



PUBLIC VERSION

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Re: Notice of Determination as to Evasion - EAPA Consolidated Case Number 7459

Dear Counsel for the above-referenced Entities:

Pursuant to an examination of the record in Enforce and Protect Act (EAPA) Consolidated Case Number 7459, U.S. Customs and Border Protection (CBP) has determined there is substantial evidence that Lionshead Specialty Tire and Wheel LLC (Lionshead); TexTrail, Inc. (TexTrail), and TRAILSTAR LLC (TRAILSTAR) (collectively, the Importers) entered merchandise covered by antidumping duty (AD) order A-570-090 and countervailing duty (CVD) order C-570-091 on steel trailer wheels 12 to 16.5 inches in diameter (steel trailer wheels) from the People’s Republic of China (China)¹ into the customs territory of the United States through evasion. Substantial evidence demonstrates the Importers entered steel trailer wheels into the United States from Asia Wheel Co., Ltd. (Asia Wheel) in Thailand that were subject to the *Orders* but did not report the merchandise as such. As a result, no cash deposits were applied to the merchandise at the time of entry.

Background

On March 11, 2020,² Dexstar Wheel Division of Americana Development, Inc. (Dexstar, or the Alleger), a domestic manufacturer of steel trailer wheels, filed an EAPA allegation regarding the evasion of AD/CVD duties by the Importers.³ On March 19, 2020, the Trade Remedy Law Enforcement Directorate (TRLED), within CBP’s Office of Trade, acknowledged receipt of the properly filed allegations against Lionshead, TexTrail, and TRAILSTAR.⁴ TRLED found the information provided in the allegations reasonably suggested that the Importers entered covered merchandise into the customs territory of the United States through evasion. On April 9, 2020, CBP initiated an investigation of Lionshead, Tex Trail, and Trailstar, pursuant to Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, commonly referred to as the “Enforce and Protect Act” or “EAPA.”⁵

¹ See *Certain Steel Trailer Wheels 12 to 16.5 Inches From the People’s Republic of China: Antidumping Duty and Countervailing Duty Orders*, 84 Fed. Reg. 45,952 (Dep’t Commerce Sep. 3, 2019) (*Orders*).

² On December 17, 2020, this matter was referred to Commerce for a scope ruling and Commerce issued its final ruling on April 11, 2023, resulting in a three-year gap between the allegation and the Notice of Determination as to evasion.

³ See Letter from the Alleger for Lionshead, “12 to 16.5 Inch Steel Trailer Wheels from China: Request for an Investigation under the Enforce and Protect Act” (Mar. 11, 2020) (Lionshead Allegation); Letter from the Alleger for TexTrail, “12 to 16.5 Inch Steel Trailer Wheels from China: Request for an Investigation under the Enforce and Protect Act” (Mar. 11, 2020) (TexTrail Allegation); and Letter from the Alleger for TRAILSTAR, “12 to 16.5 Inch Steel Trailer Wheels from China: Request for an Investigation under the Enforce and Protect Act” (Mar. 11, 2020) (TRAILSTAR Allegation) (collectively, the Allegations).

⁴ See CBP Email to the Alleger for Lionshead, “EAPA 7459 Steel Trailer Wheels / Transshipment (China thru Thailand)” (Mar. 19, 2020); CBP Email to the Alleger for TexTrail, “EAPA 7461 Steel Trailer Wheels / Transshipment (China thru Thailand)” (Mar. 19, 2020); and CBP Email to the Alleger for TRAILSTAR, “EAPA 7463 Steel Trailer Wheels / Transshipment (China thru Thailand)” (Mar. 19, 2020).

⁵ See CBP Memoranda, “Initiation of Investigation for EAPA Case Number 7459 – Lionshead Specialty Tire and Wheel LLC” (Apr. 9, 2020); “Initiation of Investigation for EAPA Case Number 7461 – Tex Trail Inc.” (Apr. 9, 2020); and “Initiation of Investigation for EAPA Case Number 7463 – Trailstar LLC” (Apr. 9, 2020) (Initiation of EAPA Investigation for TRAILSTAR).

Pursuant to 19 C.F.R. §165.2, entries covered by an EAPA investigation “are those entries of allegedly covered merchandise made within one year before the receipt of an allegation”⁶ Entry is defined as an “entry, or withdrawal from warehouse for consumption, of merchandise into the customs territory of the United States.”⁷ As discussed in the Notice of Investigation memorandum,⁸ the EAPA investigations against the Importers were consolidated from March 19, 2019, through the pendency of this investigation.⁹

On July 8, 2020, after evaluating all the information on the record at that time, TRLED determined there was reasonable suspicion that the Importers entered Chinese-origin steel trailer wheels into the United States that were transshipped through Thailand, and thus, CBP imposed interim measures.¹⁰ TRLED based this determination on information provided in the Importers’ CBP Form 28 (CF-28) responses, including the admission that Asia Wheel Co., Ltd. (Asia Wheel), the producer in Thailand, used non-Thailand-origin steel plates to produce rims; information showing that Asia Wheel purchased discs and wheel boards (*i.e.*, hot-rolled steel plate) from [Company Name], a Chinese company; and purchase orders referencing Zhejiang Jingu Company Limited (Jingu) with a Chinese address.¹¹ TRLED also cited a lack of evidence for Asia Wheels’ claimed manufacturing capabilities as well as the Importers’ failure to provide certain information requested by CBP in the CF-28s, such as raw materials documentation and factory inspection reports.¹² In addition, TRLED cited trade data establishing the shift in the Importers’ entries of steel trailer wheels from Jingu in China to Asia Wheels in Thailand, noting the shift was consistent with claims in the Allegations.¹³ CBP issued its notice of initiation of investigation and interim measures on July 15, 2020.¹⁴ In its notice, CBP explained it was consolidating the three separate EAPA investigations concerning Lionshead, TexTrail, and TRAILSTAR into a single EAPA investigation.¹⁵

Pursuant to 19 C.F.R. § 165.23(a), on August 10, 2020, CBP issued Requests for Information (RFIs) to the Importers to ascertain their corporate structure and affiliations, accounting and financial practices, procurement and sales practices, and procedures for importation.¹⁶ On

⁶ See 19 C.F.R. § 165.2.

⁷ See 19 U.S.C. § 1517(a)(4); *see also* 19 C.F.R. § 165.1.

⁸ See CBP Memorandum, “Notice of initiation of investigation and interim measures taken as to Lionshead Specialty Tire and Wheel LLC; TexTrail LLC; and TRAILSTAR LLC concerning evasion of the antidumping and countervailing duty orders on steel trailer wheels from China” (Jul. 15, 2020) (Notice of Interim Measures).

⁹ See 19 C.F.R. § 165.2.

¹⁰ See CBP Email, “EAPA Cons 7459 - Internal Notice of Investigation and Interim Measures (Steel Trailer Wheels)” (Jul. 8, 2020).

¹¹ See Notice of Interim Measures at 5-6.

¹² *Id.*

¹³ *Id.* at 7.

¹⁴ See Notice of Interim Measures generally.

¹⁵ *Id.* at 8.

¹⁶ See CBP Letter to Lionshead, “Request for Information to Importer with regard to Enforce and Protect Act (EAPA) investigation of whether Lionshead Specialty Tire & Wheel has evaded the Antidumping Duty Order or Countervailing Duty Order on steel trailer wheels (trailer wheels) from the People’s Republic of China (China), A-570-090 and C-570-091, with entries of merchandise into the United States” (Aug. 10, 2020); CBP Letter to TexTrail, “Request for Information to Importer with regard to Enforce and Protect Act (EAPA) investigation of

September 16, 2020, CBP issued an RFI to the claimed manufacturer in Thailand, Asia Wheel, in accordance with 19 C.F.R. § 165.23(a).¹⁷ The RFI issued to Asia Wheel sought information regarding the company's corporate structure and affiliations, accounting and financial practices, raw material procurement and production, and sales/exports of covered merchandise to the Importers.¹⁸ The Importers and Asia Wheel submitted their RFI responses in a timely manner.¹⁹ CBP issued supplemental RFIs to the Importers on November 9, 2020,²⁰ to which each

whether TexTrail, Inc. has evaded the Antidumping Duty Order or Countervailing Duty Order on steel trailer wheels (trailer wheels) from the People's Republic of China (China), A-570-090 and C-570-091, with entries of merchandise into the United States" (Aug. 10, 2020); and CBP Letter to TRAILSTAR, "Request for Information to Importer with regard to Enforce and Protect Act (EAPA) investigation of whether TRAILSTAR LLC has evaded the Antidumping Duty Order or Countervailing Duty Order on steel trailer wheels (trailer wheels) from the People's Republic of China (China), A-570-090 and C-570-091, with entries of merchandise into the United States" (Aug. 10, 2020).

¹⁷ See CBP Letter to Asia Wheel, "Request for Information to Identified Manufacturer/Supplier with regards to Enforce and Protect Act (EAPA) investigation of whether TRAILSTAR LLC, TexTrail Inc., and Lionshead Specialty Tire & Wheel have evaded the Antidumping Duty Order or Countervailing Duty Order on steel trailer wheels from the People's Republic of China (China), A-570-090 and C-570-091, with entries of merchandise into the United States" (Sep. 16, 2020).

¹⁸ *Id.*

¹⁹ See Letter from Lionshead, "Response to Request for Information" (Sep. 18, 2020) (Lionshead RFI Response); Letter from TexTrail, "Investigation Concerning Evasion of the Antidumping and Countervailing Duty Orders on Steel Trailer Wheels from China: TexTrail, Inc.'s Response to the Request for Information in EAPA Consolidated Case Number: 7459" (Sep. 18, 2020) (TexTrail RFI Response); Letter from TRAILSTAR, "TRAILSTAR's Response to CBP's Request for Information, Investigation Concerning Evasion of the Antidumping and Countervailing Duty Orders On Steel Trailer Wheels from China" (Sep. 18, 2020) (TRAILSTAR RFI Response); and Letter from Asia Wheel, "Asia Wheel's Response to CBP's Sept. 16, 2020 Request for Information" (Oct. 13, 2020) (Asia Wheel RFI Response).

²⁰ See CBP Letter to Lionshead, "Supplemental Request for Information to Importer with regard to Enforce and Protect Act (EAPA) investigation of whether Lionshead Specialty Tire & Wheel has evaded the Antidumping Duty Order or Countervailing Duty Order on steel trailer wheels (trailer wheels) from the People's Republic of China (China), A-570-090 and C-570-091, with entries of merchandise into the United States" (Nov. 9, 2020); CBP Letter to TexTrail, "Supplemental Request for Information to Importer with regard to Enforce and Protect Act (EAPA) investigation of whether TexTrail Inc. has evaded the Antidumping Duty Order or Countervailing Duty Order on steel trailer wheels (trailer wheels) from the People's Republic of China (China), A-570-090 and C-570-091, with entries of merchandise into the United States" (Nov. 9, 2020); and CBP Letter to TRAILSTAR, "Supplemental Request for Information to Importer with regard to Enforce and Protect Act (EAPA) investigation of whether TRAILSTAR LLC has evaded the Antidumping Duty Order or Countervailing Duty Order on steel trailer wheels (trailer wheels) from the People's Republic of China (China), A-570-090 and C-570-091, with entries of merchandise into the United States" (Nov. 9, 2020).

responded on November 13, 2020.²¹ CBP also issued a supplemental RFI to Asia Wheel on November 17, 2020.²² Asia Wheel provided its response on November 24, 2020.²³

Asia Wheels reported in its RFI response that it is owned by [Company Name], which is wholly owned by Jingu.²⁴ [Company Name] negotiated the terms of purchase for the steel trailer wheels exported by Asia Wheel during the period of investigation (POI).²⁵ Asia Wheel advised it normally imported steel plates (to produce rims in Thailand) as well as discs originating in China (to produce steel trailer wheels in Thailand).²⁶

With respect to steel plates, Asia Wheel explained that [Company Name], first acquires steel coils and resells them to [Company Name], who outsources the process of cutting the steel coils into steel plates to [Company Name]. After the coils are processed into steel plates, Jingu sells the steel plates to [Company Name], which then exports the steel plates to Asia Wheel in Thailand.²⁷ During the POI, Asia Wheel also imported some steel plates and discs directly from Jingu.²⁸

As for discs, after [Company Name] cuts the steel coils into steel circular plates, they were sent to Jingu for processing into discs in China before exportation to Thailand. Additionally, in [Month] 2019, Asia Wheel began manufacturing some discs in Thailand, by using steel circular plates processed by [Company Name] and exported through [Company Name] from China.²⁹

At this this time, Asia Wheel also began to produce some steel trailer wheels made of both Thai-processed discs and Thai-processed rims from raw materials sourced as described above. Asia Wheel stated that it exported such steel trailer wheels to the Importers during the POI.³⁰

Asia Wheel stated that in 2019, it also began to source steel plates and steel circular plates from [Location] for the processing of rims and discs, respectively, in Thailand.

²¹ See Letter from Lionshead, “Response to Supplemental Request for Information” (Nov. 13, 2020) (Lionshead Supplemental RFI Response); Letter from TexTrail, “Investigation Concerning Evasion of the Antidumping and Countervailing Duty Orders on Steel Trailer Wheels from China: TexTrail, Inc.’s Response to the Supplemental Request for Information in EAPA Consolidated Case Number: 7459” (Nov. 13, 2020) (TexTrail Supplemental RFI Response); and Letter from TRAILSTAR, “TRAILSTAR’s Response to CBP’s Supplemental Request for Information, Investigation Concerning Evasion of the Antidumping and Countervailing Duty Orders on Steel Trailer Wheels from China” (Nov. 13, 2020) (TRAILSTAR Supplemental RFI Response).

²² See CBP Letter to Asia Wheel, “Supplemental Request for Information to Manufacturer/Supplier with regard to Enforce and Protect Act (EAPA) investigation of whether TRAILSTAR LLC, TexTrail Inc., and Lionshead Specialty Tire & Wheel has evaded the Antidumping Duty Order or Countervailing Duty Order on steel trailer wheels (trailer wheels) from the People’s Republic of China (China), A-570-090 and C-570-091, with entries of merchandise into the United States” (Nov. 17, 2020).

²³ See Letter from Asia Wheel, “Asia Wheel’s Response to CBP’s Nov. 17, 2020, Supplemental Request for Information” (Nov. 24, 2020) (Asia Wheel Supplemental RFI Response).

²⁴ See Asia Wheel RFI Response at 17.

²⁵ *Id.* at 4.

²⁶ *Id.* at 4-5.

²⁷ *Id.* at 5.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

Lastly, Asia Wheel explained that during the POI, it also produced [Merchandise] for trailers, which [Process]. Asia Wheel reported that [Merchandise] accounted for a [Amount] portion of Asia Wheel's total production and exports to the United States during the POI. To produce [Merchandise], Asia Wheel sourced [Merchandise] that were processed by Jingu and exported through [Company Name] from China.³¹

As stated in its RFI response, Lionshead began importing the steel trailer wheels from Asia Wheel after determining the company had the production capacity and the technical ability to make the products.³² Lionshead described the production of the steel trailer wheels as follows: "A rim is formed from a rectangular piece of steel by a machine that rolls, forms, punches and welds the item into a circular shape. A disc is stamped from a square piece of steel. The disc is a circular piece of metal that affixes the wheel to the axle. The disc is press-fitted into the rim and welded into place to create a wheel. The welded wheel is painted."³³ Lionshead reported that the [Merchandise] are imported from Asia Wheel's Chinese parent company's factory in China. The [Merchandise] is manufactured in Asia Wheel's factory in Thailand, where it also conducts [Process].³⁴

TexTrail stated in its RFI response that it also imported steel trailer wheels from Asia Wheel in Thailand.³⁵ Like Lionshead, TexTrail reported knowledge of Asia Wheel importing the [Merchandise] in China, but the manufacturing of the [Merchandise and Process] occurs in Thailand³⁶

TRAILSTAR reported in its RFI response that it had an extensive and mutually beneficial commercial relationship with Jingu, Asia Wheel's parent company.³⁷ TRAILSTAR also indicated that it imported steel trailer wheels manufactured by Asia Wheel. With no on-site verification, TRAILSTAR obtained steel trailer wheels from Asia Wheel because it believed Jingu's claim that the products were Thai-origin, and thus not subject to the *Orders*.³⁸ TRAILSTAR stated in its RFI response that, "{a}fter the imposition of cost-prohibitive antidumping duties ("ADD"), countervailing duties ("CVD"), and Section 301 Tariffs on steel trailer wheels from China, Jingu informed TRAILSTAR that Asia Wheel could produce steel trailer wheels in Thailand."³⁹ Further, Jingu claimed that the steel trailer wheels were not manufactured from both Chinese rims and discs as required by the AD/CVD scope.⁴⁰

TRAILSTAR stated that it relied on the assurances of Jingu, after the imposition of AD/CVD duty investigation and Section 301, that the steel trailer wheels produced by Asia Wheel would

³¹ *Id.* at 5-6.

³² *See* Lionshead RFI Response at 7.

³³ *Id.* at 8.

³⁴ *Id.*

³⁵ *See* TexTrail RFI Response at 6.

³⁶ *Id.* at 7.

³⁷ *See* TRAILSTAR RFI Response at 2.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

be of the same quality, with key personnel from the Chinese factory instructing the Thai workers and overseeing quality control.⁴¹ Jingu further assured TRAILSTAR that Asia Wheel in Thailand satisfied the same international standards as Jingu's factory in China.⁴² As a result, TRAILSTAR began importing merchandise to the United States in [Time Frame].⁴³

On September 24, 2020, CBP officials conducted an on-site visit at Asia Wheel's Thailand facility.⁴⁴ During the visit, Asia Wheel leadership stated that [Amount] production of steel trailer wheels [Time Frame].⁴⁵ Asia Wheel leadership indicated that all sales are managed by [Company Name], and that Asia Wheel produces [Company Name].⁴⁶ Company leadership stated that the facility had [Number] production lines, [Quantity] for steel wheel production and [Number] for steel trailer wheel production.⁴⁷ During the site visit, [Quantity] production lines were in operation, and [Quantity] producing steel trailer wheels.⁴⁸ Asia Wheel officials indicated that the primary raw materials for production, wheel boards (*i.e.*, steel plates) and wheel discs (center discs), were sourced from China and [Country].⁴⁹ With respect to the wheel boards, Asia Wheel explained that the Chinese supplier, [Company Name], is [Company Name], and the [Country] supplier is unrelated.⁵⁰

CBP became aware of Asia Wheels' November 10, 2020 scope ruling request to the U. S. Department of Commerce (Commerce) after a search its public records.⁵¹ On December 17, 2020, CBP made a covered merchandise referral to Commerce.⁵² Although steel trailer wheels are subject to the *Orders*,⁵³ CBP was unable to determine whether the merchandise produced as outlined in Asia Wheels' November 10, 2020 scope ruling request was covered merchandise.⁵⁴ As a result of the covered merchandise referral, the deadlines in this EAPA investigation were

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at 3.

⁴⁴ See CBP Memorandum regarding Asia Wheel on-site visit (Oct. 9, 2020) (On-Site Visit Report) and See Alleger's Rebuttal, "EAPA Case No. Cons. 7459, Steel Trailer Wheels: Submission of Rebuttal Factual" (December 4, 2020) (Alleger's Rebuttal) at Exhibit 2.

⁴⁵ *Id.* at 2.

⁴⁶ *Id.* at 3.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ See Asia Wheel Memorandum, "Certain Steel Wheels (12 to 16.5 Inches in Diameter) from the People's Republic of China: Request for Scope Ruling for Asia Wheel's Steel Trailer Wheels" (November 10, 2020) (Asia Wheel Scope Ruling Request).

⁵² See CBP Letter to Commerce, "Scope Referral Request for Merchandise under EAPA Cons. Investigation 7459, Imported by Lionshead Specialty Tire and Wheel LLC; TexTrail LLC; and TRAILSTAR LLC. and concerning the Investigation of Evasion of the Antidumping and Countervailing duty orders (A-570-090 and C-570-091) on Steel Trailer Wheels from the People's Republic of China" (Dec. 17, 2020) (Scope Referral Request).

⁵³ The scope of the Order states that "certain on-the-road steel wheels, discs, and rims with a nominal wheel diameter of 12 inches to 16.5 inches within the scope... rims and discs for certain on-the-road steel wheels, whether imported as an assembly, unassembled, or separately" are subject to the order.

⁵⁴ See Asia Wheel Scope Ruling Request.

stayed pending Commerce's issuance of a determination.⁵⁵ On April 11, 2023, Commerce issued its final scope ruling,⁵⁶ and on April 14, 2023, Commerce notified CBP of the same.⁵⁷

On May 12, 2023, CBP extended the deadline for the determination as to evasion by 60 days.⁵⁸ Thus, in accordance with 19 C.F.R. § 165.22(c), CBP extended the deadline to complete this investigation to 360 days, the maximum amount of time provided by EAPA.

On May 15, 2023, the Importers collectively submitted comments to CBP on Commerce's final scope ruling.⁵⁹

On May 30, 2023, the Alleger, Lionshead, TexTrail, and TRAILSTAR submitted written arguments.⁶⁰ On June 14, 2023, each of the four parties to the investigation submitted responses to the written arguments.⁶¹

Analysis as to Evasion

⁵⁵ See 19 C.F.R. § 165.16(d).

⁵⁶ See Commerce Memorandum, "Final Scope Ruling: Asia Wheel's Steel Wheels Processed in Thailand (Asia Wheel)" (Apr. 11, 2023) (Final Scope Ruling).

⁵⁷ See Letter from Commerce, "Covered Merchandise Referral Regarding EAPA Investigation No. 7459" (Apr. 14, 2023).

⁵⁸ See CBP Memorandum, "EAPA Consolidated Case No. 7459 - Notice of Extension of Determination as to Evasion" (May 12, 2023).

⁵⁹ See Letter from Lionshead, TexTrail, and TRAILSTAR, "Importers' Comments on Commerce's Final Scope Ruling, Investigation Concerning Evasion of the Antidumping and Countervailing Duty Orders On Steel Trailer Wheels from China" (May 15, 2023) (Importers' May 15, 2023, Comments).

⁶⁰ See Letter from the Alleger, "EAPA Consol. No. {7}459, Steel Trailer Wheels from China: Submission of Written Argument" (May 30, 2023) (Alleger Written Argument); Letter from Lionshead, "Lionshead Specialty Tire & Wheel Written Argument; Investigation Concerning Evasion of the Antidumping and Countervailing Duty Orders on Steel Trailer Wheels from China" (May 30, 2023) (Lionshead Written Argument); Letter from TexTrail, "Investigation Concerning Evasion of the Antidumping and Countervailing Duty Orders on Steel Trailer Wheels from China: TexTrail, Inc.'s Written Arguments in EAPA Consolidated Case Number: 7459" (May 30, 2023) (TexTrail Written Argument); and Letter from TRAILSTAR, "TRAILSTAR's Written Argument, Investigation Concerning Evasion of the Antidumping and Countervailing Duty Orders on Steel Trailer Wheels from China" (May 30, 2023) (TRAILSTAR Written Argument).

⁶¹ See Letter from the Alleger, "EAPA Consol. No. 7459, Steel Trailer Wheels from China: Submission of Responses to Written Argument" (June 14, 2023) (Alleger Response to Written Argument); Letter from Lionshead, "Lionshead Specialty Tire & Wheel Written Argument; Investigation Concerning Evasion of the Antidumping and Countervailing Duty Orders on Steel Trailer Wheels from China" (June 14, 2023) (Lionshead Response to Written Argument); Letter from TexTrail, "Investigation Concerning Evasion of the Antidumping and Countervailing Duty Orders on Steel Trailer Wheels from China: TexTrail, Inc.'s Rebuttal Comments to Dexstar's May 30, 2023 Submission in EAPA Consolidated Case Number: 7459" (June 14, 2023) (TexTrail Response to Written Argument); and Letter from TRAILSTAR, "TRAILSTAR's Letter in Lieu of Response to Written Argument, Investigation Concerning Evasion of the Antidumping and Countervailing Duty Orders on Steel Trailer Wheels from China" (June 14, 2023) (TRAILSTAR Letter in Lieu of Response to Written Argument).

Under 19 U.S.C. § 1517(c)(1)(A), in order to reach a determination as to evasion, CBP must “make a determination, based on substantial evidence, with respect to whether such covered merchandise entered into the customs territory of the United States through evasion.”⁶² “Covered merchandise” is defined as “merchandise that is subject to a CVD order... and/or an AD order.”⁶³ “Evasion” is defined as “the entry of covered merchandise into the customs territory of the United States for consumption by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material, and that results in any cash deposit or other security or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise.”⁶⁴ As discussed below, the record of this investigation contains substantial evidence supporting a determination that covered merchandise entered the United States through evasion, resulting in the avoidance of applicable AD/CVD cash deposits or other security.

Covered Merchandise Referral to Commerce

As noted above, on December 17, 2020, CBP made a covered merchandise referral to Commerce.⁶⁵ CBP could not determine, using the plain language of the scope,⁶⁶ whether certain types of steel trailer wheels manufactured by Asia Wheel in Thailand, using three specific production methods, were covered merchandise. Asia Wheel, in its scope ruling request, claimed since it did not produce steel trailer wheels with Chinese origin rims and Chinese origin discs in Thailand, the merchandise was outside the scope of the AD/CVD orders.⁶⁷ CBP requested Commerce determine, in alignment with a scope ruling request that Asia Wheel had already submitted to Commerce, whether the products manufactured under what Asia Wheel termed Production Methods A, B, and C fell within the scope of the *Orders*.⁶⁸ The three production methods are described below.

Commerce’s Response to CBP’s Covered Merchandise Referral and Asia Wheels’ Scope Ruling

In its final scope ruling, dated April 11, 2023, Commerce made assertions on the three production methods of steel trailer wheels processed by Asia Wheel in Thailand.⁶⁹ The ruling also addressed EAPA’s covered merchandise referral request.⁷⁰ Commerce found that the plain

⁶² See also 19 C.F.R. § 165.27(a) (implementing 19 U.S.C. § 1517).

⁶³ See 19 C.F.R. § 165.1.

⁶⁴ *Id.*

⁶⁵ See also 19 C.F.R. § 165.16(a), which states that a “referral is required if at any point after receipt of an allegation, CBP cannot determine whether the merchandise described in an allegation is properly within the scope of an antidumping or countervailing duty order.” See Scope Referral Request.

⁶⁶ See *Orders*, 84 Fed. Reg. at 45,954.

⁶⁷ See Asia Wheel Scope Ruling Request at 7.

⁶⁸ *Id.* at 1. The three production methods are: Production Method A: Steel trailer wheels manufactured using discs from China and rims produced in Thailand from rectangular steel plates from China or a third country; Production Method B: Steel trailer wheels manufactured using discs produced in Thailand from circular steel plates from China or a third country and rims produced in Thailand from rectangular steel plates from China or a third country; and Production Method C: Dual wheels manufactured using discs produced in Thailand from disc blanks from China and rims from China.

⁶⁹ See Final Scope Ruling at 8-9.

⁷⁰ *Id.* at 4-5.

language of the scope was ambiguous as to the status of finished steel trailer wheels processed in a third country from one wheel component sourced from China and one component originating from a third country.⁷¹ Thus, Commerce determined it was appropriate to apply a substantial transformation analysis to ascertain the country of origin for Asia Wheel's steel trailer wheels manufactured under Production Methods A and C.⁷² Commerce found that in the underlying AD/CVD investigations, such an analysis was necessary to address the ambiguity of situations where steel trailer wheels were made in a third country from rims or discs from China but not both.⁷³

Based on the totality of five factors,⁷⁴ Commerce determined that the rims produced in Thailand from Chinese-origin steel plates by Production Method A and the discs produced in Thailand from disc blanks from China and rims from China by Production Method C are not substantially transformed such that the third-country processing confers country of origin. As a result, Commerce found that the country of origin of the rims and the discs is China, and, therefore, remain subject to the Orders after processing in Thailand.⁷⁵ Commerce clarified that its analysis and findings applied to the finished steel trailer wheels processed in Thailand by Asia Wheel through Production Method A and C, and, therefore, the entire article, as exported from Thailand to the United States, was subject to AD/CVD duties, as opposed to just the Chinese-origin components.⁷⁶ Commerce instructed CBP to continue the suspension of liquidation of entries that were already suspended, and for entries not already suspended, it intended to instruct CBP to suspend liquidation effective as of March 22, 2021, the date on which Commerce initiated a scope ruling upon Asia Wheel's request.⁷⁷ Commerce noted, however, that it has no authority to direct suspension of liquidation implemented by CBP as part of EAPA investigations.⁷⁸

Regarding steel trailer wheels manufactured under Production Method B, *i.e.*, steel trailer wheels manufactured using discs from Thailand from circular steel plates from China or a third country and rims from Thailand from rectangular steel plates from China or a third country,⁷⁹ were outside the scope of the *Orders*.⁸⁰ Commerce stated that it intended to notify CBP to terminate suspension of liquidation of such entries, but noted the termination of suspension of liquidation for entries subject to an EAPA investigation would end pursuant to CBP's authority under the EAPA regulations.⁸¹ Commerce also stated it was implementing certification requirements for out-of-scope merchandise, and, if such requirements were not met, Commerce intended to

⁷¹ *Id.* at 14-15.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Commerce used the following factors for consideration when performing its substantial transformation analysis for the scope inquiry: (1) Class or Kind of Merchandise; (2) Product Properties, the Essential Component of the Merchandise, and Intended End-Use; (3) Nature/Sophistication of Processing in the Country of Exportation; (4) Cost of Production/Value Added and (5) Level of Investment.

⁷⁵ *Id.* at 26-36.

⁷⁶ *Id.* at 47-48.

⁷⁷ *Id.* at 40-44.

⁷⁸ *Id.* at 43.

⁷⁹ *See id.* at 8-9.

⁸⁰ *Id.* at 3, citing Commerce Memorandum, "Preliminary Scope Ruling: Asia Wheel's Steel Wheels Processed in Thailand" (Aug. 25, 2022) at 24 (unchanged in Final Scope Ruling).

⁸¹ *See* Final Scope Ruling at 45-46.

instruct CBP to suspend all unliquidated entries for which the requirements were not met and require that the importer post the requisite AD/CVD cash deposits.⁸²

Importers' Comments on Scope Ruling

In their comments filed collectively to CBP on Commerce's final scope ruling on May 15, 2023, the Importers argued CBP must identify a material and false statement or act, or a material omission, to determine that evasion occurred under EAPA.⁸³ They disagreed with Commerce's final scope ruling and stated they, along with Asia Wheel, have appealed the ruling to the CIT.⁸⁴ Lastly, the Importers asserted that CBP should not liquidate the entries suspended by the EAPA investigation until the litigation concludes.⁸⁵

Determination as to Evasion

The Importers have continuously maintained throughout this investigation that they imported into the U.S. steel trailer wheels from Asia Wheel. Their point of contention has been that the production methods used, makes, their imports are not covered by the scope of the *Orders*. In its scope ruling, however, Commerce found that trailer wheels manufactured by Asia Wheel in Thailand using Production Methods A and C are subject to the scope of the *Orders*. Trailer wheels as manufactured in Thailand using Production Method B are not subject to the scope of the *Orders*. Further, Commerce required certification that Asia Wheel produced, by method B, steel trailer wheels in "Thailand from discs produced in Thailand from circular or rectangular steel plates from China and rims produced in Thailand from rectangular steel plates from China or a third country and exported to the United States by Asia Wheel."⁸⁶

Asia Wheel and the Importers have not met the certification requirement and as per Commerce's instruction, all unliquidated entries will require cash deposits at the country-wide in effect for the AD/CVD orders.⁸⁷ Since parties have not provided evidence of merchandise produced by Asia Wheel using method B, CBP found substantial evidence that all imports have evaded the orders for steel trailers wheels from China.

Based on the record evidence discussed above, including Commerce's final scope ruling, CBP finds that Lionshead's, TexTrail's, and TRAILSTAR's imports of steel trailer wheels from Asia Wheel are covered by the *Orders*. CBP also finds that the Importers made such entries using false statements that they were not covered merchandise because the Importers declared the entries as type 01 instead of type 03, thereby evading the payment of applicable AD/CVD duties on steel trailer wheels from China by misrepresenting the country of origin as Thailand rather than China. Therefore, CBP determines there is substantial evidence that the Importers entered covered merchandise into the customs territory of the United States through evasion.

⁸² *Id.* at 52-53.

⁸³ See Importers' May 15, 2023, Comments at 2-7.

⁸⁴ *Id.* at 7-10.

⁸⁵ *Id.* at 10-11.

⁸⁶ See Asia Wheel Scope Ruling at 53.

⁸⁷ See *id.*

Written Arguments and Responses to Written Arguments

Parties to the investigation submitted written arguments pursuant to 19 CFR 165.26 on May 30, 2023, and responses to the written arguments on June 14, 2023.⁸⁸ The main issues addressed are explained below.

Issue 1: Scope of the Imported Merchandise

Alleger:

- The Alleger contends Commerce confirmed in the final scope ruling that steel trailer wheels finished by Asia Wheel from either a rim or disc produced in China (*i.e.*, Production Methods A and C) are covered by the scope of the *Orders*. The Alleger adds, consistent with its practice, Commerce found the whole finished steel trailer wheel is subject to the *Orders*, not just some part of it.⁸⁹
- The Alleger asserts that instead of contesting CBP's interim measures determination that record evidence supported a reasonable suspicion of evasion, the Importers have argued their imports of steel trailer wheels from Asia Wheel are outside the scope of the *Orders*.⁹⁰ However, it notes Asia Wheel and the Importers stated in their RFI responses that the imported steel trailer wheels were produced by Asia Wheel from Chinese wheel parts, and the Importers chose to rely on Jingu's assertions that "products from Asia Wheel were products of Thailand not subject to ADD/CVD, as they were not manufactured from Chinese rims and discs as required by the ADD/CVD scope."⁹¹
- The Alleger further contends there is no evidence that the entries at issue are not subject to the *Orders*. In fact, it maintains the Importers presented no evidence that any of their entries were made from parts entirely produced from steel in Thailand (*i.e.*, Production Method B), which Commerce found to be outside the scope of the *Orders*.⁹²

Lionshead:

- Lionshead strongly disagrees with Commerce's final scope ruling that the steel trailer wheels imported from Asia Wheel are covered merchandise and has appealed the ruling to the U.S. Court of International Trade (CIT). Because entries are not covered merchandise, CBP cannot find that evasion has occurred.⁹³
- Lionshead incorporates by reference the Importers' May 15, 2023, comments.

⁸⁸ TRAILSTAR filed a letter in lieu of a response to written arguments filed by the Alleger, stating it fully supports, and incorporates by reference, Lionshead's and TexTrail's responses to the Alleger's written arguments. See TRAILSTAR Letter in Lieu of Response to Written Argument.

⁸⁹ See Alleger Written Argument at 4-5 and 7, citing Final Scope Ruling at 8-9 and 26-36.

⁹⁰ *Id.* at 7.

⁹¹ *Id.* at 3, 7 and 9, citing Asia Wheel RFI Response at 4-5; Lionshead RFI Response at 8 and Exhibit 16; TexTrail RFI Response at 7, 43 and Exhibit 6; and TRAILSTAR RFI Response at 2-3 and 18.

⁹² *Id.* at 9, citing the Final Scope Ruling at 35.

⁹³ See Lionshead Written Argument at 4.

TexTrail:

- TexTrail asserts Commerce’s scope ruling unlawfully interprets the scope of the Orders and has challenged the ruling with the CIT.⁹⁴ It notes in the AD/CVD investigations, Commerce found the scope includes “rims and discs from China” further processed in a third country, but in the final scope ruling interpreted the scope of the Orders as including wheels made in a third country using rims or discs from China.
- Thus, TexTrail maintains the final scope ruling is fundamentally flawed because it interprets the word “and” to mean “or.”⁹⁵
- In addition, TexTrail argues Commerce’s substantial transformation analysis is not supported by record evidence and is unlawful.⁹⁶

TRAILSTAR:

- TRAILSTAR asserts its imports of steel trailer wheels were not transshipped from Jingu in China through Thailand, as alleged by Dexstar, because Asia Wheel’s production documents demonstrate that the wheels were produced in Thailand from rims made in Thailand.⁹⁷
- TRAILSTAR strongly disagrees with Commerce’s final scope ruling and has appealed it to the CIT, and states that Asia Wheel is also appealing the ruling.⁹⁸ It contends Commerce’s main error in the final scope ruling is its decision that word “and” actually means “or.”⁹⁹ Commerce’s substantial transformation analysis was also fundamentally flawed.¹⁰⁰

Alleger Rebuttal:

- In its rebuttal, the Alleger maintains that Commerce, in its final scope ruling, applied its substantial transformation analysis and found that steel trailer wheels produced by Asia Wheel in Thailand using either a Chinese-origin disc or rim are covered by the scope of the *Orders*.¹⁰¹ Commerce rejected the claim that it had clarified the scope during the AD/CVD investigations to exclude steel trailer wheels made from a Chinese-origin rim or disc; rather, it had stated it would consider whether such merchandise was covered by the scope in a future scope proceeding.¹⁰²

⁹⁴ at 20, citing *TexTrail, Inc. v. United States*, Court No. 23-00099.

⁹⁵ *Id.* at 20-21, citing the *Orders*, 84 Fed. Reg. at 45,954 (emphasis TexTrail); Commerce Final Determination Scope Memo at 24; and Final Scope Ruling at 15.

⁹⁶ *Id.* at 21-22, citing Importers’ May 15, 2023, Comments at 8-9; *Asia Wheel Co., Ltd. v. United States*, Court No. 23-00096; *TRAILSTAR LLC v. United States*, Court No. 23-00097; and *Lionshead Specialty Tire and Wheel LLC v. United States*, Court No. 23-00098.

⁹⁷ *Id.* at 14-15, citing Notice of Interim Measures at 2-3 and Merriam-Webster.com (defining “transship”).

⁹⁸ *Id.* at 22, citing *TRAILSTAR LLC v. United States*, Court No. 23-00097 and *Asia Wheel Co., Ltd. v. United States*, Court No. 23-00096.

⁹⁹ *Id.* at 22-23, citing the *Orders*, 84 Fed. Reg. at 45,954; Commerce Final Determination Scope Memo at Comment 3; and Final Scope Ruling at 15.

¹⁰⁰ *Id.* at 23-24.

¹⁰¹ See Alleger Response to Written Argument at 5-6, citing Final Scope Ruling at 7, 35-36 and 54.

¹⁰² *Id.*, citing Final Scope Ruling at 15.

- The Alleger asserts CBP is bound by Commerce’s final scope ruling and there is no legal basis for CBP to disregard it.¹⁰³

TexTrail Rebuttal:

- TexTrail asserts that, contrary to the Alleger’s claim, TexTrail did not rely on assertions by the Chinese manufacturer or Asia Wheel that the steel trailer wheels were outside the scope of the *Orders*. Instead, TexTrail relied on Commerce’s clear guidance from the AD/CVD investigations that both the rims and discs must originate from China for a product assembled in a third country to be subject to the *Orders*. The determination that steel trailer wheels imported from Asia Wheel are covered by the *Orders* did not occur until Commerce issued its final scope ruling on April 11, 2023.¹⁰⁴

CBP Position

The scope of the *Orders* states, in relevant part:

The products covered by the *Orders* are certain on-the-road steel wheels, discs, and rims for tubeless tires with a nominal wheel diameter of 12 inches to 16.5 inches, regardless of width. ...

The scope includes rims and discs for certain on-the-road steel wheels, whether imported as an assembly, unassembled, or separately. ...

The scope includes rims, discs, and wheels that have been further processed in a third country, including, but not limited to, the painting of wheels from China and the welding and painting of rims and discs from China to form a steel wheel, or any other processing that would not otherwise remove the merchandise from the scope of the *Orders* if performed in China. ...¹⁰⁵

Asia Wheel reported that during the POI, it normally imported rectangular steel plates from China and a third country (for the production of rims in Thailand) and discs originating from China to manufacture steel trailer wheels in Thailand but described some variations to this process.¹⁰⁶ Lionshead, TexTrail, and TRAILSTAR asserted the steel trailer wheels they imported from Asia Wheel were products of Thailand and not subject to the *Orders*, although they acknowledged the inclusion of Chinese wheel parts in the steel wheels.¹⁰⁷ Because CBP could not determine whether the steel trailer wheels produced by Asia Wheel in Thailand under

¹⁰³ *Id.* at 7-9, citing 19 U.S.C. §1517(b)(4)(B) and *Aspects Furniture Int’l, Inc. v. United States*, 607 F. Supp. 3d 1246, 1264, 1267-1269 (CIT 2022) (*Aspects Furniture*).

¹⁰⁴ See TexTrail Response to Written Argument at 7-8. TexTrail was the only importer to provide rebuttal.

¹⁰⁵ See *Orders*, 84 Fed. Reg. at 45,954 (emphasis CBP’s).

¹⁰⁶ See, e.g., Asia Wheel RFI Response at 4-6.

¹⁰⁷ See, e.g., Lionshead RFI Response at 8; TexTrail RFI Response at 7-8; and TRAILSTAR RFI Response at 2 and 18.

the three production methods described above were covered merchandise, CBP referred the matter to Commerce.¹⁰⁸

In its final scope ruling, Commerce determined that steel trailer wheels produced by Production Methods A and C are subject to the *Orders*.¹⁰⁹ Commerce applied a substantial transformation analysis to determine the country of origin for these methods.¹¹⁰ Commerce found the rims in Production Method A and the discs in Production Method C are not substantially transformed, and, as a result, found that the country of origin of the inputs is China and therefore remain subject to the *Orders* after processing in Thailand.¹¹¹ Commerce explained that its analysis and findings applied to the entirety of the finished steel trailer wheels as exported from Thailand to the United States.¹¹² Commerce stated that it was implementing certification requirements for out-of-scope merchandise (*i.e.*, steel trailer wheels manufactured under Production Method B), and, if such requirements were not met, it would instruct CBP to suspend all unliquidated entries and require the posting of AD/CVD cash deposits.¹¹³ None of the Importers certified that the imported steel trailer wheels consisted of such out-of-scope merchandise in accordance with the instructions set forth by Commerce.¹¹⁴ Therefore, CBP finds that all steel trailer wheels imported by the Importers during the POI from Asia Wheel consist of merchandise produced under Production Methods A and C and are thus subject to the *Orders*.

TexTrail and TRAILSTAR claim Commerce determined in the AD/CVD investigations that the scope language included steel trailer wheels processed in a third country only if both the constituent rims and discs were produced in China, and thus relied on this guidance when entering the merchandise as not subject to the *Orders*. CBP disagrees with this contention. Commerce made clear in the final scope ruling that the explicit language of the scope does not address steel trailer wheels made in a third country from rims or discs from China.¹¹⁵ Commerce specifically stated, “the plain language of the scope is ambiguous as to the status of finished wheels processed in a third country from a mix of one wheel component sourced from China and one component originating from a third country, and the need to perform such an analysis to address this ambiguity was specifically contemplated in the underlying investigations.”¹¹⁶ Since the entries are comprised of goods manufactured using Production A and C, they are covered merchandise as Commerce indicated in its ruling.

TexTrail and TRAILSTAR also argue that Commerce declined to revise the scope language in the AD/CVD investigations to include steel trailer wheels made in a third country from either rims or discs from China. As Commerce noted in its final scope ruling, this argument mischaracterizes the record from the AD/CVD investigations.¹¹⁷ Referring to the petitioner’s

¹⁰⁸ See Covered Merchandise Referral.

¹⁰⁹ See Final Scope Ruling at 35-36.

¹¹⁰ *Id.* at 14 and 26-36.

¹¹¹ *Id.* at 26-36.

¹¹² *Id.* at 47-48.

¹¹³ *Id.* at 52-53.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 14-15.

¹¹⁶ *Id.* at 14.

¹¹⁷ *Id.* at 14-15.

counter-request in the AD/CVD investigations that the scope be revised “to clarify that the third-country processing of Chinese ‘rim or disc’ products are covered by the scope,” Commerce explained:

As the language of the rejection in the {Commerce Final Determination Scope Memo} indicates, we were rejecting all parties’ attempts to clarify this question *generally*, raised for the first time in the briefing stage, and were instead tabling the discussion for evaluation in the context of actual examples of third-country processing later submitted.¹¹⁸

Thus, while declining to amend the scope during the AD/CVD investigations to exclude steel trailer wheels produced in a third country from a Chinese-origin rim or disc, Commerce asserted that it would examine this issue on a case-by-case basis in the context of a future scope or circumvention proceeding, if requested, and that it was not foreclosing a further substantial transformation analysis, if appropriate.¹¹⁹ As such, CBP maintains the Importers should have sought a scope ruling from Commerce on whether steel trailer wheels from Asia Wheel were subject to the *Orders*. Further, CBP finds no merit to any argument that the Importers could not have known their entries were covered prior to April 11, 2023, the date of Commerce’s final scope ruling. .

In addition, TexTrail and TRAILSTAR contend that CBP recently ruled that the country where steel is manufactured into wheel rims conferred origin, not the country of origin of the steel.¹²⁰ CBP finds this citation is inapposite to this EAPA investigation. That CBP ruling involved, in part, a request for a determination whether the rims were eligible for preferential duty treatment under the North American Free Trade Agreement (NAFTA);¹²¹ hence, it relates in no way to the issue of whether merchandise is subject to the *Orders*. Rather, as this EAPA investigation involves the question of whether the Importers entered Chinese-origin steel trailer wheels into the United States without declaring the merchandise subject to the *Orders*, Commerce’s final scope ruling is controlling.

Likewise, TexTrail’s claim that substantial transformation occurs in Thailand, along with TexTrail’s and TRAILSTAR’s claims that certificates of origin and production documentation prove the steel trailer wheels were produced in Thailand, are groundless. Commerce expressly stated in its final scope ruling “that the totality of the factors considered in {its} substantial transformation analysis weigh against finding the rims in Production Method A and discs in Production Method C are substantially transformed when used to produce steel wheels in Thailand.”¹²² As a result, Commerce found “the country of origin of such inputs is China, and, thus, remain subject to the *Orders* after processing in Thailand.”¹²³

¹¹⁸ *Id.* at 15, citing Commerce Final Determination Scope Memo at Comment 3 (emphasis Commerce’s).

¹¹⁹ *Id.* at 15.

¹²⁰ See TRAILSTAR Written Arguments at 12-13, citing CBP Ruling N302103 (Feb. 7, 2019). See also TexTrail Written Argument at 11, citing CBP Ruling N302103 (Feb. 7, 2019).

¹²¹ See CBP Ruling N302103 (Feb. 7, 2019).

¹²² See Final Scope Ruling at 35-36.

¹²³ *Id.* at 36.

Lastly, CBP finds that the Importers' disagreement with Commerce's final scope ruling and pending challenge at the CIT is irrelevant to this EAPA investigation. CBP cannot disregard the results of Commerce's final scope ruling.¹²⁴ The record does not support any claim as the record contains no information establishing that the Importers' entries of steel trailer wheels from Asia Wheel consisted of any products made under Production Method B, including the requisite certifications specified by Commerce. As such, CBP determined that all the Importers' entries of steel trailer wheels that were manufactured under Production Methods A and C and are thus subject to the *Orders*. As discussed above, during the POI, the Importers entered merchandise as type 01 and claimed the country of origin as Thailand. Commerce's scope ruling determined that the minimal processing that occurred in Thailand did not change the country of origin and therefore merchandise entered during the POI are subject to the *Orders*.

Issue 2: Production Capacity

Alleger:

- The Alleger argues the evidence demonstrates Asia Wheel lacked the capacity to fully produce the steel trailer wheels it shipped through Thailand.¹²⁵
- The Alleger further contends the evidence indicates Asia Wheels shipped large amounts of steel trailer wheels prior to bringing production capacity on-line, supporting the conclusion that Asia Wheel also shipped finished wheels from China. The Alleger asserts this provides additional grounds for an affirmative determination as to evasion.¹²⁶

TexTrail:

- TexTrail argues that, in 2018, Jingu presented to it its subsidiary, Asia Wheel, to TexTrail in 2018 as an alternate source of steel trailer wheels. As such, and TexTrail's parent company visited Asia Wheel in April 2019 to verify the manufacturing of rims in Thailand.¹²⁷ TexTrail asserts its data for August 2019 through July 2020 show TexTrail's shift away from Chinese suppliers of wheels subject to the *Orders*, and while Asia Wheel has increased its production capacity, TexTrail still imports the majority of wheels from [Country] and has started importing from suppliers in [Country and Country].¹²⁸

TexTrail Rebuttal:

¹²⁴ See 19 U.S.C. § 1517(b)(4)(B); see also *Aspects Furniture*, 607 F. Supp. 3d at 1268 (“Allowing Customs to override and disregard a statutorily authorized Final Scope Ruling by the administering authority would be contrary to law because this would effectively substitute Customs as the administering authority rather than Commerce.”)

¹²⁵ See Alleger Written Argument at 9-10, citing the Allegations at 10-11 and Exhibit 6.

¹²⁶ *Id.* at 10-11, citing the Allegations at 8 and Exhibit 4 and Notice of Interim Measures at 7.

¹²⁷ See TexTrail Written Argument at 13, citing TexTrail RFI Response at 11.

¹²⁸ See TexTrail Written Argument at 15-16, citing TexTrail RFI Response at 12 and Exhibit 23 and Asia Wheel Supplemental RFI Response at SQ-6.

- TexTrail asserts the Alleger mischaracterizes TexTrail’s statements about Asia Wheel’s initial production capacity. TexTrail clarifies it did not seek alternative suppliers due to concerns about Asia Wheel’s production capacity, but, rather, to diversify its supply chain.¹²⁹
- TexTrail further contends Asia Wheel’s production capacity in 2018 is irrelevant since the POI did not begin until March 2019, and information on the record confirms that Asia Wheel was operating at full capacity in 2019.¹³⁰

CBP Position

Information in the allegations suggested that Asia Wheel lacked the capacity to fully produce the steel trailer wheels it shipped through Thailand.¹³¹ Lionshead and TexTrail claimed to have confirmed Asia Wheel’s ability and capacity to produce steel trailer wheels prior to receiving imports.¹³² However, TexTrail revealed that Asia Wheel initially had limited production capacity in late 2018 until production later increased.¹³³ TRAILSTAR did not verify Asia Wheel directly to establish its production capacity, but relied on Jingu’s and Asia Wheel’s statements that Asia Wheel did not manufacture steel trailer wheels from Chinese rims and discs.¹³⁴ As discussed above, during the POI, the Importers entered merchandise as type 01 and claimed the country of origin as Thailand. Commerce’s scope ruling determined that the minimal processing that occurred in Thailand did not change the country of origin, and therefore, the steel trailer wheels entered by the Importers are subject to the *Orders*.

During a visit to Asia Wheel’s facilities in September 2020, CBP confirmed that Asia Wheel was producing steel trailer wheels on the day of the visit.¹³⁵ However, CBP observed that [Number] paint lines were [Process].¹³⁶ CBP also observed a [Description] amount of finished trailer wheels in the warehouse, and some were packaged [Process] at the production facility. However, Asia Wheel claimed that the [Description] and [Description] production was attributed to the EAPA investigation, specifically the imposition of interim measures.¹³⁷

Nevertheless, despite any level of production capacity Asia Wheel may have had at any point during the POI to produce steel trailer wheels, CBP finds that Asia Wheel’s capacity to process finished steel trailers wheels is irrelevant to the matter at hand as the Importers’ entries are covered merchandise and subject to the *Orders*. As discussed above, during the POI, the Importers entered merchandise as type 01 and claimed the country of origin as Thailand. Commerce’s scope ruling determined that the minimal processing that occurred in Thailand did

¹²⁹ See TexTrail Response to Written Argument at 2-3.

¹³⁰ *Id.* at 3-5, citing TexTrail RFI Response at 46; TexTrail Supplemental RFI Response at SQ-6; Asia Wheel RFI Response at Exhibits C-1 and C-14; and Asia Wheel Supplemental RFI Response at 2.

¹³¹ See Allegations at 11 and Exhibit 6.

¹³² See Lionshead RFI Response at 7 and TexTrail RFI Response at 43.

