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Re: Enforce and Protect Act Case Number 7395; Antidumping Duty Order: Glycine From the People’s Republic of China, 60 FR 16116 (March 29, 1995) and Glycine From India and the People’s Republic of China: Countervailing Duty Orders, 84 FR 29173 (June 21, 2019); GEO Specialty Chemicals, Inc.; 19 U.S.C. § 1517

Dear Mr. Schwartz and Ms. Li:

This is in response to the request for de novo administrative review of a determination of evasion dated December 21, 2020, 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”) Case Number 7395 (hereinafter referred to as the “December 21 Determination”).

The request for review, dated January 29, 2021, was submitted to CBP OT Regulations and Rulings (“RR”) by Thompson Hine LLP, on behalf of GEO Specialty Chemicals, Inc. (“GEO”), pursuant to 19 U.S.C. § 1517(f) and 19 CFR § 165.41(a).

For the reasons set forth below, the record evidence does not establish that Tiana International LLC entered “covered merchandise,” as that term is defined in 19 U.S.C. § 1517(a)(3), into the commerce of the United States, on entries of glycine from India in violation of the EAPA. Therefore, the December 21 Determination is affirmed.

1 See Notice of Determination as to Evasion in EAPA Case Number 7395, dated December 21, 2020.
2 19 U.S.C. § 1517(a)(3) provides as follows: The term “covered merchandise” means merchandise that is subject to—

   (A) an antidumping duty order issued under section 1673e of this title; or
I. Background

A. Procedural History

Inasmuch as the facts in this case were fully set forth in the December 21 Determination,3 we will not repeat the entire factual history in this decision.

In brief, according to the record evidence, on December 18, 2019, TRLED initiated a formal investigation under Title IV, section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, in response to an allegation of evasion.4

On November 19, 2019, GEO, a domestic producer of glycine, filed an EAPA allegation against Tiana International LLC (“Tiana”).5 CBP acknowledged receipt of the properly filed allegation on November 27, 2019. GEO alleged that Tiana was importing glycine from China, that was transshipped through India to evade the payment of antidumping duties on glycine from China under Case Nos. A-570-836 and C-570-081. Specifically, GEO alleged that Tiana was transshipping Chinese glycine through two Indian companies, Kumar Industries and Studio Disrupt.

On March 24, 2020, in accordance with 19 CFR § 165.24, CBP issued a notice of initiation of investigation to all interested parties.6 Although CBP did not impose interim measures, CBP advised both GEO and Tiana that CBP would take appropriate measures to protect the revenue if it determined during the investigation that there was substantial evidence of evasion.7 The entries covered by the investigation were those entered for consumption, or withdrawn from a warehouse for consumption, from November 27, 2018, one year before receipt of the allegation, through the pendency of the investigation.8

On December 21, 2020, TRLED issued a Notice of Determination as to Evasion in EAPA Case Number 7395. TRLED found that there was not substantial evidence9

(B) a countervailing duty order issued under section 1671e of this title.

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3 See Notice of Final Determination as to Evasion in EAPA Case Number 7395, dated December 21, 2020.
4 See CBP Memorandum, “Initiation of Investigation for EAPA Case Number 7395”, dated December 18, 2019.
7 Id. at 6.
8 Id. at 2; see also 19 CFR § 165.2.
9 Substantial evidence is not defined in the statute. The U.S. Court of Appeals for the Federal Circuit has stated that “substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” A.L. Patterson, Inc. v. United States, 585 Fed. Appx. 778, 781-82 (Fed. Cir. 2014) (quoting Consolid. Edison Co. of N.Y. v. NLRB, 305 U.S. 197, 229 (1938)).
to demonstrate that Tiana entered covered merchandise into the customs territory of
the United States through evasion during the period of investigation (“POI”).

B. The Orders and the Scope

On March 29, 1995, the U.S. Department of Commerce (“Commerce”) issued an
antidumping duty (“AD”) order on imports of glycine from the People’s Republic of
China (“China AD Order”).

Commerce defined the scope of the Order as follows:

The product covered by this proceeding is glycine which is a free-flowing crystalline
material, like salt or sugar. Glycine is produced at varying levels of purity and is
used as a sweetener/taste enhancer, a buffering agent, reabsorbable amino acid,
chemical intermediate, and a metal complexing agent. 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 the investigation is dispositive.

The AD rate under the China AD Order for the China-wide manufacturer/
producer/exporter is 155.89 percent.

In 2002, the China AD Order was the subject of a Commerce scope ruling. On January 2,
2002, Watson Industries, Inc. (“Watson”) filed a request for a scope ruling on glycine. In
its request, Watson identified the glycine in question as being refined by a Korean chemical
company from crude glycine imported from China. Watson argued that the glycine it
imported from Korea was not covered by the AD order on glycine from China. Commerce determined that all Chinese-origin technical grade, or “crude” glycine, further
processed or refined or “purified” in a third country and exported to the United States was
subject to the China AD Order. In reaching its determination, Commerce stated that

