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PUBLIC VERSION

EAPA Case Number: 7404

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Re: Notice of Determination as to Evasion

Dear Mr. Lebowitz and Mr. Taylor,

Pursuant to an examination of the record in Enforce and Protect Act (EAPA) Investigation 7404, U.S. Customs and Border Protection (CBP) has determined that there is substantial evidence that Mac Swed, Inc. (Mac Swed) entered merchandise covered by antidumping (AD) and countervailing (CVD) duty orders A-552-806 and C-552-805 into the customs territory of the United States through evasion.¹ Substantial evidence demonstrates that Mac Swed imported polyethylene retail carrier bags (polyethylene bags) into the United States from the Socialist Republic of Vietnam (Vietnam) by misclassifying the merchandise under the Harmonized Tariff Schedule of the United States (HTSUS) and misrepresenting the country of origin. Mac Swed did not declare that the merchandise was subject to the AD/CVD orders upon entry and, as a result, no cash deposits were collected on the merchandise.

Background

On October 18, 2019, the Polyethylene Retail Carrier Bag Committee (the Alleger), a business association of domestic producers of covered merchandise, submitted an allegation to CBP that Bag Arts LLC (Bag Arts) / Mac Swed, also known as Mac Swed Bag Arts, was evading the

¹ See *Antidumping Duty Orders: Polyethylene Retail Carrier Bags from Indonesia, Taiwan, and the Socialist Republic of Vietnam*, 75 FR 23667 (May 4, 2010); see also *Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination*, 75 FR 16428 (April 1, 2010) (collectively referred to as the “AD/CVD orders”).

AD/CVD orders on polyethylene bags from Vietnam.² The allegation stated that Bag Arts and Mac Swed are potentially affiliated entities or alternative trade names of the same entity, share the same address, and are listed together frequently as “Mac Swed Bag Arts” in shipping documents. The allegation asserted that Bag Arts/Mac Swed was importing polyethylene bags that were ostensibly Laotian-origin and produced by K’s Laos Trading Plastic Sahakon Sole Co., Ltd., also known as K’s Laos Trading Company (K’s Laos).³ However, the allegation asserted that a manufacturer of covered merchandise named VN K’s International Polybags, JSC (VN K’s) actually produced the polyethylene bags in its Vietnamese facility.⁴ The allegation also claimed that the polyethylene bags were incorrectly classified under HTSUS 3923.29.0000, which pertains to bags made from plastic resins other than polyethylene, rather than HTSUS 3923.21.0085, which pertains to polyethylene bags, the merchandise at issue.⁵ On November 27, 2019, CBP acknowledged receipt of the allegation filed by the Alleger.⁶

CBP found the information in the allegation reasonably suggested that Bag Arts/Mac Swed entered covered merchandise for consumption into the customs territory of the United States through evasion. Consequently, on December 19, 2019, CBP initiated an EAPA investigation pursuant to Title IV, section 421 of the Trade Facilitation and Trade Enforcement Act of 2015.⁷ After the initiation of this investigation, CBP issued a CF-28 questionnaire to Bag Arts/Mac Swed concerning an entry of polyethylene bags and requested the corresponding entry and production documentation.⁸ Additionally, CBP added a memorandum to the administrative record that contained documentation related to another Bag Arts/Mac Swed entry.⁹ On February 6, 2020, CBP conducted a site visit of VN K’s facility in Vietnam.¹⁰ Concurrently, an unannounced site visit was also conducted at the alleged location of K’s Laos in Laos.¹¹

After evaluating the information on the record, CBP determined that reasonable suspicion existed that Mac Swed imported polyethylene bags into the United States that misrepresented the

² See Letter from the Alleger, “Evasion Allegation Against Bag Arts LLC, An Importer Of Certain Polyethylene Retail Carrier Bags From Vietnam (A-552-806 & C-552-805), Pursuant To The Enforce and Protect Act of 2015,” dated October 18, 2019 at 2-6, 8 (Allegation); see also Letter from the Alleger supplementing their allegation, dated November 22, 2019 (Allegation Supplement). The individual members of the Alleger are Hilex Poly Co., LLC and Superbag Corp. Attachments 1 and 2 of the Allegation Supplement indicate that each of the Alleger’s members are U.S. producers of polyethylene bags, and thus, meet the definition of an interested party that is permitted to submit an EAPA allegation pursuant to 19 USC 1517(a)(6)(A), 19 CFR 165.1(4), and 19 CFR 165.11(a).

