



U.S. Customs and
Border Protection

December 4, 2017

PUBLIC VERSION

EAPA Case Number: 7208

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President
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Re: Notice of initiation of investigation and interim measures taken as to Ceka Nutrition Inc. concerning evasion of the antidumping duty order on Glycine from the People's Republic of China

To Whom it May Concern:

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"), for Ceka Nutrition Inc ("Ceka Nutrition"). Specifically, CBP is investigating whether Ceka Nutrition has evaded the Antidumping Duty ("AD") order on Glycine from the People's Republic of China ("China"), A-570-836, with entries of glycine ("covered merchandise") into the United States. *See Glycine from the People's Republic of China: Antidumping Duty Order*, 60 Fed. Reg. 16,116 (Mar. 29, 1995). Because evidence establishes a reasonable suspicion that Ceka Nutrition has entered merchandise into the United States through evasion, CBP has imposed interim measures.

Period of Investigation

Pursuant to 19 C.F.R. § 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 for consumption, or withdrawal from warehouse for consumption, of merchandise in the customs territory of the United States." 19 C.F.R. § 165.1. GEO Specialty Chemicals, Inc. ("GEO Specialty") filed the allegation on August 1, 2017. CBP acknowledged receipt of the properly filed allegation against Ceka Nutrition on August 7, 2017. As such, the

entries covered by the investigation are those entered for consumption, or withdrawn from warehouse for consumption, from August 7, 2016, through the pendency of this investigation. *See* 19 C.F.R. § 165.2.

Initiation

On August 28, 2017, the Trade Remedy Law Enforcement Directorate (“TRLED”), within CBP’s Office of Trade, initiated an investigation under EAPA as the result of an allegation submitted by GEO Specialty as to evasion of antidumping duties. *See* Memorandum to the File on Initiation of EAPA Investigation 7208 to Troy P. Riley, Executive Director of TRLED (August 28, 2017). GEO Specialty, the largest domestic producer of glycine in the United States, alleged that importer, Ceka Nutrition, evaded AD order A-570-836 by importing into the United States glycine that was produced in China and transshipped through Cambodia by JC Chemicals Ltd. (“JC Chemicals”). *See* Allegation, at 1-2 (Aug. 2, 2017) (citing Exh. 4) (providing information from Datamyne).

First, GEO Specialty provided a recent report by the U.S. International Trade Commission (“ITC”), which concluded that there was no glycine production in Cambodia. *See* Allegation, at Exh. 2, (providing USITC Generalized System of Preferences: Possible Modifications, 2016 Review, USITC Pub. 4692 at 64 (June 2017)). The ITC reviewed the probable economic effect of the removal of glycine from eligibility for duty-free treatment under the Generalized System of Preferences program affecting U.S. industries producing like or directly competitive articles and on U.S. consumers. During its review, the ITC did not find evidence of production of glycine in Cambodia. *Id.* In addition, GEO Specialty noted that the Directory of World Chemical Producers did not list Cambodia among the countries known to produce glycine. *See* Allegation, at Exh. 3 (dated Jan. 31, 2017). Despite the lack of production of glycine in Cambodia, U.S. import data showed an increase in glycine shipments from Cambodia starting in 2015 and continuing through May 2017 (the latest available data as of the date of Allegation). *See* Allegation, at Exh. 1 (providing public U.S. imports for consumption data from January 2015 to May 2017).

