UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-570-836
Anti-Circumvention Inquiry
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DATE: December 3, 2012

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

FROM: Gary Taverman
Senior Advisor
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination of the Anti-Circumvention Inquiry of the Antidumping Duty Order on Glycine from the People's Republic of China

SUMMARY:

We have analyzed the comments and rebuttal comments submitted by interested parties. We recommend that you approve the Department of Commerce's (the Department's) positions, described in the "Discussion of Interested Party Comments" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this anti-circumvention inquiry for which we received comments from parties:

I. List of Issues

Issue 1: Whether to Include AICO's and Salvi's Affiliates in Any Anti-Circumvention Remedy
Issue 2: Whether to Apply a Country-Wide Remedy
Issue 3: Whether to Require Importer and/or Exporter Certification(s)
Issue 4: Whether Salvi's Value Added was Calculated Incorrectly
Issue 5: Whether the Production in India is Minor or Insignificant
Issue 6: Whether AICO Acted to the Best of its Ability in this Anti-Circumvention Inquiry

II. Background

On April 10, 2012, the Department published its preliminary determination with respect to an anti-circumvention inquiry concerning the antidumping duty order on glycine from the People's Republic of China (PRC).[1] We preliminarily determined Paras Intermediates Pvt. Ltd. (Paras)

[1] *See Glycine From the People's Republic of China: Preliminary Partial Affirmative Determination of Circumvention of the Antidumping Duty Order and Initiation of Scope Inquiry*, 77 FR 21532 (April 10, 2012) (*Preliminary Determination*).

not to be circumventing the antidumping duty order on glycine from the PRC[2] and found AICO Laboratories India Ltd (AICO) and Salvi Chemical Industries, Ltd. (Salvi) both to be circumventing the *Order*. Therefore, we suspended liquidation with respect to AICO and Salvi and directed U.S. Customs and Border Protection (CBP) to collect cash deposits on entries from those two entities at the PRC-wide rate of 155.89 percent, unless AICO or Salvi could demonstrate to CBP that the PRC glycine, which they processed, was supplied by a PRC manufacturer with its own cash deposit rate.[3]

The merchandise covered by this inquiry is glycine from the PRC, as described in the "Scope of the Order" section in the *Federal Register* notice of the final determination. The period of inquiry is January 1, 2005, through December 31, 2010.

We received comments on our *Preliminary Determination* from domestic interested parties, GEO Specialty Chemicals, Inc., and respondent AICO on April 30, 2012 (Domestic Interested Parties' Comments and AICO's Comments),[4] and from respondent Salvi on May 1, 2012 (Salvi's Comments).[5] We also received rebuttal comments from each of those parties, as well as from respondent Paras on May 10, 2012 (Domestic Interested Parties' Rebuttal Comments, AICO and Salvi's Rebuttal Comments, and Paras's Rebuttal Comments). We held individual meetings with counsel to all parties on June 7, 2012, and June 13, 2012, and Memoranda to the File recording those meetings were placed on the record of this inquiry.[6]

On October 31, 2012, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29 through October 30, 2012.[7] Thus, the deadline for this inquiry was extended by two days. Accordingly, the deadline for the final results of this anti-circumvention inquiry was extended from November 30, 2012, to December 2, 2012. Because December 2, 2012, falls on a weekend, the deadline for the final determination of this inquiry is December 3, 2012.[8]

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[2] *See Antidumping Duty Order: Glycine From the People's Republic of China*, 60 FR 16116 (March 29, 1995) (*Order*).

[3] *See Preliminary Determination*, 77 FR at 21535.

[4] AICO resubmitted its comments on May 21, 2012, because on April 30, 2012, it had inadvertently filed its comments as "bracketing not final" in the Department's electronic filing system called "Import Administration AD and CVD Centralized Electronic Service System," or "IA ACCESS."

[5] On May 1, 2012, Salvi submitted comments directly to the Department and through its representative, Kutak Rock LLP.

[6] *See* Memorandum to the File, dated June 12, 2012, with respect to the meeting with domestic interested parties on June 7, 2012, and the two Memoranda to the File, dated June 25, 2012, with respect to the two meetings with respondents (AICO/Salvi and Paras) on June 13, 2012.

[7] *See* Memorandum to the Record from Paul Piquado, AS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Hurricane," dated October 31, 2012.

[8] *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

Discussion of Interested Party Comments

Issue 1: Whether to Include AICO's and Salvi's Affiliates in Any Anti-Circumvention Remedy

Domestic interested parties submitted comments on this issue. We did not receive rebuttal comments from AICO or Salvi on this issue. Below is the summary of their arguments.

Domestic interested parties state that they support the Department's preliminary determination that glycine produced by AICO or Salvi, regardless of exporter or U.S. importer, is within the scope of the *Order*. *See* Domestic Interested Parties' Comments at 3. However, according to domestic interested parties, since neither AICO nor Salvi has exported glycine to the United States, but their affiliates have, the Department's instructions to CBP are wholly inadequate because they apply to companies that have never shipped circumvented merchandise to the United States. Specifically, domestic interested parties argue that the preliminary instructions from the Department to CBP to suspend liquidation of U.S. imports from AICO or Salvi fail to include any mechanism for CBP to determine whether glycine from India exported under another company's name is glycine produced by either AICO or Salvi.

In order to fix this deficiency, domestic interested parties request that the Department send instructions to CBP, notifying them that the exports of certain entities affiliated with AICO or Salvi are deemed to be exports of AICO or Salvi, and therefore are subject to the *Order*. Domestic interested parties add that the final determination should clarify that glycine from AICO's and Salvi's affiliates will be treated identically as glycine from AICO and Salvi.

Regarding AICO, domestic interested parties state that the *Preliminary Determination* disregards evidence placed on the record concerning affiliation and the Department's repeated reliance on the affiliation statute throughout the inquiry. *See* Domestic Interested Parties' Comments at 4. These findings are, in domestic interested parties' view, plainly contradicted by the fact that neither AICO nor Salvi has exported glycine to the United States. Additionally, domestic interested parties claim that the Department acknowledges the existence of AICO's and Salvi's affiliated companies in its questionnaires and in its preliminary determination analysis memoranda. *Id.* at 5. However, according to domestic interested parties, the Department declined to make findings concerning circumvention as to AICO affiliates and Salvi affiliates, while also stating, in the AICO and Salvi Preliminary Analysis Memoranda, that affiliations exist between AICO or Salvi and other entities. *Id*.[9] Furthermore, domestic interested parties claim that the Department: "ignores record evidence of affiliation and deprives the anti-circumvention statute of its intended meaning. The Department's finding rewards the respondents for their failure to respond to the Department's questionnaires regarding these relationships and opens the

[9] Citing Preliminary Analysis Memorandum for the Anti-Circumvention Inquiry of the Antidumping Duty Order on Glycine from the People's Republic of China (China), for the Producer known as AICO Laboratories India Ltd (AICO), dated March 30, 2012, (AICO Preliminary Analysis Memorandum); and Preliminary Analysis Memorandum for the Anti-Circumvention Inquiry of the Antidumping Duty Order on Glycine from the People's Republic of China (China), for the Producer known as Salvi Chemical Industries Limited (Salvi), dated March 30, 2012, (Salvi Preliminary Analysis Memorandum).

door to a massive loophole in any remedy implemented in this inquiry by allowing these affiliated companies to either continue or begin shipping Chinese-origin glycine to the United States." *Id.* at 6. Domestic interested parties assert that this deficiency must be corrected in the final anti-circumvention determination. Accordingly, domestic interested parties request that the Department determine that any exports of affiliates of AICO and Salvi are deemed to be exports of AICO and Salvi. *Id.*

Domestic interested parties claim that "the statute is intended to cover circumventing *merchandise* not *individual respondents* (emphasis in original)." *Id.* Domestic interested parties believe that, if "the Department refuses to consider respondents' relationships with affiliates, its analysis of the process occurring in, and exports from, the third country will fail to capture all circumventing merchandise." *Id.* at 7. Additionally, domestic interested parties believe that "Congress originally enacted the anti-circumvention statute to close 'loopholes' and urged 'aggressive implementation' of the statute," and that allowing "continued evasion through affiliations deprives the anti-circumvention statute of its intended remedial effect." *Id.*

