DEPARTMENT OF COMMERCE

International Trade Administration

A–122–853

Notice of Final Determination of Sales at Less Than Fair Value: Citric Acid and Certain Citrate Salts from Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: We determine that imports of citric acid and certain citrate salts (citric acid) 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 estimated margins of sales at LTFV are shown in the ''Final Determination Margins'' section of this notice.

EFFECTIVE DATE: April 13, 2009.

FOR FURTHER INFORMATION CONTACT: Terre Keaton Stefanova or Rebecca Trainor, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1280 or (202) 482–4007, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 20, 2008, the Department of Commerce (Department) published in the **Federal Register** the preliminary determination of sales at LTFV in the antidumping duty investigation of citric acid from Canada. *See Citric Acid and Certain Citrate Salts from Canada: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 70324 (November 20, 2008) (*Preliminary Determination*).

In November and December 2008, the respondent, Jungbunzlauer Technology GMBH & Co KG (JBLT), submitted revised home market and U.S. sales listings and cost data. On December 1, 2008, we received pre–verification comments from the petitioners.[1] On December 18, 2008, the petitioners requested a hearing to discuss issues addressed by the interested parties in their case and rebuttal briefs. From December 9 through December 16, 2008, we verified the respondent's sales data.

On January 6, 2009, the respondent informed the Department that its Canadian operations had recently undergone a corporate restructuring which resulted in JBL Canada, Inc. becoming the producer, seller and exporter of citric acid from Canada, effective December 31, 2008. For further discussion, see ''Corporate Restructuring'' section below.

From January 12 through January 16, 2009, we verified the respondent's cost data. On February 5, 2009, we issued the sales verification report,[2] and requested that the respondent submit a revised home market and U.S. sales listing per verification findings. We received the revised sales listings on February 17, 2009. On February 24, 2009, we issued the cost verification report.[3] We provided the interested parties an opportunity to comment on the *Preliminary Determination* and the Department's verification findings.

On February 26, 2009, the petitioners withdrew their request for a hearing. On March 3 and March 9, 2009, respectively, the petitioners and respondent each submitted case and rebuttal briefs. Because the petitioners were the only interested party to request a hearing and it subsequently withdrew its request, no hearing was held on issues raised in the case and rebuttal briefs.

Period of Investigation

The period of investigation (POI) is April 1, 2007, through March 31, 2008. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition.

Scope of Investigation

The scope of 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 of this investigation 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 of this investigation does not include calcium citrate that satisfies the standards set forth in the United States Pharmacopeia and has been mixed with a functional excipient, such as dextrose or starch, where the excipient constitutes at least 2 percent, by weight, of the product. The scope of this investigation includes the hydrous and anhydrous forms of citric acid, the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt, and the monohydrate and monopotassium forms of potassium citrate. Sodium citrate also includes both trisodium citrate and monosodium citrate, which are also known as citric acid trisodium salt and citric acid monosodium salt, respectively. Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States (HTSUS), respectively. Potassium citrate and crude calcium citrate are classifiable under 2918.15.5000 and 3824.90.9290 of the HTSUS, respectively. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.90.9290 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Corporate Restructuring

The respondent reported, and the Department verified, that during the POI, three subsidiaries of the Jungbunzlauer Group (JBL Group) were involved in the production and sale of citric acid to the United States. The production of citric acid in Canada involved two separate legal entities, JBLT and JBL Canada, Inc. JBLT was responsible for citric acid production and JBL Canada Inc. was responsible for infrastructure and personnel in connection with JBLT's operations. The third entity, JBL Inc., located in the United States was responsible for selling products from the JBL Group (including JBLT) to the United States, Canada and Mexico.

As noted above, during the course of this investigation JBLT informed the Department that it had undergone a corporate restructuring. We requested that JBLT submit a detailed explanation and supporting documentation of the corporate restructuring. We also provided the petitioners the opportunity to file comments. See January 23, 2009 Memorandum to the File, and the

[1] The petitioners in this investigation are Archer Daniels Midland Company, Cargill, Incorporated, and Tate & Lyle Americas, Inc.

[2] *See* Memorandum to the File through James Maeder, Director Office 2 from Rebecca Trainor and Kate Johnson International Trade Compliance Analysts Office 2, ''Verification of the Sales Response of Jungbunzlauer Technology GMBH & Co. KG (JBLT) in the Antidumping Investigation of Citric Acid and Certain Citrate Salts from Canada,'' dated February 5, 2009 (Sales Verification Report).

[3] *See* Memorandum to the File through Neal M. Harper, Director of Office of Accounting from James Balog Senior Accountant, Office of Accounting, ''Verification of the Cost Response of Jungbunzlauer Technology GMBH & Co. KG in the Antidumping Investigation of Citric Acid and Certain Citrate Salts from Canada,'' dated February 24, 2009 (Cost Verification Report).

January 9 and 14, 2009, submissions from JBLT. We did not receive comments from the petitioners on this matter. At verification we examined the corporate restructuring information submitted by JBLT (*see* Cost Verification Report at 4).

Based on the corporate restructuring documentation, as verified, JBL Canada Inc., rather than JBLT, is the entity responsible for all the activities related to Canadian citric acid production and exportation, effective December 31, 2008. Therefore, we will assign the final determination margin to JBL Canada, Inc.

Verification

As provided in section 782(i) of the Act, we verified the sales and cost information submitted by the respondent 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 the respondent. Our sales and cost verification results are outlined in separate verification reports. *See* Sales Verification Report and Cost Verification Report. The verification reports are on file and available in the Central Records Unit, Room 1117 of the Commerce Department.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs submitted by the parties to this investigation are addressed in the ''Issues and Decision Memorandum for the Final Determination in the Less–Than-Fair–Value Investigation of Citric Acid and Certain Citrate Salts from Canada'' from John Anderson, Acting Deputy Assistant Secretary for Import Administration, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration (Decision Memo), dated April 6, 2009, which is hereby adopted by this notice. A list of the issues that parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in the Decision Memo, which is on file in the Central Records Unit, Room 1117 of the Commerce Department. In addition, a complete version of the Decision Memo can be accessed directly on the Web at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we have made certain changes to the margin calculations for JBL Canada Inc. For a discussion of these changes, see the ''Margin Calculations'' section of the Decision Memo.

Facts Available

Section 776(a) of the Act provides that the Department will apply ''facts otherwise available'' if necessary information is not available on the record or an interested party: 1) withholds information that has been requested by the Department; 2) fails to provide such information within the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; 3) significantly impedes a proceeding; or 4) provides such information, but the information cannot be verified. As stated in the *Preliminary Determination*, our antidumping questionnaire instructs respondents to report prices and expenses in the currency in which they were incurred. *See Preliminary Determination* at 73 FR 70327. Nevertheless, in this case, the respondent reported data that had been converted from multiple currencies into Canadian dollars (CAD) in the home market, and into U.S. dollars (USD) in the U.S. market because its company–wide electronic data processing system (SAP) automatically converts all foreign currency transactions into the currency of the respective JBL Group entity at the moment of posting. According to the respondent, the entry of data and the currency conversion is a simultaneous process in its accounting system. As a result, SAP does not retain the original foreign currency amount in the sales database or in the general ledger.[4] Based on the respondent's representation that the currency conversion process is a company–wide procedure that is done in the normal course of business, we accepted the data as reported for the preliminary determination. However, we stated our intention to examine the reasonableness of the price and expense reporting based on this system at verification. *See Preliminary Determination* at 73 FR 70327.

At verification, we found that the SAP system does maintain a record of the original currency from which entries were converted and the exchange rate used. Therefore, the price and expense data could have been reported in the original foreign currency amount as incurred. *See* Sales Verification Report at 4 and 5. Based on our verification findings, we believe that it was possible for the respondent to have reported prices and expenses in the currency in which they were incurred, contrary to the representation in the respondent's questionnaire responses. For these reasons, we find that it is appropriate to resort to facts otherwise available to account for the unreported information. *See, e.g., Canned Pineapple Fruit from Thailand*, 68 FR 65247 (November 19, 2003), and accompanying Issues and Decision Memorandum at Comment 20b where the Department applied facts otherwise available to a respondent that did not provide requested information. Therefore, we have determined that the gross unit prices for certain home market customers who were invoiced in USD during the POI (see the Sales Verification Report at Exhibit 4), and all U.S inland freight expenses should be based on facts available in accordance with sections 776(a)(2)(A),(B), and (D) of the Act.[5]

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information. *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025–26 (September 13, 2005); *see also Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (August 30, 2002). The Statement of Administrative Action provides guidance by explaining that adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, Vol. 1, at 870 (1994). Furthermore, ''affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an

[4] *See* JBLT's October 9, 2008, Response to Supplemental Questions Regarding Currency Conversions and Date of Sale at 3; and JBLT's October 14, 2008, First Supplemental Questionnaire Response at 5–6.

