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Re: Enforce and Protect Act (“EAPA”) Consolidated Case Number 7553; *Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Antidumping Duty Order*, 85 Fed. Reg. 22,126 (Apr. 21, 2020); and *Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Countervailing Duty Order*, 85 Fed. Reg. 22,134 (Apr. 21, 2020); Skyview Cabinet USA, Inc.; 19 U.S.C. § 1517

Dear Messrs. Kirby and Brightbill:

This is in response to the request for *de novo* administrative review of a determination of evasion dated September 16, 2021, 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 7553 (“September 16th Determination”).¹ The request for review, dated October 28, 2021, was submitted to CBP, OT, Regulations and Rulings (“RR”), by Kyl J. Kirby, Attorney and Counsel at Law, P.C., on behalf of Skyview Cabinet USA, Inc. (“Skyview”),² 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 Consolidated Case Number 7553, dated September 16, 2021, available at: <https://www.cbp.gov/document/publications/epa-cons-case-7553-various-importers-notice-determination-evasion-september>.

² Also known as KC Cabinets, Inc.

I. Background

Inasmuch as the facts in this case were fully set forth in the September 16th Determination, we will not repeat the entire factual history herein.

In brief, according to the record evidence, on November 13, 2020, TRLED initiated a formal consolidated investigation under Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015 (“TFTEA”), in response to allegations of evasion.

On October 13, 2020, MasterBrand Cabinets, Inc. (“MasterBrand”) filed EAPA allegations against Pacific Building Material, Inc. (“PBM”); Deco Kitchen Cabinet & Bath, Inc. (“Deco”); and Skyview; and on October 20, 2020, included Greentree Trading Company (“Greentree”) (collectively the “Importers”). CBP acknowledged receipt of the allegations on October 22, 2020. MasterBrand alleged that the Importers entered wooden cabinets, vanities, and components (“WCV”) of Chinese origin, into the United States, by transshipment through Malaysia, via manufacturer Rowenda Kitchen Sdn. (“Rowenda”), to evade the payment of antidumping and countervailing duties (“AD/CVD”) on WCV from the People’s Republic of China (“China”), as required in Case Nos. A-570-106 and C-570-107.³

The allegation of evasion pertained to the AD/CVD Orders issued by the U.S. Department of Commerce (“Commerce”) on imports of WCV from China.⁴ Commerce defined the scope of the relevant AD/CVD Orders, in pertinent part, 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. . . .

Subject merchandise includes all unassembled, assembled and/or “ready to assemble” (RTA) wooden cabinets and vanities, also commonly known as “flat

³ See Notice of Initiation of Investigation and Interim Measures: Consolidated EAPA Case 7553, dated February 19, 2021 (“Notice of Initiation”).

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

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*. . . .

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. . . .

Imports of subject merchandise are classified under Harmonized Tariff Schedule of the United States (HTSUS) statistical numbers 9403.40.9060 and 9403.60.8081. The subject component parts of wooden cabinets and vanities may be entered into the United States under HTSUS statistical number 9403.90.7080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.⁵

On February 19, 2021, in accordance with 19 C.F.R. § 165.24, CBP issued the Notice of Initiation to all parties to the investigation, and notified the parties of CBP’s decision to take interim measures based upon reasonable suspicion that the Importers entered 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 October 22, 2019, one year before receipt of the allegations, through the pendency of the investigation.⁷ During the pertinent period of investigation, Skyview made “01” consumption entries of merchandise under the declared HTSUS subheading number, 9403.40.9060, with a declared country of origin of Malaysia; specifically, Skyview’s entry number xxx-xxxx704-9, including 3,549 cartons of WCV, which was made on March 25, 2020 as an “01” consumption entry, was reviewed in detail during this investigation.⁸

On April 8th and 23rd, 2021, Skyview provided responses to TRLED’s request for information (“RFI”).⁹ Additionally, on June 7, 2021, Skyview voluntarily supplemented its previous submissions, asserting for the first time that the entered WCV were produced in “conjunction with Roxy Heritage Furniture Manufacturer SDN. BHD” (“Roxy”).¹⁰

⁵ *Id.* (emphasis in the original and internal citations omitted).

⁶ See Notice of Initiation, available at: <https://www.cbp.gov/document/publications/eapa-cons-case-7553-pacific-building-material-inc-deco-kitchen-cabinet-bath>.

⁷ See 19 C.F.R. § 165.2.

⁸ See Skyview’s CBP’s Form 28 (RFI) Response (Dec. 18, 2020) and Skyview’s Written Argument (Cons. Case 7553) (July 1, 2021).

⁹ We note that only Skyview and Deco responded to TRLED’s RFIs and only Skyview requested administrative review of the September 16th Determination, as it relates to Skyview.

