

Baoding Mantong Fine Chemistry Co., Ltd. v. United States
Court No. 12-00362, Slip Op. 15-123 (CIT November 3, 2015)

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

SUMMARY

The Department of Commerce (the Department) prepared these final results of redetermination in accordance with the opinion and remand order of the U.S. Court of International Trade (CIT or the Court) issued on November 3, 2015, in *Baoding Mantong Fine Chemistry Co., Ltd. v. United States*, Consol. Court No. 12-00362, Slip Op. 15-123 (CIT 2015) (*Remand Order*). These final remand results concern the final results in the antidumping duty (AD) administrative review of glycine from the People's Republic of China (PRC), and the period of review (POR) March 1, 2010, through February 28, 2011.¹

In the underlying review, the Department calculated a dumping margin of 453.79 percent for Baoding Mantong Fine Chemistry Co., Ltd. (Baoding Mantong). In the *Remand Order*, the Court directed the Department to reconsider any and all aspects of Baoding Mantong's margin as necessary and appropriate, reexamine all record evidence, open the record if necessary, and recalculate the margin assuring that it (1) be the most accurate margin possible; (2) reflect the commercial and economic reality surrounding the production and sale of Baoding Mantong's subject merchandise; (3) be arrived at fairly and equitably, and (4) not be punitive. In accordance with the *Remand Order*, the Department reconsidered its calculation of Baoding Mantong's dumping margin as discussed below. Additionally, as noted below, certain aspects of this final remand are being done respectfully under protest.

¹ See *Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 64100 (October 18, 2012) (*Final Results*) and accompanying Issues and Decision Memorandum (Issues and Decision Memo).

DISCUSSION

I. Statutory and Regulatory Background

In proceedings involving non-market economy (NME) countries, section 773(c)(1) of the Tariff Act of 1930, as amended (the Act) directs the Department to base normal value on factors of production (FOP) valued in a surrogate market economy country, along with an amount for selling, general and administrative expenses (SG&A), plus profit. According to section 773(c)(1) of the Act, the surrogate value selections for each FOP shall be based on the best available information. However, section 773(c)(2) directs that if the Department “finds that the available information is inadequate for purposes of determining the normal value of subject merchandise” then the Department will determine normal value on the basis of the price at which comparable merchandise produced in a comparable market economy country is sold in other countries.²

Section 773(c)(4) requires the Department to value FOPs in a surrogate country that is (A) at a level of economic development comparable to that of the nonmarket economy country, and (B) a significant producer of comparable merchandise.³ The Department’s regulation, 19 CFR 351.408, provides a rule for calculating normal value for NMEs.⁴ For instance, in valuing FOPs, pursuant to 19 CFR 351.408(c)(1) and (2), the Department normally will utilize publicly available information, and will normally value all FOPs from a single surrogate country. In addition, pursuant to 19 CFR 351.408(c)(4), for SG&A and profit, the Department normally will use non-proprietary information from producers of identical or comparable merchandise in the surrogate country.

II. Factual Background

On March 29, 1995, the Department published in the *Federal Register* the antidumping duty

² See Sections 773(c)(1) and (2) of the Act.

³ See Section 773(c)(4) of the Act.

⁴ See 19 CFR 351.408.

order on glycine from the PRC.⁵ Baoding Mantong requested a review of its own sales on March 23, 2011, and GEO Specialty Chemicals, Inc. (GEO), a domestic interested party, requested a review of the sales of Baoding Mantong and 29 other firms on March 31, 2011. Based on these requests, we initiated a review of the 30 companies on April 27, 2011.⁶ On July 1, 2011, however, GEO withdrew its request for review of all companies except that of Baoding Mantong.

Relying on its surrogate value methodology pursuant to section 773(c)(1) of the Act to determine Baoding Mantong's normal value, on April 11, 2012, the Department determined a preliminary dumping margin of zero percent for Baoding Mantong in the *Preliminary Results*.⁷ On June 27, 2012, based on a currency conversion error, the Department revised the *Preliminary Results* and adjusted the rate from zero to 457.74 percent in the Revised Preliminary Results.⁸ On October 12, 2012, the Department issued the *Final Results*, determining a final dumping margin of 453.79 percent for Baoding Mantong.⁹ Baoding Mantong challenged certain aspects of the *Final Results* before the Court, including certain of the Department's surrogate value selections.

In its *Remand Order*, the Court held that in determining Baoding Mantong's margin pursuant to section 773(c)(1) the Act, the Department failed in its obligation to determine the dumping margin as accurately as possible, *i.e.*, "within the limits of permissible approximation."¹⁰ The Court further noted that the Department, "even though arriving at a margin that defies reality, did not find that the available surrogate value information was inadequate for use in determining the normal value of

⁵ See *Antidumping Duty Order: Glycine from the People's Republic of China*, 60 FR 16116 (March 29, 1996) (*Order*).

⁶ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 76 FR 23545 (April 27, 2011) (*Initiation*).

⁷ See *Glycine From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 77 FR 21738 (April 11, 2012) (*Preliminary Results*).

⁸ See Memo to File Concerning Revision to Certain Surrogate Valuations & the Prelim. Margin-Calculation Program for Baoding Mantong Fine Chemistry Co., Ltd. (June 27, 2012) (Revised Preliminary Results).

⁹ See *Final Results*, 77 FR at 64101.

¹⁰ *Remand Order*, Slip Op. 15-123 at 9 (quoting *Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (Fed. Cir. 1997)).

Baoding Mantong's subject merchandise.”¹¹ In addition, the Court found that “the record lacks substantial evidence to support a finding that the 453.79 percent margin has any relationship to Baoding Mantong's commercial reality, and the record evidence of Baoding Mantong's profitability is contrary to any such finding.”¹² The Court directed the Department to reconsider its determination of Baoding Mantong's dumping margin on remand, as discussed below.

III. Analysis

In its *Remand Order*, the Court has ordered the Department to “reconsider any and all aspects of the Department's calculation of the 453.79% margin as necessary and appropriate in arriving at a margin that complies with the directives of this Opinion and Order {,}”¹³ and has also indicated that the remand is not limited to “the surrogate country, surrogate values, and SG&A ratios {.}”¹⁴ The Court also indicated that it is “directing Commerce to reconsider all aspects of its determination of the margin it assigned to Baoding Mantong in the Final Results {.}”¹⁵ With respect to Baoding Mantong's normal value in particular, the Court has stated that, upon remand, the Department must not only reconsider whether the available record information constitutes the “best available information” pursuant to section 773(c)(1) of the Act, but also must consider whether such information is inadequate for purposes of determining Baoding Mantong's normal value under section 773(c)(1) of the Act.¹⁶ Finally, the Court stated that the final margin on remand must: 1) be the most accurate margin possible and within the limits of permissible approximation; 2) be reflective of the commercial and economic reality surrounding the production

¹¹ *Id.*, at 10.

¹² *Remand Order*, Slip Op. 15-123 at 11.

¹³ *Id.*, at 15.

¹⁴ *Id.*

¹⁵ *Id.*, at 16.

¹⁶ *Id.*, at 14-15.

and sale of Baoding Mantong's subject merchandise; 3) be arrived at fairly and equitably; and 4) not be punitive.¹⁷

To comply with the Court's order to "reconsider any and all aspects of the Department's calculation of the 453.79% margin as necessary and appropriate in arriving at a margin that complies with the directives of {the *Remand Order*,}"¹⁸ as discussed below, our reconsideration is limited solely to the reconsideration of Baoding Mantong's normal value pursuant to the Court's findings with respect to the Department's application of section 773(c) of the Act. For purposes of this final remand, the Department has recalculated certain aspects of Baoding Mantong's dumping margin. In particular, the Department has relied upon the financial information for an Indonesian producer of urea, rather than the financial information of three Indonesian pharmaceutical companies, in determining various aspects of Baoding Mantong's normal value pursuant to section 773(c)(1) of the Act. However, understanding the Court's directive that it "will not assume that a remand confined to the question of the financial ratios could suffice for correction of the serious, fundamental deficiencies affecting the Final Results{,}"¹⁹ respectfully, under protest,²⁰ we have also reconsidered the remaining aspects of Baoding Mantong's normal value calculation as discussed below.

