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April 1, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Edward C. Yang
Senior Director
China/Non-Market Economy Unit

SUBJECT: Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Glycine from the People's Republic of China

SUMMARY:

We have analyzed the case and rebuttal briefs submitted by interested parties in the administrative review of the antidumping duty order on glycine from the People's Republic of China (the PRC). As a result of our analysis, we have not made any changes, as discussed below, to the antidumping duty rate assigned to the sole respondent in this administrative review, Baoding Mantong Fine Chemistry Co. Ltd. (Baoding Mantong). 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 issues in this administrative review for which we received comments from parties:

I. List of Comments

Comment 1: Baoding Mantong's Untimely Withdrawal of Review Request and Rescission of the Administrative Review with Respect to Baoding Mantong

Comment 2: The Department's Selection of the Adverse Facts Available Margin for Baoding Mantong

II. Background

On December 6, 2012, the Department published in the *Federal Register* its preliminary results of the antidumping duty administrative review of glycine from the PRC.[1] The merchandise covered by the order is glycine from the PRC, as described in the Preliminary Decision Memorandum.[2] The period of review (POR) is March 1, 2011, to February 29, 2012. This review covers one exporter of subject merchandise, Baoding Mantong, and the PRC-wide entity.

In the *Preliminary Results*, we invited parties to comment.[3] In response, on January 7, 2013, Glycine & More, Inc. (Glycine & More), an affiliate of Baoding Mantong and U.S. importer of glycine, timely submitted a case brief commenting on our *Preliminary Results*.[4] On January 14, 2013, in response to Glycine & More's comments, GEO Specialty Chemicals, Inc. (GEO), a domestic producer of glycine, timely submitted rebuttal comments.[5] No interested party requested a hearing.

Discussion of Interested Party Comments

Comment 1: Baoding Mantong's Untimely Withdrawal of Review Request and Rescission of the Administrative Review with Respect to Baoding Mantong

In its case brief, Glycine & More emphasizes that 19 CFR 351.213(d)(1) "expressly authorizes the Secretary to permit the withdrawal of administrative review request{s} after the 90 day period when 'it is reasonable to do so'." *See* Glycine & More's case brief at 3. Glycine & More argues that the circumstances of this case merit Baoding Mantong's untimely withdrawal to be considered "reasonable," and, therefore, the Department should accept Baoding Mantong's untimely withdrawal of review request. *Id*.

First, Glycine & More explains that Baoding Mantong did not receive GEO's timely withdrawal of its administrative review request for all companies, including Baoding Mantong, until after the expiration of the 90-day limit under 19 CFR 351.213(d)(1). *Id*. Glycine & More argues that Baoding Mantong believed a unilateral withdrawal of Baoding Mantong's own review request would have no effect in the proceeding since GEO had also requested a review of Baoding Mantong's exports. Therefore, Glycine & More claims, Baoding Mantong did not consider withdrawing its own review request until after receiving GEO's withdrawal of review request.

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[1] *See Glycine From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Partial Rescission of Antidumping Duty Administrative Review; 2011–2012*, 77 FR 72817 (December 6, 2012) (*Preliminary Results*).

[2] S*ee* Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review and Preliminary Partial Rescission of Antidumping Duty Administrative Review: Glycine from the People's Republic of China'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, dated April 30, 2012 (Preliminary Decision Memorandum), for a complete description of the scope of the order.

[3] *See Preliminary Results*, 77 FR at 72817.

[4] *See* Letter to the Acting Secretary of Commerce from Glycine & More Inc., dated January 7, 2013 (Glycine & More's case brief).

[5] *See* Letter to the Acting Secretary of Commerce from GEO Specialty Chemicals, Inc., dated January 14, 2013 (GEO's rebuttal brief).

Second, Glycine & More asserts that Baoding Mantong's withdrawal of its review request should also be considered "reasonable" given that the proceeding was still at its earliest stages when the company submitted the withdrawal request. *Id*. at 3-4. Glycine & More notes that Baoding Mantong's section A questionnaire response was due after the submission of its withdrawal review request. Consequently, the Department had not, at that point, devoted significant administrative resources to the review. *Id*.

Third, Glycine & More contends that the Department's interpretation and current practice of permitting parties to withdraw its administrative review requests after the 90-day deadline only under "extraordinary circumstances," is "inconsistent" with the language of 19 CFR 351.213(d)(1) which specifically states that the Secretary may accept untimely withdrawals of administrative review request(s) when "it is reasonable to do so." *Id*. at 4.

