



U.S. Customs and Border Protection

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PUBLIC VERSION EAPA Cons. Case

Number: 7205

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Re: Notice of initiation of an investigation and interim measures taken as to Power Tek Tool, Inc. and Lyke Industrial Tool, LLC concerning evasion of the antidumping duty order on Diamond Sawblades from the People's Republic of China

To Whom it May Concern:

This letter is to inform you that U.S. Customs and Border Protection ("CBP") has commenced two formal investigations under Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, commonly referred to as the Enforce and Protect Act (EAPA), for Power Tek Tool, Inc. ("Power Tek") and Lyke Industrial Tool, LLC ("Lyke").¹ Specifically, CBP is investigating whether Power Tek and Lyke have evaded the Antidumping Duty ("AD") Order on Diamond Sawblades and Parts Thereof From the People's Republic of China ("China"), A-570-900, with their entries of diamond sawblades ("Covered Merchandise") into the United States.² Because evidence establishes a reasonable suspicion that Power Tek and Lyke have entered merchandise into the United States through evasion, CBP has imposed interim measures

¹ Investigations were initiated individually for EAPA Allegation number 7205 as to evasion for Power Tek and EAPA Allegation number 7206 as to evasion for Lyke but, as explained below in the "Consolidation of Investigations" section of this memo, the investigations have been consolidated into a single investigation referred to as EAPA Consolidated Case Number 7205.

² *Diamond Sawblades and Parts Thereof From the People's Republic of China and the Republic of Korea: Antidumping Duty Orders*, 74 Fed. Reg. 57,145 (Dept. Commerce Nov. 4, 2009).

against both importers. Additionally, CBP is consolidating both investigations into a single consolidated investigation, under “EAPA Consolidated Case Number 7205.”

Period of Investigation

Pursuant to 19 C.F.R. §165.2, entries covered by an EAPA investigation are those “entries of allegedly covered merchandise made within one year before the receipt of an allegation....” Entry is defined as an “entry for consumption, or withdrawal from warehouse for consumption, of merchandise in the customs territory of the United States.” 19 C.F.R. §165.1. The Diamond Sawblades Manufacturers Coalition (“DSMC”) filed both allegations on June 26, 2017. CBP acknowledged receipt of the properly filed allegations against Power Tek and Lyke via email on June 26, 2017 and June 27, 2017, respectively. At its discretion, CBP is hereby extending the scope of the investigation for Lyke to align with that of Power Tek and the entries covered by the consolidated investigation are those entered for consumption, or withdrawn from warehouse for consumption, from June 26, 2016, through the pendency of this investigation. *See* 19 C.F.R. § 165.2.

Initiation

On July 18, 2017, the Trade Remedy Law Enforcement Directorate (“TRLED”), within CBP’s Office of Trade, initiated two investigations under EAPA as the result of allegations submitted by DSMC as to evasion of antidumping duties. *See* Memorandum to the File on Initiation of EAPA Investigation 7205 to Troy P. Riley, Executive Director of TRLED (July 18, 2017); and Memorandum to the File on Initiation of Investigation 7206 to Troy P. Riley, Executive Director of TRLED (July 18, 2017). The allegations against Power Tek and Lyke are virtually identical because, as explained below, DSMC alleges that Power Tek is the successor to Lyke. *See* EAPA Allegation as to Evasion for Power Tek, at 1 (June 26, 2017); and EAPA Allegation as to Evasion for Lyke, at 1 (June 26, 2017) (collectively “Allegations”). DSMC alleges that Power Tek and Lyke are classifying diamond sawblades by Chinese manufacturer, Danyang NYCL Tools Manufacturing (“NYCL”), as “millstone product or as segments” in order to avoid the payment of antidumping duties. *See* Allegations, at 1. NYCL has a separate rate for this AD order. *See, e.g., Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 82 Fed. Reg. 26,912 (Dept. Commerce June 12, 2017). There is no antidumping duty order on millstone products and segments and these products are not within the scope of the antidumping duty order on Diamond Sawblades and Parts thereof.

