UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the 2012-2013 Antidumping Duty Administrative Review of Citric Acid and Certain Citrate Salts from Canada

I. Summary

We have analyzed the comments from the interested parties in the 2012-2013 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 changes to the margin calculations from the preliminary results. 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: Calculation of CEP Profit
Comment 3: Calculation of the U.S. Indirect Selling Expense Ratio
Comment 4: Missing Payment Dates
Comment 5: Differential Pricing Analysis

II. Background

On February 24, 2014, the Department of Commerce (the Department) published the preliminary results of this antidumping duty administrative review.[1] The administrative review covers one producer and exporter of the subject merchandise to the United States, Jungbunzlauer Canada Inc. (JBL Canada). The period of review (POR) is May 1, 2012, through April 30, 2013.

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 March 26, 2014, and rebuttal comments from both parties on March 31, 2014.

III. 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.

IV. Margin Calculations

We calculated constructed export price (CEP) and normal value (NV) using the same methodology as stated in the Preliminary Determination, except as follows:

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[1] See Citric Acid and Certain Citrate Salts from Canada: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 10093 (February 24, 2014) (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.

- We recalculated CEP profit to exclude certain other income. See Comment 1, below, and the memorandum entitled "Final Results Margin Calculation for Jungbunzlauer Canada Inc.," dated concurrently with and hereby adopted by this memorandum (Final Results Calculation Memo).
- We recalculated U.S. indirect selling expenses to include interest expenses incurred by JBL Canada's U.S. subsidiary. See Comment 3, below, and Final Results Calculation Memo.

V. Discussion of the Issues

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

The petitioners argue that, in the immediately preceding review, the Department made a price adjustment to capture a payment made by JBL Canada to a U.S. customer, but failed to account for the entire amount of the payment.[2] Because the Department's allocation methodology did not capture the full amount of the payment, the petitioners argue, the Department should allocate the remaining portion of the payment to JBL Canada's sales in the current review by making a similar adjustment to JBL Canada's U.S. sales prices. If the Department fails to do so, the petitioners argue, the full payment will never be captured in the dumping margin calculations.

JBL Canada contends that the Department noted in the final results of the third administrative review that the allocation methodology accounted for the entire amount of the payment and, therefore, no additional adjustment is necessary.

Department's Position:

We disagree with the petitioners that it is necessary to make a deduction to CEP for a post-sale price adjustment, as there is no evidence on the record that JBL Canada made payments during the POR similar to those at issue in the previous review. Because many of the interested parties' comments are business proprietary, we addressed their arguments in more detail in a separate memorandum entitled "Further Discussion of Comments 1 and 2 in the Issues and Decision Memorandum," dated concurrently with this memorandum and herein incorporated by reference.

Comment 2: Calculation of CEP Profit

In the Preliminary Results, the Department calculated a CEP profit ratio based on data from the 2012 income statements of JBL Canada and its U.S. affiliate, JBL Inc., because the record of this review does not contain complete information on JBL Canada's actual costs.

JBL Canada alleges that the Department's calculation of the CEP profit ratio for the preliminary results is problematic in three areas. First, JBL Canada argues that the Department should not have determined the CEP profit ratio by calculating separate profit rates for JBL Canada and JBL Inc. and then simply summing the two resulting ratios. JBL Canada reasons that, hypothetically, if each company experienced a 10 percent profit in its respective market, the combined profit should be 10 percent, not 20 percent. JBL Canada argues

[2] See Business Proprietary Issues for the Preliminary Results (May 31, 2013) at 1-2, and memorandum entitled "Preliminary Results Margin Calculation for JBL" (May 31, 2013) at 2-3 and Attachment 5, placed on the record of this review in Petitioners' Submission of Rebuttal Factual Information (September 5, 2013) at Attachment 3.

that a single ratio should be calculated by summing the numerators and denominators of each company and dividing the summed numerators by the summed denominators.

