A-570-937
POR: 05/01/11-04/30/12
Public Document
E&C/IV: KH, MC

December 26, 2013

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

FROM: Abdelali Elouaradia
Office Director
Enforcement and Compliance, Office 4

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

---

SUMMARY

The Department of Commerce ("the Department") has analyzed the comments and rebuttal comments submitted by Respondent[1] and Petitioners[2] in the 2011-2012 administrative review of the antidumping duty order on citric acid and certain citrate salts from the People's Republic of China ("PRC"). Following the Preliminary Results[3] and the analysis of the comments received, we made no changes to the antidumping duty margin calculations for the final results. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

SCOPE

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 the order also includes all forms of crude calcium citrate, including dicalcium citrate monohydrate, and tricalcium citrate tetrahydrate, which are intermediate

---

[1] RZBC Co., Ltd., RZBC Import & Export Co., Ltd., RZBC (Juxian) Co., Ltd. (collectively "RZBC").

[2] Archer Daniels Midland Company, Cargill, Incorporated, and Tate & Lyle Ingredients Americas LLC ("Petitioners").

[3] See Citric Acid and Certain Citrate Salts From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review; 2011-2012, 78 FR 34642 (June 10, 2013) ("Preliminary Results").

products in the production of citric acid, sodium citrate, and potassium citrate. The scope of the order 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 the 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.

BACKGROUND

The Department published the Preliminary Results on June 10, 2013.[4] The period of review ("POR") is May 1, 2011, through April 30, 2012. In accordance with 19 CFR 351.309(c)(1)(ii), we invited parties to comment on our Preliminary Results. On July 10, 2013, RZBC and Petitioners submitted hearing requests to address issues raised in their case and rebuttal case briefs.[5] On November 7, 2013, we received a case brief from RZBC.[6] On November 12, 2013, we received a rebuttal brief from Petitioners.[7] Petitioners and RZBC withdrew their hearing requests on November 18, 2013, and November 21, 2013, respectively.[8]

DISCUSSION OF THE ISSUES

COMMENT 1: SURROGATE VALUE FOR WATER

- RZBC argues that the source used to value water in the Preliminary Results is not contemporaneous with the POR. Instead, RZBC recommends that the Department use POR contemporaneous Indonesian water tariffs that were submitted in RZBC's surrogate

[4] See Preliminary Results.

[5] See Letter from RZBC to the Department regarding, "Citric Acid and Certain Citrate Salts from the People's Republic of China A-570-937 (Administrative Review 5/1/11-4/30/12): Hearing Request," dated July 10, 2013; see also Letter from Petitioners to the Department regarding, "Citric Acid and Citrate Salts from the People's Republic of China: Petitioners' Hearing Request," dated July 10, 2013.

[6] See RZBC's "Citric Acid and Citrate Salt from the People's Republic of China: RZBC Case Brief," (November 7, 2013) ("RZBC's November 7, 2013, Case Brief").

[7] See Petitioners "Citric Acid and Certain Citrate Salts From the People's Republic of China: Petitioners' Rebuttal Brief," (November 12, 2013).

[8] See Letter from Petitioners to the Department regarding, "Citric Acid and Certain Citrate Salts from the People's Republic of China: Petitioners' Withdrawal Of Hearing Request," dated November 18, 2013; see also Letter from RZBC to the Department regarding, "Citric Acid and Certain Citrate Salts from the People's Republic of China - A-570-937 (Administrative Review 5/1/11-4/30/12): Withdrawal of Hearing Request," dated November 21, 2013.

value ("SV") comments.[9] RZBC asserts that the only difference between the two sources is that the tariff data submitted in its SV comments are contemporaneous. Additionally, RZBC states that the water tariffs it submitted are based on the same industrial production category and are from the same Indonesian water utility company as used by the Department to value water in the First and Second Administrative Reviews and the Preliminary Results of the instant review.

- RZBC asserts that Section 773(c)(1)(B) of the Tariff Act of 1930, as amended ("the Act"), directs the Department to use "the best information available" from the appropriate market economy country to value factors of production ("FOPs"). In this instance, RZBC argues that the water SV that it submitted in its SV comments represents the best information available on the record.
- Petitioners argue that RZBC's proposed SV for water is from 2007 and thus is not contemporaneous with the POR.
- Petitioners note that the Department rejected identical arguments made by RZBC concerning the SV for water in the second administrative review and should continue to do so in the instant review.

Department's Position: In the Preliminary Results, we valued water using the average water rate provided by the United Nations Human Development Report 2006: Disconnected: Poverty, Water Supply and Development in Jakarta Indonesia ("UN Report").[10] This water rate is based on the 2005 average water tariff under Group IVa, which is made up of "large hotels, high rise buildings, banks, and factories."[11] Since the UN Report provided the water rate based on 2005 data, we inflated the water rate to the POR.[12] We agree with Petitioners and have continued to value water using the UN Report in the final results.

We have reviewed Attachment 4 of RZBC's SV Comments and have concluded that this source is neither contemporaneous nor reliable. Although RZBC stated that the pricing information it provided for water is contemporaneous with the POR, we note that the page submitted is dated January 2007.[13] Additionally, we did not find any additional information which may indicate that the pricing information is contemporaneous with the POR. Moreover, RZBC states that the water tariffs it submitted are based on the same industrial production category and are from the same Indonesian water utility company as used by the Department in the Preliminary Results and previous administrative reviews. However, as noted above, the Department valued water using the category "large hotels, high rise buildings, banks, and factories," which is classified under Group IVa in the UN Report.[14] RZBC's SV for water is classified under Group IVB.[15] While RZBC's source documentation does not provide a description of Group IVB, the UN Report

