90 K Street, NE
Washington, DC 20002
U.S. Customs and Border Protection

December 22, 2023

PUBLIC DOCUMENT

OT:RR:BSTC:PEN H334791 LNF

Jay C. Campbell
Jessica E. Lynd
White & Case LLP
Counsel for Vanguard National Trailer Corporation
701 13th Street, NW
Washington, DC 20005

Nicholas J. Birch
Schagrin Associates
Counsel for Accuride Corporation and Maxion Wheels Akron LLC
900 Seventh Street, NW
Suite 500
Washington, DC 20001

Re: Enforce and Protect Act ("EAPA") Case Number 7509; *Certain Steel Wheels from the People's Republic of China: Antidumping and Countervailing Duty Orders*, 84 Fed. Reg. 24,098 (Dep't of Commerce May 24, 2019); Vanguard National Trailer Corporation; 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 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), EAPA Case Number 7509 ("August 21 Determination").[1] The request for review, dated October 2, 2023, was submitted to CBP, OT, Regulations and Rulings ("RR"), by White & Case LLP on behalf of Vanguard National Trailer Corporation ("Vanguard" or "Importer"), pursuant to 19 U.S.C. § 1517(f) and 19 C.F.R. § 165.41(a). Accuride Corporation ("Accuride") and

[1] *See* Notice of Determination as to Evasion, EAPA Case 7509 (Aug. 21, 2023) (Public Version), *available at* https://www.cbp.gov/document/publications/eapa-investigation-7509-vanguard-national-trailer-corp-notice-determination (last accessed Oct. 12, 2023).

Maxion Wheels Akron LLC ("Maxion," and collectively, "Allegers") filed a response to the request for review on October 16, 2023.

I. Background

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

Accuride and Maxion filed an EAPA allegation against Vanguard on July 17, 2020, and filed a supplement to the allegation on July 27, 2020. CBP acknowledged receipt of the allegation on July 28, 2020. On August 18, 2020, 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.[2]

Accuride and Maxion alleged that Vanguard evaded antidumping and countervailing duty orders (the "AD/CVD Orders") issued by the U.S. Department of Commerce ("Commerce") under Case Nos. A-570-082 and C-570-083 on steel wheels 22.5 inches and 24.5 inches in diameter. Specifically, Accuride and Maxion alleged that Vanguard imported steel wheels into the United States that were in-scope merchandise subject to the AD/CVD Orders because they 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"), and entered into the United States as a product of Thailand in order to evade the AD/CVD Orders.[3] As such, Accuride and Maxion alleged that Vanguard had evaded the payment of antidumping and countervailing duties on these imports.[4]

The allegation of evasion pertained to the AD/CVD Orders issued by Commerce on imports of certain on-the-road steel wheels, discs, and rims for tubeless tires from China. Commerce defined the scope of the AD/CVD Orders as follows:

> The scope of the orders covers certain on-the-road steel wheels, discs, and rims for tubeless tires, with a nominal rim diameter of 22.5 inches and 24.5 inches, regardless of width. Certain on-the-road steel wheels with a nominal wheel diameter of 22.5 inches and 24.5 inches are generally for Class 6, 7, and 8 commercial vehicles (as classified by the Federal Highway Administration Gross Vehicle Weight Rating system), including tractors, semi-trailers, dump trucks, garbage trucks, concrete mixers, and buses, and are the current standard wheel diameters for such applications. The standard widths of certain on-the-road steel wheels are 7.5 inches, 8.25 inches, and 9.0 inches, but all certain on-the-road steel wheels, regardless of width, are covered by the scope. While 22.5 inches and 24.5 inches are standard wheel sizes used by Class 6, 7, and 8

[2] *See* Notice of Initiation of Investigation and Interim Measures: EAPA Case Number 7509 (Nov. 23, 2020) ("Notice of Initiation") (Public Version), *available at* https://www.cbp.gov/document/guidance/eapa-investigation-7509-vanguard-national-trailer-corp-notice-initiation (last accessed Nov. 14, 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 21 Determination (Public Version).

[4] *See Certain Steel Wheels from the People's Republic of China: Antidumping and Countervailing Duty Orders*, 84 Fed. Reg. 24,098 (Dep't of Commerce May 24, 2019) ("AD/CVD Orders").

commercial vehicles, the scope covers sizes that may be adopted in the future for Class 6, 7, and 8 commercial vehicles.

The scope includes certain on-the-road steel wheels with either a "hub-piloted" or "stud-piloted" mounting configuration, and includes rims and discs for such wheels, whether imported as an assembly or separately. The scope includes certain on-the-road steel wheels, discs, and rims, of carbon and/or alloy steel composition, whether cladded or not cladded, whether finished or not finished, and whether coated or uncoated. All on-the-road wheels sold in the United States are subject to the requirements of the National Highway Traffic Safety Administration and bear markings, such as the "DOT" symbol, indicating compliance with applicable motor vehicle standards. See 49 CFR 571.120. The scope includes certain on-the-road steel wheels imported with or without the 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 attached are included. However, if the certain on-the-road steel wheel is imported as an assembly with a tire mounted on the wheel and/or with a valve stem attached, the certain on-the-road steel wheel is covered by the scope, but the tire and/or valve stem is not covered by the scope.

The scope includes rims and discs that have been further processed in a third country, including, but not limited to, 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 proceeding if performed in China.

Excluded from the scope are:

(1) Steel wheels for tube-type tires that require a removable side ring;

(2) Aluminum wheels;

(3) Wheels where steel represents less than fifty percent of the product by weight; and

(4) Steel wheels that do not meet National Highway Traffic Safety Administration requirements, other than the rim marking requirements found in 49 CFR 571.120S5.2.

Imports of the subject merchandise are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 8708.70.4530, 8708.70.4560, 8708.70.6030, 8708.70.6060, 8716.90.5045, and 8716.90.5059. Merchandise meeting the scope description may also enter under the following HTSUS subheadings: 4011.20.1015, 4011.20.5020, and 8708.99.4850. While HTSUS subheadings are provided for convenience and

> customs purposes, the written description of the scope of the orders is dispositive.[5]

On November 23, 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 August 18, 2020, and notifying the parties of CBP's decision to take interim measures based upon reasonable suspicion that Vanguard had entered covered merchandise into the customs territory of the United States through evasion.[6] The entries subject to the investigation are all unliquidated entries of covered merchandise entered from January 28, 2019,[7] through the pendency of the investigation.[8]

On February 11, 2021, Asia Wheel submitted a request to Commerce for a scope ruling with respect to the steel wheels Asia Wheel manufactured in Thailand using rims produced in Thailand and discs produced in China.[9] On June 9, 2021, in accordance with 19 U.S.C. § 1517(b)(4)(A) and 19 C.F.R. § 165.16(a), CBP directed a covered merchandise referral to Commerce.[10] Specifically, based on the plain language of the scope of the AD/CVD Orders, TRLED was unable to determine whether "the steel wheels produced by Asia Wheel from imported rectangular steel plates from China and a third country that Asia Wheel converts into rims in Thailand and welds with Chinese-origin discs in Thailand are covered merchandise."[11] 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.[12]

On June 7, 2023, Commerce issued its scope ruling, and on June 9, 2023, Commerce notified CBP of the same.[13] Commerce determined that the steel wheels manufactured by Asia Wheel "using discs from China and rims produced in Thailand from rectangular steel plates sourced from China or a third country," and subsequently exported by Asia Wheel, were in-scope merchandise subject to the AD/CVD Orders "regardless of [the] importer of record."[14]

On August 21, 2023, TRLED found that there was substantial evidence that the steel wheels that Vanguard imported into the United States from Asia Wheel were covered merchandise.[15]

---

[5] 84 Fed. Reg. at 24,100.
[6] *See* Notice of Initiation (Public Version).
[7] Although the final AD/CVD Orders were published on May 24, 2019, the CVD preliminary affirmative determination was issued on August 31, 2018, and the AD preliminary affirmative determination was issued on October 30, 2018. *See* 84 Fed. Reg. at 24,099.
[8] *See* 19 C.F.R. § 165.2 ("In addition, at its discretion, CBP may investigate other entries of such covered merchandise.").
[9] *See* August 21 Determination (Public Version); Vanguard's Written Arguments (June 27, 2023) (Public Document), at 6 (citing Memorandum from Jill Pollack, Senior Director, Office VII, Antidumping and Countervailing Duties, to James Maeder, Deputy Assistant Secretary for Antidumping and Countervailing Duties, *Antidumping and Countervailing Duty Orders on Certain Steel Wheels 22.5-24.5 Inches in Diameter from the People's Republic of China, Final Scope Ruling: Asia Wheel's Steel Wheels Processed in Thailand* (June 7, 2023) (Public Document) ("Final Scope Ruling"), at 20 n.20). Vanguard has sought judicial review of Commerce's Final Scope Ruling before the U.S. Court of International Trade, which case is currently pending. *See infra* at 6.
[10] *See* Covered Merchandise Referral Request for EAPA Investigation 7509, Imported by Vanguard National Trailer Corporation: Antidumping and Countervailing Duty Orders on Certain Steel Wheels 22.5 and 24.5 inches in Diameter from the People's Republic of China (June 9, 2021) (Public Document) ("Covered Merchandise Referral.
[11] CBP Covered Merchandise Referral Request (Public Document), at 3.
[12] *See* August 21 Determination (Public Version) (citing 19 C.F.R. § 165.16(d)).
[13] *See* August 21 Determination (Public Version); Final Scope Ruling (Public Document).
[14] Final Scope Ruling (Public Document), at 31; *see also id.* at 34; August 21 Determination (Public Version) (quoting the Final Scope Ruling).
[15] *See* August 21 Determination (Public Version).

Vanguard entered the steel wheels into the customs territory of the United States on type "01" consumption entries.[16] As a result, no cash deposits for antidumping or countervailing duties were applied to the merchandise.[17]

On October 2, 2023, Vanguard timely filed a Request for Administrative Review. On October 3, 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 H334791. On October 18, 2023, Accuride and Maxion timely submitted a response to Vanguard's request for administrative review, presenting their 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."[18] 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.[19]

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.[20]

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)."[21] 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."[22]

---

[16] 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 https://www.cbp.gov/trade/programs-administration/entry-summary/cbp-form-7501 (last accessed Nov. 14, 2023).
[17] *See* August 21 Determination (Public Version).
[18] 19 U.S.C. § 1517(c)(1).
[19] 19 U.S.C. § 1517(a)(5); *see also* 19 C.F.R. § 165.1.
[20] *See Investigation of Claims of Evasion of Antidumping and Countervailing Duties, Interim Regulations*, 81 Fed. Reg. 56,477, 56,478 (CBP Aug. 22, 2016).
[21] 19 C.F.R. § 165.1.
[22] *See Altx, Inc. v. United States*, 370 F.3d 1108, 1116 (Fed. Cir. 2004) (internal citations and quotation marks omitted).

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

A. Vanguard's Arguments

Vanguard requests that we reverse the August 21 Determination, asserting that it did not import covered merchandise because the steel wheels Vanguard imported are not described by the scope of the AD/CVD Orders. Vanguard presents the following arguments in support of its request.

First, Vanguard claims that Commerce erred in its Final Scope Ruling when it determined that the steel wheels produced by Asia Wheel are in-scope merchandise, and that the Final Scope Ruling is currently under review before the U.S. Court of International Trade.[23] Vanguard asserts that, contrary to the Final Scope Ruling, steel wheels manufactured in third countries are in-scope merchandise only if both the rims and disc are of Chinese origin.[24] Alternatively, Vanguard argues that its imports cannot be covered merchandise because the scope language "was unclear," and thus, Vanguard's entries of steel wheels did not become "subject to" the AD/CVD Orders until the date on which Commerce initiated the scope inquiry requested by Asia Wheel (May 12, 2021).[25] As a result, suspension of liquidation of Vanguard's entries could take effect only after that date.[26]

Second, Vanguard contends that it did not make a material false statement or omission when entering the steel wheels manufactured by Asia Wheel on type "01" entries. Vanguard avers that it "lacked adequate notice that those wheels were potentially covered by the scope of the AD/CVD Orders at the time of entry" because the plain scope language was "ambiguous," and that an importer must have notice before being subject to AD/CVD liability.[27] Vanguard also claims that because it "reasonably relied" on the plain scope language and Commerce's scope analysis in the underlying AD/CVD investigation, Vanguard "did not act culpably." Vanguard states that the EAPA statute requires "a degree of culpability" to demonstrate falsity,[28] citing to *Diamond Tools Technology LLC v. United States*, 609 F. Supp. 3d 1378 (Ct. Int'l Trade 2022) ("*Diamond Tools II*"), in support of this assertion, and argues that the later decision in *Ikadan System United States, Inc. v. United States*, 639 F. Supp. 3d 1339 (Ct. Int'l Trade 2023), is "flawed" and should be disregarded.[29]

Third, Vanguard asserts that TRLED improperly initiated this EAPA investigation and imposed interim measures based on an "erroneous allegation" of transshipment, and that TRLED's legal basis for imposing interim measures "became invalid" once TRLED decided that it could not determine whether Vanguard's imports were covered merchandise and had to direct a covered

---

[23] *See* Vanguard's Request for Administrative Review (Public Document), at 4–5, 9–13.
[24] *See id.* at 4–5, 9–13.
[25] *Id.* at 13; *see also id.* at 14–16.
[26] *See id.* at 14–15.
[27] *Id.* at 16–20 (citing *Tai-Ao Aluminum (Taishan) Co. v. United States*, 983 F.3d 487 (Fed. Cir. 2021); *Trans Tex. Tire, LLC v. United States*, 519 F. Supp. 3d 1275 (Ct. Int'l Trade 2021)).
[28] *Id.* at 16, 20–24.
[29] *Id.* at 20–24.

merchandise referral to Commerce.[30] According to Vanguard, this action violated the EAPA statute because "CBP cannot impose interim measures if it questions whether the merchandise at issue is subject to the AD/CVD order in the first place."[31]

Fourth, citing to *Royal Brush Manufacturing, Inc. v. United States*, 75 F.4th 1250 (Fed. Cir. 2023), Vanguard claims that "CBP conducted this EAPA investigation in a manner that deprived Vanguard of its due process rights" because CBP relied on confidential information, to which Vanguard did not have access, to initiate the EAPA investigation, impose interim measures, and find substantial evidence of evasion.[32] Specifically, Vanguard asserts that it did not have access to confidential information in the allegation, in the supplement to the allegation, and in the CBP interoffice memorandum documenting CBP's on-site visit to Asia Wheel's manufacturing facility in Thailand to initiate the investigation. In addition, Vanguard claims that CBP did not provide "Vanguard with a meaningful public summary" of the CBP interoffice memorandum.[33]

For these reasons, Vanguard requests that the August 21 Determination be reversed.

