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Washington, DC 20002



**U.S. Customs and
Border Protection**

June 12, 2023

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OT: RR:BSTC:PEN H330744 GCS

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Re: Enforce and Protect Act (“EAPA”) Case Number 7705; *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); Scioto Valley Woodworking, Inc. d/b/a Valleywood Cabinetry; 19 U.S.C. § 1517

Dear Mr. Neeley and Mr. Meisner:

This is in response to the request for *de novo* administrative review of a determination of evasion dated January 31, 2023, 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 Case Number 7705 (“January 31st Determination”).¹ Scioto Valley Woodworking, Inc. d/b/a Valleywood Cabinetry’s (“Scioto”) request for review, dated March 15,

¹ See Notice of Determination as to Evasion in EAPA Case Number 7705 (Public Version), dated January 31, 2023, available at: <https://www.cbp.gov/sites/default/files/assets/documents/2023-Feb/01-31-2023%20-%20TRLED%20-%20Determination%20of%20Evasion%20%28508%20COMPLAINT%29%20-%20%287705%29%20-%20PV.pdf>: (Last accessed June 7, 2023).

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2023, and its revised submissions, dated March 15, 2023,² and March 17, 2023,³ were submitted to CBP, OT, Regulations & Rulings (“RR”), by Husch Blackwell, LLP, on behalf of Scioto. The request was filed pursuant to 19 U.S.C. § 1517(f) and 19 CFR § 165.41(a). No other parties submitted requests for review. The American Kitchen Cabinet Alliance (“AKCA”) filed a response to the request for review on March 30, 2023. This matter also involves several other companies, as follows. Alno Industry SDN BHD (“Alno”) is a company located in Malaysia, which Scioto alleges is the manufacturer of the subject merchandise. Qingdao Haiyan Group Co. Ltd., Qingdao Druout Woodworking Co., and Qingdao Haiyan Drouot Household Co., Ltd. are Chinese companies related to each other and to Alno and Scioto, which are commonly owned by a Chinese national residing in Qingdao, China, and which TRLED and AKCA allege are the true manufacturers of the subject merchandise.

I. Background

Inasmuch as the facts in this case were fully set forth in the January 31st Determination, we will not repeat the entire factual history herein. In brief, according to the record evidence, on March 30, 2022, TRLED initiated a formal investigation under Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015 (“TFTEA”), in response to an allegation of evasion.

On February 3, 2022, AKCA, a coalition of domestic producers of wooden cabinets and vanities, filed an EAPA allegation against Scioto. CBP acknowledged receipt of the allegation on March 9, 2022.

AKCA alleged that Scioto entered wooden cabinets and vanities and components thereof (“WCV”) of Chinese origin into the United States by means of transshipment through Malaysia 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-570-107.⁴

² Scioto’s original request, submitted on March 15, 2023, listed Alno Industry SDN BHD (“Alno”), the alleged manufacturer of the products at issue, and Scioto, as the parties requesting review. Our office informed Scioto that pursuant to 19 U.S.C. § 1517(f)(1) and 19 CFR § 165.41(a), requests for administrative review may only be filed by parties to the investigation. Parties to the investigation are defined in 19 CFR § 165.1 as “the interested party (or interested parties, in the case of consolidation pursuant to § 165.13) who filed the allegation of evasion and the importer (or importers, in the case of consolidation pursuant to § 165.13) who allegedly engaged in evasion.” Further, we notified Scioto that “{a} foreign manufacturer, producer, or exporter, such as Alno Industry SDN BHD, does not have standing under the statute and regulations to file a Request for Administrative Review and we are unable to accept your submission as currently provided.” Later that day on March 15, 2023, Scioto removed Alno from the request and resubmitted the request to our office listing only Scioto as the requestor.

³ On March 17, 2023, Scioto resubmitted the public version of its request, which added public summaries of confidential information.

⁴ See Notice of Initiation of Investigation and Interim Measures: EAPA Case 7705 (Public Version), dated July 6, 2022 (“Notice of Initiation”), available at: <https://www.cbp.gov/trade/trade-enforcement/tftea/eapa/recent-eapa-actions/eapa-action-notice-investigation-and-interim-measures-eapa-case-7705-wooden-cabinets-and> (Last accessed June 7, 2023).

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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.⁵ Commerce defined the scope of the relevant AD/CVD Orders, in pertinent part, as follows:

{t}he 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 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.⁶

On July 6, 2022, in accordance with 19 CFR § 165.24, CBP issued a Notice of Initiation to all parties to the investigation, stating that the investigation had begun on March 30, 2022, and notifying the parties of CBP’s decision to take interim measures based upon reasonable suspicion that the importer, Scioto, entered covered merchandise into the customs territory of the United

⁵ 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”).

⁶ *Id.* (emphasis in the original and internal citations omitted).

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States through evasion.⁷ The entries subject to the investigation were those entered for consumption, or withdrawn from a warehouse for consumption, from March 9, 2021, one year before CBP's acknowledgment of receipt of the allegation, through the pendency of the investigation.⁸ During the pertinent period of investigation, Scioto entered 18 type "01"⁹ consumption entries of WCV, under subheading 9403.40.9060 HTSUS, with a declared country of origin of Malaysia, into the United States.¹⁰

On January 31, 2023, TRLED concluded that, based on the record, there was substantial evidence to demonstrate that Scioto entered WCV covered by AD Order A-570-106 and CVD Order C-570-107, and falsely declared the WCV as being of Malaysian origin on type "01" consumption entries not subject to an AD or CVD order.¹¹ As a result, no AD/CVD cash deposits or duties were paid with respect to the merchandise.¹² TRLED also applied adverse inferences against Alno, the alleged manufacturer of the WCV at issue here, and by extension, Scioto, for Alno's alleged failure to cooperate by not acting to the best of its ability to comply with TRLED's Requests for Information ("RFIs") during an on-site verification at Alno's facilities in Malaysia.

On March 15, 2023, Scioto filed a timely request for administrative review, and subsequently, on March 15, 2023, and March 17, 2023, Scioto filed revised requests for administrative review. On March 20, 2023, RR sent an email to all parties to the investigation, notifying them of the commencement of the administrative review and the assignment of RR case number H330744. On March 30, 2023, AKCA timely filed a response to Scioto's request for administrative review.

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:

{e}xcept 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

⁷ See Notice of Initiation (Public Version), available at: <https://www.cbp.gov/trade/trade-enforcement/tftea/epa/recent-epa-actions/epa-action-notice-investigation-and-interim-measures-epa-case-7705-wooden-cabinets-and> (Last accessed June 7, 2023).

⁸ See 19 CFR § 165.2.

⁹ Type "01" entries are consumption entries which are not subject to payment of 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 June 7, 2023).

¹⁰ See National Targeting Center ("NTAC")'s Post Receipt Report (Business Confidential Version) (March 22, 2022) at pages 1, 3.

¹¹ Imports that are covered by AD/CVD orders are required to be entered on type "03" AD/CVD entries; merchandise entered on type "01" consumption entries are not subject to payment of 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 June 7, 2023).

¹² See January 31st Determination (Public Version).

¹³ 19 U.S.C. § 1517(c)(1)(A).

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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), 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. In doing so, CBP may apply adverse inferences where they are warranted. RR's determination as to evasion must be supported by substantial evidence.

A. Scioto's Arguments

Scioto requests that we reverse the January 31st Determination of evasion. Scioto argues that it did not enter covered merchandise into the United States through evasion, because the WCV entered on the entries under investigation were manufactured in Malaysia by Alno, and were not manufactured in China. In support of this argument, Scioto states that TRLED's January 31st Determination was not supported by substantial evidence, and TRLED's conclusions are arbitrary and capricious.¹⁸

Scioto makes several arguments in support of reversal of the January 31st Determination.¹⁹ First, Scioto contends that the administrative record demonstrates only that covered merchandise exported by Alno to the United States was entered by CTG,²⁰ a separate importer not involved in this EAPA investigation, and did not go to Scioto.²¹ CTG, a company unrelated to Scioto and an

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

¹⁶ 19 CFR § 165.1.

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

¹⁸ *See* Scioto's March 15, 2023 Request for Administrative Review, at 6 (Public Version); *see also* 19 CFR § 165.27(a).

