



January 28, 2022

EAPA Cons. Case No. 7252

PUBLIC VERSION

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Re: Notice of Determination as to Evasion

Parties to the Investigation:

Pursuant to an examination the record in Enforce and Protect Act (EAPA) Consolidated Investigation 7252, U.S. Customs and Border Protection (CBP) has determined that there is substantial evidence that Far East American, Inc. (Far East), Ciel Group, Inc. (Ciel), American Pacific Plywood, Inc. (APPI), InterGlobal Forest (InterGlobal), and Liberty Woods International, Inc. (Liberty Woods) (collectively, the Importers), evaded antidumping duty (AD) and

countervailing duty (CVD) orders by entering into the customs territory of the United States merchandise covered by *AD Order A-570-051*¹ and *CVD Order C-570-052*² (herein after, the *Orders*) on hardwood plywood from China. Substantial evidence demonstrates that the Importers imported Chinese-origin hardwood plywood subject to the orders into the United States and entered the merchandise “for consumption by means of any document or electronically transmitted data or information, written or oral statement, or act that is material or 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 reduce or not being applied with respect to covered merchandise.”³

Background

On August 15, 2018, the Trade Remedy Law Enforcement Directorate (TRLED) within CBP’s Office of Trade initiated an investigation⁴ pursuant to Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, commonly referred to as the “Enforce and Protect Act,” or “EAPA.” On July 25, 2018, CBP formally acknowledged receipt of the allegations, properly filed by Plywood Source, LLP (Plywood Source or *allegor*).⁵ The allegations reasonably suggested that the Importers evaded the *Orders* by entering into the customs territory of the United States, Chinese-origin hardwood plywood that was transhipped through Vietnam and falsely declared of Vietnamese origin.⁶

The Allegations provide evidence supporting a reasonable suspicion of a transshipment scheme in which the Importers were involved. Specifically, the Allegations contend that Vietnamese manufacturer/exporter Vietnam Finewood (VN Finewood) was established and began operations in Vietnam subsequent to the Department of Commerce’s (Commerce) *Orders* on hardwood plywood from China. To support this conclusion, the *allegor* began compiling data on VN Finewood shortly after the company began operations in Vietnam in April 2018. According to the Allegations, VN Finewood does not possess the capability to produce the volume of merchandise that was exported to the named U.S. importers, and is instead importing subject hardwood plywood, ostensibly and incorrectly identified as plywood cores, from China, and is subsequently shipping the subject merchandise to the United States falsely as a product of Vietnam.⁷

¹ See *Certain Hardwood Plywood from the People’s Republic of China: Antidumping Order*, 83 FR 504 (January 4, 2018) (*AD Order*).

² See *Certain Hardwood Plywood from the People’s Republic of China: Countervailing Duty Order*, 83 FR 513 (January 4, 2018) (*CVD Order*).

³ See 19 CFR 165.1.

⁴ See Memoranda to the File, “Initiation of Investigation for EAPA Case Number 7252,” “Initiation of Investigation for EAPA Case Number 7253,” “Initiation of Investigation for EAPA Case Number 7254,” “Initiation of Investigation for EAPA Case Number 7255,” “Initiation of Investigation for EAPA Case Number 7256,” dated August 15, 2018.

⁵ See TRLED Notification of Receipt emails dated July 25, 2018, and entitled “EAPA Case No. 7252,” “EAPA Case No. 7253,” “EAPA Case No. 7254,” “EAPA Case No. 7255,” “EAPA Case No. 7256.”

⁶ See Plywood Source (“PS”) Allegation and Exhibits, dated July 9, 2018, for Far East, Ciel, APPI, InterGlobal, and Liberty Woods (collectively, the Allegations).

⁷ See “PS Allegation Narrative, Flow Chart,” dated September 11, 2019.

In support of this claim, the Allegations provide two videos taken within the VN Finewood facility.⁸ In the first video, workers at VN Finewood are shown offloading crates purported to contain finished hardwood plywood from China. As the crates are stacked within VN Finewood’s facility, a worker is instructed to remove a “Made in China” label from the crate.⁹ Further video footage of the facility depicts many similar crates, stacked floor to ceiling, and little machinery or presses typically used in the production of finished hardwood plywood.

The Allegations also indicate that VN Finewood shipped an aggregate of more than 200 containers of hardwood plywood to the United States during VN Finewood’s first month of operation, yet given its limited machinery, could produce only 30 containers of hardwood plywood per month, and only if operating on a 24-hour/7-day a week schedule.¹⁰ The Allegations also contain Vietnamese import and export data for VN Finewood. Specific to June 2018, data indicates that VN Finewood imported merchandise described as “[product specification]”.¹¹

According to multiple online services, including Google Translate, the phrase is translated to “[product]”. The merchandise description and dimensions are indicative of finished hardwood plywood, complete with face and back laminated veneers, and cut to finished length and width, in which no further processing in Vietnam is necessary, except for possible minor alterations which would not remove the merchandise from the scope of the *Orders*.

To further substantiate this claim, the second video shows workers at VN Finewood inspecting shipping documents and breaking the seal on container [number].¹² The container is opened to reveal crates visibly pre-packaged and marked with the name and logo for InterGlobal Forest. The video reveals a worker inspecting a delivery notice of the container to “Vietnam Finewood.” The container is subsequently taken into the VN Finewood facility ostensibly to be shipped directly in the pre-packaged crate to InterGlobal. The Allegations include public import/export data verifying that container [number] originated as a full container in Jiangsu, China and was discharged full in Haiphong, Vietnam on [date].¹³ The bill of lading corresponding to container [number] indicates [#] cubic meters of hardwood plywood within the shipment from China to VN Finewood. The VN Finewood import data provided in the Allegations indicate the product description as “[product specification]”,¹⁴ which is consistent with product descriptions on bills of lading from Chinese manufacturers to VN Finewood during the EAPA period of review, as summarized below.

The Allegations contain additional bill of lading data showing VN Finewood imports from China from July through October 2018, indicating merchandise descriptions and dimensions similar to the June 2018 data noted above.¹⁵ For example, the Vietnamese customs data for Vietnam

⁸ See Allegations, “Link to Video of Workers Changing Labels at VN Finewood,” and “PS Allegation Attachment, Video of InterGlobal,” dated July 9, 2018.

⁹ *Id.*

¹⁰ See “PS Allegation Narrative, Flow Chart” at 3, September 11, 2018.

¹¹ See “PS Factual Information, Imports of Plywood to Finewood for June 2018,” July 9, 2018.

¹² See “PS Allegation Attachment, Video of InterGlobal,” July 9, 2018.

¹³ See “PS Allegation, Shipment Link – Cargo Tracking from China to Vietnam,” July 9, 2019.

¹⁴ See “PS Factual Information, Imports of Plywood to Finewood from China, July 2018,” July 9, 2019.

¹⁵ See Plywood Source Factual Information submission at 1 (providing Vietnamese Customs data for imports of plywood to VN Finewood from China during the period of June - October 2018). The Vietnamese import/export data submitted by the allegor is in a spreadsheet and does appear to be an original source document. The allegor has

Finewood’s Chinese imports contain products described as “[product specification],”¹⁶ which translates to “[product specification

]. The import data and product descriptions support the alleged claim that VN Finewood imported finished hardwood plywood from China, and align with the video depicting finished, pre-packaged hardwood plywood ready to ship to the U.S. importers. For the foregoing reasons, CBP determined that there was a reasonable suspicion of evasion by the Importers in entries of hardwood plywood exported by VN Finewood into the customs territory of the United States. As a result, CBP issued a notice of initiation of investigation and interim measures.¹⁷

Following the initiation of the investigation, pursuant to 19 CFR 165.5, CBP issued requests for information (RFI) questionnaires to each of the Importers, as well as to VN Finewood.¹⁸ Responses were submitted by each of the parties.¹⁹ On May 16 and 17, 2019, CBP conducted an on-site verification of information submitted by the Importers and VN Finewood at VN Finewood’s facilities in Vietnam.²⁰ Parties submitted written arguments and responses to written arguments on August 9 and 26, 2019.²¹

Covered Merchandise Referral

Section 517(b)(4)(A) of the Tariff Act of 1930, as amended (the Act) states that “{i}f the {CBP} Commissioner receives an allegation... and is unable to determine whether the merchandise at issue is covered merchandise, the Commissioner shall—(i) refer the matter to the administering authority to determine whether the merchandise is covered merchandise pursuant to the authority of the administering authority under title VII.” Section 517(a)(3) of the Act defines “covered merchandise” as “merchandise that is subject to (A) an antidumping duty order issued under section {736 of the Act} or (B) a countervailing duty order issued under section {706 of the

attested to its validity and indicated that the information is official Vietnamese customs data, provided by [persons], who wish to remain anonymous.

¹⁶ See “PS Factual Information, Imports of Plywood to Finewood from China, 2018,” dated November 21, 2018.

¹⁷ See “Notice of Initiation of Investigation and Interim Measures,” dated November 20, 2018. (NOI)

¹⁸ CBP issued the initial RFIs to Importers on February 4, 6, and 7, 2019, and supplemental RFIs to the Importers on April 3, 2019. CBP issued the initial RFI to VN Finewood on February 25, 2019, and supplemental RFIs on April 1, 2, 11, and 24, 2019.

¹⁹ See “APPI Importer Request for Information” response and exhibits dated March 4, 2019 (APPI RFI Response); “APPI Importer Supplemental Request for Information” dated April 9, 2019 (APPI Supp RFI Response); “CIEL Group Response to Request for Information” and exhibits dated March 4, 2019 (CIEL RFI Response); “Far East American Questionnaire Response” and exhibits dated March 4, 2019 (Far East RFI Response); “Far East American Supplemental Questionnaire Response,” dated April 17, 2019 (Far East Supp RFI Response); “InterGlobal Questionnaire Response” and exhibits dated March 6, 2019 (InterGlobal RFI Response); “InterGlobal Forest Supplemental Questionnaire,” dated April 17, 2019 (InterGlobal Supp RFI Response); “Liberty Woods Response to April 3, 2019 Supp. RFI,” dated April 17, 2019 (Liberty RFI Response); “Vietnam Finewood Questionnaire Response,” and exhibits dated March 22, 2019 (VN Finewood RFI Response); “Vietnam Finewood 2nd Supplemental Request for Information Questionnaire Response,” and exhibits dated April 9, 2019 (VN Finewood 2nd Supp RFI Response); “Vietnam Finewood 3rd Supplemental Request for Information Questionnaire Response,” and exhibits dated April 9, 2019 (VN Finewood 3rd Supp RFI Response); and “Vietnam Finewood Questionnaire Response,” dated April 18, 2019 (VN Finewood 4th Supp RFI Response).

²⁰ See “Verification Report, EAPA Cons. 7252,” dated July 22, 2019 (Verification Report).

²¹ See Liberty Wood Written Argument dated August 9, 2019; InterGlobal Written Argument dated August 9, 2019; PS Written Argument dated August 9, 2019; Far East American Written Argument dated August 9, 2019; InterGlobal Response to Written Argument dated August 26, 2019; and Far East American Response to Written Argument dated August 26, 2019.

Act}.”

The scope of the *Orders* on “hardwood and decorative plywood, and certain veneered panels” is “defined as a generally flat, multilayered plywood or other veneered panel, consisting of two or more layers or plies of wood veneers and a core, with the face and/or back veneer made of non-coniferous wood (hardwood) or bamboo.”²² CBP could not determine whether two-ply panels of Chinese origin, which are further processed in Vietnam to include the face and back veneers of non-coniferous wood, are covered by the scope of the *Orders*. Thus, CBP submitted a request for a covered merchandise referral to the Department of Commerce (Commerce) on September 16, 2019.²³

As a result of the covered merchandise referral, the deadlines in this EAPA investigation were stayed pending Commerce’s issuance of a determination.²⁴ On January 27, 2022, Commerce transmitted the results of its determination to CBP.²⁵ Commerce informed CBP that it found two-ply panels are “veneered panels” covered by the scope of the *Orders*, based on an analysis under 19 CFR 351.225(k)(1).²⁶ Commerce also assessed whether substantial transformation occurred and applied the following analysis: (1) whether the processed downstream product falls into a different class or kind or product when compared to the upstream product; (2) whether processing in a third country changes the important qualities or use of the component; (3) what are the nature and sophistication of processing; (4) what are the cost of production/value added to the product; and (5) how extensive is the level of investment.²⁷ Commerce found that none of the factors in the substantial transformation analysis weigh in favor of finding that the subject merchandise used by VN Finewood (Chinese-origin two-ply panels) are substantially transformed when used to produce hardwood plywood in Vietnam. Hence, Commerce found that that the country of origin of such hardwood plywood is China, and thus subject to the *Orders*.²⁸

Analysis as to Evasion

Under 19 USC 1517(c)(1)(A), to reach a 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 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 or any amount of applicable antidumping or

²² See *Orders*.

²³ See Letter from Regina Walton, Acting Director, Enforcement Operations Division, “Scope Referral Request for merchandise under EAPA Cons. Investigation 7252, imported by Far East America, Inc., CIEL Group, American Pacific Plywood, Interglobal Forest, and Liberty Woods International, Inc., (“importers”) and concerning the investigation of evasion of the antidumping and countervailing duty orders on hardwood plywood from the People’s Republic of China (A-570-051 and C-570-052),” dated September 16, 2019 (Covered Merchandise Referral).

²⁴ See 19 CFR 165.16(d).

²⁵ See Letter from Commerce, “Covered Merchandise Referral Regarding EAPA Investigation No. 7252,” dated January 27, 2022 (Covered Merchandise Referral Transmission).

