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Re: Enforce and Protect Act ("EAPA") Case Number 7711; *Certain Chassis and Subassemblies Thereof From the People's Republic of China: Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination*, 86 Fed. Reg. 24,844 (Dep't of Commerce May 10, 2021); *Certain Chassis and Subassemblies Thereof From the People's Republic of China: Antidumping Duty Order*, 86 Fed. Reg. 36,093 (Dep't of Commerce July 8, 2021); Pitts Enterprises, Inc.; 19 U.S.C. § 1517

Dear Counsel:

This is in response to the request for *de novo* administrative review of a determination of evasion dated May 23, 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 7711 ("May 23 Determination").[1] The request for review, dated July 5, 2023, was submitted to CBP, OT, Regulations and Rulings ("RR"), by Appleton Luff Pte Ltd on behalf of Pitts Enterprises, Inc. ("Pitts" or "Importer"), pursuant to 19 U.S.C. § 1517(f) and 19

[1] *See* Notice of Determination as to Evasion, EAPA Case 7711 (May 23, 2023) (Public Version), *available at* https://www.cbp.gov/document/publications/eapa-case-7711-pitts-enterprises-inc-notice-determination-evasion-may-23-2023 (last accessed August 28, 2023).

C.F.R. § 165.41(a). CIMC Intermodal Equipment LLC ("CIMC" or "Alleger") filed a response to the request for review on July 20, 2023.

I. Background

Based on our review of the administrative record, we agree with the recitation of facts as set forth by the May 23 Determination. As such, we will not repeat the entire factual history herein.

On May 11, 2022, CIMC filed an EAPA allegation against Pitts. CBP acknowledged receipt of the allegation on June 29, 2022. On July 20, 2022, TRLED initiated a formal investigation under Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015 ("TFTEA"), in response to an allegation of evasion.[2]

CIMC alleged that Pitts was importing chassis into the United States from the Socialist Republic of Vietnam ("Vietnam") that contained subassemblies and components that were produced in the People's Republic of China ("China"). CIMC alleged that these Chinese subassemblies and components were in-scope merchandise subject to antidumping and countervailing duty orders (the "AD/CVD Orders") under Case Nos. A-570-135 and C-570-136, and that Pitts had evaded the payment of antidumping and countervailing duties on these imports.[3]

The allegations of evasion pertained to the AD/CVD Orders issued by the U.S. Department of Commerce ("Commerce") on imports of chassis and subassemblies thereof from China. Commerce defined the scope of the AD/CVD Orders as follows:

> The products covered by the order are certain chassis and subassemblies thereof from China. For a full description of the scope of this order, see the appendix of this notice.
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> * * *
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> The merchandise covered by this order is chassis and subassemblies thereof, whether finished or unfinished, whether assembled or unassembled, whether coated or uncoated, regardless of the number of axles, for carriage of containers, or other payloads (including self-supporting payloads) for road, marine roll-on/roll-off (RORO) and/or rail transport. Chassis are typically, but are not limited to, rectangular framed trailers with a suspension and axle system, wheels and tires, brakes, a lighting and electrical system, a coupling for towing behind a truck tractor, and a locking system or systems to secure the shipping container or containers to the chassis using twistlocks, slide pins or similar attachment devices to engage the corner fittings on the container or

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[2] *See* Notice of Initiation of Investigation and Interim Measures: EAPA Case Number 7711 (Oct. 25, 2022) ("Notice of Initiation") (Public Version), *available at* https://www.cbp.gov/document/publications/eapa-case-7711-pitts-enterprises-inc-notice-initiation-investigation-and (last accessed Aug. 28, 2023).

[3] *See Certain Chassis and Subassemblies Thereof From the People's Republic of China: Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination*, 86 Fed. Reg. 24,844 (Dep't of Commerce May 10, 2021) ("CVD Order"); *Certain Chassis and Subassemblies Thereof From the People's Republic of China: Antidumping Duty Order*, 86 Fed. Reg. 36,093 (Dep't of Commerce July 8, 2021) ("AD Order").

other payload. Subject merchandise includes, but is not limited to, the following subassemblies:

- Chassis frames, or sections of chassis frames, including kingpin assemblies, bolsters consisting of transverse beams with locking or support mechanisms, goosenecks, drop assemblies, extension mechanisms and/ or rear impact guards;

- Running gear assemblies or axle assemblies for connection to the chassis frame, whether fixed in nature or capable of sliding fore and aft or lifting up and lowering down, which may or may not include suspension(s) (mechanical or pneumatic), wheel end components, slack adjusters, axles, brake chambers, locking pins, and tires and wheels;

- Landing gear assemblies, for connection to the chassis frame, capable of supporting the chassis when it is not engaged to a tractor; and

- Assemblies that connect to the chassis frame or a section of the chassis frame, such as, but not limited to, pintle hooks or B-trains (which include a fifth wheel), which are capable of connecting a chassis to a converter dolly or another chassis.

Importation of any of these subassemblies, whether assembled or unassembled, constitutes an unfinished chassis for purposes of this order.

Subject merchandise also includes chassis, whether finished or unfinished, entered with or for further assembly with components such as, but not limited to: Hub and drum assemblies, brake assemblies (either drum or disc), axles, brake chambers, suspensions and suspension components, wheel end components, landing gear legs, spoke or disc wheels, tires, brake control systems, electrical harnesses and lighting systems. Processing of finished and unfinished chassis and components such as trimming, cutting, grinding, notching, punching, drilling, painting, coating, staining, finishing, assembly, or any other processing either in the country of manufacture of the in-scope product or in a third country does not remove the product from the scope. Inclusion of other components not identified as comprising the finished or unfinished chassis does not remove the product from the scope.

Individual components entered and sold by themselves are not subject to the order, but components entered with or for further assembly with a finished or unfinished chassis are subject merchandise. A finished chassis is ultimately comprised of several different types of subassemblies. Within each subassembly there are numerous components that comprise a given subassembly.

This scope excludes dry van trailers, refrigerated van trailers and flatbed trailers. Dry van trailers are trailers with a wholly enclosed cargo space comprised of fixed sides, nose, floor and roof, with articulated panels (doors)

> across the rear and occasionally at selected places on the sides, with the cargo space being permanently incorporated in the trailer itself. Refrigerated van trailers are trailers with a wholly enclosed cargo space comprised of fixed sides, nose, floor and roof, with articulated panels (doors) across the rear and occasionally at selected places on the sides, with the cargo space being permanently incorporated in the trailer and being insulated, possessing specific thermal properties intended for use with self-contained refrigeration systems. Flatbed (or platform) trailers consist of load-carrying main frames and a solid, flat or stepped loading deck or floor permanently incorporated with and supported by frame rails and cross members.
>
> The finished and unfinished chassis subject to this order are typically classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 8716.39.0090 and 8716.90.5060. Imports of finished and unfinished chassis may also enter under HTSUS subheading 8716.90.5010. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under order is dispositive.[4]

On October 25, 2022, 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 July 20, 2022, and notifying the parties of CBP's decision to take interim measures based upon reasonable suspicion that the Importer had entered covered merchandise into the customs territory of the United States through evasion.[5] The entries subject to the investigation are all unliquidated entries of covered merchandise entered from June 29, 2021, through the pendency of the investigation.[6]

On May 23, 2023, TRLED found that there was substantial evidence that the chassis Pitts imported into the United States from Vietnam were of Chinese origin and described by the scope of the AD/CVD Orders. TRLED determined that: (1) the scope language was clear; (2) the manufacturer of the imported chassis, Truong Hai Auto Corporation Special Vehicles Manufacturing Limited Company ("THACO"), used Vietnamese and Chinese components to produce the chassis; and (3) the highest percentage, by value, of components comprising the imported chassis was Chinese.[7] Pitts entered the chassis into the customs territory of the United States as type "01" consumption entries.[8] As a result, no cash deposits for antidumping or countervailing duties were applied to the merchandise.[9]

On July 5, 2023, Pitts timely filed a Request for Administrative Review. On July 6, 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 H332952. On July 20, 2023,

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[4] 86 Fed. Reg. at 24,844–45, 86 Fed. Reg. at 36,093–95.
[5] *See* Notice of Initiation (Public Version).
[6] *See* 19 C.F.R. § 165.2 ("In addition, at its discretion, CBP may investigate other entries of such covered merchandise.").
[7] *See* May 23 Determination (Public Version).
[8] 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 Aug. 28, 2023).
[9] *See* May 23 Determination (Public Version).

CIMC timely submitted a response to Pitts's request for administrative review, presenting its counterarguments.

II. Law & Analysis

Section 517 of the Tariff Act of 1930 ("the Tariff Act"), as amended (19 U.S.C. § 1517), provides, "with respect to covered merchandise, the Commissioner shall make a determination, based on substantial evidence, with respect to whether such covered merchandise was entered into the customs territory of the United States through evasion."[10] 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.[11]

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.[12]

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)."[13] 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."[14]

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. In doing so, CBP may apply adverse inferences where they are warranted.[15] RR's determination as to evasion must be supported by substantial evidence.

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[10] 19 U.S.C. § 1517(c)(1).
[11] 19 U.S.C. § 1517(a)(5); *see also* 19 C.F.R. § 165.1.
[12] *See Investigation of Claims of Evasion of Antidumping and Countervailing Duties, Interim Regulations*, 81 Fed. Reg. 56,477, 56,478 (CBP Aug. 22, 2016).
[13] 19 C.F.R. § 165.1.
[14] *See Altx, Inc. v. United States*, 370 F.3d 1108, 1116 (Fed. Cir. 2004) (internal citations and quotation marks omitted).
[15] *See* 19 C.F.R. § 165.6.

A. Pitts's Arguments

Pitts requests that we reverse the May 23 Determination, asserting that TRLED's "covered merchandise" determination is without support because the merchandise Pitts imported is not within the scope of the AD/CVD Orders. Pitts presents six arguments supporting its request.

First, Pitts claims that TRLED improperly determined that the chassis THACO manufactured in Vietnam are in-scope merchandise because the chassis contain Chinese components.[16] Pitts argues that TRLED reached this conclusion by relying on CIMC's "misleading and selective scope claim," which did not consider, wholistically or contextually, the plain scope language.[17] Pitts asserts that TRLED misinterpreted the scope language by finding: (1) Chinese components to be in-scope; (2) conflating the terms components and subassemblies; (3) failing to apply the third-country scope language that requires merchandise entering into a third country to be in-scope when it is exported to the third country; and (4) overlooking the country-of-origin requirement that applies to chassis and subassemblies from China, not Vietnam.[18] As a result, Pitts contends that TRLED impermissibly expanded the scope of the AD/CVD Orders.

Second, Pitts argues that its interpretation of the scope should be afforded greater weight because Pitts was a member of the Coalition of the American Chassis Manufacturers, Petitioner in the original investigations conducted by Commerce, and therefore drafted and provided comments on the scope language to Commerce.[19] Pitts also asserts that Commerce and the U.S. International Trade Commission ("ITC") confirmed Pitts's scope interpretation, and that TRLED did not take these "interpretative sources" into account.[20]

Third, Pitts claims that TRLED "erred as a matter of law" by not directing a covered merchandise referral to Commerce.[21] Pitts points to TRLED's "expansive" and "unreasonably overbroad" interpretation of the scope language to suggest that CBP violated the EAPA statute when it refused to make such a referral.[22]

Fourth, Pitts contends that CBP unlawfully initiated an investigation of evasion based on CIMC's claims.[23] Pitts asserts that CIMC's allegation "did not 'reasonably suggest' that Pitts [*sic*] chassis are covered merchandise" because the allegation was "based entirely on a misleading scope interpretation," despite CIMC's access to relevant scope documents.[24]

Fifth, Pitts argues that TRLED had no legal basis to find that Pitts entered chassis by means of a false statement or omission because the EAPA statute requires a "level of culpability" to demonstrate falsity.[25] Pitts cites to *Diamond Tools Technology LLC v. United States*, 609 F. Supp. 3d 1378 (Ct. Int'l Trade 2022), in support of this assertion.

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[16] Pitts's Administrative Review Request (July 5, 2023) (Public Document), at 10.
[17] *Id.*
[18] *Id.* at 10, 13–22.
[19] *See id.* at 22–25.
[20] *Id.* at 22–25.
[21] *Id.* at 12.
[22] *Id.* at 27.
[23] *See id.* at 12, 27.
[24] *Id.* at 27–28.
[25] *Id.* at 12, 28–29.

Sixth, Pitts claims that CBP's EAPA investigation procedures, whereby Pitts received only public versions and public summaries, amount to an "evident deprivation of Pitts's right to due process."[26]

For these reasons, Pitts requests that the May 23 Determination be reversed.

B. CIMC's Arguments

CIMC requests that we affirm the May 23 Determination, providing several bases in support of its position.

First, CIMC asserts that Pitts improperly "rewrites" the scope language to include individual Chinese-origin components only where such components are entered with or for further assembly with a Chinese-origin chassis.[27] CIMC states that Commerce's use of the indefinite article "a" indicates that Chinese components "are included in the scope if entered with any finished or unfinished chassis, whether from China or a third country."[28]

Second, CIMC argues that Pitts's imports were not limited to Chinese components only, but also included in-scope subassemblies.[29] CIMC states that "all the critical components of the running gear and landing gear subassemblies were manufactured in China," and thus, the "essential characteristics" of those subassemblies are Chinese.[30] In addition, CIMC asserts that the administrative record shows that the chassis at issue contained "Chinese-origin suspensions, kingpins, brake systems, wheels, tires, and electrical wiring," all of which are in-scope components "because they were entered with finished chassis."[31] CIMC notes that "59% to 69% of the value of Pitts's imported chassis is generated in China."[32]

Third, CIMC asserts that Pitts misinterprets the third-country processing provision of the scope language.[33] CIMC contends that, despite further processing performed by THACO in Vietnam, the Chinese components "remain in scope throughout the supply chain because they are entered with or for further assembly with a finished or unfinished chassis."[34]

Fourth, CIMC avers that Commerce's and the ITC's determinations during the original investigations further support, rather than undermine, TRLED's determination that the merchandise imported by Pitts was subject to the AD/CVD Orders.[35] For example, Commerce did not include the language submitted by Petitioner (including Pitts) that Chinese components are in-scope if they are entered with a <u>covered</u> chassis or subassembly.[36] Instead, Commerce used an indefinite article

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[26] *Id* at 12, 30.
[27] CIMC's Response (July 20, 2023) (Public Document), at 3.
[28] *Id.*; *see also id.* at 7–8.
[29] *See id.* at 4, 10.
[30] *Id.* at 4; *see also id.* at 10–12.
[31] *Id.* at 6.
[32] *Id.* at 4; *see also id.* at 10.
[33] *See id.* at 4, 12–13.
[34] *Id.* at 13.
[35] *See id.* at 4, 12–14.
[36] *See id.* at 14 (internal footnote and citations omitted) (emphasis added).

("a"), indicating that Chinese components are in-scope if they are entered with "any finished or unfinished chassis, whether from China, Vietnam, or any other country."[37]

Fifth, CIMC claims that TRLED properly declined to make a covered merchandise referral to Commerce because the plain language of the scope is clear and because CBP has "independent authority" to determine whether imports are within the scope of an AD/CVD order.[38]

Sixth, CIMC argues that Pitts's reliance on *Diamond Tools* is misplaced and that "Pitts remains at fault even if it believed (wrongly) that the scope language and Commerce's scope determinations could be construed to exclude finished chassis assembled in a third country with Chinese-origin components."[39] Unlike the situation in *Diamond Tools*, where the plaintiff based its decision not to declare imports as subject to AD/CVD duties on Commerce's prior country-of-origin determination, here, CIMC avers that "Pitts knew or should have known based on the plain language of the scope of the AD/CVD Orders that its imported chassis included covered merchandise."[40] CIMC contends that the plain scope language of the AD/CVD Orders includes Chinese components that are "entered with or for further assembly with a finished or unfinished chassis" as subject merchandise.[41] Despite this language, Pitts falsely declared its imports as type "01" entries, rather than type "03" entries that are subject to antidumping and countervailing duties under the AD/CVD Orders.[42]

Seventh, CIMC maintains that TRLED properly initiated its evasion investigation because CIMC's allegation, which was based on the plain scope language, "'reasonably suggested' that evasion had occurred."[43]

For these reasons, CIMC requests that the May 23 Determination be affirmed.

III. Administrative Review Analysis

Pursuant to 19 U.S.C. § 1517(f)(1) and 19 C.F.R. § 165.45, upon request for administrative review, RR will apply a *de novo* standard of review 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 May 23 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 May 23 Determination and the accompanying administrative record to determine whether substantial evidence of evasion exists. As discussed below, there is substantial evidence that the chassis imported by Pitts are covered merchandise with in-scope subassemblies and components subject to the AD/CVD Orders.

The outcome of this administrative review rests on whether the merchandise THACO manufactured in Vietnam which was subsequently imported into the United States by Pitts falls

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[37] *Id.* at 14 (emphasis in original).
[38] *Id.* at 4–5, 19–20.
[39] *Id.* at 21.
[40] *Id.*
[41] *Id.* at 21-22.
[42] *See id.* at 21–22.
[43] *Id.* at 5; *see also id.* at 22–23.

within the scope of the AD/CVD Orders, and thus, constitutes covered merchandise under EAPA. For the reasons outlined below, we find that there is substantial evidence that Pitts imported covered merchandise into the United States in the form of finished chassis incorporating in-scope subassemblies and components.

There is no dispute here that the products imported by Pitts were chassis. There is also no dispute that those chassis incorporated certain "parts" that were manufactured in China, as well as incorporating parts of non-Chinese origin, and that assembly of the chassis occurred in Vietnam. The dispute is as to whether the finished chassis imported by Pitts constitute covered merchandise under the AD/CVD Orders.

As the scope language explains, "[a] finished chassis is ultimately comprised of several different types of subassemblies. Within each subassembly there are numerous components that comprise a given subassembly."[44] The plain language of the scope clearly states that subassemblies and components from China are subject merchandise under the AD/CVD Orders as follows (emphasis added below):

> The products covered by the order are certain chassis and subassemblies thereof from China. For a full description of the scope of this order, see the appendix of this notice.
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> The merchandise covered by this order is chassis and subassemblies thereof, whether finished or unfinished, whether assembled or unassembled, whether coated or uncoated, regardless of the number of axles, for carriage of containers, or other payloads (including self-supporting payloads) for road, marine roll-on/roll-off (RORO) and/or rail transport.
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> Importation of any of these subassemblies, whether assembled or unassembled, constitutes an unfinished chassis for purposes of this order.
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> Subject merchandise also includes chassis, whether finished or unfinished, entered with or for further assembly with components such as, but not limited to: Hub and drum assemblies, brake assemblies (either drum or disc), axles, brake chambers, suspensions and suspension components, wheel end components, landing gear legs, spoke or disc wheels, tires, brake control systems, electrical harnesses and lighting systems.
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> * * *

[44] 86 Fed. Reg. at 24,845; 86 Fed. Reg. at 36,094.

> Individual components entered and sold by themselves are not subject to the order, but components entered with or for further assembly with a finished or unfinished chassis are subject merchandise.[45]

Here, Pitts and THACO each placed evidence on the administrative record showing that THACO used sections of chassis frames from China to assemble chassis in Vietnam.[46] The scope language specifically lists "sections of chassis frames" as in-scope subassemblies.[47] Exhibit III.5 to THACO's RFI Response contains the list of countries from which THACO sourced the subassemblies and components it used to produce chassis. This list includes multiple entries for "[s]ections of chassis frames" where the country of origin is China.[48] Exhibit III.5 also provides THACO's cost of production calculation, showing China to be the country of origin for the "parts of sections of chassis frames" and "[s]ections of chassis frames" that THACO used to manufacture chassis.[49] Likewise, Exhibit III.5 provides the production cost calculation for shipments, again including Chinese "[s]ections of chassis frames" as part of THACO's production costs.[50]

In sum, this information demonstrates that THACO used in-scope sections of chassis frames from China to produce chassis.

Very importantly, the scope language of the AD/CVD Orders states that third-country processing of subassemblies and components does not remove those materials from the scope:

> Processing of finished and unfinished chassis and components such as trimming, cutting, grinding, notching, punching, drilling, painting, coating, staining, finishing, assembly, or any other processing either in the country of manufacture of the in-scope product or in a third country does not remove the product from the scope. Inclusion of other components not identified as comprising the finished or unfinished chassis does not remove the product from the scope.[51]

Based on this language, any processing performed by THACO of in-scope Chinese subassemblies and/or components to manufacture finished chassis in Vietnam does not remove those subassemblies and components from the scope of the AD/CVD Orders. In other words, the Chinese sections of chassis frames that THACO used to produce its chassis remain in-scope and subject to the AD/CVD Orders.

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[45] 86 Fed. Reg. at 24,844–45 (emphases added); 86 Fed. Reg. at 36,093–95 (emphases added); *see also* CIMC's Addition to the EAPA Record Necessitated by Pitts's Submission of Its Scope Ruling Application with the U.S. Department of Commerce (Feb. 1, 2023) ("CIMC Record Addition") (Public Document) (attaching Letter from A. Nakutis, Program Manager, AD/CVD Operations, Office I, to Appleton Luff Pte Ltd, *Antidumping and Countervailing Duty Orders on Chassis and Subassemblies from the People's Republic of China: Pitts Scope Application Rejection* (Jan. 20, 2023) (Public Document), at 2 (stating that the scope "clearly lists" certain subassemblies "as subject merchandise")).
[46] *See* Pitts's Revised Scope Ruling Application with the U.S. Department of Commerce (Feb. 13, 2023) (Public Version) (including excerpt of Exhibit III.5 to THACO's Response to CBP's Request for Information (Dec. 20, 2022) ("THACO's RFI Response") (Public Version)); CIMC Record Addition (Public Version) (attaching the Public Version of Exhibit III.5 to THACO's RFI Response in its entirety).
[47] *See* 86 Fed. Reg. at 24,845; 86 Fed. Reg. at 36,094.
[48] THACO's RFI Response (Public Version), at Ex. III.5, rows 12, 97–98, 105–107, & 273.
[49] *See generally id.*
[50] *See generally id.*
[51] 86 Fed. Reg. at 24,845 (emphasis added); 86 Fed. Reg. at 36,094 (emphasis added).

The same analysis as discussed above also applies for numerous other subject components used by THACO in producing the chassis imported by Pitts. The scope of the AD/CVD Orders also states that "components entered with or for further assembly with a finished or unfinished chassis are subject merchandise." [52] As such, any subject Chinese components entered with or for further assembly with the covered subassemblies or with finished chassis are also subject merchandise. Thus, subject Chinese components entered by Pitts with or for use with the covered subassemblies or the finished chassis are also covered merchandise.