Utilizing Datamyne to research publicly available import data for U.S. imports of glycine/aminoacetic acid, GEO Specialty discovered eleven shipments of glycine imported by Ceka Nutrition from September 2016 through July 2017. *See* Allegation, Exh. 4. Specifically, GEO Specialty researched the master and house bills of lading corresponding to the eleven shipments of glycine imported by Ceka Nutrition. The data showed that each master bill of lading was associated with a single house bill of lading, meaning each master bill of lading covered no other individual shipments aside from the shipments of glycine. *Id.*

At the house bill of lading level, the public data showed that the Marshall Islands was the country-of-origin for all eleven shipments of glycine consigned to Ceka Nutrition, a country that GEO Specialty noted was also not a known producer of glycine according to the Directory of World Chemical Producers. *See* Allegation, at 2 (citing Exh. 3) (providing the Directory of World Chemical Producers listing of glycine producers). JC Chemicals was the shipper listed on all eleven house bills of lading with an address in the Marshall Islands. *Id.* In contrast, eight of the eleven corresponding master bills of lading listed Cambodia as the country of origin for the

shipments of glycine, with the remaining three listing China as the country of origin. *Id.* Next GEO Specialty explained that JC Chemicals had a Chinese manufacturing facility in addition to the address indicating it was located in the Marshall Islands. *See* Allegation, Exh. 5 (providing the Panjiva report for JC Chemicals). JC Chemical's Panjiva profile listed its address as in the Changchun province of China. *See id.* This Chinese address was also listed in the "Manufacturer/Shipper" section of Ceka Nutrition's Import Genius profile.

Finally, Datamyne import data also showed that JC Chemicals had shipped merchandise that was not subject to the AD order directly to Ceka Nutrition from its Chinese address. *See* Allegation, at Exh. 6 (providing information from Datamyne). From February 2017 to June 2017, JC Chemicals shipped five shipments of lysine directly to Ceka Nutrition from China. Like glycine, lysine is an amino acid produced by JC Chemicals, and as with the glycine shipments, GEO Specialty researched the master and house bills of lading corresponding to the five shipments of lysine to Ceka Nutrition. *Id.* Again, the data showed that each master bill of lading was associated with a single house bill of lading. On the five house bills of lading, JC Chemicals at its Chinese address was listed as the shipper to consignee Ceka Nutrition. All bills of lading covering these shipments, whether master level or house level, listed China as the country-of-origin for the shipments of lysine to Ceka Nutrition.

On August 7, 2017, CBP acknowledged receipt of GEO Specialty's properly filed EAPA allegation. CBP will initiate an investigation if it determines that "[t]he information provided in the allegation ... reasonably suggests that the covered merchandise has been entered for consumption into the customs territory of the United States through evasion." *See* 19 C.F.R. §165.15(b). 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." *See* 19 C.F.R. §165.1. Thus, the allegation must reasonably suggest not only that merchandise subject to an antidumping and/or countervailing duty order was entered into the United States by the importer alleged to be evading, but that such entry was made by a material false statement or act, or material omission, that resulted in the reduction or avoidance of applicable antidumping and/or countervailing duty cash deposits or other security.

GEO Specialty has provided evidence to reasonably suggest that merchandise was entered through evasion by a material false statement or act, or material omission that resulted in the reduction or avoidance of applicable AD cash deposits, duties or other security. GEO Specialty provided import data showing that Ceka Nutrition imported glycine into the United States. Allegation, at Exh. 4. For eight of the eleven Ceka Nutrition imports of glycine for which GEO Specialty provided public information from September 2016 through July 2017, the master bills of lading listed Cambodia as the country-of-origin. GEO Specialty provided an ITC report, from June 2017, concluding that there was no glycine production in Cambodia, as well as the Directory of World Chemical Producers listing of glycine producers, which listed no producers of glycine in Cambodia. Therefore, imports were being declared from a country for which there were no known manufacturers of glycine.

Rather, the true country of origin, according to GEO Specialty, was China. GEO Specialty provided further evidence reasonably suggesting that JC Chemicals' manufacturing facility was actually in China rather than in the Marshall Islands or Cambodia, as reported on the bills of lading for the shipments of glycine. JC Chemicals' Panjiva profile listed a Chinese address, as did Ceka Nutrition's Import Genius profile in the "Shipper/Manufacturer" section. Allegation, at Exh. 5. Moreover, JC Chemicals shipped lysine, a separate, non-scope, amino acid product, directly to Ceka Nutrition in the United States from February 2017 to July 2017, from its Chinese address. Thus, in light of there being no known glycine production in Cambodia, and JC Chemicals has a demonstrated history of shipping non-scope amino acid products to Ceka Nutrition directly from China, GEO Specialty's allegation reasonably suggested that the origin of Ceka Nutrition's glycine imports was China and, therefore, subject to the AD order.

