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Re: Enforce and Protect Act ("EAPA") Case Number 7250; *Diamond Sawblades and Parts Thereof from the People's Republic of China and the Republic of Korea: Antidumping Duty Orders*, 74 FR 57145 (Nov. 4, 2009); Lyke Industrial Tool, LLC and Diamond Sawblades Manufacturers' Coalition; 19 CFR § 165.15(a)

Dear Ms. Levinson, Ms. Powell, Mr. Pickard, and Ms. Thorson:

This is in response to the request for *de novo* administrative review of a determination of evasion dated August 10, 2021, made by the Trade Remedy & Law Enforcement Directorate ("TRLED"), Office of Trade ("OT"), U.S. Customs and Border Protection ("CBP"), pursuant to 19 U.S.C. § 1517(c), in Enforce and Protect Act ("EAPA") Case Number 7250 (hereinafter referred to as the "August 10 Determination").¹ The request for review, dated September 22, 2021, was submitted to CBP OT Regulations and Rulings ("RR") by Fox Rothschild LLP, on behalf of Lyke Industrial Tool, LLC ("Lyke"), pursuant to 19 U.S.C. § 1517(f) and 19 CFR § 165.41(a).

¹ See Notice of Determination as to Evasion in EAPA Case Number 7250, dated August 10, 2021.

I. Background

Inasmuch as the facts in this case were fully set forth in the August 10 Determination, we will not repeat the entire factual history herein.

In brief, according to the record evidence, on July 2, 2018, the Diamond Sawblades Manufacturers' Coalition ("DSMC"), an association of U.S. producers of circular steel sawblades and producers of the inner steel cores of such sawblades, filed an EAPA allegation against Lyke. In its submission, DSMC alleged that Lyke evaded antidumping duty ("AD") Order A-570-900 on finished diamond sawblades and parts thereof from the People's Republic of China ("China") by both transshipping covered merchandise through a third country and misclassifying covered merchandise shipped directly from China. On July 3, 2018, TRLED acknowledged receipt of the properly filed allegation.²

On July 25, 2018, TRLED initiated a formal investigation, under Title IV, section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, in response to DSMC's allegation.³

The allegation, and CBP's subsequent investigation, pertained to the AD Order issued by the U.S. Department of Commerce ("Commerce") on imports of diamond sawblades from China.⁴

Commerce defined the scope of the relevant AD Order as follows:

The products covered by these orders are all finished circular sawblades, whether slotted or not, with a working part that is comprised of a diamond segment or segments, and parts thereof, regardless of specification or size, except as specifically excluded below. Within the scope of these orders 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

² See "Official Receipt Notification Email – (7250)," dated July 3, 2020.

³ See Notice of Initiation of Investigation and Interim Measures Taken as to Lyke Industrial Tools, LLC Concerning Evasion of the Antidumping Duty Order on Diamond Sawblades from the People's Republic of China, dated October 30, 2018 (the "Notice of Initiation").

⁴ See *Diamond Sawblades and Parts Thereof from the People's Republic of China and the Republic of Korea: Antidumping Duty Orders*, 74 Fed. Reg. 57145 (Nov. 4, 2009).

not included within the scope of these orders. 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 these orders. 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 these orders. Diamond sawblade cores with a Rockwell C hardness of less than 25 are excluded from the scope of these orders. 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 these orders. Merchandise subject to these orders 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. The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of these orders is dispositive.

On October 30, 2018, in accordance with 19 CFR § 165.2, CBP issued the Notice of Initiation to all interested parties, notifying the parties of CBP’s decision to take interim measures based upon reasonable suspicion that Lyke imported diamond sawblades covered by the AD Order into the United States, which had been transshipped through Thailand.⁵ Per the notice, the entries subject to the investigation included those entered for consumption from July 3, 2017, through the pendency of the investigation.

On July 1, 2019, TRLED submitted a Scope Referral Request to Commerce pursuant to 19 CFR § 165.16(a).⁶ CBP submitted the Scope Referral Request after CBP officials discovered boxes of Chinese-made components during a site visit to Lyke’s Thailand manufacturer, Like Tools Co., Ltd. (“Like Tools”). During this site visit, CBP officials observed boxes containing steel blades and sawblade cores bearing labels indicating they had originated in China, including some on which “Made in China” labels were covered by “Made in Thailand” labels.⁷ When asked, Like Tools could not provide an explanation for the double labeling, but did open the boxes to verify they contained steel cores.⁸ Like Tools also provided the CBP officials with invoice documentation indicating the company had sourced raw materials, [material], from China.⁹

⁵ See Notice of Initiation. Available at: https://www.cbp.gov/sites/default/files/assets/documents/2018-Nov/EAPA7250-Initiation-and-Interim-Measures-Determination_PV.pdf.

⁶ See “Scope Referral Request for Merchandise under EAPA Investigation 7250,” dated July 1, 2019 (the “Scope Referral Request”).

⁷ See CBP Regulatory Audit and Agency Advisory Services (“RAAAS”) Site Visit Report of Like Tools’ Thailand Facility, dated June 26, 2019, at 13 (the “RAAAS Site Visit Report”). This visit followed an earlier cargo examination of a Lyke shipment at the Port of Long Beach/Los Angeles in which CBP also found evidence of apparent repacking and other discrepancies. See CBP Memorandum, “EAPA Investigation #7250,” dated September 27, 2018 (the “Cargo Examination Memorandum”).

⁸ See RAAAS Site Visit Report at 13.

⁹ *Id.*

As a result, CBP sent the Scope Referral Request to Commerce, inquiring as to whether the following categories of products were within the scope of the AD Order: (1) cores sourced from Thailand joined with Chinese segments in Thailand; (2) cores and segments both sourced from China and joined in Thailand; and (3) cores sourced in China and joined in Thailand with Thai-sourced segments.¹⁰

On June 3, 2021, Commerce reverted a determination to CBP (the “Scope Determination”), advising that all three categories of sawblades are subject to the AD Order.¹¹ In part, Commerce based its determination on adverse facts available (“AFA”), finding that Lyke withheld “necessary information” and provided unreliable representations to both CBP and Commerce.¹²

On August 10, 2020, TRLED issued a Notice of Determination.¹³ TRLED found substantial evidence that Lyke entered into the customs territory of the United States diamond sawblades subject to the AD Order that had been transshipped through Thailand, and that Lyke had failed to deposit AD duties on this merchandise.

On September 22, 2021, Lyke timely filed a Request for Administrative Review.¹⁴ On September 24, 2021, CBP sent an email to all parties to the investigation notifying them of the commencement of the administrative review process, which was designated RR case number H320857. On October 6, 2021, DSMC timely submitted a Response to Lyke’s Administrative Review Request.¹⁵

II. Discussion

A. Administrative Review and Standard of Review

Pursuant to 19 U.S.C. § 1517(f)(1) and 19 CFR § 165.45, upon a request for administrative review, CBP will apply a *de novo* standard of review and will render a determination appropriate under the law according to the specific facts and circumstances on the record. For that purpose, CBP will review the entire administrative record upon which the initial determination was made, the timely and properly filed request(s) for review and responses, and any additional information that was received pursuant to 19 CFR § 165.44. The administrative review will be completed within 60 business days of the commencement of the review.

¹⁰ See Scope Referral Request at 1-2.

¹¹ See Response from Commerce, “Covered Merchandise Referral Regarding EAPA Investigation No. 7250,” dated June 7, 2021.

¹² 74 Fed. Reg. 57145.

¹³ See August 10 Determination. Available at: <https://www.cbp.gov/sites/default/files/assets/documents/2021-Aug/08-10-2021%20-%20TRLED%20-%20Final%20Determination%20%28508%20Compliant%29%20-%20%287250%29%20-%20PV.pdf>.

¹⁴ See “Lyke Industrial Tool, LLC Request for Administrative Review,” dated September 22, 2021 (the Lyke Request”).

¹⁵ See DSMC “Response to Administrative Review Request,” dated October 6, 2021 (the “DSMC Response”).

B. Law

Title 19 U.S.C. § 1517(c)(1) provides, in relevant part, as follows:

(1) Determination of Evasion

(A) In general

Except as provided in subparagraph (B), not later than 300 calendar days after the date on which the Commissioner initiates an investigation under subsection (b) with respect to covered merchandise, the Commissioner shall make a determination, based on substantial evidence, with respect to whether such covered merchandise was entered into the customs territory of the United States through evasion.

The term evasion is defined in 19 U.S.C. § 1517(a)(5), as follows:

(5) Evasion

(A) In general

Except as provided in subparagraph (B), 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 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.

See also 19 CFR § 165.1.

Examples of evasion include, but are not limited to, misrepresentation of the merchandise’s true country of origin (*e.g.*, through false country of origin markings on the product itself or false sales), false or incorrect shipping and entry documentation, or misreporting of the merchandise’s physical characteristics.¹⁶

Covered merchandise is defined as “merchandise that is subject to a CVD order issued under section 706, Tariff Act of 1930, as amended (19 U.S.C. § 1671e), and/or an AD order issued under section 736, Tariff Act of 1930, as amended (19 U.S.C. § 1673e).”¹⁷

“Substantial evidence” is not defined by statute. However, the “substantial evidence” standard has been reviewed by the courts in relation to determinations by other agencies.

¹⁶ *See Investigation of Claims of Evasion of Antidumping and Countervailing Duties, Interim Regulations*, 81 Fed. Reg. 56477, 56478 (August 22, 2016).

¹⁷ *See* 19 CFR § 165.1.

“Substantial evidence requires more than a mere scintilla, but is satisfied by something less than the weight of the evidence.”¹⁸

Therefore, CBP must determine whether a party has entered merchandise that is subject to an AD or countervailing (“CV”) duty order into 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, that resulted in the reduction or avoidance of applicable AD or CV duty cash deposits or duties being collected on such merchandise.

C. Lyke’s Arguments

Lyke requests that we reverse the August 10 Determination regarding the entries subject to the EAPA 7250 investigation.

First, Lyke disputes the correctness of Commerce’s Scope Determination, arguing that Commerce improperly relied on AFA in determining that finished diamond sawblades assembled by Like Tools in Thailand with Chinese and Thai-origin components were subject to the AD Order.¹⁹ Lyke argues that it was not given sufficient opportunity to provide information and that the facts in the record do not justify a determination that the sawblades were within the scope of the AD Order.²⁰ Lyke also asserts that Commerce should have reached the same conclusion it did in a previous Scope Referral related to Diamond Tools Technology (“DTT”), in which Commerce held that diamond sawblades made in Thailand by DTT using either Chinese cores or Chinese segments were not subject to the AD Order.²¹

Second, Lyke argues that the August 10 Determination is not supported by substantial evidence. Specifically, Lyke asserts that TRLED relied heavily on “discrepancies” in the record “that did not relate specifically to the issue of transshipment....”²² In relevant part, Lyke argues that TRLED placed “undue weight” on the following elements of the record: (1) inconsistencies regarding the ownership of Lyke and its relationship with Like Tools, the Thailand manufacturer; (2) the fact that Lyke shares a corporate address and at least two employees with Power Tek Tools, another importer previously determined to have engaged in evasion using the same supplier as Lyke; (3) the fact that “Like Tools purchased sawblades from China in 2017 and resold them to a Thai Buyer in 2018”; (4) “apparent discrepancy in the record over the date on which Like Tools began manufacturing diamond sawblades in Thailand”; and, (5) the fact that boxes of Chinese-marked cores were found on Like Tools’ premises in Thailand.²³

¹⁸ See *Altex, Inc. v. United States*, 370 F.3d 1108, 1116 (Fed. Cir. 2004) (internal citations and quotation marks omitted).

¹⁹ See Lyke Request at 2.

²⁰ *Id.* at 2-4.

²¹ See Commerce Memorandum, “*Diamond Sawblades and Parts Thereof from the People’s Republic of China: Notification of the Final Determination of the Anti-Circumvention Inquiry in Response to the Covered Merchandise Referral A-579-900*,” dated July 10, 2019, from EAPA Case No. 7184.

²² See Lyke Request at pp. 3-4; 9-10.

²³ *Id.* at 6-7.

Third, Lyke argues that TRLED failed to account for Like Tools' manufacturing capacity in Thailand. Lyke asserts that TRLED failed to give sufficient weight to various items in the record that it claims demonstrate that Like Tools possessed sufficient equipment and purchased sufficient raw materials to produce the subject diamond sawblades at its facility in Thailand. In relevant part, Lyke references the submission of an equipment list and purchase documentation, information regarding raw material purchases and consumption, and "excerpts for cores both from Chinses [sic] suppliers and Thai supplier [sic]." ²⁴

D. DSMC's Arguments

DSMC asserts that there is more than sufficient evidence in the record to find that Lyke evaded the AD Order.

First, DSMC argues that RR should affirm TRLED's August 10 Determination, based on Commerce's Scope Determination, that the merchandise exported from Like Tools' Thailand facility is "covered merchandise." ²⁵ DSMC argues that CBP does not have the authority to ignore Commerce's decision in response to TRLED's covered merchandise referral, which determined that finished diamond sawblades assembled in Thailand with Chinese and Thai-origin components are subject to the AD Order. ²⁶ Ignoring the Scope Determination, DSMC asserts, would exceed CBP's statutory authority and be contrary to established judicial precedent. ²⁷

Second, DSMC asserts that sufficient evidence in the record exists to find that Like Tools incorporated Chinese-origin components into the merchandise that was assembled in Thailand and subsequently shipped to Lyke in the United States. ²⁸ DSMC notes that CBP has observed "Made in China" stickers first on merchandise imported by Lyke into the United States and again on cores on-site at Like Tools' facility in Thailand. ²⁹ Furthermore, DSMC argues, the fact that Like Tools may have sufficient production facilities in Thailand is "besides the point" because Commerce has determined that any diamond sawblades produced by Like Tools using Chinese components are subject merchandise.

Finally, DSMC argues that Lyke failed to present any documentation rebutting the evidence in the record that Chinese-origin inputs were incorporated into the merchandise assembled at the Thailand facility. ³⁰ Furthermore, DSMC asserts that, although Lyke argues that CBP placed "undue weight" on certain elements in the record, Lyke fails to rebut many of these points or to elaborate on why or how CBP placed undue weight. ³¹

²⁴ *Id.*

²⁵ DSMC Response at 8.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 9.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

E. Administrative Review Analysis

Pursuant to 19 U.S.C. § 1517(f)(1) and 19 CFR § 165.45, RR will apply a *de novo* standard of review under the law, based solely upon the facts and circumstances on the administrative record in the proceeding. In making our determination, we reviewed: (1) the entire administrative record upon which the August 10 Determination was made by TRLED; and (2) the timely and properly filed request for review and response.

As an initial matter, we find that CBP is bound by Commerce’s Scope Determination that the subject diamond sawblades, which were assembled by Like Tools in Thailand with Thai and Chinese-origin inputs, were within the scope of the AD Order. As noted in the record, the AD Order, which covers “finished circular sawblades,” was ambiguous as to whether it extends only to sawblades finished in China or also to those finished outside of China but containing Chinese-origin components.³² As a result, TRLED properly referred the matter to Commerce pursuant to 19 CFR § 165.16(a), which requires CBP to make a scope referral to Commerce when “CBP cannot determine whether the merchandise described in an allegation is properly within the scope” of an antidumping duty order. Although Lyke urges CBP to “disregard Commerce’s findings,”³³ there is no mechanism in the applicable law or regulations permitting CBP to do so.

It is well established that CBP plays a “ministerial” role in enforcing antidumping duty order-related determinations issued by Commerce, which role is to follow Commerce’s instructions in collecting deposits of estimated duties and in assessing antidumping duties, together with interest, at the time of liquidation.³⁴ However, “Customs, incident to its ‘ministerial’ function of fixing the amount of duties chargeable, must make factual findings to determine ‘what the merchandise is, and whether it is described in an order’ and must decide whether to apply the order to the merchandise.”³⁵ Pursuant to its ministerial function, though, CBP cannot “affect the scope of the order.”³⁶ Accordingly, in the context of protests filed by importers against AD duties, CBP has previously declined to find that merchandise is outside the scope of an AD order where that merchandise had been previously deemed by Commerce to be within the scope of an AD order.³⁷ In so doing, CBP has determined that to do otherwise “would infringe upon Commerce’s authority to determine that a particular type of merchandise is within the class or kind of merchandise described in an existing finding of dumping and would potentially cause CBP to impermissibly alter the scope.”³⁸ In the present matter, after

³² See Referral Request at 1-2.

³³ See Lyke Request at 10.

³⁴ See *Mitsubishi Electronics America, Inc. v. United States*, 44 F.3d 973, 977 (Fed. Cir. 1994) (“Customs only applies antidumping rates determined by Commerce. Further, Customs has a merely ministerial role in liquidating antidumping duties.... Customs cannot ‘modify . . . [Commerce’s] determinations, their underlying facts, or their enforcement’”) (citing *Royal Business Machs., Inc. v. United States*, 1 C.I.T. 80, 507 F. Supp. 1007, 1014 n.18 (Ct. Int’l Trade 1980)); see also *Fujitsu Ten Corporation of America v. United States*, 21 C.I.T. 104, 107 (1997); and *American Hi-Fi International, Inc. v. United States*, 19 C.I.T. 1340, 1342-43 (1995).

³⁵ See *LDA Incorporated v. United States*, 79 F. Supp. 3d 1331, 1339 (Ct. Int’l Trade 2015).

³⁶ *Id.*

³⁷ See HQ H303403 (Sep. 27, 2021).

³⁸ *Id.*

receiving clarification from Commerce, CBP received unambiguous guidance from Commerce that the types of diamond sawblades described above are indeed within the scope of the AD Order.³⁹ As such, to “disregard” Commerce’s Scope Determination, as Lyke requests, would impermissibly affect the scope of the AD Order.⁴⁰

Similarly, Lyke’s assertion that TRLED should have instead found, based on Commerce’s scope determination in a different case -- EAPA Case No. 7184 -- that the diamond sawblades imported by Lyke incorporating Chinese-origin cores were not subject to the AD Order, is incorrect. The applicable regulation, 19 CFR § 165.16(a), makes clear that each scope referral is based on the individualized facts of an allegation. Furthermore, in issuing the Scope Determination here in question, Commerce made clear that the determinations in both cases were predicated on “company-specific” information.⁴¹ As such, Commerce’s scope determination in EAPA Case No. 7184 has no bearing on the present matter.

Furthermore, pursuant to relevant law, the appropriate procedure for Lyke to dispute Commerce’s scope determination is via judicial review, not via the CBP administrative review process. As outlined in 19 U.S.C. § 1517(b)(4)(D), the proper avenue for Lyke to dispute Commerce’s findings is by seeking judicial review at the Court of International Trade.⁴²

As a result, it is our position that the record fully and adequately supports the finding that Lyke imported diamond sawblades containing Chinese-origin cores in contravention of the AD Order as clarified in Commerce’s Scope Determination. Significantly, in its RFI Response, Like Tools admitted that it [action] to its Thailand facility for inclusion in the finished diamond sawblades produced at that plant.⁴³ Like Tools also produced purchase invoice data detailing the raw materials Like Tools imported from China to its plant in Thailand; this data shows that Like Tools indeed purchased steel cores for incorporation into the diamond sawblades manufactured at its

³⁹ See Scope Determination at pp. 1-2.

⁴⁰ As part of its argument, Lyke urges CBP to disregard the Scope Determination on the theory that Commerce improperly used AFA in making its determination. However, CBP lacks authority to review the methodology upon which Commerce makes its determination. Nevertheless, we note that evidence in CBP’s administrative record, such as the inadequately explained labeling/packing discrepancies found at the Thai facility and upon cargo examination in the United States, is consistent with Commerce’s use of AFA.

⁴¹ CBP had requested that Commerce provide a country-wide determination regarding the use of Chinese-origin components in diamond sawblades. Commerce nevertheless declined, noting that both the request in EAPA Case No. 7250 and previously in Case No. 7184 were based on “company-specific information.” See Scope Determination at p. 3. This adds additional support to the interpretation that Commerce’s scope determinations in EAPA Case Nos. 7184 and 7250 should be viewed as individualized and separate determinations.

⁴² See 19 U.S.C. § 1517(b)(4)(D) (“Nothing in this paragraph shall be construed to affect the authority of an interested party to commence an action in the United States Court of International Trade under section 1516(a)(2) of this title with respect to a determination of the administering authority under this paragraph.”).

⁴³ See Like Tools’ RFI Response at p. 5.

plant.⁴⁴ Like Tools, furthermore, stated that [company] U.S. customer during the investigation period.⁴⁵

More specifically, the complete record, as reviewed by TRLED, demonstrates that at least some of the diamond sawblades Like Tools supplied to Lyke during the period of investigation were made entirely of Chinese segments and cores, while others were manufactured with Chinese-origin cores. For instance, during a cargo examination of one Lyke entry, CBP officials observed cartons that carried “Made in Thailand” labels covering “Made in China” labels on boxes of covered merchandise imported by Lyke.⁴⁶ Furthermore, during a site visit to Like Tools’ Thailand facility, CBP observed many sawblades with no country-of-origin markings, and those that did have markings were only marked with easily removable stickers.⁴⁷ These facts are indicative that some of Lyke’s shipments of diamond sawblades contained Chinese-origin merchandise within the scope of the AD Order.⁴⁸

Further, even if Like Tools legitimately manufactured all the diamond sawblades in Thailand that it sold to Lyke, there is clear evidence that some of this production used Chinese-origin cores and segments. During the site visit, CBP officials discovered boxes of diamond sawblade cores bearing “Made in Thailand” labels that physically covered labels indicating the cores had originated in China.⁴⁹ CBP’s auditors also reviewed invoice data demonstrating that Like Tools had sourced many of its raw materials from China, including [material].⁵⁰ Lyke itself also stated that Like Tools “sources complete segments from China and Thailand.”⁵¹ 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.⁵² Although Lyke contends that the cores it sourced from [supplier] could have been produced in Thailand, the record does not support such a conclusion.

Very significantly, CBP’s verification at Like Tools demonstrated that the cores used by Like Tools in its production were [country of origin]. Specifically, CBP’s auditors found:

Raw Materials Purchased for Production of Diamond Sawblades

Like purchased the raw materials identified in RFI Exhibit B-7, List of Purchases. The raw materials purchased included [materials]. The raw materials were represented by invoices from the

⁴⁴ See Exhibit B-7 to Like Tools’ RFI Response.

⁴⁵ See Like Tools’ RFI Response at 4.

⁴⁶ See Cargo Investigation Memorandum at 1-2.

⁴⁷ See CBP Attaché Site Visit Memorandum at 2, dated September 28, 2018.

⁴⁸ See RAAAS Site Visit Report at 13; see also, CBP Attaché Site Visit Memorandum at 2.

⁴⁹ See RAAAS Site Visit Report at 13.

⁵⁰ *Id.* (referencing Exhibit 7 to Like Tools’ RFI responses).

⁵¹ See CF-28 Response at 4.

⁵² See Scope Determination at 15-17.

suppliers. We determined that the purchase invoice numbers, referenced in RFI Exhibit B-7, beginning with "LIKE" were sourced from China and beginning with "RR" were sourced in Thailand. The raw materials of [redacted materials] were purchased in Thailand. The raw materials of [redacted materials] were purchased from China (Items from [redacted co.] Thailand were ultimately sourced from the company's parent [redacted country]). We verified the China-sourced items against the Thailand entry declaring the goods.

During our production facility tour, we observed boxes containing the 328mm diameter steel cores for the [redacted co.] Thailand invoices had a label under the [redacted co.] Thailand label that stated [redacted company], China. (Figs. 14-16). When asked, the Production Manager stated he did not know about the double labels indicating Thailand were physically covering labels that stated cores were produced in China. The Manager opened the boxes for team to verify they contained cores and not finished blades (Fig. 17).⁵³

The above conclusions and findings are fully supported by the record and are indicative that at least some of Lyke's entries during the period under investigation contained cores, or segments, or both, that were made in China. Such products are within the scope of the AD Order. Moreover, neither Like Tools nor Lyke was able to substantiate that the diamond sawblades imported by Lyke into the United States contained only Thai-manufactured cores and segments.

In addition, a review of the administrative record also indicates that Lyke entered diamond sawblades sourced from Like Tools, into the United States as type "01" entries, and, therefore, the applicable AD/CV duties owed were not deposited.⁵⁴ (Imports that are covered by AD/CVD orders are required to be entered as "03" entries; entries declared as "01" entries cannot be subject to AD/CVD orders.)⁵⁵ Because they contained merchandise subject to the AD Order, these entries should have been made as "03" entries, indicating that they are subject to an AD order. It was material and false for these entries to be made as "01" entries. That a material falsehood may have occurred as the result of a mistake, does not mean that evasion has not occurred – a falsity within the meaning of the EAPA statute can occur as a result of a mistake.⁵⁶ Hence, based on this evidence alone, we conclude that the record supports a finding of evasion.

⁵³ RAAAS Site Visit Report at 13 (footnote omitted).

⁵⁴ See, e.g., Lyke Entry Summary documents for Entry No. XX-XXXX6457 (showing entry of "circular saw blade" items manufactured by Like Tools and marked as type "01"); see also, National Targeting & Analysis Group, "Evasion NTAG Report" for EAPA allegation 7250, submitted July 11, 2018 ("All 9 entries [redacted company] for the prior year were filed as type 01").

⁵⁵ See, e.g., CBP Form 7501 Instructions, "Block 2) Entry Type," available at <https://www.cbp.gov/sites/default/files/assets/documents/2019-Sep/CBP%20Form%207501.pdf>.

⁵⁶ See *Diamond Tools Tech. LLC v. United States*, 2021 Ct. Int'l Trade LEXIS 155, 165 (2021) ("What is false can be so by intent, by accident, or by mistake...") (citing Black's Law Dictionary (11th ed., 2019)) (emphasis added).

Finally, we find Lyke’s arguments, that TRLED placed “undue weight on insignificant details,” to be either unpersuasive or not germane to the facts upon which we base our determination of evasion. For instance, Lyke characterizes the presence of Chinese-labeled components at Like Tools’ Thailand facility as merely the presence of “mismarked boxes of cores purchased from an unaffiliated company in Thailand.”⁵⁷ This argument is without merit and, indeed, supports a finding of evasion rather than detracting from it. As outlined above, CBP, by virtue of its ministerial role, must follow Commerce’s Scope Determination, which finds that diamond sawblades manufactured by Like Tools in Thailand that contain Chinese-origin cores are indeed subject to the AD Order. And with respect to the Scope Determination, the record provides ample evidence, both in the form of Like Tools’ own RFI response and in the corresponding invoice data, that Like Tools did in fact utilize Chinese-origin cores in manufacturing diamond sawblades. Moreover, this is not the only example of marking/packing discrepancies. The bottom line is that neither Like Tools nor Lyke was able to substantiate that the cores were actually made in Thailand.

Lyke’s argument that CBP disregarded evidence of Like Tools’ manufacturing capacity in Thailand is similarly unpersuasive; this argument, too, is undermined by the documentary evidence that Like Tools incorporated Chinese-origin cores into the sawblades produced in its Thailand facility.⁵⁸

Therefore, based upon the documentation and information provided in the administrative record of EAPA Case No. 7250, we determine there is substantial evidence to support a finding of evasion as to Lyke.

III. Decision

Based upon our *de novo* review of the administrative record in this case, including the timely and properly filed request for administrative review submitted by Lyke on September 22, 2021, and DSMC’s Response submitted on October 6, 2021, the August 10 Determination of evasion under 19 U.S.C. § 1517(c) is **AFFIRMED**.

⁵⁷ See Lyke Request at 6.

⁵⁸ See discussion regarding Like Tools’ facility at pp. 10-12 *infra*.

This decision does not preclude CBP or other agencies from pursuing additional enforcement actions or penalties. Pursuant to 19 CFR § 165.46(a), this final administrative determination is subject to judicial review pursuant to section 421 of EAPA.

Sincerely,

W. Richmond Beevers
Chief, Cargo Security, Carriers and Restricted Merchandise Branch
Office of Trade, Regulations and Rulings
U.S. Customs & Border Protection

Approved by:

Alice A. Kipel
Executive Director, Regulations & Rulings
Office of Trade
U.S. Customs & Border Protection