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December 18, 2013

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review; 2012-2013: Glycine from the People's Republic of China

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SUMMARY

In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on glycine from the People's Republic of China (PRC) for the period March 1, 2012, through February 28, 2013. The Department has preliminarily determined that the mandatory respondent, Hebei Donghua Jiheng Fine Chemical Co., Ltd. (Donghua Fine Chemical), has failed to establish that it is separate from the PRC-wide entity. As a result, the PRC-wide entity, which includes Donghua Fine Chemical, is under review. Moreover, we have preliminarily applied facts otherwise available with an adverse inference to the PRC-wide entity, because an element of that entity, Donghua Fine Chemical, failed to act to the best of its ability in complying with the Department's request for information in this review and, consequently, significantly impeded the proceeding.

If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the period of review. Interested parties are invited to comment on these preliminary results. We intend to issue final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

Background

On March 1, 2013, the Department notified interested parties of their opportunity to request an administrative review, covering the period March 1, 2012, through February 28, 2013, of the antidumping duty order on glycine from the PRC.[1] In response, we received a request for review of 40 exporters from a domestic interested party, GEO Specialty Chemicals, Inc. (GEO), on March 29, 2013.[2] GEO supplemented its request by asking for a review of an additional exporter on April 1, 2013. On April 1, 2013, we also received a request for review of Donghua Fine Chemical, filed on behalf of itself and Hebei Donghua Jiheng Chemical Co., Ltd. (Donghua Chemical), a producer of Chinese glycine. The Donghua companies further asked that the review be initiated but then suspended pending completion of a new shipper review of the same order, covering subject merchandise exported by Donghua Fine Chemical from March 1, 2012, through August 31, 2012.

We initiated the administrative review on May 1, 2013,[3] and released CBP entry data on May 8, 2013, for comment by interested parties on respondent selection.[4] We received comments on the data from GEO on May 13, 2013. On July 2, 2013, we selected two respondents for individual examination in the review; namely, we selected Baoding Mantong Fine Chemistry Co., Ltd. (Baoding Mantong), and Donghua Fine Chemical as the mandatory respondents.[5] We issued the antidumping duty questionnaire to these companies on July 10, 2013. Because Donghua Fine Chemical was also participating in the new shipper review, we consulted with it on July 15, 2013, at which time Donghua Fine Chemical's counsel indicated that it intended to participate in both reviews.[6]

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[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 78 FR 13858 (March 1, 2013).

[2] The public record of the review, including all public or public versions of correspondence filed by parties or the Department, may be accessed electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to guest and registered users at http://iaaccess.trade.gov and is also available to the public in the Central Records Unit, room 7046 of the main Department of Commerce building.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 78 FR 25418 (May 1, 2013) (*Initiation Notice*).

[4] *See* Memorandum to the File from Edythe Artman, International Trade Compliance Analyst, regarding "Release of United States Customs and Border Protection Entry Data for Selection of Respondents for Individual Review, dated May 8, 2013 (Data Release Memorandum).

[5] *See* Memorandum to Richard O. Weible, Director, AD/CVD Operations, Office 7, from Nancy Decker and Edythe Artman, International Trade Analysts, regarding "Selection of Mandatory Respondents for the 2012/2013 Administrative Review of the Antidumping Duty Order of Glycine from the People's Republic of China," dated July 2, 2013 (Respondent Selection Memorandum).

[6] *See* Memorandum to the File from Angelica L. Mendoza, Program Manager, AD/CVD Operations, Office 7, Import Administration, regarding "2012-2013 Antidumping Duty Administrative Review of Glycine from the People's Republic of China: Consultation with Counsel for Mandatory Respondents Hebei Donghua Jiheng Chemical Co., Ltd. and Hebei Donghua Jiheng Fine Chemical Co., Ltd., dated July 15, 2013 (July 15 Consultation Memorandum). The counsel, who had yet to file a notice of appearance in the administrative review, had filed Donghua Fine Chemical's request for review and also represented the company in the new shipper review.

On June 7, 2013, GEO filed a withdrawal of request for review of three exporters and, on July 26, 2013, it withdrew its request for review of the remaining exporters named in the initiation notice.

