



**U.S. Customs and
Border Protection**

PUBLIC VERSION

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Re: Notice of Determination as to Evasion - EAPA Case Number 7509

Dear Counsel for the above-referenced Entities:

Pursuant to an examination of the record in Enforce and Protect Act (EAPA) Investigation 7509, U.S. Customs and Border Protection (CBP) has determined there is substantial evidence that Vanguard National Trailer Corporation (Vanguard) entered merchandise covered by the antidumping duty (AD) order A-570-082 and countervailing duty (CVD) order C-570-083 on certain steel wheels 22.5 and 24.5 inches in diameter (steel wheels) from the People's Republic of China (China)¹ into the customs territory of the United States through evasion. Substantial evidence demonstrates Vanguard imported steel wheels into the United States supplied by Asia Wheel Co., Ltd. (Asia Wheel) in Thailand that were subject to the *Orders* but did not report the merchandise as such. As a result, no cash deposits were applied to the merchandise at the time of entry.

¹ See *Certain Steel Wheels from the People's Republic of China: Antidumping and Countervailing Duty Orders*, 84 Fed. Reg. 24,098 (Dep't Commerce May 24, 2019) (*Orders*).

Background through Interim Measures

On July 17, 2020, Accuride Corporation (Accuride) and Maxion Wheels Akron LLC (Maxion) (collectively, the Allegers) filed an EAPA allegation regarding the evasion of AD/CVD duties by Vanguard, and on July 27, 2020, the Allegers filed a supplement to their allegation.² On July 28, 2020, the Trade Remedy Law Enforcement Directorate (TRLED), within CBP’s Office of Trade, acknowledged receipt of the properly filed allegation against Vanguard.³ TRLED found that the allegation reasonably suggested that Vanguard entered covered merchandise into the customs territory of the United States through evasion. On August 18, 2020, CBP initiated an investigation against Vanguard, pursuant to Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, commonly referred to as the “Enforce and Protect Act” or “EAPA.”⁴

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 ... {i}n addition, at its discretion, CBP may investigate other entries of such covered merchandise.”⁵ Entry is defined as an “entry, or withdrawal from warehouse for consumption, of merchandise in the customs territory of the United States.”⁶ In this EAPA investigation, CBP has investigated entries of covered merchandise made within 18 months before receipt of the allegation. Thus, the entries subject to this EAPA investigation are those entered for consumption, or withdrawn from warehouse for consumption, from January 28, 2019, through the pendency of this investigation.

On November 16, 2020, after evaluating all the record information, TRLED determined there was reasonable suspicion that Vanguard imported steel wheels into the United States that were transshipped from China through Asia Wheel in Thailand, and, therefore, CBP imposed interim measures.⁷ CBP issued its Notice of Initiation of Investigation and Interim Measures memorandum on November 23, 2020.⁸

TRLED found that the information provided in the allegation, namely, trade data indicating a shift in shipping patterns of steel wheels to U.S. customers from Zhejiang Jingu Company Limited (Jingu), Asia Wheel’s affiliate in China, to Asia Wheel in Thailand at the time of the AD/CVD investigations, as well as the [*types of evidence*] supported a finding of

² See Letter from the Allegers, “22.5 and 24.5 Inch Steel Wheels from China: Request for an Investigation under the Enforce and Protect Act” (July 17, 2020) (Allegation) and Letter from the Allegers, “22.5 and 24.5 Inch Steel Wheels from China: Supplement to Request for an Investigation under the Enforce and Protect Act” (July 27, 2020).

³ See CBP Email, “Receipt of EAPA Allegation 7509: Steel Wheels from China through Thailand” (July 28, 2020).

⁴ See CBP Memorandum, “Initiation of Investigation for EAPA Case Number 7509 – Vanguard National Trailer Corp.” (Aug. 18, 2020).

⁵ See 19 C.F.R. § 165.2.

⁶ See 19 U.S.C. § 1517(a)(4); see also 19 C.F.R. § 165.1.

⁷ See CBP Email, “EAPA Investigation 7509: CBP Internal Notice of Initiation and Implementation of Interim Measures” (Nov. 16, 2020).

⁸ See CBP Memorandum, “Notice of Initiation of Investigation and Interim Measures - EAPA Case Number 7509” (Nov. 23, 2020) (Notice of Interim Measures).

reasonable suspicion that evasion occurred.⁹ TRLED also cited data that were consistent with the Allegers' claim regarding a shift in shipment patterns from China to Thailand.¹⁰

In addition, TRLED relied on information provided in Vanguard's CBP Form 28 (CF-28) responses for two entries, including the fact that Vanguard's purchase orders for both entries [*information re: Vanguard's sales order process*] and the instruction to CBP to contact [*name, location*] for information on the raw materials purchased by the factory in Thailand.¹¹ The CF-28 responses showed that Asia Wheel purchased discs and wheel boards (*i.e.*, rectangular steel plates) from a Chinese affiliate, [*company name*], to form the steel wheels; TRLED noted that the scope of the *Orders* includes discs from China and the third-country processing of such discs to form steel wheels would not remove the merchandise from the scope.¹²

Moreover, CBP relied on information obtained during an on-site visit conducted at Asia Wheel's facility in Thailand.¹³ During the visit, Asia Wheel officials stated that mass production of steel wheels [*activity, year*], all sales are managed by [*company name*], and Asia Wheel produces wheels [*procedure*]. On the day of CBP's on-site visit, the [*description*] steel wheel production line was not operating; CBP noted that it appeared the line had not been used for several months, [*time*]. CBP observed the machines were placed too close together and positioned in such a way that they did not appear to have sufficient space for proper operation; pallets of steel plates were stored in front of the machines, which blocked access to the steel wheel production line; and rust and spider webs were on the machines. In sum, during its on-site visit at Asia Wheel, CBP found no evidence of recent steel wheel production.¹⁴

Post-Interim Measures

Requests for Information

On December 17, 2020, CBP issued Requests for Information (RFIs) to Vanguard and the claimed manufacturer in Thailand, Asia Wheel, pursuant to the EAPA regulations at 19 C.F.R. § 165.23(a).¹⁵ In the RFI to Vanguard, CBP requested information regarding the company's corporate structure and affiliations, accounting and financial practices, procurement and sales practices, and procedures for importation.¹⁶ The RFI issued to Asia Wheel requested information regarding the company's corporate structure and affiliations, accounting and

⁹ *Id.* at 2-4.

¹⁰ *Id.* at 7.

¹¹ *Id.* at 5-6.

¹² *Id.* at 6.

¹³ *Id.* at 7.

¹⁴ *Id.*

¹⁵ See CBP Letter to Vanguard, "Enforce and Protect Act Investigation 7509: Request for Information Concerning Whether Vanguard National Trailer Corp. Evaded the Antidumping and Countervailing Duty Orders on Certain Steel Wheels from the People's Republic of China, A-570-082 and C-570-083, with entries of merchandise into the United States" (Dec. 17, 2020) (Vanguard RFI) and CBP Letter to Asia Wheel, "Enforce and Protect Act Investigation 7509: Request for Information Concerning Whether Vanguard National Trailer Corp. Evaded the Antidumping and Countervailing Duty Orders on Certain Steel Wheels from the People's Republic of China, A-570-082 and C-570-083, with entries of merchandise into the United States" (Dec. 17, 2020) (Asia Wheel RFI).

