

will not order the liquidation of entries of pure magnesium from Canada exported by NHCI on or after August 1, 2000, at this time.<sup>1</sup> Liquidation will occur following the final judgement in the NAFTA panel appeals process.

#### Cash Deposit Requirements

The following antidumping duty deposits will be required on all shipments of pure magnesium from Canada entered, or withdrawn from warehouse, for consumption, on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) No cash deposit rate will be required for NHCI because its weighted-average margin is *de minimis*, (i.e., less than 0.5 percent); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value investigation or a previous review, the cash deposit rate will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 21 percent, the "all others" rate established in the less than fair value investigation. *See Pure Magnesium from Canada; Amendment of Final Determination of Sales At Less Than Fair Value and Order in Accordance With Decision on Remand*, 58 FR 62643 (November 29, 1993).

#### Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

<sup>1</sup> See January 28, 2003, letter from the Department granting NHCI's October 23, 2002, request for the continuation of suspension of liquidation covering all unliquidated entries of subject merchandise exported by NHCI on or after August 1, 2000.

#### Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 30, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

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#### DEPARTMENT OF COMMERCE

##### International Trade Administration

[A-570-825]

#### Sebacic Acid From The People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Partial Recision

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

**SUMMARY:** The Department of Commerce is conducting an administrative review of the antidumping duty order on sebacic acid from The People's Republic of China (PRC) in response to a request by SST Materials, Inc. d/b/a Genesis Chemicals, Inc., a domestic producer of the subject merchandise. The period of review is July 1, 2002, through June 30, 2003. We have preliminarily determined that Guangdong Chemicals Import and Export Corporation (Guangdong) has sold subject merchandise at less than normal value. If these preliminary results are adopted in our final results of administrative review, we will instruct Customs and Border Protection (CBP) to assess antidumping duties on entries subject to this review by these exporters.

**DATES:** *Effective Date:* August 5, 2004.

**FOR FURTHER INFORMATION CONTACT:** John Conniff, AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th

Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-1009.

#### SUPPLEMENTARY INFORMATION:

##### Background

On July 2, 2003, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on sebacic acid from the PRC covering the period July 1, 2002, through June 30, 2003. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 68 FR 50750 (July 2, 2003).

On July 31, 2003, in accordance with 19 CFR 351.213(b)(1), SST Materials, Inc. d/b/a Genesis Chemicals, Inc. (Genesis), a domestic producer of the subject merchandise, requested an administrative review of Tianjin Chemical Import and Export Corporation (Tianjin) and Guangdong.

On August 13, 2003, the Department issued antidumping questionnaires to Guangdong and Tianjin.<sup>1</sup> On August 20, 2003, Guangdong and Tianjin submitted a request that the Department decline to initiate the administrative review, because Genesis did not properly file its request. Specifically, Genesis did not serve its request for an administrative review on either Guangdong or Tianjin. On August 22, 2003, we afforded Genesis an opportunity to remedy the deficiencies in its filing. *See* memorandum from Michael Strollo to Louis Apple entitled "Sebacic Acid from The People's Republic of China: Initiation of an Administrative Review," dated August 22, 2003; *see also* memorandum to the file from Patrick Connolly entitled "Sebacic Acid from The People's Republic of China: Service of Request for Administrative Review on Respondents," dated August 25, 2003. On August 22, 2003, we published a notice of initiation of this administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in*

<sup>1</sup> Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under this review that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the factors of production of the merchandise under investigation. Section E requests information on further manufacturing.

Part, 68 FR 50750 (Aug. 22, 2003). On August 26, 2003, Genesis submitted a letter to the Department certifying that it had remedied the procedural deficiencies in its original filing.

We received timely responses from Guangdong to sections A, C, and D of the initial antidumping questionnaire and associated supplemental questionnaires, and we received a timely certification from Tianjin that all of its exports of sebacic acid were manufactured by Hungshui Dongfeng Chemical Co. (Hengshui), and thus were excluded from the antidumping duty order. For further information, see the *Tianjin/Hengshui: Partial Recision of Review* section below.

On March 15, 2004, the Department extended the time period for the preliminary results in this review. See *Sebacic Acid from The People's Republic of China: Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative Review*, 69 FR 12127 (Mar. 15, 2004).

