

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND
Glycine & More, Inc. v. United States
Court No. 13-00167, Slip Op. 15-124 (CIT, November 3, 2015)

SUMMARY

The Department of Commerce (the Department) has prepared these final results of redetermination pursuant to the opinion and remand order of the U.S. Court of International Trade (CIT or Court) in *Glycine & More, Inc., v. United States*, Slip Op. 15-124 (CIT, November 3, 2015) (*Opinion and Order*) in which the Court remanded the Department's final results of the antidumping administrative review of glycine from the People's Republic of China (PRC), for the period of review March 1, 2011 to February 29, 2012.¹ In particular, the Court ordered the Department on remand to reconsider the determination to not extend the deadline for Baoding Mantong Fine Chemistry Co. Ltd. (Baoding Mantong) to withdraw its request for review, which was filed after the 90-day deadline provided in 19 CFR 351.213(d)(1).

In accordance with the Court's opinion and remand order, the Department has reconsidered its determination in the *Final Results* in these final results of redetermination. For the reasons explained below, under protest, the Department intends to extend the deadline for withdrawing a request for an administrative review pursuant to 19 CFR 351.213(d)(1), accept Baoding Mantong's untimely withdrawal request, and rescind the review with respect to Baoding Mantong.

¹ See *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 20891 (April 8, 2013) (*Final Results*).

DISCUSSION

A. Background

On March 29, 1995, the Department published in the *Federal Register* the antidumping duty order on glycine from the PRC.² In response to March 30, 2012, requests from Baoding Mantong, a Chinese producer and exporter of glycine, and GEO Specialty Chemicals, Inc. (GEO), a domestic interested party, on April 30, 2012, the Department initiated an administrative review of glycine from the PRC for the period March 1, 2011, through February 29, 2012.³ On July 9, 2012, the Department selected Baoding Mantong as one of two mandatory respondents and issued a questionnaire to Baoding Mantong.⁴

On July 30, 2012, GEO timely withdrew its administrative review request for all 26 companies for which it requested a review, including Baoding Mantong, in accordance with 19 CFR 351.213(d)(1). On August 7, 2012 (nine days after the 90-day deadline to withdraw a review request), Baoding Mantong requested that the Department, pursuant to 19 CFR 351.213(d)(1), extend the ordinary 90-day period for withdrawal of a request for administrative review and accept Baoding Mantong's untimely withdrawal request. In light of the Department's interpretation of 19 CFR 351.213(d)(1), as explained in the *Initiation Notice*,⁵ Baoding Mantong explained that extraordinary circumstances prevented Baoding Mantong from filing a timely extension request. Specifically, Baoding Mantong stated that it did not receive GEO's withdrawal of administrative review request, which included Baoding Mantong, until

² See *Antidumping Duty Order: Glycine from the People's Republic of China*, 60 FR 16116 (March 29, 1995) (*Order*).

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 77 FR 25401, 25401 (April 30, 2012) (*Initiation Notice*).

⁴ See Memorandum to Richard Weible, Director AD/CVD Operations, Office 7, through Angelica Mendoza, Program Manager, AD/CVD Operations, Office 7, entitled "Administrative Review of the Antidumping Duty Order on Glycine from the People's Republic of China: Respondent Selection Memorandum," dated July 9, 2012.

⁵ See *Initiation Notice* at 25401.

after expiration of the 90-day period, and that prior to receipt of GEO's withdrawal of review request *via* first class mail, it had no reason to believe that a unilateral withdrawal of its own administrative review request would have any impact.⁶

On September 27, 2012, the Department notified Baoding Mantong that it had rejected Baoding Mantong's request for an extension of the deadline on the grounds that Baoding Mantong had not shown an extraordinary circumstance warranting an extension of time.⁷ The Department also indicated a deadline for Baoding Mantong to respond to the antidumping duty questionnaire, which was issued to Baoding Mantong on July 10, 2012.⁸ On October 18, 2012, Baoding Mantong notified the Department that it would no longer participate in the administrative review and would not respond to the questionnaire.⁹

