



A-570-071
Investigation
Public Document
E&C/IV: MZ/SB

September 17, 2018

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Affirmative
Determination in the Less-Than-Fair-Value Investigation of
sodium gluconate, gluconic acid, and derivative products from the
People's Republic of China

I. Summary

The Department of Commerce (Commerce) finds that sodium gluconate, gluconic acid, and derivative products (GNA Products) from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is April 1, 2017, through September 30, 2017.

After analyzing the comments submitted by interested parties, we have made no changes to the *Preliminary Determination*.¹ We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

II. List of Issues

Comment 1: Application of Adverse Facts Available (AFA) to the China-Wide Entity
Comment 2: Whether to Assign the China-Wide Entity Rate to the Separate Rate Applicant
Comment 3: Whether the Scope of the Investigation Should be Modified

¹ See *Sodium Gluconate, Gluconic Acid, and Derivative Products from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 83 FR 31949 (July 10, 2018) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum.



III. Background

On July 10, 2018, Commerce published the *Preliminary Determination* of this investigation.² We invited interested parties to comment on the *Preliminary Determination*. On August 9, 2018, we received a case brief from PMP Fermentation Products, Inc., the petitioner in this investigation (the petitioner).³ We received no comments from other interested parties. Based on our review of the *Preliminary Determination*, and our analysis of the comments received, we made no changes to our *Preliminary Determination*.

IV. Scope of Investigation

The scope of the investigation covers all grades of sodium gluconate, gluconic acid, liquid gluconate, and glucono delta lactone (GDL) (collectively GNA Products), regardless of physical form (including, but not limited to substrates; solutions; dry granular form or powders, regardless of particle size; or as a slurry). The scope also includes GNA Products that have been blended or are in solution with other product(s) where the resulting mix contains 35 percent or more of sodium gluconate, gluconic acid, liquid gluconate, and/or GDL by dry weight.

Sodium gluconate has a molecular formula of $\text{NaC}_6\text{H}_{11}\text{O}_7$. Sodium gluconate has a Chemical Abstract Service (CAS) registry number of 527-07-1, and can also be called “sodium salt of gluconic acid” and/or sodium 2, 3, 4, 5, 6 pentahydroxyhexanoate. Gluconic acid has a molecular formula of $\text{C}_6\text{H}_{12}\text{O}_7$. Gluconic acid has a CAS registry number of 526-95-4, and can also be called 2, 3, 4, 5, 6 pentahydroxycaproic acid. Liquid gluconate is a blend consisting only of gluconic acid and sodium gluconate in an aqueous solution. Liquid gluconate has CAS registry numbers of 527-07-1, 526-95-4, and 7732-18-5, and can also be called 2, 3, 4, 5, 6-pentahydroxycaproic acid-hexanoate. GDL has a molecular formula of $\text{C}_6\text{H}_{10}\text{O}_6$. GDL has a CAS registry number of 90-80-2, and can also be called d-glucono-1,5-lactone.

The merchandise covered by the scope of the investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 2918.16.1000, 2918.16.5010, and 2932.20.5020. Merchandise covered by the scope may also enter under HTSUS subheadings 2918.16.5050, 3824.99.2890, and 3824.99.9295. Although the HTSUS subheadings and CAS registry numbers are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

² *Id.*

³ See Petitioner’s Letter to Commerce, “Antidumping Duty Investigation of Sodium Gluconate, Gluconic Acid and Derivative Products from the People’s Republic of China: Petitioner’s Case Brief,” dated August 9, 2018 (Petitioner’s Case Brief).

V. Discussion of Issues

Comment 1: Application of Adverse Facts Available (AFA) to the China-wide Entity

Petitioner Case Brief:

- In its *Preliminary Determination*, Commerce correctly determined that the application of AFA is warranted for the China-wide entity, which includes all of the mandatory respondents (*i.e.*, Shandong Fuyang Biotechnology Co., Ltd./Shandong Fuyang Biology Starch Co., Ltd. (Shandong Fuyang); Qingdao Dongxiao Enterprise Co., Ltd. (Qingdao Dongxiao); Zhejiang Tianyi Food Additives Co. Ltd. (Tianyi Food); and Dezhou Huyang Biotechnology Co., Ltd. (Dezhou Huyang)).
- Each mandatory respondent did not cooperate to the best of its ability in this investigation by failing to respond to Commerce's request for information and withdrawing from participation in this investigation.
- While Shandong Fuyang is the only mandatory respondent that submitted questionnaire responses at the beginning of the investigation, it failed to submit a revised factors of production database upon Commerce's request and, instead, notified Commerce of its intention to no longer participate in this investigation, thereby impeding the investigation by failing to cooperate to the best of its ability.⁴
- Moreover, prior to withdrawing from participation in this investigation, Shandong Fuyang also engaged in other behaviors, such as misrepresenting the nature of its relationship with Dezhou Huiyang and failing to respond adequately to several of Commerce's questions. Accordingly, such behaviors alone would have warranted Commerce's application of AFA to Shandong Fuyang.
- Nothing has changed since the *Preliminary Determination*. Accordingly, Commerce should continue to apply total AFA to the China-wide entity, which includes all mandatory respondents, in its final determination.

No other interested parties commented on this issue.

Commerce's Position:

We agree with the petitioner regarding the application of AFA in the final determination to the China-wide entity, which includes Shandong Fuyang, Qingdao Dongxiao, Tianyi Food, and Dezhou Huyang. We also agree that, since the *Preliminary Determination*, the parties have not identified any record information or made any comments that would warrant a change to our determination of applying a rate based on AFA to the China-wide entity.

As we stated in the *Preliminary Determination*, the record indicates that exporters and/or producers of the subject merchandise during the POI subject to individual examination did not respond to Commerce's requests for information. Specifically, we did not receive timely responses to its quantity and value (Q&V) questionnaire from numerous Chinese exporters

⁴ See Preliminary Decision Memorandum at 2-7.

and/or producers of the subject that were named in the Petition and to whom we issued Q&V questionnaires.⁵ In addition, Qingdao Dongxiao, Tianyi Food, and Dezhou Huiyang refused to participate as mandatory respondents and did not respond to our antidumping duty (AD) questionnaire.⁶ Because these companies failed respond to our requests for information and, thus, did not demonstrate eligibility for separate rate status, they are properly considered part of the China-wide entity.⁷ Moreover, although Shandong Fuyang submitted responses to Commerce's questionnaire and supplemental questionnaires, it failed to respond to Commerce's request to correct errors in its factors of production (FOP) database⁸ and notified Commerce of its intention to not continue participating in this investigation, thereby rendering its responses to Commerce's questionnaires incomplete and unverifiable. Because Shandong Fuyang's responses are incomplete and unverifiable, we find such responses, including those related to separate rate eligibility, unreliable.⁹ Thus, Shandong Fuyang is, therefore, also properly considered part of the China-wide entity.

Section 776(a)(1) and (2) of the Act provide that, if necessary information is missing from the record, or if an interested party: (A) withholds information that has been requested by Commerce; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsection 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the AD statute; or (D) provides such information but the information cannot be verified, Commerce shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

When Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within applicable time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate.

⁵ See Q&V Delivery Confirmation, dated December 22, 2017. Of the 82 packages sent, 78 were delivered, and 4 could not be delivered because of incomplete addresses.

⁶ See Qingdao Dongxiao's Letter, "Sodium Gluconate, Gluconic Acid, and Derivative Products from the PRC: Withdrawal from Participation," dated February 14, 2018 (Qingdao Dongxiao Withdrawal); Tianyi Food's Letter, "Sodium Gluconate, Gluconic Acid, and Derivative Products from the People's Republic of China - Withdrawal of Participation in Antidumping Duty Investigation," dated March 8, 2018 (Tianyi Food Withdrawal); and Dezhou Huiyang Letter, "Sodium Gluconate, Gluconic Acid, and Derivative Products from the People's Republic of China: Dezhou Huiyang Biotechnology Co., Ltd. Withdrawal of Participation in Antidumping Duty Investigation," dated March 13, 2018 (Dezhou Huiyang Withdrawal); see also Commerce AD Duty Questionnaire to Qingdao Dongxiao, dated January 18, 2018 (issuing questionnaire to Qingdao Dongxiao), AD Duty Questionnaire to Tianyi Food, dated March 6, 2018 (issuing questionnaire to Tianyi Food), and AD Duty Questionnaire to Dezhou Huiyang, dated March 9, 2018 (issuing questionnaire to Dezhou Huiyang).

⁷ See *Sodium Gluconate, Gluconic Acid, and Derivative Products from France and the People's Republic of China: Initiation of Less-Than-Fair-Value Investigations*, 83 FR 516, 520 (January 4, 2018) (*Initiation Notice*) ("Exporters and producers who submit a separate-rate application and have been selected as mandatory respondents will be eligible for consideration for separate-rate status only if they timely respond to all parts of the Department's AD questionnaire as mandatory respondents").

⁸ See Memorandum to the File, "Telephone Conversation with Respondent's Counsel," dated May 29, 2018.

⁹ See Shandong Fuyang's Letter, "Notice of Non-Participation in Investigation," dated May 30, 2018 (Shandong Fuyang Withdrawal).

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.¹⁰ Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.¹¹

When using facts otherwise available, section 776(c) of the Act provides that, where Commerce relies on secondary information (such as the petition) rather than on information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.¹² The SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information to be used has probative value.¹³ To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used.¹⁴ Further, when selecting an AFA margin, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the margin reflects an “alleged commercial reality” of the interested party.¹⁵

1. Application of Facts Available

As noted above, having failed to establish their eligibility for separate rate status, Dezhou Huiyang, Qingdao Dongxiao, Shandong Fuyang, and Tianyi Food are part of the China-wide entity. These companies withdrew from participation in this investigation, thereby demonstrating a failure to cooperate with Commerce’s request for information. Additionally, other companies which failed to demonstrate eligibility for separate rate status also failed to submit their Q&V information.¹⁶

¹⁰ See section 776(b)(1)(B) of the Act.

¹¹ See 19 CFR 351.308(c).

¹² See Statement of Administrative Action accompanying the Uruguay Round Agreements Act (URAA), H.R. Doc. 103-316, at 870 (1994) (SAA).

¹³ *Id.*, see also 19 CFR 351.308(d).

¹⁴ See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Partial Termination in Part*, 62 FR 11825 (March 13, 1997).

¹⁵ See section 776(d)(1)-(2) of the Act.

¹⁶ See Preliminary Decision Memorandum at 11; see also Commerce Letter regarding the quantity and value questionnaire in this antidumping investigation, issued on December 21, 2017 and Memorandum, “FedEx Delivery,” dated December 22, 2017 (Q&V Delivery Confirmation); as well as, letter from the petitioner to Commerce, “PMP’s Response to Commerce’s Supplemental

For the reasons noted above, we continue to find that the China-wide entity, which includes Dezhou Huiyang, Qingdao Dongxiao, Shandong Fuyang, and Tianyi Food, failed to provide necessary information, withheld information requested by Commerce, and significantly impeded this proceeding by not submitting the requested information. We note that no party within the China-wide entity submitted documentation indicating that it was having difficulty providing the information, nor did it request to submit the information in an alternate form. Further, the requested information is necessary for Commerce to conduct the instant investigation and without such information there are informational gaps in the record. Therefore, consistent with our *Preliminary Determination*, we continue to find that it is necessary to select from facts otherwise available in determining the rate of the China-wide entity, pursuant to sections 776(a)(1), (a)(2)(A)-(C) of the Act.¹⁷

