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PUBLIC VERSION

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Re: Enforce and Protect Act (“EAPA”) Case Number 7321; *Certain Hardwood Plywood from the People’s Republic of China: Antidumping Duty Order*, 83 FR 504 (January 4, 2018) and *Certain Hardwood Plywood from the People’s Republic of China: Countervailing Duty Order*, 83 FR 513 (January 4, 2018); U.S. Global Forest, Inc., Interglobal Forest LLC, and American Pacific Plywood, Inc.; 19 U.S.C. § 1517

Dear Mr. Brightbill and Mr. Menegaz:

This is in response to a request for *de novo* administrative review of a determination of evasion dated June 29, 2020¹, 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 7321 (hereinafter referred to as the “June 29 Determination”)². The request for review, dated August 10, 2020, was submitted to CBP OT Regulations and Rulings (“RR”) pursuant to 19 U.S.C. § 1517(f) and 19 CFR § 165.41(a), by the following parties:

- 1) deKieffer & Horgan, PLLC, on behalf of LB Wood Cambodia Co., Ltd. (“LB Wood”)

¹ On February 11, 2020, TRLED issued a Notice of Extension of Final Determination to all parties, finding that an extension of 60 days was necessary as per 19 USC § 1517(c)(1)(B) and 19 CFR § 165.22(c). *See*, Notice of Extension of Final Determination, Public Document 92, extending the deadline from April 21, 2020 to June 22, 2020, with a notice of final determination date no later than five business days after the extended deadline.

² *See*, Notice of Final Determination as to Evasion, dated June 29, 2020.

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- 2) deKieffer & Horgan, PLLC, on behalf of Cambodian Happy Home Wood Products Co., Ltd. (“Happy Home”)
- 3) deKieffer & Horgan, PLLC, on behalf of U.S. Global Forest, Inc. (“U.S. Global”)
- 4) deKieffer & Horgan, PLLC, on behalf of Interglobal Forest LLC (“Interglobal”)
- 5) deKieffer & Horgan, PLLC, on behalf of American Pacific Plywood, Inc. (“American Pacific Plywood” or “APPI”).

The first two of the above-mentioned requests for review of the June 29 Determination were made by manufacturers LB Wood and Happy Home. LB Wood is/was a supplier to Interglobal and APPI, and Happy Home is/was a supplier to U.S. Global. Although they are considered interested parties as per 19 CFR § 165.1³, LB Wood and Happy Home are not considered parties to the investigation⁴. Only parties to the investigation are entitled to file a request for review. *See*, 19 CFR § 165.41(a). Accordingly, LB Wood’s and Happy Home’s requests are not proper requests and are not considered for purposes of this administrative review determination. However, facts already on the record and related to these entities have been considered.

The last three of the above-mentioned requests for review were made by three U.S. importers of hardwood plywood, U.S. Global, Interglobal and APPI. All three are parties to the investigation as per 19 CFR § 165.1 and 19 CFR § 165.13. Their submissions, as well as the properly filed response (discussed *infra*), are being considered herein.

We note that this decision contains business confidential information which was submitted to CBP by each of the Importers. As such, we will be issuing five versions of this document - a business confidential version of this decision, a public version, and three other versions containing only some business confidential information. The public version is being provided to all parties and the parties that submitted the business confidential information will also receive a business confidential version containing only that party’s confidential information. We will promptly issue confidential versions specific to each importer, containing only that importer’s confidential information.

I. BACKGROUND

Inasmuch as the facts in this case were fully set forth in the June 29 Determination, we will not repeat the entire factual history herein.

³ Pursuant to 19 CFR § 165.1, the term "interested party" may refer to, in pertinent part: a foreign manufacturer, producer, or exporter, or any importer (not limited to importers of record and including the party against whom the allegation is brought), of covered merchandise or a trade or business association a majority of the members of which are producers, exporters, or importers of such merchandise.

⁴ Pursuant to 19 CFR § 165.1, the phrase "parties to the investigation" means the interested party (or interested parties, in the case of consolidation pursuant to § 165.13) who filed the allegation of evasion and the importer (or importers, in the case of consolidation pursuant to § 165.13) who allegedly engaged in evasion. In the case of investigations initiated based upon a request from a Federal agency, parties to the investigation only refers to the importer or importers who allegedly engaged in evasion, and not the Federal agency. Each party who files a request for review of the initial determination must do so following the procedures delineated in 19 CFR § 165.41.

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In brief, according to the record evidence, on June 26, 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 April 12, 2019, the Coalition for Fair Trade of Hardwood Plywood (“the Coalition” or “Alleger”) filed an EAPA allegation against Interglobal, APPI, and U.S. Global (collectively, the “Importers”). CBP acknowledged receipt of the properly filed allegations on June 5, 2019. The Coalition alleged that Interglobal, APPI, and U.S. Global were importing Chinese-origin hardwood plywood (“plywood”) into the United States by transshipment through Cambodia to evade the payment of antidumping and countervailing (“AD/CV”) duties on plywood from the People’s Republic of China (“China”), Case Nos. A-570-051 and C-570-052⁵.

The allegation of evasion pertained to the antidumping and countervailing duty orders (“Orders”) issued by the U.S. Department of Commerce (“DOC” or “Commerce”) on imports of certain hardwood plywood from China⁶.

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

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

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

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

All hardwood plywood is included within the scope of this investigation regardless of whether or not the face and/or back veneers are surface coated or covered and whether or not such surface coating(s) or covers obscures the grain, textures, or markings of the wood. Examples of surface coatings and covers include, but are not

⁵ See, Notice of Initiation of Investigation and Interim Measures, dated October 1, 2019.

⁶ See, *Certain Hardwood Plywood from the People’s Republic of China: Antidumping Duty Order*, 83 Fed. Reg. 504 (January 4, 2018); see also, *Certain Hardwood Plywood from the People’s Republic of China: Countervailing Duty Order*, 83 Fed. Reg. 513 (January 4, 2018).

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limited to: Ultra violet light cured polyurethanes; oil or oil-modified or water based polyurethanes; wax; epoxyester finishes; moisture-cured urethanes; paints; stains; paper; aluminum; high pressure laminate; MDF; medium density overlay (MDO); and phenolic film. Additionally, the face veneer of hardwood plywood may be sanded; smoothed or given a “distressed” appearance through such methods as hand-scraping or wire brushing. All hardwood plywood is included within the scope even if it is trimmed; cut-to-size; notched; punched; drilled; or has underwent other forms of minor processing.

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

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

...

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

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

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As a result of the allegations, on June 26, 2019, TRLED initiated EAPA investigations against the Importers. TRLED found that the allegations submitted by the Coalition reasonably suggested that hardwood plywood imported by the Importers was not produced in Cambodia and was being transshipped through Cambodia and imported into the United States to evade antidumping and countervailing duty orders on Chinese-origin hardwood plywood. In connection with initiation of the investigation, CBP reviewed responses submitted by each of the Importers in response to CBP Form (“CF”) 28 Requests for Information (“RFIs”) for the entries which were subject to the EAPA investigation⁷. Additionally, CBP requested sales, production, and factory documentation from each of the Importers.

After evaluating the CF28 responses, TRLED concluded there was reasonable suspicion to believe that Interglobal, APPI and U.S. Global, were evading the AD and CV duty orders by importing hardwood plywood manufactured in China and falsely claiming that the country of origin for the hardwood plywood was Cambodia. As a result, on October 1, 2019, in accordance with 19 CFR § 165.24, CBP issued the Notice of Initiation of Investigation and Interim Measures (“Notice of Initiation”) to all interested parties, notifying them of CBP’s decision to take interim measures based upon reasonable suspicion that the Importers entered covered merchandise, hardwood plywood, manufactured in China, and transshipped through Cambodia, into the United States through evasion⁸.

On October 1, 2019, CBP sent additional RFIs to each of the Importers⁹. On October 28, 2019, APPI and Interglobal¹⁰ submitted their responses to the additional RFIs. On October 30, 2019, U.S. Global submitted its response to the additional RFI. On November 21, 2019, CBP sent Supplemental RFIs to Happy Home and U.S. Global and on November 22, 2019, CBP sent Supplemental RFIs to APPI, Interglobal and LB Wood. APPI provided its response to the Supplemental RFI on December 9, 2019, while U.S. Global provided its response on December 12, 2019. Happy Home, Interglobal and LB Wood all provided their responses to the Supplemental RFIs on December 16, 2019.

On June 29, 2020, TRLED issued its determination of evasion in consolidated case number 7321. The June 29 Determination stated that there is substantial evidence that each of the

⁷ As part of the EAPA investigation process, CBP issued RFIs to the Importers on [REDACTED]. See, Business Confidential Document No. 40, Page 8.

⁸ On June 26, 2019, TRLED initiated EAPA Investigation 7321 against Interglobal, EAPA investigation 7323 against APPI and EAPA investigation 7327 against U.S. Global. At its discretion, CBP may consolidate multiple allegations against one or more importers into a single investigation, pursuant to 19 CFR § 165.13(b), which sets forth the factors that CBP may consider in consolidating multiple allegations including, but not limited to, whether the multiple allegations involve: 1) relationships between the importers; 2) similarity of covered merchandise; 3) similarity of AD and CV duty orders; and 4) overlap in time periods of entries of covered merchandise. On October 2, 2019, TRLED informed the Importers of the consolidation of EAPA investigations 7323 and 7327 with EAPA Investigation 7321. See, Notice of Initiation of Investigation and Interim Measures. See, https://www.cbp.gov/sites/default/files/assets/documents/2019-Oct/Notice-of-Initiation-Interim-Measures_7321_PV.pdf#:~:text=Re%3A%20Notice%20of%20Initiation%20of%20Investigation%20and%20Interim,421%20of%20the%20Trade%20Facilitation%20and%20Trade%20Enforcement.

⁹ EAPA Case 7321, Public Documents 41 through 43.

¹⁰ EAPA Case 7321, Public Documents 60 and 61.

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Importers engaged in evasion as defined by the EAPA statute because each importer entered covered merchandise subject to AD duty order A-570-051 and CV duty order C-570-052 into the United States by transshipping Chinese-origin hardwood plywood through Cambodia. The origin of the goods was falsely declared as Cambodia. In addition, the entry type had been falsely declared as “01” rather than the required “03”¹¹. As a result, no cash deposits of AD or CV duties were applied to the merchandise at the time of entry. The entries subject to the investigation were those entered for consumption, or withdrawn from a warehouse for consumption, from June 5, 2018, one year before receipt of the allegation, through the pendency of the investigation¹². On August 10, 2020, the Importers submitted timely and properly filed requests for administrative review to RR. On August 11, 2020, RR sent an email to the parties notifying them of the assignment of RR case number H312952 to the requests for administrative review, which constituted notice to all parties of the commencement of the administrative review process pursuant to 19 C.F.R. § 165.41. Following the August 10, 2020 request for review filed by the Importers, the Coalition filed a timely response, dated August 25, 2020, to the Importers’ requests for administrative review.

II. DISCUSSION

A. ADMINISTRATIVE REVIEW AND STANDARD OF REVIEW

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

B. LAW

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

(1) Determination of Evasion

(A) In general.

Except as provided in subparagraph (B), not later than 300 calendar days after the date on which the Commissioner initiates an investigation under subsection (b) with respect to covered merchandise, the Commissioner shall make a determination, based on substantial evidence, with respect to whether

¹¹ Entry type “03” is the code that CBP requires importers to use to designate a consumption – Antidumping/Countervailing Duty entry as subject to antidumping or countervailing duties; the instructions for CBP Form 7501 (Entry Summary) clearly state that code 03 shall be used for entries subject to antidumping or countervailing duties. Electronic entries and associated entry summaries associated with certain entry types, including entry type “03”, must be filed in ACE. *See*, <https://www.cbp.gov/trade/automated/ace-transaction-details>.

¹² *See*, 19 CFR § 165.2. While the regulations set forth which entries CBP will specifically investigate, interim measures can be applied to all unliquidated entries.

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such covered merchandise was entered into the customs territory of the United States through evasion.

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

(5) Evasion

(A) In general

Except as provided in subparagraph (B), the term “evasion” refers to entering covered merchandise into the customs territory of the United States by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material, and that results in any cash deposit or other security or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise.

See also, 19 CFR § 165.1.

Examples of evasion could include, but are not limited to, the misrepresentation of the merchandise’s true country of origin (e.g., through false country of origin markings on the product itself or false sales), false or incorrect shipping and entry documentation, or misreporting of the merchandise’s physical characteristics¹³.

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)”¹⁴.

Therefore, CBP must determine whether a party has entered merchandise that is subject to an AD or CV duty order into the United States for consumption by means of any document or electronically transmitted data or information, written or oral statement, or act, that is material and false, or any omission that is material, that resulted in the reduction or avoidance of applicable AD or CV duty cash deposits or duties being collected on such merchandise.

C. ARGUMENTS MADE BY U.S. GLOBAL IN ITS REQUEST FOR ADMINISTRATIVE REVIEW

U.S. Global requests that we reverse the June 29 Determination of evasion, arguing that U.S. Global did not enter covered merchandise into the United States through evasion because the subject entries of hardwood plywood imported into the United States by U.S. Global were manufactured in Cambodia.

¹³ *See, Investigation of Claims of Evasion of Antidumping and Countervailing Duties, Interim Regulations*, 81 Fed. Reg. 56477, 56478 (August 22, 2016).

¹⁴ *See*, 19 CFR § 165.1.

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U.S. Global first argues that its manufacturer, Happy Home, had motive and opportunity to produce hardwood plywood in Cambodia, and therefore did not need to transship plywood from China through Cambodia. U.S. Global asserts that the imposition of AD/CV duty orders on Chinese hardwood plywood does not automatically prove that circumvention exists, but on the contrary, it provides a business opportunity for owners to establish a plywood factory in Cambodia in order to profitably produce plywood in Cambodia and sell the finished merchandise to the United States. Counsel for U.S. Global also asserts that Cambodia's overall economic growth in recent years proves that Cambodia has increased exports, including plywood, as a result of foreign investments. Additionally, U.S. Global cites case law from the Court of International Trade where the court has recognized that export and import data alone is not sufficient for Commerce to initiate a minor alteration circumvention inquiry¹⁵ and that it is natural for production and exports to naturally flow to companies with a lower AD duty rate burden. U.S. Global asserts that the court has indicated that a company's production changes and changes in export behavior as a result of differing assigned rates can be considered a corporate resource decision¹⁶.

Second, U.S. Global argues that TRLED improperly utilized an undisclosed inquiry, review and/or investigation for an unrelated EAPA case, as the foundation of substantial evidence for the instant EAPA case. Counsel for U.S. Global contends that both TRLED's Notice of Initiation, and the June 29 Determination relied on memoranda dated September 12, 13 and 16, 2019 as evidence that U.S. Global evaded the relevant orders. U.S. Global asserts, however, that those memoranda contain information from unknown sources, made in an unknown context, and in the purview of a CBP inquiry or review that is unrelated to EAPA Inv. 7321. U.S. Global asserts that because TRLED did not provide the whole record of the unknown proceedings as part of the record for EAPA Investigation 7321, said information should not serve as a basis for substantial evidence, much less to sustain a finding of evasion. In support of U.S. Global's claim that the information on which TRLED relied should not be considered as substantial evidence, U.S. Global contends that some of the documents were created in the context of a Generalized System of Preferences ("GSP")¹⁷ review of preferential tariff treatment for Cambodian plywood. Furthermore, U.S. Global asserts that a CBP employee's visit to a manufacturer on June 6, 2018¹⁸, one year before the initiation of EAPA Investigation 7321, cannot be considered substantial evidence because the manufacturer had no idea what the CBP employee was looking at, or how the employee came to the conclusion that the facilities and machinery of the manufacturer were not advanced enough to produce the plywood that was the subject of EAPA Investigation 7321 one year after CBP's June 2018 visit to the manufacturers. Finally, U.S. Global asserts that TRLED's conclusions in EAPA Investigation 7321 are not based on substantial evidence, and violate the principles of due process.

¹⁵ See, *Columbia Forest Prods. v. United States*, 399 F. Supp. 3d 1283, 1295 (Ct. Int'l Trade 2019), cited by U.S. Global, Public Version Request for Administrative Review dated August 10, 2020, Page 12.

¹⁶ See, *Inmax SDN v. United States*, 277 F. Supp. 3d 1367 (Ct. Int'l Trade 2017), cited by U.S. Global, Public Version Request for Administrative Review dated August 10, 2020, Page 12.

¹⁷ <https://www.cbp.gov/trade/priority-issues/trade-agreements/special-trade-legislation/generalized-system-preferences#:~:text=The%20Generalized%20System%20of%20Preferences,implemented%20on%20January%2019%2C%201976.>

¹⁸ See, CBP's Memo adding documents to the record, regarding a site visit to manufacturer Happy Home, dated September 12, 2019.

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Third, U.S. Global claims that TRLED's analysis regarding U.S. Global's production and sales records is flawed, and CBP's conclusions are without merit. Specifically, U.S. Global asserts that TRLED did not request reconciliation of payment records and invoices and incorrectly interpreted that U.S. Global made direct payments to another entity for purchases from Happy Home and that, if TRLED had requested said reconciliation, TRLED would have found the accounts on which TRLED relied to state that U.S. Global made a payment to another entity for purchases from Happy Home, are not in fact Happy Home's accounts. Furthermore, U.S. Global disagrees with TRLED's statement that the balance sheets provided by U.S. Global are inconsistent with the total of Happy Home's payroll sheets. U.S. Global again claims that, had TRLED requested further clarification, explanation or reconciliation, TRLED would not have automatically concluded that perceived inconsistencies are evidence of evasion. U.S. Global also disagrees with TRLED's conclusion that CBP's confidential entry records indicate that U.S. Global imported more merchandise during the period of investigation ("POI") than reported in response to TRLED's request for documentation. Counsel for U.S. Global further states that U.S. Global did report all entries of plywood from Cambodia manufactured by Happy Home, though there are entries listing other merchandise, producers and countries. U.S. Global claims that CBP's entry data has, at times, in other cases, been found to be inaccurate and cites a Department of Commerce administrative review¹⁹ where legal counsel's review of CBP data under an Administrative Protective Order ("APO") revealed that CBP's data was inaccurate as to the producer and exporter of the merchandise, and the respondents' certification of no sales during the period of review was confirmed as correct. As U.S. Global had no opportunity to review CBP's entry records under an APO, U.S. Global contends that it is unable to review the records relevant to the entries here at issue and is therefore unable to defend TRLED's statement that all of Happy Home's entries were not provided.

Fourth, U.S. Global argues that the trade data on the record of this investigation is unreliable. TRLED relied on trade data stemming from the United Nations' Food and Agriculture Organization ("FAO"), Stat Forestry Yearbook 2016, Chinese Export Statistics and USITC Data to render the June 29 Determination. Regarding the FAO Forestry Yearbook data, TRLED considered it authoritative and reliable for purposes of the EAPA investigation. According to U.S. Global, the information should not be considered as authoritative, and it asserts that the figures for 2016-2018 are all unofficial as the data for 2017 and 2018 is flagged and merely repeated as the same data listed for 2016. Lastly, U.S. Global asserts that an agency's refusal to consider conflicting information in its determinations has been rejected previously by the trade courts²⁰.

Finally, U.S. Global argues, as it did in its second argument, that CBP's reliance on "secret" information from an unrelated proceeding, must be rejected. Based on the foregoing, U.S. Global argues that evasion did not occur and the June 29 Determination must be reversed.

¹⁹ See, *Certain Steel Threaded Rod From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments*; 2016-2017, 83 Fed. Reg. 57,430 (November 15, 2018), cited by U.S. Global, Public Version Request for Administrative Review dated August 10, 2020, Page 20.

²⁰ See, *Solar World Ams., Inc. v. United States*, 962 F.3d 1351 (Fed. Cir. 2020), cited by U.S. Global, Public Version Request for Administrative Review dated August 10, 2020, Page 29.

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D. ARGUMENTS MADE BY INTERGLOBAL AND AMERICAN PACIFIC PLYWOOD IN THEIR REQUESTS FOR ADMINISTRATIVE REVIEW

Interglobal and APPI first argue that their manufacturer, LB Wood, had motive and opportunity to produce hardwood plywood in Cambodia, and therefore did not need to transship plywood from China through Cambodia. Like U.S. Global, both Interglobal and APPI assert that the imposition of AD/CV duty orders on Chinese hardwood plywood does not automatically prove that circumvention occurred, but on the contrary, it provides a business opportunity for owners to establish a plywood factory in Cambodia in order to profitably produce plywood in Cambodia and sell the finished merchandise to the United States. Counsel for Interglobal and APPI asserts that Cambodia's overall economic growth in recent years proves that Cambodia has increased exports, including plywood, as a result of foreign investments. Additionally, Interglobal and APPI cite case law from the Court of International Trade where the court has recognized that export and import data alone is not sufficient for Commerce to initiate a minor alteration circumvention inquiry²¹ and that it is natural for production and exports to naturally flow to companies with a lower AD duty rate burden. Interglobal and APPI assert that the court has indicated that a company's production changes and changes in export behavior as a result of differing assigned rates can be considered a reasonable corporate resource decision.

Second, Interglobal and APPI argue that TRLED improperly utilized an undisclosed inquiry, review and/or investigation for an unrelated EAPA case, as the foundation of substantial evidence for the instant EAPA case. Counsel for Interglobal and APPI contends that both TRLED's Notice of Initiation, and the June 29 Determination relied on a memorandum dated September 12, 2019 as evidence that Interglobal and APPI evaded the relevant orders. Both Interglobal and APPI assert, however, that the information in that memorandum contains information from unknown sources, made in an unknown context and in the purview of a CBP inquiry or review that is unrelated to EAPA Investigation 7321. Like U.S. Global, Interglobal and APPI assert that because TRLED did not provide the whole record of the unknown proceedings as part of the record for EAPA Investigation 7321, said information should not serve as a basis for substantial evidence, much less to sustain a finding of evasion. In support of Interglobal's and APPI's claim that the information on which TRLED relied should not be considered as substantial evidence, counsel contends that some of the documents were created in the context of a GSP review of preferential tariff treatment for Cambodian plywood. Furthermore, Interglobal and APPI assert that a CBP employee's visit to LB Wood on June 6, 2018²², one year before the initiation of EAPA Investigation 7321, cannot be considered substantial evidence because the manufacturer had no idea what the CBP employee was looking at, and it is unclear how the employee came to the conclusion that the facilities and machinery of the manufacturer were not advanced enough to produce the plywood subject of EAPA Investigation 7321 one year after the

²¹ See, *Columbia Forest Prods. v. United States*, 399 F. Supp. 3d 1283, 1295 (Ct. Int'l Trade 2019), cited by U.S. Global, Public Version Request for Administrative Review dated August 10, 2020, Page 12.

²² See, CBP's Memo adding documents to the record, regarding a site visit to manufacturer LB Wood, dated September 12, 2019.

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visit²³. Interglobal and APPI contend that the record of this investigation disproves the observations and conclusions contained in CBP's September 12, 2019 Memo, because ample evidence was submitted that both Interglobal and APPI visited LB Wood's plywood factory and confirmed that the manufacturer is capable of producing plywood in the quantity required by its consumers and that sufficient photographic evidence provided to TRLED proved that the manufacturer's production processes, facilities and equipment possessed the sophistication and capacity to produce the plywood. Interglobal and APPI expected TRLED to fully verify and confirm the capabilities of the manufacturer via on-site verification of LB Wood's production facilities and books and records and failed to receive any documentation from TRLED requesting further clarification regarding the information provided. Finally, like U.S. Global, Interglobal and APPI also assert that TRLED's conclusions in EAPA case 7321 are not based on substantial evidence, and violate the principles of due process.

Third, Interglobal and APPI claim that TRLED's analysis regarding Interglobal's production and sales records²⁴ is flawed, and CBP's conclusions are without merit. Specifically, TRLED reviewed four sales packages concerning Interglobal, and two sales packages concerning APPI's purchases. Counsel for Interglobal and APPI asserts that the inconsistencies perceived by TRLED are either not discrepancies, or can be fully explained and substantiated by Interglobal and APPI in relation with the specific circumstances of the transaction to which they are associated.

In addition to the review of production and sales records, TRLED reviewed Interglobal's entry 6164²⁵ in detail and, according to Interglobal, the only finding by TRLED was that the California Air Resources Board ("CARB")²⁶ manufacturing dates somehow do not match the manufacturer's production document dates²⁷. Interglobal and APPI rebut this finding by

²³ See, Interglobal and APPI, Public Version Request for Administrative Review, dated August 10, 2020, Pages 21-24.

²⁴ See, Request for Administrative Review of TRLED's initial determination as to evasion, Public Version, August 10, 2020, Pages 20-34. Interglobal entries identified as: 6164, 7576, 8194 and 8376 in the Public Version.

²⁵ The Public Version identifies the entries with four digits but the Business Confidential Version includes the full entry number. See, Business Confidential Version of Interglobal and APPI's request for administrative review, August 10, 2020, Page 28 of 37.

²⁶ The California Air Resources Board ("CARB") approved the Composite Wood Products Airborne Toxic Control Measure on April 26, 2007 to reduce formaldehyde emissions from composite wood products that are sold, supplied, used or manufactured for sale in California. The regulation focuses on hardwood plywood (HWPW), particleboard (PB), and medium density fiberboard (MDF). The regulation requires that HWPW, PB, and MDF and new finished goods that contain these composite wood products meet stringent emission standards and be labeled as such. See, <https://ww2.arb.ca.gov/our-work/programs/composite-wood-products-program>. See also, <https://ww2.arb.ca.gov/resources/documents/frequently-asked-questions-labeling>. The DOC has referred to CARB certificates in its AD/CV duty cases related to plywood. For example, the DOC preliminarily determines that certain hardwood plywood with face and back veneers of radiate and/or agathist pine that (1) has a Toxic Substances Control Act (TSCA) or California Air Resources Board (CARB) label certifying that it is compliant with TSCA/CARB requirements; and (2) is made with a resin, the majority of which is comprised of one or more of three product types - urea formaldehyde, polyvinyl acetate, and/or soy - (inquiry merchandise) exported from the People's Republic of China, is circumventing the AD and CV duty orders on certain hardwood plywood products from China. See, Federal Register Vol. 84, No. 112.

²⁷ See, Interglobal and APPI, Public Version Request for Administrative Review, dated August 10, 2020, Page 28.

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stating that the CARB certificates are specific to the customer's order and the lot number of the production and that the dates sometimes differ due to the schedules for mailing sample boards to a certified testing company, and when the scheduled production of the full order commences. Regarding Interglobal's entry 7576, TRLED had the same comment regarding the CARB certificate and whether the dates match the manufacturer's production dates. Interglobal explains the perceived discrepancy by stating that the sample boards were prepared for testing at the beginning of production, but the production process took longer than the production of the sample boards. TRLED also stated that, for this entry, the amount of merchandise packaged and shipped was greater than the production amount, which Interglobal explains as manufacturing more plywood of a specific type in order to maximize the use of the production capacity, leaving the additional plywood as finished goods inventory. Regarding Interglobal's entry 8376, CBP again cites a CARB manufacturing date discrepancy, and also finds that dates provided for the bill of lading ("B/L") provided by the importer do not match the one for the manufacturer. Counsel explains the discrepancy by stating that TRLED erred in considering the documents presented by Interglobal and by the manufacturer as the same, because the manufacturer presented a non-negotiable seaway bill and Interglobal was in possession of the actual B/L. Furthermore, in its response to the supplemental questionnaire, dated December 16, 2019, Interglobal provided further explanations as to the CARB certificates, their use and descriptions, and provided a statement that it keeps these certificates in-house, on file.

Finally, like U.S. Global, Interglobal and APPI also claim that the trade data on the record of the investigation for EAPA case 7321 is unreliable and, therefore, should not support TRLED's determination of evasion, as previously summarized in this document as U.S. Global's fourth claim²⁸.

E. COALITION'S RESPONSE TO IMPORTERS' REQUESTS FOR ADMINISTRATIVE REVIEW

On August 25, 2020, the Coalition submitted a response to the Importers' requests for administrative review. The Coalition argues that U.S. Global, Interglobal and APPI entered covered merchandise into the United States, through materially false statements and omissions, and avoided the application of the requisite antidumping and countervailing duties. In summary, the Coalition asserts that:

1. CBP properly relied on shifting import trends as evidence of transshipment;
2. TRLED appropriately relied on CBP's prior observations regarding the manufacturers' lack of production capabilities;
3. TRLED's analysis of the Importers' reporting was appropriate in light of inconsistencies;
4. CBP should reject the Importers' attempts to introduce new information not in the underlying record.

²⁸ See, U.S. Global's Request for Administrative Review of TRLED's initial determination as to evasion, Public Version, August 10, 2020, Section D., Pages 27-28.

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The Coalition also asserts that Interglobal had previously engaged in transshipment of Chinese plywood through Vietnam in EAPA case 7252²⁹. We note, however, that the determination as to evasion in the cited case is not final, as CBP stayed its administrative timeline to issue a decision in EAPA case 7252 as a result of the referral to the Department of Commerce, to determine if the merchandise was within scope of the relevant orders³⁰. The DOC has acknowledged receipt of the scope referral by CBP and, as of the date of this document, the DOC has not rendered its determination³¹.

F. 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, 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 June 29 Determination was made by TRLED; and (2) the timely and properly filed requests for review and response. The Office of Trade, Regulations and Rulings, 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 merchandise³².

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)³³.

We further note that the statutory definition of “evasion” does not require an intentional or purposeful attempt to avoid duties, nor does the statute provide for reasonable care as a defense to evasion. Rather, it is sufficient that an importer enters “covered merchandise” into the United States by means of any material false document, statement, act, or omission

²⁹ See, EAPA Cons. Investigation Number 7252: Certain Hardwood Plywood from the People’s Republic of China, found at: <https://www.cbp.gov/document/user-documentation/eapa-cons-investigation-number-7252-certain-hardwood-plywood-people-s-0>.

³⁰ See, Scope Referral Request for Merchandise under EAPA Cons. Investigation 7252, found at: <https://www.cbp.gov/document/publications/scope-referral-request-merchandise-under-eapa-cons-investigation-7252>.

³¹ See, Certain Hardwood Plywood From the People’s Republic of China: Notice of Covered Merchandise Referral and Initiation of Scope Inquiry, found at: <https://www.federalregister.gov/documents/2020/01/17/2020-00742/certain-hardwood-plywood-from-the-peoples-republic-of-china-notice-of-covered-merchandise-referral>.

³² See, 19 U.S.C. § 1517(a)(5)(A).

³³ See, 19 U.S.C. § 1517(c)(1) and 19 CFR § 165.1.

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that results in the reduction or non-payment of antidumping or countervailing duties or deposits thereof, for evasion to occur. As discussed below, in this case, the Importers have engaged in evasion because entries of Chinese-origin hardwood plywood were falsely identified as type “01” with Cambodia as the country of origin, which were subject to AD/CV duty orders, and no cash deposits were applied to the merchandise.

“Substantial evidence” is not defined by statute. Rather, the “substantial evidence” standard has been addressed 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”³⁴. While some evidence may detract from the determination, so long as the finding is reasonable and supported by the record as a whole, the June 29 Determination must be affirmed³⁵.

I. Manufacturers’ Alleged Capacity To Produce Hardwood Plywood

- a. The Cambodian manufacturers did not have the capacity or the means to produce the hardwood plywood.

There is substantial evidence in the record that the Cambodian manufacturers did not have the capacity or the means to produce the hardwood plywood, and that the source of much of the raw materials (and other items as well) was China. The record also contains evidence demonstrating the presence of finished Chinese plywood at the facilities of the Cambodian manufacturers. Therefore, at least some of the plywood originating from the Cambodian manufacturers was of Chinese origin and thus, the merchandise is covered merchandise because it is described by the Orders. Other than the claims made by the Importers, there is insufficient evidence in the form of production records to indicate that the manufacturers had the capacity to produce the plywood in the quantities and the quality that was exported to the United States. As discussed below, based on CBP’s visit to LB Wood’s and Happy Home’s facilities on June 6, 2018, the state of LB Wood’s and Happy Home’s equipment, and the number of employees³⁶, coupled with the amounts of raw materials sourced from China, make it highly improbable to conclude that all the hardwood plywood shipped by LB Wood and Happy Home to the United States was made in Cambodia.

1. LB Wood (Supplier to Interglobal and APPI)

In response to CBP’s RFI, LB Wood provided ownership information and confirmed that it is [REDACTED] percent owned by a [REDACTED] company, [REDACTED], [REDACTED]
[REDACTED]³⁷. [REDACTED] is an [REDACTED]
[REDACTED]³⁸ and the intimate business relationship between [REDACTED] and [REDACTED]

³⁴ See, *Altk, Inc. v. United States*, 370 F.3d 1108, 1116 (Fed. Cir. 2004) (internal citations and quotation marks omitted).

³⁵ See, *Nucor Corp. v. United States*, 34 C.I.T. 70, 72 (Ct. Int’l Trade 2010) (citing *Nippon Steel Corp. v. United States*, 458 F.3d 1345, 1352 (Fed. Cir. 2006)).

³⁶ See, Business Confidential Document 37, TRLED Memorandum to the File, September 12, 2019.

³⁷ See, Business Confidential Document 131, LB Wood Questionnaire Response, November 8, 2019, Exhibits 2, 12 and 13.

³⁸ See, Business Confidential Document 131, LB Wood Questionnaire Response, November 8, 2019, Exhibit 2

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[REDACTED]. Moreover, the statement that [REDACTED] produces plywood [REDACTED] seems contradictory. More specifically, statements that [REDACTED]³⁹ and statements that [REDACTED]⁴⁰ cannot both be accurate. Furthermore, the record shows that [REDACTED] percent by value of LB Wood's raw materials were imported from [REDACTED]⁴¹.

In this EAPA case, LB Wood has claimed that it produces plywood from logs and individual veneers at its facility in Cambodia's Sihanoukville Special Economic Zone (SEZ), then transports the plywood to the Cambodian port, and subsequently loads it onto the vessel for subsequent export to the Importers⁴². LB Wood provided alleged production capacity and calculated the steps taken during the production process, to include a process [REDACTED]⁴³ in addition to production data for [REDACTED]

[REDACTED]⁴⁴. However, in response to CBP's question pertaining to records of equipment maintenance and quality inspection reports, LB Wood stated that [REDACTED], therefore, it is impossible to determine [REDACTED]⁴⁵.

Assertions notwithstanding, LB Wood did not provide CBP with documents or evidence to substantiate the claims pertaining to LB Wood's machinery's production capabilities. Furthermore, the observations made during CBP's June 6, 2018 site visit to LB Wood support the conclusion that the asserted production capacity is not accurate. For example, with respect to LB Wood's capacity claims for [REDACTED], during the June 6, 2018 visit, a CBP official noticed the lack of a functioning [REDACTED] at the manufacturing site, while at the same time observing several pallets containing [REDACTED], leading to the conclusion that any [REDACTED] plywood leaving LB Wood's factory prior to or shortly after CBP's visit was not [REDACTED] at LB Wood's factory in Cambodia. Indeed, a photograph taken by CBP shows [REDACTED]

³⁹ See, LB Wood RFI at 7 and Exhibit 2. See also, June 29 Determination, Business Confidential Document 204, Page 8 of 18.

⁴⁰ See, LB Wood RFI at 6 and Exhibit 2. See also, June 29 Determination, Business Confidential Document 204, Page 8 of 18.

⁴¹ See, LB Wood RFI at Exhibits 12.1 and 12.2. See also, June 29 Determination, Business Confidential Document 204, Page 4 of 18.

⁴² See, Business Confidential Document 131, LB Wood Questionnaire Response, November 8, 2019, Exhibits 2-3. See also, Business Confidential Document No. 199, LB Wood Supplemental Questionnaire Response, December 16, 2019.

⁴³ See, Business Confidential Document 122, LB Wood Questionnaire Response, November 8, 2019, Exhibit 14.

⁴⁴ Id. at Pages 423-451.

⁴⁵ See, Business Confidential Document 131, LB Wood Questionnaire Response, November 8, 2019, Page 20.

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[REDACTED] even though CBP had concluded that [REDACTED] at LB Wood's Cambodian facility⁴⁶.

Although Interglobal and APPI object, we find that TRLED's June 29 Determination properly relied on CBP's visit to LB Wood's premises on June 6, 2018, one year prior to the commencement of the investigation, to buttress TRLED's conclusions as to evasion. Although CBP conducted the visit as part of a [REDACTED], the visit was sufficiently contemporaneous and examined the same types of facts as relevant to this EAPA investigation so as to provide reliable, relevant and substantial evidence for purposes of the instant case. This visit occurred within the same timeframe as when the importers Interglobal and APPI claimed to have conducted their own multiple site visits to the manufacturers to independently verify their production capacity. Interglobal claimed to have visited LB Wood in March, July and December 2018 and APPI claimed to have visited LB Wood in October 2018⁴⁷. Moreover, the POI in this EAPA investigation covered entries from June 5, 2018 through the pendency of the investigation. Goods are necessarily produced and shipped before they enter the United States. Thus, entries into the United States at the beginning part of the POI would have included products allegedly produced by and originating from LB Wood at or around the time of CBP's site visit.

The results of the CBP visit and the actions taken by CBP after said June 6, 2018 visit to both Happy Home and LB Wood provide evidence substantiating the finding of evasion. Basically, CBP was able to observe that the processing in Cambodia was not sufficient to manufacture the goods observed on-site and/or that could correctly be entered into the United States as products of Cambodia. CBP observed that LB Wood's machinery could not account for the finished plywood seen at the LB Wood premises, as CBP observed that LB Wood had a [REDACTED] that was small, broken up into multiple pieces, and covered in a thick layer of dust. CBP determined that any [REDACTED] plywood leaving that factory prior to June 2018 was not [REDACTED] there⁴⁸. Meanwhile, the observations revealed that packaging on plywood pallets for [REDACTED] had labels with [REDACTED], which means it was [REDACTED], and packaging for another importer stated [REDACTED], meaning it was [REDACTED]. Furthermore, the plywood seen on-site was clear of laps and voids and was a sophisticated product that could not have been made at LB Wood's facilities.

2. Happy Home (Supplier to U.S. Global)

In response to CBP's RFI, Happy Home provided information, pertaining to the alleged capacity of its machines and equipment and the production steps per shift, on Exhibit 13⁴⁹. The aforementioned exhibit, including the steps used to calculate the capacity on a daily and monthly basis, and the calculation method used, were based on the production manager's experience⁵⁰. A review of the record and information provided by Happy Home reveals that, although it claimed to have the capacity, machinery and employees to produce the

⁴⁶ See, Business Confidential Document 37 at Pages 15 and 21.

⁴⁷ See, Interglobal and APPI's Request for Administrative Review, Pages 23-24.

⁴⁸ See, Business Confidential Document 37 at Pages 15 and 21.

⁴⁹ Happy Home RFI, Exhibit 13.

⁵⁰ See, Public Document 85, Happy Home Supplemental Questionnaire Response, December 16, 2019, Page 11 of 86.

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hardwood plywood in Cambodia, Happy Home's top [REDACTED] suppliers by value ([REDACTED]) were all located in [REDACTED]⁵¹. We conclude that TRLED properly found these assertions, in light of other information on the record, to be insufficiently credible to support a conclusion that all of the plywood supplied by Happy Home to U.S. Global was of Cambodian origin.

As with LB Wood, CBP's site visit to Happy Home on June 6, 2018, reveals that Happy Home's claims of Cambodian manufacturing were not accurate. For example, CBP concluded that the type of temperate wood found in Happy Home's facilities does not grow well in Cambodia's tropical climate. Although CBP's visit revealed that Cambodian factories could produce plywood from raw materials composed of such woods, CBP also noted that the Cambodian factories lacked the sophistication to produce plywood which is even, without veneer overlaps, gaps, and voids and, therefore, the plywood observed by CBP during the visit to Happy Home could not have been made in Cambodia, because Happy Home did not possess the sophisticated manufacturing capabilities to produce this type of finished product.

