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Scope Review
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MEMORANDUM FOR: Joseph A. Spetrini
Deputy Assistant Secretary
for AD/CVD Enforcement, Group III

FROM: Edward Yang 7/16/97
Director, Office 9
AD/CVD Enforcement, Group III

SUBJECT: Final Scope Ruling - Antidumping Duty Order on Glycine from the People's Republic of China (PRC); Request by Consolidated Pharmaceutical Group, Inc.

SUMMARY

On March 12, 1997, Consolidated Pharmaceutical Group, Inc. (Consolidated) requested that the Department of Commerce (the Department) issue a scope ruling to establish that D(-)-Phenylglycine Ethyl Dane Salt, imported by Consolidated, is outside the scope of the antidumping duty order on glycine from the PRC.

In accordance with 19 CFR 353.29(b), we recommend that the Department determine that no formal scope inquiry is warranted. Further, in accordance with 19 CFR 353.29(i)(1), we recommend that the Department determine that D(-)-Phenylglycine Ethyl Dane Salt is outside the scope of the antidumping order.

BACKGROUND

The product for which Consolidated requests a scope ruling is D(-)-Phenylglycine Ethyl Dane Salt. D(-)-Phenylglycine Ethyl Dane Salt is an alpha-aminobenzeneacetic acid with a molecular weight of 301.3 and chemical structure of $C_{14}H_{16}O_4NK$ signifiying fourteen parts carbon, sixteen parts hydrogen, one part nitrogen, and one part potassium. D(-)-Phenylglycine Ethyl Dane Salt is used as an intermediate in the synthesis of semi-synthetic penicillins and cephalosporins, such as ampicillin, piperacillin, cefalexin, and cefachlo. According to Consolidated, D(-)-Phenylglycine Ethyl Dane Salt is used exclusively for this purpose by end-users.

In its March 12, 1997 request for a scope ruling, Consolidated argues that the D(-)-Phenylglycine Ethyl Dane Salt falls outside the scope of the antidumping duty order on glycine because of the fundamental physical differences between the two products and because end-users cannot substitute one product for the other. To support its argument, Consolidated cites the descriptions of Glycine's physical characteristics and end uses as found in the scope of the Antidumping Duty Order: Glycine from the People's Republic of China, 60 FR 16116 (March 29, 1995) (Glycine Order), in the Preliminary Determination of Sales at Less than Fair Value: Glycine from the People's Republic of China, 59 FR 59211 (November 16, 1994) (Glycine Preliminary Determination); Notice of Final Determination of Sales at Less than Fair Value: Glycine from the People's Republic of China, 60 FR 5620, (January 30, 1995) (Glycine Final Determination); in the July 1, 1994 Antidumping Petition filed with the Department and the International Trade Commission (ITC) (the Petition), and in the Determination of the Commission in Investigation No. 731-TA-718 (Final) Under the Tariff Act of 1930, Together with the Information Obtained in the Investigation, USITC Publication 2863, March 1995 (ITC Final). Consolidated argues that the scope and product descriptions contained in the above- referenced documents highlight clear distinctions between glycine and D(-)-Phenylglycine Ethyl Dane Salt.

Consolidated maintains that the antidumping duty order and the entire history of the underlying case considered exclusively glycine as defined in HTSUS subheading 2922.49.4020, "Oxygen-function amino-compounds: Amino-acids, and their esters, other than those containing more than one kind of oxygen function; salts thereof: Other: Amino Acids: Glycine (Aminoacetic Acid)." In contrast, D(-)-Phenylglycine Ethyl Dane Salt is classified under HTSUS subheading 2922.49.0500, "Oxygen-function amino-compounds: Amino-acids, and their esters, other than those containing more than one kind of oxygen function; salts thereof: Other: Aromatic (R)- α - Aminobenzeneacetic acid). Consolidated argues that the different HTS subheadings confirms the basic distinctions between these two products which include the different molecular weights, composition, physical structure, and end use. Glycine has a chemical formula of $C_2H_5NO_2$ and a molecular weight of 75.07, while D(-)-Phenylglycine Ethyl Dane Salt has the chemical formula of $C_{14}H_{16}O_4NK$ and a molecular weight of 301.3. Consolidated provided a comparison chart which illustrates the structural differences between glycine and D(-)-Phenylglycine Ethyl Dane Salt. See Request for Scope Clarification Under 19 CFR § 353.39, March 12, 1997; p. 6.

Consolidated argues that D(-)-Phenylglycine Ethyl Dane Salt's sole use as an intermediate in the synthesis in the manufacturing of semi-synthetic penicillins and cephalosporins also serves to differentiate D(-)-Phenylglycine Ethyl Dane Salt from glycine. Furthermore, Consolidated states that end-users of D(-)-Phenylglycine Ethyl Dane Salt

> "cannot use Glycine as a substitute for D(-)-Phenylglycine Ethyl Dane Salt and do not expect to be able to substitute Glycine. Similarly, end-users of Glycine cannot use D(-)-Phenylglycine Ethyl Dane Salt as a substitute for Glycine and do not expect to be able to substitute D(-)-Phenylglycine Ethyl Dane Salt for Glycine."

(Request for Scope Clarification Under 19 CFR § 353.39, p. 7, March 12, 1997).

To further distinguish D(-)-Phenylglycine Ethyl Dane Salt from glycine, Consolidated submitted the results of a chemical analysis of D(-)-Phenylglycine Ethyl Dane Salt performed at the Department of Pharmaceutical Sciences at the University of Maryland at Baltimore. This test used a spectrometer to provide evidence that D(-)-Phenylglycine Ethyl Dane Salt is not an amino glycine. (Request for Scope Clarification Under 19 CFR § 353.39, Attachment 4, March 12, 1997.

In contrast to the end uses of D(-)-Phenylglycine Ethyl Dane Salt, Consolidated cites to the uses of glycine as stated in scope of the antidumping duty order:

> "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."

The Glycine Order at 16116.

Consolidated further cites to the uses of glycine in the ITC Final which states that:

> "[Footnote 10] The principal commercial applications of glycine are as a flavor enhancer in beverages, as a masking agent in mouthwash and pet food, as an active ingredient in antiperspirants, as a buffering agent in pharmaceuticals such as nasal sprays and antacids, and as a metal complexing agent."

The ITC Final at I-6.

Based on the foregoing, Consolidated concludes that, D(-)-Phenylglycine Ethyl Dane Salt is a different product than glycine and, therefore, should be excluded from the scope of the antidumping duty order.

Petitioners in the original less-than-fair-value (LTFV) investigation of glycine from the PRC, Hampshire Chemical Corporation (Hampshire) and Chattem, Inc. Chemicals Divisions (Chattem) did not submit any comments with respect to Consolidated's request for a scope ruling.

ANALYSIS

The regulations governing the Department's antidumping scope determinations can be found at 19 CFR 353.29. On matters concerning the scope of an antidumping duty order, the Department first examines the descriptions of the merchandise contained in the petition, the initial investigation, the determinations of the Secretary and the International Trade Commission (ITC),

and the antidumping duty order. 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 subject to the scope inquiry is covered by the order. See 19 CFR 353.29(b) and (i)(1).

Conversely, where these descriptions of the merchandise are not dispositive, the Department will consider the additional factors set forth at 19 CFR 353.29(i)(2). These criteria, commonly referred to as the Diversified Products criteria, are: i) the physical characteristics of the product; ii) the expectations of the ultimate purchasers; iii) the ultimate use of the product; and iv) the channels of trade. See 19 CFR 353.29(i)(2); see also Diversified Products v. United States, 572 F. Supp. 883 (CIT 1983); Kyowa Gas Chemical v. United States, 582 F. Supp. 887 (CIT 1984); Smith-Corona v. United States, 678 F. Supp. 285 (CIT 1987). The Department applies the Diversified Products criteria when comparison of the merchandise which is subject to a scope inquiry to the product descriptions contained in the petition, the initial investigation, the determinations of the Secretary and the ITC, and the antidumping duty order reveals ambiguity or uncertainty as to its proper class or kind. 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 this case, we have evaluated this request in accordance with 19 CFR 353.29(i)(1) because the descriptions of the subject merchandise contained in the petition, the initial investigation, the determinations of the Secretary and the ITC, and the antidumping duty order are, in fact, dispositive of the issue.

Documents, or parts thereof, from the underlying investigation, deemed relevant to the scope of the order, were made a part of the record of this scope determination, and are referenced herein.

Both the Petition, the Department's determinations, and the scope of the Glycine Order describe the uses for glycine as a sweetener/taste enhancer, a buffering agent, reabsorbable amino acid, chemical intermediate, and a metal complexing agent.

The ITC Final similarly summarizes the uses of glycine:

> "Because of its unique chemical composition, all glycine, regardless of the purity level, has a number of distinctive physical properties, including the following: sweetener/flavor enhancer, masking agent, buffer, preservative, brightening agent, and complexing agent. These qualities make glycine useful in a number of food, pharmaceutical and personal care items."

(ITC Final at p. II-4, II-5)

In its petition of July 1, 1994, Petitioners Hampshire and Chattem requested that the scope of the investigation include:

> "...all glycine (as described in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 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, at page 1-2

In its Final Report, the ITC elaborated on the scope as follows:

> "Glycine, also known as an aminoacetic acid, is an organic chemical that has the chemical formula $C_2H_5NO_2$. It is a nonessential amino acid that occurs naturally in many proteins and is especially abundant in silk fibroin, gelatin, and sugar cane. However, it is synthetically manufactured for commercial purposes. Glycine exists as a sweet tasting, odorless, white, monoclinic crystals that are soluble in water and melt at 232-236 °C. It has a specific gravity of 1.1607. All purity levels of glycine are chemically identical and have the same basic properties. Because of its unique chemical composition, all glycine, regardless of purity level, has a number of distinctive physical properties, including the following: sweetner/flavor enhancer, masking agent, buffer, preservative, brightening agent, and complexing agent."

ITC Final at II-4.

The Department defined the scope of the investigation in its notice of initiation. This scope language was carried forward without change through the preliminary and final LTFV determinations, 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. This proceeding includes glycine of all purity levels."

Initiation of Antidumping Duty Investigation: Glycine from the People's Republic of China, 59 FR 38435 (July 28, 1994); See also, Glycine Preliminary Determination; Glycine Final Determination; and Glycine Order.

With respect to the end uses of glycine, the ITC Final stated that:

> "Because of glycine's chemical structure and range of distinctive physical qualities, there is no other single chemical that can substitute for glycine in all its end uses. Any

chemical that might be considered a substitute for glycine in any given application would require reformulation of the product."

[Footnote 30] "The responses to a question posed in the Commission's questionnaires confirmed this position on substitute products. Of the firms responding to the question, all of the importers and 26 out of 32 purchasers indicated that there are no other viable substitute products for glycine."

ITC Final at page II-7

We have reviewed the arguments made by Consolidated in its March 12, 1997 submission, as discussed in the "Background" section of this memorandum, and we have examined pertinent documents from the investigation of glycine as referenced above. Based on our analysis of the information on the record, we find that D(-)-Phenylglycine Ethyl Dane Salt differs significantly from glycine with respect to its chemical structure, molecular weight, molecular structure and end use. While glycine has a chemical formula of $C_2H_5NO_2$ and a molecular weight of 75.07, D(-)-Phenylglycine Ethyl Dane Salt has the chemical formula of $C_{14}H_{16}O_4NK$ and a molecular weight of 301.3. The molecular structure of D(-)-Phenylglycine Ethyl Dane Salt differs significantly from glycine, as evidenced in the chart contained in Consolidated's March 12, 1997 submission. The findings of the ITC Final, and statements made by Consolidated indicate that glycine has distinctive properties and multiple uses, including, as a sweetener/taste enhancer, masking agent, buffer, preservative, brightening agent, and metal complexing agent. However, D(-)-Phenylglycine Ethyl Dane Salt is only used as an intermediate in the synthesis of semi-synthetic penicillins and cephalosporins. Both sources further indicate that D(-)-Phenylglycine Ethyl Dane Salt and glycine are not suitable substitutes. In addition, a chemical analysis of D(-)-Phenylglycine Ethyl Dane Salt performed at the University of Maryland at Baltimore further distinguishes it from glycine. Therefore, based on our comparison of the description of D(-)-Phenylglycine Ethyl Dane Salt presented by Consolidated, with the description of glycine in the documents referenced above, we determine that D(-)-Phenylglycine Ethyl Dane Salt outside the scope of the order on glycine from the PRC.

RECOMMENDATION

Because the product description provides a sufficient basis for making a determination and the issue can be resolved by reference to the descriptions of the product contained in the petition, the initial investigation, the determinations of the Secretary and the ITC, and the antidumping duty order, we recommend that no formal inquiry is warranted. Based on the analysis above, we

further recommend that the Department find that D(-)-Phenylglycine Ethyl Dane Salt is outside the scope of the antidumping duty order on glycine from the PRC.

_____ Agree_____ Disagree

If you agree, we will send a letter enclosing this memorandum to the interested parties, and will notify the U.S. Customs Service of our determination.

Joseph A. Spetrini
Deputy Assistant Secretary
for AD/CVD Enforcement, Group III

7/23/97
(Date)