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Re: Enforce and Protect Act Case Number 7607; Vivaldi Commercial, LLC d/b/a Superior Granite and Marble by Vivaldi, and Vivaldi Interiors, LLC; *Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Antidumping and Countervailing Duty Orders*, 85 Fed. Reg. 22,126 and 22,134 (April 21, 2020); 19 U.S.C. § 1517

Dear Mr. Brightbill and Ms. Levinson:

This is in response to a request for *de novo* administrative review of a determination of evasion dated February 23, 2022, made by the Trade Remedy Law Enforcement Directorate (“TRLED”), Office of Trade (“OT”), U.S. Customs and Border Protection (“CBP”), pursuant to 19 U.S.C. § 1517(c), in Enforce and Protect Act (“EAPA”) Case Number 7607 (hereinafter referred to as the “February 23 Determination”).¹ The request for review, dated April 6, 2022, was submitted to CBP OT Regulations and Rulings (“RR”) by Fox Rothschild LLP, on behalf of Vivaldi Commercial, LLC d/b/a Superior Granite and Marble by Vivaldi, and Vivaldi Interiors, LLC (“Vivaldi”), pursuant to 19 U.S.C. § 1517(f) and 19 C.F.R. § 165.41(a).

¹ See Notice of Determination as to Evasion in EAPA Case Number 7607 (Feb. 23, 2022) (“February 23 Determination”), available at: <https://www.cbp.gov/sites/default/files/assets/documents/2022-Feb/02-23-2022%20-TRLED%20-%20Notice%20of%20Determination%20as%20to%20Evasion%20%28508%20compliant%29%20-%20%287607%29%20-%20PV.pdf> (TRLED PV Doc. #231).

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I. Background

Inasmuch as the facts in this case are fully set forth in the February 23 Determination, we will not repeat the entire factual history herein.

In brief, according to the record evidence, on January 27, 2021, MasterBrand Cabinets, Inc. (“MasterBrand”) filed an EAPA allegation through counsel claiming that Superior and a second importer, Splendid Trading Co.,² had evaded the antidumping and countervailing duty (“AD/CVD”) orders on Wooden Cabinets and Vanities and Components Thereof (“WCV”) from the People’s Republic of China (“China”) by entering merchandise covered by the scope of the orders without paying the appropriate AD/CV duties.³

The allegation of evasion pertained to the AD/CVD Orders issued by the U.S. Department of Commerce (“Commerce”) on entries of WCV from China.⁴

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

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

Wooden cabinets and vanities are covered by this order whether or not they are imported attached to, or in conjunction with, faucets, metal plumbing,

² MasterBrand submitted two separate allegations on January 27, 2021, alleging that two importers, Vivaldi and Splendid Trading Co., had each evaded the AD/CVD Orders by importing Chinese-origin wood cabinets and vanities that had been transshipped through Malaysia by Grand Supremacy Sdn. Bhd. CBP combined both investigations into EAPA Consolidated Case 7607. In the February 23 Determination, TRLED determined that substantial evidence existed that both Vivaldi and Splendid Trading had entered covered merchandise through evasion of the AD/CVD Orders. In response, only Vivaldi filed an Administrative Review Request. As such, we do not review the February 23 Determination as it pertains to Splendid Trading.

³ See MasterBrand’s EAPA Allegation re: Vivaldi (January 27, 2021) (the “Vivaldi Allegation”) (TRLED PV Doc. #2).

⁴ See *Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Antidumping and Countervailing Duty Orders*, 85 Fed. Reg. 22,126 and 22,134 (April 21, 2020) (collectively, the “AD/CVD Orders”).

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sinks and/or sink bowls, or countertops. If wooden cabinets or vanities are imported attached to, or in conjunction with, such merchandise, only the wooden cabinet or vanity is covered by the scope.

Subject merchandise includes the following wooden component parts of cabinets and vanities: (1) wooden cabinet and vanity frames (2) wooden cabinet and vanity boxes (which typically include a top, bottom, sides, back, base blockers, ends/end panels, stretcher rails, toe kicks, and/or shelves), (3) wooden cabinet or vanity doors, (4) wooden cabinet or vanity drawers and drawer components (which typically include sides, backs, bottoms, and faces), (5) back panels and end panels, (6) and desks, shelves, and tables that are attached to or incorporated in the subject merchandise.

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

Subject merchandise also includes wooden cabinets and vanities and in-scope components that have been further processed in a third country, including but not limited to one or more of the following: trimming, cutting, notching, punching, drilling, painting, staining, finishing, assembly, or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the in-scope product.⁵

On April 21, 2021, TRLED initiated a consolidated formal investigation under Title IV, section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, in response to the allegation of evasion.

On July 27, 2021, in accordance with 19 C.F.R. § 165.24, CBP issued the Notice of Initiation to all interested parties, and notified the parties of CBP’s decision to take interim measures based upon reasonable suspicion that Vivaldi, as the importer of record, entered

⁵ AD/CVD Orders.

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covered merchandise into the customs territory of the United States through evasion.⁶ The entries subject to the investigation were those entered for consumption, or withdrawn from a warehouse for consumption, from March 31, 2020, through the pendency of the investigation.⁷ TRLED concluded that, based on the record evidence, there was reasonable suspicion that Vivaldi entered covered merchandise into the customs territory of the United States through evasion.