CBP's visit to Happy Home's factory in the Sihanoukville SEZ on June 6, 2018 also revealed, via a [REDACTED] that Happy Home uses [REDACTED] to manufacture the final product. Moreover, CBP found that the processing occurring within Cambodia was minimal and did not qualify for a tariff shift, as plywood from China classified under HTS heading 4412 is manufactured into the final product also classified under HTS 4412⁵². Although the issues involved in this EAPA case are not precisely the same as those pertaining to that verification and action, the observations of CBP are nonetheless relevant – CBP observed that the processing in Cambodia did not constitute full-scale manufacturing.

Happy Home's response to the [REDACTED] alleged that while CBP officers did see some [REDACTED] the [REDACTED] shipped to the United States was made using Cambodian [REDACTED] to produce [REDACTED] shipped to the United States⁵³. Although Happy Home alleged that there was no [REDACTED] plywood used in the manufacturing of the [REDACTED] shipped to the United States, Happy Home did admit that, [REDACTED]

Despite Happy Home's response to the [REDACTED], CBP's review of the response and accompanying documents resulted in the issuance of a [REDACTED],⁵⁵ confirming information found during CBP's visit to Happy Home's premises on June 6, 2018, that Happy Home used [REDACTED] to manufacture the final product. Moreover, CBP found evidence of [REDACTED]

⁵¹ See, June 29 Determination, Business Confidential Version, Page 12 of 18.

⁵² See, Business Confidential Document No. 39, CBP "Adding Information to the Administrative Record of EAPA Cons. Case 7321," dated September 16, 2019, Page 26 of 45.

⁵³ *Id.*, Page 30 of 45.

⁵⁴ *Id.*, Page 31 of 45.

⁵⁵ *Id.*, Page 44 of 45.

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[REDACTED] at Happy Home's facility which is a [REDACTED] [REDACTED] being loaded on trucks destined for [REDACTED]⁵⁶. This evidence meant that the processing occurring within Happy Home's Cambodian manufacturing facility did not constitute [REDACTED] and, therefore, the [REDACTED]. Again, although that conclusion was made in a different context, the observations and conclusions as to the nature of the processing conducted in Cambodia, the types and condition of the equipment, and the types of finished products found on-site, are relevant here.

Though CBP planned to verify Happy Home's facilities in Cambodia on or around December 2019 – January 2020, CBP was informed by Happy Home that [REDACTED]⁵⁷. Thus, the best evidence of what was actually occurring at Happy Home's manufacturing facilities are the observations of CBP during the June 6, 2018 site visit, as buttressed by the trade data, which has revealed that Happy Home exported [REDACTED] plywood to the United States in 2016 and 2017 than Cambodia [REDACTED]⁵⁸. As such, the claims that the products imported by U.S. Global and sourced from Happy Home were all manufactured in Cambodia are not credible.

While the Importers claim that the trade data figures are unreliable and not contemporaneous, CBP notes that the FAO Yearbook⁵⁹ contains production figures that are the most accurate that are available, as they stem directly from government replies to questionnaires. The POI in this case started six months after the latest statistics posted on the FAO Yearbook, and the data shows that the plywood production in Cambodia was significantly [REDACTED] than Happy Home's total plywood exports to the United States. If Cambodia produced 27,000m3 in 2017, and Happy Home, alone, claims to have exported [REDACTED]⁶⁰, there is clearly an enormous unexplained discrepancy between those numbers, which supports the conclusion that Happy Home's hardwood plywood exports include Chinese-made hardwood plywood, commingled with Cambodian-made hardwood plywood. Indeed, Happy Home admitted that it [REDACTED], and the documentation it provided supports that fact⁶¹.

⁵⁶ See, Business Confidential Document No. 37, CBP "Adding Information to the Administrative Record of EAPA Cons. Case 7321," dated September 12, 2019, Page 4.

⁵⁷ See, Business Confidential Document No. 201, CBP Memorandum, "Adding Information to the Administrative Record of EAPA Cons. Case 7321," dated February 10, 2020.

⁵⁸ See, September 6 Memorandum at 2-11; see also CBP Memorandum, "Adding Information to the Administrative Record of EAPA Cons. Case 7321," dated January 9, 2020 (January 9 Memorandum) at 51, 236, 239, and 241.

⁵⁹ [FAOSTAT-Forestry](http://www.fao.org/forestry) online database provides annual production and trade statistics for forest products, primarily wood products such as roundwood, sawnwood, wood panels, pulp and paper. For many forest products, historical data are available from 1961. These statistics are provided by countries through an [annual survey](#) conducted by FAO Forestry Division in partnership with the [International Tropical Timber Organization \(ITTO\)](#), the [Statistical Office of the European Union \(Eurostat\)](#) and the [UN Economic Commission for Europe \(UNECE\)](#). In the cases where countries have not provided information through the questionnaire, FAO estimates annual production and trade based on trade journal reports, statistical yearbooks or other sources. Where data are unavailable, FAO repeats historical figures until new information is found. <http://www.fao.org/forestry/statistics/84922/en/>.

⁶⁰ See, June 29, 2020 Determination, Business Confidential Version, Page 16.

⁶¹ See, Business Confidential Document No. 39, CBP "Adding Information to the Administrative Record of EAPA Cons. Case 7321," dated September 16, 2019, Page 31 of 45.

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CBP's observations during the June 6, 2018 site visit pertaining to the lack of sophistication to produce the plywood Happy Home claimed to have produced in Cambodia, the inability to corroborate said information due to the fact that Happy Home [REDACTED] [REDACTED]⁶², and the discrepancy between the export data and the claimed production data, make the assertion that Happy Home produced all the plywood it claimed in Cambodia, implausible.

b. Production and sales records support TRLED's conclusions.

1. LB Wood

CBP examined documents for several transactions, starting from LB Wood's initial purchase of raw materials. According to the analysis by TRLED for invoice [REDACTED]/entry [REDACTED] 16164, invoice [REDACTED]/entry [REDACTED] 7576, invoice [REDACTED]/entry [REDACTED] 8194, and invoice [REDACTED]/entry [REDACTED] 8376, the CARB certificates did not match the manufacturing dates, the amounts packaged and shipped had discrepancies showing more pieces shipped than the pieces produced, and the production records did not match the raw material purchase records⁶³.

LB Wood's Supplemental Questionnaire⁶⁴ response to a CBP RFI casts doubt on whether all manufacturing indeed occurs in Cambodia. CBP requested [REDACTED] for all purchased raw materials identified by LB Wood (the raw materials were [REDACTED]). However, LB Wood stated [REDACTED]. While the practice of using warehouse in tickets may be useful for LB Wood, [REDACTED] of the purchased raw materials makes it difficult to confirm whether or not the materials are indeed raw materials, or whether the incoming materials are merchandise that is imported from China to Cambodia which does not undergo further processing.

Furthermore, to CBP's question pertaining to the product list, which only differentiates the [REDACTED]⁶⁵ and not by [REDACTED] as well, LB Wood responded that it does not [REDACTED]. A manufacturer's alleged failure to [REDACTED] is not only a questionable and an unreliable business practice, but it prevents CBP from ascertaining whether the production allegedly occurring in Cambodia involves a substantial transformation of the raw materials, such that the country of origin can be considered Cambodia, and not China.

⁶² See, Business Confidential Document No. 201, CBP Memorandum, "Adding Information to the Administrative Record of EAPA Cons. Case 7321," dated February 10, 2020.

⁶³ See, EAPA 7321 TRLED Determination as to Evasion, June 29, 2020, Business Confidential Version, Document 204, Page 9.

⁶⁴ LB Wood Questionnaire Response to CBP's supplemental RFI, December 16, 2019, Business Confidential Version, Document No. 199, Page 7.

⁶⁵ *Id.*, Page 5.

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Lastly, LB Wood's explanation regarding the sources for the [REDACTED] of its [REDACTED] was rudimentary and only based on the [REDACTED], which was yet another obstacle preventing CBP from confirming LB Wood's [REDACTED]⁶⁶. According to the June 29 Determination, TRLED's review of documents pertaining to LB Wood's production, sale and exportation of plywood to Interglobal revealed factual discrepancies between manufacturing dates and production records, and instances where amounts packaged and shipped were greater than amounts produced. Lastly, CBP was unable to tie LB Wood's production records to its raw material purchase records⁶⁷.

2. Happy Home

CBP's RFI for Happy Home requested a product list, including product numbers and descriptions, of all hardwood plywood and related products that the company manufactures, sells and/or purchases⁶⁸. According to the documents provided by Happy Home in response to CBP's RFIs, Happy Home listed [REDACTED] as raw material purchases from [REDACTED]⁶⁹. In addition to the raw materials, Happy Home provided a product list in response to CBP's RFI requesting a product list for [REDACTED]⁷⁰. Additionally, there are other documents indicating Happy Home purchased [REDACTED]⁷¹ from a [REDACTED] supplier named [REDACTED].

Though these documents list [REDACTED] only, other documents, such as [REDACTED], point to Happy Home's importation of [REDACTED] into Cambodia, from [REDACTED]⁷². There is no indication that the [REDACTED] was [REDACTED]. Therefore, these documents provide substantial evidence that Happy Home imported completed [REDACTED] plywood which was likely commingled with Cambodian-origin plywood. Moreover, Happy Home itself stated that it [REDACTED]⁷³.

Furthermore, on a [REDACTED] document dated [REDACTED] listing Happy Home as the consignee and [REDACTED], the description of [REDACTED] includes [REDACTED]⁷⁴.

⁶⁶ *Id.*, Page 6.

⁶⁷ *See*, June 29 Determination, Business Confidential Version, Page 10 of 18.

⁶⁸ *See*, Public Document No. 48, CBP's RFI to Happy Home, October 4, 2019, Page 9 of 10, Section D. #2.

⁶⁹ Happy Home Questionnaire Response to CBP's RFI, Business Confidential Version, Document No. 78.

⁷⁰ Happy Home Questionnaire Response to CBP's RFI, Business Confidential Version, Document No. 95.

⁷¹ Happy Home Questionnaire Response to CBP's Supplemental RFI, Business Confidential Version, Document No. 148.

⁷² Happy Home Questionnaire Response to CBP's RFI, Business Confidential Version, Document 78.

⁷³ *See*, June 29, 2020 Determination at Page 16.

⁷⁴ *See*, Happy Home Questionnaire Response to CBP's RFI, Business Confidential Version, Document No. 107, Page 157 of 159.

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The information on this document confirms CBP's assessment [REDACTED]

[REDACTED]⁷⁵. There is no indication that any recently [REDACTED] were actually available on-site, or operational, at the time of CBP's visit.

II. Evidence Of Evasion In The Record

We find that the import data, *coupled with* the evaluation of the production capabilities at the factories, discrepancies in record evidence and unsubstantiated production quantities, substantiate TRLED's finding of evasion. There is substantial evidence in the record that covered merchandise was entered by means of material false documents and statements and material omissions that resulted in the non-payment of antidumping and countervailing duties.

More specifically, as to the merchandise supplied by LB Wood to Interglobal and APPI, inter alia: 1) LB Wood could not provide documentation to substantiate what products it had actually produced in Cambodia, 2) LB Wood's [REDACTED], 3) LB Wood admitted that [REDACTED], 4) CBP's site visit revealed that [REDACTED], and 5) LB Wood acknowledged that it is [REDACTED].

[REDACTED]. These facts, coupled with others contained in the record, support a conclusion that LB Wood supplied Chinese-origin plywood to Interglobal and APPI, which was falsely designated as made in Cambodia when imported into the United States.

Further, as to the merchandise supplied by Happy Home to U.S. Global, inter alia: 1) documents such as [REDACTED], show that Happy Home imported finished plywood from China into Cambodia, 2) CBP's site visit revealed that Happy Home's facility in Cambodia [REDACTED], although such merchandise was in evidence at the facility, 3) machinery and equipment claimed to have been purchased by Happy Home for plywood production in Cambodia was not seen on-site, 4) Happy Home claims to have exported to the United States [REDACTED] plywood of Cambodian origin than official statistics show was actually produced in all of Cambodia, and 5) Happy Home informed CBP that Happy Home has [REDACTED] so that CBP could not conduct an on-site verification in 2020. These facts, coupled with others contained in the record, support a conclusion that Happy Home supplied Chinese-origin plywood to U.S. Global, which was falsely designated as made in Cambodia when imported into the United States.

⁷⁵ Happy Home Questionnaire Response to CBP's RFI, Business Confidential Version, Document No. 107.

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The Importers entered the merchandise as type “01” consumption entries, instead of as type “03” antidumping entries. The Importers also failed to include the antidumping and countervailing duty case numbers on the entry summary documentation and failed to pay the antidumping and countervailing duties owed. The Importers also provided a false country of origin of Cambodia on the invoices and entry summary documentation.

We conclude that the hardwood plywood was covered merchandise under AD order A-570-051 and countervailing duty order C-570-052 and the entries filed by the Importers were identified as type 01 entries and failed to include the AD and CV duty case numbers. The Importers transhipped Chinese-origin plywood through Cambodia, to the United States, and failed to pay AD/CV duties on the merchandise produced in China that was subject to the Orders.

Therefore, we conclude that there is substantial evidence in the record of evasion.

III. DECISION

Based upon our *de novo* review of the administrative record in this case, including the timely and properly filed requests for administrative review, as well as the response thereto, we AFFIRM the June 29, 2020 Determination by TRLED under 19 U.S.C. § 1517(c).

Substantial evidence exists that the Importers entered covered merchandise from China into the United States through evasion by failing to list the AD duty order A-570-051 and the CV duty order C-570-052 in the entry documents, and by listing the country of origin as Cambodia. The Importers also failed to make the requisite AD and CV duty deposits.

A copy of this determination is being provided to TRLED. TRLED may also take any other appropriate actions 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,

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

Approved by:

PUBLIC VERSION

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