Fourth, Glycine & More asserts that even allowing for the above "irregularity" in the interpretation of the regulation, "extraordinary circumstances" existed in Baoding Mantong's case. *Id*. Glycine & More explains that Baoding Mantong's duty deposit rate at the time Baoding Mantong filed its own administrative review request, on March 30, 2012, was 37.18 percent. *Id*. During the course of the preceding administrative review of glycine (*i.e.*, the 2010-2011 administrative review), which had not been completed by March 30, 2012, Baoding Mantong's duty deposit rate was determined to be zero for the preliminary results. *Id*. Due to GEO's comments on the 2010-2011 preliminary results (*i.e.*, regarding an error found in the currency conversions used for the surrogate value calculations), Glycine & More explains, the Department "took a truly extraordinary action" and on June 27, 2012, issued a post-preliminary determination that corrected the currency conversion error. *Id*. at 5. Glycine & More contends that in addition to the above "pervasive errors," the Department considered comments from parties for new surrogate value information post-preliminary results which resulted in a margin of 453.79 percent at the final results of the 2010-2011 administrative review. *Id*. All these "extraordinary circumstances," Glycine & More suggests, made it difficult for Baoding Mantong to determine the suitability of withdrawing its own review request. *Id*. Thus, Glycine & More contends, Baoding Mantong's request to withdraw its own review should be granted and Baoding Mantong should be rescinded from this administrative review. *Id* at 6.

In its rebuttal brief, GEO claims that the Department reasonably exercised its discretion with regard to 19 CFR 351.213(d)(1) when denying Baoding Mantong's untimely request for review withdrawal. *See* GEO's rebuttal brief at 1.

First, GEO disagrees with Glycine & More's belief that the Department's current practice of permitting parties to untimely withdraw review requests due to "extraordinary circumstances" is inconsistent with the interpretation of the language of 19 CFR 351.213(d)(1), and thus, that the Department should have accepted Baoding Mantong's untimely withdrawal of review request due to circumstances considered "reasonable." GEO argues that the Department's decision to deny Baoding Mantong's withdrawal review request was not based on what Glycine & More describes as the Department's "practice," but rather, it was based on factual information provided by Baoding Mantong in its own withdrawal of review request. *Id* at 2-3. Moreover, GEO explains it was Baoding Mantong that claimed extraordinary circumstances existed. *Id*. at 3. The Department, GEO argues, simply disagreed with what Baoding Mantong portrayed as

extraordinary circumstances and, as such, denying Baoding Mantong's untimely withdrawal of review request was a reasonable exercise of its discretion over 19 CFR 351.213(d)(1). *Id*. at 4.

Second, GEO asserts that by denying the untimely withdrawal of review request, the Department "prevented Baoding from abusing the process to gain an unreasonable advantage in this review by having more information than GEO when Baoding sought to withdraw." *Id*. at 2-3. Specifically, GEO suggests that two arguments raised by Glycine & More in its case brief inadvertently indicate that GEO's withdrawal prompted Baoding Mantong's decision to withdraw: (1) that a unilateral withdrawal of its administrative review request would have no impact on the review process; and (2) the "pervasive errors" found in the 2010-2011 administrative review of glycine from the PRC prevented the company from determining whether it was in its own interest to withdraw from this review. These comments, according to GEO, demonstrate Baoding Mantong's intent to "'game the system' to the detriment of GEO." *Id*. at 4.

Third, GEO notes that it was in a similar position to Baoding Mantong when the decision was made to withdraw GEO's review request, *i.e.*, GEO also had to contemplate what effect, if any, the revisions to the 2010-2011 preliminary results of review would have on the 2011-2012 review. *Id.* at 5-7. Unlike Baoding Mantong, however, GEO carefully weighed all known relevant factors, which included the post-preliminary margins, as well as comments and rebuttals on additional surrogate value information, and timely submitted its withdrawal of review request within the 90-day time limit, as required by 19 CFR 351.213(d). *Id*. Finally, GEO states that Baoding Mantong does not mention, in its untimely withdrawal of review request the impact of such 2010-2011 "pervasive errors." *Id*. at 6. Drawing attention to the fact that Baoding Mantong decided to no longer participate in the current review once the 2010-2011 final results of review were published, GEO suggests that Glycine & More is only introducing the 2010-2011 post-preliminary revisions as an additional justification for Baoding Mantong's untimely withdrawal of review request because of the adverse effect those changes have on Baoding Mantong's current antidumping duty deposit rate. *Id*.

Department's Position:

We have considered the comments submitted by Glycine & More and GEO and continue to find that the Department reasonably exercised its discretion not to extend the time for parties to withdraw their requests for review in this case. As discussed below, the Department's policy, announced in its *Opportunity to Request Notice* and *Initiation Notice*,[6] allows for extensions of time only where an extraordinary circumstance prevented a party from timely withdrawing its request for review. Baoding Mantong has not demonstrated that an extraordinary circumstance prevented it from submitting a timely withdrawal request. Therefore, we have not rescinded this administrative review with respect to Baoding Mantong.

