



U.S. Customs and
Border Protection

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PUBLIC VERSION

EAPA Case Number: 7320

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Re: Notice of initiation of investigation and interim measures taken as to Brio USA LLC concerning evasion of the antidumping and countervailing duty orders on glycine from the People's Republic of China

Dear Counsel and Representatives of the above-referenced Entities:

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 Brio USA LLC ("Brio"). CBP is investigating whether Brio has evaded the antidumping duty ("AD") order A-570-836¹ and the countervailing duty order C-570-081² on glycine from the People's Republic of China. Because evidence establishes a reasonable suspicion that Brio 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." *See* 19 C.F.R. § 165.1. CBP

¹ *See Glycine from the People's Republic of China: Antidumping Duty Order*, 60 FR 16116 (Dept. of Commerce, March 29, 1995) ("AD Order").

² *See Glycine from India and the People's Republic of China: Countervailing Duty Orders*, 84 FR 29173 (June 21, 2019) ("CVD Order").

acknowledged receipt of the properly filed allegation against Brio on June 25, 2019.³ The entries covered by the investigation are those entered for consumption, or withdrawn from warehouse for consumption, from June 25, 2018, through the pendency of this investigation. *See* 19 C.F.R. § 165.2.

Initiation

On July 17, 2019, 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 Chemicals, Inc. (“GEO”), as to evasion of antidumping duties by Brio.⁴ GEO alleged that Brio evaded the AD order and cash deposits from the Commerce Preliminary CVD Determination by transshipping Chinese-origin glycine through India using two Indian shippers, Enzyme Bioscience Private Ltd. (“Enzyme Bioscience”) and Chemsteel Corporation (“Chemsteel”).⁵ The basis for this allegation follows.

GEO stated that beginning in 2012, other U.S. Government agencies issued rulings which found or cited the transshipment of Chinese-made glycine through India to the United States to avoid the AD order. For example, the Commerce Department found that certain Chinese-origin technical grade or crude glycine processed (not substantially transformed) in India and marked as Indian-originating product upon importation into the United States was circumventing the glycine from China antidumping duty order. As parts of its ruling, the Commerce Department imposed country-of-origin certification requirements for importers.⁶

GEO stated that for a year Brio had been importing into the United States glycine marked as Indian origin that had been shipped from Enzyme Bioscience and Chemsteel.⁷ GEO stated that during the same period, Enzyme Bioscience and Chemsteel were importing Chinese glycine into India.⁸ GEO argued that the manufacturing and shipment dates appearing on the documentation of the shipments from China to the two Indian shippers, and the subsequent dates of the shipments by the two Indian shippers to Brio suggest that the glycine shipped to Brio was the same glycine the Indian suppliers obtained from the Chinese suppliers.⁹

³ *See* the Receipt Checklist (June 25, 2019). The CVD Order was not yet in effect at the time the allegation was filed. However, suspension of liquidation had begun as a result of the U.S. Department of Commerce Department (“Commerce Department”) issuance of its affirmative preliminary determination in its underlying countervailing duty investigation. *See Glycine from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 83 FR 44863 (Sept. 4, 2018 (“Commerce Preliminary CVD Determination”). By the time this EAPA investigation was initiated, the CVD order had gone into effect.

⁴ *See* Memorandum to Africa R. Bell, Acting Director, Enforcement Operations Division, “Initiation of Investigation for EAPA Case Number 7320 – Brio USA LLC” (July 17, 2019) (“Initiation”).

⁵ *See* GEO’s “Evasion Allegation Against Brio USA LLC” (April 26, 2019) (“Allegation”).

⁶ *Id.* at 4-5, citing *Glycine from the People’s Republic of China: Final Partial Affirmative Determination of Circumvention of the Antidumping Duty Order*, 77 FR 73426 (Dept. of Commerce, Dec. 10, 2012).

⁷ *Id.* at 6-7, Exhibit 2 (Datamyne information), and Exhibit 4 (additional Datamyne information).

⁸ *Id.* at 6-8, and Exhibit 3 (Export Genius information). Two Chinese suppliers are referenced, one of them China Sinopharm International Corporation, the other an unknown supplier. *Id.* at 7-8, and Exhibit 3.

⁹ *Id.* at 7-8.

Finally, GEO stated that various evidence shows neither Enzyme Bioscience nor Chemsteel are Indian producers of glycine. Specifically, GEO stated the companies are not listed in the Directory of World Chemical Producers,¹⁰ and internet sources of information about the companies did not indicate either company was producing glycine.¹¹ In addition, the extent to which either company possessed a workforce, if at all, was unknown,¹² and it appeared that neither company possessed facilities that were adequate for the production of the glycine.¹³

TRLED 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 covered merchandise.” *See* 19 C.F.R. §165.1. Thus, the allegation must reasonably suggest not only that merchandise subject to an AD and/or CVD 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 AD and/or CVD cash deposits or other security.