¹⁹ *See* Scioto's March 15, 2023 Request for Administrative Review, at 6-24 (Public Version).

²⁰ *See id.* at 4. We note that, although “CTG” was bracketed in Scioto's request for administrative review, the details of the federal court complaint to which Scioto refers, filed by CTG, have been released to the public in the public version of AKCA's response.

²¹ *Id.* at 4.

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importer of WCV, filed a complaint against Qingdao Haiyan Group, Qingdao Drouot, Alno, and Scioto, in the United States District Court for the Middle District of Tennessee Nashville Division, upon which Scioto relies. Scioto takes issue with CBP's failure to examine CTG and commence an EAPA investigation against CTG.²² Accordingly, Scioto maintains that, as to its importations, the alleged transshipment of WCV from China did not occur and that no cash deposits were owed.²³

Second, Scioto argues that the production tracking inspection reports, containing batch numbers from Alno's factory in Malaysia, demonstrate that the WCV Scioto entered was manufactured in Malaysia, not China.²⁴ Scioto then points out that these batch numbers on the production tracking inspection reports match the batch numbers on Alno's production schedules, which, in turn, link the production batch numbers to particular purchase orders, shipments, and entries made by Scioto.²⁵

Third, Scioto remarks that TRLED noted in the January 31st Determination that "the evidence demonstrates that Alno *can* produce wooden cabinets and vanities {in Malaysia}."²⁶

Fourth, Scioto argues that the January 31st Determination is based on a misunderstanding of the Finished Product Inbound Delivery ("FPID") sheets.²⁷ More specifically, Scioto observes that CBP misinterpreted that FPID sheets were only used when finished goods are purchased by Alno and that the presence of an FPID sheet for a shipment to Scioto demonstrates that Alno purchased Chinese WCV and exported them to Scioto.²⁸ In contrast to CBP's interpretation of the FPID sheets, Scioto asserts that Alno uses the term "inbound" for different types of documents, and FPIDs are created whenever a finished good enters the finished goods warehouse, regardless of whether the goods were purchased or produced by Alno.²⁹ Correspondingly, Scioto states that after Alno finishes production of an item in Malaysia and enters it into the finished goods warehouse, an FPID is created.³⁰ Scioto points out that the difference between FPIDs created for goods produced in Malaysia and FPIDs for purchased goods is that the FPIDs for goods produced in Malaysia will list the production batch number, whereas the other FPIDs contain no such production batch number.³¹ In turn, the batch numbers from the FPID sheets match those included on the production schedules, which also bear Scioto's purchase order numbers linking production in Malaysia to specific shipments and entries made by Scioto.³² Scioto illustrates this by comparing an FPID sheet containing a production batch number corresponding to one of its shipments to an FPID sheet pertaining to transshipped goods to [Co.] from China, which contained no such production batch numbers.³³ Additionally, Scioto asserts that the FPID sheets for the transshipped goods to [Co.] do not contain any of the SKUs used by Scioto.³⁴

²² *Id.*

²³ *Id.* at 8.

²⁴ *Id.* at 10.

²⁵ *Id.*

²⁶ *Id.* (quoting January 31st Determination (Public Version) at 4)(emphasis in original).

²⁷ See Scioto's March 15, 2023 Request for Administrative Review (Public Version), at 10-11.

²⁸ *Id.* at 11.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 11-12.

³³ *Id.* at 12 (Business Confidential Version).

³⁴ *Id.*

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Fifth, Scioto contends that the concerns with documentation which TRLED recounted in the January 31st Determination are immaterial to the issue of whether Alno produced the WCV imported by Scioto.³⁵ Specifically, Scioto asserts that CBP's finding of vague recordkeeping refers to Alno's raw material purchase records, rather than the production records reviewed by CBP.³⁶ Moreover, Scioto disagrees with CBP's finding that certain documents maintained by Alno regarding raw material purchases are unreliable.³⁷ Scioto notes that CBP found these documents unreliable because: 1) unit transfer prices did not reflect market prices when goods were purchased from related parties; 2) invoices for purchases of raw materials and other goods contained vague descriptions; 3) the invoices for purchases of raw materials and other goods contained varied and inconsistent units of quantity; and, 4) no invoices or purchase documents existed with respect to purchases of glass.³⁸ Nevertheless, Scioto maintains that these documents are not material in CBP's determination of whether the goods Scioto imported were produced in Malaysia.³⁹ Rather, the only documents CBP needs to determine whether the products were produced in Malaysia are the aforementioned production documents.⁴⁰ Moreover, Scioto argues that the similarities in the packaging of goods as referenced in AKCA's allegation and packaging of goods for CTG in Alno's warehouse and discrepancies between paperwork provided by Alno and information provided in the Allegation by AKCA are not material to this investigation.⁴¹ Likewise, Scioto contends that the disclosure of the "additional warehouse" is immaterial, because CBP provides no evidence that the disclosure of this warehouse at verification impeded CBP's investigation, nor does CBP cite to any evidence that any of the goods in the warehouse were produced in China.⁴² Lastly, Scioto asserts that the statute and CBP's regulations do not require a company to keep its internal records in any particular form.⁴³

Sixth, Scioto claims that the application of adverse inferences was not justified, because Alno cooperated to the best of its ability in responding to CBP's numerous questions and document requests in a very limited amount of time and with only a small administrative staff, and there were no material gaps in the record.⁴⁴ More specifically, Scioto notes that: 1) Alno disclosed the existence of the additional warehouse when CBP asked it specific questions and brought CBP officials to the warehouse without delay; the additional warehouse was not initially divulged, because Alno misunderstood the nature of CBP's questions, and the warehouse was only recently rented to store finished goods that Alno's customers would not accept due to the civil litigation and EAPA case; 2) CBP failed to clarify how asking Alno's officials multiple times when documents were missing led to a gap in the record or how these documents are material to the investigation and regardless, Alno acted to the best of its ability to respond to the numerous document requests with a small administrative staff; 3) CBP failed to elucidate how Alno's attempt at providing to CBP officials unrelated, irrelevant, or unsolicited documents led to gaps in the record, or how this supports CBP's finding that Alno did not cooperate to the best of its ability. Additionally, CBP fails to disclose the specific documents it is referring to, and CBP should take into account language differences which

³⁵ *Id.* at 13.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 13-14.

³⁹ *Id.* at 14.

⁴⁰ *Id.*

⁴¹ *Id.* (Business Confidential Version).

⁴² *Id.* at 14-15.

⁴³ *Id.* at 15.

⁴⁴ *Id.* at 16.

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impeded Alno's ability to understand the questions. Again, at worst, any errors are just a consequence of Alno's responding to numerous document requests with only a small administrative staff; and, 4) regarding the missing emails, Alno explained at verification that some emails were lost due to server issues, and Alno did not withhold any information.⁴⁵

Seventh, Scioto argues that CBP's failure to provide parties with access to "confidential" record information violated Scioto's due process rights under the Fifth Amendment to the Constitution of the United States, because it curbed Scioto's opportunity to be heard.⁴⁶ For instance, Scioto was not provided with photos taken by CBP officials.⁴⁷ Moreover, most of the "confidential" information at issue was submitted by Alno and Scioto themselves, so Scioto should have access to it.⁴⁸ Scioto states that the EAPA statute and regulations provide no mechanism for parties or their counsel to view confidential information that is being used against them. This creates a procedural due process violation.⁴⁹

B. AKCA's Arguments

AKCA requests that we affirm the January 31st Determination. AKCA argues that CBP's finding of evasion was based on substantial evidence.⁵⁰ AKCA sets forth various arguments as to why the January 31st Determination of evasion should be affirmed.⁵¹

First, AKCA contends that Scioto's argument that an EAPA investigation should be brought against CTG is irrelevant with regards to the issue of whether an affirmative evasion determination should be reached against Scioto.⁵² Even if this were relevant though, AKCA did not file an EAPA allegation against CTG because CTG returned the transshipped Chinese goods to Malaysia when it discovered that the goods were from China, and CTG provided information regarding the evasion scheme to AKCA, so that AKCA could collaborate with CBP to confront the evasion plot.⁵³

Second, AKCA asserts that there is substantial evidence of evasion on the record, even if Alno had the capacity to produce WCV in Malaysia.⁵⁴ Specifically, AKCA views the FPID sheets as substantial evidence of evasion, because the FPID sheets purportedly show that Alno received finished WCV that it purchased and which were manufactured in China.⁵⁵ AKCA maintains that CBP's determination was not based on a misunderstanding of the FPID sheets, as TRLED concluded that "the FPID sheet is only generated in one specific instance, *i.e.*, when goods enter the raw materials warehouse."⁵⁶ Moreover, AKCA emphasizes that TRLED 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,

⁴⁵ *Id.* at 17-19.