[9] See Letter from RZBC to the Department, regarding "Citric Acid and Citrate Salt from the People's Republic of China: Surrogate Value Comments," dated December 3, 2012, at Attachment 4 ("RZBC's SV Comments").
[10] See Memorandum from Krisha Hill and Drew Jackson to Robert Bolling, regarding "Preliminary Results of the Third Administrative Review of Citric Acid and Certain Citrate Salts from the People's Republic of China: Surrogate Value Memorandum," dated June 3, 2013 ("Surrogate Value Memorandum") at 4 and Attachment III.
[11] See Surrogate Value Memorandum at Attachment III.
[12] See Surrogate Value Memorandum at 4.
[13] See RZBC's SV Comments at Attachment 4.
[14] See Surrogate Value Memorandum at Attachment III.
[15] See RZBC's SV Comments at Attachment 4.

describes Group IVB as “harbor/port.”[16] We note that this is not the same industrial production category from which the Department derived its water SV. Second, in addition to this inconsistency, we did not find a website or any description of the source of the water value provided by RZBC in its SV comments. Furthermore, we have not found sufficient evidence to conclude that the pricing information provided by RZBC is derived from the same companies reflected in the UN Report.

Because RZBC’s water SV does not appear to be contemporaneous, and provides insufficient information regarding the claimed source website, group category and entities, we have determined that the UN Report is the superior data. Therefore, for the final results, we will continue to value water using the UN Report.[17]

COMMENT 2: ADDITIONAL LANGUAGE FOR LIQUIDATION INSTRUCTIONS

- RZBC argues that the Department should be consistent with its liquidation instructions from the prior review by adding certain language to the liquidation instructions for the instant review. Specifically, RZBC states that the Department should add the following language at the end of paragraph 1: “Entries may have come in under A-570-937-013, A-570-937-014, A-570-937-015, or A-570-937-000 during the period, as the case number assigned to RZBC Imp & Exp Co., Ltd. (A-570-937-018) was not in place during the beginning of the period of review.” RZBC notes that this language is also contained in Message No: 3004301, dated January 4, 2013.
- Petitioners state that this additional language requested by RZBC may not be applicable for the third administrative review, and request that the Department not add unnecessary information to the instructions.

Department’s Position: The Department agrees with RZBC regarding the inclusion of additional language in RZBC Imp & Exp Co., Ltd.’s (“RZBC I&E”) liquidation instructions for this instant review. RZBC was a separate rate company during the investigation, and a respondent in the first and second administrative reviews. RZBC I&E’s current case number, A-570-937-018, is assigned for entries of subject merchandise which entered into the United States on or after December 14, 2011, the publication date of the final results of the first administrative review.[18] Furthermore, RZBC’s case numbers, A-570-937-013, A-570-937-014, A-570-937-015, are deactivated for entries which entered the United States after December 14, 2011. Because the case number, A-570-937-018, was not assigned to RZBC I&E until December 14, 2011, RZBC I&E’s entries prior to December 14, 2011, may be entered under RZBC’s combination exporter/producer case numbers issued at the investigation (i.e., A-570-937-013, A-570-937-014, A-570-937-015), in which RZBC I&E was the exporter.

---

[16] See Surrogate Value Memorandum at Attachment III.
[17] See Surrogate Value Memorandum; see also Preliminary Analysis Memo.
[18] See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of the First Administrative Review of the Antidumping Duty Order, 76 FR 77772 (December 14, 2011).

The Department included certain language at the end of paragraph 1 in RZBC I&E's liquidation instructions for the second administrative review, as contained in Message No: 3004301, dated January 4, 2013. Specifically, the Department referenced RZBC I&E using the current case number (i.e., A-570-937-018) but added the following language: "{e}ntries may have come in under A-570-937-013, A-570-937-014, A-570-937-015, or A-570-937-000 during the period, as the case number assigned to RZBC Imp & Exp Co., Ltd. (A-570-937-018) was not in place during the period of review." Because the POR for the second administrative review was May 1, 2010, to April 30, 2011, and therefore prior to December 14, 2011, the Department added the above language to ensure that RZBC I&E's entries which entered the United States prior to December 14, 2011, were liquidated. Similarly, the POR for the third administrative review is May 1, 2011, to April 30, 2012. The case number A-570-937-018 became effective for entries entered into the United States on or after December 14, 2011, and does not capture entries from May 1, 2011, through December 13, 2011. Therefore, adding RZBC's suggested language will ensure liquidation of entries which entered the United States prior to December 14, 2011. Additionally, to ensure that RZBC I&E's entries are appropriately liquidated, and consistent with the second administrative review, the Department has determined to include the PRC-wide entity (i.e., A-570-937-000) in its language. Accordingly, the Department has determined that it is necessary to include the following statement in RZBC I&E's liquidation instruction for the third administrative review: "{e}ntries may have come in under A-570-937-013, A-570-937-014, A-570-937-015, or A-570-937-000 during the period, as the case number assigned to RZBC Imp & Exp Co., Ltd. (A-570-937-018) was not in place during the beginning of the period of review."

COMMENT 3: NEW FACTUAL INFORMATION

- RZBC requests that the Department further explain why an April 22, 2013, submission by Petitioners does not contain new factual information. RZBC notes that the Department rejected RZBC's reply to Petitioners' April 22, 2013, submission because the Department determined that RZBC's reply contained new factual information.
- RZBC maintains that in its May 10, 2013, rejection of RZBC's reply, the Department failed to provide any analysis of how it reached its determination that Petitioners' April 22, 2013, submission contained only argument. Therefore, RZBC contends that the Department must now clearly explain why Petitioners' April 22, 2013, submission did not contain new factual information or accept RZBC's rejected submission as a rebuttal of such facts.
- Petitioners state that they have already explained their reasons to in their request to reject RZBC's April 29, 2013, submission, in their May 2, 2013, letter.
- Petitioners state that if the Department places RZBC's new information on the record, Petitioners must be permitted to: 1) submit rebuttal factual information within 10 days thereafter; and 2) submit a supplemental brief addressing all new factual information.

