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MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

FROM: Gary Taverman   
Associate Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of  
Antidumping Duty Administrative Review: Glycine from the  
People's Republic of China; 2013-2014

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## SUMMARY

In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on glycine from the People's Republic of China (PRC) for the period of review (POR) March 1, 2013, through February 28, 2014. The Department has preliminarily determined that mandatory respondent, Baoding Mantong Fine Chemistry Co. Ltd. (Baoding Mantong), sold subject merchandise in the United States at prices below normal value (NV) during the POR. The Department preliminarily determines that mandatory respondent, Evonik Rexim (Nanning) Pharmaceutical Co., Ltd.'s (Evonik's) sales to the United States were not *bona fide* and is preliminarily rescinding the review with respect to Evonik. This review only covers these two companies.

If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. We intend to issue final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

## Background

On March 3, 2014, the Department notified interested parties of their opportunity to request an administrative review, covering the period March 1, 2013, through February 28, 2014, of the



antidumping duty order on glycine from the PRC.<sup>1</sup> On March 28, 2014, and March 31, 2014, Baoding Mantong and Evonik, respectively, requested a review of their sales to the United States during the POR.<sup>2</sup> We initiated the administrative review on April 30, 2014, with respect to these two companies.<sup>3</sup> We issued the antidumping duty questionnaire to both companies on May 20, 2014.

On May 2, 2014, domestic interested party GEO Specialty Chemicals, Inc. (GEO) filed its entry of appearance. Evonik and Baoding Mantong submitted their section A questionnaire responses (AQR) on June 20, 2014, and June 24, 2014, respectively. On July 10, 2014, Evonik submitted its section D questionnaire response (DQR). Baoding Mantong submitted its sections C and D questionnaire response on July 16, 2014 (CDQR). On July 17, 2014, Evonik submitted its section C questionnaire response (CQR). Additionally, on September 3 and 8, 2014, respectively, Evonik and Baoding Mantong filed their first supplemental questionnaire responses (FSQR).

The Department notified all interested parties, on October 21, 2014, that the deadline for the preliminary results of review would be extended by 120 days, until March 31, 2015.<sup>4</sup>

On November 10 and 21, 2014, respectively, Evonik and Baoding Mantong filed their second supplemental questionnaire responses (SSQR). On February 6, 2015, Baoding Mantong submitted its third supplemental questionnaire response (TSQR) and its importer's questionnaire response. On February 13, 2015, and February 17, 2015, Evonik submitted its third supplemental questionnaire response (TSQR) and its importer's questionnaire response, respectively.

On March 3, 2015, GEO submitted pre-preliminary results comments, to which Evonik responded on March 10, 2015.

On March 12, 2015, a representative on behalf of GEO met with Department officials to discuss its pre-preliminary results comments.<sup>5</sup>

On March 24, 2015, Evonik submitted a response to the Department's request for additional information on its glycine supplier and section D questionnaire response.

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<sup>1</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 79 FR 11757 (March 3, 2014).

<sup>2</sup> See Letters to the Department, from Baoding Mantong, titled "Glycine from the People's Republic of China; Request for Administrative Review," dated March 28, 2014; and from Evonik, titled "Glycine from the People's Republic of China: Review Request," dated March 31, 2014.

<sup>3</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 79 FR 24398 (April 30, 2014) (*Initiation Notice*).

<sup>4</sup> See Memorandum from Ericka Ukrow and Dena Crossland, International Trade Analysts, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding "Glycine from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2013/2014," dated October 21, 2014.

<sup>5</sup> See Memorandum to the File from Dena Crossland, International Trade Compliance Analyst, Office VI, AD/CVD Operations, through Angelica Townshend, Program Manager, Office VI, AD/CVD Operations, Enforcement and Compliance, regarding "*Ex parte* meeting with International Trade Consultant for Domestic Interested Party," dated March 16, 2015.

Regarding surrogate values (SVs), all interested submitted SV comments and rebuttals between September 19, 2015, and March 13, 2015.

### Scope of the Order

The product covered by this antidumping duty order is glycine, which is a free-flowing crystalline material, like salt or sugar. Glycine 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. This proceeding includes glycine of all purity levels. Glycine is currently classified under subheading 2922.49.4020 of the Harmonized Tariff Schedule of the United States (HTSUS).<sup>6</sup> Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

### DISCUSSION OF THE METHODOLOGY

#### *Bona Fides* Inquiry

Domestic interested party GEO raised concerns causing the Department to examine whether Baoding Mantong's and Evonik's sales during the POR were *bona fide*, as defined and applied in the Department's practice.<sup>7</sup> In evaluating whether a sale is *bona fide*, the Department considers the totality of the circumstances to determine whether the sales under consideration are atypical, distortive, or otherwise unrepresentative of normal business practices. Specifically, for the purpose of determining whether or not a sale subject to review is commercially reasonable, and therefore *bona fide*, the Department considers, *inter alia*, such factors as (1) the timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arms-length basis.<sup>8</sup>

The Department considers a number of factors in its *bona fides* analysis, "all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise."<sup>9</sup> In *Tianjin Tiancheng Pharmaceutical Co. v. United States*, the Court of International Trade (CIT) affirmed the Department's decision that any factor which indicates that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant,<sup>10</sup> and found

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<sup>6</sup> In separate scope rulings, the Department determined that: (a) D(-) Phenylglycine Ethyl Dane Salt is outside the scope of the order and (b) PRC-glycine exported from India remains the same class or kind of merchandise as the PRC-origin glycine imported into India. See *Notice of Scope Rulings and Anticircumvention Inquiries*, 62 FR 62288 (November 21, 1997) and *Glycine From the People's Republic of China: Final Partial Affirmative Determination of Circumvention of the Antidumping Duty Order*, 77 FR 73426 (December 10, 2012), respectively.

<sup>7</sup> See Letter from GEO, entitled, "Glycine from the People's Republic of China: Comments of GEO Specialty Chemicals, Inc. on the Sections C and D Questionnaire Responses of Baoding Mantong Fine Chemistry Co., Ltd. and the Section C Questionnaire Response of Evonik Rexim (Nanning) Pharmaceutical Co., Ltd.," dated July 28, 2014 (GEO *Bona Fide* Sales Request).

<sup>8</sup> See *Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1250 (TTPC) (CIT 2005), citing *Am. Silicon Techs. v. United States*, F. Supp. 2d 992, 995 (CIT 2000).

<sup>9</sup> See *Hebei New Donghua Amino Acid Co., Ltd v. United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005) (*New Donghua*) (citing *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002)).

<sup>10</sup> See TTPC, 366 F. Supp. 2d at 1250.

that the weight given to each factor investigated will depend upon the circumstances surrounding the sale.<sup>11</sup> Where the Department finds that a sale is not *bona fide*, the Department will exclude the sale from its export price calculations.<sup>12</sup> When the respondent under review makes only one sale and the Department finds that transaction atypical, “exclusion of that sale as *non-bona fide* necessarily must end the review, as no data will remain on the export price side of {the Department's} antidumping duty calculation.”<sup>13</sup>

The Department requested further information from Baoding Mantong and Evonik on the aforementioned factors in a supplemental questionnaire.<sup>14</sup> Baoding Mantong and Evonik each provided a timely response to the Department’s request for further information on the *bona fide* sales factors.<sup>15</sup>

We preliminarily find Baoding Mantong’s reported U.S. sale during the POR to be *bona fide* based on the facts on the record.<sup>16</sup> First, the sale was completed approximately two months prior to the completion of the POR, and, there does not seem to be anything unusual in the timing of Baoding Mantong’s sale to the unaffiliated U.S. customer.<sup>17</sup> Second, Baoding Mantong’s sale price is comparable to U.S. spot prices for U.S. Pharmacopeia (USP)-grade glycine benchmark prices submitted by GEO. Third, despite GEO’s assertion to the contrary, Baoding Mantong demonstrated the quantity examined reflects a commercially-reasonable shipment size. Fourth, there were no unusual expenses arising from the POR sale. Fifth, there is no record evidence that the merchandise was not resold at a profit. Sixth, the sale was made to an unaffiliated customer with the terms set by negotiation and payment received in a timely manner, indicating that the sale was made at arm’s-length.

Therefore, based on the totality of the circumstances, the Department preliminarily finds that there is insufficient information from which to determine that Baoding Mantong’s sales activities

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<sup>11</sup> *Id.*, at 1263.

<sup>12</sup> *See TTPC*, 366 F. Supp. 2d at 1249.

<sup>13</sup> *Id.*

<sup>14</sup> *See* Third Supplemental Questionnaire and U.S. Customer Questionnaire from the Department to Baoding Mantong and Evonik, dated January 16 and January 23, 2015, respectively.

<sup>15</sup> *See* Response from Baoding Mantong, entitled, “Glycine from China 2013-2014 Review; Submission of Baoding Mantong’s 3rd Supplemental Response” dated February 6, 2015. *See also* Responses from Evonik, entitled, “Glycine from the People’s Republic of China: Supplemental Response to the Third Supplemental Questionnaire and U.S. Customer Supplemental Questionnaire, dated February 13 and February 17, 2015, respectively.

<sup>16</sup> For further details regarding the Department’s *bona fides* analysis of Baoding Mantong’s U.S. sale, *see* Memorandum to Abdelali Elouaradia, Acting Director, Office VI, Antidumping and Countervailing Duty Operations, through Angelica Townshend, Program Manager, Office VI, Antidumping and Countervailing Duty Operations, from Dena Crossland, International Trade Compliance Analyst, Office VI, titled “Antidumping Duty Administrative Review of Glycine from the People’s Republic of China; 2013-2014: *Bona Fide* Nature of Baoding Mantong Fine Chemistry Co. Ltd.’s Sale,” dated March 31, 2015.

<sup>17</sup> We note that GEO questioned the timing of Baoding Mantong’s entry. We find that based upon our review of the relevant entry documentation that the entry was for consumption (type 3) and entered during the POR. *See* Baoding Mantong’s First Supplemental Questionnaire Response, dated September 8, 2014, at 2 and Appendix S1-1. *See also* Memorandum to the File from Dena Crossland, International Trade Compliance Specialist, AD/CVD Operations, Office VI, Enforcement and Compliance through Angelica Mendoza, Program Manager, AD/CVD Operations, Office VI, Enforcement and Compliance, “Regarding the Administrative Review of the Antidumping Duty Order on Glycine from the People’s Republic of China and on the Subject of Entry Data Obtained from U.S. Customs and Border Protection,” dated September 8, 2014.

were unreasonable, and the record supports a finding that Baoding Mantong's sales practices during the POR were *bona fide* based on the Department's standard criteria.<sup>18</sup>

We preliminarily find Evonik's reported U.S. sales during the POR are not *bona fide* based on the facts on the record, namely pricing and other concerns.<sup>19</sup> Namely, Evonik's sale prices are aberrationally high when compared to U.S. spot prices for USP-grade glycine benchmark prices submitted by GEO.<sup>20</sup> In reviewing record evidence, the Department found Evonik's U.S. sales prices to be atypical and not reflective of normal commercial realities. Moreover, the Department 1) has concerns regarding Evonik's inability to obtain necessary factors-of-production (FOP) data from its unaffiliated PRC supplier of glycine; and 2) cannot calculate a rate for Evonik, even if we were to find the sales to be *bona fide*, because we do not have the necessary FOP data on the record to determine its normal value.<sup>21</sup> Such information is necessary to support Evonik's claim that the glycine it sold to its U.S. customer is unique in quality.

In sum, the totality of the circumstances surrounding Evonik's U.S. sales and lack of FOP data to calculate normal value call into question the legitimacy of these transactions. Therefore, the Department preliminarily finds that there is sufficient information from which to determine Evonik's sales activities were unreasonable, as the record supports a finding that Evonik's sales practices during the POR were not *bona fide* based on the Department's standard criteria.<sup>22</sup>

Because these non-*bona fide* sales were the only sales of subject merchandise that Evonik made during the POR, the Department is unable to calculate a margin and is preliminarily rescinding its review of Evonik.

#### Non-Market Economy Country Status

The Department considers the PRC to be a non-market economy (NME) country.<sup>23</sup> In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the Department. Therefore, we continue to treat the PRC as an NME country for purposes of these preliminary results.

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<sup>18</sup> *Id.*, for a full discussion of this issue and the business proprietary information referenced herein.

