

in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The final weighted-average dumping margins are listed below in the section entitled "Final Determination of Investigation." In addition, the Department of Commerce has determined that critical circumstances exist with respect to imports of glycine from Japan.

FOR FURTHER INFORMATION CONTACT:

Dmitry Vladimirov or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0665 or (202) 482-4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 13, 2007, the Department of Commerce (the Department) published the preliminary determination of sales at less than fair value (LTFV) in the antidumping investigation of glycine from Japan. See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Glycine from Japan*, 72 FR 52349 (September 13, 2007) (*Preliminary Determination*). We invited parties to comment on *Preliminary Determination*. We did not receive any case or rebuttal briefs from any interested parties. On October 25, 2007, the petitioner in this investigation, Geo Specialty Chemicals, Inc., submitted an allegation of critical circumstances with respect to imports of glycine from Japan.

Period of Investigation

The period of investigation is January 1, 2006, through December 31, 2006.

Scope of Investigation

The merchandise covered by this investigation is glycine, which in its solid (i.e., crystallized) form is a free-flowing crystalline material. Glycine is used as a sweetener/taste enhancer, buffering agent, reabsorbable amino acid, chemical intermediate, metal complexing agent, dietary supplement, and is used in certain pharmaceuticals. The scope of this investigation covers glycine in any form and purity level. Although glycine blended with other materials is not covered by the scope of this investigation, glycine to which relatively small quantities of other materials have been added is covered by the scope. Glycine's chemical composition is C₂H₅NO₂ and is normally classified under subheading

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-868]

Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Glycine from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 28, 2007.

SUMMARY: The Department of Commerce determines that imports of glycine from Japan are being, or are likely to be, sold

2922.49.4020 of the Harmonized Tariff Schedule of the United States (HTSUS).

The scope of this investigation also covers precursors of dried crystalline glycine including, but not limited to, glycine slurry (*i.e.*, glycine in a non-crystallized form) and sodium glycinate. Glycine slurry is classified under the same HTSUS subheading as crystallized glycine (2922.49.4020) and sodium glycinate is classified under subheading HTSUS 2922.49.8000.

While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Adverse Facts Available

For the final determination, we continue to find that, by failing to provide information we requested, Nu-Scaan Nutraceuticals Ltd. (Nu-Scaan) and Yuki Gosei Co., Ltd. (Yuki Gosei), the mandatory respondents in this investigation, along with other producers and/or exporters of glycine from Japan (Showa Denko K.K., Hayashi Pure Chemical Industries Co. Ltd., CBC Co., Ltd., Seino Logix Co. Ltd., Estee Lauder Group Companies K.K., and Chelest Corporation) did not act to the best of their ability. Thus, the Department continues to find that the use of adverse facts available is warranted for these companies under sections 776(a)(2) and (b) of the Act. See *Preliminary Determination*, 72 FR at 52350.

As we explained in *Preliminary Determination*, the rate of 280.57 percent we selected as the adverse facts-available rate is the highest margin alleged in the petition, as recalculated in the April 19, 2007, "Office of AD/CVD Operations Initiation Checklist for the Antidumping Duty Petition on Glycine from Japan" (the Initiation Checklist) on file in Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. See also *Petition for the Imposition of Antidumping Duties on Imports of Glycine from India, Japan, and the Republic of Korea* filed on March 30, 2007 (the Petition), and the April 3, 12, 13, 17, and 18, 2007, supplements to the Petition filed on behalf of Geo Specialty Chemicals, Inc. We included the range of margins we re-calculated in the Initiation Checklist in *Glycine from India, Japan, and the Republic of Korea: Initiation of Antidumping Duty Investigations*, 72 FR 20816 (April 26, 2007) (*Initiation Notice*). Further, as discussed in *Preliminary Determination*, we corroborated the adverse facts-

available rate pursuant to section 776(c) of the Act.

All-Others Rate

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-averaged dumping margins established for all exporters and producers individually investigated are zero or *de minimis* or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated. Our recent practice under these circumstances has been to assign, as the all-others rate, the simple average of the margins in the petition. See *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Argentina, Japan and Thailand*, 65 FR 5520, 5527-28 (February 4, 2000); see also *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil from Canada*, 64 FR 15457 (March 31, 1999), and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil from Italy*, 64 FR 15458, 15459 (March 31, 1999). Consistent with our practice we calculated a simple average of the rates in the Petition, as recalculated in the Initiation Checklist at Attachment VI and as listed in *Initiation Notice*, and assigned this rate to all other manufacturers/exporters. For details of these calculations, see the memorandum from Dmitry Vladimirov to the File entitled "Antidumping Duty Investigation on Glycine from Japan - Analysis Memo for All-Others Rate," dated September 6, 2007.

Final Determination of Investigation

We determine that the following weighted-average dumping margins exist for the period January 1, 2006, through December 31, 2006:

Manufacturer or Exporter	Margin (percent)
Nu-Scaan Nutraceuticals Co., Ltd.	280.57
Yuki Gosei Co., Ltd.	280.57
Showa Denko K.K.	280.57
Hayashi Pure Chemical Industries Co., Ltd.	280.57
CBC Co., Ltd.	280.57
Seino Logix Co., Ltd.	280.57
Estee Lauder Group Companies K.K.	280.57
Chelest Corporation	280.57
All-Others	165.34

Final Critical-Circumstances Determination

On October 25, 2007, the petitioner in this investigation, Geo Specialty Chemicals, Inc., alleged that there is a reasonable basis to find that critical circumstances exist with respect to imports of glycine from Japan. In accordance with 19 CFR 351.206(e), because the petitioner submitted an allegation of critical circumstances at least 21 days before the scheduled date of the final determination, the Department must make a final finding on critical circumstances not later than the date of the final determination, pursuant to section 735(a)(3) of the Act.

Section 735(a)(3) of the Act provides that the Department will determine that critical circumstances exist if the following criteria are met: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine (i) the volume and value of the imports, (ii) seasonal trends, and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that an increase in imports of 15 percent during the "relatively short period" of time may be considered "massive."

Section 351.206(i) of the regulations defines "relatively short period" as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. The regulations also provide that, if the Department finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.

Because we are not aware of any antidumping duty order in any country on glycine from Japan, we do not find that there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise.

For this reason, the Department does not find a history of injurious dumping of glycine from Japan pursuant to section 735(a)(3)(A)(i) of the Act. Therefore, we must look to the second criterion for determining importer knowledge of dumping.

To determine whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value in accordance with section 735(a)(3)(A)(ii) of the Act, the Department normally considers margins of 25 percent or more for export-price sales or 15 percent or more for constructed export-price transactions sufficient to impute knowledge of dumping. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances: Wax and Wax/Resin Thermal Transfer Ribbons From Japan*, 68 FR 71072, 71076 (December 22, 2003) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Wax and Wax/Resin Thermal Transfer Ribbons from Japan*, 69 FR 11834, 11835 (March 12, 2004)), and *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from Indonesia*, 71 FR 15162, 15166 (March 27, 2006) (*Lined Paper Products from Indonesia*) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Lined Paper Products from Indonesia*, 71 FR 47171, 47173 (August 16, 2006)). For the reasons explained above, we have assigned a margin of 280.57 percent to the mandatory respondents, Nu-Scaan and Yuki Gosei. Consequently, we have imputed knowledge of dumping to importers of subject merchandise from these companies because the assigned margins for these companies exceed the 15-percent threshold.

Similar to the Department's normal practice of conducting its critical-circumstances analysis of companies in the all-others group based on the experience of investigated companies, as discussed below and because we have assigned a margin of 280.57 percent to other Japanese exporters/producers of glycine (Showa Denko K.K., Hayashi Pure Chemical Industries Co. Ltd., CBC Co., Ltd., Seino Logix Co. Ltd., Estee Lauder Group Companies K.K., and Chelest Corporation), we have imputed knowledge of dumping to

importers of subject merchandise from these companies.

In determining whether to find that an importer knew or should have known that there would be material injury by reason of dumped imports, the Department normally will look to the preliminary injury determination of the U.S. International Trade Commission (ITC). If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that there would be material injury by reason of dumped imports. See *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Japan*, 64 FR 30574, 30578 (June 8, 1999). In this case, the ITC has found that a reasonable indication of present material injury due to dumping exists for Japan. See *Glycine From India, Japan, and Korea*, 72 FR 29352 (May 25, 2007) (Investigation Nos. 731-TA-1111-1113 (Preliminary)) (*ITC Prelim*). As a result, the Department has determined that importers knew or should have known that there would be material injury by reason of dumped imports of subject merchandise from Japan.

In determining whether there have been "massive imports" over a "relatively short period," the Department normally compares the import volume and value of the subject merchandise for three months immediately preceding and following the filing of the petition. Imports normally will be considered massive when imports have increased by 15 percent or more during this "relatively short period." Because we do not have verifiable data from any of the uncooperative Japanese respondents, we must base our "massive imports" determination as to these companies on the basis of facts otherwise available, pursuant to section 776(a) of the Act.¹ Because these companies failed to cooperate by not acting to the best of their ability to respond to our requests for information, we may make an adverse inference in selecting from the facts otherwise available pursuant to section 776(b) of the Act. Therefore, consistent with our practice, we have made an adverse inference, as facts available, that there were massive imports from these companies over a relatively short period. See *Notice of Final Determination of Sales at Less*

Than Fair Value: Collated Roofing Nails from Taiwan, 62 FR 51427 (October 1, 1997), and accompanying Issues and Decision memorandum at Comment 20.

Based on our determination that importers knew or should have known that producers/exporters Nu-Scaan, Yuki Gosei, Showa Denko K.K., Hayashi Pure Chemical Industries Co. Ltd., CBC Co., Ltd., Seino Logix Co. Ltd., Estee Lauder Group Companies K.K., and Chelest Corporation were selling glycine from Japan at less than fair value, that there would be material injury by reason of such dumped imports, and that there have been massive imports of glycine from these producers/exporters over a relatively short period, we determine affirmatively that critical circumstances exist for imports from Japan of glycine produced and/or exported by the companies in question.

It is the Department's normal practice to conduct its critical-circumstances analysis of companies in the all-others group based on the experience of investigated companies (see *Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey*, 62 FR 9737, 9741 (March 4, 1997) (the Department found that critical circumstances existed for the majority of the companies investigated and therefore concluded that critical circumstances also existed for companies covered by the all-others rate)). Notwithstanding that practice, however, the Department does not automatically extend an affirmative critical-circumstances determination to companies covered by the all-others rate. See *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan*, 64 FR 30574, 30585 (June 8, 1999) (*Stainless Steel from Japan*). Instead, the Department considers the traditional critical-circumstances criteria with respect to the companies covered by the all-others rate. Consistent with *Stainless Steel from Japan*, in this case we have applied the traditional critical-circumstances criteria to the all-others category for the antidumping investigation of glycine from Japan.

First, in determining whether there is a reasonable basis to find that an importer knew or should have known that the exporter was selling glycine at less than fair value, we look to the all-others rate. The dumping margin for the all-others category in the instant case, 165.34 percent, exceeds the 15-percent threshold necessary to impute knowledge of dumping. Second, based on the ITC's preliminary material-injury determination, we also find that

¹ Because the non-cooperating respondents in question did not respond to our requests for information during the course of this investigation we did not request monthly shipment data from these companies.

importers knew or should have known that there would be material injury caused by the dumped merchandise.

Finally, with respect to massive imports, we are unable to base our determination on our findings for the mandatory respondents because our determinations for all companies in this investigation were based on adverse facts available. We have not inferred, as adverse facts available, that massive imports exist for companies under the all-others category because, unlike the uncooperative companies in question, the all-others companies have not failed to cooperate in this investigation. Therefore, an adverse inference with respect to a finding of a massive surge in imports by the all-others companies is not appropriate. Instead, consistent with the approach taken in *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan*, 64 FR 24329 (May 6, 1999), and *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Argentina, Japan and Thailand*, 65 FR 5520, 5527 (February 4, 2000), we examined U.S. Customs and Border Protection data² on aggregate imports from Japan for the five months preceding and the five months following the filing of the petition in order to ascertain whether an increase in shipments of greater than 15 percent or more occurred within a relatively short period following the point in time at which importers had reason to know that a proceeding has commenced.³ We

² With respect to HTSUS 2922.49.8000 (covered by the scope of this investigation) the Department did not use information supplied by U.S. Customs and Border Protection because information publicly available indicates that this is a basket category that includes non-subject merchandise. Thus, the Department cannot make an accurate analysis to determine whether there were massive imports of subject merchandise classified under this HTSUS number for the all-others category. See *Lined Paper Products from Indonesia*, 71 FR at 15167, *Stainless Steel from Japan*, 64 FR at 30585, *Preliminary Determinations of Critical Circumstances: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and South Africa*, 65 FR 12509, 12511 (March 9, 2000) (where the Department determined that massive imports did not exist for imports from companies in the all-others category because it could not rely on the U.S. Customs data) (unchanged in *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan; and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and the Republic of South Africa*, 65 FR 25907, 25908 (May 4, 2000)).

³ In its October 25, 2007, submission, the petitioner alleged an importer's prior knowledge of likelihood of the imminent filing of the petition at a time preceding the actual filing of the petition on March 30, 2007. Accordingly, in alleging a surge in

determined that, with respect to HTSUS number 2922.49.4020, there have been massive imports of glycine from Japan over a relatively short period. For further discussion, see memorandum from Dmitry Vladimirov to Laurie Parkhill entitled "Antidumping Duty Investigation on Glycine from Japan - Affirmative Final Determination of Critical Circumstances - All-Others Producers/Exporters," dated November 20, 2007.

Based on our determination that massive imports of glycine from the producers/exporters included in the all-others category have occurred and, consequently, that the third criterion necessary for determining affirmative critical circumstances has been met, we have determined affirmatively that critical circumstances exist for imports of glycine from Japan under HTSUS number 2922.49.4020 for producers/exporters in the all-others category.

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act and 19 CFR 351.211(b)(1), we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of subject merchandise from Japan entered, or withdrawn from warehouse, for consumption on or after September 13, 2007, the date of the publication of *Preliminary Determination*. Pursuant to section 735(c)(4) of the Act we will direct CBP to suspend liquidation of all entries, for all importers of subject merchandise that are entered, or withdrawn from warehouse, on or after 90 days before the date of publication of *Preliminary Determination*. We will instruct CBP to require a cash deposit or the posting of a bond equal to the

imports of glycine from Japan, the petitioner relied on import data comprising the base and comparison periods, the selection of which was guided by the point in time of the alleged knowledge. We did not rely on import data comprising the base and comparison periods the petitioner used in our evaluation of the massive surge in imports. We find that the petitioner's claim of prior knowledge was not supported by evidence sufficient in demonstrating conclusively that importers had knowledge that a petition was likely to be filed. See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Negative Preliminary Determination of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products From South Africa*, 67 FR 31243 (May 9, 2002), and the applicable April 26, 2002, critical-circumstances decision memorandum from Richard W. Moreland to Faryar Shirzad entitled "Antidumping Duty Investigation on Certain Cold-Rolled Carbon Steel Flat Products From The Republic of South Africa - Preliminary Negative Determination of Critical Circumstances." A public version of this memorandum is on file at the Import Administration Central Records Unit in Room B-099 of the Department of Commerce main building.

weighted-average margin, as indicated in the chart above, as follows: (1) the rates for companies identified in the chart above will be the rates we have determined in this final determination; (2) if the exporter is not a firm identified in this investigation but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 165.34 percent. These suspension-of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our final determination. As our final determination is affirmative and in accordance with section 735(b)(2) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: November 20, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

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