DSMC alleges that Lyke began its misclassification scheme when the AD cash deposit rate on diamond sawblades increased for its imports from NYCL. Lyke “last imported ‘circular saw blades’ on June 3, 2016, and first imported ‘millstone diamond saw segment’ on July 25, 2016.” *See* Allegations, at 3-4. This is supported by the public import data that DSMC provided, which shows imports described as “circular saw blades” prior to the first importation of the “millstone diamond saw segment” on July 25, 2016. *See* Allegations, at Exh. 1 (providing public import data for Lyke and Power Tek from Import Genius). On June 14, 2016, the AD cash deposit increased from 2.34% to 29.76%. *See* Allegations, at Exh. 8, p. 1 (affidavit of [

[redacted], an industry expert). Lyke began importing “millstone diamond saw segments” and ceased importation of diamond sawblades after the cash deposit rate on diamond sawblades increased for NYCL. *See* Allegations, at 3 and Exh. 1 (providing data from Import Genius).

DSMC provided further evidence in the affidavit by [redacted], an industry expert who works for [redacted], and claimed that although the cash deposit rate for NYCL increased on June 14, 2016, Lyke did not increase its sale prices for the sawblades to reflect the new increase in AD duties. *See* Allegations, at Exh. 8, pp. 1-2. Through examining Lyke’s imports via public import data, the industry expert concluded that the “per-unit weights {were} the same...” at “approximately 4.5 pounds...” for the 14-inch sawblades that Lyke was importing up until June 3, 2016, and the millstone segment that Lyke and Power Tek imported subsequent to that date. *See* Allegations, at 4 and Exh. 1 (providing data from Import Genius). Thus, the weight of Lyke and Power Tek’s shipments did not change even though the product description changed. However, DSMC, citing its industry expert, asserted that the millstone segment should weigh “no more than 0.10 pounds” and reported that if the per unit weight provided for the merchandise is correct, then it would mean that Power Tek and Lyke “imported 2.5 million millstone diamond segments” and would “imply the {presence} of ...{a}substantial market for millstone diamond segments in the United States.” *Id.* However, the industry expert explains that he does not believe that based, “on {his} long experience in this industry ... that there could be such a major market for such a product in the United States without {him} knowing about it.” *See* Allegations, at Exh. 8, p. 3; *see also*, Exh. 1.

Finally, DSMC asserted that the relationship of NYCL with its customer, [redacted], a U.S. diamond sawblades reseller, further evidences evasion. *See* Allegations, at 4. Specifically, DSMC explained through the affidavit of its industry expert, an [redacted], that [redacted].” *Id.* at Exh. 8. Further, the expert believes that a June 15, 2016 shipment from NYCL of millstone diamond saw segments to the Port of Norfolk, was destined for the diamond sawblades reseller. *Id.* “[redacted] does not manufacture diamond sawblades, yet it apparently received a large shipment labeled ‘millstone diamond sawblade segments.’” *See* Allegations, at 4. Expounding upon this, DSMC’s expert explained that “[redacted] would have no use for diamond sawblade segments because {as indicated on its website} they do not resell segments, only fully assembled sawblades.” *Id.* Finally, DSMC provided emails, sent [redacted]

[redacted]. *See* Allegations, at Exh. 5 (providing the email correspondence) and 8. DSMC’s expert states that the emails demonstrate that [redacted] with [redacted] and was “[redacted].” *Id.* The emails concerned a [redacted] rather than of millstone diamond sawblade segments. *See* Allegations, at Exh. 5. Of note is also a statement on the [redacted] indicating that [redacted] was probably [redacted] to discuss merchandise subject to an AD order. *Id.* DSMC alleges that [redacted] communications

with [REDACTED], and its relationship to NYCL indicates that NYCL continues to export diamond sawblades and not millstone diamond sawblade segments. Likewise, DSMC argues that this further supports its position that Lyke and Power Tek are actually importing diamond sawblades from NYCL and misclassifying them as millstone products.

