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Re: Enforce and Protect Act ("EAPA") Consolidated Case Number 7745; *Thermal Paper from Germany, Japan, the Republic of Korea, and Spain: Antidumping Duty Orders*, 86 Fed. Reg. 66,284 (Dep't of Commerce Nov. 22, 2021); A2 Labels & Rolls Inc.; 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 August 21, 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 7745 ("August 21 Determination").[1] The request for review, dated October 3, 2023, was submitted to CBP, OT, Regulations and Rulings ("RR"), by Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP on behalf of A2 Labels and Rolls, Inc. ("A2 Labels," "A2," or "Importer"), pursuant to 19 U.S.C. § 1517(f) and 19 C.F.R. §

[1] *See* Notice of Determination as to Evasion, EAPA Consolidated Case 7745 (Aug. 21, 2023) (Public Version), *available at* https://www.cbp.gov/document/publications/eapa-cons-case-7745-various-importers-notice-determination-evasion-august-21 (last accessed Nov. 8, 2023).

165.41(a).[2] Paper Receipts Converting Association ("PRCA" or "Alleger") filed a response to the request for review on October 20, 2023.

I. Background

Based on our review of the administrative record, unless otherwise discussed, we agree with the recitation of facts as set forth by the August 21 Determination. As such, we will not repeat the entire factual history herein.

On August 9, 2022,[3] PRCA filed EAPA allegations against A2 Labels and 13 other importers. CBP acknowledged receipt of the allegations on September 23, 2022. On October 17, 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 the allegations of evasion.[4]

PRCA alleged that the other importers and A2 Labels, were importing thermal paper from Germany or South Korea into the United States that had been transshipped through Mexico and were falsely declaring the country of origin of these imports as Mexico. PRCA further alleged that these imports of thermal paper were in-scope merchandise and were covered by an antidumping duty order on thermal paper from Germany (Case No. A-428-850) (the "AD Order") or from South Korea (Case No. A-580-911) (collectively, "AD Orders"), and that the other importers and A2 Labels, had evaded the payment of antidumping duties on these imports.[5]

The allegations of evasion pertained to the AD Orders issued by the U.S. Department of Commerce ("Commerce") on imports of thermal paper from Germany and/or Korea. Commerce defined the scope of the AD Orders on imports of thermal paper 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

[2] The other importers involved in EAPA Cons. Case No. 7745 are: E-Merchant Supplies, POS Supply Solutions, Royal Paper Products (aka AmerCare Royal LLC), Golden Eagle Distributors LLC, Paper Roll Supplies LLC, Lucky Heap Corp., National POS Paper, Paper Roll Products, BuyRolls Inc., Qualita Paper Products (aka Quality Paper Products), VBS Cal LLC, Allied Paper Company, and the Avantage Group (collectively, "other importers"). None of the other importers submitted a request for administrative review.

[3] Although the allegations are dated August 9, 2022, the August 21 Determination states that PCRA filed an EAPA allegation on August 10, 2022. *See* August 21 Determination (Public Version), at 2.

[4] *See* Notice of Initiation of Investigation and Interim Measures: EAPA Cons. Case 7745 (Jan. 24, 2023) ("Notice of Initiation") (Public Version), *available at* https://www.cbp.gov/document/publications/eapa-cons-case-7745-various-importers-notice-initiation-investigation-and (last accessed Nov. 13, 2023).

[5] *See Thermal Paper from Germany, Japan, the Republic of Korea, and Spain: Antidumping Duty Orders,* 86 Fed. Reg. 66,284 (Nov. 22, 2021).

> "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.[6]

On January 24, 2023, in accordance with 19 C.F.R. § 165.24, CBP issued a Notice of Initiation of Investigation to all parties to the investigation stating that the investigation had begun on October 17, 2022, and notifying the parties of CBP's decision to take interim measures based upon reasonable suspicion that the other importers and A2 Labels, had entered covered merchandise into the customs territory of the United States through evasion.[7] The entries subject to the investigation are all unliquidated entries of covered merchandise entered from September 23, 2021, through the pendency of the investigation.[8]

On August 21, 2023, TRLED found substantial evidence of evasion in that Papeles y Conversiones de Mexico, SA de CV or Convertadora PCM SA de CV (collectively, "PCM") transshipped and exported thermal paper of German origin to the United States that was subject to the AD Order, and that the other importers and A2 Labels claimed that the country of origin of the thermal paper was Mexico.[9] A2 Labels entered the thermal paper into the customs territory of the United States on type "01" consumption entries.[10] As a result, no cash deposits for antidumping duties were applied to the merchandise.[11] TRLED also found that there was not substantial evidence that any of the importers, including A2 Labels, had evaded the AD order on thermal paper from Korea.[12]

On October 3, 2023, A2 Labels timely filed a Request for Administrative Review. On October 4, 2023, RR sent an e-mail to all parties to the investigation in EAPA Cons. Case No. 7745, notifying them of the commencement of the administrative review process for A2 Labels, and assigning number H334847 to the *de novo* administrative review. On October 20, 2023, PRCA timely filed a written response to A2 Labels's request for administrative review.

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[6] 86 Fed. Reg at 66,286–87.
[7] *See* Notice of Initiation (Public Version).
[8] *See id. See also* 19 C.F.R. § 165.2 ("In addition, at its discretion, CBP may investigate other entries of such covered merchandise.").
[9] *See* August 21 Determination (Public Version), at 2.
[10] Imports that are covered by AD/CVD orders are required to be entered as type "03" entries; entries declared as type "01" are not subject to payment of antidumping or countervailing duties. *See* CBP Entry Summary Form 7501 and Instructions and the ACE Entry Summary Business Rules and Procedure Document https://www.cbp.gov/trade/programs-administration/entry-summary/cbp-form-7501 (last accessed Nov. 8, 2023).
[11] *See* August 21 Determination (Public Version), at 2.
[12] *See id.*

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."[13] 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.[14]

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.[15]

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)."[16] 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."[17]

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. RR's determination as to evasion must be supported by substantial evidence.

A. A2 Labels's Arguments

A2 Labels requests that we reverse the August 21 Determination, arguing that the thermal paper is not covered merchandise because the correct country of origin of the merchandise it imported is Mexico. As such, there can be no evasion of the AD Order on thermal paper from Germany.[18]

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[13] 19 U.S.C. § 1517(c)(1).
[14] 19 U.S.C. § 1517(a)(5); *see also* 19 CFR § 165.1.
[15] *See Investigation of Claims of Evasion of Antidumping and Countervailing Duties, Interim Regulations*, 81 Fed. Reg. 56,477, 56,478 (CBP Aug. 22, 2016).
[16] 19 C.F.R. § 165.1.
[17] *See Altx, Inc. v. United States*, 370 F.3d 1108, 1116 (Fed. Cir. 2004) (internal citations and quotation marks omitted).
[18] A2 Labels did not request administrative review of the August 21 Determination with respect to the Korea order. *See generally* Labels's Request for Administrative Review (Public Document).

Specifically, A2 Labels claims that no transshipment or evasion occurred because, based on the United States-Mexico-Canada Agreement's ("USMCA") rules of origin, the country of origin of the thermal paper is Mexico (not Germany), due to processing that occurred in Mexico.[19]

A2 Labels then argues that, consistent with *Diamond Tools Technology LLC v. United States*, 609 F. Supp. 3d 1378 (Ct. Int'l Trade 2022), it did not make a materially false statement or omission.[20] A2 Labels asserts that it relied on and complied with the following sources: (1) the USMCA's rules of origin; (2) "Customs ruling N3067376"[21]; and (3) "legal advice from their competent local and U.S. legal counsel."[22] A2 Labels also distinguishes the facts of *Ikadan System United States, , Inc. v. United States*, 639 F. Supp. 3d 1339 (Ct. Int'l. Trade 2023), from those present in this review because at the time of entry, A2 Labels properly classified the merchandise under the Harmonized Tariff Schedule of the United States ("HTSUS") and exercised "reasonable care" when it claimed that the thermal rolls were of Mexican origin under the USMCA's rules of origin.[23]

Lastly, A2 Labels claims that TRLED relied on redacted business confidential information to find substantial evidence of evasion, and that this resulted in a "procedural defect [that] violated A2's due process rights and was prejudicial to A2."[24] A2 Labels argues that per the U.S. Court of Appeals for the Federal Circuit's decision in *Royal Brush Manufacturing, Inc. v. United States*, 75 F.4th 1250, 1258 (Fed. Cir. 2023), CBP acted unlawfully by finding evasion without disclosing the business confidential information, "including information provided by the alleger, Koehler, and other importers, and the trade data relied [upon] by CBP."[25]

For these reasons, A2 Labels requests that the August 21 Determination be reversed.

B. PRCA's Arguments

PRCA requests that we affirm the August 21 Determination because thermal paper that is converted into rolls in third countries from jumbo rolls produced in Germany is covered merchandise under the plain language of the AD Order. Therefore, PRCA concludes that A2 Labels entered the merchandise by evasion.

PRCA states that A2 Labels does not dispute either that the converted thermal paper rolls sourced from PCM were produced with jumbo thermal paper rolls from Germany or that the scope of the AD Order on thermal paper from Germany "covers thermal paper that is converted into rolls with an actual width of less that [*sic*] 4.5 inches and with an actual basis weight of 70 gsm or less in third countries from jumbo rolls produced in subject countries."[26] Furthermore, PRCA claims there is no merit to A2 Labels's argument that country of origin for marking and preferential tariff treatment under the USMCA determines scope under the AD Order. Specifically, PRCA avers that

[19] *Id.* at 4–6.
[20] *See id.* at 8–9.
[21] The citation to Customs ruling N3067376 appears to be a typographical error; we believe the intended citation is NY N306776. *See* NY N306776 (Nov. 17, 2019) (on the applicability of the North American Free Trade Agreement ("NAFTA") to imports of thermal paper cut to size in Canada from master rolls from South Korea and Japan and finding, in part, that the country of origin of the thermal paper rolls, for both customs duty and marking purposes, is Canada).
[22] *See id.* at 8–9.
[23] *Id.* at 9.
[24] *Id.* at 4, 12.
[25] *Id.* at 12.
[26] PRCA's Response (Public Document) (Oct. 20, 2023), at 6.

A2 Labels "misunderstands the difference between non-preferential origin determinations (such as whether an imported article is subject to an AD/CVD order) and the separate tests to determine country of origin marking and/or whether imported articles qualify for preferential general duty treatment under a trade agreement or duty preference legislation, such as the USMCA."[27] PRCA states that the USMCA rules of origin do not supersede the clear language of the scope of the AD Order. Consequently, the fact that the jumbo rolls were converted in Mexico, and the fact that A2 Labels declared Mexico as the country of origin of the converted rolls which were imported into the United States, are irrelevant because the converted rolls were described by the plain language of the AD Order.

PRCA further claims that the record demonstrates that A2 Labels made material false statements, acts or material omissions pursuant to 19 U.S.C. § 1517(c)(1)(A), and that *Diamond Tools* actually supports CBP's findings that A2 Labels entered merchandise into the commerce of the United States by means of material false statements, acts or material omissions because the language of the AD Order clearly indicates that jumbo rolls from the subject country that are converted in third countries are covered merchandise.[28]

Furthermore, PRCA avers that A2 Labels cannot claim "unawareness" of the existing AD Order, as the record of the EAPA investigation demonstrates that A2 Labels (and its "parent"[29] company, PCM), knew that antidumping duties for German thermal paper applied to imports of converted rolls from Mexico.[30]

As for A2 Labels's argument regarding possible procedural due process violations, PRCA claims such arguments are without merit because CBP's determination of evasion was based solely on information that was provided by A2 Labels and PCM, its parent company, and to which A2 Labels therefore had complete access. PRCA states that it (PRCA) never submitted any confidential information and that any confidential information submitted by the other importers would have no bearing on CBP's determination of evasion as to A2 Labels.

For these reasons, PRCA requests that the August 21 Determination be affirmed.

III. Administrative Review Analysis

Pursuant to 19 U.S.C. § 1517(f)(1) and 19 C.F.R. § 165.45, upon request for administrative review, 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 the following materials: (1) the administrative record upon which the August 21 Determination was made, as provided to RR by TRLED; and (2) the timely and properly filed request for review and response.

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[27] PCRA's Response (Public Document), at 6. *See also Canadian Solar, Inc. v. United States*, 918 F. 3d 909 (Fed. Cir. 2019).
[28] *Id* at 7.
[29] *Id* at 7.
[30] PRCA refers to statements made by some importers (Paper Roll Products, Paper Roll Supplies, VBS CAL LLC, E Merchant Supplies Inc., and BuyRolls Inc.) summarized under Importers' Written Arguments (July 18, 2023) (Public Version), at 1.

The purpose of this *de novo* review is to analyze the August 21 Determination and the accompanying record to determine whether substantial evidence of evasion exists. For the reasons set forth below, we find that there is substantial evidence of evasion.

