



## U.S. Customs and Border Protection

August 23, 2021

### **EAPA CASE NO. 7523**

### **PUBLIC VERSION**

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### **RE: Notice of Determination as to Evasion**

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Pursuant to an examination of the record in Enforce and Protect Act (EAPA) Investigation 7523, U.S. Customs and Border Protection (CBP) has determined there is substantial evidence that Amlink Sourcing Incorporated (Amlink) entered merchandise covered by antidumping (AD) and countervailing (CVD) duty orders A-570-920 and C-570-921 on lightweight thermal paper (LWTP) from the People's Republic of China (China)<sup>1</sup> into the customs territory of the United States through evasion. Substantial evidence demonstrates that Amlink imported LWTP from China and did not declare that the merchandise was subject to the *AD/CVD Orders* upon entry and, as a result, no cash deposits were collected on the merchandise.

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<sup>1</sup> See *Antidumping Duty Orders: Lightweight Thermal Paper From Germany and the People's Republic of China*, 73 FR 70959 (November 24, 2008) (*AD Order*). See also *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 FR 70958 (November 24, 2008) (*CVD Order*).

## Background

On August 26, 2020, the Paper Receipts Converting Association (PRCA), an association of U.S. producers of lightweight thermal paper, filed an EAPA allegation through its counsel.<sup>2</sup> PRCA alleges that Amlink imported LWTP manufactured by Shenzhen Likexin Industrial Co., Ltd. (Likexin) in China.<sup>3</sup> PRCA asserts that Amlink declared these entries as “type 01” in field 2 of its entry summaries, instead of as “type 03” entries, to avoid paying AD/CVD duties upon liquidation.<sup>4</sup> CBP acknowledged receipt of the properly filed allegation against Amlink on September 28, 2020.<sup>5</sup>

CBP found the information in the allegation reasonably suggested that Amlink entered covered merchandise for consumption into the customs territory of the United States through evasion. Consequently, on October 20, 2020, CBP initiated an EAPA investigation pursuant to Title IV, section 421 of the Trade Facilitation and Trade Enforcement Act of 2015.<sup>6</sup> CBP issued CF-28 questionnaires to Amlink concerning certain entries of LWTP and requested the corresponding entry and production documentation.<sup>7</sup>

After evaluating the information on the record, CBP determined that reasonable suspicion existed that Amlink imported LWTP into the United States without declaring AD/CVD duties. Specifically, CBP based its determination on the information provided in the allegation and the fact that Amlink’s broker indicated that two entries were indeed subject to the *AD* and *CVD Orders*; however, Amlink failed to support its claim that the third entry was out of scope and not covered by the *AD* and *CVD Orders*. Consequently, on January 27, 2021, CBP issued a notice of initiation of investigation and interim measures.<sup>8</sup>

On February 22, 2021, pursuant to 19 CFR 165.5, CBP sent requests for information (RFIs) to Amlink and the claimed manufacturer, Shenzhen Likexin Industrial Co., Ltd. (Likexin), requesting information on the manufacturer’s shipments to Amlink, production process, and company financial information.<sup>9</sup> Amlink submitted a response on March 31, 2021.<sup>10</sup> On May

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<sup>2</sup> See Letter from PRCA, “Evasion Allegation Against Amlink Sourcing Incorporated, An Importer Of Certain Light Weight Thermal Paper From The People’s Republic Of China (A-570-920 & C-570-921), Pursuant To The Enforce and Protect Act of 2015,” dated August 26, 2020 (Allegation).

<sup>3</sup> See Allegation at 4.

<sup>4</sup> Importers must provide transaction detail on all entries with a coding system and “type 01” is defined as entries for consumption and “type 03” are entries for consumption and AD/CVD duties apply.

<sup>5</sup> See “Receipt Notification Email to Bonnie Byers and Richard Lutz of King & Spalding for EAPA 7523,” dated September 28, 2020.

<sup>6</sup> See 19 USC 1517(b)(1); see also 19 CFR 165.15; and Memorandum to Brian Hoxie, Director, Enforcement Operations Division, “Initiation of Investigation for EAPA Case Number 7523 – Amlink Sourcing Inc.,” dated October 20, 2020 (Initiation).

<sup>7</sup> See Memorandum to the File, “CF-28 and Follow-up Issued to Amlink,” dated January 25, 2020 (CF-28 and Follow-Up).

<sup>8</sup> See “Notice of initiation of investigation and interim measures taken as to Amlink Sourcing Incorporated concerning evasion of the antidumping and countervailing duty orders on lightweight thermal paper from the Peoples’ Republic of China,” dated January 27, 2021 (NOI).

<sup>9</sup> See Memorandum to Shenzhen Likexin Industrial Co., Ltd., “EAPA 7523 Request for Information,” dated February 11, 2021, and Memorandum to Amlink Sourcing Incorporated, “EAPA 7523 Request for Information,” dated February 11, 2021.

