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Investigation  
**Public Document**  
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**DATE:** December 29, 2017

**MEMORANDUM TO:** Christian Marsh  
Deputy Assistant Secretary  
for Enforcement and Compliance

**FROM:** Edward Yang  
Senior Director, Office VII  
Antidumping and Countervailing Duty Operations

**SUBJECT:** Decision Memorandum for the Preliminary Determination in the  
Less-Than-Fair-Value Investigation of Citric Acid and Certain  
Citrate Salts from Belgium

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## I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that citric acid and certain citrate salts (citric acid) from Belgium are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average dumping margins are shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice.

## II. BACKGROUND

On June 2, 2017, Commerce received an antidumping duty (AD) petition covering imports of citric acid from Belgium,<sup>1</sup> filed behalf of Archer Daniels Midland Company; Cargill, Incorporated; and Tate & Lyle Ingredients Americas LLC (collectively, the petitioners). On June 30, 2017, Commerce published in the *Federal Register* the initiation of this investigation.<sup>2</sup>

In the *Initiation Notice*, Commerce stated that the petition identified only one company as a producer/exporter of citric acid in Belgium, that it knew of no additional producers/exporters of merchandise under consideration from Belgium, and that, as a result, it intended to examine all known producers/exporters in the investigation for Belgium (*i.e.*, the sole company cited in the petition, S.A. Citrique Belge N.V. (Citrique Belge)).<sup>3</sup>

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<sup>1</sup> See “Petitions for the Imposition of Antidumping and Countervailing Duties on Citric Acid and Certain Citrate Salts from Belgium, Colombia, and Thailand,” dated June 2, 2017 (the Belgium-specific volumes of which are henceforth referred to as: the petition).

<sup>2</sup> See *Citric Acid and Certain Citrate Salts from Belgium, Colombia, and Thailand: Initiation of Less-Than-Fair-Value Investigations*, 82 FR 29828 (June 30, 2017) (*Initiation Notice*).

<sup>3</sup> *Id.*, 82 FR at 29832.

Also in the *Initiation Notice*, Commerce notified parties of the opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of citric acid to be reported in response to Commerce's AD questionnaire.<sup>4</sup> On July 12, 2017, the Coca-Cola Company and Caribbean Refrescos, Inc. (collectively, TCCC), a United States importer of merchandise subject to the above-named investigations, submitted comments requesting that Commerce "explicitly clarify that citric acid products that would qualify for {non-genetically modified organism} (non-GMO) Project Verified labeling are excluded from the scope of the investigations."<sup>5</sup> On July 12, 2017, COFCO Thailand filed a letter stating its support for TCCC's scope exclusion request.<sup>6</sup> On July 24, 2017, the petitioners filed a response opposing TCCC's scope exclusion request.<sup>7</sup>

On July 21, 2017, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of citric acid from Belgium.<sup>8</sup>

Commerce issued its AD questionnaire to Citrique Belge On July 6, 2017. Citrique Belge submitted its section A questionnaire response (AQR) on August 7, 2017, its section B questionnaire response (BQR) on September 7, 2017, and its section C questionnaire response (CQR) and section D questionnaire response (DQR) response on September 8, 2017. From October through November 2017, we issued supplemental questionnaires to Citrique Belge and received timely responses to these supplemental questionnaires from November through December 2017.<sup>9</sup>

On October 11, 2017, the petitioners submitted timely requests pursuant to section 703(c)(1)(A) of the Act and 19 CFR 351.205(e), to postpone the preliminary determination in this investigation. On November 1, 2017, Commerce published in the *Federal Register* the notice of

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<sup>4</sup> *Id.*, 82 FR at 29829.

<sup>5</sup> See TCCC's Comments titled, "Citric Acid and Certain Citrate Salts from Belgium, Colombia, and Thailand; Comments Regarding the Scope of the Investigations, dated July 12, 2017 (TCCC's Exclusion Request).

<sup>6</sup> See letter from COFCO, "Citric Acid and Certain Citrate Salts from Thailand: Scope Comment Requesting Exclusion of Non-GMO Project Verified Citric Acid," dated July 12, 2017 (COFCO Thailand's Comments).

<sup>7</sup> See Letter from Petitioners, titled "Citric Acid and Certain Citrate Salts from Belgium, Colombia, and Thailand: Petitioners' Reply to Comments Regarding the Scope of the Investigation," dated July 24, 2017 (Petitioners' Reply Comments).

<sup>8</sup> See *Citric Acid and Certain Citrate Salts from Belgium, Colombia, and Thailand*, 82 FR 33925 (July 21, 2017) (*ITC Preliminary Determination*); see also ITC Publication 4710, July 2017, "Citric Acid and Certain Citrate Salts from Belgium, Colombia, and Thailand, Investigation Nos. 701-TA-581 and 731-TA-1374-1376 (Preliminary)."

<sup>9</sup> See Citrique Belge's first, second and third supplemental section D questionnaire responses: "Antidumping Duty Investigation of Citric Acid and Certain Citrate Salts from Belgium: Citrique Belge First Supplemental Sections D Questionnaire Response," dated November 1, 2017 (SDQR1); "Antidumping Duty Investigation of Citric Acid and Certain Citrate Salts from Belgium: Citrique Belge Second Supplemental Section D Questionnaire Response," dated November 20, 2017 (SDQR2); and "Antidumping Duty Investigation of Citric Acid and Certain Citrate Salts from Belgium: Citrique Belge Third Supplemental Section D Questionnaire Response," dated December 5, 2017 (SDQR3). See also Citrique Belge's first and second supplemental sections A, B, and C questionnaire responses: "Antidumping Duty Investigation of Citric Acid and Certain Citrate Salts from Belgium: Citrique Belge Sections A, B, and C Supplemental Questionnaire Response," dated November 9, 2017 (SABCQR1) and "Antidumping Duty Investigation of Citric Acid and Certain Citrate Salts from Belgium: Citrique Belge Second Supplemental Section ABC Questionnaire Response," dated November 28, 2017 (SABCQR2).

postponement of the deadline for the preliminary determination, in accordance with section 703(c)(1)(A) of the Act and 19 CFR 351.205(e), until no later than 190 days after the initiation of the investigation, *i.e.*, December 29, 2017.<sup>10</sup>

We are conducting this investigation in accordance with section 733(b) of the Act.

### **III. PERIOD OF INVESTIGATION**

The period of investigation (POI) is April 1, 2016, through March 31, 2017. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was June 2017.<sup>11</sup>

### **IV. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES**

On November 29, 2017, pursuant to 19 CFR 351.210(e)(1), the petitioners requested that Commerce postpone the final determination in the event of a negative preliminary determination.<sup>12</sup> On November 30, 2017, Citrique Belge requested that Commerce postpone the final determination in the event of an affirmative preliminary determination, and on December 1, 2017, pursuant to 19 CFR 351.210(b) and (e), Citrique Belge re-submitted its request to postpone the final determination to also request that provisional measures be extended from a four-month period to a six-month period, pursuant to section 733(d) of the Act.<sup>13</sup>

In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because 1) our preliminary determination is affirmative, 2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise, and 3) no compelling reasons for denial exist, we are granting the respondent's request, postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the *Federal Register* and extending provisional measures from four months to a period not to exceed six months. Suspension of liquidation will be extended accordingly.

### **V. SCOPE COMMENTS**

In accordance with the *Preamble* to Commerce's regulations,<sup>14</sup> the *Initiation Notice* set aside a

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<sup>10</sup> See *Citric Acid and Certain Citrate Salts from Belgium, Colombia, and Thailand: Postponement of Preliminary Determinations of Less-Than-Fair-Value Investigation*, 82 FR 50622 (November 1, 2017) (*Preliminary Postponement Notice*).

<sup>11</sup> See 19 CFR 351.204(b)(1).

<sup>12</sup> See the petitioners' letter, "Antidumping Duty Investigations of Citric Acid and Certain Citrate Salts from Belgium: Petitioners' Request for Postponement of Final Determination," dated November 29, 2017.

<sup>13</sup> See Citrique Belge's letter, "Antidumping Duty Investigation of Citric Acid and Certain Citrate Salts from Belgium: Respondent's Request for Postponement of Final Determination," dated November 30, 2017, as amended by Citrique Belge's letter, "Antidumping Duty Investigation of Citric Acid and Certain Citrate Salts from Belgium: Respondent's Request for Postponement of Final Determination," dated December 1, 2017 (collectively, Citrique Belge's Postponement Request).

<sup>14</sup> See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

period of time for parties to raise issues regarding product coverage, (*i.e.*, “scope”).<sup>15</sup> Certain interested parties commented on the scope of the citric acid investigation, as published in the *Initiation Notice*. For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.<sup>16</sup> We have evaluated the scope comments filed by the interested parties, and we are not preliminarily modifying the scope language as it appeared in the *Initiation Notice*.<sup>17</sup> In the Preliminary Scope Decision Memorandum, we invited interested parties to comment on our preliminary scope finding in their case briefs so that the issue can be addressed in the final determinations of these investigations.<sup>18</sup>

## **VI. SCOPE OF THE INVESTIGATION**

The merchandise covered by this investigation 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 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 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.

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.

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, if included in a mixture or blend, 3824.99.9295 of the HTSUS. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.99.9295 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

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<sup>15</sup> *See Initiation Notice*, 82 FR at 29828.

<sup>16</sup> *See* Memorandum titled “Scope Comments Decision Memorandum for the Preliminary Determinations,” dated December 1, 2017 (Preliminary Scope Decision Memorandum).

<sup>17</sup> *See Initiation Notice*, 82 FR at 29828.

<sup>18</sup> *See* the Preliminary Scope Decision Memorandum at 9.

## VII. DISCUSSION OF THE METHODOLOGY

### Comparisons to Fair Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether Citrique Belge's sales of subject merchandise from Belgium to the United States were made at LTFV, Commerce compared the export price (EP) to the normal value (NV), as described in the "Export Price," and "Normal Value" sections of this memorandum.

#### *A. Determination of Comparison Method*

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or constructed export prices (CEPs)), *i.e.*, the average-to-average method, unless the Secretary determines that another method is appropriate in a particular situation. In LTFV investigations, Commerce examines whether to compare weighted-average NVs with the EPs (or CEPs) of individual sales, *i.e.*, the average-to-transaction method, as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

In recent investigations, Commerce has applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.<sup>19</sup> Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code, *i.e.*, zip code, and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POI

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<sup>19</sup> See, *e.g.*, *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between EP or CEP and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean, *i.e.*, weighted-average price, of a test group and the mean, *i.e.*, weighted-average price, of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region, or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large, *i.e.*, 0.8, threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage, *i.e.*, the Cohen’s *d* test and the ratio test, demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, Commerce examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative comparison method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot

account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.<sup>20</sup>

### ***B. Results of the Differential Pricing Analysis***

For Citrique Belge, based on the results of the differential pricing analysis, Commerce preliminarily finds that 45.05 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>21</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Commerce preliminarily determines that there is not a meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test.<sup>22</sup> Thus, for this preliminary determination, Commerce is applying the standard method for all U.S. sales to calculate the weighted-average dumping margin for Citrique Belge.

## **VIII. DATE OF SALE**

Section 351.401(i) of Commerce's regulations states that, in identifying the date of sale of the subject merchandise or foreign like product, Commerce normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, Commerce may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.<sup>23</sup> Finally, Commerce has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.<sup>24</sup>

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<sup>20</sup> The Court of Appeals for the Federal Circuit (CAFC) in *Apex Frozen Foods v. United States*, 862 F.3d 1337 (Fed. Cir. 2017) recently affirmed much of Commerce's differential pricing methodology. We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

<sup>21</sup> See Commerce's memorandum, "Analysis Memorandum for the Preliminary Determination of the Less-Than-Fair-Value Investigation of Citric Acid and Certain Citrate Salts from Belgium," dated December 22, 2017 (Citrique Belge's Preliminary Analysis Memorandum).

<sup>22</sup> *Id.*

<sup>23</sup> See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

<sup>24</sup> See, e.g., *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007) (*Shrimp from Thailand*), and

Citrique Belge reported the invoice date as the date of sale for sales made in Belgium<sup>25</sup> and for its U.S. sales.<sup>26</sup> Citrique Belge states that its orders/shipments are invoiced subsequent to shipment.<sup>27</sup> Therefore, in accordance with Commerce's practice, Commerce will use the shipment date as the date of sale.

## **IX. PRODUCT COMPARISONS**

In accordance with section 771(16) of the Act, we considered all products produced and sold by Citrique Belge in Belgium during the POI that fit the description in the "Scope of Investigation" section of the accompanying *Federal Register* notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales of merchandise produced/sold by Citrique Belge. We compared U.S. sales to sales of foreign like product made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade or constructed value (CV), as appropriate.

In making product comparisons, we matched subject merchandise and foreign like product based on the physical characteristics reported by Citrique Belge in the following order of importance: type, form, grade, and particle size. The reported control number (CONNUM) identifies the characteristics of citric acid exported by Citrique Belge.

## **X. EXPORT PRICE AND CONSTRUCTED EXPORT PRICE**

### ***A. Export Price***

Section 772(a) of the Act defines EP as "the price at which subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States," as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, we calculated EP for Citrique Belge's U.S. sales where the subject merchandise was first sold to an unaffiliated purchaser in the United States prior to importation and the CEP methodology was not otherwise warranted based on the facts of the record.

