



U.S. Customs and Border Protection

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Dear Ms. Levinson and Mr. Wang:

This letter is to inform you that U.S. Customs and Border Protection (“CBP”) has commenced a formal investigation under Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, commonly referred to as the Enforce and Protect Act (“EAPA”), for Newtrend USA Co., Ltd. (“Newtrend USA”). Specifically, CBP is investigating whether Newtrend USA has evaded antidumping duty (“AD”) order A-570-836¹ by entering into the United States Chinese-origin glycine (“covered merchandise”) that was transshipped through Thailand, without declaring the merchandise as subject to the Order.² Because evidence establishes a reasonable suspicion that Newtrend USA has entered covered merchandise into the United States through evasion, CBP has imposed interim measures.

Period of Investigation:

Pursuant to 19 C.F.R. § 165.2, entries covered by an EAPA investigation are those “entries of allegedly covered merchandise made within one year before the receipt of an allegation” Entry is defined as an “entry for consumption, or withdrawal from warehouse for consumption,

¹ See *Glycine from the People’s Republic of China: Antidumping Duty Order*, 60 Fed. Reg. 16,116 (Dep’t Commerce, Mar. 29, 1995).

² In addition, the Department of Commerce recently issued an affirmative preliminary determination in the ongoing countervailing duty investigation on glycine from China (C-570-081). See *Glycine from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 83 Fed. Reg. 44,863 (Dep’t Commerce, Sept. 4, 2018). As a result, CBP began collecting cash deposits on entries of glycine from China in conjunction with the Department of Commerce’s countervailing duty investigation on September 4, 2018.

of merchandise in the customs territory of the United States.” *See* 19 C.F.R. § 165.1. Salvi Chemical Industries Ltd. (“Salvi”) filed the allegation on September 17, 2018.³ CBP acknowledged receipt of the properly filed allegation against Newtrend USA on September 24, 2018.⁴ As such, the entries covered by the investigation are those entered for consumption, or withdrawn from warehouse for consumption, from September 24, 2017, through the pendency of this investigation. *See* 19 C.F.R. § 165.2.

Initiation

On October 16, 2018, the Trade Remedy Law Enforcement Directorate (“TRLED”), within CBP’s Office of Trade, initiated an investigation under EAPA as the result of an allegation submitted by Salvi as to evasion of antidumping duties.⁵ Salvi alleges that Newtrend USA evaded AD order A-570-836 on glycine from China by transshipping Chinese-origin glycine through Thailand, and upon customs entry into the United States, declared the merchandise as a product of Thailand and not subject to the AD order. A more detailed description of the alleged transshipment scheme through Thailand follows below.

Description of the Alleged Transshipment Scheme

In a 2002 scope ruling, the Department of Commerce (“Commerce”) determined that all glycine further processed or “purified” from Chinese-origin technical grade, or “crude,” glycine in a third country and exported to the United States is subject to the AD order on glycine from China. In reaching its determination, Commerce stated that:

{t}he scope of the Order clearly includes glycine of all purity levels. The glycine, as exported from China, was covered by the scope of the Order. When the lower grade glycine left the PRC, it was covered by the scope of the Order because it was manufactured/produced in the PRC. When the glycine was refined in Korea, it was still subject to the Order because it was manufactured/produced in the PRC. Further, after refinement, the glycine was still subject to the Order because, although the purity level changed in Korea, both the glycine exported from the PRC to Korea and the glycine exported from Korea to the Unite{d} States are covered by the description of the scope of the Order. Thus, the processing done in Korea did not produce merchandise that was outside the scope of the Order.⁶

Based on this determination, glycine of any purity level originating from China is subject to the AD order. Furthermore, refining or further processing in a third country of glycine of any purity level originating from China will not exclude the merchandise from the AD order.

³ *See* Salvi’s EAPA Allegation (Sept. 17, 2018) (“Allegation”) and “Supplement to Allegation” (Oct. 11, 2018).

⁴ *See* Email acknowledging receipt from EAPA Allegations, “EAPA Case Number 7270” (Sept. 24, 2018).

⁵ *See* Memorandum to Carrie L. Owens, Director, Enforcement Operations Division, “Initiation of Investigation for EAPA Case Number 7270” (Oct. 16, 2018).

⁶ *See* Memorandum from Barbara E. Tillman to Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration, “Final Scope Ruling; Antidumping Duty Order on Glycine from the People's Republic of China (A-570-836); (Watson Industries Inc.)” (May 3, 2002).

According to the allegation, Newtrend Food Ingredient (Thailand) Co., Ltd. (“Newtrend Thailand”), an affiliate of Newtrend USA located in Thailand, supplies glycine to Newtrend USA. Salvi alleges that Newtrend Thailand cannot be considered to be a Thai producer of glycine due to the lack of an adequate volume of raw materials necessary to produce the amount of glycine exported to the United States. Salvi argues that evidence suggests that there did not exist adequate volume of the major raw materials of glycine production, mono-chloro acetic acid (“MCAA”) and hexamine, to support the production of glycine in the country of Thailand. Salvi notes that, to their knowledge, there was no domestic production of either raw material in Thailand during the period 2016-2018.⁷ Furthermore, Salvi submitted trade data that shows imports of MCAA and hexamine into Thailand between 2016-2018 in quantities inadequate to produce the volume of glycine that Newtrend Thailand exported to the United States.⁸

Salvi alleges that Newtrend USA and its affiliates⁹ are purchasing Chinese-origin glycine or intermediate glycine products, shipping the glycine from China to Thailand, then re-exporting that same Chinese-origin glycine to the United States claiming Thailand as the country of origin. To substantiate this allegation, Salvi submitted information from Great Import Export regarding bills of lading for five shipments of glycine made to Newtrend USA from Thailand.¹⁰ The supporting documents for each of the five shipments include information derived from House Bills of Lading that reflect shipments of “glycine Thai,” with an origin of “China,” from Laem Chabang, Thailand to Los Angeles, California. In turn, those House Bills of Lading tie to Master Bills of Lading that shows “glycine Thai” shipped from Laem Chabang, Thailand to Los Angeles, California by Newtrend USA from Newtrend Thailand with country of origin of Thailand. Salvi alleges that these documents show that these re-exports of glycine were shipped directly to the U.S. without an interim stop in China, eliminating the possibility that the House Bills of Lading identifying China as the country of origin of the merchandise was referencing the freight routes. Salvi argues that this documentation suggests that Newtrend is importing Chinese-origin glycine into Thailand and claiming Chinese country of origin for those entries, while subsequently re-exporting the same Chinese-origin glycine to the U.S. market and claiming country of origin as Thailand.

The allegation reasonably suggests that Newtrend USA has engaged in attempts to evade AD order A-570-836 by transshipping glycine through Thailand and failing to report merchandise as subject to the AD order. Salvi submitted documentation reasonably available to it that suggests Newtrend Thailand is not a *bona fide* producer of Thai-origin glycine and, instead, sources Chinese-origin glycine for transshipment through Thailand to the United States, claiming Thailand as the country of origin. Salvi provided evidence to reasonably suggest that Newtrend Thailand did not have access to an adequate volume of the major raw materials of glycine production, MCAA and hexamine, to support the production of glycine it exported to the United States. Furthermore, information on bills of lading covering glycine shipped from Thailand to Newtrend USA casts doubt on the claim that the glycine contained in the shipments is of Thai

⁷ See Allegation at 7 and Supplement to Allegation.

⁸ See Allegation at 7-9 and Exhibits 10-11; *see also* Supplemental Information filed by Salvi (Oct. 15, 2018).

⁹ Salvi states that these affiliates include Newtrend Thailand; Ji An Newtrend Technology Co., Ltd.; Jiangxi Ansun Chemical Technology Co., Ltd.; Nanchang Newtrend Technology Co., Ltd.; Shenzhen Newtrend International Co., Ltd.; and Xi Zang Newtrend Fine Chemical Technology Co., Ltd. These affiliates, along with Newtrend USA, are part of the Newtrend Group. See Allegation at 1 and Exhibit 14.

¹⁰ *Id.* at 4-5 and Exhibits 1-5 (providing data from Great Import Export).

origin and, rather, suggests that the glycine is of Chinese origin. For the forgoing reasons, TRLED determined on October 16, 2018 that the allegation reasonably suggests that Newtrend USA entered covered merchandise into the United States through evasion by a material and false statement or act, or material omission, and initiated an investigation pursuant to 19 U.S.C. §1517(b)(1).

Interim Measures

Not later than 90 calendar days after initiating an investigation under EAPA, CBP will decide based on the record of the investigation if there is reasonable suspicion that such covered merchandise was entered into the United States through evasion. If reasonable suspicion exists, CBP will impose interim measures pursuant to 19 U.S.C. § 1517(e) and 19 C.F.R. § 165.24. As explained below, CBP is imposing interim measures because based on the record evidence, there is a reasonable suspicion that Newtrend USA entered covered merchandise into the customs territory of the United States through evasion by means of transshipment through Thailand. *See* 19 U.S.C. § 1517(e); 19 C.F.R. § 165.24(a).

Discrepancy Resulting from Documents Review

After initiation of this EAPA investigation, on November 8, 2018, CBP issued Customs Form 28 (“CF28”) to Newtrend USA covering two separate entries of glycine with a reported country of origin as Thailand: entry []2792 and entry []2750. On November 28, 2018, Newtrend USA provided a response to the CF28 for entry []2792, but it was incomplete as it did not contain all of the requested information pertaining to Newtrend Thailand.¹¹ CBP contacted Newtrend USA’s customs broker and reiterated that the missing information for both CF28s was due by the original deadline of December 10, 2018. Newtrend USA submitted complete CF28 responses (“Newtrend USA CF28 Responses”) to CBP for entry []2792 and entry []2750 on December 5, 2018.¹² CBP also sent Newtrend USA a follow-up CF28 for entry []2792 on November 29, 2018, to which Newtrend submitted a response on December 4, 2018.¹³

CBP reviewed other documents pertaining to Newtrend USA and Newtrend Thailand. The first document is a CBP protest filed on February 15, 2017, by Newtrend USA in a bid to be granted GSP preference for its importation of glycine from Thailand.¹⁴ Other documents include certain responses of Newtrend Thailand to questionnaires issued by Commerce in Commerce’s ongoing AD investigation of glycine from Thailand, to which Newtrend Thailand is the sole mandatory respondent.¹⁵ Also on the record of this investigation is the 2018 preliminary determination by the U.S. International Trade Commission (“ITC”) regarding glycine from a number of countries,

¹¹ *See* Incomplete CF28 response for entry []2792 from Newtrend USA (Nov. 28, 2018).

¹² *See* Newtrend USA CF28 Responses for entries []2792 and []2750 (Dec. 5, 2018).

¹³ *See* Follow-up CF28 response for entry []2792 from Newtrend USA (Dec. 4, 2018).

¹⁴ *See* Newtrend USA CBP Protest (Feb. 15, 2017) (“Newtrend USA Protest”).

¹⁵ *See* Newtrend Thailand’s Responses to Commerce’s AD Questionnaire for Sections A (June 11, 2018) and B-D (July 12, 2018) (Excerpts); Newtrend Thailand’s Response to Commerce’s Supplemental Questionnaire for Section A (August 1, 2018) (Excerpts); Newtrend Thailand’s Response to Commerce’s First Supplemental Questionnaire for Section D (August 24, 2018); and Newtrend Thailand’s Response to Commerce’s Second Supplemental Questionnaire for Section D (October 3, 2018).

including Thailand, for ongoing AD/countervailing duty (“CVD”) investigations of imports of glycine into the United States.¹⁶ Lastly, CBP obtained official trade statistics from Thailand’s Department of Foreign Trade (“DFT”) for the record.¹⁷

In reviewing the documentation on the record, as identified above, CBP observed an inverse relationship between the claimed production capacity and number of employees at Newtrend Thailand between 2016 and 2018. The Newtrend USA Protest indicated that Newtrend Thailand’s glycine production capacity in 2016 was [] metric tons monthly ([] metric tons annually) and that the company employed [] workers.¹⁸ The 2018 CF28 Responses claimed that Newtrend Thailand’s glycine production capacity was [] metric tons annually ([] metric tons monthly) and that the company employed [] workers.¹⁹ In comparing this information submitted to CBP by Newtrend USA, between 2016 and 2018, Newtrend Thailand *increased* its production capacity by [] percent while simultaneously *decreasing* its workforce by [] percent. According to the ITC, Newtrend Thailand did not have any operational or organizational changes since January 1, 2013.²⁰ Furthermore, in its responses to Commerce’s questionnaires, Newtrend Thailand did not state that it upgraded its facility or added any equipment during calendar year 2017.²¹

