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Re: Enforce and Protect Act Case Number 7583; CNC Associates N.Y., Inc.; *Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Antidumping and Countervailing Duty Orders*, 85 Fed. Reg. 22,126 and 22,134 (April 21, 2020); 19 U.S.C. § 1517

Dear Messrs. Brightbill and Menegaz:

This is in response to a request for *de novo* administrative review of a determination of evasion dated January 31, 2022, 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 7583 (hereinafter referred to as the “January 31 Determination”).¹ The request for review, dated March 15, 2022, was submitted to CBP OT Regulations and Rulings (“RR”) by deKieffer & Horgan, PLLC, on behalf of CNC Associates N.Y., Inc. (“CNC”), pursuant to 19 U.S.C. § 1517(f) and 19 CFR § 165.41(a).

¹ See Notice of Determination as to Evasion in EAPA Case Number 7583 (Jan. 31, 2022), available at: <https://www.cbp.gov/sites/default/files/assets/documents/2022-Feb/01-31-%202022%20-%20TRLED%20-%20Final%20Determination%20%28508%20compliant%29%20-%20%287583%29%20-%20PV.pdf>.

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I. Background

Inasmuch as the facts in this case were fully set forth in the January 31 Determination, we will not repeat the entire factual history herein.

In brief, according to the record evidence, on November 17, 2020, MasterBrand Cabinets, Inc. (“MasterBrand”) filed an EAPA allegation through counsel claiming that CNC evaded the antidumping and countervailing duty (“AD/CVD”) orders on Wooden Cabinets and Vanities and Components thereof (“WCV”) from the People’s Republic of China (“China”) by entering merchandise covered by the scope of the orders without paying the appropriate AD/CV duties.²

The allegation of evasion pertained to the AD/CVD Orders issued by the U.S. Department of Commerce (“Commerce”) on WCV from China.³

Commerce defined the scope of the AD/CVD Orders as follows:

The merchandise subject to this order consists of wooden cabinets and vanities that are for permanent installation (including floor mounted, wall mounted, ceiling hung or by attachment of plumbing), and wooden components thereof. Wooden cabinets and vanities and wooden components are made substantially of wood products, including solid wood and engineered wood products (including those made from wood particles, fibers, or other wooden materials such as plywood, strand board, block board, particle board, or fiberboard), or bamboo. Wooden cabinets and vanities consist of a cabinet box (which typically includes a top, bottom, sides, back, base blockers, ends/end panels, stretcher rails, toe kicks, and/or shelves) and may or may not include a frame, door, drawers and/or shelves. Subject merchandise includes wooden cabinets and vanities with or without wood veneers, wood, paper or other overlays, or laminates, with or without non-wood components or trim such as metal, marble, glass, plastic, or other resins, whether or not surface finished or unfinished, and whether or not completed.

Wooden cabinets and vanities are covered by this order whether or not they are imported attached to, or in conjunction with, faucets, metal plumbing, sinks and/or sink bowls, or countertops. If wooden cabinets or vanities are imported attached to, or in conjunction with, such merchandise, only the wooden cabinet or vanity is covered by the scope.

Subject merchandise includes the following wooden component parts of cabinets and vanities: (1) wooden cabinet and vanity frames (2) wooden cabinet and vanity boxes (which typically include a top, bottom, sides, back, base blockers, ends/end panels, stretcher rails, toe kicks, and/or shelves), (3)

² See MasterBrand’s EAPA Allegation re: CNC (November 17, 2020).

³ See *Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Antidumping and Countervailing Duty Orders*, 85 Fed. Reg. 22,126 and 22,134 (April 21, 2020) (collectively, the “AD/CVD Orders”).

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wooden cabinet or vanity doors, (4) wooden cabinet or vanity drawers and drawer components (which typically include sides, backs, bottoms, and faces), (5) back panels and end panels, (6) and desks, shelves, and tables that are attached to or incorporated in the subject merchandise.

Subject merchandise includes all unassembled, assembled and/or “ready to assemble” (RTA) wooden cabinets and vanities, also commonly known as “flat packs,” except to the extent such merchandise is already covered by the scope of antidumping and countervailing duty orders on *Hardwood Plywood from the People’s Republic of China*. See *Certain Hardwood Plywood Products from the People’s Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 83 FR 504 (January 4, 2018); *Certain Hardwood Plywood Products from the People’s Republic of China: Countervailing Duty Order*, 83 FR 513 (January 4, 2018). RTA wooden cabinets and vanities are defined as cabinets or vanities packaged so that at the time of importation they may include: (1) wooden components required to assemble a cabinet or vanity (including drawer faces and doors); and (2) parts (*e.g.*, screws, washers, dowels, nails, handles, knobs, adhesive glues) required to assemble a cabinet or vanity. RTAs may enter the United States in one or in multiple packages.

