



U.S. Customs and
Border Protection

PUBLIC VERSION

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Lionel Perera
Carbon Activated Corp.
2250 S. Central Ave.
Compton, CA 90220
info@activatedcarbon.com

John M. Herrmann
R. Alan Luberda
Melissa M. Brewer
Kelley Drye & Warren LLP
3050 K Street, N.W., Suite 400
Washington, DC 20007
jherrmann@kellydrye.com

Re: Notice of Initiation of Investigation and Interim Measures - EAPA Case 7430

Dear Mr. Perera, Mr. Herrmann, Mr. Luberda and Ms. Brewer:

This letter is to inform you that U.S. Customs and Border Protection (“CBP”) has commenced a formal investigation 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”), against Carbon Activated Corp. (“Carbon Activated”). CBP is investigating whether Carbon Activated evaded antidumping duty (“AD”) order A-570-904¹ on activated carbon from the People’s Republic of China (“China”) when importing activated carbon into the United States.

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 or false, or any omission that is material, and that results in any cash deposit or any security or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise.²

¹ See Notice of Antidumping Duty Order: Certain Activated Carbon from the People’s Republic of China, 72 Fed. Reg. 20,988 (Dept. Commerce April 27, 2007).

² See 19 USC 1517(a)(5).

Because evidence supports a reasonable suspicion that Carbon Activated entered covered merchandise into the customs territory of the United States through evasion, CBP has imposed interim measures.³

Period of Investigation

Pursuant to 19 CFR 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, or withdrawal from warehouse for consumption, of merchandise in the customs territory of the United States.”⁴ CBP acknowledged receipt of the properly filed allegation against Carbon Activated on January 29, 2020,⁵ and the entries covered by the investigation are those entered for consumption, or withdrawn from warehouse for consumption from January 29, 2019, through the pendency of this investigation. In addition, 19 CFR 165.2 provides that at its discretion, CBP may investigate other entries of such covered merchandise.

Initiation of Investigation

On February 20, 2020 the Trade Remedy Law Enforcement Directorate (“TRLED”), within CBP’s Office of Trade, initiated an investigation against Carbon Activated as a result of an allegation submitted by Calgon Carbon Corporation and Cabot Norit Americas, Inc. (“Allegers”)⁶ regarding evasion of AD duties.⁷ The Allegers submitted reasonably available evidence to demonstrate that Chinese producers and/or exporters of activated carbon are shipping merchandise subject to the Orders to Indonesian company PT Indokarbon Primajaya (“Indokarbon”) which, in turn, is repackaging and exporting the Chinese-origin merchandise to Carbon Activated.⁸

Information submitted in the allegation includes public import/export data which indicates that Indokarbon imports activated carbon from China, and aligns the data from those imports to Indokarbon’s exports of activated carbon to Carbon Activated.⁹ The data demonstrates significant characteristic similarities in Indokarbon Primajaya’s Chinese imports and subsequent exports of activated carbon to Carbon Activated. Further, the timing of the import/export transactions reasonably suggests that Indokarbon Primajaya is transshipping subject merchandise to Carbon Activated in the United States and evading AD duties on Chinese-origin activated carbon.

³ See 19 USC 1517(e); see also 19 CFR 165.24.

⁴ See 19 USC 1517(a)(4); see also 19 CFR 165.1.

⁵ See January 29, 2020 email, “Receipt of EAPA Allegation.”

⁶ Calgon Carbon Corporation and Cabot Norit Americas, Inc. are domestic producers of thermally activated carbon, and pursuant to 19 USC 1517(a)(6)(A)(ii), have standing to submit the allegation. Further, the U.S. Department of Commerce has identified both companies as Petitioners in the investigations that resulted in the issuance of the antidumping order. See “Evasion of Antidumping Duties Assessable on Imports of Chinese-Origin Activated Carbon from the People’s Republic of China Shipped Through Indonesia (DOC Case A-570-904),” (hereinafter the “Allegation,”) at Attachment 1.

⁷ See CBP Memorandum, “Initiation of Investigation for EAPA Case Number 7430”, February 20, 2020.

⁸ See Allegation at 5-6.

⁹ *Id.*, at 10-11, and Attachment 8.

The import/export data in the allegation correlates quantities, product descriptions, Harmonized Tariff (“HTS”) codes, as well as geographic and timeline proximities of the Chinese imports and Indonesian exports of activated carbon from Indokarbon to Carbon Activated.¹⁰ As an example, the data shows that Indokarbon Primajaya imported 40 metric tons (“MT”) of 4 mm activated carbon pellets from Shanxi Carbon Industry Co. in China on January 4, 2019. In turn, Indokarbon Primajaya exported 20 MT of 4 mm activated carbon pellets to Carbon Activated on January 8, 2019, and another 20 MT of 4 mm pellets to Carbon Activated on January 11, 2019.¹¹

The data submitted in the allegation identifies 20 total shipments that comprise 540 MT of activated carbon exported by Indokarbon to Carbon Activated between January 2018 and April 2019.¹² This is the exact quantity of activated carbon imported by Indokarbon from China during this same time period.¹³ Thus, according to the allegation, the overlapping and identical characteristics of the activated carbon that was imported by Indokarbon from China and the activated carbon that was exported from Indokarbon Primajaya to Carbon Activated is a strong indication that Indokarbon is facilitating the evasion of AD duties by transshipping the subject merchandise to Carbon Activated in the United States.¹⁴

