



A-533-883

POI: 01/01/2017-12/31/2017

**Public Document**

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DATE: April 24, 2018

MEMORANDUM TO: Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

FROM: Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Affirmative  
Determination in the Less-Than-Fair-Value Investigation of  
Glycine from India

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## **I. SUMMARY**

The Department of Commerce (Commerce) determines that glycine from India is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is January 1, 2017, through December 31, 2017.

Below is the complete list of the issues in this investigation for which we received comments from interested parties:

Comment 1: Application of Total Adverse Facts Available to Kumar  
Comment 2: Paras' Contributions for Corporate Social Responsibility  
Comment 3: Calculation of Paras' Short-term Interest Income



## II. BACKGROUND

On October 31, 2018, the Department of Commerce (Commerce) published the *Preliminary Determination* for this investigation of glycine from India.<sup>1</sup>

In October 2018, we received timely scope comments from Ajinomoto Health and Nutrition North America and the petitioners, GEO Specialty Chemicals, Inc., and Chattem Chemicals, Inc., filed rebuttal scope comments.<sup>2</sup> We issued a final scope decision memorandum, concurrent with this final determination, in response to these comments.<sup>3</sup> We made no changes to the scope of the investigation since the *Preliminary Determination*.

In November and December 2018, we conducted sales and cost verifications for Kumar Industries, India (Kumar) and Paras Intermediates Private Limited (Paras), the two mandatory respondents in this case. Following the issuance of the last verification report, interested parties filed timely case briefs and rebuttal briefs.<sup>4, 5</sup>

In the *Preliminary Determination*, Commerce announced that it would be extending the deadline for the final determination of this investigation, until March 15, 2019.<sup>6</sup> Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.<sup>7</sup> If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final determination of this investigation is now April 24, 2019.

Based on questionnaire responses received after the *Preliminary Determination*, verification findings, and our analysis of the comments received from interested parties, we made changes since the preliminary determination. For the final determination, we revised the weighted-

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<sup>1</sup> See *Glycine from India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 54713 (October 31, 2018) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum.

<sup>2</sup> See Letter from AHN, "Glycine from the People's Republic of China, India, Japan, and Thailand: Comments on the Scope of the Investigation," dated October 4, 2018; Letter from the petitioners, "Glycine from India, Japan, the People's Republic of China and Thailand: Petitioners' Rebuttal to Ajinomoto Health and Nutrition North America, Inc.'s Comments on the Scope of Less-Than-Fair-Value and Countervailing Duty Investigations," dated October 8, 2018.

<sup>3</sup> See Memorandum, "Glycine from India, Japan, the People's Republic of China and Thailand: Scope Comments Decision Memorandum for the Final Determinations," dated April 24, 2019.

<sup>4</sup> See Letter from the petitioners, "Glycine from India: Petitioners' Case Brief," dated March 6, 2019 (Petitioners' Comments); Letter from Kumar, "Certain Glycine from India (A-533-833), Kumar Industries, Case Brief," dated March 6, 2019 (Kumar's Comments); Letter from Paras, "Paras Intermediates Private Limited's Case Brief on Antidumping Investigation," dated March 11, 2019 (Paras' Comments) (accepted by Commerce after it rejected Paras' original brief, dated March 4, 2019).

<sup>5</sup> See Letter from the petitioners, "Glycine from India: Petitioners' Rebuttal Case Brief," dated March 12, 2019 (Petitioners' Rebuttal Comments); Letter from Paras, "Paras Intermediates Private Limited's Rebuttal Brief on Antidumping Investigation," dated March 12, 2019 (Paras' Rebuttal Comments).

<sup>6</sup> See *Preliminary Determination* at 83 FR 54714-54715.

<sup>7</sup> See Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

average dumping margins for Kumar and Paras that were assigned or calculated for the companies in the *Preliminary Determination*.

### **III. PERIOD OF INVESTIGATION**

The POI is January 1, 2017, through December 31, 2017.

### **IV. SCOPE OF THE INVESTIGATION**

The merchandise covered by this investigation 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 investigations 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 investigations is dispositive.

### **V. ADJUSTMENT FOR COUNTERVAILABLE EXPORT SUBSIDIES**

In a less-than-fair-value investigation where there is a countervailing duty (CVD) investigation, it is Commerce's normal practice to calculate the cash deposit rate for each respondent by adjusting the respondent's estimated weighted-average dumping margin to account for export subsidies found for each respective respondent in the concurrent CVD investigation. Doing so is in accordance with section 772(c)(1)(C) of the Act, which states that U.S. price "shall be increased by the amount of any countervailing duty imposed on the subject merchandise . . . to offset an export subsidy."<sup>8</sup>

Commerce determined in the final determination of the companion CVD investigation that Kumar and Paras benefitted from export subsidies. For Kumar, we find that an export subsidy adjustment of 6.99 percent to the estimated weighted-average dumping margin is warranted to establish Kumar's cash deposit rate. For Paras, we find that an export subsidy adjustment of 3.03 percent to the estimated weighted-average dumping margin is warranted to establish Paras' cash deposit rate. For all other exporters and producers, the final rate of which is based on an average of Kumar's and Paras' final rates, we find that an export subsidy adjustment of

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<sup>8</sup> See *Carbazole Violet Pigment 23 from India: Final Results of Antidumping Duty Administrative Review*, 75 FR 38076, 38077 (July 1, 2010), and accompanying Issues and Decision Memorandum at Comment 1.

