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Re: Notice of Determination as to Evasion - EAPA Case 7705

Pursuant to an examination of the record in Enforce and Protect Act (EAPA) Investigation 7705, U.S. Customs and Border Protection (CBP) has determined there is substantial evidence that Scioto Valley Woodworking, Inc. d/b/a Valleywood Cabinetry (Scioto or Importer) entered merchandise covered by antidumping duty (AD) and countervailing duty (CVD) orders A-570-106 and C-570-107¹ on wooden cabinets and vanities and components thereof (cabinets and vanities) from the People's Republic of China (China) into the customs territory of the United States through evasion. Substantial evidence demonstrates Scioto imported Chinese-origin cabinets and vanities that were transshipped to the United States with a claimed country of origin of Malaysia. As a result, no cash deposits were applied to the merchandise at the time of entry.

Background

¹ See *Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Antidumping Duty Order*, 85 FR 22,126 (Dep't Commerce Apr. 21, 2020); *Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Countervailing Duty Order*, 85 FR. 22,134 (Dep't Commerce Apr. 21, 2020) (collectively, the *Orders*).

On February 3, 2022, the American Kitchen Cabinet Alliance (AKCA or the Alleger) filed an allegation against Scioto.² One of Scioto’s customer Cabinets to Go (CTG) had cooperated with AKCA in providing evidence that showed Alno Industry SDN BHD (Alno)³ sold it transshipped cabinets and vanities of Chinese-origin. On March 9, 2022, the Trade Remedy Law Enforcement Directorate (TRLED), within CBP’s Office of Trade, acknowledged receipt of the properly filed allegation by the Alleger, a domestic producer of cabinets and vanities.⁴ TRLED found the information provided in the Allegation reasonably suggested that Scioto entered covered merchandise into the customs territory of the United States through evasion. Consequently, CBP initiated an investigation on March 30, 2022, pursuant to Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, commonly referred to as the “EAPA.”⁵

On July 6, 2022, after evaluating the information on the record at that time, CBP issued its Notice of Initiation and Interim Measures.⁶ TRLED determined that reasonable suspicion existed that Scioto had evaded the *Orders* by claiming cabinets and vanities imported into the United States were of Malaysian origin when it was actually of Chinese origin.⁷ TRLED based its determination on the sufficient information provided in the Allegation (*e.g.*, Scioto’s admission to transshipping in an ongoing civil suit) and the stock-keeping units (SKUs) known to be of Chinese origin found in the CF-28 response.⁸

Request for Information

On July 8, 2022, pursuant to 19 CFR 165.5, CBP sent a Request for Information (RFI) to Scioto and to the claimed manufacturer, Alno,⁹ about shipments to the Importer.¹⁰ On August 10, 2022, CBP received an RFI responses from Alno and Scioto to CBP’s July 8 RFI. On August 17, 2022, CBP rejected Scioto’s and Alno’s RFI responses because the documents did not conform to EAPA regulations and requested they refile them.¹¹ On August 25, 2022, Alno and Scioto timely

² See Letter from the AKCA, “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 Scioto Valley Woodworking, Inc. d/b/a Valleywood Cabinetry,” dated February 3, 2022 (Allegation).

³ Alno, the reported Malaysian manufacturer, is owned by the Chinese company Qingdao Haiyan Group Co., Ltd. (Haiyan). Haiyan also owns Scioto.

⁴ See email “EAPA 7705 - Receipt of EAPA Allegation 7705: Receipt of Properly Filed Allegation,” dated March 9, 2022.

⁵ See Memorandum, “Initiation of Investigation for EAPA Case Number 7705 – Scioto Valley Woodworking, Inc.,” dated March 30, 2022 (Initiation Notice).

⁶ See Memorandum, “Notice of Initiation of Investigation and Interim Measures - EAPA Case 7705,” dated July 6, 2022 (NOI).

⁷ *Id.*

⁸ *Id.*

⁹ Alno Industry SDN BHD (Alno), the reported Malaysian manufacturer, is owned by the Chinese company Qingdao Haiyan Group Co., Ltd. (Haiyan). Haiyan also owns Scioto.

¹⁰ See Memorandum, “EAPA CASE NUMBER 7705 - Request for Information,” dated July 8, 2022 (Alno RFI). See Memorandum, “EAPA CASE NUMBER 7705 – Request for Information,” dated July 8, 2022 (Scioto RFI).

¹¹ See email “EAPA 7705: Rejection of Submission,” dated July 30, 2021.

refiled their RFI responses.¹² On September 2, 2022, CBP sent a supplemental RFI to Alno.¹³ On September 8, 2022, Alno responded to Alno 1SRFI.¹⁴ On September 9, 2022, CBP sent a second supplemental RFI to Alno.¹⁵ On September 12, 2022, CBP sent a supplemental RFI to Scioto.¹⁶ On September 26, 2022, CBP received Alno's second supplemental response.¹⁷ On September 29, 2022, CBP received Scioto's supplemental RFI response.¹⁸ On October 5, 2022, CBP sent a third supplemental RFI to Alno.¹⁹ On October 17, 2022, CBP received Alno's third supplemental response.²⁰

Verification and Written Arguments

On October 17, 2022, CBP sent a site engagement letter to Alno regarding verification.²¹ From October 24, 2022, through October 27, 2022, CBP conducted an on-site verification of Alno in Malaysia.²² On December 22, 2022, CBP released the Verification Report to parties to the investigation.²³ On January 4, 2022, CBP received written arguments from Scioto and the Alleger.²⁴ On January 19, 2022, CBP received rebuttals arguments from Scioto and the Alleger.²⁵

Analysis

Under 19 U.S.C. § 1517(c)(1)(A), to reach a final determination as to evasion, CBP must, “make a determination, based on substantial evidence, with respect to whether such covered merchandise entered into the customs territory of the United States through evasion.” Evasion is

¹² See letter from Alno, “EAPA Case No. 7705: Third Request for Extension for Response to CBP Questionnaires,” dated August 25, 2022 (Alno RFI Response); see also letter from Scioto, “EAPA Case No. 7705: Third Request for Extension for Response to CBP Questionnaires,” dated August 25, 2022 (Scioto RFI Response).

¹³ See Memorandum “EAPA 7705; – First Supplemental Request for Information to Alno Industry SDN BHD,” dated September 2, 2022 (Alno 1SRFI).

¹⁴ See letter from Alno “EAPA Case No. 7705: First Supplemental Request for Information Questionnaire Response,” dated September 8, 2022 (Alno 1SRFI Response).

¹⁵ See Memorandum “EAPA 7705; – First Supplemental Request for Information to Alno Industry SDN BHD,” dated September 9, 2022 (Alno 2SRFI).

¹⁶ See Memorandum “EAPA 7705; – First Supplemental Request for Information to Alno Industry SDN BHD {sic},” dated September 9, 2022 (Scioto 1SRFI).

¹⁷ See letter from Alno, “EAPA Case No. 7705: Second Supplemental Request for Information to Alno Industry SDN BHD,” dated September 22, 2022 (Alno 2SRFI Response).

¹⁸ See letter from Scioto, “EAPA Case No. 7705: Second Supplemental Request for Information to Scioto Valley Woodworking, Inc. d/b/a/ Valleywood Cabinetry,” dated September 29, 2022 (Scioto 1SRFI Response).

¹⁹ See Memorandum, “EAPA 7705; Third Supplemental Request for Information to Alno Industry SDN BHD,” dated October 5, 2022 (Alno 3SRFI).

²⁰ See letter from Alno, “EAPA Case No. 7705: Third Supplemental Request for Information to Alno Industry SDN BHD,” dated October 17, 2022 (Alno 3SRFI Response).

²¹ See Letter from CBP, “Site Engagement Letter,” dated October 17, 2022.

²² *Id.*; see also Memorandum, “On-Site Verification Report,” dated December 21, 2022 (Verification Report).

²³ See Verification Report.

²⁴ See letter from Alleger, “Investigation Concerning the Evasion of Antidumping and Countervailing Duty Orders: Written Comments,” dated January 4, 2023 (Alleger Written Arguments); letter from Scioto, “EAPA Case No. 7705: Written Submission,” dated January 4, 2023 (Scioto Written Arguments).

²⁵ See letter from Alleger, “Investigation Concerning the Evasion of Antidumping and Countervailing Duty Orders: Rebuttal Comments,” dated January 19, 2023 (Alleger Rebuttal Arguments); letter from Scioto, “EAPA Case No. 7705: Written Submission,” dated January 19, 2023 (Scioto Rebuttal Arguments).

defined as “the entry of 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 of any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise.”²⁶ As discussed below, the record of this investigation indicates there is substantial evidence that covered merchandise was entered by Scioto into the United States through evasion, resulting in the avoidance of applicable AD/CVD cash deposits or other security.

The evidence demonstrates that Alno *can* produce wooden cabinets and vanities. However, Alno itself has admitted in court documents that it transshipped Chinese-origin cabinets and vanities through Malaysia to [Name] during the²⁷ for this EAPA investigation. The questions before CBP, then, are whether Alno manufactured all the cabinets and vanities it exported to Scioto, or whether Alno exported transshipped, Chinese-origin cabinets and vanities to Scioto during the POI.

Affiliations with China

Evidence on the record shows that Scioto and Alno have ties to China. From October 2018 to October 2019, approximately when the *Orders* were implemented, Qingdao Haiyan Drouot Household Co., Ltd. (Haiyan Drouot) exported wooden cabinets and vanities from its manufacturing plant in Qingdao, China to Scioto in Waverly, Ohio.²⁸ Scioto, which is 100 percent owned by the Qingdao Haiyan Group Co., Ltd. (Haiyan Group),²⁹ acquired Alno on July 1, 2019, and the deal was official on September 4, 2019.³⁰ In July 2022, Scioto transferred all its shares of Alno to the Haiyan Group.³¹ The owner of Haiyan Group is Liyan Jiao, a Chinese national residing in Qingdao, China.³² This evidence shows that control of Alno and Scioto is the Chinese company the Haiyan Group.

The RFI responses, and as confirmed at verification, show that Alno was designated as the supplier for Scioto by the Haiyan Group in 2020.³³ Evidence on the record shows that due to the Haiyan Group’s ownership of both Scioto and Alno, it has discretion over the budgets for both companies’ operations, production, shipping schedules for all goods produced, and the purchase prices.³⁴ Furthermore, the invoice terms between Alno and Scioto are designated by the Haiyan Group and are based on the amount of profit generated by Scioto.³⁵ The record shows that if Alno falls short, the company would go to its parent company of, *i.e.*, the Haiyan Group, for

²⁶ See 19 CFR 165.1; *see also* 19 USC 1517(a)(5)(A).