[6] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 77 FR 12559, 12560 (March 1, 2012) (*Opportunity to Request Notice*)*; Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 77 FR 25401, 25401 (April 30, 2012) (*Initiation Notice*).

The regulation governing the withdrawal of an administrative review and rescission of reviews, 19 CFR 351.213(d)(1), states the following:

> The Secretary will rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. The Secretary may extend this time limit if the Secretary decides that it is reasonable to do so.

The regulation indicates that the Secretary may "consider" an extension of the 90-day limit if it is reasonable to do so. The regulation affords the Department wide discretion in determining whether to extend the 90-day limit.

Exercising its wide discretion, the Department, in both its *Opportunity to Request Notice* and *Initiation Notice*, put parties on notice that "{i}n order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline…the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request."[7] The Department further stated that "{d}eterminations by the Department to extend the 90-day deadline will be made on a case-by-case basis."[8] Accordingly, in exercising its discretion to consider Baoding Mantong's untimely withdrawal request—and therefore whether to rescind its review—the Department evaluated whether extraordinary circumstances prevented Baoding Mantong from submitting a timely withdrawal request.

First, Baoding Mantong argued that there were extraordinary circumstances that validated its request for an extension in this case.[9] For instance, Baoding Mantong stated that because both GEO and Baoding Mantong requested the review, a withdrawal of the request by only one party would invalidate the possibility to rescind this administrative review. Baoding Mantong also explained that GEO's withdrawal of review request was served upon Baoding Mantong's counsel via first class mail after the 90-day deadline. Therefore, according to Baoding Mantong, only after it received GEO's withdrawal request was Baoding Mantong "able to decide whether to withdraw its own administrative review request or proceed with the review."[10]

Second, Baoding Mantong argued that good reason existed to extend the 90-day deadline in this case because the Department would be able to preserve its limited administrative resources in this proceeding since Baoding Mantong had yet to submit its responses to the Department's questionnaire.[11]

After considering these arguments, the Department did not find that extraordinary circumstances existed which prevented Baoding Mantong from filing a timely withdrawal request. Furthermore, evidence suggests that it was the final results from the prior administrative review

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[7] *See Opportunity to Request*, 77 FR at 12560; *Initiation Notice*, 77 FR at 25401.
[8] *See Opportunity to Request*, 77 FR at 12560; *Initiation Notice*, 77 FR at 25401.
[9] *See* Letter to the Department from Baoding Mantong, "Glycine from the People's Republic of China; Withdrawal of Administrative Review Request," dated August 7, 2012, (Baoding Mantong's Withdrawal Request), at 2-3.
[10] *Id*. at 3.
[11] *See id*.

(*i.e.*, the 2010-2011 administrative review) that influenced Baoding Mantong's ultimate decision to withdraw its participation in the instant proceeding. For example, Baoding Mantong decided to no longer participate in the instant review on October 19, 2012, *i.e.*, the day after the final results of the 2010-2011 administrative review published in the *Federal Register*. As a result, the Department denied Baoding Mantong's request for an extension of the 90-day deadline and proceeded with the review.[12]

In its case brief, Glycine & More reiterates these same points made by Baoding Mantong. Regarding the first point, the Department acknowledges that GEO's withdrawal was submitted on the last day of the 90-day deadline and that such withdrawal was served upon Baoding Mantong's counsel via first class mail after that deadline. We note, however, as with any deadline stated by the statute or the regulations, it is inherent that parties might not have knowledge of/access to last-minute submitted documents, and, therefore, we continue to find that this does not present an extraordinary circumstance which would have prevented Baoding Mantong from filing a timely withdrawal request. We also find that Baoding Mantong's assertion that only after it received GEO's withdrawal request was Baoding Mantong "able to decide whether to withdraw its own administrative review request or proceed with the review," does not present an extraordinary circumstance. Every single party that withdraws its request for review of itself or another could be faced with the uncertainty of knowing whether the other party will follow suit and also withdraw its request for review. This is evident by the fact that in this case GEO withdrew its request for review of all parties with no knowledge of whether Baoding Mantong would also withdraw its own request for review. While Baoding Mantong may have known a timely withdrawal of its request for review would not guarantee that the review would be rescinded, it also knew that unless it timely withdrew its request the review would not be rescinded absent extraordinary circumstances. Nothing prevented a timely withdrawal if it wished the review to be rescinded in the event that GEO also timely withdrew its request.