Our reconsideration of Baoding Mantong's normal value, and related recalculation of Baoding Mantong's dumping margin, demonstrate that the Department has reconsidered Baoding Mantong's dumping margin as necessary and appropriate in arriving at a margin which complies with the *Remand Order*. For these reasons, the Department has not reconsidered the remaining aspects of Baoding Mantong's dumping margin, such as export price or constructed export price.

¹⁷ *Id.*, at 14.

¹⁸ *Remand Order*, Slip Op. 15-123 at 15.

¹⁹ *Id.*, at 16.

²⁰ *See Viraj Group v. United States*, 343 F.3d 1371 (Fed. Cir. 2003).

1. *The Department has reconsidered whether each surrogate valuation is based on the best available information for purposes of section 773(c)(1) of the Act.*

A. Surrogate Country

In accordance with section 773(c)(4) of the Act, the Department selected Indonesia as the surrogate country in the *Preliminary Results* because the Department determined that it was (1) at a level of economic development comparable to that of the NME country; and (2) a significant producer of comparable merchandise.²¹ The Department identified Colombia, Indonesia, the Philippines, South Africa, Thailand, and Ukraine as countries at a level of economic development comparable to that of the PRC.²² The Department then evaluated whether any of those six identified countries was also a significant producer of comparable merchandise, finding that five were producers of comparable merchandise during the period of review.

In addition, the Department found that the record contained reliable and publicly available surrogate data from Indonesia and publicly available financial information for six Indonesian companies.²³ Therefore, because Indonesia met both prongs of the surrogate-selection criteria, and based on the available record evidence, the Department selected Indonesia as the primary surrogate country.²⁴ In the *Final Results*, no party argued that the Department should select another country as the surrogate country, and the Department continued to rely upon Indonesia as the primary surrogate country. Further, Baoding Mantong did not challenge the Department's selection of Indonesia as the primary surrogate country before the Court.

²¹ See *Preliminary Results*, 77 FR at 21740.

²² *Id.*; see also Memorandum to Angelica Mendoza from Carole Showers Concerning Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Glycine from the People's Republic of China, dated August 15, 2011 (Surrogate Country List).

²³ See *Preliminary Results*, 77 FR at 21740-41 (citing GEO's Letter Concerning GEO Specialty Chemicals' Comments on Selection of Surrogate Country for Valuing Factors of Production and Surrogate Value Data for Valuing Baoding Mantong's Factors of Production, dated November 1, 2011 (GEO's November 1, 2011 Comments) at 3, 5-6 and exhibits 3, 5 and 6).

²⁴ See *Preliminary Results*, 77 FR at 21740.

As discussed above, respectfully under protest, in light of the Court's directive, we have reconsidered our selection of Indonesia as the surrogate country as necessary and appropriate. Upon reconsideration of this selection, we observe that, based on the record evidence, Indonesia still meets the two prongs of our analysis, *i.e.*, it is at a level of economic development comparable to the PRC and is a significant producer of comparable merchandise. We also observe that, despite numerous opportunities throughout the underlying review to file surrogate value factual information, the parties did not provide sufficient information for us to calculate a margin using information from one of the other possible surrogate countries, *i.e.*, those countries that had been deemed to be at a level of economic development comparable to that of the PRC. In its submissions prior to the preliminary results, Baoding Mantong provided surrogate data, including financial information, for India. As noted above, India was not identified as a country at a level of economic development comparable to that of the PRC on the Surrogate Country List. Indeed, while we found the PRC to have a per capita gross national income (GNI) of \$3,590 and Indonesia to have a per capita GNI of \$2,230 for 2011 at the time of the review, India only had a per capita GNI of \$1,180 for that year.²⁵ This amount, which is substantially below the lowest GNI amount on our surrogate country list, shows that the Indian per capita GNI was less than 32.87 percent that of the PRC's during the latter part of the period of review.²⁶ We simply had no basis to find India to be economically comparable to the PRC during the review and, in light of the per capita GNI amount for India, we can find no basis to revise our analysis for purposes of the final remand. Moreover, because the record contains adequate surrogate data information for Indonesia and because parties did not provide information for other possible surrogate countries when given opportunities to do so, we find no basis to reopen the record on this point for the redetermination.

²⁵ See Surrogate Country List; *see also* World Development Report 2011, World Bank.

²⁶ See World Development Report 2011, World Bank.

In accordance with the *Remand Order* and section 773(c)(4) of the Act, the Department has respectfully under protest reconsidered its selection of Indonesia as the surrogate country. As a result of this reconsideration, the Department finds that Indonesia remains a country at a level of economic development comparable to that of the PRC, is a significant producer of comparable merchandise, and has sufficiently reliable and publicly available data available to calculate a dumping margin. Therefore, the Department continues to find that the most appropriate surrogate country is Indonesia.

B. Financial Statements

In the *Final Results*, we selected financial information of three Indonesian pharmaceutical companies – that of PT Darya-Varia Laboratoria Tbk (Darya-Varia), PT Pyridam Farma Tbk (Pyridam), and PT Kalbe Farma Tbk (Kalbe) – over the financial information of an Indonesian urea fertilizer producer to calculate the surrogate financial ratios for overhead, SG&A, and profit for Baoding Mantong.²⁷ For the reasons discussed below, after reconsidering this issue on remand, we find that the financial statements of the Indonesian urea fertilizer producer, PT Pupuk Kujang (Pupuk), constitute the best available information for determining overhead, SG&A, and profit for Baoding Mantong.

According to 19 CFR 351.408(c)(4), we will normally use non-proprietary information from producers of identical or comparable merchandise in the surrogate country as the basis for our calculation of the surrogate ratios. Moreover, when selecting financial statements for the purpose of calculating surrogate financial ratios, the Department's policy is to use data from market-economy surrogate companies based on the specificity, contemporaneity, and quality of the

²⁷ The financial reports for Darya-Varia, Pyridam, and Kalbe appear in GEO's November 1, 2011 Comments at Exhibits 6-7, and the financial report for PT Pupuk Kujang (Pupuk) appears in Baoding Mantong's July 16, 2012 Comments at Attachment 5.

data.²⁸ We note that the regulation does not provide further guidance on what may be considered comparable merchandise. However, the Department has further developed a three-part test for identifying comparable merchandise which examines, where appropriate, the physical characteristics, end uses, and production process.²⁹ Additionally, for purposes of selecting surrogate producers, the Department examines how similar a proposed surrogate producer's production experience is to the NME producer's production experience.³⁰

Here, the record contains contemporaneous audited financial statements of nine companies, of which only six companies are from the primary surrogate country.³¹ Of the six companies, five are pharmaceutical companies, and one is a producer of urea fertilizer.³² As discussed, in the *Final Results*, we relied on the financial statements of three of the pharmaceutical companies because we found that they produced products comparable to glycine, *i.e.*, amino acids.³³ We further found that urea fertilizer, which is generally used as a raw-material input in other chemical products, was not comparable to glycine.³⁴

In reevaluating our determination, we first examined the physical characteristics of the products produced by the pharmaceutical companies and the urea fertilizer producer as compared

²⁸ 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 1.

²⁹ See *Certain Woven Electric Blankets From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 38459 (July 2, 2010), and accompanying IDM at Comment 2; *Certain Cased Pencils from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 48612 (July 25, 2002), and accompanying Issues and Decision Memorandum at Comment 5.

³⁰ See *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010) and accompanying Issues and Decision Memorandum at Comment 13.

³¹ See Baoding Mantong's November 1, 2011 Comments at 8; see also GEO's November 1, 2011 Comments at 6; see also Baoding Mantong's July 16, 2012 Comments at 5.

³² See GEO's November 1, 2011 Comments at 6; see also Issues and Decision Memorandum at 27.

³³ See *Final Results*, and accompanying Issues and Decision Memorandum at Comment 6; see also *Preliminary Results*, 77 FR at 21743; Memorandum from Edythe Artman, International Trade Analyst, to the File, Concerning "Factors of Production Valuation for the Preliminary Results (Factor Valuation Memorandum), dated March 30, 2012 at 2-3.

