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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh *cm*
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the
2011-2012 Antidumping Duty Administrative Review of Citric
Acid and Certain Citrate Salts from Canada

Summary

We have analyzed the comments from the interested parties in the 2011-2012 administrative review of the antidumping duty order on citric acid and certain citrate salts (citric acid) from Canada. As a result of this analysis, we have made no changes to the margin calculations from the preliminary results or the margin assigned to Jungbunzlauer Canada, Inc. (JBL Canada). We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this administrative review for which we received comments from parties:

- Comment 1: Price Adjustment of a Business Proprietary Nature for Certain Constructed Export Price (CEP) Sales
- Comment 2: Allocation of U.S. Indirect Selling Expenses (ISEs)
- Comment 3: Calculation of Home Market Indirect Selling Expenses (INDIRSH)

Background

On June 7, 2013, the Department of Commerce (the Department) published the preliminary results of this antidumping duty administrative review.¹ The administrative review covers one producer

¹ See Citric Acid and Certain Citrate Salts from Canada: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 34338 (June 7, 2013) (Preliminary Results), and accompanying Decision Memorandum entitled "Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Citric Acid and Certain Citrate Salts from Canada" (Preliminary Decision Memorandum). The Preliminary Decision Memorandum is herein incorporated by reference.

and exporter of the subject merchandise to the United States, JBL Canada. The period of review (POR) is May 1, 2011, through April 30, 2012.

We invited parties to comment on the preliminary results. We received comments from Archer Daniels Midland Company, Cargill, Incorporated, and Tate & Lyle Ingredients Americas LLC (collectively, the petitioners), and respondent JBL Canada on July 22, 2013, and rebuttal comments from both parties on July 29, 2013.

In July 2013, the petitioners requested that the Department conduct a hearing in this review, but subsequently withdrew that request on August 1, 2013. Thus, no hearing was held.

Scope of the Order

The scope of the order includes all grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. The scope also includes blends of citric acid, sodium citrate, and potassium citrate; as well as blends with other ingredients, such as sugar, where the unblended form(s) of citric acid, sodium citrate, and potassium citrate constitute 40 percent or more, by weight, of the blend. The scope of this order also includes all forms of crude calcium citrate, including dicalcium citrate monohydrate, and tricalcium citrate tetrahydrate, which are intermediate products in the production of citric acid, sodium citrate, and potassium citrate. The scope does not include calcium citrate that satisfies the standards set forth in the United States Pharmacopeia and has been mixed with a functional excipient, such as dextrose or starch, where the excipient constitutes at least 2 percent, by weight, of the product. The scope of this order includes the hydrous and anhydrous forms of citric acid, the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt, and the monohydrate and monopotassium forms of potassium citrate. Sodium citrate also includes both trisodium citrate and monosodium citrate, which are also known as citric acid trisodium salt and citric acid monosodium salt, respectively. Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States (HTSUS), respectively. Potassium citrate and crude calcium citrate are classifiable under 2918.15.5000 and 3824.90.9290 of the HTSUS, respectively. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.90.9290 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Discussion of the Issues

Comment 1: Price Adjustment of a Business Proprietary Nature for Certain CEP Sales

The petitioners disagree with the methodology that the Department used in the Preliminary Results to calculate a per-unit price adjustment for certain sales. JBL Canada argues that the Department should not even make this price adjustment. However, if the Department continues to make the price adjustment in the final results, JBL Canada contends that it should be treated as an indirect selling expense (ISE). JBL Canada does not believe the preliminary calculation methodology is distortive.

Department's Position:

In the final results, we made no change to the methodology used in the preliminary results to calculate the price adjustment for certain CEP sales. Because many of the facts underlying the price adjustment methodology and the interested parties' comments are business proprietary, we addressed the interested parties' arguments in more detail in a separate memorandum entitled "Price Adjustment of a Business Proprietary Nature for Certain Constructed Export Price (CEP) Sales," dated concurrently with this memorandum and herein incorporated by reference.

Comment 2: Allocation of U.S. Indirect Selling Expenses (ISEs)

The petitioners argue that JBL Canada has taken an internally inconsistent and results-oriented approach to allocating ISEs by allocating ISEs incurred by JBL Canada and its parent company, JBL International, among products and markets on the basis of sales values, while allocating the expenses incurred by JBL Inc. using an "activity-based" allocation.² The petitioners believe that the only explanation for such inconsistent methodologies is that the allocations were selected in a results-oriented fashion to reduce the dumping margin.

The petitioners maintain that the Department's normal practice is to allocate ISEs on the basis of relative sales values because a company's expenses associated with sales are correlated with the value of those sales, and JBL Canada provided no reason to conclude that in this case an alternative allocation methodology is appropriate. The petitioners submit that, although the Department reviewed a "call report"³ at verification that "generally supported" the activity-based allocations, there is no reason to conclude that the number of phone calls is the sole determinant of ISEs or reflective of actual ISEs incurred.⁴

The petitioners urge the Department to not depart from its normal value-based allocation methodology and allow JBL Canada to allocate U.S. ISEs on an alternative activity-based method. For purposes of the final results, the petitioners assert that the Department should recalculate JBL Canada's U.S. ISEs after allocating all expenses to sales on a value basis. Finally, the petitioners point to other evidence that they admit is circumstantial to substantiate their arguments that the activity-based method is unreliable.

JBL Canada argues that the record confirms that an activity-based methodology is an appropriate means of allocating its ISEs because it is accurate and based on verified information. JBL Canada explains that it submitted detailed information and supporting documentation which showed the time spent by JBL Inc.'s sales staff on sales of citric acid from Canada, as well as sales of other products. JBL Canada adds that the Department examined monthly regional sales reports, call reports, and logs of sales calls to confirm the accuracy and completeness of the information at

² JBL Inc., a U.S. subsidiary of JBL Canada, operates as a regional sales office of JBL Canada and serves both the U.S. and the Canadian markets.

³ "Call reports" refer to visits to customers, not phone calls as stated by the petitioners.

⁴ See Memorandum to the File re: Verification of the Sales Response of Jungbunzlauer Canada inc. and Jungbunzlauer Inc. in the Antidumping Duty Administrative Review of Citric Acid and Certain citrate Salts from Canada (Verification Report) (April 17, 2013) at 16-17 and Exhibit 39.

verification. Moreover, JBL Canada asserts, the Department has broad discretion to use an alternative ISE allocation methodology if it is reasonable and non-distortive in the Department's view.⁵

JBL Canada states that it relies upon repeat business from longtime customers for its sales of citric acid, one of the company's core commodity products, and points out that this established customer base does not require the same level of sales activity that is necessary for sales of newer products, where customers must be identified and relationships established.

Finally, JBL Canada explains that it did not employ an activity-based allocation for ISEs incurred in Canada for U.S. sales because the Canadian facility produces and sells only citric acid; therefore, all of its selling expenses are related to subject merchandise and no allocation of these expenses was necessary. JBL Canada asserts that the petitioners were wrong to claim that JBL Canada proposed to allocate JBL International's ISEs on the basis of relative sales value, as JBL Canada provided to the Department an activity-based costing method for JBL International in its original questionnaire response. JBL Canada notes that the petitioners refer to a response to the Department's request that JBL Canada provide an alternative methodology for allocating ISEs that did not rely on an activity-based methodology, which the Department did not ultimately use in the Preliminary Results.

Accordingly, JBL Canada argues that the Department should continue to accept the activity-based allocation methodology for U.S. ISEs in the final results because this methodology accurately reflects the sales activities of JBL Inc. with respect to citric acid.

Department's Position:

We disagree with the petitioners and continued to allocate JBL Canada's U.S. ISEs in the same manner as in the Preliminary Results. In calculating U.S. prices based on CEP, the statute directs the Department to deduct "any . . . expenses generally incurred by or for the account of the producer or exporter, or the affiliated seller in the United States, in selling the subject merchandise" ⁶ The Court of International Trade (CIT) has recognized that the statute is "silent as to *how* {the Department} is to calculate those expenses (including indirect selling expenses)." ⁷ Furthermore, the Department's regulations do not require respondents to allocate ISEs based upon relative sales value in every instance. As long as the Department is satisfied that the allocation methodology used is on as specific a basis as is feasible and does not cause inaccuracies or distortions, respondents can use alternative methodologies. ⁸

⁵ See U.S. Steel Corp. v. United States, 712 F. Supp. 2d 1330, 1337 (CIT 2010) (U.S. Steel Corp.).

⁶ See section 772(d) of the Tariff Act of 1930, as amended (the Act).

⁷ See, e.g., U.S. Steel Corp., 712 F. Supp. 2d at 1336 (discussing section 772(d) of the Act).

⁸ See 19 CFR 351.401(g)(2); see also U.S. Steel Corp., 712 F. Supp. 2d at 1337; Notice of Final Determination of Sales at Less Than Fair Value: Citric Acid and Certain Citrate Salts from Canada, 74 FR 16843 (April 13, 2009) and accompanying Issues and Decision Memoranda at Comment 2; Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 61 FR 20216, 20217 (May 6, 1996) at Comment 1.

In this case, we are satisfied, based on verification findings, that the respondent's activity-based allocations are reasonable and are not distortive. Citric acid is a well-established core commodity product that does not require the same level of sales activity as some of JBL Canada's other products.⁹ Therefore, using relative sales value as the allocation basis for U.S. ISEs would likely be less accurate than the activity-based allocation methodology, and may even be distortive because sales value does not correlate with selling activities in this case. Moreover, JBL Inc. was able to substantiate its activity-based allocations with records of its sales activities, kept on a product-specific basis in its normal course of business.¹⁰ As a consequence, we find the record supports using the sales activity reported by JBL Canada as a reasonable determinant for JBL Canada's U.S. ISEs and that the methodology is not results oriented, contrary to the petitioners' claim. Therefore, we have not changed our preliminary results methodology with respect to the calculation of JBL Canada's U.S. ISEs in the final results.

Comment 3: Calculation of Home Market Indirect Selling Expenses (INDIRSH)

The petitioners argue that any ISEs incurred by JBL Inc. in the United States may not be included within the Department's INDIRSH calculation or otherwise deducted from normal value as part of the CEP offset. The petitioners maintain that the statute is clear that, when calculating a CEP offset, "normal value shall be reduced by the amount of {ISEs} incurred in the country in which normal value is determined on sales of the foreign like product. . . ."¹¹ The petitioners assert that the expenses of JBL Inc. were incurred in the United States, not "the country in which normal value is determined" (i.e., Canada). Finally, the petitioners argue that if the Department allows expenses incurred by JBL Inc. in the United States to be included in the CEP offset calculation, then those expenses should be reallocated to sales on a value basis. JBL Canada submits that, in the Preliminary Results as well as in all prior segments of this case, the Department has properly accounted for all of JBL Canada's home market ISEs – including those expenses incurred by JBL Inc., which is the sales office responsible for Canadian sales. JBL Canada explains that because JBL Inc., located in Massachusetts, is the U.S. marketing office of JBL Canada serving both the U.S. and Canadian markets, the selling expenses that it incurs are properly allocated to the markets it serves. Furthermore, JBL Canada asserts that section 773(a)(7)(B) of the Act does not prohibit the Department from deducting expenses that are not incurred in the comparison market but that are related to sales in the comparison market. JBL Canada maintains that, because JBL Inc. functions as the selling office for both U.S. and Canadian sales, such a deduction is both reasonable and necessary for a fair comparison in conformity with the intent of the statute.

Finally, JBL Canada argues that if the Department accepts the petitioners' argument, the result would be an impermissible comparison of sales at different levels of trade (LOTs) in the U.S. market and Canadian market. JBL Canada contends that an export price net of JBL Inc.'s expenses would be at a different LOT than a home market price from which JBL Inc.'s expenses for sales in Canada have not been deducted.

⁹ See Verification Report at 17.

¹⁰ Id.

¹¹ See section 773(a)(7)(B) of the Act.

Department's Position:

We disagree with the petitioners and continued to calculate home market ISEs in the same manner as in the Preliminary Results. In permitting the Department to make certain adjustments to normal value, section 773(a)(7)(B) of the Act states that upon the satisfaction of certain conditions the Department "shall" reduce normal value "by the amount of {ISEs} incurred in the country in which normal value is determined on sales of the foreign like product," so long as that amount does not exceed the amount of a certain deduction permitted by statute. This adjustment to normal value is known as a CEP offset. The statute does not define the phrase "indirect selling expenses."

More generally, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (the SAA) provides guidance on what the Department may regard as an ISE. In particular, the SAA describes ISEs as

expenses which do not meet the criteria of "resulting from and bearing a direct relationship to" the sale of the subject merchandise, do not qualify as assumptions, and are not commissions. Such expenses would be incurred by the seller regardless of whether the particular sales in question are made, *but reasonably may be attributed (at least in part) to such sales.*¹²

The Department's regulations provide further guidance on which ISEs may appropriately be included in the CEP offset calculation. In particular, the relevant regulation defines "indirect selling expenses" for purposes of a CEP offset as "selling expenses, other than direct selling expenses or assumed selling expenses . . . , that the seller would incur regardless of whether particular sales were made, but that reasonably may be attributed, in whole or in part, to such sales."¹³ In calculating the CEP offset, it is the Department's practice to account for all ISEs included in the normal value associated with selling the merchandise at issue, regardless of whether particular sales were made or the location of the company which incurred the expenses.¹⁴

In this case, the respondent's U.S. subsidiary, JBL Inc., functions as the selling arm for both the U.S. and the Canadian markets. As we stated in the verification report, JBL Canada did not employ sales staff during the POR. Its role in the sales process was limited to processing orders and arranging for freight and delivery for all merchandise leaving the factory, except for merchandise delivered to a U.S. warehouse for which JBL Inc. arranged the transportation.¹⁵ Therefore, a portion of JBL Inc.'s ISEs are attributable to Canadian sales, and the respondent was correct to include them in its home market ISE calculation.

¹² See SAA, H.R. Rep. No. 103-316, at 824 (1994) (emphasis added).

¹³ See 19 CFR 351.412(f)(2).

¹⁴ See Citric Acid and Certain Citrate Salts From Canada: Final Results of Antidumping Duty Administrative Review, 76 FR 34044 (June 10, 2011), and Citric Acid and Certain Citrate Salts From Canada: Final Results of Antidumping Duty Administrative Review, 77 FR 24461 (April 24, 2012).

¹⁵ See Verification Report at 5.

We do not find petitioners' arguments persuasive. The petitioners contend that the Department cannot include JBL Inc.'s ISEs in the CEP offset calculation because JBL Inc. incurred these expenses in the United States, not the comparison market of Canada. As an initial matter, the statute is silent as to whether the Department "shall" include ISEs attributable to comparison market sales in its CEP offset calculation if those ISEs are incurred by a company located outside of the comparison market. The statute does not prohibit the Department from including those expenses incurred outside the comparison market if they are attributable to comparison market sales. The Department's regulation, 19 CFR 351.412(f)(2), reasonably fills this statutory gap and explicitly contemplates that the Department "will" include all ISEs attributable to comparison-market sales in its calculation of the CEP offset, regardless of where they are incurred, so long as those expenses do not exceed the cap stated in the statute. The Department interprets this regulation to mean that all ISEs attributable to comparison market sales should be included in the CEP offset calculation, given that the CEP offset, in the absence of sufficient record data to make a LOT adjustment, is designed to ensure that a proper comparison is made by accounting for all ISEs attributable to the comparison market sales, regardless of the location of the company that incurred the expenses. As we explained in the verification report, the expenses at issue plainly are attributable to JBL Canada's home market sales. Thus, we have continued to account for them in our CEP offset calculation.

Finally, for the reasons stated in the Department's Position with respect to Comment 2, we decline to follow the petitioners' request that we reallocate these expenses on a value basis.

Recommendation:

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of the review and the final dumping margin in the Federal Register.

Agree ✓

Disagree _____

Paul Piquado
 Paul Piquado
 Assistant Secretary
 for Enforcement and Compliance

23 OCTOBER 2017

(Date)