5.01 percent to the estimated weighted-average dumping margin is warranted to establish the “all others” cash deposit rate.<sup>9</sup>

## VI. CHANGES SINCE THE PRELIMINARY DETERMINATION

Based on our findings at verification and analysis of the comments received from parties, we made certain changes to the margin calculations since the *Preliminary Determination*. Specifically, we made the following changes:

- A dumping margin for Kumar based on its cost and sales data.<sup>10</sup>
- Adjustments to Kumar’s reported total cost of manufacturing for raw material inputs purchased from an affiliated party in accordance with the transactions disregarded rule, a revision to Kumar’s reported G&A expense rate and a revision to Kumar’s reported financial expense rate to reflect the revised COGS denominator.<sup>11</sup>
- An adjustment to the financial expense ratio for Paras.<sup>12</sup>

## VII. DISCUSSION OF THE ISSUES

### Comment 1: Application of Total Adverse Facts Available to Kumar

*Petitioners’ Comments:*<sup>13</sup>

- Commerce properly assigned a rate based on total adverse facts available to Kumar in the *Preliminary Determination*, because it found that Kumar withheld information concerning its affiliation with its U.S. customer. Commerce should not reward Kumar’s deception by spending resources to fix Kumar’s record that is riddled with errors but, instead, should find that the respondent did not act to the best of its ability to respond to Commerce’s repeated requests for information.
- Kumar failed to identify the U.S. customer as an affiliate in its original response to Section A of the antidumping duty questionnaire. However, after Commerce confronted Kumar, it admitted its affiliation with the U.S. customer, but attempted to absolve itself, in part by claiming it believed the transfer prices were made at arm’s length. Because Kumar withheld information, Commerce found that the record was still missing

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<sup>9</sup> See the unpublished A-533-883: *Glycine from India: Final Determination of Sales at Less Than Fair Value*, dated April 24, 2019; and *Countervailing Duty Investigation of Glycine from India: Affirmative Final Determination* and accompanying Issues and Decision Memorandum, dated April 24, 2019.

<sup>10</sup> See Memorandum to the File, “Final Determination Margin Calculation Memorandum for Kumar Industries, India”, dated concurrently with this memorandum, (Kumar Final Calculation Memorandum).

<sup>11</sup> See Memorandum, “Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Kumar Industries, India,” dated concurrently with this memorandum (Kumar Final Cost Memorandum).

<sup>12</sup> See Memorandum, “Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Paras Intermediates Private Limited,” dated concurrently with this memorandum.

<sup>13</sup> See Petitioners’ Comments at 1-44.

necessary information that it would have obtained in the initial questionnaire responses had Kumar disclosed its U.S. affiliate in these responses.<sup>14</sup>

- The record continues to lack reliable financial and sales information for Kumar’s U.S. sales, which is necessary for Commerce to complete this investigation. Kumar’s “audited financial statements” for its U.S. affiliate are not reliable and verification findings show that Kumar’s accountant created non-existing categories for the balance sheet that could not be tied to invoices during the normal course of business.<sup>15</sup> The record also shows that Kumar did not use the correct date of sale for U.S. sales and thus did not correctly report either the quantity and value of its U.S. sales or the universe of transactions for the POI. Commerce found at verification that, when terms of an initial purchase order had been fulfilled, Kumar and its customer agreed to a new purchase order, thereby demonstrating that the purchase order fixed the quantity of the sale.<sup>16</sup> Kumar has not reported the correct date of sale and thus its U.S. sales are unusable and, because the quantity and value of its U.S. sales are incorrect, Kumar may have been improperly selected as a mandatory respondent.
- Even after Kumar was confronted with its lies concerning its affiliation with its U.S. customer, it still withheld the financial information of the affiliate and, as pointed out by Commerce, took no steps to remedy the oversight, such as providing the financial reports of the affiliate in its August 28, 2018, supplemental questionnaire response.<sup>17</sup> In any event, Kumar squandered its opportunity to fix its deficiencies by continuing to submit information after the *Preliminary Determination* that was materially incomplete and erroneous. For example, Kumar provided financial statements that were incomplete and unreliable in its revised questionnaire responses and reported the wrong date of sale for its U.S. sales in the revised database. Following case and court precedent, Commerce should find the revised questionnaire responses, dated October 31, 2018, to be unreliable and unusable.<sup>18</sup>
- Numerous errors were discovered in Kumar’s sales reporting during verification. For example, the examination of individual sales revealed that the reporting of the date of sale for home-market sales was incorrect and that this sales database is incomplete because Kumar did not report the purchase order dates for its home-market sales. The cost verification revealed that Kumar failed to properly report costs according to the major input rule; that it failed to include general and administrative (G&A) and financial

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<sup>14</sup> The petitioners cite Memorandum to the File, “Less-Than-Fair-Value Investigation of Glycine from India: Additional Analysis Regarding Preliminary Determination to Apply Adverse Facts Available to Kumar Industries, India,” dated October 24, 2018, 2-3.