In assessing the claims made and evidence provided in the allegation, TRLED found that the allegation reasonably suggested that the Importer is evading AD order A-570-985 and CVD proceeding C-570-081 by importing Chinese-origin glycine into the United States via India and failing to declare the merchandise as subject merchandise. Specifically, GEO noted the history of transshipment of Chinese glycine through India to the United States, and cited evidence suggesting neither Enzyme Bioscience nor Chemsteel are capable of producing glycine. Furthermore, GEO cites shipment information suggesting those two Indian entities are obtaining Chinese glycine and shipping it to Brio, and that the merchandise’s country of origin is being mischaracterized as India, rather than China. TRLED concluded the allegation reasonably suggests that Brio may have been importing covered merchandise into the customs territory of the United States by means of evasion. Consequently, TRLED initiated an investigation pursuant to 19 U.S.C. §1517(b)(1).¹⁴

Interim Measures

Not later than 90 calendar days after initiating an investigation under EAPA, TRLED will decide based upon the record of the investigation if there is reasonable suspicion that such covered

¹⁰ *Id.* at 8, citing Exhibit 5.

¹¹ *Id.* at 8, citing Exhibit 6.

¹² *Id.* at 8-9, citing Exhibit 7.

¹³ *Id.* at 9, citing Exhibits 1, 4, 8, and 9.

¹⁴ *See* Initiation.

merchandise was entered into the United States through evasion. Therefore, CBP need only have sufficient evidence to support a reasonable suspicion that merchandise subject to an AD or CVD 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 AD or CVD 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 Brio entered covered merchandise into the United States through evasion by means of transshipment of Chinese-origin Glycine through India. *See* 19 C.F.R. § 165.24(a).

Lab Report

CBP conducted a chemical analysis of a sample of merchandise for one of the Brio entries. CBP confirmed that the merchandise in question is glycine.¹⁵

CF28 Responses and Analysis

As part of the EAPA investigation process, CBP reviewed documentation submitted by Brio in response to a Customs Form (“CF”) 28 request for information for entries that are subject to this EAPA investigation. CBP requested sale, production, and factory documentation from Brio for three entries, two for which the identified manufacturer on the entry documents was Enzyme Bioscience, and one for which the identified manufacturer on the entry documents was Chemsteel.¹⁶ On September 20, 2019, Brio submitted its response to the CF28 request.¹⁷ On October 3, 2019 and October 8, 2019, Brio submitted answers to additional questions asked by CBP.¹⁸ Information submitted in those responses is discussed below, as is additional information CBP obtained from other sources.

Enzyme Bioscience

Although the allegor provided evidence that the Enzyme Bioscience facility was inactive at some point during 2017,¹⁹ the allegor itself, in a 2018 submission it made to the Department of Commerce, identified Enzyme Bioscience as a producer of glycine.²⁰ Furthermore, Brio’s CF28 response contains assorted documents referencing what are identified as Enzyme Bioscience’s production process and glycine production related to the entries in question. The response includes photographs of a facility and equipment, a flowchart of the production process, a summary of the breakdown of material costs, three sets of production records (apparently

¹⁵ *See* Lab Report (August 16, 2019).

¹⁶ *See* CF28 Request to Brio (August 19, 2019).

¹⁷ *See* Brio CF28 Response (September 20, 2019).

¹⁸ *See* Brio Supplemental CF28 Response One (October 3, 2019) (“Brio Supp CF28 Response One”) and Brio Supplemental CF28 Response Two (October 8, 2019) (“Brio Supp CF28 Response Two”).

¹⁹ *See* Allegation at 5 and Exhibit 1.

²⁰ *See* October 7, 2019 memorandum to the file containing GEO submission to the U.S. Dept. of Commerce.

intended to represent production at different times), and a statement referring to a staff level of [] individuals,²¹ which appears at odds with the allegor’s claim that Enzyme Bioscience has staff levels too limited for operation.²²

Despite indications that Enzyme Bioscience may have been capable of producing glycine during the period of investigation, other available information suggests that Chinese-origin glycine has been transshipped through Enzyme Bioscience to Brio. First, as the allegor noted in its allegation, based on Export Genius information, Enzyme Bioscience was sourcing glycine shipped from China.²³ Examination of more recent information available from Panjiva indicates additional glycine was shipped from China to Enzyme Bioscience.²⁴ In fact, the volumes of shipments from China identified by those sources are 20 metric tons each, [] for Brio imports from Enzyme Bioscience.

With regard to the three sets of Enzyme Bioscience production records provided by Brio, it is not evident if or how those documents are tied to any of the specific entries identified in the CF28 request, though [] of the sets of production records identify a final production volume of [] kilograms, consistent with the glycine volumes [] entries identified in the CF28 request.²⁵ However, the dates on the production records are inconsistent. Specifically, [] at the bottom of each page [] identified on those pages. For example, the [] are [], while the upper portion of the third page of each set of documents contain a reference to “[]” and state “[]” but are dated []. There are numerous other comparable date discrepancies in the three sets of production records.²⁶

There are additional problems with the production data in the documents. Each of the three sets of production records contains a “Raw Material Consumption” chart that identifies raw material inputs, including []. Each chart identifies an input volume for [] of [] kg, and corresponding glycine output volumes of approximately [] kg. However, given the glycine production process, the volume of glycine produced should be [].²⁷ In addition, the lists of raw material inputs appearing in the “Raw Material

²¹ See Brio CF28 Response at pages containing Enzyme Bioscience narrative statements.

²² See Allegation at 8-9, citing Exhibit 7.

²³ See Allegation at 6-8, and Exhibit 3 (Export Genius information).

²⁴ See Panjiva Shipment Data from China to Enzyme Bioscience (Oct. 7, 2019).

²⁵ See the three “Batch Manufacturing Record of Glycine” sets of documents in Brio CF28 Response versus the [] entry documents in Brio CF28 Response.

²⁶ See the three “Batch Manufacturing Record of Glycine” sets of documents in Brio CF28 Response.

²⁷ See the three “Batch Manufacturing Record of Glycine” sets of documents in Brio CF28 Response. Even if it were assumed the crude glycine produced by Enzyme Bioscience was supplemented in the later stages of the production process with crude glycine obtained from another source, that would call into question identification of Enzyme Bioscience as the sole producer of the glycine imported by Brio, especially given the evidence that glycine

Consumption” charts do not include a catalyst (e.g., hexamine), and the absence of a necessary input to the production process from production records further calls into question the accuracy of such records.²⁸

Chemsteel

In its initial CF28 response, Brio did not provide documentation indicating that Chemsteel produced the glycine imported by Brio. Moreover, the only references in the documentation provided to India as a possible country of origin (e.g., certificate of origin) do not have backup supporting production records of Chemsteel.²⁹ In short, no evidence was provided in the initial CF28 response indicating that Chemsteel produces glycine. However, in a supplemental response, Brio indicated that [

].³⁰ Subsequently, Brio provided sale documents consistent with its claim that [].³¹ Consequently, the analysis with respect to Chemsteel involves [

]. Furthermore, the allegor noted in its allegation, based on Export Genius information, Chemsteel was sourcing glycine from China.³²

Enactment of Interim Measures

Based on the information described above, TRLED determines that reasonable suspicion exists that the glycine that Brio imported into the United States from India was in fact manufactured in China. The three sets of production records provided by Brio relating to supposed production by Enzyme Bioscience are unreliable, given the inconsistencies described above. Consequently, it is reasonable to conclude that Brio entries of merchandise for which Enzyme Bioscience had been identified in entry documents as the manufacturer contained Chinese-origin glycine, particularly given evidence that Enzyme Bioscience appeared to be receiving shipments of glycine from China. There is also evidence that Chemsteel appeared to be receiving shipments of glycine from China and, furthermore, given that [

], it is reasonable to conclude that Brio entries of merchandise for which Chemsteel had been identified in entry documents as the manufacturer

was being shipped from China to Enzyme Bioscience. In any case, in the three sets of production documents, and Brio’s CF28 response and supplemental responses more generally, there [].

²⁸ The production flowchart submitted by Brio includes a reference to “catalyst” as being introduced into the production process. See the Enzyme Bioscience Process Flowchart in Brio CF28 Response.

²⁹ See Brio CF28 Response. Note that there does not even appear to be any internet presence for Chemsteel (e.g., website, etc.), and CBP was unable to even confirm the accuracy of the Chemsteel address appearing in entry sales documentation.

³⁰ See Brio Supp CF28 Response One.

³¹ See Brio Supp CF28 Response Two.

³² See Allegation at 6-8 and Exhibit 3 (Export Genius information). Note that the volume associated with the entry of merchandise from Chemsteel was [] kg, which [] from China to Chemsteel based on the Export Genius information, as well as being [].

contained Chinese-origin glycine, given []].

Consequently, there is an objective basis for CBP to conclude that at least some of the glycine imported by Brio into the United States was produced in China, and thus should be subject to AD and CVD duties under the AD and CVD orders on glycine from China.

As part of interim measures, unliquidated entries of glycine subject to this investigation will be rate-adjusted to reflect that they are subject to the AD and CVD orders on glycine from China and cash deposits will be owed. Additionally, “live entry” is required for all future imports for Brio, meaning that all entry documents and cash deposits must be provided before cargo is released by CBP into the U.S. commerce. CBP will reject any entry summaries that do not comply with live entry, and require refiling of entries that are within the entry summary rejection period. CBP will also suspend the liquidation for any entry that has entered on or after July 17, 2019, the date of initiation for the 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). CBP will also evaluate the continuous bond for Brio to determine its sufficiency, among other measures, as needed. Finally, CBP may pursue additional enforcement actions, as provided by law, consistent with 19 U.S.C. §1517(h).

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 to GEO, at David.Schwartz@ThompsonHine.com, and Mr. Riyaz Mohamed, at briousa@aol.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 7320” in the subject line of your email. Additional information on this investigation, 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,
Regina Walton

Regina Walton
Acting Director, Enforcement Operations Division
Trade Remedy & Law Enforcement Directorate
CBP Office of Trade