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EAPA Case Number 7718

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RE: Notice of Initiation of Investigation and Interim Measures: EAPA Case 7718

To the Counsel and Representatives of the above-referenced Entities:

This letter is to inform you that U.S. Customs and Border Protection (“CBP”) has commenced a formal investigation under Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act (“TFTEA”) of 2015, commonly referred to as the Enforce and Protect Act (“EAPA”). Specifically, CBP is investigating whether Zinus Inc. (USA) (“Zinus¹”) evaded the antidumping (“AD”) duty order on wooden bedroom furniture from China (“WBF”) (A-570-890),² by entering into the United States Chinese-origin WBF through the use of a general product description and misclassification as non-covered merchandise not subject to the AD order. Based on a review of available information, CBP has determined that there is reasonable

¹ See the Alleger’s Letter, “Allegation of AD Evasion Under the Enforce and Protect Act of 2015,” dated March 23, 2022 (“Zinus Allegation”).

² See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture from the People’s Republic of China*, 70 Fed. Reg. 329 (Dep’t of Commerce Jan. 4, 2005) (Case No. A-570-890) (“WBF Order” or “AD Order”).

suspicion of evasion of AD duties by Zinus, and therefore, CBP is issuing a formal notice of investigation (“NOI”) and imposing the interim measures outlined below.

Period of Investigation

Pursuant to 19 C.F.R. § 165.2, entries covered by an EAPA investigation are those “entries of allegedly covered merchandise made within one year before the receipt of an allegation” “Entry” is defined as an “entry for consumption, or withdrawal from warehouse for consumption of merchandise in the customs territory of the United States.”³ On March 23, 2022, CVB Inc., dba Malouf® (“CVB Inc.”), a U.S. producer of wooden bedroom furniture, filed an EAPA allegation through its counsel and submitted a supplement to the allegation on March 26, 2022.⁴ CBP acknowledged receipt of the properly filed allegation against Zinus on June 27, 2022.⁵ In addition to the entries made within the period of investigation and those entries raised in the allegation, CBP may also investigate other entries of such covered merchandise at its discretion.⁶

Initiation

On July 19, 2022, the Trade Remedy Law Enforcement Directorate (“TRLED”) within the CBP Office of Trade initiated an investigation under EAPA as the result of the allegations submitted by CVB Inc., the allegor, as to evasion of AD duties by Zinus.⁷ CVB Inc. alleges that information available to the company reasonably suggests Zinus evaded the AD Order through the use of a general product description and by misclassifying Chinese WBF as metal furniture, thereby entering the WBF as non-covered merchandise.

CVB Inc. alleged that Zinus entered its metal and wood platform beds using a harmonized tariff schedule (“HTSUS”) subheading applicable to metal furniture, rather than the appropriate wooden bed HTSUS subheadings, and that Zinus did so without payment of applicable AD duties.⁸ The beds at issue consist of wooden headboards and footboards with metal frames⁹ that are subject to the 216.01% China-wide AD cash deposit rate.¹⁰ Zinus receives imports from Zinus (Xiamen) Inc.,¹¹ a related party that does not have an exporter specific rate.¹²

Zinus misclassifies its metal and wood platform beds, under HTS 9403.20.0050, applicable to other metal furniture and 9403.20.0040, the HTS for metal household furniture, metal mattress

³ See 19 C.F.R. § 165.1.

⁴ See Zinus Allegation and the Allegor’s Letter, “Allegation of AD Evasion Under the Enforce and Protect Act of 2015,” dated March 26, 2022 (“Zinus Allegation Supplement”).

⁵ See “Receipt Notification Email to Emily Lawson and Kelly A. Slater, Esqs of Appleton Luff for EAPA 7718,” dated June 27, 2022.

⁶ See 19 C.F.R. § 165.2.

⁷ See Memorandum to Brian Hoxie, Director, Enforcement Operations Division, “Initiation of Investigation for EAPA Allegations 7718 – Zinus Inc. (USA),” dated July 19, 2022.

⁸ According to its website, Zinus sells metal and wood platform beds in the United States. The “Wood and Metal Bed Frames” product line includes the following: Suzanne Metal and Wood Platform Bed (“Suzanne”), Olivia Metal and Wood Platform Bed (“Olivia”), and the Paul Metal and Wood Platform Bed (“Paul”). Marketing and sales materials establish that Zinus’ metal and wood bed frames are composed of wood and subject to the WBF Order.

