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September 19, 2008

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 2006-2007 Antidumping Duty Administrative Review

SUMMARY:

We have analyzed the case briefs and rebuttal briefs submitted by GEO Specialty Chemicals, Inc. ("Petitioner") and Baoding Mantong Fine Chemistry Co., Ltd., ("Baoding Mantong") in the 2006-2007 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 Partial Rescission, 73 FR 18503 (April 4, 2008) ("Preliminary Results").

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 review for which we received comments.

Case Issues:
Comment 1: Surrogate Value for Steam Coal
Comment 2: Surrogate Value for Acetic Acid
Comment 3: Surrogate Value for Ammonia
Comment 4: Surrogate Financial Ratios
Comment 5: Surrogate Value for Chlorine
Comment 6: Surrogate Value for Truck Freight

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, 2006, through

February 28, 2007. In accordance with 19 CFR 351.309(c)(ii), we invited parties to comment on our Preliminary Results. On May 19, 2008, Baoding Mantong submitted its case brief, and on May 28, 2008, Petitioner submitted its case brief. On June 3, 2008, Baoding Mantong submitted its rebuttal brief, and on June 4, 2008, Petitioner submitted its rebuttal brief. On June 18, 2008, the Department rejected Baoding Mantong's rebuttal brief for containing new factual information, which Baoding Mantong resubmitted on June 19, 2008. On July 15, 2008, we extended the time limit for the completion of the final results of this review by thirty days until September 2, 2008. See Notice of Extension of Time Limit for Final Results of the Antidumping Duty Administrative Review: Glycine from the People's Republic of China, 73 FR 40480 (July 15, 2008). On August 29, 2008, we extended the time limit for completion of the final results by an extra 17 days until September 19, 2008. See Notice of Extension of Time Limit for Final Results of the Antidumping Duty Administrative Review: Glycine from the People's Republic of China, 73 FR 50939 (August 29, 2008).

Comment 1: Surrogate Value for Steam Coal

Baoding Mantong argues that the Department should use the TERI Energy Data Directory and Yearbook 2004/2005 regarding average prices of non-coking steam coal, by grade, as reported by Coal India Ltd., ("CIL") to value Baoding Mantong's consumption of steam coal. Baoding Mantong cites Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China, 72 FR 60632 (October 25, 2007) and accompanying Issues and Decision Memorandum at Comment 19, where the Department stated its preference for using CIL data when it has on the record of the investigation information to determine the specific grade of coal used by respondent. Baoding Mantong contends that the Department should use the CIL data for Grade A steam coal, which it states is consistent with information Baoding Mantong put on the record establishing the type of coal it consumed during the POR.

Petitioner responds to Baoding Mantong's argument by stating that although Baoding Mantong provided evidence of the heat values of the coal it purchases, there is no evidence on the record to establish whether Baoding Mantong uses grade I steel coking steam coal or grade A non-coking steam coal. Petitioner argues that because it is unclear which type of coal Baoding Mantong purchases, the Department should continue to use Indian import statistics to value steam coal. Additionally, Petitioner contends that the Department should use the World Trade Atlas ("WTA") data to value coal because they are more contemporaneous with the POR, which is important due to the worldwide increases in energy prices, making the WTA data more accurate. Petitioner also argues that the WTA data are superior to the CIL data because the CIL data are based on a price list for a single company, which may not represent actual prices paid by unaffiliated parties. Alternatively, Petitioner proposes that if the Department chooses to use the CIL data, it should average the value of grade A non-coking steam coal and the value of grade I steel coking steam coal, and inflate the average value to the POR using the actual observed inflation rate for this product, rather than using wholesale price indices.

