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Re: Enforce and Protect Act (“EAPA”) Consolidated Case Number 7357; *Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Antidumping Duty Order*, 78 FR 8105 (February 5, 2013) and *Certain Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Countervailing Duty Order*, 78 FR 8107 (February 5, 2013); Leco Supply Inc.; 19 U.S.C. § 1517

Dear Ms. Jacobson, Ms. Young, and Mr. Waite:

This is in response to a request for *de novo* administrative review of a determination of evasion dated October 26, 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”) Consolidated Case Number 7357 (hereinafter referred to as the “October 26 Determination”).¹ The request for review, dated November 24, 2020, was submitted to CBP OT Regulations and Rulings (“RR”) by Junker & Nakachi, P.C., on behalf of Leco Supply Inc. (“Leco Supply”), pursuant to 19 U.S.C. § 1517(f) and 19 C.F.R. § 165.41(a). The other importers involved in EAPA Cons. Case No. 7357 are: N&M Hanger, LLC; Direco International LLC; PNJ Import, Inc.; LGA Trading, Inc.; Chungwa Prince Group Corporation; WHL International, Inc.; Wah Hing Lee Investment, Inc.; SK Supply Corp.; and, KS Supply. Leco Supply’s request for administrative review was submitted to RR within 30 business days after the issuance of the initial determination of evasion, consistent

¹ See Notice of Determination as to Evasion, dated October 26, 2020.

with 19 C.F.R. § 165.41(d).² None of the other importers filed a timely request for administrative review.³

I. Background

Inasmuch as the facts in this case were fully set forth in the October 26 Determination, we will not repeat the entire factual history herein.

In brief, according to the record evidence, on October 25, 2019, TRLED initiated a formal investigation under Title IV, section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, in response to an allegation of evasion.

On October 2, 2019, M&B Metal Products Company, Inc. (“M&B”) filed separate revised EAPA allegations⁴ against ten (10) different importers, including Leco Supply. CBP acknowledged receipt of the properly filed allegations on October 3, 2019. M&B alleged that Leco Supply and the other importers were importing Vietnamese-origin steel wire hangers (“wire hangers”) into the United States by transshipment through Lao People’s Democratic Republic (“Laos”) to evade the payment of antidumping (“AD”) and countervailing (“CV”) duties on wire hangers from Vietnam, Case Nos. A-552-812 and C-552-813, respectively.⁵

The allegation of evasion pertained to the antidumping and countervailing duty orders issued by the U.S. Department of Commerce (“Commerce”) on imports of wire hangers from Vietnam.⁶

Commerce defined the scope of the relevant AD duty order as follows:

The merchandise subject to this order is steel wire garment hangers, fabricated from carbon steel wire, whether or not galvanized or painted, whether or not coated with latex or epoxy or similar gripping materials, and whether or not

² Leco Supply filed their Request for Administrative Review prior to the 30th business day. As nine (9) other importers were involved in EAPA Cons. Case No. 7357, the period of administrative review did not commence until December 10, 2020, the day after the 30th business day deadline for filing a request for review.

³ Pursuant to 19 U.S.C. § 1517(f)(1), the deadline to file a timely request was December 9, 2020. On December 12, 2020, counsel for WHL International, Inc. and Wah Hing Lee Investment, Inc. filed a Response to Leco Supply’s Request for Administrative Review (sometimes “Request”) in which those importers sought to join the Request and ask for reversal of the determination of evasion as to all ten importers. Any response to a request for administrative review must be limited to the issues raised in the request. *See* 19 C.F.R. § 165.42. As detailed later, Leco Supply limits its Request to strictly those facts and circumstances related to the finding of evasion as to Leco Supply and does not discuss the determination of evasion as to the other importers.

Furthermore, the Response to Leco Supply’s Request for Administrative Review did not conform to the requirements of 19 C.F.R. § 165.41(f). Counsel was apprised of the defects and offered an opportunity to perfect the Response by the due date of December 28, 2020. No such perfected Response was received.

⁴ M&B originally submitted separate allegations against the importers on July 19, 2019. The administrative record does not indicate that CBP ever acknowledged receipt of any of those original allegations and those documents were not part of the administrative record transmitted to OT-RR by TRLED.

⁵ *See* Notice of Investigation and Interim Measures, dated January 30, 2020.

⁶ *See Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Antidumping Duty Order*, 78 FR 8105 (February 5, 2013) and *Certain Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Countervailing Duty Order*, 78 FR 8107 (February 5, 2013).

fashioned with paper covers or capes (with or without printing) or nonslip features such as saddles or tubes. These products may also be referred to by a commercial designation, such as shirt, suit, strut, caped, or latex (industrial) hangers.

Specifically excluded from the scope of the investigation are (a) Wooden, plastic, and other garment hangers that are not made of steel wire; (b) steel wire garment hangers with swivel hooks; (c) steel wire garment hangers with clips permanently affixed; and (d) chrome plated steel wire garment hangers with a diameter of 3.4 millimeters (“mm”) or greater.

The products subject to the investigation are currently classified under U.S. Harmonized Tariff Schedule (“HTSUS”) subheadings 7326.20.0020 and 7323.99.9080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Commerce defined the scope of the relevant CV duty order as follows:

The merchandise subject to this order is steel wire garment hangers, fabricated from carbon steel wire, whether or not galvanized or painted, whether or not coated with latex or epoxy or similar gripping materials, and/or whether or not fashioned with paper covers or capes (with or without printing) and/or nonslip features such as saddles or tubes. These products may also be referred to by a commercial designation, such as shirt, suit, strut, caped, or latex (industrial) hangers.

Specifically excluded from the scope are (a) Wooden, plastic, and other garment hangers that are not made of steel wire; (b) steel wire garment hangers with swivel hooks; (c) steel wire garment hangers with clips permanently affixed; and (d) chrome-plated steel wire garment hangers with a diameter of 3.4mm or greater.

The products subject to the order are currently classified under U.S. Harmonized Tariff Schedule (HTSUS) subheadings 7326.20.0020 and 7323.99.9080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

On January 30, 2020, in accordance with 19 C.F.R. § 165.24, CBP issued the Notice of Initiation and Interim Measures to all parties to the investigation, notifying the parties of CBP’s decision to take interim measures based upon reasonable suspicion that the ten importers, including Leco Supply, entered covered merchandise into the customs territory of the United States through evasion and that CBP was consolidating all ten investigations into

a single investigation, EAPA Consolidated Case 7357.⁷ The entries subject to the investigation were those entered for consumption, or withdrawn from a warehouse for consumption, from October 3, 2018, one year before receipt of the revised allegation, through the pendency of the investigation.⁸ TRLED concluded that, based on the record evidence, there was reasonable suspicion that Leco Supply had entered covered merchandise into the customs territory of the United States through evasion, and imposed interim measures.⁹

On October 26, 2020, TRLED issued the October 26 Determination. TRLED found substantial evidence¹⁰ to demonstrate that steel wire hangers entered into the customs territory of the United States by Leco Supply for which the claimed manufacturer was Truong Hong Development Multidisciplinary Group Ltd. (“Truong Hong”) were Vietnamese-origin and that the country of origin was misrepresented as Laos. No cash deposits were applied to the merchandise since the importer claimed Laos as the country of origin and the merchandise was declared as entry type 01 (consumption) instead of entry type 03.¹¹

II. Discussion

A. Administrative Review and Standard of Review

Pursuant to 19 U.S.C. § 1517(f)(1) and 19 C.F.R. § 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.

B. Law

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

(1) Determination of Evasion

⁷ See Notice of Initiation and Interim Measures. Available at: <https://www.cbp.gov/sites/default/files/assets/documents/2020-Mar/EAPAInvestigation%207357%20%28508%20compliant%29.pdf>.

⁸ See 19 C.F.R. § 165.2. While the regulations set forth which entries CBP will specifically investigate, interim measures can be applied to all unliquidated entries.

⁹ The record evidence supporting the finding of reasonable suspicion is discussed in the Notice of Initiation and Interim Measures.

¹⁰ 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)).

¹¹ See October 26 Determination, available at: <https://www.cbp.gov/sites/default/files/assets/documents/2020-Oct/10-26-2020%20-%20TRLED%20-%20Notice%20of%20Determination%20as%20to%20Evasion%20%28508%20compliant%29%20-%20%28Cons%20Case%207357%29%20-%20PV%20%282%29.pdf>.

(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 C.F.R. § 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.¹²

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).”¹³

Therefore, based on substantial evidence, CBP must determine whether a party has entered merchandise that is subject to an AD or 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 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.

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

¹² *See Investigation of Claims of Evasion of Antidumping and Countervailing Duties, Interim Regulations*, 81 Fed. Reg. 56477, 56478 (August 22, 2016).

¹³ *See* 19 C.F.R. § 165.1.

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 C.F.R. § 165.27.

C. Leco Supply's Arguments

Leco Supply requests that we reverse the October 26 Determination of evasion as to itself, arguing that Leco Supply did not enter covered merchandise into the United States through evasion because the subject entries of wire hangers imported into the United States by Leco Supply were manufactured in Laos.

Leco Supply argues that it did not import Vietnamese-origin wire hangers into the U.S. and that the evidence supports this contention. Leco Supply only imported two containers from Truong Hong during the period of investigation.¹⁴ Part of M&B's allegation included a foreign market research report regarding Truong Hong's ability to produce wire hangers and included a finding that Truong Hong could produce one container of wire hangers per month. Given this finding and that Truong Hong's two exports of wire hangers to Leco Supply occurred in different months, Leco Supply claims there is substantial evidence that Truong Hong manufactured these two containers of wire hangers in Laos. Leco Supply supports this contention by reviewing all of the documentation it supplied to CBP during the course of the investigation to indicate that manufacturing of the wire hangers occurred in Laos, including the records from Truong Hong showing purchase and receipt of raw materials to produce the wire hangers and the cartons for shipping the finished hangers for Entry No. XXXXXXXX8400¹⁵ and the customs documents indicating export of the wire hangers from Laos to the United States in Entry Nos. XXXXXXXX2633 and XXXXXXXX8400. Thus, Leco Supply did not misrepresent the country of origin of these wire hanger entries as the administrative record supports a finding that the wire hangers were manufactured in Laos.

Furthermore, Leco Supply argues that no evidence has been placed on the record to contradict the documentation it provided to demonstrate production of the wire hangers for those two entries in Laos. Leco Supply contends that nothing in the administrative record ties Leco Supply to the manufacture of wire hangers in Vietnam and only circumstantial evidence within the record ties Truong Hong to Vietnam; namely, connections to DNA Investment JSC ("DNA"), which succeeded South East Asian Hamico Export Joint Stock Company ("SEA Hamico"), a producer/exporter of wire hangers in Vietnam. These ties do not rise to a level of substantial evidence to indicate evasion.

Leco Supply also takes issue with the manner in which CBP treated all ten importers as a single entity and did not offer individual analyses of the importers in terms of whether each committed evasion. Although CBP may consolidate individual EAPA investigations, Leco Supply argues that such criteria is based primarily on administrative efficiency and "does not in any way relieve CBP of the obligation to make a determination with regard to each

¹⁴ Entry No. XXXXXXXX2633 has an entry date of November 17, 2018 and Entry No. XXXXXXXX8400 has an entry date of January 15, 2019.

¹⁵ The supporting documentation regarding the manufacture of the wire hangers in Entry No. XXXXXXXX2633 was not requested by CBP.

importer individually based on the evidence on the record.”¹⁶ Even if evidence as related to the other importers indicated a greater connection to Vietnam, that evidence did not exist as to Leco Supply and cannot be included in CBP’s analysis of whether Leco Supply engaged in evasion. CBP did not point to specific evidence that indicates Leco Supply imported covered merchandise from Vietnam.

Additionally, Leco Supply claims that CBP applied adverse inferences improperly in several manners. First, CBP was wrong to treat all importers the same when applying adverse inferences given the different levels of cooperation by the importers in responding to the Request for Information (“RFI”) and Supplemental RFI issued by CBP during the course of the investigation. Nothing in the record indicates that Leco Supply did not cooperate and comply to the best of its ability during the course of the investigation. Second, Leco Supply argues that CBP improperly dismissed all of the documentation it provided based upon the noncooperation of Truong Hong in responding to the RFI. Leco Supply argues that CBP’s inability to corroborate the documentation it provided does not allow CBP to discount that evidence as unreliable when no other evidence contradicts what Leco Supply provided. Third, in applying adverse inferences, CBP did not select from the “facts otherwise available”¹⁷ but, rather, inferred that all of the wire hangers were produced in Vietnam when the most conservative estimate of Truong Hong’s production capabilities within the administrative record is one container per month. Overall, Leco Supply states that CBP cannot apply adverse inferences against and, therefore, make a determination of evasion as to Leco Supply based upon the wrongdoing of other, unrelated parties.

Additionally, Leco Supply presents an argument not related to the determination of evasion: that Leco Supply’s inability to review evidence considered by CBP in reaching the determination of evasion violated Leco Supply’s procedural due process rights.

D. M&B’s Arguments

M&B requests that we affirm the October 26 Determination of evasion, arguing that substantial evidence exists to show that evasion occurred in Leco Supply’s importation of wire hangers from Truong Hong.

M&B highlights the evidence upon which CBP relied in reaching a final determination of evasion as to Leco Supply and argues that Leco Supply is unable to refute the substantial evidence of evasion found in these documents. Specifically, M&B notes the amount of containers imported from Truong Hong between July 2018 and June 2019 (approximately thirty (30) per month) is too high based upon the production capacity determined by the foreign market research report commissioned by M&B (one (1) container per month). Based upon this discrepancy, M&B reasons that the only way Truong Hong would have been able to ship so many containers of wire hangers is if they were being produced elsewhere and falsely declaring Laos as the country of origin. Additionally, M&B examines the ties of Truong Hong to Vietnamese companies, including the production of mill test reports for steel wire rods of a diameter that Truong Hong did not have the ability to use to

¹⁶ See Leco Supply’s Request for Administrative Review of Evasion Determination, dated November 25, 2020, page 19.

¹⁷ See 19 C.F.R. § 165.6(a).

make wire hangers given its lack of wire drawing facilities that the Vietnamese company associated with Truong Hong did use to produce wire hangers.

M&B further argues that CBP did investigate each importer individually before reaching the determination of evasion and did properly apply adverse inferences as Truong Hong failed to respond to the RFI and none of the importers could certify the accuracy of the documents they provided which were from the manufacturer. Additionally, M&B notes that Leco Supply did not explain how CBP could determine which importer received the one (1) container out of approximately thirty (30) each month that was purportedly manufactured by Truong Hong.

E. Administrative Review Analysis

Pursuant to 19 U.S.C. § 1517(f)(1) and 19 C.F.R. § 165.45, the Office of Trade, Regulations and Rulings (“RR”), will apply a *de novo* standard of review under the law, based solely upon the facts and circumstances on the administrative record in the proceeding. In making our determination, we reviewed: (1) the entire administrative record upon which the October 26 Determination was made by TRLED; and (2) the timely and properly filed request for review and response. The Office of Trade, RR, did not request additional written information from the parties to the investigation pursuant to 19 C.F.R. § 165.44. Pursuant to 19 C.F.R. § 165.45, our administrative review of this case has been completed in a timely manner, within 60 business days of the commencement of the review.

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.¹⁸

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).¹⁹

“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.”²⁰ While some evidence may detract from the determination, so long as the finding is reasonable and supported by the record as a whole, the October 26 Determination must be affirmed.²¹

¹⁸ See 19 U.S.C. § 1517(a)(5)(A).

¹⁹ See 19 U.S.C. § 1517(c)(1) and 19 C.F.R. § 165.1.

²⁰ See *Altex, Inc. v. United States*, 370 F.3d 1108, 1116 (Fed. Cir. 2004) (internal citations and quotation marks omitted).

²¹ 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)).

Preliminarily, the purpose of this *de novo* review is to analyze the October 26 Determination and the accompanying administrative record to determine whether substantial evidence of evasion exists. Leco Supply's arguments regarding violation of its procedural due process rights is outside of the purview of this *de novo* review.²²

A review of the full administrative record supports the October 26 Determination that Leco Supply engaged in evasion by entering into the customs territory of the United States Vietnamese-origin wire hangers and misrepresenting the country of origin as Laos. Such designation at entry was materially false, in that it failed to indicate that the wire hangers were merchandise covered by the AD and CV Duty Orders; the false designation also led to the non-collection of AD and CV duty deposits. The record evidence indicates that the authenticity of much of the documentation as it pertains to the production of wire hangers by Truong Hong in Laos is in question. That issue of the reliability of the production documentation, coupled with the evidence demonstrating significant ties between Truong Hong and a Vietnamese company that produces covered merchandise, meets the standard of substantial evidence that evasion occurred when Leco Supply misrepresented the country of origin as Laos.

The Summary of Facts Memorandum produced by OT's Regulatory Audit and Agency Advisory Services ("RAAAS") extensively details the reasons why the Truong Hong-created documentation provided by Leco Supply and the other importers is unreliable. TRLED redacted RAAAS's Summary of Facts Memorandum in full, claiming it contained business confidential information;²³ however, an example of the questionability of the documents can be seen within the public record. Truong Hong appears to have self-generated receipts for raw materials and packaging materials it purchased. Specifically, the receipts for packaging materials provided by Leco Supply were printed on Truong Hong's own letterhead.²⁴ This is the type of documentation that, if legitimate, would have been generated by the third party raw material or packaging material supplier. These types of inconsistencies call into question the authenticity of the documents from Truong Hong.

²² The Court of International Trade ("CIT") has recently opined on the rights of parties in EAPA investigations to have access to business confidential information. In *Royal Brush Mfg., Inc. v. United States*, Ct. No. 19-00198, Slip Op. 20-171, the CIT found that a party is only entitled to public summaries of the business confidential information pursuant to 19 C.F.R. § 165.4(a)(1) and (e). The parties do not otherwise have a right to review business confidential information as the statute and regulation do not provide for such. Nonetheless, pursuant to the CIT's ruling in *Royal Brush*, it appears that non-compliance with 19 C.F.R. § 165.4(a)(1) and (e) may have occurred. Leco Supply has alleged that CBP did not make available the general information provided by Truong Hong on March 10, 2020. Truong Hong did not request business confidential treatment for this submission and the entirety of the document is on the public record. Pursuant to 19 C.F.R. § 165.23(c)(1), Truong Hong was required to serve a copy on all parties to the investigation. It is unclear from the record whether service of this document on all parties to the investigation happened as required.

²³ TRLED did not provide a public summary of RAAAS's Summary of Facts Memorandum, labeling it as "not capable of public summary" but TRLED failed to provide a full explanation of that claim as required pursuant to 19 C.F.R. § 165.4(e). This is also evident in other documents TRLED placed on the record but redacted almost entirely as containing business confidential information without providing a public summary.

²⁴ See e.g. Leco Supply's Attachment E31 to Response to RFI, receipt for payment of cartons. Truong Hong's letterhead is not redacted from the public version. This same letterhead is found on a number of other receipts for raw materials provided by other importers and for payment of electricity bills by Truong Hong submitted by Leco Supply and other importers in response to the RFI. Some of these receipts are also stamped "CASH PAID," which further calls their legitimacy into question as payment cannot be traced through bank records.

Aside from the authentication issues related to Truong Hong's documentation, nothing within the record indicates that Truong Hong was ever able to produce wire hangers at such a level to meet the amount it exported to the United States during the period of investigation. Leco Supply did not provide any documentation regarding Truong Hong's production capacity. Other importers did not provide consistent numbers of machinery and numbers of employees to indicate production capacity. Additionally, Truong Hong appears to have created all of the reports regarding its production capacity that those importers provided in response to the initial CBP Form 28, Request for Information ("CF-28") questionnaires and subsequent RFIs issued by CBP as the majority were printed on Truong Hong's letterhead. Truong Hong, however, then failed to respond to CBP's RFI despite receiving multiple extensions of time to respond.²⁵ Indeed, although some of the importers claimed to have visited the factory in Laos, no reports or video/photographic evidence of production capacity made in connection with those visits were provided to CBP with the exception of some poor quality photos allegedly taken by Direco International LLC during trips in 2013 and 2014. Otherwise, the same eleven (11) undated photographs were provided by multiple importers to demonstrate wire hanger production at Truong Hong.²⁶ Wah Hing Lee Investment, Inc. stated in its response to the Supplemental RFI that those photographs were provided by Truong Hong.²⁷ Leco Supply admitted to not visiting Truong Hong's factory in Laos to verify production capacity.²⁸ Furthermore, nothing in the record indicates that, if Truong Hong produced any wire hangers, those specific wire hangers were segregated from any other wire hangers produced elsewhere but exported from the factory to ensure no commingling occurred in containers bound for the United States. Leco Supply cannot show that Truong Hong specifically produced the two (2) containers of wire hangers it imported into the United States.