⁹ See Zinus Allegation at 6.

¹⁰ See the *WBF Order* for the applicable China-wide AD rate.

¹¹ See Zinus Allegation at 7 and Attachment 3.2 for import data showing Zinus (Xiamen) Inc. shipped the subject platform beds to Zinus. See also Attachment 7 for the ACE company-cases query of Chinese exporter rates in the WBF proceeding.

¹² See Zinus Allegation.

bases with legs, seemingly in an attempt to avoid AD cash deposits.¹³ The appropriate classification of metal and wood platform beds appears to be under subheading HTSUS 9403.50.9045, which would cover wooden beds with metal parts.¹⁴

By scope definition, wooden bedroom furniture is “made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates.”¹⁵ Further, the furniture can be constructed “with or without non-wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished.”¹⁶ Specifically, WBF subject to the orders include: “(1) Wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand-alone or attached to side rails), wooden footboards for beds, wooden side rails for beds....”¹⁷

Import data reveals that Zinus received platform beds from China comprised of metal and wood, specifically, the models: Suzanne, Olivia, and Paul.¹⁸ Rather than use these specific model names,¹⁹ which would have ultimately revealed their metal and wood composition, as described on the Zinus website,²⁰ Zinus elected to use general product descriptions, such as “metal and wood platform bed” or “platform bed” seemingly to evade the applicable AD Order. On December 13, 2011, the Department of Commerce (“Commerce”) ruled that “metal bed headboards” made with wood products sold by the University Loft Company were in the scope of the applicable AD Order.²¹ The University Loft Company beds were described as “composed of a piece of laminated particleboard surrounded by a metal frame.”²² Similarly, Zinus models of platform beds, specifically the Suzanne, Olivia and Paul, have headboards and footboards that are substantially made of wood surrounded by a metal frame.²³

The price of Zinus’ imports of metal and wood platform beds in the U.S. market supports the allegor’s claim that Zinus did not tender cash deposits for AD duties and/or undervalued its

¹³ *Id.* at 6.

¹⁴ *See id.*

¹⁵ *See the WBF Order.*

¹⁶ *See id.*

¹⁷ *See id.*

¹⁸ Zinus Allegation at Attachment 3.1. The models described in the Zinus import data match the metal and wood platform bed models Zinus markets and offers for sale in the United States as set forth above, and which include the (i) Suzanne Metal and Wood Platform Bed; (ii) Olivia Metal and Wood Platform Bed; and (iii) Paul Metal and Wood Platform Bed.

¹⁹ *Id.* at Attachment 3.

²⁰ *See the Zinus website listing its “Wood and Metal” product line available at <https://www.zinus.com/products/wood-and-metal-bed-frames>. According to the metal and wood platform bed specifications, Zinus’ merchandise is comprised of wood components and is WBF described in the scope of the WBF Order. Zinus’ metal and wood platform beds are sold as complete bed sets, consisting of a wooden headboard and a footboard (footboard slat). Wood components can be described as “solid wood” or “pine wood” but are “wood products” as defined in the scope. The metal components of the platform beds include a steel frame, steel leg supports, steel support bar and middle legs. All bed parts are packed into one box and are shipped in this manner.*

²¹ *See Department of Commerce Memorandum, “re: Wooden Bedroom Furniture from the People’s Republic of China: Scope Ruling on University Loft Company’s Request, dated December 13, 2011,” at 10-11. (“University Loft Ruling”).*

²² *See id.*

²³ *See Zinus Allegation at 13.*

goods.²⁴ The retail price of Zinus' various models of platform beds does not reflect pricing from a Chinese supplier if AD cash deposits had been paid and/or if the real value of the merchandise had not been falsely reduced.²⁵ The Zinus Allegation provides a price breakdown of the Zinus metal and wood platform beds to show that if the AD cash deposits were applied properly, U.S. sales would leave Zinus at a loss or with minimal profits, based on its current retail price for the bed models at issue.²⁶ This analysis supports the evasion allegation because while Zinus' actual purchase prices for platform beds were not publicly available to CVB Inc., its retail prices for the model beds at issue would not be commercially viable if Zinus had actually paid the requisite AD duties.²⁷

Initiation Assessment

TRLED will initiate an investigation if it determines that “{t}he information provided in the allegation ... reasonably suggests that the covered merchandise has been entered for consumption into the customs territory of the United States through evasion.”²⁸ “Evasion” is defined as “the entry of covered merchandise into the customs territory of the United States for consumption by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material, and that results in any cash deposit or other security or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the covered merchandise.”²⁹ Thus, the allegation must reasonably suggest not only that merchandise subject to an AD Order was entered into the United States by the importer alleged to be evading, but that such entry was made by a material false statement or act, or material omission, that resulted in the reduction or avoidance of applicable AD cash deposits or other security.

