90 K Street NE
Washington, D.C. 20002

U.S. Customs and Border Protection

December 15, 2023

PUBLIC DOCUMENT

OT:RR:BSTC:PEN H334521 SJS

R. Kevin Williams
Kelsey Christensen
Sally Alghazali
Clark Hill PLC
Counsel for Lionshead Specialty Tire & Wheel LLC
130 E. Randolph Street, Suite 3900
Chicago, IL 60601

Nancy A. Noonan
Leah N. Scarpelli
Yun Gao
ArentFox Schiff LLP
Counsel for TexTrail, Inc.
1717 K Street, NW
Washington, D.C. 20006

Alan R. Klestadt
Jordan C. Kahn
Grunfeld, Desiderio, Lebowitz, Silverman, & Klestadt LLP
Counsel for TRAILSTAR LLC
599 Lexington Avenue, 36th Floor
New York, NY 10022

Roger B. Schagrin, Esq.
Nicholas J. Birch, Esq.
Schagrin Associates
Counsel for Dexstar Wheel Division of Americana Development Inc.
900 Seventh Street, NW, Suite 500
Washington, D.C. 20001

Re: Enforce and Protect Act ("EAPA") Consolidated Case Number 7459; *Certain Steel Trailer Wheels 12 to 16.5 Inches from the People's Republic of China: Antidumping Duty and Countervailing Duty Orders*, 84 Fed. Reg. 45,952 (Dep't of Commerce Sept. 3, 2019); Lionshead Specialty Tire & Wheel LLC; TexTrail Inc.; and TRAILSTAR LLC;
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 August 7, 2023, made by the Trade Remedy Law Enforcement Directorate ("TRLED"), Office of Trade ("OT"), U.S. Customs and Border Protection ("CBP"), pursuant to 19

U.S.C. § 1517(c), EAPA Consolidated Case Number 7459 ("August 7 Determination").[1] On September 19, 2023, the requests for review were submitted to CBP, OT, Regulations and Rulings ("RR"), by Lionshead Specialty Tire & Wheel, LLC ("Lionshead"), TexTrail, Inc. ("TexTrail"), and TRAILSTAR LLC ("TRAILSTAR") (collectively, the "Importers"), pursuant to 19 U.S.C. § 1517(f) and 19 C.F.R. § 165.41(a). Dexstar Wheel Division of Americana Development Inc. filed a response to the request for review on October 3, 2023.

I. Background

Based on our review of the administrative record, we agree with the recitation of facts as set forth by the August 7 Determination. As such, we will not repeat the entire factual history herein.

On March 11, 2020, Dexstar Wheel Division of Americana Development Inc. ("Dexstar" or the "Alleger"), a domestic manufacturer of steel trailer wheels, filed three EAPA allegations alleging the evasion of antidumping and countervailing duties on steel trailer wheels 12 inches to 16.5 inches in diameter by Lionshead, TexTrail, and TRAILSTAR. CBP acknowledged receipt of the allegations on March 19, 2020. On April 9, 2020, TRLED initiated formal investigations against Lionshead, TexTrail, and TRAILSTAR under Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015 ("TFTEA"), in response to the allegations of evasion.[2]

Dexstar alleged that Lionshead, TexTrail, and TRAILSTAR were entering steel trailer wheels 12 inches to 16.5 inches in diameter into the United States that were produced in the People's Republic of China ("China") by Zhejiang Jingu Company Limited ("Jingu"), transshipped through Jingu's affiliate in Thailand, Asia Wheel Co., Ltd. ("Asia Wheel"),[3] and entered into the United States as products of Thailand in order to evade the antidumping and countervailing duty orders (the "AD/CVD Orders" or "Orders"), issued under Case Nos. A-570-090 and C-570-091.[4] Dexstar alleged that these steel trailer wheels were in-scope merchandise subject to the AD/CVD Orders, and that Lionshead, TexTrail, and TRAILSTAR had evaded payment of antidumping and countervailing duties on these imports.

The allegations of evasion pertained to AD/CVD Orders issued by the U.S. Department of Commerce ("Commerce") on imports of certain steel trailer wheels from China.[5] Commerce defined the scope of the AD/CVD Orders as follows:

> The products subject to these orders are certain on-the-road steel wheels, discs, and rims for tubeless tires with a nominal wheel diameter of 12 inches to 16.5 inches, regardless of width. Certain on-the-road steel wheels with a

---

[1] *See* Notice of Determination as to Evasion – EAPA Consolidated Investigation Case Number 7459 (Aug. 7, 2020) (Public Version), *available at* https://www.cbp.gov/document/publications/eapa-cons-investigation-7459-lionshead-specialty-tire-and-wheel-llc-tex-trail (last accessed Dec. 11, 2023).

[2] *See* Notice of Initiation of Investigation and Interim Measures: Consolidated EAPA Case 7459 (July 15, 2020) (Public Version) ("Notice of Initiation"), *available at* https://www.cbp.gov/document/guidance/eapa-cons-case-number-7459-lionshead-specialty-tire-and-wheel-llc-tex-trail-llc (last accessed Dec. 8, 2023).

[3] As discussed, herein, the investigation revealed that some processing operations occur in Thailand prior to importation to the United States. *See generally* August 7 Determination.

[4] *See* Notice of Initiation (Public Version).

[5] *See Certain Steel Trailer Wheels 12 to 16.5 Inches from the People's Republic of China: Antidumping Duty and Countervailing Duty Orders*, 84 Fed. Reg. 45,952 (Dep't of Commerce Sept. 3, 2019).

nominal wheel diameter of 12 inches to 16.5 inches within the scope are generally for road and highway trailers and other towable equipment, including, inter alia, utility trailers, cargo trailers, horse trailers, boat trailers, recreational trailers, and towable mobile homes. The standard widths of certain on-the-road steel wheels are 4 inches, 4.5 inches, 5 inches, 5.5 inches, 6 inches, and 6.5 inches, but all certain on-the-road steel wheels, regardless of width, are covered by the scope.

The scope includes rims and discs for certain on-the-road steel wheels, whether imported as an assembly, unassembled, or separately. The scope includes certain on the road steel wheels regardless of steel composition, whether cladded or not cladded, whether finished or not finished, and whether coated or uncoated. The scope also includes certain on-the-road steel wheels with discs in either a "hub-piloted" or "stud-piloted" mounting configuration, though the stud-piloted configuration is most common in the size range covered.

All on-the-road wheels sold in the United States must meet Standard 110 or 120 of the National Highway Traffic Safety Administration's (NHTSA) Federal Motor Vehicle Safety Standards, which requires a rim marking, such as the "DOT" symbol, indicating compliance with applicable motor vehicle standards. See 49 CFR 571.110 and 571.120. The scope includes certain on-the-road steel wheels imported with or without NHTSA's required markings.

Certain on-the-road steel wheels imported as an assembly with a tire mounted on the wheel and/or with a valve stem or rims imported as an assembly with a tire mounted on the rim and/or with a valve stem are included in the scope of these orders. However, if the steel wheels or rims are imported as an assembly with a tire mounted on the wheel or rim and/or with a valve stem attached, the tire and/or valve stem is not covered by the scope.

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

Excluded from this scope are the following: (1) Steel wheels for use with tube-type tires; such tires use multi piece rims, which are two-piece and three-piece assemblies and require the use of an inner tube; (2) aluminum wheels; (3) certain on-the-road steel wheels that are coated entirely in chrome. This exclusion is limited to chrome wheels coated entirely in chrome and produced through a chromium electroplating process, and does not extend to wheels that have been finished with other processes, including, but not limited to, Physical Vapor Deposition (PVD); (4) steel wheels that do not meet Standard 110 or 120 of the NHTSA's requirements other than the rim marking requirements found in 49 CFR 571.110S4.4.2 and 571.120S5.2; (5) steel wheels that meet the following specifications: steel wheels with a nominal wheel

> diameter ranging from 15 inches to 16.5 inches, with a rim width of 8 inches or greater, and a wheel backspacing ranging from 3.75 inches to 5.5 inches; and (6) steel wheels with wire spokes.
>
> Certain on-the-road steel wheels subject to these orders are properly classifiable under the following category of the Harmonized Tariff Schedule of the United States (HTSUS): 8716.90.5035 which covers the exact product covered by the scope whether entered as an assembled wheel or in components. Certain on-the-road steel wheels entered with a tire mounted on them may be entered under HTSUS 8716.90.5059 (Trailers and semi-trailers; other vehicles, not mechanically propelled, parts, wheels, other, wheels with other tires) (a category that will be broader than what is covered by the scope). While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise is dispositive.[6]

On July 15, 2020, in accordance with 19 C.F.R. § 165.24, CBP issued a Notice of Initiation to all parties to the investigation, stating that the investigation had begun on April 9, 2020; notifying the parties of CBP's decision to take interim measures based upon reasonable suspicion that Lionshead, TexTrail, and TRAILSTAR had entered covered merchandise into the customs territory of the United States through evasion; and consolidating the three separate EAPA investigations into a single investigation.[7] The entries subject to the consolidated investigation are all unliquidated entries of covered merchandise entered from March 19, 2019,[8] through the pendency of the investigation.[9]

On November 10, 2020, Asia Wheel submitted a request to Commerce for a scope ruling with respect to the steel wheels Asia Wheel manufactured in Thailand using three distinct production methods (termed as Production Methods A, B, and C).[10] On December 17, 2020, TRLED directed a covered merchandise referral to Commerce to confirm whether the steel wheels produced in the manner outlined by Asia Wheel in its scope ruling request were covered merchandise.[11] Specifically, based on the plain language of the AD/CVD Orders, TRLED was unable to determine whether the steel trailer wheels produced by Asia Wheel in Thailand using Production Methods A, B, and C, as outlined by Asia Wheel in its scope ruling request, were

---

[6] 84 Fed. Reg. at 45,952–954.

[7] *See* Notice of Initiation (Public Version).

[8] Although the final AD/CVD orders were published on September 3, 2019, the CVD preliminary affirmative determination was issued on February 25, 2019, and the AD preliminary affirmative determination was issued on April 22, 2019.

[9] *See* Notice of Initiation (Public Version); *see also* 19 C.F.R. § 165.2 ("In addition, at its discretion, CBP may investigate other entries of such covered merchandise.").

[10] *See* Memorandum from Erin Begnal, Director, Office III, Antidumping and Countervailing Duty Operations, to James Maeder, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, *Antidumping and Countervailing Duty Orders on Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China; Final Scope Ruling: Asia Wheel's Steel Wheels Processed in Thailand (Asia Wheel)* (Dep't of Commerce April 11, 2023) (Public Document) ("Final Scope Ruling"). CBP learned of Asia Wheel's scope ruling request through a search of public records. *See* August 7 Determination (Public Version).

[11] *See* August 7 Determination (Public Version) (citing 19 C.F.R. § 165.16(a) (providing authority to CBP to direct a covered merchandise referral to Commerce during an EAPA investigation)).

covered merchandise.[12] As a result of the covered merchandise referral to Commerce, the deadlines in this EAPA investigation were stayed pending Commerce's issuance of a determination.[13] On April 11, 2023, Commerce issued its final scope ruling, and on April 14, 2023, Commerce notified CBP of the same.[14] To summarize, Commerce determined that trailer wheels manufactured by Asia Wheel in its facilities in Thailand using Production Methods A and C, as described below, and exported to the United States, are subject to the Orders.[15] Commerce also determined that trailer wheels manufactured by Asia Wheel in Thailand using Production Method B, as described below, are outside the scope of the Orders.[16] Commerce stated that it was implementing certification requirements for out-of-scope merchandise, and if such requirements were not met, Commerce intended to instruct CBP to suspend all unliquidated entries for which the requirements were not met and require that the importer post the requisite AD/CVD cash deposits.[17]

On August 7, 2023, TRLED found that there was substantial evidence that the merchandise Lionshead, TexTrail, and TRAILSTAR had imported from Asia Wheel was covered merchandise.[18] The Importers entered the merchandise into the customs territory of the United States as type "01" consumption entries.[19] As a result, no cash deposits for antidumping or countervailing duties were applied to the merchandise.[20]

On September 19, 2023, the Importers each filed a request for *de novo* review with RR. On September 20, 2023, RR sent an email to all parties to the investigation, notifying them of the commencement of the administrative review process and the assignment of RR case number H334521. On October 3, 2023, Dexstar submitted a response to the Importers' requests for 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."[21] 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

---

[12] *See* August 7 Determination (Public Version).
[13] *See id.*
[14] *See id.* The Importers have sought judicial review of Commerce's Final Scope Ruling before the U.S. Court of International Trade ("CIT"), which case is currently pending. *See id.*
[15] *See generally* Final Scope Ruling (Public Document).
[16] *See id.* at 3, 35; August 7 Determination (Public Version) (describing Commerce's Final Scope Ruling).
[17] *See* Final Scope Ruling (Public Document), at 52–52; August 7 Determination (Public Version), at 11.
[18] *See* August 7 Determination (Public Version).
[19] Imports that are covered by AD/CVD orders are required to be entered as type "03" entries; entries declared as type "01" are not subject to payment of antidumping or countervailing 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 Nov. 14, 2023).
[20] *See* August 7 Determination (Public Version).
[21] 19 U.S.C. § 1517(c)(1).

> 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.[22]

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.[23]

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)."[24] 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."[25]

Therefore, CBP must determine whether a party has entered merchandise that is subject to an AD or CVD order into the United States for consumption by means of any document or electronically transmitted data or information, written or oral statement, or act, that is material and false, or any omission that is material, that resulted in the reduction or avoidance of applicable AD or CVD cash deposits or duties being collected on such merchandise. RR's determination as to evasion must be supported by substantial evidence.

A. Lionshead's Arguments[26]

Lionshead argues that CBP's determination of evasion is not in accordance with law because CBP failed to meet the first two of the three elements required by the EAPA statute, specifically, the "covered merchandise" and "material and false statements or acts, or material omissions" requirements.[27] Lionshead claims that the merchandise Lionshead imported was not covered merchandise at the time of entry. Lionshead maintains that Commerce's final scope ruling in the original investigations limited the scope of the AD/CVD Orders to steel wheels processed in a third country that contain *both* a rim and a disc from China.[28] Lionshead's imports did not meet this description because the steel wheels Lionshead imported from Asia Wheel in Thailand contained only a disc from China.[29]

---

[22] 19 U.S.C. § 1517(a)(5); *see also* 19 C.F.R. § 165.1.
[23] *See Investigation of Claims of Evasion of Antidumping and Countervailing Duties, Interim Regulations*, 81 Fed. Reg. 56,477, 56,478 (CBP Aug. 22, 2016).
[24] 19 C.F.R. § 165.1.
[25] *See Altx, Inc. v. United States*, 370 F.3d 1108, 1116 (Fed. Cir. 2004) (internal citations and quotation marks omitted).
[26] Lionshead also "adopts by reference" the arguments presented by TexTrail's and TRAILSTAR's requests for administrative review. *See* Lionshead's Request for Administrative Review (Sept. 19, 2023) (Public Document), at 7 (hereinafter, "Lionshead's Request").
[27] *See id.* at 8–10. According to Lionshead, the third element is "whether there was a resulting reduction or avoidance of applicable antidumping or countervailing duty cash deposits or other security." *Id.* at 8.
[28] *See id.* at 8, 10 (emphasis in original).
[29] *See id.*

Lionshead also avers that CBP failed to "establish the intent to evade that is embedded in the second element of the EAPA statute," and that CBP thereby did not "meet its burden of proof" to demonstrate that Lionshead entered covered merchandise into the United States by a material false statement, document or omission.[30] In this respect, Lionshead argues that CBP's interpretation of 19 C.F.R. § 1517 requiring strict liability is erroneous and not in accordance with law.[31] Specifically, Lionshead claims that it did not act with intent to evade the AD/CVD Orders because, based on its best knowledge and on its understanding of Commerce's final scope ruling in the original investigations, Lionshead reasonably believed, at the time of entry, that the subject merchandise was outside the scope of the AD/CVD Orders.[32]

Lionshead further argues that it exercised reasonable care when it declared the country of origin as Thailand (not China) and when it entered the steel wheels on type "01" consumption entries, as not subject to AD/CVD orders.[33] Lionshead describes steps it took, "including consulting with counsel and conducting an on-site factory inspection at Asia Wheel," to confirm that merchandise contained only Chinese discs, and therefore, was not in-scope merchandise per Commerce's final scope ruling in the original investigations.[34] Thus, Lionshead cannot be deemed to have made a material and false statement or act, nor a material omission, absent intent.[35]

Additionally, Lionshead argues that CBP violated Lionshead's due process rights throughout the course of the EAPA investigation.[36] Lionshead claims that CBP deprived it of constitutional due process rights, namely: (1) its right of notice; (2) the right to access to opposing evidence; and (3) the right to rebut such evidence.[37] Lionshead claims that it received a copy of the Original Allegation filed by Dexstar in January 2020 but not Dexstar's "revised allegation" submitted on March 11, 2020.[38]

Moreover, Lionshead argues that it was not afforded notice of CBP's determination that "there was reasonable suspicion that the Importers entered Chinese-origin steel trailer wheels into the United States that were transshipped through Thailand" on July 8, 2020.[39] Lionshead did not receive notice of this determination until CBP issued its Notice of Investigation and Interim Measures on July 15, 2020, after CBP had already imposed interim measures and suspended liquidation of Lionshead's imports that were entered as of the date of the initiation of the EAPA investigation.[40] As a result, Lionshead argues that it was denied the opportunity to be heard before CBP imposed interim measures.[41]

Furthermore, Lionshead maintains that CBP imposed the interim measures by relying on redacted record information, Dexstar's allegations, and "trade data establishing the shift in the

---

[30] *Id.* at 14–15.
[31] *See id.* at 10–14.
[32] *See id.* at 15–16.
[33] *See id.* at 17.
[34] *Id.*
[35] *See id.* at 17.
[36] *See id.*
[37] *See id.* at 18.
[38] *See id.*
[39] *Id.* at 22.
[40] *See id.*
[41] *See id.*

Importer's entries of steel trailer wheels from Jingu in China to Asia Wheel in Thailand,"[42] without allowing Lionshead the opportunity to comment and rebut such allegation with evidence.[43]

For these reasons, Lionshead requests that the August 7 Determination be reversed.

