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

June 11, 2024

**PUBLIC VERSION**

OT:RR:BSTC:PEN H338101 MF

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Re: Enforce and Protect Act (“EAPA”) Consolidated Case Number 7796; *Antidumping Duty Orders: Lightweight Thermal Paper From Germany and the People’s Republic of China*, 73 Fed. Reg. 70,959 (Dept. of Commerce Nov. 24, 2008); *Lightweight Thermal Paper from the People’s Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order*, 73 Fed. Reg. 70,958 (Dept. of Commerce Nov. 24, 2008); Lollicup USA Inc.; 19 U.S.C. § 1517

Dear Counsel:

This is in response to the request for *de novo* administrative review of a determination of evasion dated February 5, 2024, made by the Trade Remedy Law Enforcement Directorate (“TRLED”), Office of Trade (“OT”), U.S. Customs and Border Protection (“CBP”), pursuant to 19 U.S.C. § 1517(c), EAPA Consolidated Case Number 7796 (“February 5th Determination”).<sup>1</sup> The

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<sup>1</sup> See EAPA Consolidated Investigation 7796 and EAPA Investigation 7799: Notice of Determinations as to Evasion (Public Version) (Feb. 5, 2024) (“February 5th Determination”), available at <https://www.cbp.gov/document/publications/eapa-consolidated-investigation-7796-and-eapa-investigation-7799-various> (last accessed May 10, 2024).

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request for review, dated March 19, 2024, was submitted to CBP, OT, Regulations and Rulings (“RR”), by Fox Rothschild LLP on behalf of Lollicup USA Inc. (“Lollicup” or “Importer”), pursuant to 19 U.S.C. § 1517(f) and 19 C.F.R. § 165.41(a).<sup>2</sup> Paper Receipts Converting Association (“PRCA” or “Alleger”) filed a response to the request for review on April 3, 2024.

### I. Background

Based on our review of the administrative record, unless otherwise discussed, we agree with the recitation of facts as set forth by the February 5th Determination. As such, we will not repeat the entire factual history herein.

On November 8, 2022, PRCA filed EAPA allegations against Lollicup and two other importers. CBP acknowledged receipt of the allegations on January 10, 2023.<sup>3</sup> On February 1, 2023, TRLED initiated formal investigations under Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015 (“TFTEA”), in response to the allegations of evasion.<sup>4</sup>

PRCA alleged that Lollicup and two other importers were importing thermal paper from the People’s Republic of China (“China”) or the Republic of Korea (“Korea”) into the United States, that had been transshipped through Taiwan.<sup>5</sup> PRCA further alleged that these imports of thermal paper were in-scope merchandise that were covered by antidumping and countervailing duty orders on lightweight thermal paper (“LWTP”) from China (Case Nos. A-570-920 and C-570-921) (the “AD/CVD Orders”) or by an antidumping duty order on thermal paper from Korea (Case No. A-580-911), and that Lollicup and two other importers had evaded the payment of antidumping and countervailing duties on these imports.<sup>6</sup>

The allegations of evasion against Lollicup pertained to the AD/CVD Orders issued by the U.S. Department of Commerce (“Commerce”) on imports of LWTP from China. Commerce defined the scope of the AD/CVD Orders as follows:

The merchandise covered by these orders includes certain lightweight thermal paper, which is thermal paper with a basis weight of 70 grams per square meter ( $\text{g}/\text{m}^2$ ) (with a tolerance of  $\pm 4.0 \text{ g}/\text{m}^2$ ) or less; irrespective of dimensions;<sup>1</sup> with or without a base coat<sup>2</sup> on one or both sides; with thermal active coating(s)<sup>3</sup> on one or both sides that is a mixture of the dye and the developer that react and form an image when heat is applied; with or without a top coat;<sup>4</sup>

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<sup>2</sup> The other importers involved in EAPA Consolidated Case Number 7796 are Exquis Inc. and Sanster Corporation (collectively, “other importers”). None of the other importers submitted a request for administrative review.

<sup>3</sup> See February 5th Determination (Public Version), at 2.

<sup>4</sup> See Notice of Initiation of Investigation and Interim Measures: EAPA Consolidated Case 7796 and EAPA Case 7799 (Business Confidential Version) (May 9, 2023) (“Notice of Initiation”), available at: <https://www.cbp.gov/document/guidance/eapa-consolidated-case-7796-and-eapa-case-7799-exquis-inc-lollicup-usa-inc-and> (last accessed June 10, 2024).

<sup>5</sup> TRLED separately considered the allegations of evasion of the AD order on thermal paper from Korea (Case No. A-580-911) against Exquis Inc. in EAPA Case No. 7799. That case is not at issue herein.

<sup>6</sup> See *Antidumping Duty Orders: Lightweight Thermal Paper From Germany and the People’s Republic of China*, 73 Fed. Reg. 70,959 (Dept. of Commerce Nov. 24, 2008); *Lightweight Thermal Paper from the People’s Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order*, 73 Fed. Reg. 70,958 (Dept. of Commerce Nov. 24, 2008); and *Lightweight Thermal Paper From the People’s Republic of China: Continuation of Antidumping and Countervailing Duty Orders* 85 FR 40,249 (Dept. of Commerce July 6, 2020).

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and without an adhesive backing. Certain lightweight thermal paper is typically (but not exclusively) used in point-of-sale applications such as ATM receipts, credit card receipts, gas pump receipts, and retail store receipts. The merchandise subject to these orders may be classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 3703.10.60, 4811.59.20, 4811.90.8040, 4811.90.9090, 4820.10.20, and 4823.40.00.<sup>5</sup> Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these orders is dispositive.

FN 1: LWTP is typically produced in jumbo rolls that are slit to the specifications of the converting equipment and then converted into finished slit rolls. Both jumbo and converted rolls (as well as LWTP in any other form, presentation, or dimension) are covered by the scope of these orders.

FN 2: A base coat, when applied, is typically made of clay and/or latex and like materials and is intended to cover the rough surface of the paper substrate and to provide insulating value.

FN 3: A thermal active coating is typically made of sensitizer, dye, and co-reactant.

FN 4: A top coat, when applied, is typically made of polyvinyl acetone, polyvinyl alcohol, and/or like materials and is intended to provide environmental protection, an improved surface for press printing, and/or wear protection for the thermal print head.

FN 5: HTSUS subheading 4811.90.8000 was a classification used for LWTP until January 1, 2007. Effective that date, subheading 4811.90.8000 was replaced with 4811.90.8020 (for gift wrap, a non-subject product) and 4811.90.8040 (for “other” including LWTP). HTSUS subheading 4811.90.9000 was a classification for LWTP until July 1, 2005. Effective that date, subheading 4811.90.9000 was replaced with 4811.90.9010 (for tissue paper, a non-subject product) and 4811.90.9090 (for “other,” including LWTP).<sup>7</sup>

On May 9, 2023, in accordance with 19 C.F.R. § 165.24, CBP issued a Notice of Initiation of Investigations and Interim Measures (“NOI”) to all parties to the investigations, stating that the investigations had begun on February 1, 2023, and notifying the parties of CBP’s decision to take interim measures based upon reasonable suspicion that Lollicup and the other importers had entered covered merchandise into the customs territory of the United States through evasion.<sup>8</sup> The entries subject to the investigations are all unliquidated entries of covered merchandise entered from January 10, 2022, through the pendency of the investigation.<sup>9</sup>

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<sup>7</sup> 73 Fed. Reg. at 70,960. The AD/CVD Orders were subsequently continued. *See Lightweight Thermal Paper From the People’s Republic of China: Continuation of Antidumping and Countervailing Duty Orders* 85 FR 40249 (Dept. of Commerce July 6, 2020).

<sup>8</sup> *See* Notice of Initiation (Public Version).

<sup>9</sup> *See* 19 C.F.R. § 165.2 (“In addition, at its discretion, CBP may investigate other entries of such covered merchandise.”).

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On February 5, 2024, TRLED found that there was substantial evidence of evasion because thermal paper sourced from Taiwanese supplier Mega Thermal and imported into the United States by Lollicup and the other importers as a product of Taiwan was of Chinese and/or Korean origin subject to the AD/CVD Orders on LWTP from China and/or the AD order on thermal paper from Korea. More specifically, regarding the importations by Lollicup, TRLED found that Lollicup imported Chinese-origin LWTP into the United States that was subject to the AD/CVD Orders and misrepresented the country of origin as Taiwan. Lollicup entered the LWTP into the customs territory of the United States on type “01” consumption entries.<sup>10</sup> As a result, no cash deposits for antidumping or countervailing duties were made as to the merchandise.<sup>11</sup>

On March 19, 2024, Lollicup filed a timely Request for Administrative Review. On March 20, 2024, RR sent an email to all parties to the investigation in EAPA Cons. Case No. 7796, notifying them of the commencement of the administrative review process for Lollicup, and assigning RR case number H338101 to the *de novo* administrative review. On April 3, 2024, PRCA filed a timely written response to Lollicup’s request for administrative review.

## II. Law & Analysis

Section 517 of the Tariff Act of 1930 (“the Tariff Act”), as amended (19 U.S.C. § 1517), provides, “with respect to covered merchandise, the Commissioner shall make a determination, based on substantial evidence, with respect to whether such covered merchandise was entered into the customs territory of the United States through evasion.”<sup>12</sup> The term evasion is defined as:

Except as provided in subparagraph (B), the term “evasion” refers to entering covered merchandise into the customs territory of the United States by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material, and that results in any cash deposit or other security or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise.<sup>13</sup>

Examples of evasion include, but are not limited to, misrepresentation of the merchandise’s true country of origin (*e.g.*, through false country of origin markings on the product itself or false sales), false or incorrect shipping and entry documentation, or misreporting of the merchandise’s physical characteristics.<sup>14</sup>

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<sup>10</sup> Imports that are covered by AD/CVD orders are required to be entered as type “03” entries; entries declared as type “01” are not subject to payment of AD/CVD. *See* CBP Entry Summary Form 7501 and Instructions and the ACE Entry Summary Business Rules and Procedure Document, *available at* <https://www.cbp.gov/trade/programs-administration/entry-summary/cbp-form-7501> (last accessed June 10, 2024).

<sup>11</sup> *See* February 5th Determination (Public Version).

<sup>12</sup> 19 U.S.C. § 1517(c)(1).

<sup>13</sup> 19 U.S.C. § 1517(a)(5); *see also* 19 C.F.R. § 165.1.

<sup>14</sup> *See Investigation of Claims of Evasion of Antidumping and Countervailing Duties, Interim Regulations*, 81 Fed. Reg. 56,477, 56,478 (CBP Aug. 22, 2016). This case was initiated under CBP’s interim regulations. Subsequently, final regulations were published. *See Investigation of Claims of Evasion of Antidumping and Countervailing Duties*, 89 Fed. Reg. 19,239 (CBP March 18, 2024) (effective date, April 17, 2024). However, the new rules do not differ from the interim regulations as they relate to the issues raised in this matter. We note that the new rules provide for the issuance of Administrative Protective Orders

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Additionally, covered merchandise is defined as “merchandise that is subject to a CVD order issued under section 706, Tariff Act of 1930, as amended (19 U.S.C. § 1671e), and/or an AD order issued under section 736, Tariff Act of 1930, as amended (19 U.S.C. § 1673e).”<sup>15</sup> While “substantial evidence” is not defined by statute, the “substantial evidence” standard has been reviewed by the courts in relation to determinations by other agencies. “Substantial evidence requires more than a mere scintilla but is satisfied by something less than the weight of the evidence.”<sup>16</sup>

Therefore, RR must determine whether a party has entered merchandise that is subject to an AD or CVD order into the United States for consumption by means of any document or electronically transmitted data or information, written or oral statement, or act, that is material and false, or any omission that is material, that resulted in the reduction or avoidance of applicable AD or CVD cash deposits or duties being collected on such merchandise. RR’s determination as to evasion must be supported by substantial evidence.

### A. Lollicup’s Arguments

Lollicup requests that we reverse the February 5th Determination, arguing that the LWTP at issue is not covered merchandise that is subject to the scope of the AD/CVD Orders, for two reasons.

First, Lollicup argues that a “significant amount”<sup>17</sup> of the LWTP it imported into the United States was substantially transformed in Taiwan. Lollicup argues that the LWTP “underwent printing and converting processes by manufacturer Mega Thermal” in Taiwan.<sup>18</sup> Lollicup explains that Mega Thermal’s processing of jumbo rolls was not limited to converting jumbo rolls of thermal paper by slicing them into consumer sized units, but that Mega Thermal applied customized printing, specifically, the logos of various businesses, to its thermal paper.<sup>19</sup> Lollicup argues that the “combination of converting and applying a custom print to the thermal paper substantially transformed the jumbo rolls and changed their country of origin to Taiwan.”<sup>20</sup> Lollicup concludes that the LWTP was correctly entered as a product of Taiwan.<sup>21</sup>

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(“APOs”), but that provision is not pertinent herein, as Lollicup has not alleged any harm related to non-access to confidential information, nor has Lollicup asked for access to business confidential information under an APO pursuant to the U.S. Court of Appeals for the Federal Circuit’s decision in *Royal Brush Manufacturing, Inc. v. United States, Dixon Ticonderoga Company*, 75 F.4th 1250 (Fed. Cir. 2023). Indeed, given Lollicup’s extensive citations to Mega Thermal’s confidential information, it is clear that Lollicup has had full access to the confidential information relied upon by TRLED and RR in rendering our determinations.

<sup>15</sup> 19 C.F.R. § 165.1.

<sup>16</sup> See *Altix, Inc. v. United States*, 370 F.3d 1108, 1116 (Fed. Cir. 2004) (internal citations and quotation marks omitted).

<sup>17</sup> See Lollicup USA Incorporated’s Administrative Review Request (Public Version) (Mar. 19, 2024) (“Request For Administrative Review”), at 9.

<sup>18</sup> See *id.* at 1.

<sup>19</sup> See *id.* at 9, 10–11.

<sup>20</sup> See *id.* at 9.

<sup>21</sup> See *id.* at 9–10.

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In support of this claim, Lollicup cites to 19 C.F.R. part 134, and cites to several CBP rulings.<sup>22</sup> Lollicup points to two CBP rulings that addressed whether printing results in a substantial transformation of the underlying merchandise and thereby affected the country of origin. Specifically, Lollicup references Headquarters Ruling (“HQ”) 557408 and HQ H323855, where CBP found, respectively, that bingo sheet booklets and printed books were products of the country in which they were printed.<sup>23</sup>

Lollicup also contends, irrespective of whether a substantial transformation occurred, that the pre-printed merchandise it imported from Mega Thermal does not fall within the scope of the AD/CVD Orders.<sup>24</sup> Lollicup asserts that the scope of the AD/CVD Orders has no discussion of merchandise that is both pre-printed and converted.<sup>25</sup> Lollicup concludes that the AD/CVD Orders do not cover LWTP that is “both converted and had a custom printing applied.”<sup>26</sup> Lollicup concludes that pre-printed and converted LWTP is not covered by the scope of the AD/CVD Orders. Lollicup also notes that the application of specific printed images limits the potential end uses of these rolls, whereas unprinted rolls maintain multiple potential uses, including point of sale (“POS”) receipts, automatic teller machine (“ATM”) receipts, entertainment and transportation tickets, and medical recording paper.<sup>27</sup> Lollicup contends that the limitation of end uses distinguishes its LWTP from the LWTP that is subject to the AD/CVD Orders. Moreover, Lollicup indicates that TRLED improperly usurped Commerce’s role in resolving the meaning of ambiguous scope language and in essence issued a scope ruling in determining that pre-printed merchandise fell within the scope of the AD/CVD Orders.<sup>28</sup>

Second, Lollicup argues that, for purposes of calculating and assigning duties, TRLED failed to address Mega Thermal’s use of inventory of “finished merchandise,” rather than rolls made to order, when determining the country of origin of the LWTP that Lollicup imported.<sup>29</sup> In particular, Lollicup refers to Mega Thermal’s initial Request for Information (“RFI”) response, where Mega Thermal stated that it occasionally completes an order by drawing from its inventory.<sup>30</sup> Further, Lollicup contends that although the converting worksheet that was addressed in the February 5th Determination records merchandise which was produced for specific work orders, as well as merchandise which was placed in inventory, the worksheet does not identify instances when merchandise was drawn from inventory to fulfill an order.<sup>31</sup> In those instances, Lollicup requests that RR utilize an additional raw materials tracing ledger maintained by Mega Thermal, referred to as the “Ching Hang system,” to determine the country of origin for each of Lollicup’s entries.

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<sup>22</sup> See *id.* at 11–12 n.47, n.53, n.54 (citing to (1) Country of Origin Marking of a Printed Book; Section 301 Measures, CBP HQ Ruling H 323855, dated April 4, 2022; (2) Country of Origin Marking of a Trading Cards; Substantial Transformation; CBP HQ Ruling 560155, dated April 10, 1997; (3) Internal Advice 42/93; (4) Eligibility of Bingo Game Cards for Duty Free Treatment under the GSP, CBP HQ Ruling 557408, dated January 14, 1994; (5) Ruling N030222, “THE COUNTRY OF ORIGIN MARKING OF FINISHED ROLLS OF LIGHTWEIGHT THERMAL PAPER,” dated July 2, 2008; and (6) Ruling N268298, “The Country of Origin of Rolls of Converted Thermal Paper,” dated September 30, 2015).

<sup>23</sup> See Request For Administrative Review at 11.

<sup>24</sup> See *id.* at 12.

<sup>25</sup> See *id.* at 13.

<sup>26</sup> See *id.* at 10.

<sup>27</sup> See *id.* at 10–11.

<sup>28</sup> See *id.* at 13–14.

<sup>29</sup> *Id.* at 16; see also *id.* at 17–18.

<sup>30</sup> See *id.*

<sup>31</sup> See *id.*

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Specifically, where CBP is unable to effectively utilize the converting worksheet to determine the country of origin of the merchandise Mega Thermal drew from inventory, Lollicup requests that CBP ask Lollicup for supplemental inventory data which will be provided from the Ching Hang system records.<sup>32</sup>

For these reasons, Lollicup requests that the February 5th Determination be reversed.

### **B. PRCA's Arguments**

PRCA requests that we affirm the February 5th Determination because the LWTP that is converted into rolls in third countries from jumbo rolls produced in China is covered merchandise under the plain language of the AD/CVD Orders.<sup>33</sup> Therefore, PRCA concludes that Lollicup entered the merchandise by evasion.

PRCA states that Lollicup does not dispute that the converted rolls of LWTP sourced from Mega Thermal were produced with jumbo LWTP rolls from China. First, PRCA claims there is no merit to Lollicup's substantial transformation argument because: (1) Lollicup cannot point to any evidence in the record of printing and conversion operations taking place at Mega Thermal; and, (2) Lollicup's argument that country of origin under 19 C.F.R. part 134 determines scope under the AD/CVD Orders is misplaced. PRCA argues that scope is determined by the scope of the orders set forth by Commerce. PRCA notes that here, the scope of the AD/CVD Orders encompasses converted rolls,<sup>34</sup> and that the addition of printing on converted rolls does not remove them from the scope.<sup>35</sup> Moreover, PRCA dismisses the value of the bingo card and book printing CBP rulings relied upon by Lollicup, asserting that there are more relevant rulings<sup>36</sup> directly addressing thermal paper, which support the position that "the country of origin of thermal paper is the country where the thermal chemicals are applied, not the country where the thermal paper is converted."<sup>37</sup>

Second, PRCA claims there is no merit to Lollicup's argument that CBP should consider the inventory held by Mega Thermal to calculate the antidumping duty rates for each shipment during the POI. PRCA challenges Lollicup's attempt to rely upon its belated revelation that not all of its purchases were made-to-order, and that in some instances, its orders were filled by Mega Thermal from Mega Thermal's inventories.<sup>38</sup> PRCA asserts that Lollicup and Mega Thermal should have raised the issue in their written comments, which they did not.<sup>39</sup> PRCA requests that CBP reject Lollicup's suggestion that CBP request information from Lollicup clarifying the country of origin of Lollicup's imports that were sourced from Mega Thermal's inventory.<sup>40</sup> PRCA argues that any issue regarding the shortcomings of the conversion worksheet resulted from Lollicup's failure to raise these issues with TRLED, and prior to its Request for Administrative Review.<sup>41</sup> PRCA also requests

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<sup>32</sup> See *id.* at 15.

<sup>33</sup> See Alleger's Written Response to Lollicup USA Inc.'s Request for Administrative Review (Public Document) (Apr. 3, 2024) ("Alleger's Response"), at 2.

<sup>34</sup> See *id.* at 6.

<sup>35</sup> See *id.* at 4.

<sup>36</sup> *Id.* at 8 (citing Customs Ruling N030222 (July 2, 2008); Customs Ruling N268298 (Sept. 30, 2015)).

<sup>37</sup> See Alleger's Response (Public Document), at 7.

<sup>38</sup> See *id.* at 4.

<sup>39</sup> See *id.* at 5.

<sup>40</sup> See *id.* at 9–10.

<sup>41</sup> See *id.* at 10.

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that CBP assume that the source of rolls unaddressed in the conversion worksheet is China and apply the highest AD and CVD rates applicable to the imports sourced from Mega Thermal's inventory.<sup>42</sup>

For these reasons, PRCA requests that the February 5th Determination be affirmed.

### III. Administrative Review Analysis

Pursuant to 19 U.S.C. § 1517(f)(1) and 19 C.F.R. § 165.45, upon request for administrative review, RR will apply a *de novo* standard of review under the law, based solely upon the facts and circumstances on the administrative record in the proceeding. In making our determination, we reviewed the following: (1) the administrative record upon which the February 5th Determination was made, as provided to RR by TRLED; and (2) the timely and properly filed request for review and response.

The purpose of this *de novo* review is to analyze the February 5th Determination and the accompanying administrative record to determine whether substantial evidence of evasion exists. For the reasons set forth below, we find that there is substantial evidence of evasion.

#### A. **There is substantial record evidence that the jumbo rolls of LWTP from China which were converted into smaller rolls in Taiwan and imported by Lollicup are covered merchandise.**

Based on our review of the administrative record, there is substantial evidence that Lollicup sourced its importations of LWTP from Mega Thermal, a Taiwanese manufacturer that imported Chinese-origin jumbo rolls of LWTP into Taiwan, and then converted them into smaller rolls. Those converted rolls were then entered as type "01" consumption entries upon arrival in the United States, and AD/CVD deposits were not made and such duties were not paid.<sup>43</sup>

First, Lollicup does not dispute that LWTP which it purchased from Mega Thermal and imported into the United States during the POI included LWTP made in China and converted in Taiwan.<sup>44</sup> This concession is also supported by record evidence that Mega Thermal imported into Taiwan, jumbo rolls of LWTP from China. Lollicup provides an example of this acknowledgment in the Written Arguments submitted jointly with Mega Thermal and the other importers during the EAPA investigation. Specifically, in explaining the sourcing of Lollicup's importation of LWTP from Mega Thermal for an entry ending in 6672 ("entry 6672"), Lollicup's Written Arguments cite to Mega Thermal's sourcing of raw materials from a specific Chinese manufacturer,<sup>45</sup> including an import declaration listing jumbo rolls of LWTP that have a weight under 70 grams per square meter ("gsm")<sup>46</sup> and therefore are subject to the AD/CVD Orders.

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<sup>42</sup> *See id.*

<sup>43</sup> *See* Lollicup's Initial RFI Response-Corrected (Public Version), (June 27, 2023) ("Lollicup's RFI Response"), at 451, 454, 457, 475; *see also* CBP Entry Summary Form 7501 and Instructions and the ACE Entry Summary Business Rules and Procedure Document.

<sup>44</sup> *See* Request For Administrative Review (Public Version), at 8, 10.

<sup>45</sup> *See* Manufacturer's and Importers' Written Arguments (Business Confidential Version) (December 5, 2023), ("Lollicup's Written Arguments"), at 16-18 (citing to Mega Thermal's SRFI Response: Vol. 3 and 4 (Business Confidential Version), at 322-328).

<sup>46</sup> *See id.*



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Notably, in its Request For Administrative Review, Lollicup itself confirms the origin of the jumbo rolls imported by Mega Thermal into Taiwan, indicating that “Mega Thermal imports raw material jumbo thermal paper rolls from various countries, including [Country]...,” and cites to Mega Thermal’s SRFI response in support of this statement.<sup>47</sup> Moreover, the verification visit confirmed Mega Thermal’s use of Chinese-origin jumbo rolls.<sup>48</sup>

Second, there is substantial record evidence that the Chinese-origin jumbo rolls imported by Mega Thermal were then converted into smaller rolls in Taiwan. Lollicup does not dispute this fact. In addition, the record demonstrates that during the POI, Mega Thermal had the capability to convert LWTP, and operated a number of thermal paper converting machines at its facility.<sup>49</sup>

The scope language of the AD/CVD Orders clearly states that LWTP from China is subject merchandise, and that such merchandise includes jumbo rolls and converted rolls:

The merchandise covered by these orders includes certain lightweight thermal paper, which is thermal paper with a basis weight of 70 grams per square meter ( $\text{g}/\text{m}^2$ ) (with a tolerance of  $\pm 4.0 \text{ g}/\text{m}^2$ ) or less; *irrespective of dimensions*;<sup>1</sup> with or without a base coat on one or both sides; with thermal active coating(s) on one or both sides that is a mixture of the dye and the developer that react and form an image when heat is applied; with or without a top coat; and without an adhesive backing. Certain lightweight thermal paper is typically (but not exclusively) used in point-of-sale applications such as ATM receipts, credit card receipts, gas pump receipts, and retail store receipts. The merchandise subject to these orders may be classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 3703.10.60, 4811.59.20, 4811.90.8040, 4811.90.9090, 4820.10.20, 4823.40.00, 4811.90.8030, 4811.90.8050, 4811.90.9030, and 4811.90.9050. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these orders is dispositive.<sup>50</sup>

Very importantly, the scope language of the AD/CVD Orders clearly states that converting jumbo rolls of thermal paper into smaller rolls does not remove those “converted rolls” from the scope of the AD/CVD Orders:

FN 1: LWTP is typically produced in jumbo rolls that are slit to the specifications of the converting equipment and then converted into finished slit rolls. Both *jumbo and converted rolls* (as well as LWTP in any other form, presentation, or dimension) are covered by the scope of these orders.<sup>51</sup>

Based on the plain scope language, the AD/CVD Orders cover the Chinese jumbo rolls of LWTP and the rolls of LWTP that are converted into smaller rolls in Taiwan. Mega Thermal’s

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<sup>47</sup> Request For Administrative Review (Business Confidential Version), at 10.

<sup>48</sup> See Trade Regulatory Audit (“TRA”) On-site Verification Report (Public Version), at 4.

<sup>49</sup> See *id.* at 3. See also Mega Thermal’s RFI Response (Business Confidential Version), at 26.

<sup>50</sup> See 73 Fed. Reg. at 70,960 (emphasis added).

<sup>51</sup> 73 Fed. Reg. at 70,958 n.1; 73 Fed. Reg. at 70,760 n.1 (emphasis added).

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conversion of in-scope Chinese jumbo rolls into smaller rolls of LWTP in Taiwan does not remove these converted rolls from the scope of the AD/CVD Orders.

Third, there is also ample evidence that the converted merchandise was then imported into the United States by Lollicup. As demonstrated by the entry documents that Lollicup itself provided, Lollicup entered converted thermal paper rolls at the Port of Los Angeles/Long Beach during the POI, on [ Date ], [ Date ], [ Date ], and [ Date ].<sup>52</sup>

Fourth, and very importantly, there is an absence of record evidence that the LWTP imported by Lollicup into the United States underwent printing operations in Taiwan. The administrative record lacks sufficient evidence that Mega Thermal performed printing on the LWTP from China in Taiwan, or that the LWTP which Lollicup imported into the United States bore printed logos. Lollicup does not point to any evidence in the record to support its claim that the “combination of converting and applying a custom print to the thermal paper substantially transformed the jumbo rolls and changed the country of origin to Taiwan.”<sup>53</sup> In fact, none of Lollicup’s factual submissions to TRLED during the investigation reference, let alone detail, any type of printing process occurring at Mega Thermal. Moreover, in responding to TRLED’s inquiry regarding the equipment utilized in the production process, Mega Thermal only indicated the use of thermal paper converting machines, and made no references to any printing equipment.<sup>54</sup> Furthermore, the verification report for CBP’s site visit to Mega Thermal supports a conclusion as to the lack of printing equipment at Mega Thermal, as there is no indication throughout the entire report that any such machinery was seen during that visit, or that any such activity was occurring; importantly, counsel for Lollicup was present at the verification visit at Mega Thermal.<sup>55</sup> Yet, Lollicup has offered no explanation as to why there is no mention of such equipment or activity. Additionally, we note that Lollicup’s request for review contains conflicting statements as to when the printing process allegedly occurs. For example, Lollicup first indicates that Mega Thermal “applied a custom print to {thermal} paper and then converted it,” but then states that “Mega Thermal cuts the paper into smaller sizes and applies a custom print to that paper.”<sup>56</sup>

Furthermore, there is insufficient record evidence that converted rolls ordered by Lollicup contained printed logos.<sup>57</sup> While the record contains possible indications of printing on some of Mega Thermal’s work orders,<sup>58</sup> these references are vague at best. For example, these documents do not clarify what was being printed.<sup>59</sup> They merely reference printing and give no indication of whether logos or other distinguishing imagery or information consistent with the claims made in Lollicup’s request for review occurred. The work orders’ direct references to printing are limited to referencing a numerical measure, in the printing column.<sup>60</sup> A quoted term appears in the “description” column,<sup>61</sup> but no clarification is given as to what this term signifies. Beyond these vague impressions, which also are not universal across the large quantities of work orders contained

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<sup>52</sup> See Lollicup’s RFI Response (Business Confidential Version), at 451, 454, 457, 475.

<sup>53</sup> Request For Administrative Review (Public Version), at 9.

<sup>54</sup> See Mega Thermal’s RFI Response (Business Confidential Version), at 26.

<sup>55</sup> See generally TRA On-site Verification Report (Public Version).

<sup>56</sup> See Request for Administrative Review (Public Version), at 9-11.

<sup>57</sup> See Mega Thermal’s SRFI Response: Vol. 3 and 4 (Business Confidential Version), at 764, 870, 911.

<sup>58</sup> See *id.* at 48, 112, 185, 526, 668, 977, 1204, 1305.

<sup>59</sup> See *id.*

<sup>60</sup> See *id.*

<sup>61</sup> See *id.*

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within the record, RR found no corroborating materials to confirm their significance. In particular, RR is unable to find any photographs depicting the presence of printed logos on Mega Thermal's LWTP. Rather, the only images related to LWTP from Mega Thermal or that Lollicup promoted to its customers show plain white LWTP.<sup>62</sup> As there is no indication of a capacity on the part of Mega Thermal to engage in printing operations and the only references to printing are vague and inconclusive in nature, we cannot conclude that any of the LWTP imported by Lollicup underwent printing in Taiwan.

Moreover, Lollicup's focus on the "country of origin" of the converted rolls for purposes of marking, customs duties or otherwise, is inapposite to the question presented here — whether Lollicup entered merchandise covered by the AD/CVD Orders into the United States. It is well-settled law that the country of origin of a good from a customs law perspective is not the same as whether the good falls within the scope of an AD or CVD order with respect to a certain country.<sup>63</sup>

In addition, nothing in Commerce's AD/CVD Orders requires that the ultimate country of origin of the covered merchandise, from a customs marking or other customs law perspective, be China; rather, the question is whether the merchandise is covered by the AD/CVD Orders, as described by Commerce. Here, the plain language of the AD/CVD Orders clearly states that jumbo rolls made in China are covered, and remain covered, where the merchandise is subsequently converted into rolls with an actual basis weight of 70 gsm or less in a third country such as Taiwan. Based on the unambiguous scope of the AD/CVD Orders, LWTP from China and converted rolls are covered by the scope of the AD/CVD Orders. Likewise, and for these same reasons, Lollicup's substantial transformation arguments and reliance on 19 C.F.R. part 134 and CBP rulings for purposes of scope are misplaced.

Further, Lollicup's contention that a pre-printed and converted roll of LWTP falls outside the scope of the AD/CVD Orders because pre-printing limits the potential end uses of the LWTP is also without merit. Contrary to Lollicup's contention, the plain scope language clearly and unambiguously contemplated numerous applications for LWTP. Specifically, the scope language of the AD/CVD Orders states that "{c}ertain lightweight thermal paper is typically (but not exclusively) used in point-of-sale applications such as ATM receipts, credit card receipts, gas pump receipts, and retail store receipts."<sup>64</sup> In other words, the scope language acknowledges that the list of end uses of LWTP is not exhaustive, meaning that end use is not determinative of scope.

Finally, we agree with PRCA that the rulings cited by Lollicup are inapposite to the case at hand. The goods imported by Lollicup are still converted rolls of thermal paper, whether with or without some printing. They are not books or bingo sheets. The facts herein differ from those in the cited rulings.

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<sup>62</sup> See *id.* at Ex. III-6 (Mega Thermal's Business Brochure), at 209. See also Lollicup's RFI Response (Public Version), at Ex. 7 (Karat's Catalogue) (at 405, Ex. 12 (Karat's Website), at 2409).

<sup>63</sup> See, e.g., *Aireko Constr., LLC v. United States*, 425 F. Supp. 1307, 1312 n.7 (Ct. Int'l Trade 2020) (acknowledging that country of origin differs in the AD/CVD versus customs marking contexts because "CBP makes country of origin determinations under a different authority than that by which Commerce determines country of origin for purposes of applying AD/CVD duties") (citing 19 U.S.C. § 1304; *SunEdison, Inc. v. United States*, 179 F. Supp. 3d 1309, 1323 n.77 (Ct. Int'l Trade 2016) (finding CBP's country of origin determinations to be "inapposite" to Commerce's country of origin determinations)).

<sup>64</sup> See 73 Fed. Reg. at 70,958; 73 Fed. Reg. 70,960.

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Accordingly, we determine that the converted rolls of LWTP that Lollicup imported into the United States are “covered merchandise.”

### **B. There is substantial record evidence that Lollicup entered covered merchandise by evasion.**

There is substantial record evidence that Lollicup entered the covered merchandise by evasion. The record evidence shows that Lollicup entered covered merchandise by means of material and false documents or electronically transmitted data or information, written statements, or material omissions that resulted in AD cash deposits not being applied with respect to the merchandise. The merchandise was incorrectly entered on type “01” consumption entries instead of on type “03” AD/CVD entries.<sup>65</sup> These constitute false statements that are also material because the applicable AD/CVD cash deposits were not paid.<sup>66</sup> Lollicup also omitted Case Nos. A-570-920 and C-570-921 from the entry summary documentation.<sup>67</sup> The omission of Case Nos. A-570-920 and C-570-921 from the entry summary documentation is material because it interfered with the government’s ability to accurately track imports of thermal paper, to collect the applicable AD/CVD deposits due, and to determine and assess future AD/CVD duties. Therefore, we conclude that there is substantial evidence that Lollicup entered covered merchandise by evasion.

We explicitly do not rely on Lollicup’s country of origin designations in our finding of falsity in this decision, which is made pursuant to CBP’s authorities under the EAPA. As indicated above, it does not matter in an EAPA case, *i.e.*, for purposes of determining whether merchandise is subject to an AD/CVD order, what the country of origin is for customs purposes. Nor does it matter whether there was substantial transformation in Taiwan, as defined under other customs laws. Our finding of falsity rests on Lollicup’s entering subject merchandise using the “01” entry type, meaning not subject to AD/CVD orders, and in omitting Case Nos. A-570-920 and C-570-921 from the entry summary documentation.

### **C. The use of additional ledger and input tracing systems for purposes of calculating Lollicup’s outstanding duty obligations amounts to an entry-by-entry assessment that is not appropriate in the context of an EAPA administrative review determination.**

In the February 5th Determination, TRLED indicated that “CBP will assess any AD/CVD duties owed by the Importer based on the country (or countries) of origin of the entry using the Converting Worksheet.”<sup>68</sup> This ledger system accounts for the use of LWTP made to order for Lollicup’s customers, but does not track the use of LWTP drawn from Mega Thermal’s inventory.<sup>69</sup> Accordingly, Lollicup requests that RR analyze all of Lollicup’s entries using the Ching Hang inventory tracking system, which Lollicup asserts was deemed reliable by TRLED.<sup>70</sup> Lollicup’s request is inappropriate.

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<sup>65</sup> See Lollicup’s RFI Response (Public Version), at 451, 454, 457, 475.

<sup>66</sup> See *id.* See also February 5th Determination (Public Version), at 2.

<sup>67</sup> See Lollicup’s RFI Response (Public Version), at 451, 454, 457, 475.

<sup>68</sup> See February 5th Determination (Public Version), at 8.

<sup>69</sup> See Request For Administrative Review (Public Version), at 16.

<sup>70</sup> See *id.* at 17–18.

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First, Lollicup's requested approach would necessitate an entry-by-entry review to determine which specific entries contain covered merchandise. As the Court of International Trade ("CIT") has recognized recently, CBP is not required to conduct an entry-by-entry review to determine whether evasion has occurred within the meaning of the EAPA statute.<sup>71</sup> Rather, CBP must determine whether there is substantial evidence within the administrative record, as a whole, that evasion has occurred.<sup>72</sup> As detailed above, a review of the record establishes that Lollicup had multiple entries during the POI that definitively included covered merchandise (*i.e.*, LWTP from China), rendering such an entry-by-entry review by CBP unnecessary. If, indeed, some entries are believed not to contain subject merchandise, as the CIT has explained, the proper recourse to challenge CBP's assignment of duties on an entry-by-entry basis is via a protest, pursuant to 19 U.S.C. § 1514, after review of the determination of evasion is completed.<sup>73</sup>

Second, Lollicup's request represents an eleventh-hour attempt to fill in gaps in the record that were created by Lollicup's failure to provide pertinent information regarding the Ching Hang system data during the course of the investigation before TRLED. Indeed, Lollicup had ample opportunity to clarify any deficiencies in the Converting Worksheet and to submit pertinent Ching Hang System records to TRLED during the investigation and while the record remained open to receive submissions of factual information. Lollicup's failure to submit such information cannot be remedied at this stage. Moreover, RR has no role in the determination of what duty rates or assessments should be imposed; the determinations as to what steps should be taken to implement a decision as to evasion are the province of TRLED, not of RR.

Third, contrary to Lollicup's assertion, TRLED's verification report does not appear to have rendered judgment as to the reliability of the Ching Hang System. TRLED merely acknowledges that it received an explanation by Mega Thermal regarding the complementary roles of these tracking systems, examples of data exported from one system to the other, and screenshots from these systems.<sup>74</sup> The extent of TRLED's commentary regarding the reliability of the information provided and the materials shown was to note that they did not contradict Mega Thermal's RFI responses,<sup>75</sup> a far more restrained assessment than the endorsement described by Lollicup in its request for review.

Fourth, the production records contained within Mega Thermal's response to the First RFI are not clearly described as comprising the Ching Hang system records in part or in whole, nor do they appear to be.<sup>76</sup> Lollicup seems to acknowledge this in its request for review when it asks that "if the quantity produced reported in the converting worksheet is not the same as the quantity shipped, we urge CBP to request specific production and inventory documentation for that shipment."<sup>77</sup> This indicates that the Ching Hang records are not present within the existing record upon which RR must render its determination, and could not have been the subject of a credibility assessment.

In sum, Lollicup's contention that RR should conduct an entry-by-entry review and remedy Lollicup's failure to submit relevant information during the course of the investigation is without

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<sup>71</sup> See *Ikadan System United States, Inc. v. United States*, 639 F. Supp. 3d 1339, 1354 (Ct. Int'l Trade 2023).

<sup>72</sup> See 19 U.S.C. § 1517(f)(1); 19 C.F.R. § 165.45.

<sup>73</sup> See *Ikadan*, 639 F. Supp. 3d at 1354.

<sup>74</sup> See TRA On-Site Verification Report (Public Version), at 4.

<sup>75</sup> See *id.*

<sup>76</sup> See generally Mega Thermal's RFI Response (Business Confidential Version).

<sup>77</sup> See Request For Administrative Review (Public Version), at 18 (emphasis added).

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merit. Nonetheless, to the extent that it is demonstrated that any of converted rolls imported by Lollicup into the United States were not made from jumbo rolls of Chinese origin, we do not find evasion as to those entries (or entry line items, as some entries may have contained LWTP originating from multiple countries), given that they do not contain merchandise covered by the AD/CVD Orders on LWTP from China. As to such entries or entry lines, if they are not otherwise covered by an AD or CVD order, no AD/CVD duties should be assessed on such entries.

**IV. Decision**

Based upon our *de novo* review of the administrative record in this case, including the request for administrative review and response, with respect to Lollicup's entries of LWTP from Mega Thermal, the February 5th Determination of evasion under 19 U.S.C. § 1517(c) is **AFFIRMED**.

This decision does not preclude CBP or other agencies from pursuing additional enforcement actions or penalties. Pursuant to 19 CFR 165.46(a), this final administrative determination is subject to judicial review pursuant to section 421 of TFTEA.

Sincerely,

Jacinto P. Juarez, Jr.  
Supervisory Attorney-Advisor  
Regulations and Rulings, Office of Trade  
U.S. Customs and Border Protection

Approved by:

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Alice A. Kipel  
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