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10 See December 21 Determination, available at:
https://www.cbp.gov/sites/default/files/assets/documents/2020-Dec/12-21-2020%20-%20TRLED%20-
%20Determination%20as%20to%20Evasion%20%28508%20compliant%29%20%287395%29%20-%20PV.pdf
11 See Antidumping Duty Order: Glycine From the People’s Republic of China, 60 FR 16116 (March 29, 1995).
12 In 2017, the tariff classification of glycine changed from subheading 2922.49.4020, HTSUS, to subheading
2922.49.4300, HTSUS, as a result of Presidential Proclamation 9625 of June 29, 2017.
13 See Antidumping Duty Order: Glycine From the People’s Republic of China, 60 FR 16116 (March 29, 1995).
14 See Antidumping Duty Order: Glycine From the People’s Republic of China, 60 FR 16116 (March 29, 1995).
15 See Final Scope Ruling; Antidumping Duty Order on Glycine from the People’s Republic of China (A-570-
836); Watson Industries, Inc.
16 The regulations governing Commerce’s AD scope determinations are found at 19 CFR 351.225.
17 See Final Scope Ruling; Antidumping Duty Order on Glycine from the People’s Republic of China (A-570-
836); Watson Industries, Inc.
“glycine of Chinese origin that was refined and re-exported from South Korea which was then imported by Watson, was within the scope of the antidumping duty order.”

There have been four five-year reviews of that Order. In each, the U.S. International Trade Commission (“Commission”) determined that revocation of the Order would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time and, accordingly, Commerce published notices of continuation of the Order.

The China AD Order (Case No. A-570-836) has been the subject of circumvention proceedings and determinations by Commerce, the Commission, the Office of the U.S. Trade Representative, and CBP. On December 10, 2012, Commerce determined that two Indian companies—AICO Laboratories India Ltd. and Salvi Chemical Industries Limited—engaged in circumvention of that Order. In its 2016 review of possible modifications to the Generalized System of Preferences, the Commission’s report highlighted issues and comments regarding production and shipments of glycine, and as determined by CBP, transshipments. On June 29, 2017, the Office of the U.S. Trade Representative announced that the President had removed glycine from eligibility for duty-free treatment for beneficiary developing countries under the Generalized System of Preferences.

On September 4, 2018, Commerce issued preliminary affirmative determinations in the countervailing duty (“CVD”) investigations of Chinese glycine and Indian glycine, directing CBP to assess CVDs on unliquidated entries of Chinese and Indian glycine entered, or withdrawn from warehouse, for consumption on or after September 4, 2018 until the end of the four-month provisional period, January 1, 2019. On October 31, 2018, Commerce published its preliminary affirmative determination in the Indian glycine AD investigation, assessing antidumping duties on unliquidated Indian glycine entries entered, or withdrawn from warehouse, for consumption on or after October 31, 2018, until the end of the six-month provisional period, April 28, 2019.

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24 See Glycine From India and the People’s Republic of China: Countervailing Duty Orders, 84 FR 29173, 29173-29174 (June 21, 2019) (“China and India CVD Orders”).
25 See Glycine From India and Japan: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Orders, 84 FR 29170, 29171 (June 21, 2019) (“India AD Order”).
On June 21, 2019, Commerce issued the CVD Order (Case No. C-570-081) on imports of glycine from the People’s Republic of China (“China CVD Order”), and the AD Order and the CVD Order on Indian glycine (“India AD and CVD Orders”), resuming the assessment of countervailing duties on Chinese glycine entries and antidumping duties and countervailing duties on Indian glycine entries entered, or withdrawn from warehouse, for consumption, on or after June 21, 2019.26

Commerce defined the scope of the China CVD Order and India AD and CVD Orders 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 56-40-5. 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.27

The China CVD rate under the China and India CVD Orders for all producers or exporters not specifically listed is 144.01 percent.28

C. The Merchandise at Issue

The merchandise at issue is glycine. The glycine imported into the United States by Tiana was exported from India by Kumar Industries and Studio Disrupt.

D. The Parties

GEO is a domestic producer of glycine, and party seeking de novo administrative review of the December 21 Determination in EAPA Case Number 7395.29

Tiana is an importer of glycine. Tiana participated in this administrative review proceeding by filing a response to GEO’s request for administrative review.30

26 Id.; China and India CVD Orders, 84 FR at 29173-29174.
27 Id.
II. Discussion

A. Administrative Review and Standard of Review

Pursuant to 19 U.S.C. § 1517(f)(1) and 19 CFR § 165.45, 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, CBP will review the entire administrative record upon which the initial determination was made, the timely and properly filed request(s) for review and responses, and any additional information that was received pursuant to § 165.44. The administrative review will be completed within 60 business days of the commencement of the review.

Pursuant to 19 U.S.C. § 1517(f)(1), GEO’s January 29, 2021 request for administrative review is timely.

Pursuant to 19 CFR § 165.41(i), the commencement date of the administrative review is February 2, 2021. This is the date that CBP accepted the last properly filed request for administrative review and transmitted electronically the assigned administrative review case number to all parties to the investigation.

Pursuant to 19 CFR § 165.42, Tiana submitted a written response, dated February 17, 2021, to GEO’s request for administrative review. Tiana’s response both complies with the requirements of 19 CFR § 165.42, and is timely.

CBP did not request additional written information from the parties to the investigation pursuant to 19 CFR § 165.45.

The administrative review was completed within 60 business days after the request for administrative review was filed.31

B. 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:

31 See 19 U.S.C. § 1517(f)(2). The deadline was April 26, 2021.
(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.

See also 19 CFR § 165.1.

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. See Investigation of Claims of Evasion of Antidumping and Countervailing Duties, Interim Regulations, 81 Fed. Reg. 56477, 56478 (August 22, 2016).

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).” 19 CFR § 165.1.

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.

C. Arguments made by GEO Specialty Chemical, Inc.

GEO requests that we reverse the December 21 Determination. Its arguments are summarized below.

1. TRLED disregarded Commerce’s 2012 importer certification requirement under the China AD Order.

Tiana failed to submit (1) importer certifications for the glycine that Tiana imported into the United States; and (2) certificates of origin for the glycine inputs used to allegedly manufacture the glycine in India during the POI. TRLED contends that the record does not show that Tiana was non-compliant with the certification requirement. TRLED’s determination is unsupported by substantial evidence, is arbitrary and capricious, and is otherwise not in accordance with law.
When Commerce imposes a certification requirement, exporters in the third country and their U.S. importers must certify that the product does not originate in the country subject to the order under the circumvention or scope inquiry. Under Commerce’s 2012 importer certification requirement each importer is required to certify, \textit{inter alia}, it “maintains sufficient documentation supporting this certification for all ingredients used to produce the glycine imported under the above-referenced entry number(s).”\textsuperscript{32} Each importer, by signing the certification, confirms that “failure to maintain the required certification or failure to substantiate the claim” will cause the entry to be subject to the PRC\textsuperscript{33}-wide rate in effect at the time of entry.\textsuperscript{34}

GEO argues that the country of origin of the glycine inputs remains unknown. In order to determine if Tiana’s imports are subject to the China AD Order, TRLED’s investigation must include whether Tiana complied with Commerce’s importer certification requirements. Tiana failed to provide the requisite supporting documentation upon request, and failed to substantiate the country of origin of the glycine inputs because it did not submit certificates of origin. TRLED acknowledged that Tiana never submitted the certificates of origin for its inputs.

GEO argues that Tiana has failed to exercise its statutory duty of reasonable care, and TRLED’s indifference to Tiana’s non-compliance with the certification requirement contravene’s Commerce’s instructions to CBP. GEO argues that TRLED’s failure to even request certifications demonstrates that it abdicated its statutory duty during an evasion investigation and has rendered Commerce’s 2012 certification requirement meaningless.

2. TRLED improperly refused to consider commercial trade data.

GEO submitted commercial trade data from India and the United States directly tying Tiana’s entry XXX-XXXX6944 to Chinese-origin glycine imported into India by Chemsteel Corporation (“Chemsteel”). GEO explains that the Indian export data demonstrates that at least part of the glycine exported by Studio Disrupt and imported by Tiana was a “re-export” of Chinese-origin glycine imported into India by Chemsteel. TRLED’s refusal to consider the commercial trade data is arbitrary and capricious.

According to GEO, TRLED refused to consider the import trade data because the total quantity of Chinese glycine imported into India by Chemsteel on the bill of lading was lower than the quantity of glycine identified as a re-export by Studio Disrupt sharing the same bill of lading number, and lower than the total quantity of glycine re-exports sharing the same bill of lading number according to the trade data. GEO argues that the imperfect matching of quantities (1) does not repudiate the connection between Studio Disrupt’s shipment to Tiana and Chemsteel’s imports of Chinese glycine into India that share the same bill of lading number and transaction date and (2) does not undermine the reliability of the commercial trade data. GEO argues that the imperfect matching of the

\textsuperscript{32} See GEO Sept. 3, 2020 Tiana Rebuttal at 3 and Exhibit 2 (TRLED Instructions accompanying 2012 Final Scope Ruling).

\textsuperscript{33} People’s Republic of China.

\textsuperscript{34} Id.
quantities demonstrates, at most, that the exports may have consisted of part, but not all, of the Chemsteel Chinese-origin glycine imported into India.

GEO argues that evasion of the China AD and China CVD Orders does not require re-exportation of the entire importation of Chinese-origin glycine by Chemsteel, or even a re-exportation of the same Chinese-origin glycine. Rather, any transshipment or further processing of even a portion of the Chinese origin glycine exported by Studio Disrupt and imported by Tiana establishes evasion. Tiana will have evaded the China AD and CVD Orders even if Studio Disrupt only re-exported part of Chemsteel’s imported Chinese-origin glycine to Tiana. Tiana will have evaded the China AD and CVD Orders even if Studio Disrupt’s supplier used part of the Chinese-origin glycine sourced by Chemsteel for further processing and then supplied Studio Disrupt the higher-grade glycine for exportation to Tiana.

3. TRLED refused to address Tiana’s evasion of the India AD Order.

GEO argues that Tiana’s importation of glycine on entry number XXX-XXXX6944 from Studio Disrupt was falsely entered as a “Type 1” entry when the India AD Order was in effect. GEO argues that the glycine imported by Tiana is subject to trade remedy duties regardless of origin. Whether the glycine is Chinese in origin or Indian in origin, Tiana’s importation of glycine on entry number XXX-XXXX6944 on a “Type 1” entry is a material false statement resulting in the reduction or avoidance of duties. TRLED did not address Tiana’s evasion of the India AD Order. Instead, TRLED stated that “CBP will take any appropriate actions under the AD and CVD orders on glycine from India as to Tiana’s entries of glycine from India.” This boilerplate statement which fails to articulate whether and how TRLED intends to take any enforcement action against Tiana on this issue, falls short of CBP’s statutory obligation to protect the revenue “to the maximum practicable.”

4. TRLED’s disregard for record evidence tying Kumar with its own affiliates importing Chinese glycine into India runs counter to Congressional intent.

GEO argues that TRLED refused to consider evidence showing Tiana’s and Kumar’s affiliates imported Chinese glycine into India because TRLED claimed nothing on the record suggested that (1) Tiana was the importer of record for glycine from any of its actual or purported affiliates; or (2) Kumar purchased glycine from any of its actual or purported affiliates during the POI. GEO argues that Tiana’s and Kumar’s affiliates could have engaged in and assisted in evasion through other Indian companies by simply importing Chinese-origin crude glycine into India and then shipping the glycine to U.S. importers or further processing the glycine and shipping it to U.S. importers, through other parties. GEO concludes that by disregarding Tiana’s and Kumar’s affiliates as irrelevant, and accepting without further challenge or investigation the affiliates information provided by Tiana and Kumar, CBP betrays Congressional intent.

5. TRLED’s refusal to apply adverse inferences against Kumar and Tiana is irrational, arbitrary, capricious, and not in accordance with law.
GEO argues the record is replete with vague, inconsistent and misleading responses that impeded TRLED’s investigation, and that TRLED ignored pervasive deficiencies and discrepancies in Tiana’s and Kumar’s Request for Information (“RFI”) responses.

GEO argues that Tiana deceived CBP by entering glycine on entry number XXX-XXXX6944 as a “Type 1” entry. Tiana and Kumar did not fully disclose their affiliates and did not provide the certificates of origin for the raw material inputs. GEO concludes that TRLED’s refusal to apply adverse inferences is irrational, capricious, arbitrary, and not in accordance with law.

GEO argues that the record evidence shows that Tiana and Kumar failed to comprehensively and truthfully respond to CBP’s initial RFI about affiliates, until faced with contradictory evidence submitted by GEO. Although GEO acknowledges TRLED’s determination that Tiana and Kumar did not conceal information about their affiliates and that adverse inferences were not warranted, GEO argues that TRLED’s refusal to apply adverse inferences renders 19 CFR § 165.5(b)(3) and 19 CFR § 166, superfluous. GEO argues that while Kumar and Tiana remedied the missing affiliate information, Tiana’s and Kumar’s attempted concealment of their affiliations undermines their credibility.

GEO argues that Tiana, Kumar, and Studio Disrupt failed to address the country of origin of the glycine inputs. GEO argues that, instead of certificates of origin, TRLED accepted other documents that did not identify the origin of the glycine inputs. Rather, these other documents can only trace the glycine inputs to the suppliers of the raw materials instead of to the producers of the raw materials. Similarly, Tiana failed to submit country of origin documentation for any raw materials for its entry number XXX-XXXX6944. Commerce’s certification requirement under the China AD Order requires Indian glycine exporters and their U.S. importers to certify the origin of the glycine inputs. GEO argues that the certificate of origin for glycine inputs is critical to determining the country of origin of imported glycine, based on Commerce’s 2002 and 2012 scope rulings. GEO concludes that the absence of certificates of origin for the glycine inputs/raw materials creates a gap in information on the record that CBP is entitled to have; therefore CBP may fill the gap with adverse inferences. TRLED’s acceptance of Tiana’s and Kumar’s failure to produce certificates of origin for the raw materials deviates from the regulatory recordkeeping requirements and ample court precedent on the “best-of-one’s-ability” statutory requirement.

6. TRLED improperly absolved Studio Disrupt, Tiana’s glycine supplier, for failing to provide batch numbers for its produced glycine.

GEO notes that in the December 21 Determination, TRLED recognized that batch numbers on Studio Disrupt’s invoices are different from those on Manufacturer #2’s production records, and that Studio Disrupt admits that it does not keep written records to trace its batch numbers to those of Manufacturer #2. Despite this, TRLED determined that Studio Disrupt was able to tie its batch numbers to Manufacturer #2’s batch numbers through Manufacturer #2’s dispatch reports. GEO argues that the dispatch reports merely confirm that the glycine was sourced from Manufacturer #2. Dispatch reports are not production records; rather, they are used by suppliers to provide
logistical information for shipments (e.g., the dates the orders ship from a facility) and indicate nothing about the glycine’s manufacturing itself. TRLED’s finding is unsupported by substantial evidence and is unreasonable.

7. TRLED improperly relied on Kumar’s inventory movement register to conclude that Kumar produced the glycine imported by Tiana.

GEO argues that, at best, Kumar’s self-inventory movement register reflected the actual amount of raw materials used to produce its reported glycine, rather than the amount of raw materials used to produce Kumar’s entire production capacity. Actual amounts of raw materials used to produce its reported glycine do not address whether a part of Kumar’s glycine was commingled with imported Chinese-origin glycine or further processed from Chinese-origin glycine. Without calculating the amount of raw material used to produce Kumar’s entire production capacity, TRLED’s determination is irrational and unsupported by substantial evidence.

8. TRLED failed to address Kumar’s misleading and commercially unlikely “FOB Export Invoice” in its December 21 Determination.

GEO argues that Kumar’s claim that an “FOB Export Invoice” is used for duty calculation is unlikely. GEO explains that an “FOB Export Invoice” is used to claim eligibility and benefits under the Indian export subsidy program Merchandise Exports from India Scheme, which exporters can use to pay “Basic Customs Duty and Additional Customs Duty. . .for import of inputs.” GEO argues that an “FOB Export Invoice” suggests that Kumar imported merchandise from China, which may include Chinese-origin glycine, crude glycine or sodium glycinate.

D. Arguments made by Tiana International LLC.

Tiana requests that we affirm the December 21 Determination. Its arguments are summarized below.

1. TRLED was not required to request importer certifications under Commerce’s 2012 importer certification requirement.

Tiana argues that Commerce only requires that an importer maintain its own certifications and supporting documents. Importers are not required to submit these certifications, unless requested. Moreover, nothing in the record supports GEO’s allegation that Tiana failed to complete and maintain importer certifications at the time of entry. Finally, whether or not Tiana maintains the importer certifications is not dispositive of evasion.

2. TRLED properly determined that the Chemsteel trade data was discrepant and unreliable.

TRLED correctly determined that the third party Indian export documentation was unreliable because it indicated that the 20,000 kgs of glycine imported into India by Chemsteel was a “re-export” attributed to five shipments totaling 97,000 kgs. TRLED
correctly determined that the inconsistencies rendered the trade data wholly unreliable to establish that Studio Disrupt re-exported the glycine imported by Chemsteel.

In response to GEO’s argument that TRLED failed to consider the “possible scenario” that a portion of the glycine that Studio Disrupt exported to Tiana could have been sourced from Chemsteel, Petitioner can only offer conjecture because the data itself is flawed and unreliable. Moreover, the record does not support this possible scenario. Rather, the record evidence demonstrates that Studio Disrupt sourced the entire quantity of its exports of glycine to Tiana from Manufacturer #2, which was produced in India. There are no gaps in the production records or the quantities of glycine transferred from Manufacturer #2 to Studio Disrupt to Tiana.

3. TRLED did not abuse its discretion in this investigation regarding whether glycine imported on entry number XXX-XXXX6944 was subject to the AD/CVD Orders on glycine from India.

GEO has alleged evasion of the AD/CVD Orders on glycine from the PRC (Case No. A-570-836) and (Case No. C-570-081). It now wants to improperly expand the scope of the investigation to include possible evasion of the AD/CVD Orders on glycine from India. TRLED noted that it would take appropriate actions under the AD and CVD Orders on glycine from India. GEO disregards the discretion and authority granted to CBP under the EAPA regulations.

Moreover, entries subject to the AD/CVD Orders on glycine from India are not the proper subject of the instant administrative review. The regulations require that an EAPA allegation identify the applicable AD/CVD Orders. This is to ensure that the investigation is focused and directed at specific AD/CVD Orders, and the Alleger does not abuse the process in an attempt to conduct a “fishing expedition.”

Should CBP determine that Tiana’s entry XXX-XXXX6944 was inappropriately entered as a “Type 1” entry, then CBP can take the ordinary administrative corrective action. However, it would be improper to consider the AD/CVD Orders on glycine from India in the administrative review, given that TRLED exercised its discretion not to address this issue during the EAPA investigation.

4. TRLED properly considered information pertaining to affiliations.

GEO conjectures that Tiana’s and Kumar’s affiliates could have imported Chinese-origin crude glycine and then shipped it or further processed glycine to U.S. importers through other parties. CBP is bound by the record and cannot supplant record evidence with GEO’s conjecture to make an affirmative determination of evasion. GEO failed to point to a single shred of evidence to support its unsubstantiated theory that affiliates “could have” been involved. TRLED properly conducted its investigation of Kumar, considered the record evidence, and determined that there is no evidence of any such fraudulent schemes.
5. Adverse inferences are not warranted.

TRLED correctly found that there was no basis to apply adverse inferences in this investigation.

Contrary to GEO’s allegation, Tiana and Kumar did not conceal their affiliations in their initial RFI responses to CBP. TRLED correctly found that Tiana and Kumar did not conceal information regarding their affiliates. GEO has been unable to identify any record evidence that links any purported affiliates’ imports of Chinese glycine to the India-origin glycine imported by Tiana. Instead, GEO attempts to use Kumar’s affiliations to conflate the core issues in this investigation by harping on the company’s prior affiliations, none of which have any involvement in the production or sale of the glycine imported by Tiana.

It is within the agency’s discretion to consider whether entry number XXX-XXXX6944 was subject to the AD/CVD Orders on glycine from India using ordinary CBP administrative procedures, rather than in the context of this investigation of evasion of AD/CVD Orders on glycine from China.