²⁶ See Covered Merchandise Referral Transmission. CBP originally referred to the products at issue as “two-ply cores” and in Commerce’s final determination, Commerce described the products at issue as “two-ply panels” of Chinese origin.

²⁷ *Id.*

²⁸ *Id.*

countervailing duties being reduced or not being applied with respect to the merchandise.”²⁹ As discussed below, the record of this investigation indicates that covered merchandise entered the United States through evasion, and that there is substantial evidence that indicates the Importers’ imports were merchandise entered through evasion, resulting in the avoidance of applicable AD/CVD deposits or other security.

Central to this investigation is the allegor’s claim that VN Finewood lacks the manufacturing capacity to produce the volume of hard plywood that it exports, and thus, at least in part, transships covered merchandise from China through its facility in Vietnam to the U.S. importers named in the Allegations.³⁰ VN Finewood’s limited production capacity is corroborated not only by the Importers, but by VN Finewood itself.³¹ Representative of this situation is an RFI response from Far East, in which it stated that in early 2018, it was informed by VN Finewood that VN Finewood intended to use existing local Vietnamese hard plywood factories to produce its hardwood plywood cores consuming, in part, imported veneers from China.³² In response to CBP’s question to determine the steps that Far East took to verify the Vietnamese producers that VN Finewood used to outsource production of hardwood plywood cores, Far East stated that “{VN} Finewood declined to show us their suppliers.”³³ Further Far East declared that “it was made clear to {VN} Finewood, just like with any veneer supplier, it was {VN} Finewood’s responsibility to ensure the subcontractor was supplying them wood that was legally source.”³⁴

Far East’s response is consistent with the other Importers’ knowledge of VN Finewood’s claim of outsourcing local Vietnamese subcontractors to complete the hardwood plywood cores used in the finished product. The response is also indicative of the Importers’ failure to verify the capability, or existence of, VN Finewood’s domestic sources. The Importers continued to place orders with VN Finewood based only on VN Finewood’s assurance, or the Importers’ cursory review of unverified records stating that VN Finewood was able to supplement its production capacity by outsourcing hardwood plywood core production through local sources.³⁵

This factor is significant given the underlying premise of the Allegations, which contend that VN Finewood lacks the capacity to produce the quantity of hardwood plywood that it exports and is thus transshipping Chinese-origin hardwood plywood to the United States. The failure of the Importers to verify VN Finewood’s outsourcing of hardwood plywood cores does little to refute evidence submitted by the allegor showing pre-packaged, Chinese-origin hardwood plywood

²⁹ See 19 CFR 165.1.

³⁰ See “PS Allegation Narrative” at 2. September 11, 2019.

³¹ See RFI responses. Each respondent substantiated that VN Finewood possessed limited machinery and production capacity and acknowledged that VN Finewood was dependent on outsourcing production to meet its orders.

³² See Far East Supp RFI Response at 2.

³³ *Id.* at 4.

³⁴ *Id.*

³⁵ See InterGlobal Supp RFI Response at 2. In its response to CBP’s question regarding steps InterGlobal took to verify the producers VN Finewood to outsource production, InterGlobal stated that it was “aware” of the local platform manufacturers, and “according to our understanding” Finewood provided raw materials to the local platform manufacturers. Nowhere does InterGlobal, or any of the Importers, make serious attempts to verify VN Finewood’s sources, nor mention that this lack of verification influenced their decision to purchase from VN Finewood.

arriving at VN Finewood's facility, which, combined with other information on the record, indicates that VN Finewood was importing material other than two-ply panels from China.³⁶

This is evident in the analysis of documents submitted by VN Finewood in its RFI responses to CBP. During the period of investigation, VN Finewood signed a contract with [company] on [date] for the purchase of [#] cubic meters of [specification] hardwood plywood from China. The RFI response contains the contract, invoice, packing list, bill of lading, and import record listing the HTS as [number].³⁷ VN Finewood indicated that the dimensions of its hardwood plywood products to the customer are [product specification].³⁸ The merchandise description and dimensions are indicative of finished hardwood plywood, complete with face and back laminated veneers, and cut to finished length and width, in which no further processing in Vietnam is necessary, therefore it retains its country of origin as China and is covered by the scope of the *Orders*.