Subject merchandise also includes wooden cabinets and vanities and in-scope components that have been further processed in a third country, including but not limited to one or more of the following: trimming, cutting, notching, punching, drilling, painting, staining, finishing, assembly, or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the in-scope product.⁴

On January 28, 2021, TRLED initiated a consolidated formal investigation under Title IV, section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, in response to the allegation of evasion.

On May 5, 2021, in accordance with 19 CFR § 165.24, CBP issued the Notice of Initiation to all interested parties, and notified the parties of CBP’s decision to take interim measures based upon reasonable suspicion that CNC, as the importer of record, entered covered merchandise into the customs territory of the United States through evasion.⁵ Per the Notice of Initiation, the entries subject to the investigation were those entered for consumption, or withdrawn from a warehouse for consumption, from January 5, 2020, through the pendency of the investigation.⁶ TRLED concluded that, based on the record evidence, there was reasonable suspicion that CNC entered covered merchandise into the customs territory of the United States through evasion.

⁴ AD/CVD Orders.

⁵ See Notice of Initiation of Investigation and Interim Measures (May 5, 2021) (“Notice of Initiation”), available at <https://www.cbp.gov/sites/default/files/assets/documents/2021-May/05-05-2021%20-%20TRLED%20-%20Notice%20of%20Initiation%20and%20Interim%20Measures%20%28508%20compliant%29%20-%20%287583%29%20-%20PV.pdf>.

⁶ *Id.* at 2. See also 19 CFR § 165.2.

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On January 31, 2022, TRLED issued the January 31 Determination. TRLED found substantial evidence to demonstrate that CNC entered certain WCV from China that were covered by the AD/CVD Orders by transshipping Chinese-origin WCVs through Malaysia. As a result, no AD/CVD cash deposits were paid on the merchandise upon entry.⁷

On March 15, 2022, CNC filed a timely Request for Administrative Review.⁸ On March 16, 2022, RR sent an email to all parties to the investigation, notifying them of the commencement of the administrative review process and the assignment of RR case number H323956.⁹ On March 30, 2022, MasterBrand timely filed a response to CNC's request for administrative review.¹⁰ For purposes of our decision, we have reviewed the record as transmitted to us and indexed by TRLED, as well as the request for review and response.

II. Discussion

a. 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

⁷ See January 31 Determination, at 1-2.

⁸ CNC's Request for Administrative Review (Mar. 15, 2022).

⁹ Request for Record – EAPA 7583 (H323956) (Mar. 16, 2022).

¹⁰ MasterBrand's Response to Request for Administrative Review (Mar. 30, 2022).

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security or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise.¹¹

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

We are required to conduct a *de novo* review. This means that we will use the original record as transmitted to us, but will review the evidence and law independently, without deference to TRLED's determination. Our decision must be supported by substantial evidence. While substantial evidence is not defined by statute, 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.”¹⁴ The U.S. Court of Appeals for the Federal Circuit has also stated that “substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”¹⁵

Therefore, we 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. Lastly, as stated above, our decision herein must be supported by substantial evidence.

b. CNC's Arguments

CNC requests that we reverse the January 31 Determination of evasion, arguing that CNC did not enter covered merchandise into the United States through evasion because the entered merchandise was produced by Bagus Timber Sdn Bhd (“Bagus”) in Malaysia, and therefore, there is no legal or factual basis for CBP to impose AD/CV duties on CNC's entries.

Specifically, CNC asserts that TRLED erred in finding there are discrepancies in Bagus' factory photos on the record, and that TRLED's determination that Bagus does not

¹¹ See also 19 CFR § 165.1.

¹² See *Investigation of Claims of Evasion of Antidumping and Countervailing Duties, Interim Regulations*, 81 Fed. Reg. 56,477, 56,478 (Aug. 22, 2016).

¹³ See 19 CFR § 165.1.

¹⁴ See *Altex, Inc. v. United States*, 370 F.3d 1108, 1116 (Fed. Cir. 2004) (internal citations and quotation marks omitted).

¹⁵ *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)).

