



## U.S. Customs and Border Protection

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### **PUBLIC VERSION**

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Re: Enforce and Protect Act (“EAPA”) Consolidated Case Number 7724; *Antidumping Duty Orders: Lightweight Thermal Paper from Germany and the People’s Republic of China*, 73 FR 70959 (Nov. 24, 2008); *Lightweight Thermal Paper From the People’s Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order*, 73 Fed. Reg. 70958 (Nov. 24, 2008); *Thermal Paper from Germany, Japan, the Republic of Korea, and Spain: Antidumping Duty Orders*, 86 FR 66284 (Nov. 22, 2021); WHP Associates LLC; 19 U.S.C. § 1517

Dear Counsel:

This is in response to the request for *de novo* administrative review of a determination of evasion dated May 1, 2023, made by the Trade Remedy Law Enforcement Directorate (“TRLED”), Office of Trade (“OT”), U.S. Customs and Border Protection (“CBP”), pursuant to 19 U.S.C. § 1517(c), EAPA Consolidated Case Number 7724 (“May 1 Determination”).<sup>1</sup> The request for review, dated June 13, 2023, was submitted to CBP, OT, Regulations and Rulings (“RR”), by Fox Rothschild LLP on behalf of WHP Associates LLC (“WHP” or “Importer”), pursuant to 19 U.S.C. § 1517(f) and 19 CFR § 165.41(a).

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<sup>1</sup> See Notice of Determination as to Evasion, EAPA Consolidated Case 7724 (Public Version), dated May 1, 2023, available at: <https://www.cbp.gov/document/publications/eapa-cons-case-7724-whp-associates-llc-notice-determination-evasion-may-1> (last accessed August 28, 2023).

## PUBLIC VERSION

### I. Background

Inasmuch as the facts in this case were fully set forth in the May 1 Determination, we will not repeat the entire factual history herein. In brief, according to the record evidence, on June 28, 2022, TRLED initiated a formal investigation under Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015 (“TFTEA”), in response to an allegation of evasion.<sup>2</sup>

On April 15, 2022, Paper Receipts Converting Association (“PRCA” or “Alleger”) filed EAPA allegations against WHP. CBP acknowledged receipt of the allegations on June 7, 2022.

PRCA alleged that the Importer was importing lightweight thermal paper (“thermal paper” or “LWTP”) from the People’s Republic of China (“China”), Germany, and the Republic of Korea (“Korea”) into the United States that was transshipped through Malaysia to evade the payment of antidumping and countervailing duties (“AD/CVD”) on thermal paper from China, under Case Nos. A-570-920 and C-570-921, and the payment of AD duties on thermal paper from Korea and Germany, under Case Nos. A-580-911 and A-428-850, respectively.<sup>3</sup>

The allegations of evasion pertained to the AD/CVD orders issued by the U.S. Department of Commerce (“Commerce”) on imports of thermal paper from China, Germany, and Korea (collectively, the “Orders”). Commerce defined the scope of the AD/CVD orders on imports of thermal paper from China as follows:<sup>4</sup>

The merchandise covered by these orders includes certain lightweight thermal paper, which is thermal paper with a basis weight of 70 grams per square meter (g/m<sup>2</sup>) (with a tolerance of  $\pm 4.0$  g/m<sup>2</sup>) or less; irrespective of dimensions;<sup>5</sup> with or without a base coat on one or both sides; with thermal active coating(s) on one or both sides that is a mixture of the dye and the developer that react and form an image when heat is applied; with or without a top coat; and without an adhesive backing. Certain lightweight thermal paper is typically (but not exclusively) used in point-of-sale applications such as ATM receipts, credit card receipts, gas pump receipts, and retail store receipts. The merchandise subject to these orders may be classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) under subheadings 4811.90.8040, 4811.90.9090, 3703.10.60, 4811.59.20, 4820.10.20, and 4823.40.00. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

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<sup>2</sup> See Notice of Initiation of Investigation and Interim Measures: EAPA Cons. Case 7724, dated October 3, 2022 (Public Version) (“Notice of Initiation”), available at: <https://www.cbp.gov/document/publications/eapa-cons-case-7724-whp-associates-llc-notice-initiation-investigation-and> (last accessed August 28, 2023).