Department's Position:
We agree with Baoding Mantong that the TERI data on the record of this review for Grade A non-coking steam coal are the appropriate source to value Baoding Mantong's steam coal input. Section 773(c)(1) of the Tariff Act of 1930, as amended ("Act"), states that "the valuation of the

factors of production shall be based on the best available information regarding the values of such factors. . . ." We find that the TERI data are the best available information to value the steam coal input for the final results because they are more specific to Baoding Mantong's reported input than the WTA data for steam coal. See Saccharin from the People's Republic of China: Final Results of the 2005-2006 Antidumping Duty Administrative Review, 72 FR 51800 (September 11, 2007) and accompanying Issues and Decision memorandum at Comment 3. TERI data are categorized by major types of coal and useful heat value ("UHV"), whereas WTA import data are listed under "steam coal" without further specificity. In its April 17, 2008, supplemental questionnaire response, Baoding Mantong submitted certificates of assay from its coal suppliers, which listed the UHV of the coal between 6350 and 6670 (at Appendix S3-1). Thus, where, as here, we have information on the record to use the more specific TERI data, the TERI data for Grade A non-coking steam coal are the best available information to value Baoding Mantong's consumption of steam coal.

Regarding petitioner's argument that it is unclear from the record evidence whether Baoding Mantong uses coking or non-coking steam coal, we agree that in its submissions, Baoding Mantong has only reported that it used "steam coal" or "coal." However, as there is no evidence on the record that Baoding Mantong is using steam coal for coking, or that coking is part of the glycine production process, we find that it is reasonable to conclude that Baoding Mantong is utilizing non-coking steam coal as a heat source. Additionally, the relevant information for determining the grade of non-coking steam coal is the UHV, which Baoding Mantong has provided, and based on this information, we find that using the TERI data for Grade A steam coal is the best available information to value steam coal.

In terms of the quality of the TERI data, reported by CIL, as we stated in Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China, 72 FR 60632 (October 25, 2007) ("PRC CFS") and accompanying Issues and Decision memorandum at Comment 19, the CIL data, for the types of coal at issue, are identical to TERI data, which have been used by the Department to value coal in a number of proceedings. In recent cases, the Department has determined that TERI steam coal prices are appropriate because they are "representative of the coal industry throughout India." See Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Order Pursuant to Court Decision: Lawn and Garden Steel Fence Posts from the People's Republic of China, 72 FR 32835 (June 14, 2007) (the CIT sustained the Department's second remand redetermination in which the Department determined that TERI Data were the best source of a surrogate value for coal because the data were complete, comprehensive—in that they cover all sales of all types of coal made by Coal India Limited and its subsidiaries,—and exclusive of duties and taxes).

Finally, while the CIL prices are not contemporaneous with the POR, we have adjusted the prices to the POR using Indian wholesale price indices published in selected issues of the International Financial Statistics by the International Monetary Fund. While Petitioner advocates for the Department adjusting the TERI data by the "actual observed inflation rate for this product," we find that it would be inappropriate for us to do so. First, the Department has a demonstrated practice of using the WPI to adjust the TERI data for inflation. See, e.g., PRC CFS at Comment 19. Additionally, while the Petitioner argues that the inflation rate for Grade I steel coking coal was 47 percent, based on the actual difference in price between September 2003 and

June 2004, Petitioner has provided no evidence that the price increase is solely due to inflation. There could be various other factors explaining why the price of coal in India increased over a nine month period for the one example provided by Petitioner. Finally, as in this case, the Department often will need to inflate multiple surrogate values that are not similar in nature. Therefore, due to the infrequency of precise matching between surrogate values and inflators, as well as the Department's need to inflate unrelated products in one proceeding, the Department finds it appropriate to continue to use the WPI to inflate all inputs, where necessary, including coal, because the WPI data are calculated from a wide a range of commodities. 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 1.

Comment 2: Surrogate Value for Acetic Acid

Baoding Mantong argues that the surrogate value for acetic acid that the Department used for its preliminary results, derived from Indian import statistics from the WTA database, is a better source than the annual report of Avon Organics Limited, as advocated by petitioner. Baoding Mantong argues that the import statistics for acetic acid are more representative of commercial prices in India, due to the large import volume, and that the import statistics have not been found to be aberrational. Thus, it argues, the Department should continue to use the Indian import statistics to value acetic acid.

