U.S. Customs and Border Protection

19 CFR PART 177

MODIFICATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN WHEELS AND HUBS FOR TRUCKS AND TRAILERS

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of modification of one ruling letter and of revocation of treatment relating to the tariff classification of certain wheels and hubs for trucks and trailers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying one ruling letter concerning tariff classification of certain wheels and hubs for trucks and trailers under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 58, No. 37, on September 18, 2024. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after May 12, 2025.

FOR FURTHER INFORMATION CONTACT: Julio Ruiz-Gomez, Electronics, Machinery, Automotive, & International Nomenclature Branch, Regulations and Rulings, Office of Trade, at (202) 325–0736.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 58, No. 37, on September 18, 2024, proposing to modify one ruling letter pertaining to the tariff classification of certain wheels and hubs for trucks and trailers. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this notice.

In New York Ruling Letter ("NY") H85742, dated December 7, 2001, CBP classified certain wheels and hubs for trucks and trailers in heading 8708, HTSUS, specifically in subheading 8708.70.60, HTSUS, which provides for "Parts and accessories of the motor vehicles of headings 8701 to 8705: Road wheels and parts and accessories thereof: For other vehicles: Parts and accessories." CBP has reviewed NY H85742 and has determined the ruling letter to be in error. It is now CBP's position that certain wheels and hubs for trucks and trailers are properly classified, in heading 8716, HTSUS, specifically in subheading 8716.90.50, HTSUS, which provides for "Parts and

accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Other: Other: Other: Other: Other parts of power trains."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying NY H85742 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H310555, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H310555
February 24, 2025
OT:RR:CTF:EMAIN H310555 JRG/TPB
CATEGORY: Classification
TARIFF Nos.: 8708.70.60; 8708.99.68; 8716.90.50

MR. MIKE M. KRASSICK
WEBB WHEEL PRODUCTS, INC.
2310 INDUSTRIAL DRIVE, S.W.
CULLMAN, ALABAMA 35055

Re: Modification of NY H85742; Classification of truck and trailer wheels and hubs from China or South Korea

DEAR MR. KRASSICK:

The following is our decision regarding reconsideration of New York Ruling Letter (NY) H85742, dated December 7, 2001, issued to your company, Webb Wheel Products, Inc., regarding the tariff classification of certain wheels and hubs for trucks and trailers under the Harmonized Tariff Schedule of the United States (HTSUS).

In that ruling letter, certain spoke wheels for truck steering axles, spoke wheels for trailers, hubs for truck drive axles, and hubs for trailers were classified under subheading 8708.70.60, HTSUS (2001), which provides for "Parts and accessories of the motor vehicles of headings 8701 to 8705: Road wheels and parts and accessories thereof: For other vehicles: Parts and accessories."

Upon review of NY H85742, we find that while the classification of the spoke wheels for trucks is correct, the classification of the spoke wheels for trailers, hubs for trucks, and hubs for trailers is incorrect. As such, for the reasons set forth below, NY H85742 is modified with respect to the classification of the spoke wheels for trailers, hubs for trucks, and hubs for trailers.

Pursuant to Section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. No. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed action was published on September 18, 2024, in Volume 58, Number 37, of the *Customs Bulletin*. No comments were received in response to this notice.

FACTS:

The subject merchandise was described in NY H85742 as follows:

> The wheels and hubs will be made of iron. The wheels are identified on your drawings as spoke wheels that are bolted into the brake drums. Your drawings indicate that the hubs will be imported without the inner bearing cup and the outer bearing cup.

ISSUE:

What is the classification of the wheels and hubs for trucks and trailers?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff

schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

8708	Parts and accessories of the motor vehicles of headings 8701 to 8705:
8708.70	Road wheels and parts and accessories thereof:
	For other vehicles:
8708.70.60	Parts and accessories...
	* * *
	Other parts and accessories:
8708.99	Other:
	Other:
	Other:
8708.99.68	Other parts for power trains...
	* * *
8716	Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof:
8716.90	Parts:
8716.90.50	Other...

The text of heading 8708, HTSUS, requires a product to be a part or an accessory for vehicles of headings 8701 through 8705. Trailers, however, are classified in heading 8716, HTSUS, which provides for trailers and semi-trailers. As a result, no parts or accessories for such trailers can be classified in heading 8708, HTSUS.

Legal Note 3 to section XVII states

> References in Chapters 86 to 88 to 'parts' or 'accessories' do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part or accessory.

The wheels and hubs at issue are not designed for interchangeable use with motor vehicles and trailers. Rather, each model corresponds to its specific use. The hubs for motor vehicle use are very much distinguishable from the hubs used on trailers by name and physical characteristics. Therefore, they must be classified separately.

Further, we note that wheel hubs (or axle hubs, or hubs) are not wheels, nor parts or accessories to wheels. Wheel hubs are installed on the drive axle of the vehicle, and wheels are then installed on the hubs. In fact, hubs for vehicles of headings 8701 to 8705 are listed separately from those wheels in the HTSUS, in subheading 8708.99. In Headquarters Ruling Letter (HQ) H013123, dated April 14, 2008, U.S. Customs and Border Protection (CBP) determined that "[a] wheel hub is the component upon which the wheel is mounted. It fits over the wheel bearings and is also mounted to the brakes. A brake disc, or rotor, usually made of cast iron, is connected to the wheel or the

axle." As a result, wheel hubs designed for truck use are classified in subheading 8708.99, HTSUS, which provides for other parts and accessories of vehicles of headings 8701 to 8705.

The hubs for trucks are for drive axles, which makes them parts of power trains. As such, they are classified in subheading 8708.99.68, HTSUS, which provides for "Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Other: Other: Other: Other parts of power trains...."

Lastly, the wheels and hubs for trailers are classified under subheading 8716.90.50, HTSUS, which provides for "Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof: Parts: Other."

HOLDING:

By application of GRIs 1 and 6, the hubs for trucks are classified in subheading 8708.99.68, HTSUS, which provides "Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Other: Other: Other: Other parts of power trains...." The general, column one rate of duty for merchandise classified under this subheading is 2.5% *ad valorem*.

The hubs and wheels for trailers are classified under subheading 8716.90.50, HTSUS, which provides for "Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof: Parts: Other...." The general rate, column one of duty for merchandise under this subheading is 3.1% *ad valorem*.

Pursuant to U.S. Note 20 to Subchapter III, Chapter 99, HTSUS, products of China classified under subheadings 8708.70.60, 8708.99.68, and 8716.90.50, HTSUS, unless specifically excluded, are subject to an additional 25 percent *ad valorem* rate of duty. At the time of importation, you must report the Chapter 99 subheading, i.e., 9903.88.03, in addition to the subheadings listed above.

The HTSUS is subject to periodic amendment so you should exercise reasonable care in monitoring the status of goods covered by the Note cited above and the applicable Chapter 99 subheading. For background information regarding the trade remedy initiated pursuant to Section 301 of the Trade Act of 1974, you may refer to the relevant parts of the USTR and CBP websites, which are available at https://ustr.gov/issue-areas/enforcement/section-301-investigations/tariff-actions and https://www.cbp.gov/trade/remedies/301-certain-products-china, respectively.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided at https://hts.usitc.gov/current.

EFFECT ON OTHER RULINGS:

NY H85742, dated December 7, 2001, is hereby MODIFIED with respect to the classification of the spoke wheels for trailers, hubs for trucks, and hubs for trailers.

In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

Sincerely,

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

VESSEL ENTRANCE AND CLEARANCE AUTOMATION TEST: EXTENSION OF TEST

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice announces that U.S. Customs and Border Protection (CBP) is extending the Vessel Entrance and Clearance Automation Test. This test allows participants to submit the vessel entry and clearance data required on CBP Forms 26, 226, 1300, 1302, 1303, 1304, and 3171, and to make certain entry and clearance requests and reports, to CBP electronically through the Vessel Entrance and Clearance System (VECS).

DATES: The extended test will run for an additional 24 months until February 21, 2027, unless further extended.

ADDRESSES: Written comments concerning this notice and any aspect of the test may be submitted at any time during the test period via email to Brian Sale, Branch Chief, Cargo and Conveyance Security, Manifest Conveyance and Security Division, Office of Field Operations, U.S. Customs and Border Protection, at *OFO-ManifestBranch@cbp.dhs.gov.* In the subject line of the email, please write "Comments on the Vessel Entrance and Clearance Automation Test."

FOR FURTHER INFORMATION CONTACT: Brian Sale, Branch Chief, Cargo and Conveyance Security, Manifest Conveyance and Security Division, Office of Field Operations, U.S. Customs and Border Protection, at (202) 325–3338 or *OFO-ManifestBranch@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

U.S. Customs and Border Protection (CBP) regulations generally require that the master or vessel agent[1] of a commercial vessel submit certain arrival, entrance, and clearance data to CBP when traveling to and from U.S. ports of entry. *See* part 4 of title 19 of the Code of Federal Regulations (19 CFR part 4). The vessel agent must generally submit this data to CBP on paper forms. Some of the data

[1] For the purposes of this document, "vessel agent" may include a vessel master or commanding officer, authorized agent, operator, owner, consignee, or a third party contracted by the owner or operator of the vessel to prepare and submit entrance and clearance documentation to CBP on behalf of the vessel owner or operator.

collected through these forms is redundant or already available to CBP through other required data submission platforms, such as data required by the applicable U.S. Coast Guard (USCG) regulations. *See* 33 CFR 160.201–216.

On November 21, 2022, CBP published a notice in the **Federal Register** (87 FR 70850) announcing the Vessel Entrance and Clearance Automation Test ("the Test"). The Test allows for the partial automation and electronic filing of many of CBP's paper-based commercial vessel arrival, entrance, and clearance data collections. Specifically, the Test allows participants to electronically submit to CBP, through the Vessel Entrance and Clearance System (VECS), when seeking to enter into or depart from a designated port, the entrance and clearance data that is collected on CBP Form 1300: Vessel Entrance or Clearance Statement;[2] CBP Form 1302: Inward Cargo Declaration; CBP Form 1303: Ship's Stores Declaration; CBP Form 1304: Crew's Effects Declaration; CBP Form 3171: Application-Permit-Special License Unlading-Lading-Overtime Services; CBP Form 26: Report of Diversion; and CBP Form 226: Record of Vessel Foreign Repair or Equipment Purchase.[3] The Test also allows participants to make certain entry and clearance requests and reports. Additionally, the Test allows vessel agents to submit required supporting documentation, such as vessel certificates, to CBP electronically. CBP then uses the data and documentation submitted through VECS to process vessel entrances and clearances electronically at designated ports.

The Test is authorized under 19 CFR 101.9(a), which authorizes the CBP Commissioner to impose requirements different from those specified in the CBP regulations for the purposes of conducting a test program or procedure designed to evaluate the effectiveness of new technology or operational procedures regarding the processing of passengers, vessels, or merchandise. The Test assesses the functionality and effectiveness of using VECS to automate the submission of certain vessel entrance and clearance data elements to CBP electronically, instead of requiring the completion and submission of multiple paper forms. VECS prepopulates certain vessel arrival, entrance, and clearance information that Test participants have previously submitted to CBP through other maritime requirements and then prompts participants to enter additional data elements required by the forms, manually. The participant must verify that the information that has

[2] Participants seeking foreign clearance from one of the designated ports during this Test may also submit a paper CBP Form 1300. Alternatively, during the Test, CBP will also accept submissions of CBP Form 1300 by fax or as an email attachment from Test participants, at the discretion of the Port Director. For fax or email submissions, CBP will respond in the same manner.

[3] All other CBP forms required for the entrance and clearance of a vessel (*e.g.,* CBP Form 1302A: Cargo Declaration Outward with Commercial Forms; CBP Form I–418: Passenger List-Crew List; and CBP Form 5129: Crew Member's Declaration) are not part of this Test.

been prepopulated into VECS is accurate, correct any inaccurate or incomplete data fields, supply any additional information necessary, and confirm and submit the data to CBP. This technology allows CBP to reduce paperwork burdens and promote greater efficiency since CBP only needs to request data elements once, even when a particular element is needed to satisfy the requirements of multiple different CBP forms on different occasions, and/or the paper format is required in duplicate or triplicate. Furthermore, this Test decreases the time it takes for CBP Officers and the trade community to process an entrance and clearance of a commercial vessel.

The November 21, 2022 **Federal Register** notice sets forth the eligibility criteria, application process and acceptance, procedures, and misconduct rules regarding the Test, as well as the vessel arrival, entrance, and clearance processes and regulatory requirements to be waived for participants of the Test. For further details, please refer to the November 21, 2022 **Federal Register** notice. The designated ports where the Test operates are set forth on the Vessel Entrance and Clearance System page on CBP's website, available at *https://www.cbp.gov/trade/automated/vecs.* All participants must have a Vessel Agency Portal Account in the Automated Commercial Environment (ACE) because it serves as access for Test participants to the VECS platform. For more information and for instructions on how to request an ACE Vessel Agency Portal Account, please visit the Getting Started with CBP Automated Systems page on CBP's website, available at *https://www.cbp.gov/trade/automated/getting-started.*

II. Extension of the Vessel Entrance and Clearance Automation Test Period

CBP announced in the November 21, 2022 **Federal Register** notice that the Test would begin no earlier than December 21, 2022 and continue for 24 months from the date the Test actually began. Since the Test began at the Port of Gulfport in Gulfport, Mississippi, on February 21, 2023, it is scheduled to continue until February 21, 2025. CBP also stated that any expansion or extension of the Test would be announced in the **Federal Register**. Accordingly, this notice announces that CBP is renewing the Test for an additional 24 months to continue to evaluate the feasibility and effectiveness of CBP's capacity to automate CBP Forms 26, 226, 1300, 1302, 1303, 1304, and 3171 through VECS. The extended Test will now operate for an additional 24 months until February 21, 2027, unless further extended.

CBP intends to initiate rulemaking to require the submission of certain vessel arrival, entry, and clearance data to CBP electronically through VECS for all mandated vessels seeking entry into or clearance from U.S. ports after sufficient Test analysis and evaluation are conducted.

III. Applicability of Initial Test Notice

All provisions in the November 21, 2022 **Federal Register** notice remain applicable, subject to the further extension of the time period provided herein.

IV. Privacy

CBP will ensure that all Privacy Act requirements and applicable policies are adhered to during the continued implementation of this Test.

V. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3507(d)) requires that CBP consider the impact of paperwork and other information collection burdens imposed on the public. An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget (OMB).

This Test does not impose any new information collection requirements; it simply changes the modality through which currently collected information is submitted to CBP. The Vessel Entrance and Clearance Statement (CBP Form 1300) has been approved by OMB in accordance with the requirements of the PRA (44 U.S.C. 3507) under OMB control number 1651–0019. In addition, the following collections of information have been submitted to OMB for review and approval in accordance with the requirements of the PRA (44 U.S.C. 3507): 1651–0025 Report of Diversion (CBP Form 26), 1651–0027 Record of Vessel Foreign Repair or Equipment (CBP Form 226), 1651–0001 Cargo Manifest/Declaration, Stow Plan, Container Status Messages and Importer Security Filing (CBP Form 1302), 1651–0018 Ship's Stores Declaration (CBP Form 1303), 1651–0020 Crew Effects Declaration (CBP Form 1304), 1651–0005 Application-Permit-Special License Unlading/Lading, Overtime Services (CBP Form 3171).

Dated: January 14, 2025.

DIANE J. SABATINO,
Acting Executive Assistant Commissioner,
Office of Field Operations.

U.S. Court of Appeals for the Federal Circuit

ALL ONE GOD FAITH, INC., DBA DR. BRONNER'S MAGIC SOAPS, Plaintiff GLŌB ENERGY CORP., ASCENSION CHEMICALS LLC, UMD SOLUTIONS LLC, CRUDE CHEM TECHNOLOGY LLC, Plaintiffs-Appellants v. UNITED STATES, Defendant-Appellee CP KELCO U.S., INC., Defendant

Appeal No. 2023–1078, 2023–1081

Appeals from the United States Court of International Trade in Nos. 1:20-cv-00160-GSK, 1:20-cv-00161-GSK, 1:20-cv-00162-GSK, 1:20-cv-00163-GSK, 1:20-cv-00164-GSK, Judge Gary S. Katzmann.

Decided: February 27, 2025

KYL JOHN KIRBY, Kyl J. Kirby, Attorney and Counselor at Law, PC, Fort Worth, TX, argued for plaintiffs-appellants.

ASHLEY AKERS, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, argued for defendant-appellee United States. Also represented by CLAUDIA BURKE, PATRICIA M. MCCARTHY, LOREN MISHA PREHEIM, ANTONIA RAMOS SOARES, BRETT SHUMATE; SHAE WEATHERSBEE, Office of Chief Counsel, United States Customs and Border Protection, United States Department of Homeland Security, Washington, DC.

Before MOORE, *Chief Judge*, HUGHES and CUNNINGHAM, *Circuit Judges*.

HUGHES, *Circuit Judge*.

Appellants appeal the decision of the United States Court of International Trade affirming determinations by Customs and Border Protection that Appellants transshipped xanthan gum from the People's Republic of China through India to evade antidumping duties imposed by an antidumping order issued by the United States Department of Commerce.

Appellants challenge two aspects of the trial court's decision. First, regarding evasion determinations over which the trial court exercised jurisdiction, they argue that the trial court improperly concluded that Customs' evasion determinations were in accordance with law and supported by substantial evidence. Second, they contend that the trial court improperly dismissed for lack of subject matter jurisdiction certain claims seeking review of evasion determinations because those claims concerned entries that had been finally liquidated. We conclude that the trial court did have jurisdiction over these claims. Nonetheless, because Customs' other evasion determinations were in accordance with law and not an abuse of discretion, and the trial

court indicated it would find evasion regarding the finally liquidated entries for the same reasons if it had jurisdiction, we affirm.

I

This current appeal addresses whether GLōB Energy Corporation, Ascension Chemicals LLC, UMD Solutions LLC, Crude Chem Technology LLC (collectively, Appellants) improperly transshipped[1] xanthan gum from the People's Republic of China (PRC) through India in an effort to evade antidumping (AD) duties imposed by the United States Department of Commerce. We begin with an explanation of the scope of the statutory scheme under which AD determinations are reached and reviewed. We then summarize the case's procedural history before turning to the merits.

A

In 2013, in accordance with 19 U.S.C. § 1673e, Commerce issued AD Order No. A-570–985 on xanthan gum from China. *See Xanthan Gum From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 78 Fed. Reg. 43,143 (Dep't of Commerce July 19, 2013) (AD Order). That order set forth the AD duties to be collected on imports of xanthan gum from China.

In 2016, the President signed into law the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA). Pub. L. No. 114–125, 130 Stat. 122 (2016). Title IV, Section 421 of the TFTEA is the Enforce and Protect Act of 2015 (EAPA), which empowers Customs to investigate allegations that an importer has evaded AD or countervailing duties (CVD). 19 U.S.C. § 1517.

Under the EAPA, the Customs Commissioner has fifteen business days to initiate an investigation after receipt of an allegation or referral that "reasonably suggests that covered merchandise has been entered into the customs territory of the United States through evasion." 19 U.S.C. § 1517(b)(1). Within 90 calendar days of initiating an investigation, the Commissioner must decide whether there is "reasonable suspicion" that covered merchandise entered the customs territory of the United States through evasion that warrants imposition of interim measures. 19 U.S.C. § 1517(e). If the Commissioner determines there is such reasonable suspicion, the Commissioner shall take the following interim measures: (1) "suspend the liquidation of each unliquidated entry of such covered merchandise that entered on or after the date of the initiation of the investigation;" (2)

[1] Transshipment occurs when goods originating in a country subject to antidumping or countervailing duty orders are exported to a third country prior to importation into the United States in an effort to obscure the country of origin and evade payment of duties.

"extend the period for liquidating each unliquidated entry of such covered merchandise that entered before the date of the initiation of the investigation" (pursuant to her authority under § 1504(b)); and (3) "take such additional measures as the Commissioner determines necessary to protect the revenue of the United States, including requiring a single transaction bond or additional security or the posting of a cash deposit with respect to such covered merchandise" (pursuant to her authority under § 1623). *Id*. These interim suspensions dissolve once the Customs investigation terminates.

The Commissioner then has 300 calendar days after initiating the investigation to "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." 19 U.S.C. § 1517(c)(1)(A). "If the Commissioner finds that a party or person . . . has failed to cooperate by not acting to the best of the party or person's ability to comply with a request for information, the Commissioner may, in making a determination . . . , use an inference that is adverse to the interests of that party or person in selecting from among the facts otherwise available to make the determination." 19 U.S.C. § 1517(c)(3)(A).

A party determined to have brought covered merchandise into the customs territory of the United States has 30 business days to file an appeal with the Commissioner for de novo review. 19 U.S.C. § 1517(f)(1). A party whose appeal to the Commissioner fails has 30 business days to seek review by the Court of International Trade (trial court or CIT). 19 U.S.C. § 1517(g)(1). A party seeking judicial review of an EAPA determination can seek a preliminary injunction to prevent liquidation during the litigation. *Qingdao Taifa Grp. Co. v. United States*, 581 F.3d 1375, 1378 (Fed. Cir. 2009) ("In international trade cases, the CIT has authority to grant preliminary injunctions barring liquidation in order to preserve a party's right to challenge the assessed duties.").

B

In December 2018 and March 2019, CP Kelco U.S., a domestic producer of xanthan gum, submitted letters to Customs alleging that xanthan gum from China subject to the AD Order was being transshipped by Appellants through India to evade AD duties. *See* J.A. 314–19 (Ascension December 2018 allegation); J.A. 343–49 (Crude March 2019 allegation); J.A. 353–59 (GLõB March 2019 allegation); J.A. 363–69 (Ascension March 2019 allegation); J.A. 373–78 (UMD March 2019 allegation). Based on these letters, Customs initiated an

investigation under 19 U.S.C. § 1517(b)(1). The AD rate applicable to merchandise from Chinese companies that did not receive their own rates, *i.e.*, those that are determined to be part of the China-Wide Entity, is 154.07%. AD Order at 43,144.

After evaluating CP Kelco's EAPA allegations concerning evasion, Customs' Trade Remedy Law Enforcement Directorate (TRLED) in the Office of Trade initiated separate investigations of each importer on May 7, 2019. TRLED specifically noted that "CP Kelco has submitted documentation reasonably available to it that suggests xanthan gum is not produced in India, and that Chinese-origin xanthan gum is being sourced through India for transshipment to the United States with India the declared country of origin." J.A. 37, 41, 45, 49. TRLED thus concluded that "the allegation reasonably suggests that covered merchandise has entered into the customs territory of the United States by means of evasion, and that [Appellants] may have been importing such merchandise." *Id*.

On August 12, 2019, Customs notified Appellants that it would consolidate the investigations. Customs also provided notice that it was imposing interim measures pursuant to 19 U.S.C. § 1517(e), including that Customs would adjust unliquidated entries of covered merchandise by the investigation "to reflect that they are subject to the antidumping order on xanthan gum from China and cash deposits will be owed," suspend liquidation for entries that entered on or after May 7, 2019, the date Customs initiated its investigation, and extend the period for liquidation for all unliquidated entries that were entered before May 7, 2019. J.A. 404.

On August 19, 2019, Customs sent Appellants additional requests for information, to which they responded on September 13, 2019. J.A. 50–93. In these responses, Appellants each indicated that their merchandise was manufactured by a common supplier, Chem Fert Chemicals. *Id*. On August 20, 2019, Customs sent requests for information to Chem Fert; Chem Fert responded on September 3, 2019. *See* J.A. 523–29 (Chem Fert response). The parties submitted additional information and written arguments to Customs.

1

After the investigation, Customs determined Appellants, along with several other importers who are not parties to this appeal, had improperly imported Chinese origin xanthan gum into the United States by transshipment through India without disclosing the true country of origin.

In its March 9, 2020 Final Determination, Customs issued its affirmative determination of evasion covering the period of investiga-

tion from April 16, 2019 to March 9, 2020. J.A. 183–84. Customs explained that the EAPA statute outlines three elements for Customs to address in reaching an evasion determination: "1) whether the entries in question [we]re covered merchandise (*i.e.*, merchandise that is subject to an AD/CVD order) when they entered into the customs territory of the United States; 2) whether such entry was made by a material false statement or act or material omission; and 3) whether there was a resulting reduction or avoidance of applicable AD/CVD cash deposits or other security." J.A. 187.

Based on information collected during its investigation, Customs determined there was substantial evidence demonstrating that the xanthan gum at issue was of Chinese origin and "[wa]s subject to the China-wide entity rate for the AD order on xanthan gum from China." J.A. 201. Customs also concluded that because "merchandise was misidentified as of Indian origin" and free of duties at the time of entry, no cash deposits had been collected on the entries, and there was therefore a resulting reduction or avoidance of applicable AD duties. J.A. 187, 194, 196, 198. In its affirmative evasion finding, Customs rejected arguments by the importers that there was no evasion because the merchandise in the entries at issue was manufactured in and exported from China by entities for which the cash deposit rate has been 0.00 percent. J.A. 187, 194, 196, 198.

Regarding Appellants, Customs stated that they, along with their purported manufacturer, Chem Fert, had not cooperated "to the best of their abilities," and that "[n]either Chem Fert nor the [Appellants] provided requested production documentation related to the actual xanthan gum imported into the United States that could have enabled [Customs] to determine the country of origin." J.A. 187–88 (regarding Ascension); *see also* J.A. 194–95 (regarding UMD), J.A. 196 (regarding Crude), J.A. 198 (regarding GLōB). Customs therefore determined it would apply an adverse inference on the question of who manufactured the merchandise at issue, inferring that the foreign manufacturer had not manufactured the imported xanthan gum, and would make a determination based on available record information. J.A. 200.

2

Pursuant to 19 U.S.C. § 1517(f), the importers sought administrative review of the Final Determination. On July 16, 2020, after de novo review, the Customs' Office of Regulations and Rulings (ORR) issued a Decision affirming Customs' Final Determination. In its decision, ORR determined that the goods at issue were "covered merchandise" transshipped from China to India for export and that

the Appellants had engaged in evasion of the AD Order because they had imported Chinese-origin xanthan gum but falsely identified India as the country of origin. ORR also found that the importers had falsely identified their entries as not being subject to AD duties at the time of entry, which resulted in no cash deposits being applied to the merchandise. Additionally, ORR rejected arguments that there was no evasion because the errors in entry documents were clerical errors, noting that "[a]t the time of entry, the [Appellants] consciously declared the merchandise as of Indian origin . . . [and] that the declarations were (even if unwittingly) based on false facts, does not make them the result of clerical error." J.A. 280.

In its Decision, ORR also dismissed arguments from Appellants that CP Kelco—the domestic entity that had submitted the initial complaint to Customs—was not producing oilfield grade xanthan gum in the United States and that this fact detracted from the weight of the evidence. J.A. 278–80. According to Appellants, this constituted "changed circumstances that could remove oilfield grade xanthan gum from the antidumping order." J.A. 278. In rejecting these arguments, ORR found that the argument did not relate to the "narrow" question in an EAPA investigation of whether merchandise that is subject to an AD Order "entered by means of a material falsehood or omission resulting in the non-payment or reduction of AD duties." J.A. 279.

3

Appellants then each separately sought judicial review of Customs' evasion determinations before the trial court. The trial court consolidated these cases into the present action. After consolidation, each of the Appellants filed motions for judgment on the agency record; the government responded in opposition. The government simultaneously moved to dismiss the claims of importer Dr. Bronner's for lack of subject matter jurisdiction, since these claims concerned entries that had been finally liquidated. The trial court granted the Government's motion to dismiss Dr. Bronner's claims and applied the same reasoning to also dismiss GLōB's claims regarding finally liquidated entries. The trial court then denied the remaining Appellants' motions for judgment on the agency record, thus affirming Customs' EAPA evasion determinations.

II

We review legal holdings, such as granting a motion to dismiss for lack of subject matter jurisdiction, de novo. *Bell BCI Co. v. United States*, 570 F.3d 1337, 1340 (Fed. Cir. 2009); *JCM, Ltd. v. United States*, 210 F.3d 1357, 1359 (Fed. Cir. 2000).

When reviewing the Customs' EAPA determinations or administrative review decisions, we apply the same "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" standard that the trial court applied in reviewing the Customs' determinations. J.A. 14; 19 U.S.C. § 1517(g)(2); *see also BMW of N. Am. LLC v. United States*, 926 F.3d 1291, 1300 (Fed. Cir. 2019).

III

With respect to the twelve entries over which the trial court determined that it had jurisdiction and evaluated the arguments on the merits, Appellants appeal Customs' determination as resting on two alleged errors: they argue that Customs (1) "fail[ed] to consider whether there was a 'change in circumstances affecting the industry' such that entries were not covered merchandise" and (2) erroneously applied an adverse inference. J.A. 19.

For these entries, the trial court concluded that Customs' evasion determinations were not arbitrary, capricious, nor an abuse of discretion. The trial court also concluded that Customs' evasion determinations were independently supported by substantial evidence. We agree with the trial court on both determinations.

A

"If the domestic industry truly no longer has any interest in maintaining the antidumping duty order . . . , then the proper procedure is to institute a 'changed circumstances' administrative review pursuant to 19 U.S.C. § 1675(b) and 19 C.F.R. § 353.25(d)." *Nitta Indus. Corp. v. United States*, 997 F.2d 1459, 1464 (Fed. Cir. 1993). A party subject to a final affirmative determination resulting from an AD evasion determination is an interested party that may challenge the AD order by showing such changed circumstances that the domestic industry will not be injured if the AD order is modified or revoked. Where "changed circumstances sufficient to warrant a review exist," Commerce, not Customs, must conduct the review of the alleged changed circumstances. 19 U.S.C. § 1675(b)(1)(C).

Appellants argued before the trial court that because "evidence on the record demonstrated that it is possible or even likely that CP Kelco is not subject to material injury by oilfield xanthan produced in China, [Customs] was thus required to refer the matter to [Commerce] for a changed circumstances review." J.A. 19 (internal quotation marks omitted) (second alteration in original). Specifically, Appellants argued Customs erred by failing to refer to Commerce the question of whether CP Kelco—the domestic entity that had submitted the initial complaint to Customs which prompted the relevant investigations of Appellants—underwent a "corporate strategy shift"

"that could remove oilfield grade xanthan gum from the antidumping order." J.A. 170, 212. According to Appellants, CP Kelco was no longer producing oilfield grade xanthan gum in the United States. Appellants argued before the trial court that "it is possible or even likely that CP Kelco is not subject to material injury by oilfield xanthan produced in China," and thus, that xanthan gum should not be covered merchandise under the AD Order. J.A. 19, 21.

The trial court disagreed and clarified that the evidence Appellants relied upon—"a single email chain"— failed to show with any certainty that CP Kelco was no longer producing oilfield xanthan gum in the United States. J.A. 20. Indeed, the trial court noted that, in the emails cited by Appellants, "CP Kelco expressly states that it is manufacturing substantial quantities of ZANFLO [Oilfield Xanthan Gum]." J.A. 20. The trial court concluded Appellants did not identify any record evidence "which plausibly supports their contention that changed circumstances review would be appropriate." J.A. 21. This conclusion is consistent with the statutory requirement that matters be referred to Commerce only where "changed circumstances *sufficient to warrant a review*" exist. 19 U.S.C. § 1675(b)(1)(C) (emphasis added).

Additionally, because Appellants did not argue that any change of circumstances would apply retroactively, the trial court concluded that the issue was not relevant to Customs' present evasion determinations. J.A. 21. The trial court cited ORR's statement that any possible change in circumstances that may result in Commerce modifying the scope "at a later date does not change the fact that, at the time of entry, the xantha[n] gum was covered merchandise." J.A. 21. Thus, because any alleged changed in circumstance was only relevant to future modifications, "such review was not essential to [Customs'] determination of evasion" in the present case. J.A. 21. Accordingly, we agree with the trial court and hold it was not an abuse of discretion for Customs to decline to refer Appellants' request for review by Commerce where it reasonably concluded changed circumstances sufficient to warrant a review did not exist.

B

Appellants further argue that Customs' application of adverse inferences against them based on the failure of Appellants' manufacturers to cooperate with requests for information was arbitrary, capricious, an abuse of discretion, not in accordance with law, and not supported by substantial evidence. We disagree.

The statute governing procedures for investigating claims of evasion of AD orders provides that Customs "may . . . use an inference

that is adverse to the interests of that party or person in selecting from among the facts otherwise available to make the determination" against an interested party, importer, foreign producer, foreign exporter, or foreign government who "has failed to cooperate by not acting to the best of [its] ability to comply with a request for information." 19 U.S.C. § 1517(c)(3)(A). Such adverse inferences may be used "without regard to whether another person involved in the same transaction or transactions under examination has provided the information sought by the Commissioner, such as import or export documentation." 19 U.S.C. § 1517(c)(3)(B).

Here, it is undisputed that "the claimed manufacturers either did not respond to [Customs'] [requests for information], or failed to provide most of the information requested in the [request for information]." J.A. 200. That the manufacturers were uncooperative is clear from the record: Appellants themselves admitted in their briefing before the trial court that they had to sue the manufacturers to obtain documentation relevant to the EAPA determination. J.A. 22–23. In its EAPA Determination, Customs applied adverse inferences against the manufacturers, and "infer[red] that the claimed foreign manufacturers did not manufacture the imported xanthan gum," instead determining that the alleged Indian-origin xanthan gum was transshipped Chinese-origin xanthan gum. J.A. 200–01.

Appellants argue that because they themselves cooperated with Customs' requests for information to the best of their ability, it was improper for Customs to apply this adverse inference against the manufacturers. Appellants do not cite any law or precedent to support their position that adequately cooperative conduct by an importer should prevent an adverse inference against the manufacturer.

As the trial court noted, "these adverse inferences [sic] were not applied to [Appellants], but rather to the alleged foreign manufacturers—the same manufacturers the [Appellants] state they were forced to sue in order to 'obtain documentation' relevant to the EAPA investigation." J.A. 22–23. Because it is uncontroverted that the alleged manufacturers were not cooperative, Customs properly applied an adverse inference against the manufacturer as authorized by statute, irrespective of the conduct of other interested parties like Appellants. *See* 19 U.S.C. § 1517(c)(3)(B). Thus, we agree with the trial court that Customs' application of the adverse inference was in accordance with law.

Regardless of the adverse inference, Customs' inference that the foreign manufacturers did not manufacture the imported xanthan gum and determination that the alleged Indian-origin xanthan gum

was transshipped Chinese-origin xanthan gum were supported by substantial evidence. The trial court noted that Customs' determination that China produced the subject goods, rather than India (*i.e.*, the adverse inference fact), was also "independently supported by the record." J.A. 23. Appellants do not dispute that the goods transshipped from India originated in China. Data from the International Trade Commission stated that "xanthan gum is made in China, Austria, France, and the United States, with no reference to India"; "large and rising volumes of imports into India from China of the category of merchandise including xanthan gum, while the volumes from other xanthan-gum producing countries (*i.e.*, Austria, France, and the United States) are minimal"; and there is a "history of attempted circumvention of the xanthan gum AD order by various companies." J.A. 200–01; *see also* J.A. 348. This evidence far exceeds the "mere scintilla" of "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion" needed to withstand substantial evidence review. *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1379 (Fed. Cir. 2003) (internal citation omitted). Customs' determination of evasion is supported by substantial evidence.

IV

Appellants also argue that the trial court erred in holding that it lacked jurisdiction over Appellant GLōB's challenges to Customs' liquidation of the disputed merchandise because the relevant entries were finally liquidated before the trial court rendered its decision. We agree. But because the trial court noted it would deny GLōB's motion for judgment on the agency record for the same reasons stated for denying the motion for judgment on the agency record of the other Appellants' entries, we nonetheless affirm the trial court with respect to GLōB's finally liquidated entries.

As an interim measure during its investigation, Customs should have suspended liquidation for entries that were entered on or after the date on which separate investigations of the Appellants were initiated—May 7, 2019—and extended the period for liquidation for all unliquidated entries that were entered before May 7, 2019. *See* J.A. 403–04; 19 U.S.C. § 1517(e). Of the seventeen entries subject to this appeal, the twelve entries discussed above were properly suspended during the investigation; however, five were liquidated, as conceded by the Government, "evidently in error." J.A. 17. GLōB, the importer of two of the five entries which were not suspended, protested the erroneous liquidations. J.A. 14, 17. But after Customs denied the protests, GLōB failed to appeal the denials. J.A. 17. The

trial court found that, because of this failure to timely appeal the protest denials, "those liquidations bec[ame] final and conclusive," regardless of the error. J.A. 18 (quoting *United States v. Am. Home Assur. Co.*, 789 F.3d 1313, 1323 (Fed. Cir. 2015)); *see also* 19 U.S.C. § 1514(a). Thus, the trial court concluded it did not have subject matter jurisdiction to review Customs' determinations as to those finally liquidated entries. J.A. 18–19.

The trial court had earlier advised GLōB of an alternate avenue to preserve its rights: by timely filing an action under 28 U.S.C. § 1581(a) contesting Customs' denial of its protest. J.A. 18 n.7, 530–31. The trial court has limited jurisdiction to review timely protested denials under 28 U.S.C. § 1581(a); *see also* 19 U.S.C. §§ 1514(a), 1514(c). Section 1514(a) of Title 19 provides a statutory remedy for erroneously liquidated entries during an investigation, stating "any clerical error, mistake of fact, or other inadvertence . . . adverse to the importer" regarding "the liquidation or reliquidation of an entry . . . shall be final and conclusive . . . unless a protest is filed . . . or unless a civil action contesting the denial of a protest . . . is commenced" before the trial court. Here, GLōB properly protested the erroneous liquidations to Customs. But after Customs denied those protests on March 9, 2020, GLōB failed to timely appeal or contest the denial of these protests. J.A. 17. The statutorily authorized 180-day deadline to appeal the denial of protest passed during the pendency of this case before the trial court. J.A. 17; *see also* 28 U.S.C. § 2636(a)(1). The erroneous liquidations thus became "final and conclusive" under 19 U.S.C. § 1514(a), such that GLōB can no longer bring a claim under § 1581(a). To the extent GLōB is challenging the evasion determination to attain reliquidation of its finally liquidated entries, its only avenue for attaining that relief was under § 1581(a). That avenue is now foreclosed due to GLōB's failure to timely appeal the denial of its protest of liquidation and the subsequent final liquidation of those entries.

Most of the caselaw raised by Appellants in support of finding jurisdiction over the finally liquidated entries is unavailing. For example, both *Shinyei Corporation of America v. United States*, 355 F.3d 1297 (Fed. Cir. 2004), and *American Signature, Inc. v. United States*, 598 F.3d 816 (Fed. Cir. 2010), address how to apply 19 U.S.C. § 1514 in the context of liquidations where Customs is acting in a ministerial capacity implementing allegedly erroneous instructions from Commerce. *Shinyei Corp.*, 355 F.3d at 1311–12; *Am. Signature*, 598 F.3d at 829. Moreover, in a later case determining an importer was not entitled to mandamus to compel a refund of AD duties on entries that

had been finally liquidated, we clarified the importance that "*in Shinyei* the importer diligently pursued its rights throughout by, among other things, filing a mandamus action before its entries were liquidated." *Mukand Int'l, Ltd. v. United States*, 502 F.3d 1366, 1370 (Fed. Cir. 2007). Importer Mukand was not entitled to mandamus compelling a refund of AD duties on finally liquidated entries where "adequate alternative remedies [were] available to it[,] but [it] did not take advantage of those remedies in a timely fashion." *Id*. Like Mukand, GLōB had ample time to appeal its protest denials of the liquidated entries. The trial court even alerted GLōB of an alternate avenue to appeal the denial of its protest under 28 U.S.C. § 1581(a) after it failed to timely appeal the denial under 19 U.S.C. § 1514. J.A. 531. Accordingly, even under the caselaw cited by Appellants, GLōB's failure to preserve its rights by timely filing an appeal barred the trial court's jurisdiction under § 1581(a) to review the finally liquidated entries.

After the trial court issued its decision and during the pendency of this appeal, this court recognized the availability of jurisdiction under a separate provision, 28 U.S.C. § 1581(c), to review the propriety of an evasion determination by Commerce irrespective of whether the entries subject to the determination had been finally liquidated. *See Royal Brush Mfg., Inc. v. United States*. 75 F.4th 1250 (Fed. Cir. 2023). *Royal Brush* acknowledged the general principle that "once liquidation occurs the trial court is powerless to order the assessment of duties at any different rate." *Id*. at 1256 (citing *SKF USA, Inc. v. United States*, 512 F.3d 1326, 1328 (Fed. Cir. 2008), and *Zenith Radio Corp. v. United States*, 710 F.2d 806 (Fed. Cir. 1983)). Nonetheless, *Royal Brush* concluded that the trial court had jurisdiction under § 1581(c) to review the evasion determination itself even where the merchandise subject to the determination had been finally liquidated. *Id*. That decision, rendered after the trial court's decision here, is binding and mandates a conclusion that jurisdiction in this case would have been proper under § 1581(c) (but still unavailable under § 1581(a)).

In *Royal Brush*, the question was one of mootness: whether the importer's failure to protest liquidation of entries rendered its challenge to the evasion determinations of finally liquidated entries moot. *Id*. Under the facts of that case, we found that mootness had not been established. But in doing so, we clarified the nature of the challenge brought by importer Royal Brush: "Royal Brush did not bring a challenge to a liquidation determination; it brought a challenge to an evasion determination pursuant to the statute specifically authorizing such challenges. That statute does not require a liquidation pro-

test as a condition of review." *Id*. We thus declined to find Royal Brush's case moot with regard to the evasion determinations, despite the claims raised involving finally liquidated entries. *Id*. That distinction between a challenge to the evasion determination itself under § 1581(c) and the final liquidation decision under § 1581(a) is central to *Royal Brush*'s holding because, as it and our prior precedent recognize, courts do not possess jurisdiction under § 1581(a) to order reliquidation of already finally liquidated entries. Thus, while the trial court properly concluded that it did not have jurisdiction under § 1581(a) to review Customs' evasion determinations concerning entries that had been finally liquidated, it erred because it did not consider § 1581(c).

Despite that error, we need not remand this case. The trial court itself noted that to the extent it possessed jurisdiction, GLōB's motion for judgment on the agency record would also be denied for the same reasons stated for denying the motion for judgment on the agency record of the other Appellants' entries. J.A. 19 n.9. We thus affirm the trial court with respect to GLōB's finally liquidated entries for the same reasons we affirmed the trial court's affirmance of Customs' decisions regarding the non-finally liquidated entries: Customs' evasion determinations were in accordance with law and were independently supported by substantial evidence.

V

We have considered the remainder of Appellants' arguments and find them unpersuasive. Because we conclude that the trial court had jurisdiction to review the evasion determinations of all entries at issue in this appeal, did not act arbitrarily, capriciously, nor abuse its discretion, and properly found substantial evidence support for all of Customs' evasion determinations, we affirm.

AFFIRMED

U.S. Court of International Trade

Slip Op. 25–17

ASIA WHEEL CO., LTD., Plaintiff, and TRAILSTAR LLC and LIONSHEAD SPECIALTY TIRE AND WHEEL LLC, Consolidated Plaintiffs, and DEXTER DISTRIBUTION GROUP LLC F/K/A TEXTRAIL, INC., Plaintiff-Intervenor, v. UNITED STATES, Defendant, and DEXSTAR WHEEL DIVISION OF AMERICANA DEVELOPMENT, Inc., Defendant-Intervenor.

Before: Gary S. Katzmann, Judge
Consol. Court No. 23–00096

[Plaintiffs' Motion for Judgment on the Agency Record is denied.]

Dated: February 21, 2025

Jay C. Campbell, White & Case LLP, of Washington, D.C., argued for Plaintiff Asia Wheel Co., Ltd. With him on the briefs were *Walter J. Spak* and *Chunfu Yan*.

Jordan C. Kahn, Grunfeld Desiderio Lebowitz Silverman & Klestadt, LLP, of Washington, D.C., argued for Consolidated Plaintiff Trailstar LLC.

R. Kevin Williams, Clark Hill, of Chicago, IL, argued for Consolidated Plaintiff Lionshead Specialty Tire and Wheel LLC.

Nancy A. Noonan, *Yun Gao*, and *Leah N. Scarpelli*, ArentFox Schiff LLP, of Washington, D.C., for Plaintiff-Intervenor Dexter Distribution Group LLC.

Stephen C. Tosini, Senior Trial Counsel, U.S. Department of Justice, Washington, D.C., argued for Defendant the United States. With him on the briefs were *Brian M. Boynton*, Principal Deputy Assistant Attorney General, *Patricia M. McCarthy*, Director, *L. Misha Preheim*, Assistant Director. Of counsel in the briefs were *Ian A. McInerney*, Senior Attorney, *Danielle Cossey*, Attorney, and *Brishailah Brown*, Attorney, Office of the Chief Counsel for Trade Enforcement and Compliance, U.S. Department of Commerce, of Washington, D.C.

Nicholas J. Birch, Schagrin Associates, of Washington, D.C., argued for Defendant-Intervenor Dexstar Wheel Division of Americana Development, Inc. With him on the briefs was *Roger B. Schagrin*.

OPINION

Katzmann, Judge:

This case arises from the U.S. Department of Commerce's ("Commerce") ruling that certain trailer wheels produced by Asia Wheel Co., Ltd. ("Asia Wheel") fall within the scope of the antidumping and countervailing duty orders on certain steel trailer wheels from the People's Republic of China ("China"). In September 2019, Commerce issued antidumping and countervailing duty orders on certain steel wheels from China covering: "certain on-the-road steel wheels, discs and rims," including "rims, discs, and wheels that have been further processed in a third country, including, but not limited to, the painting of wheels from China and the welding and painting of rims and

discs from China to form a steel wheel, or any other processing that would not otherwise remove the merchandise from the scope of the Orders if performed in China." *Certain Steel Trailer Wheels 12 to 16.5 Inches from the People's Republic of China: Antidumping Duty and Countervailing Duty Orders*, 84 Fed. Reg. 45952, 45954 (Dep't Com. Sept. 3, 2019) ("*Orders*").

In response to Asia Wheel's request for scope proceedings, Commerce determined in a scope ruling that Asia Wheel's steel trailer wheels, manufactured in Thailand using discs from China and rims produced in Thailand from rectangular steel plates sourced from China or a third country, are subject to the *Orders*. *See* Mem. from E. Begnal to J. Maeder, re: Final Scope Ruling: Asia Wheel's Steel Wheels Processed in Thailand (Dep't Com. Apr. 11, 2023), P.R. 126 ("Final Scope Ruling"). Plaintiff Asia Wheel, a Thai subsidiary of a Chinese steel wheel manufacturer; Consolidated Plaintiffs Trailstar LLC ("Trailstar"), an American trailer wheel wholesaler, and Lionshead Specialty Tire and Wheel LLC ("Lionshead"), an American trail component contract manufacturer; and Plaintiff-Intervenor Dexter Distribution Group ("Dexter"), an American distributer of trailer parts, (collectively, "Plaintiffs") challenge Commerce's Final Scope Ruling. *See* Pls.' Am. Mot. for J. on Agency R., Feb. 22, 2024, ECF No. 47 ("Pls.' Br."); Pls.' Reply Br., May 31, 2024, ECF No. 58 ("Pls.' Reply"); *Orders*, 84 Fed. Reg.; Final Scope Ruling. Defendant the United States ("the Government") and Defendant-Intervenor Dexstar Wheel Division of Americana Development, Inc. ("Defendant-Intervenor") ask the court to sustain Commerce's determination. *See* Def.'s Resp. in Opp'n to Pls.' Mot. for J. on the Agency R., Mar. 8, 2024, ECF No. 48 ("Gov't Br."); Def.-Inter.'s Resp. in Opp'n to Pls.' Mot. for J. on the Agency R., Apr. 5, 2024, ECF No. 52 ("Def.-Inter.'s Br.").

This case presents four issues: (1) whether Commerce impermissibly expanded the scope of the *Orders*; (2) whether Commerce's determination that Asia Wheel's trailer wheels produced from mixed-origin components were not substantially transformed in Thailand is supported by substantial evidence and in accordance with law; (3) whether Commerce's decision to impose duties on the entire imported trailer wheel is supported by substantial evidence and in accordance with law; and (4) whether importers lacked adequate notice that the trailer wheels produced from mixed-origin components were covered by the *Orders*, such that Commerce impermissibly directed U.S. Customs and Border Protection ("Customs") to continue to suspend liquidation of imports entered before the date of initiation of the scope inquiry. The court concludes that (1) Commerce did not impermissibly

expand the scope of the *Orders*; that (2) Commerce's determination that Asia Wheel's trailer wheels were not substantially transformed is supported by substantial evidence and in accordance with law; that (3) Commerce's imposition of duties on the entire wheel based on a substantial transformation analysis is supported by substantial evidence and in accordance with law; and that (4) Plaintiffs had sufficient notice that the wheels were covered by the *Orders*. Therefore, the court denies Plaintiffs' motion and sustains the Final Scope Ruling.

BACKGROUND

I. Legal Background

A. Antidumping and Countervailing Duties and Scope Determinations

To facilitate fair trade, the Tariff Act of 1930 "permits Commerce to impose two types of duties on imports that injure domestic industries[.]" *Guangdong Wireking Housewares & Hardware Co. v. United States*, 745 F.3d 1194, 1196 (Fed. Cir. 2014) (citing 19 U.S.C. §§ 1671(a), 1673). Commerce assesses antidumping duties on foreign goods if it determines that the "merchandise is being, or is likely to be, sold in the United States at less than its fair value," and the U.S. International Trade Commission separately concludes that dumping materially injures, threatens, or impedes the establishment of an industry in the United States. 19 U.S.C. § 1673; *see also Diamond Sawblades Mfrs. Coal. v. United States*, 866 F.3d 1304, 1306 (Fed. Cir. 2017). Similarly, Commerce imposes countervailing duties if it determines that a good is receiving a "countervailable subsidy" from a foreign government. 19 U.S.C. § 1671(a).

The duty orders that Commerce issues must "include[] a description of the subject merchandise, in such detail as [Commerce] deems necessary. . . ." 19 U.S.C. § 1673e(a)(2). Under Commerce's regulations, an interested party may request that Commerce issue a scope ruling to clarify whether a certain article of merchandise is subject to an order. *See* 19 C.F.R. § 351.225(a).

B. Substantial Transformation Analysis

Antidumping and countervailing orders "must specify both the class or kind of merchandise and the particular country from which the merchandise originates." *Ugine & Alz Belg., N.V. v. United States*, 31 CIT 1536, 1550, 517 F. Supp. 2d 1333, 1345 (2007) (citing *Certain Cold Rolled Carbon Steel Flat Prods. from Arg.*, 58 Fed. Reg. 37062,

37065 (July 9, 1993)). In determining country of origin and whether an imported article falls within the scope of an order, Commerce may conduct a substantial transformation analysis. *See Bell Supply Co. v. United States*, 888 F.3d 1228,1229 (Fed. Cir. 2018) ("*Bell Supply IV*").[1] The U.S. Court of Appeals for the Federal Circuit ("Federal Circuit") has affirmed substantial transformation analysis as "a yardstick for determining whether the processes performed on merchandise in a country are of such significance as to require that the resulting merchandise be considered the product of the country in which the transformation occurred." *Id.* at 1229 (quoting *E.I. DuPont de Nemours & Co. v. United States*, 22 CIT 370, 373–74, 8 F. Supp. 2d 854, 858 (1998)). The Federal Circuit has explained that if a product:

> originates from a country identified in the order, then Commerce need not go any further. On the other hand, if Commerce applies the substantial transformation test and concludes that the imported article has a country of origin different from the country identified in [the] order, then Commerce can include such merchandise within the scope . . . only if it finds circumvention under [19 U.S.C.] § 1677j.

Id. at 1230 (citations omitted). Ultimately, in conducting a substantial transformation analysis, Commerce asks whether "as a result of manufacturing or processing, the product loses its identity and is transformed into a new product having a new name, character[,] and use." *Id.* at 1228 (internal quotation marks omitted) (quoting *Bestfoods v. United States*, 165 F.3d 1371, 1373 (Fed. Cir. 1999)). To determine whether substantial transformation has occurred, "Com-

[1] Commerce published revisions to its scope regulations in September 2021, adding a new relevant provision titled "[c]ountry of origin determinations." 19 C.F.R. § 351.225(j)(1). Under the new provision, Commerce "may use any reasonable method" to "determine the country of origin of the product," to ultimately "consider[] whether a product is covered by the scope of the order at issue . . . ." *Id.* § 351.225(j). The provision goes on to state that "the Secretary may conduct a substantial transformation analysis that considers relevant factors that arise on a case-by-case basis," and includes the factors outlined in *Bell Supply IV*. *Id.* § 351.225(j)(1); *see also Bell Supply IV*, 888 F.3d at 1228–29. While this revision codified the substantial transformation test, the parties agree that because Asia Wheel filed its scope ruling request on November 11, 2020, before the effective date of the new regulations, the pre-revision version of the regulations applies. *See* Pls.' Br. at 19 n.3; Def.'s Br. at 11 (citing to (k)(1) rather than (j)(1)); *see also* Scope Ruling Request; *Regulations to Improve Administrative and Enforcement of Antidumping and Countervailing Duty Laws*, 86 Fed. Reg. 52300 (Dep't Com. Sept. 20, 2021) ("Amendments to § 351.225 . . . apply to scope inquiries for which a scope ruling application is filed . . . on or after November 4, 2021."). The parties also agree that substantial transformation was relevant in determining whether a product falls within scope even before Commerce's revision of its scope regulations. *See* Pls.' Br. at 27 (arguing that Commerce applied the wrong standard, but not challenging the use of substantial transformation analysis itself); Def.'s Br. at 16 ("Commerce reasonably decided to apply a substantial transformation analysis to determine country of origin . . . .").

merce looks to factors such as (1) the class or kind of merchandise; (2) the nature and sophistication of processing in the country of exportation; (3) the product properties, essential component of the merchandise, and intended end-use; (4) the cost of production/value added; and (5) level of investment." *Id.* at 1228–29.

C. Customs's EAPA Investigations

The Enforce and Protect Act ("EAPA"), 19 U.S.C. § 1517 (2018), directs Customs to investigate agency referrals or interested-party allegations that "reasonably suggest[] that covered merchandise has been entered into the customs territory of the United States through evasion." 19 U.S.C. § 1517(b)(1); *see also Diamond Tools Tech. LLC v. United States*, 45 CIT __, __, 545 F. Supp. 3d 1324, 1331–32 (2021). If Customs determines that covered merchandise entered the United States through evasion, it will suspend liquidation of unliquidated entries "that enter on or after the date of the initiation of the investigation . . . ." 19 U.S.C. § 1517(d)(1)(A)(i). If liquidation of entries has already been suspended, then that suspension will continue. *See id.* § 1517(d)(1)(A)(ii).

EAPA's purpose is to "empower the U.S. Government and its agencies with the tools to identify proactively and thwart evasion at earlier stages to improve enforcement of U.S. trade laws, including by ensuring full collection of [antidumping and countervailing] duties and, thereby, preventing a loss in revenue." *Diamond Tools*, 45 CIT at __, 545 F. Supp. 3d at 1351. EAPA establishes the procedure for an "interested party" to submit allegations of importer evasion of antidumping and countervailing liability. 19 U.S.C. § 1517(b). Within fifteen days of a filed allegation, Customs will open an investigation. *See id.* § 1517(b)(1). Within ninety days, Customs must determine whether there is "reasonable suspicion" of evasion, at which point Customs imposes interim measures, including suspension of liquidation. *Id.* § 1517(e). Next, parties can submit factual information, written arguments, and responses before Customs reaches a final determination.[2] *See* 19 C.F.R. § 165.23(b), (c)(2); *id.* § 165.26(a)(1), (b)(1). If Customs cannot make a final determination of evasion, it refers the matter to Commerce through a "covered merchandise referral." 19 U.S.C. § 1517(b)(4)(A); 19 C.F.R. § 351.227(a). Upon receiving the referral, Commerce "shall determine whether the merchandise is covered merchandise and promptly transmit that

[2] Customs typically must reach this final determination within 300 days of the initiation of the original investigation, though that timeline can be extended in extraordinarily complicated situations. See 19 U.S.C. § 1517(c)(1).

determination to the Commissioner." 19 U.S.C. § 1517(b)(4)(B); 19 C.F.R. § 351.227(a).

II. Factual Background

On September 3, 2019, Commerce issued antidumping and countervailing orders on imports of certain steel trailer wheels from China in response to a petition from Defendant-Intervenor Dexstar. *See Orders*, 84 Fed. Reg. The trailer wheels subject to the *Orders* are used on road and highway trailers and on other towable equipment. *See id.* at 45954. These wheels consist of two components—a rim and a disc—that are welded together.

Description and Flowchart of Production Method A at 4 (Nov. 11, 2020), P.R. 1, 2, C.R. 1, 2, 3, 4, Attach. 4.

The *Orders* account for certain types of processing in third countries:

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

Orders, 84 Fed. Reg. at 45954.

During the original investigation, both Plaintiffs, as importers of the steel wheels at issue, and Defendant-Intervenor, as a producer of the domestic like product, sought Commerce's clarification on whether the scope includes steel wheels where only one component—that is, a rim or a disc—originates in China. *See* Letter from G. De Prest to W. Ross, re: Pet'r's Req. for Clarification of Country of Origin Criteria at 4, Case No. A-570–090, Bar Code: 3798826–01 (Mar. 1, 2019); Letter from W. Spak to W. Ross, re: Jingu's Rebuttal Scope Case Brief at 14–15, Case No. A-570–090, Bar Code: 3841819–01

(May 30, 2019) ("Jingu's Rebuttal Br."); Letter from N. Marshak to W. Ross, re: TTT's Scope Case Br. at 11–12, Case No. A-570–090, Bar Code: 3837566–01 (May 22, 2019) ("TTT's Br."). Plaintiffs requested explanation and potential language changes to clarify that wheels with only one component from China would not fall within the *Orders*' scope. *See* Jingu's Rebuttal Br. at 14–15; TTT's Br. at 11–12. Commerce declined these requests, stating "the current scope language is clear that only if all constituent rim and disc parts to form a steel wheel are from China does the order apply notwithstanding any analysis of substantial transformation." Final Scope Decision Mem. for the Final AD/CVD Determinations at 24 (Dep't Com. July 1, 2019), P.R. 57, C.R. 36, Ex. 1 ("Final Scope Mem."). Commerce also declined to change the language in the *Orders* from "rims and discs" to "rims or discs," explaining that the word "or" was "selectively expansionary and not consistent with the plain meaning of the word 'and.'" *Id.* Commerce added during the initial investigation that it would:

> not foreclose a further analysis of substantial transformation should a product be completed in a third country from a mix of rim and disc parts from China and a third country, if an interested party requests a scope ruling and/or to address a future circumvention concern.

Id.

On November 10, 2020, Asia Wheel requested a scope ruling from Commerce asking whether certain models of their wheels produced in Thailand fall under the scope of the *Orders*. *See* Letter from White & Case LLP to W. L. Ross, Sec'y of Com., re: Request for Scope Ruling for Asia Wheel's Steel Trailer Wheels (Nov. 10, 2020), P.R. 1, 2, C.R. 1, 2, 3, 4 ("Scope Ruling Request"). Asia Wheel specifically requested rulings on wheels produced through the following three production methods:

- **Production Method A:** Trailer wheels manufactured from Chinese-origin discs and rims produced in Thailand from rectangular steel plates sourced from China.
- **Production Method B:** Trailer wheels manufactured from Thai-origin discs made from circular steel plates from China or a third country and Thai-origin rims made from rectangular steel plates from China or a third country.
- **Production Method C**: "Dual wheels" manufactured using Thai-origin discs made from disc blanks from China and rims from China.

See id. at 6–7.

In response to an evasion allegation by Dextar, Customs initiated an EAPA investigation under 19 U.S.C. § 1517 to determine if mixed-component wheels, such as those manufactured by Asia Wheel, evaded the *Orders*. *See* Letter from Customs, re: Notice of Initiation of Investigation and Interim Measures Taken as to Lionshead Specialty Tire and Wheel LLC; TexTrail LLC; and TRAILSTAR LLC Concerning Evasion of the Antidumping and Countervailing Duty Orders on Steel Trailer Wheels from China (CBP July 15, 2020), P.R. 14, C.R. 6, Attach. 1. Customs was unable to determine if these wheels were covered merchandise, and on December 17, 2020 (shortly after Asia Wheel requested a scope ruling), issued a "covered merchandise referral" to Commerce under 19 U.S.C. § 1517(b)(4). *Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China: Notice of Covered Merchandise Referral*, 86 Fed. Reg. 10245, 10246 (Dep't Com. Feb. 19, 2021).

In response to Asia Wheel's scope request and the covered merchandise referral, Commerce initiated a scope inquiry on March 22, 2021. *See* Mem. from B. Quinn to All Interested Parties, re: Initiation of Asia Wheel Scope Inquiry (Dep't Com. Mar. 22, 2021), P.R. 34. Commerce found that the original underlying investigation did not explicitly exclude wheels produced using mixed-origin components from the scope, and that the *Orders* are ambiguous as to the inclusion of wheels produced from mixed-origin inputs. *See* Final Scope Ruling at 14. As a result, Commerce conducted a substantial transformation analysis based on the five factors outlined in *Bell Supply IV*. *See* 888 F.3d at 1228–29. Commerce concluded that the finished wheels processed in Thailand under Production Methods A and C are not substantially transformed, and that those wheels' country of origin is therefore China. *See* Final Scope Ruling at 26–36. On August 25, 2022, Commerce issued a Preliminary Scope Ruling, finding that Method A and C wheels are within the scope of the *Orders*, while Method B wheels are not. *See* Mem. from E. Begnal, to J. Maeder, re: Preliminary Scope Ruling: Asia Wheel's Steel Wheels Processed in Thailand (Dep't Com. Aug. 25, 2022), P.R. 100 ("Prelim. Scope Ruling").

Commerce issued its Final Scope Ruling on April 11, 2023, continuing to find that Method A and C wheels are within the scope of the *Orders* and that Method B wheels are not. *See* Final Scope Ruling at 54. Commerce then instructed Customs to continue to suspend liquidation of entries of Methods A and C wheels if liquidation was already suspended; for entries not subject to suspension, Commerce instructed Customs to suspend liquidation effective as of the March 22, 2021 initiation of the scope inquiry. *See id.* at 40.

III. Procedural History

Asia Wheel brought this action against the Government on June 8, 2023 to challenge Commerce's Final Scope Ruling. *See* Compl., June 8, 2023, ECF No. 11. Defendant-Intervenor and Plaintiff-Intervenor each moved to intervene in the instant action under USCIT Rule 24, and the court granted both motions. *See* Mot. to Intervene as Def.-Inter., July 7, 2023, ECF No. 14; Order, July 11, 2023, ECF No. 22; Mot. to Intervene as Pl.-Inter., July 10, 2023, ECF No. 18; Order, July 11, 2023, ECF No. 23.

On August 18, 2023, the parties filed a joint status report agreeing to consolidate separate actions initiated by Asia Wheel, Trailstar, Lionshead, and Dexter. *See* Joint Status Report, Aug. 18, 2023, ECF No. 26. The court subsequently consolidated the four cases under Consolidated Court Number 23–00096. *See* Order, Aug. 18, 2023, ECF No. 27.

On November 20, 2023, Plaintiffs together filed a Motion for Judgment on the Agency Record under USCIT Rule 56.2. *See* Pls.' Br. The Government and Defendant-Intervenor filed their respective response briefs on June 13 and June 27, 2023. *See* Gov't Br.; Def.-Inter.'s Br. Plaintiffs filed a reply on July 31, 2023. *See* Pls.' Reply.

With all papers filed, the court held oral argument on Tuesday, July 23, 2024. *See* Order, June 14, 2024, ECF No. 59. Prior to oral argument, the court issued, and the parties responded to, questions regarding the case. *See* Letter re: Qs. for Oral Arg., July 8, 2024, ECF No. 63; Def.'s Resp. to Ct.'s Qs. for Oral Arg., July 18, 2024, ECF No. 66; Def.-Inter.'s Resp. to Ct.'s Qs. for Oral Arg., July 18, 2024, ECF No. 67; Pls.' Resp. to Ct.'s Qs. for Oral Arg., July 18, 2024, ECF No. 68. As directed by the court, the parties also filed briefs following oral argument. *See* Def.'s Post-Arg. Br., July 30, 2024, ECF No. 73; Def.-Inter.'s Post-Arg. Br., July 30, 2024, ECF No. 74; Pls.' Post-Arg. Br., July 30, 2024, ECF No. 75.

The case was held in abeyance pending oral argument in a parallel case, *Asia Wheel Co. v. United States*, Consol. Ct. No. 23–00143 (USCIT filed July 14, 2023) ("*Asia Wheel II*"). *See* Order, Oct. 18, 2024, ECF No. 76. That case involves a scope determination where Commerce considered wheels much like those here: those with components originating in China but where processing culminates in Thailand. *See* Mem. from J. Pollack to J. Maeder, re: Final Scope Ruling: Asia Wheel's Steel Wheels Processed in Thailand at 9, Case No. A-570–082, Bar Code: 4386647 (Dep't Com. June 7, 2023). The opinion in *Asia Wheel II* is being released concurrently with this opinion. *See* Opinion, *Asia Wheel II*, Feb. 21, 2025, ECF No. 65.

JURISDICTION AND STANDARD OF REVIEW

The court has jurisdiction over this action pursuant to 28 U.S.C. § 1581(c) and 19 U.S.C. § 1516a(a)(2)(B)(vi). Section 1516a(b)(1)(B)(i) provides the standard of review: "[t]he Court shall hold unlawful any determination, finding, or conclusion" by Commerce that is "unsupported by substantial evidence on the record, or otherwise not in accordance with law." 19 U.S.C. § 1516a(b)(1)(B)(i).

A determination by Commerce "is supported by substantial evidence if a reasonable mind might accept the evidence as sufficient to support the finding." *Maverick Tube Corp. v. United States*, 857 F.3d 1353, 1359 (Fed. Cir. 2017) (citing *Consol. Edison Co. of N.Y. v. NLRB*, 305 U.S. 197, 229 (1938)). This standard requires Commerce to "examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)) (referring to the arbitrary and capricious standard); *see also Yangzhou Bestpak Gifts & Crafts Co. v. United States*, 716 F.3d 1370, 1378 (Fed. Cir. 2013) (citing *Amanda Foods (Viet.) Ltd. v. United States*, 33 CIT 1407, 1416, 647 F. Supp. 2d 1368, 1379 (2009)) (requiring the same of Commerce with respect to the substantial-evidence standard). Substantial evidence may support Commerce's determination even if there is "evidence that detracts from the agency's conclusion or [if] there is a 'possibility of drawing two inconsistent conclusions from the evidence.'" *Aluminum Extrusions Fair Trade Comm. v. United States*, 36 CIT 1370, 1373 (2012) (quoting *Consolo v. Fed. Mar. Comm'n*, 383 U.S. 607, 620 (1966)).

In issuing scope rulings in particular, Commerce has "substantial freedom to interpret and clarify its antidumping orders," leading to "significant deference to Commerce's interpretation of a scope order." *Mid Continent Nail Corp. v. United States*, 725 F.3d 1295, 1300 (Fed. Cir. 2013). However, the question of whether the scope set out in an original investigation is ambiguous such as to warrant substantial transformation analysis is reviewed by the court *de novo*. *See Meridian Prods. LLC v. United States*, 851 F.3d 1375, 1381 (Fed Cir. 2017).

DISCUSSION

I. Commerce's Interpretation of the Orders Is Supported by Substantial Evidence and in Accordance with Law.

The text of the *Orders* here provides that "[t]he scope includes rims, discs, and wheels that have been further processed in a third country,

including, but not limited to, the painting of wheels from China and the welding and painting of rims and discs from China to form a steel wheel, or any other processing that would not otherwise remove the merchandise from the scope of the *Orders* if performed in China." *Orders*, 84 Fed. Reg. at 45954. Plaintiffs argue that the word "and" in the phrase "rims and discs from China" is conjunctive such that only wheels consisting of both Chinese-origin discs and Chinese-origin rims fall within the scope. *See* Pls.' Br. at 19–20. Therefore, Plaintiffs maintain that the term "rims and discs from China" unambiguously excludes wheels produced from mixed-origin components. *See id.*

The Government and Defendant-Intervenor counter that the words "including, but not limited to" in the scope indicate "that the 'painting of wheels from China and the welding and painting of rims and discs from China to form a steel wheel' are non-exhaustive examples of included processing," and point out that the "plain language does not address what varieties of processing may otherwise exclude a product from the scope." Gov't Br. at 12 (quoting Prelim. Scope Ruling at 13); *see also* Def.-Inter.'s Br. at 6–8. Therefore, the Government contends that the scope does not exclude Asia Wheel's wheels produced from mixed-origin components, and instead reflects that wheels produced from mixed-origin components are covered by the scope if the "processing would not otherwise exclude these items had the processing occurred in China." Gov't Br. at 12 (quoting Prelim. Scope Ruling at 13).

Commerce's interpretation of the scope is supported by substantial evidence and in accordance with law because (1) "rims, discs, and wheels that have been further processed in a third country" may be reasonably interpreted to include wheels produced from mixed-origin components and because (2) Commerce's later statements only addressed wheels produced from Chinese components such that they did not contradict the earlier interpretation that wheels produced from mixed-origin components fall within the scope of the *Orders*. *Orders*, 84 Fed. Reg. at 45954.

A. Commerce Did Not Err in Determining the Plain Language of the Orders Does Not Exclude Asia Wheel's Steel Wheels from the Scope.

The terms of an order govern its scope. *See Duferco Steel, Inc. v. United States*, 296 F.3d 1087, 1087 (Fed. Cir. 2002) ("[A] predicate for the interpretive process is language in the order that is subject to interpretation."); *see also Eckstrom Indus., Inc. v. United States*, 254 F.3d 1068, 1071–72 (Fed. Cir. 2001); *Wheatland Tube Co. v. United States*, 161 F.3d 1365, 1370 (Fed. Cir. 1998). The first step in considering whether a product is within the scope of an order is to consider

the language of the order itself. *See ArcelorMittal Stainless Belg. N.V. v. United States*, 694 F.3d 82, 87 (Fed. Cir. 2012). In analyzing the language of the scope, Commerce may also examine primary interpretive sources such as the descriptions of the merchandise in the petition and in the initial investigation, previous or concurrent determinations of the Secretary, and reports issued pursuant to the initial investigation. *See* 19 C.F.R. § 351.225(k)(1)(i). If the language of the order unambiguously covers or excludes a product, then that language governs Commerce's inquiry. *See* 19 C.F.R. § 351.225(k)(1); *Tak Fat Trading Co. v. United States*, 396 F.3d 1378, 1382–83 (Fed. Cir. 2005).

"Scope orders may be interpreted as including merchandise only if they contain language that specifically includes merchandise or may be reasonably interpreted to include it." *Duferco Steel*, 296 F.3d at 1089. "[A]n interpretation that renders [a term in the scope language] meaningless and mere surplusage," is not reasonable. *SMA Surfaces, Inc. v. United States*, 47 CIT __, __, 617 F. Supp. 3d 1263, 1275 (2023) (internal quotation marks and citations omitted). Commerce "may reasonably define the class or kind of merchandise in a single set of orders," rather than "engage in a game of whack-a-mole" to specifically include every item of merchandise that could fall within an order in the language of that order. *Canadian Solar, Inc. v. United States*, 918 F.3d 909, 921–22 (Fed. Cir. 2019). "Commerce need only meet a low threshold to show that it justifiably found an ambiguity in scope language, but it is not justifiable to identify an ambiguity where none exists." *Allegheny Bradford Corp. v. United States*, 29 CIT 830, 843, 342 F. Supp. 2d 1172, 1184 (2004) (citing *Novosteel SA v. United States*, 284 F.3d 1261, 1272 (Fed. Cir. 2002)).

The original scope language as laid out at the outset of the antidumping and countervailing investigations included "steel wheels, discs, and rims" imported from China. *Certain Steel Wheels 12 to 16.5 Inches in Diameter From the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation*, 83 Fed. Reg. 45095, 45100 (Dep't Com. Sept. 5, 2018) ("*Initiation of Investigation*"). Commerce later modified this scope language to more explicitly include wheels that undergo further processing outside of China. In response to a proposal from Defendant-Intervenor on the issue of wheels processed in third countries, Commerce included a provision in its preliminary scope determination, and later its final scope determination, explicitly stating that "[t]he scope includes rims, discs, and wheels that have been further processed in a third country." Mem. from E. Begnal to G. Taverman, re: Preliminary Scope Decision Mem. at 7–8 (Dep't Com. Apr. 15, 2019), P.R. 1, 2, C.R. 1, 2, 3, 4, Attach. 2 ("Prelim. Scope

Mem."); Final Scope Ruling at 6. While this scope language does not specifically include wheels produced from mixed-origin components, it can be reasonably interpreted to include any wheels produced from mixed-origin components that still qualify as "steel wheels . . . from China," and whose processing "would not otherwise remove the merchandise from the scope of the investigations if performed in [China]." *Id.*

Commerce also accepted Defendant-Intervenor's proposed example of further processing, noting that this provision "include[es], but [is] not limited to, the welding and painting of rims and discs to form a steel wheel, or any other processing that would not otherwise remove the merchandise from the scope of the investigations if performed in the People's Republic of China." Prelim. Scope Mem. at 5. Commerce added further clarifying language at the request of Asia Wheel, and ultimately included the following example of further processing in the final *Orders* : "the painting of wheels from China and the welding and painting of rims and discs from China to form a steel wheel." *Orders*, 84 Fed. Reg. at 45954 (emphasis added).

Plaintiffs argue that this example, and in particular the phrase "rims and discs from China" indicates that wheels produced from mixed-origin components are unambiguously excluded from the scope. *See* Pls.' Br. at 19–20. However, the phrase "rims and discs from China" comes only after the phrase "including, but not limited to," indicating that "the painting of wheels from China and the welding and painting of rims and discs from China to form a steel wheel" constitute two non-exclusive examples. The words "including, but not limited to" would be rendered meaningless if Commerce were to interpret the scope to unambiguously exclude wheels produced from mixed-origin components because they are not "rims and discs from China":

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

Orders, 84 Fed. Reg. at 45954 (emphasis added); Def.-Inter.'s Br. at 5–6. "The court cannot accept an interpretation that renders [a term in the scope language] meaningless and mere surplusage." *SMA Surfaces*, 47 CIT at __, 617 F. Supp. 3d at 1275 (internal quotation marks and citation omitted). A nonexclusive example of third-country processing that would certainly not remove wheels from the scope still

leaves open what other types of third-country processing would similarly not remove the merchandise from the scope of the investigation.

The phrase "including, but not limited to" indicates that there are methods of third-country processing that will fall within the scope of the *Orders*, even if not specifically outlined. *Orders*, 84 Fed. Reg. at 45954. The above excerpt from the *Orders* indicates that there are methods of processing that will be within the scope, though Commerce explicitly chose not to enumerate them all. To rule that any method of processing not explicitly outlined in the *Orders* is outside the scope would render certain key phrases superfluous. Therefore, this language does not, as Plaintiffs argue, indicate that wheels produced from mixed-origin components are unambiguously excluded from the scope.

The plain scope language includes rims, discs, and wheels that have undergone further processing that would not otherwise remove the merchandise from the scope of the investigations if performed in China. While the scope language notes that "the painting of wheels from China and the welding and painting of rims and discs from China" are further processing that do not remove the merchandise from the scope, the scope language is ambiguous as to what other further processing would not remove the merchandise from the scope. *Id.* Therefore, Commerce did not err in determining that the scope language does not categorically exclude wheels produced from mixed-origin components.

B. Commerce's Scope Determination Did Not Change the Scope of the Orders.

Plaintiffs state that Commerce "confirmed in the original investigation that wheels manufactured in third countries with only one wheel component (rims or discs) originating in China are outside the scope." Pls.' Br. at 21. Thus, Plaintiffs argue, Commerce "recharacterized" its scope analysis from the antidumping and countervailing investigations by concluding that the scope of the *Orders* is ambiguous. *Id.* at 23. The Government counters that Commerce declined to modify the scope to expressly include wheels produced from rims or discs from China, but also "did not dictate that wheels manufactured from some other variation of Chinese rims or discs must be held to be out-of-scope." Gov't Br. at 14. Defendant-Intervenor further argues that "Commerce was explicit that its determination on this point addressed only 'the clarifying language in question,'" and therefore did not change the scope of the order or alter its express terms. Def.-Inter.'s Br. at 8.

"[A] scope determination is not in accordance with law if it changes the scope of an order or interprets an order in a manner contrary to the order's terms." *Allegheny Bradford*, 28 CIT at 843, 342 F. Supp. 2d at 1183 (citing *Duferco Steel*, 296 F.3d at 1094–95); *see also Wheatland Tube*, 161 F.3d at 1370 ("Although Commerce enjoys substantial freedom to interpret and clarify its antidumping duty orders, it can neither change them, nor interpret them in a way contrary to their terms." (internal quotation marks and citations omitted)). A clarification of scope language does "not change the scope of the order or alter its express terms." *King Supply Co. v. United States*, 674 F.3d 1343, 1351 (Fed. Cir. 2012) (distinguishing *Duferco Steel* on the ground that Commerce in that case "had impermissibly relied upon language in the petitions rather than the orders to modify the scope of the orders by effectively importing a physical description of certain products that was not present in the text of the order." (citation omitted)).

Commerce's statements during the investigation did not "recharacterize" or change the scope of the *Orders*, but rather confirmed the scope was ambiguous as to which types of third-country processing would not remove a product from the scope. Pls.' Br. at 23; *see also* Prelim. Scope Mem. at 8–11; Final Scope Mem. at 22–24. In refusing to accept suggested revisions from both Plaintiffs and Defendant-Intervenor, Commerce communicated that during the original investigation it would not address the inclusion of wheels produced from mixed-origin components. *See* Final Scope Mem. at 22–24 ("Commerce understood this clarification to address exactly the circumstance that was explicitly presented, the assembly (and surface finishing) of steel wheels in a third country from all constituent parts in China."). For example, Commerce's statement during the original investigation that it "does not foreclose a further analysis of substantial transformation should a product be completed in a third country from a mix of rim and disc parts from China and a third country" confirmed that the original investigation would not address wheels produced from mixed-origin components. *See id.* at 24.

As Plaintiffs point out, Commerce reiterated this position again at the conclusion of its analysis:

> [A]s we find that the existing language sufficiently conveys the concept that third-country processing of a steel wheel must be of rims and discs produced in China and agree, generally, with the respondent/importer's understanding of this language, we do not find it necessary to adopt further clarification language proposed in the respondent/importer's affirmative scope comments.

Id.

The term "existing language" refers to "the welding and painting of rims and discs from China to form a steel wheel," as it contains the term "rims and discs." *Orders*, 84 Fed. Reg. at 45954. As indicated above, this language provides a single, nonexclusive example of third-country processing that would certainly not remove wheels from the scope. This statement confirms only that that single, nonexclusive example does not include wheels produced from mixed-origin components; it does not, as Plaintiffs suggest, confirm that wheels produced from mixed-origin components do not fall within scope. This is consistent with Commerce's intent to defer the question of wheels produced from mixed-origin components for later, case-by-case analysis. *See* Def.'s Br. at 15.

Commerce commentary in the Final Scope Memorandum responded to both Plaintiffs' and Defendant-Intervenor's attempts to gain a favorable scope ruling far along in the original investigation process. *See* Final Scope Mem. at 24 ("[T]he petitioner did not avail itself of previous opportunities to provide exclusionary language regarding the component parts of wheels."). Commerce had requested that all interested parties submit scope comments by September 17, 2018. *See Initiation of Investigation* at 45096. Neither Defendant-Intervenor nor Plaintiffs put forward proposed language changes to the third-country processing provision until early 2019. *See* Prelim. Scope Mem. at 3–4.

Instead of issuing a late-stage scope determination in the original investigation, Commerce's "agree[ed], generally, with the respondent/importer's understanding" pertaining only to wheels made with both Chinese discs and rims, while deferring the question of wheels produced from mixed-origin components to a later scope inquiry. *See* Final Scope Mem. at 24. This interpretation is also consistent with Commerce's other statements. For example, Commerce found "*at this time*, that the current scope language is clear that only if all constituent rims and disc parts to form a steel wheel are from China does the order apply *notwithstanding any analysis of substantial transformation*." *Id.* (emphasis added). Commerce also noted that substantial transformation analysis is a fact-specific inquiry, and that a sweeping decision for all wheels produced from mixed-origin components would accordingly be inappropriate. *See* Prelim. Scope Mem. at 9. These additional statements emphasize that Commerce spoke only to wheels produced from Chinese-origin components rather than making a wholesale determination on the additional question of wheels produced from mixed-origin components.

The court concludes that Commerce's scope determination that the *Orders* did not exclude wheels produced from mixed-origin components was consistent with both the plain text of the *Orders* and with Commerce's statements during the investigations. Therefore, Commerce's scope determination did not "change[] the scope of [the] order or interpret[] [the] order in a manner contrary to the order's terms." *Allegheny Bradford*, 28 CIT at 843, 342 F. Supp. 2d at 1183 (citing *Duferco Steel*, 296 F.3d at 1094–95). In lawfully determining that the scope of the *Orders* was ambiguous as to wheels produced from mixed-origin components, Commerce permissibly proceeded to conduct a substantial transformation analysis. *See Bell Supply Co. v. United States*, 39 CIT 948, 970, 83 F. Supp. 3d 1311, 1328 (2015) ("*Bell Supply I*") (finding that Commerce must first "interpret the actual words of an order when it conducts a scope inquiry" before conducting a substantial transformation analysis).

II. Commerce's Determination that the Mixed-Origin Components Were Not Substantially Transformed into Thai-Origin Wheels Is Supported by Substantial Evidence and in Accordance with Law.

Plaintiffs argue that Commerce failed to apply the proper legal standard in conducting its substantial transformation analysis, and that Commerce's analysis is unsupported by substantial evidence. The court addresses each argument in turn and concludes that (1) Commerce's method of analysis is in accordance with law, and that (2) Commerce's analysis and subsequent conclusion that Asia Wheel's steel wheels were of Chinese origin is supported by substantial evidence.