<sup>3</sup> See *Antidumping Duty Orders: Lightweight Thermal Paper from Germany and the People’s Republic of China*, 73 FR 70959 (Nov. 24, 2008); and *Lightweight Thermal Paper From the People’s Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order*, 73 Fed. Reg. 70958 (Nov. 24, 2008) (“Chinese AD/CVD Orders”). The AD order on thermal paper from Korea is referred to herein as the “Korean AD Order.”

<sup>4</sup> Only the relevant footnote in Commerce’s scope language is included herein. See footnote 5 below. Additionally, we note that, although the sequence in which the HTSUS subheadings are listed differs in the two orders, the subheadings listed in both the Chinese AD and CVD Orders are the same.

<sup>5</sup> {Thermal paper} is typically produced in jumbo rolls that are slit to the specifications of the converting equipment and then converted into finished slit rolls. Both jumbo and converted rolls (as well as {thermal paper} in any other form, presentation, or dimension) are covered by the scope of these orders.

## PUBLIC VERSION

Commerce defined the scope of the AD orders on imports of thermal paper from Germany and Korea as follows:

The scope of these orders 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 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.

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.<sup>6</sup>

On October 3, 2022, in accordance with 19 CFR § 165.24, CBP issued a Notice of Initiation of the EAPA investigation to all parties to the investigation, stating that the investigation had begun on June 28, 2022, and notifying the parties of CBP’s decision to take interim measures based upon reasonable suspicion that the Importer entered covered merchandise into the customs territory of the United States through evasion.<sup>7</sup> The entries subject to the investigation are all unliquidated entries of covered merchandise entered from June 7, 2021, through the pendency of the investigation.<sup>8</sup>

On May 1, 2023, TRLED found there was substantial evidence that the thermal paper imported by WHP from Malaysia was of Korean or Chinese origin and described by the scope of the AD/CVD Orders, as the manufacturer, Actan (Malaysia) SDN BHD (“Actan”), merely converted jumbo rolls of thermal paper from Korea or China into smaller rolls (*i.e.*, finished slit rolls) for importation into the United States. The thermal paper was entered into the customs territory of the United States on type “01” consumption entries.<sup>9</sup> As a result, no cash deposits or AD/CVD were applied to the merchandise.<sup>10</sup> TRLED applied adverse inferences against Actan for

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<sup>6</sup> See *Thermal Paper from Germany, Japan, the Republic of Korea, and Spain: Antidumping Duty Orders*, 86 FR 66284 (Nov. 22, 2021).

<sup>7</sup> See Notice of Initiation (Public Version).

<sup>8</sup> See 19 CFR § 165.2.

<sup>9</sup> Imports that are covered by AD/CVD orders are required to be entered on type “03” entries; entries declared as type “01” are not subject to payment of AD/CVD. See CBP Entry Summary Form 7501 and Instructions and the ACE Entry Summary Business Rules and Procedure Document, available at: <https://www.cbp.gov/trade/programs-administration/entry-summary/cbp-form-7501> (last accessed August 28, 2023).

<sup>10</sup> See May 1 Determination (Public Version).

## PUBLIC VERSION

its failure to provide several documents in response to TRLED's Requests for Information ("RFIs"), to find that the merchandise on some of the entries was of Chinese origin. TRLED otherwise found that the converted rolls of thermal paper were of Korean origin.

On June 13, 2023, WHP filed a timely Request for Administrative Review. On June 14, 2023, RR sent an email to all parties to the investigation, notifying them of the commencement of the administrative review process and the assignment of RR case number H332637. PRCA did not file a response to WHP's request for administrative review.

### II. Law & Analysis

Section 517 of the Tariff Act of 1930 ("the Tariff Act"), as amended (19 U.S.C. § 1517), provides, "with respect to covered merchandise, the Commissioner shall make a determination, based on substantial evidence, with respect to whether such covered merchandise was entered into the customs territory of the United States through evasion."<sup>11</sup> The term evasion is defined as:

Except as provided in subparagraph (B), the term "evasion" refers to entering covered merchandise into the customs territory of the United States by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material, and that results in any cash deposit or other security or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise.<sup>12</sup>

Examples of evasion include, but are not limited to, misrepresentation of the merchandise's true country of origin (*e.g.*, through false country of origin markings on the product itself or false sales), false or incorrect shipping and entry documentation, or misreporting of the merchandise's physical characteristics.<sup>13</sup>

Additionally, covered merchandise is defined as "merchandise that is subject to a CVD order issued under section 706, Tariff Act of 1930, as amended (19 U.S.C. § 1671e), and/or an AD order issued under section 736, Tariff Act of 1930, as amended (19 U.S.C. § 1673e)."<sup>14</sup> While "substantial evidence" is not defined by statute, the "substantial evidence" standard has been reviewed by the courts in relation to determinations by other agencies. "Substantial evidence requires more than a mere scintilla but is satisfied by something less than the weight of the evidence."<sup>15</sup>

Therefore, CBP must determine whether a party has entered merchandise that is subject to an AD or CVD order into the United States for consumption by means of any document or electronically transmitted data or information, written or oral statement, or act, that is material and false, or any omission that is material, that resulted in the reduction or avoidance of applicable AD or CVD cash deposits or duties being collected on such merchandise. In doing so, CBP may apply adverse inferences where they are warranted.<sup>16</sup> RR's determination as to evasion must be supported by substantial evidence.

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<sup>11</sup> 19 U.S.C. § 1517(c)(1).

<sup>12</sup> 19 U.S.C. § 1517(a)(5); *see also* 19 CFR § 165.1.

<sup>13</sup> *See Investigation of Claims of Evasion of Antidumping and Countervailing Duties, Interim Regulations*, 81 Fed. Reg. 56,477, 56,478 (Aug. 22, 2016).

<sup>14</sup> 19 CFR § 165.1.

<sup>15</sup> *See Altex, Inc. v. United States*, 370 F.3d 1108, 1116 (Fed. Cir. 2004) (internal citations and quotation marks omitted).

<sup>16</sup> *See* 19 CFR § 165.6.

## PUBLIC VERSION

### A. WHP's Arguments

WHP requests that we reverse the May 1 Determination, arguing that it received thermal paper from Actan which was converted from jumbo rolls of only Korean origin, and that the evidence on the record supports such a finding. On this basis, WHP concludes that the May 1 Determination should be reversed with respect to the entries of merchandise found to be of Chinese origin. With such a reversal, the entries would be subject to a much lower AD duty rate for thermal paper from Korea (versus the much higher AD/CVD rate for thermal paper from China).

WHP does not refute that evasion of the Korean AD Order occurred and does not dispute that there is substantial evidence on the record that 16 of the subject entries of merchandise were of Korean origin. Rather, WHP takes issue with TRLED's use of adverse inferences to find that the merchandise in the remaining five subject entries, in whole or in part, was entered by means of evasion of the Chinese AD/CVD Orders. Specifically, WHP argues that the record evidence, provided by itself and Actan, demonstrates the impossibility that WHP received any Chinese-origin thermal paper from Actan, because Actan received 48 GSM thermal paper only from Korea, which is the weight that WHP ordered from Actan; and, although Actan did receive 70 GSM thermal paper from Chinese suppliers, WHP did not order any 70 GSM thermal paper from Actan.

WHP breaks down the treatment of the five subject entries into two categories: 1) the two entries which were found to include merchandise of entirely Chinese origin, and 2) the three entries that were found to include merchandise partially of Chinese origin. With regard to the two entries found to include merchandise of entirely Chinese origin, WHP claims that, although Actan did not provide the production records related to these entries, documentation was provided by WHP to CBP in response to an earlier CF-28. WHP argues that the application of adverse inferences to Entry Nos. ending in 2710 and 3916 was unreasonable, citing to *Ad Hoc Shrimp Trade Enforcement Committee v. United States*,<sup>17</sup> because the daily production records were provided in WHP's CF-28 response, which undermines the conclusion that those two entries contained Chinese-origin thermal paper.

With regard to the three entries found to partially contain thermal paper of Chinese origin, Entry Nos. ending in 2918, 3783, and 4328, WHP argues that there is sufficient information on the administrative record to tie the missing sales order numbers to their corresponding entry documents and related production records, since production documentation for other sales order numbers imported under the same entry number were provided during the course of the investigation. According to WHP, these documents demonstrate that WHP only ordered thermal paper of one specific weight, 48 GSM, from Actan. WHP claims that the only weight of thermal paper that Actan received from Korea was 48 GSM and the only weight of thermal paper Actan received from China was 70 GSM. Therefore, according to WHP, the administrative record aptly shows that WHP could have only received thermal paper converted from Korean-origin jumbo rolls, regardless of the use of adverse inferences.

As such, WHP requests that RR find that the five entries in questions evaded the Korean AD Order and reverse the May 1 Determination's finding that those five entries were of Chinese-origin and thus evaded the China AD/CVD Orders.

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<sup>17</sup> See 2023 WL 3244789, \*7 (Ct. Int'l Trade April 26, 2023).

## PUBLIC VERSION

### B. PRCA's Arguments

The allegor in this case, PRCA, did not file a response to WHP's request for review of TRLED's May 1 Determination.

### III. Administrative Review Analysis

As an initial matter, pursuant to 19 U.S.C. § 1517(f)(1) and 19 CFR § 165.45, upon request for administrative review, RR will apply a *de novo* standard of review, based solely upon the facts and circumstances on the administrative record in the proceeding. In making our determination, we reviewed: (1) the administrative record upon which the May 1 Determination was made, as provided to RR by TRLED; and (2) the timely and properly filed request for review.

WHP acknowledges evasion of the Korean AD Order, and requests that we reverse TRLED's determination of evasion of the Chinese AD and CVD Orders. Therefore, we will not disturb the May 1 Determination finding of substantial evidence of evasion of the Korean AD Order on 16 of the 21 entries addressed in the May 1 Determination. As for the remaining five entries (Entry Nos. ending in 2918, 3783, 4328, 2710, and 3916, involving eight purchase orders),<sup>18</sup> WHP argues that there is record evidence that the country of origin of the merchandise is Korea, not China. Therefore, with respect to the remaining five entries, WHP requests that RR: (1) determine that the country of origin of the merchandise is Korea; (2) determine that the merchandise is covered by the scope of the Korean AD Order; and (3) determine that there has been evasion of the Korean AD Order. However, for the reasons set forth below, we find substantial record evidence of evasion of the Chinese AD and CVD Orders for the five entries.

In its request for review, WHP essentially asks RR to make a country-of-origin determination. However, that is not the determination which we are charged with making in an EAPA case; rather, we are charged with determining whether covered merchandise was entered via evasion, *i.e.*, by means of materially false statements and/or omissions which resulted in the nonpayment or underpayment of AD/CVD cash deposits or duties. With respect to the challenged five entries/eight purchase orders, we affirm TRLED's finding that WHP entered merchandise covered by the AD/CVD Orders on thermal paper from China, through evasion by means of false statements and/or omissions that led to nonpayment of AD/CVD cash deposits. The record evidence demonstrates that Actan sourced jumbo thermal paper rolls from China and Korea and neither Actan nor WHP has provided sufficient evidence linking the thermal rolls on the eight purchase orders in question to Korea. We explain below.

- A. There is insufficient record evidence that the merchandise on eight purchase orders entered on five entries was Korean-origin thermal paper.

First, WHP has failed to establish that the merchandise in question is of Korean origin and is unable to substantiate its claims that the eight purchase orders were fulfilled using only Korean-origin thermal paper. The records produced by Actan and/or WHP, as well as Actan's narrative responses to the request for information and supplemental requests for information, do not allow for any, let alone accurate, tracing of the exact jumbo rolls used to fulfill those eight purchase orders.

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<sup>18</sup> The eight purchase orders involved correspond to the five entries as follows: purchase order ending in [ No. ] is related to entry ending in 2918; purchase order ending in [ No. ] is related to entry ending in 3783; purchase order ending in [ No. ] is related to entry ending in 4328; purchase orders ending in [No. ] and [No. ] are related to entry ending in 2710; and, purchase orders ending in [ No. ], [ No. ], and [ No. ] are related to entry ending in 3916.

## PUBLIC VERSION

For the entries ending in 2710 and 3916, WHP provided to CBP the Actan production records for four of the five corresponding purchase orders, as well as the purchase and importation documents for the purported “raw materials” received by Actan (*i.e.*, the jumbo rolls of thermal paper) used to fulfill those four purchase orders. There are, however, some major inconsistencies within those records which call into question the ability to use them to find that Korean-origin jumbo thermal paper rolls were definitively used.

Specifically, with regard to the entry ending in 2710, the numbers identifying each jumbo roll on the “Roll List” from the Korean supplier do not match the jumbo roll numbers identified on the “Production Daily Record” as having been used by Actan to fulfill WHP’s order.<sup>19</sup> The jumbo roll numbers on the “Roll List” provided with regard to the entry ending in 3916 also do not match those jumbo roll numbers on the “Production Daily Record” for that entry.<sup>20</sup> Thus, we cannot rely on those documents to substantiate that Chinese-origin jumbo rolls were not used in the production of the converted rolls for those two entries when we also know that Actan had received jumbo thermal paper rolls of the same weight from a Chinese supplier, as discussed in the next section.<sup>21</sup> Similarly, due to the fact that the records do not match, they do not support WHP’s claim that it provided evidence that the merchandise in question was of Korean origin.

Furthermore, Actan did not provide any “Roll List” documents in response to the several requests for information made by TRLED during the EAPA investigation. The *only* “Roll Lists” found on the record are those produced by WHP in response to the CF-28s.<sup>22</sup> Therefore, it is impossible to try and match up other jumbo rolls for specific orders produced for WHP to substantiate the claim that Korean-origin jumbo rolls were used, rather than Chinese-origin ones.<sup>23</sup>

Claims to the contrary notwithstanding, WHP did not provide the production or purchase records for the purchase order ending in [ No. ], which was part of the entry ending in 2710, with its CF-28 response. The absence of documents for this purchase order is discussed next in conjunction with our discussion of the missing documents for the remaining three purchase orders.

As to the remaining four purchase orders, which the May 1 Determination found evaded the Chinese AD/CVD Orders, production records are missing entirely from the record. Actan was asked to provide this documentation in a supplemental request for information.<sup>24</sup> Actan’s response simply referred TRLED back to the documents Actan had previously provided in response to the initial request for information.<sup>25</sup> WHP cannot use the presence of production documents related to *other* purchase orders included in those entries as proof that *all* of the merchandise in each *entire* entry was produced using only Korean-origin thermal paper. Indeed, the inference that WHP asks us to draw is contradicted by the record.

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<sup>19</sup> See WHP’s CF-28 Response for Entry No. ending in 2710 (Business Confidential Version). We also note that the production records provided predate when WHP submitted its purchase order to Actan for those goods, further calling into question the reliability of these documents.

<sup>20</sup> See WHP’s CF-28 Response for Entry No. ending in 3916 (Business Confidential Version).

<sup>21</sup> See PRCA’s Allegation of Evasion, Exhibit 17 (Public Document).

<sup>22</sup> See WHP’s CF-28 Response for Entry No. ending in 2710 (Business Confidential Version). See also WHP’s CF-28 Response for Entry No. ending in 3916 (Business Confidential Version).

<sup>23</sup> We also note that the “raw material” documents provided in response to the RFIs by both WHP and Actan are not matched up with specific orders of converted thermal paper rolls made by WHP. Therefore, there is no accurate way to track which jumbo rolls may have been used for which purchase orders.

<sup>24</sup> See Supplemental Request for Information to Actan, dated December 23, 2022, page 2 (Business Confidential Version).

<sup>25</sup> See Actan’s First Supplemental Response to RFI, Part 1 (Public Document).

## PUBLIC VERSION

The commercial invoices for each of the three entries found to partially evade the Chinese AD/CVD Orders delineate out which amounts of thermal paper correspond to which purchase order.<sup>26</sup> The production records for the purchase orders included in the RFI responses very clearly match up to only those quantities listed for the specific purchase order listed on the commercial invoice and the production records themselves identify which specific purchase order is being fulfilled.<sup>27</sup> As such, there are production records missing for hundreds of thousands of converted thermal paper rolls, including the very rolls that are at issue here. These converted thermal paper rolls cannot be traced back to individual jumbo rolls, and the record is clear that Actan had both Korean-origin and Chinese-origin jumbo thermal paper rolls onsite at the time those purchase orders were fulfilled.

These examples of inconsistencies and deficiencies in the record illustrate Actan's inability to definitively track which jumbo rolls are used for each order. Likewise, while WHP did provide some documentation that tracks production, for the entries in question, such documentation was either not provided, or incomplete, or inaccurate such that it does not support the proposition for which it was offered. As a result, WHP cannot meet the burden of proving that the converted rolls it imported into the United States are of Korean-origin and subject only to the Korean AD Order and WHP's argument that the thermal paper used to produce those purchase orders was not of Chinese-origin fails.

- B. There is record evidence that Actan purchased 48 GSM jumbo thermal paper rolls from Chinese suppliers.

Second, WHP's argument in support of a finding of evasion only as to the Korean AD Order for the five entries at issue hinges significantly on the claim that Actan received only one weight of thermal paper from its Korean supplier (48 GSM) and a different weight of thermal paper from its Chinese suppliers (70 GSM). WHP states that it only received 48 GSM thermal paper from Actan, and, therefore, Actan could not have possibly used any Chinese-origin thermal paper to fulfill WHP's purchase orders. However, this claim is not supported by the administrative record because the record shows that Actan did indeed source 48 GSM jumbo rolls from China.

Specifically, the Malaysian Customs data provided by the PRCA with its allegation shows that between June 6, 2021, and March 16, 2022, Actan received 11 importations of 48 GSM jumbo thermal paper rolls—the *same weight* as WHP ordered from Actan—from Chinese supplier Gold Hua Sheng Paper (Suxhou).<sup>28</sup> Those imports from China arrived in Malaysia at least a couple of months prior to the exportation of the first of the five entries (entry ending in 2710) of converted rolls from Actan in Malaysia to WHP in the United States, thus providing adequate time for their use in any of the entries at issue.<sup>29</sup> Moreover, Actan has acknowledged that it received jumbo rolls of thermal paper from both Korea and China.<sup>30</sup> WHP has been unable to identify anything within the record that would discredit or otherwise question the authenticity of the PRCA-provided Malaysian Customs data; instead, WHP has completely ignored the presence of this information on the record.

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<sup>26</sup> See WHP's RFI Response, Appendix 20, pages 78, 123, and 209 (Business Confidential Version).

<sup>27</sup> See *id.* in comparison with Actan's RFI Response, Appendix 19, pages 95, 113, 117, 293, and 298 (Business Confidential Version). Given this break-out, determining which portions of the entries are subject to the duty rate applicable for the Chinese AD/CVD Orders is only a matter of using the entered value apportioned to those purchase orders, as found on the commercial invoices.

<sup>28</sup> See PRCA's Allegation of Evasion, Exhibit 17 (Public Document).

<sup>29</sup> See *id.* in comparison to WHP's RFI Response, Appendix 20 (Business Confidential Version).

<sup>30</sup> See generally Actan's Second Supplemental Response to RFI (Public Version).