In assessing the claims made and evidence provided in the allegation, TRLED found that the allegation reasonably suggests that Zinus has engaged in attempts to evade the AD Order through the use of the general product description and the misclassification of Chinese WBF as non-covered merchandise into the United States, thereby failing to declare the merchandise as subject to the AD Order. Zinus' wood and metal platform beds were misclassified as simply metal furniture because by design the headboards and footboards are comprised of wooden panels. As a result, a classification for metal furniture does not capture the complete composition of these beds. Zinus' platform wood and metal beds should have been classified under the HTS subject to the AD Order. Consequently, TRLED initiated investigations pursuant to 19 U.S.C. § 1517(b)(1) and 19 C.F.R. § 165.15.

Interim Measures

Not later than 90 calendar days after initiating an investigation under EAPA, TRLED will decide based on the record of the investigation if there is reasonable suspicion that merchandise covered

²⁴ See Zinus Allegation at 4 – 7, and Attachments 7.a – 7.c. The Allegation also provided photographs of covered merchandise sold by Zinus taken from its website.

²⁵ See, e.g., CBP website at <https://www.cbp.gov/trade/e-allegations> (referencing undervaluation as a method of AD evasion).

²⁶ See Zinus Allegation at Attachments 8-10. Attachment 8 provides a retail to-FOB price breakdown for the Zinus Suzanne queen-size model, as an illustrative example.

²⁷ See Zinus Allegation at 15.

²⁸ See 19 C.F.R. § 165.15(b); see also 19 U.S.C. § 1517(b)(1).

²⁹ See 19 C.F.R. § 165.1; see also 19 U.S.C. § 1517(a)(5)(A).

by the AD Orders was entered into the United States through evasion. If reasonable suspicion exists, CBP will impose interim measures pursuant to 19 U.S.C. § 1517(e) and 19 C.F.R § 165.24. As explained below, CBP is imposing interim measures because the evidence establishes reasonable suspicion that Zinus Inc. (USA) entered covered merchandise into the customs territory of the United States through evasion through the use of a general product description and its misclassification of Chinese WBF as non-covered merchandise.

CF-28 Responses/Cargo Exams and Analysis

CBP issued CBP Form 28 (“CF28”) requests for information to Zinus Inc. (USA). The CF28s requested various information including invoices, packing slips, bills of lading, sources of raw materials, and production records related to entries from Malaysia during the period of investigation (POI). Additionally, cargo examinations of Zinus’ shipments were performed to determine the validity of the requested information.

On August 04, 2022, CBP sent a CF28 for entries [entry number]2613, [entry number]0346 and [entry number]5771³⁰ to Zinus and its broker with a due date of September 03, 2022. On September 01, 2022, the broker for entries [entry number]2613 and [entry number]0346 was granted an extension until September 13, 2022. The broker for [entry number]5771 forwarded partial documents in response to the CF28 on September 2, 2022.³¹ The importer obtained counsel and was given additional time to respond. CBP received more responses on September 28, 2022.³²

In its responses, Zinus maintains that its merchandise is not subject to the antidumping duty order covering imports of WBF from China.³³ Further, the importer affirms that its entries were appropriately made as Type 01 consumption entries.³⁴ Zinus cites the Commerce ruling that metal framed bed frames, including bed frames with “wooden cross slats, which provide mattress support,” are not within the scope of the WBF Order.³⁵ Specifically, it states that Commerce has found that slat beds with “two components: (1) all metal frames and legs with no headboard or footboard; and (2) wooden cross slats, which provide mattress support” are “not within the scope of the WBF Order.”³⁶ However, the Zinus models of platform beds are comprised of wooden headboards and footboards.³⁷

The waybill for entry [entry number]2613, lists several lines of the Suzanne model platform bed classified as 9403.20.0040,³⁸ which provides for “Mattress bases with legs, not foldable, having the characteristics of a stationary (not mechanically adjustable) bed frame, of a width exceeding 91.44 cm of a length exceeding 184.15 cm and of a depth exceeding 8.89 cm.” Ironically, the invoice and purchase orders describe this style [style number] as Ironline Metal and Wood

³⁰ See CF 28 Request for Information for Entries [entry number]2613, [entry number]0346 and [entry number]5771, dated August 04, 2022 (“CF 28 Request [entry number]2613”, “[entry number]0346” and “[entry number]5771”).

