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Border Protection

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RE: Notice of Determination as to Evasion

To the Counsel and Representatives of the Above-Referenced Entities:

After an examination of the record in Enforce and Protect Act (EAPA) Consolidated Investigation 7553, U.S. Customs and Border Protection (CBP) has determined there is substantial evidence that Pacific Building Material Inc. (“PBM”); Deco Kitchen Cabinet & Bath, Inc. (“Deco”); Skyview Cabinet USA, Inc (“Skyview”); and Greentree Trading Company (“Greentree”)¹ evaded antidumping (“AD”) and countervailing duty (“CVD”) orders A-570-106 and C-570-107, respectively, on wooden cabinets and vanities and components thereof (“WCV”) from the People’s Republic of China (“China”)² by entering merchandise covered under those orders into the customs territory of the United States through evasion. Substantial evidence demonstrates that the Importers imported Chinese-origin WCV into the United States and misrepresented the country of origin as Malaysia. As a result, no cash deposits were applied to the merchandise at the time of entry.

Background

On October 22, 2020, the Trade Remedy Law Enforcement Directorate (“TRLED”), within CBP’s Office of Trade, acknowledged receipt of the properly filed allegations against PBM, Deco, Skyview, and Greentree by MasterBrand Cabinets, Inc. (“MasterBrand”), a domestic producer of WCV.³ TRLED found the information provided in the allegation reasonably suggested that the Importers entered covered merchandise into the customs territory of the United States through evasion. Consequently, CBP initiated an investigation with respect to the Importers on November 13, 2020, pursuant to Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015.⁴

After evaluating all of the information on the record at the time, on February 11, 2021, TRLED determined that reasonable suspicion exists that WCV imported into the United States that were

¹ As discussed below, Skyview acknowledged it imported merchandise under the name KC Cabinet, and references to Skyview below should be interpreted to encompass KC Cabinet as well. The importers identified above, including KC Cabinet, are referenced collectively as “the Importers.”

² See *Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Antidumping Duty Order*, 85 FR 22126 (U.S. Department Commerce, Apr. 21, 2020) and *Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Countervailing Duty Order*, 85 FR 22134 (U.S. Department of Commerce Apr. 21, 2020), respectively. Those notices indicate the suspension of liquidation for CVD occurred for entries on or after August 12, 2019, and the suspension of liquidation for AD occurred for entries on or after October 9, 2019, the respective publication dates of the affirmative preliminary determinations in the U.S. Department of Commerce investigations.

³ See the October 22, 2020, emails entitled “Receipt of EAPA Allegation 7553: Wooden Cabinets and Vanities and Components Thereof from China through Malaysia (PBM),” “Receipt of EAPA Allegation 7557: Wooden Cabinets and Vanities and Components Thereof from China through Malaysia (Deco),” “Receipt of EAPA Allegation 7558: Wooden Cabinets and Vanities and Components Thereof from China through Malaysia (Skyview),” and “Receipt of EAPA Allegation 7565: Wooden Cabinets and Vanities and Components Thereof from China through Malaysia (Greentree),” respectively.

⁴ See the November 13, 2020, memoranda entitled “Initiation of Investigation for EAPA Case Number 7553 – Pacific Building Material Inc.” (“PBM Initiation”), “Initiation of Investigation for EAPA Case Number 7557 – Deco Kitchen Cabinet & Bath, Inc.” (“Deco Initiation”), “Initiation of Investigation for EAPA Case Number 7558 – Skyview Cabinet USA Inc.” (“Skyview Initiation”), and “Initiation of Investigation for EAPA Case Number 7565 – Greentree Trading Company” (“Greentree Initiation”), collectively referred to as the “Initiation Memoranda”.

reported as Malaysian in origin by the Importers were in fact manufactured in China.⁵ Specifically, TRLED based its finding of reasonable suspicion on several factors introduced through the course of the investigation and discussed below, namely, information provided in the allegation and the failure of PBM, Deco, Skyview, and Greentree to provide requested production records demonstrating their imported merchandise was produced by the claimed manufacturer, Rowenda Kitchen Sdn. Bhd. (“Rowenda Kitchen”) in Malaysia.⁶

After the issuance of the NOI, CBP, pursuant to 19 CFR 165.23, sent Requests for Information (“RFIs”) to the Importers and Rowenda Kitchen asking for information about corporate structure and affiliations, accounting and financial practices, and sales-specific order, sales, transport, and product details, as summarized below.

PBM

CBP issued an RFI to PBM on March 15, 2021, with a response due by March 29, 2021.⁷ PBM did not submit a response by the deadline. On March 30, 2021, CBP gave PBM another opportunity to submit its response, this time with a deadline of April 6, 2021.⁸ Again, PBM did not submit a response.