Moreover, the ties between Truong Hong and a Vietnamese company engaged in the production of wire hangers are more than circumstantial. First, Truong Hong's registered business address is in Vietnam.²⁹ There is clearly a relationship between Truong Hong and DNA/SEA Hamico, a Vietnamese producer of wire hangers, as many of the same individuals who represented Truong Hong in communications with the importers were also involved in the operations of DNA/SEA Hamico. This relationship is further seen in those individuals' use of the same email addresses when communicating on behalf of both companies. Additionally, individuals who communicated with the importers as employees of Truong Hong do not appear on the company's employee list indicating payment into Laos's National Social Security Fund on their behalf.³⁰ RAAAS's Summary of Facts Memorandum further details these connections and shows how the two companies are interwoven. At the same time, while Leco Supply did not visit the factory in Laos to verify production, the record shows that Leco Supply's General Manager met with representatives of Truong Hong

²⁵ TRLED granted seven (7) extension requests made by Truong Hong which ultimately changed the due date from February 25, 2020 to June 5, 2020. *See* Partial Grant of Extension to Truong Hong, dated May 26, 2020. Truong Hong never responded to the RFI beyond the General Information submitted on March 10, 2020, which was very sparse.

²⁶ Leco Supply did not provide any photographs of Truong Hong.

²⁷ *See* Wah Hing Lee Narrative Response to Supplemental RFI, page 1.

²⁸ *See* Leco Supply Narrative Response to RFI, page 7.

²⁹ *See* October 26 Determination, page 10.

³⁰ *See* Direco International LLC RFI Response Exhibits, Exhibit 14, pages 51-57. We note that these payment records are also printed on Truong Hong's letterhead.

in *Vietnam* in November 2018 to make a personal connection.³¹ The record does not show any such similar ties between Truong Hong and another wire hanger manufacturer outside of Vietnam, nor does the record indicate a connection between Truong Hong and another wire hanger manufacturer in Laos.

The purpose of an EAPA investigation is to determine whether substantial evidence exists that covered merchandise entered the customs territory of the United States through evasion.³² There is no requirement, as Leco Supply alleges, that this determination be broken out by each importer in the event that multiple EAPA investigations are consolidated pursuant to 19 U.S.C. § 1517(b)(5)(A) and 19 C.F.R. § 165.13.³³ In this case, all ten (10) importers used the same manufacturer during the same period of time and CBP utilized its discretion to consolidate the EAPA investigations. The administrative record, as a whole, was examined and reviewed to find substantial evidence of evasion. From the authentication issues regarding documentation created/supplied by Truong Hong through the importers to the lack of evidence demonstrating Truong Hong had adequate production capabilities to the relationship Truong Hong had with a Vietnamese company that manufactures wire hangers, there is substantial evidence within the administrative record as to all of the importers that covered merchandise entered the customs territory of the United States through evasion.

Nevertheless, the administrative record does not support the application of adverse inferences as to Leco Supply. 19 U.S.C. § 1517(c)(3)(A) and 19 C.F.R. § 165.6(a) are clear that the use of adverse inferences are applied only to a party who is found to have failed to cooperate and comply to the best of its ability with requests for information made by CBP. Leco Supply responded to all of CBP's inquiries timely and properly, providing a significant amount of documentation and full responses to the RFI and Supplemental RFI. Although the EAPA statute does not require knowledge or intent, it is clear from the record that Leco Supply was an inexperienced importer and nothing within the record indicates that Leco Supply was aware of the authentication issues with the documentation produced by Truong Hong at any time during the investigation.³⁴ It was improper for all importers to be treated similarly in the application of adverse inferences given the significantly different levels of cooperation. Regardless, as discussed above, even without adverse inferences, the record fully and adequately supports the finding that the wire hangers are of Vietnamese origin and Leco Supply misrepresented the country of origin as Laos resulting in evasion of the payment of AD and CV duties upon importation into the United States.

Thus, substantial evidence supports the final determination of evasion as to Leco Supply.

³¹ See Leco Supply Narrative Response to Supplemental RFI, page 9.

³² See 19 U.S.C. § 1517(c)(1)(A). See also 19 C.F.R. § 165.27(a).

³³ While it is entirely possible that, in a different investigation, substantial evidence of evasion may exist as to only some importers in a consolidated EAPA investigation, this has not happened here.

³⁴ Conversely, in the event the fraudulent nature of certain documents is discovered and the record supports a finding that the importer who provided such fraudulent documents was aware at the time of production that such documentation was fabricated, the application of adverse inferences may very well still be appropriate.

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 October 26 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 C.F.R. § 165.46(a), this final administrative determination is subject to judicial review pursuant to section 421 of EAPA.

Sincerely,

Paul Pizzeck
Chief, Penalties Branch, Regulations & Rulings
Office of Trade
U.S. Customs & Border Protection

Approved by:

Joanne R. Stump
Acting Executive Director, Regulations & Rulings
Office of Trade
U.S. Customs & Border Protection