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August 5, 2005

MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of
the Antidumping Duty Administrative Review of Glycine
from the People's Republic of China: March 1, 2003
through February 29, 2004

SUMMARY:

We have analyzed the comments and the case brief submitted by the respondent in response to Glycine from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 70 FR 17649, dated April 7, 2005 (“Preliminary Results”). We did not receive comment on the Preliminary Results from petitioner. As a result of our analysis, we have made changes from the Preliminary Results, which are fully addressed in the “Discussion of the Issues” section below. We recommend that you approve the positions we have developed in the “Discussion of the Issues” section. Below is the complete list of the issues in this administrative review:

1. Surrogate Value for Aqueous Ammonia;
2. Financial Ratios;
3. By-Product Offset; and
4. Alleged Clerical Error.

DISCUSSION OF THE ISSUES

Comment 1: Surrogate Value for Aqueous Ammonia

Respondent claims that the surrogate value used by the Department in the Preliminary Results to value aqueous ammonia is aberrational when compared to the other pricing information on the administrative record.

Respondent provides data for Indian import values and quantities of aqueous ammonia for the March through February periods from 1999-2000 through 2003-2004. Respondent notes that for the four previous March through February periods prior to the period of review, the Indian import statistics had commercial volume imports up to over 100 times the import volume recorded in the 2003-2004 period.

Respondent explains that the Department's aqueous ammonia surrogate value was based on imports constituting only 66 MT of product compared to 16,000 MT and 67,000 MT for 2002-2003 and 2001-2002, respectively. Respondent notes that the Court of International Trade ruled in Shanghai Foreign Trade Enterprises Co., Ltd. v. United States, 318 F. Supp.2d 1339 (CIT 2004) ("Shanghai Foreign Trade Enterprises") that the Department can rely upon Indian import statistics as the basis for a surrogate value "after concluding that they {the import statistics} are based on commercially and statistically significant quantities." Respondent also cites Nation Ford Chem. Co. v. United States, 166 F.3d 1372, 1378 (Fed. Cir. 1999) ("Nation Ford Chem. Co.") where the Court of Appeals for the Federal Circuit indicated that the Department "should avoid the use of distorted surrogate prices." Finally, respondent claims that other data on the record, including U.S. import statistics for aqueous and anhydrous ammonia, Indian import statistics for anhydrous ammonia, 2003-2004 prices of anhydrous ammonia from Chemical Marketing Reporter, web articles concerning prices for anhydrous ammonia, and the surrogate values used by the Department in prior glycine new shipper reviews indicate that the aqueous ammonia surrogate value used in the Preliminary Results was aberrational.

Respondent argues that the Department should use the average unit value of 6.37 Rs/Kg as derived from the March 2002 through February 2003 Indian import statistics for aqueous ammonia because it is based upon commercial volumes of product, is not aberrational, is most contemporaneous with the period of review, and is corroborated by all other pricing information on the record.

Department's Position:

The Department has changed the value of aqueous ammonia that was used in the Preliminary Results, as detailed below. For these final results, the Department is weight-averaging the March - February 2002/2003, 2003/2004, and 2004/2005 Indian import data for aqueous ammonia (HTS subheading: 28142000).

In valuing factors of production, section 773(c)(1) of the Tariff Act of 1930, as amended (“the Act”) instructs the Department to use “the best available information” from the appropriate market economy country. In choosing the most appropriate surrogate value, the Department considers several factors, including the quality, specificity, and contemporaneity of the source information. See e.g., Fresh Garlic from the People’s Republic of China: Final Results of Antidumping Duty New Shipper Review, 67 FR 72139 (December 4, 2002), and accompanying Issues and Decision Memorandum at Comment 6 (“Garlic Decision Memo”). Stated differently, the Department attempts to find the most representative and least distortive market-based value in the surrogate country. See Certain Preserved Mushrooms from China Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People’s Republic of China, 66 FR 31204 (June 11, 2001), and accompanying Issues and Decision Memorandum at Comment 5. The Department undertakes this analysis on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry. The Department prefers to rely on publicly available data. See Freshwater Crawfish Tail Meat from the PRC: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, and Final Partial Rescission of Antidumping Duty Administrative Review, 66 FR 20634 (April 24, 2001) and accompanying Issues and Decision Memorandum at Comment 2.

In the Preliminary Results, the Department relied on Indian import data for aqueous ammonia (HTS subheading: 28142000) for the period March - February 2003/2004, finding it to be more contemporaneous with the period of review (“POR”) than Indian import data for the previous year. After the Preliminary Results, respondent placed on the record of this review Indian import data for aqueous ammonia for the periods March - February 1999/2000, 2000/2001, and 2001/2002. The Department has since updated the record to include Indian import figures for aqueous ammonia for the period March - February 2004/2005. See Memorandum to the file dated August 5, 2005.

In its analysis of the Indian import data for aqueous ammonia, the Department has found: (1) that the total quantity and value of aqueous ammonia imported between March 2003 and February 2004 is extremely lower than in the same period of each of the previous four years; (2) that the unit value of March-February 2003/2004 imports is substantially higher than in the same period of each of the previous four years; for example, the per unit price for the previous year, 2002-2003, was about 800 percent lower than that of the 2003-2004 per unit price; and, (3) that these characteristics of quantity, value, and unit value observed for the March-February 2003/2004 data are more in accord with the figures for the following year, March-February 2004/2005.

Given the possible trend based on the March-February 2004/2005 data, the March-February 2003/2004 data is not conclusively aberrational, but may not be completely reliable, given the extreme difference in quantity and value (as compared to previous periods), arising from the same source of data. While these differences may, in fact, be reflective of a shift in market conditions, there is no information on the record is not sufficient for the Department to fully evaluate this. In light of these highly unusual

circumstances, the Department finds it necessary to continue to consider the historical data in this case, given the extreme difference in quantity and value.

In order to account for both this potential trend and the sudden and dramatic change in the data as compared to previous years, the Department, in this instance, has calculated a weighted-average of the unit values of Indian imports of aqueous ammonia for the periods March-February 2002/2003, 2003/2004, and 2004/2005. These periods include the POR and one year prior to and one year following the POR. See Analysis Memo for the Final Results of Glycine from the People's Republic of China: Baoding Mantong Fine Chemistry Co., Ltd. ("Baoding Mantong") ("Final Analysis Memo"), dated August 5, 2005, at Attachment 1.

In accordance with our normal practice, we have adjusted the 2002/2003 and 2004/2005 values to calculate values contemporaneous with the POR prior to calculating the weighted-average. See e.g., Preliminary Results 70 FR at 17652; and Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China: Final Results, Partial Rescission and Termination of a Partial Deferral of the 2002-2003 Administrative Review, 69 FR 65148 (November 10, 2004) and accompanying Issues and Decision Memorandum at Comment 3. The weighted-average value is 7.03 Rs/Kg.

Comment 2: Financial Ratios

Respondent argues that for the final results, the Department should use the Reserve Bank of India ("RBI") data to value profit, overhead, and selling, general, and administrative expenses ("SG&A"). Respondent notes that the Department used the annual report for Torrent Pharmaceuticals Co., Ltd. ("Torrent"), an Indian manufacturer of branded and generic pharmaceutical products, to value the financial ratios used in the Preliminary Results. Respondent notes that the Department's regulations at 19 C.F.R. § 351.408(c)(4) specify that in calculating financial ratios to be applied to manufacturing costs (the producer's factors of production valued using surrogate prices), the Department is to use "information gathered from producers of identical or comparable merchandise." Respondent contends that Torrent does not provide an appropriate basis for comparison because it does not manufacture glycine or a product comparable to glycine.

Respondent notes that after the Preliminary Results it provided the publicly available annual report of Jubilant Organosys, Ltd. ("Jubilant"), the largest Indian producer of bulk and industrial chemicals. Respondent argues that Jubilant's data is more appropriate to use than the Torrent financial data because it produces products (bulk chemicals) that are more comparable with glycine than a manufacturer of pharmaceutical and bulk drugs. Respondent also cites to the April 2005 edition of *Chemical Weekly* which includes an advertisement by Jubilant offering glycine for sale. Despite arguing that Jubilant is a more appropriate surrogate than Torrent, respondent contends that the use of Jubilant as a surrogate is also problematic. Respondent notes that more than half of Jubilant's revenues and profits are from specialty chemical products and branded and generic

pharmaceutical products, which are not comparable to either bulk chemicals or glycine. Second, respondent maintains that Jubilant is a fully integrated chemical and pharmaceutical company that manufactures many of its own basic inputs. Respondent claims that Jubilant operates at an entirely different level of integration than Baoding Mantong, which purchases all of its raw materials and utilities. Respondent alleges that Baoding Mantong is a small operation that only produces industrial grade and food grade glycine. See Glycine from the People's Republic of China: Submission of Case Brief ("Case Brief"), dated May 9, 2005 at 10. Respondent asserts that it is not the Department's practice to use surrogate financial ratios from companies that operate at different levels of vertical integration. See Case Brief at 3 and 13.

Respondent also explains that the overhead and selling expenses for Jubilant and Torrent are different from those attributable to Baoding Mantong. Specifically, respondent notes that Jubilant and Torrent have numerous foreign and domestic subsidiaries, massive depreciation and interest charges, huge research and development expenses, and large selling expenses attributable to advertising, promotion, and traveling expenses. Respondent reiterates that the application of financial ratios attributable to large Indian pharmaceutical/chemical companies to Baoding Mantong's manufacturing costs would not yield representative capital costs for a company such as Baoding Mantong.

Respondent argues that the Department should use the financial ratios derived from RBI data, which respondent provided in its Submission of Publicly Available Data For Use as Surrogate Values (February 14, 2005) at Attachment 10. Respondent notes that RBI data (which is sourced from a large variety of Indian public companies, including companies in the bulk chemical sector) is often used by the Department to value financial ratios when company-specific financial ratio data is either not available or not reliable. Respondent contends that financial ratios calculated from RBI data would result in capital costs that would be most representative for a respondent like Baoding Mantong.

Department's Position:

In the preliminary results, the Department relied on surrogate values for factory overhead, SG&A and profit ratios derived from Torrent's 2003/2004 financial statements. We used this information because neither we nor any of the interested parties were able to find available information from a producer of glycine in India. However, for the final results respondent provided additional data on financial ratios.

The Department's practice is, where information is available, to derive the overhead, SG&A, and profit values from producers of merchandise that is identical or comparable to the subject merchandise. See Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 68 FR 68030 (December 5, 2003) ("Persulfates from the PRC Final Results") and accompanying Issues and Decision Memorandum at Comment 1; Import Administration's Policy Bulletin 04.1, "Non-Market Economy Surrogate Country Selection Process," (March 1, 2004); and section 351.408(c)(4) of the Department's regulations. In this proceeding, there is no information

on the record regarding the glycine industry in India. Alternatively, we have the following Indian industry information on the record:

- 1) RBI Bulletin (April 2004): Combined Income, Value of Production, Expenditure and Appropriation Accounts of the Selected 997 Large Public Limited Companies for fiscal year 2002-2003;
- 2) RBI Bulletin (August 2004): Combined Income, Value of Production Expenditure and Appropriation Accounts of the Selected 2,031 Public Limited Companies for fiscal year 2002-2003;
- 3) Jubilant Organosys, Ltd., 2003-2004 Annual Report (“Jubilant Annual Report”); and
- 4) Torrent Pharmaceuticals Co., Ltd., 2003-2004 Annual Report (“Torrent Annual Report”).

The RBI financial data covers a range of companies ranging from tea plantations to computer activities to hotels and restaurants. The annual report for Torrent, which is a producer of branded and generic pharmaceuticals, does not indicate that it produces glycine. Although there is evidence on the record that Jubilant, a producer of bulk and specialty chemicals as well as pharmaceuticals, advertised glycine for sale in an April 2005 edition of *Chemical Weekly*, there is no evidence in Jubilant’s 2003/2004 annual report that it produced glycine during the fiscal year. We note the offer for sale of glycine was 14 months after the end of the POR and 13 months after the end of Jubilant’s 2003/2004 fiscal year (March 2004).

Accordingly, we must rely on a comparable producer of glycine to value respondent’s overhead, SG&A, and profit. As defined in the scope of the order, glycine is a free-flowing crystalline material, like salt or sugar that is produced at varying levels of purity and is used as a sweetener/taste enhancer, a buffering agent, reabsorbable amino acid, chemical intermediate, and a metal complexing agent. In its determination in the 2000 five-year sunset review of glycine from China, the International Trade Commission noted that in the U.S. market, “glycine is typically used as an intermediate product by manufacturers in the production of downstream products, such as pharmaceuticals and food products, pet food, and antiperspirants.” See United States International Trade Commission, Glycine From China, Determination and Views of the Commission (USITC Publication No. 3315, June 2000) at 7.

While the statute does not define “comparable merchandise,” in selecting surrogate values for overhead, SG&A and profit, the Department has considered whether the surrogate company’s products have similar production processes, end uses, and physical characteristics as the respondent. See Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China, 70 FR 24502 (May 10, 2005) and accompanying Issues and Decision Memorandum at Comment 2; and Glycine from the People's Republic of China: Final Results of New Shipper Administrative Review, 66 FR 8383 (January 31, 2001), and accompanying Issues and Decision Memorandum (“Glycine Decision Memo”) at Comment 7. The

Department's practice is to use financial data that are more narrowly limited to a producer of comparable merchandise than data based on a producer of a wider range of products when the former data are available. See, e.g., Synthetic Indigo from the Peoples Republic of China; Notice of Final Determination of Sales at Less Than Fair Value, 65 FR 25706, (May 3, 2000) and accompanying Issues and Decision Memorandum (“Indigo Decision Memo”) at Comment 6; and Glycine Decision Memo at Comment 7 (using the financial statements of Daurula Organics Ltd., a producer of phenylglycine, rather than RBI data). As detailed below, we determine that the Department should rely on both Jubilant and Torrent financial data for purposes of these final results because they are both comparable producers of subject merchandise.

Although it is the Department’s practice when selecting surrogate values for individual inputs to select the best available single surrogate value for valuing the factor,¹ for purposes of valuing overhead, SG&A, and profit, where such information is available, the Department may rely on financial statements of multiple surrogate companies. For example, in the antidumping investigation of shrimp from the PRC, the Department explained that the averaging of financial statements of several surrogate companies resulted in more accurately derived surrogate financial ratios of SG&A, profit and overhead costs. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China, 69 FR 70997 (December 8, 2004) and accompanying Issues and Decision Memorandum at Comment 9F. Similarly, in the antidumping investigation of color television receivers from the PRC, the Department averaged the financial data of five Indian companies. See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People’s Republic of China, 69 FR 20594 (April 16, 2004) and accompanying Issues and Decision Memorandum (“CTVs Decision Memo”) at Comment 14. Accordingly, the Department is relying on the financial statements of the two producers of comparable merchandise contained in the record for the Final Results.

As a producer of generic and branded pharmaceuticals, we find that Torrent is likely a consumer of glycine, which can be used in the production of pharmaceuticals. Regarding their comparability, both glycine and pharmaceuticals are chemical compounds. Finally, the Department has previously determined that Torrent is an appropriate surrogate company to value SG&A, profit, and overhead for glycine production (see Notice of Preliminary Results of Antidumping Duty New Shipper Review: Glycine from the People’s Republic of China, 69 FR 9804 (March 2, 2004)). Accordingly, we find that as a producer of pharmaceuticals, Torrent is a producer of comparable merchandise

¹ See Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review, 70 FR 38872 (July 6, 2005) and accompanying Issues and Decision Memorandum at Comment 1.

Jubilant's annual report for 2003/2004 indicates that Jubilant is the largest Indian manufacturer of bulk and specialty chemicals as well as a producer of bulk and generic pharmaceuticals. Thus, in addition to likely consuming glycine in its pharmaceutical business, Jubilant produces over 500 chemicals, including acetic acid, one of the inputs into glycine. See Jubilant Annual Report at 12 and 43. During the 2003/2004 fiscal year, Jubilant's pharmaceuticals and life sciences businesses accounted for 37 percent of the revenue and 57 percent of operating profits while the performance and industrial chemicals businesses account for 63 percent of revenues and 43 percent of operating profits. See Jubilant Annual Report at 4 and 6. Accordingly, as a producer of pharmaceuticals and chemicals, we also find that Jubilant is also a producer of comparable merchandise.

Regarding the general usability of the financial data of Torrent and Jubilant, we note that respondent has not contested the integrity of the financial data of either Torrent or Jubilant. Both annual reports are equally contemporaneous with the POR in this review. Moreover, both companies have been used by the Department in prior antidumping proceedings. In addition to being used in the preliminary results, Torrent was used in the new shipper review of Hebei New Donghua (see Notice of Preliminary Results of Antidumping Duty New Shipper Review: Glycine from the People's Republic of China, 69 FR 9804 (March 2, 2004)). Jubilant was recently used in the antidumping investigation of polyvinyl alcohol from the PRC. See Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China, 68 FR 47538 (August 11, 2003) ("Polyvinyl Alcohol from the PRC Final Determination") and accompanying Issues and Decision Memorandum at Comment 9.

As likely consumers of glycine in the production of pharmaceuticals, chemical compounds, and a producer of bulk chemicals comparable to glycine (Jubilant only), we find that each is a producer of comparable merchandise in accordance with section 351.408(c)(4) of the Department's regulations. Accordingly, we determine that it is appropriate to rely on both companies' financial data to value respondent's SG&A, overhead, and profit.

Respondent argues that neither Torrent or Jubilant are appropriate given the relatively higher R&D expenditures and selling expenses incurred at these companies compared to the type of expenditures one would expect for a company the size of respondent. Respondent also cites to the significant capital costs incurred at Jubilant as a result of the high level of integration at Jubilant compared to respondent. However, we note that that the RBI data proposed by respondent covers 2,031 public limited companies. Consequently, based on the large range of companies in RBI data (from metal fabricators to hotels) it is reasonable to infer that companies included in the average include companies with relatively large R&D expenditures, selling expenses, and/or high capital costs. Also, because the RBI data covers so many companies, the industry experience of the RBI data is considerably less specific to respondent than either Jubilant or Torrent. As explained above, the Department prefers to rely on financial data that are more narrowly limited to a producer of comparable merchandise than data based on a producer

of a wider range of products when the former data are available. See, e.g., Indigo Decision Memo at Comment 6 and Glycine Decision Memo at Comment 7. Therefore, we are relying on Jubilant and Torrent financial data only for these final results.

For Torrent we have relied on the calculation of the financial ratios as determined in the Preliminary Results. For Jubilant, whose financial data was recently used in the antidumping investigation of polyvinyl alcohol from the PRC, we have calculated the surrogate ratios consistent with the calculation methodology used in the PVA final determination. See Surrogate Valuation Memo for calculation of Jubilant's financial ratios. Consistent with our standard practice, we have calculated a simple average of the two companies' financial ratios and applied the average in our margin calculation. See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 69 FR 20594 (April 16, 2004) and accompanying Issues and Decision Memorandum ("CTVs Decision Memo") at Comment 21.

Comment 3: By-Product Offset

Respondent argues that the by-product offset should be deducted from the raw material costs prior to the application of the surrogate financial ratios. Respondent notes that the Department's Preliminary Results allowed for a by-product credit for hydrochloric acid and ammonium chloride in the calculation of Baoding Mantong's margin by deducting the offset from the final normal value calculation. Respondent contends that the Department's methodology is contrary to law because it does not take into account the totality of raw materials consumed in the production of the subject merchandise, which should encompass the income earned on the by-products.

Respondent alleges that, because the hydrochloric acid and ammonium chloride by-products are produced in the manufacturing stages of the subject merchandise, the total raw material production costs incurred in producing the subject merchandise is the surrogate cost of all raw materials, labor, and energy incorporated into the finished product, net of the surrogate by-product revenue received from sales of the by-products. Respondent claims that by making an adjustment to normal value rather than cost of manufacture, the Department overstates Baoding Mantong's overhead costs, the SG&A costs, and profit.

Respondent argues that the methodology used in the Preliminary Results is inconsistent with numerous holdings of the Court of International Trade, the Court of Appeals of the Federal Circuit, the Department's own administrative precedent, and basic accounting rules. Specifically, respondent cites Magnesium Corporation of America v. United States, 1092, 1106, 938 F. Supp. 885, 899 (CIT 1996) ("Magnesium Corporation of America"), where the Court of International Trade affirmed the Department's long-standing administrative practice of using a company's by-product credits to adjust manufacturing costs (i.e., applying the financial ratios prior to, rather than after, application of the surrogate financial ratios). Respondent also cites Air Products and

Chemicals Inc. v. United States, 443, 14 F. Supp. 2d 737 (CIT 1998), where the CIT determined that “factory overhead {one of the financial ratios} is generally calculated as a percentage of manufacturing costs.” Respondent also states that the Court of Appeals for the Federal Circuit affirmed the determination made by the Court of International Trade in Magnesium Corporation of America v. United States, 166 F.3d 1364 (Fed. Cir. 1999) (“Magnesium Corporation of America”), whereby the Appellate Court affirmed both the Department’s practice, and the Court of International Trade’s affirmation, of deducting by-product revenue from reported manufacturing costs. Moreover, respondent states that the Court of Appeals of the Federal Circuit expressly held that “SG&A expenses is a ratio of general expenses to the cost of manufacturing,” See Magnesium Corporation of America. The respondent argues that the Court of Appeals for the Federal Circuit affirmed the Court of International Trade’s determination that the Department properly calculated overhead costs by applying the surrogate overhead ratio of the Brazilian surrogate producer to the respondents’ manufacturing costs, net of by-product revenue. See Magnesium Corporation of America.

Respondent also cites previous Department determinations as evidence that the Department’s practice is to deduct by-product revenue from manufacturing costs. See Notice of Amended Preliminary Antidumping Determination of Sales at Less Than Fair Value: Certain Frozen Fish Fillets from Vietnam, 68 FR 10440 at 4 (March 5, 2003) (“Fish Fillets from Vietnam Amended Preliminary Results”). Respondent contends that the Department stated in Automotive Replacement Glass Windshields from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 70 FR 24373 (May 9, 2005) (“Glass Windshields from PRC”):

Pilkington reported that it sells its recovered scrap glass to float glass manufacturers for meltdown. The Department has offset the respondents’ cost of production by the amount of a reported by-product (or portion thereof) where respondents indicated that the by-product was sold.

Respondent also cites the Antidumping Manual, which notes that “If a by-product or a co-product is generated in the manufacturing process, we allow a credit for it in accordance with generally accepted accounting principles,” and “Factory overhead, general expenses, and profit are included in the constructed value,” and “Normally, factory overhead is expressed as a percentage of the cost of goods sold.” See Antidumping Manual, Chapter 8 (emphasis in the original).

In support of its claim that by-products should be deducted from the cost of manufacturing, respondent refers to Cost Accounting, A Managerial Emphasis, Eleventh Edition, in which Charles Horngren states that “Direct material costs are the acquisition costs of all materials that eventually become part of the cost object (work in process and then finished goods) and that can be traced to the cost object in an economically feasible way.” Respondent states that Horngren was cited in Magnesium Corporation of America, noting that when “accounting for by-products, Commerce usually subtracts the

sales revenue (or the value of the by-products recovered) from the production costs of the product under investigation.”

Respondent notes that in Chlorinated Isocyanurates from the PRC the Department made its by-product adjustment as a deduction to normal value to be consistent with the surrogate companies’ accounting treatment for by-product revenue. See Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from China, 70 FR 24502, (May 10, 2005) and accompanying Issues and Decision Memorandum (“Chlorinated Isos Decision Memo”) at Comment 3. Respondent argues that the financial ratios of Torrent, as used in the Preliminary Results, did not separately report by-product income as other income. Respondent states that Torrent’s report of “other income” includes dividends, lease rent, profits on sales of investment, and miscellaneous income, and that by-product income is not noted under “other income.” Thus, respondent argues that the justification relied upon by the Department in Chlorinated Isocyanurates to deviate from its normal practice of accounting for by-product revenue or an adjustment to manufacturing costs does not exist in this case. Moreover, respondent claims that neither the RBI data nor Jubilant data establishes that by-product income is treated as a credit to sales.

Therefore, respondent argues that for the purpose of the final results, the Department should revert to its long-standing administrative practice, consistent with the statute, judicial precedent, and GAAP, and treat by-product income as an offset to manufacturing costs, not as an adjustment to normal value.

Department’s Position:

We have continued to deduct the by-product offsets for hydrochloric acid and ammonium chloride, which respondent reported that it sold during the POR, from normal value consistent with the Department’s current practice. See, e.g., Certain Helical Spring Lock Washers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 28274 (May 17, 2005) and accompanying Issues and Decision Memorandum (“Lock Washers Decision Memo”) at Comment 5; Chlorinated Isos Decision Memo at Comment 3; and Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam, 69 FR 71005 (December 8, 2004) and accompanying Issues and Decision Memorandum (“Vietnam Shrimp Decision Memo”) at Comment 4B. In the Vietnam Shrimp Decision Memo from Vietnam, the Department explained it is appropriate to apply the surrogate financial ratios to the respondents’ cost of manufacture in a manner consistent with the surrogate companies’ treatment of the item. See Vietnam Shrimp Decision Memo at Comment 4B. Where a by-product is sold, a company necessarily incurs overhead and SG&A expenses in selling that by-product and it is thus appropriate to deduct the by-product credit at the normal value stage, after the application of overhead, SG&A, and profit.

In this case, as in the shrimp and lock washers cases, the financial statements of the surrogate companies do not indicate how by-product sales are treated. Where there is no information regarding how the surrogate company treats a by-product, it is the Department's practice to apply the by-product revenue to the normal value. See Vietnam Shrimp Decision Memo at Comment 4B and Lock Washers Decision Memo at Comment 5. In explaining its determination to apply by-product revenue to normal value, the Department explained in lock washers that it considered it "reasonable to assume that the unidentified amounts included in the 'other income' line item of the Indian companies' financial statements include scrap revenue." See Lock Washers Decision Memo at Comment 5. Similarly, for purposes of this review, we find it reasonable to presume that "other income" line items in the companies' financial statements include sales of by-products. Specifically, Schedule 15 of Torrent's financial statement which breaks down the components of "other" income includes miscellaneous income in addition to dividends, lease rent, and profit on sale of investments. Schedule J-1 "Other Income" of Jubilant's financial statement includes "miscellaneous receipts," which are defined in the financial statement as including sale of unserviceable spares, used drums, residual catalyst, etc.

Regarding the cases cited by respondent in support of its claim that the Department should apply the by-product offset to the cost of manufacture, we note that in fish fillets from Vietnam, the Department applied the by-product offset to the cost of manufacturing because the surrogate company reduced its cost of manufacturing for by-product revenues. See Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 37116 (June 23, 2003); and Vietnam Shrimp Decision Memo at Comment 4B (where the Department explained that it applied the by-product offset to the cost of manufacturing in fish fillets because the surrogate company reduced its cost of manufacturing for by-product revenue whereas there was no indication how the surrogate company in the shrimp case treated by-product revenue). With respect to respondent's reliance on windshields from the PRC, we note that the case in question was only a preliminary finding. See Glass Windshields from the PRC.

Moreover, respondent's reliance on two CIT decisions and one CAFC decision in support of its argument that the Department is required to take into account a by-product offset before applying the surrogate financial ratios to cost of manufacturing is misplaced. In the present review, the determining factor is whether there is evidence Indian companies accounted for revenue from by-products as a credit to sales rather than as a debit to cost of manufacturing. When there is no evidence regarding how the surrogate companies treated by-product revenue, it is the Department's practice to make the adjustment to normal value. This issue was not addressed in the CIT and CAFC cases cited by respondent and did not serve as a basis for those CIT and CAFC decisions.

Therefore, for the above stated reasons, we have continued to use the same methodology for deducting by-product offsets from normal value in the final results as we used in the Preliminary Results.

Comment 4: Alleged Clerical Error

Baoding Mantong claims that the Department made a clerical error in its margin calculation program by failing to add freight revenue to the U.S. price. Baoding Mantong contends that it used a Chinese ocean freight company and incurred ocean freight expenses in RMB. Baoding Mantong alleges that the U.S. customer was invoiced for freight charges, which it paid in addition to the payment made for subject merchandise. Baoding Mantong observes that for the Preliminary Results, the Department used a surrogate value for the ocean freight cost to be deducted from U.S. price and that, as evidenced by the Analysis Memo of the Administrative Review of Glycine from the People's Republic of China ("Preliminary Analysis Memo"), dated March 31, 2005, and the SAS program, the Department intended to increase U.S. price by the amount of freight revenue received by Baoding Mantong from its U.S. customer for the invoiced freight charge. See Preliminary Analysis Memo at 8, FREIGHTREVU value, and the SAS Program Log at Part 8, Line 583, FREIGHTREVU value.

Citing the SAS Output Log, respondent argues that the Department's intended command to add the verified freight revenue to U.S. price is not reflected in the SAS Output Log. Respondent claims that the Department should correct this error in the final results.

Department's Position:

The Department disagrees with respondent's contention that the Department's intended command to add the verified freight revenue to U.S. price is not reflected in the SAS Output. As shown by line 583 of the SAS log (See Preliminary Analysis Memo at Attachment 2), the Department properly added the verified freight revenue cost to the gross unit price. Moreover, contrary to respondent's claim that the variable "FREIGHTREVU" is not reflected in the SAS Output statement, page 13 of the SAS Output titled "U.S. Sales with Calculated Net U.S. Price" includes the variable "FREIGHTREVU." A check of the calculation of net U.S. price reveals that freight revenue was included in the value that appears in the net U.S. price variable field (NETPRIU) on page 13 of the SAS Output. Therefore, the Department is not making any changes to its calculation of net U.S. price for the final results.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results and the final weighted-average dumping margin in the Federal Register.

Agree _____ Disagree _____

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

Date