Deco

CBP issued an RFI to Deco on March 15, 2021,⁹ and Deco submitted its response on April 16, 2021.¹⁰ CBP issued a supplemental RFI to Deco on April 30, 2021,¹¹ and Deco submitted its final version of its response on May 10, 2021.¹² CBP issued an additional supplemental RFI to Deco on May 20, 2021,¹³ and Deco submitted its response on May 26, 2021.¹⁴

Skyview

CBP issued an RFI to Skyview on March 15, 2021,¹⁵ and Skyview submitted its response on April 8, 2021.¹⁶ CBP issued a supplemental RFI to Skyview on April 12, 2021,¹⁷ and Skyview submitted its response on April 23, 2021.¹⁸

⁵ See e.g., the February 11, 2021, email entitled “Internal CBP Email of Determination and Interim Measures.”

⁶ See “Notice of Initiation of Investigation and Interim Measures: Consolidated EAPA Case 7553,” dated February 19, 2021 (“NOI”) at 1 (“Based on a review of available information, CBP has determined that there is reasonable suspicion of evasion of AD/CVD duties by PBM, Deco, Skyview, and Greentree, and therefore, CBP has imposed... interim measures...” With regard to production records, in their responses to CF28s, PBM, Deco, and Skyview failed to provide the requested documentation, while Greentree did not submit any CF28 response. *Id.* at 5-6.

⁷ See March 15, 2021, RFI issued to PBM.

⁸ See March 31, 2021, email from TRLED to PBM, clarifying new deadline first referenced in an email to PBM dated March 30, 2021.

⁹ See March 15, 2021, RFI issued to Deco.

¹⁰ See April 16, 2021, Deco RFI Response (“Deco Response”).

¹¹ See April 30, 2021, supplemental RFI issued to Deco.

¹² See May 10, 2021, Deco resubmitted May 7, 2021, supplemental RFI Response (“Deco Supp Response”).

¹³ See May 20, 2021, supplemental RFI issued to Skyview.

¹⁴ See May 26, 2021, Deco supplemental RFI Response (“Deco 2nd Supp Response”).

¹⁵ See March 15, 2021, RFI issued to Skyview.

¹⁶ See April 8, 2021, Skyview RFI Response (“Skyview Response”).

¹⁷ See April 12, 2021, supplemental RFI issued to Skyview.

¹⁸ See April 23, 2021, Skyview supplemental RFI Response (“Skyview Supp Response”).

Greentree

CBP issued an RFI to Greentree on March 15, 2021, with a response due by March 29, 2021.¹⁹ Greentree did not submit a response by the deadline. On March 30, 2021, CBP gave Greentree another opportunity to submit its response, this time with a deadline of April 6, 2021.²⁰ Again, Greentree did not submit a response.

Rowenda Kitchen

CBP issued an RFI to Rowenda Kitchen on March 15, 2021, with a response due by March 29, 2021.²¹ Rowenda Kitchen did not submit a response by the deadline. CBP gave Rowenda Kitchen another opportunity to submit a response, this time with a deadline of April 7, 2021. A Rowenda Kitchen official responded that he did not receive the originally emailed RFI, speculated that it perhaps ended up in his “junk mail,” and requested additional time to prepare a response. CBP extended the deadline for Rowenda Kitchen’s response to April 12, 2021. However, Rowenda Kitchen did not submit a response by that date. CBP then provided Rowenda Kitchen a final opportunity to submit its response, setting a deadline of April 15, 2021.²² Rowenda Kitchen failed to submit a response.²³

On June 7, 2021, counsel for Skyview submitted what it characterized as new factual information. In addition to a variety of exhibit documents with names indicating they related to production activities of Rowenda Kitchen and another Malaysian entity noted below,²⁴ and a submission certification document identified as provided to comply with the requirements of 165.5(b) with the name and apparent signature of a Skyview official,²⁵ Skyview’s counsel provided the following narrative explanation:

Skyview Cabinet USA Inc (“Skyview”) is submitting additional voluntary information pursuant to 19 C.F.R. § 165.23. As stated to U.S. Customs and Border Protection (“CBP”), Skyview has made progress in documenting a complicated supply chain of Rowenda Kitchen SDN. BHD. (“Rowenda”). Even with the extension, there are not sufficient time to complete the process. However, Skyview has learned additional information pertaining to its relationship with Rowenda as provided Kian Hong Ong. The cabinets in question

¹⁹ See March 15, 2021, RFI issued to Greentree.

²⁰ See March 31, 2021, email from TRLED to Greentree, clarifying new deadline first referenced in an email to Greentree dated March 30, 2021.

²¹ See March 15, 2021, RFI issued to Rowenda Kitchen.

²² See email chain between TRLED and Rowenda Kitchen official, concluding on April 13, 2021.

²³ Note that MasterBrand alluded to Rowenda Kitchen’s failure to respond. See May 4, 2021, submission by MasterBrand entitled “Comments on RFI Responses” at 6.

²⁴ The file names include references to bills of material, buyers’ orders, schedules, stock control lists, supplier invoices, purchase invoices, supply chain documents, and other miscellaneous information relating to Rowenda Kitchen and/or the other Malaysian entity, none of which appear to be production records demonstrating that Rowenda Kitchen and/or that other Malaysian entity produced the WCV exported by Rowenda Kitchen to Skyview (including KC Cabinet). For additional discussion, see below.

²⁵ See Exhibits 1 through 14 submitted by Skyview’s counsel on June 7, 2021 (“Skyview Voluntary Info Exhibit 1,” “Skyview Voluntary Info Exhibit 2,” etc.), including two exhibits numbered Exhibit 12 (one referenced as a “Map” and the other referenced as “Appendix A”), as well as the separate certification document, which though submitted in conjunction with the other documents in the June 7, 2021, voluntary submission of factual information, references a printed date of April 6, 2021.

were produced in Malaysia in conjunction with Roxy Heritage Furniture Manufacturer SDN. BHD. as demonstrated in the attached. Additional emails with documents to follow.²⁶

In response to that submission, on June 24, 2021, MasterBrand submitted rebuttal information.²⁷

On July 1, 2021, MasterBrand, Skyview, and Deco submitted written arguments.²⁸ On July 15, 2021, Skyview submitted its response to written argument.²⁹ On July 16, 2021, MasterBrand submitted its response to written arguments.³⁰

Analysis

Under 19 USC 1517(c)(1)(A), to reach a determination as to evasion, CBP must “make a determination, based on substantial evidence, with respect to whether such covered merchandise entered into the customs territory of the United States through evasion.” Evasion is defined as “the entry of covered merchandise into the customs territory of the United States for consumption by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material, and that results in any cash deposit or other security or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise.”³¹ As discussed below, the record of this investigation contains substantial evidence supporting a determination that covered merchandise entered the United States through evasion, resulting in the avoidance of applicable AD/CVD deposits or other security.

As summarized in the NOI, the allegation contained evidence that WCV merchandise imported by Greentree, PBM, Deco, and Skyview originated from China and was transshipped through Malaysia. Specifically, the evidence consisted of:

- Aggregate trade data showing surges in overall imports into Malaysia from China, and into the United States from Malaysia, of merchandise under tariff classifications containing subject merchandise, following the imposition of provisional measures as a result of the Department of Commerce’s affirmative preliminary determination in its CVD investigation of WCV from China.
- Company-specific shipment data sourced from [data source], indicating Rowenda Kitchen began shipping wooden cabinets to the United States in August 2019, the month

²⁶ See various emails in the compilation of June 7, 2021, emails entitled “Emails relating to Skyview Voluntary Info” (“Voluntary Info emails”). The “{a}dditional emails” in question were those also containing attached voluntary submission exhibits.

²⁷ See the June 24, 2021, submission by MasterBrand (“MasterBrand Rebuttal”).

²⁸ See the July 1, 2021, written argument submissions by MasterBrand (“MasterBrand Written Argument”), Skyview (Skyview Written Argument”), and Deco (“Deco Written Argument”), respectively.

²⁹ See the July 15, 2021, response to written argument submission by Skyview (“Skyview Response to Written Argument”).

³⁰ See the July 16, 2021, response to written arguments submission by MasterBrand (“MasterBrand Response to Written Arguments”).

³¹ See 19 CFR 165.1.

in which the CVD investigation provisional measures were imposed, including shipments by Rowenda Kitchen to PBM, Deco, Skyview, and Greentree during the 2019-2020 period.

- An affidavit from a market researcher citing statements by:
 - a) [individual], indicating that Rowenda Kitchen works with Chinese producers and engages in transshipment of Chinese-origin merchandise to the United States, including wooden cabinets produced in China;
 - b) [individuals], who, in response to questions about [topic of questions and response];
 - c) [individual] that the Rowenda Kitchen facilities are relatively small, that they are equipped for minor processing such as wood treatment and painting, rather than substantive manufacturing such as milling, that a nearby building was limited to administrative activities, and that showrooms were either closed down or unoccupied.³²

Those changes in general country trade patterns and in the specific shipment activity of Rowenda Kitchen, and the statements in the affidavit regarding comments by [individuals] that observed that company's facilities, constituted evidence that Rowenda Kitchen may have been shipping WCV that it did not have the capability of producing, and that such WCV may have originated in China. Furthermore, none of the Importers provided the requested production records demonstrating their imported merchandise was produced by Rowenda Kitchen, the party they had identified as the manufacturer for the entries associated with the CF28s.³³ This evidence cited in the NOI is applicable in CBP's final determination with regard to whether substantial evidence exists of evasion by the Importers.

The RFIs issued to the Importers subsequent to the NOI requested from them information relating to corporate structure, affiliations, accounting and financial documentation, and sales-specific order, sales, transport, and product details. Such records and documentation are critical for evaluating the validity of entry information provided by importers and to determine the country of origin of the WCV. The importers Greentree and PBM did not submit RFI responses. 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 a request for information made by CBP. In applying an adverse inference against an eligible party, CBP may select from the facts otherwise available to make a final determination as to evasion pursuant to 19 USC 1517(c)(1)(A) and 19 CFR 165.27.³⁴ 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

³² See NOI at 4.

³³ *Id.* at 5-6. As stated above, one of the importers, Greentree, did not submit any CF28 response.

³⁴ See 19 CFR 165.6(a).

provided the information sought. . . .”³⁵ There is no basis for concluding that Greentree and PBM were unable to provide responses to their RFIs. CBP finds that Greentree and PBM did not cooperate to the best of their ability in failing to respond to CBP’s RFIs and thus the application of adverse inferences is appropriate. The application of such adverse inferences, in conjunction with the evidence of transshipment summarized in the NOI and referenced above (*i.e.*, country trade patterns, Rowenda Kitchen trade patterns, information provided in an affidavit in the allegation, and failure of the importers to provide production documentation in CF28 responses), justifies a final determination of evasion with respect to Greentree and PBM.

Deco and Skyview, in contrast to Greentree and PBM, did submit RFI responses. Those RFI responses do not contain production information demonstrating that the WCV that Deco and Skyview imported from Rowenda Kitchen was produced in Malaysia, whether by Rowenda Kitchen or some other entity in that country. The claimed manufacturer, Rowenda Kitchen, did not provide an RFI response, despite being given multiple opportunities to do so. The RFI issued to Rowenda Kitchen requested significant information relating to its production and sale activities, including transactions related to the Importers. There is no basis for concluding that Rowenda Kitchen was unable to provide a response to its RFI, and application of adverse inference to that party is appropriate. Rowenda Kitchen’s failure to cooperate and comply to the best of its ability to CBP’s information requests leads CBP to rely on evidence otherwise on the record regarding identification of the country of origin of merchandise Rowenda Kitchen shipped to the Importers. That evidence is from the allegation and cited in the NOI indicating WCV imported by the remaining two importers under investigation, Deco and Skyview, was not produced in Malaysia and instead originated in China (*i.e.*, country trade patterns, Rowenda Kitchen trade patterns, information provided in an affidavit in the allegation, and failure of the importers to provide production documentation in CF28 responses). Therefore, CBP concludes substantial evidence exists that Deco and Skyview evaded the AD/CVD orders. Furthermore, while not necessary for CBP’s determination, the existence of various discrepancies and omissions with respect to the RFI responses of Deco and Skyview also call into question the accuracy of information provided by those importers.³⁶

³⁵ See 19 USC 1517(c)(3)(B).

³⁶ With regard to Deco, that importer claimed multiple times that it was providing all communications with Rowenda Kitchen (*see* Deco Response at 21 and 22), but the communications provided (*see* Deco Response at Exhibit 17) are dated no earlier than [date], even though Deco stated it had placed orders with Rowenda Kitchen as early as [date] (*see* Deco Supp Response at 2). Consequently, Deco did not fully document its interactions with the supplier claimed to be to be the manufacturer of its imported merchandise.

With regard to Skyview, we note the following discrepancies and omissions that may relate to transactions and merchandise associated with Rowenda Kitchen:

- a) In its initial RFI response, Skyview stated its “local contact visited the manufacturer to verify their capacity, reviewed manpower, machines, and raw material.” *See* Skyview Response at 3-4. In its April 12, 2021, supplemental RFI, CBP asked Skyview to “{p}rovide evidence that {its} local contact did visit the manufacturer and performed the tasks identified.” In response, Skyview only provided documentation that appears to refer to airline itineraries, none of which even makes mention of Rowenda Kitchen or its specific location, let alone its operations. *See* Skyview Supp Response at narrative and Attachment 1.
- b) In its initial RFI issued to Skyview on March 15, 2021, CBP asked Skyview for the general ledger chart of accounts, pre-closing and closing trial balances, and all accounts payable records covering the calendar or business years 2019 and 2020. Skyview completely ignored this request in its RFI response, not even referencing the requested questions. *See* Skyview Response at 6-7. CBP repeated these requests in its April 12, 2021, supplemental RFI, and Skyview stated it was providing “the P&L, balance sheet, and tax return in Attachment 4.” This was

As referenced above, on June 7, 2021, Skyview’s counsel submitted voluntary factual information consisting of a very brief narrative and exhibits with file names including references to bills of material, buyers orders, schedules, stock control lists, supplier invoices, purchase invoices, supply chain documents, and other miscellaneous information relating to Rowenda Kitchen another Malaysian entity.³⁷ Its counsel, in an email that included part of that submission, stated the submission as a whole indicates “{t}he cabinets in question were produced in Malaysia in conjunction with Roxy Heritage Furniture Manufacturer SDN. BHD,” a party not identified to CBP previously during the investigation.³⁸ However, as discussed below, that submission is not probative.