¹⁰ See Skyview’s, June 7, 2021, Email, RE: EAPA 7553 (consolidated): Voluntary Information Submission (“the June 7th Submission”). Skyview also contends that it was not aware of Roxy’s involvement in the production

On September 16, 2021, TRLED concluded that, based on the record evidence, there was substantial evidence to demonstrate that the Importers entered WCV that were covered by AD Order A-570-106 and CVD Order C-570-107 by falsely entering them as being of Malaysian origin under type “01” as entries not subject to an AD or CVD order.¹¹ As a result, no cash deposits or AD/CVD were applied to the merchandise.¹² TRLED also applied adverse inferences against Greentree, PMB, and Rowenda for their failure to respond to TRLED’s information requests.

On October 28, 2021, Skyview filed a timely Request for Administrative Review and, on November 1, 2021, 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 H321677. On November 16, 2021, MasterBrand timely filed a response to Skyview’s requests for administrative review, presenting its counterarguments.

II. Law & Analysis

Section 517 of the Tariff Act of 1930 (“the Tariff Act”), as amended (19 U.S.C. § 1517), provides, “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.”¹³ The term evasion is defined as:

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.¹⁴

Examples of evasion include, but are not limited to, misrepresentation of the merchandise’s true country of origin (e.g., through false country of origin markings on the product itself or false sales), false or incorrect shipping and entry documentation, or misreporting of the merchandise’s physical characteristics.¹⁵

Additionally, 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),

of the WCV “until shortly before disclosing Skyview’s June 7, 2021, new factual submission.” *See* Skyview Cabinet USA Inc. Request for Administrative Review (Oct. 28, 2021) at pg. 26.

¹¹ Imports that are covered by AD/CVD orders are required to be entered as “03” entries; entries declared as “01” are not subject to AD/CVD. *See* 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 Dec. 14, 2021).

¹² *See* September 16th Determination.

¹³ 19 U.S.C. § 1517(c)(1).

¹⁴ 19 U.S.C. § 1517(a)(5); *see also* 19 C.F.R. § 165.1.

¹⁵ *See Investigation of Claims of Evasion of Antidumping and Countervailing Duties, Interim Regulations*, 81 Fed. Reg. 56,477, 56,478 (Aug. 22, 2016).

and/or an AD order issued under section 736, Tariff Act of 1930, as amended (19 U.S.C. § 1673e).¹⁶ 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.”¹⁷

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. Lastly, our decision herein must be supported by substantial evidence.

A. Skyview’s Arguments

Skyview requests that we reverse the September 16th Determination of evasion, arguing that it did not enter covered merchandise into the United States through evasion because the finding is not based upon substantial evidence.

First, Skyview posits that the evidence and law do not support CBP’s determination and that CBP incorrectly applied adverse inferences against Skyview. Specifically, Skyview asserts that CBP failed to meet the “three (3) prongs required” in an EAPA determination: 1) whether the entries in question are covered merchandise; 2) whether such entry was made by a material false statement or act or material omission; and, 3) whether there was a resulting reduction or avoidance of applicable AD/CVD.¹⁸ Instead, Skyview states that CBP should have referred the matter to Commerce, “since it was unable to make a ‘covered merchandise’ determination.”¹⁹ “If CBP cannot make a Malaysia country of origin determination based on the facts, it must refer the matter to Commerce. Skyview believes that it has presented sufficient documentation to show that, at the very least, any China [*visi*] produced product would not be substantially transformed to WCV into a product of China origin.”²⁰

Further, Skyview argues that CBP improperly applied adverse inferences against it, stating that “there was no way to induce supplier in providing all known/unknown records.”²¹ Skyview asserts that it is a small company with limited resources. Skyview continues by suggesting that CBP’s decision was arbitrary and capricious and potentially an abuse of discretion, and “illegal.” Skyview asserts that the foreign market research and business confidential statements are “disallowed hearsay and should be removed from the administrative record.” Skyview continues that the evidence is irrelevant under

¹⁶ 19 C.F.R. § 165.1.

¹⁷ See *Altex, Inc. v. United States*, 370 F.3d 1108, 1116 (Fed. Cir. 2004) (internal citations and quotation marks omitted).

¹⁸ Skyview Cabinet USA Inc. Request for Administrative Review (Public Document) (Oct. 28, 2021).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

Administrative Procedure Act (“APA”) rules and hearsay is only admissible up to the point of relevancy.²²

Skyview further contends that CBP is flawed in its belief “that various discrepancies and omissions in responses to CBP’s “critical’ kitchen sink” RFI “call into question the accuracy of information” and CBP’s requests “had nothing to do with the country of origin at issue.”²³ Skyview contends that its June 7, 2021, voluntary submission contained the necessary production records, “*i.e.*, substantial evidence, to demonstrate that Rowenda and Roxy produced the WCV under Royal Brush Considerations” in Malaysia. “A volume of documentation was produced that showed wood raw material suppliers, raw material invoices, production records, and shipping records.”^{24, 25} Skyview contends that CBP should have verified the newly submitted information to ensure proper assessment of duties.