Finally, DSMC asserts that Power Tek, which was incorporated in January 2017, is the successor company to Lyke, evidenced by the fact that NYCL stopped “all shipments to Lyke” in March 2017, when it began shipping to Power Tek. *See* Allegations, at 5. DSMC further alleges that Power Tek “has the exact same physical address” as Lyke. *Id.* In addition, DSMC reports that Power Tek imports merchandise in similar quantities and per unit weights, and from the same manufacturer, NYCL, as Lyke did. *Id.* Based on the foregoing, DSMC alleges that Lyke is now doing business as Power Tek and “is intentionally entering subject merchandise into the United States under an incorrect classification (*i.e.*, as millstone product) in an effort to avoid payment of the required antidumping duties.” *See* Allegations, at 3. Therefore, DSMC attributes the evidence for the misclassification scheme for Lyke to its alleged successor, Power Tek. *Id.* DSMC provided corporate and import data, in addition to a notarized affidavit from its industry expert in support of these assertions. *See* Allegations, at Exhs. 1, 3 and 8.

CBP will initiate an investigation if it determines that “{t}he information provided in the allegation ... reasonably suggests that the covered merchandise has been entered for consumption into the customs territory of the United States through evasion.” *See* 19 C.F.R. § 165.15(b). 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 (“CVD”) duties being reduced or not being applied with respect to the covered merchandise.” *See* 19 C.F.R. § 165.1. Thus, the allegation must reasonably suggest not only that merchandise subject to an AD/CVD order was entered into the United States by the importer alleged to be evading, but that such entry was made by a material false statement or act, or material omission, that resulted in the reduction or avoidance of applicable AD/CVD cash deposits or other security.

The Allegations explained that Lyke stopped importing diamond sawblades when the cash deposit rate increased and instead, began importing “millstone diamond saw segments” at the same weight per unit as the diamond sawblades. *See* Allegations, at 3. Market intelligence also demonstrated that Lyke continued to sell its sawblades at similar prices even after the cash deposit rate for its supplier rose to 29.76%. *See* Allegations, at Exh. 8, p. 1. Further, [REDACTED] does not manufacture diamond sawblades, nor does it resell segments, only fully assembled sawblades. *See* Allegations, at 4. Yet, there were emails [REDACTED]

[REDACTED], and those emails indicated that [REDACTED]

[REDACTED]. Of note is also a statement on the [REDACTED]. *See* Allegations, at

Exh. 5. This reasonably suggests that [REDACTED], was likely discussing the purchase of merchandise that should be subject to an AD order and not non-subject merchandise.

In its allegations, DSMC provided sufficient evidence to reasonably suggest that Power Tek also imported merchandise subject to an AD order by means of material false statements or acts, or

material omissions, resulting in the reduction or avoidance of applicable AD cash deposits or other security. DSMC provided import data and corporate documents showing that Power Tek is importing merchandise from NYCL, the same Chinese manufacturer of diamond sawblades that was supplying Lyke. Further, once Power Tek began purchasing from NYCL, Lyke stopped its imports from NYCL. Both Power Tek and Lyke share the same physical address and both import millstone diamond saw segments weighing 4.5 lbs per unit, according to the public import data. Thus, Power Tek evidences the same pattern of imports as Lyke. For the reasons discussed above, TRLED determined on July 18, 2017, that the Allegations reasonably suggest that covered merchandise entered the customs territory of the United States through evasion, pursuant to 19 U.S.C. § 1517(b)(1), and therefore, initiated investigations for both Power Tek and Lyke.

