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Re: Enforce and Protect Act Consolidated Case Number 7647; Starille, Ltd.;
Nutrawave Co., Ltd.; and Newtrend USA Co., Ltd.; *Glycine from the People's Republic
of China: Antidumping and Countervailing Duty Orders*, 60 Fed. Reg. 16,115 (March 29,
1995) and 84 Fed. Reg. 29,173 (June 21, 2019); 19 U.S.C. § 1517

Dear Messrs. Heffner and Schwartz:

This is in response to a request for *de novo* administrative review of a determination of evasion dated July 22, 2022, 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”) Consolidated Case Number 7647 (hereinafter referred to as the “July 22 Determination”).¹ A request for review, dated September 1, 2022, was submitted to CBP, OT, Regulations and Rulings (“RR”) by Faegre Drinker Biddle & Reath LLP, on behalf of Starille, Ltd. (“Starille”) and Nutrawave Co., Ltd. (“Nutrawave”), pursuant to 19 U.S.C. § 1517(f) and 19 CFR § 165.41(a). A separate request for review, also dated September 1, 2022, was submitted to RR by Faegre Drinker Biddle & Reath LLP, on behalf of Newtrend USA Co., Ltd. (“Newtrend USA”).

¹ See Notice of Determination as to Evasion in EAPA Consolidated Case Number 7647 (July 22, 2022) (“July 22 Determination”), available at: <https://www.cbp.gov/document/publications/eapa-consolidated-case-7647-various-importers-notice-determination-evasion>.

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I. Background

Inasmuch as the facts in this case were fully set forth in the July 22 Determination, we will not repeat the entire factual history herein.

In brief, according to the record evidence, on April 30, 2021, GEO Specialty Chemicals, Inc. (“GEO”) filed separate EAPA allegations against Nutrawave and Starille. GEO alleged that Nutrawave and Starille entered glycine of Chinese origin into the United States by transshipment through Indonesia to evade the payment of antidumping and countervailing duties (“AD/CVD”) on glycine from the People’s Republic of China (“China”) under Case Nos. A-570-836 and C-570-081.² On September 7, 2021, GEO filed an EAPA allegation against Newtrend USA. GEO alleged that Newtrend USA entered glycine of Chinese origin by transshipment through Indonesia to evade payment of AD/CVD on glycine from China.³ These three allegations were subsequently consolidated by TRLED into a single case.⁴

The allegations of evasion pertained to the AD/CVD Orders issued by the U.S. Department of Commerce (“Commerce”) on glycine from China.⁵

Commerce defined the scope of the CVD Order as follows:

The merchandise covered by these orders is glycine at any purity level or grade. This includes glycine of all purity levels, which covers all forms of crude or technical glycine including, but not limited to, sodium glycinate, glycine slurry and any other forms of amino acetic acid or glycine. Subject merchandise also includes glycine and precursors of dried crystalline glycine that are processed in a third country, including, but not limited to, refining or any other processing that would not otherwise remove the merchandise from the scope of these orders if performed in the country of manufacture of the in-scope glycine or precursors of dried crystalline glycine. Glycine has the Chemical Abstracts Service (CAS) registry number of 56-40-6. Glycine and glycine slurry are classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2922.49.43.00. Sodium glycinate is classified in the HTSUS under 2922.49.80.00. While the HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written description of the scope of these orders is dispositive.

Commerce defined the scope of the AD Order as follows:

The product covered by this proceeding is glycine which is a freeflowing crystalline material, like salt or sugar. Glycine is produced at varying levels of

² See GEO – Nutrawave Allegation (Apr. 30, 2021)(Public Version (“PV”)); GEO – Starille Allegation (Apr. 30, 2021)(PV).

³ See GEO – Allegation Against Newtrend USA (Sep. 7, 2021)(PV).

⁴ See Notice of Initiation of Investigation and Interim Measures – EAPA Consolidated Case Number 7647 (Oct. 26, 2021)(PV).

⁵ See *Glycine From India and the People's Republic of China: Countervailing Duty Orders*, 84 Fed. Reg. 29,173 (June 21, 2019); *Antidumping Duty Order: Glycine From the People's Republic of China*, 60 Fed. Reg. 16,115 (Mar. 29, 1995).

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purity and is used as a sweetener/taste enhancer, a buffering agent, reabsorbable amino acid, chemical intermediate, and a metal complexing agent. Glycine is currently classified under subheading 2922.49.4020 of the Harmonized Tariff Schedule of the United States (HTSUS). This proceeding includes glycine of all purity levels. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

On July 21, 2021, TRLED initiated a formal investigation under Title IV, section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, in response to the allegations of evasion.⁶

On October 26, 2021, in accordance with 19 CFR § 165.24, CBP issued the Notice of Initiation to all interested parties, and notified the parties of CBP's decision to take interim measures based upon reasonable suspicion that Nutrawave, Starille, and Newtrend USA (collectively "the Importers") entered covered merchandise into the customs territory of the United States through evasion.⁷ Per the Notice of Initiation, the entries subject to the investigation were those entered for consumption, or withdrawn from a warehouse for consumption, from June 19, 2020, through the pendency of the investigation ("the Period of Investigation" or "POI").⁸ TRLED concluded that, based on the record evidence, there was reasonable suspicion that the Importers entered covered merchandise into the customs territory of the United States through evasion.⁹

On July 22, 2022, TRLED issued the July 22 Determination. TRLED found substantial evidence to demonstrate that the Importers entered glycine into the United States from China that was covered by the AD/CVD Orders, by transshipment through Indonesia. As a result, no AD/CVD cash deposits were paid on the merchandise upon entry.¹⁰

On September 1, 2022, Starille/Nutrawave and Newtrend USA filed timely Requests for Administrative Review.¹¹ On September 1, 2022, RR sent an email to all parties to the investigation, notifying them of the commencement of the administrative review process and the assignment of RR case number H327086. On September 16, 2022, GEO filed a timely response to the Importers' requests for administrative review.¹² For purposes of our decision, we have reviewed the record as transmitted to us and indexed by TRLED, as well as the requests for review and response.

⁶ See TRLED Initiation Memo – Nutrawave – China (July 21, 2021)(PV); TRLED Initiation Memo – Starille – China (July 21, 2021)(PV); TRLED Initiation Memo – Newtrend USA (Sep. 13, 2021)(PV).

