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PUBLIC VERSION

EAPA Case: 7250

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Re: Notice of Determination as to Evasion

To the Counsel of the above-referenced Entities:

Pursuant to an examination of the record in Enforce and Protect Act (EAPA) investigation 7250, U.S. Customs and Border Protection (CBP) has determined that there is substantial evidence that Lyke Industrial Tool, LLC (Lyke), entered merchandise covered by antidumping duty (AD) order A-570-900 into the customs territory of the United States through evasion.¹ Substantial evidence demonstrates that Lyke imported diamond sawblades from the People's Republic of China (China) into the United States after transshipping the merchandise through Thailand. Lyke did not declare that the merchandise was subject to the AD order upon entry and, as a result, no cash deposits were collected on the merchandise.

Background

On July 2, 2018, the Diamond Sawblades Manufacturers' Coalition (Alleger), a business association of domestic producers of covered merchandise, submitted an allegation to CBP that Lyke was evading the AD order on diamond sawblades from China.² The allegation asserted

¹ See *Diamond Sawblades and Parts Thereof from the People's Republic of China and Republic of Korea: Antidumping Duty Orders*, 74 FR 57145 (November 4, 2009) (the AD order).

² See Letter from the Alleger, "EAPA Allegation," dated July 2, 2018, at 2; see also Letter from the Alleger, "EAPA Allegation Supplement," dated July 5, 2018 (Allegation), at 2. Page 2 of the Allegation indicates that the Alleger's members are U.S. producers of diamond sawblades, and thus, meet the definition of an interested party that is

that Lyke imported diamond sawblades into the United States from China by transshipping them through Thailand and falsely declaring them as Thai-origin. The allegation also asserted that Lyke evaded duties by misclassifying the diamond sawblades as “cupwheels,” merchandise that was not subject to the AD order. On July 3, 2018, CBP acknowledged receipt of the allegation filed by the Alleger.³ CBP found the information in the allegation reasonably suggested that Lyke entered covered merchandise for consumption into the customs territory of the United States through evasion. Consequently, on July 25, 2018, CBP initiated an EAPA investigation pursuant to Title IV, section 421 of the Trade Facilitation and Trade Enforcement Act of 2015.⁴

To further investigate Lyke’s entry practices, on [date], CBP conducted cargo examinations on six Lyke entries and observed several discrepancies in entry [number]6457 including signs that the merchandise was repackaged in Thailand.⁵ The entry documents described the merchandise as “circular saw blade” and identified the Thai company Like Tools Co., Ltd. (Like Tools) as the shipper.⁶ Although the invoice and bill of lading indicated that the merchandise was Thai-origin, CBP officials observed that the shipment contained a pallet of cartons in which “Made in China” markings were visible on some of the cartons and “Made in Thailand” labels were affixed over underlying “Made in China” markings on other cartons.⁷

CBP conducted a site visit at Like Tools facility on September 18, 2018.⁸ During the site visit, a CBP official observed diamond sawblades that lacked country-of-origin markings and observed inconsistencies in the production data sheets.⁹

Interim Measures

After subsequently evaluating the information on the record, CBP determined that reasonable suspicion existed that Lyke imported diamond sawblades into the United States that were transshipped through Thailand. This determination was based on information that included the signs of repackaging observed during the cargo examinations and the lack of information substantiating Like Tools’ diamond sawblade production in Thailand.¹⁰ Consequently, on October 30, 2018, CBP issued a notice of investigation and interim measures to Lyke and to the Alleger.¹¹ This notice informed Lyke and the Alleger of the initiation of the investigation and of

permitted to submit an EAPA allegation pursuant to 19 USC 1517(a)(6)(A)(iv) and 19 CFR 165.1(4); *see also* 19 CFR 165.11(a).

³ *See* 19 CFR 165.12; *see also* CBP Email, “EAPA Case Number 7250,” dated July 3, 2018.

⁴ *See* 19 USC 1517(b)(1); *see also* 19 CFR 165.15 and CBP Memorandum, “Initiation of Investigation for EAPA Case Number 7250,” dated July 25, 2018.

⁵ *See* CBP Memorandum, “EAPA Investigation #7250,” dated September 27, 2018 (Cargo Examination Memorandum).

⁶ *See* Cargo Examination Memorandum; *see also* Letter from Lyke, “EAPA Cons. Case No. 7250 Entry Summary Documents for Entry No. Ending with 6457,” dated November 14, 2018, at 6-10.

⁷ *See* Cargo Examination Memorandum.

⁸ *See* CBP Memorandum, “Interoffice Memorandum,” dated September 28, 2018 (Site Visit Memorandum).

⁹ *Id.* at 2.

¹⁰ *See* Letter from CBP, “Notice of initiation of investigation and interim measures taken as to Lyke Industrial Tool, LLC concerning evasion of the antidumping duty order on diamond sawblades from the People’s Republic of China,” dated October 30, 2018.

¹¹ *Id.*

CBP’s decision to impose interim measures based upon reasonable suspicion of evasion.¹² The notice also informed Lyke and the Alleger that the entries covered by the investigation are those entered for consumption, or withdrawn from warehouse for consumption, from July 3, 2017, through the pendency of this investigation.¹³ As part of the interim measures, CBP stated that, pursuant to its authority under 19 USC 1517(e), it would extend the period for liquidating each unliquidated entry of such covered merchandise that entered before the date of the initiation of the investigation, suspend the liquidation of Lyke’s entries entered after the initiation of the investigation, rate-adjust entries to reflect that they were subject to the AD order on diamond sawblades from China, and require “live entry” for Lyke’s imports.¹⁴

After issuing the notice of initiation and interim measures, CBP sent requests for information (RFI) to Lyke and to Like Tools.¹⁵ Lyke stated in its RFI response that:

Like Tools was originally invested in by [name], who is the President of Lyke, and [individual’s name], who is the [position] of Lyke. Therefore, [information about Lyke’s ownership and corporate structure]. {...} On [date], [individual’s name] and [individual’s name] sold all their shares in Like Tools and transferred control and ownership of Like Tools to its new shareholders.¹⁶

Lyke claimed that [company name] was one of its [corporate structure] until [date], at which time “[individual’s name] and [individual’s name] sold all their shares in Like Tools and transferred control and ownership of Like Tools to its new shareholders.”¹⁷ Curiously, although Lyke claims that these two individuals sold all their shares in Like Tools, Lyke’s organizational chart indicates that [individual’s name] continues to own [number] percent of the [business relationship] Like Tools’ factory, [company name].¹⁸ [company name] also owns Lyke’s property in [location].¹⁹

Lyke’s RFI response indicates that employees of Lyke also worked for Power Tek Tools (PTT).²⁰ According to this RFI response, [individual’s name] and [individual’s name], also known as

¹² *Id.*

¹³ See 19 CFR 165.2. Entries covered by the investigation include entries up to one year prior to the date CBP officially received the allegations, which was July 3, 2018.

¹⁴ As explained later in this document, one entry was liquidated as type [type code] on [date] and three other entries were liquidated as type [type code] on [several discrete dates].

¹⁵ See Letter from CBP, “Like Tools Co., Ltd - Request for Information,” dated November 19, 2018; see also Letter from CBP, “Lyke Industrial Tool LLC - Request for Information,” dated November 19, 2018; Letter from CBP, “Like Tools Co., Ltd - Request for Information,” dated February 28, 2019; and Letter from CBP, “Lyke Industrial Tool, LLC - Request for Information,” dated February 28, 2019.

¹⁶ See Letter from Lyke, “EAPA Consolidated Case Number 7250: Submission of Lyke Industrial's RFI Response, dated December 21, 2018 (Lyke RFI), at 4.

¹⁷ *Id.* at 4, 8.

¹⁸ *Id.* at 9 and Exhibit A-4.

¹⁹ *Id.* at 16 and Exhibit A-12.

²⁰ CBP had previously determined that both of these U.S. importers, Lyke and PTT in EAPA investigation 7205, were evading order A-570-900 by failure to declare Chinese-origin diamond sawblades as subject to AD duties. See CBP Notice of Final Determination as to Evasion EAPA Consolidated Case Number 7205 (July 20, 2018); see also CBP July 8, 2021 Memo at Attachment 1.

