



**UNITED STATES DEPARTMENT OF COMMERCE**  
**International Trade Administration**  
Washington, D.C. 20230

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November 29, 2012

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

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

**SUBJECT:** Decision Memorandum for the Preliminary Results of  
Antidumping Duty Administrative Review and Preliminary Partial  
Rescission of Antidumping Duty Administrative Review: Glycine  
from the People's Republic of China

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## SUMMARY

In response to requests from interested parties, the Department of Commerce (the Department), is conducting the administrative review of the antidumping duty order on glycine from the People's Republic of China (the PRC) for the period of review (POR) March 1, 2011, through February 29, 2012. The Department has preliminarily determined that Baoding Mantong Fine Chemistry Co., Ltd. (Baoding Mantong) has not cooperated to the best of its ability by withholding information that has been requested, failing to provide information within established deadlines, and significantly impeding the proceeding pursuant to sections 776(a)(2)(A), (B), and (C) of the Tariff Act of 1930, as amended (the Act). Therefore, we preliminarily determine that we must rely on facts otherwise available, with an adverse inference, in order to determine a weighted-average dumping margin for Baoding Mantong.

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 will 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 Act.



## Background

On March 1, 2012, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on glycine in the *Federal Register*.<sup>1</sup> On March 30, 2012, Baoding Mantong requested a review of its own sales and GEO Specialty Chemicals, Inc. (GEO), a domestic interested party, requested a review of the sales of Baoding Mantong as well as 25 other firms. Based on these requests, on April 30, 2012, the Department initiated an administrative review of glycine from the PRC for the period March 1, 2011, through February 29, 2012.<sup>2</sup>

As explained in the memorandum from the Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29, through October 30, 2012. Thus, all deadlines in this segment of the proceeding have been extended by two days. The revised deadline for the preliminary results of this review is now December 3, 2012.<sup>3</sup>

## Scope of the Order

The product covered by the 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 review 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). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.<sup>4</sup>

## Respondent Selection

Section 777A(c)(1) of the Act, directs the Department to calculate an individual weighted-average dumping margin for each known exporter or producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters and producers if it is not practicable to make individual weighted average dumping margin determinations because of the large number of exporters and producers involved in the review.

On May 15, 2012, the Department placed CBP data for the HTSUS number listed in the scope of the order on the record of the review and requested comments on the data for use in respondent

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<sup>1</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 77 FR 12559 (March 1, 2012).

<sup>2</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 77 FR 25401 (April 30, 2012) (*Initiation Notice*).

<sup>3</sup> See Memorandum to the Record from Paul Piquado, Assistant Secretary for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During Hurricane Sandy," dated October 31, 2012.

<sup>4</sup> In a separate scope ruling, the Department determined that D(-) Phenylglycine Ethyl Dane Salt is outside the scope of the order. See *Notice of Scope Rulings*, 62 FR 62288 (November 21, 1997).

selection.<sup>5</sup> GEO submitted comments on May 22, 2012. We received no additional comments or rebuttal comments from any parties. The Department issued its respondent selection memorandum on July 9, 2012, choosing Baoding Mantong and Chiyuen International Trading Ltd. as mandatory respondents.<sup>6</sup> The Department sent its antidumping duty questionnaire to Baoding Mantong and Chiyuen International Trading Ltd. on July 18, 2012.

#### Preliminary Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party that requested the review withdraws the request within 90 days of the date of publication of the initiation notice.

On July 30, 2012, GEO withdrew its request for review of all 26 firms for which we initiated a review, including Chiyuen International Trading Ltd. and Baoding Mantong. As GEO was the only party to request a review of Chiyuen International Trading Ltd.'s exports, we issued Chiyuen International Trading Ltd. a letter informing it that it was no longer required to submit a response to the Department's antidumping duty questionnaire.