⁷ See Notice of Initiation of Investigation and Interim Measures – EAPA Consolidated Case Number 7647 (Oct. 26, 2021)(PV)("Notice of Initiation"), available at <https://www.cbp.gov/trade/trade-enforcement/tftea/eapa/recent-eapa-actions/eapa-action-notice-investigation-and-interim-measures-eapa-consolidated-case-7647-glycine>.

⁸ *Id.* at 2; see also 19 CFR § 165.2.

⁹ *Id.* at 1.

¹⁰ See July 22 Determination, at 1 (PV).

¹¹ Nutrawave/Starille Request for Administrative Review (Sep. 1, 2022)(PV); Newtrend USA Request for Administrative Review (Sep. 1, 2022)(PV).

¹² GEO's Response to Administrative Review Requests (Sep. 16, 2022)(PV).

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II. Discussion

a. 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.¹³

Examples of evasion could include, but are not limited to, the 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.¹⁴

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).”¹⁵

Our decision must be supported by substantial evidence. While substantial evidence is not defined by statute, the “substantial evidence” standard has been reviewed by the courts in relation to determinations by other agencies. “Substantial evidence requires more

¹³ See also 19 CFR § 165.1.

¹⁴ See *Investigation of Claims of Evasion of Antidumping and Countervailing Duties, Interim Regulations*, 81 Fed. Reg. 56,477, 56,478 (Aug. 22, 2016).

¹⁵ See 19 CFR § 165.1.

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than a mere scintilla, but is satisfied by something less than the weight of the evidence.”¹⁶ The U.S. Court of Appeals for the Federal Circuit has also stated that “substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”¹⁷

Therefore, CBP must determine whether a party has entered merchandise that is subject to an AD or CVD 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 CVD cash deposits or duties being collected on such merchandise. Lastly, as stated above, our decision herein must be supported by substantial evidence.

b. Nutrawave’s and Starille’s Arguments

Nutrawave and Starille request that we reverse the July 22 Determination of evasion, arguing that it is not supported by substantial evidence.¹⁸

Nutrawave and Starille begin with various due process arguments. Specifically, they argue that TRLED did not transmit its Verification Report¹⁹ to the Importers until June 13, 2022, three days before the deadline for written arguments.²⁰ They contend that TRLED’s refusal to extend this deadline did not give them adequate time “to correct TRLED’s many factual and analytical errors” in the Verification Report.²¹ Next, Nutrawave and Starille state that the Importers should have been provided with Indonesian manufacturer PT Newtrend Nutrition Ingredient’s (“PTNNI”) business confidential information contained in the Verification Report.²² Nutrawave and Starille also contend that TRLED failed to include public version summaries of bracketed business confidential information.²³ Additionally, Nutrawave and Starille assert that the July 22 Determination relied upon facts not on the record, which they had no opportunity to rebut.²⁴ Lastly, Nutrawave and Starille allege that TRLED selectively omitted from the administrative record various documents physically presented to TRLED by PTNNI during verification.²⁵

Nutrawave and Starille further argue that TRLED erroneously concluded that Nutrawave was affiliated with the Newtrend Group.²⁶ Nutrawave and Starille contend that a finding of affiliation must meet the statutory standard for “related parties”²⁷ found at 19

¹⁶ See *Altex, Inc. v. United States*, 370 F.3d 1108, 1116 (Fed. Cir. 2004) (internal citations and quotation marks omitted).

¹⁷ *A.L. Patterson, Inc. v. United States*, 585 Fed. Appx. 778, 781-82 (Fed. Cir. 2014) (quoting *Consol. Edison Co. of N.Y. v. NLRB*, 305 U.S. 197, 229 (1938)).

¹⁸ Nutrawave/Starille Request for Administrative Review (Sep. 1, 2022)(PV) at 3-5.

¹⁹ Verification Report, EPA Case Number 7647 (June 7, 2022)(“Verification Report”).

²⁰ Nutrawave/Starille Request for Administrative Review (Sep. 1, 2022)(PV) at 8.

²¹ *Id.* at 9.

²² *Id.* at 11-14.

²³ *Id.* at 14-15.

²⁴ *Id.* at 15-16.

²⁵ *Id.* at 16-19.

²⁶ *Id.* at 19-21.

²⁷ 19 U.S.C. § 1401a(g)(1).

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U.S.C. § 1401a(g)(1).²⁸ Nutrawave and Starille contend that TRLED’s finding of affiliation based on a common former officer between Newtrend Group and Nutrawave, as well as common business relationships, is arbitrary and capricious because it fails to meet this statutory standard.²⁹

Next, Nutrawave and Starille make various arguments asserting that the July 22 Determination is not supported by substantial evidence.³⁰ Specifically, Nutrawave and Starille allege that TRLED wrongly relied on countrywide trade data showing an increase in imports into Indonesia of Chinese-origin amino acids, because this basket category included products besides glycine.³¹ Additionally, they argue that this evidence is not substantial because the countrywide trade data cannot be directly connected to PTNNI or the Importers.³²

Nutrawave and Starille also challenge TRLED’s finding that PTNNI could not have produced all the glycine sold to the Importers from PTNNI’s manufacturing facility at Karawang, Indonesia.³³ They contend that TRLED’s calculation of methanol and activated carbon consumption was based on a flawed understanding of the glycine production process, and that TRLED’s analysis of gas and electricity consumption similarly failed to account for the multistage nature of glycine production.³⁴

Finally, Nutrawave and Starille allege that TRLED failed to engage with PTNNI regarding identified discrepancies, resulting in incorrect conclusions in the July 22 Determination.³⁵ Specifically, they allege TRLED mistranslated the Indonesian labeling of an ammonia tank and used this incorrect interpretation to raise a discrepancy related to PTNNI’s Request for Information (“RFI”) responses.³⁶ They also contend that TRLED’s conclusion that PTNNI’s methanol distillation tower was used for methanol filtering rather than methanol recycling was groundless.³⁷ Additionally, they argue that TRLED’s conclusion that PTNNI had insufficient labor to support production ignored numerous payroll and attendance documents in the record.³⁸ Lastly, Nutrawave and Starille assert that TRLED erroneously concluded that PTNNI mislabeled its packaging by ignoring PTNNI’s internal procedures regarding when a production date is stamped on finished glycine.³⁹

c. Newtrend USA’s Arguments

Newtrend USA submitted a separate request for review of the July 22 Determination, arguing that it should be reversed because it is not supported by substantial evidence.⁴⁰

²⁸ Nutrawave/Starille Request for Administrative Review (Sep. 1, 2022)(PV) at 20.

²⁹ *Id.*

³⁰ *Id.* at 21.

³¹ *Id.* at 22.