[individual's name], incorporated Lyke in [year] in [location].²¹ Matt Wu was the Vice President of PTT;²² PTT and Lyke are also located at the same physical address, 14270 Euclid Ave, Chino Hills, CA.²³ Lyke's only explanation for this was to claim that they leased their location from [company name]. However, this response does not explain why Lyke would choose to lease a building at the same location used by another importer which CBP previously determined had engaged in evasion using the same supplier as Lyke.²⁴

Lyke stated that its owner, [individual's name], also owns [number] percent of the [company name and description], which continues to be Lyke's [corporate relationship].²⁵ Likewise, the president of Lyke, [individual], is also the president and general manager of [company name].²⁶ Notably, Lyke admitted that [company name] is a producer of diamond sawblades subject to the AD order, but that "Lyke ceased purchasing diamond sawblades from [company name] and instead only purchased [products other than diamond saw blades] during the POI {period of investigation}."²⁷ After a couple months, Lyke amended its statement to the following:

Lyke Industrial clarifies that [proprietary information about sourcing] even before the POI. Lyke Industrial imported diamond sawblades from [company name and abbreviation of company name] before the POI. [company name] had no production during the POI. [company name] continued to manufacture diamond sawblades during the POI, but only sold diamond sawblades to non-U.S. markets{.}²⁸

It is noteworthy that Lyke's organization chart indicates that Lyke's president [individual's name] is also the president of [company name].²⁹ Additionally, Lyke provided three invoices from [company name] from 2017-2018 for purchase of "Millstone Cup Wheel{s}" that were made in China.³⁰ The U.S. Department of Commerce (Commerce) determined that cup wheels were not within the scope of the AD order.³¹ Although [company name] issued these invoices, Lyke's bank

²¹ *Id.* at Exhibit A-3.

²² *See* Letter from Power Tek Tools, "EAPA Consolidated Case Number 7205: Response to Importer Request for Information," dated November 21, 2017 (PTT RFI) at Exhibit 2; *see also* CBP Memorandum "Adding Information to the Administrative Record of EAPA Case 7250" dated July 23, 2021 (CBP July 23, 2021 Memo), at Attachment 1.

²³ *See* CBP Notice of Initiation for EAPA Case Number 7205 dated September 22, 2017.

²⁴ *See* PTT RFI at 16.

²⁵ *Id.* at 5 and Exhibit A-4.

²⁶ *Id.* at Exhibits A-4 and A-5.

²⁷ *Id.* at 8.

²⁸ *See* Letter from Lyke, "EAPA Consolidated Case Number 7250: Submission of Lyke Industrial's Supplemental RFI Response," dated March 13, 2019 (Lyke Supplemental RFI) at 6.

²⁹ *See* Lyke RFI at Exhibit A-4.

³⁰ *Id.* at Exhibit A-10, pages 4, 16, 27. These invoices corresponded to Lyke entries [number]9038, [number]5772, and [number]0657. *See also* CBP document, "NTAG - Entry Data," dated July 11, 2018, at 1-2. Regarding entry [number]5772, the value Lyke declared to CBP is reached after subtracting the amounts of the "Plastic Clam Shells" and "Insert Cards."

³¹ *See* Commerce Memorandum, "Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Scope Determination for Scope Request from Lyke Industrial Tool, LLC," dated May 17, 2018; *see also* CBP Memorandum "Adding Information to the Administrative Record of EAPA Case 7250" dated July 8, 2021 (CBP July 8, 2021 Memo), at Attachment 3.

statements indicated that [company name] was the payment beneficiary.³² Furthermore, most of these payments occurred after the date, [specific date], in which Lyke claims that it and [proprietary information about corporate structure] with Like Tools.³³

Lyke stated that its first purchase of diamond sawblades from Like Tools was April 2018.³⁴ Lyke stated that “[company name] was involved in the production and sales of diamond sawblades under investigation during the POI.”³⁵ Lyke claims that “when the factory produced a sufficient quantity of diamond sawblades to fill at least one shipping container, it notified Lyke Industrial of the type and the out-diameter of the saw blades produced. Lyke Industrial then issued a purchase order containing the same information which the factory notified Lyke Industrial that it had produced.”³⁶ This is the opposite of the normal process, in which an importer issues a purchase order to the manufacturer that precedes the manufacturer filling the order through production or existing inventory. Lyke provided invoices from Like Tools from 2018 for segmented, turbo, and laser segmented “Circular Saw Blades {s}”, measuring 350mm, and stating that the products were “Made in Thailand.”³⁷