For the forgoing reasons, TRLED determined on August 28, 2017, that the allegation reasonably suggests that Ceka Nutrition entered covered merchandise into the customs territory of the United States through evasion by a material false statement or act, or material omission, and initiated an investigation pursuant to 19 U.S.C. § 1517(b)(1).

Interim Measures

Not later than 90 calendar days after initiating an investigation under EAPA, CBP will decide based on the record of the investigation if there is reasonable suspicion that such covered merchandise was entered into the customs territory of the United States through evasion. Therefore, CBP need only have sufficient evidence to support a reasonable suspicion that merchandise subject to an antidumping duty 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 or avoidance of applicable antidumping duty 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 there is a reasonable suspicion that Ceka Nutrition entered covered merchandise into the customs territory of the United States through evasion. *See* 19 C.F.R. § 165.24(a).

As stated above, the AD order on glycine from China was published in 1995. The following is the scope of the order:

The product covered by this antidumping duty order is glycine, which is a free-flowing crystalline material, like salt or sugar. Glycine is produced at varying levels of purity and is used as a sweetener/taste enhancer, a buffering agent, reabsorbable amino acid, chemical intermediate, and a metal complexing agent. This proceeding includes glycine of all purity levels. Glycine is currently classified under subheading 2922.49.4020 of the Harmonized Tariff Schedule of the United States (HTSUS).¹ Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

¹ *In separate scope rulings, the Department determined that: (a) D(-) Phenylglycine Ethyl Dane Salt is outside the scope of the order and (b) PRC-glycine exported from India remains the same class or kind of merchandise as the PRC-origin glycine imported into India. See Notice of Scope Rulings and*

Anticircumvention Inquiries, 62 FR 62288 (November 21, 1997) and Glycine from the People's Republic of China: Final Partial Affirmative Determination of Circumvention of the Antidumping Duty Order, 77 FR 73426 (December 10, 2012), respectively.

In a 2002 scope inquiry, the Department of Commerce determined that all glycine further processed or “purified” from Chinese-origin technical grade, or “crude,” glycine in a third country and exported to the United States is subject to the AD order on glycine from China. In reaching its determination, the Department of Commerce stated that:

{t}he scope of the Order clearly includes glycine of all purity levels. The glycine, as exported from China, was covered by the scope of the Order. When the lower grade glycine left the PRC, it was covered by the scope of the Order because it was manufactured/produced in the PRC. When the glycine was refined in Korea, it was still subject to the Order because it was manufactured/produced in the PRC. Further, after refinement, the glycine was still subject to the Order because, although the purity level changed in Korea, both the glycine exported from the PRC to Korea and the glycine exported from Korea to the Unite{d} States are covered by the description of the scope of the Order. Thus, the processing done in Korea did not produce merchandise that was outside the scope of the Order. *See* Memorandum from Barbara E. Tillman to Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration, “Final Scope Ruling; Antidumping Duty Order on Glycine from the People's Republic of China” (A-570- 836); (Watson Industries Inc.) (May 3, 2002) (“2002 Scope Ruling”).

Based on this determination, glycine of any purity level originating from China is subject to the AD order. Furthermore, refining or further processing in a third country of glycine of any purity level originating from China will not exclude the merchandise from the AD order. Thus, only glycine that did not originate from China at any purity level may be excluded from the AD order. In other words, if the glycine imported by Ceka Nutrition is imported into Cambodia from China and only refined in Cambodia, it would remain subject to the AD order on Glycine from China.

After initiation of this investigation, CBP issued CBP Form (“CF”) 28 to Ceka Nutrition on September 18, 2017, requesting information pursuant to this EAPA investigation, including: factory profile, production records, raw materials invoices, proof of payment to the manufacturer, and narrative descriptions of company officials and processes in place regarding CBP compliance. *See* Response of Ceka Nutrition to CF28 (Sept. 18, 2017) (“Supplemental CF28 response”). This CF28 followed another CF28 issued by CBP on July 31, 2017, in an action predating and unrelated to the EAPA investigation. *See* Response of Ceka Nutrition to CF28 (July 31, 2017) (“July CF28 response”). Information provided by Ceka Nutrition as part of both CF28 responses indicated that Ceka Nutrition and JC Chemicals were [

]. *See* July CF28 response, at 15. While sales contracts included in the July CF28 response named JC Chemicals from the Marshall Islands as the seller, and the manufacturer identification (MID) claimed by Ceka Nutrition identified [], the actual sales invoices identified the manufacturer as [], located at [

], Cambodia. *See* July CF28 response, at 15; and Supplemental CF28 response, at 14. According to the CF28 response, [] was incorporated in [], has [] employees, and specializes in producing [

]. See Supplemental CF28 response, at 14. Ceka Nutrition also provided certain information regarding [], including exterior and interior photographs of the facility and production equipment; production and employee attendance records; invoices for wood, water, electricity diesel usage, property management invoices, and tax payment documents. See Supplemental CF28 response, at 15-196. Although the CF28s requested that Ceka Nutrition submit information regarding raw materials, manufacturing overhead, labor, general and administrative expenses, and profit, as well as proof of payment to the manufacturer, Ceka Nutrition failed to submit any of the requested information.

Subsequent to reviewing the CF28 responses, CBP conducted a site visit to [] in Cambodia on October 31, 2017, to verify the information regarding [] provided in Ceka Nutrition's CF28 responses. CBP noted serious discrepancies between the information gained during the site visit and the information provided in Ceka Nutrition's CF28 responses, as summarized below. See Memorandum from Robert M. Thommen, CBP Attaché-Thailand to Troy P. Riley, Executive Director, Trade Remedy Law Enforcement Directorate (Nov. 9, 2017) ("Site Visit Memorandum").

Despite Ceka Nutrition's claim that [] produces glycine, and [] claim that it further processes "technical grade" Chinese-origin glycine for export, CBP did not find evidence supporting these claimed levels of production, processing, or packaging at [] facility in Cambodia. As previously noted, according to Ceka Nutrition's CF28 response, [] with an annual production capacity of [] metric tons. During the site visit in Cambodia, [] manager contradicted that information by stating to CBP that [] only further processes "technical grade" glycine imported from China to remove impurities at an annual capacity of [] metric tons, and processes no other products. CBP observed no other products onsite aside from glycine. See Site Visit Memorandum, at 3. [] does not manufacture glycine but, at most, further refines it. Therefore, by its own admission, this glycine would be subject to the AD order as further purifying the glycine it imports from China would not remove it from the scope of the order. See 2002 Scope Ruling.

We note two further, significant inconsistencies within this information. First the production capacity claimed by Ceka Nutrition far exceeds the capacity claimed by [] by [] percent. Second, based on its own claims, [] was only capable of producing less than [] percent of the [] metric tons of glycine supplied by [] through seller JC Chemicals to Ceka Nutrition within a one year period (August 2016 – July 2017).

Although [] claimed that it further processes glycine, CBP observed that [] facility lacked the basic infrastructure to adequately support even its claim to further process and package [] metric tons of glycine. For example, record information indicates that glycine producers/processors should maintain certain raw materials and infrastructure to support the processing of technical glycine. See GEO Specialty Chemicals Supplemental Public Domain Information on Production of Glycine (Oct. 27, 2017) ("Information on Production of Glycine"). At a minimum, to purify technical grade glycine, documentation reflects the need for methanol

and methanol storage facilities, as well as an adequate laboratory to perform analytical tests and calibrate instruments. *See* Information on Production of Glycine, at 5 and 6.

During its site visit to [] in Cambodia, CBP observed that [] was lacking in two areas noted above. First, CBP observed no evidence of methanol or methanol storage tanks visible in the facility. Rather, CBP observed only a small amount of [], as well as technical grade glycine. [] stated that [] is used to “purify” technical grade glycine. *See* Site Visit Memorandum, at 1.

CBP observed that the bags of merchandise labeled as “technical grade” glycine, enclosed in brown paper bags, were imported from []. *Id.* We note that the Chinese address for []. *Id.* CBP also reviewed Cambodian Customs documentation that supported the manager’s statement that [] imports “technical grade” glycine from China. *See id.*; *and* Site Visit Photos Paperwork 1-4. Second, [] laboratory equipment was [], and found evidence of test certificates that were certified in [], not Cambodia. CBP observed that there were other test certificates indicating tests results by [] in Cambodia. *Id.*

CBP also observed [] infrastructure to be deficient with regards to its claims of production and packaging. The facility appeared to be [] in that it was [], indicating that it was not used in quite some time. *See Id.* at 1.

Additionally, CBP observed airtight, outer stitched white plastic bags in [] warehouse that the general manager identified as the final product ready for export to the United States. [] stated that it packaged the final glycine into the clear plastic bags []. Not only does this packaging system not support the final, airtight and stitched packaged glycine for export observed by CBP in the warehouse, but CBP observed no onsite packaging equipment sophisticated enough to package glycine for export supporting what was observed in the warehouse. *See id.* at 2-3.

[] own admission that it only refines glycine it imports from China and does not actually manufacture glycine renders its product within the scope of the AD order. *See* 2002 Scope Ruling. In addition, even accepting [] claimed production capacity, it can only process, at most, [] percent of what it exports to the United States. This estimate has not been verified given the observed state of the production facilities, lack of employees, and product on hand. Furthermore, [] general manager disclosed that [] is []. In turn, Ceka Nutrition stated in its CF28 response that it is also []. For these reasons, the record evidence supports a reasonable suspicion that this is a coordinated scheme to transship merchandise from China through Cambodia to the United States. We determine that there is a reasonable suspicion that Ceka Nutrition has entered merchandise into the United States through evasion by a material false statement or act, or material omission that resulted in the reduction or avoidance of applicable AD cash deposits and duties.

As CBP is undertaking interim measures based on a reasonable suspicion that Ceka Nutrition entered covered merchandise into the customs territory of the United States through evasion, entries under this investigation that entered the United States as not subject to antidumping duties

will be rate-adjusted to reflect that they are subject to the antidumping duty order on glycine from China and cash deposits are owed. Additionally, "live entry" is required for all future imports for Ceka Nutrition, meaning that all entry documents and duties are required to be provided before cargo is released by CBP into the U.S. commerce. CBP will reject any entry summaries and require a refile for those that are within the entry summary reject period; suspend the liquidation for any entry that has entered on or after August 28, 2017, the date of initiation of this investigation; as well as extend the period for liquidation for all unliquidated entries that entered before that date. *See* 19 C.F.R. § 165.24(b)(1)(i) and (ii). For any entries that have liquidated and for which CBP's reliquidation authority has not yet lapsed, CBP will reliquidate those entries accordingly. CBP will also be evaluating Ceka Nutrition's continuous bond to determine its sufficiency, among other measures, as needed.

For any future submissions or factual information that you submit to CBP pursuant to this EAPA investigation, please provide a public version to CBP, as well as to Mr. Schwartz, counsel for GEO Specialty, at David.Schwartz@thompsonhine.com. *See* 19 C.F.R. §§ 165.4, 165.23(c), and 165.26. Should you have any questions regarding this investigation, please feel free to contact us at eapallegations@cbp.dhs.gov. Please include "EAPA Case Number 7208" in the subject line of your email. Additional information on these investigations, 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,



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Trade Remedy & Law Enforcement Directorate
Office of Trade