Finally, official Thai trade statistics suggest that the claim of an increase in capacity at Newtrend Thailand is accurate. Between calendar year 2016 and year-to-date 2018 (January - October), there was a dramatic increase in sales to the United States (by value). During this period of time, Newtrend Thailand’s exports to the United States increased by [] percent, while its total exports increased by [] percent during that same period.²² Furthermore, during that same time period, Newtrend Thailand’s exports to the United States as a share of its total exports increased by [] percent.²³ While the increase in Newtrend Thailand’s total exports appears to indicate increased capacity, the increase in Newtrend Thailand’s exports to the United States lends further credence to the instant allegation of transshipment through Thailand.

While record information from two different sources suggests that Newtrend Thailand did increase its glycine production capacity between 2016 and 2018, there is no documentation on the record to explain how Newtrend Thailand could have achieved this while simultaneously decreasing its workforce by [] percent without an upgrade of facilities or installation of additional manufacturing capabilities.

¹⁶ See Glycine from China, India, Japan, and Thailand, Publication 4786, U.S. International Trade Commission, May 2018 (“ITC Preliminary Glycine Report”).

¹⁷ See CBP Attaché Memorandum for Onsite Visit (Dec. 19, 2018) (“Onsite Visit Memorandum”), at Attachment 1 (containing DFT Import and Export Data for Newtrend Thailand).

¹⁸ See Newtrend USA Protest, at Exhibit 4, page 11.

¹⁹ See Newtrend USA CF28 Response for entry []2792, at 3 and 71 and Newtrend USA CF28 Response for entry []2750, at 4 and 77.

²⁰ See ITC Preliminary Glycine Report, at page VII-13.

²¹ Commerce’s AD investigation of glycine from Thailand covers calendar year 2017.

²² See Onsite Visit Memorandum, at Attachment 1.

²³ *Id.*

Preliminary Onsite Visit to Newtrend Thailand

In an attempt to corroborate information provided by Newtrend USA to CBP in the CF28 responses, CBP conducted a preliminary onsite visit to the facility in conjunction with DFT.²⁴ CBP and DFT met with Newtrend Thailand's Vice President of Production, Assistant General Manager, and Manager of Technical Quality Department. Newtrend Thailand company officials did not allow CBP or DFT to review any purchase, production, shipping or sales documentation during the visit.²⁵ As such, CBP was unable to corroborate record information regarding Newtrend Thailand's operations. For example, Newtrend Thailand officials stated that the company employs between [] workers who work [], [] days per week.²⁶ Regarding production, Newtrend Thailand officials claimed that yearly production of glycine was [] metric tons, with [] metric tons exported to the United States and the [].²⁷

Based on record information claiming [] metric tons annual *capacity*,²⁸ the claims by Newtrend Thailand officials during the onsite visit that the company *produces* [] metric tons annually means that Newtrend Thailand is running its production facilities at full capacity. However, CBP was unable to corroborate this claim because Newtrend Thailand did not allow CBP to review timekeeping, labor or production records during this onsite visit.²⁹ Moreover, Newtrend Thailand's assertion that it exports [] metric tons to the United States of the [] metric tons of glycine it produces annually is not consistent with official trade data obtained from DFT, as those data establish that Newtrend Thailand's exports of glycine to the United States equaled [], [], and [] percent, by value, of its total exports in 2016, 2017, and year-to-date 2018 (January - October), respectively.³⁰

While CBP observed generally that Newtrend Thailand currently has some capacity to produce glycine from [], because company officials did not allow access to production and time card records, we were unable to ascertain whether the facility in fact produced all of the glycine exported to the United States.³¹ Furthermore, CBP observed a [] stock of crude glycine compared to the supply of finished USP grade glycine in stock.³² The Newtrend Thailand officials indicated that this was due to the fact that a [] metric ton shipment of finished USP grade glycine had just been shipped prior to the visit, although CBP could not confirm this claim as the team was not permitted access to production or shipping records.³³ Furthermore, CBP could not confirm whether the production of the observed crude glycine was completed onsite in Thailand.

²⁴ See Onsite Visit Memorandum.

²⁵ *Id.* at 2 and 4.

²⁶ *Id.* at 2.

²⁷ *Id.*

²⁸ See Newtrend USA CF28 Response for entry []2792, at 3 and Newtrend USA CF28 Response for entry []2750, at 4.

²⁹ See Onsite Visit Memorandum at 2 and 4.

³⁰ *Id.* at Attachment 1.

³¹ *Id.* at 4.

³² *Id.*

³³ *Id.*

In sum, CBP was unable to corroborate various claims of production capacity and actual production on the record from a 2017 CBP protest filed by Newtrend USA (claiming GSP preference), 2018 CF28 responses from Newtrend USA, 2018 questionnaire responses filed by Newtrend Thailand in Commerce’s ongoing AD investigation of glycine from Thailand, and statements made by Newtrend Thailand officials at the CBP onsite visit. CBP was also unable to corroborate the various claims of employee numbers or shifts. Due to Newtrend Thailand officials’ refusal to allow CBP and DFT access to timekeeping information and production documents onsite, there is no corroboration for any record information, and in particular, no explanation as to how Newtrend Thailand could increase its production capacity by [] percent between 2016 and 2018 with no upgrades to the facility and, at best, a steady workforce of [] people and possibly a drop in the workforce by up to [] percent over that same period. Moreover, as a result of Newtrend Thailand officials’ refusal to permit CBP to view purchase, production, shipment, and sales documentation during the site visit, information concerning the country of origin of the glycine shipped from Thailand to Newtrend USA, particularly information on the bills of lading submitted with Salvi’s allegation showing “China” as the origin of the glycine, could not be examined.

As interim measures, CBP is directing that all unliquidated entries of glycine under this investigation that entered the United States as not subject to AD duties will be rate-adjusted to reflect that they are subject to the AD order on glycine from China and AD cash deposits (and CVD cash deposits, where applicable³⁴) are owed. Additionally, “live entry” is required for all future imports by Newtrend USA, meaning that all entry documents and duties must be provided before cargo is released by CBP into the U.S. commerce. CBP will reject any entry summaries that do not comply with live entry, and require refiling of entries that are within the entry summary rejection period; suspend the liquidation for any entry that has entered on or after October 16, 2018, the date of initiation of this investigation; and extend the period for liquidation for all unliquidated entries that entered before that date. *See* 19 C.F.R. § 165.24(b)(1)(i) and (ii). For any entries that have liquidated and for which CBP’s reliquidation authority has not yet lapsed, CBP will reliquidate those entries accordingly. CBP will also evaluate Newtrend USA’s continuous bond and will require single transaction bonds, as appropriate.

³⁴ As explained in footnote 2, on September 4, 2018, CBP began collecting cash deposits on entries of glycine from China in conjunction with Commerce’s ongoing CVD investigation on glycine from China. *See* Notice of preliminary determination in the countervailing duty investigation of glycine from the People’s Republic of China (C-570-081), Msg. No. 8255301 (Sept. 12, 2018), available at <https://aceservices.cbp.dhs.gov/adcvdweb>.

For any future submissions or factual information that you submit to CBP pursuant to this EAPA investigation, please provide a public version to CBP, as well as to Ms. Levinson, counsel for Salvi, at llevinson@foxrothschild.com, and Hao Wang, at wang.hao@newtrend-group.com. See 19 C.F.R. §§ 165.4, 165.23(c), and 165.26. Should you have any questions regarding this investigation, please feel free to contact us at epallegations@cbp.dhs.gov. Please include “EAPA Case Number 7270” in the subject line of your email. Additional information on this investigation, including the applicable statute and regulations, may be found on CBP’s website at: <https://www.cbp.gov/trade/trade-enforcement/tftea/enforce-and-protect-act-eapa>.

Sincerely,

Marisa A. Hill

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