[5] Because we could not isolate the U.S. inland freight expenses that were affected by the inappropriate currency conversions, we are applying facts available to all reported U.S. inland freight expenses.

adverse inference.'' *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997); *see also Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003) (*Nippon*). Because: 1) the respondent had the necessary information within its control and it did not report this information; and 2) it failed to put forth its maximum effort to provide the requested information, we find that the respondent failed to cooperate to the best of its ability. Therefore, for the final determination, we are using facts available with an adverse inference and applying it to the gross unit prices of certain home market sales, and to all U.S. inland freight expenses. Specifically, as adverse facts available, we increased both the affected home market sales prices and the U.S. freight expenses by 1.16 percent, *i.e.*, the percentage difference between the Department's weighted–average POI exchange rate (used to convert comparison–market values to USD in the margin program), and JBLT's POI average exchange rate (used by JBLT's SAP system for currency conversion purposes). For further discussion, *see* Decision Memo at Comment 4 and the April 6, 2009, Memorandum to The File from Case Analyst, entitled ''Calculations Performed for Jungbunzlauer Technology GMBH & Co. KG for the Final Determination in the Antidumping Duty Investigation of Citric Acid and Certain Citrate Salts from Canada.''

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all imports of subject merchandise that are entered or withdrawn from warehouse, for consumption on or after November 20, 2008, the date of publication of the preliminary determination in the **Federal Register**. We will instruct CBP to continue to require a cash deposit or the posting of a bond for all companies based on the estimated weighted–average dumping margins shown below. The suspension of liquidation instructions will remain in effect until further notice.

Final Determination Margins

We determine that the following weighted–average dumping margins exist for the period April 1, 2007, through March 31, 2008:

Manufacturer/Exporter	Weighted Average Margin (percent)
JBL Canada, Inc.	23.21
All Others	23.21

All–Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated ''All–Others'' rate shall be an amount equal to the weighted average of the estimated weighted–average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely under section 776 of the Act. In this investigation the Department calculated a company–specific rate only for JBL Canada Inc. Therefore, for purposes of determining the all–others rate and pursuant to section 735(c)(5)(A) of the Act, we are using the weighted–average dumping margin calculated for JBL Canada, Inc., as referenced above. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Italy*, 64 FR 30750, 30755 (June 8, 1999); and *Coated Free Sheet Paper from Indonesia: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*,, 72 FR 30753, 30757 (June 4, 2007), unchanged in final determination, *Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from Indonesia*, 72 FR 60636 (October 25, 2007).

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our final determination. As our final determination is affirmative, the ITC will determine within 45 days whether imports of the subject merchandise are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Return or Destruction of Proprietary Information

This notice will serve as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 735(d) and 777(i) of the Act.

Dated: April 6, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix--Issues in Decision Memo

Comments

Comment 1: Date of Sale and Whether to Exclude U.S. Sales Made Pursuant to Multiyear Contracts
Comment 2: Indirect Selling Expenses
Comment 3: Home Market Billing Adjustments
Comment 4: Currency Conversions Reported for Certain Home Market Sales Prices and U.S. Freight Expenses
Comment 5: Electricity Purchased from an Affiliate
Comment 6: General and Administrative (G&A) Expense Ratio

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BILLING CODE: 3510–DS–S

DEPARTMENT OF COMMERCE

Bureau of the Census

2010 Census Advisory Committee

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of the Census (U.S. Census Bureau) is giving notice of a meeting of the 2010 Census Advisory Committee. The Committee will address policy, research, and technical issues related to 2010 Decennial Census Programs. Last-minute changes to the agenda are possible, which could prevent giving advance notification of schedule changes.

DATES: May 7–8, 2009. On May 7, the meeting will begin at approximately