

A-423-813
Sunset Review
Public Document
E&C/OIII: DC

September 15, 2023

MEMORANDUM TO: Lisa W. Wang
Assistant Secretary
for Enforcement and Compliance

FROM: Scot Fullerton
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Preliminary Decision Memorandum for the Preliminary Results of
Sunset Review of the Antidumping Duty Order on Citric Acid and
Certain Citrate Salts from Belgium

I. SUMMARY

We have analyzed the responses of the interested parties in the first sunset review of the antidumping duty (AD) order on citric acid and certain citrate salts (citric acid) from Belgium. 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 sunset review for which we received substantive responses:

1. Likelihood of Continuation or Recurrence of Dumping
2. Magnitude of the Margins of Dumping Likely to Prevail

II. BACKGROUND

On June 1, 2023, the U.S. Department of Commerce (Commerce) initiated a sunset review of the antidumping duty (AD) order¹ on citric acid from Belgium pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).²

Commerce received a notice of intent to participate from Archer Daniels Midland Company, Cargill, Incorporated, and Primary Products Ingredients Americas LLC (domestic interested parties) within the deadline specified in 19 CFR 351.218(d)(1)(i).³ Domestic interested parties claim interested party status under section 771(9)(c) of the Act.

¹ See *Citric Acid and Certain Citrate Salts from Belgium, Colombia and Thailand: Antidumping Duty Orders*, 83 FR 35214 (July 25, 2018) (*Order*).

² See *Initiation of Five-Year (Sunset) Reviews*, 88 FR 35832 (June 1, 2023) (*Initiation Notice*).

³ See Domestic Interested Parties Letters, “Domestic Industry’s Notice of Intent to Participate,” dated June 15, 2023.



On June 30, 2023, Commerce received a substantive response from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).⁴ On July 3, 2023, Commerce received a substantive response from Citribel nv (Citribel) within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).⁵ Citribel claimed interested party status under section 771(9)(A) of the Act, as a foreign producer and foreign exporter of citric acid. On July 10, 2023, we received rebuttal comments from the domestic interested parties within the deadline specified in 19 CFR 351.218(d)(4).⁶

On July 25, 2023, Commerce notified the U.S. International Trade Commission (ITC) that it received an adequate substantive response from the respondent interested party and that, in accordance with 19 CFR 351.218(e)(2), it would conduct a full sunset review of the *Order*.⁷

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 from Belgium. 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, 3824.99.9397 of the HTSUS. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.99.9397 of the HTSUS. Although the HTSUS subheadings

⁴ See Domestic Interested Parties' Letter, "Domestic Interested Party's Substantive Response," dated June 30, 2023 (Domestic Interested Parties' Substantive Response).

⁵ See Citribel's Letter, "Citribel N.V.'s Substantive Response," dated July 3, 2023 (Citribel's Substantive Response).

⁶ See Domestic Interested Parties' Letter, "Domestic Industry's Rebuttal to Citribel N.V.'s Substantive Response," dated July 10, 2023 (Domestic Interested Parties' Rebuttal).

⁷ See Commerce's Letter, "Sunset Reviews Initiated on June 1, 2023," dated July 25, 2023.

are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

IV. HISTORY OF THE *ORDER*

Investigation

On June 5, 2018, Commerce published the final determination of sales at less than fair value (LTFV) on citric acid from Belgium.⁸ In the final determination, Commerce found estimated weighted-average dumping margins as follows:

Exporter/Producer	Estimated Weighted-Average Dumping Margin (percent)
S.A. Citrique Belge N.V. (Citrique Belge)	19.30
All-Others-Rate ⁹	19.30

Following the publication of Commerce's final determination, the ITC found that the U.S. industry was materially injured by reason of the imports of subject merchandise.¹⁰ On July 25, 2018, Commerce published the *Order* on citric acid from Belgium.¹¹

Administrative Reviews

Since the publication of the *Order*, Commerce has conducted three administrative reviews (ARs) of the *Order* and is currently conducting a fourth review. In the first three of these reviews, S.A. Citrique Belge N.V. (Citrique Belge)/Citribel nv¹² received an AD rate of 0.00 percent.¹³ The 19.30 all-others rate remains in effect for all other exporters and producers of subject merchandise to the United States. In the ongoing fourth administrative review, Commerce preliminarily determined an above *de minimis* dumping margin for Citribel.¹⁴

⁸ See *Citric Acid and Certain Citrate Salts from Belgium: Affirmative Final Determination of Sales at Less Than Fair Value*, 83 FR 26001 (June 5, 2018) (*Citric Acid from Belgium LTFV Final*), and accompanying Issues and Decision Memorandum (IDM).