Department's Position: We have reassessed Petitioners' April 22, 2013, submission, and reaffirm our original finding that this submission contains no new factual information.[19] In its May 6, 2013, letter to the Department, RZBC states that Petitioners' April 22, 2013, submission makes additional factual claims and provides new factual information that allowed RZBC to rebut.[20] Specifically, RZBC claims that the April 22, 2013, submission provided new explanations regarding why Petitioners' expert reports from the first and third administrative reviews do not contradict each other.[21] Additionally, RZBC argues that Petitioners stated for the first time in this instant review that Mr. Chambers' report understated RZBC's corn usage amounts. RZBC therefore argues that its April 29, 2013, submission, which was rejected by the Department, is a rebuttal to these new statements in defense of its corn usage rates. We note that Petitioners' April 22, 2013, letter is a timely response to RZBC's April 15, 2013, submission, in which RZBC placed Mr. Chambers' report on the record.[22] In the April 15, 2013, submission, RZBC states that Mr. Chambers and Dr. Verhoff are in disagreement regarding how much corn RZBC needs to produce citric acid, which displays lack of credibility in Petitioners' arguments. Specifically, in the April 15, 2013, submission, RZBC argues that one expert claimed that RZBC underreported its corn usage amount by a different amount than the claim presented by the other expert. The Department notes that through this argument, RZBC acknowledges that both experts claimed that RZBC underreported its corn usage amounts.[23] In the April 22, 2013, submission, Petitioners responded to RZBC's April 15, 2013, submission by stating that Mr. Chambers and Dr. Verhoff conducted different studies, thereby explaining the difference in the derived usage rate amounts. Specifically, Petitioners state that Mr. Chambers presented an opinion about the theoretical minimum usage of corn and the best possible recovery in any conceivable industry setting, whereas the Dr. Verhoff report derived the consumption rate based on mass balance equations and information provided by RZBC regarding its production process. Additionally, Petitioners note that both Mr. Chambers and Dr. Verhoff concluded that RZBC underreported its FOPs.

Based on a review of Petitioners' April 22, 2013, submission, the Department continues to find that Petitioners' arguments are limited in scope to the issues raised in RZBC's April 15, 2013,

---

[19] See Letter from Petitioners to RZBC, regarding "Citric Acid And Certain Citrate Salts From The People's Republic Of China: Response To RZBC's April 15 Letter," dated April 22, 2013 ("April 22, 2013, submission"); see also Letter from the Department to RZBC, regarding "Third Administrative Review of the Antidumping Duty Order on Citric Acid and Certain Citrate Salts from the People's Republic of China: Rejection of New Factual Information," dated May 10, 2013.

[20] See Letter from RZBC to the Department, regarding "Citric Acid and Citrate Salt from the People's Republic of China: Reply to Petitioners' May 2nd Comments," dated May 6, 2013, at 3.

[21] In the first administrative review, Petitioners presented an expert affidavit from Tony Chambers, President and Senior Process Design Engineer for Chambers Process Engineering, regarding RZBC's consumption rates. RZBC placed this affidavit on the record in this instant review. See letter from RZBC to the Department regarding, "Citric Acid and Citrate Salt from People's Republic of China: Reply to Petitioners' April 4, 2013, Submission of Rebuttal Factual Information," dated April 15, 2013 ("RZBC's April 15, 2013 submission") at Attachment 1 ("Mr. Chambers' report"). In the instant review, Petitioners presented another expert affidavit from Frank Verhoff, President of USTech Inc., regarding RZBC's consumption and yield rates. See letter from Petitioners to the Department regarding, "Citric Acid and Certain Citrate Salts from the People's Republic of China: Submission of Rebuttal Factual Information," dated April 4, 2013 ("Dr. Verhoff's report").

[22] See Mr. Chambers' Report.

[23] See RZBC's April 15, 2013 submission, at 3.

submission. RZBC considers Petitioners' statements on the difference of the reports as new factual information; however the Department finds that these statements constitute a compilation of information already on the record. A review of both Dr. Verhoff's and Mr. Chambers' reports indicates that Dr. Verhoff performed a mass balance analysis to assess RZBC's reported usage rates, whereas Mr. Chambers derived his calculations from purely theoretical and best case industrial practice standpoints. Accordingly, we have determined that Petitioners' April 22, 2013, submission contains no new factual information and there is no reason to accept RZBC's April 29, 2013, reply as further factual rebuttal.

COMMENT 4: ADEQUACY OF PUBLIC VERSION

- RZBC argues that Petitioners failed to comply with 19 C.F.R. 351.304 because Petitioners did not create an adequate public version of their December 14, 2012, resubmission of its November 21, 2012, new factual information submission.
- RZBC notes that on November 27, 2012, RZBC submitted a letter to the Department identifying certain areas of Petitioners' December 14, 2012, submission that required further bracketing treatment. Specifically, RZBC noted that it requested Petitioners make public certain information (i.e., names of companies surveyed, the standard form template, names of usage factors, and names of by-products used) and range all data in their November 21, 2012, submission. RZBC also notes that these revisions are not voluminous and fall squarely within the requirements of 19 C.F.R. 351.304.
- RZBC notes that on December 21, 2012, it notified the Department that Petitioners' December 14, 2012, resubmission failed to comply with 19 C.F.R. 351.304. RZBC states that Petitioners failed to explain why input names should not be made public, or why usage rates were so voluminous that they cannot be ranged.
- RZBC argues that Petitioners' information was not held to the same level of reporting as RZBC's submissions, which raises concerns of fairness and due process within these proceedings.
- Petitioners argue that they have stated their reasons for disagreeing with RZBC in their January 2, 2013, submission.
- Petitioners argue that if the Department rejects Petitioners' December 14, 2012, resubmission, then the Department should also: 1) reject RZBC's Section D response for the same reasons; and 2) establish a schedule for supplemental briefing to address the administrative record.

