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Investigation
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May 29, 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: Scot Fullerton
Director, Office VI
Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Final Affirmative Antidumping Duty
Determination in the Less-Than-Fair-Value Investigation of Citric
Acid and Certain Citrate Salts from Belgium

I. SUMMARY

The Department of Commerce (Commerce) finds 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 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is April 1, 2016, through March 31, 2017.

After analyzing the comments submitted by interested parties, we have made changes to the *Preliminary Determination*.¹ We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this Less-Than-Fair-Value investigation for which we received comments from interested parties:

- Comment 1:** Whether a Certain Home Market Sale Should Be Considered Outside the Normal Course of Trade
- Comment 2:** Correction of Misclassification of Indirect Selling and Inventory Carrying Expense as Movement Expenses

¹ See *Citric Acid and Certain Citrate Salts from Belgium: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 787 (January 8, 2018) (*Preliminary Determination*) and accompanying memorandum, “Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Citric Acid and Certain Citrate Salts from Belgium” (*Preliminary Decision Memorandum*).

Comment 3: Income Offset to Interest Expenses

Comment 4: Revisions to Indirect Selling Expense, General and Administrative, and Financial Expense Ratios

II. BACKGROUND

On January 8, 2018, Commerce published the *Preliminary Determination*. On January 10, 2018, Citrique Belge submitted a request that Commerce correct significant ministerial errors in the calculation of its preliminary AD duty margin.² On February 9, 2018, Commerce released its Preliminary Ministerial Error Memorandum, explaining that, though Citrique Belge identified a ministerial error in the preliminary margin calculation, it did not meet the definition of a “significant” ministerial error pursuant to 19 CFR 351.224(g), and thus did not necessitate an amended preliminary determination.³ In accordance with section 782(i) of the Act, in January and March, 2018, we conducted verification of the cost and sales information submitted by the sole mandatory respondent, S.A. Citrique Belge N.V. (Citrique Belge), for use in our final determination. We used standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by Citrique Belge.⁴

On April 25, 2018, Citrique Belge and Archer Daniels Midland Company, Cargill Incorporated, and Tate & Lyle Ingredients Americas LLC (collectively, the petitioners) filed their case briefs.⁵ On April 30, 2018, the petitioners filed a rebuttal brief to Citrique Belge’s affirmative case brief.⁶ On April 30, 2018, Citrique Belge also filed a rebuttal brief; however, Commerce later rejected and removed this submission from the record because the argument therein was not directly responsive to arguments raised in Petitioners’ case brief and, thus, represented an untimely filed affirmative argument.⁷ Based on our analysis of the comments received, we have made changes from the *Preliminary Determination*.

² See Letter from Citrique Belge, “Antidumping Duty Investigation on Citric Acid and Certain Citrate Salts from Belgium: Request to Correct Significant Ministerial Errors in the Preliminary Determination,” dated January 10, 2018 (Citrique Belge’s Preliminary Ministerial Error Comments).

³ See Memorandum, “Less-Than-Fair-Value Investigation of Citric Acid and Certain Citrate Salts from Belgium: Allegation of Ministerial Errors in the Preliminary Determination,” dated February 9, 2018 (Preliminary Ministerial Error Memorandum). As discussed below, this error was noted during the briefing stage and has been corrected for the final determination.

⁴ See Memoranda, “Verification of the Cost Response of S.A. Citrique Belge N.V. in the Antidumping Duty Investigation of Citric Acid and Certain Citrate Salts from Belgium,” dated April 16, 2018 (Cost Verification Report) and “Verification of the Sales Questionnaire Responses of S.A. Citrique Belge N.V. in the Antidumping Investigation of Citric Acid and Certain Citrate Salts from Belgium,” dated April 17, 2018 (Sales Verification Report).

⁵ See Letter from Citrique Belge, “Antidumping Duty Investigation on Citric Acid and Certain Citrate Salts from Belgium – Citrique Belge’s Case Brief,” dated April 25, 2018 (Citrique Belge Case Brief) and Letter from the petitioners, “Antidumping Duty Investigation of Citric Acid and Certain Citrate Salts from Belgium: Petitioners’ Case Brief,” dated April 25, 2018 (Petitioners Case Brief).