²⁷ The POI are imports entered for consumption, or withdrawn from warehouse for consumption, from March 9, 2021, through the pendency of this investigation, *i.e.*, January 31, 2023.

²⁸ See Verification Report, at 3.

²⁹ Haiyan Group also owns Haiyan Drouot

³⁰ *Id.*

³¹ *Id.*

³² *Id.*, at 2. Liyan Jiao also owns 80% of Haiyan Drouot; therefore, Haiyan Drouot has common ownership with Haiyan Group, Alno, and Scioto.

³³ *Id.*, at 8.

³⁴ *Id.*

³⁵ See Verification Report, at 8.

money to stay solvent.³⁶ Additionally, company officials at Alno confirmed that Alno owes substantial amount of money to the Haiyan Group for subsidizing Alno’s budget shortfalls.³⁷ Furthermore, many of the correspondences related to price updates, status of purchase orders, shipment arrangements, *etc.*, were between Scioto and the Haiyan Group, not between Scioto and Alno.³⁸ This arrangement seems to indicate that Alno had a more closely linked production process with the Haiyan Group than would be expected by the ownership structure in which Scioto owned Alno until July 2022.³⁹ As a result, the evidence on the record establishes that the Chinese company the Haiyan Group has Alno and Scioto.

Finally, Alno purchases supplies, *e.g.*, wooden boards and medium density fiber (MDF) board, from Chinese suppliers.⁴⁰ In particular, the primary input for cabinets and vanities, *i.e.*, wooden boards, come from the commonly owned Chinese company [Name].⁴¹ Additionally, Alno’s department heads are Chinese nationals.⁴² Taken *in toto* Alno is a Malaysian company owned and controlled by a Chinese company, is operated under Chinese management, and is supplied by Chinese suppliers. As a result, there is evidence on the record showing Alno’s and Scioto’s ties to China.

Evidence of Transshipment

Evidence on the record shows that Alno transshipped Chinese origin wooden cabinets into the United States. The Allegation was filed based on information provided by CTG in cooperation with AKCA. A CTG quality control inspector (QCI) had discovered the transshipment scheme.⁴³ Evidence in the Allegation suggests Scioto engaged in evasion of AD/CV duties and that CTG had filed a civil suit against supplier, Alno, and its U.S. affiliate, Scioto, in the U.S. District Court for the Middle District of Tennessee based on the CTG’s QCI’s discovery and the Haiyan Group’s admission of transshipment.⁴⁴ Evidence in the Allegation provided by CTG to the Allegor shows Scioto’s evasion of the *Orders*, including direct admissions of facts that implicate Scioto in an evasion scheme.⁴⁵ In its responses to CBP in this EAPA investigation, Alno stated that it produced all goods shipped to Scioto.⁴⁶

However, as discussed in detail below, CBP finds substantial evidence on the record shows that Alno transshipped more products than it initially admitted to in both the civil suit and in Alno’s 1SRFI Response. CBP officials had discovered an “additional warehouse” during verification that was filled with finished goods from China and Malaysia that were packaged identically and ready for shipment.⁴⁷ CBP officials had no way to differentiate the country of origin of the

³⁶ See Verification Report, at 8.

³⁷ *Id.*, at 7.

³⁸ *Id.*, at 9.

³⁹ *Id.*

⁴⁰ See Alno RFI Response, at 8.

⁴¹ *Id.*

⁴² See Verification Report, at 17.

⁴³ See Allegation, at Exhibit 12.

⁴⁴ See Allegation at 6. See also *Cabinets To Go, LLC v. Qingdao Haiyan Grp. Co.*, 3:21-cv-00711 (M.D. Tenn.).

⁴⁵ *Id.*, at 7.

⁴⁶ See generally Alno RFI Response, Alno 1SRFI Response, Alno 2SRFI Response, and Alno 3RFI Response.

⁴⁷ See Verification Report.

finished packaged cabinets and vanities.⁴⁸ CBP was not able to verify or confirm whether all cabinets and vanities exported to Scioto were produced on site in Malaysia or imported from China due to the company’s vague record keeping.⁴⁹ Finally, CBP found documents, *i.e.*, inbound delivery sheets (a document only used by Alno for items it had purchased), that showed the delivery of finished goods for Scioto.⁵⁰ The inbound delivery sheets contained SKUs and PO numbers for Scioto and were nearly identical to the ones for [Name] transshipped goods.⁵¹

Evidence on the record obtained by CBP confirms that much of the information that [Name] had provided to AKCA in the Allegation regarding Alno’s transshipment was correct. The Allegation stated that Alno exported cabinets and vanities of Chinese origin to one of its customers, *i.e.*, [Name].⁵² In the Alno ISRFI Response, Alno confirmed that it did export cabinets and vanities of Chinese origin to [Name].⁵³ The Allegation identified certain SKUs from certain purchase orders (POs) as being of Chinese origin.⁵⁴ Alno confirmed that the SKUs in question identified in the Allegation had been transshipped during the POI.⁵⁵ The PO numbers in the Allegation matched documents CBP obtained from Alno at verification.⁵⁶ Alno admits that it transshipped to one of its customers, *i.e.*, [Name], but claims that it produced all the cabinets and vanities in Malaysia to all the other customers.⁵⁷ When CBP asked if Alno produced all of the cabinets and vanities in Malaysia, Alno stated that it did for all but [Name] customer.⁵⁸ When CBP asked in which countries were the cabinets and vanities produced in for the sales during the POI, Alno stated that products for [Name] customer were produced in [Country] and that all other products were made in Malaysia.⁵⁹ However, evidence on the record cast doubt on these statements from Alno.