¹⁶ See Vanguard RFI.

financial practices, raw material procurement and production, and sales/exports of covered merchandise to Vanguard.¹⁷ Both Vanguard and Asia Wheel submitted their RFI responses in a timely manner.¹⁸ On March 5, 2021, Vanguard made a timely submission of voluntary factual information.¹⁹ CBP issued a supplemental RFI to Vanguard on March 21, 2021,²⁰ to which Vanguard timely responded on March 22, 2021.²¹ On March 16, 2021 and April 30, 2021, CBP issued supplemental RFIs to Asia Wheel.²² Asia Wheel timely provided its response to the first supplemental RFI between April 9 - 21, 2021,²³ and its response to the second supplemental RFI on May 10 and 12, 2021.²⁴

In its RFI response, Asia Wheels reported that Jingu, which is located in China, is its parent company and ultimate shareholder.²⁵ Asia Wheel began [*description*] production of [*product, year*], and in [*month, year*], Jingu decided to expand the operation in Thailand.²⁶ Asia Wheel stated that during the POI, it sold steel wheels to customers in the United States and

¹⁷ See Asia Wheel RFI.

¹⁸ See Letters from Vanguard, “PROPRIETARY Version of Vanguard’s Response to CBP’s Dec. 17, 2020 Request for Information” (Jan. 19, 2021) and “Re-Submission of the PUBLIC Version of Vanguard’s January 19, 2021 Response to CBP’s Dec. 17, 2020 Request for Information, with Amended Public Summaries Pursuant to CBP’s Feb. 5, 2021 Request” (Feb. 10, 2021) (Vanguard RFI Response) and Letters from Asia Wheel, “PROPRIETARY Version of Asia Wheel’s Response to CBP’s Dec. 17, 2020 Request for Information” (Jan. 19, 2021) and “Re-Submission of the PUBLIC Version of Asia Wheel’s January 19, 2021 Response to CBP’s Dec. 17, 2020 Request for Information, with Amended Public Summaries Pursuant to CBP’s Feb. 5, 2021 Request” (Feb. 10, 2021) (Asia Wheel RFI Response).

¹⁹ See Letter from Vanguard, “Vanguard’s Voluntary Submission of Factual Information” (Mar. 5, 2021).

²⁰ See CBP Letter to Vanguard, “Enforce and Protect Act Investigation 7509: Supplemental Request for Information concerning whether Vanguard National Trailer Corporation Evaded the Antidumping and Countervailing Duty Orders on Certain Steel Wheels from the People’s Republic of China, A-570-082 and C-570-083, with Entries of Merchandise into the United States” (Mar. 12, 2021).

²¹ See Letter from Vanguard, “Vanguard’s Response to CBP’s March 12, 2021 Supplemental Request for Information” (Mar. 22, 2021).

²² See CBP Letters to Asia Wheel, “Enforce and Protect Act Investigation 7509: Supplemental Request for Information concerning whether Vanguard National Trailer Corporation Evaded the Antidumping and Countervailing Duty Orders on Certain Steel Wheels from the People’s Republic of China, A-570-082 and C-570-083, with Entries of Merchandise into the United States” (Mar. 16, 2021) and “Enforce and Protect Act Investigation 7509: Second Supplemental Request for Information concerning whether Vanguard National Trailer Corporation Evaded the Antidumping and Countervailing Duty Orders on Certain Steel Wheels from the People’s Republic of China, A-570-082 and C-570-083, with Entries of Merchandise into the United States” (Apr. 30, 2021), respectively.

²³ See Letters from Asia Wheel, “Asia Wheel’s Response to CBP’s March 16, 2021 Supplemental Request for Information” (Apr. 9, 2021) (Asia Wheel April 9, 2021 Supplemental RFI Response); “Asia Wheel’s Response to Three Questions in CBP’s March 16, 2021 Supplemental Request for Information” (Apr. 15, 2021) (Asia Wheel April 15, 2021 Supplemental RFI Response); “Asia Wheel’s Response to Question 10 in CBP’s March 16, 2021 Supplemental Request for Information” (Apr. 19, 2021) (Asia Wheel April 19, 2021 Supplemental RFI Response); and “Asia Wheel’s Response to Question 12.c in CBP’s March 16, 2021 Supplemental Request for Information” (Apr. 21, 2021).

²⁴ See Letters from Asia Wheel, “Asia Wheel’s Response to CBP’s April 30, 2021 Second Supplemental Request for Information” (May 10, 2021) (Asia Wheel May 10, 2021 Second Supplemental RFI Response) and “Asia Wheel’s Response to Question 3 in CBP’s April 30, 2021 Second Supplemental Request for Information” (May 12, 2021) (Asia Wheel May 12, 2021 Second Supplemental RFI Response).

²⁵ See Asia Wheel RFI Response at 6, 8, and Exhibit B-4.

²⁶ *Id.* at 8.

Thailand.²⁷ Asia Wheel explained that [*persons, company name*] negotiates with customers on Asia Wheel's behalf, including negotiations regarding purchase orders for steel wheels.²⁸

During the POI, Asia Wheel imported rectangular steel plates (to produce rims in its factory in Thailand) from China and [*country*] and discs from China into Thailand.²⁹ Asia Wheel explained that after manufacturing the rims, it welds the rims and discs together to form steel wheels and paints and packages them in its factory.³⁰

Regarding rectangular steel plates, Asia Wheel explained that [*name of company affiliated with Asia Wheel*] in China, acquires steel coils and resells them to Jingu, which outsources the process of cutting the steel coils into rectangular steel plates to [*name of company affiliated with Asia Wheel*] in China. Jingu then sells the rectangular steel plates to [*name of company affiliated with Asia Wheel*] in China, which subsequently exports them to Asia Wheel in Thailand.³¹ As for discs, [*name of co. affil. with Asia Wheel*] cuts the steel coils into circular steel plates and then sends them to Jingu for processing into discs in China before the finished discs are exported to Thailand through [*name of co. affil. with Asia Wheel*]. During the POI, Jingu also exported a small number of discs directly to Asia Wheel.³²

In its RFI response, Vanguard reported that among other suppliers, it had worked with Jingu for over ten years to source goods, and in [*month, year*], Jingu proposed that Vanguard use Asia Wheel as an alternative source for the production and supply of steel wheels.³³ During the POI, Vanguard purchased and imported steel wheels from Asia Wheel.³⁴ Vanguard stated that it issued orders for steel wheels to [*information re: Vanguard's sales order process*] Asia Wheel for production in Thailand.³⁵ For Vanguard's entries of steel wheels from Asia Wheel, [*company name*] was Asia Wheel's sales agent.³⁶ Vanguard explained that Asia Wheel produced the steel wheels using discs from China and rims made from imported steel plates in Asia Wheel's factory in Thailand, where it also welds the discs and rims and conducts the final finishing and painting.³⁷

Both Vanguard and Asia Wheel asserted in their RFI responses that in the AD/CVD investigations of steel wheels from China, the Department of Commerce (Commerce) found that Chinese-origin rims *and* discs processed in a third country into finished steel wheels were included in the scope.³⁸ Both Vanguard and Asia Wheel claimed that the steel wheels at issue in this EAPA investigation are not covered by the scope of the *Orders* because Asia Wheel manufactured the steel wheels in Thailand using rims that did not originate in China and

²⁷ *Id.*

²⁸ *Id.* at 19.

²⁹ *Id.* at 20.

³⁰ *Id.* at 21-23.

³¹ *Id.* at 8 and 20.

³² *Id.* at 20.

³³ See Vanguard RFI Response at 8.

³⁴ *Id.* at 15.

³⁵ *Id.* at 9.

³⁶ *Id.* at 13.

³⁷ *Id.* at 2.

³⁸ See Vanguard RFI Response at 2 and Asia Wheel RFI Response at 2 (emphasis Vanguard's and Asia Wheel's).

Chinese-origin discs (*i.e.*, both the constituent parts, rims and discs, did not originate from China).³⁹

Extension of Deadline for Determination as to Evasion

On May 20, 2021, CBP extended the deadline for the determination as to evasion by 60 days.⁴⁰ Thus, in accordance with 19 U.S.C. § 1517(c)(1)(B) and 19 C.F.R. § 165.22(c), CBP extended the deadline to complete this investigation to 360 days, the maximum amount of time provided by the EAPA statute and regulations.

Covered Merchandise Referral to Commerce

On June 9, 2021, CBP made a covered merchandise referral to Commerce.⁴¹ 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 ... {and} 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.”⁴² CBP could not determine whether the steel wheels produced by Asia Wheel from rectangular steel plates imported 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; thus, CBP referred the matter to Commerce.⁴³ As a result of the covered merchandise referral, the deadlines in this EAPA investigation were stayed pending Commerce’s issuance of a determination.⁴⁴

Commerce’s Final Scope Ruling

On June 7, 2023, Commerce issued a final scope ruling,⁴⁵ and on June 9, 2023, Commerce transmitted its final scope ruling to CBP.⁴⁶ Commerce noted that its final scope ruling addressed CBP’s covered merchandise referral and a scope ruling request previously submitted by Asia Wheel, as both requested determinations on the same merchandise.⁴⁷ Based on information

³⁹ See Vanguard RFI Response at 1-3 and Asia Wheel RFI Response at 1-3.

⁴⁰ See CBP Memorandum, “Notice of Extension of Determination as to Evasion” (May 20, 2021).

⁴¹ See CBP Letter to Commerce, “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” (Jun. 9, 2021) (Covered Merchandise Referral).

⁴² *Id.* at 3, citing the *Orders*, 84 Fed. Reg. at 24,100.

⁴³ *Id.* at 1 and 3.

⁴⁴ See 19 C.F.R. § 165.16(d).

⁴⁵ See Commerce Memorandum, “Final Scope Ruling: Asia Wheel’s Steel Wheels Processed in Thailand” (Jun. 7, 2023) (Final Scope Ruling).

⁴⁶ See Letter from Commerce, “Covered Merchandise Referral Regarding EAPA Investigation No. 7509” (Jun. 9, 2023); see also Commerce Memorandum, “Correction to Case and Segment Identifier in EAPA 7509 Transmittal Letter” (Jun. 15, 2023).

⁴⁷ See Final Scope Ruling at 2-3.

provided by Asia Wheel, Commerce stated that all steel wheels manufactured by Asia Wheel were subject to its scope ruling request and were produced using one method of production.⁴⁸

Commerce found that the plain language of the scope was ambiguous with respect to the status of finished steel wheels processed in a third country from a mix of one Chinese-origin wheel component and one component originating from a third country.⁴⁹ Commerce stated that while it had revised the scope in the AD/CVD investigations on steel wheels from China to include language on third-country processing, it “did not automatically exclude an array of products, such as steel wheels assembled in a third country of Chinese-origin and third country components.”⁵⁰ Commerce further stated that during the AD/CVD investigations, it explained the most appropriate way to determine whether such products were in scope would be through “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.”⁵¹ For its final scope ruling, Commerce found it was appropriate to apply a substantial transformation analysis to determine the country of origin for the steel wheels produced by Asia Wheel as described above.⁵²

Based on the totality of five factors,⁵³ Commerce determined the finished steel wheels produced by Asia Wheel in its facilities in Thailand using Chinese-origin discs and rims it manufactures 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, and thus are subject to the *Orders*.⁵⁴ Commerce also found that the rims manufactured in Thailand are not substantially transformed when used to produce steel wheels in Thailand; thus, Commerce found that the country of origin of such inputs is China and they remain subject to the *Orders* after processing in Thailand.⁵⁵ Commerce clarified that its analysis and findings applied to the finished steel wheels processed in Thailand, and, thus, the entire article, as exported from Thailand to the United States, was subject to AD/CVD duties, not just the Chinese-origin components.⁵⁶

Commerce stated it would instruct CBP to continue the suspension of liquidation of entries that were already suspended, and for entries not already suspended, it would instruct CBP to suspend liquidation effective as of May 12, 2021, the date on which Commerce initiated an inquiry on Asia

⁴⁸ *Id.* at 6.

⁴⁹ *Id.* at 9.

⁵⁰ *Id.* Specifically, Commerce revised the scope language in the AD/CVD investigations to include “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.” *Id.*

⁵¹ *Id.*

⁵² *Id.* at 8.

⁵³ *Id.* at 5 and 16-25. Commerce considered the following five factors in performing its substantial transformation analysis: class or kind of merchandise; product properties, the essential component of the merchandise, and intended end use; nature/sophistication of processing in the country of exportation; cost of Production/value added; and level of investment.

⁵⁴ *Id.* at 16-25 and 34.

⁵⁵ *Id.* at 16-25.

⁵⁶ *Id.* at 32-33.

Wheel's scope ruling request.⁵⁷ Commerce noted, however, that it has no authority to direct any existing suspension of liquidation implemented by CBP pursuant to CBP's EAPA authority.⁵⁸

Commerce asserted that importers were provided with "fair warning" at the time of the underlying AD/CVD investigations that merchandise produced pursuant to production methods other than those outlined in the investigations may be the subject of a future scope inquiry, and explicitly stated that "Jingu clearly was aware that the product for which its affiliate Asia Wheel {was} requesting a scope ruling was potentially within the scope of the *Orders*."⁵⁹ Moreover, Commerce stated that as neither Asia Wheel's scope ruling request nor CBP's covered merchandise referral made reference to specific importers, Commerce's final scope ruling "covers all relevant wheel products otherwise described by the production method identified, produced, and exported by Asia Wheel, regardless of importer of record."⁶⁰

Analysis and Determination as to Evasion

Under 19 U.S.C. § 1517(c)(1)(A), to reach a determination as to evasion, CBP must "make a determination, based on substantial evidence, with respect to whether such covered merchandise entered into the customs territory of the United States through evasion."⁶¹ "Covered merchandise" is defined as "merchandise that is subject to a CVD order... and/or an AD order."⁶² "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 merchandise."⁶³ As discussed in this determination, the record of this investigation contains substantial evidence supporting a determination that Vanguard entered covered merchandise into the United States through evasion, resulting in the avoidance of applicable AD/CVD cash deposits or other security.

As explained above, during the POI, Asia Wheel imported discs from China into Thailand and rectangular steel plates from China and a third country that it used to produce rims in its factory in Thailand.⁶⁴ Asia Wheel welds the rims and the Chinese-origin discs together to form steel wheels and then paints and packages the finished steel wheels in its factory in Thailand.⁶⁵ Asia Wheel obtains the rectangular steel plates used to manufacture the rims as follows: [*description*] in China, [*company name*], purchases steel coils and resells them to Jingu, which outsources the process of cutting the coils into rectangular steel plates to [*description, company name*] in China. Jingu then sells the rectangular steel plates to [*description, company name*] in

⁵⁷ *Id.* at 27-28.

⁵⁸ *Id.* at 30.

⁵⁹ *Id.* at 27-28.

⁶⁰ *Id.* at 31.

⁶¹ *See also* 19 C.F.R. § 165.27(a) (implementing 19 U.S.C. § 1517).

⁶² *See* 19 C.F.R. § 165.1.

⁶³ *Id.*

⁶⁴ *See* Asia Wheel RFI Response at 20.

⁶⁵ *Id.* at 22-23.

China, which exports the plates to Asia Wheel in Thailand.⁶⁶ Regarding the discs, [*company name*] cuts the steel coils into circular steel plates and sends them to Jingu, which processes them into discs in China, and then the finished discs are exported to Thailand through [*company name*]. During the POI, Jingu also exported a small number of discs directly to Asia Wheel.⁶⁷

During the POI, Vanguard imported and purchased the steel wheels described above from Asia Wheel.⁶⁸ Vanguard reported that prior to [*month, year*], when Jingu suggested that Vanguard use Asia Wheel as an alternative source for the manufacture and supply of steel wheels, it had worked with Jingu for over ten years to source goods.⁶⁹ Vanguard issued orders for steel wheels to [*information re: Vanguard's sales order process*] Asia Wheel for production in Thailand,⁷⁰ and [*company name*] served as Asia Wheel's sales agent for Vanguard's entries of steel wheels from Asia Wheel.⁷¹

As noted above, Commerce determined in its final scope ruling that finished steel wheels manufactured by Asia Wheel in its facilities in Thailand using discs from China and rims it produces in Thailand using steel plates from China or a third country are not substantially transformed in Thailand.⁷² As such, the finished steel wheels exported by Asia Wheel in Thailand to the United States remain Chinese origin and are subject to the *Orders*.⁷³ Therefore, based on the record evidence discussed above, including Commerce's final scope ruling, CBP finds that Vanguard's imports of steel wheels into the United States from Asia Wheel are covered merchandise. Further, CBP finds that Vanguard made such entries using false statements that they did not contain covered merchandise because Vanguard declared the entries as type 01 consumption entries instead of type 03 AD/CVD entries and misrepresented the country of origin as Thailand rather than China, thereby evading the payment of applicable AD/CVD duties on steel wheels from China. Thus, CBP determines there is substantial evidence that Vanguard entered covered merchandise into the customs territory of the United States through evasion.

⁶⁶ *Id.* at 8 and 20.

⁶⁷ *Id.* at 20.

⁶⁸ See Vanguard RFI Response at 2 and 15 and Asia Wheel RFI Response at 2 and 20-23; see also Letter from Vanguard, "Submission of ... Vanguard's Responses to CBP Form 28 Pursuant to CBP's Mar. 1, 2021 Request" (Sep. 15, 2020 and Oct. 26, 2020) (containing Vanguard's CF-28 responses for entry numbers [*numbers*]8200 and [*numbers*]3802) (collectively, Vanguard CF-28 Responses).

⁶⁹ See Vanguard RFI Response at 8.

⁷⁰ *Id.* at 9.

⁷¹ *Id.* at 13.

⁷² See Final Scope Ruling at 16-25.

⁷³ *Id.* generally.

Written Arguments and Responses to Written Arguments

On June 27, 2023, the Allegers and Vanguard submitted written arguments.⁷⁴ On July 12, 2023, the Allegers and Vanguard submitted responses to the written arguments.⁷⁵ The main issues raised by parties are addressed below.

Issue 1: Scope of the Imported Merchandise

The Allegers argue that in its final scope ruling, Commerce applied its standard substantial transformation analysis and found that steel wheels finished by Asia Wheel from Chinese components, including the disc and steel plate, are subject to the *Orders*.⁷⁶ The Allegers add that Commerce found the whole finished steel wheel is subject to the *Orders*.⁷⁷ According to the Allegers, the record lacks any evidence that the entries at issue are not covered merchandise.⁷⁸

Vanguard contends that Commerce's final scope ruling is inconsistent with the plain language of the scope and Commerce's scope analysis in the AD/CVD investigations.⁷⁹ Citing the scope language, Vanguard asserts the *Orders* cover steel wheels processed in a third country only when both the rim and disc originate from China.⁸⁰ Vanguard claims that Asia Wheel's steel wheels are not subject to the *Orders* because Asia Wheel produces them using only discs from China but manufactures the rims in Thailand, where it welds those rims to the Chinese-origin discs.⁸¹ Vanguard also argues that Commerce's substantial transformation analysis is fundamentally flawed because it focuses on the Chinese-origin component (*i.e.*, the disc) rather than the finished steel wheel imported into the United States.⁸²

In their response to Vanguard's written arguments, the Allegers maintain that Commerce, in its final scope ruling, rejected claims that it clarified the scope during the AD/CVD investigations to specify that both the rim and the disc must originate from China in order for the finished steel wheels to be within scope.⁸³ The Allegers aver that CBP is bound by Commerce's final scope ruling, and there is no legal basis for CBP to disregard it.⁸⁴

⁷⁴ See Letter from the Allegers, "EAPA No. 7509, Steel Wheels from China: Submission of Written Argument" (Jun. 27, 2023) (Allegers' Written Argument) and Letter from Vanguard, "Vanguard's Written Arguments" (Vanguard Written Argument) (Jun. 27, 2023).

⁷⁵ See Letter from the Allegers, "EAPA No. 7509, Steel Wheels from China: Submission of Responses to Written Argument" (Jul. 12, 2023) (Allegers' Response to Written Argument) and Letter from Vanguard, "Vanguard's Rebuttal Arguments" (Jul. 12, 2023) (Vanguard Response to Written Argument).

⁷⁶ See Allegers' Written Argument at 4-5 and 8.

⁷⁷ *Id.* at 5.

⁷⁸ *Id.* at 8.

⁷⁹ See Vanguard Written Argument at 8-10.

⁸⁰ *Id.* at 8, citing the *Orders*, 84 Fed. Reg. at 24,100.

⁸¹ *Id.* at 8-9 and 12, citing Asia Wheel RFI Response at 21-22; Vanguard CF-28 Responses at Exhibits 4 and 6; and Asia Wheel April 19, 2021, Supplemental RFI Response at 1-4 and Exhibits SQR-22-1 through SQR-22-14.

⁸² *Id.* at 11-12.