## PUBLIC VERSION

- C. There is record evidence that Actan fulfills purchase orders from an inventory that includes commingled Chinese and Korean thermal paper rolls.

Third, it is clear from the administrative record that Actan kept an inventory of jumbo thermal paper rolls from which it fulfilled orders for converted rolls, rather than ordering jumbo rolls to fulfill orders after purchase orders were received.<sup>31</sup> As Actan explained on multiple occasions, it attempts to use “first in first out” in practice when converting the jumbo rolls to fill orders, but it is not a perfect system or always practical to use the jumbo rolls in such a manner.<sup>32</sup> At the same time, there is no indication in the record that Actan in any way was able to trace the origin of the rolls taken from inventory. Indeed, Actan itself has stated that it cannot necessarily do so (“we are not able to tally exactly which material we purchased must be use for which order. there is no such thing in practical (sic).”)<sup>33</sup> There is also no evidence that Actan kept the jumbo rolls from different countries segregated from one another to prevent commingling of jumbo rolls from different countries for different order productions. Although Actan has claimed that, for the Chinese shipments in question, it has shown that they were not used to fulfill the orders to WHP, our review reveals that this claim is not supported by the record because there are neither documents regarding the purported use of the Chinese-origin jumbo rolls at Actan nor reliable production records for those eight purchase orders to demonstrate that they were fulfilled using Korean-origin jumbo rolls within the administrative record. Moreover, given Actan’s general practices and statements regarding inventory and commingling as detailed throughout this section, we do not see how that could be possible for those shipments alone.

Notably, the total weight of those 11 shipments of 48 GSM jumbo rolls of thermal paper from China to Actan equals over 430,000 kilograms.<sup>34</sup> By contrast, the total gross weight of the eight purchase orders at issue is approximately [ weight ],<sup>35</sup> significantly less than the amount Actan received from Chinese suppliers (the total quantity received from China is more than double the total quantity on the eight WHP purchase orders). As such, it is clear that there was sufficient quantity of 48 GSM thermal paper from China on hand to fulfill all of the eight purchase orders at issue.

Furthermore, the administrative record does not demonstrate that Actan had a system in place to prevent commingling. Indeed, Actan’s inability to accurately track which jumbo rolls were used to fulfill which orders is evident from WHP’s responses to the CF-28s, as discussed above. Hence, the circumstances here differ from those in *Ad Hoc Shrimp v. United States*, and WHP’s citation to that case is inapposite.

Given the failure of WHP to provide records to trace the shipments in question to merchandise of Korean origin, the admitted lack of accurate tracking capabilities at Actan, and the commingled inventory of jumbo thermal paper rolls, in conjunction with the evidence that a Chinese

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<sup>31</sup> See Actan’s First Supplemental Response to RFI, Part 1 (Public Document).

<sup>32</sup> See *id.* See also Actan’s Second Supplemental Response to RFI (Public Document), page 3.

<sup>33</sup> See Actan’s Second Supplemental Response to RFI (Public Document), page 3. See also Actan’s First Supplemental Response to RFI, Part 1 (Public Document).

<sup>34</sup> See PRCA’s Allegation of Evasion, Exhibit 17 (Public Document).

<sup>35</sup> See WHP’s CF-28 Response for Entry No. ending in 2710 (Business Confidential Version); WHP’s CF-28 Response for Entry No. ending in 3916 (Business Confidential Version); and WHP’s RFI Response, Appendix 20, pages 79, 124 and 210 (Business Confidential Version). This number is the sum of all the total weights of the individual eight purchase orders as found on these documents, which WHP provided to CBP and has access to in order to determine the sum total listed herein.

## PUBLIC VERSION

supplier provided Actan with large amounts of thermal paper of the same weight as ordered by WHP several months prior to any of the five entries at issue departing Malaysia for the United States, as described in the preceding paragraphs, it is wholly reasonable to conclude that those entries contained thermal paper of Chinese origin and were subject to the AD/CVD Orders on thermal paper from China.

