



PUBLIC VERSION

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Re: EAPA Consolidated Case No. 7745 – Notice of Determination as to Evasion

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

Pursuant to an examination of the record in Enforce and Protect Act (EAPA) Consolidated Investigation 7745 (EAPA Cons. 7745), U.S. Customs and Border Protection (CBP) has determined there is substantial evidence that E-Merchant Supplies (E-Merchant Supplies), A2 Labels & Rolls Inc. (A2 Labels), POS Supply Solutions (POS Supply), Royal Paper Products (otherwise known as AmerCare Royal LLC) (collectively, AmerCare Royal), Golden Eagle Distributors LLC (Golden Eagle Distributors), Paper Roll Supplies LLC (Paper Roll Supplies), Lucky Heap Corp. (Lucky Heap), National POS Paper, Paper Roll Products, BuyRolls Inc. (Buy Rolls), Qualita Paper Products (otherwise known as Quality Paper Products) (collectively, Quality Paper), VBS Cal LLC (VBS Cal), Allied Paper Company (Allied Paper), and The Avantage Group (collectively, the Importers) entered merchandise covered by antidumping duty (AD) order A-428-850 (Germany) on thermal paper into the customs territory of the United States through evasion.¹

Substantial evidence demonstrates that Papeles y Conversiones de Mexico, SA de CV or Convertadora PCM SA de CV (collectively, PCM) transshipped and exported thermal paper of German origin to the United States, which the Importers claimed as country-of-origin (COO) Mexico. CBP also has determined there is substantial evidence that Allied Paper, Paper Roll Supplies, POS Supply, and VBS Cal misclassified products as non-covered merchandise. As a result, no cash deposits were applied to the merchandise at the time of entry.

Additionally, pursuant to an examination of the record in EAPA Cons. 7745, CBP has determined there is not substantial evidence that the Importers entered merchandise covered by AD order A-580-911 (South Korea) on thermal paper into the customs territory of the United States through evasion.²

Background

On August 10, 2022, the Paper Receipts Converting Association (the Alleger, or PRCA)³ filed EAPA allegations alleging that the Importers evaded the *Orders* by importing thermal paper either from Germany or South Korea into the United States which was transshipped through

¹ See *Thermal Paper from Germany, Japan, the Republic of Korea, and Spain: Antidumping Duty Orders*, 86 FR 66284 (Nov. 22, 2021) (AD Order A-428-850 will hereafter be referred to as the *Order*).

² See *Thermal Paper from Germany, Japan, the Republic of Korea, and Spain: Antidumping Duty Orders*, 86 FR 66284 (Nov. 22, 2021) (AD Order A-580-911 will hereafter be referred to as the *Korean Order*).

³ The Alleger is a trade or business association in which a majority of the members manufacture, produce, or wholesale a domestic like product in the United States; thus, pursuant to 19 CFR 165.1(4), the Alleger meets the definition of an interested party that is permitted to submit an EAPA allegation.

Mexico.⁴ CBP acknowledged receipt of 30 properly filed allegations against the Importers on September 23, 2022.⁵ TRLED found the information provided in the Allegations reasonably suggested that the Importers entered covered merchandise into the customs territory of the United States through evasion.⁶ Consequently, CBP initiated investigations on October 17, 2022, pursuant to Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, commonly referred to as the “EAPA.”⁷

After evaluating the information on the record at that time, on January 24, 2023, CBP issued its Notice of Initiation of Investigation and Interim Measures.⁸ TRLED determined that there was reasonable suspicion that the Importers evaded the *Order* by claiming the thermal paper they imported into the United States was of Mexican origin when the paper was actually of German origin.⁹ TRLED based its findings on the information provided in the Allegations (*i.e.*, commercial trade data and industry reports) and on the information supplied by the Importers in their responses to the CBP Form 28 (CF-28) requests for information (*i.e.*, the reported production process consisted of only converting jumbo rolls to smaller rolls such that the origin of raw material supplies remained Germany or Korea).¹⁰ Because of the explicit language of the scope, CBP found that the processing of the German-origin thermal paper (*i.e.*, cutting jumbo rolls to smaller rolls) undertaken by PCM, as the Importers described in their CF-28 responses, does not change the country of origin (COO) of the thermal paper to Mexico.¹¹ Additionally, CBP found reasonable suspicion existed that covered merchandise in certain shipments were

⁴ See 7745-7756, 7759-7761, 7763-7765, 7768-7779 Letters from the Paper Receipts Converting Association (PRCA), “Duty Evasion and False Country of Origin Allegation Against Various Importers of Thermal Paper from The Republic of Korea and Germany Pursuant to The Enforce and Protect Act,” dated August 10, 2022 (collectively, the Allegations) at 1.

⁵ See email “Receipt of EAPA Allegations 7745-7756, 7759-7761, 7763-7765, 7768-7779,” dated September 23, 2022. The Allegor also filed EAPA Allegations 7749, 7750, 7762, 7766 and 7767, related to this investigation, but withdrew these allegations on August 23, 2022, and January 6, 2023.

⁶ See The Allegations.

⁷ CBP consolidated EAPA investigations 7745-7756, 7759-7761, 7763-7765, 7768-7779 into a single investigation. See Memorandum, “Initiation of Consolidated Investigation for EAPA Case 7745,” dated October 17, 2022 (Initiation Memorandum). Because the Allegor withdrew some allegations, this consolidated investigation consists of EAPA case numbers: 7745-7748, 7751-7756, 7759-7761, 7763-7765, and 7768-7779.

⁸ See CBP Memorandum, “Notice of Initiation of Investigation and Interim Measures - EAPA Cons. Case 7745,” dated January 24, 2023 (NOI).

⁹ At the time of the NOI, CBP found no evidence that PCM purchased raw materials from South Korea; therefore, CBP only applied interim measures based on the German rate. *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 6-10. See also the *Order*’s scope: “The scope of these orders covers thermal paper that is converted into rolls with an actual width of less than 4.5 inches and with an actual basis weight of 70 gsm or less in third countries from jumbo rolls produced in the subject countries.”

misclassified based on cargo descriptions, use of a shared customs broker, and the CF-28 responses providing information on raw materials.¹²

On February 10, 2023, pursuant to 19 CFR 165.5, CBP sent Requests for Information (RFI) to the purported manufacturer, PCM, and to the Importers, requesting information on the manufacturer's shipments to the Importers, as well as the manufacturer's production capabilities and capacities.¹³ PCM and Importers E-Merchant Supplies, A2 Labels, POS Supply, AmerCare Royal, Paper Roll Supplies, National POS, Paper Roll Products, BuyRolls, Quality Paper, VBS Cal, and Allied Paper Company (collectively, the Responding Importers) submitted timely RFI responses.¹⁴ Despite CBP requesting information numerous times and the Non-Responsive Importers acknowledging the request,, Golden Eagle, Lucky Heap, and the Avantage Group (collectively, the Non-Responsive Importers) failed to respond to the issued RFI.¹⁵ On April 17, 2023, and May 24, 2023, CBP sent Supplemental Requests for Information (SRFIs) to the Responding Importers and PCM, respectively,¹⁶ and received timely responses.¹⁷ On May 24, 2023, CBP sent an RFI to Koehler Paper SE (Koehler) and received a timely response.¹⁸

On May 5, 2023, manufacturer PCM submitted timely voluntary factual information.¹⁹

On May 26, 2023, CBP extended the deadline to submit the written arguments and the responses, and on July 7, 2023, set the written argument and responses deadlines for July 18, 2023, and August 2, 2023, respectively.²⁰ On July 18, 2023, the Alleger as well as Paper Roll Products, Paper Roll Supplies, VBS CAL, E Merchant Supplies, BuyRolls, and A2 Labels submitted

¹² See NOI at 8-9.

¹³ See Letter to PCM, "EAPA CONSOLIDATED CASE 7745 - Request for Information," dated February 10, 2023 (PCM RFI); Letters to the Importers, "EAPA 7745 Request for Information," dated February 10, 2023 (Importers' RFIs).

¹⁴ See PCM's RFI response, dated May 1, 2023; the Responding Importers' RFI responses, dated March 9, 23, 27, 31, 2023, and April 3 and 5, 2023.

¹⁵ See Memo to the File, "Consolidated EAPA Case 7745: Information Pertaining to Non-responsive Importers," dated June 7, 2023, (Non-Responsive Importers Memorandum) at Attachments 1-3.

¹⁶ See Letters to the Responding Importers, "EAPA 7745: Supplemental Request for Information," dated April 17, 2023 (Responding Importers' SRFIs); Letter to PCM, "EAPA 7745 Supplemental Request for Information," dated May 24, 2023 (PCM SRFI).

¹⁷ See the Responding Importers' SRFI responses, dated May 1, 3, 4, 9 and 15, 2023; PCM's SRFI response, dated June 7, 2023.

¹⁸ See Letter to Koehler, "EAPA 7745 Request for Information," dated May 24, 2023; Koehler's RFI response, dated June 21, 2023.

¹⁹ See "Investigation - EAPA Consol. Case 7745 Investigation of Thermal Paper from Germany and South Korea: Additional Facts for Initial FRI{sic} Response of Papeles Y Conversiones De Mexico SA DE CV Convertidoras PCM SA De CV," dated May 5, 2023 (PCM's VFI Submission).

²⁰ See "Memorandum to File, "Extension of Deadlines for Written Arguments and Responses to Written Arguments," dated May 26, 2023. See email "EAPA 7745: Written Arguments Deadlines," dated July 7, 2023.

timely written arguments.²¹ On August 2, 2023, the Alleger submitted timely written rebuttal arguments.²² On August 2 and 9, 2023, A2 Labels submitted timely written rebuttal arguments.²³

Scope of the Order²⁴

The scope of the *Order* covers thermal paper in the form of “jumbo rolls” and certain “converted rolls.” The scope covers jumbo rolls and converted rolls of thermal paper with or without a base coat (typically made of clay, latex, and/or plastic pigments, and/or like materials) on one or both sides; with thermal active coating(s) (typically made of sensitizer, dye, and co-reactant, and/or like materials) on one or both sides; with or without a top coat (typically made of pigments, polyvinyl alcohol, and/or like materials), and without an adhesive backing. Jumbo rolls are defined as rolls with an actual width of 4.5 inches or more, an actual weight of 65 pounds or more, and an actual diameter of 20 inches or more (jumbo rolls). All jumbo rolls are included in the scope regardless of the basis weight of the paper. Also included in the scope are “converted rolls” with an actual width of less than 4.5 inches, and with an actual basis weight of 70 grams per square meter (gsm) or less.

The scope of the *Order* covers thermal paper that is converted into rolls with an actual width of less than 4.5 inches and with an actual basis weight of 70 gsm or less in third countries from jumbo rolls produced in the subject countries.

The merchandise subject to these orders may be classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 4811.90.8030 and 4811.90.9030. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these orders is dispositive.

²¹ See, “EAPA Investigation No. 7745 - Alleger’s Written Arguments,” dated July 18, 2023 (the Alleger’s Written Arguments); “EAPA Investigation of Thermal Paper from Germany and South Korea: Written Arguments for the Importers,” dated July 18, 2023 (Certain Importers’ Written Arguments); and “Investigation - EAPA Consol. Case 7745 Investigation of Thermal Paper from Germany and South Korea: Written Arguments,” dated July 18, 2023 (A2 Label’s Written Arguments).

²² See “EAPA Investigation No. 7745 - Alleger’s Written Rebuttal Arguments,” dated August 2, 2023 (the Alleger’s Rebuttal Arguments).

²³ See Extension email, “EAPA 7745,” dated August 7; “Investigation - EAPA Consol. Case 7745 Investigation of Thermal Paper. from Germany and South Korea: Response to Written Arguments,” dated August 2, 2023 (A2 Labels’ Rebuttal Arguments); “Investigation - EAPA Consol. Case 7745 Investigation of Thermal Paper from Germany and South Korea: Response to Importers’ Written Arguments,” dated August 9, 2023 (A2 Labels’ Certain Importers’ Rebuttal).

²⁴ See *the Order*.

Analysis

Under 19 USC 1517(c)(1)(A), to reach a determination as to evasion, CBP must “make a determination, based on substantial evidence, with respect to whether such covered merchandise was entered into the customs territory of the United States through evasion.” Evasion is defined as “the entry of covered merchandise into the customs territory of the United States for consumption by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material, and that results in any cash deposit or other security or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the covered merchandise.”²⁵ The term covered merchandise means “merchandise that is subject to AD order A-428-850.”²⁶ The record of this investigation contains substantial evidence supporting a determination that covered merchandise entered the United States through evasion, resulting in the avoidance of applicable AD deposits or other security.

Transshipment

In its RFI response, PCM provided information that was consistent with the Allegations by indicating the Importers purchased thermal paper that PCM sourced from Germany.²⁷ PCM explained that “that all goods produced by PCM and exported to the U.S. were made from jumbo rolls that originated in Germany.”²⁸ As shown in Appendix 1, Table 1, PCM submitted Koehler invoice numbers for jumbo rolls to substantiate the raw materials used to produce thermal paper exports destined for the United States. Specifically, PCM linked these raw material purchases to bill of lading numbers associated with Customs entries by all 14 importers subject to EAPA Cons. 7745.²⁹ CBP also obtained trade data from [description] that indicated that the vast majority of the of [description].³⁰ Additionally, German manufacturer Koehler indicated in its RFI response that all thermal paper sold it sold to PCM was manufactured in Germany and that the [#] invoices provided in PCM’s RFI responses match Koehler’s invoice records.³¹ As mentioned above, the scope of the *Order* covers thermal paper that is converted into certain-sized rolls in third countries from jumbo thermal rolls produced in the subject countries. Because PCM’s and Koehler’s RFI responses show that the raw materials are jumbo

²⁵ See 19 CFR 165.1.

²⁶ See 19 USC § 1517(c)(3).

²⁷ See PCM’s RFI Response.

²⁸ See *Id.* at 39.

²⁹ See PCM’s RFI Response.

³⁰ The trade data indicates that [description] from other sources, [countries]; CBP did not find substantial evidence linking those [description] to merchandise entering the U.S customs territory during this investigation. See Memo to the File “Trade Data Information for the Administrative Record of EAPA Case 7745,” dated June 21, 2023.

³¹ See Koehler’s RFI Response; PCM’s RFI Response.

thermal rolls from Germany, the COO for the purposes of enforcing the *Order* should be Germany because the scope of the *Order* covers thermal paper rolls with an actual width of less than 4.5 inches and basis weight of 70 gsm or less converted in third countries from jumbo rolls produced in subject countries. The imports in this investigation included merchandise that remained within the scope of this order.

Further, record evidence indicates that PCM only has the capability to convert jumbo rolls into small thermal paper rolls, not to produce the jumbo thermal paper rolls themselves.³² CBP's RFI request for PCM asked for pictures and a description of capabilities for each piece of equipment in the PCM factory as well as a flowchart of the production process.³³ PCM's RFI Response indicates that PCM's production flowchart for thermal paper starts with cutting jumbo rolls, moves to rewinding the thermal paper, and finishes with packaging the finalized product.³⁴ The Importers submitted photographs of PCM's "Cash Register Rolls Manufacturing Process," which shows PCM's equipment for converting jumbo rolls into smaller thermal paper rolls.³⁵ However, PCM's RFI Response does not show photographs or descriptions of machinery capable of producing paper from pulp or coating paper to become thermal paper.³⁶ PCM's RFI Response indicates that PCM cannot produce thermal paper, nor does it make representations that PCM does produce thermal paper; therefore, when applying scope of the Order, PCM is not a producer of thermal paper.³⁷

Misclassification

Record information exists that importers Allied Paper, Paper Roll Supplies, POS Supply, and VBS Cal are misclassifying thermal paper imports as well as transshipping thermal paper through Mexico. According to CBP data, these four importers classified certain entry lines under Harmonized Tariff Schedule of the United States (HTSUS) subheading 4811.90.9080 (description: other paper, paperboard, cellulose wadding and webs of cellulose fibers, coated, impregnated, covered, *etc.*, in rolls or rectangular (incl sq.) sheets).³⁸ However, cargo

³² See PCM's RFI Response.

³³ See PCM's RFI Request.

³⁴ See PCM's RFI Response.

³⁵ *Id.*

³⁶ The Allegations submitted an industry report "Thermal Paper 2017-2022, 12th Edition, Worldwide Market Study" from Laves Chemie indicating that Mexico has no thermal paper production capabilities (*i.e.*, thermal paper made in Mexico and/or paper coated in Mexico). Interested parties did not submit evidence for the record contradicting this statement. See *Allegations* at Exhibit 1; PCM's RFI Response.

³⁷ See PCM's RFI Response.

³⁸ The scope for the *Order* indicates that merchandise subject to the *Order* may be classified in the HTSUS under subheadings 4811.90.8030 and 4811.90.9030. However, the written description of the scope of the *Order* is dispositive and the HTUS subheadings are for convenience. See January 5 Memo at Attachment 2 for a summary

description on the relevant entries is “thermal paper,” which would more accurately be classified under HTSUS subheadings 4811.90.8030 and 4811.90.9030.³⁹ Because HTSUS subheading 4811.90.9080 does not describe thermal paper, it appears that these importers are misclassifying their thermal paper imports. Additionally, these entries share the same filer code, [code], which denotes the customs broker ([name]).⁴⁰ Because the same customs broker filed these entries, it is likely that the customs broker misclassified other entries of thermal paper for multiple customers under a non-thermal paper HTSUS subheading to avoid payment of AD duties on thermal paper. These entries all have similar patterns of classifying the product under HTSUS subheading 4811.90.9080, describing the cargo as “thermal paper,” and using the same broker but these entries should have been classified under the HTSUS for thermal paper.

CBP sent CF-28 requests to Allied Paper, Paper Roll Supplies, POS Supply Solutions, and VBS Cal regarding certain entries with the HTSUS subheading 4811.90.9080 and asking for information pertaining to the imports’ dimensions (length, width, and weight) as well as information on production materials and processes.⁴¹ In their CF-28 responses, Allied Paper, Paper Roll Supplies, POS Supply, and VBS Cal provided invoices for PCM’s purchase of raw materials (jumbo rolls) produced in Germany and submitted information indicating that these in-scope jumbo rolls were converted into smaller rolls that remained within the scope and imported by Allied Paper, Paper Roll Supplies, POS Supply, and VBS Cal.⁴² These exact same raw material invoices provided by Allied Paper, POS Supply, and VBS Cal were also supplied by other importers’ (BuyRolls and Lucky Heap) in their CF-28 responses, indicating that PCM used the exact same raw materials for the entries associated with the CF-28s for Allied Paper, Paper Roll Supplies, POS Supply, VBS Cal, BuyRolls, and Lucky Heap for conversion into smaller thermal paper rolls⁴³ The CF-28 responses submitted by Allied Paper, POS Supply, VBS Cal, BuyRolls, and Lucky Heap indicate that the manufacturer PCM imported in-scope jumbo rolls

chart of misclassified entries from importers Allied Paper, Paper Roll Supplies, POS Supply Solutions, and VBS Cal, based on CBP trade data. Allied Paper, Paper Roll Supplies, POS Supply Solutions, and VBS Cal erroneously declared these entries as Type “01” and not subject to the *Order*.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ See CF-28 request for entry [#]7512 sent to POS Supply, dated October 28, 2022; CF-28 request for entry [#]5776 sent to Paper Roll Supplies, dated October 28, 2022; CF-28 request for entries [#]0670 and [#]3436 sent to VBS Cal, dated October 28, 2022; and CF-28 request for entries [#]0777 and [#]0191 sent to Allied Paper, dated October 28, 2022.

⁴² See POS Supply’s CF-28 response for entry [#]7512, dated December 21, 2022; VBS Cal’s CF-28 response for entries [#]0670 and [#]3436, dated December 9, 2022; Paper Roll Supplies’ CF-28 response for entry [#]5776, dated November 28, 2022; and Allied Paper’s CF-28 response for entries [#]0777 and [#]0191, dated December 8, 13, and 29, 2022.

⁴³ See POS Supply’s CF-28 response for entry [#]7512, dated December 21, 2022; VBS Cal’s CF-28 response for entries [#]0670 and [#]3436, dated December 9, 2022; and Allied Paper’s CF-28 response for entry [#]0777, dated December 8, 13, and 29, 2022; BuyRolls’ CF-28 response, dated December 6, 2022; Lucky Heap’s CF-28 response, dated November 23, 2022; and January 5 Memo at Attachment 1 for a summary chart which indicates the various overlaps between the raw material invoices submitted by the Importers.

from Germany, which is corroborated by the German producer Koehler's thermal paper marketing materials.⁴⁴ Buy Rolls' and Lucky Heap's CF-28 responses indicated that the thermal paper produced using these raw materials were classified under HTSUS subheading 4811.90.9030 when imported into the United States; whereas, Allied Paper, Paper Roll Supplies, POS Supply, and VBS Cal classified their entries under HTSUS subheading 4811.90.9080.⁴⁵ The same CF-28 responses do not show photographs or descriptions of machines that can manipulate thermal paper beyond slitting jumbo rolls into smaller thermal paper rolls, which is insufficient for purposes of removing the thermal paper from the scope of the Order. Because PCM does not show the ability to manipulate the raw materials, all U.S. imports of thermal paper from PCM that use the in-scope jumbo rolls as raw materials should be classified under HTSUS subheading 4811.90.9030. Therefore, it is likely that Allied Paper, Paper Roll Supplies, POS Supply, and VBS Cal misclassified their entries when they were filed under HTSUS subheading 4811.90.9080.⁴⁶

CBP also sent RFI requests to manufacturer PCM for information on POS Supply's entries [#]3868 (Entry 3868) and [#]7512 (Entry 7512) and VBS Cal's entry [#]3436 (Entry 3436) that entered the United States under the HTSUS subheading 4811.90.9080.⁴⁷ As shown in Appendix 1, Table 2a, PCM's RFI response and Paper Roll Supplies, POS Supply Solutions, and VBS Cal's RFI responses indicated that entries under the HTS subheading 4811.90.9080 continued to show similar patterns as reported in the Importers' CF-28 responses.⁴⁸ Specifically, descriptions in the Customs Form 7533 describe these entries as thermal paper, and these entries share the same filer code, [code], which denotes the customs broker ([code]).⁴⁹ As shown in Appendix 1, Table 2a, PCM submitted Customs documentation (CBP Form 7533 for Cargo Manifest) for Entries 3868, 7512, and 3436 that show the cargo description for these entries as "thermal paper."⁵⁰ PCM's RFI Response also specified that these same entries use German jumbo rolls (basis weight of less than 70 gsm) as raw materials for PCM's thermal paper conversion activities.⁵¹ Additionally, Appendix 1, Table 1 and Table 2a, link the German jumbo roll raw materials used in Entry 3436 with the same raw materials used to produce entry numbers

⁴⁴ *Id.*

⁴⁵ See Importers' CF-28 Responses and January 5 Memo at Attachment 1 for a summary chart which indicates the various overlaps between the raw material invoices submitted by the Importers.

⁴⁶ *Id.*

⁴⁷ See PCM's RFI Request at Appendix 1 for entries [#]3868, [#]7512, and [#]3436; POS Supply's RFI Request at Appendix 1 for entries [#]3868 and [#]4090; Paper Roll Supplies' RFI Request at Appendix 1 for entries [#]7280; VBS Cal's RFI Request at Appendix 1 for entries [#]9311.

⁴⁸ See PCM's RFI Response; POS Supply's RFI Response; Paper Roll Supplies' RFI Response; VBS Cal's RFI Response.

⁴⁹ *Id.*

⁵⁰ Jumbo rolls with the basis weight of less than 70 gsm are subject to the scope of the *Order*. See PCM's RFI Response at Attachment IV.

⁵¹ See PCM's RFI Response.

[#]0608 and [#]6473.⁵² Both entry numbers [#]0608 and [#]6473 were identified as HTS 4811.90.9030 when imported into the United States, but Entry 3436 used the HTSUS subheading 4811.90.9080. Therefore, it is likely that Allied Paper, POS Supply, and VBS misclassified their entries under HTSUS subheading 4811.90.9080.⁵³

CBP sent RFI requests to importers Paper Roll Supplies and VBS Cal for information on entries [#]9311 (Entry 9311) and [#]7280 (Entry 7280) that entered the United States under the HTSUS subheading 4811.90.9080.⁵⁴ As shown in Appendix 1, Table 2b, Paper Roll Supplies and VBS Cal's importer RFI and SRFI Responses indicated that entries under the HTSUS subheading 4811.90.9080 continued to show similar patterns as reported in the Importers' CF-28 responses.⁵⁵ First, these entries share the same filer code, [code], which denotes the customs broker ([code]).⁵⁶ Second, as shown in Appendix 1, table 2b, both importers submitted purchase order invoices for these entries indicating that these entries should be classified as in-scope thermal paper.⁵⁷ Specifically, both importers provide invoices from the manufacturer that describe the merchandise as thermal paper rolls.⁵⁸ Paper Roll Supplies' RFI and SRFI response for Entry 7280 indicates that PCM identifies the merchandise sold to Paper Roll Supplies as a unique part number, [#], based on product type (thermal paper), size measurements of the thermal paper and customer name.⁵⁹ Paper Roll Supplies also submitted information for entry code [#]6473 that uses the same unique part number, but the entry is entered as HTS subheading 4811.90.9030.⁶⁰ It stands to reason that if Paper Roll Supplies has two entries with merchandise using the same part number that Paper Roll Supplies should have used the same HTSUS subheading to label the merchandise.

Because of the CBP cargo descriptions, shared customs broker misclassifying the merchandise, and the CF-28 and RFI responses regarding raw materials, CBP finds substantial evidence exists that the covered merchandise entered on these shipments was misclassified and appropriate cash deposits or securities were not paid.

⁵² Entry numbers [#]0608 and [#]6473 in Appendix 1, Table 2a are associated with bill of lading numbers [#] and [#] respectively, in Appendix 1, Table 1.

⁵³ *Id.*

⁵⁴ See Paper Roll Supplies' RFI Request at Appendix 1 for Entry 9311; VBS Cal's RFI Request at Appendix 1 for Entry 7280; Paper Roll Supplies' SRFI Request; VBS Cal's SRFI request.

⁵⁵ See Paper Roll Supplies' RFI and SRFI Responses; VBS Cal's RFI and SRFI Responses.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ See Paper Roll Supplies' RFI and SRFI Responses.

⁶⁰ *Id.*

Adverse Inferences

CBP finds that the Non-Responsive Importers (Golden Eagle, Lucky Heap, and the Avantage Group) failed to cooperate with this EAPA investigation by not acting to the best of the party's or person's ability to comply with a request for information, specifically Golden Eagle's, Lucky Heap's, and the Avantage Group's RFI Requests.⁶¹ As detailed in the Non-Responsive Importers Memorandum, the Non-Responsive Importers failed to respond to CBP's February 10, 2023, requests for information, despite multiple requests and multiple opportunities to respond.⁶² As documented in Non-Responsive Importers Memorandum, Attachments 1-3, Golden Eagle, Lucky Heap, and the Avantage Group acknowledged receipt of their respective RFI Requests.⁶³ The RFIs issued to the Importers requested information relating to corporate structure, affiliations, accounting and financial documentation, and sales-specific order, sales, and product details. Such records and documentation are critical for evaluating the validity of entry information and to determine the COO of the thermal paper.

Pursuant to 19 USC 1517(c)(3) and 19 CFR 165.6, CBP may apply an adverse inference if the party to the investigation that filed an allegation, the importer, or the foreign producer or exporter of the covered merchandise fails to cooperate and comply to the best of its ability with a request for information made by CBP. In applying an adverse inference against an eligible party, CBP may also select from the facts otherwise available to make a final determination as to evasion pursuant to 19 USC 1517(c)(1)(A) and 19 CFR 165.27.⁶⁴ Therefore, due to the documented failure of the Non-Responsive Importers to participate by responding to CBP's RFIs, CBP finds that the Non-Responsive Importers did not cooperate to the best of their abilities in this EAPA investigation.⁶⁵ As a result, there is no evidence on the record that refutes the Alleger's evidence submitted with the allegation that the Non-Responsive Importers imported thermal paper from Germany, as well as CBP's further research and PCM's RFI responses, that show that the imported thermal paper was transshipped from Germany through Mexico.

No Substantial Evidence for Evasion of The Korean Order

During its investigation, CBP did not find substantial evidence that the Importers were evading the *Korean Order* via transshipment through Mexico. CBP sent a RFI to the purported manufacturer, PCM, requesting information on the manufacturer's shipments to the Importers, as well as the manufacturer's production capabilities and capacities and sources for raw materials (thermal paper jumbo rolls). The RFI response indicates that there is substantial evidence that

⁶¹ See Letters to Golden Eagle, Lucky Heap, and the Avantage Group, "EAPA 7745 Request for Information," dated February 10, 2023 (Golden Eagle's, Lucky Heap's, and the Avantage Group's RFI Requests)

⁶² See Non-Responsive Importers Memorandum at Attachments 1-3.

⁶³ *Id.*

⁶⁴ See 19 CFR 165.6(a).

⁶⁵ See Non-Responsive Importers Memorandum at Attachments 1-3.

the Importers entered thermal paper into the customs territory of the United States that was COO Germany, not South Korea.⁶⁶ Record evidence shows traced shipments of jumbo rolls from [**name**] to PCM,⁶⁷ shows that PCM used the German jumbo rolls in its thermal paper conversion process,⁶⁸ and links the raw material jumbo roll purchases to specific entries into the United States.⁶⁹ No record evidence ties Korean thermal paper jumbo rolls or converted thermal paper rolls to entries brought into the customs territory of the United States.⁷⁰ Therefore, CBP has determined there is not substantial evidence for this investigation that the Importers entered merchandise covered by the *Korean Order* on thermal paper into the customs territory of the United States through evasion.

Written Arguments

Country of Origin as Mexico

A2 Labels Arguments

A2 Labels argues that PCM and A2's converted thermal paper imported into the United States originated in Mexico pursuant to the Rules of Origin of the United States-Mexico Canada Agreement (USMCA) and that the merchandise was correctly marked as a product of Mexico.⁷¹ A2 Labels relies on 19 USC 1304 and the corresponding Customs Regulations in 19 CFR 134.1(b) to support its argument that all goods of foreign origin must be marked with their COO pursuant to 19 CFR 134.1(b), which defines the COO of an article as "the country of manufacture, production, or growth of any article of foreign origin entering the United States."⁷²

A2 Labels maintains that thermal paper exported by PCM is subject to General Note (GN) 11 of the HTSUS which implements the USMCA. GN 11 of the HTSUS sets forth the criteria for determining whether a thermal paper is an originating good for purposes of the USMCA, GN 11, Chapter 48, Rule 6(a) states:

A change to paper or paperboard in strips or rolls of a width not exceeding 15 cm of heading 4811 from strips or rolls of a width exceeding 15 cm of heading 4811, floor

⁶⁶ See PCM's RFI Response.

⁶⁷ See [**name**]'s RFI Response.

⁶⁸ See PCM's RFI Response.

⁶⁹ *Id.*; Importers' CF-28 Response.

⁷⁰ *Id.*

⁷¹ See A2 Labels' Written Arguments at 2-4; A2 Label's Written Rebuttal Arguments at 3; A2 Labels' Certain Importers' Rebuttal at 1-2.

⁷² See A2 Labels' Written Arguments at 2-4.

coverings on a base of paper or paperboard of heading 4811, or from any other heading, except from headings 4817 through 4823.⁷³

A2 Labels argues that the jumbo rolls of thermal paper were produced by [name] in Germany and exported to PCM under the HTS 4811.90.⁷⁴ PCM then sourced the rolls it sold to U.S. importers from jumbo rolls from its inventory and converted them into smaller roll sizes [description of item] wound on to plastic cores and packaged.⁷⁵ A2 Labels claims that it is not in dispute that the proper COO of the converted rolls is Mexico, which is what was declared on entry, because pursuant to the Rules of Origin of USMCA, the converted thermal paper was entirely produced in Mexico and the foreign jumbo rolls sourced from Germany underwent the requisite change required under GN 11, Chapter 48, Rule 6(a).⁷⁶

A2 Labels further cites that PCM secured two legal opinions from PCM's legal counsel both in Mexico and in the United States as to the origin of its merchandise.⁷⁷

A2 Labels argues in its written rebuttal arguments its imports were correctly and properly marked as the product of Mexico under the Rules of Origin of USMCA, citing Customs Ruling N333961.⁷⁸

Certain Importers' (Paper Roll Products, Paper Roll Supplies, VBS CAL, E Merchant Supplies Inc, and BuyRolls) Arguments

Certain Importers argue that PCM's thermal paper converting operations qualify their exports as COO Mexico under the USMCA.⁷⁹ Certain Importers assert that in PCM's RFI response, PCM provided evidence that the COO for the merchandise is Mexico, citing 19 CFR 134(b) and 19 CFR 102.20.⁸⁰

Certain Importers maintain that there are three CBP CROSS Rulings that apply to conversion of thermal paper: Customs' Ruling N306776, N030222, and N268298.⁸¹ In Customs Ruling N306776 regarding the North American Free Trade Agreement (NAFTA) origin of BPA-free

⁷³ See A2 Labels' Written Arguments at 2-4; A2 Label's Written Rebuttal Arguments at 3.

⁷⁴ *Id.*

⁷⁵ See A2 Labels' Written Arguments at 2-4.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ See CBP Ruling "The country of origin of thermal paper rolls," dated August 2, 2023 (Ruling N333961); A2 Label's Written Rebuttal Arguments at 3 and Attachment A1.

⁷⁹ See Certain Importers' Written Arguments at 17-19.

⁸⁰ *Id.*

⁸¹ See CBP Ruling "Applicability of the North American Free Trade Agreement to imports of thermal paper," dated November 7, 2019 (Ruling N306776); CBP Ruling "The Country Of Origin Marking Of Finished Rolls Of Lightweight Thermal Paper," dated July 2, 2008 (Ruling N030222); CBP Ruling "The Country Of Origin Of Rolls Of Coated Thermal Paper," dated September 30, 2015 (Ruling N268298).

thermal paper products, CBP found under 19 CFR 102.20, the COO for the merchandise would be Canada. Certain Importers argue that the Canadian company requesting the ruling imported jumbo thermal paper rolls from Japan and Korea for conversion, which is similar to PCM's thermal paper converting operations. In Customs Rulings N030222 and N268298, Certain Importers explain that CBP found that Chinese companies' conversion of thermal paper via slitting did not change the COO of that merchandise. Certain Importers assert that Ruling N306776 is far more applicable to this current proceeding because: (1) the ruling is more recent; and (2) this ruling applies to a USMCA country. Certain Importers maintain that Ruling N306776 shows that thermal paper converted in Mexico or Canada via slitting should be considered to originate from Mexico or Canada. Thus, Certain Importers agree with PCM that the thermal paper PCM exported to the United States should be considered of Mexican origin.⁸²

Alleger's Arguments

In its Written Rebuttal Arguments, the Alleger asserts that CBP has previously determined that non-preferential origin determinations (including whether imported merchandise is subject to antidumping duties or countervailing duties) are distinct from: (1) the USMCA COO marking rules; and (2) the tests that are used to determine whether an imported article qualifies as a USMCA-"originating good" (and thus qualifies for general duty preferences at the time of entry).⁸³ The Alleger argues that origin marking for USMCA and general duty preference rules are not used to determine whether imported merchandise are subject to AD/CVD orders.⁸⁴

CBP's Response

AD/CVD laws in Title VII of the Tariff Act of 1930 (codified at 19 USC 1671, et seq.) authorize the Department of Commerce (DOC) to determine whether specific imported products are subject to AD/CVD duties. In the AD/CVD context, DOC addresses questions of COO in its scope determinations, using its own rules in 19 CFR 351.225(j) that specifically provide that they are "not bound by the determinations of any other agency, including tariff classification and COO marking rulings issued by the Customs Service." In *Canadian Solar, Inc. v. U.S.*, 918 F.3d 909 (Fed. Cir. 2019), the U.S. Court of Appeals for the Federal Circuit has upheld DOC's authority to make its own AD/CVD COO determinations and use its own rules; in the context of AD/CVD orders, CBP applies DOC's COO determination, not Rules of Origin in the USMCA, Customs Rulings, or opinions from a business's legal counsel.

⁸² *Id.*

⁸³ See Alleger's Written Rebuttal Arguments at 3-4, citing CBP Rulings N326702 and N328916.

⁸⁴ See CBP Ruling "The eligibility of a walk-behind lawn mower under the United States-Mexico-Canada Agreement (USMCA)," dated July 6, 2022 (Ruling N326702); CBP Ruling "The eligibility of a snowblower under the United States-Mexico-Canada Agreement," dated November 4, 2022 (Ruling N328916); Alleger's Written Rebuttal Arguments at 3-4.

None of the interested parties supplied a DOC scope ruling for the *Order* that indicates that the conversion of thermal paper in a third country is not subject to the scope of the *Order*. Therefore, CBP must rely on the plain language of the scope of the *Order*, which states:

The scope of the *Order* covers thermal paper that is converted into rolls with an actual width of less than 4.5 inches and with an actual basis weight of 70 gsm or less in third countries from jumbo rolls produced in the subject countries.

The plain language of the scope clearly states that third country conversion of thermal paper into widths of less than 4.5 inches and with an actual basis weight of 70 gsm or less is subject to the scope. In PCM's RFI response, PCM provided purchase orders and production records testifying to converting German jumbo rolls of thermal paper into rolls with an actual width of less than 4.5 inches and with an actual basis weight of 70 gsm or less and exporting smaller thermal paper rolls to the Importers in the United States that meet description of the scope.⁸⁵ Therefore, the Importers are evading the *Order* by importing thermal paper rolls subject to *Order* without paying the applicable AD duty.

With respect to the applicability of Customs Rulings, CBP notes that interested parties did not submit a Customs Ruling that addresses the importation of German or South Korean thermal paper into Mexico for conversation and later exportation to the United States.⁸⁶ A Customs Ruling may enable companies to make business decisions based on how their goods will be treated on importation. The Customs Rulings are based on specific facts about specific transactions that are presented by companies to CBP.⁸⁷ Customs Rulings are not meant to supersede the unambiguous scope of an AD/CVD order or any subsequent DOC AD/CVD scope rulings. Written decisions regarding the scope of AD/CVD orders are issued by DOC and are separate from tariff classification and origin rulings issued by CBP.⁸⁸

Interested Parties submitted the following Customs Rulings: Ruling N326702, Ruling N328916, Ruling N030222, Ruling N268298, Ruling N306776, and Ruling N333961.⁸⁹

⁸⁵ See PCM's RFI Response, the Responding Importers' RFI responses, dated March 9, 23, 27, 31, 2023, and April 3 and 5, 2023.

⁸⁶ See A2 Labels' Written Arguments; A2 Label's Written Rebuttal Arguments; Certain Importers' Written Arguments; Alleger's Written Arguments; Alleger's Written Rebuttal Arguments.

⁸⁷ Accordingly no person, other than to whom the ruling letter is addressed, "should rely on the ruling letter or assume that the principles of that ruling will be applied in connection with any transaction other than the one described in the letter." 19 CFR 177.9(c).

⁸⁸ See Rulings N326702 and N328916.

⁸⁹ See A2 Label's Written Rebuttal Arguments; Certain Importers' Written Arguments; Alleger's Written Rebuttal Arguments.

- Rulings N326702 and N328916 apply to walk-behind lawn mowers and snow throwers, respectively, that are made of Chinese parts that are assembled in Mexico. CBP ruled that under USMCA rules, the COO for the products is Mexico. Because these Customs Rulings do not apply to thermal paper and the USMCA rules are not applicable to the consolidated EAPA investigation, the Rulings do not apply to this EAPA investigation.
- Ruling N030222 involves jumbo rolls from South Korea and Germany that are converted in China and ruled this merchandise is COO China. This Customs Ruling was published in 2008, two years before the *Order* or the *Korean Order* went into effect. The Customs Ruling is not applicable because it does not involve a claimed COO Mexico, and it was 12 years before the *Order* or the *Korean Order* went into effect.
- Ruling N268298 applies to jumbo rolls from Japan that are converted in China and ruled this merchandise is COO Japan. The Ruling is not applicable because it does not involve claimed production in Mexico or jumbo rolls from Germany or South Korea, and it was 6 years before the *Japanese Order* went into effect.⁹⁰
- Ruling N306776 involves jumbo rolls from South Korea and Japan that are converted in Canada and ruled this merchandise is COO Canada. This Customs Ruling was published in November 2019, two years before the *Korean Order* went into effect. The Customs Ruling is not applicable because it does not involve claimed production in Mexico, and it was before the *Order* or the *Korean Order* went into effect.
- Ruling N333961 applies to thermal paper converted in Mexico from Brazilian jumbo rolls. CBP ruled that under USMCA rules, the COO for the products is Mexico. With respect to AD/CVD responsibilities, CBP stated that that imported merchandise “may be subject to antidumping duties and countervailing duties” if the “jumbo rolls originate in other countries.” Further, CBP emphasizes that this Customs Ruling “applies only to the specific factual situation and merchandise description as identified in the ruling request” and that the Customs’ Ruling is dependent on information being “accurate and complete in every material respect.”⁹¹ CBP states that if “the facts are modified in any way, or if the goods do not conform to these facts at time of importation,” then the requester needs to alert CBP and “submit a request for a new ruling in accordance with 19 CFR 177.2.”⁹² This Customs’ Ruling does not apply to the current EAPA investigation because it does not make a ruling on German thermal paper jumbo rolls being converted in Mexico.

⁹⁰ See *Thermal Paper from Germany, Japan, the Republic of Korea, and Spain: Antidumping Duty Orders*, 86 FR 66284 (Nov. 22, 2021) (AD Order A-588-880 will hereafter be referred to as the *Japanese Order*).

⁹¹ Citing 19 CFR 177.9(b)(1).

⁹² See Ruling N333961.

Material and False Statements and Omissions

A2 Labels arguments

A2 Labels maintain that it did not evade the *Order* because it did not import thermal paper into the United States under material and false statements or omissions.⁹³ A2 Labels asserts that under the EAPA, 19 USC 1517(a)(5) defines “evasion” to refer 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.⁹⁴

A2 Labels argues that evasion and falsity require some culpability to be actionable and that the statute does not confer strict liability on importers. A2 Labels asserts that evasion involves intentionally engaging in deceptive or fraudulent conduct to evade or escape the consequences of the law.⁹⁵ A2 Labels argues that neither A2 Labels nor PCM engaged in such conduct. Since the statute excepts clerical errors from culpability, A2 Labels made the argument that the statute does not impose strict liability and that the EAPA statute instructs that CBP may find evasion only when “the clerical error is part of a pattern of *negligent* conduct.” 19 USC 1517(a)(5)(B)(ii).⁹⁶

A2 Labels asserts that the Court of International Trade (CIT) ruled that any determination of evasion must include culpability on behalf of the importer, citing *Diamond Tools Tech. LLC v. United States*, 545 F. Supp. 3d 1324, 1351-1353 (CIT October 29, 2021) (*Diamond Tools I*). A2 Labels maintains that if the EAPA statute imposes strict liability then such a reading “violates a core maxim of statutory construction,” citing *Diamond Tools Tech. LLC v. United States*, 609 F. Supp. 3d 1378, 1386 (CIT December 16, 2022) (*Diamond Tools II*). A2 Labels argues that in the current investigation, A2 Labels and PCM have a good faith disagreement with CBP on the enforcement of the *Order*. First, A2 Labels alleges that the rules of origin of USMCA confirm that the goods at issue should be COO Mexico. Further, in reasonable reliance on the legal advice both from its Mexican and the U.S. counsel, A2 Labels and PCM claims that A2 Labels entered the goods without declaring the goods as subject to AD duties. Because of these two

⁹³ See A2 Labels’ Written Arguments at 7-8; A2 Label’s Written Rebuttal Arguments at 2.

⁹⁴ See A2 Labels’ Written Arguments at 7-8. A2 Labels add the emphasis in their Written Arguments.

⁹⁵ *Id.*

⁹⁶ *Id.*

factors, A2 Labels asserts that, in an absence of “falsity,” it is insufficient for CBP to find liability of evasion.⁹⁷

Certain Importer’s Arguments

Certain Importers assert that their companies did not knowingly enter the merchandise to evade AD/CVD duties, claiming that Certain Importers did not address or handle the customs documentation. Citing the EAPA statute, particularly 19 USC 1517(a)(5), and *Diamond Tools I*, Certain Importers argue that the statute requires a material falsehood or omission for there to be a finding of evasion.⁹⁸ Certain Importers maintain that none of their actions meet the statutory definition of evasion since they made no material falsehoods or omissions to CBP.⁹⁹

Certain Importers highlight that the CIT found that the plaintiff’s failure to distinguish did not constitute a material and false statement or a material omission, since it was not erroneous, untrue, or deceitful, citing *Diamond Tools I*.¹⁰⁰ Certain Importers argue that their companies did not make a material omission or falsehood since the companies were operating under the belief that the tariffs were being paid by PCM and that the correct COO was being identified in the customs documentation that was submitted by PCM.¹⁰¹

CBP’s Response

The standard for “material and false statement” or “material omission” applied in *Diamond Tools I* does not apply to this scenario. In *Diamond Tools I*, the CIT held that Plaintiff (*Diamond Tools I*)’s failure to label the COO of the imported products did not meet the standard of “material and false statement” or “material omission.” The CIT explained that the importer was relying on DOC’s specific statements regarding the country of origin of merchandise at issue during the original AD investigation and later found in *Diamond Tools II*¹⁰² that plaintiff complied with the DOC’s specific instructions.¹⁰³ No such facts are present here.

⁹⁷ *Id.*

⁹⁸ See Certain Importer’s Written Arguments at 5-7, citing 19 USC 1517(a)(5) and *Diamond Tools I*.

⁹⁹ See Certain Importer’s Written Arguments at 5-7.

¹⁰⁰ *Id.* at 6-7, citing *Diamond Tools I* at 1352-1353.

¹⁰¹ Certain Importers claim that PCM that was responsible for the payment of the tariffs according to the terms of delivery and their agreements. *Id.* at 5-7.

¹⁰² *Diamond Tools Tech. LLC v. United States*, 609 F. Supp. 3d 1378 (Ct. Int’l Trade 2022) (finding that importer relied on and followed clear, specific, and unambiguous instructions in core public decisional document issued by Department of Commerce to explain scope of antidumping order, and thus, representation by importer that sawblades were not subject to antidumping duty order on sawblades and parts from the People’s Republic of China was not material and false statement or omission under EAPA).

¹⁰³ During this EAPA investigation, CBP made a covered merchandise referral to DOC; CBP based its final determination on the results of the covered merchandise referral.

With respect to the current EAPA investigation, the importers did make materially false statements and omissions. The plain language in the scope of the *Order* is clear:

The scope of the *Order* covers thermal paper that is converted into rolls with an actual width of less than 4.5 inches and with an actual basis weight of 70 gsm or less in third countries from jumbo rolls produced in the subject countries.

Any jumbo rolls from an order country that is converted into rolls of a certain width and gsm in a third country is under the scope. In this case, the jumbo rolls were not converted in Mexico such that it could be considered to have been produced in Mexico for purposes of avoiding the payment of AD. Therefore, by not declaring the correct COO, the importers submitted materially false statements. Further, the importers do not provide any information that DOC has issued additional scope rulings further clarifying or changing the current language of the scope.

In addition, no culpability is required by plain language of EAPA.¹⁰⁴ In *Ikadan System*, the CIT concluded that when EAPA is read as a whole, it supports a strict liability interpretation.¹⁰⁵ The CIT determined that because there is no culpability requirement, having a “good faith disagreement” with CBP about the interpretation of the scope of *the Order* does not exempt importers from an EAPA evasion determination.¹⁰⁶ As such, importer’s state of mind, and whether it espouses a different interpretation of the language of the scope, at the time of the importation has no bearing as to whether it made false statements, and in turn, whether evasion occurred.¹⁰⁷

Reasonable Care and Misrepresentation

A2 Labels’ Arguments

A2 Labels argues that it, as well as related manufacturer PCM by association, employed reasonable care when importing thermal paper into the United States.¹⁰⁸ A2 Labels maintains that the importer of record is responsible for exercising reasonable care to enter, classify, and determine the value of imported merchandise, and to provide any other information to enable

¹⁰⁴ 19 U.S.C. § 1517(a)(5). See *Ikadan System, et al., v. United States*, Court No. 21-00592 (CIT June 23, 2023) (*Ikadan System*).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ According to A2 Labels’ RFI Response, A2 Labels and PCM have overlapping [name]. Also, A2 Labels indicated that A2 does not have any direct employees and that A2 functions in the U.S. are performed by PCM’s employees. See A2 Labels’ RFI Response, A2 Labels’ Written Arguments at 5-7; A2 Label’s Written Rebuttal Arguments at 1-2.

CBP to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, citing 19 USC 1484.¹⁰⁹ A2 Labels further asserts that it took reasonable care when importing thermal paper from Mexico because it exercised due diligence by following guidance available on CBP's website as well as in Customs Rulings, regulations and court decisions.

- A2 Labels asserts that it followed the “Informed Compliance Publication” from CBP’s website and which outlines a checklist for the purpose of exercising reasonable care.¹¹⁰ A2 Labels argues that the reasonable care standard includes having in place a Customs compliance program and procedures, as well as assigning a responsible and knowledgeable individual or customs broker to review and ensure the accuracy of Customs documentation.¹¹¹ A2 Labels alleges that if an importer makes a legally incorrect conclusion, it may still be found to have acted with reasonable care so long as there was a good faith effort to ensure that information provided to CBP was correct and the importer had sufficient support for its actions.¹¹²
- A2 Labels asserts that Customs Ruling HQ H272798 applies to this current EAPA investigation.¹¹³ A2 Labels indicates that in this ruling, CBP considered whether an importer exercised reasonable care in relying on another company’s advice for customs matters. CBP listed certain elements included in the defense of reasonable care, including consulting with a customs broker.
- A2 Labels alleges that the CIT's holding in *United States v. Optrex* applies to this EAPA investigation.¹¹⁴ A2 Labels argues that in *United States v. Optrex*, the CIT determined the importer did not exercise reasonable care because it did not follow the instructions of counsel when it did not obtain a binding ruling letter for the classification of one of its products. A2 Labels indicates that the CIT ruling included a determination an honest, good faith professional disagreement as to correct classification of a technical matter shall not be lack of reasonable care unless such disagreement has no reasonable basis. A2 Labels argues that it sought counsel when importing thermal paper into the United States and followed counsel’s advice.¹¹⁵

¹⁰⁹ See A2 Labels’ Written Arguments at 5.

¹¹⁰ *Id.* at 5.

¹¹¹ *Id.* at 5.

¹¹² *Id.* at 5, citing *United States v. Golden Ship Trading Co.*, 25 CIT 40, 47-8 (2001) (holding that an importer did not exercise reasonable care where the importer did not attempt to verify or ascertain the correctness of the information prepared by its broker).

¹¹³ See CBP Ruling “Request for a Ruling as to Whether Certain Consulting Activities Constitute “Customs Business” for Purposes of 19 USC 1641, and “Whether Reliance on the Work Product of Such Consulting Activities Constitutes the Exercise of “Reasonable Care” by United States Importers,” dated January 26, 2017 (Ruling HQ H272798); A2 Labels’ Written Arguments at 6.

¹¹⁴ See A2 Labels’ Written Arguments at 6, citing *United States v. Optrex America, Inc.*, 32 C.I.T. 620, 560 F. Supp. 2d 1326, 1335 (Ct. Int’l Trade 2008) (citing H. Rep. No. 103-361 at 120) (*United States v. Optrex*).

¹¹⁵ *Id.* at 6-7.

In response to allegations of fraud (discussed below), A2 Labels, as the related importer to PCM, asserts that there is no evidence on the record supporting these allegations, specifically that PCM engaged in a fraudulent scheme or sought to mislead its customers. A2 Labels maintains that PCM did not intend to, nor did it seek to deceive the Importers in any way.¹¹⁶

Certain Importer's Arguments

Certain Importers claim that PCM has engaged in deceptive and fraudulent behavior to both its customers and CBP.¹¹⁷ Certain Importers assert that PCM offered the following to its customers: that it would handle the importation process, so long as the customers paid an increased price to include the cost of the tariffs.¹¹⁸ Certain Importers argue that PCM requested certain information from the customers, had them sign a customs power of attorney document, and then used that documentation to set the customers up as importers of record.¹¹⁹ Certain Importers maintain that PCM engaged a customs broker on the customers' behalf and used the importer of record number it created for them to import the purchased merchandise into the United States.¹²⁰ Certain Importers argue that PCM that was responsible for the payment of the tariffs according to the terms of delivery and PCM's agreements with those Certain Importers.¹²¹ Certain Importers claim that they did not become aware of the misrepresentation of the COO or that the tariffs were not being paid in accordance with their agreements with PCM until the onset of this evasion investigation at which time they conceded that the COO should have been Mexico.¹²²

Alleger's Arguments

The Alleger asserts that none of the Importers applied any level of care or diligence to ensure that they were declaring the correct COO and paying the requisite duty deposits owed.¹²³ The Alleger specifically argues that A2 Labels and PCM did not use reasonable care when importing thermal paper into the United States.¹²⁴ The Alleger maintains that PCM was fully aware that the AD duties applicable to Germany would apply to its imports of converted rolls from Mexico, citing Certain Importers' written arguments.¹²⁵ The Alleger further argues that PCM's preparation of the importation documentation and failure to pay the AD duties as represented

¹¹⁶ See A2 Labels' Certain Importers' Rebuttal at 1.

¹¹⁷ See Certain Importers' Written Arguments at 3-5.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.* at 5-6 and 8-16.

¹²² *Id.* at 6 and 8-16.

¹²³ See Alleger's Written Arguments at 4; Alleger's Written Rebuttal Argument at 4-7.

¹²⁴ See Alleger's Written Rebuttal Argument at 4-7.

¹²⁵ *Id.*

indicates that related importer A2 Labels did not use reasonable care when importing thermal paper into the United States.¹²⁶

The Alleger argues that whether an importer exercised reasonable care is irrelevant to determining if imports are covered by an AD order.¹²⁷ The Alleger asserts that whether an importer failed to exercise reasonable care should only inform the amount of additional civil penalties that CBP may impose for fraud, gross negligence, or negligence under 19 USC 1592, on top of any duties owed.¹²⁸

CBP's Response

With respect to reasonable care, CBP notes that EAPA does not have a culpability requirement necessary to find evasion. As discussed above, EAPA neither has a knowledge requirement for evasion, nor is an importer required to intend to make the material or false statement. In other words, whether an importer exercised reasonable care is irrelevant for the purposes of determining substantial evidence of evasion under EAPA. Therefore, CBP does not need to determine any level of culpability, only that evasion occurred with entry. The evidence on the record does not support A2 Labels' assertions that the merchandise was COO Mexico for purposes of the *Order*, rather substantial evidence on the record indicates the merchandise was manufactured in Germany and transshipped through Mexico before being imported to the United States.

With respect to Certain Importers, CBP asserts their reliance on their supplier does not absolve them from the requirements imposed on importers of record.¹²⁹ Under section 19 USC 1484, importers of record, either themselves or by an agent authorized by the party in writing, are required to provide CBP with information to properly assess duties on the merchandise brought into the United States. By not declaring their thermal paper imports as COO Germany and subject to the *Order*, Certain Importers failed to provide CBP with information to properly assess duties on the imports and evaded the *Order* via transshipment.

CBP rejects the claim by E-Merchant Supplies, Paper Roll Products, Paper Roll Supplies, and VBS Cal that they were not aware of their status as to whether they were considered importers of record when purchasing from PCM as this directly contradicts their acknowledgement that company representatives signed powers of attorney, authorizing customs brokers to act as their representative for Customs entries.¹³⁰ E-Merchant Supplies, Paper Roll Products, Paper Roll Supplies, and VBS Cal provided a copy of the signed power of attorney between those importers

¹²⁶ *Id.*

¹²⁷ *See* Alleger's Written Rebuttal Argument at 4.

¹²⁸ *Id.* at 4-7

¹²⁹ *See* Certain Importers' Written Arguments at 3-6 and 8-16.

¹³⁰ *Id.*

and the customs brokers.¹³¹ The agreement, signed by E-Merchant Supplies, Paper Roll Products, and Paper Roll Supplies, with customs broker [name] included requirements that the customers (the importer in these agreements) must “[description of process]” and that the customers “[description of process].”¹³² In the agreement, signed by E-Merchant Supplies, Paper Roll Products, and VBS Cal, with another customs broker [code], the customers agreed to give [code] the authority to “[description of process].”¹³³ By signing the powers of attorney with the customs brokers, E-Merchant Supplies, Paper Roll Products, Paper Roll Supplies, and VBS Cal were aware of their obligations to review Customs entries made on their behalf and/or aware of the customs broker’s ability to make statements on their behalf. These importers were responsible for the statements that their customs brokers made, including labeling these companies as the importer of record.

CBP finds BuyRolls’ claim that it was also unaware of its status as importer of record when purchasing from PCM to be contrary to the record. CBP records indicate that BuyRolls has been the importer of record of thermal paper shipments from [code] using customs broker [code] since [date] and using customs broker [name] since [date], suggesting that BuyRolls is an experienced importer that maintains a relationship with two customs brokers.¹³⁴ BuyRolls claimed that it altered its agreement with PCM in 2021 to set up A2 Labels for the placement and facilitation of orders from the United States.¹³⁵ CBP notes that the email submitted by BuyRolls explaining the change to the business relationship with PCM clearly shows PCM warning BuyRolls that BuyRolls [description] for [date range].¹³⁶ PCM also warns BuyRolls that [name] has the [description] and offering [description of process].¹³⁷ During this EAPA investigation, BuyRolls claims that it had “no direct contact” with the customs brokers,¹³⁸ however, the record shows it did in fact know its status as importer of record, specifically, its [date range] of experience as an importer of record with the customs brokers, PCM’s warning about its [description], and the failure to follow up with the customs brokers.

Given the Certain Importers’ claims of ignorance as to their status as importers of record, CBP reiterates that EAPA does not have a culpability requirement necessary to find evasion. EAPA does not have a knowledge requirement for evasion, nor is there any requirement that an importer know of the material or false statement. In other words, whether an importer exercised

¹³¹ See E-Merchant Supplies RFI Response at Exhibit 18; Paper Roll Products’ RFI Response at Exhibit III-3; Paper Roll Supplies’ RFI Response at Exhibit 18; VBS Cal’s SRFI response at Appendix 1.

¹³² See E-Merchant Supplies RFI Response at Exhibit 18; Paper Roll Products’ RFI Response at Exhibit III-3; Paper Roll Supplies’ RFI Response at Exhibit 18.

¹³³ See Paper Roll Products’ RFI Response at Exhibit III-3; Paper Roll Supplies’ RFI Response at Exhibit 18; VBS Cal’s SRFI response at Appendix 1.

¹³⁴ See EAPA Receipt Report (7770-7771).

¹³⁵ See Certain Importers’ Written Arguments at 14-15, citing BuyRolls’ SRFI response at 2 and Exhibit A.

¹³⁶ See BuyRolls’ SRFI response at 2 and Exhibit A.

¹³⁷ *Id.*

¹³⁸ See Certain Importers’ Written Arguments at 14-15.

reasonable care is irrelevant for the purposes of making an evasion determination under EAPA. Therefore, CBP does not need to determine any level of culpability, only that evasion occurred with entry. Substantial evidence on the record indicates the merchandise was manufactured in Germany and transshipped through Mexico before being imported to the United States and that applicable AD duties were not paid.

Use of Korea as Adverse Inferences

Alleger's Arguments

The Alleger argues that as a result of the failure to respond to CBP's information requests, CBP should apply an adverse inferences with respect to the Non-Responding Importers in accordance with 19 USC 1517(c)(3) and 19 CFR 165.27.¹³⁹ The Alleger indicates that under the EAPA statute, CBP may apply an adverse inference when a party has failed to cooperate by not acting to the best of the party's or person's ability to comply with a request for information and that CBP may use an inference that is adverse to the interest of that party or person in selecting from among the facts otherwise available to make the determination.¹⁴⁰

The Alleger argues it provided CBP with information in the allegation that PCM imported jumbo rolls from both Koehler in Germany and Hansol in South Korea.¹⁴¹ According to the Alleger, PCM stated in its initial questionnaire response that it sourced "some" of the thermal jumbo rolls from Koehler in Germany.¹⁴² Moreover, the Alleger argues that CBP should make an adverse inference consistent with 19 USC 1517(c)(3) and 19 CFR 165.27 and find that the Non-Responsive Importers are subject to the duties applicable to Hansol in South Korea.¹⁴³

CBP's Response

CBP is applying adverse inferences to the Non-Responding Importers due to their lack of cooperation in this current investigation. CBP is using adverse inferences to make the determination that the Non-Responding Importers are evading the German AD Order by transshipment through Mexico. This determination is adverse to the interests of the Non-Responding Importers. While the Alleger did provide some evidence with respect to Korean imports, the subsequent EAPA investigation concluded that there is substantial evidence that PCM used German, not Korean-origin, thermal paper jumbo rolls as raw materials for its exports

¹³⁹ See Alleger's Written Arguments at 3-4 and 7; Alleger's Written Rebuttal Arguments at 7-8.

¹⁴⁰ *Id.*

¹⁴¹ See Alleger's Written Arguments at 3-4 and 7

¹⁴² See Alleger's Written Arguments at 3-4 and 7

¹⁴³ See Alleger's Written Arguments at 3-4 and 7; Alleger's Written Rebuttal Arguments at 7-8.

to the United States. Therefore, CBP finds all Importers evaded the German AD Order by importing rolls from PCM that were converted from German thermal-paper jumbo rolls.

COO Germany

A2 Labels' Arguments

A2 Labels asserts that PCM provided substantial evidence that all thermal paper exported by PCM into the United States was converted using the jumbo rolls of thermal paper from [name] in Germany.¹⁴⁴ While A2 Labels maintains that the merchandise was properly imported as COO Mexico, A2 Labels argues that if CBP does not find COO Mexico, then CBP should determine that the COO is Germany.¹⁴⁵

Certain Importers' Arguments

Certain Importers argue that should CBP determine that the COO for the merchandise is not Mexico, there is sufficient evidence on the record to determine that the merchandise PCM exported to the Importers is of German origin.¹⁴⁶ Certain Importers assert that PCM informed CBP in PCM's RFI response that all merchandise it exported to the United States was made using jumbo thermal paper rolls from Germany.¹⁴⁷ Certain Importers maintain that interested parties have provided sufficient documentation to show that the raw material jumbo thermal paper rolls used in the production of the imported merchandise was produced by Koehler Paper in Germany.¹⁴⁸

Alleger's Arguments

The Alleger acknowledges that PCM is arguing that it only produced converted rolls of thermal paper exported to the United States from jumbo rolls produced by Koehler in Germany.¹⁴⁹ The Alleger asserts that if PCM was unable to tie the exports of converted rolls to the United States with specific imports of jumbo rolls from Koehler in Germany, then CBP cannot assume that the appropriate COO is Germany for all the entries into the United States.¹⁵⁰

¹⁴⁴ See A2 Labels' Written Arguments at 13-14, citing PCM's RFI response and PCM's SRFI Response; A2 Labels' Certain Importers' Rebuttal at 2-4.

¹⁴⁵ *Id.*

¹⁴⁶ See Certain Importers' Arguments at 19-21

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ See Alleger's Written Arguments at 7.

¹⁵⁰ *Id.*

CBP's Response

During this investigation, CBP found substantial evidence that the Importers are evading the *Order* by transshipping German thermal paper through Mexico. CBP was able to link shipments of thermal paper jumbo rolls to Mexico, the conversion of those jumbo rolls in PCM's facility, and the importation of the converted rolls into the United States by the Importers.

Determination as to Evasion

The previously discussed facts on the record establish that there is substantial evidence that German-origin thermal paper was imported into the United States by evasion, specifically via transshipment through Mexico and misclassification. Furthermore, evidence on the record indicates that the Importers entered the German-origin thermal paper into the United States as type 01 entries and evaded the payment of AD duties on thermal paper from Germany, by misrepresenting the thermal paper as Mexican origin or misclassifying products as non-covered merchandise.¹⁵¹ The thermal paper that the Importers entered from PCM during the period of investigation were subject to the AD rates on thermal paper from Germany.¹⁵²

¹⁵¹ Entry type "01" is the code that CBP requires importers use to designate a standard consumption entry that is not subject to AD/CVD duties. *See* <https://www.cbp.gov/trade/automated/ace-transaction-details>.

¹⁵² Importers' thermal paper entries are subject to the Koehler Paper rate of 2.90 percent for AD case A-428-850. *See the Order.*

Actions Taken Pursuant to the Affirmative Determination of Evasion

In light of CBP's determination that the Importers entered covered merchandise into the customs territory of the United States through evasion, and pursuant to 19 USC 1517(d) and 19 CFR 165.28, CBP will suspend or continue to suspend the entries subject to this investigation until instructed to liquidate these entries. For those entries previously extended in accordance with the interim measures, CBP will rate adjust and change those entries to type 03 and continue suspension until instructed to liquidate these entries. CBP will also evaluate the Importers' continuous bonds in accordance with CBP's policies and may require single transaction bonds as appropriate. None of the above actions precludes CBP or other agencies from pursuing additional enforcement actions or penalties.

Sincerely,



Victoria Cho
(A) Director, Enforcement Operations Division
Trade Remedy Law Enforcement Directorate
CBP Office of Trade

Appendix 1

Table 1: Importer and Bill of Lading Numbers Linked to PCM’s Raw Material Invoices from Koehler

| Jumbo Roll Invoice Number | Bill of Lading Number | Importer of Record (Converted Rolls) |
|----------------------------------|------------------------------|---|
| [#] | [#] | E Merchant Supplies |
| | [#] | The Advantage Group |
| [#] | [#] | A2 Labels |
| | [#] | Paper Roll Supplies |
| | [#] | VBS Cal |
| [#] | [#] | National Pos |
| [#] | [#] | POS Supply Solutions |
| [#] | [#] | POS Supply Solutions |
| [#] | [#] | E Merchant Supplies |
| [#] | [#] | E Merchant Supplies |
| | [#] | Paper Roll Products |
| [#] | [#] | Lucky Heap |
| [#] | [#] | AmerCare Royal |
| | [#] | Buy Rolls Inc |
| | [#] | Quality Paper |
| [#] | [#] | E Merchant Supplies |
| | [#] | Golden Eagle |
| | [#] | Allied Paper |

Source: PCM’s RFI Response

Table 2a: Misclassification

| Importer of Record | HTS Subheading | Filer Code | Entry Number | Customs Form 7533 Cargo Description | Koehler Jumbo Roll Invoice Number | Source |
|---------------------------|-----------------------|-------------------|---------------------|--|--|-----------------------------------|
| POS Supply | 4811.90.9080 | [code | #]3868 | Thermal Paper | [#] | PCM RFI at Attachment IVQ12.19.I |
| POS Supply | 4811.90.9080 | [code | #]7512 | Thermal Paper | [#] | PCM RFI at Attachment IV-Q12.1.k |
| VBS Cal | 4811.90.9080 | [code | #]3436 | Thermal Paper | [#] | PCM RFI at Attachment IV-Q12.10.k |

Table 2b: Misclassification

| Importer of Record | HTS Subheading | Filer Code | Entry Number | PCM Invoice Merchandise Description | Source |
|---------------------------|-----------------------|-------------------|---------------------|--|---|
| VBS Cal | 4811.90.9080 | [code | #]9311 | Thermal Paper Rolls [measurements] | Importer Supplemental RFI at Appendix 1 |
| Paper Roll Supplies | 4811.90.9080 | [code | #]7280 | Thermal Paper Rolls [measurements] | Importer Supplemental RFI at Appendix 3 |