The signed certification document accompanying the June 7, 2021, submission, provided to fulfill the requirements of 165.5(b), including 165.5(b)(2) requiring certain “certifications from the person making the submission” was dated April 6, 2021.³⁹ If this certification document, dated as it is April 6, 2021, is valid, it would indicate Skyview was aware of the alleged involvement of Roxy Heritage Furniture Manufacturer SDN. BHD (“Roxy”) prior to Skyview’s submission of its initial RFI response on April 8, 2021. However, neither that April 8, 2021, RFI response, nor the supplemental RFI response, submitted by Skyview’s counsel on April 23, 2021, made any reference to Roxy. In other words, if Roxy was somehow relevant to this investigation, and if the April 6, 2021, certification document provided with the June 7, 2021, submission was valid, then for at least two months (between April 6 and June 7, 2021) Skyview concealed Roxy’s involvement from CBP, thereby hindering CBP’s ability to conduct its investigation. Furthermore, the certification document accompanying the June 7, 2021, submission looks identical to the certification submitted with Skyview’s April 8, 2021, RFI response, suggesting the former may not have signed for the June 7, 2021 submission.⁴⁰ Whether Skyview purposely withheld information from CBP it now claims is important for the analysis and failed to mention it in subsequent RFI responses, or if the June 7, 2021, submission contained an invalid, false certification document, the information in that submission is rendered unreliable.

unresponsive to CBP’s request. Furthermore, while the tax return includes Schedule L, listing information such as the balance sheet amounts of cash, and accounts payable, the tax return is not signed, and there is no indication that the version submitted to us was the same information submitted on their actual tax return filed with the IRS. *See* Skyview Supp Response at narrative and Attachment 4.

c) In its initial RFI response, Skyview failed to provide the purchase order CBP requested for an entry. In response to a repeated request for that information, Skyview provided a document in its supplemental RFI response that does not appear to be a legitimate purchase order. There are no buyer or seller names listed on the document, nor are there any pricing or payment terms. All that appears on the document, which appears to be a spreadsheet, are two columns of data for which Skyview provided no explanation. *See* Skyview Supp Response at narrative and Attachment 6.

³⁷ The original deadline for voluntary submission of factual information was June 1, 2021, but Skyview requested an extension of that deadline, and TRLED allowed parties to the investigation an additional six calendar days in which to submit such information. *See* TRLED’s May 28, 2021, email regarding extension of deadline for submission of factual information.

³⁸ *See* Voluntary Info emails.

³⁹ *See* June 7, 2021, certification.

⁴⁰ Furthermore, the importer certification provided with Skyview’s April 23, 2021, supplemental RFI response was also dated April 6, 2021, which suggests that response was not certified by Skyview, either, given CBP had not even devised the questions in its supplemental RFI, let alone provided them to Skyview, as of April 6, 2021.

Even if the June 7, 2021, voluntary submission was considered to have been properly certified by the importer, the information in the submission claimed to relate to Rowenda Kitchen and Roxy would still not constitute credible evidence. Such documentation Skyview associates with Rowenda Kitchen and/or Roxy are not credible because there is no basis for concluding those documents originated with Rowenda Kitchen or Roxy, despite those parties having had many months in which to cooperate with CBP and, for that matter, Skyview. The only reference in the June 7, 2021, submission to any involvement with the submission by Rowenda Kitchen or Roxy staff is a vague allusion to the name of one individual Skyview had in a prior submission publicly identified as a contact at Rowenda Kitchen.⁴¹ In any case, Rowenda Kitchen failed to respond to the RFI it was provided, so any submission by that firm would have been untimely, but even the attempt by Skyview to create an appearance of cooperation by its supplier Rowenda Kitchen fails, given there is no indication Rowenda Kitchen participated in the preparation of the June 7, 2021, submission.

Furthermore, even if one were to conclude that the June 7, 2021, had been properly certified by the importer, and that the information in the submission relates to the activities of Rowenda Kitchen and Roxy, the information in the submission still would not demonstrate the imported merchandise was manufactured by Rowenda Kitchen or Roxy (*see* discussion in the *Arguments by Skyview* section below).

Arguments by MasterBrand

MasterBrand argues that information on the record demonstrates there is substantial evidence of evasion by the Importers,⁴² and that CBP should make adverse inferences with respect to Greentree, PBM, and Rowenda Kitchen because of their failure to cooperate in the investigation to the best of their abilities.⁴³ For the reasons discussed above, CBP agrees.⁴⁴

MasterBrand argues that the record does not support Skyview's claim that the merchandise imported from Rowenda Kitchen was manufactured in Malaysia by Roxy. MasterBrand argues that the information submitted by Skyview, including that in the June 7, 2021, voluntary submission, does not demonstrate actual production of WCV parts, that Rowenda Kitchen completed production of WCV using such parts, or that production by Roxy was used to fulfill orders Rowenda Kitchen received from Skyview.⁴⁵ CBP agrees that even if the information in

⁴¹ "However, Skyview has learned additional information pertaining to its relationship with Rowenda as provided Kian Hong Ong." *See* Voluntary Info emails. It is not clear what entity is being referenced by the word "its" in that sentence, but in any case, it does not amount to any type of certification of the accuracy or relevance of any of the documents in the June 7, 2021, submission.

⁴² *See* MasterBrand Written Argument at 6-9.

⁴³ *Id.* at 15-18.