On August 6, 2013, Donghua Fine Chemical filed a notice of appearance, an administrative protective order (APO) application, and a "scheduling request" in which it asked the Department to transfer the questionnaire responses that the company had filed in its new shipper review to the record of the administrative review in lieu of the company filing a set of new responses or, alternatively, to move the deadlines for the responses until after the issuance of the preliminary results of the new shipper review. On August 8, 2013, GEO filed comments on this request and, on August 13, 2013, we issued a letter to Donghua Fine Chemical denying its request in full.

On August 14, 2013, Donghua Fine Chemical requested an extension of time to respond to all sections of the antidumping duty questionnaire. On October 18, 2013, we denied this request in full. On the same day, the Department notified all interested parties that the deadline for the preliminary results of review would be extended by 16 days due to the closure of the federal government from October 1, through October 16, 2013.[7]

On December 2, 2013, Donghua Fine Chemical filed a request to extend the preliminary results of review so that a key issue could be discussed with Department officials. On December 13, 2013, the company's counsel had a teleconference with these officials,[8] and, on December 16, 2013, we denied Donghua Fine Chemical's request to extend the preliminary results.

Scope of the Order

The product covered by this 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 proceeding 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). In a separate scope ruling, the Department determined that D(-) Phenylglycine Ethyl Dane Salt is outside the scope of the order.[9] Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

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[7] *See* Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, regarding "Deadlines Affected by the Shutdown of the Federal Government," dated October 18, 2013 (Tolling Memorandum).

[8] *See* Memorandum to the File from Edythe Artman, International Trade Compliance Analyst, AD/CVD Operations, Office 6, regarding "*Ex Parte* Meeting with Counsel for Hebei Donghua Jiheng Fine Chemical Co., Ltd., dated December 13, 2013 (December 13 *Ex Parte* Memorandum).

[9] *See Notice of Scope Rulings and Anticircumvention Inquiries*, 62 FR 62288 (November 21, 1997).

Respondent Selection

Section 777A(c)(1) of the Act directs the Department to calculate an individual weighted-average dumping margin for each known exporter or producer of the subject merchandise. However, if it is not practicable to calculate individual weighted-average dumping margins because of the large number of exporters and producers involved in the review, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters and producers, based on sampling or the selection of exporters or producers accounting for the largest volume of subject merchandise from the exporting country that can be reasonably examined.

We named 41 exporters in the *Initiation Notice* and informed all interested parties of our intent to limit the number of companies examined in the administrative review in our May 8, 2013, Data Release Memorandum. We attached relevant CBP entry data to this memorandum so that it could be commented upon by parties authorized to receive business proprietary information under an APO.[10] On May 13, 2013, GEO submitted comments on this data, that we addressed in our July 2, 2013, Respondent Selection Memorandum.[11] We selected Baoding Mantong and Donghua Fine Chemical as mandatory respondents in the review, based on the fact that they were the two largest exporters of subject merchandise by import volume during the period of review.[12]

We issued the antidumping duty questionnaire to these two companies on July 10, 2013, and we consulted with Donghua Fine Chemical's representative, pursuant to 19 CFR 351.214(j), on July 15, 2013, at which time the counsel confirmed the company's intent to fully participate in the review.[13] On July 26, 2013, GEO filed a timely request to withdraw its request for review of both Baoding Mantong and Donghua Fine Chemical. However, Donghua Fine Chemical and Donghua Chemical did not withdraw their request for review and, consequently, Donghua Fine Chemical remains the sole mandatory respondent in the review.

Intent Not To Rescind Review In Part

GEO's withdrawals of its two requests for review of the companies named in the *Initiation Notice* were timely pursuant to 19 CFR 351.213(d)(1) because they were filed within 90 days of the date of publication of the initiation notice. Thus, with the exception of Donghua Fine Chemical, all requests for review have been withdrawn for the following exporters: 1) A&A Pharmachem Inc., 2) AICO Laboratories India Ltd., 3) Amol Pharmaceuticals Pvt. Ltd., 4) Avid Organics, 5) Aqua Bond Inc., 6) Baoding Mantong Fine Chemistry Co., Ltd., 7) Beijing Onlystar Technology Co., Ltd., 8) Chiyuen International Trading Ltd., 9) China Jiangsu International Economic Technical Cooperation Corporation, 10) E-Heng Import and Export Co., Ltd., 11) Evonik Rexim (Nanning) Pharmaceutical Co., Ltd., 12) FarmaSino Pharmaceuticals (Jiangsu)

[10] *See* Data Release Memorandum at attachment 2.