⁶ See Letter from the petitioners, “Antidumping Duty Investigation of Citric Acid and Certain Citrate Salts from Belgium: Petitioners’ Rebuttal Brief and Withdrawal Of Hearing Request,” dated April 30, 2018 (Petitioners Rebuttal Brief).

⁷ See Letter from Commerce to Citrique Belge, “Antidumping Duty Investigation of Citric Acid and Certain Citrate Salts from Belgium: Rejection of Citrique Belge’s Rebuttal Brief,” dated May 8, 2018 and corresponding memorandum, “Rejection Memo,” dated May 8, 2018. See also letter from the petitioners, “Antidumping Duty

Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through 22, 2018. The revised deadline for the final determination in this investigation is now May 29, 2018.⁸

III. SCOPE OF THE INVESTIGATION

The products covered by this investigation are citric acid from Belgium. Prior to the *Preliminary Determination*, Commerce issued a Preliminary Scope Decision Memorandum⁹ in which Commerce determined that citric acid that would qualify for non-GMO Project Verified labeling is included in the scope of the investigations. We invited parties to comment on this preliminary finding in their case briefs but no comments were filed on the record of this investigation or the companion investigations of citric acid from Belgium and Colombia. Therefore, our preliminary findings concerning the scope of the investigation remain unchanged in the final determination. For a complete description of the scope of this investigation, see Appendix I of the accompanying *Federal Register* notice.

IV. CHANGES SINCE THE PRELIMINARY DETERMINATION

Based on our analysis of the record, analysis of the comments from parties, and verification findings,¹⁰ we made certain changes to the margin calculations since the *Preliminary Determination* for Citrique Belge. Specifically, we made the following changes:

1. We removed indirect selling expenses (ISE) and inventory carrying costs (ICC) from the movement expense buildup. *See* Comment 2 below.¹¹
2. We offset interest expenses with short term interest income. *See* Comment 3 below.¹²
3. We removed certain cost items previously classified as ISE, resulting in a change to the ISE ratio, as well as the general and administrative (G&A) and financial expense ratios.¹³

Investigation of Citric Acid and Certain Citrate Salts from Belgium: Petitioners' Request to Reject Citrique Belge Beige's Rebuttal Brief," dated May 1, 2018.

⁸ *See* Memorandum, "Deadlines Affected by the Shutdown of the Federal Government," dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by three days.

⁹ *See* Memorandum, "Preliminary Scope Memorandum," dated December 1, 2017 (Preliminary Scope Memorandum).

¹⁰ *See* Letters from Citrique Belge, "Antidumping Duty Investigation on Citric Acid and Certain Citrate Salts from Belgium: Citrique Belge Cost Verification Minor Corrections," dated February 21, 2018 (Cost Minor Corrections) and "Antidumping Duty Investigation on Citric Acid and Certain Citrate Salts from Belgium: Citrique Belge Sales Verification Minor Corrections," dated March 7, 2018 (Sales Minor Corrections).

¹¹ *See* Memorandum, "Analysis for the Final Determination of the Less-Than-Fair-Value Investigation of Citric Acid and Certain Citrate Salts from Belgium," dated May 29, 2018 (Final Determination Sales Calculation Memorandum).

¹² *See* Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – S.A. Citrique Belge N.V.," dated May 29, 2018 (Final Determination Cost Calculation Memorandum).

¹³ *See* Comment 4, below. *See also* the Final Determination Cost Calculation Memorandum and the Final Determination Sales Calculation Memorandum.

4. We added two sales transactions to the home market database and one sales transaction to the U.S. sales database, pursuant to minor corrections reported at the beginning of the sales verification.¹⁴
5. We included the income associated with foreign exchange gains in the financial expense ratio calculation.¹⁵
6. We recalculated the G&A and financial expense ratios to correct errors made by Citrique Belge and identified in the Cost Verification Report.¹⁶

V. DISCUSSION OF THE ISSUES

Comment 1: Whether a Certain Home Market Sale Should Be Considered Outside the Normal Course of Trade

Citrique Belge Case Brief

- Citrique Belge's single home market sale to a pharmaceutical company should be excluded from the dumping calculation to avoid distortive results, as the sale to this customer involved merchandise (i) produced according to atypical product specifications and (ii) sold at an aberrational price.¹⁷
- Specifically, as verified by Commerce, the citric acid for the home market sale in question was a specialized product that required additional instructions that were not necessary for other products that were sold in the home market.¹⁸
- Further, the price this sale was higher than the average price for sales to all other customers in the home market.¹⁹
- Alternatively, Commerce should find that this sale was made at a separate level of trade, as this customer orders specialized products that are distinct from other products sold in the home market.²⁰ Thus, Citrique Belge undertakes selling activities that are both qualitatively and quantitatively different from those it performs for any of its other customers.²¹

Petitioners' Rebuttal Brief

- The record does not support Citrique Belge's assertions.²² Most notably, Citrique Belge's extensive discussion of this sale cite only to a single page of Commerce's verification report as support for the conclusions that the sale was of a specialized product with special order instructions from the customer is not supported by the information on that page of the verification report or elsewhere on the record.²³
- The fact that this sale was to a pharmaceutical customer is not unique, as Citrique Belge has other pharmaceutical customers, and though this was the only sale to this customer in the

¹⁴ See Sales Minor Corrections and Final Determination Sales Calculation Memorandum.

¹⁵ See Cost Minor Corrections and Final Determination Cost Calculation Memorandum.

¹⁶ *Id.*

¹⁷ See Citrique Belge Case Brief at 2-3.

¹⁸ *Id.* at 3-4.

¹⁹ *Id.* at 4.

²⁰ *Id.* at 6.

²¹ *Id.* at 7.

²² Petitioners Rebuttal Brief at 2.

²³ *Id.* at 2-3.

- POI, Commerce verified that there were sales to this customer in every year since 2009.²⁴
- The sale in question involved a sale of a specific product code previously established by Commerce.²⁵ There are numerous sales of the same product code reported in both the home market and the U.S. sales databases. Thus, sales of this type of product are not unique.²⁶
 - Citrique Belge's claims that this product was highly specialized because it was further processed to a smaller particle size is unconvincing.²⁷ Specifically, the particle size of this specialized product is well within the range of particle size defined by Citrique Belge in its product brochure.²⁸
 - Citrique Belge's claim that the sale resulted in an abnormally high profit is overstated.²⁹ Commerce verified that Citrique Belge has been selling citric acid to this customer at the same price for seven years.³⁰ Though this sale may have had the highest gross price in the home market sales file, it is not aberrational, as the next highest price is lower by a small percentage and the profitability gap similarly modest.³¹ The second highest priced sale has an even higher price than the sale in question when the reported billing adjustment is taken into account and, thus, was ultimately far more profitable, yet no such claim regarding the course of trade is claimed for that sale. This fact pattern thus suggests that Citrique Belge's focus on the sale in question appears to be little more than an exercise in cherry-picking, because that particular transaction happens to be a matching sale used in the dumping calculations.³²
 - Commerce has repeatedly found that high prices and profitability alone are insufficient to establish that sales are outside the ordinary course of trade and sales also must have other unique or unusual characteristics that make them unrepresentative to be excluded.³³ Citrique Belge has not satisfied this burden; thus, the fact that this sale has a relatively high price tending to increase normal value is not a valid reason to exclude it as outside the ordinary course.³⁴
 - Citrique Belge's level of trade (LOT) argument also should be rejected.³⁵ Citrique Belge reported only two customer categories and channels of distribution, distributors and end-users, with the pharmaceutical customer falling into one of these two specific categories. However, there is no basis to conclude that the sale to this customer was made at a "different marketing stage" from sales to all other end user customers, nor are there any "substantial differences in selling activities" that might warrant creating a separate LOT.³⁶
 - Citrique Belge now claims that, for sales to the pharmaceutical customer, it undertakes

²⁴ *Id.* at 4.

²⁵ *Id.* at 5.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 5-6.

³¹ *Id.* at 6.

³² *Id.*

³³ *Id.*; the petitioners cite to, e.g., *Certain New Pneumatic Off-the-Road Tires from India*, 82 FR 4848 (January 17, 2017); *Narrow Woven Ribbons With Woven Selvedge from Taiwan*, 80 FR 19635 (April 13, 2015); and *IQF Red Raspberries from Chile*, 67 FR 35790 (May 21, 2002).

³⁴ *Id.* at 6-7.

³⁵ *Id.* at 7.