The Department published its *Preliminary Results*¹⁰ on December 6, 2012, finding that Baoding Mantong was no longer eligible for a separate rate and was part of the PRC-wide entity. Because the PRC-wide entity, through Baoding Mantong, failed to cooperate to the best of its ability, the Department assigned the PRC-wide entity a revised dumping margin of 453.79 percent based on adverse facts available. The 453.79 percent dumping margin was the margin

⁶ See Letter to the Department from Baoding Mantong, "Glycine from the People's Republic of China; Withdrawal of Administrative Review Request," dated August 7, 2012, (Baoding Mantong's Withdrawal Request), at 2-3.

⁷ See Letter from the Department to Baoding Mantong, "Administrative Review of the Antidumping Duty Order on Glycine from the People's Republic of China – Antidumping Duty Questionnaire," dated September 27, 2012 (Response to Baoding Mantong's Untimely Withdrawal Request).

⁸ *Id.*

⁹ See Letter to the Department from Baoding Mantong, "Glycine from China, Withdrawal from Administrative Review," dated October 18, 2012.

¹⁰ See *Glycine From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Partial Rescission of Antidumping Duty Administrative Review; 2011–2012*, 77 FR 72817 (December 6, 2012) (*Preliminary Results*).

calculated for Baoding Mantong in the immediately preceding administrative review of the *Order*.¹¹ This rate was also the highest calculated rate from any segment of the proceeding.

Glycine & More, Inc. (Glycine & More), the U.S. affiliate of Baoding Mantong and an importer of Baoding's Mantong's exports of glycine, entered a notice of appearance on December 17, 2012, and subsequently filed a case brief objecting to the Department's rejection of Baoding Mantong's request to withdraw the administrative review and the application of a 453.79 percent dumping margin to Baoding Mantong. On April 8, 2013, the Department published the *Final Results*, affirming its *Preliminary Results* in its entirety.¹² Glycine & More challenged the *Final Results* with the CIT.

B. Court's Holding

On November 3, 2015, the CIT ruled that the Department's decision to deny Baoding Mantong's extension request and not rescind the review was unlawful and remanded the case to the Department. In its *Opinion and Order*, the CIT examined the 1989 preamble to the original version of 19 CFR 351.213(d)(1), finding that the Department's stated intent and purpose in enacting the language to "extend the 90-day deadline when the Secretary determines it is reasonable to do so" reflected an understanding that parties may wish to see the prior review's final results before deciding whether to withdraw a review request.¹³ Thus, because the Department's interpretation of the regulation requiring parties to demonstrate extraordinary circumstances did not adhere to this stated purpose, the CIT ruled that the agency's interpretation

¹¹ Baoding Mantong is currently contesting the 453.79 percent rate assigned to it in the 10/11 review. On November 3, 2015, the CIT remanded our calculation of Baoding Mantong's 453.79 percent rate in the 10/11 review. See CIT Court No. 12-00362.

¹² See *Final Results* and accompanying Issues and Decision Memorandum at 4-8.

¹³ See *Opinion and Order*, Slip Op. 15-124 at 14-19.

should be afforded little deference and found it unreasonable.¹⁴ Additionally, the Court found the Department's decision not to extend the 90-day deadline in 19 CFR 351.213(d)(1) in light of the facts of this proceeding and the prior stated purpose for the regulation was unreasonable.

On remand, the CIT instructed the Department to reach a new decision that does not require that Baoding Mantong demonstrate that extraordinary circumstances prevented it from filing a timely withdrawal of review request, and which instead applies an interpretation of 19 CFR 351.213(d)(1) which comports with the prior stated purpose of the regulation.¹⁵ Further, the CIT stated that the Department will need to take into consideration the controlling circumstances, as shown by the record of this case, that (1) Baoding Mantong's withdrawal of its review request occurred only nine days after the close of the 90-day period; (2) the review then was at an early stage, with no questionnaire responses having been submitted; (3) Baoding Mantong could not have known the results of the immediately preceding review during the 90-day period, which the Department had yet to issue as of the expiration of that period; and (4) at the time Baoding Mantong submitted the withdrawal of its review request, all parties who had requested a review had expressed the position that the review not be conducted.¹⁶

The CIT also stated that under the circumstances shown by the record of this proceeding, it appears likely that only a decision allowing a nine-day extension, and a consequent rescission of the review, could fulfill the stated purpose of 19 CFR 351.213(d)(1).¹⁷ The CIT further noted that it could sustain a decision reinstating the previous, negative decision only if the record were

¹⁴ *Id.*

¹⁵ *Id.*, at 22-23.

¹⁶ *Id.*, at 23.

¹⁷ *Id.*

to support a finding of a new and compelling circumstance, not previously identified by the Department that could justify disallowing Baoding Mantong's withdrawal.¹⁸

C. Draft Results of Redetermination Pursuant to Remand

Commerce released its Draft Remand Redetermination on December 24, 2015, and invited comments from interested parties.¹⁹ Baoding and GEO submitted comments on January 6, 2016.²⁰

D. Analysis

For the reasons explained below, although we respectfully disagree with the Court's holding, because we have not identified any "new and compelling circumstance," under protest,²¹ we intend to extend the deadline set forth in 19 CFR 351.213(d)(1), accept Baoding Mantong's otherwise untimely withdrawal of review request, and rescind the review with respect to Baoding Mantong.²²

¹⁸ *Id.*, at 23-24.

¹⁹ See Draft Results of Remand Determination: Glycine & More, Inc. United States. Consol. Ct. No. 13-00167; Slip Op. 15-124 (January 24, 2015) (Draft Remand Redetermination).

²⁰ See letter from Baoding Mantong Fine Chemistry Co. Ltd. to Commerce, "Glycine from China: Remand Redetermination Comments of Baoding Mantong Fine Chemistry Co., Ltd.," (January 6, 2015) (Baoding Mantong Comments) and letter from GEO Specialty Chemicals, Inc. to Commerce, "Glycine from the People's Republic of China: Comments on the Draft Results of the Redetermination Pursuant to the Remand Order of the U.S. Court of International Trade in Glycine & More, Inc. v. United States, Court No. 13-00167, Slip Op. 15-124 (Ct. Int'l Trade, November 3, 2015), (January 6, 2015) (GEO Comments), respectively.

²¹ See *Viraj Group, Ltd. v. United States*, 343 F.3d 1371, 1376 (Fed. Cir. 2003).

²² In its *Opinion and Order*, the Court criticized the Department for not adhering to the statutory deadline in issuing the final results of the prior review. See *Opinion and Order*, Slip Op. 15-124 at 19, footnote 8. The Court also criticized the Department for seemingly accepting an untimely withdrawal request from petitioner, which the Court found was one-day after the 90-day deadline. *Id.*, at 20, footnote 9. The Department respectfully disagrees with both of the Court's findings.

With respect to the Court's statement that the Department did not adhere to the statutory deadline in issuing the final results of the prior review, the Court's interpretation does not accord with the statute. According to the Court, the Department should have issued the final results in the prior administrative review, at the latest, by September 26, 2012 (the final results in the prior administrative review were published in the *Federal Register* on October 18, 2012 (see *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 64100 (October 18, 2012))). The Court's interpretation does not account for (1) tolled deadlines due to the fact that initial deadlines fell on a weekend or holiday or (2) the time elapsed between the signature of the *Federal Register* notice and its publication for either the preliminary or the final results in that review. Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue final results in an

The Department's regulation, 19 CFR 351.213(d)(1), provides that:

The Secretary will rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. The Secretary may extend this time limit if the Secretary decides that it is reasonable to do so.