Regarding the second point, Glycine & More reiterates Baoding Mantong's argument that the Department should grant Baoding Mantong's request because the review is in its early stages and therefore the Department has not expended significant time or resources. Furthermore, Glycine & More also argues that this is not an instance where a company has attempted to withdraw its request for review late in the proceeding, *i.e.*, after the preliminary results, on the basis that the party is not satisfied with the preliminary results. While this may be true, this consideration is not the focus in the Department's decision of whether to extend the 90-day deadline for withdrawal requests. As explained in the *Opportunity to Request Review Notice* and *Initiation Notice*, the Department's decision rests on whether extraordinary circumstances prevented a party for submitting a timely withdrawal request. As noted above, we do not find that extraordinary circumstances prevented Baoding Mantong from timely withdrawing its request for review. Furthermore, as explained in *ArcelorMittal Dofasco Inc. v. United States*, 602 F. Supp. 2d 1330, 1336 (Ct. Int'l Trade 2009) (*ArcelorMittal*), "{t}he resources the Department expended in conducting the administrative review are not the only consideration that reasonably should affect {the Department's decision not to extend the ninety-day time period}, and it is

[12] *See* Letter from the Department to Baoding Mantong, "Administrative Review of the Antidumping Duty Order on Glycine from the People's Republic of China – Antidumping Duty Questionnaire," dated September 27, 2012 (Response to Baoding Mantong's Untimely Withdrawal Request).

questionable whether these expended government resources are the most important consideration." As a result, the Department was well within its discretion to deny Baoding Mantong's request even at this early stage of the review.

In addition to its reiteration of Baoding Mantong's earlier arguments, Glycine & More also challenges the Department's allegedly inconsistent interpretation and practice with regard to the language of 19 CFR 351.213(d)(1). We disagree. As stated in our *Opportunity to Request Review Notice* and *Initiation Notice*, the Department put parties on notice concerning its consideration of ***untimely***-filed withdrawal of review requests. In other words, the Department clarified that it will exercise its discretion pursuant to 19 CFR 351.213(d)(1) to extend this time limit only where the requestor has demonstrated that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Thus, it was only after considering the factual information described by Baoding Mantong in its untimely withdrawal of review request that the Department determined that Baoding Mantong had failed to demonstrate that extraordinary circumstances prevented it from filing its withdrawal of review request ***within*** the 90-day deadline. Consequently, we did not grant Baoding Mantong's extension request.[13]

As stated in our *Opportunity to Request Review* and *Initiation Notice*, the Department clarified its withdrawal of review request deadline in August 2011 "{i}n order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline."[14] In the past, extending the 90-day deadline depended on a variety of factors, such as whether the Department had devoted significant time or resources to the review and the stage of the review. To enhance certainty and fairness, the Department determined to apply the 90-day rule except where a requestor could demonstrate that an extraordinary circumstance prevented it from timely submitting a withdrawal of review request. Accordingly, the Department continues to determine that denying Baoding Mantong's untimely withdrawal of review request was a reasonable exercise of its discretion pursuant to 19 CFR 351.213(d)(1) since Baoding Mantong did not demonstrate that any extraordinary circumstances existed that prevented it from timely submitting its withdrawal of review request.

Finally, with respect to Glycine & More's characterization of certain events that occurred in the 2010-2011 administrative review of glycine from the PRC as "pervasive errors" and its argument that such errors, in combination with the issuance of post-preliminary results and new surrogate valuation information, should be considered "extraordinary circumstances" which precluded Baoding Mantong from a timely decision to withdraw its request for review, we do not find this argument persuasive. The "pervasive errors" that Glycine & More refers to in its case brief pertain to currency conversion corrections made by the Department after considering comments by all parties, including those of Baoding Mantong, regarding its preliminary antidumping duty rate calculation.[15] These corrections changed Baoding Mantong's antidumping duty rate from zero at the preliminary results of review to 453.79 percent. Glycine & More further states that

[13] *See* Response to Baoding Mantong's Untimely Withdrawal Request.
[14] *See Initiation Notice*, 77 FR at 25401.
[15] *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 64100 (October 18, 2012) (*2010-2011 Final Results*), and accompanying Issues and Decision Memorandum at comment 8.

"the Department took a truly 'extraordinary action' and … issued a 'post-preliminary determination' that corrected the currency conversion error."[16]

The preliminary results of the 2010-2011 review, the release of the post-preliminary results, as well as all comments and rebuttal comments on such revised results, were known to all parties involved in the instant administrative review well before the 90-day limit to withdraw review requests.[17] Specifically, on April 11, 2012, the Department published the 2010-2011 Preliminary Results in the *Federal Register.* The domestic interested party in that review, GEO, submitted factor-valuation information on May 1, 2012. GEO and the respondent, Baoding Mantong, both submitted comments on May 11, 2012. Baoding Mantong also submitted rebuttal comments on May 16, 2012. On June 27, 2012, the Department issued revised preliminary results of 2010-2011 review. Finally, both GEO and Baoding Mantong, submitted factor-valuation information and comments on the Revised Preliminary Results on July 16, 2012, and rebuttal comments on July 23, 2012, *i.e.*, seven days before the deadline to withdraw its review request within the 90-day deadline in the instant review.[18] Furthermore, we note that there have been other instances in which the Department has issued amended preliminary results and, for this reason, the Department's issuance of amended preliminary results in the 2010-2011 administrative review was not an "extraordinary action," as Baoding Mantong argues.[19] Therefore, Glycine & More's argument that the above alleged "pervasive errors" and "extraordinary circumstances" made it difficult for Baoding Mantong to determine the suitability of withdrawing its own review request is simply not factually accurate, nor, as described above, a compelling reason that would prevent a party from timely submitting a request for withdrawal.

We have considered all of the above factors in determining whether to accept Baoding Mantong's untimely request for withdrawal from this review and, therefore, to rescind the instant review. Based upon the foregoing, we find it is not reasonable to extend the 90-day deadline to accept Baoding Mantong's untimely request for withdrawal. Consequently, we have continued to determine that Baoding Mantong be subject to the instant review.

Comment 2: The Department's Selection of the Adverse Facts Available Margin for Baoding Mantong

In its case brief, Glycine & More does not challenge the Department's use of total adverse facts available (AFA) towards Baoding Mantong. However, it does argue that the Department's

[16] *See* Glycine & More's case brief at 5.
[17] *See 2010-2011 Final Results*, and accompanying Issues and Decision Memorandum.
[18] *See 2010-2011 Final Results*, 77 FR at 6100.
[19] *See Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 74171 (December 13, 2012) (where the Department cites to a post-preliminary memorandum issued on October 23, 2012, in which it determined that the antidumping margin calculation methodology shall remain unchanged from the preliminary results); *see also Certain Welded Stainless Steel Pipes from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 74 FR 31242 (June 30, 2009) (where the Department cites to a post-preliminary memorandum issued on April 29, 2009, in which it made upward cost adjustments of the respondent's dumping margin prior to completion of the final results); *see also Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318, October 18, 2011 (where the Department cites to its amended preliminary determination, published on June 27, 2011, in which the Department corrected for ministerial errors it made in the margin calculations regarding the mandatory respondent in that investigation).

selection and application of the 453.79 percent margin (calculated for Baoding Mantong in the 2010-2011 administrative review as AFA) to Baoding Mantong for this *Preliminary Results* is contrary to law. *Id*. at 6. First, Glycine & More argues that the calculation of the 453.79 margin in the 2010-2011 administrative review has been challenged by Baoding Mantong at the U.S. Court of International Trade (CIT). *Id*. Thus, Glycine & More asserts that if such appeal is upheld it cannot be used as the basis for AFA applied to Baoding Mantong in the current 2011-2012 review. *Id*. In particular, Glycine & More lists the following factors challenged by Baoding Mantong in its appeal: (a) the Department's selection of surrogate values for certain raw material inputs such as chlorine, liquid ammonia, formaldehyde, and steam coal; and (b) the Department's calculation of surrogate financial ratios used in the review. *Id*.

Additionally, Glycine & More stresses the fact that Baoding Mantong established its eligibility for a separate rate in the 2010-2011 review. Therefore, for the current review Baoding Mantong was only required to submit its separate rate re-certification. *Id*. at 7. According to Glycine & More, because the re-certification was submitted previous to the selection of mandatory respondents for this review, Baoding Mantong is exempt from responding to a segment of the Department's section A questionnaire that requires information on separate rate status. *Id*.

Finally, citing to *Sigma Corp. v. United States*, 117 F. 3d. 1401, 1405 (Fed. Cir. 1997), Glycine & More contends that since Baoding Mantong demonstrated it operates free from Chinese government control it is entitled to a separate company-specific rate rather than the assigned PRC-wide rate. *Id*. Moreover, Glycine & More references certain decisions by the Court of International Trade (CIT) in support of its argument that the "{a}pplication of the country-wide rate to a respondent that has demonstrated its entitlement to a separate company rate has been found to be unlawful by the U.S. Court of International Trade on numerous occasions." These CIT decisions are *Qingdao Taifa Group Co., Ltd. V. United States*, 637 F. Supp. 2d. 1231, 1240 (CIT 2009); *Gerber Food (Yunnan) Co v. United States*, 387 F. Supp. 2d 1270 (CIT 2007) (*Gerber II*); *Gerber Food (Yunnan) Co v. United States*, 387 F. Supp. 2d 1270, 1287 (CIT 2005) (*Gerber I*); and *Shandong Huarong General Group v. United States*, 27 CIT 1568, 1594-1596 (2003) (*Shandong Huarong*). Consequently, Glycine & More suggests that for the final results of this review the Department select an alternative AFA margin for Baoding Mantong other than the PRC-wide rate.

In its rebuttal comments, GEO supports the Department's decision not to grant a separate rate to Baoding Mantong and instead apply the PRC-wide rate. GEO further asserts this decision is supported by law and the Department's practice. *See* GEO's rebuttal brief at 7.

Primarily, GEO argues that Baoding Mantong did not satisfy the conditions required to be entitled to a company-specific rate and, therefore, forfeited its separate rate status when it failed to respond to the Department's questionnaire and eventually voluntarily withdrew from the review. *Id*. at 8-9. Referring to the *Initiation Notice*, GEO notes that Baoding Mantong was notified that mandatory respondents are required to respond to all parts of the Department's questionnaire in order to keep eligibility for a separate rate status. Consequently, according to GEO, Glycine & More's claim that Baoding Mantong's June 29, 2012, separate rate information submission alone entitles them to a separate rate is misleading. *Id*.

Citing to the Department's Policy Bulletin 05.1,[20] GEO describes certain of the Department's requirements with which a separate rate applicant must comply in order to be considered for separate rate eligibility. Accordingly, GEO states that the Department must have the opportunity to: (1) verify the information provided by the applicant; (2) request additional information if necessary to remedy deficiencies in original separate rate application submission; and (3) make a finding as to whether the separate rate information is dispositive.[21] *Id*. at 8. GEO argues that because Baoding Mantong failed to answer any of the questionnaires and ultimately withdrew from the review, Baoding Mantong "deprived the Department of any opportunity to evaluate the separate rate information Baoding placed on the record and, thus, failed to fulfill the prerequisite conditions Baoding must satisfy to be eligible and considered for a separate rate." *Id*. at 9.

In addition, GEO notes that the cases cited by Glycine & More in support of its claim that Baoding Mantong is entitled to a separate rate address the legitimacy of a PRC-wide rate application to a respondent. However, GEO notes that in each of these cases the Department had the opportunity to evaluate the separate rate information pursuant to the requirements of Policy Bulletin 05.1, *i.e.*, the Department had the opportunity to verify the information, request additional information, and ultimately make findings based on the totality of the information. *Id*. at 9-10. In this review, GEO emphasizes, there is no information on the record which the Department can analyze in order to even consider a separate rate status for Baoding Mantong because the company refused to respond to the Department's questionnaire and ultimately withdrew from the review. Thus, according to GEO, not even the case law brought up by Glycine & More in its brief support its argument. *Id*. Consequently, based on the Department's practice and case law, GEO alleges it was Baoding Mantong's irresponsiveness that left the Department with no other alternative than to assign the company the PRC-wide entity rate. *Id*. at 10.

Moreover, if the Department determines that Baoding Mantong is entitled to a separate rate subject to AFA, GEO advocates that such rate should continue to be the 453.79 percent rate, *i.e.*, the most recently calculated rate for the company from the 2010-2011 administrative review of glycine from the PRC. *Id*. at 10-11. GEO highlights the fact that in the 2010-2011 review Baoding Mantong fully responded to all of the Department's questionnaires; information which was then verified by the Department. *Id*. GEO also notes that both GEO and Baoding actively participated and submitted briefs commenting on the Department's selection of surrogate values in that review. *Id*. at 11. Citing Federal Circuit precedent, GEO points out that "{i}n cases in which the respondent fails to provide Commerce with the most recent pricing data, it is within Commerce's discretion to presume that the highest prior margin reflects the current margins,"[22] and that "a presumption exists 'that a prior dumping margin imposed against an exporter in an

[20] *See* "Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries," Import Administration Policy Bulletin, Number: 05.1, April 5, 2005 (Policy Bulletin 05.1), at 4-5.
[21] Citing *Shandong Huarong*, 27 CIT at 1595; *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586 (May 2, 1994) (*Silicon Carbide from China*) (finding that because the Department is unable to verify certain information in separate rate responses, it cannot consider separate rate requests).
[22] *See Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F.3d 1330, 1339 (Fed. Cir. 2002).

earlier administrative review continues to be valid if the exporter fails to cooperate in a subsequent administrative review'."[23] *Id*.

GEO further argues that the 453.79 percent margin is representative of Baoding Mantong's commercial activity because it is based on Baoding Mantong's own calculated and fully-verified rate in the underlying 2010-11 review. Therefore, in accordance with court precedent, this margin can be corroborated with reliable, verified facts rooted in commercial reality and reasonably related to very recent Baoding Mantong sales.[24] Thus, according to GEO, the facts on the record, as well as case law, support the use of the 453.79 percent rate as Baoding Mantong's company-specific rate subject to AFA, if the Department determines it is entitled to one. *Id*. at 11-12.

