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October 4, 2017

MEMORANDUM TO: Gary Taverman  
Deputy Assistant Secretary  
Antidumping and Countervailing Duty Operations,  
performing the non-exclusive functions and the duties of the  
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder  
Senior Director  
performing the duties of Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Glycine from the People's Republic of China: Issues and Decision  
Memorandum for the Final Results of Administrative Review and  
Rescission of the Administrative Review, In Part; 2015-2016

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## I. SUMMARY

We have analyzed the case and rebuttal briefs submitted by interested parties. As a result of our analysis, we have decided to rescind the administrative review with respect to one respondent and to make no changes to the margin calculation of the other respondent, as discussed below. We recommend that you approve the positions described in the "Discussion of Interested Party Comments" section of this Issues and Decision Memorandum. Below is a list of issues commented upon by interested parties and discussed in the memorandum:

## II. LIST OF ISSUES

Comment 1: *Bona Fides* of Baoding Mantong's U.S. Sale

Comment 2: Moot Arguments Concerning Baoding Mantong's Margin Calculations

Comment 3: Assignment of the PRC-Wide Rate to Pharm-Rx Following Judicial Review of the Rate

## III. BACKGROUND

On March 31, 2017, the Department released U.S. Customs and Border Protection (CBP) entry data to parties subject to the administrative protective order for the review, so that the parties

could comment on the data and the *bona fides* of the one reported U.S. sale of Baoding Mantong Fine Chemistry Co., Ltd. (Baoding Mantong), a respondent in the review.<sup>1</sup> Baoding Mantong and GEO Specialty Chemicals, Inc. (GEO), the domestic interested party in the proceeding, filed timely comments and rebuttal comments on these matters.

On April 7, 2017, the Department of Commerce (the Department) published its notice of preliminary results of review for the administrative review of the antidumping duty order on glycine from the People's Republic of China (PRC), covering the period from March 1, 2015, through February 29, 2016.<sup>2</sup> Baoding Mantong, GEO, and Pharm-Rx Chemical Corporation (Pharm-Rx), a U.S. importer of subject merchandise, filed timely comments to the *Preliminary Results* and Baoding Mantong and GEO filed timely rebuttal comments.

On August 3, 2017, the Department notified all interested parties that the deadline for the final results of review would be extended by until September 19, 2017.<sup>3</sup> On September 13, 2017, the Department fully extended the review until October 4, 2017.<sup>4</sup>

#### **IV. 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>5</sup> Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

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<sup>1</sup> See Memorandum to the File on the subject of "Data for *Bona Fides* Analysis and Extension of Deadline for Case and Rebuttal Briefs, dated March 31, 2017.

<sup>2</sup> See *Glycine from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission of Antidumping Duty Administrative Review, In Part; 2015-2016*, 82 FR 16992 (April 7, 2017) (*Preliminary Results*).

<sup>3</sup> See Memorandum to James Maeder, Senior Director, on the subject of "Glycine from the People's Republic of China: Extension of Deadline for the Final Results of Antidumping Duty Administrative Review; 2015/2016," dated August 3, 2017.

<sup>4</sup> See Memorandum to James Maeder, Senior Director, on the subject of "Glycine from the People's Republic of China: Extension of Deadline for the Final Results of Antidumping Duty Administrative Review; 2015/2016," dated September 13, 2017.

<sup>5</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.

## V. DISCUSSION OF INTERESTED PARTY COMMENTS

### Comment 1: *Bona Fides* of Baoding Mantong's U.S. Sale

*GEO's Comments:*<sup>6</sup>

- The Department should decline to review Baoding Mantong's U.S. sale and rescind the review with respect to this company. The "totality of the circumstances" of the sale supports rescission because we know this sale will not be reflective of Baoding Mantong's future commercial behavior because it is not reflective of the company's past commercial behavior in the United States, including past sales to the same U.S. customer.
- Baoding Mantong's single shipment was not a *bona fide* transaction because it was not commercially reasonable. A review of Baoding Mantong's sales quantities in prior reviews shows that this sale was historically atypical for the company and not indicative of future commercial behavior.
- Baoding Mantong's reported pricing did not reflect market conditions or commercial reality when the dumping deposit rate for the sale is taken into account. The record shows that there is nothing legitimate or logical about the price, logistics or timing of the sale.
- Baoding Mantong's sale to its customer was not an arm's-length transaction; the record demonstrates that the sale had the earmarks of a sham transaction designed only to establish a low antidumping duty rate for Baoding Mantong. The record also shows a close supplier relationship between Baoding Mantong and its customer, which confirmed it had never imported glycine from any other company other than Baoding Mantong.
- The supplier relationship between Baoding Mantong's customer and its customer also has the earmarks of a sham transaction because the two companies share the same process address of an individual who provided both companies with incorporation services.
- The record shows that Baoding Mantong is not a legitimate producer, with a history of inactivity other than the production of a small quantity of glycine for the U.S. sale and entries on its books in 2014 that are abnormal and inconsistent with a going concern.
- The "totality of the circumstances" shows that Baoding Mantong's sale was not commercially reasonable or typical and, thus, it was not *bona fide*. The record demonstrates that Baoding Mantong did not operate as a typical producer or exporter in terms of its production and selling operations.

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<sup>6</sup> See GEO Specialty Chemicals' Case Brief, dated May 5, 2017, 3-10.

*Baoding Mantong's Rebuttal Comments:*<sup>7</sup>

- Despite GEO's allegations, the record supports a finding that Baoding Mantong's U.S. sale was a *bona fide* transaction, just as the Department found Baoding Mantong's single U.S. sale to be *bona fide* in the most-recently completed administrative review of the company (*i.e.*, the 2013-2014 administrative review).
- The quantity of Baoding Mantong's sale is indicative of a *bona fide* transaction when compared to all other entries of Chinese-origin glycine made during the period of review. This analysis demonstrates that the quantity and the price of Baoding Mantong's sale was not atypical. Although Baoding Mantong's quantity was less than a container load, the CBP data shows that sales of less than one container load cannot be considered atypical for imports of Chinese-origin glycine during the period of review. Moreover, the quantity of Baoding Mantong's sale is larger than the quantity of the sale it reported in the 2013-2014 administrative review and which the Department found to be *bona fide*.
- With respect to sales price, GEO's analysis was based on prices that included antidumping duty deposits and other CBP fees and should be disregarded by the Department as irrelevant. The fact that Baoding Mantong's sale may be priced lower than a comparison sale during the period of review is not an indication that the sale was not *bona fide*. The CBP data confirm that the unit sales value of Baoding Mantong's sale was not atypical of those made by other exporters of the subject merchandise during the period of review.
- The record shows that there is no affiliation between Baoding Mantong and its U.S. customer. Although the customer has only purchased glycine from Baoding Mantong, it is engaged as a reseller of the subject merchandise and other products. The record thus shows that Baoding Mantong and the customer are not engaged in an exclusive relationship. Despite GEO's assertion that Baoding Mantong is not an ongoing concern because of its limited production during the period of review, the record establishes Baoding Mantong's customer is an ongoing business concern and that both companies earned a profit on the reported U.S. sale.
- The record shows that the U.S. customer and its customer are not affiliated. Baoding Mantong has fully explained that these two companies share the same process address because they were incorporated by the same accountant.

**Department's Position:**

In evaluating if a sale is *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; (5) whether the transaction was

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<sup>7</sup> See Submission of Baoding Mantong's Rebuttal Brief, dated May 11, 2017, 1-7.

made on an arms-length basis; and (6) any factor the Department considers relevant as to whether the sale is typical of future sales.<sup>8</sup> Therefore, 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>

Although some *bona fides* issues may share commonalities across various Department cases, the Department examines the *bona fide* nature of a sale on a case-by-case basis, and the analysis may vary with the facts surrounding each sale.<sup>10</sup> In *TTPC*, the Court affirmed the Department's practice of considering as relevant “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,”<sup>11</sup> and found “the weight given to each factor investigated will depend on the circumstances surrounding the sale.”<sup>12</sup> The Court stated that the Department’s practice makes clear the Department is highly likely to examine objective, verifiable factors to ensure a sale is not being made to circumvent an antidumping duty order.<sup>13</sup> Thus, a respondent is on notice that it is unlikely to establish the *bona fide* nature of a sale merely by claiming to have sold goods in a manner representative of its future commercial practice.<sup>14</sup>

With respect to the factors discussed above, we find that: 1) the timing of the sale is suspect given the gap in time between the sale and resale; 2) the pricing involved considerations of obtaining a new dumping margin for Baoding Mantong; 3) delayed payment of the sale allowed for adjustment of the price and profit of the resale; 4) the sale between Baoding Mantong and its customer was not made on an arm’s-length basis due to their long-standing acquaintance; and 5) additional circumstances indicate that Baoding Mantong arranged the sale using a dissolved U.S. company to obtain a lower dumping margin. For these reasons, and to ensure a sale is not being made to circumvent an antidumping duty order, we find that the totality of the circumstances support the conclusion that Baoding Mantong’s U.S. sale was not a *bona fide* sale, and was otherwise not typical of future sales. Because of the proprietary nature of our analysis, a full discussion appears in Memorandum to Brian C. Davis, Acting Office Director, regarding “*Bona Fides* Analysis Memorandum for the Final Results of Review of Baoding Mantong Fine Chemistry Co., Ltd., dated October 4, 2017.

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<sup>8</sup> See *Tianjin Tiangcheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d at 1246, 1250 (CIT 2005) (*TTPC*), citing *American Silicon Technologies v. United States*, 110 F. Supp. 2d 992, 995 (CIT 2000) (*Silicon Techs*).

<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), and accompanying Issues and Decision Memorandum: New Shipper Review of Clipper Mfg. Ltd.

<sup>10</sup> See *New Donghua*, 374 F. Supp. 2d at 1340, n. 5, citing *TTPC* at 1260 (quoting *Certain Preserved Mushrooms from the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 68 FR 41304 (July 11, 2003), and the accompanying Issues and Decision Memorandum at 2).

<sup>11</sup> See *TTPC*, 366 F. Supp. 2d at 1250.

<sup>12</sup> *Id.* at 1263.

<sup>13</sup> See *New Donghua*, 374 F. Supp. 2d at 1339.

<sup>14</sup> *Id.*

As Baoding Mantong's U.S. sale was its only sale subject to this administrative review, we are rescinding the review with respect to this company in our final results.

### **Comment 2: Moot Arguments Concerning Baoding Mantong's Margin Calculations**

GEO and Baoding Mantong raised other issues related to Baoding Mantong's dumping margin calculations.

#### *Department's Position:*

Because we are not calculating a final dumping margin for Baoding Mantong, these issues are moot and, as such, are not addressed in this memorandum.

### **Comment 3: Assignment of the PRC-Wide Rate to Pharm-Rx Following Judicial Review of the Rate**

#### *Pharm-Rx's Comments:*<sup>15</sup>

- Pharm-Rx contests the Department's selection of the 453.79 percent margin as the PRC-wide rate applicable to its Chinese exporter, Huayang Chemical Co., Ltd. (Huayang Chemical), in this review. This margin, which was calculated in the final results of the 2010-2011 administrative review of the order, was revised to 64.97 percent in a redetermination upon remand that was affirmed by the U.S. Court of International Trade (the Court) in April 2017. Although the case was again remanded to the Department for reconsideration of other issues, the Court has rendered a final decision which effectively invalidated the 453.79 percent margin.
- The U.S. Court of Appeals for the Federal Circuit (CAFC) has held that reliance upon a margin based upon margins from previous administrative segments "that have been demonstrated to be inaccurate is irrational".<sup>16</sup> The Department should assign Huayang Chemical the previous PRC-wide rate of 155.89 percent for the final results, as the Department has not issued any company-specific margin in the proceeding that exceeds this rate, other than the invalidated one.

#### *GEO's Rebuttal Comments:*<sup>17</sup>

- GEO argues that Pharm-Rx should not be allowed to "game the administrative review process" by requesting a review with no intention of having its Chinese supplier respond to the antidumping duty questionnaire, so that Pharm-Rx can acquire standing to file a brief and challenge the PRC-wide deposit rate. GEO states that Pharm-Rx should not be able to benefit from requesting a review of its importer and then refusing to participate.

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<sup>15</sup> See Comments on the Preliminary Determination, (filed by Pharm-Rx and) dated May 5, 2017, 1-5.

<sup>16</sup> Pharm-Rx cites this holding from *D&L Supply Co. v. United States*, 113 F.3d 1220, 1224 (Fed. Cir. 1997).

<sup>17</sup> See Submission of Baoding Mantong's Rebuttal Brief, dated May 11, 2017, 12.

**Department's Position:**

The Department's practice is to review the non-market economy (NME) entity only upon request.<sup>18</sup> Here, no party requested that the Department review the NME entity. In addition, because Huayang Chemical did not apply for or otherwise demonstrate that it is separate from the NME entity, the Department will treat Huayang Chemical as part of the NME entity.<sup>19</sup> Further, because the Department is not conducting a review of the NME entity, the rate for the NME entity is not subject to change in this administrative review.<sup>20</sup> With respect to Pharm-Rx's argument concerning the litigation of the rate, the litigation has not resulted in a final judgment at this time. Therefore, the current rate remains 453.79 percent. Accordingly, the Department will continue to apply the 453.79 rate to the PRC entity for these final results.

**VI. RECOMMENDATION**

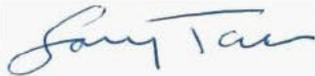
Based on our analysis of the comments received, we recommend adopting the above positions. If accepted, we will publish the final results and the final dumping margin in the *Federal Register*.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

10/4/2017

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Signed by: GARY TAVERMAN