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January 22, 2021

MEMORANDUM TO: Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
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;
2019-2020

I. SUMMARY

We analyzed comments and rebuttals submitted by interested parties in the administrative review of the antidumping duty (AD) order on glycine from the People's Republic of China (China) covering the period of review (POR) March 1, 2019, through February 29, 2020. We made no changes to the preliminary results of this administrative review. We recommend that you approve the positions we have developed in the "Discussion of the Issue" section of this memorandum. Below is identified the sole issue for which we have received comments and rebuttal comments from the interested parties.

Comment: Rescission Request

II. BACKGROUND

On October 22, 2020, the Department of Commerce (Commerce) published the preliminary results of the administrative review of the AD order on glycine from China.¹ We invited interested parties to comment on the *Preliminary Results*, and received timely comments from Avid Organics Private Limited (Avid)² and timely rebuttal comments from GEO Specialty Chemicals, Inc.³ (GEO).

¹ See *Glycine from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2019-2020*, 85 FR 67332 (October 22, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

² See Avid's Letter, "Comments in Lieu of Case Brief on Behalf of Avid Organics," dated November 23, 2020.

³ See Geo's Letter, "Petitioners' Rebuttal Brief in Response to Avid Organics Private Limited's Comments In Lieu of Case Brief," dated November 30, 2020.

III. SCOPE OF THE ORDER

The product covered by this AD 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).⁴ Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

IV. DISCUSSION OF THE ISSUE

Comment: Rescission Request

Avid's Comments

- Commerce should rescind this administrative review. Avid is a no-shipments company, according to the CBP data Commerce obtained for respondent selection purposes. Commerce should not have assigned the China-wide rate to Avid just because Avid did not submit a no-shipments letter or a separate rate application.
- Avid was not represented by counsel earlier and did not realize that it was required to file a no-shipments letter until after the deadline had passed.
- If Commerce believed that Avid made any shipments of subject merchandise, Commerce should have issued questionnaires to Avid in accordance with 19 CFR 351.221(b) and, if Commerce issued a questionnaire, Avid would have responded with a no-shipments letter. Commerce ignored its own regulations and denied Avid a right to participate in this review.

GEO's Rebuttal Comments

- Avid missed all deadlines, including the deadlines for filing the no-shipments certification and factual information, and Avid cannot claim now that it had no shipments.
- Record evidence contradicts Avid's claim of no shipments and demonstrates that Avid shipped glycine from China during the POR.
- Because Avid did not submit a separate rate application, Commerce properly treated Avid as part of the China-wide entity.

Commerce's Position: For these final results, we continue to treat Avid as part of the China-wide entity. At the time of the initiation of this review, Avid was part of the China-wide entity

⁴ In separate scope rulings, Commerce determined that: (a) D(-) Phenylglycine Ethyl Dane Salt is outside the scope of the order and (b) Chinese glycine exported from India remains the same class or kind of merchandise as the China-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.

and ineligible for a separate rate.⁵ In the *Initiation Notice*, we invited parties “that currently do not have a separate rate from a completed segment of the proceeding” to file a separate rate application within 30 days after the publication of the *Initiation Notice* to “demonstrate eligibility for a separate rate in this proceeding.”⁶ Avid did not submit a separate rate application. Therefore, Avid continues to be part of the China-wide entity.

We also provided Avid with an opportunity to submit a no-shipments claim. In the *Initiation Notice*, we allowed the companies listed in the *Initiation Notice* that had no exports, sales, or entries during the POR to submit a no-shipments letter within 30 days after the publication of the *Initiation Notice*.⁷ Avid was a no-shipments claimant in a prior segment of this proceeding⁸ so we do not find that Avid was unaware of the requirement to submit a no-shipments letter at the time of the initiation of this review.

If Avid made no shipments of subject merchandise during the POR, it should have responded to our request in the *Initiation Notice* for a no-shipments letter in a timely manner without waiting for a questionnaire. Because Avid did not submit a no-shipments claim, we were unable to follow our normal procedures to inquire with CBP concerning Avid and receive notification regarding whether there is any contrary information that would indicate shipments of glycine as claimed by GEO, before we made the preliminary determination of no shipments.⁹

As we explained above, Avid was part of the China-wide entity and did not have a separate rate at the time of the initiation of this review. In addition, we limit our consideration of separate rate applications to those firms that exported subject merchandise to the United States during the POR.¹⁰ In an administrative review, a separate rate applicant must have made a relevant U.S. sale of subject merchandise to an unaffiliated U.S. customer and have a suspended entry of subject merchandise in the United States during the POR.¹¹ If Avid had no shipments of subject merchandise to the United States during the POR as it claims, then Avid is not an exporter capable of demonstrating the absence of the *de facto* government control in setting export sales prices and negotiating export sales.¹² Commerce considers that a company that is unable to rebut the presumption of Chinese government control is part of the China-wide entity.

⁵ See *Glycine from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 20891, 20893 (April 8, 2013), in which Avid was identified as a no-shipments claimant without a separate rate eligibility. Since this decision, Avid has not been a separate rate respondent.

⁶ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 26931, 26933 (May 6, 2020) (*Initiation Notice*).

⁷ *Id.* at 26932.

⁸ See *Glycine from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 64746, 64747 (October 31, 2014).

⁹ See *Preliminary Results*, 85 FR 67333.

¹⁰ See Separate Rate Application for China at 2, available on Commerce’s website at <https://enforcement.trade.gov/nme/sep-rate-files/app-20190221/prc-sr-app-022119.pdf>.

¹¹ *Id.*

¹² See, e.g., *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), and accompanying PDM at 6, unchanged in *Glycine from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review, in Part; 2015-2016*, 82 FR 47474 (October 12, 2017), for the four criteria of the *de facto* control.

Therefore, if Avid had provided a no-shipments claim, in accordance with our practice, we would have continued to treat it as part of the China-wide entity.¹³

Avid relies on the CBP data to claim that it had no shipments during the POR; however, it is not our practice to rely on the CBP data that we obtained for respondent selection purposes to determine whether a company had shipments or not during the POR.¹⁴ Because CBP data alone do not provide a complete and conclusive basis for us to make a company-specific no-shipments determination, “it is the respondent’s responsibility to comply with our request for information and report to us that it has not made any shipments of subject merchandise” so we can corroborate the respondent’s no-shipments claim with information from CBP.¹⁵ Regardless, as noted above, the *Initiation Notice* is clear that parties claiming no shipments must do so within 30 days of publication of the initiation, and Avid failed to file a timely claim of no shipments.¹⁶

Moreover, it is not our practice to rescind an administrative review for an NME company that had no exports, sales, or entries of subject merchandise during the relevant POR.¹⁷ Since the *NME Assessment Notice* took effect,¹⁸ we discontinued our practice of rescinding an administrative review for a no-shipments company in an NME proceeding.¹⁹ Consistent with our current practice, we will not rescind this review.

¹³ See, e.g., *Diamond Sawblades and Parts Thereof from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 73417, 73418 (December 10, 2012) (*Diamond Sawblades China Prelim*), unchanged in *Diamond Sawblades and Parts Thereof from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 36166, 36167 (June 17, 2013) (*Diamond Sawblade China Final*).

¹⁴ See *Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part*, 75 FR 10207 (March 5, 2010), and accompanying Issues and Decision Memorandum at Comment 2 (“... CBP data alone is not sufficient to determine whether there were entries of subject merchandise from a reviewed company during the POR because it may not demonstrate conclusively that the company in question had no relevant sales or shipments of subject merchandise.”), affirmed in *Hyosung Corporation v. United States*, 35 CIT 343 (2011).

¹⁵ *Id.*

¹⁶ See *Initiation Notice*, 85 FR at 26932 (“If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (POR), it must notify Commerce within 30 days of publication of this notice in the *Federal Register*.”).

¹⁷ See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011) (*NME Assessment Notice*).

¹⁸ The *NME Assessment Notice* took effect “to all relevant entries, regardless of when entered, for which the anniversary month for requesting a review of the order is November 2011 or later.” *Id.* at 65695.

¹⁹ Compare *Diamond Sawblades and Parts Thereof from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2009-2010*, 78 FR 11143, 11144 (February 15, 2013), with *Diamond Sawblades China Prelim*, 77 FR at 73418, unchanged in *Diamond Sawblades China Final*, 78 FR at 36167.

V. RECOMMENDATION

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

Agree

Disagree

1/22/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance