

5/3/02

A-570-836
Scope Review
PUBLIC DOCUMENT
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MEMORANDUM FOR: Joseph A. Spetrini
Deputy Assistant Secretary
for Import Administration, Group III

FROM: Barbara E. Tillman *BE T*
Director
Office of AD/CVD Enforcement VII

SUBJECT: Final Scope Ruling; Antidumping Duty Order on Glycine from the
People's Republic of China (A-570-836); Watson Industries, Inc.

Summary

On January 2, 2002, the Department of Commerce (the Department) received a request from Watson Industries, Inc. (Watson) for a scope ruling on glycine. In its request, Watson identifies the glycine in question as being refined by a Korean chemical company from crude glycine imported from the People's Republic of China (PRC). Watson argues that the glycine it imports from Korea is not covered by the antidumping duty order on glycine from the PRC (*Antidumping Duty Order: Glycine from the People's Republic of China*, 60 FR 16116 (March 29, 1995) (the Order)). In accordance with 19 C.F.R. § 351.225(k)(1), we recommend that the Department determine that this glycine is within the scope of the antidumping duty order on glycine from the PRC.¹

Background

Watson filed its request for a scope ruling in proper form on January 2, 2002. On February 19, 2002, the Department extended the 45-day deadline to issue a ruling.

The regulations governing the Department's antidumping scope determinations are found at 19 C.F.R. § 351.225. On matters concerning the scope of an antidumping duty order, the Department first examines the descriptions of the merchandise contained in the petition, the determinations of the Secretary and the International Trade Commission (the Commission), the initial investigation, and the antidumping duty order. *See* 19 C.F.R. § 351.225(d) (referencing

¹Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 C.F.R. part 351 (2001).

§ 351.225(k)(1)). This determination may take place with or without a formal inquiry. If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether or not the merchandise is covered by the order. *See* 19 C.F.R. § 351.225(d).

Conversely, where the descriptions of the merchandise are *not* dispositive, the Department will consider the five additional factors set forth at 19 C.F.R. § 351.225(k)(2). These criteria are: i) the physical characteristics of the merchandise; ii) the expectations of the ultimate purchasers; iii) the ultimate use of the product; iv) the channels of trade in which the product is sold; and v) the manner in which the product is advertised and displayed. The determination as to which analytical framework is most appropriate in any given scope inquiry is made on a case-by-case basis after consideration of all evidence before the Department.

In the instant case, the Department has evaluated Watson's request in accordance with 19 C.F.R. § 351.225(k)(1), and the Department finds that the descriptions of the product contained in the petition, the final determinations of the Secretary (including prior scope determinations) and the Commission, the initial investigation, and the antidumping duty order are, in fact, dispositive. Therefore, the Department finds it unnecessary to consider the additional factors set forth at 19 C.F.R. § 351.225(k)(2).

Documents and parts thereof from the underlying investigation deemed relevant by the Department to this scope ruling were made part of the record of this determination and are referenced herein. Documents that were not presented to the Department, or placed by it on the record, do not constitute part of the administrative record for this scope determination.

In its petition of July 1, 1994, the petitioners requested that the investigation cover:

[a]ll glycine (as described in the Harmonized Tariff Schedule of the United States (HTSUS) under heading 2922.49.40.20) from the People's Republic of China. Glycine is a free-flowing crystalline material, like salt or sugar. Its chemical composition is $C_2H_5NO_2$ — 2 parts carbon, 5 parts hydrogen, 1 part nitrogen, and 2 parts oxygen. Glycine is produced at varying levels of purity, as described below. This petition covers glycine of all purity levels (Antidumping Petition, July 1, 1994, 2-3).

Based on the petition and after its own analysis, the Department defined the scope of the investigation in its notice of initiation. This scope language carried forward without change through the preliminary and final determinations of sales at less than fair value and the eventual antidumping duty order:

The product covered by this proceeding 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. Glycine is currently classified under subheading 2922.49.4020 of the Harmonized Tariff Schedule of the United States (HTSUS). This proceeding includes glycine of all purity levels (emphasis added). (*Glycine from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 59 FR 38435 (July 28, 1994); see also *Preliminary Determination of Sales at Less Than Fair Value*, 59 FR 59211 (November 16, 1994), *Final Determination*, 60 FR 5620 (January 30, 1995), and *Antidumping Duty Order: Glycine from the People's Republic of China* 60 FR 16116 (March 29, 1995)).

The Commission adopted a similar definition of the "like product" subject to its determinations (*Determinations of the Commission (Final)*, USITC Publication 2863, March 1995, at 2, note 2, I-6, and II-4 (Commission Determination)). Thus, all forms of the domestically produced merchandise constitute a single like product.

Watson's Scope Request

Watson argues that it was originally informed by its Korean supplier, Samin Chemical Co. (Samin), that the glycine subject to this inquiry was Korean in origin. Only after the merchandise was purchased by Watson and entered into the United States did Watson become aware that Samin had merely refined a lower grade of glycine from the PRC and reexported it to the United States. In its request, Watson submitted documentation demonstrating the above chain of events. Watson contends that since it was misinformed by Samin, it should not be liable for the antidumping duties, especially since it feels it has no other legal recourse.

Analysis

With respect to the instant request, we find that for the reasons outlined below, the glycine imported by Watson falls within the scope of the Order.

When determining whether or not a particular product is within the scope of an antidumping duty order, the Department must consider, above all else, the physical description and physical characteristics of the merchandise. The glycine imported by Watson originated in China, was refined to a higher grade in Korea by Samin, and then reexported to the United States. The scope of the Order clearly includes glycine of all purity levels. The glycine, as exported from China, was covered by the scope of the Order. When the lower grade glycine left the PRC, it was covered by the scope of the Order because it was manufactured/produced in the PRC. When the glycine was refined in Korea, it was still subject to the Order because it was manufactured/produced in the PRC. Further, after refinement, the glycine was still subject to the Order because, although the purity level changed in Korea, both the glycine exported from the PRC to Korea and the glycine exported from Korea to the United States are covered by the description of the scope of the Order. Thus, the processing done in Korea did not produce merchandise that was outside the scope of the Order.

We note that the Department examined a similar request involving the antidumping (AD) and countervailing duty (CVD) orders on sulfanilic acid from India. Pursuant to that request, the Department considered whether sodium sulfinilate, refined in Italy from crude sulfanilic acid originating from India and then reexported to the United States, would be within the scope of the AD and CVD orders. The scope of these AD and CVD orders covered all grades of sulfanilic acid, as well as sodium sulfinilate. As in the glycine case, both the ITC and the Department determined that all forms of the domestically produced merchandise constituted a single like product. In its scope determination, the Department noted that, "The chemical reaction that takes place during processing in Italy only changes the grade of the acid. This is not a significant product alteration in the context of the AD and CVD cases. . ." (Recommendation Memorandum— Final Ruling of Scope Request by 3V for Exclusion of Sodium Sulfinilate Processed in Italy from the Scope of the Antidumping and Countervailing Duty Orders on Sulfanilic Acid from India, May 5, 1999, 4-5).

Summary

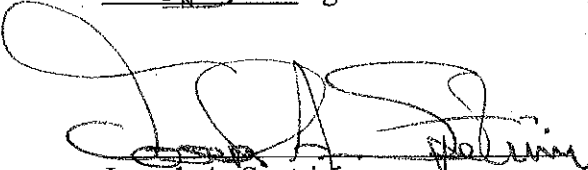
The scope of the Order includes glycine of all purity levels, and the glycine imported by Watson and the subject of this inquiry is within the Order's scope. This conclusion is consistent with the scope of the investigation and the Order, as defined in the petition, as well as the Department's and the Commission's determinations.

Recommendation

Based on the preceding analysis, we recommend that the Department find that the glycine imported by Watson and subject to this inquiry is within the scope of the Order. If you agree, we will send the attached letter to the interested parties, and will notify the U.S. Customs Service of our determination.

 JAS Agree

_____ Disagree


Joseph A. Spetrini
Deputy Assistant Secretary
for Import Administration, Group III

 5-3-02
Date