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J. David Park, Esq.
Henry D. Almond, Esq.
Archana Rao P. Vasa, Esq.
On Behalf of Zinus, Inc.
Arnold & Porter Kaye Scholer LLP
601 Massachusetts Ave., NW
Washington, DC 20001

Emily Lawson, Esq.
Kelly A. Slater
On Behalf of CVB, Inc., dba Malouf
Appleton Luff
1700 Seventh Ave., Suite 2100
Seattle, WA 98101

Re: Enforce and Protect Act (“EAPA”) Case Number 7718; *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture From the People’s Republic of China*, 70 Fed. Reg. 329 (Dep’t of Commerce Jan. 4, 2005); Zinus, Inc.; 19 U.S.C. § 1517

Dear Counsel:

This is in response to the request for *de novo* administrative review of a determination of evasion, dated July 21, 2023, made by the Trade Remedy Law Enforcement Directorate (“TRLED”), Office of Trade (“OT”), U.S. Customs and Border Protection (“CBP”), pursuant to 19 U.S.C. § 1517(c), in Enforce and Protect Act (“EAPA”) Case Number 7718 (“July 21 Determination”).¹ The request for review, dated September 1, 2023, and re-submitted on September 6, 2023, was submitted to CBP, OT, Regulations and Rulings (“RR”) by Arnold & Porter Kaye Scholer LLP on behalf of Zinus, Inc. (“Zinus” or “Importer”), pursuant to 19 U.S.C. § 1517(f) and 19 CFR § 165.41(a). CVB, Inc., dba Malouf® (“CVB” or “Alleger”) filed a response to the request for review on September 19, 2023.

¹ See Notice of Determination as to Evasion, EAPA Case 7718 (July 21, 2023) (Public Version), *available at* <https://www.cbp.gov/document/publications/eapa-case-7718-zinus-inc-notice-determination-evasion-july-21-2023> (last accessed Nov. 1, 2023).

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I. Background

Based on our review of the administrative record, we agree with the recitation of facts as set forth by the July 21 Determination.² As such, we will not repeat the entire factual history herein.

On March 23, 2022, CVB filed an EAPA allegation against Zinus and submitted a supplement to the allegation on March 26, 2022. CBP acknowledged receipt of the allegation on June 27, 2022.³ On July 19, 2022, TRLED initiated a formal investigation under Title IV, section 421 of the Trade Facilitation and Trade Enforcement Act of 2015 (“TFTEA”), in response to the allegation of evasion.

CVB alleged that Zinus was importing wooden bedroom furniture (“WBF”), specifically, metal and wood platform beds consisting of wooden headboards and footboards and metal frames, from the People’s Republic of China (“China”) into the United States by means of material false statements to evade the payment of antidumping (“AD”) duties on WBF from China, as required under Case No. A-570-890.⁴

The allegation of evasion pertained to the AD order issued by the U.S. Department of Commerce (“Commerce”) on imports of WBF from China (“AD Order”).⁵ Commerce defined the scope of the relevant AD Order as follows:

The product covered by the order is wooden bedroom furniture. Wooden bedroom furniture is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise is made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, oriented strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with or without non-wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished.

² To the extent that two aspects of the July 21 Determination are considered to be part of the recitation of facts, we wish to clarify our interpretation of those two aspects. First, as noted in footnote 54, *infra*, we interpret statements to the effect that Zinus “admitted” that it imported subject merchandise, as an admission by Zinus that it imported platform beds made of wood and metal, which products CBP considers to be subject merchandise. Second, we interpret any statements to the effect that classification under a specific HTSUS code does or does not bring a product within the scope of the antidumping order here at issue, as indicating that scope coverage is determined by the product description, and not solely by the HTSUS code. For example, we interpret the statement: “Metal furniture classified under HTS 9403.20.0050 is not subject to the scope of the *WBF Order*” (July 21 Determination at 7), to mean that metal furniture classified under this HTS code would not be subject to the antidumping order here at issue **because it is metal**, and not simply because it falls under this HTS code. As shown below, the order here at issue is very clear that the HTSUS classification is provided for guidance, but is not dispositive.

³ See TRLED Receipt Checklist (June 27, 2022) (Public Document).

⁴ See Notice of Initiation of Investigation (Oct. 24, 2022) (Public Version), *available at* <https://www.cbp.gov/document/publications/eapa-case-7718-zinus-inc-notice-initiation-investigation-and-interim-measures> (last accessed Nov. 1, 2023).

⁵ See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture from the People’s Republic of China*, 70 Fed. Reg. 329 (Dep’t of Commerce Jan. 4, 2005) (“*WBF Order*” or “*AD Order*”).

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The subject merchandise includes the following items: (1) wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand-alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; . . .

The scope of the order excludes the following items: “mattresses, mattress supports (including box springs),” “bedroom furniture made primarily of wicker, cane, osier, bamboo or rattan,” “side rails for beds made of metal if sold separately from the headboard and footboard,” and “certain metal parts {.”¹³

Imports of subject merchandise are classified under statistical category 9403.50.9040 of the HTSUS as “wooden *** beds” and under statistical category 9403.50.9080 of the HTSUS as “other *** wooden furniture of a kind used in the bedroom.” In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may also be entered under statistical category 9403.50.9040 of the HTSUS as “parts of wood{.” This investigation covers all wooden bedroom furniture meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

FN 13: Metal furniture parts and unfinished furniture parts made of wood products (as defined above) that are not otherwise specifically named in this scope (i.e., wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds) and that do not possess the essential character of wooden bedroom furniture in an unassembled, incomplete, or unfinished form. Such parts are usually classified in subheading 9403.90.7000, HTSUS.⁶

On October 24, 2022, in accordance with 19 C.F.R. § 165.24, CBP issued a Notice of Initiation of the EAPA investigation to all parties to the investigation, stating that the investigation had begun on June 27, 2022, and notifying the parties of CBP’s decision to take interim measures based upon reasonable suspicion that the Importer had entered covered merchandise into the customs territory of the United States through evasion.⁷ The entries subject to the investigation are all entries of covered merchandise entered from June 27, 2021, through the pendency of the investigation (herein, referred to as the “period of investigation” or “POI”).⁸

On July 21, 2023, TRLED found that there was substantial evidence that the platform beds imported by Zinus were of Chinese origin and described by the scope of the AD Order. TRLED

⁶ *Id.* We note that Commerce published a continuation of the AD Order on September 14, 2022, which includes mention of additional subheadings under the HTSUS. See *Wooden Bedroom Furniture From the People’s Republic of China: Continuation of Antidumping Duty Order*, 87 Fed. Reg. 56,397 (Dep’t of Commerce Sept. 14, 2022).

⁷ See Notice of Initiation (Public Version).

⁸ See 19 C.F.R. § 165.2 (“In addition, at its discretion, CBP may investigate other entries of such covered merchandise.”).

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determined that Zinus entered the WBF into the customs territory of the United States on type “01” consumption entries.⁹ As a result, no AD cash deposits were applied to the merchandise.¹⁰

On September 1, 2023, Zinus timely filed a Request for Administrative Review. On September 6, 2023, RR sent an email to all parties to the investigation, notifying them of the commencement of the administrative review and the assignment of RR case number H334282. On September 19, 2023, CVB timely submitted a response to Zinus’s Request for Administrative Review, presenting its counterarguments.

II. Law & Analysis

Section 517 of the Tariff Act of 1930 (“the Tariff Act”), as amended (19 U.S.C. § 1517), provides, “with respect to covered merchandise, the Commissioner shall make a determination, based on substantial evidence, with respect to whether such covered merchandise was entered into the customs territory of the United States through evasion.”¹¹ The term evasion is defined as:

Except as provided in subparagraph (B), the term “evasion” refers to entering covered merchandise into the customs territory of the United States by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material, and that results in any 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.¹²

Examples of evasion include, but are not limited to, misrepresentation of the merchandise’s true country of origin (*e.g.*, through false country of origin markings on the product itself or false sales), false or incorrect shipping and entry documentation, or misreporting of the merchandise’s physical characteristics.¹³

Additionally, covered merchandise is defined as “merchandise that is subject to a CVD order issued under section 706, Tariff Act of 1930, as amended (19 U.S.C. § 1671e), and/or an AD order issued under section 736, Tariff Act of 1930, as amended (19 U.S.C. § 1673e).”¹⁴ While “substantial evidence” is not defined by statute, the “substantial evidence” standard has been reviewed by the courts in relation to determinations by other agencies. “Substantial evidence requires more than a mere scintilla but is satisfied by something less than the weight of the evidence.”¹⁵

Therefore, CBP must determine whether a party has entered merchandise that is subject to an AD or CVD order into the United States for consumption by means of any document or electronically transmitted data or information, written or oral statement, or act, that is material and false, or any omission that is material, that resulted in the reduction or avoidance of applicable cash

⁹ Imports that are covered by AD orders are required to be entered on type “03” entries; entries declared as type “01” are not subject to payment of AD duties. *See* CBP Entry Summary Form 7501 and Instructions and the ACE Entry Summary Business Rules and Procedure Document, *available at* <https://www.cbp.gov/trade/programs-administration/entry-summary/cbp-form-7501> (last accessed Oct. 31, 2023).

¹⁰ *See* July 21 Determination (Public Version).

¹¹ 19 U.S.C. § 1517(c)(1).

¹² 19 U.S.C. § 1517(a)(5); *see also* 19 C.F.R. § 165.1.

¹³ *See Investigation of Claims of Evasion of Antidumping and Countervailing Duties, Interim Regulations*, 81 Fed. Reg. 56,477, 56,478 (Aug. 22, 2016).

¹⁴ 19 C.F.R. § 165.1.

¹⁵ *See Altix, Inc. v. United States*, 370 F.3d 1108, 1116 (Fed. Cir. 2004) (internal citations and quotation marks omitted).

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deposits or antidumping or countervailing duties being collected on such merchandise. RR's determination as to evasion must be supported by substantial evidence.

A. Zinus's Arguments

Zinus requests that we reverse the July 21 Determination of evasion, arguing that the platform beds that were entered during the POI are not described by the scope of the AD Order and that TRLED's investigation and determination of evasion lacked adequate procedural due process and sufficient reasoning.

First, Zinus argues that its imported platform beds are not described by the scope of the AD Order because the AD Order's explicit exclusions cover the majority of the beds' components. Namely, the AD Order excludes "mattresses, mattress supports (including box springs)" and "certain metal parts" which Zinus claims to be present in the platform beds.¹⁶ Zinus also cites to a previous Commerce final scope ruling regarding the AD Order, involving *University Loft*, which decided that slat beds (*i.e.*, metal frames for platform beds with wooden slats that support the mattress) do not fall within the AD Order's scope, while metal-framed, laminated particleboard core headboards do.¹⁷ The metal framed headboards with particleboard cores were found to be "substantially made of wood," as the core is integral to headboard's composition.¹⁸

Next, Zinus cites to another Commerce final scope ruling on the AD Order, involving *Acme Furniture*, which decided that trundle beds with upholstered wooden headboards and footboards, solid wood side rails, and a solid wood trundle frame are within the scope of the AD Order.¹⁹ The ruling specifically concluded that "the extensive use of wood products in all of the essential structural components of the bed; namely, the headboard, the footboard, the side rails; and the trundle unit; demonstrates that this bed is extensively made of wood products."²⁰ Without an extensive use of wood in all of the essential structural components of the bed, Zinus argues that its platform beds could not fall within the AD Order's scope.²¹ Zinus also argues that the wooden headboards are merely "decorative" in nature, not structurally required and, therefore, outside of the AD Order's scope.²² Zinus has separately sought a scope ruling from Commerce and correspondingly urges CBP to issue a covered merchandise referral to Commerce.²³

As Zinus takes the position that the AD Order's scope does not cover its imported platform beds, Zinus next claims that its choice of classification and entry type was not false, nor did Zinus omit any accurate information concerning its imported beds. Also, Zinus vehemently contests TRLED's characterization of Zinus's provision of product information in requests for information

¹⁶ See Zinus Review Request (Public Version), at 14.

¹⁷ See Zinus CF-28 Response (Sept. 28, 2022) (Business Confidential Version), at Ex. GEN-2 (providing Memorandum from Brandon Petelin, International Trade Analyst, AD/CVD Operations, Office 4, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duties, *Wooden Bedroom Furniture from the People's Republic of China: Scope Ruling on University Loft Company's Request* (Dep't of Commerce Dec. 13, 2011) (Public Document) ("*University Loft*"), at 11).

¹⁸ *Id.* at 12, 14.

¹⁹ See generally Zinus Review Request (Public Version) (citing *Acme Furniture Indus., Inc. v. United States*, 825 F. Supp. 2d 1353 (Ct. Int'l Trade 2012) (analyzing *Wooden Bedroom Furniture from the People's Republic of China: Scope Ruling on Acme Furniture Industry, Inc.'s Upholstered Daybeds* (Dep't of Commerce Apr. 15, 2011) ("*Acme Furniture*")).

²⁰ *Acme Furniture Indus., Inc.*, 825 F. Supp. 2d at 1355 (internal quotation marks and citation omitted).

²¹ Zinus Review Request (Public Version), at 19–20.

²² *Id.* at 16.

²³ See *id.* at 1–2.

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(“RFI”) or other filings²⁴ as admissions of importations of in-scope merchandise.²⁵ Instead, throughout the RFI responses provided to TRLED, Zinus contextualized answers to queries on “covered merchandise” with the caveat that its compliance with the requests was only in line with what CBP – not Zinus – considers as in-scope.²⁶ Zinus further claims to have argued consistently that its platform beds fall outside the scope of the AD Order.²⁷ Zinus last contests TRLED’s conclusion that Zinus “misclassified” its platform beds as metal furniture under HTSUS 9403.20.0050.²⁸

Finally, Zinus assails both the procedural due process by which TRLED conducted its investigation, as well as the reasoning behind TRLED’s determination. With respect to the former, Zinus cites *Royal Brush Manufacturing, Inc. v. United States*, 75 F.4th 1250 (Fed. Cir. 2023), in which Zinus asserts the U.S. Court of Appeals for the Federal Circuit (“CAFC”) required disclosure of the government’s evidence to individuals where the government’s reasonable reliance on the information in that evidence seriously injures an individual, so that the individual has a chance to establish that evidence’s veracity.²⁹ Zinus raises concerns both over the lack of transparency in TRLED’s decision to initiate an investigation, as well as the timing of that decision occurring before Zinus had an opportunity to rebut the allegation driving TRLED’s conclusions.³⁰

As to the lack of transparency, Zinus highlights the redaction in the public version of the notice of the investigation of the shipment numbers of the cargo exams and images of cargo examined on August 4, 2022 and September 28, 2022.³¹ In Zinus’s view, even in instances where TRLED cited Zinus’s own confidential information, the opaque nature of TRLED’s reasoning prevented Zinus from conducting a meaningful analysis.³² Zinus makes analogous arguments as to TRLED’s determination, which cited the same cargo exam results previously redacted, redacted Zinus’s supplier name, and enclosed in brackets Zinus’s potential duty liability.³³ As to the reasoning TRLED did supply in its determination, Zinus raises the failure to define what the AD Order scope actually is, and how Zinus’s products – complete platform beds – fall into that verbiage.³⁴

As such, Zinus requests that RR reverse the July 21 Determination.

B. CVB’s Arguments

CVB argues that the plain language of the Order covers Zinus’s wood and metal platform beds that include wooden headboards and footboards, and TRLED’s reliance on that language as the basis of the evasion determination was appropriate. Further, CVB disputes Zinus’s claims that the wood and metal platform beds are not covered merchandise and the need for TRLED to make a scope referral to Commerce. Finally, CVB believes that Zinus’s classification of the wood and metal

²⁴ See July 21 Determination (Public Version), at 5 n.35; see also Zinus Request for Reconsideration of Initiation and Imposition of Interim Measures (Public Version) (Nov. 7, 2022), at 4 (“Zinus Request for Reconsideration”).

²⁵ See Zinus Review Request (Public Version), at 12–13, 20–21.

²⁶ See Zinus U.S. Importer RFI Response (Public Version) (Jan. 30, 2023), at 22–23 (“Zinus RFI Response”).

²⁷ See Zinus Review Request (Public Version) at 21.

²⁸ *Id.* at 21–22.

²⁹ See *Royal Brush Mfg., Inc.*, 75 F.4th at 1257 (citing *Greene v. McElroy*, 360 U.S. 474, 496 (1959)).

³⁰ See Zinus Review Request (Public Version), at 6–7.

³¹ See *id.* at 6.

³² See *id.* at 7.

³³ See *id.* at 9–10.

³⁴ See *id.* at 12.

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platform beds and subsequent entry of that merchandise on incorrect entry types were both material and false statements.

First, CVB supports the July 21 Determination, because the AD Order’s scope covers wooden beds and wooden headboards and footboards with metal (non-wooden) components. As the headboard and footboard components of the wood and metal platform beds are wooden headboards and footboards, they are covered by the AD Order.³⁵ As such, there was no need for TRLED to define the scope nor would there be a need for CBP to issue a referral to Commerce for a covered merchandise determination, as the plain language of the AD Order’s scope section was already sufficiently clear.

CVB then disposes of Zinus’s argument that the wooden headboards and footboards are insignificant compared to the metal frames, after the wooden slats are excluded, by noting that the scope language explicitly includes articles with non-wood components, such as metal.³⁶ As such, CVB characterizes Zinus’s statement that it “did import a limited number of SKUs of metal and wood platform beds” as an admission.³⁷ CVB cites to two Commerce scope rulings on the AD Order, related to *Sunrise Medical Inc.* and *Medline Industries*, which both concerned wooden headboards and footboards imported for addition to metal-framed beds used in the health care industry.³⁸ In those decisions, the imported wooden headboards and footboards were ruled as within the AD Order’s scope. As such, CVB argues that Commerce has consistently ruled that wooden headboards and footboards imported as components of metal beds are within the AD Order’s scope.³⁹ CVB also addresses Zinus’s claim that *Acme Furniture* establishes that beds within the scope must extensively use wood products in all of the essential structural components of the bed. Specifically, CVB argues that “structural” in *Acme Furniture* was merely descriptive of the product, not necessarily *sine qua non* with respect to the scope criteria.⁴⁰

As CVB concludes that the platform beds were within the AD Order’s scope, CVB accordingly rejects Zinus’s reliance on *Diamond Tools Technology LCC v. United States*, 609 F. Supp. 3d 1378 (Ct. Int’l Trade 2022).⁴¹ To that end, CVB argues that *Diamond Tools* actually undercuts Zinus’s arguments and supports TRLED’s conclusions.⁴² Specifically, CVB argues that the court’s reliance on Commerce’s “clear directive” in *Diamond Tools* — which cut against CBP’s finding of substantial evidence for a material false statement or omission — actually supports TRLED’s finding of substantial evidence for a material false statement or omission in this matter.⁴³ To that point, CVB argues that if scope clarity governs Commerce’s enforcement parameters, then the AD Order’s clear scope language should have apprised Zinus both of how to classify and declare its merchandise.

³⁵ See CVB’s Response (Public Document), at 2.

³⁶ See *id.*

³⁷ *Id.* at 5–6; see also Zinus Request for Reconsideration (Public Version), at 4.

³⁸ See CVB’s Response (Public Document), at 11 (discussing *Wooden Bedroom Furniture from the People’s Republic of China: Sunrise Medical Inc.’s Final Scope Ruling* (Dep’t of Commerce Sept. 29, 2005) (“*Sunrise Medical*”); *Wooden Bedroom Furniture from the People’s Republic of China: Scope Ruling on Medline Industries, Inc.’s Hospital Bed End Panel Components* (Dep’t of Commerce Dec. 21, 2012) (“*Medline Industries*”), *aff’d Medline Indus. v. United States*, 961 F. Supp. 2d 1287 (Ct. Int’l Trade 2014)).

³⁹ See CVB’s Response (Public Document) at 10–11.

⁴⁰ See CVB’s Response (Public Document) at 12.

⁴¹ See Zinus Request for Review (Public Version) at 24, n.70 (citing *Diamond Tools Tech. LLC*, 609 F. Supp. 3d 1378).

⁴² See CVB’s Response (Public Document), at 5, 14–15 (discussing *Diamond Tools Tech. LLC*, 609 F. Supp. 3d at 1388–89).

⁴³ See *Diamond Tools Tech. LLC*, 609 F. Supp. 3d at 1391.

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As to Zinus's arguments on TRLED's procedural due process violations, CVB notes how Zinus's complaint concerns the redaction of information which Zinus itself can access. In CVB's view, even if Zinus did not know the exact reasoning TRLED was applying, Zinus should at least have understood what merchandise TRLED was referencing. Also, given the AD Order scope's clarity, CVB argues that TRLED's reasoning ought to have been reasonably apparent, as well.

As to procedural due process concerns per the *Royal Brush* decision that Zinus raised, CVB points out that the issue being determined in this investigation is a straightforward scope question, and the issue does not concern information that Zinus lacked.⁴⁴ In other words, CBP clearly articulated that CVB's allegation reasonably suggesting evasion was based on the scope and certain platform beds containing wood components, *i.e.*, headboards and/or footboards with metal frames.⁴⁵

As such, CVB concludes that RR must affirm the July 21 Determination.

III. Administrative Review Analysis

Pursuant to 19 U.S.C. § 1517(f)(1) and 19 C.F.R. § 165.45, upon request for administrative review, RR will apply a *de novo* standard of review under the law, based solely upon the facts and circumstances on the administrative record in the proceeding. In making our determination, we reviewed: (1) the administrative record upon which the July 21 Determination was made, as provided to RR by TRLED; and (2) the timely and properly filed request for review and response.

The purpose of this *de novo* review is to analyze the July 21 Determination and the accompanying administrative record to determine whether substantial evidence of evasion exists. As discussed below, there is substantial evidence that the platform beds imported by Zinus are WBF covered by the scope of the AD Order. There is also evidence that the platform beds originate in China. The evidence also shows that the products were entered under type "01", as not subject to an AD or CVD order, and AD deposits or duty payments were not made. Thus, we find substantial evidence of evasion.

The outcome of this administrative review rests on whether the merchandise imported into the United States by Zinus falls within the scope of the AD Order, and thus, constitutes covered merchandise under EAPA. For the reasons outlined below, we find that there is substantial evidence that Zinus imported covered merchandise into the United States, specifically platform beds with wooden headboards and wooden footboards.

⁴⁴ See CVB's Response (Public Document), at 3.

⁴⁵ See July 21 Determination (Public Version), at 2.

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A. There is substantial record evidence that Zinus's metal and wood platform beds are "substantially made of wood" and are covered by the AD Order.

The administrative record contains substantial evidence that Zinus imported metal and wood platform beds comprised of wooden headboards and footboards.⁴⁶

Among the metal and wood platform bed SKUs on the record are those corresponding to the following bed models: "Wesley," "Paul," "Olivia," and "Suzanne."⁴⁷ The "Suzanne" is also known as the "Ironline," and both models have been listed under OLB-IRPBH.⁴⁸ TRLED's research indicated that the "Suzanne" model was sold with a "cherry finished pine wood headboard."⁴⁹ Other SKUs include FBOWNM ("Wesley"), HBPBA ("Paul"), HBPBB ("Olivia"), and OLB-RPPBC ("Therese").⁵⁰

The SKU headboard configurations can include: (1) the "Wesley" model of metal and wood platform bed frame, which incorporates a headboard consisting of a wide flat wooden rectangle framed in metal supports linking to the bed's metal frame (FBOWNM); (2) the "Paul" model of metal and wood platform bedframe, which incorporates a headboard with several wide wooden horizontal planks attached to metal support columns extending into the bed's back frame legs (HBPBA); (3) the "Olivia" model of metal and wood platform bed, which incorporates a headboard with a single wide wooden plank attached to metal support columns extending into the bed's back frame legs (HBPBB); and (4) the "Therese" model of metal and wood platform bed, which incorporates a headboard with several wide wooden planks filling in the hollow aperture created by a metal back frame attached to the bed's metal supports (OLB-RPPBC).⁵¹ The footboards also include (for HBPBB and OLB-RPPBC) wooden plank configurations appearing to fill in about a third of a hollow aperture created by a metal front frame attached to the bed's back metal supports.⁵² The platform bed SKUs in this investigation refer to a variety of wood and metal beds that do not necessarily retain the same model name branding throughout the POI, but each model at least has a wooden headboard, and sometimes a footboard, in a variety of configurations. The wood types include [Material] for FBOWNM, [Material] for HBPBA, [Material] for HBPBB, and

⁴⁶ See generally EAPA Allegation (Mar. 23, 2022) (Public Version); Zinus Request for Reconsideration (Public Version); Zinus RFI Response (Public Version); Zinus RFI Response (Business Confidential Version); Zinus CF-28 Response [Number]2613 (Sept. 28, 2022) (Business Confidential Version).

⁴⁷ July 21 Determination (Public Version), at 6; see also Zinus Request for Reconsideration (Public Version), at 4 & Ex. 1A.

⁴⁸ See July 21 Determination (Public Document) at 6; see also CF-28 Response [Number]2613 (Business Confidential Version), at 5 & Exs. IMP.

⁴⁹ July 21 Determination (Public Version), at 6–7 (citing eBay webpage entitled, "Zinus Suzanne Platform Bed Headboard Metal Wood Slat Support Queen OLBIRPBH14Q" (Oct. 18, 2022)).

⁵⁰ July 21 Determination (Public Version), at 10; see also Zinus Request for Reconsideration (Public Version), at 4 & Ex. 1A.

⁵¹ See EAPA Allegation (Public Version), at Attachs. 9–10; Zinus Request for Reconsideration (Public Version), Exs. 1A, 1B (providing SKU, commercial name, and web site description). See also generally Zinus Request for Reconsideration (Business Confidential Version), at Ex. 2 Excels (Mixed) at BOB Bedframe (providing spec sheets).

⁵² See *id.*

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[Material] for OLB-RPPBC, all of which constitute “solid wood” under the AD Order.⁵³ This comports with Zinus’s admission that its headboards and footboards contained wood.⁵⁴

These products fit within the plain language of the scope of the AD Order, which provides:

made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, *with or without non-wood components or trim such as metal*, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed or finished.

Emphasis added. Moreover, the AD Order is clear that headboards, whether attached to a siderail or not, are subject merchandise covered by the AD Order.

Commerce has defined “substantially made of wood” in *University Loft*, which provides the relevant analysis. In that matter, Commerce raised two queries to aide in determining whether an article falls within the scope, namely: “(1) how extensive is the use of wood products in the composition of the furniture; and (2) are the wood products integral to its composition to the extent that if the wood products were removed, the resulting item is substantially different from the item when the wood products were still part of it?”⁵⁵

Applying *University Loft* to the wood and metal beds at issue here, the headboards and footboards are made of wood, and Zinus’s advertising carried on Amazon.com touts the wooden headboards and footboards, as being made of “stylish solid wood” that is “handsomely polished” or “genuine solid wood with gorgeous natural wood grain”; the “Suzanne” even includes a USB port at the top of its headboard.⁵⁶ Additionally, in a response to a CF-28 request for information directed by CBP to Zinus, Zinus listed the “Suzanne” SKU with wooden headboards and footboards.⁵⁷ Zinus later confirmed in its request for review that its platform beds indeed had those wood features, *i.e.*, wooden headboards and footboards, and metal frames.⁵⁸ Further, in response to CBP’s RFIs, Zinus disclosed the importation from China of SKUs corresponding to platform beds with

⁵³ *Id.* Zinus claims to have switched from using wood to using pressed bamboo in its headboards and footboards, at least as to some models, in [Date]. See Zinus CF-28 Response [Number]2613 (Business Confidential Version), at Ex. GEN-1; see also Zinus Request for Reconsideration (Business Confidential Version), at 2. However, there is no record evidence to support this claim. See July 21 Determination (Public Version), at 11. To the contrary, there is ample descriptive information, provided by Zinus, covering entries and/or sales made in 2022, wherein the products continue to be described as containing wood. See Zinus CF-28 Response [Number]2613 (Business Confidential Version), at 2; Zinus 2613 CF-28 QR FAC-1 (Business Confidential Version), at 100, 102–04, 106, 108, 762, 764–66, 768–69; Zinus U.S. Importer RFI Response (Jan. 30, 2023) (Public Version), at 22–23; Zinus US – SRFI Response (May 5, 2023) (Business Confidential Version), at 15–16 & Exs. S-1(F), S-3. See also generally Zinus Request for Reconsideration (Business Confidential Version), at Ex. 2 Excels (Mixed) at BOB Bedframe (providing spec sheets).

⁵⁴ See Zinus Request for Reconsideration (Public Version), at 4 & Ex.1A. We note that Zinus has objected to the characterizations in the July 21 Determination, to the effect that Zinus “admitted” that it imported covered merchandise; we agree with Zinus that this point should be clarified. Although Zinus has admitted that the headboards and footboards which it imported contained wood, Zinus has not conceded or admitted that such products constitute subject merchandise within the scope of the AD Order. However, we do agree with the conclusion in the July 21 Determination, that the products conceded by Zinus to be made in part of wood, are indeed subject merchandise.

⁵⁵ *University Loft* at 12.

⁵⁶ See EAPA Allegation (Public Version), at 9 & Attach. 8–10.

⁵⁷ July 21 Determination (Public Version), at 6; see also CF-28 Response [Number]2613 (Business Confidential Version), at 2 & Ex. IMP.

⁵⁸ See Zinus Review Request (Public Document), at 2, 14; see also Zinus Request for Reconsideration (Public Version), at 4 & Ex. 1A.

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both wood and metal components.⁵⁹ Also in response to TRLED’s RFI, Zinus specifically admitted that entry number 5482 included SKU HBPBA, which incorporated wooden panels in the headboard, and SKUs HBPBB and RPPBC which incorporated wooden panels in the headboards and footboards.⁶⁰

With respect to the second question posed by Commerce in *University Loft*, the role of these wooden headboards and footboards in the platform beds is integral to the composition of the beds as a whole. If the wooden portions of the headboards and footboards were removed, the bed would be “substantially different from the item when the wood products were still part of it.”⁶¹ For example, a bed without the wooden portion in the headboard does not provide the same support for the user to recline. To illustrate the point, in the “Paul” and “Olivia” models — specified in SKUs (HBPBA) and (HBPBB), respectively — removing the headboard would leave nowhere to place one’s pillow without it falling off of the bed.⁶² As such, the wooden portions of the headboards (and footboards) are integral to the composition of the platform bed and their removal would result in a substantially different item. Accordingly, the platform beds imported by Zinus from China, taken as a whole, are “substantially made of wood products,” meaning that the merchandise is within the scope of the AD Order. Moreover, it is important to keep in mind that the headboards (even if attached to side rails) and the footboards, even if including metal, and regardless of whether assembled, in their own right, are subject merchandise. Reviewing the spec sheets for the four models mentioned above, there is no question that the headboards and footboards would be substantially different without the wood products.⁶³

Zinus has not contested the products’ importation from China, and Zinus’s RFI response and other documents provided in this matter also establish substantial evidence of China as the country of origin.⁶⁴ Therefore, we conclude that there is substantial evidence that the platform beds are covered merchandise.

B. There is substantial record evidence that covered merchandise was entered by means of evasion.

Zinus entered covered merchandise by means of material and false documents or electronically transmitted data or information, written statements, or material omissions that resulted in AD cash deposits not being applied with respect to the merchandise. The merchandise was incorrectly entered on type “01” consumption entries instead of on type “03” AD/CVD entries.⁶⁵

⁵⁹ See July 21 Determination (Public Version), at 8; see also Zinus – Description of SKUs – Ex. 2 Excels, BOB Bedframe (Mixed) (Nov. 7, 2022) (Business Confidential Version), at 3.

⁶⁰ See Zinus U.S. Importer RFI Response (Public Version) (Jan. 30, 2023), at 22–23. See also Zinus US – SRFI Response (May 5, 2023) (Business Confidential Version), at 15–16 & Ex. S-3 (providing information regarding a shipment that was later re-exported (after being detained) on [Date], about [Time] after Zinus’s being advised of TRLED’s investigation and about [Time] after TRLED’s RFI inquiring about that same shipment).

⁶¹ *University Loft* at 12.

⁶² See EAPA Allegation (Public Version), at Attachs. 9–10. See also generally Zinus Request for Reconsideration (Business Confidential Version), at Ex. 2 Excels (Mixed) at BOB Bedframe (providing spec sheets).

⁶³ See *supra* at 9; Zinus Request for Reconsideration (Business Confidential Version), at Ex. 2 Excels (Mixed) at BOB Bedframe (providing spec sheets).

⁶⁴ See Zinus RFI Response (Public Version), at 22.

⁶⁵ See Zinus Review Request (Public Version), at 25–26; Zinus’s CF-28 Response. ([Number]2613) (Sept. 28, 2022) (Business Confidential Version), at Ex. IMP-1.

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These constitute false statements.⁶⁶ The false statements are also material because applicable AD cash deposits were not paid. Zinus also falsely omitted Case No. A-570-890 from the entry summary documentation. The omission of Case No. A-570-890 from the entry summary documentation is material because it interfered with the government's ability to accurately track imports of WBF, to collect the applicable AD duties due, and to determine and assess future AD duties.

Therefore, we conclude that there is substantial evidence that Zinus entered covered merchandise by evasion.

C. Zinus's other arguments and procedural due process claims lack merit.

Zinus's reliance on *Acme Furniture* to argue that the AD Order requires the extensive use of wood in all of the bed's elements is not persuasive.⁶⁷ That level of *sine qua non* finds no basis in *Acme Furniture*, which happened to have such facts met in the subject merchandise, but in no place did that scope ruling require such facts to be present for an article to fall within the AD Order's scope. In *Acme Furniture*, Commerce decided that an upholstered daybed with trundle fell within the AD Order's scope, even though the solid wood portion composed only 34% of the bed (with 66% being upholstered materials not subject to the AD Order).⁶⁸ Commerce reached this determination, because all of the essential structural components of the bed were made of wood: the headboard, footboard, side rails, and trundle unit.⁶⁹ Contrary to Zinus's position, Commerce's characterization of the headboards and footboards as "essential structural components" lends further support to Zinus's platform beds falling within the AD Order scope.⁷⁰ Zinus's reliance on its beds' metal frames and wooden slats does not change this conclusion, because the scope allows the inclusion of non-wood components. Indeed, *Acme Furniture* shows that even 66% of non-wood components does not take a product out of the scope of the AD Order.

Zinus erroneously argues that "the alleged 'misstatement' of entering these {platform beds} as Type 01 cannot reasonably form the basis for an affirmative evasion finding."⁷¹ However, the EAPA statute requires only that there be a material false statement, document or omission, which led to the non-payment or underpayment of antidumping and/or countervailing duties. Indeed, evasion:

{r}efers to entering covered merchandise into the customs territory of the United States by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material, and that results in any cash deposit or other security

⁶⁶ Zinus errs in claiming that it would not be false for entries containing products subject to a zero deposit rate to be made as type "01" — such entries are still subject to the AD Order and therefore using type "01" constitutes a false statement. Even though the deposit rate is zero — the entries remain subject unless and until the AD Order is revoked in whole or as to the particular entity. And because AD duties (as opposed to mere deposits) may eventually be owing, failure to properly report the entry type and AD case number can interfere with CBP's ability to collect the duties.

⁶⁷ See Zinus Review Request (Public Version), at 19–20.

⁶⁸ See *University Loft* at 12 n.56 (discussing *Acme Furniture*).

⁶⁹ See *University Loft* at 12 (discussing *Acme Furniture*).

⁷⁰ *University Loft* at 12 (discussing *Acme Furniture*).

⁷¹ See Zinus Review Request (Public Version), at 26–27.

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or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise.⁷²

“Culpability” does not appear in this definition. Moreover, the U.S. Court of International Trade has recently held that “EAPA read as a whole supports CBP’s strict liability interpretation of the definition of evasion.”⁷³ Thus, EAPA does not require “some level of culpability.”

Zinus also claims to have “acted in a manner consistent with Commerce’s and CBP’s interpretive guidance from prior scope and classification rulings” when it entered the platform beds on type “01” entries, and therefore concludes that, pursuant to *Diamond Tools*, these entries cannot have been false statements.⁷⁴ Zinus bases this argument on its ostensibly “good faith interpretation and understanding of the *WBF Order*.”⁷⁵

Again, Zinus’s assertion lacks merit. *Diamond Tools* involved a very unique set of circumstances that do not apply here. In *Diamond Tools*, the court held that the false statement element of the EAPA statute had not been met as to certain entries where Commerce had changed the scope of an AD order via a circumvention determination and the importer had relied upon Commerce’s prior memorandum that opined on scope coverage of the specific type of merchandise at issue in the EAPA determination.⁷⁶ Here, Zinus is not claiming to have relied on a prior Commerce determination involving the specific types of products at issue in this EAPA investigation. Instead, Zinus, in effect, relies on its own interpretation of Commerce’s prior scope ruling with respect to different types of products. As discussed above, Zinus imported covered merchandise in the form of in-scope WBF from China (*i.e.*, the platform beds). The plain scope language specifically lists wooden headboards and wooden footboards, and Commerce’s subsequent scope ruling describes bedroom furniture that extensively uses its wood components in an integral fashion as subject merchandise under the AD Order. What governs is the unambiguous scope language set forth in Commerce’s AD Order and subsequent scope rulings. Zinus’s scope interpretation comports with neither.

Zinus makes two additional procedural arguments that are without merit. Zinus claims that TRLED improperly initiated this EAPA investigation. RR’s role is to review the administrative record to render a substantive determination as to evasion; that said, here, the scope of the AD Order, when matched up against the allegation and the other facts provided in the administrative record, show that initiation of an investigation was fully justified. Likewise, contrary to Zinus’s position, it was not necessary for CBP to refer the matter to Commerce for a covered merchandise determination. CBP was (and remains) able to review the plain language of the AD Order and the nature of the imported merchandise to reach an independent conclusion as to whether the merchandise at issue was subject to the AD Order. As such, referral to Commerce was not, and is not, required.

Lastly, Zinus’s claim that it was not afforded due process by CBP’s EAPA investigation procedures is without merit. In *Royal Brush*, the CAFC held that due process required that the importer in that case, have access to the information the agency had relied upon in reaching the determination that Royal Brush had engaged in evasion under EAPA, including information that

⁷² 19 U.S.C. § 1517(a)(5)(A).

⁷³ *Ikadan Sys. United States, Inc. v. United States*, 639 F. Supp. 3d 1339, 1349 (Ct. Int’l Trade 2023).

⁷⁴ Zinus Review Request (Public Version), at 24.

⁷⁵ *Id.*

⁷⁶ See *Diamond Tools*, 609 F. Supp. 3d at 1387–88, 1391.

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was determined to be business confidential and was therefore originally withheld.⁷⁷ By contrast, here, RR’s determination is based on either submissions that Zinus itself placed on the administrative record or public versions of documents that CVB placed on the record. Any business confidential information that underpins RR’s determination that there is substantial evidence of evasion comes from Zinus’s own information. As such, the business confidential information RR relies on in this evasion determination was available to Zinus, *e.g.*, Zinus’s RFI responses, its CF-28 responses, and other communications.⁷⁸ Therefore, this case is unlike the situation in *Royal Brush* because Zinus had access to (and, in fact, controlled) the information underlying RR’s final administrative determination finding substantial evidence of evasion.⁷⁹ In short, the facts underlying *Royal Brush* are distinguishable from those present here.

IV. Decision

Based upon our *de novo* review of the administrative record in this case, including the request for administrative review and response thereto, the July 21 Determination of evasion under 19 U.S.C. § 1517(c) is **AFFIRMED**.⁸⁰

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

Sincerely,

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

Approved by:

Alice A. Kipel
Executive Director,
Regulations & Rulings, Office of Trade
U.S. Customs & Border Protection

⁷⁷ See *Royal Brush Mfg., Inc.*, 75 F.4th at 1257–59; see also *Doty v. United States*, 53 F.3d 1244, 1251 (Fed. Cir. 1995) (“The agency’s . . . withholding of the evidence on which {it} purported to rely . . . w{as} . . . egregiously removed from the fairness required of an agency in its administrative responsibilities. . .”).

⁷⁸ To the extent that TRLED may have included additional information in its determination, RR does not rely on such information in our finding of evasion. For example, Zinus cites to TRLED’s calculation of duty liability; however, such a calculation is not necessary to a finding of evasion and RR does not rely upon such information.

⁷⁹ *C.f. Royal Brush Mfg., Inc.*, 75 F.4th at 1257–59.

⁸⁰ As noted above, we do not affirm any aspect of the July 21 Determination that could be construed as relying exclusively upon a misclassification under the HTSUS to find evasion. However, we do note that a finding of an incorrect HTSUS classification could be relevant to the question of evasion, as for example, in an instance where it is shown that an importer used an incorrect classification to avoid detection by CBP.