#### **Tianjin/Hengshui: Partial Recision of Review**

The Department previously revoked, in part, the antidumping duty order on sebacic acid from The PRC, with respect to Tianjin's sales of subject merchandise produced by Hengshui. See *Sebacic Acid From The People's Republic of China: Final Results of Antidumping Duty Administrative Review and Determination To Revoke Order in Part (Sebacic Acid Sixth Review Final)*, 67 FR 69719, 69720 (Nov. 19, 2002). As noted above, on August 13, 2003, the Department issued an antidumping questionnaire to Tianjin, and on September 29, 2003, Tianjin submitted a certification that all of its exports of sebacic acid were manufactured by Hengshui, and thus were excluded from the antidumping duty order. Therefore, in accordance with 19 CFR 351.213(d)(3) and consistent with our practice, we are rescinding this review of the antidumping duty order on sebacic acid from the PRC for the period of July 1, 2002, through June 30, 2003 with respect to subject merchandise exported to the United States by Tianjin.

On February 10, 2004, Genesis alleged that, subsequent to the revocation of the order, Tianjin resumed dumping sebacic acid in the United States with respect to its U.S. sales of sebacic acid produced by Hengshui. Accordingly, Genesis requested that the Department reinstate the antidumping duty order on exports of this merchandise. On February 17, 2004, Tianjin submitted a letter to the Department in which it argued that Genesis' request should be rejected because: (1) it is outside the scope of the

2002–2003 administrative review; and (2) it was untimely filed in that segment of the proceeding. Tianjin argued that Genesis' allegation should instead be considered in the context of a changed circumstances review, pursuant to 19 CFR 351.216.

On June 25, 2004, the Department initiated a changed circumstances review of the antidumping duty order on sebacic acid from the PRC to consider whether the Department should reinstate the order with respect to subject merchandise produced by Hengshui and exported to the United States by Tianjin. See *Sebacic Acid From The People's Republic of China: Notice of Initiation of Changed Circumstances Review*, 69 FR 39906 (July 1, 2004) (*Sebacic CCR Initiation*). Accordingly, this issue will not be addressed in this administrative review.

#### **Scope of Review**

The products covered by this order are all grades of sebacic acid, a dicarboxylic acid with the formula  $(CH_2)_8(COOH)_2$ , which include but are not limited to CP Grade (500ppm maximum ash, 25 maximum APHA color), Purified Grade (1000ppm maximum ash, 50 maximum APHA color), and Nylon Grade (500ppm maximum ash, 70 maximum ICV color). The principal difference between the grades is the quantity of ash and color. Sebacic acid contains a minimum of 85 percent dibasic acids of which the predominant species is the  $C_{10}$  dibasic acid. Sebacic acid is sold generally as a free-flowing powder/flake. Sebacic acid has numerous industrial uses, including the production of nylon 6/10 (a polymer used for paintbrush and toothbrush bristles and paper machine felts), plasticizers, esters, automotive coolants, polyamides, polyester castings and films, inks and adhesives, lubricants, and polyurethane castings and coatings. Sebacic acid is currently classifiable under subheading 2917.13.00.30 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

#### **Separate Rates**

It is the Department's policy to assign all exporters of the merchandise subject to review in non-market-economy (NME) countries a single rate, unless an exporter can demonstrate an absence of government control, both in law and in fact, with respect to its exports to the United States. To establish whether an exporter is sufficiently independent of government control to be entitled to a

separate rate, the Department analyzes the exporter in light of the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from The People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from The People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. With respect to evidence of a *de facto* absence of government control, the Department considers the following four factors: (1) Whether the respondent sets its own export prices independently from the government and other exporters; (2) whether the respondent can retain the proceeds from its export sales; (3) whether the respondent has the authority to negotiate and sign contracts; and (4) whether the respondent has autonomy from the government regarding the selection of management. See *Silicon Carbide*, 59 FR at 22587; see also *Sparklers*, 56 FR at 20589.

With respect to Guangdong, in our final results for the most recently completed review period (*i.e.*, July 1, 2000, through June 30, 2001), the Department determined there was both *de jure* and *de facto* absence of government control of this company's export activities and determined that it warranted a company-specific dumping margin. See *Sebacic Acid Sixth Review Final*, 67 FR 69719. For this review, Guangdong has responded to the Department's request for information regarding separate rates. We have found that the evidence on the record is consistent with the final results in the *Sebacic Acid Sixth Review Final* and continues to demonstrate an absence of both *de jure* and *de facto* government control with respect to its exports in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*.

