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Re: Enforce and Protect Act (“EAPA”) Case Number 7523; *Lightweight Thermal Paper from the People’s Republic of China: Antidumping and Countervailing Duty Orders*, A-570-921; C-570-921; Amlink Sourcing Incorporated; 19 CFR § 165.2; 19 U.S.C. § 1517(f)

Dear Mr. Orava, Ms. Byers, Mr. Zalud, and Mr. Todd:

This is in response to a request for *de novo* administrative review of a determination of evasion dated August 23, 2021, 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), in Enforce and Protect Act (“EAPA”) Case Number 7523 (hereinafter referred to as the “August 23 Determination”).<sup>1</sup> The request for review, dated September 23, 2021, was submitted to CBP, OT, Regulations and Rulings (“RR”), by Benesch, Friedlander, Coplan & Aranoff LLP, on behalf of Amlink Sourcing Inc. (“Amlink”), pursuant to 19 U.S.C. § 1517(f) and 19 CFR § 165.41(a).

**I. Background**

Inasmuch as the facts in this case were fully set forth in the August 23 Determination, we will not repeat the entire factual history herein.

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<sup>1</sup> See Notice of Final Determination of Evasion in EAPA Case Number 7523, dated August 23, 2021 (the “August 23 Determination”).

In brief, according to the record evidence, on August 26, 2020, the Paper Receipts Converting Association (“PRCA”), an association of U.S. producers of lightweight thermal paper, filed an EAPA allegation against Amlink.<sup>2</sup> On September 28, 2020, CBP acknowledged receipt of the properly filed allegation.<sup>3</sup> In its submission, PRCA alleged that Amlink imported lightweight thermal paper (“LWTP”) manufactured by Shenzhen Likexin Industrial Co., Ltd. (“Likexin”) in the People’s Republic of China (“China”).<sup>4</sup> Specifically, PRCA asserted that Amlink declared nine entries of LWTP as type “01” in field 2 of its entry summaries, instead of as type “03” entries, to avoid paying anti-dumping and countervailing duties (“AD/CVD”) upon liquidation.<sup>5</sup>

On October 20, 2020, TRLED initiated a formal investigation, under Title IV, section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, in response to PRCA’s allegation.<sup>6</sup>

The allegation, and CBP’s subsequent investigation, pertained to the AD/CVD orders issued by the U.S. Department of Commerce (“Commerce”) on imports of lightweight thermal paper from China.<sup>7</sup>

Commerce defined the scope of the relevant AD/CVD Orders as follows:

The merchandise covered by these orders includes certain lightweight thermal paper, which is thermal paper with a basis weight of 70 grams per square meter (g/m<sup>2</sup>) (with a tolerance of ±4.0 g/m<sup>2</sup>) or less; irrespective of dimensions;<sup>[1]</sup> with or without a base coat <sup>[2]</sup> on one or both sides; with thermal active coating(s)<sup>[3]</sup> on one or both sides that is a mixture of the dye and the developer that react and form an image when heat is applied; with or without a top coat;<sup>[4]</sup> and without an adhesive backing. Certain lightweight thermal paper is typically (but not exclusively) used in point-of-sale applications such as ATM receipts, credit card receipts, gas pump receipts, and retail store receipts. The merchandise subject to these orders may be classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) under subheadings 3703.10.60, 4811.59.20, 4811.90.8040, 4811.90.9090, 4820.10.20, and 4823.40.00.<sup>[5]</sup> Although HTSUS subheadings are provided for

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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 (the “Allegation”).

<sup>3</sup> See “Receipt Notification Email to Bonnie Byers and Richard Lutz of King & Spalding for EAPA 7523,” dated September 28, 2020.

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

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

<sup>6</sup> See EAPA Case Number 7523, Notice of Initiation of Investigation and Interim Measures (Jan. 27, 2021) (“Notice of Initiation”).

<sup>7</sup> See *Lightweight Thermal Paper from the People’s Republic of China: Antidumping Duty Order*, 73 Fed. Reg. 70950 (Nov. 24, 2008), and *Lightweight Thermal Paper from the People’s Republic of China: Countervailing Duty Order*, 73 Fed. Reg. 70958 (Nov. 24, 2008) (the “AD/CVD Orders”).

convenience and customs purposes, the written description of the scope of these orders is dispositive.