At the same time, the administrative record demonstrates that Actan was asked multiple times to provide specific documents and failed to do so.<sup>36</sup> This has created several gaps in the record as to the five subject entries, which prevents accurate tracing of raw materials through their conversion to smaller thermal paper rolls in Malaysia. These gaps in the record were detailed above. Actan was clearly advised that failure to timely provide full responses could lead to the application of adverse inferences.<sup>37</sup> Thus, adverse inferences were appropriately used here to fill these gaps to conclude that, with respect to the five entries at issue, WHP evaded the AD/CVD Orders on thermal paper from China.

However, in our view, the record contains sufficient evidence to support a finding of evasion of the AD/CVD Orders on thermal paper from China, even without resorting to adverse inferences. The Customs data provided by the PRCA, the evidence of commingling, and the failure of WHP to adequately trace the production/origin of the materials for these entries, support the conclusion that the eight purchase orders at issue were fulfilled using Chinese-origin jumbo thermal paper rolls and are subject to the AD/CVD Orders on thermal paper from China.

WHP entered covered merchandise by means of material and false documents or electronically transmitted data or information, written statements, or material omissions that resulted in AD/CVD cash deposits not being applied with respect to the merchandise. The merchandise was incorrectly entered on type “01” consumption entries instead of on type “03” AD/CVD entries. These constitute false statements that are also material because the applicable antidumping and countervailing duties were not paid. WHP also omitted Case Nos. A-570-920 and C-570-921 from the entry summary documentation. The omission of Case Nos. A-570-920 and C-570-921 from the entry summary documentation is material because it interfered with the government’s ability to accurately track imports of thermal paper, to collect the applicable antidumping and countervailing duties due, and to determine and assess future antidumping and countervailing duties. Consequently, WHP entered the merchandise through evasion of the Chinese AD/CVD Orders.

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<sup>36</sup> See Manufacturer First Supplemental Request for Information dated December 23, 2022 (Public Version); Manufacturer Second Supplemental Request for Information dated February 16, 2023 (Public Version); and Manufacturer Third Supplemental Request for Information dated February 28, 2023 (Public Version).

<sup>37</sup> See *id.*

## PUBLIC VERSION

Lastly, in light of the U.S. Court of Appeals for the Federal Circuit's recent opinion in *Royal Brush Manufacturing, Inc. v. United States*,<sup>38</sup> we note that WHP has not made any arguments regarding possible procedural due process violations.<sup>39</sup>

### IV. Decision

Based upon our *de novo* review of the administrative record in this case, including the request for administrative review, the May 1 Determination of evasion under 19 U.S.C. § 1517(c) is **AFFIRMED**.

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

Sincerely,

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

Approved by:

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

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<sup>38</sup> No. 2022-1226, 2023 U.S. App. LEXIS 19224 (Fed. Cir. Jul. 27, 2023). Although this decision is not yet final, should it become final, CBP wishes the record to reflect that the agency is in compliance with the decision.

<sup>39</sup> A review of the record indicates that, during the course of the investigation and this *de novo* review, WHP had access to all of the pertinent information used to support the finding of evasion of the Chinese AD/CVD Orders because the allegation submitted by PRCA is a public document and the remaining documents were provided by WHP and/or Actan. WHP provided the same production documents (*see* WHP's Response to Request for Information, Exhibit 27 (Business Confidential Version)) in comparison to Actan's Response to Request for Information, Exhibit 19 (Business Confidential Version)) and jumbo thermal paper roll purchase documents (*see* WHP's Response to Request for Information, Exhibit 26 (Business Confidential Version)) in comparison to Actan's Response to Request for Information, Exhibit 18 (Business Confidential Version)) as did Actan, and it was WHP that provided the CF-28 responses (*see* WHP's CF-28 Response for Entry No. ending in 3916 (Business Confidential Version); *see also* WHP's CF-28 Response for Entry No. ending in 2710 (Business Confidential Version)). Therefore, WHP had access to all of the pertinent documents and information relied upon by CBP to find evasion by WHP.