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October 22, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Glycine from the People's Republic of China; 2012-2013

I. SUMMARY

We have analyzed the case and rebuttal briefs submitted by parties in the administrative review of the antidumping duty order on glycine from the People's Republic of China (PRC). As a result of our analysis and as discussed below, we have not made any changes to the weighted-average dumping margin assigned to the PRC-wide entity, which includes the sole mandatory respondent, Hebei Donghua Jiheng Fine Chemical Co., Ltd. (Donghua Fine Chemical)). We recommend that you approve the positions of the Department of Commerce (the Department) set forth below in the "Discussion of Interested Party Comments" section of this memorandum.

BACKGROUND

On December 26, 2013, the Department published the preliminary results of the administrative review on glycine from the PRC in the *Federal Register*.[1] In the *Preliminary Results*, we invited interested parties to comment on our findings and to request a hearing to discuss any issues raised in case and rebuttal briefs.[2] We received comments from Donghua Fine Chemical, GEO Specialty Chemicals, Inc. (GEO), the domestic interested party in this review, and two other interested parties, Evonik Rexim (Nanning) Pharmaceutical Co., Ltd. (Evonik), and Paras

[1] *See Glycine From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013*, 78 FR 78331 (December 26, 2013) (*Preliminary Results*). The *Preliminary Results* were accompanied by the Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding "Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review; 2012-2013: Glycine from the People's Republic of China," dated December 18, 2013 (Preliminary Decision Memorandum).
[2] *Id.* at 78332.

Intermediates Pvt. Ltd (Paras).[3] GEO and Paras also submitted timely rebuttal comments. However, on March 7, 2014, we rejected the case brief filed by Donghua Fine Chemical and the rebuttal brief filed by GEO on the basis that Donghua Fine Chemical's brief contained new factual information that was untimely, unsubstantiated and unsolicited by the Department. We accepted revised briefs, from which the new information was correctly redacted, from GEO on March 10, 2014, and from Donghua Fine Chemical on July 31, 2014.[4]

Donghua Fine Chemical and Evonik requested a public hearing to discuss the briefed issues and, consequently, the Department conducted a hearing on March 12, 2014.[5]

We extended the issuance of the final results of review on April 8, 2014, June 20, 2014, and July 23, 2014. Currently, the final results are due to be issued on October 22, 2014.[6]

III. PERIOD OF REVIEW

The period of review is from March 1, 2012, through February 28, 2013.

IV. SCOPE OF THE REVIEW

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.[7] Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

[3] 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.

[4] Donghua Fine Chemical attempted resubmission of its brief on March 10, 2014, and July 23, 2014, without the requested redactions. It also filed comments on the resubmission of its case brief on March 21, 2014, and on March 23, 2014, these comments were rejected by the Department on the basis that the comments were untimely filed.

[5] Because Donghua Fine Chemical presented untimely new information in its hearing presentation, portions of the transcript have been redacted.

[6] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Edythe Artman, International Trade Compliance Analyst, Office VI, Antidumping and Countervailing Duty Operations, regarding "Glycine from the People's Republic of China: Extension of Deadline for the Final Results of Antidumping Duty Administrative Review; 2012-2013", dated July 23, 2014.

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

V. DISCUSSION OF INTERESTED PARTY COMMENTS

Comment 1: Application of Adverse Facts Available to the PRC-Wide Entity Due to Donghua Fine Chemical's Failure to Respond to Requests for Information or File a Timely Request for an Extension

In its case brief, Donghua Fine Chemical acknowledges that it did not file a response to Section A of the antidumping duty questionnaire on July 31, 2013, the due date for its submission.[8] It notes, however, that, pursuant to 19 CFR 351.302(b), the Department has the authority to extend a filing deadline if there is a showing of "good cause" to do so.

According to Donghua Fine Chemical, this is not a normal case in which there is a full record of relevant facts, as much of the discussion at issue occurred over the telephone with the Department. Donghua Fine Chemical asserts that, although the Department prepared requisite summary memoranda for several of these phone conversations, the memoranda are cursory and a memorandum to the file, dated July 15, 2013, fails to describe a discussion between Donghua Fine Chemical's counsel and Department officials concerning the movement of a new shipper record to the record of the administrative review as a means of responding to the questionnaire for the review.[9] Donghua Fine Chemical notes that this discussion was later acknowledged by the Department in a memorandum to the file, dated August 2, 2013.[10, 11]

Donghua Fine Chemical contends that, in the preliminary results of review, the Department found there to be no good cause to grant an extension for the Section A response because Donghua Fine Chemical requested the extension on August 2, 2013, and in writing on August 6, 2013. Donghua Fine Chemical also contends that the preliminary results incorrectly stated that the company waited until August 14, 2013, to request an extension, which Donghua Fine Chemical claims was actually a second request for an extension. The respondent argues that the Department previously has accepted questionnaire submissions filed after their deadlines, including situations where the respondent had not even requested an extension for its response.[12]

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[8] Although Donghua Fine Chemical filed a revised case brief on July 31, 2014, for the review record, the brief is dated July 23, 2014.

[9] The respondent is referring to the 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).

[10] *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 (August 2 Memorandum).

[11] In Attachment A of its brief, Donghua Fine Chemical provided a "Key Chronology of Administrative Review Questionnaire Discussions," although it makes no reference to the chronology in its brief.

[12] In support of its assertions, Donghua Fine Chemical cites *Circular Welded Carbon-Quality Steel Pipe from India: Preliminary Determination of Sales at Less Than Fair Value*, 77 FR 32564 (June 1, 2012), where the Department accepted some untimely responses before rejecting a final untimely response; *Stainless Steel Bar from India: Final Results of Antidumping Duty Administrative Review*, 74 FR 47198 (September 15, 2009) and accompanying issues and decision Memorandum at Comment 4, where the Department accepted late questionnaire submissions despite the receipt of improperly-filed extension requests by the respondent; *New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review*, 75 FR 64268

Donghua Fine Chemical argues that the inconsistency of the Department's approach in granting extensions is perhaps best illustrated by how it treated respondents in the less-than-fair-value investigation of glycine from Japan. Donghua Fine Chemical notes that, in that investigation, one of the respondents filed a request for an extension after the questionnaire response deadline, which was defectively prepared and not served on parties on the service list.[13] However, according to Donghua Fine Chemical, the Department fully granted the respondent's request for an extension and continued to give this respondent and another respondent multiple, and sometimes unwarranted, extensions up to a certain point.

Donghua Fine Chemical argues that in *Glycine from Japan* and other proceedings, the Department granted multiple and repeated extensions, even in cases where none was requested and where, obviously, no good cause was set forth for a late submission. It asserts that, in contrast, Donghua Fine Chemical had already submitted its Section A questionnaire information related to the entry and shipment under review to the Department in a new shipper review and was discussing with the Department the best way to use the information as a means to satisfy the review questionnaires.

Donghua Fine Chemical comments that in two memoranda issued by the Department in which it denied extension requests to the company, the Department implied that the extension requests were denied because the discussions regarding the extension were not in writing. Donghua Fine Chemical asserts that in a practice dating back as far as 30 years, the Department has orally granted extension requests in response to telephone requests for extensions.[14] Donghua Fine Chemical adds that, as mentioned above, the Department has granted extensions even in cases where no request for an extension (either orally or in writing) was made by a respondent.

Donghua Fine Chemical notes that, after more than 20 years of participating in investigations and administrative reviews, its counsel is well aware of the regulations that require extension requests to be made in writing but adds that, in this review, there was an open request for a stay of the administrative review pending the publication of the new shipper review preliminary results. The company asserts that this was not the usual circumstance where an extension was needed due to difficulty in gathering required information.

(October 19, 2010), where the Department gave the Chinese government a second, unsolicited opportunity to respond to a questionnaire; *Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from South Africa*, 66 FR 37002 (July 16 2001), where the respondent filed questionnaire responses in defective form after the deadlines and without requesting extensions but the Department nonetheless accepted them; and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Butt-Weld Pipe Fittings from the Philippines*, 65 FR 81823 (December 27, 2000), where, despite the respondent repeatedly filing late questionnaire submissions, the Department resorted to partial, and not total, facts available.

[13] *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Glycine from Japan*, 72 FR 52349, 52350 (September 13, 2007) (*Glycine from Japan*).

[14] In support, the respondent cites *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils From the People's Republic of China*, 59 FR 55625 (November 8, 1994); *Porcelain-on-Steel Cooking Ware from the People's Republic of China: Preliminary Negative Antidumping Duty Determination of Critical Circumstances*, 51 FR 25227 (July 11, 1986) (*Cooking Ware from the PRC*); and *Final Determination of Sales at Less Than Fair Value: Porcelain-On-Steel Cooking Ware from Mexico*, 51 FR 36435 (October 10, 1986) (*Cooking Ware from Mexico*).

Donghua Fine Chemical continues by asserting that, in an August 6, 2013, memorandum, the Department denied a request for an extension on the grounds that the statutory deadlines for an administrative review precluded granting the extension. However, the company argues, it is customary for the Department to grant an extension of the deadline for an initial questionnaire response and the Department must grant extensions in order to comport with its obligations under the World Trade Organization Agreements to give a respondent a minimum of 30 days to respond to a questionnaire. Donghua Fine Chemical adds that if it had requested an extension to respond to Section A prior to its due date, the Department would certainly have granted it.

Donghua Fine Chemical contends that there is little logical support for the Department's reasons for declining to extend the questionnaire deadline. According to Donghua Fine Chemical, the Department stated that the statutory deadlines to complete the administrative review precluded granting an extension until after the publication of the preliminary results of the new shipper review. However, as noted by Donghua Fine Chemical, when the Department denied the extension, the publication date of the new shipper review results was only eight days away. The company further asserts that a review of prior cases show that the Department has granted extension requests in recognition of the fact that granting a request would not impact the conduct of the review or prejudice the interests of the petitioner. Citing the *Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Ukraine*, 67 FR 55785 (August, 30, 2002), Donghua Fine Chemical notes that in that determination, the Department found that a late submission of surrogate value information would not have any impact on any interested parties because they still would have the ability to review and comment on the information.

Donghua Fine Chemical claims that the only reason it did not submit a timely request for an extension to respond to Section A was due to its reliance on the Department's representations regarding the timing of the questionnaire due date and the company's pending request to transfer the record of the new shipper review as a means of responding to the administrative review questionnaire. According to Donghua Fine Chemical, the Section A response it had submitted for the new shipper review would have required only minimal changes to serve as the response to the administrative review questionnaire, since any additional entries of subject merchandise covered by the administrative review were not sold by the company with the knowledge it would later be sold in the United States. Donghua Fine Chemical argues that, in light of past Departmental precedent, it would be inconsistent for the Department to continue to deny its extension request in this review.

Donghua Fine Chemical argues that, apart from the "good cause" considerations for granting an extension, there are "equitable tolling" principles that should be considered in this review. Donghua Fine Chemical notes that, pursuant to the tolling doctrine, where a person dealing with an agency has been "induced" into not taking a required action by relying on a statement or representation of an agency, such as not making a required filing on a timely basis, even statutory deadlines should be equitably tolled.[15] The company cites *Final Results and Partial Rescission of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products from Canada*, 67 FR 67388 (November 5, 2002) (*Softwood Lumber Products*), as an example of a

[15] The respondent cites *Irwin v. Dep't of Veterans Affairs*, 489 U.S. 89 (1990), in support of the proposition that equitable concepts apply in an administrative context.

case where the Department accepted arguments that it is appropriate to apply principles of equitable tolling where a respondent relied upon an unclear Department communication. In that case, a respondent withdrew a request for an expedited review based upon its interpretation of a Department letter that it thought indicated that it could not seek such a review. As Donghua Fine Chemical notes, the Department later reinstated the review because the respondent had misinterpreted the letter.[16]

Donghua Fine Chemical argues that the concept of equitable tolling equally applies in this administrative review because the only reason the company did not file a response to Section A was its reliance on a statement made by the Department that caused it to refrain from making the submission. Donghua Fine Chemical further argues that its case is stronger than was the case in *Softwood Lumber Products* because the respondent in that review misinterpreted a standard cover letter whereas Donghua Fine Chemical was "navigating a complicated situation that is not contemplated by the regulations." According to the company, its failure to file a response was "all based upon oral discussions by the Department regarding the transfer of the record that were not committed to paper until August 6 and 13, 2013."[17]

Donghua Fine Chemical also cites *Delphi Petroleum, Inc. v. United States*, 662 F. Supp. 2d 1348, (Ct. Int'l Trade 2009) (*Delphi*), where the plaintiff relied on the oral statement of a Customs official to wait on the filing of a Customs protest until after liquidation had occurred. The Court of International Trade (CIT) found that the Customs Service abused its discretion in not granting an extension of time for plaintiff to file its drawback claims. Donghua Fine Chemical claims that in this review, it sought advice pending a stay request and, when told by the Department that a stay would not be possible, it made an alternative request to move the record of the new shipper review to the record of the administrative review as a means of responding the review questionnaire. Donghua Fine Chemical states that the Department did not respond to this request until August 6, 2013, and that, therefore, the appropriate course of action is to grant the extension request.

In response to the Department's claim in the preliminary results that based on the July 15 Memorandum, it was unreasonable for Donghua Fine Chemical to have the impression that the Department was still considering the company's request, Donghua Fine Chemical asserts that the July 15 Memorandum was not provided to its counsel until August 2, 2013, and, for that reason, the counsel was under the impression that the company's record-transfer request was still under consideration by the Department. It asserts that if its counsel had reviewed the memorandum prior to the questionnaire due date, all ambiguity would have been resolved concerning the request. The company opines that the application of equitable tolling is particularly appropriate in this review because of the "unfortunate interaction between the Department's notice of appearance/APO regulations and its reliance on IA ACCESS as a means of communicating with parties who have requested an administrative review."[18] Donghua Fine Chemical notes that the regulations provide no deadline for filing a notice of appearance and that the Department only provided notices of its filings to its counsel as a courtesy in the administrative review. The company asserts that there is a link between the ability to receive communications from the

[16] *Softwood Lumber Products*, 67 FR at 67389.
[17] Donghua Fine Chemical's case brief at 15.
[18] *Id*. at 17.

Department and the application of an administrative protective order (APO) and that the Department must be aware of the gap resulting from the need to file an APO to receive IA ACCESS communications.

Donghua Fine Chemical contends that in cases involving equitable tolling, courts have emphasized that where an agency has adopted procedures that prevent a party from receiving notice, the application of the equitable tolling doctrine is particularly reasonable. Citing *Kyong Truong v. U.S. Secretary Agriculture*, 461 F. Supp. 2d 1349 (Ct. Int'l Trade 2006) (*Truong*), Donghua Fine Chemical asserts that the CIT found that it was appropriate to equitably toll a deadline where an agency had failed to communicate important information to a party. The CIT held that such failure should be taken into account when determining whether the actions of the relying party were reasonable. Donghua Fine Chemical asserts that the failure of the Department to provide communication of the July 15 Memorandum to its counsel should be taken into account when determining if equitable tolling is appropriate in this review.

Donghua Fine Chemical opines that the Department is aware that it does not summarize all *ex parte* communications with counsel. The company further asserts that during its participation in the new shipper and administrative reviews of the order on glycine from the PRC, there were several e-mail and telephone discussions that were never placed on the record or summarized in any *ex parte* memoranda by the Department. The company asserts that for the Department to rely on a system that it knows will not communicate information to parties who have not yet submitted an APO application is unreasonable and the resulting lack of notice should be taken into account when determining if principles of equitable tolling should be applied. Donghua Fine Chemical states that in this case, the Department failed to memorialize the key discussion regarding the transfer of the record in the July 15 Memorandum, relied on a system that did not notify an interested party that had not filed an APO of the memorandum, and rejected the possibility of moving the record on August 6, 2013, or six days after the Section A response was due. The company argues that given the combination of these factors, the statutory goal of having the Department prepare contemporaneous proof of oral discussions was entirely undermined.

In its case brief, GEO states that it fully supports the Department's findings in its *Preliminary Results* and accompanying Preliminary Decision Memorandum, which GEO notes are supported by both the record evidence and the law. GEO further notes that when the Department found that Donghua Fine Chemical had failed to file a timely separate-rate application or a timely Section A response, which led the Department to conclude that the PRC-wide entity, including Donghua Fine Chemical, had not acted to the best of its ability, it properly applied 19 CFR 351.302(c), the regulation concerning the filing of extension requests in administrative reviews. GEO adds that this approach was upheld by the CIT in *Hyosung Corp. v. United States*, 2011 Ct. Int'l Trade LEXIS 54; Slip Op. 2011-34 at *8-*10 (March 31, 2011) (*Hyosung*), where the Court affirmed the Department's discretion to reject the respondent's attempt to submit information after a deadline following its failure to request an extension before the deadline expired.

GEO comments that in its August 6, 2013, request, Donghua Fine Chemical first tried to persuade the Department to either transfer questionnaire responses from the ongoing new shipper review or postpone the questionnaire deadlines to a "reasonable time" after the new shipper

preliminary results were issued. GEO adds that in an August 14, 2013, submission, Donghua Fine Chemical formally requested an extension of the questionnaire response deadlines for the first time. GEO asserts that the Department's actions toward Donghua Fine Chemical's dilatory tactics exemplify what the CIT identified in *Hyosung* as a critical component of the Department's statutory authority – establishing deadlines to satisfy statutory timeframes.[19] GEO concludes that, even if it had been theoretically possible for the Department to accept the untimely responses, analyze them, ask for supplemental information and conduct a verification of the responses, the Department properly exercised its discretion to preserve the integrity of the administrative review process.

In its rebuttal brief, GEO comments that the Department was doing nothing unusual when, pursuant to 19 CFR 351.214(j), it contacted Donghua Fine Chemical's counsel by telephone to discuss how to proceed with the concurrent reviews. GEO also comments that the Department's instruction to Donghua Fine Chemical on July 15, 2013, to file a written request to transfer questionnaire responses from the record of the new shipper review to that of the administrative was consistent with 19 CFR 351.302(c). GEO notes that Donghua Fine Chemical never made such a request in writing before the Section A response deadline of July 31, 2013, nor did the company follow up with the Department before that deadline about the potential transfer of responses from one record to another. GEO states that for these reasons, the Department never responded in writing or otherwise to Donghua Fine Chemical between the July 15, 2013, telephone consultation and the July 31, 2013, deadline.

GEO notes that the Department was only obligated to respond to Donghua Fine Chemical in writing after the respondent submitted its August 6, 2013, request for a transfer of the questionnaire responses and a postponement of the questionnaire deadlines until a "reasonable time" after the issuance of the new shipper review results. GEO comments that on August 14, 2013, Donghua Fine Chemical filed an extension request in writing for responses to all sections of the questionnaire, including Section A, for the first time – a request that the Department turned down on October 18, 2013, because Donghua Fine Chemical had not provided "good cause" for the extension for the Section A deadline pursuant to 19 CFR 351.302(b). GEO asserts that in realizing that it failed to show that there was good cause for the extension, Donghua Fine Chemical now attempts to establish that granting an extension either after the response deadline has passed or over the telephone is consistent with Department practice.

GEO notes that, in almost all of the proceedings cited by Donghua Fine Chemical as an example of where the Department granted extensions after deadlines had passed, the party granted the extension was a *pro se* respondent.[20] GEO comments that Donghua Fine Chemical's counsel is

[19] *Hyosung* at *9-*10.

[20] GEO refers to Donghua Fine Chemical's cites to *Circular Welded Carbon-Quality Steel Pipe from India: Preliminary Determination of Sales at Less Than Fair Value*, 77 FR 32562 (June 1, 2012); *Stainless Steel Bar from India: Final Results of Antidumping Duty Administrative Review*, 74 FR 47198 (September 15, 2009); *New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review*, 75 FR 64268 (October 19, 2010) and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from South Africa*, 66 FR 37002, 37004 (July 16, 2001); *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Butt-Weld Pipe Fittings from the Philippines*, 65 FR 81823 (December 27, 2000); *and Tung Fong Industrial Co., Inc. v. United States*, 318

aware that the Department provides certain leeway to *pro se* respondents that it does not provide to respondents' counsel.[21] GEO also notes the CIT's warning in *Hyosung* that allowing parties to submit responses at whatever time is most convenient for them would amount to relinquishing the Department's authority to establish due dates for submissions and it would thus impair the Department's ability to satisfy the statutory timeframe in which to complete an administrative review.[22] GEO asserts that although the Department has allowed certain *pro se* respondents some leeway, it is not the Department's practice or policy to do so with parties represented by counsel.

GEO argues that, likewise, the granting of extensions orally in response to telephoned requests is not a Department practice. It counters that in the *Cooking Ware from the PRC* and the *Cooking Ware from Mexico* determinations, extensions were orally granted because there was no regulation requiring a written request for an extension of time at the time the determinations were issued. GEO notes that in *Notice of Final Determination of Sales of Less Than Fair Value: Certain Cased Pencils From the People's Republic of China*, 59 FR 55625, 55634 (November 8, 1994), the Department apparently did allow a respondent an extension by telephone but that the Department also allowed the petitioner a similar extension. GEO opines that Donghua Fine Chemical's counsel was required to follow the statutory and regulatory requirements to ensure that no abuse of process or injustice occurred in the current review.

GEO rebuts that equitable tolling principles do not apply in this review. It notes that Donghua Fine Chemical knew of and understood that the deadline for filing its Section A questionnaire response was July 31, 2013. GEO asserts that the respondent did not diligently pursue a timely request for an extension of time to respond. GEO further notes that the CIT has held that, "equitable tolling is not permissible where it is inconsistent with the text of the relevant statute,"[23] GEO argues that, here, the relevant text is 19 CFR 351.302, which requires that a request to extend a deadline must be made in writing before the deadline passes. GEO comments that, at best, Donghua Fine Chemical's failure to meet the questionnaire deadline or timely request an extension constitutes neglect, excusable or otherwise, to which equitably tolling does not extend. GEO further argues that equitable tolling is unwarranted because of Donghua Fine Chemical's demonstrated lack of diligence in this case. GEO notes that the company's own chronology of events shows that it took no action to meet the looming July 31, 2013, deadline or to preserve its right to file a response by seeking an extension in accordance with 19 CFR 351.302 until after the deadline had already passed.[24] GEO notes that only on August 14, 2013, did the company file an extension request in writing for the first time, a

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F. Supp. 2d 1321, 1325 and 1337 (Ct. Int'l Trade 2004); and *Notice of Preliminary Determination of Sales at Less Than Fair Value: Glycine from Japan*, 72 FR 52349 (September 13, 2007).

[21] In support of its claims, GEO cites *Certain Hot-Rolled Carbon Steel Flat Products From India: Notice of Final Results of Antidumping Duty Administrative Review*, 73 FR 31961 (June 5, 2008) and the accompanying Issues and Decision Memorandum at Comment 10; and *Wooden Bedroom Furniture From the People's Republic of China: Extension of Time Limit for the Preliminary Results of Antidumping Duty New Shipper Reviews*, 71 FR 10010 (February 28, 2006) (*Pro se* respondents may require additional assistance).

[22] *Hyosung* at *9-*10.

[23] GEO cites *Ingman v. U.S. Sec'y of Agriculture*, 29 Ct. Int'l Trade 1123, 1128 (2005) (quoting *United States v. Beggerly*, 524 U.S. 38, 48 (1998)).

[24] Donghua Fine Chemical's case brief at Attachment A.

submission that Donghua Fine Chemical omitted from its chronology. GEO opines that such inattention to deadlines does not merit the benefit of equitable tolling.

Regarding Donghua Fine Chemical's reliance on *Truong* as support for its position that the Department should have resolved the record transfer issue before Donghua Fine Chemical's deadline passed, GEO notes that this precedent is limited to cases where the agency has an affirmative duty to provide timely information, which was not the case here. GEO further notes that *Delphi* is not an equitable tolling case at all but concerns the application of 19 USC 1313, which provides for an extension of time to file a drawback claim when CBP was responsible for the untimely filing. Finally, GEO comments that although the ruling in the *Softwood Lumber Products* case states that the Government of Canada requested that equitable tolling principles be applied, the decision contains no analysis of the doctrine nor any reasoning to support its application.

Department's Position:

Donghua Fine Chemical argues that pursuant to 19 CFR 351.302(b), "good cause" exists to extend the deadline for its questionnaire response. However, we continue to find that Donghua Fine Chemical did not request an extension in a timely manner pursuant to 19 CFR 352.302(c), nor did it provide good cause pursuant to 19 CFR 351.302(b). The Department's regulations provide that the agency "may, for good cause, extend any time limit established by this part."[25] Further, parties that request extensions are required to submit a written request "before the time limit specified" by the Department, and must "state the reasons for the request."[26] As noted by the CIT in *Grobest*, the Department has the discretion to "set and enforce deadlines."[27] Otherwise any party would be allowed to provide the Department with information at the parties' leisure and expect the agency to review the information and issue a binding determination.[28] The establishment of deadlines for submission of factual information in an antidumping duty review is not arbitrary.[29] Rather, deadlines are specifically designed to allow a respondent sufficient time to prepare responses to detailed requests for information, and to allow the Department to analyze and verify that information, within the statutorily-mandated timeframe for completing the review. The Department recognizes that respondents may encounter difficulties in meeting certain deadlines in the course of any segment; indeed, the Department's regulations specifically address the requirements governing requests for extensions of specific time limits (*i.e.*, 19 CFR 351.302(c)). While the Department may extend deadlines when possible and where there is good cause, here Donghua Fine Chemical submitted no explanation for why it was unable to submit its extension request (or responses) in a timely manner.

[25] 19 CFR 351.302(b).
[26] 19 CFR 351.302(c).
[27] *See Grobest & I-Mei Industrial (Vietnam) Co., Ltd., v. United States*, 815 F. Supp. 2d 1342, 1365 (CIT 2012) (*Grobest*).
[28] *See Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China*, 69 FR 67313 (November 17, 2004) and accompanying Issues and Decision Memorandum at Comment 82.
[29] *See Saha Thai Steel Pipe Co., Ltd. v. United States*, 828 F. Supp. 57, 64 (CIT 1993) ("...the Department has honored one of the fundamental principles underlying the trade statute accuracy. It is this endeavor for accuracy, within the limits of strict deadlines, that lends respectability to U.S. trade statues...").

Donghua Fine Chemical premises its arguments on the "unusual circumstances" of this review. However, a review of the record (*see* Preliminary Determination Memorandum at pages 5-8) demonstrates that there are no unusual circumstances but, rather, a failure on behalf of Donghua Fine Chemical to 1) file a timely separate rate application by the July 1, 2013 deadline, 2) file a timely Section A response by the July 31, 2013 deadline, or 3) file a timely request for extension. For instance, the record clearly shows that Donghua Fine Chemical did not file an extension request for its Section A response until August 14, 2013, two weeks following its missed filing deadline.[30] Likewise, the record establishes that the company did not file a request in writing to transfer responses from the new shipper review to the record of the administrative review until August 6, 2013, even though Donghua Fine Chemical argues this request was made prior to the July 31, 2013, deadline.

Donghua Fine Chemical argues that the Department has a practice of accepting untimely requests for extensions, in some cases granting them even where a party did not request one. However, many of these instances occurred in the context of a less-than-fair-value investigation, where a respondent was new to the administrative process, or involved *pro se* respondents, which led us to give the respondents additional opportunities to file responses to requests for information. Furthermore, there are many instances in which the Department has denied a party's untimely request for an extension, finding that the party did not demonstrate good cause.[31] In any event, a determination of good cause is a fact-specific finding that must be made on the basis of the individual circumstances of a proceeding. Here, Donghua Fine Chemical was an experienced interested party, having already engaged in a new shipper review of the same antidumping duty order at the time it requested an administrative review of its entries. For that reason, we contacted the company, through its counsel of record for the new shipper review, on July 15, 2013, to confirm its intent to participate in both reviews. Donghua Fine Chemical's counsel confirmed its intent and stated that the company would respond to the questionnaire for the administrative review, for which the Section A response was due only a few days later.[32] Based on this discussion, we had no reason to conclude that the company was under the impression that the administrative review was somehow on hold pending the results of the new shipper review, or that the company believed an informal oral discussion counsel had with the Department meant that the company was awaiting a decision on the propriety of moving a response from the new shipper review record to that of the administrative review. Moreover, because the company had requested two reviews in a short period of time and had retained experienced counsel for the reviews, we had no basis to find that respondent either was unfamiliar with the process or missed regulatory deadlines (both the separate-rates application

[30] Donghua Fine Chemical alleges that it filed an extension request on August, 6, 2013. *See* Donghua Fine Chemical's case brief at 3, n.2. However, the August 6 request was a request that the deadlines for the instant review be moved pending completion of the preliminary results in the ongoing new shipper review. In our August 13, 2013 letter responding to Donghua Fine Chemical's request, we stated that it was not possible to reschedule or delay the administrative review for this purpose.

[31] *See Dongtai Peak Honey Industry Co., Ltd. v. United States*, 971 F. Supp. 2d 1234, 1240 (CIT 2014) ("Because Peak failed to file its extension requests before the deadline to file the {supplemental questionnaire} expired even though it was capable of doing so, Commerce reasonably determined that there was not good cause to retroactively extend the deadline."), affirming *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 1.

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

and Section A response deadlines). The respondent has presented no argument for the final determination that would cause us to revisit these findings.

Part of the respondent's argument is couched in the notion that the company could have filed the same questionnaire responses in the administrative review that it had filed in the new shipper review. We informed Donghua Fine Chemical's counsel of the infeasibility of this idea due to the different review periods on August 2, 2013, or four days before the company filed its request to transfer the responses.[33] Also, in our August 13, 2013, response to its August 6, 2013, request for a transfer, we found that it would be neither appropriate nor helpful to move the responses because our review of the new shipper record had generated a series of supplemental questionnaires and responses to clarify the original questionnaire responses. In addition, based on proprietary CBP entry data which had been released to interested parties under APO at the respondent selection phase,[34] we disagreed that the materials filed in the new shipper review would be equally applicable to the administrative review. Thus, as established by the record, this was never a situation in which it was logical to try and rely upon the responses filed in the new shipper review to satisfy the questionnaire issued for the administrative review.

Donghua Fine Chemical has argued that granting its extension request would not have impacted the conduct of the review or prejudiced the interests of GEO. We cannot agree. The Department establishes appropriate deadlines to ensure that its ability to complete the proceeding is not jeopardized. We note that the CIT has long recognized the need to establish and enforce time limits for filing questionnaire responses, the purpose of which is to aid the Department in the administration of the dumping laws.[35] Thus, a party seeking an extension of the Department's deadlines must demonstrate good cause for us to consider its request.[36] Here, Donghua Fine Chemical missed its deadlines for its separate-rate application and its Section A response, and filed an untimely request for an extension for its Section A response on August 14, 2014. Also, as stated in our October 18, 2013, letter denying Donghua Fine Chemical's request, the company simply provided no sound basis for granting its extension request. Even if it had provided such a basis, it would have been difficult to analyze Donghua Fine Chemical's complete questionnaire response at that point and issue preliminary results within the statutory timeframe.

Donghua Fine Chemical next argues that equitable tolling principles require that the Department grant its requested extension. According to Donghua Fine Chemical, this doctrine states that where there were explicit oral or written statements that lulled a party into inaction, *i.e.*, missing a deadline, the relevant deadline is tolled regardless of whether the agency representative

[33] *See* August 2 Memorandum at 1.
[34] *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 (CBP Data Memorandum). Pursuant to the Department's regulations, only those parties that had filed a notice of appearance and an application for an administrative protective order (APO) would have had access to the proprietary information in this release. *See* 19 CFR 351.103(d)(1); 19 CFR 351.305. Because Donghua Fine Chemical had not filed a notice of appearance and an APO application at the time of this release, it did not have access to this proprietary information.
[35] *See e.g., Nippon Steel Corp. v. United States*, 118 F. Supp. 2d 1366, 1377 (CIT 2000); and *Seattle Marine Fishing Supply, et al. v. United States*, 679 F. Supp. 1119, 1128 (CIT 1998) (it was not unreasonable for the Department to refuse to accept untimely filed responses, where "the record displays the ITA followed statutory procedure" and the respondent "was afforded its chance to respond to the questionnaires, which it failed to do.")
[36] *See* 19 CFR 351.301(b).

intended to induce reliance.[37] However, we find that the record does not support that there were "explicit oral or written statements" on behalf of the agency and, further, there are simply no circumstances in this review that would call equitable considerations into play. The record demonstrates that we made no representations to the company to suggest it could delay or avoid filing its Section A response. On the contrary, we clearly informed the company of its obligation to respond to Section A of the questionnaire in a timely manner on July 15, 2013. This consultation followed the July 10, 2013, issuance of the questionnaire, in which we informed the company of the July 31, 2013, due date. Accordingly, there is no basis for the Department to find that the respondent was misled about the deadline due to our representations. In addition, we agree with GEO that the court precedent cited by GEO applies here, and under this precedent, equitable tolling is not required.[38] We disagree that *Softwood Lumber Products* provides a precedent for the Department to extend that principle to this case. As noted by GEO, that case is distinguishable in several respects. In that there was no analysis of the equitable tolling principle, the Government of Canada intervened on the company's behalf, and the request was unopposed.[39]

Lastly, Donghua Fine Chemical asserts that there are several defects with the July 15, 2013, Consultation Memorandum which require the Department to apply equitable tolling in this case. For instance, Donghua Fine Chemical argues that its counsel did not receive notification of the July 15 Consultation Memorandum until sometime in August 2013, that the memorandum is incomplete, and that there is an inconsistent interplay between notices of appearance, applications for APO, and IA ACCESS notifications. We disagree. The Department's regulations provide that interested parties wishing to participate in a segment of a proceeding must file a notice of appearance.[40] The regulations further provide that interested parties that file a notice of appearance will be placed on the public service list.[41] Parties on this public service list will receive an automated report from IA ACCESS; thus, without a notice of appearance, the electronic system cannot generate automatic reports to that party.[42] In addition, parties must also file an application for APO to receive access to proprietary information, which may be submitted at the time it files a notice of appearance.[43] Donghua Fine Chemical is correct that there is no deadline for filing a notice of appearance, even though the regulations specify that parties to a proceeding must file one in order to be an active party to a segment of a proceeding.[44] But, as a practical matter, to participate meaningfully in a proceeding and to ensure notification of all public and BPI record documents, parties' counsel generally enter a notice of appearance and application for APO at the beginning of a proceeding. Also as a practical matter, APO applications frequently have to be revised and refiled, as was the case here; Donghua Fine Chemical filed its first APO application on August 6, 2013, and a revised application two days

[37] *See* Donghua Fine Chemical's case brief at 12-13.
[38] *See* GEO's rebuttal brief at 10-14.
[39] *Id*. at 14-16 (citing *Softwood Lumber Products*, 67 FR at 67389).
[40] *See* 19 CFR 351.103(d)(1).
[41] *Id*.
[42] *See generally* IA ACCESS Handbook, available at https://iaaccess.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.
[43] *See* 19 CFR 351.103(d)(1); 19 CFR 351.305.
[44] We note that the deadline for filing an APO application is not until the date that case briefs are due. However, 19 CFR 351.305(b)(4) provides that, to minimize disruptions, APO applications should be filed before questionnaire responses are submitted.

later, which was accepted for the record. Given the impending due dates of the questionnaire responses and the likelihood that an APO application would have to be revised, it is hard to understand why Donghua Fine Chemical's counsel did not file its notice of appearance or APO application immediately following the telephone consultation on July 15, 2013.

As we noted in the preliminary determination, Donghua Fine Chemical's counsel failed to file a notice of appearance or an application of APO on behalf of its client until August 6, 2014, four months after first requesting a review on behalf of the company. Had it filed an application sooner, it would have 1) been entered on the public service list for the review and would have received e-mail notification regarding the July 15 Consultation Memorandum at the time it was uploaded to the IA ACCESS system, and 2) have received access to all BPI documents, including the CBP entry data which provided relevant information regarding counsel's client. Thus, contrary to Donghua Fine Chemical's claims, the Department has not adopted procedures that prevented the company from receiving notice of important documents; rather, it was the company that failed to follow the Department's requirements to participate in this proceeding which would have ensured the company had access to all relevant documents. Had Donghua Fine Chemical taken these steps, it would have reviewed the July 15 Consultation Memorandum and discovered that the document did not reflect counsel's purported understanding. In addition, we note that all registered users to IA ACCESS have access to the public records of all reviews at all times;[45] Donghua Fine Chemical failed to explain why its counsel could not search the public record of the review of counsel's own volition, especially if, as counsel asserts, he was awaiting the Department's decision concerning the transferring of responses from one record to another.

In light of the foregoing, we continue to find that the Department must rely on facts otherwise available to assign a dumping margin to the PRC-wide entity in this review 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 included Donghua Fine Chemical, withheld information that was requested within the established deadline and, by not providing requested information, significantly impeded the proceeding.[46] Specifically, we continue to 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. Donghua Fine Chemical also failed to file a timely request for an extension of its deadlines. The Department continues to find that Donghua Fine Chemical's failure to provide the requested information led the Department to conclude that the company and, hence, the PRC-wide entity, had not acted to the best of its ability to comply with the Department's request for information.[47] Therefore, pursuant to section 776(b) of the Act, the Department continues to find that the PRC-wide entity failed to cooperate by not acting to the best of its ability and, accordingly, when selecting from among the facts otherwise available, that an adverse inference is warranted with respect to the PRC-wide entity.

[45] *See generally* IA ACCESS Handbook.
[46] *See* Preliminary Decision Memorandum at 10.
[47] *Id*. at 10-11.

Comment 2A: The Status of Paras as Part of the PRC-Wide Entity

In its case brief, Paras argues that the Department wrongly considered it to be part of the PRC-wide entity and, hence, not entitled to rescission from the review in the *Preliminary Results*. Paras reminds the Department that it is not a Chinese company but an Indian company and that it does not export Chinese glycine or use Chinese glycine in any form to produce the glycine it sells. Paras notes that it provided all of this information in its letter of no shipments, submitted to the Department on May 8, 2013, and that, based on this information, it should have been rescinded from the review in the *Preliminary Results*. Paras concludes that, because it cannot be considered to be part of the PRC-wide entity, it requests that the Department find it is not part of the PRC-wide entity in the final results of review.

GEO argues in its case brief that the Department should reject Paras' request to not be considered a part of the PRC-wide entity on the basis that the request is beyond the scope of the current review. GEO contends that its withdrawal of request of review for Paras and the company's no-shipments letter should not lead to a blanket finding on the part of the Department that Paras only produces and ships Indian glycine.

Paras contends in its rebuttal brief that, in the final results, the Department can and must rule that it is not part of the PRC-wide entity, that its exports of glycine are not covered by the PRC-wide rate, and that it is rescinded from the review. Paras objects to GEO's statement that, based on Paras' no-shipments letter, the Department should not make a blanket finding that Paras only produces and ships Indian glycine. Paras counters that it is not asking for a blanket determination from the Department, only a determination that it had no shipments of Chinese-origin glycine in the current review. Paras further argues that GEO has put nothing on the record to substantiate its claim that Paras should be considered a part of the PRC-wide entity. The company notes that according to GEO's argument, it can only be found to not be a part of the PRC-wide entity if it seeks review as an exporter of Chinese glycine in a future review; given the circumstances, Paras considers this to be an absurd proposition. Paras argues that an assumption of PRC-wide status for a company named in a review is unsupported by any statute and totally contrary to any legal principles and facts on the record. Paras once again requests that as a producer of Indian-origin glycine, it is rescinded from the final results of review and determined to not be a part of the PRC-wide entity.

In its rebuttal brief, GEO reiterates its argument that the Department should reject Paras' request to not be considered a part of the PRC-wide entity because such a request is beyond the scope of the review and also because the record evidence would not support such a finding if the Department did address the request. GEO again asserts that its withdrawal of request of review for Paras and the company's no-shipments letter do not logically lead to a finding that Paras only produces and ships Indian-origin glycine but that the documents only signify that Paras probably did not ship Chinese-origin glycine during the review period.

Department's Position:

We stated in the Preliminary Decision Memorandum that it was not our intent to rescind 40 companies, including Paras, from the review in keeping with Departmental practice.

Specifically, we found these companies to have been named in the initiation notice for the review, then to have been withdrawn from consideration of individual review because of the submission of GEO's timely withdrawals of its requests for review. We also stated they did not qualify for a separate rate from a completed segment of the proceeding.[48] We thus found them to be part of the PRC-wide entity under review.

However, Paras, along with seven of the other 40 companies, submitted a timely "no-shipment" certification and we have confirmed that no entries appeared for Paras in the CBP data we obtained for respondent-selection purposes.[49] Thus, pursuant to our practice,[50] for the final results of review, we determine that Paras did not have any reviewable entries of subject merchandise during the review period and, accordingly, we will issue instructions that are consistent with our "automatic assessment" clarification for these final results.[51]

Comment 2B: The Status of Evonik as Part of the PRC-Wide Entity

In its January 27, 2014, case brief, Evonik comments that, despite GEO's timely withdrawal of its request for an administrative review of Evonik, the Department declined to rescind the review because the company had not previously received a separate rate and, as part of the PRC-wide entity, it remained under review. Evonik asserts that, by regulation, the Department is required to rescind a review that is withdrawn and instruct CBP to liquidate all suspended entries at the cash-deposit rate required at the time of entry. Evonik states that, alternatively, if the Department continues to review Evonik as part of the PRC entity, it must do the work of conducting the review and not ignore the evidence of record.

Evonik contends that, if the Department is conducting a review, it must act on the company's request, submitted on July 18, 2013, to be treated as a voluntary respondent. Evonik argues that the denial of its request under the circumstances of this review is unfair. Evonik notes there are no other respondents active in the case and the Department is continuing the review of the company. Evonik also notes that the denial of the company's request leads to a punitive rate, which would be an outrageous abuse of process. In support, Evonik cites *Grobest*, where the CIT found that a higher standard must be met by the Department in denying a request for voluntary review where the Department has limited the number of mandatory respondents in an administrative review. Evonik further notes that, the Statement for Administrative Action for the Uruguay Rounds Agreements Act also provides that "Commerce, consistent with Article 6.10.2 of the Agreement, will not discourage voluntary responses and will endeavor to investigate all firms that voluntarily provide timely responses in the form required . . .".[52] Evonik notes that in *Grobest*, the CIT rejected the Department's argument that accepting a voluntary respondent would be unduly burdensome.[53]

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[49] *See* CBP Data Memorandum.
[49] *See* CBP Data Memorandum.
[50] *See, e.g., Small Diameter Graphite Electrodes From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 55680, 55681 (September 11, 2013).
[51] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).
[52] Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, Vol. 1, at 873 (1994).
[53] *Grobest* at 1364.

Evonik states that in the Respondent Selection Memorandum, the Department selected two mandatory respondents for review, Donghua Fine Chemical and Baoding Mantong Fine Chemistry, Ltd. (Baoding Mantong). It asserts Baoding Mantong had its review withdrawn but that, unlike Evonik, its review was also rescinded by the Department. Evonik further asserts that as of July 31, 2013, the Department knew that Donghua Fine Chemical would not be participating in the review because of its failure to respond to Section A. Therefore, the Department knew since the end of July 2013 that there would be no active respondents in the review and that Evonik was ready to be fully reviewed. Evonik adds that with no other respondents in the review, it is difficult to fathom why the Department did not review Evonik if it did not intend to rescind the company. In support of its position, the company cites *Yangzhou Bestpak Gifts & Crafts Co., Ltd. v. United States*, Appeal 2012-1312 (Fed. Cir. 2013), where the Court of Appeals of the Federal Circuit (CAFC) ruled that it could find no support in its precedents or the statute's plain text for the proposition that limited resources or statutory time constraints can override fairness or accuracy.

Evonik also argues that, even if the Department did not to rescind its review and there was a reason to deny the company's request to be treated as a voluntary respondent, record evidence establishes that Evonik is not controlled by the government of the PRC in any manner. Evonik asserts that if the Department is not going to rescind the review, then it must consider all of the evidence on the record, whether the Department is reviewing Evonik as a separate-rate company or is reviewing the PRC-wide entity generally.

Evonik notes that in the Preliminary Decision Memorandum, the Department cited *Hand Trucks and Certain Parts Thereof from the People's Republic of China: Preliminary Results of the 2010-11 Antidumping Duty Administrative Review*, 78 FR 1835 (January 9, 2013) (*Hand Trucks from the PRC*), and the accompanying Preliminary Decision Memorandum at 3, as its basis for not rescinding the review of companies for which the requests for review had been withdrawn but which have not previously obtained a separate-rate status. But Evonik notes that, in *Hand Trucks from the PRC*, no citation is given to support this "practice" and, moreover, in the final results of that review, the Department suggested it had never done anything in the preliminary results of review but rescind the companies in question. Evonik argues that *Hand Trucks from the PRC* is incoherent and self-contradictory and certainly provides no support to apply an adverse-facts-available rate to Evonik.

Evonik comments that as established by the separate-rate application it submitted on July 1, 2013, the company is 100-percent owned by a French company, which is ultimately owned by a German company. This fact, along with other information in the separate-rate application, demonstrates that Evonik is not subject to *de jure* or *de facto* control by the PRC government. Evonik asserts that there is no legal basis for the Department to ignore this record evidence and continue to include Evonik in the PRC-wide entity for the final results' rather, the Department should grant Evonik a separate rate in these results.

Evonik also asserts that the Department cannot assign the PRC-wide rate to Evonik because it is an adverse-facts-available rate and Evonik fully cooperated in the review. Evonik argues that its comportment in this review does not meet the requirements of section 776(a) or (b) of the Act, as

it was fully cooperative in its responses to the Department's requests for information and was willing to serve as a voluntary respondent. Evonik adds that the courts have held that the Department cannot attribute an adverse-facts-available margin to a cooperative party, citing *SKF USA Inc. v. United States*, 675 F. Supp. 2d 1264, 1276 (CIT 2009), where the CIT rejected the Department's decision to apply partial adverse facts available to the respondent where an unaffiliated interested party had failed to cooperate.

Evonik notes that it is apparent from the final results of the 2011-2012 administrative review of the order on glycine from the PRC that the current PRC-wide margin of 453.79 percent is an adverse-facts-available rate. Evonik adds that in the final results of that review, the rate was applied to Baoding Mantong as an adverse-facts-available rate because of its failure to act to the best of its ability.[54] Evonik opines that this rate may be applied to the other 39 companies not rescinded from the current review but that it cannot be applied to a fully cooperative company like Evonik. The company concludes by noting that the Department must follow the statute and precedent of the courts with respect to the assigning of adverse facts available or face claims under the Equal Access to Justice Act, where the government would have the burden of proving its position was substantially justified.[55] Evonik states that in light of the statute and court precedent, the Department cannot reasonably claim that the methodology it used in the *Preliminary Results* is justified given that it is assigning an adverse-facts-available rate to a cooperative company that acted in every possible way to obtain its own rate in this review.

Evonik argues that, if the Department does not rescind the review with respect to Evonik and liquidate its entries at the cash-deposit rate required at the time of entry, then it should fully review the company. Barring a full review, Evonik suggests the Department calculates a weighted-average rate of investigated companies – in other words, those companies subject to individual examination in prior reviews of the proceeding – or alternatively, assign the most recently-calculated, non-adverse-facts-available rate from a prior review as a separate rate for Evonik.

Evonik avers that if it is not part of the PRC-wide entity, as shown by its separate-rate application, then its review has been withdrawn and its entries should be liquidated as entered. Evonik asserts that the Department has done nothing in this review to determine if it is properly a part of the PRC-wide entity; having initiated a review on the entity, the Department must conduct one. Evonik adds that if the Department is reviewing the entity, it has an obligation to consider relevant information about that entity, such as the companies that supposedly make up the PRC entity. Evonik asserts that once the record evidence is considered, the only conclusion is that Evonik is not part of the entity. It concludes by noting that use of an irrebutable presumption that Evonik is part of the PRC-wide entity and should thus have a facts-available rate used against it is contrary to due process principles.[56]

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[54] *See Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 20891 (April 8, 2013) and the accompanying Issues and Decision Memorandum at Comment 2.
[55] Evonik cites 28 USC § 2412(d)(1)(A) in support of its claim. Evonik also cites *Diamond Sawblades Mfrs. Coalition v. United States*, 816 F. Supp. 2d 1342, 1356 (CIT 2012).
[56] In support of its claim, Evonik cites *Vladis v. Kline*, 412 U.S. 441, 37 L. Ed. 2d 63, 93 S. Ct. 2230 (1973), where the U.S. Supreme Court found a state law providing that married students living in Connecticut who applied to the state university from outside Connecticut were irrebutably presumed to be out-of-state students violated procedural due process.

In its rebuttal brief, GEO avers that if the Department were to rescind Evonik from the review, there will be no review of Evonik as a separate entity and, accordingly, the company will not receive a separate rate. Accordingly, the Department should liquidate its entries at the appropriate PRC-wide rate. GEO also rebuts that Evonik is not under review as a separate entity from the PRC because GEO withdrew it request for review of the company and Evonik did not self-request a review of its entries. GEO adds that once its review request was timely withdrawn, Evonik became ineligible to participate in the review even as a voluntary respondent. Because it was not reviewed as a separate entity and had not received a separate rate in a previously completed segment of the proceeding, the company remains part of the PRC-wide entity.

Department's Position:

As noted by Evonik, the company was included in the 40 companies which we stated were not rescinding the review in our Preliminary Decision Memorandum. Specifically, we found Evonik, along with the other companies to have been withdrawn from consideration of individual review because of GEO's timely withdrawals of its requests for review, did not qualify for a separate rate from a completed segment of the proceeding.[57] We thus found all of the companies to be part of the PRC-wide entity under review.

Evonik has argued that our practice, as stated in *Hand Trucks from the PRC*, should not apply in the instant review because we did not apply it to companies in that review. However, we clearly stated our intent in the preliminary results of that review to not rescind certain companies until in the final results, in case we found it necessary to review the PRC-wide entity and thus keep those companies in the review.[58] We did not have to review the PRC-wide entity for the final results of the *Hand Trucks* review and, hence, we did rescind the companies in the final results.[59]

Evonik argues that we should consider the separate-rate application and the request to be a voluntary respondent that it filed in this current review. However, as pointed out by GEO, Evonik never filed a review request for its entries and, when GEO withdrew its review request with respect to Evonik, the company ceased to be under consideration for any individual review. Consequently, we had no basis to consider its separate-rate application or its request to be a voluntary respondent. Thus, Evonik remains part of the PRC-wide entity for purposes of the final results of review.

VI. 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 of this review and the final

[57] *See* Preliminary Decision Memorandum at 4-5. We note that these companies included Baoding Mantong, which had a separate rate in earlier segments of the proceeding but not in the most previously-completed segment. Thus, Evonik is mistaken in its assertions that Baoding Mantong has been rescinded from the current review.
[58] *See Hand Trucks from the PRC* at 1835-1836.
[59] *See Hand Trucks and Certain Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011,* 78 FR 28801, 28802 (May 16, 2013).

weighted-average dumping margin for the PRC-wide entity, including Donghua Fine Chemical, in the *Federal Register*.

✓
Agree

Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

22 October 2014
Date