In its RFI response, Like Tools stated that it was registered in Thailand in July 2017, began operations in September 2017, and made its first export sale in April 2018.³⁸ Like Tools claimed that before [date] it was affiliated with Lyke and [company name], but since then, Like Tools is not under common control with any other entity.³⁹ Like Tools admitted that it “made [proprietary information about sourcing and supply chains along with information about the date(s) of sourcing]” that were then [proprietary supply chain information].⁴⁰ It stated that it subsequently began producing [product] in [month and year] and [product] in [date].⁴¹ This information differs from their response during the September 2018 site visit, in which Like Tools officials stated that “the [product] blades began in August 2018.”⁴² Like Tools stated that it [proprietary production information], but rather sourced [product and supply chain information] and [cores for sintered diamond sawblades from China].⁴³ Similarly, Lyke stated the following:

Like Tools sources steel blades {cores} from China and Thailand. It sources complete segments from China and Thailand. It also sources synthetic diamond particles, graphite powder, iron powder, copper powder and tin powder from China to manufacture diamond

³² See Lyke RFI at Exhibit A-10, pages 8, 20, 31, 42.

³³ *Id.* at Exhibit A-10, pages 20, 31, 42.

³⁴ *Id.* at 4.

³⁵ *Id.* at 7.

³⁶ See Lyke Supplemental RFI at 1.

³⁷ See Lyke RFI at Exhibit A-10.

³⁸ See Letter from Like Tools, “EAPA Consolidated Case Number 7250: Submission of Like Tools’ RFI Response,” dated January 25, 2019 (Like Tools RFI) at 2-3 and Exhibits B-2 and B-4.

³⁹ *Id.* at 18-19.

⁴⁰ *Id.* at 11-12 and Exhibit B-12.

⁴¹ *Id.* at 8, 11.

⁴² See Site Visit Memorandum at 2.

⁴³ See Like Tools RFI at 5, 11-13. They also stated that they sourced [product and sourcing information].

segments in its Thai factory. The joining of diamond segments and steel blades takes place in Like Tools' Thai factory.⁴⁴

Like Tools provided invoices from the Chinese companies [company name]; [company name]; and [company name], which denoted that it purchased Chinese cores (also known as “steel blades” and “saw blanks”) of various sizes for laser-welded and sintered diamond sawblades.⁴⁵ Like Tools noted that [supply chain information] U.S. customer of Like Tools during the POI.”⁴⁶ Like Tools stated that it provided the commercial invoices and other shipment documentation to Lyke after it shipped the goods.⁴⁷

Verification

After Lyke and Like Tools submitted their RFI responses, CBP conducted a verification of the information on the record at Like Tools' facility in Thailand on March 18-22, 2019.⁴⁸ The verification confirmed that Like Tools [sales information] the diamond sawblades it [supply chain information].⁴⁹ The verification also confirmed that Like Tools' documentation indicated that it imported [product] from China.⁵⁰ Additionally, during a tour of Like Tools' facility, CBP officials observed labels from the Thai company [name of Thai company] affixed to boxes of cores. These labels physically covered underlying labels referencing the Chinese company [name of Chinese company].⁵¹ Like Tools' manager opened some of these boxes and CBP officials confirmed that it contained cores.⁵²

Although Lyke's and [company name]'s owners claimed that these companies sold their stake in Like Tools, Like Tools could not provide CBP officials participating in the verification with proof of Like Tools' sale or any other proof of the ownership transfer during the verification.⁵³ The only document Like Tools furnished was a registration certificate from the Thai Business Development Office.⁵⁴

Shortly before verification, Like Tools stated that “Like Tools has also sold equipment and machinery. As of January 31, 2019, Like Tools officially closed production and dismissed all production staff. Upon agreement with the landlord, Like Tools will return the land and

⁴⁴ See Letter from Lyke, “EAPA Cons. Case No. 7250: CF 28 Response Submitted on June 4, 2018,” dated November 26, 2018, at 4, 6 (CF-28 Response).

⁴⁵ See Like Tools RFI at Exhibit B-9, pages 9-10, 12-13, and Exhibit B-14, pages 1, 3; see also Letter from Like Tools, “EAPA Consolidated Case Number 7250: Submission of Like Tools' Supplemental RFI Response,” dated March 13, 2019 (Like Tools Supplemental RFI) at Exhibit BS-1, pages 1-2; Exhibit BS-2, page 2, 4; and Exhibit BS-5, pages 3, 5-9, 11-13.

⁴⁶ See Like Tools RFI at 4.

⁴⁷ *Id.* at 6.

⁴⁸ See CBP Verification Report, “On-Site Verification Report: Enforce and Protect Act (EAPA) Case Number 7250,” dated June 26, 2019 (Verification Report), at 1.

⁴⁹ *Id.* at 3.

