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Re: Enforce and Protect Act (“EAPA”) Case Number 7189; Wooden Bedroom Furniture from the People’s Republic of China: Antidumping Duty Order, 70 FR 329 (January 4, 2005); Aspects Furniture International, Inc.; 19 U.S.C. § 1517

Dear Messrs. Snyder and Schneiderman:

This is in response to a request for *de novo* administrative review of a determination of evasion dated May 18, 2020, made by the Trade Remedy & Law Enforcement Directorate (“TRLED”), Office of Trade (“OT”), U.S. Customs and Border Protection (“CBP”), pursuant to 19 U.S.C. § 1517(c), in Enforce and Protect Act (“EAPA”) Case Number 7189 (hereinafter referred to as the “May 18, Determination”).¹ The request for review, dated June 30, 2020, was submitted to CBP OT Regulations and Rulings (“RR”) by the Law Offices of Robert W. Snyder, on behalf of Aspects Furniture International, Inc. (“Aspects”) pursuant to 19 U.S.C. § 1517(f) and 19 CFR § 165.41(a).

I. Background

Inasmuch as the facts in this case were fully set forth in the May 18 Determination, we will not repeat the entire factual history herein.

In brief, according to the record evidence, on May 9, 2017, TRLED initiated a formal investigation under Title IV, section 421 of the Trade Facilitation and Trade Enforcement Act (“TFTEA”) of

¹ See Notice of Final Determination as to Evasion, dated May 18, 2020.

2015, in response to an allegation of evasion made by American Furniture Manufacturers Committee for Legal Trade (“AFMC”).

AFMC submitted its allegation of evasion to TRLED on April 6, 2017. TRLED acknowledged receipt of the allegation on April 18, 2017. With regards to the allegation, AFMC alleged that Aspects was misreporting the identities of the actual producers of wooden bedroom furniture (“WBF”) from the People’s Republic of China (“China”) on its entries in order to avoid the payment of antidumping (“AD”) duties on WBF from China, Case No. A-570-890.² Specifically, AFMC alleged that Aspects purchased both covered and non-covered merchandise from manufacturers subject to the China-wide AD duty rate on WBF but then identified a different manufacturer with either a low or zero percent AD duty rate on the entry documents in order to evade payment of the correct AD duties on the WBF.³

The allegation of evasion pertained to the antidumping duty order issued by the U.S. Department of Commerce (“Commerce”) on imports of WBF from China.⁴

Commerce defined the scope of the relevant AD duty order, in relevant part, as follows:⁵

[t]he products covered by the order are wooden bedroom furniture. Wooden bedroom furniture is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise is made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with or without non-wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished.

The subject merchandise includes the following items: . . . (2) *wooden headboards* for beds (whether stand-alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; (3) night tables, *night stands*, dressers, commodes, bureaus, mule chests, gentlemen’s chests, bachelor’s chests, lingerie chests, wardrobes, vanities, chessers, chifforobes, and wardrobe-type cabinets; (4) *dressers* with framed glass mirrors that are attached to, incorporated in, sit on, or hang over the dresser; (5) chests-on-chests, highboys, lowboys, chests of drawers, chests, door chests, chiffoniers, hutches and *armoires*⁶ . . .

² See Notice of initiation of an investigation and interim measures taken as to Aspects Furniture International, Inc. concerning evasion of the antidumping duty order on Wooden Bedroom Furniture from the People’s Republic of China, dated August 14, 2017 (“Notice of Initiation and Interim Measures”).

³ See *id.* at 2-3.

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

⁵ The footnotes that Commerce provided to give more detail on the covered merchandise have been omitted for any types of furniture that were not included in the subject entries.

⁶ An armoire is typically a tall cabinet or wardrobe (typically 50 inches or taller), with doors, and with one or more drawers (either exterior below or above the doors or interior behind the doors), shelves, and/or garment rods or other apparatus for storing clothes. Bedroom armoires may also be used to hold television receivers and/or other audiovisual entertainment systems.

...The scope of the order excludes the following items:...3) office furniture, such as desks, stand-up desks, computer cabinets, filing cabinets, *credenzas*, and bookcases;... (5) other non-bedroom furniture, such as television cabinets, cocktail tables, *end tables*, occasional tables, wall systems, book cases, and entertainment systems...

...Imports of subject merchandise are classified under subheadings 9403.50.9042 and 9403.50.9045 of the HTSUS as “wooden...beds” and under subheading 9403.50.9080 of the HTSUS as “other...wooden furniture of a kind used in the bedroom.” In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may be entered under subheadings 9403.90.7005 or 9403.90.7080 of the HTSUS. Subject merchandise may also be entered under subheadings 9403.50.9041, 9403.60.8081, 9403.20.0018, or 9403.90.8041. Further, framed glass mirrors may be entered under subheading 7009.92.1000 or 7009.92.5000 of the HTSUS as “glass mirrors...framed.” The order covers all wooden bedroom furniture meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.⁷

(Emphasis added to identify the merchandise found within the subject entries.)

On August 14, 2017, in accordance with 19 CFR § 165.24, CBP issued the Notice of Initiation and Interim Measures to all interested parties, notifying the parties of CBP’s decision to take interim measures based upon reasonable suspicion that Aspects entered covered merchandise into the customs territory of the United States through evasion.⁸ Prior to the receipt of the allegation from AFMC, CBP had been reviewing all of Aspects’ entries for the 2016 calendar year for potential avoidance of antidumping duties. Given the circumstances, CBP chose to align the scope of the EAPA investigation with that of the existing review. Therefore, the entries subject to the investigation were those entered for consumption, or withdrawn from a warehouse for consumption, from January 1, 2016 through the pendency of the investigation.⁹ TRLED concluded that, based on the record evidence, there was reasonable suspicion that Aspects had entered covered merchandise into the customs territory of the United States through evasion, and imposed interim measures.¹⁰

On December 22, 2017, as part of the EAPA investigation, CBP made a covered merchandise referral¹¹ to Commerce with regards to whether the following pieces of furniture are covered by the

⁷ See Scope Ruling on the Antidumping Duty Order on Wooden Bedroom Furniture from the People’s Republic of China: Enforce and Protect Act (EAPA) Investigation No. 7189, dated December 31, 2019.

⁸ See Notice of Initiation and Interim Measures. Available at: <https://www.cbp.gov/document/report/eapa-investigation-number-7189-aspects-furniture-international-inc-notice-initiation>.

⁹ See 19 CFR § 165.2. While the regulations set forth which entries CBP will specifically investigate, interim measures can be applied to all unliquidated entries. Although EAPA investigations typically cover those entries made within one year of the receipt of an allegation of evasion, the regulations provide CBP with discretion to investigate other entries of such covered merchandise.

¹⁰ The record evidence supporting the finding of reasonable suspicion is discussed in the Notice of Initiation and Interim Measures.

¹¹ See Scope Referral Request for merchandise under EAPA Investigation 7189, imported by Aspects Furniture International, Inc. and concerning evasion of the antidumping duty order on wooden bedroom furniture from the People’s Republic of China.

scope of the AD duty order on WBF from China: (1) a desk/console table with drawers; (2) certain TV credenzas/dressers; (3) a TV cabinet with a minibar; (4) a trunk storage unit; (5) certain console/custom dressers; and, (6) a bed bench base. The covered merchandise referral was revised by CBP and retransmitted to Commerce on July 24, 2019.¹² Commerce found that the desk/console table with drawers (G-200), the TV cabinet with a minibar (G-208L and G-208R), the trunk storage unit (G-207), and the bed bench base (GF-200) that Aspects imports are not covered by the scope of the AD order on WBF from China.¹³ However, Commerce found that the TV credenzas/dressers (G-206(1) and G-206(2)) and the console/custom dresser (GF-103L and GF103R) that Aspects imports are covered by the AD duty order on WBF from China.¹⁴ Commerce informed CBP of this determination on January 8, 2020. Thus, in addition to these items, CBP's investigation also covered other items that were clearly within the scope of the order.

On May 18, 2020, TRLED issued the May 18 Determination. TRLED found substantial evidence¹⁵ to demonstrate that Aspects evaded AD duties owed on Chinese-origin WBF entered into the customs territory of the United States by using a number of tactics, including, but not limited to: misdescribing the merchandise to have it appear as though it was not covered by the AD duty order; undervaluation of the covered merchandise; and, inclusion of merchandise produced by unknown manufacturers. Therefore, either incorrect or no cash deposits were applied to the merchandise.¹⁶

II. Discussion

A. Administrative Review and Standard of Review

Pursuant to 19 U.S.C. § 1517(f)(1) and 19 CFR § 165.45, upon a request for administrative review, CBP will apply a *de novo* standard of review and will render a determination appropriate under the law according to the specific facts and circumstances on the record. For that purpose, CBP will review the entire administrative record upon which the initial determination was made, the timely and properly filed request(s) for review and responses, and any additional information that was received pursuant to § 165.44. The administrative review will be completed within 60 business days of the commencement of the review.

¹² See Supplement to Scope Referral Request for certain wooden bedroom furniture under EAPA Investigation 7189, imported by Aspects Furniture International, Inc.

¹³ See Scope Ruling on the Antidumping Duty Order on Wooden Bedroom Furniture from the People's Republic of China: Enforce and Protect Act (EAPA) Investigation No. 7189, dated December 31, 2019.

¹⁴ *Id.*

¹⁵ Substantial evidence is not defined in the statute. The U.S. Court of Appeals for the Federal Circuit has stated that "substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *A.L. Patterson, Inc. v. United States*, 585 Fed. Appx. 778, 781-82 (Fed. Cir. 2014) (quoting *Consol. Edison Co. of N.Y. v. NLRB*, 305 U.S. 197, 229 (1938)).

¹⁶ See May 18 Determination, available at: <https://www.cbp.gov/document/report/notice-final-determination-evasion-eapa-case-number-7189>.

B. Law

Title 19 U.S.C. § 1517(c)(1) provides, in relevant part, as follows:

(1) Determination of Evasion

(A) In general

Except as provided in subparagraph (B), not later than 300 calendar days after the date on which the Commissioner initiates an investigation under subsection (b) with respect to covered merchandise, the Commissioner shall make a determination, based on substantial evidence, with respect to whether such covered merchandise was entered into the customs territory of the United States through evasion.

The term evasion is defined in 19 U.S.C. § 1517(a)(5)(A), as follows:

(5) Evasion

(A) In general

Except as provided in subparagraph (B), the term “evasion” refers to entering covered merchandise into the customs territory of the United States 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.

See also 19 CFR § 165.1.

Examples of evasion could include, but are not limited to, the misrepresentation of the merchandise’s true country of origin (e.g., through false country of origin markings on the product itself or false sales), false or incorrect shipping and entry documentation, or misreporting of the merchandise’s physical characteristics.¹⁷

Covered merchandise is defined as “merchandise that is subject to a CVD order issued under section 706, Tariff Act of 1930, as amended (19 U.S.C. 1671e), and/or an AD duty order issued under section 736, Tariff Act of 1930, as amended (19 U.S.C. 1673e).”¹⁸

Therefore, CBP must determine whether a party has entered merchandise that is subject to an AD duty or countervailing duty (“CVD”) order into the United States for consumption by means of any document or electronically transmitted data or information, written or oral statement, or act, that is

¹⁷ *See Investigation of Claims of Evasion of Antidumping and Countervailing Duties, Interim Regulations*, 81 FR 56477, 56478 (August 22, 2016).

¹⁸ *See* 19 CFR § 165.1.

material and false, or any omission that is material, that resulted in the reduction or avoidance of applicable AD or CVD cash deposits or duties being collected on such merchandise.

C. Aspects' Arguments

Aspects requests that we reverse the May 18 Determination, arguing that Aspects did not enter covered merchandise in the United States through evasion as the imported goods are either not covered by the AD duty order or are covered but any discrepancy in the declarations have not resulted in any loss of revenue. Therefore, Aspects did not engage in evasion.¹⁹

Aspects preliminarily argues that CBP's interpretation of 19 CFR § 165.2, purportedly allowing EAPA investigations to be retroactive, is erroneous and not in accordance with the law.²⁰ Aspects argues that any entries made prior to August 22, 2016, the effective date of EAPA, cannot be part of the EAPA investigation and this administrative review, as doing so would subvert congressional intent. Aspects further argues that it was deprived of its procedural due process rights provided by the U.S. Constitution as Aspects was not provided with access to the business confidential versions of documents cited by CBP in support of the finding of evasion. Aspects notes that the regulations implementing EAPA do not provide a mechanism to allow parties access to business confidential documents, which limits a party's ability to defend itself. As Commerce has such a mechanism in the context of AD/CVD investigations, there is no reason for EAPA investigations to treat parties differently. Additionally, Aspects argues that it is also deprived of its procedural due process rights, given the combination of the EAPA investigation with a regulatory audit. By CBP's doing so, Aspects claims that it has been deprived of certain protections and the regulatory audit is being conducted without regard to the specific formalities usually involved in such an action.

Aspects also takes issue with CBP's reliance on the claim of evidence destruction which occurred during the verification visit at Aspects' Nantong satellite office. As the CBP employee who allegedly witnessed this destruction is not identified, Aspects claims this accusation is based upon inadmissible hearsay and the report does not otherwise specifically describe the circumstances of the alleged destruction. Therefore, this incident cannot be used to support the May 18 Determination of evasion.

With regard to the determination of evasion, Aspects argues that CBP has failed to prove the third element required to find evasion occurred: that the actions of the importer resulted in a reduction or avoidance of applicable AD duties as required pursuant to 19 U.S.C. § 1517(a)(5)(A) and 19 CFR § 165.1. Aspects supports this argument by noting specific examples of entries found within the administrative record. Two manufacturers participated in the verification conducted by CBP. One manufacturer, Nantong Fuhuang Furniture Co. Ltd ("Nantong Fuhuang"), is subject to the China-wide AD duty rate of 216.01 percent, which is the highest possible AD duty rate. Therefore, if any of those entries from Nantong Fuhuang included covered merchandise from other manufacturers, the highest possible AD duty rate was paid and there was no reduction or avoidance of applicable AD duties. The other manufacturer, Wuxi Yushea Furniture Co. Ltd ("Wuxi Yushea"), is subject to

¹⁹ As part of the Request for Administrative Review, Aspects incorporated those arguments made in its Written Argument submitted during the course of the EAPA investigation, which both expound upon arguments made in the Request for Administrative Review and include different arguments regarding the lawfulness of AFMC's allegation.

²⁰ For a list of entries which Aspects argues must be excluded from CBP's administrative review (at a minimum), *see* Written Argument at 20.

a zero percent duty rate. The verification found that Wuxi Yushea was capable of producing the quantity of goods it exported to the United States. Additionally, Aspects asserts that CBP has acknowledged that Wuxi Yushea is the manufacturer of the furniture by according deference to their invoice descriptions. Therefore, even if some of the merchandise was incorrectly described, no AD duties were owed, given the zero percent AD duty rate applied to Wuxi Yushea, and thus, there was no reduction or avoidance of applicable AD duties.

D. AFMC's Arguments

AFMC requests that we affirm the May 18 Determination of evasion as there is substantial evidence that Aspects made false statements which resulted in either underpayment or avoidance of AD duties owed on the entries.²¹ AFMC does not elaborate on the false statements, as the activities of Aspects which led to these false statements are detailed in the May 18 Determination and include efforts by Aspects' employees at verification to falsify, conceal, and destroy relevant documents. AFMC further argues that Aspects cannot show that a loss of duties did not occur, as CBP was unable to verify that Wuxi Yushea was both the manufacturer and the exporter for the entries at issue. Without that verification, Wuxi Yushea would not be entitled to receive the zero percent AD duty rate.

AFMC argues that Aspects' argument that EAPA investigations cannot cover entries made prior to the enactment of the statute is incorrect, since CBP has always had the authority to enforce the payment of AD duties owed on WBF from China. Additionally, AFMC states that there were no due process violations, since the statutory provisions do not establish a process for parties to have access to business confidential information through a mechanism such as an Administrative Protective Order ("APO"). Moreover, to the extent that the May 18 Determination is based on confidential information, it is based on Aspects' own information. Aspects also fails to explain with any specificity how it was prejudiced in its ability to defend itself because of the lack of APO procedures. Lastly, per AFMC, Aspects complains that CBP should not have combined this EAPA investigation with another (already ongoing) enforcement action; however, this argument does not identify a due process violation.

E. Administrative Review Analysis

The term "evasion" under the EAPA refers to entering covered merchandise into the customs territory of the United States 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 AD duties or CVD being reduced or not being applied with respect to the merchandise.²²

The term "covered merchandise" means merchandise that is subject to a CVD order issued under section 706, Tariff Act of 1930, as amended (19 U.S.C. § 1671e), and/or an AD order issued under section 736, Tariff Act of 1930, as amended (19 U.S.C. § 1673e).²³

²¹ Given that Aspects had incorporated by reference its Written Argument submitted during the EAPA investigation, AFMC chose to do the same and pointed to the page numbers of its Written Arguments and Response to Written Arguments that elaborated on the claims made in the Response to Aspects' Request for Administrative Review.

²² See 19 U.S.C. § 1517(a)(5)(A).

²³ See 19 U.S.C. § 1517(c)(1)(A) and 19 CFR § 165.1.

Preliminarily, the purpose of this *de novo* review is to analyze the May 18 Determination of evasion and whether substantial record evidence supports that determination. The purported unlawfulness of CBP's inclusion of entries that occurred prior to the effective date of EAPA and whether Aspects has been deprived of procedural due process as a result of alleged deficiencies within the implementing regulations of EAPA and the combination of this EAPA investigation with a regulatory audit are outside the purview of this *de novo* review. We note, however, that many of the entries subject to the investigation occurred after EAPA became effective.²⁴ Additionally, of the 28 entries examined as part of the verification, only 3 entered the United States prior to the effective date of EAPA.²⁵ Our discussion of specific entries herein relies only on entries made after the effective date of EAPA. We further note that the EAPA regulations specifically provide CBP with authority to conduct verifications, which are information traces similar to audits.²⁶

A review of the administrative record shows that, to the extent they are not excluded pursuant to Commerce's Scope Ruling,²⁷ the furniture items involved in these importations are covered merchandise, as they are pieces of WBF from China, including, but not limited to, nightstands, dressers, armoires, and headboards. Indeed, Aspects has not disputed that the importations consist of covered merchandise. Aspects has also not disputed that the entry documents may have contained false information. Rather, Aspects argues that, even if the covered merchandise was entered by means of false and material statements or omissions, there has been no loss of AD duties as a result and, thus, no evasion occurred. We find this argument unpersuasive.

The administrative record in this case is replete with examples of the different ways in which Aspects manipulated shipments of covered merchandise in ways that would affect the AD duties applied to each entry and would therefore indicate evasion. The May 18 Determination summarized many of the ways in which the entry packages submitted by Aspects did not accurately reflect what the shipments contained, who manufactured the goods, and their correct values.²⁸ Aspects has only focused on one piece of evidence which arose during the verification—namely, the destruction of evidence by an employee during the visit to Aspects' Nantong satellite office²⁹—to discredit the finding of evasion. Even without this destruction of evidence, the administrative record *still* contains substantial evidence of actions taken by Aspects to underpay or avoid the payment of AD duties.

²⁴ EAPA became effective on August 22, 2016. *See Investigation of Claims of Evasion of Antidumping and Countervailing Duties*, 81 FR at 56477.

²⁵ *See* Verification Report, page 3.

²⁶ *See* 19 U.S.C. § 1517(c)(2)(B) and 19 CFR § 165.25.

²⁷ *See* Scope Ruling on the Antidumping Duty Order on Wooden Bedroom Furniture from the People's Republic of China: Enforce and Protect Act (EAPA) Investigation No. 7189, dated December 31, 2019.

²⁸ *See* May 18 Determination, pages 4-8.

²⁹ Additionally, Aspects included new evidence in the form of affidavits from two employees regarding this incident as exhibits to the Request for Administrative Review. This evidence was not considered as part of this *de novo* review as the only additional written information which can be included is that requested by RR during the course of this administrative review pursuant to 19 CFR § 165.44. RR did not request additional information and is limiting this review only to those documents on the administrative record.

Briefly, it is clear from the record that Aspects created separate invoices and packing lists for CBP purposes (that is, for purposes of importation/entry of the goods into the United States). The employees at Aspects' Nantong satellite office admitted to such practices during the verification.³⁰ Invoices provided by the two manufacturers who participated in the verification, Wuxi Yushea and Nantong Fuhuang, both in response to CBP's requests for information and as part of the verification, did not match the invoices submitted by Aspects to CBP as part of the entry packages.³¹ The fonts and layouts of the invoices are different and also contained misdescribed and/or additional merchandise that was not found on invoices provided by the two manufacturers for the same entry.³² These misdescriptions were done in such a way to make it seem as though covered merchandise (*i.e.*, described by Wuxi Yushea as "nightstand") was not covered by the AD duty order (*i.e.*, described by Aspects as "end table").³³ Moreover, during the investigation, TRLED discovered that entry no. XXX-XXXX5073 (which was dated after the effective date of EAPA) was filed as a type 01 consumption entry³⁴ when the shipment contained in-scope WBF, specifically headboards. These headboards were misdescribed in the entry package as wall panels, which would not have been subject to AD duties.³⁵ The photographs included with the documents provided during the investigation clearly show a headboard.

Commingling also occurred with shipments bound for Aspects. The manufacturers told CBP officials during the verification that containers bound for Aspects had arrived at their facilities partially filled with goods from other manufacturers and that this occurred on multiple occasions. At the same time, the verification revealed that Aspects would create the loading plans for the containers that arrived at both Wuxi Yushea and Nantong Fuhuang, which the manufacturers followed.³⁶ Despite the presence of goods manufactured by different companies, Aspects would only declare one manufacturer, either Wuxi Yushea or Nantong Fuhuang, on the entry documents.³⁷

Furthermore, CBP's comparison of the sales and shipping documents provided in the entry packages with those produced by the manufacturers revealed different weights and values for the merchandise. The number of cartons and weight of the shipment found on the manufacturer's export form were lower than on the bill of lading provided to CBP by Aspects. As this would affect the value of the shipment, at times, the unit prices of the merchandise were adjusted downward so that the documents provided by the manufacturer still showed the same value as those provided by Aspects.³⁸ The record also shows that Aspects had, at times, additional involvement in Wuxi Yushea's manufacture of this merchandise; however, there is no evidence that Aspects included any assists it provided to either manufacturer in the declared value of the merchandise as required pursuant to 19 CFR § 141.86.³⁹

³⁰ See Verification Report, page 6.

³¹ See *id.* at 6-8.

³² See *id.*

³³ See *id.* at 10.

³⁴ A type 01 consumption entry is not permitted to be used for goods subject to an AD or CVD order; CBP requires type 03 to be used instead. Hence, use of a type 01 entry is in itself a materially false statement.

³⁵ See Notice of Initiation and Interim Measures at 5. See also Aspects Entry Package Submission Sample 35.

³⁶ See *id.* at 6.

³⁷ See *id.* at 4-6.

³⁸ See *id.* at 8-9 and 14-15.

³⁹ See *id.* at 11-13.

Aspects relies upon the AD duty rate applied to each of the manufacturers to purportedly show that no loss of AD duties occurred. This is due to Wuxi Yushea's being granted a zero percent AD duty rate as an exporter/producer and Nantong Fuhuang's being subject to the China-wide AD duty rate of 216.01 percent, which is the highest rate possible. Therefore, if Wuxi Yushea manufactured all of the items that Wuxi Yushea exported to the United States, Aspects argues that no revenue is lost, given the zero percent AD duty rate and, if Nantong Fuhuang added items produced by other manufacturers to its shipments, no revenue is lost, as the highest AD duty rate is paid. Aspects ignores a substantial amount of the record evidence in order to draw such a conclusion.

The problems with the entries Aspects uses to support its position were not limited to simply misdescriptions of merchandise manufactured by Wuxi Yushea or additional merchandise added to the merchandise produced by Nantong Fuhuang. Rather, entry no. XXX-XXXX1238 (which was dated after the effective date of EAPA) from Nantong Fuhuang *also* had discrepancies in the weight and value declared by Aspects, not just the addition of goods from other manufacturers.⁴⁰ The price per unit was also lowered.⁴¹ Therefore, if the goods are undervalued, and AD duties are deposited and assessed on an *ad valorem* basis (as is the case with WBF), the full amount of AD duties owed was not paid and evasion has occurred. Additionally, there were weight and value discrepancies discovered with three of the five entries from Wuxi Yushea that Aspects uses to support the argument that no AD duties were unpaid (all three of these entries were also dated after the effective date of EAPA).⁴² Officials at Wuxi Yushea acknowledged that some containers had arrived at their manufacturing facility that already contained some goods going to Aspects, but could not recall which shipments those were.⁴³ Therefore, if the shipment weighed more than what was noted by Wuxi Yushea and Aspects has a practice of bringing partially loaded containers to Wuxi Yushea, this signifies commingling of merchandise that is not entitled to Wuxi Yushea's zero percent AD duty rate and shows evasion occurred, since AD duties were not paid.

There are also indications within the record that Aspects, for at least some of the entries, controlled the export process behind the scenes.⁴⁴ It is not clear which entries these were; however, in order to qualify for the zero percent AD duty rate, Wuxi Yushea needed to both produce and export the goods. The record evidence does not support such a conclusion given Aspects' involvement in procuring and paying for freight forwarders through the use of its Nantong satellite office. Aspects and Wuxi Yushea have not demonstrated that the zero percent AD duty rate was actually applicable to these shipments, and, therefore, the total amount of AD duties were not paid and evasion has occurred.

⁴⁰ See *id.* at 9.

⁴¹ See *id.* at 14.

⁴² See *id.* at 9.

⁴³ See *id.* at 6.

⁴⁴ See *id.* at 15-18.

III. Decision

Based upon our *de novo* review of the administrative record in this case, including the timely and properly filed request for administrative review and response, the May 18 Determination of evasion under 19 U.S.C. § 1517(c) is AFFIRMED.

This decision does not preclude CBP or other agencies from pursuing additional enforcement actions or penalties. Pursuant to 19 CFR § 165.46(a), this final administrative determination is subject to judicial review pursuant to section 421 of the EAPA.

Sincerely,

Jacinto P. Juarez, Jr.
Acting Chief, Penalties Branch, Regulations & Rulings
Office of Trade
U.S. Customs & Border Protection

Approved by:

Alice A. Kipel
Executive Director, Regulations & Rulings
Office of Trade
U.S. Customs & Border Protection