⁹ The rate of 19.30 percent remains in effect for all other producers/exporters of citric acid from Belgium.

¹⁰ See *Citric Acid and Certain Citrate Salts from Belgium, Colombia, and Thailand Inv. Nos. 731-TA-1374-1376 (Final)*, USITC Publication 4799 (July 2018).

¹¹ See *Order*.

¹² Commerce determined Citribel nv to be the successor-in-interest to the prior Citrique Belge respondent pursuant to a changed circumstances determination reflecting a name change to the prior respondent firm. See discussion, *infra*. Citrique Belge/Citribel was identified as the only producer-exporter of subject merchandise in Belgium in the petition stage of the LTFV investigation and has been the sole respondent party examined in any subsequent segment of this proceeding.

¹³ See *Citric Acid and Certain Citrate Salts from Belgium: Final Results of Antidumping Duty Administrative Review; 2018-2019*, 86 FR 11723 (February 26, 2021); see also *Citric Acid and Certain Citrate Salts from Belgium: Final Results of Antidumping Duty Administrative Review; 2019-2020*, 87 FR 62993 (November 15, 2021); and *Citric Acid and Certain Citrate Salts from Belgium: Final Results of Antidumping Duty Administrative Review; 2020-2021*, 87 FR 68681 (November 16, 2022).

¹⁴ See *Citric Acid and Certain Citrate Salts from Belgium: Preliminary Results of Antidumping Duty Administrative Review*, 88 FR 49442 (July 24, 2023).

Duty-Absorption Findings, Changed-Circumstances Reviews, Section 129 Proceedings, Scope Inquiries, Circumvention Inquiries

There have been no duty-absorption findings, proceedings conducted pursuant to section 129 of the Uruguay Round Agreements Act (URAA) (section 129 proceedings), scope inquiries, or circumvention inquiries concerning the *Order*. Commerce conducted one changed circumstances review, finding Citribel to be the successor-in-interest to Citrique Belge as a result of a change to the legal name of the respondent.¹⁵

V. LEGAL FRAMEWORK

In accordance with section 751(c)(1) of the Act, Commerce is conducting this sunset review to determine whether revocation of the *Order* would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that in making this determination, Commerce shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the period before, and the period after, the issuance of the *Orders*.

Consistent with the guidance provided in the legislative history accompanying the URAA, specifically the SAA,¹⁶ the House Report,¹⁷ and the Senate Report,¹⁸ Commerce's determination of likelihood will be made on an order-wide, rather than a company-specific, basis.¹⁹ In addition, Commerce normally determines that revocation of an order is likely to lead to continuation or recurrence of dumping when: (a) dumping continued at any level above *de minimis* after issuance of the order; (b) imports of the subject merchandise ceased after issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.²⁰ Alternatively, Commerce normally will determine that revocation of an AD order is not likely to lead to continuation or recurrence of dumping where dumping was eliminated after issuance of the order and import volumes remained steady or increased.²¹

Furthermore, as a base period for import volume comparison, it is Commerce's practice to use the one-year period immediately preceding the initiation of the investigation, rather than the level of pre-order import volumes, as the initiation of an investigation may dampen import volumes and, thus, skew comparison.²² When analyzing import volumes for the first sunset review,

¹⁵ See *Citric Acid and Certain Citrate Salts from Belgium: Final Results of Antidumping Duty Changed Circumstances Review*, 87 FR 45750 (July 25, 2022).

¹⁶ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1 (1994) (SAA).

¹⁷ See H. Rep. No. 103-826, pt. 1 (1994) (House Report).

¹⁸ See S. Rep. No. 103-412 (1994) (Senate Report).

¹⁹ See SAA at 879; see also House Report at 56.

²⁰ See SAA at 889 and 890; see also House Report at 63-64; Senate Report at 52; and *Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871, 18872 (April 16, 1998) (*Sunset Policy Bulletin*).

²¹ See SAA at 889-90; see also House Report at 63.

²² See, e.g., *Stainless Steel Bar from Germany; Final Results of the Sunset Review of the Antidumping Duty Order*, 72 FR 56985 (October 5, 2007), and accompanying IDM at Comment 1.

Commerce's practice is to compare import volumes during the year preceding initiation of the underlying investigation to import volumes since the issuance of the order.²³

In addition, section 752(c)(3) of the Act states that Commerce shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Generally, Commerce selects the margin(s) from the final determination in the original investigation, as this is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place.²⁴ However, Commerce may use a rate from a more recent review where the dumping margin increased, as this rate may be more representative of a company's behavior in the absence of an order (e.g., where a company increases dumping to maintain or increase market share with an order in place).²⁵ Finally, pursuant to section 752(c)(4)(A) of the Act, a dumping margin of "zero or *de minimis* shall not by itself require" Commerce to determine that revocation of an AD order would not be likely to lead to a continuation or recurrence of sales at LTFV.²⁶

Below we address the comments submitted by the interested parties.

VI. DISCUSSION OF THE ISSUES

1. Likelihood of Continuation or Recurrence of Dumping

Domestic Interested Parties' Comments:

- Continuation is appropriate because imports declined significantly after the issuance of the *Order*. In this case, the petition was filed on June 2, 2017, and the *Order* was imposed on July 25, 2018. During the last five years, annual imports of the subject merchandise from Belgium have been less than one-half of their pre-*Order* volume. Because imports of subject merchandise declined significantly after the issuance of the *Order*, Commerce should find that dumping would likely continue or recur if the *Order* were revoked.²⁷
- Dumping margins were preliminarily determined to be above *de minimis* in the fourth administrative review, reflecting that dumping has continued after issuance of the *Order*.²⁸

²³ See, e.g., *Ferrovanadium from the People's Republic of China and the Republic of South Africa: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Orders*, 79 FR 14216 (March 13, 2014), and accompanying IDM (*Ferrovanadium from China and South Africa*).

²⁴ See SAA at 890; see also, e.g., *Persulfates from the People's Republic of China: Notice of Final Results of Expedited Second Sunset Review of Antidumping Duty Order*, 73 FR 11868 (March 5, 2008), and accompanying IDM at Comment 2.

²⁵ See SAA at 890-91.

²⁶ See *Folding Gift Boxes from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 72 FR 16765 (April 5, 2007), and accompanying IDM at Comment 1.

²⁷ See Domestic Interested Parties' Substantive Response at 4-5 (citing import data sourced from ITC Dataweb).

²⁸ *Id.* at 5-6.

Citribel's Comments:

- Citribel's exports of citric acid during the sunset period generally held steady, with increases in certain years, and such imports were found to be below *de minimis* in all three completed reviews during this period.²⁹
- Further, since Citribel has been near full production capacity and with steady U.S. sales of citric acid throughout the sunset period, with a few exceptions, these factors show Citribel "does not need to sell its products at dumped prices to access the U.S. market."³⁰
- Citribel argues that the causes for these exceptions for lower volumes during the sunset period are the Russian war with Ukraine, Covid-19, and the corresponding energy and supply chain problems.³¹ Thus, all else held equal, Citribel will "continue to ship to the U.S. market without dumping, with or without an antidumping order in place."³²
- Commerce should revoke the AD *Order* as this cessation will not likely lead to continued or renewed dumping.

Domestic Interested Parties' Rebuttal:

- Although Citribel argues exports to the United States of subject merchandise during the sunset period has remained steady with non-dumped prices, a review of exports of subject merchandise to the United States before the implementation of the order compared to those after implementation of the order shows a significant reduction in volume, which supports a finding that revocation of the order would lead to continued or renewed dumping.³³
- Citribel argues that consistent volumes of subject merchandise to the United States were interrupted by unfavorable macroeconomic conditions and to consider these factors when evaluating volume levels of citric acid to the United States in determining whether or not to revoke the dumping *Order*. However, these factors did not occur in the year following the enactment of the *Order*, and thus, do not fully explain the reasons for subject merchandise volumes to the United States significantly dropping following the implementation of the order compared to before it was enacted.³⁴
- The macroeconomic factors cited, such as COVID-19, the supply chain disruption, and the war in Ukraine all occurred subsequent to 2019 and cannot explain the decrease in exports in the first half of the sunset period. Thus, these macroeconomic conditions are insufficient reason to explain the significant differential between pre- and post-*Order* export levels to the United States, which is the primary factor in determining whether or not the *Order* should be revoked.
- Citribel argues that high utilization rates show that it will continue to sell at non-dumped prices at consistent volumes with or without the *Order* in place. However, there is no basis to support this claim, and alternatively, this fact pattern reflects that Citribel will likely redirect the volumes sold at dumped prices previously sold to the United States in

²⁹ See Citribel's Substantive Response at 7.

³⁰ *Id.* at 10.

³¹ *Id.* at 7-8 and 11.

³² *Id.* at 6.

³³ See Domestic Interested Parties Rebuttal at 2.

³⁴ *Id.* at 2-3.

the pre-*Order* period back to the United States in the event the *Order* is revoked, which will lead to continued dumping in the United States.³⁵

- The *Order* should not be revoked as it will lead to continued or renewed dumping.

Commerce's Position: Drawing on the guidance provided in the legislative history accompanying the URAA, specifically the SAA, the House Report and the Senate Report, Commerce's determination of likelihood of continuation or recurrence will be made on an order-wide basis for each sunset review.³⁶ In addition, Commerce will normally determine that revocation of an AD order is likely to lead to continuation or recurrence of dumping where: (a) dumping continued at any level above *de minimis* after the issuance of the order; (b) imports of the subject merchandise ceased after the issuance of the order; or (c) dumping was eliminated after the issuance of an order and import volumes for the subject merchandise declined significantly.³⁷ Further, when determining whether revocation of the order would be likely to lead to continuation of dumping, sections 752(c)(1)(A) and (B) of the Act instruct Commerce to consider: (1) the weighted-average dumping margins determined in the investigation and subsequent reviews; and (2) the volume of imports of the subject merchandise for the period before and after the issuance of the AD order. According to the SAA and the House Report, "if companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were removed."³⁸

Pursuant to section 752(c)(1)(A) of the Act, Commerce first considered the weighted-average dumping margins determined in the respective investigation and subsequent segments of the proceeding. Citribel, the only Belgian producer and/or exporter reviewed in any segment of the *Order*, was found to be dumping at a level of 19.30 percent in the investigation, and dumping was found to be below *de minimis* in three completed reviews since the discipline of the *Order* went in place. Additionally, the 19.30 percent all-other's rate remains in effect for all other exporters and producers of citric acid from Belgium. With respect to the domestic interested parties' argument that an above-*de minimis* dumping margin was found in the preliminary results of the ongoing fourth administrative review, we note that this rate is not yet final.

Pursuant to section 752(c)(1)(B) of the Act, Commerce also considered the volume of imports of the subject merchandise for the period before and the period after the issuance of the AD order or acceptance of the suspension agreement, in determining whether revocation of the *Orders* would be likely to lead to continuation or recurrence of dumping. As noted above, when analyzing import volumes for the first sunset review, Commerce's practice is to compare import volumes during the year preceding initiation of the underlying investigation to import volumes since the issuance of the order.³⁹ The evidence on the record before Commerce indicates that Citribel's imports of subject merchandise have significantly fallen since the one-year period immediately preceding the initiation of the investigation compared to after the imposition of the *Order*. Though Citribel is correct that export levels to the United States appear to have held steady during the five-year sunset period from 2018 through 2022, these annual levels are roughly half

³⁵ *Id.* at 3.

³⁶ See SAA at 879; see also House Report at 56; and Senate Report at 52.

³⁷ See SAA at 889-890; see also House Report at 63-64; and Senate Report at 52.

³⁸ *Id.*; see also House Report at 63-64.

³⁹ See *Ferrovanadium from China and South Africa*.

of the level of exports in both 2017 (the year of the filing of the petition) and 2016 (the last full year prior to the AD petition and investigation).⁴⁰ Thus, ITC Dataweb reflects that exports of subject merchandise have decreased after the issuance of the order compared to the one-year period immediately preceding the initiation of the investigation, which supports a finding that revocation of the order would lead to continued or renewed dumping.

Although Citribel argues that the decrease in exports of subject merchandise to the United States is due to macroeconomic factors and should be considered when deciding whether or not to continue the *Order*, Citribel does not explain why these factors should supersede the standard analysis. We agree with the domestic interested parties that the factors cited, which generally reference post-2019 events, simply do not account for the decrease in exports of citric acid in the first half of the sunset period. Further, that Citribel's production and utilization rates are near capacity would not lead to an increase of exports does not substantiate that Citribel would not redirect the volumes sold at dumped prices previously sold to the United States in the pre-*Order* period back to the United States in the event of revocation of the *Order*.⁴¹ Given the significant decrease in imports during the one-year period immediately preceding the initiation of the investigation compared to after the imposition of the *Order* in which Citribel was found to be dumping at above *de minimis* levels, Commerce preliminarily determines that this prong of the analysis supports a finding that dumping would be likely to continue or recur if the AD *Order* on citric acid from Belgium were revoked.

2. Magnitude of the Margins of Dumping Likely to Prevail

Domestic Interested Party's Comments:

- Consistent with the SAA, Commerce will normally select dumping margins established in the original investigation because they best reflect the behavior of exporters without the discipline of an order or suspension agreement in place.⁴²
- Commerce should report to the ITC the margins from the original investigation as those would likely prevail upon revocation, *i.e.*, that the magnitude of the margin of dumping likely to prevail if the order were revoked is 19.30 percent.⁴³

Citribel's Comments:

- During the sunset period, exports to the United States of subject merchandise have remained steady, and all margins calculated by Citribel have been determined to be below *de minimis*. This reflects that Citribel does not need to dump to access the U.S. market, and no dumping is likely to prevail if the *Order* is revoked.⁴⁴

⁴⁰ See ITC DataWeb data provided in Domestic Interested Parties' Substantive Response at 5.

⁴¹ *Id.* at 2-3.

⁴² See Domestic Industry's Substantive Response at 6-7.

⁴³ *Id.*

⁴⁴ *Id.*

Domestic Interested Party's Rebuttal:

- Although Citribel argues its exports to the United States of citric acid during the sunset period have remained steady with non-dumped prices, a review of exports to the United States before the implementation of the order compared to those after implementation of the *Order* shows a significant reduction in volume, which supports a finding that revocation of the order would lead to continued or renewed dumping, *i.e.* non-zero dumping margins at the 19.30 rate which reflects the level of dumping observed without the discipline of the *Order* in place.⁴⁵

Commerce's Position: Section 752(c)(3) of the Act provides that the administering authority shall provide to the ITC the magnitude of the margins of dumping that is likely to prevail if the *Orders* were revoked.⁴⁶

Commerce prefers selecting a rate from the investigation because such rates are the only calculated rates that reflect the behavior of the producers and exporters without the discipline of an order or suspension agreement in place.⁴⁷ Under certain circumstances, however, Commerce may select a more recently calculated rate to report to the ITC.⁴⁸

Because above *de minimis* margins remained in place following the issuance of the *Orders*, and given the significant decline in volumes from the pre-*Order* levels, Commerce finds that the estimated weighted-average dumping margins in the LTFV investigations of the *Order* are probative of the behavior of producers or exporters from Belgium if the *Order* was revoked because these estimated weighted-average dumping margins are the only information which reflect the behavior of these producers or exporters absent the discipline of the *Order*. Thus, we preliminarily determine that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping at weighted-average dumping margins up to 19.30 percent.

⁴⁵ See Memorandum, "Domestic Industry's Rebuttal to Citribel N.V.'s Substantive Response," dated July 10, 2023, at 2.

⁴⁶ See, e.g., *Certain Hot-Rolled Carbon Steel Flat Products from Argentina, the People's Republic of China, India, Indonesia, Kazakhstan, Romania, South Africa, Taiwan, Thailand, and Ukraine; Final Results of Expedited Sunset Reviews of the Antidumping Duty Orders*, 71 FR 70506 (December 5, 2006), and accompanying IDM at Comment 2.

⁴⁷ See *Eveready Battery Co. v. United States*, 77 F. Supp. 2d 1327, 1333 (CIT 1999); see also SAA at 890.

⁴⁸ See section 752(c)(3) of the Act; see also *Final Results of Full Sunset Review: Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands*, 65 FR 65294 (November 1, 2000), and accompanying IDM at Comment 3.

VII. RECOMMENDATION

Based on our analysis of the substantive responses received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the preliminary results of this sunset review in the *Federal Register*.



Agree



Disagree

9/15/2023

X



Signed by: LISA WANG
Lisa W. Wang
Assistant Secretary
for Enforcement and Compliance