On August 7, 2012, Baoding Mantong withdrew its request for review of its own sales. While GEO's request was timely submitted, Baoding Mantong did not submit its withdrawal request by the deadline to submit such a request (*i.e.*, July 30, 2012). In its request, Baoding Mantong specifically requested that the Department exercise its discretion, pursuant to 19 CFR 351.213(d)(1), and extend the 90 day limit to permit Baoding Mantong to withdraw its own administrative review request. Baoding Mantong further explained that there were extraordinary circumstances that validated its request for an extension. The circumstances described by Baoding Mantong in its letter were (a) because both GEO and Baoding Mantong requested the review, a withdrawal of the request by only one party would invalidate the possibility to rescind this administrative review; which is what both parties currently plea, and (b) the Department would be able to preserve its limited administrative resources in this proceeding since Baoding Mantong had yet to submit its responses to the Department's questionnaire.

We considered Baoding Mantong's request for an extension of the 90-day deadline to withdraw its request for review but did not find the circumstances described to be extraordinary and, therefore, did not grant Baoding Mantong's request. Pursuant to 19 CFR 351.213(d)(1), because the withdrawal of review request was submitted untimely (*i.e.*, past the 90 days of the date of publication of the notice of initiation for this administrative review), we determined that Baoding Mantong was subject to this administrative review. As such, we notified Baoding Mantong that it was required to respond to the Department's antidumping duty questionnaire.<sup>7</sup> As explained below, on October 18, 2012, we received a letter from Baoding Mantong in which it advised the

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<sup>5</sup> See Letter to "All Interested Parties," dated May 15, 2012.

<sup>6</sup> See Memorandum to Richard Weible, Director AD/CVD Operations, Office 7, through Angelica Mendoza, Program Manager, AD/CVD Operations, Office 7, entitled "Administrative Review of the Antidumping Duty Order on Glycine from the People's Republic of China: Respondent Selection Memorandum," dated July 9, 2012.

<sup>7</sup> See Letter to Baoding Mantong, "Administrative Review of the Antidumping Duty Order on Glycine from the People's Republic of China – Antidumping Duty Questionnaire," dated September 26, 2012.

Department that it would no longer participate in this administrative review and would not, therefore, respond to the Department's antidumping duty questionnaire.<sup>8</sup>

## DISCUSSION OF THE METHODOLOGY

### Separate Rates

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>9</sup> In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in non-market economy (NME) proceedings.<sup>10</sup> It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. 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>11</sup> as amplified by *Silicon Carbide*.<sup>12</sup> However, if the Department determines that a company is wholly foreign-owned or located in a market economy (ME), then a separate rate analysis is not necessary to determine whether it is independent from government control.<sup>13</sup> In this administrative review, only one entity, Baoding Mantong, submitted separate rate information.<sup>14</sup>

### *Separate Rate Respondents/PRC-Wide Entity*

As discussed above, in this administrative review we limited the selection of respondents using CBP import data.<sup>15</sup> After GEO timely filed a withdrawal request for all companies for which a review was initiated, Baoding Mantong was left as the sole respondent. As described below, because Baoding Mantong was non-responsive, we preliminarily find that it loses its separate rate status and, therefore, becomes part of the PRC-wide entity. In sum, because (1) Baoding Mantong, as the sole respondent, forfeited its separate rate status by failing to respond to the Department's antidumping questionnaire, and (2) the review is preliminarily being rescinded for

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<sup>8</sup> See Letter to the Department from Baoding Mantong, "Glycine from China, Withdrawal from Administrative Review," dated October 18, 2012.

<sup>9</sup> See *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079, 53082 (September 8, 2006); *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China*, 71 FR 29303, 29307 (May 22, 2006).

<sup>10</sup> See *Initiation Notice*, 77 FR at 25401-25402.

<sup>11</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>12</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>13</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>14</sup> See Letter to the Department from Baoding Mantong, "Glycine from the People's Republic of China; Separate Rate Certification of Baoding Mantong Fine Chemistry Co., Ltd.," dated June 29, 2012.

