



U.S. Customs and Border Protection

July 2, 2018

PUBLIC VERSION

EAPA Case Number: 7208

Charles Duan, President
Ceka Nutrition Inc.
13895 Plumrose Place
Chino Hills, CA 91709-5935

David M. Schwartz
On behalf of Geo Specialty Chemicals, Inc.
Thompson Hine LLP
1919 M St. NW, Suite 700
Washington, D.C. 20036

Re: Notice of Final Determination as to Evasion

To Mr. Duan and Mr. Schwartz:

Pursuant to an examination of the record in Enforce and Protect Act (“EAPA”) Investigation Number 7208, U.S. Customs and Border Protection (“CBP”) has determined that there is substantial evidence that Ceka Nutrition Inc. (“Ceka”) entered merchandise covered by antidumping (“AD”) duty order A-570-836¹ into the customs territory of the United States through evasion. Specifically, substantial evidence demonstrates that Ceka imported glycine from the People’s Republic of China (“China”) that was transshipped through Cambodia to the United States. Ceka did not declare the merchandise was subject to an AD order upon entry and, as a result, no cash deposits were applied to the merchandise.

Background

On August 28, 2017, CBP initiated an investigation pursuant to Title IV, section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, commonly referred to as the “Enforce and Protect Act” or “EAPA.” The allegation submitted by GEO Specialty Chemicals, Inc. (“Geo

¹ See *Glycine from the People's Republic of China: Antidumping Duty Order*, 60 Fed. Reg. 16,116 (Mar. 29, 1995).

Specialty”) reasonably suggested that Ceka evaded the payment of cash deposits on imports of certain shipments of glycine covered by AD order A-570-836 on glycine from China.² Specifically, GEO Specialty alleged that Ceka evaded the AD order by importing into the United States glycine that was produced in China and transshipped through Cambodia via its supplier, JC Chemicals Ltd. (“JC Chemicals”). *See* Allegation, at 1-2 (Aug. 2, 2017) (citing Exh. 4) (analyzing information from Datamyne, a research database for international trade).

On September 18, 2017, CBP issued a CBP Form (“CF”) 28, Request for Information (“RFI”) to Ceka, to ascertain information regarding, *inter alia*, the nature of any production processes by its Cambodian supplier, JC Chemicals. Based on Ceka’s responses to this RFI and to an earlier CF 28 RFI issued by CBP on July 31, 2017, prior to receipt of the allegation, CBP conducted a site visit to the Cambodian exporter, where Ceka claimed its entries of glycine were being manufactured. As explained in the Notice of Interim Measures, CBP found no evidence of glycine manufacturing at the Cambodian exporter’s facility. *See also* 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”). The Cambodian exporter conceded during the site visit, consistent with the evidence observed by CBP, that it “only further processes ‘technical grade’ glycine imported from China to remove impurities ... and processes no other products.” *See* Notice of Interim Measures, at 6; *see also* Site Visit Memorandum, at 3.

Refining glycine would not remove it from the scope of the order. The Department of Commerce has specifically determined that all glycine further processed or “refined” from Chinese-origin technical grade, or “crude,” glycine in a third country and exported to the United States is subject to AD order A-570-836 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 {People’s Republic of China}, 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 (May 3, 2002) (“2002 Scope Ruling”).

On December 4, 2017, in accordance with 19 C.F.R. §154.24, CBP issued a notice of initiation of investigation to all interested parties with CBP’s decision to take interim measures, based upon a reasonable suspicion that Ceka entered covered merchandise into the customs territory of the United States through evasion. *See* Notice of initiation of investigation and interim measures

² *See* Memorandum to the File on Initiation of EAPA Investigation 7208 (Aug. 28, 2017).

taken as to Ceka Nutrition Inc. concerning evasion of the antidumping order on Glycine from the People's Republic of China, (Dec. 4, 2017) (available at <https://www.cbp.gov/document/report/eapa-investigation-number-7208-ceka-nutrition-inc-notice-initiation-inv-and-interim>) (hereinafter "Notice of Interim Measures"). The notice summarized the basis for CBP's finding of reasonable suspicion as to evasion, and listed the interim measures CBP applied against Ceka's shipments of glycine. *See id.* at 7-8.

On January 17, 2018, CBP issued separate RFIs to Ceka, JC Chemicals, and the Cambodian exporter. Ceka and JC Chemicals submitted timely RFI responses on March 16, 2018. *See* Ceka RFI Response, Parts 1-4 ("Ceka March 16 Response") and JC Chemicals Response ("JC Chemicals March 16 Response"). Despite repeated attempts to contact the Cambodian exporter via email, CBP never received an RFI response from the company. The substance of the Ceka and JC Chemicals RFI responses as they pertain to the final determination as to evasion, are addressed below, along with the applicable arguments proffered by the interested parties.³

Final Determination as to Evasion

Under 19 U.S.C. §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.

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 of 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, CBP must reach a determination as to whether merchandise subject to an AD or countervailing duty ("CVD") order was entered into the United States by the importer and such entry was made by a material false statement or act, or material omission that resulted in the reduction of avoidance of applicable AD/CVD cash deposits or other security.

Substantial evidence on the record of this investigation supports a determination that Ceka's imports of glycine from its supplier, JC Chemicals, were made by material false statements or acts and material omissions that resulted in the avoidance of applicable AD cash deposits required under AD order A-570-836. Specifically, the glycine imported by Ceka and declared to be of Cambodian origin was actually Chinese-origin glycine that was transshipped through Cambodia. As noted in our Notice of Interim Measures and summarized below, there is extensive documentation regarding the transshipment scheme.

³ *See* Geo's Written Arguments (Apr. 30, 2018), Ceka's Written Argument (Apr. 30, 2018), and Geo's Response to Ceka's Written Arguments (May 15, 2018).

JC Chemicals is a trading company that purchases glycine, which it describes as “raw materials,” from [redacted], a Chinese producer of glycine, and transports the “raw materials” to the Cambodian exporter’s facility in Cambodia for processing, and books the shipment of the processed glycine to the United States to Ceka. *See* JC Chemicals March 16 Response, at 2 and 4. CBP found corroborating evidence during the onsite visit at the Cambodian exporter. Specifically, the Cambodian exporter’s manager stated that the facility only further processes “technical grade” glycine imported from China and processes no other products. During the site visit, CBP took two samples of glycine, one from a bag labeled “Technical Grade Glycine” and one from an unmarked bag of purported further refined glycine for export, for testing at CBP laboratories. *See* Site Visit Memorandum at 2-3. CBP laboratory evaluation confirmed that both samples were composed of glycine. *See* Lab – LSS – Glycine. As all grades of glycine are subject to the AD order, these results confirm that the glycine found onsite at the Cambodian facility is covered merchandise.

Further, at the Cambodian facility, CBP observed technical grade glycine and Cambodian Customs documents demonstrating the importation of technical grade glycine from China. *See* Notice of Interim Measures, at 6-7; *see also* Site Visit Memorandum, at 2. Finally, Ceka conceded that its Cambodian exporter imports “raw materials”, *i.e.* technical grade glycine, from China to Cambodia, which is then processed by the Cambodian exporter in Cambodia and imported by Ceka into the United States. *See* Ceka’s Written Argument, at 1 (Apr. 30, 2018).

As discussed above, a 2002 Department of Commerce scope ruling clarified that all glycine further processed or “refined” from Chinese-origin technical grade, or “crude,” glycine in a third country and exported to the United States is subject to the AD order A-570-836 on glycine from China. Therefore the glycine “raw materials” purchased from [redacted] in China, otherwise known as technical grade or crude glycine, are covered by the scope of the AD order, regardless of any further refining that may be performed by the Cambodian exporter in Cambodia. Based on this determination, glycine of any purity level in a third country originating from China is subject to AD order A-570-836 and refining in a third country will not exclude the merchandise from the scope of the order. Contrary to Ceka’s position, this conclusion is not influenced by the fact that, for its entries of glycine subject to this investigation, the Cambodian exporter provided a Cambodian Certificate of Origin, which designates Ceka’s imports as a Cambodian product. Ceka’s arguments that processing in Cambodia confers the country of origin are wholly irrelevant with respect to whether or not it is subject to the AD order. Further, Cambodian law does not influence how Commerce applies the scope of the AD order.

Pursuant to 19 C.F.R. §165.27, based on the full record of this investigation, CBP determines that there is substantial evidence that Ceka entered covered merchandise into the United States through evasion. The facts of the transshipment scheme, as set forth above, are uncontroverted and demonstrate that during the period of investigation Ceka imported glycine from Cambodia that was originally sourced from a Chinese manufacturer. As such, it is covered by AD order A-570-836. Furthermore, as Ceka did not affirmatively substantiate that its imports of glycine are entitled to a rate other than the China-wide rate of 453.79 percent, this is the applicable rate to apply to Ceka’s glycine imports subject to this investigation.

Actions Taken Pursuant to the Affirmative Determination of Evasion

In light of CBP's determination that Ceka entered merchandise into the customs territory of the United States through evasion, and pursuant to 19 U.S.C. §1517(d) and 19 C.F.R. §165.28, CBP will continue to suspend the liquidation for any entry that has entered on or after August 28, 2017, the date of initiation of this investigation. CBP will continue to extend the period for liquidation for all unliquidated entries that entered before that date until instructed to liquidate these entries. For future entries, CBP will continue to require live entry, which requires that the importer post the applicable cash deposits prior to the entry's release. Finally, CBP will evaluate the continuous bond of the importer in accordance with CBP's policies, and require single transaction bonds as appropriate. None of the above actions preclude CBP or other agencies from pursuing additional enforcement actions or penalties.

Sincerely,



Carrie L. Owens
Director of Enforcement Operations
Trade Remedy & Law Enforcement Directorate
Office of Trade