³ See Allegation at 4-6 and Exhibits 2-3.

⁴ *Id.* at 4-6 and Exhibit 2.

⁵ *Id.* at 4, 6, and Exhibits 2-3, 7.

⁶ See 19 CFR 165.12; see also CBP Email, “EAPA 7404: Receipt of EAPA Allegation Pertaining to Alleged Misclassification of PRCBs from Vietnam,” dated November 27, 2019. PRCBs is an acronym for polyethylene retail carrier bags.

⁷ See 19 USC 1517(b)(1); see also 19 CFR 165.15; see also CBP Memorandum, “Initiation of Investigation for EAPA Case Number 7404 – Bag Arts LLC/Mac Swed, Inc.,” dated December 19, 2019.

⁸ See CBP Form 28 (CF-28) sent to Mac Swed, dated January 21, 2020; see also Mac Swed’s Response to the CF-28, dated February 24, 2020 (CF-28 Response). The CF-28 concerned entry []3223.

⁹ See CBP Memorandum, “Adding Information to the Administrative Record of EAPA Case 7404,” dated March 11, 2020 (March 11 Memorandum). This memorandum pertained to entry []8248.

¹⁰ See CBP Interoffice Memorandum from the Regional CBP Attaché of Thailand, Vietnam, Laos, Cambodia, Myanmar to the Executive Director of the Trade Remedy Law Enforcement Division, dated February 13, 2020 (Site Visit Report).

¹¹ *Id.* at 3 and Attachment 2.

country of origin and incorrectly classified the HTSUS number. This information on the record included VN K's statement on its website concerning its willingness to facilitate evasion, Mac Swed's failure to provide production-related documents requested by CBP's CF-28, and evidence of misclassification in Mac Swed's sales documents.¹² Additionally, the site visit to K's Laos purported facility did not indicate any production capabilities and during the site visit to VN K's facility, VN K's admitted a working relationship with K's Laos.¹³ Consequently, on March 25, 2020, CBP issued a notice of initiation of investigation and interim measures to Mac Swed and the Alleger.¹⁴ This notice informed Mac Swed and the Alleger of the initiation of the investigation and of CBP's decision to impose interim measures based upon a reasonable suspicion of evasion.¹⁵ The notice also informed Mac Swed and the Alleger that the entries covered by the investigation are those entered for consumption, or withdrawn from warehouse for consumption, from November 27, 2018, through the pendency of this investigation.¹⁶ As part of interim measures, CBP suspended the liquidation of Mac Swed's entries entered after the initiation of the investigation pursuant to its authority under 19 USC 1517(e). After interim measures, CBP continued investigating the allegation by issuing requests for information (RFI) to Mac Swed, VN K's, and K's Laos.¹⁷

In its RFI response, Mac Swed stated that it was established as an importer in 1961 and has since imported various types of merchandise such as toys, photo frames, and other general items.¹⁸ Mac Swed further stated that it is [] percent owned by [] and that [] of Bag Arts.¹⁹ The RFI response narratives and the attached sales correspondence indicate that [] has various roles with Mac Swed and Bag Arts, such as [].²⁰ Mac Swed stated that in 2001, its owners at the time [] Bag Arts to sell all types of bags.²¹

Mac Swed specified that it engages in sourcing, purchasing, and selling activities, including importing plastic bags that [] subsequently resells to customers in the United States.²² Mac Swed stated that [] receives price quotes on plastic bags from multiple factories,

¹² See Letter from CBP, "Notice of Initiation of Investigation and Interim Measures - EAPA Case 7404," dated March 25, 2020 at 3, 7, 9.

¹³ *Id.* at 7-9.

¹⁴ *Id.*

¹⁵ *Id.*; see also 19 USC 1517(e); see also 19 CFR 165.24.

¹⁶ See 19 USC 1517(b)(5); see also 19 CFR 165.13; see also 19 CFR 165.2.

