



**EAPA Investigation Number 7252: Far East America, Inc., CIEL Group, American Pacific Plywood, Interglobal Forest, and Liberty Woods International, Inc. (Notice of Scope Referral, August 23, 2019)**

Scope Referral Request for merchandise under EAPA Cons. Investigation 7252, imported by Far East America, Inc., CIEL Group, American Pacific Plywood, Interglobal Forest, and Liberty Woods International, Inc., (“importers”) and concerning the investigation of evasion of the antidumping and countervailing duty orders on hardwood plywood from the People’s Republic of China (A-570-051 and C-570-052).

The following referral is submitted pursuant to U.S. Customs and Border Protection (“CBP”) Enforce and Protect ACT (“EAPA”) regulation 19 CFR §165.16 in response to EAPA consolidated investigation 7252. The allegation asserts that the importers have failed to properly declare imported merchandise as subject to the antidumping duty (“AD”) and countervailing duty (“CVD”) orders on hardwood plywood from the People’s Republic of China (China) (A- 570-051 and C-570-052) .

On August 15, 2018, the Trade Remedy Law Enforcement Directorate (“TRLED”) within CBP’s Office of Trade initiated an investigation under EAPA. TRLED determined that the allegations submitted by Plywood Source, and consolidated by CBP, reasonably suggested evasion of AD/CVD duties. Specifically, the allegations contend that the Vietnamese manufacturer, Vietnam Finewood Company Limited (“Finewood”), lacked the capability to produce the volume of merchandise exported to the United States during the period of review and therefore transshipped Chinese origin plywood through Vietnam to the importers.

In response to CBP requests for information, Finewood submitted documentation indicating that its production of finished plywood involved importing 2-ply panels from China under HTS subheading 4412. Finewood indicated that it outsourced the Chinese panels to tollers in Vietnam to develop the plywood core in varying sizes. Upon receipt of the developed core from the Vietnamese tollers, Finewood applied hardwood veneer to the cores and shipped the finished product to the importers, which entered the Customs territory of the United States under HTSUS subheading 4412.

Referral Request

Section 517(b)(4)(A) of the Act states that “{i}f the {CBP} Commissioner receives an allegation... and is unable to determine whether the merchandise at issue is covered merchandise, the Commissioner shall—(i) refer the matter to the administering authority to determine whether the merchandise is covered merchandise pursuant to the authority of the administering authority under title VII.” (See also 19 CFR 165.16(a), which states that a “referral is required if at any point after receipt of an allegation, CBP cannot determine whether the merchandise described in an allegation is properly within the scope of an antidumping or countervailing duty order.”) Section 517(a)(3) of the Act defines “covered merchandise” as “merchandise that is subject to (A) an antidumping duty order issued under section {736 of the Act} or (B) a countervailing duty order issued under section {706 of the Act}.”

The merchandise covered by the orders includes “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 non-coniferous wood (hardwood) or bamboo.” *See* Antidumping Order and Countervailing Order.

The question arises as to whether the 2-ply cores of Chinese origin, which are further processed in Vietnam to include the face and back veneers of non-coniferous wood, are within the scope of the orders.

CBP has considered that lamination of a veneer face and/or back veneers to a plywood substrate consisting of 2 or more plies does not constitute a substantial transformation. (*See* Customs Rulings N146815 (March 7, 2011), N282788 (February 7, 2017), and N291240 (November 7, 2017)). Section 134.1(b) of the Customs Regulations (19 CFR 134.1(b)) provides that

the “[c]ountry of origin” means the country of manufacture, production or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin” within the meaning of Part 134, Customs Regulations (19 CFR Part 134). Substantial transformation requires that “[t]here must be a transformation; a new and different article must emerge, ‘having distinctive name, character, or use.’”  
*Anheuser-Busch Brewing Association v. United States*, 207 U.S. 556, 28 S. Ct 204 (1908).

Accordingly, in considering this issue, CBP cites The Explanatory Notes of the Harmonized Commodity Description and Coding System (“EN”s) for Heading 4412, Harmonized Tariff Schedule of the United States (“HTSUS”) in determining country of origin of plywood cores that are further processed in a third country and to consider whether merchandise further processed in such a manner are within the scope of the orders. Specifically, the ENs for Heading 4412 direct that “{s}ubstrates of only two layers do not constitute plywood, but instead are laminated panels - also of Heading 4412, HTSUS. The lamination of a veneer face ply onto a substrate of two layers renders plywood, yet does not significantly change the classification; the article is still classifiable in Heading 4412, HTSUS. The lamination of the veneer face ply to the substrate, therefore, does not render a new and different article.” Thus, for CBP purposes in this instance, because no substantial transformation is effected by any of the manufacturing, neither the materials nor processing sourced outside of China impacts the country of origin of the imported goods. The country of origin for the complete flooring panels is China.

In the present EAPA investigation, CBP is unable to determine whether the hardwood plywood produced by Finewood in Vietnam from Chinese origin materials is covered merchandise. Therefore, pursuant to Section 517(b)(4)(A) of the Act, CBP submits this covered merchandise referral to Commerce for its determination concerning whether the merchandise produced as outlined above is covered merchandise within the scope of the Order.

As a result of this referral, the deadlines in EAPA investigation 7252 have been stayed pending Commerce’s issuance of a determination.