



A-423-813
Administrative Review
POR: 01/08/2018 – 06/30/2019
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November 3, 2020

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of the 2018-
2019 Antidumping Duty Administrative Review: Citric Acid and
Certain Citrate Salts from Belgium

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on citric acid and certain citrate salts (citric acid) from Belgium covering the period of review (POR) January 8, 2018 through June 30, 2019. This administrative review covers one producer/exporter of the subject merchandise: S.A. Citrique Belge N.V. (Citrique Belge). We preliminarily determine that Citrique Belge did not make sales below normal value (NV) during the POR.

II. BACKGROUND

On July 1, 2019, Commerce published a notice of opportunity to request an administrative review of the *Order* for the 2018-2019 review period.¹ In July 2019, Commerce received timely requests to conduct an administrative review from Citrique Belge² and the petitioners.³ On September 9, 2019, we published a notice initiating an AD administrative review of citric acid from Belgium covering Citrique Belge.⁴

¹ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 84 FR 31295 (July 1, 2019).

² See Citrique Belge's Letter, "Citric Acid and Certain Citrate Salts from Belgium: Request for Administrative Review," dated July 11, 2019.

³ The petitioners are Archer Daniels Midland Company; Cargill, Incorporated; and Tate & Lyle Ingredients Americas LLC, domestic producers of the subject merchandise (collectively, the petitioners). See Petitioners' Letter, "Citric Acid and Certain Citrate Salts from Belgium: Petitioners' Request for Administrative Review," dated July 31, 2019.

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 47242 (September 9, 2019).

On September 23, 2019, we issued the initial questionnaire to the respondent Citrique Belge. Citrique Belge provided timely responses to the relevant sections of the initial questionnaire. Between February 2020 and July 2020, we issued supplemental questionnaires to Citrique Belge and Citrique Belge provided timely responses, as requested.

On March 13, 2020, we extended the preliminary results of this review to no later than July 30, 2020.⁵ On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.⁶ On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.⁷ The deadline for the preliminary results of this review is now November 17, 2020.

III. SCOPE OF THE ORDER

The merchandise covered by this order includes all grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. The scope also includes blends of citric acid, sodium citrate, and potassium citrate; as well as blends with other ingredients, such as sugar, where the unblended form(s) of citric acid, sodium citrate, and potassium citrate constitute 40 percent or more, by weight, of the blend.

The scope 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.

⁵ See Memorandum, “Citric Acid and Certain Citrate Salts from Belgium: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated March 13, 2020.

⁶ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19,” dated April 24, 2020.

⁷ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,” dated July 21, 2020.

IV. DISCUSSION OF THE METHODOLOGY

We are conducting this administrative review of the order in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.213.

A. *Comparisons to Normal Value*

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

B. *Determination of the 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 (A-A) method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, Commerce examines whether to compare weighted-average NVs with the EPs or CEPs of individual sales (*i.e.*, the average-to-transaction (A-T) method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of administrative reviews, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.⁸

In numerous investigations, Commerce 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.⁹ Commerce finds that the differential pricing analysis used in several investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. 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.

⁸ See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010-2011*, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum (IDM) at Comment 1; see also *JBF RAK LLC v. United States*, 790 F. 3d 1358, 1363-65 (Fed. Cir. 2015) ("{t}he fact that the statute is silent with regard to administrative reviews does not preclude Commerce from filling gaps in the statute to properly calculate and assign antidumping duties.") (citations omitted); and *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014).

⁹ 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); see also *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); or *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of export prices (or CEPs) 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 POR 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 account 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 under the “mixed method.” 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 these preliminary results, including arguments for modifying the group definitions used in this segment of the proceeding.¹⁰

C. Results of the Differential Pricing Analysis

For Citrique Belge, based on the results of the differential pricing analysis, Commerce preliminarily finds that 85.86 percent of the value of U.S. sales pass the Cohen's *d* test, and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that there is no 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 all U.S. sales. Thus, for these preliminary results, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Citrique Belge.

V. 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

¹⁰ The Court of Appeals for the Federal Circuit (CAFC) in *Apex Frozen Foods v. United States*, 862 F. 3d 1322 (Fed. Cir. July 12, 2017) 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.

terms of sale. 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.

Citrique Belge reported the invoice date as the date of sale for its home market and U.S. sales.¹¹ Our examination of Citrique Belge's home market sales database revealed that the shipment date often preceded the invoice date. Therefore, we preliminarily determine to use Citrique Belge's shipment date as the reported date of sale for Citrique Belge's home market sale transactions, where the shipment date precedes the invoice date.

VI. PRODUCT COMPARISONS

In accordance with section 771(16) of the Act, we considered all products that the respondent produced and sold in Belgium during the POR that fit the description in the "Scope of Order" section of this memorandum to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales.

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. For the respondent's sales of citric acid in the United States, the reported control number identifies the characteristics of citric acid, as exported by Citrique Belge.

VII. 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 deductions, where appropriate, for movement expenses, *i.e.*, warehousing expenses, country of manufacture inland insurance expenses, brokerage and handling expenses incurred in the United States, international freight expenses, and U.S. customs duty expenses, in accordance with section 772(c)(2)(A) of the Act.

¹¹ See Citrique Belge's Letter, "Antidumping Duty Administrative Review of Citric Acid and Certain Citrate Salts from Belgium: S.A. Citrique Belge N.V. Section BCD Questionnaire Responses," dated November 15, 2019 (BQR, CQR, and DQR) at B-12 and at C-12.

VIII. 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 review, we found that Citrique Belge's individual aggregate sales volume of foreign like product in the home market was greater than five percent of its sales of subject merchandise to the United States. Therefore, we used home market sales as the basis for normal value 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, we will calculate NV based on sales of foreign like products 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).¹² Substantial differences in selling activities are necessary, but not a sufficient, condition for determining that there is a difference in the stages of marketing.¹³ To determine whether the comparison-market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, chain of distribution), including selling functions, 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),¹⁴ we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.¹⁵

When we are unable to match U.S. 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 LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under

¹² See 19 CFR 351.412(c)(2).

¹³ *Id.*; see also *Notice of Final Determination of Sales at Less Than Fair Value; Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (November 19, 1997).

¹⁴ Where NV is based on constructed value (CV), we determine the NV LOT based on the LOT of the sales from which we derive selling, general, and administrative expenses and profit for CV, where possible. See 19 CFR 351.412(c)(1).

¹⁵ See *Micron Tech., Inc. v. United States*, 243 F. 3d 1301, 1314-16 (Fed. Cir. 2001).

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.¹⁶

In this review, we obtained information from Citrique Belge regarding the marketing stages involved in making its reported home market and U.S. sales, including a description of the selling activities performed by Citrique Belge for each channel of distribution.¹⁷ Citrique Belge did not claim LOT adjustments in either the home market or the U.S. market.¹⁸ Consequently, we matched all EP sales to home market sales, and no LOT adjustment was warranted.

C. Cost of Production Analysis

In accordance with section 773(b)(2)(A)(ii) of the Act, Commerce requested cost of production (COP) information from Citrique Belge.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated 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.

We examined Citrique Belge's cost data and determined that our quarterly cost methodology is not warranted. Therefore, we have applied our standard methodology of using annual average costs based on Citrique Belge's reported cost data and we relied on the COP data submitted by Citrique Belge.

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 applicable billing adjustments, discounts and rebates, movement charges, actual direct and indirect selling expenses, and packing expenses.

¹⁶ See, e.g., *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.

¹⁷ See Citrique Belge's Letter, "Antidumping Duty Administrative Review of Citric Acid and Certain Citrate Salts from Belgium: S.A. Citrique Belge N.V. Section A Questionnaire Response," dated October 14, 2019 at A-14, Exhibit A-4, and Exhibit A-5.

¹⁸ See Citrique Belge's Letter, "Antidumping Duty Investigation of Citric Acid and Certain Citrate Salts from Belgium: Citrique Belge Second Supplemental Questionnaire Response," dated June 1, 2020 at 13.

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 POR, 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.

Where we find that more than 20 percent of a company's home market sales for a given product were made at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time, we 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

We based NV for Citrique Belge on comparison market prices where there was an appropriate number of sales at prices above the COP. We calculated NV based on carriage and insurance paid, free carrier, or ex works prices, as applicable, to unaffiliated customers.¹⁹ We made deductions from the starting price for billing adjustments, movement expenses, *i.e.*, warehousing expenses, inland freight expenses, and insurance expenses, under section 773(a)(6)(B)(ii) of the Act as appropriate. We made adjustments for differences in packing, in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and in circumstances of sale (imputed credit expenses) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410.

When comparing U.S. sales with comparison-market sales of similar, but not identical, merchandise, we also made adjustments for differences in merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like products and merchandise under consideration.²⁰

¹⁹ See BQR at B-14.

²⁰ See 19 CFR 351.411(b).

IX. 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.

X. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

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☐

Agree

Disagree

11/3/2020

X



Signed by: JEFFREY KESSLER
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance