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**PUBLIC VERSION**

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**RE: EAPA Consolidated Investigation 7501: Notice of Determination as to Evasion**

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

Pursuant to an examination of the record in Enforce and Protect Act (EAPA) Consolidated Investigation 7501, U.S. Customs and Border Protection (CBP) has determined there is substantial evidence that CEK Group LLC (CEK), D&J Trading Inc. (D&J), KSA Supply Corporation (KSA)<sup>1</sup> and Power Poly & Hanger Supply Inc. (Power Poly) and (collectively, the Importers) have entered merchandise covered by antidumping duty (AD) order A-570-918<sup>2</sup> on steel wire garment hangers (hangers or the covered merchandise) from the People's Republic of China (China) into the customs territory of the United States through evasion. Substantial evidence demonstrates that the Importers imported Chinese-origin hangers into the United States

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<sup>1</sup> TRLED notes that KSA also does business as [ company name ]. See CBP's Memorandum, dated September 14, 2020. For the purposes of this consolidated investigation, TRLED refers to KSA and [ company name ] as "KSA."

<sup>2</sup> See *Notice of Antidumping Duty Order: Steel Wire Garment Hangers from the People's Republic of China*, 73 FR 58111 (Dept. of Commerce, October 6, 2008) (the *Order*).

and misrepresented the country of origin as Thailand. As a result, no cash deposits were applied to the merchandise at the time of entry.

## I. Background

On August 26, 2020, the Trade Remedy Law Enforcement Directorate (TRLED), within CBP's Office of Trade, acknowledged receipt of the properly filed allegations against CEK, D&J, KSA, and Power Poly, by M&B Metal Products Company, Inc. (M&B or the alleged), a domestic manufacturer of hangers.<sup>3</sup> TRLED found the information provided in the allegations 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 September 14, 2020, pursuant to Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, commonly referred to as the "Enforce and Protect Act" or "EAPA".<sup>4</sup>

After evaluating all of the information on the record at the time, on December 11, 2020, TRLED determined that reasonable suspicion existed that the hangers imported into the United States from Thailand by the Importers were, in fact, manufactured in China, and imposed interim measures.<sup>5</sup> Specifically, TRLED based its determination on several elements introduced through the course of the investigation, including information provided in the allegations, multiple discrepancies in the Importers' CF28 responses, the HSI Report, Thai Trade Statistics and information gathered from other EAPA investigations.<sup>6</sup> Consequently, based upon the information stated above, CBP issued the Notice of Initiation of Investigation (NOI) on December 18, 2020.<sup>7</sup>

On January 28, 2021, pursuant to 19 C.F.R. § 165.5 of the EAPA Regulations, CBP sent Requests for Information (RFIs) to the Importers.<sup>8</sup> In the RFIs, CBP requested the following information from the Importers: (1) information about each company's corporate structure and affiliations; (2) information about each company's accounting and financial practices; (3) information about their procurement and sales practices; and reconciliations, to tie their financial

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<sup>3</sup> See CBP's E-mail, "Receipt of EAPA Allegations 7501-04: Steel Wire Garment Hangers from China," dated August 26, 2020.

<sup>4</sup> See CBP's Memorandum, "Initiation of Investigation for EAPA Case Number 7501," dated September 14, 2020 (CEK Initiation Memorandum); CBP's Memorandum, "Initiation of Investigation for EAPA Case Number 7502," dated September 14, 2020; CBP's Memorandum, "Initiation of Investigation for EAPA Case Number 7503," dated September 14, 2020; and CBP's Memorandum, "Initiation of Investigation for EAPA Case Number 7504," dated September 14, 2020.

<sup>5</sup> See CBP's E-mail, "EAPA Investigations 7501-04: Notice of Initiation and Interim Measures," dated December 11, 2020.

<sup>6</sup> See CBP's Letter, "Notice of Initiation of Investigation and Interim Measures: Consolidated EAPA Case 7501," dated December 18, 2020 (NOI). See also CBP's Memorandum, "Adding Information to the Administrative Record of Consolidated EAPA Case 7501," dated December 18, 2020. This memorandum contains a site visit report conducted by U.S. Department of Homeland Security (HSI) personnel (HSI Report) and trade statistics provided by the Government of Thailand (Thai Trade Statistics).

<sup>7</sup> See, generally, NOI.

<sup>8</sup> See CBP's Letter, "Enforce and Protect Act Consolidated Case 7501: Request for Information from CEK Group LLC," dated January 28, 2021 (CEK's RFI); CBP's Letter, "Enforce and Protect Act Consolidated Case 7501: Request for Information from D&J Trading Inc.," dated January 28, 2021; CBP's Letter, "Enforce and Protect Act Consolidated Case 7501: Request for Information from KSA Supply Corporation," dated January 28, 2021; and CBP's Letter, "Enforce and Protect Act Consolidated Case 7501: Request for Information from Power Poly & Hanger Supply Inc.," dated January 28, 2021.

statements to their sales of covered merchandise.<sup>9</sup> Three importers, D&J, KSA and Power Poly, did not respond to the RFI. CBP provided these importers a second opportunity to respond to the RFI and reissued the RFI to each company on February 19, 2021.<sup>10</sup> D&J, KSA and Power Poly did not respond to the supplemental RFI. CEK provided a response to the RFI on February 25, 2021.<sup>11</sup> CBP issued a supplemental RFI to CEK on February 26, 2021.<sup>12</sup> CEK did not respond to the supplemental RFI. On March 10, 2021, CBP requested that CEK confirm it had received the supplemental RFI or indicate whether it intended to not respond to the supplemental RFI.<sup>13</sup> CEK provided no response to CBP.

In addition, on January 27, 2021, pursuant to section 165.5 of the EAPA Regulations, CBP sent an RFI to the foreign producer, NWH Manufacture Company Limited (NWH).<sup>14</sup> On February 12, 2021, NWH requested an extension of time to respond to the RFI.<sup>15</sup> On February 16, 2021, CBP granted an extension and provided NWH with an additional seven days to respond.<sup>16</sup> NWH filed its first response to the RFI after 5 pm Eastern Standard Time on February 24, 2021, which was rejected on February 25, 2021, due to multiple filing deficiencies and because NWH had failed to answer many of the questions in the RFI.<sup>17</sup> CBP also granted NWH an additional seven days to complete and resubmit its RFI response.<sup>18</sup> On March 3, 2021, NWH filed its second response to the RFI, which was rejected on March 8, 2021, due to multiple filing deficiencies and because NWH still failed to answer many of the questions in the RFI.<sup>19</sup> On March 3, 2021, NWH also submitted an extension request, although it did not specify the length of the extension it requested.<sup>20</sup> In rejecting the second RFI response CBP granted NWH an additional seven days to complete its RFI response.<sup>21</sup> In sum, CBP provided NWH three extensions totaling 21 days to complete its RFI response. NWH filed its RFI response for a third and final time on March 10, 2021.<sup>22</sup>

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<sup>9</sup> *Id.*

<sup>10</sup> See CBP's Letter, "Enforce and Protect Act Consolidated Case 7501: Second Request for Information from D&J Trading Inc.," dated February 19, 2021; CBP's Letter, "Enforce and Protect Act Consolidated Case 7501: Second Request for Information from KSA Supply Corporation," dated February 19, 2021; and CBP's Letter, "Enforce and Protect Act Consolidated Case 7501: Second Request for Information from Power Poly & Hanger Supply Inc.," dated February 19, 2021.

<sup>11</sup> See CEK's Letter, "EAPA Response to First Request for Information, EAPA Cons. Case No. 7501, CEK Group, LLC," dated February 25, 2021 (CEK's RFI Response).

<sup>12</sup> See CBP's Letter, "Enforce and Protect Act Consolidated Case 7501: Supplemental Request for Information from CEK Group LLC," dated February 26, 2021 (CEK's Supplemental RFI).

<sup>13</sup> See CBP's E-mail, "EAPA Cons 7501: Supplemental RFI for CEK Group LLC," dated March 10, 2021.

<sup>14</sup> See CBP's Letter, "Enforce and Protect Act Consolidated Case 7501: Request for Information from the Foreign Producer," dated January 27, 2021 (NWH's RFI).

<sup>15</sup> See NWH's Letter, "Enforce and Protect Act Investigation Case No. 7501: Request for Information," dated February 12, 2021.

<sup>16</sup> See CBP's E-mail, "EAPA Cons 7501: RFI Extension Request for NWH," dated February 16, 2021.

<sup>17</sup> See CBP's E-mail, "EAPA Cons 7501: Rejection of NWH's RFI Response," dated February 25, 2021 (First RFI Rejection).

<sup>18</sup> *Id.*

<sup>19</sup> See CBP's E-mail, "EAPA Cons 7501: Rejection of NWH's RFI Response," dated March 8, 2021 (Second RFI Rejection).

<sup>20</sup> See NWH's Letter, "Enforce and Protect Act Investigation Case No. 7501: Request for Information," dated March 3, 2021.

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

<sup>22</sup> See NWH's Letter, "Enforce and Protect Act Investigation Case No. 7501: Request for Information," dated March 10, 2021 (NWH's RFI Response).

M&B submitted voluntary factual information on April 2, 2021.<sup>23</sup> On April 9, 2021, CEK submitted rebuttal voluntary factual information.<sup>24</sup> On April 15, 2021, CBP rejected CEK's submission because it contained new factual information which did not rebut M&B's Voluntary Factual Information.<sup>25</sup> In the rejection, CBP provided CEK a second opportunity to submit rebuttal voluntary factual information.<sup>26</sup> NWH submitted voluntary factual information between March 23-25, 2021, which CBP placed on the record on April 15, 2021.<sup>27</sup> NWH submitted additional voluntary factual information between April 13-14, 2021, however, CBP rejected this information as untimely.<sup>28</sup> On April 19, 2021, CEK resubmitted its rebuttal voluntary factual information in two submissions.<sup>29</sup> On April 21, 2021, CEK changed counsel.<sup>30</sup> On April, 22, 2021, CBP rejected CEK's two submissions of rebuttal voluntary factual information because they contained new factual information which did not rebut M&B's Voluntary Factual Information.<sup>31</sup> CBP again granted additional time for CEK to submit rebuttal voluntary factual information. CEK filed rebuttal voluntary factual information on April 27, 2021.<sup>32</sup> On April 29, 2021, CBP received more voluntary factual information from NWH, but rejected the information as untimely and improperly filed.<sup>33</sup>

On May 10, 20, 2021, CEK and M&B submitted written arguments.<sup>34</sup> On May 25, 2021, CEK and M&B submitted rebuttal written arguments.<sup>35</sup>

## II. Analysis

Under 19 U.S.C. § 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.”<sup>36</sup> “Covered merchandise” is defined as “merchandise that is subject to a CVD order... and/or an AD

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<sup>23</sup> See M&B's Letter, “EAPA Investigation of Steel Wire Garment Hangers Imported from Thailand: Submission of Factual Information,” dated April 2, 2021 (M&B's Voluntary Factual Information).

<sup>24</sup> See CEK's Letter, “EAPA Submission of Process Objections and Factual Information EAPA Cons. Case No. 7501,” dated April 9, 2021.

<sup>25</sup> See CBP's E-mail, “EAPA 7501: Rejection of Rebuttal NFI,” dated April 15, 2021.

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

<sup>27</sup> See CBP's Memorandum, “Consolidated EAPA Case 7501: New Factual Information Submitted by NWH Manufacture Company Limited,” dated April 15, 2021 (NWH's Voluntary Factual Information).

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

<sup>29</sup> See CEK's Letters, “EAPA Submission of Objections #1, EAPA Cons. Case No. 7501,” and “EAPA Submission of Process Objection as to Basis for Investigation, EAPA Cons. Case No. 7501,” dated April 19, 2021.

<sup>30</sup> See CEK's Letters, “Withdrawal from Representation of CEK Group, EAPA Cons. Case No. 7501” (Junker & Nakachi, P.C.), and “Consolidated EAPA Case 7501, Letter of Appearance” (Diaz Trade Law), dated April 21, 2021.

<sup>31</sup> See CBP's E-mail, “EAPA 7501: Rejection of Rebuttal NFI Submissions,” dated April 22, 2021.

<sup>32</sup> See CEK's Letter, “EAPA Consolidated Case 7501, Submission of Rebuttal Factual Information,” dated April 27, 2021 (CEK's Rebuttal Voluntary Factual Information).

<sup>33</sup> See CBP's E-mail, “EAPA 7501: Rejection of Video Files,” dated April 30, 2021.

<sup>34</sup> See CEK's Letter, “EAPA Cons. Case 7501, Submission of Written Argument,” dated May 10, 2021 (CEK's Written Arguments); and M&B's Letter, “EAPA Investigation of Steel Wire Garment Hangers Imported from Thailand (EAPA Cons. Case No. 7501): Written Argument of M&B Metal Products Company, Inc.,” dated May 10, 2021 (M&B's Written Arguments).

<sup>35</sup> See CEK's Letter, “EAPA Cons. Case 7501, Response to Written Argument,” dated May 25, 2021 (CEK's Rebuttal Written Arguments); and M&B's Letter, “EAPA Investigation of Steel Wire Garment Hangers Imported from Thailand (EAPA Cons. Case No. 7501): Response to Written Argument,” dated May 25, 2021 (M&B's Rebuttal Written Arguments).

<sup>36</sup> See also 19 C.F.R. § 165.27(a) (implementing 19 U.S.C. § 1517).

order.”<sup>37</sup> “Evasion” is defined as “the entry of covered merchandise into the customs territory of the United States for consumption by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material, and that results in any cash deposit or other security or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise.”<sup>38</sup> As discussed below, the record of this investigation indicates that covered merchandise entered the United States through evasion, and that there is a basis for concluding that substantial evidence indicates the Importers entered covered merchandise through evasion.

### D&J, KSA and Power Poly

D&J, KSA and Power Poly, did not respond to the RFI, and CBP provided these importers a second opportunity to respond to the RFI to which they did not respond.

**Comments:** M&B notes that D&J and KSA provided incomplete responses to the CF28s, and Power Poly provided no response.<sup>39</sup> M&B observes that these three companies did not respond to their respective RFIs.<sup>40</sup> Therefore, M&B argues, consistent with the regulations and statute, CBP should apply adverse inferences in selecting from the facts otherwise available to make a final evasion determination with respect to D&J, KSA and Power Poly given their failure to cooperate fully in this investigation.<sup>41</sup>

CEK asserts that incomplete responses and non-participation from some of the importers does not justify the application of adverse inferences, and if CBP does determine to apply adverse inferences, it should not universally apply adverse inferences to all of the importers but make a separate decision with respect to CEK.<sup>42</sup>

**CBP’s Position:** As noted above, D&J, KSA and Power Poly failed to respond to CBP’s RFIs, despite being provided two chances to do so. The failure of D&J, KSA and Power Poly to participate in the consolidated investigation, and to respond to the RFIs, precludes CBP from performing the necessary analysis of their books and records to determine whether their imports of hangers entered the United States through evasion. Because D&J, KSA and Power Poly failed to cooperate and comply to the best of their ability to respond to the RFIs, in accordance with 19 U.S.C. § 1517(c)(3)(A) and 19 C.F.R. § 165.6, CBP finds that the use of adverse inferences is warranted. In relying upon an adverse inference for the failure to cooperate and comply to the best of one’s ability with a request for information, “CBP may apply an inference adverse to the interests of that party in selecting from among the facts otherwise available to make the determination as to evasion.”<sup>43</sup> 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....”<sup>44</sup> As adverse inferences, CBP determines that D&J, KSA and Power Poly

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<sup>37</sup> See 19 C.F.R. § 165.1.

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

<sup>39</sup> See M&B’s Written Arguments at 9.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* citing section 165.6 of the EAPA Regulations. See also M&B’s Rebuttal Written Arguments at 8 – 10.

<sup>42</sup> See CEK’s Rebuttal Written Arguments at 16.

<sup>43</sup> See the EAPA Regulations at 165.6 (a).

<sup>44</sup> See 19 USC 1517(c)(3)(B).

misrepresented the country of origin of their imports of hangers by claiming Thailand, rather than China, as the country of origin. As a result, the entries by D&J, KSA and Power Poly subject to this EAPA investigation will be subject to the China-wide entity rate for the *Order*.

With respect to CEK's argument that CBP make individual decisions with respect to the Importers, CBP's decisions in this case are based on the facts on the record of the investigation with respect to each importer. We discuss CEK in the next section.

### CEK

CEK initially provided a partial response to CBP's RFI, answering only certain questions.<sup>45</sup> CBP provided CEK a second opportunity<sup>46</sup> to respond to the questions it failed to answer in a supplemental RFI, however, CEK did not respond to the supplemental RFI, nor did CEK respond to CBP's enquiry as to whether it received the supplemental RFI, or whether it intended not to respond.<sup>47</sup>

**Comments:** CEK contends that the information not supplied in its RFI response is irrelevant and unnecessary to CBP's investigation, and that it responded in its entirety to questions it deemed to be relevant to this investigation.<sup>48</sup> CEK alleges the RFI questions may potentially support some investigation beyond the instant EAPA investigation, which is not the intention of EAPA investigations.<sup>49</sup> According to CEK, CBP's questions extend significantly beyond the scope of 19 U.S.C. § 1508 as the questions do not relate to the business activity of importing or a finding of evasion.<sup>50</sup>

In addition, CEK argues adverse inferences can only be made where there is an absence of information on the record.<sup>51</sup> CEK contends that the term "adverse inferences" in the EAPA statute should be read *in pari materia* with the term "adverse inferences" in the AD/CVD law since both involve similar subjects.<sup>52</sup> CEK suggests that, under the basic rule of statutory interpretation, well-established terms in laws in effect prior to the enactment of a new law should be taken into account in administering the later law.<sup>53</sup> According to CEK, unlike the manner in which Commerce applies adverse inferences, the adverse inferences provision, as applied by CBP, deprives the investigated party of notice as to what information is missing and does not provide an opportunity to redress the missing information before a final determination is reached, violating the party's right to a meaningful and fair proceeding.<sup>54</sup> In this case, CEK argues, the information provided, and the arguments presented, raised questions which CBP failed to follow-up on.<sup>55</sup> Moreover, CEK submits that M&B has misinterpreted the adverse inferences provisions because CBP should only resort to adverse facts to fill in gaps in necessary information.<sup>56</sup> In this

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<sup>45</sup> See CEK's RFI Response.

<sup>46</sup> See CEK's Supplemental RFI.

<sup>47</sup> See CBP's E-mail, "EAPA Cons 7501: Supplemental RFI for CEK Group LLC," dated March 10, 2021.

<sup>48</sup> See CEK's Written Arguments at 19.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 20.

<sup>51</sup> *Id.* at 22.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 49.

<sup>55</sup> *Id.*

<sup>56</sup> See CEK's Rebuttal Written Arguments at 16.

case, according to CEK, CBP has all of the necessary information for it to make a finding of no circumvention as CBP has evidence of real, actual on-going production, and, CEK concludes, there is no record evidence of circumvention though transshipment during the POI.<sup>57</sup>

M&B observes that CEK acknowledged it withheld certain information requested by CBP, that CEK claims that such information is irrelevant to CBP's analysis, and that the information provided by it and NWH are adequate for purposes of CBP's analysis.<sup>58</sup> M&B notes that CBP found CEK's CF28 to be so deficient that it could not use the information provided to determine whether the hangers imported by CEK were actually produced in Thailand by NWH, and that CEK only provided a partial response to the RFI and provided no response to the supplemental RFI.<sup>59</sup> M&B comments that CEK failed to cite to anything in the EAPA law or regulations that permits importers named in an EAPA investigation to pick and choose which questions from CBP to answer and which requests for information to comply with. M&B argues that it is not the role of the interested party to decide what information is relevant for CBP's evasion determination, rather, it is for CBP to determine how best to conduct its investigation and to determine what information is relevant and necessary for its analysis of possible evasion.<sup>60</sup> M&B contends that it is entirely appropriate for CBP to apply adverse inferences in selecting from the facts otherwise available to make a final evasion determination with respect to CEK.<sup>61</sup>

According to M&B, CEK's reliance on Commerce's regulations regarding adverse inferences ignores the provisions in the EAPA regulations on adverse inferences.<sup>62</sup> M&B states that section 165.6(b) of the EAPA Regulations indicates that "CBP may also apply an inference adverse to the interests of a party based on a prior determination in another CBP investigation, proceeding, or action that involved evasion with respect to AD/CVD orders, or any other available information."<sup>63</sup> In addition, M&B notes, section 165.6(c) of the EAPA Regulations provides that "{a}n adverse inference described in this section may be used with respect to the importer of the covered merchandise, or the foreign producer or exporter of the covered merchandise without regard to whether another party involved in the same transaction or transactions under examination has provided the information sought by CBP . . ."<sup>64</sup> M&B asserts that CEK had a specific obligation to provide complete responses to CBP's requests for information, an obligation that CEK failed to meet, and this failure justifies the application of adverse inferences.<sup>65</sup>

**CBP's Position:** The failure of CEK to fully respond to the RFI and supplemental RFI precludes CBP from performing the necessary analysis of its books and records to determine whether its imports of hangers entered the United States through evasion, which we discuss further below. Because CEK failed to cooperate and comply to the best of its ability to respond to the RFI questions, in accordance with 19 U.S.C. § 1517(c)(3)(A) and 19 C.F.R. § 165.6, CBP finds that the use of adverse inferences is warranted. In relying upon an adverse inference for the failure to cooperate and comply to the best of one's ability with a request for information, "CBP

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<sup>57</sup> *Id.*

<sup>58</sup> See M&B's Rebuttal Written Arguments at 8, citing CEK's Written Arguments at 19.

<sup>59</sup> See M&B's Rebuttal Written Arguments at 8 – 9, citing the NOI at 7 – 9 and CEK's RFI Response.

<sup>60</sup> *Id.* at 9.

<sup>61</sup> *Id.* at 10.

<sup>62</sup> See M&B's Rebuttal Written Arguments at 9, citing CEK's Written Arguments at 22 – 24.

<sup>63</sup> See M&B's Rebuttal Written Arguments at 9.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

may apply an inference adverse to the interests of that party in selecting from among the facts otherwise available to make the determination as to evasion.”<sup>66</sup> 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....”<sup>67</sup> In other words, although the foreign manufacturer, NWH, provided some limited answers to its RFI questions, CBP may still apply adverse inferences to CEK for not cooperating to the best of its ability in answering the RFIs. Accordingly, CBP has decided to apply the adverse inference that CEK misrepresented the country of origin of its imports of hangers by claiming Thailand, rather than China, as the country of origin. As a result, the entries by CEK subject to this EAPA investigation will be subject to the China-wide entity rate for the *Order*.

In making an evasion determination, CBP has the authority to “collect such additional information as is necessary to make the determination through such methods as the Commissioner considers appropriate, including by ... issuing a questionnaire with respect to such covered merchandise to” the importer alleged to have engaged in evasion and the foreign producer of the covered merchandise.<sup>68</sup> The EAPA Regulations provide that in order to obtain “information necessary to carry out its functions and duties ... CBP may employ any means authorized by law,” which as noted in the statute, includes the issuance of questionnaires to interested parties.<sup>69</sup> Further, 19 U.S.C. § 1517(c)(3) discusses the use of adverse inferences by CBP, stating that if CBP finds that a party “has failed to cooperate by not acting to the best of the party or person’s ability to comply with a request for information, the Commissioner may, in making a determination {of evasion}, use an inference that is adverse to the interests of that party or person in selecting from among the facts otherwise available to make the determination.”<sup>70</sup> Additionally, the EAPA Regulations provide that if “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, CBP may apply an inference adverse to the interests of that party in selecting from among the facts otherwise available to make the determination as to evasion...”<sup>71</sup> Thus, both the statute and implementing regulations are clear that CBP may issue questionnaires, *i.e.*, RFIs, in making its determination as to evasion. The statute and EAPA Regulations are also equally clear that CBP may apply an adverse inference to a party which does not, to the best of its ability, respond to CBP’s RFI. As such, we disagree with CEK’s contention that it may determine which RFI questions to respond to.

CBP finds that interested parties, such as CEK, have the information needed by CBP to conduct its EAPA investigation. In this case, CEK has the relevant information in its own books and records, but simply has decided not to provide it. Therefore, consistent with 19 U.S.C. § 1517(c)(3) and 19 C.F.R. § 165.6, we have applied adverse inferences to CEK for failing to cooperate to the best of its ability in responding to the RFI and supplemental RFI.

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<sup>66</sup> See 19 C.F.R. § 165.6(a).

<sup>67</sup> See 19 U.S.C. § 1517(c)(3)(B).

<sup>68</sup> *Id.* at 1517(c)(2).

<sup>69</sup> See 19 C.F.R. § 165.5(a).

<sup>70</sup> See 19 U.S.C. § 1517(c)(3).

<sup>71</sup> See 19 C.F.R. § 165.6(a).

CBP's application of adverse inferences should be of no surprise to CEK. CBP indicated to CEK that a failure to answer questions in the RFI and supplemental RFI could lead to the use of adverse inferences. In the initial RFI, CBP stated:

Please respond to each question. If a particular question does not apply, please state so, and explain why in your response. Failure to respond to each question could lead to the use of **adverse inferences** for that particular question.<sup>72</sup>

Because CEK's RFI Response contained such a large number of questions unanswered, in the supplemental RFI, in the cover letter and in each section of the RFI, CBP stated:

If you fail to respond to the questions in this section of the questionnaire, CBP may find that you have not cooperated to the best of your ability, may apply an inference adverse to CEK, and select from among the facts otherwise available to make the determination as to evasion pursuant to 19 CFR 165.27.<sup>73</sup>

As there are four sections in the supplemental RFI, this warning of the possible use of adverse inferences was repeated to CEK five times. Of the four sections of questions in the RFI and supplemental RFI, we note CEK did not provide any answers to questions in two of the sections ("Accounting/Financial Practices" and "Sales Reconciliations") and only answered some questions in the remaining two sections ("Corporate Structure" and "Procurement and Sales Practices"). Of the approximate 74 questions and their sub-parts found in the RFI, CEK answered 23.<sup>74</sup> The questions found in the RFI should be very familiar to CEK. John Liu, CEK's owner, has owned/operated respondent companies in other EAPA investigations.<sup>75</sup> Considering the depth and breadth of questions CEK did not answer, and as CEK was warned of the consequences of not cooperating to the best of its ability, the application of adverse inferences should not be unexpected by CEK.

CEK alleges the RFI questions were devised with a purpose to potentially support some investigation outside of the instant EAPA investigation, which is not the intention of EAPA investigations.<sup>76</sup> We disagree with this speculation by CEK as the other importers to in this investigation received identical RFIs, and these questions have been asked in other EAPA investigations.

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<sup>72</sup> See CEK's RFI at the "Instructions for Filing the Response" section.

<sup>73</sup> See CEK's Supplemental RFI at, e.g., the "Accounting/Financial Practices" section.

<sup>74</sup> See CEK's RFI Response.

<sup>75</sup> EAPA was already conducting an EAPA investigation involving another company owned by John Liu, AB MA Distribution Corp. (AB MA), which was importing transshipped Chinese hangers from India. See CBP's Letter, "Notice of Initiation of Investigation and Interim Measures – EAPA Cons. Case 7379," dated February 26, 2020 (7379 NOI); and CBP's Letter, "Notice of Determination as to Evasion," dated September 23, 2020 (7379 Final Determination). By coincidence, the company which produced the transshipped hangers in EAPA 7379, Shaoxing Maosheng Metal (Shaoxing Maosheng), is owned by the same person which owns NWH, Mr. Tu. In addition, John Liu managed two companies, Garment Cover Supply, LLC. (Garment Cover) and GL Paper Distribution, LLC. (GL Paper), which were found to be transshipping Chinese hangers through Malaysia. See CBP's Letter, "Notice of Determination as to Evasion – EAPA Investigation 7191," dated March 15, 2018 (7191 Final Determination).

<sup>76</sup> See CEK's Written Arguments at 19.

CEK contends CBP's questions extend significantly beyond the scope of 19 USC 1508 as the questions do not relate to the business activity of importing or a finding of evasion.<sup>77</sup> CEK made this claim in response to one of the questions in the RFI.<sup>78</sup> In the supplemental RFI, CBP noted to CEK that EAPA investigations are covered under 19 U.S.C. § 1517.<sup>79</sup> While CEK, as an importer, is subject to recordkeeping requirements under 19 U.S.C. § 1508, the information requests in this investigation are pursuant to 19 USC 1517(c)(2), which provides that CBP "may collect such additional information as is necessary to make the determination {of evasion}." In sum, CEK's argument concerning 19 U.S.C. § 1508 does not appear to apply either to the procedures governing this investigation or to the question of evasion.

With respect to CEK's arguments comparing the application of adverse inferences by Commerce and CBP, *i.e.*, that adverse inferences can only be applied after the agency provides an interested party notice of a record deficiency, we note for this investigation CBP has only applied adverse inferences in instances where the Importers, including CEK, and NWH did not respond to RFI questions despite being provided two or three opportunities to do so. As such, CEK's argument is moot. Furthermore, CBP must follow the statute governing EAPA proceedings and not the statute governing Commerce's proceedings. Under 19 U.S.C. § 1517(c)(3), CBP is not required to provide an opportunity to remedy or explain any deficiencies before the application of adverse inferences.

### NWH

As discussed above, CEK, D&J, Power Poly and KSA did not cooperate to the best of their abilities and received adverse inferences in this investigation. Given the lack of cooperation from the Importers, although we do not find it is necessary to discuss the RFI response of the foreign producer, NWH, to make a finding of evasion, we nevertheless provide an analysis of NWH's RFI Response below. First, we discuss the application of adverse inferences to NWH for its failure to cooperate to the best of its ability in answering the RFI questions, then we discuss how the information did NWH provide<sup>80</sup> also leads us to a conclusion of evasion.

#### a. *Background*

NWH's RFI contained detailed instructions with respect to requests for an extension of time to submit an RFI response. For ease of reference, we repeat the instructions here:

CBP must conduct this proceeding in accordance with statutory and regulatory deadlines. If you are unable to respond completely to every question in the attached RFI by the established deadline, or are unable to provide all requested supporting documentation by the same date, you must notify the official in charge and submit a request for an extension of the deadline for all or part of the RFI response. If you require an extension for only part of your response, such a request should be submitted separately from the portion of your response filed under the current deadline. Statements included within an RFI response regarding a respondent's ongoing efforts to collect part of the requested

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<sup>77</sup> See CEK's Written Arguments at 20.

<sup>78</sup> See CEK's RFI Response at 5.

<sup>79</sup> See CEK's Supplemental RFI at 3.

<sup>80</sup> This includes NWH's Voluntary Factual Information, which was supplemental by CEK's Rebuttal Voluntary Factual Information.

information, and promises to supply such missing information when available in the future, do not substitute for a written extension request. Section 165.5(c)(1) of the EAPA Regulations requires that all extension requests be, “in a separate, stand-alone submission and states the reasons for the request. Such requests must be submitted *no less than three business days* before the time limit expires unless there are extraordinary circumstances.” Any extension granted in response to your request will be in writing; otherwise, the original deadline will apply.

If CBP does not receive either the requested information or a written extension request before 5:00 pm ET on the established deadline, we may conclude that you have decided not to cooperate in this proceeding. CBP will not accept any requested information submitted after the deadline. As required by section 351.302(d) of our regulations, we will reject such submissions as untimely. Therefore, failure to properly request extensions for all or part of a RFI response may result in the application of **adverse inferences**, pursuant to section 19 CFR 165.5(c)(2) and 165.6 and section 412(b) of the Trade Facilitation and Trade Enforcement Act of 2015.<sup>81</sup>

We note that in NWH’s February 12, 2021, extension request it complied with the RFI’s instructions for filing an extension, including submitting the request in writing more than three days before the due date, which indicates that NWH is familiar with CBP’s instructions on filing extension requests.<sup>82</sup> Despite the detailed instructions for filing an extension contained in the RFI, instructions which were followed by NWH in its extension request, on February 24, 2021, NWH submitted an incomplete RFI response and provided a self-granted extension by not answering certain questions, stating the responses to those questions were “in progress.”<sup>83</sup>

While CBP granted NWH additional time to fix its filing deficiencies and to answer previously unanswered questions, we also repeated the warning that “Statements included within a questionnaire response regarding ongoing efforts to collect the requested information or promises to supply missing information when available in the future, do not substitute for a written extension request.”<sup>84</sup> On March 3, 2021, NWH resubmitted its second incomplete RFI response, and continued to grant itself an extension by not answering certain questions, stating that responses were “in progress,” or by providing “answers” that were simply not responsive to the questions. In NWH’s RFI Response, it continued to leave questions unanswered despite CBP granting it three extensions, repeated instructions on how to file an extension request, and CBP’s warnings to NWH to not self-grant extensions. In almost every section of NWH’s RFI Response it left questions unanswered, despite CBP’s instructions that if a question was not applicable, NWH should indicate this.<sup>85</sup> We discuss below each incomplete section of NWH’s RFI Response, leading CBP to the conclusion NWH did not cooperate to the best of its ability.

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<sup>81</sup> See NWH’s RFI at “General Instructions,” Part F, “Extension Requests” (emphasis not added).

<sup>82</sup> See NWH’s Letter, “Enforce and Protect Act Investigation Case No. 7501: Request for Information,” dated February 12, 2021.

<sup>83</sup> See First RFI Rejection.

<sup>84</sup> *Id.*

<sup>85</sup> NWH’s RFI stated: “Please respond to each question. If a particular question does not apply, please state so, and explain why in your response. Failure to do so could lead to the use of adverse inferences for that particular question.” See NWH’s RFI at “Instructions for Filing the Response.”

b. *Accounting*

NWH did not provide answers to most accounting questions. In the first rejection of NWH's RFI response, CBP stated that:

A careful examination of NWH's RFI response indicates that it did not answer any of the questions in Part II, Accounting and Financial Practices, stating: "In progress, insufficient time was provided to assemble and translate." There is one exception, Exhibit 10 contains an untranslated document which appears to be a partial response to question 2 of this section.

CBP must conduct this investigation in accordance with statutory and regulatory deadlines. Statements included within a questionnaire response regarding ongoing efforts to collect the requested information or promises to supply missing information when available in the future, do not substitute for a written extension request. **If you fail to respond to the questions in this section of the questionnaire, CBP may find that you have not cooperated to the best of your ability, may apply an inference adverse to NWH, and select from among the facts otherwise available to make the determination as to evasion pursuant to 19 CFR 165.27.** Please ensure these questions are fully answered in your refiled response.<sup>86</sup>

In its second RFI response, NWH continued to not answer most questions in the "Accounting/Financial Practices" section, and in some instances merely pointed to an exhibit containing financial records which was not responsive to the detailed questions concerning NWH's accounting and financial practices. When rejecting the second RFI response, CBP stated:

... In its second RFI response, NWH did not answer most questions in this section, and merely pointed to an exhibit containing financial records which was not responsive to the very detailed questions concerning NWH's accounting and financial practices. CBP is providing NWH a third opportunity to fully answer the questions found in this section of the RFI. As noted in the RFI and the Rejection of NWH's RFI Response, CBP must conduct this investigation in accordance with statutory and regulatory deadlines. Statements included within a questionnaire response regarding ongoing efforts to collect the requested information or promises to supply missing information when available in the future, do not substitute for a written extension request. **If you fail to respond to the questions in this section of the questionnaire, CBP may find that you have not cooperated to the best of your ability, may apply an inference adverse to NWH, and select from among the facts otherwise available to make the determination as to evasion pursuant to 19 CFR 165.27.** Please ensure these questions are fully answered in your refiled response.<sup>87</sup>

As noted above, NWH filed its RFI response for a third time on March 10, 2021.<sup>88</sup> In NWH's RFI Response, NWH continued to not answer most questions in the "Accounting/Financial Practices" section. The following questions went unanswered by NWH:

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<sup>86</sup> See First RFI Rejection (emphasis not added).

<sup>87</sup> See Second RFI Rejection (emphasis not added).

<sup>88</sup> See NWH's RFI Response.

Provide a detailed narrative explaining the financial accounting practices used to account for assets, liabilities, equity, income, and expenses, including:

- a. Name, title, telephone number, and e-mail address of the individual with overall responsibility for financial accounting and reporting;
- b. Normal corporate accounting period (fiscal year);
- c. Description of any electronic system(s) or software used to record financial data and generate financial reports;
- d. Flowchart illustrating the specific source documents (*e.g.*, purchase orders, sales orders, invoices, inventory receipts, *etc.*) and general ledger account numbers used to record raw materials purchases, inventories, sales, accounts payable and accounts receivable;
- e. Whether the company's financial accounting practices are in accordance with generally accepted accounting principles (GAAP) practiced in the country in which the covered merchandise is produced, and if practices are not in accordance with GAAP, please explain; and,
- f. Physical location where financial records are maintained and the period of retention.