[11] *See* Respondent Selection Memorandum at 3 and 4.

[12] *Id*. at 6.

[13] *See* July 15 Consultation Memorandum at 1.

Co., Ltd., 13) General Ingredient Inc., 14) Gulbrandsen Technologies (India), 15) Gurvey & Berry Co., 16) H.T. Griffin Food Ingredients, 17) Hong Kong United Biochemistry Co. Ltd., 18) Jiangsu Dongchang Chemical, 19) Jiangxi Ansun Chemical Technology, 20) Jiangyin Trust International Inc., 21) Jizhou City Huayang Chemical Co., Ltd., 22) Kissner Milling Co. Ltd., 23) NALCO Canada Co., 24) Ningbo Create-Bio Engineering Co. Ltd., 25) Ningbo Generic Chemical Co., 26) Qingdao Samin Chemical Co., Ltd., 27) Paras Intermediates Pvt. Ltd., 28) Ravi Industries, 29) Salvi Chemical Industries, 30) Shanpar Industries Pvt. Ltd., 31) Showa Denko K.K., 32) Shijiazhuang Jackchem Co., Ltd., 33) Shijiazhuang Zexing Amino Acid Co., 34) Tianjin Garments Import & Export, 35) Tianjin Tiancheng Pharmaceutical Company, 36) Tianjin Tianen Enterprise Co. Ltd., 37) Tywoon Development (China) Co., Ltd., 38) Unipex Solutions Canada Inc., 39) XPAC Technologies Inc., and 40) Yuki Gosei Kogyo Co.

None of these exporters, named in the *Initiation Notice* and for which the requests for review were timely withdrawn, currently have a separate rate from a completed segment of the proceeding,[14] It is the Department's practice to refrain from rescinding the review with respect to the exporters at this time.[15] Although their requests for review were timely withdrawn, the exporters remain part of the PRC-wide entity.[16] Therefore, we do not intend to rescind the review with respect to them, as they remain a part of the PRC-wide entity under review.

Extension of the Preliminary Results of Review

As explained in a memorandum issued by the Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll deadlines for the duration of the closure of the federal government from October 1, 2013, through October 16, 2013.[17] Therefore, deadlines in this review have been extended by 16 days and, accordingly, the deadline for the preliminary results of review is now December 18, 2013.

Failure to Respond to Requests for Information

In the *Initiation Notice*, we requested any firm that wished to qualify for separate-rate status in this review, and that did not currently have a separate rate from a completed segment of the proceeding, to file a separate-rate application no later than 60 days from the date of publication of the *Initiation Notice*.[18] Thus, because Donghua Fine Chemical has not qualified for a separate rate in a prior segment of the proceeding on glycine from the PRC, it was required to file a

[14] Baoding Mantong has been found to be entitled to a separate rate in the past but lost this status in *Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 20891 (April 8, 2013), the most recently-completed review in which it participated.

[15] *See Handtrucks and Certain Parts Thereof from the People's Republic of China: Preliminary Results of the 2010-2011 Antidumping Duty Administrative Review*, 78 FR 1835 (January 9, 2013), and accompanying Preliminary Decision Memorandum at 3.

[16] We note that eight of the exporters submitted letters of no-shipments but, as none of these companies have established a separate rate in a prior segment of this proceeding, they are a part of the PRC-wide entity.

[17] *See* Tolling Memorandum.

[18] *See Initiation Notice*, 78 FR at 25419-25420.

separate-rate application by July 1, 2013. However, it did not file an application by that date or subsequent to it.