Interim Measures

Not later than 90 calendar days after initiating an investigation under EAPA, CBP will decide based on the investigation if there is reasonable suspicion that such covered merchandise was entered into the customs territory of the United States through evasion. Therefore, CBP need only have sufficient evidence to support a reasonable suspicion that merchandise subject to an antidumping duty or countervailing duty order was entered into the United States by the importer alleged to be evading by a material false statement or act, or material omission, that resulted in the reduction or avoidance of applicable antidumping duty or countervailing duty cash deposits or other security. If reasonable suspicion exists, CBP will impose interim measures pursuant to 19 U.S.C. §1517(e) and 19 C.F.R. §165.24. As explained below, CBP is imposing interim measures because there is a reasonable suspicion that the importer entered covered merchandise into the customs territory of the United States through evasion. *See* 19 C.F.R. §165.24(a).

After initiation, on August 11, 2017, CBP performed a cargo exam of an entry by Power Tek []7976, imported from NYCL and found that it contained undeclared diamond sawblades from China that were subject to AD order A-570-900. The entry was filed as type 01 instead of type 03 and falsely classified the diamond sawblades as “millstone diamond cup wheel,” under HTSUS subheading 6804.21.0080. CBP determined that each type of sawblade in the shipment should have been classified under HTSUS subheading 8202.39.0010, and would fall within the scope of the AD order on Diamond Sawblades and Parts thereof. Thus, this entry establishes the pattern of evasion alleged by DSMC in its allegations for both Lyke and Power Tek. This evidence, along with the information provided in the allegations, establishes a reasonable suspicion that the importers entered merchandise into the United States through evasion. For this reason, CBP is imposing interim measures.

Unliquidated entries of subject merchandise under this investigation that entered the United States as not subject to antidumping duties have been rate-adjusted to reflect that they are subject to the AD order on diamond sawblades from China and cash deposits are owed. Additionally, “live entry” is required for all future imports for Power Tek and Lyke, meaning that all entry documents and duties must be provided before cargo is released by CBP into the U.S. commerce. CBP will further suspend the liquidation for any entry that has entered on or after July 18, 2017, the date of initiation of this investigation; and extend the period for liquidation for all unliquidated entries that entered before that date. *See* 19 C.F.R. §165.24(b)(1)(i) and (ii).

Further, CBP will evaluate Power Tek and Lyke's continuous bond in light of these new developments and will require single transaction bonds as appropriate.

Consolidation of the Investigations

CBP is consolidating the investigations of Power Tek and Lyke into a single investigation covering both importers. The new consolidated case number will be EAPA Consolidated Case Number 7205, and a single administrative record will be maintained for the duration of both investigations.

At its discretion, CBP may consolidate multiple allegations against one or more importers into a single investigation, pursuant to 19 C.F.R. §165.13(b), which states that:

the factors that CBP may consider include, but are not limited to, whether the multiple allegations involve: 1) relationships between the importers; 2) similarity of covered merchandise; 3) similarity of AD/CVD orders; and 4) overlap in time periods for entries of covered merchandise.

In these investigations, there is a reasonable suspicion that Power Tek and Lyke both imported diamond sawblades from China, which are covered by a single AD order. Moreover, each imported covered diamond sawblades during the period of investigation, with one beginning to import as the other stopped importing. Both importers share the same physical address, indicating that they may be related companies, which we will further investigate. Further, both importers, as stated above, have imported from the same manufacturer, NYCL, and the type of evasion for both concerns misclassification. Because factors warranting consolidation are present in these investigations, CBP is consolidating them and providing this notice pursuant to 19 C.F.R. §165.13(c).

For any future submissions or factual information that you submit to CBP pursuant to this EAPA investigation, please provide a public version to CBP, as well as to Mr. Pickard, counsel for DSMC, at DPickard@wileyrein.com. See 19 C.F.R. §§165.4, 165.23(c), and 165.26. Should you have any questions regarding this investigation, please feel free to contact us at epallegations@cbp.dhs.gov. Please include "EAPA Cons. Case Number 7205" in the subject line of your email. Additional information on these investigations, including the applicable statute and regulations, may be found on CBP's website at: <https://www.cbp.gov/trade/trade-enforcement/tftea/enforce-and-protect-act-eapa>.

Sincerely,

/s

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Office of Trade