On February 23, 2022, TRLED issued the February 23 Determination. TRLED found substantial evidence to demonstrate that Vivaldi entered certain WCV from China that were covered by the AD/CVD Orders by transshipping Chinese-origin WCVs through Malaysia. As a result, no AD/CVD cash deposits were paid on the merchandise upon entry.⁸

On April 6, 2022, Vivaldi filed a timely Request for Administrative Review.⁹ On April 7, 2022, RR sent an email to all parties to the investigation, notifying them of the commencement of the administrative review process and the assignment of RR case number H324408.¹⁰ On April 21, 2022, MasterBrand timely filed a response to Vivaldi's request for administrative review.¹¹ For purposes of our decision, we have reviewed the record as transmitted to us and indexed by TRLED, as well as the submissions filed with RR by Vivaldi and MasterBrand.

II. Discussion

a. Law

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

(1) Determination of Evasion

(A) In general

Except as provided in subparagraph (B), not later than 300 calendar days after the date on which the Commissioner initiates an investigation under subsection (b) with respect to covered merchandise, the Commissioner shall make a determination, based on substantial evidence, with respect to whether such covered merchandise was entered into the customs territory of the United States through evasion.

⁶ See Notice of Initiation of Investigation and Interim Measures (July 27, 2021) (“Notice of Initiation”), available at <https://www.cbp.gov/sites/default/files/assets/documents/2021-Aug/07-27-2021%20-TRLED%20-%20Notice%20of%20Initiation%20of%20Invest.%20and%20Interim%20Measures%20%28508%20compliant%29%20-%20%287607%29%20-%20PV.pdf> (TRLED PV Doc. #17).

⁷ See 19 C.F.R. § 165.2. Entries covered by the Period of Investigation (“POI”) include entries up to one year prior to the date CBP officially received the allegations, which was January 27, 2021.

⁸ See February 23 Determination at 1-2.

⁹ Vivaldi's Request for Administrative Review (April 6, 2022) (the “Vivaldi Request”).

¹⁰ Email – EAPA Cons. Case No. 7607 – Commencement of Administrative Review (Apr. 7, 2022).

¹¹ MasterBrand's Response to Request for Administrative Review (Apr. 21, 2022) (“MasterBrand Response”).

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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.¹²

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, false sales, or transshipment through a third country), false or incorrect shipping and entry documentation, or misreporting of the merchandise’s physical characteristics.¹³

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

While substantial evidence is not defined by statute, the “substantial evidence” standard has been reviewed by the courts in relation to determinations by other agencies. “Substantial evidence requires more than a mere scintilla, but is satisfied by something less than the weight of the evidence.”¹⁵ The U.S. Court of Appeals for the Federal Circuit has also stated that “substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”¹⁶

Therefore, CBP must determine whether a party has entered merchandise that is subject to an AD or CVD order into the United States for consumption by means of any document or electronically transmitted data or information, written or oral statement, or act, that is material and false, or any omission that is material, that resulted in the reduction or avoidance of applicable AD or CVD cash deposits or duties being collected on such merchandise. The U.S. Court of International Trade (“CIT”) explained in *Diamond Tools Tech. LLC*, “‘False’ is defined as: ‘Untrue . . . Deceitful . . . Not genuine; inauthentic . . . What is

¹² See also 19 C.F.R. § 165.1.

¹³ See *Investigation of Claims of Evasion of Antidumping and Countervailing Duties, Interim Regulations*, 81 Fed. Reg. 56,477, 56,478 (Aug. 22, 2016).

¹⁴ See 19 C.F.R. § 165.1.

¹⁵ See *Altz, Inc. v. United States*, 370 F.3d 1108, 1116 (Fed. Cir. 2004) (internal citations and quotation marks omitted).

¹⁶ *A.L. Patterson, Inc. v. United States*, 585 Fed. Appx. 778, 781-82 (Fed. Cir. 2014) (quoting *Consol. Edison Co. of N.Y. v. NLRB*, 305 U.S. 197, 229 (1938)).

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false can be so by intent, by accident, or by mistake . . . Wrong; erroneous . . .”¹⁷ Imports that are covered by AD/CVD orders are required to be entered as type “03” entries; entries declared as type “01” entries cannot be subject to AD/CVD orders.¹⁸ It is material and false for entries to be made as type “01” when they are subject to AD/CV duties. That the material falsehood may have occurred as a result of a mistake does not mean that evasion has not occurred – a falsity within the meaning of the EAPA statute can occur as a result of a mistake.¹⁹ Lastly, our decision herein must be supported by substantial evidence.

b. Vivaldi’s Arguments

Vivaldi requests that we reverse the February 23 Determination, arguing that the company did not enter covered merchandise into the United States through evasion because the entered merchandise was produced by Grand Supremacy Sdn Bhd (“Grand Supremacy”) in Malaysia, and therefore, there is no legal or factual basis for CBP to impose AD/CV duties on Vivaldi’s entries.

Vivaldi asserts that TRLED relied solely on “isolated tidbits of data which suggest a result contrary to the clear weight of the evidence.”²⁰ In doing so, Vivaldi offers roughly five arguments as to why TRLED lacked substantial evidence to support a finding of evasion. First, Vivaldi asserts that the report furnished by MasterBrand is flawed and incomplete.²¹ The report, Vivaldi argues, relies on a declarant’s statement that is heavily redacted and, furthermore, Vivaldi posits the declarant did not visit the entirety of Grand Supremacy’s Malaysia facility.²² Second, Vivaldi asserts that trade data related to the import of Chinese and Malaysian-origin WCV is insufficient evidence of transshipment.²³ Instead, Vivaldi argues, this data only presents a non-specific picture of trade flows between China, Malaysia, and the United States that is unrelated to the specific entries at issue.²⁴ Third, Vivaldi argues that TRLED erred in its assessment that Grand Supremacy imported WCV components, rather than raw materials, from a Chinese supplier, to its Malaysia facility.²⁵ Documentation relied on by TRLED showing that Grand Supremacy had imported Chinese-origin WCV components from Supree Fujian Wood Co., Ltd. and Supree Fujian Construction Materials Co., Ltd. (“Supree”) does not specify that such components were incorporated into the specific products imported by Vivaldi, the company argues.²⁶ Furthermore, Vivaldi claims, Grand Supremacy imported adequate raw materials into Malaysia to produce the subject WCV locally.²⁷ Fourth, Vivaldi argues that Grand Supremacy’s alleged affiliation with

¹⁷ *Diamond Tools Tech. LLC v. United States*, LEXIS 155, 165, SLIP OP. 2021-151 (Ct. Int’l Trade 2021) (internal citations omitted).

¹⁸ See, e.g., CBP Form 7501 Instructions, “Block 2) Entry Type,” available at <https://www.cbp.gov/sites/default/files/assets/documents/2019-Sep/CBP%20Form%207501.pdf>.

¹⁹ See *Diamond Tools Tech. LLC v. United States*, LEXIS 155, 165, SLIP OP. 2021-151 (Ct. Int’l Trade 2021) (internal citations omitted) and 19 U.S.C. § 1517(a)(5)(A). We also note that Vivaldi does not assert that there were clerical errors, for which the EAPA statute does carve out an exception.

²⁰ Vivaldi Request at 6, citing *USX Corp. v. United States*, 11 CIT 82, 84, 655 F. Supp. 487, 489 (1987).

²¹ *Id.* at 7-9.

²² *Id.*

²³ *Id.* at 9-12.

²⁴ *Id.*

²⁵ *Id.* at 11-12 and 22-23.

²⁶ *Id.*

²⁷ *Id.*

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Supree, by way of several personnel links, is not substantial evidence of evasion.²⁸ These personnel links, which include one of Grand Supremacy's directors having previously worked for Supree and a shared sales representative between Grand Supremacy and Supree, Vivaldi asserts, are not substantial and, instead, reflect that employees and contractors within an industry often move around within that industry.²⁹ And lastly, Vivaldi argues that Grand Supremacy had sufficient manufacturing capacity to produce the subject WCV at its Malaysia factory.³⁰ The case record, Vivaldi asserts, contains substantial documentation, including thousands of pages submitted by Grand Supremacy, showing Grand Supremacy had extensive production operations, and employed sufficient personnel, to transform raw materials into WCV using the equipment at its Malaysia facility.³¹ Thus, Vivaldi contends it did not enter its merchandise through evasion.

c. MasterBrand's Arguments

MasterBrand requests that we affirm the February 23 Determination of evasion, arguing that CBP correctly found that Vivaldi evaded the AD/CVD Orders through evasion.

MasterBrand argues that Vivaldi provided a "piecemeal" challenge to TRLED's determination, and that TRLED properly reviewed the record as a whole.³² In doing so, MasterBrand also offers roughly five arguments. First, MasterBrand argues that the trade data referenced by TRLED properly contains evidence of circumvention.³³ The data, MasterBrand asserts, shows a "clear shift" in import trends, which supports the allegation that Grand Supremacy transshipped Chinese WCV through Malaysia and that such data is corroborated by evidence in the record that Grand Supremacy began importing Chinese-origin WCV components from Supree to Malaysia around the time it began exporting WCV to the United States.³⁴ Second, MasterBrand asserts that CBP properly considered the market research and site visit evidence presented in MasterBrand's allegation.³⁵ MasterBrand reiterates that the record indicates that Grand Supremacy was incorporated the same month the preliminary CVD determination was issued and that the allegation report failed to show that Grand Supremacy conducted substantial manufacturing operations at its Malaysia plant during the period of EAPA investigation ("POI").³⁶ Third, MasterBrand argues that the personnel affiliation between Grand Supremacy and Supree also contributes to a finding of substantial evidence.³⁷ Contrary to Vivaldi's characterization of the personnel ties between Grand Supremacy and Supree as insignificant, MasterBrand argues that these affiliations are "extremely relevant" in showing Grand Supremacy's ties to a Chinese producer of WCV.³⁸ Fourth, MasterBrand asserts that Grand Supremacy's own submissions show that it

²⁸ *Id.* at 12-17.

²⁹ *Id.*

³⁰ *Id.* at 19-24.

³¹ *Id.*

³² MasterBrand Response at 5 and 7.

³³ *Id.* at 8-9.

³⁴ *Id.* at 8-10.

³⁵ *Id.* at 10-13.

³⁶ *Id.* at 11-13.

³⁷ *Id.* at 14-16.

³⁸ *Id.*

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purchased Chinese-origin WCV that was subsequently transshipped to the United States.³⁹ In doing so, MasterBrand again argues that the documentation provided by Grand Supremacy proves the company imported Chinese-origin WCV components from Supree, which were subsequently transshipped to customers in the United States, including Vivaldi.⁴⁰ And fifth, MasterBrand argues that Vivaldi and Grand Supremacy failed to provide evidence that Grand Supremacy produced the subject WCV at its Malaysia plant.⁴¹ In providing its production records to CBP, MasterBrand argues, Grand Supremacy failed to provide production records, material consumption worksheets, inventory documentation, or other “basic production records” sufficient to demonstrate that the company actually produced the subject WCVs at its Malaysia plant, thus proving Vivaldi evaded AD/CV duties through transshipment.⁴²

d. Administrative Review Analysis

As an initial matter, pursuant to 19 U.S.C. § 1517(f)(1) and 19 C.F.R. § 165.45, upon request for administrative review, RR 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, as provided to RR by TRLED, upon which the February 23 Determination was made; and (2) the timely and properly filed request for review and response.

A review of the administrative record and Vivaldi’s request for administrative review clearly indicates that WCV were entered as type “01” consumption entries and, therefore, AD/CV duties were not paid.⁴³ Here, Vivaldi’s entries were entered as “kitchen cabinets” classified under Harmonized Tariff Schedule of the United States (“HTS”) subheading number, 9403.40.9080, which is not an HTS number listed in the scope of the AD/CVD Orders.⁴⁴ Although HTS subheadings are provided in the scope of AD/CVD orders for convenience and customs purposes, the written description of the scope, not the HTS, is dispositive. In this matter, Vivaldi claims that the subject WCV are not within the scope of the AD/CVD Orders by virtue of purportedly being manufactured in Malaysia; Vivaldi does not dispute that the subject WCV, if of Chinese origin, would be within the scope of the AD/CVD Orders. The only fact in contention, therefore, is whether the WCV at issue are in fact of Chinese origin, and if TRLED properly found evasion through transshipment. Thus, so long as the WCV are considered covered merchandise under the applicable AD/CVD Orders, their entry during the period of investigation without proper declaration as type “03” AD/CVD entries and without deposit or payment of the AD/CV duties owed constitutes evasion under the EAPA statute and implementing regulations. We find that substantial evidence in the record demonstrates that evasion occurred.

³⁹ *Id.* at 16-18.

⁴⁰ *Id.*

⁴¹ *Id.* at 18-20.

⁴² *Id.*

⁴³ *See* Entries XXX-XXXX7155, XXX-XXXX7163, and XXX-XXXX8918 (TRLED PV Docs. #31, #155, and #181); *see also*, CBP Entry Summary Form 7501 and Instructions and the ACE Entry Summary Business Rules and Procedure Document <https://www.cbp.gov/trade/programs-administration/entry-summary/cbp-form-7501> (last visited June 3, 2022).

⁴⁴ *Id.*

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First, we determine that the evidence presented in MasterBrand's report is reliable and corroborated by other evidence in the record. The report, which includes a sworn declaration, provides specific evidence that Grand Supremacy transshipped Chinese-origin WCV products and lacked the capacity to fully produce WCV at its Malaysia facility.⁴⁵ In this regard, we note that the AD/CVD Orders cover WCV and components thereof from China, and that assembly-type operations in a third country do not render the resulting products as non-scope merchandise. Thus, production operations in Malaysia would need to be qualitatively and quantitatively sufficient. Evidence of such, however, is lacking. Rather, there is substantial evidence of Chinese in-scope WCV components being shipped to Malaysia, and being consumed in production in Malaysia for goods thereafter shipped to the United States. In contrast, there is a dearth of evidence as to production using non-scope raw materials, as discussed in the February 23 Determination and highlighted below.

Specifically, the declarant reports that an [PARTY] visited Grand Supremacy's Malaysia facility twice during the pertinent POI.⁴⁶ During the visits, the [PARTY] reports having entered the facility.⁴⁷ The portions of the factory that the [PARTY] did observe did not have manufacturing activities, but rather showed signs of logistics functions, such as shipping, palletizing, and assembly of components.⁴⁸ The [PARTY] only observed approximately [NO.] workers. The [PARTY], furthermore, did not observe production involving raw materials.⁴⁹ The [PARTY] also listened for any indication that manufacturing was occurring elsewhere in the facility, but did not hear any.⁵⁰ Also the [PARTY] reports meeting with a high-level Grand Supremacy employee, [EMPLOYEE NAME].⁵¹ The employee offered to assist the declarant [DESCRIPTION OF CONVERSATION], with the understanding that this arrangement would be to assist with transshipment.⁵² The employee also [DESCRIPTION OF CONVERSATION REPORTED BY PARTY].⁵³ The Grand Supremacy employee also told [PARTY] that Grand Supremacy imported "materials" from multiple countries, including cabinets from China, and indicated that the material, which included the Chinese-origin material and components, was assembled in Malaysia before being exported.⁵⁴ The report, therefore, indicates that the [PARTY] only uncovered indicia of assembly and logistics operations occurring at Grand Supremacy's Malaysia plant, as opposed to full manufacturing. Perhaps most relevantly, the [PARTY] reportedly uncovered indicia that Grand Supremacy imported Chinese-origin WCV components that were assembled into finished WCV at the Malaysia plant. As discussed below, Chinese-origin WCV components are within the scope of the AD/CVD Orders, and their incorporation with non-scope components or raw materials, if indeed this occurred at the Malaysia plant, does not remove the resultant WCV from the AD/CVD Orders.

⁴⁵ Vivaldi Allegation at Exhibit 7.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

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Vivaldi's request does not refute the bulk of the allegations contained in MasterBrand's report. Instead, Vivaldi seeks to discredit the report by noting that the date of the visit and identity of the [PARTY] are not disclosed and that the [PARTY] did not visit the entire factory.⁵⁵ CBP notes in response that the alleged complied with EAPA regulations requiring public summaries of business confidential information.⁵⁶ Furthermore, Vivaldi does not explain how the redacted information is necessary to dispute the basic allegations contained in the report. Vivaldi also asserts that the declaration contains various instances of "supposition and innuendo," rendering the declaration "weak and conclusory."⁵⁷ The report, which Vivaldi avers "is the only evidence MasterBrand relies on for its entire case," therefore does not constitute substantial evidence.⁵⁸ Vivaldi's assessment here mischaracterizes both the role of the report and the state of the record. To begin with, MasterBrand's initial allegation did not rely entirely on the [PARTY'S] report, but contained specific import data and personnel information, among other sources. More importantly, the subsequent TRLED investigation developed additional documentation corroborating the contents of the earlier report, and TRLED based its determination on the entirety of the record evidence. Instead of existing in isolation, the details contained in the [PARTY'S] report are corroborated by the evidence of transshipment discussed elsewhere in this analysis.

Second, the record contains evidence that Grand Supremacy incorporated Chinese-origin components into the WCVs shipped from its Malaysia facility. In relevant part, Grand Supremacy reported that one of the significant inputs used to manufacture the subject WCV was "Solidwood," including "Door," "Semi-finished Frame," and "Drawer."⁵⁹ The commercial invoices provided by Grand Supremacy further show that Grand Supremacy purchased cabinet doors, door panels, drawers, drawer faces, drawer panels, drawer boxes, frames, wooden panels, additional components, hardware, and packing materials from Supree.⁶⁰ These invoices show that the merchandise came from Xiamen, China, to Port Klang West or Port Tanjung Pelapas, Malaysia, and many describe the products as HS code 9403.90.0099 and/or 9403.40.0090 or as "kitchen cabinet accessories."⁶¹ In addition, in a list provided to CBP of "manufacturers for the three most significant direct material inputs during POI," Grand Supremacy names Supree as a supplier of "kitchen cabinets, accessories & components."⁶² These sources provide documentary evidence, produced by Grand Supremacy itself, that the company imported Chinese-origin WCV components covered by the scope of the AD/CVD Orders, that were subsequently assembled into the products sold by Grand Supremacy to customers in the United States. Once again, Vivaldi does not dispute the accuracy of the underlying evidence. Instead, Vivaldi argues no evidence exists that these inputs were incorporated into the specific entries at issue. In doing so, Vivaldi notes, many of Supree's invoices to Grand Supremacy contain a column titled "Marks," listing a variety of alphanumeric codes which correlate with purchase contract numbers

⁵⁵ Vivaldi Request at 8.

⁵⁶ See 19 C.F.R. § 165.4 and public versions of Vivaldi Allegation, and April 6 Supplement to Vivaldi Allegation.

⁵⁷ Vivaldi Request at 8-9.

⁵⁸ *Id.*

⁵⁹ February 23 Determination at 12, citing Grand Supremacy SRFI Response at Parts 1-4, Exhibit Request for Information ("RFI")-GS #37.1-37.2 (TRLED PV Docs. #183 and #184).

⁶⁰ Grand Supremacy SRFI Responses at Parts 1-4, Exhibits RFI-GS #36.5971-6062 (TRLED PV Doc. #184).

⁶¹ *Id.*

⁶² *Id.* at Exhibit SRFI-GS 37.3-37.5 (TRLED PV Doc. #184).

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between Grand Supremacy and Splendid Trading, the other importer subject to the February 23 Determination. None of the purchase order numbers on the Supree invoices, Vivaldi states, matches contract numbers between Grand Supremacy and Vivaldi.⁶³ Nevertheless, neither Grand Supremacy nor Vivaldi presented evidence showing that Chinese-origin WCV components purchased by Grand Supremacy were used only in WCV sold to non-Vivaldi purchasers. Indeed, although CBP observed a link between Supree invoices and Splendid Trading's purchase orders to Grand Supremacy and to consumption worksheets based on the alphanumeric codes, there was not a clear match between the number of pieces on the Supree invoices and the quantities reported on the consumption worksheets.⁶⁴ This is because most of the Supree invoices list multiple purchase contract numbers, and some of these numbers were listed on multiple Supree invoices.⁶⁵ Thus, due to the lack of a clear match between the quantities on specific invoices for inputs and specific consumption worksheets, and the lack of production-related accounting records, Vivaldi has failed to provide evidence, and thus, CBP cannot conclude, that the Chinese-origin WCV components sourced by Grand Supremacy from Supree were not used to fulfill shipments to Vivaldi.

In the alternative, Vivaldi also asserts that, even if Chinese-origin components had been incorporated into the subject WCV, that the manufacturing process in Malaysia resulted in a "substantial transformation" of the material such that the imports were of Malaysian origin.⁶⁶ This argument elides the fact that the AD/CVD Orders extend not only to finished WCV units but also to "in-scope components that have been further processed in a third country, including but not limited to one or more of the following: trimming, cutting, notching, punching, drilling, painting, staining, finishing, assembly, or any other processing that would not otherwise be remove the merchandise from the scope of the order if performed in the country of manufacture of the in-scope product."⁶⁷ As such, the scope of the AD/CVD Orders specifically covers the type of Chinese-origin components imported by Grand Supremacy, such as cabinet doors, door panels, drawers, drawer faces, drawer panels, drawer boxes, frames, and wooden panels. And the scope of processing and manufacturing that Grand Supremacy claims to have taken place at its facility (*e.g.*, processing, shaping, combination with other raw materials) would not have been sufficient to remove the subject components from the scope of the AD/CVD Orders.

Third, Vivaldi and Grand Supremacy failed to demonstrate that Grand Supremacy had sufficient capacity to produce the subject WCV in Malaysia during the POI without the use of in-scope Chinese-origin components. During the investigation CBP requested production information from Vivaldi; Vivaldi instead incorporated by reference the documentation provided by Grand Supremacy.⁶⁸ Grand Supremacy, for its part, provided an incomplete set of documentation related to the purchase and utilization of raw materials and

⁶³ Vivaldi Request at 11-12.

⁶⁴ *See* February 23 Determination at 17.

⁶⁵ *Id.*; *see also* Grand Supremacy SRFI Responses at Parts 1-4, Exhibits RFI-GS #36.5971-6062 (TRLED PV Doc. #184).

⁶⁶ Vivaldi Request at 18-19.

⁶⁷ *See* AD Order, 85 Fed. Reg. at 22,132-33 and CVD Order, 85 Fed. Reg. at 22,135.

⁶⁸ *See, e.g.*, Vivaldi Resubmission of Supp. RFI Response ("We understand that Grand Supremacy is submitting a site report that provides details of its production process. We request that CBP refer to Grand Supremacy's explanation of its production process....") (TRLED PV Doc. #181).

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other inputs at its Malaysia plant. Specifically, Grand Supremacy provided purchase orders, invoices, packing lists, bills of lading and import customs documentation for materials, and payment documentation for materials and freight.⁶⁹ This documentation indicates that Grand Supremacy imported a mixture of in-scope components and out-of-scope inputs, including WCV components from Supree, “solid wood” from various other suppliers in China, plywood from Vietnam, and WCV accessories from Malaysia.⁷⁰ Nevertheless, in response to CBP’s RFI, Grand Supremacy also reported that several types of records were “not applicable,” including general ledger accounts for raw material costs and cost calculation worksheets.⁷¹ Instead, Grand Supremacy provided an estimate of its annual production capacity,⁷² but failed to provide supporting documentation (*e.g.*, actual production records) to support the calculation. And in response to a supplemental RFI, Grand Supremacy further clarified that the company “does not have the production records (both standard and actual) maintained by the company in the normal course of its business by the production department.”⁷³ Accordingly, to the extent Grand Supremacy provided purchase documentation for certain non-scope inputs, it failed to substantiate or contextualize this evidence with production records or cost worksheets demonstrating whether or how such materials were incorporated into the final products exported from its Malaysia plant. In other words, Grand Supremacy failed to provide evidence to support a claim that its alleged production operations used for products sold to Vivaldi exclusively used non-scope inputs to manufacture WCV or components thereof.

In addition to failing to show the exclusive use of non-scope inputs, Grand Supremacy also failed to demonstrate that it had sufficient machinery and employees to produce the subject WCV. As noted above, the declarant in the report provided by the allegor described viewing only logistics functions, such as packing and shipping, occurring at Grand Supremacy’s facility, and of observing no outward indications of manufacturing activity occurring elsewhere in the facility.⁷⁴ Additionally, in response to CBP’s RFI for detailed information about the equipment used at its plant, including photographs of the relevant machinery and corresponding model numbers or serial numbers, Grand Supremacy provided a document containing thumbnail-sized photographs that were too blurry to be legible.⁷⁵ (While Grand Supremacy provided a list of the machines and their serial numbers, it was impossible to verify these details from the thumb-nail photographs provided.)⁷⁶ Grand Supremacy also provided a series of video clips, which are represented as depictions of the manufacturing process occurring at its Malaysia plant.⁷⁷ These videos are undated and do not appear to represent a comprehensive picture of the manufacturing process. Instead, each video is accompanied by a vague title (*e.g.*, [TITLE OF VIDEO]) without further context regarding the contents; the activities purportedly depicted in the videos (*i.e.*,

⁶⁹ See Grand Supremacy SRFI Response at Parts 1-4 (TRLED PV Docs. #183 and #184).

⁷⁰ *Id.* at Exhibit SRFI-GS 37.3-37.5 (TRLED PV Doc. #184).

⁷¹ See Grand Supremacy Supp. RFI Response Parts 1-4 (TRLED PV Docs. #183 and #184).

⁷² See Grand Supremacy RFI Response Part, 4.1, Equipment Capacity Data Sheet (TRLED PV Doc. #111).

⁷³ Grand Supremacy Supp. RFI Response at question 4 (TRLED PV Doc. #183).

⁷⁴ Vivaldi Allegation at Exhibit 7.

⁷⁵ See, *e.g.*, Grand Supremacy Supp. RFI Response 1-4 at Exhibits 2.11 a “New product or production facility” and 2.11 f “Equipment List” (TRLED PV Doc. #183); see also, Vivaldi REVISED Response to RFI, Supplier Profile – Pictures of Plant, Machines and Raw Materials (TRLED PV Doc. #153).

⁷⁶ *Id.*

⁷⁷ Grand Supremacy Supp. RFI Response at Part 5, attachments 45.1-45.9 (TRLED BC Docs. #153-#161).

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[DESCRIPTION OF PRODUCTION PROCESSES INCLUDED IN THE VIDEO ATTACHMENTS] do not preclude the incorporation of foreign-origin components, such as those imported from Supree in China.

Next, Vivaldi asserts that Grand Supremacy provided detailed documentation on the number of individuals employed at its Malaysia facility during the POI.⁷⁸ Once again, however, this documentation contains multiple inconsistencies. For instance, Grand Supremacy provided an organizational chart that purportedly lists the company's business units, but the accompanying "Chart of All Employees during the POI" fails to list employees for several of these units.⁷⁹ Finally, although Grand Supremacy stated that its Malaysia plant manufactures all WCV that the company sells to purchasers in the United States, one of its sales representatives stated in correspondence with Vivaldi that the company would, "need to make clear PI to our Malaysia factory," which seemingly raises the possibility that Grand Supremacy operates one or more additional facilities outside of Malaysia.⁸⁰ CBP subsequently asked Grand Supremacy to clarify whether this statement indicated that Grand Supremacy operates other plants outside of Malaysia, but the company did not provide a definitive response.⁸¹

Fourth, the record contains import data and market research demonstrating, since Commerce's affirmative preliminary determination in the CVD investigation on WCV from China in August 2019, imports of Chinese WCV to the United States have significantly decreased, and imports from Malaysia have significantly increased.⁸² Around the same time, imports into Malaysia of WCV from China surged.⁸³ Relatedly, individualized trade data shows that this trend also held true for WCV imported from Grand Supremacy. Specifically, [TYPE OF SOURCE MATERIAL] data obtained by CBP shows that Supree shipped large volumes of WCV from China to the United States from 2016 through July 2019, the month before Commerce's affirmative preliminary determination in the CVD investigation, at which point the shipments ceased.⁸⁴ Grand Supremacy, for its part, was incorporated in August 2019, and began shipping WCV to the United States in significant quantities in December 2019.⁸⁵

Vivaldi does not dispute the accuracy of this data. Instead, Vivaldi asserts that import statistics following the imposition of the AD/CVD Orders do not constitute substantial evidence of evasion because such data only shows general trends that do not provide specific insight into the WCV shipped from Grand Supremacy to Vivaldi. Once again, however, we note that this data is not considered in isolation. Instead, this evidence is weighed alongside

⁷⁸ See Vivaldi Request at 24, citing Grand Supremacy Supplemental Response at Part 4, attachment 4.7a (TRLED PV Doc. #184).

⁷⁹ See February 23 Determination at 10.

⁸⁰ See Grand Supremacy RFI Response at Part 3, RFI-GS #14.1 (TRLED PV Doc. #155). From the context, it appears "PI" refers to "purchase invoice" or "proforma invoice."

⁸¹ See Grand Supremacy Supp. RFI Response Parts 1-4 at question 12 (TRLED PV Doc. #183) ("The factory...identified is Grand Supremacy.").

⁸² See February 23 Determination at 3, citing CBP Memoranda, "Initiation of Investigation for EAPA Case Number 7608 – Superior Granite and Marble by Vivaldi LLC" (Apr. 21, 2021) (TRLED PV Doc. #17); *see also* Vivaldi Allegation at 6-8, Exhibits 4-5 (TRLED PV Doc. #2).

⁸³ *Id.*

⁸⁴ *Id.*, citing Vivaldi Allegation at 9 and Exhibit 3 (TRLED PV Doc. #2).

⁸⁵ *Id.*

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the entirety of the evidence in the record, including import documentation showing that Grand Supremacy imported Chinese-origin WCV components to its Malaysia facility, evidence that Grand Supremacy and Supree shared certain management and sales personnel, and Grand Supremacy's failure to provide evidence that it had sufficient capacity to produce WCV in Malaysia.

Fifth, CBP takes note of the personnel affiliations between Grand Supremacy and Supree. As shown in the record, Zhu Decheng, a [TYPE ROLE AT GRAND SUPREMACY], worked for Supree prior to Grand Supremacy's incorporation.⁸⁶ Additionally, a LinkedIn profile uncovered during the investigation indicates that Grand Supremacy and Supree shared a sales manager, "Cabinet Anny."⁸⁷ In an RFI response, Grand Supremacy acknowledged a connection with "Cabinet Anny," but stated she is not an employee but an outside sales agent.⁸⁸ Although not determinative on their own, these personnel connections show that there existed some affiliation between Grand Supremacy and Supree beyond a purchaser/supplier relationship.⁸⁹

For its part, Vivaldi asserts that these personnel connections are not indicative of transshipment. Vivaldi concedes that Zhu Decheng previously worked in China for Supree, but argues it was reasonable for Mr. Zhu to depart for Grand Supremacy "to use his industry knowledge and experience to establish Grand Supremacy."⁹⁰ Next, with respect to the status of "Cabinet Anny" as having performed sales work on behalf of both Supree and Grand Supremacy, Vivaldi reiterates that this individual was an outside sales agent who never worked as an employee of Grand Supremacy. On this matter, we find the personnel links between the two entities are inconclusive evidence as to whether evasion occurred. While the record does show a Grand Supremacy director and a sales agent both worked for Supree, it is possible such overlap is attributable to the mere exchange of employees and/or contractors occurring within the same industry. As such, these links, on their own are not substantial evidence of evasion. Nevertheless, these personnel connections, when considered alongside the evidence detailed elsewhere in this document, do point to a relationship between Grand Supremacy and Supree that is something more than a mere supplier/purchaser relationship. As such, the entire record supports a finding that Vivaldi purchased Chinese-origin WCV that had been transshipped by Grand Supremacy.