³⁴ See *Final Results*, and accompanying Issues and Decision Memorandum at Comment 6.

to the physical characteristics of glycine. We continue to recognize that the pharmaceutical companies produce amino acids (used in pharmaceutical products), and that glycine is also an amino acid.³⁵ We also continue to recognize that urea fertilizer is a raw-material input which is used in other chemicals, and thus not akin to glycine.³⁶ However, upon further examination of the record, we find that the pharmaceutical companies produce high value patented and branded medical products which, by their nature, are much more complex products than glycine, which, if used, is merely an additive to some of these products.³⁷ Thus, although the pharmaceutical companies produce amino acids, we find that the additional products produced by these companies which incorporate amino acids, demonstrate that the products produced by these companies are ultimately more complex than glycine.³⁸

Second, in evaluating the end uses, we find that the pharmaceutical companies are engaged in the development, production and sale of retail products (*i.e.*, products that are packaged for consumer use) whereas Baoding Mantong sells glycine in bulk quantities to customers for use in the production of retail products.³⁹ In this respect, urea is also most commonly sold in bulk quantities to customers for use in fertilizer applications.

Third, we find that the production processes for the pharmaceutical products are much more complex than that of glycine. The production process for glycine consists of chemical reactions between a few inputs, as demonstrated by the low number of factors of production

³⁵ *Id.*; see also *Preliminary Results*, 77 FR at 21743.

³⁶ See *Final Results*, and accompanying Issues and Decision Memorandum at Comment 6.

³⁷ See GEO's November 1, 2011 letter to the Department at exhibits 6 and 7, for the financial information of the three pharmaceutical companies; see also GEO's November 1, 2011 Comments at Attachment 6 Section 6 Page 8 (referencing Darya-Varia's high value brands) and Section 10 Page 33 (referencing Kalbe's high value brands).

³⁸ See GEO's November 1, 2011 Comments at Attachment 6 Section 6 Page 8 (referencing the Darya-Varia's products), Section 9 Page 11 (referencing Pyridam's products), and Section 10 Page 21 (referencing Kalbe's products).

³⁹ See Baoding Mantong Initial Questionnaire Sections C and D Response, dated August 2, 2011 at D-16; see also GEO's November 1, 2011 Comments at Attachment 6 Section 6 (referencing the Darya-Varia's consumers), Section 9 (referencing Pyridam's packing), and Section 10 (referencing Kalbe's consumers).

reported by Baoding Mantong.⁴⁰ The production processes for the pharmaceutical products can involve the production and combination of several ingredients, including glycine, for one product and, in the case of Darya-Varia, Pyridam, and Kalbe, involves packaging processes that are not necessary for Baoding Mantong's sales of glycine.⁴¹ On the other hand, urea is similar to glycine in that the production process relies upon the chemical reactions between a few inputs.⁴²

The above findings also demonstrate that the production experience, of Baoding Mantong is most similar to that of the urea fertilizer, rather than the pharmaceutical companies. For instance, the pharmaceutical companies, through the production of high-value patented and branded medical products, have high research and development (R&D) expenses and high selling costs on products in which the raw materials form a small part of the cost.⁴³ In contrast, glycine, like urea fertilizer, is a low-value commodity product, in which the raw materials account for a larger share of the production costs.⁴⁴ We also have no evidence that Baoding Mantong incurred high R&D expenses and high selling costs.

Based on these findings, we conclude that urea is the most comparable product to glycine of those products for which financial information was placed on the record. By relying on

⁴⁰ See Baoding Mantong Initial Questionnaire Section A, dated July 19, 2011 at Appendix A-11

⁴¹ A similar finding was reached in Glycine 13/14 Review I&D Memo at 19. See also *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 28809 (October 17, 2007) (2005/2006 Glycine Final Results) and accompanying Issues and Decision Memorandum at Comment 2, where the Department found the pharmaceutical product lines tend towards higher value-added products with dissimilar production process; *Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 55814 (September 26, 2008) (2006/2007 Glycine Final Results) and accompanying Issues and Decision Memorandum at Comment 4; see also GEO's November 1, 2011 Comments at Attachment 6 Section 6 (referencing the Darya-Varia's products), Section 9 (referencing Pyridam's products), and Section 10 (referencing Kalbe's products).

⁴² We reached a similar finding in a later review, although we declined to utilize the financial statement at issue because the document was largely illegible. See Memorandum from Chris Marsh, Deputy Assistant Secretary for Enforcement and Compliance Concerning Glycine from the People's Republic of China: Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review; 2013-2014 (Glycine 13/14 Review I&D Memo), dated October 5, 2015 at 18 n. 90; see also Baoding Mantong's July 12, 2012 Comments at Attachment 5.

⁴³ See Baoding Mantong's July 16, 2012 Comments at 16; see also GEO's November 1, 2012 Comments at Attachment 6 Section 6, Section 9, and Section 10.

⁴⁴ See Baoding Mantong's July 23, 2012 Comments at 3.

Pupuk's financial information in this final remand, we believe that the Department will be using the best information available as required by the statute, and that this meets the requirement of 19 CFR 351.408(c)(4). Moreover, relying on the financial information of the Indonesian urea producer will enable the Department to meet the Court's directive that we determine that the best available information is adequate for purposes of determining normal value. Using this financial information for the calculation of surrogate financial ratios results in a revised dumping margin for Baoding Mantong of 64.97 percent, as compared to the prior dumping margin of 453.79 percent.⁴⁵

C. Liquid Chlorine

In the *Preliminary Results*, the Department determined that the value derived from Global Trade Atlas (*GTA*) data, as published by the Global Trade Information Services, for Indonesian imports of "Chlorine" under the Harmonized Tariff Schedule (HTS) subheading 2801.10, represented the best available information for valuing liquid chlorine because this data represented information that is product-specific, representative of a broad-market average, publicly available, contemporaneous with the period of review, and exclusive of taxes and duties.⁴⁶ In the *Final Results*, the Department continued to find that *GTA* data from its primary surrogate country, Indonesia, constituted the best available information to value liquid chlorine. The Department considered Baoding Mantong's argument that the Indonesian data was aberrational, but consistent with its practice and based on the available record information, compared the Indonesian *GTA* data to the *GTA* data for the same period from the five other potential surrogate countries. Based on this comparison, the Department determined that the Indonesian values were not aberrational, and that Baoding Mantong's proposed benchmark information was insufficient.⁴⁷

⁴⁵ See Memorandum to the File from Madeline Heeren, International Trade Compliance Analyst, on the subject of "Analysis Memorandum for the Redetermination Pursuant to the Court Remand of the 2010/2011 Administrative Review of the Antidumping Duty Order on Glycine from the People's Republic of China", dated March 14, 2016.

⁴⁶ See Factor Valuation Memorandum at 2-3.

⁴⁷ See Issues and Decision Memo at 6-8.

As discussed above, respectfully under protest, in light of the Court’s directive, we have reconsidered the use of the *GTA* data for Indonesia in valuing liquid chlorine as necessary and appropriate. The Department continues to find that the Indonesian value for liquid chlorine meets its requirements to be product-specific, representative of a broad-market average, publicly available, contemporaneous with the period of review, and exclusive of taxes and duties. In particular, the Department finds that, with respect to specificity, “Chlorine,” under HTS subheading 2801.10, is the most product specific data available from Indonesia. The *GTA* data from Indonesia provides a broad market-average of liquid ammonia that is specific to this product HTS code. Additionally, *GTA* data is publicly available, contemporaneous with the period of review, and is free of taxes and duties. Further, *GTA* data from Indonesia was the only value for liquid chlorine from an Indonesian source suggested by the parties and placed on the record.⁴⁸

Further, we continue to find this data is not aberrational, but is useable and reliable. In determining whether a surrogate value derived from *GTA* data is aberrational, it is the Department’s practice to compare it with the *GTA* data for the input at issue of the other countries found by the Department to be economically comparable to the PRC.⁴⁹ Additionally, the fact that the import volume is low does not render surrogate value data aberrational.⁵⁰ We have reevaluated the Indonesian *GTA* data for liquid chlorine by comparing it to that of the other five countries and continue to find that Indonesia’s average unit value (AUV) of 0.56 USD/kilogram falls within a range from 0.25 USD/kilogram to 12.54 USD/kilogram from the six countries.⁵¹ Further, we also continue to find that the Indonesian import volume statistics – showing the volume exceeded 2,000 metric tons, which was the highest volume of all potential surrogate

⁴⁸ See GEO’s July 16, 2012 Comments at Attachment 2; and Baoding Mantong’s July 16, 2012 Comments at Attachment 4.