Provide the following financial records for the two most recently completed fiscal years plus all subsequent monthly or quarterly records:

- a. Chart of accounts, including sub-accounts, preferably in electronic format such as Microsoft Excel.
- b. All general ledger accounts payable transactions, preferably in electronic format. If general ledger accounts are not used, provide all such information that would ordinarily be recorded in an accounts payable account such as vendor name, vendor address, purchase order date, purchase order number, invoice date, invoice number, invoice amount, description, and payment date. Highlight all transactions related to the development, production, warehousing, sale, supply, distribution, and/or exportation of the covered merchandise (*e.g.*, purchase of raw materials, purchase of finished goods, purchase of production equipment, transportation costs, income tax, value added tax, import duty/tax, *etc.*).
- c. Trial balance sheet, preferably in electronic format.
- d. Audited, consolidated and unconsolidated financial statements (including any footnotes and auditor's opinion).
- e. Internal financial statements or profit and loss reports of any kind that are prepared and maintained in the normal course of business.
- f. Financial statements or other relevant documents (*i.e.*, profit and loss reports) of all affiliates involved in the production or sale of the covered merchandise and of the parent(s) of these affiliates.
- g. Any financial statement or other financial report you filed with the local or national government (*i.e.*, value added tax, income tax, *etc.*).<sup>89</sup>

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<sup>89</sup> See NWH's RFI Response at "Accounting/Financial Practices."

In response to these two questions, NWH only pointed to an exhibit in its response which contains a subledger for a single account number.<sup>90</sup> NWH provided no narrative to explain any of its accounting practices, nor did it provide any financial records, with the exception of a subledger for one account number. A single subledger devoid of any narrative explanation is clearly not responsive to the detailed questions listed above. In addition, and despite warnings not to engage in this behavior, for the following question NWH stated the answer was “in progress”:

Provide a detailed narrative explaining the cost accounting practices regarding raw materials inventories, work-in-process, finished goods inventories, and cost of goods sold, including:

- a. Name, title, telephone number, and e-mail address of the individual with overall responsibility for cost accounting and reporting.
- b. Description of any electronic system(s) or software used for cost accounting and reporting.
- c. Whether the company uses job order costing, process costing, or other type of cost accounting practices, flowchart illustrating the specific source documents (*e.g.*, materials requisition slip, timecards, job cost sheet, bill of materials, overhead allocation, *etc.*) and general ledger account numbers used to record raw material inventory, work-in-process, finished goods inventory, and cost of goods sold.
- d. Identify all cost centers used in the company’s accounting system through which the covered merchandise passes during production. Explain how materials, labor, and overhead incurred at each cost center are recorded as part of the cost of goods sold.
- e. Identify the company’s inventory methodology (*e.g.*, First In, First Out, Last In, Last Out, Weighted Average Cost, Direct Identification, *etc.*).
- f. Explain how standard/budgeted costs (*e.g.*, input prices, usage, *etc.*) are calculated and how variances between standard/budgeted costs and actual costs are allocated to the cost of goods sold.
- g. List and describe all reports generated by your company’s cost accounting and production control systems.
- h. Explain how the company’s cost accounting system reconciles to the financial accounting system. If your company does not have a formal cost accounting system, provide a detailed explanation and example of how the fiscal year-end inventory values are determined.
- i. Whether the company’s cost accounting practices are in accordance with GAAP practiced in the country in which the covered merchandise is produced. If practices are not in accordance with GAAP, please explain.
- j. Physical location where cost accounting records are maintained and the period of retention.<sup>91</sup>

In the “Accounting/Financial Practices” section of NWH’s RFI, CBP sought a basic, but very clear, understanding of NWH’s accounting system in order to adequately understand the data

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<sup>90</sup> *Id.* at Exhibit 10.

<sup>91</sup> See NWH’s RFI Response at “Accounting/Financial Practices.”

systems used to record production, inventory, and sales data, and to review the manner in which source documents for production and sales flow into NWH's financial statements *via* accounting vouchers, journals, and ledgers. CBP also requested a flow chart that clearly shows how production costs and sales revenues are tracked in NWH's accounting system and identifies the different stages of each of the accounting records kept by NWH. This kind of information would also indicate to CBP how, when, and where the inventory, production and sales accounting systems tie together. CBP also requested a chart of accounts and subaccounts to provide a clear understanding of the types of accounting detail NWH had available, so that we would know which accounts are specific to the production, inventory, and sales of the covered merchandise, and could ask questions concerning these accounts or transactions of interest and trace these accounts back to source documents.

As explained above, NWH provided none of this information to CBP. Of the approximately 29 questions (*i.e.*, questions and their sub-parts) CBP asked NWH concerning its accounting practices, NWH answered one.<sup>92</sup> As such CBP does not have even a basic understanding of how NWH's accounting system works, how costs and sales are tracked, how the inventory, production and sales accounting systems tie together, or even what accounts NWH keeps, with one exception. If certain questions were not applicable, and the RFI instructed NWH to indicate if any questions were not applicable,<sup>93</sup> NWH did not state this. The single subledger NWH submitted, account [ number ], is clearly a lower level account as it is at the 12 digit level.<sup>94</sup> It purports to be a subledger of [ currency ] and [ currency ] transactions, but NWH did not provide the requested bank transactions to substantiate this subledger.<sup>95</sup> Moreover, this subledger contains very little detail with transactions labelled [ debit/credit ] and [ debit ] without any information as to what entities were making [ debit/credit ] or [ debit/credit ].<sup>96</sup> At a very basic level, NWH refused to even provide simple information such as its fiscal year, the name of its accountant, or whether it uses an electronic accounting system. In sum, we have applied adverse inferences to NWH's "Accounting /Financial Practices" section of the RFI because NWH did not cooperate to the best of its ability to provide even the most basic accounting information to CBP.

### *c. Sales and Production Reconciliations*

NWH did not provide answers to most sales and production reconciliation questions. In the first rejection of NWH's RFI response, CBP stated that:

A careful examination of NWH's RFI response indicates that it did not answer questions 2, 4 or 5 of Part V, Sales and Production Reconciliations, stating: "In progress, insufficient time was provided to assemble and translate."

CBP must conduct this investigation in accordance with statutory and regulatory deadlines. Statements included within a questionnaire response regarding ongoing efforts

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<sup>92</sup> *Id.*

<sup>93</sup> NWH's RFI stated: "Please respond to each question. If a particular question does not apply, please state so, and explain why in your response. Failure to do so could lead to the use of adverse inferences for that particular question." See NWH's RFI at the "Instructions for Filing the Response" section. Despite being provided three extensions to complete the RFI, NWH did not bother state which questions, if any, were not applicable to it.

<sup>94</sup> See NWH's RFI Response at Exhibit 10. Although NWH provided the account number for this subledger, it did not provide the name of the ledger.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

to collect the requested information or promises to supply missing information when available in the future, do not substitute for a written extension request. **If you fail to respond to this question, CBP may find that you have not cooperated to the best of your ability, may apply an inference adverse to NWH, and select from among the facts otherwise available to make the determination as to evasion pursuant to 19 CFR 165.27.** Please ensure these questions are fully answered in your refiled response.<sup>97</sup>

In its second RFI response, NWH continued to not answer most questions in the “Sales and Production Reconciliations” section, and for one question cited to an export list which was not responsive to the question. When rejecting the second RFI response, CBP stated:

... In its second RFI response, NWH continued to leave questions unanswered in this section, and cited to an export list in response to question 3, although this was not a response to the question. CBP is providing NWH a third opportunity to fully answer these questions. As noted in the RFI and the Rejection of NWH’s RFI Response, CBP must conduct this investigation in accordance with statutory and regulatory deadlines. **If you fail to respond to the questions in this section of the questionnaire, CBP may find that you have not cooperated to the best of your ability, may apply an inference adverse to NWH, and select from among the facts otherwise available to make the determination as to evasion pursuant to 19 CFR 165.27.** Please ensure these questions are fully answered in your refiled response.<sup>98</sup>

In NWH’s RFI Response, NWH continued to not answer most questions in the “Sales and Production Reconciliations” section. NWH provided a response to the first question of this section, a chart which indicates the total quantity and value (Q&V) of all sales of the covered merchandise that sold during the period of investigation (POI).<sup>99</sup> However, NWH then pointed to this chart as its answer to another question in this section which requested a list of customers/buyers, broken down by customer category (*e.g.*, distributor, wholesaler, retailer, end-user), including various contact information, of all products NWH sold to the United States during the POI. Clearly the Q&V chart is not a response to this question.

Despite CBP’s warnings, for the following questions NWH stated the answer was “in progress”:

Please provide a reconciliation of the sales reported in the question above to the total sales listed in your financial statements (profit and loss/income statement).

Your reconciliation must provide supporting documentation (*e.g.*, financial statements, trial balance sheets, relevant excerpts from general ledger, sub-ledger, *etc.*) for each step in the reconciliation. The reconciliation must include the following:

- a. Worksheets demonstrating how the POI financial statements’ sales totals tie to the general ledgers’ sales revenue accounts. Please include the relevant supporting documents from your accounting and financial systems, such as excerpts from the general ledger, sub-ledger, *etc.*

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<sup>97</sup> See First RFI Rejection (emphasis not added).

<sup>98</sup> See Second RFI Rejection (emphasis not added).

<sup>99</sup> See NWH’s RFI Response at “Sales and Production Reconciliations.”

- b. Worksheets demonstrating how the general ledgers' sales revenue accounts in step one, above, tie to your U.S. sales of the covered merchandise. The worksheet should identify the total quantity and value of all sales in the fiscal years overlapped by the POI and identify the quantity and value of each category of sales that are excluded from your reported sales of the covered merchandise (*e.g.*, sales outside the POI, sales to foreign markets other than the United States, *etc.*). Please include the relevant supporting documents from your accounting and financial systems, such as excerpts from the general ledger, sub-ledger, *etc.*
- c. A detailed narrative explaining how all worksheets and supporting documentation tie together.

For the covered merchandise with respect to the entries listed in the **APPENDIX I**, provide the following regarding the raw materials used in production (provide data, with the information grouped by raw material used in production, as well as hard copy support):

- a. purchase orders to the suppliers/manufacturers of the raw materials;
- b. associated invoices and packing lists from suppliers/manufacturers of the raw materials;
- c. product descriptions and quantity (and unit of measure) of the raw materials;
- d. production records, *e.g.*, weekly / monthly production logs, raw material receipts and consumption, *etc.*;<sup>100</sup>
- e. a bill of material, or equivalent document noting the raw materials/inputs needed to produce the products (for a defined unit of each product), and identify the amount of each raw material input needed;
- f. site visits, quality assurance reports, origin certificates executed by government officials for the raw materials;
- g. proof of payment to suppliers and/or manufacturers of the raw materials related to the transactions above and any associated transactions (wire transfers, canceled checks, letters of credit, bank statements, *etc.*);
- h. all pertinent transportation documents (*e.g.*, master and house bills of lading) from source location to destination;
- i. payment for freight (*e.g.*, freight bill along with wire transfers, canceled checks, letters of credit, bank statements, *etc.*);
- j. import customs documents (as appropriate);
- k. container load plans for the imported raw materials;
- l. certificates of assay, such as a mill certificate, or test reports for the raw materials; and,
- m. explain where raw materials are stored prior to use in production.

In addition, please provide worksheets that illustrate how raw material purchases reconcile to the financial statements, general ledger or trial balance, and cost accounting system.<sup>101</sup>

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<sup>100</sup> If production records are not available, provide a detailed description of how the company monitors and records production including raw materials consumed, number of employees and hours worked, and the amount of the covered merchandise produced.

<sup>101</sup> See NWH's RFI Response at "Sales and Production Reconciliations."

The “Sales and Production Reconciliations” section also asked the following question:

For the covered merchandise with respect to the entries listed in the **APPENDIX I**, provide the following regarding packing:

- a. describe the packing process and state the location / physical address where the products were packed, but if packing was performed offsite, then provide the name and physical address of the packing entity;
- b. identify the various boxes/cartons/*etc.* by item/part number, their dimensions, and the quantity per box/carton/*etc.*;
- c. provide a summary breakdown of packing cost for packing materials, labor, any transportation costs related to packing; and,
- d. provide the container load plans for the covered merchandise for export to the United States.<sup>102</sup>

Although NWH responded to the first part of this question, it did not answer parts b, c, or d.

The “Sales and Production Reconciliations” section of the RFI is one of the most important tasks for respondents to perform. It serves the purpose of baselining accounting ledgers and worksheets that will be used to make ties between the production and sales systems. Baselining documents means that the documents have an internal validity when they are tied to the financial statements and is an indication that they are complete and accurate. At a very basic level, this section also provides a list of entries of covered merchandise and requests respondents provide specific production and packing information to show that the respondent produced and packed the selected entries. These specific questions help to answer the basic premise of an EAPA investigation, whether evasion has occurred.

NWH provided almost none of the requested information from the “Sales and Production Reconciliations” section to CBP. Of the approximate nine general questions (*i.e.*, questions and their sub-parts) CBP asked NWH with respect to its sales and production reconciliations, NWH answered one. Of the approximate 136 specific questions tied to certain entries (*i.e.*, questions and their sub-parts), NWH answered eight questions. As such CBP does not have any financial statements from NWH, let alone accounting ledgers and worksheets that tie production to any financial document whatsoever. NWH refused to answer the basic questions which tie production and packing records to the selected entries of covered merchandise. These two questions in particular are important because they provide NWH the opportunity to show it produced the entries in question. We have applied adverse inferences to NWH’s “Sales and Production Reconciliations” section of the RFI because NWH did not cooperate to the best of its ability to provide any of the reconciliation information to CBP.

d. *Sales*

NWH did not provide answers to the largest question in the “Sales” section of the RFI. In the first rejection of NWH’s RFI response, CBP stated that:

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<sup>102</sup> *Id.*

A careful examination of NWH's RFI response indicates that it did not answer question 12 of Part III, Sales, stating: "In progress, insufficient time was provided to assemble and translate."

CBP must conduct this investigation in accordance with statutory and regulatory deadlines. Statements included within a questionnaire response regarding ongoing efforts to collect the requested information or promises to supply missing information when available in the future, do not substitute for a written extension request. **If you fail to respond to this question, CBP may find that you have not cooperated to the best of your ability, may apply an inference adverse to NWH, and select from among the facts otherwise available to make the determination as to evasion pursuant to 19 CFR 165.27.** Please ensure these questions are fully answered in your refiled response.<sup>103</sup>

In its second RFI response, NWH continued to not answer this question in the "Sales" section. When rejecting the second RFI response, CBP stated:

... In its second RFI response, NWH provided some documents that were responsive to this question, however, many documents continue to be missing, as is a narrative explanation and diagram as to how the documents fit together. CBP is providing NWH a third opportunity to fully answer this question. As noted in the RFI and the Rejection of NWH's RFI Response, CBP must conduct this investigation in accordance with statutory and regulatory deadlines. **If you fail to respond to the questions in this section of the questionnaire, CBP may find that you have not cooperated to the best of your ability, may apply an inference adverse to NWH, and select from among the facts otherwise available.**<sup>104</sup>

In NWH'S RFI Response, NWH did not make any changes in its response to this question from its second RFI response. Question 12 requests:

For the covered merchandise with respect to the entries listed in the **APPENDIX I**, please provide an overview of the sales and distribution processes and document flow for these customers. Provide a diagram showing the paper trail for the recording of these sales in your accounting records. The diagram should start from the receipt of an order through final payment and the year-end posting of sales in the financial statements. Identify each step of the paper trail, all entries that are recorded in the books and ledgers, the name and number of the accounting code, and the name of the ledger, book, or journal in which each such entry is made. For each sale, provide the following documents:

- Sales-negotiation correspondence
- Price Lists
- Customer contracts
- Customer purchase orders
- Order confirmations

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<sup>103</sup> See First RFI Rejection (emphasis not added).

<sup>104</sup> See Second RFI Rejection (emphasis not added).

- Invoices
- Packing lists
- Inspection certificates, mill certifications
- Shipping documents such as freight bills, bills of lading and airway bills
- Export licenses and export permits
- U.S. Customs entry documents
- Sales journal pages recording the selected sale
- Accounts receivable page showing the corresponding sales journal information (or summary information) pertaining to the selected sale
- Records of payment such as canceled checks, letters of credit, debit/credit memos, bank deposit slips and/or bank statements
- Accounts receivable ledger pages
- Cash receipts journals
- General Ledger pages

In the “Sales” section of the RFI, CBP requested fundamental information on NWH’s sales process. In particular, CBP sought for NWH to illustrate the different stages of its sales process with sample documents which tie to accounting records. More specifically, we requested information on eight entries to the United States in order to understand the full details of a sale from beginning to end and what paperwork NWH keeps in the normal course of business which would allow us to tie these entries of covered merchandise to NWH’s books and records. We note NWH provided some documents for only five of the eight requested entries. NWH provided no narrative explanation of the sales process, no diagram of the sales process or how sales are accounted for in NWH’s books and records.<sup>105</sup> Of the 136 requested documents, NWH provided approximately 32 - U.S. Customs entry documentation, bills of lading, invoices, and packing lists.<sup>106</sup> With respect to sales negotiations, although NWH submitted two e-mails between it and CEK, the e-mails merely state what the order is and ask that it be shipped, rather than a negotiation over the price, shipping terms, *etc.*<sup>107</sup> CBP finds that these two e-mails are not sales negotiations. We have applied adverse inferences to this question in NWH’s “Sales” section of the RFI because NWH did not cooperate to the best of its ability since it only provided a small portion of the requested information to CBP.

*e. Production*

NWH did not provide answers to several questions in the “Production” section of the RFI, specifically the questions which deal with production capacity and the make and model of hanger making machines NWH owns. In the first rejection of NWH’s RFI response, CBP stated that:

A careful examination of NWH’s RFI response indicates that it did not answer question 11 of Part IV, Production, stating: “In progress, insufficient time was provided to assemble and translate.” Moreover, for question 10 of Part IV, which requests detailed information concerning the purchase of NWH’s machines, NWH provided photographs which only partially answered one of the seven parts of question 10.