At verification, CBP used the documents that showed transshipment to [Name] to establish how Alno tracked transshipped goods in its normal books and records. CBP officials asked how Alno knew which invoices related to [Name] goods that it admitted to having transshipped as seen in the Allegation.⁶⁰ Company officials stated that the information is available on the Packing Check-List from Haiyan Drouot.⁶¹ Furthermore, the transshipped goods enter the raw material warehouse on a Finished Product Inbound Delivery (FPID) sheet; this sheet shows the SKUs, quantity, the reference PO, and clearly states finished product **inbound** delivery (emphasis added).⁶² However, in Alno’s RFI Response, it stated that it maintained 15 documents during the normal course of business for an average period of 18-months—one of those reported documents was an “Inbound Order.”⁶³ In its third supplemental response, Alno clarified by saying:

⁴⁸ *Id.*

⁴⁹ *Id.*, at 17.

⁵⁰ *Id.*

⁵¹ Compare Attachment at 22-25 with VE-10.

⁵² See generally Allegation.

⁵³ See Alno ISRFI Response.

⁵⁴ See Allegation, at Exhibit 12.

⁵⁵ See Alno ISRFI Response.

⁵⁶ See Allegation, at Exhibit 12; see also VE-11.

⁵⁷ See Alno ISRFI Response.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ See Verification Report, at 15. See attachment at 17-20

⁶¹ *Id.*

⁶² See *e.g.*, VE-10 at 20-30.

⁶³ See RFI Response, at 29-30.

*Alno keeps the products tracked by outbound sheets (warehouse-out sheets) for production inputs and **inbound sheets (warehouse-in sheets) for materials purchased** (emphasis added).⁶⁴*

According to Alno's response, the FPID sheets are for materials that it purchased; therefore, the FPID sheet for the [Name] goods that were known to be transshipped were recorded according to their SKU, Quantity, PO number, because Alno purchased them.

As can be seen in the Attachment to this notice, Scioto provided FPID sheets dated [Date] and [Date] that refute Alno's own statements of producing all the goods it shipped to Scioto.⁶⁵ The FPID references finished goods entering Alno's raw material warehouse for POs [#s].⁶⁶ However, as noted in the Verification Report, the FPID sheet is only generated in one specific instance, *i.e.*, when goods enter the raw materials warehouse.⁶⁷ CBP officials asked both the General Manager and Chief Accountant when the FPID sheet is generated, and they stated that the FPID sheet is generated when purchased materials are entered into the raw materials warehouse.⁶⁸ Again, CBP asked "The Inbound Delivery Sheet would not be generated without goods coming in?" The GM replied, "Yes, it is only generated when goods are checked in."⁶⁹ Alno's own company officials stated it is for when purchased goods are checked in, confirming what Alno said in its third supplemental response on three occasions.⁷⁰ Further, Alno's Chief Accountant confirmed that Alno does not track inventory movement during the production process, which provides additional support that items listed on the FDIP are goods purchased by Alno.⁷¹ Finally, Alno also did not provide the FPID sheets for any of the sales traces that the CBP verification team conducted on site during the verification, even though Alno had provided them in RFI responses. The only other time CBP officials saw inbound sheets was for when raw materials that Alno had purchased and when Alno transshipped finished cabinets and vanities from China to [Name], which generated FPID sheets identical to the ones in question.⁷²

It is important to note that the FPID sheets show the identical SKUs and Quantities from the POs [#s], as well as specifically identifying for each item the PO that it is allocated.⁷³ These FPID sheets mirror the FPID sheets for [Name]'s transshipped goods. The documents are also signed by the same person, underscoring their authenticity.⁷⁴ The POs in question are on the record, and each PO states they are from Scioto Cabinetry to Alno.⁷⁵ They clearly show "Scioto Cabinetry" listed at the top, the ship to address matches Scioto's

⁶⁴ See Alno Third Supplemental Response, at 16.

⁶⁵ See Attachment, at 22-25.

⁶⁶ *Id.*

⁶⁷ See Verification Report, at 14.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*, at 6-7.

⁷² See *e.g.*, VE-10 at 20-30.

⁷³ See Attachment, at 22-25.

⁷⁴ *Id.*

⁷⁵ *Id.*

reported address in Ohio, and the vendor listed is “Alno Industry SDN BHD.”⁷⁶ The POs also show the same SKUs, which are described as various finished cabinets and vanities, as those having been purchased by Alno from [Name] with the same quantities; this means that the FPIDs in question should not exist if Alno did not transship goods for customers other than [Name].⁷⁷ Due to the existence of FPID sheets containing SKUs and POs for Scioto, the fact that this matches the documents used by Alno in its normal course of business to distinguish products that were transshipped from China through Malaysia for [Name], and Alno’s own statements that inbound sheets are for materials purchased, CBP determines that this is significant evidence that Alno transshipped goods that were imported by Scioto during the POI.

