



U.S. Customs and
Border Protection

May 19, 2020

PUBLIC VERSION

Paula Connelly, Esq.
Kristen Smith, Esq.
Sarah E. Yuskaitis, Esq.
On behalf of Brio USA LLC
Sandler, Travis & Rosenberg, P.A.
100 Trade Center
Ste. G-700
Woburn, MA 01801

1300 Pennsylvania Avenue NW
Suite 400
Washington, DC 20004

David M. Schwartz
Michelle Li
On behalf of GEO Specialty Chemicals, Inc.
Thompson Hine LLP
1919 M St., NW, Suite 700
Washington, DC 20036

Re: Notice of Determination as to Evasion

To the Counsel and Representatives of the above-referenced Entities:

Pursuant to an examination of the record in Enforce and Protect Act (“EAPA”) Investigation 7320, U.S. Customs and Border Protection (“CBP”) has determined that there is substantial evidence that Brio USA LLC (“Brio”), entered into the customs territory of the United States through evasion, merchandise covered by the antidumping duty (“AD”) order A-570-836¹ and the countervailing duty (“CVD”) order C-570-081² on glycine from the People’s Republic of China (“China”). Substantial evidence demonstrates that Brio imported Chinese-origin glycine

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

² See *Glycine from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 83 FR 44863 (Dept. of Commerce, Sept. 4, 2018) (“Commerce Prelim”). See *Glycine from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 84 FR 18489 (May 1, 2019), and *Glycine From India and the People’s Republic of China: Countervailing Duty Orders*, 84 FR 29173 (June 21, 2019).

that was transshipped through India. As a result, no cash deposits were applied to the merchandise at the time of entry.

Background

The Trade Remedy Law Enforcement Directorate (“TRLED”), within CBP’s Office of Trade, acknowledged receipt of the properly filed allegation by GEO Specialty Chemicals, Inc. (“GEO” or “the Allegor”) against Brio on June 25, 2019.³ GEO alleged that Brio evaded AD and CVD orders on glycine from China by importing glycine that was manufactured in China, but transshipped through two Indian manufacturers, Enzyme Bioscience Private Ltd. (“Enzyme Bioscience”) and Chemsteel Corporation (“Chemsteel”).⁴

TRLED found the information provided in the allegation reasonably suggested that the covered merchandise was entered for consumption by Brio into the customs territory of the United States through evasion. In assessing the claims made and evidence provided in the allegation, TRLED found that the allegation reasonably suggested that Brio evaded AD order A-570-836 and CVD order C-570-081 by importing Chinese origin glycine to the United States via India, thus failing to declare the merchandise as subject to the AD and CVD orders. Specifically, GEO submitted documentation that reasonably suggested glycine was not solely produced in India. It was noted that in 2012, the U.S. Department of Commerce (“Dept. of Commerce”), the United States Trade Representative (“USTR”), and the U.S. International Trade Commission (“USITC”) issued rulings finding or citing transshipment of Chinese-made glycine through India to the United States to avoid the AD order.⁵

In 2018, Brio imported glycine with Indian country of origin markings shipped from Enzyme Bioscience and Chemsteel.⁶ GEO stated that during the same period, Enzyme Bioscience and Chemsteel imported Chinese glycine into India.⁷ The same manufacturing and shipment dates appearing on glycine from China to India, and on glycine from India to Brio in the United States provided reason to suspect that the glycine imported by Brio from Enzyme Bioscience and Chemsteel was obtained from the Chinese suppliers.⁸ Further, GEO evidenced that Enzyme Bioscience nor Chemsteel were Indian producers of glycine, citing the absence of reference to the companies in a Directory of World Chemical Producers,⁹ the lack of information on the

³ See the June 25, 2019, Receipt Notification Emails to David M. Schwartz of Thompson Hine LLP for EAPA Allegations 7320 (“Brio”).

⁴ See GEO’s “Evasion Allegation Against Brio USA LLC” (April 26, 2019) (“Allegation”).

⁵ *Id.* at 4-5, citing, for example, *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). Geo also references an e-allegation that it filed an e-allegation in early 2017 alleging Brio and Enzyme Bioscience were involved in an evasion scheme involving glycine from China. *Id.* at 5 and Exhibit 1.

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

⁷ *Id.* at 6-7 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.

⁸ *Id.* at 7-8.

⁹ *Id.* at 8, citing Exhibit 5.

internet establishing the companies as producers of glycine,¹⁰ an unknown workforce,¹¹ and facilities that appear inadequate for glycine production.¹² Consequently, on July 17, 2019, TRLED, initiated an investigation under EAPA based on the allegation, as to evasion of antidumping and countervailing duties by Brio.¹³

As noted above, TRLED initiated its investigation based on the evidence that glycine imported by Brio was not solely a product of India. As part of the EAPA investigation process, on August 19, 2019,¹⁴ CBP issued a Customs Form (“CF”) 28 to request information on Brio’s sales and production of glycine, as well as factory documentation from Brio for two entries where Enzyme Bioscience was identified as the manufacturer, and one that identified Chemsteel as manufacturer on the entry documents.¹⁵ On September 20, 2019, Brio submitted its initial responses to the CF28 request¹⁶ and supplemental responses were provided on October 3, 2019 and October 8, 2019, respectively.¹⁷

Brio’s CF28 response included photographs of a facility and equipment that appeared to belong to Enzyme Bioscience,¹⁸ documentation of its production process and glycine production,¹⁹ and a breakdown of material costs.²⁰ Also, included were three sets of production records, which is believed to chronicle periods of production.²¹ Brio’s response also included a statement suggesting that Enzyme Bioscience had a staff consisting of [] individuals,²² which contradicts the allegor’s claim there did not appear to enough staff to support full production of glycine.²³

There was evidence presented that Enzyme Bioscience shipped Chinese-origin glycine to Brio. The allegation asserted that Enzyme Bioscience sourced glycine shipped from China according to Export Genius information.²⁴ A review of information available through Panjiva reported glycine exports from China to Enzyme Bioscience.²⁵ The size of the shipments from China

¹⁰ *Id.* at 8, citing Exhibit 6.

¹¹ *Id.* at 8-9, citing Exhibit 7.

¹² *Id.* at 9, citing Exhibits 1, 4, 8, and 9.

¹³ 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”).

¹⁴ See CF28 Request to Brio (August 19, 2019).

¹⁵ *Id.*

¹⁶ See Brio CF28 Response (September 20, 2019).

¹⁷ 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”).

¹⁸ See Brio CF28 Response (September 20, 2019)

¹⁹ See Brio CF28 Response (September 20, 2019)

²⁰ See Brio CF28 Response (September 20, 2019)

²¹ See Initiation at 5.

²² See Brio CF28 Response at pages containing Enzyme Bioscience narrative statements.

²³ See Allegation at 8-9, citing Exhibit 7.

²⁴ See Allegation at 6-8, and Exhibit 3 (Export Genius information).

²⁵ See Panjiva Shipment Data from China to Enzyme Bioscience (Oct. 7, 2019).

identified by these two sources were 20 metric tons each, [] for Brio imports from Enzyme Bioscience.²⁶

The production records for Enzyme Bioscience's glycine provided in response to the CF28 were inconsistent. Brio provided information that could not be tied to the [] entries designated for the CF28 review.²⁷ It was established that the production volume [] totaled [] kilograms, which was equal to the glycine volumes [] entries identified in the CF28 request.²⁸

The response also pointed out inconsistencies on the paperwork for the batches such as [] at the bottom of each page [].²⁹

The [] were [], while the upper portion of the third page of each set of documents contained a reference to "[]" and stated that "[]," but were dated [].³⁰

Enzyme Bioscience's production records for the three batches of glycine indicated that [] kilograms (Kg) of monochloroacetic acid ("MCA") was used in the production of approximately [] (Kg) of glycine.³¹ MCA is a primary raw material additive necessary in the production of glycine.³² The CF 28 response failed to explain how [] glycine was produced than the amount of MCA [] to manufacture the glycine. Moreover, the "Raw Material Consumption" charts did not include the catalyst hexamine,³³ which is another necessary additive for the production of glycine.

²⁶ See Brio CF28 Response (September 20, 2019).

²⁷ *Id.*

²⁸ See the three "Batch Manufacturing Record of Glycine" sets of documents in Brio CF28 Response versus the [] entry documents in Brio CF28 Response.

²⁹ See the three "Batch Manufacturing Record of Glycine" sets of documents in Brio CF28 Response.

³⁰ *Id.*

³¹ 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 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 [].

³² See CF28 Request to Brio (August 19, 2019).

³³ 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.

Brio initially did not provide documentation to establish that Chemsteel produced the glycine imported by Brio.³⁴ An invalidated certificate of origin from India identified Chemsteel as a producer, however, there was no supporting production documentation included in the initial CF28 response.³⁵ In its supplemental response, Brio provided sale documents that established [

].³⁶ Trade information from Export Genius information, referenced in the allegation, maintained that Chemsteel sourced glycine from China.³⁷

After evaluating the CF28 response obtained from Brio, TRLED determined that reasonable suspicion exists that the glycine imported into the United States from India by Brio was in fact manufactured in China. The information provided by GEO, the alleged and source (*e.g.*, Indian supplier websites, *etc.*) information regarding glycine import trends, in addition to minimal glycine production by Enzyme Bioscience and Chemsteel in India, created an objective basis for CBP to conclude that the glycine imported by Brio into the United States may have been produced in China, and thus, should have been subject to AD and CV duties. Consequently, CBP found there was reasonable suspicion that this importer was evading the AD and CVD orders by importing glycine manufactured in China, but falsely marked as being of Indian origin, and imposed interim measures.³⁸

After interim measures, CBP sent Request for Information (“RFIs”) questionnaires to Brio, Enzyme, and Chemsteel. On December 16, 2019, Brio and Enzyme Bioscience submitted their responses.³⁹ Chemsteel claimed it was an Indian [] not a manufacturer of glycine, consequently they did not submit a RFI response.⁴⁰ CBP established that a response to the RFI was still required although Chemsteel revealed their true relationship to the importation of glycine (as an exporter) to the United States on December 10, 2019. Enzyme’s responses were rejected on December 21, 2019, due to nonexistent bracketing and failure to provide public versions of their limited submission. Enzyme Bioscience did not respond to CBP’s offer to clarify the reasoning for providing public versions of the documents.⁴¹ As a result, CBP did not conduct an onsite verification of Chemsteel and Enzyme’s facilities.

³⁴ 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

³⁵ *Id.*

³⁶ See Brio Supp CF28 Response One.

³⁷ 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 []

³⁸ See Initiation at 6-7.

³⁹ See “Brio USA LLC RFI Response”, dated December 16, 2019 (“Brio RFI Response”); see also “Enzyme Bioscience Private Ltd. RFI Response” (“Enzyme Bioscience RFI Response”), dated December 16, 2019.

⁴⁰ See Email TRLED – RFI Instruction to Chemsteel (“RFI Instruction Chemsteel”), dated December 20, 2019. Chemsteel Email.

⁴¹ See TRLED – Enzyme Bioscience Conference Call Request for RFI (“Enzyme Bioscience Conference Request”), dated December 26, 2020.

On March 2, 2020, and March 3, 2020, Brio and GEO submitted its written arguments, respectively.⁴² On March 18, 2020, and March 20, 2020, GEO and Brio submitted rebuttal written arguments.⁴³

Analysis of the Evasion

Under 19 U.S.C. 1517(c)(1)(A), to reach a final 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. As discussed below, the record of this investigation indicates that covered merchandise entered the United States through evasion, and that there is a basis for concluding that substantial evidence indicates Brio’s imports, were merchandise entered through evasion, resulting in the avoidance of applicable AD/CVD deposits or other security.

Entry documentation for Brio’s entries of glycine during the period of investigation (“POI”) identified India as the country of origin.⁴⁴ Record evidence shows that Brio had [] entries for glycine imported during the POI,⁴⁵ however, they supplied documentation for only [], failing to provide CBP with a complete, true, and accurate response to its RFI request.⁴⁶ Furthermore, Brio failed to provide its financial statements, chart of accounts and/or the general ledger, and essential accounting records requested by CBP.⁴⁷

In addition, evidence on the record establishes incomplete and unreconciled reporting during the POI, where Brio sold glycine to the following companies: [], [], and [];⁴⁸ however, Brio’s bank statements only corroborate payments from [] for sales of glycine.⁴⁹ Conversely, Brio’s bank statements reveals a payment from an [] for

⁴² See “Brio USA LLC Written Argument” (“Brio Written Argument”), dated March 2, 2020. See also (GEO Written Argument).

⁴³ See (“GEO Rebuttal Arguments”); (“Brio Rebuttal Arguments”).

⁴⁴ See RFI Questionnaire to Importer Brio (“Brio RFI”) at 9.

⁴⁵ *Id.* at 9.

⁴⁶ See Brio RFI Response.

⁴⁷ See Brio RFI Response at 12 and 13.

⁴⁸ See Brio’s RFI response at 5-7.

⁴⁹ *Id.* at 5-7.

glycine;⁵⁰ however, Brio never identifies this company as a buyer, only the aforementioned entities above.⁵¹ Additionally, there are inconsistencies in Brio's bank statements, which include payments for glycine totaling approximately [];⁵² however, Brio's invoices indicate it sold [] worth of glycine.⁵³ Since, Brio's president and owner, [], is the only person within the company that handles purchases and sales,⁵⁴ inadvertent misreporting or failure to fully comply with CBP's multiple requests support the evasion scheme on the record.

It was previously mentioned that Enzyme Bioscience provided production records for three batches of glycine. Further analysis revealed that [] batch of glycine was associated with one of three entries designated for review.⁵⁵ Production records for Brio's [] were requested through CBP's request for information process.⁵⁶ In analyzing the quantities of raw materials required to produce glycine, it was inexplicable how the reported amounts of [] (Kg) of monochloroacetic acid (MCA) produced approximately [] (Kg) of glycine, which is almost [] the amount of glycine.⁵⁷

Enzyme Bioscience acknowledged that they source glycine from other parties; however, it did not provide any requested documents related to the sourced glycine.⁵⁸ Since, Enzyme Bioscience manufactures glycine and sources glycine from other parties, CBP requested records documenting the movement of glycine from their inventory system to explore opportunities for comingling.⁵⁹ Again, Enzyme Bioscience did not provide any requested inventory records for glycine. Enzyme Bioscience provided invoices and payments for raw materials (*e.g.*, MCA, ammonia, methanol, *etc.*).⁶⁰ They failed to provide the requested records to capture the movement of raw materials into and out of their inventory. Enzyme Bioscience did not provide requested accounting/financial documents such as chart of accounts and financial statements as requested in the RFI.⁶¹

Chemsteel was identified as the manufacturer on several entries filed by Brio for the import of glycine.⁶² However, it was revealed that Chemsteel is actually a [] that exported glycine to the United States.⁶³ In fact, Brio [] that

⁵⁰ See Brio RFI Response to request for accounting information at 13. A review of the submitted bank statements identified payment from []. This company was not listed as a party to any previous business transactions.

⁵¹ See Brio Buyers.

⁵² See Brio RFI Response to request for accounting information at 13.

⁵³ See Brio RFI at 9-10 and See Brio RFI Response to documents request at 14.

⁵⁴ See Brio RFI Response at 3.

⁵⁵ See the three "Batch Manufacturing Record of Glycine" sets of documents in Brio CF28 Response.

⁵⁶ See RFI Questionnaire to Importer Brio ("Brio RFI") at 9-10.

⁵⁷ See the three "Batch Manufacturing Record of Glycine" sets of documents in Brio CF28 Response.

⁵⁸ See Enzyme Bioscience RFI Response at 1.

⁵⁹ See RFI Questionnaire to Enzyme Bioscience ("Enzyme Bioscience RFI") at 5-6.

⁶⁰ See Brio CF 28 Response.

⁶¹ See Enzyme Bioscience RFI Response at 2-3.

⁶² See Brio RFI at 9-10 and See Brio RFI Response to documents request at 14.

⁶³ See RFI Instruction Chemsteel.

was manufactured by Enzyme.⁶⁴ On December 6, 2019, Chemsteel expressed indifference about responding to the RFI issued to them because they were a []. On December 10, 2019, CBP explained that the RFI was still necessary because of their business transactions with Brio. Further, the RFI response was due December 16, 2019; Chemsteel did not respond.⁶⁵ As a result, a site visit to Chemsteel’s facilities was not performed.

A review of Brio’s RFI and CF-28 responses included various documents (*i.e.*, invoices, packing lists... *etc.*) from Chemsteel.⁶⁶ Invoices from Chemsteel referenced a batch number that was used to trace glycine manufactured by Enzyme.⁶⁷ A certificate of analysis detailing specific criteria related to the glycine was submitted on Chemsteel’s letterhead and signed by Chemsteel.⁶⁸ If Chemsteel was not the manufacturer,⁶⁹ it should not sign the certificate of analysis.

CBP’s standard verification protocols are to evaluate and verify information collected during the course of an EAPA investigation is accurate. To do this effectively, CBP must be able to, among other things, trace a producer’s raw material purchases to its accounting system; through the production process, *i.e.*, starting inventory, work-in-progress, ending inventory, and finished goods, *etc.*; and, for instances in which the manufacturer was identified as the [], exportation to the U.S. importer. Taking into consideration the statements by Enzyme Bioscience, the multiple deficiencies in their RFI, and the failure of Chemsteel to provide complete RFI responses, CBP determined that it could not verify the accuracy or the validity of the information submitted.

Final Determination as to Evasion

Pursuant to 19 U.S.C. §1517(c)(3) and 19 C.F.R. §165.6, CBP may apply an adverse inference if the party to the investigation that filed an allegation, the importer, or the foreign producer or exporter of the covered merchandise fails to cooperate and comply to the best of its ability with an RFI made by CBP. In applying an adverse inference against an eligible party, CBP may use the facts otherwise available to make a final determination as to evasion pursuant to 19 U.S.C. §1517(c)(1)(A) and 19 C.F.R. §165.27. Moreover, an adverse inference may be used with respect to U.S. importers, foreign producers, and manufacturers “without regard to whether another person involved in the same transaction or transactions under examination has provided the information sought....” *See* 19 U.S.C. 1517(c)(3)(B).

⁶⁴ *See* Brio CF 28 Response One.

⁶⁵ *See* RFI Instruction Chemsteel.

⁶⁶ *See* Brio RFI at 9-10 and *see also* Brio RFI Response to documents request at 14.

⁶⁷ *See* Brio RFI Response to documents request at 14.

⁶⁸ *Id.* at 14. Export invoices submitted on Chemsteel’s letterhead identify manufacture dates for batches of glycine. The same batch numbers are captured on certificates of analysis on Chemsteel’s letterhead that detail material specifications with results.

⁶⁹ *See* RFI Instruction Chemsteel.

In this case, the producer and the [] failed to provide sufficient information to demonstrate that Enzyme Bioscience actually produce the merchandise that Brio imported into the United States. Given these failures on the part of the alleged foreign companies, CBP concludes that the producer and [] did not cooperate with CBP's information requests to the best of their ability.⁷⁰ As a result, CBP will apply adverse inferences and infer that the claimed foreign manufacturers did not manufacture the imported glycine. CBP is relying on the existing information on the record, including the information submitted by GEO, the allegor.

Since the record does not contain sufficient evidence to support that Enzyme Bioscience or Chemsteel produced the merchandise under investigation, CBP will select from the facts otherwise available and infer that the merchandise imported to the United States was produced in China, as submitted by the Allegor. GEO asserted that various United States government entities confirmed the scheme to transship Chinese-made glycine through India to the United States to avoid the AD order.⁷¹ The allegation included that Brio imported glycine from India shipped from Enzyme Bioscience and Chemsteel,⁷² and in the same time period, Enzyme Bioscience and Chemsteel imported Chinese glycine into India.⁷³ The manufacturing and shipment dates on the glycine from China to India were similar dates on the glycine from India to Brio in the United States.⁷⁴ The allegation also included that Enzyme Bioscience and Chemsteel were not referenced in the Directory of World Chemical Producers and minimal information on the internet established the companies as producers of glycine.

Accordingly, evidence on the record indicates that the glycine originated in China. Therefore, based on the evidence on the record, CBP finds that the identified producer Enzyme Bioscience and [] have been participating in the transshipment of Chinese-origin glycine through India. The aforementioned failure of producer and the [] to respond to the best of their abilities also supports the application of adverse inferences. In relying upon an adverse inference for failure to respond to the RFIs, or failure to cooperate and comply to the best of one's ability with an RFI, CBP will look at the facts otherwise available. Here, CBP selects and relies upon the information which indicates the glycine originated in China. On the basis of the aforementioned analysis, CBP determines that substantial evidence exists demonstrating that the glycine entered by Brio during the period of investigation was of Chinese-origin and transshipped through India, and is subject to the China-wide entity rate for the AD and the all-others rate for CVD orders on glycine. At present, the rates are 155.89 and 144.01 percent, respectively.

⁷⁰ See Conference Call Request. See also RFI Instruction Chemsteel.

⁷¹ See GEO's "Evasion Allegation Against Brio USA LLC" (April 26, 2019) ("Allegation").

⁷² *Id.* at 4-5.

⁷³ *Id.* at 6-7.

⁷⁴ *Id.* at 6-7.

Actions Taken Pursuant to the Affirmative Determination of Evasion

In light of CBP's determination that Brio 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 imported by Brio on or after July 17, 2019, the date of initiation. 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 importers post the applicable in accordance with CBP's policies, and may require single transaction bonds as appropriate. None of the above actions precludes CBP or other agencies from pursuing additional enforcement actions or penalties.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian M. Hoxie". The signature is fluid and cursive, with the first name "Brian" being the most prominent.

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