B. Accuride's and Maxion's Arguments

Accuride and Maxion request that we affirm the August 21 Determination, providing several bases in support of their position.

First, the Allegers argue that CBP cannot "simply ignore Commerce" and that "a scope determination from Commerce is binding on CBP."[34] Accuride and Maxion maintain that the proper recourse for disputing the Final Scope Ruling is through judicial intervention.[35]

Second, the Allegers claim that the statutory standard for a finding of evasion has been met because Vanguard imported covered merchandise into the United States as non-subject merchandise and did not pay the deposits and duties due on these imports.[36] Accuride and Maxion contend that Vanguard's imports of covered merchandise entered on type "01" entries instead of "03" entries constitute false statements under the EAPA statute, and dispute Vanguard's claim that the EAPA statute requires a showing of intent to evade.[37] The Allegers also distinguish this review from the *Diamond Tools II* decision, where the U.S. Court of International Trade found that the false statement element of the EAPA statute had not been met because Commerce "'changed the scope of the Order' through the anticircumvention determination. . . ."[38]

Third, Accuride and Maxion assert that CBP's authority to suspend liquidation before Commerce initiated its scope review has been upheld by federal courts.[39] In *Sunpreme Inc. v. United States*, 946 F.3d 1300 (Fed. Cir. 2020) (en banc), the U.S. Court of Appeals for the Federal Circuit "made clear that 'Customs has the authority to suspend liquidation of goods when it determines that

[30] *Id.* at 7; *see also id.* at 8, 24–27.
[31] *Id.* at 25.
[32] *Id.* at 28–29.
[33] *Id* at 28–29.
[34] Accuride's and Maxion's Response (Oct. 16, 2023) (Public Document), at 4, 6.
[35] *See id.* at 5.
[36] *See id.* at 7.
[37] *See id.* at 7–10 (citing *Ikadan Sys. United States, Inc.*, 639 F. Supp. 3d 1339).
[38] Accuride's and Maxion's Response (Public Document), at 9 (quoting *Diamond Tools II*, 609 F. Supp. 3d at 1388).
[39] *See* Accuride's and Maxion's Response (Public Document), at 11.

the goods fall within the scope of an ambiguous antidumping or countervailing duty order,' even prior to Commerce (*sic*) opinion on the issue."[40]

Fourth, Accuride and Maxion argue that CBP's imposition of interim measures under the EAPA statute was proper because the Final Scope Ruling did not change the scope of the AD/CVD Orders, meaning that the steel wheels at issue here were covered merchandise prior to Commerce's determination.[41] Additionally, the Allegers depict Vanguard's reading of the EAPA statute as "simply incorrect," and assert that "[n]owhere is CBP's authority dependent on Commerce's timing."[42]

Fifth, Accuride and Maxion dispute Vanguard's claim that it was denied adequate notice that its imports could be covered merchandise.[43] The Allegers claim that Vanguard had sufficient notice because it was a "reasonably informed party" aware that its imports "were potentially within the scope of Commerce's action. . . ."[44] Accuride and Maxion also distinguish case law cited by Vanguard, which the Allegers contend neither addresses "a situation similar to the EAPA investigations here," nor supports the limitation on CBP's authority under the EAPA statute as Vanguard claims.[45]

Sixth, the Allegers argue that Vanguard's due process violation claim is without merit and inapposite to RR's review.[46] Accuride and Maxion assert that RR does not have authority to review whether TRLED followed proper procedures.[47] Even so, "a simple failure of an agency to follow a procedural requirement does not void subsequent agency action."[48] The Allegers then contend that the *Royal Brush* decision does not require CBP to disseminate all confidential information on the record, but only that information on which CBP relies to find evasion.[49] In this respect, Accuride and Maxion state that "Vanguard points to no information that was not shared with it that was the basis for TRLED's determination of evasion here."[50] Further, the Allegers claim that TRLED based its determination on the public Final Scope Ruling, where Commerce found the merchandise Vanguard imported to be in-scope merchandise subject to the AD/CVD Orders.[51] Thus, Vanguard's due process violation argument fails.[52]

For these reasons, Accuride and Maxion request that the August 21 Determination be affirmed.

---

[40] *Id.* (quoting *Sunpreme Inc.*, 946 F.3d at 1321).
[41] *See* Accuride's and Maxion's Response (Public Document), at 12.
[42] *Id.* at 12–13, 15.
[43] *See id.* at 13–14.
[44] *Id.* at 14 (quoting *Transcom, Inc. v. United States*, 294 F.3d 1371, 1380 (Fed. Cir. 2002); *Transcom, Inc. v. United States*, 182 F.3d 876, 882–83 (Fed. Cir. 1999)) (internal quotation marks omitted).
[45] Accuride's and Maxion's Response (Public Document), at 13–14.
[46] *See id.* at 15–20.
[47] *See id.* at 16.
[48] *Id.* at 18 (quoting *Dixon Ticonderoga Co. v. United States*, 468 F.3d 1353, 1355 (Fed. Cir. 2006) (internal quotation marks omitted).
[49] *See* Accuride's and Maxion's Response (Public Document), at 16–17.
[50] *Id.* at 18.
[51] *See id.* at 19.
[52] *See id.*

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 the following materials: (1) the administrative record upon which the August 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 August 21 Determination and the accompanying administrative record to determine whether substantial evidence of evasion exists. As discussed below, there is substantial evidence that the imported steel wheels are covered merchandise subject to the AD/CVD Orders, and that the steel wheels were entered by Vanguard into the customs territory of the United States through evasion.

The outcome of this administrative review rests on whether the steel wheels that Asia Wheel manufactured in Thailand, which Vanguard subsequently imported into the United States, fall within the scope of the AD/CVD Orders, and thus, constitute covered merchandise under EAPA. For the reasons outlined below, we find that there is substantial evidence that Vanguard imported covered merchandise into the United States.

There is no dispute that Vanguard imported steel wheels produced by Asia Wheel during the EAPA period of investigation.[53] There is also no dispute that Asia Wheel manufactured these steel wheels in Thailand by welding together discs from China and rims produced in Thailand using rectangular steel plates sourced from China or a third country, which Asia Wheel then painted and packaged in its factory.[54] The dispute is whether these steel wheels constitute covered merchandise under the AD/CVD Orders.[55]

The AD/CVD Orders state that "[t]he scope of the orders covers certain on-the-road steel wheels, discs, and rims for tubeless tires, with a nominal rim diameter of 22.5 inches and 24.5 inches, regardless of width."[56] The scope "includes certain on-the-road steel wheels with either a 'hub-piloted' or 'stud-piloted' mounting configuration, and includes rims and discs for such wheels, whether imported as an assembly or separately."[57] Additionally, [t]he scope includes rims and discs that have been further processed in a third country, including, but not limited to, the welding and

[53] *See generally* Vanguard's Request for Administrative Review (Public Document); *see also* Vanguard's Re-Submission of Public Version of January 19, 2021 Request for Information ("RFI") Response (Feb. 10, 2021) (Public Version) ("Vanguard's RFI Response"), at 1–2, 9, 13, 15, 44–50, Exs. 2–3; Vanguard's Entry 3802 CF-28 Response (Sept. 2, 2020) (Public Version), at Exs. 1, 3, 5; Vanguard's Entry 8200 CF-28 Response (Sept. 2, 2020) (Public Version), at Exs. 1, 3, 5.
[54] *See* Asia Wheel's Re-Submission of Public Version of January 19, 2021 RFI Response (Feb. 10, 2021) (Public Version) ("Asia Wheel's RFI Response"), at 2, 8, 13, 20–24; Vanguard's Voluntary Submission of Factual Information (Mar. 5, 2021) (Public Version), at Attach.; Final Scope Ruling (Public Document), at 6 (internal citation omitted).
[55] *See* Vanguard's Request for Administrative Review (Public Document), at 4–6, 8–12; August 21 Determination (Public Version), at 5–6; Vanguard's RFI Response (Public Version), at 1–3; *see also* Asia Wheel's RFI Response (Public Version), at 1–3 (raising the same arguments as Vanguard regarding covered merchandise).
[56] 84 Fed. Reg. at 24,100.
[57] *Id.*

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 proceeding if performed in China."[58]

Here, based on the plain language of the AD/CVD Orders' scope, TRLED concluded that it was unable to determine whether "the steel wheels produced by Asia Wheel from imported rectangular steel plates from China and a third country that Asia Wheel converts into rims in Thailand and welds with Chinese-origin discs in Thailand are covered merchandise."[59] 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 directed a covered merchandise referral to Commerce on June 9, 2021.[60]

In accordance with 19 U.S.C. § 1517(b)(4)(B), Commerce issued a Final Scope Ruling on June 7, 2023.[61] Commerce conducted its five-factor substantial transformation test to determine the country of origin of steel wheels produced by Asia Wheel, after finding the plain scope language to be "ambiguous" as to finished steel wheels processed in a third country from a mix of Chinese and non-Chinese components.[62] As discussed in more detail below, Commerce explained that, in the Final Determination in the underlying AD/CVD investigations, it had notified the parties that a case-by-case evaluation may be necessary to address country of origin issues.[63] In the Final Scope Ruling, Commerce determined the country of origin of Asia Wheel's steel wheels to be China because "the finished truck wheels Asia Wheel manufactures in its facilities in Thailand using discs from China and rims it produces in Thailand from steel plates from China or a third country are not substantially transformed such that the third-country processing confers country of origin based on the totality of circumstances."[64] Commerce also cited the scope language regarding third-country processing, and found that "the plain language of the scope extends to 'any other processing that would not otherwise remove the merchandise from the scope of the proceeding if performed in China.'"[65] As such, Commerce determined that Asia Wheel's finished steel wheels, manufactured in Thailand "from a mix of one wheel component sourced from China and one component originating from a third country," are in-scope merchandise subject to the AD/CVD Orders.[66] Accordingly, under the EAPA statute, the steel wheels Vanguard imported from Asia Wheel are covered merchandise.[67]

There is also substantial evidence that Vanguard 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

---

[58] *Id.*
[59] Covered Merchandise Referral (Public Document); August 21 Determination (Public Version), at 6.
[60] *See id.*; *see also* 19 U.S.C. §§ 1517(b)(4)(A)(i), (B); *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))).
[61] *See* Final Scope Ruling (Public Document).
[62] *Id.* at 9, 16–25.
[63] *See id.* at 9.
[64] *Id.* at 16; *see also id.* at 33 ("This decision plainly applies to the finished article, the steel wheel, as exported from Thailand").
[65] *Id.* at 10 (quoting 84 Fed. Reg. at 24,100).
[66] *Id.* at 7, 9.
[67] *See* 19 U.S.C. § 1517(a)(3) (defining "covered merchandise" as merchandise that is subject to an AD or a CVD order).

on type "03" AD/CVD entries and omitted the relevant AD/CVD case numbers from the entry summary documentation.[68] These constitute false statements that are also material because the applicable cash deposits and antidumping and countervailing duties were not paid. Additionally, the relevant case numbers were omitted from the entry summary documentation. The omission of case numbers on the entry summary documentation is material because it interfered with the government's ability to accurately track imports of steel trailer wheels from China, to collect the applicable antidumping and countervailing cash deposits due, and to determine and assess future antidumping and countervailing payments. Therefore, we conclude that there is substantial evidence that Vanguard entered covered merchandise by evasion.

Vanguard also presents several other arguments and procedural claims in its request for administrative review, all of which lack merit.

First, Vanguard's noting "that Commerce's Final Scope Ruling is flawed and reversible on appeal," is irrelevant to RR's review here.[69] Contrary to Vanguard's suggestion, CBP cannot ignore a scope determination made by Commerce. In fact, 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 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.[70]

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."[71]

As such, CBP must follow Commerce's Final Scope Ruling. As discussed above, Commerce determined that the steel wheels Asia Wheel manufactured in Thailand "from a mix of one wheel component sourced from China and one component originating from a third country," are in-scope merchandise subject to the AD/CVD Orders.[72] Accordingly, under the EAPA statute, the steel wheels Vanguard imported from Asia Wheel are covered merchandise.[73]

Second, Vanguard claims that it did not make a material false statement or omission because: (1) it lacked notice that its imports were covered merchandise; and (2) it lacked intent to evade the

---

[68] *See* August 21 Determination (Public Version), at 9, 13, 15; Vanguard's Request for Administrative Review (Public Document), at 6, 16, 20–21, 24 (stating that Vanguard declared imports of steel wheels manufactured by Asia Wheel on type "01" entries).
[69] Vanguard's Request for Administrative Review (Public Document), at 13; *see also id.* at 4–5, 9–13.
[70] *Aspects Furniture Int'l, Inc.*, 607 F. Supp. 3d at 1268.
[71] *Id.* at 1269.
[72] Final Scope Ruling (Public Document), at 7, 9.
[73] *See* 19 U.S.C. § 1517(a)(3) (defining "covered merchandise" as merchandise that is subject to an AD or a CVD order).

AD/CVD Orders as required by the EAPA statute because Vanguard "reasonably relied" on the scope language and Commerce's analysis in the original investigations.[74] The Final Scope Ruling specifically refutes these arguments.[75] As Commerce stated in the Final Scope Ruling: a reasonably informed importer such as Vanguard had "fair warning" and "sufficient notice" that "merchandise produced pursuant to production methods other than those outlined in the underlying investigation," would be evaluated on "a case-by-case basis" in the context of a scope inquiry, including "consideration of information regarding substantial transformation, if appropriate."[76] Commerce further stated that "[a]dequate notice that a product be (*sic*) completed in a third country from a mix of rim and disc parts from China and a third country may be subject to further analysis of substantial transformation, in general, was established at the time of the underlying investigation."[77]

More specifically, the final determination in the original Commerce investigations provided the notice which Vanguard erroneously claims was lacking. In its original final determination, Commerce declined to rule on the issue of mixed origin rims and discs in the abstract and indicated that it would consider such scenarios based on specific facts. As Commerce explained in the Final Scope Ruling:

> As an initial matter, fair warning that merchandise produced pursuant to production methods other than those outlined in the underlying investigation, 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:
>
> > While in some instances Commerce has relied on a substantial transformation analysis to address country-of-origin issues, the decision to conduct such an analysis is contingent upon the facts and circumstances of a particular case. However, here, we find that we can properly frame the scope of the investigation and properly address issues concerning circumvention by incorporating the petitioners' proposed clarification of the scope, subject to the minor change discussed further below." (emphasis added).
>
> 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's 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's strained attempts to interpret the meaning of the language of the *Final Determinations* otherwise, no party contests that the steel wheels subject to this request are precisely the merchandise contemplated by Zhejiang Jingu in its comments for the *Final Determinations*, namely, that "[t]he proposed scope language is overly broad and vague, potentially expanding the scope to include other merchandise that also originates in third countries (*e.g.*, the language does

[74] Vanguard's Request for Administrative Review (Public Document), at 16–24.
[75] *Id.* at 16–20.
[76] Final Scope Ruling (Public Document), at 9, 14–15.
[77] *Id.* at 28 (emphasis in original).

> not explicitly require that both the rim and disc be produced in China for China to be considered the country of origin)." Zhejiang Jingu clearly was aware that the product for which its affiliate Asia Wheel is requesting a scope ruling was potentially within the scope of the *Orders*.[78]

In sum, in the Final Scope Ruling, Commerce concluded that importers such as Vanguard 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 merchandise containing such a mix of rims and discs was on notice that, depending on the specific facts, its merchandise might be considered subject to the AD/CVD Orders, and therefore, the importer should seek a scope ruling before importing such merchandise. Indeed, as Commerce stated in the Final Scope Ruling:

> [b]y including the above third country processing language, Commerce did not automatically exclude an array of products, such as steel wheels assembled in a third country of Chinese-origin and third country components. Instead, Commerce explained that it considered the most appropriate resolution to the question to be an evaluation of specific examples on a case-by-case basis in the context of future scope or circumvention inquiries, in consideration of information regarding substantial transformation, if appropriate. As stated in the Final Determinations, "[w]hile in some instances Commerce has relied on a substantial transformation analysis to address country-of origin issues, the decision to conduct such an analysis is contingent upon the facts and circumstances of a particular case."[79]

RR's decision on this point is buttressed by the U.S. Court of Appeals for the Federal Circuit's *en banc* decision in *Sunpreme*.[80] 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.[81] In this case, the steel wheels were already subject to a lawful suspension and extension of liquidation under EAPA when Commerce issued its Final Scope Ruling in response to CBP's covered merchandise referral and Asia Wheel's scope ruling request . 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 *Sunpreme* decision.[82] 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.[83]

---

[78] Final Scope Ruling (Public Document), at 27–28 (internal citations omitted).
[79] *Id,* at 9 (internal citation omitted).
[80] *See Sunpreme*, 946 F.3d 1300 (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).
[81] *See* 19 U.S.C. §§ 1517(b) and (e).
[82] *See Sunpreme*, 936 F.3d at 1322 (stating "[b]arring Customs from suspending liquidation based on ambiguous orders would create perverse incentives for importers, contrary to the remedial and revenue-driven policy of the [Tariff Act].").
[83] *See Diamond Tools I*, 545 F. Supp. 3d at 1324, 1347–48.

Additionally, Vanguard's claim that the EAPA statute requires "a degree of culpability" does not withstand scrutiny.[84] 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.[85]

"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."[86] Thus, EAPA does not require "some level of culpability."[87]

Further, the situation present in the instant review is distinguishable from the facts underlying *Diamond Tools II*.[88] In *Diamond Tools II*, 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.[89] By contrast, here, Vanguard could not and did not rely on any previous "clear and specific" instructions issued by Commerce regarding the country of origin of merchandise. 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 AD/CVD Orders, to be made based on specific facts as may be presented to the agency. Thus, here, in the Final Scope Ruling, Commerce "provide[d] specific clarification" that Asia Wheel's products are in-scope merchandise.[90]

Third, Vanguard erroneously contends that CBP cannot impose interim measures and suspend liquidation when it subsequently decides to direct a covered merchandise referral to Commerce.[91] In effect, Vanguard suggests that CBP must halt its imposition of interim measures and the suspension of liquidation where it has issued a covered merchandise referral.

This assertion lacks legal support and Vanguard fails to provide any such authority.[92] Moreover, Vanguard's attempt to limit CBP's authority disregards and undermines the purpose of the EAPA statute, which is described by the U.S. Court of International Trade as follows:

> [t]he purpose of the EAPA was to empower the U.S. Government and its agencies with the tools <u>to identify proactively and thwart evasion at earlier</u>

[84] Vanguard's Request for Administrative Review (Public Document), at 28 (internal footnote and citation omitted).
[85] 19 U.S.C. § 1517(a)(5)(A).
[86] *Ikadan Sys. United States, Inc.*, 639 F. Supp. 3d at 1349.
[87] Vanguard's Request for Administrative Review (Public Document), at 28.
[88] *See* Vanguard's Request for Administrative Review (Public Document), at 23 (claiming that "*Diamond Tools II*'s legal holding cannot be distinguished on factual grounds").
[89] *Diamond Tools II*, 609 F. Supp. 3d at 1387–88, 1391.
[90] Final Scope Ruling (Public Document), at 10.
[91] Vanguard's Request for Administrative Review (Public Document), at 13; *see also id.* at 14–16.
[92] *See generally id.*