⁴⁶ *Id.* at 20-24.

⁴⁷ *Id.* at 22.

⁴⁸ *Id.* at 23.

⁴⁹ *Id.* at 21.

⁵⁰ See Alleger's Response to Request for Administrative Review, dated March 30, 2023 (Public Version) at 4.

⁵¹ *Id.* at 4-22.

⁵² *Id.* at 5.

⁵³ *Id.* at 5-6.

⁵⁴ *Id.* at 6; see January 31st Determination (Public Version) generally.

⁵⁵ Alleger's Response to Request for Administrative Review (Public Version), dated March 30, 2023, at 6-8.

⁵⁶ *Id.* at 8 (quoting January 31st Determination (Public Version) at 7).

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which confirmed what Alno said in its third supplemental response.⁵⁷ Additionally, Alno's Chief Accountant confirmed that Alno does not track inventory movement during the production process. Alno also did not provide the FPID sheets for any of the sales traces that the TRLED verification team conducted on-site during the verification, even though Alno had provided them in RFI responses.⁵⁸ The only other instance during which TRLED officials viewed these inbound sheets was for raw materials that Alno had purchased and when Alno transshipped finished WCV from China to another company, presumably referencing [Co.], which gave rise to FPID sheets identical to the instant ones.⁵⁹

Third, AKCA points out that the information submitted by Alno was unverifiable and unreliable.⁶⁰ AKCA views Scioto's claims – that the discrepancies and missing documents for purchases of raw materials are immaterial to this investigation – as meritless.⁶¹ Further, AKCA takes issue with Scioto's claim that the production documents themselves are the only documents necessary to determine that the WCV were produced in Malaysia, because production documents can easily be forged or altered.⁶² Moreover, the discrepancies in the purchase documents and the missing purchase documents are probative of evasion.⁶³ The aforementioned discrepancies included inconsistent quantity types and vague invoice and packing list descriptions that concealed the volume and types of goods purchased, specifically finished WCV, from the Chinese supplier.⁶⁴

Fourth, AKCA asserts that TRLED properly applied adverse inferences, because Alno did not cooperate to the best of its ability with CBP's requests for information, as follows.⁶⁵ Specifically, among other things, AKCA notes that TRLED discovered the existence of an additional warehouse, not previously disclosed, after an Alno employee inaccurately stated that no other location existed. TRLED had to ask company officials multiple times to provide documents and each time discovered that documents were missing. Alno attempted to provide TRLED officials unrelated or irrelevant documents that were unsolicited to cover for Alno's error of not providing certain documents after being asked multiple times. TRLED was unsure the missing emails provided to TRLED at verification were original emails since TRLED was not provided with access to the original files despite asking for access.⁶⁶ Finally, AKCA insists that the EAPA statute is different from the AD/CVD statutes with regards to adverse facts available, because under the EAPA statute, CBP does not have to find a "gap in the record" before it applies adverse inferences, as Commerce must in AD/CVD proceedings.⁶⁷ CBP only has to find that an interested party has failed to cooperate to the best of its ability before CBP is authorized to apply adverse inferences.⁶⁸

Fifth, AKCA proclaims that CBP may collect duties based on its application of adverse inferences based upon the statutory language of EAPA, as CBP can find that the WCV is covered merchandise, Scioto evaded the AD/CVD Orders, and Alno failed to cooperate to the best of its

⁵⁷ Alleger's Response to Request for Administrative Review (Public Version), dated March 30, 2023, at 8.

⁵⁸ *Id.*

⁵⁹ *Id.* at 8-9; *see also* January 31st Determination (Business Confidential Version) at 7.

⁶⁰ Alleger's Response to Request for Administrative Review (Public Version), dated March 30, 2023, at 9.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* at 10.

⁶⁴ *Id.* at 11.

⁶⁵ *Id.* at 12.

⁶⁶ *Id.* at 14.

⁶⁷ *Id.* at 16.

⁶⁸ *Id.*

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ability with regards to CBP's requests for information.⁶⁹ This is consistent with the intent behind granting the power to apply adverse inferences to TRLED, which is "to provide respondents with an incentive to cooperate."⁷⁰

Finally, AKCA expostulates with Scioto's argument that its due process rights were violated under the U.S. Constitution, since the U.S. Court of International Trade ("CIT") has rejected similar claims. The CIT has found that when CBP provides public summaries of sufficient detail to permit a reasonable understanding of the substance of the information, the parties have been provided with an adequate opportunity to respond to adverse evidence.⁷¹ AKCA then notes that all confidential information on the record was properly summarized in sufficient detail to permit a reasonable understanding of the substance of the information. Therefore, Scioto's due process rights were not infringed.⁷²

III. Administrative Review Analysis

As an initial matter, pursuant to 19 U.S.C. § 1517(f)(1) and 19 CFR § 165.45, upon request for administrative review, RR will apply a *de novo* standard of review, based solely upon the facts and circumstances on the administrative record in the proceeding. In making our determination, we reviewed: (1) the administrative record upon which the January 31st Determination was made, as provided to RR by TRLED; and, (2) the timely and properly filed request for review and response.

The purpose of this *de novo* review is to analyze the January 31st Determination and the accompanying administrative record to determine whether substantial evidence of evasion exists. Our review of the administrative record clearly indicates that Scioto's WCV were entered on type "01" consumption entries and, therefore, AD/CVD deposits and duties were not paid. The only fact in contention is whether the WCV at issue are, in fact, of Chinese origin, and thus, considered covered merchandise under the applicable AD/CVD Orders. If so, no one disputes that when entered on type "01" entries, they would have been entered into the customs territory of the United States by means of a document or electronically transmitted data or information, written or oral statement, or act, that is material and false, or an omission that is material; and that such entry resulted in the reduction or avoidance of applicable AD or CVD cash deposits or duties being collected on such merchandise.

The record contains extensive documentation regarding the presence of raw materials at Alno's warehouse in Malaysia and Alno's ability to produce, and production of, WCV from those raw materials using machinery and its workforce, which we find credible. Moreover, the record contains substantial evidence linking Alno's production records to Scioto's entries into the United States. In contrast, the record contains no evidence that WCV produced in China were transshipped through Malaysia and imported into the United States by Scioto. Accordingly, in our view, there is not substantial evidence in the record that covered merchandise was entered into the customs territory of the United States through evasion, as we explain in detail below.

⁶⁹ *Id.* at 19-20.

⁷⁰ *Id.* at 20 (quoting *F.lli De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000)).

⁷¹ *Id.* at 20-21.

⁷² *Id.* at 21.

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A. Our *de novo* administrative review is limited to a determination as to Scioto, not CTG.

No EAPA investigation was conducted as to CTG, and no determination was made as to CTG's imports. As such, our determination herein necessarily relates to Scioto's imports and not those of CTG. However, given that Scioto's request for administrative review contains arguments related to CTG, we briefly address the issue of CTG. The issue of whether CTG engaged in evasion is not properly before us. Nor are facts related to CTG's conduct and transactions relevant to our decision as to whether Scioto engaged in evasion, given that the record is devoid of any evidence of a relationship between Scioto and CTG.

We do note one fact, contained in the record, which is relevant to our decision. As acknowledged in the January 31st Determination, "Alno itself has admitted in court documents that it transshipped Chinese-origin cabinets and vanities through Malaysia to [Co.] during the for {sic} this EAPA investigation."⁷³ Indeed, Alno admitted in response to CBP's RFI that it transshipped WCV to [Co.], but it did not so admit with regards to Scioto's importations.⁷⁴

B. The use of adverse inferences against Alno and Scioto is not supported by substantial evidence.

TRLED's application of adverse inferences encompasses both the alleged non-responsive manufacturer, Alno, and the importer, Scioto. Based on such inferences, TRLED's finding of transshipment extended to all entries of WCV sourced from Alno, which Scioto imported during the period of investigation. 19 CFR § 165.6(a), provides, in part, as follows:

{i}f the party to the investigation that filed an allegation, 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 pursuant to 165.27 and subpart D of this part.

However, while Alno and Scioto may not have acted perfectly in responding to information requests by CBP, in our view, when the record is examined as a whole, it supports a conclusion that they cooperated and complied with requests for information made by CBP such that application of a wholesale adverse inference to Scioto is not justified. This is especially so given there is record evidence that the information requested was ultimately provided to CBP.

First, the January 31st Determination applied adverse inferences against Alno, because, among other reasons, Alno did not initially disclose an additional warehouse⁷⁵ when asked if it owned any other locations. Scioto claims that Alno did not initially disclose the existence of this warehouse, because it misunderstood the nature of CBP's questions, and the warehouse was only recently rented to store finished goods that Alno's customers would not accept due to the civil

⁷³ January 31st Determination (Business Confidential Version) at 4.

⁷⁴ Alno's September 8, 2022 Supplemental CF 28 Response (Business Confidential Version) at 1.

⁷⁵ January 31st Determination (Public Version) at 11.

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litigation and EAPA case.⁷⁶ It is clear from the record that when Alno realized that CBP also wanted information on this warehouse, Alno disclosed the existence of the warehouse to CBP and further provided CBP with access to the warehouse.⁷⁷ According to the verification report, “Alno claimed they misunderstood the question and thought we {CBP officials conducting verification} meant raw materials.”⁷⁸ In this regard, we note that Alno had both a “raw materials warehouse” and an “additional . . . (Finished Goods Warehouse).”⁷⁹ We also note that, after being asked about other locations, Alno’s employee “confirmed that Alno did not own any other land in the area {,}” according to the verification report.⁸⁰ This statement of Alno’s employee to CBP officials appears to be both technically correct and accurate, as CBP officials noted that they “identified payments for a [description] which was actually the additional finished goods warehouse.”⁸¹ Alno truly did not own any other land or factories in the area, as corroborated by the payments for a [description] which CBP officials identified; Alno was merely renting another facility, and Alno did not own the facility or the land upon which it stood.⁸² On balance, in our view, the facts discussed above do not support a conclusion that Alno did not cooperate by not acting to the best of its ability to comply with a request for information, especially given that Alno did in fact disclose the additional finished goods warehouse and subsequently brought CBP officials to the warehouse location.⁸³

Secondly, the January 31st Determination employed adverse inferences against Alno because, initially, Alno failed to provide missing packing checklists, when requested to do so by CBP.⁸⁴ Later during the on-site visit, company officials and Alno’s counsel attempted to provide the missing Packing Check-Lists, unsolicited, at a time when CBP officials were focused on obtaining other documents (commercial invoices and bills of lading).⁸⁵ The statutory provision on when the application of adverse inferences is appropriate does not require perfection, but rather, it requires acting to the best of one’s ability to comply with a request for information.⁸⁶ Alno did not act perfectly, in that there were delays— of indeterminate length pursuant to the record before us— in providing certain Packing Check-Lists, but when Alno found the relevant documents, later during the course of the verification, it produced them to CBP “unsolicited.”⁸⁷ Thus, Alno acted to the best of its ability.⁸⁸

Thirdly, the January 31st Determination employed adverse inferences against Alno because CBP was unsure whether 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.⁸⁹ The verification report notes that the Alno employee stated that this was due to “server issues.”⁹⁰ There

⁷⁶ Scioto’s March 15, 2023 Request for Administrative Review (Public Version) at 14-15.

⁷⁷ *Id.* at 17; Regulatory Audit and Agency Advisory Services’ (“RAAAS”) verification report, dated December 21, 2022, (Public Version) at 9.

⁷⁸ RAAAS verification report, dated December 21, 2022, (Public Version) at 9.

⁷⁹ *Id.* at 3, 9.

⁸⁰ *Id.* at 9.

⁸¹ *Id.* (Business Confidential Version).

⁸² *Id.*

⁸³ *See* 19 U.S.C. § 1517(c)(3)(A).

⁸⁴ January 31st Determination at 11 (Public Version).

⁸⁵ RAAAS verification report, dated December 21, 2022, (Public Version) at 16.

⁸⁶ *See Nippon Steel Corp. v. United States*, 337 F.3d 1373,1382 (Fed. Cir. 2003).

⁸⁷ *See id.*; RAAAS verification report, dated December 21, 2022, (Public Version) at 16.

⁸⁸ *See* 19 U.S.C. § 1517(c)(3)(A).

⁸⁹ January 31st Determination at 11 (Public Version).

⁹⁰ RAAAS verification report, dated December 21, 2022, at 11 (Public Version).

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is insufficient evidence in the verification report or otherwise regarding the veracity of the claims made concerning the server issues. It appears the issue surrounding the server and corresponding emails was unresolved.⁹¹ Consequently, it is difficult to draw any conclusion on this point.⁹² Lastly, according to the verification report, it is noteworthy that:

Alno did contact someone from the parent company who was included on the email, and they forwarded the email to Alno. While we {CBP Officials} did not find any concerns with the attachments provided, we cannot be sure the attachments provided in the forwarded email were the ones in the original email since we did not have access to the original email.⁹³

There is no proof on the record that the person from the parent company forwarded an email to CBP officials containing different attachments from those accompanying the original email.⁹⁴ Regardless, the forwarded email and its attachments were not included in the attachments to the verification report, so we are unable to examine them, and we were unable to locate the email and its attachments within the 18 verification exhibits Alno submitted.⁹⁵ Thus, on balance, we believe that the evidence with respect to the emails is mixed. In our view, the evidence is sufficient to call into question the reliability of the attachments and emails so as to not rely upon them for purposes of a determination; however, this example, when considered with all of the other evidence, is insufficient to draw a wholesale adverse inference against Scioto for all of its imports during the period in question.

We thus conclude that the use of adverse inferences against Alno and Scioto is not supported by substantial evidence.

C. There is record evidence that Alno has the capability to, and likely did, produce the WCV in Malaysia.

1. Alno's production records are direct evidence of production of WCV in Malaysia of WCV imported by Scioto.

The record evidence demonstrates not only that Alno *could* produce WCV in Malaysia, but that Alno *did* produce the WCV at issue in Malaysia. Production documentation, including FPID sheets, production tracking inspection reports, and production schedules, submitted by Alno, link specific production batch records from Alno's factory in Malaysia to specific purchase orders, commercial invoices, and entry numbers for WCV which Scioto imported, and which are the subject of this EAPA investigation. The January 31st Determination dismisses the FPID sheets based on the view that they are only for occasions when Alno purchased finished goods from China; however, based on our review of the evidence, as discussed herein, such a conclusion is not justified. The record demonstrates that the FPID are used for purchased and manufactured finished goods inventory.

⁹¹ *See id.*

⁹² *See* 19 U.S.C. § 1517(c)(3)(A).

⁹³ RAAAS verification report, dated December 21, 2022, at 11 (Public Version).

⁹⁴ *See id.*

⁹⁵ *See id.* at Attachments 1-11, pp. 19-56 (Business Confidential Version); Alno's Verification Exhibits 1-18, dated November 3, 2022 (Business Confidential Versions).

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No mention is made in the January 31st Determination of the production tracking inspection reports, and production schedules, submitted by Alno.⁹⁶ The record evidence supports a conclusion that Alno did produce the WCV in Malaysia. More specifically, the batch number listed on Alno's FPID sheet, reproduced in the January 31st Determination, [batch no.] matches the batch number listed on Alno's production tracking inspection sheets, [batch no.], and the batch number, [batch no.] listed in the production batch lot checklist for Alno's factory in Malaysia.⁹⁷ The production batch checklists link the production batch number [batch no.] to a Scioto purchase order number [example], a SKU [example], and a line item on an entry number (e.g., [XXXXXXXXX]7716, entry line 6).⁹⁸ The production batch number from the production batch checklists [batch no.] also matches the batch number on the production schedule [batch no.]⁹⁹ The production schedule links a batch number, [batch no.], to Scioto's purchase order numbers [P.O. no.].¹⁰⁰ We note that Alno's August 25, 2022 CF 28 Response Part VII also listed different batch numbers that are unrelated to the FPID sheet reproduced in the January 31st Determination, such as batch nos. [batch nos.] supporting a conclusion that Alno also produced other batches of WCV in Malaysia and that these WCV were not produced in China.¹⁰¹ Alno's August 25, 2022 CF 28 Response Part VIII Part 2 also contains some production tracking inspection sheets with the matching batch number [batch no.]¹⁰² The matching batch number in the FPID and production documents (which are linked to specific entries made by Scioto) strengthens the claim that Alno produced the WCV at its factory in Malaysia, which were then imported by Scioto, and that the WCV were not manufactured by Qingdao Haiyan in China.¹⁰³

Notwithstanding the fact that some of the production tracking inspection sheets that were placed on the record contain foreign language text without English translations,¹⁰⁴ these documents nonetheless contain alphanumeric batch numbers with English letters [batch no.], which can be read by our office, and which link to purchase orders, commercial invoices, and entries/importations of WCV by Scioto.¹⁰⁵

Dismissing this record evidence, AKCA contends that “{p}roduction documents can easily be forged or altered.”¹⁰⁶ Such a statement, without any support, is not a proper basis for dismissing the evidence contained in the record. AKCA fails to detail which production documents, in particular, are allegedly forged or altered, or how CBP or AKCA can discern which production documents are forged or altered.¹⁰⁷ No citation to the administrative record was provided by AKCA for its contentions regarding forgery or alteration of specific production documents.¹⁰⁸ Regardless,

⁹⁶ See January 31st Determination at 7 and generally (Public Version).

⁹⁷ January 31st Determination of evasion at 23 (Business Confidential Version); Alno's August 25, 2022 CF 28 Response Part IV at pages 540-749, Part VII at 574, 577 (Business Confidential Version).

⁹⁸ Alno's August 25, 2022 CF 28 Response Part VII at p. 574 (Business Confidential Version).

⁹⁹ Alno's August 25, 2022 CF 28 Response, Part IV at p. 141 (Business Confidential Version).

¹⁰⁰ *Id.*

¹⁰¹ Alno's August 25, 2022 CF 28 Response Part VII at p. 21 (Business Confidential Version).

¹⁰² Alno's August 25, 2022 CF 28 Response Part VIII Part 2, pages 406-610 (Business Confidential Version).

¹⁰³ See Scioto's March 15, 2023 Request for Administrative review at 10 (Business Confidential Version).

¹⁰⁴ Alno's August 25, 2022 CF 28 Response Part IV at pages 540-749 (Business Confidential Version); see 19 CFR 165.5(b)(1).

¹⁰⁵ Alno's August 25, 2022 CF 28 Response Part IV pages 141, 540-749, Part VII at 574, 577 (Business Confidential Versions).

¹⁰⁶ Alleger's Response to Request for Administrative Review, dated March 30, 2023, at 9 (Public Version).

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

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the production tracking inspection reports for batch number [batch no.], allegedly comprising transshipped merchandise per the January 31st Determination, appear to be authentic, at least chronologically speaking, as the production dates on the reports, ranging from July 30, 2021 through August 6, 2021, occur before the entry date on the corresponding entry, entry no. [XXXXXXX]7716, with an entry date of [date].¹⁰⁹ Alno provided evidence tracking inventory movements, through batch numbers, and there has been no demonstration on the record that these documents were falsified, forged, or altered.¹¹⁰

Again, we observe that Scioto and Alno linked certain production batches in production documentation from Alno's factory and warehouse to specific entries of WCV imported by Scioto, which provides evidence that the WCV were produced in Malaysia.¹¹¹ For example, Scioto provided a copy of a warehouse inbound order which contained an FPID sheet containing production batch number [batch no.] matching the batch number on the production tracking inspection sheet [batch no.] and in turn, the purchase order numbers on the FPID sheets [P.O. nos.] match those of the commercial invoices for entry [XXXXXXX]142-0 [P.O. nos.].¹¹² In sum, Scioto and Alno provided documentation that tracks production of WCV in Malaysia to the sale to and importation of WCV by Scioto in the United States.¹¹³ While we find that production records provide strong evidence concerning production in Malaysia, these documents are not the only relevant documents, as contended by Scioto. Rather, raw material documentation is also relevant to the issue, as recognized *infra*.

We also note that the January 31st Determination contains certain statements as to the FPID sheets that are at odds with the verification report. The January 31st Determination, concludes that "Alno's own company officials stated it {the FPID sheet} is for when purchased goods are checked in, confirming what Alno said in its third supplemental response on three occasions."¹¹⁴ By "purchased goods" it appears that the January 31st Determination meant "finished cabinets and vanities . . . having been purchased by Alno from [Co.]."¹¹⁵ However, according to the verification report, Alno's company official never said that these were purchased goods from [Co.] coming in --- they are merely described as "goods{:}"

{d}uring the verification, we showed the Chief Accountant and GM a sample of a Finished Product Inbound Delivery sheet that was submitted as part of its RFI responses and asked when that sheet is generated. They both responded that it is generated when goods are entered into the materials warehouse. We confirmed by asking again, "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."¹¹⁶

¹⁰⁹ See January 31st Determination at 23 (Business Confidential Version); Alno's August 25, 2022 CF 28 Response Part IV" pages 540-749, Part VII" at 574, 577 (Business Confidential Versions); RAAAS verification report, dated December 21, 2022, Attachment 3, page 1 (Business Confidential Version).

¹¹⁰ See *id.*

¹¹¹ Alno's August 25, 2022 CF 28 Response Part IV at 141, 540-749, Part VII at 574, 577 (Business Confidential Versions).

¹¹² Scioto's June 1, 2022 CF 28 Response Attachments 3, pages 54-56, 8-4, page 243, and 8-5, pages 245-49 (Business Confidential Version).

¹¹³ See *id.*

¹¹⁴ January 31st Determination at 7 (Public Version).

¹¹⁵ *Id.* at 8 (Business Confidential Version).

¹¹⁶ RAAAS verification report, dated December 21, 2022, at 14 (Business Confidential Version); see also Alleger's Response to Request for Administrative Review, dated March 30, 2023, at 8 (Public Version).

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Likewise, the January 31st Determination is inconsistent with Alno's Third Supplemental Response, as Alno never said that these were "purchased goods," i.e., finished WCV purchased by Alno from [Co.]. Instead, Alno said that the FPID sheets were also for "{raw}" materials purchased" as evidenced by CBP's RFI question and Alno's response:

{CBP request for information} 3. Inbound delivery sheets for hardware accessors (Exhibit VII page 80), runner and hinges (Exhibit VII page 82-87), paint (Exhibit VII page 113) and plywood (Exhibit VII page 125-130). These raw materials were purchased from various vendors and tracked on an inbound delivery sheet. We identified finished product inbound delivery sheets in Exhibit VII page 56 and 75 lists, which SKU numbers received for each sheet dated separately. The listed SKU numbers are also listed on commercial invoices for Scioto and the product catalog. Generally, inbound delivery is for material entering a facility for stock purposes.

a. Please explain why these products would be tracked as inbound delivery and not outbound forms. Where did this shipment inbound from?

Response: The package documents we submitted include materials inbound sheets which are for materials entering the factory and outbound sheets which are for materials withdrawn from Alno's warehouse as production inputs. Alno keeps the products tracked by outbound sheets (warehouse-out sheets) for production inputs and inbound sheets (warehouse-in sheets) for materials purchased. Please see Exhibit S-Part VII-Q3 for a sample outbound sheet.¹¹⁷

The January 31st Determination seems to conclude that Alno admitted it purchased transshipped finished goods (WCV) from China and sent them to Scioto; however, neither the verification report nor Alno's RFI response supports such a conclusion. Rather, the information extracted above appears to support Scioto's argument in the request for administrative review, that "FPID's are generated whenever a finished good enters the finished goods warehouse regardless of whether the goods were purchased or were produced by Alno. Therefore, once Alno completes production of an item in Malaysia and enters it into the finished goods warehouse, an FPID is also generated."¹¹⁸ Unlike the FPIDs for the goods destined to Scioto, the FPIDs for transshipped goods destined to [Co.] on the record did not contain batch numbers, instead, they contained the notation "N/A."¹¹⁹ The inclusion or absence of production batch numbers would differentiate transshipped goods to [Co.] versus non-transshipped goods to Scioto, manufactured in production batches in Malaysia.¹²⁰

The January 31st Determination also points out that Alno's Chief Accountant confirmed that Alno does not track inventory movement *during* the production process, which the Determination relies upon to provide additional support that items listed on the FPID are goods purchased by Alno from a Chinese manufacturer. However, this statement does not address inventory tracking after completion of the production process (as opposed to during the production

¹¹⁷ Alno's October 17, 2022 3rd Supplemental CF 28 Response, at 16 (Public Version).

¹¹⁸ Scioto's March 15, 2023 Request for Administrative Review, at 18 (Public Version).

¹¹⁹ Verification Exhibit 10 at page 21 (Business Confidential Version).

¹²⁰ *See id.*

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process). The FPID sheets contain production batch numbers for the manufactured products that enter inventory.¹²¹ In other words, Alno did track inventory movements for finished goods, through batch numbers, and there has been no demonstration on the record that these documents were falsified, forged, or altered.¹²²

Moreover, Alno explained in its Third Supplemental response that the term “inbound” means input of either a raw material from China or a finished product made in Malaysia:

Response: There are two types of inbound orders for solid wood. An “inbound order” means that the input is inbound into the production process. It does not refer to whether the input coming from abroad or whether it is produced in Malaysia. One type of inbound order is for the purchase of solid wood from China. This solid wood from China is not cut-to-size planed solid wood, but instead is “Long-piece Planed Wood” which is a kind of wood boards with various lengths and widths with a thickness of 21mm. Please see Exhibit S-Part VII-Q1-1 for an inbound order of long-piece planed wood and a picture of the long-piece planed wood. A second type of inbound order is for a product made in Malaysia. That second product is produced in Malaysia by Alno.¹²³

Finally, the record is devoid of any evidence of shipments in the form of finished WCV from China into Malaysia, in terms of Malaysian import records, and then to the United States, to Scioto, in terms of U.S. import records.¹²⁴ Thus, in addition to the evidence related to production of WCV in Malaysia, there is an absence of evidence of any shipments of Chinese-origin WCV covered by the Orders and transhipped to Scioto.

2. CBP’s on-site visit corroborated that Alno can produce WCV.

As discussed above, Scioto and Alno provided substantial documentary evidence to support a conclusion that the WCV Scioto imported into the United States was manufactured by Alno in Malaysia. Moreover, CBP was also able to corroborate Alno’s production capabilities during an on-site verification at Alno in Malaysia.

Importantly, the January 31st Determination states that the “evidence demonstrates that Alno *can* produce wooden cabinets and vanities {in Malaysia}.”¹²⁵ When CBP officials conducted an on-site verification at Alno’s raw materials warehouse in Malaysia, CBP officials found raw materials that can be used to manufacture the goods at issue here: “{t}he warehouse was filled with stacks of mostly medium density fiberboard (MDF), plywood, wood boards, etc.”¹²⁶ This corroborates that Alno had the raw materials to manufacture the WCV in Malaysia.¹²⁷ CBP officials also took note of where Alno purchased raw materials from, which further supports the claim that Alno used raw

¹²¹ January 31st Determination at 7, Attachment p. 23 (Business Confidential Version).

¹²² *See id.*

¹²³ Alno’s Third Supplemental CF 28 response dated October 17, 2022, at 15 (Public Version).

¹²⁴ January 31st Determination generally (Business Confidential Version); NTAC Post Receipt Report (March 22, 2022) generally (Business Confidential Version); *see also, e.g.*, Commercial invoice for entry no. 791-357[XXXXXX] issued by Alno listing a Malaysian address to Scioto with a U.S. address (Business Confidential Version).

¹²⁵ January 31st Determination at 4 (emphasis in original) (Public Version).

¹²⁶ RAAAS verification report, dated December 21, 2022, at 3 (Public Version).

¹²⁷ *See id.*

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materials to make cabinets in Malaysia. The three most significant raw materials used to manufacture WCV are solid wood boards, plywood, and paint; Alno purchased solid wood boards from Haiyan Drouot China; plywood from seven various suppliers in Vietnam and Malaysia; and, paint from two suppliers in Malaysia. The other materials used in the process of manufacturing cabinets are MDF, and hardware, which Alno sourced from Malaysian and Chinese suppliers.¹²⁸ Moreover, photos in the verification report of Alno's facility in Malaysia depict raw materials made of wood.¹²⁹

Although the January 31st Determination recognizes that "Alno *can* produce wooden cabinets and vanities," it states that, from October 2018 to October 2019, approximately when the Orders were implemented, Qingdao Haiyan Drouot Household Co., Ltd. (Haiyan Drouot) exported WCV from its manufacturing plant in Qingdao, China, to Scioto in Waverly, Ohio (disputed by Scioto), since, among other reasons, "there is evidence on the record showing Alno's and Scioto's ties to China."¹³⁰ More specifically, Scioto, which is 100 percent owned by the Qingdao Haiyan Group Co., Ltd. (Haiyan Group), acquired Alno on July 1, 2019, and the deal was official on September 4, 2019;¹³¹ in July 2022, Scioto transferred all its shares of Alno to the Haiyan Group;¹³² the owner of Haiyan Group is Liyan Jiao, a Chinese national residing in Qingdao, China;¹³³ and Alno's department heads are Chinese nationals.¹³⁴ Nevertheless, evidence of common ownership by a Chinese national does not necessarily prove that the goods associated with these entries were produced in China rather than Malaysia (especially given that Alno acknowledges that it sourced solid wood boards from Haiyan Drouot in China). Moreover, the evidence shows that this Chinese national's company also owns a factory in Malaysia, which CBP visited, and which is capable of producing WCV. The January 31st decision explicitly acknowledges that Alno can produce WCV in Malaysia.¹³⁵ Thus, in light of all of the evidence, the common origin and ties to China do not justify a conclusion of transshipment.

3. Alno's raw material records, machinery, and packaging operations are direct evidence of production of WCV in Malaysia.

According to the verification report, CBP officials questioned Alno as to why Alno had so much raw material if it had not been producing cabinets in months.¹³⁶ Alno's General Manager ("GM") responded that:

they do not stock inventory based on orders, instead they keep enough stock on hand to produce [number] shipping containers of cabinets. The GM could not provide a process time for a cabinet from start to finish, and instead stated they could fill [no.] shipping containers in an 8-hour day. He also confirmed that it takes approximately

¹²⁸ *Id.* at 4 (Business Confidential Version).

¹²⁹ *Id.* at attachment 4, Photos 3-7, pages 2-4 (Business Confidential Version).

¹³⁰ January 31st Determination at 4 (Public Version) (emphasis in original).

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.* at 5.

¹³⁵ *Id.* at 4.

¹³⁶ RAAAS verification report, dated December 21, 2022, at 4 (Public Version).

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[no.] months lead time for raw materials by sea shipment regardless of origin location.¹³⁷

The verification report did not provide any information which would call into question the GM's explanation as to why Alno had the amount of raw materials that were present.¹³⁸ If anything, the presence of ample and abundant raw materials suggests that Alno had everything it needed in Malaysia to produce the WCV in Malaysia, as opposed to not having enough raw materials in Malaysia to produce the WCV in Malaysia.¹³⁹ CBP also observed the machinery needed to produce WCV in Malaysia, specifically, machines used to dovetail and precisely trim wood.¹⁴⁰ This suggests that Alno had the capacity to produce the WCV in Malaysia.¹⁴¹ Additionally, CBP officials observed a packaging area for finished products during the on-site verification; again, this constitutes direct evidence of Alno's production capacity for the manufacture of WCV in Malaysia.¹⁴²

The evidence relied upon in the January 31st Determination to dismiss the substantial evidence of capacity is insufficient. The determination concludes that [Co.] sales documents, consisting of invoices issued by [Co.] to Alno for sales of raw materials, are unreliable because of the discrepancy in sales prices of raw materials for invoices examined at the on-site verification: "on Invoice [no.], dated [date], the price for birch and hickory was \$[no.] and \$[no.], respectively, but on Invoice [no.], dated [date], the price for birch and hickory was \$[no.] and \$[no.] . . ." ¹⁴³ While this difference raises questions, CBP officials asked about the difference and Alno's Chief Accountant indicated that the difference is: "normal based on the volume they purchase, and the mix in the container. The smaller the size boards, the bigger the quantity they can order and better price they can receive. It all depends on the product mix in the container."¹⁴⁴

More importantly, this difference does not in any way establish that these raw materials were actually finished products manufactured in China, which link to a specific entry of WCV imported by Scioto.¹⁴⁵ The January 31st Determination did note that "Alno owes substantial amount of money (sic) to the Haiyan Group for subsidizing Alno's budget shortfalls."¹⁴⁶ The increase or decrease in sales price is likely a mechanism to transfer money between related companies to make up for debts owed between the related companies, and a device used to reallocate funds amongst related companies based upon each company's current needs.¹⁴⁷ We do

¹³⁷ *Id.* (Business Confidential Version).