<sup>15</sup> See Department's respondent selection memorandum, dated July 9, 2012.

the remaining 25 companies for which a review was initiated, we have preliminarily determined that the PRC-wide entity is under review.<sup>16</sup>

#### Use of Facts Available and Adverse Facts Available (AFA)

As stated above, pursuant to 19 CFR 351.213(d)(1), because Baoding Mantong's withdrawal of review request was submitted untimely (*i.e.*, past the 90 days of the date of publication of the notice of initiation for this administrative review), we determined that Baoding Mantong was subject to this administrative review. As such, we notified Baoding Mantong that it was required to respond to the Department's antidumping duty questionnaire. On October 18, 2012, we received a letter from Baoding Mantong in which it advised the Department that it would no longer participate in this administrative review and would not, therefore, respond to the Department's antidumping duty questionnaire.<sup>17</sup>

Section 776(a) of the Act provides that the Department shall apply "facts otherwise available" if (1) necessary information is not on the record or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Furthermore, section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

#### *Application of Total AFA to Baoding Mantong*

As discussed above, Baoding Mantong stated in its October 18, 2012 letter that it would not respond to the Department's July 18, 2012, antidumping duty questionnaire. By refusing to participate in this administrative review or respond to our antidumping duty questionnaire, Baoding Mantong leaves the Department unable to determine the extent of subject merchandise sales it made and the extent of any dumping during the POR. Accordingly, we preliminarily determine that Baoding Mantong withheld information requested by the Department and failed to respond within the established deadlines in accordance with sections 776(a)(2)(A) and (B) of the Act and Baoding Mantong significantly impeded the proceeding in accordance with section 776(a)(2)(C) of the Act.

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<sup>16</sup> See *Pure Magnesium in Granular Form From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 77 FR 46030, 46032 (August 12, 2012) (*Magnesium from the PRC*) (finding the PRC-wide entity under review because a selected mandatory respondent did not qualify for a separate rate).

<sup>17</sup> See Letter to the Department from Baoding Mantong, "Glycine from China, Withdrawal from Administrative Review," dated October 18, 2012.

Baoding Mantong's refusal to provide information constitutes circumstances under which the Department can conclude that Baoding Mantong has not cooperated to the best of its ability.<sup>18</sup> Hence, pursuant to section 776(b) of the Act, the Department has preliminarily determined that it must rely on facts otherwise available in order to determine a weighted-average dumping margin for Baoding Mantong. Further, when selecting from among the facts otherwise available, the Department has preliminarily determined that an adverse inference is warranted with respect to Baoding Mantong because it has withheld information and significantly impeded the proceeding by failing to respond to our antidumping questionnaire. Thus, it is appropriate to apply total AFA in calculating a rate for Baoding Mantong.

*Application of Total AFA to the PRC-Wide Entity*

In the *Initiation Notice*, the Department stated that if one of the companies for which this review was initiated "does not qualify for a separate rate, all other exporters of glycine from the PRC that have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity."<sup>19</sup> As noted above, because (1) Baoding Mantong forfeited its separate rate status by failing to respond to the Department's antidumping questionnaire, and (2) the review is preliminarily being rescinded for the remaining 25 companies for which a review was initiated, the PRC-wide entity is under review.

The PRC-wide entity, including Baoding Mantong, withheld information requested by the Department and failed to respond within the established deadlines in accordance with sections 776(a)(2)(A) and (B) of the Act. Furthermore, the PRC-wide entity's refusal to participate in the review significantly impeded the proceeding in accordance with section 776(a)(2)(C) of the Act.

Because the PRC-wide entity, including Baoding Mantong, did not respond to the Department's antidumping questionnaire, the Department must rely on facts otherwise available to assign a weighted-average dumping margin to the PRC-wide entity in accordance with section 776(a) of the Act. Further, the Department finds that the PRC-wide entity's failure to provide the requested information constitutes circumstances under which the Department concludes that less than full cooperation has been shown. Hence, pursuant to section 776(b) of the Act, the Department has preliminarily determined that, when selecting from among the facts otherwise available, an adverse inference is warranted with respect to the PRC-wide entity.<sup>20</sup>

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<sup>18</sup> See *Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8911 (February 23, 1998); see also *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review*, 70 FR 69937, 69939 (November 18, 2005), and *Uruguay Round Agreements Act, Statement of Administrative Action*, H.R. Doc. No. 103-316, vol. 1, at 870 (1994) (SAA).

<sup>19</sup> See *Initiation Notice*, 77 FR at 25404, footnote 6.

<sup>20</sup> See *Magnesium from the PRC*, 77 FR at 46032. See also *Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent To Rescind Review in Part*, 75 FR 5952, 5959 (February 5, 2010); *Honey from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 102, 105-106 (January 3, 2007).

### *Selection of AFA Rate*

In deciding which rate to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any information placed on the record. In reviews, the Department normally selects as AFA the highest rate determined for any respondent in any segment of the proceeding.<sup>21</sup> The Court of International Trade (CIT) and the Court of Appeals for the Federal Circuit have consistently upheld the Department's practice.<sup>22</sup> The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."<sup>23</sup> The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."<sup>24</sup>

In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's commercial activity, selecting the highest prior margin reflects a "common sense inference that the highest prior margin is the most probative evidence of current rates because, if it were not so, the importer, knowing the rule, would have produced current information showing the respondent's rate to be less."<sup>25</sup> Consistent with the statute, court precedent, and its normal practice, the Department has assigned, as AFA, the rate calculated in the 2010-2011 final results administrative review, 453.79 percent, to the PRC-wide entity, including Baoding Mantong, for the instant review. This rate was assigned to Baoding Mantong in the final results of the 2010-2011 antidumping duty administrative review and is the rate currently applicable to Baoding Mantong.<sup>26</sup> The Department preliminarily determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA.

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<sup>21</sup> See, e.g., *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 68 FR 19504, 19507 (April 21, 2003).

<sup>22</sup> See *KYD, Inc. v. United States*, 607 F.3d 760, 766-67 (Fed. Cir. 2010) (*KYD*); *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990) (*Rhone Poulenc*); *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (Ct. Int'l Trade 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in a less-than-fair-value investigation); *Kompass Food Trading Int'l v. United States*, 24 CIT 678, 684 (2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd. v. United States*, 360 F. Supp. 2d 1339, 1348 (Ct. Int'l Trade 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

<sup>23</sup> See SAA at 870.

<sup>24</sup> See *id.*; see also *Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910, 76912 (December 23, 2004), and *D&L Supply Co. v. United States*, 113 F.3d 1220, 1223 (Fed. Cir. 1997).

<sup>25</sup> See *KYD*, 607 F.3d at 766 (citing *Rhone Poulenc*, 899 F.2d at 1190).

<sup>26</sup> See *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 64100 (October 18, 2012).

### *Corroboration of Secondary Information*

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.<sup>27</sup> To corroborate means that the Department will satisfy itself that the secondary information to be used has probative value.<sup>28</sup>

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.<sup>29</sup> Independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.<sup>30</sup> However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations.

Thus, in an administrative review, if the Department chooses as total AFA a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. In addition, we have examined the circumstances surrounding the calculation of this rate and have determined that there is no reliable evidence on the administrative records for the review in which this rate was calculated which indicates that the margin is irrelevant or inappropriate.

As a result, the Department finds that the AFA rate of 453.79 percent for the PRC-wide entity (including Baoding Mantong) has probative value as the AFA rate for PRC-wide entity (including Baoding Mantong) in these preliminary results. Because these are the preliminary results of review, the Department will consider all rates on the record at the time of the final results of review for the purpose of determining the most appropriate weighted-average dumping margin for the PRC-wide entity (including Baoding Mantong).<sup>31</sup>

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<sup>27</sup> See SAA at 870.

<sup>28</sup> *Id.*

<sup>29</sup> See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

<sup>30</sup> See SAA at 870; see also *Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada*, 70 FR 12181, 12183 (March 11, 2005).

<sup>31</sup> See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation*, 65 FR 1139, 1141 (January 7, 2000), unchanged in *Notice of Final*



RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

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Agree

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Disagree

Ronald K Lorentzen

Ronald K. Lorentzen  
Acting Assistant Secretary  
for Import Administration

November 29, 2012

Date