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EAPA CASE NO. 7520

PUBLIC VERSION

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RE: Notice of Determination as to Evasion

Pursuant to an examination of the record in Enforce and Protect Act (EAPA) Investigation 7520, U.S. Customs and Border Protection (CBP) has determined there is not substantial evidence that BGI Group Inc. dba U.S. Cabinet Depot (“BGI”) entered merchandise covered by antidumping (“AD”) and countervailing duty (“CVD”) orders A-570-106 and C-570-107, respectively, on wooden cabinets and vanities and component parts thereof (“WCV”) from the People’s Republic of China¹ into the customs territory of the United States through evasion. Specifically, CBP determined that there is not substantial evidence that BGI imported Chinese-origin WCV through Cambodia.

Background

On August 26, 2020, the Trade Remedy Law Enforcement Directorate (“TRLED”), within CBP’s Office of Trade, acknowledged receipt of the properly submitted allegation by the

¹ See *Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Antidumping Duty Order*, 85 FR 22126 (Dep’t Commerce, Apr. 21, 2020) and *Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Countervailing Duty Order*, 85 FR 22134 (Dep’t Commerce Apr. 21, 2020), respectively.

American Kitchen Cabinets Alliance (“AKCA”) against BGI regarding evasion of AD/CVD duties by BGI.² AKCA submitted reasonably available evidence to demonstrate that Chinese producers and/or exporters of WCV are shipping merchandise subject to the AD/CVD Orders to Cambodian company Cambodia Golden Coast Wood Products Co., Ltd. (“Golden Coast”), which in turn, is repackaging and exporting the Chinese-origin merchandise to BGI.³

TRLED found the information provided in the allegation reasonably suggested that BGI entered covered merchandise into the customs territory of the United States through evasion. TRLED noted that information submitted by AKCA suggested that the Chinese-origin WCV imported into Cambodia was being transshipped to BGI in the United States, thus, evading the duties due under the AD/CVD Orders. Specifically, TRLED concluded that AKCA had submitted documentation reasonably available to it, including aggregate U.S. import data, individual shipment data sourced from Panjiva, and a sworn affidavit from an official in the WCV industry that suggested WCV produced in China is being repackaged in Cambodia and then shipped to the United States for entry by BGI, and that such merchandise is being classified by BGI at time of entry as a product of Cambodia rather than China. Consequently, CBP initiated an investigation with respect to BGI on September 17, 2020, pursuant to Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, commonly referred to as the “Enforce and Protect Act” or EAPA.⁴

Following the initiation, TRLED examined additional information supporting a determination of evasion. TRLED noted that although Golden Coast staff indicated to DHS officials during a site visit that [company, activity, and time period], nothing provided to DHS substantiated the claim that [company, activity, and time period], the month of the reported export date for the entry by BGI associated with its submitted CF28 response. TRLED also noted that BGI indicated in its CF28 response for an entry of WCV that the imported merchandise for the entry in question was produced by [references to company names], but DHS was told during the site visit that [company and activity]. Finally, TRLED noted that based on its research as well as statements made to DHS during its site visits, Golden Coast and [company] appear to have been [various activities], providing a rationale for applying an investigation of BGI’s entries to transactions involving both of those Cambodian entities.⁵ Based on this additional information, and the evidence provided in the Allegation and the associated affidavit, TRLED concluded the evidence reasonably suggested BGI entered covered merchandise for consumption into the customs territory of the United States through evasion, and thus, such covered merchandise should have been subject to the applicable AD and CVD duties on WCV from China. However, CBP did not find that the evidence rose to the level of reasonable suspicion that BGI was engaged in evasion and did not impose interim measures under section 1517(e) at that time.⁶

CBP issued a Request for Information (“RFI”) to BGI on January 19, 2021, and supplemental

² See August 26, 2020 email entitled “Receipt of EAPA Allegation 7520: Wooden Cabinets and Vanities and Components Thereof from China through Cambodia.”

³ See “Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Request for an Investigation under the Enforce and Protect Act of BGI Group Inc. d/b/a U.S. Cabinet Depot for Transshipment through Cambodia,” dated August 19, 2020 (“Revised Allegation”).

⁴ See Memorandum to Brian M. Hoxie, Director, Enforcement Operations Division, “Initiation of Investigation for EAPA Case Number 7520 – BGI Group Inc. dba U.S. Cabinet Depot” (September 17, 2020) (“Initiation Memo”).

⁵ See December 23, 2020 “Notice of Initiation of Investigation - EAPA Case 7520” (“NOI”), at 8.

⁶ *Id.*

RFIs on March 24, 2021 and April 8, 2021, and BGI submitted responses to those RFIs on February 11, 2021, March 31, 2021, and April 20, 2021, respectively. CBP issued an RFI to Golden Coast on January 12, 2021, and a supplemental RFI on March 24, 2021, and Golden Coast submitted responses to those RFIs on February 11, 2021 and March 31, 2021, respectively. CBP issued an RFI to a Cambodian entity associated with Golden Coast on January 13, 2021, and the entity, Glory Wood, subsequently identified itself publicly as the entity in question in its RFI response submitted on February 11, 2021 (in a response consolidated with that of Golden Coast). On March 24, 2021, CBP issued a supplemental RFI to Glory Wood, and Glory Wood submitted a response to that RFI on March 31, 2021 (in a response consolidated with that of Golden Coast).

On May 11, 2021, AKCA and BGI submitted written arguments.⁷ On May 26, 2021, AKCA and BGI submitted responses to written arguments.⁸

Final Determination as to Evasion

Under 19 C.F.R. § 165.27(a), CBP must “make a determination based on substantial evidence as to whether covered merchandise was entered into the customs territory of the United States through evasion.” “Covered merchandise” is defined by 19 C.F.R. § 165.1 as “merchandise that is subject to a CVD order... and/or an AD order.” “Evasion” is defined as entering covered merchandise “into the customs territory of 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, 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 covered merchandise.”⁹ As discussed below, the record of this investigation indicates that substantial evidence does not exist to determine that BGI entered from Cambodia covered merchandise into the customs territory of the United States through evasion.

In the Notice of Initiation, CBP cited evidence indicating that BGI had declared Cambodia as the WCV’s country of origin. Although Glory Wood’s and Golden Coast’s operations are entwined, and they are sometimes conflated in the narrative provided in their joint RFI responses, the information in those responses is consistent with what DHS officials were told during their site visit: that Golden Coast uses inputs from Glory Wood (and other suppliers) to manufacture WCV. However, DHS officials did not identify any evidence of WCV being transshipped from China.¹⁰ Furthermore, the information provided in the joint RFI responses of Glory Wood and Golden Coast, and the RFI responses of BGI, is consistent with the explanation that the merchandise was being manufactured in Cambodia and exported to BGI. This conclusion is based on the review of the detailed information submitted by those parties, including production, sales, and shipment documentation of the companies in question.

⁷ See May 11, 2021, “Investigation into BGI Group Inc. dba U.S. Cabinet Depot Concerning the Evasion of Antidumping and Countervailing Duty Orders: Written Comments” (“AKCA Written Argument”) and May 11, 2021, “EAPA Case No. 7520 – BGI Written Argument” (“BGI Written Argument”), respectively.

⁸ See May 26, 2021, “Investigation into BGI Group Inc. dba U.S. Cabinet Depot Concerning the Evasion of Antidumping and Countervailing Duty Orders: Response to Written Comments” (“AKCA Response to Written Argument”) and May 26, 2021 “EAPA Case No. 7520 – BGI Rebuttal Written Argument” (BGI Response to Written Argument”), respectively.

⁹ See 19 C.F.R. § 165.1.

¹⁰ See the December 11, 2020 Site Visit Memorandum with Attached Report at 2-3.

The information submitted to CBP by Glory Wood and Golden Coast in their joint RFI responses does not indicate that WCV being imported by BGI from Cambodia were produced in China, and the capacity and sales data in those responses do not suggest that Golden Coast had insufficient capacity to account for the WCV shipments during the period of investigation, including those to BGI. Finally, at the time of the NOI, no interim measures were imposed because the standard — reasonable suspicion of evasion—had not been met based on the information available to CBP at the time.¹¹ The further investigation since the NOI did not uncover any additional evidence supporting the conclusion that BGI was importing WCV produced in China and covered by the AD/CVD Orders.

In conclusion, based on an examination of the information on the record, including the absence of sufficient additional evidence of evasion obtained subsequent to the NOI, CBP finds that substantial evidence does not exist that BGI entered into the customs territory of the United States WCV manufactured in China that had been transshipped through Cambodia during the period of this EAPA investigation.

Arguments by BGI

Some of BGI's arguments concern the documentation provided by Glory Wood, Golden Coast, and BGI, and we agree with BGI's contention that there is not substantial evidence that BGI engaged in evasion involving WCV imported from Cambodia, as discussed above.

Regarding BGI's arguments on procedural deficiencies, because CBP did not find reasonable suspicion of evasion, any arguments pertaining to that standard with respect to the final determination are moot and will not be addressed. With respect to the investigation's initiation, BGI argues that such initiation was improper because the evidence submitted as part of the allegation did not reasonably suggest evasion.¹² However, given the low evidentiary bar and the evidence that was collected, CBP believes that this standard was satisfied, particularly that the evidence did reasonably suggest evasion, as discussed above. CBP's decision in its NOI to continue the investigation on the grounds that the evidence reasonably suggested evasion was further supported by BGI's intervening misidentification of a Cambodian company in its CF28 response that CBP learned was not the manufacturer of the WCV in question.