As discussed above the inbound deliver sheets, are how Alno tracks transshipped finished goods coming from China through their Malaysian factory. The finished SKUs and PO numbers on the FPID sheet shows that transshipped finished goods entered its warehouse and then were shipped on to Scioto. CBP officials found FPID sheets for the transshipped goods to [Name] that were identical to FPID sheets that were for Scioto and matched Scioto’s POs. Taken together, these documents are evidence that Alno had purchased Chinese-origin cabinets and vanities and had them delivered to its “raw materials” warehouse to be later exported to Scioto in a transshipping scheme to evade AD/CV duties.

Reliability of [Name] Sales Documents

As discussed in detail below, evidence on the record shows that Alno has submitted to CBP inaccurate information and documents filled with discrepancies. Evidence on the record shows that Alno had provided inaccurate information from [Name] that is unreliable.⁷⁸ At verification, CBP discovered that the unit transfer prices between [Name] and Alno did not reflect market prices and fluctuated dependent on whichever company needed more funds.⁷⁹ The CBP verification team asked the Chief Accountant if Alno could explain the substantial price difference between the raw materials purchased from [Name] in [Date] and [Date].⁸⁰ For example, on Invoice [#], dated [Date], the price for birch and hickory was \$[#] and \$[#], respectively, but on Invoice [#], dated [Date], the price for birch and hickory was \$[#] and \$[#].⁸¹ Alno’s Chief Accountant stated that the pricing depends on the product mix in the container.⁸² CBP finds this response unsatisfactory as discussed in detail below, there is no way to tell what the product mix in the container actually is for any of [Name]’s shipments.

Additionally, invoices from [Name] use vague invoice descriptions that do not specify or categorize different sizes of wood or specific hardware.⁸³ All purchases of wood and parts were found to be under one of the six descriptions below, which uses only four item numbers:

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *See generally* Verification Report.

⁷⁹ *See* Verification Report, at 5.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*, at 4-5.

- [Description];
- [Description];
- [Description];
- [Description];
- [Description]; or
- [Description].⁸⁴

Evidence on the record shows that [Name] was also the supplier of the finished cabinets and vanities that were transshipped to [Name].⁸⁵ For the transshipped goods to [Name], the invoices from [Name] listed them under either [Description] or [Description].⁸⁶ These vague descriptions mean CBP cannot confirm the contents of these purchases based solely on the commercial invoices, packing lists, bill of ladings, *etc.*, from the supplier [Name] to identify shipments that had transshipped goods. At verification, CBP asked how Alno knew which shipments contained transshipped goods, and company officials stated that the information is available on the Packing Check-List from [Name].⁸⁷

Furthermore, as noted in the Verification Report, [Name] invoices all contain the quantity in terms of pieces in the first column of its invoices, but the quantity in the second column varied between three types: 1) cartons; 2) packages; and 3) pallets.⁸⁸ Additionally, the quantity types would not always be consistent among invoices from the Chinese supplier.⁸⁹ This also obscures the volume and types of goods purchased from the Chinese supplier. When listed as pallets, the Packing List appeared to support what the invoice claimed, but in some cases, when packages or cartons were used as the quantity type, the matching Packing Check-Lists would contain SKUs of finished goods which then also had a related FPID sheet.⁹⁰ The inconsistent ways of documenting invoice quantities, coupled with vague invoice and packing list descriptions, seem indicative of [Name] and Alno attempting to withhold information from CBP to obtain a favorable outcome in this investigation.

Also, at verification CBP officials noticed glass doors listed on invoices from Alno to [Name] and asked about the glass needed to make them.⁹¹ The verification team did not see or hear Alno mention glass during the production demonstration.⁹² Company officials confirmed that Alno does not make glass doors and obtains the glass from [Name].⁹³ CBP asked Alno to provide two years of invoices for the purchase of the glass at our request.⁹⁴ CBP officials found that glass was not listed on the [Name] invoices.⁹⁵ The CBP verification team learned

⁸⁴ *Id.*

⁸⁵ *See* VE-10.

⁸⁶ *Id.*

⁸⁷ *See* Verification Report, at 15.

⁸⁸ *Id.*, *see also* Attachment, at 20.

⁸⁹ *Id.*

⁹⁰ *See* VE-10.

⁹¹ *See* Verification Report, at 13.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

that the glass is ordered by calling the parent company, *i.e.*, Haiyan Group, and no purchase orders are issued so there is no record of how much glass Alno ordered.⁹⁶ The glass is not separately identified on the raw material invoices and is incorrectly listed as [Description], which have a value as low as \$[#] per screw. There are no inventory records for glass when it is received.⁹⁷ When imported into Malaysia, the glass is either not declared or declared as hardware/screws.⁹⁸ The CBP verification team noted the process, as described by company officials, shows no evidence that the glass entered the production process at any point.⁹⁹ The fact that glass shipments to Alno are either not declared or declared as something else is evidence that supplier [Name] is willing to omit or obfuscate important information in paperwork, evidence which casts doubt on the reliability of the supplier's documents to use as proof that Alno did not transship cabinets and vanities of Chinese origin.