B. TexTrail's Arguments

TexTrail argues that it did not evade the AD/CVD Orders when it entered steel trailer wheels into the United States because the scope language did not cover its imported wheels at the time of entry.[44] Alternatively, TexTrail claims that Commerce's admission that the scope of the Orders was ambiguous supports a negative determination as to evasion because the Orders did not provide sufficient notice to TexTrail that the products were subject to AD/CVD Orders.[45]

TexTrail also asserts that the EAPA statute and regulations require an importer to have knowledge that the merchandise is covered when the merchandise is entered into the United States.[46] Relying on two decisions issued by the U.S. Court of International Trade, TexTrail asserts that the EAPA statute requires a degree of culpability to find that the material "false" statement or material omission element has been met.[47] TexTrail further avers that the CIT erred when its subsequently held that the EAPA statute is a strict liability statute.[48]

In addition, TexTrail claims that it used reasonable care when it imported the merchandise at issue in this EAPA investigation.[49] TexTrail's reasonable care is evidenced by its visits to Asia Wheel's factory to confirm that the wheels were being processed in a third country (Thailand) and were not transshipped.[50] TexTrail further asserts that it had no notice that the steel trailer wheels were within the scope of the AD/CVD Orders at the time of entry into the customs territory of the United States.[51] TexTrail claims that AD/CVD liability cannot attach without such notice, and that even if the CIT sustains Commerce's Final Scope Ruling, AD/CVD liability cannot apply to the entries of steel wheels by TexTrail and the other importers until March 22, 2021, at the earliest, *i.e.*, the date on which Commerce initiated the scope inquiry requested by Asia Wheel.[52] Moreover, TexTrail claims that CBP's finding of evasion is not supported by substantial evidence.[53] TexTrail argues that CBP erred in initiating the investigation and imposing interim measures in this proceeding because the evidence did not support initiation or CBP's finding that there was reasonable suspicion that covered merchandise entered into the United States through evasion, and

---

[42] *Id.* (quoting August 7 Determination (Public Version), at 3 (internal quotation marks omitted)).
[43] Lionshead's Request (Public Document), at 22.
[44] TexTrail's Request for Administrative Review (Sept. 19, 2023) (Public Document), at 10 (hereinafter, "TexTrail's Request").
[45] *See id.* at 9–10, 15–16.
[46] *See id.* at 10–11, 15–17.
[47] *See id.* at 10–11, 16–17 (citing *Diamond Tools Tech LLC v. United States*, 545 F. Supp. 3d 1324, 1355 (Ct. Int'l Trade 2021) ("*Diamond Tools I*"); *Diamond Tools Tech. LLC v. United States*, 609 F. Supp. 3d 1378, 1388 n.10 (Ct. Int'l Trade 2022) ("*Diamond Tools II*").
[48] TexTrail's Request (Public Document), at 11 (citing *Ikadan Sys. USA, Inc. v. United States*, 639 F. Supp. 3d 1339, 1349 (Ct. Int'l Trade 2023)); *see also id.* at 16–17.
[49] *See* TexTrail's Request (Public Document), at 11, 15–16.
[50] *See id.* at 3, 11, 15–16.
[51] *See id.* at 11, 16–18.
[52] *See id.* at 17.
[53] *See id.* at 11, 18–25.

that CBP suspended liquidation of TexTrail's entries of merchandise "based on the false premise of the EAPA allegation that there was transshipment."[54] TexTrail alternatively argues that the EAPA investigation should have ended, or a negative determination should have been issued, once CBP determined that there was no transshipment, as alleged by Dexstar in its allegation.[55] In this regard, TexTrail asserts that, because there was no transshipment, rather permissible third country processing, Dexstar's allegation of evasion is not supported by the facts.[56]

Furthermore, TexTrail asserts that there is no material false statement or act or omission here because Commerce previously examined the scope of the AD/CVD Orders and questions related to third-country processing, declined to amend the scope language to include wheels processed in third countries that contain either rims or discs produced in China (rather than requiring both components to be of Chinese origin), and thus, found products that were processed in a third country in the manner at issue in this investigation to be out-of-scope.[57] TexTrail avers that it reasonably relied on Commerce's clear and specific guidance when it imported the merchandise on type "01" entries, and that courts have found that AD/CVD liability cannot be applied retroactively if the importer had no notice that the merchandise was within the scope of the orders.[58]

Relatedly, TexTrail argues that CBP had no basis for requesting the covered merchandise referral that resulted in Commerce's Final Scope Ruling because CBP could have determined whether merchandise was properly within the scope of the AD/CVD Orders based on the clear language in Commerce's final scope ruling in the original investigations.[59] Nevertheless, TexTrail claims that Commerce's Final Scope Ruling is flawed based on the plain language of the scope of the AD/CVD Orders as well as Commerce's erroneous substantial transformation analyses, and that Commerce's Final Scope Ruling is now pending review before the CIT.[60] TexTrail notes that if the CIT finds that the merchandise is not described by the scope of the AD/CVD Orders, there can be no evasion.[61]

Lastly, TexTrail presents several claims regarding CBP's failure to disclose certain documents on the administrative record. First, TexTrail argues that CBP's EAPA procedures in this investigation violated TexTrail's due process rights because CBP did not provide TexTrail with business confidential information, contrary to the decision of the U.S. Court of Appeals for the Federal Circuit in *Royal Brush Manufacturing, Inc. v. United States*, 75 F.4th 1250 (Fed. Cir. 2023), or with sufficient public summaries of such business confidential information.[62] Second, TexTrail claims that CBP did not maintain a proper administrative record and failed to promptly disclose documents, such as when it did not place the Asia Wheel site visit report on the record or allow TexTrail to submit rebuttal information regarding that site visit.[63] Third, TexTrail asserts that CBP

---

[54] *Id.* at 20; *see also id.* at 11–12, 19–20.
[55] *See id.* at 12, 18–19.
[56] *See id.* at 12, 19–20.
[57] *See id.* at 11, 20–21.
[58] *See id.* at 11, 22–25.
[59] *See id.* at 11, 25–26.
[60] *See id.* at 13, 26–27.
[61] *See id.* at 14, 27.
[62] *See id.* at 27–29.
[63] *See id.* at 27.

should have provided immediate notice of the initiation of the investigation rather than delaying notice until the interim measures were issued.[64] Fourth, TexTrail avers that CBP did not timely issue the EAPA Determination.[65]

For these reasons, TexTrail requests that the August 7 Determination be reversed.

C. TRAILSTAR's Arguments

TRAILSTAR argues that CBP improperly followed Commerce's Final Scope Ruling, which is currently under review by the CIT, to find evasion.[66]

Specifically, TRAILSTAR contends that in the original investigations, Commerce determined that steel wheels processed in a third country were in-scope only if they contained both rims and discs from China, and that, here, Commerce "revers[ed] course in its Final Scope Ruling" and used a substantial transformation analysis that was "fundamentally flawed."[67] TRAILSTAR claims that it relied on Commerce's analysis of the scope language in the original investigations, which, according to TRAILSTAR, confirmed that both the rims and discs that are processed in a third country must originate from China for the steel wheel to be in-scope.[68] As a result of TRAILSTAR's reliance on Commerce's scope memorandum in the original investigations, CBP cannot identify a material and false statement or act, or a material omission by TRAILSTAR as is necessary to find EAPA liability.[69]

TRAILSTAR also claims that a negative evasion determination is warranted because TRAILSTAR did not receive sufficient notice of potential AD/CVD applicability as required by binding judicial precedent.[70] In support of this argument, TRAILSTAR cites to judicial precedent whereby the U.S. Court of Appeals for the Federal Circuit explained that agencies such as Commerce and CBP, "must provide regulated parties fair warning of the conduct [the order or regulation] prohibits or requires."[71]

Additionally, TRAILSTAR argues that CBP's EAPA investigation culminating in the August 7 Determination was beset by procedural errors.[72] Citing to *Royal Brush*, TRAILSTAR asserts that the August 7 Determination unlawfully found substantial evidence of evasion by using business proprietary information that TRAILSTAR did not have access to under an administrative protective order, as required.[73] TRAILSTAR further claims that it was not provided with adequate public

---

[64] *See id.* at 29.
[65] *See id.*
[66] *See* TRAILSTAR's Request for Administrative Review (Sept. 19, 2023) (Public Document), at 11 (hereinafter, "TRAILSTAR's Request").
[67] *Id.* at 12; *see also id.* at 11–13 (emphasis added).
[68] *See id.* at 18–23 (citing *Diamond Tools I* and *Diamond Tools II*).
[69] TRAILSTAR's Request (Public Document), at 18–23.
[70] *See id.* at 11, 14–17 (*citing Tai-Ao Aluminum*, 983 F.3d 487 (Fed. Cir. 2020); *Trans Texas Tire, LLC v. United States*, 519 F. Supp. 3d 1275 (Ct. Int'l Trade 2021); *Trans Texas Tire, LLC v. United States*, 519 F. Supp. 3d 1289 (Ct. Int'l Trade 2021)).
[71] TRAILSTAR's Request (Public Document), at 14 (quoting *Tai-Ao Aluminum*, 983 F.3d at 495); *see also* TRAILSTAR's Request (Public Document), at 15–17.
[72] *See* TRAILSTAR's Request (Public Document), at 11, 23–30.
[73] *See id.* at 23–25.

summaries.[74] Furthermore, TRAILSTAR claims that the site visit report was not properly placed on the record,[75] and that TRLED deprived TRAILSTAR of the opportunity to rebut this evidence because the rebuttal was filed beyond the 200-day regulatory deadline.[76] Moreover, TRAILSTAR claims that insufficient due process was afforded at the time the EAPA investigation was initiated because it did not receive notice of the initiation and interim measures until July 15, 2020.[77] TRAILSTAR also asserts that TRLED improperly initiated this EAPA investigation and imposed interim measures on the basis of purported transshipment, of which CBP found no indicia.[78] Finally, TRAILSTAR argues that the August 7 Determination was not timely issued.[79]

For these reasons, TRAILSTAR requests that the August 7 Determination be reversed.

D. Dexstar's Arguments

Dexstar requests that RR affirm the August 7 Determination based on substantial evidence of evasion for the following reasons.

First, Dexstar asserts that the Importers' attacks on Commerce's scope determinations are irrelevant and without merit.[80] Dexstar argues that CBP cannot ignore a scope determination made by Commerce.[81] Furthermore, Dexstar argues that TexTrail's claim that the scope referral to Commerce was illegal lacks any legal or factual merit.[82]

Second, Dexstar asserts that the statutory standard for a finding of evasion has been met because the products that were entered by the Importers as non-subject merchandise were, in fact, subject merchandise under the AD/CVD Orders.[83]

Third, Dexstar asserts that the Importers' attacks on TRLED's procedures are both inapposite to RR's review and without merit.[84] Dexstar points out that the Importers' claims of due process violations based upon TRLED's treatment of confidential information must fail because the Importers had access to all of the information TRLED used to support its evasion determination.[85] Dexstar also states that the *Royal Brush* decision did not mandate that a party to an EAPA investigation has a right to all possible information gathered by CBP, but rather that a party has a right to review the evidence on which CBP bases its determination.[86]

---

[74] *See id.* at 25–26 (citing *Royal Brush Mfg., Inc. v. United States*, 483 F. Supp. 1294 (Ct. Int'l Trade 2020)).
[75] *See* TRAILSTAR's Request (Public Document), at 26 (citing 19 C.F.R. § 165.25(b)).
[76] *See* TRAILSTAR's Request (Public Document), at 27.
[77] *See id,* at 27–28.
[78] *See id.* at 10, 23, 30.
[79] *See id.* at 29.
[80] Dexstar's Response to Requests for Administrative Review (Oct. 3, 2023) (Public Document), at 3 (hereinafter, "Dexstar's Response").
[81] *See id.* at 3–7.
[82] *See id.* at 7–9.
[83] *See id,* at 9–17.
[84] *See id.* at 17.
[85] *See id.* at 18.
[86] *See id.* at 19.

Fourth, Dexstar asserts that the Importers' claims that they were entitled to notice of the EAPA investigations at an earlier time must fail.[87] Contrary to the Importers' arguments, 19 U.S.C. § 1517(e) allows TRLED 90 calendar days from the initiation of an EAPA investigation to make a determination if there is a reasonable suspicion of evasion and to apply interim measures.[88] The statute neither requires that TRLED alert the importers of the subject merchandise of its investigation at any point in that period nor provides those importers a right to comment on the initiation of the investigation.[89] Moreover, Dexstar argues that the Importers' claims regarding the timing of determinations ignore the applicable law because the EAPA statute specifically allows CBP five business days to "provide to each interested party . . . a notification of the determination and may, in addition, include an explanation of the basis for the determination."[90]

For these reasons, Dexstar requests that the August 7 Determination be affirmed.

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, 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 August 7 Determination was made, as provided to RR by TRLED; and (2) the timely and properly filed requests for review and response.

The purpose of this *de novo* review is to analyze the August 7 Determination and the accompanying administrative record to determine whether substantial evidence of evasion exists. The outcome of this administrative review rests on whether the merchandise Asia Wheel manufactured in Thailand, which was subsequently imported into the United States by the Importers, falls within the scope of the AD/CVD Orders, and thus, constitutes covered merchandise under the EAPA. As discussed below, there is substantial evidence that the imported steel trailer wheels 12 inches to 16.5 inches in diameter are covered merchandise subject to the AD/CVD Orders, and that the steel trailer wheels were entered by the Importers into the customs territory of the United States through evasion.

A. There is substantial record evidence that the steel trailer wheels 12 inches to 16.5 inches in diameter imported by Lionshead, TexTrail, and TRAILSTAR are covered by the AD/CVD Orders.

There is no dispute that the goods imported by Lionshead, TexTrail, and TRAILSTAR were steel trailer wheels 12 inches to 16.5 inches in diameter.[91] The dispute is whether the steel trailer wheels imported by Lionshead, TexTrail, and TRAILSTAR constitute covered merchandise under the AD/CVD Orders.

The scope of the Orders states, in relevant part:

---

[87] *See id.* at 22.
[88] *See id.*
[89] *See id.* at 22.
[90] *Id.* at 24 (citing 19 U.S.C. § 1517(c)(4)).
[91] *See* August 7 Determination at 6 (citing to the Importers' RFI responses).

> The products covered by the Orders are certain on-the-road steel wheels, discs, and rims for tubeless tires with a nominal wheel diameter of 12 inches to 16.5 inches, regardless of width. . . . The scope includes rims and discs for certain on-the-road steel wheels, whether imported as an assembly, unassembled, or separately. . . . The scope includes rims, discs, and wheels that have been further processed in a third country, including but not limited to, the painting of wheels from China and the welding and painting of rims and discs from China to form a steel wheel or any other processing that would not otherwise remove the merchandise from the scope of the Orders if performed in China. . . .[92]

Here, TRLED concluded that it was unable to determine, based on the plain language of the Orders, whether steel trailer wheels produced by Asia Wheel in Thailand using Production Methods A, B, and C, as described below, were covered merchandise.[93] Under such circumstances, the statute provides for CBP to direct a covered merchandise referral to Commerce pursuant to 19 U.S.C. § 1517(b)(4)(A)(i). TRLED followed this statutory process and properly submitted a covered merchandise referral to Commerce on December 17, 2020.[94]

On April 11, 2023, Commerce issued its Final Scope Ruling as to whether certain types of steel trailer wheels that Asia Wheel manufactures in its facilities in Thailand and exports to the United States are covered by the scope of the AD/CVD Orders.[95] In its Final Scope Ruling, Commerce considered three manufacturing methods used by Asia Wheel to produce steel trailer wheels in Thailand:

> Production Method A: Trailer wheels manufactured using discs from China and rims produced in Thailand from rectangular steel plates from China or a third country.
>
> Production Method B: Trailer wheels manufactured using discs produced in Thailand from circular steel plates from China or a third country and rims produced in Thailand from rectangular steel plates from China or a third country.
>
> Production Method C: Dual wheels manufactured using discs produced in Thailand from disc blanks from China and rims from China.[96]

Commerce determined that Asia Wheel's steel trailer wheels produced using Production Methods A and C are in-scope merchandise because "the finished wheels processed in Thailand under Production Methods A and C are not substantially transformed such that the third-country

---

[92] 84 Fed. Reg. at 45,952–54 (emphasis added).
[93] *See* August 7 Determination (Public Version).
[94] *See* 19 U.S.C. §§ 1517(b)(4)(A)(i), (B); *see also Aspects Furniture Int'l, Inc. v. United States*, 607 F. Supp. 3d 1246, 1268 (Ct. Int'l Trade 2022) ("(T)he EAPA statute states clearly that Commerce, not Customs, is the appropriate administering authority to issue a referral determination of whether merchandise is covered or not." (citing 19 U.S.C. § 1517(b)(4)(A)(i), (B)).
[95] Final Scope Ruling (Public Document).
[96] *Id.* at 8–9.

processing confers country of origin based on the totality of the circumstances."[97] In other words, Commerce found that steel wheels processed via Production Methods A and C remain Chinese, and therefore, are covered by the AD/CVD Orders. Commerce also found that the trailer wheels manufactured using Production Method B are not in-scope merchandise, and recommended that Asia Wheel and importers of such products certify that the products were manufactured in this manner.[98] Accordingly, the steel trailer wheels are covered merchandise if they are processed via Production Methods A and C, but not Production Method B.

Here, the record evidence shows that the steel wheels entered by the Importers were manufactured under Production Methods A and C.[99] Indeed, the Importers concede that the steel trailer wheels were manufactured via Production Method A (i.e., using discs from China and rims produced in Thailand from steel plates from China or a third country).[100] Moreover, the Importers did not submit certifications or other evidence to TRLED or assert in their requests for review to RR that the merchandise they imported was manufactured via Production Method B and therefore, was not within scope of the Orders.[101] Therefore, per Commerce's Final Scope Ruling, the merchandise falls within the scope of the Orders. Based on the record evidence, the steel trailer wheels that Lionshead, TexTrail, and TRAILSTAR imported are "covered merchandise" under the EAPA.

The Importers' attempts to have CBP somehow invalidate Commerce's Final Scope Ruling fail. Contrary to the Importers' suggestions, CBP cannot ignore a scope determination made by Commerce. More to the point, CBP does not have authority to disregard or overturn Commerce's scope determinations, and permitting CBP to do so would undermine the purpose of a covered merchandise referral under the EAPA statute. As the U.S. Court of International Trade has stated:

> Customs cannot disregard Commerce's Final Scope Ruling that Customs requested pursuant to the EAPA statute, nor can Customs substitute itself as the administering authority contrary to statute, simply because Customs disagrees with Commerce's Final Scope Ruling. The EAPA statute is clear that Commerce is the administering authority to determine whether the subject

---

[97] *Id.* at 26.

[98] *See id.* at 54.

[99] *See* Lionshead's RFI (Sept. 18, 2020) (Public Version), at 7–8; TexTrail's RFI (Sept. 18, 2020) (Public Version), at 5–12; and TRAILSTAR's RFI (Sept. 18, 2020) (Public Version), at 2–4.

[100] *See, e.g.,* Lionshead's Request (Public Version) at 10 ("The wheels were manufactured by Asia Wheel in Thailand using center discs from China. The rims were manufactured in Thailand using steel plates from China or another country."); TexTrail Request (Public Document) at 6-7 (wheels manufactured in Thailand with discs from China and rims manufactured in Thailand from steel plates); TRAILSTAR Request at 21. *See also* Lionshead's RFI (Sept. 18, 2020) (Public Version) Response to Question 5 at 7–8;; TexTrail's RFI (Sept 18, 2020) (Public Version) Response to Question 5 at 7-8; TRAILSTAR's Request (Public Document) at 7-8; TRAILSTAR's RFI (Sept. 18, 2020) (Public Version) Response to Question 5 at 2–4.

[101] *See* August 7 Determination (Public Version), at 11 ("Asia Wheel and the Importers have not met the certification requirement and as per Commerce's instruction, all unliquidated entries will require cash deposits at the country-wide (*sic)* in effect for the AD/CVD orders. Since [the] parties have not provided evidence of merchandise produced by Asia Wheel using method B, CBP found substantial evidence that all imports have evaded the orders for steel trailers wheels from China.") (internal citations omitted); Final Scope Ruling (Public Document), at 53–72 (discussing the certification requirements for Production Method B); Dexstar's Written Argument (May 30, 2023) (Public Version), at 9; Dexstar's Response to Written Arguments) (June 14, 2023) (Public Version), at 4; Lionshead's Request (Public Document); TexTrail's Request (Public Document); TRAILSTAR's Request (Public Document).

> merchandise is outside the scope of the antidumping order, and that disputes contesting the results of the Final Scope Ruling are within the jurisdiction of this Court.[102]

Moreover, "[a]llowing Customs to override and disregard a statutorily authorized Final Scope Ruling by the administering authority would be contrary to law because this would effectively substitute Customs as the administering authority rather than Commerce."[103]

As such, CBP must follow Commerce's Final Scope Ruling. In its Final Scope Ruling, Commerce determined that "the finished wheels processed in Thailand under Production Methods A and C are not substantially transformed such that the third-country processing confers country of origin based on the totality of circumstances," and thus, the country of origin of the rims and the discs is China, and therefore, remain subject to the AD/CVD Orders after processing in Thailand.[104] Commerce further explained that its analysis and findings applied to the entire finished steel trailer wheels as exported from Thailand to the United States.[105] Accordingly, steel wheels that Lionshead, TexTrail, and TRAILSTAR imported from Asia Wheel during the POI were covered merchandise.[106]

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

The Importers 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/CVD 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.[107] These constitute false statements that are also material because the applicable AD/CVD cash deposits were not paid. The Importers also omitted Case Nos. A-570-090 and C-570-091 from the entry summary documentation. The omission of Case Nos. A-570-090 and C-570-091 on the entry summary documentation is material because it interfered with the government's ability to accurately track imports of steel trailer wheels, to collect the applicable AD/CVD deposits due, and to determine and assess future AD/CVD payments. Therefore, we conclude that the Importers entered covered merchandise by evasion.

---

[102] *Aspects Furniture Int'l, Inc.*, 607 F. Supp. 3d at 1268.
[103] *Id.* at 1269.
[104] *See* Final Scope Ruling (Public Document), at 26–36.
[105] *See id.* at 47–48.
[106] *See* 19 U.S.C. § 1517(a)(3) (defining "covered merchandise" as merchandise that is subject to an AD or a CVD order).
[107] *See* August 7 Determination (Public Version), at 11–12, 17–19, 22; Lionshead RFI Exhibits 13, 14, and 15 (Sept. 18, 2020) (Business Confidential Version), at 2744–804, 2778–804, and 2805–834; TexTrail RFI (Parts 8-9) Exhibits 18, 19, and 20 (Sept. 18, 2020) (Business Confidential Version), at 1–42, 43–178, 284–406 ; and TRAILSTAR RFI Exhibits 1, 2, and 3 (Sept. 18, 2020) (Business Confidential Version).

C. The Importers' other arguments and procedural due process claims lack merit.

Lionshead, TexTrail, and TRAILSTAR erroneously argue that the EAPA statute requires intent or culpability.[108] Their arguments, that they could not have intended to evade the Orders because they did not know that the merchandise was subject to the Orders, also fail. 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 or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise.[109]

"Culpability" and "intent" do not appear in this definition. Moreover, the U.S. Court of International Trade has held that "EAPA read as a whole supports CBP's strict liability interpretation of the definition of evasion."[110] Thus, EAPA does not require intent or culpability. Lionshead's, TexTrail's, and TRAILSTAR's arguments that they exercised reasonable care also fail. Regardless of whether an importer exercised reasonable care, such exercise is not a defense as to evasion.

Moreover, the situation present in the instant review is distinguishable from the facts underlying *Diamond Tools II*. In *Diamond Tools II*, where the importer had relied on Commerce's "clear and specific instructions — including Commerce's explicit rejection of petitioner's circumvention concerns" — from the original investigation determination.[111] By contrast, here, the Importers could not and did not rely on any previous "clear and specific" instructions issued by Commerce regarding the country of origin of merchandise. As discussed below, here, Commerce had explicitly indicated that it was reserving decisions as to whether products with discs and rims of mixed origin are covered by the Orders, to be made based on specific facts as may be presented to it. Thus, here, in the Final Scope Ruling, Commerce "provide[d] specific clarification" that Asia Wheel's products are in-scope merchandise.[112]

CBP likewise finds no merit to TexTrail's and TRAILSTAR's arguments that they did not have adequate notice that their imports were in-scope merchandise.[113] The Final Scope Ruling specifically refutes this "lack of notice" argument. Indeed, the final determination in the original Commerce investigations provided such notice; therein, Commerce declined to rule on the issue in

---

[108] *See* Lionshead's Request (Public Document), at 10–17; TexTrail's Request (Public Document), at 10–11, 16–17; TRAILSTAR's Request (Public Document), at 18, 22–23.
[109] 19 U.S.C. § 1517(a)(5)(A).
[110] *Ikadan Sys. United States, Inc.*, 639 F. Supp. 3d at 1349.
[111] *Diamond Tools II*, 609 F. Supp. 3d at 1387–88, 1391.
[112] Final Scope Ruling (Public Document), at 15.
[113] *See* TexTrail's Request (Public Document), at 11–12; TRAILSTAR's Request (Public Document), at 11, 14.

the abstract and indicated that it would consider such scenarios based on specific facts. As Commerce stated in the Final Scope Ruling:

> As an initial matter, fair warning that merchandise produced pursuant to production methods such as those specified in Production Methods A and C, generally, may be the subject of a future scope inquiry was explicitly provided by the statements in the underlying investigation which considered this type of inquiry: "{Commerce} does not foreclose a further analysis of substantial transformation should a product be completed in a third country from a mix of rim and disc parts from China and a third country, if an interested party requests a scope ruling and/or to address a future circumvention concern." We agree with the petitioner that, by specifically stating that certain merchandise may be the subject of a future scope inquiry, Commerce conveyed to any reasonably informed importer sufficient notice that such merchandise may be the subject of a future scope inquiry. As discussed in Comment 1, above, Asia Wheel and Importers' contentions regarding the ambiguity of this statement and conclusions that this statement reflected the opposite meaning are not informed by reason. Notably, notwithstanding Asia Wheel and Importers' strained attempts to interpret the meaning of the language of the Final Investigation Scope Memo otherwise, no party contests that the Production Method A and C merchandise subject to this request is precisely the merchandise contemplated by the phrase "{products} completed in a third country from a mix of rim and disc parts from China and a third country."[114]

In sum, in the Final Scope Ruling, Commerce concluded that importers such as the ones herein had adequate notice that their imports may be in-scope and subject to the AD/CVD Orders. We agree. In fact, given what Commerce stated in its initial investigations, a prudent importer of such a mix was on notice that, depending on the specific facts, its merchandise might be considered subject to the Orders, and therefore, the importer should seek a scope ruling before importing such merchandise.

Furthermore, our decision is buttressed by the Federal Circuit's *en banc* decision in *Sunpreme Inc. v. United States*.[115] CBP has the independent authority pursuant to EAPA to investigate allegations of evasion and to impose interim measures designed to protect the revenue of the United States in the event that substantial evidence of evasion is found.[116] In this case, the steel trailer wheels were already subject to a lawful suspension and extension of liquidation when Commerce issued its Final Scope Ruling in response to Asia Wheel's scope ruling request and CBP's covered merchandise referral.

---

[114] Final Scope Ruling (Public Document), at 40–41 (quoting *Certain Steel Wheels from the People's Republic of China: Final Scope Decision Memorandum for the Final Antidumping Duty and Countervailing Duty Determinations* (Dep't of Commerce July 1, 2019) (Public Document), at Comment 3) (emphasis added).

[115] *See Sunpreme Inc. v. United States*, 946 F.3d 1300, (Fed. Cir. 2020) (holding that it is within CBP's authority to preliminarily suspend liquidation of goods based on an ambiguous antidumping or countervailing duty order, such that the suspension may be continued following a scope determination by Commerce).

[116] *See* 19 U.S.C. §§ 1517(b) and (e).

Commerce made an affirmative determination with regard to the covered merchandise referral and transmitted this determination to CBP pursuant to Commerce's obligations under the EAPA statute. There is no temporal limitation on this determination and to find such a limitation would create a result contrary to that intended by the Federal Circuit's en banc holding in Sunpreme.[117] Consequently, we find that all entries that have been suspended or extended as a result of this EAPA investigation, regardless of the date of entry, are covered merchandise.[118]

Moreover, Lionshead, TexTrail, and TRAILSTAR make various procedural arguments that are inapposite to RR's *de novo* administrative review. RR does not possess the statutory authority during a *de novo* administrative review to comment on claims of procedural errors that may (or may not) have occurred during TRLED's investigation. Pursuant to 19 U.S.C. § 1517(f), the administrative review is limited to a *de novo* review of the initial determination to be conducted within 60 business days after a review request is filed based on the record of the case. The administrative review process does not afford RR any authority or guidance to rectify any alleged procedural errors claimed by the Importers in their requests for review. It is upon judicial review that the CIT can "examine (A) whether the Commissioner fully complied with all procedures under subsections (c) and (f); and (B) whether any determination, finding, or conclusion is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."[119]

That said, we note the following. On July 15, 2020, CBP issued the notice of initiation of investigation and interim measures to Lionshead, TexTrail, and TRAILSTAR in accordance with 19 C.F.R. § 165.15(d) and CBP imposed interim measures in accordance with the time limits provided in 19 U.S.C. § 1517(e) and 19 U.S.C. § 165.24.[120] Furthermore, that the EAPA investigation may have revealed facts that differ from those upon which the reasonable suspicion to initiate an investigation was based, does not invalidate the initiation or the investigation; to do so would essentially do away with the need for an investigation.

Lastly, Lionshead, TexTrail, and TRAILSTAR claim that they were not afforded due process by CBP's EAPA investigation procedures is without merit. In *Royal Brush*, the U.S. Court of Appeals for the Federal Circuit held that due process required that the importer have access to the information the agency had relied upon in reaching the determination of evasion, including information that was determined to be business confidential and as such, originally withheld.[121] By contrast, RR's determination in this case is based on public versions of documents and each importer's own submissions placed on the administrative record. As such, there is no due process violation because each importer had access to the information relied upon by RR as to each importer in making the determination that there is substantial evidence of evasion as to that importer.

---

[117] *See Sunpreme* at 40 (stating that—in the context of a scope determination made by Commerce after CBP had already suspended liquidation—a holding that CBP cannot determine whether goods are subject to an antidumping or countervailing duty order when such an order lacks perfect clarity would result in significant limitation on CBP's "ability to perform its statutory role and would encourage gamesmanship by importers hoping to receive the type of windfall that Sunpreme seeks [in this case]").
[118] *See Diamond Tools I*, 545 F. Supp. 3d 1324, 1347-48.
[119] 19 U.S.C. § 1517(g)(2).
[120] See Notice of Initiation (Public Version).
[121] *Royal Brush Mfg.*, 75 F.4th at 1262.

IV. Decision

Based upon our *de novo* review of the administrative record in this case, including the requests for administrative review and response thereto, the August 7 Determination under 19 U.S.C. § 1517(c) is **AFFIRMED**.

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
Digitally signed by JACINTO P JUAREZ JR
Date: 2023.12.15 13:49:14 -05'00'

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

Approved by:

ALICE A KIPEL
Digitally signed by ALICE A KIPEL
Date: 2023.12.15 13:57:53 -05'00'

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