



A-570-051, C-570-052  
Anti-Circumvention Inquiry  
**Public Document**  
E&C/OV: RG

November 22, 2019

**MEMORANDUM TO:** Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

**FROM:** James Maeder  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Issues and Decision Memorandum for the Final Determination of  
the Anti-Circumvention Inquiry: Certain Hardwood Plywood  
Products from the People's Republic of China

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## I. Summary

We analyzed the case and rebuttal briefs submitted by interested parties in the anti-circumvention inquiry of the antidumping duty (AD) and countervailing duty (CVD) orders on certain hardwood plywood products (hardwood plywood) from the People's Republic of China (China),<sup>1</sup> conducted pursuant to section 781(d) of the Tariff Act of 1930, as amended (the Act). This anti-circumvention inquiry assesses whether certain plywood with face and back veneers of radiata and/or agathis pine that: (1) has a Toxic Substances Control Act (TSCA) or California Air Resources Board (CARB) label certifying that it is compliant with TSCA/CARB requirements; and (2) is made with a resin, the majority of which is comprised of one or more of the following three product types – urea formaldehyde, polyvinyl acetate, and/or soy (inquiry merchandise) was commercially available prior to December 8, 2016 (initiation date of the underlying investigation) and therefore, not later-developed.<sup>2</sup> We recommend that you approve the positions described in the “Discussion of Issues” section of this memorandum. Below is the complete list of the issues for which we received comments and rebuttal comments from interested parties:

Issue 1: Whether There is a Legal Basis for Initiating the Inquiry

Issue 2: Whether Commerce's Previous Exclusion of Plywood with Softwood Veneers Applies to this Inquiry

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<sup>1</sup> See *Certain Hardwood Plywood from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Order*, 83 FR 504 (January 4, 2018) and *Certain Hardwood Plywood from the People's Republic of China: Countervailing Duty Order*, 83 FR 513 (January 4, 2018) (collectively, *Orders*).

<sup>2</sup> See *Certain Hardwood Plywood Products from the People's Republic of China: Initiation of the Less-Than-Fair-Value Investigation*, 81 FR 91125 (December 16, 2016) (*Initiation Notice*).



- Issue 3: Whether Record Evidence Contradicts Commerce’s Findings
- Issue 4: Whether Commerce Correctly Found Documents Unreliable
- Issue 5: Whether Commerce Created Insurmountable Criteria
- Issue 6: Whether Commerce Should Accept New Factual Information
- Issue 7: Whether Inquiry Merchandise Passes the Threshold of Commercial Availability
- Issue 8: Whether a Negative Finding Applies to all Exports of Inquiry Merchandise
- Issue 9: Whether Commerce Can Make a Country-Wide Finding
- Issue 10: Whether Commerce Applied Adverse Facts Available
- Issue 11: Whether Commerce Must Notify the International Trade Commission
- Issue 12: Whether the Date of Publication is the Appropriate Effective Date
- Issue 13: Whether the Certification Requirements are Unreasonable and Burdensome

## II. Background

On June 11, 2019, Commerce published the preliminary affirmative determination of circumvention of the AD and CVD orders on certain hardwood plywood products from China.<sup>3</sup> In accordance with 19 CFR 351.309, we invited parties to comment on the *Preliminary Determination*. In July 2019, Commerce received timely hearing requests from Xuzhou Shelter Import and Export Co., Ltd., Shandong Shelter Forest Products Co., Ltd. and Shelter Forest International Acquisition Inc., (collectively, Shelter Forest),<sup>4</sup> East Coast Lumber Co., Elberta Crate and Box Co., Laminate Technologies Inc., Liberty Woods International Inc., Masterbrand Cabinets Inc., McCorry & Company Limited, MJB Wood Group Inc., Northwest Hardwoods Inc., Patriot Timber Products Inc., Sierra Forest Products Inc., Taraca Pacific Inc. and USPLY LLC (collectively, Importers Alliance),<sup>5</sup> IKEA Supply AG (IKEA),<sup>6</sup> Far East American Inc. (FEA), Linyi Glary Plywood Co., Ltd. (Glary) and Shanghai Futuwood Trading Co., Ltd. (Futuwood), and Chinese Exporters<sup>7</sup> (collectively, Glary and Futuwood),<sup>8</sup> and the Coalition for Fair Trade in Hardwood Plywood (the petitioner).<sup>9</sup>

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<sup>3</sup> See *Certain Hardwood Plywood Products from the People’s Republic of China: Preliminary Affirmative Determination of Circumvention of the Antidumping and Countervailing Orders*, 84 FR 27081 (June 11, 2019) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).

<sup>4</sup> See Shelter Forest’s Letter, “Shelter Forest and Integra Wood’s Request for Hearing,” dated July 8, 2019.

<sup>5</sup> See Importers Alliance’s Letter, “Anti-Circumvention Inquiry on Certain Hardwood Plywood Products from the People’s Republic of China: Hearing Request,” dated July 10, 2019.

<sup>6</sup> See IKEA’s Letter, “Anti-Circumvention Inquiry on Hardwood Plywood from the People’s Republic of China: Request for Hearing,” dated July 10, 2019.

<sup>7</sup> Anhui Hoda Wood Co., Ltd., Fei County Hongsheng Wood Industry Co., Ltd, Feixian Dongqin Woodwork Co., Ltd, Feixian Longteng Wood Co., Ltd., Feixian Tanyi Youcheng Jiafu Plywood Factory., Grand Focus Intl. Ltd., Linyi Celtic Wood Co., Ltd, Linyi City Lanshan District Fubo Wood Factory, Linyi Dongfangjuxin Wood Co. Ltd., Linyi Evergreen Wood Co., Ltd., Linyi Hengsheng Wood Industry Co. Ltd., Linyi Jiahe Wood Industry Co., Ltd., Linyi Sanfortune Wood Co. Ltd, Shandong Dongfang Bayley Wood Co. Ltd., Sumec International Technology Co., Ltd., Suzhou Oriental Dragon Import and Export Corp., Ltd., Xu Zhou Changcheng Wood Co., Ltd., Xuzhou Golden River Wood Co., Ltd., Xuzhou Jiangheng Wood Products Co., Ltd., Xuzhou Jiangyang Wood Industries Co., Ltd, Xuzhou Longyuan Wood Industry Co., Ltd, and Xuzhou Timber International Trade Co., Ltd. (collectively, Chinese Exporters).

<sup>8</sup> See Glary and Futuwood’s Letter, “Hardwood Plywood from the People’s Republic of China: Hearing Request,” dated July 10, 2019.

<sup>9</sup> See Petitioner’s Letter, “Hardwood Plywood from the People’s Republic of China: Hearing Request,” dated July

In July and August 2019, Commerce also received case briefs from Lianyungang Yuantai International Trade Co., Ltd (Yuantai);<sup>10</sup> Importers Alliance;<sup>11</sup> IKEA;<sup>12</sup> Glary, Futuwood *et. al.*;<sup>13</sup> Shelter Forest;<sup>14</sup> and rebuttal briefs from IKEA<sup>15</sup> and petitioners.<sup>16</sup>

Pursuant to requests from interested parties, we held a public hearing on August 22, 2019, regarding the *Preliminary Determination*.

On October 3, 2019, consistent with section 781(f) of the Act, Commerce extended the deadline for the final determination to November 22, 2019.<sup>17</sup>

### **III. Scope of the Anti-Circumvention Inquiry**

This anti-circumvention inquiry covers certain hardwood plywood products with face and back veneers made of radiata and/or agathis pine that: (1) has a TSCA or CARB label certifying that it is compliant with TSCA/CARB requirements; and (2) is made with a resin, the majority of which is comprised of one or more of the following three product types—urea formaldehyde, polyvinyl acetate, and/or soy.<sup>18</sup> Importers and exporters of plywood from China with both outer veneers made of a softwood species of wood (softwood plywood products), must certify that the softwood plywood products do not meet all three of the following criteria: (1) have both outer veneers of radiata and/or agathis pine; (2) are made with a resin, the majority of which is comprised of urea formaldehyde, polyvinyl acetate, and/or soy; and (3) have a TSCA or CARB label certifying that they are compliant with TSCA/CARB requirements, as provided for in the certifications attached as appendices to the accompanying *Federal Register* notice. Failure to submit the requisite certifications may result in the merchandise being found subject to antidumping and countervailing duties.

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10, 2019.

<sup>10</sup> See Yuantai’s Letter, “Hardwood Plywood from the People’s Republic of China: Case Brief,” dated July 18, 2019 (Yuantai Case Brief).

<sup>11</sup> See Importers Alliance’s Letter, “Anti-Circumvention Inquiry on Certain Hardwood Plywood Products from the People’s Republic of China: Case brief,” dated July 18, 2019 (Importers Alliance Case Brief).

<sup>12</sup> See IKEA’s Letter, “Certain Hardwood Plywood Products from the People’s Republic of China: Case Brief,” dated July 18, 2019 (IKEA Case Brief).

<sup>13</sup> See Glary and Futuwood’s Letter, “Hardwood Plywood from the People’s Republic of China: Case Brief,” dated July 18, 2019 (Glary and Futuwood Case Brief).

<sup>14</sup> See Shelter Forest’s Letter, “Anti-Circumvention Inquiry of the Antidumping and Countervailing Duty Orders Certain Hardwood Plywood Products from China,” dated July 29, 2019 (Shelter Forest Case Brief).

<sup>15</sup> See IKEA’s Letter, “Certain Hardwood Plywood Products from the People’s Republic of China: Rebuttal Case Brief,” dated July 31, 2019 (IKEA Rebuttal Brief).

<sup>16</sup> See Petitioners’ Letter, “Certain Hardwood Plywood Products from the People’s Republic of China: Rebuttal Brief,” dated July 31, 2019 (Petitioner Rebuttal Brief).

<sup>17</sup> See Memorandum, “Extension of Final Determination Deadline,” dated October 3, 2019.

<sup>18</sup> See *Initiation Notice*.

## IV. Discussion of the Issues

### Issue 1: Whether There is a Legal Basis for Initiating the Inquiry

#### *Glary and Futuwood Comments:*

- In the *Preliminary Determination*, Commerce ignored arguments that there was no legal basis to initiate an anti-circumvention inquiry as proposed by the petitioner.<sup>19</sup>
- Interested parties demonstrated that a multitude of Chinese companies produced and exported hundreds of shipments of inquiry merchandise to the United States years before the initiation of the underlying investigations in December 2016.<sup>20</sup>
- Because Commerce found that this inquiry is effective country-wide, the commercial availability of inquiry merchandise in the United States from any one producer, exporter, or importer is sufficient to conclude that there is no circumvention due to newly-developed merchandise.<sup>21</sup>
- Commerce has already decided that plywood made with face and back veneers of softwood are not part of the *Orders*.<sup>22</sup>

#### *Yuantai Comments:*

- Anti-circumvention inquiries cannot bring excluded products within the scope of an order.<sup>23</sup>
- Commerce initiated this inquiry and made an affirmative preliminary determination based on essentially the same arguments and alleged facts that it previously rejected when the petitioner attempted to expand the scope of the underlying investigation.<sup>24</sup>
- The petitioner's current definition of inquiry merchandise does not change the fact that all plywood with softwood face and back veneers were intentionally excluded from the *Orders* by the petitioner.<sup>25</sup>
- The petitioner filed the petition to exclude plywood with a face and back veneer of softwood to avoid the challenge to their standing brought by importers in the 2012 investigation because the petitioner did not represent the softwood industry.<sup>26</sup>
- While the scope of the 2012 investigation covered softwood plywood, the scope of the underlying investigations was written to specifically exclude such products. In excluding plywood with a face and back veneer of any softwood from the scope, the petitioner

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<sup>19</sup> See Glary and Futuwood Case Brief at 5.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 6.

<sup>22</sup> *Id.* at 7.

<sup>23</sup> See Yuantai Case Brief at 2 (citing to *Wheatland Tube Co. v. United States*, 161 F.3d 1365 (Fed. Cir. 1998) (*Wheatland*)).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 2-3.

<sup>26</sup> *Id.* at 3 (citing *Hardwood and Decorative Plywood from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 58283 (September 23, 2013), and accompanying Issues and Decision Memorandum at Comment 4).

contemplated all of the various softwoods then in existence, including radiata and agathis pine.<sup>27</sup>

- The statute governing later-developed merchandise provides for an inquiry where new “merchandise” is developed, not where old merchandise is put to new use, and the petitioner does not claim that radiata and agathis pine were not being used as veneers at the time of filing the petition.<sup>28</sup>
- The petitioner cannot claim that they could not have included these products in the petition because they did not know about them; by the petitioner’s own admission, such products were commercially available.<sup>29</sup>
- Commerce’s practice is concerned with whether a product is “commercially available,” not whether a product is commercially available for a particular use.<sup>30</sup>
- Neither the scope of the *Orders* nor the underlying investigation contained a “use” provision, yet the petitioner inserted one in their request for circumvention inquiry by including “suitable for decorative use.”<sup>31</sup> The petitioner defines this term based on two criteria that are not in the scope of the *Orders*, TSCA/CARB compliant and made with a particular resin.<sup>32</sup>
- The scope states that products meeting *American National Standard for Hardwood and Decorative Plywood*, ANSI/HPVA HP1-2016 standards, including any revisions to that standard, are covered, indicating that the petitioner anticipated that updated standards for glue would not remove the products from the *Orders*.<sup>33</sup>
- The petitioner’s request defines inquiry merchandise as “suitable for interior/decorative use” in addition to the other three criteria. Therefore, this is essentially the same product as described by the scope of the *Orders*.<sup>34</sup>

*Petitioner Rebuttal Comments:*

- Products not in existence at the time the scope of the *Orders* was written could not have been expressly excluded.<sup>35</sup>
- The existence of plywood with veneers of radiata pine prior to December 8, 2016, does not undermine this proceeding. Inquiry merchandise has several physical characteristics—characteristics that allow this new merchandise to mimic in-scope merchandise, and that were specifically developed to circumvent the *Orders*.<sup>36</sup>

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<sup>27</sup> *Id.* at 3-4.

<sup>28</sup> *Id.* at 5.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 6.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 7.

<sup>34</sup> *Id.*

<sup>35</sup> See Petitioner Rebuttal Brief at 5-6 (citing to *Tao-Ao Aluminum (Taishan) Co. v. United States*, No. 17-216 Slip op. 17-70 at 12 (June 7, 2019)).

<sup>36</sup> *Id.* at 6.

- The petitioner’s request mentioned “suitable for interior/decorative use” but it is clear that the definition of inquiry merchandise is based on the physical characteristics of the merchandise, not the end use.<sup>37</sup>
- That the criteria for this merchandise complies with the law does not excuse that it was created for the purpose of avoiding duties.<sup>38</sup>

**Commerce Position:** We disagree with Interested Parties’ claims that this anti-circumvention inquiry is contrary to the law. Specifically, section 781(d)(1) of the Act provides that Commerce may find circumvention of an AD or CVD order when merchandise is developed after an investigation is initiated (later-developed merchandise).<sup>39</sup> Glary and Futuwood’s arguments are predicated on the contention that interested parties sufficiently demonstrated that the inquiry merchandise was sold prior to the initiation of the investigations, which was not Commerce’s conclusion in the *Preliminary Determination*.<sup>40</sup> In the *Preliminary Determination*, we found that neither the three mandatory respondents, nor Shelter Forest, a voluntary respondent, provided documentation to support their claim that they sold merchandise meeting all three criteria of inquiry merchandise in any one sale prior to December 8, 2016,<sup>41</sup> the date of the initiation of these underlying investigations.<sup>42</sup> Consequently, we found that the inquiry merchandise was not commercially available prior to the date of initiation of the AD/CVD investigations and, therefore, that the inquiry merchandise constituted merchandise developed after an investigation was initiated, within the meaning of section 781(d) of the Act.<sup>43</sup> Although Glary and Futuwood argue that Commerce should acknowledge that interested parties demonstrated that inquiry merchandise was imported in large quantities before the initiation of the investigations, we continue to find that interested parties did not demonstrate that inquiry merchandise was available prior to the initiation of the investigations for this final determination and, therefore, continue to conclude that inquiry merchandise was later developed, within the meaning of section 781(d) of the Act.

Citing to *Wheatland*, Yuantai argues that anti-circumvention inquiries cannot bring excluded products within the order but overlooks the fact that inquiry merchandise in this case is not expressly excluded by the *Orders*. First, by enacting the statutory circumvention provisions, “Congress has provided that Commerce’s consideration of certain types of articles within the scope of an {antidumping duty or countervailing duty} order will be a proper clarification or interpretation of the order instead of improper expansion or change even where these products do not fall within the order’s literal scope.”<sup>44</sup> Indeed, the Court of Appeals for the Federal Circuit

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<sup>37</sup> *Id.* at 6-7.

<sup>38</sup> *Id.* at 7.

<sup>39</sup> See 19 CFR 351.225(j).

<sup>40</sup> See *Preliminary Determination*, and accompanying PDM, at 21.

<sup>41</sup> *Id.*, at 17.

<sup>42</sup> See *Certain Hardwood Plywood Products from the People’s Republic of China: Initiation of Less-Than-Fair-Value Investigation*, 81 FR 91125 (December 16, 2016); see also *Certain Hardwood Plywood Products from the People’s Republic of China: Initiation of Countervailing Duty Investigation*, 81 FR 91131 (December 16, 2016).

<sup>43</sup> See *Preliminary Determination*, and accompanying PDM at 17.

<sup>44</sup> See *Target Corp. v. United States*, 609 F.3d 1352, 1355 (CAFC 2010) (quoting *Wheatland*, 161 F.3d at 1370); see also *Bell Supply Co. v. United States*, 179 F. Supp. 3d 1082, 1093 n.9 (CIT 2016) (“...Commerce conducts a formal

(CAFC) has held that products that are not subject to an order may still be found to be subject to an AD or CVD order after conducting a circumvention inquiry.<sup>45</sup> Second, the CAFC in *Wheatland* held that minor alteration inquiries are inappropriate when the AD order *expressly* excludes the allegedly altered product.<sup>46</sup> The CAFC has recognized that such scenarios are distinguishable from those in which an order specifies what is covered by the scope, but does not contain an explicit exclusion. For example, in *Deacero*, which concerned the scope of the wire rod from Mexico order, the CAFC concluded that Commerce’s affirmative anti-circumvention determination was in accordance with law because the scope provides a cross-sectional range but “does not provide that steel wire rod less than 5.00 mm in diameter should necessarily be excluded from its scope.”<sup>47</sup> Similarly, in this case, although the *Orders* state that hardwood plywood consists 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, the scope does not provide that inquiry merchandise should necessarily be excluded from the scope.

Yuantai also argues that the petitioner excluded inquiry merchandise from the scope of the *Orders* in order to satisfy the requisite industry standing, however, we find this argument to be unavailing. Commerce conducted the analysis pursuant to section 781(d) of the Act and is guided by the language of the scope of the *Orders*, which does not expressly exclude the inquiry merchandise.

Although Yuantai argues that the petitioner concedes that plywood with a face and back of radiata and agathis pine was available for structural use prior to the investigations and that they cannot now claim that such products were not commercially available, Yuantai conflates the existence of one characteristic of inquiry merchandise with the existence of products satisfying *all* characteristics of the inquiry merchandise. Plywood with radiata pine outer veneers, paired with glues that are suitable for structural/exterior use (*i.e.*, the glues are not formulated to reduce formaldehyde emissions), does not equate to plywood with face and back veneers of radiata pine with a majority urea formaldehyde/polyvinyl acetate/soy resin (glues which are formulated to have very low formaldehyde emissions, so that the plywood produced using this glue is suitable for indoor use). Thus, because plywood with face and back veneers of radiata and/or agathis pine for structural use is not interchangeable with inquiry merchandise, the mere existence of such structural plywood does not render the inquiry merchandise commercially available prior to the investigations.

Yuantai alternatively argues that nowhere does the scope require that subject merchandise be for “interior/decorative use,” but then states that inquiry merchandise are essentially the same products as those covered the scope of the order, but made with a core that is glued to meet ANSI/HPVA standards, including any subsequent revisions. Not only does the scope explicitly

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circumvention inquiry pursuant to 19 C.F.R. § 351.225(g)-(h) to lawfully expand the reach of an antidumping or countervailing duty order to include otherwise non-subject merchandise within the scope of an order.”).

<sup>45</sup> See, e.g., *Bell Supply Co., LLC v. United States*, 888 F.3d 1222, 1229 (Fed. Cir. 2018) (“Circumvention can only occur if the articles are from a country not covered by the relevant AD or CVD orders.”); *id.* at 1230-31 (explaining that Commerce “can still find that {an article} is subject to an AD or CVD order after conducting a circumvention inquiry” when it would otherwise be outside the scope of the order, such as due to substantial transformation).

<sup>46</sup> See *Wheatland*, 161 F.3d at 1369-70.

<sup>47</sup> See *Deacero S.A. de C.V. v. United States*, 817 F.3d 1332, 1338 (CAFC 2016) (*Deacero*).

identify the products as “decorative plywood,” contrary to Yuantai’s claims, but Yuantai equates the requirements of ANSI/HPVA standards as the TSCA/CARB certification and glue requirements of inquiry merchandise. However, the record does not contain the text of the standards and, thus, Commerce does not have a basis to determine how similar or dissimilar the standards aligns with TSCA/CARB compliance or with the three types of glues used to produce inquiry merchandise.

Accordingly, we disagree with Glary, Futuwood, and Yuantai that there is no legal basis for initiating this anti-circumvention inquiry. As documented in the *Initiation Notice*, the *Preliminary Determination*, and this final determination, this proceeding has been conducted in accordance with the law and the record developed over the course of this inquiry supports a finding that merchandise developed after the initiation of the investigations is circumventing the *Orders*.

## **Issue 2: Whether Commerce’s Previous Exclusion of Plywood with Softwood Veneers Applies to this Inquiry**

### *IKEA Comments:*

- Commerce previously distinguished subject merchandise from inquiry merchandise when Commerce rejected the petitioner’s first request to include hardwood plywood with a face and/or back of softwood, stating that the plain language of the scope expressly excludes merchandise with both a face and back veneer of softwood.<sup>48</sup>
- Commerce noted at that time that the request to include plywood with both a face and back veneer of coniferous wood would expand the scope and raise some procedural concerns.<sup>49</sup>
- Commerce’s Final Scope Memorandum repeatedly stated that plywood with both a face and back veneer of coniferous wood is not covered by the scope and the record demonstrated that it was not the petitioner’s intent to cover such merchandise.<sup>50</sup>
- The petitioner did not challenge Commerce’s final scope determination in the investigation and, therefore, waived its right to contest the determination that the plain language of the scope does not cover plywood with a face and back of softwood.<sup>51</sup>
- In response to the first anti-circumvention inquiry, Commerce declined to initiate because it had already determined that plywood with a face and back veneer of softwood was not covered by the *Orders*, that such merchandise was not considered in the International Trade Commission’s (ITC’s) injury analysis, and could impermissibly expand the scope.<sup>52</sup>

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<sup>48</sup> See IKEA Case Brief, at 2-3 (citing to Importers Alliance’s Letter, “Certain Hardwood Plywood Products from the People’s Republic of China: Objection to Second Request for Anti-Circumvention Inquiry,” dated July 16, 2018 (Importers Alliance Comments on Initiation) at Exhibit 1 (Post-Preliminary Scope Decision Memorandum) at 6-12).

<sup>49</sup> *Id.* at 3.

<sup>50</sup> *Id.* at 4-5 (citing to Importer Alliance’s Comments on Initiation at Exhibit 3 (Final Scope Memorandum) at 18-19).

<sup>51</sup> *Id.* at 5.

<sup>52</sup> *Id.* at 6.

- In declining to initiate that inquiry, Commerce determined that the use of softwood veneers for the face and back was not insignificant, noting that it results in the production of a different product.<sup>53</sup>

*Petitioner Rebuttal Comments:*

- Inquiry merchandise is different from the merchandise previously examined.
- The merchandise was developed after the initiation of the investigation and, therefore, could not have been contemplated in the inclusion or exclusion of the merchandise at issue.<sup>54</sup>
- The fact that Commerce found that inquiry merchandise is later-developed is the central distinction between this proceeding and prior proceedings.<sup>55</sup>

*IKEA Rebuttal Comments:*

- In light of the administrative records and fact arising from two previous anti-circumvention requests and the original investigation, Commerce should reach a negative determination regardless of whether it finds that there is evidence of the commercial availability of inquiry merchandise prior to December 8, 2016.<sup>56</sup>

**Commerce’s Position:** We agree with IKEA that plywood with a face and back veneer of a softwood species is not covered by these *Orders*, which cover hardwood and decorative plywood, and certain veneered panels from China.<sup>57</sup> We also agree with IKEA that there is an abundance of administrative precedent stating that plywood with a face and back veneer of softwood is not covered by the *Orders*, as a general category.<sup>58</sup> However, IKEA oversimplifies the nature of the product at issue in this inquiry such that the comparisons between prior segments and the current segment are inapposite. Specifically, this inquiry is not limited to merchandise solely defined by the species of face and back veneer, as characterized by IKEA. Instead, this inquiry is focused on merchandise that is alleged to be developed after the investigations and that is defined by a very specific set of parameters. As explained above, inquiry merchandise is plywood with a face and back veneer of radiata and/or agathis pine that: (1) has a TSCA or CARB label certifying that it is compliant with TSCA/CARB requirements; and (2) is made with a resin, the majority of which is comprised of one or more of the following three product types – urea formaldehyde, polyvinyl acetate, and/or soy. In the *Initiation Notice*, in addition to the unique physical characteristics of the inquiry merchandise, we also addressed the advertisement, display, channels of trade, the commercial availability, the expectations of the ultimate purchaser, and the ultimate use of the inquiry merchandise.<sup>59</sup> Thus, IKEA’s claims that Commerce has already ruled that the inquiry merchandise is not covered by the *Orders* is based on mischaracterizations of the inquiry merchandise and are without merit.

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<sup>53</sup> *Id.* at 6-7.

<sup>54</sup> *See* Petitioner Rebuttal Brief at 5.

<sup>55</sup> *Id.*

<sup>56</sup> *See* IKEA Rebuttal Brief at 4.

<sup>57</sup> *See Orders.*

<sup>58</sup> *See, e.g.,* Post-Preliminary Scope Decision Memorandum.

<sup>59</sup> *See Initiation Notice.*

We also disagree with IKEA that Commerce’s prior scope finding that plywood with face and back veneers of softwood is not covered by the *Orders* should preclude this anti-circumvention inquiry. Although the Post-Preliminary Scope Decision Memorandum issued in the investigation states that the scope “expressly excluded the merchandise at issue,” it did so not because it found express language that excluded the merchandise, but because the plain language of the scope clearly covered only merchandise with at least one of the face or back veneers made of hardwood or bamboo.<sup>60</sup> To reiterate, neither in the Post Preliminary Scope Decision Memorandum, nor in any other segment of this proceeding did Commerce find language in the scope of the *Order* that expressly excludes merchandise with face and back veneers made of softwood. In the absence of such express exclusionary language, Commerce is not precluded from conducting an anti-circumvention inquiry.<sup>61</sup>

### **Issue 3: Whether Record Evidence Contradicts Commerce’s Findings**

#### *Glary and Futuwood Comments:*

- The certifications and labels provided by Glary demonstrate that Glary was CARB certified and used CARB certification labels on its pine plywood imports to the United States.<sup>62</sup>
- All of Glary’s purchase orders prior to December 2016, requested “CARB certified” labels on all shipments of the inquiry merchandise. All of the invoices and packing lists confirmed that the exported merchandise complied the with label requirement. Commerce did not explain why it rejected the reasonable explanation, that “{a}ll labels have been used with each shipment, and Linyi Glary did not keep photos of the previous labels.”<sup>63</sup>
- CARB and TSCA certifiers do not issue certificates for individual sales and therefore Glary cannot directly link its CARB certificates with the sales documents provided.<sup>64</sup>
- Glary has provided all of the certificates used from 2013 through 2018, to demonstrate its CARB/EPA certifications. The certificates include the requirement to use formaldehyde glue for the veneer bonding agent.<sup>65</sup>
- Futuwood’s sales documents demonstrate conclusively that it sold inquiry merchandise, because the company has reported that the U.S. customer declared the merchandise under the HTS code for both outer plies of coniferous wood,<sup>66</sup> and its Plant and Plant Product

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<sup>60</sup> See Post-Preliminary Scope Decision Memorandum at 10.

<sup>61</sup> See, e.g., *Deacero*, 817 F.3d at 1338 (“The purpose of minor alteration anti-circumvention inquiries is to determine whether articles not expressly within the literal scope of a duty order may nonetheless be found within its scope as a result of a minor alteration to merchandise covered in the investigation. To conclude otherwise would render meaningless Congress’s intent to address circumvention concerns.”).

<sup>62</sup> See Glary and Futuwood Case Brief at 12 (citing to Glary’s November 27, 2018 initial questionnaire response (Glary’s IQR) at 16-18 and Exhibits 11 and 12).

<sup>63</sup> *Id.* at 12-13 (citing Glary’s IQR at 16).

<sup>64</sup> *Id.* at 13.

<sup>65</sup> *Id.* at 14.

<sup>66</sup> See Glary and Futuwood Case Brief at 15 (citing to Futuwood’s November 27, 2018 initial questionnaire response (Futuwood’s IQR) at Exhibit 9).

Declaration (PPQ) forms declared plywood consisting of *pinus radiata* and *populus tomentosa*.<sup>67</sup> Since poplar is non-coniferous and the imported plywood only consists of two wood species, the merchandise declared in the U.S. Customs and Border Protection (CBP) entry forms must refer to merchandise with both outer plies of radiata.

- Throughout Futuwood’s questionnaire responses<sup>68</sup> and marketing materials,<sup>69</sup> Futuwood’s merchandise is described as coniferous and radiata pine plywood.
- Futuwood provided CARB certification labels for 2013, 2014, and 2015, that tie directly to the sales documents provided.<sup>70</sup> The lot number and production date on each label corresponds to the purchase order number and anticipated shipment date in the sales documentation.<sup>71</sup> The purchase orders consistently indicate that the customer required the CARB labels.<sup>72</sup>
- Commerce’s claim that it cannot rely on purchase orders as finalized documents is inconsistent with Commerce’s practice for using purchase order date as the sale date. Purchase orders articulate the exact terms of the sales between Futuwood and its customer. This is demonstrated by the email correspondence that clearly shows the sales terms were agreed upon before the issuance of the purchase order.<sup>73</sup>
- Futuwood’s invoices all include a “Statement of Compliance” that demonstrates the requirement for the merchandise to be CARB compliant.<sup>74</sup>
- Futuwood’s sales documents and shipment labels show that the merchandise required the glue standard, “California 93120 Phase 2 compliant for formaldehyde this product must meet or be less than 0.05 PPM (ASTM E1333-96 Large Chamber Test).”<sup>75</sup>
- CARB certificates demonstrate that Futuwood was using urea formaldehyde glue prior to December 8, 2016, because plywood cannot be CARB certified without bonding the wood with urea formaldehyde.<sup>76</sup>
- Futuwood provided sample purchase invoices of urea formaldehyde glue from its suppliers of inquiry merchandise.<sup>77</sup>

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<sup>67</sup> *Id.*

<sup>68</sup> See Glary and Futuwood Case Brief at 15-16 (quoting Futuwood’s IQR at 11-12: “CONIFEROUS WOOD was clearly shown in the description of the commercial invoice{,}” and Futuwood’s February 12, 2019 supplemental questionnaire response (Futuwood’s SQR) at 5, “a) all purchase orders clearly described the merchandise as ‘RADIATA PINE PLYWOOD;’ b) the requirements specified ‘RADIATA PINE face and PP Back’ (sales document in 2013), ‘Radiata Pine Clear one side & PPMSC NWRP one side’ (sales document from 2014, 2015 and 2016), meaning that both face and back veneers are radiata pine and back veneer should be specially painted with ‘Patriot Primed moisture shield {sic} coating{.}’”)

<sup>69</sup> See Glary and Futuwood Case Brief at 17 (quoting Futuwood’s SQR at Exhibit SQ1-6, “{t}he face of RevBead has a clear, smooth Radiata Pine.”)

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at 17-18.

<sup>72</sup> *Id.* at 20 (quoting Futuwood’s IQR at Exhibits 7 and 9, “in one corner on the back of each piece just above the barcode label”).

<sup>73</sup> *Id.* (citing to Futuwood’s SQR at Exhibits SQ1-4 and SQ1-5).

<sup>74</sup> *Id.* at 19.

<sup>75</sup> *Id.* at 21.

<sup>76</sup> *Id.* citing to Futuwood’s IQR at Exhibit 11.

<sup>77</sup> *Id.* at 22.

- Commerce incorrectly determined that Shelter Forest failed to provide documentation supporting the claim that E0 glue is made from urea formaldehyde base.<sup>78</sup> Commerce should acknowledge that it failed to consider this evidence and determine that Shelter Forest proved that it consistently imported inquiry merchandise in great quantities for years before these investigations.<sup>79</sup>

*Shelter Forest Comments:*

- The petitioner defined the merchandise at issue for this inquiry as “suitable for interior/decorative use” and Commerce has adopted petitioners’ definition, namely all merchandise that meets the three criteria outlined in the *Initiation Notice*.<sup>80</sup>
- The petitioner provided documentation clearly demonstrating that inquiry merchandise consists of radiata pine CARB certified plywood made with E0 glue and described this documentation as “online offers of plywood with radiata pine and/or agathis pine veneers suitable for interior or decorative use.”<sup>81</sup>
- The petitioner’s own supporting evidence of what constitutes inquiry merchandise identified “E0” glue as complying glue.<sup>82</sup>
- Petitioner’s Request references Shelter Forest’s website and a description of Shelter Forest’s Tigerply Cabinet Grade Pine Plywood (TigerPly). Therefore, the petitioner has acknowledged that TigerPly is inquiry merchandise, including the required glue and Shelter Forest has fully demonstrated it sold Tigerply prior to December 8, 2016.<sup>83</sup>
- Shelter Forest has demonstrated that the glue used for SKU numbers PLYTPIN09CB2 and 575879 was E0 glue because the specification sheets provided with its sworn declaration state that E0 glue is CARB compliant.<sup>84</sup> Shelter Forest has also explained on several occasions that E0 refers to a glue made from a urea formaldehyde base, *i.e.*, meaning the majority of the chemical composition is urea formaldehyde.<sup>85</sup>
- A photograph of the product, dated March 26, 2014, clearly shows a label stating, “CARB Compliant...” and the marking for the SKU sold to the retailer also shows that the glue is E0 and compliant with CARB.<sup>86</sup>

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<sup>78</sup> *Id.* at 5-6.

<sup>79</sup> *Id.* at 6.

<sup>80</sup> See Shelter Forest Case Brief at 8.

<sup>81</sup> See Shelter Forest Case Brief at 9-10 (citing to Petitioner’s Letter, “Request for Anti-Circumvention Inquiry,” dated June 25, 2018 (Petitioner’s Request), at Exhibits 4 and 8).

<sup>82</sup> See Shelter Forest Case Brief at 10 (citing Petitioner’s Request at Exhibits 4 and 8, “What is noteworthy is that for every single product in this exhibit the description provided for “glue” is a certain specification. That is, the product details provided in Exhibit 18 list the glue as “E1” or “E0” or “E0 E1 E2 Carb P2” or “MR/E0/E1/E2/WBP/Melamine” or “E0 (Carb P2) /E1/E2,” depending on the product.”).

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* at 11 (citing to Shelter Forest’s Letter, “Comment on Certain U.S. Producers’ Request for Anti-Circumvention Inquiry,” dated July 16, 2018 (Shelter Forest Comments) at Exhibit 1 Attachment B).

<sup>85</sup> *Id.* at 12.

<sup>86</sup> *Id.* at 12 (citing Shelter Forest Comments at Exhibit 1 Attachments C and D).

- In the sales trace provided, the documents all state “CARB-2 glue” and the CARB certification states that the producer is in compliance with “Formaldehyde Emission from Composite Wood Product....”<sup>87</sup>
- The sworn declaration of Zhang FangMu, the General Manager of Shelter Forest’s China operations, made clear that “{a}ll orders from {a retailer} contained the following specifications: 18mm B/C radiata pine faced panels with poplar core, and a CARB2 certified resin (glue)” and stated that “{t}he resin was specified as E0 urea formaldehyde base....”<sup>88</sup>

*Yuantai Comments:*

- Commerce claimed that a portion of a translated document was not correct. However, it is clear that Yuantai was using abbreviations in its translation of the Chinese documents. Regardless, this error does not rise to the level of calling into question the reliability of the documentation.<sup>89</sup>
- Commerce held that Yuantai submitted incorrectly translated documents, that Yuantai did not demonstrate that it sold inquiry merchandise because it did not provide a finalized sales document, and that Yuantai did not explain what ingredients are in E0 glue.
- Commerce was obligated to request more information from Yuantai.<sup>90</sup>

*Importers Alliance Comments:*

- Glary demonstrated through its PPQ forms that it imported products with face and back veneers made of radiata pine prior to December 8, 2016.<sup>91</sup> Commerce incorrectly disregarded Glary’s PPQ forms, holding it to an unrealistic standard and ignoring certified record evidence.
- By focusing its concerns on Glary’s CBP entry form print dates, Commerce ignored all other details connecting the 7501 forms to Glary’s sales documents. This form, in conjunction with the sales documents, clearly demonstrates that inquiry merchandise was commercially available prior to December 8, 2016.<sup>92</sup>
- In *Timken*, the Court held that Commerce could not reject information as unverified if the agency chose not to verify it.<sup>93</sup>

<sup>87</sup> *Id.* at 13 (citing to Shelter Forest Comment at Exhibit 1).

<sup>88</sup> *Id.* at 14 (citing to Shelter Forest’s Letter, “Shelter Forest Quantity and Value Questionnaire Response,” dated October 11, 2018 (Shelter Forest’s Q&V) at Exhibit 3).

<sup>89</sup> *Id.* at 12 (citing to Memorandum, “Business Proprietary Information Memo for Preliminary Decision Memorandum on the Antidumping and Countervailing Duty Orders on Certain Hardwood Plywood Products from the People’s Republic of China,” dated June 4, 2019 (Prelim BPI Memo) at 17).

<sup>90</sup> *Id.* (citing to section 782(d) of the Act, *China Kingdom Imp. & Exp. Co. v. United States*, 31 CIT 1329, 1344–45 (2007)(*China Kingdom*), *Ta Chen Stainless Steel Pipe v. United States*, 23 CIT 804 (1999) and *Bowe–Passat v. United States*, 17 CIT 335, 343 (1993)).

<sup>91</sup> See Importers Alliance Case Brief at 8 (citing Glary’s IQR at 11 and Glary’s February 12, 2019 supplemental questionnaire response (Glary’s SQR) at 7 and Exhibit SQ1-4).

<sup>92</sup> See Importers Alliance Case Brief 10-11.

<sup>93</sup> *Id.* at 15-16 (citing to *Timken U.S. Corp. v. United States*, 434 F.3d 1345, 1354 (Fed Cir. 2006) (*Timken*)).

- Glary’s sales documentation clearly shows the sale of merchandise that was labeled CARB certified.<sup>94</sup> The certification from third-party certifiers show that Glary is in compliance with CARB regulations. Commerce improperly disregarded Glary’s third-party CARB certifications by claiming that Linyi Glary failed to tie them to its underlying sales documents. CARB certificates cannot be tied to a specific product but, rather, they apply to a company’s products as whole.<sup>95</sup>
- Glary proved that all of its plywood products were CARB certified prior to December 8, 2016, and, therefore, it proved that it could legally label its merchandise as CARB compliant.<sup>96</sup> The CARB certifications show that the glue used in all of Glary’s products is urea formaldehyde.<sup>97</sup>
- Commerce’s decision not to verify precluded the respondents from establishing their information as complete and accurate.<sup>98</sup>
- The post-December 8, 2016 photographs of Glary’s glue production corroborate Glary’s composition, in that it was made up of a majority urea formaldehyde glue.<sup>99</sup>
- Purchase orders from Futuwood clearly demonstrate its merchandise was made of radiata pine and Commerce ignored Futuwood’s explanations of the products’ labeling which included Futuwood’s statement that the merchandise was made with face and back radiata pine.<sup>100</sup>
- The HTS code under which Futuwood’s merchandise entered identified the wood as coniferous and even the petitioner states that inquiry merchandise can enter under this code.<sup>101</sup>
- Commerce ignored Futuwood’s explanation regarding its PPQ forms, in that these forms, reported plywood with radiata and *populus tomentosa*. Futuwood explained that the radiata represented the face and back veneers while the *populus tomentosa* represented the core.<sup>102</sup>
- Futuwood submitted a certified statement that CARB labels were attached to individual panels or crates.<sup>103</sup> The expectation that Futuwood would be able to provide photos of the labels from several years ago is unreasonable.
- Futuwood provided the ingredients for its glue, which indicates its glue was comprised of a majority urea formaldehyde. Futuwood provided purchase invoices of urea formaldehyde glue from its plywood suppliers to support its assertions.
- The purchase invoices of the glue used by Futuwood’s suppliers can be directly tied to the sales documentation that demonstrates Futuwood’s plywood was of face and back radiata pine.<sup>104</sup> The purchases of glue, made in the same year as Futuwood’s purchases

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<sup>94</sup> *Id.* at 17-18 (citing to Glary’s IQR at Exhibits 5 and 8 and to Glary’s SQR at 7 and Exhibit SQ-4).

<sup>95</sup> *Id.* at 18-19 (citing to Glary’s IQR at Exhibit 12 and Glary’s SQR at 7).

<sup>96</sup> *Id.* at 19 and 21.

<sup>97</sup> *Id.* at 21.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.* at 22.

<sup>100</sup> *Id.* at 23-25.

<sup>101</sup> *Id.* at 25.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at 31.

of plywood demonstrate a strong corroboration between the glue used in the plywood Futuwood purchased.

- With respect to certain sales documentation provided by Yuantai, the purchase orders obviously refer to radiata pine on the face and back. Yuantai didn't expressly explain this because the acronyms on the documents were assumed to be self-evident.<sup>105</sup> Additionally, the commercial invoice and packing list tied to these purchase orders prescribe the goods as meeting the veneer criteria.
- Commerce relied on one small discrepancy in determining that sales documents to the United States did not support Yuantai's assertion that it sold plywood with face and back veneers of radiata pine. Because Yuantai demonstrated that it sold plywood with face and back veneers of radiata pine to other countries outside of the United States, Commerce should not exclude certified statements asserting that other documents provided for sales to the United States were for merchandise with face and back veneers of radiata.<sup>106</sup>
- Purchase orders, which Commerce asserts are not finalized sales documents, demonstrate that Yuantai's merchandise was CARB compliant. Finding purchase orders to be not finalized documents is inconsistent with Commerce's practice.<sup>107</sup>
- The purchase contract, which Commerce overlooked due to the translation issue, also demonstrates that Yuantai's merchandise was CARB compliant. The plywood supplier's sales contract is supported by the CARB certificate Yuantai provided for this same supplier.<sup>108</sup>
- Yuantai provided a purchase contract with order numbers that match its initial sales documentation and the purchase contract also indicates that the plywood was made with urea formaldehyde.<sup>109</sup>
- Shelter Forest's submissions outline the company's plywood as being produced with CARB2 glue which was E0 glue. These submissions include two declarations that E0 is made with a urea formaldehyde base.<sup>110</sup>
- The petitioner's submissions also demonstrate that Shelter Forest's E0 glue is for interior applications and made of a urea formaldehyde base.<sup>111</sup> Specifically, the petitioner submitted a catalog for Shelter Forest's TigerPly, which although did not specifically identify the glue composition, identified the merchandise as "suitable for interior applications."<sup>112</sup>
- The petitioner provided Shelter Forest catalog for Tigerply, which lists E0 glue as a "melamine urea-formaldehyde" resin glue.<sup>113</sup>

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<sup>105</sup> *Id.* at 33.

<sup>106</sup> *Id.* at 35.

<sup>107</sup> *Id.* at 36.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.* 37-38.

<sup>110</sup> *Id.* at 40.

<sup>111</sup> *Id.* at 40-41.

<sup>112</sup> *Id.* at 41.

<sup>113</sup> *Id.*

*IKEA Comments:*

- Commerce was correct in determining Shelter Forest and Yuantai sold plywood with face and back veneers of radiata pine prior to December 8, 2016.<sup>114</sup>
- Commerce was correct in finding that Shelter Forest sold plywood that was CARB certified prior to December 8, 2106.<sup>115</sup>
- The supplier agreement that Yuantai provided, which Commerce disregarded, ties to a purchase order that indicates the product meets the “CARB2 standard” and a CARB certificate for the same supplier.

*Petitioner Rebuttal Comments:*

- Glary’s PPQ forms were correctly found to be unreliable and therefore Commerce properly declined to rely on them. Only when confronted with questions about its PPQ form did Glary acknowledge that it had reported inconsistent information.<sup>116</sup>
- Glary attempted to explain a host of issues with its PPQ forms, but all of these increase the amount of doubt of their reliability and are not credible.<sup>117</sup> Glary mentions a Chinese attorney in its explanation of the error in its PPQ form, for which no certification of accuracy has been provided.<sup>118</sup>
- The assertion that Glary’s CBP entry form demonstrates that the company imported plywood with face and back veneers of radiata pine is false because the HTS code only indicates the veneers were made of coniferous wood, not the specific species of radiata.<sup>119</sup>
- Commerce noted that there was a “distinct shift” in the way Glary documented its merchandise as it was described in its sales documentation from before December 8, 2016, to after. With respect to this issue, interested parties point to CARB certificates that Glary submitted, but none explain why Commerce’s finding was unreasonable. Interested parties attempt to undermine Commerce’s finding simply by stating that the record evidence was sufficient, but they do not identify any record evidence that supports their conclusions.<sup>120</sup>
- Importers Alliance states Commerce incorrectly concluded that CARB certificates correspond to a specific product. This is not the case. Commerce found that given the shift in the language in its sales documentation, which was indicative of a shift in the characteristics of the merchandise itself, Linyi failed to show that the existence of its CARB certifications necessarily demonstrated that the merchandise at issue was certified as CARB compliant.<sup>121</sup>
- Importers Alliance also points out that the purchase orders imply that a requirement of the sale demonstrated that the merchandise was CARB compliant. However, there are

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<sup>114</sup> See IKEA’s Case Brief at 9.

<sup>115</sup> *Id.* at 10.

<sup>116</sup> See Petitioner Rebuttal Brief at 9-10.

<sup>117</sup> *Id.* at 10-11.

<sup>118</sup> *Id.* at 11.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.* at 13.

<sup>121</sup> *Id.* at 14.

other parts of the purchase order that do not tie to the CBP entry form, which call into question the degree in which the purchase order requirements must be met.<sup>122</sup>

- Glary and Futuwood and Importers Alliance assert that the photographs of CARB labels provided by Glary demonstrate that Glary's merchandise was labeled CARB compliant. However, these labels are from after the initiation of the investigation, and therefore do not provide evidence for Glary's sales from prior to December 8, 2016.
- None of the interested parties point to evidence that clearly demonstrates that Glary sold merchandise that was CARB compliant prior to December 8, 2016.<sup>123</sup>
- Importers Alliance points to information after December 8, 2016, with respect to urea formaldehyde, but because this information is not related to the time prior to this date, the information does not apply to the sales before this date.<sup>124</sup>
- Futuwood provides documentation that demonstrates that it sold merchandise with some radiata pine, but Commerce was correct in its determination that the company did not demonstrate that its veneers had both face and back veneers of radiata pine.
- Parties state that the sales documents clearly indicate that Futuwood's plywood had both face and back veneers of radiata pine, but neither explain why that is the case.<sup>125</sup>
- Glary and Futuwood and Importers Alliance state that Futuwood's PPQ forms demonstrate that the company sold plywood with both veneers of radiata pine, but Futuwood's PPQ forms refer to the plywood as "hardwood plywood."<sup>126</sup>
- But for the two certificates of suppliers that were issued prior to December 8, 2016, Futuwood does not provide sales documentation that ties to those suppliers at the time they demonstrate being certified.<sup>127</sup>
- A product does not need to contain urea formaldehyde in order to be CARB compliant, therefore CARB compliance is not an indicator that plywood contains the requisite resin.<sup>128</sup>
- The two Futuwood suppliers with CARB certificates that indicate they used urea formaldehyde are the two suppliers from which Futuwood does not report purchasing inquiry merchandise prior to December 8, 2016.<sup>129</sup>
- The fact that suppliers may have purchased urea formaldehyde shortly before Futuwood purchased plywood from those suppliers does not demonstrate that the merchandise Futuwood purchased contained that urea formaldehyde. In fact, Futuwood also demonstrates that it had sales of scope merchandise, which implies that the urea formaldehyde could have been used to produce other merchandise and not the specific merchandise in Futuwood's sales documents.<sup>130</sup>

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<sup>122</sup> *Id.*

<sup>123</sup> *Id.* at 15.

<sup>124</sup> *Id.* at 16-17.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* at 17.

<sup>127</sup> *Id.* at 18.

<sup>128</sup> *Id.* at 19.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.* at 19-20.

- With respect to Yuantai’s purchase orders, no sale documentation other than the purchase order made a reference to the CARB standard, and therefore the record does not establish that Yuantai sold or was capable of selling plywood with a face and back of radiata pine that was labeled as CARB compliant.
- Importers Alliance points to a CARB certification and purchase contract that are tied to similarly named companies, but Commerce properly found that sales contract unreliable and the company names are not the same.<sup>131</sup>
- The only document that interested parties reference, to demonstrate Yuantai’s use of urea formaldehyde majority resin, is the wrongly translated purchase contract provided by Yuantai.<sup>132</sup>
- Shelter Forest misunderstands the first website example provided by the petitioner, because this was just an example of plywood with radiata pine veneers and not an example of inquiry merchandise.<sup>133</sup>
- The website screenshots Shelter Forest cites include several glues, including some that are not CARB compliant.<sup>134</sup>
- Shelter Forest, IKEA, and Importers Alliance iterate that Commerce should rely on sworn declarations provided by Shelter Forest that state E0 glue is made with a majority urea formaldehyde resin. Shelter Forest and Importers Alliance point to Shelter Forest’s 2012 catalogue that states that E0 is a “melamine urea-formaldehyde” resin. However, Shelter Forest provided no documentation to demonstrate the composition of its E0 glue. Moreover, the brochure does not indicate that the E0 glue is a majority urea-formaldehyde.<sup>135</sup>
- Shelter Forest also provided conflicting information, supporting Commerce’s decision to not simply accept the statements made in the company’s declarations. Shelter Forest’s quantity and value submission conflicts with its 2012 brochure.
- The suggestion that Commerce must accept every statement on the record as fact, undermines the role of the agency as a fact-finder, in that there would be no role for Commerce in examining and weighing the facts on the record. There would also be no reason for Commerce to ever request supporting documentation.<sup>136</sup>
- In *Timken* the Court affirmed Commerce’s decision to not rely on certain “corrective” information submitted by the party at issue.<sup>137</sup>
- In *China Kingdom* the Court noted that when Commerce rejects certain information that contains errors, it cannot reject all other information unaffected by the errors on the grounds that the information was unverified.<sup>138</sup>

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<sup>131</sup> *Id.* at 25-26.

<sup>132</sup> *Id.* at 26.

<sup>133</sup> *Id.* at 27.

<sup>134</sup> *Id.* at 28.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.* at 30.

<sup>137</sup> *Id.* at 32-33 (citing *Timken U.S. Corp. v. United States*, 434 F.3d 1345, 1354-55 (Fed. Cir. 2006)).

<sup>138</sup> *Id.* at 33.

## Commerce's Position:

### *Glary*

We continue to find that Glary did not demonstrate that it produced or sold merchandise that was labeled CARB/TSCA certified prior to December 8, 2016. Glary provided “CARB certified” labels for pine plywood dated after December 8, 2016.<sup>139</sup> Glary also provided CARB certificates for its hardwood plywood from 2013, 2014, 2015, 2016, 2017, and 2018.<sup>140</sup> The certificates state that the type of glue used was urea formaldehyde. While these labels and certificates provide general insight into Glary’s hardwood plywood production, they do not clearly demonstrate that Glary was producing plywood with both face and back radiata pine (softwood) veneers with a majority urea formaldehyde resin. We also find that these certificates do not indicate that *all* merchandise produced by Glary is CARB certified.

Commerce did not disregard Glary’s CARB certifications as suggested by Importers Alliance.<sup>141</sup> Rather, Commerce analyzed the documents provided by Glary, including the producer’s CARB certificates and determined that these certificates do not demonstrate that inquiry merchandise was commercially available prior to December 8, 2016. We find that having a CARB certification and being legally allowed to label merchandise as CARB certified, does not mean that the merchandise is *actually labeled* CARB certified. We find that Glary submitted documentation demonstrating that it was CARB certified prior to December 8, 2016. However, Glary failed to demonstrate that its products were *labeled* CARB certified. The sales documentation iterates that Glary sold pine plywood that was CARB compliant, but that does not demonstrate that Glary’s merchandise was *actually labeled* “CARB certified.”

The record is clear in showing that while CARB certifiers do not certify individual sales, they do certify specific products, or as Importers Alliance points out, “production lines.”<sup>142</sup> This can be seen on any of the CARB certifications that identify the type of wood covered by the certification, to include the glue used, *etc.*<sup>143</sup> The criteria for inquiry merchandise is that the merchandise be *labeled* CARB certified—not that the producer be certified as producing CARB compliant products, and not that the producer be legally able to label its merchandise as CARB certified. Glary points to its purchase orders, invoices, and 2018 labels that state that the merchandise ordered and sold was CARB compliant.<sup>144</sup> Glary states that its purchase orders show that its customer required the merchandise to be labeled CARB compliant. We find that this is not what the documentation indicates. While the sales documentation references CARB P2, the purchase orders show that the customer required its plywood to be marked with the formaldehyde content, and the customer required a copy of the CARB certification for itself, none of these documents provide evidence of Glary’s products being *labeled* CARB certified.<sup>145</sup>

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<sup>139</sup> See Glary’s IQR at Exhibit 11.

<sup>140</sup> *Id.* at Exhibit 12.

<sup>141</sup> See Importers Alliance Case Brief at 18.

<sup>142</sup> See Importers Alliance Case Brief at 18 (citing to Glary’s IQR at Exhibit 12).

<sup>143</sup> See *e.g.*, Glary’s IQR at Exhibit 12.

<sup>144</sup> *Id.* at Exhibits 8 and 11.

<sup>145</sup> *Id.*

We continue to find that Glary has not demonstrated that it produced or sold merchandise with both face and back veneers of agathis and/or radiata pine prior to December 8, 2106. With respect to both face and back outer veneers of radiata and/or agathis pine, we continue to find that Glary did not demonstrate that it met this criterion for our final determination. Glary submitted several PPQ forms, that identify radiata pine as one of two species of wood it exported to the United States prior to December 8, 2016.<sup>146</sup> In response to the initial questionnaire, the company supplied some of these PPQ forms again, but with notable differences. These differences include different importer names, different descriptions of merchandise, different consignee name, different consignee addresses, and the existence of several apparent handwritten markings.<sup>147</sup> Glary’s explanation of these discrepancies is that the company had submitted form fillable and editable draft PDF forms with Glary’s Initiation Comments and that these PDFs automatically populated with the wrong information when sending them to Glary’s counsel.<sup>148</sup> Glary provided screenshots to demonstrate its explanation.<sup>149</sup>

Although our *Preliminary Determination* narrative did not discuss Glary’s explanation of its PPQ forms, it did discuss our preliminary finding that Glary’s PPQ documents were unreliable. For our final determination, we continue to find that Glary’s PPQ forms are not reliable sources and therefore we continue to not consider them in our analysis. Glary’s explanation of the discrepancies in its sales documents call the veracity of the PPQ forms into greater question. Specifically, by demonstrating how easily these forms were to modify (*i.e.*, by providing screenshots of the PDFs from several years ago that could be changed in 2018), it is impossible for Commerce to ascertain whether these documents were created for the purpose of this inquiry, or if the PPQs with marking on them were generated for the sales with which they were provided.<sup>150</sup> Glary did not demonstrate how the “final correct” PPQ forms it provided were final documents, outside of stating this as fact. Moreover, when Glary submitted what it refers to as “draft forms,” it did not claim these to be drafts, instead it purported that these draft forms were evidence, and referred to these as “shipping documents,” in effect mischaracterizing these draft forms as actual documents used in the process of shipping.<sup>151</sup> We find that these facts are a sufficient basis for Commerce to determine that it cannot rely on Glary’s PPQ forms for its final determination. Furthermore, even if Commerce were to consider Glary’s PPQ forms in its analysis of Glary’s responses, Glary still has not demonstrated that inquiry merchandise was commercially available prior to December 8, 2016, because it has failed to demonstrate that it used a majority urea formaldehyde resin in the production of what it says is inquiry merchandise and because it failed to demonstrate that this same merchandise was labeled CARB/TSCA certified. Additionally, even if Commerce considered Glary’s PPQ forms in its analysis, which shows radiata and another species of wood, the documentation provided does not demonstrate that both the face and back veneers of Glary’s plywood were of radiata pine.

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<sup>146</sup> See Glary *et al.*’s Letter, “Comments in Opposition to Request for Anti-Circumvention Inquiry: Certain Softwood Species,” dated July 16, 2018 (Glary’s Initiation Comments) at Exhibit 5.

<sup>147</sup> See Glary’s IQR at Exhibit 8.

<sup>148</sup> See Glary’s SQR at 2.

<sup>149</sup> *Id.* at Exhibit SQ1-1.

<sup>150</sup> See Glary’s SQR at Exhibit SQ1-1.

<sup>151</sup> See Glary’s Initiation Comments at 7 and Exhibit 3.

Glary also provided CBP entry forms that identified its plywood as having plywood with both outer veneers of coniferous wood. We preliminarily found that these forms were unreliable because they were not dated consistently with the other sales documents Glary provided. However, Glary explained why these forms were dated inconsistently, “{a}t the request of {the customer, the Customs broker} reprinted 7501 forms from U.S. Customs’ electronic system, and {different dates are} the reprinting date{s} automatically created by U.S. Customs’ electronic system.”<sup>152</sup> We find that after further analysis, Glary’s explanation of the incorrect dates was sufficient, and Commerce has considered these forms in its analysis. These forms demonstrate that Glary exported merchandise with both other plies of softwood based on the HTS code the merchandise was entered under.<sup>153</sup>

We continue to find that Glary did not demonstrate that it produced or sold merchandise with a majority urea formaldehyde, polyvinyl acetate, or soy resin prior to December 8, 2016. Interested parties contend that CARB certificates from prior to December 8, 2016, show that Glary was CARB certified to produce hardwood plywood with urea formaldehyde glue, and therefore Glary has demonstrated that it produced inquiry merchandise.<sup>154</sup> They also argue that photos of Glary’s present day glue production operations and Glary’s current recipe for glue corroborates Glary’s assertion that it made a majority urea formaldehyde glue for plywood with radiata pine veneers several years ago.<sup>155</sup> However, Commerce continues to find that Glary has only demonstrated that it could produce hardwood plywood with urea formaldehyde that is CARB compliant. These CARB certificates and photographs did not demonstrate the glue content of merchandise prior to December 8, 2016, nor did they demonstrate that Glary produced or sold plywood with radiata/agathis pine outer veneers made with a majority urea formaldehyde resin.

Interested parties state that Commerce cannot find documentation unreliable without verifying said information. However, we find that the purpose of verification, according to 19 CFR 351.307, is to “verify relevant factual information.” Despite interest parties’ suggestion, verification does not “establish” accuracy or completeness, rather it *confirms* that the record is accurate and complete. It is Commerce’s practice to treat the record as accurate until issues call into question their creditability. Commerce received no requests for verification prior to receipt of case briefs.

Accordingly, because Glary did not demonstrate an instance prior to December 8, 2016, where plywood that meets all three of the inquiry merchandise criteria was commercially available, Commerce continues to find that Glary did not demonstrate that inquiry merchandise was commercially available prior to December 8, 2016.

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<sup>152</sup> *Id.* at 19.

<sup>153</sup> *See* Glary’s IQR at Exhibit 8.

<sup>154</sup> *See e.g.*, Importers Alliance Case Brief at 21.

<sup>155</sup> *Id.* at 22.

## ***Futuwood***

Upon further review of the information submitted by Futuwood, for our final determination we agree that Futuwood sold merchandise labeled CARB/TSCA certified prior to December 8, 2016. All of the Futuwood purchase orders indicate that the customer had a requirement to label each crate CARB certified.<sup>156</sup> Futuwood also provided CARB labels that tie to the sales documentation.<sup>157</sup> Accordingly, upon further analysis, for our final determination, we find that Futuwood demonstrated that its merchandise was labeled CARB compliant.<sup>158</sup>

We continue to find that Futuwood has not demonstrated that it sold merchandise with both front and back veneers of radiata and/or agathis pine prior to December 8, 2016. Futuwood provides CBP entry forms that identify the merchandise under the HTS code for both outer plies of coniferous wood.<sup>159</sup> The PPQ forms that tie to these documents identify two species of wood, one of which is a hardwood and the other which is radiata pine.<sup>160</sup> Futuwood also provides purchase orders that indicate the face of merchandise ordered prior to December 8, 2016, was comprised of radiata pine. The purchase orders distinctly describe the face and back veneers differently.<sup>161</sup> Futuwood describes how these sides are described in its sales documents: “(b) the requirements specified ‘RADIATA PINE face and PP Back’ (sales document in 2013), ‘Radiata Pine Clear one side & PPMSC NWRP one side’ (sales document from 2014, 2015 and 2016).” Futuwood defined these acronyms to mean, “both face and back veneers are radiata pine and back veneer should be specially painted with ‘Patriot Primed moisture shield {sic} coating{,}’” but does not explain how this documentation demonstrates that both veneers were made of radiata pine.<sup>162</sup> Futuwood also states, “the purchase order clearly described the merchandise as ‘RADIATA PINE PLYWOOD,’ which means both face and back veneer using radiata pine; b) the requirement specified that the face/back veneer should be ‘SLICED RADIATA PINE’; c) the PPQ declared that the plywood is consist {sic} of ‘PINUS RADIATA’ and POPULUS TOMENTOSA’, *i.e.* the face/back veneer is radiata pine and the core is poplar.”<sup>163</sup> We continue to find, as we did in the *Preliminary Determination*, that Futuwood did not provide documentation to clearly support these assertions.<sup>164</sup>

Despite Futuwood’s statements that the purchase orders must mean that the merchandise it sold had front and back veneers of radiata pine, even though they simply reference radiata pine and do not explicitly suggest that the plywood has two veneers of radiata pine, there is evidence on the record that suggests that the sample sales provided by Futuwood did not have front and back

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<sup>156</sup> See Futuwood’s IQR at Exhibits 7 and 9.

<sup>157</sup> *Id.* at Exhibit 11.

<sup>158</sup> We note that Futuwood did not provide the CARB certificates for suppliers that can be clearly tied to the sales documentation it provided to demonstrate it sold inquiry merchandise prior to December 8, 2016. Therefore, for our final determination, we find that the producer(s) of this merchandise were necessarily CARB certified because Futuwood demonstrated that it labeled its products as CARB compliant.

<sup>159</sup> See Futuwood’s IQR at Exhibits 7 and 9.

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> See Futuwood’s SQR at 5.

<sup>163</sup> *Id.* at 3.

<sup>164</sup> See Prelim BPI Memo at Note 3.

veneers of radiata pine.<sup>165</sup> Further, Futuwood states that its email conversations demonstrate that the purchase orders provided are the final terms of sale for its sample inquiry merchandise sales.<sup>166</sup> These email conversations tie to purchase order numbers 14029 and 16200, which are provided at Exhibit 9.<sup>167</sup> These emails, which appear to be between a Futuwood representative and the U.S. customer, indicate that the merchandise for this order was produced with veneers not made with *both* face and back veneers of radiata pine.<sup>168</sup>

With respect to Futuwood's marketing materials, we disagree that they are sufficient evidence to establish that Futuwood's outer veneers that they are of the same material (*i.e.*, radiata pine).<sup>169</sup> We also note that none of these marketing materials contain any dates to support the claim that they are from prior to December 8, 2016, though Futuwood states that the websites in the advertisements contain historical records that could confirm the dates.<sup>170</sup>

Importers Alliance states that Commerce ignored Futuwood's explanation of its PPQ forms.<sup>171</sup> Commerce considered Futuwood's PPQ forms, which show that Futuwood exported radiata pine.<sup>172</sup> However, the PPQ forms do not demonstrate that Futuwood's front and back veneers were made of radiata pine, instead they confirm that Futuwood exported two species of wood. This is directly addressed in the emails mentioned above. Futuwood's merchandise entered under an HTS code that was for both outer veneers of coniferous wood.<sup>173</sup> As such, we find that this does not demonstrate that both outer veneers of the merchandise that Futuwood sold were made of radiata pine because the HTS code only indicates the veneers were made of coniferous wood, not the specific species of either radiata or agathis pine. Therefore, we cannot conclude that this HTS code is dispositive in describing the merchandise included in its shipments.

We continue to find that Futuwood did not demonstrate that it sold merchandise with a majority urea formaldehyde, polyvinyl acetate, or soy resin prior to December 8, 2016. Of the two suppliers that are identified on the purchase orders and can be directly tied to sales of merchandise which Futuwood states is inquiry merchandise, Futuwood has not provided any documentation to support its assertion that the merchandise was produced with urea formaldehyde. Glary and Futuwood state, "Plywood not bonded with urea formaldehyde glue could not be CARB/TSCA certified because such merchandise cannot be verified by any third-party certified to be CARB compliant."<sup>174</sup> None of the interested parties have provided an exhaustive list identifying all CARB compliant glues, identifying urea formaldehyde as the only

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<sup>165</sup> *Id.*; see also Memorandum, "Business Proprietary Information Memo for Issues and Decision Memorandum on the Antidumping and Countervailing Duty Orders on Certain Hardwood Plywood Products from People's Republic of China," dated concurrently with this memorandum (Final BPI Memo) at Notes 1 and 2; and Futuwood SQR at Exhibit SQ1-5.

<sup>166</sup> See Glary and Futuwood Case Brief at 20.

<sup>167</sup> See Futuwood SQR at Exhibit SQ1-5; see also Futuwood IQR at Exhibit 9.

<sup>168</sup> See Final BPI Memo at Note 2.

<sup>169</sup> See Prelim BPI Memo at Note 3.

<sup>170</sup> See Final BPI Memo at Note 1.

<sup>171</sup> See Importers Alliance Case Brief at 25.

<sup>172</sup> See Futuwood's IQR at Exhibits 7 and 9.

<sup>173</sup> *Id.*

<sup>174</sup> See Glary and Futuwood Case Brief at 22.

CARB compliant glue. Futuwood also provided several invoices for urea formaldehyde from a plywood supplier.<sup>175</sup> These invoices are not tied to a specific sale or production document. Therefore, Commerce continues to find that these invoices do not demonstrate the use of a majority urea formaldehyde glue for a product that has both veneers of radiata pine and that is labeled CARB compliant.

Accordingly, because Futuwood did not demonstrate an instance prior to December 8, 2016, where plywood that meets all three of the inquiry merchandise criteria was commercially available, Commerce continues to find that Futuwood did not demonstrate that inquiry merchandise was commercially available prior to December 8, 2016.

### ***Shelter Forest***

In our *Preliminary Determination*, we found that Shelter Forest demonstrated that it sold plywood with radiata pine veneers that was labeled CARB certified, but that it did not demonstrate its assertion that “eZero...is a glue made of a urea formaldehyde base.”<sup>176</sup> For the final determination, we find that Shelter Forest failed to demonstrate the glue used in its plywood products was *majority* urea formaldehyde.

Shelter Forest points to its sworn statements to support its claim that inquiry merchandise was commercially available prior to December 8, 2016. With Shelter Forest’s Q&V response, Zhang FangMu, the General Manager of Shelter Forest’s China operations states, “[t]he resin was specified as E0 urea formaldehyde base with an emissions standard of less than .04ppm of Formaldehyde, and therefore can be CARB certified...”<sup>177</sup> With Shelter Forest’s Initiation Comments, Ryan Loe states that the, “[s]pecification confirms that the glue used is eZERO (Melamine Fortified), which is a glue made from a urea formaldehyde base.” Zhang FangMu and Ryan Loe provide “specifications” to support their assertions that Shelter Forest used E0 (melamine fortified) glue.<sup>178</sup> We note that these two Shelter Forest officials have stated in their sworn declarations, that its “resin was specified as E0 urea formaldehyde base...fortified with approx. 3% melamine{,}”<sup>179</sup> that E0 “is a glue made from a urea formaldehyde base{,}”<sup>180</sup> and that its plywood “utilizes a glue from a urea formaldehyde base{,}”<sup>181</sup> However, at no point in its Q&V Response, Initiation Comments, or supplemental questionnaire, does Shelter Forest provide a sworn declaration from anyone stating Shelter Forest used a majority urea formaldehyde resin, and further, Shelter Forest fails to provide the exact composition of its resin to demonstrate that the majority was of urea formaldehyde. Shelter Forest did not identify the exact composition of its E0 glue, and the sworn declarations asserting that the glue is “specified as a urea formaldehyde base” do not assert that the glue is a *majority* urea formaldehyde or clarify the glue’s composition.

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<sup>175</sup> See Futuwood’s SQR at Exhibit SQ1-3.

<sup>176</sup> See PDM at 17.

<sup>177</sup> See Shelter Forest’s Q&V at Exhibit 3.

<sup>178</sup> *Id.* at Exhibit 1, Attachments C and D and Shelter Forest’s Q&V at Exhibit 3 Attachment A.

<sup>179</sup> See Shelter Forest’s Q&V at Exhibit 3 page 3.

<sup>180</sup> See Shelter Forest’s Initiation Comments at Exhibit 1 page 7 and 10.

<sup>181</sup> *Id.* at Exhibit 1 page 1.

Shelter Forest also suggests that the petitioner provided documentation demonstrating that E0 glue is a majority urea formaldehyde glue. First, the suggestion that merchandise that is “suitable for interior/decorative use,” must be inquiry merchandise is without merit. While the petitioner discusses merchandise that is “suitable for interior/decorative use,” in its request, this is not the description Commerce initiated this inquiry on, and therefore Commerce has not assessed the merchandise according to this description.<sup>182</sup>

Shelter Forest also claims that the petitioner provided screen shots of what appears to be inquiry merchandise from Shelter Forest. However, we note that the petitioner did not assert that this website was an example of inquiry merchandise, but of one of the criteria of inquiry merchandise. Moreover, the website screenshot merely shows that the formaldehyde was E0, it does not provide any further information about the composition of E0. With respect to Exhibit 18, where Shelter Forest noted that E0 was listed amongst the types of glues used to define inquiry merchandise. However, at no time did the petitioner or Commerce equate E0 glue with glue that is majority urea formaldehyde. Ultimately, the record does not indicate that the glue used by Shelter Forest prior to December 8, 2016, was a majority urea formaldehyde glue. The information on the record does not demonstrate that a product must have E0 glue in order to be inquiry merchandise, that E0 glue is a majority urea formaldehyde resin, or that all E0 glue is produced with the same composition of ingredients. Accordingly, we continue to find that Shelter Forest did not demonstrate that inquiry merchandise was commercially available prior to December 8, 2016.

### ***Yuantai***

We continue to find that Yuantai did not demonstrate it sold merchandise with both face and back veneers of radiata and/or agathis pine. Yuantai provided a purchase order and stated that the description noted that both the face and back veneers were of radiata pine.<sup>183</sup> Yuantai also provided a CBP entry form that identifies the merchandise that ties to its sales documents as having only one veneer of softwood.<sup>184</sup> Yuantai states that it has “no knowledge of why” its CBP entry form reported the merchandise this way, but Yuantai does not dispute the document’s accuracy.<sup>185</sup>

Interest parties call our attention to Yuantai’s purchase contract with a translation error. Importers Alliance suggests that Yuantai’s translation error was minor and was the result of an abbreviation.<sup>186</sup> Yuantai purported that the purchase contract clearly indicated that Yuantai had purchased plywood with radiata pine veneers made with urea formaldehyde.<sup>187</sup> Commerce finds that this translation error was not minor and therefore it cannot assume that the remainder of the document is without error. Therefore, Yuantai’s purchase contract, in its entirety, is unreliable. As such, Commerce did not take the purchase contract into account for its analysis, and in the

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<sup>182</sup> See Petitioner’s Request and *Initiation Notice*.

<sup>183</sup> See Final BPI Memo at Note 3.

<sup>184</sup> See Yuantai’s initial questionnaire response, dated November 26, 2018 at Exhibit 6.

<sup>185</sup> See Yuantai’s supplemental questionnaire response, dated February 12, 2019 (Yuantai’s SQR) at 5.

<sup>186</sup> See Importers Alliance Case Brief at 31; see also Final BPI Memo at Note 4.

<sup>187</sup> See Yuantai’s SQR at 7 and Exhibit S-7; see also Final BPI Memo at Note 4.

absence of other documentation, found that Yuantai had not demonstrated it sold or purchased plywood with face and back veneers of radiata pine.<sup>188</sup> While Yuantai did provide sales documents that identify radiata pine, none of the documents clearly indicate that *both* face and back veneers were made of radiata pine.

We continue to find that Yuantai did not demonstrate that it sold merchandise that was labeled CARB/TSCA certified prior to December 8, 2016. While Yuantai's plywood purchase contract, albeit it being unreliable, shows that Yuantai requested CARB compliant merchandise with E0 glue, the contract does not provide any information as to whether the merchandise was labeled CARB certified or as to the actual composition of the glue used.<sup>189</sup> Yuantai also provided a purchase order that indicates the customer requested the plywood be CARB compliant and Yuantai provided its supplier's CARB certificate. However, these documents do not demonstrate that the merchandise was *labeled* CARB certified.

We continue to find that Yuantai did not demonstrate that it sold merchandise with a majority urea formaldehyde, polyvinyl acetate, or soy resin prior to December 8, 2016. Yuantai's purchase order shows that the customer ordered plywood with a radiata pine face that was made with E0 glue and was CARB 2 compliant.<sup>190</sup> The only document Yuantai provided that gives insight into the glue used in producing Yuantai's plywood was the purchase contract, of which we find to be unreliable.<sup>191</sup> Alternatively, Yuantai's purchase order references E0 glue, but Yuantai has not provided the composition of its E0 glue.<sup>192</sup>

Finally, interested parties suggest that Yuantai's documentation should have been acceptable because Commerce did not issue a second supplemental questionnaire. Commerce issued an initial questionnaire and supplemental questionnaire. Commerce is not required to continue sending out supplemental questionnaires, nor is Yuantai entitled to unlimited opportunities to provide or correct information. Commerce also finds that this was not a case of a minor error that could have been corrected with a supplemental questionnaire, but rather, this is a case of Yuantai translating its document incorrectly, calling into question the accuracy of the information provided by Yuantai. Accordingly, because Yuantai did not demonstrate an instance prior to December 8, 2016, where plywood that meets all three of the inquiry merchandise criteria was commercially available, Commerce continues to find that Yuantai did not demonstrate that inquiry merchandise was commercially available prior to December 8, 2016.

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<sup>188</sup> See Prelim BPI Memo at Note 3.

<sup>189</sup> See Yuantai's SQR at Exhibit S-7.

<sup>190</sup> *Id.* at Exhibit S-6.

<sup>191</sup> If we had considered the purchase contract, it would have not demonstrated whether the plywood was made with a *majority* urea formaldehyde resin. See Yuantai's SQR at Exhibit S-7.

<sup>192</sup> See Yuantai's SQR at Exhibit S-6.

#### Issue 4: Whether Commerce Correctly Found Documents Unreliable

##### *Glary and Futuwood Comments:*

- Commerce failed to explain why Glary’s explanation of the CBP entry form dates is not reasonable or sufficient, nor did Commerce explain why Glary’s explanation of its draft PPQ forms does not suffice.
- Commerce ignored Glary’s CBP entry forms because they contained the automatic date generated by CBP’s electronic system. The reprint date is often long after the operation dates for the date-limited queries.
- All other dates on these entry forms correspond to the other sample sale documents at Exhibit 8 of Glary’s Initial Questionnaire Response.<sup>193</sup>
- Commerce ignored Glary’s reliable and correct PPQ forms that were submitted with its initial questionnaire response. Instead it only referred to the error in the PPQ forms.<sup>194</sup>
- Glary provided PPQ forms with hand check-marks demonstrating that the forms were the final, error-free versions, *i.e.*, scanned, reviewed and checked by the customer.<sup>195</sup> The initial draft versions that were submitted with Glary’s Initiation Comments had no impact on the issues with respect to this inquiry.

##### *Importers Alliance Comments:*

- Commerce had no reason to question the valid reasons provided by Glary regarding the CBP entry forms that had dates which “did not align to the dates of the other sales documentation{.}”<sup>196</sup>
- Commerce is required to assume the accuracy or usability of submissions it elects not to verify.<sup>197</sup> Commerce elected not to verify and therefore must assume the submissions on the record to be true.
- Commerce’s decision to discount Yuantai’s purchase contract on the basis of a minor translation error contrasts with well-established court precedent.<sup>198</sup> The Court directs Commerce to either correct a translation error that is “so obvious” or to give Yuantai the opportunity to correct a minor error.
- Discounting Yuantai’s supplier’s purchase order undermines the interests of justice because the purchase order is also relevant with respect to Yuantai’s CARB certifications and glue content.<sup>199</sup>

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<sup>193</sup> *Id.* at 11.

<sup>194</sup> *See* Glary and Futuwood Case Brief at 8, citing to Glary’s IQR at Exhibits 4 and 8; *see also* Glary’s Initiation Comments at Exhibit 3.

<sup>195</sup> *See* Glary and Futuwood Case Brief at 9-10.

<sup>196</sup> *Id.* at 9-10.

<sup>197</sup> *Id.* at 16 (citing to *China Kingdom*).

<sup>198</sup> *Id.* at 34 (citing to *Chengde Malleable Iron Gen. Factory v. United States* 505 F. Supp. 2d 1367 (CIT 2007)).

<sup>199</sup> *Id.* at 35.

*IKEA Comments:*

- Commerce cannot disregard record evidence, such as certified statements, without verification of the responses to prove the accuracy of the statements.<sup>200</sup>

*Petitioner Rebuttal Comments:*

- The error recognized in the sales contract provided by Yuantai is critical in that it related to one of the criteria at issue for inquiry merchandise. The error questions the accuracy of the entire translation.<sup>201</sup>
- Yuantai provided contradictory information: one document with one HTS code and another document with another, and was unable to provide any explanation of this inconsistency. Commerce is appropriately skeptical of Yuantai's submission.<sup>202</sup>
- Yuantai also submitted contradictory accounts of the total value of radiata pine plywood that it sold between its narrative response and its supporting documentation.
- With Yuantai consistently submitting contradictory information, it was appropriate for Commerce to not rely on a mistranslated document or documents containing said contradictory information.
- It is unreasonable to say that Commerce should rely on a document that contains an inaccurate translation just because a certification was provided with the submission.<sup>203</sup>
- Throughout the life of this proceeding, respondents and Shelter Forest have provided unreliable information, giving plenty of reasons why Commerce cannot be required to accept information simply because it was submitted with a certification.<sup>204</sup> There are multiple instance where the original and the revised response was certified:
  - Glary reported two different years which it began shipping inquiry merchandise.
  - Glary provided a document, but later acknowledged it was incorrect.
  - Yuantai provided documentation of a sale to the United Kingdom as a demonstration of inquiry merchandise, then later conceded that the merchandise did not meet the CARB criteria.
  - Shelter Forest provided a photograph of plywood at a retailer in an effort to demonstrate the sale of inquiry merchandise. The plywood in this image had a plywood supplier's name on it. The supplier reports beginning its sales of inquiry merchandise after the date of that photograph.
  - Shelter Forest provided a list of its sales of radiata pine, CARB-certified plywood to the United States. This list included numerous sales of other species of pine plywood.

**Commerce's Position:** In the *Preliminary Determination*, we determined that certain documents provided by mandatory respondents were not reliable: Glary's PPQ forms, Glary's CBP Entry Summary forms, and Yuantai's plywood purchase contract with its supplier.

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<sup>200</sup> See IKEA Case Brief at 15-16.

<sup>201</sup> See Petitioner Rebuttal Brief at 23.

<sup>202</sup> *Id.* at 24-25.

<sup>203</sup> *Id.* at 30.

<sup>204</sup> *Id.* at 30-31.

Glary states that “the draft PPQs were fillable and editable PDF Forms.” We initially questioned the documents because we found them to be inconsistent with the rest of Glary’s sales documentation. Glary provided screen shots of its sales system, which shows that its sales person could potentially create PPQs in 2018, but write in a date of 2015. Glary’s demonstration that these documents could be easily modified, confirmed that its PPQs are not reliable sources. Accordingly, we continue to find Glary’s PPQ forms to be unreliable sources because there is no finality of such documents, and therefore, continue to not consider these in our analysis.<sup>205</sup>

In its supplemental questionnaire response, Glary stated that the dates printed on its CBP entry forms are the reprinting dates automatically created by CBP’s electronic system.<sup>206</sup> Upon further analysis, outside of the automatically generated date, all of the of the other dates and sales information on these forms tie to the remainder of the sales documentation, such that we have considered it in our analysis. Glary’s CBP entry forms demonstrate that Glary sold plywood that entered the United States under an HTS code for plywood with both outer veneers of coniferous wood. However, this entry form does not contain the species name for those veneers.

Yuantai agrees that it provided an inaccurate translation of its source document.<sup>207</sup> Yuantai states that it abbreviated a Chinese translation, which resulted in Commerce’s preliminary finding that Yuantai submitted an incorrectly translated document, but it does not clarify what the proper translation should have been, and why an abbreviation would be so specific.<sup>208, 209</sup> In fact, by deciding to translate the purchase contract the way it did, Yuantai introduced translation inaccuracies, or at a minimum, incorrectly translated documents, which could have distorted the entire outcome of this inquiry.<sup>210</sup> As such, Commerce continues to find that Yuantai’s purchase contract is not reliable.<sup>211</sup>

As is evidenced by the several issues Commerce noted throughout the interested parties’ submissions, and reiterated by the petitioner, the fact that interested parties provided certifications stating the factual information they provide is accurate and complete does not preclude the respondents from submitting unreliable documentation. It is Commerce’s role to determine whether documentation supports the assertions of the respondent, and it is not Commerce’s practice to accept documentation with errors or inaccurate translations just because the company submitted a certification. If Commerce were to simply accept sworn statements at face value, there would be no need to request supporting documentation. Accordingly, for the final determination, Commerce finds that it correctly found Glary’s PPQ forms and Yuantai’s

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<sup>205</sup> We note that if Commerce did consider Glary’s PPQ forms in its analysis, Glary still has not demonstrated that inquiry merchandise was commercially available prior to December 8, 2016.

<sup>206</sup> See Glary’s SQR at 20.

<sup>207</sup> See Yuantai Case Brief at 13; see also Yuantai’s SQR at Exhibit S-7.

<sup>208</sup> *Id.*;

<sup>209</sup> See e.g., Importers Alliance Case Brief at 34-35.

<sup>210</sup> See Final BPI Memo at Note 4.

<sup>211</sup> Even if Commerce were to consider the wrongly translated, and unreliable, document in its analysis, the purchase contract does not report plywood with face and back veneers of hardwood plywood, and the Yuantai’s Custom documents which, Yuantai states ties to this purchase contract, identifies this plywood as being made with one veneer of hardwood.

purchase contract to be unreliable for the purposes of the analyses. We also note that, as discussed in the prior issue, even if we considered these documents in our analysis, neither Glary nor Yuantai is able to demonstrate that they sold inquiry merchandise prior to December 6, 2018.

### **Issue 5: Whether Commerce Created Insurmountable Criteria**

*Glary and Futuwood Comments:*

- The Court states that Commerce must select the best available information and substantially support its decisions,<sup>212</sup> and that Commerce must consider “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” The Court also states that Commerce also must consider how much contradictory evidence actually detracts from the evidence.<sup>213</sup>
- In accordance with section 782(e) the Act, Commerce must use the record information necessary even when it does not meet Commerce’s requirements.

**Commerce’s Position:** We find that the record supports our final determination that inquiry merchandise was not commercially available prior to December 8, 2016. The record contains thousands of pages of documentation provided by importers, exporters, and producers of plywood products, but none of these documents contain a clear, non-disputable demonstration that inquiry merchandise was sold prior to December 8, 2016. The criteria of the merchandise are specific, as is the nature of most products subject to anti-circumvention inquiries, and, therefore, Commerce’ analysis is specific. In the later-developed anti-circumvention inquiry of aluminum extrusions, the merchandise at issue was “heat-treated extruded aluminum products from China that meet the chemical specifications for 5050-grade aluminum alloy,” and in another later-developed merchandise inquiry, we assessed whether “laminated woven sacks produced with two ink colors printed in register and a screening process” were commercially available.<sup>214</sup> As in those cases, this instant inquiry assesses precise criteria in determining whether a particular product was commercially available prior to December 8, 2016. To make assumptions that interested parties are suggesting we make because they are supposedly “the best available information” would be the antithesis of analyzing merchandise in accordance with section 781(d) of the Act.

We note that the evidence provided in *Laminated Woven Sacks* demonstrated that the merchandise was commercially available, because the respondent provided documentation that demonstrated a sale of the merchandise. In the instant anti-circumvention inquiry, the requirement was the same, in that all one party needed to do was demonstrate that it sold or tested merchandise that met all three criteria, in order for us to find that the inquiry merchandise

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<sup>212</sup> See Glary and Futuwood Case Brief at 23 (citing to *Calgon Carbon Corp. v. United States*, Slip Op. 2011-21 (February 17, 2011)).

<sup>213</sup> *Id.* (citing to *Taian Ziyang Food Co. v. United States*, 637 F. Supp. 2d 1093, 1102 (CIT 2009), citing to *Elkem Metals Co. v. United States*, 468 F. 3. 795, 800 (Fed. Cir. 2006)).

<sup>214</sup> See *Aluminum Extrusions from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping and Countervailing Duty Orders and Rescission of Minor Alterations Anti-Circumvention Inquiry*, 82 FR 34630 (July 26, 2017); see also *Laminated Woven Sacks from the People's Republic of China: Negative Final Determination of Circumvention*, 78 FR 12716 (February 25, 2013) (*Laminated Woven Sacks*).

was not later-developed. This expectation was clear in each questionnaire issued to the mandatory respondents, and Commerce precedent supports that expectation.

Accordingly, we continue to find that the record evidence does not demonstrate the commercial availability of inquiry merchandise prior to December 8, 2016.

## **Issue 6: Whether Commerce Should Accept New Factual Information**

### *IKEA Comments:*

- Commerce did not permit Shelter Forest to submit new factual information (NFI) that would have directly addressed the issue at hand: that Commerce found that Shelter Forest did not demonstrate that E0 glue was made of urea formaldehyde.<sup>215</sup>
- Commerce is mandated to accurately and fairly administer the antidumping duty law. Because Shelter Forest's NFI supports the possibility of an alternative conclusion, it must be solicited for consideration in the final determination.<sup>216</sup>

**Commerce's Position:** For our final determination, we find that Commerce was correct in not accepting Shelter Forest's request to submit NFI.

Since the issuance of the *Initiation Notice*, interested parties have had several opportunities to provide information they believed to be essential to the record, *i.e.*, initial questionnaire responses, supplemental questionnaire responses. After the *Preliminary Determination*, Shelter Forest requested to submit NFI regarding E0 glue, specifically stating that the documentation it wished to submit would demonstrate that E0 is a glue that is comprised of a majority urea formaldehyde. Subsequent to its initial opposition to the request for an anti-circumvention inquiry, Shelter Forest had two opportunities to demonstrate that inquiry merchandise it sold was made with a resin, the majority of which is comprised of urea formaldehyde, polyvinyl acetate, and/or soy: (1) Shelter Forest could submit a voluntary response to Commerce's initial questionnaire, which it did not; and (2), in Shelter Forest's SQR, it failed to respond to a specific question regarding composition of the resin in the merchandise under consideration, only generally responding to Commerce's questions to the mandatory respondents.<sup>217</sup>

In its SQR, Shelter Forest limited its responses to certain questions. For example, in Glary's SQR, Commerce first reiterated its initial request, asking "for the precise resin composition used in the production of inquiry merchandise, and documentation to support {their} response."<sup>218</sup> Then it asked the company to "further identify the percentage of each component listed used to formulate the glue, and as requested {initially}, provide documentation for {their response}."<sup>219</sup> This questionnaire alone demonstrates that Commerce was clear in its requirements: (1) Commerce needed the exact composition of the resin used prior to December 8, 2016, for inquiry

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<sup>215</sup> See *IKEA Case Brief* at 13.

<sup>216</sup> *Id.*

<sup>217</sup> See Shelter Forest supplemental questionnaire response, dated February 2, 2019 (Shelter Forest's SQR).

<sup>218</sup> See Glary's SQR at 21.

<sup>219</sup> *Id.* at 22.

merchandise, if it was being produced; and (2) Commerce needed documentation to support the composition being reported. Shelter Forest responded to the supplemental questionnaires, stating “[t]he underlying leitmotif of the Department’s December 19<sup>th</sup> Supplemental Questionnaire is that the Department wants to be certain that it has all possible documentation concerning whether, in fact, inquiry merchandise was sold prior to December 2016.”<sup>220</sup> The fact that Shelter Forest summarized its understanding of the questionnaires, and then failed to outline its resin composition and provide supporting documentation demonstrates that Commerce was clear in its expectations of its respondents and that Shelter Forest determined it did not need to answer certain questions.

We also note that Commerce did not select Shelter Forest as a mandatory respondent. Commerce often has limited resources and considers voluntary responses only if it has the administrative resources to do so. In this case, Commerce considered all of the record information, from all respondents and interested parties, in an effort to ensure that its country-wide analysis included all relevant data on the record. Despite Commerce’s best efforts to analyze the record, which included evaluating responses voluntarily provided by Shelter Forest, Commerce did not issue supplemental questionnaires to Shelter Forest because this company was not a mandatory respondent selected for individual examination and the complex nature of this anti-circumvention inquiry required Commerce to focus its efforts in soliciting, and understanding, information from the mandatory respondents. Moreover, based on Shelter Forest’s response, as noted above, Commerce understood that Shelter Forest recognized what Commerce requested and had simply failed to supply the requisite information (*i.e.*, only respond to a subset of questions issued to the mandatory respondents). As such, Shelter Forest had ample opportunity to provide the information it deemed necessary to supply, prior to the issuance of the *Preliminary Determination*, but failed to do so. Also, Commerce is not required to accept untimely NFI, which is what Shelter Forest asked Commerce to do.<sup>221</sup> Therefore, Commerce continues to find that Shelter Forest had several opportunities to provide specific information concerning the resin composition of its merchandise, but did not avail itself of such opportunities.

## **Issue 7: Whether Inquiry Merchandise Passes the Threshold of Commercial Availability**

### *Shelter Forest Comments:*

- Commerce may find circumvention of an order when “merchandise is developed after an investigation is initiated.”<sup>222</sup>
- The Courts and Commerce have confirmed that the definition of “commercial availability” as either “present in the commercial market or fully developed, *i.e.*, tested and ready for commercial production, but not yet in the commercial market.”<sup>223</sup>
- Commerce has historically found that a product was not later developed because the product was ready for commercial production at the initiation of the investigation, finding that commercial availability does not require actual presence in the market.

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<sup>220</sup> See Shelter Forest’s SQR at 2.

<sup>221</sup> See Commerce’s Letter, “Rejection of Submission,” dated July 10, 2019.

<sup>222</sup> See Shelter Forest Case Brief at 5 (citing to section 781(d) of the Act).

<sup>223</sup> *Id.* at 6.

- The record of this proceeding demonstrates that the merchandise was commercially available prior to December 8, 2016.

*IKEA Comments:*

- The established standard for commercial availability is that “commercial availability” can mean “fully developed, tested, and ready for commercial production, but not yet in the commercial market.” For this proceeding, Commerce is straying from its practice and is requiring the establishment of the final terms of sale.<sup>224</sup>

**Commerce’s Position:** Commerce continues to find that responding companies did not demonstrate that inquiry merchandise was commercially available prior to December 8, 2016.

Commerce’s analysis of inquiry merchandise in the *Preliminary Determination* assessed whether inquiry merchandise was present in the market prior to the initiation of the underlying investigations on December 8, 2016.<sup>225</sup> Our definition of “commercially available” used in our analysis was “present in the commercial market or fully developed, *i.e.*, tested and ready for commercial production but not yet in the commercial market.”<sup>226</sup> In response to questionnaires, which asked companies to explain and demonstrate that inquiry merchandise was commercially available, interested parties stated that they had sold inquiry merchandise in the United States, but none asserted that they had tested and had inquiry merchandise ready for commercial production, but not yet in the commercial market.<sup>227</sup> As a result, our preliminary analysis focused on the claims and information provided by the parties, which concerned whether the inquiry merchandise was present in the commercial market.

For this final determination, we find that our analysis of inquiry merchandise’s commercial availability appropriately assessed whether subject merchandise was present in the market. While IKEA and Shelter Forest attempt to discredit this analysis, their points are moot because all parties who provided documentation on this record have asserted that inquiry merchandise was present in the market. Accordingly, Commerce had no need to assess whether the product was in production. Also, while the interested parties make this claim, not a single responding company provided production documentation, *i.e.* warehouse slips or bills of materials, to support their assertions that this merchandise met the three criteria of inquiry merchandise.

**Issue 8: Whether a Negative Finding Applies to All Exports of Inquiry Merchandise**

*IKEA Comments:*

- An affirmative anti-circumvention determination allows Commerce to place otherwise non-subject merchandise under the scope of an order where certain criteria are met.<sup>228</sup>

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<sup>224</sup> See IKEA Case Brief at 11.

<sup>225</sup> See PDM at 9-20.

<sup>226</sup> *Id.* at 8.

<sup>227</sup> *Id.* at 9 (stating “Each respondent provided sales documentation...”).

<sup>228</sup> See IKEA’s Case Brief, at 18.

- A negative finding precludes Commerce from including the merchandise in the *Order* and to do so would unlawfully expand the scope of the order.<sup>229</sup>

**Commerce’s Position:** Because we are finding that the inquiry merchandise is circumventing the *Orders*, the question of whether a negative determination applies to all exports of inquiry merchandise is moot. Accordingly, we are not making a determination as to whether a negative finding, in whole or in part, would apply to all exports of inquiry merchandise.

### **Issue 9: Whether Commerce can Make a Country-Wide Finding**

*Importers Alliance Comments:*

- The respondents have shown that the inquiry merchandise was commercially available at the time of initiation of the underlying investigation.<sup>230</sup>
- Even if Commerce concludes that one or more respondents cannot establish prior existence of the product, Commerce cannot resort to a country-wide finding because the statute is focused on the existence of a product, regardless of who produced or sold it.
- A country-wide finding is not appropriate where Commerce finds the merchandise to be commercially available, even among a single or subset of producers.

*Petitioner Comments:*

- The evidence of this proceeding supports Commerce’s affirmative preliminary determination, and therefore Commerce must continue to make an affirmative finding and apply its decision on a country-wide basis.

**Commerce’s Position:** Because we determine that the inquiry merchandise constitutes later developed merchandise and because no respondents or interested parties have demonstrated that they had shipments of the inquiry merchandise prior to the initiation of the investigations, this issue is moot.

### **Issue 10: Whether Commerce Applied Adverse Facts Available**

*Shelter Forest Comments:*

- Commerce applied adverse fact available (AFA) to Shelter Forest in its *Preliminary Determination*. Commerce assigned the China-wide rate of 182.90 percent to the China-wide entity for entries of inquiry merchandise, which was the AFA rate from the investigation.
- In order to apply AFA, Commerce is first required to find that a respondent has impeded the investigation.<sup>231</sup> Additionally, in order to apply AFA, Commerce is required to notify respondents that necessary information was not available on the record.<sup>232</sup>

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<sup>229</sup> *Id.*

<sup>230</sup> See Importer’s Alliance Case Brief, at 42.

<sup>231</sup> See Shelter Forest Case Brief at 19 (citing sections 776(a) and (b) of the Act).

<sup>232</sup> *Id.* (citing to section 782(d) of the Act).

- Commerce cannot apply AFA to Shelter Forest because Commerce did not ask Shelter Forest about the information it submitted, not did it provide Shelter Forest with the opportunity to correct any perceived deficiencies.

*Yuantai Comments:*

- Commerce applied AFA to Yuantai and failed to inform Yuantai that it needed more information.

*Importers Alliance Comments:*

- Despite not using the phrase “AFA,” Commerce effectively applied AFA in its decision not to consider Glary’s CBP entry forms. Commerce ignored certified record evidence in favor of a conclusion that disregards evidence by making inferences that are wholly adverse to Glary.<sup>233</sup>
- Commerce did not find that necessary information was not on the record or could not be verified. Commerce did not find that Glary failed to cooperate.<sup>234</sup>
- Glary put forth its best effort to cooperate in this inquiry and there is no evidence that Glary failed to cooperate.<sup>235</sup>
- Commerce relied on suspicion and speculation in the face of Futuwood’s certified record evidence and ultimately made an adverse inference with respect to Futuwood’s responses.
- Commerce viewed the facts presented by Futuwood in their most negative light and in effect applied AFA.<sup>236</sup>

*Petitioner Rebuttal Comments:*

- Commerce did not apply AFA to Shelter Forest. The fact that the rate assigned to Shelter Forest is equivalent to the China-wide rate does not equate to the application of AFA.
- Commerce did not apply AFA to Yuantai, but instead determined that Yuantai failed to provide information demonstrating that it produced/sold inquiry merchandise prior to December 8, 2016. Finding that certain information cannot be relied upon is not equivalent to AFA.
- If one were to determine that Commerce did apply AFA, Commerce would have been correct to do so. Commerce satisfied its obligations under section 782(d) of the Act by identifying deficiencies and issuing a lengthy supplemental questionnaire. Commerce was not required to do more and Yuantai was not entitled to unlimited opportunities to provide information.
- Commerce did not apply AFA to Glary. Determining that certain information and explanations are insufficient to reach a certain conclusion or otherwise unreliable does not equate to the application of AFA.<sup>237</sup>

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<sup>233</sup> See Importers Alliance Case Brief at 12-13.

<sup>234</sup> *Id.* at 12.

<sup>235</sup> *Id.* at 15.

<sup>236</sup> *Id.* at 32.

<sup>237</sup> See Petitioner Rebuttal Brief at 12.

- If Commerce had applied AFA, it would have been warranted because Glary submitted documentation, and then the same type of document for the same sale that differed from its original submission.<sup>238</sup>

**Commerce’s Position:** The *Preliminary Determination* resulted in a finding that inquiry merchandise is covered by the scope of the *Orders*. As a result, companies that produced inquiry merchandise were then subject to the suspension of such entries at the China-wide rate (under the antidumping duty order), or the all-others rate (under the countervailing duty order), unless the importer/exporter could certify to CBP that the Chinese-origin inquiry merchandise was supplied by a Chinese manufacturer with its own company-specific separate rate.<sup>239</sup> Although parties argue that the China-wide rate is a high dumping margin, the rate applicable to exporters and producers was determined in the underlying investigation, and was not the result of Commerce applying AFA in this segment of the proceeding.<sup>240</sup> Interested parties did not present any evidence that the China-wide rate was incorrectly applied given the result of our determination in this anti-circumvention inquiry, *i.e.*, that the cash deposit rate applicable to certain entries was the company-specific rate of the manufacturer and not the China-wide rate. Therefore, for this final determination, we here clarify that Commerce is not applying AFA to any of the responding companies, but rather, no responding party was able to demonstrate it sold inquiry merchandise prior to December 8, 2016, thereby supporting our affirmative circumvention finding that inquiry merchandise is later developed merchandise pursuant to section 781(d) of the Act.

Regarding documents that Commerce determined to be unreliable, Commerce did not make any inferences to supplement the unreliable documents. Commerce merely concluded that those documents cannot be relied upon in making its determination.<sup>241</sup> Therefore, as discussed above, Commerce continues to find that no responding party was able to demonstrate it sold inquiry merchandise prior to December 8, 2016.

## **Issue 11: Whether Commerce Must Notify the ITC**

### *Glary and Futuwood Comments:*

- Contrary to its announcement in the *Preliminary Determination*, Commerce stated in the PDM that it will not notify the ITC because altering the production process from hardwood plywood to the specific softwood species of the inquiry merchandise “does not constitute a significant technological advancement or significant alteration of scope merchandise.”<sup>242</sup>
- Commerce’s evaluation of the significance of the alteration in this case contradicts its own findings on the petitioner’s first attempt to bring an anti-circumvention inquiry on softwood plywood.<sup>243</sup>

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<sup>238</sup> *Id.*

<sup>239</sup> See *Preliminary Determination*, 84 FR at 27082.

<sup>240</sup> See PDM at 17 (citing to *Initiation Notice*).

<sup>241</sup> See Issues 3 and 4 for a discussion of the record evidence and the documentation Commerce found unreliable.

<sup>242</sup> See Glary and Futuwood Case Brief at 24.

<sup>243</sup> *Id.*

- In its decision memorandum declining to initiate the petitioner’s first request on softwood plywood Commerce stated that “use of softwood veneers for both the face and back of the plywood is not an insignificant alteration of subject merchandise; rather, it results in the production of a different product, which is not covered by the scope of the Orders, and, thus, would not otherwise be covered by the scope but for the inclusion of an additional face or back veneer of softwood.”<sup>244</sup>
- If Commerce upholds its *Preliminary Determination*, it must refer this case to the ITC for consultations and a decision on injury.<sup>245</sup>

*Importers Alliance Comments:*

- In the *Preliminary Determination*, Commerce determined that it was not required to consult with the ITC because the inquiry merchandise “does not constitute a significant technological advancement or significant alteration of scope merchandise.”<sup>246</sup>
- However, that stands in contrast to the finding in its earlier decision denying a previous circumvention request where Commerce stated that the use of softwood veneers is not an insignificant alteration of subject merchandise but results in the production of a different product.<sup>247</sup>
- By Commerce’s own admission, inquiry merchandise (as softwood plywood) is a different product from in-scope merchandise.<sup>248</sup>
- Reaching the threshold of a different product requires a significant alteration and Commerce must therefore consult with the ITC before making its final determination.<sup>249</sup>
- Failure to consult with the ITC poses concerns regarding lack of industry support, as Commerce recognized when it declined to initiate the prior circumvention inquiry.<sup>250</sup>
- The scope language covers all hardwood and decorative plywood with the face and/or back veneer made of non-coniferous wood (hardwood) or bamboo, which was a departure from the earlier investigation on Chinese plywood that included coniferous wood/softwood face and back veneers.<sup>251</sup>
- Failure to consult with the ITC undermines the legitimacy of the ITC’s injury determination.<sup>252</sup>

*IKEA Comments:*

- Commerce’s failure to notify the ITC violates the statutory requirement that the ITC be notified of a proposed action “with respect to any later-developed merchandise which

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<sup>244</sup> *Id.* at 24-25.

<sup>245</sup> *Id.* at 25.

<sup>246</sup> *See* Importer’s Alliance Case Brief at 43.

<sup>247</sup> *Id.*

<sup>248</sup> *Id.* at 43-44.

<sup>249</sup> *Id.* at 44.

<sup>250</sup> *Id.*

<sup>251</sup> *Id.*

<sup>252</sup> *Id.* at 45.

incorporates a significant technological advance or significant alteration of an earlier product.”<sup>253</sup>

- Commerce claims that altering the production process of hardwood plywood does not constitute a significant technological or significant alteration of the scope merchandise, but the administrative record demonstrates otherwise.<sup>254</sup>
- In the underlying investigation, Commerce considered whether plywood with softwood veneers should be included within the scope and stated that the scope excludes products with both a face and back veneer of coniferous wood.<sup>255</sup>
- In an earlier anti-circumvention proceeding, Commerce recognized the significant differences between hardwood and softwood when it stated that the use of softwood veneers is not an insignificant alteration of subject merchandise but results in a different product not covered by the scope of the Orders.<sup>256</sup>
- The use of softwood veneers must be considered a significant alteration and, as a result, the ITC must be notified.<sup>257</sup>

*IKEA Rebuttal Comments:*

- Commerce cannot make an affirmative final determination without consulting with the ITC.
- The ITC has never made an injury determination on a domestic industry product including producers of plywood with a face and back veneer of softwood. The ITC final determination of injury during the investigation defined the “domestic like product” only as having hardwood face or back veneers.

*Petitioner Rebuttal Comments:*

- The respondents incorrectly rely on Commerce’s statement when it declined to initiate the minor alterations anti-circumvention inquiry that the use of softwood veneers for both the face and back of plywood is not an insignificant alteration and results in a different product, because that statement was made in the context of the minor alterations inquiry and was not an assessment of the later-developed merchandise statutory factors.<sup>258</sup>
- The inquiry merchandise at issue in the prior circumvention proceeding is distinct from the inquiry merchandise at issue here.<sup>259</sup>
- For minor alterations inquiries, Commerce does not evaluate whether the merchandise incorporates a significant technological advancement or significant alteration of an earlier product such that Commerce should notify the ITC of the proposed action.<sup>260</sup>

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<sup>253</sup> See IKEA Case Brief at 18-19.

<sup>254</sup> *Id.* at 19.

<sup>255</sup> *Id.*

<sup>256</sup> *Id.*

<sup>257</sup> *Id.*

<sup>258</sup> See Petitioner Rebuttal Brief at 39-40.

<sup>259</sup> *Id.* at 40.

<sup>260</sup> *Id.*

- IKEA claims that the record demonstrates that inquiry merchandise is a significant alteration from in-scope merchandise; it does not point to any evidence on the record of this proceeding to support its assertion.<sup>261</sup>
- IKEA argues that in the underlying investigation, Commerce found that plywood with both a face and back veneer of coniferous wood is excluded from the scope but that does not equate to whether the product incorporates a significant technological advance or significant alteration of an earlier product for the purpose of a later-developed merchandise inquiry.<sup>262</sup>
- All merchandise subject to an anti-circumvention inquiry is not within the literal scope of existing order, which make the Importers' Alliance's assertion that inquiry merchandise is a different product from in-scope merchandise unavailing.<sup>263</sup>
- The Importers Alliance is arguing that Commerce must notify the ITC in every later-developed merchandise inquiry, but Congress clearly laid out when Commerce must notify the ITC of its determinations with respect to later-developed merchandise; only when there is a significant technological advance or significant alteration of an earlier product.<sup>264</sup>
- A decision by Commerce as to whether any merchandise is within a category for which ITC notice is required is not subject to judicial review.<sup>265</sup>
- In the request for anti-circumvention inquiry, the petitioners provided substantial evidence for each of the statutory factors, demonstrating that inquiry merchandise and in-scope merchandise are interchangeable, and that inquiry merchandise was being offered to customers as a direct alternative for the purpose of avoiding duties.<sup>266</sup>
- The petitioners also provided information demonstrating that the same equipment can be used to produce inquiry and subject merchandise without any retooling.<sup>267</sup>
- Commerce properly found that inquiry merchandise does not incorporate a significant technological advance or significant alteration and, thus, that it need not notify the ITC.<sup>268</sup>

**Commerce's Position:** We agree with the petitioner and continue to find that inquiry merchandise does not incorporate a significant technological advancement or significant alteration of scope merchandise.<sup>269</sup> Specifically, in the *Preliminary Determination* we stated that:

As discussed in our *Initiation Notice*, and based on the record evidence provided by the petitioner, inquiry merchandise differs from subject hardwood plywood in

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<sup>261</sup> *Id.*

<sup>262</sup> *Id.*

<sup>263</sup> *Id.* at 40-41.

<sup>264</sup> *Id.* at 41 (citing to section 781(e) of the Act and *Target Corp. v. United States*, 578 F. Supp. 2d at 1377-78).

<sup>265</sup> *Id.*

<sup>266</sup> *Id.* at 42.

<sup>267</sup> *Id.*

<sup>268</sup> *Id.*

<sup>269</sup> *Id.* at 20-21.

several aspects. In order to produce inquiry merchandise, companies must use hardwood plywood with face and back veneers of radiata and/or agathis pine that: (1) has a TSCA or CARB label certifying that it is compliant with TSCA/CARB requirements; and (2) is made with a resin, the majority of which is comprised of one or more of the following three product types: urea formaldehyde, polyvinyl acetate, and/or soy. We find that altering the production process of hardwood plywood in the above manner does not constitute a significant technological advancement or significant alteration of scope merchandise.<sup>270</sup>

Accordingly, we concluded that we need not notify the ITC of our determination.<sup>271</sup>

Interested parties point to Commerce's decision not to initiate a prior minor alterations anti-circumvention inquiry on softwood plywood generally to support their claims that Commerce erred in finding that altering the production process of hardwood plywood does not constitute a significant technological advancement or significant alteration of scope merchandise.<sup>272</sup>

However, the later-developed merchandise inquiry and minor alterations inquiry are distinct.

A minor alterations inquiry focuses on whether a class or kind of merchandise subject to an AD and/or CVD order have been "altered in form or appearance in minor respects . . . whether or not included in the same tariff classification."<sup>273</sup> Further, in determining whether an alteration is minor under section 781(c) of the Act and 19 CFR 351.225(i), Commerce examines "such criteria as the overall characteristics of the merchandise, the expectations of ultimate users, the use of the merchandise, the channels of marketing {,} and the cost of any modification relative to the total value of the imported product."<sup>274</sup> In addition, in declining to initiate the prior anti-circumvention inquiry, Commerce also considered additional factors, such as the commercial availability of the product at issue prior to the issuance of the order as well as the circumstances under which the products at issue entered the United States, and the timing and quantity of said entries.<sup>275</sup> Thus, the scope of information on which we based our determination that the use of softwood veneers for both the face and back of the plywood did not constitute a minor alteration within the meaning of section 781(c) of the Act, is distinct from the factors evaluated, and information underpinning our determination, in this inquiry.

More importantly, the merchandise at issue in this inquiry is narrower than the expansive and general category of plywood made with a face and back veneer of a softwood species that was at issue in our prior determination. The merchandise that is the subject of this inquiry shares physical qualities similar to subject merchandise, but for the addition of one of two species of wood veneers, is used for the same purposes as subject merchandise, and, we continue to find in

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<sup>270</sup> *Id.*

<sup>271</sup> *Id.*

<sup>272</sup> See Glary and Futuwood Case Brief, at 24-25; Importer's Alliance Case Brief at 43; IKEA Case Brief at 19.

<sup>273</sup> See Section 781(c)(1) of the Act.

<sup>274</sup> See S. Rep. No. 100-71, at 100 (1987).

<sup>275</sup> See Importers' Alliance Letter, "Certain Hardwood Plywood Products from the People's Republic of China: Objection to Second Request for Anti-Circumvention Inquiry," dated July 16, 2018, at Exhibit 2 (Minor Alterations Inquiry Memo) at 12.

this final determination, was not commercially available prior to the initiation of the underlying investigations that resulted in the *Orders*. While we found that softwood plywood as a general category was a distinct product in a prior decision,<sup>276</sup> the record of this proceeding indicates that the inquiry merchandise maintains certain physical properties of the subject merchandise.<sup>277</sup> The mere substitution of a specific species of face and back veneer on plywood that is otherwise produced in a similar manner and used for the same purposes as subject merchandise cannot be considered a significant technological advancement or significant alteration of scope merchandise. Similarly, that the inquiry merchandise must have a CARB or TSCA label, and use a majority urea formaldehyde, polyvinyl acetate, and/or soy resin, also does not constitute a significant technological advancement or alteration of the scope merchandise – nor has any interested party identified evidence demonstrating such. Accordingly, we continue to find that altering the production process of hardwood plywood in the above manner does not constitute a significant technological advancement and that there is no significant alteration of the scope merchandise and, therefore, is not the type of product that would require us to notify the ITC of our determination.

## **Issue 12: Whether the Date of Publication is the Appropriate Effective Date**

### *Shelter Forest Comments:*

- If Commerce issues an affirmative final determination it must make clear that the effective date for collection of cash deposits on imports of inquiry merchandise is the publication date of Commerce’s initiation notice, *i.e.*, September 21, 2018.<sup>278</sup>
- The date of the unpublished initiation notice is not the appropriate effective date and Commerce’s practice, as well as notions of due process, supports the use of publication date as the effective date.<sup>279</sup>

### *Importers Alliance Comments:*

- Commerce erroneously identified the initiation date as September 18, 2018, which is not the date of public notice and not properly considered the “date of initiation.”<sup>280</sup>
- The correct date is the date the preliminary determination was published in the *Federal Register*.<sup>281</sup>
- The CIT has held the publication of the notice of initiation in the *Federal Register* is what constitutes public notice.<sup>282</sup>

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<sup>276</sup> *Id.*

<sup>277</sup> *See, e.g.*, Petitioner’s Request at 26-32.

<sup>278</sup> *See* Shelter Forest’s Case Brief at 22 (citing to *Initiation Notice*).

<sup>279</sup> *Id.*

<sup>280</sup> *See* Importer’s Alliance Case Brief, at 46.

<sup>281</sup> *Id.* at 46.

<sup>282</sup> *Id.* at 46-47 (citing to *Tai-Ao Aluminium (Taishan) Co. v. United States*, 391 F. Supp. 3d 1301, 1314 (CIT 2019) (*Tai-Ao Aluminum*)).

*Petitioner Comments:*

- The regulations identify the applicable date as the “date of initiation,” not the date on which the notice of initiation is published.<sup>283</sup>
- As the Importers Alliance concedes, Commerce has ordered suspension of liquidation in anti-circumvention inquiries, effective from the actual date of initiation and not the date of publication.<sup>284</sup>
- In *Tai-Ao Aluminum*, the CIT was responding to plaintiff’s argument that Commerce should have suspended liquidation from the date of the preliminary determination instead of the date of initiation based on the claim that the initiation notice did not clearly indicate that the proceeding covered the plaintiffs’ merchandise.<sup>285</sup>

**Commerce’s Position:** We disagree with Shelter Forest and the Importer’s Alliance that the date of publication is the date of initiation of this anti-circumvention. Rather, we continue to find that the appropriate date at which to instruct CBP to suspend liquidation and require cash deposits of estimated duties of the inquiry merchandise is the initiation date of this inquiry, *i.e.*, the date that this initiation notice was signed. Indeed, the CIT has recognized that “the liquidation of merchandise subject to an affirmative anti-circumvention determination is suspended as of the date of initiation of the anti-circumvention proceeding.”<sup>286</sup>

Although the Importer’s Alliance points to *Tai-Ao Aluminum* to support its arguments, *Tai-Ao Aluminum* is not a final judgement and Commerce’s compliance with the CIT’s conclusion was done so under respectful protest.<sup>287</sup> Nevertheless, *Tai-Ao Aluminum* is readily distinguishable from the facts of this inquiry. In *Tai-Ao Aluminum* the CIT objected to Commerce’s decision to retroactively suspend liquidation to the date of initiation rather than the date of the preliminary determination for certain companies because the initiation notice specified that the inquiry covered products exported by a specific company, Zhongwang, and only that company was sent a questionnaire.<sup>288</sup> The CIT concluded that we should have suspended liquidation for certain companies from the preliminary determination but required no changes of our decision to suspend liquidation for Zhongwang.<sup>289</sup> In contrast, we stated in the *Initiation Notice* for this inquiry that “in order to determine the extent to which a country-wide finding applicable to all exports might be warranted” we intended to “issue questionnaires to potential Chinese producers and exporters of inquiry merchandise to the United States,” without naming any specific companies and thereby putting all producers and exporters on notice that they could be subject to

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<sup>283</sup> See Petitioner’s Rebuttal Brief at 43.

<sup>284</sup> *Id.*

<sup>285</sup> *Id.* at 44.

<sup>286</sup> See *Target Corp. v. United States*, 626 F. Supp. 2d 1285, 1301, aff’d, 609 F.3d 1352 (Fed. Cir. 2010) (citing 19 CFR 351.225(l)) (sustaining Commerce’s determination to suspend liquidation of all entries of the subject merchandise that were entered, or withdrawn from warehouse, for consumption on or after February 25, 2005, the date of the initiation of the anticircumvention inquiry); see also *Tai-Ao Aluminum*, 391 F. Supp. 3d at 1307.

<sup>287</sup> See “Final Results of Redetermination Pursuant to Court Remand, *Tai-Ao Aluminum*, (Taishan) Co., Ltd. et al v. United States Court No. 17-00216, Slip Op. 19-70 (CIT June 7, 2019),” dated June 22, 2019, available at <http://ia.ita.doc.gov/remands/>.

<sup>288</sup> See *Tai-Ao Aluminum*, 391 F. Supp. 3d at 1315.

<sup>289</sup> *Id.*

an affirmative preliminary determination.<sup>290</sup>

Accordingly, we find that the initiation date of this anti-circumvention inquiry is the date of the signed initiation notice, rather than the publication date, and that this date is the appropriate date to begin suspension of liquidation following our affirmative preliminary determination in this inquiry. Moreover, because parties were notified that Commerce intended to issue questionnaires to potential producers and exporters of inquiry merchandise, all Chinese producers and exporters were on notice of the possibility that their entries could be suspended at the date of initiation of this inquiry, *i.e.*, the date on which the initiation notice was signed, September 18, 2018.

### **Issue 13: Whether the Certification Requirements are Unreasonable and Burdensome**

#### *IKEA Comments:*

- Commerce's requirement for importers to maintain certifications of non-subject merchandise is unduly burdensome. Importers must already declare their merchandise accurately to CBP.<sup>291</sup>
- The documentation importers are required to maintain for this certification is extreme.
- This requirement violates Commerce's preference to avoid the use of certificates to determine out-of-scope merchandise. Commerce has historically found certification programs to be difficult to administer.<sup>292</sup>
- The certification requirement will not assist CBP in enforcing the *Orders*. CBP already has methods in place for determining whether a good is subject to AD/CVD duties and importers already face strict civil and criminal sanctions for improperly declaring merchandise.<sup>293</sup>

#### *Petitioner Rebuttal Comments:*

- Commerce consistently implements certification requirements pursuant to affirmative circumvention determination.<sup>294</sup>
- Given the great amount of circumvention of the *Orders*, it is important to impose certification requirements that ensure these orders are effectively enforced.<sup>295</sup>

**Commerce's Position:** We find that it is not uncommon for an affirmative anti-circumvention ruling to result in a certification program.<sup>296</sup> Commerce recognizes that this places a degree of burden on importers of non-subject merchandise, but it is a necessary consequence in order to

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<sup>290</sup> See *Initiation Notice*, 83 FR at 47866.

<sup>291</sup> See *IKEA Case Brief* at 24.

<sup>292</sup> *Id.* at 25.

<sup>293</sup> *Id.* at 26.

<sup>294</sup> See *Petitioner's Rebuttal Brief* at 44.

<sup>295</sup> *Id.* at 45.

<sup>296</sup> See *e.g.*, *Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Final Affirmative Determination of Circumvention of the Antidumping Duty Order*, 84 FR 29164, 29166 (June 21, 2019); see also *Aluminum Extrusions from the People's Republic of China: Final Affirmative Determination of Circumvention of the Antidumping Duty and Countervailing Duty Orders, and Partial Rescission*, 84 FR 39805 (August 21, 2019).

ensure that exports of inquiry merchandise are properly identified to CBP collects the proper duties at the time of entry.

**V. Recommendation**

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final determination of this inquiry in the *Federal Register*.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

11/22/2019

X 

Signed by: JEFFREY KESSLER