



U.S. Customs and Border Protection

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PUBLIC VERSION

EAPA Cons. Case Number: 7205

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On behalf of Lyke Industrial Tool, LLC and Power Tek Tool, Inc.
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Re: Notice of Final Determination as to Evasion

Dear Ms. Liang and Mr. Pickard:

Pursuant to an examination of the record in Enforce and Protect Act (“EAPA”) Investigation Number 7205, U.S. Customs and Border Protection (“CBP”) has determined that there is substantial evidence that Lyke Industrial Tool, LLC (“Lyke”) and Power Tek Tool, Inc. (“Power Tek”) entered merchandise covered by antidumping (“AD”) duty order A-570-900¹ into the customs territory of the United States through evasion. Specifically, substantial evidence demonstrates that Lyke and Power Tek imported diamond sawblades from the People’s Republic of China (“China”), but did not declare the AD order upon entry; and, as a result, no cash deposits were applied to the merchandise.

Background

On July 18, 2017, CBP initiated two investigations pursuant to Title IV, section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, commonly referred to as the “Enforce and Protect Act” or “EAPA.” The allegations submitted by Diamond Sawblades Manufacturer Coalition (“DSMC”), received by CBP on June 22 and June 26, 2018, reasonably suggested that

¹ See *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 (Nov. 4, 2009) (“AD Order”).

Lyke and Power Tek evaded the payment of cash deposits on imports of certain shipments of diamond sawblades covered by AD order A-570-900 on diamond sawblades from China.² Specifically, DSMC alleged that Lyke and Power Tek evaded the AD order by misclassifying diamond sawblades as millstone products and segments, which are not covered by AD order A-570-900.³ On September 22, 2017, in accordance with 19 C.F.R. §165.24, CBP issued a notice of initiation of investigation to all interested parties, and notified the parties of CBP’s decision to take interim measures based upon reasonable suspicion that Lyke and Power Tek entered covered merchandise into the customs territory of the United States through evasion.⁴ The reasonable suspicion arose not only from the information provided in the allegations filed by DSMC, but also from additional information provided by Lyke (prior to receipt of the allegations) and a cargo exam performed on a shipment from Power Tek (after receipt of the allegations). A brief summary follows below.

Prior to receipt of the EAPA allegations from DSMC, CBP had already notified and taken action against Lyke regarding its importations of diamond sawblades from China. On March 22, 2016, CBP notified Lyke that it had identified an entry of merchandise found to be falsely classified and which was subject to the AD order on diamond sawblades from China. This entry of merchandise, []7268,⁵ manufactured by Danyang NYCL Tools Manufacturing (“NYCL”), was classified by Lyke under subheading 6804.21.0010, HTSUS⁶ (a provision that does not apply to finished diamond sawblades), and identified by Lyke as a type 01 entry (an entry type that is not subject to AD duties). CBP had previously issued a CBP Form (“CF”) 28, Request for Information (“RFI”), to Lyke on January 27, 2017, stating that the merchandise may be subject to the AD order A-570-900 on diamond sawblades, and requesting documents pertaining to the shipment. In its response to the RFI on February 23, 2017, Lyke stated that the merchandise imported from NYCL was not segments as originally classified but, rather, “complete diamond sawblades” and stated that the correct classification should be subheading

² 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).

³ 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).

⁴ See 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, (Sept. 22, 2017) (“Notice of Initiation and Interim Measures”). CBP consolidated the two separate allegations filed against Lyke and Power Tek into EAPA Consolidated Case 7205 and aligned the periods of investigation. See 19 C.F.R. §165.13(b). On October 11, 2017, Lyke and Power Tek submitted a letter to CBP requesting deconsolidation and arguing that the parties are not related. Even if that argument was supported by evidence, and it does not appear to be, CBP’s discretion to consolidate the cases is broad and includes other factors, such as the nature of the merchandise (which is the same) and the time period of the investigations (which is almost identical, based on the filing dates for the allegations). Accordingly, deconsolidation is not warranted.