³⁶ *Id.* at 7-8.

selling activities that are both qualitatively and quantitatively different from those it performs for any of its other customers.³⁷ However, Citrique Belge cites no evidence to support this assertion.³⁸ In the questionnaire responses, the discussion regarding selling activities is limited to those performed for sales to distributors and end-users; there is no separate discussion of the selling activities performed specifically for sales to the pharmaceutical customer, and thus no basis to treat the sale as its own level of trade.³⁹

Commerce's Position:

As discussed below, for the final determination, we continue to consider Citrique Belge's single sale sold to a pharmaceutical company in the home market as sold in the ordinary course of trade and to continue to include this sale in our margin calculation for Citrique Belge.

In determining whether subject merchandise is being, or is likely to be, sold at less than fair value in an antidumping duty determination, a comparison is made between the price of the merchandise in the United States ("export price" or "constructed export price") and its price in a foreign market ("normal value").⁴⁰ The "normal value" is the price at which the foreign like product is first "sold" for consumption in the exporting country "in the usual commercial quantities and in the ordinary course of trade."⁴¹ Thus, the price of the merchandise is included in the margin calculation if, among other things, the merchandise is "sold" in the "ordinary course of trade." If it is not "sold" or not sold in the "ordinary course of trade," the merchandise is excluded from the normal value calculation.

The phrase "ordinary course of trade" is defined by statute as "the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind."⁴² What is to be considered "outside the ordinary course of trade" includes, "among others, . . . (A) Sales disregarded under section 773(b)(1) (below cost sales of this title); (B) Transactions disregarded under section 773(f)(2) (transactions between affiliated parties, of this title)," and (C) "Situations in which {Commerce} determines that the particular market situation prevents a proper comparison with the export price or constructed export price."⁴³

Determining whether a sale or transaction is outside the ordinary course of trade is a question of fact. In making this determination, Commerce considers not just "one factor taken in isolation but rather . . . all the circumstances particular to the sales in question."⁴⁴ Commerce's methodology for making this determination is reflected in section 351.102(b) of Commerce's

³⁷ *Id.* at 8.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ See *Huffy Corp. v. United States*, 632 F. Supp. 50, 52 (CIT 1986).

⁴¹ See section 773(a)(1)(B)(i) of the Act.

⁴² See section 771(15) of the Act.

⁴³ *Id.*

⁴⁴ See *Murata Mfg. Co., Ltd. v. United States*, 820 F. Supp. 603, 607 (CIT 1993) (citation omitted) (*Murata*).

regulations.⁴⁵ Section 351.102(b)(35) of the regulation states, in part, “{t}he Secretary may consider sales or transactions to be outside the ordinary course of trade if the Secretary determines, based on an evaluation of all of the circumstances particular to the sales in question, that such sales or transactions have characteristics that are extraordinary for the market in question.” Examples that might be considered outside the ordinary course of trade include: (1) off-quality merchandise; (2) merchandise produced according to unusual product specifications; (3) merchandise sold at aberrational prices or with abnormally high profits; (4) merchandise sold pursuant to unusual terms of sale; or (5) merchandise sold to an affiliated party at a non-arm’s length price.⁴⁶ The Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act (URAA) contains similar language and identifies similar types of transactions Commerce may consider to be outside the ordinary course of trade, including (1) sales disregarded as being below-cost; and (2) transactions between affiliated persons.⁴⁷

Citrique Belge maintains that the inclusion of this sale in the margin program leads to “distortive results” that are atypical of its home market sales. To justify its claim that this specific sale is unrepresentative and atypical of its home market sales, Citrique Belge argues this one sale to a pharmaceutical customer is outside the ordinary course of trade. Specifically, Citrique Belge asserts that the merchandise: (1) is produced according to abnormal product specifications; (2) is sold at an aberrational price and with an abnormal profit; (3) is sold pursuant to unusual terms of sale that involved additional instructions that was not required for other products sold in the home market; and (4) is made at a separate level of trade. We address each of Citrique Belge’s claims below.

1. Product Specifications

Citrique Belge contends that its single sale to a pharmaceutical customer involved merchandise produced according to abnormal product specifications. However, there is no record evidence to support Citrique Belge claim that the product was processed differently from other products sold in the home market or the U.S. market. Citrique Belge points to a product specification sheet from the company’s product brochure to corroborate its assertion that this merchandise is produced to abnormal product specifications; however, the document does not indicate that the production specifications indicate abnormal processes are performed during production of this merchandise.⁴⁸ The company’s brochure indicates that this product is within the range of particle size produced by Citrique Belge and available for purchase. In addition, the record shows that the merchandise sold in this sale has the same product code as many other sales Citrique Belge made in the home market.⁴⁹ Therefore, we find that the record evidence does not

⁴⁵ See, e.g., *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Sweden, and the United Kingdom*; *Final results of Antidumping Duty Administrative Reviews*, 64 FR 35590, at 35620 (July 1, 1999).

⁴⁶ See 19 CFR 351.102(b)(35).

⁴⁷ See SAA Accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol 1 (1994) at 834.

⁴⁸ See Sales Verification Report at VE-13; see also, e.g., letter from Citrique Belge, “Antidumping Duty Investigation of Citric Acid and Certain Citrate Sales from Belgium: S.A. Citrique Belge N.V. Section A Questionnaire Response,” dated August 7, 2017 (AQR), at Exhibit A-15.

⁴⁹ See Letter from Citrique Belge, “Antidumping Duty Investigation of Citric Acid and Certain Citrate Salts from Belgium: S.A. Citrique Belge N.V. Sections B Questionnaire Response,” dated September 8, 2017 at Exhibit B-1, home market sales database.

support Citrique Belge's assertion that this merchandise was in any way distinct or was of extraordinary or abnormal product specifications. Thus, we find that Citrique Belge failed to provide sufficient information to demonstrate its claim that the single sale at issue was produced according to abnormal product specifications.

2. *Price, Quantity, and Profit*

We disagree with Citrique Belge's contention that this sale constitutes an extraordinary sale because it involves a small quantity in relation to overall home market sales and yielded an abnormally high profit in comparison to all other home market sales. As an initial matter, although the sale in question has the *highest gross unit price (GRSUPRH)* in Citrique Belge's home market sales database, the record shows that it is in fact not the *highest priced sale* after taking into consideration customer-specific billing adjustments (BILLADJH).⁵⁰ Moreover, in our review of Citrique Belge's home market sales database, we found that the gross unit price of the sale in question was not that much higher than Citrique Belge's other home market sales to consider it to be aberrational or outside the ordinary course of trade.⁵¹ In addition, although the sales price to the customer in question has been historically high, as the petitioners note, the existence of higher prices alone is not sufficient to exclude a sale on this basis absent other unusual characteristics.⁵² We also compared the quantity of the sale at issue with the quantities of all other home market sales and found that the quantity for this particular sale is within the range of quantities for all of Citrique Belge's home market sales.⁵³ We also reviewed the gross profit (GRSUPRH - BILLADJH – cost of production) for the sale in question as compared to Citrique Belge's other home market sales. We found that Citrique Belge's gross profit for this particular sale was high but not that much higher than its other home market sales to consider it to be aberrational or outside the ordinary course of trade.⁵⁴ In fact, the gross profit for this sale is within a reasonable percentage of the next highest sale.⁵⁵ Thus, we do not find this single sale made to a pharmaceutical company to be extraordinary such that it should be treated as outside the ordinary course of trade in terms of price, quantity, or profit. Further details of Commerce's analysis and determination in this respect include business proprietary information, and therefore are discussed in the Final Determination Sales Calculation Memorandum.

3. *Unusual Terms of Sale*

We disagree with Citrique Belge that its single sale to a pharmaceutical customer is sold pursuant to unusual terms of sale that involved additional instructions that were not required for

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² See, e.g., *Certain New Pneumatic Off-the-Road Tires from India*, 82 FR 4848 (January 17, 2017) and accompanying Issues and Decision Memorandum at footnote 47 (citing, e.g., *Narrow Woven Ribbons With Woven Selvedge from Taiwan; Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 19635 (April 13, 2015) (*OTR Tires from India*)).

⁵³ See Final Determination Sales Calculation Memorandum at Attachment 5.

⁵⁴ See, e.g., *OTR Tires from India* and accompanying Issues and Decision Memorandum at Comment 3, where we determined that "high levels of profitability alone, for sales of merchandise in the home market, are not enough to establish that the sales are outside the ordinary course of trade."

⁵⁵ See Final Determination Sales Calculation Memorandum at Attachment 5, gross profit analysis.

other products sold in the home market. As an initial matter, although Citrique Belge claims this sale contained unusual terms of sale, this was not raised by Citrique Belge in its questionnaire responses, and there is no record evidence showing that such terms actually existed with respect to the sale(s) made to this customer. While company officials explained at verification that this particular sale involved certain terms of sale specified by the customer,⁵⁶ we do not find (1) that the record supports these claims, and (2) that this sale is characterized by unusual terms of sale. The burden of establishing that a particular sale is outside the ordinary course of trade rests on the party making the claim.⁵⁷ In sum, we find that Citrique Belge failed to demonstrate, and provide supporting documentation, to corroborate its unusual terms of sale argument. Thus, we find that there is no basis to find this sale as one that involved unusual terms of sale. The details of Commerce's analysis and determination in this respect include business proprietary information, and therefore are discussed in the Final Determination Sales Calculation Memorandum.

4. *Level of Trade*

Citrique Belge asserts in the alternative that the customer, a pharmaceutical company, for the sale in question warrants a separate LOT distinct from that of Citrique Belge's other customers. Specifically, Citrique Belge argues that because this customer orders specialized products that are distinct from other products sold in the home market, as a result, Citrique Belge undertakes selling activities that are both qualitatively and quantitatively different from those it performs for any of its other customers. However, Citrique Belge does not cite to any record evidence to support its claim. Rather, Citrique Belge simply asserts that "in the event the Department does not consider this sale to be outside Citrique Belge's ordinary course of trade, a level of trade adjustment would be warranted."⁵⁸

When considering LOT, 19 CFR 351.412(c)(2) defines differences in LOT as sales that are made at different marketing stages. It further instructs Commerce to consider whether substantial differences in selling activities is necessary when conducting the LOT analysis.⁵⁹ In the *Preliminary Determination*, based on record evidence, we determined that Citrique Belge's U.S. and home market sales were made at the same LOT. Specifically, Citrique Belge provided a selling function chart describing the activities it used in making home market and U.S. sales.⁶⁰ Citrique Belge reported that it made sales through two channels of distribution in Belgium, *i.e.*, to unaffiliated distributors and to end-users.⁶¹ We examined the description of its selling activities reported for each channel of distribution,⁶² and at verification, we reviewed this information during our examination of Citrique Belge's U.S. and home market sales. Citrique Belge reported that for all home market customers, which includes the customer in question, it performed the same selling activities, *i.e.*, sales forecasting/strategic/ economic planning; sales promotion; distributor/dealer training; quality testing; packing; technical assistance/after sales

⁵⁶ See Sales Verification Report at 6 and VE-13.

⁵⁷ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296 (May 19, 1997) at 27300.

⁵⁸ See Citrique Belge Case Brief at 6.

⁵⁹ See 19 CFR 351.412(c)(2).

⁶⁰ See AQR at A-12 and 13, Exhibit A-4; BQR at B-11 and CQR at C-9.

⁶¹ *Id.* at A-12 – A-13 and Exhibit A-4.

⁶² See Citrique Belge's AQR at Exhibit A-5.

services; freight and delivery/shipping/logistics.⁶³ At verification, we found the sales documents provided to be consistent with the information on the record, including the sale at issue.

Further, in response to our request for clarification as to the degree at which each selling function was performed in each market, Citrique Belge provided a revised selling functions chart, which included this distinction, prior to the *Preliminary Determination*.⁶⁴ Our request for clarification provided Citrique Belge an opportunity to distinguish the selling activities for this customer from its other customers, if in fact they are different from its other customers. However, the only distinction Citrique Belge made to the chart was the degree of selling activity, and it provided extensive descriptions for each selling activity. Citrique Belge's revised chart continued to distinguish the difference in selling activities performed in the home market by channel type (distributor and end-user), which included this pharmaceutical customer.⁶⁵ Citrique Belge has stated that this customer constitutes a separate level of trade from its other customers. However, the selling functions for this sales transaction are no different than the selling activities of other home market sales.⁶⁶ At verification, we observed that Citrique Belge has been doing business with this pharmaceutical customer every year for many years, and record evidence does not indicate unusual or extraordinary circumstances with respect to the sale in question, made during the POI.⁶⁷ We find that characteristics with respect to the type of customer and the nature of business relationship between Citrique Belge and this particular pharmaceutical company are not extraordinary for the market in question. Consequently, we find that there is no basis to reverse our *Preliminary Determination* here. Thus, we find that the single sale in question made to a pharmaceutical company was made at the same LOT as Citrique Belge's other home market sales.