The allegation information is supplemented by an affidavit from [], the []. [] attests to his expertise in sourcing of particular inputs and raw materials necessary for the production of activated carbon by his company, as well as the trade flows of raw materials in Asia.¹⁵

[] is responsible for providing the import/export data on Indokarbon Primajaya. The data additionally indicates that Indokarbon’s Chinese imports consist of coal-based activated carbon.¹⁶ [] indicates that, to his knowledge, there are no Indonesian producers of coal-based activated carbon.¹⁷ Since the data suggest a correlation between Indokarbon’s Chinese imports of coal-based activated carbon and the subsequent exports to Carbon Activated, the allegation reasonably suggests that Carbon Activated is importing coal-based activated carbon that originated in China.¹⁸

Interim Measures

Not later than 90 calendar days after initiating an investigation under EAPA, CBP will decide based upon the record of the investigation if there is reasonable suspicion that such covered merchandise was entered into the United States through evasion. Therefore, CBP need only have sufficient evidence to support a reasonable suspicion that merchandise subject to an antidumping and/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

¹⁰ *Id.*

¹¹ *See* Allegation, Attachment 8.

¹² *See* Allegation at 9, and Attachment 8.

¹³ *Id.*

¹⁴ *See* Allegation at 11.

¹⁵ *See* Allegation, Attachment 5.

¹⁶ *See* Allegation, Attachment 6.

¹⁷ *See* Allegation, Attachment 5.

¹⁸ *Id.*

or avoidance of applicable antidumping 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 the evidence indicates a reasonable suspicion that Carbon Activated entered covered merchandise into the United States through evasion by means of transshipping subject merchandise through Indonesia and falsely declaring Indonesia as the country of origin.

Pursuant to 19 CFR 165.5, in obtaining information necessary to carry out its functions and duties under this part, CBP may employ any means authorized by law. In general, CBP will obtain information from its own files, from other agencies of the United States Government, through questionnaires and correspondence, and through fieldwork by its officials. Accordingly, CBP has utilized the following sources to obtain information for EAPA 7430:

Examination of Merchandise

Subsequent to the initiation of the investigation, and pursuant to 19 CFR 165.5(a), CBP conducted physical examinations on several shipments of activated carbon exported by Indokarbon and imported by Carbon Activated. Samples from entries []5388, []5396, []5917, []6006, and []6188 were collected and sent to CBP’s Laboratory and Scientific Services (“LSS”) for analysis to evaluate the source material and production process used in Indokarbon’s production of the activated carbon. On May 15, 2020, LSS returned reports from its analyses indicating that all of the samples consisted of “[]”¹⁹ Further, according to the analyses, merchandise in entries []5388 and []6188 is [], and that merchandise in entry []6006 is []. Analyses of merchandise from entries []5396 and []5917 [].²⁰ Carbon Activated entered all of the above merchandise under Harmonized Tariff Schedule (“HTS”) [].

Foreign Customs Data

In response to a CBP request for information, the [] queried data regarding Indokarbon’s imports of activated carbon from China. On May 14, 2020 the [] submitted to CBP its findings, which demonstrate that Indokarbon imported [] kg of activated carbon from China in 2019, and [] kg of activated carbon from January through mid-April of 2020.²¹

¹⁹ See LSS Reports [], May 15, 2020.

²⁰ *Id.*

²¹ See “[]”, May 14, 2020.

Enactment of Interim Measures

Based on the record evidence, combined and evaluated in comparison of the allegation, CBP has determined that reasonable suspicion exists that activated carbon exported by Indokarbon and entered into the customs territory of the United States by Carbon Activated are, at least in part, transshipped from China, and thus, are evading the Orders on activated carbon from China. Therefore, TRLED is imposing interim measures pursuant to this investigation.²² Specifically, in accordance with 19 USC 1517(e)(1-3), CBP shall:

- (1) Suspend the liquidation of each unliquidated entry of such covered merchandise that entered on or after {January 27, 2020,} the date of the initiation of the investigation;
- (2) pursuant to the Commissioner's authority under section 504(b), extend the period for liquidating each unliquidated entry of such covered merchandise that entered before the date of the initiation of the investigation; and
- (3) pursuant to the Commissioner's authority under section 623, take such additional measures as the Commissioner determines necessary to protect the revenue of the United States, including requiring a single transaction bond or additional security or the posting of a cash deposit with respect to such covered merchandise.²³

In addition, CBP will require live entry and reject any entry summaries that do not comply, and require refile of entries that are within the entry summary rejection period. CBP will also evaluate Carbon Activated's continuous bonds to determine sufficiency. Finally, CBP may pursue additional enforcement actions, as provided by law, consistent with 19 USC 1517(h).

For any future submissions or factual information that you submit to CBP pursuant to this EAPA investigation, please provide a public version to CBP at epallegations@cbp.dhs.gov and to the email addresses of the parties identified. Documents containing business confidential information, and corresponding public versions of documents, must be submitted in accordance with EAPA regulations.²⁴ Should you have any questions regarding this investigation, you may contact us at epallegations@cbp.dhs.gov with "EAPA Case 7430" in the subject line of your email. Additional information on this investigation, including the applicable statute and regulations, may be found on CBP's website at: <https://www.cbp.gov/trade/tradeenforcement/tftea/enforce-and-protect-act-eapa>.

Sincerely,



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

²² See 19 USC 1517(e); see also 19 CFR 165.24.

²³ See also 19 CFR 165.24.

²⁴ See 19 CFR 165.4; see also 19 CFR 165.5; see also 19 CFR 165.23(c); see also 19 CFR 165.26.