Department's Position: We have carefully reviewed Petitioners' December 14, 2012, resubmission, the arguments presented by RZBC and Petitioners, as well as the regulations regarding the treatment of proprietary information and the submission of public versions.[24] In our December 5, 2012, letter to Petitioners with respect to their original November 21, 2012, factual information submission, we requested that Petitioners revise their bracketing treatment for certain information as noted in the letter, range all numerical values within 10 percent of the actual figures in Attachment 2 of the submission, or alternatively, to explain why revised

[24] See Letter from Petitioners to the Department, regarding "Citric Acid And Certain Citrate Salts From The People's Republic Of China: Petitioners' November 21, 2012 Factual Information Submission With Revised Bracketing," dated December 14, 2012 ("December 14, 2012, submission").

bracketing or such ranging is not possible. Specifically, we requested Petitioners to provide revised bracketing or explanations with respect to: 1) names of companies surveyed; 2) the headers, titles, and form structure of certain survey forms; 3) a citric acid brochure; and 4) for each company surveyed, the names of inputs and by-products used and obtained in production. On December 14, 2013, Petitioners filed a resubmission which met these requests. Petitioners have identified the names of companies surveyed, the headers, titles, and form structure of certain survey forms, and disclosed the citric acid brochure. The Department notes that Petitioners have made public the input and by-product names that are part of the survey form template; however, they did not identify the inputs and by-products used and obtained in production. The Department notes because the survey forms are grouped by company, identifying the inputs or by-products used and obtained in production would consequently reveal company-specific information. Petitioners explained that identifying publicly which of the surveyed companies used which inputs would reveal the nature of each company's production process. The language in 19 C.F.R. 351.304(c)(1) instructs that "{i}f the submitting person claims that summarization is not possible, the claim must be accompanied by a full explanation of the reasons supporting the claim." The Department has concluded that Petitioners' explanation is sufficient.

With respect to ranging, the Department notes that Petitioners have ranged certain numerical data in their December 14, 2012, resubmission. The language in 19 C.F.R. 351.304(c)(1) states the following: "Generally, numerical data will be considered adequately summarized if grouped or presented in terms of indices or figures within 10 percent of the actual figure. If an individual portion of the numerical data is voluminous, at least one percent representative of that portion must be summarized." In their January 2, 2013, letter, Petitioners argued that their data are voluminous and have complied with the regulation by ranging at least one percent of the data. Petitioners also noted that RZBC has treated smaller datasets as voluminous. Additionally, Petitioners argued that even if the numerical data is not considered voluminous, ranging every number would reveal sensitive information regarding each survey company's production process. We have reviewed the regulations regarding the treatment of proprietary information and agree with Petitioners that the regulations do not require ranging such proprietary information.

RZBC argues that Petitioners failed to create a public version that contained a summary of bracketed information in sufficient detail to permit a reasonable understanding of the information submitted. The Department disagrees with RZBC. Specifically, the public version of Petitioners' December 14, 2012, submission provides sufficient detail to provide a reasonable understanding. Based on the public version, we are able to ascertain that a survey is conducted to gather information on citric acid production efficiencies from major non-Chinese companies.[25] The public version also establishes that Petitioners' expert consultant reviewed both the survey responses and RZBC's questionnaire responses.[26] Further, we note that based on this review, the expert consultant drew a concluding opinion regarding RZBC's consumption rates for certain inputs. Additionally, RZBC argues that Petitioners' filings are not held to the same standard as RZBC's filings. Aside from maintaining consistency in bracketing treatment between different

[25] See December 14, 2013, submission, at 2.
[26] See December 14, 2013, submission, at 3.

documents and requesting parties under review to disclose input names and range quantity and value data, we have not required RZBC to publicly disclose information which RZBC has deemed as proprietary. Accordingly, we have concluded that Petitioners have provided an adequate public version of the December 14, 2012, submission.

COMMENT 5: CO-PRODUCT VALUATION

- RZBC argues that the Department failed to consider all five factors required under its co-product/by-product analysis. RZBC notes that these factors include: 1) how the company records and allocates costs in the ordinary course of business, in accordance with its home country GAAP; 2) the significance of each product relative to the other joint products; 3) whether the product is an unavoidable consequence of producing another product; 4) whether management intentionally controls production of the product; and 5) whether the product requires significant further processing after the split-off point. RZBC cites to Structural Steel Beams from South Africa in noting that no single factor is dispositive but rather considered in light of all facts and circumstances.[27] RZBC states that the factors above support a finding that high protein scrap is treated as a by-product rather than a co-product.
- RZBC notes that in the Preliminary Results, the Department treated high protein scrap as a co-product because: 1) it calculates costs for high protein scrap; and 2) it treated high protein scrap sales as main income. RZBC states that all by-products are treated as by-products in its accounting system. RZBC states that it calculates an estimated cost value for high protein scrap (and corn feed), which is used to offset total citric acid production costs; it does not allocate costs (i.e., actual raw material costs, cost of manufacturing, cost of production) to any by-product. Additionally, RZBC cites to Structural Steel Beams from South Africa in stating that it is normal for by-product sales to be treated as part of sales revenue.
- RZBC argues that the significance of each product relative to the other joint product is not significant compared to other products. Additionally, RZBC states that the relative sales value is not significant based on the Department's net realizable value calculation, and notes that the Department's calculation is flawed since the primary sales value is based on a SV and China is considered a non-market economy country.
- RZBC states that its by-products are unavoidable consequences of production of the subject merchandise, and require insignificant further processing. Furthermore, RZBC states that it does not intentionally control the production quantities of its by-products.
- RZBC argues that it is unreasonable to calculate the net realizable value of high protein scrap based on the SV of citric acid because citric acid is not produced at the split off point, and because there is significant processing after the split off point. RZBC notes that using the citric acid SV results in an unreasonable circular methodology (i.e., where the SV of citric acid becomes the basis for the normal value ("NV") of citric acid in the

[27] See Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from South Africa, 67 FR 35485 (May 20, 2002) ("Structural Steel Beams from South Africa").

antidumping calculation) that was rejected by IPSCO and Polyvinyl Alcohol from the PRC.[28]

- RZBC argues that the sales value methodology used in the Preliminary Results, in which the Department deducts downstream further processing FOPs from the selling price, shifts a disproportionate amount of overhead, selling, general and administrative, profit, and costs of citric acid SV onto the upstream shared FOPs of the co-products. Additionally, RZBC states that the Department's methodology significantly overstates the net realizable value of the co-product (i.e., citric acid vs. co-product from the split-off point) when compared with RZBC's cost allocation methodology.
- RZBC argues that the Department should use a cost allocation methodology that values upstream shared FOPs for the co-products, which RZBC provided in a supplemental questionnaire response, to avoid circularity issues.
- RZBC cites to Polyvinyl Alcohol from the PRC in stating that it is the Department's preference to use a cost allocation methodology instead of a sales value methodology, however noted that a sales value methodology was ultimately used. RZBC notes that unlike this case, the Department did not use a subject merchandise SV in obtaining a net realizable value for the co-product in Polyvinyl Alcohol from the PRC.
- Petitioners note that RZBC's methodology is incorrect, because it would offset citric acid costs by the value of high protein scrap, which is more akin to by-product methodology.

Department's Position: We disagree with RZBC that high protein scrap should be treated as a by-product in this administrative review. For the final results, we have continued to treat citric acid and high protein scrap as co-products.

RZBC's production facilities produce citric acid, high protein scrap and minor products, including corn feed, sludge and calcium sulfate. The output from a particular production stage (i.e., split-off point) is liquefied liquid[29] and wet high protein scrap. The liquefied liquid is processed further to produce the merchandise under consideration, citric acid. The wet high protein scrap also undergoes further processing, which consists of drying and packing before being sold to third parties. The other minor products are produced subsequent to the split-off point during the further processing of the liquefied liquid.

The National Association of Accountants ("NAA") defines a joint product as two or more products so related that one cannot be produced without producing the other(s), each having relatively substantial value and being produced simultaneously by the same process up to a split-off point.[30] The NAA defines a by-product as a secondary product recovered in the course of manufacturing a primary product, whose total sales value is relatively minor in comparison with

[28] See IPSCO, Inc. v. United States, 965 F. 2d 1056, 1061 (Fed. Cir. 1992) ("IPSCO"); see also Polyvinyl Alcohol from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 27991, (May 15, 2006) ("Polyvinyl Alcohol from the PRC").

[29] The term liquefied liquid is labeled by RZBC and is used consistently throughout the instant review. It is comprised of components of inputs previously entered in the production process and is an output from the split-off point.

[30] See Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010–2011, 78 FR 36168 (June 17, 2013) and accompanying Issues and Decision Memorandum at Comment 14.

the sales value of the primary product(s).[31] In a similar vein, it has been noted that the products in a jointly produced group often vary in importance.[32] Products of greater importance are termed major products and products of minor importance are termed by-products. When two or more major products appear in the same group, they are called co-products.[33] The term joint product includes major products, by-products, and co-products because all are jointly produced.[34]

As noted by RZBC, the Department looks to several factors in order to determine which joint products are to be considered co-products and which are to be considered by-products.[35] Among these factors are the following: 1) how the company records and allocates costs in the ordinary course of business, in accordance with its home country GAAP; 2) the significance of each product relative to the other joint products; 3) whether the product is an unavoidable consequence of producing another product; 4) whether management intentionally controls production of the product; and 5) whether the product requires significant further processing after the split-off point. No single factor is dispositive in our determination. Rather, we consider each factor in light of all of the facts and circumstances surrounding the case.

The first factor is how the company allocates costs in the ordinary course of business. In the normal course of business, RZBC tracks the quantities of high protein scrap produced and records the quantities in inventory on a monthly basis. In addition, on a monthly basis, RZBC assigns a cost to the high protein scrap in inventory, based on an estimated value.[36] While RZBC does not allocate individual cost elements (e.g., raw material costs) to high protein scrap, RZBC records the sale of the high protein scrap in its main sales revenue account, and the related cost as cost of sales.[37] As differences between the relative values of joint products influence the decision as to the amounts of time and effort to expend in costing and tracking them, we consider RZBC's treatment of high protein scrap in its normal books and records, as compared to other minor products, an indication of its relative significance. For example, RZBC also produces sludge and calcium sulfate, however, unlike high protein scrap, RZBC does not track the production of these products and only records revenue from these products in other operating income.[38]

The second factor is the significance of each product relative to the other joint products. The significance of the various joint products produced impact the necessity of more detailed

---

31 See id at Comment 14.
32 See id at Comment 14.
33 See id at Comment 14.
34 See id at Comment 14.
35 See Final Results of Antidumping Finding Administrative Review: Elemental Sulphur From Canada ("Elemental Sulphur From Canada"), 61 FR 8239, 8241-42 (March 4, 1996).
36 See Letter from RZBC to the Department, regarding "Citric Acid and Citrate Salt from the People's Republic of China: Fifth Supplemental Questionnaire Response," dated April 18, 2013("RZBC's April 18, 2013 response"), at 8 and Exhibit 7.
37 See RZBC's April 18, 2013 response, at 14.
38 See RZBC's April 18, 2013 response, at 14. See also Memorandum from the Department to the File regarding, "Verification Report of the Sales and Factors Responses of RZBC Co., Ltd., RZBC Import & Export Co., Ltd., and RZBC (Juxian) Co., Ltd. in the Antidumping Duty Administrative Review of Citric Acid and Certain Citrate Salts from the People's Republic of China," dated October 30, 2013 ("RZBC's Verification Report"), at 39.

tracking of production activity, thus, resulting in the company-wide decision of whether to treat certain products as by-products versus co-products. In past cases, in assessing the significance of each product generated from a joint process, we have looked at the relative value for each of the products produced from the joint process stream.[39] While the relative value of the end products is important for financial reporting purposes, the relative values of the joint products at the split off point are more meaningful for assessing the significance of each product generated from the joint production process.[40] For purposes of this case, we analyzed the relative value of each product generated from the joint production based on the relative values for the products output from the joint process (i.e., at the split-off point).