Finally, the Allegation specifically identified container [#] as containing finished goods arriving at Alno for transshipment to [Name].¹⁰⁰ Additionally, in the Allegation was a picture provided by the QCI of the packaged cabinets and vanities in the container.¹⁰¹ CBP officials were able to verify that the packaging of the goods in the container was like the packaging of the unshipped [Name] finished products in the "Additional Warehouse" at Alno when inspected during the verification.¹⁰² Furthermore, the Verification Report noted that the packaging in the container did not match anything in the Raw Materials Warehouse on site, which is indicative that the items in the container are indeed finished goods and not raw materials.¹⁰³ CBP officials were also able to verify that the [Name] commercial invoice, packing list, and Packing Check-List related to container [#] listed the goods as [Description].¹⁰⁴ The paperwork provided by Alno conflicts with the sworn statement by the [Name] QCI and with the photo provided in the Allegation that the container was loaded with finished goods transshipped via China.¹⁰⁵ In the Verification Report, CBP identified that it was this container and information that caused [Name] to ask for Scioto to verify the country of origin of Alno's cabinets and that caused the subsequent admission from the Haiyan Group of providing transshipped goods.¹⁰⁶ While this discrepancy alone is not definitive proof of transshipment to other customers occurring, [Name] not declaring or misclassifying goods and other evidence on the record substantiates the QCI claims in the Allegation. This is a strong indicator that [Name]'s and Alno's paperwork is unreliable.

Based on the aforementioned reasons, CBP determines that the paperwork from supplier [Name] provided by Alno is unreliable evidence that transshipment was not occurring

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *See* Allegation, at Exhibit 11.

¹⁰¹ *Id.*

¹⁰² *See* Verification Report, at 17.

¹⁰³ *Id.*

¹⁰⁴ *See* VE-10, *see also* Attachment at 21

¹⁰⁵ *Id.*

¹⁰⁶ *See* Verification Report, at 17.

at Alno. Combining this information with Alno's admission to transshipping cabinets and vanities of Chinese-origin to [Name] during the POI, provides strong support for CBP's determination that there is substantial evidence that Alno was transshipping cabinets and vanities to Scioto.

Adverse Inferences

EAPA regulation at 19 CFR 165.6(a) states:

If . . . the importer, or the foreign producer or exporter of the covered merchandise fails to cooperate and comply to the best of its ability with a request for information made by CBP, CBP may apply an inference adverse to the interests of that party in selecting from among the facts otherwise available to make the determination as to evasion. . . .

CBP finds that Alno failed to act to the best of its ability in this EAPA investigation by Alno's failure to cooperate and comply with CBP at verification. CBP encountered the following issues at verification:

- CBP discovered the existence of an additional warehouse that was not previously reported. This discovery happened after the GM was asked and provided inaccurate information that no other location existed.¹⁰⁷
- CBP had to ask company officials multiple times to provide documents and each time discovered that documents were missing, *e.g.*, Packing-Check Lists.¹⁰⁸
- Alno attempted to provide CBP officials unrelated or irrelevant documents that were unsolicited to cover for their error of not providing certain documents after being asked multiple times.¹⁰⁹
- CBP was unsure the missing emails provided to CBP at verification were original emails since CBP was not provided with access to the original files despite asking for access.¹¹⁰

As a result of this lack of cooperation, CBP was unable to rely on the records Alno kept in its normal course of business and unable to fully understand the inventory management processes at Alno. Therefore, CBP is applying adverse inferences in drawing conclusions from other information on the record. CBP is relying on information in the Allegation and obtained from Alno, to determine all cabinets and vanities exported to the United States to Scioto are from China.¹¹¹ Specifically, CBP is relying on the information provided by the Allegor in the Allegation, *i.e.*, litigation documents showing Alno transshipped cabinets and vanities to CTG.¹¹² CBP is also relying on other evidence on the record obtained from Alno, as described above, that shows it transshipped cabinets and vanities of Chinese-origin to Scioto specifically during the POI that were entered into the United States.¹¹³ Based on all this information, CBP finds that all

¹⁰⁷ See Verification Report, at 9-10.

¹⁰⁸ *Id.*, at 15-16.

¹⁰⁹ *Id.*, at 16.

¹¹⁰ *Id.*, at 10-11.

¹¹¹ See Allegation.

¹¹² *Id.*, at Exhibit 4.

¹¹³ See *e.g.*, Alno 1SRFI Response.

of the cabinets and vanities that Scioto imported into the United States from Alno are of Chinese origin.

Written Arguments

1. Adverse Inferences

Alleger:

- Alno failed to act to the best of its ability, because CBP could not verify the accuracy of critical information. Therefore, the application of adverse inferences is warranted.¹¹⁴
- Adverse inference should apply to all of Alno's exports to the United States not just the ones to Scioto.¹¹⁵

Scioto:

- A determination based on adverse facts available is not supported by information on the record.¹¹⁶
- Alno and Scioto have cooperated to the best of their ability.¹¹⁷
- The discrepancies at issue are of not material issue.¹¹⁸

CBP Position:

We disagree with Scioto based on the reasons set forth above.

2. Forced Labor

Alleger:

- CBP should self-initiate a forced labor probe in accordance with Section 307 of the U.S. Tariff Act of 1930, due to its verification team discovering that Alno retains foreign workers' passports.¹¹⁹
- Passport retention is a strong indicator of forced labor, which is pervasive in Malaysia.¹²⁰

Scioto:

- CBP should not self-initiate a forced labor probe because keeping worker passports alone is an insufficient justification, based on the International Labor Organization's (ILO) eleven indicators of forced labor.¹²¹

¹¹⁴ See Alleger Written Arguments, at 4-9.

