



**U.S. Customs and
Border Protection**

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EAPA CASE NO. 7430

PUBLIC VERSION

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RE: Notice of Determination as to Evasion

Pursuant to an examination of the record in Enforce and Protect Act (EAPA) Investigation 7430, U.S. Customs and Border Protection (CBP) has determined there is not substantial evidence that Carbon Activated Corp. (“CAC”) entered merchandise covered by antidumping duty (AD) order A-570-904 on activated carbon from the People’s Republic of China (“China”)¹ into the customs territory of the United States through evasion. Specifically, CBP determined that there is not substantial evidence that CAC imported Chinese-origin activated carbon that was transshipped through Indonesia.

Background

On January 29, 2020, the Trade Remedy Law Enforcement Directorate (“TRLED”), within CBP’s Office of Trade, acknowledged receipt of the properly filed allegation by Calgon Carbon Corporation and Cabot Norit Americas, Inc. (“Allegers”) regarding evasion of AD duties by CAC.² 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

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 January 29, 2020, email entitled, “Receipt of EAPA allegation.”

and exporting the Chinese-origin merchandise to CAC.³ TRLED found the information provided in the allegation reasonably suggested that CAC entered covered merchandise into the customs territory of the United States through evasion. TRLED noted that information submitted by the Allegers suggests that the Chinese-origin activated carbon imported into Indonesia by Indokarbon Primajaya is being transshipped to CAC in the United States, thus evading the AD duties imposed by the order. Consequently, CBP initiated an investigation with respect to CAC on February 20, 2020, pursuant to Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, commonly referred to as the “Enforcement and Protect Act” or EAPA.⁴

Subsequent to the Initiation, TRLED examined additional information supporting a determination of evasion. Specifically, CBP conducted physical examinations on several shipments of activated carbon exported by Indokarbon and imported by CAC. CBP found that all of the samples consisted of “[[product]],” including some merchandise constituting [[product]];⁵ however, CAC entered all of the above merchandise into the United States, including that found [[product]], under Harmonized Tariff Schedule of the United States (“HTSUS”) [[product description]].

In addition, in response to a CBP request for information, the [[data source]] queried data regarding Indokarbon’s imports of activated carbon from China. On May 14, 2020, the [[data source]] submitted to CBP its findings, which demonstrate that Indokarbon imported [[number]] kg of activated carbon from China in 2019, and [[number]] kg of activated carbon from January through mid-April of 2020.⁶

Consequently, based upon the evidence provided in the Allegation and the additional information referenced above, CBP determined there was reasonable suspicion that CAC entered covered merchandise into the customs territory of the United States through evasion, and imposed interim measures.⁷

On June 17, 2020, CBP issued an initial Request for Information (“RFI”) to both CAC and Indokarbon. CAC submitted its response on August 12, 2020 (“CAC RFI Response”), and Indokarbon submitted its responses on August 14, 2020 (“Indokarbon Aug 14 RFI Response”) and September 15, 2020 (“Indokarbon Sept 15 RFI Response”). CBP issued a supplemental RFI to Indokarbon on September 30, 2020, and Indokarbon submitted its response on October 26, 2020 (“Indokarbon Oct 26 RFI Response”).

³ See December 20, 2019 Allegation narrative at 9-11.

⁴ See CBP Memorandum, “Initiation of Investigation for EAPA Case Number 7430”, February 20, 2020.

⁵ See LSS Reports [[report numbers]], May 15, 2020.

⁶ See “[[data source]]. May 14, 2020.

⁷ See May 28, 2020 “Notice of Initiation of Investigation and Interim Measures - EAPA Case 7430” (“NOI”). Note that CAC also submitted information associated with an entry of its merchandise in its April 24, 2020 response to CBP’s CF-28 (“CAC CF-28 Response”).

On December 10, 2020, the Allegers submitted written argument.⁸ On December 14, 2020, CAC submitted written argument.⁹ On December 29, 2020, the Allegers submitted a response to written argument.¹⁰ On January 25, 2021, CAC resubmitted its response to written argument, after having removed untimely new factual information.¹¹

Analysis as to Evasion

Under 19 USC 1517(c)(1)(A), to reach a determination as to evasion, 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 or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise.”¹²

In its RFI response, CAC stated it sources activated carbon derived from coconut shells from suppliers/manufacturers in [country(ies)], and that CAC’s coal based activated carbon is supplied from China, [country(ies)].¹³ CAC also stated it sends [activities].¹⁴ Furthermore, it noted it has [entity],¹⁵ and that it has a regeneration facility in the United States.¹⁶

CAC stated that it [activities].¹⁷ CAC stated that merchandise that was regenerated abroad has been shipped back to CAC for importation into the United States.¹⁸ CAC acknowledged it had misclassified certain entered merchandise as coconut-based rather than coal-based, noting that “{u}pon review, it appears reimports of certain reactivated coal-origin carbon (originally spent carbon is exported from the United States for reactivation) was incorrectly described as being for a coconut source,” but that this had no effect on duties due.¹⁹

In summary, CAC claims its imports of activated carbon from Indokarbon are not covered by the AD order because they are not of Chinese origin and/or [

product description(s)

].

⁸ See December 10, 2020 “Written Argument” (“Allegers Written Argument”).

⁹ See December 14, 2020 “Brief/Comments of Carbon Activated Corporation” (“CAC Written Argument”).

¹⁰ See December 29, 2020 “Allegers’ Response to Written Argument” (“Allegers Response to Written Argument”).

¹¹ See January 25, 2021 “Rebuttal to Alleger’s Written Arguments under 19 C.F.R. §165.26” (“CAC Response to Written Argument”).

¹² 19 U.S.C. § 1517(a)(5).

¹³ See CAC RFI Response at 15.

¹⁴ *Id.*

¹⁵ *Id.* at 7.

¹⁶ *Id.* at 8.

¹⁷ *Id.* at 26.

¹⁸ *Id.* at 5.

¹⁹ *Id.*

Although the Allegers identified information indicating shipments of activated carbon from China to Indokarbon, and documentation provided by Indokarbon also indicates such shipments occurred, there is no specific information linking such Chinese shipments to CAC’s entries into the United States. The volumes of those individual Chinese shipments [volume comparison], but the volume of CAC’s entries from Indokarbon [volume comparison] by CAC, as recorded, for example, by [data source] customs data. Such similarity in individual shipment quantities in and of itself does not constitute substantial evidence of evasion, in particular given the CAC entries [volumes] occurred [frequency(ies)], covering [volume comparison].

The apparent misclassification by CAC of certain activated carbon entries as coconut-shell based rather than coal-based supports concluding that some of the merchandise in question was not Indonesian virgin activated carbon, given the absence of evidence that Indokarbon is able to produce virgin coal-based activated carbon. However, such misclassification does not constitute substantial evidence that the merchandise entered was covered by the scope of the AD order. For example, coal-based activated carbon would not be covered by the scope of the Chinese AD order if it had been produced in a third country, or if it had been either chemically activated or reactivated, as those two categories of excluded products are defined by the scope of the AD order.²⁰

Moreover, CBP’s lab testing results indicated the merchandise for certain shipments to CAC [product source],²¹ and CBP’s testing could not rule out the possibility that [product source].²² The Allegers themselves cited information indicating Indokarbon has coconut-shell based activated carbon production capacity,²³ and information on the record of the investigation, as discussed below, supports concluding that CAC imported [product source]. At this time, CBP has no basis for concluding such merchandise identified as [product source] was covered by the scope of the order.

CAC indicated that it reactivates spent activated carbon itself, but that “{d}ue to limited capacity, CAC sends spent carbon abroad to [entity(ies)] and [entity(ies)],” and that it “arranges the export of shipments and pays the freight charges.” CAC provided bill of lading as proof of such exportation to [entity(ies)].²⁴ In addition, CBP’s export records (AES) indicate substantial quantities of CAC shipments of such merchandise, including to [entity(ies)] during the period of investigation.²⁵

²⁰ See the scope of the AD order cited in the December 20, 2019 Allegation narrative at 3-5.

²¹ See CBP lab testing results for abbreviated entry number 6006, dated May 15, 2020, and testing results for abbreviated entry number 0164, dated September 3, 2020.

²² See the aforementioned testing results, as well as the May 15, 2020 testing results for abbreviated entry numbers 5388, 5396, 5917, and 6188, dated May 15, 2020.

²³ See December 20, 2019, Allegation narrative at 4.

²⁴ See CAC RFI Response at 26, citing Exhibit D-27.

²⁵ See AES Data summary document, dated October 15, 2020.

Indokarbon stated it [activities],²⁶ Indokarbon also stated that [activities], it instead [activities and pricing],²⁷ Examination of the purchase orders from CAC for 2019 indicated [pricing], inconsistent with the [pricing] cited by Indokarbon, with a few instances of [pricing]²⁸ However, in almost all instances, the transactions identified as involving [product(s)] were priced [pricing] the unit prices for sales of coal-based activated carbon from Chinese suppliers to Indokarbon.²⁹

CBP was unable, based on Indokarbon’s RFI responses, to tie individual Indokarbon shipments to CAC to specific Indokarbon production batches, whether of [product(s)] or of virgin coconut-shell based activated carbon, or to tie individual Indokarbon imports of coal-based activated carbon to specific sales to parties other than CAC. This resulted at least in part from various gaps and inconsistencies in Indokarbon’s RFI responses due to inadequate inventory and production records. For example, without sufficient information on Indokarbon’s inventories, which was the primary focus of CBP’s supplemental RFI issued to Indokarbon, CBP is unable to make an assessment about Indokarbon’s overall production capacity, whether the material inputs were commensurate with manufacturing output, or the specific sources of all particular shipments by Indokarbon to CAC in the United States. CBP’s initial RFI focused more upon Indokarbon production records, and in response to CBP’s request for period-wide production records, Indokarbon provided information only for a sample of the overall period.

Despite the limitations of Indokarbon’s RFI responses such as those referenced above, the RFI responses contained a substantial amount of documentation, which were provided in the face of lockdowns in Indonesia due to COVID-19. Further hindering Indokarbon’s efforts were problems resulting from [event]. Furthermore, the reporting problems do not constitute substantial evidence that the CAC entries in question consisted of Chinese coal-based activated carbon [product description], or that they had originated in China at all.

There is an example of an invoice from a Chinese supplier to Indokarbon that appears to reference [document information] of CAC, which indicates the possibility of transshipment of some Chinese merchandise through Indokarbon to CAC. From the many invoices involving Indokarbon that the Indonesian company provided in its RFI responses, CBP identified a single invoice from the Chinese supplier to Indokarbon that references a [document information] consistent with those of CAC. The Chinese supplier shipped the merchandise to Indokarbon with additional merchandise associated with a [document information] that is consistent with

²⁶ See Indokarbon Sept 15 RFI Response at 3.

²⁷ See Indokarbon Sept 15 RFI Response at 3. Indokarbon noted that it charges CAC for services. See Indokarbon Aug 14 RFI Response at 31.

²⁸ See Indokarbon Aug 14 RFI Response at Exhibit D-12. The characterization of this as a [pricing] is based, for example, on narrative in Indokarbon’s response. *Id.* at 30-32.

²⁹ See *e.g.* Indokarbon Oct 26 RFI Response at Exhibit 5-3.

those issued by Indokarbon. This Chinese supplier-to-Indokarbon transaction involving an apparent CAC [document information] was unusual in that it did not follow the same pattern as other shipments identified in Indokarbon's responses that Indokarbon received from its Chinese vendors. Based on CBP's analysis, the Chinese supplier invoiced Indokarbon for activated carbon based on a CAC [document information] associated with [entity]. In addition, documentation indicates the merchandise was shipped to Indokarbon, which then received it into its inventory and remitted a wire transfer paying for the merchandise.³⁰ However, there is no indication that the merchandise in question, which is a small fraction of the total imports of CAC from Indokarbon during the period of investigation, was actually shipped to the United States, as opposed to some [entity] or some party other than CAC. Furthermore, even if the merchandise was eventually shipped to CAC and entered into the United States, it is not evident that it would not have been part of an entry of Chinese-origin activated carbon that CAC had entered as type 03 merchandise subject to the AD order.

Actions Taken Pursuant to the Negative Determination as to of Evasion

In light of CBP's determination that there is not substantial evidence that CAC entered covered merchandise into the customs territory of the United States through evasion during the period of this investigation, CBP will reverse any actions taken with respect to entries subject to this investigation. CBP's negative determination as to evasion in this EAPA investigation does not preclude CBP or other agencies from pursuing other enforcement actions or penalties as may be appropriate.

Sincerely,



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

³⁰ The referenced [entity] invoice to Indokarbon contains a [document information] (*i.e.*, [document info]) in the format consistent with those of [entity]. *See* Indokarbon Oct 26 RFI Response, at Exhibit 1-2 (Invoice [invoice number]).