<sup>19</sup> For further details regarding the Department's *bona fides* analysis of Evonik's U.S. sales, see Memorandum to Abdelali Elouaradia, Acting Director, Office VI, Antidumping and Countervailing Duty Operations, through Angelica Townshend, Program Manager, Office VI, Antidumping and Countervailing Duty Operations, from Ericka Ukrow, International Trade Compliance Analyst, Office VI, titled "Antidumping Duty Administrative Review of Glycine from the People's Republic of China; 2013-2014: *Bona Fide* Nature of Evonik Rexim (Nanning) Pharmaceutical Co., Ltd.'s Sales," dated March 31, 2015 (Evonik *Bona Fide* Analysis Memorandum).

<sup>20</sup> See Letter from GEO to the Department entitled, "Glycine from the People's Republic of China: Comments of GEO Specialty Chemicals, Inc., on the Response of Evonik Rexim (Nanning) Pharmaceutical Co., Ltd. to the Second Supplemental Questionnaire for Sections A and C," dated November 18, 2014 at 8-9 and Attachment B.

<sup>21</sup> See Evonik *Bona Fide* Analysis Memorandum.

<sup>22</sup> *Id.*, for a full discussion of this issue and the business proprietary information referenced herein.

<sup>23</sup> See, e.g., *Multilayered Wood Flooring From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 70267, 70268 (November 25, 2013), unchanged in *Multilayered Wood Flooring From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 26712 (May 9, 2014).

## Separate Rates Determination

There is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate.<sup>24</sup> In the *Initiation Notice*, the Department notified parties of the application process by which exporters may obtain separate-rate status in NME reviews.<sup>25</sup> It is our policy to assign a single rate to all exporters of the merchandise subject to review in a NME country unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its exports.<sup>26</sup> To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in *Sparklers*<sup>27</sup> and as amplified by *Silicon Carbide*.<sup>28</sup> However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate-rate analysis is not necessary to determine if it is independent from government control.<sup>29</sup>

In the current review, we received separate-rate applications from Evonik and Baoding Mantong, as part of their AQRs. Evonik and Baoding Mantong have not obtained a separate rate in any previous segment of the proceeding.<sup>30</sup>

Given that the Department preliminary finds that Evonik's U.S. sales are not *bona fide* a separate-rate analysis is moot. Thus, for purposes of this review, we analyzed whether respondent Baoding Mantong has demonstrated an absence of *de jure* and *de facto* government control over its export activities to determine its eligibility for a separate rate.

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<sup>24</sup> See, e.g., *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, 53082 (September 8, 2006); see also *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039, 55040-41 (September 24, 2008).

<sup>25</sup> See *Initiation Notice*, 79 FR at 24398-24399.

<sup>26</sup> See Import Administration Policy Bulletin, Number 05.1, regarding "Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries," dated April 5, 2005.

<sup>27</sup> See *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*).

<sup>28</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

<sup>29</sup> See, e.g., *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007).

<sup>30</sup> See *Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 64746, 64748 (October 31, 2014). Also, we note that Baoding Mantong forfeited its separate rate status in a previous segment of this proceeding. See *Glycine From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Partial Rescission of Antidumping Duty Administrative Review; 2011-2012*, 77 FR 72817 (December 6, 2012), and accompanying Preliminary Decision Memorandum at 4; unchanged in *Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 20891 (April 8, 2013), and accompanying Issues and Decision Memorandum at Comment 2.

### A. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.<sup>31</sup>

The evidence submitted by Baoding Mantong includes government laws and regulations on corporate ownership and control (*i.e.*, the Foreign Trade Law of the People's Republic of China and the Law of the People's Republic of China on Foreign Joint Ventures), its individual business license, and narrative information regarding its operations and selection of management.<sup>32</sup> Additionally, the evidence provided by Baoding Mantong support a preliminary finding of a *de jure* absence of government control over their export activities. Specifically, record evidence indicates that: (1) there are no controls on exports of subject merchandise, such as quotas applied to, or licenses required for, exports of the subject merchandise to the United States; (2) the government of the PRC has passed legislation decentralizing control of companies; and (3) the government has taken formal measures to decentralize control of companies.<sup>33</sup>

### B. Absence of *De Facto* Control

Typically the Department considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.<sup>34</sup>

The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control over export activities which would preclude the Department from assigning separate rates. Baoding Mantong indicated that: (1) it sets its own export prices independent of the government and without the

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<sup>31</sup> See *Sparklers*, 56 FR at 20589.

<sup>32</sup> See Baoding Mantong's Section A questionnaire response, dated June 24, 2012 (AQR), at A-2 through A-5, and Attachments A-1 through A-4. See also Baoding Mantong's First Supplemental Questionnaire Response, dated September 8, 2014, at 1 and 2.

<sup>33</sup> See Baoding Mantong's AQR at A-6 through A-8.

<sup>34</sup> See *Silicon Carbide*, 59 FR at 22587; *Sparklers*, 56 FR at 20589; and *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995); see also *Pure Magnesium from the People's Republic of China: Preliminary Results of 2011-2012 Antidumping Duty Administrative Review*, 78 FR 34646 (June 10, 2013) and accompanying Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, titled "Decision Memorandum for Preliminary Results of 2011-2012 Antidumping Duty Administrative Review: Pure Magnesium from the People's Republic of China," dated May 31, 2013, unchanged in *Pure Magnesium From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 94 (January 2, 2014).

approval of a government authority; (2) it retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) it has autonomy from the government regarding the selection of management and (4) there are no restrictions on the company's use of export revenues.<sup>35</sup> Therefore, we preliminarily find that Baoding Mantong has established that it qualifies for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers*.

### The PRC-Wide Entity

As noted above, the Department initiated this review with respect to Baoding Mantong and Evonik only. As a result of Baoding Mantong's separate rate application, we preliminarily determine that Baoding Mantong has demonstrated its eligibility for separate rate status in this review. As a result of our *bona fide* analysis of Evonik's U.S. sales, we intend to rescind this review with respect to Evonik, and therefore, the question of whether Evonik is entitled to a separate rate in this review is moot.

The Department's change in policy regarding conditional review of the PRC-wide entity applies to this administrative review.<sup>36</sup> Under this policy, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. Because no party requested a review of the PRC-wide entity in this review, the entity is not under review and the entity's rate is not subject to change.

### Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production (FOPs), valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.<sup>37</sup> To determine which countries are at a comparable level of economic development, the Department generally relies solely on per capita gross national income (GNI) data from the World Bank's *World Development Report*.<sup>38</sup>

As a general rule, the Department selects a surrogate country that is at the same level of economic development as the NME country unless it is determined that none of the countries are viable options because (a) they either are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available SV data, or (c) are not suitable

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<sup>35</sup> See Baoding Mantong's AQR at A-7.

<sup>36</sup> See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 4, 2013).

<sup>37</sup> See Import Administration Policy Bulletin 04.1, "Non-Market Economy Surrogate Country Selection Process" (March 1, 2004) (Policy Bulletin).

<sup>38</sup> *Id.*

for use based on other reasons. Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development.<sup>39</sup>

In the current segment of the proceeding, on May 16, 2014, the Department notified interested parties it had determined that Bulgaria, Colombia, Ecuador, Indonesia, South Africa, and Thailand are at the same level of economic development as the PRC.<sup>40</sup> All interested parties, *i.e.*, Baoding Mantong, Evonik, and GEO, submitted timely comments and rebuttals regarding surrogate country selection. Baoding Mantong argued that Ukraine and India should be added to the list of potential surrogate countries.<sup>41</sup> Baoding Mantong argued that Ukraine is not only within the range of per capita GNI of the six countries selected by the Department, but is also an exporter of subject merchandise. It further argued that India, although with a lower per capita GNI than the range established, has an economy at a comparable level of development as the PRC; primarily in terms of a large emerging economy with a comparable market size.<sup>42</sup>

GEO rebutted Baoding Mantong's suggestions regarding Ukraine and India, stating that the Ukraine was not a significant producer of comparable merchandise and that India is not at a level of economic development comparable to that of the PRC.<sup>43</sup> On September 2 and 19, 2014, GEO submitted additional comments suggesting that Indonesia should be selected as the primary surrogate country because it is a significant producer of identical or comparable merchandise and also a rich source of readily-available high quality data for both FOPs and financial statement valuations.<sup>44</sup> Evonik did not directly address the issue of surrogate-country selection but suggested surrogate values for FOPs based on Indonesian import data.<sup>45</sup> Baoding Mantong and GEO timely filed additional comments on February 27, 2015, and March 2, 2015, respectively.<sup>46</sup> While Baoding Mantong did not state a preference for a particular country, GEO maintained that Indonesia was the most comparable economically to the PRC and a significant producer of merchandise during the POR.<sup>47</sup>

As indicated above, when selecting among several potential surrogate countries, the Department's practice, in accordance with section 773(c)(1) of the Act, is to select a country that provides surrogate value data which are product-specific, representative of a broad-market

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<sup>39</sup> See Surrogate Country Memorandum.

<sup>40</sup> See Memorandum from Carole Showers, Director, Office of Policy, to Angelica Mendoza, Program Manager, Office VI, Enforcement and Compliance, entitled, "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 ("China")," dated May 16, 2014 (Surrogate Country List). These six countries are part of a non-exhaustive list of countries that are at the level of economic development of the PRC in terms of per capita gross national income.

<sup>41</sup> See Baoding Mantong's surrogate country submission dated June 6, 2014.

<sup>42</sup> *Id.*

<sup>43</sup> See GEO's rebuttal comments on Baoding Mantong's surrogate country submission, dated June 10, 2014.

<sup>44</sup> See GEO's additional surrogate value comments dated September 2, 2014 and September 19, 2014.

<sup>45</sup> See Evonik's surrogate value comments dated September 19, 2014.

<sup>46</sup> See Baoding Mantong's surrogate value submission dated February 27, 2015 and GEO's additional surrogate value comments dated March 2, 2015; *see also* GEO's pre-preliminary results comments dated March 3, 2015.

<sup>47</sup> See GEO's Pre-Preliminary Results Comments, dated March 3, 2015, at 24 through 26.

average, publicly available, contemporaneous with the POR, and free of taxes and duties.<sup>48</sup> There is no hierarchy among these criteria. It is the Department’s practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing FOPs.<sup>49</sup>

#### A. Economic Comparability

Section 773(c)(4)(A) of the Act is silent with respect to how the Department may determine that a potential surrogate country is economically comparable to the NME country. As such, the Department’s long standing practice has been first to identify those countries which are at the same level of economic development as the PRC based on *per capita* GNI data reported in the World Bank’s *World Development Report*.<sup>50</sup> We note that identifying potential surrogate countries based on GNI data has been affirmed by the CIT.<sup>51</sup>

As explained in the Department’s *Policy Bulletin*, “{t}he surrogate countries on the list are not ranked.”<sup>52</sup> This lack of ranking reflects the Department’s long-standing practice that, for the purpose of surrogate country selection, the countries on the list “should be considered equivalent”<sup>53</sup> from the standpoint of their level of economic development based on GNI as compared to the PRC’s level of economic development and recognition of the fact that the concept of “level” in an economic development context necessarily implies a range of GNIs, not a specific GNI. This long-standing practice of providing a non-exhaustive list of countries at the same level of economic development as the NME-country fulfills the statutory requirement to value FOPs using data from “one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country...”<sup>54</sup> In this regard, “countries that are at a level of economic development comparable to that of the nonmarket economy country” necessarily includes countries that are at the same level of economic development as the NME country.

As explained in our letter to interested parties, Bulgaria, Colombia, Ecuador, Indonesia, South Africa, and Thailand are all at the same level of economic development as the PRC. Accordingly, unless we find that all of the countries determined to be equally economically comparable are not significant producers of comparable merchandise, do not provide a reliable

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<sup>48</sup> See, e.g., *First Administrative Review of Certain Polyester Staple Fiber From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 1336 (January 11, 2010), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>49</sup> See, e.g., *Certain Steel Threaded Rod From the People’s Republic of China; Final Results of Third Antidumping Duty Administrative Review; 2011-2012*, 78 FR 66330 (November 5, 2013), and accompanying Issues and Decision Memorandum at 7.

<sup>50</sup> See, e.g., *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results of the Antidumping Duty Administrative Review and New Shipper Review; 2011–2012*, 78 FR 55676 (September 11, 2013), unchanged in *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2011-2012*, 79 FR 19053 (April 7, 2014) and accompanying Issues and Decision Memorandum at Comment I.A.

<sup>51</sup> See *Fujian Lianfu Forestry Co., Ltd. v. United States*, 638 F. Supp. 2d 1325 (CIT 2009).

<sup>52</sup> See *Policy Bulletin*.

<sup>53</sup> *Id.*

<sup>54</sup> See section 773(c)(4) of the Act.

source of publicly available surrogate data, or are unsuitable for use for other reasons, we will rely on data from one of these countries and will not rely on data from India, which the Department considers to be less economically comparable to the PRC. Therefore, we consider all six countries as having met this prong of the surrogate country selection criteria.

Additionally, although Ukraine was not included in the Surrogate Country Letter, Ukraine's GNI falls within the range of GNIs for those countries listed in the Surrogate Country Letter. Because Ukraine's GNI falls within the highest GNI and lowest GNI (*i.e.*, the "bookends") of the countries listed in the Surrogate Country Letter, for economic comparability, the Department finds Ukraine to also be at the same level of economic development as the PRC for these preliminary results.

#### B. Significant Producer of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the Department's regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, the Department looks to other sources such as the *Policy Bulletin* for guidance on defining comparable merchandise. The *Policy Bulletin* states that "in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise."<sup>55</sup> Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.<sup>56</sup> Further, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.<sup>57</sup> "In cases where the identical merchandise is not produced, the Department must determine if other merchandise that is comparable is produced. How the Department does this depends on the subject merchandise."<sup>58</sup> In this regard, the Department recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

In other cases, however, where there are major inputs, *i.e.*, inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, *e.g.*, processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.<sup>59</sup>

Further, the statute grants the Department discretion to examine various data sources for determining the best available information.<sup>60</sup> Moreover, while the legislative history provides

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<sup>55</sup> See *Policy Bulletin* at 2.

<sup>56</sup> The *Policy Bulletin* also states that "if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise." *Id.* at note 6.

<sup>57</sup> See *Sebacic Acid from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 65674, 65675-76 (December 15, 1997) ("{T}o impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.").

<sup>58</sup> See *Policy Bulletin* at 2.

<sup>59</sup> *Id.* at 3.

that the term “significant producer” includes any country that is a significant “net exporter,”<sup>61</sup> it does not preclude reliance on additional or alternative metrics. In this case, because production data of comparable merchandise are not available, we first analyzed exports of comparable merchandise from the six countries, as a proxy for production data. We obtained export data using the Global Trade Atlas (GTA) for the six-digit HTS number listed in the description of the scope of this order specific to glycine, *i.e.*, 2922.49. The potential surrogate countries that reported export volumes for 2013 were as follows: (1) Indonesia (6,684,827 kilograms); (2) South Africa (101,233 kilograms); (3) Thailand (14,034 kilograms); (4) Colombia (10,084 kilograms); (5) Ecuador (3,545 kilograms); and (6) Ukraine (20,932 kilograms).<sup>62</sup>

### C. Data Availability

The *Policy Bulletin* states that, if more than one country is at the same level of economic development comparable as the NME and is a significant producer, “then the country with the best factors data is selected as the primary surrogate country.”<sup>63</sup> Importantly, the *Policy Bulletin* explains further that “data quality is a critical consideration affecting surrogate country selection” and that “a country that perfectly meets the requirements of economic comparability and significant producer is not of much use as a primary surrogate if crucial factor price data from that country are inadequate or unavailable.”<sup>64</sup>

Section 773(c)(1) of the Act instructs the Department to value the FOPs based upon the best available information from a market economy (ME) country or a country that the Department considers appropriate. When considering what constitutes the best available information, the Department considers several criteria, including whether the SV data are contemporaneous, publicly available, tax and duty exclusive, represent a broad-market average, and are specific to the input.<sup>65</sup> The Department’s preference is to satisfy the breadth of the aforementioned selection criteria.<sup>66</sup> Moreover, it is the Department’s practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing

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<sup>60</sup> See section 773(c) of the Act; see also *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1990).

<sup>61</sup> See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).

<sup>62</sup> See Memorandum to the File, from Ericka Ukrow and Dena Crossland, International Trade Compliance Analysts, regarding “Glycine from the People’s Republic of China: Surrogate Values for the Preliminary Results of Review,” dated concurrently with this memorandum (Preliminary SV Memorandum), at Exhibit B.

<sup>63</sup> See *Policy Bulletin*.

<sup>64</sup> *Id.*

<sup>65</sup> See, e.g., *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, 53082 (September 8, 2006) (*Lined Paper*), and accompanying Issues and Decision Memorandum at Comment 3.

<sup>66</sup> See, e.g., *Administrative Review of Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 51940, 51943 (August 19, 2011), and accompanying Issues and Decision Memorandum at Comment 2.

the FOPs.<sup>67</sup> The Department must weigh the available information with respect to each input value and make a product-specific and case-specific decision as to what constitutes the “best” available SV for each input.<sup>68</sup>

Both GEO and the respondents suggested SVs based on Indonesian import or domestic data. As a result, the record contains usable Indonesian SVs for every FOP for which we need a SV. In addition, GEO and Evonik provided financial information of Indonesian producers of merchandise with comparable production processes to glycine to value factory overhead, selling, general, and administrative (SG&A) expenses, and profit.<sup>69,70</sup>

Because Indonesia is a country identified by the Department to be economically comparable to the PRC, one which is a significant producer of comparable merchandise, and one for which we have reliable record data to value all of the FOPs, we selected it as the primary surrogate country. Further, because we found Indonesia to satisfy all the criteria for the selection of a primary surrogate country, it was not necessary to resort to the selection of an alternative surrogate country.

### Date of Sale

In identifying the date of sale of the merchandise under consideration, the Department will normally, in accordance with 19 CFR 351.401(i), “use the date of invoice, as recorded in the exporter or producer’s records kept in the normal course of business.” The date of sale is generally the date on which the parties agree upon all material terms of the sale. This normally includes the price, quantity, delivery terms, and payment terms.<sup>71</sup>

Baoding Mantong indicated that the material terms of its U.S. sales occurred on the invoice date.<sup>72</sup> Therefore, we are relying on invoice date as the date of Baoding Mantong’s U.S. sales for these preliminary results.<sup>73</sup>

### Fair Value Comparisons

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<sup>67</sup> See *Certain Preserved Mushrooms from the People’s Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006) (*Sixth Mushrooms AR*), and accompanying Issues and Decision Memorandum at Comment 1; see also *Freshwater Crawfish Tail Meat from the People’s Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

<sup>68</sup> See, e.g., *Sixth Mushrooms AR*, 71 FR 40477 and accompanying Issues and Decision Memorandum at Comment 1.