#### **Export Price**

We calculated export price (EP) in accordance with section 772(a) of the Tariff Act of 1930, as amended (the Act) because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and constructed export

price methodology was not otherwise warranted. As appropriate, we calculated EP based on packed, free-on-board, PRC-port prices to unaffiliated purchasers in the United States. We deducted from the starting price amounts for foreign inland truck freight and foreign brokerage and handling. As these movement services were provided by NME suppliers, we valued them using surrogate values from Indian suppliers. For further discussion of our use of surrogate data in an NME proceeding, as well as the selection of India as the appropriate surrogate country, see the "Normal Value" section of this notice, below.

For foreign inland freight, we obtained publicly-available information which was published in the October 2002 through March 2003 editions of *Chemical Weekly*. For foreign brokerage and handling expenses, we used a publicly summarized version of the average value for brokerage and handling expenses reported in *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from India*, 67 FR 50406 (Oct. 3, 2001), and used in the 2000–2001 administrative review of freshwater crawfish tail meat from the PRC. See the memorandum to the file from Mathew Renkey and Adina Teodorescu dated September 30, 2002, and entitled "Administrative Review of Freshwater Crawfish Tail Meat from The People's Republic of China: Factor Values Memorandum," the relevant portion of which we have placed on the record of this review, and which is on file in the Central Records Unit (CRU), Room B–099 of the main Commerce building. We inflated the per kilogram price (in rupees) to the POR using wholesale price index (WPI) data from the International Monetary Fund (IMF). For further discussion, see the memorandum to the file from Gregory Kalbaugh entitled "Preliminary Valuation of Factors of Production for the Preliminary Results of the 2002–2003 Administrative Review of Sebacic Acid from The People's Republic of China," dated July 30, 2004 (*FOP Memo*), which is on the record of this review and is on file in the CRU.

## Normal Value

### A. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value an NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable

merchandise. See March 9, 2004, Surrogate Country Selection Memorandum from Ronald Lorentzen to Louis Apple entitled "Administrative Review of Sebacic Acid from The People's Republic of China: Surrogate Country Selection," which is on the record of this review and is on file in the CRU.

For purposes of the most recent segment of this proceeding, we found that India is a producer of oxalic acid, a product comparable to sebacic acid. See *Sebacic Sixth Review*. For purposes of the preliminary results, we continue to find that India is a significant producer of oxalic acid. See the July 30, 2004, memorandum to the file from Greg Kalbaugh entitled "Oxalic Acid Production in India During the Period of Review," which is on the record of this review and is on file in the CRU. Accordingly, as India is at a level of economic development comparable to that of the PRC, and a significant producer of a product comparable to the subject merchandise, we find that India fulfills both statutory requirements for use as a surrogate country and have continued to use India as the surrogate country in this administrative review. Accordingly, we have calculated NV using Indian values for the PRC producers' factors of production. We have obtained and relied upon publicly available information wherever possible.

### B. Factors of Production

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to value factors of production. However, the Department's regulations also provide that where a producer purchases an input from a market economy supplier and pays for it in market economy currency, the Department employs the actual price paid for the input to the market economy supplier to calculate the factors-based NV. *Id.*; see also *Lasko Metal Products v. United States*, 43 F. 3d 1442, 1445–1446 (Fed. Cir. 1994).

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by Guangdong for the POR. To calculate NV, the reported per-unit factor quantities were multiplied by publicly available Indian surrogate values. Factors of production include, but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital cost, including depreciation. In examining surrogate values, we selected, where possible, the

publicly available value which was: (1) An average non-export value; (2) representative of a range of prices within the POR or most contemporaneous with the POR; (3) product-specific; and (4) tax-exclusive. For a more detailed explanation of the methodology used in calculating various surrogate values, see the *FOP Memo*.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. Where appropriate, we adjusted surrogate values to reflect inflation up to the POR using the WPI published by the IMF. In accordance with this methodology, we valued the factors of production as follows:

To value caustic soda, cresol, phenol, sulfuric acid, and zinc oxide, we obtained information from the Indian publication *Chemical Weekly*. Where necessary, we adjusted the values reported in *Chemical Weekly* to exclude sales and excise taxes. To value activated carbon, inner polyethylene bags, woven plastic bags, jumbo plastic bags, and bag closing thread, we obtained import prices from the *Government of India's Department of Commerce Import/Export Data* for the period April 2002 through March 2003. To value steam coal, we obtained import prices from the *Monthly Statistics of the Foreign Trade of India (MSFTI)*, and contained in the *World Trade Atlas* for the period April 2002 through March 2003.

Consistent with the methodology employed in *Sebacic Acid Sixth Review*, we have determined that fatty acid and glycerine are by-products. Because they are by-products, we subtracted the sales revenue of fatty acid and glycerine, from the estimated production costs of sebacic acid. This treatment of by-products is also consistent with generally accepted accounting principles. See *Cost Accounting: A Managerial Emphasis* (1991) at pages 539–544. To value fatty acid, we used data published in *Government of India's Department of Commerce Import/Export Data*. To value glycerine, we used data published in *Chemical Weekly*.

We also allocated a by-product credit for glycerine to the production cost for the co-product capryl alcohol. We deducted a by-product credit for glycerine from sebacic acid based on the ratio of the value of sebacic acid to the total value of both sebacic acid and capryl alcohol.

Consistent with the methodology employed in the previous administrative review, we have determined that capryl alcohol is a co-product and have allocated the factor inputs based on the relative surrogate

values for this product and sebacic acid. *See Sebacic Acid Sixth Review.* Additionally, we have used the production times necessary to complete each production stage of sebacic acid as a basis for allocating the amount of labor, energy usage, and factory overhead among the co-product(s). This treatment of co-products is consistent with generally accepted accounting principles. *See Cost Accounting: A Managerial Emphasis* (1991) at pages 528–533. To value capryl alcohol, we used data published in *Government of India's Department of Commerce Import/Export Data.*

To value electricity, we used data from the *International Energy Agency's Key World Energy Statistics 2003* report. For further discussion, see the *FOP Memo.*

We made adjustments to account for freight costs between the suppliers and the respective manufacturing facilities for each of the factors of production identified above. In accordance with our practice, for inputs for which we used cost-insurance-freight import values from India, we calculated a surrogate freight cost using the shorter of the reported distances either from the closest PRC ocean port to the factory or from the domestic supplier to the factory. *See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From The People's Republic of China*, 62 FR 61964, 61977 (Nov. 20, 1997); see also *Sigma Corp. v. United States*, 117 F.3d 1401, 1407–1408 (Fed. Cir. 1997).

For truck freight, we obtained publicly-available information which was published in the October 2002 through March 2003 editions of *Chemical Weekly*. *See the FOP Memo.* To value rail freight, we relied upon price quotes obtained from Indian rail freight companies in November 1999. These quotes were used in the investigation of bulk aspirin from the PRC and the 1999–2000 administrative review of tapered roller bearings from the PRC. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Bulk Aspirin From The People's Republic of China*, 65 FR 116, 119 (Jan. 3, 2000); and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From The People's Republic of China: Preliminary Results of 1999–2000 Administrative Review, Partial Rescission of Review, and Notice of Intent Not To Revoke Order in Part*, 66 FR 35937, 35941 (July 10, 2001). We averaged these quotes, then inflated this average to the POR using the WPI data published by IMF.

We valued labor based on a regression-based wage rate, in

accordance with 19 CFR 351.408(c)(3). This information is available on the Department's Web site at <http://www.ia.ita.doc.gov/wages/01wages/01wages.html>.

To value factory overhead, selling, general, and administrative expenses, and profit, we obtained data from the *Reserve Bank of India Bulletin*.

#### Preliminary Results of Review

We preliminarily determine that the following margin exists for the period July 1, 2002, through June 30, 2003:

Manufacturer/exporter	Margin (percent)
Guangdong Import and Export Corporation .....	1.73

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. Interested parties may request a hearing within 30 days of the publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such written briefs, within 120 days of the publication of these preliminary results.

The Department will determine and CBP shall assess antidumping duties on all appropriate entries. The Department will issue appropriate appraisal instructions directly to CBP upon completion of this review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties.

For assessment purposes, we do not have the information to calculate an estimated entered value. Accordingly, we have calculated importer-specific duty assessment rates for the merchandise by aggregating the dumping margins calculated for all U.S. sales and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific *ad valorem* ratios based on the EPs.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Guangdong will be that established in the final results of this administrative review; (2) for a company covered by the antidumping duty order, previously found to be entitled to a separate rate and for which no review was requested, the cash deposit rate will be the rate established in the most recent review of that company; (3) the cash deposit rate for all other PRC exporters (*i.e.*, all other exports except those of sebacic acid produced by Hengshui and exported by Tianjin) will be 243.40 percent, the PRC-wide rate established in the LTFV investigation; (4) the cash deposit rate for a non-PRC exporter of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter; and (5) as we have revoked the order, in part, with respect to sebacic acid produced by Hengshui and exported by Tianjin, no cash deposit is required for such merchandise. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

#### Notification of Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: July 29, 2004.

**Jeffrey A. May,**

*Acting Assistant Secretary for Import Administration.*

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