⁴⁴ Skyview counters that with respect to the affidavit provided by the Alleger, Skyview has no "knowledge" of what is alleged in that affidavit, and that whatever it contains should be disallowed as hearsay and removed from the record. *See* Skyview Response to Written Argument at 8-9. Such affidavits may be considered in EAPA investigations, and the affidavit, and the information within it, was only one source of evidence of evasion, and CBP has not, and is not, claiming that the information in the affidavit, alone, is adequate to justify a finding of reasonable suspicion of evasion, let alone a final finding of substantial evidence of evasion.

⁴⁵ *See* MasterBrand Written Argument at 10-11.

the June 7, 2021 submission was considered reliable, it would not demonstrate the merchandise in question was produced by Rowenda Kitchen or Roxy.

MasterBrand also notes that prior to the notice of initiation of this investigation, Skyview submitted to CBP an affidavit from the director of Rowenda Kitchen, executed on February 8, 2021, in which the official identified the suppliers and country of origin of the raw materials allegedly used to manufacture Rowenda Kitchen's products, and that while the specific suppliers and country of origin were redacted, the affidavit listed the materials publicly, which included plywood, hardware, and cartons. Nowhere in this affidavit did Rowenda Kitchen or Skyview advance an argument that a company other than Rowenda Kitchen was manufacturing the cabinets or that Rowenda Kitchen was subcontracting the production of certain cabinet components.⁴⁶ The director's affidavit does state Rowenda Kitchen manufactures products, and makes no reference to any other party involved in the manufacturing process, but it makes no reference to the types of products, nor does it affirm anything with respect to specific merchandise shipped to Skyview (or KC Cabinet).⁴⁷

MasterBrand also notes that Skyview, in its RFI responses, explained how it had certified that Rowenda Kitchen was the manufacturer of the WCV it received from that firm, and Skyview did not in those RFI responses make any reference to Roxy or its involvement in the production process.⁴⁸ Skyview counters that while it recognizes that Roxy and its suppliers were not disclosed in the RFI responses, "Skyview had the legal right to later add voluntary facts," and "Skyview was not required to 'advance' arguments in its RFI responses."⁴⁹ Skyview is correct that it is not required to provide "arguments" in its RFI responses, but it was required to provide answers to CBP's inquiries. In its RFI responses in April 2021, each submitted after an official of Skyview supposedly certified on April 6, 2021, the content of the June 7, 2021, voluntary factual information submission, Skyview made no mention of Roxy at all, let alone any reference to Roxy's allegedly significant role in the production process. This demonstrates that Skyview withheld information that it could have provided in its RFI responses during April 2021, or that the June 7, 2021, submission was not actually certified, or both.

MasterBrand argues that CBP should investigate the non-payment of Section 301 Duties that resulted from the Importers' failure to properly identify the country of origin of the imported merchandise.⁵⁰ Such an investigation would not be conducted within the confines of this EAPA investigation, but those in CBP that normally consider importers' failure to pay Section 301 Duties may consider this issue.

Arguments by Deco

Deco argues that there is nothing unusual or surprising about a shift of trade patterns after the imposition of the AD/CVD orders on WCV from China, whether it be reduced shipments from

⁴⁶ *Id.* at 13.

⁴⁷ See February 9, 2021, CF28 response document containing affidavit dated February 8, 2021.

⁴⁸ See MasterBrand Written Argument at 13-14. MasterBrand also notes that no other importer has claimed that Roxy is involved in the production process for WCV shipped by Rowenda Kitchen. *Id.* at 14.

⁴⁹ See Skyview Response to Written Argument at 13.

⁵⁰ See MasterBrand Written Argument at 18-19.

China to the United States, or increased shipments from Malaysia to the United States, including from Rowenda Kitchen, particularly given there is no evidence, or even allegation, that Rowenda Kitchen “is really an alter-ego of the Chinese supplier from whom Deco previously purchased.”⁵¹ However, the overall changes in trade patterns involving shipments from China to Malaysia, and from the United States, were dramatic between the general time periods before and after cash deposits began to be required in the AD/CVD investigations.⁵² With regard to Rowenda Kitchen specifically, bill of lading data beginning with 2017 indicate shipments from Rowenda Kitchen to the United States began in August 2019, the month in which provisional measures were first imposed pursuant to the Department of Commerce’s affirmative preliminary determination in its CVD investigation, and those to Deco began after that month.⁵³ In addition, as noted by MasterBrand, there is no requirement in the EAPA statute that where CBP finds evasion based on transshipment through a third country, the transshipping entity be owned or controlled by entities in the country subject to the AD/CVD order at issue.⁵⁴ Finally, these data trends are only some of the evidence supporting a finding of evasion, and CBP has not, and is not, claiming that those trends, alone, are adequate to justify a finding of reasonable suspicion of evasion, let alone a final finding of substantial evidence.