⁴⁹ See Issues and Decision Memorandum at 6.

⁵⁰ See *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review and First New Shipper Review*, 72 FR 52052 (September 12, 2007).

⁵¹ See Baoding Mantong’s July 16, 2012 Comments at Attachment 1.

countries – supports the conclusion that liquid chlorine was imported into Indonesia in commercial quantities during the period of review.⁵²

It is the Department's practice,⁵³ as upheld by the Court of International Trade,⁵⁴ to place the burden of providing factual evidence showing the value is aberrational on the interested party. In light of the above, we continue to find that Baoding Mantong's proposed benchmarks of Indian surrogate values used in past reviews, Indian company-specific data, and its own company-specific information to be insufficient in determining whether the Indonesian value is aberrational.

Pursuant to the *Remand Order*, the Department has reconsidered the selection of the surrogate value for liquid chlorine and finds that the *GTA* data from Indonesia continues to be the best available information for valuing liquid chlorine.

D. Liquid Ammonia

In the underlying review, Baoding Mantong identified the molecular formula for the liquid ammonia that it used as NH_4OH , and identified the HTS subheading as 2814.20 – the subheading for aqueous ammonia – in its Section D response, and in a later submission Baoding Mantong provided surrogate value information under this HTS subheading.⁵⁵ In previous reviews, the Department had established that NH_4OH is the molecular formula for aqueous ammonia.⁵⁶ Baoding Mantong offered no correction to this information at the start of verification, and the Department made no findings at verification to contradict Baoding Mantong's reporting of aqueous ammonia as the liquid ammonia it used.⁵⁷ Thus, in the *Preliminary Results*, the Department classified liquid ammonia as aqueous ammonia under HTS subheading 2814.20.⁵⁸

⁵² See Issues and Decision Memo at 6-8; see also GEO's July 16, 2012 Comments at Attachment 1.

⁵³ See *Small Diameter Graphite Electrode from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review*, 77 FR 40854 (July 1, 2012) (*SDGE from the PRC*).

⁵⁴ See *Trust Chem. Co. Ltd. v. United States*, 791 F. Supp. 2d 1257, 1264-65 (Ct. Int'l Trade 2011) (*Trust Chem.*).

⁵⁵ See Baoding Mantong's Section D Response at Exhibit D-5; Baoding Mantong's Surrogate Country Comments.

⁵⁶ See Issues and Decision Memorandum at 11 (citing earlier reviews).

⁵⁷ See Memorandum to the File from Edythe Artman International Trade Analyst Concerning Verification of the Sales

Subsequent to the Revised Preliminary Results, Baoding Mantong, for the first time, argued that its initial reporting stated that it used “‘liquid ammonia’ with a purity level greater than 99.8%,” and that in previous reviews the Department had determined that “‘liquid ammonia with a purity level of over 98% is reflective of anhydrous ammonia in liquid form and does not relate to aqueous ammonia, which has significantly lower purity levels and has a chemical composition distinct from anhydrous ammonia.’”⁵⁹ As a result, Baoding Mantong argued that the Department should value its liquid ammonia using Indonesian import statistics under HTS subheading 2814.10 – the HTS subheading for anhydrous ammonia, or, alternatively, rely on another source such as import data from the Philippines for valuing aqueous ammonia or company-specific information from an Indian fertilizer producer.⁶⁰

In the *Final Results*, the Department continued to find that it was appropriate to value liquid ammonia using Indonesian import data under the HTS subheading for aqueous ammonia because Baoding Mantong had reported the molecular formula and HTS subheading for aqueous ammonia, and the Department verified this reporting.⁶¹ The Department further found that the value derived from *GTA* data for Indonesian imports of aqueous ammonia under the HTS subheading 2814.20 represented the best available information for valuing liquid ammonia. The Department also considered Baoding Mantong’s argument that the Indonesian data was aberrational, but consistent with its practice and based on the available record information, compared the Indonesian *GTA* data to the *GTA* data for the same period from the five other potential surrogate countries. Based on this comparison, the Department determined that the

and Factors-Of-Production Responses of Baoding Mantong Fine Chemistry Co., Ltd., in the Antidumping Duty Administrative Review of Glycine from the People’s Republic of China, dated March 30, 2012 (Verification Report) at 3 and 27-32.

⁵⁸ See Factor Valuation Memorandum at 2.

⁵⁹ See Baoding Mantong’s July 6, 2012 Comments at 10 (citing Baoding’s Section D Response at Exhibit D-5).

⁶⁰ *Id.*, at 9-11.

⁶¹ See Issues and Decision Memo at 11.

Indonesian values were not aberrational, and that Baoding Mantong's proposed benchmark information was insufficient.⁶²

As discussed above, respectfully under protest, in light of the Court's directive, we have reconsidered the use of the aqueous ammonia *GTA* data for Indonesia in valuing liquid ammonia as necessary and appropriate. As an initial matter, we reiterate that the Department's selection of a surrogate value must be supported by evidence on the record. The record indicates that in Baoding Mantong's section D response, it provided the formula for the ammonia it uses as NH_4OH ,⁶³ which is the formula for aqueous ammonia.⁶⁴ In its submission for surrogate value information, Baoding Mantong's section D response identified HTS subheading 2814.20, the subheading for "Ammonia in Aqueous Solution."⁶⁵ Further, Baoding Mantong did not offer a correction of this information at verification, nor was there anything at verification to contradict the information reported.⁶⁶ Based upon the record, the Department continues to use aqueous ammonia to value liquid ammonia.

The Department also continues to find that the use of aqueous ammonia *GTA* data for Indonesia in valuing liquid ammonia meets its requirements to be product-specific, representative of a broad-market average, publicly available, contemporaneous with the period of review, and exclusive of taxes and duties. In particular, the Department finds that, with respect to specificity, HTS subheading 2814.20 for aqueous ammonia, is the most product-specific data available from Indonesia. The *GTA* data from Indonesia is representative of a broad market-average of liquid ammonia that is specific to this product HTS code. Additionally, *GTA* data is publicly available,

⁶² *Id.*, at 11-12.

⁶³ See Baoding Mantong's section D response, dated August 2, 2011, at Exhibit D-5.

⁶⁴ See 2005/2006 Glycine Final Results and accompanying Issues and Decision Memorandum at Comment 1; *see also* 2006/2007 Glycine Final Results and accompanying Issues and Decision Memorandum at Comment 3; *see also* *Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 41121 (August 14, 2009) (2007/2008 Glycine Final Results) Memorandum at Comment 5.

⁶⁵ See Baoding Mantong's July 16, 2012 Comments at Attachment 2.

⁶⁶ See Verification Report at 3 and 27-32.

contemporaneous with the period of review, and is free of taxes and duties. Further, *GTA* data from Indonesia was the only value for liquid ammonia from an Indonesian source suggested by the parties and placed on the record.

The Department finds that the value for liquid ammonia from Indonesia is not aberrational, but is useable and reliable. Compared to the other five countries on the list of economically comparable countries to the PRC, three had lower import values than Indonesia which imported 82 metric tons.⁶⁷ Indonesia's AUV is 4.06 USD/kilogram, which falls within the range of economic comparable countries of 0.28 to 6.94 USD/kilogram.⁶⁸ When compared with the other economically comparable countries, the import data is considered reliable and not aberrational. Therefore, the Department continues to find that the *GTA* data from Indonesia is the best available information for valuing liquid ammonia.

E. Formaldehyde

In the *Preliminary Results*, the Department determined that the value derived from the *GTA* data for Indonesian imports under HTS subheading 2912.11 for formaldehyde represented the best available information for valuing formaldehyde.⁶⁹ The Department continued this determination in the *Final Results*, finding that the Indonesian *GTA* data compared to the *GTA* data for the same period from the five other potential surrogate countries demonstrated the Indonesian data was not aberrational.⁷⁰

As discussed above, respectfully under protest, in light of the Court's directive, we have reconsidered the use of *GTA* data for Indonesia in valuing formaldehyde as necessary and appropriate. In reconsidering the surrogate value for formaldehyde, the Department has determined that the *GTA* Indonesian import data constitutes the best available information because

⁶⁷ See Baoding Mantong's July 16, 2012 Comments at Attachment 2.

