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DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

(C-549-834)

Citric Acid and Certain Citrate Salts from Thailand: Initiation of Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

DATES: Effective June 22, 2017

FOR FURTHER INFORMATION CONTACT: John Conniff at (202) 482-1009, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION

The Petition

On June 2, 2017, the Department of Commerce (the Department) received a countervailing duty (CVD) petition concerning imports of citric acid and certain citrate salts (citric acid) from Thailand,[1] filed in proper form on behalf of Archer Daniels Midland Company (ADM); Cargill Incorporated (Cargill); and Tate & Lyle Ingredients Americas LLC (Tate & Lyle) (collectively, the petitioners). The Petition was accompanied by antidumping duty (AD) petitions concerning imports of citric acid from Belgium, Colombia and Thailand.[2] The petitioners are domestic producers of citric acid.[3]

[1] *See* "Petitions for the Imposition of Antidumping and Countervailing Duties on Citric Acid and Certain Citrate Salts from Belgium, Colombia, and Thailand," dated June 2, 2017, at Volume V (Petition).
[2] *See* Petition, Volumes II-IV.
[3] *See* Volume I of the Petitions, at 2.

On June 7, and June 12, 2017, the Department requested additional information and clarification of certain areas of the Petition.[4] The petitioners filed responses to these requests on June 9, and June 14, 2017, respectively.[5]

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that imports of citric acid from Thailand received countervailable subsidies from Thai government authorities within the meaning of sections 701 and 771(5) of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States. Also, consistent with section 702(b)(1) of the Act, for those alleged programs on which we are initiating a CVD investigation, the Petition alleged the elements of a subsidy and provided information reasonably available to the petitioners supporting the allegations.

The Department finds that the petitioners filed the Petition on behalf of the domestic industry because the petitioners are interested parties as defined in section 771(9)(C) of the Act. The Department also finds that the petitioners demonstrated sufficient industry support with respect to the initiation of the CVD investigation that the petitioners are requesting.[6]

Period of Investigation

Because the Petition was filed on June 2, 2017, the period of investigation (POI) is January 1, 2016, through December 31, 2016.[7]

[4] *See* Letter to the petitioners from the Department, "Petition for the Imposition of Countervailing Duties on Imports of Citric Acid and Certain Citrate Salts from Thailand: Supplemental Questions," dated June 7, 2017; *see also* Letter to the petitioners from the Department concerning supplemental questions on general issues, dated June 12, 2017.
[5] *See* Letter from the petitioners, "Petitioners' Responses to Supplemental Questions," dated June 9, 2017; *see also* Letter from the petitioners, "Antidumping Duty Investigation of Citric Acid and Certain Citrate Salts from Belgium, Colombia, and Thailand: Petitioners' Responses to Supplemental Questions – Volume I," dated June 14, 2017 (General Issues Supplement).
[6] *See* "Determination of Industry Support for the Petitions" section, below.
[7] *See* 19 CFR 351.204(b)(2).

Scope of the Investigation

The product covered by this investigation is citric acid and certain citrate salts from Thailand. For a full description of the scope of this investigation, *see* the "Scope of the Investigation," in the Appendix to this notice.

Comments on Scope of the Investigation

During our review of the Petition, the Department issues questions to, and received responses from, the petitioners pertaining to the proposed scope to ensure that the scope language in the Petition would be an accurate reflection of the products for which the domestic industry is seeking relief.[8]

As discussed in the preamble to the Department's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope). The Department will consider all comments received from parties and, if necessary, will consult with parties prior to the issuance of the preliminary determinations. If scope comments include factual information (*see* 19 CFR 351.102(b)(21)), all such factual information should be limited to public information. In order to facilitate preparation of its questionnaires, the Department requests all interested parties to submit such comments by 5:00 p.m. Eastern Time (ET) on July 12, 2017, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information (also limited to public information), must be filed by 5:00 p.m. ET on July 24, 2017, which is the next business day after 10 calendar days after the initial comments. All such comments must be filed on the records of this investigation and each of the concurrent AD investigations.

[8] *See* General Issues Supplement, at 1-4.

The Department requests that any factual information the parties consider relevant to the scope of this investigation be submitted during this time period. However, if a party subsequently believes that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact the Department and request permission to submit the additional information. As stated above, all such comments must be filed on the records of this investigation and each of the concurrent AD investigations.

Filing Requirements

All submissions to the Department must be filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).[9] An electronically-filed document must be received successfully in its entirety by the time and date it is due. Documents excepted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Consultations

Pursuant to section 702(b)(4)(A)(i) of the Act, the Department notified representatives of the Royal Thai Government (RTG) of the receipt of the Petition. Also, in accordance with section 702(b)(4)(A)(ii) of the Act, the Department provided representatives of the RTG with an opportunity for consultations with respect to the Petition. Consultations with the RTG were held

[9] *See* 19 CFR 351.303 (for general filing requirements); *see also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011), for details of the Department's electronic filing requirements, which went into effect on August 5, 2011. Information on help using ACCESS can be found at https://access.trade.gov/ help.aspx, and a handbook can be found at https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.

at the Department's main building on June 14, 2017. The invitation letter and the memorandum regarding these consultations are on file electronically *via* ACCESS.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the "industry."

Section 771(4)(A) of the Act defines the "industry" as the producers, as a whole, of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,[10] they do so for different purposes and pursuant to a separate and distinct authority. In addition, the

[10] *See* section 771(10) of the Act.

Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[11]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petition).

With regard to the domestic like product, the petitioners do not offer a definition of the domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that citric acid, as defined in the scope, constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product.[12]

In determining whether the petitioners have standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the "Scope of the Investigation," in the Appendix to this notice. To establish industry support, the petitioners provided their own production of the domestic like product in 2016.[13] The petitioners state that they represent the totality of the domestic industry producing citric acid; therefore, the Petition is supported by 100 percent of the

[11] *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[12] For a discussion of the domestic like product analysis, *see* Countervailing Duty Investigation Initiation Checklist: Citric Acid and Certain Citrate Salts from Thailand (Thailand CVD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Citric Acid and Certain Citrate Salts from Belgium, Colombia, and Thailand (Attachment II). This checklist is dated concurrently with this notice and on file electronically *via* ACCESS. Access to documents filed *via* ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

[13] *See* Volume I of the Petition, at Exhibit I-13.

U.S. industry.[14]

Our review of the data provided in the Petition, the General Issues Supplement, and other information readily available to the Department indicates that the petitioners have established industry support for the Petition.[15] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling).[16] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[17] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[18] Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

The Department finds that the petitioners filed the Petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act, and they have demonstrated sufficient industry support with respect to the CVD investigation they are

[14] *Id.*, at 2-3 and Exhibits I-1 and I-2; *see also* General Issues Supplement, at 1, 7 and Attachments 1 and 3.
[15] *See* Thailand CVD Initiation Checklist, at Attachment II.
[16] *See* section 702(c)(4)(D) of the Act; *see also* Thailand CVD Initiation Checklist, at Attachment II.
[17] *See* Thailand CVD Initiation Checklist, at Attachment II.
[18] *Id.*

requesting the Department to initiate.[19]

Injury Test

Because Thailand is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from Thailand materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[20] In CVD petitions, section 771(24)(B) of the Act provides that imports of subject merchandise from developing and least developed countries must exceed the negligibility threshold of four percent. The petitioners also demonstrate that subject imports from Thailand, which has been designated as developing country under section 771(36)(A) of the Act, exceed the negligibility threshold of four percent.[21]

The petitioners contend that the industry's injured condition is illustrated by reduced market share; underselling and price suppression or depression; lost sales and revenues; adverse impact on the domestic industry's production, capacity utilization, and U.S. shipments; and declines in financial performance.[22] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that

[19] *Id*.
[20] *See* Volume I of the Petition, at 21-22 and Exhibit I-12.
[21] *Id*.
[22] *See* Volume I of the Petition, at 17-32 and Exhibits I-7 and I-9 – I-15.

these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[23]

Initiation of CVD Investigation

Section 702(b)(1) of the Act requires the Department to initiate a CVD investigation whenever an interested party files a CVD petition on behalf of an industry that: (1) alleges the elements necessary for an imposition of a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to the petitioners supporting the allegations.