⁵ Entry []7268 is dated June 26, 2016, which is also the first day of the period of investigation for the instant EAPA investigation.

⁶ Subheading 6804.21.0010, HTSUS, provides for “Millstones, grindstones, grinding wheels and the like, without frameworks, for grinding, sharpening, polishing, trueing or cutting, hand sharpening or polishing stones, and parts thereof, of natural stone, of agglomerated natural or artificial abrasives, or of ceramics, with or without parts of other materials: Other millstones, grindstones, grinding wheels and the like: Of agglomerated synthetic or natural diamond: Segments for circular sawblades, consisting of diamond agglomerated with metal.” The terms of this subheading apply to segments of diamond sawblades, but *not* to finished diamond sawblades.

6804.21.0080, HTSUS (a provision that does not apply to finished diamond sawblades).⁷ Lyke further claimed that the merchandise was not subject to the AD order because the “finished sawblades” had cores of a Rockwell C hardness of less than 25. *See* Letter from Lyke, Response to CF 28, dated February 23, 2017. CBP determined that this entry by Lyke was for diamond sawblades from China, as manufactured by NYCL, and subject to the AD order on diamond sawblades. Accordingly, on March 22, 2017, CBP changed the entry from type 01 to type 03 (subject to AD duties), classified the merchandise under subheading 8202.39.0040, HTSUS (which applies to diamond sawblades),⁸ and assigned NYCL’s separate AD rate of 29.76 percent to the entry. *See* CF 29, Notice of Action Taken, dated March 22, 2017.⁹

Several months later, CBP received DSMC’s EAPA allegations against Lyke and Power Tek, and it initiated the subject EAPA investigation on July 18, 2017.¹⁰ While the CBP actions taken prior to receipt and initiation supported reasonable suspicion that Lyke was engaged in evasion, additional steps were taken to confirm that the same was also the case for Power Tek. On August 11, 2017, CBP performed a cargo exam of entry []7976, imported by Power Tek from NYCL. Power Tek identified the entry as a type 01 (not subject to AD duties) and classified the merchandise under subheading 6804.21.0080, HTSUS (not applicable to diamond sawblades). CBP determined, upon inspection, that the imported merchandise actually consisted of diamond sawblades and that each type of sawblade in the shipment was properly classified under subheading 8202.39.0010, HTSUS (which applies to finished diamond sawblades)¹¹ and subject to the AD order.¹²

For the reasons set forth above, Lyke and Power Tek should have entered certain shipments found to contain diamond sawblades as type 03 entries and paid the applicable cash deposits under the AD order for diamond sawblades and parts thereof, which states:

The products covered by the order are all finished circular sawblades, whether slotted or not, with a working part that is comprised of a diamond segment or

⁷ Subheading 6804.21.0080, HTSUS, provides for “Millstones, grindstones, grinding wheels and the like, without frameworks, for grinding, sharpening, polishing, trueing or cutting, hand sharpening or polishing stones, and parts thereof, of natural stone, of agglomerated natural or artificial abrasives, or of ceramics, with or without parts of other materials: Other millstones, grindstones, grinding wheels and the like: Of agglomerated synthetic or natural diamond: Other.” The terms of this subheading apply to certain millstone products, but not to diamond sawblades.

⁸ Subheading 8202.39.0040, HTSUS, provides for “Handsaws, and metal parts thereof; blades for saws of all kinds (including slitting, slotting or toothless saw blades), and base metal parts thereof: Circular saw blades (including slitting or slotting saw blades), and parts thereof: Other, including parts: Diamond sawblade cores.” The terms of this provision apply to diamond sawblades covered by the AD order.

⁹ Lyke did not file a protest to challenge CBP’s classification of the diamond sawblades under subheading 8202.39.0040, HTSUS, or otherwise contest the applicability of the AD order to this particular entry. Almost immediately following CBP’s action taken on this entry, Lyke ceased importing for a six-month period. At the same time, Power Tek started importing diamond sawblades from NYCL, identifying their entries as type 01 (not subject to AD duties) and classifying their merchandise as “millstone diamond cup wheels” under subheading 6804.21.0080, HTSUS.

¹⁰ *See* Initiations.

¹¹ Subheading 8202.39.0010, HTSUS, provides for “Handsaws, and metal parts thereof; blades for saws of all kinds (including slitting, slotting or toothless saw blades), and base metal parts thereof: Circular saw blades (including slitting or slotting saw blades), and parts thereof: Other, including parts: With diamond working parts.” The terms of this provision apply to diamond sawblades covered by the AD order.

¹² *See* MCEE 8.10.17 – Cargo Exam Results – Power Tek Inc. (Cons. Case 7205).

segments, and parts thereof, regardless of specification or size, except as specifically excluded below. Within the scope of the order are semifinished diamond sawblades, including diamond sawblade cores and diamond sawblade segments. Diamond sawblade cores are circular steel plates, whether or not attached to non-steel plates, with slots. Diamond sawblade cores are manufactured principally, but not exclusively, from alloy steel. A diamond sawblade segment consists of a mixture of diamonds (whether natural or synthetic, and regardless of the quantity of diamonds) and metal powders (including, but not limited to, iron, cobalt, nickel, tungsten carbide) that are formed together into a solid shape (from generally, but not limited to, a heating and pressing process).

Sawblades with diamonds directly attached to the core with a resin or electroplated bond, which thereby do not contain a diamond segment, are not included within the scope of the order. Diamond sawblades and/or sawblade cores with a thickness of less than 0.025 inches, or with a thickness greater than 1.1 inches, are excluded from the scope of the order. Circular steel plates that have a cutting edge of non-diamond material, such as external teeth that protrude from the outer diameter of the plate, whether or not finished, are excluded from the scope of the order. Diamond sawblade cores with a Rockwell C hardness of less than 25 are excluded from the scope of the order. Diamond sawblades and/or diamond segment(s) with diamonds that predominantly have a mesh size number greater than 240 (such as 250 or 260) are excluded from the scope of the order. Merchandise subject to the order is typically imported under heading 8202.39.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). When packaged together as a set for retail sale with an item that is separately classified under headings 8202 to 8205 of the HTSUS, diamond sawblades or parts thereof may be imported under heading 8206.00.00.00 of the HTSUS. On October 11, 2011, the Department included the 6804.21.00.00 HTSUS classification number to the customs case reference file, pursuant to a request by CBP. *See* Diamond Sawblades and Parts Thereof From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review, 76 FR 76128 (December 6, 2011). The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.¹³

As noted above, the AD order is applied based on the physical composition of the imported merchandise as the classification is not dispositive, and thus, the instant EAPA investigation involved an assessment of the characteristics of the imported merchandise.

¹³ *See* AD Order, updated at <http://web.ita.doc.gov/ia/CaseM.nsf/136bb350f9b3efba852570d9004ce782/3f0bfef39ffbee0d85257dfd006da790!OpenDocument>

Subsequent to the Notice of Initiation and Interim Measures in this case, on October 17, 2017, CBP issued separate CF 28s to Lyke and Power Tek.¹⁴ Both importers timely responded to the respective RFIs¹⁵, but prior to receipt of these responses, Lyke and Power Tek made separate submissions to CBP on November 15, 2017 and November 16, 2017, respectively, and advised that their entries of “diamond circular sawblades” on dates corresponding to entries covered by this EAPA investigation were not covered by the AD order because the cores of those sawblades were of a Rockwell C hardness of less than 25.¹⁶

On December 21, 2017, CBP again issued separate CF 28s to Lyke and Power Tek, requesting samples from entry numbers []2463 and []7676, respectively.¹⁷ CBP’s analysis of those samples, as it relates to the relevance of the Rockwell C hardness for the scope of AD order A-570-900, is addressed below, along with the additional responses received for RFIs that CBP sent to the following parties: Lyke,¹⁸ Power Tek,¹⁹ NYCL,²⁰ and Danyang LIKE Tools Manufacturing Co. (“LIKE”).²¹ In reaching its determination, CBP also considered the

¹⁴ See Email: EAPA Consolidated Case 7205: Questionnaires, dated October 17, 2017. CBP requested that Lyke and Power Tek provide the following: contact information, determination of product classification, explanation of the importation process for diamond sawblades from China, product descriptions, and downstream market.

¹⁵ See Letter from Lyke: Re: EAPA Cons. Case No. 7205 Response to Importer Request for Information, dated November 21, 2017 (“Lyke Initial RFI Response”) and Letter from Power Tek: Re: Re: EAPA Cons. Case No. 7205 Response to Importer Request for Information, dated November 21, 2017 (“Power Tek Initial RFI Response”).

¹⁶ See Letter from Power Tek, Re: Power Tek Tools, Inc. Prior Disclosure, dated November 15, 2017 and Letter from Lyke, Re: Lyke Industrial Tools, LLC, dated November 16, 2017 (“Lyke PD”). We note that prior disclosures are not accepted by CBP after the party is notified of an ongoing EAPA investigation.

¹⁷ See MCEE – EAPA 7205 Request for Samples.

¹⁸ On January 23, 2018, CBP issued supplemental CF 28s to the Lyke and Power Tek. See Email: EAPA Cons. 7205 – Supplemental Request for Information, dated January 23, 2018. CBP requested that the importers provide the following: clarification of or request for certain documentation and information regarding ownership and corporate structure. The importers submitted their responses to these RFIs on February 13, 2018. See Re: EAPA Cons. Case No. 7205 Response to Supplemental Request for Information (“Lyke 2/13 Supplemental RFI Response”) and Re: EAPA Cons. Case No. 7205 Response to Supplemental Request for Information (“Power Tek 2/13 Supplemental RFI Reponse”). Power Tek’s response to this supplemental RFI neglected to answer a specific question asking it to identify the “names of the officers, directors, and managers assigned to each operating unit, including any and all aliases ever used or known by, either in English or Chinese language names.” In so doing, Power Tek deleted that portion of the question when it copied the original question from the RFI into its response.

¹⁹ See *id.*

²⁰ On January 19, 2018, CBP issued an initial CF 28 to NYCL. See Email: EAPA Cons. 7205 - Request for Information, dated January 19, 2018. CBP requested that NYCL provide the following: contact information, process of producing and selling to Lyke and Power Tek, recordkeeping information, list of merchandise produced, and information regarding ownership and company structure. NYCL submitted its response to the RFI on February 12, 2018. On March 7, 2018, CBP issued additional supplemental RFIs to the Lyke, Power Tek, and NYCL requesting clarification of the roles of NYCL and LIKE in the U.S. sales process and the submission of documents pertaining to certain entries. See Email: EAPA Cons. 7205 – Supplemental Request for Information, dated March 7, 2018. Lyke and Power Tek submitted responses on March 22, 2018. See “Lyke 3/22 Supplemental RFI Response” and “Power Tek 3/22 Supplemental RFI Response.” NYCL did not respond to the supplemental RFI and, therefore, did not answer questions regarding its relationship with LIKE, whether LIKE produced goods for NYCL or vice versa and whether each entity produced the same merchandise, whether LIKE and NYCL used the same facility or employees to produce diamond sawblades, and whether either entity acted as representative for the other.

²¹ On March 20, 2018, CBP issued a RFI to LIKE. See Email: EAPA Cons. 7205 – Request for Information, dated March 20, 2018. LIKE did not respond to the questions posed by CBP; instead, it stated that LIKE’s “operation is totally independent from that of the U.S. importers, and Danyang Like was not involved in any importing activities

written arguments provided by DSMC, as well as Lyke and Power Tek (the importers responded jointly through shared legal counsel).²² Given the complexity of the investigation, CBP extended the deadline for this final determination by sixty days pursuant to Section 517(c)(1)(B) of the Tariff Act of 1930, as amended, and 19 C.F.R §165.22(c).²³

Final Determination as to Evasion

Under 19 U.S.C. § 1517(c)(1)(A), to reach a final determination as to evasion in this case, 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 of any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise.” *See* 19 C.F.R. §165.1. Thus, CBP must reach a determination as to whether merchandise subject to an AD or countervailing duty (“CVD”) order was entered into the United States by the importer and such entry was made by a material false statement or act or material omission that resulted in the reduction of avoidance of applicable AD/CVD cash deposits or other security.

Substantial evidence demonstrates that Lyke and Power Tek imported diamond sawblades from China and entered the merchandise into the customs territory of the United States through material false statements, specifically the declaration of the entry type as 01 (not subject to AD duties) when the imported merchandise was covered by the AD order on diamond sawblades from China. Because the entry was declared as a type 01, no cash deposit was made, resulting in evasion. During the period of investigation, these material false statements were identified for ten entries by Lyke²⁴ and ten entries by Power Tek²⁵, made between June 26, 2016, and August 10, 2017, which consisted of diamond sawblades imported from NYCL in China.²⁶

of the importers, including but not limited to U.S. Custom declaration.” *See* Email from LIKE to CBP: Re: EAPA Cons. 7205 – Request for Information, dated April 2, 2018.

²² *See* DSMC Written Allegations; “EAPA Cons. Case No. 7205, Investigation Into Power Tek Tool, Inc. and Lyke Industrial Tool, LLC: Response Arguments of the Diamond Sawblades Manufacturers Coalition,” (Apr. 27, 2018). *See also* “EAPA Cons. Case No. 7205 Written Argument by Lkye,” (Apr. 27, 2018) and “EAPA Cons. Case No. 7205 Rebuttal to DSMC’s Written Argument by Power Tek,” (May 14, 2018).

²³ *See* TRLED – E-mail Regarding Notice of Extension of Final Determination (EAPA Cons. 7205) (May 3, 2018).

²⁴ []8381, []2463, []7268, []6407, []4820,
[]8334, []1063, []8381, []7902, []7119.

²⁵ []7976, []1961, []0096, []5591, []4784,
[]0139, []5816, []5023, []7797, []1642.

²⁶ CBP has reviewed all entries from Lyke and Power Tek that have been made since June 26, 2016, to determine which entries contain covered merchandise. CBP has excluded from rate adjustment any entry of merchandise that is not subject to the AD Order.

Lyke and Power Tek argued that the imported diamond sawblades are not covered by the AD order because they were of a Rockwell C hardness of less than 25 prior to incorporation into the finished product. Even if that claim was supported by record evidence, which it is not,²⁷ under the language in the scope of the AD order, none of these sawblades would fall within that exclusion. The exclusion for Rockwell C hardness is inapplicable because it is limited to diamond sawblade cores and not finished diamond sawblades, such as those imported by Lyke and Power Tek. Therefore, the imported sawblades are covered by the AD order. *See Xerox Corp. v. United States*, 289 F.3d 792, 794–95 (Fed. Cir. 2002). On May 22, 2018, the Department of Commerce transmitted findings of a scope inquiry that had been previously requested by Lyke.²⁸ In Message 8142304 to CBP, the Department of Commerce states that:

finished diamond sawblades with: (1) diamond segments permanently bonded by sintering and/or laser welding to the outer diameter of the core; and (2) cores that are made of stainless steel and have a Rockwell C hardness of less than 25 (22+/- 2) prior to the incorporation of diamond segments, with diameters from 4 inches to 36 inches and thickness from 1.2 mm to 4.5 mm, which Lyke Industrial Tool, LLC imports, are within the scope of the antidumping duty order.²⁹

As Lyke and Power Tek entered only finished diamond sawblades since June 26, 2016, this scope exclusion does not apply to their entries and, as such, the AD Order applies to the imported merchandise.

Lyke and Power Tek previously claimed that the applicable rate for its entries, if determined to be under the scope of the order, would be the separate AD rate for NYCL.³⁰ Where merchandise

²⁷ See Lyke Initial RFI Response, at 2; see also Lyke CF 28 Response, at 3; Lyke Industrial Tools, LLC Prior Disclosure, submitted November 16, 2018 (“Lyke PD”); and Power Tek Tools, Inc. Prior Disclosure, submitted November 15, 2017 (“Power Tek PD”). Factually, CBP has determined that Lyke and Power Tek failed to substantiate their claims about the actual Rockwell C hardness of the cores of the imported diamond sawblades with supporting documentation. In its supplemental RFI response, Lyke stated that no sales documents include language specifying that the cores of merchandise sold are to have a Rockwell C hardness of less than 25. See Lyke Feb. 13 Supplemental RFI, at 2. In response to CBP requests, both importers provided samples of finished diamond sawblades that were part of the shipments entered under entry numbers []2463 and []7676. Specifically, Lyke submitted six different samples and Power Tek submitted five different samples. CBP tested the Rockwell C hardness level of the cores from all of these samples and found that all of Power Tek’s cores had a Rockwell C hardness level of less than 25 while four of six samples from Lyke had a Rockwell C hardness level of less than 25. Two of Lyke’s samples had a Rockwell C hardness of over 25. Therefore, the claim by Lyke and Power Tek that all of their entries of diamond sawblades during the period of investigation had a Rockwell C hardness of less than 25 is not supported by the evidence.

²⁸ CBP did not formally file a scope referral with the Department of Commerce pursuant to the EAPA referral procedures. This scope ruling was filed with Commerce directly by Lyke and as such, it was not an EAPA scope referral and did not impact any deadlines for the EAPA investigation. Because the decision was issued prior to our final determination, we have taken it into consideration in our determination.

²⁹ See Message 8142304, Scope determination on antidumping duty order on diamond sawblades and parts thereof from the People’s Republic of China (A-5700-900), available at http://adcvd.cbp.dhs.gov/adcvdweb/ad_cvd_msgs/24562?filter_cat=ALL&filter_type=ALL&page=1&per_page=10&search=a-570-900.

³⁰ See Lyke PD and Power Tek PD, Exh. A.

falls within the scope of an order, the importer must demonstrate that its entries are entitled to a separate AD rate, as opposed to the China-wide rate. We find that Lyke and Power Tek failed to demonstrate that any separate rate within the order applies to their entries. For this AD order, the rate is determined by who the exporter is for that entry. Record evidence does not establish that NYCL is the exporter. CBP reviewed entry and payment documentation for covered entries made by Lyke and Power Tek during the period of investigation. NYCL is listed on the packing lists and invoices as the seller and the bills of lading as the shipper, with payments made to NYCL. *See* Lyke Initial RFI Resp., at Exh. 4. *See also* Lyke 2/13 RFI Resp., at Exhs. 1 and 3. *See* Power Tek Initial RFI Resp. at Exh. 3; and Power Tek 2/13 RFI Resp., at Exh. 1.

However, the RFI responses submitted by Lyke and Power Tek indicated that another entity, LIKE, which wholly owns Lyke, plays a role in the sales process. Furthermore, in its email communication with CBP noted above, LIKE self-identified as an “exporter of diamond tools (including diamond sawblades...)” While LIKE stated that it “was not involved in any importing activities of the importers, including but not limited to U.S. Custom declaration,” Lyke and Power Tek also stated that LIKE is the conduit through which NYCL files its ISF and invoice to the customs broker.³¹ Lyke and Power Tek further stated that all purchase orders to NYCL are routed through LIKE, with LIKE providing paper copies of the purchase orders to NYCL. Lyke and Power Tek then stated that once a shipment is ready, NYCL, through LIKE, submits the Importer Security Filing (“ISF”) and invoice to the customs broker, and that Lyke and Power Tek make a wire transfer directly to NYCL after the shipment is received. *See* Lyke Initial RFI Resp., at 3-4 and Power Tek Initial RFI Resp., at 2-3. Additionally, in a supplemental RFI response, Lyke stated that it is 100 percent owned by LIKE, and that LIKE also produces finished diamond sawblades. *See* Lyke 2/13 Supplemental RFI Resp., at 3-4, and 6. Thus, record evidence did not demonstrate who the exporter was for the diamond sawblades imported by Lyke and Power Tek.