Finally, GEO indicates that Glycine & More presented no legal support or Department precedent to sustain its claim that the 453.79 rate should not be applied to Baoding Mantong in the current review since it is presently in litigation at the CIT. GEO insists the 453.79 percent rate is currently applicable to all U.S. entries of glycine from Baoding Mantong and as such, is the most appropriate rate for Baoding Mantong in this review.

Department's Position:

After considering all arguments on this issue, we have determined to continue to apply the 453.79 percent antidumping duty rate, assigned to Baoding Mantong in the 2010-2011 administrative review, as the AFA rate for Baoding Mantong in these final results.

Section 776(a) of the Act provides that the Department will apply "facts otherwise available" if (1) necessary information is not on the record or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide such information within the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act. In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information.

In the *Preliminary Results*, the Department determined that Baoding Mantong withheld information requested by the Department, failed to respond within the established deadlines, and significantly impeded the proceeding, in accordance with sections 776(a)(2)(A), (B), and (C) of the Act.[25] Further, the Department determined that, in accordance with section 776(b) of the Act, AFA was warranted with respect to Baoding Mantong because it demonstrated a failure to act to the best of its ability in withholding information and failing to respond to the Department's antidumping questionnaire, which significantly impeded the proceeding.[26]

[23] *Kyd, Inc. v. United States*, 607 F.3d 760, 767 (Fed. Cir. 2010).
[24] *See, e.g., Qingdao Taifa Group Co., Ltd. v. United States*, 780 F. Supp. 2d. 1342, 1348-1349 (CIT 2011); *F.Lii De Cecco di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000); *Tianjin Mach. Imp. & Exp. Corp. v. United States*, 36 CIT _, Ct. Int'l Trade Lexis 89, Slip Op. 12-83 (June 14, 2012).
[25] *See Preliminary Results*, 77 FR at 72817.
[26] *Id. See also* accompanying Preliminary Decision Memorandum at 5-7.

Glycine & More does not contest the Department's determination to use total AFA with respect to Baoding Mantong, yet it argues that the Department has selected an AFA rate for Baoding Mantong that is contrary to law. Specifically, Glycine & More argues that the calculation of the 453.79 percent antidumping duty rate in the 2010-2011 administrative review has been challenged by Baoding Mantong at the CIT, and if an appeal is upheld, the margin cannot be used as the basis for the AFA rate for Baoding Mantong in the current 2011-2012 administrative review. Therefore, Glycine & More argues that the Department should select an alternate AFA rate.

Section 776(b) of the Act provides that the Department may use as AFA information derived from: (1) the petition; (2) the final determination in the investigation; (3) any previous review; or (4) any other information placed on the record. There is nothing in the statute that precludes the Department from selecting an AFA rate from a prior review that has been or is being challenged at the CIT. Furthermore, as the Department has stated, and as the CIT has upheld, Commerce must make its determinations on the basis of the facts before it, and cannot be held back from making a determination before the litigation in previous segments has concluded.[27] Glycine & More has offered no case precedent to the contrary. Therefore, we continue to find that the 2010-2011 administrative review represents Baoding Mantong's most recent commercial activity that was corroborated with reliable and verified facts. During the 2010-2011 review, Baoding Mantong fully responded to the Department's questionnaires and the Department verified those responses.[28] Accordingly, we continue to find that applying the antidumping duty rate from the most recently completed review (*i.e.*, the 2010-2011 administrative review) to the PRC-wide entity, including Baoding Mantong, as the AFA rate is in accordance with Department laws, regulations and practice.

Glycine & More argues that Baoding Mantong is eligible for a separate rate in this proceeding because it submitted its separate rate certification, which confirmed its separate rate status from the previous review. According to Glycine & More, if a mandatory respondent submits a separate rate certification prior to its selection as a mandatory respondent, that respondent is then exempt from responding to the part of the antidumping questionnaire requiring information on a company's separate rate status. Thus, according to Glycine & More, Baoding Mantong only had to submit its separate rate certification in this instant review to remain eligible for a separate rate. However, as stated in the *Initiation Notice*, "{f}or exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers ***will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire*** as mandatory respondents" (emphasis

[27] *See Stainless Steel Bar From India; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part*, 69 FR 55409 (September 14, 2004), and accompanying Issues and Decision Memorandum at Comment 3 ("{A}s the CIT has not rendered a final opinion in the cases under litigation that reverses the Department's decisions, we have continued to rely on the margins determined in the segments at issue because we consider them to be valid and reliable."); *Carpenter Tech. Corp. v. United States*, 474 F. Supp. 2d 1347, 1351-52 (2007).