Petitioner argues that the Department should use Chemical Weekly to value acetic acid because it most closely resembles the input that Baoding Mantong consumes in its production of glycine. Petitioner cites 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 Isos") and accompanying Issues and Decision Memorandum at Comment 4, where the Department stated its preference to use Chemical Weekly data when it reflects prices for a more specific input than WTA data. Petitioner argues that the WTA value derived from Indian import statistics used by the Department in the preliminary results covers all grades of acetic acid, which vary in price depending on the purity level. Petitioner contends that the Chemical Weekly data are representative of a broad market average, are more product-specific, and are corroborated by the purchase value of acetic acid contained in the 2006-2007 annual report of Avon Organics, an Indian chemical producer.

In rebuttal, Baoding Mantong argues that it is the Department's practice to rely on publicly available official Indian import statistics in which the HTS item is specified for the commodity to be valued, and will only choose an alternate source to value a factor of production if the import statistics are found to be aberrational or unreliable. Baoding Mantong argues that the Indian HTS category used to value acetic acid for the preliminary results is specific to acetic acid, the commodity used by Baoding Mantong to produce glycine. Baoding Mantong also contends that the Department continues to rely on import statistics to value surrogate values, even when the import statistics may represent a range of grades and qualities of the product in question, unless the import statistics are found to be unreliable, citing among others, Saccharin from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 7515 (February 13, 2006) and accompanying Issues and Decision

Memorandum at Comment 10. Additionally, Baoding Mantong asserts that the Department, in both the 2003-2004 and 2005-2006 administrative reviews of glycine from the PRC, found that the Indian import statistics, and not Chemical Weekly data, represented the best information with which to value acetic acid.

Petitioner argues that it has not provided the Department the annual report of Avon for purposes of deriving a surrogate value for acetic acid, but rather to corroborate the reliability of the Chemical Weekly value. Petitioner asserts that the Chemical Weekly value for glacial acetic acid should be used because it is more product-specific than the WTA value proposed by Baoding Mantong, which encompasses multiple grades. Petitioner contends that it is the Department's preference to use Chemical Weekly data in situations where the Chemical Weekly data are more product-specific to the input in question, citing Chlorinated Isos at Comment 14. Petitioner argues that the acetic acid value derived from Avon's annual report demonstrates that the Chemical Weekly data are more representative of prices of acetic acid in India.

Department's Position:
When selecting possible surrogate values for use in an NME proceeding, the Department's preference is to use, where possible, a publicly available value which is (1) an average non-export value; (2) representative of a range of prices within the POR or most contemporaneous with the POR; (3) product-specific; and (4) tax-exclusive. See, e.g., 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) ("Activated Carbon") and accompanying Issues and Decision memorandum at comment 18. Additionally, in applying the Department's surrogate value selection criteria as mentioned above, the Department has concluded in numerous NME cases that the data from Chemical Weekly represent reliable information for valuation purposes because they represent multiple prices over time, are representative of prices during the POR in India, are product-specific, and can be made tax-exclusive. Id. We agree with Petitioner that, based on information submitted by Baoding Mantong on the record of this administrative review regarding the specificity of the type of acetic acid Baoding Mantong used in its production process, the Chemical Weekly value for acetic acid is more specific to the input in question.[1]

Additionally, although we agree with Baoding Mantong's assertion that Petitioner has not provided evidence that the WTA data contain prices for various grades of acetic acid, we find the Chemical Weekly data to be superior in that they are specific to the type of acetic acid Baoding Mantong uses, whereas there is no way to determine the specificity of the WTA data with regard to acetic acid. As we stated in Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 33977 (June 16, 2008) and accompanying Issues and Decision Memorandum at Comment 10: "{w}hile the Department commonly uses Indian import statistics to value inputs, we do not have a practice of always choosing that source over other sources. Rather, we seek to use the best available information for each input." In addition, while we have utilized WTA data to value acetic acid in previous reviews, in this particular proceeding, we have information on the record to determine the specific type of acetic acid that Baoding

[1] See Baoding Mantong's July 20, 2007, questionnaire response at Appendix D-5, where Baoding Mantong listed the purity level of the acetic acid it consumes.

Mantong uses, for which the Chemical Weekly data are more specific, and thus Chemical Weekly data are the best available information to value acetic acid.

Comment 3: Surrogate Value for Ammonia

Baoding Mantong contends that the Department properly used Indian import statistics under HTS category 2814.1000 (anhydrous ammonia) to value Baoding Mantong's consumption of this input. Baoding Mantong states that it provided information in its supplemental questionnaire response, which shows that Baoding Mantong was delivered liquid ammonia with a 99.93% purity, which represents anhydrous ammonia in liquid form. It argues that it did not use anhydrous ammonia dissolved in water or "ammonia liquor," which have lower purity levels, and that the Department should, consistent with 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) ("2005-2006 Glycine") and accompanying Issues and Decision Memorandum at Comment 1, value liquid ammonia using Indian import statistics for anhydrous ammonia.

Petitioner argues that the information on the record of this review indicates that Baoding Mantong used aqueous ammonia to produce glycine, and that Baoding Mantong was unable to provide evidence that it purchased anhydrous ammonia during the POR, despite the opportunities it had to do so. Petitioner argues that based on statements Baoding Mantong made in the 2003-2004 administrative review, verification from that review, and its lack of supporting documentation in this review, the Department should use the WTA value for aqueous ammonia instead of the anhydrous ammonia WTA value.

Baoding Mantong asserts that, in its responses to the Department, it reported using ammonia in liquid form, with the chemical formula of NH3 and a purity level greater than 99.8 percent, and that it supplied the Department with a certificate of assay from its supplier, which listed the liquid ammonia's purity at 99.93%. It argues that the HTS category proposed by Petitioner, 2814.2000, ammonia in aqueous solution, has a different chemical composition, NH4OH, and that the high purity level of the ammonia that Baoding Mantong uses confirms that it is liquid ammonia, as opposed to ammonia in an aqueous solution. Baoding Mantong states that the Department clarified in the previous administrative review that "liquid ammonia" refers to anhydrous ammonia (see 2005-2006 Glycine at Comment 1), and that the Department should continue to value Baoding Mantong's liquid ammonia using the import statistics for HTS 2814.1000, anhydrous ammonia.

Petitioner argues that Baoding Mantong erred in relying on the Department's decision in 2005-2006 Glycine because the Department based its decision on evidence relating to another Glycine provider, Nantong Dongchang Industrial Co., Ltd. ("Nantong Dongchang"), not Baoding Mantong. Petitioner argues that Nantong Dongchang provided sufficient documentation demonstrating that it consumed anhydrous ammonia in the 2005-2006 review, whereas Baoding Mantong hasn't met that burden in the instant review, and that Baoding Mantong does not use the same material inputs as Nantong Dongchang. Petitioner further argues that the Department verified in the 2003-2004 administrative review that Baoding Mantong used aqueous ammonia,

and hence asserts that the Department should use the WTA value for aqueous ammonia as it is more product-specific to the input used by Baoding Mantong.

Department's Position:
We agree with Baoding Mantong that, based on information contained on the record of the instant review, the WTA data for HTS 2814.1000, anhydrous ammonia, are the best available information to value Baoding Mantong's liquid ammonia input. In its questionnaire responses, Baoding Mantong listed the purity level of the liquid ammonia that it consumes, as well as the chemical composition of the input, and there is no information on the record of this review that contradicts that information. See Baoding Mantong's July 20, 2007, questionnaire response at Appendix D-5. As we stated in 2005/2006 Glycine at Comment 1, liquid ammonia with a chemical composition of NH_3, and a purity level of greater than 99 percent, is reflective of anhydrous ammonia, which corresponds to the information submitted by Baoding Mantong in its July 20, 2007, questionnaire response at Appendix D-5. Notwithstanding the information on the current record from the 2003-2004 review, we find it appropriate to make the determination as to the specific type of liquid ammonia that Baoding Mantong consumed based on information Baoding Mantong placed on the record from the current period of review. There is no evidence from this POR contradicting Baoding Mantong's assertions that it consumed anhydrous ammonia during the current review period (March 1, 2006, through February 28, 2007).

