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U.S. Customs and Border Protection

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Re: Enforce and Protect Act Case Number 7618 Correction; 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. Meisner and Menegaz:

This is in response to a request for *de novo* administrative review of a determination of evasion dated June 7, 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 7618 (hereinafter referred to as the “June 7 Determination”).¹ The request for review, dated July 21, 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).

I. Background

Inasmuch as the facts in this case were fully set forth in the June 7 Determination, we will not repeat the entire factual history herein.

¹ See Notice of Determination as to Evasion in EAPA Case Number 7618 (Jun. 7, 2022), available at: <https://www.cbp.gov/document/publications/eapa-case-7618-cnc-associates-ny-inc-dba-cnc-cabinetry-notice-determination>.

PUBLIC VERSION

In brief, according to the record evidence, on March 15, 2021, American Kitchen Cabinets Alliance (“AKCA”) filed an EAPA allegation against CNC. AKCA alleged that CNC entered wooden cabinets, vanities, and components thereof (“WCV”) of Chinese origin, into the United States by transshipment through Indonesia, to evade the payment of antidumping and countervailing duties (“AD/CVD”) on WCV from the People’s Republic of China (“China”)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) 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.

² See AKCA EAPA Allegation (Mar. 15, 2021)(Public Version (“PV”)).

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”).

PUBLIC VERSION

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.

[...]

Imports of subject merchandise are classified under Harmonized Tariff Schedule of the United States (HTSUS) statistical numbers 9403.40.9060 and 9403.60.8081. The subject component parts of wooden cabinets and vanities may be entered into the United States under HTSUS statistical number 9403.90.7080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

On June 3, 2021, TRLED initiated a 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 September 9, 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.⁴ Per the Notice of Initiation, the entries subject to the investigation were those entered for consumption, or withdrawn from a warehouse for consumption, from May 12,

⁴ See Notice of Initiation of Investigation and Interim Measures (Sep. 9, 2021) (“Notice of Initiation”), available at <https://www.cbp.gov/document/publications/eapa-case-7618-cnc-associates-ny-inc-dba-cnc-cabinetry-notice-initiation>.

PUBLIC VERSION

2020, through the pendency of the investigation (“the Period of Investigation” or “POI”).⁵ 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.

On June 7, 2022, TRLED issued the June 7 Determination. TRLED found evidence demonstrating that CNC entered certain WCV from China that were covered by the AD/CVD Orders, by transshipment through Indonesia. As a result, no AD/CVD cash deposits were paid on the merchandise upon entry.⁶

On July 21, 2022, CNC filed a timely Request for Administrative Review.⁷ On July 22, 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 H326341. On July 29, 2022, AKCA timely filed a response to CNC’s request for administrative review.⁸ 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

⁵ *Id.* at 2, *see also* 19 CFR § 165.2.

⁶ *See* June 7 Determination, at 1-2 (PV).

⁷ CNC’s Request for Administrative Review (Jul. 21, 2022)(PV).

⁸ AKCA’s Response to Request for Administrative Review (Jul. 29, 2022)(PV).

PUBLIC VERSION

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.⁹

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.¹⁰

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).”¹¹

Our *de novo* review 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.”¹² 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.”¹³

Therefore, RR 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 June 7 Determination of evasion, arguing that CNC did not enter covered merchandise into the United States through evasion. CNC contends that the entered merchandise was produced by PT Aiwood Smart Home (“Aiwood”) and PT Sunwell Manufacturing Indonesia (“Sunwell”) in Indonesia, and therefore, there is no legal or factual basis for CBP to impose AD/CV duties on CNC's entries.

⁹ See also 19 CFR § 165.1.

¹⁰ See *Investigation of Claims of Evasion of Antidumping and Countervailing Duties, Interim Regulations*, 81 Fed. Reg. 56,477, 56,478 (Aug. 22, 2016).

¹¹ See 19 CFR § 165.1.

¹² See *Altex, Inc. v. United States*, 370 F.3d 1108, 1116 (Fed. Cir. 2004) (internal citations and quotation marks omitted).

¹³ *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)).

PUBLIC VERSION

The June 7 Determination centered around three findings. First, TRLED found that trade data showed Aiwood and Sunwell were importing to Indonesia WCV from China. Second, TRLED found that ownership information and proximity between Aiwood, Sunwell, and with PT Mangrove Industry Park Indonesia (“MIPI”), showed that the three companies were affiliated. Third, TRLED found that Aiwood and Sunwell were unable to track specific raw material purchases to finished goods sold. With these three findings, TRLED concluded that substantial evidence was on the record demonstrating that evasion occurred.

First, CNC asserts that TRLED erred in finding that Aiwood and Sunwell imported cabinet components from China to Indonesia, subject to the AD/CVD Orders. CNC claims that Aiwood and Sunwell imported into Indonesia raw materials from China, which were misreported as furniture components and thus misclassified under Indonesian Harmonized Tariff Schedule “(HTS)” heading number 9403, which is for WCV and not raw materials.¹⁴

CNC argues that the Panjiva¹⁵ data AKCA submitted during the investigation does not show that Aiwood and Sunwell were importing into Indonesia finished WCV from China, because the prices for the same item on the same day are vastly different, suggesting that the Panjiva descriptions of items are incorrect.¹⁶ CNC uses the discrepancies in the Panjiva data to assert that the [source] trade data likely contains similar errors. In arguing this, CNC explains that Aiwood and Sunwell only purchased raw materials from China which needed to be substantially processed in Indonesia to construct finished WCV.¹⁷ CNC also notes that, after visiting Aiwood’s and Sunwell’s factories, U.S. Department of Homeland Security (“DHS”) officials concluded that “Aiwood, and Sunwell are legitimately producing these products in Indonesia and exporting them to the U.S.”¹⁸

CNC further argues against the determination that Aiwood and Sunwell are affiliated with MIPI because of the proximity of their factories and alleged joint ownership.¹⁹ In the June 7 Determination, TRLED concluded that a Chinese national owns 20% of MIPI and 29% of Aiwood. CNC states that while one of Aiwood’s shareholders also held some MIPI shares, that shareholder withdrew its investment in MIPI prior to the POI. CNC also admits that MIPI’s owner owns 1% of Sunwell, but argues that a 1% ownership does not amount to an “affiliated person.” CNC also repeats its position that physical proximity does not amount to affiliation.²⁰

¹⁴ CNC Review Request at 18-20 (citing AKCA April 8 RFI Exhibits 7 & 8)(PV).

¹⁵ Panjiva Inc., is a global trade data company focused on bringing transparency to global trade. *See generally* www.panjiva.com (last accessed Sep. 14, 2022).

¹⁶ CNC Review Request at 18-20 (PV).

¹⁷ *Id.* at 20-22 (citing Sunwell RFI Response; Aiwood RFI Response).

¹⁸ *Id.* at 11-12 (citing Site Visit Report).

¹⁹ The June 7 Determination relied, in part, upon a finding that Aiwood, Sunwell, and MIPI were financially tied and acted in concert to engage in a transshipment scheme wherein their imports from China were commingled before shipping to the United States. *See* June 7 Determination at 9-10 (PV). While MIPI is not a party to this case, MIPI is located in the same industrial park as Aiwood and Sunwell, and the initial allegation includes news reports from before the POI wherein the owner of MIPI admitted to transshipment. The record shows that MIPI closed in 2020.

²⁰ CNC Review Request at 25-27 (citing CNC VFI; CNC Written Argument; Sunwell RFI Response; June 7 Determination)(PV).

PUBLIC VERSION

CNC takes issue with TRLED's determination that Aiwood and Sunwell failed to demonstrate that they were able to manufacture all the products they sold to CNC. Instead, CNC contends that Sunwell provided all production information relevant to the shipments sent to CNC, and that Aiwood provided all the relevant production information TRLED requested. CNC argues that, because Aiwood and Sunwell were not asked to provide production information for some months inside the POI, their failure to provide that information should not be regarded as an inability to produce the merchandise imported into the United States or to provide the information if requested.²¹

In addition to the above, CNC makes various due process arguments. Specifically, CNC argues that TRLED failed to timely notify CNC, Aiwood, or Sunwell of the EAPA investigation;²² that TRLED's use of Business Confidential Information ("BCI") violated CNC's right to due process and effective legal counsel;²³ that TRLED did not provide adequate summaries of BCI;²⁴ that TRLED acted inconsistently by publicly disclosing information in the June 7 Determination previously redacted as BCI;²⁵ and that TRLED did not analyze whether CNC made any false statements at entry.²⁶ Based on the above arguments, CNC posits there is not substantial evidence of evasion.

c. AKCA's Arguments

AKCA requests that we affirm the June 7 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.