<sup>15</sup> The petitioners cite Memorandum to the File, “Verification of the Sales Response of Kumar Industries, India in the Antidumping Investigation of Glycine from India,” dated February 19, 2019 (Kumar’s Sales Verification Report), 13-14.

<sup>16</sup> The petitioners cite Kumar’s Sales Verification Report at 9-10.

<sup>17</sup> The petitioners cite Memorandum from Gary Taverman, “Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Glycine from India,” dated October 24, 2018 (Preliminary Decision Memorandum), 8.

<sup>18</sup> The petitioners rely on *Ad Hoc Shrimp Trade Action Comm. v. United States*, 802 F.3d 1339, 1357 (Fed.Cir. 2015).

expenses in determining its affiliated supplier's costs; that it miscalculated G&A expenses using a packing-inclusive denominator; and that appeared to have improperly reported total cost of manufacturing (COM) and total finished goods production by overstating the latter amount. Kumar's errors, taken in their totality, are not minor and, here, the multitude and scope of the errors discovered at verification cast significant doubt on the reliability of the company's reported data as a whole. Given the extent of these errors, Commerce cannot consider Kumar's data to be reliable or its unverified data to be accurate and, as a result, it should continue to employ total adverse facts available in the final determination.

- As recounted in Volume 1 of the Petitions, Kumar and its predecessor have a history of circumventing the antidumping duty order on glycine from the People's Republic of China (China).<sup>19</sup> The petitioners placed more contemporaneous evidence on this record to show Commerce should also apply total adverse facts available to Kumar because of its continued denial of affiliations with two companies. These denials did not refute the contemporaneous evidence relating to before and during the POI. This evidence exposes the speciousness of Kumar's claims, again casting doubt on the reliability of its responses throughout the investigation. Even though Commerce has discretion in making its determinations based on substantial evidence, Commerce should not disregard this evidence that more than detracts from Kumar's unsupported assertions and should not find in favor of Kumar. In addition, the record supports a finding that Kumar attempted to conceal certain sales (*i.e.*, through Kumar's failure to identify affiliations to companies involved in the transshipment of Chinese glycine or glycine slurry). Commerce should apply total adverse facts available to Kumar for its failure to cooperate concerning these sales and imported Chinese glycine.
- At the cost verification, Commerce noted that a December 2011 document, placed on the record, identified one of Kumar's current partners as a managing director of Aico Agencies Pvt. Ltd. and a partner of Rexasize Rasayan Industries (Rexasize) but that this partner was no longer involved in Rexasize. Record evidence, contemporaneous with the POI, contradicts Kumar's claims. The abundance of evidence that the petitioners placed on the record has not been refuted by evidence in kind and Kumar's repeated failure to acknowledge a certain affiliation should warrant the application of total adverse facts available. Alternatively, the materials that Kumar obtained from an affiliated supplier are major inputs which warrant the application of the major input rule.
- Commerce's sales verification report confirms that Kumar failed to disclose more affiliated shell companies to Commerce, including an additional undisclosed company that Kumar claimed as an affiliate that was no longer operational (*i.e.*, Kumar Healthcare).
- Kumar's purchase and resale of glycine by its supplier Avid is suspicious because such a sales channel would be consistent with a finding that some or all of the glycine that

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<sup>19</sup> The petitioners cite to the Petitions for the Imposition of Antidumping Duties on Imports of Glycine from India, Japan, and Thailand; and Countervailing Duties on Imports from the People's Republic of China, dated March 28, 2018 (the Petitions), Volume 1, 18.



Kumar sold was transshipped Chinese product. While Kumar officials confirmed at the sales verification that Avid had knowledge of the ultimate destination (*i.e.*, the United States) of the glycine, Commerce was rebuffed in its quest for any documentation of such knowledge.<sup>20</sup> Avid refused to provide cost data and there is no paper trail showing actual production in India. Even without evidence that Avid-supplied glycine was transshipped from China, the many other deficiencies are further grounds for an adverse inference *vis-a-vis* Kumar's overall posture during this proceeding.

- Commerce should, at a minimum, apply partial adverse facts available to Kumar's U.S. sales of glycine that was produced by Avid. Although Kumar identified certain sales as produced by Avid, no cost of production information was provided, and Commerce cannot consider Kumar's claim of knowledge by Avid to be credible. Other than product grades, Kumar did not point to any other evidence on the record to show that Avid had knowledge of the ultimate destination of each sale of glycine. In addition, Avid did not respond to a supplemental questionnaire, issued by Commerce on October 26, 2018, requesting its cost information. Whether Commerce finds that Kumar's deceitful behavior significantly impeded this investigation as it has done in the glycine from Japan investigation, it is undisputed that cost information for Kumar's resales is necessary for Commerce to complete this investigation and that its unavailability mandates that Commerce apply facts otherwise available on this basis alone.<sup>21</sup> Furthermore, based on Kumar's failure to cooperate to the best of its ability, Commerce should apply partial adverse facts available for the final determination.

*Kumar Comments:*<sup>22</sup>

- Subsequent to the *Preliminary Determination*, Kumar responded to the supplemental questionnaire, issued by Commerce on October 19, 2018, and provided all information requested by Commerce with respect to the sales and financial information of its U.S. affiliate. This information was verified by Commerce, which found documentation relating to the U.S. affiliate to conform with information on the record.<sup>23</sup> As such, Kumar has acted to the best of its ability and there is no reason to continue to apply total adverse facts available with respect to its margin in the final determination.

*Petitioners' Rebuttal Comments:*<sup>24</sup>

- Commerce should continue to apply adverse facts available to Kumar because the U.S. sales information that Kumar submitted after the *Preliminary Determination* was rampant with deficiencies and is unusable. Even if Kumar had come clean and provided the information requested by Commerce, Kumar was neither acting as a reasonable

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<sup>20</sup> The petitioners cite Kumar's Sales Verification Report at 4-5.

<sup>21</sup> The petitioners cite *Glycine from Japan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 83 FR 54718 (October 31, 2018) and accompanying Issues and Decision Memorandum at 8-9.

<sup>22</sup> See Kumar's Comments at 3-4.

<sup>23</sup> Kumar cites Kumar's Sales Verification Report.

<sup>24</sup> Petitioners' Rebuttal Comments at 3-7.

respondent, by not submitting the information earlier in the investigation, nor acting to the best of its ability as required by section 776(b) of the Act.

- Kumar also ignores that Commerce’s verification reports reveal numerous errors and this pervasive misreporting, on its own, serves as another ground for Commerce to apply total adverse facts available in the final determination. In addition, Commerce’s verification findings corroborated evidence the petitioners placed on the record concerning two other unreported Kumar affiliates, including Rexisize, that Kumar failed to refute with evidence of any kind. Kumar’s refusal to recognize these shell company affiliates provides Commerce with yet another ground to apply total adverse facts available in the final determination. Finally, for reasons covered in the petitioners’ comments, Commerce should apply partial adverse facts available to Kumar’s sales of glycine supplied by Avid.

### **Commerce’s Position:**

Following issuance of the *Preliminary Determination*, Kumar submitted a supplemental questionnaire response in which it provided a revised U.S. sales database, reflecting the sales of the U.S. affiliate to the unaffiliated customer, and revised responses to sections A and C of the antidumping duty questionnaire.<sup>25</sup> We verified both sales and cost information for Kumar in November 2018. In each case, we made minor findings with respect to the reported information.<sup>26</sup> With respect to Kumar’s affiliations with other companies in its home market, we found at the sales verification that Kumar had failed to identify one company, Kumar Healthcare.<sup>27</sup> The company officials stated that this company, which had produced cosmetic products, was not currently operational, but remained listed with the Ministry of Corporate Affairs. Additionally, record evidence does not demonstrate that Kumar Healthcare was involved in the production, sale and distribution of glycine to the United States during the POI. At both verifications, we reviewed the relevant sections of Kumar’s audited 2015/2016 and 2016/2017 financial statements that disclosed no other unreported affiliations, as well as the income tax returns for one of Kumar’s partners.<sup>28</sup> This exercise also established that there were no additional affiliations for Kumar. The issue of additional affiliations was raised in several supplemental questionnaires prior to the two verifications and, based on our findings, Kumar and its U.S. affiliate were the only two companies involved in the production, sale and distribution of glycine to the United States during the POI.

Based on all of our findings, we do not find that the application of total adverse facts available to Kumar’s margin is warranted for this final determination. Kumar failed to identify its U.S. affiliate in its initial response to the Section A questionnaire, for which we assigned total adverse facts available in the *Preliminary Determination*. However, Kumar explained this oversight in

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<sup>25</sup> See Letter, “Certain Glycine from India (A-533-883) – Response to 3<sup>rd</sup> Supplementary Questionnaire Section A & C,” dated October 31, 2018 (Revised A & C Responses).

<sup>26</sup> See Memorandum to the File, “Verification of the Cost Response of Kumar Industries, India in the Antidumping Duty Investigation of Glycine from India,” dated December 20, 2018 (Kumar’s Cost Verification Report), 2; Kumar’s Sales Verification Report at 2.