⁶⁸ See Baoding Mantong's July 16, 2012 Comments at Attachment 3.

⁶⁹ See *Preliminary Results*, 77 FR at 21742.

⁷⁰ See Issues and Decision Memo at 14-15.

it is product specific, representative of a broad-market average, publicly available, contemporaneous with the period of review, and free of taxes and duties. Of the sources suggested by parties, the *GTA* data was the only value suggested from Indonesia for formaldehyde. The *GTA* import data is the most specific available data from Indonesia for valuing this input.

As mentioned above, it is the Department's practice to value all factors from a single surrogate country when we have useable and reliable data. The Department has compared the total imports and AUV of formaldehyde imported from Indonesia to the other five countries on the economically comparable list. Indonesia had the fourth highest total import with 357 metric tons, surpassing South Africa and Colombia with 823 kilograms and three metric tons, respectively.⁷¹ Additionally, Indonesia's AUV fell within the six countries' range from 0.027 to 23.54 USD/kilogram, with three countries having an AUV in excess of Indonesia's AUV of 0.49 USD/kilogram.⁷² When compared, the Indonesian volumes reflect commercial quantities and the AUV is reflective of market averages. Therefore, the Department has no basis to conclude the Indonesian *GTA* data is aberrational, and finds that the data is useable and reliable.

In reconsidering the selection of the surrogate value for formaldehyde, the Department finds that the *GTA* data from Indonesia continues to be the best available information for valuing formaldehyde.

F. Steam Coal

In the *Preliminary Results*, the Department determined that the value derived from the *GTA* data for Indonesian imports under HTS subheading 2701.19 for "Coal, Other Than Anthracite Or Bituminous, Whether Or Not Pulverized, But Not Agglomerated" constitutes the best available information for valuing steam coal.⁷³ The Department continued this determination in the *Final*

⁷¹ See Baoding Mantong's July 16, 2012 Comments at Attachment 3.

⁷² *Id.*

⁷³ See *Preliminary Results*, 77 FR at 21742.

Results, finding that a comparison of the Indonesian *GTA* data to the *GTA* data for the same period from the five other potential surrogate countries demonstrated the Indonesian data was not aberrational.⁷⁴ In doing so, we found that the Department should not rely upon the average price for the grade of non-coking steam coal reported by the Indian company, Coal India Limited (CIL). We acknowledged that we had used CIL data to value steam coal in the earlier administrative reviews of Baoding Mantong's glycine sales but that we had selected India as the primary source of surrogate values in those reviews. Indonesia was our primary source of surrogate values in this review, and because reliable public data was available from this source, and as it is our practice is to value all factors in a single surrogate country pursuant to 19 CFR 351.408(c)(2), we relied on the *GTA* data to value steam coal.

As discussed above, respectfully under protest, in light of the Court's directive, we have reconsidered the use of *GTA* data for Indonesia in valuing steam coal as necessary and appropriate. In reconsidering the surrogate value for steam coal, the Department has determined that the *GTA* Indonesian import data constitutes the best available information because it is product specific, representative of a broad-market average, publicly available, contemporaneous with the period of review, and free of taxes and duties. As mentioned above, it is the Department's practice to value all factors from a single surrogate country when we have useable and reliable data.

When the *GTA* Indonesia import data is compared to the other five economically comparable countries, Indonesia has the lowest import volume (*i.e.*, 604 metric tons) and the highest unit value (*i.e.*, 0.66 USD/kilogram).⁷⁵ However, there is no indication that the total import amount does not represent commercial quantities, and it is not the Department's practice to exclude data solely on the size of imports.⁷⁶ Also, although the average unit value of 0.66

⁷⁴ See Issues and Decision Memo at 17-18.

⁷⁵ See Baoding Mantong's July 16, 2012 Comments at Attachment 4.

⁷⁶ See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical

USD/kilogram exceeds the values of the other five countries, it appears that both Thailand and Philippines values are extremely low compared to the other three countries' AUVs. There is no obvious reason for rejecting the Indonesian value, solely because it is the highest of the five AUVs, of which two are extremely low. Therefore, the record evidence does not support a finding that this value is unreliable.⁷⁷ Based upon our comparison, we find that the *GTA* Indonesian import data is not aberrational, and that it is useable and reliable. We acknowledge that the CIL pricing data suggested by Baoding Mantong is more specific than the *GTA* import data but it is our practice to select data that is reflective of a broad market average (*i.e.*, not based on one company's experience) and it is our practice is to value all factors from a single surrogate country when we have useable and reliable data. Therefore, the Department continues to find that the *GTA* data for Indonesia is the best available information for valuing steam coal.

G. Other Raw Material Inputs

In the *Preliminary Results*, the Department determined that the best available information derived from the *GTA* data for Indonesian imports for valuing sulfur, acetic acid, and methanol were under HTS subheadings 2802.00 for "Sulfur, sublimed or precipitated; colloidal sulfur," 2915.21 for "Acetic Acid," and 2905.11 for "Methanol."⁷⁸ Parties did place additional surrogate value information on the record following the issuance of our Revised Preliminary Results; however, this information did not pertain to the valuation of sulfur, acetic acid, or methanol. Because the valuations of these inputs were not commented on by parties in the *Final Results*, we made no changes to the valuations from our *Preliminary Results*.⁷⁹ Therefore, the valuations for

Circumstances: Certain Color Television Receivers From the People's Republic of China, 69 FR 20594 (April 16, 2004) and accompanying Issues and Decision Memorandum at Comment 11. The CIT has upheld the Department's finding that small quantities of imports are not inherently distortive, stating that "the question is whether the *relative* quantity of imports is distortive." *Trust Chem.*, 791 F. Supp. 2d at 1265 (emphasis in the original).

⁷⁷ *Id.*

⁷⁸ See *Preliminary Results*, 77 FR at 21742.

⁷⁹ See Issues and Decision Memorandum at 1.

these three inputs remain based on the *GTA* data that the Department placed on the record for the *Preliminary Results*.⁸⁰

As discussed above, respectfully under protest, in light of the Court’s directive, we have reconsidered the use of *GTA* data for Indonesia in valuing the remaining raw material inputs as necessary and appropriate. The Department used Indonesian *GTA* data for the surrogate values for the remaining raw materials – sulfur, acetic acid, and methanol. *GTA* data is product specific, representative of a broad-market average for the material, publicly available, contemporaneous of the period of review, and free of taxes and duties. Therefore, the surrogate values for sulfur, acetic acid, and methanol are the based on the best available information.

H. By-Products

In the *Preliminary Results*, the Department determined that the values derived from the *GTA* data for Indonesian imports under HTS subheading 2806.10 for “Hydrogen Chloride (Hydrochloric Acid)” and 2827.10 for “Ammonium Chloride” represented the best available information for valuing these by-products.⁸¹ In the *Final Results*, we reexamined the valuations of the by-products. We found that *GTA* data continued to be the best available information pursuant to section 773(c)(1) of the Act.

In the *Final Results*, GEO submitted surrogate values for hydrochloric acid for the U.S. and Europe. The Department decided not to use this information, because useable and reliable data from the primary source country was available, thus it would be inappropriate to rely on information which, although more specific to the product, is from countries not economically comparable to the PRC.⁸²

⁸⁰ For *GTA* data used in the Preliminary Results, *see* Factor Valuation Memorandum; we revised this data in the Revised Preliminary Results.

⁸¹ *See Preliminary Results*, 77 FR at 21742.

⁸² *See* Issues and Decision Memo at 23-25.

As discussed above, respectfully under protest, in light of the Court's directive, we have reconsidered the use of *GTA* data for Indonesia in valuing Baoding Mantong's by-products as necessary and appropriate. *GTA* data is product specific, representative of a broad-market average for the material, publicly available, contemporaneous of the period of review, and free of taxes and duties. Therefore, we conclude that the surrogate values for hydrochloric acid and ammonium chloride are based on the best available information.

I. Electricity

In the *Preliminary Results*, the Department based the electricity surrogate value upon price data for Indonesia specified in the World Bank's *Electricity for All* report.⁸³ Parties did place additional surrogate value information on the record following the issuance of our Revised Preliminary Results, however, this information did not pertain to the valuation of electricity. Because the valuation of electricity was not commented on by parties in the *Final Results*, we did not change the valuation from our *Preliminary Results*.⁸⁴ Therefore, the valuation for electricity remains based on the *Electricity for All* data that the Department placed on the record for the *Preliminary Results*.⁸⁵

As discussed above, respectfully under protest, in light of the Court's directive, we have reconsidered the use of price data for Indonesia in valuing electricity as necessary and appropriate. Upon reconsideration, we continue to find this data is the best available information for valuing electricity because *Electricity for All* represents actual, country-wide, publicly available information on tax-exclusive electricity rates charged to small, medium, and large industries in Indonesia. Additionally, this data was inflated using the Indonesian Consumer Price Index rates from the *International Financial Statistics* to represent current electricity rates during the period of

⁸³ See The World Bank, *Electricity for All: Options for Increasing Access in Indonesia (2003) (Electricity for All)*.

⁸⁴ See Issues and Decision Memo at 1.

⁸⁵ For data used in the Preliminary Results, see Factor Valuation Memorandum; we revised this data in the Revised Preliminary Results.

review, thus making it contemporaneous with the period of review. Therefore, the Department finds that the *Electricity for All* data for Indonesia continues to be the best available information for valuing electricity.

J. Water

In the *Preliminary Results*, the Department determined the water surrogate value using data collected from the United Nations in 2006.⁸⁶ The surrogate value was based on the 2005 data listed for large hotels, high-rise buildings, banks, and factories. Parties placed additional surrogate value information on the record following the issuance of our Revised Preliminary Results, however, this information did not pertain to the valuation of water. Because the valuation of water was not commented on by parties in the *Final Results*, we made no changes to the valuation from our *Preliminary Results*.⁸⁷ Therefore, the valuation for water remains based on the data collected from the United Nations that the Department placed on the record for the *Preliminary Results*.⁸⁸

As discussed above, respectfully under protest, in light of the Court's directive, we have reconsidered the data collected from the United Nations in valuing water as necessary and appropriate. This is the best available information for valuing water, because it is industry specific, representative of a broad-market average, publicly available, and free of taxes and duties. Additionally, in order to make the data contemporaneous with the period of review, the surrogate value was inflated using the Indonesian Consumer Price Index from the *International Financial Statistics*. The data collected from the United Nations in 2006 is the best available information for valuing water.

⁸⁶ See *Preliminary Results*, 77 FR at 21742, 21743; see also *Human Development Report: Disconnected Poverty: Water Supply and Development in Jakarta, Indonesia (Water Supply and Development)*.

⁸⁷ See Issues and Decision Memo at 1.

⁸⁸ For *GTA* data used in the Preliminary Results, see Factor Valuation Memorandum; we revised this data in the Revised Preliminary Results.

K. Direct, Indirect, and Packing Labor

In the *Preliminary Results*, the Department determined the surrogate value for direct, indirect, and packing labor using Chapter-5B data from the *International Labor Statistics*, or wage-rate data, for Indonesia. This was in compliance with the Department's policy to base its calculation of labor on the methodology set out by the Department.⁸⁹ The surrogate value was based on Chapter-5B data for Indonesia from the *International Labor Statistics* under the two digit description under ISIC-Revision (Manufacture of Other Chemical Products). Parties did place additional surrogate value information on the record following the issuance of our Revised *Preliminary Results*, however, this information did not pertain to the valuation of labor. Because the valuation of labor was not commented on by parties in the *Final Results*, we did not change the valuation from our *Preliminary Results*.⁹⁰ Therefore, the valuation for labor remains based on the *International Labor Statistics* data that the Department placed on the record for the *Preliminary Results*.⁹¹

As discussed above, respectfully under protest, in light of the Court's directive, we have reconsidered the methodology used to base its labor calculations as necessary and appropriate. The two-digit description under ISIC-Revision 2-3 (Manufacture of Other Chemical Products) of Chapter-5B data from Indonesia continues to be the best available information. The information is industry specific, representative of a broad-market average, publicly available, contemporaneous with the period of review, and free of taxes and duties. Therefore, we find the data from the *International Labor Statistics* to be the best available information for valuing indirect labor, direct labor, and packing labor.

⁸⁹ *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodologies*).

⁹⁰ See Issues and Decision Memo at 1.

⁹¹ For data used in the *Preliminary Results*, see Factor Valuation Memorandum; we revised this data in the Revised *Preliminary Results*.

L. Transportation and Handling

In the *Preliminary Results*, the Department valued foreign inland truck freight expenses using a per-unit rate calculated from a 2001 study *Cost of Investing and Doing Business in ASEAN (ASEAN Study)*. Additionally, the Department valued domestic brokerage and handling expense using the values calculated in *Doing Business 2012: Indonesia (Doing Business 2012)* by the World Bank (excluding “inland transportation and handling” to avoid double counting). Parties did place additional surrogate value information on the record following the issuance of our Revised Preliminary Results, however, this information did not pertain to the valuation of transport and handling. Because the valuation of transport and handling was not commented on by parties in the *Final Results*, we did not change the valuation from our *Preliminary Results*.⁹² Therefore, the valuation for freight expenses and brokerage and handling expenses remains based on the *ASEAN Study* and *Doing Business 2012* data, respectively, that the Department placed on the record for the *Preliminary Results*.⁹³

As discussed above, respectfully under protest, in light of the Court’s directive, we have reconsidered the data used to calculate transportation and handling as necessary and appropriate. We found that the *ASEAN Study* and *Doing Business 2012* data was the best information available at the time of review for valuing inland truck freight and brokerage and handling, respectively. The information is representative of a broad-market average of Indonesia, and it is publicly available and free of taxes and duties. We inflated the inland truck freight and deflated the brokerage and handling rates, using Consumer Price Index data for Indonesia from the International Monetary Fund’s *International Financial Statistics*, to make the values contemporaneous with the period of review. Therefore, the *ASEAN Study* and *Doing Business*

⁹² See Issues and Decision Memo at 1.

⁹³ For data used in the Preliminary Results, see Factor Valuation Memorandum; we revised this data in the Revised Preliminary Results.

2012 are the best available information for valuing truck freight and brokerage and handling expenses, respectively.

2. *The Department has considered whether the available information is inadequate for purposes of determining normal value under sections 773(c)(1) and (2) of the Act.*

As stated above, in its *Remand Order* the Court has directed that the Department must not only reconsider whether the available record information constitutes the “best available information” pursuant to section 773(c)(1) of the Act (which we have done above) but also must consider whether such information is inadequate for purposes of determining Baoding Mantong’s normal value under section 773(c)(1) of the Act, as directed in section 773(c)(2) of the Act.⁹⁴ Generally, if the information relied upon in determining normal value is the best available information for each aspect of its surrogate value determination, and has not been found to be aberrational, and the Department will conclude the information is reliable and useable. Accordingly, the Department will find the information is not “inadequate” for purposes of determining normal value under section 773(c)(1) of the Act. The statute does not define the term “inadequate,” and, to our knowledge, it has never been determined that information which constitutes the best available information (and was otherwise reliable and useable) was inadequate for purposes of determining normal value under section 773(c)(1).

It is the Department’s understanding that the Court envisions that the Department must conduct some analysis for purposes of determining whether the available information is inadequate for purposes of determining normal value under sections 773(c)(1) and (2) of the Act. For purposes of this remand, in determining whether the available information is inadequate for purposes of determining Baoding Mantong’s normal value, we find that the Court’s four-factor

⁹⁴ See *Remand Order*, Slip Op. 15-123 at 14-15.

analysis discussed below will suffice to meet this requisite demonstration of “adequacy.” This is being done under respectful protest.

3. *The Department’s recalculated margin satisfies the four-factor analysis.*

As an initial matter, we note that, as discussed above, the Department has recalculated Baoding Mantong’s margin by relying upon the financial information of a urea producer over that of the pharmaceutical companies, which results in a revised dumping margin for Baoding Mantong of 64.97 percent. Pursuant to the *Remand Order*, respectfully under protest, we have considered whether this margin is: 1) the most accurate margin possible and within the limits of permissible approximation; 2) reflective of the commercial and economic reality surrounding the production and sale of Baoding Mantong’s subject merchandise; 3) arrived at fairly and equitably; and 4) not punitive.⁹⁵

In light of this revised margin, we first find that applying our chosen methodology to the available information to determine Baoding Mantong’s normal value resulted in the calculation of a dumping margin that is both the most accurate margin possible and within the limits of permissible approximation because this margin is similar to other rates Baoding Mantong received in previous segments.⁹⁶

Second, we find that we have calculated a margin reflective of the commercial and economic reality surrounding the production and sale of Baoding Mantong’s subject merchandise because, at each step in the process, we considered Baoding Mantong’s own information, as well as the best available information as surrogate values to calculate the normal value of the product in

⁹⁵ See *Remand Order*, Slip Op. 15-123 at 14.

⁹⁶ In previous reviews, we calculated dumping margins of 12.29 percent (the 2003/2004 review), 52.02 percent (the 2006/2007 review) and 33.67 percent (the 2007/2008 review) for Baoding Mantong.

that economic reality and time period.⁹⁷ Moreover, as noted above, this rate is similar to other rates of Baoding Mantong in previous segments.

Third, in light of the above, we believe this revised margin satisfies the Court's concerns regarding fairness and equitability. Fourth, as Baoding Mantong's revised margin is considerably below the then-current adverse-facts-available rate of 155.89 percent, we do not find the rate to be punitive in nature.

DISCUSSION OF COMMENTS

Issue 1: The Federal Circuit's *Nan Ya Plastics* Decision Effectively Overturns the Court's Opinion and Order

GEO's Comments:

- The Department should recognize that the Federal Circuit's *Nan Ya Plastics* decision effectively overturns the entire basis of the Court's Opinion and Order. Although the Department notes that its respectful protest is based on *Nan Ya Plastics*, it responds *in toto* to the Court's Opinion and Order, even though the Federal Circuit has determined in *Nan Ya Plastics* that these issues are not necessary to address.⁹⁸
- The Department's determination that a calculated margin is "within the limits of permissible approximation" because it is similar to other rates the respondent received in previous segments of the proceeding is absurd. Administrative reviews are separate segments of a proceeding and a respondent's lower rates from previous segments do not mean it is not dumping at a higher rate in a subsequent review. Accurate dumping margins that are not based on facts otherwise available, are never punitive, regardless of the size of the margin. Rather, they are remedial measures to retrospectively impose antidumping duties and to establish new deposit rates for foreign exporters, in accordance with the antidumping duty laws.⁹⁹

⁹⁷ The Department notes that in the recent decision of the Court of Appeals for the Federal Circuit in *Nan Ya Plastics Corp. LTD. v. United States*, 810 F.3d 1333, 2016 WL 209915 (Fed. Cir. Jan. 19, 2016) (*Nan Ya Plastics*), the Court clarified that "{w}hen Congress directs the agency to measure pricing behavior and otherwise execute its duties in a particular manner, Commerce need not examine the economic or commercial reality of the parties specifically, or of the industry more generally, in some broader sense." *Id.*, at 15-16. The Court further held that "a Commerce determination (1) is 'accurate' if it is correct as a mathematical and factual matter, thus supported by substantial evidence; and (2) reflects 'commercial reality' if it is consistent with the method provided in the statute, thus in accordance with law." *Id.*, at 16. We believe that the Federal Circuit's decision provides further support for the Department's decision to conduct this portion of the remand under respectful protest.

⁹⁸ See GEO's March 21, 2016 Comments at 3.

⁹⁹ *Id.*, at 4-5.

- The “commercial and economic reality” in determining dumping margins is what Congress says it is and the Department should adhere to Congress’ intent in administering and enforcing the law, as well as the determinations of higher courts.¹⁰⁰

The Department’s Position:

In our draft remand results, the Department noted that, in the recent decision of the Court of Appeals for the Federal Circuit in *Nan Ya Plastics*, the Court clarified that “{w}hen Congress directs the agency to measure pricing behavior and otherwise execute its duties in a particular manner, Commerce need not examine the economic or commercial reality of the parties specifically, or of the industry more generally, in some broader sense.”¹⁰¹ The Court further held that “a Commerce determination (1) is “accurate” if it is correct as a mathematical and factual matter, thus supported by substantial evidence; and (2) reflects “commercial reality” if it is consistent with the method provided in the statute, thus in accordance with law.”¹⁰²

We noted that the decision provided further support for the Department’s decision to conduct this portion of the remand under respectful protest. In our final remand results, we continue to conduct this portion of the remand under respectful protest and observe that our calculations are accurate, in the sense that they are factually and mathematically correct, and supported by substantial evidence. We further find that our final remand results are reflective of commercial reality, in that they are consistent with our methodology for calculating dumping margins for respondents in non-market-economy countries.

With respect to our analysis to find the margin to be within the limits of permissible approximation, we note that this analysis was conducted under protest and we have not revised it for our final remand results.

¹⁰⁰ See GEO’s March 21, 2016 Comments at 5.

¹⁰¹ *Nan Ya Plastics*, 810 F.3d at 15-16.

¹⁰² *Id.*, at 16.

Although we agree with GEO that *Nan Ya Plastics* provides further support for our determination to conduct this portion of the remand under protest, we believe that the Department has responded to the Court’s Opinion and Order as necessary and appropriate. Therefore, we decline GEO’s invitation to reject the Court’s Opinion and Order in its entirety.

Issue 2: Whether the Department Should Reinstate its Original Selection of Surrogate Financial Ratios

GEO’s Comments:

- If the Department does not reject the Court’s Opinion and Order in its entirety, the Department should support its original selection of the financial reports of the three Indonesian pharmaceutical companies for the calculation of surrogate financial ratios because they produced products that best satisfy the Department’s established three-part test for determining if a product produced by company in the surrogate country is comparable. In this test, the Department examines the physical characteristics, end uses, and production processes of a product produced in a surrogate country to determine whether it is comparable.¹⁰³
- In its analysis supporting the selection of Pupuk’s financial information, the Department ignored two parts of the test – the comparison of the physical characteristics and end uses of glycine with those of the products for which financial information was placed on the record. When those other two parts of the test are applied, Pupuk’s urea fertilizer product is not comparable or in any way similar to glycine or other amino acids. By contrast, the Department determined in the *Final Results* that the pharmaceutical companies, Darya-Varia, Pyridam, and Kalbe were involved in the production of amino acids (used in pharmaceutical products) comparable to glycine. The Department must complete the three-part test and, when it does so, it will find that it should use the financial information of the pharmaceutical companies because their products are the most comparable to glycine.¹⁰⁴
- The production process for Pupuk’s urea fertilizer is not comparable to the production processes of glycine or other amino acids whereas Darya-Varia, Pyridam, and Kalbe make downstream amine-based products comparable to glycine, which require additional manufacturing processes and, as a result, additional costs.¹⁰⁵

The Department’s Position:

¹⁰³ See GEO’s March 21, 2016 Comments at 5-7.

¹⁰⁴ *Id.*, at 7-9.

¹⁰⁵ *Id.*, at 8-10.

As addressed above, the Department continues to find Pupuk's financial information from the urea producer to be the best available information for determining the surrogate financial ratios for use in Baoding Mantong's margin calculations.¹⁰⁶ We applied the three-part test, as suggested by GEO, and the findings led us to the conclusion that, for purposes of our margin calculations, Pupuk's product is a more comparable product to glycine than products produced by Darya-Varia, Pyridam, and Kalbe.¹⁰⁷

We simply cannot find that the financial expenses incurred in the production of these more complex products is more reflective of Baoding Mantong's expenses than those of a urea producer, whose product is much more similar in terms of use and production process. For this reason, we will continue to use Pupuk's financial information for the calculation of surrogate financial ratios for the final remand results. We have modified the results to incorporate the findings of the three-part test.

Issue 3: Selection of Surrogate Values for Chlorine, Liquid Ammonia, Formaldehyde and Steam Coal

Baoding Mantong's Comments:

- Baoding Mantong strongly disagrees with the Department's draft remand results, as the Department continues to apply the aberrational surrogate values selected in the final results of review for chlorine, liquid ammonia, formaldehyde and steam coal. The Department's failure to fairly and equitably reexamine the surrogate values for these factors of production establish that the draft remand results have not complied with the Court's order.¹⁰⁸
- The differences between the alternate surrogate values placed on the record (and used in the previous review) and those selected by the Department are staggering, in that the selected values are many times higher than the alternate values. The Department's chosen surrogate value for liquid chlorine was more than four times greater than Baoding's alternate surrogate value; the Department's liquid ammonia surrogate was approximately 9, 11 and 15 times greater than Baoding's three alternate surrogate values; the Department's formaldehyde surrogate was more than

¹⁰⁶ The financial report for Pupuk appears at Baoding Mantong's July 16, 2012 Comments at Attachments 5.