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have a fully functioning production facility is incorrect. CNC argues that Homeland Security Investigations (“HSI”) officers found an incorrect address on Google Maps for both of Bagus’ factories, and thus the photographs taken by the officers and the evidence relied on by TRLED were of an incorrect location and have no value. CNC asserts that Bagus’ old factory address, Lot 8610, Jalan Telok Mengkuang, Telok Panglima Garang, Selangor (the “Lot 8610 address”) appears at an incorrect location when searched on Google Maps, and HSI visited this incorrect location. Likewise, CNC submits that a Google Maps search for Bagus’ new factory address, 1778-1779, Jalan Tampin Gemas, 73400 Gemas, Negeri Sembilan (the “1778-1779 address”) points to an intersection visited by HSI but again does not point to the correct location for Bagus’ factory.¹⁶

CNC contends that TRLED’s comparison of the factory photographs on the record with the factory photograph on Bagus’ website was incorrect, as CNC notes that the photograph on Bagus’ website is a stock photograph used by other companies as well.¹⁷ CNC submits that TRLED came to an incorrect conclusion about the existence of Bagus’ factories and its production capabilities by confusing which photographs were of which factory and relying on faulty video footage.¹⁸

CNC argues that TRLED’s determination does not adhere to the substantial evidence standard, which requires TRLED to base its determination on more than “isolated tidbits of data” and take into account contradictory evidence.¹⁹ CNC also claims that TRLED failed to analyze whether CNC made false statements or material omissions at entry. CNC points out that the January 31 Determination does not include an analysis of the statutory criteria for evasion and that CNC exercised reasonable care when choosing to import WCV from Bagus.²⁰

Finally, in addition to the above, CNC makes various due process arguments. First, that TRLED did not provide sufficient information for CNC to file rebuttal responses regarding Bagus’ correct factory address²¹ or to trade data,²² and second, against TRLED’s decision to keep the allegation and investigation secret for three months before informing CNC.²³ CNC also argues due process violations stemming from TRLED’s failure to disclose to it, CNC’s and Bagus’ own business confidential information (“BCI”).²⁴ Based on the above arguments, CNC posits there is not substantial evidence of evasion.

¹⁶ CNC Review Request at 13-14 (citing TRLED Nov. 10 Visit Memo; January 31 Determination; CNC Nov. 22 Rebuttal Information).

¹⁷ *Id.* at 15.

¹⁸ *Id.* at 15-20 (citing CNC Rebuttal Information; CNC CF-28 Response for Entry No. XXX-XXXX9424; Bagus RFI Response; and TRLED Nov. 10 Memo).

¹⁹ *Id.* at 20 (citing *USX Corp. v. United States*, 11 C.I.T. 82, 84 (1987)).

²⁰ *Id.* at 23-24 (citing CNC Supplemental Request for Information (“RFI”) Response).

²¹ *Id.* at 17.

²² *Id.* at 24-25 (citing CNC Written Argument).

²³ *Id.* at 25-26.

²⁴ *Id.* at 27-30 (citing TRLED Dec. 15 Memo; Bagus RFI Response; CNC Extension of Time Request to submit Rebuttal Factual Information).

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c. MasterBrand's Arguments

MasterBrand requests that we affirm the January 31 Determination of evasion, arguing that CBP correctly found that CNC evaded the AD/CVD Orders through transshipment when CNC entered WCV into the United States. MasterBrand argues that CBP properly relied upon evidence indicating that Bagus did not have a manufacturing facility, suggesting instead that Bagus transshipped Chinese merchandise.

Specifically, MasterBrand argues that CBP reasonably relied on the HSI investigator's findings demonstrating that there was no manufacturing facility or Bagus company activity at either the Lot 8610 address or the 1778-1779 address. MasterBrand notes that the HSI investigator's findings are consistent with evidence included in MasterBrand's allegation. MasterBrand contends that the information submitted by Bagus and CNC supporting their claim that Bagus has a functioning factory with enough production capacity to produce the required WCV lacks probative value and does not overcome the weight of the evidence against CNC.²⁵ MasterBrand notes Bagus' lack of documentary proof of its manufacturing facility, country-wide trade data, bill of lading data indicating Bagus started exporting cabinets from Malaysia to the United States after the provisional AD/CVD measures were imposed, Bagus officers with connections to Chinese entities engaged in the production of WCV, and the declaration of MasterBrand's foreign market researcher ("FMR"), to support MasterBrand's position.²⁶

MasterBrand also argues that there were no procedural deficiencies in CBP's investigation. Specifically, MasterBrand notes that there is no knowledge or intent requirement in the EAPA statute, and that CNC made a material and false statement by declaring its entries from Bagus as not subject to AD/CV duties. MasterBrand asserts that neither CNC nor Bagus was entitled to BCI in the EAPA investigation, that CBP complied with the regulations, and that CBP did not deprive them of their right to due process.²⁷ MasterBrand contests CNC's assertion that it did not have notice or a meaningful opportunity to be heard.²⁸

In addition to all of the substantive and due process arguments above, MasterBrand argues that CNC's request should be rejected for containing new factual information, or at the least, that CBP should reject and remove from the record the portions of CNC's request for review which constitute improperly submitted new factual information.²⁹

d. Administrative Review Analysis

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

²⁵ MasterBrand Response to Request for Review at 17-19 (citing CNC RFI Response; CNC Supplemental RFI Response; Bagus RFI Response; Final Determination).

²⁶ *Id.* at 11-15 (citing MasterBrand's EAPA Allegation against CNC).

²⁷ *Id.* at 25 (citing Final Determination; EAPA 7593 Memo to the File – Import and Export Data; Import/Export Data; CNC Review Request).

²⁸ *Id.* at 25-26 (citing CNC Review Request; Initiation Notice).

²⁹ *Id.* at 5.

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on the record. For that purpose, CBP will review the administrative record, as provided to RR by TRLED, upon which the initial determination was made, the timely and properly filed request(s) for review and responses.

Our *de novo* review of the administrative record raises significant questions as to whether CNC engaged in evasion by transshipping Chinese-origin WCV through Malaysia to the United States. The record evidence includes copies of purchase orders, entry documents, contracts, payroll records, employee timesheets, bank records, financial statements, financial audits, videos, and photographs all indicating that the origin and source of the merchandise was Malaysia. TRLED relied upon MasterBrand's allegation, the inability to confirm the location of Bagus' factories, and the foreign trade 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. Production Capacity

The first major part of the January 31 Determination was that TRLED was unable to confirm the location and existence of Bagus' factories; thus, TRLED concluded that Bagus lacked adequate production capacity to manufacture its WCV in Malaysia. TRLED observed that a Google Earth search of Bagus' addresses did not reveal any large buildings that resemble a factory building, contrary to photos provided by Bagus and CNC or found on Bagus' website. HSI conducted a visit to the two factory addresses, but was unable to find proof that an operational factory existed at either site.³⁰ In response to the HSI visit, CNC and Bagus placed on the record Google Maps results showing that a search for each of their factories could return an incorrect address, and seventeen videos showing the travel from the "incorrect" addresses to the "correct" addresses. CNC and Bagus used this submission to argue that HSI visited the wrong addresses.³¹

TRLED gave little weight to this rebuttal evidence. First, TRLED noted that street signs and/or address numbers on several buildings were not visible in the video footage. TRLED repeatedly observed that neither building matched the photo posted on Bagus' website. Regarding the interior of the Lot 8610 video, TRLED observed that there did not appear to be any sign of prolonged heavy equipment in place, and that the interior did not match the photographs in Bagus' RFI Response. Finally, TRLED also noted that Bagus failed to provide a video of the interior of the 1778-1779 address.³²

However, upon review of the record, we disagree. First, we note that neither Bagus nor CNC ever indicated that the photo of the factory on Bagus' website was a photograph of Bagus' real factory. We do not find there is evidence that Bagus provided inaccurate information about its actual factory images and location. Upon review of the video footage, we find that many of the street signs and/or address numbers are visible in the video footage. In fact, the videos were clear enough to follow along, to confirm the asserted endpoint addresses lined up with the commute. Additionally, while MasterBrand's FMR visited the same Lot 8610 address as HSI, also finding no factory, the FMR visited the

³⁰ January 31 Determination, at 6-7 (citing DHS Visit Memo).

³¹ CNC Rebuttal to DHS Visit Memo.

³² January 31 Determination, at 7-8.

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“correct” 1778-1779 address, which HSI was unable to locate, thus corroborating that a factory did in fact exist, at the location claimed by CNC and Bagus.³³

While, TRLED properly determined that the Lot 8610 video did not show evidence of prolonged heavy equipment use on the floor, TRLED incorrectly compared photographs of the interior of the 1778-1779 address to the video of the Lot 8610 address to determine that the interior did not match.³⁴ Those photographs do appear to match the exterior of the 1778-1779 address, though there is regrettably no video of the interior of that address.³⁵ We also find that the lack of commercial vehicles and/or containers at the “correct” 1778-1779 address is not sufficiently probative of the functioning capacity of a factory, and thus is not substantial evidence of evasion.

Based on the above, we find that the evidence on the record does not support TRLED’s conclusion that CNC and Bagus lacked production capacity and we find that there is actual evidence on the record that a Malaysian factory exists.

2. Foreign Trade and Research Data.

The second main factor the January 31 Determination relied upon to demonstrate that CNC engaged in evasion was foreign trade data. This data shows that Bagus regularly imported goods into Malaysia from a supplier in China classified under the same HTS number that Bagus exported to the United States. TRLED determined that this trade data, when coupled with TRLED’s determination that Bagus did not have an operational factory in Malaysia, led to a finding of substantial evidence that CNC entered covered merchandise via transshipment. However, we disagree. We determine that trade data is not substantial evidence of evasion. Without any evidence connecting specific shipments imported into Malaysia from China with the specific entries under review, it is difficult to determine here that there is substantial evidence showing CNC engaged in evasion via transshipment.

MasterBrand contends that the FMR provided evidence that CNC engaged in evasion. Specifically, the FMR declared that a Bagus officer stated that Bagus does not manufacture any of its own goods for export and, instead, exports goods manufactured by other companies, including those in China, to the United States. The Bagus officer also told the FMR that Bagus repackages products from China.³⁶ The FMR, without entering the 1778-1779 address, determined that it was still under construction and it was highly unlikely that any manufacturing was going on, despite that Bagus acquired the factory in early 2020.³⁷ The FMR’s declaration also includes photographs of the 1778-1779 address, which includes a sign for the company from which Bagus purchased the factory. However, we find that the FMR’s declaration is merely a statement of conversations the FMR engaged in without any

³³ See MasterBrand EAPA Allegation against CNC, Exhibit 8.

³⁴ The record shows that Bagus had moved from the Lot 8610 address to the 1778-1779 factory address. While not every photograph attached to Bagus’ RFI Response and CNC’s CF-28 Responses was asserted in the record to be of the 1778-1779 factory address, none was ever asserted to be part of the Lot 8610 address, and it seems likely that Bagus would take photographs of its current factory with production running to help CNC fulfill a CF-28 Request rather than use old photographs of a previous factory.

³⁵ See an analysis of the photographs in Section II(d)(3) below.

³⁶ MasterBrand EAPA Allegation against CNC, at 10.

³⁷ *Id.* at 10-11 and Exhibit 8.

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support for the proposition that the information conveyed in the conversations was factually accurate. Furthermore, like the trade data, these statements have not been connected to the CNC U.S. entries of WCV pertinent to this investigation. Nothing else in the record provides further evidence supporting the information conveyed in the FMR's conversations; thus, we determine that the conversations have little evidentiary value.

3. Production Records.

The record also shows that CNC and Bagus submitted documents containing evidence of WCV production in Malaysia such as: an independent financial audit from before the EAPA allegation, which included the purchase of the 1778-1779 factory,³⁸ records of purchases and model numbers of factory machinery,³⁹ production records of every step of WCV manufacturing,⁴⁰ employee attendance sheets,⁴¹ employee payroll slips, including social security payments,⁴² sales lists linked to commercial invoices,⁴³ raw material purchase documents and shipping documents,⁴⁴ entry documents, including commercial invoices,⁴⁵ and photographs of raw materials and WCV production inside Bagus' factory.⁴⁶

CNC and Bagus submitted thousands of pages of documents, covering the shipments and period in question. The documents confirm one another when cross-referenced and are evidence of the narrative that Bagus purchased domestically in Malaysia, or imported from China, various raw materials,⁴⁷ to manufacture WCV in Malaysia, and entered Malaysian-origin WCV into the United States.⁴⁸ Of note are the photographs Bagus provided of the interior of its factory, showing what appears to be raw materials such as plywood, solid wood, fiberboard, and paint, being manufactured into finished WCV, evidence of both production ability and capacity.⁴⁹

More importantly the invoices, bills of materials, and shipping information provided show that raw materials such as wood, paint, and parts were either purchased domestically in Malaysia or imported from China, and the production and employee records demonstrate that these raw materials were then manufactured into finished WCV in Bagus' Malaysian factory.⁵⁰

³⁸ See, e.g., Bagus RFI Response, Exhibit 7.

³⁹ *Id.*, Exhibit 11.

⁴⁰ *Id.*, Exhibit 18.2.

⁴¹ *Id.*, Exhibit 20.

⁴² *Id.*, Exhibit 21.

⁴³ *Id.*, Exhibit 22.

⁴⁴ *Id.*, Exhibit 26.1.

⁴⁵ See, e.g., CNC RFI Response, Exhibit 28.

⁴⁶ See, e.g., CNC CF-28 Response for Entry Number XXX-XXXX9424, at 155-183.

⁴⁷ *Id.* (showing purchases of plywood, birch stock board, medium density fiberboard from China). See also CF-28 Response to Entry No. XXX-XXXX3821 (showing purchases of plywood, birch, medium density fiberboard, rubber board from Malaysia; hinges, slides, shelf pins, connectors, L bars, door stoppers, paints from China).

⁴⁸ See, e.g., CNC RFI Response, Exhibit 28.

⁴⁹ *Supra* 46.

⁵⁰ See, e.g., Bagus RFI Response, Exhibits 18.2, 20.

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The scope of the AD/CVD Orders includes finished WCV as well as wooden components and assorted parts required to assemble a cabinet or vanity, provided they are from China.⁵¹ The scope language does not indicate that raw materials from China which are processed into WCV in a third country are intended to be a part of the scope. As stated above, evidence on the record shows that Bagus imported raw materials from China, processed them into finished WCV in Malaysia, and exported the WCV to the United States. We find that the evidence described above supports a finding that CNC imported materials that are outside the scope of the AD/CVD Orders.

Reliable evidence contained within the record does demonstrate that many raw materials sourced by Bagus did come from China. However, based on the unambiguous language of the AD/CVD Orders, we find this merchandise is not within scope, as the production records related to the pertinent entries show that Bagus imported raw materials and not WCV or components thereof from China.

e. Conclusion

We find that the administrative record does not contain substantial evidence that covered merchandise was entered by CNC during the POI and was not declared as subject to the AD/CVD Orders. Although some deficiencies existed in the responses to TRLED's requests for information, a significant amount of information was received showing Bagus' ordering of raw materials from its suppliers, that Bagus does have facilities in Malaysia where manufacturing of WCV took place, and of the subsequent purchases by CNC. The record establishes that Bagus had the capability to produce WCV, supported by photographs of its production in progress, evidence of Bagus' machinery, production records, purchase orders, shipping information, employee records, and an independent analysis of Bagus' capabilities.

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

Because we are overturning TRLED's January 31 Determination on the weight of the facts, we do not find it necessary to address the due process arguments put forward by CNC. However, even if we had reached a different result, we note that it is not the role of RR to review procedural issues related to TRLED's investigation; rather, our role is to review the evidence, *de novo*, to determine whether substantial evidence of evasion exists. Furthermore, the U.S. Court of International Trade has addressed the issue of access to confidential information in the context of an EAPA investigation and has rejected arguments similar to those made by CNC.⁵²

MasterBrand also contends that there are five sections of CNC's Request for Review which constitute new factual information and that CBP should reject and remove these sections. The first two sections contain CNC's arguments explaining that the factory photograph on Bagus' website was not a photograph of Bagus' factory, and that many other companies and governments also used the same photograph. The third section involves

⁵¹ AD/CVD Orders.

⁵² See, e.g., *Royal Brush Mfg. v. United States*, 545 F. Supp. 3d 1357, 1365-1369 (C.I.T. 2021).

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CNC's explanation that the job post seen on Bagus' factory gate in one of the videos was an old job post and merely was not taken down. The final two sections contain CNC's arguments against the veracity of the foreign trade data added by TRLED's December 15, 2021 Memorandum.

We did not rely upon any of these sections in our determination. While we did analyze the website photograph in making our determination, we did not rely upon CNC's information. Instead, we noted that neither Bagus nor CNC ever asserted that the website photograph was a photograph of Bagus' factory, but both asserted that various other photographs were of the factory. These assertions or lack thereof are all found in the original record. Likewise, we did not rely upon information about the job post in our determination, as the existence of a job posting of this type has little probative value towards determining whether Bagus transshipped WCV, especially considering the vast amount of information supporting the contention that Bagus had a functioning factory. Finally, because we determined that foreign trade data is not substantial evidence of evasion and there was no evidence connecting specific shipments imported into Malaysia from China with the specific entries under review, we did not rely on the trade data, and thus did not rely upon CNC's arguments related thereto. Accordingly, since we have not relied on the information in question, we do not need to determine whether the above information in CNC's Request for Review should be rejected as being improperly submitted new factual information.

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 January 31 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.

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,

W. Richmond Beevers
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Approved by:

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