GEO alleges that the failure to provide certificates of origin of raw materials is a failure to cooperate to the best of their ability. However, TRLED determined that the documentation pertaining to raw materials sufficiently demonstrated that the materials were converted into India-origin glycine, and that glycine was traceable to Tiana’s imports. Certificates of origin are only prepared for merchandise destined for export. The country of origin of the glycine is at issue, not the country of origin of the raw materials used to produce the glycine when those materials are not simply crude or technical grade glycine.

Kumar and Manufacturer #2 produced glycine from the following raw materials: monochloroacetic acid, hexamine, activated carbon, ammonia, and industrial solvent. Both companies submitted invoices for these raw materials, demonstrated the movement of raw materials into their production process, and the resulting glycine output was ultimately imported by Tiana. The record is abundantly clear that neither Kumar nor Studio Disrupt merely processed crude or technical glycine into USP glycine. Rather, the production batch reports demonstrate precisely how they produced technical glycine from raw materials. Each and every batch that was imported by Tiana was accounted for by their production records.

6. The glycine exported by Studio Disrupt traced back to Manufacturer #2’s production records based on the dispatch reports.

GEO alleges that TRLED improperly absolved Tiana for failing to provide batch numbers. Studio Disrupt explained that its batch numbers are different from Manufacturer #2’s batch numbers because Studio Disrupt and Manufacturer #2 are different entities with different recording systems. However, Studio Disrupt explained that it is able to trace the glycine it exported directly to Manufacturer #2’s production records based on the invoices and dispatch reports. In addition, Studio Disrupt provided
a chart detailing exactly how to trace the glycine that Manufacturer #2 produced to the
glycine sold to Tiana.

TRLED correctly determined that the batch numbers on Manufacturer #2’s dispatch
reports traced back to the production documents provided in Manufacturer #2’s RFI
response for each sale to Studio Disrupt. While GEO argues that dispatch reports are
not production records, it fails to acknowledge that they are a necessary document in the
chain of custody for the transfer of material from one party to another. The dispatch
reports are the very documents that list Manufacturer #2’s batch numbers which are then
traced directly to Manufacturer #2’s production documentation.

7. Kumar’s production records were consistent with its inventory
movement register.

TRLED properly used the inventory movement register to corroborate Kumar’s
production of certain batches of glycine and subsequent supply of those batches of
glycine to Tiana. The inventory movement register is a necessary link in the chain of
custody.

8. Tiana used the FOB export invoice for payment of duties upon
importation into the United States.

Import duties are assessed on the FOB values. Kumar explained that it issued an FOB
Export Invoice which Tiana used to pay duties upon importation into the United States.
Petitioner casts doubt on this explanation without any substantiation, and alleges that
simply because FOB export invoices are also used to claim eligibility for export subsidy
programs, Kumar imported merchandise from China that “may” have included imported
Chinese-origin glycine, crude glycine, or sodium glycinate. This is mere speculation.
There is no record evidence that Kumar imported Chinese-origin glycine, crude glycine,
or sodium glycinate, nor that it supplied any such imports to Tiana.

E. Administrative Review Analysis

The term “evasion” under the EAPA 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 ADs or CVDs being reduced or not being applied with respect
to the merchandise.\textsuperscript{35}

The term “covered merchandise” means 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).\textsuperscript{36}

\textsuperscript{36} See 19 U.S.C. § 1517(c)(1) and 19 CFR § 165.1.
It is well established that for merchandise to be subject to an AD and/or CVD order it must be (1) the type of merchandise described in the order, and (2) from the particular country covered by the order.37

1. There is not substantial evidence that the glycine imported into the United States by Tiana was “covered merchandise.”

   a. There is insufficient evidence that the glycine imported into the United States by Tiana is processed from PRC-origin glycine.

On April 10, 2012, the Department of Commerce published its preliminary determination with respect to a circumvention inquiry concerning the antidumping duty order on glycine from the People’s Republic of China (“PRC”).38 At that time, the Department of Commerce also self-initiated a scope inquiry to determine whether PRC-origin glycine processed into a purer grade glycine in India is within the scope of the AD order on glycine from the PRC.39

On September 13, 2012, the Department of Commerce issued its preliminary scope ruling.40 The Department of Commerce preliminarily determined that the processing of PRC-origin technical grade or crude glycine, including but not limited to AAA-97TE, ACAA-97TE, sodium glycinate and glycine slurry, in India results in a product that remains within the scope of the Order, and is not substantially transformed into glycine that is of Indian origin.41 The Department of Commerce also adopted an importer certification requirement to ensure that merchandise meeting this scope clarification is properly identified as subject merchandise.

The importer certification must be completed, signed, and dated at the time of the entry of the glycine.42 The U.S. importer is required to certify that the glycine being imported is not processed from glycine originating in the PRC and that it has sufficient documentation to substantiate its certification.43 Furthermore, the importer certification and supporting documentation must be maintained by the importer but will only be provided to CBP by the importer at the request of CBP. These documents should not be provided by the importer as part of the entry document package, unless specifically

37 See Bell Supply Co., LLC v. United States, 179 F. Supp. 3d 1082, 1091 (Ct. Int’l Trade 2016) (Bell Supply II); Sunpower Corp. v. United States, 179 F. Supp. 3d 1286, 1298 (Ct. Int’l Trade 2016) (Sunpower); Certain Cold-Rolled Carbon Steel Flat Products from Argentina, 58 FR 37062, 37065 (July 9, 1993) (Cold-Rolled Steel from Argentina).
39 Id., 77 FR at 21535; see also Antidumping Duty Order: Glycine From the People’s Republic of China, 60 FR 16116 (March 29, 1995) (Order).
40 See Memorandum from Richard Weible, Director, AD/CVD Operations, Office 7 to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations entitled, “Preliminary Scope Ruling concerning the Antidumping Duty Order on Glycine from the People’s Republic of China (PRC),” dated September 13, 2012 (Preliminary Scope Ruling).
41 See Final Scope Ruling concerning the Antidumping Duty Order on Glycine from the People’s Republic of China, dated December 3, 2012.
42 See CBP Message 2270302, dated September 26, 2012 at para. 8.
43 Id. at para. 6.
requested by CBP. The importer certification is used to differentiate between merchandise that is circumventing the Orders, and India-origin merchandise. CBP may accept the certification to establish that the merchandise is not covered by the scope of the Orders. In this case, TRLED did not request importer certifications from Tiana.

In the absence of importer certifications, we considered the glycine production records submitted by Kumar and Manufacturer #2, and the raw materials invoices found in the administrative record. This record evidence indicates that glycine was produced in India from raw materials. Nothing in the production records describes the mere processing of glycine. In addition, the raw materials invoices indicate that glycine was produced in India from monochloro acetic acid, hexamine, activated carbon, ammonia and industrial solvent. Although we can not establish with certainty that the raw materials suppliers in India did not source these raw materials from China, none of these raw materials is described by the scope of the Orders on glycine. According to the Orders, PRC-origin glycine and PRC-origin glycine processed in India remain within the scope of the Orders. Glycine produced in India from raw materials that are not within the scope of the Orders is outside the scope of the Orders. There is substantial record evidence that the glycine was produced in India from such raw materials.

b. There is insufficient evidence that Kumar exported Chinese-origin glycine previously imported into India by Kumar affiliates.

Record evidence of importations of PRC-origin glycine into India by Kumar affiliates does not establish circumvention of the Orders, unless there is also record evidence that the PRC-origin glycine imported by Kumar affiliates was exported by Kumar and imported into the United States by Tiana during the POI. There is insufficient evidence linking Kumar and Kumar’s exports of glycine to PRC-origin glycine imported by Kumar affiliates.

There is substantial record evidence that Kumar produced glycine in India from raw materials. There is insufficient record evidence that Kumar exported PRC-origin glycine or further processed PRC-origin glycine from crude glycine or sodium glycinate contrary to its production records and inventory movement register.

c. There is insufficient evidence that Studio Disrupt exported Chinese-origin glycine previously imported into India by Chemsteel.

The only record evidence that suggests that Studio Disrupt exported Chinese-origin glycine to the United States in circumvention of the Orders is commercial import and export trade data submitted by GEO. The import trade data suggests that glycine from

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44 Id. at para 7.
45 See December 21 Determination at 15.
46 See Kumar RFI Response at Exhibit RFIK-17.1 to 17.72.
47 See Manufacturer #2 RFI Response at Exhibit 5 and Manufacturer #2 Supplemental RFI Response at Exhibit 2.
48 See Kumar’s RFI Response at Exhibit RFIK-15; Manufacturer #2’s RFI Response at Exhibit 5.
China was imported into India by another Indian company, Chemsteel. The export trade data purportedly suggests that the glycine that was exported by Studio Disrupt to the United States, and imported by Tiana on entry number XXX-XXXX6944, was a re-export of the PRC-origin glycine imported into India by Chemsteel.

TRLED determined that the trade data provided by GEO was “discrepant” and could not be relied upon as evidence of evasion.\textsuperscript{49} TRLED further explained: “It is simply not possible for Chemsteel to have imported 20,000 kg of glycine into India from China on bill of lading number 8086662 and then for that same glycine to have been re-exported in five shipments totaling 97,000 kg.”\textsuperscript{50} TRLED also explains that the total quantity exported by Studio Disrupt according to the data is 39,000 kg, “which is almost twice the quantity of Chemsteel’s import of glycine on bill of lading 8086662.”\textsuperscript{51}

There is insufficient record evidence that part (but not all) of the PRC-origin glycine imported by Chemsteel was exported by Studio Disrupt and imported into the United States by Tiana. In addition, there is insufficient record evidence that part of the same PRC-origin glycine imported by Chemsteel was processed in India, and then exported by Studio Disrupt. There is insufficient record evidence that Studio Disrupt acquired all or part of the PRC-origin glycine from Chemsteel or that Manufacturer #2 acquired and supplied Studio Disrupt with all or part of the PRC-origin glycine imported by Chemsteel.

While substantial record evidence in the record indicates that Manufacturer #2 manufactured glycine in India from raw materials, the glycine batch numbers on Studio Disrupt’s invoices are different from the glycine batch numbers from Manufacturer #2’s production records. Studio Disrupt acknowledges that its batch numbers and Manufacturer #2’s batch numbers do not match. Studio Disrupt explains:

We are able to trace the material by corresponding the manufacturer’s dispatch date as provided on the manufacturer’s invoices and dispatch reports to our sales invoices issued for the very same consignment that was ready for export. Of note, each consignment exported is exactly the same quantity procured.