¹³⁸ *Id.*

¹³⁹ *See id.* (Public Version).

¹⁴⁰ *See id.* at 5-6.

¹⁴¹ *See id.*

¹⁴² *See id.* at 6.

¹⁴³ *Id.* at 8 (Business Confidential Version) (quoting RAAAS verification report, dated December 21, 2022, at 5 (Business Confidential Version)).

¹⁴⁴ RAAAS verification report, dated December 21, 2022, at 5 (Public Version).

¹⁴⁵ *See id.*

¹⁴⁶ January 31st Determination at 4-5 (Public Version).

¹⁴⁷ *See id.* *See also* Alno's Third Supplemental Response, dated October 17, 2022 (Business Confidential Version):

Response: The unit transfer prices between [Co.] and Alno do not reflect the market price for the materials. Since the companies are related to each other, if [Co.] needs to get more fund to purchase raw wood boards, the unit prices for the solid is increased so that the total payment made by Alno to [Co.] for that purchase is increased. The invoice [No.] dated [date] is one such situation. In the same way, if Alno needs more fund

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not discuss here the implications of such a practice, in terms of the reliability of the transfer prices related to raw materials and/or finished goods purchased by Alno from China, but note that such types of intra-corporate pricing policies are a key reason why government agencies often do not rely upon, or minimally rely upon, related-party transfer prices.¹⁴⁸ We further note that there has been no allegation, nor has evidence been provided, that prices on the importation-related documents which were submitted to CBP for Scioto's entries were inaccurate or false such that a finding of evasion could be made based on false valuation.

Furthermore, regardless of the listed prices, because the documentation shows sales of raw materials from [Co.] to Alno in Malaysia, it supports a conclusion that Alno manufactured the raw materials into WCV in Malaysia and then exported the finished products to Scioto.¹⁴⁹ Alno acknowledged that it purchased both birch and hickory from China in one of its responses to a request for information.¹⁵⁰ Moreover, packing checklists, warehouse out slips, and inbound order forms provided to CBP identify birch and hickory (raw materials) sold from [Co.] to Alno, and photographs present in the record inside of Alno's factory in Malaysia validate sales of raw materials from [Co.] to Alno.¹⁵¹

The January 31st Determination acknowledged that the factory in Malaysia can produce WCV, and the documentation of purchases of raw materials, as well as the actual presence of raw materials at Alno's warehouse, corroborate production in Malaysia.¹⁵²

The January 31st Determination further notes that "invoices from [Co.] use vague invoice descriptions that do not specify or categorize different sizes of wood or specific hardware."¹⁵³ Given the presence of actual raw materials at the factory, this fact related to the invoices does not equate to a conclusion that, behind the invoice descriptions claimed to be raw materials sent to Alno, are actually finished products manufactured in China and transshipped through Malaysia.¹⁵⁴ The January 31st Determination also considers discrepancies, in terms of unit transfer prices, and finds that units of quantity were inconsistent (cartons, packages, and pallets) in the invoices for purchases of raw materials, and there were no invoice documents for purchases of glass.¹⁵⁵ Again, without more, as discussed herein, this does not demonstrate transshipment.¹⁵⁶

The January 31st Determination indicates that, in some cases, when packages or cartons were used as the quantity type, the matching Packing Check-Lists would contain SKUs of finished

to run its operation, the unit prices for the solid wood would be decreased so that the total payment made by Alno to [Co.] for that purchase will be less than what they should pay. The invoice [No.] dated [date] meets this situation.

¹⁴⁸ See, e.g., 19 U.S.C. § 1677b(f)(2) ("A transaction directly or indirectly between affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration.").

¹⁴⁹ January 31st Determination at 4-5 (Public Version). See also Alno's Third Supplemental Response, dated October 17, 2022 (Business Confidential Version).

¹⁵⁰ Scioto's June 1, 2022 CF 28 Response at p. 96 (Business Confidential Version).

¹⁵¹ See, e.g., *id.* at 125-241; see also verification report at Attachment 4, Photos 3-6, pp. 2-3 (Business Confidential Version).

¹⁵² January 31st Determination at 4 (Public Version).

¹⁵³ *Id.* at 8 (Business Confidential Version).

¹⁵⁴ See *id.* (Public Version).

¹⁵⁵ *Id.* at 8-9.

¹⁵⁶ See *id.*

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goods, which then also had a related FPID sheet.¹⁵⁷ However, when one examines Verification Exhibit 10, cited by the January 31st Determination, it appears that these only pertain to purchase order numbers from [Co.], not Scioto, because the documentation lacks production batch numbers (which denotes purchased goods, rather than manufactured goods) and the purchase order numbers are in a different format from those used for Scioto's purchases.¹⁵⁸ As discussed above, evidence as to [Co.] does not demonstrate evasion by Scioto.

Moreover, we disagree with the conclusions drawn in the January 31st Determination as to the FPID sheets. As demonstrated in the summary table provided herein (which is based on our examination of the record), a review of the SKUs for the WCV imported by [Co.] shows that the SKUs are not the same as the SKUs for WCV imported by Scioto. The January 31st Determination states that the FPID sheets contained SKUs and purchase order numbers for Scioto and "were *nearly* identical to the ones for [Co.] transshipped goods."¹⁵⁹ (Emphasis added.) However, only two out of Scioto's fourteen SKUs approximately match the documentation cited by the January 31st Determination, including the FPID sheets, and even those two SKUs do not match exactly.¹⁶⁰ As such, in our view, this evidence does not support the proposition that Alno also transshipped WCV to Scioto.

¹⁵⁷ *Id.* at 9; Verification Exhibit 10 (Business Confidential Version).

¹⁵⁸ Verification Exhibit 10 (Business Confidential Version). *Compare* January 31st Determination FPID sheet on page 23 for goods sent to Scioto: "*Batch no.* [batch no.] and Purchase Order number [no.] *with e.g.* FPID sheet from Verification Exhibit 10 page 24 [batch no.] purchase order no. [no.] (Business Confidential Versions) (emphasis added).

¹⁵⁹ January 31st Determination (Business Confidential Version) at 6, Attachments 22-25 (citing Verification Exhibit 10 (Business Confidential Version)).

¹⁶⁰ *Id.* at 23-25; Verification Exhibit 10 (Business Confidential Version) at pages 19, 21, 23, 26, 32, 33.

[

Comparison of SKUs

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Finally, the use of different quantity type designations, without more, is not probative as to the issue of evasion.

Likewise, with regards to the lack of invoices for glass, this pertained to shipments to [Co.], not Scioto, per the verification report.¹⁶¹ The lack of invoices for glass with respect to products shipped to [Co.] is of limited to no relevance here, where the record demonstrates that 1) the verification report mentions no evidence of Scioto's having ordered products with glass from Alno, 2) the same or similar invoices for glass were lacking for Scioto's orders, and, 3) most importantly, glass was not among the materials listed in Scioto's product and batch material lists, obviating any reason for Alno to possess such invoices for WCV sold to Scioto.¹⁶²

4. Alno's employee records are direct evidence of production of WCV in Malaysia.

CBP noted in the verification report that Alno's GM stated that "about [no.] employees . . . run the facility . . . (and) there are four production areas: 1. [area]; 2. [area]; 3. [area]; and 4. [area]."¹⁶³ Thus, it appears that Alno had the workforce necessary to complete the various stages of producing WCV.¹⁶⁴ The verification report did not include any information to cast doubt on the GM's aforementioned statements regarding production at Alno's facility in Malaysia.¹⁶⁵ We note that Alno stopped production of WCV as of [date], after the last dates of entry concerning the entries subject to this investigation, [date], because "{c}ustomers would not accept orders due to ongoing litigation and EAPA investigation..."¹⁶⁶

Although the factory was shut down during the verification, Alno brought in employees to demonstrate that the factory in Malaysia could produce WCV at the factory location.¹⁶⁷ Even though Alno's bringing in employees during the shutdown to demonstrate the production process does not demonstrate that the workers were previously present and that they produced the goods at issue in this investigation in Malaysia, CBP acknowledged in the January 31st Determination that Alno could produce the products in Malaysia.¹⁶⁸ In addition, CBP found machinery present at Alno's factory used to manufacture WCV, including machines used to dovetail wood and make precise trims to make the WCV presently at issue.¹⁶⁹

D. Scioto was not denied procedural due process, and other arguments raised by Scioto are unpersuasive.

Finally, we will address Scioto's argument that it was denied due process, and other tangential or unpersuasive arguments raised by Scioto. In *Royal Brush v. United States*, the CIT

¹⁶¹ RAAAS verification report, dated December 21, 2022, at 13 (Business Confidential Version).

