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Re: Enforce and Protect Act (“EAPA”) Consolidated Case Number 7252; *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 Fed. Reg. 504 (Jan. 4, 2018); and *Certain Hardwood Plywood Products From the People’s Republic of China: Countervailing Duty Order*, 83 Fed. Reg. 513 (Jan. 4, 2018); 19 U.S.C. § 1517

Dear Messrs. Menegaz, Van Arman, Levy, and Reincke, and Meses. Holdsworth and Murphy:

This is in response to the requests for *de novo* administrative review of a determination of evasion dated January 28, 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), EAPA Consolidated Case Number 7252 (“January 28th Determination”).<sup>1</sup> On March 14, 2022, three requests for review, were received by CBP, OT, Regulations and Rulings (“RR”), by 1) Ellen Murphy, Stroock & Stroock & Lavan LLP, on behalf of Liberty Woods International, Inc. (“LWI”); 2) Frederic D. Van Arman, Barnes, Richardson & Colburn LLP, on behalf of American Pacific

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<sup>1</sup> See Notice of Determination as to Evasion in EAPA Cons. Case Number 7252, dated January 28, 2022, available at: <https://www.cbp.gov/document/publications/eapa-cons-investigation-number-7252-certain-hardwood-plywood-people-s-republic>.

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Plywood, Inc. (“APPI”); and 3) Judith L. Holdsworth, deKieffer & Horgan, PLLC, on behalf of Far East American, Inc. (“FEA”), pursuant to 19 U.S.C § 1517(f) and 19 C.F.R. § 165.41(a).

Unfortunately, RR’s designated EAPA FAD inbox experienced a spam blocking malfunction, as on March 14, 2022, we did not receive the timely submission made by Cadden & Fuller, LLP, on behalf of InterGlobal Forest, LLC (“InterGlobal” or “IGF”). On June 6, 2022, RR issued our Final Administrative Determination related to LWI, APPI, and FEA (“June 6th FAD”) under the assignment of RR case number H323923. Subsequently, on June 7, 2022, IGF resubmitted its March 14, 2022, request for review, which we received and found compliant with the submission requirements enumerated in 19 C.F.R. § 165.41. As such, we are issuing this addendum to the June 6th FAD, adding IGF’s arguments, under the assignment of RR case number H325765; however, as discussed below, RR maintains our decision as outlined in the June 6th FAD.

### I. Background

Inasmuch as the facts in this case were fully set forth in the January 28th Determination and June 6th FAD, we will not repeat the factual history herein, and incorporate the entire June 6th FAD into this addendum.

### II. Law & Analysis

Inasmuch as the law and analysis in this case were fully set forth in the June 6th FAD, we will not repeat it herein, and incorporate the entire June 6th FAD into this addendum.

#### A. InterGlobal Forrest, LLC.’s Arguments

IGF rests the bulk of its arguments on its contention that Commerce erred in its January 27, 2022 Scope Determination (“January 27th Scope Determination”), stating it is specifically seeking *de novo* review because the scope ruling was wrong. IGF posits that Commerce impermissibly expanded the scope of the AD/CVD Orders.<sup>2</sup> IGF argues that “Commerce informed CBP that Commerce (erroneously) determined two-ply panels to be ‘veneered panels.’ . . . Compounding its error, Commerce also concluded (incorrectly) that none of the factors in the substantial transformation analysis weighed in favor of finding that the two-ply panels had been substantially transformed.”<sup>3</sup> IGF seeks RR to find that its imported two-ply and finished plywood is not within the scope of the AD/CVD Orders, and the Chinese-sourced two-ply were substantially transformed in Vietnam, and thus of Vietnamese origin upon entry into the United States. IGF asserts that Commerce should not

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<sup>2</sup> 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 Fed. Reg. 504 (Jan. 4, 2018); and *Certain Hardwood Plywood Products From the People’s Republic of China: Countervailing Duty Order*, 83 Fed. Reg. 513 (Jan. 4, 2018) (“AD/CVD Orders”).