On January 27, 2021, in accordance with 19 CFR § 165.2, CBP issued the Notice of Initiation to all interested parties, and notified the parties of CBP's decision to take interim measures based upon reasonable suspicion that Amlink, as the importer of record, entered covered merchandise into the customs territory of the United States through evasion.<sup>8</sup> The entries subject to the investigation were those entered for consumption, or withdrawn from a warehouse for consumption, from September 18, 2019, one year before receipt of the allegation, through the pendency of the investigation.<sup>9</sup> TRLED concluded that, based on the record evidence, there was reasonable suspicion that Amlink had entered covered LWTP into the customs territory of the United States through evasion, and imposed interim measures.<sup>10</sup>

On August 23, 2021, TRLED issued its Notice of Determination. TRLED found substantial evidence<sup>11</sup> that Amlink entered LWTP that was covered by AD and CVD Orders A-570-920 and C-570-921 by falsely entering Chinese-origin LWTP into the customs territory of the United States as type "01" entries not subject to the AD/CVD Orders. (Imports that are covered by AD/CVD orders are required to be entered as "03" entries; entries declared as "01" entries cannot be subject to AD/CVD orders.)<sup>12</sup> As a result, no cash deposits had been collected on the merchandise.<sup>13</sup>

On September 23, 2021, Amlink timely filed a Request for Administrative Review. On September 27, 2021, CBP sent an email to all parties to the investigation notifying them of the commencement of the administrative review process, which was designated RR case number HQ H320870. PRCA did not file a response to the Amlink's request for administrative review.

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<sup>8</sup> See Notice of Initiation. Available at: <https://www.cbp.gov/sites/default/files/assets/documents/2021-Feb/01-27-2021%20-%20TRLED%20-%20Notice%20of%20Investigation%20and%20Interim%20Measures%20%28508%20compliant%29%20%287523%29%20PV.pdf>.

<sup>9</sup> See 19 CFR § 165.2. While the regulations set forth which entries CBP will specifically investigate, interim measures can be applied to all unliquidated entries.

<sup>10</sup> See Notice of Initiation.

<sup>11</sup> Substantial evidence is not defined in the statute. The U.S. Court of Appeals for the Federal Circuit has stated that "substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *A.L. Patterson, Inc. v. United States*, 585 Fed. Appx. 778, 781-82 (Fed. Cir. 2014) (quoting *Consol. Edison Co. of N.Y. v. NLRB*, 305 U.S. 197, 229 (1938)).

<sup>12</sup> See, e.g., CBP Form 7501 Instructions, "Block 2) Entry Type," available at <https://www.cbp.gov/sites/default/files/assets/documents/2019-Sep/CBP%20Form%207501.pdf>.

<sup>13</sup> See August 23 Determination at 1. Available at: <https://www.cbp.gov/sites/default/files/assets/documents/2021-Aug/08-23-2021%20-%20TRLED%20-%20NOTICE%20OF%20DETERMINATION%20%28508%20compliant%29%20-%20%287523%29%20-%20PV.pdf>.

## II. Discussion

### A. Administrative Review and Standard of Review

Pursuant to 19 U.S.C. § 1517(f)(1) and 19 CFR § 165.45, upon a request for administrative review, CBP will apply a *de novo* standard of review and will render a determination appropriate under the law according to the specific facts and circumstances on the record. For that purpose, CBP will review the entire administrative record upon which the initial determination was made, the timely and properly filed request(s) for review and responses, and any additional information that was received pursuant to 19 CFR § 165.44. The administrative review will be completed within 60 business days of the commencement of the review.

### B. Law

Title 19 U.S.C. § 1517(c)(1) provides, in relevant part, as follows:

#### (1) Determination of Evasion

##### (A) In general

Except as provided in subparagraph (B), not later than 300 calendar days after the date on which the Commissioner initiates an investigation under subsection (b) 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.

The term evasion is defined in 19 U.S.C. § 1517(a)(5), as follows:

#### (5) Evasion

##### (A) In general

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.

*See also* 19 CFR § 165.1.

Examples of evasion could include, but are not limited to, the misrepresentation of the merchandise’s true country of origin (*e.g.*, through false country of origin markings on

the product itself or false sales), false or incorrect shipping and entry documentation, or misreporting of the merchandise's physical characteristics.<sup>14</sup>

Covered merchandise is defined as “merchandise that is subject to a CVD order issued under section 706, Tariff Act of 1930, as amended (19 U.S.C. 1671e), and/or an AD order issued under section 736, Tariff Act of 1930, as amended (19 U.S.C. 1673e).”<sup>15</sup>

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.

### **C. Amlink's Arguments**

Amlink requests that we reverse the August 23 Determination of evasion, asserting that there is not substantial evidence that Amlink engaged in a fraudulent scheme and evasive conduct.

In its first argument, Amlink concedes that four of the nine entries subject to the August 23 Determination contained merchandise within the scope of the AD/CVD Orders. Amlink nevertheless asserts that TRLED's determination should be reversed on the grounds that these entries, as well as the five additional entries, occurred as “the result of Amlink's reliance on its principal's direction and the services of its customs broker to accomplish what it believed to be the lawful and appropriate entry of the [LWTP] and simple misstatements of the same.”<sup>16</sup> Amlink's submission further states that, it, as the importer, did not have knowledge of the relevant AD/CVD Orders on LWTP, instead relying on information provided by its customs brokers and the product manufacturers.<sup>17</sup>

In support of this argument, Amlink asserts that a finding of evasion must be predicated on a “fraudulent export scheme,” and that, because Amlink's entries were not prepared with an intent to defraud, no evasion occurred. In support of this contention, Amlink cites *Inmax SDN v. United States*,<sup>18</sup> claiming that the court in that case determined that evasion must arise from a fraudulent export scheme.<sup>19</sup> Amlink's submission further argues that the subject imports resulted from “human errors or simple misstatements and...discrepancies in paperwork,” which do not amount to a fraudulent, evasive scheme.

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<sup>14</sup> See *Investigation of Claims of Evasion of Antidumping and Countervailing Duties, Interim Regulations*, 81 Fed. Reg. 56477, 56478 (Aug. 22, 2016).

<sup>15</sup> See 19 CFR § 165.1.

<sup>16</sup> See Amlink Sourcing Request for Review of Initial Determination as to Evasion, Case No. 7523 at 7-8 (Sept. 23, 2021) (“Amlink Request”).

<sup>17</sup> See *id.*

<sup>18</sup> See *Inmax SDN v. United States*, 277 F. Supp. 3d 1367 (Ct. Int'l Trade 2017).

<sup>19</sup> See *id.* at 11 (“In *Inmax*, the court suggested that evasion arises from a fraudulent export scheme.”).

In its second argument, Amlink states that five of the nine entries subject to the August 23 Determination are not within the scope of the AD/CVD Orders. Specifically, Amlink asserts that those five shipments did not contain “lightweight” thermal paper. Amlink’s submission instead argues that, for several of the shipments, Likexin, the manufacturer, failed to provide product test reports regarding the nature of the shipment. As a result, Amlink argues, the company relied on the weights provided by Likexin in older product test reports with the same SKU numbers to calculate the weights for the LWTP at issue. In addition, Amlink argues that TRLED erred in applying adverse inferences to these entries. Instead, Amlink claims that the company, as well as Likexin, cooperated with all of CBP’s requests for information throughout the investigation.

Based on the foregoing, Amlink argues that evasion did not occur and that the August 23 Determination should be reversed.

#### **D. PRCA’s Arguments**

PRCA did not submit a response to Amlink’s request for administrative review.

#### **E. Administrative Review Analysis**

Pursuant to 19 U.S.C. § 1517(f)(1) and 19 CFR § 165.45, RR will apply a *de novo* standard of review under the law, based solely upon the facts and circumstances on the administrative record in the proceeding. In making our determination, we reviewed: (1) the entire administrative record upon which the August 23 Determination was made by TRLED; and (2) the timely and properly filed request for review. RR did not request additional written information from the parties to the investigation pursuant to 19 CFR § 165.44. Pursuant to 19 CFR § 165.45, our administrative review of this case has been completed in a timely manner, within 60 business days of the commencement of the review.

The term “evasion” under the EAPA 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>20</sup>

The term “covered merchandise” means merchandise that is subject to a countervailing duty order issued under section 706, Tariff Act of 1930, as amended (19 U.S.C. § 1671e), and/or an antidumping duty order issued under section 736, Tariff Act of 1930, as amended (19 U.S.C. § 1673e).<sup>21</sup>

“Substantial evidence” is not defined by statute. However, the “substantial evidence” standard has been reviewed by the courts in relation to determinations by other agencies.

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<sup>20</sup> See 19 U.S.C. § 1517(a)(5)(A).

<sup>21</sup> See 19 U.S.C. § 1517(c)(1) and 19 CFR § 165.1.

“Substantial evidence requires more than a mere scintilla, but is satisfied by something less than the weight of the evidence.”<sup>22</sup> Our decision herein must be supported by substantial evidence.

A review of the administrative record and Amlink’s request for administrative review clearly indicates that LWTP was entered as type “01” entries and, therefore, the applicable AD/CV duties owed were not paid.<sup>23</sup> Indeed, in its request for review, Amlink acknowledges that four of the nine entries at issue contained LWTP subject to the AD/CVD Orders. Specifically, Amlink states that the following entries contained subject LWTP: XXXXXX774-6, XXXXXX920-4, XXXXXX352-8, and XXXXXX462-5.<sup>24</sup> As such, these entries should have been made as “03” entries, indicating that they are subject to the AD/CVD Orders. It was material and false for these entries to be made as “01” entries. That the material falsehood may have occurred as a result of a mistake does not mean that evasion has not occurred – a falsity within the meaning of the EAPA statute can occur as a result of a mistake.<sup>25</sup> Hence, based on this evidence alone, we conclude that the record supports a finding of evasion.

Nevertheless, we also examine Amlink’s claim that CBP must show a fraudulent intent to commit evasion. This assertion is not supported in either the plain language of the statute or the applicable case law.

The EAPA itself defines evasion without reference to intent, stating that “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....”<sup>26</sup>

Similarly, Amlink’s argument that *Inmax* requires fraudulent intent for a finding of evasion is misplaced. *Inmax* did not involve judicial review of a CBP determination of evasion. Instead, the *Inmax* court examined the circumstances in which the Department of Commerce may continue a “changed circumstances” review of an importer when the alleged evasion upon which the investigation was initiated is disproven during the course of the investigation.<sup>27</sup> At no point does the court state that “evasion” requires fraudulent intent, as Amlink incorrectly suggests. Instead, the decision merely notes that a company’s letter to the Taiwan Stock Exchange stating that a subsidiary would open a new production line in response to an AD/CVD order was not a “bold pronouncement of

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<sup>22</sup> See *Altx, Inc. v. United States*, 370 F.3d 1108, 1116 (Fed. Cir. 2004) (internal citations and quotation marks omitted).

<sup>23</sup> See Amlink Request at 7-8.

<sup>24</sup> See Entry Summary 7501 Forms for nine shipments, Exhibits 15 and 16 to Amlink’s RFI Response Narrative (March 31, 2021).

<sup>25</sup> See *Diamond Tools Tech. LLC v. United States*, 2021 Ct. Int’l Trade LEXIS 155, 165 (2021) (“What is false can be so by intent, by accident, or by mistake....”) (citing Black’s Law Dictionary (11<sup>th</sup> ed., 2019)) (emphasis added). We also note that, although the EAPA does carve out an exception for certain clerical errors, Amlink does not assert that the misrepresentations were the result of such an error. See 19 U.S.C. § 1517(a)(5)(B).

<sup>26</sup> See 19 U.S.C. § 1517(a)(5).

<sup>27</sup> See 277 F. Supp. 1367 at 1374.

fraudulent intent” to evade, but merely a straightforward explanation that the company was making changes to its business practices.<sup>28</sup> The court did not hold, as Amlink posits, that *every* “misstatement of otherwise lawful activity under an antidumping order” protects an importer from an evasion finding. Moreover, the court certainly did not find that an importer who mistakenly enters merchandise subject to an AD/CVD order as type “01” can avoid an evasion determination under the EAPA.

If the LWTP is considered covered merchandise under the applicable AD/CVD Orders, which it is, entry thereof during the period of investigation without proper declaration as type “03” entries and without the deposit of the AD/CV duties owed constitutes evasion under the EAPA statute and implementing regulations. As a result, substantial evidence in the record demonstrates that evasion occurred with respect to Entry Nos.: XXXXXXXX774-6, XXXXXXXX920-4, XXXXXXXX352-8, and XXXXXXXX462-5.

Next, we address Amlink’s argument that CBP has applied an overly broad interpretation as to which entries included LWTP. The fact that all of Amlink’s entries may not have been falsely declared does not mean that there is an absence of substantial evidence of evasion. Here, four of nine entries were admittedly falsely declared. As such, the administrative record contains ample and substantial evidence that entries of covered merchandise were made by Amlink during the period of investigation and were not declared as subject to the AD/CVD Orders. This constitutes evasion as defined by the EAPA and the finding of evasion stands, notwithstanding Amlink’s argument concerning the number of entries subject to AD/CV duties during the period of investigation.

We also note that Amlink’s arguments as to its reliance on information from its customs broker and/or the manufacturer misapprehend the legal responsibilities of an importer when it does business with CBP. The importer, by statute, is required to exercise reasonable care. Even if Amlink received incorrect information from its customs broker and/or the manufacturer, 19 U.S.C. § 1484 places the burden on Amlink, as the importer of record, to use reasonable care to make entry by filing such information as necessary to enable CBP to determine whether merchandise may be released from CBP custody, and using reasonable care, to complete the entry by submitting to CBP the declared value, classification and rate of duty and such other documentation or information as necessary to enable CBP to assess duties, including AD/CVD duties.<sup>29</sup> Moreover, although reasonable care is a fundamental requirement, even if an importer of record has exercised “reasonable care,” that would not be dispositive in determining whether evasion, as defined by the EAPA, has occurred.<sup>30</sup>

Finally, it is our position that, even without adverse inferences, the record fully and adequately supports the finding that Amlink imported Chinese-origin LWTP into the

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<sup>28</sup> See *id.* at 1373.

<sup>29</sup> See HQ H302687 (Feb. 22, 2021) (citing 19 U.S.C. §§ 1484 and 1485, 19 CFR Parts 141 and 142).

<sup>30</sup> See HQ H194977 (Feb. 28, 2012) (“[the importer] argues that it used reasonable care in entering goods and that in some manner, this provides a basis for their protest of the assessment of anti-dumping duties.... [T]he dispositive view is whether CBP lawfully collecting [sic] antidumping duties. This does not depend on the degree of care exercised by [the importer].”).

United States in contravention of the AD/CVD Orders. As such, we affirm the finding of evasion without reliance on adverse inferences. The evidence with respect to the four entries discussed above is sufficient to support an affirmative determination of evasion.

Furthermore, although not necessary to our conclusion, in our view, the record, as a whole, does not support Amlink's assertions that CBP should conclude that the remaining five entries were not subject to the AD/CVD Orders. TRLED noted some discrepancies in the documentation (*e.g.*, the shipment inspection report for one shipment of 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>31</sup> and the manufacturer did not provide production or test records to explain those discrepancies. As such, the only support in the record for the position that the other five entries are not of LWTP are outdated test records acknowledged not to be associated with the specific goods contained in the subject entries, and Amlink's assumptions that the weights for other production runs of the same SKU would also be valid for the subject entries, even though Amlink concedes that it is not very familiar with the LWTP industry.

Therefore, based upon the documentation and information provided in the administrative record of EAPA Cons. Case No. 7523, there is substantial evidence to support a finding of evasion as to Amlink.

### **III. Decision**

Based upon our *de novo* review of the administrative record in this case, including the timely and properly filed request for administrative review submitted by Amlink on September 23, 2021, the August 23 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 EAPA.

Sincerely,

W. Richmond Beevers  
Chief, Cargo Security, Carriers and Restricted Merchandise Branch  
Office of Trade, Regulations and Rulings  
U.S. Customs and Border Protection

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<sup>31</sup> See Amlink RFI Response at 3 and Attachments 10-13.

Approved by:

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