[28] *See Glycine From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 77 FR 21738 (April 11, 2012) (*2010-2011 Preliminary Results*).

added).[29] Therefore, despite Baoding Mantong's efforts to submit a separate rate certification in this proceeding, as a mandatory respondent it was required to fully respond to ***all*** parts of the Department's questionnaire in order to maintain its separate rate eligibility. Although Baoding Mantong was notified of this requirement, it still failed to respond to the Department's questionnaire and voluntarily withdrew from the review on October 18, 2012, thereby forfeiting its eligibility to be considered for a separate rate.

Glycine & More points out that the Department's selection of Baoding Mantong as a mandatory respondent occurred after Baoding Mantong's submitted its separate rate certification. While this may be true, Baoding Mantong was still on notice that if it was selected as a mandatory respondent, it would be required to complete all parts of the Department's questionnaire in order to maintain its separate rate eligibility. This is a logical application of the Department's policies and procedures: How can the Department accept a separate rate certification if the respondent is uncooperative, does not submit questionnaire responses, and withdraws from the review? Such actions prevent the Department from continuing on with its review of the respondent, and deny the Department the opportunity to: (1) verify the separate rate information provided by the respondent; (2) request additional information if necessary to remedy deficiencies in the original separate rate submission; and (3) make a finding as to whether the separate rate information is dispositive.[30] Baoding Mantong's failure to submit a questionnaire response and voluntary withdrawal from the review on October 18, 2012, denied the Department the opportunity to verify any information provided by Baoding Mantong, including the information contained in its separate rate certification. Accordingly, because Baoding Mantong did not cooperate in this review, the Department continues to find that it did not establish its eligibility for a separate rate in this segment of the proceeding.

Regarding Glycine & More's reference to certain decisions by the CIT in support of its argument that the "{a}pplication of the country-wide rate to a respondent that has demonstrated its entitlement to a separate company rate has been found to be unlawful by the U.S. Court of International Trade on numerous occasions," we note that in each of these cases, the respondents submitted the necessary separate rate information and the Department had the opportunity to verify the separate rate information. As we note above, there is no opportunity in the instant proceeding for the Department to verify the separate rate information provided by Baoding Mantong because Baoding Mantong denied the Department an opportunity to complete its review. Consequently, because Baoding Mantong did not establish in this segment of the proceeding that it was entitled to a separate rate, we continue to find that Baoding Mantong is part of the PRC-wide entity.

The Department continues to apply AFA to the PRC-wide entity, including Baoding Mantong, because Baoding Mantong has failed to cooperate to the best of its ability. In applying the AFA rate to the PRC-wide entity, which now includes Baoding Mantong, the Department corroborated the AFA rate to the extent practicable in accordance with section 776(b) of the Act, and found it

[29] *See Initiation Notice*, 77 FR at 25402.
[30] *See Shandong Huarong*, 27 CIT at 1595; *Silicon Carbide from China*, 59 FR at 22586 (finding that because the Department is unable to verify certain information in separate rate responses, it cannot consider separate rate requests).

to be both reliable and relevant.[31] As described above, we note that the CIT has found that where a respondent is determined to be part of the PRC-wide entity, "the Department need not provide the respondent with a separate AFA rate."[32] Additionally, we note that the CIT and the Federal Circuit have "affirmed decisions to select the highest margin from any prior segment of the proceeding as the AFA rate on numerous occasions, where this rate has been applied to an exporter in a prior segment."[33] Accordingly, we continue to find that applying the antidumping duty rate from the most recently completed review (*i.e.*, the 2010-2011 administrative review) to the PRC-wide entity, including Baoding Mantong, as the AFA rate is appropriate.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the positions set forth above. If accepted, we will publish the final results and the final weighted-average dumping margin for the PRC-wide entity, including Baoding Mantong, in the *Federal Register*.

✓
Agree

Disagree

Paul Piquado
Assistant Secretary
for Import Administration

1 APRIL 2013
Date

[31] *See Preliminary Results.*

[32] *See Administrative Review of Honey From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 70417 (November 26, 2012), and accompanying Issues and Decision Memorandum at Comment 5, citing *Watanabe Group v. United States*, 33 Int'l Trade Rep. (BNA) 1012 (CIT December 22, 2010) at footnote 10.

[33] *Id.*, citing *KYD, Inc. v. United States*, 607 F.3d 760, 766-767 (CAFC 2010) and *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (affirming a 73.55 percent total AFA rate, the highest available dumping margin calculated for a different respondent in the investigation).