidumping (AD) duties.² AFMC had claimed that Aspects Furniture International, Inc. (“Aspects”) was

¹ See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture from the People's Republic of China*, 70 FR 329 (January 4, 2005) (“the AD order”).

² See “Memo to the File: Initiation of Investigation in EAPA Case Number 7189” (“Initiation Memo”).

misreporting the identities of the actual producers of wooden bedroom furniture (“WBF”) from China on its entries in order to avoid the payment of AD duties. In short, AFMC had alleged that Aspects was importing covered WBF produced by Nantong Fuhuang Furniture Co., Ltd. (“Nantong Fuhuang”) and Nantong Wangzhuang Furniture Co., Ltd. (“Wangzhuang”), both Chinese companies subject to a 216.01 percent cash deposit rate on WBF, while claiming the producers of the WBF to be two other Chinese companies, Shanghai Jian Pu Import & Export Co., Ltd. (“Shanghai Jian Pu”) and Wuxi Yushea Furniture Co., Ltd. (“Wuxi Yushea”).³

In its Initiation Memo, CBP noted that “AFMC provided the details of ship manifest data to provide reasonable suspicion that Aspects is importing subject merchandise from Chinese manufacturers of WBF with an AD cash deposit rate of 216.01 percent, yet reporting the rate of other companies that have either a much lower rate or no cash deposit rate.” CBP also noted that AFMC provided evidence that “one of the Chinese manufacturers that shipped merchandise to Aspects” had stated “that although it exported WBF to the United States, it was not likely identified as the exporter on entry summaries,” that it has “a separate sales method, which includes a third party, for merchandise that is considered to be subject to the AD order,” and that the manufacturer, rather than this third party, produces, sells, and ships the merchandise directly to the customer in the United States. Based on this analysis, TRLED found that the information submitted with the allegation reasonably suggested that Aspects imported merchandise subject to an AD order by means of material false statements or acts, or material omissions, resulting in the reduction or avoidance of applicable AD cash deposits or other security.⁴

Interim Measures.

CBP was already evaluating certain Aspects’ entries even before the allegation was filed. On April 6, 2017, CBP requested that Aspects provide copies of entry packages related to 2016 entries, to include the entry summary, commercial invoice, purchase order, proof of payment to the supplier, accounting records, broker bill, bill of lading, packing list, specification sheets, photos of the merchandise, and manufacturer name and address, as well as any evidence establishing that the identified manufacturer produced the goods (production records, purchase invoices, *etc.*). On June 5, 2017, CBP made a similar request to Aspects for comprehensive information related to its 2017 entries. Aspects provided records in response to both requests. Further, CBP conducted a site visit to Aspects’ facility and met with company representatives on July 27, 2017.⁵

In addition to the information provided in the allegation pertaining to the apparent misidentification of the cash deposit rate applicable for type 03 (‘Consumption – Antidumping/Countervailing Duty’) entries (“type 03 entries”), CBP identified two Aspects

³ *Id.* at 1-2.

⁴ *Id.* at 3.

⁵ *See Notice of initiation of an investigation and interim measures taken as to Aspects Furniture International, Inc. concerning evasion of the antidumping duty order on Wooden Bedroom Furniture from the People’s Republic of China* (August 14, 2017) (“NOI”) at 4-5.

entries “with undeclared merchandise (six misdescribed invoice items) subject to AD order A-570-890 on WBF from China,” meaning they had been filed as type 01 entries (“Consumption – Free and Dutiable”) instead of type 03 entries.⁶ Based on evaluation of the entry information that was obtained, combined with ship manifest data and testimony from a Commerce Department proceeding, TRLED determined there was reasonable suspicion that Aspects entered merchandise into the United States through evasion by failing to declare subject merchandise on entries and failing to make the requisite cash deposits for the AD order. For these reasons, CBP imposed interim measures and extended the period of investigation back to January 1, 2016, to cover additional entries already under review by CBP when the allegation was filed.⁷

Subsequent Investigation

Between October 2017 and March 2018, CBP sent Requests for Information (RFI) to Aspects and to Chinese companies associated with Aspects’ WBF entries. Aspects, its Nantong, China satellite office (“Aspects Nantong”), and two Chinese companies identified as manufacturers in Aspects entries (*i.e.*, Wuxi Yushea and Nantong Fuhuang) submitted RFI responses. From April 23, 2018 through April 27, 2018, CBP conducted verifications of the responses placed on the record of the proceeding by these parties.⁸

CBP determined it was unable to determine whether several of the many products at issue are covered merchandise, and pursuant to 19 USC § 1517(b)(4) and 19 CFR § 165.16, CBP referred this matter to the Commerce Department for a scope determination. The Commerce Department notified CBP of its scope ruling on January 8, 2020.⁹

On February 10, 2020, Aspects submitted written argument.¹⁰ On March 6, 2020, AFMC submitted its written argument.¹¹ On March 6, 2020, AFMC submitted its response to written argument.¹² On March 10, 2020, Aspects submitted its response to written argument.¹³

⁶ *Id.* at 5.