As stated in the "Respondent Selection" section above, we selected Baoding Mantong and Donghua Fine Chemical as mandatory respondents on July 2, 2013. We issued the antidumping duty questionnaire to these respondents on July 10, 2013, notifying them of the due dates of July 31, 2013 (to respond to section A of the questionnaire) and August 14, 2013 (to respond to sections C and D) in our cover letter. Because Donghua Fine Chemical was also a participant in a new shipper review of the same order, we consulted with the company pursuant to 19 CFR 351.214(j).[19] Specifically, we contacted Donghua Fine Chemical's counsel by telephone on July 15, 2013, and explained that, although the new shipper review was ongoing, we expected the company to fully participate in the administrative review as a mandatory respondent.[20] The counsel responded by indicating that Donghua Fine Chemical intended to fully participate in the review and would respond to the questionnaire.[21] However, Donghua Fine Chemical did not file a response to section A of the questionnaire, nor did it file an extension request for the response, by the July 31, 2013, due date.

On August 2, 2013, Donghua Fine Chemical's counsel contacted the Department by telephone and e-mail to discuss the filing of the questionnaire responses.[22] At that time, the counsel stated that, based on the July 15 consultation, it was his impression that Donghua Fine Chemical did not have to file any questionnaire responses because the Department was going to transfer the questionnaire responses from the record of the new shipper review to that of the administrative review.[23] He also stated that, based on the consultation, he was under the impression that the administrative review had been "stayed" until completion of the new shipper review.[24] We informed the counsel that the program manager, with whom he had consulted on July 15, 2013, recalled telling him that, if he desired to transfer documents from one record to the other, he would have to file a request with the Department to do so.[25] We also informed him that, because he had yet to file a notice of appearance or APO application on behalf of Donghua Fine Chemical, we were limited in addressing his concerns about the company's participation in the administrative review.[26]

[19] *See* July 15 Consultation Memorandum at 1.

[20] *Id*.

[21] *Id*.

[22] *See* Memorandum to the File from Edythe Artman, International Trade Analyst, AD/CVD Operations, Office 7, regarding "Questionnaire Responses of Hebei Donghua Jiheng Fine Chemical Co., Ltd., in the 2012-2013 Antidumping Duty Administrative Review of Glycine from the People's Republic of China," dated August 2, 2013.

[23] *Id*. at 1.

[24] *Id*.

[25] *Id*. at attachment 1.

[26] *Id*.

On August 6, 2013, the company's counsel filed a notice of appearance, an APO application and a "scheduling request" on behalf of the company, Donghua Fine Chemical.[27] In this request, the company formally asked the Department to transfer the questionnaire responses for the new shipper review to the record of the administrative review in lieu of it filing responses for the administrative review. Donghua Fine Chemical asked that, alternatively, the Department move the deadlines for the questionnaire responses until after the issuance of the preliminary results in the new shipper review. On August 8, 2013, GEO filed comments in which it asked the Department to deny Donghua Fine Chemical's rescheduling request and to apply adverse facts available to the company in the preliminary results of the administrative review.

In an August 13, 2013, letter, we responded to Donghua Fine Chemical's scheduling request by explaining that, based on the CBP entry data, we did not agree with the company's assumption that information filed in the new shipper review would be equally applicable to the administrative review. We stated that we also did not agree with the company's assertions that transferring the responses from one review to the other would make for a more expedient review process for the Department. We thus denied the request to transfer the responses, as well as the request to reschedule the response due dates in light of the statutory time constraints imposed on the administrative review.

Donghua Fine Chemical filed a request for an extension of time to respond to all sections of the questionnaire, including section A, on August 14, 2013. The company stated that good cause existed for the extensions because: 1) the CBP data showed there may be entries of which the company had been previously unaware, and 2) because the Department had now indicated (in its letter of the day before) that it would not be using a six-month period of review for the administrative review.

On August 22, 2013, Donghua Fine Chemical's counsel contacted Department officials by telephone to restate that it had been his impression (*i.e.*, during the period between the July 15 consultation and the July 31 due date for the section A response) that the company did not need to file questionnaire responses until the Department had made a decision regarding the transfer of responses from the new shipper review.[28] In a follow-up e-mail on August 28, 2013, the counsel emphasized that, if he had received a notification in IA ACCESS of the posting of the July 15 Consultation Memorandum,[29] he would have immediately contacted the Department to ascertain

[27] Counsel filed a corrected APO application on August 8, 2013, and the Department included him on the APO service list on August 9, 2013.