CBP issued supplemental RFIs to Lyke, Power Tek, NYCL, and LIKE, asking specific questions regarding the roles of NYCL and LIKE in the production and sales process of covered merchandise entered during the period of investigation in order to ascertain which entity was the exporter. Lyke and Power Tek declined to answer, deferring to LIKE. NYCL did not respond to its supplemental RFI. *See* Lyke 3/22 Supplemental RFI Resp. and Power Tek 3/22 Supplemental RFI Response. LIKE sent an email, in response to the RFI, declining to answer any questions contained in the RFI, stating the following:

As an exporter of diamond tools (including diamond sawblades, cup wheels, etc.) located in China, Danyang Like Tools Manufacturing Co., Ltd. (“Danyang Like”) would not be the respondent of the undergoing EAPA investigation against Lyke Industrial Tools. And Power Tek Tool, (“the U.S. importers”). Danyang Like’s operation is totally independent from that of the U.S. importers, and Danyang Like was not involved in any importing activities of the importers, including but not limited to U.S. Custom declaration.

See Email from LIKE to CBP, dated Apr. 2, 2018. However, there is no requirement that a foreign manufacturer or exporter be involved with importing activities in order to be required to

³¹ *See* Lyke Initial RFI Response at 3-4 and Power Tek Initial RFI Response at 2-3.

respond to a questionnaire in an EAPA investigation. *See* 19 USC 1517(c)(2)(A)(iii). As a result of the failure to respond to the RFIs, CBP may apply an adverse inference.

Pursuant to 19 U.S.C. §1517(c)(3) and 19 C.F.R. §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 a request for information made by CBP. In applying an adverse inference against an eligible party, CBP may select from the facts otherwise available to make a final determination as to evasion pursuant to 19 U.S.C. §1517(c)(1)(A) and 19 C.F.R. §165.27. Moreover, an adverse inference may be used with respect to the U.S. importer, foreign producers, and manufacturers “without regard to whether another person involved in the same transaction or transactions under examination has provided the information sought...” *See* 19 USC 1517(c)(3)(B). In relying upon an adverse inference for failure to respond to the RFIs, CBP will look at facts otherwise available.

Given the contradictory information on the record of this investigation as to who served as the exporter and the failure of parties to answer RFI questions regarding the roles of NYCL and LIKE in the exportation of covered merchandise, CBP is applying an adverse inference. As adverse inferences, we find that all entries of diamond sawblades made by Lyke and Power Tek during the period of investigation are subject to the China-wide rate for the AD order on diamond sawblades. At present, this rate is 82.05 percent. *See Cash deposit instructions for diamond sawblades and parts thereof from the People’s Republic of China*, Msg. No. 7165302 (June 14, 2017) (available at <http://adcvd.cbp.dhs.gov/adcvdweb/>).

Actions Taken Pursuant to the Affirmative Determination of Evasion

In light of CBP’s determination that Lyke and Power Tek entered merchandise into the customs territory of the United States through evasion, and pursuant to 19 U.S.C. §1517(d) and 19 C.F.R. §165.28, CBP will continue to suspend the liquidation for any entry that has entered on or after July 18, 2017, the date of initiation of this investigation. CBP will continue to extend the period for liquidation for all unliquidated entries that entered before that date until instructed to liquidate these entries. For future entries, CBP will continue to require live entry, which requires that the importers post the applicable cash deposits prior to the release. Finally, CBP will evaluate the continuous bond of the importer in accordance with CBP’s policies, and may require single transaction bonds as appropriate. None of the above actions preclude CBP or other agencies from pursuing additional enforcement actions or penalties.

Sincerely,



Carrie L. Owens
Director of Enforcement Operations
Trade Remedy & Law Enforcement Directorate
Office of Trade