Overall, Skyview does not argue that the evidence submitted by MasterBrand is false or inaccurate, but merely contends that Skyview’s submissions should be weighted more heavily and thus CBP should not find that evasion occurred.

B. MasterBrand’s Arguments

MasterBrand requests that we affirm the September 16th Determination of evasion, arguing that CBP’s finding of evasion was based on substantial evidence and that applying AD/CVD to the applicable entries made during the period of investigation is consistent with the statutory and regulatory authority provided to CBP.

MasterBrand specifically argues that there was no requirement for CBP to make a scope referral to Commerce, as the only question was whether transshipment of Chinese origin WCV through Malaysia took place, and CBP appropriately made such determination under its authority as supported by substantial evidence. MasterBrand argues that the September 16th Determination was properly based on the voluminous record, including foreign market research,²⁶ declarations of transshipment, and discrepancies in Skyview’s submissions. Specifically, MasterBrand asserts that Skyview asserted late in the investigation process, that Rowenda produced Skyview’s WCV in Malaysia with the assistance of a previously unmentioned company, Roxy. Even if considered reliable, the submissions did not demonstrate production of the WCV in Malaysia.

²² *Id.* (citing to 5 U.S.C. § 556(c)(3)(1988); *Baltimore Security Warehouse Co. v. United States*, 9 CIT 641, 645, 1985 WL 25793 (1985); *Allen Robbins and Robbins, Inc. v. James A. Baker*, 14 CIT 275, ---, Slip Op. 90-40, at 4, 1990 WL 62640 (Apr. 27, 1990); *Anderson v. United States*, 799 F. Supp. 1198, 1202 (Ct. Int’l Trade 1992)).

²³ *Id.* at 22.

²⁴ *Id.* at 14.

²⁵ See Skyview’s Voluntary Info Exhibits 1-14. We note that Skyview submitted its June 7th Submission and Exhibits, via e-mail, to TRLED and the Importers, as a “Public Document”.

²⁶ In its submissions, MasterBrand produced research, including U.S., Chinese, and Malaysian WCV import statistics, showing that import/export patterns reflect transshipment of these goods through Malaysia, starting when the pertinent AD/CVD Orders were first implemented, and that there were no manufacturers in Malaysia with the ability to manufacture meaningful quantities of WCV. See MasterBrand-Allegation (Skyview) and Exhibits (Oct. 13, 2020).

Finally, MasterBrand argues that Skyview has erroneously asserted that CBP applied adverse inferences against Skyview, when instead CBP properly applied adverse inferences against Rowenda, as the declared manufacturer wholly failed to respond and participate in the investigation. MasterBrand notes that 19 U.S.C. § 1517(c) specifically allows adverse inferences to be used with respect to the importer or foreign producer, without regard to whether another party involved has provided the information sought by CBP during the investigation.²⁷ Based on the foregoing, MasterBrand argues that the September 16th Determination should be affirmed.

C. 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 upon which the September 16th Determination was made; and (2) the timely and properly filed request for review and response.

The purpose of this *de novo* review is to analyze the September 16th Determination and the accompanying administrative record to determine whether substantial evidence of evasion exists. Skyview's arguments regarding CBP's abuse of discretion, and the relevancy of the evidence submitted in accordance with the APA, are outside the purview of this *de novo* review.²⁸ Additionally, as TLRED did not apply adverse inferences against Skyview, this review also does not address Skyview's contention that it timely and wholly complied, to the best of its ability, with CBP's requests.²⁹

A review of the administrative record and Skyview's request for administrative review clearly indicates that WCV were entered as type "01" consumption entries and, therefore, AD/CVD were not paid.³⁰ Here, there is no dispute that if Chinese-manufactured WCV were shipped directly from China to the United States, the WCV would fall under the AD/CVD Orders. There is also no dispute that Skyview's entries were entered as classified under subheading number, 9403.40.9060, HTSUS, and, again, if of Chinese origin, are within

²⁷ See MasterBrand's Resp. to Req. for Review, dated November 16, 2021 (citing 19 U.S.C. § 1517(c)(3)(A) &(B)).

²⁸ While Skyview cites to the EAPA statute for support, the provision relied upon outlines the standard of review of the U.S. Court of International Trade and is outside the purview of RR's review. See 19 U.S.C. § 1517(g)(2).

²⁹ To the extent that Skyview suggests that adverse inferences applied to Rowenda somehow unfairly or improperly led to a finding of evasion as to Skyview, such an argument is without merit. As discussed thoroughly in the September 16th Determination and herein, Skyview failed to establish the existence of WCV production in Malaysia as to the products imported by Skyview into the United States and declared to be of Malaysian origin and thus not subject to AD/CVD. As the importer, Skyview is responsible to provide CBP with all information necessary to establish the correct duty amounts for its imports. Skyview's failure to do so is independent of any failure by Rowenda to cooperate. See 19 U.S.C. § 1484; see also, <https://www.cbp.gov/sites/default/files/documents/Importing%20into%20the%20U.S.pdf>.

³⁰ See Skyview's RFI Response; 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 Dec. 14, 2021).

the scope of the AD/CVD Orders. The only fact in contention 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/CVD owed constitutes evasion under the EAPA statute and implementing regulations. We find that substantial evidence in the record demonstrates that evasion occurred.

The evidence of evasion here is cumulative and substantial, as thoroughly discussed in the September 16th Determination. The key facts are as follows. For the WCV to be considered outside the scope of the AD/CVD Orders, the products would need to be manufactured in Malaysia. Skyview failed to provide adequate and reliable evidence that the WCV it imported into the United States were manufactured in Malaysia. Although it claimed to have provided production records, in fact, it provided no production records. Nor did the alleged manufacturer(s) (Rowenda and/or Roxy) provide such records. The documents Skyview did provide, even if credible/reliable (which they are not), do not demonstrate manufacturing in Malaysia. Moreover, evidence in the record from a site visit and interviews, contradict Skyview’s assertions that Rowenda manufactured WCV in Malaysia. To the extent Skyview belatedly claimed Roxy was somehow involved in production, again, Skyview provided no production records to substantiate such claim. Furthermore, the conclusion as to an absence of manufacturing in Malaysia is buttressed by the sudden shift in shipment patterns -- when provisional measures were put in place, shipments from China into Malaysia went up, shipments to the United States from Malaysia went down, and shipments from China to the United States went down. Finally, any assertion that the above was due to assembly in Malaysia from Chinese components is unavailing, given that the scope of the AD/CVD Orders clearly includes WCV assembled in a third country with Chinese-origin components.

These facts are discussed in more detail below and in the September 16th Determination.

Skyview first argues that CBP does not have the ability to determine the origin of the WCV, and thus, whether the WCV are covered merchandise, without Commerce’s opinion in a scope ruling. We disagree, as 19 U.S.C. § 1517(b)(4) and 19 C.F.R. § 165.16(a) only provide for a scope referral to Commerce when CBP cannot determine whether the merchandise described in the allegation is covered merchandise under the AD and/or CVD orders at issue. Here, after review of the evidence, CBP determined that it could exercise its authority pursuant to 19 U.S.C. § 1517 without a referral to Commerce.

First of all, CBP was confronted with evidence of basic transshipment. The U.S. Court of International Trade (“CIT”), in *Globe*, explained that CBP is best suited to address standalone claims of transshipment.³¹ “Commerce’s recognition of U.S. Customs and Border Protection’s (CBP’s) authority to investigate fraud, gross negligence, or negligence involving entries of merchandise, and that CBP is better positioned to address a standalone country-of-origin issue is also consistent with 19 U.S.C. § 1592.”³² The CIT specifically held that, in

³¹ *Globe Metallurgical Inc., v. United States*, 722 F. Supp. 2d 1372 (Ct. Int’l Trade 2010).

³² *Id.* at 1164.

reference to Commerce's ability to perform administrative reviews, in AD/CVD cases, its authority to investigate transshipment is not as expansive as the authority granted to CBP.³³ Accordingly, the authority to investigate and prevent AD/CVD circumvention rests with both Commerce and CBP; and when claims of transshipment arise, the determination is well suited for CBP to make.

Secondly, there was some evidence presented that some operations may have been performed in Malaysia with respect to components imported from China. Because Commerce had already spoken to this issue in the relevant Orders, CBP did not need to submit a covered merchandise referral to Commerce. Specifically, the AD/CVD Orders at issue state the following: "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."³⁴

In its request for review, Skyview states: "Skyview believes that it has presented sufficient documentation to show that, at the very least, any China [*sic*] produced product would not have substantially transformed the WCV into a product of China origin."³⁵ We note that this statement may have been made in error; nonetheless, there is nothing in the record to demonstrate, what, if any, manufacturing of WCV actually occurred in Malaysia. And, even if Chinese-origin products were further processed or assembled in Malaysia, such processing would not exclude them from the scope of the Orders.

Thus, whether there were some operations performed in Malaysia or none, a scope referral to Commerce was not needed and CBP acted within its authority in determining that the WCV are of Chinese origin, and therefore, squarely within the scope of the AD/CVD Orders. We confirm that CBP acted properly when it found that it was able to determine that WCV are covered merchandise based upon the contents of the record without a scope referral to Commerce.

As explained *supra*, there is no dispute as to whether the WCV are in-scope merchandise, if of Chinese origin; the only issue was the country of origin. CBP found, based upon direct and circumstantial evidence in the administrative record, that neither Rowenda nor any company in Malaysia had the capacity to produce the WCV. Specifically, the record contains a third-party corporate investigator's statement who performed a site visit, contacted Rowenda, and conducted research during the pertinent period of investigation. This investigation resulted in statements from principals of Rowenda that it "works with Chinese producers and engages in transshipment of Chinese-origin merchandise, including wooden cabinets produced in China. Specifically, the source stated that Rowenda Kitchen repackages the products from China and that the company generally is able to unload the products from one container and repackage and reload the products

³³ *Id.*

³⁴ See 85 Fed. Reg. 22,126 and 85 Fed. Reg. 22,134.

³⁵ Skyview's Request for Administrative Review, pg. 19.

into another container for export to the United States.”³⁶ The third-party site visitor also stated “there did not appear to be any substantive manufacturing operations at Rowenda Kitchen’s factory in Malaysia.”³⁷ Additionally, the site visitor noted that there was only minor equipment in the factory and the factory did not appear to have any substantial manufacturing operations.³⁸ With this third-party investigation evidence, evasion of AD/CVD through the transshipment of WCV by Rowenda is substantiated.

Additionally, in the record are import data and research to demonstrate that, since the imposition of AD/CVD on WCV from China in August 2019, imports of this merchandise to the United States from China have significantly decreased, and imports from Malaysia have significantly increased.³⁹ MasterBrand explains: “foreign market research on certain companies in Malaysia indicates that Rowenda Kitchen, which appears to have been originally formed in April 2009, is transshipping Chinese goods to the United States.”⁴⁰ The import data also shows an influx of WCV shipments from China to Malaysia, during the same time period. This extensive import data also provides additional evidence to support a finding of evasion, as described above.

We note that Skyview does not dispute the accuracy of these statements and research, but only that, because of their confidential nature, they should be stricken from the record, and that Skyview submissions, which it concedes contain discrepancies, should outweigh all other evidence.⁴¹ Skyview makes no arguments to refute the statements of transshipment declared by the third-party investigator. For Skyview to overcome the evidence provided of evasion, it needed to provide evidence that its entries of WCV, which it claims were manufactured by Rowenda, were in fact of Malaysian origin and not merely transshipped from China.

Next, Skyview contends that, in its June 7th Submission, it provided all the relevant production information needed to corroborate that its entered WCV are of Malaysian origin, and therefore the determination of evasion based on previously submitted information or omissions was improper. Skyview contends that production records are not defined by EAPA and that the documents it submitted should be considered substantially sufficient. However, as Skyview concedes, the June 7th Submission contained many discrepancies, backdated and unsigned documents. The main discrepancy is that of the Malaysian supply chain; in its July 1, 2021, written argument, Skyview reiterates: “Manufacture’s affidavit from Rowenda of the raw materials used in the production of the good stating that the plywood is

³⁶ See TRLED Initiation Memo (Skyview) at page 2 (Nov. 13, 2020); *see also*, MasterBrand’s Allegation (Skyview) (Public Version) at Exhibit 8 (Declaration of Site Visit Investigation). We find it is telling that a principal of Rowenda expressly made statements that Rowenda repackages Chinese-origin WCV, describing the “turnaround time to transship Chinese cabinets to the United States.” *See id.* We also note, while these photos are redacted, as business confidential, the third-party site investigator provided widely different pictures of the manufacturer’s facilities as compared to Skyview’s submitted photos, purporting to establish factory capabilities and production.

³⁷ *Id.*

³⁸ *Id.* at pg. 10 and Exhibit 9 (Declaration of Site Visit Investigation).

³⁹ *Id.* at Exhibits 6 - 8 (Import Data).

⁴⁰ *Id.* at pg. 9 (citing Exhibit 3)(Bill of Lading Data).

⁴¹ We note that Skyview also provided business confidential information, including an affidavit from Rowenda, dated February 8, 2021, declaring the source of its raw materials, as well as invoices and other commercial documentation; however, Skyview does not seek to have its confidential submissions stricken.

from a Malaysian supplier, Besgrade Plywood Sdn Bhd (submitted February 9, 2021)” (“Besgrade”).⁴² However, in its Exhibit 11 – Supply Chain Documents, submitted a few weeks earlier with Skyview’s June 7th Submission, Besgrade does not appear at all, instead Roxy, Wild Industries Sdn Bhd, Mohd Sobri Bin Md Daud (“Wild Industries”), and Hupp Li Timber Sdn Bhd (“Hupp Li Timber”) are the purported suppliers. Additionally, Skyview concedes that certifications and affidavits are backdated, and that its updated purchase order numbers and other information vary, but instead contends that because the variances and inconsistencies are minor, these documents properly account for a Malaysian supply chain.⁴³