BGI argues that the affidavit relied upon by AKCA and CBP does not meet the standard of reliability because the affiant was not deposed, and the affiant's qualifications are not established by information on the record. Accordingly, BGI argues that the affiant's claims are hearsay and should not be considered as evidence of evasion.¹³ While CBP is not finding that substantial evidence of evasion exists on the record of this investigation, such finding should not be construed to mean that the information provided in the affidavit was not considered by CBP or that CBP did not find that it was credible evidence of evasion.

Further, BGI argues that Glory Wood and Golden Coast are de facto parties to this EAPA investigation, and that TRLED should have allowed them to present their written argument on their own information and data.¹⁴ Among the arguments made in support of this, BGI argues that its ability to produce evidence to rebut and defend against CBP's allegation of evasion depended

¹¹ See 19 C.F.R. § 165.24(a).

¹² See BGI Written Argument at 26-29.

¹³ *Id.* at 31-33.

¹⁴ *Id.* at 40-43.

on the willingness and ability of Glory Wood and Golden Coast to cooperate and participate fully in EAPA 7520 because critical evidence to prove or disprove evasion is in the hands of those Cambodian firms, and if they had refused to cooperate, adverse inferences would be applied against them. Consequently, Glory Wood and Golden Coast have an interest in proving, based on their own record evidence, that BGI, as their contracting partner, did not evade U.S. AD/CVD Orders or violate AD/CVD laws and that BGI does not owe AD/CVD duties on the covered merchandise.¹⁵ The EAPA regulations define “parties to the investigation” as the alleged and the importer,¹⁶ therefore, because Glory Wood and Golden Coast are not under investigation of evasion, and they are not considered parties to the investigation. Additionally, according to the EAPA regulations, only parties to the investigation may submit written arguments to CBP.¹⁷ Consequently, TRLED was correct when it rejected the request of Glory Wood and Golden Coast to submit written arguments.

Arguments by AKCA

AKCA argues that the ownership structure of Golden Coast, which involves affiliations with Chinese companies and parties and the timing of its establishment, which was close in time to the establishment of the AD/CVD orders, supports a finding of evasion.¹⁸ While such facts may contribute to the basis for conducting an investigation, they do not, alone, constitute substantial evidence of actual evasion.

AKCA also argues that record information supports concluding that Chinese parts were imported and combined into cabinet flat-packs with plywood carcasses made by Glory Wood. AKCA cites three factors supporting this conclusion.

First, AKCA claims “it is clear from the description of the timing of the production of the plywood carcasses and the later packing of these plywood carcasses with the solid wood cabinet components is unduly complicated,” and that Glory Wood and Golden Coast appear “to be covering up for the fact that the components were not actually made in Cambodia but were imported from China.”¹⁹ However, nothing in the Glory Wood and Golden Coast RFI responses suggest that Golden Coast was incapable of producing WCV components, and the report of DHS investigators indicates such production was taking place.²⁰

Second, AKCA claims “the timing of the issuance of the purchase orders and the shipment dates described by Glory and Golden Coast does not make sense,” and that the reason for the elapse of months between purchase orders from BGI and shipments to BGI appears to be “that the plywood carcasses and the wooden components were being produced in separate facilities in different countries, which took additional time to allow the Chinese components to arrive and be packed together with the Cambodian carcasses.”²¹ While the elapse of time between purchase orders and shipments is consistent with the theory presented by AKCA, it does not constitute substantial evidence of evasion, particularly given the fact that Golden Coast appears capable of producing such components, and there is no indication that production capacity was such that it

¹⁵ *Id.*

¹⁶ *See* 19 C.F.R. § 165.1.

¹⁷ *Id.* § 165.26(a)(1).

¹⁸ *See* AKCA Written Argument at 6-8.

¹⁹ *Id.* at 8-9.

²⁰ *See* the December 11, 2020 Site Visit Memorandum with Attached Report at 2-3.

²¹ *See* AKCA Written Argument at 9-10.

was incapable of supplying the components needed for shipments during the period of investigation.

Finally, AKCA claims Glory Wood and Golden Coast “were less than forthright – to say the least – regarding their purchase of certain ‘raw materials’ from China that were incorporated into the WCV,” only revealing that an “affiliate purchased certain ‘raw materials’ in China and resold these materials to Glory {Wood} or Golden Coast” when pressed by CBP for an explanation of the purchase of raw materials referenced in the initial RFI response. AKCA argues that this explanation is “fully consistent with the allegation that Glory {Wood} and Golden Coast were combining plywood carcasses made in Cambodia with solid wood three-piece components made in China.”²² However, many inputs are used in the production process, and the Glory Wood and Golden Coast RFI responses indicate that those in question “[various items],”²³ as opposed to the finished WCV wooden components AKCA notes are covered by the scopes of the AD/CVD orders (*i.e.*, wooden cabinet frames, wooden cabinet doors, and wooden cabinet drawers and drawer components).²⁴

AKCA also argues that CBP should apply adverse facts available based on BGI’s, Glory Wood’s, and Golden Coast’s failure to cooperate, specifically arguing that BGI failed to provide in its CF28 response accurate production capacity information for Glory Wood and Golden Coast,²⁵ and because of Glory Wood’s and Golden Coast’s inaccurate reporting of total sales volume and their intentional omission of certain requested Golden Coast sales documents.²⁶ Regarding the inaccurate reporting of total sales volume, which as noted by AKCA was identified by BGI in its written argument,²⁷ the presence of certain limited errors in the RFI responses does not rise to the level of failure to cooperate. Regarding sales documents that BGI had acknowledged Glory Wood and Golden Coast did not provide in their joint RFI response, BGI stated those were omitted because the merchandise in question had been identified as [business activity] by the time that the RFI response was submitted,²⁸ a conclusion not inconsistent with the RFI responses of BGI and Glory Wood and Golden Coast generally. With respect to inaccuracies in BGI’s CF28 response involving production capacity, problems with the CF28 response, including identification of the inaccurate manufacturer, justified continuation of the investigation at the time of the NOI, but given the additional information and clarification in the subsequent RFI responses regarding production capacity, there is no basis for finding that the responding parties failed to cooperate with the investigation.

With respect to production capacity, AKCA also argues that even if it were conceded that significant production capacity existed at some point during the period of the investigation, it still would not be evident that they had adequate WCV capacity early in the period of investigation, given that the volume of WCV shipments occurred at that early stage. AKCA notes that Glory Wood and Golden Coast, in their supplemental RFI response, chose “the busiest month” of production to demonstrate its production capabilities, which AKCA argues does not support a claim of sufficient production capacity early in the period of investigation.²⁹

²² *Id.* at 10.

²³ See the March 31, 2021, Glory Wood and Golden Coast RFI response narrative at 2.

²⁴ See AKCA Written Argument at 11, citing the scopes of the AD/CVD orders.

²⁵ See AKCA Response to Written Argument at 2-3.

²⁶ *Id.* at 3-4.

²⁷ See BGI Written Argument at 17.

²⁸ *Id.*

²⁹ See AKCA Response to Written Argument at 6-7.

However, that supplemental RFI response, in discussing the data in question, as well as their supporting documentation, referred to December 2019 as the “[description of time period]” of WCV products, noting that such a production level nevertheless was exceeded by their production capacity. In other words, Glory Wood and Golden Coast indicated the production capacity was of such magnitude that it could support production of the WCV required for the “busiest” month, which happened to be in the period of the investigation.³⁰ The full extent to which the production capacity might have varied during the period of investigation is not clear, but there is no evidence on the record indicating the production capacity was not sufficient for the volume of merchandise in question, whether in December 2019, which was early in the period of investigation, or in other months.

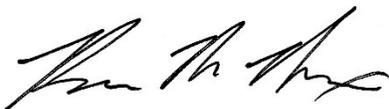
In addition, AKCA argues that even BGI concedes that Glory Wood and Golden Coast were unable to provide actual raw material purchases that it could tie to actual WCV production, and AKCA argues this is because such actual purchases would show that either Glory Wood or Golden Coast were purchasing merchandise subject to the AD/CVD orders (*i.e.*, three-piece components) from China during a portion of the POI.³¹ However, the mere absence of ties from each WCV to each specific input used to make it does not amount to substantial evidence that the WCV imported into the United States was manufactured in China, especially given the absence of additional evidence indicating WCV was sourced from China.

In conclusion, although there is certain information on the record from the Allegation and from documents subsequently placed on the record which suggest the possibility of evasion, collectively this information does not amount to “substantial evidence” that BGI’s imports of such merchandise from Cambodia during the period of investigation should have been entered as subject to the AD/CVD orders on WCV from China.

Actions Taken Pursuant to the Negative Determination as to of Evasion

In light of CBP’s determination that there is not substantial evidence that BGI entered covered merchandise that had been exported from Cambodia into the customs territory of the United States through evasion during the period of this investigation, CBP will reverse any actions taken with respect to entries covered by this investigation. This does not preclude CBP or other agencies from pursuing other enforcement actions or penalties as may be appropriate.

Sincerely,



Brian M. Hoxie
Director, Enforcement Operations Division
Trade Remedy Law Enforcement Directorate
Office of Trade

³⁰ See Glory Wood and Golden Coast Supplemental RFI response narrative at 10.

³¹ See AKCA Response to Written Argument at 8.