[28] *See* Memorandum to the File from Angelica L. Mendoza, Program Manager, AD/CVD Operations, Office 7, Import Administration, regarding "2012-2013 Antidumping Duty Administrative Review of Glycine from the People's Republic of China: Phone Conversation with Counsel for Mandatory Respondent Hebei Donghua Jiheng Fine Chemical Co., Ltd," dated August 22, 2013, and Memorandum to the File from Richard Weible, Director, Office 7, AD/CVD Operations, Import Administration, regarding "2012-2013 Antidumping Duty Administrative Review of Glycine from the People's Republic of China: Phone Conversation with Counsel for Mandatory Respondent Hebei Donghua Jiheng Fine Chemical Co., Ltd," dated August 22, 2013.

[29] This memorandum was uploaded in IA ACCESS on the day of the consultation, resulting in a notification of the posting being sent to all interested parties of record.

whether we expected Donghua Fine Chemical to file original responses in the administrative review.[30]

On October 18, 2013, we denied Donghua Fine Chemical's extension request because we found that, based on the reasons cited in the company's request and pursuant to 19 CFR 351.302(b), it had failed to provide us with good cause to grant the request. In our letter, we further noted that, even if we had been able to grant the request with respect to sections C and D of the questionnaire, the request to extend the due date for section A was filed two weeks late and, given the untimeliness of this request and the fact that the company had not filed a separate-rate application, we would not be able to grant a separate rate to the company in the current review or calculate a weighted-average margin for it.

On November 6, 2013, Donghua Fine Chemical's counsel spoke with Department officials to state that the company was interested in fully participating in the administrative review and that the delay in filing a response to section A was due to his impression prior to early August that the Department was considering the possibility of transferring the responses from the record of the new shipper review to that of the administrative review.[31] On December 2, 2013, Donghua Fine Chemical filed a request to extend the preliminary results of review so that this issue could be discussed further with Department officials. In a meeting on December 13, 2013, the company's counsel reiterated that he had been under the impression that the Department was considering the transfer of responses from one record to the other prior to the July 31 deadline for the response to section A.[32] In light of this additional discussion, we found there was no basis to extend the preliminary results and denied Donghua Fine Chemical's request for such on December 16, 2013.

DISCUSSION OF THE METHODOLOGY

Non-Market Economy Country Status

The Department considers the PRC to be a non-market economy (NME) country.[33] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the Department. Therefore, we continue to treat the PRC as an NME country for purposes of these preliminary results.

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[30] *See* Memorandum to the File from Angelica L. Mendoza, Program Manager, AD/CVD Operations, Office 7, Import Administration, regarding "2012-2013 Antidumping Duty Administrative Review of Glycine from the People's Republic of China: E-mail from Counsel for Mandatory Respondent Hebei Donghua Jiheng Fine Chemical Co., Ltd," dated August 29, 2013.

[31] *See* Memorandum to the File from Edythe Artman, International Trade Compliance Analyst, AD/CVD Operations, Office 6, regarding "*Ex Parte* Meeting with Counsel for Hebei Donghua Jiheng Fine Chemical Co., Ltd.," dated November 7, 2013; and the December 13 *Ex Parte* Memorandum.

[32] *See* December 13 *Ex Parte* Memorandum.

[33] *See, e.g.*, *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Results of the First Administrative Review, Preliminary Rescission, in Part, and Extension of Time Limits for the Final Results*, 76 FR 62765, 62767-68 (October 11, 2011), unchanged in *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review*, 77 FR 21734 (April 11, 2012).

Separate Rates Determination

There is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate.[34] In the *Initiation Notice*, the Department notified parties of the application process by which exporters may obtain separate-rate status in NME reviews.[35] It is our policy to assign a single rate to all exporters of the merchandise subject to review in a NME country unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its exports.[36] To establish if a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991), and as amplified in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994). However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate-rate analysis is not necessary to determine if it is independent from government control.[37]

In the current review, we received one separate-rate application from Evonik Rexim (Nanning) Pharmaceutical Co., Ltd. (Evonik), on July 1, 2013. However, GEO withdrew its request of review for Evonik on July 26, 2013, and Evonik has not obtained a separate rate in any previous segment of the proceeding. Thus, for purposes of this review, it remains a part of the PRC-wide entity.

Donghua Fine Chemical did not file a separate-rate application, which was due on July 1, 2013.[38] Since the company has not qualified for a separate rate in a prior segment of the proceeding and did not file the requisite application in this review, we preliminarily find it to be part of the PRC-wide entity.

[34] *See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079, 53082 (September 8, 2006); *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China*, 71 FR 29303, 29307 (May 22, 2006).

[35] *See Initiation Notice*, 78 FR at 25419-25420.

[36] *See* Import Administration Policy Bulletin, Number 05.1, regarding "Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries," dated April 5, 2005.

[37] *See, e.g.*, *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007).

[38] *See Initiation Notice*, 78 FR at 25420.

The PRC-Wide Entity

As discussed above, we find that Evonik, Donghua Fine Chemical and the exporters, for which the requests for review were timely withdrawn but which we do not intend to rescind from the review, to be part of the PRC-wide entity and, thus, subject to the results of the review.

Adverse Facts Available

1. Use of Facts Available and Adverse Facts Available

Section 776(a) of the Act provides that the Department shall 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 information within the deadlines established, or in the form and 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.

Furthermore, section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Adverse inferences are appropriate to "ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[39] Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.[40]

2. Application of Total Adverse Facts Available to the PRC-Wide Entity

In the *Initiation Notice*, the Department stated that, if one of the companies for which this review was initiated "does not qualify for a separate rate, all other exporters of Glycine from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part."[41] The Department preliminarily determines that it must rely on facts otherwise available to assign a dumping margin to the PRC-wide entity in accordance with sections 776(a)(1),(2)(A),(B) and (C) of the Act because necessary information is not on the record, and because the PRC-wide entity, which includes Donghua Fine Chemical, has withheld information that was requested within the established deadline and, by not providing requested information, has significantly impeded the proceeding. Specifically, we find that, although Donghua Fine Chemical requested the review of its own sales and stated its intent to fully participate in the review, it failed to file a timely separate-rate application or a timely response to section A of the questionnaire. Further, the Department preliminarily finds that Donghua Fine Chemical's failure to provide the requested information constitutes circumstances under which the Department concludes that the company and, hence,

[39] *See Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. No., 103-316 at 870 (1994) (*SAA*).

[40] *See* Section 776(b) of the Act.

[41] *See Initiation Notice*, 78 FR at 25422, n. 7.

the PRC-wide entity, has not acted to the best of its ability to comply with the Department's request for information. Therefore, pursuant to section 776(b) of the Act, the Department has preliminarily determined that the PRC-wide entity has failed to cooperate by not acting to the best of its ability and, accordingly, when selecting from among the facts otherwise available, an adverse inference is warranted with respect to the PRC-wide entity.

3. Selection of an Adverse-Facts-Available Rate

In deciding which facts to use as adverse facts available, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any information placed on the record. The Department's practice in reviews, when selecting a rate as total adverse facts available, is to use the highest rate on the record of the proceeding which, to the extent practicable, can be corroborated.[42] The Court of International Trade and the Court of Appeals for the Federal Circuit have affirmed decisions to select the highest margin from any prior segment of the proceeding as the adverse-facts-available rate on numerous occasions.[43] The Department's practice is to select an adverse-facts-available rate that is sufficiently adverse as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner, and that ensures that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.[44]

In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's commercial activity, selecting the highest prior margin reflects a "common sense inference that the highest prior margin is the most probative evidence of current rates because, if it were not so, the importer, knowing the rule, would have produced current information showing the respondent's rate to be less."[45]

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[42] *See Glycine from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 15930, 15934 (April 8, 2009), unchanged in *Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 41121 (August 14, 2009); *see also Fujian Lianfu Forestry Co., Ltd. v. United States*, 638 F. Supp. 2d 1325, 1336 (CIT 2009) ("Commerce may, of course, begin its total AFA selection process by defaulting to the highest rate in any segment of the proceeding, but that selection must then be corroborated, to the extent practicable.")

