



U.S. Customs and Border Protection

PUBLIC VERSION

May 23, 2023

VIA EMAIL

Emily Lawson, Esq.
On Behalf of Pitts Enterprises, Inc.
1700 Seventh Ave., Suite 2100
Seattle, WA 98101
lawson@appletonluff.com

Jay Campbell, Esq.
On Behalf of CIMC
Intermodal Equipment LLC
701 Thirteenth St. NW
Washington, DC 20005-3807
jcampbell@whitecase.com

Re: EAPA Case No. 7711 - Notice of Determination as to Evasion

To Counsel for the above-referenced Entities:

Pursuant to an examination of the record in Enforce and Protect Act (“EAPA”) Case 7711, U.S. Customs and Border Protection (“CBP”) has reached a determination as to whether Pitts Enterprises, Inc. (“Pitts”) entered merchandise covered by antidumping duty (“AD”) and countervailing duty (“CVD”) orders A-570-135 and C-570-136 (the “Orders”),¹ respectively, on certain chassis and subassemblies from the People’s Republic of China (“China”).

CBP determines there is substantial evidence that importer Pitts entered covered merchandise for consumption into the customs territory of the United States through evasion. Specifically, Pitts knowingly imported finished chassis comprised of numerous Chinese Origin subassemblies and subassembly components into the United States as a product of Vietnam only, without disclosing China as the Country of Origin (“COO”) of the components, and without identifying the chassis as having Chinese Origin components, subject to the Orders.

¹ See *Certain Chassis and Subassemblies Thereof from the People’s Republic of China: Antidumping Duty Order*, 86 Fed. Reg. 36,093 (July 8, 2021) (*AD Order*) and *Certain Chassis and Subassemblies Thereof from the People’s Republic of China: Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination*, 86 Fed. Reg. 24,845 (May 10, 2021) (*CVD Order*), respectively.

I. Background & Procedural History (Pre-Interim Measures)

Allegation and Initiation

On July 20, 2022, the Trade Remedy Law Enforcement Directorate (“TRLED”) within CBP’s Office of Trade initiated an investigation under EAPA² based on an allegation submitted by CIMC Intermodal Equipment LLC, dba CIE Manufacturing (“CIMC” or “CIE”),³ an importer of covered merchandise.⁴ CIMC claimed Pitts was evading the Orders on certain chassis and subassemblies from China. CIMC alleged that available information reasonably suggested Pitts imported chassis with subassembly components, including axles and landing gear legs, of Chinese Origin, that are subject to the Orders.

More specifically, CIMC claimed Pitts was importing certain chassis incorporating subassembly components manufactured in China without the payment of AD/CVD duties by claiming that the imported chassis were COO Vietnam and by failing to identify covered merchandise (*i.e.*, chassis subassembly components, including Chinese Origin axles and landing gear legs, entered with finished or unfinished chassis). Due to purported material omissions, or material false statements in Pitts’ entry summaries, CIMC claimed Pitts avoided tendering cash deposits or paying AD/CVD duties lawfully owed under the Orders.⁵

In support of its allegation, CIMC provided an affidavit attesting to the facts of its inspection of [*# / company name/ chassis products*]⁶ that CIMC had reason to believe Pitts imported into the customs territory of the United States.⁷ CIMC asserted that each inspected chassis had a date of manufacture of [*date*], meaning that each chassis was manufactured after the preliminary determinations, the suspensions of liquidation, and the first collections of cash deposits under the AD/CVD investigations that gave rise to the Orders.⁸

According to the affiant [*name*], each of the VIN plates on the inspected chassis indicated that the chassis were [*company name, activity*] and listed THACO Special Vehicles Manufacturing Limited Company (“THACO”) as the manufacturing plant.⁹ This affiant indicated the only [*company name and information, location*

² See CBP Memorandum, “Initiation of Investigation for EAPA Case Number 7711 – Pitts Enterprises, Inc.” (Jul. 20, 2022).

³ See CIMC’s Request for an Investigation under the Enforce and Protect Act, dated May 11, 2022 (“Allegation”).

⁴ *Id.* at 3 and Exhibit 20. As an importer, CIMC meets the definition of an interested party that may file an EAPA allegation, pursuant to 19 C.F.R. § 165.1(1).

⁵ *Id.* at 6.

⁶ *Id.* at Exhibit 8 referencing the [*company name, activity*] by Pitts.

⁷ *Id.* at Exhibit 6.

⁸ *Id.* at 7, citing *Certain Chassis and Subassemblies Thereof from the People’s Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 86 Fed. Reg. 12,616 (Mar. 4, 2021) and *Certain Chassis and Subassemblies Thereof from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 86 Fed. Reg. 56 (Jan. 4, 2021).

⁹ *Id.*

].¹⁰ Photographs of the VIN numbers of the inspected chassis refer to [*company name*] as the manufacturer.¹¹

Each of the inspected chassis also contained axles and landing gear legs [*company name, information*].¹² CIMC provided a second affidavit detailing the [*company*] chassis components. The second affiant, [*name*], indicated that [*company*] chassis components are manufactured only in China.¹³ [*company*]'s parent company is [*company*]. [*company*] is based in [*location*], China, where its only manufacturing locations are located.¹⁴ [*name*] expressed that [*company*] does not manufacture any axle components from raw materials in the United States, and instead imports ready-for-assembly axle components manufactured by [*company*] in China and assembles those components in the United States. This affiant also noted that despite [*company*] having a facility in [*location*], this facility handles only minor final assembly operations, not the substantially transformative operations that confer origin for purposes of the Orders.¹⁵

In support of its claim that Pitts entered the chassis with Chinese Origin components into the United States as a product of Vietnam only, without disclosing China as the COO of the components, CIMC submitted data from [*source*].¹⁶ The [*source*] results revealed that between April 30, 2021, and July 26, 2021, eight shipments of chassis classified under Harmonized Tariff Schedule of the United States (“HTSUS”) subheadings 8716.90 and 8716.39 were imported into the United States with Pitts Enterprises, Inc. listed as the consignee, and THACO as the shipper.¹⁷ Based on the date of inspection by CIMC of [*date*], and the VIN plate information of the four inspected chassis, namely [*date, company name/info and company/info*], CIMC reasonably believed that the four inspected chassis were imported into the United States in one of these eight shipments.

In further support of its allegation, CIMC cited a Hanoi Times article dated August 21, 2021, claiming it anticipated that Pitts would continue to import chassis with subject Chinese Origin components into the United States.¹⁸ The article explained that “Vietnamese conglomerate Truong Hai Auto Corporation (THACO)” planned to export 6,050 semi-trailers “to Dorsey Intermodal, a subsidiary of PITTTS Enterprise” in November 2021. The article also notes that beginning in 2022, “THACO will export between 12,000 and 15,000 semi-trailers to the US market annually.” Additionally, a [*customer name*] news release dated January 24, 2022, states that [*customer name, company name and information*], and notes that [*customer name, company names and info,*

¹⁰ *Id.* at 7.

¹¹ *Id.* at Exhibit 7, and Figure 1.

¹² *Id.* at 8. *See also* Exhibits 10 and 11, and Figure 2.

¹³ *Id.* at 9 and Exhibit 12.

¹⁴ *Id.* at Exhibit 14.

¹⁵ *Id.* at 10.

¹⁶ *Id.* at 11 and Exhibit 14.

¹⁷ *Id.* at 12. *See also* Tables 1 and 2; Exhibit 17.

¹⁸ *Id.* at 13 and Exhibit 18.

year].¹⁹

Based on the documentation reasonably available to it, CIMC claimed Pitts declared Vietnam only as the COO and failed to properly segregate the covered Chinese Origin axles and landing gear legs on its import documentation. CIMC argued that Pitts should have segregated the chassis subassembly components on the Commercial Invoice and Form 7501 Entry Summary, with associated per-line HTSUS subheadings, invoiced prices, dutiable value, COO (*i.e.*, China), AD and CVD case numbers, cash deposit rates, and Type 03 entry type, to properly import chassis containing subject Chinese Origin axles and landing gear legs.²⁰ CIMC alleged that Pitts failed to do so (*i.e.*, by stating that Vietnam was the only COO for the imported merchandise) based on documentation described above that was reasonably available to CIMC.

In assessing the claims made and evidence provided in the allegations, TRLED found the allegations reasonably suggested that Pitts evaded the Orders by importing chassis with Chinese Origin components into the United States as a product of Vietnam only, without disclosing China as the COO of the components.²¹ In summary, CIMC submitted documentation reasonably available to it, including company specific shipment data sourced from [*source*], images of inspected chassis, business entity information, company profiles, media links, and sworn declarations from affiants with industry specific knowledge (*i.e.*, production practices, affiliations, and a firsthand account of a chassis inspection).

Cargo Examination

On September 2, 2022, CBP conducted a cargo examination of chassis imported by Pitts, specifically, entry number [#]3525.²² On examination, the chassis were found to be [*description*]. Each chassis inspected by CBP was appropriately classified under HTSUS [#]. CBP found that the imported chassis were consistent with the description of merchandise in the Orders. Among other notable observations, the chassis included:

- Landing gear legs with serial plates bearing [*company*] markings, a manufacture date, and a reference to “[*location*]”.
- Axles and/or [*component name*] with serial plates bearing [*company name*] markings, a manufacture date, and a reference to “[*location*]”.
- Serial plates and other components with [*company*] branding decals.

¹⁹ *Id.* at 13-14 and Exhibit 19.

²⁰ *Id.* at 14.

²¹ While TRLED agreed with CIMC that the evidence presented reasonably suggests evasion, TRLED disagrees with CIMC that only the components of Chinese Origin should have been classified as Type 03 entries. As detailed throughout this notice, it is TRLED’s position that the entire chassis should have been classified as Type 03.

²² See Cargo Exam Photos 1, Cargo Exam Photos 2, and Cargo Exam Photos 3 (September 2, 2022).

- Serial plates indicating that the trailers were manufactured by [*company and description*] with THACO as the manufacturing plant.
- Other components or subassemblies manufactured by [*company*] engraved with “Assembled in CHINA.”

CF-28 Responses

On August 10, 2022, CBP issued two CBP Form 28 (“CF-28”) Requests for Information (“RFI”) to Pitts.²³ In the CF-28s, CBP requested bills of lading, purchase orders, invoices, proof of payments, certificate(s) of origin and information regarding final assembly. In addition, CBP requested that Pitts provide the following from the foreign manufacturer: raw material records with Customs clearances, production records, assembly records, employee timecards, export documentation, Outward Processing Arrangements (“OPA”), and documentation detailing manufacturing processes.

Following CBP’s approval of two extension requests by the importer, Pitts submitted expansive CF-28 responses for entry numbers [#]4391 and [#]3907 on September 23, 2022. The documents provided by Pitts revealed a significant portion of the chassis was produced by THACO, including parts, components, assemblies, and subassemblies that were either sourced or originated from at least [#] different countries, including China. According to a Bill of Materials (“BOM”), China was the COO for approximately [#] percent of the parts for entry number [#]3907 and [#] percent for entry number [#]4391. Other voluminous documentation such as purchase orders, invoices, and customs clearances corroborated the same.

In addition to the documents provided, and in compliance with CBP’s CF-28 RFI, Pitts also supplied narrative responses to questions tendered.²⁴ Of note, Pitts indicated that it sought to have “THACO SV produce semi-trailers for Pitts” because “THACO SV produces high quality semi-trailers.”²⁵ Furthermore, “Pitts entered into a sales agreement to purchase the completed chassis, produced by THACO SV”.²⁶ Reportedly, the chassis for both of Pitts’ entries were imported for its customer, [*company*].²⁷ Specifically, Pitts contracted for a total of [#] chassis of different models, including [#] of the [*model description*] model in entry number [#]4391. Entry number [#]3907 included [#] pieces of completed chassis model number [#], specifically [*model name*].²⁸ Pursuant to the contract terms, payment was

²³ See CBP’s CF-28 for Entry [#]3907 and CF-28 for Entry [#]4391.

²⁴ See Pitts CF-28 Response – Entry [#]4391 at RFI QNR Resp. and Pitts’ CF-28 Response – Entry [#]3907 at RFI QNR Resp.

²⁵ *Id.* at 1.

²⁶ *Id.*

²⁷ *Id.* at 2.

²⁸ *Id.*

made to THACO SV with a [*payment terms*] of total amount at time of signing, and [*payment terms*].²⁹

CBP also observed the following in the importer's CF-28 responses:

- According to Pitts, “the completed chassis were produced by THACO SV in Vietnam with raw materials and parts sourced in Vietnam and several countries, which are identified in the BOM.”³⁰
- THACO SV purchased certain parts and components produced from raw materials by related entities or divisions operating in the same production complex with THACO SV. THACO SV is a division of [*company* *company names and information*], which supply manufactured parts and production to THACO SV for the chassis.³¹
- [*company*] is responsible for the integration of made-in and bought-out parts with other made-in and bought-out parts to transform these parts from their original state into a usable product for chassis.³²
- As part of Pitts' response to CBP's request for commercial invoices and any OPAs, the importer stated, “to the extent the question asks for an invoice issued to THACO SV for the chassis at issue this question does not apply. The chassis are produced in Vietnam.”³³
- Pitts indicated the merchandise for [#]4391 and [#]3907 was complete at the time of import and no post-importation assembly of the semi-trailers took place in the United States.³⁴
- Pitts referred to “completed” chassis on at least 12 occasions in describing the imported merchandise, thereby inferring the chassis are “finished” in accordance with the Orders.³⁵

II. Notice of Initiation of Investigation and Interim Measures

Based on the record evidence as of October 18, 2022, CBP determined that reasonable suspicion existed that Pitts entered covered merchandise for consumption into the customs territory of the United States through evasion by importing chassis with Chinese Origin components into the United States as a product of Vietnam only, without disclosing China as the COO of the

²⁹ *Id.* at 4.

³⁰ *Id.* at 5.

³¹ *Id.*

³² *Id.*

³³ *Id.* at 5-7.

³⁴ *Id.* at 10.

³⁵ *Id.* at 1-10.

components. Therefore, CBP imposed interim measures on Pitts' imports of chassis from Vietnam into the United States pursuant to the investigation.³⁶

In accordance with 19 U.S.C. § 1517(e)(1)-(3), CBP suspended the liquidation of each unliquidated entry of covered merchandise that entered on or after July 20, 2022, the date of the initiation of the investigation; extended the period for liquidating each unliquidated entry of covered merchandise that entered before July 20, 2022; and took additional measures necessary to protect the revenue of the United States, including requiring a single transaction bond or requiring the posting of a cash deposit with respect to covered merchandise.³⁷ On October 25, 2022, interested parties were notified that CBP had commenced a formal EAPA investigation for Pitts and that the aforementioned interim measures had been enacted.

III. Post-Interim Measures

Requests for Information & On-site Verification

On November 8, 2022, CBP issued a RFI to both Pitts as the importer of record and THACO as the manufacturer of covered merchandise.³⁸ Following CBP's granting of two extension requests each to Pitts and THACO, both provided timely responses on December 20, 2022. The RFIs were specific to the following entries:

Entry Number		Bill of Lading Number	
[#]0025	[#]
[#]6172	[#]

CBP visited THACO's manufacturing facilities located at Chu Lai Truong Hai Automotive Mechanical Industrial Zone, Tam Hiep Commune, Nui Thanh District, Quang Nam Province, Vietnam during the period February 13-17, 2023, to conduct a verification. Prior to and during the on-site verification, CBP requested that THACO provide documentation for three additional shipments/entries not included with the original two CF-28 RFIs and the two RFI shipments/entries, bringing the total number of entries reviewed during this investigation to seven. The shipments/entries selected for on-site review were:³⁹

Entry Number		Bill of Lading Number	
[#]9754	[#]
[#]3525	[#]
[#]8096	[#]

³⁶ See CBP Memorandum, "Notice of Initiation of Investigation and Interim Measures - EAPA Case Number 7711," October 25, 2022.

³⁷ See 19 U.S.C. § 1623 and 19 C.F.R. § 165.24(b)(1)(i)-(iii).

³⁸ See CBP's Request for Information to Pitts and THACO (November 8, 2022).

³⁹ See CBP's Verification Report, at 2.

CBP verified the information contained in THACO’s RFI responses with the information reviewed during the on-site verification; in particular, information related to the COO of the parts used in the production of chassis subassemblies, landing gear, and axles. During the on-site verification, CBP received an overview of THACO’s company organization and operations. CBP also received a tour of THACO’s facilities.⁴⁰

While CBP did not witness all steps and sub-activities within each of the main activities of the chassis production process outlined in THACO’s RFI Response Narratives and Exhibits, the verification team observed parts and/or stages of each main production process. For instance, CBP witnessed the following activities and sub-activities: processing of raw steel into parts for the chassis frames and landing gear workpieces, painting-related activities (degreasing, drying, painting) and areas (shot blasting room and powder coating line), processing related to the kingpin and pickup plate (welding), processing related to the axle (welding and assembly), processing related to landing gear (welding), and packing (strapped and stacked finished chassis). Additionally, CBP verified that the equipment, inputs, and parts described in the RFI response existed in THACO’s facilities.⁴¹

In addition, for the three shipments/entries identified above, CBP conducted comprehensive traces, which focused on export (*i.e.*, sale to Pitts), production (*i.e.*, welding, painting, assembly, and packing), and purchases (*i.e.*, acquisition of raw materials and components). With respect to each transaction, CBP did not identify any material inconsistencies during the verification compared to information previously placed on the administrative record, nor did we identify any significant discrepancies or concerns in the underlying documentation.⁴²

As for COO, CBP again did not note any discrepancies or inconsistencies between the information THACO provided in its RFI response and during the on-site verification regarding the countries of origin (COO) of parts and raw materials used in the production of chassis. CBP determined, on average, that approximately [#] percent of the parts used to produce the chassis we reviewed originated from China (“CN”) and [#] percent originated from Vietnam (“VN”).⁴³

As shown below, in THACO’s RFI response, BOM, including COO for the parts, were provided for six different chassis models. CBP calculated what percentage of the parts, by value, for each product originated in China, [*Country*], and Vietnam:⁴⁴

Product Code	COO – CN (%)	COO – [<i>country</i>] (%)	COO – VN (%)
[<i>product code</i>]	[#]	[#]	[#]
[<i>product code</i>]	[#]	[#]	[#]
[<i>product code</i>]	[#]	[#]	[#]

⁴⁰ *Id.*, at 3.
⁴¹ *Id.*, at 5.
⁴² *Id.*, at 6.
⁴³ *Id.*, at 10.
⁴⁴ *Id.*, at 10-11.

[]	<i>product code</i>	[]	[]	#	[]	[]	#	[]	[]	#	[]
[]	<i>product code</i>	[]	[]	#	[]	[]	#	[]	[]	#	[]
[]	<i>product code</i>	[]	[]	#	[]	[]	#	[]	[]	#	[]
Average % CN & VN		[]	[]	#	[]	[]	#	[]	[]	#	[]

As reported by THACO, on average, [#] percent of the parts for each chassis originated from China and [#] percent originated in Vietnam.⁴⁵

To confirm these calculations during the on-site verification, CBP requested that THACO calculate the COO percentages, by value, for the parts used to produce the chassis related to the three verification walkthrough entries: [#]3525, [#]9754, and [#]8096. THACO provided BOM for [#] chassis and calculated COO percentages for each. Based on that information, CBP calculated the average percentage of Chinese Origin and Vietnamese Origin parts for each entry as follows:⁴⁶

Entry No.	China COO Percentage	Vietnam COO Percentage
[#]3525	[#]	[#]
[#]9754	[#]	[#]
[#]8096	[#]	[#]

The COO percentages for the [#] chassis calculated during the on-site verification were consistent with the calculations conducted based on the information received in response to the RFI. To verify the Vietnam Origin percentages, CBP reviewed steel mill certificates from all the manufacturers THACO purchased steel rolled steel coils and steel plates. Many of the parts classified as Vietnam Origin were parts fabricated in THACO’s factories from steel rolled coils. These mill certificates primarily came from Chinese and Vietnamese manufacturers.⁴⁷

THACO representatives indicated that, of the seven primary Vietnamese suppliers of steel coils, [*company*] manufacturing capacity (*i.e.*, operates blast furnace). The remaining suppliers are trading companies that source some of the steel from China and sell the product to THACO. Therefore, we could not determine the actual percentage of steel purchased from Vietnam versus China based on the mill certificates, but THACO stated most of the steel was Chinese Origin. The significance of this evidence is that the approximately [#] percent of the final chassis parts and raw materials currently classified as Vietnam Origin, based on THACO’s BOMs, is overstated. A large portion of the parts and raw materials classified as Vietnamese Origin should be classified as Chinese Origin based on the origin of the steel used.⁴⁸

As part of the on-site verification of THACO’s RFI responses, CBP conducted employee interviews, asking key THACO employees questions on the topics of sales, marketing, production, and purchasing. Based on the information provided during these interviews, CBP

⁴⁵ *Id.*, at 11.

⁴⁶ *Id.*, at 12.

⁴⁷ *Id.*

⁴⁸ *Id.*

did not identify any material inconsistencies compared to information previously placed on the administrative record.⁴⁹

IV. Analysis

Under 19 U.S.C. § 1517(c)(1)(A), to reach a final determination as to evasion, CBP must “make a determination, based on substantial evidence, with respect to whether such covered merchandise entered into the customs territory of the United States through evasion.” Evasion is defined as “the entry of covered merchandise into the customs territory of the United States for consumption by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material and that results in any cash deposit or other security of any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise.”⁵⁰ As discussed in this determination, the record of this investigation indicates there is substantial evidence that covered merchandise was entered by Pitts into the United States through evasion, resulting in the avoidance of applicable AD/CVD cash deposits or other security.

Based on the totality of information contained in the administrative record, CBP determines there is substantial evidence that Pitts evaded the Orders by importing chassis with Chinese Origin subassemblies and subassembly components into the United States as a product of Vietnam only, without disclosing China as the COO of the subassemblies and subassembly components, and without identifying the chassis as having Chinese Origin components, which should be entered as Type 03 entries, subject to the Orders. CIMC’s allegations largely comport with CBP data, and objective observations by CBP officials who conducted a cargo examination and onsite verification at THACO’s manufacturing facilities. After reviewing evidence collected as part of CF-28 Responses, cargo examination findings, and RFI responses by both importer and manufacturer CBP’s finds that substantial evidence on the record exists that Pitts has engaged in evasion of the Orders.

In particular, the Orders explicitly state that imported chassis having subassemblies of Chinese Origin, such as axles and landing gear legs, are regarded as subject merchandise. These Chinese Origin subassemblies were observed by CBP during a cargo inspection, mentioned in Pitts’ extensive CF-28 responses, mentioned in THACO’s extensive RFI responses, and observed by CBP’s on-site verification team.

The Orders go on to detail:

Subject merchandise also includes chassis, whether finished or unfinished, entered with or for further assembly with components such as, but not limited to: Hub and drum assemblies, brake assemblies (either drum or disc), *axles*, brake chambers, suspensions

⁴⁹ *Id.*, at 12-13.

⁵⁰ *See* 19 CFR 165.1; *see also* 19 USC 1517(a)(5)(A).

and suspension components, wheel end components, *landing gear legs*, spoke or disc wheels, tires, brake control systems, electrical harnesses, and lighting systems.⁵¹

Again, much of the subject merchandise referenced immediately above was included in what Pitts referenced in its CF-28 responses as “completed chassis,” which it imported as a product of Vietnam only, including axles and landing gear. The scope language from the Orders further details:

Processing of finished and unfinished chassis and components such as trimming, cutting, grinding, notching, punching, drilling, painting, coating, staining, finishing, assembly, or any other processing either in the country of manufacture of the in-scope product or in a third country does not remove the product from the scope. Inclusion of other components not identified as comprising the finished or unfinished chassis does not remove the product from the scope.⁵²

In the instant case, CBP observed that chassis imported by Pitts contain many subassemblies and/or subassembly components of Chinese Origin, including subassembly components that were specifically detailed in CIMC’s allegation, such as axles and landing gear legs. CBP also observed covered subassembly components that were not referenced by the allegor, including [**subassembly components**], among others. Given this fact, and considering the above-referenced scope language, the chassis imported by Pitts are “covered merchandise” subject to the Orders because they include Chinese Origin chassis subassembly components “entered with” a finished or unfinished chassis. By falsely declaring the imported merchandise as outside the scope of the Orders, Pitts avoided paying applicable AD/CVD cash deposits and duties. Consequently, substantial evidence on the record supports an affirmative determination that Pitts has entered covered merchandise into the United States through evasion.

Because they contain Chinese Origin chassis subassembly components that are “entered with” a finished or unfinished chassis, Pitts’ imported chassis are considered “covered merchandise” and are subject to the Orders. Pitts avoided paying the necessary cash deposits and duties, erroneously claiming that the imported goods were not covered by the Orders. Therefore, a conclusion of affirmative evasion is supported in this case by substantial evidence on the record.

Written Arguments

On April 12, 2023, TRLED received written arguments, which were timely submitted by Pitts and CIMC. The parties submitted responses to written arguments on April 27, 2023.

1. Verification Report

Pitts:

⁵¹ See *AD Order*, 86 Fed. Reg. at 36,094-95 and *CVD Order*, 86 Fed. Reg. at 24,845. (Emphasis added).

⁵² *Id.* (Emphasis Added).

- Factual errors in the verification report on rolled steel coils and steel plate should be corrected in making the final determination.⁵³
- In the verification report, CBP stated in error that THACO representatives indicated that of the seven primary Vietnamese suppliers of steel coils only [#] has manufacturing capacity (*i.e.*, operates blast furnace). The remaining suppliers are trading companies that source some of the steel from China. The supporting documentation reviewed at verification rather establish that THACO purchased the steel directly from [amount and company] and sourced the remaining steel from trading companies in Vietnam. The trading companies sourced the steel from [amount and company name] and producers in China, and also some from other countries. Based on this record information, *i.e.*, Vietnamese steel mill and steel quantity, the actual percentage of steel purchased in Vietnam is verified. CBP, therefore, must correct this misstatement in its final determination.⁵⁴

Alleger:

- The source of the steel is not relevant for purposes of determining whether Pitts imported covered merchandise and consequently evaded AD/CVD duties. The record confirms that Pitts imported chassis with Chinese Origin subassembly components, and, thus, imported covered merchandise into the United States. Moreover, even without any Chinese Origin steel, the percentage of the chassis subassembly components made in China is “59 to 69 percent by value.”⁵⁵

CBP Position

CBP disagrees with Pitts’ claim of factual errors in the verification report. Pitts claims that the *actual* percentage of steel purchased in Vietnam was verified. Though the origin of the steel has no bearing on the outcome of this determination, Pitts’ assertion misstates information contained in the verification report. The mill certificates were used to support CBP’s explanation that the COO calculations supplied by THACO were in fact overstated. THACO calculated that approximately [#] percent of the finished chassis were made from Vietnamese Origin steel, but the steel mill certificates showed that a portion of the steel was actually of Chinese Origin. CBP made no claim to have calculated or verified the actual percentage of Chinese or Vietnamese steel used; rather, CBP observed that most of the steel claimed to be of Vietnamese Origin was, in fact, not manufactured in Vietnam.

As stated above, the purpose of verification is for CBP to validate the information and data submitted by parties, and verification allows the parties being verified to fully explain their record responses. In this instance, CBP was on-site to validate information in THACO’s RFI

⁵³ See Pitts’ Written Arguments, at 13-16.

⁵⁴ *Id.*

⁵⁵ See Alleger’s Response to Pitts’ Written Arguments, at 13.

responses to aid CBP in its determination. CBP's verification report accurately conveys what was observed, verified, and happened at verification.

2. CIMC's Allegation & CBP's Initiation of Investigation

Pitts:

- CBP violated 19 U.S.C. § 1517(b)(1) when it initiated an investigation of Pitts, because the information in CIMC's allegation did not "reasonably suggest" that evasion had occurred. CBP's determination that the information in the allegation "suggests" evasion must be "reasonable."⁵⁶

Alleger:

- Contrary to Pitts' argument, CIE's allegation is based on the plain language of the scope, which includes Chinese Origin "components entered with . . . a finished . . . chassis."⁵⁷

CBP Position

CIMC submitted documentation reasonably available to it, including company specific shipment data sourced from [[source](#)], images of inspected chassis, business entity information, company profiles, media links, and sworn declarations from affiants with industry specific knowledge (*i.e.*, production practices, affiliations, and a firsthand account of a chassis inspection).

As explained in Section I above, CBP found the allegations and supporting evidence reasonably suggested that Pitts evaded the Orders by importing chassis with Chinese Origin subassembly components into the United States as a product of Vietnam only, without disclosing China as the COO of the components.⁵⁸

3. Covered Merchandise

Pitts:

- China Origin axles and landing gear legs are components and not in-scope.⁵⁹
- Axles and landing gear legs are non-scope components and not covered subassemblies.⁶⁰

⁵⁶ See Pitts' Written Arguments, at 16-19.

⁵⁷ See Alleger's Response to Pitts' Written Arguments, at 13, citing *AD Order* at 36094; *CVD Order* at 24845.

⁵⁸ While TRLED agreed with CIMC that the evidence presented reasonably suggests evasion, TRLED disagrees with CIMC that only the components of Chinese Origin should have been classified as Type 03 entries. As detailed throughout this notice, it is TRLED's position that the entire chassis should have been classified as Type 03.

⁵⁹ See Pitts' Written Arguments, at 18-24.

⁶⁰ *Id.*, at 24-27.

- CIMC’s allegation against Pitts is based entirely on a clear misinterpretation of the scope of the Orders and a disregard of the fundamental legal basis for AD/CVD orders.⁶¹
- CIMC’s allegation is that the scope covers Chinese Origin chassis components that are entered with or for further assembly with a non-Chinese Origin chassis or non-Chinese Origin subassembly. The plain scope language provides that individual Chinese components alone are not in-scope. The scope covers Chinese components only when entered with or for further assembly with a finished or unfinished subject (*i.e.*, Chinese Origin) chassis.⁶²

Alleger:

- Pitts argues that “{a}ll scope language is constrained by this prerequisite” and that “the China country-of-origin applies to the Orders as a whole” Pitts’ interpretation, however, isolates portions of the scope while ignoring the rest. Although the AD/CVD Orders cover “certain chassis and subassemblies thereof from China{,}” the very next sentence directs the reader to the appendix “{f} or a ***complete description*** of the scope of” the Orders. The appendix, in turn, states that “components entered with or for further assembly with ***a*** finished or unfinished chassis are subject merchandise.”⁶³
- Pitts points to Commerce’s scope determination in the original AD/CVD investigations as “information reasonably available to” CIMC that counters its scope interpretation. However, Commerce’s scope determination in the investigations further supports CIMC’s argument that the scope language means what it says.⁶⁴
- Pitts does not dispute the factual basis for CIMC’s allegation (*i.e.*, that Pitts’ imported chassis from Vietnam include Chinese Origin axles and landing gear legs), and CBP’s investigation has uncovered numerous other Chinese Origin components included in Pitts’ imported chassis. Thus, CBP’s decision to initiate this investigation was reasonable and did not violate 19 U.S.C. § 1517(b)(1).⁶⁵

CBP Position

As discussed in Section IV, Chinese Origin chassis components entered with a finished chassis are included in the plain wording of the Orders, and the record shows that Pitts imported finished chassis with Chinese Origin components. Pitts therefore imported goods that were covered by the Orders.

4. Substantial Transformation

⁶¹ See Pitts’ Written Arguments, at 16-18.

⁶² *Id.*

⁶³ See Alleger’s Response to Pitts’ Written Arguments, at 6.

⁶⁴ *Id.*, at 13.

⁶⁵ *Id.*

Pitts:

- The Chinese Origin axle and landing gear leg components fall outside the plain language of the scope. As such, further scope analysis is not necessary.⁶⁶

Alleger:

- CIMC agrees with Pitts that a “substantial transformation” analysis to determine the COO of the imported merchandise is not required – but only because the scope of the Orders plainly includes Pitts’ imported chassis with Chinese Origin chassis components.⁶⁷

CBP Position

CBP determines that a substantial transformation analysis is unnecessary because the scope of the Orders applicable to the covered merchandise includes subassembly components manufactured in China, whether finished or unfinished, regardless of minor processing in a third country.

5. Entries Made Through Materially False Statements or Omissions

Pitts:

- The courts have considered mere entry of what may be considered covered merchandise by CBP is not sufficient support for an affirmative evasion determination.⁶⁸
- Commerce’s existing scope determinations provided that individual axles and landing gear legs are not in-scope covered merchandise.⁶⁹
- Processing of Chinese Origin axle and landing gear legs into complete chassis in Vietnam does not subject the components to the Orders or make the chassis subject to the Orders at issue here.⁷⁰

Alleger

- Pitts knew or should have known that the finished chassis it purchased from THACO included numerous Chinese Origin components. As established above, the plain

⁶⁶ See Pitts’ Written Arguments, at 28.

⁶⁷ See Alleger’s Response to Pitts’ Written Arguments, at 2.

⁶⁸ See Pitts’ Written Arguments, at 37-39.

⁶⁹ *Id.*

⁷⁰ *Id.*

language of the scope includes Chinese Origin chassis components that are entered with a finished chassis.⁷¹

CBP Position

Under 19 U.S.C. § 1517(c)(1)(A), to reach a final determination as to evasion, CBP must “make a determination, based on substantial evidence, with respect to whether such covered merchandise entered into the customs territory of the United States through evasion.” Evasion is defined as “the entry of covered merchandise into the customs territory of the United States for consumption by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material and that results in any cash deposit or other security of any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise.”⁷²

As discussed throughout this determination, the record of this investigation indicates there is substantial evidence that covered merchandise was entered by Pitts into the United States through evasion. The Orders speak for themselves in stating:

Subject merchandise also **includes chassis**, whether finished or unfinished, entered with or for further assembly **with components such as**, but not limited to: Hub and drum assemblies, brake assemblies (either drum or disc), **axles**, brake chambers, suspensions and suspension components, wheel end components, **landing gear legs**, spoke or disc wheels, tires, brake control systems, electrical harnesses, and lighting systems.⁷³

Moreover, the finished chassis entered by Pitts consisted of Chinese Origin components, rendering the finished chassis within the scope of the Orders, and by failing to declare the merchandise as type 03 entries as required by law, Pitts made materially false statements resulting in the avoidance of applicable AD/CVD cash deposits or other security. Unlike what CIMC argues, knowledge or culpability is not required for finding evasion under EAPA.

6. Due Process

Pitts:

- The EAPA proceedings herein present due process and equity considerations that must be addressed by CBP in making its final determination. CBP did not even inform Pitts that it had initiated an EAPA investigation until its imposition of interim measures, therefore depriving Pitts of its right to timely file rebuttal factual information. The determination as to whether an agency has given respondents the opportunity to be heard “at a

⁷¹ See CIE’s Written Arguments, at 7.

⁷² See 19 CFR 165.1; *see also* 19 USC 1517(a)(5)(A).

⁷³ See *AD Order*, 86 Fed. Reg. at 36,094-95 and *CVD Order*, 86 Fed. Reg. at 24,845. (Emphasis added).

meaningful time and in a meaningful manner” must be decided on a case-by-case basis. Here, the meaningful time occurred prior to the imposition of interim measures.⁷⁴

- Interested parties should be provided with the opportunity to make an oral presentation to CBP during the investigation. Pitts requested a meeting with CBP upon issuance of the CBP interim measures, which CBP declined to hold.⁷⁵
- The public summaries of record documents hinder defense against allegations under EAPA.⁷⁶

CBP Position

In accordance with 19 C.F.R. 165.15(d)(1), CBP aptly notified all parties of its decision to initiate an investigation no later than 95 calendar days after the decision had been made. CBP followed its regulatory and statutory procedures during the investigation. Pitts had ample opportunities to participate in the investigation and place evidence on the administrative record under section 165.23, in addition to having opportunity to submit written arguments to CBP under 165.26. In addition, Pitts has an opportunity to seek a *de novo* review of this determination under 19 U.S.C. § 1517(f).⁷⁷

On November 9, 2022, eleven days after interested parties were notified about CBP’s initiation of the investigation, Pitts submitted correspondence via EAPA’s Case Management System (“CMS”) that included arguments against the enactment of interim measures, a request for the revocation of interim measures, and a request for a meeting, “either in-person or by teleconference, to discuss the scope of the AD/CVD orders at issue”, and suggested that CBP should make a covered merchandise referral to the U.S. Department of Commerce.⁷⁸

In a response dated November 28, 2022, CBP provided Pitts with status of the investigation and explained that in accordance with 19 U.S.C. § 1517(e)(3), the Agency retains discretion to determine the appropriate manner for which to best protect the revenue of the United States.⁷⁹ The EAPA statute or regulations do not require CBP to allow parties to submit oral representations. CBP at its discretion determined not to convene a meeting regarding the subject of scope interpretation with Pitts. Instead, CBP responded that should a scope referral become necessary at any point during the investigation, TRLED will promptly notify the parties to the investigation of the date of the referral.⁸⁰

⁷⁴ See Pitts’ Written Arguments, at 39.

⁷⁵ *Id.*, at 41.

⁷⁶ *Id.*, at 42.

⁷⁷ See *Aspects Furniture International, Inc. v. United States*, 607 F.Supp.3d 1246, 1273 (finding that importer was not deprived of due process by virtue of CBP imposing the interim measures, because the importer failed to identify how CBP deviated from its regulations, and CBP provided the importer with opportunities to place evidence on the record and submit written arguments).

⁷⁸ See Pitts’ letter to CBP (November 9, 2022).

⁷⁹ See CBP response to Pitts (November 28, 2022).

⁸⁰ See 19 C.F.R. § 165.16(c).

As for public summaries, the U.S. Court of International Trade (“CIT”) has opined on the rights of parties in EAPA investigations to have access to business confidential information. The CIT has found that the lack of access to confidential information is not a due process issue.⁸¹ In *Royal Brush Mfg., Inc. v. United States*, the CIT found that a party is only entitled to public summaries of the business confidential information, pursuant to 19 CFR 165.4(a)(1) and (e). The parties do not otherwise have a right to review business confidential information, as the statute and regulations do not provide for such. CBP has provided Pitts’ counsel with the requisite public version of documents that contained public summaries of redacted business confidential information. Therefore, CBP has ensured that due process had been followed during the investigation in accordance with 19 CFR 165.4.

7. Determination

Pitts:

- Pitts submits that the allegor has not met its burden throughout the proceeding to establish the basis for this EAPA investigation based on substantial evidence, and record evidence does not otherwise support that Pitts evaded the Orders on chassis and subassemblies from China by importing chassis produced in Vietnam with non-covered Chinese Origin axle and landing gear leg components.

Alleger:

- Pitts’ imported chassis are “covered merchandise” subject to the Orders because they include Chinese Origin chassis components “entered with” a finished or unfinished chassis. By falsely declaring the imported merchandise as outside the scope of the Orders, Pitts avoided paying applicable AD/CVD cash deposits and duties.

CBP Position

Based on the record evidence, which is analyzed in detail above, CBP determines there is substantial evidence that Pitts entered covered merchandise for consumption into the customs territory of the United States through evasion. Specifically, Pitts knowingly imported finished chassis comprised with numerous Chinese Origin subassemblies and subassembly components into the United States as a product of Vietnam only, without disclosing China as the COO of the subassembly components, and without identifying the chassis as having Chinese Origin subassembly components, subject to the Orders. Furthermore, Pitts declared the covered merchandise as type 01 entries and did not pay the applicable AD/CVD cash deposits.

⁸¹ See *Royal Brush Mfg., Inc. v. United States*, 545 F. Supp. 3d 1357 at 1369 (Ct. Int’l Trade Oct. 29, 2021) (*Royal Brush*) (rejecting a similar claim and holding that CBP’s withholding of confidential information does not violate a respondent’s due process rights where “CBP has complied with 19 CFR 165.4 by providing necessary public summaries of the confidential information....”).

V. Determination as to Evasion

The evidence on the record establishes that there is substantial evidence that Chinese Origin chassis were imported into the United States by evasion, specifically by failing to declare China as the COO. Furthermore, evidence on the record indicates that Pitts entered the Chinese Origin chassis into the United States as type 01 entries and evaded the payment of AD/CVD duties on certain chassis and subassemblies from, including by misrepresenting the chassis as Vietnamese in origin only.⁸² The chassis that Pitts entered from THACO during the period of investigation should have been subject to the AD/CVD rates on chassis and subassemblies from China.

VI. Actions Taken Pursuant to the Affirmative Determination as to Evasion

In consideration of CBP's determination that substantial evidence demonstrates that the importer entered covered merchandise into the customs territory of the United States through evasion, and pursuant to 19 U.S.C. § 1517(d) and 19 CFR 165.28, CBP will suspend or continue to suspend the entries covered by this investigation, until instructed to liquidate. For those entries previously extended in accordance with Interim Measures, CBP will rate adjust and change those entries to type 03 and continue suspension until instructed to liquidate these entries. CBP will continue to evaluate the importer's continuous bonds in accordance with CBP's policies. None of the above actions precludes CBP or other agencies from pursuing additional enforcement actions or penalties.

Sincerely,



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

⁸² Entry type "01" is the code that CBP requires importers use to designate a standard consumption entry that is not subject to AD/CVD duties. See <https://www.cbp.gov/trade/automated/ace-transaction-details>.