Specifically, we find that the June 7th Submission, is inadequate to substantiate Skyview’s claim of Malaysian-origin WCV. In its June 7th Submission, Skyview provided the following public exhibits, which we have reviewed and summarized in detail below:

Exhibit 1. “Bill of Material” dated September 9, 2019, between Rowenda and KC Cabinet for “Ivory Octagonal door-S3”; Ref No. R190920-S3. - This document contains a purported “production schedule” of different model numbers of component, drawers, frames, door panels, and carcasses. There are no dates included in the “production schedule” or other information to link this order to any of the Roxy-related documents.

Exhibit 2. “Rowenda Buyer Order – R190920-S3” - This document lists quantities and model numbers and does not contain any descriptions, dates, or other identifying information.

Exhibit 3. “Rowenda’s Schedule” - This document, on Rowenda letter head, contains dates of receipt of materials such as plywood, received November 2019 for Order R190920-S3. We note that this document does not include details on suppliers or where this material was obtained.

Exhibit 4. “Rowenda’s Stock Control List” - This document indicates that plywood, of different sizes, was received in Rowenda’s inventory, between July 1, 2019, and December 31, 2019, and lists R-190920-S3 in the remarks section, corresponding to the plywood sent “out” of the inventory. The source of the plywood is not provided, nor is any further information provided which demonstrates that the randomly listed plywood was used in the construction of Skyview’s WCV.

Exhibit 5. “Rowenda Sub-Contractor Cooperation Contract” - This document is between Rowenda and Roxy, dated August 6, 2019. This agreement states that Roxy will be responsible for all materials used for production, will choose applicable glue used, and prepares the materials for production, assembly process, and delivery to Rowenda’s factory.

⁴² See Skyview’s Written Arguments (July 1, 2021). We note that the February 9, 2021, affidavit referenced in Skyview’s July 1, 2021, written argument is from the Director of Rowenda, and contains the names of Rowenda’s suppliers, including Besgrade, which was originally redacted as business confidential, but later divulged in Skyview’s April 8, 2021, public RFI response, none of which were included in the June 7th Exhibit 11 “Supply Chain Document.” Additionally, Skyview provided invoices from these suppliers to Rowenda in its initial April RFI responses. We further note, in the February 8, 2021, affidavit and Skyview April submissions, Roxy was noticeably missing; however, in the June 7th Submission, Skyview provided numerous public 2019 purchase orders and commercial documents between Rowenda and Roxy.

⁴³ See Skyview’s Request for Administrative Review at pgs. 17 and 21.

Roxy is also listed as responsible for the purchase of raw materials and arrangement of the production schedule. Rowenda is responsible for profile cutters needed for production.

Exhibit 6. “Roxy Stock List” - This document contains a list of cartons, coming in and out of Roxy’s inventory between September 6, 2019, and December 21, 2019. This document lists R190920-S3 and several purchase order numbers.

Exhibits 7 & 8. “Roxy Weekly Production Schedule”, October 2019 and November 2019” - These documents purport to list the schedule of molding, tenon drilling, frame/parts assembly, drilling, and applying various coats of paint. However, it is not evident how this document demonstrates the Malaysian production of Skyview’s order R190920-S3 or any other WCV products imported into the United States.

Exhibit 9. “Rowenda Supplier Invoices” - This exhibit contains various invoices between Rowenda and various companies, such as Besgrade, for plywood, polyster, veneer, boards, and other raw materials. Roxy is included in this exhibit with several invoices/purchase orders dated between September 9, 2019, and December 21, 2019, for “Kitchen Cabinet Part”. The Roxy purchase orders do not provide any further details or indicate what raw materials or final products were purchased.

Exhibit 10. “Roxy Purchase Invoices” – This exhibit contains various invoices between Roxy and suppliers of fiberboard, MDF board, lamination boards, thinner, sealer, lacquer, stains, and a significant amount of carton boxes, dated between August 6, 2019, and December 21, 2019. These invoices, while they contain some board purchases, do not reflect the quantities of materials that would be needed to create permanent wooden cabinets; it appears that most of the purchases made by Roxy were for finishing staining products and shipping cartons, and the documents do not link these materials to any Skyview imports.

Exhibit 11. “Supply Chain Document” - In Exhibit 11, as noted above, Skyview outlines the following supply chain, by making notes on the commercial invoices found in Exhibits 9 and 10, and also includes invoices from purported 3rd and 4th tier suppliers. Here, Skyview claims that Roxy is listed as the “1st tier supplier” who sells “Kitchen Cabinet Parts” under various model numbers to Rowenda. Next, Skyview indicates that Wild Industries is the “2nd tier supplier” and “3rd tier supplier” by providing Roxy with “lamination boards”. Lastly, Skyview lists Hupp Li Timber as the “4th tier supplier”, which provides Wild Industries with “KD rubber wood” and dry wood.

