

merchandise sold to that importer during the POR. Upon completion of this review, we will direct CBP to assess antidumping duties on a per kilogram basis equivalent to the company-specific dumping margin established in this review for each entry of subject merchandise made by the importer during the POR that was produced by Jiangxi Quanfu and exported by Shanghai Ocean Flavor during the POR. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of review.

#### Schedule for Final Results of Review

Pursuant to 19 CFR 351.224(b), the Department will disclose calculations performed in connection with the preliminary results of this review within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication of this notice in accordance with section 351.310(c) of the Department's regulations. Any hearing would normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Requests for a public hearing should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 351.309(c)(ii) of the Department's regulations. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed. If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the

time, date, and place of the hearing 48 hours before the scheduled time.

Unless the time limit is extended, the Department will issue the final results of this new shipper review no later than 90 days after the signature date of the preliminary results. The final results will include the analysis of issues raised in the briefs.

#### Notification to Importers

At the completion of this new shipper review, the Department will notify the CBP that bonding will no longer be permitted to fulfill security requirements for shipments exported by Shanghai Ocean Flavor and produced by Jiangxi Quanfu of freshwater crawfish tail meat from the PRC that are entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of the final results in the **Federal Register**, and that a cash deposit should be collected for any entries exported by Shanghai Ocean Flavor.

This notice also serves as a preliminary reminder to importers of their responsibility under 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. 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 new shipper review and this notice are published in accordance with sections 751(a)(2)(B) and 777 (I)(1) of the Act.

Dated: February 24, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 04-4614 Filed 3-1-04; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**A-570-836**

#### Notice of Preliminary Results of Antidumping Duty New Shipper Review: Glycine from the People's Republic of China

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

**SUMMARY:** The Department of Commerce (the Department) is conducting a new shipper review (NSR) of the antidumping duty order on glycine from

the People's Republic of China (PRC) in response to a request from Hebei New Donghua Amino Acid Co. Ltd. (New Donghua). The period of review (POR) is March 1, 2002, through February 28, 2003. The preliminary results are listed below in the "Preliminary Results of Review" section. Interested parties are invited to comment on these preliminary results. (See the "Preliminary Results of Review" section of this notice.)

**EFFECTIVE DATE:** March 2, 2004.

#### FOR FURTHER INFORMATION CONTACT:

Christian Hughes or Matthew Renkey, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0190 or (202) 482-2312, respectively.

#### Background

On March 29, 1995, the Department published in the **Federal Register** an antidumping duty order on glycine from the PRC. See *Antidumping Duty Order: Glycine from the People's Republic of China*, 60 FR 16116 (March 29, 1995). In accordance with section 351.214(b) of the Department's regulations, on March 26, 2003, the Department received a timely request for a new shipper review from New Donghua. On May 6, 2003, the Department published its initiation of this new shipper review for the period March 1, 2002, through February 28, 2003. See *Glycine from the People's Republic of China: Initiation of Antidumping New Shipper Review*, 68 FR 23962.

On May 20, 2003, we issued a questionnaire to New Donghua. On July 10, 2003, New Donghua submitted copies of the Chinese laws and regulations that apply to the export activities of New Donghua. On July 10, 2003, we received New Donghua's response to Sections A, C, and D of the Department's questionnaire.

Due to the complex nature of the case, on November 4, 2003, the Department decided to extend the time limit for the completion of the preliminary results to 300 days after the date of initiation, in accordance with section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), and section 351.214(i)(2) of the Department's regulations. See *Glycine from the People's Republic of China: Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty New Shipper Review*, 68 FR 62430 (November 4, 2003). On November 26, 2003, we issued a supplemental questionnaire to New Donghua. We received the response to

the supplemental questionnaire on December 19, 2003. On December 31, 2003, the Department sent New Donghua a second supplemental questionnaire and released the verification outline. On January 7, 2004, we received New Donghua's second supplemental response. On February 5, 2004, we sent New Donghua a third supplemental questionnaire, which included a request for information from New Donghua's U.S. importer. We received the response to the supplemental questionnaire on February 12, 2004. We have not had sufficient time to consider this response for purposes of these preliminary results; however, we will evaluate the information contained therein for the purposes of the final results of this new shipper review.

#### **SUPPLEMENTARY INFORMATION:**

##### **Scope of the Antidumping Duty Order**

The product covered by this antidumping duty 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. Glycine is currently classified under subheading 2922.49.4020 of the Harmonized Tariff Schedule of the United States (HTSUS). This order covers glycine of all purity levels.

