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International Trade Administration

Washington, D.C. 20230

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August 16, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Christian Marsh *ST*
For Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Results of Antidumping
Duty New Shipper Review: Glycine from the People's Republic
of China

Summary

We are conducting a new shipper review of the antidumping duty order on glycine from the People's Republic of China (PRC), covering the period March 1, 2012, through August 31, 2012. As explained below, we recommend preliminarily rescinding this new shipper review.

Background

On March 29, 1995, we published in the *Federal Register* the antidumping duty order on glycine from the PRC.¹ On October 28, 2012, we received a timely new shipper review request from Hebei Donghua Jiheng Fine Chemical Company, Ltd. (Donghua Fine Chemical) and Hebei Donghua Jiheng Chemical Company, Ltd. (Donghua Chemical) (collectively, the Hebei Companies) in accordance with section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(c).² We determined that the Hebei Companies' request for a new shipper review covering Donghua Fine Chemical met the threshold requirements for initiation of a new shipper review and, therefore, on October 23, 2012, initiated a new shipper review for Donghua Fine Chemical.³ In our new shipper review *Initiation Notice* and initiation checklist,

¹ See *Antidumping Duty Order: Glycine From the People's Republic of China*, 60 FR 16116 (March 29, 1995).

² See the Hebei Companies' letter to the Department regarding, "Glycine from China (A-570-836): Request for New Shipper Review for the Period of Review of 3/1/12-8/31/12," dated September 28, 2012 (New Shipper Review Request); see also Memorandum to Richard O. Weible, Director, Antidumping and Countervailing Duty Operations, Office 7, Import Administration, regarding, "Proprietary Decision Memorandum for Preliminary Results of Antidumping Duty New Shipper Review: Glycine from the People's Republic of China," dated concurrently with these results and hereby adopted by this notice (Proprietary Preliminary Decision Memorandum), at page 4, where we determined that Donghua Fine Chemical and Donghua Chemical are affiliated entities.

³ See *Glycine From the People's Republic of China: Notice of Initiation of Antidumping Duty New Shipper Review*, 77 FR 65669 (October 31, 2012) (*Initiation Notice*). We also note that based on the information presented at initiation, we initiated a review of Donghua Fine Chemical's exports to the United States of glycine from the PRC.



we raised concerns regarding Donghua Fine Chemical's possible affiliation with certain other PRC companies that previously shipped glycine to the United States.⁴

We pursued these concerns, as well as others with respect to the *bona fide* nature of the sale, throughout this segment of the proceeding to fully ascertain the true nature of Donghua Fine Chemical's and Donghua Chemical's affiliation with these PRC companies.

Scope of the Order

The product covered by the antidumping duty order is glycine, which is a free-flowing crystalline material, like salt or sugar. Glycine is produced at varying levels of purity and is used as a sweetener/taste enhancer, a buffering agent, reabsorbable amino acid, chemical intermediate, and a metal complexing agent. This review includes glycine of all purity levels. Glycine is currently classified under subheading 2922.49.4020 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.⁵

Discussion of the Methodology

Statutory and Regulatory Framework

As outlined in section 751(a)(2)(B) of the Act and 19 CFR 351.214, the new shipper review provisions require that the entity making a request for a new shipper review must document and certify, among other things: (A) the date on which subject merchandise of the exporter or producer making the request was first entered, or withdrawn from warehouse, for consumption, or, if it cannot establish the date of first entry, the date on which the exporter or producer first shipped the merchandise for export to the United States; (B) the volume of that and subsequent shipments; and (C) the date of the first sale to an unaffiliated customer in the United States.⁶ If these requirements, among others, are met, the Department will initiate a new shipper review to determine whether the new shipper is eligible for an individual weighted-average dumping margin.⁷ Further, an exporter or producer must request a new shipper review within one year of the date of the first entry (or if appropriate, first shipment for export to the United States).⁸

Section 771(33) of the Act, states that the following persons shall be considered to be affiliated or affiliated persons: (A) "members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants," (B) "any officer or director of

However, based on our review of record information, we note that this new shipper review covers imports of technical grade (or crude glycine) produced by Donghua Chemical and then further processed and exported by Donghua Fine Chemical.