Exhibit 12. “Supply Chain Map & Appendix” – Skyview’s summary and chart of the purported supply chain.

Exhibit 13. Public Information for Roxy, Roxy Wood Suppliers, and Rowenda Wood Suppliers – Financial and business information of the above listed entities.

Exhibit 14. Miscellaneous Roxy Documents – Financial and employee salary tables.

In summary, these documents purport to demonstrate that KC Cabinets, also known as Skyview, placed an order with Rowenda (R190920-S3), and that Roxy is the Malaysian subcontractor of Rowenda, responsible for assembly of the WCV materials. However, the

documents fail to rise to the level of production documents needed to substantiate Skyview's claim that the actual production of its WCV occurred in Malaysia. Specifically, Skyview provided various invoices, without providing a thorough connection to the merchandise imported into the United States. Also, as mentioned above, these documents contradict Skyview's April RFI submissions, which failed to make mention of Roxy as the supplier of raw materials. Additionally, these exhibits contradict themselves. In Exhibit 3, it purports that Rowenda obtained the raw materials and created a production schedule as it relates to R190920-S3; however, the exhibits related to Roxy purport that Roxy was the supplier of the raw materials and created the production schedule, as well as performed the assembly of the materials then sold to Rowenda as "kitchen cabinet parts". Lastly, as the September 16th Determination explained, the documents described above, do not demonstrate actual production, *i.e.*, that the imported WCV were actually manufactured by Roxy or Rowenda. There is nothing to indicate that the WCV at issue were produced with the materials and parts included in the various provided invoices, and the documentation does not confirm the country of origin of the WCV as being Malaysian.

As indicated above, the evidence shows that WCV were, admittedly sourced from China, received by Rowenda in Malaysia, and then transshipped to the United States. Any assembly performed by Roxy or Rowenda is of no consequence, if as we find here, the records do not show that the raw materials themselves were sourced from Malaysia (or some other country, other than China). As such, even if the June 7th Submission were probative, it does not constitute sufficient production records, as Skyview contends.

In this regard, Skyview only argues that these credibility issues are of no consequence and that CBP should have taken the opportunity to investigate the accuracy of Skyview's submissions. We disagree; the onus is on Skyview, as the importer, to investigate and know the full production chain of its imports and to provide CBP with accurate information.⁴⁴ Moreover, we do not find, as Skyview contends, that TRLED failed to review these new submissions; to the contrary, TRLED extended the deadline for Skyview to make such submissions, fully reviewed the information and rightfully determined it was not probative, and potentially fraudulent, due to its numerous inconsistencies. Specifically, TRLED found "[s]uch documentation Skyview associates with Rowenda Kitchen and/or Roxy are not credible . . . [t]he only reference in the June 7, 2021, submission to any involvement with the submission by Rowenda Kitchen or Roxy staff is a vague allusion to the name of one individual Skyview had in a prior submission publicly identified as a contact at Rowenda Kitchen."⁴⁵ It appears that in an attempt to respond to TRLED's RFIs, Skyview just submitted a hodgepodge of any documents it could obtain, or potentially create, without verifying their accuracy and relation to its entries under investigation, and with no regard to their discrepancies. Therefore, we find that the June 7th Submission does not negate the remaining evidence in the administrative record, which demonstrated evidence of evasion. The information is not credible, and we determine it to be unreliable.

⁴⁴ Individuals presenting false information to CBP officers may be liable for sanctions under civil and criminal fraud statutes. *See* 18 U.S.C. § 542 (criminal) and 19 U.S.C. § 1592 (civil). Additionally, under 19 C.F.R. § 111.32, brokers are also prohibited from making false statements to CBP. *See also*, <https://www.cbp.gov/sites/default/files/documents/Importing%20into%20the%20U.S.pdf>.

⁴⁵ *See* September 16th Determination, at pg. 9.

Lastly, we find that Skyview’s argument concerning hearsay and relevancy under the APA does not have any bearing on our finding of substantial evidence of evasion in this case. As Skyview mentions, hearsay evidence is admissible in administrative proceedings, if relevant.⁴⁶ However, Skyview contends, that “business confidential statements are certainly disallowed hearsay and should be removed from the administrative record and not be considered.”⁴⁷ Skyview also argues that the foreign market research is biased and unreliable. We do not agree. On the contrary, the EAPA regulations provide specific authority for parties to provide business confidential information and parties are only entitled to public summaries; there is no restriction on CBP’s ability to review and consider such business confidential information.⁴⁸ The administrative record, including the business confidential statements, contains substantial evidence that entries of covered merchandise were made as “01” entries, by Skyview, but were of WCV produced in China, and merely repackaged in Malaysia. Additionally, we note that, although it was MasterBrand that provided the research, the foreign market research and third-party corporate investigation, were conducted by disinterested entities, including U.S. government agencies, not parties to the case; therefore, we find no reason to conclude that this information is biased or irrelevant, as Skyview contends.⁴⁹

The record shows that Skyview 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 . . .’”⁵⁰ 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 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.⁵¹ In our view, the record as a whole, does not support Skyview’s assertions that CBP should conclude that entry number xxx-xxxx740-9 was not subject to the AD/CVD Orders. TRLED noted discrepancies in Skyview’s submissions, including backdated

⁴⁶ See Skyview’s Request for Administrative Review, pg. 14 (internal citations omitted).

⁴⁷ *Id.* at pg. 20. We note that Skyview concedes “it is nonsensical that Skyview would not disclose Roxy’s involvement. Skyview was unaware of Roxy’s involvement until shortly before disclosing Skyview’s June 7, 2021 new factual submission.” *Id.* at 17. Thus, in its statement, Skyview also concedes that it failed to properly verify the accuracy of the information or the full supply chain for its WCV imports, prior to June 2021.

⁴⁸ See 19 C.F.R. § 165.4 and 5 U.S.C. § 552. Also, we note that the CIT recently opined on the rights of parties in EAPA investigations to have access to business confidential information. In *Royal Brush Mfg., Inc.*, the CIT found that a party is only entitled to public summaries of the business confidential information pursuant to 19 C.F.R. § 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. *Royal Brush Mfg., Inc. v. United States*, 483 F. Supp. 3d 1294 (Ct. Int’l Trade 2020) (remanded on other matters). Regardless, the ability of RR to opine on whether procedural due process violations occurred in this case is not contemplated by the statute or implementing regulations.

⁴⁹ See MasterBrand’s Allegation (Skyview) (Public Version) (*citing* foreign research provided by: USITC {U.S. International Trade Commission} Dataweb, HTS statistical reporting number 9403.40.9060, www.usitc.gov, at Exhibit 1; Import Statistics, dataweb.usitc.gov, at Exhibits 6-7; Malaysian Import Statistics from China, Department of Statistics Malaysia, at Exhibit 8; and Declaration of Site Visit Investigation at Exhibit 9.

⁵⁰ *Diamond Tools Tech. LLC v. United States*, LEXIS 155, 165, SLIP OP. 2021-151 (Ct. Int’l Trade 2021) (internal citations omitted).

⁵¹ See *id.*, and 19 U.S.C. § 1517(a)(5)(A). We also note that Skyview does not assert that there was a clerical error, for which the EAPA statute does carve out an exception.

affidavits and inconsistent “supply chain” documents; the manufacturer did not provide production records to explain those discrepancies, but instead signed sworn affidavits attesting to the use of a completely different supply chain. As such, the only support in the record for the position that the entries are of Malaysian origin are purported supply chain and production documents, the accuracy of which is in question.

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

We also note that Skyview’s arguments as to its reliance on information from its customs broker and/or the manufacturer misapprehend the legal responsibilities of an importer when it does business with CBP. Skyview contends that it is a small business with little experience and supplemented this by hiring brokerage and freight forwarder firms to exercise reasonable care.⁵² While we appreciate Skyview’s attempts to comply with the investigation, despite the lack of cooperation from Rowenda, Skyview, 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 Act⁵³ 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.⁵⁴ Therefore, the onus is on Skyview, as the importer of record, to ensure accuracy in the information that is declared to CBP.⁵⁵ Nonetheless, we note that whether an importer of record exercised “reasonable care” is not dispositive in determining whether evasion occurred.⁵⁶

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.

III. Decision

Based upon our *de novo* review of the administrative record in this case, including the requests for administrative review and response, the September 16th Determination of evasion under 19 U.S.C. § 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.

⁵² See, e.g., Skyview RFI Response (Apr. 8, 2021) at pg. 4.

⁵³ See Title VI of the North American Free Trade Agreement Implementation Act, P.L. 103-182, 107 Stat. 2057 (December 8, 1993).

⁵⁴ See <https://www.cbp.gov/sites/default/files/documents/Importing%20into%20the%20U.S.pdf>.

⁵⁵ See HQ H302687 (Feb. 22, 2021) (citing 19 U.S.C. § 1485, 19 C.F.R. Parts 141 and 142).

⁵⁶ 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.”).

Sincerely,

for W. Richmond Beever
Chief, Cargo Security, Carriers & Restricted Merchandise Branch
Regulations & Rulings, Office of Trade
U.S. Customs & Border Protection

Approved by:

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