³² *Id.* at 23.

³³ *Id.* at 24.

³⁴ *Id.* at 24-26.

³⁵ *Id.* at 26-27.

³⁶ *Id.* at 27.

³⁷ *Id.* at 28.

³⁸ *Id.* at 28-29.

³⁹ *Id.* at 29.

⁴⁰ Newtrend USA Request for Administrative Review (Sep. 1, 2022)(PV) at 6-7.

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Newtrend USA first argues that TRLED relied on incorrectly characterized Indonesian import statistics of Chinese-origin amino acids as glycine imports, and that TRLED's linkage of amino acids imported through Jakarta to PTNNI is overly speculative.⁴¹ Newtrend USA states that this data is not evidence of transshipment because "PTNNI's shipments of Indonesian origin glycine tend to follow *decreases* in the imports of Chinese amino acids."⁴² Newtrend USA alleges that reliance on this trade data was dispositive in the July 22 Determination because a parallel investigation into PTNNI's alleged transshipments of Thai-origin glycine found no evidence of evasion due to a lack of Thai amino acid imports into Indonesia.⁴³ Newtrend USA argues that TRLED behaved inconsistently by giving full weight to the sales reconciliations of PTNNI's Thailand affiliate in this parallel investigation, while not giving weight to the sales reconciliations of PTNNI's Chinese affiliates in the present matter.⁴⁴ Finally, Newtrend USA asserts that TRLED's July 22 Determination was not supported by substantial evidence of evasion because there is no direct evidence of Chinese glycine purchases by PTNNI.⁴⁵

Next, Newtrend USA argues that TRLED intentionally misconstrued the record in concluding that PTNNI's facility was not operational on its claimed production start date.⁴⁶ Newtrend USA alleges that TRLED's reliance on photographs showing construction equipment outside the factory walls after the claimed production start date is irrelevant to production occurring within the factory, and states that TRLED ignored evidence where an Indonesian Ministry of Trade official "independently confirmed it was fully constructed."⁴⁷ Newtrend USA takes issue with TRLED's reliance on records showing equipment installed after PTNNI's claimed production start date, noting that the equipment was used to produce finished glycine later in the production process and therefore is not inconsistent with a finding that production had begun on the claimed start date.⁴⁸

Newtrend USA further alleges that TRLED disregarded record evidence when it concluded that PTNNI's facility lacked capacity to produce PTNNI's claimed production quantities.⁴⁹ Specifically, Newtrend USA states that TRLED calculated PTNNI's methanol consumption using an erroneous consumption rate and engaged in unfounded speculation regarding the functionality of PTNNI's methanol distillation tower.⁵⁰ Newtrend USA also argues that TRLED failed to take into account the various stages of glycine production in calculating PTNNI's electricity and natural gas usage, resulting in erroneous conclusions as to the facility's output.⁵¹ Additionally, Newtrend USA states that TRLED incorrectly calculated expected activated charcoal consumption on the basis of finished glycine

⁴¹ *Id.* at 7-8.

⁴² *Id.* at 9 (emphasis in original).

⁴³ *Id.* at 9-10 (citing Notice of Determination as to Evasion – EAPA Consolidated Case Number 7663 (July 22, 2022), available at <https://www.cbp.gov/document/publications/eapa-consolidated-case-7663-nutrawave-co-ltd-starille-ltd-and-newtrend-usa-co>).

⁴⁴ *Id.* at 11.

⁴⁵ *Id.* at 12-13.

⁴⁶ *Id.* at 14.

⁴⁷ *Id.*

⁴⁸ *Id.* at 14-15.

⁴⁹ *Id.* at 15.

⁵⁰ *Id.* at 16-21.

⁵¹ *Id.* at 21-24.

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production, rather than refined glycine production.⁵² Newtrend USA alleges that TRLED's finding that PTNNI utilized ammonia gas, rather than liquid ammonia, to produce glycine was based on an incorrect translation of Indonesian language stenciling on the ammonia tank.⁵³ Newtrend USA claims TRLED disregarded PTNNI records, including a cash journal and attendance sheets, in concluding that PTNNI did not have adequate labor to support production.⁵⁴ Lastly, Newtrend USA asserts that TRLED erroneously concluded that PTNNI mislabeled its packaging by ignoring PTNNI's internal procedures regarding when a production date is stamped on finished glycine.⁵⁵

Newtrend USA's arguments conclude with an assertion that the Importers' due process rights were violated by TRLED.⁵⁶ These arguments mirror those advanced by Nutrawave/Starille in their request for review.⁵⁷

d. GEO's Arguments

GEO filed a response to the Importers' requests for administrative review, requesting that we affirm the July 22 Determination of evasion, arguing that TRLED's determination was based on substantial evidence and that the Importers' due process arguments are beyond the scope of this *de novo* review.⁵⁸

GEO first argues that there is sufficient record evidence that PTNNI's facility was not operational at the time of the claimed production start date.⁵⁹ GEO contends that the Importers mischaracterized record evidence in their requests for review by claiming an Indonesian official verified PTNNI's facility was operational by the claimed start date, when he merely attested to the authenticity of a new exporter verification document.⁶⁰ GEO also asserts that the evidence in its corporate investigative report, commissioned by GEO prior to its submission of allegations against the Importers, is independently sufficient based on prior EAPA precedent to support substantial evidence of evasion.⁶¹ Specifically, GEO cites the Final Administrative Determination in EAPA Consolidated Case 7553, in which RR relied upon a third-party investigation to substantiate a finding of evasion through transshipment.⁶²

GEO next argues that there is sufficient record evidence to demonstrate that PTNNI did not have adequate raw materials to support its claimed production.⁶³ GEO cites record evidence of an established Indian glycine producer using the same production process

⁵² *Id.* at 24-25.

⁵³ *Id.* at 25-26.

⁵⁴ *Id.* at 26-27.

⁵⁵ *Id.* at 28.

⁵⁶ *Id.* at 29.

⁵⁷ *Id.* at 29-30; Nutrawave/Starille Request for Administrative Review (Sep. 1, 2022)(PV) at 9-25.

⁵⁸ GEO Response to Importers' Administrative Review Requests (Sep. 16, 2022)(PV) at 3-4.

⁵⁹ *Id.* at 5.

⁶⁰ *Id.* at 6.

⁶¹ *Id.* at 6-7.

⁶² Final Administrative Determination – EAPA Consolidated Case Number 7553 (January 28, 2022), available at <https://www.cbp.gov/sites/default/files/assets/documents/2022-Aug/EAPA%20Case%207553%20Final%20Administrative%20Determination.pdf>.

⁶³ *Id.* at 9.

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as PTNNI to support a finding that PTNNI would have needed more ammonia to support its claimed production.⁶⁴ GEO also asserts that PTNNI could not have recycled methanol at the rates it claimed due to repeated stoppages during the period of investigation which would have inhibited the recycling process.⁶⁵ Finally, GEO notes that raw material shortages identified by TRLED in its Verification Report also cast doubt on PTNNI's claimed production.⁶⁶

GEO next cites various discrepancies in PTNNI's employment records and production processes as supporting TRLED's determination of evasion.⁶⁷ GEO rebuts the Importers' objection to TRLED's reliance on certain employment records, stating that PTNNI explained its use of these same records to TRLED.⁶⁸ GEO then cites record evidence of poor safety processes and inadequate protective equipment at the PTNNI facility as supporting a finding that workers did not have sufficient capacity to engage in the hazardous glycine production process.⁶⁹ GEO also emphasizes evidence in TRLED's Verification Report that PTNNI workers lacked expertise to operate PTNNI's methanol distillation tower, or test pH with sufficient accuracy.⁷⁰ Finally, GEO rebuts the Importers' assertion that PTNNI's glycine is not labeled until the final stage of production by arguing that PTNNI shut down all stages of production during the month in question, supporting a finding that the glycine was nevertheless mislabeled.⁷¹

GEO also asserts there is sufficient record evidence to support TRLED's finding that PTNNI's glycine was of Chinese origin.⁷² GEO first asserts that each of the Importers is tied to the Newtrend Group.⁷³ GEO cites record evidence that Newtrend Group's CEO had previously served as Nutrawave's CEO during the POI, as well as evidence that Newtrend Group provided loans to Starille and Nutrawave.⁷⁴ GEO cites prior EAPA precedent in asserting that this evidence of affiliation supports a finding that the glycine purchased by the Importers originated from the Newtrend Group's factories in China.⁷⁵ GEO further notes record evidence that the Newtrend Group's Chinese affiliate had sold glycine to Indonesian companies, and countrywide trade data showing an increase in Chinese exports of glycine to Indonesia during the POI.⁷⁶ While GEO acknowledges that this evidence is not dispositive, it argues that the evidence is sufficient to support TRLED's finding of evasion when viewed in combination with other record evidence.⁷⁷

In addition to the above, GEO responds to the Importers' due process arguments by stating that RR's administrative review is limited by statute to a review of TRLED's

⁶⁴ *Id.* at 10-11.

⁶⁵ *Id.* at 11-12.

⁶⁶ *Id.* at 12-13.

⁶⁷ *Id.* at 13.

⁶⁸ *Id.* at 14.

⁶⁹ *Id.* at 15-16.

⁷⁰ *Id.* at 16-17.

⁷¹ *Id.* at 17-18.

⁷² *Id.* at 18.

⁷³ *Id.*

⁷⁴ *Id.* at 19.

⁷⁵ *Id.* at 19-20.

⁷⁶ *Id.* at 22.

⁷⁷ *Id.* at 23-25.

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administrative record, and that RR has consistently refused to address due process arguments in the past.⁷⁸ GEO also specifically rebuts the Importers' due process allegations, arguing that TRLED had already extended the deadline for written arguments and could not have met its regulatory deadline had it done so again; that TRLED properly redacted business confidential information; and, that there is no evidence to support the Importers' claim that TRLED refused to include in the record various documents allegedly produced by PTNNI during verification.⁷⁹

e. Administrative Review Analysis

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, RR has reviewed the administrative record, as provided to RR by TRLED, upon which the initial determination was made, and the timely and properly filed requests for review and response.

Our *de novo* review of the administrative record reveals substantial evidence of evasion. Each of the Importers acknowledges it entered glycine sourced from PTNNI during the POI under HTSUS Item No. 2922.49.43.00.⁸⁰ These entries were made as [ENTRY TYPE] consumption entries, rather than [ENTRY TYPE].⁸¹ Specifically, Starille entered shipments of glycine between [DATE RANGE] which were shipped by PTNNI between [DATE RANGE].⁸² Nutrawave entered shipments of glycine between [DATE RANGE] which were shipped by PTNNI in [MONTH].⁸³ Finally, Newtrend USA entered glycine in [MONTH] shipped by PTNNI in [MONTH].⁸⁴

The crux of this administrative review is whether the Importers falsely entered Chinese-origin glycine supplied by PTNNI as “01” free and dutiable consumption entries, not subject to AD/CVD, when they were required to be entered as “03” entries subject to AD/CVD.⁸⁵ As discussed below, we find that the Importers' entries of glycine, containing merchandise subject to the scope of the Orders, were improperly made as “01” entries and

⁷⁸ *Id.* at 25-26.

⁷⁹ *Id.* at 26-30.

⁸⁰ Importers' Combined CF-28 Submission (Nov. 22, 2021), at Nutrawave Exhibit A (PV), Starille Exhibit A (PV), Newtrend USA Exhibit A (PV).

⁸¹ Newtrend USA CF-28 Response – Combined (Oct. 4, 2021)(Business Confidential Version (“BC”)) at Exhibit C; Nutrawave Combined CF-28 Response (Oct. 15, 2021)(BC) at Exhibit C; Starille CF-28 Response – Combined (Sep. 15, 2021)(BC) at Exhibit C.

⁸² Starille CF-28 Response – Combined (Sep. 15, 2021)(BC) at Exhibit C.

⁸³ Nutrawave Combined CF-28 Response (Oct. 15, 2021)(BC) at Exhibit C.

⁸⁴ Newtrend USA CF-28 Response – Combined (Oct. 4, 2021)(BC) at Exhibit C.

⁸⁵ Entries that are covered by AD/CVD orders are required to be entered as “03” entries; entries declared as “01” are not subject to AD/CVD. *See* CBP Entry Summary Form 7501 and Instructions and the ACE Entry Summary Business Rules and Procedure Document, available at <https://www.cbp.gov/trade/programs-administration/entry-summary/cbp-form-7501>.

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the applicable AD/CVD were not deposited or paid. Thus, pursuant to 19 U.S.C. § 1517, evasion has occurred.⁸⁶

First, the record supports a finding that PTNNI was incapable of producing glycine at the times during which the Importers claim such capacity. The record contains imagery of PTNNI’s factory from Karawang New Industry City’s (“KNIC”) public website showing the walls of the factory incomplete as of August 2020,⁸⁷ and imagery dated December 2020 shows the factory grounds substantially unpaved, with construction equipment and detritus immediately outside the factory walls.⁸⁸ GEO’s investigative report also provides evidence of the factory’s incomplete status several months after PTNNI’s claimed production start date, which we find reliable and corroborated by other record evidence.⁸⁹ The investigative report includes extensive photographic evidence of [

VARIOUS ACTIONS

].⁹⁰ The

investigative report also contains [

STATEMENTS BY PTTNI MANAGER

].⁹¹ PTNNI’s submissions also show [

ACTIONS

]⁹², as well as [

ACTIONS

].⁹³

PTNNI’s submission of an affidavit from KNIC stating that the photograph of the PTNNI factory posted on the KNIC website purporting to show construction progress as of December 2020 was actually taken in November 2020,⁹⁴ as well as its own photographs documenting construction of the factory, and an affidavit from the PTNNI Director attesting that construction of the PTNNI facility was completed in October 2020, do little to rebut what the photographs elsewhere in the record show.⁹⁵ In fact, PTNNI’s own photographs depict incomplete factory walls as of August 2020, with crates and uninstalled production equipment lying inside the shell of the factory, and no walls in the interior of the factory.⁹⁶ PTNNI’s photograph dated October 2020 depicts a completed factory exterior, but provides no indication of whether production equipment was installed inside the factory at that time.⁹⁷ Newtrend USA argues specifically in its request for review that the equipment

⁸⁶ 19 U.S.C. § 1517(a)(5)(A) (“...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.”).

⁸⁷ TRILED Memorandum Adding Information to the Administrative Record (Oct 19, 2021)(PV) at Attachment 2.

⁸⁸ *Id.* at Attachment 3.

⁸⁹ GEO – Nutrawave Allegation (Apr. 30, 2021)(BC) at Exhibit 1; GEO – Starille Allegation (Apr. 30, 2021)(BC) at Exhibit 1; GEO – Allegation Against Newtrend USA (Sep. 7, 2021)(BC) at Exhibit 1.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² PTNNI 2nd Supp RFI (Mar. 9, 2022)(BC) at Exhibit SQ2-IV-13.

⁹³ PTNNI NFI Response (Jan. 3, 2022)(BC) at Exhibit 14.

⁹⁴ PTNNI NFI Response (Jan. 3, 2022)(PV) at Exhibit 2.

⁹⁵ *Id.* at Exhibit 4.

⁹⁶ *Id.*

⁹⁷ *Id.*

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installed after October 2020 was used to produce finished glycine later in the production process and therefore not inconsistent with this claimed production start date.⁹⁸ Yet, PTNNI claims significant finished glycine production in [MONTH] at a time when [INCOMPLETE ACTIONS].⁹⁹ Weighing the evidence on the record, it appears highly improbable that PTNNI's facility was operational as of the claimed production start date of October 2020. Even if operational, PTNNI's facility almost certainly could not have supported production of the glycine entered by the Importers into the United States between [DATE RANGE].¹⁰⁰

There is also record evidence suggesting that PTNNI did not procure sufficient methanol to support its claimed production. TRLED noted that PTNNI only purchased [#] kg of methanol during the POI, an insufficient quantity to support PTNNI's claimed intermediate glycine production of [#] kg during the POI at PTNNI's claimed methanol consumption rate of [#] kg of methanol per kg of intermediate glycine.¹⁰¹ In its request for review, Newtrend USA notes that TRLED relied on an incorrect methanol consumption rate which PTNNI inadvertently submitted in its CF-28 response, while ignoring the Importers' efforts to correct the record.¹⁰² Newtrend USA asserts that the correct consumption rate of methanol per kg of intermediate glycine is actually [#], not [#].¹⁰³ However, evidence elsewhere in the record indicates this claimed consumption rate is unrealistically low. TRLED and CBP Regulatory Audit and Agency Advisory Services officials estimated that [#] kg of methanol would be needed to produce one kg of intermediate glycine.¹⁰⁴ GEO also submitted record evidence from a third-party glycine producer in India showing a methanol consumption rate of [#] kg per one kg of intermediate glycine.¹⁰⁵ The Importers argue that TRLED erroneously concluded that PTNNI was not recycling methanol, which would explain the discrepancy in consumption rates.¹⁰⁶ However, CBP officials noted during verification (which occurred a full 19 months after PTNNI's claimed production start date) that workers responsible for the methanol distillation tower had limited understanding of its controls and the methanol recycling process.¹⁰⁷ The Importers also did not account for methanol recycling when calculating

⁹⁸ Newtrend USA Request for Administrative Review (Sep. 1, 2022)(PV) at 14-15.

⁹⁹ PTNNI RFI Response (Dec. 3, 2021)(BC) at Exhibit 20; PTNNI 2nd Supp RFI (Mar. 9, 2022)(BC) at Exhibit SQ2-IV-13.

¹⁰⁰ Newtrend USA CF-28 Response – Combined (Oct. 4, 2021)(BC) at Exhibit C; Nutrawave Combined CF-28 Response (Oct. 15, 2021)(BC) at Exhibit C; Starille CF-28 Response – Combined (Sep. 15, 2021)(BC) at Exhibit C.

¹⁰¹ *Id.* at 30.

¹⁰² Newtrend USA Request for Administrative Review (Sep. 1, 2022)(PV) at 16; Importers' Written Argument Resubmission (Jun. 24, 2022)(PV) at fn. 87 (“Note that the consumption rate for liquid ammonia and methanol were inadvertently transposed in Exhibit J; however, the actual rate of consumption is provided elsewhere in the responses.”).

¹⁰³ *Id.*; *see* Newtrend USA CF-28 Response – Combined (Oct. 4, 2021)(BC) at Exhibit J (containing transposed consumption rate), Exhibit R (containing correct consumption rate).

¹⁰⁴ Verification Report – Enforce and Protect Act Case Number 7647 (June 7, 2022)(BC) at 16 (“Verification Report”).

¹⁰⁵ GEO RFI Rebuttal (Dec. 13, 2021)(BC) at Exhibit 5, p. 152.

¹⁰⁶ Nutrawave/Starille Request for Administrative Review (Sep. 1, 2022)(PV) at 28; Newtrend USA Request for Administrative Review (Sep. 1, 2022)(PV) at 16-21.

¹⁰⁷ Verification Report (BC) at 15.

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[FIGURES] in their CF-28 responses.¹⁰⁸ Finally, PTNNI had not paid for all its invoiced methanol as of verification in May 2022, raising doubts as to whether the invoiced methanol was actually received.¹⁰⁹ On the whole, the record evidence indicates that PTNNI probably did not procure sufficient methanol to support its claimed intermediate glycine production.

TRLED also determined that PTNNI did not procure sufficient [SUBSTANCE] to support production, stating that [#] kg of [SUBSTANCE] would have been necessary to support PTNNI's finished glycine production, while only [#] kg were procured.¹¹⁰ The Importers responded that TRLED's calculations are erroneous because [activated carbon] is used to produce refined glycine, not finished glycine.¹¹¹ This argument does not work in the Importers' favor because PTNNI's output of refined glycine was higher than its output of finished glycine during the POI (which would logically necessitate more [SUBSTANCE] input). Nevertheless, the Importers assert [SUBSTANCE] consumption rate of [#], rather than TRLED's claimed consumption rate of [#] which would account for the discrepancy.¹¹² While the record evidence suggests that PTNNI possibly may not have procured sufficient [SUBSTANCE], such evidence is not particularly probative of whether evasion occurred given the fact that this shortfall in procurement can be explained by a relatively minor discrepancy in consumption rate. As such, we do not see a need to accord it any weight, given the other evidence that is available.

The record also indicates that PTNNI did not have sufficient labor to support production.¹¹³ PTNNI asserts that it relied on the expertise of former Thai and Chinese workers when the factory was first operational.¹¹⁴ However, according to visa information submitted by PTNNI, only [#] Chinese workers and [#] Thai workers had arrived in Indonesia as of October 2020 when PTNNI claims production began.¹¹⁵ Furthermore, all of these employees filled [EMPLOYEE ROLES] and did not appear to [ACTIVITY].¹¹⁶ Moreover, as of [DATE],¹¹⁷ when PTNNI made its export of glycine to the Importers, only [#] Chinese workers and [#] Thai workers had a valid Indonesian work visa.¹¹⁸ The Importers did not address the absence of these critical foreign employees in their requests for review, alleging instead that TRLED ignored internally generated labor records such as signature sheets and cash journals.¹¹⁹ The absence of these skilled Thai and Chinese employees during PTNNI's

¹⁰⁸ Newtrend USA CF-28 Response – Combined (Oct. 4, 2021)(BC) at Exhibit R; Nutrawave Combined CF-28 Response (Oct. 15, 2021)(BC) at Exhibit R; Starille CF-28 Response – Combined (Sep. 15, 2021)(BC) at Exhibit R.

¹⁰⁹ Verification Report (PV) at 13.

¹¹⁰ *Id.* (BC) at 32.

¹¹¹ Newtrend USA Request for Administrative Review (Sep. 1, 2022)(PV) at 24-25; Nutrawave/Starille Request for Administrative Review (Sep. 1, 2022)(PV) at 25.

¹¹² Second Resubmission of Importers' Rebuttal Written Argument (June 29, 2022)(BC) at Attachment 3.

¹¹³ July 22 Determination (BC) at 32-33.

¹¹⁴ PTNNI & Importers NFI Rebuttal (Jan. 3, 2022)(PV) at 3.

¹¹⁵ PTNNI Supplemental RFI Response (Jan. 18, 2022)(BC) at Exhibit SQ-V-15.

¹¹⁶ *Id.* at Exhibit SQ-V-14.

¹¹⁷ Nutrawave Combined CF-28 Response (Oct. 15, 2021)(BC) at Exhibit C.

¹¹⁸ *Id.* at Exhibit SQ-V-15.

¹¹⁹ Newtrend USA Request for Administrative Review (Sep. 1, 2022)(PV) at 26-27; Nutrawave/Starille Request for Administrative Review (Sep. 1, 2022)(PV) at 28-29.

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claimed period of production raises particular doubts given PTNNI's statement that it takes about [TIME PERIOD] for new workers to sufficiently familiarize themselves with the production process to work independently.¹²⁰ Furthermore, the record contains information describing the lethal consequences of exposure to monochloroacetic acid ("MCA"), the primary input in the intermediate glycine production process, highlighting the hazards of engaging in production without trained workers.¹²¹ Examined as a whole, the administrative record indicates that PTNNI did not have a workforce capable of supporting glycine production when it claimed production began.

The record evidence further indicates that the glycine PTNNI sold to the Importers was likely of Chinese origin.¹²² While the administrative record contains no direct evidence of PTNNI's having openly imported glycine from China into Indonesia, there is nevertheless substantial evidence in the record to support a finding that PTNNI transshipped Chinese-origin glycine, as further explained below.

It is not disputed that both PTNNI and Newtrend USA are ultimately owned by [COMPANY NAME], which also owns [FACILITIES].¹²³ [#] of these [PLACE] factories [VARIOUS ACTIVITIES] during the POI, while the remaining [#] [ACTIVITY].¹²⁴ Furthermore, [ACTION].¹²⁵ The Importers argue that TRLED failed to give full weight to the sales reconciliations of PTNNI's Chinese and Thai affiliates;¹²⁶ however, we must view the record evidence as a whole. GEO's investigative report contains [STATEMENTS BY PTNNI MANAGER].¹²⁷ The record also contains public trade statistics on Indonesian amino acid imports from China, revealing total imports of amino acids several magnitudes greater than PTNNI's claimed production during the POI.¹²⁸ The Importers allege this amino acid basket category is broader than simply glycine.¹²⁹ However, alternative trade data offered by the Importers also shows Chinese glycine exports to Indonesia at several times greater than PTNNI's production during the POI.¹³⁰ We do not find the countrywide trade data alone to be dispositive, but, when viewed in conjunction with the rest of the record evidence, it supports the finding of substantial evidence of transshipment that is found elsewhere in the record.

¹²⁰ PTNNI Supplemental RFI Response (Jan. 18, 2022)(BC) at 26.

¹²¹ TRLED Memo Adding Information to the Administrative Record (June 15, 2022)(PV) at Attachment 7.

¹²² July 22 Determination (BC) at 34.

¹²³ Newtrend USA RFI Response (Nov. 26, 2021)(BC) at Exhibit 4.

¹²⁴ Newtrend and Importers Voluntary Submission of Factual Information (Feb. 14, 2022)(BC) at Exhibits 7-16.

¹²⁵ *Id.* at Exhibit 11.

¹²⁶ Newtrend USA Request for Administrative Review (Sep. 1, 2022)(PV) at 11; Nutrawave/Starille Request for Administrative Review (Sep. 1, 2022)(PV) at 23.

¹²⁷ GEO – Nutrawave Allegation (Apr. 30, 2021)(BC) at Exhibit 1; GEO – Starille Allegation (Apr. 30, 2021)(BC) at Exhibit 1; GEO – Allegation Against Newtrend USA (Sep. 7, 2021)(BC) at Exhibit 1.

¹²⁸ TRLED Memo Adding Information to the Administrative Record (June 15, 2022)(PV) at Attachments 1-4.

¹²⁹ Newtrend USA Request for Administrative Review (Sep. 1, 2022)(PV) at 4; Nutrawave/Starille Request for Administrative Review (Sep. 1, 2022)(PV) at 23.

¹³⁰ Importers & PTNNI NFO Rebuttal (June 27, 2022)(PV) at Exhibit 2.

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Additionally, the record indicates that the Newtrend Group likely exercised significant control over Nutrawave and Starille. Starille was incorporated on September 23, 2020, shortly before it began importing into the United States glycine from PTNNI.¹³¹ Starille sold all glycine it imported into the United States from PTNNI to [CORP.]¹³², who subsequently resold it to [COMPANY].¹³³ Further, Starille did not advertise its glycine.¹³⁴ Nutrawave likewise resold [#]% of the glycine it imported from PTNNI to [COMPANY].¹³⁵ The record also indicates that one individual served as both Nutrawave CEO and Newtrend USA general manager at different points during the POI.¹³⁶ Most significantly, the record states that both Starille and Nutrawave received interest-free loans from the president of [COMPANY].¹³⁷ Indeed, Newtrend USA acknowledged that [

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].¹³⁸ These facts support a conclusion that the Newtrend Group exercised control over Nutrawave and Starille during the POI. In its request for review, Nutrawave cites the definition of “related parties” used in the customs valuation statute and regulations¹³⁹ in arguing that it cannot be considered an affiliate of the Newtrend Group.¹⁴⁰ This argument is without merit as it ignores the plain statutory language in 19 U.S.C. § 1401a(g)(1) limiting application of the “related parties” definition to “this section”.¹⁴¹ The EAPA statute is codified in a different section of Title 19 of the U.S. Code.¹⁴² Thus, the cited definition is not relevant. Relevant are the facts showing intertwined relationships that would enable transshipment strategies to be executed as to glycine produced in China. Alone, these affiliations might not suffice as substantial evidence of evasion; however, they further buttress the other evidence of evasion in the record.

The Importers’ requests for review seek to rebut miscellaneous inconsistencies noted by TRLED. Specifically, the Importers challenge TRLED’s contention that glycine packages spotted during verification with a production date of [DATE], were mislabeled, arguing that PTNNI does not label its glycine until [ACTIVITY].¹⁴³ This explanation appears to be plausible, especially given the evidence that workers were paid for the entire month of [MONTH].¹⁴⁴ The Importers also take issue with TRLED’s determination that PTNNI’s liquid ammonia tank actually contained gaseous ammonia, alleging that TRLED

¹³¹ Starille RFI Response (Nov. 26, 2021)(PV) at Exhibit 2.

¹³² Starille RFI Response (Nov. 26, 2021)(BC) at 10.

¹³³ Nutrawave Supplemental RFI Response (Jan. 11, 2022)(BC) at 12.

¹³⁴ Starille Supplemental RFI Response (Jan. 11, 2022)(PV) at 3.

¹³⁵ Nutrawave Supplemental RFI Response (Jan. 11, 2022)(BC) at 11.

¹³⁶ Nutrawave Supplemental RFI Response (Jan. 11, 2022)(PV) at 3; Newtrend USA Supplemental RFI Response (Jan 11, 2022)(PV) at 1.

¹³⁷ Starille RFI Response (Nov. 26, 2021)(BC) at 3; Nutrawave Supplemental RFI Response (Jan. 11, 2022)(BC) at 6.

¹³⁸ Newtrend USA Supplemental RFI Response (Jan. 11, 2022)(BC) at 2.

¹³⁹ 19 U.S.C. § 1401a(g)(1); 19 C.F.R. § 152.102(g).

¹⁴⁰ Nutrawave/Starille Request for Administrative Review (Sep. 1, 2022)(PV) at 19-21.

¹⁴¹ 19 U.S.C. § 1401a(g)(1)(“(1)For purposes of this section, the persons specified in any of the following subparagraphs shall be treated as persons who are related:...”).

¹⁴² See 19 U.S.C. § 1517(c)(1)(containing AD/CVD evasion investigation procedures).

¹⁴³ Newtrend USA Request for Administrative Review (Sep. 1, 2022)(BC) at 28; Nutrawave/Starille Request for Administrative Review (Sep. 1, 2022)(BC) at 29.

¹⁴⁴ Verification Report (BC) at 14.

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mistranslated the Indonesian language stenciling on the tank labeled [LABELING], which was actually a [TRANSLATION].¹⁴⁵ We were unable to ascertain whether PTNNI's tank held liquid or gaseous ammonia based on the photographs in the Verification Report.¹⁴⁶ That said, the Importers' argument is plausible [DESCRIPTION OF LABELING],¹⁴⁷ although other record evidence indicates that [DESCRIPTION OF TANK].¹⁴⁸ Finally, the Importers challenge TRLED's contention that PTNNI's gas and electricity consumption per kg of glycine production spiked in [MONTH].¹⁴⁹ The Importers' argument that discrepancies in gas and electricity consumption can be explained by differing usage in the multiple stages of glycine production¹⁵⁰ do not align with PTNNI's prior record statement that this increase was due to the installation of an "evaporative condenser."¹⁵¹ While the Importers offer some evidence to rebut these alleged inconsistencies, we do not find any of these issues particularly probative on the ultimate question of whether PTNNI was capable of producing glycine on the claimed production start date of October 2020. As such, the weight of the evidence supports a conclusion that PTNNI could not have produced all of the glycine that was shipped to the United States and claimed to be of Indonesian origin.

For the sake of completeness, we also briefly address Importers' due process arguments. Importers allege that TRLED did not transmit its Verification Report¹⁵² to the Importers until June 13, 2022, three days before the deadline for written arguments.¹⁵³ They contend that TRLED's refusal to extend this deadline did not give them adequate time to respond to the contents of the Verification Report.¹⁵⁴ Although the statute imposes various deadlines¹⁵⁵ on CBP in its handling of an EAPA investigation, it does not provide a deadline for transmission of verification reports. We note that TRLED had previously provided a 100-day extension to the deadline for written arguments and proposed earlier dates for conducting the verification visit.¹⁵⁶

¹⁴⁵ Newtrend USA Request for Administrative Review (Sep. 1, 2022)(BC) at 25-26; Nutrawave/Starille Request for Administrative Review (Sep. 1, 2022)(BC) at 27.

¹⁴⁶ See Verification Report (BC) at Attachment IV (some labeling obscured in photograph of ammonia tank).

¹⁴⁷ *Id.*

¹⁴⁸ Verification Report (BC) at 5.

¹⁴⁹ July 22 Determination (PV) at 25.

¹⁵⁰ Newtrend USA Request for Administrative Review (Sep. 1, 2022)(PV) at 21-23; Nutrawave/Starille Request for Administrative Review (Sep. 1, 2022)(PV) at 24-25.

¹⁵¹ Verification Report (PV) at 13.

¹⁵² Verification Report, EAPA Case Number 7647 (June 7, 2022)("Verification Report").

¹⁵³ Nutrawave/Starille Request for Administrative Review (Sep. 1, 2022)(PV) at 8; Newtrend Request for Administrative Review (Sep. 1, 2022)(PV) at 29-30.

¹⁵⁴ Nutrawave/Starille Request for Administrative Review (Sep. 1, 2022)(PV) at 9; Newtrend Request for Administrative Review (Sep. 1, 2022)(PV) at 29-30.

¹⁵⁵ We note that 19 U.S.C. § 1517(b) provides a 15-business day deadline to CBP, after receiving an allegation, to initiate an EAPA investigation; 19 U.S.C. § 1517(e) provides a 90-calendar day deadline to CBP, after initiating an investigation under (b), to decide to impose interim measures; 19 U.S.C. § 1517(c) provides a 300 (or 360) calendar-day deadline, after an investigation is initiated for CBP to issue a determination; and lastly 19 U.S.C. § 1517(c)(4) mandates that notification be issued no later than 5 business days after the determination is made.

¹⁵⁶ July 22 Determination (PV) at 22.

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The Importers also contend that they should have been provided with PTNNI's business confidential information contained in the Verification Report.¹⁵⁷ The EAPA regulations provide specific authority for parties to provide business confidential information to CBP and parties are only entitled to public summaries.¹⁵⁸ We note that the Court of International Trade ("CIT") has opined on the rights of parties in EAPA investigations to have access to business confidential information and has found that the lack of access to confidential information is not a due process issue. *See Royal Brush Mfg., Inc. v. United States*, 545 F. Supp. 3d 1357 at 1369 (Ct. Int'l Trade Oct. 29, 2021) (rejecting a similar claim and holding that CBP's withholding of confidential information does not violate a respondent's due process rights where "CBP has complied with 19 C.F.R. § 165.4 by providing necessary public summaries of the confidential information..."). In *Royal Brush Mfg., Inc.*, the CIT found that a party is only entitled to public summaries of the business confidential information, pursuant to 19 C.F.R. § 165.4(a)(1) and (e). The parties do not otherwise have a right to review business confidential information, as the statute and regulations do not provide for such.

Additionally, the Importers assert that the July 22 Determination relied upon facts not on the record, which they had no opportunity to rebut.¹⁵⁹ Lastly, the Importers allege that TRLED selectively omitted from the administrative record various documents physically presented to TRLED by PTNNI during verification.¹⁶⁰ Having reviewed the July 22 Determination and the record, we see no evidence that TRLED relied upon facts not on the record.

Finally, we address GEO's argument that RR should give weight to GEO's investigative report because RR relied on a similar report in its Final Administrative Determination in EAPA Consolidated Case 7553.¹⁶¹ RR is required to complete its administrative review under "a de novo standard of review and will render a determination appropriate under law according to the specific facts and circumstances on the record."¹⁶² Accordingly, the weight we give to any piece of evidence is based upon the specific facts and circumstances on the record, and not prior determinations.

Based on the cumulative evidence in the record, the Importers' entries of glycine into the United States sourced from PTNNI should have been made as "03" entries, subject to the AD/CVD Orders. As the CIT explained in *Diamond Tools Tech. LLC*, "False" is defined as: 'Untrue . . . Deceitful . . . Not genuine; inauthentic . . . What is false can be so by intent,

¹⁵⁷ Nutrawave/Starille Request for Administrative Review (Sep. 1, 2022)(PV) at 11-14; Newtrend Request for Administrative Review (Sep. 1, 2022)(PV) at 29-30.

¹⁵⁸ *See* 19 C.F.R. § 165.4 and 5 U.S.C. § 552.

¹⁵⁹ Nutrawave/Starille Request for Administrative Review (Sep. 1, 2022)(PV) at 15-16; Newtrend Request for Administrative Review (Sep. 1, 2022)(PV) at 29-30.

¹⁶⁰ Nutrawave/Starille Request for Administrative Review (Sep. 1, 2022)(PV) at 16-19; Newtrend Request for Administrative Review (Sep. 1, 2022)(PV) at 29-30.

¹⁶¹ Final Administrative Determination – EAPA Consolidated Case Number 7553 (January 28, 2022), available at <https://www.cbp.gov/sites/default/files/assets/documents/2022-Aug/EAPA%20Case%207553%20Final%20Administrative%20Determination.pdf>.

¹⁶² 19 C.F.R. § 165.45.

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by accident, or by mistake . . . Wrong; erroneous . . . ”¹⁶³ It was material and false for these entries to be made as “01” entries,¹⁶⁴ which is only appropriate for goods not subject to AD or CVD orders. Because the Importers’ entries of glycine, subject to the scope of the Orders, were made as “01” entries, and the applicable AD/CVD were not deposited or paid, we conclude that, pursuant to 19 U.S.C. § 1517, evasion has occurred. Accordingly, TRLED’s finding of evasion stands.

III. Decision

Based upon our *de novo* review of the administrative record in this case, including the timely and properly filed requests for administrative review and response, the July 22 Determination of evasion under 19 USC § 1517(c) is **AFFIRMED**.

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 the Trade Facilitation and Trade Enforcement Act of 2015.

Sincerely,

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

Approved by:

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

¹⁶³ *Diamond Tools Tech. LLC v. United States*, 545 F. Supp. 3d 1324 at 1353 (Ct. Int’l Trade 2021) (quoting Black’s Law Dictionary, 11th ed. 2019). That the material falsehood may have occurred as a 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.

¹⁶⁴ *See id.*, and 19 U.S.C. § 1517(a)(5)(A). We also note that the Importers do not assert that there was a clerical error, for which the EAPA statute does carve out an exception.