Where the Department decides to not verify, it will rely on timely submitted information, unless there is evidence that the information is unreliable. See, e.g., Stainless Steel Sheet and Strip in Coils From the Republic of Korea; Final Results and Rescission of Antidumping Duty Administrative Review in Part, 72 FR 4486 (January 31, 2007) and accompanying Issues and Decision Memorandum at Comment 8. In this review, the Department chose to not verify Baoding Mantong, and has not obtained contradictory evidence from this POR, as opposed to information from prior reviews,[2] as to the type of liquid ammonia Baoding Mantong consumes. Thus, the Department is using the information Baoding Mantong provided on the record of this review to determine the surrogate value for liquid ammonia. Additionally, although we acknowledge Petitioner's claim that the information submitted by Baoding Mantong in its post-preliminary results supplemental included a testing certificate for liquid ammonia dated after the POR, we find that the information contained in the certificate is consistent with the information that was already submitted regarding Baoding Mantong on the record of the review.

Comment 4: Surrogate Financial Ratios

Baoding Mantong asserts that the Department made a ministerial error with respect to how it calculated the average overhead, selling, general, and administrative expenses ("SG&A"), and profit rate using the annual reports of Diamines and Chemical Limited ("Diamines") and Jubilant Organosis Limited ("Jubilant"), by averaging the rates incorrectly. Additionally, Baoding Mantong argues that the Department should not use the financial statements of any of the companies submitted by petitioner because these companies are drug, pharmaceutical, and specialty chemical manufacturers, some of which are vertically integrated and have large

[2] The Department placed information from the 2003-2004 Administrative Review on the record of the 2006/2007 review on February 28, 2008.

research and development ("R&D") operations, unlike Baoding Mantong. Baoding Mantong argues that glycine is not a complex amino acid, nor a complex specialty chemical, a drug, or a vaccine. Baoding Mantong cites Chlorinated Isos and accompanying Issues and Decision Memorandum at Comment 1, where the Department states that its preference in deriving financial ratios is to avoid relying on companies that operate at a different level of integration than the respondent.

Specifically, Baoding Mantong argues that Jupiter Bioscience's ("Jupiter") experience does not match that of Baoding Mantong because Jupiter is an Indian specialty drug manufacturer, with a large R&D budget, and does not produce glycine. Baoding Mantong also contends that Divi Laboratories Ltd. ("Divi") is a large multinational company that does not produce glycine, but rather is a large generic drug manufacturer. It also argues that Akzo Nobel Chemicals ("Azko") is a large vertically integrated multinational company that produces products not similar to glycine. Finally, Baoding Mantong argues that Hester Pharmaceuticals Ltd. ("Hester") produces products that are not similar to glycine.

Petitioner argues that Divi, Jupiter, and Diamines' merchandise is more comparable to glycine than Jubilant's, because Divi and Jupiter produce amino acids, Jupiter produces FMOC glycine, a derivative of glycine, and because Diamines produces amines, which the Department found to be similar to glycine. See 2005-2006 Glycine at Comment 2. Additionally, Petitioner argues that the Department should reject Jubilant's financial statements because it does not produce comparable merchandise. Petitioner further argues that Jubilant's production experience is very different than that of Baoding Mantong.

In addition, Petitioner states that if the Department chooses to use Jubilant's financial statements for the final results, in combination with Divi, Jupiter, and Diamines, it should also include the financial statements of Azko, Hester, and Torrent Pharmaceuticals Ltd., all large pharmaceutical companies, in its calculation of the surrogate financial ratios. Petitioner cites Glycine from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 70 FR 47176 (August 12, 2005) and accompanying Issues and Decision Memorandum at Comment 2, where the Department found that a large pharmaceutical company is likely a consumer of glycine, and hence Petitioner contends that adding the financial ratios of more pharmaceutical companies will improve the quality and breadth of the financial ratio calculations.

Baoding Mantong argues that the Department should not exclude the financial statements of Jubilant, because in the previous two administrative reviews, the Department determined that Jubilant made identical or comparable merchandise to glycine. Baoding Mantong also notes that Jubilant produces acetic acid and monochloroacetic acid, two raw material inputs used to produce glycine. Baoding Mantong acknowledges that Jubilant's experience is different than its experience, as a large fully integrated chemical and pharmaceutical company, but that the Department is permitted to make adjustments to normal value to account for differences in integration between the surrogate company and the respondent, citing Sinopec Sichuan Vinylon Works v. United States, 29 CIT ___, Slip Op. 05-45 at 23 (April 4, 2005). Baoding Mantong asserts that Jubilant's annual report should be the only surrogate company used to calculate the financial ratios, but asserts that if the Department chooses to use the annual reports of other

companies, it should calculate a simple average of each ratio, avoiding the mathematical error the Department made for the preliminary results.

Petitioner counters Baoding Mantong's argument and asserts that Jubilant does not make glycine, citing 2005-2006 Glycine at Comment 2, and that Jubilant's experience is less representative of Baoding Mantong's experience than the other companies on the record. Petitioner contends that Jubilant is highly vertically integrated, has a large R&D budget, and would be inappropriate to use as a surrogate company for Baoding Mantong. Petitioner further argues that Jupiter's financial statements should be used because it produces amino acids, of which glycine is a type, and has a lower R&D budget than Jubilant. As for Divi, Petitioner argues that Divi produces peptide building blocks and FMOC glycine, which it states are comparable to Baoding Mantong's merchandise. Again, Petitioner argues that Divi has a smaller R&D budget and fewer expenses than Jubilant, and thus should be used to calculate the financial ratios for the final results. Finally, Petitioner argues that the Department should only use Azko India and Hester in the event that the Department continues to use the annual report of Jubilant to calculate surrogate financial ratios, as they are more similar to Baoding than Jubilant, and including these financials would results in more representative surrogate financial ratios.

Department's Position:
As noted above, section 773(c)(1) of the Act, states that "the valuation of the factors of production 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."

Subsequent to the issuance of the Preliminary Results, interested parties submitted financial statements for four additional Indian companies, including Jupiter, Divi, Azko, and Hester for the period 2006-2007. In reviewing each annual report, it is not clear that any of the Indian companies on the record are producers of merchandise identical to that which Baoding Mantong produces. In the 2005-2006 review of glycine, we used the financial statements of Jubilant, Diamines and Transpek, noting that, "{w}hile 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." See 2005-2006 Glycine at Comment 2. However, we now have on the record of this review two companies, Jupiter and Divi, which produce merchandise we find to be more comparable to glycine, i.e., amino acids. Based on information that Petitioner submitted in its May 8, 2008, surrogate value submission at tab 2, we find it reasonable to determine that, as glycine is listed as one of twenty standard amino acids, amino acids are comparable merchandise to glycine because glycine is an amino acid.

Jupiter's financial statements at page 51 lists sales of "peptide reagents and protected amino acids," and Divi's financial statements at page 12 list "peptide building blocks" in Divi's portfolio (while Divi's financial statements do not define "peptide building blocks," Divi's website at http://www.divislabs.com/inside/aminoacids.asp lists "peptide building blocks" as

amino acids). While we acknowledge that glycine is the "simplest amino acid," it is still an amino acid, whereas the other companies for which we have financial statements on the record do not appear to produce amino acids.