Specifically, AKCA argues that the record evidence supports TRLED's finding that Aiwood and Sunwell imported WCV from affiliated cabinet producers in China and shipped the covered merchandise to the United States. AKCA points to the Panjiva data showing that Aiwood and Sunwell imported products into Indonesia under Indonesian HTS 9403, from companies in China.²⁷ AKCA also notes that the Panjiva data describes the imports as specific components of cabinets, not as raw materials.²⁸ Furthermore, AKCA notes the shared ownership between Aiwood and one of Aiwood's Chinese suppliers.²⁹

AKCA contests CNC's assertion that the price discrepancies between shipments of imports with the same description detract from the reliability of the Panjiva data. AKCA explains that the price discrepancy could reflect the difference in cost between different components of the same model of cabinet, and that the descriptions themselves, specifically, state that the imports are wooden cabinet components.³⁰

²¹ *Id.* at 27-28 (citing June 7 Determination).

²² *Id.* at 15-16 (citing CNC Written Argument).

²³ *Id.* at 16-17 (citing CNC Written Argument).

²⁴ *Id.* at 24-25 (citing June 7 Determination).

²⁵ *Id.* at 25, 29-30 (citing June 7 Determination).

²⁶ *Id.* at 30 (citing CNC Written Argument).

²⁷ AKCA Response to Review Request at 11-18 (citing AKCA RFI Submission; EAPA Allegation; Aiwood RFI Response; CNC Review Request; Sunwell RFI Response)(PV).

²⁸ *Id.* at 12-13, 14, 16-17 (citing AKCA RFI Submission).

²⁹ *Id.* at 13 (citing EAPA Allegation; AKCA RFI Submission).

³⁰ *Id.* at 18 (citing CNC Review Request).

PUBLIC VERSION

AKCA also argues that the fact that Aiwood and Sunwell were found to have production capacity does not mean the companies did not engage in evasion. AKCA puts forward four theories for what may have happened: 1) that there may have been a transitional period wherein the companies engaged in evasion while they shifted production from China to Indonesia;³¹ 2) that the Indonesian operations may have been interrupted by COVID-19 lockdowns, requiring the companies to supplement their production with WCV from China;³² 3) that the affiliated Chinese producers make WCV more efficiently;³³ 4) or that the Indonesian operations were established by Chinese WCV producers as a front to cover transshipment.³⁴

In addition to the above, AKCA responds to CNC's due process arguments. AKCA argues that CBP gave CNC notice of the EAPA investigation within the statutory timeframe;³⁵ that CBP and AKCA provided adequate summaries of BCI;³⁶ and that CNC's assertion that CBP did not analyze whether CNC entered covered merchandise is incorrect.³⁷

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 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, and the timely and properly filed request(s) for review and response(s).

Our *de novo* review of the administrative record raises significant questions as to whether CNC engaged in evasion by transshipping Chinese-origin WCV through Indonesia to the United States. The record evidence includes copies of purchase orders, entry documents, contracts, payroll records, employee timesheets, bank records, company ownership information, financial statements, and photographs, all indicating that the merchandise was manufactured in Indonesia.³⁸ TRLED relied upon financial connections between relevant companies, the initial allegation, statements of the alleged's private investigator ("PI"),³⁹ foreign trade data, and a finding that Aiwood and Sunwell's inability to link specific raw material purchases to finished goods sold to conclude that evasion occurred. We determine that, when weighed against the entire record, there is not sufficient evidence to conclude that evasion occurred, as discussed below.

³¹ *Id.* at 20.

³² *Id.* at 20-21.

³³ *Id.* at 21.

³⁴ *Id.*

³⁵ *Id.* at 7-8.

³⁶ *Id.* at 9-10; 18-20.

³⁷ *Id.* at 21.

³⁸ *See, generally*, CNC CF-28 Entry Summary No. 0968 (BC); CNC Refiling CF-28 and Document Request Response(BC); Aiwood RFI Response (BC); Sunwell RFI Response (BC).

³⁹ The June 7 Determination uses the term "foreign market researcher" instead of "private investigator." However, AKCA's initial allegation against CNC uses the term "private investigator" and accordingly we have decided to use the terminology description AKCA used.

PUBLIC VERSION

TRLED determined that ownership information found in the initial allegation showed evidence of an affiliation between MIPI, Aiwood, and Sunwell. In particular, the allegation showed that a Chinese national owned 20% of MIPI, and the same individual owned 29% of Aiwood, while an Indonesian national who owned 70% of MIPI also owned 1% of Sunwell.⁴⁰ That shared ownership, combined with the three companies being located in the same industrial park, was used by TRLED as evidence that the three companies might be involved in a transshipment scheme, according to the June 7 Determination.⁴¹

In addition to the shared ownership and close proximity between the three companies, TRLED found that the trade data showed a potential transshipment scheme. Specifically, Aiwood and Sunwell frequently imported goods from Chinese companies under the Indonesian HTS code covering wooden furniture parts, not raw materials. The June 7 Determination found that products were sourced from known producers of finished WCV in China, not producers of raw materials.⁴² This trade data shows what appears to be furniture components imported from China to Indonesia by the three companies, which is then exported from Indonesia to the United States. Additionally, though MIPI stopped operations in 2020,⁴³ the [source] trade data from [findings in trade data]⁴⁴ The descriptions of the goods imported from China in the Panjiva data imply that the imports into Indonesia consisted of finished cabinets or cabinet components.⁴⁵

First, we address the affiliation issue. We find that the record does not fully support the contention that the companies have shared ownership. While CNC did admit that the 70% owner of MIPI owns a 1% stake in Sunwell,⁴⁶ the record is conflicted on whether the 20% owner of MIPI owns 29% of Aiwood. Outside the initial allegation, the financial documentation on Aiwood shows that, prior to the POI, the [change in Aiwood's ownership].⁴⁷ While this is during the POI, it is before the initial allegation was received, suggesting that the ownership change had nothing to do with a pending EAPA investigation. We determine that the 1% ownership stake in this case does not show a notable financial connection between the companies, and that the physical proximity between the companies does not amount to sufficient evidence upon which to conclude the existence of a transshipment scheme. Additionally, even assuming the ownership information as it was presented in the initial allegation is true, considering the other facts in the record, we do not find substantial evidence of evasion.

While the trade data may offer some evidence of a transshipment scheme, we determine that, in this case, when viewed in the context of all of the evidence developed in

⁴⁰ June 7 Determination, at 9 (PV). *See also* AKCA EAPA Allegation, Exhibit 6.

⁴¹ *Id.*

⁴² *Id.*, at 8, *citing* AKCA RFI Response, CNC RFI Response, Aiwood RFI Response, Sunwell RFI Response, TRLED January 13 Memo adding Information to the File.

⁴³ TRLED Memo to the File (Site Visit Report), at 4 (PV).

⁴⁴ June 7 Determination, at 7 (Business Confidential (“BC”).

⁴⁵ *See generally* Alleger RFI, Exhibits 1, 2, 7, 19 (BC).

⁴⁶ CNC Review Request, at 26 (PV).

⁴⁷ CNC NFI Submission, Exhibit 7 (BC).

PUBLIC VERSION

the record, the trade data is not sufficient to establish evasion. We note that the [] source [] trade data does not [] limitation in data [], instead it shows [] specifics of trade data provided

[] We note that without any evidence connecting specific shipments imported into Indonesia from China with the specific entries of finished WCV into the United States under review, it is difficult to determine that there is substantial evidence showing CNC engaged in evasion via transshipment, especially in light of our determination that the record holds insufficient evidence to conclude that the three companies have notable financial connections.

As regards the Panjiva data, the product descriptions used and the Chinese material suppliers being known WCV producers imply that CNC may have imported covered merchandise into the United States. However, the product descriptions and prices do not line up in an understandable manner. Frequently, for what are described as the same products imported on the same day, the prices are vastly different.⁴⁸ If Aiwood and Sunwell were importing finished WCV, the prices would likely be equivalent for the same finished WCV on the same day. In theory, the price discrepancies could be for the same product at different prices, completely different products, different components of the same product, or raw materials for a model of WCV. The record does not contain any explanation as to why these prices are so different, and therefore we accord the Panjiva data limited weight. Additionally, the prices of the goods imported to Indonesia from China are vastly lower than the prices of finished cabinets exported from Indonesia to the United States.⁴⁹ This further supports CNC’s contention that the goods imported to Indonesia from China are raw materials or unfinished. As with the [] source [] trade data, without any evidence connecting specific shipments imported into Indonesia from China with the specific entries of finished WCV into the United States under review, it is difficult to determine that there is substantial evidence showing CNC engaged in evasion via transshipment.

TRLED determined that AKCA’s PI provided evidence that CNC engaged in evasion. Specifically, TRLED relied upon the PI’s declaration that the [] PI communication with factory personnel [] and that [] PI communication with factory personnel []. The [] PI communication with factory personnel []. The PI stated that she observed [] description of equipment type and quantity and commodities at factory [] in the Sunwell factory, and that the [] condition of factory [].⁵⁰

⁴⁸ See generally Alleger RFI, Exhibits 7, 19 (BC).

⁴⁹ The Panjiva data shows total price and total weight, whereas the invoice data from CNC shows units purchased and price per unit. However, e.g., a comparison of the average price per kilogram on the Panjiva data for Aiwood’s imports from China returns roughly [price] per kilogram, whereas the price per kilogram shipped from Indonesia to the United States returns roughly [price] per kilogram. See Alleger RFI, Exhibit 7 (BC); Aiwood RFI Response, Exhibit 3 (BC).

⁵⁰ AKCA EAPA Allegation, at 7 (BC). See also June 7 Determination (BC).

PUBLIC VERSION

However, there is little evidence in the record to corroborate the PI's findings. Much of the PI's declaration is merely a statement of conversations the PI engaged in without any support for the proposition that the information conveyed in the conversations was factually accurate. These same or similar statements or purported facts do not appear elsewhere in the record. When U.S. government officials visited the Aiwood and Sunwell factories, they spoke to multiple managers, but there is no mention of the manager with whom the PI spoke.⁵¹ In fact, the U.S. government officials received information which directly contradicts the PI's statements, such as verifying that Aiwood and Sunwell "have sufficient production capabilities," and that [factory status].⁵² Furthermore, these PI statements have not been connected to CNC's entries of WCV pertinent to this investigation. Nothing else in the record provides further evidence supporting the information conveyed in the PI's conversations; thus, we determine that the conversations have little evidentiary value.

Likewise, the record does not corroborate the PI's observations during the PI's factory visit. Aiwood and Sunwell provided lists of all the machinery they purchased for their respective factories and the dates the machines were purchased.⁵³ CNC provided images of the Aiwood factory exterior and interior, showing raw materials being manufactured into cabinets.⁵⁴ Aiwood and Sunwell both provided documents showing purchases of raw materials such as [list of raw materials and country of purchase],⁵⁵ production records of every step of WCV manufacturing,⁵⁶ employee attendance sheets,⁵⁷ employee payroll sheets (including social security payments),⁵⁸ sales lists linked to commercial invoices,⁵⁹ and entry documents to both Indonesia and the United States, including commercial invoices.⁶⁰

CNC, Aiwood, and Sunwell submitted thousands of pages of documents, covering the shipments during the POI. The documents confirm one another when cross-referenced and are evidence of the facts asserted by CNC that Aiwood and Sunwell purchased domestically in Indonesia or imported from China, various raw materials⁶¹ to manufacture WCV in Indonesia, and entered Indonesian-origin WCV into the United States.⁶²

Of particular note is the Site Visit Report, detailing a site visit to Aiwood, Sunwell, and MIP's locations by DHS officials in October 2021, during the POI. During this visit,

⁵¹ See generally TRLED Memo to the File (Site Visit Report) (BC).

⁵² *Id.*

⁵³ Aiwood RFI Response, Exhibit 15 (BC); Sunwell RFI Response, Exhibit 14 (BC).

⁵⁴ CNC CF-28 Entry Summary No. 0968, Exhibit 11; CNC Refiling CF-28 and Document Request Response, Exhibit 6 (BC).

⁵⁵ Aiwood RFI Response, Exhibit 1 (BC); Sunwell RFI Response, Exhibit 1 (BC).

⁵⁶ Aiwood RFI Response, Exhibit 2 (BC); Sunwell RFI Response, Exhibit 2 (BC).

⁵⁷ Aiwood RFI Response, Exhibit 22 (BC); Sunwell RFI Response, Exhibit 21 (BC).

⁵⁸ Aiwood RFI Response, Exhibit 23 (BC); Sunwell RFI Response, Exhibit 22 (BC).

⁵⁹ Aiwood RFI Response, Exhibit 25 (BC); Sunwell RFI Response, Exhibit 24 (BC).

⁶⁰ Aiwood RFI Response, Exhibit 3 (BC); Sunwell RFI Response, Exhibit 3 (BC).

⁶¹ See, e.g., Aiwood RFI Response, Exhibit 1 (BC); Sunwell RFI Response, Exhibit 1 (BC) (showing purchases of [list of raw materials and country of purchase]); CNC Refiling CF-28 and Document Request Response, Exhibit 5 (showing purchases of [list of raw materials and country of purchase]).

⁶² See, e.g., CNC RFI Response, Exhibits 28-29 (BC).

PUBLIC VERSION

officials spoke with managers for Aiwood and Sunwell, and observed the facilities and production processes for both companies. The officials determined that both companies had “sufficient production capabilities and manufacturing capacities to produce volume of their WCV and components.”⁶³ The site visit concluded that Aiwood and Sunwell were “legitimately producing these products in Indonesia” and that “MIPI is no longer in business producing these goods.”⁶⁴ We consider this evidence of greater weight than the declaration of the PI.⁶⁵

Reliable evidence contained within the record does demonstrate that many raw materials sourced by Aiwood and Sunwell 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 purchase records and production records related to the pertinent entries show that Aiwood and Sunwell imported raw materials and not WCV or components thereof from China.

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.⁶⁶ 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 Aiwood and Sunwell imported raw materials from China, processed them into finished WCV in Indonesia, and entered the WCV into 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.

Between the visual evidence of production at the factory, the purchase orders for the materials and much of the other documentation provided during the investigation, the record supports the assertions of CNC, Aiwood, and Sunwell that, while they acknowledge misclassification of the Chinese materials occurred when the materials entered Indonesia, the items actually entering Indonesia would fall outside of the scope of the AD/CVD Orders.

While the scope of the AD/CVD Orders on WCV from China is broad and comprehensive, it specifically defines which WCV wooden component parts are covered; namely,

- (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) 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.

⁶³ TRLED Memo to the File (Site Visit Report), at 4 (PV).

⁶⁴ *Id.*, at 9.

⁶⁵ The Site Visit Report mentions that pictures and videos were taken in the facility. These pictures and videos were not included in the record as provided to us, and we were informed by TRLED that it did not receive the pictures and videos.

⁶⁶ AD/CVD Orders.

PUBLIC VERSION

CNC provided photographs of raw materials in the Indonesian factory, and Aiwood and Sunwell provided raw material purchase records and workflow explanations. These photographs and documents do not demonstrate, on their face, that the Chinese imports would fall into any one of the six (6) categories outlined by Commerce as covered by the scope. Materials that will be used to create the covered WCV wooden component parts are not included and there has been no determination from Commerce indicating that pre-cut materials sourced from China but used to create the WCV wooden component parts in a third country are within the scope of the AD/CVD Orders. CBP cannot affect the scope of the Orders. CBP is bound by the plain language of the scope of the AD/CVD Orders and cannot expand the scope to include parts of WCV wooden component parts.

e. Conclusion

We find that the administrative record does not contain substantial evidence that covered merchandise was entered by CNC during the POI. Although the trade data raises general concerns about a transshipment scheme, a significant amount of information was received showing Aiwood and Sunwell ordered raw materials from their suppliers and have sufficient WCV manufacturing facilities in Indonesia. The record establishes that Aiwood and Sunwell had the capability to produce WCV for CNC in Indonesia, at the volumes imported into the United States. The supporting evidence includes the DHS Site Visit Report, photographs of production in progress, evidence of machinery, production records, purchase orders, shipping information, and employee records.

The documentation and information provided within the record, in our view outweighs any circumstantial trade and ownership data provided. Thus, we determine there is not substantial evidence that CNC entered covered merchandise through evasion.

Because we are reversing TRLED's June 7 Determination on the weight of the facts, we do not find it necessary to address the due process arguments put forward by CNC. We note, however, that 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.⁶⁷

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 June 7 Determination of evasion is **REVERSED**.

This administrative review 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.

⁶⁷ See, e.g., *Royal Brush Mfg. v. United States*, 545 F. Supp. 3d 1357, 1365-1369 (C.I.T. 2021).

PUBLIC VERSION

This decision does not preclude CBP or other agencies from pursuing additional enforcement actions or penalties. Pursuant to 19 CFR § 165.46(a), this final administrative determination is subject to judicial review pursuant to section 421 of the Trade Facilitation and Trade Enforcement Act of 2015.

Sincerely,

W. Richmond Beevers
Chief, Cargo Security, Carriers, and Restricted Merchandise Branch
Regulations and Rulings, Office of Trade
U.S. Customs and Border Protection

Approved by:

Charles R. Steuart
Director, Border Security and Trade Compliance Division
Regulations and Rulings, Office of Trade
U.S. Customs and Border Protection