Considering these factors individually and under a "totality of the circumstances," Commerce determines that the foregoing factors support finding that the contested sale is not made outside the ordinary course of trade. Therefore, we find that there is no evidence on the record demonstrating that the single sale at issue involved off-quality merchandise, merchandise produced according to unusual product specifications, merchandise sold at aberrational prices or with abnormally high profits, merchandise sold pursuant to unusual terms of sale, or merchandise sold to an affiliated party at a non-arm's length price. We further find that the single sale to a pharmaceutical company does not constitute a separate LOT. Accordingly, we have continued to include Citrique Belge's single sale made to the pharmaceutical customer in our calculations and treat all of Citrique Belge's home market sales as having occurred at a single LOT for the final determination.

⁶³ *Id.* at Exhibit A-4.

⁶⁴ See letter from Citrique Belge, "Antidumping Duty Investigation of Citric Acid and Certain Citrate Salts from Belgium: Citrique Belge Second Supplemental Section ABC Questionnaire Response," dated November 28, 2017 (SSQR) at 4 and Exhibit SS-4; see also Sales Verification Report at 6 and VE-8 and VE-9.

⁶⁵ See Letter from Citrique Belge, "Antidumping Duty Investigation of Citric Acid and Certain Citrate Salts from Belgium: S.A. Citrique Belge N.V. Sections {sic} B Questionnaire Response," dated September 8, 2017 (BQR) at B-10 and B-11; see also "Antidumping Duty Investigation of Citric Acid and Certain Citrate Salts from Belgium: S.A. Citrique Belge N.V. Sections {sic} C Questionnaire Response," dated September 8, 2017 (CQR) at C-9.

⁶⁶ See SSQR at 4 and Exhibit SS-4.

⁶⁷ See Sales Verification Report at 6 and VE-13.

Comment 2: Correction of Misclassification of Indirect Selling and Inventory Carrying Expense as Movement Expenses

Citrique Belge Case Brief

- In the *Preliminary Determination*, Commerce inadvertently treated indirect selling expenses (INDIRSU) and inventory carrying expense (INVCARU) as movement expenses in the calculation of export price. However, these items were treated properly as indirect selling expenses and imputed inventory carrying expenses elsewhere in the programming and, thus, are double-counted. Commerce should revise the calculation to remove these items from movement expenses.⁶⁸

No other interested party commented on this issue.

Commerce's Position:

We agree that INDIRSU and INVCARU should be treated as indirect selling expenses and imputed inventory carrying expenses.⁶⁹ Both are distinct from expenses incurred in the movement/transportation of the merchandise under consideration and each are properly accounted for in the margin program.⁷⁰ Accordingly, the inclusion of the expenses in the movement expense field results in improperly double-counting each expense. We will thus revise the calculation to remove these items from the movement expense field for the final determination.⁷¹

Comment 3: Income Offset to Interest Expenses

Citrique Belge Case Brief

- Commerce preliminarily disallowed an income offset from the financial expense ratio calculation because it deemed that Citrique Belge had not demonstrated that the interest income used to offset interest expenses was generated from short term sources.⁷² Commerce

⁶⁸ See Citrique Belge Case Brief at 8-10.

⁶⁹ This was previously submitted as a ministerial error allegation for the *Preliminary Determination*, in which we agreed the allegation constituted an error, but did not meet the threshold for a “significant” error to prompt an amended preliminary determination, as correction of the error did not result in a change of at least five absolute percentage points or more than a 25 percent change in Citrique Belge’s preliminary weighted-average margin pursuant to 19 CFR 351.224(g). See Preliminary Ministerial Error Memorandum. In requesting that Commerce correct for this error, which Commerce already acknowledged to represent an inadvertent ministerial error that it intends to correct in the instant final determination in the Preliminary Ministerial Error Memorandum, Citrique Belge continues to assert that this represents a “significant” ministerial error that results in a change of at least five absolute percentage points and more than a 25 percent change in Citrique Belge’s preliminary weighted-average margin. Though the question of whether the error is “significant” pursuant to 19 CFR 351.224(g) so as to necessitate an amended preliminary determination is effectively moot at this time, we note that the change to the margin based on the correction of this error continues to fall short of the threshold for “significant” and Citrique Belge fails to further support this continued claim.

⁷⁰ See, e.g., Memorandum, “Preliminary Determination Margin Calculation for S.A. Citrique Belge N.V.,” dated December 29, 2017, at Attachment 2 which includes the margin program and log for the *Preliminary Determination*.

⁷¹ See Final Determination Sales Calculation Memorandum.

⁷² See Citrique Belge Case Brief at 10.

confirmed in the course of the cost verification that the income was associated with exchange gains.⁷³

- Commerce must offset Citrique Belge's interest expenses with its income from exchange gains, which is consistent with *Polyester Staple Fiber from Taiwan* where Commerce found that the respondent's exchange gains and losses should be taken into account in calculating the company's interest expense.⁷⁴

No other interested party commented on this issue.

Commerce's Position:

Commerce verified that Citrique Belge's fiscal year 2016 income offset to financial expenses was associated with foreign exchange gains.⁷⁵ It is Commerce's practice to include in the financial expense ratio calculation the total net foreign exchange gains and losses reported in the financial statements of the same entity used to compute a respondent's interest expense ratio.⁷⁶ Thus, we agree with Citrique Belge and, for the final determination, we have included the income associated with foreign exchange gains in the financial expense ratio calculation.⁷⁷

Comment 4: Revisions to Indirect Selling Expense, General and Administrative, and Financial Expense Ratios

Petitioners Case Brief

- Consistent with the findings in the cost verification report, Commerce should recalculate Citrique Belge's ratios for general and administrative expenses (G&A) and financial expenses.⁷⁸

Citrique Belge Case Brief

- Commerce should revise the indirect selling expense (ISE) ratio to reflect the removal of certain accounts that were otherwise included in the cost of manufacture (COM), as detailed in Citrique Belge's minor corrections submitted at the beginning of its sales verification.⁷⁹

No other interested party commented on this issue.

Commerce's Position:

We agree with the petitioners, and for the final determination, we are recalculating Citrique

⁷³ *Id.*

⁷⁴ *Id.* at 10-11 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber from Taiwan*, 65 FR 16877 (March 30, 2000) (*Polyester Staple Fiber from Taiwan*)).

⁷⁵ See Cost Verification Report.

⁷⁶ See *Magnesium Metal from the Russian Federation: Final Determination of Sales at Less-than-Fair Value*, 70 FR 9041 (February 24, 2005), and accompanying Issues and Decision Memorandum at Comment 12 and *Stainless-Steel Bar from India: Final Results of Antidumping Duty Administrative Review*, 68 FR 47543 (August 11, 2003), and accompanying Issues and Decision Memorandum at Comment 6.

⁷⁷ See Final Determination Cost Calculation Memorandum.

⁷⁸ See Petitioners Case Brief at 1 (citing Cost Verification Report at 2 and 21-23).

⁷⁹ See Citrique Belge Case Brief at 11 (citing Cost Verification Report at Exhibit CVE-5 and Sales Verification Report at Exhibit VE-1 at Attachment 3).

Belge's ratios for G&A and financial expenses to correct errors made by Citrique Belge, which were identified in the cost verification report.⁸⁰ We also agree with Citrique Belge, and are revising Citrique Belge's ISE ratio calculation for use in its indirect expense calculation.⁸¹

Regarding Citrique Belge's minor correction presented at Commerce's home market sales verification, at verification Citrique Belge presented a minor correction to its ISE based on an error in calculation found at Commerce's cost verification.⁸² Citrique Belge provided a revision to its indirect selling expense and demonstrated the removal of the relevant cost accounts from the calculation, which Commerce reviewed for accuracy and accepted onto the record.⁸³ Accordingly, we agree with all parties that the relevant costs should be recalculated to reflect the correct classification of the aforementioned accounts (as well as other minor corrections, as relevant). Thus, we are making the appropriate adjustments to the indirect selling expenses reported in the sales response.⁸⁴

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 weighted-average dumping margins in the *Federal Register*.

☒

Agree

☐

Disagree

5/29/2018

X



Signed by: GARY TAVERMAN