⁷ *Id.* EAPA regulations state explicitly that the investigation is retrospective, covering entries “made within one year before the receipt of an allegation under §165.11 or of a request for an investigation under §165.14,” and that, “at its discretion, CBP may investigate other entries of such covered merchandise.” *See* EAPA Regulations at §165.2.

⁸ *See* “ON-SITE VERIFICATION REPORT ENFORCE AND PROTECT ACT (EAPA) CASE 7189,” dated December 13, 2018 (“Verification Report”).

⁹ *See* “Notification of CBP with Dec. 31, 2019 Scope Ruling and Attachments” (“Scope Ruling”).

¹⁰ *See* “Submission of Written Argument, Pursuant to 19 C.F.R. § 165.26; Aspects Furniture International, Inc. / EAPA Inv. No.: 7189” (“Aspects Written Argument”) (February 10, 2020).

¹¹ *See* “Investigation of Aspects Furniture International, Inc./Resubmission of Written Arguments” (“AFMC Written Argument”) (March 6, 2020). AFMC’s original written argument, dated February 10, 2020, had been rejected because it did not conform to all EAPA requirements (*see* the March 3, 2020 email rejecting AFMC’s written argument, AFMC’s response to written argument, and Aspects’ response to written argument (“Rejection Email”).

¹² *See* “Investigation of Aspects Furniture International, Inc./Resubmission of Response to Written Arguments” (“AFMC Response to Written Argument”) (March 6, 2020). AFMC’s original response to written argument, dated February 28, 2020, had been rejected because it did not conform to all EAPA requirements (*see* Rejection Email).

¹³ *See* “Resubmission of Response to the Written Argument Submitted by the American Furniture Manufacturers Committee for Legal Trade on February 10, 2020 and Resubmitted on March 6, 2020, Pursuant to

Final Determination as to Evasion

Under 19 USC 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.” As discussed below, there is substantial evidence that covered merchandise entered the United States through evasion, resulting in the reduction or avoidance of applicable AD cash deposits or other security.

Based on its verifications of the parties that responded to RFIs, CBP concluded there were shipments to Aspects for which the manufacturer of the merchandise could not be identified, merchandise was described inaccurately on invoices, and there were errors in the valuation of merchandise.¹⁴ Some of these problems were associated with different consolidated shipments of commingled merchandise identified as originating from multiple manufacturers, and during the verification of Aspects Nantong, there were multiple instances in which one employee involved with the commingling process was observed deleting and destroying information when such commingling was under discussion.¹⁵ Also, CBP noted it “obtained invoices from the manufacturers that differed from the invoices Aspects provided to CBP with its entries and later, when requested to provide supporting commercial documents,” and that the verifiers observed “numerous discrepancies in weight and value between various sales and shipping documents from Aspects, the freight forwarders, and the foreign manufacturers.”¹⁶ The CBP verifiers concluded they “were unable to verify that the stated manufacturers on Aspects’ entry documentation were in fact the manufacturers of the subject merchandise.”¹⁷

Specific details referenced in the verification report supporting these conclusions are discussed below:

CBP Form 7501 for entry number, []5073 (Entry Sample 35), identifies the MID (Manufacturer Identification Code) for [], and is identified as a type 01 entry, with both country of export and country of origin identified as “CN”

19 C.F.R. § 165.26” (“Aspects Response to Written Argument”) (March 10, 2020). Aspects’ original response to written argument, dated February 28, 2020, had been rejected because it did not conform to all EAPA requirements (*see* Rejection Email).

¹⁴ *See* Verification Report at 4 and 17-18.

¹⁵ *Id.* at 16-17.

¹⁶ *Id.* at 4.

¹⁷ *Id.*

(China). The accompanying documentation references some WBF (e.g., []). An official of Nantong Fuhuang, one of the suppliers being verified, stated that Aspects shipped to Nantong Fuhuang certain items, including [], which are subject merchandise, that were “produced by an unknown manufacturer,” and that “Aspects asked the company to consolidate and export those items with its merchandise because Aspects did not have an export license from the Chinese government.”¹⁸ The verification report also notes that “as part of the entry package, Aspects provided a purchase order listing Nantong Fuhuang as the vendor and exporter for the items not produced by Nantong Fuhuang,” including [].¹⁹ In short, this entry is an example of one for which subject merchandise was not identified at the time of entry as subject to the AD order, and for which at least some of the merchandise reflected in the entry was not manufactured by the company identified as the manufacturer on the CBP Form 7501.

CBP Form 7501 for entry number, []1238 (Entry Sample 36), identifies the MID for [], and is identified as a type 03 entry. Various products on the invoice that Aspects had provided to CBP for this entry were not included on the invoice provided by Nantong Fuhuang at verification, and Nantong Fuhuang officials stated at verification that it did not produce the extra items included on the invoice provided by Aspects.²⁰

Another example of an entry with invoice discrepancies, one examined during the verification of Wuxi Yushea is entry number, []9546 (Entry Sample 84). The entry was entered as a type 01 entry, and refers to the MID of [].²¹ The verification report indicates the record of the proceeding contains “three versions of the invoice related to the entry,” and that various products appear on the Wuxi Yushea invoice, as submitted by Aspects in the CBP entry package, even though different manufacturers produced the products.²²

With regard to the invoice inconsistencies, the verification report states that “{t}he verification team compared the invoices provided by Nantong Fuhuang and Wuxi Yushea at verification to the invoices provided by Aspects to CBP in its entry packages.” The verifiers concluded that “{i}n each case, Aspects did not provide the invoice from Nantong Fuhuang nor Wuxi Yushea to CBP in its entry packages,” but “{r}ather, after questioning from the verification team, Aspects Nantong personnel reported that Aspects issues a final invoice and packing list from the California office.” Furthermore, “when comparing the invoices from the CBP entry packages to the invoices in the verification

¹⁸ *Id.*

¹⁹ *Id.* at 5.

²⁰ *Id.*

²¹ See e.g. RA Aspects entry package submission email 6.23.17 19, 20, 31, 34 and 36 Part 1 (7189). The entry labeled “19” in this file corresponds to the Entry Sample 84.

²² See Verification Report at 7.

exhibits,” the verifiers noted “that the invoices have a different appearance (type, formatting, *etc.*)” Ultimately, “[t]he verification team determined that the invoices created by the Aspects California office do not accurately identify the actual manufacturers of the merchandise imported under the entries examined.”²³ An official of Aspects that was present at the Aspects Nantong verification acknowledged “that Aspects adds other manufacturers’ products at the bottom of the manufacturers’ invoices that they issue from the California office and then declares that final invoice to CBP.”²⁴ Therefore, CBP noted at verification not only multiple examples of manufacturer inconsistencies and errors, including some involving subject merchandise (*e.g.* Entry Sample 35, Entry Sample 36, *etc.*), but also a pattern of manipulation of documents by Aspects that obfuscated the identities of manufacturers of the products it imported.

Furthermore, the verification team concluded it had “found that the descriptions of merchandise on documentation submitted by Aspects often differed from those documents submitted by the manufacturers.” The verification report notes that for “[s]ome of the invoices submitted to CBP, Aspects changed merchandise descriptions to a description that would fall outside of the scope of the AD order from a product description that would fall within the scope of the order.” The report also notes that Aspects had claimed type 01 status for some of these entries instead of the type 03 status required for goods subject to AD duties. The verification report describes in detail two examples, both involving Wuxi Yushea (Entry Sample 41 and Entry Sample 39), for which subject merchandise had been mischaracterized on the documents it had provided to CBP.²⁵ The verification report notes four other such examples with such mischaracterizations of merchandise.²⁶ Wuxi Yushea officials even informed the verifiers that their attorney instructed them [] to the company’s final invoices to ensure that other parties are no longer able to adjust them after issuance.²⁷ Aspects Nantong officials acknowledged, as summarized in the verification report, “that Wuxi Yushea began using [] with Wuxi Yushea’s invoices.”²⁸

The verifiers also “found numerous examples of weight and value differences between various sales and shipping documents,” and described in detail two examples that were “representative” of their observations (one each involving Nantong Fuhuang and Wuxi

²³ *Id.* at 6.

²⁴ *Id.* at 6-7.

²⁵ *Id.* at 10.

²⁶ *Id.* at 10-11, referencing entry number []3651 (Entry Sample 8), entry number []8671 (Entry Sample 38), entry number []8944 (Entry Sample 39), and entry number []9783 (Entry Sample 56).

²⁷ *Id.* at 12.

²⁸ *Id.*

Yushea).²⁹ They noted six other such examples where there were “weight and value differences between the importer and manufacturer documents.”³⁰

In addition, the verifiers determined that they could not verify whether or not the value of the merchandise that Aspects provided to CBP is accurate, nor whether the values reported by Aspects appropriately account for assists when relevant. The CBP verifiers indicated their inability to verify valuation resulted not only from uncertainty regarding the actual manufacturer of merchandise and discrepancies between invoices, problems discussed above, but also because the proper valuation of the finished goods could not be verified in instances where an assist was supplied by the buyer Aspects [] to the manufacturer.³¹ The verifiers explained details for one such example, and noted many additional examples.³² In addition, the verifiers noted in their report that Nantong Fuhuang had added merchandise to its invoices that it did not produce and manipulated the per unit prices.³³ The verifiers also described details of that manipulation, and indicated that a Nantong Fuhuang official noted during verification that Nantong Fuhuang “added lines to the invoice for the merchandise supplied by Aspects and manipulated the unit price calculated to match the total sales price of the merchandise manufactured by Nantong Fuhuang and sold to Aspects.” The verifiers concluded that “{a}s a result, the unit prices on this invoice are undervalued” because the Nantong Fuhuang official reallocated the cost of the merchandise that Nantong Fuhuang produced,” which involved one product item, “among all three items listed on the invoice.”³⁴ The verifiers also identified a few other examples of entries for which there were valuation discrepancies.³⁵

At the verification of Aspects Nantong, the verifiers “did not see any signs that Aspects Nantong is registered for business in China,” and while the employees at Aspects Nantong are under the director of an office manager, “the company employees are [

].”³⁶ One employee of Aspects Nantong, [], has the job of designing container loading plans for the various manufacturers that supply Aspects, based on spreadsheets []. The verifiers “asked to see how [] designs the container loads on his computer,” and “{i}n response to our question of [], and while CBP personnel were standing behind him waiting to see a sample of a container loading spreadsheet from [], [] deleted the chat record for a person called ‘[],’” identified subsequently by Aspects Nantong company officials as an employee of Wuxi

²⁹ *Id.* at 8-9.

³⁰ *Id.* at 9.

³¹ *Id.* at 11.

³² *Id.* at 12-13.

³³ *Id.* at 11.

³⁴ *Id.* at 14.

³⁵ *Id.* at 14-15.

³⁶ *Id.* at 16.

Yushea.³⁷ Later, after the verification team asked [] for samples of the container loading plans and spreadsheets, one of the verification team members “saw him delete dozens of files from his computer.”³⁸ These destructions of documents and correspondence occurred despite the presence at verification of Aspects’ Controller.³⁹ These multiple examples of destruction of information during attempted verification of merchandise from multiple suppliers being organized in the same individual containers relates to the issue of whether or not specific merchandise imported by Aspects could be linked to specific manufacturers, which is of critical importance with regard to the appropriate cash deposit rates. Consequently, Aspects’ characterization of such destruction as “exaggerated and excessive” is unwarranted.⁴⁰

Aspects claims it did not make material false statements or material omissions with respect to a variety of its imports, including a) products Commerce found to be outside the scope of the AD order because they are not described by the scope of the order, which therefore were properly identified as type 01 entries; b) entries of merchandise on or after August 9, 2017, after which Aspects claims it has declared type 03 in compliance with interim measures; and c) products properly identified as type 01 at the time of entry because even though Commerce found them to be described by the scope of the AD order, Commerce’s scope ruling is only prospective.⁴¹

With regard to products Commerce found outside of the scope based on product descriptions, in various instances during verification CBP found discrepancies in the identification of merchandise associated with actual entries, such “that the descriptions of merchandise on documentation submitted by Aspects often differed from those documents submitted by the manufacturers,” as described above. Although Aspects may have correctly classified certain imported products as type 03, CBP found discrepancies, such as those relating to the identification of the producers of specific merchandise, supporting a conclusion that applicable antidumping duties were underpaid. Additionally, in regard to products Commerce found to be covered by the scope, those are relevant for the evasion analysis, given that those products were subject to suspension of liquidation under the AD order prior to Commerce’s scope inquiry and ruling. Finally, many of the products (*e.g.*, headboards, dressers, nightstands, *etc.*) associated with Aspects’ entries subject to the EAPA investigation were not referred to Commerce for

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at Appendix I, page 1.

⁴⁰ See Aspects Response to Written Arguments at 8. Aspects claims ignorance of the details of the deletion and destruction, citing one such occurrence involving one Aspects Nantong employee, claiming that “essential information is redacted by CBP from the public version of its Verification Report.” See Aspects Response to Written Argument at 8-10. As discussed, during the verification there were two instances of such destruction, not one, but Aspects is correct in concluding that, based on the evidence presented in the verification report, only one Aspects Nantong official was responsible for the deletion and destruction. For each instance of such deletion and destruction, CBP bracketed the name of the official involved, as it bracketed names of company officials throughout the Verification Report. However, the essential descriptions of the actions by the one individual, related to the commingling of merchandise seemingly from multiple suppliers in individual shipments, are evident from the public version of the verification report.

⁴¹ See Aspects Written Argument at 25-28.

scope referral because it was evident from their descriptions that they were covered by the scope of the order.

Moreover, the general failure of Aspects to accurately identify the manufacturers of its imported merchandise is characterized by Aspects as “mainly” involving “non-covered merchandise.” Aspects stated that “while there have been some instances of inadvertent misreporting, . . . , they have only affected non-covered merchandise, such as glass tops, metal parts, etc.,” and that Aspects has attempted to rectify any inadvertent misreporting, to the best of its ability, by providing the respective invoices and/or purchase orders made between {Aspects} and the manufacturers of the non-covered merchandise to Customs in the course of this Investigation.”⁴² But Aspects’ changing of merchandise descriptions from products that would fall within the scope of the AD order to ones that would fall outside of the scope of the AD order goes beyond inadvertent misreporting, and instead evidences evasion of the applicable order.

Aspects cites various reasons it believes the allegation was invalid or misleading and that no legal basis existed for the investigation to be initiated.⁴³ However, the allegation identified just one importer, Aspects,⁴⁴ and included information reasonably available to the Allegor. EAPA investigations are against a specific importer of record, and the statute does not limit the evasion scheme being investigated to just the specific scheme outlined in the allegation. Therefore, even if not all of the information from the allegation was supported by further investigation, EAPA’s initiation was properly based on reasonably available information that raised suspicions of an evasion scheme.

Summary

Pursuant to 19 CFR 165.27(a) and based upon the full record of this investigation, CBP has determined that there is substantial evidence that Aspects entered covered merchandise into the United States through evasion of A-570-890. Given the numerous problems associated with Aspects’ reporting of entry information referenced above (*i.e.*, misclassification of merchandise, unverified manufacturers, inconsistent values and weights, *etc.*), CBP determines that substantial evidence exists demonstrating that Aspects evaded the AD order, thereby reducing or avoiding applicable AD cash deposits or other security. The problems identified at verifications involved numerous discrepancies, but also included, as described above; a) evidence of Aspects’ alteration of product descriptions on sales documents, which obscured the type of item being imported; b) the request by Aspects to Nantong Fuhuang to consolidate and export subject merchandise from an unidentified manufacturer in Nantong Fuhuang’s shipments, followed by Aspects’ declaration of the merchandise as non-subject merchandise with the MID of []; and c) the destruction of documents and correspondence during verification by an Aspects Nantong official, despite the presence of Aspects’ controller at the verification in question.

⁴³ *Id.* at 21-25.

⁴⁴ See narrative of “Evasion Allegation Against Aspects, An Importer Of Wooden Bedroom Furniture From The People’s Republic Of China (A-570-890), Pursuant To The Enforce and Protect Act of 2015,” dated April 6, 2017 (“Allegation narrative”), at 1.

Overall, the nature of the problems with the record responses in this investigation are broad enough to undermine the reliability of Aspects' reported entry information. Therefore, on the basis of the aforementioned analysis, CBP determines that substantial evidence exists demonstrating Aspects misidentified the applicable AD cash deposit rate for entries of subject merchandise, and in other instances failed to declare entered subject merchandise to be subject to the AD order. As a result, Aspects' entries are subject to the China-wide entity rate for the AD order on wooden bedroom furniture from China, currently 216.01 percent.

Actions Taken Pursuant to the Affirmative Determination of Evasion

In light of CBP's determination that Aspects 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 Aspects that has entered on or after May 9, 2017, 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 importer post the applicable cash deposits as a condition for the release of merchandise. 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 of Enforcement Operations
Trade Remedy & Law Enforcement Directorate
Office of Trade