##### **Verification**

As provided in section 782(i) of the Act, we conducted verification of the questionnaire responses of New Donghua. We used standard verification procedures, including on-site inspection of the production and sales facilities, and an examination of relevant sales and financial records. Our verification results are outlined in the *New Shipper Review of Glycine from the People's Republic of China: Sales and Factors Verification Report for Hebei New Donghua Amino Acid Co., Ltd.*, dated February 23, 2004. A public version of this report is on file in the Central Records Unit located in room B-099 of the Main Commerce Building. At verification, certain information on related companies was presented to the Department for the first time. While we have not been able to fully analyze this information for purposes of the preliminary results, we intend to fully examine this information for the final results.

##### **Application of Facts Available**

At verification, New Donghua reported, for the first time, that, in

addition to producing its own industrial grade glycine, it also purchased industrial grade glycine from one of its related companies. Company officials provided the total amount of industrial grade glycine purchased from its related company during the POR. However, this information was not reported in New Donghua's original response to the Department's questionnaire, nor in any subsequent supplemental questionnaire response. Thus, New Donghua's responses were incomplete because it failed throughout to report the factors of production for the factory from which New Donghua purchased the industrial grade glycine.

Sections 776(a)(2)(A) and 776(a)(2)(B) of the Act provide for the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. New Donghua failed to provide accurate and complete factor values for the POR in a timely manner.

Section 782(c)(1) of the Act provides that if an interested party "promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner," the Department may modify the requirements to avoid imposing an unreasonable burden on that party. Throughout the course of this review, New Donghua had several opportunities to correct the reported data. However, at no time, prior to the verification, did New Donghua notify the Department that it had any difficulty in obtaining accurate and complete factors of production (FOP) information for the relevant POR. At no point during the review did New Donghua seek guidance on alternative reporting requirements, or propose an alternate form for submitting the required data, as contemplated in section 782(c)(1) of the Act.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate. In its original

questionnaire, the Department asked New Donghua to provide production and FOP data for the POR. Prior to the verification, the Department had no means of determining whether the FOP data submitted by New Donghua was complete, and therefore could not inform the respondent that its response was deficient. On the other hand, New Donghua could have acquired the necessary FOP information for the industrial grade glycine it purchased. In addition, New Donghua had ample opportunities to report that it purchased industrial grade glycine and, in doing so, New Donghua could have reported complete FOP data for industrial grade glycine prior to verification. However, New Donghua did not report this information.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties. From the time it received the original questionnaire until verification, New Donghua had ample time to submit accurate and complete FOP information for glycine. However, New Donghua never reported, at any point in the proceeding, that it had purchased industrial grade glycine from one of its related companies and, consequently, failed to report a complete and accurate FOP data for its glycine.

New Donghua did not act to the best of its ability to comply and report all necessary data in response to the Department's requests for information; New Donghua should have been able to report complete and accurate FOP data. New Donghua's failure to provide essential information, namely, complete and accurate FOP data for industrial grade glycine it purchased, hindered the Department's ability to accurately calculate a dumping margin. Thus, the information that New Donghua reported for its FOP data for industrial grade glycine is incomplete. At no time did New Donghua report that it purchased industrial grade glycine or report that it had trouble obtaining or submitting a complete and accurate FOP data.

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may use an inference that is adverse to the interests of the respondent, if it determines that

a party has failed to cooperate to the best of its ability. In applying the facts otherwise available, the Department finds that an adverse inference is warranted, pursuant to section 776(b) of the Act, because the Department has determined that New Donghua has failed to cooperate to the best of its ability. New Donghua did not report significant data regarding its FOP. Furthermore, the Department issued, in all, three supplemental requests for information to New Donghua, which required New Donghua to examine the information it had submitted to the Department. Nevertheless, on none of these three occasions did New Donghua ever report that it purchased industrial grade glycine or revise its FOP data to reflect the FOP of this purchased industrial grade glycine, nor did it indicate that it had not included this information. We therefore determine that New Donghua did not cooperate to the best of its ability within the meaning of 776(b) of the Act, and the application of adverse facts available is warranted.

Although the failure to report that it purchased industrial grade glycine and its failure to report a complete and accurate FOP data for industrial grade glycine purchased warrants the application of adverse facts available, we do not find that the application of total adverse facts available is appropriate since New Donghua responded to the Department's questionnaires; New Donghua allowed for verification; its reported sales information was verified; and the FOP for glycine produced in its own factory were verified. *See New Donghua Verification Report*. As such, the Department has determined that partial adverse facts available should be applied to account for New Donghua not reporting that it purchased industrial grade glycine from a related company nor reporting complete and accurate FOP data for purchased industrial grade glycine.

As partial adverse facts available, we are applying the highest monthly factor usage rates that were reported by New Donghua, and multiplying those by their corresponding surrogate values. In addition, for those factors for which we used Indian import statistics from the *World Trade Atlas* as surrogate values, we are using the highest non-aberrational monthly data from the POR. For monochloroacetic acid, we used the highest reported price during the POR from *Chemical Weekly*. These measures are applied to the production of industrial grade glycine. For further details, see the memorandum entitled "Analysis for the Preliminary Results of the New Shipper Review of Glycine

from the People's Republic of China: Hebei New Donghua Amino Acid Co., Ltd. (New Donghua)," dated February 24, 2004.

#### Separate Rates

The Department has treated the PRC as a non-market-economy (NME) country in all past antidumping investigations (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 33805 (May 25, 2000), and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China*, 65 FR 19873 (April 13, 2000)), and in prior segments of this proceeding. A designation as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate.

It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be eligible for a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test 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 the *Notice of 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*).

Under this policy, exporters in NME countries are eligible for separate, company-specific margins when they can demonstrate an absence of government control, in law and in fact, with respect to export activities. 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. *De facto* absence of government control over exports is based on four factors: 1) whether each exporter sets its own

export prices independently of the government and without the approval of a government authority; 2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; 3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and 4) whether each exporter has autonomy from the government regarding the selection of management.

#### De Jure Control

With respect to the absence of *de jure* government control over the export activities of the company reviewed, evidence on the record supports the claim made by New Donghua that its export activities are not controlled by the government. New Donghua submitted evidence of its legal right to set prices independently of all government oversight. The business license of New Donghua indicates that the company is permitted to engage in the exportation of glycine. We found no evidence of *de jure* government control restricting this company's exportation of glycine.

There are no export quotas that apply to glycine. *The Administrative Regulations of the People's Republic of China for Controlling the Registration of Enterprises as Legal Persons (Legal Persons Law)*, issued on June 13, 1988 by the State Administration for Industry and Commerce of the PRC, the *Company Law of the People's Republic of China (Company Law)*, adopted by the National People's Congress, promulgated by the President on December 29, 1993 and effective on July 1, 1994, and the *Foreign Trade Law of the People's Republic of China (Foreign Trade Law)*, adopted by the National People's Congress, promulgated by the President on May 12, 1994 and effective on July 1, 1994, provided in the record of this review, all indicate a lack of *de jure* government control over privately-owned companies, such as New Donghua. They demonstrate that control over the company rests with the enterprise itself. The *Legal Persons Law*, *Company Law*, and *Foreign Trade Law* provide that, to qualify as legal entities, companies must have the "ability to bear civil liability independently" and the right to control and manage their businesses. These laws also state that, as an independent legal entity, a company is responsible for its own profits and losses. *See Notice of Final Determination of Sales at Less Than Fair Value; Manganese Metal from the People's Republic of China*, 60 FR 56045 (November 6, 1995) (*Manganese Metal*).

At verification, company officials provided New Donghua's business license and they demonstrated that it was granted in accordance with these laws. See *New Donghua Verification Report* at 4. Compliance with these laws supports a finding of *de jure* absence of central control. Therefore, we preliminarily determine that there is an absence of *de jure* control with respect to New Donghua.

#### De Facto Control

With respect to the absence of *de facto* control over export activities, the information submitted on the record and reviewed at verification indicates that the management of New Donghua is responsible for the determination of export prices, profit distribution, marketing strategy, and contract negotiations. Our analysis indicates that there is no government involvement in the daily operations or the selection of management for this company. In addition, we have found that the respondent's pricing and export strategy decisions are not subject to the review or approval of any outside entity, and that there are no governmental policy directives that affect these decisions.

There are no restrictions on the use of export earnings. The general manager of New Donghua has the authority to negotiate, set prices and enter into contracts, and may delegate this authority to employees within the company.<sup>1</sup> There is no evidence that this authority is subject to any level of governmental approval. New Donghua stated that its management is selected by the shareholders and there is no government involvement in the selection process. Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over the company's activities, we preliminarily determine that a separate rate should be applied to New Donghua.

#### Normal Value Comparisons

To determine whether the respondent's sale of the subject merchandise to the United States was made at a price below normal value (NV), we compared its United States Price to NV, as described in the "United States Price" and "Normal Value" sections of this notice.

#### United States Price

Based on the information we have gathered to date, we preliminarily find New Donghua's sale to be *bona fide*. However, we will continue to analyze this issue for purposes of the final

results of review. For a discussion of our analysis see Memorandum to the File through Maureen Flannery from Matthew Renkey entitled *Bona Fide Nature of the Sale in the New Shipper Review of Hebei New Donghua Amino Acid Co., Ltd.*, dated February 24, 2004. A public version of this memo is on file in the Central Records Unit located in room B-099 of the Main Commerce Building.

We based the United States price on export price (EP), in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation, and constructed export price (CEP) was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the first unaffiliated purchaser in the United States. We deducted foreign inland freight expenses from the starting price (gross unit price) in accordance with section 772(c) of the Act.

#### Normal Value

##### 1. Surrogate Country

When investigating imports from an NME country, section 773(c)(1) of the Act directs the Department to base normal value, in most circumstances, on the NME producer's factors of production valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall use, to the extent practicable, the prices or costs of factors of production in one or more market-economy countries that are at a level of economic development comparable to the NME country and are significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the "Factor Valuations" section below.

We calculated normal value based on factors of production in accordance with section 773(c)(4) of the Act and section 351.408(c) of our regulations. Consistent with the original

investigation of this order, we determined that India (1) is comparable to the PRC in level of economic development, and (2) is a significant producer of comparable merchandise.<sup>2</sup>

##### 2. Factors of Production

Section 773(c)(1) of the Act provides that the Department shall determine NV

using a factors-of-production methodology if (1) the merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Factors of production include the following elements: (1) hours of labor required, (2) quantities of raw materials employed, (3) amounts of energy and other utilities consumed, and (4) representative capital costs. We valued all the input factors using publicly available information.

In accordance with section 351.301(c)(3)(ii) of the Department's regulations, for the final results of an administrative review and a new shipper review, interested parties may submit publicly available information to value the factors of production no later than 20 days following the date of publication of these preliminary results.

#### 3. Factor Valuations

As discussed above, we are applying partial adverse facts available to determine factor values and FOP for industrial grade glycine production. For the FOP, we used the highest monthly factor usage reported by New Donghua. We applied surrogate values to the FOP to determine NV, and where the information was available, we used the highest non-aberrational surrogate value identified during the POR. We valued the factors of production as follows:

#### Materials and Energy

To value chloroacetic acid (also known as monochloroacetic acid), we used the highest price concurrent with the POR as reported in *Chemical Weekly*. To value liquid ammonia, formaldehyde, and methanol, we used the highest non-aberrational monthly import value derived from Indian import statistics in the *World Trade Atlas* for the period March 2002 through February 2003. To value activated carbon and hydrogen peroxide, we used the weighted-average unit import value derived from Indian import statistics in the *World Trade Atlas* for the period March 2002 through February 2003. To value electricity, we used the total cost per kilowatt hr (KWH) for "Electricity for Industry" as reported in the International Energy Agency's publication, *Key World Energy Statistics, 2003*. For water, we relied upon public information from the October 1997 *Second Water Utilities Data Book: Asian and Pacific Region*, published by the Asian Development Bank. To value steam, we used a calculated per metric ton value for low-

<sup>1</sup> See *New Donghua Verification Report* at 5.

<sup>2</sup> See *Surrogate Values Used for the Preliminary Results of the Antidumping Duty New Shipper Review of Glycine from the People's Republic of China*, dated February 24, 2004 (*Factor Values Memo*).

pressure steam based on publicly available company data as was used in *Hot-Rolled Steel from the People's Republic of China: Preliminary Determination of Sales at Less than Fair Value*, 66 FR 22183 (May 3, 2001).

To achieve comparability of steam and water prices to the factors reported for the POR, we adjusted these factor values to reflect inflation through the POR using the Wholesale Price Index (WPI) for India, as published in the 2003 *International Financial Statistics (IFS)* by the International Monetary Fund (IMF).

To value packing materials (inner plastic bags, outer woven bags, and nylon thread), we used the weighted-average unit import value derived from Indian import statistics in the *World Trade Atlas* for the period March 2002 through February 2003.

**Labor**

For labor, we used the PRC regression-based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected

NME Countries, revised in September 2003 and updated in February 2004. See <http://www.ia.ita.doc.gov/wages/01wages/01wages.html> Because of the variability of wage rates in countries with similar per capita gross domestic products, section 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. The source of these wage rate data on the Import Administration's web site is the *Yearbook of Labour Statistics 2002*, International Labour Office (Geneva: 2002), Chapter 5B: Wages in Manufacturing.

**Factory Overhead, SG&A, and Profit**

To value factory overhead, selling, general, and administrative expenses (SG&A), and profit, we used financial information from the 2001-2002 financial statement of an Indian pharmaceutical producer, Torrent Pharmaceuticals Limited (Torrent). We applied these rates to the calculated cost of manufacture. See *Factor Values Memo*.

**Transportation Expenses**

To value truck freight expenses, we used Indian freight rates as reported in the February 14, 2000 issue of *The Financial Express* (an Indian business publication), which were used in the antidumping duty investigation of certain circular welded carbon-quality steel pipe from the PRC. See *Notice of Final Determination of Sales at Less than Fair Value: Certain Circular Welded Carbon-Quality Steel Pipe from the People's Republic of China*, 67 FR 36570 (May 24, 2002) (*China Pipe*). We adjusted the rates to reflect inflation through the POR using the WPI for India from the *IFS*.

**Currency Conversion**

We made currency conversions pursuant to section 351.415 of the Department's regulations at the rates certified by the Federal Reserve Bank.

**Preliminary Results of Review**

We preliminarily determine that the following dumping margin exists:

Manufacturer/Exporter	Time Period	Margin
Hebei New Donghua Amino Acid Co., Ltd. ....	3/1/02-2/28/03	8.89%

**Cash Deposit Requirements**

Upon completion of the review, bonding will no longer be permitted. If these preliminary results are not modified in the final results of this review, a cash deposit rate of 8.89 percent will be effective upon publication of the final results of this new shipper review for all shipments of glycine from the PRC produced and exported by New Donghua and entered, or withdrawn from warehouse, for consumption on or after publication date, as provided for by section 751(a)(2)(c) of the Act. This cash deposit rate will only be effective for merchandise that is both produced and exported by New Donghua. If New Donghua exports merchandise produced by any other company, the applicable cash deposit rate will be the PRC-wide rate, which is currently 155.89 percent.

**Assessment Rates**

Upon completion of this new shipper review, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. The Department will issue appraisal instructions directly to CBP upon completion of this review. For assessment purposes, we will calculate importer-specific assessment rates for

glycine from the PRC. We divided the total dumping margins (calculated as the difference between NV and EP) for the importer by the total quantity of subject merchandise sold to that importer during the POR. Upon the completion of this review, we will direct CBP to assess antidumping duties on a per kilogram basis equivalent to the company-specific dumping margin established in this review for each entry of subject merchandise made by New Donghua during the POR. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of review.

**Schedule for Final Results of Review**

Pursuant to section 351.224(b) of the Department's regulations, the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days of the date of publication of this notice. Pursuant to section 351.309 of the Department's regulations, interested parties may submit written comments in response to these preliminary results. Normally, case briefs are to be submitted within 30 days of the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, are to be submitted no later

than five days after the time limit for filing case briefs. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) a statement of the issues, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with section 351.303(f) of the Department's regulations.

Also, pursuant to section 351.310 of the Department's regulations, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. Parties will be notified of the time and location. The Department will issue the final results of this new shipper review, which will include the results of its analysis of issues raised in the briefs, within 90 days from the date of signature of these preliminary results, unless the time limit is extended.

**Notification to Importers**

At the completion of this new shipper review, the Department will notify the CBP that bonding will no longer be permitted to fulfill security requirements for shipments of glycine

from the PRC exported and produced by New Donghua that are entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of the final results in the **Federal Register**, and that a cash deposit should be collected for any entries produced and exported by New Donghua.

This notice also serves as a preliminary reminder to importers of their responsibility under 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. 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 new shipper review and this notice are published in accordance with sections 751(a)(2)(B) and 777 (i)(1) of the Act.

Dated: February 24, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 04-4613 Filed 3-1-04; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 022004D]

#### Endangered and Threatened Wildlife and Plants: Updated Status Review of Eastern North Pacific Southern Resident Killer Whales

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Status review; request for information.

**SUMMARY:** Following receipt of a petition to list of the eastern North Pacific Southern Resident stock of killer whales (*Orcinus orca*) as threatened or endangered under the Endangered Species Act (ESA), NMFS conducted a status review and determined that the petitioned action was not warranted at the time because Southern Resident killer whales did not constitute a species, subspecies, or distinct population segment (DPS) under the ESA. However, a court set aside NMFS' finding and remanded the matter back to NMFS for re-evaluation of whether the Southern Resident killer whales

should be listed under the ESA. NMFS has reconvened a Biological Review Team (BRT) to consider the most recent scientific and commercial information available on Southern Resident killer whales in this re-evaluation. NMFS is requesting that interested parties submit pertinent information to assist NMFS with updating its status review.

**DATES:** Information must be received by May 3, 2004.

**ADDRESSES:** Information on this action should be submitted to Chief, Protected Resources Division, NMFS, 525 NE Oregon Street, Suite 500, Portland, OR 97232. Information may also be submitted electronically by sending an e-mail message to [SRKWstatus.nwr@noaa.gov](mailto:SRKWstatus.nwr@noaa.gov).

**FOR FURTHER INFORMATION CONTACT:** Mr. Garth Griffin, Northwest Regional Office, NMFS, Portland, OR (503) 231-2005, or Dr. Thomas Eagle, Office of Protected Resources, NMFS, Silver Spring, MD (301) 713-2322, ext. 105.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

A list of the references used in this notice and other information related to this stock of killer whales is available on the Internet at: <http://www.nwr.noaa.gov/mmammals/whales/index.html>

##### Background

On May 2, 2001, NMFS received a petition from the Center for Biological Diversity and 11 co-petitioners (CBD, 2001a) to list Southern Resident killer whales as threatened or endangered under the ESA. On August 13, 2001, NMFS provided notice of its determination that the petition presented substantial information that a listing may be warranted and requested information to assist with a status review to determine if Southern Resident killer whales warranted listing under the ESA (66 FR 42499). To assist in the status review, NMFS formed a BRT comprised of scientists from the agency's Alaska, Northwest, and Southwest Fisheries Science Centers. NMFS convened a meeting on September 26, 2001, to gather technical information from co-managers, scientists, and individuals having research or management expertise pertaining to killer whale stocks in the north Pacific Ocean. Additionally, the BRT discussed its preliminary scientific finding with Tribal, State and Canadian co-managers on March 25, 2002. The BRT considered information from the petition, the September and March meetings, and comments submitted in response to NMFS' information request

to prepare a final scientific document on Southern Resident killer whales (NMFS, 2002).

After conducting the status review, NMFS determined that listing Southern Resident killer whales as a threatened or endangered species was not warranted because Southern Resident killer whales did not constitute a species as defined by the ESA. The finding was announced on July 1, 2002 (67 FR 44133), and the notice contained additional information on the finding, including DPS status of Southern Residents under existing killer whale taxonomy and the conclusions of the BRT. The status review and other documents supporting the finding are available on the Internet (see Electronic Access) or from NMFS (see ADDRESSES). Along with the finding, NMFS announced that it would reconsider the taxonomy of killer whales within 4 years.

The scientific information evaluated during the ESA status review indicated that Southern Resident killer whales may be depleted under the Marine Mammal Protection Act (MMPA). NMFS initiated consultation with the Marine Mammal Commission (Commission) in a letter dated June 25, 2002 and published an advance notice of proposed rulemaking (ANPR) on July 1, 2002 (67 FR 44132) to request pertinent information regarding the status of the stock and potential conservation measures that may benefit these whales. After considering comments received in response to the ANPR and from the Commission, NMFS published a proposed rule to designate the Southern Resident stock of killer whales as depleted (68 FR 4747, January 30, 2003) and solicited comments on the proposal. Based on the best scientific information available and consultation with the Commission, NMFS determined that the Southern Resident stock of killer whales was depleted under the MMPA (68 FR 31980, May 29, 2003) and announced its intentions to prepare a Conservation Plan.

On December 18, 2002, the Center for Biological Diversity (and other plaintiffs) initiated a lawsuit in U.S. District Court challenging NMFS' not warranted finding. The U.S. District Court for the Western District of Washington issued an order on December 17, 2003, which set aside NMFS's not warranted finding and remanded the matter back to NMFS for redetermination of whether the Southern Resident killer whales should be listed under the ESA. Pursuant to the court's order, NMFS will make this determination by December 17, 2004.