¹³³ See TexTrail RFI Response at 11 and TexTrail Supplemental RFI Response at unnumbered page 4.

¹³⁴ See TRAILSTAR’s RFI Response at 2 and 18.

¹³⁵ See On-Site Visit Report at 3-5 and See Alleger’s Rebuttal at Exhibit 2.

¹³⁶ *Id.*

¹³⁷ *Id.*

not change the country of origin and therefore merchandise entered during the POI are subject to the *Orders*.

Issue 3: Material and False Statement or Act, or Material Omission

Alleger:

- The Alleger contends the Importers should have sought confirmation from Commerce about the scope of the entered steel trailer wheels, since Commerce explicitly stated that a request would need to be made for a ruling that such merchandise was not subject. The Alleger also argues the Importers' failure to do so exceeds negligence and does not alter CBP's finding that evasion occurred.¹³⁸ The statute contains no intent or fault standards for a finding of evasion; it only requires that CBP determine if false information/claims or material omissions have resulted in the reduction or non-payment of cash deposits or duties.¹³⁹
- The Alleger asserts because the Importers' entries of steel trailer wheels are clearly subject to the *Orders*, such entries were made using a false claim that they were not covered merchandise and without payment of AD/CVD cash deposits.¹⁴⁰ Thus, the statutory standard for evasion has been met, and CBP should make a determination as to evasion based on substantial evidence.¹⁴¹

The Importers:

The Importers argue they relied on Commerce's clear instructions from the AD/CVD investigations and the scope's plain language that both the rims and discs must originate from China for the steel trailer wheels to be in scope. As such, they maintain they exercised reasonable care in declaring the country of origin as Thailand and the entry type as 01 upon entry.¹⁴²

- TexTrail and TRAILSTAR specifically contend that, even if Commerce's final scope ruling is affirmed on appeal, AD/CVD liabilities cannot apply any earlier than March 22, 2021, the date on which Commerce initiated the scope ruling requested by Asia Wheel (which became the basis for Commerce's response to CBP's covered merchandise referral).¹⁴³ Consistent with judicial precedent, government agencies must provide adequate notice to avoid unfairness to importers.¹⁴⁴ However, in the AD/CVD investigations, TexTrail and

¹³⁸ See Alleger Written Argument at 8.

¹³⁹ *Id.*, citing 19 U.S.C. § 1517 generally and 19 U.S.C. § 1517 (a)(5)(A) specifically.

¹⁴⁰ *Id.* at 8.

¹⁴¹ *Id.* at 8-9.

¹⁴² See Lionshead Written Argument at 7-8, TexTrail Written Argument at 11-12 and 18, and TRAILSTAR Written Argument at 19, each citing *Diamond Tools II*, 609 F. Supp. 3d at 1391 and Commerce Final Determination Scope Memo at 24.

¹⁴³ See TexTrail Written Argument at 4 -5, and TRAILSTAR Written Argument in 2022.

¹⁴⁴ *Id.*

TRAILSTAR contend that Commerce did “not foreclose a further analysis of substantial transformation” in the future, which “confirms the lack of requisite notice at that time.”¹⁴⁵

- In its rebuttal, Lionshead asserts that the Alleger’s argument that the EAPA statute does not contain an intent or fault standard reduces the statutory elements for reaching a determination as to evasion from three to two and ignores the CIT’s decision in *Diamond Tools*.¹⁴⁶

Alleger Rebuttal:

- The Alleger asserts the Importers’ reliance on *Diamond Tools* is misplaced since the facts in the underlying case differ from those in this EAPA investigation. In *Diamond Tools*, CBP had referred a scope question to Commerce. The Alleger observed that as a result of a circumvention determination conducted simultaneously with the scope ruling, Commerce expanded the scope to cover the merchandise at issue rather than finding it was covered under the existing scope language. According to the Alleger, because Commerce changed the scope, the CIT found that no false statement was made when merchandise was entered as non-subject prior to the circumvention determination.¹⁴⁷
- The Alleger asserts that, unlike in circumvention determinations, Commerce cannot expand the scope of an order in scope rulings.¹⁴⁸ Thus, in its scope ruling on the steel trailer wheels at issue here, the Alleger argues Commerce only examined whether they fall within the existing scope. Since Commerce found that the merchandise under Production Methods A and C were within scope, the merchandise was subject to the scope when they entered.¹⁴⁹ Therefore, any statement that the entries were not subject to the scope is false.¹⁵⁰
- The Alleger argues in *Diamond Tools*, the CIT acknowledged its reasoning was only pertinent to the type of situation being addressed in that case and not all EAPA investigations or scope questions.¹⁵¹
The Alleger asserts the Importers misquote the Commerce Final Determination Scope Memo in claiming that Commerce found steel trailer wheels comprised of rims and discs from China were the only products within the scope.¹⁵² Instead, the Alleger argues Commerce ruled that steel trailer wheels made from Chinese-origin rims and discs were clearly covered,

¹⁴⁵ See TexTrail Written Argument at 12 and TRAILSTAR Written Argument at 20-22, both citing Final Scope Ruling at 2; *Tai-Ao Aluminum (Taishan) Co. v. United States*, 983 F.3d 487, 494-95 (Fed. Cir. 2020); *Tai-Ao Aluminum (Taishan) Co. v. United States*, 391 F. Supp. 3d 1301, 1314-15 (CIT 2019) (*Tai-Ao Aluminum*); and Commerce Final Determination Scope Memo at 24. Both TexTrail and TRAILSTAR stated that alternatively, notice was not provided until August 25, 2022, the date on which Commerce issued its preliminary scope ruling.

¹⁴⁶ See Lionshead Response to Written Argument at 3, citing Alleger Written Argument at 9; *Diamond Tools I*, 545 F. Supp. 3d at 1355; and *Diamond Tools II*, 609 F. Supp. 3d at 1388 n. 10.

¹⁴⁷ See Alleger Response to Written Argument at 12-13, citing *Diamond Tools I*, 545 F. Supp. 3d at 1330 and *Diamond Tools II*, 609 F. Supp. 3d at 1388.

¹⁴⁸ See Alleger’s Rebuttal, “EAPA Consol. No. 7459, Steel Trailer Wheels from China: Submission of Responses to Written Argument,” (June 14, 2023) (Alleger’s Written Argument Response) at 13.

¹⁴⁹ See at Alleger’s Written Argument Response at 13-14.

¹⁵⁰ *Id.* at 15-16, citing *Diamond Tools I*, 545 F. Supp. 3d at 1353.

¹⁵¹ *Id.* at 14-15, citing *Diamond Tools II*, 609 F. Supp. 3d at 1387-1388 and 1391.

¹⁵² *Id.* at 19.

and that further analysis was needed to determine whether a product made in a third country from rims or discs from China was in scope.¹⁵³

- The Allegor claims the Importers' reliance on *Tai-Ao Aluminum* is inapposite, as the issue in that case was Commerce's treatment of all exporters as subject to a circumvention inquiry rather than just the exporter named in the initiation notice.¹⁵⁴
- The Allegor states notes when CBP makes an affirmative determination as to evasion, the statute and regulations require CBP to apply that determination to all entries of covered merchandise for which liquidation has been suspended or that entered after the date of the initiation of investigation.¹⁵⁵ CBP's authority is not dependent on the timing of Commerce's actions, and the CIT has rejected arguments on this point.¹⁵⁶

CBP Position

As an initial matter, CBP finds the Importers' reliance on *Diamond Tools* is misplaced because the circumstances in the EAPA investigation underlying the litigation in *Diamond Tools* differ from those here.

In *Diamond Tools*, CBP submitted a covered merchandise referral to Commerce to determine whether diamond sawblades assembled in Thailand with Chinese cores and segments were covered merchandise; Commerce found that the diamond sawblades at issue were subject to the relevant AD order. Commerce noted that it had aligned the scope ruling with a concurrent anticircumvention inquiry, and, as a result of the anticircumvention inquiry, Commerce had expanded the scope to cover the merchandise at issue rather than finding that merchandise was covered under the existing scope language. CBP determined that the importer evaded the AD order with respect to all entries of covered merchandise during the period of the EAPA investigation. On remand, the Court upheld CBP's finding that the importer's entries made before December 1, 2017, the date Commerce initiated its anticircumvention inquiry, constituted covered merchandise, but remanded CBP's determination for CBP to consider whether the importer made materially false statements, acts, or omissions with respect to its entries of diamond sawblades prior to that date. CBP filed the second remand under respectful protest finding that in light of the court's holding, *Diamond Tools* did not make false statements when it entered certain merchandise into the United States. Ultimately, the court sustained CBP's findings.¹⁵⁷

In essence, at the time of the AD/CVD investigations, Commerce provided notice to interested parties that the question of whether steel trailer wheels processed in a third country from Chinese-origin rims or discs were in scope would be evaluated at a later time in the context of

¹⁵³ *Id.* at 16-18, citing Commerce Final Determination Scope Memo at 22-23 and Final Scope Ruling at 14-15.

¹⁵⁴ *Id.* at 20, citing *Tai-Ao Aluminum (Taishan) Co., Ltd. v. United States*, 391 F.Supp.3d at 1301, 1314-1315 (Ct. Int'l Trade June 7, 2019).

¹⁵⁵ *Id.* at 21, citing 19 U.S.C. § 1517(d)(1) and 19 C.F.R. § 165.28.

¹⁵⁶ *Id.* at 21-22, citing *Diamond Tools I*, 545 F. Supp. 3d at 1344.

¹⁵⁷ See Judgment, *Diamond Tools Technology LLC v. United States*, No. 20-00060 (Ct. Int'l Trade July 28, 2023), ECF No. 101.

actual scope rulings.¹⁵⁸ Therefore, CBP disagrees with the Importers' contention that they did not have requisite notice that their entries were in scope. Rather, based on Commerce's scope determinations in the steel trailer wheels AD/CVD investigations, the Importers should have requested a scope ruling from Commerce on whether Asia Wheel's steel trailer wheels were covered by the *Orders*. Thus, the Importers' arguments that notice did not occur until some later date, including March 22, 2021 (the date on which Commerce initiated the scope ruling), August 25, 2022 (the date of Commerce's preliminary scope ruling), or even April 11, 2023 (the date of Commerce's final scope ruling), are baseless. Moreover, the scope includes rims, discs, and wheels that have been further processed in a third country, including, but not limited to, the painting of wheels from China and the welding and painting of rims and discs from China to form a steel wheel, or any other processing that would not otherwise remove the merchandise from the scope of the *Orders* if performed in China.¹⁵⁹ Therefore, the Importers should have known that rims and discs processed in a third country, *i.e.*, Thailand are in scope.