We calculated EP for Citrique Belge based on packed prices to unaffiliated purchasers in the United States. We made adjustments for credit expenses, bank charges, indirect selling expenses incurred in the country of manufacture, and inventory carrying costs incurred in the country of

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accompanying Issues and Decision Memorandum (IDM) at Comment 11; *see also Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002) (*Steel Beams from Germany*), and accompanying IDM at Comment 2.

<sup>25</sup> See Citrique Belge's BQR at B-12.

<sup>26</sup> See Citrique Belge's CQR at C-10.

<sup>27</sup> See Citrique Belge's AQR at A-16.



exportation. We also made deductions for movement expenses, *i.e.*, inland freight to the port of exportation and foreign inland insurance, in accordance with section 772(c)(2)(A) of the Act.

## **XI. NORMAL VALUE**

### ***A. Home Market Viability***

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, *i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales, we normally compare the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. If we determine that no viable home market exists, we may, if appropriate, use a respondent's sales of the foreign like product to a third-country market as the basis for comparison market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

In this investigation, we determined that the aggregate volume of home market sales of the foreign like product for Citrique Belge was greater than five percent of the aggregate volume of its U.S. sales of subject merchandise. Therefore, we used home market sales as the basis for NV for Citrique Belge, in accordance with section 773(a)(1)(B) of the Act.

### ***B. Level of Trade***

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).<sup>28</sup> Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.<sup>29</sup> In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market *i.e.*, the chain of distribution, including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales *i.e.*, NV based on either home market or third country prices,<sup>30</sup> we consider the starting prices before any adjustments.

When Commerce is unable to match sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, Commerce may compare the U.S. sale to sales at a different

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<sup>28</sup> See 19 CFR 351.412(c)(2).

<sup>29</sup> *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010), and accompanying IDM at Comment 7 (*OJ from Brazil*).

<sup>30</sup> Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative expenses (SG&A), and profit for CV, where possible. See 19 CFR 351.412(c)(1).

LOT in the comparison market. In comparing EP or CEP sales to sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability *i.e.*, no LOT adjustment is possible, Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.<sup>31</sup>

In this investigation, we obtained information from Citrique Belge regarding the marketing stages involved in making reported home market and U.S. sales, including a description of the selling activities performed by Citrique Belge for each channel of distribution.<sup>32</sup>

Citrique Belge reported that it made sales through two channels of distribution in Belgium, *i.e.*, to unaffiliated distributors and to end-users.<sup>33</sup> According to Citrique Belge, it performed the following selling functions for sales to all home market customers: sales forecasting/strategic/economic planning; sales promotion; distributor/dealer training; quality testing; packing; technical assistance/after sales services; freight and delivery/shipping/logistics.<sup>34</sup>

Selling activities can be generally grouped into four selling function categories for analysis: (1) sales and marketing; (2) freight and delivery; (3) inventory maintenance and warehousing; and (4) warranty and technical support. Based on these selling function categories, we find that Citrique Belge performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and technical support for its home market sales. Because we find that there were no differences in selling activities performed by Citrique Belge to sell to its home market customers through either channel, we preliminarily determine that there is one LOT in the home market, regardless of channel.

With respect to the U.S. market, Citrique Belge reported that, as in the home market, it made sales through two channels of distribution in the United States, *i.e.*, to unaffiliated distributors and to end-users.<sup>35</sup> For its U.S. sales, Citrique Belge reported that it performed the following selling functions: sales forecasting/strategic/economic planning; sales promotion; distributor/dealer training; quality testing; packing; technical assistance/after sales services; freight and delivery/shipping/logistics.<sup>36</sup> Based on these selling function categories, we find that Citrique Belge performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and technical support in the United States. Because we find that there were no significant differences in selling activities performed by Citrique Belge to sell to its U.S. customers through either channel, we preliminarily determine that all U.S. sales are at the same LOT, regardless of channel.

Furthermore, Citrique Belge described the exact same selling functions in both the home and export market. While it provided a description regarding the extent to which each function was

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<sup>31</sup> See, e.g., *OJ from Brazil* and accompanying IDM at Comment 7.

<sup>32</sup> See Citrique Belge's AQR at Exhibit A-5.

<sup>33</sup> *Id.* at A-12 – A-13 and Exhibit A-4.

<sup>34</sup> *Id.* at Exhibit A-4.

<sup>35</sup> *Id.* at A-12 – A-13 and Exhibit A-4.

<sup>36</sup> *Id.* at Exhibit A-4.

applied in each market, the record lacks supporting documentation to corroborate how the same functions in the same channels are performed, by what appears to be the same employees, to a different degree of comparative magnitude between the home and U.S. markets. Thus, we preliminarily find that the selling functions performed for the U.S. and home market customers do not differ significantly. Therefore, Commerce preliminarily finds that sales to the home market during the POI were made at the same LOT as sales to the United States, and, thus, a LOT adjustment is not warranted. Accordingly, we have not granted a LOT adjustment pursuant to sections 773(a)(7)(A) of the Act.

### ***C. Cost of Production Analysis***

Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015.<sup>37</sup> It requires Commerce to request constructed value (CV) and cost of production (COP) information from respondent companies in all AD proceedings.<sup>38</sup> Accordingly, Commerce requested this information from Citrique Belge in this investigation. We examined Citrique Belge's reported cost data and determined that our quarterly cost methodology is not warranted. Therefore, we applied our standard methodology of using annual costs based on the reported data.

#### **1. Calculation of Cost of Production**

In accordance with section 773(b)(3) of the Act, we calculated weighted-average COP based on the sum of costs of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses and interest expenses.<sup>39</sup>

We relied on the COP data submitted by Citrique Belge, except as follows:

- We adjusted the denominator used in the G&A and interest expense ratios to deduct the embedded G&A expenses and by-product sales revenues. We also adjusted the denominator to reflect changes in finished goods inventory.
- We disallowed the interest income offset from the financial expense ratio calculation.<sup>40</sup>

#### **2. Test of Comparison Market Sales Prices**

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the adjusted weighted-average COPs to the home market sales prices of the foreign like product, in order to determine whether the sales prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were exclusive of any billing adjustments, discounts and rebates, movement charges, actual direct and indirect selling expenses, and packing expenses.

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<sup>37</sup> See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793, 46794-95 (August 6, 2015) (*Applicability Notice*).

<sup>38</sup> *Id.*, 80 FR at 46794-95.

<sup>39</sup> See "Test of Comparison Market Sales Prices" section, below, for treatment of home market selling expenses.

<sup>40</sup> See the memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination - S.A. Citrique Beige N.V.," dated December 29, 2017.

### 3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: (1) within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's comparison market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales because: (1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and, (2) based on our comparison of prices to the weighted-average COPs for the POI, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of Citrique Belge's home market sales were at prices less than the COP and that, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We, therefore, excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

#### ***D. Calculation of NV Based on Comparison-Market Prices***

For those comparison products for which there were an appropriate number of sales at prices above the COP for Citrique Belge, we based NV on comparison market prices. We calculated NV based on delivered prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for billing adjustments and quantity discounts in accordance with 19 CFR 351.401(c). We also made deductions from the starting price for movement expenses, including inland freight, under section 773(a)(6)(B)(ii) of the Act.

We deducted comparison-market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act. For comparisons to EP sales, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale. Specifically, we deducted direct selling expenses incurred for home market sales, *i.e.*, credit expenses and other direct selling expenses, and added U.S. direct selling expenses, *i.e.*, credit expenses and other direct selling expenses. In instances where U.S. sales remained unpaid as of the date of Citrique Belge's latest response, we used the signature date of the preliminary determination as the payment date, and we recalculated U.S. imputed credit expenses, in accordance with our practice.<sup>41</sup>

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<sup>41</sup> See *Stainless Steel Bar from France: Final Results of Antidumping Duty Administrative Review*, 70 FR 46482 (August 10, 2005), and accompanying IDM at Comment 8.

When comparing U.S. sales with comparison-market sales of similar, but not identical, merchandise, as applicable, Commerce also made adjustments for differences in merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. As appropriate, Commerce based this adjustment on the difference in the variable cost of manufacturing for the foreign like products and merchandise under consideration.<sup>42</sup>

## **XII. CURRENCY CONVERSION**

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415(a), based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

## **XIII. VERIFICATION**

As provided in section 782(i)(1) of the Act, we intend to verify the factual information submitted in response to Commerce's questionnaires.

## **XIV. RECOMMENDATION**

We recommend applying the above methodology for this preliminary determination.

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\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree



Christian Marsh  
Deputy Assistant Secretary  
for Enforcement and Compliance

December 29, 2017  
(Date)

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<sup>42</sup> See 19 CFR 351.411(b).