

January 31, 2011

MEMORANDUM TO: Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of
Expedited Third Sunset Review of the Antidumping Duty Order on
Glycine from the People's Republic of China

Summary

We have analyzed the responses of the interested parties in the third sunset review of the antidumping duty order covering glycine from the People's Republic of China ("PRC"). We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this sunset review for which we received a substantive response:

1. Likelihood of a continuation or recurrence of dumping
2. Magnitude of the margin likely to prevail

History of the Order

Less-Than-Fair Value Investigation, Administrative Reviews, Sunset Reviews, and New Shipper Reviews

On January 30, 1995, the Department of Commerce ("the Department") published its final affirmative determination in the less than fair value ("LTFV") investigation of glycine from the PRC in the *Federal Register*.¹ In the investigation, the Department established a margin of 155.89 percent *ad valorem* to all manufacturers/producers/exporters of glycine from the PRC. On March 29, 1995, the Department published the antidumping duty order on glycine from the

¹ See *Notice of Final Determination of Sales at Less Than Fair Value: Glycine From the People's Republic of China*, 60 FR 5620 (January 30, 1995).

PRC (“the Order”).² The petitioners in the original investigation were Chattem Chemicals, Inc. (“Chattem”) and Hampshire Chemical Corp.

Since the issuance of the Order, the Department has conducted several reviews with respect to glycine from the PRC.

The Department completed no administrative reviews of the antidumping duty order on glycine from the PRC between the publication of the order and the first sunset review results. On June 8, 2000, the Department published its final results of the first sunset review of the antidumping duty order on glycine from the PRC, in which it found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at a weighted-average margin of 155.59 percent.³

The Department conducted a new shipper review for the period March 1, 1999, through August 31, 1999, of Nantong Dongchang Chemical Industry Corp. (“Nantong”), which ultimately resulted in Nantong receiving an 18.6 percent weighted-average margin in an amended final results.⁴ The Department also initiated, and later rescinded, a new shipper review of Tianjin Tiancheng Pharmaceutical Co., Ltd. (“Tianjin Tiancheng”), for the period March 1, 2001 through February 28, 2002.⁵ For the period covering March 1, 2002, through February 28, 2003, the Department initiated a new shipper review of Hebei New Donghua Amino Acid Co., Ltd. (“Hebei New Donghua”), which the Department also rescinded.⁶

The Department also completed one administrative review for the period of March 1, 2003, to February 29, 2004.⁷ On August 12, 2005, the Department determined a weighted-average margin of 12.29 percent for Baoding Mantong Fine Chemistry Co., Ltd (“Baoding”), the only manufacturer covered by the review.⁸ On September 13, 2005, the Department amended the weighted-average margin for Baoding to 2.95 percent.⁹

On October 5, 2005, the Department published its final results of the second sunset review of the antidumping duty order on glycine from the PRC, in which it determined that revocation of the Order would be likely to lead to continuation or recurrence of dumping at the rate of 155.89 for Baoding, Nantong and the PRC-wide entity.¹⁰ Since the second sunset review, the Department

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

³ See *Glycine From the People’s Republic of China; Final Results of Expedited Sunset Review of Antidumping Duty Order*, 65 FR 36405, 36406 (June 8, 2000).

⁴ See *Glycine From the People’s Republic of China: Amended Final Results of New Shipper Administrative Review*, 66 FR 13284 (March 5, 2001).

⁵ See *Notice of Rescission of Antidumping Duty New Shipper Review: Glycine from the People’s Republic of China*, 68 FR 49434 (August 18, 2003).

⁶ See *Glycine From The People’s Republic of China: Rescission of Antidumping Duty New Shipper Review of Hebei New Donghua Amino Acid Co., Ltd.*, 69 FR 47405 (August 5, 2004).

⁷ See *Glycine from the People’s Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 70 FR 47176 (August 12, 2005), as amended by *Glycine From the People’s Republic of China: Notice of Amended Final Results of Antidumping Duty Administrative Review*, 70 FR 54012 (September 13, 2005).

⁸ See *Glycine from the People’s Republic of China: Notice of Final Results of Antidumping Administrative Review*, 70 FR 47176, 47177 (August 12, 2005).

⁹ See *Glycine From the People’s Republic of China: Notice of Amended Final Results of Antidumping Duty Administrative Review*, 70 FR 54012 (September 13, 2005).