Here, evidence that Pitts and THACO placed on the record shows that THACO used numerous Chinese-origin "components"[53] to produce chassis in Vietnam.[54] For example, Exhibit III.5 to THACO's RFI Response, which provides the countries from which THACO sourced subassemblies and components, includes myriad entries indicating THACO's use of Chinese components to manufacture chassis.[55] These components include, for example, the following items:

- Wheels;
- Tires;
- Suspensions; and
- Axles.[56]

Exhibit III.5 also shows China to be the country of origin for these components in the context of THACO's cost of production calculations.[57]

Moreover, the scope language explains that "[a] finished chassis is ultimately comprised of several different types of subassemblies. Within each subassembly there are numerous components that comprise a given subassembly."[58] In short, a finished chassis is composed of various components. Therefore, per the plain language of the scope, a finished chassis is covered merchandise where it includes in-scope Chinese subassemblies and/or components, as is the case here. Accordingly, the finished chassis that Pitts imported are "covered merchandise" under EAPA.

In this regard, Pitts's focus on the "origin" of the products entered into the United States is inapposite to the question presented here — whether Pitts entered covered merchandise into the United States. Nothing in Commerce's AD/CVD Orders requires that the ultimate country-of-origin of the entered merchandise, from a customs marking or other customs law perspective, be China; rather, the question is whether the merchandise is covered by the Orders, as described by

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[52] 86 Fed. Reg. at 24,845; 86 Fed. Reg. at 36,094.

[53] We use the term "components" generically, to not run afoul of what we perceive to be a red herring argument by Pitts, claiming that CBP's conflating of terms such as subassembly and component has yielded an erroneous decision on the part of CBP.

[54] *See* Pitts's Revised Scope Ruling Application with the U.S. Department of Commerce (Feb. 13, 2023) (Public Version) (including excerpt of Exhibit III.5 to THACO's Response to CBP's Request for Information (Dec. 20, 2022) ("THACO's RFI Response") (Public Version)); CIMC Record Addition (Public Version) (attaching the Public Version of Exhibit III.5 to THACO's RFI Response in its entirety).

[55] THACO's RFI Response (Public Version), at Ex. III.5, rows 12, 97–98, 105–107, & 273.

[56] THACO's RFI Response (Public Version), at Ex. III.5.

[57] *See generally id.*

[58] 86 Fed. Reg. at 24,845; 86 Fed. Reg. at 36,094.

Commerce.[59] Here, the Orders clearly state that certain categories of merchandise, made in China, are covered, and remain covered, where that merchandise is subsequently incorporated into or imported with, non-Chinese-origin subassemblies, "components," or labor. Commerce has crafted orders in such a fashion for various reasons, including to prevent circumvention of AD/CVD orders via operations in third countries.[60]

Pitts incorrectly entered the chassis at issue on type "01" consumption entries instead of on type "03" AD/CVD entries. In other words, the entries should have been declared as subject to AD/CVD deposits/duties, but they were not. Thus, Pitts 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. These constitute false statements that are also material because the applicable cash deposits and antidumping and countervailing duties were not paid. Consequently, Pitts entered the merchandise through evasion.

Pitts erroneously argues that "[m]ere entry of what may be considered covered merchandise by CBP is not sufficient support" for a finding of a material and false statement, and that "EAPA requires at least some level of culpability."[61] 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.[62]

"Culpability" does not appear in this definition. Moreover, contrary to Pitts's assertion, 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."[63] Thus, EAPA does not require "some level of culpability."[64]

Pitts also claims to have "reasonably relied upon the scope" when it entered the chassis manufactured by THACO on type "01" entries, and therefore concludes that, pursuant to *Diamond*

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[59] *See, e.g.*, *Aireko Constr., LLC v. United States*, 425 F. Supp. 1307, 1312 n.7 (Ct. Int'l Trade 2020) (acknowledging that country-of-origin differs in the AD/CVD and customs marking contexts because "CBP makes country of origin determinations under a different authority than that by which Commerce determines country of origin for purposes of applying AD/CVD duties") (citing 19 U.S.C. § 1304; *Sun Edison, Inc. v. United States*, 179 F. Supp. 3d 1309, 1323 hn.77 (finding CBP's country-of-origin determinations to be "inapposite" to Commerce's country-of-origin determinations)).

[60] *See, e.g.*, Pitts's Revised Scope Ruling Application (Feb. 13, 2023) (Public Version), at Ex. 13 (Commerce's Scope Comments Decision Memorandum for Final Determinations, rejecting proposed third-country processing exclusions because, in part, "such an exclusion may lead to possible evasion or circumvention" of the AD/CVD Orders)).

[61] Pitts's Request for Administrative Review (Public Document), at 28 (internal footnote and citation omitted).

[62] 19 U.S.C. § 1517(a)(5)(A).

[63] *Ikadan Sys. United States, Inc. v. United States*, No. 21-00592, 2023 Ct. Int'l Trade LEXIS 91, at **20–21 (Ct. Int'l Trade June 13, 2023).

[64] Pitts's Request for Administrative Review (Public Document), at 28.

Tools, 609 F. Supp. 3d at 1388, these entries cannot have been false statements.[65] Pitts bases this argument on its position as a Petitioner in the underlying AD/CVD investigations and the fact that it originally proposed and commented on the scope language at issue.[66]

Again, Pitts's assertion lacks merit. As discussed above, Pitts imported covered merchandise from THACO in the form of finished chassis with in-scope subassemblies from China (*e.g.*, sections of chassis frames) and numerous subject Chinese components. The plain scope language specifically lists Chinese sections of chassis frames and subject components entered with or for further assembly with finished or unfinished chassis as subject merchandise under the AD/CVD Orders. What governs is the unambiguous scope language set forth in Commerce's Orders, not what may or may not have been suggested to Commerce during the original AD/CVD investigation.[67] Pitts's scope interpretation in this instance does not comport with the plain language of the AD/CVD Orders.

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

Lastly, Pitts's claim that it was not afforded due process by CBP's EAPA investigation procedures is without merit. In *Royal Brush Manufacturing, Inc. v. United States*, 75 F.4th 1250 (Fed. Cir. 2023),[68] 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.[69] By contrast, here, RR's determination is based on the public versions of documents that Pitts itself placed on the administrative record. Therefore, this case is unlike the situation in *Royal Brush*, and Pitts did not experience "evident deprivation"[70] because Pitts had access to (and, in fact, controlled) the

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[65] *Id.* at 28–29.
[66] *See generally id.*
[67] *See Duferco Steel, Inc. v. United States*, 296 F.3d 1087, 1097 (Fed. Cir. 2002) (finding that "review of the petition and the investigation may provide valuable guidance as to the interpretation of the final order. But they cannot substitute for language in the order itself. It is the responsibility of the agency, not those who initiated the proceedings, to determine the scope of the final orders."); *Vietnam Finewood Co. v. United States*, 633 F. Supp. 3d 1243, 1258 (Ct. Int'l Trade 2023) ("While the Petition 'may provide valuable guidance as to the interpretation of the final order,' the Petition 'cannot substitute for language in the order itself.'") (quoting *Duferco Steel, Inc.*, 296 F.3d at 1097).
[68] We note that the *Royal Brush* decision is not yet final. Even if it were final, however, it does not apply to the facts presented herein.
[69] *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. . . .").
[70] Pitts's Request for Administrative Review (Public Document), at 30.

information underlying RR's final administrative determination finding substantial evidence of evasion.[71]

Moreover, it is unclear how Pitts was deprived of pertinent information through its receipt of public summaries only. Pitts's generic due process complaint lacks specificity and is devoid of any evidence in support of this claim.[72] In short, the facts underlying *Royal Brush* are distinguishable from those present here.

IV. Decision

Based upon our *de novo* review of the administrative record in this case, including the request for administrative review and response thereto, the May 23 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.
Supervisory Attorney-Advisor
Regulations and Rulings, Office of Trade
U.S. Customs and Border Protection

Approved by:

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

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[71] *C.f. Royal Brush Mfg., Inc.*, 75 F.4th 1250 at 1257–59.
[72] *See* Pitts's Request for Administrative Review (Public Document), at 30.