¹⁷ See Letter from CBP, "Request for Information regarding EAPA investigation 7404 concerning whether Mac Swed, Inc. evaded the AD/CVD orders A-522-806 and C-552-805 on polyethylene retail carrier bags from Vietnam," dated March 25, 2020; see also Letter from CBP, "VN K's International Polybags, Joint Stock Company Request for Information..." dated March 25, 2020; see also Letter from CBP, "K's Laos Trading Plastic Sahakon Sole Company, Limited Request for Information..." dated April 9, 2020; see also Letter from CBP, "Supplemental Request for Information – Mac Swed, Inc.," dated May 28, 2020.

¹⁸ See Letter from Mac Swed, "Response of Mac Swed, Inc. to Request for Information issued March 25, 2020," dated May 19, 2020 (Mac Swed RFI) at 10.

¹⁹ *Id.* at 8, 10.

²⁰ *Id.* at 1, 6-8, 10 and Exhibits 1, 6; see also Letter from Mac Swed, "Response of Mac Swed, Inc. to Request for Information issued May 28, 2020," dated July 6, 2020 (Mac Swed Supplemental RFI) at Exhibit 1.

²¹ See Mac Swed RFI at 10.

²² *Id.* at 7, 9. However, Mac Swed noted that since receiving this case's initial RFI, [] obtained a bond and is now acting as the importer of record. See Mac Swed Supplemental RFI at 4.

including K's Laos.²³ Upon considering cost, quality, and delivery time, [] decides which factory will receive the order.²⁴ []/Mac Swed claimed that when it placed orders, its understanding was "that VNK was acting only as a trading company or a selling agent facilitating orders (e.g., by providing English speaking staff) to be produced by K's Laos."²⁵ Further, []/Mac Swed stated that because Laos is a land-locked country, it was its understanding that K's Laos arranged for the inland movement of the finished merchandise to the port of export in Haiphong, Vietnam.²⁶ Additionally, Mac Swed claimed that the Laotian production facilities of a precursor company of K's Laos "were verified" many years ago.²⁷ However, Mac Swed did not specify who verified the production facilities, when the verification took place, or provide any further substantiation.

In spite of CBP's several requests, neither VN K's nor K's Laos responded to CBP's RFIs.²⁸ Also, no parties to the investigation submitted written arguments.

Analysis

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."²⁹ 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."³⁰ As discussed below, the record of this investigation indicates that covered merchandise entered the United States through evasion. Further, substantial evidence indicates that Mac Swed's imports were entered through evasion, resulting in the avoidance of applicable AD/CVD deposits or other security.

Record evidence shows that in the beginning of the sales process []/Mac Swed repeatedly contacted VN K's through [] at [] to negotiate [] for imports purported to come from K's Laos.³¹ In these sales negotiation emails, []/Mac Swed explicitly requested price quotes for "[]"

²³ See Mac Swed RFI at 4.

²⁴ *Id.* at 2.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ See CBP Memorandum, "Adding Information to the Administrative Record of EAPA Case 7404," dated June 23, 2020 (June 23 Memorandum). This memorandum detailed the instances in which CBP issued requests for information to VN K's and to K's Laos.

²⁹ Substantial evidence is not defined in the statute. However, the Federal Circuit has stated that "substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." See *A.L. Patterson, Inc. v. United States*, 585 Fed. Appx. 778, 781-782 (Fed. Cir. 2014) (quoting *Consol. Edison Co. of N.Y. v. NLRB*, 305 U.S. 197, 229 (1938)).

³⁰ See 19 CFR 165.1; see also 19 USC 1517(a)(5)(A).

³¹ See Mac Swed RFI at 2 and Exhibits 1, 6; see also Mac Swed Supplemental RFI at Exhibit 1. This email address was listed in the "Contact Us" section of VN K's website. See Allegation at Exhibit 6, pages 1-2.

and “[],” *i.e.* [] and [] plastic bags, respectively.³² After finalizing the sales, the packing lists and commercial invoices that VN K’s prepared and the purchase orders that Mac Swed prepared referred to [] and [] plastic bags.³³ Because [] and [] plastic bags are composed of [], they are properly classified in CBP entry documentation under HTSUS [].³⁴