Based on the foregoing, the evidence of evasion available in the record cannot be boiled down to mere "isolated tidbits" as Vivaldi asserts. Instead, the record presents several forms of interlocking and mutually confirming pieces of evidence that, when taken together, provide substantial evidence that Vivaldi entered covered merchandise into the United States through evasion.

⁸⁶ February 23 Determination at 19.

⁸⁷ Vivaldi Allegation at Exhibit 7.

⁸⁸ Grand Supremacy Supplemental RFI Resp. at parts 1-4, p. 2 (TRLED PV Doc. #183).

⁸⁹ The February 23 Determination also alleges, that Su Xiayang, a Grand Supremacy director, shares a surname with Su Xiayang, an executive director, general manager, and legal representative at Supree. We find this evidence unpersuasive and irrelevant because the record presents no evidence, outside a common shared surname, that these individuals are related.

⁹⁰ Vivaldi Request at 12-13.

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The record shows that Vivaldi made type “01” entries of the WCV into the United States, declared as not subject to the AD/CVD Orders. These entries should have been made as “03” entries, subject to the AD/CVD Orders. As the CIT recently explained in *Diamond Tools Tech. LLC*, “False’ is defined as: ‘Untrue . . . Deceitful . . . Not genuine; inauthentic . . . What is false can be so by intent, by accident, or by mistake . . . Wrong; erroneous’”⁹¹ It was material and false for these entries to be made as “01” entries. That the material falsehood may have occurred as a result of a mistake, or despite Vivaldi’s purported due diligence, does not mean that evasion has not occurred – a falsity within the meaning of the EAPA statute can occur as a result of a mistake.⁹²

Because Vivaldi’s entries of WCV, subject to the scope of the AD/CVD Orders, were made as an “01” entries, and the applicable AD/CV duties were not deposited or paid, we conclude that, pursuant 19 U.S.C. § 1517, evasion has occurred.

We also note that Vivaldi’s arguments as to its reliance on information provided by Grand Supremacy misapprehend the legal responsibilities of an importer when it does business with CBP. Vivaldi contends that it exercised extensive due diligence before purchasing the subject WCV from Grand Supremacy.⁹³ The long-standing Customs Modernization Act⁹⁴ fundamentally altered the relationship between importers and CBP, shifting to the importer the legal responsibility for declaring the value, classification, and rate of duty applicable to entered merchandise. Pursuant to 19 U.S.C. § 1484, the importer of record must use reasonable care in making entry. CBP provides the trade community with an expansive explanation of what steps should be taken to ensure compliance with customs laws, prior to importation.⁹⁵ Therefore, the onus is on Vivaldi, as the importer of record, to ensure accuracy in the information that is declared to CBP.⁹⁶ Nonetheless, we note that whether an importer of record exercised “reasonable care” is not dispositive in determining whether evasion occurred.⁹⁷

Based on the above, we conclude that the record supports a finding of evasion as defined by EAPA; therefore, TRLED’s finding of evasion stands.

⁹¹ *Diamond Tools Tech. LLC v. United States*, LEXIS 155, 165, SLIP OP. 2021-151 (Ct. Int’l Trade 2021) (internal citations omitted).

⁹² *See id.*, and 19 U.S.C. § 1517(a)(5)(A).

⁹³ Vivaldi Request at 25.

⁹⁴ *See* Title VI of the North American Free Trade Agreement Implementation Act, P.L. 103-182, 107 Stat. 2057 (December 8, 1993).

⁹⁵ *See* <https://www.cbp.gov/sites/default/files/documents/Importing%20into%20the%20U.S.pdf>.

⁹⁶ *See* HQ H302687 (Feb. 22, 2021) (citing 19 U.S.C. § 1485, 19 C.F.R. Parts 141 and 142).

⁹⁷ *See* HQ H194977 (Feb. 28, 2012) (The importer “argues that it used reasonable care in entering goods and that in some manner, this provides a basis for their protest of the assessment of anti-dumping duties.... the dispositive view is whether CBP lawfully collect[ed] antidumping duties. This does not depend on the degree of care exercised.”).

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III. Decision

Based upon our *de novo* review of the administrative record in this case, including the timely and properly filed request for administrative review and response, the February 23 Determination of evasion under 19 USC § 1517(c) is **AFFIRMED**.

This decision does not preclude CBP or other agencies from pursuing additional enforcement actions or penalties. Pursuant to 19 C.F.R. § 165.46(a), this final administrative determination is subject to judicial review pursuant to section 421 of EAPA.

Sincerely,

W. Richmond Beevers
Chief, Cargo Security, Carriers, and Restricted Merchandise Branch
Regulations and Rulings, Office of Trade
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Approved by:

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