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<sup>105</sup> See NWH’s RFI Response at “Sales.”

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

CBP must conduct this investigation in accordance with statutory and regulatory deadlines. Statements included within a questionnaire response regarding ongoing efforts to collect the requested information or promises to supply missing information when available in the future, do not substitute for a written extension request. **If you fail to respond to this question, CBP may find that you have not cooperated to the best of your ability, may apply an inference adverse to NWH, and select from among the facts otherwise available to make the determination as to evasion pursuant to 19 CFR 165.27.** Please ensure these questions are fully answered in your refiled response.<sup>108</sup>

In NWH's RFI Response, NWH did not make any changes in its response to these questions from its second RFI response. The following question (question 10) was unanswered by NWH:

With respect to the machines used in the production of the covered merchandise, provide a spreadsheet identifying the following information for the POI:

- a. Vendor name, physical address, telephone number, e-mail address, internet website, business license number, and taxpayer identification number;
- b. Purchase date and vendor invoice number, including quantity, price, and complete description;
- c. Machine manufacturer model number, serial number, and NWH internal asset number used for accounting purposes;
- d. Date machine was placed into service and any date(s) machine was no longer in service or temporarily out of service, as applicable;
- e. Identify the production capacity and provide supporting documentation from the machine manufacturer, and if documentation is not available from the manufacturer, explain how the company determined production capacity;
- f. Identify the method of depreciation used for accounting purposes (*e.g.*, straight-line, units of production, double declining balance, sum of the years digits, *etc.*) and provide a depreciation schedule showing beginning book value, monthly depreciation expense, and current book value; and,
- g. Provide a color photograph clearly depicting the machine model number and serial number.<sup>109</sup>

This question is crucial to CBP's understanding of NWH's production capacity. While NWH provided photographs of its machines, the machine model numbers and serial numbers are not visible, thus, the photographs are not responsive to the question.<sup>110</sup> Other than these photographs, NWH provided no other response to the different parts of question 10. As discussed below, NWH's production capacity was an issue discussed in the NOI, as different company officials provided wildly varying estimates as to NWH's production capacity.<sup>111</sup> For the final determination, rather than rely on the guesstimates of NWH personnel, CBP sought information on the production capacities on a per machine basis so that a calculation could be made as to NWH's production capacity. We have applied adverse inferences to this question in

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<sup>108</sup> See First RFI Rejection (emphasis not added).

<sup>109</sup> See NWH's RFI Response at "Sales."

<sup>110</sup> *Id.*

<sup>111</sup> See NOI at 14 – 15.

NWH’s “Production” section of the RFI because NWH did not cooperate to the best of its ability to provide any of the requested production capacity information to CBP.

**Comments:** M&B notes that the HSI Report contains numerous inconsistencies in the answers provided to the HSI investigators, specifically the owners and employees: were unsure how many hanger making machines were in working order; did not seem to know the days per week and hours operated; were unsure of when operations began (October 2018 *versus* 2020 when the Chinese manager arrived); indicated they do not keep production records and that another company keeps records for NWH; and gave wildly varying answers as to the number of hangers NWH produces, sometimes with the same individual contradicting themselves (one owner indicated the production capacity was 20 times what the other owner stated).<sup>112</sup> While CEK claims that any discrepancies in responses in the HSI Report are the result of different perspectives, M&B submits that one would expect some consistency regarding these topics as they are not subjective but ascertainable facts.<sup>113</sup> M&B observes that NWH provided three different lists of equipment between the Importers CF28 responses,<sup>114</sup> and Exhibits 11 (list of equipment) and 19 (invoices for purchases of equipment) in NWH’s RFI Response.<sup>115</sup>

CEK asserts the discrepancies between statements of capacity provided by employees and ownership are a result of personal accounts, and the statements made were not inconsistent.<sup>116</sup> According to CEK, it is a well-known phenomenon that many people observing even the same event will perceive different things based on their own experiences.<sup>117</sup> As such, CEK contends that each of the interviewees had different perspectives of the business operation based on their roles, length of time in the company, and exposure to specific information.<sup>118</sup> CEK argues that because the information was redacted concerning production capacity in the HSI Report, CEK is unable to address CBP’s production capacity concern’s and as such CBP is barred from applying adverse inferences to this issue, especially as the information is NWH’s business confidential data.<sup>119</sup> CEK asserts CBP should have sent a questionnaire to NWH to address the production capacity discrepancies.<sup>120</sup> CEK also provided its own calculated estimates of NWH’s production, based on NWH’s RFI Response, which indicates NWH could have produced the hangers it shipped during the POI.<sup>121</sup> CEK counters M&B’s argument with respect to the numbers of machines NWH owns by pointing out that importations of additional hanger making machinery are reflected in the raw material invoices provided by NWH in Exhibit 8.3.<sup>122</sup>

**CBP’s Position:** It is unusual that Mr. Tu, the owner of NWH, does not seem to know the production capacity of the factory he owns and operates, given that all of the answers to the RFI

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<sup>112</sup> See M&B’s Written Arguments at 11 – 12, citing the NOI at 15 and the HSI Report. See also M&B’s Rebuttal Written Arguments at 14 – 15.

<sup>113</sup> See M&B’s Rebuttal Written Arguments at 14 – 15, citing the HSI Report.

<sup>114</sup> CEK, D&J and KSA responded to their CF28s. See CEK’s CF28 Response, dated November 3, 2020 (CEK’s CF28 Response); KSA’s CF28 Response, dated November 10, 2020 (KSA’s CF28 Response); and D&J’s CF28 Response, dated December 4, 2020. Power Poly did not respond to its CF28.

<sup>115</sup> See M&B’s Written Arguments at 10 and M&B’s Rebuttal Written Arguments at 16 – 17, citing D&J’s CF28 Response and KSA’s CF28 Response, NWH’s RFI Response at Exhibits 11 & 19.

<sup>116</sup> See CEK’s Written Arguments at 38. See also CEK’s Rebuttal Written Arguments at 16.

<sup>117</sup> See CEK’s Written Arguments at 38.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.* at 37.

<sup>120</sup> *Id.*

<sup>121</sup> See CEK’s Written Arguments at 20 – 21.

<sup>122</sup> See CEK’s Rebuttal Written Arguments at 13, citing M&B’s Written Arguments at 16 – 17.

questions to which NWH chose to respond were taken from “Tu Zhongming’s notebook.”<sup>123</sup> It also seems unusual that the production capacity estimates of the two NWH owners significantly differ from one another. However, we have not had to rely upon the HSI Report in the final determination. As detailed above, CBP asked a very detailed question in the RFI on production capacity, and CBP provided NWH two opportunities to answer the question and its sub-parts. However, NWH did not respond to this question. As such we have applied adverse inferences with respect to NWH’s production capacity based not on the information gathered in the HSI Report, but on NWH’s failure to cooperate to the best of its ability and answer the RFI question on this topic.

*f. Application of Adverse Inferences for NWH*

NWH provided a partial response to CBP’s RFI, answering only certain questions. CBP provided NWH with a second and third opportunity to respond to the questions it failed to answer. We find that NWH’s failure to fully respond to the RFI precludes CBP from performing the necessary analysis of its books and records to determine whether it produced the hangers it exported to the United States. As discussed extensively above, NWH provided CBP with almost no information on its financial/accounting practices, it did not provide specific production and packing information to show it produced and packed certain selected entries, and it did not provide information on its sales process, or production capacity. Although CBP has already applied adverse inferences to the Importers and determined the country of origin of their hangers to be China rather than Thailand, because NWH failed to cooperate and comply to the best of its ability to respond to the RFI questions, in accordance with 19 U.S.C. § 1517(c)(3)(A) and 19 C.F.R. § 165.6, CBP finds that the use of adverse inferences is warranted. In relying upon an adverse inference for the failure to cooperate and comply to the best of one’s ability with a request for information, “CBP may apply an inference adverse to the interests of that party in selecting from among the facts otherwise available to make the determination as to evasion.”<sup>124</sup> 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....”<sup>125</sup> As adverse inferences, CBP determines that the country of origin of NWH’s hangers is China.

**Comments:** According to CEK, there is no disagreement that NWH had the ability to produce steel wire hangers during the POI and the administrative record supports a finding that NWH produced the steel wire hangers that it exported to the United States.<sup>126</sup> CEK notes that NWH provided a description of its hanger production process, purchases of hanger making machines, labor records,<sup>127</sup> and during a visit to the factory, HSI officials found that NWH was engaged in production of wire hangers, had raw materials on hand and appeared to have a large number of hangers in inventory.<sup>128</sup> CEK engaged in several exercises examining the limited information provided by NWH to show that it must have produced the covered merchandise, and therefore, cannot apply adverse inferences. CEK argues it calculated the weight of hangers NWH exported to the United States between August 2019 through December 2020 and the weight of its raw

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<sup>123</sup> See, generally, NWH’s RFI Response.

<sup>124</sup> See 19 C.F.R. § 165.6 (a).

<sup>125</sup> See 19 USC 1517(c)(3)(B).

<sup>126</sup> See CEK’s Written Arguments at 24.

<sup>127</sup> *Id.* at 25, citing NWH’s RFI Response at 21, Exhibits 9.1 & 19.

<sup>128</sup> *Id.* at 25 – 26, citing NOI at 14.

materials, and estimates that NWH's exports roughly equal the weight of its imported raw materials, minus some variations in yield loss.<sup>129</sup> CEK asserts this total can be further verified using the records for the Free Trade Zone where the factory is situated and was provided to CBP by Thai Customs which would indicate that the exported shipment records provided by NWH are complete.<sup>130</sup> CEK contends it also examined the volume (cubic meters) of raw materials imported by NWH *versus* the volume of sales, and finds that the exported material of the same weight doubled in volume (halved in density) after being processed.<sup>131</sup> Since there was in fact a significant increase in the average space occupied by a given weight of material, CEK concludes that NWH's raw materials were being imported and then substantially transformed into significantly larger finished products.<sup>132</sup>

**CBP's Position:** The record indicates NWH has the capability to produce hangers. NWH's owner, Mr. Tu, continues to operate a Chinese hanger manufacturer, Shaoxing Maosheng.<sup>133</sup> NWH's Chinese production manager emigrated to Thailand, presumably because he has knowledge with respect to the production of hangers. Wang Petrel, the individual copied on NWH's communications with CBP, also has experience in the Chinese hanger industry with Shaoxing Dingli Metal Clotheshorse Co., Ltd. (Shaoxing Dingli). The individual who we believe to be NWH's accountant, [ name ] (discussed below in the "Other Indicia of Evasion" section), also has experience working in the hanger industry, as this individual appears to [ company information ] and worked for a different Thai hanger manufacturer, Everbright. On a single day, HSI personnel witnessed NWH producing hangers,<sup>134</sup> and NWH and CEK provided videos which purport to show the production of hangers during a small portion of the POI.<sup>135</sup> Thus, record evidence exists which indicates NWH could produce hangers if it so chooses. However, the question this EAPA investigation seeks to answer is whether NWH produced the hangers which entered the United States during the POI. To answer this question CBP provided NWH with multiple opportunities in the form of the RFI to demonstrate that it was the producer of the covered merchandise. As discussed extensively above, NWH did not avail itself of the opportunities the RFI provided to show it was the manufacturer of covered merchandise.

Regarding the exercises CEK engaged in to prove NWH must have been the producer of the covered merchandise, we note CEK would not have felt compelled to engage in any of these exercises had NWH fully responded to the RFI. Through these exercises CEK sought to establish that there are no gaps in the record, and therefore, CBP cannot apply adverse inferences to NWH. CBP has serious concerns with the raw material purchase information provided by NWH, which we discuss in the "Other Indicia of Evasion" section below. Briefly, we find NWH reported purchase data for only two of its five suppliers of steel wire, and the purchase data it did provide was altered because raw material purchase documents from separate companies contained identical errors. Without reliable raw material purchase data from NWH, we find CEK's analysis to be flawed. With respect to the Thai government trade data CEK references, this information ends a few weeks before the POI, and thus, would not confirm CEK's

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<sup>129</sup> *Id.* at 27 – 29, citing NWH's RFI Response at Exhibits 8.3 and 14.

<sup>130</sup> *Id.* at 27, citing NOI at 18, referencing the Thai Trade Data.

<sup>131</sup> See CEK's Written Arguments at 29 – 30, citing NWH's RFI Response at Exhibits 8.3 and 14.

<sup>132</sup> *Id.*

<sup>133</sup> See NWH's RFI Response at "Corporate Structure." Although CBP requested that NWH provide certain information with respect to all affiliated companies, it provided none of the requested information with respect to Shaoxing Maosheng. *Id.*

<sup>134</sup> See HSI Report.

<sup>135</sup> See, e.g., NWH's Voluntary Factual Information.

contention that NWH produced the covered merchandise. The Thai government data indicates NWH imported approximately [ number ] hangers just before the start of the POI, and therefore, is an indicator of evasion.<sup>136</sup> With respect to CEK's volume of raw materials *versus* finished goods exercise, as noted above CBP has serious concerns with the raw material purchases and there is little record information with respect to the container size used by NWH to export hangers, which would provide more detail on the volume of finished goods. CBP requested information with respect to the containers used by NWH in the RFI (questions 4.k and 5.d in the "Sales and Production Reconciliations" section), but NWH did not provide answers to these questions.

*g. Other Indicia of Evasion*

As discussed above, CBP has applied adverse inferences to NWH for its failure to fully respond to the RFI questions, and in some cases, NWH did not respond to whole sections of the RFI. As adverse inferences CBP has already found the country of origin of NWH's hangers to be China, and thus, a discussion of the information NWH provided is not necessary for CBP to reach a conclusion of evasion. However, an examination of the information NWH provided to certain RFI questions lead us to believe NWH facilitated the Importers' evasion. Below we discuss certain information provided in NWH's RFI Response, as well as the video evidence provided by NWH and CEK in their submissions of voluntary factual information, which lead us to this conclusion. More specifically, we find that NWH's steel wire purchase documents, the labor records it submitted, surveillance videos, NWH's importation of Chinese-origin semi-finished and finished hangers, and the information it provided for the Importers' CF28 responses all indicate evasion may have occurred.

Raw Materials

Question 5 of the "Production" section of the RFI requested that NWH provide a spreadsheet identifying all raw materials purchased, each corresponding vendor name, physical address, telephone number, e-mail address, internet website, business license number, taxpayer identification number, purchase dates, vendor invoice numbers, the quantity, unit of measure and price of each raw material, and a description of the raw material purchased.<sup>137</sup> NWH did not provide any narrative response to these questions, and instead simply pointed to Exhibit 8.1 for a complete list of raw material suppliers, and Exhibit 8.3 for purchase documents for steel wire.<sup>138</sup>

With respect to the steel wire, the main input used to produce hangers, NWH only provided the requested information for one supplier, [ company name ] in Exhibit 8.1, and only provided purchase documents for two suppliers in Exhibit 8.3 ([ company names ]).<sup>139</sup> Record evidence indicates that NWH had five suppliers of steel wire, three in China, [ company names ], and two in Thailand, Siam Wire Rope Co., Ltd. (Siam Wire) and [ company name ]. We discuss these five suppliers below.

In the CF28 responses, NWH indicated that its supplier of steel wire was Siam Wire, and provided receipts from this company and purchase orders to this company dated during the

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<sup>136</sup> See Thai Trade Statistics. Quantity based on the number of cartons times the number of hangers NWH reported per carton. See, e.g., NWH's RFI Response at Exhibit 18.1 – 18.5.

<sup>137</sup> See NWH's RFI at the "Production" section, question 5.

<sup>138</sup> See NWH's RFI Response at Exhibits 8.1 and 8.3.

<sup>139</sup> *Id.* at Exhibits 8.1 and 8.3.

POI.<sup>140</sup> Siam Wire was the only supplier of wire rope to NWH listed in the CF28 responses for KSA<sup>141</sup> and D&J,<sup>142</sup> while CEK listed [ company name ] as a supplier of steel wire to NWH.<sup>143</sup> NWH makes no mention of Siam Wire in its RFI narrative response, nor are there any invoices for this company found in Exhibit 8.3, and no company information for Siam Wire was provided in Exhibit 8.1. CBP finds there are several discrepancies with NWH's purchases from Siam Wire, the three major discrepancies being that (a) the purchase order issued by NWH contained Siam Wire's name and address rather than NWH's, (b) there are no identification numbers on the purchase order, and (c) the receipt issued by Siam Wire contain NWH's company stamp and not Siam Wire's.<sup>144</sup> While we discuss Siam Wire further in the "CF28 Responses" section below, we find that discrepancies such as these, and NWH's omission of this company from its RFI response, call into question the reliability of NWH's reported raw material purchases.

Regarding NWH's other Thai supplier of steel wire, [ company name ], NWH makes no mention of this company in its RFI narrative response, nor are there any invoices for this company found in Exhibit 8.3, and no company information for [ company name ] was provided in Exhibit 8.1.<sup>145</sup>

In response to the RFI's accounting questions, NWH provided a single subledger which, for the entirety of the POI, contains a few line items for [ raw material from country ].<sup>146</sup> We believe these may correspond to purchases from Siam Wire or [ company name ].<sup>147</sup> Although this subledger makes no mention of Siam Wire, it lists a heretofore unmentioned supplier of steel wire, "[ company name ]."<sup>148</sup> This company is also never mentioned by NWH in its narrative response, nor are there any invoices for this company found in Exhibit 8.3, and no company information for this company was provided in Exhibit 8.1.<sup>149</sup>

Question 4.1 of the "Sales and Production Reconciliations" section of the RFI requested mill certificates from each of NWH's suppliers, and question 12 of the "Sales" section of the RFI requested mill certificate information as well.<sup>150</sup> If NWH had responded to these questions, we would have a comprehensive list of the producers of NWH's steel wire, but it did not respond to this question despite multiple opportunities to do so. As NWH omitted any mention of three of its five suppliers of steel wire in its RFI response, Siam Wire, [ company name ] and [ company name ], we are left to guess at the universe of NWH's suppliers of steel wire, which casts doubt on the accuracy of NWH's reported raw material purchases.<sup>151</sup>

In addition to unreported suppliers of steel wire in NWH's RFI Response, we find several troubling discrepancies with respect to the invoices for steel wire provided by NWH in Exhibit

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<sup>140</sup> See, e.g., KSA's CF28 Response.

<sup>141</sup> *Id.*

<sup>142</sup> See D&J's CF28 Response.

<sup>143</sup> See CEK's CF28 Response.