¹⁶² *See id.*; Scioto's June 1, 2022 CF 28 Response at Attachments 11-2-11-3, p. 1622-1759 (Business Confidential Version).

¹⁶³ RAAAS verification report, dated December 21, 2022, at 5 (Business Confidential Version).

¹⁶⁴ *See id.*

¹⁶⁵ *See id.*

¹⁶⁶ *Id.* at 3, Attachment 3, p. 1.

¹⁶⁷ *Id.* at 5 (Public Version).

¹⁶⁸ *Id.* at 5; January 31st Determination at 4 (Public Version).

¹⁶⁹ RAAAS verification report, dated December 21, 2022, at 6 (Public Version).

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examined an EAPA case presenting similar due process claims around public summaries of confidential documents required by 19 CFR § 165.4.¹⁷⁰ The court found that “CBP has shared information with Royal Brush consistent with its regulation and in a manner that balances the need to disclose evidence against an importer with the need to protect certain information from unauthorized disclosure,” and concluded that “CBP has complied with 19 CFR § 165.4 by providing necessary public summaries of the confidential information.”¹⁷¹ In the present case, we find that TRLED provided public summaries consistent with the requirements of 19 CFR § 165.4, as stated by *Royal Brush*, and that Scioto’s due process rights were not infringed by a lack of access to the confidential record, although we do recognize that an appeal of the *Royal Brush* decision is currently pending before the U.S. Court of Appeals for the Federal Circuit, but not yet decided.¹⁷²

Scioto also argues that the determination should be reversed because CBP “never asked to verify Scioto despite the fact that it was the subject of this investigation, yet made a finding of evasion against Scioto.”¹⁷³ This factor is not one that we use to support our determination and we agree with TRLED that a verification of Scioto was not necessary under the circumstances; a finding of evasion could be made without a verification of Scioto. The issue here is whether the WCV were produced in Malaysia or in China. Thus, the critical on-site verification with respect to this issue was an on-site verification of the factory in Malaysia, owned by Alno, to determine if the WCV at issue were produced in Malaysia, or produced in and transshipped from China.¹⁷⁴ CBP already had the entry records as filed by Scioto, because, by statute, Scioto was required to make entry by filing the required documentation necessary for CBP to determine whether the merchandise can be released (subject to exceptions inapplicable here).¹⁷⁵ The information that CBP needed, with respect to Scioto, was the entry records, as filed, to determine: a) the entry type claimed (consumption vs. AD/CVD), and b) the claimed country of origin, and CBP already had this information;- thus, an on-site verification of this information at Scioto’s premises was unnecessary. Finally, Scioto’s argument ignores the fact that on-site verification is discretionary under the EAPA statute, not mandatory, and it is focused only on the relevant issues at play in a particular case:

{i}n making a determination under paragraph (1) with respect to covered merchandise, the Commissioner **may** collect such additional information **as is necessary** to make the determination through such methods as the Commissioner considers appropriate, including by— . . . conducting verifications, including **on-site verifications**, of **any relevant information**.¹⁷⁶

Scioto’s argument regarding missing invoices also makes undue assumptions. The verification report states that a review of the documents discovered that invoices [no. _____], [no. _____], and [no. _____] were missing, as well as the corresponding packing lists and shipping invoices.¹⁷⁷ Additionally, there were no corresponding Packing Check-Lists in the folder

¹⁷⁰ See *Royal Brush Mfg., Inc. v. United States*, 545 F. Supp. 3d 1357,1367-69 (Ct. Int’l Trade Oct. 29, 2021); *appeal filed and docketed*, No. 22-1226 (Fed. Cir. filed Sept. 9, 2022).

¹⁷¹ *Id.* at 1367, 1369.

¹⁷² *Royal Brush Mfg., Inc. v. United States*, No. 22-1226 (Fed. Cir. filed Sept. 9, 2022).

¹⁷³ Scioto’s March 15, 2023 Request for Administrative Review at 5 (Public Version).

¹⁷⁴ See 19 U.S.C. § 1517(c)(2)(B).

¹⁷⁵ See 19 U.S.C. § 1484(a)(1).

¹⁷⁶ 19 U.S.C. § 1517(c)(2)(B)(emphasis added).

¹⁷⁷ RAAAS verification report, dated December 21, 2022, at 16 (Business Confidential Version).

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related to the period of the missing invoices.¹⁷⁸ As a result, TRLED found that 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.¹⁷⁹ Scioto claims that "CBP's finding of vague record keeping refers to Alno's material purchase records, rather than the production records reviewed by CBP."¹⁸⁰ However, Scioto's argument unnecessarily assumes that these missing purchase records pertain to raw materials from China, not finished products from China.¹⁸¹ Regardless though, we find that there is substantial evidence on the record demonstrating that the WCV at issue were produced in Malaysia based upon the aforementioned production records, and the presence of ample raw materials and machinery at Alno's raw materials warehouse in Malaysia.

In asking us to reverse the January 31st Determination, Scioto makes two additional and tangential requests, both of which we dismiss for purposes of our determination.

First, Scioto requests that: CBP "must provide Scioto with the opportunity to demonstrate that individual shipments during the period of investigation and going into the future were produced in Malaysia in order to avoid antidumping and countervailing duty liability."¹⁸² In light of reversal of the finding of evasion, this argument is moot and we take no position on this point.

Secondly, Scioto also argues that "{f}or new entries and for entries on which cash deposits are claimed, Scioto should be allowed to submit additional documentation during the entry process to demonstrate that the cabinets were produced in Malaysia. CBP should make it clear in its final determination that such procedures will be available to Scioto."¹⁸³ Again, given our reversal of the finding of evasion, this argument is not relevant to our determination. However, we note that 19 U.S.C. § 1484 and 19 CFR § 142.3 already detail the entry documentation requirements.¹⁸⁴ Moreover, CBP's regulation provides for importers to submit "Other documentation. Other documents which may be required by CBP . . . for a particular shipment."¹⁸⁵

Based on the foregoing, irrespective of Scioto's arguments and requests which we find unpersuasive or inapposite, particularly Alno's production capacity and documentation relating to production of the WCV and linked to Scioto's entries at issue, we conclude that there is not substantial evidence of evasion as defined by EAPA.

IV. Decision

Based upon our *de novo* review of the administrative record in this case, including the administrative record as transmitted to RR by TRLED, the request for administrative review and response, the January 31st Determination of evasion under 19 U.S.C. § 1517(c) is **REVERSED**.

¹⁷⁸ *Id.* (Public Version).

¹⁷⁹ January 31st Determination at 5-6 (Public Version).

¹⁸⁰ Scioto's March 15, 2023 Request for Administrative Review at 13 (Public Version).

¹⁸¹ *See id.*

¹⁸² *Id.* at 5.

¹⁸³ *Id.*

¹⁸⁴ 19 U.S.C. § 1484; 19 CFR § 142.3.

¹⁸⁵ 19 CFR § 142.3(a)(5).

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A copy of this determination is being provided to TRLED so that the interim measures may be modified consistent with this decision. TRLED may also take any other appropriate actions consistent with this decision.

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

Sincerely,

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Supervisory Attorney-Advisor
Regulations & Rulings, Office of Trade
U.S. Customs & Border Protection

Approved by:

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