While neither Divi nor Jupiter appear to produce glycine, we find that their products more closely resemble glycine than either Jubilant or Diamines, which the Department used for the preliminary results, or Azko, Hester, and Torrent, which are also on the record of this review. In 2005-2006 Glycine, the Department selected the financial statements for Jubilant, Diamines, and Transpek because they were the best available information on the record of that review. We stated that Jubilant, Diamines, and Transpek were preferred because,

> {i}n 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 {Petitioner}, 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… 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 2005-2006 Glycine at Comment 2

As noted above, the Department's will normally use the financial statements of companies that produce identical or comparable merchandise in deriving the surrogate financial ratios. In the prior review of glycine, the Department selected financial statements from companies that may have produced the raw material inputs for glycine because they were the best available information at the time. However, as there are currently financial statements on the record of this review for producers of more comparable merchandise (i.e., amino acids), we find that Jubilant and Diamines are no longer the best available information to derive the surrogate financial ratios. Additionally, the Department finds that Azko, Hester, and Torrent produce merchandise that is not comparable to glycine, and will not use their financial statements to calculate the surrogate financial ratios.

With respect to Baoding Mantong's argument that Jupiter and Divi are large pharmaceutical companies whose experience does not match that of itself, we find that Jubilant's experience is no more similar to Baoding Mantong's than either Jupiter or Divi. As petitioner points out, Jubilant has a large R&D budget, which is greater than both Jupiter and Divi during the 2006-2007 fiscal year.[3] Additionally, Jubilant has more subsidiaries than either Jupiter or Divi. Thus, we find that, while none of the companies for which we have financial statements are similarly integrated or have the same experience as Baoding Mantong, Jupiter and Divi produce

[3] See Petitioner's June 4, 2008, rebuttal brief at 19.

comparable merchandise to glycine, and thus are the best available information to calculate the surrogate financial ratios.

Comment 5: Surrogate Value for Chlorine

Petitioner argues that for the final results, the Department should use the purchase values of chlorine contained in the annual reports of Kanoria Chemicals ("Kanoria") and Gujarat Alkalies and Chemicals Ltd., ("Gujarat"). Petitioner contends that the value of liquid chlorine derived from the annual reports of Kanoria and Tata Chemicals ("Tata") for the preliminary results does not accurately reflect the value of Baoding Mantong's purchases of liquid chlorine. Petitioner argues that the Department's use of inventory values to derive the surrogate value for liquid chlorine are not the best available information and are irrelevant to the purchase price of liquid chlorine. Additionally, Petitioner asserts that the sales prices of liquid chlorine contained in the annual reports used for the preliminary results are by-product sales which are not representative of the purchase price of liquid chlorine in India.

Petitioner argues that, if the Department chooses not to solely use the purchase prices of liquid chlorine from Kanoria and Gujarat, it should average the purchase value of liquid chlorine for Kanoria with the average purchase and sales values for Gujarat, Chemfab Alkalis Ltd. ("Chemfab"), Aditya Birla Nuvo ("Aditya"), and Tata, excluding Kanoria's liquid chlorine sales and all inventory values. Alternatively, Petitioner contends that if the Department decides to average the purchase, inventory, and sales values of Kanoria and Tata's liquid chlorine, it should also include the purchase, inventory, and sales data for Gujarat, Chemfab, and Aditya, which would be more representative than using just Kanoria and Tata.

Baoding Mantong argues that the Department should not rely solely on "purchases" of liquid chlorine listed in the annual reports on the record because they are not representative of Baoding Mantong's experience purchasing liquid chlorine from liquid chlorine producers, only two of the five companies purchase liquid chlorine, and the purchase volumes of liquid chlorine are much smaller than the sales volumes in the annual reports. Baoding Mantong also disagrees with Petitioner's alternative calculations of the liquid chlorine surrogate value based on the financial statements on the record. Baoding Mantong contends that the Department should base its surrogate value for liquid chlorine on the 2006-2007 annual reports of the Indian companies on the record that are contemporaneous with the POR, and should calculate the surrogate value by weight averaging the sales, purchases, opening and closing inventories of liquid chlorine.