⁸³ See Allegers' Response to Written Argument at 4-5, citing Final Scope Ruling at 9-10.

⁸⁴ *Id.* at 5-7, citing 19 U.S.C. § 1517(b)(4)(B) and *Aspects Furniture Int'l, Inc. v. United States*, 607 F. Supp. 3d 1246, 1264, 1267-69 (CIT 2022) (*Aspects Furniture*).

In rebuttal to the Allegers' written arguments, Vanguard contends the Allegers mischaracterize Commerce's final scope ruling, as Commerce found the plain scope language was "ambiguous" regarding Asia Wheel's steel wheels.⁸⁵ Vanguard also argues that CBP did not fully reject Vanguard's claim that the scope wheels it imported from Asia Wheel were out of scope, but, rather, CBP made a covered merchandise referral to Commerce as CBP could not determine whether the steel wheels were covered merchandise.⁸⁶

CBP Position

During the POI, Asia Wheel imported rectangular steel plates from China and a third country to produce rims in its factory in Thailand, where it welded the rims and Chinese-origin discs together to form steel wheels and then conducted painting and packaging.⁸⁷ Vanguard purchased and imported steel wheels from Asia Wheel during the POI.⁸⁸ As explained above, since CBP could not determine whether the steel wheels produced by Asia Wheel in Thailand were covered merchandise, CBP made a covered merchandise referral to Commerce.⁸⁹ In its final scope ruling, Commerce applied a substantial transformation analysis, and determined that the steel wheels Asia Wheel produced in Thailand using Chinese-origin discs and rims it manufactures in Thailand from imported steel plates are not substantially transformed such that the third-country processing confers country of origin, and, therefore, are subject to the *Orders*.⁹⁰ As a result, CBP determines that all of Vanguard's imports of steel wheels into the United States from Asia Wheel during the POI are covered merchandise.

Vanguard's assertion that Commerce's final scope ruling is inconsistent with the plain language of the scope and Commerce's scope analysis in the underlying AD/CVD investigations is irrelevant for the purposes of this proceeding.

CBP cannot disregard the results of Commerce's determination in response to CBP's covered merchandise referral.⁹¹

Issue 2: Production Capacity

The Allegers maintain that all the entries at issue in this EAPA investigation were not produced by Asia Wheel in Thailand, as the record evidence demonstrates that Asia Wheel lacked production capacity.⁹² This evidence includes information provided in the Allegation and information obtained during CBP's on-site visit at Asia Wheel's facility in Thailand.⁹³ The

⁸⁵ See Vanguard Response to Written Argument at 4-5, citing Final Scope Ruling at 9.

⁸⁶ *Id.* at 5-6.

⁸⁷ See Asia Wheel RFI Response at 2 and 20-23.

⁸⁸ See Vanguard RFI Response at 2 and 15; see also Vanguard CF-28 Responses.

⁸⁹ See Covered Merchandise Referral.

⁹⁰ See Final Scope Ruling at 16-25 and 34.

⁹¹ See 19 U.S.C. § 1517(b)(4)(B); see also *Aspects Furniture*, 607 F. Supp. 3d at 1268 ("Allowing 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.")

⁹² See Allegers' Written Argument at 9-10.

⁹³ *Id.* at 10-11, citing the Allegation at 9-10 and Exhibit 6 and CBP Memorandum regarding Asia Wheel on-site visit (Oct. 9, 2020) (On-Site Visit Report) at 3-4.

Alleger asserts this evidence provides additional grounds for an affirmative determination as to evasion.⁹⁴

Vanguard responds that record evidence substantiates Asia Wheel's capacity to produce the steel wheels at issue.⁹⁵ First, Vanguard claims its CF-28 responses contained production records showing Asia Wheel's production of steel wheels using rims produced in Thailand and discs from China; purchase records for steel plates; and workers' attendance records.⁹⁶ Vanguard asserts its RFI response also included various production records, as well as production quantity, shipment quantity, and steel wheel capacity information that prove Asia Wheel produced more truck wheels that it sold, and its capacity was sufficient to cover production.⁹⁷ Vanguard contends its supplemental RFI responses contain additional records that support Asia Wheel's production of steel wheels.⁹⁸ Finally, Vanguard refutes statements cited by the Allegers with respect to CBP's on-site visit at Asia Wheel's facility in Thailand.⁹⁹ In particular, Vanguard asserts there was no steel wheel production at Asia Wheel on the date of CBP's on-site visit because there were no outstanding orders requiring production on that date, and that an Asia Wheel representative pointed out finished steel wheels piled nearby to the CBP officials.¹⁰⁰

CBP Position

Based on information on the record, CBP found there was reasonable suspicion that Vanguard imported steel wheels into the United States through evasion, and therefore imposed interim measures. This includes information in the Allegation suggesting that Asia Wheel lacked the capacity to produce the steel wheels it shipped from Thailand.¹⁰¹ This also includes CBP's observations during an on-site visit at Asia Wheel's facility in Thailand, such as its observation that the [^{descrip} _{tion}] steel wheel production line was not operating during the visit; the apparent lack of use of the steel wheel production line for several months and the placement of the machines; and CBP's observation that there were no semi-finished or finished steel wheels at the main production facility.¹⁰²

Vanguard claims that information on the record confirms that Asia Wheel has the capacity to produce the steel wheels at issue in this EAPA investigation. However, regardless of any level of production capacity that Asia Wheel may have had at any point during the POI to produce steel wheels, CBP finds that Asia Wheel's capacity to process finished steel wheels is irrelevant to the matter at hand. As discussed above, Commerce determined in its final scope ruling that

⁹⁴ *Id.* at 11.

⁹⁵ *See* Vanguard Response to Written Argument at 10-16.

⁹⁶ *Id.* at 10, citing Vanguard CF-28 Responses (Oct. 26, 2020) at Exhibits 4, 6, and 10.

⁹⁷ *Id.* at 11, citing Asia Wheel RFI Response at Exhibits D-2, D-3, D-5, D-6, D-7, D-8, D-12, E-1, and Exhibit 2, Attachment 3.

⁹⁸ *Id.* at 12-13, citing Asia Wheel April 9, 2021, Supplemental RFI Response at Exhibits SQR-7, SQR-9, and SQR-11; Asia Wheel April 15, 2021, Supplemental RFI Response at Exhibits SQR-13 through SQR-18; Asia Wheel April 19, 2021, Supplemental RFI Response at Exhibits SQR-22-1 through SQR-22-14; Asia Wheel May 10, 2021, Second Supplemental RFI Response; and Asia Wheel May 12, 2021, Second Supplemental RFI Response.

⁹⁹ *Id.* at 13-16, citing On-Site Visit Report and Asia Wheel RFI Response at 4, Exhibits D-3 and E-1, and Exhibit 2, paragraphs 9, 10, 16, 18, 19, 20, 21, and 22.

¹⁰⁰ *Id.* at 14-15, citing Asia Wheel RFI Response at Exhibit 2, paragraphs 9 and 10.

¹⁰¹ *See* Notice of Interim Measures at 3-4, citing Allegation at 9-12 and Exhibit 6.

¹⁰² *Id.* at 7, citing On-Site Visit Report at 2-5.

the processing performed by Asia Wheel in Thailand did not change the country of origin of the product and therefore Asia Wheel's steel wheels are subject to the *Orders*. During the POI, Vanguard imported such steel wheels from Asia Wheel but entered the merchandise as type 01 and claimed the country of origin as Thailand, thereby evading the payment of the requisite AD/CVD duties. Because CBP determines there is substantial evidence that Vanguard entered covered merchandise into the customs territory of the United States through evasion, Asia Wheel's production capacity is inapposite to this EAPA investigation.

Issue 3: Material and False Statement or Act, or Material Omission

The Allegers contend that because Vanguard entered in-scope steel wheels as not subject to the *Orders* and without payment of AD/CVD cash deposits, such entries were made using a false statement and the statutory standard of substantial evidence of evasion has been met.¹⁰³ The Allegers assert the statute contains no intent or fault standards for a finding of evasion; it only requires that CBP determine if false information/claims or material omissions have resulted in the reduction or non-payment of cash deposits or duties.¹⁰⁴

Vanguard asserts that, based on the plain scope language and Commerce's scope analysis in the AD/CVD investigations, it understood that steel wheels processed in third countries are subject to the *Orders* only if both the rims and discs originate from China.¹⁰⁵ Thus, Vanguard claims it did not enter the steel wheels at issue by means of a material false statement or material omission because it did not have adequate notice that the steel wheels were potentially subject to the *Orders* until May 12, 2021 (*i.e.*, the date Commerce initiated its scope ruling).¹⁰⁶ Vanguard contends that decisions by the U.S. Court of International Trade (CIT) and the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) in *Trans Tex. Tire* and *Tai-Ao II*, respectively, support the principle that an importer must be provided with "fair warning" that its entries are covered by an AD and/or CVD order for CBP to find the importer made a material false statement or omission.¹⁰⁷ Vanguard argues that while the CIT upheld CBP's finding that the importer made a material false statement or omission in *Ikadan*, the AD/CVD orders in *Ikadan* provided adequate notice to the importer that its entries were covered merchandise.¹⁰⁸

Moreover, Vanguard maintains that culpability is required for an importer to have made a materially false statement or omission, and the CIT's decision in *Diamond Tools II* supports this principle.¹⁰⁹ Although the CIT found in *Ikadan* that CBP reasonably interprets the EAPA as a strict liability statute,⁴⁵ Vanguard contends the CIT's reasoning in *Ikadan* is flawed.¹¹⁰

¹⁰³ See Allegers' Written Argument at 8.

¹⁰⁴ *Id.* at 9, citing 19 U.S.C. § 1517 generally and 19 U.S.C. § 1517(a)(5)(A) specifically.

¹⁰⁵ See Vanguard Written Argument at 16.

¹⁰⁶ *Id.* at 13 and 16-17.

¹⁰⁷ *Id.* at 13-15, citing *Trans Tex. Tire, LLC v. United States*, 519 F. Supp. 3d 1275, 1288-89 (CIT 2021) (*Trans Tex. Tire*) and *Tai-Ao Aluminum (Taishan) Co. v. United States*, 983 F.3d 487, 495, 497 (Fed. Cir. 2021) (*Tai-Ao II*).

¹⁰⁸ *Id.* at 16, citing *Ikadan Sys. United States, Inc. v. United States*, Slip Op. 23-88 (Court No. 21-00592, June 13, 2023) (CIT 2023) at 21 (*Ikadan*).

¹⁰⁹ *Id.* at 17-19, citing *Diamond Tools Tech. LLC v. United States*, 609 F. Supp. 3d 1378, 1386 and 1388-89 (CIT 2021) (*Diamond Tools II*).

¹¹⁰ *Id.* at 18-19, citing *Ikadan* at 12-13 and 15-16.

In rebuttal to Vanguard's written arguments, the Allegers counter that Commerce provided adequate notice to importers that the scope of the *Orders* included products besides the "rim and disc" products Commerce specifically addressed in the underlying AD/CVD investigations.¹¹¹ The Allegers assert Vanguard's reliance on *Trans Tex. Tire* and *Tai-Ao II* is inapposite.¹¹² The Allegers maintain Vanguard's reliance on *Diamond Tools II* is also inapplicable because that case addressed a situation where the merchandise at issue was not covered by the scope until the relevant order was expanded by Commerce's circumvention determination, and the CIT acknowledged its reasoning was only germane to the type of situation being addressed in that case.¹¹³

In its response to the Allegers' written arguments, Vanguard asserts that in *Diamond Tools II*, the CIT held that CBP's view that the EAPA is a strict liability statute improperly nullifies the material false statement or omission provision.¹¹⁴ Vanguard argues the CIT's decision in *Ikadan* is faulty and should not take precedence over the CIT's correct reasoning in *Diamond Tools II*.¹¹⁵ According to Vanguard, where Commerce has not provided adequate notice of an AD and/or CVD order's coverage, an importer's declaration of its entries as Type 01 (*i.e.*, not subject to an AD and/or CVD order) should not be considered a false statement or omission.¹¹⁶

CBP Position

As an initial matter, CBP finds that Vanguard's reliance on *Trans Tex. Tire*, *Tai-Ao II*, and *Diamond Tools II* is misplaced. First, *Trans Tex. Tire* addressed Commerce's authority to retroactively assess duties on certain products prior to the scope language being finalized in the context of an AD investigation.¹¹⁷ Thus, it did not interpret CBP's authorities under EAPA to investigate evasion and has no relevance to this proceeding. Similarly, *Tai-Ao II* addresses Commerce's authority to apply duties retroactively in the context of an anti-circumvention inquiry and does not analyze CBP's authority to find evasion under EAPA.¹¹⁸

Finally, Vanguard misinterprets *Diamond Tools II*. CBP submitted a covered merchandise referral to Commerce to determine whether diamond sawblades assembled in Thailand with Chinese cores and segments were covered merchandise; Commerce found that the diamond sawblades at issue were subject to the relevant AD order after initiating an anti-circumvention inquiry. CBP determined that the importer evaded the AD order with respect to all entries of covered merchandise during the period of the EAPA investigation. On remand, the Court upheld CBP's finding that the importer's entries made before December 1, 2017, the date Commerce initiated its anti-circumvention inquiry, constituted covered merchandise, but remanded CBP's determination for CBP to consider whether the importer made materially false statements, acts,

¹¹¹ See Allegers' Response to Written Argument at 8-9, citing Final Scope Ruling at 27-28.

¹¹² *Id.* at 9-10, citing *Trans Tex. Tire*, 519 F. Supp. 3d at 1275 and *Tai-Ao Aluminium (Taishan) Co. v. United States*, 391 F. Supp. 3d 1301, 1307, 1310-11, and 1314-15 (CIT 2019).

¹¹³ *Id.* at 13-15, citing *Diamond Tools II*, 609 F. Supp. 3d at 1383, 1387-88, and 1391 and *Diamond Tools Tech. LLC v. United States*, 545 F. Supp. 3d 1324, 1339 (CIT 2021).

¹¹⁴ See Vanguard's Response to Written Argument at 7, citing *Diamond Tools II*, 609 F. Supp. 3d at 1386 and 1389.

¹¹⁵ *Id.* at 7-8, citing *Ikadan* at 15-16 and *Diamond Tools II*, 609 F. Supp. 3d at 1386 and 1388.

¹¹⁶ *Id.* at 8.

¹¹⁷ See *Trans Tex. Tire*, 519 F. Supp. 3d 1275.

¹¹⁸ See *Tai-Ao II*, 983 F.3d at 487.

or omissions with respect to its entries of diamond sawblades prior to that date in light of Commerce’s “clear and precise scope determination” regarding country of origin. Specifically, in *Diamond Tools II*, the court found that Commerce had made an explicit finding during the original investigation that the country of assembly of diamond segment cores and segments would be the country of origin of the merchandise, and the importer in that case had relied on and followed “Commerce’s clear and specific instructions.”¹¹⁹ Commerce made no such explicit decision in the AD/CVD investigations regarding the country of origin of steel wheels from China. Rather, Commerce found in its final scope ruling that Asia Wheel’s steel wheels are subject to the *Orders*. As such, *Diamond Tools II* is not relevant to this EAPA investigation.

CBP disagrees with Vanguard’s claim that it did not have adequate notice that its entries of steel wheels from Asia Wheel were in scope until May 12, 2021, the date on which Commerce initiated its scope inquiry. Rather, as Commerce stated in its final scope ruling, it explained during the AD/CVD investigations that the most appropriate way to determine whether steel wheels assembled in a third country from Chinese-origin and third-country components were in scope would be through “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.”¹²⁰ In fact, Commerce specifically stated in its final scope ruling that importers were provided with “fair warning” at the time of the AD/CVD investigations that merchandise produced pursuant to production methods other than those outlined in the investigations may be the subject of a future scope inquiry.¹²¹ Commerce also explicitly stated that “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*.”¹²² Vanguard could have requested a scope ruling from Commerce on whether Asia Wheel’s steel wheels were covered by the *Orders* prior to importing such steel wheels, but chose not to do so.

The plain language of the EAPA does not require CBP to analyze whether an importer acted with intent or knowledge when making false statements that resulted in avoiding the payment of AD/CVD.¹²³ As such, Vanguard’s claim that culpability is required for an importer to have made a material and false statement or material omission is inapposite. As noted above, CBP finds that the steel wheels entered by Vanguard during the POI from Asia Wheel are covered by the *Orders*. Therefore, when Vanguard entered this covered merchandise into the United States and declared it as type 01 instead of type 03, the latter of which would denote that it is subject to AD/CVD duties but the former of which would not, and claimed the country of origin as Thailand rather than China, Vanguard made false statements. These false statements were material because it resulted in Vanguard failing to pay the applicable AD/CVD duties.

¹¹⁹ See *Diamond Tools II*, 609 F. Supp. 3d at 1391.

¹²⁰ See Final Scope Ruling at 9.

¹²¹ *Id.* at 27.

¹²² *Id.* at 28.

¹²³ See 19 U.S.C. § 1517(a)(5); see also *Ikadan* at 16 (“EAPA read as a whole supports CBP’s strict liability interpretation of the definition of evasion.”).

Issue 4: Application of Interim Measures

Vanguard contends the statute only allows CBP to impose interim measures on “covered merchandise.”¹²⁴ Further, Vanguard argues, the reference to CBP’s receipt of “an allegation” in the statutory language regarding covered merchandise referrals to Commerce indicates that such referrals must be made prior to the imposition of interim measures.¹²⁵ Vanguard claims that CBP’s covered merchandise referral to Commerce after the imposition of interim measures meant the existence of “covered merchandise” was in doubt, thereby invalidating the interim measures.¹²⁶ Thus, Vanguard asserts CBP must terminate the suspension of liquidation implemented as part of interim measures, and state in the determination as to evasion that any suspension of liquidation starts no earlier than May 12, 2021 (*i.e.*, the date of initiation of Commerce’s scope ruling).¹²⁷

In response, the Allegers assert the statute does not require CBP to make a covered merchandise referral before imposing interim measures, but permits CBP to make such a referral at any time after it receives an allegation.¹²⁸ The Allegers note that Vanguard overlooks 19 U.S.C. § 1517(b)(4)(A)(ii), which requires CBP to inform the allegor and “any other interested party” of a covered merchandise referral; the requirement to notify “any other interested party” makes it clear that such referrals are permissible after interim measures.¹²⁹ The Allegers also contend the statute directs CBP to implement interim measures if there is reasonable suspicion that covered merchandise was entered into the customs territory of the United States through evasion, not reasonable suspicion that the merchandise was covered and entered through evasion.¹³⁰ Finally, the Allegers argue there are no statutory provisions that allow CBP to rescind interim measures prior to making a determination as to evasion.¹³¹

CBP Position

The EAPA statute and regulations instruct CBP to implement interim measures if there is reasonable suspicion that covered merchandise was entered into the customs territory of the United States through evasion.¹³² In this EAPA investigation, CBP implemented interim measures within the statutory timeframe based on reasonable suspicion that Vanguard had entered covered merchandise into the United States.¹³³

When questions arise about whether merchandise is covered by the scope of an AD or CVD order, CBP is directed to refer such questions to Commerce under 19 U.S.C. § 1517(b)(4).¹³⁴ Neither the statute nor regulations require that such referrals be made at a specific point within

¹²⁴ See Vanguard Written Argument at 20-22, citing 19 U.S.C. § 1517(e).

¹²⁵ *Id.* at 21, citing 19 U.S.C. § 1517(b)(4)(A).

¹²⁶ *Id.* at 22-23.

¹²⁷ *Id.* at 23.

¹²⁸ See Allegers’ Response to Written Argument at 16.

¹²⁹ *Id.* at 16-17.

¹³⁰ *Id.* at 17, citing 19 U.S.C. § 1517(e).

¹³¹ *Id.* at 18-19, citing 19 U.S.C. § 1517(e)(1).

¹³² See 19 U.S.C. § 1517(e); *see also* 19 C.F.R. § 165.24(a).

¹³³ See Notice of Interim Measures.

¹³⁴ See 19 U.S.C. § 1517(b)(4)(A); *see also* 19 C.F.R. § 165.16(a).

the investigatory timeframe; in fact, the regulations state that a referral is required “at any point” after receipt of an allegation if CBP cannot determine whether the merchandise is properly within the scope of an AD or CVD order.¹³⁵ Therefore, CBP’s covered merchandise referral to Commerce after the imposition of interim measures, once questions arose about whether Asia Wheel’s steel wheels were within the scope of the *Orders*, was consistent with the statute and the regulation.

The statute and regulations require CBP to continue the measures in the event of an affirmative determination¹³⁶ or cease interim measures in the case of a negative determination as to evasion.¹³⁷ Accordingly, CBP disagrees with Vanguard’s contention that due to the covered merchandise referral, CBP must terminate the suspension of liquidation implemented as part of interim measures. As CBP is making an affirmative determination as to evasion, CBP disagrees with Vanguard that the suspension of liquidation should not begin prior to May 12, 2021 (*i.e.*, the date of initiation of Commerce’s scope ruling). Instead, pursuant to the 19 U.S.C. § 1517(d)(1), CBP will suspend, or continue to suspend, the liquidation of entries of covered merchandise that entered on or after the date of the initiation of the investigation, extend or continue to extend the period for liquidation of unliquidated entries of covered merchandise that entered before the date of initiation of the investigation, and require the posting of cash deposits and assess duties on the suspended and extended entries.¹³⁸

Issue 5: Due Process Concerns

Vanguard argues that CBP redacted information from the Allegation and Supplement to the Allegation in its notice of initiation of the EAPA investigation, and CBP has not provided Vanguard with the full context of these documents.¹³⁹ Vanguard also argues that CBP has not provided a meaningful public summary of the report recounting CBP’s on-site visit to Asia Wheel’s facilities, and all key information therein was fully redacted.¹⁴⁰ Vanguard maintains this is a violation of its due process rights.¹⁴¹ Vanguard complains that even robust public summaries are not a substitute for parties’ counsel being able to access and review business confidential information, and states that the Federal Circuit recently questioned CBP’s reliance on business confidential information in making an affirmative determination as to evasion without providing importers’ counsel with access to that information.¹⁴²

The Allegers respond the CIT has rejected claims that CBP’s practice of not releasing business confidential information to parties violates their due process rights.¹⁴³ The Allegers maintain

¹³⁵ See 19 C.F.R. § 165.16(a).

¹³⁶ See 19 U.S.C. § 1517(d)(1); *see also* 19 C.F.R. § 165.28.

¹³⁷ See 19 C.F.R. § 165.27(c).

¹³⁸ See 19 U.S.C. § 1517(d)(1)(A), (B), and (D); *see also* 19 C.F.R. § 165.28(a)(1)-(2) and (c).

¹³⁹ See Vanguard Written Argument at 24.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.* at 25, citing *Royal Brush Mfg. Inc. v. United States*, Fed. Cir. No. 22-1226, Oral Argument (May 3, 2023), available at <https://oralarguments.cafc.uscourts.gov/default.aspx?fl=22-1226-05032023> mp3.

¹⁴³ See Allegers’ Response to Written Argument at 20, citing *Leco Supply, Inc. v. United States*, 619 F. Supp. 3d 1287, 1304 (CIT 2023) (*Leco Supply*) and *Royal Brush Mfg., Inc. v. United States*, 545 F. Supp. 3d 1357, 1367 (CIT 2021).

parties only have the right to a public version of a business confidential submission that contains “a summary of the bracketed information in sufficient detail to permit a reasonable understanding of the substance of the information.”¹⁴⁴ The Allegers state the CIT found that public summaries do not need to be “detailed enough to determine a close approximation of the redacted information,” but need to “retain enough context and . . . provide sufficient summaries to determine what type of information was redacted.”¹⁴⁵ According to the Allegers, the CIT has held it will not find a party’s due process rights were violated by not receiving sufficient public summaries unless the challenging party can demonstrate it was actually prejudiced by not receiving such information.¹⁴⁶ The Allegers argue Vanguard (and Asia Wheel) was able to respond in detail to the Allegation and CBP’s on-site visit report; thus, it suffered no prejudice.¹⁴⁷

CBP Position

Pursuant to 19 C.F.R. § 165.4(a), parties in EAPA investigations are permitted to request business confidential treatment for certain information. In accordance with 19 C.F.R. § 165.4(a)(2), parties only have the right to a public version of a business confidential submission that contains “a summary of the bracketed information in sufficient detail to permit a reasonable understanding of the substance of the information.”¹⁴⁸ The EAPA statute and regulations do not provide for a procedure for parties to access confidential information.

Based on the foregoing, CBP agrees that the public version of documents containing redacted business confidential information on the record should contain public summaries as required by 19 C.F.R. § 165.4(a)(2). Nevertheless, CBP acknowledges that some of the public versions of documents on the record of this EAPA investigation do not contain the requisite public summaries. CBP initiated this EAPA investigation in August 2020 and, upon making its covered merchandise referral to Commerce in June 2021, all deadlines were stayed in this case pursuant to the statute and regulations.¹⁴⁹ Commerce transmitted the results of its final scope ruling to CBP on June 9, 2023, at which point the stay of the deadlines in this EAPA investigation was lifted. Further, the decision from the Federal Circuit requiring that CBP disclose business confidential information under an administrative protective order was issued at the tail end of this investigation.¹⁵⁰ As such, CBP did not have sufficient time within the statutory timeframe of the EAPA investigation to implement an administrative protective order in this case.

As noted above, Commerce determined in its final scope ruling that the steel wheels Asia Wheel manufactured in Thailand using Chinese-origin discs and rims it makes in Thailand from imported steel plates are subject to the *Orders*. Thus, all of Vanguard’s entries of steel wheels

¹⁴⁴ *Id.* at 21, citing 19 C.F.R. § 165.4(a)(2).

¹⁴⁵ *Id.*, citing *CEK Grp. LLC v. United States*, No. 22-00082, 2023 WL 3198816, at *5 (CIT May 2, 2023) (*CEK Grp.*).

¹⁴⁶ *Id.* at 21-22, citing *Leco Supply*, 619 F. Supp. 3d at 1303-05 and *CEK Grp.*, 2023 WL 3198816, at *5.

¹⁴⁷ *Id.* at 22-23, citing Vanguard Written Argument at 23-24; Vanguard RFI Response at 3-5 and Exhibits 2 and 3; and Asia Wheel RFI Response at 3-5 and Exhibits 2 and 3.

¹⁴⁸ See also 19 C.F.R. § 165.4(e) (extending the requirement for public summaries to business confidential information placed on the record by CBP).

¹⁴⁹ See 19 U.S.C. § 1517(b)(4)(C) and 19 C.F.R. § 165.16(d).

¹⁵⁰ See *Royal Brush Mfg., Inc. v. United States*, No. 2022-1226, 2023 WL 4772550, at *7 (Fed. Cir. July 27, 2023).

from Asia Wheel during the POI consisted of covered merchandise that should have been declared as subject to the *Orders*.

Actions Taken Pursuant to the Affirmative Determination as to Evasion

In light of CBP's determination that substantial evidence demonstrates that Vanguard entered covered merchandise into the customs territory of the United States through evasion, CBP will take action, as applicable, pursuant to 19 U.S.C. § 1517(d) and 19 C.F.R. § 165.28. CBP will suspend or continue to suspend the liquidation of all entries imported by Vanguard that are subject to this EAPA investigation and continue suspension of liquidation until instructed to liquidate these entries. For those entries previously extended in accordance with the interim measures, CBP will rate adjust and change those entries to type 03 and continue suspension of liquidation until instructed to liquidate those entries. CBP will also evaluate Vanguard's continuous bond in accordance with CBP's policies and may require single transaction bonds as appropriate. None of the above actions precludes CBP or other agencies from pursuing additional enforcement actions or penalties.¹⁵¹

Sincerely,

Kristina Horgan
Acting Director, Enforcement Operations Division
Trade Remedy Law Enforcement Directorate
CBP Office of Trade

¹⁵¹ See 19 U.S.C. § 1517(h).