The petitioners allege that producers/exporters of citric acid in Thailand benefit from countervailable subsidies bestowed by their government. The Department examined the Petition and finds that it complies with the requirements of section 702(b)(1) of the Act. Therefore, in accordance with section 702(b)(1) of the Act, we are initiating this CVD investigation to determine whether manufacturers, producers, and/or exporters of citric acid in Thailand receive countervailable subsidies from Thai government authorities.

Under the Trade Preferences Extension Act of 2015, numerous amendments to the AD and CVD law were made.[24] The amendments to sections 776 and 782 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this CVD investigation.[25]

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on all nine alleged programs. For a full discussion of the basis for our

[23] *See* Thailand CVD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Citric Acid and Certain Citrate Salts from Belgium, Colombia, and Thailand (Attachment III).
[24] *See* Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015). *See also, Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*).
[25] *See Applicability Notice*, 80 FR at 46794-95.

decision to initiate on each program, *see* the Thailand CVD Initiation Checklist. A public version of the initiation checklist is available on ACCESS.

In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

Respondent Selection

Based on information from independent sources, the petitioners identified four companies in Thailand as producers/exporters of citric acid.[26] Following standard practice in CVD investigations, the Department intends to review U.S. Customs and Border Protection (CBP) data for U.S. imports under the appropriate HTSUS numbers listed in the "Scope of the Investigation," in the Appendix, below. If the Department determines that, due to the large number of producers or exporters, it cannot individually examine each company based on the Department's resources, then the Department will select respondents based on the CBP data. We intend to release the CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO. Comments regarding the CBP data and respondent selection should be submitted seven calendar days after the placement of the CBP data on the record of the investigation. Parties wishing to submit rebuttal comments should submit those comments five calendar days after the deadline for the initial comments.

Comments must be filed electronically using ACCESS. An electronically-filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 PM ET on the date noted above. We intend to finalize our decision regarding respondent selection within 20 days of publication of this notice.

[26] *See* Petitions, Volume I at 30-31.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the RTG *via* ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each known exporter (as named in the Petition), consistent with 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of citric acid from Thailand are materially injuring, or threatening material injury to, a U.S. industry.[27] A negative ITC determination will result in the investigation being terminated.[28] Otherwise, this investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). Any party, when submitting factual information, must specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying

[27] *See* section 703(a)(2) of the Act.
[28] *See* section 703(a)(1) of the Act.

the information already on the record that the factual information seeks to rebut, clarify, or correct. Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Parties should review the regulations prior to submitting factual information in this investigation.

Extension of Time Limits Regulation

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Review *Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013), available at http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm, prior to submitting factual information in this investigation.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[29] Parties are hereby reminded that revised

[29] *See* section 782(b) of the Act.

certification requirements are in effect for company/government officials, as well as their representatives. Investigations initiated on the basis of petitions filed on or after August 16, 2013, and other segments of any AD or CVD proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule*.[30] The Department intends to reject factual submissions if the submitting party does not comply with the applicable revised certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.*, the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 702 and 777(i) of the Act.

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

Dated: June 22, 2017

[30] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) ("*Final Rule*"); *see also* frequently asked questions regarding the *Final Rule*, available at http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.

Appendix
Scope of the Investigation

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

The scope also includes all forms of crude calcium citrate, including dicalcium citrate monohydrate, and tricalcium citrate tetrahydrate, which are intermediate products in the production of citric acid, sodium citrate, and potassium citrate.

The scope includes the hydrous and anhydrous forms of citric acid, the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt, and the monohydrate and monopotassium forms of potassium citrate. Sodium citrate also includes both trisodium citrate and monosodium citrate which are also known as citric acid trisodium salt and citric acid monosodium salt, respectively.

The scope does not include calcium citrate that satisfies the standards set forth in the United States Pharmacopeia and has been mixed with a functional excipient, such as dextrose or starch, where the excipient constitutes at least 2 percent, by weight, of the product.

Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States (HTSUS), respectively. Potassium citrate and crude calcium citrate are classifiable under 2918.15.5000 and, if included in a mixture or blend, 3824.99.9295 of the HTSUS. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.99.9295 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

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