¹⁰ See *Glycine from the People’s Republic of China; Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 70 FR 58185, 58186 (October 5, 2005).

has conducted four administrative reviews with respect to the antidumping duty order on glycine from the PRC. In the administrative review covering the period March 1, 2005, through February 28, 2006, the Department determined a weighted-average dumping margin of 38.67 percent for Nantong, and rescinded the review of Baoding because that company had no shipments during the review period.¹¹ In the review covering the March 1, 2006, through February 28, 2007 period, the Department calculated a 52.02 percent weighted-average dumping margin for Baoding and the PRC-wide weighted-average dumping margin remained 155.89 percent.¹² In the review covering the March 1, 2007, through February 29, 2008 period, the PRC-wide margin continued to be 155.89 percent,¹³ and the Department calculated a weighted-average antidumping duty margin of 37.18 percent for Baoding.¹⁴ In the review covering the period March 1, 2008 through February 28, 2009, GEO Specialty Chemicals, Inc. (“GEO”), a domestic interested party that was the only party to have requested an administrative review, withdrew its request and the Department rescinded the review.¹⁵

Changed Circumstances Reviews

There have been no changed circumstances review requests at any time during this proceeding.

Scope Rulings

The Department has completed two scope rulings since the issuance of the antidumping duty order. On July 23, 1997, the Department determined d-phenylglycine ethyl dane salt, to be outside the scope of the order.¹⁶ On May 3, 2002, the Department determined that certain Chinese glycine further refined in South Korea is within the scope of the antidumping duty order.¹⁷

Duty Absorption Finding

The Department has made no duty absorption findings.

¹¹ See *Glycine from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007).

¹² See *Glycine From the People’s Republic of China; Final Results of Antidumping Duty Administrative Review*, 73 FR 55814, 55815 (September 26, 2008).

¹³ See *Glycine From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 41121 (August 14, 2009), where the Department determined that Nantong no longer qualified for separate rate status. Therefore, the Department considered Nantong to be part of the PRC-wide entity and assigned it a rate of 155.89 percent based on facts otherwise available with an adverse inference.

¹⁴ See *Notice of Amended Final Results of Antidumping Duty Administrative Review: Glycine from the People’s Republic of China*, 74 FR 48223 (September 22, 2009).

¹⁵ See *Glycine from the People’s Republic of China: Notice of Rescission of Antidumping Duty Administrative Review*, 74 FR 43098 (August 26, 2009).

¹⁶ See *Notice of Scope Rulings and Anticircumvention Inquiries*, 62 FR 62288 (November 21, 1997).

¹⁷ See *Notice of Scope Rulings and Anticircumvention Inquiries*, 68 FR 7772 (February 18, 2003).

Sunset Reviews

As discussed above, on June 8, 2000, the Department published the final results of its first, expedited, sunset review of the antidumping duty order.¹⁸ On July 12, 2000, the International Trade Commission (“the Commission”) published its determination that revocation of the order would be likely to lead to a continuation or recurrence of material injury to the domestic industry.¹⁹ On July 25, 2000, the Department published a notice of continuation of the antidumping duty order.²⁰ On October 5, 2005, the Department published the final results of its second, expedited, sunset review of the antidumping duty order.²¹ On November 3, 2005, the Commission published its determination that revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry.²² On November 15, 2005, the Department published a notice of continuation of the antidumping duty order.²³

On October 1, 2010, the Department initiated the instant sunset review of the antidumping duty order pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”).²⁴ On October 5, 2010, the Department received a notice of intent to participate from GEO and Chattem within the deadline specified by section 351.218(d)(1)(i) of the Department’s regulations. GEO and Chattem claimed domestic interested party status under section 771(9)(C) of the Act, as U.S. producers in the domestic industry of glycine. On October 29, 2010, we received a complete, substantive response from domestic interested parties within the 30-day deadline specified under section 351.218(d)(3)(i) of the Department’s regulations. *See* Sunset Review of the Antidumping Order on Glycine from the People’s Republic of China – Substantive Response to Notice of Initiation (October 29, 2010) (“Petitioners’ Response”). The Department received no substantive responses from respondent interested parties, *i.e.*, Baoding and Nantong. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department’s regulations, the Department conducted an expedited (120-day) sunset review of the antidumping duty order.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department is conducting this sunset review to determine whether revocation of the antidumping duty order would likely lead to a continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making these determinations, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews, as well as the volume of imports of the subject merchandise for the periods before and the periods after the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act provides that the Department

¹⁸ *See Glycine From the People’s Republic of China; Final Results of Expedited Sunset Review of Antidumping Duty Order*, 65 FR 36405 (June 8, 2000).

¹⁹ *See Glycine From China*, 65 FR 43037 (July 12, 2000).

²⁰ *See Continuation of Antidumping Duty Order; Glycine from the People’s Republic of China*, 65 FR 45752 (July 25, 2000).

²¹ *See Glycine from the People’s Republic of China; Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 70 FR 58185 (October 5, 2005) (“*Second Sunset Review*”).

²² *See Glycine from China*, 70 FR 66850 (November 3, 2005).

²³ *See Glycine from the People’s Republic of China; Continuation of Antidumping Duty Order*, 70 FR 69316 (November 15, 2005).

²⁴ *See Initiation of Five-Year (“Sunset”) Review*, 75 FR 60731 (October 1, 2010).

shall provide to the Commission the magnitude of the margins of dumping likely to prevail if the antidumping duty order were revoked. Below we address the comments of the interested parties.

1. Likelihood of a Continuation or Recurrence of Dumping

Domestic Interested Party Comments

Domestic interested parties assert that revocation of the antidumping duty order would be likely to lead to a continuation or recurrence of dumping by the manufacturers/producers and exporters of the subject merchandise. *See* Petitioners' Response at 6. Domestic interested parties state that currently all PRC companies, except one, have the margin of 155.89 percent. *Id.* Baoding, the one exception, has had a 37.18 percent rate since the 2008-2009 administrative review. *Id.* Domestic interested parties claim that these margins have remained despite attempts by PRC companies to reduce them through new shipper reviews and administrative reviews. *See* Petitioners' Response at 7.

Citing the Department's *Sunset Policy Bulletin*,²⁵ domestic interested parties conclude that the Department should determine that revocation of an antidumping duty order is inappropriate where dumping continued at any level above *de minimis* after the issuance of the order. *See* Petitioners' Response at 7. In summary, domestic interested parties argue that record evidence strongly supports the conclusion that dumping of glycine by PRC producers, manufacturers, and exporters would be likely to continue or recur if the order were revoked.²⁶ *See* Petitioners' Response at 9.

Domestic interested parties state that the Department may consider other factors in reaching its determination of whether dumping will continue if the order were revoked, citing the Statement of Administrative Action ("SAA")²⁷ and the *Sunset Policy Bulletin*. *See* Petitioners' Response at 10. Petitioners note that in the LTFV investigation, the Commission found that the capacity of PRC glycine production was between 22 and 33 million pounds. *Id.* In their substantive response, petitioners included the results of an industry-sponsored market study which demonstrates that PRC producers have a significantly higher production capacity today. *See* Petitioners' Response at 11. Domestic interested parties argue that the "grossly underutilized capacity" of glycine production indicates that, should the order be revoked, the United States will become a target of dumping that will harm domestic product prices. *Id.*

Department's Position:

Consistent with the guidance provided in the legislative history accompanying the *Uruguay Round Agreements Act* -- specifically the SAA, the House Report, and the Senate Report -- the Department's determinations of likelihood of a continuation or recurrence of dumping will be

²⁵ *See Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

²⁶ Domestic interested parties note that the Department initiated an anti-circumvention inquiry on October 22, 2010 to determine if glycine from the PRC that is further processed in India is within the scope of the order. *See Glycine from the People's Republic of China: Initiation of Antidumping Anti-circumvention Inquiry*, 75 FR 66352 (October 28, 2010). The Department acknowledges petitioners statement regarding the anti-circumvention inquiry but also notes that the inquiry is ongoing and a sunset review is not the proper proceeding to address the issue.

²⁷ H.R. Doc. No. 103-316, vol. 1 (1994).

made on an order-wide basis.²⁸ In addition, the Department normally will determine that revocation of an antidumping duty order is likely to lead to a continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order; (b) imports of the subject merchandise ceased after the issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly. In addition, pursuant to section 752(c)(1)(B) of the Act, the Department considers the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty order.

In this case, the domestic interested parties provided data from 2005 through 2008, showing that, during that period, PRC exports of glycine to the United States almost doubled. *See* Petitioners' Response at 11. The Department confirmed these data using tariff and trade data from the Commission.²⁹ *See* Memorandum to Angelica Mendoza, Program Manager, from Patrick Edwards, International Trade Compliance Analyst, titled "Import Volumes and Values for the Final Results of Expedited Third Sunset Review of the Antidumping Duty Order on Glycine from the People's Republic of China," dated January 31, 2011 ("Import Volumes and Values Memorandum").

The Department notes that in 1994, one year prior to the issuance of the order, the import volume of glycine from the PRC was 728,635 kilograms ("kg").³⁰ During the 2005-2008 period, imports of glycine from the PRC ranged from 868,488 kg to 1,646,472 kg, indicating an increase in imports from the pre-order period. *See* Import Volumes and Values Memorandum at 3. In 2009, the import volume of glycine from the PRC decreased to 57,001 kg. *Id.* During the 2005-2009 period, imports of glycine from the PRC averaged 910,081 kg, indicating an overall increase in imports from the pre-order period. *Id.* While operating under the order, PRC glycine exports have still increased, indicating that if the order were revoked, glycine export volumes would continue at higher levels without the discipline of an order in place.