First, there is substantial record evidence that the thermal paper rolls from Germany that were converted into smaller rolls in Mexico are covered merchandise. There is record evidence that jumbo rolls produced by Koehler Paper SE ("Koehler") in Germany were converted in Mexico by PCM into rolls with widths of less than 4.5 inches in Mexico and then imported by A2 Labels into the United States.[31] There is also record evidence that the converted rolls that A2 Labels imported into the United States had an actual basis weight of 70 gsm or less.[32]

The scope language of the AD Order clearly states that thermal paper from Germany is subject merchandise under the AD Order, and that such merchandise includes jumbo rolls and certain converted rolls:

> 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.[33]

Very importantly, the scope language of the AD Order clearly states that converting jumbo rolls of thermal paper into smaller rolls in third countries does not remove those "converted rolls" from the scope of the AD Order:

> 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.[34]

Based on the plain scope language, the AD Order covers the German jumbo rolls of thermal paper and the rolls of thermal paper that are converted into smaller rolls in Mexico. PCM's

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[31] *See* August 21 Determination (Public Version), at 6, 8–9, 15; PCM's Rebuttal Comments to Importers' Written Arguments (Aug. 23, 2023) (Public Version), at 2; Koehler Paper SE's RFI response (June 21, 2023) (Public Version); PCM's RFI response (May 1, 2023) (Public Version), at 39; PCRA allegation (Public Version), at Ex. 3 (spreadsheet listing exports of thermal paper converted rolls from Mexico (May 2021–April 2022), listing exports of thermal paper from PCM); Ex. 8 (spreadsheet listing imports of thermal paper rolls into Mexico (May 2021–April 2022), listing exports from Koehler in Germany).

[32] *See id.*

[33] 86 Fed. Reg. at 66,286–87 (emphasis added).

[34] *Id.* at 66,287.

conversion of in-scope German jumbo rolls into smaller rolls of thermal paper in Mexico does not remove these converted rolls from the scope of the AD Order. Accordingly, the converted rolls of thermal paper that A2 Labels imported are "covered merchandise."

A2 Labels's focus on the "country of origin" of the converted rolls for purposes of marking and preferential tariff treatment under the USMCA or NAFTA, or otherwise, is inapposite to the question presented here — whether A2 Labels entered merchandise covered by the AD Order into the United States. It is well-settled law that the country of origin of a good from a customs law perspective is not the same as whether the good falls within the scope of an AD or CVD order with respect to a certain country.[35] Moreover, nothing in Commerce's AD Order requires that the ultimate country of origin of the entered merchandise, from a customs marking or other customs law perspective, be Germany; rather, the question is whether the merchandise is covered by the AD Order, as described by Commerce. Here, the plain language of the AD Order clearly states that jumbo rolls made in Germany are covered, and remain covered, where that merchandise is subsequently 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 a third country such as Mexico. Therefore, we conclude that there is substantial evidence that the converted rolls of thermal paper are covered merchandise.

Second, there is substantial record evidence that A2 Labels entered the covered merchandise by evasion. The record evidence shows that A2 Labels 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 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.[36] These constitute false statements that are also material because the applicable AD cash deposits were not paid.[37] A2 Labels also omitted Case No. A-428-850 from the entry summary documentation.[38] The omission of Case No. A-428-850 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 AD deposits due, and to determine and assess future AD duties.[39] Therefore, we conclude that there is substantial evidence that A2 Labels entered covered merchandise by evasion.

A2 Labels's additional arguments lack merit. A2 Labels argues that "the CIT has held that a degree of culpability is required for the importer to have made a material false statement or material omission."[40] However, the EAPA statute requires only that there be a material false statement,

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[35] *See, e.g.*, *Aireko Constr., LLC v. United States*, 425 F. Supp. 1307, 1312 n.7 (Ct. Int'l Trade 2020) (acknowledging that country of origin differs in the AD/CVD versus customs marking contexts because "CBP makes country of origin determinations under a different authority than that by which Commerce determines country of origin for purposes of applying AD/CVD duties") (citing 19 U.S.C. § 1304; *SunEdison, Inc. v. United States*, 179 F. Supp. 3d 1309, 1323 n.77 (Ct. Int'l Trade 2016) (finding CBP's country of origin determinations to be "inapposite" to Commerce's country of origin determinations)).

[36] *See, e.g.*, A2 Labels's CF-28 Response for Entry No. ending in 9627 (Public Version), at 3; August 21 Determination (Public Version), at 26.

[37] *See* August 21 Determination (Public Version), at 26.