<sup>3</sup> InterGlobal’s Request for Administrative Review (Mar. 14, 2022) (citing Commerce’s January 27th Scope Determination) at pg. 8. In its Request for Review, IGF argued the impermissibly and incorrectly expanded Commerce Scope Determination for 22 of 26 pages of arguments.

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be allowed to “entrap” unknowing manufacturers and importers retroactively into this impermissibly expanded scope.

Next, IGF argues that some of the hardwood plywood it purchased from Finewood was not produced with two-ply, and thus must be excluded from the Scope Determination.<sup>4</sup> IGF argues the scope does not apply to various sizes and thickness of hardwood composed of single veneer, because the scope requires at least two plies and a core.<sup>5</sup>

IGF also contends that it undertook extensive efforts to verify that Finewood could produce plywood and thus had no intent to evade, citing to *Diamond Tools Tech*.<sup>6</sup> Contending they submitted thousands of pages of documentation to TRLED, fully complying with the investigation and demonstrating Finewood’s production capacity.<sup>7</sup> Additionally, IGF visited Finewood on more than one occasion, and observed their production capacity. IGF concedes that it knew Finewood procured veneers and tolled cores from other Vietnamese manufacturers and only requested that Finewood keep the quality consistent among the different tollers.<sup>8</sup> IGF asks that we find it did not participate in any transshipment or evasion, because it exercised due diligence in verifying Finewood’s production capacity.

Lastly, IGF claims that CBP prematurely liquidated entries subject to this EAPA investigation and that Commerce’s liquidation instructions were in violation of regulations requiring continued suspension of liquidation. IGF explains, because of these liquidations and Commerce Scope Determination, it has already filed a complaint with the Court of International Trade (“CIT”).<sup>9</sup>

### B. 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 administrative record, as provided to us by TRLED, upon which the January 28th Determination was made; and (2) the timely and properly filed request for review.

#### I. InterGlobal’s Due Process and Evidentiary Arguments:

##### a. Due Process Rights:

IGF, like the other Requesters, presented due process arguments. As explained in detail in the June 6th FAD, arguments related to procedural issues are outside the purview of this *de novo* review.

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<sup>4</sup> See *id.* at 20.

<sup>5</sup> See *id.* at 20, 26.

<sup>6</sup> *Diamond Tools Tech. LLC v. United States*, LEXIS 155, 165, SLIP OP. 2021-151 (Ct. Int’l Trade 2021).

<sup>7</sup> See InterGlobal Request for Review at 24.

<sup>8</sup> See *id.*

<sup>9</sup> See *id.* at 10 (referencing *InterGlobal Forest LLC v. United States*, CIT Ct. No. 22-00053, ECF Doc. No. 7 (Feb. 22, 2022)).

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Thus, notwithstanding any due process concerns raised by IGF, the purpose of this *de novo* review is to analyze the January 28th Determination and the accompanying administrative record to determine whether substantial evidence of evasion exists.<sup>10</sup> As discussed in more detail below, a review of the administrative record and IGF's request for administrative review clearly indicates that it entered, as type "01" consumption entries, hardwood plywood, and, therefore, AD/CVD deposits were not paid.<sup>11</sup> Because they contained merchandise subject to the AD/CVD Orders, these entries should have been made as type "03" entries, indicating that they are subject to an AD/CVD order.

There is no dispute that if Chinese-manufactured finished hardwood plywood were shipped directly from China to the United States, it would fall under the AD/CVD Orders. The facts in contention are: 1) whether transshipment of finished hardwood plywood from China, via Vietnam, occurred, as it relates to IGF, so that TRLED properly found evasion; 2) whether the two-ply panels of Chinese-origin, which were further processed in Vietnam to make hardwood plywood by adding the face and back veneers of non-coniferous wood, is merchandise covered by the AD/CVD Orders; and, 3) whether substantial evidence demonstrates that the finished hardwood plywood manufactured in Vietnam contained Chinese-origin two-ply panels and, thus, remains covered under the scope of the AD/CVD Orders. So long as the finished hardwood plywood goods 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 would constitute evasion under the EAPA statute and implementing regulations.

### b. InterGlobal's Scope Arguments:

The bulk of IGF's argument stems from its disagreement with Commerce's Scope Ruling. Specifically, while IGF contends Commerce erred in its determination and that veneers should be excluded based on their thickness, we disagree. Commerce defined the scope of the AD/CVD Orders and further explained in its January 27th Scope Determination that thickness of the veneer, core, and/or two-ply is not determinative.

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.

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All hardwood and decorative plywood is included within the scope of this investigation, without regard to dimension (overall thickness, thickness of face

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<sup>10</sup> See 19 U.S.C. § 1517(f); and 19 C.F.R. § 165.45.

<sup>11</sup> See InterGlobal's Written Arguments, Request for Administrative Review, and RFI Responses; *see also*, CBP Entry Summary Form 7501 and Instructions and the ACE Entry Summary Business Rules and Procedure Document at <https://www.cbp.gov/trade/programs-administration/entry-summary/cbp-form-7501> (last visited June 6, 2022).

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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).<sup>12</sup>

As discussed in detail in the June 6th FAD, after receiving Commerce's January 27th Scope Determination, TRLED received unambiguous guidance from Commerce that Finewood's finished plywood and two-ply panels are indeed within the scope of the AD/CVD Orders. Commerce clarified the scope and determined that "Finewood's two-ply panels were of the same class or kind of merchandise as the hardwood plywood that it produced in China using those panels."<sup>13</sup> Thus, the layer and thickness of plies was not determinative as to the country of origin of the merchandise, and, specifically, "Finewood's two-ply panels meet the definition of 'certain veneered panels'" and, as such, this merchandise, as well as three-layer hardwood plywood, are both within scope of the AD/CVD Orders.<sup>14</sup> "For Finewood's two-ply panels that are the subject of this scope inquiry, that process begins in China. That the product may undergo the addition of other veneers or minor processing does not substantially transform these two-ply panels into a product that is outside the scope of the *Orders*."<sup>15</sup> As such, to disregard the January 27th Scope Determination, as IGF requests, would impermissibly affect the scope of the AD/CVD Orders, and is not within CBP's authority to do.

While we understand IGF's confusion as to the proper inclusion of its merchandise in the scope of the AD/CVD Orders, this is exactly why TRLED was correct in its decision to obtain clarification from Commerce, which is always an option for parties, such as IGF and Finewood, regardless of the initiation of an EAPA investigation. We understand that IGF continues to dispute Commerce's definition of the merchandise as within scope. Given that Finewood and IGF concede to importing goods that incorporate Chinese-origin two-ply panels and veneers, we find that TRLED properly determined the merchandise under investigation to be within the scope of the AD/CVD Orders. The appropriate procedure to dispute Commerce's scope determination is via judicial review, not via the CBP administrative review process under the EAPA statute.<sup>16</sup> While we understand that IGF has commenced such CIT review, RR does not have the authority to stay these administrative review proceedings pending the outcome of such litigation, as we must operate under the strict statutory deadlines imposed by 19 U.S.C. § 1517(f)(2).<sup>17</sup>

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<sup>12</sup> AD/CVD Orders

<sup>13</sup> January 27th Scope Determination at 9.

<sup>14</sup> *See id.* at 12. "There are no specific dimensions or materials that define the characteristics of certain veneered panels, and even finished plywood or other products serving as veneer core platforms may be thinner than Finewood's two-ply panels imported from China." *Id.* at 30.

<sup>15</sup> *Id.* at 33.

<sup>16</sup> *See* 19 U.S.C. § 1517(b)(4)(D).

<sup>17</sup> However, we note that, while litigation is pending, if the CIT issues a court order enjoining liquidation, the liquidation of any entries subject to such injunction would remain suspended during the pendency of the litigation. *See* 19 C.F.R. § 159.12.

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### c. Substantial Evidence of Two-Ply Origin & Production:

We lastly address whether substantial evidence supports the determination that the finished hardwood plywood, manufactured in Vietnam and imported into the United States by IGF, contained Chinese-origin two-ply panels, and thus remained of Chinese-origin for AD/CVD purposes and within the scope of the AD/CVD Orders, *i.e.*, whether IGF provided substantial production records and other evidence to refute TRLED's determination that covered merchandise importations were transshipped from China through Vietnam and/or made from Chinese raw materials.

The record evidence includes copies of purchase orders, contracts, bank records, invoices, financial statements, videos, and photographs, all indicating that the origin and source of raw materials was both Vietnam and China. As explained in the June 6th FAD, the majority of Plywood Source's allegation is contained within two short video clips purportedly showing the unloading of covered merchandise at the manufacturer's premises. We note that while one video purported to show shipping boxes, delivered from China, and labeled for IGF, these videos do not show the location of the video, or any production activities, nor do they provide any verifiable reference to how these videos relate to the entries at issue. We could not discern what is in these shipping boxes, where they came from, or where they are going. As such, in the June 6th FAD, we found that these videos did not provide any relevant evidence of transshipment or evidence of Finewood's production capacity, or lack thereof, and these videos form no part of this determination. RR disregarded these videos and did not consider them in the June 6th FAD determination, and we maintain that decision here.

Disregarding the videos and considering the remaining record evidence, it is undisputed that Finewood used both Vietnamese-origin two-ply and Chinese-origin two-ply in its hardwood plywood operations. Specifically, Regulatory Audit and Agency Advisory Services ("RAAAS") confirmed that Finewood imported, as well as sourced domestically, raw materials, which were used to produce finished plywood exported to the United States.<sup>18</sup> RAAAS also confirmed that Finewood imported two-ply panels, single-ply veneers, and coating materials from a supplier in China. Finewood admitted "that they did not have the production capacity to produce the quantity of plywood needed to fulfill its sales orders."<sup>19</sup> Instead, Finewood outsourced its core production to tollers and failed to provide CBP or IGF with the information regarding the tollers to enable CBP to conduct further verifications. Subsequently, RAAAS and TRLED concluded that "[d]ue to the outsourcing of core production (tolling), it was not possible to accurately determine the production capacity of VN Finewood's manufacturing facility in relation to their sales orders."<sup>20</sup>

IGF, like the other importers, asserts that TRLED failed to make a distinction between which of their entries contained only Vietnamese raw materials, Chinese two-ply, or Chinese single-ply veneers, and which did not, and argue that substantial evidence demonstrates that some of their entries are outside of the scope of the AD/CVD Orders. This argument mistakenly attempts to shift the burden of proof from IGF to CBP, for CBP

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<sup>18</sup> RAAAS VN Finewood Verification Report at 7-8.

<sup>19</sup> *See id* at 8.

<sup>20</sup> *See id* at 8. *See also*, January 28th Determination.

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to disprove evasion, even though it has already been established, as discussed *supra*, through the January 27th Scope Determination and various concessions regarding the inclusion of Chinese-origin plies in the finished goods. Moreover, IGF misapprehends the nature of an EAPA investigation – CBP must determine if there is substantial evidence of evasion during the period of investigation, and if there is, CBP is able to take steps to preserve the entries subject to investigation from liquidation without regard to payment of AD/CV duties. Most importantly, the argument is without substantiation in the record.

IGF provided over 3,000 pages of documents to TRLED’s requests for information. In its submission, IGF included commercial, financial, and entry documents, as well as Lacey Act Declarations regarding its nearly fifty entries made during the period of investigation. IGF declared Vietnam as the country of origin on all its entries made during the period of investigation and entered the goods as “01” consumption entries with no AD/CVD cash deposits assessed. IGF provided specific commercial packets and customer invoices for its entries and other production documents that are not traced to any particular entry.<sup>21</sup> The entry specific packets found at Exhibit 16 “Packages of Orders” do not provide records for raw materials such as two-ply, cores, or veneers, but lists Vietnam as the source of the plywood on the CBP Entry forms and documents.<sup>22</sup> Related to fifteen entries included in Exhibit 16, IGF included commercial invoices and packing lists from [

SUPPLIER, LACEY ACT DECLARATION, AND COUNTRY OF ORIGIN DETAILS

NO]540-6, IGF provided a shipment document that lists IGF as the vendor [ ]<sup>23</sup> For entry number [ENTRY  
COUNTRY OF ORIGIN DETAILS ]<sup>24</sup> The remaining entries list  
plywood from Finewood [ SUPPLIER INFORMATION  
]; however, most of these documents also show [ ]  
FINANCIAL PAYMENT INFORMATION ]<sup>25</sup>

Also included in these submissions were sales contracts, invoices, packing lists, arrival notices, and bills of lading of raw materials, poplar core and veneer, documents not specifically attached to specific entries, but that show materials were [

EXPORTER, SUPPLIER, COUNTRY OF ORIGIN, AND PORT OF LADING DETAILS

].<sup>26</sup> IGF also provided commercial invoices of plywood from [SUPPLIER NAME ] and from Finewood.<sup>27</sup> Again, some of these non-entry specific commercial

<sup>21</sup> See InterGlobal Questionnaire Response and Exhibits 1-16 (Mar. 6, 2019) at Exhibit 16, Business Confidential Version (We note the Public Version of this submission only contains 105 pages and only provides the cover page with the title of each exhibit, as opposed to almost 3,000 pages in the Business Confidential version.)

<sup>22</sup> See *id.*

<sup>23</sup> Entry Numbers [ ENTRY ]443-3; [ ENTRY ]465-6; [ ENTRY ]478-9; [ ENTRY ]479-7; [ ENTRY ]490-4; [ ENTRY ]529-9; [ ENTRY ]538-0; [ ENTRY ]540-6; [ ENTRY ]552-1; [ ENTRY ]553-9; [ ENTRY ]554-7; [ ENTRY ]562-0; [ ENTRY ]569-5; [ ENTRY ]570-3; [ ENTRY ]576-0. See *id.* at pg. 1395 -1418; 1435-1478; 1480-1499; 1536-1601; 1634-1656; 1721-1736; 1752-1786; 1797-1817; 1844-1859; 1892-1908; 2008-2012; 2093-2112; 2116-2138; 2168-2188.

<sup>24</sup> *Id.* at. pg 1742; 1751

<sup>25</sup> See *id.* at Exhibit 16,

<sup>26</sup> *Id.* at Exhibit 4.

<sup>27</sup> *Id.* at Exhibit 5; see also InterGlobal CF-28 Response (Mar. 4, 2019)

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invoices from Finewood list [ FINANCIAL PAYMENT INFORMATION ].<sup>28</sup> Additionally, IGF provided a list of supplier names in its Exhibit 12 “Accounts Payable” and the types of services provided and from which country. This list included [ PLYWOOD SUPPLIER DETAILS ] and [ PLYWOOD PRODUCER DETAILS ].<sup>29</sup>

Lacey Act Declarations were provided for forty-nine entries.<sup>30</sup> Only two of the Lacey Act Declarations provided include [ COUNTRY OF HARVEST ] (entry numbers [ ENTRY ]652-9; and [ ENTRY ]700-600); [

LACEY ACT DECLARATIONS, COUNTRY OF HARVEST DETAILS ]<sup>31</sup> This submission provides further evidence contradicting IGF’s claims of limited sourcing of raw materials and finished plywood from China. Additionally, IGF concedes that it knew Finewood sourced materials from China and other manufacturers, and yet only requested that the quality be the same. IGF did not determine the source of all the materials Finewood used in the production of its hardwood plywood, as Finewood admittedly kept its tollers’ identities secret.<sup>32</sup>

In sum, these submissions were a compilation of financial, commercial, and entry documents intended to support a finding that IGF’s entries under investigation were devoid of Chinese materials, but actually confirms that IGF and Finewood sourced raw materials from both China and Vietnam. Specifically, these documents show that IGF declared its hardwood to CBP as being of Vietnamese origin, yet declared the origin of the same merchandise to Animal Plant Health Inspection Service (“APHIS”)[ COUNTRY OF HARVEST DETAILS ] We find it is of great significance that IGF made contradictory declarations to two separate agencies of the U.S. government, especially given that a consistent declaration to CBP would likely trigger the imposition of additional duties.

Again, as explained in the June 6th FAD, the question before CBP in an EAPA case is not whether every entry of the Importer during the period of investigation was made with false information and failure to deposit or pay antidumping and/or countervailing duties. Thus, in an EAPA administrative review, RR is not required to analyze entry by entry, line by line, and make a determination on an entry-line-specific basis whether evasion has occurred. Rather, we have looked at the record as a whole in great detail, on which TRLED based its

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<sup>28</sup> InterGlobal Questionnaire Response and Exhibits 1-16, at Exhibit 3 and Exhibit 16, Business Confidential Version.

<sup>29</sup> *See id.*, at Exhibit 12 pg 889-90.

<sup>30</sup> Lacey Declarations were provided for Entry Number [ ENTRY ]540-6; [ ENTRY ]582-8; [ ENTRY ]583-6; [ ENTRY ]589-3; [ ENTRY ]614-9; [ ENTRY ]635-4; [ ENTRY ]657-8; [ ENTRY ]410-7; [ ENTRY ]563-3; [ ENTRY ]660-2; [ ENTRY ]490-4; [ ENTRY ]652-9; [ ENTRY ]554-7; [ ENTRY ]563-8; [ ENTRY ]564-4; [ ENTRY ]566-1; [ ENTRY ]567-9; [ ENTRY ]590-1; [ ENTRY ]705-5; [ ENTRY ]652-9; [ ENTRY ]443-3; [ ENTRY ]479-7; [ ENTRY ]478-9; [ ENTRY ]538-0; [ ENTRY ]552-1; [ ENTRY ]553-9; [ ENTRY ]568-7; [ ENTRY ]569-5; [ ENTRY ]570-3; [ ENTRY ]576-0; [ ENTRY ]619-8; [ ENTRY ]620-6; [ ENTRY ]621-4; [ ENTRY ]640-4; [ ENTRY ]641-2; [ ENTRY ]642-0; [ ENTRY ]643-8; [ ENTRY ]655-2; [ ENTRY ]656-0; [ ENTRY ]666-9; [ ENTRY ]678-4; [ ENTRY ]699-0; [ ENTRY ]680-0; [ ENTRY ]700-6; [ ENTRY ]465-6; [ ENTRY ]529-9; [ ENTRY ]637-0; [ ENTRY ]638-8; and [ ENTRY ]662-8. *See* InterGlobal Questionnaire Response and Exhibits 1-16 at Exhibit 7.

<sup>31</sup> *See id.* at pg. 106.

<sup>32</sup> *See* InterGlobal – Supplemental Response (Apr. 17, 2019) at 3.



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determination, to determine whether substantial evidence of evasion exists. We find that it does. In conclusion, we find that IGF, like the other Importers in this case, failed to adequately provide production evidence to allow TRLED to determine which, if any, of its entries did not contain Chinese-origin covered materials.

In contrast, we find substantial evidence exists that IGF's entries into the United States did contain Chinese-sourced covered merchandise. Additionally, we note that the argument that Finewood increased production capacity in Vietnam, through secret tollers, does not negate the evidence which shows that Finewood sourced material inputs from China. On the contrary, the inability or refusal of Finewood to provide TRLED with specific details on the tollers' processing works against the argument that total Vietnamese production occurred. Thus, because it is evident on the record, and IGF has conceded that Finewood sourced two-ply panels, cores, and veneers from China to use in the production of its finished hardwood, we find substantial evidence that entries under investigation, which were made without AD/CVD cash deposits, were made through false statements, namely, declaring the entries as entry type "01" (not subject to AD/CVD orders).

### II. IGF's Due Diligence and Lack of Culpability Arguments:

As explained in the June 6th FAD, we find that nothing in the EAPA statute precludes CBP's ability to find evasion, especially after a covered merchandise referral is made. EAPA creates a mechanism for collecting duties when importers fail to pay AD or CV duties without regard to intent and provides a process for referral to Commerce in order to effectuate EAPA's ultimate purpose. Thus, we disagree with IGF's argument that CBP must demonstrate a level of culpability to find that evasion occurred.

Lastly, we also note that IGF's arguments as to its reliance on information from Finewood misapprehend the legal responsibilities of an importer when it does business with CBP. While we appreciate IGF's attempts to vet Finewood and its supply line, we note that IGF accepted Finewood's production capacity even without visibility into its suppliers and tollers. Additionally, we also appreciate IGF's compliance with the investigation, however, IGF, prior to importing goods into the United States, had the responsibility of verifying its supply chain and cannot now feign ignorance. The long-standing Customs Modernization Act<sup>33</sup> 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 into the United States. CBP provides the trade community with an expansive explanation of what steps should be taken to ensure compliance with customs laws, prior to importation.<sup>34</sup> Therefore, the onus is on IGF, as the importer of record, to ensure accuracy in the information that is declared to CBP.<sup>35</sup>

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<sup>33</sup> See Title VI of the North American Free Trade Agreement Implementation Act, P.L. 103-182, 107 Stat. 2057 (December 8, 1993).

<sup>34</sup> See <https://www.cbp.gov/sites/default/files/documents/Importing%20into%20the%20U.S.pdf>.

<sup>35</sup> See HQ H302687 (Feb. 22, 2021) (citing 19 U.S.C. § 1485, 19 C.F.R. Parts 141 and 142).

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Nonetheless, we note that whether an importer of record exercised “reasonable care” is not dispositive in determining whether evasion occurred.<sup>36</sup>

### III. Premature Liquidation:

Finally, IGF also contends that some of their entries were prematurely liquidated.<sup>37</sup> Again, as explained in the June 6th FAD, this is a procedural issue and not within RR’s administrative review authority.

### III. Decision

We conclude that the record supports a finding of evasion as defined by EAPA; therefore, TRLED’s finding of evasion stands. The record shows that IGF made type “01” entries of the plywood into the United States, declared as not subject to the AD/CVD Orders. These entries should have been made as type “03” entries, subject to the AD/CVD Orders. It was material and false for these entries to be made as type “01” entries. 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.<sup>38</sup> In our view, the record as a whole does not support IGF, APPI, FEA, and LWI’s assertions that CBP should conclude that their entries were not subject to the AD/CVD Orders.

Based upon our *de novo* review of the administrative record in this case, including the requests for administrative review, the January 28th Determination of evasion under 19 U.S.C. § 1517(c) is **AFFIRMED**.

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<sup>36</sup> 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.”).

<sup>37</sup> Liquidation “means the final computation or ascertainment of the duties . . . accruing on an entry.” 19 C.F.R. § 159.1. This definition of liquidation was affirmed in *Swisher International, Inc., v. U.S.*, 27 F. Supp. 2d 234 (Ct. Int’l Trade 1998), rev’d on other grounds, 205 F.3d 1358 (Fed. Cir. 2000), reh’g en banc denied, LEXIS 12707 (Fed. Cir. May 22, 2000). The *Swisher* court found that it “is a liquidation which settles ‘the amount of duties owing.’” *Id.* at 237.

<sup>38</sup> 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 Requestors do not assert that there were clerical errors, for which the EAPA statute does carve out an exception.

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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 & Restricted Merchandise Branch  
Regulations and Rulings, Office of Trade  
U.S. Customs and Border Protection

Approved by:

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