The same applies to the evidence in the affidavit provided in the allegation and cited in the NOI, which is also only part of the evidence of evasion. Deco states that the affidavit simply amounts to a claim that “a market researcher said to somebody that someone in China is transshipping goods,” which it indicates is not a basis for CBP to be willing to bankrupt an importer. However, the affidavit is from a foreign research firm [roles] who has worked as a corporate investigator for more than [time period] and has been involved in, and overseen, hundreds of investigations, and cites statements of [individuals] regarding their first-hand observations that Rowenda Kitchen was incapable of production of WCV and was engaged in transshipment of merchandise from China.⁵⁵

In addition, Deco argues that if Rowenda Kitchen assembled the furniture in Malaysia, it would be a Malaysian product, even if some of the materials were obtained from China.⁵⁶ Neither Deco nor Rowenda Kitchen have demonstrated that the WCV shipped to Deco was manufactured by Rowenda Kitchen, and if the furniture were “assembled” in Malaysia from Chinese materials, it would be considered of Chinese origin, rather than Malaysian origin, given specific language in the scope of the AD/CVD orders noting that “{s}ubject merchandise also includes wooden

⁵¹ See Deco Written Argument at 1-2.

⁵² The total value of Malaysian imports from China of products classified in tariff classifications containing WCV increased over 300 percent between 2018 and 2019, and by over 550 percent between January-May 2019 and the comparable period in 2020. Also, the total value of U.S. imports from Malaysia of products classified in the HTSUS numbers identified as containing subject merchandise increased more than 81 percent from 2018 to 2019, and by 164 percent in January through June 2020, compared to the same period in 2019, while U.S. imports from China decreased substantially during those same periods. See e.g., Initiation of Investigation for EAPA Case Number 7557 – Deco Kitchen Cabinet & Bath, Inc. (“Deco Initiation Memo”) at 2 (footnote 6), issued before the four separate investigations for each importer were consolidated; see also NOI at 4.

⁵³ See e.g., Deco Initiation Memo at 2 and NOI at 4.

⁵⁴ See MasterBrand Response to Written Arguments at 8.

⁵⁵ See MasterBrand’s October 13, 2020, allegation against Deco at 9-10 and Exhibit 8; see also Deco Initiation Memo at 2-3 and NOI at 4.

⁵⁶ See Deco Written Argument at 2.

cabinets and vanities and in-scope components that have been further processed in a third country, including but not limited to one or more of the following: trimming, cutting, notching, punching, drilling, painting, staining, finishing, *assembly*, or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the in-scope product.”⁵⁷

Deco claims that an adverse inference would require evidence of fair value price distortions or price reductions due to government subsidization, that would have been passed on not only to the Malaysian producer, but also through to the U.S. purchaser.⁵⁸ However CBP does not make a finding of dumping or subsidization in its EAPA investigations, but, rather, investigates possible evasion of AD/CVD orders. Consequently, adverse inferences can be made in an EAPA investigation without considering the extent to which merchandise was dumped or subsidized. In any case, CBP is not making an adverse inference for Deco.

In addition, Deco argues that if Rowenda Kitchen failed to cooperate in the investigation, it could have been for various reasons, any one of which is relevant when considering whether or not an adverse inference is or is not warranted, and if an adverse inference is made, it will likely destroy Deco.⁵⁹ However, the EAPA statute states that if CBP finds that a person alleged to have entered the covered merchandise into the United States through evasion, the foreign producer or exporter of such merchandise, or the interested party that filed the allegation has failed to cooperate by not acting to the best of the party or person’s ability to comply with a request for information, CBP may use an inference that is adverse to the interests of that party or person in selecting from among the facts otherwise available to make its determination of evasion.⁶⁰ The statute further states that an adverse inference may be used without regard to whether another person involved in the same transaction(s) has provided the information sought by CBP.⁶¹ CBP does not need to contemplate why the non-cooperating party chose not to cooperate. The failure to cooperate itself is sufficient for the application of adverse inferences pursuant to the plain language of the statute. Finally, as noted above, CBP is not making an adverse inference for Deco, though Rowenda Kitchen’s failure to cooperate in the investigation through its failure to submit an RFI response meant there could be no substantiation for Deco’s claim that Rowenda Kitchen manufactured the merchandise Deco imported from that firm.

Arguments by Skyview

Skyview argues that there is not substantial evidence that there has been evasion of the AD/CVD orders for its imported merchandise. Skyview states it is worth noting that CBP originally stated that Skyview did not provide production records, and Skyview argues that it “certainly overcame this finding with its voluntary information submission” of June 7, 2021. Describing that submission, Skyview claims “{a} volume of documentation was produced that showed wood raw material suppliers, raw material invoices, production records, and shipping records,” and that

⁵⁷ See MasterBrand Response to Written Arguments at 9-11, citing language from the scope of the AD/CVD orders (emphasis added).

⁵⁸ See Deco Written Argument at 2.

⁵⁹ *Id.* at 2-3.

⁶⁰ See 19 U.S. Code § 1517(c)(3)(A).

⁶¹ *Id.* § 1517 (c)(3)(B).

the “timing, model numbers, etc.” of Roxy’s production “match up to Skyview’s product that was shipped,” and that Skyview “demonstrated that all models were covered between Roxy invoices and Rowenda {Kitchen} purchase orders.”⁶² However, Skyview did not submit documents demonstrating actual production either by Rowenda Kitchen or Roxy. More fundamentally, however, the June 7, 2021, submission is not probative due to the aforementioned procedural and timing discrepancies, so it does not in any way support Skyview’s claim that the imported merchandise in question was manufactured in Malaysia.

