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October 9, 2007

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Glycine from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the 2005-2006 Antidumping Duty Administrative Review

SUMMARY:

We have analyzed the case and rebuttal briefs of interested parties[1] in the 2005-2006 administrative review of the antidumping duty order on glycine from the People's Republic of China ("PRC"). As a result of our analysis, we have made changes to Glycine from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Rescission, in Part, 72 FR 18457 (April 12, 2007) ("Preliminary Results").[2]

We recommend that you approve the positions described in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this antidumping duty administrative for which we received comments and rebuttal comments from interested parties.

[1] The domestic interested party participating in this review is Geo Specialty Chemicals, Inc. ("GSC"), and the respondent party participating in this review is Nantong Dongchang Chemical Industry Corp. ("NDCI").

[2] The specific calculation changes for NDCI can be found in the Memorandum to the File, Administrative Review of Glycine from the People's Republic of China: Analysis for the Final Results of Nantong Dongchang Chemical Industry Corp., dated October 9, 2007 ("Final Analysis Memo"). The surrogate values for these final results can be found in the Memorandum to the File, Administrative Review of Glycine from the People's Republic of China: Surrogate Values for the Final Results, dated October 9, 2007 ("Final SV Memo").

General Issues:

Comment 1: Ammonia Surrogate Value
Comment 2: Selection of Surrogate Financial Companies
Comment 3: Chlorine Surrogate Value
Comment 4: U.S. Inland Freight Valuation
Comment 5: Zeroing
Comment 6: CBP Assessment
Comment 7: Ministerial Errors

Background:

The merchandise covered by the order is glycine as described in the "Scope of the Order" section of the Preliminary Results. The period of review ("POR") is March 1, 2005, through February 28, 2006. In accordance with 19 CFR 351.309(c)(ii), we invited parties to comment on our Preliminary Results. On July 16, 2007, parties filed case briefs, and on July 23, 2007, parties filed rebuttal briefs.

Discussion of the Issues

Comment 1: Ammonia Surrogate Value

NDCI states that with respect to liquid ammonia, it has placed substantial information on the record, both prior and subsequent to the Preliminary Results, which shows that the Department selected an incorrect surrogate value ("SV") for this input, i.e., using Indian import data from the World Trade Atlas ("WTA") for aqueous ammonia (HTS 2804.2000, chemical formula NH_4OH), rather than anhydrous ammonia (HTS 2804.1000, chemical formula NH_3). NDCI contends that the Department's selection was due primarily to misleading information provided by GSC without record support. NDCI contends that the Department should use data for anhydrous ammonia as the SV for its liquid ammonia input for the final results. NDCI further argues that since GSC has substantially impeded the instant review by advocating the use of an incorrect raw material – aqueous ammonia – with a substantially inflated value, the Department should draw an adverse inference against GSC and select the lowest record value for liquid ammonia placed on the record by NDCI.

NDCI then details the record evidence that supports its contention that the Department should use a SV for anhydrous ammonia to value its liquid ammonia input. NDCI notes that throughout its June 27, 2006, Section D response, it referred to anhydrous ammonia as "liquid ammonia," and in the narrative explanation of its production process explained (in the context of a discussion of chlorine gas) how and why a hazardous gas would be liquified for transportation and processing. NDCI argues that those in the chemical industry, such as GSC, must know that many hazardous gases are liquified for ease of processing, and that such a fact has nothing to do with aqueous solutions. NDCI states that the term "liquid ammonia" is widely understood in China to mean anhydrous ammonia, and that anyone with a passing familiarity with chemistry would have known that "liquid ammonia" must have referred to anhydrous ammonia, and not

aqueous ammonia. NDCI states that if it had used aqueous ammonia, the factor input (i.e., usage ratio) would have been significantly higher, it would have had to expend significantly more energy to separate the water from the ammonia gas, and it would have reported water as a by-product.

In its November 16, 2006, supplemental Section D response, NDCI provided the chemical reaction formula for the step involving the liquid ammonia input in its glycine production process: $ClCH_2COOH + 2NH_3 = NH_2CH_2COOH + NH_4Cl$. NDCI notes that the ammonia gas at this stage, NH_3, is clearly not bonded to a water molecule or an oxygen-hydrogen combination. NDCI also refers to its June 11, 2007, SV submission that contains the explanatory notes to chapter 28 of the Harmonized Tariff Schedule, which explain that "aqueous ammonia" is chemically represented as NH_4OH, and anhydrous ammonia as NH_3. NDCI also notes that it indicated the purity level of its liquid ammonia input at Exhibit S2-20 of its November 16, 2006, response, and that this purity level was consistent with the chemical formula noted in the response.

In response to the Department pointing out that in its January 3, 2007, supplemental response that NDCI reported it used liquid ammonia at a lower concentration, NDCI states that this was an inadvertent typographical error, wherein it mistakenly transposed the numerical value indicating the purity level of a different chemical input referenced in the question directly above it. NDCI states that regardless of this error, its responses throughout the review indicated that the product at the input stage was a liquified gas (NH_3), and that nowhere was its liquid ammonia input indicated as being chemically bonded to a hydrogen-oxygen combination.

NDCI further notes that in its January 8, 2007, SV submission, it submitted the U.S. import statistics for HTS 2814.1000, anhydrous ammonia, as a benchmark for evaluating potential SV options. Subsequent to the Preliminary Results, in its June 1, 2007, SV submission NDCI placed the WTA data for Indian imports under HTS 2814.1000 on the record, as well as the scientific dictionary definition of anhydrous ammonia, which is referred to as "liquid ammonia." NDCI also included excerpts from the petitions recently filed by GSC against glycine from India, Japan, and South Korea, which describe two different methods of glycine production, one using hydrogen cyanide, and the other using monochloracetic acid and anhydrous ammonia (the latter method being used by NDCI). In its June 25, 2007, supplemental response regarding its ammonia input, NDCI notes that in addition to the record evidence discussed above, it submitted several certificates of analysis (in addition to those it submitted on June 11, 1002) from various suppliers of its liquid ammonia input indicating that its ammonia was anhydrous ammonia at 99 percent purity. NDCI notes that although it submitted WTA data for anhydrous ammonia, it believes that ammonia sales data from the financial statements of two Indian companies should be used to value its liquid ammonia input.

NDCI argues that because GSC misled the Department by submitting Indian WTA data for aqueous ammonia, rather than anhydrous ammonia, and has impeded this proceeding, the Department should draw an adverse inference against GSC with respect to SVs. NDCI contends that GSC has significantly impeded the Department's proceeding within the meaning of section 776(a)(2)(c) of the Tariff Act of 1930, as amended ("the Act"), by drawing respondent and

Department resources away from issues of actual controversy. NDCI states that the Department could opt to select the lowest record SV for each input, including raw materials and financial ratios.

GSC rebuts that the Department should use WTA data for aqueous ammonia to value NDCI's liquid ammonia input. GSC contends that NDCI had ample opportunity to submit whatever information it saw fit onto the record within the normal time limits of an administrative review, including information regarding the type of ammonia it uses in its production process. GSC argues that the Department improperly allowed NDCI to submit new factual information in its June 1, 2007, and June 11, 2007 filings, and compounded its error by soliciting additional information from NDCI via a supplemental questionnaire. GSC contends that the Department allowing NDCI to submit additional information in this manner is inexplicable and undermines the very rule of law the Department is supposed to uphold. GSC cites legal precedent outlining the basic principles requiring fairness and adherence to precedent. See GSC's Rebuttal Brief at 3. GSC states that the Department, having allowed such information on the record, should not compound its error by relying upon it for the final results.

GSC contends that even if the Department relies on the evidence submitted by NDCI subsequent to the Preliminary Results, such evidence does not reconcile with previous record information. GSC also notes that the Department used WTA data for aqueous ammonia in the previous glycine administrative review. See Glycine from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 70 FR 47176 (August 12, 2005) ("2003-2004 Glycine Review"), and accompanying Issues and Decision Memorandum at Comment 1. GSC states that prior to the Preliminary Results, NDCI only questioned the valuation of aqueous ammonia, but never questioned whether something besides aqueous ammonia should be used to value its ammonia input. GSC thus argues that while NDCI blames GSC for confusing the record with regard to the ammonia input, it is the respondent's responsibility to submit evidence at issue.

GSC argues that NDCI's position that "liquid ammonia" always refers to anhydrous ammonia has no logical basis. GSC states that anhydrous ammonia is a gas at room temperature and is only liquified when specially processed to facilitate its transportation. In contrast, GSC states that aqueous ammonia is always a liquid at room temperature. GSC contends that NDCI stated affirmatively that it uses aqueous ammonia at a certain concentration level in its January 3, 2007, supplemental response, and that its attempt to explain away this statement as a typographical error does not stand up to serious scrutiny. GSC notes that one of the Indian financial statements that NDCI argues should be used to value its ammonia input in fact represents aqueous ammonia, as evidenced by the product code (28142000) representing the HTS classification for aqueous ammonia.

GSC concludes that contrary to NDCI's claims that there is no room for ambiguity with respect to the identity of its liquid ammonia input, the Department's decision to use a SV for aqueous ammonia in the Preliminary Results was based upon the record information– placed there by NDCI– demonstrating that it does in fact use aqueous ammonia. GSC contends that, far from

being misled, the Department relied on NDCI's explicit statement that it used aqueous ammonia and past precedent from the 2003-2004 Glycine Review.

GSC further contends that NDCI, and not it, is responsible for the confusing state of the record. GSC notes that NDCI places a great deal of importance on its description of the production process, but its reference to anhydrous ammonia therein does not clarify the record. GSC states that NDCI itself noted that it is possible to convert anhydrous ammonia into aqueous ammonia or vice versa. GSC argues that it is not what form of ammonia NDCI uses in the production process, but rather the form that it purchases, that is relevant for assigning the SV. GSC surmises that, given the ease of turning one form of liquid ammonia (aqueous) into another (anhydrous), it is possible that NDCI purchases aqueous ammonia and converts it to anhydrous ammonia during production, or that it purchases both inputs. GSC offers the supposition that since NDCI's entire defense rests upon the claim that it committed an inadvertent error in describing the concentration of ammonia it uses, it is possible that the chemical reaction formula NDCI submitted in its description of the production process is erroneous, and not its reported ammonia concentration.

Alternatively, GSC states that the Department could average the WTA data for aqueous ammonia and anhydrous ammonia. GSC notes that the Department has done this when the record was unclear which particular HTS category best represented the input used by the respondent. See e.g., Hand Trucks and Certain Parts Thereof From the People's Republic of China: Final Results of Administrative Review and Final Results of New Shipper Review, 72 FR 27287 (May 15, 2007), and accompanying Issues and Decision Memorandum at Comment 18; and 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 1.

Department's Position:

For the Preliminary Results, the Department used Indian import data from the WTA for HTS 2814.2000 ("ammonia in aqueous solution") to value NDCI's liquid ammonia input. This decision was based on the available information at the time, and on the fact that these data were used in the 2003-2004 Glycine Review. A review of the record information, submitted both prior and subsequent to the Preliminary Results, indicates that the Department should instead establish the SV for liquid ammonia using data for anhydrous ammonia, HTS 2814.1000.

In valuing the FOPs, section 773(c)(1) of Act instructs the Department to use "the best available information" from the appropriate market economy country. The Department's criteria for selecting SV information are normally based on the use of publicly available information ("PAI") and the Department considers several factors when choosing the most appropriate PAI, including the quality, specificity, and contemporaneity of the data. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006) ("CLPP"), and accompanying Issues and Decision Memorandum at Comment 3.

Regarding GSC's argument that the Department should not rely on information that it allowed NDCI to improperly submit, we addressed this matter in our June 14, 2007, letter:

> The Department of Commerce ("Department") has received the surrogate value ("SV") submissions and rebuttals filed by the interested parties in this review. In separate letters, Geo Specialty Chemicals, Inc., ("Geo"), the domestic producer participating in this review, objected to both the June 1, 2007, and June 11, 2007, SV submission filed by the respondent, Nantong Dongchang Chemical Industry Corporation ("NDCI"), arguing that they contained new factual information other than SV information. NDCI subsequently argued that Geo's requests to strike its filings from the record were unwarranted.
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> First, the Department disagrees with Geo that NDCI's June 1, 2007 submission contained new factual information unrelated to SV information. NDCI submitted information relating to the specificity and classification of the input in question, something which is germane in selecting the appropriate SV for that input. Second, while the Department agrees with Geo that NDCI's June 11, 2007 {submission} contains new factual information[1], given the ambiguity of the information currently on the record of this review regarding the ammonia input, including the selection of the appropriate SV, and the fact that the Department itself is soliciting additional information on this topic (see below), the Department has exercised its discretion to keep this new factual information. Pursuant to 19 CFR 351.301(c)(1), Geo may comment on the information contained in NDCI's June 11, 2007 filing within 10-days of the receipt of this letter since the Department is now clarifying that such information will remain on the record of this review.
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> Additionally, concurrent with this letter, we are issuing a supplemental questionnaire to NDCI to clarify certain information regarding its ammonia input. Pursuant to 19 CFR 351.301(c)(1), the domestic interested party participating in this review will have 10 days from the date it receives a copy of the response (due on June 25, 2007) to file comments.
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> [1] NDCI's June 11, 2007, submission did not contain factual information to rebut, clarify, or correct the factual information submitted by Geo on June 1, 2007. Moreover, while NDCI claims to have filed the new factual information on June 11, 2007, in response to Geo's filings of June 4 and 8, 2007, Geo's filings on those two dates did not contain factual information, but rather were argumentative in nature.

In allowing this information to remain on the record, and in seeking further clarification subsequent to these filings, the Department was following its objective to calculate margins as accurately as possible. See Shakeproof Assembly Components, Div. of Ill. Toolworks, Inc. v. United States, 268 F.3d 1376,1382 (Fed. Cir. 2001) ("In determining the valuation of the factors of production, the critical question is whether the methodology used by Commerce is based on the best available information and establishes antidumping margins as accurately as possible."). Using an incorrect SV would be counter to this goal, and the Department therefore exercised its

discretion to keep such information under 19 CFR 351.301(c)(1). Moreover, the Department recognized that GSC should be given an opportunity to rebut any new information so as not to be unfairly prejudiced, and clearly provided an opportunity for it do so, as noted in the Department's letter of June 14, 2007. GSC chose not to avail itself of this opportunity.

The Department determines that NDCI has been consistent in reporting its liquid ammonia FOP, and that its input consists of anhydrous ammonia, and that "liquid ammonia" appropriately refers to anhydrous ammonia. Record evidence supports this conclusion. Evidence that supports this conclusion consists of: 1) the chemical reaction formula for glycine production submitted by NDCI that shows NH_3 being used; 2) the explanatory notes to the HTSUS, stating that the chemical formula for anhydrous ammonia is NH_3, and the chemical formula for ammonia in aqueous solution is NH_4OH; 3) Certificates of Analyses ("COAs") from NDCI's ammonia suppliers, indicating the chemical name and purity level (99%+); 4) an excerpt from the petitions on glycine from India and South Korea filed by GSC, where GSC itself describes one of the two methods of glycine production, the same method used by NDCI, as using anhydrous ammonia; and 5) the definition of anhydrous ammonia from the McGraw Hill Dictionary of Scientific and Technical Terms, which describes anhydrous ammonia as "liquid ammonia." Given the substantial evidence noted above, we are satisfied that NDCI's explanation that a transcription error led to its misreporting of the concentration of its liquid ammonia input in its January 3, 2007, supplemental response. Additionally, the COAs from NDCI's suppliers indicate that they sell anhydrous ammonia to NDCI, and NDCI stated that it ". . .does not pre-mix the anhydrous ammonia in any other way before combining it chemically with MCA." See NDCI's June 25, 2007, response at 3. While GSC contends that prior to the Preliminary Results NDCI only questioned the value of the ammonia input, and not its composition, we note that NDCI did submit U.S. import statistics for anhydrous ammonia as a benchmark to what it considered to be "aberrational" data for Indian imports of aqueous ammonia. Lastly, we note that the 2003-2004 Glycine Review represents a different record, and the respondent there did not raise the issue of the HTS classification of the ammonia input.

To value NDCI's liquid ammonia input, we are using Indian import data covering the POR for HTS 2814.1000 (anhydrous ammonia), as reported in the WTA. These WTA data are publicly available, contemporaneous with the POR, and specific to the input in question. Since the record evidence supports the conclusion that NDCI's liquid ammonia input is anhydrous ammonia, we determine that it would not be appropriate to use an average of the Indian import data for anhydrous and aqueous ammonia. While NDCI argues that data from the financial statements of two Indian companies should be used, it does not offer a specific reason why, and record evidence, as noted by GSC, indicates that such data may in fact reflect aqueous ammonia. The Department therefore finds that the aforementioned WTA data represent the best available information on the record for which to value the liquid ammonia input.

Comment 2: Selection of Surrogate Financial Companies

NDCI argues that although the Department generally prefers to use more than one financial statement to derive the financial ratios, it does not use all financial statements in the administrative record when valuing financial ratios if the facts do not support such an

application. NDCI asserts that the Department will recognize differences in the respondents' production experience and attempt to match the financial ratio sources to that experience when the record permits. NDCI cites to the administrative review on garlic from the People's Republic of China, and states that, in that case, the Department matched financial statements with producers according to whether or not they were vertically integrated. See Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 34082 (June 13, 2005) ("Garlic from China").

NDCI argues that the current administrative review of glycine from the PRC is very different from the previous review because the Department now has more data available to it and can select a set of financial ratios that are more comparable to NDCI's experience. NDCI maintains that the Department can accomplish this without relying only on a single Indian financial statement and without stretching the meaning of the word comparable to mean any company that deals with chemicals. NDCI holds that none of the financial statements on the record of this review are closely comparable to it in terms of raw materials or manufacturing process.

NDCI argues that GSC has impeded this case by placing a large number of financial statements on the record of this administrative review on the last day for filing surrogate values submissions. NDCI maintains that the Department stated that the final day to submit new surrogate values was on June 1, 2007 and that it adhered to this deadline. NDCI also states that it submitted rebuttal comments on June 11, 2007, to rebut GSC's June 1, 2007, SV comments. NDCI argues that in GSC's June 11, 2007, rebuttal comments, it placed on the record financial statements for companies with little or no connection to glycine production, and that placing these large financial statements on the record in the form rebuttal comments is not in keeping with the due process guarantees in the Department's regulations. NDCI further argues that these statements are not permissible rebuttals to the information NDCI submitted in its timely filed submission on June 1, 2007, and GSC did not explain why it did not submit these financial statements in its own June 1, 2007, submission, which would have enabled NDCI a proper opportunity to provide rebuttal comments. NDCI argues that the Department should not consider the financial statements placed on the record in GSC's June 11, 2007, submission.

In its October 5, 2007, filing, NDCI states that the Department made the correct decision in its October 2, 2007, letter rejecting the financial statements submitted by GSC on June 11, 2007. Citing 19 CFR 351.302, NDCI asserts that GSC's October 3, 2007, letter objecting to the Department's decision to reject the financial statements was untimely and unsolicited and should also be rejected. NDCI argues that GSC has impeded this proceeding by attempting to "game" the system. NDCI contends that whether or not the Department determines to articulate its rejection of GSC's documents as a policy, the Department's decision was the correct one, given the specific facts and procedural evolution of this record. NDCI reiterates its argument that the Department apply an adverse inference against GSC due its gamesmanship.

NDCI further argues that financial statements placed on the record by GSC in its June 11, 2007, submission are clearly not comparable to NDCI. NDCI states that its June 1, 2007, submission contained the financial statement of Transpek Industry Limited ("Transpek"), a producer of industrial chemicals, as well as the financial statements of three pharmaceutical companies:

Cipla, Cadila Heathcare Limited ("Cadila"), and Alembic Limited ("Alembic") NDCI contends that the chart it submitted in Exhibit 1 of its June 1, 2007, submission compares the R&D expenditure of and the turnover of NDCI with each of these companies and with Jubilant Organosys Limited's ("Jubilant") and Torrent Pharmaceutical Ltd.'s ("Torrent") financial statements. With the exception of Transpek, NDCI maintains that the chart demonstrates that the absolute R&D and sales turnover of each company show substantial differences between them and NDCI. NDCI argues that the financial statements submitted by GSC demonstrate that the manufacturing process and raw materials consumed by these companies are completely different than those consumed by NDCI

NDCI provides a summary of the financial statements provided by GSC and argues why each should not be considered suitable for use as the basis of the financial ratios for NDCI. NDCI states that the information submitted for Biddle Sawyer Ltd., is an abstract and not the actual report and should be disregarded. Futher, NDCI states that there is no information linking this company to the production of glycine and it appears that it sells pharmaceuticals that are the type which are often sold for high profits. Next NDCI states that Bihar Caustic & Chemicals, Ltd. is a manufacturer of caustic soda and that the production of this product is in no way similar to the production of glycine. NDCI notes that the Department found this company was not comparable to the glycine producers in the previous annual review of this antidumping duty order because it is a caustic soda producer. NDCI also argues that Diamines and Chemicals Ltd. ("Diamines") produces only ethylene diamines and amines and that this company has substantial non-chemical operations in co-generation (namely, producing and selling electricity from its windmill operations). NDCI further notes that Diamines' primary raw material, polyamine mix, has nothing to do with glycine. With regard to Bliss Chemicals and Pharmaceuticals India Ltd., NDCI contends that it is a healthcare and pharmaceutical company and that its raw materials consist of nonoxynol, PVC/PE film, hydrocortisone, and other chemicals, which are very different from the raw materials used by NDCI. NDCI states that RPG Life Sciences ("RPG") sells pharmaceuticals that apply to chronic therapy and acute therapy segments and that these products appear to be specialized. NDCI contends that RPG is thus even less comparable to it than companies that produce other, more generic pharmaceuticals.

NDCI argues that it demonstrated that Transpek, which produces chlorinated compounds, is comparable to NDCI because it is a manufacturer of basic chemicals, which are comparable to the products produced by NDCI. NDCI argues that the comparability of these companies is supported by a comparison of absolute and relative research and development between the two companies. NDCI asserts that it is not reasonable to compare Jubilant to NDCI and that it only submitted the financial statements of Jubilant, Alembic, Cipla, and Cadila Healthcare to show just how different they are from NDCI. NDCI argues that none of the financial statements of these companies should be used as the basis of the financial ratios for NDCI.

In NDCI's rebuttal brief, NDCI states that the Department should reject GSC's request to use only the financial statement of Diamines. NDCI argues that complete information about this company was not provided and that it is a monopoly supplier in India and has a huge profit ratio because it has proprietary rights to certain technology. NDCI also contends that the products

made by Diamines are more complex than glycine and the production process is therefore not similar.

GSC argues that the Department should select Diamines as the source for the financial ratios. GSC asserts that Diamines' merchandise is more comparable to NDCI's than either Jubilant or Torrent. GSC contends that the Department should not consider NDCI's approach of using research and development and sales turnover as the criteria to select a surrogate company. GSC maintains that NDCI did not explain why these values are more meaningful for comparison than selling and administrative costs. GSC argues that research and development costs are an inappropriate basis for selecting a comparable surrogate company since glycine is a chemical that has a fixed production process, and there is little reason to conduct research and development in this field.

GSC also claims that NDCI's reliance on Garlic from China is misplaced because the Department was applying a three-part test to determine on a qualitative basis whether certain surrogate companies were comparable to the Chinese companies on the basis of the physical characteristics, end users, and production processes and at no time were actual values considered because this would entail relying on the actual costs of an NME company, something which the Department does not do.

GSC asserts that Diamines best satisfies the Department's three part test and should be used as the surrogate company. GSC argues that Diamines is most like NDCI because it produces amines, which are the building blocks to amino acids, and glycine is itself an amino acid. GSC also claims that Diamines uses windmills to generate electricity for the production of its own merchandise and that NDCI was incorrect when it asserted that it was operating a substantial non-chemical operation in co-generation. GSC further states that Diamines only recently completed a new windmill in order to sell the electricity to the state power board.

GSC also argues that alternatively the Department may average the financial ratios of all the pharmaceutical companies on the record to use as the basis of the financial ratios. GSC contends that if the Department decides not to select Diamines, then it should include more companies and average them in with the ratios of Torrent and Jubilant to improve the quality and breadth of the financial ratios, which would be consistent with the Department's basis for averaging the ratios of Torrent and Jubilant for the Preliminary Results, when the financial statements for those two companies were the only ones on the record.

GSC states that the financial statements it submitted on June 11, 2007, were timely filed because they were submitted only for rebuttal purposes to demonstrate that the financial ratios submitted by NDCI are aberrationally low. GSC argues that although the financial statements were submitted as a rebuttal, they can be used for any purpose because they are now properly on the record of this administrative review. In a separate letter submitted on October 3, 2007, GSC reiterated the arguments in their case briefs about the financial statements submitted on June 11, 2007, and cited two cases in which the Department accepted financial statements submitted in rebuttal surrogate comments. GSC maintains that the Department should not have rejected its June 11, 2007, submission. See GSC's October 3, 2007 Submission at 3-4. Moreover, GSC

argues that parties should be allowed to provide briefs based on the record before the Department and that the record should not change after the briefing has occurred.

Department's Position:

We agree with NDCI that GSC submitted new financial statements on June 11, 2007, which was 10 days after the deadline for submission of SV information.[3] On October 2, 2007, the Department issued a letter to parties rejecting the additional, new financial statements submitted by GSC on June 11, 2007, because the financial statements did not "adequately meet the intent of 19 CFR 351.301(c)(1) as they {did} not rebut, clarify or correct those previously on the record." See Letter to Interested Parties, dated October 2, 2007. After considering the comments GSC submitted on October 3, 2007, and NDCI on October 5, 2007, the Department has determined that given concerns that the late timing of the rejection did not provide parties an opportunity to submit arguments based on a record without those financial statements, the Department will keep the financial statements submitted by GSC on June 11, 2007, on the record and will consider them in these final results.

However, we are taking this opportunity to clarify the meaning of 19 CFR 351.301(c)(1) as it pertains to the submission of financial statements as rebuttal to surrogate value submissions. Although we agree with GSC that parties are allowed to submit information to rebut, correct, or clarify the information submitted by other parties within 10 days as the regulation states, in the context of surrogate value submissions, it is not intended to provide an opportunity to submit wholly new surrogate values or financial ratios, such as the financial statements at issue here. Rather, the regulation permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record; it does not envision the submission of additional, previously absent-from-the-record alternative surrogate value or financial ratio information. While this distinction can be subtle in certain circumstances, new surrogate financial ratios are clearly new alternative information rather than information that rebuts, clarifies, or corrects information already on the record. Moreover, the Department has concerns that submission of wholly new surrogate value information submitted citing this regulation can generate further submission of yet more "rebuttal" information and has the potential to seriously erode the finality of the record necessary for interested parties to make complete assessments of the record for the purposes of the submission of complete briefs, in accordance with long-standing Department practice. As stated in the preamble to the regulations, "at this point in the proceeding, the Department and the parties have an interest in finalizing the addition of new factual information to the record." See Antidumping Duties; Countervailing Duties; Final rule, 62 FR 27296, 27332 (May 19, 1997). Therefore, parties should take note that financial statements that are introduced as rebuttal to a surrogate value submission of financial statements generally will not fall within the meaning and applicability of 19 CFR 351.301(c)(1).

In valuing the FOPs, section 773(c)(1) of the Act instructs the Department to use "the best available information" from the appropriate market economy country. In choosing surrogate financial ratios, it is the Department's policy to use data from market economy surrogate

[3] The original deadline was May 2, 2007. On April 27, 2007, we extended the deadline by 30 days to June 1, 2007.

companies based on the specificity, contemporaneity, and quality of the data. See CLPP. Moreover, for valuing factory overhead, SG&A, and profit, the Department normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country. See 19 CFR 351.408(c)(4).

We note that all the financial statements on the record are sufficiently contemporaneous (they overlap with the POR for 11 of 12 months) and are publicly available. However, in evaluating financial statements for use in calculating the surrogate financial ratios "it is the Department's preference to match the surrogate companies' production experience with Respondents' production experience." 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). The Department notes that absent the financial statement of an actual Indian glycine producer, it is left to choose from a number of companies that produce products ranging from caustic soda to specialty pharmaceuticals. Among the companies listed, the Department finds that selecting Jubilant, Diamines and Transpek as surrogate financial companies offers the best solution, as explained below. While none is a "perfect" match, the product lines (all three produce chemicals, and Jubilant also produces pharmaceuticals) and production experiences of these companies appear to resemble those of a glycine producer more closely than the other companies, and using a simple average of the financial ratios of these three companies would offer the best approximation of a glycine producer's financial experience from among the information on the record.

In selecting Jubilant, we note that while it does produce pharmaceuticals, its product line is diversified into industrial chemicals and performance chemicals. See Jubilant's 2005-2006 Annual Report (submitted in NDCI's January 8, 2007, SV filing) at 126 for a complete description of these product lines. Furthermore, its chemical product lines account for over half of its revenue. Id. We also believe Diamines to be a suitable surrogate financial company. As noted by GSC, Diamines produces amines, which are organic chemicals and comprise the building blocks for amino acids (glycine is, in terms of chemical structure, the simplest amino acid). Diamines thus produces a narrowly tailored product line of chemical compounds similar to glycine. While NDCI's argument that Diamines' main raw material, polyamine mix, has nothing to do with glycine may be true, without knowing the composition of that raw material, we are unable to determine conclusively whether it may or may not be similar to the FOPs consumed by NDCI to produce glycine. Furthermore, while Diamines generates some wind power for captive consumption and constructed a second windmill during the relevant financial period to sell power to the state electricity board, these are both minor items in terms of Diamines' total energy usage and revenue. See Diamines' 2005-2006 annual report (submitted in GSC's June 11, 2007, SV filing) at 10, 13 and 40. Regarding NDCI's argument that Diamines is a monopoly supplier, we note that Diamines' website only states that it is the only domestic supplier of one particular product. Diamines itself notes that it faces competition from imports across its product line. See Id. at 15. Lastly, we also find that Transpek is also appropriate to use as a surrogate financial company. As a producer of chlorinated compounds, it uses several of the same raw material inputs that NDCI uses in its glycine production process: chlorine, acetic

acid, monochloracetic acid, and sulphur. See Transpek's 2005-2006 annual report (submitted in NDCI's June 1, 2007, SV filing) at 69.

We find that the remaining pharmaceutical companies are not as comparable as the three aforementioned companies since their pharmaceutical product lines tend towards higher valued-added products with dissimilar production processes that use different raw materials than those consumed in the production of glycine. Likewise, Bihar, which produces caustic soda, uses completely different raw materials and also has a dissimilar production process. Lastly, although one of the pharmaceutical companies we are not using for these final results, Torrent, was used as a surrogate financial company in the final results of the most recent glycine administrative review and in the Preliminary Results of the instant review, it was only one of two companies for which financial data was submitted at those times. Given the wider array of surrogate company financial data available for these final results, the three companies named above, Jubilant, Diamines and Transpek, are superior choices to serve as surrogate companies for the calculation of financial ratios.

Comment 3: Chlorine Surrogate Value

GSC contends that the Department should follow its normal preference for using Indian import data from the WTA to value the chlorine input, as it has done for the other material inputs in this review. Citing to several cases, GSC lists the Department's selection criteria for SV data from publicly available sources, noting that SVs should be: 1) an average non-export value; 2) representative of a range of prices within the POR; 3) product-specific; and 4) tax-exclusive. Citing to a prior case, GSC notes that the Department has stated that it ". . .relies on financial statements to value factors only when there is no other usable data because while financial statements typically involve several purchases of any given input, they represent data from only one company." See Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review, 71 FR 66304 (November 14, 2006), and accompanying Issues and Decision Memorandum at Comment 3 ("Brake Rotors"). GSC states that, in contrast, the Department has found in numerous cases that WTA data meet these criteria.

GSC argues that the WTA data on the record represent an average import price that is representative of prices within the POR. GSC states that these data represent a range of transactions involving large quantities (over 5,000 kilograms from five different countries, the entirety of chlorine imports during the POR) and constitute a broad cross-section of selling prices. GSC argues that the quantities of chlorine and their sources are unknown for the chlorine data from the three Indian company financial statements used in the Preliminary Results. GSC contends that the data represent discrete purchases by individual companies and cannot be viewed as representative Indian prices. GSC further argues that the prices in the WTA data are all within a tight range and thus mutually correlate with one another. GSC adds that the WTA data overlap exactly with the POR, whereas the financial statement data overlap for only 11 months.[4] GSC states that in another case, the Department found WTA data to be specific to the

[4] In its case brief, GSC incorrectly noted that the financial statements cover only 10 months of the POR. In fact, the fiscal year for each is April 1, 2005, through March 31, 2006, giving 11 month coverage of the POR.

product in question (chlorine) (see Polyvinyl Alcohol from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 71 FR 38612 (July 7, 2006) ("PVA"). GSC also notes that the Department has found the WTA data to be tax-exclusive in a number of cases.

GSC contends that while NDCI claims that the Department rejected the use of WTA data to value chlorine in the 2003-2004 administrative review of glycine, it is not clear why the Department rejected such data. GSC states that the Department's practice for when it will depart from using WTA data has been inconsistent, citing to several cases where the Department has taken various approaches in evaluating WTA data. GSC argues that the Department should develop a unified standard for when its treatment of import statistics, such as WTA data. GSC states that the Department, for the reasons stated above, should use import statistics as the basic source for SVs and should only deviate from them in exceptional circumstances. GSC note that such circumstances when it would be reasonable to do so are: 1) where the data, on their face, demonstrate that there is some kind of distortion in the statistics; 2) where the data consist of commercially insignificant quantities that may not be representative of overall prices; or 3) where there is a similar broad-based alternative source of internal data, such as a price series published within the surrogate country. GSC also argues that the Department should not depart from a surrogate country's import statistics based upon comparisons to other countries' import statistics, especially those at different levels of economic development.

GSC concludes that there are no exceptional circumstances in the present case requiring departure from the WTA data, for the very reasons noted above. Furthermore, GSC notes that the Department has expressed a preference for using consistent data sets for the valuation of inputs in a case. See Notice of Final Determination of Sales at Less than Fair Value, and Affirmative Critical Circumstances, in Part: Certain Lined Paper Products from the People's Republic of China, 71 FR 53079 (September 8, 2006), and accompanying Issues and Decision Memorandum at Comment 5 ("CLPP"). Since the Department used WTA data to value other inputs, GSC argues that it should also use WTA data for chlorine. Lastly, GSC notes that if the Department is concerned that the WTA value for liquid chlorine during the POR may not be completely reliable, that it could broaden the time period to include previous years, as it did for the ammonia input in the 2003-2004 glycine review.

NDCI argues that GSC is incorrect in citing a SV memorandum from PVA as support for using WTA data to value the chlorine input, when in fact it was a previous segment of the instant case that serves as the precedent for the Department's valuation of chlorine, in which the Department used chlorine sales data from the financial statements of two Indian companies to value the input. NDCI states that for this review it simply provided more recent Indian financial statements containing chlorine sales data, as well as U.S. import statistics that corroborate the prices reflected in the Indian chemical company financial statements.

NDCI notes that in the Preliminary Results, the Department used data from the financial statements of three different companies, mitigating the concern about such sources' representativeness. NDCI notes that the quantity of this chlorine data is not unknown, and that it covers over 50,000 metric tons, far greater than the WTA data which cover slightly over five

metric tons. Moreover, NDCI notes that the data from the financial statements represent sales values, not purchases. NDCI contends that GSC's claim that the WTA data are reliable because the values happen to correlate with one another is meaningless, and that it simply proves that the WTA data are consistently aberrant. NDCI posits that the WTA data may reflect a different chlorine product than what NDCI consumes, and what local Indian companies sell, on a commercial basis. While GSC objects to comparing the WTA Data to import data from other countries, NDCI contends that the Department would simply use such data to objectively compare that respective values and not rely on it for valuation purposes. NDCI notes that the Indian financial data cover the vast majority of the POR, and the fact that the WTA data happen to be slightly more contemporaneous is meaningless if such data are aberrant in nature. Lastly, NDCI notes that while the value of chlorine is key to the margin calculations in the instant case, it might have been incidental in PVA and not subject to intense debate or scrutiny.

Department's Position:

As noted in Comments 1 and 2 above, in valuing the FOPs, section 773(c)(1) of the Act instructs the Department to use "the best available information" from the appropriate market economy country. The Department's criteria for selecting SV information are normally based on the use of publicly available information ("PAI") and the Department considers several factors when choosing the most appropriate PAI, including the quality, specificity, and contemporaneity of the data. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006), and accompanying Issues and Decision Memorandum at Comment 3.

Moreover, it is the Department's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing the FOPs on a case-by-case basis. See Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review, 71 FR 40477 (July 17, 2006), and accompanying Issues and Decision Memorandum at Comment 1 ("Mushrooms"); see also Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review, 67 FR 19546 (April 22, 2002) and accompanying Issues and Decision Memorandum at Comment 2. As there is no hierarchy for applying the above-mentioned principles, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the "best" available SV is for each input. See Mushrooms. Thus, a "one-size-fits-all" approach for excluding import data, as advocated by GSC, would be contrary to the Department's goal of calculating antidumping margins as accurately as possible.

For these final results, we continue to find the chlorine sales data from the financial statements of three Indian chemical companies to be the best source for valuing the chlorine input. This information encompasses a much larger quantity (50,223 metric tons) than the WTA data (slightly more than five metric tons), and since it is based on the experience of three companies,

also represents a reasonably broad market average. Moreover, such data are publicly available and overlap with the vast majority (11 out of 12 months) of the POR. Record evidence indicates that NDCI purchases chlorine in bulk quantities, and that its monthly purchases and consumption are far greater than the total quantity of Indian imports for the POR. See NDCI's June 27, 2006 Section C and D questionnaire response at Exhibit D-5. Because the WTA data for the POR cover an amount smaller than NDCI's monthly purchases and consumption, it is unlikely that these data reflect bulk purchases such as NDCI's. The much larger quantities reflected in the chlorine sales data from the financial statements are likely more reflective of NDCI's bulk purchases.

The instant case is distinguishable from Brake Rotors in that the record evidence in that case indicated that the financial statement data did not reflect the input in question. There is no evidence to suggest that the financial statement data in the instant review do not reflect the chlorine input used by NDCI. Further, we note that the chlorine SV was not subject to debate or scrutiny in the PVA case. See Polyvinyl Alcohol from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 62086 (October 23, 2006). We further note that we do not need to benchmark the various chlorine data against the average value from the U.S. import statistics. While GSC argues that the Department could broaden the time period for the Indian WTA data if it feels that the data for POR are not sufficient, we note that such data are not on the record for use in this review.

Thus, rather than being inconsistent in departing from the WTA data, the Department, in accordance with section 773(c)(1) of the Act, has weighed the relevant characteristics of the data, rather than relying solely on one or two absolute "rules." As such, the chlorine sales data from the financial statements represent the "best" SV for the chlorine input, a conclusion that is consistent with the most recent (2003-2004) administrative review of this case.

Comment 4: U.S. Inland Freight Valuation

NDCI takes issue with GSC's June 1, 2007, SV submission as it relates to U.S. inland freight valuation. NDCI maintains that these data are proprietary[5], which conflicts with the Department's primary criterium for selecting SVs, i.e., that they be publicly available. NDCI states that it submitted the Indian freight SVs used by the Department in the most recent segment of this proceeding and also submitted the freight SV information from a recently completed investigation. NDCI also notes that the period of investigation in that case covers a significant portion of the POR for this current glycine review. Finally, NDCI argues that GSC used a country other than India, and one which was not comparable to the PRC in terms of economic development.

GSC argues that the Department should use inland freight values from www.freightcenter.com, which GSC contends is a source recognized by the Department as an acceptable source for U.S.

[5] GSC submitted U.S. inland freight values from www.freightcenter.com. The freight values themselves were public, but GSC considered the routes, which were for similar distances as the distances reported by NDCI, as business proprietary.

incurred freight values. GSC maintains that NDCI is incorrect when it claims that surrogate country inland freight values should be used to value inland freight costs in the United States. GSC notes that the two proceedings cited by NDCI in its case brief were instances where the Department used surrogate values from India to determine inland freight costs from the respondent's factory in China to the port in China.

GSC argues that when the Department seeks freight SVs for U.S. inland freight, the Department routinely relies on the values available directly from U.S. sources rather than SVs from a surrogate country. GSC contends that because the Department is seeking to value inland freight costs in the United States, the Department would logically use U.S. inland freight values from the website listed above rather than Indian inland freight values.

GSC states that the source of the data is not proprietary, yet because NDCI's U.S. customer names, locations, and U.S. ports were not made public, the Department's APO rules required GSC to designate this public information as confidential. GSC argues that this does not change the fact that the information on the website is publicly available or the fact that the Department has used freight values from that site repeatedly.

In NDCI's rebuttal brief, NDCI asserts that GSC has offered no explanation for the Department to depart from its practice of using SVs from the primary surrogate country to value freight.

Department's Position:

In the Preliminary Results, the Department inadvertently failed to value this movement expense due to a SAS coding error, which has been corrected as discussed below in Comment 7. We note that NDCI reported that "{it} incurred U.S. inland freight from the port of unloading to the customer's location on certain sales. For some sales, we paid this freight in U.S. dollars, as it was incurred, and for other sales, we paid one charge for international freight and U.S. inland freight to a non-market economy freight forwarder in China." See NDCI's June 27, 2006 Section C response at C-17. To value U.S. inland freight charges that were incurred from an NME-provider, the Department used data from a U.S. source. See Synthetic Indigo From the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value, 65 FR 27506 (May 3, 2000) and accompanying issues and Decision Memorandum at Comment 7. NDCI appears to confuse the domestic inland freight expense (i.e., freight within the PRC), for which the Department uses Indian SV data, with U.S. inland freight. For U.S. sales with a certain U.S. inland distance, we are using NDCI's reported market economy expense incurred in U.S. dollars, since that expense covered freight for the same distance. For other U.S. sales with a much longer U.S. inland distance, where a freight rate for a short-haul distance would not be reflective of the expense that was actually incurred, we are using data submitted by GSC from www.freightcenter.com, which the Department finds to be a public source of U.S. freight data.[6]

[6] We note that in obtaining freight quotes from this source, GSC used similar distances to the actual distances reported by NDCI, but that the rates themselves are public information.

Comment 5: Zeroing

NDCI asserts that the Department recently terminated its practice of zeroing negative margins in ongoing investigations. NDCI argues that the Department defended its conclusion[7] to implement the WTO decision banning zeroing in ongoing investigations and deemed that the case law cited by GSC in its rebuttal brief was inapposite and their reasoning unpersuasive. NDCI requests that the Department also terminate zeroing for the purposes of this administrative review and it is the most accurate way to calculate antidumping margins.

GSC argues that the Department has limited the termination of zeroing to investigations and does not apply this practice to other proceedings such as administrative reviews. GSC asserts that the Department has applied zeroing to more than a dozen administrative reviews since the announcement of the WTO ruling referred to by NDCI. GSC further contends that there is nothing special about this review to warrant a different result. GSC argues that the Department should continue to apply zeroing for the purposes of the final results in this administrative review.

Department's Position:

Section 771(35)(A) of the Act defines "dumping margin" as the "amount by which the normal value *exceeds* the export price and constructed export price of the subject merchandise" (emphasis added). Outside the context of antidumping investigations involving average-to-average comparisons, the Department interprets this statutory definition to mean that a dumping margin exists only when normal value is greater than export or constructed export price. As no dumping margins exist with respect to sales where normal value is equal to or less than export or constructed export price, the Department will not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The U.S. Court of Appeals for the Federal Circuit has held that this is a reasonable interpretation of the statute. See Timken Co. v. United States, 354 F.3d 1334, 1342 (Fed. Cir. 2004), cert. denied sub nom., Koyo Seiko Co. v. United States, 543 U.S. 976 (2004) ("Timken"). See also Corus Staal BV v. Department of Commerce, 395 F.3d 1343, 1347 (Fed. Cir. 2005), cert. denied, 126 S. Ct. 1023, 163 L. Ed. 2d 853 (January 9, 2006) ("Corus Steel").

The Department notes it has taken action with respect to two WTO dispute settlement reports finding the denial of offsets to be inconsistent with the Antidumping Agreement. With respect to U.S. – Softwood Lumber (see United States -Final Dumping Determination on Softwood Lumber from Canada, Appellate Body Report, WT/DS264/AB/R (August 11, 2004) (adopted August 31, 2004)), consistent with section 129 of the Uruguay Round Agreements Act, the United States' implementation of that WTO report affected only the specific administrative determination that was the subject of the WTO dispute: the antidumping duty investigation of softwood lumber from Canada. See 19 U.S.C. 3538.

[7] NDCI cites to Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China, 72 FR 9508 (March 2, 2007) and accompanying Issues and Decision Memorandum at Comment 4.

With respect to United States– Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing") (WT/DS294) ("U.S. – Zeroing (EC)"), the Department recently modified its calculation of the weighted-average dumping margin when using average-to-average comparisons in antidumping investigations. See Antidumping Proceedings: Calculation of the Weighted–Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722 (December 27, 2006). In doing so, the Department declined to adopt any other modifications concerning any other methodology or type of proceeding, such as administrative reviews. See 71 FR at 77724. With respect to the specific administrative reviews at issue in that dispute, the United States has determined that each of those reviews has been superseded by a subsequent administrative review and the challenged reviews are no longer in effect. As such, the Appellate Body's reports in U.S. – Softwood Lumber and U.S. – Zeroing (EC) have no bearing on whether the Department's denial of offsets in this administrative determination is consistent with U.S. law. See Corus Staal, 395 F.3d at 1347-49; Timken, 354 F.3d at 1342. Congress has adopted an explicit statutory scheme for addressing the implementation of WTO dispute settlement reports. See 19 U.S.C. § 3538. As is clear from the discretionary nature of that scheme, Congress did not intend for WTO dispute settlement reports to automatically trump the exercise of the Department's discretion in applying the statute. See 19 U.S.C. § 3538(b)(4) (implementation of WTO reports is discretionary); see also Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316 at 354 (1994) ("{a}fter considering the views of the Committees and the agencies, the Trade Representative may require the agencies to make a new determination that is 'not inconsistent' with the panel or Appellate Body recommendations . . .)" Because no change has yet been made with respect to the issue of "zeroing" in administrative reviews, the Department has continued with its current approach to calculating and assessing antidumping duties in this administrative review. See, e.g., Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands: Final Results of Antidumping Duty Administrative Review, 72 FR 28676 (May 22, 2007) and accompanying Issues and Decision Memorandum at Comment 4.

Comment 6: CBP Assessment

GSC argues that the Department should take all necessary steps to ensure the proper assessment on reshippers/intermediate companies and transshippers. GSC asserts that NDCI's reporting of its transactions appears to be incomplete and inaccurate, and that for certain proprietary transactions the deposits were not correctly made for some entries made during the POR. GSC urges the Department to ensure that all entries of glycine that were not included in NDCI's sales listings are liquidated at the PRC-wide rate of 155.89 percent. GSC maintains that in cases where NDCI has no knowledge that glycine it sold to a Chinese intermediary was destined for the United States, the Department is required to assess the shipments under the "automatic assessment" regulation at the rate of 155.89 percent. GSC argues that under this regulation the Department shall instruct U.S. Customs and Border Protection ("CBP") to liquidate unreviewed entries at the country-wide rate.

GSC also argues that the Department should investigate suspicious entry summaries and determine whether and to what extent duty deposits have been correctly calculated and countries

of origin have been correctly declared. GSC notes that published import statistics indicate that entries of glycine from China during the POR exceed the volumes reported by NDCI. GSC asserts that the Department should undertake a comprehensive analysis to ensure that: no sales of glycine to the United States were either made by Baoding Mantong Fine Chemistry Co., Ltd. ("Baoding Mantong"), which claimed to have made no shipments during the POR; no entries were made at Baoding Mantong's cash deposit rate of 2.95 percent; and, all entries not covered in NDCI's sales listings are identified, including entries for which the incorrect country of origin has been declared, so that liquidation at the PRC-wide rate of 155.89 percent can be ensured.

NDCI did not comment on this issue.

Department's Position:

The Department agrees with GSC that all entries that entered at NDCI's rate, but which are not covered by NDCI's reported U.S. sales data during this review should be liquidated at the PRC-wide rate. We will incorporate language into our liquidation instructions to ensure the proper liquidation of entries that may have entered at NDCI's cash deposit rate, but for which the exporter is another company. GSC raises concerns about the overall volume of U.S. imports of PRC glycine exceeding the volume reported by NDCI, and requests that the Department ensure that there were no shipments from Baoding Mantong. As noted in the Federal Register notice accompanying this memorandum, the Department has rescinded the administrative review for Baoding Mantong because CBP data indicated that no entries were made by that company during the POR. We also note that NDCI reported that it did not make sales to intermediate trading companies for which it had knowledge that such sales were destined for the United States (aside from its one reported sale through a Hong Kong company). See NDCI's January 3, 2007, supplemental questionnaire response at S3-7. As noted above, the Department will include language to ensure that entries other than those covered by the instant review are liquidated at the appropriate rate.

Lastly, we note that GSC has raised certain concerns regarding country of origin and the collection of duty deposits for allegedly transshipped merchandise. In addition, if any interested party subsequently develops information sufficient to allege potential circumvention of this or any order, they are encouraged to bring such information to the Department's attention. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Tissue Paper Products from the People's Republic of China, FR 7475 (February 14, 2005) and accompanying Issues and Decision Memorandum at Comment 3. Such concerns may also be addressed by referral to CBP, either directly or through the Department.

Comment 7: Ministerial Errors

GSC states that the Department should correct certain SAS programming errors pertaining to international freight, U.S. inland freight, indirect selling expenses, and credit expenses.

For international freight, GSC notes that the SAS language used in the Preliminary Results improperly set the international freight value to zero for sales where NDCI incurred an international freight expense from an NME provider. GSC provides its suggested SAS language in its brief. GSC notes that a similar error was made for U.S. inland freight, where that expense was incorrectly set to zero for all sales, and also offers corrected SAS language:

GSC notes that NDCI allocated its indirect selling expenses over the total amount of sales made through its U.S. affiliate, Wavort, Inc. GSC states that since the Department determined that only a portion of the sales made through Wavort should be considered as CEP sales, that the indirect selling expenses should be allocated only over that portion of Wavort's sales.

Lastly, GSC states that the Department should deduct U.S. credit expenses on sales designated as CEP, and that the average U.S. prime rate for the POR was 6.52 percent.

Department's Position:

For international freight, we agree with GSC and have incorporated its suggested modifications into the SAS program for these final results. See Final Analysis Memo.

For U.S. inland freight, we agree with GSC that an error was made in the SAS language for the Preliminary Results, but our corrected SAS language differs. See Id.

For indirect selling expenses, we note that no adjustment is necessary. While the Department considers only a portion of the sales through Wavort to be CEP sales, the indirect selling expenses ratio would remain the same since the overall amount of such expenses would still be applied to Wavort's total sales value to obtain the ratio. For credit expenses, we note that we did in fact deduct credit expenses for CEP sales, as they were included in the CEPSELLU variable; therefore, no correction is necessary.

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions, and adjusting the margin calculation programs accordingly. If accepted, we will publish the final results of this review and the final weighted-average dumping margin in the Federal Register.

AGREE_____ DISAGREE_____

_____
David M. Spooner
Assistant Secretary
for Import Administration

_____
Date