⁵⁰ *Id.* at 13.

⁵¹ See Site Visit Memorandum at 2.

⁵² See Verification Report at 13.

⁵³ *Id.* at 28.

⁵⁴ *Id.*

workshop by April 5, 2019.”⁵⁵ However, 10 days after this statement, CBP observed that Like Tools’ equipment and machinery was [*information about machinery*].⁵⁶ Furthermore, in contrast to its earlier claim that it already sold its machinery and equipment, during verification Like Tools claimed it would [*information about disposition of machinery and equipment*] or possibly [*information about disposition of machinery and equipment*] at a loss.⁵⁷

Additionally, Like Tools could not provide any documentation, such as a [*document type*], that explicitly corroborated its statement that it would return the land and workshop to the landlord on April 5, 2019.⁵⁸ Like Tools claimed, without substantiation, that it communicated its intention via telephone to break the lease at some point in the future to their landlord, [*landlord’s name*].⁵⁹ Like Tools claimed that its bank statements indicated that it was closing down and provided bank statements showing the company’s [*financial information*] until April 5, 2019.⁶⁰ However, these bank statements only substantiate its previous [*financial information*] and not the status of its [*information about operations*].

Scope Referral

As previously noted, Lyke stated that Like Tools sources cores and segments from Thailand and China and joins them in Thailand.⁶¹ The scope of the AD order does not specify how to determine whether a product is covered by the order when the origin of the cores and segments differ from each other and are assembled into completed diamond sawblades in a country other than China. Therefore, CBP was unable to determine whether the merchandise was covered under the scope of the AD order. Pursuant to 19 USC 1517(b)(4)(A), CBP issued a covered merchandise referral to Commerce on July 1, 2019, and notified the parties to the investigation.⁶² As a result of this referral, the deadlines for this investigation were stayed pending Commerce’s response to the covered merchandise referral.⁶³

On June 7, 2021, Commerce issued its official response to CBP’s covered merchandise referral.⁶⁴ Commerce determined that all imports of diamond sawblades from Lyke are within

⁵⁵ See Letter from Like Tools, “EAPA Consolidated Case 7250,” dated March 8, 2019, at 2.

⁵⁶ See Verification Report at 28.

⁵⁷ *Id.* at 28.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*; see also Letter from Like Tools, “EAPA Consolidated Case Number 7250: Submission of Like Tools’ Verification Exhibits,” dated March 27, 2019, at Exhibit 2.

⁶¹ See CF-28 Response at 4, 6.

⁶² See also 19 CFR 165.16; see also Letter from CBP, “Scope Referral Request for merchandise under EAPA Investigation 7250, concerning allegation of evasion of A-570-900,” dated July 1, 2019, and Email from CBP, “RE: EAPA 7250: Notice of Scope Referral,” dated July 1, 2019. A covered merchandise referral is also known as a scope referral. This was the first iteration of the covered merchandise referral that CBP submitted to Commerce. See also Letter from CBP, “Covered Merchandise Referral Request for Merchandise under EAPA Investigation 7250, Imported by Lyke Industrial Tool, LLC, and Concerning the Investigation of Evasion of the Antidumping Duty Order on Diamond Sawblades and Parts Thereof from the People’s Republic of China (A-570-900),” dated September 19, 2019 (Covered Merchandise Referral). This was the second iteration, which was an update, of the covered merchandise referral that CBP submitted to Commerce.

⁶³ See 19 USC 1517(b)(4)(C); see also 19 CFR 165.16(d).

⁶⁴ See Letter from Commerce, “Covered Merchandise Referral Regarding EAPA Investigation No. 7250”, dated June 7, 2021.

the scope of the order based on adverse facts available (AFA). Commerce used AFA for its determination because it found that:

necessary information is missing from the record and was withheld from Commerce, which significantly impeded our investigation, pursuant to sections 776(a)(1), (2)(A), and (2)(C) of the Act. Additionally, we continue to find that Lyke and Like Tools Thailand misrepresented CBP's findings and that the companies made statements to Commerce contradicting statements made to CBP. As a result, we continue to find that Lyke and Like Tools Thailand's representations on our record are unreliable and, therefore, the use of AFA is appropriate, pursuant to section 776(b) of the Act. Thus, we determine that diamond sawblades exported by Like Tools Thailand and imported by Lyke are covered by the scope of the DSB Order.⁶⁵

Written Arguments

As result of Commerce's notification, CBP removed the stay on this case's deadlines.⁶⁶ CBP then notified the parties to the investigation of Commerce's covered merchandise decision and of the deadline for the submission of written arguments.⁶⁷ On June 21, 2021, Lyke submitted written arguments and on July 6, 2021, the Alleger submitted a response to Lyke's written arguments.⁶⁸

Lyke argued that "Commerce improperly applied adverse inferences."⁶⁹ Lyke further asserted that this "usurp{s} CBP's role by essentially making a final determination on the merits of this {EAPA} case based on AFA." Lyke also contended that "Commerce wrongly refused to address the questions presented and its flawed analysis should be disregarded by CBP based on substantial evidence on the record."⁷⁰

The Alleger contends that CBP should reject Lyke's arguments and "make a determination as to evasion consistent with Commerce's findings that Lyke's merchandise is within the scope of the antidumping duty order on Diamond Sawblades and Parts Thereof ("DSBs") from the People's Republic of China."⁷¹ The Alleger argues that Lyke should not argue against Commerce's scope determination on the record of a CBP proceeding because CBP does not have the authority to reject Commerce's scope ruling. Instead, the Alleger argues that Lyke should appeal Commerce's scope ruling to the Court of International Trade. The Alleger further argues that Commerce made its determination based on AFA because it found all Lyke's information

⁶⁵ *Id.*

⁶⁶ *See* 19 USC 1517(b)(4); *see also* 19 CFR 165.16(d)-(e).

⁶⁷ *See* CBP Email, "EAPA 7250: Placing Document on the Record/Opportunity to Rebut; Deadline for Written Arguments and Responses", dated June 7, 2021.

⁶⁸ *See* Letter from Lyke, "EAPA Consolidated Case Number 7250: Final Scope Ruling by the Department of Commerce", dated June 21, 2021 (Lyke Written Arguments); *see also* Letter from the Alleger, "Enforce and Protect Act Case 7250: Response to Written Arguments on Final Scope Ruling by the Department of Commerce", dated July 6, 2021 (Alleger Response to Written Arguments).

⁶⁹ *See* Lyke Written Arguments at 3.

⁷⁰ *Id.* at 7.

⁷¹ *See* Alleger Response to Written Arguments at 1.

unreliable, not just some of it. The Alleger also asserts that “Lyke’s arguments inaccurately present Commerce’s finding and the scope preceding” because “it was not a lack of information that led to Commerce’s determination, but instead Lyke’s presentation of misleading and contradictory information that predicated the application of AFA.”⁷²

CBP’s determination as to evasion is based upon the totality of the evidence on the record. CBP relied on Commerce’s response to its covered merchandise referral pursuant to section 1517(b)(4)(A) to inform whether the merchandise at issue was covered merchandise. Whether or not Commerce relied on adverse facts available in reaching that determination under its own authorities has no bearing on the EAPA investigation. Several facts influenced CBP’s determination as to evasion in this case. These facts include repeated observations by CBP officials that Like Tools covered “Made in China” labels on covered merchandise and inputs with “Made in Thailand” labels;⁷³ discrepancies between Lyke’s RFI responses and CBP’s findings at verification; the inability of Lyke and Like Tools to demonstrate Like Tools’ transfer of ownership; RFIs claiming that Like Tools sold its equipment, which [observations of CBP officials];⁷⁴ Lyke’s and Like Tools’ ownership by the same individual or individuals employed by Like Tools’ parent company and Like Tools’ [information about corporate structure];⁷⁵ and CBP’s previous determination of Lyke’s evasion in EAPA case 7205, which involved the same AD order and the same type of merchandise.⁷⁶

Lyke further argued in its written arguments that there is substantial evidence on the record that Like Tools has considerable production capacity in Thailand.⁷⁷ Lyke argued that Like Tools submitted information showing substantial investment in its Thai factory and evidence of purchases and consumption of raw materials. Lyke further claims that its submissions show that no segments were made from Chinese inputs and that all cores were sourced locally in Thailand.

In fact, Like Tools could not account for all its raw materials purchases and there were significant discrepancies between the statements Like Tools made in its RFI responses and what CBP officials actually observed.⁷⁸ Further, there is evidence on the record that Like Tools’ supplier of supposedly Thai-origin cores, [name of Thai company], actually sourced the cores from its Chinese parent company.⁷⁹ Specifically, CBP officials observed cores ostensibly from this supplier in boxes with “made in Thailand” labels covering the original “made in China” labels.⁸⁰ Lyke also explicitly stated that Like Tools “sources complete segments from China and Thailand.”⁸¹ Commerce’s scope ruling informs CBP’s determination as to evasion because Commerce found that all covered merchandise that Lyke imported from Like Tools should be considered in-scope. However, CBP also found many inconsistencies and errors in Lyke/Like

⁷² *Id.* at 5.

⁷³ See Verification Report; see also Site Visit Memorandum; see also Cargo Inspection Memorandum.

⁷⁴ See Verification Report at 8.

⁷⁵ See Like Tools RFI at Exhibit A-4.

⁷⁶ See CBP Notice of Final Determination as to Evasion EAPA Consolidated Case Number 7205 (July 20, 2018); see also CBP July 8, 2021 Memo at Attachment 1.

⁷⁷ See Lyke Written Arguments at 8.

⁷⁸ Verification Report at 5-7 and 28.

⁷⁹ *Id.* at 13-15.

⁸⁰ *Id.* at 13-16.

⁸¹ See CF-28 Response at 4.

Tools' responses in this proceeding, which factor substantially in CBP's determination as to evasion. Specifically, CBP discovered "Made in China" labels on covered merchandise and inputs with "Made in Thailand" labels at several points in the investigation,⁸² as well as the inconsistencies in Lyke's and Like Tools' RFI responses described above.⁸³

Analysis as to Evasion

Under 19 USC 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."⁸⁴ 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 duties being reduced or not being applied with respect to the covered merchandise."⁸⁵ The substantial evidence indicates that covered merchandise entered the United States through evasion resulting in the avoidance of applicable cash deposits or other security.

Lyke and Like Tools submitted unreliable and contradictory answers to RFIs and did not place any information on the record to explain these discrepancies despite repeated opportunities to do so. For example, Lyke and Like Tools failed to substantiate their claim that Like Tools' ownership was transferred, and provided information that [information about company ownership and operations].⁸⁶ Like Tools also claimed to have sold all its equipment and terminated its lease one month before verification.⁸⁷ However, when CBP officials conducted verification, they observed that [information about equipment].⁸⁸ Furthermore, Like Tools was unable to provide documentary proof, during verification, that a change in ownership occurred or that the lease had been terminated. Lyke's and Like Tools' contradictory and unsubstantiated assertions on the record do not establish that the transfer of ownership or the sale of the equipment occurred. Thus, this lack of substantiation indicates that Lyke's owner, which also owns Like Tools' current [information about company operations and corporate structure], continues to own Like Tools and to [information about company ownership and operations].

Evidence on the record suggests that some of the diamond sawblades Like Tools supplied to Lyke during the POI were made entirely in China. CBP officials observed cartons that had "made in Thailand" labels covering "made in China" labels on boxes of covered merchandise

⁸² See Verification Report; see also Site Visit Memorandum and Cargo Inspection Memorandum.

⁸³ See Verification Report at 8.

⁸⁴ Substantial evidence is not defined in the statute. However, the Federal Circuit has stated that "substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." See *A.L. Patterson, Inc. v. United States*, 585 Fed. Appx. 778, 781-782 (Fed. Cir. 2014) (quoting *Consol. Edison Co. of N.Y. v. NLRB*, 305 U.S. 197, 229 (1938)).

⁸⁵ See 19 CFR 165.1; see also 19 USC 1517(a)(5)(A).

⁸⁶ See Lyke RFI at Exhibits A-3 and A-4.

⁸⁷ See Letter from Like Tools, "EAPA Consolidated Case 7250," dated March 8, 2019, at 2.

⁸⁸ See Verification Report at 28.

imported by Lyke during the cargo exam.⁸⁹ Furthermore, during the site visit, CBP observed many packages of sawblades with no country of origin markings, and those that did have markings were only marked with easily removable stickers.⁹⁰ These facts are indicative that some of Lyke’s shipments of diamond sawblades contained Chinese-origin covered merchandise.⁹¹

Further, even if Like Tools legitimately manufactured all the diamond sawblades it sold to Lyke solely in Thailand, there is clear evidence that some of this production used Chinese-origin cores and Chinese-origin segments. During verification, CBP officials discovered diamond sawblade cores apparently manufactured in China but covered with labels to appear as manufactured in Thailand. Lyke also stated that Like Tools “sources complete segments from China and Thailand.”⁹² According to Commerce, the fact that Chinese-made cores may be joined with Chinese-made segments in Thailand does not remove them from the scope of the AD order. Although Lyke contends that the cores it sourced from [company name] could have been produced in Thailand, CBP has previously considered the sourcing of diamond sawblade cores with labels from this company covering labels from the Chinese parent company as evidence of transshipment in EAPA 7184.⁹³ Further, Commerce found “that diamond sawblades exported by Like Tools Thailand and imported by Lyke are covered by the scope of the AD order on diamond sawblades from China.”

Based on the entirety of the record, CBP determines that Lyke’s imports of diamond sawblades are from China and subject to the AD order. Because Lyke entered these diamond sawblades as Thai-origin rather than Chinese-origin, the company evaded the AD order on diamond sawblades from China and failed to pay the requisite AD duties.

Determination as to Evasion

In conclusion, multiple facts on the record establish that Like Tools transshipped Chinese-origin diamond sawblades through its facility in Thailand. These facts include the ownership structure of Lyke, Like Tools, and [corporate relationship]; the Chinese-origin merchandise labels CBP officials observed at Like Tools’ facility; Lyke’s and Like Tools’ inability to prove Like Tools’ transfer of ownership; RFIs claiming that Like Tools sold its equipment, even though equipment was observed by CBP officials in the factory during verification; and Lyke’s past record of evasion in EAPA 7205. Furthermore, evidence on the record indicates that Lyke subsequently entered the transshipped diamond sawblades into the United States as type 01 entries resulting in the failure to pay AD duties on diamond sawblades from China.⁹⁴

Consequently, based on the aforementioned analysis of relevant evidence, CBP determines that substantial evidence exists demonstrating that, by means of material false statements or

⁸⁹ See Cargo Examination Memorandum.

⁹⁰ See Site Visit Memorandum at 2.

⁹¹ *Id.* at 13-16; see also Cargo Examination Memorandum at 1 and Site Visit Memorandum at 2.

⁹² See CF-28 Response at 4.

⁹³ See Final Determination as to Evasion EAPA 7184, dated September 17, 2019, at 5, 8; see also CBP July 8, 2021 Memo at Attachment 2.

⁹⁴ Entry type “01” is the code that CBP requires importers use to designate a standard consumption entry that is not subject to AD/CVD duties. See <https://www.cbp.gov/trade/automated/ace-transaction-details>.

omissions, Lyke entered diamond sawblades subject to the AD order that were transshipped through Thailand that into the United States and failed to pay AD duties on the merchandise.⁹⁵ All covered merchandise that Lyke entered from Like Tools during the period of investigation is subject to the AD rate on diamond sawblades from China.⁹⁶

While this investigation was pending, CBP liquidated [number] of Lyke's entries. CBP liquidated one of these entries as type [type code] on [date] at a rate of 164.09 percent, the PRC-wide rate for the AD order. CBP also liquidated three other entries as type [type code] on [several discrete dates]. However, CBP has determined that Lyke has repeatedly provided incomplete or erroneous entry summary information in connection with its entries of diamond sawblades produced by Like Tools. Consequently, in accordance with its authority under 19 USC 1517(d)(1)(E)(iii), CBP will require Lyke to deposit estimated duties at the time of any future entry of diamond sawblades from Like Tools.

Actions Taken Pursuant to the Affirmative Determination of Evasion

In light of CBP's determination that substantial evidence demonstrates that Lyke entered covered merchandise into the customs territory of the United States through evasion, CBP will take action, as applicable, pursuant to 19 USC 1517(d)(1)(D)-(E) and 19 CFR 165.28(a). Specifically, pursuant to 19 USC 1517(d)(1)(E)(iii), CBP will require that for any imports of diamond sawblades from Like Tools, Lyke deposit estimated duties at the time of entry. CBP will also evaluate Lyke's continuous bond in accordance with CBP's policies and will require single transaction bonds as appropriate. None of the above actions preclude CBP or other agencies from pursuing additional enforcement actions or penalties.

Sincerely,



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

⁹⁵ EAPA does not have a knowledge requirement for evasion as defined under 19 CFR 165.1, nor is there any requirement that an importer know of the material or false statement. Therefore, CBP does not need to determine any level of culpability, only that evasion occurred with entry.

⁹⁶ Lyke's diamond sawblade imports that are subject to this investigation are subject to the "PRC-Wide Rate" of 164.09 percent for AD case A-570-900. See AD order.