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 CM
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the 2013-2014 Antidumping Duty Administrative Review of Citric Acid and Certain Citrate Salts from Canada

## I. Summary

We analyzed the comments from the interested parties in the 2013-2014 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 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: Fixed Overhead Costs
Comment 2: U.S. Indirect Selling Expenses
Comment 3. Exclusion of Below-Cost Sales from the Normal Value Calculation

## II. Background

On June 8, 2015, 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, 2013, through April 30, 2014.

[1] See Citric Acid and Certain Citrate Salts from Canada: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014, 80 FR 32342 (June 8, 2015) (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 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) on July 8, 2015, and rebuttal comments from respondent JBL Canada on July 13, 2015.

## 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 that we recalculated U.S. indirect selling expenses to correct a ministerial error. See Comment 2, below, and Memorandum to the File, "Final Results Margin Calculation for Jungbunzlauer Canada Inc." dated concurrently with this memorandum.

## V. Discussion of the Issues

### Comment 1: Fixed Overhead Costs

The petitioners argue that the Department should adjust depreciation expense for the final results of this review as it did in the first administrative review in this proceeding[2] because the reported depreciation expense was not based on the fair market value (FMV) of assets that were acquired from an affiliated party. The petitioners assert that the Canadian Revenue Agency's (CRA's) stated approval of JBL

[2] See Citric Acid and Certain Citrate Salts from Canada: Final Results of Antidumping Duty Administrative Review, 76 FR 34044 (June 10, 2011) (AR1), and accompanying Issues and Decision Memorandum (AR1 I&D Memo) at Comment 3.

Canada's valuation of the assets since the completion of AR1 changes nothing because the CRA's tax audit was conducted for a purpose different than the dumping analysis, i.e., to ensure that JBL Canada did not overstate its deduction for depreciation expense for tax purposes. The petitioners argue that for the purpose of the dumping analysis, the concern is whether depreciation expense has been understated. The petitioners assert that in the current review, as in AR1, the reported factory overhead costs do not include depreciation expense based on the FMV of the assets purchased from an affiliated party and, therefore, they do not reasonably reflect the costs associated with the production of the merchandise under consideration pursuant to section 773(f)(1) of the Tariff Act of 1930, as amended (the Act).

JBL Canada maintains that the transaction in question was not an acquisition of assets but rather a change in legal organization. JBL Canada claims that the assets were never actually sold, but rather their ownership title was transferred from one entity to another, where both of the entities were under common control. JBL Canada claims that in a circumstance of a change in legal organization such as this, JBL Canada properly valued the assets at their book value as required by Canadian Generally Accepted Accounting Principles (GAAP). JBL Canada argues that, consequently, there is no need for the Department to examine the arm's-length nature of the asset values. Nevertheless, JBL Canada adds, at verification JBL Canada's external auditors explained that the transfer of assets was done at arm's length, and after a lengthy audit of the transaction, the CRA concluded that the transfer of assets was done at arm's length, requiring only a minimal adjustment as a result of the audit. JBL Canada asserts that the reasoned conclusion of a Canadian governmental body, which like the Department, makes its decisions on the basis of the factual record and not on any preconceptions about the desired outcome, warrants serious consideration. JBL Canada further asserts that the claim that a tax audit is for a different purpose does not diminish the value of the CRA's findings, and that the purpose of any audit is to examine the facts and reach supportable results, regardless of the use to which those results may be put.

JBL Canada points out that section 773(f)(1)(A) of the Act directs the Department to calculate the cost of production based on a respondent's normal books and records if those records are kept in accordance with the GAAP of the exporting country, and reasonably reflect the costs associated with the production and sale of the merchandise under consideration. JBL Canada cites Mushrooms from India[3] in support of its assertion that the Department considers normal GAAP accounting practices as a reasonably objective and predictable basis by which to compute costs for the merchandise, and Cinsa, S.A. de C.V. v. United States[4] to support its argument that the courts have upheld the Department's reliance on a company's financial statements if those financial statements were prepared in accordance with the home country's GAAP and did not significantly distort the firm's actual costs. JBL Canada contends that when determining if a respondent's books and records reasonably reflect the costs associated with the production of the merchandise, the Department often compares the accounting treatment specified under the home country GAAP with the accounting treatment under U.S. and International GAAP, and that in this case, Canadian and U.S. GAAP both view the transaction in question identically, i.e., requiring that the valuation of the assets acquired and liabilities assumed to be recognized at book value. JBL Canada cites Canadian GAAP Accounting Standard 3840.34 and Wiley CPA Exam Review 2010[5] to