¹¹⁵ *Id.*, at 9.

¹¹⁶ See Scioto Rebuttal Arguments, at 2-13.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ See Alleger Written Arguments, at 10-12.

¹²⁰ *Id.*, at 11.

¹²¹ See Scioto Rebuttal Arguments, at 7-8.

- Alno only keeps the foreign workers' passports for security reasons, and the workers can retrieve them at any time.¹²²

CBP Position:

The purpose of the verification is for CBP to validate the information and data submitted by either importers or foreign manufacturers participating in an EAPA investigation. As such, CBP was on site to validate information in Alno's RFI responses to aide CBP in its determination of whether Alno produced the cabinets and vanities that it exported to Scioto, not to assess labor conditions. CBP took note of the passport retention, but it is not a factor CBP will consider for this EAPA investigation.

3. Verification Report

Scioto:

- There are several issues with CBP's Verification Report.¹²³
- CBP either misunderstood, reported descriptions are inaccurate, or its descriptions require clarification.¹²⁴
- It was unreasonable for CBP to not accept additional documents as Alno was overwhelmed by the numerous document requests, and CBP should have expected mistakes to happen.¹²⁵
- CBP should not presume that information in the Allegation is entirely accurate.¹²⁶

Alleger:

- CBP should reject Scioto's written arguments because it is an attempt to rebut and clarify CBP's on site Verification Report with new factual information that was not previously on the record.¹²⁷
- CBP has rejected such attempts in the past and those decisions have been upheld by the Court of International Trade.¹²⁸

CBP Position:

It is the responsibility of Parties to the Investigation and Interested Parties, as defined by 19 CFR 165.1, to ensure the information they place on the record or provide to CBP is complete, true, and accurate. In the same vein, it is also their responsibility to make sure that the information they are conveying is presented clearly. This continues to hold true when CBP is conducting verification. As stated above, the purpose of verification is for CBP to validate the information and data submitted by parties, and verification allows the parties being verified to fully explain

¹²² *Id.*

¹²³ *See* Scioto Written Arguments, at 1-7.

¹²⁴ *Id.*

¹²⁵ *Id.* at 6.

¹²⁶ *Id.*, at 7.

¹²⁷ *See* Alleger Rebuttal Arguments, at 1-4.

¹²⁸ *Id.*

their record responses. In this instance, CBP was on site to validate information in Alno's RFI responses to aide CBP in its determination of whether Alno produced the cabinets and vanities that it exported to Scioto. The Verification Report written by CBP and released to parties was the result of the collaboration of all seven CBP officials that attended verification. All seven officials agree that the report released to parties is a true and accurate account of what was observed, verified, and happened at verification.

CBP's verification team followed its standard practice for allowing parties to take corrective action for any deficiency or non-conforming submission found at verification. At verification, after a CBP official asked for an item or items and discovered a deficiency, CBP officials allowed Alno the opportunity to take corrective action. CBP officials only determined that anything offered after that corrective action was already taken was non-conforming. Allowing a party to take repeated corrective actions for an identified deficiency shifts the responsibility for the accuracy and completeness of information on the record from the manufacturer to CBP, whose responsibility in the matter is to maintain the record and determine its validity.¹²⁹ CBP did not force Alno to provide requested information when it knew was incomplete, nor did it set any time limits to provide the information during verification.¹³⁰ Alno provided the information only after it deemed it complete and ready to present to CBP, as evident by the CBP officials asking if Alno provided everything that CBP requested.¹³¹ CBP believes that Alno was afforded sufficient time during the verification to present the information requested from it, but that Alno often failed to take the time and effort to ensure completeness, and instead relied on CBP to do it for them.

Finally, CBP finds that much of the information in the Allegation was accurate based on Alno's responses and information reviewed during the on-site verification. The Allegation stated that Alno exported cabinets and vanities of Chinese-origin to one of its customers, *i.e.*, CTG.¹³² In the Alno 1SRFI Response, Alno confirmed that it did export cabinets and vanities of Chinese-origin to [Name].¹³³ The Allegation identified certain SKUs from certain POs as being of Chinese origin.¹³⁴ Alno confirmed that the SKUs in question identified in the Allegation had been transshipped during the POI.¹³⁵ The PO numbers in the Allegation matched documents CBP obtained from Alno at verification.¹³⁶ The container number in question, *i.e.*, [#], did indeed arrive at Alno around the time it was claimed based on documents obtained at verification.¹³⁷ The pictures of the packaged cabinets and vanities in the container taken by the QCI matched unshipped packaged cabinets and vanities for [Name] found in the "Additional Warehouse."¹³⁸ Therefore, based on substantial evidence on the record, CBP finds no reason to question the accuracy of the QCI report provided in the Allegation.

¹²⁹ See 19 CFR 165.21, *see also* 19 CFR 165.25.

¹³⁰ See generally Verification Report.

¹³¹ See *e.g.*, Verification Report, at 15

¹³² See generally Allegation.

¹³³ See Alno 1SRFI Response.

¹³⁴ See Allegation, at Exhibit 12.

¹³⁵ See Alno 1SRFI Response.