<sup>69</sup> See GEO and Evonik’s SV submissions dated September 9, 2014.

<sup>70</sup> For an additional discussion on the Department’s selection of financial statements for valuation, see our financial ratios discussion below; see also the Preliminary SV Memorandum, dated concurrently with this memorandum.

<sup>71</sup> See, e.g., *Carbon and Alloy Steel Wire Rod From Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review*, 72 FR 62824 (November 7, 2007), and accompanying Issue and Decision Memorandum at Comment 1; *Notice of Final Determinations of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>72</sup> See Baoding Mantong’s section C-D responses, dated July 16, 2014 (CDQR), at C-8.

<sup>73</sup> See Baoding Mantong’s Preliminary Analysis Memorandum for additional information.

In accordance with section 777A(d)(2) of the Act, the Department compared the EPs/CEPs of the U.S. sales of the merchandise under consideration to the weighted-average NV to determine whether the individually-examined respondents sold merchandise under consideration to the United States at less than fair value during the POR.

#### A. Export Price

In accordance with section 772(a) of the Act, “the term ‘export price’ means the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c).” The Department defined the U.S. price of merchandise under consideration based on the EP for all sales reported by Baoding Mantong.<sup>74</sup> The Department calculated the EP based on the prices at which merchandise under consideration was sold to unaffiliated purchasers in the United States.

The Department made deductions, as appropriate, from the reported U.S. price for movement expenses (*i.e.*, domestic inland freight and domestic brokerage and handling).<sup>75</sup> The Department based movement expenses on surrogate values where the service was purchased from a PRC company.<sup>76</sup>

#### B. Value-Added Tax

The Department’s recent practice in NME cases is to adjust EP or CEP for the amount of any unrefunded value-added tax (VAT), in accordance with section 772(c)(2)(B) of the Act.<sup>77</sup> The Department explained that when an NME government imposes an export tax, duty, or other charge on subject merchandise, or on inputs used to produce subject merchandise, from which the respondent was not exempted, the Department will reduce the respondent’s EP and CEP prices accordingly by the amount of the tax, duty or charge paid, but not rebated.<sup>78</sup> Where the irrecoverable VAT is a fixed percentage of CEP or EP, the Department explained that the final step in arriving at a tax neutral dumping comparison is to reduce the U.S. CEP or EP downward by this same percentage.<sup>79</sup> The Department’s methodology, as explained above and applied in this review, essentially amounts to performing two basic steps: (1) determining the irrecoverable VAT on subject merchandise, and (2) reducing U.S. price by the amount (or rate) determined in step one.

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<sup>74</sup> See Baoding Mantong’s CDQR at C-6.

<sup>75</sup> See section 772(c)(2)(A) of the Act. See also Baoding Mantong’s CDQR at C-15 through C-21.

<sup>76</sup> See “Factor Valuation Methodology” section below.

<sup>77</sup> See *Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481, 36483-84 (June 19, 2012) (*Methodological Change*).

<sup>78</sup> *Id.*; see also *Chlorinated Isocyanurates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014) and accompanying Issues and Decision Memorandum at Comment 5.A.

<sup>79</sup> *Id.*

The Department requested that Baoding Mantong report net unrefunded VAT for the subject merchandise. Baoding Mantong reported that the official VAT rate for exports of subject merchandise is 17 percent and the refund rate is 13 percent, under the applicable PRC regulations.<sup>80</sup>

Thus, Baoding Mantong incurred an effective VAT rate of four percent on exports of domestic glycine. Because Baoding Mantong reported that it pays VAT associated with subject merchandise that is not refunded at a rate of four percent, the Department adjusted Baoding Mantong's net price for the unrefunded VAT, in order to calculate EP or CEP net of VAT.<sup>81</sup> We note that this is consistent with the Department's policy and the intent of the statute, that dumping comparisons be tax-neutral.<sup>82</sup>

### C. Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using the FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.<sup>83</sup> Therefore, in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c), the Department calculated NV based on FOPs. Under section 773(c)(3) of the Act, FOPs include, but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs.<sup>84</sup>

### Factor Valuation Methodology

In accordance with section 773(c) of the Act, the Department calculated NV based on FOP data reported by Baoding Mantong.<sup>85</sup> To calculate NV, the Department multiplied the reported per-unit factor-consumption rates by publicly available surrogates. Further, we added freight costs, based on surrogate freight rates, where appropriate, to the inputs that we valued using surrogates.

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<sup>80</sup> See Baoding's CDQR at C-30 through C-32.

<sup>81</sup> See Baoding Mantong's Preliminary Analysis Memorandum.

<sup>82</sup> See *Methodological Change*, (citing *Antidumping Duties; Countervailing Duties*, 62 FR27296, 27369 (May 19, 1997) and Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. I 03-316, vol. I, 827, reprinted in 1994 U.S.C.C.A.N. 3773, 4172); see also *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Results of Antidumping Administrative Review*; 2011-2012, 78 FR 78333 (December 26, 2013) and accompanying Preliminary Decision Memorandum at Issue 9, unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; 2011-2012, 79 FR 37715 (July 2, 2014).

<sup>83</sup> See, e.g., *Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China*, 71 FR 19695, 19703 (April 17, 2006), unchanged in *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).

<sup>84</sup> See section 773(c)(3)(A)-(D) of the Act.

<sup>85</sup> For a list of the FOPs reported by Baoding Mantong and Evonik, see Preliminary SV Memorandum at Attachment 1.

Baoding Mantong stated that it recovered and sold/reused certain by-products in the production of subject merchandise. In calculating NV we also granted these by-product offsets for Baoding Mantong, based upon the reported by-product generated and sold during the POR.<sup>86</sup>

#### A. ME Prices

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs produced in an ME, from an ME supplier, and pays in an ME currency, the Department normally will use the actual price paid by the respondent to value, in whole or in part, those inputs, except when prices may have been distorted by findings of dumping in the PRC and/or subsidies. Where the Department finds ME purchases to constitute substantially all of the total factor purchased from all sources, (*i.e.*, 85 percent or more),<sup>87</sup> the Department normally uses the actual purchase prices to value the inputs. Where the quantity of the reported input purchased from ME suppliers is below 85 percent of the total volume of the input purchased from all sources during the POI, and where otherwise valid, the Department weight-averages the ME input's purchase price with the appropriate surrogate value for the input according to their respective shares of the reported total volume of purchases.

Baoding Mantong stated that none of its inputs were sourced from a ME supplier.<sup>88</sup> Therefore, we have used SVs to calculate the costs of all of Baoding Mantong's inputs for our margin calculation.<sup>89</sup>

#### B. Surrogate Values

When selecting the surrogate values, the Department considered, among other factors, the quality, specificity, and contemporaneity of the data.<sup>90</sup> As appropriate, the Department adjusted input prices by including freight costs to make them delivered prices. Specifically, the Department added a surrogate freight cost, where appropriate, to surrogate input values using the shorter of the reported distance from the domestic supplier to the respondent's factory or the distance from the nearest seaport to the respondent's factory.<sup>91</sup> An overview of the surrogate values used to calculate weighted-average dumping margins for Baoding Mantong and Evonik are below. A detailed description of all surrogate values used to calculate weighted-average

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<sup>86</sup> See Baoding's CDQR at D-15 through D-16 and Evonik's DQR at 16 through 17.

<sup>87</sup> See *Use of Market Economy Input Prices in Nonmarket Economy Proceedings*, 78 FR 46699 (August 2, 2013) (where the Department changed its methodology in NME cases, and now requires respondents' purchases of market economy inputs to equal or exceed 85 percent to warrant use of market economy prices to value the input.); see also *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717-61718 (October 19, 2006) (*Antidumping Methodologies: Market Economy Inputs*).

<sup>88</sup> See Baoding Mantong's CDQR at D-6.

<sup>89</sup> See Baoding Mantong's Preliminary Analysis Memorandum.

<sup>90</sup> See, e.g., *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008), and accompanying Issues and Decision Memorandum at Comment 9.

<sup>91</sup> See *Sigma Corp. v. United States*, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997).

dumping margin for the mandatory respondents can be found in the Preliminary Surrogate Value Memorandum.<sup>92</sup>

We used Indonesian import data, as published by GTA, and other publicly available sources from Indonesia to calculate surrogate values for Baoding Mantong's FOPs. In accordance with section 773(c)(1) of the Act, the Department applied the best available information for valuing FOPs by selecting, to the extent practicable, surrogate values which are (1) non-export average values, (2) contemporaneous with, or closest in time to, the POR, (3) product-specific, and (4) tax-exclusive.<sup>93</sup> The record shows that Indonesian import data obtained through GTA, as well as data from other Indonesian sources, are product-specific, tax-exclusive, and generally contemporaneous with the POR.<sup>94</sup> In those instances where the Department could not obtain information contemporaneous with the POR with which to value FOPs, the Department adjusted the surrogate values using, where appropriate, Indonesia's producer price index (PPI) or consumer price index (CPI) in the case of labor.<sup>95</sup> Both indices were published in the International Monetary Fund's (IMF) *International Financial Statistics*.

When calculating Indonesian import-based, per-unit surrogate values, the Department disregarded import prices that it has reason to believe or suspect may be dumped or subsidized. It is the Department's practice, guided by the legislative history, not to conduct a formal investigation to ensure that such prices are not dumped or subsidized; rather, the Department bases its decision on information that is available to it at the time it makes its determination.<sup>96</sup> In this case, the Department has reason to believe or suspect that prices of exports from India, Indonesia, and South Korea are subsidized. The Department found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, consequently, it is reasonable to infer that all exports from these countries to all markets may be

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<sup>92</sup> See Preliminary SV Memorandum.

<sup>93</sup> See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *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).

<sup>94</sup> See Preliminary SV Memorandum.

<sup>95</sup> See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 78333 (December 26, 2013) and accompanying Decision Memorandum, unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 37715 (July 2, 2014).

<sup>96</sup> See Omnibus Trade and Competitiveness Act of 1988, Conference Report, H.R. Rep. 100-576 at 590 (1988); *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 30758, 30763 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 60632 (October 25, 2007); *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 24552, 24559 (May 5, 2008), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR at 55039 (September 24, 2008).

subsidized.<sup>97</sup> Therefore, the Department has not used data from these countries in calculating Indonesian import-based surrogate values.

Additionally, the Department disregarded data from NME countries when calculating Indonesian import-based per-unit surrogate values. The Department also excluded from the calculation of Indonesian import-based per-unit surrogate values imports labeled as originating from an “unidentified” country because it could not be certain that these imports were not from either an NME country or a country with generally available export subsidies.<sup>98</sup>

As stated above, the Department used Indonesian Import Statistics from GTA to value certain raw materials, certain energy inputs, and packing material inputs that Baoding Mantong used to produce subject merchandise during the POR, except where listed below.

We valued electricity and water using values from Indonesian utilities. Specifically, we valued electricity using an average value from an Indonesian electricity company, PT PLN (Persero). We valued water using a value from an Indonesian water utility, Pam Jaya.<sup>99</sup> However, as detailed below, in the financial ratios discussion, we had to disregard electricity, as well as coal expenses that were valued using GTA data, from our NV calculations.

We valued truck freight for production inputs and packing materials and domestic inland freight, as well as brokerage and handling expenses, using a price list of export procedures necessary to export a standardized cargo of goods in Indonesia. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in Indonesia that is published in *Doing Business 2014: Indonesia by the World Bank*.<sup>100</sup>

In keeping with the methodology outlined in *Labor Methodologies*, we attempted to value labor using single-country labor cost and compensation data from Chapter 6A of the International Labor Organization (ILO).<sup>101</sup> However, in this case, Chapter 6A does not contain recent Indonesian labor data from the ILO Yearbook; the data are from 2008. Therefore, we are

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<sup>97</sup> 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 at Comment 7; *Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4-5; *Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review*, 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at 4; and *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19-20.

<sup>98</sup> See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates From the People’s Republic of China*, 69 FR 75294, 75301 (December 16, 2004), unchanged in *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).

<sup>99</sup> For information on the electricity and water SV calculations, see the Preliminary SV Memorandum.

<sup>100</sup> For information on the inland freight, brokerage and handling surrogate value calculation, see the Preliminary SV Memorandum.

<sup>101</sup> See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodologies*).

valuing labor using an Indonesian industry-specific wage rate based on labor cost and compensation data from Chapter 5B of the ILO, which GEO put on the record. Specifically, we calculated the wage rate using data provided to the ILO under Sub-Classification 24 of the ISIC-Revision 3-D standard, and inflated this wage rate using the Indonesian Consumer Price Index as published in the International Monetary Fund's *International Financial Statistics*. We find the description under Sub-Classification 24 of the ISIC-Revision 3-D ("Manufacture of Chemicals and Chemical Products") to be the best available wage rate SV source on the record because it is specific and derived from industries that produce merchandise comparable to the subject merchandise.<sup>102</sup>

According to 19 CFR 351.408(c)(4), the Department is directed to value overhead, SG&A expenses, and profit using non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country. For valuing these financial ratios, the record contains contemporaneous audited financial statements of eight companies from Indonesia, including the financial statements that GEO and Evonik provided of Indonesian producers of merchandise with comparable production processes to glycine.<sup>103,104</sup>

After considering all surrogate financial statements, the Department determined to use the financial information of two Indonesian producers of merchandise with comparable production processes as glycine for the purposes of these preliminary results, PT Budi Starch and Sweetner Tbk (PT Budi) and PT Lautan Luas Tbk (PT Lautan).<sup>105</sup> While the Department has relied on the financial information of the Indonesian companies PT Darya-Varia Laboratoria Tbk, PT Pyridam Farma Tbk, and PT Kalbe Farma Tbk in a prior proceeding, we find these are pharmaceutical companies with too dissimilar production processes, *i.e.*, more advanced, to the production of glycine.

Of the remaining financial statements on the record, we determined that only three companies had production processes similar to the production process for glycine: PT Budi, PT Lautan, and PT Ungul Indah Cahaya Tbk and Affiliates (PT Ungul).<sup>106</sup> In reviewing PT Ungul's financial statement, we noted that direct labor and factory overhead were not separately delineated. Therefore, we determined that PT Ungul's financial statement was not sufficiently detailed in disaggregate individual expenses, and that the two remaining financial statements for calculating the financial ratios, PT Budi and PT Lautan, were useable for these preliminary results (*i.e.*, they are contemporaneous, sufficiently detailed, and without any countervailable subsidies).

In valuing factory overhead, SG&A expenses, and profit using PT Budi and PT Lautan financial statements, we noted that energy expenses were not specifically itemized in the cost of goods sold (COGS) section of the financial statements and were most likely included in the companies'

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<sup>102</sup> For more information on the surrogate labor calculations, *see* the Preliminary SV Memorandum.

<sup>103</sup> *See* GEO and Evonik's SV submissions dated September 9, 2014.

<sup>104</sup> For an additional discussion on the Department's selection of financial statements for valuation, *see* Preliminary SV Memorandum, dated concurrently with this memorandum.

<sup>105</sup> *Id.* for additional discussion on the Department's selection of SVs used for financial ratios.

<sup>106</sup> We also find that the PT Pupuk Kujang engaged in a production process comparable to that of glycine. However, key information contained in the financial statements were largely illegible and, therefore, we were unable to rely on these financial statements.

production expenses (*i.e.*, overhead). Thus, we were unable to segregate these expenses and, therefore, were unable to exclude energy costs for production from the calculation of the surrogate financial ratios. Accordingly, as we have done in other reviews, we have disregarded Baoding Mantong’s energy inputs (coal and electricity) in the calculation of normal value (NV), by setting them to zero, in order to avoid double-counting energy costs that have been captured in the surrogate financial ratios.<sup>107</sup>

### Comparisons to Normal Value

Pursuant to section 773(a)(1)(B) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether Baoding Mantong’s sales of the subject merchandise to the United States were made at less than NV, the Department compared the EP and CEP, respectively, to the NV as described above in the “Export Price,” “Constructed Export Price,” and “Normal Value” sections of this memorandum.

#### A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs) (the average-to-average method) unless the Department determines that another method is appropriate in a particular situation. In AD investigations, the Department examines whether to use the average-to-transaction method as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department’s examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in AD investigations.<sup>108</sup>

In recent investigations and reviews, the Department applied a “differential pricing” analysis to determine whether application of average-to-transaction comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.<sup>109</sup> The Department finds the differential pricing analysis used in those recent

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<sup>107</sup> See *Citric Acid and Certain Citrate Salts from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 74 FR 16838 (April 13, 2009), and accompanying Issues and Decision Memorandum at Comment 2. See also *Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Preliminary Results of the Antidumping Duty Administrative Review; 2011-2012*, 78 FR 78333 (December 26, 2013) and accompanying Decision Memorandum, unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Final Results of the Antidumping Duty Administrative Review; 2011-2012*, 79 FR 37715 (July 2, 2014).

<sup>108</sup> See *Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>109</sup> See *Xanthan Gum from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 78 FR 2252 (January 10, 2013), unchanged in *Xanthan Gum From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); see also *Hardwood and Decorative Plywood From the People’s Republic of China: Antidumping Duty Investigation*, 78 FR 25946 (May 3, 2013), unchanged in *Hardwood and Decorative Plywood From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013); see also *Certain Steel Threaded Rod From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative*

investigations and reviews may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating weighted-average dumping margins.

The differential pricing analysis used in these preliminary results requires a finding of a pattern of EPs (or CEPs) for comparable merchandise that differs significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported customer names. Regions are defined using the reported destination code (*i.e.*, city name, zip code, *etc.*) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen's *d* test is applied when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is calculated to evaluate the extent to which the net prices to a particular purchaser, region or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

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*Review; 2011-2012, 78 FR 21101 (April 9, 2013), unchanged in Certain Steel Threaded Rod From the People's Republic of China; Final Results of Third Antidumping Duty Administrative Review; 2011-2012, 78 FR 66330 (November 5, 2013); see also Certain Lined Paper Products From the People's Republic of China: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review; 2011-2012, 78 FR 34640 (June 10, 2013) unchanged in Certain Lined Paper Products From the People's Republic of China: Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review; 2011-2012, 78 FR 65274 (October 31, 2013).*

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of EPs that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen’s *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, we examine whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margin between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

#### B. Results of the Differential Pricing Analysis

As stated above, the Cohen’s *d* test is applied when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. With regard to Baoding Mantong, there were not enough observations to apply the Cohen’s *d* test. Because we do not have enough sales data to establish usable comparison and test groups, the Department finds that these circumstances do not support consideration of an alternative to the average-to-average method. Accordingly, for these preliminary results, the Department determines to use the average-to-average method in making comparisons of EP and NV for Baoding Mantong.