Drawing from both the Commission trade data and the industry-sponsored study submitted by petitioners, exports of PRC glycine to the United States have increased even with an antidumping duty order in place. Also, the results of the recent administrative reviews, conducted as part of this antidumping duty proceeding, indicate that PRC exporters have continued to dump when selling glycine in the U.S. market. Where companies continue to dump with the discipline of an order in place, it is reasonable for the Department to assume that dumping would continue if the discipline were removed.³¹ In light of the continued existence of dumping, and the PRC's increased exports of glycine while an antidumping duty order was in place in tandem with an increased production capacity throughout the PRC glycine industry as a whole, the Department finds that revocation of the order would be likely to lead to the continuation or recurrence of dumping.

²⁸ SAA, at 879; H. Rep. No. 103-826, pt. 1 (1994); S. Rep. No. 103-412 (1994).

²⁹ Data is from the ITC Data Web (<http://dataweb.usitc.gov/>).

³⁰ *See* Import Volumes and Values Memorandum at 4.

³¹ SAA, at 890.

2. Magnitude of the Margin Likely to Prevail

Domestic Interested Party Comments

Citing the SAA and the *Sunset Policy Bulletin*, the domestic interested parties state that the Department normally selects dumping margins calculated in the original investigation to determine the magnitude of the margin of dumping likely to prevail if the order were revoked. *See* Petitioners' Response at 8. Domestic interested parties note that, currently, all PRC companies except Baoding are subject to the all-others margin of 155.89 percent, determined in the LTFV investigation. *Id.* Domestic interested parties state that Baoding, the one exception, currently has a sizable 37.18 percent margin, as determined in the 2007-2008 administrative review.³² *Id.* The domestic interested parties therefore request that the Department report the antidumping duty margin resulting from the investigation to the Commission. *Id.* This rate is set forth in the "History of the Order" section, above.

Department's Position:

Normally, the Department will provide to the Commission the margin for each company from the investigation.³³ For companies not investigated specifically, or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the all-others rate from the investigation.³⁴ However, because this case involves the PRC, which the Department considers to be a non-market economy as defined by section 771(18) of the Act, the Department does not have an all-others rate; instead, there is a PRC-wide rate which applies to imports from an exporter that has not established its eligibility for a separate rate. The Department's preference for selecting a margin from the investigation is based on the fact that it is the only calculated rate that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order or suspension agreement in place.³⁵ Under certain circumstances, however, the Department may select a more-recently calculated margin to report to the Commission. *See* section 752(c)(3) of the Act.³⁶

The Department finds it appropriate to provide the Commission with the final determination rate from the investigation because this margin best reflects the behavior of manufacturers/producers/exporters of glycine without the discipline of the order in place. Therefore, the Department determines that the PRC-wide rate of 155.89 percent should be

³² *See Notice of Amended Final Results of Antidumping Duty Administrative Review: Glycine from the People's Republic of China* 74 FR 48223 (September 22, 2009).

³³ *See, e.g., Eveready Battery Co., Inc. v. United States*, 77 F. Supp. 2d 1327, 1333 n.9 (CIT 1999).

³⁴ *See Certain Hot-Rolled Carbon Steel Flat Products from Argentina, the People's Republic of China, India, Indonesia, Kazakhstan, Romania, South Africa, Taiwan, Thailand, and Ukraine; Final Results of Expedited Sunset Reviews of the Antidumping Duty Orders*, 71 FR 70506 (December 5, 2006) ("Hot-Rolled"), and accompanying Issues and Decision Memorandum at Comment 2.

³⁵ *Id.*

³⁶ *See also, Final Results of Full Sunset Review: Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands*, 65 FR 65294 (November 1, 2000), and accompanying Issues and Decision Memorandum at Comment 3.

reported to the Commission. Respondent parties have presented no argument as to why the Department should not utilize the 155.89 percent margin in this sunset review.

Thus, the Department will report to the Commission the margin listed in the “Final Results of Review” section below.

Final Results of Review

We determine that revocation of the antidumping duty order on glycine from the PRC would be likely to lead to a continuation or recurrence of dumping at the following weighted-average margin:

Manufacturers/Producers/Exporters	Weighted-Average Margin (percent)
PRC-wide Entity (all manufacturers/producers/exporters)	155.89

Recommendation

Based on our analysis of the comments received, we recommend adopting the above position. If this recommendation is accepted, we will publish the final results of the expedited sunset review in the *Federal Register* and notify the Commission of our determination.

Agree _____

Disagree _____

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

Date