[3] See Certain Preserved Mushrooms from India: Final Results of Antidumping Duty Administrative Review, 68 FR 41303 (July 11, 2003), and accompanying Issues and Decision Memorandum at Comment 1 (Mushrooms from India).
[4] See Cinsa, S.A. de C.V. v United States, 966 F. Supp. 1230, 1235 (1997) (citing FAG U.K. Ltd. v. United States, 945 F Supp. 260, 271 (1996)) (Cinsa, S.A. de C.V. v United States).
[5] See Wiley CPA Exam Review 2010, Financial and Reporting, Patrick R. Delaney and O. Ray Whittington, October 2010,

support its argument that both Canadian and U.S. GAAP treat transactions between entities under common control as a change in legal organization, and not as an asset purchase.

Accordingly, JBL Canada argues that both Canadian and U.S. GAAP require the entity under common control that receives the net assets or the equity interests (such as JBL Canada) to recognize the assets and liabilities at their carrying amounts (i.e., book value) in the accounts of the transferring entity at the date of transfer. JBL Canada adds that International Financial Reporting Standards Number 3 of 2004 prohibits the recognition of assets acquired or liabilities assumed at fair value in circumstances such as this one. JBL Canada asserts that the recognition of the assets and liabilities at the carrying amounts of the transferring entity in this case confirms that this transaction was a movement of equity from the affiliated company to JBL Canada. Thus, JBL Canada claims, the substance of the transaction was a change in legal organization (a change in equity) between JBL Canada and its affiliate, and not an acquisition of assets. JBL Canada urges the Department not to elevate form over substance in analyzing this issue. According to JBL Canada, while the legal title to the assets shifted to JBL Canada from its affiliate, this movement of assets is merely the form of the transaction. The substance of the transaction is the movement of the parent's equity investment from the affiliated company to JBL Canada, as there was no substantive change in the equity ownership interests of the assets. JBL Canada claims that GAAP treats transactions and other events and conditions in accordance with the substance of the transaction, and not merely the legal form of the transaction. JBL Canada argues that accounting professionals are required to determine the economic substance of the transaction irrespective of the manner in which it appears to be structured in order to determine the proper accounting treatment under GAAP. JBL Canada asserts that this is the proper way to view this transaction, and that if done so, the Department should conclude that JBL Canada's books and records properly reflect this transaction and that no adjustment to depreciation expense is warranted for the final results.

<u>The Department's Position</u>:

We did not adjust JBL Canada's depreciation expense in the final results. In <u>AR1</u>, the transaction in question constituted a purchase of assets by JBL Canada from an affiliated party. We evaluated the reported depreciation expense based on section 773(f)(2) of the Act (<u>i.e.</u>, the "transactions disregarded" rule). We adjusted the reported depreciation expense by calculating depreciation expense based on the FMV of the assets (<u>i.e.</u>, as determined by an independent appraisal of the assets at the time) acquired from an affiliated party rather than calculating the depreciation expense on the carrying amounts of the assets as they were recorded in JBL Canada's audited financial statements. In the current review, these same assets continue to be recorded in JBL Canada's books and records at their carrying amounts, which JBL Canada used to calculate and report depreciation expense. In <u>AR1</u> the Department stated:

> Contrary to JBL Canada's arguments, the Department's treatment of this issue was not form over substance. The record shows that the affiliated transaction was a "purchase" of fixed assets by JBL Canada from JBLT, not a movement of equity. No party has argued that JBL Canada and JBLT are not affiliates. <u>See generally</u> the August 6, 2010 Section A Response. Furthermore, in its submissions, JBL Canada stated that it purchased all of the assets of JBLT at fair market value. The notes accompanying JBL

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at 652 (<u>Wiley CPA Exam Review 2010</u>).

> Canada's audited financial statements state that the company entered into an "asset purchase agreement" with JBLT. Further, prior to and consistent with the sale of these assets, JBLT (i.e., the seller of these assets) appointed a professional appraiser to determine the fair market value of these assets and received the appraisal report and the fair market values. Moreover, the asset transfer agreement refers to JBLT as the "vendor" and JBL Canada as the "purchaser," which is not reflective of a change in legal organization.[6]

The underlying facts of the transaction have not changed since AR1.[7] The transaction between JBL Canada and its affiliate was a fixed asset purchase between affiliated parties. Furthermore, whether treatment of the transaction under U.S. GAAP is the same or different from that of Canadian GAAP does not determine the appropriateness of relying on a respondent's cost. The statute at section 773(f)(1)(A) directs us to determine whether the costs are reasonable and consistent with the GAAP practiced in a respondent's home country. Moreover, the treatment under both sets of accounting principles may be reasonable, as is the case here (in fact, they are the same). The Department is obligated under the statute to first consider costs as they are historically recorded in a respondent's normal books and records.[8] U.S. GAAP is merely one tool for the Department to use and is not dispositive of whether the reported costs are reasonable.

Since AR1, in addition to the professional appraisal conducted by JBLT at the time of sale, the CRA completed an audit that specifically looked at the proper valuation of the assets in question. The CRA looked at the transaction and concluded that it had been transacted at an "arm's-length price."[9] We agree with the petitioners that the audit performed by the CRA was conducted for a purpose different from the antidumping analysis, however the purpose of the CRA audit does not take away from the conclusion it reached that the transaction was made at an arm's-length price. That one of the CRA's possible concerns is the overstatement of the assets (i.e., an overstatement of the assets on JBL Canada's books and records from the perspective of the CRA would result in higher depreciation expenses going forward which would lower taxable income) is speculation, as it is also likely that the CRA might also be concerned with the understatement of asset values in such a situation. For example, an understatement of asset values might lower the capital gains and related capital gains taxes resulting from the sale of assets from the perspective of a selling company. The Department does not know the reasons behind the CRA's audit and does not follow tax law when conducting a dumping analysis, as discussed above, but rather follows the home country GAAP and normal books and records of a responding company if those books and records are reasonable. In AR1, although JBL Canada's books and records were kept in accordance with Canadian GAAP, we found that those books and records were not reasonable for the dumping analysis. In the current review, JBL Canada again reported its costs based on its normal books and records which were kept in accordance with Canadian GAAP. However, in addition to the independent appraisal conducted in AR1, we find that in this case JBL Canada's books and records are reasonable because an independent credible entity has determined that

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6 See AR1 I&D Memo at Comment 3.

7 See the June 19, 2015 Memorandum to The File from James J. Balog entitled "Factual Information Placed on the Record" at Attachment 1 which states "JBL Canada is the respondent because on December 31, 2008 they purchased the citric acid plant and other assets from JBLT". See also Note 4 of the 2013 audited financial statements of JBL Canada Inc., used to calculate the reported costs in the current review, which shows that the citric acid plant assets are included in property plant and equipment.

8 See section 773(f)(1)(A) of the Act.

9 See JBL Canada's January 20, 2015 First Supplemental Section D Questionnaire response at Exhibit (1st Supp-D)-9.

the transaction was conducted at an arm's-length price. Therefore, we also find that depreciation expense as calculated by JBL Canada from its normal books and records is reasonable, and we made no adjustment for the final results.

Comment 2: U.S. Indirect Selling Expenses

In the Preliminary Results, the Department calculated revised U.S. indirect selling expenses in the field RINDIRSU in the margin program. The petitioners point out that the Department erroneously set CEP selling expenses (CEPISELL) equal to the original expense field INDIRSU rather than the revised expense field RINDIRSU. The petitioners request that the Department correct this error and set CEPISELL equal to RINDIRSU for the final results.

The Department's Position:

We agree with the petitioners that U.S. indirect selling expenses were incorrectly calculated in the Preliminary Results. We corrected this error for purposes of the final results.

Comment 3: Exclusion of Below-Cost Sales from the Normal Value Calculations

In the Preliminary Results, we stated that "we found that less than 20 percent of JBL Canada's sales were at prices less than the COP. Therefore, we used all of JBL Canada's home-market sales as the basis for determining NV."[10] The petitioners argue that, once the above-referenced adjustments are made, the Department should make an affirmative finding of sales below COP and exclude all below-cost sales from the NV calculations.

The Department's Position:

The petitioners' comments are moot, as the only adjustment we made to the margin calculations had no impact on the results of the COP test.

[10] See Preliminary Decision Memorandum at 10.

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

6 OCTOBER 2015
(Date)