Though Mac Swed imported [] and [] plastic bags, CBP’s entry forms indicate that Mac Swed did not classify any of its entries from VN K’s/K’s Laos under HTSUS [].³⁵ Instead, CBP’s entry records indicate that Mac Swed classified all its plastic bag imports from VN K’s/K’s Laos under HTSUS [], which covers [].³⁶ Therefore, record evidence indicates that Mac Swed classified the merchandise under an incorrect HTSUS number on its entry forms and should have classified the plastic bags under HTSUS []. The importation of subject merchandise under a false HTSUS number helped facilitate the evasion of antidumping duties associated with HTSUS 3923.21.0085.³⁷

On their CBP entry forms, Mac Swed declared [] of its [] entries from K’s Laos with the country of export as [], a landlocked country, and [] from K’s Laos [] identified [] as the country of export.³⁸ The [] bills of lading issued for these entries indicated Haiphong, Vietnam as the [].³⁹ Therefore, Mac Swed should have declared Vietnam as the country of export. Mac Swed also declared Laos as the country of origin for [] of these entries.⁴⁰ However, neither VN K’s, K’s Laos, nor Mac Swed provided any evidence to support the claim that K’s Laos produces plastic bags or that the subject merchandise originated in Laos.

In its CF-28 response, Mac Swed did not provide requested production records, which could have indicated whether the bags were produced in production at K’s Laos’ facility in Laos.⁴¹

³² See *e.g.* Mac Swed RFI at Exhibit 6, pages 37-38, 40-43; see also Mac Swed Supplemental RFI at Exhibit 1, pages 8-11, 39.

³³ See *e.g.* Mac Swed RFI at Exhibit 1, pages 4-8, 12, 14, 16-18, 20, 33-48, 54-57, 98-99, 119-120, 147-150, 184-185, 233-238, *etc.*; see also CF-28 Response at 23, 25-27. Additionally, the purported shipper, K’s Laos, included the full ten-digit HTSUS number as “3923290000” on the bills of lading of many entries, which is odd because the number does not appear in either the Laotian or Vietnamese HTS schedules. See Allegation at 6 and Exhibits 3-5 and 9; see also Allegation Supplement at Attachment 1, Exhibit 9.

³⁴ See Allegation at 4, 6, and Exhibit 4. The [] rather than the [] HTSUS number has been entered here to account for [] HTSUS numbers that could include [].

³⁵ See Mac Swed RFI at Exhibit 1, pages 2, 52, 96, 117, 145, 182, 231, 291, 321, 358, 400, 411, 458, 511, 542, 578, 616, 667, 717, 753, 807, 881, 936, 994, 1008, and 1036. Please note that the entry summary on page 881 contains an incorrect country of origin and manufacturer ID.

³⁶ See CF-28 Response at 1, 3, 5, 28, and 31; see also Allegation at 4, 6, and Exhibit 4; see also March 11 Memorandum at Attachment; see also DC NTAC report, dated November 27, 2019 at Attachment 1.

³⁷ See Allegation at Exhibit 1. Exhibit 1 contains the scope of the AD/CVD orders; these orders indicate that HTSUS 3923.21.0085 is the proper classification number for polyethylene bags.

³⁸ See Mac Swed RFI at 12 and Exhibit 1.

³⁹ *Id.* at Exhibit 1; see also Allegation at Exhibit 3.

⁴⁰ See Mac Swed RFI at Exhibit 1; see also March 11 Memorandum at Attachment; see also DC NTAC report, dated November 27, 2019 at Attachment 1; see also Allegation at Exhibits 3-5.

⁴¹ See CF-28 Response.

Mac Swed also failed to provide the requested description of production processing steps, factory inspection reports that Mac Swed or an agent may have conducted, or a list of the number and types of machinery available for the production of plastic bags.⁴² Not only did Mac Swed omit these items but it did not explain why it failed to provide these documents. Mac Swed's failure to obtain these production-related documents from VN K's/K's Laos or to provide any explanation is one of several instances in which evidence of K's Laos production is notably absent.

To investigate K's Laos further, the [] went to the purported Laotian address of K's Laos' facility on [] and took photographs.⁴³ These photographs indicated that [] is possibly a current or previous occupant of the facility and that the facility is [].⁴⁴ The photographs did not indicate any stored plastic bags or machinery used to produce plastic bags; thus, any evidence of K's Laos' production is again absent.⁴⁵

K's Laos' apparent lack of production aligns with the scenario described in the affidavit submitted with the allegation. In this document, the affiant []⁴⁶ The affiant stated that VN K's arranges for its U.S. customers to place their orders with K's Laos so merchandise in the transactions' sales documents appears to originate from K's Laos in Laos.⁴⁷ The affiant stated that VN K's then produces the polyethylene bags for these orders in its Vietnamese facility and subsequently marks them as "Made in Laos." This scenario is corroborated by Mac Swed's statement that "{w}hen negotiating and contracting with K's Laos, all {Mac Swed's} correspondence passed through various English speaking individuals at VNK{.}"⁴⁸ The sales and transportation documentation that was subsequently generated from this correspondence identified K's Laos as the [] of the merchandise.⁴⁹ The affiant noted that after production, VN K's shipped the polyethylene bags directly from its facility to the port at Haiphong, Vietnam, which is listed as the [] and [] on multiple documents.⁵⁰ The affiant added that [] that these arrangements are made to avoid AD duties.⁵¹

⁴² *Id.*

⁴³ See Site Visit Report at 3; see also Allegation at Exhibit 3. This exhibit contains the address that Mac Swed claimed for K's Laos.

⁴⁴ See Site Visit Report at Attachment 2.

⁴⁵ *Id.* at 3 and Attachment 2.

⁴⁶ See Allegation at Exhibit 2.

⁴⁷ *Id.* The affiant noted that [] VN K's has customers in New York, which is where Mac Swed/Bag Arts is located.

⁴⁸ See Mac Swed RFI at 2 and Exhibit 6; see Mac Swed Supplemental RFI at Exhibit 1.

⁴⁹ See Mac Swed RFI at Exhibit 1.

⁵⁰ See Allegation at Exhibit 2. This statement on the port of Haiphong corresponds with multiple other case documents in which Haiphong is listed as the [] and []. See e.g. CF-28 Response at 22, 24, 26, and 28; see also Mac Swed RFI at Exhibit 1.

⁵¹ See Allegation at Exhibit 2.

To investigate these claims, a CBP official visited VN K's Vietnamese facility in February 2020 and spoke with VN K's chief accountant and a sales representative.⁵² VN K's representatives did not allow the CBP official to tour the production area. However, they confirmed that VN K's produces low-density polyethylene (LDPE) and high-density polyethylene (HDPE) bags that they export to the [] via the port of Haiphong.⁵³ The production and exportation of polyethylene bags via the port of Haiphong corresponds with the evasion scheme outlined in the allegation's affidavit.

VN K's statements on its relationship to K's Laos during the site visit also aligned with the affidavit submitted with the allegation. These statements unequivocally indicated the existence of a working relationship between VN K's and K's Laos. In one such statement, VN K's said that K's Laos is a separate company and was the only subcontractor for VN K's.⁵⁴ VN K's further stated that "KS Laos supplies handles for bags to VNK for bag production."⁵⁵ VN K's also stated that "VNK is KS Laos Trading's only supplier."⁵⁶ Because VN K's has a working relationship with K's Laos as a "supplier", ostensibly takes orders from customers for K's Laos, and is a plastic bag manufacturer - in addition to the fact that there is no indication that K's Laos has manufacturing capabilities - VN K's likely supplied the plastic bags purported to come from K's Laos.⁵⁷ This scenario supports the allegation's claim that VN K's arranged for its customers to place their orders with K's Laos and then produced the polyethylene bags for these orders that were labelled "made in Laos" and "produced by K's Laos."⁵⁸ Correspondingly, Mac Swed stated that when it placed orders with K's Laos, they did so through VN K's personnel.⁵⁹

Though VN K's did not explicitly state that it produces polyethylene bags shipped in K's Laos' name, VN K's made several contradictory statements during the site visit that call the forthrightness of their statements into question. These included contradictory statements on VN K's production capacity, the number of machines used for plastic bag production, and its relationship to the producer of the plastic pipes observed on the facility grounds. In contrast, VN K's was much more forthright on their website when they stated, "Our advantages: – Competitive price: Cheap source of labor in comparison to other companies in Viet Nam and countries in Asia. Regarding to {sic} anti-dumping tax, you no need to worry any more, we will help you to deal with it."⁶⁰ This statement openly marketed VN K's ability and willingness to help its U.S. customers evade AD/CVD duties.

⁵² See Site Visit Report at 1.

⁵³ *Id.* at 2. Additionally, Commerce previously identified VN K's as a Vietnamese manufacturer of polyethylene bags during its 2010 AD proceeding on polyethylene bags from Vietnam. Commerce issued VN K's its own AD margin of 52.3 percent. See Allegation at Exhibit 1, page 3.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* For evidence of VN K's taking orders for K's Laos, see Mac Swed RFI at 2 and Exhibit 6; see also Mac Swed Supplemental RFI at Exhibit 1.

⁵⁸ See Allegation at 4-5 and Exhibit 2.

⁵⁹ See Mac Swed RFI at 2 and 4. Mac Swed claimed that when it placed its orders it believed that VN K's was K's Laos' trading company or representative and that K's Laos produced the plastic bags in Laos. However, EAPA does not have a knowledge requirement for evasion as defined under 19 CFR 165.1, nor is there any requirement that an importer know of the material or false statement. Therefore, CBP does not need to determine any level of culpability, only that evasion occurred with entry.

⁶⁰ See Allegation at 5 and Exhibit 8.

Moreover, as previously noted, neither VN K's, K's Laos, nor Mac Swed provided any evidence indicating that the polyethylene bags at issue were manufactured in Laos or by K's Laos. CBP provided VN K's and K's Laos with multiple opportunities to provide information on Laotian production, yet VN K's and K's Laos never responded to CBP's RFIs.⁶¹ Therefore, K's Laos' Laotian production capabilities remain unsubstantiated.

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 by CBP...."⁶²

Based on the aforementioned analysis, CBP determines that the repeated failure of VN K's and K's Laos to respond to CBP's RFIs demonstrates that 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) and 19 CFR 165.6.⁶³ VN K's and K's Laos' failure to respond to CBP's RFIs inhibited CBP's ability to further investigate whether VN K's or K's Laos produced the plastic bags that were exported in K's Laos's name to Mac Swed. As a result, CBP is applying adverse inferences to its determination in this case.

As explained throughout this determination notice, multiple pieces of information on the record support the allegation that the plastic bags imported into the United States by Mac Swed were produced by VN K's in Vietnam and not by K's Laos in Laos. This information includes:

- VN K's statement on their website, "Regarding to {sic} anti-dumping tax, you no need to worry any more, we will help you to deal with it."⁶⁴
- VN K's admission that it has a working relationship with K's Laos as a supplier⁶⁵
- VN K's affirmation that it produces polyethylene bags in its Vietnam facility and that it exports its merchandise to the [].⁶⁶
- Mac Swed's statement that when "negotiating and contracting with K's Laos, all correspondence passed through various English speaking individuals at VNK".⁶⁷ Mac Swed's correspondence with VN K's also demonstrates that they ordered the same types

⁶¹ See June 23 Memorandum. CBP issued RFIs to VN K's on March 25, 2020, and April 16, 2020, and to K's Laos on April 9, 2020, and May 1, 2020.

⁶² See 19 USC 1517(c)(3)(B); see also 19 CFR 165.6(c).

⁶³ See June 23 Memorandum at Attachment.

⁶⁴ See Allegation at Exhibit 8, page 2.

⁶⁵ See Site Visit Report at 2.

⁶⁶ *Id.*

⁶⁷ See Mac Swed RFI at 2.

of plastic bags that VN K's produces.⁶⁸

- Mac Swed's merchandise orders through VN K's personnel generated sales and transportation documentation that portrayed K's Laos as the [] of the merchandise and yet did not mention VN K's anywhere.⁶⁹