In assessing the significance of each product output from the split-off point, we attempted to obtain a reasonable market value for products produced, as close to the split off point as possible. As citric acid and dry high protein scrap are the saleable products that result closest to the split-off point, we started with SVs from the selected surrogate country, for these products, then reduced the values by the cost of further processing each product after the split-off point. The further processing costs were calculated based on RZBC's reported FOPs after the split-off point and the respective SVs from the selected surrogate country for each FOP. This analysis demonstrated that the net realizable value ("NRV") of high protein scrap at the split-off point is significant as compared to that of the liquefied liquid.[41]

With respect to RZBC's argument that it is unreasonable to calculate the NRV of high protein scrap based on the SV of citric acid because citric acid is not produced at the split-off point, and because there is significant processing after the split-off point, we disagree. While we agree with RZBC that under ideal circumstances it would be our preference to obtain SVs at the split-off point, there are no SVs available to determine the value of the joint products produced at the split-off point (i.e., liquefied liquid and wet high protein scrap). Likewise, there is no SV for a product that is produced further upstream (i.e., closer to the split-off point) from citric acid. Therefore, it is reasonable to use the citric acid and dry high protein scrap SVs, and deduct further processing costs, to determine the NRVs of the joint products produced and assess the relationship between the NRVs at the split-off point.

The third and fourth factors that we use in determining whether joint products are main products or by-products are whether the product is an unavoidable consequence of producing another product and whether management intentionally controls the production of the joint products. If a product in question is avoidable, but is intentionally produced, it supports the notion that the product is a main product. If a product in question is not avoidable, it neither supports nor refutes a decision to treat a product as a main product or a by-product. As such, these factors

[39] See Elemental Sulphur From Canada.

[40] See Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review, 73 FR 52642 (September 10, 2008) ("Magnesium Metal from Russia") and corresponding Issues and Decision Memorandum at Comments 2 and 3.

[41] See Memorandum from the Department to the File, regarding "Third Administrative Review of the Antidumping Duty Order on Citric Acid and Certain Citrate Salts from the People's Republic of China: Analysis of the Preliminary Results Margin Calculation for RZBC Import & Export Co., Ltd.," dated June 3, 2013 at Attachment IV.

look at whether management takes steps to minimize or maximize the output quantities of certain outputs. In this case, RZBC cannot avoid or necessarily control the ratio of liquefied liquid and high protein scrap coming out from the split-off point; thus, the output of each joint product is unavoidable.[42] That being said, these two factors neither support nor refute a decision to treat high protein scrap as a main product or a by-product.

Finally, the last factor considers whether high protein scrap requires significant further processing after the split-off point. This factor can have conflicting implications. For financial reporting purposes, this factor is relevant in that if there is significant further processing required, presumably the end product's value will increase to the point where its value may be significant in relation to the other end products produced. On the other hand, however, the fact that a product output from the split-off point requires significant further processing may indicate that the value of the output product is minimal, with the bulk of its value being added by the further processing. As such, if a product in question undergoes significant further processing, it may support the notion that the product is a main product. Although, if a product in question is not significantly further processed, it neither supports nor refutes a decision to treat a product as a main product or a by-product. In the instant case, RZBC's wet high protein scrap is dried and packaged for sale after the split-off point.[43] We find that the high protein scrap does not require much additional processing after the split-off point. While there is further processing required to produce the high protein scrap, which management intentionally undertakes (which may support treating the product as a co-product), the further processing required does not appear to be significant.[44] As such, in the instant case, we do not consider that this factor supports treatment of the high protein scrap as either a by-product or co-product. We note, however, that management does intentionally undertake further processing rather than dispose of the product at the split-off point.

In summary, based on our analysis of the five factors above, we consider wet high protein scrap to be a co-product at the split-off point. Specifically, the relative value at the split-off point is significant, and in its normal books and records RZBC tracks production quantities, assigns a cost, and records high protein scrap in inventory.[45] While the significance of further processing on its own does not refute or support a co-product or by-product treatment, management does intentionally further process the wet high protein scrap.[46] Thus, taking all the factors into account, we consider it appropriate to allocate a portion of the FOPs through the split-off point to both liquefied liquid and wet high protein scrap. Accordingly, consistent with the preliminary results, for all the reasons stated above, the Department will treat RZBC's claimed by-product, high protein scrap, as a co-product.

---

[42] See RZBC's Verification Report at 15-16; see also Letter from RZBC to the Department regarding, "Citric Acid and Citrate Salt from the People's Republic of China: 1st Supplemental Questionnaire Response," dated November 28, 2012, at 20-21 and 29.

[43] See RZBC's November 7, 2013, Case Brief at 7.

[44] See Memorandum from the Department to the File regarding, "Third Administrative Review of the Antidumping Duty Order on Citric Acid and Certain Citrate Salts from the People's Republic of China: Analysis of the Preliminary Results Margin Calculation for RZBC Import & Export Co., Ltd.," dated June 3, 2013, at Attachment IV.

[45] See RZBC's April 18, 2013 response, at 8, 14, 15 and Exhibit 7.

[46] See RZBC's November 7, 2013, Case Brief, at 7.

With respect to RZBC's argument that using the citric acid SV creates circularity issues because using an SV to value citric acid in calculating the NRV for high protein scrap ultimately distorts the calculated NV for citric acid, we disagree. The starting point for our NRV calculations are independent market values, as well as from our surrogate country. We avoid the circularity issues faced in other cases, when using a value based allocation methodology, because we are not using alleged dumped prices to determine the allocation of the cost at the split-off point for each co-product.[47] Further, contrary to RZBC's assertions, the SV for citric acid does not become the basis for the NV. Instead, the SV for citric acid is used for determining the NRV of liquefied liquid in order to allocate the FOPs up to the split-off point to the respective co-products.

Two common approaches for allocating joint production costs to co-products are value based and physical measure (e.g., volume or weight based).[48] The Department's current practice, of using a value based allocation methodology, is normally considered reasonable when a volume-based allocation methodology generates an unreasonable result. Here, because at the split-off point each product produced (i.e., wet high protein scrap and liquefied liquid) is radically different in composition and is not convertible to the same basis, using a volume based allocation methodology generates an unreasonable result.[49] As such, the NRV allocation methodology adopted at the preliminary results, and normally used by the Department in cases with similar fact patterns, is a reasonable allocation basis for joint products. On the contrary, while we note that RZBC's calculation methodology also demonstrates that high protein scrap should be considered a co-product, the methodology is flawed. Specifically, the starting point for RZBC's methodology only takes into account the NRV for high protein scrap, deducts further processing costs, and then subtracts that result from the total joint product costs (i.e. the joint product costs that we are trying to determine how much should be allocated to each co-product). This methodology does not allow the co-products to be analyzed on the same basis (i.e., starting with the sales value and deducting further processing costs). To properly determine the appropriate amounts of the FOPs that should be allocated to each co-product, the starting point in determining the NRV should be on the same basis.

COMMENT 6: REVOCATION FOR RZBC

- RZBC argues that the Department should revoke the antidumping duty order for RZBC because it has three consecutive years of sales at not less than NV.
- While it requests revocation, RZBC acknowledges that the Department modified its revocation procedure by eliminating the regulation providing for company-specific revocation from antidumping orders for companies with three consecutive years of sales at not less than normal NV.[50]

[47] See Magnesium Metal from Russia and accompanying Issues and Decision Memorandum at Comment 3.
[48] See Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada, 67 FR 15539 (April 2, 2002) ("Lumber from Canada) and accompanying Issues and Decision Memorandum at Comment 4.
[49] See Lumber from Canada and corresponding Issues and Decision Memorandum at Comment 4.
[50] See Modifications to Regulations Concerning the Revocation of Antidumping and Countervailing Duty Orders, 77 FR 29875 (May 21, 2012) ("Rule Modification").

- However, RZBC argues that the Rule Modification is contrary to law and inapplicable in this case because it violates the Administrative Procedure Act ("APA"). RZBC argues that the Department's regulations set the deadline for review requests and revocation requests during the anniversary month of the antidumping duty order. After the Department receives these requests, RZBC argues that the Department is supposed to publish an initiation notice no later than the last day of the month following the anniversary month. RZBC argues that by making the Rule Modification effective on June 20, 2012, RZBC's review request was covered even though its request was made before the May 21, 2012, publication of the Rule Modification. Therefore, RZBC contends that the Rule Modification's actual effective date covered review requests made prior to its publication, which results in an impermissible effective date under the APA. RZBC quotes the APA statement that "the required publication or service of a substantive rule shall not be made less than 30 days before its effective date."[51]
- RZBC contends that it did not submit a revocation request in May 2012 because it would have been futile to make such a request without a verification, given the elimination of the verification requirement by the Rule Modification. However, it notes that it decided to submit a revocation request because the Department ultimately verified RZBC in this review.
- RZBC argues that the Department essentially backdated the Rule Modification because it potentially affected any revocation requests made prior to May 21, 2012, for reviews that had not been initiated.
- RZBC also argues that its revocation from the order would not be inconsistent with the policy considerations that precipitated the Rule Modification, e.g., conservation of resources, equitable administration, etc. For example, RZBC notes that because the Department verified it during this review, the Department has already allocated resources.
- Petitioners argue that the Department should not revoke the antidumping duty order with respect to RZBC because the regulations do not allow RZBC to seek company-specific revocation. Petitioners note that the Rule Modification states that company-specific revocation is no longer available for reviews initiated after June 20, 2012, and this instant review was initiated on July 10, 2012.
- Petitioners argue that the Rule Modification does not violate the APA. Petitioners note that the APA requires that publication of a substantive rule "shall not be made less than 30 days before its effective date." Petitioners contend that the Rule Modification was published on May 21, 2012, which is thirty days before the June 20, 2012, effective date. Therefore, Petitioners assert that the Rule Modification complies with the APA.
- Petitioners argue that RZBC's claim that revocation would not be inconsistent with the policy considerations precipitating the Rule Modification is irrelevant because the plain language of the regulation is controlling.
- Petitioners note that even if the Rule Modification did not exist, RZBC's revocation request would be untimely under the former regulations which required such requests be made by the last day of the anniversary month. Petitioners note that RZBC submitted its

[51] See 5 U.S.C. § 553(d); see also RZBC's "Citric Acid and Citrate Salts from the People's Republic of China: Request for Revocation" (October 31, 2013), at 6.

request for revocation on October 31, 2013. Petitioners argue that the timing of RZBC's request stripped Petitioners of an opportunity to address the revocation request.

Department's Position: The Department recently revoked the regulation that provided for revocation of an antidumping duty order with respect to individual exporters or producers based on those individual exporters or producers having received antidumping rates of zero for three consecutive years.[52] This change to the Department's company-specific revocation regulation applies to all reviews initiated on or after June 20, 2012. This review was initiated on July 10, 2012, which is after the effective date (June 20, 2012) of the Rule Modification. Therefore, based upon the date of the initiation of this review, RZBC is not eligible for revocation under the regulation in effect prior to the Rule Modification.