A. Commerce's Five-Factor Method of Analysis Is in Accordance with Law.

Recall that antidumping and countervailing orders apply based on the type of merchandise and the country of origin, and that in determining country of origin, Commerce may conduct a substantial transformation analysis. *See Bell Supply IV*, 888 F.3d at 1228, 1230. Substantial transformation analysis is a metric to determine "whether the processes performed on merchandise in a country are of such significance as to require that the resulting merchandise be considered the product of the country in which the transformation occurred." *Id.* at 1229 (internal quotation marks and citation omitted).

Plaintiffs first contend that Commerce employed the incorrect test in performing its substantial transformation analysis. According to Plaintiffs, the "fundamental question" is whether the Chinese-origin components became "a new product having a new name, character

and use," through Thai processing. Pls.' Br. at 27–28 (citing *Bell Supply IV*, 888 F.3d at 1228 (internal quotation marks and citations omitted)). Instead, Plaintiffs argue, Commerce "had it backwards," employing five factors noted in *Bell Supply IV* for determining whether substantial transformation had occurred as the primary test—disconnected from the fundamental question such that its analysis was "meaningless"—rather than using the factors to inform the "name, character, and use" question. *See id.* at 28–29 (citing *Bell Supply IV*, 888 F.3d at 1228–29). The Government contends that Commerce "may consider whether the third[-]country processing imparted 'a new name, character, and use' in consideration of the totality of the circumstances, [but] such [a] finding[] may not supplant analysis of the record with respect to the" five factor test. Gov't Br. at 21. The Government and Defendant-Intervenor also argue that implementation of this standard as the "sole basis of analysis would result in even minor finishing/assembly operations sufficient to determine country of origin and render the existing substantial transformation factors moot." *Id.* at 20–21 (quoting Final Scope Ruling at 28); *see also* Def.-Inter.'s Br. at 19–20.

Commerce's application of the five factors from *Bell Supply IV*, in analyzing whether the wheel components underwent substantial transformation in Thailand, is in accordance with law. *See* 888 F.3d at 1228–29. Recall that in *Bell Supply IV*, the Federal Circuit held that "[a] substantial transformation occurs where, as a result of manufacturing or processing steps . . . [,] the [product] loses its identity and is transformed into a new product having a new name, character and use." *Id.* at 1228 (internal quotation marks and citation omitted). According to the Final Scope Ruling, Commerce's substantial transformation analysis here asked:

> (1) whether, as a result of the manufacturing or processing, the product loses its identity and is transformed into a new product having a new name, character, and use; and
>
> (2) whether through that transformation, the new article becomes a product of the country in which it was processed or manufactured.

Final Scope Ruling at 8 (footnotes omitted).

Thus, while Plaintiffs correctly note that whether a product "loses its identity and is transformed into a new product having a new name, character, and use" is relevant to the substantial transformation question here, this is not where the analysis ends. Pls.' Br. at 28 (quoting *Bell Supply IV*, 888 F.3d at 1228–29). Recall that the court in

Bell Supply IV went on to posit five (nonexclusive) factors for the substantial transformation analysis:

> To determine whether there has been a substantial transformation, Commerce looks to factors such as (1) the class or kind of merchandise; (2) the nature and sophistication of processing in the country of exportation; (3) the product properties, essential component of the merchandise, and intended end-use; (4) the cost of production/value added; and (5) level of investment.

888 F.3d at 1228–29.

Consequently, while a product's "new name, character[,] and use" may be relevant, the five-factor test is the primary mechanism for determining whether substantial transformation has occurred.[3] Additionally, the five-factor test is a "totality of the circumstances" method of analysis such that the factors are not "divorced" from the fundamental question, as Plaintiffs allege. *See Venus Wire Indus. Pvt. Ltd. v. United States*, 43 CIT __, __, 424 F. Supp. 3d 1369, 1378 n.11 (2019) ("While the formulation of the factors Commerce considers in a substantial transformation test varies slightly across proceedings, in general, Commerce considers [these five factors.]" (citing *Bell Supply IV*, 888 F.3d at 1228–29)). Accordingly, Commerce's thorough analysis of the five factors outlined in *Bell Supply IV* in determining whether Asia Wheel's steel wheels underwent substantial transformation in Thailand is in accordance with law.

B. Commerce's Substantial Transformation Analysis Is Supported by Substantial Evidence.

Plaintiffs next suggest that Commerce, in conducting its substantial transformation analysis, considered just one component (the rims for Method A wheels) rather than the finished wheel, thus failing to apply the governing legal standard. *See* Pls.' Br. at 29–30.[4] The

---

[3] This court previously addressed the Federal Circuit's mention of a "new name, character[,] and use" in *Bell Supply IV*, noting that "[a]lthough the Court of Appeals quotes *Bestfoods* to invoke the name, character[,] or use test, *Bestfoods* involved a North American Free Trade Agreement country of origin determination applying statutory tariff-shift rules as opposed to Gibson-Thomsen's 'name, character[,] and use' test, which evolved in Customs law." *Bell Supply Co. v. United States*, 42 CIT __, __, 348 F. Supp. 3d 1281, 1287 n.6 (2018) ("*Bell Supply V*"). The Federal Circuit "[spoke] of the name, character or use test, [but did] not invoke any of the factors used in Customs cases and specifically states the factors Commerce considers to determine whether there has been a substantial transformation." *Id.* Because Commerce itself noted the new name, character, and use question within the Final Scope Ruling, the court considers it here just as courts did in *Bell Supply IV* and *V*: as secondary to the more essential five factors.

[4] Plaintiffs do not challenge Commerce's substantial transformation determination with respect to Method C wheels due to low U.S. shipment volumes. *See* Pls.' Br. at 27 n.4.

Government contends that the court rejected a similar argument *ten years ago in a case* where it considered whether unfinished and finished parts from China were substantially transformed into finished products in Thailand. *See* Gov't Br. at 23 (citing *Peer Bearing Co.-Changshan v. United States*, 39 CIT 1942, 1963–64, 128 F. Supp. 3d 1286, 1304 (2015) ("Commerce was not precluded from taking into consideration the uncontested fact that the [tapered roller bearing] production in Thailand was conducted upon parts, finished and unfinished, that ultimately were destined to become [tapered roller bearings].")).

While the parties agree that one component (the rims for Method A wheels) of the subject merchandise is of Chinese origin, Plaintiffs' characterization ignores Commerce's thorough analysis of the wheel as a whole and the other component of the finished wheel (the disc in Method A wheels). The relevant question in Commerce's substantial transformation analysis was not whether the rectangular sheet of steel is substantially transformed when turned into a round rim in the case of Method A wheels. Rather, the question was whether *both* wheel components undergo substantial transformation to become a *finished wheel*. *See* Final Scope Ruling at 26–36. Thus, Commerce here asked whether an in-process component (a steel plate for Method A wheels) and a finished component (a disc for Method A wheels) are substantially transformed when processed and assembled into a finished wheel. Focusing only on the transformation from steel sheet to finished rim ignores the rest of the processing, much of which takes place in China: for example, the creation of the steel plate and the production of the finished disc for Method A wheels. But again, the relevant question was not whether the in-process component is substantially transformed when processed into a finished component (the steel sheet into a rim for Method A wheels), but rather whether the in-process component *and the finished component* are substantially transformed when processed and assembled into a *finished wheel*. *See id.*

Commerce's Final Scope Ruling demonstrates that the agency considered exactly this question at every stage of analysis. Contrary to Plaintiffs' contention that Commerce only considered a single component rather than the finished wheel, *see* Pls.' Br. at 30, Commerce found that: (1) the wheel components *and finished wheel* are of the same class or kind of merchandise included within the scope, (2) both major components continue to function as the only such component after incorporation into *the finished wheel*, and (3) the production in China culminates in a *complete component and an in-process component*, *functionally creating an already-designed wheel*. *See* Final

Scope Ruling at 26–36. Commerce ultimately concluded that "*the finished wheels* processed in Thailand under Production Methods A and C are not substantially transformed such that the third-country processing confers country of origin based on the totality of circumstances." *Id.* at 26 (emphasis added). This conclusion is supported by substantial evidence, as Commerce thoroughly considered all five factors in analyzing whether the in-process component and the finished component are substantially transformed into a finished wheel in Thailand.

The Method A at issue, where the production in China culminates in one finished component and one in-process component, differ from the Method B wheels, where the production in China culminates in two in-process components. *Compare* Final Scope Ruling at 32, *with* Prelim. Scope Mem. at 15. Commerce reasonably found that because the Chinese manufacturing of Method A wheels results in one finished component and one in-process component, unlike Method B wheels, the processing in China "functionally results in an already designed wheel." Final Scope Ruling at 32. Additionally, though Commerce did not conduct substantial transformation analysis on Method B wheels, the value added in Thailand and the Thai investment in Method B wheels is presumptively higher than for Method A wheels, as more manufacturing is likely required to produce finished wheels from two in-process components rather than one finished component and one in-process component. Thus, Commerce reasonably determined that Method A wheels fall within the scope of the *Orders* while Method B wheels do not.

Plaintiffs suggest that Commerce's analysis of the "essential component" factor "further illustrates its flawed approach." Pls.' Br. at 30. To the extent that this argument serves as an example that Commerce only considered one component, it fails, as Commerce considered both components and the finished wheel throughout its analysis. *See* Final Scope Ruling at 26–36. To the extent that this argument raises an independent ground for finding Commerce's substantial transformation analysis to be unsupported by substantial evidence, it also fails, as Commerce extensively considered the properties and end uses of both the rim and the disc and the finished wheel. *See* Final Scope Ruling at 27–28. In doing so, Commerce noted that, while the essential characteristics of the finished wheel are not established until the rim and disc are assembled, the elements remain the same both before and after assembly. *Id.* at 29. Commerce found that "a given disc or rim continues to function as the only such component after incorporation into a finished wheel." *Id.* at 28 (quoting Prelim. Scope Ruling at 18). Commerce considered, for example, that the

qualities of a disc do not change or transform through processing: the number, placement, and type of bolt holes; the mounting arrangement; and the materials used to produce the disc all remain the same. *See* Prelim. Scope Ruling at 18. Additionally, Commerce noted that the introduction of certain physical characteristics in Thailand, like the rim's diameter, is merely the finishing of a process that began in China. *See* Final Scope Ruling at 32. Commerce thus "examine[d] the relevant data and articulate[d] a satisfactory explanation for its action . . . ." *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Commerce's finding is therefore supported by substantial evidence.

III. Commerce's Decision to Impose Duties on the Entire Wheel Is Supported by Substantial Evidence.

Plaintiffs also argue Commerce impermissibly expanded the scope contrary to its terms when it determined that the entire wheel is covered by the scope of the *Orders* when "only one wheel component . . . was exported from China . . . ." Pls.' Br. at 3, *see also id.* at 32. The Government counters that Plaintiffs begin the inquiry at the wrong point in the analysis, asking the court to determine whether some components of the wheel are not dutiable on their own when it has been determined that the entire wheel is subject merchandise. *See* Gov't Br. at 24. Defendant-Intervenor further argues that "precedent confirms that Commerce's determination is to the origin of the imported article *as a whole*, not separately where its amalgamated components may have originated." Def.-Inter.'s Br. at 22.

While Plaintiffs are correct that Commerce cannot interpret the scope of the *Orders* to change the scope or otherwise interpret it contrary to its terms, that is not the case here. *See* Pls.' Br. at 32 (citing *Eckstrom Indus.*, 254 F.3d at 1072). Commerce did not change or expand the scope, but merely conducted a substantial transformation analysis to confirm that the wheels here are Chinese and therefore fall within the scope.

Plaintiffs' argument on this point is based on its mischaracterization of Commerce's substantial transformation analysis as concluding that only one component of the wheel was of Chinese origin. *See* Pls.' Br. at 29–30. As indicated above, this characterization overlooks Commerce's thorough analysis of both components and the finished wheel. Indeed, substantial transformation analysis assesses duty liability for a product assembled from multiple components upon its entry into the United States. *See Bell Supply IV*, 888 F.3d at 1229 ("Because a single article can be assembled from various components and undergo multiple finishing steps, Commerce must have some way to determine the country of origin during scope inquiries.").

Subsequently, the substantial transformation analysis provides a metric "for determining whether the processes performed on merchandise in a country are of such significance as to require that the *resulting merchandise* be considered the product of the country in which the transformation occurred." *Id.* (internal quotation marks and citation omitted) (emphasis added). In conducting substantial transformation analysis, Commerce sought to determine the country of origin for the resulting product as entered into the United States—that is, as an assembled wheel.

Plaintiffs do not provide any legal support for a different method of duty assessment that would first exclude specific components before determining what duties to assess. To the extent the Plaintiffs suggest Commerce should follow this method separately from conducting a substantial transformation analysis, the suggestion is moot. As Commerce already determined the entire wheel is within scope, it need not assess duties on individual wheel components. Therefore, Commerce's imposition of antidumping and countervailing duties on the entire wheel is supported by substantial evidence.

IV. Commerce Permissibly Directed Customs to Continue to Suspend Liquidation of Imports Entered Before the Date of Initiation of the Scope Inquiry.

Plaintiffs argue that importers did not receive fair warning that trailer wheels produced in third countries from mixed-origin components are subject to the *Orders* until Commerce initiated the scope inquiry at Asia Wheel's request. *See* Pls.' Br. at 34. Thus, Plaintiffs contend, Commerce impermissibly directed Customs to continue its prior suspension of liquidation of imports entered before the date of initiation of the scope inquiry. *See id.* This direction, according to Plaintiffs, will subject them to millions of dollars in retroactive antidumping and countervailing duties that they could not have anticipated. *See* Pls.' Br. at 3–4. The Government and Defendant-Intervenor counter that Commerce expressly noted during the underlying investigation that mixed-origin wheels may be the subject of a future scope inquiry and therefore provided adequate notice to importers of mixed-origin wheels. *See* Def.'s Br. at 30–31; Def.-Inter.'s Br. at 24–25. Even if Commerce did not provide adequate notice, the Government and Defendant-Intervenor argue, Commerce has no authority to direct the outcome of decisions that Commerce entrusted to Customs. *See* Def.'s Br at 34; Def.-Inter.'s Br. at 26–28; 19 U.S.C. § 1517(b)(1) ("[Customs] shall initiate an investigation if [Customs] determines that the information provided in . . . the referral . . . reasonably suggests that covered merchandise has been entered into the customs territory of the United States through evasion.").

Upon an affirmative scope determination, Commerce will "direct U.S. Customs and Border Protection to continue the suspension of liquidation of previously suspended entries and apply the applicable cash deposit rate until appropriate liquidation instructions are issued . . . ." 19 C.F.R. § 351.225(*l*)(3). Additionally, Commerce "will direct U.S. Customs and Border Protection to begin the suspension of liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product not yet suspended . . . on or after the date of initiation of the scope inquiry . . . ." *Id.* Fair notice is particularly important in contexts like this one where importers may be subjected to substantial retroactive liability. The fair notice requirement reflects the "broader due-process principle that before an agency may enforce an order or regulation by means of a penalty or monetary sanction, it must 'provide regulated parties fair warning of the conduct [the order or regulation] prohibits or requires.'" *Tai-Ao Aluminum Co. v. United States*, 983 F.3d 487, 495 (Fed. Cir. 2020) (quoting *Mid Continent Nail*, 725 F.3d at 1300–01).

Commerce's statements expressly "not foreclos[ing] a further analysis of substantial transformation" of mixed-origin components served as adequate notice. Final Scope Mem. at 24. Because Plaintiffs had adequate notice, Commerce permissibly directed Customs to continue its prior suspension of liquidation.

A. Commerce Provided Lawful Notice That Mixed-Origin Wheels Could Be Subject Merchandise.

An antidumping and countervailing duty order must contain "a description of the subject merchandise, in such detail as the administering authority deems necessary," to provide adequate notice to the relevant importers. 19 U.S.C. §§ 1671e(a)(2), 1673e(a)(2). Adequate notice requires "that antidumping orders only be applied to merchandise that they may be reasonably interpreted to include." *Mid Continent Nail*, 725 F.3d at 1301 (internal quotation marks and citation omitted). Without adequate notice, "Commerce cannot suspend liquidation of entries entered 'on . . . the date of initiation of the scope inquiry.'" *Tai-Ao*, 983 F.3d at 490 (quoting 19 C.F.R. § 351.225(*l*)(2)). This notice requirement reflects the "broader due-process principle" that Commerce must provide fair warning to regulated parties before enforcing a penalty or sanction. *Id.* at 495 (quoting *Mid Continent Nail*, 725 F.3d at 1300–01).

However, adequate notice is not the same as certainty that a product will or will not fall within the scope of an order. Instead, adequate notice need only allow an importer to reasonably interpret what

merchandise is included in the order. *Cf. Mid Continent Nail*, 725 F.3d at 1301–02 ("The mere fact that the order in this case makes no explicit reference to mixed media items does not conclusively establish that Commerce lacked authority to consider the order's applicability to nails contained within such items."). Notice need not be certain because questions often later "arise as to whether a particular product is covered by the scope of an antidumping or countervailing duty order. Such questions, such as those regarding the country of origin of merchandise, may arise for a variety of reasons given that the description of the merchandise subject to the scope is written in general terms." 19 C.F.R. § 351.225(a); *see also Bell Supply Co. v. United States*, 43 CIT __, __, 393 F. Supp. 3d 1229, 1236 (2019) ("*Bell Supply VI*") ("Issues arise regarding whether a product falls within the scope of an [antidumping or countervailing duty] order, in part because federal regulations require Commerce to write the descriptions in 'general terms.'"). Commerce may use a substantial transformation analysis to resolve questions regarding the country of origin of an imported article. *See Bell Supply IV*, 888 F.3d at 1229. The existence of some ambiguity in scope language does not mean that notice is inadequate as to products requiring substantial transformation to determine country of origin, as it is impractical to require Commerce to anticipate every type of third-country processing. *Cf. Canadian Solar*, 918 F.3d at 921–22 ("It is unnecessary for Commerce to engage in a game of whack-a-mole when it may reasonably define the class or kind of merchandise in a single set of orders, and within the context of a single set of investigations, to include all imports causing injury.").

Here, Commerce explicitly included within the scope "rims, discs, and wheels that have been further processed in a third country," and provided two types of processing that would certainly be included (painting of Chinese wheels and welding and painting of Chinese rims and discs). *Orders*, 84 Fed. Reg. at 45954. However, by including "any other processing that would not otherwise remove the merchandise from the scope of the orders if performed in China," Commerce left open the question of what other types of third-country processing would not remove merchandise from the scope. *Id.* While this language did not explicitly indicate that the exact processing here would be included, *supra* section I.A., it contained the general statement that rims, discs, and wheels processed in a third country may be included.

Even if the scope language itself was not enough to provide adequate notice on its own, Commerce went further. Commerce stated during the investigation that it "does not foreclose a further analysis

of substantial transformation should a product be completed in a third country from a mix of rim and disc parts from China and a third country." Final Scope Mem. at 24. This statement further delineated the type of merchandise that was subject to the scope: "wheels completed in a third country from a mix of rim and disc parts from China and a third country" that did not undergo substantial transformation that would otherwise remove them from the scope. *Id.* Commerce cannot be expected to anticipate every type of third-country processing, and thus cannot feasibly indicate with certainty every hypothetical product that would fall within the scope. Despite this ambiguity as to specific types of processing, Plaintiffs could anticipate that the wheels at issue fall within Commerce's description and thus are covered by the scope based on the language of the *Orders* and Commerce's commentary during the investigation. Therefore, Commerce's commentary during the investigation provided further adequate notice that wheels produced from mixed-origin components could be subject merchandise.

Plaintiffs argue that "Commerce gave importers the exact opposite of fair warning," by stating that "the existing language sufficiently conveys the concept that third-country processing of a steel wheel must be of rims and diss produced in China." Pls.' Br. at 36; *see also* Final Scope Mem. at 24. However, in confirming that "the use of the limit phrase ('or'), is intentionally and selectively expansionary and not consistent with the plain meaning of the word 'and,'" Commerce merely confirmed that the single, nonexclusive example of wheels that would certainly fall within the scope is limited to wheels produced from Chinese rims and Chinese discs. Final Scope Mem. at 24. This confirmation does not, as Plaintiffs suggest, exclude any other wheels from the scope, such as wheels produced from mixed-origin components.

Along with this confirmation that the non-exhaustive example includes only wheels produced from Chinese rims and Chinese discs, Commerce importantly noted that it "does not foreclose a further analysis of substantial transformation should a product be completed in a third country from a mix of rim and disc parts from China and a third country." Final Scope Mem. at 24. In refusing to foreclose this further analysis, Commerce clearly contemplated the exact wheels at issue here such that Plaintiffs could reasonably anticipate that the wheels at issue would fall within the scope subject to a substantial transformation analysis. This express statement, along with the original scope language and third-country processing provision, provided importers with adequate notice.

B. Tai-Ao and Trans Texas Do Not Support Plaintiffs' Argument that Commerce Failed to Provide Fair Notice Here.

Plaintiffs provide two cases to support their assertion that Commerce's statements clarifying the original scope did not provide adequate notice. *See Tai-Ao Aluminum Co. v. United States*, 983 F.3d 487 (Fed. Cir. 2020); *Trans Tex. Tire, LLC v. United States*, 45 CIT __, 519 F. Supp. 3d 1275 (2021). However, those cases differ in important ways from the present case. In *Tai-Ao*, Commerce expanded the scope of its inquiry. *See* 983 F.3d at 495–96. In *Trans Texas*, Commerce did not suggest the relevant products were included in the scope until the final scope ruling. *See* 45 CIT at __, 519 F. Supp. 3d at 1281. Those cases are unlike the present case, where a reasonable importer could interpret Commerce's original scope language to include the wheels at issue and where Commerce provided additional commentary noting that substantial transformation analysis would be used on a case-by-case basis. *See Orders*, 84 Fed. Reg. at 45954; Final Scope Mem. at 24.

Plaintiffs argue that *Tai-Ao* "confirms that statements of intent to consider the potential application of antidumping and countervailing duties in the future do not constitute fair warning." Pls.' Br. at 40. However, the court in *Tai-Ao* did not hold that a statement of intent can never provide adequate notice, but only that a statement of intent contemplating whether the inquiry should be expanded does not provide adequate notice. *Tai-Ao*, 983 F.3d at 495. This holding was supported by Commerce's statements and conduct suggesting the scope was limited to a single importer. For example, in *Tai-Ao*, the Initiation Notice only named one importer, Commerce's explanation for why it initiated the inquiry focused primarily on one importer, and Commerce issued a questionnaire to only one importer. *See id.* at 495–96. Unlike in *Tai-Ao*, where the statement of intent contemplated expansion of the scope and contradicted Commerce's other statements and conduct, Commerce's statement here that it would not "foreclose a further analysis of substantial transformation should a product be completed in a third country from a mix of rim and disc parts from China and a third country," merely clarified the original scope and was consistent with Commerce's other statements and conduct. Final Scope Mem. at 24. Therefore, unlike in *Tai-Ao*, Commerce's statement here that it would not foreclose future analysis of wheels produced from mixed-origin components served as adequate notice that wheels produced from mixed-origin components could be included within the scope.

Trans Texas similarly does not support the Plaintiffs' argument that Commerce did not provide adequate notice here. *See* 45 CIT __, 519 F. Supp. 3d 1275. In *Trans Texas*, Commerce expressly excluded certain on-the-road steel wheels that are coated entirely in chrome from its preliminary determination and reiterated this position throughout the investigation. *Id.* at __, 1281. However, Commerce ultimately included PVD chrome wheels in its final scope ruling despite their being coated in chrome. *See id.* While the court confirmed that Commerce can "alter the scope of the investigation until the final order," Commerce did not alter the scope to include PVD chrome wheels until publication of the final scope ruling, and thus did not provide adequate notice until then. *Id.* at __, __, 1284, 1288. This is unlike the present case where wheels produced from mixed-origin components can reasonably be considered within the original scope and where Commerce expressly indicated they might be included subject to a substantial transformation analysis during the initial investigation. *See* Final Scope Mem. at 24.

Ultimately, Commerce's initial scope language, Commerce's addition of the third-country processing provision, and Commerce's express statements during the investigation that it would not foreclose future substantial transformation analysis of wheels produced from mixed-origin components provided Plaintiffs with adequate notice that their wheels could reasonably be subject to the *Orders*. Because Commerce provided Plaintiffs with adequate notice, Commerce's instructions to Customs to continue its prior suspension of liquidation were proper.

CONCLUSION

For the reasons stated above, Commerce's determination is supported by substantial evidence and in accordance with law. The court thus denies Asia Wheel's motion and sustains Commerce's Final Scope Ruling. Judgment will enter accordingly.

SO ORDERED.

Dated: February 21, 2025
New York, New York

/*s*/ *Gary S. Katzmann*
GARY S. KATZMANN, JUDGE

Slip Op. 25–18

ASIA WHEEL CO., LTD., Plaintiff, and ZC RUBBER AMERICA INC., Plaintiff-Intervenor, v. UNITED STATES, Defendant, and ACCURIDE CORP., Defendant-Intervenor.

Before: Gary S. Katzmann, Judge
Court No. 23–00143

[Plaintiffs' Motion for Judgment on the Agency Record is denied.]

Dated: February 21, 2025

Jay C. Campbell, White & Case LLP, of Washington, D.C., argued for Plaintiff Asia Wheel Co., Ltd. With him on the briefs were *Walter J. Spak* and *Chunfu Yan*.

Jing Zhang, Mayer Brown LLP, of Washington, D.C., argued for Plaintiff-Intervenor ZC Rubber America, Inc.

Stephen C. Tosini, Senior Trial Counsel, and *Danielle V. Cossey*, Of Counsel, U.S. Department of Justice, Washington, D.C., argued for Defendant the United States. With them on the briefs were *Brian M. Boynton*, Principal Deputy Assistant Attorney General, *Patricia M. McCarthy*, Director, *L. Misha Preheim*, Assistant Director, and *Ian A. McInerney*, Senior Attorney, U.S. Department of Commerce.

Nicholas J. Birch, Schagrin Associates, of Washington, D.C., argued for Defendant-Intervenor Accuride Corp. With him on the briefs was *Roger B. Schagrin*.

OPINION

Katzmann, Judge:

This case arises from the U.S. Department of Commerce's ("Commerce") ruling that certain truck wheels produced by Asia Wheel Co., Ltd. ("Asia Wheel") fall within the scope of the antidumping and countervailing duty orders on certain steel trailer wheels from the People's Republic of China ("China"). In May 2019, Commerce issued antidumping and countervailing duty orders on certain steel wheels from China that included as subject products: "certain on-the-road steel wheels, discs, and rims," including "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." *Certain Steel Wheels from the People's Republic of China: Antidumping and Countervailing Duty Orders*, 84 Fed. Reg. 24098, 24100 (Dep't Com. May 24, 2019) ("*Orders*").

In response to Asia Wheel's request for scope proceedings, *see* Letter from White and Case LLP to Com., re: Request for Scope Ruling for Asia Wheel's Steel Truck Wheels (Feb. 11, 2021), P.R. 1 ("Scope Ruling Request"), Commerce determined in a scope ruling that Asia Wheel's steel truck wheels, manufactured in Thailand using discs from China and rims produced in Thailand from rectangular steel plates sourced

from China or a third country, are subject to the *Orders*. *See* Mem. from J. Pollack to J. Maeder, re: Final Scope Ruling: Asia Wheel's Steel Wheels Processed in Thailand (Dep't Com. June 7, 2023), P.R. 79 ("Final Scope Ruling"). Plaintiff Asia Wheel, a Thai subsidiary of a Chinese steel wheel Manufacturer, and Plaintiff-Intervenor ZC Rubber America Inc., a U.S. importer of the subject merchandise ("ZC Rubber") challenge Commerce's Final Scope Ruling. *See* Pl.'s Am. Mot. for J. on Agency R., Feb. 22, 2024, ECF No. 35 ("Pl.'s Br."); Pl.-Inter.'s Mot. for J. on Agency R., Feb. 13, 2024, ECF No. 31 ("Pl.-Inter.'s Br."); Pl.'s Reply Br., June 18, 2024, ECF No. 46; Pl.-Inter.'s Reply Br., July 2, 2024, ECF No. 47; *Orders*, 84 Fed. Reg.; Final Scope Ruling. Defendant the United States ("the Government") and Defendant-Intervenor Accuride Corporation ("Accuride") ask the court to sustain Commerce's determination. *See* Def.'s Resp. in Opp'n to Pl.'s Mot. for J. on the Agency R., Apr. 30, 2024, ECF No. 42 ("Gov't Br."); Def.-Inter.'s Resp. in Opp'n to Pl.'s Mot. for J. on the Agency R., May 14, 2024, ECF No, 43 ("Def.-Inter.'s Br.").

This case presents four issues: (1) whether Commerce impermissibly expanded the scope of the *Orders*; (2) whether Commerce's determination that Asia Wheel's truck wheels produced from mixed-origin components were not substantially transformed in Thailand is supported by substantial evidence and in accordance with law; (3) whether Commerce's decision to impose duties on the entire imported truck wheel is supported by substantial evidence and in accordance with law; and (4) whether importers lacked adequate notice that the truck wheels produced from mixed-origin components were covered by the *Orders* such that Commerce impermissibly directed U.S. Customs and Border Protection ("Customs") to continue to suspend liquidation of imports entered before the date of initiation of the scope inquiry. The court concludes that (1) Commerce did not impermissibly expand the scope of the *Orders*; that (2) Commerce's determination that Asia Wheel's truck wheels were not substantially transformed is supported by substantial evidence and in accordance with law; that (3) Commerce's imposition of duties on the entire wheel based on a substantial transformation analysis is supported by substantial evidence and in accordance with law; and that (4) Asia Wheel and ZC Rubber had sufficient notice that the wheels were covered by the *Orders*. Therefore, the court denies Asia Wheel's motion and sustains the Final Scope Ruling.

BACKGROUND

I. Legal Background

A. Antidumping and Countervailing Duties and Scope Determinations

To facilitate fair trade, the Tariff Act of 1930 "permits Commerce to impose two types of duties on imports that injure domestic industries[.]" *Guangdong Wireking Housewares & Hardware Co. v. United States*, 745 F.3d 1194, 1196 (Fed. Cir. 2014) (citing 19 U.S.C. §§ 1671(a), 1673). Commerce assesses antidumping duties on foreign goods if it determines that the "merchandise is being, or is likely to be, sold in the United States at less than its fair value," and the U.S. International Trade Commission separately concludes that dumping materially injures, threatens, or impedes the establishment of an industry in the United States. 19 U.S.C. § 1673; *see also Diamond Sawblades Mfrs. Coal. v. United States*, 866 F.3d 1304, 1306 (Fed. Cir. 2017). Similarly, Commerce imposes countervailing duties if it determines that a good is receiving a "countervailable subsidy" from a foreign government. 19 U.S.C. § 1671(a).

The duty orders that Commerce issues must "include[] a description of the subject merchandise, in such detail as [Commerce] deems necessary . . . ." 19 U.S.C. § 1673e(a)(2). Under Commerce's regulations, an interested party may request that Commerce issue a scope ruling to clarify whether a certain article of merchandise is subject to an order. *See* 19 C.F.R. § 351.225(a).

B. Substantial Transformation Analysis.

Antidumping and countervailing orders "must specify both the class or kind of merchandise and the particular country from which the merchandise originates." *Ugine & Alz Belg., N.V. v. United States*, 31 CIT 1536, 1550, 517 F. Supp. 2d 1333, 1345 (2007) (citing *Certain Cold Rolled Carbon Steel Flat Prods. from Arg.*, 58 Fed. Reg. 37062, 37065 (July 9, 1993)). In determining country of origin and whether an imported article falls within the scope of an order, Commerce may conduct a substantial transformation analysis. *See Bell Supply Co. v.*

United States, 888 F.3d 1228,1229 (Fed. Cir. 2018) ("*Bell Supply IV*").[1] The U.S. Court of Appeals for the Federal Circuit ("Federal Circuit") has affirmed substantial transformation analysis as "a yardstick for determining whether the processes performed on merchandise in a country are of such significance as to require that the resulting merchandise be considered the product of the country in which the transformation occurred." *Id.* at 1229 (quoting *E.I. DuPont de Nemours & Co. v. United States*, 22 CIT 370, 373–74, 8 F. Supp. 2d 854, 858 (1998)). The Federal Circuit has explained that if a product:

> originates from a country identified in the order, then Commerce need not go any further. On the other hand, if Commerce applies the substantial transformation test and concludes that the imported article has a country of origin different from the country identified in [the] order, then Commerce can include such merchandise within the scope . . . only if it finds circumvention under [19 U.S.C.] § 1677j.

Id. at 1230 (citations omitted). Ultimately, in conducting a substantial transformation analysis, Commerce asks whether "as a result of manufacturing or processing, the product 'loses its identity and is transformed into a new product having a new name, character[,] and use.' " *Id.* at 1228 (internal quotation marks omitted) (quoting *Bestfoods v. United States*, 165 F.3d 1371, 1373 (Fed. Cir. 1999)). To determine whether substantial transformation has occurred, "Commerce looks to factors such as (1) the class or kind of merchandise; (2) the nature and sophistication of processing in the country of expor-

---

[1] Commerce published revisions to its scope regulations in September 2021, adding a new relevant provision titled "[c]ountry of origin determinations." 19 C.F.R. § 351.225(j)(1). Under the new provision, Commerce "may use any reasonable method" to "determine the country of origin of the product," to ultimately "consider[] whether a product is covered by the scope of the order at issue . . . ." *Id.* § 351.225(j). The provision goes on to state that "the Secretary may conduct a substantial transformation analysis that considers relevant factors that arise on a case-by-case basis," and includes the factors outlined in *Bell Supply IV*. *Id.* § 351.225(j)(1); *see also Bell Supply IV*, 888 F.3d at 1228–29. While this revision codified the substantial transformation test, the parties agree that because Asia Wheel filed its scope ruling request on February 11, 2021, before the effective date of the new regulations, the pre-revision version of the regulations applies. *See* Pl.'s Br. at 16 n.2; Def.'s Br. at 9–10 (citing to (k)(1) rather than (j)(1)); *see also* Scope Ruling Request; *Regulations to Improve Administrative and Enforcement of Antidumping and Countervailing Duty Laws*, 86 Fed. Reg. 52300 (Dep't Com. Sept. 20, 2021) ("Amendments to § 351.225 . . . apply to scope inquiries for which a scope ruling application is filed . . . on or after November 4, 2021."). The parties also agree that substantial transformation was relevant in determining whether a product falls within scope even before Commerce's revision of its scope regulations. *See* Pl.'s Br. at 23 (arguing that Commerce applied the wrong standard, but not challenging the use of substantial transformation analysis itself); Def.'s Br. at 15 ("Commerce reasonably decided to apply a substantial transformation analysis to determine country of origin . . . .").

tation; (3) the product properties, essential component of the merchandise, and intended end-use; (4) the cost of production/value added; and (5) level of investment." *Id.* at 1228–29.

C. Customs's EAPA Investigations.

The Enforce and Protect Act ("EAPA"), 19 U.S.C. § 1517 (2018), directs Customs to investigate agency referrals or interested-party allegations that "reasonably suggest[] that covered merchandise has been entered into the customs territory of the United States through evasion." 19 U.S.C. § 1517(b)(1); *see also Diamond Tools Tech. LLC v. United States*, 45 CIT __, __, 545 F. Supp. 3d 1324, 1331–32 (2021). If Customs determines that covered merchandise entered the United States through evasion, it will suspend liquidation of unliquidated entries "that enter on or after the date of the initiation of the investigation . . . ." 19 U.S.C. § 1517(d)(1)(A)(i). If liquidation of entries has already been suspended, then that suspension will continue. *See id.* § 1517(d)(1)(A)(ii).

EAPA's purpose is to "empower the U.S. Government and its agencies with the tools to identify proactively and thwart evasion at earlier stages to improve enforcement of U.S. trade laws, including by ensuring full collection of [antidumping and countervailing] duties and, thereby, preventing a loss in revenue." *Diamond Tools*, 45 CIT at __, 545 F. Supp. 3d at 1351. EAPA establishes the procedure for an "interested party" to submit allegations of importer evasion of antidumping and countervailing liability. 19 U.S.C. § 1517(b). Within fifteen days of a filed allegation, Customs will open an investigation. *See id.* § 1517(b)(1). Within ninety days, Customs must determine whether there is "reasonable suspicion" of evasion, at which point Customs imposes interim measures, including suspension of liquidation. *Id.* § 1517(e). Next, parties can submit factual information, written arguments, and responses before Customs reaches a final determination.[2] *See* 19 C.F.R. § 165.23(b), (c)(2); *id.* § 165.26(a)(1), (b)(1). If Customs cannot make a final determination of evasion, it refers the matter to Commerce through a "covered merchandise referral." 19 U.S.C. § 1517(b)(4)(A); 19 C.F.R. § 351.227(a). Upon receiving the referral, Commerce "shall determine whether the merchandise is covered merchandise and promptly transmit that determination to the Commissioner." 19 U.S.C. § 1517(b)(4)(B); 19 C.F.R. § 351.227(a).

---

[2] Customs typically must reach this final determination within 300 days of the initiation of the original investigation, though that timeline can be extended in extraordinarily complicated situations. *See* 19 U.S.C. § 1517(c)(1).

II. Factual Background

On May 24, 2019, Commerce issued antidumping and countervailing orders on imports of certain steel truck wheels from China in response to a petition from Accuride and Maxion Wheels Akron LLC (collectively, "Petitioners"). *See Orders*, 84 Fed. Reg. The truck wheels subject to the *Orders* are used on commercial vehicles including tractors, semi-trailers, dump trucks, garbage trucks, concrete mixers, and buses. *See id.* at 24100. These wheels consist of two components—a rim and a disc—that are welded together.

Steel Truck Wheel Production Process Description and Flowchart at 7 (Feb. 11, 2021), P.R. 1, C.R. 1, Attach. 4.

The *Orders* account for certain types of processing in third countries:

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

Orders, 84 Fed. Reg. at 24100.

During the original investigation, both Asia Wheel, as an importer of the steel wheels at issue, and Petitioners, as producers of the domestic like product, sought Commerce's clarification on whether the scope includes steel wheels where only one component—that is, a disc—originates in China. *See* Letter from White & Case LLP to W. Ross, re: Resp. to Pet'rs' Req. for Clarification of Scope of Investigations, Case No. A-570–082, Bar Code: 3789670 (Feb. 4, 2019) ("Zhejiang Jingu's Resp."); Letter from W. Fennell to W. Ross, re: Pet'rs' Req. for Clarification of the Scope of the Investigations and Submission of Additional Factual Information Relevant to Scope, Case No. A-570–082, Bar Code: 3784194 (Dec. 20, 2018). Zhejiang Jingu Company Limited ("Zhejiang Jingu"), a Chinese mandatory respondent

and affiliate of Asia Wheel, argued that Chinese-origin rims and discs that are welded and painted in third countries should be considered outside the scope as wheel components that are "substantially transformed" into finished wheels in the third country. *See* Zhejiang Jingu's Resp. at 2–3. Alternatively, Zhejiang Jingu suggested that the third-country processing provision was "overly broad and vague, potentially expanding the scope," because it "does not explicitly require that both the rim and disc be produced in China for China to be considered the country of origin." *Id.* at 6. Thus, Zhejiang Jingu requested clarification and potential language changes to make clear that wheels with only one component from China would not fall within the scope. *See id.* Commerce declined to conduct a preemptive substantial transformation analysis, noting that:

> "[w]hile in some instances Commerce has relied on substantial transformation analysis to address country-of-origin issues, the decision to conduct such an analysis is contingent upon the facts and circumstances of a particular case. However, here, we find that we can properly frame the scope of the investigation and properly address issues concerning circumvention by incorporating the petitioners' proposed clarification of the scope . . . ."

Mem. from J. Maeder to G. Taverman, re: Issues and Decision Mem. for the Final Determination of the Less-Than-Fair-Value Investigation of Certain Steel Wheels from the People's Republic of China at 11 (Dep't Com. Mar. 21, 2019), P.R. 1, C.R. 1, Ex. 1 ("Final AD Mem."). Commerce agreed with Zhejiang Jingu that further clarifying language should be included, and subsequently added the qualifier "from China" to provision such that "rims and discs from China that have been further processed in a third country into finished steel wheels be included within scope." *Id.* at 12.

On February 11, 2021, Asia Wheel requested a scope ruling from Commerce asking whether its truck wheels manufactured in Thailand using discs from China and rims it produced in Thailand from steel plates from China or a third country fall under the scope of the *Orders*. *See* Scope Ruling Request at 6.

Customs initiated an EAPA investigation under 19 U.S.C. § 1517 to determine if mixed-component wheels, such as those manufactured by Asia Wheel, evaded the *Orders*. *See* Letter from B. Hoxie to N. Birch, re: Notice of Initiation of Investigation and Interim Measures – EAPA Case Number 7509 at 2 (CBP Nov. 23, 2020). Customs was unable to determine if these wheels were covered merchandise, and on June 9, 2021, issued a "covered merchandise referral" to Com-

merce under 19 U.S.C. § 1517(b)(4). *See Certain Steel Wheels from the People's Republic of China: Notice of Covered Merchandise Referral*, 86 Fed. Reg. 38270, 38270–71 (Dep't Com. July 20, 2021).

In response to Asia Wheel's scope request and the covered merchandise referral, Commerce initiated a scope inquiry on May 12, 2021. *See* Letter from T. Gilgunn to All Interested Parties, re: Initiation of Asia Wheel Scope Inquiry (Dep't Com. May 12, 2021), P.R. 6. Commerce found that the original underlying investigation did not explicitly exclude these wheels produced using mixed-origin components from the scope, and that the *Orders* are ambiguous as to the inclusion of wheels produced from mixed-origin inputs. *See* Final Scope Ruling at 9. As a result, Commerce conducted a substantial transformation analysis based on the five factors outlined in *Bell Supply IV*. *See* 888 F.3d at 1228–29. Commerce concluded that the finished wheels processed in Thailand are not substantially transformed, and that those wheels' country of origin is therefore China. *See* Final Scope Ruling at 16–25. On December 13, 2022, Commerce issued a Preliminary Scope Ruling, finding that Asia Wheel's truck wheels manufactured in Thailand are within the scope of the *Orders*. *See* Mem. from S. Thompson to J. Maeder, re: Preliminary Scope Ruling: Asia Wheel's Steel Wheels Processed in Thailand (Dep't Com. Dec. 13, 2022), P.R. 59 ("Prelim. Scope Ruling").

Commerce issued its Final Scope Ruling on June 7, 2023, continuing to find that Asia Wheel's truck wheels manufactured in Thailand are in scope. *See* Final Scope Ruling at 1. Commerce stated that it "intend[ed] to instruct CBP to continue the suspension of liquidation for products found to be covered by the scope of the *Orders* of already suspended." *Id.* at 27.

III. Procedural History

Asia Wheel brought this action against the Government on August 11, 2023 to challenge Commerce's Final Scope Ruling. *See* Compl., Aug. 11, 2023, ECF No. 8. Plaintiff-Intervenor ZC Rubber and Defendant-Intervenor Accuride moved to intervene in the instant action under USCIT Rule 24, and the court granted both motions. *See* Consent Mot. to Intervene as Pl.-Inter., Sept. 1, 2023, ECF No. 15; Order, Sept. 7, 2024, ECF No. 16; Consent Mot. to Intervene as Def.-Inter., Sept. 11, 2023, ECF No. 17; Order, Sept. 12, 2023, ECF No. 21.

On January 30, 2024 and February 13, 2024, respectively, Asia Wheel and ZC Rubber filed a Motion for Judgment on the Agency Record under USCIT Rule 56.2. *See* Pl.'s Mot. for J. on the Agency R., Jan. 30, 2024, ECF No. 30; Pl.-Inter.'s Br. Asia Wheel filed an Amended Motion for Judgment on the Agency Record on February 22, 2024. *See* Pl.'s Br. The Government and Accuride filed their response briefs on April 30, 2024 and May 14, 2024, respectively. *See* Gov't Br.; Def.-Inter.'s Br. Asia Wheel and ZC Rubber filed replies on June 18, 2024 and July 2, 2024 respectively. *See* Pl.'s Reply Br.; Pl.-Inter.'s Reply Br.

With all papers filed, the court held oral argument on Wednesday, November 13, 2024. *See* Order, Sept. 17, 2024, ECF No. 53. Prior to oral argument, the court issued, and the parties responded to, questions regarding the case. *See* Letter re: Qs. for Oral Arg., Oct. 25, 2024, ECF No. 54; Pl.'s Resp. to Ct.'s Qs. for Oral Arg., Nov. 7, 2024, ECF No. 58; Pl.-Inter.'s Resp. to Ct.'s Qs. for Oral Arg., Nov. 7, 2024, ECF No. 55; Def.'s Resp. to Ct.'s Qs. for Oral Arg., Nov. 7, 2024, ECF No. 56; Def.-Inter.'s Resp. to Ct.'s Qs. for Oral Arg., Nov. 7, 2024, ECF No. 57. As directed by the court, the parties also filed briefs following oral argument. *See* Def.'s Post-Arg. Br., Nov. 22, 2024, ECF No. 61; Def.-Inter.'s Post-Arg. Br., Nov. 22, 2024, ECF No. 62; Pl. and Pl.-Inter.'s Post-Arg. Br., Nov. 22, 2024, ECF No. 63.

Concurrently with the procedures in this case, the court heard a parallel case, *Asia Wheel Co. v. United States*, Ct. No. 23–00096 (USCIT filed May 9, 2023) ("*Asia Wheel I*"). That case involves a relevant prior scope determination, where Commerce considered wheels much like those here: those with components originating in China but where processing culminates in Thailand. *See* Mem. from E. Begnal to J. Maeder, re: Final Scope Ruling: Asia Wheel's Steel Wheels Processed in Thailand at 8, Case No. A-570–090, Bar Code: 4364599–01 (Dep't Com. Apr. 11, 2023) ("*Asia Wheel I* Final Scope Ruling"). The court held *Asia Wheel I* in abeyance pending oral argument in this case. *See* Order, *Asia Wheel I*, Oct. 18, 2024, ECF No. 76. The opinion in *Asia Wheel I* is being released concurrently with this opinion. *See* Opinion, *Asia Wheel I*, Feb. 21, 2025, ECF No. 78.

JURISDICTION AND STANDARD OF REVIEW

The court has jurisdiction over this action pursuant to 28 U.S.C. § 1581(c) and 19 U.S.C. § 1516a(a)(2)(B)(vi). Section 1516a(b)(1)(B)(i) provides the standard of review: "[t]he Court shall hold unlawful any

determination, finding, or conclusion" by Commerce that is "unsupported by substantial evidence on the record, or otherwise not in accordance with law." 19 U.S.C. § 1516a(b)(1)(B)(i).

A determination by Commerce "is supported by substantial evidence if a reasonable mind might accept the evidence as sufficient to support the finding." *Maverick Tube Corp. v. United States*, 857 F.3d 1353, 1359 (Fed. Cir. 2017) (citing *Consol. Edison Co. of N.Y. v. NLRB*, 305 U.S. 197, 229 (1938)). This standard requires Commerce to "examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)) (referring to the arbitrary and capricious standard); *see also Yangzhou Bestpak Gifts & Crafts Co. v. United States*, 716 F.3d 1370, 1378 (Fed. Cir. 2013) (citing *Amanda Foods (Viet.) Ltd. v. United States*, 33 CIT 1407, 1416, 647 F. Supp. 2d 1368, 1379 (2009)) (requiring the same of Commerce with respect to the substantial evidence standard). Substantial evidence may support Commerce's determination even if there is "evidence that detracts from the agency's conclusion or [if] there is a 'possibility of drawing two inconsistent conclusions from the evidence.'" *Aluminum Extrusions Fair Trade Comm. v. United States*, 36 CIT 1370, 1373 (2012) (quoting *Consolo v. Fed. Mar. Comm'n*, 383 U.S. 607, 620 (1966)).

In issuing scope rulings in particular, Commerce has "substantial freedom to interpret and clarify its antidumping orders," leading to "significant deference in Commerce's interpretation of a scope order." *Mid Continent Nail Corp. v. United States*, 725 F.3d 1295, 1300 (Fed. Cir. 2013). However, the question of whether the scope set out in an original investigation is ambiguous such as to warrant substantial transformation analysis is reviewed by the court de novo. *See Meridian Prods. LLC v. United States*, 851 F.3d 1375, 1381 (Fed. Cir. 2017).

DISCUSSION

I. Commerce's Interpretation of the Orders Is Supported by Substantial Evidence and in Accordance with Law.

The text of the *Orders* here provides that "[t]he scope includes rims and discs that have been further processed in a third country, including, but not limited to, the welding and painting of rims and discs

from China to form a steel wheel, or any other processing that would not otherwise remove the merchandise from the scope of the proceeding if performed in China." *Orders*, 84 Fed. Reg. at 24100. Asia Wheel and ZC Rubber argue that the phrase "rims and discs" unambiguously excludes wheels produced from mixed-origin components, suggesting that the word " 'and' does not mean 'or,' " such that only wheels consisting of both Chinese-origin discs and Chinese-origin rims fall within the scope. Pl.'s Br. at 17; Pl.-Inter.'s Br. at 12. The Government and Accuride counter that the words "including, but not limited to" in the scope indicate "that the 'welding and painting of rims and discs from China to form a steel wheel' are non-exhaustive examples of included processing," but the "plain language does not address what varieties of processing may otherwise exclude a product from the scope." Gov't Br. at 11 (quoting Final Scope Ruling at 10); Def.-Inter.'s Br. at 6–7. Therefore, the Government contends that the scope does not exclude Asia Wheel's wheels produced from mixed-origin components, and instead reflects that wheels produced from mixed-origin components are covered by the scope if the "processing would not otherwise exclude these items had the processing occurred in China." Gov't Br. at 11 (quoting Final Scope Ruling at 10).

Commerce's interpretation of the scope is supported by substantial evidence and in accordance with law because (1) "rims and discs that have been further processed in a third country" may be reasonably interpreted to include wheels produced from mixed-origin components and because (2) Commerce's later statements only addressed wheels produced from Chinese components such that they did not contradict the earlier interpretation that wheels produced from mixed-origin components fall within the scope of the *Orders*. *Orders*, 84 Fed. Reg. at 24100.

A. Commerce did not err in determining the plain language of the Orders does not exclude Asia Wheel's steel wheels from the scope.

The terms of an order govern its scope. *See Duferco Steel, Inc. v. United States*, 296 F.3d 1087, 1097 (Fed. Cir. 2002) ("[A] predicate for the interpretive process is language in the order that is subject to interpretation."); *see also Eckstrom Indus., Inc. v. United States*, 254 F.3d 1068, 1071–72 (Fed. Cir. 2001); *Wheatland Tube Co. v. United States*, 161 F.3d 1365, 1370 (Fed. Cir. 1998). The first step in considering whether a product is within the scope of an order is to consider

the language of the order itself. *See ArcelorMittal Stainless Belg. N.V. v. United States*, 694 F.3d 82, 87 (Fed. Cir. 2012). In analyzing the language of the scope, Commerce may also examine primary interpretive sources such as the descriptions of the merchandise in the petition and in the initial investigation, previous or concurrent determinations of the Secretary, and reports issued pursuant to the initial investigation. *See* 19 C.F.R. § 351.225(k)(1)(i). If the language of the order unambiguously covers or excludes a product, then that language governs Commerce's inquiry. *See* 19 C.F.R. § 351.225(k)(1); *Tak Fat Trading Co. v. United States*, 396 F.3d 1378, 1382–83 (Fed. Cir. 2005).

"Scope orders may be interpreted as including merchandise only if they contain language that specifically includes merchandise or may be reasonably interpreted to include it." *Duferco Steel*, 296 F.3d at 1089. "[A]n interpretation that renders [a term in the scope language] meaningless and mere surplusage," is not reasonable. *SMA Surfaces, Inc. v. United States*, 47 CIT __, __, 617 F. Supp. 3d 1263, 1275 (2023) (internal quotation marks and citations omitted). Commerce "may reasonably define the class or kind of merchandise in a single set of orders," rather than "engage in a game of whack-a-mole" to specifically include every item of merchandise that could fall within an order in the language of that order. *Canadian Solar, Inc. v. United States*, 918 F.3d 909, 921–22 (Fed. Cir. 2019). "Commerce need only meet a low threshold to show that it justifiably found an ambiguity in scope language, but it is not justifiable to identify an ambiguity where none exists." *Allegheny Bradford Corp. v. United States*, 29 CIT 830, 843, 342 F. Supp. 2d 1172, 1184 (2004) (citing *Novosteel SA v. United States*, 284 F.3d 1261, 1272 (Fed. Cir. 2002)).

The original scope language as laid out at the outset of the antidumping and countervailing investigations included "steel wheels, discs, and rims" imported from China. *Certain Steel Wheels from the People's Republic of China: Initiation of Less-Than-Fair Value Investigation*, 83 Fed. Reg. 17798, 17802 (Dep't Com. Apr. 24, 2018). Commerce later modified this scope language to more explicitly include wheels that undergo further processing outside of China. During the investigations, Commerce established that "[t]he scope includes rims and discs that have been further processed in a third country." Final

Scope Ruling at 3.[3] While this scope language does not specifically include wheels produced from mixed-origin components, it can be reasonably interpreted to include any wheels produced from mixed-origin components that still qualify as "steel wheels . . . from China," and whose processing "would not otherwise remove the merchandise from the scope of the investigations if performed in [China]." *Id.* Commerce also included an example of further processing, noting that this provision "include[s], but [is] not limited to, the welding and painting of rims and discs from China to form a steel wheel." *Orders*, 84 Fed. Reg. at 24100.

Asia Wheel and ZC Rubber argue that this example, and in particular the phrase "rims and discs from China," indicates that wheels produced from mixed-origin components are unambiguously excluded from the scope. *See* Pl.'s Br. at 17; Pl.-Inter.'s Br. at 12. However, the phrase "rims and discs from China" comes only after the phrase "including, but not limited to," indicating that "welding and painting of rims and discs from China" constitutes a single, non-exclusive example. The words "including, but not limited to" would be rendered meaningless if Commerce were to interpret the scope to unambiguously exclude wheels produced from mixed-origin components because they are not "rims and discs from China":

---

[3] In *Asia Wheel I*, which the court discusses below—a different Final Scope Ruling (which predated the scope ruling now before the court)—the third-country processing provision includes "rims, discs, and wheels that have been further processed in a third country, including, but not limited to, . . . the welding and painting of rims and discs from China," such that Commerce's commentary on the term "rims and discs" clearly refers to its only appearance in the second half of the third-country provision. *Asia Wheel I* Final Scope Ruling at 6. In contrast, the third-country processing provision here includes only "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," such that Commerce's commentary on the term "rims and discs" could refer to its appearance either in the first half of the provision, the second half of the provision, or in both locations. *Certain Steel Wheels from the People's Republic of China*, 84 Fed. Reg. 11746, 11748 (Dep't Com. Mar. 28, 2019). However, Asia Wheel and ZC Rubber have focused on the phrase "rims and discs" that appears in the second half of the third-country provision, arguing that this language indicates that the rim and disc must both be from China. *See* Pl.'s Br. at 19 (emphasizing "rims and discs" only in the second half of the provision); *id.* at 22 (suggesting that the "including, but not limited to" language indicates that the scope may include scenarios of third-country processing of Chinese-origin rims, discs, *and wheels*); Pl.-Inter.'s Br. at 6 (emphasizing only "rims and discs" in the second half of the provision); Pl.-Inter.'s Resp. to Qs. for Oral Arg. at 1, Nov. 7, 2024, ECF No. 58 ("[T]his difference in wording should not lead to a different result . . . because neither case involves a situation where a Chinese-origin wheel is further processed in a third country.").

Because the Government has interpreted the third country provision in *Asia Wheel II* to reflect that "rims, discs, and wheels further processed in a third country are covered by the scope," Preliminary Scope Ruling: Asia Wheel's Steel Wheels Processed in Thailand at 11 (Dep't Com. Dec. 13, 2022), P.R. 59 ("Preliminary Scope Ruling"), and because Asia Wheel and ZC Rubber focus exclusively on the second half of the third-country provision, the court does not address whether Commerce's commentary applies to the same phrase, "rims and discs," in the first half of the third-country provision.

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

Orders, 84 Fed. Reg. at 24100 (emphasis added); Def.-Inter.'s Br. at 7–8. "The court cannot accept an interpretation that renders [a term in the scope language] meaningless and mere surplusage." *SMA Surfaces*, 47 CIT at __, 617 F. Supp. 3d at 1275 (internal quotation marks and citation omitted). A single, nonexclusive example of third-country processing that would certainly not remove wheels from the scope still leaves open what other types of third-country processing would similarly not remove the merchandise from the scope of the investigation.

The phrase "including, but not limited to" indicates that there are methods of third country processing that will fall within the scope of the *Orders*, even if not specifically outlined. *Orders*, 84 Fed. Reg. at 24100. The above excerpt from the *Orders* indicates that there are methods of processing that will be within the scope, though Commerce explicitly chose not to enumerate them all. To rule that any method of processing not explicitly outlined in the *Orders* is outside the scope would render certain key phrases superfluous. Therefore, this language does not, as Asia Wheel and ZC Rubber argue, indicate that wheels produced from mixed-origin components are unambiguously excluded from the scope.

The plain scope language includes rims, discs, and wheels that have undergone further processing that would not otherwise remove the merchandise from the scope of the investigations if performed in China. While the scope language notes that "welding and painting of rims and discs from China" is further processing that does not remove the merchandise from the scope, the scope language is ambiguous as to what other further processing would not remove the merchandise from the scope. *Id.* Therefore, Commerce did not err in determining that the scope language does not categorically exclude wheels produced from mixed-origin components.

B. Commerce's Scope Determination Did Not Change the Scope of the Orders.

Asia Wheel suggests that Commerce "confirmed in the original investigations that wheels manufactured in third countries with only one wheel component—the disc—originating in China are outside the

scope." Pl.'s Br. at 18. Thus, Asia Wheel argues, Commerce "recharacterized" its scope analysis from the antidumping and countervailing investigations by concluding that the scope of the *Orders* is ambiguous. *Id.* at 20. The Government counters that Commerce declined to modify the scope to expressly include wheels produced from rims or discs from China, but also "did not dictate that such wheels must be held to be out-of-scope." Gov't Br. at 13. Accuride further argues that, while Commerce explicitly included Chinese rims and discs that had been processed in a third country before importation to the United States, Commerce was also "explicit that the coverage *was wider than and not limited to* that stated example of welding and painting of a rim and disc [from] China." and therefore did not change the scope of the order or alter its express terms. Def.-Inter.'s Br. at 6.

"[A] scope determination is not in accordance with law if it changes the scope of an order or interprets an order in a manner contrary to the order's terms." *Allegheny Bradford*, 28 CIT at 843, 342 F. Supp. 2d at 1183 (citing *Duferco Steel*, 296 F.3d at 1094–95); *see also Wheatland Tube*, 161 F.3d at 1370 ("Although Commerce enjoys substantial freedom to interpret and clarify its antidumping duty orders, it can neither change them, nor interpret them in a way contrary to their terms." (internal quotation marks and citations omitted)). A clarification of scope language does "not change the scope of the order or alter its express terms." *King Supply Co. v. United States*, 674 F.3d 1343, 1351 (Fed. Cir. 2012) (distinguishing *Duferco Steel* on the ground that Commerce in that case "had impermissibly relied upon language in the petitions rather than the orders to modify the scope of the orders by effectively importing a physical description of certain products that was not present in the text of the order." (citation omitted)).

Commerce's statements during the investigation did not "recharacterize" or change the scope of the *Orders*, but rather confirmed the scope was ambiguous as to which types of third-country processing would not remove a product from the scope. Pl.'s Br. at 20; Prelim. Scope Mem. at 9–13; Final Scope Mem. at 7–10. In refusing to accept suggested revisions, Commerce communicated that during the original investigation it would not address the inclusion of wheels produced from mixed-origin components. *See* Final Scope Mem. at 10. Commerce declined to modify the scope to expressly include wheels manufactured in a third country from rims or discs from China, stating that:

> "[w]hile in some instances Commerce has relied on a substantial transformation analysis to address country-of-origin issues, the decision to conduct such an analysis is contingent upon the facts

> and circumstances of a particular case. However, here, we find that we can properly frame the scope of the investigation and properly address issues concerning circumvention by incorporating the petitioners' proposed clarification of the scope . . . ."

Final AD IDM at 11. This language confirmed that Commerce deferred the issue of wheels produced from mixed-origin components and noted that further analysis would be necessary on a case-by-case basis.

While Commerce did, as Asia Wheel note, "agree with Zhejiang Jingu that the proposed scope amendment should include further language," this agreement was limited to the addition of the qualifier "from China" to the non-exhaustive example of further processing ("welding and painting"), not to the broader suggestion that the scope only covered wheels where both the rim and the disc were made in China. Final AD Mem. at 12; Pl.'s Br. at 19–20.

The court concludes that Commerce's scope determination that the *Orders* did not exclude wheels produced from mixed-origin components was consistent with both the plain text of the *Orders* and with Commerce's statements during the investigations. Therefore, Commerce's scope determination did not "change[] the scope of [the] order or interpret[] [the] order in a manner contrary to the order's terms." *Allegheny Bradford*, 28 CIT at 843, 342 F. Supp. 2d at 1183 (citing *Duferco Steel*, 296 F.3d at 1094–95). In lawfully determining that the scope of the *Orders* was ambiguous as to wheels produced from mixed-origin components, Commerce permissibly proceeded to conduct a substantial transformation analysis.

II. Commerce's Determination that the Mixed-Origin Components Were Not Substantially Transformed into Thai-Origin Wheels Is Supported by Substantial Evidence and in Accordance with Law.

Asia Wheel and ZC Rubber argue that Commerce failed to apply the proper legal standard in conducting its substantial transformation analysis, and that Commerce's analysis is unsupported by substantial evidence. *See* Pl.'s Br. at 23. The court addresses each argument in turn and concludes that (1) Commerce's method of analysis is in accordance with the law, and that (2) Commerce's analysis and subsequent conclusion that Asia Wheels steel wheels were of Chinese origin is supported by substantial evidence.

A. Commerce's Five-Factor Method of Analysis Is in Accordance with Law.

Recall that antidumping and countervailing orders apply based on the type of merchandise and the country of origin, and that in determining country of origin, Commerce may conduct a substantial transformation analysis. *See Bell Supply IV*, 888 F.3d at 1228, 1230. Substantial transformation analysis is a metric to determine "whether the processes performed on merchandise in a country are of such significance as to require that the resulting merchandise be considered the product of the country in which the transformation occurred." *Id.* at 1229 (internal quotation marks and citation omitted).

Asia Wheel first contends that Commerce employed the incorrect test in performing its substantial transformation analysis. According to Asia Wheel, the "fundamental question" is whether the Chinese-origin components became "a new product having a new name, character, and use," through Thai processing. Pl.'s Br. at 24 (citing *Bell Supply IV*, 888 F.3d at 1228 (internal quotation marks and citations omitted)). Instead, Asia Wheel argues, Commerce "had it backwards," employing the five factors noted in *Bell Supply IV* for determining whether substantial transformation had occurred as the primary test—disconnected from the fundamental question such that its analysis was "meaningless"—rather than using the factors to inform the "name, character, and use" question. *See id.* at 23 (citing *Bell Supply IV*, 888 F.3d at 1228–29). The Government contends that Commerce "may consider whether the third[-]country processing imparted 'a new name, character, and use' in consideration of the totality of the circumstances, [but] such findings may not supplant analysis of the record with respect to the" five factor test. Gov't Br. at 19. The Government also argues that implementation of this standard as the "sole basis of analysis would result in even minor finishing/assembly operations sufficient to determine country of origin and render the existing substantial transformation factors moot." *Id.* (citing *Bell Supply IV*, 888 F.3d at 1228–29).

Commerce's application of the five factors from *Bell Supply IV*, in analyzing whether the wheel components underwent substantial transformation in Thailand, is in accordance with law. *See* 888 F.3d at 1228–29. Recall that in *Bell Supply IV*, the Federal Circuit held that "[a] substantial transformation occurs where, as a result of manufacturing or processing steps . . . [,] the [product] loses its identity and is transformed into a new product having a new name, character and use." *Id.* at 1228 (internal quotation marks and citation omitted). According to the Final Scope Ruling, Commerce's substantial transformation analysis here asked:

> (1) whether, as a result of the manufacturing or processing, the product loses its identity and is transformed into a new product having a new name, character, and use; and
>
> (2) whether through that transformation, the new article becomes a product of the country in which it was processed or manufactured.

Final Scope Ruling at 5 (footnotes omitted).

Thus, while Asia Wheel and ZC Rubber correctly note that whether a product "loses its identity and is transformed into a new product having a new name, character, and use" is relevant to the substantial transformation question here, this is not where the analysis ends. Pl.'s Br. at 28 (quoting *Bell Supply IV*, 888 F.3d at 1228–29). Recall that the court in *Bell Supply IV* went on to posit five (nonexclusive) factors for the substantial transformation analysis:

> To determine whether there has been a substantial transformation, Commerce looks to factors such as (1) the class or kind of merchandise; (2) the nature and sophistication of processing in the country of exportation; (3) the product properties, essential component of the merchandise, and intended end-use; (4) the cost of production/value added; and (5) level of investment.

888 F.3d at 1228–29.

Consequently, while a product's "new name, character, and use" may be relevant, the five-factor test is the primary mechanism for determining whether substantial transformation has occurred.[4] Additionally, the five-factor test is a "totality of the circumstances" method of analysis such that the factors are not "divorced" from the fundamental question, as Asia Wheel and ZC Rubber allege. *See Venus Wire Indus. Pvt. Ltd. v. United States*, 43 CIT __, __, 424 F. Supp. 3d 1369, 1378 n.11 (2019) ("While the formulation of the factors Commerce considers in a substantial transformation test varies slightly across proceedings, in general, Commerce considers [these

[4] This court previously addressed the Federal Circuit's mention of a "new name, character[,] and use" in *Bell Supply IV*, noting that "[a]lthough the Court of Appeals quotes *Bestfoods* to invoke the name, character[,] or use test, *Bestfoods* involved a North American Free Trade Agreement country of origin determination applying statutory tariff-shift rules as opposed to Gibson-Thomsen's 'name, character[,] and use' test, which evolved in Customs law." *Bell Supply Co. v. United States*, 42 CIT __, __, 348 F. Supp. 3d 1281, 1287 n.6 (2018) ("*Bell Supply V*"). The Federal Circuit "[spoke] of the name, character or use test, [but did] not invoke any of the factors used in Customs cases and specifically states the factors Commerce considers to determine whether there has been a substantial transformation." *Id.* Because Commerce itself noted the new name, character, and use question within the Final Scope Ruling, we consider it here just as courts did in *Bell Supply IV* and *V*: as merely a framework for the more essential five factors outlined below.

five factors.]" (citing *Bell Supply IV*, 888 F.3d at 1228–29)). Accordingly, Commerce's thorough analysis of the five factors outlined in *Bell Supply IV* in determining whether Asia Wheel's steel wheels underwent substantial transformation in Thailand is in accordance with law.

B. Commerce's Substantial Transformation Analysis Is Supported by Substantial Evidence.

Asia Wheel next suggests that Commerce, in conducting its substantial transformation analysis, considered just one component—the discs—rather than the finished wheels, thus failing to apply the governing legal standard. *See* Pl.'s Br. at 28–29. The Government contends that the court rejected a similar argument in *Peer Bearing*, where it considered whether unfinished and finished parts from China were substantially transformed into finished products in Thailand. *See* Gov't Br. at 21–22 (citing *Peer Bearing Co.-Changshan v. United States*, 39 CIT 1942, 128 F. Supp. 3d 1286 (2015) ("Commerce was not precluded from taking into consideration the uncontested fact that the [tapered roller bearing] production in Thailand was conducted upon parts, finished and unfinished, that ultimately were destined to become [tapered roller bearings].")).

While the parties agree that the disc component of the subject merchandise is of Chinese origin, Asia Wheel's characterization ignores Commerce's thorough analysis of the wheel as a whole and the other component of the finished wheel: the rim. The relevant question in Commerce's substantial transformation analysis was not whether the rectangular sheet of steel is substantially transformed when turned into a round rim. Rather, the question was whether *both* wheel components undergo substantial transformation to become a *finished wheel*. *See* Final Scope Ruling at 16–25. Thus, Commerce here asked whether an in-process component (a rim) and a finished component (a disc) are substantially transformed when processed and assembled into a finished wheel. Focusing only on the transformation from steel sheet to finished rim ignores the rest of the processing, much of which takes place in China: for example, the creation of the steel plate and the production of the finished disc. But again, the relevant question was not whether the in-process rim is substantially transformed when processed into a finished rim, but rather whether the in-process rim and finished disc are substantially transformed when processed and assembled into a finished wheel. *See id.*

Commerce's Final Scope Ruling demonstrates that the agency considered exactly this question at every stage of analysis. Contrary to Plaintiff's contention that Commerce only considered a single component rather than the finished wheel, *see* Pl.'s Br. at 28–29, Commerce

found that: (1) the wheel components and *finished wheel* are of the same class or kind of merchandise included within the scope, (2) both major components continue to function as the only such component after incorporation into *the finished wheel*, and (3) the production in China culminates in a complete disc and an in-process rim, *functionally creating an already designed wheel*. *See* Final Scope Ruling at 16–25 (emphasis added). Commerce ultimately concluded that "*the finished truck wheels* Asia Wheel manufactures in its facilities in Thailand using discs from China and rims it produces in Thailand from steel plates from China or a third country are not substantially transformed such that the third-country processing confers country of origin based on the totality of circumstances." *Id.* at 16 (emphasis added). This conclusion is supported by substantial evidence, as Commerce thoroughly considered all five factors in analyzing whether the in-process component and the finished component are substantially transformed into a finished wheel in Thailand.

Asia Wheel suggests that Commerce's analysis of the "essential component" factor "further illustrates its flawed approach." Pl.'s Br. at 26. To the extent that this argument serves as an example that Commerce only considered the discs, it fails, as Commerce considered both the components and the finished wheel throughout its analysis. To the extent that this argument raises an independent ground for finding Commerce's substantial transformation analysis to be unsupported by substantial evidence, it also fails, as Commerce extensively considered the properties and end uses of both the rim and the disc and the finished wheel. *See* Final Scope Ruling at 16–25. In doing so, Commerce noted that, while the essential characteristics of the finished wheel are not established until the rim and disc are assembled, the elements remain the same both before and after assembly. *Id.* at 19. Commerce found that "any given disc or rim continues to function as the only such component after incorporation into a finished wheel." *Id.* (quoting Prelim. Scope Ruling at 17). Commerce considered, for example, that the qualities of a disc do not change or transform through processing: the number, placement, and type of bolt holes; the mounting arrangement; and the materials used to produce the disc all remain the same. *See id.* at 20. Additionally, Commerce noted that the introduction of certain physical characteristics in Thailand, like the rim's diameter, is merely the finishing of a process that began in China. *See id.* at 22. This finding is therefore supported by substantial evidence.

III. Commerce's Decision to Impose Duties on the Entire Wheel Is Supported by Substantial Evidence.

Asia Wheel also argues that Commerce impermissibly expanded the scope contrary to its terms when it determined that the entire wheel is covered by the scope of the *Orders* when "only one wheel component (a disc) was exported from China." Pl.'s Br. at 2–3, *see also id.* at 28–29. The Government counters that Asia Wheel begins the inquiry at the wrong point in the analysis, asking the court to determine whether some components of the wheel are not dutiable on their own when it has been determined that the entire wheel is subject merchandise. *See* Gov't Br. at 22. Accuride further argues that "precedent confirms that Commerce's determination is to the origin of the imported article *as a whole*, not separately to each of what were only previously separate components." Def.-Inter.'s Br. at 21.

While Asia Wheel is correct that Commerce cannot interpret the scope of the *Orders* to change the scope or otherwise interpret it contrary to its terms, that is not the case here. *See* Pl.'s Br. at 28 (citing *Eckstrom Indus.*, 254 F.3d at 1072). Commerce did not change or expand the scope, but merely conducted a substantial transformation analysis to confirm that the wheels here are Chinese and therefore fall within the scope.

Asia Wheel's argument on this point is based on its mischaracterization of Commerce's substantial transformation analysis as concluding that only the disc was of Chinese origin. *See* Pl.'s Br. at 28–29. As indicated above, this characterization overlooks Commerce's thorough analysis of both components and the finished wheel. Indeed, substantial transformation analysis assesses duty liability for a product assembled from multiple components upon its entry into the United States. *See Bell Supply IV*, 888 F.3d at 1229 ("Because a single article can be assembled from various components and undergo multiple finishing steps, Commerce must have some way to determine the country of origin during scope inquiries."). Subsequently, the substantial transformation analysis provides a metric "for determining whether the processes performed on merchandise in a country are of such significance as to require that the *resulting merchandise* be considered the product of the country in which the transformation occurred." *Id.* (internal quotation marks and citation omitted) (emphasis added). In conducting substantial transformation analysis, Commerce sought to determine the country of origin for the resulting product as entered into the United States—that is, as an assembled wheel.

Asia Wheel does not provide any legal support for a different method of duty assessment that would first exclude specific compo-

nents before determining what duties to assess. To the extent the Asia Wheel suggests Commerce should follow this method separately from conducting a substantial transformation analysis, the suggestion is moot. As Commerce already determined the entire wheel is within scope, it need not assess duties on individual wheel components. Therefore, Commerce's imposition of antidumping and countervailing duties on the entire wheel is supported by substantial evidence.

IV. Commerce Permissibly Directed Customs to Continue to Suspend Liquidation of Imports Entered Before the Date of Initiation of the Scope Inquiry.

Asia Wheel argues that importers did not receive fair warning that trailer wheels produced in third countries from mixed-origin components are subject to the *Orders* until Commerce initiated the scope inquiry at Asia Wheel's request. *See* Pl.'s Br. at 30. Thus, Asia Wheel contends, Commerce impermissibly directed Customs to continue its prior suspension of liquidation of imports entered before the date of initiation of the scope inquiry. *See id.* This direction, according to Asia Wheel, will subject them to millions of dollars in retroactive antidumping and countervailing duties that they could not have anticipated. *See* Pl.'s Br. at 3. The Government and Accuride counter that Commerce expressly noted that future merchandise would need to be evaluated on a case-by-case basis. *See* Def.'s Br. at 29; Def.-Inter.'s Br. at 23. Even if Commerce did not provide adequate notice, the Government and Accuride argue, Commerce has no authority to direct the outcome of decisions that Commerce entrusted to Customs. *See* Def.'s Br. at 32–34; Def.-Inter.'s Br. at 26; 19 U.S.C. § 1517(b)(1) ("[Customs] shall initiate and investigation if [Customs] determines that the information provided in . . . the referral . . . reasonably suggests that the covered merchandise has been entered into the customs territory of the United States through evasion.").

Upon an affirmative scope determination, Commerce will "direct U.S. Customs and Border Protection to continue the suspension of liquidation of previously suspended entries and apply the applicable cash deposit rate until appropriate liquidation instructions are issued . . . ." 19 C.F.R. § 351.225(*l*)(3). Additionally, Commerce "will direct U.S. Customs and Border Protection to begin the suspension of liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product not yet suspended . . . on or after the date of initiation of the scope inquiry . . . ." *Id.* Fair notice is particularly important in contexts like this one where importers may be subjected to substantial retroactive liability. The fair notice requirement reflects the "broader due-process principle that before an agency may enforce an order or regulation by

means of a penalty or monetary sanction, it must 'provide regulated parties fair warning of the conduct [the order or regulation] prohibits or requires.'" *Tai-Ao Aluminum Co. v. United States*, 983 F.3d 487, 495 (Fed. Cir. 2020) (quoting *Mid Continent Nail*, 725 F.3d at 1300–01).

Commerce's statements expressly noting that "in some instances Commerce has relied on a substantial transformation analysis to address country-of-origin issues," but that "the decision to conduct such an analysis is contingent upon the facts and circumstances of a particular case" served as adequate notice. Final AD IDM at 11. Because Asia Wheel and ZC Rubber had adequate notice, Commerce permissibly directed Customs to continue is prior suspension of liquidation.

A. Commerce Provided Lawful Notice That Mixed-Origin Wheels Could Be Subject Merchandise.

An antidumping and countervailing duty order must contain "a description of the subject merchandise, in such detail as the administering authority deems necessary," to provide adequate notice to the relevant importers. 19 U.S.C. §§ 1671e(a)(2), 1673e(a)(2). Adequate notice requires "that antidumping orders only be applied to merchandise that they may be reasonably interpreted to include." *Mid Continent Nail*, 725 F.3d at 1301 (internal quotation marks and citations omitted). Without adequate notice, "Commerce cannot suspend liquidation of entries entered 'on . . . the date of initiation of the scope inquiry.'" *Tai-Ao*, 983 F.3d at 490 (quoting 19 C.F.R. § 351.225(*l*)(2)). This notice requirement reflects the "broader due-process principle" that Commerce must provide fair warning to regulated parties before enforcing a penalty or sanction. *Id.* at 495 (quoting *Mid Continent Nail*, 725 F.3d at 1300–01).

However, adequate notice is not the same as certainty that a product will or will not fall within the scope of an order. Instead, adequate notice need only allow an importer to reasonably interpret what merchandise is included in the order. *Cf. Mid Continent Nail*, 725 F.3d at 1301–02 ("The mere fact that the order in this case makes no explicit reference to mixed media items does not conclusively establish that Commerce lacked authority to consider the order's applicability to nails contained within such items."). Notice need not be certain because questions often later "arise as to whether a particular product is covered by the scope of an antidumping or countervailing duty order. Such questions, such as those regarding the country of origin of merchandise, may arise for a variety of reasons given that the description of the merchandise subject to the scope is written in general terms." 19 C.F.R. § 351.225(a); *see also Bell Supply Co. v.*

United States, 43 CIT __, __, 393 F. Supp. 3d 1229, 1236 (2019) ("*Bell Supply VI*") ("Issues arise regarding whether a product falls within the scope of an [antidumping or countervailing duty] order, in part because federal regulations require Commerce to write the descriptions in 'general terms.' "). As noted above, Commerce may use a substantial transformation analysis to resolve questions regarding the country of origin of an imported article. *See Bell Supply IV*, 888 F.3d at 1229. The existence of some ambiguity in scope language does not mean that notice is inadequate as to products requiring substantial transformation to determine country of origin, as it is impractical to require Commerce to anticipate every type of third-country processing. *Cf. Canadian Solar*, 918 F.3d at 921–22 ("It is unnecessary for Commerce to engage in a game of whack-a-mole when it may reasonably define the class or kind of merchandise in a single set of orders, and within the context of a single set of investigations, to include all imports causing injury.").

Here, Commerce explicitly included within the scope "rims and discs that have been further processed in a third country," and provided one type of processing that would certainly be included (the welding and painting of rims and discs from China). Final Scope Ruling at 3. However, by including "any other processing that would not otherwise remove the merchandise from the scope of the orders if performed in China," Commerce left open the question of what other types of third-country processing would not remove the merchandise from the scope. *Id.* While this language did not explicitly indicate that the exact processing here would be included, *see supra* section I.A., it contained the general statement that rims and discs processed in a third country may be included.

Even if the scope language itself was not enough to provide adequate notice on its own, Commerce went further. Commerce stated during the investigation that "in some instances Commerce has relied on a substantial transformation analysis to address country-of-origin issues," but that "the decision to conduct such an analysis is contingent upon the facts and circumstances of a particular case." Final AD IDM at 11. This statement indicated that particular types of processing would undergo substantial transformation analysis to address country-of-origin issues depending on the specific facts and circumstances. Commerce cannot be expected to anticipate every type of third-country processing, and thus cannot feasibly indicate with certainty every hypothetical product that would fall within the scope. Despite this ambiguity as to specific types of processing, Asia Wheel could anticipate that the wheels at issue fall within Commerce's description and thus are covered by the scope based on the language

of the *Orders* and Commerce's commentary during the investigation. Therefore, Commerce's commentary during the investigation provided further adequate notice that wheels produced from mixed-origin components could be subject merchandise.

Beyond the language and commentary during this investigation, Commerce's commentary in *Asia Wheel I*, a relevant prior scope determination, provided further notice to the parties in this case. *See* Mem. from E. Begnal to J. Maeder, re: Certain Steel Wheels from the People's Republic of China: Final Scope Decision Memorandum for the Final Antidumping Duty and Countervailing Duty Determinations, Case No. A-570–090, Bar Code: 3857017 (Dep't Com. July 1, 2019) ("*Asia Wheel I* Final Scope Memo"); Mem. from E. Begnal to J. Maeder, re: Final Scope Ruling: Asia Wheel's Steel Wheels Processed in Thailand (Dep't Com. Apr. 11, 2023), P.R. 126 ("Final Scope Ruling"). In *Asia Wheel I*, Commerce considered wheels much like those here: those manufactured in Thailand using discs from China and rims it produces in Thailand from steel plates sourced from China or a third country. *See Asia Wheel I* Final Scope Ruling at 8. In fact, Commerce's commentary in *Asia Wheel I* is particularly relevant because it interpreted a prior scope ruling involving almost identical antidumping orders, and specifically, a nearly identical third-country processing provision. The antidumping orders in *Asia Wheel I* contain the following third-country processing provision:

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

Certain Steel Trailer Wheels 12 to 16.5 Inches from the People's Republic of China: Antidumping Duty and Countervailing Duty Orders, 84 Fed. Reg. 45952, 45954 (Dep't Com. Sept. 3, 2019). The *Orders* in this case contain a substantially similar third-country processing provision:

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

Orders, 84 Fed. Reg. at 24100. Thus, Commerce's commentary interpreting the third-country processing provision in *Asia Wheel I* is particularly relevant here. In *Asia Wheel I*, Commerce interpreted the third-country processing provision while conducting a substantially similar country-of-origin analysis on nearly identical wheels.[5] There, Commerce noted that it "does not foreclose a further analysis of substantial transformation should a product be completed in a third country from a mix of rim and disc parts from China and a third country." *Asia Wheel I* Final Scope Memo at 24. In declining to foreclose this further analysis, Commerce clearly contemplated the exact wheels at issue in *Asia Wheel I*, which are substantially similar to the wheels at issue in this case such that Asia Wheel and ZC Rubber could reasonably anticipate that the wheels here would fall within the scope of the *Orders* subject to a substantial transformation analysis.

There is no question that Asia Wheel was aware that the language from *Asia Wheel I* was instructive here, as Asia Wheel suggested in their scope request that Commerce's interpretation of the scope language in *Asia Wheel I* is relevant and submitted excerpts of the AD/CVD Orders and the Final Scope Memo from *Asia Wheel I* as exhibits to their request for a scope ruling. *See* Request for Scope Ruling at 5 (Dept. Com. Feb. 11, 2021), P.R. 1; *see also Asia Wheel I* Final Scope Memo. Similarly, Commerce's commentary in *Asia Wheel I* provided additional notice to ZC Rubber, though it was not a named party in that case, because scope determinations are made based on the type of merchandise, not the particular parties. Therefore, responsible importers should consider publicly available prior scope rulings interpreting antidumping orders on substantially similar merchandise regardless of whether or not they are explicitly named. *See Mid Continent Nail*, 725 F.3d at 1304 ("In some cases . . . guidance may be found in the third of the (k)(1) criteria . . . so long as these prior determinations were publicly available at the time that the antidumping order was issued." (footnote omitted)). Because Com-

[5] ZC Rubber argues that the differences between the scope language in *Asia Wheel I* and *Asia Wheel II* suggest that Commerce's commentary in *Asia Wheel I* cannot serve as sufficient notice. However, ZC Rubber only points to immaterial differences such as the differences in wheel diameter, and the use for the wheels in *Asia Wheel I* for road and highway trailers versus the use for the wheels in *Asia Wheel II* for Class 6, 7, and 8 commercial vehicles. *See* Pl.-Inter.'s Resp. to Qs. for Oral Arg. at 2–3, Nov. 7, 2024, ECF No. 55. These differences do not suggest that Commerce's ultimate decision would be any different in the two cases, and do not indicate why the statement in *Asia Wheel I* that Commerce does not foreclose future substantial transformation analysis would not be applicable here.

merce's commentary in *Asia Wheel I* involved substantially similar merchandise, interpreted a nearly identical third-country processing provision, and was publicly available, it provided additional notice to the parties in this case.

Asia Wheel and ZC Rubber had adequate notice that steel wheels produced from mixed-origin components would fall within the scope based on the language of the scope order itself, Commerce's additional commentary during the investigation, and Commerce's commentary in its prior scope determination in *Asia Wheel I*.

B. Tai-Ao and Trans Texas Do Not Support Plaintiff's Argument that Commerce Failed to Provide Fair Notice Here.

Asia Wheel provides two cases to support its assertion that Commerce's statements clarifying the original scope did not provide adequate notice. *See Tai-Ao Aluminum Co. v. United States*, 983 F.3d 487 (Fed. Cir. 2020); *Trans Tex. Tire, LLC v. United States*, 45 CIT __, 519 F. Supp. 3d 1275 (2021). However, those cases differ in important ways from the present case. In *Tai-Ao*, Commerce expanded the scope of its inquiry. *See* 983 F.3d at 495–96. In *Trans Texas*, Commerce did not suggest the relevant products were included in the scope until the final scope ruling. *See* 45 CIT at __, 519 F. Supp. 3d at 1281. Those cases are unlike the present case, where a reasonable importer could interpret Commerce's original scope language to include the wheels at issue and where Commerce provided additional commentary noting that substantial transformation analysis would be used on a case-by-case basis. *See Orders*, 84 Fed. Reg. at 24100; Final Scope Ruling at 27–28.

Asia Wheel argues that *Tai-Ao* "confirms that statements of intent to consider the potential application of antidumping and countervailing duties in the future do not constitute fair warning." Pl.'s Br. at 35. However, the court in *Tai-Ao* did not hold that a statement of intent can never provide adequate notice, but only that a statement of intent contemplating whether the inquiry should be expanded does not provide adequate notice. *Tai-Ao*, 983 F.3d at 495. This holding was supported by Commerce's statements and conduct suggesting the scope was limited to a single importer. For example, in *Tai-Ao*, the Initiation Notice only named one importer, Commerce's explanation for why it initiated the inquiry focused primarily on one importer, and Commerce issued a questionnaire to only one importer. *See id.* at 495–96. Unlike in *Tai-Ao*, where the statement of intent contemplated expansion of the scope and contradicted Commerce's other statements and conduct, Commerce's statement here that it would not conduct fact specific substantial transformation analysis merely

clarified the original scope and was consistent with Commerce's other statements and conduct. Final Scope Mem. at 27–28. Therefore, unlike in *Tai-Ao*, Commerce's statement here that it would not foreclose future analysis of wheels produced from mixed-origin components served as adequate notice that wheels produced from mixed-origin components could be included within the scope.

Trans Texas similarly does not support the Asia Wheel and ZC Rubber's argument that Commerce did not provide adequate notice here. *See* 45 CIT __, 519 F. Supp. 3d 1275. In *Trans Texas*, Commerce expressly excluded certain on-the-road steel wheels that are coated entirely in chrome from its preliminary determination and reiterated this position throughout the investigation. *Id.* at __, 1281. However, Commerce ultimately included PVD chrome wheels in its final scope ruling despite chrome coating. *See id.* While the court confirmed that Commerce can "alter the scope of the investigation until the final order," Commerce did not alter the scope to include PVD chrome wheels until publication of the final scope ruling, and thus did not provide adequate notice until then. *Id.* at __, __, 1284; 1288. This is unlike the present case where wheels produced from mixed-origin components can reasonably be considered within the original scope and where Commerce expressly indicated they might be included subject to a substantial transformation analysis during the initial investigation. *See* Final Scope Mem. at 28.

Ultimately, Commerce's initial scope language, Commerce's statements during the investigation the decision to conduct substantial transformation is fact specific, and Commerce's commentary in *Asia Wheel I* provided Asia Wheel and ZC Rubber with adequate notice that their wheels could reasonably be subject to the *Orders*. Because Commerce provided Asia Wheel and ZC Rubber with adequate notice, Commerce's instructions to Customs to continue its prior suspension of liquidation were proper.

CONCLUSION

For the reasons stated above, Commerce's determination is supported by substantial evidence and in accordance with law. The court thus denies Asia Wheel's motion and sustains Commerce's Final Scope Ruling. Judgment will enter accordingly.

SO ORDERED.

Dated: February 21, 2025
New York, New York

/*s*/ *Gary S. Katzmann*
GARY S. KATZMANN, JUDGE

Slip Op. 25–19

NANJING KAYLANG CO., LTD., Plaintiff, v. UNITED STATES, Defendant, and AMERICAN KITCHEN CABINET ALLIANCE, Intervenor-Defendant.

Senior Judge Aquilino
Court No. 24–00045

[Plaintiff's motion for judgment upon agency record denied; action dismissed.]

Dated: February 21, 2025

David J. Craven, Craven Trade Law LLC, Chicago, IL, for the plaintiff.

Ashley Akers, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, Washington, D.C., for the defendant. With her on the brief *Brian M. Boynton*, Principal Deputy Assistant Attorney General, Civil Division, *Patricia M. McCarthy*, Director, and *Tara K. Hogan*, Assistant Director. Of counsel on the brief *Heather Holman*, Attorney, Office of Chief Counsel for Enforcement and Compliance, U.S. Department of Commerce, Washington, D.C.

Luke A. Meisner and *Alessandra A. Palazzolo*, Schagrin Asssociates, Washington, D.C., for the intervenor-defendant.

Opinion

AQUILINO, Senior Judge:

The plaintiff contests the final scope ruling of defendant International Trade Administration ("ITA"), U.S. Department of Commerce, that its products, manufactured in the People's Republic of China ("PRC"), are subject to the 2020 antidumping-duty ("AD") and countervailing-duty ("CVD") orders on Wooden Cabinets and Vanities and Components Thereof therefrom.[1] *See* Memorandum, "Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Kaylang Phragmites Scope" (Dep't Commerce Jan. 12, 2024)[2], Public Record ("P.R.") 30 ("*Scope Ruling*").

The American Kitchen Cabinet Alliance ("AKCA"), intervening in support of that ruling alongside the defendant, opposes plaintiff's interposed USCIT Rule 56.2 motion for judgment on the agency record.[3]

---

[1] *See Wooden Cabinets and Vanities and Components Thereof From the People's Republic of China: Antidumping Duty Order*, 85 Fed.Reg. 22126 (Dep't Commerce April 21, 2020) ("AD Order"); *Wooden Cabinets and Vanities and Components Thereof From the People's Republic of China: Countervailing Duty Order*, 85 Fed.Reg. 22134 (Dep't Commerce April 21, 2020) ("CVD Order") (collectively, "*Orders*").

[2] Not published in the Federal Register.

[3] *See* Pl's Mot. J. on Agency Rec. ("Pl's Br."), ECF No. 21; Def's Resp. to Pl's Mot. J. on Agency Rec. ("Def's Resp."), ECF. No. 23; Int-Def's Resp. to Pl's Mot. J. on Agency Rec. ("Int-Def's Resp."), ECF No. 22. Plaintiff did not file a reply brief.

I

At issue is ITA's interpretation of the 2020 AD and CVD *Orders* that encompass

> [w]ooden cabinets and vanities and wooden components . . . made substantially of wood products, including solid wood and engineered wood products (including those made from wood particles, fibers, or other wooden materials such as plywood, strand board, block board, particle board, or fiberboard), or bamboo.

AD Order, 85 Fed.Reg. at 22132; CVD Order, 85 Fed.Reg. at 22135.

Based on Nanjing Kaylang's Scope Ruling Application, P.R. 1, ITA's *Scope Ruling* describes its products as

> cabinets and vanities made from phragmites, a common reed with various scientific names starting with "Phragmites." This plant is a perennial wetland grass that can grow up to 15 feet high.
>
> Phragmites are cut into specific lengths, dried, ground into particles, mixed with glue, flattened into a sheet and spread to form a surface layer over a core layer. The layers are cold pressed, then hot pressed, sanded, and finished, where melamine paper[4] is applied to the surface using high temperature and high pressure, thus completing the process for phragmite composite board. After the composite board is produced, the cabinet or vanity is produced using traditional furniture production processes.

Scope Ruling at 5 (footnotes omitted).

Nanjing Kaylang argued that its cabinets and vanities produced from phragmites should be classified under HTSUS subheading 1404.90.9090, Vegetable Products, not elsewhere specified or included; other; other. *See id*. at 7. ITA ultimately determined that the cabinets manufactured in the PRC from phragmite composite boards are covered by the scope of the *Orders*. *Id*. at 10.

Explaining its rationale, ITA acknowledged that the scope's language includes cabinets and vanities produced from "engineered wood products (including those made from wood particles, fibers, or other wooden materials such as plywood, strand board, block board, particle board, or fiberboard), or bamboo", *id*. at 2, but reasoned that the language does not clearly state "whether engineered wood prod-

[4] Melamine is a plastic. *See* P.R. 1 at 3.

ucts would include cabinets and vanities made from fibers and particles other than wood". To ITA's thinking, "engineered wood" is ambiguous, thus necessitating resort to considering secondary sources pursuant to 19 C.F.R. 351.225(k)(1)(ii). *Id*. at 9. The secondary interpretative sources ITA then considered, such as Customs and Border Protection ("CBP") rulings and explanatory notes on classifications from the World Customs Organization ("WCO") and the International Trade Commission ("ITC"), persuaded it that plaintiff's "phragmite composite" boards are a type of "engineered wood." *See id*.

ITA also examined plaintiff's manufacturing process for phragmite composite board and found that it "is very similar to the production process for manufacturing particle board." *Id*. at 9.

This appeal ensued.

II

Jurisdiction herein is pursuant to 28 U.S.C. §1581(c). This action concerns "[a] determination by [ITA] as to whether a particular type of merchandise is within the class or kind of merchandise described in an . . . antidumping or countervailing duty order." 19 U.S.C. §1516a(a)(2)(B)(vi). In such a matter, the standard of judicial review is whether the final determination is "unsupported by substantial evidence on the record, or otherwise not in accordance with law." *Id*. §1516a(b)(1)(B)(i). And in that review, ITA's *Scope Ruling* is presumed to be correct, with the burden on the plaintiff to prove otherwise. 28 U.S.C. §2639(a)(1).

III

To clarify whether a particular product is within the scope of an unfair trade order, ITA will issue a scope ruling. *See* 19 C.F.R. §351.225(a). Its inquiry begins with the relevant scope language to determine whether it is plain or ambiguous. *See OMG, Inc. v. United States*, 972 F.3d 1358, 1363 (Fed.Cir. 2020). If it is unambiguous, the plain meaning obviously controls the outcome. *Id*. When it is ambiguous, since no specific statute aresses the interpretation of an order's scope, ITA is guided by case law and agency regulations. *See Meridian Prods., LLC v. United States*, 851 F.3d 1375, 1382 (Fed.Cir. 2017); 19 C.F.R. §351.225. These sources aid ITA's inquiry:

> (A) The descriptions of the merchandise contained in the petition pertaining to the order at issue;
>
> (B) The descriptions of the merchandise contained in the initial investigation pertaining to the order at issue;

> (C) Previous or concurrent determinations of the Secretary, including prior scope rulings, memoranda, or clarifications pertaining to both the order at issue, as well as other orders with same or similar language as that of the order at issue; and
>
> (D) Determinations of the Commission pertaining to the order at issue, including reports issued pursuant to the Commission's initial investigation.

19 C.F.R. § 351.255(k)(1)(i).

ITA may also consider secondary interpretive sources, including: any other of its determinations or by the ITC; rulings or determinations by CBP; industry usage; dictionaries; and any other relevant record evidence. *Id*. § 351.255(k)(1)(ii). If there is a conflict between such secondary interpretive sources and the primary interpretive sources of this section, the primary interpretive sources will normally govern in determining whether a product is covered by the scope of the order at issue. *Id*.

Finally, if the (k)(1) sources do not dispositively answer the question, ITA may consider the (k)(2) factors[5] :

> (i) The physical characteristics of the product;
>
> (ii) The expectations of the ultimate purchasers;
>
> (iii) The ultimate use of the product;
>
> (iv) The channels of trade in which the product is sold; and
>
> (v) The manner in which the product is advertised and displayed.

19 C.F.R. §351.225(k)(2). *Id*.

In this process, ITA cannot interpret the scope so as to change its intended meaning, nor can it interpret the language in a manner contrary to the unfair trade order's terms overall. *See King Supply Co. LLC v. United States*, 674 F.3d 1343, 1348 (Fed.Cir. 2012); *Eckstrom Indus., Inc. v. United States*, 254 F.3d 1068, 1072 (Fed.Cir. 2001). In other words, when a party challenges a scope determination, in ruling on whether ITA's decision is unsupported by substantial evidence or not in accordance with law, the Court must determine whether the scope of the order "contain[s] language that specifically

[5] *See Diversified Products Corp. v. United States*, 6 CIT 155, 162, 572 F.Supp. 883, 889 (1983).

includes the subject merchandise or may be reasonably interpreted to include it." *Duferco Steel, Inc. v. United States*, 296 F.3d 1087, 1089 (Fed.Cir. 2002).

IV

The scope of the *Orders* encompasses

> wooden cabinets and vanities that are for permanent installation (including floor mounted, wall mounted, ceiling hung or by attachment of plumbing), and wooden components thereof. Wooden cabinets and vanities and wooden components are made substantially of wood products, including solid wood and engineered wood products (including those made from wood particles, fibers, or other wooden materials such as plywood, strand board, block board, particle board, or fiberboard), or bamboo....

Scope Ruling at 2.

Given such language, the plaintiff argues that the scope of the *Orders* is limited to articles of wood. It submits that the cabinets in question were made out of phragmites, which ITA specifically and clearly found were "not wood". Plaintiff's position, thus, is that

> [t]he first sentence of the scope expressly references "wooden" as the characterization of the term cabinet and also the "wooden" components. The second sentence again refers to wooden cabinets made substantially of wood products and engineered wood products including solid wood and engineered wood products. The scope then further characterizes the engineered wood products as those made from wood particles, fibers, or other wooden materials such as plywood, strand board, block board, particle board, or fiberboard[ ]. The scope then also names bamboo, and only bamboo[,] as an alternate material[ ]. In other words, every sentence of the scope expressly references wood or is characterized by the word wood or is another expressed material. There is no rational or reasonable interpretation that the scope includes materials not made of wood.

Pl's 56.2 Br. at 8.

Therefore, according to the plaintiff, the sole question here is whether "non-wood" products are within or without the scope of the *Orders*. Given ITA's finding that phragmite is *not wood*, plaintiff especially maintains that ITA improperly expanded the term "composite board" in the scope of the *Orders* to include composite board not made of "wood". *Id*. at 2.

The plaintiff is correct as to ITA's observation that phragmite is "not wood" for purposes of the *Scope Ruling*. However, ITA's focus was not on phragmite, *per se*, but on what it could be processed into:

> As demonstrated above, even though phragmite is not wood, it undergoes a manufacturing process that is very similar to the process used to make particle boards, resulting in the production of phragmite particle board, a ligneous board of a woody nature.

Scope Ruling at 10. Although redundant, "ligneous" succinctly captures ITA's rationale, since it means "[o]f the nature of wood; woody: said *esp*. of plants and their texture (opposed to *herbaceous*)." *Ligneous*, *The Oxford English Dictionary* (2d ed. 1989) ("*OED*"), Vol. VIII at 941. The intervenor-defendant also explains that

> the scope not only covers cabinets made of "solid wood" but also cabinets made from "engineered wood." Kaylang's cabinets are made substantially of phragmite composite boards that are a type of engineered wood product. Thus, they are covered by the scope of the Orders.

Int-Def's Resp. at 7.

This court can agree with ITA that "engineered wood products" is ambiguous. *See Scope Ruling* at 9. A hyphen would have helped clarify whether the scope encompasses "engineered-wood products" or "engineered wood-products". To the extent that the concept of engineering encompasses not only invention or problem-solving but practical application in creation or refinement,[6] for the purpose of the *Orders*' scope, "engineered wood products" must at least amount to an artfully contrived (*i.e*., invented) type of "wood", for that is the term employed. In its natural state, technically speaking, "wood" is "[t]he hard compact fibrous substance lying between the bark outside and the pith within" (*OED*, Vol. XX at 502), or "the hard fibrous substance that makes up the greater part of the stems and branches of trees or shrubs beneath the bark, is found to a limited extent in herbaceous plants, and consists technically of the aggregated xylem elements

[6] "Engineering", of course, is "the science by which the properties of matter and the sources of energy in nature are made useful to man", Webster's Third New International Dictionary Unabridged 752 (1981) ("Webster's"), and so to "engineer" in the transitive sense means "to use specialized knowledge or skills to develop (a complicated system or process) so as to fulfil specified criteria or perform particular functions; *esp*. to design and construct (a large-scale machine, structure, etc.), typically for public or industrial use." *Engineer*, oed.com, https://www.oed.com/search/dictionary/?scope=Entries&q=Engineer (last visited this date); *cf*. *OED*, Vol. V at 252.

intersected in many plants with the rays", Webster's at 2630. That hard fibrous substance – cellulose fiber – is the basic building-block shared by all *Plantae* – one of the "five kingdoms" of living organisms. *E.g.*, Bo Madsen and Kristofer Gamstedt, *Wood versus Plant Fibers: Similarities and Differences in Composite Applications*, 1 Advances in Materials Science and Engineering (May 14, 2013) at 2, available at https://onlinelibrary.wiley.com/doi/10.1155/2013/564346 (last visited this date).

There are gradations thereof, as the plaintiff would argue (*e.g.*, the notable distinctions between wood and plant fibers would include higher hemicellulose and lignin content and lower cellulose crystallinity in wood fibers versus plant fibers). *See id*. That is certainly true of unprocessed fiber in its natural state. However, the focus of this action is processed fiber and the scope language of "engineered wood products". And the subject merchandise includes cabinets and vanities made from "engineered wood products," including those made from "particles" and "fibers," including specifically "particleboard" and "fiberboard.". *See*, *e.g.*, AD Order, 85 Fed.Reg. at 22132. If *ejusdem generis* were appropriate at this point, that doctrine would limit such "fibers" only to wood fibers. But, the term employed in the scope language is just that: "fibers" -- set apart from the other terms by commas as part of a series. The term appears unmodified and unqualified, and this court will not read into it any further qualification, when it would have been a simple matter for the domestic industry to clearly state "wood fibers" if such fibers had been their scope intent. *Cf*. Douglas D. Stokke, Qinglin Wu, and Guangping Han, *Introduction to Wood and Natural Fiber Composites* (Christian V. Stevens ed., John D. Wiley & Sons, Ltd. 2014) at 2 ("[w]hile it may in some respects resemble the wood of trees, it is generally agreed that monocots such as coconut palm stems do not contain wood *per se*, but are said to be composed of 'woody material'").

"Engineered wood products", incorporating wood particles, fibers, or other wooden materials, as well as particle board and fiberboard products, are accurately described in the *Scope Ruling* by its referential use of "ligneous," which in turn illuminates a broader intended meaning of "wood" as employed in the scope of the *Orders* : the *Scope Ruling* describes phragmite particle board as "a ligneous board of a *woody* nature" (highlighting added). Further, the scope of the *Orders* broadly covers "*[w]ooden* cabinets and vanities and *wooden* components" (highlighting added). In addition to the obvious sense of "wooden," that word also means "*resembling* wood in stiffness and lack of resilience". *Wooden*, Webster's at 2631 (highlighting added).

ITA's *Scope Ruling* appears to have interpreted the *Orders* as conveying both meanings, which is not an unreasonable interpretation.

Furthermore, as AKCA points out, the type of "particle board" that the plaintiff contends is outside the scope of the *Orders* was not unknown in the industry at the time the scope language was drafted. *See* Int-Def's Resp. at 3. Describing particle board to ITA as manufactured by pressing and extruding materials, such as wood chips, sawmill shavings or sawdust, straw particles, or reed shavings, combined with a synthetic resin or other suitable binder, AKCA explained that

> particle board . . . may be made with reed fibers and shavings. One patent for "reed particle board" describes the manufacturing process as: (1) cutting the reed to a certain size; (2) cutting the resulting material using a reed cutting machine, where one part of the cut material is cooked and softened to obtain the reed fibers, and the other part of the material is crushed again to obtain fine reed shavings; (3) combining resin with the reed fibers and the shavings to form three-layer or multilayer structural boards; and (4) pre-pressing the boards in a continuous flat-pressing hot press to produce the reed fiber particle board. *Id*. at Exhibit 3. Similarly, medium-density fiberboard ("MDF") is another type of engineered wood that is manufactured by breaking down plant materials into fibers, often in a defibrator, combining the fibers with wax and a resin binder, and forming panels by applying high temperature and pressure. *Id*. at Exhibit 4. Like particle board, MDF can be produced from plants in the *Poaceae* family of grasses, including bamboo, bagasse, and phragmite reeds. *Id*. at 7–8, Exhibits 5–9. In one study published in 2004, "MDF was produced from Reed (P*hragmites australis*)" and the resulting physical and mechanical properties of the MDF were determined according to the relevant industry standards. *Id*. at Exhibit 8. In a later study published in 2010, the detailed characteristics of reed were analyzed, and the effects of density and adhesive content on the physical and mechanical properties of reed-based MDF were investigated. *Id*. at Exhibit 9.

AKCA Response to Scope Request (April 27, 2023), P.R. 7, at 6–7 (summarizing Patent CN104227819A (China): Preparation method for reed fiber particle board (2014), attached to AKCA Response to Scope Request as Exhibit 3). Presented with such information, in ruling on Kaylang's scope application ITA further observed that phragmites are indeed a member of a family of grasses consistently

found to be "wood articles" and "of a woody nature", and that multiple agencies including the ITC and CBP "have classified articles made of ligneous materials as wood articles, and furniture made of bamboo, which is classified as belonging to the same family of grasses as phragmites, classified as wood." *Scope Ruling* at 9–10. ITA's conclusion therefrom that the scope language covered plaintiff's processed phragmite products was and is not unreasonable.

It is, furthermore, not coincidence that "board" naturally or typically connotes to the mind the association of a product that is of wood or wooden, *see*, *e.g.*, *board*, Webster's at 243 ("piece of sawed lumber . . . 5 a : a flat usu. rectangular piece of material (as wood) . . . 6 a : any of various wood pulps or composite materials formed or pressed into somewhat stiff or rigid flat usu. rectangular sheets; *specif* : material of the same general composition as paper but stiffer and usu. thicker, being in one classification 12/1000 inch thick . . ."), and plaintiff's natural references to its product among its papers consider it a type of board. *See*, *e.g.*, Pl's 56.2 Br. at 2 ("[t]he cabinets in question were made of composite board made out of Phragmites"; "cabinets made from fiber board made from Phragmites").

V

In the light of the foregoing, this court cannot conclude ITA's *Scope Ruling* unsupported by substantial evidence on the record or otherwise not in accordance with law. Ergo, plaintiff's motion for judgment on the agency record must be denied, with judgment entered accordingly.

Dated: February 21, 2025
New York, New York

/s Thomas J. Aquilino, Jr.
SENIOR JUDGE

Slip Op. 25–20

PRECISION COMPONENTS, INC., Plaintiff, v. UNITED STATES, Defendant,

Before: Joseph A. Laroski, Jr., Judge
Court No. 23–00218

[Denying Plaintiff's Motion for Judgment on the Agency Record and sustaining the U.S. Department of Commerce's determination interpreting the scope of the antidumping duty order on tapered roller bearings from China.]

Dated: February 25, 2025

David J. Craven, Craven Trade Law LLC, of Chicago, IL, argued for plaintiff Precision Components, Inc.

Geoffrey M. Long, Senior Trial Counsel, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, DC, argued for defendant United States. With him on the brief were *Brian M. Boynton*, Principal Deputy Attorney General, *Patricia M. McCarthy*, Director, *L. Misha Preheim*, Assistant Director. Of counsel was *Jesus N. Saenz*, Attorney, Office of the Chief Counsel for Trade Enforcement & Compliance, U.S. Department of Commerce.

OPINION

Laroski, Judge:

This action is a challenge to the final scope ruling of the U.S. Department of Commerce ("Commerce") regarding certain low-carbon steel blanks (the "merchandise") imported from the People's Republic of China ("China") by Precision Components, Inc. ("Precision"). Commerce's final scope ruling found that the merchandise is covered by the antidumping duty order on tapered roller bearings, including finished and unfinished parts thereof, from China. *Final Scope Ruling on Precision Components, Inc.'s Low-Carbon Steel Blanks*, P.R. 22 (Sept. 19, 2023) ("*2023 Scope Ruling*"); *see also Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China*, 52 Fed. Reg. 22,667 (June 15, 1987), *as amended*, *Tapered Roller Bearings from the People's Republic of China; Amendment to Final Determination of Sales at Less than Fair Value and Antidumping Duty Order in Accordance with Decision Upon Remand*, 55 Fed. Reg. 6,669 (Feb. 26, 1990) (the "Order"). Commerce concluded that the merchandise falls within the scope of the Order based on its consideration of interpretive sources specified by 19 C.F.R. 351.225(k)(1), including a 2020 scope ruling regarding steel blanks imported by Precision. *Final Scope Ruling on Precision Components, Inc.'s Green Machined but Not Heat-Treated Components*, P.R. 10 ("*2020 Scope Ruling*"). Precision brought this action against the United States (the "Government") to challenge Commerce's final scope ruling. Based on Com-

merce's alleged failure to reach a decision regarding the merchandise that is supported by substantial evidence and otherwise in accordance with law, Precision moves for judgment on the agency record and asks the court to remand proceedings to Commerce. The Government opposes Precision's motion and asks the court to sustain Commerce's final scope ruling. For the reasons detailed below, the court agrees with the Government. Plaintiff's Motion for Judgment on the Agency Record is denied, and Commerce's determination is sustained.

BACKGROUND

I. The Order

On June 15, 1987, Commerce issued the Order. *See Antidumping Duty Order; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China*, 52 Fed. Reg. 22,667 (June 15, 1987); *2023 Scope Ruling*; *2020 Scope Ruling* at 1. In the Order and later scope inquiries involving products imported by Precision, Commerce has described the scope, in part, as "tapered roller bearings and parts thereof, finished and unfinished, from China." *2023 Scope Ruling* at 6; *2020 Scope Ruling* at 2.

II. Scope Inquiry Proceedings

A. 2020 Scope Ruling: Green-Machined but Not Heat-Treated

In 2020, Precision requested that Commerce issue a scope ruling on cups, cones, and rollers that are silver metallic in color and green-machined, but not heat-treated, at the time of importation into the United States (the "2020 merchandise"). *See Scope Ruling Application*, P.R. 10 at 1 (Feb. 6, 2020) ("*2020 Application*"); *2020 Scope Ruling* at 1–2. After considering comments from interested parties, Commerce performed an extensive analysis of the interpretive sources specified by section 351.225(k)(1) and the factors specified by subsection (k)(2). *2020 Scope Ruling* at 3–12. Commerce concluded that the 2020 merchandise was within the scope of the Order. *Id.* at 11.

In reaching its conclusion, Commerce first reasoned there was sufficient ambiguity between the plain language of the Order, a related final determination of the International Trade Commission ("ITC"), and related scope rulings to require consideration of the factors set forth in section 351.225(k)(2). *Id.* at 7–11. Noting its obligations under that provision, Commerce then evaluated (a) the physical characteristics of the 2020 merchandise, (b) its ultimate uses, (c) the

expectations of the ultimate purchasers, (d) the channels of trade, and (e) the manner of advertising and display, concluding that each of these factors supported a finding that the products were within the scope. *Id.* at 8–11.

Concerning physical characteristics, Commerce noted that, notwithstanding Precision's characterization of heat treatment as a transformative process, the 2020 merchandise already had the physical characteristics of unfinished tapered roller bearings ("TRBs") or parts thereof. *Id.* at 8. In Commerce's words, even prior to heat treatment, the 2020 merchandise was "very close to [its] final form." *Id.*

With respect to the remaining factors, Commerce observed that Precision had failed to articulate any scenario in which the 2020 merchandise would be imported and subsequently processed for an end-use other than the manufacture of TRBs. *Id.* at 8–10. Consequently, Commerce concluded none of the factors suggested the 2020 merchandise was anything other than an "unfinished TRB[]." *Id.* at 11.

Finally, Commerce bolstered its conclusion by highlighting two scope inquiries concerning unfinished bearing parts subject to the antidumping order on TRBs from Japan, which had been initiated based on the same petitions that gave rise to the Order. *Id.* at 10 (referring to *Memorandum, "TRBs from Japan - American NTN Bearing Manufacturing corporation (ANBM) Scope Request on Green Turned Rings," (Green Rings Memorandum) (May 16, 1989) and Memorandum, "Final Affirmative Determination in Scope Inquiry on Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof from Japan," (Rough Forgings Memorandum) (Jan. 26, 1995)*). The products at issue in these prior scope rulings, in Commerce's view, were analogous to the 2020 merchandise because they were "destined to become fully finished TRBs" and "sold through the same channels of trade [with] the same end-use expectations." *Id.*

Commerce issued its final scope ruling on June 12, 2020. *Id.* at 1. Precision did not challenge the ruling.

B. 2023 Scope Ruling: Low-Carbon Steel Blanks

In 2023, Precision requested another scope inquiry under the Order, this time identifying the products in question as "low-carbon steel blanks" (the "2023 merchandise"). *Scope Ruling Application*, P.R. 8 at 4 (Apr. 24, 2023) ("*2023 Application*"). As Precision explained, the 2023 merchandise is made from "nonstandard steel" and "sold to US manufacturers who add substantial value to the blanks by significant further processing," a post-importation process that re-

sults in "finished tapered roller bearings." *Id.* Throughout the 2023 Application, Precision underscored in considerable detail how the 2023 merchandise is not bearing-grade steel. *E.g. id.* at 5–6. Precision maintained that the non-bearing-grade nature of the 2023 merchandise compelled the conclusion, based on the plain language of the Order and section 351.225(k)(1) sources, that it is outside the scope of the Order. *Id.* at 14–15. Yet in summarizing the importation history of the merchandise, Precision referred to a "2020 Scope ruling putting these parts inside the scope," suggesting to Commerce that Precision believed the merchandise described in the 2023 Application is covered by the 2020 Scope Ruling and the Order. *Id.* at 21. In its rebuttal comments addressing input from the petitioner, Precision also wrote that "[i]t was the same material in the same parts for both the 2020 and 2023 scope requests . . . ." *Tapered Roller Bearings from China: Rebuttal Comments on Timken's Comments on Scope Inquiry Low Carbon Blanks*, P.R. 19 at 8 (July 10, 2023) ("*2023 Rebuttal Comments*"). Notwithstanding the apparent duplicative nature of Precision's reframed request, Commerce initiated a new scope inquiry on May 25, 2023. *See Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Deemed Initiation of Scope Inquiry*, P.R. 10 (May 25, 2023); *2023 Scope Ruling*.

In its 2023 Scope Ruling, Commerce first reviewed the plain language of the Order: "tapered roller bearings and parts thereof, finished and unfinished, from China." *2023 Scope Ruling* at 6. Commerce acknowledged that this language does not address "parts made of low-carbon steel or bearing steel," but concluded that the 2023 merchandise is best characterized as "unfinished TRB parts." *Id.* Commerce appeared to reach this conclusion based on Precision's statements in the 2023 Application about how the blanks are "destined to become finished TRBs" and "sold to US bearing manufacturers." *Id.* At this stage of its analysis, Commerce also observed that the plain language of the Order does not refer to "steel grade or composition," the criterion most emphasized by Precision, and determined that arguments on this point were "moot." *Id.* at 6, n.40. Similarly, Commerce emphasized in its plain language analysis that Precision had not articulated "an alternative commercial use" for the merchandise, or anything suggesting it is not an unfinished TRB part. *Id.* at 6. *Cf. 2020 Scope Ruling* at 8–10.

Commerce then proceeded with its analysis of section 351.225(k)(1) sources. *2023 Scope Ruling* at 6. Here, Commerce determined the 2020 Scope Ruling was a prior scope ruling in the proceeding and that

the 2023 merchandise equivalent to the 2020 merchandise. *Id.* In so concluding, Commerce agreed with the petitioner's comment, which observed that Precision had provided identical photos of the product in the 2020 Application and in the 2023 Application, suggesting the 2020 merchandise and the 2023 merchandise are indistinguishable. *Id.* at 3. *Compare 2023 Application*, P.R. 8, Ex. 2, *with 2020 Application*, P.R. 10 at 3.

Commerce concluded the 2023 Scope Ruling by finding that "the products subject to this inquiry are the same as the products subject to the 2020 Final Scope Ruling, and that the 2020 Final Scope Ruling is dispositive of whether [Precision's] low-carbon steel blanks are covered by the scope of the Order." *2023 Scope Ruling* at 6–7. On November 9, 2023, Precision filed this action.

JURISDICTION AND STANDARD OF REVIEW

The court has jurisdiction pursuant to 28 U.S.C. § 1581(c) (2020) and 19 U.S.C. § 1516a(a)(2)(B)(vi) (2020). Section 1581(c) provides for exclusive jurisdiction over any civil action commenced under section 1516a. 28 U.S.C. § 1581(c). Section 1516a(a)(2)(B)(vi), provides for judicial review of a determination of "whether a particular type of merchandise is within the class or kind of merchandise described in an . . . antidumping or countervailing duty order." 19 U.S.C. § 1516a(a)(2)(B)(vi). In conducting its review, the court must set aside any determination, finding, or conclusion found "to be unsupported by substantial evidence on the record, or otherwise not in accordance with law." *Id.* § 1516a(b)(1)(B)(i).

DISCUSSION

I. The Parties' Contentions

A. Precision's Arguments

In support of its motion for judgment on the agency record, Precision contends that Commerce erred when it found that the merchandise is within the scope of the Order and, in doing so, expanded the scope of the Order impermissibly. Pl. Precision Br. in Supp. of Mot. for J. on Agency R., ECF No. 17.1 (Apr. 3, 2024) ("Precision Br.") at 1.

Precision offers four reasons why Commerce's conclusion concerning the 2023 merchandise was unlawful. *Id.* at 12–16. According to Precision, each of these points suggests that, under the plain language of the Order, the merchandise is a raw material "from which parts (Rings) are produced," rather than a finished or unfinished TRB part. *Id.* at 12. Precision's arguments proceed as follows:

First, Precision cites Harmonized Tariff Schedule ("HTS") subheadings it believes suggest the merchandise is not a part. As Precision notes, these subheadings do not expressly use the term part, and instead refer to the relevant merchandise as "[s]uitable for use in the manufacture of ball or roller bearings." *Id.* Precision further observes that a different HTS subheading refers to parts of bearings. *Id.* The content of these subheadings, according to Precision, "is strong evidence of the non-scope" nature of the merchandise. *Id.*

Second, Precision states that historical U.S. Customs and Border Protection ("CBP") classification of its merchandise supports its view of the plain language of the Order. *Id.* at 12–13. Precision refers to numerous "intensive reviews" by CBP that resulted in the conclusion that Precision's merchandise was outside the scope of the Order. *Id.* at 13. Yet on this point, Precision also writes: "[i]n 2020 these products were provisionally moved into the order, but such decision was based on an inadequate analysis and the fact that these blanks were made of materials that do not meet the definitions of bearing steel was not considered." *Id.* (citing *2020 Application* and *2020 Scope Ruling*). This argument appears to acknowledge explicitly that its 2020 Application and its 2023 Application concerned the same merchandise, suggestion this litigation is merely an attempt at a do-over.[1]

Third, Precision elaborates on the key consideration it believes rendered Commerce's analysis in 2020 "inadequate," i.e., the non-bearing-steel nature of the 2023 merchandise. *Id.* at 13. Precision explains that the 2023 merchandise is not made of bearing grade steel, but rather low-carbon alloy steel, which "has different mechanical properties." *Id.* at 13–14. "If a part does not have the appropriate mechanical properties, even if it 'looks' like a bearing part to the naked eye, it does not function as a bearing." *Id.* at 14. In addition, Precision highlights how low carbon alloy steel "cannot be readily heat-treated," referring to the processing step that was the focus of the 2020 Application and the 2020 Scope Ruling. *Id.* Precision summarizes this point by clarifying that low carbon blanks "cannot be heat-treated in their condition as imported" and "heat-treatment is required prior to their final conversion to a bearing part." *Id.* at 15. As with its prior points, Precision neither addresses how this information relates specifically to a plain language analysis of the written scope description nor attempts to locate its argument within the framework of the analysis Commerce must perform under section 351.225(k). *Id.*

[1] As addressed, and acknowledged by Precision's counsel during oral argument, there are several statements from Precision in the administrative record, not just its briefing, that confirm the merchandise from 2020 and 2023 are the same. *See id.*; *2023 Application* at 13, 21; *2023 Rebuttal Comments* at 8.

Fourth and finally, Precision underscores the "significant processing" the 2023 merchandise must undergo "in order to be converted into a bearing part." *Id.* Precision also notes that such processing "adds substantial value" to the merchandise and "alters the chemistry of the steel." *Id.* Here, too, Precision does not attempt to root its argument in the written scope description or in the framework of analysis specified by section 351.225(k). *Id.* at 15–16. Indeed, despite its emphasis of steel grade and the need for additional processing, Precision acknowledges that after such processing, the merchandise becomes a "bearing part." *Id.* at 16. Precision concludes by asking the court to "find that the steel blanks are materials used in the production of bearings, but are not parts of bearings." *Id.* Beyond discussing the "significant processing" required to fashion the merchandise into a TRB part, Precision does not explain why this is different from *finishing* an unfinished TRB part or at what later point in the manufacturing process the merchandise would be considered an unfinished TRB part.

B. The Government's Arguments

The Government correctly frames this dispute as turning on whether the 2023 Scope Ruling, in which Commerce found that the merchandise was within the scope of the Order, is supported by substantial evidence and otherwise in accordance with law. Def. United States Br. in Supp. of Resp. to Pl. Mot. for J. on Agency R., ECF No. 21 (July 12, 2024) ("Gov. Br.") at 5. The Government's position is that Commerce was reasonable in concluding that the merchandise is within the scope of the Order based on consideration of the plain language of the Order and interpretive sources under section 351.225(k)(1). *Id.* at 12. Regarding the plain language analysis undertaken by Commerce, the Government highlights how Commerce concluded that "unfinished TRB parts are explicitly covered" by the written description of the scope and the merchandise is "destined to become" a finished TRB. *Id.* at 14 (citing *2023 Scope Ruling* at 6.

The Government then addresses Commerce's consideration of the 2020 Scope Ruling as a primary interpretive source under section 351.225(k)(1) — specifically, as a prior scope ruling in the proceeding. *Id.* at 11–12, 14–15. The Government contends Commerce was reasonable in reviewing the 2020 Scope Ruling as a (k)(1) source because it relied on an "admission" in the 2023 Application, photographs in the 2020 Application and the 2023 Application, and Precision's failure to assert that the merchandise is not covered by the 2020 Scope

Ruling. *Id.* at 15; *see 2020 Application* at 45, *2023 Application* at 23, 28; *see also* Precision Br. at 13.

For similar reasons, the Government argues that Precision's challenge of the 2023 Scope Ruling is in fact "an impermissible collateral attack" on the 2020 Scope Ruling. Gov. Br. at 16. The Government refers to the statements from Precision that suggest Precision itself views the merchandise from 2020 and 2023 as one in the same and, separately, to the portion of Precision's briefing that appears to focus on alleged deficiencies in the 2020 Scope Ruling, rather than the decision from Commerce that is the focus of this litigation. *Id.* (citing Precision Br. at 13). In addition, the Government observes that Precision "identifies no subsequent Commerce ruling or court decision that calls the 2020 Scope Ruling into question." *Id.* According to the Government, Precision "provides no basis" for challenging either the 2020 Scope Ruling itself or its decisive interpretive role as a section 225.351(k)(1) source in Commerce's issuance of the 2023 Scope Ruling. *Id.*

The Government also responds to Precision's contentions. Regarding Precision's first point, the Government argues that the written description of the scope of the Order is dispositive and, consequently, HTS subheadings cannot be read to contradict the Order's plain language. *Id.* at 17 (citing *Saha Thai Steel Pipe Pub. Co. Ltd. v. United States*, 101 F.4th 1310, 1328 (Fed. Cir. 2024). As the Government summarizes, the language of certain HTS provisions that Precision prefers "cannot supersede the written description" in the Order. *Id.* at 17–18.

On Precision's second point, the Government's position is that the CBP documents cited by Precision are secondary interpretive sources under section 351.225(k)(1)(ii), sources which Commerce did not need to afford weight due to the interpretive clarity provided by its (k)(1)(i) review of the 2020 Scope Ruling. *Id.* at 18. The Government notes that, insofar as Precision intended to suggest Commerce should have privileged CBP's view under subsection (k)(1)(ii), that provision expressly provides that (k)(1)(i) sources control "in the event of a conflict." *Id.*; *see* § 351.225(k)(1). Thus, the Government posits, CBP's view is inapposite.

In response to the third and fourth points raised by Precision, the Government suggests that steel grade and additional processing are irrelevant considerations based on the plain language of the Order, which makes no reference to material composition or processing steps. Gov. Br. at 18–20. The Government also highlights Commerce's discussion of how, in 2020, it had concluded that the green-machining and heat-treatment processing steps did not prevent the 2020 mer-

chandise from falling within the scope of the Order. *Id.* at 19. In the same vein, the Government notes that Precision's focus on steel grade and value added from processing appear to be arguments aimed at undermining the analysis in the 2020 Scope Ruling, rather than the 2023 Scope Ruling. *Id.* The Government bolsters this observation by highlighting sources cited by Precision — namely, publications from the International Trade Commission ("ITC") — that Commerce had acknowledged in the 2020 Scope Ruling. *Id.* at 19–20; *see 2020 Scope Ruling* at 11. Finally, like its response regarding the reference to CBP's historical treatment of Precision's products under the Order, the Government objects to Precision's discussion of "significant processing" as an attempt to shoehorn an analysis of the factors specified by section 351.225(k)(2) into a review that Commerce reasonably limited to consideration of (k)(1) sources.[2] *Id.* at 20–21.

Thus, according to the Government, Commerce correctly relied upon the plain language of the Order and a dispositive (k)(1) source — the 2020 Scope Ruling — to find the merchandise within the scope. Precision's attempts to undermine that determination, in turn, reflect a combination of untimely attacks on the 2020 Scope Ruling, rather than the 2023 Scope Ruling, and references to information that Commerce was not required to include in its analysis. *Id.* at 17–21.

A few points raised in Precision's reply brief merit mention. First, Precision acknowledges that the scope of the Order does "not differentiate between bearing and non-bearing steel." Pl. Precision Reply Br. in Supp. of Mot. for J. on Agency R., ECF No. 24 (Aug. 30, 2024) ("Precision Reply Br.") at 2. Second, Precision reiterates its arguments regarding the importance of steel grade and the significant processing required to fashion the merchandise into a finished TRB part. *Id.* at 5–6. In doing so, however, Precision again declines to offer any actual or potential examples of non-TRB end-uses for the merchandise. Instead, it reiterates its own characterization of the merchandise as a "raw material," a term that does not appear in plain language of the scope of the Order. *Id.* at 6. Precision uses the term "raw material" without reference to a definition or citation that might clarify its relationship to the scope description set forth in the Order. *Id.*

---

[2] Given Commerce's reliance upon the 2020 Scope Ruling in reaching its determination in the 2023 Scope Ruling, it is worth noting that in the 2020 Scope Ruling, Commerce performed an extensive analysis under section 351.225(k)(2) in which it considered additional information, such as the additional processing of the part in the United States by bearing manufacturers, and concluded that the 2020 merchandise was within the scope of the Order. *2020 Scope Ruling* at 7–11.

Precision's reply brief also addresses the Government's contention that the 2023 Application and this litigation represent an untimely effort to challenge the 2020 Scope Ruling rather than a novel scope ruling request for distinct merchandise. *Id.* at 4–5. After rejecting this view (and without addressing the Government's citations to Precision's own statements linking the 2020 Scope Ruling and the merchandise), Precision suggests "there is ***nothing more than conjecture*** that the two sets of products covered are identical." *Id.* at 5 (emphasis added).

II. Legal Standard

When questions arise as to whether merchandise is covered by the scope of an antidumping order, Commerce will conduct a scope inquiry and issue a scope ruling. 19 C.F.R. § 351.225(a) (2024). Commerce has broad authority in interpreting its own antidumping orders. *Tak Fat Trading Co. v. United States,* 396 F.3d 1378, 1382 (Fed. Cir. 2005). In determining whether a product falls within the scope of such an order, Commerce considers "the language of the scope and may make its determination on this basis alone if the language of the scope, including descriptions of merchandise expressly excluded from the scope, is dispositive." § 351.225(k)(1). "If the scope is unambiguous, it governs." *Meridian Prods., LLC v. United States*, 851 F.3d 1375, 1381 (Fed. Cir. 2017).

"In reviewing the plain language of a duty order," Commerce must consider the (k)(1) sources. § 351.225(k); *see Meridian*, 851 F.3d at 1382. The (k)(1) sources include the description of the merchandise considered by Commerce and the Commission when crafting the scope, as well as previous determinations made by Commerce and the Commission. § 351.225(k)(1)(i); *see Meridian*, 851 F.3d at 1382.

If Commerce "determines that the sources under paragraph (k)(1) of this section are not dispositive," Commerce will then consider the (k)(2) factors. § 351.225(k)(2)(i); *see, e.g.*, *2020 Scope Ruling*. Thus, the (k)(1) sources assist Commerce in interpreting the scope language, while the (k)(2) factors assist Commerce in determining if the language describes the product at issue. All of Commerce's analysis, however, must be done in such a way that the scope is not changed, and that the order is not interpreted in a manner contrary to its terms. *E.g. Eckstrom Indus., Inc. v. United States*, 254 F.3d 1068, 1072 (Fed. Cir. 2001).

The plain meaning of an antidumping order is a question of law, while the question of whether certain merchandise falls within the scope of such an order is a question of fact reviewed for substantial evidence. *See Worldwide Door Components, Inc. v. United States*, 119

F.4th 959, 968 (Fed. Cir. 2024) (citing *Meridian*, 851 F.3d at 1382). Substantial evidence is any relevant evidence that one might reasonably accept as adequate to support a conclusion. *See Worldwide Door Components*, 119 F.4th at 968. In the context of a scope ruling issued by Commerce, substantial evidence review is limited to the administrative record in the proceeding before Commerce, including any relevant evidence therein. *See id.* Commerce's conclusion may be supported by substantial evidence even if it is possible to draw two inconsistent conclusions from the record evidence. *See id.*

III. Analysis

As discussed above, this dispute boils down to whether Commerce's determination in the 2023 Scope Ruling is supported by substantial evidence and otherwise in accordance with law. Thus, the court considers whether Commerce reasonably concluded that the merchandise, described by Precision as "low-carbon steel blanks," falls within the pertinent part of the written description of the scope as set forth in the Order: "tapered roller bearings and parts thereof, finished and unfinished." *2023 Scope Ruling* at 2. Here, the court concludes Commerce's determination is supported by substantial evidence and otherwise in accordance with law. *Id.* at 7.

Commerce's approach to the first part of its analysis, a review of the language of the Order, was reasonable and supported by substantial evidence. Commerce correctly acknowledged — and both parties agree — that the written description does not explicitly address "parts made of low-carbon steel or bearing steel." *Id.* at 6; *see* Precision Reply Br. at 2. Because steel composition is absent from the written description of the Order, Commerce declined to consider Precision's comments relating to steel grade when evaluating the language of the Order. *2023 Scope Ruling* at 6, n.40. Commerce then reasoned that the decisive interpretive question was whether "low-carbon steel blanks" were "unfinished TRB parts." *Id.* at 6. Commerce also cited to Precision's 2023 Scope Application, in which Precision stated that the 2023 merchandise is sold to "US bearing manufacturers" that employ "significant further processing" in order "to make a finished bearing," and identified no alternative end uses or applications. *Id.* (citing *2023 Scope Application* at 15. Based on this information, and absent language suggesting otherwise, it was reasonable for Commerce to conclude initially that low-carbon steel blanks were best understood as unfinished TRB parts. *Id.*

To test its first instinct regarding the plain language of the Order, Commerce turned to primary interpretive sources under section

351.225(k)(1), "including prior scope rulings in this proceeding." *2023 Scope Ruling* at 6. Commerce noted that the 2020 Scope Ruling, which involved Precision, the Order, and merchandise that was "green machined, but not heat-treated," appeared on point. Commerce also observed that Precision suggested the same when it stated in its 2023 Application: "These blanks were moved within the scope in 2020." *Id.* at 6 (citing *2023 Application* at 13.[3] Commerce then referred to comments from the petitioner and photographs in the 2020 Application and the 2023 Application, concluding that the 2023 Application and the 2020 Scope Ruling concerned "the same products." *Id.* Finally, Commerce highlighted that as of the 2023 inquiry, Precision had made "no assertions that the products here are different" from those examined in 2020. *Id.* Thus, based on scrutiny of the 2020 Application, the 2020 Scope Ruling, the 2023 Application, interested party comments, and the absence of contradictory statements from Precision, Commerce concluded the merchandise was the same as the 2020 merchandise. *Id.* at 6. Accordingly, as in 2020, Commerce found the 2023 merchandise fell within the scope of the Order. *Id.* at 7.

In short, Commerce acted reasonably in issuing the 2023 Scope Ruling. In its initial review of the written scope description, Commerce identified the most intuitively applicable language in the Order — i.e., "parts thereof, finished or unfinished" — and moved forward with its analysis from there. Recognizing implicitly that it could not fairly characterize the merchandise as a "finished" TRB part, Commerce considered whether and to what extent it might be "unfinished." In doing so, Commerce observed that Precision had identified bearing manufacturers as the only consumers of the merchandise, described a process by which the merchandise would be used "to make a finished bearing," and omitted any mention of even hypothetical or potential alternative uses. From a fair reading of the Order and Precision's own statements, then, Commerce reached the initial interpretation that the merchandise was an unfinished TRB part.

Next, and pivotally, Commerce explained that it had conducted a scope inquiry involving the same importer, the same Order, and (seemingly) the same merchandise only three years prior. That the 2020 scope inquiry involved the same importer (Precision), the same antidumping order (the Order), and a similar category of merchandise is not disputed. Nor, until recently, did any party cast doubt on

[3] Commerce also had before it at least one additional citation expressly suggesting its 2023 inquiry concerned the same merchandise as the 2020 Scope Ruling. *See 2023 Rebuttal Comments* at 8 ("It was the same material in the same parts for both the 2020 and 2023 scope requests . . . .").

whether the 2023 merchandise was the same as the 2020 merchandise.[4] In the 2023 Application, Precision stated: "These blanks were moved within the scope in 2020." *2023 Application* at 13. Commerce reasonably relied on this statement in the 2023 Scope Ruling. *2023 Scope Ruling* at 6. Notwithstanding Precision's unclear briefing on this point, it was more than reasonable for Commerce to rely upon Precision's own statements and photographs in concluding that the merchandise was the same as the 2020 merchandise and, in turn, that the merchandise was within the scope of the Order. This is not a case in which Commerce faced "two inconsistent yet reasonable conclusions," *Saha Thai Steel Pipe*, 101 F.4th at 1331, but rather one in which Precision's own statements and photographs led inexorably to the conclusion reached by Commerce.

As discussed above, Commerce made the express factual finding that the merchandise was the same as the 2020 merchandise. *2023 Scope Ruling* at 6. It did so based on an administrative record replete with evidence that supported that conclusion and devoid of indications to the contrary. *See, e.g., 2023 Application* at 13, Ex. 2; *2020 Application* at 3. Based on that finding, Commerce resolved to rely upon the 2020 Scope Ruling, which contained extensive analysis of the subject merchandise under both subsection (k)(1) and (k)(2). *2023 Scope Ruling* at 6–7; *see 2020 Scope Ruling*. In the absence of a timely, successful challenge of the 2020 Scope Ruling by Precision, it was reasonable for Commerce to root its 2023 determination in the analysis it performed for the same merchandise in 2020.

For the foregoing reasons, Plaintiff's Motion for Judgment on the Agency Record is **DENIED** and Commerce's determination is **SUSTAINED**. Judgment will enter accordingly. **SO ORDERED**.

Dated: February 25, 2025
New York, New York

/*s*/ *Joseph A. Laroski, Jr.*
JUDGE

[4] After stating in its first brief, that "[i]n 2020 these products were provisionally moved into the order," Precision Br. at 13, in its reply brief, Precision equivocated: "while there is some commonality, there is nothing more than conjecture that the two sets of products covered are identical." Precision Reply Br. at 5.

Index

Customs Bulletin and Decisions
Vol. 59, No. 11, March 12, 2025

U.S. Customs and Border Protection

General Notices

U.S. Court of Appeals for the Federal Circuit

U.S. Court of International Trade
Slip Opinions

GPO U.S. G.P.O.: 2025—431-372/30118