The plain language of EAPA does not require CBP to analyze whether an importer acted with intent or knowledge when making false statements that resulted in avoiding the payment of AD/CVD.¹⁶⁰ As such, the Importers' claims that there must be a degree of culpability for an importer to have made a material and false statement or material omission are inapposite. As noted above, CBP finds that all the steel trailer wheels entered by Lionshead, TexTrail, and TRAILSTAR during the POI from Asia Wheel consist of merchandise made under Production Methods A and C and, thus, are covered by the *Orders*. As such, when the Importers entered this merchandise into the United States and declared it as type 01 instead of type 03, the latter of which would denote that it is subject to AD/CVD duties but the former of which would not, the Importers made a false statement. This false statement was materially false because it resulted in Lionshead, TexTrail, and TRAILSTAR failing to pay the applicable AD/CVD duties.

Issue 4: Status of Suspended Entries

TexTrail:

- TexTrail maintains that because Commerce's final scope ruling is currently under litigation at the CIT, CBP should not liquidate TexTrail's suspended entries until all litigation related to the scope ruling and the EAPA proceeding concludes.¹⁶¹

Alleger Rebuttal:

- The Alleger contends, consistent with the statute, that CBP should continue suspending liquidation of the entries subject to this investigation as merchandise subject to the *Orders* and liquidate the entries when instructed by Commerce to do so.¹⁶² Although CBP may

¹⁵⁸ See Commerce Final Determination Scope Memo at Comment 3; see also Final Scope Ruling at 15.

¹⁵⁹ See *Orders*, 84 Fed. Reg. at 45,954.

¹⁶⁰ See *Ikadan Sys. USA, Inc. v. United States*, No. 21-00592, 2023 WL 3962058, at *7 (Ct. Int'l Trade June 13, 2023) ("EAPA read as a whole supports CBP's strict liability interpretation of the definition of evasion.").

¹⁶¹ See TexTrail Written Argument at 22-23, citing, *inter alia*, *TexTrail, Inc. v. United States*, Court No. 23-00099.

¹⁶² See Alleger Response to Written Argument at 31, citing 19 U.S.C. §§ 1517(d) and 1675(a)(3)(B).

continue to suspend liquidation when required by a court order, the Alleger notes nothing in the statute permits CBP to do so because of the possibility of a future court order.¹⁶³

CBP Position

Pursuant to 19 U.S.C. § 1517(d) and 19 C.F.R. § 165.28, when CBP determines, based on substantial evidence, that covered merchandise was entered into the customs territory of the United States through evasion, CBP will suspend or continue to suspend the liquidation of all entries imported by the importer(s) subject to the EAPA investigation and continue suspension until instructed by Commerce to liquidate these entries. CBP's authority to suspend liquidation is not dependent on actions related to Commerce proceedings. As the litigation pertaining to Commerce's final scope ruling is outside CBP's purview, CBP will suspend or continue to suspend liquidation under its own authority, as appropriate, per the EAPA statute and regulations, rather than base the timing of suspension of liquidation on the conclusion of such litigation.

Issue 5: Due Process Concerns related to Business Confidential and Public Information

Lionshead:

- Lionshead argues CBP has not provided access to information that “was fully redacted” from the allegation, nor has it provided access to information in the alleger’s submission dated November 23, 2020, or CBP’s On-Site Visit Report.¹⁶⁴ Lionshead argues this violates its due process rights.¹⁶⁵
- Consistent with *Royal Brush I*, Lionshead maintains that CBP is bound by due process requirements in EAPA investigations and, pursuant to 19 C.F.R. § 165.4(a)(2), must provide public summaries of all business confidential information on the record.¹⁶⁶

TexTrail:

- TexTrail asserts that CBP has not provided the requisite public summaries or provided an explanation of why such summaries are not possible in accordance with 19 C.F.R. § 165.4. TexTrail argues the failure to do so has hindered its ability to defend its position.¹⁶⁷
- TexTrail further argues the CIT has found that CBP violated importers’ due process in other EAPA cases by not providing access to information relied upon in making determinations as to evasion.¹⁶⁸

¹⁶³ *Id.* at 31-32, citing 19 U.S.C. § 1504(a)(1).

¹⁶⁴ *See* Lionshead Written Argument at 10-11.

¹⁶⁵ *See id.* at 11.

¹⁶⁶ *Id.* at 11, citing *Royal Brush Manufacturing, Inc. v. United States*, 483 F. Supp. 3d 1294, 1305-1306 (CIT 2020) (*Royal Brush I*).

¹⁶⁷ *See* TexTrail Written Argument at 23-24.

¹⁶⁸ *Id.* at 23, citing *Royal Brush I*, 483 F. Supp. 3d at 1305-1306 (CIT) and *Aspects Furniture*, 607 F. Supp. 3d at 1272-1273.

- TexTrail claims the lack of administrative protective orders (APOs) in the EAPA statute prevents parties from receiving access to business confidential information, and, thus, has unlawfully violated its due process rights.¹⁶⁹

TRAILSTAR:

- TRAILSTAR, like the other Importers, also argues its due process rights have been violated because CBP has not provided the public summaries required by its regulations, referencing various documents as examples.¹⁷⁰
- TRAILSTAR asserts the CIT has held that CBP must provide meaningful public summaries of business confidential information.¹⁷¹
- TRAILSTAR claims public summarization is not a substitute for counsel having access to business confidential information that is required for due process, and the Court of Appeals for the Federal Circuit “appears poised to invalidate CBP’s EAPA procedure through which duty evasion may be found against importers whose counsel are prohibited from accessing” the underlying business confidential information.¹⁷²

Alleger Rebuttal:

- The Alleger asserts CBP is not permitted to disclose business confidential information.¹⁷³
- The Alleger claims parties only have the right to a public version of a business confidential submission that contains “a summary of the bracketed information in sufficient detail to permit a reasonable understanding of the substance of the information.”¹⁷⁴ The CIT found that public summaries do not need to be “detailed enough to determine a close approximation of the redacted information,” but need to “retain enough context and ... provide sufficient summaries to determine what type of information was redacted.”¹⁷⁵
- The Alleger asserts the CIT has held it will not determine that CBP has violated a party’s due process rights by failing to provide sufficient public summaries of business confidential information unless the challenging party can demonstrate it was actually prejudiced by CBP’s treatment.¹⁷⁶
- The Alleger contends that all three importers concede they imported the steel trailer wheels at issue in this EAPA investigation and Commerce determined such merchandise is subject to the *Orders*; this is sufficient to find evasion occurred. “Because the Importers have no actual, specific claims that they have been denied any information CBP needs {to} rely on to

¹⁶⁹ *Id.* at 24.

¹⁷⁰ See TRAILSTAR Written Argument at 24-26, citing 19 C.F.R. § 165.4. The documents cited by TRAILSTAR include, *inter alia*, Notice of Interim Measures at 3-7 and Initiation of EAPA Investigation for TRAILSTAR.

¹⁷¹ *Id.*, citing *Aspects Furniture*, 607 F. Supp. 3d at 1270-74 and *Royal Brush I*, 483 F. Supp. 3d at 1305-08.

¹⁷² *Id.* at 26-27, citing *Royal Brush Mfg. Inc. v. United States*, Fed. Cir. # 22-1226, Oral Argument (May 3, 2023), available at https://oralarguments.cafo.uscourts.gov/default.aspx?fl=22-1226_05032023.mp3.

¹⁷³ *Id.* at 22-23, citing *Royal Brush Mfg., Inc. v. United States*, 545 F. Supp. 3d 1357, 1367 (CIT 2021) (*Royal Brush II*).

¹⁷⁴ *Id.* at 23, citing 19 C.F.R. § 165.4(a)(2).

¹⁷⁵ *Id.*, citing *CEK Group LLC v. United States*, No. 22-00082, 2023 WL 3198816, at *5 (Ct. Int’l Trade May 2, 2023).

¹⁷⁶ *Id.* at 23-24, citing *Leco Supply, Inc. v. United States*, 619 F. Supp. 3d 1287, 1303-1305 (CIT 2023).

make those findings and determine evasion occurred, they have suffered no actionable prejudice.”¹⁷⁷

Lionshead Rebuttal:

- Lionshead asserts the public summaries in the public version of the Alleger’s written arguments regarding production capacity are not “in sufficient detail to permit a reasonable understanding of the substance of the information,” violating the Importers’ due process rights.¹⁷⁸

CBP Position

Pursuant to 19 C.F.R. § 165.4(a), parties in EAPA investigations are permitted to request business confidential treatment for certain information. In accordance with 19 C.F.R. § 165.4(a)(2), parties only have the right to a public version of a business confidential submission that contains “a summary of the bracketed information in sufficient detail to permit a reasonable understanding of the substance of the information.”¹⁷⁹ The EAPA statute and regulations do not provide for a procedure for parties to access confidential information.

Based on the foregoing, CBP agrees that the public version of documents containing redacted business confidential information on the record should contain public summaries as required by 19 C.F.R. § 165.4(a)(2) but acknowledges that many of the public versions of documents on the record of this EAPA investigation do not contain the requisite public summaries. CBP initiated this EAPA investigation in April 2020 and, upon making its covered merchandise referral to Commerce in December 2020, all deadlines were stayed in this case pursuant to the statute and regulations.¹⁸⁰ Importantly, much of this investigation was conducted before the CIT opined on public disclosure in the *Royal Brush I*. Commerce transmitted the results of its final scope ruling to CBP on April 14, 2023, at which point the deadlines in this EAPA investigation were no longer stayed. Further, the decision from the U.S. Court of Appeals for the Federal Circuit ruling requiring that CBP to disclose confidential information under an administrative protective order was issued at the conclusion of the investigation. As such, CBP did not have sufficient time within the statutory timeframe of the investigation to implement a protective order in this case.¹⁸¹

¹⁷⁷ *Id.* at 24-27.

¹⁷⁸ See Lionshead Response to Written Argument at 2, citing Alleger Written Argument at 10 and *Royal Brush I*, 483 F. Supp. 3d at 1305.

¹⁷⁹ See also 19 C.F.R. § 165.4(e) (extending the requirement for public summaries to business confidential information placed on the record by CBP).

¹⁸⁰ See 19 U.S.C. § 1517(b)(4)(C) and 19 C.F.R. § 165.16(d).

¹⁸¹ The Importers argue that CBP did not provide the requisite public summaries in public versions of business confidential documents, but fail to acknowledge that their own submissions, including their voluminous RFI responses, along with Asia Wheel’s voluminous RFI responses, also lack the requisite public summaries. Thus, CBP and all parties would have needed to review each document on the record and provide the requisite public summaries, and then parties to the investigation would have been granted ten calendar days to provide rebuttal information to the newly summarized public versions pursuant to 19 C.F.R. § 165.23(c). See Letter from TRAILSTAR, “TRAILSTAR LLC’s Notice of Supplemental Authority, Investigation Concerning Evasion of the Antidumping and Countervailing

As noted above, Commerce determined in its final scope ruling that the steel trailer wheels manufactured by Asia Wheel under Production Methods A and C (*i.e.*, with either a Chinese-origin disc or rim) are subject to the *Orders*. None of the Importers certified that any of their entries of steel trailer wheels consisted of out-of-scope merchandise (*i.e.*, steel trailer wheels made under Production Method B) in accordance with the instructions set forth by Commerce. As such, CBP finds that, even if public summaries should have been provided, all the Importers' entries of steel trailer wheels from Asia Wheel consisted of covered merchandise that should have been declared as subject to the *Orders*.

Issue 6: Miscellaneous Procedural Matters

TexTrail:

- TexTrail asserts the question of whether a product is included in the scope of an AD/CVD order is entirely within Commerce's purview and Commerce clearly addressed the scope issue in the AD/CVD scope ruling.¹⁸² Thus, TexTrail argues "it was improper for Petitioner to appeal to a different agency (CBP) in search of a different result," as well as "unlawful" for CBP to make a covered merchandise referral to Commerce.¹⁸³

TRAILSTAR:

- TRAILSTAR claims CBP erred by not permitting rebuttals to a site inspection report that Dexstar placed on the record from another investigation.¹⁸⁴
- TRAILSTAR asserts CBP improperly declined to conduct a site inspection in this EAPA investigation.¹⁸⁵
- TRAILSTAR asserts CBP did not provide it with notice and opportunity to comment prior to initiation of this investigation, and only provided notice when it implemented interim measures.¹⁸⁶
- TRAILSTAR asserts CBP has not acted within the statutory timeframe for this EAPA investigation. It should have made a determination as to evasion in April 2021, which is 360 days from the date of initiation of this investigation. As a result, interim measures have been applied to TRAILSTAR for more than three times that amount of time.¹⁸⁷

Alleger Rebuttal:

Duty Orders On Steel Trailer Wheels from China," (Jul. 27, 2023) citing *Royal Brush Mfg., Inc. v. United States*, *CAFC Case No. 2022-1226*.

¹⁸² See TexTrail Written Argument at 19 (citing 19 C.F.R. § 351.225(a) and 351.225(f)(7); *Sunpreme Inc. v. United States*, 946 F.3d 1300, 1320-21 (Fed. Cir. 2020)); and Commerce Final Determination Scope Memo at Comment 3.

¹⁸³ *Id.* at 19-20 (citing 19 C.F.R. § 165.16(a) and Commerce Final Determination Scope Memo at 24).

¹⁸⁴ See TRAILSTAR Written Argument at 27-28, citing Letter from the Alleger, "EAPA Case No. Cons. 7459, Steel Trailer Wheels: Submission of Rebuttal Factual Information" (Dec. 4, 2020) (Alleger December 4, 2020, Letter) at Attachment 2 and CBP Email, "EAPA Cons 7459 - Rejection of Untimely Submissions" (Dec. 18, 2020) (CBP December 18, 2020, Email).

¹⁸⁵ *Id.* at 28.

¹⁸⁶ *Id.*, citing Notice of Interim Measures.

¹⁸⁷ *Id.*, citing 19 U.S.C. § 1517(c)(1).

- Regarding covered merchandise referral, the Alleger argues the EAPA statute directs CBP to refer scope questions to Commerce when they arise, and nothing in the relevant provision limits CBP from doing so.¹⁸⁸ In this investigation, CBP stated the imported steel trailer wheels were covered by the *Orders* based on the plain scope language, while the Importers argued the *Orders* did not cover steel trailer wheels with a Chinese-origin rim or disc, and Asia Wheel requested a scope ruling from Commerce. As there was clearly a question regarding scope in this EAPA investigation, the Alleger maintains CBP properly referred that question to Commerce.¹⁸⁹
- With respect to the site inspection report, the Alleger notes this was included in its timely submission included it in a submission timely rebutting Asia Wheel’s supplemental RFI response pursuant to the regulatory 10-day deadline. The Alleger explains that because the Importers’ submission was untimely made after the 200-day regulatory deadline for submitting new factual information, CBP rejected that submission.¹⁹⁰
- In responding to TRAILSTAR’s argument that it was given notice or an opportunity to comment prior to initiation of this investigation, the Alleger argues CBP acted in accordance with the EAPA statute and regulations. The Alleger asserts the CIT has considered this argument in another case and found the party under investigation was not deprived of due process because interim measures are temporary, and the regulations provide mechanisms to respond to the allegations of evasion.¹⁹¹
- As for the statutory timeframe, the Alleger contends TRAILSTAR ignores 19 U.S.C. § 1517(b)(4)(C), which requires deadlines in an EAPA investigation to be stayed in the event of a referral to Commerce on a scope question. Since CBP made a covered merchandise referral to Commerce, it stayed the deadlines for this investigation at the time of that referral, and unstayed the investigation after receiving Commerce’s final scope ruling.¹⁹²

CBP Position:

Despite the Importers’ challenges to CBP’s covered merchandise referrals to Commerce, the EAPA statute and regulations direct CBP to refer scope questions to Commerce when AD/CVD questions arise.¹⁹³ In accordance with 19 U.S.C. §1517(b)(4)(B), after receiving a referral as to whether merchandise is subject to the scope of an AD or CVD order, the administering authority, in this case Commerce, determines whether the merchandise is covered merchandise.¹⁹⁴ Because CBP could not determine whether the steel trailer wheels produced by Asia Wheel in Thailand under three production methods are covered merchandise, CBP properly referred the matter to

¹⁸⁸ See Alleger Response to Written Argument at 9-10, citing 19 U.S.C. § 1517(b)(4)(A)

¹⁸⁹ *Id.* at 10-11, citing Notice of Interim Measures at 3; Lionshead RFI Response at 8; TexTrail RFI Response at 8, 11 and 12; TRAILSTAR RFI Response at 6 and 17; Covered Merchandise Referral at 1 (referencing Asia Wheel’s scope ruling request to Commerce); and Final Scope Ruling at 54.

¹⁹⁰ See Alleger Response to Written Argument at 27-29, citing CBP December 18, 2020, Email; 19 C.F.R. §§ 165.21(b) and 165.23(c)(1) and (2); and Alleger December 4, 2020, Letter.

¹⁹¹ *Id.* at 29-30, citing *Aspects Furniture*, 607 F. Supp. 3d at 1273.

¹⁹² *Id.* at 30-31, citing CBP December 18, 2020, Email.

¹⁹³ See 19 U.S.C. § 1517(b)(4)(A); see also 19 C.F.R. § 165.16(a).

¹⁹⁴ In accordance with 19 U.S.C. §1517(b)(4)(B), after receiving a referral as to whether merchandise is subject to the scope of an AD or CVD order, the administering authority, Commerce makes a decision.

Commerce. CBP notes that, prior to making its covered merchandise referral to Commerce, Asia Wheel also requested a scope ruling from Commerce on the same merchandise.¹⁹⁵

CBP disagrees with TRAILSTAR's argument that CBP erred in not allowing rebuttal comments to a site visit report that the Alleger placed on the record. The Alleger included the site visit report in a December 4, 2020, submission of rebuttal factual information to Asia Wheel's November 24, 2020, supplemental RFI response.¹⁹⁶ The Alleger's submission was timely filed in accordance with 19 C.F.R. § 165.23(c)(2). The Importers did not submit their rebuttal comments to the Alleger's December 4, 2020, submission prior to the 200-day regulatory deadline for submitting new factual information, pursuant to CBP 19 C.F.R. § 165.23(c)(2).¹⁹⁷ Thus, CBP properly rejected the Importers' submission.¹⁹⁸

TRAILSTAR also asserts that CBP did not conduct a site visit in this EAPA investigation. In fact, CBP did conduct a site visit of Asia Wheel. While CBP inadvertently did not place the site visit report on the record of this EAPA investigation, the details of that site visit report are documented in the site visit report contained in the Alleger's December 4, 2020, submission of rebuttal information.¹⁹⁹ A review of that report makes it clear that CBP visited Asia Wheel's facilities in September 2020 and made observations regarding steel trailer wheel production.²⁰⁰

TRAILSTAR finds fault with CBP's investigative process that does not allow importers opportunity to comment on an investigation prior to the notice of investigation and implementation of interim measures. However, in accordance with 19 C.F.R. § 165.15(d)(1), CBP will notify all parties of the decision to initiate an investigation no later than 95 calendar days after the decision has been made.

Finally, TRAILSTAR complains that CBP did not adhere to the statutory timeframes that regulate an EAPA investigation, stating that CBP should have made a determination as to evasion over two years ago. This argument does not consider the statute and regulations that govern covered merchandise referrals to Commerce. Pursuant to 19 U.S.C. § 1517(b)(4)(C) and 19 C.F.R. § 165.16(d), the time period required by Commerce to make a scope ruling will not be counted toward any deadlines in EAPA investigations, including the deadline to issue a determination as to evasion.

Actions Taken Pursuant to the Affirmative Determination as to Evasion

In light of CBP's determination that the Importers entered covered merchandise into the customs territory of the United States through evasion, and pursuant to 19 U.S.C. § 1517(d) and 19 C.F.R. § 165.28, CBP will suspend or continue to suspend the liquidation of all entries imported by the

¹⁹⁵ See Covered Merchandise Referral at 1.

¹⁹⁶ See Alleger December 4, 2020, Letter.

¹⁹⁷ See CBP December 18, 2020, Email. In the email, CBP states that the deadline for voluntary submissions of factual information was October 26, 2020.

¹⁹⁸ *Id.*

¹⁹⁹ See Alleger December 4, 2020, Letter at Exhibit 2

²⁰⁰ *Id.*

Importers that are subject to this EAPA investigation and continue suspension of liquidation until instructed by Commerce to liquidate these entries. For those entries previously extended in accordance with the interim measures, CBP will rate adjust and change those entries to type 03 and continue suspension of liquidation until instructed by Commerce to liquidate those entries. CBP will also continue to evaluate the Importers' continuous bonds in accordance with CBP's policies and may require single transaction bonds, as appropriate. None of the above actions precludes CBP or other agencies from pursuing additional enforcement actions or penalties.²⁰¹

Sincerely,

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

Victoria Y. Cho, Acting Director
Enforcement Operations Division
Trade Remedy Law Enforcement Directorate
CBP Office of Trade

²⁰¹ See 19 U.S.C. § 1517(h).