2. *Application of Facts Available with an Adverse Inference*

Section 776(b) of the Act provides that Commerce, in selecting from the facts otherwise available, may use an inference that is adverse to the interests of a party if that party has failed to cooperate by not acting to the best of its ability to comply with a request for information. As discussed above and in the *Preliminary Determination*, Dezhou Huiyang, Qingdao Dongxiao, Shandong Fuyang, and Tianyi Food have not demonstrated their eligibility for a separate rate and, therefore, are considered part of the China-wide entity. Thus, we continue to determine that the China-wide entity has failed to cooperate by not acting to the best of its ability. Therefore, we find that an adverse inference is warranted in selecting from the facts available with respect to the China-wide entity, in accordance with section 776(b) of the Act and 19 CFR 351.308(a).¹⁸ As a result, we continue to assign the China-wide entity a dumping margin on the basis of AFA in the final determination. Specifically, we continue to select a rate for the China-wide entity based on the highest (and only) dumping margin alleged in the petition (*i.e.*, 213.15 percent), because it is the highest and only rate on the record of the proceeding and Commerce has corroborated such a rate to the extent practicable within the meaning of section 776(c) of the Act.¹⁹

Questions on the Petition,” dated December 7, 2017 (General Issues and AD Supplement), Volume I of the Petition, at 13 and Exhibit I-5A; and General Issues and AD Supplement, at 1 and Revised Exhibit 1-5A.

¹⁷ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 4986, 4991 (January 31, 2003), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

¹⁸ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003).

¹⁹ No party commented on Commerce’s corroboration of this rate in the *Preliminary Determination*. Accordingly, we have made no changes to our corroboration analysis. For further details, see the *Preliminary Determination* and accompanying Preliminary Decision Memorandum at 11-15.

Comment 2: Whether to Assign the China-Wide Entity Rate to the Separate Rate Applicant

Petitioner Case Brief:

- Commerce correctly assigned to separate rate applicant Anhui Xingzhou Medicine Food Co., Ltd. (Xingzhou Medicine) the same rate it assigned to the mandatory respondents (*i.e.*, 213.15 percent), as it is the only available rate in this investigation.
- Since all rates are based on AFA, Commerce is authorized to apply the AFA rate to separate rate applicants. Accordingly, Commerce should continue to apply the AFA rate to Xingzhou Medicine in its final determination.

No other interested parties commented on this issue.

Commerce's Position:

We agree with the petitioner. Based on the information that Xingzhou Medicine provided in its separate rate application (SRA), including information reflected in supplemental questionnaire responses,²⁰ we continue to find that Xingzhou Medicine is eligible to receive a separate rate because it demonstrated an absence of *de jure* and *de facto* government control over its export activities. Accordingly, in the final determination, we continued to assign Xingzhou Medicine a separate rate, which is based on the petition rate because that is the only rate available in this investigation.²¹

Comment 3: Whether the Scope of the Investigation Should be Modified

Petitioner Case Brief:

- In its *Preliminary Determination*, Commerce correctly determined to maintain the scope of the investigation, as it was published in the *Initiation Notice*.²² The only party to submit scope comments for an amendment was Jungbunzlauer S.A. (JBL), a respondent in the companion AD investigation of GNA Products from France, that is no longer a party to this investigation and whose comments focused only on irrelevant domestic like product issues.²³
- Moreover, all GNA Products are of the same class or kind of merchandise because they share the same basic chemistry, differing only in water and sodium content. Thus, they are interchangeable and nearly identical with respect to physical characteristics,

²⁰ See, e.g., Xingzhou Medicine's Letter, "Xingzhou Medicine Separate Rate Application," dated February 5, 2018; Xinghui Medicine's Letter, "First SRA Supplemental Response," dated March 6, 2018; and Xinghui Medicine's Letter, "Second SRA Supplemental Response," dated March 29, 2018.

²¹ See the *Preliminary Determination* and accompanying Preliminary Decision Memorandum at 9.

²² See Preliminary Decision Memorandum at 5; see also *Preliminary Determination* at 83 FR at 31949. See also *Initiation Notice* at 516-518.

²³ Petitioner cites to the Preliminary Decision Memorandum at 5, in which Commerce noted that although it "... evaluates domestic like product issues when determining the sufficiency of a petition, once an investigation is initiated, Commerce does not revisit the definition of domestic like products. Accordingly, we have not considered Jungbunzlauer S.A.'s arguments.")

expectations of ultimate customers, ultimate use, channels of trade, and manner of display.

- Accordingly, Commerce should continue not to modify the scope as it was published in the *Notice of Initiation*.

No other interested parties commented on this issue.

Commerce's Position:

We agree with petitioner. In accordance with the *Preamble* to Commerce's regulations,²⁴ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, *i.e.*, scope.²⁵ In response, on January 9, 2018, we received comments regarding domestic like product from JBL, the mandatory respondent in the AD investigation on GNA Products from France.²⁶ On January 19, 2018, we received rebuttal comments from the petitioner.²⁷ In the *Preliminary Determination*, we cited our explanation in the *Initiation Notice* that section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Because section 771(4)(A) of the Act defines "industry" as the producers as a whole of a domestic like product, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product.²⁸ We also stated that, although Commerce evaluates domestic like product issues when determining the sufficiency of a petition, once an investigation is initiated, Commerce does not revisit the definition of domestic like product. No party has argued that Commerce reconsider this decision. Accordingly, we continue to decline consideration of JBL's domestic like product arguments and have not modified the scope from the *Notice of Initiation*.

Additionally, all of the interested parties had an opportunity to comment on the product characteristics used for reporting purposes in this investigation. In accordance with the preamble to Commerce's regulations, we set aside a period of time for interested parties to raise issues regarding product coverage.²⁹ We specified that any such comments were due January 9, 2018, which was 20 calendar days from the signature date of the *Initiation Notice*, and any rebuttal comments were due by January 19, 2018.³⁰ On January 9, 2018, the petitioners and JBL submitted comments to Commerce regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes.³¹ On January 19, 2018, the petitioner filed

²⁴ See *Antidumping Duties: Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (Preamble).

²⁵ See *Initiation Notice*, 83 FR at 517.

²⁶ See Letter from JBL, "*Investigations of Sodium Gluconate, Gluconic Acid, and Derivative Products from France and China—Junsbunzlauer's Comments regarding Scope*," dated January 9, 2018 (JBL Scope Comments).

²⁷ See the petitioner's Letter, "*Countervailing and Antidumping Duty Investigations of Sodium Gluconate, Gluconic Acid and Derivative Products from the People's Republic of China: Petitioner's Rebuttal Comments on Scope Comments*," dated January 19, 2018.

²⁸ See *Initiation Notice*, 83 FR at 518.

²⁹ See *Initiation Notice*, 83 FR at 518.

³⁰ *Id.*

³¹ See the petitioner's Letter, "*Antidumping Duty Investigations of Sodium Gluconate, Gluconic Acid and Derivative Products from the People's Republic of China and France: PMP's Comments on Product Characteristics*," dated January 9, 2018, and JBL's Letter, "*Antidumping Investigations of Sodium Gluconate,*

rebuttal comments.³² Based on the comments received, we issued a memorandum to interested parties which contained the product characteristics for this investigation.³³

VI. 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 determination of the investigation and the final dumping margins in the *Federal Register*.

☒

Agree

☐

Disagree

9/17/2018

X



Signed by: GARY TAVERMAN

Gary Taverman

Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

Gluconic Acid, and Derivative Products from France and China—Jungbunzlauer’s Comments regarding Product Characteristics for Purposes of Model Matching,” dated January 9, 2018.

³² See the petitioner’s Letter, “Countervailing and Antidumping Duty Investigations of Sodium Gluconate, Gluconic Acid and Derivative Products from the People’s Republic of China: Petitioner’s Rebuttal Comments on Product Characteristics,” dated January 19, 2018.

³³ See Commerce’s Letter, “Product Characteristics for Use in Sections C and D Questionnaire Responses of sodium gluconate, gluconic acid, and derivative products from the People’s Republic of China,” dated February 1, 2018.