[38] *See id.*

[39] We expressly take no position herein on the questions of whether the statements -- declaring the goods as of Mexican origin for customs purposes and claiming preferential tariff treatment under the USMCA -- were correct/not false, because those questions are not germane to an EAPA investigation.

[40] A2 Labels's Request for Administrative Review (Public Document), at 7.

document or omission, which led to the non-payment or underpayment of antidumping and/or countervailing duties. Indeed, evasion:

> [r]efers 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.[41]

"Culpability" does not appear in this definition. Moreover, contrary to A2 Labels's assertion, the U.S. Court of International Trade has recently held that "EAPA read as a whole supports CBP's strict liability interpretation of the definition of evasion."[42] Thus, EAPA does not require "a degree of culpability."[43] In the absence of a degree of culpability in the definition of evasion, A2 Labels's argument that it exercised reasonable care[44] also fails. Reasonable care is not a defense against a finding of evasion under EAPA.[45]

A2 Labels claims that entry type "01" cannot be a false statement because the merchandise qualified as originating under the USMCA and because it "reasonably relied" on "Customs ruling N3067376," [46] and "legal advice from their competent local and U.S. legal counsel. " A2 Labels therefore concludes that, pursuant to *Diamond Tools*, these type "01" entries cannot have been false statements.[47]

Again, A2 Labels's assertion lacks merit. As discussed above, A2 Labels imported covered merchandise from PCM. The plain scope language specifically states that "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" is subject merchandise under the AD Order.[48] The unambiguous scope language set forth in Commerce's AD Order governs whether merchandise is subject to AD duties, not the ultimate country of origin under NAFTA or the USMCA or from a customs marking or other customs law perspective.[49] Goods subject to an AD order are required to be entered under type "03" and thus, the use of type "01" (*i.e.*, not subject to an AD/CVD order) by A2 Label was incorrect and false. Likewise, the omission of the relevant AD case number was a material omission.

Lastly, A2 Labels's claim of procedural due process violations is without merit. In *Royal Brush*, the U.S. Court of Appeals for the Federal Circuit held that due process required that the

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[41] 19 U.S.C. § 1517(a)(5)(A).
[42] *Ikadan Sys. United States, Inc.*, 639 F. Supp. 3d at 1349.
[43] A2 Labels's Request for Administrative Review (Public Document), at 7.
[44] *See id.* at 9.
[45] *See* 19 U.S.C. § 1517(a)(5).
[46] *See* A2 Labels's Request for Administrative Review (Public Document),at 8–9. We find the claim of purported reliance on this NY ruling to be particularly disingenuous, given that the ruling related to preferential treatment under NAFTA, even though NAFTA ceased to be effective at the end of June of 2020. On July 1, 2020, the USMCA entered into force. The entries in this EAPA case started on September 21, 2021, more than a year after the NAFTA had expired. Thus, the cited NY ruling had no applicability to the entries here at issue, for any purpose, given that the entries were made under a totally different legal regime.
[47] *See id.* at 8–9.
[48] 86 Fed. Reg. at 66,287.
[49] *See Aireko Constr., LLC*, 425 F. Supp. at 1312 n.7; *SunEdison, Inc.*, 179 F. Supp. 3d at 1323 n.77.

importer in that case have access to the information the agency had relied upon in reaching the determination that Royal Brush had engaged in evasion under EAPA, including information that was determined to be business confidential and was therefore originally withheld.[50] By contrast, here, RR did not rely on confidential information to find substantial evidence of evasion. Rather, RR's determination is based entirely on the public versions of documents on the administrative record. Therefore, this case is unlike *Royal Brush* because A2 Labels had and continues to have access to the information underlying RR's final administrative determination finding substantial evidence of evasion.[51]

IV. Decision

Based upon our *de novo* review of the administrative record in this case, including the request for administrative review and response thereto, the August 21 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
Digitally signed by JACINTO P JUAREZ JR
Date: 2023.12.22 16:40:02 -05'00'

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

Approved by:

ALICE A KIPEL
Digitally signed by ALICE A KIPEL
Date: 2023.12.22 17:05:32 -05'00'

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

[50] *See Royal Brush Mfg., Inc.*, 75 F.4th at 1257–59; *see also Doty v. United States*, 53 F.3d 1244, 1251 (Fed. Cir. 1995) ("The agency's . . . withholding of the evidence on which [it] purported to rely . . . w[as] . . . egregiously removed from the fairness required of an agency in its administrative responsibilities. . . .").
[51] *C.f. Royal Brush Mfg., Inc.*, 75 F.4th 1250 at 1257–59.