In addition, Skyview notes that it provided substantial amounts of information pertaining to an entry in its CF28 response, and that Skyview provided documentation to substantiate the country of origin as Malaysia, citing information provided regarding purchase order numbers, model numbers, item quantities, and carton/box quantities.⁶³ However, none of this information allows for confirmation of the actual country of origin of the importer merchandise. With regard to the information in the CF28 response identified as associated with Rowenda Kitchen operations, such as machine and employee lists and employee log information, Rowenda Kitchen’s failure to respond to the RFI calls into question the accuracy or probative value of that earlier information. Furthermore, no production documentation was provided by Skyview that can be linked to the actual imported merchandise, and Rowenda Kitchen failed to even submit a response to the RFI issued to it after the NOI.

Skyview argues that “CBP cannot make an adverse inference to an importer where the importer is powerless in inducing a shipper to produce records,” citing various court rulings involving AD/CVD the Department of Commerce’s authority.⁶⁴ Arguably, it might be appropriate to apply adverse inferences to Skyview, given the potentially fraudulent “certifications” submitted by its counsel with the supplemental RFI response and the June 7, 2021, submission. However, CBP is not making an adverse inference against Skyview in this case. Instead, CBP is drawing an inference that is adverse to the interests of Rowenda Kitchen, as authorized under § 1517(a)(3)(B), which provides that CBP may apply an adverse inference against the alleged foreign exporter or producer of covered merchandise “without regard to whether another person involved in the same transaction or transactions under examination has provided the information.”

Skyview argues it was within its rights to submit the information provided in the June 7, 2021, voluntary factual information submission. Skyview challenges MasterBrand’s suggestion in MasterBrand’s June 24, 2021 rebuttal submission that the June 7, 2021 submission should be disregarded and adverse inferences applied due to Rowenda Kitchen’s lack of cooperation, and Skyview states CBP was authorized by the EAPA regulations, at its discretion, to verify information such as that in the June 7, 2021, submission.⁶⁵ However, as discussed above, it is not evident that Rowenda Kitchen or Roxy actually provided information included in the June 7, 2021 submission, and even if they had, the claim of Roxy’s involvement in the production process was not made in Skyview’s RFI responses, which were submitted after the April 6, 2021 date appearing on the importer certification document accompanying the June 7, 2021

⁶² See Skyview Written Argument at 12-13.

⁶³ *Id.* at 4-7.

⁶⁴ *Id.* at 15-17.

⁶⁵ *Id.* at 17.

submission. Furthermore, there was no need to consider verification of the information in the June 7, 2021 submission, given it has been determined to be unreliable and therefore, not probative.

Finally, Skyview argues that if CBP is unable to make a “covered merchandise” determination, it should refer the matter to Commerce. Skyview appears to clarify by stating that “if CBP cannot make a Malaysia country of origin {sic} based on the facts, it must refer the matter to Commerce.” Skyview states it “believes that it has presented sufficient documentation to show that, at the very least, any China produced product would not have substantially transformed the WCV into a product of China origin,” and that “{a}ny question of the law must be settled by Commerce” based on various case law it cites pointing to Commerce’s responsibility in this regard.⁶⁶ As it appears Skyview is arguing that the issue is whether or not CBP can determine the country of origin,⁶⁷ the record does not support Skyview’s claim that the imported merchandise underwent manufacturing in Malaysia., and it bears repeating that CBP has determined, based on the full range of information on the record, that substantial evidence exists indicating the imported merchandise was manufactured in China and transshipped through Malaysia.

⁶⁶ *Id.* at 18-20.

⁶⁷ In its response to written argument, Skyview appeared to clarify the basis for its argument that CBP should make a referral to Commerce when it stated that “...although MasterBrand asserts that Roxy’s steps ‘would not transform the merchandise to Malaysian origin,’ country of origin/covered merchandise questions, as discussed further below, must be decided by the U.S. Department of Commerce.” *See* Skyview Response to Written Argument at 12.

Skyview also “believes that it has presented sufficient documentation to show that, at the very least, any China produced product would not have substantially transformed the WCV into a product of China origin.” *See* Skyview Response to Written Argument at 16. However, the record does not demonstrate what, if any, manufacturing of WCV actually occurred in Malaysia, but does contain various evidence that WCV originating in China was being transshipped through Malaysia to the United States.

Actions Taken Pursuant to the Affirmative Determination of Evasion

In light of CBP's determination that the Importers 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 these entries. For those entries previously extended in accordance with the interim measures, CBP will rate adjust and change those entries to type 03 and continue suspension until instructed to liquidate these entries. CBP will also evaluate the Importers' continuous bonds 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,

A handwritten signature in black ink, appearing to read "Brian Hoxie". The signature is fluid and cursive, with a prominent initial "B" and "H".

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