Exhibit 8 of VN Finewood's RFI response are documents related to its imports of two-ply panels from China, central to CBP's covered merchandise referral to Commerce, from [date]. As stated above, Commerce determined that the two-ply panels are subject to the scope of the *Orders*, the further processing of the two-ply panels in Vietnam does not result in a substantial transformation of the product, and that the country of origin of VN Finewood's hardwood plywood that it produced using two-ply panels imported from China and that it exported to the United States remains China.³⁹ This is contrary to the company's explicit statement that it did not source finished hardwood plywood and resell to the United States.⁴⁰

Exhibit 9 of VN Finewood's RFI response are documents related to its purchases from suppliers in Vietnam. VN Finewood lists purchases of hardwood plywood in finished dimensions, *i.e.*, ranging from [product specification], from [date], and other raw materials of varying dimensions.⁴¹ Again, this is contrary to the company's statement that it did not source finished hardwood plywood and resell to the United States.

Record evidence indicates that VN Finewood could not meet its production demands and purchased a varying combination of hardwood plywood, semi-finished goods, *i.e.*, core/core platforms and/or two-ply panels, and veneers from China and domestic suppliers.⁴² CBP concluded in its verification report that because VN Finewood outsourced its production of core/core platforms, it was not possible to accurately connect the production capacity of VN Finewood's manufacturing facility to its sales orders.⁴³ Additionally, VN Finewood stated that its "{r}aw material purchases are not tied to each sale, *i.e.*, we do not make each purchase of a raw material to fulfill a specific sale. Therefore, we cannot differentiate raw material purchases by sales destination."⁴⁴ Furthermore, record evidence indicates that VN Finewood purchased

³⁶ See PS Factual Information dated July 9, 2019. See also VN Finewood RFI Response at Exhibit 8: Imported Materials; #77.

³⁷ See VN Finewood RFI Response at Exhibit 8: Imported Materials; #77.

³⁸ *Id.* at Exhibit 2.

³⁹ See Covered Merchandise Referral Transmission.

⁴⁰ See VN Finewood RFI Response at 5.

⁴¹ *Id.* at Exhibit 9.

⁴² *Id.*

⁴³ See Verification Report at 6.

⁴⁴ See VN Finewood 4th Supp RFI Response at 1 and 2.

[number] cubic meters of two-ply panels in [product specification] from China, [#] cubic meters in varying finished plywood dimensions from domestic suppliers, but it sold a total of [#] cubic meters of plywood in 2018, foreign and domestic.⁴⁵ VN Finewood officials indicated at the CBP verification that using the two-ply panels from China allowed the company to increase production by [#] percent.⁴⁶ However, because there is no feasible method on the record to distinguish between Chinese-origin merchandise subject to the *Orders* transshipped by VN Finewood, the company's actual production, and whether the sales containing Chinese-origin merchandise were foreign or domestic, CBP determines that all of the Importers' entries from VN Finewood entered into the customs territory of the United States through evasion by means of transshipment. In any case, the number of two-ply panels purchased from China by VN Finewood suggests the majority of its finished products were Chinese in origin.

Consequently, based on the full record of this investigation, CBP determines that there is substantial evidence the Importers entered merchandise into the United States through evasion. Based on the aforementioned analysis, CBP determines that substantial evidence exists demonstrating that the Importers entered Chinese-origin hardwood plywood transshipped through Vietnam into the United States and failed to pay AD/CVD duties on the merchandise produced in China that was subject to the *Orders*. Although the covered merchandise was likely comingled, because VN Finewood purchased most of its two-ply panels from China and because no reliable evidence exists on the record to differentiate between Vietnam-origin and Chinese-origin hardwood plywood, all covered merchandise that the Importers entered from VN Finewood during the period of investigation is subject to the AD/CVD rates from hardwood plywood from China. Because the Importers did not declare that the merchandise was subject to the *Orders* upon entry, the requisite cash deposits were not collected on the merchandise.

⁴⁵ *Id.* at Exhibit SQ4-1 and SQ4-2.

⁴⁶ *See* Verification Report at 6.

Actions Taken Pursuant to the Affirmative Determination of Evasion

In light of CBP's determination that the Importers entered merchandise into the customs territory of the United States through evasion, and pursuant to 19 USC 1517(d) and 19 CFR 165.28, CBP will suspend or continue to suspend the liquidation for all unliquidated entries imported by the Importers, that are subject to EAPA consolidated investigation 7252 and continue suspension until instructed to liquidate these entries. For those entries previously extended in accordance with the interim measures, CBP will rate adjust and change those entries to type 03 and continue suspension until instructed to liquidate these entries. CBP will also evaluate the Importers' continuous bonds in accordance with CBP's policies and may require single transaction bonds as appropriate. None of the above actions precludes CBP or other agencies from pursuing additional enforcement actions or penalties.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian M. Hoxie". The signature is fluid and cursive, with the first name being the most prominent.

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