> stages to improve enforcement of U.S. trade laws, including by ensuring full collection of AD and CVD duties and, thereby, preventing a loss in revenue.[93]

Put simply, the EAPA statute is intended to identify and stop evasion at the earliest instance. To achieve this purpose, the EAPA statute authorizes CBP to impose interim measures — including the suspension of liquidation — prior to rendering a determination of evasion.[94] Requiring CBP to wait for Commerce to issue a scope ruling inherently contravenes the EAPA statute's purpose and intent "to identify proactively and thwart evasion at earlier stages" in order to improve trade enforcement.[95]

Additionally, in *Diamond Tools I*, the U.S. Court of International Trade recognized that, when exercising its authority under the EAPA statute, CBP is not beholden to Commerce's deadlines in an anti-circumvention proceeding:

> [t]o require that Customs be bound by Commerce's later circumvention timeline would restrict Customs' authority to find that DTT USA's pre-December 2017 entries were "covered merchandise," thereby limiting Customs' enforcement authority under the EAPA with regard to those entries.[96]

Moreover, in that case, the U.S. Court of International Trade did not criticize CBP's decision to suspend liquidation as an interim measure, even though CBP later directed a covered merchandise referral to Commerce.[97]

Further, the U.S. Court of Appeals for the Federal Circuit has upheld CBP's authority to suspend liquidation where CBP seeks a scope ruling from Commerce to clarify ambiguous scope language and confirm that the products were covered by AD/CVD orders.[98] In fact, in *Sunpreme*, the U.S. Court of Appeals for the Federal Circuit held that "[b]arring Customs from suspending liquidation based on ambiguous orders would create perverse incentives for importers, contrary to the remedial and revenue-driven policy of the [Tariff Act]."[99] There is nothing to suggest that CBP could not exercise such authority under the EAPA statute, which intends to enforce the Tariff Act by ensuring that AD/CVD orders are not evaded, and where the EAPA statute explicitly provides CBP with independent authority to suspend liquidation as an interim measure.[100]

---

[93] *Diamond Tools Tech. LLC v. United States*, 545 F. Supp. 3d 1324, 1351 (Ct. Int'l Trade 2021) ("*Diamond Tools I*") (emphasis added).
[94] *Compare* 19 U.S.C. § 1517(e) *with* 19 U.S.C. § 1517(d)(1)(A).
[95] *Diamond Tools I*, 545 F. Supp. 3d at 1351 (emphases added).
[96] *Id.* at 1349.
[97] *See id.* at 1329–30 (imposing interim measures on June 23, 2017, and directing a covered merchandise referral to Commerce on November 21, 2017).
[98] *See Sunpreme Inc.*, 946 F.3d at 1305, 1317–18, 1320–21.
[99] *Id.* at 1322.
[100] *See* 19 U.S.C. § 1517(e)(1). *See also id.* at § 1517(b)(1) (directing CBP to initiate an EAPA investigation no later than 15 business days after receiving an allegation if CBP "determines that the information provided in the allegation or the referral, as the case may be, reasonably suggests that covered merchandise has been entered into the customs territory of the United States through evasion.") (emphasis added)).

Fourth, Vanguard asserts that TRLED improperly initiated this EAPA investigation, imposed interim measures, and issued its determination by relying on confidential information to which Vanguard did not have access.[101] Again, this claim is without merit. RR's statutory role is to conduct a *de novo* review of the administrative record to render a substantive determination as to evasion.[102] 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 Vanguard in its request for review. It is upon judicial review that the U.S. Court of International Trade 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."[103]

That said, here, the facts provided in the allegation reasonably suggested evasion, and the other facts in the administrative record (including the Final Scope Ruling), show that initiation of an investigation was fully justified, as was the imposition of interim measures and the finding of substantial evidence of evasion. That the EAPA investigation may have revealed facts which differ from those upon which the decision 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.

Further, Vanguard's reliance on *Royal Brush* for the premise that it was not afforded due process by CBP's EAPA investigation procedures is misplaced. In *Royal Brush*, the U.S. Court of Appeals for the Federal Circuit 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 was determined to be business confidential and was therefore originally withheld.[104] By contrast, RR's determination in this case is based on public versions of documents and Vanguard's own submissions that it placed on the administrative record. Therefore, Vanguard's due process concerns are without merit because it had and has access to the information upon which RR is relying to find substantial evidence of evasion in this case.

---

[101] Vanguard's Request for Administrative Review (Public Document), at 7.
[102] *See* 19 U.S.C. § 1517(f).
[103] 19 U.S.C. § 1517(g)(2).
[104] *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. . . .").

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 August 21 Determination of evasion 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: 2023.12.22 09:31:45 -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: 2023.12.22 09:41:39 -05'00'

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