Because of VN K's and K's Laos' failure to respond to CBP's RFIs, CBP will rely on an adverse inference and will look at the facts otherwise available on the case record.⁷⁰ Here, CBP selects and relies on the information on the administrative record indicating that the polyethylene bags incorrectly indicated that K's Laos manufactured them in Laos and that they were actually produced by VN K's in Vietnam. Specifically, CBP relies upon information in the affiant's declaration, which is contained in the allegation and was made under penalty of perjury.⁷¹ In this document, the affiant stated that [], VN K's [] antidumping duties could be evaded, because although the polyethylene bags are manufactured in Vietnam by VN K's, they are marked "Made in Laos."⁷² The affiant further stated that "[

] and packaged into cartons marked 'Made in Laos.'"⁷³ The affiant noted that [] the sales documents identify K's Laos as the shipper, to give the appearance that the bags are made in Laos. Nevertheless, [] the product is shipped directly from VNK's plant to the port at Haiphong, Vietnam and never physically enters Laos. The [] that these arrangements are made in order to avoid antidumping duties.⁷⁴

Based on the aforementioned analysis, CBP determines that substantial evidence exists demonstrating that Mac Swed misrepresented the country of origin of Laos when they claimed the polyethylene bags at issue were manufactured by K's Laos in Laos. CBP finds that VN K's produced these polyethylene bags in Vietnam and therefore, the correct country of origin is Vietnam. Further, as previously discussed, CBP finds that VN K's and Mac Swed misclassified the polyethylene bags under HTSUS 3923.29.0000 to evade AD/CVD duties associated with HTSUS 3923.21. Because Mac Swed misrepresented the country of origin and misclassified the HTSUS number, it was able to evade the payment of AD/CVD duties on polyethylene bags from Vietnam. Additionally, because Mac Swed did not declare that the merchandise was subject to the AD/CVD orders upon entry, the requisite cash deposits were not collected on the merchandise.⁷⁵

⁶⁸ See Mac Swed Supplemental RFI at Exhibit 1, pages 8, 15-16, 44, 120, 124, 126, 130, *etc.* see also Mac Swed RFI at Exhibits 1 and 6.

⁶⁹ See Mac Swed RFI at Exhibit 1.

⁷⁰ See 19 USC 1517(c)(3)(C); see also 19 CFR 165.6.

⁷¹ See Allegation at Exhibit 2.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ The entries are subject to the rate specified for "VN K's International Polybags Joint Stock Company" in the AD order (52.3 percent) and the All Others rate for the CVD order on polyethylene bags from Vietnam (5.28 percent). See ADCVD orders.

Unreported Assists

As a result of this investigation, CBP also learned that Mac Swed had 15 unreported assists worth \$[] on the merchandise at issue.⁷⁶ Specifically, Mac Swed stated that factories create printing plates for them that are used in plastic bag production. These factories then bill Mac Swed for the printing plates, which are considered Mac Swed's property for future plastic bag reorders. Mac Swed provided the 15 secondary invoices for printing plates for the merchandise at issue.⁷⁷ These unreported assists resulted in the undervaluation of the subject merchandise's declared value. Because AD/CVD duties are collected *ad valorem*, undervaluation of entries constitutes a form of evasion.

Actions Taken Pursuant to the Affirmative Determination as to Evasion

In light of CBP's determination that substantial evidence demonstrates that Mac Swed entered covered 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 suspend or continue to suspend the entries subject to this investigation, until instructed to liquidate. For those entries previously extended in accordance with Interim Measures, CBP will rate adjust and change those entries to type 03 and continue suspension until instructed to liquidate these entries. CBP will adjust the reported values of the relevant entries by the amount of their unreported assists and assess duties accordingly.⁷⁸ CBP will also correct the reported manufacturer and country of origin for entry []4445 and adjust duties accordingly.⁷⁹ Finally, CBP will continue to evaluate Mac Swed's continuous bonds in accordance with CBP's policies, and will continue to require single transaction bonds as appropriate. None of the above actions preclude CBP or other agencies from pursuing additional enforcement actions or penalties.

Sincerely,



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

⁷⁶ See Mac Swed Supplemental RFI at 2-3 and Exhibit 3.

⁷⁷ *Id.*

⁷⁸ The following entries contain unreported assists; therefore, they are undervalued: []7401, []0496, []6923, []7194, []7491, []8192, []9232, []0534, []1573, []2589, []3223, []4445, []5525, []5889, and []7521.

⁷⁹ See Mac Swed RFI at 12. Entry []4445, [].