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Re: Enforce and Protect Act (“EAPA”) Case Number 7311; *Certain Hardwood Plywood from the People’s Republic of China: Antidumping Duty Order*, 83 FR 504 (January 4, 2018) and *Certain Hardwood Plywood from the People’s Republic of China: Countervailing Duty Order*, 83 FR 513 (January 4, 2018); Concannon Corporation; 19 U.S.C. § 1517

Dear Mr. Grimson, Ms. Cramer, and Mr. Weir:

This is in response to a request for *de novo* administrative review of a determination of evasion dated May 11, 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 7311 (hereinafter referred to as the “May 11 Determination”).<sup>1</sup> The request for review, dated June 23, 2020, was submitted to CBP OT Regulations and Rulings (“RR”) by Mowry & Grimson, PLLC, on behalf of Concannon Corporation (“Concannon”), 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 11 Determination, we will not repeat the entire factual history herein.

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<sup>1</sup> See Notice of Final Determination as to Evasion, dated May 11, 2020.

In brief, according to the record evidence, on July 9, 2019, TRLED initiated an investigation under Title IV, section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, in response to an allegation of evasion.

On May 10, 2019, Apec International LLC (“Apec”) filed an EAPA allegation against Concannon. CBP acknowledged receipt of the properly filed allegation on June 17, 2019. Apec alleged that Concannon was importing Chinese-origin hardwood plywood (“plywood”) into the United States by transshipment through Vietnam to evade the payment of antidumping and countervailing (“AD/CV”) duties on plywood from the People’s Republic of China (“China”), Case Nos. A-570-051 and C-570-052.<sup>2</sup>

The allegation of evasion pertained to the antidumping and countervailing duty orders issued by the U.S. Department of Commerce (“Commerce”) on imports of certain hardwood plywood from China.<sup>3</sup>

Commerce defined the scope of the relevant AD/CV duty orders, in part, as follows:

The merchandise subject to this investigation is hardwood and decorative plywood, and certain veneered panels as described below. For purposes of this proceeding, hardwood and decorative plywood is defined as a generally flat, multilayered plywood or other veneered panel, consisting of two or more layers or plies of wood veneers and a core, with the face and/or back veneer made of nonconiferous wood (hardwood) or bamboo. The veneers, along with the core may be glued or otherwise bonded together. Hardwood and decorative plywood may include products that meet the American National Standard for Hardwood and Decorative Plywood, ANSI/HPVA HP-1-2016 (including any revisions to that standard).

For purposes of this investigation a “veneer” is a slice of wood regardless of thickness which is cut, sliced or sawed from a log, bolt, or flitch. The face and back veneers are the outermost veneer of wood on either side of the core irrespective of additional surface coatings or covers as described below.

The core of hardwood and decorative plywood consists of the layer or layers of one or more material(s) that are situated between the face and back veneers. The core may be composed of a range of materials, including but not limited to hardwood, softwood, particleboard, or medium-density fiberboard (MDF).

All hardwood plywood is included within the scope of this investigation regardless of whether or not the face and/or back veneers are surface coated or covered and whether or not such surface coating(s) or covers obscures the grain, textures, or markings of the wood. Examples of surface coatings and covers include, but are not limited to: Ultra violet light cured polyurethanes; oil or oil-modified or water based polyurethanes; wax; epoxyester finishes; moisture-cured urethanes; paints; stains;

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<sup>2</sup> See Notice of Initiation of Investigation and Interim Measures, dated October 15, 2019.

<sup>3</sup> See *Certain Hardwood Plywood from the People’s Republic of China: Antidumping Duty Order*, 83 FR 504 (January 4, 2018); see also *Certain Hardwood Plywood from the People’s Republic of China: Countervailing Duty Order*, 83 FR 513 (January 4, 2018).

paper; aluminum; high pressure laminate; MDF; medium density overlay (MDO); and phenolic film. Additionally, the face veneer of hardwood plywood may be sanded; smoothed or given a “distressed” appearance through such methods as hand-scraping or wire brushing. All hardwood plywood is included within the scope even if it is trimmed; cut-to-size; notched; punched; drilled; or has underwent other forms of minor processing.

All hardwood and decorative plywood is included within the scope of this investigation, without regard to dimension (overall thickness, thickness of face veneer, thickness of back veneer, thickness of core, thickness of inner veneers, width, or length). However, the most common panel sizes of hardwood and decorative plywood are 1219 x 1829 mm (48 x 72 inches), 1219 x 2438 mm (48 x 96 inches), and 1219 x 3048 mm (48 x 120 inches).

Subject merchandise also includes hardwood and decorative plywood that has been further processed in a third country, including but not limited to trimming, cutting, notching, punching, drilling, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope product.

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Imports of hardwood plywood are primarily entered under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4412.10.0500; 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.0620; 4412.31.0640; 4412.31.0660; 4412.31.2510; 4412.31.2520; 4412.31.2610; 4412.31.2620; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4075; 4412.31.4080; 4412.31.4140; 4412.31.4150; 4412.31.4160; 4412.31.4180; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.5175; 4412.31.5235; 4412.31.5255; 4412.31.5265; 4412.31.5275; 4412.31.6000; 4412.31.6100; 4412.31.9100; 4412.31.9200; 4412.32.0520; 4412.32.0540; 4412.32.0565; 4412.32.0570; 4412.32.0620; 4412.32.0640; 4412.32.0670; 4412.32.2510; 4412.32.2525; 4412.32.2530; 4412.32.2610; 4412.32.2630; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.3235; 4412.32.3255; 4412.32.3265; 4412.32.3275; 4412.32.3285; 4412.32.5600; 4412.32.3235; 4412.32.3255; 4412.32.3265; 4412.32.3275; 4412.32.3285; 4412.32.5700; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3141; 4412.94.3161; 4412.94.3175; 4412.94.4100; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5115; and 4412.99.5710.

Imports of hardwood plywood may also enter under HTSUS subheadings 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.10.9000; 4412.94.5100; 4412.94.9500; and 4412.99.9500. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

On October 15, 2019, in accordance with 19 CFR § 165.24, CBP issued the Notice of Initiation of Investigation and Interim Measures (“Notice of Initiation”) to all interested

parties, notifying the parties of CBP's decision to take interim measures based upon reasonable suspicion that Concannon entered covered merchandise into the customs territory of the United States through evasion.<sup>4</sup> The entries subject to the investigation were those entered for consumption, or withdrawn from a warehouse for consumption, from June 18, 2018, one year before receipt of the allegation, through the pendency of the investigation.<sup>5</sup> TRLED included seven subject entries when requesting information from Concannon during the course of the investigation.<sup>6</sup> TRLED concluded that, based on the record evidence, there was reasonable suspicion that Concannon had entered covered merchandise into the customs territory of the United States through evasion, and, therefore, imposed interim measures.<sup>7</sup>

On May 11, 2020, TRLED issued the May 11 Determination. TRLED found substantial evidence<sup>8</sup> to demonstrate that plywood entered into the customs territory of the United States by Concannon was Chinese-origin, and transshipped through Vietnam. No AD/CV duty cash deposits had been made for entries of the merchandise since the importer claimed Vietnam as the country of origin and the merchandise was declared as entry type 01 (consumption) instead of entry type 03.<sup>9</sup>

## 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 19 CFR § 165.44. The administrative review will be completed within 60 business days of the commencement of the review.

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<sup>4</sup> See Notice of Initiation of Investigation and Interim Measures. Available at: <https://www.cbp.gov/sites/default/files/assets/documents/2020-Mar/EAPA%2%A0Investigation%207311.pdf>.

<sup>5</sup> 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.

<sup>6</sup> See Request for Information to Importer with regard to Enforce and Protect Act (EAPA) investigation of whether Concannon Corporation has evaded the Antidumping and Countervailing Duty Orders on certain hardwood plywood products from the People's Republic of China, A-570-051 and C-570-052, with entries of merchandise into the United States, Appendix.

<sup>7</sup> The record evidence supporting the finding of reasonable suspicion is discussed in the Notice of Initiation and Interim Measures.

<sup>8</sup> 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)).

<sup>9</sup> See May 11 Determination. Available at: <https://www.cbp.gov/sites/default/files/assets/documents/2020-May/TRLED%20-%20NOTICE%20OF%20FINAL%20DETERMINATION%20%28508%20compliant%29%20-%20MAY%2011%2C%202020%20-%20%287311%29%20-%20PV.pdf>.

## 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), 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.<sup>10</sup>

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 order issued under section 736, Tariff Act of 1930, as amended (19 U.S.C. 1673e).”<sup>11</sup>

Therefore, CBP must determine whether a party has entered merchandise that is subject to an AD or CV duty 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 material and false, or any omission that is material, that resulted in the reduction or

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<sup>10</sup> *See Investigation of Claims of Evasion of Antidumping and Countervailing Duties, Interim Regulations*, 81 Fed. Reg. 56477, 56478 (August 22, 2016).

<sup>11</sup> *See* 19 CFR § 165.1.

avoidance of applicable AD or CVD cash deposits or duties being collected on such merchandise.

In the event that an alleging party, an importer, or a foreign producer or exporter of the covered merchandise fails to cooperate and comply to the best of its ability in responding to CBP's requests for information, adverse inferences may be applied by selecting among other facts available within the administrative record when making a determination as to evasion pursuant to 19 CFR § 165.27.

### **C. Concannon's Arguments**

Concannon requests that we reverse the May 11 Determination of evasion, arguing that Concannon did not enter covered merchandise into the United States through evasion because the subject entries of hardwood plywood imported into the United States by Concannon were manufactured in Vietnam.

Concannon first argues that significant procedural and constitutional deficiencies require reversal of the determination of evasion. First, it claims that the investigation itself was unlawfully initiated because the alleging party, Apec, misrepresented itself as a wholesaler<sup>12</sup> when submitting the initial allegation to TRLED when Apec is, in fact, an importer of plywood. When Concannon challenged Apec's claimed interested party status as a wholesaler, Apec responded that it is an importer.<sup>13</sup> As such, the investigation should have been terminated upon this finding as Apec did not properly file a complete EAPA allegation against Concannon since it did not accurately portray how Apec is an interested party.

Second, Concannon argues that TRLED improperly cancelled the verification trip to the manufacturer and its suppliers scheduled for the middle of February 2020. Concannon claims that the reasons provided by TRLED for cancelling the verification are without merit as much of the information that TRLED says was not provided is found within the multiple documents that Concannon, the manufacturer, and the four raw material suppliers provided in response to the requests for information. The purpose of a verification visit is to verify the accuracy of the information provided to TRLED. Concannon, the manufacturer, and the four raw material suppliers provided a multitude of records in response to TRLED's requests for information. Because TRLED decided to cancel the verification trip, Concannon argues that CBP is required to assume the accuracy of those responses since the parties fully cooperated in providing the relevant information, as the Court of International Trade ("CIT") has emphasized in cases involving government agencies electing not to verify submissions.<sup>14</sup>

Third, Concannon argues that TRLED's cancellation of the verification trip deprived Concannon of its right to due process as Concannon was given no opportunity to be heard

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<sup>12</sup> See 19 U.S.C. § 1517(a)(6)(A)(ii). A wholesaler as an interested party sells a domestically produced like product to the covered merchandise.

<sup>13</sup> Concannon also alleges that a copy of this response by Apec was never provided to Concannon as required pursuant to 19 CFR § 165.23(c)(1). See Request for Administrative Review, page 5.

<sup>14</sup> See *China Kingdom Imp. & Exp. Co. v. United States*, 507 F. Supp. 2d 1337, 1364 n.13 (Ct. Int'l Trade 2007) (citing *Timken U.S. Corp. v. United States*, 434 F.3d 1345, 1354 (Fed. Cir. 2006)). See Request for Administrative Review, page 13.

on the cancellation decision. Cancelling the verification trip imposed the adverse consequence of the determination of evasion on Concannon without providing a mechanism that would allow Concannon to counter such a finding.

Fourth, Concannon argues that its lack of access to the business confidential versions of the May 11 Determination and the Notice of Initiation, as well as Apec's allegations and all other initiating documents, meant that Concannon could not fully respond to the allegations and claimed deficiencies found within the record. This placed Concannon at an unfair disadvantage as it does not know upon what information TRLED relied when making the affirmative finding of evasion.

Concannon also argues that TRLED improperly applied adverse inferences. Concannon claims that it was improper for TRLED to find that the manufacturer and its raw material suppliers did not respond to the Requests for Information to the best of their abilities as required by 19 C.F.R. § 165.6(a). Together with Concannon, the manufacturer and the raw material suppliers provided TRLED with thousands of pages of documents, and responses to two sets of questionnaires, and the manufacturer hosted an initial site visit and remained willing to host a verification trip. Concannon believes that TRLED is holding the smaller, more informal raw material suppliers, who are two steps removed from Concannon, to an impossible standard given they do not maintain records similar to those of larger, more sophisticated companies. Furthermore, Concannon argues that TRLED erred in using inaccurate information as "facts available" when making these adverse inferences given that Apec's allegation videos have been proven unreliable. Although these allegation videos have not been made available to Concannon, the information made public about what these videos contain has been refuted by both the documents/videos provided by Concannon and what was observed by CBP during the initial site visit.

Concannon argues that the record shows that the plywood it imported into the United States is not covered merchandise as the record shows that the Vietnamese manufacturer had the capability to produce plywood in the amount exported by Concannon. The responses to the Requests for Information prove this. While some of the raw materials used by the manufacturer may have been sourced by the raw materials suppliers from China, this would not mean that such plywood manufactured in Vietnam of those materials would be of Chinese origin for AD/CV duty purposes. Plywood requires a minimum of three layers and none of the raw material suppliers provided anything more than a two-ply sheet, which would not have qualified as covered merchandise. Nothing in the record indicates that plywood was transshipped to the United States from China through Vietnam by the manufacturer.

Finally, Concannon argues that, given the amount of production completed by the manufacturer in Vietnam, if TRLED had any question as to whether this plywood was considered "covered merchandise," advice from Commerce must be sought. A scope referral regarding the use of two-ply sheets from China in producing plywood in Vietnam is currently pending in a different EAPA investigation.<sup>15</sup> Commerce is also currently in the

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<sup>15</sup> See Scope Referral Request for Merchandise under EAPA Cons. Investigation 7252 (August 23, 2019). Available at: <https://www.cbp.gov/sites/default/files/assets/documents/2020->

midst of an anti-circumvention inquiry regarding whether two-ply sheets from China are subject to AD/CV duties.<sup>16</sup> Therefore, TRLED's issuance of the May 11 Determination was, at best, premature, as Commerce's inquiries remain ongoing.

Based on the foregoing, Concannon argues that evasion did not occur and the May 11 Determination must be reversed.

#### **D. Apec's Arguments**

Apec did not submit a response to Concannon's request for administrative review.

#### **E. Administrative Review Analysis**

The term "evasion" under 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 antidumping or countervailing duties being reduced or not being applied with respect to the merchandise.<sup>17</sup>

The term "covered merchandise" means merchandise that is subject to a countervailing duty order issued under section 706, Tariff Act of 1930, as amended (19 U.S.C. § 1671e), and/or an antidumping duty order issued under section 736, Tariff Act of 1930, as amended (19 U.S.C. § 1673e).<sup>18</sup>

"Substantial evidence" is not defined by statute. However, the "substantial evidence" standard has been reviewed by the courts in relation to determinations by other agencies. "Substantial evidence requires more than a mere scintilla, but is satisfied by something less than the weight of the evidence."<sup>19</sup> While some evidence may detract from the determination, so long as the finding is reasonable and supported by the record as a whole, the May 11 Determination must be affirmed.<sup>20</sup>

A review of the administrative record, however, raises significant questions as to whether Concannon allegedly engaged in evasion by transshipping Chinese-origin plywood through Vietnam to the United States. The record evidence includes copies of purchase orders, contracts, bank records, invoices, financial statements, videos, and photographs all indicating that the origin and source of the merchandise was Vietnam. According to the record, this

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[Jan/Scope%20Referral%20Request%20for%20Merchandise%20under%20EAPA%20Cons.%20Investigation%207252.pdf](#).

<sup>16</sup> See *Certain Hardwood Plywood Products From the People's Republic of China: Initiation of Anti-Circumvention Inquiries and Scope Inquiries on the Antidumping Duty and Countervailing Duty Orders; Vietnam Assembly*, 85 Fed. Reg. 36,530 (June 17, 2020).

<sup>17</sup> See 19 U.S.C. § 1517(a)(5)(A).

<sup>18</sup> See 19 U.S.C. § 1517(c)(1) and 19 CFR § 165.1.

<sup>19</sup> See *Altix, Inc. v. United States*, 370 F.3d 1108, 1116 (Fed. Cir. 2004) (internal citations and quotation marks omitted).

<sup>20</sup> See *Nucor Corp. v. United States*, 34 C.I.T. 70, 72 (2010) (citing *Nippon Steel Corp. v. United States*, 458 F.3d 1345, 1352 (Fed. Cir. 2006)).



documentation was not verified. However, the extensive documentation exists and has not been shown to be in any way unreliable. TRLED instead applied adverse inferences and relied upon Apec's allegation videos and importation data to establish evasion. In our view, this has created a situation where there is not substantial evidence that evasion occurred, as discussed below.

1. The evidence provided with the allegation to show evasion is inconclusive.

The majority of Apec's allegation is contained within several short video clips purportedly showing the unloading of covered merchandise at the manufacturer's premises from a container labeled for an international shipper who routes between China and Vietnam.<sup>21</sup> These videos lack audio and are poor quality. It is not clear whether plywood (*i.e.*, covered merchandise), raw materials to produce plywood, or some other goods are being unloaded. The Notice of Initiation highlights this inability to determine what the goods are, as the merchandise is described as "center cores" in addition to "covered merchandise."<sup>22</sup> Center cores are one of the raw materials used to produce the covered merchandise; they are not the same thing. The fact that the merchandise is acknowledged to also include cores further demonstrates the inability to determine exactly what kinds of goods were being unloaded. The only *possible* connection to China is the presence of the international shipper's container at the manufacturing plant. There is nothing to show that what is being unloaded came from China, let alone that those goods are covered merchandise. This is not substantial evidence that the manufacturer received covered merchandise.

Another component of the allegation only shows that one of the raw material suppliers imported plywood from China. There is no direct link between that raw material supplier and Concannon's U.S. imports of plywood from the manufacturer. Without any evidence tying those importations of plywood from China by the raw material supplier into Vietnam to the manufacturer and Concannon, this is not substantial evidence of transshipment.

2. Even with the application of adverse inferences as found within the May 11 Determination, there is not substantial evidence that the origin and source of the merchandise is China.

The finding of evasion in this case appears to rest significantly upon the use of facts otherwise available due to the purported insufficient responses to TRLED's requests for information provided by the manufacturer and raw material suppliers during the course of the EAPA investigation. As a result of these deficiencies, TRLED canceled the planned February 2020 verification trip and applied adverse inferences on the basis that the manufacturer and raw material suppliers failed to cooperate and comply to the best of their abilities in response to a request for information from CBP.<sup>23</sup> In doing so, TRLED concluded that the manufacturer could not prove it produced the merchandise under investigation and selected from the facts otherwise available to infer that the plywood was manufactured in China and transshipped through Vietnam to avoid AD/CV duties.

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<sup>21</sup> See Notice of Initiation, page 2.

<sup>22</sup> See *id.*, page 5.

<sup>23</sup> See 19 U.S.C. § 1517(c)(3) and 19 CFR § 165.6.

According to the May 11 Determination, the facts otherwise available which TRLED selected to make this inference are those found within Apec's allegation. The May 11 Determination does not mention any other record evidence upon which TRLED relied as facts otherwise available to make the determination of evasion.

As discussed in the preceding section, the evidence found within Apec's allegation is inconclusive. The only *potential* direct link between the manufacturer and China is the presence of an international shipping company's container in the videos submitted by Apec. It is not possible to determine what is being unloaded from that container. The May 11 Determination supports that uncertainty by stating that the workers in the video are "unloading what *appears to be* covered merchandise."<sup>24</sup> At other times within the administrative record, the goods being unloaded are described as "center cores,"<sup>25</sup> which is not covered merchandise under the AD/CV duty orders. Even if it is plywood being unloaded, it is not possible to determine whether what is being unloaded from that container originated from China. The merchandise being unloaded is not marked in a way that is made at all visible in any of the videos. There is also nothing in the videos or supporting documentation tying the international shipping container and its contents to the raw material supplier who allegedly imported plywood into Vietnam from China.<sup>26</sup>

Moreover, there is substantial evidence supporting the fact that actual manufacturing operations take place in Vietnam. The initial site visit by CBP found that the Vietnamese manufacturer had "the capacity to produce plywood cores and plywood from veneers."<sup>27</sup> The photographs and videos taken during that site visit show machinery for different stages of plywood production in use, as well as veneer inventory present at the manufacturer. This supports the photographs and videos provided by Concannon in response to the requests for information which also show production of plywood at the Vietnamese manufacturer.

The ties to China upon which TRLED relied are tenuous, at best. With no direct link from the manufacturer to China provided within the allegation, substantial evidence of evasion cannot be established from the facts selected in the May 11 Determination to find that the plywood is transshipped from China through Vietnam to the United States.

3. The record as a whole lacks substantial evidence of evasion.

Concannon, the manufacturer, and the four raw material suppliers submitted a multitude of documents and answered several questions in response to requests for information from TRLED. An initial site visit at the manufacturer's facility also occurred. Although some deficiencies existed in the responses to TRLED's requests for information, a significant amount of information was still received showing the manufacturer's ordering of raw materials from its suppliers, that the manufacturing of plywood took place at the manufacturer's facility, and the subsequent purchases from Concannon. The raw materials that the manufacturer purchased from the suppliers included veneers, cores, and center core

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<sup>24</sup> See May 11 Determination, page 7 (emphasis added).

<sup>25</sup> See Notice of Initiation, page 5.

<sup>26</sup> The allegation videos are date-stamped but no other documents within the record tie that date to any particular shipment of any good to the manufacturer.

<sup>27</sup> See Site Visit Memorandum, page 3.

veneers. Furthermore, as discussed above, the record establishes that the manufacturer had the capability to produce plywood cores and plywood, as seen during the initial site visit on September 18, 2019.<sup>28</sup> This is supported by the videos and photographs taken during CBP's initial site visit as well as those provided by Concannon and the manufacturer in their responses to the requests for information. Concannon also appears to have done its due diligence in seeking to avoid the possibility of transshipment and evasion by conducting its own site visits to the manufacturer and inspecting for signs of such activity. Concannon found nothing during these site visits to indicate transshipment occurred.

Reliable evidence contained within the record does demonstrate that some raw materials, specifically veneer, sourced by the manufacturer to produce the plywood did come from China. This was relayed to CBP during the initial site visit.<sup>29</sup> The May 11 Determination appears to place a great deal of emphasis on the source of the raw materials purchased and used to produce the plywood. However, there has been no determination from Commerce placing plywood produced in a third country from some raw materials sourced from China within the scope of the AD/CV duty orders. Rather, Commerce is currently considering such issues. We note that had a covered merchandise referral been directed to Commerce, the effect would have been to stay TRLED's investigation pending the outcome of the referral. That was not done in this case, thereby requiring us to issue this administrative review determination within the statutory time limit, based on the evidence in the record. As such, there is not substantial evidence that the plywood produced by the manufacturer in Vietnam is covered merchandise.

Given these findings, we do not find it necessary to address the remaining arguments made by Concannon in its Request for Administrative Review.

Based on the documentation and information provided within the record, there is not substantial evidence that Concannon entered covered merchandise by means of material and false statements.

### **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, the May 11 Determination of evasion under 19 USC § 1517(c) is REVERSED.

This determination is being transmitted to TRLED so that TRLED can determine whether the interim measures should be modified, consistent with this decision. TRLED may also take any other appropriate action consistent with this decision.

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<sup>28</sup> See *id.*

<sup>29</sup> See *id.*, page 2.

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 EAPA.

Sincerely,

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

Approved by:

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