Second, JBL Canada contends that the Department's calculation overstates the total impact on profits of JBL Canada. JBL Canada maintains that the profit experience of the two companies should be weighted in proportion to the total sales of citric acid that they represent. JBL Canada notes that this proportional allocation corresponds exactly to the methodology reflected in the Department's standard programming, where the actual values of profit in the U.S. and comparison markets are summed and divided by the actual amounts of total costs and expenses in the two markets – thereby weighting the shares of profits and expenses based on the proportional size of the markets in terms of sales of subject merchandise. JBL Canada reasons that even though the Department's regulations allow the use of "any appropriate financial reports" to determine the ratio in the absence of actual costs, it is both mathematically and methodologically correct to allocate profit and expenses proportionally to reflect actual sales of citric acid.

Finally, JBL Canada argues that the Department should disregard certain "other income" in the profit calculation and in the total income before taxes calculation because the Department does not consider antidumping-related expenses in determining costs or selling expenses.

The petitioners argue that JBL Canada's proposed adjustments to the CEP profit calculation represent a radical departure from the existing and well-established methodology employed in prior segments of this proceeding, which JBL Canada has never before challenged. The petitioners submit that JBL Canada makes no argument that its preferred approach is required by the statute or regulations, nor does it cite any case precedent in support of its proposed adjustments.

The petitioners continue that JBL Canada's proposal to weight profits in proportion to sales to unaffiliated customers violates the statute and is a distortive solution to a nonexistent problem. The petitioners assert that the profit earned by JBL Canada is separate and distinct from the profit earned by JBL Inc. Therefore, it is appropriate to capture the profits earned on both transactions. The petitioners maintain that the statute requires that CEP profit be based on "total actual profit," which means the "total profit earned by the foreign producer, exporter, and affiliated parties."[3] They contend that it is only by summing the profits of the two companies that one can capture the full profit of both. According to the petitioners, JBL Canada's proposed alternative is distortive and results in a grossly understated profit ratio.

The petitioners emphasize that the Department's established practice complies with the statute in that it calculates "total actual profit" for CEP sales and then deducts from CEP that portion of total profit allocable to expenses incurred in the United States (based on the ratio of U.S. expenses to total expenses).[4] The petitioners argue that JBL Canada's proposed allocation methodology defeats the purpose of the CEP profit deduction which is intended to result in a CEP that reflects, "as closely as possible, a price corresponding to an export price between non-affiliated exporters and importers,"[5] regardless of whether companies set transfer prices high or low. The petitioners add that the SAA specifically states that the "transfer price between exporters or producers and the affiliated importer is irrelevant in determining the

[3] See section 772(f)(1) and (2)(D) of the Act.
[4] See section 772(f) of the Act.
[5] Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, at 823 (1994) (SAA).

amount of profit to be deducted from constructed export price."[6] The petitioners contend that, in contrast, JBL Canada's proposed methodology effectively assumes that the profit earned by JBL Inc. is the appropriate profit to be deducted from CEP.

Finally, the petitioners argue that profit should not be reduced for income related to post-sale price adjustments because this would represent a departure from the Department's established methodology in this case. The petitioners protest that JBL Canada makes no claim that the Department made a similar adjustment in the third administrative review, nor does it cite any legal authority or precedent to support its claimed adjustment. The petitioners maintain that, if anything, the Department's methodology is conservative because the "other income" at issue here is being allocated over the company's entire expenses.

The Department's Position:

In the preliminary results, the Department calculated a combined CEP profit ratio based on data from the 2012 income statements of JBL Canada and its U.S. affiliate, JBL Inc. The Department calculated the CEP profit rate in accordance with its normal practice, which is articulated in Policy Bulletin 97.1, "Calculation of Profit for Constructed Export Price Transactions" (September 4, 1997) (Policy Bulletin 97.1). Pursuant to this practice, the Department typically includes profit earned by a respondent (such as JBL Canada) on its affiliated party sales in its CEP profit calculation, unless those sales were made at non-arm's-length prices.[7] The Department's practice is informed by, and consistent with, the relevant statutory text. Because some of the interested parties' comments are business proprietary, we addressed their arguments in more detail in a separate memorandum entitled "Further Discussion of Comments 1 and 2 in the Issues and Decision Memorandum," dated concurrently with this memorandum and herein incorporated by reference.

Comment 3: Calculation of the U.S. Indirect Selling Expense Ratio

In the Preliminary Results we recalculated the reported U.S. indirect selling expenses to include administrative expenses incurred by JBL Inc., JBL Canada's affiliate in the United Sates, during the POR.

JBL Canada argues that these administrative expenses should not be included in the indirect selling expense pool because they represent the corporate administrative expenses of JBL Inc. JBL Canada adds that such differentiation between selling expenses and administrative costs is in accordance with U.S. Generally Accepted Accounting Principles (GAAP), which define "administrative expenses" as "the aggregate total of expenses of managing and administering the affairs of an entity, including the affiliates of the reporting entity, which are not directly or indirectly associated with the manufacture, sale or creation of a product or product line."

The petitioners contend that, although the Department was correct to include JBL Inc.'s administrative expenses in the U.S. indirect selling expense total, the Department also should have included JBL Inc.'s relevant interest expenses in this figure, consistent with the Department's methodology in the previous administrative review.[8] The petitioners claim that whether the expenses at issue are classified as

[6] See id. at 825.
[7] See Policy Bulletin 97.1. JBL Canada has not alleged that its sales to JBL Inc. were made on a non-arm's-length basis.
[8] See Citric Acid and Certain Citrate Salts From Canada: Preliminary Results of Antidumping Duty Administrative Review;

"administrative" or "selling" is irrelevant because JBL Inc. is a sales entity; thus, all general and administrative expenses incurred by the company necessarily support the company's selling activities. The petitioners assert that it is the Department's longstanding practice to include such items within the U.S. indirect selling expense variable (INDIRSU), and add that JBL Canada did not challenge this same adjustment to its U.S. indirect selling expenses in the third administrative review. Moreover, the petitioners argue, JBL Canada cites no legal authority for excluding the expense items at issue from INDIRSU.

The Department's Position:

We agree with the petitioners and have included JBL Inc.'s administrative and interest expenses related to the selling of subject merchandise in the calculation of U.S. indirect selling expenses.

Section 772(d) of the Act permits the Department to reduce CEP by the amount of certain 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 . . . ." The record demonstrates that JBL Inc. functions as the sales company for products from the JBL Group – including JBL Canada – that are sold in the United States and Canada.[9]

Section 772(d)(1)(D) of the Act directs the Department to reduce CEP by the amount of "any selling expenses not deducted under subparagraph (A), (B), or (C)." Administrative expenses incurred by an affiliated seller in the United States in the sale of subject merchandise is not covered by section 772(d)(1)(A)-(C) of the Act. As we stated in the Preliminary Results, our normal practice is to include such expenses in the indirect selling expense total because these expenses support the selling functions of JBL Inc.[10] For the same reason, we also agree that JBL Inc.'s interest expenses should be included in indirect selling expenses, and we have recalculated the indirect selling expense ratio to include them for the final determination. As petitioners correctly observe, the Department has regarded such expenses as indirect selling expenses in past segments of this proceeding.[11]

Finally, we disagree with JBL Canada that U.S. GAAP requires a different result in these final results. Although U.S. GAAP may characterize certain expenses as "administrative" rather than "selling" expenses, such a distinction is irrelevant with respect to which expenses should be included in the U.S. indirect selling expense calculation. Because these expenses support JBL Inc.'s selling activities, both selling and administrative expenses are appropriately included in the calculation of U.S. indirect selling expenses.

Comment 4: Missing Payment Dates

The petitioners assert that, for purposes of calculating imputed credit expenses, the Department's practice

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2011-2012, 78 FR 34338 (June 7, 2013), and accompanying Decision Memorandum (Preliminary Results AR3), unchanged in Citric Acid and Certain Citrate Salts from Canada: Final Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 64914 (October 30, 2013), and accompanying Issues and Decision Memorandum (Final Results AR3).

[9] See Section A questionnaire response dated August 22, 2013, at page A-6.

[10] See Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review, 68 FR 6889 (February 11, 2003), and accompanying Issues and Decision Memorandum at Comment 11.

[11] See e.g., Preliminary Results AR3 Decision Memorandum at 6, unchanged in Final Results AR3.

with respect to missing payment dates is to use the date of the respondent's "last submission."[12] However, in this case, the Department used the date of JBL Canada's supplemental questionnaire response, rather than the subsequent date of January 9, 2014, on which JBL Canada submitted a revised U.S. sales file. Accordingly, the petitioners argue that the Department should assign "January 9, 2014" as the payment date for sales that remained unpaid as of the date of that submission.

JBL argues that the January 9, 2014, submission did not contain any new or additional information regarding invoice dates or payment dates for JBL Canada's U.S. sales. Instead, this submission corrected an inadvertent error in the sales database to include a data field that had been missing, but made no other substantive changes to the database. According to JBL Canada, the last submission in which it revised the payment dates of its U.S. sales was filed with the Department on November 21, 2013.[13] JBL Canada contends that the Department should continue to use this date for purposes of making credit adjustments for JBL Canada's U.S. sales which do not have a reported payment date.

The Department's Position:

We agree with JBL Canada and continue to use the date of November 21, 2013, as the payment date for any sales which were not paid as of that date. Typically, the Department's practice with respect to missing payment dates is to use the date of the respondent's last submission that included payment dates for its U.S. sales.[14] Although JBL Canada made another submission after November 21, 2013, that affected its U.S. sales database, this later-filed submission did not contain any new payment date information.

On October 31, 2013, we issued a supplemental questionnaire to JBL Canada requesting that it provide missing payment dates and imputed credit values for certain sales in both the home market and U.S. databases.[15] On November 21, 2013, JBL Canada provided this information for all sales that were unpaid as of that date.[16] Although JBL Canada also stated in this submission that it added a new freight expense variable to the U.S. sales database, this variable was inadvertently omitted from the database. On January 9, 2014, in response to the Department's request, JBL Canada submitted a revised database which included the additional freight expense variable.[17] All other fields and variables remained unchanged from the U.S. sales database submitted on November 21, 2013. Accordingly, because the only reason JBL Canada submitted a new database in January was to provide a missing freight variable, we believe it is consistent with our practice to use the date of the November submission for purposes of calculating imputed credit expenses for those sales that were unpaid as of that date.

Comment 5: Differential Pricing Analysis

In the Preliminary Results, our differential pricing test indicated that it was appropriate to use the

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[12] See, e.g., Certain Lined Paper Products From India: Final Results of Antidumping Duty Administrative Review, 77 FR 14729 (March 13, 2012), and accompanying Issues and Decision Memorandum at Comment 3.
[13] See JBL Canada's supplemental questionnaire response dated November 21, 2013, at pages 3-13, 1st Revised Exhibit B-1, and 1st Revised Exhibit C-1.
[14] See, e.g., Certain Lined Paper Products From India: Final Results of Antidumping Duty Administrative Review, 77 FR 14729 (March 13, 2012), and accompanying Issues and Decision Memorandum at Comment 3.
[15] See letter to JBL Canada from Irene Darzenta Tzafolias, dated October 30, 2013.
[16] See First Supplemental A/B/C Questionnaire Response dated November 21, 2013, at pages 3, 5.
[17] See letter from JBL Canada dated January 9, 2014, and accompanying database.

average-to-transaction method in making comparisons of CEP and NV. Specifically, we found that more than 66 percent of JBL Canada's export sales indicated the existence of a pattern of CEPs for comparable merchandise that differed significantly among purchasers, regions, or time periods. We also found that there was a meaningful difference in the weighted-average dumping margin when calculated using the average-to-average method and the average-to-transaction method (i.e., the resulting weighted-average dumping margin moved across the de minimis threshold).

JBL Canada claims that the Department's differential pricing analysis fails to account for market realities such as: sales made through different channels of distribution; the use of multiyear contracts versus spot prices for one-time deliveries; and differences in the relative size of customers. According to JBL Canada, the analysis also ignores likely changes to raw material and energy costs, as well as fluctuating exchange rates over the course of a POR. JBL Canada claims that these factors might offer an alternative explanation to the Department's conclusion that a foreign producer is discriminating between purchasers, regions or time periods within the U.S. market.

The petitioners argue that JBL Canada's argument is without merit because the statute requires only a finding of patterns of differential pricing, but does not require an examination of the cause for such patterns. They add that any pattern of significant price differences, regardless of its cause and the exporter's motivation, has the potential to mask dumping, while the purpose of the alternative average-to-transaction method is to unmask such dumping.[18] The petitioners submit that the Department has repeatedly rejected the identical argument to that now being asserted by JBL Canada, and there is no reason that the Department should reach a different conclusion in this case.[19]

The Department's Position:

We disagree with JBL Canada. Section 777A(d)(1)(B) of the Act permits the Department to determine whether subject merchandise is being sold in the United States at less than fair value by comparing the weighted-average of the normal values to the export prices (or CEPs) of individual transactions of comparable merchandise if (i) there is a pattern of export prices (or CEPs) for comparable merchandise that differ significantly among purchasers, regions or periods of time, and (ii) the Department explains why such differences cannot be taken into account using the average-to-average comparison method. The statute does not direct the Department to use a particular test in making this determination. The Department's recent practice is to apply a "differential pricing analysis" to determine whether the average-to-transaction comparison method is warranted.[20]

The Department's purpose in applying a differential pricing analysis in this review is to assess whether the average-to-average method is an appropriate tool with which to measure dumping, if any, by JBL Canada during the POR. To do so, we evaluated whether there exists a pattern of prices that differ significantly

[18] See Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations, 73 FR 74930, 74931 (December 20, 2008); see also, Union Steel v. United States, 713 F.3d 1101, 1104-09 & nn. 3, 5 and 8 (Fed. Cir. 2013).

[19] See e.g., Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 79665 (December 31, 2013), and accompanying Issues and Decision Memorandum at Comment 9B; Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 11406 (February 28, 2014), and accompanying Issues and Decision Memorandum at Comment 2 (PET Film from India I&D Memo).

[20] See, e.g., PET Film form India I&D Memo, at Comment 1.

based on the Cohen's *d* and ratio tests. This is a factual determination required by the statute, but the statute does not require the Department to consider the intent or motivations of the respondent, or to consider certain market realities specific to a given respondent within a particular industry, in discerning whether the concerned pricing behavior exists. As the Department stated in PET Film from India:

> The statute does not include a requirement that the Department must account for some kind of causality for any observed pattern of prices that differ significantly, such as increasing market share, changes in raw material costs, prices of natural gas, or fluctuations in exchange rates. Congress did not speak to the intent of the producers or exporters in setting export prices that exhibit a pattern of significant price differences. Nor is an intent-based analysis consistent with the purpose of the provision, as noted above, which is to determine whether averaging is a meaningful tool to measure whether, and if so, to what extent, dumping is occurring. Consistent with the statute and the SAA, the Department determined whether a pattern of significant price differences exists. Neither the statute nor the SAA requires the Department to conduct an additional analysis to account for potential reasons for the observed pattern of prices that differ significantly.[21]

Based on the results of the differential pricing analysis, the Department continues to find that more than 66 percent of JBL Canada's export sales indicate the existence of a pattern of CEPs for comparable merchandise that differ significantly among purchasers, regions, or time periods. Therefore, the results continue to support consideration of the application of an average-to-transaction methodology to all sales. Because the Department continues to find that there is a meaningful difference in the weighted-average dumping margin when calculated using the average-to-average method and the average-to-transaction method (i.e., the resulting weighted-average dumping margin moves across the de minimis threshold), the Department continues to determine that it is appropriate to apply the average-to-transaction method in making comparisons of CEP and NV for JBL Canada.

For these reasons, we have continued to employ the average-to-transaction comparison method for the final results based on the results of the differential pricing test.[22]

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[21] See PET Film from India I&D Memo at Comment 2; see also Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 79665 (December 31, 2013), and accompanying Issues and Decision Memorandum at Comment 9B.

[22] See Final Results Calculation Memo.

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 weighted-average dumping margin in the Federal Register.

Agree ✓ Disagree _____

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

24 JUNE 2014
(Date)