⁴ See *Initiation Notice* at 65670 and accompanying Memorandum to the file entitled, "Initiation of Antidumping Duty New Shipper Review: Glycine from the People's Republic of China," dated October 23, 2012, at pages 6-7 (Initiation Checklist).

⁵ In a separate scope ruling, the Department determined that D(-) Phenylglycine Ethyl Dane Salt is outside the scope of the order. See *Notice of Scope Rulings*, 62 FR 62288 (November 21, 1997).

⁶ See 19 CFR 351.214(b)(2)(iv)(A)-(C).

⁷ See generally 19 CFR 351.214(b)(2).

⁸ See 19 CFR 351.214(c) (referring to the date in 19 CFR 351.214(b)(iv)(A)).

an organization and such organization,” (C) “partners,” (D) “employer and employee,” (E) “any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization,” (F) “two or more persons directly or indirectly controlling, controlled by, or under common control with, any person,” or (G) “any person who controls any other person and such other person.” Furthermore, section 771(33) of the Act states that “a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.”

Analysis

As noted above, in our new shipper review *Initiation Notice* and Initiation Checklist, we raised concerns regarding Donghua Fine Chemical’s and Donghua Chemical’s possible affiliation with certain other PRC-companies that previously shipped glycine to the United States.⁹ We pursued these concerns in three supplemental questionnaires, examining at length Donghua Fine Chemical’s and Donghua Chemical’s affiliation with these other PRC-companies. The Hebei Companies responded to our questions, yet, these responses were deficient in many respects, provided confusing and often contradictory statements, failed to provide requested documentation, and overall did not consistently and clearly address our concerns. Our analysis of the record evidence, and lack thereof, appears to indicate that both Donghua Fine Chemical and Donghua Chemical are affiliated with entities that entered subject merchandise into the United States more than one year prior to Donghua Fine Chemical’s request for a new shipper review. Therefore, we preliminarily determine that Donghua Fine Chemical has failed to certify to its first U.S. shipment and its first U.S. sale, as required by 19 CFR 351.214(b)(2)(iv)(A) and (C). Because record evidence shows that the Hebei Companies did not report Donghua Fine Chemical’s first shipment of subject merchandise in its request for a new shipper review, and did not meet the deadline requirements of 19 CFR 351.214(c), we have preliminarily found that the Hebei Companies’ request does not satisfy the regulatory requirements for a new shipper review. Thus, we preliminarily determine that it is appropriate to rescind the new shipper review for Donghua Fine Chemical on this basis.¹⁰

We have not conducted a detailed *bona fides* analysis for these preliminary results due to the preliminary decision that Donghua Fine Chemical is not eligible for a new shipper review because it is affiliated with entities that exported subject merchandise to the United States more than one year prior to Donghua Fine Chemical’s request for new shipper review. Should Donghua Fine Chemical sufficiently demonstrate that it is not, in fact, affiliated with entities which exported subject merchandise to the United States more than one year prior to Donghua Fine Chemical’s request for new shipper review as detailed above, we will conduct a full *bona fides* analysis of Donghua Fine Chemical’s reported sales at that time.

⁹ See *Initiation Notice* at 65670; see also *Initiation Checklist* at pages 6-7.

¹⁰ See, e.g., *Wooden Bedroom Furniture From the People’s Republic of China: Final Rescission of Antidumping Duty New Shipper Review*, 77 FR 21536 (April 10, 2012); see also, *Honey From Argentina: Preliminary Rescission of Antidumping Duty New Shipper Review*, 77 FR 45334 (July 31, 2012), unchanged in *Honey From Argentina: Final Rescission of Antidumping Duty New Shipper Review*, 77 FR 65670 (October 30, 2012) where we rescinded these new shipper reviews on the basis that these companies were affiliated with entities which had prior shipments and operated under different names.

Since much of the factual information used in our analysis involves business proprietary information, a full discussion of the basis for our decision to rescind is set forth in the Proprietary Preliminary Decision Memorandum.

Recommendation

We recommend rescinding this new shipper review for these preliminary results.

✓
Agree Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Import Administration

16 AUGUST 2013
Date