¹⁰⁷ The financial reports for these three companies appear at GEO's November 1, 2011 Comments at Exhibits 6-7.

¹⁰⁸ See Baoding Mantong's March 21, 2016 Comments at 2-6.

twice as high as Baoding's two alternate surrogate values; and the Department's surrogate value for steam coal was 12 and 20 times greater than Baoding's alternate surrogate values. Moreover, each of the selected surrogate value was inexplicably many times greater than the surrogate value selected in the previous administrative review for those inputs.¹⁰⁹

- Case precedent on the subject of the selection of surrogate values includes *Mittal Steel Galati S.A. v. United States*, 502 F. Supp. 2d 1295 (CIT 2007), 1308, where the CIT found that, when confronted with a colorable claim that data is aberrational, the Department must examine the data and provide a reasoned explanation as to why the data it chooses is reliable and non-distortive. It also includes *Xinjiaimei Furniture (Zhongzhou) Co., Ltd. v. United States*, Slip Op. 13-30 at 13 (Mar. 12, 2013), where the CIT found that the Department should have addressed whether alternate surrogate data provided a basis to doubt the accuracy of the *GTA* data.¹¹⁰
- As in the cited cases, the Department's draft remand results are unacceptable because it made no attempt to determine the reliability of its chosen surrogate values as compared to the other data on the record. In order to comply with the Court's remand, the Department must compare the disparities between its selected values for chlorine, liquid ammonia, formaldehyde and steam coal with the alternate values placed on the record and address why the selected surrogate values are not aberrational, particularly with respect to the small sample sizes upon which they were based. To this end, Baoding Mantong incorporates the arguments presented in its July 22, 2013, memorandum to the Court and its March 10, 2014, reply brief to the Court, both of which address the valuations of the four factors, into its comments.¹¹¹

The Department's Position:

As addressed in our final results of review and these final remand results, we find that the values derived from the *GTA* import data for Indonesia are the best available information for valuing liquid chlorine, liquid ammonia, formaldehyde and steam coal for the reasons explained above. In particular, the Department followed its statutorily-prescribed method in selecting Indonesia as the surrogate country and, based on the record before it, properly determined that it had sufficient information from that country to value surrogate values for liquid chlorine, liquid ammonia, formaldehyde, and steam coal. The Department reasonably concluded that this

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

information — *GTA* import data for Indonesia — constituted the best available information because it was product-specific, representative of a broad-market average, publicly available, contemporaneous with the period of review, and exclusive of taxes and duties.

We disagree with Baoding Mantong that the Department has failed to further examine our selected surrogate values for accuracy, or that the Department has limited its analysis only to the alleged shortcomings of Baoding Mantong's suggested alternate data. Baoding Mantong claims that the Department has ignored all other information on the record, but this statement fails to account for the fact that here, the Department did evaluate its chosen surrogate values in comparison to other information on the record. For instance, consistent with its practice, the Department looked to comparable surrogate value data — that is, import data from the other potential surrogate countries — and determined that the Indonesian data at issue fell within an acceptable range of the data from those countries.¹¹² As demonstrated above, this comparison not only demonstrates that the Indonesian data is not aberrational, it also corroborates the reliability and reasonableness of this data.

With respect to the remaining potential surrogate value data provided by Baoding Mantong, the Department has reconsidered this data, and continues to find that surrogate value data from past reviews in which India was the surrogate country, Baoding Mantong's own company-specific data, and data from Indian companies, fail to satisfy the Department's preferences for reliable surrogate value data. This is especially true in comparison to the available record evidence from the primary surrogate country, Indonesia. Moreover, the Department has sufficient record evidence from the other potential surrogate countries with which to compare to the Indonesian data. We note that Baoding Mantong did not provide the Department with alternative data from within

¹¹² The CIT has upheld this practice as reasonable and thus entitled to deference. *See Trust Chem.*, 791 F. Supp. 2d at 1268.

Indonesia (such as company-specific data) or even data from any of the other potential surrogate countries.

Thus, we continue to find that Baoding Mantong's suggested surrogate value data from past reviews in which India was the surrogate country, do not represent reliable information because this information is not contemporaneous with the period of review and relies on information for a country which has been determined to be not at a level of economic development comparable to China in accordance with section 773(c)(4)(A) of the Act.¹¹³ We also note that Baoding Mantong has not raised any objection to the primary surrogate country selection of Indonesia, nor does it contend that India should continue to be considered a potential surrogate country. On this basis alone, the Department has reasonably concluded that potential surrogate value data from India should be rejected. We also continue to find that Baoding Mantong's suggested surrogate value data from Indian companies is equally unreliable because this represents data from a country that has not been found to be at a level of economic development to the PRC.¹¹⁴

With respect to Baoding Mantong's suggested surrogate value data of its own company-specific information, we also continue to find that this data is not reliable for purposes of determining certain surrogate values. As noted in the *Final Results*, “{i}t is our policy to compare the total import volumes of potential surrogate countries to one another, not to compare import volume to the purchases of individual respondents.”¹¹⁵

Finally, we continue to find that it is appropriate to value all surrogate values from the same surrogate country pursuant to 19 CFR 351.408(c)(2).¹¹⁶ Thus, we decline Baoding

¹¹³ See *Preliminary Results*, 77 FR at 21740.

¹¹⁴ *Id.*

¹¹⁵ See Issues and Decision Memo at 8.

¹¹⁶ The CIT has upheld this preference and practice as reasonable, both because it is directed by regulation and also because valuing surrogate data from one surrogate country limits the potential for distortion. See *Clearon Corp. v.*

Mantong's invitation to rely on alternative surrogate values from other potential surrogate countries for certain surrogate values. As discussed above, the Indonesian import quantities and values are within a range of these other values, and therefore the data was usable and reliable. Valuing all surrogate values from Indonesia is both consistent with the regulation, and also removes the potential for distortion.

In short, Baoding Mantong has raised no new arguments on these issues¹¹⁷ and, after reconsidering the record evidence as discussed above, we have not changed our position from the *Final Results*. Moreover, we observe that we did reexamine the alternate values from the other potential surrogate countries for each of these factors of production in our final remand and continue to find that, because the Indonesian import quantities and values are within the range of these other values, the data was usable and reliable.¹¹⁸ In doing so, we complied with Departmental practice, as well as case precedent, and, for reasons stated above, we have complied with the Court's order in selecting the surrogate values for these factors.

FINAL RESULTS OF REDETERMINATION

In accordance with the *Remand Order*, the Department has reconsidered the record evidence, in part under respectful protest, and recalculated Baoding Mantong's dumping margin. Based on its analysis, the Department: 1) reconsidered the selection of Indonesia as the surrogate country and continued to find that Indonesia is the most appropriate primary surrogate country; 2) reconsidered its selection of financial statements from Indonesian pharmaceutical companies, and found that the financial statement of a urea fertilizer producer constitutes the best available information, 3) reconsidered all surrogate values and found that the surrogate values as determined

United States, No. 08-00364, 2013 WL 646390, at *6 (Ct. Int'l Trade Feb. 20, 2013).

¹¹⁷ Baoding Mantong has indicated that it raises no new arguments, but rather, has incorporated the previous arguments that it raised in its briefs before the CIT. To the extent any of those arguments have not been directly addressed here, the Department incorporates herein the discussion from the *Final Results*, as well as its own brief before the CIT, which is provided here as an attachment.

¹¹⁸ See *Final Results* at Comments 1-4.

in the *Final Results* continue to constitute the best available information; 4) found that the available information is not inadequate for purposes of determining normal value; and 5) determines the revised dumping margin satisfies the four factors set out by the court. The weighted-average dumping margin for Baoding Mantong for the period of review, March 1, 2010, through February 28, 2011, for glycine from the PRC was 453.79 percent in the *Final Results*. The weighted-average dumping margin for Baoding Mantong resulting from the Department's modified calculations pursuant to this remand is 64.97 percent.



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

29 MARCH 2016
Date