Domestic interested parties also claim that "AICO and Salvi used importers, suppliers and exporters as shields to avoid disclosing that they have continued to circumvent the Order through new entities." *Id*. at 7-8. To determine which entities are affiliated with AICO and Salvi, domestic interested parties claim that the "Department should apply the Act's affiliation statute and the Department's affiliation regulations," and that as it does in the context of antidumping investigations and reviews, "the Department should treat affiliated entities as a single entity—*i.e.*, affiliated entities should be assumed to add nothing to the processing of glycine in India and should be deemed to export the products of respondents." *Id.* at 8. Domestic interested parties state that these "adverse inferences are warranted against AICO and Salvi because they both failed to respond *repeatedly* to the Department's questionnaires about affiliations (emphasis in original)." *Id.*

Based on their review of record evidence, domestic interested parties claim that AICO's and Salvi's affiliates that imported glycine into India from the PRC clearly meet the definition of affiliates under multiple prongs of the affiliation statute. *Id.* at 9-12. Therefore, domestic interested parties request that the Department revise its preliminary finding to include Advanced Exports,[10] Reliance Rasayan (Reliance),[11] and Ravi Industries (Ravi) as AICO's affiliates. *Id.* at 13. Similarly, domestic interested parties also request that the Department revise its *Preliminary Determination* to include Vimal Chemicals (Vimal), Nutracare International (Nutracare) and Universal Minerals (Universal) as Salvi's affiliates. *Id*. Domestic interested parties assert that exports from all of these entities should be deemed to be the exports of AICO and Salvi, and therefore, subject to the current country-wide rate of the *Order*. *Id.* Moreover, according to domestic interested parties, because AICO, Salvi, and their affiliates have been unable to demonstrate that their shipments of glycine are outside the scope of the *Order*, they should not be allowed to certify the origin of their shipments through a certification process, and that any

[10] Sometimes referred to as Advance Exports.
[11] Sometimes referred to as Reliable Rasayan Industries.

challenge to a duty rate assessment must be addressed in administrative reviews of the *Order*. *Id.*

Department's Position:

We disagree with the domestic interested parties that the Department's instructions with respect to Salvi and AICO are inadequate. The Department's finding with respect to the anti-circumvention proceeding pertains to the producers of the product. As the Department made clear in its *Preliminary Determination*, section 781(b) of the Tariff Act of 1930, as amended (the Act), provides that the Department may find circumvention of an antidumping duty order when merchandise of the same class or kind of merchandise that is subject to the order is completed or assembled in a foreign country other than the country to which the order applies. The Department then analyzed the various criteria laid out in the Act, which are based on an analysis of the processing of the PRC-origin glycine by the Indian producers/processors in question.[12] Therefore, the Department believes it correctly analyzed those criteria with respect to the Indian producers/processors when it drew its conclusions in its *Preliminary Determination*.

Domestic interested parties claim that the Department's instructions to CBP are inadequate because they apply to companies that have never shipped circumvented merchandise to the United States. Specifically, domestic interested parties argue that they fail to include any mechanism for CBP to determine whether glycine from India exported under another company's name is glycine processed by either AICO or Salvi. However, the Department notes that by definition, any glycine processed by AICO or Salvi and regardless of the exporter, whether or not affiliated, is covered by the Department's determination.[13] Thus, whichever entity imports glycine that is produced by AICO or Salvi is covered by this finding whether or not the intermediary exporter is specifically named in the CBP instructions.

We disagree with domestic interested parties' claims that any affiliate of AICO or Salvi should automatically be covered by the finding. For example, an importer of PRC-origin glycine into India is not necessarily circumventing the *Order*, and the Department cannot deem them to be covered by the circumvention finding simply because they import PRC-origin glycine, when there is no evidence they have ever manufactured glycine that was exported to the United States. The named circumventing parties in this case are the producers of the processed product that is then exported to the United States. Thus, if we were to find an affiliation issue in this case, it would not apply to affiliated importers of PRC-origin glycine in India, unless there is evidence that these companies were processing or exporting the processed PRC-origin glycine to the United States.

The Department also believes that its determination is unambiguous in applying to any PRC-origin glycine processed by AICO or Salvi, the named companies upon which this anti-circumvention proceeding was initiated, whether or not we name any affiliated exporters.

[12] *See, e.g.*, Salvi Preliminary Analysis Memorandum and AICO Preliminary Analysis Memorandum.

[13] *See* Paragraph 4 of the CBP instructions where the Department notes that the instructions state the instructions apply to "all entries of glycine produced by AICO Laboratories India Ltd. or Salvi Chemical Industries Limited…."

Finally, the Department has issued an affirmative scope ruling in which it finds that glycine processed in India of Chinese origin does not change country of origin. As part of the affirmative scope ruling, the Department has instituted a certification procedure, which it believes further addresses the issue of affiliates. *See also* Issue 2, below, and Final Scope Ruling Memorandum.[14]

Issue 2: Whether to Apply a Country-Wide Remedy

Domestic interested parties submitted comments and Paras submitted rebuttal comments on this issue. Below are summaries of their arguments.

Domestic interested parties assert that record evidence in this inquiry establishes that circumvention of the *Order* in India is widespread and rampant and requires a country-wide response. Domestic interested parties state that the *Preliminary Determination* fails to address entities known to participate with Salvi in a scheme to circumvent the *Order*. According to domestic interested parties, these entities include Aditya Chemicals, Navkar International, Shree Vardhan Industries, and Vaibhav Pharma. Domestic interested parties claim that all of these companies, except Navkar International, imported Chinese-origin glycine and supplied it to Salvi for further processing. Therefore, according to domestic interested parties, these suppliers have participated in Salvi's circumvention of the *Order*. *See* Domestic Interested Parties' Comments at 13-14.

Domestic interested parties state that, by failing to include these entities in the *Preliminary Determination*, the Department is making it possible for Salvi to use those entities to export the PRC-origin glycine to the United States in circumvention of the *Order*. Domestic interested parties contend that the anti-circumvention statute focuses on the process occurring in India, not on the specific corporate entities involved in the circumvention. Further, according to domestic interested parties, the statute authorizes action to "prevent evasion," contemplating a remedy to prevent continued circumvention. Therefore, according to domestic interested parties, when the Department is confronted with evidence that companies are merely "pass-through entities to launder Chinese-origin glycine," it is appropriate to take action against them. *Id*. at 14-15.

Regarding Paras, domestic interested parties state that Paras admitted that it circumvented the *Order*, and therefore, the Department should also find that Paras has circumvented the *Order*. Citing the Paras Preliminary Analysis Memorandum,[15] where the Department stated that it could not conclude "Paras is not circumventing" because "action is not appropriate {as to Paras} to prevent evasion of the *Order*," domestic interested parties argue that the Department is obligated to make a circumvention finding before it rules summarily that taking action is not appropriate as

[14] *See* Final Scope Ruling Memorandum entitled "Final Scope Ruling concerning the Antidumping Duty Order on Glycine from the People's Republic of China (PRC)" (Final Scope Ruling Memorandum), dated December 3, 2012.

[15] *See* Preliminary Analysis Memorandum for the Anti-Circumvention Inquiry of the Antidumping Duty Order on Glycine from the People's Republic of China (China), for the Producer known as Paras Intermediates Pvt. Ltd. (Paras), dated March 30, 2012 (Paras Preliminary Analysis Memorandum).

to Paras. *Id*. at 15-16. Domestic interested parties further argue that the Department's finding as to Paras contravenes earlier anti-circumvention determinations, such as *Tissue Paper* and *Butt-Weld Pipe Fittings*, where domestic interested parties claim that the Department has previously applied remedies against parties that had stopped circumventing at the time of the Department's determinations. *Id.* at 16.[16] Specifically, domestic interested parties claim that, in *Tissue Paper* and *Butt-Weld Pipe Fittings*, the Department found that a respondent previously circumvented an order, the respondent had stopped circumventing the order, and importer certification was still required to prevent continued and future circumvention. *Id*.

According to domestic interested parties, the Department placed undue weight on Paras's intentions, when Paras stated that it "believed that its processing of Chinese-origin glycine. . . changed the product's origin to Indian origin." *Id*. Domestic interested parties argue that giving any weight to Paras's intent when it circumvented the *Order* directly contradicts the Department's earlier finding that intent of the parties is irrelevant to the anti-circumvention analysis.[17] Domestic interested parties allege that Paras and all other shippers of glycine have been on notice since 2002, the date of the Watson Scope Determination, that further processing in a third country of crude PRC-origin glycine to a higher-grade glycine does not change the country of origin.[18] Therefore, domestic interested parties conclude that Paras knew that it was circumventing.

Domestic interested parties assert that providing amnesty for Paras establishes a terrible precedent for the Department in future anti-circumvention inquiries. Specifically, domestic interested parties contend that the Department would be setting up a new practice, where one-time offenders are not considered circumventers. According to domestic interested parties, this precedent would encourage companies to remain ignorant of their obligation under U.S. trade law in hopes that they do not get caught as their merchandise enters the United States. Moreover, domestic interested parties argue that the Department's finding, in itself, that Paras exported glycine of PRC-origin glycine provides further evidence of "the widespread and rampant circumvention" occurring in India and could continue to occur if the Department "fails to implement an adequate remedy to combat future evasion." *Id.* at 17. Thus, domestic interested parties believe that Paras and its affiliate, Pasco Traders (Pasco), should be subject to a country-wide certification program. *Id.*

Domestic interested parties also allege that Avid Organics Pvt. Ltd. (Avid) has been

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[16] Citing *Certain Tissue Paper Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order,* 73 FR 57591 (October 3, 2008) (*Tissue Paper*) and *Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China: Affirmative Final Determination of Circumvention of Antidumping Order*, 59 FR 15155 (March 31, 1994) (*Butt-Weld Pipe Fittings*).

[17] *See* Domestic Interested Parties' Comments at 16, footnote 69, citing *Brass Sheet and Strip From Canada: Final Affirmative Determination of Circumvention of Antidumping Duty Order*, 58 FR 33610, 33615 (June 18, 1993).

[18] *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.), dated May 3, 2002 (Watson Scope Determination); placed on the record by domestic interested parties in their December 18, 2009, submission at Exhibit D.

circumventing the *Order* since January 2011, shortly after the Department initiated the anti-circumvention inquiry in October 2010. According to domestic interested parties, Avid began shipping glycine to the United States almost immediately after Ravi, an AICO affiliate, was named as part of the anti-circumvention inquiry. Domestic interested parties claim that Avid ships to the same U.S. importer that AICO, Advanced Exports, and Ravi Industries once did. Domestic interested parties argue that, despite the evidence on the record regarding Avid, Avid's willingness to participate in this proceeding, and domestic interested parties' timely requests for further inquiry into Avid's activities, the Department continues to ignore Avid's circumvention of the *Order*.

Domestic interested parties reiterate their argument that the scope of circumvention occurring in India is widespread and rampant. According to domestic interested parties, record evidence shows *sixteen* total companies have participated in a scheme to circumvent the *Order* (emphasis in original). *Id*. at 19. Further, according to domestic interested parties, a total of *seventeen* new Indian importers of PRC-glycine or Indian shippers of glycine to the United States have emerged since domestic interested parties requested the inquiry in December 2009 (emphasis in original). *Id*. Domestic interested parties argue that failing to include a mechanism to prevent further circumvention will allow these companies to re-position their exporting operations, permitting continued evasion of the *Order*.

According to domestic interested parties, because Indian companies regularly use new entities to import and export glycine, "Any remedy following an affirmative circumvention or scope inquiry finding specifically tailored to entities known to be involved in shipping Chinese-origin glycine from India will quickly become obsolete and ineffective because new entities will simply take their place." *Id*. at 20. Citing Attachments 1 and 3 of their April 30, 2012, comments, domestic interested parties state that Indian entities have already positioned themselves to continue evading antidumping duties through using new and previously unknown entities to "launder" Chinese-origin glycine. *Id*. Domestic interested parties assert that for either an affirmative anti-circumvention inquiry finding or an affirmative scope inquiry finding to be effective, it must address this problem of continuously arising new entities.

Domestic interested parties argue that the afore-described problem is acute because of delays in the anti-circumvention inquiry. Domestic interested parties contend that the Department was under a statutory obligation to complete this inquiry, to the "maximum extent practicable," by August 24, 2011. *Id*. Domestic interested parties claim that the delay was caused by the stall tactics of respondents, including their repeated failure to answer questions about affiliates and suppliers. Domestic interested parties argue that this delay has created a large window of opportunity for circumventers to re-position themselves to continue evading the *Order*, if the Department does not take appropriate action. *Id*.

Domestic interested parties assert that if the Department simply affirms the *Preliminary Determination*, it will deprive the domestic industry of any real-world remedy. According to domestic interested parties, a formal finding in this inquiry that AICO and Salvi have circumvented the *Order*, without any adequate implementation mechanism, will not prevent

Chinese-origin glycine from continuing to be shipped to the United States through India. Domestic interested parties add that such an outcome would wholly subvert congressional intent in enacting the anti-circumvention statute.

Citing *Butt-Weld Pipe Fittings*,[19] domestic interested parties state that the Department has, in prior inquiries, investigated the processing of one company, as requested by petitioners, but made its remedy country-wide. According to domestic interested parties, the Department did so because it "has no other means to ensure. . . the proper cash deposits are collected on entries of Chinese {merchandise} finished by other companies in {other foreign countries}." *Id*. at 21-22. Domestic interested parties claim that the Department has implemented country-wide remedies under all four provisions of the anti-circumvention statute. *Id*. at 22.

Domestic interested parties conclude that the text of the statute and indicia of congressional intent show the statute is intended to cover *circumventing merchandise* not *individual respondents* (emphasis in original). *Id*. Therefore, according to domestic interested parties, the Department should not apply the circumvention statute to only the respondents of this inquiry when record evidence shows that circumvention is and will be much broader than the activities of these respondents.

In rebuttal, Paras argues that nothing in domestic interested parties' comments provides legal or factual support for a change in the Department's negative circumvention finding with respect to Paras. Citing the *Preliminary Determination*, Paras asserts that, contrary to domestic interested parties' claims, the Department determined that Paras did not circumvent the *Order*. Paras contends that, rather than determine what appropriate action to take to prevent evasion of the relevant order, domestic interested parties seem to be claiming that the purpose of the inquiry is to just find circumvention. Paras argues that, in the Paras Preliminary Analysis Memorandum, the Department stated that under section 781(b)(l)(E) of the Act it must determine if action is appropriate to prevent evasion of the *Order*. Paras asserts that in this instance, "because Paras provided evidence of its being a very long-time producer of glycine, of its ability to produce all of its glycine in its own facilities from raw materials, of its ability to track that production by raw material input, and of its intention not to process Chinese-origin glycine for sale to the United States," the Department determined that "no action against Paras was warranted; that is, that no restrictions on Paras are necessary to prevent evasion of the Order as Paras is not circumventing the Order." *See* Paras's Rebuttal Comments at 3. Paras asserts that the Department's analysis did not, as claimed by domestic interested parties, "just put 'undue weight on Paras's intentions."' *Id*.

Paras argues that while domestic interested parties state that, in prior circumvention determinations, the Department has imposed restrictions on companies that had previously circumvented but had stopped circumventing, they fail to recognize that the Department has repeatedly observed that circumvention decisions are made on a case-by-case basis, and are based on numerous qualitative and quantitative factors that are particular to the specific company under investigation. Paras contends that, in this instance, the Department did not ignore or

[19] *See Butt-Weld Pipe Fittings*, 59 FR at 15158, 15159.

disregard Paras's past history, but in fact recognized it and distinguished it from past findings, and made a reasonable and reasoned determination that Paras was not circumventing the *Order*, and that no restrictions were warranted insofar as Paras was concerned.

With regard to domestic interested parties' claim that providing amnesty for Paras establishes a terrible precedent, Paras rebuts that there is no amnesty because it has been found not to be circumventing and, more importantly, has demonstrated that it will not evade the *Order* in the future. Paras argues that "the precedent established, if any, says, where a company has voluntarily taken steps to ensure that shipping of offending product will not occur, it should not be penalized." *Id*. at 4-5.

While domestic interested parties allege that Paras was "on notice" that converting Chinese glycine in India did not change the country of origin, Paras contends that this allegation is belied by the record and the Department's own findings. Paras argues that, in the Paras Preliminary Analysis Memorandum, the Department "correctly accepts the fact that, if Paras had had intentions to circumvent the Order, then it would have followed that Paras could have easily purchased technical-grade glycine from China, processed it in its facilities, and, in turn, sold that re-processed glycine to companies in the United States that had sent the inquiries to Paras, which Paras did not do." *Id*. at 5-6. Accordingly, Paras states that domestic interested parties' accusation that Paras was hoping it would "not get caught" should be discounted by the Department because it correctly found that Paras inadvertently exported processed Chinese-origin glycine during only one year of the inquiry period. *Id*. at 6. For these reasons, Paras contends, the Department should reject domestic interested parties' arguments as they relate to Paras and should, for the final determination, maintain its finding that Paras is not circumventing the *Order*, and that, as a result, no remedy is needed.

Department's Position:

The Department has determined that the question of a country-wide remedy is more appropriately addressed in the concurrent scope inquiry.[20] Therefore, we have not implemented a country-wide remedy on the basis of our final anti-circumvention inquiry. With respect to domestic interested parties' claims that record evidence in this inquiry establishes that circumvention of the *Order* in India is widespread and rampant and requires a country-wide response, the Department notes that it self-initiated a scope inquiry in part to evaluate whether the Department should take steps to ensure importers follow the final scope ruling.[21] The Department disagrees with domestic interested parties' claim that the circumvention inquiry is the appropriate segment in which to consider the country-wide option that they demand. First, the anti-circumvention inquiry focuses on the named entities for which domestic interested parties requested an inquiry to be initiated. The remedy in the anti-circumvention inquiry is based upon the findings regarding each of those entities. While we found AICO and Salvi to be

[20] *See* Final Scope Ruling Memorandum.
[21] *See* Preliminary Scope Ruling Memorandum entitled "Preliminary Scope Ruling concerning the Antidumping Duty Order on Glycine from the People's Republic of China (PRC)," (Preliminary Scope Ruling Memorandum), dated September 13, 2012, and Final Scope Ruling Memorandum.

circumventing the *Order*, we preliminarily determined that Paras was not circumventing the *Order*.[22] Notwithstanding the preliminary anti-circumvention finding, the Department preliminarily determined in its scope ruling that a certification requirement was needed with respect to glycine from India, in order to prevent the issues identified by domestic interested parties with respect to continuously arising new exporters. *See* Preliminary Scope Ruling Memorandum at 22. The Department explains the reasons for its decisions with respect to country-wide certification in the context of its final scope ruling, which is being issued concurrently with the final determination of this anti-circumvention inquiry. *See* Final Scope Ruling Memorandum.

With respect to Paras, the Department disagrees with domestic interested parties' assertions that it failed to determine whether Paras was circumventing the *Order*. In fact, the Department explicitly found that Paras was not circumventing the *Order*, and that the record evidence showed that: "Paras has provided evidence of its ability to track both glycine produced from Indian raw materials and Chinese-origin glycine, and has demonstrated that it did not export any Chinese-origin glycine to the United States once it was notified in the course of the *Indian Investigation*[23] that processing technical-grade Chinese glycine into a purer grade of glycine would not transform the product into Indian-origin glycine." *See* Paras Preliminary Analysis Memorandum at 6. Accordingly, the Department did not base its anti-circumvention determination with respect to Paras upon the intent of the party, but rather upon the facts and evidence on the record with respect to Paras's activities.

With respect to domestic interested parties' claims concerning *Butt-Weld Pipe Fittings* and *Tissue Paper*, the Department notes that in the former case, a unique fact pattern existed in which there were orders on pipe fittings from both the PRC and from Thailand, but one Thai company, Sangyo (Thailand) Company, Ltd. (AST), was excluded from the antidumping duty order on pipe fittings from Thailand.[24] While the certification applied to all imports from Thai producers, the unique fact pattern in *Butt-Weld Pipe Fittings*, and the fact that the case was decided nearly 18 years ago, is different to the fact pattern in the instant case. With respect to *Tissue Paper*, the Department notes that in that case, the determination was based on adverse facts available and no importer certification was instituted.[25]

Domestic interested parties have not shown that a country-wide certification, in the context of this specific anti-circumvention proceeding, is justified. Therefore, the Department has determined that, in this particular case, domestic interested parties' arguments with respect to country-wide certification are best addressed in its concurrent final scope ruling. *See* Final Scope Ruling Memorandum. Further, domestic interested parties made a limited allegation that the Department initiate an anti-circumvention inquiry with respect to the companies it had named in its initiation request. The Department disagrees with domestic interested parties' insistence

[22] *See* Paras Preliminary Analysis Memorandum.
[23] *See Notice of Final Determination of Sales at Less Than Fair Value: Glycine from India*, 73 FR 16640 (March 28, 2008) (*Indian Investigation*).
[24] *See Butt-Weld Pipe Fittings*, 59 FR at 15156-57.
[25] *See Tissue Paper*, 73 FR at 57593-94, and accompanying Issues and Decision Memorandum at Comment 1.

that the anti-circumvention inquiry should be expanded beyond the respondents named in domestic interested parties' initiation request. By its very nature, the circumvention provisions of the statute, as well as the Department's past practice, requires the Department to look at the circumvention allegations individually and the criteria, as laid out in the Department's *Preliminary Determination*, are based on the analysis of producer-based criteria. Domestic interested parties assert that, for either an affirmative anti-circumvention inquiry finding or an affirmative scope inquiry finding to be effective, it must address the problem of continuously newly arising importers and exporters. It is for this reason that the Department self-initiated a scope inquiry for this case, so that this issue, among others, might be addressed in a more appropriate context. *See* Final Scope Ruling Memorandum.

With respect to domestic interested parties' arguments that Paras and all other shippers of glycine have been on notice since 2002, the date of the Watson Scope Determination, that further processing in a third country of crude PRC-origin glycine to a higher-grade glycine does not change the country of origin, the Department notes that the Watson Scope Determination applied to imports of PRC-glycine processed in Korea. This ruling applied to that specific case. It was not until the *Indian Investigation* on glycine that Paras was on notice with respect to glycine it produced and, according to record information, took corrective action.

The Department also notes that while in the context of the anti-circumvention finding it has determined that Paras is not circumventing the *Order*, the record evidence indicates that it is relatively easy for PRC glycine to be processed,[26] and that domestic interested parties' concerns are valid with respect to the importation of glycine from India. The Department also notes that no party has been able to provide test results, which could conclusively show from which country glycine is produced. While we have not found Paras to be circumventing the *Order*, we note Paras's own admission that it inadvertently exported processed PRC-origin glycine during only one year of the inquiry period. *See* Paras's Rebuttal Comments at 6. Such admission is relevant with respect to the Department's final scope ruling and is therefore addressed in that context. *See* Final Scope Memorandum.

Issue 3: Whether to Require Importer and/or Exporter Certification(s)

Domestic interested parties and Salvi submitted comments and all parties, including all domestic interested parties, AICO, Salvi and Paras, submitted rebuttal comments on this issue. Below are summaries of their arguments.

Domestic interested parties disagree with the Department's decision to not implement an importer certification program in the *Preliminary Determination*, and claim that there is record evidence to provide justification for such a certification program to differentiate legitimate,

[26] *See*, *e.g.*, Paras's December 17, 2010, questionnaire response at Exhibits 9.2 and 9.3 and Salvi's December 21, 2010, questionnaire response at Exhibit 15 for flow charts of the production process. *See also* domestic interested parties November 23, 2011, submission at 13, in which they state "the nature of further processing is minor, insignificant and adds little value. The glycine is simply refined, with no change in the chemical properties between the starting product and the finished product."

Indian-origin merchandise from circumventing merchandise. *See* Domestic Interested Parties' Comments at 22. Referencing information on the record, domestic interested parties argue that not only was circumvention widespread and rampant during the five year period of the inquiry, but it has remained widespread, rampant and more complex since January 2011. Furthermore, according to domestic interested parties, the object of the analysis is the merchandise and not the entities, and company-specific findings are not needed to implement a country-wide certification. Finally, based on the Watson Scope Determination, domestic interested parties claim that all parties have been on notice since 2002 that further processing Chinese-origin glycine in third countries for export to the United States remains within the scope of the *Order*.

Domestic interested parties claim that there are no unintended effects of a certification process, and that business would continue as usual for all Indian shippers that could demonstrate that their glycine is not processed Chinese-origin glycine. *Id*. at 25. Domestic interested parties dispute Paras's claims that there would be a chilling effect on imports and that importers are already required to identify correctly the country of origin of imported goods for customs purposes. Domestic interested parties contend that, in this situation, certification is required to ensure accurate determinations by importers of glycine from India, and that an importer certification is the only way to address the issue without the need for an endless series of anti-circumvention or scope inquiries.