¹³⁶ See Allegation, at Exhibit 12; *see also* VE-11.

¹³⁷ *Id.*

¹³⁸ See Verification Report.

4. Determination

Scioto:

- A negative determination should be made as CBP has not met the requisite standard of proof to find evasion in this investigation.¹³⁹
- The record establishes that the only covered merchandise was sent to [Name].¹⁴⁰

Alleger:

- Substantial evidence supports a finding of evasion.¹⁴¹
- CBP uncovered a wide array of discrepancies during the investigation.¹⁴²

CBP Position:

Based on the analysis described in detail above, CBP believes there is substantial evidence on the record to show that Alno exported transshipped goods of Chinese-origin through Malaysia and that Scioto imported those products into the United States.

5. Due Process

Scioto:

- Scioto' and Alno's due process rights were violated by failing to provide its counsel with confidential record information.¹⁴³

Alleger:

- No due process rights were violated based on Court of International Trade (CIT) decisions, because parties received public versions with public summaries.¹⁴⁴

CBP Position:

The CIT has already opined on the rights of parties in EAPA investigations to have access to business confidential information. The CIT has found that the lack of access to confidential information is not a due process issue.¹⁴⁵ In *Royal Brush Mfg., Inc. v. United States*, the CIT

¹³⁹ See Scioto Written Arguments, at 7-9.

¹⁴⁰ *Id.*

¹⁴¹ See Alleger Rebuttal Arguments, at 5-7.

¹⁴² *Id.*

¹⁴³ See Scioto Written Arguments, at 9-10.

¹⁴⁴ See Alleger Rebuttal Arguments, at 7-9.

¹⁴⁵ See *Royal Brush Mfg., Inc. v. United States*, 545 F. Supp. 3d 1357 at 1369 (Ct. Int'l Trade Oct. 29, 2021) (*Royal Brush*) (rejecting a similar claim and holding that CBP's withholding of confidential information does not violate a respondent's due process rights where "CBP has complied with 19 CFR 165.4 by providing necessary public summaries of the confidential information....").

found that a party is only entitled to public summaries of the business confidential information, pursuant to 19 CFR 165.4(a)(1) and (e). The parties do not otherwise have a right to review business confidential information, as the statute and regulations do not provide for such. CBP has provided Scioto's counsel with the requisite public version of documents that contained public summaries of redacted business confidential information. Therefore, CBP has ensured that due process had been followed during the investigation in accordance with 19 CFR 165.4.

Determination as to Evasion

The previously discussed facts on the record establish that there is substantial evidence that Chinese-origin cabinets and vanities were imported into the United States by evasion, specifically via transshipment through Malaysia. Additionally, by application of adverse inferences, relying on evidence provided in the Allegation and obtained from Alno, CBP determines that all the cabinets and vanities exported by Alno via Malaysia to Scioto were of Chinese origin. Furthermore, evidence on the record indicates that Scioto entered the Chinese-origin cabinets and vanities into the United States as type 01 entries and evaded the payment of AD/CV duties on cabinets and vanities from China, including by misrepresenting the cabinets and vanities as Malaysian in origin.¹⁴⁶ The cabinets and vanities that Scioto entered from Alno during the period of investigation should have been subject to the AD/CVD rates on cabinets and vanities from China.

Actions Taken Pursuant to the Affirmative Determination as to Evasion

In light of CBP's determination that substantial evidence demonstrates that the Importer entered covered merchandise into the customs territory of the United States through evasion, and pursuant to 19 U.S.C. § 1517(d) and 19 CFR 165.28, CBP will suspend or continue to suspend the entries covered by this investigation, until instructed to liquidate. For those entries previously extended in accordance with Interim Measures, CBP will rate adjust and change those entries to type 03 and continue suspension until instructed to liquidate these entries. CBP will continue to evaluate the Importer's continuous bonds in accordance with CBP's policies. None of the above actions precludes CBP or other agencies from pursuing additional enforcement actions or penalties.

¹⁴⁶ Entry type "01" is the code that CBP requires importers use to designate a standard consumption entry that is not subject to AD/CVD duties. See <https://www.cbp.gov/trade/automated/ace-transaction-details>.

Sincerely,

A handwritten signature in blue ink, appearing to read "Victoria Cho".

Victoria Cho
(A) Director, Enforcement Operations Division
Trade Remedy Law Enforcement Directorate
CBP Office of Trade

Attachment

Packing check list showing transshipped SKUs, snip from VE-10, page 18]

Snip

]

FPID showing finished goods from the packing check-list arriving, snip from VE-10, page 20]

snip

Information provided to CTG showing transshipped goods matching information in the previous two pages snip from Allegation Exhibit 12 f

snip

Invoice showing qty inconsistencies, snip from VE-17, page 1[

snip

]
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]
]

Invoice showing qty inconsistencies, snip from VE-17, page 5[

snip

]

Invoice showing qty inconsistencies, snip from VE-17, page 13[

snip

]

Packing Check-list for container identified in allegation, snip from VE-10, page 12f

snip

]

FPID showing purchased finished goods arriving, snip from Alno RFI Response Exhibit IV [

snip

]

PO from customer matching the FPID. snip from Alno RFI Response Exhibit IV [

snip

]

PO from customer matching the FPID, snip from VE-4 [

snip

]

Snip from Alno's RFI Response, Exhibit 10[

snip of FPID

]