[43] *See, e.g., KYD, Inc. v United States*, 607 F.3d 760, 766-767 (Fed. Cir. 2010) (*KYD*); *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990) (*Rhone Poulenc*); *Shanghai Taoen International Trading Co., Ltd. v. United States*, 360 F. Supp. 2d 1339, 1348 (CIT 2005) (upholding a 223.01 percent total adverse-facts-available rate, the highest available dumping margin from a different respondent in a previous administrative review); *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55 percent total adverse-facts-available rate, the highest available dumping margin from a different respondent in a less-than-fair-value investigation); *Kompass Food Trading International v. United States*, 24 CIT 678, 684 (2000) (upholding a 51.16 percent total adverse-facts-available rate, the highest available dumping margin from a different, fully cooperative respondent).

[44] *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8911 (February 23, 1998); *see also Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review*, 70 FR 69937, 69939 (November 18, 2005); *SAA at 870*.

[45] *See KYD*, 607 F.3d at 766 (citing *Rhone Poulenc*, 899 F.2d at 1190).

Consistent with the statute, court precedent and our practice, the Department has assigned, as adverse facts available, a rate of 453.79 percent to the PRC-wide entity, which includes Donghua Fine Chemical and the companies which we do not intend to rescind from the review. This margin is the highest rate on the record of any segment of this proceeding,[46] and is the rate currently applicable to the PRC-wide entity.

4. Corroboration of Secondary Information

Section 776(c) of the Act provides that, when the Department relies upon secondary information, rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as "{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 {of the Act} concerning the subject merchandise."[47] To corroborate means to determine that the information used has probative value.[48] The Department has determined that to have probative value, information must be both reliable and relevant.[49] Independent sources used to corroborate such evidence may include, for example, "published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation."[50] Unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated margins. Thus, in an administrative review, if the Department chooses a calculated dumping margin from a prior segment of the proceeding as adverse facts available, as we have done in this review, it is not necessary to question the reliability of the margin.[51]

The Department has previously corroborated the 453.79 percent rate, the highest rate on the record of any segment of this proceeding, with respect to the PRC-wide entity. The Department notes this *ad valorem* rate was calculated for the final results of the 2010/2011 administrative

[46] *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 64100 (October 18, 2012) (*2010/2011 Glycine Final*).

[47] *See SAA* at 870.

[48] *See id*.

[49] *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

[50] *See SAA* at 870.

[51] *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews, Final Partial Rescission of Antidumping Duty Administrative Reviews, and Determination Not To Revoke in Part*, 69 FR 55581 (September 15, 2004), and accompanying Issues and Decision Memorandum at Comment 18.

review of the order[52] and applied in the final results of the 2011/2012 administrative review as the PRC-wide entity rate.[53] In the 2011/2012 review, the Department found the 453.79 percent rate to be both reliable and relevant with respect to the PRC-wide entity, as it had been calculated in the previous review and, consequently, we determined it was probative of the commercial behavior of exporters belonging to the PRC-wide entity and, thus, corroborated to the extent practicable, in accordance with section 776(c) of the Act.[54] There is nothing on the record of the instant review that calls into question our earlier corroboration of the 453.79 percent rate with respect to the PRC-wide entity.[55] As a result, and consistent with our practice, we find that the 453.79 percent rate remains corroborated with respect to the PRC-wide entity to the extent practicable, and we will continue to assign this rate to the PRC-wide entity in this segment of the proceeding.[56]

RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

✓
Agree   Disagree

Ronald K Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

December 18, 2013

Date

[52] *See 2010/2011 Glycine Final*, 77 FR at 64101.

[53] *See Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 20891, 20892 (April 8, 2013) (*2011/2012 Glycine Final*).

[54] *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), and accompanying Preliminary Decision Memorandum at 8, unchanged in *2011/2012 Glycine Final.*

[55] *See KYD*, 607 F.3d at 766-67.

[56] *See, e.g., Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011*, 78 FR 35249 (June 12, 2013), and accompanying Issues and Decision Memorandum at 9-10 & n.46; *see also KYD,* 607 F.3d at 767; *Watanabe Group v. United States*, 2010 CIT LEXIS 144, at *14-17 (CIT December 22, 2010); *Peer Bearing Co.- Changshan v. United States*, 587 F. Supp. 2d 1317, 1327 (CIT 2008); *Harvest Wholesale, Inc. v. United States*, 26 CIT 358, 370 n.21 (2002).