³¹ See CF 28 Partial Response for Entry [entry number]5771, dated September 1, 2022 (“CF 28 Response “[entry number]5771”).

³² See CF 28 Response for Entries [entry number]2613, [entry number]0346 and [entry number]5771, dated September 28, 2022 (“CF 28 Response [entry number]2613”, “[entry number]0346” and “[entry number]5771”).

³³ See CF 28 Response [entry number]2613 at 6, [entry number]0346 at 13, and [entry number]5771 at 9.

³⁴ See *id.*

³⁵ See CF 28 Response for Entries [entry number]2613 at referring to the University Loft Ruling dated December 13, 2011 at 10-11.

³⁶ *Id.*

³⁷ See also Zinus Allegation at 4 – 7, and Attachments 7.a – 7.c.

³⁸ See CF 28 Response for Entries [entry number]2613.

platform beds.³⁹ An internet search identified this model number for sale as the Suzanne model, which was previously misclassified as 9403.20.0050.⁴⁰

The descriptions on the invoice and purchase orders contradict the general descriptions used by Zinus in its entry documents.⁴¹ Further, Zinus claims that Ironline (Suzanne) model is not subject to the AD order because its wood is composed of bamboo.⁴² The allegation provides evidence that this model is sold having solid wood in the headboard.⁴³ An additional internet search found that Suzanne model continued to be sold as having a “cherry finished pine wood headboard.”⁴⁴

As explained in the allegation, however, Zinus metal and wood platform bed are complete bed frames, not standalone slat beds, consisting of a wooden headboard and a footboard (footboard slat), with metal frame.⁴⁵ These wood components are consistent with descriptions of wood products defined in the scope of the WBF Order.⁴⁶ Further, Commerce has found in scope rulings that wooden headboards and footboards imported as components of metal beds are products that meet the description in the WBF Order.⁴⁷

At the request of the investigative team, CBP conducted a cargo exam on shipments for entry [entry number]0046 on August 4, 2022.⁴⁸ CBP requested additional shipments held for examination as an additional investigative measure. Shipments for entry [entry number]5482⁴⁹ were examined on September 28, 2022. The CBP Office of Field Operations (OFO) officers at the Port of Charleston that shipment [numbers] consisted of merchandise described as metal bed frames.⁵⁰ Further, photographs from the cargo examination indicated that the styles [style numbers], [style numbers] and [style numbers] were misclassified as metal furniture.⁵¹ The merchandise should have designated under the HTSUS 9403.50.9045 as “wooden furniture of a kind used in the bedroom.”⁵²

The cargo examination photos identify the styles “Tuscan” and “Sonoma,” metal and wood platform beds, which were misclassified under 9403.20.0050.⁵³ Further, the exam captured Zinus’ Horizon model metal and wood platform bed,⁵⁴ properly classified as wooden bedroom furniture under 9403.50.9045.⁵⁵ Although the appropriate HTS was used for this particular merchandise, Zinus entered it as an “01” entry. Upon further research and comparative analysis, it appears that Zinus changed the names of its styles of metal and wood platform beds. For

³⁹ *See id.*

⁴⁰ *See* the eBay website advertisement for the Suzanne model.

⁴¹ *See* the entry documents for [entry number]2613 at 3-4, 6-7, 11 and 14.

⁴² *See* CF 28 Response [entry number]2613 at 2.

⁴³ *See* Zinus allegation at Attachment 8.

⁴⁴ *See* eBay listing for the Therese model.

⁴⁵ *See* Zinus Allegation.

⁴⁶ *See* the WBF Order.

⁴⁷ *See id.*

⁴⁸ *See* Cargo Exam request dated August 4, 2022.

⁴⁹ The cargo examined were Shipment: [numbers], BOL: [numbers] (S), Description: [merchandise description] and Shipment: [numbers], BOL: [numbers] (S), Description: [merchandise description].

⁵⁰ *See* Cargo Examination request dated August 4, 2022.

⁵¹ *See* 09-28-2022 CEE-Cargo Exam Photos (7718) and 10-04-2022 CEE-Cargo Exam Photos.

⁵² *See* the *WBF Order*.

⁵³ *See* entry documents for [entry numbers]5482.

⁵⁴ *See id.*

⁵⁵ *See* entry documents for [entry numbers]5482.

example, the styles formerly identified in the allegation as “Olivia” were named “Tuscan” on the invoice.⁵⁶ Additionally, the style “Paul” was captured as “Sonoma.”⁵⁷ The shipment contained the “Horizon”, wood and metal platform bed not previously identified in the allegation. When researched, this model was named “Therese.”⁵⁸ These changes further support Zinus’ tendency to misrepresent the description of its wood and metal platform beds.

There were distinct differences in the description of Horizon metal and wood platform bed twin size.⁵⁹ On the invoice and packing list as well as the manifest documents, the Zinus’ Horizon models are indicated.⁶⁰ The bill of lading simply describes the beds as “furniture (bed).”⁶¹ According to the Amazon listings for the Horizon model, its components include a pine wood headboard.⁶² Further, the materials of Therese model include engineered wood, according to its Amazon listing.⁶³

The aforementioned evidence submitted by CVB Inc., and referenced by CBP in its initiation memorandum, supports TRLED’s determination that there is reasonable suspicion that Zinus entered covered merchandise into the United States through evasion by using a general product description and misclassifying Chinese WBF as non-covered merchandise.

Enactment of Interim Measures

Because of the reasons stated above, TRLED finds that there is reasonable suspicion that Zinus entered covered merchandise into the customs territory of the United States through evasion by using a general product description and misclassifying Chinese WBF as non-covered merchandise. Therefore, CBP is imposing interim measures pursuant to this investigation. Specifically, in accordance with 19 U.S.C. § 1517(e)(1)-(3), CBP shall:

- (1) suspend the liquidation of each unliquidated entry of such covered merchandise that entered on or after June 27, 2021, the date of the initiation of the investigation;
- (2) pursuant to the Commissioner’s authority under 19 U.S.C. § 1504(b), extend the period for liquidating each unliquidated entry of such covered merchandise that entered before the date of the initiation of the investigation June 27, 2021; and
- (3) pursuant to the Commissioner’s authority under 19 U.S.C. §1623, take such additional measures as the Commissioner determines necessary to protect the revenue of the United States, including requiring a single transaction bond or additional security or the posting of a cash deposit with respect to such covered merchandise.

Pursuant to its authority under subparagraph (3) to take such additional measures, CBP will require live entry requiring cash deposits to be posted prior to release of merchandise from CBP custody. CBP will reject any entry summaries that do not comply with live entry procedure and

⁵⁶ *See id.*

⁵⁷ *See id.*

⁵⁸ *See* the Amazon website advertisement for the Horizon and Therese models.

⁵⁹ *See* the entry documents for [number].

⁶⁰ *See id.*

⁶¹ *Id.*

⁶² *See* Amazon advertisement for the Horizon model.

⁶³ *See* Amazon listing for the Therese model.

require refiling of entries that are within the entry summary rejection period. CBP will also evaluate Zinus' continuous bonds to determine their sufficiency. Finally, CBP may pursue additional enforcement actions, as provided by law, consistent with 19 U.S.C. § 1517(h).

For any future submissions or factual information to CBP pursuant to this EAPA investigation, please provide a business confidential version and public version to CBP. In addition, please also provide a public version to the email addresses of the parties identified at the top of this notice.

Should you have any questions regarding this investigation, please feel free to contact us at eapallegations@cbp.dhs.gov. Please include "EAPA Case Number 7718" in the subject line of your email. Additional information on this investigation, including the applicable statute and regulations, may be found on CBP's EAPA website, <https://www.cbp.gov/trade/trade-enforcement/tftea/enforce-and-protect-act-eapa>.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian M. Hoxie". The signature is fluid and cursive, with the first name being the most prominent.

Brian M. Hoxie
Director, Enforcement Operations Division
Trade Remedy Law Enforcement Directorate
CBP Office of Trade