RZBC argues that the regulation should apply to its request. However, even if the regulation was still in force, RZBC failed to satisfy the procedural requirements of the revoked regulation. Under the regulation, a company could request revocation from an antidumping order by submitting a written request during the anniversary month of the publication of the antidumping order. See 19 C.F.R .351.222(e). In this proceeding, the anniversary month of this review was May 2012. If RZBC wanted to obtain a company-specific revocation from the antidumping order, its request should have been submitted in May 2012. Under the revoked regulation, this would have permitted the Department the ability to consider the request and conduct the requisite and appropriate analysis during the review. However, RZBC's revocation request was not submitted until October 31, 2013, which is almost a year and a half past the deadline for submitting a request for revocation under the previous regulatory provision. RZBC states that it did not submit a revocation request because the Rule Modification made such a request futile given the elimination of the verification requirement. However, the Department is not persuaded by this reason as justification for not submitting a timely revocation request under the revoked regulation. We note that conducting verification was only one component of the revocation requirement under the revoked regulation. In cases of revocation, the type of information examined and reviewed at verification becomes particularly important. Specifically, as part of the revocation analysis under the revoked regulation, the Department also examined whether the continued application of the antidumping duty order was necessary to offset dumping.[53] By submitting its revocation request almost a year and a half after the deadline and after the completion of verification, RZBC deprived the Department and other interested parties of requesting information prior to verification related to all of the relevant factors and of examining this information at verification. In addition, we note that RZBC's request for review was made on May 14, 2012, and the Rule Modification was published on May 21, 2012, and became effective on June 20, 2012. RZBC could not have definitively known when the Department was going to publish the initiation of cases with May 2012 anniversary dates, but decided not to submit a revocation request by the May 2012 deadline even though the Department could have initiated prior to June 20, 2012. Therefore, irrespective of the effective date of the Rule

[52] See Rule Modification, 77 FR at 29875.
[53] See 19 CFR 351.222(b)(2)(i)(C)(2011).

Modification, RZBC would not be eligible for revocation because its request was not timely submitted.[54]

RZBC also argues that the Rule Modification should not apply because it violates the APA. We disagree with RZBC. The APA states that "the required publication or service of a substantive rule shall not be made less than 30 days before its effective date."[55] As noted above, the Rule Modification was published on May 21, 2012, and stated that it would become effective for all reviews initiated after June 20, 2012. RZBC argues that the Rule Modification's effective date should not apply to its request because it submitted its review request prior to May 21, 2012. RZBC claims that by making the Rule Modification effective for reviews initiated on or after June 20, 2012, the Department effectively backdated the Rule Modification because requests for reviews prior to June 20, 2012, are not covered. However, the APA does not dictate to what event a rulemaking must be tied, but rather requires a 30-day wait period for the effective date. It was within the Department's discretion to tie the effective date of the Rule Modification to the initiation of a review, rather than to when parties request a review. RZBC fails to demonstrate why such an approach is unreasonable. Therefore, there is nothing improper about the procedure by which the Department eliminated the regulation, and we find that the Rule Modification does not violate the APA.

RZBC contends that the Department delayed initiation of this instant review beyond the required initiation date in the Department's regulations. RZBC notes that 19 C.F.R. 351.221(c)(1)(i) states that the Department "will publish the notice of initiation of review no later than the last day of the month following the anniversary month." RZBC states that the anniversary month of the current review was May 2012 and that the Department should have published the initiation notice in June 2012 and not July 2012. However, we note that publishing the initiation notice on the last day of June 2012 would have had no impact on RZBC's revocation request. The effective date of the Rule Modification was June 20, 2012. As of June 20, 2012, the Rule Modification eliminated the company-specific revocation regulation for reviews initiated (not requested) after June 20, 2012. The Department's initiation notice for antidumping and countervailing duty orders and findings with May anniversary dates was published on July 10, 2012.[56] Even if the Department had published the Initiation Notice on June 29, 2012 (the last business day in June 2012), the Rule Modification still would have applied.

RZBC also argues that the Department should not apply the Rule Modification to its request because the Department's reasons for implementing the Rule Modification do not apply to its situation. For example, RZBC notes that one of the policy considerations leading the Department to implement the Rule Modification was conservation of resources. RZBC argues that the Department verified RZBC in this instant review and, given that verification was a requirement under the previous regulatory provision, the Department would not have to expend

---

[54] We note that if the previous regulatory provision was still in place, the Department would have rejected RZBC's October 31, 2013, revocation request from the record for having been untimely submitted. However, since the previous regulatory provision is no longer applicable, the Department did not reject RZBC's October 31, 2013, revocation request from the record.
[55] See 5 U.S.C. § 553(d).
[56] See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 77 FR 40565 (July 10, 2012) ("Initiation Notice").

additional resources to complete this component of its revocation analysis. We disagree with RZBC. First, we agree with Petitioners that the plain language of the Rule Modification is controlling and not the policy considerations that led the Department to implement the Rule Modification. Second, we note that RZBC's revocation request was submitted almost a year and a half past the May 2012 anniversary month and after the Department had completed verification. Under the previous regulatory provision, the Department had to consider whether the company requesting revocation had sales of subject merchandise in commercial quantities for three consecutive years. Given the late submission of RZBC's revocation request, interested parties would not have had the opportunity to place information on the record related to RZBC's revocation request, and the Department did not have reason to verify the commercial quantities of RZBC's sales for all the relevant years, given that we did not verify RZBC's information in the second review. Additionally, a request for company-specific revocation would have required the Department to conduct a verification, during which RZBC's books and records for the past three years would have been verified. Therefore, we find RZBC's arguments regarding the policy considerations of the Rule Modification to be unpersuasive.

Given that the Rule Modification eliminating the company-specific revocation regulation applies to the administrative review forming the basis of RZBC's revocation request, we find that RZBC should not be revoked from this antidumping order.

RECOMMENDATION

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

AGREE ✓ DISAGREE__________

Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

12/26/13
Date