We provide in Exhibit 1.0 a listing of each of Studio’s sales invoices numbers and dates, as they correlate to the related purchase invoice numbers and dates for material purchased from the manufacturer, the dispatch dates listed on the manufacturer’s invoice, the dispatch trailer numbers, the lot numbers provided on the manufacturer’s dispatch report, and Studio’s assigned lot number. The data compiled in Exhibit 1.0 was derived from Studio Disrupt’s purchase invoices issued by Manufacturer #2 (provided as Exhibit 1.1), Manufacturer #2’s dispatch reports (provided as Exhibit 1.2), and the sale invoices from Studio Disrupt to Tiana (provided in Exhibit 1.3).\textsuperscript{52}

\textsuperscript{49} See December 21 Determination at 8.
\textsuperscript{50} Id. at 9.
\textsuperscript{51} Id.
\textsuperscript{52} See Studio Disrupt’s 2\textsuperscript{nd} Supplemental RFI Response, dated September 25, 2020 and Exhibits 1.0-1.3.
Notwithstanding Studio Disrupt’s explanation, Studio Disrupt does not maintain any written records to trace its batch numbers to Manufacturer #2’s batch numbers. Accordingly, we could not ascertain with certainty that Studio Disrupt’s batch numbers correspond directly to Manufacturer #2’s batch numbers.

There is insufficient record evidence that the glycine exported by Studio Disrupt and imported by Tiana on entry number XXX-XXXX6944, was either (1) PRC-origin glycine, or PRC-origin glycine processed in India; or (2) a re-export of the PRC-origin glycine imported into India by Chemsteel. Therefore, we conclude that there is not substantial evidence that the glycine imported by Tiana was “covered merchandise.”

2. There is insufficient record evidence that TRLED did not have the necessary information to be able to conduct its investigation and reach a determination in this case.

Pursuant to 19 U.S.C. § 1517(c)(3)(A), if CBP finds that a party or person has failed to cooperate by not acting to the best of their ability to comply with a request for information, CBP may, in making a determination of evasion, use an inference that is adverse to the interests of that party or person in selecting from among the facts otherwise available to make the determination.\(^ {53}\) The standard of acting to the best of one’s ability does not require perfection, and only requires that a respondent do the maximum that it is able to do to comply with information requests. \textit{See}, e.g. \textit{Nippon Steel Corp. v. United States}, 337 F.3d 1373, 1382 (Fed. Cir. 2003).

While GEO describes Tiana’s responses to TRLED’s RFIs as “material false statements, omissions, and attempts to conceal material information” and as “vague, inconsistent and misleading,”\(^ {54}\) there is insufficient record evidence that TRLED did not have the necessary information to be able to conduct its investigation and reach a determination in this case. TRLED exercises its authority to apply adverse inferences when a party’s actions make it necessary to do so.

Instead, the record evidence includes the following findings by TRLED: “CBP finds that Tiana and Kumar have not concealed information regarding their affiliates, and as a result the application of adverse inferences is not warranted.”\(^ {55}\) “Based on the evidence in the record, CBP determines that . . . Kumar did not fail to provide the information requested by CBP.”\(^ {56}\) and “Thus, CBP finds that Kumar did not impede the investigation in responding to CBP’s requests for information.”\(^ {57}\)

\(^ {53}\) \textit{See} 19 U.S.C. § 1517(c)(3)(A). Pursuant to 19 U.S.C. § 1517(c)(3)(C), an adverse inference may include reliance on information derived from: (i) the allegation of evasion of the trade remedy laws, if any, submitted to U.S. Customs and Border Protection; (ii) a determination by the Commissioner in another investigation, proceeding, or other action regarding evasion of the unfair trade laws; or (iii) any other available information.

\(^ {54}\) \textit{See} GEO’s Request for Administrative Review of EAPA Determination as to Evasion, dated January 29, 2021, at 5.

\(^ {55}\) \textit{See} December 21 Determination at 13.

\(^ {56}\) \textit{See} December 21 Determination at 14.

\(^ {57}\) \textit{See} December 21 Determination at 15.
3. Our *de novo* administrative review is limited to determinations of evasion.

GEO requests that we address record evidence that Tiana imported glycine on entry number XXX-XXXX6944 as a “Type 01” entry that was entered within the provisional period of the India AD Order. However, 19 U.S.C. § 1517(f) limits our *de novo* review to determinations of evasion. Therefore GEO’s request is outside the scope of our review in this proceeding.

**III. Decision**

Based upon our *de novo* review of the administrative record in this case, including the timely and properly filed request for administrative review and response, there is not substantial evidence of evasion. The December 21 Determination finding no evasion under 19 USC § 1517(c) is AFFIRMED.

A copy of this determination is being provided to TRLED.

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 EAPA.

Sincerely,

**Paul Pizzeck**

Chief, Penalties Branch, Regulations & Rulings
Office of Trade
U.S. Customs & Border Protection

Approved by:

**JOANNE R STUMP**

Acting Executive Director, Regulations & Rulings
Office of Trade
U.S. Customs & Border Protection

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