Department's Position:
As described above, when selecting possible surrogate values for use in an NME proceeding, the Department's preference is to use, where possible, a publicly available value which is (1) an average non-export value; (2) representative of a range of prices within the POR or most contemporaneous with the POR; (3) product-specific; and (4) tax-exclusive. See Activated Carbon at Comment 18. The sales data information for chlorine from the five financial statements on the record from 2006-2007 encompass a large quantity (approximately 258,056 metric tons), are based on the experience of five companies, represent a reasonably broad market average, are contemporaneous with the POR, are specific to the input in question, and have been adjusted for excise taxes. Thus, the Department finds that the use of sales/turnover values from

the financial statements of Kanoria, Tata, Gujarat, Chemfab, and Aditya are the best available information to value liquid chlorine.

Regarding Petitioner's argument that Kanoria's liquid chlorine sales are for by-product liquid chlorine or that Gujarat's sales of liquid chlorine must be "excess liquid chlorine," which Petitioner asserts must have been sold at a loss (because their prices are far less than the companies' purchase price of liquid chlorine), we find that there is insufficient information from either company's financial statements to draw the conclusion that the liquid chlorine was sold at a loss. Additionally, while Petitioner stated that Kanoria's liquid chlorine is for "by-product" chlorine that is not specific to Baoding Mantong's purchased liquid chlorine, again, Petitioner has provided no evidence specifically for why Kanoria's liquid chlorine sales are not specific to Baoding Mantong's liquid chlorine.

Additionally, we find that the purchase data for liquid chlorine contained in Kanoria's and Gujarat's financial statements are not the best available information to value liquid chlorine because compared to the sales data for liquid chlorine contained in the financial statements, the quantity purchased is much smaller and may not be representative of prices of liquid chlorine in India. Finally, the small quantity of purchases of liquid chlorine is not representative of Baoding Mantong's liquid chlorine purchasing and consumption experience because Baoding Mantong's purchases and consumption are far greater than the quantities purchased by Kanoria and Gujarat. See Baoding Mantong's July 20, 2007, Section D response at Exhibit 4. We also find that the inventory values for liquid chlorine are typically determined by the company and may not reflect the prevailing market price.

Because we have determined that the sales values from all five companies from their 2006-2007 financial statements are the best available information to value liquid chlorine, and we find it inappropriate to use purchase or inventory values to value liquid chlorine, we find it unnecessary to address the alternative calculations proposed by Petitioner that contain a hybrid of using inventory, purchase, and sales values.

Comment 6: Surrogate Value for Truck Freight

Petitioner argues that the Department should use the average freight values in the September 2006 "Competition Issues in the Road Goods Transport Industry in India with special reference to The Mumbai Metropolitan Region," ("September 2006 Study") because the rates are based on quotes from daily newspapers in India, and were in part obtained from the same source, Infreight Logistics Solutions Ltd. ("ILS"), that the Department utilized in the preliminary results. Petitioner argues that rates from the September 2006 Study are contemporaneous with the POR, are more reliable and more accurate than the data used for the preliminary results and should be used for the final results.

Baoding Mantong did not comment on this issue.

Department's Position:

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. Additionally, as described above, when selecting possible surrogate values for use in an NME proceeding, the Department's preference is to use, where possible, a publicly available value which is (1) an average non-export value; (2) representative of a range of prices within the POR or most contemporaneous with the POR; (3) product-specific; and (4) tax-exclusive. See Activated Carbon at Comment 18. We disagree with Petitioner that the September 2006 Study is the best available information to value truck freight. While we acknowledge that the September 2006 Study provides truck freight rates that are more contemporaneous with the POR, they are not representative of truck freights throughout India, because they only focus on rates to and from Mumbai, one city within India. The ILS rates used by the Department in the Preliminary Results, though from one year prior to the POR, represent truck freight rates throughout many areas in India and hence represent a range of truck freight prices throughout the country. Additionally, we do not find the ILS data to be unreliable, as the September 2006 Study used this same source to report the historical 2005 truck freight rates in its study.

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final results of this review in the Federal Register.

AGREE_____ DISAGREE_____

_____
David M. Spooner
Assistant Secretary
for Import Administration

_____
Date