<sup>144</sup> See, e.g., KSA's CF28 Response.

<sup>145</sup> We note that when HSI officials visited NWH, it provided documentation indicating that [ company name ] was NWH's supplier of steel wire. See HSI Report.

<sup>146</sup> See NWH's RFI Response at Exhibit 10.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> See NWH's RFI at "Sales and Production Reconciliations."

<sup>151</sup> This also casts doubt upon CEK analysis that NWH's steel wire inputs roughly equal the output of finished goods, as NWH provided no information on purchases from these three suppliers. See CEK's Written Arguments at 27 – 29.

8.3.<sup>152</sup> One supplier whose invoices and purchase documents appear in Exhibit 8.3, but for which NWH provided no company information in Exhibit 8.1, is [ company name ].<sup>153</sup> NWH provided two different types of invoices for [ company name ]. One set of invoices (*e.g.*, invoice CL191105) contains a great deal of information on the invoice and contains information such as the ship name, container number seal number, and details under the description of the goods such as the unit price. These invoices have a [ city ] address which comports with public information on [ company name ] location.<sup>154</sup> This set of invoices also appears to have an invoice numbering system different than that of the other [ company name ] invoices, *i.e.*, the invoice numbers start with “CL.”<sup>155</sup> The other set of [ company name ] invoices have an address, according to the public versions of the bills of lading, Thai customs documentation, and invoices in mainland China.<sup>156</sup> These invoices contain much less detail and are formatted differently. Of note, many of the invoices with a mainland Chinese address contain errors that the set of invoices from the [ city ] do not have. For example, these invoices capitalize the name of the province, [ name ], but do not capitalize the name of the road and town, nor is the name of the country, China, capitalized. These kinds of errors do not appear in the invoices with a [ city ] address.<sup>157</sup> The invoices with the mainland China address have column widths are different for certain invoices, for example the shipping mark column is sometimes wider and sometimes thinner, causing the title of the column, “shipping mark,” to be truncated (*e.g.*, invoice TC19011).<sup>158</sup> In sum, [ company name ] invoices with a [ city ] address do not appear to have errors, whereas many of the [ company name ] invoices with a mainland China address do. CBP finds it unusual for a company headquartered in [ city ] to have these kinds of errors on their invoices, especially with respect to [ company name ] own information.

In examining the purchase documents from [ company name ], we find its invoices and packing lists to be identical in many ways to those of [ company name ] with an address in mainland China. For example, both [ company name ] and [ company name ] list NWH and its address at the top left of the invoice under “To.” However, both companies list NWH’s name and address in an identical manner, “To:NWH Manufacturer Co., LTD” on all their invoices and packing lists.<sup>159</sup> We note there is no space after the colon, no space after the comma and no period after LTD. [ company name ] and [ company name ] both list NWH’s address as: “105/9, Moo3,Bangna-trad Rd., K.M.52.” We note there is a space before the first comma, the space is missing after the second comma, “Trad” is not capitalized, and the space is missing after K.M. Lastly, the third line of the address is listed by [ company name ] and [ company name ] as: “Thakham,Bankpakong, Chachoengsao 24130.” The space is missing after the sub-district name, Thackham, and the name of the district, Bangpakong, is misspelled “Bankpakong.” While similarities between invoices between companies may exist if they are using the same software to generate an invoice, the identical errors appearing over and over on each of these seemingly unrelated companies’ invoices and packing lists are highly unlikely to be a coincidence. CBP finds that these invoices and packing lists must have been altered in some way, possibly to obscure what it is NWH is purchasing from

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<sup>152</sup> See NWH’s RFI Response at Exhibit 8.3.

<sup>153</sup> *Id.* at Exhibit 8.3. This is a fourth supplier of steel wire which NWH makes no mention of in its narrative response, nor does it provide company information on in Exhibit 8.1.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> See NWH’s RFI Response at Exhibit 8.3 (public version) at Invoice TC19014.

<sup>157</sup> *Id.* A subset of these invoices contains correct capitalizations (*e.g.*, invoice TC19014), although the invoices dated before (19013) and after (19015) this invoice have incorrect capitalizations.

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

[ company name ] and [ company name ], both of which are Chinese hanger companies, which casts further doubt on the accuracy of NWH's reported raw material purchases.<sup>160</sup>

Dongfu Tu is listed in the allegations as the agent of D&J. Responses to CBP's inquiries from D&J's e-mail address, yoyo75420@hotmail.com, come from an individual named Juice Syu. Because D&J refused to respond to the RFI, we do not know the roles of Dongfu Tu/Juice Syu at D&J, or if they are the same person. A review of the employee list of NWH indicates neither of these individuals are employees of NWH.<sup>161</sup>

As discussed above, CBP concludes NWH has altered the documents submitted to CBP, or that in the regular course of business keeps altered documents. As discussed in the NOI, D&J submitted falsified documents in its CF28 response. For example, D&J appears to have taken NWH's monthly production records submitted by KSA and simply changed the name of the month from March to November.<sup>162</sup> We note, for example, the daily production numbers are identical for each day of the month, and while March has 31 days November does not, yet D&J provided production totals for a November 31<sup>st</sup>, which coincidentally match the production totals of March 31<sup>st</sup> submitted by KSA.<sup>163</sup> CBP posits there may be a nexus between the altered documents submitted by D&J and the altered steel wire purchase documents submitted by NWH, as an individual, [ name ], was involved with these transactions and submissions.

When examining the bills of lading for NWH's purchases of steel wire, the individual whose e-mail address appears on the bill of lading as the contact when the materials arrive in Thailand is [ name / e-mail address ].<sup>164</sup> At times [ name ] is listed as the only contact on the bills of lading, and at other times this person is listed as the primary contact, where an e-mail address for [ company ] is listed as a secondary contact.<sup>165</sup> NWH submitted an agreement between it and Evergreen Lines, for shipping raw materials from China.<sup>166</sup> The "Joint Service Agreement" between the two companies lists NWH's contact information as the e-mail address for [ name ].<sup>167</sup>

The record is silent as to why an individual [ activities performed by an individual ]. Then again, CBP's primary contact with NWH is the sales manager, Wang Petrel, from Shaoxing Dingli, who also does not appear to be an employee of NWH, as discussed in the "NWH's Labor Data" section below. As [ name ] was involved in the fraudulent CF28 response, CBP believes this person may

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<sup>160</sup> NWH's invoices sometimes lists the units of measure for its purchases of steel wire as kilograms or bundles. An examination of NWH's surveillance videos indicates the bundles of steel wire used in production appear to be large and heavy. However, certain invoices for steel wire list the unit of measure as cartons, which is the unit of measure used for hangers.

<sup>161</sup> See NWH's RFI Response at Exhibit 9.1.

<sup>162</sup> See D&J's CF28 Response; and KSA's CF28 Response.

<sup>163</sup> See KSA's CF28 Response; and D&J's CF28 Response. We also note the production totals in the CF28 responses do not match those provided by NWH in Exhibit 12 of its RFI response.

<sup>164</sup> We also note that [ name ] was the accountant for the Thai hanger shipper Everbright Clothes Hanger (Thailand) Co., Ltd. (Everbright) in EAPA case 7175. See CBP's Letter, "Notice of initiation of an investigation and interim measures taken as to Eastern Trading NY Inc. concerning a reasonable suspicion as to evasion of the antidumping duty order on Steel Wire Garment Hangers from the People's Republic of China," dated December 13, 2016, at 4; and CBP's Letter, "Notice of Final Determination as to Evasion," dated August 14, 2017 (EAPA 7175 Final Determination).

<sup>165</sup> See NWH's RFI Response at Exhibit 8.3.

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

be involved in the submission of fraudulent raw materials purchase documents in NWH's RFI Response.

Lastly, question 2 of the "Production" section requested that for each product produced by NWH to:

...provide a complete bill of materials, identifying all direct materials (quantity, unit of measure, and unit cost), direct labor (man-hours, machine use hours, and cost per hour), and direct overhead allocation (fuel, utilities, *etc.*). The information provided must be sufficient to demonstrate the total direct cost incurred to produce one unit (hanger) of each product. Moreover, from the time an order is accepted, please state how long it typically takes to manufacture and package the covered merchandise, and fill a container for export.

Because NWH did not provide a complete bill of materials identifying the quantity, unit of measure, and unit cost of each raw material used to produce one unit of each variation of hanger, CBP cannot determine if the raw materials purchased by NWH were sufficient to produce the quantity of hangers exported to the United States. NWH did not provide the requested bank statements which would corroborate the withdrawal of funds from NWH's bank account to pay raw material suppliers.

In sum, while NWH may have provided 417 pages of steel wire purchase documents, it did not provide much of the information requested in the RFI nor did it provide information on three of its five suppliers of steel wire. Moreover, we find that NWH submitted falsified documents with respect to its purchases of steel wire. As such, we find the information provided by NWH to be unreliable with respect to its purchases of steel wire.

#### NWH's Labor Data

We note NWH did not translate all its labor records. In the first and second rejections of NWH's RFI response, CBP warned NWH that: "All submissions to CBP must be in writing in the English language or accompanied by an adequate English language translation as they will be part of the record for proceedings and determinations covered in this part." Despite this warning, NWH still did not fully translate its labor records. We note that NWH did not translate the names of its employees in its labor records which are Chinese nationals, although it translated other documents which are in Chinese.<sup>168</sup>

In addition, with respect to the labor information provided by NWH, we find that NWH did not fully respond to the RFI questions. We note some employees who appear to be Chinese nationals do not appear at all in NWH's employee records. Wang Petrel, [ name ] and Daogu Caigen, the individual who appears to have prepared the public version of NWH's RFI Response, do not appear in NWH's labor records. While record evidence indicates these individuals perform work for NWH, the record is silent with respect to what entity paid these employees, and NWH did not submit the requested bank statements to prove payment to them.

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<sup>168</sup> *Id.* at Exhibit 9.1.

In addition, question 2 of the “Production” section requested that for each product produced by NWH to:

...provide a complete bill of materials, identifying all direct materials (quantity, unit of measure, and unit cost), direct labor (man-hours, machine use hours, and cost per hour), and direct overhead allocation (fuel, utilities, *etc.*). The information provided must be sufficient to demonstrate the total direct cost incurred to produce one unit (hanger) of each product. Moreover, from the time an order is accepted, please state how long it typically takes to manufacture and package the covered merchandise, and fill a container for export.

Because NWH did not provide a complete bill of materials identifying the direct labor cost incurred to produce one unit of each variation of hanger, CBP cannot determine if the labor reported by NWH was sufficient to produce the quantity of hangers exported to the United States. NWH did not provide the requested bank statements which would corroborate the withdrawal of funds from NWH’s bank account to pay labor costs. As NWH did not fully translate its labor records, did not include all employees in its labor records, indicate how much labor was used to produce different hanger models or provide bank statements to support its labor costs, we find the labor data provided by NWH to be incomplete and unreliable.

#### Videos Submitted by NWH and CEK

NWH and CEK submitted five sets of videos. Of the five sets of videos, three remain on the record of this investigation. We describe all five below.

#### **March 10**

NWH submitted several videos with its RFI response, which show the production of hangers.<sup>169</sup> We note these videos appear to be taken using a hand-held recorder, rather than the surveillance camera used in other video submissions.

#### **March 23-25**

NWH attempted to submit surveillance videos using Google Drive links, but due to internet security protocols, CBP was unable to access the links.<sup>170</sup> CBP notified NWH of this issue and between March 23-25, 2021, NWH submitted these videos *via* e-mail.<sup>171</sup> CBP placed these videos on the record of this investigation on April 15, 2021, after NWH stated it served the March 23-25 videos to the interested parties.<sup>172</sup>

#### **April 13 & 14**

NWH appears to have misconstrued CBP’s instructions on April 13 & 14, 2021, to serve the interested parties with the March 23-25 surveillance videos e-mailed to CBP with an opportunity to submit additional videos.<sup>173</sup> Because the April 13 & 14 surveillance videos were submitted

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<sup>169</sup> See NWH’s RFI Response at Exhibits 17.8, 17.9 and 17.10.

<sup>170</sup> See NWH’s Voluntary Factual Information.

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> See NWH’s Voluntary Factual Information at Attachment 1.

after the April 2, 2021, deadline to submit voluntary factual information, CBP rejected them from the record of this investigation.<sup>174</sup>

### **April 27**

As a part of CEK's Rebuttal Voluntary Factual Information, CEK submitted certain additional NWH surveillance videos.<sup>175</sup> While these videos do not play on CBP computers, CEK indicated these videos are identical to the March 23-25 videos submitted by NWH but are recorded on different dates and times from the March 23-25 videos.<sup>176</sup>

### **April 29**

NWH mailed a physical disk which contained all its surveillance videos. This disk contained the March 23-25, April 13 & 14, and April 27 videos, as well as additional videos. CEK's Rebuttal Voluntary Factual Information contains a list of the surveillance videos contained on the disk.<sup>177</sup> This disk did not arrive to EAPA's offices until April 29, 2021, nor did NWH serve these videos to the interested parties.<sup>178</sup> Because these surveillance videos were submitted after the April 2, 2021, deadline to submit voluntary factual information, CBP rejected them from the record of this investigation.<sup>179</sup>

The March 23-25 surveillance videos submitted by NWH are grainy and appear to have a low resolution.<sup>180</sup> Most videos are taken from a fixed point in the factory, and show certain hanger making machines.<sup>181</sup> The video titled "NWH NFI factory area out to in" takes the viewer from outside the industrial zone to inside the factory, and shows where the surveillance camera is located, about the halfway point of the factory where one half appears to be hanger making machines and the other half used for inventory, strut attaching and cape attaching.<sup>182</sup> The surveillance videos show machines closer to the camera are more clear, while machines further away, and even on the opposite side of the factory are not clear, and present a grainy image.<sup>183</sup>

Because we do not have a clear image of all hanger making machines, while it appears that spools of what seems to be wire are spinning, it is not clear of the wire is being fed into the machines or that hangers are being produced. Some examples of our observations of the submitted videos are:

- October 21, 2020, from 9 am to 10 am, one individual in a blue shirt completes making a rack of hangers, consisting of a rolling cart with eight rows of tubes vertically stacked. While there are machines spinning in the background, and what appear to be four individuals sitting by those machines, due to the graininess of the video we cannot tell if hangers are being produced. At times the individuals leave the machines and at times a forklift blocks certain areas in the camera angle.

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<sup>174</sup> We also note that NWH did not serve these videos to the interested parties.

<sup>175</sup> See CEK's Rebuttal Voluntary Factual Information.

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> See CBP's E-mail, "EAPA 7501: Rejection of Video Files," dated April 30, 2021.

<sup>179</sup> *Id.*

<sup>180</sup> See NWH's Voluntary Factual Information.

<sup>181</sup> *Id.*

<sup>182</sup> *Id.* at file titled "NWH NFI factory area out to in."

<sup>183</sup> *Id.*

- October 22, 2020, from 8 am to 9 am, the video show individuals on the left almost completing three racks of hangers left over from the previous day.
- October 22, 2020, from 3 pm to 4 pm, it appears as if two racks of hangers have been completed. While there are individuals seated at machines on the right-hand side of the factory, we cannot tell if those works are making hangers.
- October 26, 2020, from 4 pm to 5 pm, it appears that two workers making about a quarter of a rack of hangers each.

We have not summarized all videos because they are generally similar, but the quality of the videos does not allow us to ascertain hanger production throughout the factory.

**Comments:** CEK posits that the April 29 surveillance videos were improperly rejected by CBP.<sup>184</sup> By rejecting these videos from the record of the investigation, CEK contends that CBP denied NWH an adequate opportunity to participate, and therefore, denied NWH’s rights to have all necessary information on the record.<sup>185</sup> According to CEK, the statute does not preclude CBP from accepting NWH’s voluntary factual information submissions, although CBP claims to have discretion as to whether to accept such submissions.<sup>186</sup>

According to CEK, multiple videos of NWH’s production establish significant ongoing actual production of hangers by NWH during the period of purported transshipment.<sup>187</sup> CEK asserts that the multiple videos establish that NWH not only had the capability to manufacture the steel wire hangers purchased by CEK, but it also actually produced such hangers.<sup>188</sup> CEK argues that the videos were confidential in their entirety, and thus no public version could be prepared.<sup>189</sup>

M&B disagrees with CEK’s contention that video evidence establishes that NWH produced the hangers sold to the Importers in this investigation.<sup>190</sup> M&B submits that the surveillance videos provided by NWH do not establish the company’s capacity or actual production quantities, the videos are selective, episodic, and limited in coverage.<sup>191</sup> M&B asserts that the videos simply show that, during certain limited time periods during two months of 2020, there was some activity in NWH’s facility.<sup>192</sup> According to M&B, contrary to NWH’s claim that all of the hangers it sold were produced by NWH, the record evidence confirms that NWH imported both finished and semi-finished hangers from China into Thailand.<sup>193</sup>

**CBP’s Position:** Pursuant to 19 C.F.R. § 165.23(c)(2), voluntary factual information “submitted to CBP pursuant to paragraph (b) of this section must be submitted no later than 200 calendar days after CBP initiated the investigation under § 165.15.” Section 165.23(c)(2) goes on to state that “{v}oluntary information submitted after the 200<sup>th</sup> day after the initiation of the investigation will not be considered or placed on the administrative record{.}” As this investigation initiated on September 14, 2020, the 200<sup>th</sup> calendar day of the investigation is April

<sup>184</sup> *Id.* at 40, footnote 65.

<sup>185</sup> *See* CEK’s Written Arguments at 50.

<sup>186</sup> *Id.*

<sup>187</sup> *See* CEK’s Written Arguments at 20, 39 – 41.

<sup>188</sup> *Id.* at 41.

<sup>189</sup> *Id.* at 40, footnote 65.

<sup>190</sup> *See* M&B’s Rebuttal Written Arguments at 15 – 17, citing CEK’s Written Arguments at 11 – 14 and 30.

<sup>191</sup> *Id.* at 16.

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*, citing the CEK Allegation at Exhibit 5, NOI at 15.

2, 2021. At no point did NWH submit a request for an extension to submit voluntary factual information. NWH was informed of the regulations for submitting extension requests in the RFI,<sup>194</sup> and in fact, submitted an extension request in this investigation.<sup>195</sup> Thus, we find that NWH was aware of the process to submit an extension request to CBP. Moreover, NWH was informed of the requirement to serve all interested parties with submissions made to CBP, and that a failure to do so would result in the submission being rejected.<sup>196</sup> We find that NWH was aware of this requirement as well, as it served the interested parties with the public version of its RFI Response. Therefore, given that NWH displayed an awareness of the EAPA Regulations concerning submissions in this investigation, did not serve the interested parties, and did not request an extension of time to submit this information, consistent with 19 C.F.R. § 165.23(c)(2), we rejected the April 13 & 14 and April 29 surveillance videos from the record of this investigation. As such, we do not find that the surveillance videos were improperly rejected as CEK contends.

In addition, with respect to the April 29 surveillance videos, when NWH notified CBP it physically mailed this information, CBP advised NWH to retrieve its package from the shipping service because it was unlikely to physically receive this mail, let alone receive it by April 2, 2021.<sup>197</sup> When we rejected this submission, CBP noted that it advised NWH not to physically mail this information “because (a) our offices are closed and there is no one to receive mail, (b) CBP’s mail is handled by a central processing authority which would delay the package, and (c) the RFI instructions specifically state that submissions must be submitted *via* e-mail.”<sup>198</sup> In this case, the disk was mailed on March 19, 2021, and signed for by an individual at the Ronald Reagan Washington National Airport in Washington, D.C. on March 23, 2021, and did not reach EAPA’s offices until April 29, 2021.

With respect to the submission of voluntary factual information, we note that 19 C.F.R. § 165.23(b) states that: “Any party to the investigation may submit additional information in order to support the allegation of evasion or to negate or clarify the allegation of evasion.” “Party to the investigation” is defined by 19 C.F.R. § 165.1 of as “the interested party ... who filed the allegation of evasion and the importer ... who allegedly engaged in evasion.” For this consolidated investigation, this means that the alleged and the importers under investigation are the only “parties to the investigation.” As such, EAPA’s regulations are clear that the only parties who may submit voluntary factual information are the alleged and the importers under investigation. We agree with CEK that the statute does not preclude CBP from accepting voluntary factual information from NWH, and in this rare instance CBP retained NWH’s submission of voluntary factual information (*i.e.*, the March 23-25 surveillance videos). Consistent with EAPA’s regulations, CBP could have rejected NWH’s submission of voluntary factual information but did not choose to do so. In fact, the March 23-25 videos were not served to interested parties, and CBP provided NWH a reminder to do so before accepting this information on the record. Moreover, the March 23-25 videos generally did not conform to the filing requirements found in sections 165.4 and 165.5 of the EAPA Regulations, yet CBP allowed this submission to remain. In sum, CBP acted in a manner which was the opposite of

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<sup>194</sup> See NWH’s RFI at “Extension Requests.”

<sup>195</sup> See NWH’s Letter, “Enforce and Protect Act Investigation Case No. 7501: Request for Information,” dated February 12, 2021, which is an extension request to file a response to NWH’s RFI.

<sup>196</sup> See NWH’s RFI at “Instructions for Filing the Response, Due Date.”

<sup>197</sup> See CBP’s E-mail, “EAPA 7501: Rejection of Video Files,” dated April 30, 2021.

<sup>198</sup> *Id.*

what CEK describes in its written arguments and allowed NWH to place information on the record.

Moreover, CEK, despite not being affiliated with NWH and its counsel not representing NWH, came into possession of certain additional NWH surveillance videos and submitted them as a part of CEK's rebuttal voluntary factual information submission. After twice rejecting CEK's submissions of rebuttal voluntary factual information, CBP provided CEK a third opportunity to make this submission and even granted an extension for CEK to make the submission. Again, we find CBP acted in a manner which was the opposite of what CEK describes in its written arguments and allowed CEK three opportunities to place additional surveillance videos on the record. CBP finds the record contains ample information with respect to NWH's surveillance videos.

With respect to CEK's argument that the submitted surveillance videos establish substantial production of hangers by NWH during the POI, we disagree. NWH submitted no narrative with its surveillance videos. NWH did not in any way tie these videos to its books and records. NWH could have, for example, indicated that between certain hours machine number "X" finished producing a rack of hangers, which ties to the production record of "X" hangers being produced at those times. Moreover, the videos do not make clear that hanger production is occurring other than right in front of the camera.

The universe of NWH's surveillance videos only spans a 52-day period.<sup>199</sup> Assuming, *arguendo*, that all surveillance videos made by NWH were on the record of this investigation, *i.e.*, the April 29 submission, this would show that during this time period NWH had operations on 31 of the 52 days, or 60% of this short time period. In addition, we note this 52-day period only covers approximately 7% of the POI. NWH has not provided any information with respect to the videos covering the other 93% of the POI, or why NWH did not attempt to submit any videos for the missing days during the 52-day period. CBP finds NWH's self-selected videos to be episodic, unclear, and not indicative of the POI production CEK claims.

With respect to the confidentiality of NWH's videos, CBP is uncertain as to the genesis of this argument by CEK. NWH submitted several videos of its production in its RFI response, and did not claim business confidential treatment, thus, they are public.<sup>200</sup> NWH also did not claim business confidential treatment for its March 23-25 surveillance videos, thus, they are public, and NWH confirmed these videos were served to the interested parties. Therefore, when discussing these videos in this final determination, we have treated NWH's videos as public documents.

### NWH's Imports of Semi-finished Hangers and Hangers

In its RFI response, NWH indicated that it imported semi-finished hangers from China during the POI.<sup>201</sup> In addition, data from the Thai government indicates NWH imported [ number ] of Chinese-origin hangers before the start of the POI (August 26, 2019).<sup>202</sup>

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<sup>199</sup> See CEK's Rebuttal Voluntary Factual Information, which contains a list of all videos NWH recorded.

<sup>200</sup> See NWH's RFI Response at "Summary of Public Documents" which indicates that photos and videos submitted by NWH are public.

<sup>201</sup> See NWH's RFI Response at Exhibit 8.3.

<sup>202</sup> See Thai Trade Statistics.

**Comments:** M&B notes NWH placed evidence on the record in this investigation that it imported semi-finished hangers from China into Thailand.<sup>203</sup> M&B observes that Commerce analyzed a similar set of facts in Vietnam and determined that exporting hangers to the United States from a third country using Chinese-origin, semi-finished hangers constitutes circumvention, and found such hangers to be subject to the *Order*.<sup>204</sup> Like Commerce did with the respondents in the *Hangers Circumvention*, CBP should find that NWH is circumventing the *Order*, and find it is irrelevant what percentage of NWH's hanger exports are self-produced as it would be impossible to distinguish between NWH's circumventing hangers and its self-produced hangers at the time of entry into the United States.<sup>205</sup>

CEK argues that M&B misleadingly states that NWH admitted it imported semi-finished wire hangers with no mention of the quantity.<sup>206</sup> CEK contends that the quantity of semi-finished hangers purchased by NWH is a small percentage of its overall production.<sup>207</sup> According to CEK, semi-finished hangers could have been imported for quality control purposes.<sup>208</sup> CEK asserts that the circumvention case cited by M&B differs from the instant investigation because:

- the use of semi-finished hangers was the respondent's primary product;
- the respondent lacked documented hanger making machines and capacity;
- the importation of semi-finished hangers was an ongoing issue with the respondent, and
- there was a question of how to segregate and account for covered merchandise when semi-finished imports were substantial and ongoing throughout the POI.<sup>209</sup>

CEK contends that M&B's argument NWH imported hangers into Thailand fails because the Thai government data it cites predates the POI.<sup>210</sup> CEK submits that the relevant question is the conduct which occurred in the POI, not in the period prior to the POI.<sup>211</sup>

**CBP's Position:** Commerce has the final say in determining what products are covered by the scope of an AD/CVD order. With respect to semi-finished hangers, Commerce has already ruled on this issue.<sup>212</sup>

In addition, data from the Thai government indicates NWH imported [ number ] of Chinese-origin hangers before the start of the POI (August 26, 2019).<sup>213</sup> Given the [ number ] of hangers in inventory reported by NWH the month before the start of the POI, we find it highly probable that

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<sup>203</sup> See M&B's Written Arguments at 3 and Attachment A, citing NWH's RFI Response at Exhibit 8.3 (pages 61 – 63 and 79 – 81).

<sup>204</sup> *Id.* at 4, citing *Steel Wire Garment Hangers from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 76 FR 66895 (Dept. of Commerce, October 28, 2011) (*Hangers Circumvention*) and accompanying Issues and Decision Memorandum, "Steel Wire Garment Hangers from the People's Republic of China: Issues and Decision Memorandum for the Final Determination of the Circumvention Inquiry," dated October 21, 2011 (Chinese Hangers Circumvention I&D), which is also found in M&B's Voluntary Factual Information at Exhibit 4.

<sup>205</sup> *Id.* at 5 – 6.

<sup>206</sup> See CEK's Written Arguments at 47.

<sup>207</sup> *Id.* See also CEK's Rebuttal Written Arguments at 8 – 9.

<sup>208</sup> See CEK's Written Arguments at 47.

<sup>209</sup> *Id.* at 48. See also CEK's Rebuttal Written Arguments at 9.

<sup>210</sup> See CEK's Rebuttal Written Arguments at 8 – 9, citing M&B's Written Arguments at 14.

<sup>211</sup> *Id.* at 9.

<sup>212</sup> See *Hangers Circumvention*.

<sup>213</sup> See Thai Trade Statistics.

these Chinese-origin hangers were exported to the United States during the POI.<sup>214</sup> The focus of our investigation is whether POI entries were transshipped, thus, if NWH purchased Chinese-origin hangers before the POI, but shipped them to the United States during the POI, these entries are subject to our investigation. Consistent with Commerce’s *Hangers Circumvention*, we find NWH exported Chinese-origin covered merchandise to the United States during the POI.

### *CF28 Responses*

While CEK, D&J and KSA responded to the CF28s, because they either did not provide any response to the RFI, or provided a very limited response, CBP cannot evaluate whether the information provided in the CF28 responses is accurate.<sup>215</sup>

With respect to CEK’s CF28 Response,<sup>216</sup> we discussed its many discrepancies in the NOI. Specifically, in the NOI we found that:

- CEK failed to provide the CF7501, bill of lading, contract, and purchase order, and other export documentation filed with the Thai authorities;
- CEK failed to provide a schedule tying the invoices to the payment;
- CEK failed to provide documentation to tie the “Production Records” to the entry in question; and,
- CEK failed to raw material invoices for steel wire, invoices, mill certificates, certificates of origin, or a manufacturer’s affidavit indicating where the raw materials were produced which tie to the production of the entry in question.<sup>217</sup>

As discussed briefly in the “Raw Materials” section, the documentation that was provided in CEK’s CF28 Response with respect to steel wire had many discrepancies.<sup>218</sup> The purchase order, allegedly issued by NWH, contains [ company name ] letterhead at the top.<sup>219</sup> Typically, a business purchasing a raw material issues the purchase order to the supplier of the raw material. The purchase also contains no identification number which would tie it to the receipt.<sup>220</sup> It is a normal business practice to number documents so that they may be traced in a company’s accounting system. The receipt, for example, is numbered.<sup>221</sup> In addition, the receipt issued by [ company name ] contains NWH’s company stamp and not [ company name ].<sup>222</sup> In addition, the receipt states “[ instructions on the receipt ].”<sup>223</sup> As the receipt bears [ lack of information ] whatsoever, based on the plain language of the receipt, it appears to be invalid. Also, the receipt indicates NWH’s wire rope purchase was for [ number ] Thai Baht which is listed numerically and written out in [ language ], however, the purchase order indicates NWH’s purchase was for [ number ] million Thai Baht.<sup>224</sup> Thus, the receipt and purchase order do not tie to one another.

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<sup>214</sup> See NWH’s RFI Response at Exhibit 12.

<sup>215</sup> Power Poly did not respond to the CF28 or the RFI.

<sup>216</sup> See CEK’s CF28 Response, dated November 3, 2020 (CEK’s CF28 Response).

<sup>217</sup> See NOI at 7 – 9.

<sup>218</sup> See CEK’s CF28 Response.

<sup>219</sup> *Id.*

<sup>220</sup> *Id.*

<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

<sup>223</sup> *Id.*

<sup>224</sup> *Id.* CBP notes that the receipt for the purchase of wire rope contrasts sharply with the receipt for the hanger boxes because the box receipt is [ language ].

The record also contains other inconsistencies and conflicting information submitted in the CF28 responses. CEK, D&J and KSA each submitted a one-page document entitled “Production Records” which appears to have been created in response to the CF28 rather than a record kept by NWH in the normal course of business.<sup>225</sup> We discuss above how D&J falsified this document in the “Raw Materials” section, and thus, we find it unreliable. Moreover, NWH’s records are in [ language ] and not [ language ], whereas the record submitted by CEK and D&J are in [ language ].<sup>226</sup> Although the RFI requested that all documents not in English be translated, NWH did not translate its production records.<sup>227</sup> Also, the production records submitted in the CF28 responses do not match those submitted by NWH. For example, KSA submitted production records for March 2020, and on March 2, 2020, KSA’s CF28 Response indicates NWH produced 459 cartons of hangers, while NWH’s RFI Response indicates it produced 347 cartons.<sup>228</sup> Similarly, the March 3, 2020, KSA’s CF28 Response indicates NWH produced 547 cartons of hangers, while NWH’s RFI Response indicates it produced 331 cartons of hangers.<sup>229</sup> These discrepancies between NWH’s RFI Response and CEK’s and KSA’s CF28 responses continue day after day.<sup>230</sup>

### Miscellaneous Issues

Interested parties submitted comments in their written arguments which do not necessarily fit within CBP’s analysis above. We discuss these issues below.

#### *Miscellaneous Issue 1: Third Party Trade Data*

**Comments:** CEK disagrees with M&B’s contention that third party manifest data indicate CEK underreported the quantity of steel wire hangers imported into the United States.<sup>231</sup> CEK submits it provided accurate import data and properly reported the number of hangers, not the number of cartons, to CBP.<sup>232</sup> CEK asserts M&B’s claims are misleading, factually incorrect and cannot be given weight to find substantial evidence on the record of evasion or transshipment.<sup>233</sup> CEK states that it is unable to opine on whether the official statistics are inaccurate as it reported its quantities correctly, and it is the Census Bureau which assembles the official statistics from the information submitted to CBP by importers.<sup>234</sup>

M&B notes that the CEK Allegation identifies significant discrepancies between the quantity of hangers from Thailand reported in the official import statistics and the reported shipments of

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<sup>225</sup> See NOI at 8.

<sup>226</sup> See NWH’s RFI Response at Exhibit 12; and D&J’s CF28 Response.

<sup>227</sup> The production log rows appear to identify the hanger description and the columns appeared to identify the alleged beginning inventory, quantity added to inventory, quantity withdrawn from inventory, and ending inventory.

<sup>228</sup> See NWH’s RFI Response at Exhibit 12; and KSA’s CF28 Response.

<sup>229</sup> See NWH’s RFI Response at Exhibit 12; CEK’s CF28 Response; and KSA’s CF28 Response.

<sup>230</sup> *Id.* at the “Production Records” for March and [ month ] 2020.

<sup>231</sup> See CEK’s Written Arguments at 32 – 33, citing M&B’s Voluntary Factual Information at Exhibit 1 & 2. See also CEK’s Rebuttal Written Arguments, citing M&B’s Written Arguments at 10 –12.

<sup>232</sup> *Id.*

<sup>233</sup> See CEK’s Written Arguments at 33.

<sup>234</sup> See CEK’s Rebuttal Written Arguments 8.

cartons of hangers from Thailand according to *Datamyne* data.<sup>235</sup> M&B relied on the *Datamyne* data to identify the importers associated with shipments of hangers from NWH and to confirm that the official import statistics on hangers from Thailand were being underreported.<sup>236</sup> M&B asserts that the intentional misreporting of the quantity of hanger imports is Customs fraud, and section 165.47 of the EAPA Regulations provide that CBP and other government agencies may undertake additional investigations or enforcement actions.<sup>237</sup>

**CBP's Position:** We note M&B submitted voluntary factual information with respect to this issue, and CEK submitted rebuttal voluntary factual information on this issue.<sup>238</sup> An examination of the sales documents submitted by NWH indicates that the number, weight and cartons are reported on the CBP7501, invoice and packing list.<sup>239</sup> However, on the bill of lading NWH reported the quantity as the number of cartons.<sup>240</sup> While there is a difference between the quantities in official CBP data and *Datamyne*, *Datamyne* is a private company which has its own data collection system. If, for example, *Datamyne* collects data from bills of lading, it would capture an incorrect quantity for the number of hangers exported by NWH. With respect to the data submitted by M&B from the ITC's DataWeb, we note those statistics are retrieved from the U.S. Bureau of the Census (Census Bureau), which is an agency within the U.S. Department of Commerce. An analysis of CBP data indicates CEK reported the correct quantity of hangers it entered to CBP.<sup>241</sup> We do not know why there would be a discrepancy between the Census Bureau data and CBP's data. This is an issue we will examine further after the conclusion of this case. For the final determination, because CEK reported the correct quantity of hangers to CBP, we have not considered this as an issue for our final determination.

#### *Miscellaneous Issue 2: Royal Brush*

**Comments:** CEK argues that in *Royal Brush*, the CIT found that CBP failed to afford an importer a meaningful opportunity to participate in the proceeding when CBP did not provide the importer public summaries of the Attaché Report documenting findings of the government's site visit to the foreign producer's facility.<sup>242</sup> Like the importer in *Royal Brush*, and inconsistent with section 165.4(e) of the EAPA Regulations, CEK contends CBP failed to provide a public summary of the HSI Report in this investigation, and has not provided NWH with a version of the report with NWH's own confidential information not redacted.<sup>243</sup> Because CBP has not provided the redacted information in the HSI Report, or a public summary of its findings, the Importers and NWH cannot respond to the evidence presented against them.<sup>244</sup> Therefore, CBP cannot rely on the HSI Report for any determination applying adverse inferences because the

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<sup>235</sup> See M&B's Written Arguments at 12, citing the CEK Allegation at Exhibit 4. See also M&B's Voluntary Factual Information at Exhibit 2.

<sup>236</sup> See M&B's Rebuttal Written Arguments at 10.

<sup>237</sup> *Id.* at 11.

<sup>238</sup> See M&B's Voluntary Factual Information; and CEK's Rebuttal Voluntary Factual Information.

<sup>239</sup> See NWH's RFI Response (public version) at Exhibits 18.1 – 18.5.

<sup>240</sup> *Id.*

<sup>241</sup> We compared invoices on the record to the CBP data found in the NTAC Report. See CBP's Memorandum, "DC NTAC CEK Report (7501)," dated September 14, 2020 (DC NTAC Report).

<sup>242</sup> See CEK's Written Arguments at 46, citing *Royal Brush Manufacturing, Inc. v United States*, 483 F. Supp. 3d 1294 (CIT 2020) (*Royal Brush*).

<sup>243</sup> See CEK's Written Arguments at 46 – 47.

<sup>244</sup> *Id.* at 47.

Importers or NWH failed to cooperate.<sup>245</sup> CEK submits that CBP also improperly conducted a site visit before initiating that investigation, and because CBP had not yet initiated an investigation, CBP lacked authority to collect information pursuant to 19 U.S.C. §1517(c)(2).<sup>246</sup>

M&B disagrees with CEK's contention that CBP cannot rely on the HSI Report because CBP failed to provide a public summary of the report in accordance with the CIT's remand decision in *Royal Brush* and CBP improperly conducted a site visit before initiating its investigation.<sup>247</sup> M&B notes CBP released the public version of the HSI Report to the parties *via* e-mail on January 29, 2021, and the public version only treats as business confidential the names of individuals present during the site visit, personally identifiable information, photographs and videos, and certain numbers such as the number of machines and work hours. M&B contends that although the court in *Royal Brush* held that CBP must ensure compliance with the public summarization requirements in the EAPA regulations, the court did not prevent CBP from relying on the site visit report in its evasion determination.<sup>248</sup> In addition, M&B argues that CBP did not improperly conduct a site visit before initiating this EAPA investigation.<sup>249</sup> M&B posits that the HSI Report was prepared in connection with a separate HSI Investigation, and pursuant to 19 C.F.R. §165.5, CBP can obtain information from other governmental entities in its EAPA investigations, thus, CBP can rely on the HSI Report which provides substantial evidence of evasion in this investigation.<sup>250</sup>

**CBP's Position:** Because of the application of adverse inferences to the Importers and NWH, as well as our analysis of information provided by NWH, we need not rely upon the HSI Report in the final determination.

With respect to CEK's argument concerning the propriety of conducting a site visit before the initiation of this investigation, CBP did not conduct a site visit prior to the initiation of the investigation, HSI conducted a site visit. Section 165.5(a) of the EAPA Regulations indicates that in obtaining information necessary to conduct an investigation, CBP may employ any means authorized by law, including obtaining information from its own files and from other agencies of the United States Government, among other means. After initiating this investigation, CBP learned that HSI, in the regular course of its duties, made a site visit to NWH and detailed this visit in a report. Consistent with 19 C.F.R. § 165.5(a) of the EAPA Regulations, CBP placed the report on the record of this investigation.<sup>251</sup>

### *Miscellaneous Issue 3: Allegor's Standing as an Interested Party*

**Comments:** CEK argues that M&B has failed to establish itself as an interested party under 19 U.S.C. § 1517(a)(6), and CBP should therefore, terminate the investigation.<sup>252</sup> CEK contends that M&B's claim for standing as an interested party is based on an assertion that M&B is a U.S. producer of hangers, and in support thereof, M&B cites to the fact that it obtained an AD order

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<sup>245</sup> *Id.*

<sup>246</sup> *Id.* at 46.

<sup>247</sup> See M&B's Rebuttal Written Arguments at 18, citing CEK's Written Arguments at 46 – 47.

<sup>248</sup> *Id.*, citing *Royal Brush*. The court also emphasized that “the court does not hold that *Royal Brush* is entitled to receive business confidential information.”

<sup>249</sup> *Id.* at 19.

<sup>250</sup> *Id.*

<sup>251</sup> See HSI Report.

<sup>252</sup> *Id.* at 6 – 8.

on the subject merchandise in 2008.<sup>253</sup> CEK asserts that while M&B may have had status as an interested party in 2008, it may not be today as it now has operations in Mexico and imports substantial quantities of hangers from Mexico.<sup>254</sup> According to CEK, CBP should have requested information from M&B to confirm it has domestic production, which is particularly important as M&B is not required to serve the allegations on potential respondents, and CBP did not notify respondents of the allegations until well after the case was initiated.

M&B posits there is nothing in the statute or regulations that prohibits a U.S. manufacturer that also has facilities outside of the United States from filing an EAPA allegation.<sup>255</sup> M&B notes that EAPA's regulations define an "interested party" as, *inter alia*, "a manufacturer, producer, or wholesaler in the United States of a domestic like product."<sup>256</sup> M&B also notes it was an interested party: (a) when it filed the original AD case against Chinese hangers in 2008, (b) when it filed subsequent trade actions at Commerce against Vietnam and Taiwan, (c) during every administrative review and sunset review of hangers at Commerce and the ITC, (d) during each of the EAPA investigations conducted by CBP, and (e) the United States Trade Representative (USTR) found M&B to be an interested party during its special safeguard investigation of hangers from China.<sup>257</sup> Moreover, M&B contends that EAPA's regulations state that an allegation filed by an interested party must include "an explanation as to how the interested party qualifies as an interested party pursuant to § 165.1," which M&B filed in the allegations.<sup>258</sup> In sum, M&B asserts CEK's standing argument has no basis in fact or law and should be rejected.

**CBP's Position:** In the allegations, M&B stated it is "a U.S. producer of steel wire garment hangers in Leeds, Alabama,"<sup>259</sup> and M&B certified that the statements made in the allegations were "accurate and true."<sup>260</sup> In its written arguments, CEK discusses how M&B may have had standing as a domestic producer in 2008, and cites to a 2012 *Taiwan Hangers ITC Report* that it does not have domestic production in 2020.<sup>261</sup> We note the *Taiwan Hangers ITC Report* is dated eight years before the filing of the allegations.<sup>262</sup> There is no record evidence that M&B does not currently domestically produce the covered merchandise, and in fact, M&B has stated the opposite. Assuming, *arguendo*, that M&B had no domestic production of covered merchandise and imports the hangers it sells from Mexico as CEK suggests, 19 U.S.C. § 1517(a)(6) states that an importer of covered merchandise qualifies as an interested party. Thus, regardless of whether M&B imports covered merchandise from Mexico is irrelevant for the purposes of establishing that M&B is an interested party in this case. As we find that M&B has interested party status in accordance with 19 U.S.C. § 1517(a)(6), we have not terminated this investigation as argued by CEK.

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<sup>253</sup> *Id.* at 7.

<sup>254</sup> *Id.*, citing *Steel Wire Garment Hangers from Taiwan*, USITC Inv. No. 731-TA-1197. Pub. No 4363 (November 2012) (*Taiwan Hangers ITC Report*) at Table III-1 which states that M&B is related to M&B Hangers de Mexico, S. de RL de CV.

<sup>255</sup> See M&B's Rebuttal Written Arguments at 3, citing CEK's Written Arguments at 6 – 8.

<sup>256</sup> *Id.*, citing section 165.1 of the EAPA Regulations.

<sup>257</sup> *Id.* at 3 – 4.

<sup>258</sup> *Id.* at 4.

<sup>259</sup> See CEK Allegation at cover letter.

<sup>260</sup> *Id.* at "Certification of Accuracy," signed by Milton M. Magnus, III, President of M&B.

<sup>261</sup> See CEK's Written Arguments at 7, citing *Taiwan Hangers ITC Report*.

<sup>262</sup> See *Taiwan Hangers ITC Report*.

We further note that the interested parties, including CEK, were notified of the initiation of this investigation on December 11, 2020. If CEK had issues with respect to M&B's standing to file the allegations, it had ample opportunity to raise this as an issue with CBP. Under section 165.23(a)(1) of the EAPA Regulations, CBP has the authority to request factual information from an interested party that filed the allegation; however, CEK made no mention of its concerns with M&B's standing until the submission of its written arguments on May 10, 2021.

#### *Miscellaneous Issue 4: NWH's Chinese Ownership*

**Comments:** CEK submits that CBP cannot consider NWH's ties to China as constituting substantial evidence of evasion based on: (1) NWH's ownership by Chinese nationals; (2) that NWH sourced raw materials from China; and, (3) that NWH sourced equipment from China.<sup>263</sup> According to CEK, NWH is a legal person and is permanently operating in Thailand to produce wire hangers.<sup>264</sup> CEK contends the nationality of NWH's partners and employees, and the origin of its production equipment, are wholly irrelevant to the country-of-origin determination of the covered merchandise.<sup>265</sup> CEK asserts that CBP must recognize that there are no companies involved in NWH's day-to-day operations that would qualify as affiliated under the definition provided in the RFI, and NWH confirmed the arm's length relationship with Shaoxing Maosheng.<sup>266</sup> CEK argues information pertaining to NWH's ties to China is simply irrelevant to the final determination, and thus, does not amount to "more than a mere scintilla" sufficient to support a finding that NWH transshipped or commingled Chinese origin steel wire hangers.<sup>267</sup>

While CEK asserts that NWH's ties to China are entirely irrelevant, including NWH's ownership by Chinese nationals and NWH's sourcing of raw materials from China, M&B disagrees.<sup>268</sup> M&B notes the record confirms that Mr. Tu owns NWH and Shaoxing Maosheng, a producer of covered merchandise in China, which was found to be transshipping Chinese hangers through India in EAPA 7379.<sup>269</sup> With respect to raw materials from China, M&B observes that NWH placed evidence on the record in these investigations that it imported semi-finished hangers from China into Thailand.<sup>270</sup> M&B argues that the assembly of semi-finished hangers from China does not change the country of origin to Thailand and constitutes circumvention of the *Order*.<sup>271</sup> In sum, M&B contends that NWH's ties to China are entirely relevant to CBP's investigation of evasion.<sup>272</sup>

**CBP's Position:** We disagree with CEK that NWH demonstrated that there are no companies involved in NWH's day-to-day operations that would qualify as affiliated under the definition provided in the RFI, or that NWH confirmed the arm's length relationship with Shaoxing Maosheng. The RFI clearly stated that CBP requested information about NWH's affiliates

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<sup>263</sup> See CEK's Written Arguments at 44.

<sup>264</sup> *Id.* at 42.

<sup>265</sup> *Id.* at 43. See also CEK's Rebuttal Written Arguments at 10.

<sup>266</sup> See CEK's Written Arguments at 44, citing NWH's RFI Response at Exhibits 1 – 4 which indicate there are no Chinese companies which own an interest in NWH.

<sup>267</sup> *Id.* at 42 – 43, citing *PAM, S.p.A. v. United States*, 582 F.3d 1336, 1339 (Fed. Cir. 2009), quoting *Consol. Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938).

<sup>268</sup> See M&B's Rebuttal Written Arguments at 12, citing CEK's Written Arguments at 41 – 44.

<sup>269</sup> *Id.*, citing 7379 Final Determination.

<sup>270</sup> *Id.*, citing NWH's RFI Response at Exhibit 8.3 (pages 61 – 63 and 79 – 81).

<sup>271</sup> *Id.*

<sup>272</sup> *Id.* at 13.

because it may be necessary to gather information from them. We note the RFI defined affiliation, specifically requested Shaoxing Maosheng’s business license, and information on intertwined operations, shared employees, *etc.* NWH did not answer these questions or provide the requested documents. For example, NWH and Shaoxing Maosheng share a customer, John Liu, owner of CEK, but it provided no information on this relationship despite the RFI requesting it do so. NWH appears to share employees with other companies in the hanger industry, Wang Petrel from Shaoxing Dingli and [ name ] from Everbright and [ company name ], as discussed above. NWH provided no information on its ties with Shaoxing Dingli, Everbright and [ company name ]. The RFI also requested that NWH submit corporate information and documents on Shaoxing Maosheng, but it did not do so. In sum, we cannot make a determination as CEK suggests with respect to affiliations because NWH did not provide RFI responses which would allow us to do so.

*Miscellaneous Issue 5: Whether EAPA Investigations Provide Due Process*

**Comments:** CEK argues that the EAPA statute and implementing regulations do not provide the affected parties the right to fully and actively participate in the proceedings, and are unconstitutional as they violate the 5th Amendment of the *Constitution of the United States* concerning due process.<sup>273</sup> CEK asserts that respondent importers in EAPA investigations have a due process right to “notice and a meaningful opportunity to be heard.”<sup>274</sup> CEK disagrees with CBP’s statement that it seeks “to make the proceedings under the EAPA as transparent as possible and to provide for full participation and engagement by all parties involved in an EAPA proceeding.”<sup>275</sup> According to CEK, due process requires the disclosure to parties the nature of the charges made against them and the information cited in support of any determination based on those charges.

**CBP’s Position:** We disagree with CEK concerning the constitutionality of this investigation. In accordance with our regulations, CBP made the Importers fully aware of the evasion allegations against them, releasing them to the public record of the investigation on or about December 18, 2020. After the NOI, CBP sought information from the Importers and NWH in the form of the RFIs and provided them time to submit voluntary factual information and written arguments.

*Miscellaneous Issue 6: Parties to an Investigation*

**Comments:** CEK contends that the EAPA Regulations only consider the party filing the allegation and the importers of the covered merchandise to be “parties to the investigation.”<sup>276</sup> CBP’s regulations foreclose other interested parties from fully participating in the proceedings and unlawfully narrow the scope of participation provided for under EAPA for “interested parties,” as defined by 19 U.S.C. § 1517(a)(6). The statute does not preclude CBP from accepting NWH’s voluntary factual information submissions, but rather CBP claims to have

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<sup>273</sup> See CEK’s Written Arguments at 48, citing *U.S. Constitution*, Article 5. See also CEK’s Rebuttal Written Arguments at 7.

<sup>274</sup> *Id.*, citing *PSC VSMPO-Avisma Corp. v. United States*, 688 F.3d 751, 761–62 (Fed. Cir. 2012) (quoting *LaChance v. Erickson*, 522 U.S. 262, 266 (1998)).

<sup>275</sup> See *Investigation of Claims of Evasion of Antidumping and Countervailing Duties*, 81 FR 56477, 56479 (August 22, 2016).

<sup>276</sup> See 19 C.F.R. § 165.1.

discretion as to whether to accept such submissions. Because CBP denied NWH an adequate opportunity to participate, it also denied NWH's rights to have all necessary information of record which is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law, in violation of 19 U.S.C. § 1517(g)(2)(B) and 5 U.S.C. § 706.

**CBP's Position:** CEK has correctly interpreted our regulations in that the "parties to an investigation" are limited to the importers and the alleged. <sup>277</sup> These are the only parties which may make submissions of voluntary factual information. <sup>278</sup> CEK seems to have overlooked the fact that despite our regulations only providing for the Importers and the alleged to make submissions of voluntary factual information, in this investigation CBP allowed NWH to make a submission of voluntary factual information, *i.e.*, the videos discussed above in the "Videos Submitted by NWH and CEK" section. We believe CEK may be referring to the NWH's second submission of voluntary factual information which was rejected due to it being untimely, which we discuss extensively above. CBP has provided NWH every opportunity to participate in this proceeding, even offering second and third chances to submit responses to our RFI questions, which NWH failed to do. In sum, we do not find we have denied NWH an opportunity to participate in this investigation.

#### *Miscellaneous Issue 7: Sufficiency of the CEK Allegation*

**Comments:** CEK submits that the CEK Allegation filed by M&B was inadequate and does not contain sufficient information for CBP to find a "reasonable suspicion" of evasion, and as the investigation was improvidently initiated, it must be terminated. <sup>279</sup> CEK asserts that the CEK Allegation should be reviewed based only on the information it contained and not based on other information subsequently collected.

M&B disagrees with CEK's contention that the CEK Allegation was inadequate and that it did not contain sufficient information for CBP to find a reasonable suspicion of evasion. <sup>280</sup> M&B argues that CEK appears to have conflated the standard for initiating an EAPA investigation ("reasonably suggests") with the standard for imposing interim measures ("reasonable suspicion"). <sup>281</sup> M&B notes the CEK Allegation:

- identified a common director between NWH and the Chinese hanger producer Shaoxing Maosheng; <sup>282</sup>
- observed that the first importer of hangers from NWH was AB MA, and that CEK and AB MA are owned by John Liu; <sup>283</sup>
- explained that AB MA was the primary U.S. importer of hangers from Kaylee International Private Limited (Kaylee), the Indian shipper in EAPA 7379, where Kaylee acknowledged that it was transshipping Chinese hangers from India to the United States that were produced by Shaoxing Maosheng; <sup>284</sup>

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<sup>277</sup> *Id.*

<sup>278</sup> *Id.* § 165.23(c)(2); *see also* § 165.1.

<sup>279</sup> *See* CEK's Written Arguments at 8.

<sup>280</sup> *See* M&B's Rebuttal Written Arguments at 5, citing CEK's Written Arguments at 8 – 10.

<sup>281</sup> *See* M&B's Rebuttal Written Arguments at 5, citing sections 165.15(b)(2) and 165.24(a) of the EAPA Regulations, respectively.

<sup>282</sup> *See* M&B's Written Arguments at 6.

<sup>283</sup> *See* M&B's Written Arguments at 7, citing the CEK Allegation at 10.

<sup>284</sup> *Id.*, citing the CEK Allegation at 10, citing 7379 Final Determination.

- indicated that in EAPA 7191 a company managed by John Liu, Garment Cover, imported transshipped hangers from a Thai shipper, Everbright;<sup>285</sup>
- identified CEK as an importer of hangers in a Commerce new shipper review, importing hangers from two Chinese producers of hangers which were found to be the source of transshipped hangers from Thailand in EAPA 7191;<sup>286</sup> and,
- showed that NWH imported Chinese-origin hangers into Thailand.<sup>287</sup>

M&B contends that by the time CBP determined to impose interim measures, the record already contained the deficient and incomplete responses of CEK and the other importers to CBP's CF28s, as well as the HSI Report.<sup>288</sup> Based on all of the record evidence, including but not limited to the information in the CEK Allegation, M&B notes CBP found a reasonable suspicion of evasion and imposed interim measures.<sup>289</sup> As such, M&B argues CEK's adequacy argument has no basis in fact or law and should be rejected.

**CBP's Position:** CBP finds that the information provided in the CEK Allegation, along with other record information, provided a reasonable suspicion that evasion was occurring. As we stated in the NOI:

In the Allegations, M&B provided trade data which indicates that EAPA investigations regarding transshipped hangers from other countries and the sudden number of hanger shipments coming from Thailand, are likely due to the transshipping of Chinese hangers to avoid applicable AD duties. Reinforcing the shifting trade patterns is evidence that M&B provided which indicates the Importers are attempting to [ activity ]. According to information provided by M&B, NWH imported hangers from [ country ] before it began making shipments to the United States, and M&B's foreign market researcher noted [ an amount of action ]. In addition, M&B noted that NWH reported to the Thai government that it is not the type of business that engages in manufacturing, but instead is a trading company. M&B provided evidence that NWH has links to Chinese hanger producer Shaoxing Maosheng, as well as foreign companies and importers that were investigated in prior EAPA investigations concerning hangers and were found to be engaged in evasion.<sup>290</sup>

CBP disagrees with CEK's contention that allegations should be examined in a vacuum, and no other information may be considered by CBP when evaluating an allegation for the purposes of imposing interim measures. Section 165.5(a) of the EAPA Regulations states:

In obtaining information necessary to carry out its functions and duties under this part, CBP may employ any means authorized by law. In general, CBP will obtain information from its own files, from other agencies of the United States Government, through questionnaires and correspondence, and through field work by its officials.

<sup>285</sup> *Id.*, citing the CEK Allegation at 10 – 11.

<sup>286</sup> *Id.*, citing the CEK Allegation at 10 – 11.

<sup>287</sup> *Id.*, citing the CEK Allegation at Exhibit 5.

<sup>288</sup> See M&B's Rebuttal Written Arguments at 6, citing, *e.g.*, CEK's CF28 Response and the HSI Report.

<sup>289</sup> *Id.* at 6.

<sup>290</sup> See NOI at 6 (citations omitted).

When an allegation is received and an investigation initiated, consistent with its regulations, CBP will examine its own files to determine whether there is any other pertinent information to the allegation.<sup>291</sup> One of the Importers, KSA under a doing-business-as name, was the subject of another EAPA investigation involving the transshipment of Vietnamese hangers through Laos.<sup>292</sup> While KSA was provided two opportunities to respond to the RFIs in that case to definitively demonstrate it was not engaged in evasion, KSA did not respond to any RFI issued by CBP.<sup>293</sup> While this case had not reached a final determination by the time of the NOI, CBP had already found evidence which reasonably suggested evasion by KSA in EAPA 7357.<sup>294</sup> In addition, the Thai government indicated to CBP that NWH imported Chinese-origin hangers, and the HSI Report indicated that NWH's owners and employees did not seem to know its hours of operations, the number of machines currently online or the number of hangers NWH was able to produce.<sup>295</sup> Furthermore, M&B placed copious amounts of information on the record with respect to other EAPA investigations concerning entities and individuals named in the CEK Allegation. As explained in the CEK Allegation, CBP was already conducting an EAPA investigation involving another company owned by Mr. Tu, Shaoxing Maosheng, which was transshipping Chinese hangers through India to another company owned by John Liu, AB MA.<sup>296</sup> Moreover, companies managed by John Liu had been found to be transshipping Chinese hangers through Malaysia, Garment Cover and GL Paper.<sup>297</sup> These facts all helped to confirm our finding of a reasonable suspicion of evasion in the NOI.

Below we briefly discuss the points raised by interested parties with respect to different portions of the CEK Allegation.

a. *Trade Data*

**Comments:** CEK argues that the CEK Allegation assumes that the presence of imports from Thailand imported by a small number of importers is evidence of transshipment.<sup>298</sup> CEK posits that high Chinese dumping rates creates an incentive for the creation of a new factory in another country, like NWH in Thailand.<sup>299</sup> CEK asserts that if the same importer from another EAPA case is also the same importer responsible for the first imports from NWH, this is not evidence of circumvention.<sup>300</sup> CEK contends that importers seek product to fill demand from a range of sources, so an importer changing from one supplier to another supplier is not an indication of transshipment, it is merely an indication of the need for a source of supply for the importer's business.<sup>301</sup>

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<sup>291</sup> Section 165.5 of the EAPA Regulations indicates that CBP "will obtain information from its own files." The use of the word "will" in this section requires CBP to analyze its own files for information pertinent to this case, an example of which is other EAPA cases.

<sup>292</sup> See CBP letter, "Notice of Initiation of Investigation and Interim Measures – EAPA Cons. Case Number 7357," dated January 30, 2020 (7357 NOI); and CBP's Letter, "Notice of Determination as to Evasion – EAPA Cons. Case Number 7357," dated October 26, 2020 (7357 Final Determination).

<sup>293</sup> See 7357 Final Determination at 3 – 4.

<sup>294</sup> *Id.* Moreover, KSA did not answer the RFI in EAPA 7357, just as it did not in the instant investigation.

<sup>295</sup> See Thai Trade Data; and HSI Report.

<sup>296</sup> See 7379 NOI.

<sup>297</sup> See 7191 Final Determination.

<sup>298</sup> See CEK's Written Arguments at 18.

<sup>299</sup> *Id.* at 10.

<sup>300</sup> *Id.* at 16.

<sup>301</sup> *Id.* at 16 – 17.

M&B argues that shifting trade patterns, a history of transshipment of Chinese hangers through Thailand, evidence of transshipment of hangers from China to NWH, *Datamyne* data indicating AB MA, the company found to be transshipping hangers in EAPA 7379, was also importing hangers from Thailand, AB MA's owner having a history of transshipping, evidence of links between NWH and a Chinese hangers producer and that same producer involved in a transshipment scheme in EAPA 7379, reasonably suggested that CEK and the other three importers were evading the *Order*.<sup>302</sup>

**CBP's Position:** Imports from Thailand by a small number of importers provides a reasonable suspicion of evasion when taken together with the facts that: (a) there were no imports of hangers in Thailand before a prior EAPA investigation and after that investigation all imports stopped, and (b) when imports of hangers from Thailand resumed, CBP had already found a reasonable suspicion of evasion that the individuals involved were already engaged in evasion from other countries. While importers may seek product to fill demand from a range of sources, as CEK suggests, considering CEK is John Liu's fourth company CBP has found to be engaged in evasion, we would gently suggest performing a due diligence check to ensure any future suppliers are not transshipping products which have applicable AD/CVD duties. In sum, we find that trade data may provide a reasonable suspicion of evasion taken together with other facts on the record.

b. *Bill of Lading*

**Comments:** CEK notes the CEK Allegation indicates it contains compelling evidence that NWH's hangers were likely made in China through a reference to a confidential bill of lading.<sup>303</sup> CEK argues the absence of any similar documents submitted by M&B for the POI, or even for the period after NWH started production, is strong evidence of no evasion.

**CBP's Position:** A bill of lading which indicates NWH sourced hangers from China, even if before the POI, is evidence of NWH's trade patterns and would provide a reasonable suspicion that NWH may have sourced more hangers from China. CBP added corroborating information to the record such as [ document, number and country ], in addition to the Thai Trade Statistics which indicated NWH sourced [ number ] of hangers from China.<sup>304</sup> As a result, we find that the bill of lading referenced by CEK, along with other record evidence, provides a reasonable suspicion of evasion.

c. *Foreign Market Researcher Site Visit*

**Comments:** CEK argues that the foreign market research report in the CEK Allegation does not contain any public information, and the absence of public information leads CEK to conclude that the report does not contain any information about the operations of NWH.<sup>305</sup> CEK contends that although the nature of the market researcher may be confidential, the observations and

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<sup>302</sup> See M&B's Rebuttal Written Arguments at 6 – 7.

<sup>303</sup> See CEK's Written Arguments at 10.

<sup>304</sup> See CBP's Memorandum, "Adding Information to the Administrative Record of Consolidated EAPA Case 7501," dated December 18, 2020. This memorandum contains information gathered by CBP which indicates NWH sourced hangers from China. See also Thai Trade Statistics.

<sup>305</sup> See CEK's Written Arguments at 11.

conclusions of the market researcher would necessarily not be confidential.<sup>306</sup> CEK asserts that a market researcher would not be able to simply walk into, or up to, NWH unannounced, because NWH's landlord and NWH limit access to limit liability as NWH's operations use multiple machines and other industrial equipment that present danger.<sup>307</sup> Accordingly, CEK surmises that either the market researcher sought entry to NWH's location and was denied access or was one of a limited number of potential customers that had been approved to visit the facility.<sup>308</sup> As such, CEK contends that the market researcher has no actual first-hand knowledge as to NWH's operations and any speculation as to such operations is wholly unsupported and provides no basis for a "reasonable suspicion" of evasion.<sup>309</sup> CEK submits that TRLED can readily confirm this surmise as it has access to the actual market research report.

**CBP's Position:** The foreign market researcher report found in the CEK Allegation contains a variety of information about NWH, but is business confidential, thus, we cannot divulge specifics from it as CEK requests, nor comment upon CEK's speculations. In the NOI we noted the report indicated there was [ an amount of action ], which indicates a reasonable suspicion of evasion, as a company which was not engaged in evasion would likely have [ an amount of action ]. Again, the foreign market researcher report must be taken into context with the rest of the CEK Allegation in order to arrive at a reasonable suspicion of evasion. For example, the fact that NWH did not indicate to the Thai government that it would be engaged in manufacturing, but instead listed itself as a trading company, coupled with [ an amount of action ] at its location, provides a reasonable suspicion of evasion.

Because of the application of adverse inferences to the Importers and NWH, as well as our analysis of information provided by NWH, we need not rely upon the foreign market researcher report in the final determination.

d. *DBD Website*

**Comments:** CEK notes the CEK Allegation contains information on NWH through the Thai Ministry of Commerce's Department of Business Development (DBD) website.<sup>310</sup> CEK suggests that when the CEK Allegation states NWH has never submitted any financial data to the Thai Government, this creates the impression that this is due to some impropriety on NWH's part.<sup>311</sup> CEK speculates that the DBD website may not be the standard platform for Thai companies to submit their financials to the government, that it may not allow outside parties to view financial data on the platform, and it may allow companies to opt out of a public posting of financial data.<sup>312</sup> CEK argues that the information in the CEK Allegation indicates the response by NWH to the Thai government has been adequate, as its status is shown as operating, and does not indicate some kind of deficiency or similar language. According to CEK, the SIC code on the DBD website is self-selected and has not been verified by the Thai Government. CEK contends the SIC code appears to have been mis-selected, which is confirmed by the factory

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<sup>306</sup> *Id.*

<sup>307</sup> *Id.* at 14.

<sup>308</sup> *Id.*

<sup>309</sup> *Id.*

<sup>310</sup> *See* CEK's Written Arguments at 15.

<sup>311</sup> *Id.*

<sup>312</sup> *Id.*

license submitted by NWH and is not evidence of transshipment.<sup>313</sup> In addition, CEK counters M&B's argument that the factory license was issued after NWH began exporting hangers by noting that the NOI, citing the HSI Report, indicates NWH was producing hangers on that day, was dated before the license as well.<sup>314</sup> CEK notes that other Thai legal documents reflect the existence of NWH in June 2018, such as the Business License and Certification of Registration.<sup>315</sup>

M&B notes that in NWH's RFI Response, NWH submitted a "License for Factory Operations" which indicates that the factory started operating on November 4, 2019.<sup>316</sup> M&B observes that U.S. imports of hangers from NWH began in January 2019, according to the *Datamyne* data.<sup>317</sup> M&B argues that for at least 11 months and likely longer, NWH shipped hangers to the United States that had been produced somewhere besides in Thailand.

**CBP's Position:** With respect to the lack of financial information for NWH on the Thai government's DBD website, CBP did not rely upon this information in our analysis of the CEK Allegation discussed in the NOI. While CEK suggests several theories as to why there is no financial data from NWH on the website, we note these conjectures are not supported by record evidence and the record is silent with respect to this issue. As such, we find the arguments with respect to the lack of financial data on the DBD website to be moot.

With respect to the SIC code on the DBD website, we find that this information, along with other information in the CEK Allegation and information placed on the record by CBP, provides a reasonable suspicion of evasion. NWH selected SIC code 46109, which is described as "Wholesale on a fee or contract basis of a variety of goods."<sup>318</sup> The CEK Allegation explains the meaning of this code, which encompasses "activities of commission agents and all other wholesalers who trade on behalf of others."<sup>319</sup> This SIC code indicates it is for businesses to trade goods other companies have produced, and is not indicative of manufacturing activities.<sup>320</sup> The CEK Allegation also provided a code which is indicative of the manufacturing of steel wire products, code 2599, the manufacture of other fabricated metal products not elsewhere classified, including "manufacture of articles made of wire."<sup>321</sup> Although CEK speculates that the Thai government did not verify NWH's SIC code, there is no record evidence of this.

There is record information which indicates NWH may have selected a SIC not indicative of manufacturing because it was not engaged in manufacturing. As discussed above, Mr. Tu was already engaged in an evasion scheme involving the transshipment of Chinese hangers through India. While NWH may have registered as a business in June 2018,<sup>322</sup> and purchased equipment in 2018,<sup>323</sup> documentation from the Thai government clearly indicates the license for NWH's

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<sup>313</sup> *Id.* at 16, citing NWH's RFI Response at Exhibit 2.1.

<sup>314</sup> *See* CEK's Rebuttal Written Arguments at 14, citing M&B's Written Arguments at 11.

<sup>315</sup> *Id.*, citing NWH's RFI Response at Exhibits 2 & 3.

<sup>316</sup> *See* M&B's Written Arguments at 11, citing NWH's RFI Response at Exhibit 2.1.

<sup>317</sup> *Id.*, citing the CEK Allegation at Exhibit 12.

<sup>318</sup> *See* CEK Allegation at Exhibit 7.

<sup>319</sup> *Id.* at Exhibit 8.

<sup>320</sup> In this way the SIC code dovetails with the foreign market researcher's findings with respect to NWH's manufacturing activities.

<sup>321</sup> *See* CEK Allegation at Exhibit 8.

<sup>322</sup> *See* NWH's RFI Response at Exhibit 1.

<sup>323</sup> *Id.* at Exhibit 19.

factory to operate was issued by the Thai government in October 2019, and that operations began on November 4, 2019.<sup>324</sup> However, NWH's first shipment of hangers to the United States was in January 2019.<sup>325</sup> While HSI personnel witnessed NWH's machines operating in July 2019, they were told by NWH employees that NWH had just begun to operate its machines, despite having a large amount of inventory on hand.<sup>326</sup> As such, we find NWH's selection of its SIC code to provide a reasonable suspicion of evasion.

e. *Made in China Website*

**Comments:** CEK notes the CEK Allegation references the Made in China website in which a Chinese hanger company, Shaoxing Maosheng, advertises its hangers and states that its products are exported to the United States.<sup>327</sup> CEK contends this citation is presented without context to create the implication that Shaoxing Maosheng's profile is evidence that its product is entering the US *via* transshipment.<sup>328</sup> CEK argues that this account was created in 2015, several years before the alleged transshipment occurred and that the manufacturer has not logged onto this site for several years, which means that any reference to shipments to the U.S. must logically reference events that preceded NWH's formation.<sup>329</sup>

**CBP's Position:** In EAPA investigation 7379, CBP found that Shaoxing Maosheng transshipped its hangers through India to the United States, thus, the information on the Made in China website appears to be factually accurate.<sup>330</sup> We did not rely upon the Made in China website information in our analysis of the CEK Allegation discussed in the NOI. As such, we find the arguments with respect to this information to be moot.

*Summary for All Importers*

Based on the information provided by the Allegor and the record evidence discussed above, CBP finds that the hangers were actually made in China and that the Importers misrepresented Chinese-origin hangers on their imports into the United States by claiming the country of origin as Thailand. Moreover, the failure of the Importers to respond or fully respond to CBP's RFIs supports the conclusion that they did not act to the best of their abilities in complying with this investigation, permitting CBP to apply adverse inferences.

In relying upon an adverse inference for failure to respond to the RFIs, or failure to cooperate and comply to the best of one's ability with a request for information, CBP will look at the facts otherwise available. On the basis of the aforementioned analysis, CBP determines that substantial evidence exists demonstrating that the Importers misrepresented the country of origin on their imports of hangers by claiming Thailand rather than China as the country of origin. Substantial evidence supports the finding of evasion. As discussed above, the Allegor and CBP placed information on the record which indicates NWH purchased Chinese-origin hangers, the

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<sup>324</sup> See NWH's RFI Response at Exhibit 2.1

<sup>325</sup> See CEK Allegation at Exhibit 4. CEK's first entry of hangers from NWH was on [ date ]. See DC NTAC Report.

<sup>326</sup> See HSI Report which indicates NWH employees stated, "the machines were operated when a Chinese manager arrived not long ago."

<sup>327</sup> See CEK's Written Arguments at 17.

<sup>328</sup> *Id.*

<sup>329</sup> *Id.*

<sup>330</sup> See 7379 Final Determination.

Thai government indicated that NWH purchased Chinese-origin hangers, NWH admitted that it purchased semi-finished hangers, which Commerce ruled is covered merchandise and the Thai government provided information which indicates NWH could not begin production until November 2019, after the POI had begun. In addition, we note that multiple interested parties, or their owners/employees, have a history of engaging in evasion, as CBP found in other EAPA investigations.<sup>331</sup> Certain interested parties submitted falsified documents, *i.e.*, D&J in its CF28 response and NWH in response to raw material purchase documents. Lastly, NWH was provided multiple opportunities to answer its RFI questions, but failed to do so, including questions about the production and packing of specific entries of covered merchandise. As a result, the entries subject to this EAPA investigation will be subject to the China-wide entity rate for the *Order*.

### III. Actions Taken Pursuant to the Affirmative Determination of Evasion

In light of CBP's determination that the Importers 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 suspend or continue to suspend the liquidation for all entries imported by the Importers, that are subject to EAPA consolidated investigation 7501, and continue suspension 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,



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

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<sup>331</sup> As discussed earlier, EAPA conducted other investigations involving companies owned/managed by John Liu. *See* 7379 Final Determination, where a company owned by John Liu, AB MA, was found to be importing transshipped Chinese hangers from India, produced by Mr. Tu's Chinese company, Shaoxing Maosheng. In addition, two companies managed by John Liu, Garment Cover and GL Paper, were found to be transshipping Chinese hangers through Malaysia. *See* 7191 Final Determination. Also, [ name ], who appears to be an employee of NWH, worked for another Thai company, Everbright, which CBP found to be transshipping Chinese hangers through Thailand. *See* 7175 Final Determination. Moreover, KSA was found to be transshipping Vietnamese hangers through Laos. *See* 7357 Final Determination.