<sup>10</sup> See Letter from Amlink, “Amlink Sourcing Incorporated’s Response to CBP’s Request for Information, Case No. 7523,” dated March 31, 2021 (Amlink RFI Response).

03, 2021, CBP issued a supplemental RFI to Amlink, seeking additional information.<sup>11</sup> Amlink submitted a response on May 27, 2021.<sup>12</sup>

Likexin did not respond to the RFI. Therefore, on May 03, 2021, CBP issued a supplemental RFI to Likexin and provided the company another opportunity to respond to the initial questions sent in the February 11, 2021, RFI and additional questions related to documents submitted in Amlink's RFI response.<sup>13</sup> Likexin did not respond to the supplemental RFI.

Amlink submitted written arguments on June 21, 2021.<sup>14</sup> The Alleger did not submit any written arguments.

## 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 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 merchandise.”

As noted above, the claimed manufacturer, Likexin, did not provide a response to either the initial or supplemental RFIs issued to it.

In its CF-28 response, the product descriptions and HTS codes on the commercial invoices for each entry provided inconsistent information. For example, the product descriptions for entry no. [NUMBER]4625 were [PRODUCT DESCRIPTION] and the HTS code listed is [NUMBER]. Amlink admits that certain line items within the entry are subject to the *AD* and *CVD Orders*.<sup>15</sup> On the other hand, Amlink claims that the entirety of entry no. [NUMBER]4755 did not include covered merchandise because the items were heavier than 70 grams per square meter, however similar product descriptions indicate otherwise.<sup>16</sup> Specifically, the product descriptions for entry no. [NUMBER]4755 were [PRODUCT DESCRIPTION]

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<sup>11</sup> See “EAPA 7523; Supplemental Request for Information for Amlink Sourcing Incorporated,” dated May 3, 2021 (Amlink Supplemental RFI).

<sup>12</sup> See Letter from Amlink, “Amlink Sourcing Incorporated’s Response to CBP’s Supplemental Request for Information, Case No. 7523,” dated May 27, 2021 (Amlink Supplemental RFI Response).

<sup>13</sup> See “EAPA 7523; Supplemental Request for Information to Shenzhen Likexin Industrial Co., Ltd.,” dated May 3, 2021 (Likexin Supplemental RFI). See also Amlink RFI Response at 16 – 19 and Attachments 10 – 13.

<sup>14</sup> See Letter from Amlink, “Amlink Sourcing Incorporated’s Written Arguments, Case No. 7523,” dated June 21, 2021 (Amlink Written Argument).

<sup>15</sup> See Memorandum to the File, “Partial Responses to CF-28 Issued for Entry Nos. 9204, 4625, and 4755,” dated January 25, 2020 (Amlink CF-28 Response).

<sup>16</sup> See *AD and CVD Orders*. See also Allegation at Exhibit 1A and 1B. Scope of the Order, “The merchandise covered by this order includes certain lightweight thermal paper, which is thermal paper with a basis weight of 70 grams per square meter ( $g/m^2$ ) (with a tolerance of  $\pm 4.0 g/m^2$ ) or less; irrespective of dimensions; 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...” See Federal Register for footnotes within scope of the order.

] and the HTS code listed is [ NUMBER ].<sup>17</sup> The product descriptions for both entries are substantially the same. CBP requested in a follow-up CF-28 to Amlink dated November 4, 2020, additional information, *i.e.*, the weight of the product in grams per square meter, whether the product has a base coat, thermal active coating, topcoat, or adhesive backing.<sup>18</sup> However, Amlink did not provide a response.

In its RFI response, Amlink stated that the company reviewed 9 entries with Likexin and submitted documents labeled as “shipment” or “product inspection reports,” “weight summary per style product,” entry summary and bill of lading summary, and invoices for those 9 entries.<sup>19</sup> Amlink indicated that certain line items on 4 entries were indeed subject to the *AD* and *CVD Orders*.<sup>20</sup> CBP reviewed Amlink’s response and found multiple discrepancies between the inspection reports, bill of lading, invoices, and entry summaries.<sup>21</sup> For example, the shipment inspection report for blank thermal paper had a production date of July 2, 2019, but the invoices had exportation dates in January, March, April, May, June, July, and September 2020.<sup>22</sup> For each entry, there is no clear direct linkage between the information included in each shipment inspection report, bill of lading, commercial invoices, and entry summary.

In order to determine whether Amlink’s entries contained covered merchandise, in its supplemental RFI to Likexin, CBP requested that Likexin provide the internal production documents to support Amlink’s claim that the merchandise is out of scope and *AD/CVD* duties should not apply to all line items on each of the 9 entries. For each line item on the invoices, CBP requested documentary evidence for the physical characteristics of each product such as the weight of the product in grams per square meter, whether the product has a base coat, thermal active coating, topcoat, or adhesive backing.<sup>23</sup> Likexin did not respond to the RFI or supplemental RFI. In addition, Amlink did not submit any evidence to support its claims. There is no record evidence that supports Amlink’s claims that either line items or entries are out of scope, actually fall outside of the scope of the *AD/CVD Orders*.

Amlink argued that it did not participate in any fraudulent scheme and did not intentionally, purposefully, knowingly, or negligently engage in evasive conduct.<sup>24</sup> It further argues that it does not have much experience or knowledge regarding the importation of thermal paper, nor does it sell products to U.S. customers.<sup>25</sup> Amlink acted as the importer of record and on all of the entries from Likexin, therefore, pursuant to 19 USC 1484 Amlink is charged with a burden to exercise reasonable care to make an entry and provide such necessary information to CBP to enable it to assess duties.<sup>26</sup> Amlink’s argument that claim that it did not sell merchandise to U.S. customers does not absolve it from the requirements imposed on importers of record under section 1484. Further, under EAPA, there is no requirement that CBP determine that the

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<sup>17</sup> *Id.* The commercial invoices provided in the CF-28 responses listed the HTS code [ NUMBER ], however, CBP data indicates the HTS code utilized at the time of entry was [ NUMBER ] with the HTS description of [ PRODUCT DESCRIPTION ].

<sup>18</sup> See CF-28 and Follow-Up.

<sup>19</sup> See Amlink RFI Response at 3 and Attachments 10 – 13.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* See Likexin Supplemental RFI at Appendix II for chart detailing the discrepancies.

<sup>23</sup> *Id.*

<sup>24</sup> See Amlink Written Argument at 8.

<sup>25</sup> *Id.*

<sup>26</sup> See 19 USC 1484.

importer acted with any level of culpability. The statute only requires that CBP determine whether evasion occurred, *i.e.*, whether covered merchandise was entered into 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>27</sup> Thus, CBP does not need to determine any level of culpability, only that evasion occurred.

### **Determination as to Evasion**

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 an RFI made by CBP. In applying an adverse inference against a party, CBP may use 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. Moreover, an adverse inference may be used with respect to U.S. importers, foreign producers, and manufacturers “without regard to whether another person involved in the same transaction or transactions under examination has provided the information sought by CBP....”<sup>28</sup>

Amlink submitted documents with multiple discrepancies, *i.e.*, a “shipment inspection report” for blank thermal paper with the production date July 2, 2019, but the export dates on the commerce invoices were January 27, 2020, April 27, 2020, June 27, 2020, and July 4, 2020. Another example is the “shipment inspection report” for fragile labels had a production date of July 13, 2020, but the export dates on the commercial invoice were March 29, 2020, June 8, 2020, June 27, 2020, July 4, 2020, July 20, 2020, and September 7, 2020.<sup>29</sup> CBP requested detailed production records from the manufacturer, Likexin, to determine whether Amlink’s claim that certain products were not within the scope of the *AD/CVD Orders* had any merit. However, no such information was submitted to the record. Further, CBP finds that the repeated failure of Likexin to respond to CBP’s RFIs demonstrates that the company did not act to the best of its abilities in this CBP investigation, justifying the application of adverse inferences under 19 USC 1517(c)(3) and 19 CFR 165.6. The information requested would have helped CBP assess the physical characteristics of the products and evaluate Amlink’s claim that those products were not within the scope of the *AD/CVD Orders*. In relying upon an adverse inference for failure to cooperate and comply to the best of one’s ability with a request for information, CBP will look at the facts otherwise available. In this case CBP relies on the facts established in the allegation, Amlink’s admission that certain items on 4 entries are indeed subject to *AD/CVD* duties, and despite Amlink’s arguments, there is no evidence placed on the record, *i.e.*, production information from the manufacturer, and finds that substantial evidence on the record demonstrates that all of Amlink’s entries from Likexin entered into the customs territory of the United States through evasion by means of misclassification and/or misdeclaration of entry type. As a result, the entries subject to this EAPA investigation will be subject to the China-wide entity rate for the *AD Order* and the all-others rate for the *CVD Order* on LWTP from China.

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<sup>27</sup> See 19 USC 1518(a)(5).

<sup>28</sup> See 19 USC 1517(c)(3)(B); *see also* 19 CFR 165.6(c).

<sup>29</sup> See Amlink RFI Response at Attachment 10 to 15. *See also* Likexin Supplemental RFI at Appendix II for chart detailing the discrepancies.

## **Actions Taken Pursuant to the Affirmative Determination of Evasion**

Considering CBP's determination that Amlink entered 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 liquidation for all entries imported by the Amlink that are subject to EAPA investigation 7523, for the period of investigation, September 28, 2019, through August 23, 2021, and continue suspension 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 Amlink's 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,

A handwritten signature in black ink, appearing to read "Brian M. Hoxie". The signature is fluid and cursive, with the first name being the most prominent.

Brian M. Hoxie  
Director, Enforcement Operations Division  
Trade Remedy Law Enforcement Directorate  
Office of Trade