According to the Court, the original purpose of the regulation, as reflected in the 1989 preamble to the regulation, was to allow a party to know the final results of the immediately preceding review before having to decide whether to withdraw a review request.²³

We respectfully disagree with the Court's conclusion. As an initial matter, the plain language of the regulation, that “{t}he Secretary may extend this time limit if the Secretary decides that it is reasonable to do so{,}” – in the words of the Court – “connotes wide discretion.”²⁴ Thus, an interpretation of this provision which requires the Department to extend the time limit when the immediately preceding review is ongoing would, in our view, effectively nullify the Department's “wide discretion.” The Department thus does not read the 1989 preamble language as limiting this discretion to account for instances in which parties are seeking to know the final results of the immediately preceding review. Moreover, the 1997 preamble indicates that the Department intended to reserve maximum discretion to accept or

administrative review of an antidumping duty order within 120 days after the day on which the preliminary results are *published* (emphasis added) or, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2) allow the Department to extend the 120-day period to 180 days after *publication* (emphasis added) of the preliminary results. In other words, signature deadlines were met. The Department is not responsible for the length of time it takes the Office of the Federal Register to publish notices.

With respect to the Court's statement that the Department seemingly accepted an untimely withdrawal request from petitioner, which the Court found was one-day after the 90-day deadline, the Court's characterization is also misplaced. The Department initiated the administrative review on April 30, 2012. *See Initiation Notice*. Pursuant to 19 CFR 351.213(d)(1), parties have 90 days to withdraw a request for review. In this case, the 90-day period ended on July 29, 2012, a Sunday. As a result, pursuant to the Department's regulation, 19 CFR 351.303(b), “if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.” Petitioner filed its withdrawal request on July 30, 2012, a Monday, which was the next business day. Therefore, Petitioner's withdrawal request was, in fact, timely.

²³ *See Opinion and Order*, Slip Op. 15-124 at 14-19.

²⁴ *Id.*, at 13.

reject untimely withdrawal of review requests, and does not so limit such discretion to the circumstances described by the Court.²⁵

In sum, we disagree with the Court that the purpose of the regulation was to allow a party to know the final results of the immediately preceding review before having to decide whether to withdraw a review request. Rather, we find that the purpose of the regulation was, and continues to be, to ensure the Department would be able to maintain maximum discretion in determining whether to extend the 90-day deadline.

DISCUSSION OF COMMENTS

Issue: Whether the Department Failed to Consider a “New and Compelling Circumstance”

Baoding Mantong Comments

Baoding Mantong agrees with the Department’s redetermination of the *Final Results* and decision to accept the withdrawal of the administrative review request and to rescind the administrative review for the March 1, 2011 to February 29, 2012 period of review. Baoding Mantong supports this decision because the record shows that (1) its withdrawal request was submitted only nine days late after the end of the 90-day review, (2) no questionnaire responses had been submitted, (3) it was unable to know the results of the prior review during the 90-day period, and (4) the other parties that requested reviews withdrew their requests.²⁶ Additionally, there were no “new and compelling circumstances” to justify rejecting the withdrawal.²⁷ Further, Baoding Mantong believes that the Department’s decision to accept the withdrawal and rescind the administrative order is a reasonable interpretation of 19 CFR 351.213(d)(1).²⁸

²⁵ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27317 (May 19, 1997).

²⁶ See Baoding Mantong Comments at 2.

²⁷ *Id.*

²⁸ *Id.*

GEO Comments

GEO argues that the Department should not have extended the deadline “under protest” for withdrawing an administrative review request for Baoding Mantong and discontinuing its review, but should have instead upheld its original determination.²⁹ GEO states that the Court omitted a sentence from the 1997 preamble, and that this omission undercuts the legal basis of the Court’s opinion and the four “controlling circumstances” the court relies upon.³⁰ GEO argues that the legal basis for issuing a remand no longer exists when this sentence is omitted, and that this qualifies as a “new and compelling circumstance” that justifies the Department’s disallowance of Baoding Mantong’s withdrawal.³¹

Further, GEO argues that the Court, in making its decision, omitted a third choice for parties that request a review.³² The Court stated that such a party is limited to either requesting a review outright, regardless of whether the previous results are known, or forego any realistic opportunity to request a review.³³ However, GEO argues that Baoding Mantong could have requested an extension to withdraw the review before the 90-day period deadline, thereby extending the deadline until the final results from the previous review were released, and allowing the Department discretion to either grant or deny the extension under 19 CFR 351.302.³⁴ Further, the U.S. Court of Appeals for the Federal Circuit has upheld the Department’s wide discretion to set and enforce extension requests under 19 CFR 351.302.³⁵

²⁹ See GEO Comments at 1-2.

³⁰ *Id.*, at 2-5 (citing *Opinion and Order*, Slip Op. 15-124 at 18).

³¹ *Id.*

³² *Id.*, at 5-7.

³³ *Id.*, at 5 (citing *Opinion and Order*, Slip Op. 15-124 at 18).

³⁴ *Id.*, at 6.

³⁵ *Id.*, at 6-7; see also *Dongtai Peak Honey Industry Co., Ltd. v. United States*, 777 F. 3d 1343, 1351 (Fed. Cir. 2015) (quoting *Yantai Timken Co. v. United States*, 521 F. Supp. 2d 1356, 1371 (Ct. Int’l Trade 2007)).

Thus, GEO believes this is a “new and compelling circumstance” upon which the Department should uphold its original determination.³⁶

GEO recommends the Department incorporate the above additional analysis into the initial analysis of the Final Remand, and revise the Final Remand to uphold its original determination.³⁷

The Department’s Position:

We disagree with GEO that, as indicated by the Court, a newly identified compelling circumstance exists on the record which could justify reinstating the *Final Results*. The Court indicated that “it could sustain a decision reinstating the previous, negative decision only if the record were to support a finding of a new and compelling circumstance, not previously identified by Commerce in the Issues & Decision Memorandum or elsewhere during the review, that, despite the circumstances the court has identified, could justify disallowing Baoding’s withdrawal.”³⁸ GEO first argues that the Court’s failure to consider certain language in the Department’s preamble constitutes “a ‘new and compelling circumstance’ that justifies the Department’s disallowance of Baoding’s withdrawal.”³⁹ However, while we agree with GEO that the Court’s findings with respect to the Department’s intended purpose of its revised regulation is in error, we do not believe that this constitutes a factual circumstance *on the record* not previously identified by the Department.

Second, GEO argues that the Court has failed to identify a third “practical choice” for parties seeking review, which is to request an extension of the 90-day deadline before the expiry

³⁶ See GEO Comments at 7.

³⁷ *Id.*, at 7-8.

³⁸ See *Opinion and Order*, Slip Op. 15-124 at 23-24.

³⁹ See GEO Comments at 5.

of the 90-day deadline.⁴⁰ With respect to this alleged “new and compelling circumstance” identified by GEO, we note that the main issue in this review, which was considered by the Department in the Issues and Decision Memorandum, is that Baoding Mantong did not seek a timely extension of the 90-day deadline.⁴¹ Thus, although the Court did not reference this as a choice for parties seeking review in its opinion, given the Court’s instruction that the newly identified compelling circumstance is one that was “not previously identified *by Commerce* in the Issues & Decision Memorandum or elsewhere during the review,”⁴² we disagree with GEO’s argument.

FINAL RESULTS OF REDETERMINATION

In sum, for the reasons explained above, although we respectfully disagree with the Court’s holding, because we have not identified any “new and compelling circumstance,” under protest, we intend to extend the deadline set forth in 19 CFR 351.213(d)(1), accept Baoding Mantong’s otherwise untimely withdrawal of review request, and rescind the review with respect to Baoding Mantong.



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

1 FEBRUARY 2016
Date

⁴⁰ *Id.*, at 5-7.

⁴¹ See Baoding Mantong’s Withdrawal Request at 2 (“Baoding Mantong requests that Commerce exercise its discretion and extend the 90-day limit to permit Baoding Mantong to withdraw its own administrative review request.”); *Final Results* and accompanying Issues and Decision Memorandum at 4-8.

⁴² See *Opinion and Order*, Slip Op. 15-124 at 23 (emphasis added).