<sup>27</sup> *Id.*

<sup>28</sup> See Kumar’s Cost Verification Report at 4; Kumar’s Sales Verification Report at 5.



its first supplemental questionnaire response.<sup>29</sup> Furthermore, it did cooperate by providing the information Commerce requested of it in its supplemental questionnaire responses and at the verifications. Thus, we find it appropriate to calculate a dumping margin based on an analysis of this information.

The petitioners argue that the financial statements for Kumar's U.S. affiliate are unreliable. As explained at the sales verification, this affiliate is a virtual company (*i.e.*, there is no actual physical location of the company in the United States) and a U.S. accountant creates its sales ledger and financial statements based on the records supplied to him.<sup>30</sup> Although the statements were not audited, we reviewed the reconciliation of them to the sales invoices and bank statements for the U.S. affiliate and found no discrepancies.<sup>31</sup> Thus, we find no basis to conclude that the statements are unreliable. The petitioners also questioned the reliability of Kumar's Revised A & C Responses, specifically questioning one entry on the U.S. affiliate's balance sheet. We reviewed this entry at verification and we were not able to tie the total for the entry to the invoices presented.<sup>32</sup> However, given all of the record evidence, we do not find this one entry to impugn the financial records of the U.S. affiliate to the extent that we would find them to be unreliable. As stated above, we found no discrepancies in the U.S. sales reconciliation.

Because we do not agree with the petitioners' conclusion that purchase order date should be used as the date of sale for home-market sales, we cannot agree with the petitioners' argument that Kumar reported the incorrect date of sale for these sales. Finally, the petitioners assert that Kumar reported the wrong date of sale for its U.S. sales in the revised database. To the contrary, we find that Kumar did report the most appropriate date of sale, that of invoice date, for its U.S. sales. At the sales verification, Kumar's company officials informed Commerce verifiers that all of the U.S. sales during the POI were made pursuant to either a "blanket purchase order" or a second, "optional purchase order."<sup>33</sup> Based on these discussions and a review of these documents, we conclude that the second purchase order served to augment the first purchase order; in other words, the second purchase order was used to modify a material term of sale (*i.e.*, quantity) in the first "blanket purchase order." Thus, we find that the most appropriate date of sale for the U.S. sales is the invoice date, as reported by Kumar.<sup>34</sup> This finding is consistent with 19 CFR 351.401(i), which states that Commerce will normally rely on the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business, as the date of sale. Furthermore, with respect to Kumar's home-market sales, Kumar stated that these orders were typically placed by phone calls or text messages, not purchase orders.<sup>35</sup> It also stated that

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<sup>29</sup> See Letter, "Certain Glycine from India (A-533-883) Response to Supplemental Questionnaire for Section A", dated August 28, 2018 (Supplemental Response for Section A), 1-2.

<sup>30</sup> The petitioners cite Memorandum to the File, "Verification of the Sales Response of Kumar Industries, India in the Antidumping Investigation of Glycine from India," dated February 19, 2019 (Kumar's Sales Verification Report), 3 and 7.

<sup>31</sup> See Kumar's Sales Verification Report, at 12 and 13.

<sup>32</sup> *Id.* at 13 and 14. See also Memorandum to the File, Kumar Final Calculation Memorandum at 6.

<sup>33</sup> See Kumar's Sales Verification Report, at 9-10.

<sup>34</sup> For a fuller discussion, see Kumar Final Calculation Memorandum, 2-3.

<sup>35</sup> See Letter, "Certain Glycine from India (A-533-883) – Response to Supplemental Questionnaire for Section ABC," dated September 25, 2018, 7.

the material terms of sale were subject to change prior to shipment.<sup>36</sup> Thus, we find that the tax invoice date is the most appropriate date of sale for the home-market sales.<sup>37</sup> For these reasons, we do not find the missing purchase-order dates for the home-market sales to be a basis to apply total adverse facts available to Kumar, as also argued by the petitioners.

As to the petitioners' assertions concerning adjustments to cost, we have made minor adjustments to Kumar's cost calculations due to our findings are verification. Each of these adjustments are detailed in the final cost memorandum for Kumar.<sup>38</sup> We do not find these adjustments to be of such significance as to question the reliability of Kumar's reporting of its cost data.

The petitioners have commented throughout the investigation and in their comments for the final determination about Kumar's affiliations with companies involved in the transshipment of Chinese glycine or glycine slurry. These comments have been based on data obtained from the Internet, for which we cannot confirm the reliability. Similarly, the petitioners assert that Kumar is affiliated with certain "shell" companies. We asked Kumar company officials to identify each of the other companies named by the petitioners as a potential shell company at the sales verification and, based on their responses and the review of affiliations in their financial documents (already discussed above), we found no affiliations between Kumar and these companies.<sup>39</sup>

With respect to Kumar's U.S. sales of glycine produced by Avid, we find that necessary information is missing from the record. First, while Kumar claims that Avid had knowledge at the time it sold subject merchandise to Kumar that the merchandise was destined for the United States, the record does not bear out this claim. Kumar stated that Avid had knowledge based on discussions the two parties had at the time the orders were placed and also because of the product specifications, *i.e.*, Kumar only ordered glycine with U.S. Pharmacopeia (USP) parameters from Avid.<sup>40</sup> But, as observed by the petitioners, Kumar also had sales of USP glycine in the home market during the POI.<sup>41</sup> During verification, Commerce officials provided an additional opportunity for Kumar to substantiate its claims that the supplier, Avid, knew or should have known that its glycine was shipped to the United States through Kumar during the POI. However, Kumar was unable to do so. Specifically, Kumar was unable to present any records generated from the sales that would document Avid's knowledge regarding the U.S. destination. Rather, according to company officials, knowledge was only orally communicated by Kumar to Avid.<sup>42</sup>

In situations where a respondent purchases the merchandise under consideration from an unaffiliated producer, if: (1) the producer knew or should have known that the merchandise is going to the U.S., and (2) the sales of the merchandise can be identified as to the original manufacturer (*i.e.*, not commingled), then we may exclude the sales from the U.S. database.

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<sup>36</sup> *Id.*

<sup>37</sup> See Kumar Final Calculation Memorandum at 2-3.

<sup>38</sup> See Kumar Final Cost Memorandum at 1-2.

<sup>39</sup> See Kumar's Sales Verification Report, at 5 and 6.

<sup>40</sup> See Section A Response at 24; Supplemental Response for Section A at 14.

<sup>41</sup> See Kumar's Sales Verification Report at SVE 6 and 7.

<sup>42</sup> *Id.* at 4 and 5.

Here, however, we cannot establish from the record that Avid did have knowledge of the ultimate destination (*i.e.*, the United States) of the glycine. We have no sales records to document Avid's knowledge, and the record shows that the USP product specification was also used in sales destined for the home market.

As a result, Commerce finds that Kumar is the first party in the transaction chain with knowledge of U.S. destination and, thus, is treating sales of subject merchandise produced by Avid and exported by Kumar as U.S. sales attributable to Kumar as the exporter. Although the sales are attributable to Kumar as the exporter, the statute requires that we obtain Avid's cost of production information because Avid is the producer of this subject merchandise. Commerce issued a questionnaire to Avid to obtain this information for the merchandise it sold to Kumar.<sup>43</sup> However, Avid did not respond to our questionnaire. Thus, the record is missing cost information for the glycine produced by Avid and exported by Kumar during the POI.

Section 776(a) of the Act provides that Commerce, subject to section 782(d) of the Act, will apply "facts otherwise available" if necessary information is not available on the record or an interested party: 1) withholds information that has been requested by Commerce; 2) fails to provide such information within the deadlines established, or in the form or manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; 3) significantly impedes a proceeding; or 4) provides such information, but the information cannot be verified. Additionally, section 776(b) of the Act provides that if Commerce finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an adverse inference to the interests of that party in selecting the facts otherwise available.

We find that Avid is an interested party to this investigation within the meaning of section 771(9)(A) of the Act because it is a producer of glycine, which is the merchandise subject to this investigation. As an initial matter, we find that necessary information is missing from the record pursuant to section 776(a)(1) of the Act, namely, Avid's cost information. In addition, and given that Avid did not provide the cost information at issue, we find that Avid withheld information that was requested by Commerce, failed to provide such information within our deadline, and significantly impeded the investigation, pursuant to section 776(a)(2)(A)-(C) of the Act, respectively. Furthermore, we find that Avid, as an interested party to this investigation, failed to cooperate to the best of its ability in responding to Commerce's request for information, given that it did not respond to our questionnaire at all. Therefore, we find it appropriate to resort to partial facts available with adverse inferences regarding Avid's missing cost information, pursuant to section 776(b) of the Act.

Specifically, as partial adverse facts available, we calculated a surrogate cost for the Avid glycine, based on Kumar's acquisition cost of Avid-produced glycine plus an amount for Kumar's G&A and financial expenses, adjusted based on Kumar's home market sale on which it realized the largest loss.<sup>44</sup> We find this approach results in an appropriate rate for Kumar because it is precisely proportional to the missing cost information and, in this instance, relies upon data provided by Kumar with respect to cost of production as well as losses on home

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<sup>43</sup> See Letter to Avid Organics Private Ltd., dated October 26, 2018.

<sup>44</sup> Details of this adjustment appear in Kumar Final Cost Memorandum at 2-3.

market sales of glycine. We believe that this approach yields an estimated cost of production for Avid and prevents the use of an acquisition price which may be below Avid's true cost of production.<sup>45</sup> In addition to resulting in an appropriate rate, we find that our approach potentially induces the cooperation of Kumar's suppliers in future segments of this proceeding, if any, and induces Kumar in future segments to source from producers of subject merchandise that will cooperate in these proceedings by providing necessary information to Commerce.<sup>46</sup> We recognize that the use of this information indirectly affects the overall dumping margin assigned to Kumar. However, we believe that our approach is consistent with our statutory and regulatory obligations to ensure an accurate result, while bearing in mind the need for inducement measures in situations where interested parties have failed to cooperate in these proceedings.

## **Comment 2: Paras' Contributions for Corporate Social Responsibility**

### *Paras' Comments:*<sup>47</sup>

- Commerce should not include Paras' contributions for corporate social responsibility (CSR) in the calculation of Paras' G&A expense ratio.
- Under section 135 of Companies Act 2013, a company meeting the criteria (*i.e.*, a certain amount of net worth, or turnover or net profit in a financial year), must spend a certain amount on CSR activities, specified in Schedule VII of the Act, for eradicating hunger, poverty and malnutrition, promotion health care, education, etc.
- CSR is not an expense and is not allowed as a deduction under Income Tax Act.
- CSR is not part of the cost of producing any goods, but merely a contribution statutorily required to be incurred in the future for CSR activities.

### *Petitioners' Rebuttal Comments:*<sup>48</sup>

- Commerce should include Paras' CSR contribution in Paras' G&A expense ratio calculation.
- Expenses for CSR contributions are a normal part of business for Paras and other Indian companies and clearly relate to the general operations of the company.
- Paras has provided no examples of cases where Commerce excluded CSR expenses from G&A expense or other cost components in calculating the cost of production or constructed value.

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<sup>45</sup> See *SolarWorld Americas, Inc. v. United States*, 273 F. Supp. 3d 1254, 1276-78 (CIT 2017) (*SolarWorld*) (upholding Commerce's determination to apply partial adverse facts available by relying on the highest consumption figures for the unreported inputs that were reported by other suppliers or by the respondent).

<sup>46</sup> See *Mueller Comercial de Mexico, S. de R.L. de C.V. v. United States*, 753 F.3d 1227, 1233, 1236 (Fed. Cir. 2014) (Commerce is not barred, under appropriate circumstances, "from drawing adverse inferences against a non-cooperating party that have collateral consequences for a cooperating party," or from relying on inducement or deterrence considerations in determining a dumping margin for a cooperating party "as long as the application of those policies is reasonable on the particular facts and the predominant interest in accuracy is properly taken into account.").

<sup>47</sup> See Paras' Comments at 1-2

<sup>48</sup> See Petitioners' Rebuttal Comments at 1-2.

## Commerce Position:

We disagree with Paras. Commerce has previously included CSR contributions in the calculation of a company's G&A expense ratio.<sup>49</sup> CSR contributions are expenses that a company must incur as a result of doing business in India. As stated by Paras, "under section 135 of Companies Act 2013, a company meeting the criteria (*i.e.*, a certain amount of net worth, or turnover or net profit in a financial year), must spend a certain amount on CSR activities, specified in Schedule VII of the Act, for eradicating hunger, poverty and malnutrition, promotion health care, education, *etc.*" Paras is required to spend 2 percent of its 3-year average net profit on social programs for "the betterment of society."<sup>50</sup> These contributions are not a tax and are not paid to the Government of India. Instead they reflect the amount the company must accrue and spend on certain social programs. Accordingly, these CSR period expenses relate to the general operations of the company. Therefore, we will continue to include the CSR contributions in the numerator of the G&A expense ratio calculation for the final determination.

## Comment 3: Calculation of Paras' Short-term Interest Income

*Paras' Comments:*<sup>51</sup>

- Commerce should offset Paras' interest expense with all of its reported interest income in the calculation of its financial expense ratio.
- In Paras' audited financial statements, all of the fixed deposits are classified as "cash & cash equivalents" under current assets.<sup>52</sup>
- Paras keeps its surplus money with banks as fixed deposits and borrows against these fixed deposits when it needs money for working capital by way of an overdraft.
- Fixed deposits are directly tied to the borrowing by overdraft for working capital and thus are short-term interest-bearing assets.
- The fixed deposits in question are for a duration of not more than a year.
- Commerce has clarified that "assets that generate long-term financial income lock up the related cash funds for over a year, whereas liabilities that generate long-term interest expenses provide the company with cash that can be used in current operations."<sup>53</sup> Likewise, the interest paid on excess value-added taxes (VAT) to the government authority is refunded at the time of the tax assessment, which can be at any time, and

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<sup>49</sup> See *Stainless Steel Flanges From India: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Critical Circumstances Determination*, 83 FR 40745 (August 16, 2018), and accompanying Issues and Decision Memorandum at Comment 9 (where Commerce stated that "we adjusted the numerator of the {G&A} ratio by including charitable donations and company's contributions under 'corporate social responsibility' because such expenses relate to the general operations of the company").

<sup>50</sup> See Cost Verification Report at exhibit 13.

<sup>51</sup> See Paras' Comments at 2-6.

<sup>52</sup> See note 14 of the 2017-18 audited financial statements in exhibit S2-10 submitted on August 31, 2018.

<sup>53</sup> See *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 77 FR 63291 (October 16, 2012), and accompanying Issues and Decision Memorandum at Comment 11.

hence should be allowed as offset in the calculation of the financial expense ratio for the final determination.

*Petitioners' Rebuttal Comments:*<sup>54</sup>

- Paras' arguments should be rejected, and its interest income should not be used to offset its interest expenses.
- As Commerce stated, interest income from working capital maintained in interest-bearing accounts to meet "daily requirements (*e.g.*, material purchases, payroll, supplies, *etc.*) ..." is classified as short-term because such funds are "ready for use in a company's current operations..." and are "readily available...for day-to-day cash requirements..."<sup>55</sup>
- Paras, however, explains that it does not use its deposits for working capital but, instead, "keeps its surplus money in the bank..." and separately borrows the funds that are needed for working capital.
- As a result, Paras' deposits are nothing more than investments and are unrelated to its operations.
- Accordingly, Commerce should not allow interest income related to these deposits as an offset to Paras' interest expenses.

**Commerce Position:**

We disagree with Paras that all of its interest income was generated from short term sources. However, we agree with Paras that the interest income earned on its fixed deposits and VAT paid to the government is short-term interest income.

In calculating cost of production and constructed value (CV), it is Commerce's practice to allow a respondent to offset (*i.e.*, reduce) financial expenses with short-term interest income earned from the company's working capital.<sup>56</sup> In calculating a company's cost of financing, we recognize that, in order to maintain its operations and business activities, a company must maintain a working capital reserve to meet its daily cash requirements (*e.g.*, payroll, suppliers, *etc.*). Commerce further recognizes that companies normally maintain this working capital reserve in interest-bearing accounts. Commerce therefore allows a company to offset its financial expense with the short-term interest income earned on income received from a company's current assets and working capital accounts. Commerce does not, however, allow a company to offset its financial expense with income earned from investing activities (*e.g.*, interest earned on long-term assets, capital gains, dividend income) because such activities are not related to the current operations of the company.

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<sup>54</sup> See Petitioners' Rebuttal Comments at 2-3.

<sup>55</sup> *Id.*

<sup>56</sup> See *Silicon Metal from Brazil: Notice of Final Results of Antidumping Duty Administrative Review*, 64 FR 6305, 6314 (February 9, 1999); *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review*, 74 FR 65751 (December 11, 2009), and accompanying Issues and Decision Memorandum at Comment 5.



In this case, based on an analysis of the data we obtained at verification and a review of Paras' 2017-18 audited financial statements, we found that most of the interest income reported as an offset to the interest expense is generated from short-term interest-bearing sources. Specifically, the footnotes, which accompany Paras' audited financial statements, show that Paras had interest-bearing accounts that were classified as both "non-current investments" and as "cash and cash equivalents."<sup>57</sup> The "cash and cash equivalents" are current assets that are short-term in nature, whereas, the interest-bearing "non-current investments" are assets that are long-term in nature. Here, record evidence shows that the fixed deposits and VAT paid to the government that generated a portion of the interest income in question was classified as "cash and cash equivalents" (*i.e.*, current assets) related to working capital, and thus should be considered interest income that is short-term in nature. However, the interest income generated from national savings certificates was classified as non-current investments in note 9 to Paras 2017-18 financial statements, and thus considered long term.<sup>58</sup> Accordingly, for the final determination, we have continued to include an offset for the short-term interest income generated from fixed deposits and VAT from the government in the financial expense ratio, and we have excluded the interest income earned on the national savings certificates.

We find no merit to the petitioners' argument that the interest income earned on fixed deposits should be considered long-term interest income because Paras does not use its deposits for working capital but, instead, "keeps its surplus money in the bank..." and separately borrows the funds that are needed for working capital. The fact that Paras borrows against its current assets is not sufficient cause to define its fixed deposits as investment activity or long-term assets. Paras can choose to borrow funds against anything of value to obtain working capital. Moreover, a company's cash and cash equivalents accounts are current financial instruments of high liquidity, not investments that are a separate profit-making activity.

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<sup>57</sup> See note 9 and note 14 to Paras' financial statements in exhibit S2-10 of the August 31, 2018 submission.

<sup>58</sup> See exhibit S2-10 of the submission of audited financial statements for the financial year April 2017 to March 2018, dated August 31, 2018.

## VIII. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination of the investigation in the *Federal Register* and inform the International Trade Commission of our determination.



\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

4/24/2019

**X**   
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Signed by: JEFFREY KESSLER

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Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance