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October 5, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Glycine from the People's Republic of China: Issues and Decision
Memorandum for the Final Results of Antidumping Duty
Administrative Review; 2013-2014

I. Summary

We have analyzed the case and rebuttal briefs submitted by interested parties, GEO (GEO or domestic interested party), Baoding Mantong Fine Chemistry Co. Ltd. (Baoding Mantong) and Evonik Rexim (Nanning) Pharmaceutical Co., Ltd.'s (Evonik). As a result of our analysis, we have made changes to the margin calculation of mandatory respondent, Baoding Mantong, as discussed below. We recommend that you approve the positions described in the "Discussion of Interested Party Comments" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this antidumping duty administrative review for which we received comments from parties:¹

¹ Due to the proprietary nature of certain details in the case and rebuttal briefs regarding some of the issues raised in this proceeding, the Department has drafted accompanying proprietary memoranda for each respondent. See Memorandum from Dena Crossland to the File, titled "Analysis of Data Submitted by Baoding Mantong Fine Chemistry Co. Ltd. in the Final Results of the 2013-2014 Administrative Review of the Antidumping Duty Order on Glycine from the People's Republic of China" dated concurrently with this memorandum (Baoding Mantong Final Analysis Memorandum), and Memorandum from Dena Crossland to the File, titled "Antidumping Duty Administrative Review of Glycine from the People's Republic of China; 2013-2014: Final Analysis of *Bona Fide* Nature of Evonik Rexim (Nanning) Pharmaceutical Co., Ltd.'s Sales," dated concurrently with this memorandum (Evonik Final *Bona Fide* Memo). These memoranda are incorporated by reference into this Issues and Decision Memorandum, providing supplementary detail regarding business proprietary aspects of the issues discussed and summarized below.



II. List of Issues

A. Baoding Mantong-Specific Issues

- Comment 1: Whether the Review Should be Rescinded with Regard to Baoding Mantong
Comment 2: Whether Baoding Mantong's Sale was a *Bona Fide* Sale
Comment 3: Whether Baoding Mantong's Requested By-Product Offset Should Be Denied or Valued at Zero or the Lowest Available Value on the Record
Comment 4: Surrogate Financial Ratios

B. Evonik-Specific Issues

- Comment 5: Whether Evonik's Sales Were *Bona Fide*
Comment 6: Whether the 453.79 Percent PRC-Wide Rate is in Accordance with Law

III. Background

On April 8, 2015, the Department of Commerce (the Department) published the preliminary results of the administrative review of glycine from the People's Republic of China (PRC) in the *Federal Register*.² On May 8, 2015, all interested parties filed case briefs.³ On May 13, 2015, the parties filed rebuttal briefs.⁴

GEO and Evonik both requested hearings on May 8, 2015. The Department held a hearing with respect to this administrative review on July 22, 2015.

On July 30, 2015, GEO submitted a letter regarding new factual information in the hearing transcript, to which Baoding Mantong submitted rebuttal information on August 7, 2015. A redacted hearing transcript was filed on August 5, 2015.

On August 27, 2015, the Department issued a letter to Baoding Mantong rejecting its case brief, given that it contained new factual information, and instructed it to submit a redacted version of its May 8, 2015, case brief by August 31, 2015. The Department further noted that it would not consider the rejected case brief for the final results.⁵ On September 3, 2015, Baoding Mantong

² See *Glycine From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Intent to Rescind, in Part; 2013-2014*; 80 FR 18814 (April 8, 2015) (*Preliminary Results*).

³ See Letter from Domestic Interested Party, "Glycine from the People's Republic of China: GEO Specialty Chemical's Case Brief," dated May 8, 2015 (GEO's Case Brief); Letter from Baoding Mantong Fine Chemistry Co., Ltd., "Glycine from the People's Republic of China," dated May 8, 2015 (Baoding Mantong's Case Brief); and Letter from Evonik Rexim (Nanning) Pharmaceutical Co., Ltd., "Glycine from the People's Republic of China," dated May 8, 2015 (Evonik's Case Brief).

⁴ See Letter from Domestic Interested Party, "Glycine from the People's Republic of China," dated May 13, 2015 (GEO's Rebuttal Brief); Letter from Baoding Mantong Fine Chemistry Co., Ltd., "Glycine from China 2013-2014 Review; Submission of Baoding Mantong's Rebuttal Brief," dated May 13, 2015 (Baoding Mantong's Rebuttal Brief); and Letter from Evonik Rexim (Nanning) Pharmaceutical Co., Ltd., "Glycine from the People's Republic of China," dated May 13, 2015 (Evonik's Rebuttal Brief).

⁵ See Letter from the Department of Commerce to Baoding Mantong Fine Chemistry Co., Ltd. Regarding "2013/2014 Administrative Review of the Antidumping Duty Order on Glycine from the People's Republic of China (A-570-836); Response to August 7, 2015, Letter from Baoding Mantong Fine Chemistry Co., Ltd. and

submitted an untimely redacted case brief and requested that the Department accept its late submission because of an “oversight.” On September 8, 2015, GEO submitted a letter, stating that the Department should not accept Baoding Mantong’s untimely redacted case brief.⁶

On September 22, 2015, the Department informed Baoding Mantong that it was rejecting its redacted brief, but would still consider its timely submitted rebuttal brief for the final results. Also on September 22, 2015, the Department instructed GEO to submit a redacted rebuttal brief, eliminating all references to the issues that Baoding Mantong discussed in its rejected May 8, 2015, case brief and September 3, 2015, revised, but untimely case brief.⁷ Additionally, on October 1, 2015, a final version of the redacted hearing transcript was filed.

On September 25, 2015, the Department extended the signature date for the final results to October 5, 2015.⁸

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).⁹ Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

V. Period of Review

The period of review (POR) is March 1, 2013, through February 28, 2014.

Rejection of May 8, 2015, and August 7, 2015, Submissions by Baoding Mantong Fine Chemistry Co., Ltd.,” dated August 27, 2015.

⁶ See Letter from GEO Specialty Chemicals, Inc. to the Department of Commerce Regarding “Glycine from the People’s Republic of China: Opposition to Baoding’s Untimely Filed and Improperly Redacted September 3, 2015 Case Brief,” dated September 8, 2015.

⁷ See Letter from the Department of Commerce to Baoding Mantong Fine Chemistry Co., Ltd. Regarding “2013/2014 Administrative Review of the Antidumping Duty Order on Glycine from China (A-570-836); Rejection of September 3, 2015, Submission by Baoding Mantong Fine Chemistry Co., Ltd.,” dated September 22, 2015; and Letter from the Department of Commerce to GEO Specialty Chemicals, Inc. Regarding “2013/2014 Administrative Review of the Antidumping Duty Order on Glycine from China (A-570-836); Rejection of May 13, 2015 Submissions GEO Specialty Chemicals, Inc.,” dated September 22, 2015.

⁸ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Dena Crossland, International Trade Compliance Analyst, Antidumping and Countervailing Duty Operations, Office VI, through Scot Fullerton, Director, Antidumping and Countervailing Duty Operations, Office VI, on the subject of “Glycine from the People’s Republic of China: Final Extension of Deadline for Final Results of Antidumping Duty Administrative Review; 2013/2014,” dated September 25, 2015.

⁹ In separate scope rulings, the Department determined that: (a) D(-) Phenylglycine Ethyl Dane Salt is outside the scope of the order and (b) PRC-glycine exported from India remains the same class or kind of merchandise as the PRC-origin glycine imported into India. See *Notice of Scope Rulings and Anticircumvention Inquiries*, 62 FR 62288 (November 21, 1997) and *Glycine From the People’s Republic of China: Final Partial Affirmative Determination of Circumvention of the Antidumping Duty Order*, 77 FR 73426 (December 10, 2012), respectively.

VI. Changes Since the *Preliminary Results*

Based on our review and analysis of the comments received from parties and information on the record, we made certain changes to Baoding Mantong's margin calculation since the *Preliminary Results*. Specifically, we have made changes to the surrogate value calculation for Baoding Mantong's formaldehyde input.¹⁰ Additionally, we made an adjustment to the surrogate value calculation for one of Baoding Mantong's by-products.¹¹

VII. Discussion of Interested Party Comments

A. Baoding Mantong-Specific Issues

Comment 1: Whether the Review Should be Rescinded with Regard to Baoding Mantong

GEO's Case Brief¹²

- The record shows that Baoding Mantong was not a going concern, as evidenced by the data and discrepancies in Baoding Mantong's financial statements, and the fact it was only briefly operational during the POR.
- Baoding Mantong had excess production that was not sold during the POR, and the Department should consider it a loss and increase Baoding Mantong's reported factors of production by a factor to reflect the costs associated with re-starting the plant to sell glycine to the U.S. market.
- Baoding Mantong's importer of record did not make a Type 3 entry of Baoding Mantong's subject merchandise within the POR because it failed to complete the entry process and deposit estimated antidumping duties until after the review period.¹³

¹⁰ See Memorandum to the File from Dena Crossland, International Trade Compliance Analyst, AD/CVD Operations, Office VI, through Angelica L. Townshend, Program Manager, AD/CVD Operations, Office VI, on the Subject of "Glycine from the People's Republic of China: Surrogate Values for the Final Results of the Antidumping Duty Administrative Review," dated concurrently with this memorandum (Final SV Memo), and incorporated by reference into this memorandum.

¹¹ See Comment 3 in this memorandum. See also Final SV Memo.

¹² See GEO's Case Brief at 3 through 8. In support of its arguments, GEO cites the following: Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review: Glycine from the People's Republic of China; 2013-2014, dated March 31, 2015 (Prelim Decision Memo) at 4, n. 17; http://www.cbp.gov/sites/default/files/documents/CBP%20Form%207501_Instructions.pdf; *FAG Holding Corp. v. United States*, 744 F. Supp. 2d 1353, 1357-1358 (CIT 2010) (*FAG Holding Corp.*); 19 CFR 141.0a(f); 19 CFR 141.0a(b); 19 CFR 141.68(c); and *Certain Welded Carbon Steel Standard Pipe and Tube from Turkey: Notice of Final Rescission of Countervailing Duty Administrative Review, In Part*, 77 FR 6542, 6543 (February 8, 2012) (*Pipe and Tube from Turkey*) and accompanying Issues and Decision Memorandum at 2. GEO also references the following submissions: Baoding Mantong's First Supplemental Questionnaire Response, dated September 8, 2014 (Baoding Mantong's FSQR), at 3 and Appendices S1-1 and S1-2; Baoding Mantong's Section A Questionnaire Response, dated June 24, 2014 (Baoding Mantong's AQR), at Appendix A-10; and Memorandum to the File from Dena Crossland through Angelica Mendoza, Regarding the Administrative Review of the Antidumping Order on Glycine from the People's Republic of China and on the Subject of Entry Data Obtained from U.S. Customs and Border Protection, dated September 8, 2014, at 2-3.

¹³ The Declarant also did not sign the Type 3 entry that Baoding Mantong provided until March 13, 2014—13 days after the end of the review period—indicating that the entry process was not completed until almost two weeks after the end of the review period.

- The Department should adhere to its longstanding practice and rescind its review of Baoding Mantong because record evidence, U.S. Customs and Border Protection (CBP) regulations and judicial precedent establish that no Type 3 entry of Baoding Mantong's subject merchandise was made during the POR.
- Rescinding the current review will not prejudice Baoding Mantong because its entry can still be considered in the ongoing 2014-2015 administrative review.

Baoding Mantong's Rebuttal Brief¹⁴

- Although Baoding Mantong had produced for only a few days during in January of 2014, and its production facility was idle for the rest of the POR, it has a valid business license, its production capacity remains in place, it did not sell off any assets, it had ongoing financial and administrative operations, and it issued 2012 and 2013 audited financial statements.¹⁵
- Regarding GEO's claim that Baoding Mantong's financial statements cannot be reconciled, the financial statements have been, in fact, audited, and Baoding Mantong reconciled its production and sales to its financial statements.¹⁶
- Regarding the entry date issue, the U.S. importer of record filed two CBP entry forms regarding the subject merchandise, an initial entry form to enter the subject merchandise into the United States, and a corrected entry form to correct mistakes made in the initial entry form.
- Contrary to GEO's argument, the applicable summary date is the date listed on the initial CBP Form 7501 because that is the date the importer of record formally filed the required documentation with CBP and posted estimated tariff duties, and the date CBP released custody of the merchandise to the U.S. importer of record.
- The Department placed a memorandum on the record containing the results of an additional CBP data run, which confirmed that Baoding Mantong's entry for consumption was made during the POR.¹⁷
- Since the record evidence shows that the applicable summary date of the subject merchandise was February 27, 2014, which is a date that was within the POR, the Department correctly did not rescind the review as to Baoding Mantong.

Department's Position

We agree with Baoding Mantong that its entry occurred during the POR. The Department's procedure, at the beginning of an administrative review, is to request CBP data to confirm that there are Type 3 entries to review. According to this data, Baoding Mantong had a reviewable

¹⁴ See Baoding Mantong's Rebuttal Brief at 1 through 8. In support of its arguments, Baoding Mantong cites the Memorandum to Abdelali Elouaradia from Dena Crossland through Angelica Townshend, entitled Antidumping Duty Administrative Review of Baoding Mantong Fine Chemistry Co., Ltd., dated March 31, 2015 (Baoding Mantong *Bona Fide* Sale Memorandum) at 3. Baoding Mantong references the following submissions: GEO's Case Brief at 3 through 8; Baoding Mantong's AQR at 12 and Appendices A-2, A-7 (pages 1 and 2), A-9, A-10, and A-11; Baoding Mantong's Sections C and D Questionnaire Response, dated July 16, 2014 (Baoding Mantong's CDQR), at V1 through V5 and Appendices V1 through V3; and Baoding Mantong's FSQR at 2 and Appendix S1-1.

¹⁵ See Baoding Mantong's AQR at Appendices A-2 (business license), A-9 (2012 financial statement), and A-10 (2013 financial statement).

¹⁶ See Baoding Mantong's CDQR at V1 through V5 and Appendices V1 through V3.

¹⁷ See Baoding Mantong *Bona Fide* Sale Memorandum at 3.

entry that fell within this POR.¹⁸ After reviewing the information on the record, we have found no evidence that would lead us to determine that Baoding Mantong's entry should be reviewed during the 2014-2015 administrative review, rather than during this POR. Additionally, after reviewing Baoding Mantong's financial statements and other information on the record, we have found no evidence to lead us to conclude that Baoding Mantong was not in existence as a limited liability company during the POR. Accordingly, we have determined not to rescind the review with respect to Baoding Mantong.

Comment 2: Whether Baoding Mantong's Sale was a *Bona Fide* Sale

GEO's Case Brief¹⁹

- In the Baoding Mantong *Bona Fide* Sale Memorandum, the Department compared the quantity of Baoding Mantong's single shipment to its test sale shipment used to obtain its own margin more than 10 years ago, rather than focusing on the quantities that were shipped in recent years that were representative of Baoding Mantong's future commercial practice.²⁰
- Baoding Mantong and other glycine exporters to the United States routinely export glycine in commercial quantities of 18,000 kilograms or more; Baoding Mantong's shipment during the POR was not close to the normal commercial quantity.²¹
- The price to the ultimate purchaser/end user represents an incredibly high market price for the period, above even the high price Baoding Mantong's importer paid, with antidumping duties and charges included, and higher than a price a legitimate purchaser would have paid at the time of the sale and entry.

¹⁸ See Memorandum to the File from Dena Crossland, International Trade Compliance Specialist, AD/CVD Operations, Office VI, Enforcement and Compliance, through Angelica Mendoza, Program Manager, AD/CVD Operations, Office VI, Enforcement and Compliance, Regarding the Administrative Review of the Antidumping Duty Order of Glycine from the People's Republic of China and on the Subject of Entry Data Obtained from U.S. Customs and Border Protection, dated September 8, 2014.

¹⁹ See GEO's Case Brief at 8 through 16. In support of its arguments, GEO cites the following: *Jinxiang Yuanxin Import & Export Co., Ltd. v. United States* (CIT 2013) at 39-40; Preliminary Decision Memo at 4-5; Baoding Mantong *Bona Fide* Sale Memorandum at 2 (referencing *Tianjin Tiangcheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1250 (CIT 2005); *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1339 (CIT 2005) (*Hebei Amino Acid*); and Baoding Mantong's Second Supplemental Questionnaire, dated November 21, 2014 (Baoding Mantong's SSQR) and 3-4; 19 CFR 351.102(b)(3); *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty New Shipper Review and Final Rescission of Antidumping New Shipper Review*, 68 FR 1439, 1440 (January 10, 2003) (*Crawfish from the PRC*); *Am. Silicon Techs. v. United States*, 110 F. Supp. 2d 992, 995 (CIT 2000); and *Shandong Chenhe International Trading Co., Ltd. v. United States*, 32 Int'l Trade Rep. (BNA) 2176, Slip Op. 2010-129 at 15, 20 (CIT 2010) (*Shandong Chenhe v. United States*). GEO references the following submissions: GEO's Comments on Baoding Mantong's and Evonik's Section A Questionnaire Responses, dated July 3, 2014 (GEO's July 3, 2014 Comments), at Exhibit B (Declaration of Joseph G. Shauf on Baoding Mantong's Glycine Shipment to the United States, at paragraphs 3 and 6); Baoding Mantong's Importer's Questionnaire Response (submitted as part of Baoding Mantong's Third Supplemental Questionnaire Response), dated February 6, 2015, at 2-7; GEO's Comments on Baoding Mantong's Supplemental Questionnaire Response, dated September 19, 2014, at 8-9 and Attachment A; GEO's Comments on Baoding Mantong's Second Supplemental Questionnaire Response, dated November 26, 2014, at 3-6; GEO's Pre-Preliminary Results Comments, dated March 3, 2015, at 19-22; and Baoding Mantong's SSQR at 1-2.

²⁰ See Baoding *Bona Fide* Sale Memorandum at 4 and *Hebei Amino Acid* at 1339.

²¹ See GEO's July 3, 2014 Comments at Exhibit B, paragraph 3.

- Moreover, Baoding Mantong and its U.S. customer were affiliated during the POR through an exclusive distribution arrangement pursuant to 19 CFR 351.102(b)(3).
- Baoding Mantong's customer stated that it did not import glycine from any other companies, either prior to or after importing glycine from Baoding Mantong.
- Baoding Mantong's U.S. customer was dissolved as a company in 2011, was inactive at the time of the glycine sale with Baoding Mantong, and is currently inactive, which all support a finding that the U.S. customer is affiliated with Baoding Mantong.

Baoding Mantong's Rebuttal Brief²²

- The Department's long-standing practice is that the size of a transaction is not sufficient, in and of itself, to warrant a finding that the transaction is not a *bona fide* transaction.²³
- In prior cases, sales were found not to be *bona fide* when there were low-quantity shipments combined with artificially high prices and an unusual sales process, such as a product not resold at a profit but sold as a sample sale or not resold by the importer.²⁴ In contrast, here, Baoding Mantong's sale was small but all other aspects of the transaction were typical of reasonable commercial transactions.
- The Department determined that Baoding Mantong's sales quantity in this proceeding, in which it is attempting to establish its own rate, is the same quantity that it sold in the 2003-2004 review in which it established its own rate.²⁵
- The high antidumping duty margin of 453.79 percent precluded Baoding Mantong from selling large quantities.
- GEO compared Baoding Mantong's sales price, which included antidumping duty deposits and other CBP charges imposed upon entry of the subject merchandise into the United States, to GEO's spot market prices.²⁶ The Department's antidumping methodology precludes the inclusion of antidumping duty deposits or assessments in the calculation of U.S. price.²⁷
- Regarding GEO's assertion that Baoding Mantong and its U.S. customer are affiliated, the record establishes that the companies are not affiliated by stock ownership, employee-employer relationships, or familial connections.²⁸

²² See Baoding Mantong's Rebuttal Brief at 8 through 13. In support of its arguments, Baoding Mantong cites the following: Baoding Mantong *Bona Fide* Sale Memorandum at 1, 3, 4, and 5; *Certain Cut-to-Length Carbon Steel from Romania: Notice of Rescission of Antidumping Duty Administrative Review*, 63 FR 47234 (September 4, 1998) (*CTL Steel from Romania*); *Crawfish from the PRC* and Issues and Decision Memorandum at Comment 1; *Freshwater Crawfish Tail Meat from the People's Republic of China: Rescission of Antidumping Duty New Shipper Reviews*, 68 FR 52746 (September 5, 2003) (*Crawfish Rescissions*); and *Apex Exports and Falcon Marine Exports Limited v. United States*, Slip Op 12-104 (August 6, 2012) (*Apex and Falcon*), affirmed 2014-1234 (Fed. Cir. February 5, 2015). Baoding Mantong also references the following submissions: GEO's Case Brief at 8 through 10 through 14; Baoding Mantong's AQR at 2, Appendix A-4, and Appendix A-7 at 2; Baoding Mantong's FSQR at 5 and Appendix S1-1; Baoding Mantong's Third Supplemental Questionnaire Response, dated February 6, 2015 (Baoding Mantong's TSQR) at 2 and 3; and Baoding Mantong's SSQR at 1.

²³ See *CTL Steel from Romania*, where the Department stated that "single sales, even those involving small quantities, are not inherently commercially unreasonable and do not necessarily involve selling practices atypical of the parties' normal selling practices."

²⁴ See *Crawfish Rescissions*.

²⁵ See Baoding Mantong *Bona Fide* Sale Memorandum at 4.

²⁶ See GEO's Case Brief at 11 through 12.

²⁷ See *Apex and Falcon*.

²⁸ See Baoding Mantong's AQR at 2 and Appendix A-4; Baoding Mantong's FSQR at 5; and Baoding Mantong's TSQR at 2 and 3.

Department's Position

After considering parties' comments, we continue to find that Baoding Mantong made a *bona fide* sale during the POR. Because our analysis involves the discussion of business proprietary information, we have included that discussion in a separate memorandum.²⁹

Comment 3: Whether Baoding Mantong's Requested By-Product Offset Should Be Denied or Valued at Zero or the Lowest Available Value on the Record

GEO's Case Brief³⁰

- According to 19 CFR 351.401(b)(1), Baoding Mantong must provide information to the Department regarding the amount and nature of a particular adjustment, but has claimed the following: it does not keep production records for its by-products;³¹ all sales were made on a

²⁹ See Baoding Mantong Final Analysis Memorandum for further discussion.

³⁰ See GEO's Case Brief at 16 through 25. In support of its arguments, GEO cites the following: Preliminary Decision Memo at 16 and 17; Memorandum to the File from Ericka Ukrow and Dena Crossland Through Angelica L. Townshend, "Glycine from the People's Republic of China: Surrogate Values for the Preliminary Results of the Review," dated March 31, 2015 (Prelim SV Memo), at 2 and 5; 19 CFR 351.401(b)(1); *Antidumping Manual*, U.S. Department of Commerce, Chapter 10, Section VI. G. at 25 (2009); *Mid Continent Nail Corp. v. United States*, 32 International Trade Rep. (BNA) 1641, 2010 CIT, Slip Op. 2010-47 at 30-31 (CIT 2010) (referencing *Final Results of Antidumping Duty Administrative Review and New Shipper Review of Wooden Bedroom Furniture from the People's Republic of China* and accompanying Issues and Decision Memorandum at Comment 20; *Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China: final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order*, 75 FR 8301 (February 24, 200010)) and accompanying Issues and Decision Memorandum at Comment 7; *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010) and accompanying Issues and Decision Memorandum at Comment 23; *Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 71 FR 34893 (June 16, 2006) and accompanying Issues and Decision Memorandum at Comment 7; *Fresh Garlic from the People's Republic of China: Final Results* (June 10, 2013) (*Fresh Garlic*) and accompanying Issues and Decision Memorandum at Comment 14; *Prestressed Concrete Steel Rail Tire Wire from Thailand: Antidumping Duty Investigation* (April 28, 2014) (*Prestressed Concrete Steel*) and accompanying Issues and Decision Memorandum at Comment 3; *Citric Acid and Certain Salts from the People's Republic of China: Final Results of the 2011-2012 Antidumping Duty Administrative Review* (December 26, 2013) (*Citric Acid and Certain Salts 2011-2012*) and accompanying Issues and Decision Memorandum at Comment 5; *Steel Wire Garment Hangers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 47587 (August 14, 2008) (*Garment Hangers*) and accompanying Issues and Decision Memorandum at Comment 6; and *Blue Field (Sichuan) Food Industrial Co., Ltd. v. United States*, 949 F. Supp. 2d 1311, 1326-1327 (CIT 2013) (*Blue Field*). GEO references the following submissions: GEO's Additional Factual Information for the Preliminary Results, dated March 2, 2015 (GEO's Additional Factual Info for the Prelim), at Exhibits 1 through 3; Baoding Mantong's TSQR at 6; Baoding Mantong's SSQR at 6 and Appendix S2-3; and Baoding Mantong's FSQR at 8 and Appendix S1-11; GEO's Comments on Baoding Mantong's Second Supplemental Questionnaire Response, dated November 26, 2014, at 11 and Exhibit E; Baoding Mantong's Submission of Surrogate Value Information for Valuing Certain By-Products, dated March 13, 2015, at Exhibit 1; and Baoding Mantong's Submission of Surrogate Value Information, dated February 27, 2015 (Baoding Mantong's February SV Submission), at Attachments 1-3 and 5-6; and Evonik's Comments on Surrogate Value Information for Valuing Certain By-Products, dated March 13, 2015 (Evonik's March SV Submission), at Exhibit 1.

³¹ See Baoding Mantong's TSQR at 6.

cash basis to customers that did not require invoices or purchase orders;³² and it does not know to whom the buyer resells the by-products.³³

- Baoding Mantong has not provided sufficient documentation to support its by-product sales and production and the Department should not grant any by-product offset for Baoding Mantong.
- If the Department decides to continue to value by-product offsets for Baoding Mantong, it should use a zero value or low value because these by-products are waste-grade chemicals rather than virgin- or pure-grade chemicals.
- Values based on national import statistics, such as GTA, are likely to including only very high-value, virgin-grade ammonium chloride and hydrogen chloride that were by traded and shipped internationally.
- The Department has relied on the National Association of Accountants' definition of a by-product as being a "secondary product recovered in the course of manufacturing a primary product, whose total sales value is relatively minor in comparison with the sales value of the primary product."³⁴
- The Department has also rejected by-product offsets when the use of a particular product will produce an unreasonable result.³⁵
- The CIT has stated that a "by-product price approximating the primary good's price is likely aberrational."³⁶
- The record shows that the value of \$5.28 per kilogram (kg) that the Department selected for ammonium chloride is aberrational.
- GEO placed the following surrogate values on the record for ammonium chloride: 46 cents (Bulgaria), 13 to 15 cents (South Africa), 12 to 13.5 cents (Thailand), and 0 to 20 cents (Malaysia).³⁷ Baoding Mantong placed the following GTA values for ammonium chloride on the record: 61 cents (Bulgaria), 84 cents (Colombia), \$2.65 (Ecuador), 70 cents (South Africa), and \$1.79 (Thailand).³⁸
- The aberrational nature of the surrogate value of \$5.29 per kg for ammonium chloride that the Department selected is also obvious when it is compared with the GTA values for glycine, which was as follows: \$3.39 (Thailand), \$8.73 (Indonesia), \$8.59 (Peru), and \$7.91 (Colombia).³⁹

³² See Baoding Mantong's SSQR at 6.

³³ *Id.*

³⁴ See *Fresh Garlic, Prestressed Concrete Steel, and Citric Acid and Certain Salts 2011-2012*.

³⁵ See *Garment Hangers*.

³⁶ See *Blue Field*.

³⁷ See GEO's Additional Factual Info for the Prelim at Exhibit 3.

³⁸ See Baoding Mantong's February SV Submission at Attachments 1-3 and 5-6.

³⁹ See Evonik's March SV Submission at Exhibit 1 (Evonik did not provide GTA glycine values for two of the listed surrogate countries: Bulgaria and South Africa).

Baoding Mantong's Rebuttal Brief⁴⁰

- The Department should continue to offset Baoding Mantong's normal value with the value of by-products (hydrochloric acid and ammonium chloride) resulting from the glycine manufacturing process.
- It is the Department's normal practice to grant an offset to the reported factors of production (FOPs) for by-products generated during the production of subject merchandise if the respondent demonstrates that the by-products have some commercial value.⁴¹
- Baoding Mantong provided the Department with the quantities of by-products produced from the manufacture of glycine during the POR (*i.e.*, December 2013), and supporting sales documentation and inventory-out receipts.
- Regarding GEO's assertion that Baoding Mantong has not substantiated its total by-product production quantity during the POR, the Department has not established that production records are the only means to substantiate such production.
- For respondents that do not maintain by-product production records, the Department has valued the by-product offset using other means, including sales quantity and inventory slips.⁴²
- The by-product quantities reported on Baoding Mantong's inventory-out slips and sales receipts demonstrate that the by-products produced during the POR were also sold during the POR, and thus have commercial value.
- Contrary to GEO's claim that Baoding Mantong speculates the quantity of by-products produced and sold during the POR, Baoding Mantong relied on the documentation it generated in the course of business to determine the production quantity for the by-products produced during the POR.
- In prior proceedings, the Department determined that sales receipts and inventory-out slips were adequate evidence for substantiating Baoding Mantong's by-product quantities.
- Contrary to GEO's assertions, Baoding Mantong submitted adequate sales documentation to

⁴⁰ See Baoding Mantong's Rebuttal Brief at 14 through 22. In support of its arguments, Baoding Mantong cites the following: *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 74 FR 16838 (April 13, 2009) (*Citric Acid and Citrate Salts 2007-2008*); *Frontseating Service Valves from the People's Republic of China: Final Results of the 2008-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 76 FR 70706 (November 15, 2011) and accompanying Issues and Decision Memorandum at Comment 18; *Multilayered Wood Flooring: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011) and accompanying Issues and Decision Memorandum; *Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review 2013-2014 (Preserved Mushrooms Prelim)* and accompanying Issues and Decision Memorandum; *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Administrative Review; 2012-2013*, 80 FR 4539 (January 28, 2015) (*Chlorinated Isocyanurates Final*) and accompanying Issues and Decision Memorandum; *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 65669 (October 30, 2012) and accompanying Issues and Decision Memorandum at Comment 1; *Garment Hangers; Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Administrative Review*, 74 FR 66087 (December 14, 2009) and accompanying Issues and Decision Memorandum at Comments 1 and 4; *Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review*, 70 FR 34448 (June 14, 2005). Baoding Mantong referenced the following submissions: Baoding Mantong's CDQR at Appendices D-8 and D-9; Baoding Mantong's SSQR at Appendix S2-3; Baoding Mantong's FSQR at Appendix S1-11; Baoding Mantong's February SV Submission at Attachment 5.

⁴¹ See, *e.g.*, *Citric Acid and Citrate Salts 2007-2008*.

⁴² See *Preserved Mushrooms Prelim*. See also Baoding Mantong's FSQR at S1-5 (for sales quantity).

demonstrate its by-products were sold for revenue, and thus have commercial value.⁴³ Baoding Mantong's sales receipts identify the volumes sold and are consistent with the volumes of by-products produced during the POR.

- For each purchaser, Baoding Mantong provided the Department with the following information: full names, relative locations, by-product purchased, and the commercial purposes for the by-products.⁴⁴
- GEO takes issue with the fact that Baoding Mantong did not provide specific addresses to the Department for each individual purchaser, but street numbers are often not designated in rural districts in the PRC.
- To further support its by-product sales, Baoding Mantong provided sales receipts,⁴⁵ in addition to its sub-ledger which shows credit values for the sales of by-products that are equal to the operating income for the sales of each by-product in the cash payment voucher.⁴⁶
- Additionally, GEO takes issue with the cash transactions that transpired between Baoding Mantong and its by-product purchasers, even though the Department has not established any policy or practice to exclude documented cash transactions in favor of formal sales contracts and purchase orders when determining whether to apply the by-product offset to normal value.

Department's Position

The Department finds that Baoding Mantong has provided sufficient information regarding the production and sale of its by-products, and, as Baoding explains, such information is consistent with prior reviews with regard to the by-product information provided to, and accepted by, the Department. Therefore, for these final results of review, the Department has granted Baoding Mantong's claim for a by-product offset for hydrochloric acid and ammonium chloride generated during the POR.

The Department has explained its by-product offset practice as follows: "the by-product offset is limited to the total production quantity of the by-product. . . produced during the POR, so long as it is shown that the by-product has commercial value."⁴⁷ For a by-product offset to have commercial value, the respondent must demonstrate that the product was sold for revenue or reintroduced into production.⁴⁸

Baoding Mantong reported that hydrochloric acid and ammonium chloride were produced and sold during the POR.⁴⁹ The record indicates that Baoding Mantong's two by-products had commercial value during the POR because they were sold for revenue.⁵⁰ While Baoding

⁴³ See Baoding Mantong's SSQR at Appendix S2-3.

⁴⁴ *Id.*

⁴⁵ See Baoding Mantong's CDQR at Appendix D-8 for sales receipts, which correspond with the information provided in Baoding Mantong's SSQR at Appendix S2-3, and Baoding Mantong's FSQR at Appendices S1-5 and S1-11.

⁴⁶ See Baoding Mantong's CDQR at Appendix D-9 and Baoding Mantong's FSQR at Appendix S1-11.

⁴⁷ See *Frontseating Service Valves From the People's Republic of China: Final Results of the 2008-20100 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 76 FR 70706 (November 15, 2011) and accompanying Issues and Decision Memorandum at Comment 18.

⁴⁸ See *Silicon Metal from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 54563 (September 5, 2012) and accompanying Issues and Decision Memorandum at Comment 3.

⁴⁹ See CDQR at D-15 and D-16.

⁵⁰ See Baoding Mantong's FSQR at S1-11 and CDQR at Appendix D-9.

Mantong stated that it does not track the quantity of the by-products generated during the POR, it did provide inventory records to support the quantity sold.⁵¹ Therefore, consistent with the Department's by-product offset practice, the Department has continued to grant Baoding Mantong's by-product offset.

However, we do agree with GEO that the by-product at issue here is a "secondary product recovered in the course of manufacturing a primary product, whose total sales value is relatively minor in comparison with the sales value of the primary product."⁵² The Department has noted that "it is unreasonable to assign a higher value to a waste product than to its input product."⁵³ Additionally, the Department has noted its practice of capping the by-product surrogate values in instances where "it is of a higher price than the {surrogate value} for the input which created the scrap by-product in question."⁵⁴

Since the surrogate value for hydrochloric acid is lower than the average of the surrogate values for the inputs for this by-product, we have determined that the hydrochloric acid surrogate value does not need to be capped.⁵⁵ However, we have determined that the surrogate value for ammonium chloride should be capped because it is higher than the average for the inputs for this by-product.⁵⁶ Therefore, although the Department determines that Baoding Mantong demonstrated that its by-products had commercial value, as they were sold for revenue during the POR, we are changing the surrogate value for the by-product ammonium chloride to reflect the capped value for these final results.

⁵¹ *Id.*

⁵² See *Fresh Garlic, Prestressed Concrete Steel, and Citric Acid and Certain Salts 2011-2012*.

⁵³ See *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 20197 (April 15, 2015) and accompanying Issues and Decision Memorandum at Comment 20.

⁵⁴ *Id.*, citing *Monosodium Glutamate From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 58326 (September 29, 2014) at Comment 11, and *Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011) at Comment 24, where the Department valued by-products using a simple average of the surrogate values for the inputs used to generate the by-products.

⁵⁵ See Baoding Mantong Final Analysis Memo for a further discussion.

⁵⁶ *Id.*

Comment 4: Whether the Department Should Select Alternate Companies for Valuing Financial Ratios

GEO's Case Brief⁵⁷

- In the *Preliminary Results*, the Department relied on the financial information of two Indonesian companies, PT Budi Starch and Sweetener Tbk (PT Budi) and PT Lautan Luas Tbk (PT Lautan), to derive surrogate financial ratios because they had “comparable production processes as glycine.”⁵⁸
- The Department rejected the financial statements of the companies that GEO placed on the record, PT Darya-Varia Laboratoria Tbk (PT Darya-Varia), PT Pyridam Farma Tbk (PT Pyridam), and PT Kalbe Farma Tbk (PT Kalbe).
- In the 2010-2011 glycine from the PRC review, the Department selected these three companies for the surrogate financial ratios, stating they were “involved in the production of amino acids (used in pharmaceutical products). . .comparable to glycine.”⁵⁹

⁵⁷ See GEO's Case Brief at 25 through 35. In support of its arguments, GEO cites the following: *Preliminary Decision Memo* at 19; *Glycine from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 77 FR 21738, 21743 (April 11, 2012) (*Glycine 2010-2011 Prelim*) ; *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 64100, 64101 (October 18, 2012) (*Glycine 2010-2011*) and accompanying Issues and Decision Memorandum at Comments 6 and 12; *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 41121 (August 14, 2009) (*Glycine 2007-2008*) and accompanying Issues and Decision Memorandum at Comment 1; *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 55814 (September 26, 2008) (*Glycine 2006-2007*) and accompanying Issues and Decision Memorandum at Comment 4; *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China*, 70 FR 24502 (May 10, 2005) (*Chlorinated Isocyanurates from China*) and accompanying Issues and Decision Memorandum at Comment 3; *Garment Hangers* and accompanying Issues and Decision Memorandum at Comment 1; *Certain Steel Threaded Rod from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 8907 (February 27, 2009) (*Steel Threaded Rod*) and accompanying Issues and Decision Memorandum at Comment 3; *Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Determination in the Antidumping Duty Investigation*, (January 20, 2015) (*Tires from the PRC Prelim*) and accompanying Decision Memorandum at 19; and *Citric Acid and Citrate Salts 2007-2008*. GEO references the following submissions: GEO's Comments on Surrogate Country Selection, dated September 2, 2014 (GEO's Surrogate Country Comments), at Exhibit 1; GEO's Surrogate Value Data for Factors of Production, dated September 19, 2014 (GEO's September SV Submission), at Attachment 4; GEO's Factual Information to Rebut, Clarify and/or Correct Evonik's Surrogate Value Information, dated October 1, 2014 (GEO's Rebuttal to Evonik's SV Information), at 2 and Exhibits 1 and 2; GEO's Comments on the Response of Evonik Rexim (Nanning) Pharmaceutical Co., Ltd. to the Second Supplemental Questionnaire for Sections A and C, November 18, 2014, at 8, 9, and Attachment C; GEO's Additional Factual Info for the Prelim at Exhibit 6; 19 CFR 351.408(c)(4); Evonik's Surrogate Value Comments, dated September 19, 2014 (Evonik's September SV Comments), at Exhibit 7 (pages 75-76 of PT Budi Annual Report); GEO's Additional Factual Info for the Prelim at Exhibit 5; Evonik's Surrogate Value Submission, dated October 31, 2014 (Evonik's October SV Submission), at Exhibit 2 (pages 84-85 of PT Lautan annual report); GEO's Additional Factual Info for the Prelim at Exhibit 5; GEO's Factual Information to Rebut, Clarify and/or Correct the Department's Factual Information, dated March 6, 2015 (GEO's Rebuttal to the Department's Factual Information), at 3, 5, and Attachment A; Evonik's Response to GEO's Pre-Preliminary Comments, dated March 10, 2015, at 14 and 16; and Evonik's Third Supplemental Questionnaire and U.S. Customer Supplemental Questionnaire, dated February 13, 2015 at Section D, Response 6.b.

⁵⁸ See Prelim Decision Memo at 19.

⁵⁹ See *Glycine 2010-2011 Prelim* unchanged in *Glycine 2010-2011*.

- For this review, the Department claims that PT Darya-Varia, PT Pyridam, and PT Kalbe are “pharmaceutical companies with too dissimilar production processes, *i.e.*, more advanced, to the production of glycine,”⁶⁰ even though 1) the financial statements of these companies describing the companies’ product lines and production processes have not materially changed in three years, and 2) the supporting factual information that GEO placed on the record in that proceeding and in this one showing that these companies’ amine and amino acid products and their uses are comparable to glycine has not materially changed in three years.
- In prior reviews, the Department acknowledged the difference between companies that make amino acids used in pharmaceutical products and the companies that make pharmaceutical products.⁶¹ All three companies produce “amines,” and PT Kalbe also produces amino acids.⁶²
- The statute and regulations require that the Department select financial statements of companies that make a product identical to or more comparable to glycine.⁶³ The statutory requirement for comparable products is not fulfilled by merely by asserting comparability in production processes.
- The products of PT Budi and PT Lautan are not identical, comparable, or similar to glycine, and neither company meets the statutory definition of a suitable surrogate financial ratio source.
- PT Budi produces primarily tapioca starch, glucose, and fructose, which are not glycine or amino acids.⁶⁴ Furthermore, PT Budi’s main material input is cassava.⁶⁵ In contrast, major inputs for glycine include acetic acid, chlorine, and liquid ammonia.
- PT Lautan produces unrelated chemicals and uses production processes that are significantly different from the production processes used to make amino acid products. Further, PT Lautan is a multinational corporation with subsidiaries that significantly differs in organizational structure from Evonik, a Chinese subsidiary of a multinational corporation, and Baoding Mantong, a Chinese company with a single location.⁶⁶
- In a prior review, the Department rejected the financial statements of multinational corporations with subsidiaries in the primary surrogate country.⁶⁷
- The other companies that were rejected, PT Unggul and PT Pupuk, also do not make products comparable to glycine or other amine-based products that require certain manufacturing processes and costs.
- PT Unggul produces raw material inputs that can be used in downstream chemical or glycine production.⁶⁸ However, the Department has consistently not used financial statements for companies producing only the raw material inputs of the subject merchandise.⁶⁹
- Similarly, the Department rejected the financial statements of PT Pupuk in the 2010-2011 review because it produced urea fertilizer, a raw material input that the Department did not determine was comparable to glycine.⁷⁰

⁶⁰ See Prelim Decision Memo at 19.

⁶¹ See *Glycine 2010-2011* and accompanying Issues and Decision Memorandum at Comment 6.

⁶² See GEO’s Surrogate Country Comments at Exhibit 1 and GEO’s September SV Submission at Attachment 4.

⁶³ See 19 CFR 351.408(c)(4).

⁶⁴ See Evonik’s September SV Comments at Exhibit 7 (pages 75-76 of PT Budi Annual Report).

⁶⁵ See GEO’s Rebuttal to Evonik’s SV Information at 2 and Exhibit 2.

⁶⁶ See Evonik’s October SV Submission at Exhibit 2 (pages 84-85 of PT Lautan annual report).

⁶⁷ See *Glycine 2010-2011 Prelim* at 21743.

⁶⁸ See GEO’s Factual Information to Rebut, Clarify and/or Correct Evonik’s Surrogate Value Information, dated October 1, 2014, at Exhibit 2.

⁶⁹ See *Glycine 2007-2008* and accompanying Issues and Decision Memorandum at Comment 1; *Garment Hangers* and accompanying Issues and Decision Memorandum at Comment 3; and *Steel Threaded Rod* and accompanying Issues and Decision Memorandum at Comment 1.

- The Department found that PT Unggul’s financial statement “was not detailed in disaggregate individual expenses.”⁷¹ However, PT Budi’s and PT Lautan’s energy expenses were not specifically itemized in the cost of goods section of the financial statements and the Department was unable to segregate these expenses or exclude them from the calculation of surrogate financial ratios.⁷²
- In one proceeding where it had several potential surrogate sources that were producers of identical or comparable merchandise, the Department rejected one company’s financial statement because it did not adequately break out energy costs.⁷³
- In another proceeding, the Department stated that PT Budi’s financial information lacked detail but was the only usable data on the record of that review.⁷⁴
- For the final results, the Department should select the three Indonesian companies that GEO recommended for this review because they manufacture amine and amino acid products used in the pharmaceutical industry, and glycine itself is an amino acid that is very often used as a pharmaceutical product. Further, Evonik is a producer of amino acids and an exporter of glycine used as a pharmaceutical product.⁷⁵
- The Department could, as an alternative, use PT Kalbe’s financial statement alone as the basis for financial ratios in the final results. It is a producer of amino acids, and its financial data permit the energy and utility costs to be included in the financial ratio denominators.⁷⁶

⁷⁰ See *Glycine 2010-2011* and accompanying Issues and Decision Memorandum at Comments 6. PT Pupuk also produces ammonia, a raw material input for glycine. See GEO’s Factual Information to Rebut, Clarify and/or Correct the Department’s Factual Information, dated March 6, 2015, at 3 and Attachment A (PT Pupuk’s list of products, including urea and ammonia).

⁷¹ See Prelim Decision Memo at 19.

⁷² *Id.* at 19-20.

⁷³ See *Tires from the PRC Prelim* and accompanying Decision Memorandum at 19.

⁷⁴ See *Citric Acid and Citrate Salts 2007-2008* and accompanying Issues and Decision Memorandum at Comment 1.

⁷⁵ See Evonik’s Third Supplemental Questionnaire and U.S. Customer Supplemental Questionnaire, dated February 13, 2015, at Section D, Response 6.b.

⁷⁶ See GEO’s September SV Submission at Attachment 4.

Evonik's Rebuttal Brief⁷⁷

- In the *Preliminary Results*, the Department correctly selected the financial statements of PT Budi and PT Lautan for calculating the surrogate financial ratios and should continue to use these financial statements for the final results.
- Section 773(c)(1) of the Tariff Act of 1930, as amended (the Act), instructs the Department to use the “best available information” from the appropriate market economy country.
- The financial statements of three pharmaceutical companies that GEO recommended are not suitable because the companies produce a vast majority of products that are not comparable to the subject merchandise, have too dissimilar production processes, *i.e.*, more advanced, to the production of glycine, and are entirely different financially from Evonik and Baoding Mantong.
- Evonik is a producer of amino acids and related derivatives and compounds. In contrast, PT Darya-Varia produces prescription pharmaceuticals and consumer health products, including soft gelatin capsules and liquid products, sterile injections and solids. PT Pyridam also produces pharmaceutical products.
- PT Kalbe, the company most favored by GEO, also produces prescription pharmaceuticals, over-the-counter drugs, biopharma, eye care products, energy drinks, ready-to-drink health beverages, milk products, nutrition supplements, health foods, and medical devices. The financial statements also indicate that PT Kalbe is involved in the marketing of medical and diagnostic devices and in providing health services.⁷⁸
- The Department properly focused on whether the proposed surrogate producers have a production experience comparable to that of the producers of the subject merchandise because it must select surrogate companies that have a comparable production process.⁷⁹
- The Department has an established practice of rejecting financial statements of surrogate producers whose production process is not comparable to respondents’ production process when better information is available.⁸⁰

⁷⁷ See Evonik’s Rebuttal Brief at 1 through 6. In support of its arguments, Evonik cites the following: Prelim Decision Memo at 19; *Lifestyle Enterprises v. United States*, 768 F. Supp. 2d 1286, 1310 (CIT 2011) (*Lifestyle Enterprises*); *Shanghai Foreign Trade Enters. Co. v. United States*, 318 F. Supp. 2d 1339, 1348 (CIT 2004) (*Shanghai Foreign Trade*); *Chlorinated Isocyanurates from China*; *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 (May 16, 2013) (*Hand Trucks from the PRC*) and Issues and Decision Memorandum at Comment 2; *Certain Steel Nails From the People’s Republic of China: Final Results and Final Partial Rescission of the Second Antidumping Duty Administrative Review*, 77 FR 12556 (March 1, 2012) and accompanying Issues and Decision Memorandum at Comment 2; *Stanley Works (Langfang) Fastening Systems Co., Ltd. and the Stanley Works/Stanley Fastening Systems, LP v. United States*, Slip Op. 13-118 (CIT 2013) (*Stanley Works*); *Glycine from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007) (*Glycine 2005-2006*) and accompanying Issues and Decision Memorandum at Comments 2 and 3; *Glycine 2006-2007* and accompanying Issues and Decision Memorandum at Comment 4; *Glycine 2010-2011* and accompanying Issues and Decision Memorandum at Comment 6; 19 USC 1677b(c)(1); 19 CFR 351.309(d)(1)-(2); 19 CFR 351.309(c)(1)(ii); and CIT Court No. 12-00362. Evonik also references the following submissions: Evonik’s Section A Questionnaire Response, dated June 20, 2015, at Exhibit A-9; GEO’s September SV Submission at Exhibit 4; and Evonik’s Rebuttal Comments on Surrogate Values, dated October 1, 2014 (Evonik’s October SV Rebuttal), at Exhibit 3.

⁷⁸ See GEO’s September SV Submission at Exhibit 4; and Evonik’s October SV Rebuttal at Exhibit 3.

⁷⁹ See *Lifestyle Enterprises* and *Shanghai Foreign Trade*.

⁸⁰ See *Chlorinated Isocyanurates from China*.

- The Department also generally seeks the financial statements of companies producing identical merchandise in order to better match the production experience of the producers of the subject merchandise.⁸¹
- The Department has also considered product mix when considering whether a company is a producer of identical or comparable merchandise,⁸² and given the product mix of the companies suggested by GEO, they should not be considered producers of comparable merchandise. Furthermore, the Department has previously rejected the use of pharmaceutical companies in prior administrative reviews of the order.⁸³
- The three companies GEO proposes that the Department use in this review were used by the Department for the financial ratio calculation in a prior review because the Department did not have better information in that review and none of the companies available in this review were available during that prior review.⁸⁴
- Additionally, GEO overlooked the fact that the Department requested a voluntary remand to reconsider its decision to use the financial statements of these three pharmaceutical companies after the appeal of the 2010-2011 review.⁸⁵
- PT Lautan and PT Budi are producers of basic and specialty chemicals, which like glycine, can be used in food, beverages, cosmetics, pharmaceuticals, or personal care products.⁸⁶
- The absence of energy cost details in PT Lautan's and PT Budi's financial statements are not major flaws that would require the Department to reject these statements.

Baoding's Rebuttal Brief⁸⁷

- The Department should continue to use the financial statements of PT Budi and PT Lautan to calculate the surrogate financial ratios in the final results. The Department's selection of these companies that make products that are comparable to glycine due to similar production processes, end uses, or physical characteristics is consistent with its precedent and is supported by evidence on the record.
- Although GEO asserts that the Department should use the financial statements of the same three pharmaceutical companies used in the 2010-2011 review, in the appeal of that review, the Department requested a voluntary remand to reconsider whether these companies are comparable to Baoding Mantong.

Department's Position

The Department determines that PT Budi's and PT Lautan's financial reports are the best available information on the record for which to calculate surrogate financial ratios for the POR.

⁸¹ See *Hand Trucks from the PRC*.

⁸² See *Stanley Works*.

⁸³ See *Glycine 2005-2006* and accompanying Issues and Decision Memorandum at Comment 3; see also *Glycine 2006-2007* and accompanying Issues and Decision Memorandum at Comment 4.

⁸⁴ See *Glycine 2010-2011* and accompanying Issues and Decision Memorandum at Comment 6.

⁸⁵ See CIT Court No. 12-00362.

⁸⁶ Contrary to GEO's assertion, Evonik argues that it never stated that it was an "exporter of glycine used as a pharmaceutical product." While its product is referred to as pharmaceutical-grade (PG) glycine, that does not mean that it is used as a pharmaceutical, as opposed to being suitable for use as an input in pharmaceuticals. Evonik Case Brief at 6.

⁸⁷ See Baoding Mantong's Rebuttal Brief at 22-23.

Section 773(c)(1) of the Act states that “the valuation of the factors of production (FOP) shall be based on the best available information regarding the values of such factors. . . .” Additionally, 19 CFR 351.408(c)(4) states that for deriving the financial ratios, the Department “normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.”

While GEO is correct that in the most recently completed review, we relied on the financial statements for the pharmaceutical companies (*i.e.*, PT Darya-Varia, PT Pyridam, and PT Kalbe) for calculating surrogate financial ratios for the 2010-2011 review, we stated during that POR that “we relied on the financial information of three Indonesian pharmaceutical companies, as there was no information on the record for companies in Indonesia that produced glycine.”⁸⁸ We maintain that they are not the best available information for calculating the surrogate financial ratios for this POR. Specifically, the Department has previously rejected the use of pharmaceutical companies in prior administrative reviews of the order.⁸⁹

Regarding GEO’s argument that our analysis of PT Budi and PT Lautan’s “comparable production processes as glycine”⁹⁰ is not a correct interpretation of the statute and regulations, we disagree. While we will normally use non-proprietary information from producers of identical or comparable merchandise in the surrogate country,⁹¹ we also have a preference for matching the surrogate companies’ production experience with respondent’s production experience.⁹² Here, the Department finds that the production processes of the pharmaceutical companies PT Darya-Varia, PT Pyridam, and PT Kalbe are much more advanced than Baoding Mantong’s production process of glycine and thus are not an accurate reflection of Baoding Mantong’s business activities. Therefore, we determine using a simple average of the financial ratios of these two companies offers the best approximation of a glycine producer’s financial experience from among the information on the record.

Citing *Tires from the PRC Prelim*, GEO states that “in one proceeding where the Department had several potential sources that were producers of identical or comparable merchandise, the Department rejected one company’s financial statement because it did not adequately break out

⁸⁸ See *Glycine 2010-2011* and accompanying Issues and Decision Memorandum at Comment 6.

⁸⁹ See *Glycine 2005-2006* and accompanying Issues and Decision Memorandum at Comment 2, where the Department found the pharmaceutical product lines tend towards higher value-added products with dissimilar production process; see also *Glycine 2006-2007* and accompanying Issues and Decision Memorandum at Comment 4.

⁹⁰ See Prelim Decision Memo at 19, where stated that “we determined that only three companies had production processes similar to the production process for glycine: PT Budi, PT Lautan, and PT Ungul Indah Cahaya Tbk and Affiliates (PT Ungul). In reviewing PT Ungul’s financial statement, we noted that direct labor and factory overhead were not separately delineated. Therefore, we determined that PT Ungul’s financial statement was not sufficiently detailed in disaggregate individual expenses, and that the two remaining financial statements for calculating the financial ratios, PT Budi and PT Lautan, were useable for these preliminary results (*i.e.*, they are contemporaneous, sufficiently detailed, and without any countervailable subsidies).” Additionally, we stated that “{w}e also find that the PT Pupuk Kujang engaged in a production process comparable to that of glycine. However, key information contained in the financial statements were largely illegible and, therefore, we were unable to rely on these financial statements.”

⁹¹ See 19 CFR 351.408(c)(4).

⁹² See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the People’s Republic of China*, 69 FR 70997 (December 8, 2004) and accompanying Issues and Decision Memorandum at Comment 9(F).

energy costs.” Citing *Citric Acid and Citrate Salts 2007-2008*, GEO also argues that the Department stated that PT Budi’s financial information lacked detail but was the only usable data on the record of that review. In this review, we do not have several potential sources for the surrogate ratio, but consistent with *Citric Acid and Citrate Salts 2007-2008*, we find that PT Budi’s financial statement, as well as PT Lautan’s financial statement, contain useable data. Specifically, we find that the absence of energy cost details in PT Lautan’s and PT Budi’s financial statements are not major flaws that would require the Department to reject these statements. As we stated in the Prelim Decision Memo, we were able to disregard Baoding Mantong’s energy inputs (coal and electricity) in the calculation of normal value, by setting them to zero, in order to avoid double-counting energy costs that have been captured in the surrogate financial ratios as we have done in other reviews.⁹³

While GEO states that as an alternative to the three companies it proposes, we could use PT Kalbe’s financial statement alone as the basis for the financial ratio calculations, the record reflects that PT Kalbe, as a producer of pharmaceutical products, is therefore not the best information on the record in this review. Additionally, we have a preference, where possible, for using more than one financial statement.⁹⁴

Accordingly, for purposes of these final results, the Department determines that PT Budi’s and PT Lautan’s financial statements are the best information available to calculate surrogate financial ratios because: (1) the companies are profitable; (2) the financial reports are contemporaneous with the POR; (3) the companies have a comparable production process to producers of glycine; and (4) the financial reports are complete, translated, and sufficiently detailed.

⁹³ See Prelim Decision Memo at 20, citing *Citric Acid and Citrate Salts 2007-2008*, and accompanying Issues and Decision Memorandum at Comment 2 and *Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Preliminary Results of the Antidumping Duty Administrative Review; 2011-2012*, 78 FR 78333 (December 26, 2013) and accompanying Decision Memorandum, unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Final Results of the Antidumping Duty Administrative Review; 2011-2012*, 79 FR 37715 (July 2, 2014).

⁹⁴ See, e.g., *Folding Metal Tables and Chairs from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 72 FR 71355 (December 17, 2007).

B. Evonik-Specific Issues

Comment 5: Whether Evonik's Sales Were *Bona Fide*

Evonik's Case Brief⁹⁵

- The Department's finding that the price of Evonik's sales was atypical, not reflective of normal commercial realities, and not based on any commercial circumstances is not supported by the record.
- Evonik provided the Department with record evidence of the circumstances surrounding the sales and explained why the price was commercially reasonable under the circumstances and was not solely or primarily based on the "uniqueness" of the product.
- Evonik's unaffiliated glycine supplier's company was shut-down and the fact that certain FOP information is not available due to this shut-down is not a reason for rescinding the review with regard to Evonik.
- The statute provides that when record information is not available, the Department should apply neutral facts available, which it has done in a similar case.⁹⁶
- The Department's authority to exclude sales as not *bona fide* is limited to "exceptional circumstance when those sales are unrepresentative and extremely distortive."⁹⁷ {T}he definition of USP contains no requirement than the prices used in USP calculations to be prices charged 'in the ordinary course of trade.'⁹⁸

⁹⁵ See Evonik's Case Brief at 2 through 7. In support of its arguments, Evonik cites the following: *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review*, 73 FR 49162, 49164 (August 20, 2008) (*Wooden Bedroom Furniture*), and Issues and Decision Memorandum at Comment 12; *Foshan Nanhai Jiujiang Quan Li Spring Hardware Factory v. United States*, 920 F. Supp. 2d 1350, 1353 (CIT 2013) (*Foshan Nanhai*); *Windmill International PTE, Ltd. v. United States*, 26 CIT 221 (*Windmill International*); 193 F. Supp. 2d 1303 (2002); *Tianjin Tiancheng Pharmaceutical Co. v. United States*, 366 F. Supp. 2d 1246 (2005) (*Tianjin Tiancheng*); *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 29 CIT 603, 611 (*Hebei New Donghua*); 374 F. Supp. 2d 1333 (2005); *FAG U.K. v. United States*, 20 CIT 1277, 1281-1282 (CIT 1996); *American Silicon Technologies v. United States*, 24 CIT 612; 110 F. Supp. 2d 99224 CIT 612; 110 F. Supp. 2d 992 (2000); *Floral Trade Council of Davis, California v. United States*, 15 CIT 497, 508 n.18, 775 F. Supp. 1492, 1503 n.18 (1991); *Ipsco v. United States*, 12 CIT 384, 394, 687 F. Supp. 633, 641 (1988); *Notice of Final Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin from Italy*, 68 FR 2007 (January 15, 2003); *Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands*, 66 FR 50408 (October 3, 2001) and accompanying Issues and Decision Memorandum at Comment 3; *Silicon Metal from Brazil: Notice of Final Results of Antidumping Duty Administrative Review*, 64 FR 6305 (February 9, 1999) and Issues and Decision Memorandum at Comment 1; *Chang Tieh Industry Co. v. United States*, 840 F. Supp. 141, 146 (CIT 1993); *Fresh Garlic From the People's Republic of China: Final Rescission of Antidumping Duty New Shipper Review; 2010-2011*, 78 FR 18316 (March 26, 2013) and Issues and Decision Memorandum at 6; *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 29 CIT 603; 374 F. Supp. 2d 1333 (2005). Evonik also references the following submissions: *Preliminary Results*, Memorandum to Abdelali Elouaradia, Acting Office Director from Ericka Ukrow, International Trade Compliance Analyst, Antidumping Administrative Review of Glycine from the People's Republic of China; 2013-2014: *Bona Fide Nature of Evonik Rexim (Nanning) Pharmaceutical Co., Ltd.'s Sales*, dated March 31, 2015 (*Evonik Bona Fide Memo*).

⁹⁶ See *Wooden Bedroom Furniture*.

⁹⁷ See *American Silicon Technologies v. United States*, 24 CIT 612; 110 F. Supp. 2d 99224 CIT 612; 110 F. Supp. 2d 992 (2000).

⁹⁸ See *FAG U.K. v. United States*, 20 CIT 1277, 1281 (CIT 1996); *Floral Trade Council of Davis, Cal. V. United States*, 15 CIT 497, 508 n. 18, 775 F. Supp. 1492, 1503 n. 18 (1991) (regular exclusion of sales not in the ordinary

- The Department has stated that it “disregards U.S. sales in exceptional circumstances where the sale is commercially unreasonable and other facts and circumstances indicate an attempt to manipulate the dumping margin.”⁹⁹
- The Court has agreed that where a transaction involves artificially high prices, the Department may disregard the sale as not resulting from a *bona fide* transaction.¹⁰⁰
- Furthermore, even if the Department continues to find the price was atypical of normal business practices, price alone is not enough to support a determination that a sale is not *bona fide*.¹⁰¹
- If Evonik had sold at a price close to Baoding Mantong’s price or to the U.S. spot market prices of \$5.95 to \$6.61 per kilogram for USP-grade glycine that GEO provided, it would have effectively obtained a review by dumping subject merchandise into the U.S. market.
- The Department overlooked the fact that, in the *Preliminary Results*, Baoding Mantong’s price constituted dumping at a high margin of 784.48 percent.
- The Department should be encouraging respondents to increase their prices, rather than discouraging them with the possibility that they will not get a refund of deposited duties after an administrative review has been completed.
- Regarding the Department’s argument that there was “insufficient record evidence to support the uniqueness of Evonik’s glycine quality, which theoretically drove the high price. . .,”¹⁰² Evonik supplied the Department with the specifications for the supplier’s glycine and the specifications for Evonik’s glycine and explained the additional production steps performed by Evonik.
- Regarding whether the goods were resold at a profit, the Department stated that Evonik’s “transaction may not be indicative of normal commercial practices.”¹⁰³
- The fact that sales may not be “ordinary” when compared to sales generally made in the market is not sufficient to find them to be non-*bona fide* sales. Rather, that is an ordinary course of trade analysis, which is only applicable to normal value calculations.¹⁰⁴

course of trade only occurs on the home-market side of the price comparison); *Ipsco v. United States*, 12 CIT 384, 394, 687 F. Supp. 633, 641 (1988) (“If Congress intended to require the administering authority to exclude all sales made outside the ‘ordinary course of trade’ from its determination of United States price it could have provided for such an exclusion in the definition of United States price, as it has in the definition of foreign market value. It has not done so.”); see also *Notice of Final Results of Antidumping Duty Administrative Review Granular Polytetrafluoroethylene Resin from Italy*, 68 FR 2007 (January 15, 2003); *Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot Rolled Carbon Steel Flat Products from the Netherlands*, 66 FR 50408 (October 3, 2001) and accompanying Issues and Decision Memorandum at Comment 3.

⁹⁹ See *Silicon Metal from Brazil: Notice of Final Results of Antidumping Duty Administrative Review*, 64 FR 6305 (February 9, 1999) and accompanying Issues and Decision Memorandum at Comment 1.

¹⁰⁰ See *Chang Tieh Industry Co. v. United States*, 840 F. Supp. 141, 146 (CIT 1993).

¹⁰¹ See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333 (CIT 2005), where the Court stated that “price alone would likely be an insufficient basis on which to exclude a transaction.” See also *Freshwater Crawfish Tail Meat from the People’s Republic of China; Notice of Final Results of Antidumping Duty New Shipper Review*, and *Final Rescission of Antidumping Duty New Shipper Review*, 68 FR 1439 (January 10, 2003) and Issues and Decision Memorandum at Comment 1, where the Department found sales to be *bona fide* despite the fact that respondent’s prices were higher than average prices, and where there was no indication on the record that it was an artificially-set high price.

¹⁰² See Evonik’s *Bona Fides* Memo.

¹⁰³ *Id.*

- Additionally, contrary to the Department’s assertion, Evonik has supplied the Department with all the relevant sales documentation, including the purchase orders.
- Regarding the other factors traditionally considered by the Department, the Department took no issue with the timing of Evonik’s sale, or the expenses arising from the transaction.
- In the *Preliminary Results*, the Department stated that it had concerns regarding Evonik’s inability to obtain necessary FOP data from its unaffiliated PRC supplier of glycine, and cannot calculate a rate for Evonik, even if it were to find Evonik’s sales to be *bona fide* sales, because it does not have the necessary FOP data on the record to determine its normal value.¹⁰⁵
- The statute provides that in these situations, where information is not available on the record but the respondent has cooperated to the best of its ability, the Department should apply neutral facts available.¹⁰⁶
- The Department did not attempt to address or distinguish its decision in *Wooden Bedroom Furniture* from its decision in the *Preliminary Results*.
- The following are the similar facts in *Wooden Bedroom Furniture* and this administrative review: 1) respondents in both reviews purchased subject merchandise from an affiliated supplier and further processed it into a product that was also subject merchandise; 2) both respondents provided evidence to the Department showing that they attempted to obtain FOP data for their suppliers; and 3) both unaffiliated suppliers refused or were unable to provide the relevant FOPs for the subject merchandise input.
- The Department should follow the precedent it set in *Wooden Bedroom Furniture* and use neutral facts available to value the glycine input used in Evonik’s production process.
- As a surrogate for the glycine purchased by Evonik for use in its production process, the Department can use one of the following: 1) import data from various countries on the record; or 2) the normal value of Baoding Mantong as the surrogate for Evonik’s glycine input.
- Additionally, pursuant to section 773 of the Act, the Department could reopen the record and allow parties to submit export or other data from relevant countries to supplement the record.

GEO’s Rebuttal Case Brief

- The Department correctly determined in the *Preliminary Results* that Evonik’s single constructed export sale during the review period was not *bona fide* and is not a reasonable or reliable basis for calculating a dumping margin.
- The Department’s determination was primarily based on the atypical nature of Evonik’s prices and atypical circumstances surrounding its supplier’s inability to provide certain FOP data.
- Specifically, the Department noted certain factors including that there was insufficient evidence to support the uniqueness of Evonik’s glycine quality to justify its high price, and there was inconsistent evidence that Evonik’s glycine supplier was shut down and that necessary FOP data was not obtainable for the calculation of normal value.¹⁰⁷

¹⁰⁴ See, e.g., *FAG U.K. v. United States*, 20 CIT 1277, 1282 (CIT 1996), where the courts have stated that the standard for excluding sales from U.S. price is stricter than the “outside the ordinary course of trade” standard used in the normal value calculation.

¹⁰⁵ See Preliminary Decision Memo at 5.

¹⁰⁶ See 19 U.S.C. 1677e(a).

¹⁰⁷ See *Evonik Bona Fide Sales Memorandum* at 8.

- In conducting its *bona fide* analysis, the Department’s practice is to determine whether the respondent has “conducted *bona fide*, commercially reasonable transactions that are indicative of how the company can be expected to act in the future.”¹⁰⁸
- The Department applies a totality of circumstances analysis to determine whether the transaction is “commercially reasonable” or “atypical of normal business practice.”¹⁰⁹ A single sale need not be “extremely distortive” in order to be found unsuitable; rather, a sale must be typical of normal business practices.¹¹⁰ Even Evonik admits that its future U.S. glycine sales would not likely resemble this one.¹¹¹
- Evonik claims that it submitted substantial record evidence demonstrating that the price of its sales was set based on commercial circumstances and commercial realities in affect at the time of the sales and cites *Silicon Metal from Brazil*.
- However, in *Silicon Metal from Brazil* the Department verified the respondent in that review and found no discrepancies with the information the company reported regarding its U.S. sale,¹¹² but in this administrative review the Department has not verified Evonik and has found discrepancies concerning the company’s U.S. sale.
- Therefore, the Department’s finding that Evonik did not make a *bona fide* sale was in accordance with law and supported by substantial evidence on the record.
- If the Department does not rescind Evonik’s review in the final results, it should apply an adverse inference and use adverse facts available in Evonik’s FOP calculations for its failure to cooperate from the start of this review in providing FOPs for the subject merchandise and its frequent alterations to its version of the facts.
- Evonik did not act to the best of its ability as demonstrated by its failure to notify the Department in a timely manner of its alleged inability to obtain FOP data and misrepresented its supplier’s status. Specifically, one week before the *Preliminary Results*, Evonik stated that there was no evidence in support of its explanation for failing to provide any FOPs for the subject merchandise was available or forthcoming.
- Evonik states that the Department should apply “neutral facts available” and cites *Wooden Bedroom Furniture* as precedent that should be followed for Evonik in this review.
- In *Wooden Bedroom Furniture*, there was a confusion concerning the scope of the order and the respondent’s missing FOP information involved a relatively small number of sales.¹¹³
- In contrast to *Wooden Bedroom Furniture*, Evonik itself requested a review; Evonik knew that the food-grade glycine it purchased was within the scope of this order; Evonik knew that it was providing FOP data for one product from only one supplier, and all of those FOPs from that supplier were unreported; and the Department made Evonik aware of its obligations to submit the FOPs from the start of the review and repeatedly reminded Evonik of that obligation.
- The Department has recognized that “it is crucial for suppliers of subject merchandise to provide their own FOP data because suppliers actually provide finished merchandise independently subject to the Order.”¹¹⁴

¹⁰⁸ See *Foshan Nanhai Jiujiang Quan Li Spring Hardware Factory v. United States*, 920 F. Supp. 2d, 1350, 1353 (CIT 2013).

¹⁰⁹ See *Windmill International Pte., Ltd. v. United States*, 193 F. Supp. 2d, 1303, 1313 (CIT 2002).

¹¹⁰ See *Shandong Chenhe International Trading Co., Ltd. v. United States*, Slip Op. 2010-129 (CIT 2010).

¹¹¹ See Evonik’s Case Brief at 8-10.

¹¹² See *Silicon Metal from Brazil: Notice of Final Results of Antidumping Duty Administrative Review*, 64 FR 6305, 6317 and accompanying Issues and Decision Memorandum at Comment 1.

¹¹³ See *Wooden Bedroom Furniture* and accompanying Issues and Decision Memorandum at Comment 12.

- When respondent has not provided FOP information at all for a product, the Department applies adverse facts available.¹¹⁵

Department's Position

We disagree with Evonik and continue to determine, as we did in the Preliminary Results, that Evonik did not have *bona fide* sales during the POR, because 1) the atypical nature of Evonik's price; and 2) the atypical circumstances surrounding the sales, including Evonik's supplier's inability to provide FOP data. Because Evonik did not have *bona fide* sales during the POR, we are rescinding the review with respect to Evonik. Given that our analysis involves the discussion of significant business proprietary information, we have included such analysis in a separate memorandum.¹¹⁶

Comment 6: Whether the 453.79 Percent PRC-Wide Rate is Accordance with Law

Evonik's Case Brief¹¹⁷

- In the *Preliminary Results*, the Department stated that if it proceeds to a final rescission with regard to Evonik, then Evonik's entries will be assessed at the rate entered.
- The Department should not instruct CBP to liquidate Evonik's entries at the 453.79 percent PRC-wide rate because this rate may soon be held invalid by the Court.¹¹⁸

GEO's Rebuttal Brief¹¹⁹

- The courts have never held that liquidation of entries entered at a duty rate that may soon be held invalid should not occur.
- Therefore, the Department should liquidate Evonik's entries at the rate entered.

Department's Position

We disagree with Evonik. Pursuant to the statute and regulatory framework, our instructions to CBP explicitly state that they should liquidate at the rate that was in effect at the date the merchandise was entered or withdrawn from a warehouse.¹²⁰ The cases cited by Evonik are inapplicable here. In both *Navneet* and *Jilin Henghe*, the court had already issued decisions on

¹¹⁴ See *Final Results and Final Partial Rescission of the Second Antidumping Duty Administrative Review: Certain Steel Nails from the People's Republic of China*, 77 FR 12556 (March 1, 2012).

¹¹⁵ See, e.g., *Steel Nails from the PRC* and accompanying Issues and Decision Memorandum at Comment 12.

¹¹⁶ See Evonik Final *Bona Fide* Memo.

¹¹⁷ See Evonik's Case Brief at 24. Evonik cites the following in support of its arguments: *Preliminary Results*; *Baoding Mantong Fine Chemistry Co., Ltd. v. United States*, Ct. No. 12-00362; *Jilin Henghe Pharm. Co. v. United States*, 28 CIT 969, 980, 342 F. Supp. 2d 1301, 1312 (2004); and *Navneet Publs. (India) Ltd. v. United States*, 36 International Trade Rep. (BNA) 1054 (CIT 2014).

¹¹⁸ See, e.g., *Navneet v. United States* (granting preliminary injunction to prevent liquidation at deposit rate from a previous review that was under appeal).

¹¹⁹ See GEO's Rebuttal Brief at 21-22.

¹²⁰ See Section 751(B) of the Act and 19 CFR 351.212(c)(2).

the rates being challenged before providing relief. Accordingly, the Department will issue instructions to liquidate entries pursuant to its statute and regulations.

CONCLUSION

We recommend applying the above methodology for this final determination.



Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

5 October 2015
Date