Salvi claims that the Department's determination to suspend liquidation of imports of glycine from Salvi is "based entirely on the finding that Salvi exported some glycine to the United States that had been processed from technical grade glycine originating from China." *See* Salvi's Comments at 3. Furthermore, Salvi argues "{t}he Department has entirely ignored the equally true fact, established on the record, that Salvi had the capability to produce, and did produce and export, glycine produced entirely from Indian origin raw materials." *Id.*

Salvi then compares the Department's treatment of Salvi with its treatment of Paras and urges the Department to "establish a system of either importer or exporter certification, which will establish that a particular product was produced from Indian origin material only." *Id*. Salvi claims that it would be willing to demonstrate in a review that its glycine is truly of Indian origin. *Id.* Salvi further states that "{a}llowing this type of certification is an inherently more reasonable and fair approach than forcing a company to pay antidumping duty deposits on merchandise that can be easily proven to be Indian in origin." *Id.* at 5.

Salvi argues that since the initiation of the scope inquiry, "it has only produced glycine from raw materials that it can confirm are of Indian origin." *Id.* Salvi further argues against appeasing domestic interested parties by imposing duties on Indian glycine through the "back door." According to Salvi, there are established precedents, such as the one in the *Tissue Paper Preliminary Results*,[27] in which a certification program was used where the "exporter could

[27] Citing *Certain Tissue Paper Products from the People's Republic of China; Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination*, 73 FR 21580 (April 22, 2008) (*Tissue Paper Preliminary Results*), unchanged in *Tissue Paper* cited previously by domestic interested parties.

establish the date on which it stopped exporting tissue paper using inputs from China," and that such precedent is applicable in this case as "Salvi has stated that it has stopped producing glycine from technical grade product obtained from China on October 22, 2010, the date of initiation of this scope inquiry," and that, since that time, "Salvi has exported and can export only glycine made from Indian indigenous materials." *Id.* at 7.

In their rebuttal comments, both Salvi and AICO state that they would not agree with any finding of circumvention in the final determination. *See* AICO and Salvi's Rebuttal Comments at 1. Nonetheless, both companies state that "although both AICO and Salvi deny that they have circumvented the antidumping order on Chinese glycine by importing raw material from China," they are "willing to cooperate with such a certification program" because the program will "provide AICO and Salvi with a renewed opportunity to sell glycine of strictly Indian origin in the United States without the cloud of circumvention allegations or findings." *Id*. at 2. Additionally, AICO and Salvi state, both will "abandon their practices of importing raw materials from China." *Id*. at 3.

Furthermore, AICO and Salvi contend, "even if the Department should conclude that AICO and Salvi have circumvented the antidumping order in the final determination, it should not preclude the companies from selling glycine produced from Indian indigenous materials in the United States." *Id*. at 2. AICO and Salvi state that there is no evidence that either of them are dumping glycine and that "should the Department fail to implement a certification program, then AICO and Salvi will be obligated to post prohibitive antidumping duties despite having defeated petitioners' more direct attempts to impose an order on India." *Id*. at 2-3.

In rebuttal to domestic interested parties' argument for a "country-wide certification requirement based on circumvention that is '*wide spread and rampant*' (emphasis in original)," Paras states that the domestic industry "fails to demonstrate how Paras's minor incidence of an inadvertent sale of Chinese-origin material in 2007 (three years prior to initiation of the {anti-} circumvention inquiry) has, or can in the future, possibly lead to or add to any alleged and '*wide spread and rampant circumvention* (emphasis in original).'" *See* Paras's Rebuttal Comments at 6. Additionally, Paras argues that it "cannot and should not be penalized for the past or possible future misdeeds of others." *Id*. What domestic interested parties want, Paras contends, "are restrictions on Paras in order to reduce Paras's Indian-origin exports, not to eliminate any shipments of Chinese glycine going forward since that has already been eliminated." *Id*. at 7. If it is not circumventing, Paras states, "then no certification requirement is warranted." *Id*. While domestic interested parties argue that such a requirement would not "have a chilling effect on a U.S. importer's decision to buy from Paras," Paras contends that domestic interested parties are calling for the requirement because they know that "such a requirement would serve as a warning to importers to look elsewhere; that is, to other than Paras, when buying glycine." *Id*. at 8. Paras notes that, contrary to domestic interested parties' assertions, Paras has had no decline in exports because it has assured its buyers throughout this inquiry that it was not selling Chinese-origin material in the United States. Finally, Paras asserts that it has never been a part of any evasion scheme, nor does the company have any affiliated entities that ship glycine to the United States. In sum, Paras submits that the Department reject domestic interested parties'

arguments as they relate to Paras and should continue to find that Paras is not circumventing the *Order* and that, as a result, no remedy is needed in its final determination.

In their rebuttal comments, domestic interested parties state that while both the domestic industry and respondents agree that a certification process should be used to differentiate between merchandise circumventing the *Order* and Indian-origin merchandise, the parties disagree as to how that certification process should be implemented. *See* Domestic Interested Parties' Rebuttal Comments at 3. Domestic interested parties state that, "consistent with Department practice in anti-circumvention inquiries, the Department should not allow AICO and Salvi to certify the origin of their glycine as it enters the United States" because "neither can prove the origin of its glycine." *Id*. at 4.[28]

Domestic interested parties also contend that both AICO and Salvi's reliance on *Tissue Paper* as "supporting their call for the Department to revise its preliminary determination and allow{ing} them to certify the origin of their glycine exports" is misplaced. *Id*. at 5. In *Tissue Paper*, domestic interested parties argue, the respondent had "ceased importing merchandise from the country subject to the order for at least two years prior to the final determination" whereas in the instant proceeding, "neither Salvi nor AICO has shown, despite numerous opportunities, their circumvention has stopped." *Id*.

Domestic interested parties conclude that the Department should affirm its preliminary findings that all glycine from AICO and Salvi are within the scope of the *Order* and clarify that this finding extends to their affiliates as well. *Id.* at 16. Domestic interested parties argue for an importer certification that allows U.S. importers of glycine shipped from India, except for glycine from AICO, Salvi and their affiliates, to certify that their glycine is not Chinese-origin glycine. *Id.*

Department's Position:

The Department has determined that the question of the certification issue is more appropriately addressed in the concurrent scope inquiry, in which the issue is examined on a country-wide basis. *See* Final Scope Ruling Memorandum. With respect to domestic interested parties' arguments on why country-wide certification is necessary, the Department notes it has addressed many of these repeated issues above. The Department also notes that it has addressed the certification issue in the context of the concurrent final scope ruling, and therefore many of domestic interested parties' and Paras's points regarding a country-wide importer and/or exporter certification scheme in the instant anti-circumvention inquiry are moot.

[28] *See also* page 4, footnote 12, where domestic interested parties cite *Steel Wire Hangers From the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 76 FR 66895 (October 28, 2011) and accompanying Issues and Decision Memorandum at 8 (where the Department found that third country exporter/producers failed to "link U.S. exports to the source of production," and, therefore, the Department had to assume that "{the third country exporter/producer's} merchandise produced using {Chinese-sourced, semi-finished merchandise} continues to be exported to the United States").

The Department disagrees with Salvi's claims that "{t}he Department has entirely ignored the equally true fact, established on the record, that Salvi had the capability to produce, and did produce and export, glycine produced entirely from Indian origin raw materials." *See* Salvi's Comments at 3. The Department notes that Salvi itself provided record evidence to the contrary, *i.e.*, Exhibit 36 in response to question 24 in its December 21, 2010, response in the anti-circumvention inquiry. While the quantities themselves are business proprietary, it is clear that relatively small quantities were produced from raw materials, and that the sales of such product were made in the domestic market and not for export. Furthermore, as the Department noted in its *Preliminary Determination*, at page 4 of the Salvi Analysis Memorandum, Salvi stated that "{it} is able to produce glycine from raw materials," but also stated categorically in its fourth supplemental questionnaire response that "{t}he quantity of Manufactured Glycine is insignificant & processed Glycine is almost the quantity of export." *See* Salvi's fourth supplemental questionnaire response at 14. In the same questionnaire response, Salvi claimed that "although it had established a manufacturing plant ... {h}owever, the cost of production is not very competitive for our plant. Therefore, we were constrained to take a call on outsourcing for exports." *Id.* at 40.. The record evidence establishes that, while Salvi may have some capacity to produce glycine from raw materials, the company found it cheaper and more competitive to process PRC-origin glycine for export to the United States.

As a result of the anti-circumvention finding, the Department has determined that glycine produced by Salvi is within the scope of the order. If, in a later segment of the proceeding, such as an administrative review upon request, Salvi demonstrates it is no longer circumventing the order and can produce glycine from Indian raw materials in commercial quantities, at that time the Department can exercise its authority to remove the imposition of duties and instead have Salvi's imports come within the importer certification requirement. At the present time, however, the Department finds it necessary to continue cash deposits on imports of glycine produced by Salvi to prevent circumvention of the antidumping duty order. Based upon the information on the record, the Department is not satisfied that Salvi can produce glycine from Indian raw materials for purposes of supplying the U.S. market at the same level of imports as in the past. While we recognize that Salvi may have the ability to produce a limited quantity of glycine from Indian raw materials, the statements on the record concerning the status of its production, the evidence of limited production, and in particular the statement concerning outsourcing for exports indicate that Salvi is not ready to, and has not demonstrated that it can, produce in sufficient quantities to replace its sales of subject merchandise to the U.S. market with sales of self-produced Indian glycine.

We also disagree with Salvi's attempts to link itself to Paras. Paras has been forthright in its responses to the Department and made no attempt to argue that the processing of PRC-origin glycine transformed it into Indian glycine. Its production capacity and records show that with one limited exception, Paras has not exported processed PRC-origin glycine to the United States during the inquiry period. Salvi claims that it has stopped producing glycine from technical grade product obtained from the PRC on October 22, 2010, the date of initiation of this scope inquiry but references nothing on the record to support this assertion.

The Department also disagrees with Salvi and AICO's attempts to portray the Department's circumvention finding as a "back door" means of establishing an order on glycine from India. Even in the case of Salvi and AICO, where the Department has instructed CBP to collect cash deposits on its glycine exported to the United States, such deposits are cash deposits, *i.e.*, estimated dumping margins, and are subject to review in an administrative review. Both AICO and Salvi have an opportunity via a future segment of the proceeding (*i.e.*, an administrative review or changed circumstances review) to demonstrate that any glycine being entered into the United States they produced is of Indian origin. If they can timely demonstrate that the entered glycine is of Indian origin, the Department has authority to order such cash deposits to be refunded with interest. However, the burden properly is on AICO and Salvi to show that such action is warranted. They may also ask the Department at that time, should they be able to demonstrate that all glycine entered is of Indian origin, to institute the certification requirements that they now wish the Department to employ. The Department is not instituting an order on Indian glycine. Rather, it is taking action to prevent circumvention by two entities that have been demonstrated to have circumvented the *Order* on a widespread scale. In conclusion, the Department's action does not preclude AICO or Salvi from producing glycine from raw materials and exporting it to the United States. While a cash deposit is required at the time of entry, it may be refunded if AICO and/or Salvi request a review as described above, and the Department is satisfied that such glycine is of Indian origin.

Issue 4: Whether Salvi's Value Added was Calculated Incorrectly

Salvi submitted comments and domestic interested parties submitted rebuttal comments on this issue. Below are summaries of their arguments.

Salvi argues that the Department has miscalculated the value added by its processing of technical grade glycine in India into purified glycine. Salvi notes that one of the critical statutory factors for evaluating whether circumvention has occurred is to determine whether the value of the merchandise produced in the country to which the order applies is a significant portion of the total value of the merchandise sold in the United States. Salvi asserts that the Department's methodology for evaluating this factor is flawed because it compares the sales value of the merchandise purchased from China to the sales value of the processed glycine sold in the United States. According to Salvi, the determination of value added is a cost based test, not a sales based test.

Salvi contends that if the Department had correctly calculated the value ratios using cost of production information instead of sales information, the result would have shown that the actual value added in India is almost 30%. Salvi maintains that 35% is a standard that is widely considered to represent substantial transformation under various free trade agreements between the United States and its trading partners. Thus, Salvi reasons, a value added of almost 30% is significant, and should be considered to represent a substantial transformation in India.

Salvi argues that the amount of reprocessing required for Salvi's technical glycine can only be determined based on the record evidence submitted by Salvi. Salvi cites the *Indian Investigation*

and accompanying Issues and Decision Memorandum at Comment 5 and states the Department correctly notes in the *Preliminary Determination* that it has previously found that certain Chinese glycine processed in India did not change the country of origin. However, Salvi contends, the Department makes no attempt to recognize the distinctions among different types of technical glycine, and also makes no attempt to draw parallels between the technical glycine further processed in past cases and the five percent purity glycine processed by Salvi. According to Salvi, the Department acknowledges in the *Preliminary Determination* that "its scope determination in the original investigation was company and fact specific."

Domestic interested parties assert that Salvi's arguments regarding the calculation of the value added to Chinese origin glycine are unsupported by record evidence. Rather, domestic interested parties maintain that the evidence submitted by Salvi in this proceeding supports the Department's conclusion that Salvi's further processing is not significant. According to domestic interested parties, the Department determined that the value of Chinese glycine purchased by Salvi constitutes the great majority of the value of the merchandise exported to the United States based on that evidence.[29] Moreover, domestic interested parties argue, the statute directs the Department to compare the "value" of merchandise imported into the United States, rather than perform a comparison of cost as suggested by Salvi.[30]

Domestic interested parties maintain that Salvi's reliance on the rates reflected in free trade agreements as a standard for substantial transformation is misplaced. Domestic interested parties assert that Congress recognizes the need for flexibility in the anti-circumvention statute, and that there is no rigid numerical test or the expectation that the Department should establish one.[31] The petitioners argue that Commerce must consider all of the statutory factors under section 781(b) of the Act, not just the numerical ones, and that the final determination cannot be based solely on a quantitative measure of value.

Department's Position:

We disagree with Salvi that the Department has miscalculated the value added by its processing of technical grade glycine in India. Under section 781(b)(2)(E) of the Act, one of the factors the Department considers in determining whether the process of assembly or completion is minor or insignificant is whether the value of the processing performed in the third country represents a small proportion of the value of the merchandise imported into the United States. Contrary to Salvi's assertion, although the statute does not specify a method for determining value, it does clearly specify that this is a value based test, and not a cost based test. Thus, for both elements in the calculation, the Department must determine a value, not a cost, based on the information existing on the record.

At the preliminary determination, in order to determine the value of the processing of technical glycine performed in India by Salvi, we constructed a value based on Salvi's submitted cost and

[29] *See* Salvi Preliminary Analysis Memorandum at 9.
[30] *See* sections 781(b)(1)(D) and 781(b)(2)(E) of the Act.
[31] *See* S. Rep. No. 103-412 (1994) at 76 and H.R. Rep. No. 103-826(I) (1994) at 89.

profit information. Specifically, we determined the cost of manufacturing for the processing at Salvi's factory, and then added amounts for selling, general and administrative expenses, financial expenses and profit from Salvi's financial statements. We calculated the value added percentage by dividing the resulting amount by the average sales price of the finished glycine sold in the United States. *See* Salvi Preliminary Analysis Memorandum at 7 and Attachment 1. We used this information, as provided by Salvi, because it represents the most complete, verifiable information available on the record. Further, we note that this same methodology was used by the Department to determine value added in past cases.[32] Accordingly, we continue to rely on the value added calculations performed at the preliminary determination[33] and continue to find that the value of the processing of technical glycine performed by Salvi in India represents a small proportion of the value of the merchandise imported into the United States.

Irrespective of our finding that the value added by Salvi in India is not significant (*i.e.*, that it represents a small proportion of the value of the imported finished glycine), we disagree with Salvi that the value added can be determined solely based on the numerical percentage of value added alone. Under section 781(b)(2) of the Act, the numerical calculation of value added is just one of five factors (both quantitative and qualitative) that the Department must examine in its determination of whether the processing undertaken in a third country is minor or insignificant. The Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 at 893 (1994), states that no single factor listed in section 781(b)(2) of the Act will be controlling. *See* SAA at 893. The SAA also states that the Department will evaluate each of the factors as they exist in the third country depending upon the particular circumvention scenario. *Id.* Therefore, the importance of any one factor varies from case-to-case depending upon the particular circumstances of each inquiry.[34] Accordingly, we evaluated each of the five factors under section 781(b)(2) of the Act based solely on the particular evidence submitted by Salvi in this proceeding. Based on this evaluation, we continue to find that Salvi's processing of technical glycine originating from the PRC does not result in sufficient value added to change the country of origin.

Issue 5: Whether the Production in India is Minor or Insignificant

Salvi submitted comments and domestic interested parties submitted rebuttal comments on this issue. Below are summaries of their arguments.

Salvi states that it set up a manufacturing plant during the 2008-2009 fiscal period, at a considerable cost to the company. According to Salvi, it has provided a "wealth of information" concerning its plant and the differences in costs between producing glycine from technical grade with five percent chloride impurity, and producing glycine from raw materials. *See* Salvi

[32] *See, e.g., Certain Butt-Weld Pipe Fittings from the People's Republic of China; Affirmative Preliminary Determination of Circumvention of Antidumping Duty Orde*r, 59 FR 62, 63 (January 3, 1994), unchanged in *Butt-Weld Pipe Fittings* cited previously by domestic interested parties.
[33] *See* Salvi Preliminary Analysis Memorandum at Comment 9.
[34] *See, e.g., Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany and the United Kingdom; Negative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 64 FR 40336, 40338 (July 26, 1999).

Comments at 9. Salvi asserts that the Department appears to have ignored the data that Salvi provided. Citing its questionnaire and supplemental questionnaire responses, Salvi claims that the record contains detailed information concerning the following: 1) the level of investment, details of equipment, inventory movement of raw materials for glycine produced from basic raw materials, cost of labor and machinery used in manufacturing glycine from raw materials as well as processing glycine; 2) specific details of the product steps, timing, number of workers, number of machines, and details about chemical transformations; and 3) details of finished inventory movement and the consumption norms associated with processing glycine and manufacturing glycine from indigenous raw materials. *See* Salvi's Comments at 9, footnotes 1-3.

Salvi argues that the Department accepted the amount that Salvi reported that it had invested into its facilities for the production of glycine over the course of 2004-2010. Salvi further argues that the amount it reported is significant and strongly suggests that its intention from the beginning has been to create operations for the production of glycine and not to simply re-process technical grade purchased from the PRC. Salvi adds that, had the latter been its intention, it would have made a much lower investment in its facilities.

Salvi concludes that the record contains ample information showing that it has made a significant investment in India, that the processing of technical grade glycine is not minor or significant, and that the value of the technical glycine produced in the PRC is an insignificant portion of the total value of the merchandise exported to the United States. Therefore, according to Salvi, the Department should revisit its finding of circumvention in the final determination.

In rebuttal to Salvi's claims, domestic interested parties contend that the Department's preliminary finding that all of Salvi exports are within the scope of the *Order* should be upheld for several reasons. *See* Domestic Interested Parties' Rebuttal Comments at 6-12. First, domestic interested parties contend that Salvi's latest submissions "lack credibility" (*i.e.*, "portions of the submissions contain information or argument not contained in the other version") and "continue to evolve." *Id*. at 6-7. Second, domestic interested parties assert that Salvi does not produce glycine but further processes Chinese-origin glycine. Specifically, domestic interested parties argue that Salvi's claims that it manufactured glycine from both indigenous (Indian) raw materials and from technical grade sources originating in the PRC are untrue, and that because Salvi set up a manufacturing plant in 2008-2009, all glycine that Salvi shipped prior to that period was transshipped Chinese-origin glycine. *Id*. at 7. Additionally, domestic interested parties state that there is no record evidence that Salvi has only produced glycine from Indian-origin raw materials. Third, domestic interested parties contend that contrary to Salvi's claims that its processing of Chinese-origin glycine in India substantially transforms that glycine to Indian-origin merchandise, evidence demonstrates that Salvi's shipments of further-processed Chinese-origin glycine are within the scope of the *Order*. Fourth, domestic interested parties contend that abundant evidence supports the Department's preliminary determination that Salvi's further processing is not significant. Domestic interested parties contend that Salvi's disagreement with the Department's calculation of the value added to the Chinese-origin glycine in India is unsupported by record evidence, the terms of the anti-

circumvention statute, the statute's legislative history and the Department's prior determinations concerning the scope of the *Order*.

Lastly, domestic interested parties state that Salvi's claims, with respect to its investments in glycine manufacturing, are irrelevant. Domestic interested parties claim that Salvi failed to provide evidence needed to derive the total investment for further processing glycine and that the investment needed for further processing is minor and insignificant, especially when considered relative to manufacturing glycine. *Id.* at 12.

Department's Position:

The Department continues to determine that the process of completion in India, with respect to the processing of PRC-origin glycine, is minor or insignificant. The Department laid out its reasons for determining the process of completion with respect to Salvi was minor or insignificant in great detail in its preliminary determination.[35] As the Department referenced in its preliminary determination, by examining each of the statutory criteria, the Department determined that the process of refinement is minor when compared to the production of glycine from raw materials. Salvi makes its arguments based on claims that it has invested heavily in the ability to produce glycine from raw materials. However, record evidence shows that, because Salvi set up a manufacturing plant in 2008-2009, all glycine that Salvi shipped prior to that period was transshipped PRC-origin glycine.[36] The Department also notes Salvi's claims with respect to its claim that it has made a significant investment in India. Specifically, the Department noted in the Salvi Preliminary Analysis Memorandum that Salvi had failed in the course of its responses to segregate its research and development activities between glycine and other products.[37] In addition, Salvi failed to show how its level of investment relates to the production of glycine as compared to the refinement of glycine. Moreover, Salvi failed to show the break down between research and development with respect to processing technical glycine versus producing glycine from raw materials, and this resulted in necessary information not being on the record. The Department used facts otherwise available pursuant to sections 776(a)(1) and (2)(A) of the Act in reaching its preliminary determination of the level of Salvi's research and development activities concerning its processing of technical glycine, and Salvi's arguments in its comments to the Department are not persuasive in this matter as they fail to be supported by record evidence.

Finally, the Department notes again that by Salvi's own admission "{t}he quantity of Manufactured Glycine is insignificant & processed Glycine is almost the quantity of export ...." *See* Salvi's fourth supplemental questionnaire response at 14. Further, in its fourth supplemental questionnaire response, Salvi stated that "{it} established a manufacturing plant ... {h}owever, the cost of production , is not very competitive for our plant. Therefore, we were constrained to take a call on outsourcing for exports ..." *Id.* at 40. It may well be that Salvi can produce glycine from raw materials, but the record evidence from the anti-circumvention inquiry is that it chose

[35] *See* Salvi Preliminary Analysis Memorandum at 4-9.
[36] *See* Salvi's initial questionnaire response at 6, 14, 15, and Exhibit 15.
[37] *See* Salvi Preliminary Analysis Memorandum at 5.

not to do so and that the vast majority of its exports to the United States during the inquiry period were of processed PRC-origin glycine which circumvented the *Order*. Therefore, we continue to find that Salvi's processing of PRC-origin glycine in India is minor or insignificant as defined by section 781(b)(2) of the Act.

Issue 6: Whether AICO Acted to the Best of its Ability in this Anti-Circumvention Inquiry

AICO submitted comments and domestic interested parties submitted rebuttal comments on this issue. Below are summaries of their arguments.

AICO asserts that the Department unjustly concluded that AICO failed to cooperate to the best of its ability, and that an adverse inference was warranted pursuant to section 776(b) of the Act. AICO states that it responded to multiple information requests, including its original questionnaire response and five supplemental questionnaire responses. Additionally, AICO states that the record contains detailed information concerning AICO's procurement of AAA-97TE from the PRC, the processing of the Chinese materials in India, the level of investment, details of equipment, inventory movement of raw materials for glycine produced from AAA-97E,[38] cost of labor and machinery used in manufacturing glycine from AAA-97TE, and the ratio between the value of AAA-97E and the final glycine exported to the United States. AICO adds that the record also contains specific details of the product steps, timing, number of workers, number of machines and details of chemical transformation. According to AICO, the information it provided should have been sufficient to allow the Department to conduct its requisite determination under the anti-circumvention statute.

AICO claims that it is being punished for failing to respond to certain questions in the Department's third supplemental questionnaire. AICO further claims that it is a small company with limited resources, and as a result, found it impossible to respond to all questions within the time constraints mandated by the Department. According to AICO, many of the Department's questions were repetitive and had already been answered. AICO states that for instance, Question 47c of the Department's third supplemental questionnaire requested auditor's notes, which AICO argues it had already supplied. *See* AICO Comments at 2. AICO asserts that there were no responses to the Department's third supplemental questionnaire that were absolutely necessary for the Department to reach a preliminary determination. AICO argues that the Department seeks to penalize AICO out of principle, more than out of a genuine necessity for information that missing, which is not a proper use of the application of adverse facts available.

AICO concludes by reiterating that it is a small company, but cooperated to the best of its ability in providing detailed data to the Department. AICO adds that it is disappointed that the Department chose not to conduct verification because it believes that the Department would have benefitted from viewing first-hand the magnitude of AICO's investment in India. AICO states that the it remains ready to cooperate with any verification in the future, and maintains that a verification would strongly enhance the quality of this inquiry.

[38] At page 2 of its comments, AICO refers to both AAA-97TE and AAA-97E. It appears that the latter might be a typographical error, however, in our summary of AICO's comments we did not make any changes.

Domestic interested parties assert that based on AICO's response rate, the application of adverse facts available against AICO was entirely appropriate. Domestic interested parties claim that AICO failed to respond throughout this inquiry, not merely to the Department's third supplemental questionnaire. Domestic interested parties cite specific instances where AICO refused to provide answers to the Department's questions, and dispute AICO's claim that these responses were not "absolutely necessary for the Department to reach a preliminary determination." *See* Domestic Interested Parties' Rebuttal Comments at 14.

Domestic interested parties argue that the Department cannot assess the value and nature of AICO's processing of Chinese-origin glycine, or determine whether AICO continues to circumvent the *Order*, with the information AICO has submitted on the record. Domestic interested parties also provide examples of the unreliable information and data that they claim AICO has placed on the record, and argue that AICO has shown an intent to deceive the Department. *Id.* at 15.

Domestic interested parties claim that the Department "may make adverse inferences against a party when the party fails to produce information and 'has failed to cooperate by not acting to the best of its ability to comply with a request for information' or when 'less than full cooperation has been shown' by the party." *Id.* Additionally, domestic interested parties claim that a "party fails to act to the best of its ability when it demonstrates 'inattentiveness, carelessness, or inadequate record keeping' or when 'less than full cooperation has been shown' by the party." *Id*. Domestic interested parties assert that AICO not only has failed to respond to this inquiry to the best of its ability but also has acted in bad faith. Accordingly, domestic interested parties conclude that the application of adverse facts available with respect to AICO was warranted.

Department's Position:

The Department disagrees with AICO and continues to find that AICO failed to cooperate to the best of its ability and therefore, it appropriately applied adverse facts available with respect to AICO by determining that the final product being exported to the United States is processed from glycine that is subject to the *Order*, and that therefore AICO is circumventing the *Order*, and that its product should be considered to be within the scope of the order to prevent evasion of the *Order*.

Section 776(a) of the Act, provides that, if (1) necessary information is not available on the record or (2) an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information by the established deadlines or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Furthermore, section 776(b) of the Act permits the Department to use an inference that is adverse

to the interests of an interested party if that party fails to cooperate by not acting to the best of its ability to comply with a request for information. Specifically, section 776(b) of the Act states that "if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority ... , the administering authority ... , in reaching the applicable determination under this subtitle, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available." *See also* SAA at 870. It is the Department's practice to make an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *Id*. An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous administrative review, or any other information placed on the record. *See* section 776(b) of the Act.

In the AICO Preliminary Analysis Memorandum, the Department provided numerous examples of AICO's failure to answer questions essential to the Department's ability to examine the issues at hand in this inquiry. AICO bases its arguments on its claim that the information it provided should have been sufficient to allow the Department to conduct its requisite determination under the anti-circumvention statute and that the Department is seeking to unfairly punish AICO out of principle.

However, as the Department explained in the AICO Preliminary Analysis Memorandum, AICO failed to answer numerous questions and provided misleading information that clearly meets the statutory criteria for using adverse facts available in this case. In particular, AICO's answers with respect to AAA-97TE are contradictory and misleading, leaving the Department no mechanism by which to evaluate AICO's responses with respect to this crucial question as to the type of inputs AICO used to produce or refine its glycine.[39] Despite record evidence that AICO was using PRC-origin amino acetic acid, a crude form of glycine, AICO impeded the inquiry by failing to answer these critical questions in detail.

AICO references in its comments its desire for the Department to verify the information so that the Department can see AICO's investment in India. These comments and arguments are misplaced. The purpose of verification is not to examine new information, but to verify information that is already on the record. As the Department noted in the AICO Preliminary Analysis Memorandum, when asked to provide the dates of AICO's purchases of inputs for glycine, AICO stated in its first and third supplemental questionnaire responses that "there are too many invoices," and that they would show them to us at verification. *See* AICO's third supplemental response at question 35 and question 22(a) of the first supplemental questionnaire. However, as the Department noted in question 35 of the second supplemental questionnaire, "all invoices must be provided in *advance* of verification so that the Department can review and analyze the information they contain and can be fully prepared to discuss such documents at verification." AICO's failure to provide such information impeded the Department's ability to analyze such data before any verification.

[39] *See* AICO Preliminary Analysis Memorandum at 3-8.

The Department notes that AICO's claim that it did not answer questions that it had answered previously is incorrect. For example, regarding AICO's statement that Question 47c of the Department's third supplemental questionnaire requested auditor's notes, which AICO argues it had already supplied, the Department notes that question 47c actually requested that AICO explain those notes and no such explanation was provided to enable the Department to evaluate the statement that the "company is not required to maintain cost records pursuant to the rules made by the central government for the maintenance of cost records under Section 209(1)(d) of the Companies Act 1956."

AICO claims that it cooperated to the best of its ability in providing detailed data to the Department. However, these claims are unsupported by record evidence. AICO argues the Department does not need the information that it requested in order to make a determination. However, the information requested by the Department was necessary information for making an anti-circumvention determination, either negative or affirmative. As a result, AICO, through its incomplete responses, has failed to provide a detailed description of the production process, failed to provide dates of purchases of AICO's inputs for glycine, failed to fully describe affiliations and percentages of ownership, failed to provide documentation showing production capacity, and to fully answer questions related to Reliance's imports of glycine into India and Ravi's exports of glycine to the United States. This information was necessary for the Department to be able to conduct its analysis and reach a determination in this case. The Department exercises its authority to apply adverse facts available only when the respondent's actions make it necessary to do so. In this case, the documentation on the record, and repeated requests for information and the failure to provide the requested information provides the Department with ample grounds to conclude that AICO failed to cooperate to the best of its ability. In the AICO Preliminary Analysis Memorandum, the Department made extensive findings regarding AICO's lack of cooperation in providing accurate and complete information and has therefore met the legal standard set out in section 776(b) of the Act, as reiterated by *NSK Ltd. v.* United States, 4025 C.I.T. 583, 617-618 (CIT 2001).

The Department notes that the respondent must act to the best of its ability, and that AICO has failed to do so throughout this proceeding. AICO has demonstrated inattentiveness, carelessness, and inadequate record keeping throughout its responses to the Department, as documented by the AICO Preliminary Analysis Memorandum. The answers AICO have provided have been elusive and in the case of 32 questions, no answers were provided at all. While the Department recognizes that AICO is a small company, AICO's responses have been inconsistent and careless, at best, and, at worst, evasive and misleading. By failing to cooperate to the best of its ability, AICO has failed to provide enough information for the Department to evaluate what product AICO is importing, processing, and exporting and the network of companies involved in the process.

Finally, we note that the Department has granted AICO numerous extension requests for responding to questionnaires. Such actions are indicative of how the Department has attempted to ensure that AICO has been given every opportunity to cooperate.

In conclusion, AICO has failed repeatedly to provide answers concerning its production and processing of glycine, has evaded questions on its importation of PRC-glycine and acknowledges that AICO does not have records to show which exports came from PRC amino acetic acid and which came from India.[41] Without knowing what AICO is importing and exporting and the companies with which AICO is affiliated because of AICO's failure to cooperate to the best of its ability, the Department has determined, under section 776(b) of the Act, to apply inferences adverse to AICO. In so doing, the Department is ensuring that AICO's failure to provide accurate, complete information is not rewarded, and that AICO should not benefit from its failure to cooperate with the Department to the best of its ability.

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting the positions set forth above. If these recommendations are accepted, we will publish the final determination in the *Federal Register*.

✓ Agree _____ Disagree

Ronald K Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

December 3, 2012

Date

[41] *See* AICO's response to third supplemental questionnaire, dated June 2, 2011, at Question 8.