



May 12, 2023

PUBLIC VERSION

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RE: EAPA Consolidated Case No. 7737 – Notice of Determination as to Evasion

To the Counsel for the Above-Referenced Entities:

Pursuant to an examination of the record in Enforce and Protect Act (EAPA) Consolidated Investigation 7737, U.S. Customs and Border Protection (CBP) has determined there is substantial evidence that Gorilla Paper, Inc. and Gorilla Supply (collectively, Gorilla Paper or, the Importer) entered merchandise covered by antidumping duty (AD) orders A-428-850 (Germany) and A-580-911 (South Korea) on thermal paper into the customs territory of the United States through evasion.¹ Substantial evidence demonstrates that Dor Etiket San. Ve. Tic. Ltd, Sti (Dor Etiket), Engin Kagit Mamulleri San Tic. Ltd. (Engin Kagit), and Umur Basim Sanayi Ve Tic. A.S. (Umur Basim) exported and transshipped thermal paper of German origin and of South Korean origin to the United States with a claimed country-of-origin (COO) Turkey. Additionally, substantial evidence demonstrates that the Importer misclassified thermal paper of South Korean origin as carbon paper. As a result, no cash deposits were applied to the merchandise at the time of entry.

Background

On June 13, 2022, the Paper Receipts Converting Association (the Allegor, or PRCA) filed two EAPA allegations alleging that the Importer evaded the *Orders* by importing thermal paper

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 and A-580-911 will hereafter be collectively referred to as the *Orders*). The allegations at issue were brought against Gorilla Paper, Inc., and Gorilla Supply collectively.

either from Germany or South Korea into the United States which was transshipped through Turkey; in addition the thermal paper of South Korean origin was misclassified.² On July 8, 2022, the Trade Remedy Law Enforcement Directorate (TRLED), within CBP's Office of Trade, acknowledged receipt of the properly filed Allegations by the Alleger, a trade or business association in which a majority of the members manufacture, produce, or wholesale a domestic like product, *i.e.*, thermal paper, 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.³ TRLED found the information provided in the Allegations reasonably suggested that the Importer entered covered merchandise into the customs territory of the United States through evasion. Consequently, CBP initiated investigations on July 29, 2022, pursuant to Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, commonly referred to as the "EAPA."⁴

After evaluating the information on the record at that time, on November 3, 2022, CBP issued its Notice of Initiation and Interim Measures.⁵ TRLED determined that there was reasonable suspicion that the Importer evaded the *Orders* by claiming the thermal paper it imported into the United States was of Turkish-origin when it was actually of South Korean-origin or German-origin.⁶ TRLED based its finding on the information provided in the Allegations, *i.e.*, the 2008 CROSS Ruling N030222 and 2015 CROSS Ruling N268298, finding "no substantial transformation" in the jumbo-roll-to-smaller-roll conversion process, and the raw material supplier information supplied by the Importer in its responses to the CBP Form 28 (CF-28) requests for information and concluded that there was reasonable suspicion of evasion. CBP finds that the processing of the South Korean-origin and/or German-origin thermal paper, *i.e.*, cutting jumbo rolls to smaller rolls, undertaken by Dor Etiket, Engin Kagit, and Umur Basim, as the Importer described in its CF-28 response, does not change the COO of the thermal paper to Turkey.⁷ Additionally, in finding reasonable suspicion of evasion, CBP relied on the results of a cargo examination to discover that Gorilla Paper had been misclassifying thermal paper into the

² See 7737 Letter from the PRCA, "Duty Evasion and False Country of Origin Allegation Against Gorilla Paper, Inc, An Importer Of Thermal Paper From The Republic of Korea and Germany, Pursuant To The Enforce and Protect Act," dated June 13, 2022, (7737 Allegation) and 7738 Letter from the PRCA, "Duty Evasion and False Country of Origin Allegation Against Gorilla Paper, Inc, An Importer Of Thermal Paper From The Republic of Korea and Germany, Pursuant To The Enforce and Protect Act," dated June 13, 2022, (7738 Allegation) (collectively, the Allegations) at 3. The president, secretary, and agent for Gorilla Paper is listed as Su Chang Lim, and both Gorilla Paper Inc. and Gorilla Supply, among others, are trademarks registered to Su Chang Lim. See Allegations at 3-4 and Exhibits 3-4.

³ See email, "Receipt of Properly Filed Allegation 7737," dated July 8, 2022, and email, "Receipt of Properly Filed Allegation 7738," dated July 8, 2022. The period of investigation is July 8, 2021, through the pendency of this investigation.

⁴ See CBP Memorandum, "Initiation of Investigation for EAPA Case Number 7737," dated July 29, 2022, and CBP Memorandum, "Initiation of Investigation for EAPA Case Number 7738," dated July 29, 2022, (collectively, Initiation Notices).

⁵ See CBP Memorandum, "Notice of Initiation of Investigation and Interim Measures - EAPA Cons. Case 7737," dated November 3, 2022 (NOI). Because factors warranting consolidation were present, during the NOI, CBP consolidated EAPA investigations 7737 and 7738 into one investigation, EAPA Consolidated Case No. 7737.

⁶ *Id.* at 5 and 11.

⁷ *Id.* at 8 and 10.

United States as carbon paper (specifically, the carbon paper was actually South Korean-origin thermal paper that had been transshipped through Turkey).⁸

On November 7, 2022, pursuant to 19 CFR 165.5, CBP sent Requests for Information (RFI) to the purported manufacturers Dor Etiket, Engin Kagit, and Umur Basim, and to the Importer, requesting information on the manufacturers' shipments to the Importer, as well as the manufacturers' production capabilities and capacities.⁹

Umur Basim failed to respond to the RFI. On November 23, 2022, CBP reissued the RFI to Umur Basim by email.¹⁰ On December 2, 2022, CBP again reissued its RFI to Umur Basim by FedEx.¹¹ On December 6, 2022, Umur Basim received the FedEx package.¹² On December 12, 2022, CBP reissued the RFI to Umur Basim by way of counsel after Umur Basim notified CBP that it had retained counsel.¹³ On December 27, 2022, Umur Basim notified CBP that it was declining to participate in the EAPA investigation and did not respond to CBP's RFI.¹⁴

On December 5, 2022, Gorilla Paper responded to the RFI.¹⁵ In its RFI response, Gorilla Paper stated that it would "follow up with a spreadsheet that goes entry-by-entry, based upon ACE data, to indicate the country of origin of the original rolls, so that the exact amount of underpaid antidumping duties can be readily ascertained."¹⁶ On December 19, 2022, CBP set a deadline for the aforementioned submission of January 6, 2023.¹⁷ On January 6, 2023, Gorilla Paper filed the addendum response (*i.e.*, the spreadsheet that goes entry-by-entry corresponding with additional filed documentation) to its RFI.¹⁸

On November 22, 2022, CBP received a limited response from Dor Etiket (*e.g.*, the response did not respond sufficiently to every question, did not provide fulsome descriptions where requested, and did not include all requested documentation), which was rejected in its entirety on November 23, 2022, because the treatment of business confidential information was nonconforming with CBP regulations.¹⁹ On November 23, 2022, CBP rejected Dor Etiket's RFI response and

⁸ *Id.* at 6.

⁹ See Letter to Dor Etiket, "EAPA CONSOLIDATED CASE 7737 - Request for Information," dated November 7, 2022 (Dor Etiket RFI); Letter to Engin Kagit, "EAPA CONSOLIDATED CASE 7737 - Request for Information," dated November 7, 2022 (Engin Kagit RFI); Letter to Umur Basim, "EAPA CONSOLIDATED CASE 7737 - Request for Information," dated November 7, 2022 (Umur Basim RFI); and, Letter to Gorilla Paper, "EAPA 7737 Request for Information," dated November 7, 2022 (Gorilla Paper RFI).

¹⁰ See email, "Investigation of Evasion - Thermal Paper," dated November 23, 2022.

¹¹ See Memorandum, "FEDEX Delivery of Request for Information to Identified Supplier," dated December 7, 2022 (Delivery Memo).

¹² See Delivery Memo at Attachment 1.

¹³ See email, "EAPA Cons. 7737 -- Reissue Umur Basim RFI," dated December 12, 2022.

¹⁴ See Umur Basim's email, "RE: EAPA Cons. 7737 -- Reissue Umur Basim RFI," dated December 27, 2022 (Decline Response Email).

¹⁵ See Gorilla Paper's Letter, "Gorilla Paper, Inc. EAPA Case 7737 -- Request for Information Response to November 7, 2022, RFI," dated December 5, 2022 (Gorilla Paper RFI Response).

¹⁶ *Id.* at 3.

¹⁷ See email, "EAPA Cons. 7737: Set Deadline for Filing Entry Worksheet," dated December 19, 2022.

¹⁸ See Gorilla Paper's Letter, "Gorilla Paper, Inc. EAPA Case 7737 -- Request for Information Response to December 19, 2022, RFI," dated January 6, 2022 (Gorilla Paper Addendum Response).

¹⁹ *Id.* at 2.

provided it an opportunity to take corrective action.²⁰ On November 30, 2022, CBP again received limited responses from Dor Etiket and, for the first time the agency received a response from Engin Kagit.²¹ On February 16, 2023, CBP memorialized the filing deficiencies in Dor Etiket's and Engin Kagit's 11 varying RFI response submissions (*i.e.*, while the 10 re-filings were supposed to be unchanged and only resubmitted with applied corrective action, new documents appeared that did not reconcile with corresponding documents that had been originally filed, meaning that there was no pair of corresponding public version and business confidential version), described the inconsistencies across the response submissions, and identified a lack of summarization of business confidential information that did not conform with EAPA regulations.²² On February 17, 2023, CBP rejected Dor Etiket's and Engin Kagit's responses to the RFI from the administrative record pursuant to 19 CFR 165.4(b) for bracketing nonconformities and failure to serve the Alleger as required by 19 CFR 165.23(c)(1).²³

On March 16, 2023, the Alleger and Gorilla Paper submitted written arguments.²⁴ On March 30, 2023, Gorilla Paper submitted rebuttal arguments.²⁵

Analysis as to Evasion

Under 19 U.S.C. 1517(c)(1)(A), to reach a determination as to evasion, CBP must “make a determination, based on substantial evidence, with respect to whether such covered merchandise entered into the customs territory of the United States through evasion.” 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.”²⁶

Adverse Inferences

EAPA regulation at 19 CFR 165.6(a) states:

²⁰ See Memorandum, “Bracketing Inconsistencies,” dated February 16, 2023 (Bracketing Memo) at 2. See also email, “Bracketing RFI Response RE: US CUSTOMS,” dated November 23, 2022.

²¹ Only the narrative responses (*i.e.*, the respondents' written, narrative answers, albeit limited, to questions in the RFI) were properly filed with a public version and business confidential, as such, CBP accepted only the narrative response and rejected nonconforming attached documentation (*i.e.*, various export documentation). See Bracketing Memo at 1 and 3. See also email, “EAPA 7737 - Partial Rejection of the Public Versions of the Dor Etiket & Engin Kagit Nov. 30 RFI Responses,” dated November 30, 2022. In total Dor Etiket and Engin Kagit filed 11 different versions of the RFI responses. Despite providing multiple opportunities for Dor Etiket and Engin Kagit to undertake corrective actions, the submissions did not conform with regulatory requirements. See Bracketing Memo.

²² See Bracketing Memo.

²³ *Id.*

²⁴ See Alleger's Letter, “EAPA Investigation No. 7737 - Gorilla Paper - Alleger's Written Arguments,” dated March 16, 2023 (Alleger Written Argument). See also Gorilla Paper's Letter, “Gorilla Paper, Inc. EAPA Case 7737 Written Arguments,” dated March 16, 2023 (Gorilla Paper Written Argument).

²⁵ See Gorilla Paper's Letter, “Gorilla Paper, Inc. EAPA Case 7737 Response to Written Arguments,” dated March 30, 2023 (Gorilla Paper's Rebuttal to Written Arguments).

²⁶ See 19 CFR 165.1.

If . . . 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, CBP may apply an inference adverse to the interests of that party in selecting from among the facts otherwise available to make the determination as to evasion. . . .

CBP finds that Dor Etiket, Engin Kagit, and Umur Basim failed to act to the best of their abilities in this EAPA investigation by their lack of cooperation and responsiveness to CBP's requests for information pertaining to the importation, acquisition, production, sale, and purchase of covered merchandise exported to the United States.

Umur Basim declined to respond to the RFI.²⁷ As such, Umur Basim failed to ever provide a response to the RFI issued by CBP to it and, as explained in great detail in the Bracketing Memo, Dor Etiket and Engin Kagit submitted 11 different versions of a limited response to the initial RFI, their responses were significantly deficient and did not meet CBP regulatory requirements.²⁸ As a result, while TRLED accepted the Dor Etiket and Engin Kagit RFI narrative responses, it rejected from the administrative record of this investigation the portion of the Dor Etiket and Engin Kagit RFI responses with attached documentation for the reasons presented above and detailed in-depth in the Bracketing Memo.²⁹ This means that Umur Basim, Engin Kagit, and Dor Etiket all failed to provide documentary evidence that would substantiate and/or corroborate Gorilla Paper's reported imports of thermal paper as not being subject to the *Orders*.

As a result of this lack of cooperation, CBP had no complete responses from Dor Etiket, Engin Kagit, and Umur Basim that corroborated in-full the Importer's claims.³⁰ Further, CBP was unable to reconcile any importation, acquisition, production, sale, and purchase records at Dor Etiket, Engin Kagit, and Umur Basim against Gorilla Paper's RFI responses, including the Importer's assertion that certain imports from these Turkey suppliers were U.S.-origin merchandise. Even though the Importer replied to its RFI, EAPA regulations allow an adverse inference to be used without regard to whether another party involved in the same transaction or transactions under examination has provided the information sought by CBP, such as import or export documentation.³¹ Therefore, CBP is applying adverse inferences to the interests of Dor Etiket, Engin Kagit, and Umur Basim and will select from among the facts otherwise available to make the determination as to evasion. In making its determination, CBP relies on information in the Allegations, information in the three CBP CF-28s received from Gorilla Paper (*i.e.*, in the Engin Kagit CF-28 Response, Dor Etiket CF-28 Response, and Umur Basim CF-28 Response), and information in the Gorilla Paper RFI Response to determine all thermal paper exported by Dor Etiket and Engin Kagit to Gorilla Paper is from South Korea and all thermal paper exported

²⁷ See Decline Response Email.

²⁸ See Bracketing Memo. Dor Etiket filed the first response on November 22, 2022. Collectively, Dor Etiket and Engin Kagit filed 10 separate submissions following the first filing on November 22, 2022. In total, Dor Etiket and Engin Kagit filed 11 versions.

²⁹ *Id.*

³⁰ A verification was not possible because Dor Etiket, Engin Kagit, and Umur Basim did not fully participate in accordance with EAPA's regulations. See 19 CFR 165.4a.

³¹ See 19 CFR 165.6(c).

by Umur Basim to Gorilla Paper is from Germany.³²

Specifically, CBP relies on: 1) Engin Kagit's website that demonstrates Engin Kagit sources thermal jumbo paper rolls from Hansol Paper in South Korea, which is subject to the South Korea *Order*;³³ 2) Umur Basim's website that shows Umur Basim uses a patented form of thermal paper produced by Koehler Paper in Germany;³⁴ 3) an invoice demonstrating transactions from Koehler Paper to Umur Basim;³⁵ 4) a commercial invoice, packing list, certificate of origin, and bill of lading demonstrating transactions of jumbo rolls from Hansol Paper to Engin Kagit;³⁶ 5) a commercial invoice, packing list, certificate of origin, and bill of lading demonstrating transactions from Hansol Paper to Engin Kagit;³⁷ and 6) Gorilla Paper's own admission of evading the *Orders* by misreporting the COO and misclassifying certain thermal roll merchandise erroneously as carbon paper.³⁸

Dor Etiket's and Engin Kagit's failures to fully respond to the RFIs and comply with CBP's regulations preclude CBP's understanding of the relationship between Dor Etiket and Engin Kagit. While sales documentation for raw materials in both the Dor Etiket CF-28 Response and Engin Kagit CF-28 Response show transactions between Hansol Paper and strictly *Engin Kagit*, the full relationship between Dor Etiket and Engin Kagit is unclear. The lack of sales documentation evidencing transactions for raw materials between *Dor Etiket* and Hansol Paper is also unexplained by the record. The available evidence shows: 1) thermal paper exported by Dor Etiket and Engin Kagit and imported into the United States by Gorilla Paper are of South Korean-origin; and 2) thermal paper exported by Umur Basim and imported into the United States by Gorilla Paper are of German-origin.

The aforementioned information is juxtaposed against Gorilla Paper's claims that certain merchandise used by the Turkish manufacturer Dor Etiket is made out of materials constituting U.S.-origin jumbo rolls.³⁹ Gorilla Paper claims that certain merchandise used by the Turkish manufacturer Dor Etiket is made out of materials constituting U.S.-origin jumbo rolls⁴⁰ and

³² See Gorilla Paper Response to CF-28 for manufacturer Dor Etiket, Entry [#]5222, filed August 30, 2022 (dated August 11, 2022) (Dor Etiket CF-28 Response); Gorilla Paper Response to CF-28 for manufacturer Engin Kagit, Entry [#]0669, filed August 30, 2022 (August 11, 2022) (Engin Kagit CF-28 Response); and Gorilla Paper Response to CF-28 for manufacturer Umur Basim, Entry [#]1451, filed September 2, 2022 (dated August 11, 2022) (Umur Basim CF-28 Response).

³³ See Allegations at 7-8.

³⁴ See Allegations at 7-8.

³⁵ See Umur Basim CF-28 Response at PDF page 79 and 85-86.

³⁶ See Dor Etiket CF-28 Response at PDF page 24-27. See also NOI at 7.

³⁷ See Engin Kagit CF-28 Response at PDF page 22-26.

³⁸ See Gorilla Paper RFI Response at 2.

³⁹ See Gorilla Paper Addendum Response at 3. Gorilla Paper states: "Not all of the entries that have occurred over the Period of Review covered by this Investigation may be subject to antidumping duties. In certain cases, Gorilla Paper believes that the goods were originally sourced within the United States, sent to Turkey for cutting and slitting (which takes fairly expensive and specialized machinery, that is not routinely available at cost-effective rates within the United States) and then had it returned to the United States. Gorilla Paper will follow up with a spreadsheet that goes entry-by-entry, based upon ACE data, to indicate the country of origin of the original rolls, so that the exact amount of underpaid antidumping duties can be readily ascertained." See also Gorilla Paper Addendum Response at 3, "Gorilla Paper is providing additional Exhibits with this January 6, 2023, filing to support its claim that {certain} entries were derived from U.S.-origin jumbo rolls."

⁴⁰ See, e.g., Gorilla Paper Addendum Response at 3.

Gorilla Paper claims that it provided supporting documents demonstrating that such merchandise is indeed derived from U.S.-origin jumbo rolls. However, the supporting documentation that Gorilla Paper provides does not identify any U.S. shippers or any U.S. entities that originally manufactured the jumbo rolls; thus, no U.S. entity is identified in order to corroborate Gorilla Paper's claim against a U.S. manufacturer's records.⁴¹ Moreover, regardless of whether the U.S. manufacturer was identifiable in the documentation that Gorilla Paper submitted, Umur Basim's, Dor Etiket's, and Engin Kagit's lack of participation either at all or in compliance with CBP regulations prevents CBP from corroborating Gorilla Paper's claims of U.S.-origin merchandise being exported to Dor Etiket in Turkey for processing and re-imported back into the United States. CBP finds Gorilla Paper's claims that certain thermal paper imports from Dor Etiket constitute U.S.-origin jumbo rolls uncorroborated and unverified. Since Dor Etiket failed to cooperate by responding to an RFI seeking information on imports of input materials and manufacturing processes thereby preventing CBP from corroborating input imports and production processes, CBP is using adverse inference in forming a determination on a pattern that has been clearly established, namely that Dor Etiket has sourced South Korean-origin jumbo rolls.

Based on the above, CBP finds that all entries from Dor Etiket and Engin Kagit imported by Gorilla Paper are of South Korean-origin. CBP further finds that all thermal paper exported by Umur Basim and imported into the United States by Gorilla Paper are of German-origin.

Misclassification

There is substantial evidence on the record that shows the Importer misclassified the thermal paper it imported into the United States. The Allegor provided information that shows Gorilla Paper had been entering converted thermal paper into the United States using Harmonized Tariff Schedule (HTS) number 4816.90 for Engin Kagit or Dor Etiket, which is the HTS code for "carbon paper, self-copy paper and other copy of transfer papers, other."⁴² Furthermore, evidence in the Allegations shows Gorilla Paper's imports from Umur Basim, under HTS number 4823.90, which is the HTS code for "Other paper, paperboard, cellulose wadding and webs of cellulose fibers, cut to size or shape; Other, Other."⁴³ The Allegor provided a section of the U.S. Harmonized Tariff Schedule (USHTS) that shows the appropriate USHTS number for direct thermal paper in rolls, not exceeding 15 centimeters in width, is 4811.90.90.30.⁴⁴

Additionally, CBP conducted a cargo exam during this investigation and determined that Gorilla Paper had misclassified thermal paper as carbon paper. CBP examined Gorilla Paper's entry [#]4969, which had Dor Etiket listed as the manufacturer.⁴⁵ Based on the cargo exam, CBP determined that the entirety of the product in the entry, as identified on invoice [#], thermal roll [description] was misclassified under HTS 4816.90.0100 (carbon paper, self-copy paper and other copying or transfer papers (other than those of heading 4809),

⁴¹ See, e.g., Gorilla Paper Addendum Response at Exhibit 1.

⁴² See Allegations at 9.

⁴³ *Id.* at 10.

⁴⁴ *Id.* at 9 and Exhibit 19.

⁴⁵ See NOI at 6.

duplicator stencils and offset plates, of paper, whether or not put up in boxes: Other).⁴⁶ CBP determined that the thermal rolls included in this entry are more appropriately classified under 4811.90.8030 (Other paper, paperboard, cellulose wadding and webs of cellulose fibers: In strips or rolls of a width exceeding 15 cm or in rectangular (including square) sheets with one side exceeding 36 cm and the other side exceeding 15 cm in the unfolded state: Weighing over 30 g/m² Direct thermal coated paper). Therefore, since the characteristics of the thermal paper rolls in this entry meet the scope of the *Orders*, the merchandise in this entry is covered by the *Orders*.⁴⁷ Additionally, CBP found that imports from both Dor Etiket and Engin Kagit followed the same misclassification pattern.⁴⁸ As a result, based on the aforementioned, CBP determines that there is substantial evidence the Importer entered merchandise into the United States through evasion by misclassification.

Transshipment

Evidence on the record of this investigation supports a determination that Gorilla Paper's imports were covered merchandise entered through evasion, resulting in the avoidance of applicable AD duties. The Allegor submitted that the Importer attempted to evade the *Orders* through the transshipment of German-origin and South Korean-origin thermal paper through Turkey: 1) Engin Kagit's and Umur Basim's own company information shows that the two companies offer converted thermal paper products;⁴⁹ 2) industry reports demonstrate that there is no known thermal paper production in Turkey;⁵⁰ 3) two CBP rulings on CROSS determined minor operations, such as cutting and slitting jumbo rolls into smaller rolls, do not change the COO of thermal paper from where it was initially produced;⁵¹ and 4) commercial trade data show that Gorilla Paper imported thermal paper from Engin Kagit and Umur Basim in Turkey into the United States.⁵²

In the Gorilla Paper RFI Response, Gorilla Paper explicitly stated that it imported thermal paper originating in Germany and South Korea that had been transshipped through Turkey and agreed with the Allegations that certain merchandise were indeed subject to the *Orders*.⁵³ It also stated that certain merchandise was sourced in the United States before being sent to Turkey for cutting and slitting prior to importation back into the United States; thus, it claimed that certain merchandise would not be subject to the *Orders*.⁵⁴ However, based on adverse inference, and given that Gorilla Paper did not corroborate its claims regarding U.S.-origin jumbo rolls, as discussed in detail above, CBP finds that Gorilla Paper's imported merchandise is either South Korean-origin or German-origin.

Based on the aforementioned analysis, CBP determines that substantial evidence exists that demonstrates the thermal paper entered by Gorilla Paper during the period of investigation was

⁴⁶ *Id.*

⁴⁷ See entry summary documents for entry [#]4969.

⁴⁸ See NOI at 8.

⁴⁹ See NOI at 5.

⁵⁰ See NOI at 5.

⁵¹ See NOI at 5.

⁵² See NOI at 5.

⁵³ See Gorilla Paper RFI Response at 2-4. See also footnote 39.

⁵⁴ *Id.* at 3.

of German-origin and South Korean-origin and transshipped through Turkey. As a result, Gorilla Paper avoided the payment of applicable AD duties on these thermal paper imports, as the merchandise is subject to the *Orders* on thermal paper from Germany and South Korea.

Written Arguments

1. Additional enforcement measures

Gorilla Paper:

- Gorilla Paper claimed that it cooperated fully with the investigation and had no intention to evade the AD *Orders* on thermal paper;⁵⁵ as such, the investigation can be concluded with payment of unpaid duties, as well as associated interest, and without the initiation of penalty proceedings.⁵⁶

The Alleger did not provide rebuttal arguments on this issue.

CBP Position:

The purpose of this EAPA investigation is to determine whether or not the Importer evaded the *Orders* when it entered thermal paper into the U.S. customs territory during the period of investigation. A penalty proceeding is a wholly separate and distinct process that is not part of this EAPA investigation. As such, the issue of penalties it is not a factor CBP will consider for this EAPA determination.

2. Adverse inference

Alleger:

- Gorilla Paper's exhibits demonstrate that Gorilla Paper imported converted thermal rolls from Umur Basim that were produced in Germany, and from Dor Etiket and Engin Kagit that were produced in South Korea.⁵⁷
- Neither Dor Etiket, Engin Kagit, nor Umur Basim fully participated in the investigation.⁵⁸ Since CBP is unable to corroborate the claims of U.S.-origin entries against source documents from the Turkish exporters, CBP should apply an adverse inference to all of Gorilla Paper's entries from Turkey, regardless of whether the claimed COO is the United States.⁵⁹

Gorilla Paper:

- Gorilla Paper submitted documentation that corroborated the COO for eight entries as

⁵⁵ See Gorilla Paper Written Argument at 5-8.

⁵⁶ *Id.* at 9.

⁵⁷ See Alleger Written Argument at 5.

⁵⁸ *Id.* at 3-5.

⁵⁹ *Id.* at 3 and 5-6.

being that of the United States.⁶⁰

- Gorilla Paper had no incentive to misrepresent U.S.-origin rolls since they were originally entered consistent with a lack of understanding of substantial transformation rules.⁶¹

CBP Position:

As explained above, CBP will use adverse inferences for all of the Importer's imports to the U.S. during the period of investigation. The supporting documentation that Gorilla Paper provided does not identify any U.S. shippers or any U.S. entities that originally manufactured the jumbo rolls.

Determination as to Evasion

The previously discussed facts on the record establish that there is substantial evidence that German- and South Korean-origin thermal paper was imported into the United States by evasion, specifically via transshipment through Turkey and misclassification. Additionally, by application of adverse inferences, relying on evidence provided in the Allegations, in the CF-28s received from Gorilla Paper, and the Gorilla Paper RFI Response, CBP determines that all the thermal paper exported by Dor Etiket and Engin Kagit and imported by Gorilla Paper was of South Korean origin and that all the thermal paper exported by Umur Basim and imported by Gorilla Paper was of German origin. Furthermore, evidence on the record indicates that Gorilla Paper entered thermal paper into the United States from Dor Etiket under the wrong HTS number, *i.e.*, misclassifying the thermal paper as carbon paper under 4816.90.0100, and that these misclassified entries were of South Korean origin. As a result, the imports that Gorilla Paper entered from Dor Etiket during the period of investigation was subject to the AD rates on thermal paper from South Korea.

Actions Taken Pursuant to the Affirmative Determination as to Evasion

In light of CBP's determination that substantial evidence demonstrates that the Importer 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 covered by this investigation, until instructed to liquidate. For those entries previously extended in accordance with 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 Importer's continuous bonds in accordance with CBP's policies. None of the above

⁶⁰ See Gorilla Paper's Rebuttal to Written Arguments at 5.

⁶¹ *Id.* at 6.

actions precludes CBP or other agencies from pursuing additional enforcement actions or penalties.

Sincerely,

A handwritten signature in blue ink, appearing to read "Victoria Cho".

Victoria Y. Cho
Acting Director, Enforcement Operations Division
Trade Remedy Law Enforcement Directorate
Office of Trade