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DATE: January 3, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Determination of
Antidumping Duty Investigation: Xanthan Gum from Austria

Summary

The Department of Commerce (“the Department”) is conducting an antidumping duty (“AD”) investigation of xanthan gum from Austria. This investigation covers one producer/exporter of the merchandise under consideration, Jungbunzlauer Austria AG (“JBL Austria”). The period of investigation (“POI”) is April 1, 2011, through March 31, 2012. We have preliminarily found that sales of the merchandise under consideration have been made at less than fair value (“LTFV”).

Background

On June 5, 2012, the Department received an AD petition concerning imports of xanthan gum from Austria filed in proper form by CP Kelco U.S. (“Petitioner”). In June 2012, the Department requested information regarding, and clarification of certain areas of the petition. Petitioner filed timely responses to these requests. The Department initiated an AD investigation of xanthan gum from Austria on July 2, 2012.¹

In the Initiation Notice, the Department stated that it intended to select JBL Austria for examination as the sole known exporter and producer of the subject merchandise because the petition identifies this one company as accounting for virtually all of the imports of xanthan gum

¹ See Xanthan Gum from Austria and the People's Republic of China: Initiation of Antidumping Duty Investigations, 77 FR 39210 (July 2, 2012) (“Initiation Notice”).



from Austria and, furthermore, the Department knew of no other exporters or producers of merchandise under consideration.² The Department invited interested parties to comment on respondent selection; however, the Department received no comments on respondent selection.

On July 10, 2012, the Department issued the AD questionnaire to JBL Austria. From August through December 2012, JBL Austria submitted timely responses to the Department's AD questionnaire and corresponding supplemental questionnaires. In the same time frame, Petitioner submitted comments regarding those responses.

In the Initiation Notice, the Department notified parties that they had an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of xanthan gum to be reported in response to the Department's AD questionnaire.³ In July and August, 2012, Petitioner and JBL Austria submitted comments to the Department regarding the physical characteristics of merchandise under consideration to be used for reporting purposes.

On July 23, 2012, the U.S. International Trade Commission ("ITC") preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of xanthan gum from Austria.⁴

On November 26, 2012, Petitioner filed comments for the Department to consider in its preliminary determination. No other party submitted comments regarding the preliminary determination.

We received a supplemental section D submission from JBL Austria on December 21, 2012. However, this submission was received too late to be considered for purposes of the preliminary determination because it requires an additional detailed analysis of the information. We will consider this submission in our final determination.

We are conducting this investigation in accordance with section 733(b) of the Tariff Act of 1930, as amended ("the Act").

Period of Investigation

The POI is April 1, 2011, through March 31, 2012. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was June 2012.⁵

Postponement of Preliminary Determination

On October 12, 2012, Petitioner made a timely request, pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(b)(2) and (e), for a 50-day postponement of the preliminary determination. On October 26, 2012, the Department fully extended the deadline for issuing the

² See Initiation Notice, 77 FR at 39214.

³ Id., 77 FR at 39211.

⁴ See Xanthan Gum From Austria and China, 77 FR 43857 (July 26, 2012).

⁵ See 19 CFR 351.204(b)(1).

preliminary determination by 50 days.⁶ On October 31, 2012, the Department tolled the preliminary determination deadline two additional days, until January 3, 2013.⁷

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, between December 10, 2012, and December 21, 2012, Petitioner and JBL Austria each requested that the Department postpone the final determination, and JBL requested that provisional measures be extended. In accordance with section 733(d) of the Act and 19 CFR 351.210(b) and (e), because (1) our preliminary determination is affirmative, (2) the requesting exporter JBL accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the request and are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the *Federal Register*, and we are extending provisional measures from four months to a period not to exceed six months. Suspension of liquidation will be extended accordingly.

Scope of the Investigation

The scope of this investigation covers dry xanthan gum, whether or not coated or blended with other products. Further, xanthan gum is included in this investigation regardless of physical form, including, but not limited to, solutions, slurries, dry powders of any particle size, or unground fiber.

Xanthan gum that has been blended with other product(s) is included in this scope when the resulting mix contains 15 percent or more of xanthan gum by dry weight. Other products with which xanthan gum may be blended include, but are not limited to, sugars, minerals, and salts.

Xanthan gum is a polysaccharide produced by aerobic fermentation of *Xanthomonas campestris*. the chemical structure of the repeating pentasaccharide monomer unit consists of a backbone of two P-1,4-D-Glucose monosaccharide units, the second with a trisaccharide side chain consisting of P-D-Mannose-(1,4)- P-D-Glucuronic acid-(1,2) - a-D-Mannose monosaccharide units. The terminal mannose may be pyruvylated and the internal mannose unit may be acetylated.

Merchandise covered by the scope of this investigation is classified in the Harmonized Tariff Schedule of the United States at subheading 3913.90.20. This tariff classification is provided for convenience and customs purposes; however, the written description of the scope is dispositive.

⁶ See Xanthan Gum from Austria and the People's Republic of China: Postponement of Preliminary Determinations of Antidumping Duty Investigations, 77 FR 65361 (October 26, 2012).

⁷ As explained in the memorandum from the Assistant Secretary from Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29, through October 30, 2012. Thus, all deadlines in this segment of the proceeding have been extended by two days. See Memorandum to the Record from Paul Piquado, Assistant Secretary for Import Administration, regarding "Tolling of Administrative Deadlines as a Result of the Government Closure During Hurricane Sandy," dated October 31, 2012.

Alternative Comparison Methodology

Section 777A(d)(1)(B) of the Act allows the Department to employ the average-to-transaction comparison methodology under the following circumstances: (1) there is a pattern of export prices (“EPs”) that differ significantly among purchasers, regions, or periods of time; and (2) the Department explains why such differences cannot be taken into account using the average-to-average or transaction-to-transaction methodology.

On September 21, 2012, Petitioner submitted a timely allegation of targeted dumping with respect to JBL Austria and asserted that the Department should apply the average-to-transaction comparison methodology in calculating the weighted-average dumping margin for JBL Austria. In its allegation, Petitioner asserted that there is a pattern of U.S. sales prices for comparable merchandise that differ significantly among time periods, customers, and regions, and these pricing differences cannot be taken into account using the average-to average comparison methodology.⁸

In order to determine whether a pattern of significant price differences exists pursuant to section 777A(d)(1)(B)(i) of the Act, we conducted time-period, customer, and regional analyses for JBL Austria using the methodology we adopted in Nails and recently articulated in Wood Flooring⁹ and Refrigerators¹⁰. In the Nails test, we made all price comparisons on the basis of identical merchandise (i.e., by control number or CONNUM). We based our analysis on the U.S. net price which we determined for U.S. sales by JBL Austria’s U.S. affiliate JBL Inc. (Boston) in our dumping margin calculations. For further discussion of the Nails test and its results, see memorandum entitled “Preliminary Determination Margin Calculation for Jungbunzlauer Austria AG” (“JBL Calculation Memo”), dated concurrently with this notice, which we incorporate by reference. As a result of our analysis, we preliminarily determine that there is not a pattern of U.S. prices for comparable merchandise that differs significantly among certain time periods, customers, or regions for JBL Austria/JBL Inc., in accordance with section 777A(d)(1)(B)(i) of the Act. Further, we note that even if we had found a pattern of significant price differences to exist, we would preliminarily find that the average-to-average methodology can take into account the observed price differences, in accordance with section 777A(d)(1)(B)(ii) of the Act, because the difference in the weighted-average dumping margin calculated using the average-to-transaction methodology is not meaningful relative to the weighted-average dumping margin calculated using the average-to-average methodology. Accordingly, for this preliminary determination, we have used the average-to-average methodology to calculate the weighted-average dumping margin for JBL Austria.

⁸ See Petitioner’s Allegations of Targeted Dumping submission, dated September 21, 2012, at 5-6. Petitioner relied on the Department’s targeted dumping test in Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value, 73 FR 33985 (June 16, 2008) (“Nails”).

⁹ See Multilayered Wood Flooring From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 64318 (October 18, 2011) (“Wood Flooring”) and accompanying Issues and Decision Memorandum at Comment 4.

¹⁰ See Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From Mexico, 77 FR 17422 (March 26, 2012) (“Refrigerators”).

Discussion of the Methodology

A. Fair Value Comparisons

To determine whether sales of xantham gum from Austria to the United States were made at less than fair value, we compared the constructed export prices (“CEP”) to the normal value (“NV”), as described in the “Constructed Export Price” and “Normal Value” sections of this notice below. In accordance with section 777A(d)(1)(B) of the Act, we compared transaction-specific CEPs to POI weighted-average NVs for JBL Austria.

B. Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by JBL Austria in the comparison market during the POI that fit the description in the “Scope of the Investigation” section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. Where there were no sales of identical or similar merchandise, we made product comparisons using constructed value. In making product comparisons, we matched foreign like products based on the physical characteristics reported by JBL Austria in the following order of importance: product grade, types of blends and/or coatings, viscosity, clarity, particle size, whether or not agglomerated, type of post-fermentation chemical treatment, and type of post-fermentation enzymatic treatment.

C. Date of Sale

In identifying the date of sale of the merchandise under consideration, the Department will normally, in accordance with 19 CFR 351.401(i), “use the date of invoice, as recorded in the exporter or producer’s records kept in the normal course of business.” The date of sale is generally the date on which the parties agreed upon all material terms of the sale and such terms were no longer subject to change. This normally includes the price, quantity, delivery terms and payment terms.¹¹ Because JBL Austria demonstrated that the substantive terms of sale were agreed upon on the invoice date, the Department has preliminarily determined to use invoice date as the date of sale.

D. Constructed Export Price

In accordance with section 772(b) of the Act, we used CEP for JBL Austria because the merchandise under consideration was sold in the United States by a U.S. seller affiliated with JBL Austria, and EP, as defined by section 772(a) of the Act, was not otherwise warranted.

¹¹ See, e.g., Carbon and Alloy Steel Wire Rod From Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review, 72 FR 62824 (November 7, 2007), and accompanying Issues and Decision Memorandum at Comment 1; see also Notice of Final Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey, 65 FR 15123 (March 21, 2000), and accompanying Issues and Decision Memorandum at Comment 1.

We calculated the CEP based on carriage and insurance paid to named place of destination and ex-works terms of delivery to unaffiliated purchasers in, or for exportation to, the United States. We also made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which includes direct selling expenses and indirect selling expenses. Finally, we made an adjustment for profit allocated to these expenses in accordance with section 772(d)(3) of the Act.

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 compared JBL Austria'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.

In this investigation, we determined that JBL Austria's aggregate volume of home market sales of the foreign like product was insufficient to permit a proper comparison with U.S. sales of the subject merchandise. JBL Austria's largest third country market for sales of foreign like product is Germany. The volume of JBL Austria's sales to Germany is sufficient (*i.e.*, at least five percent of JBL Austria's U.S. sales volume) so that Germany is a viable comparison market in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404. Therefore, the Department, for this preliminary determination, has used Germany as the comparison market on which to base JBL Austria's price-based NVs.

B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade ("LOT") as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).¹² Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.¹³ In order 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.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

¹² See 19 CFR 351.412(c)(2).

¹³ *Id.*; see also Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent to Revoke Antidumping Duty Order in Part, 75 FR 50999, 51001 (August 18, 2010) ("OJ from Brazil") and accompanying Issues and Decision Memorandum at Comment 7.

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 market 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 the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department 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 an LOT adjustment under 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 was possible), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.¹⁶

In this investigation, we obtained information from JBL Austria regarding the marketing stages involved in making the reported comparison market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. Our LOT finding is summarized below.

JBL Austria sold xanthan gum to end users and distributors in both the German and U.S. markets.¹⁷ JBL Austria reported that it made CEP sales in the U.S. market through the following two channels of distribution: (1) direct deliveries to U.S. customers by JBL Austria, invoicing by JBL Austria's U.S. affiliate JBL Inc. (Boston); and (2) deliveries by JBL Austria to U.S. warehouse and shipping from U.S. warehouse and invoicing by JBL Inc. (Boston).¹⁸ For purposes of examining the different selling activities reported by JBL Austria for sales made through each U.S. channel of distribution, we grouped the selling activities into four selling function categories for analysis: (1) sales and marketing; (2) freight and delivery services; (3) inventory maintenance and warehousing; and (4) warranty and technical support.

We compared the selling activities JBL Austria performed in each channel, as well as the level of intensity at which each activity was performed, exclusive of the selling activities performed by its U.S. affiliate, and found no significant difference in the selling functions performed by JBL Austria between the two channels of distribution (i.e., sales and marketing, freight and delivery services, inventory maintenance).¹⁹ As a result, we found that JBL Austria performed the same selling functions for both U.S. distribution channels. Accordingly, we determined that all of JBL Austria's CEP sales constitute one LOT.

¹⁴ Where NV is based on constructed value, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative expenses, and profit for constructed value, where possible.

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

¹⁶ See, e.g., *OJ from Brazil*, 75 FR at 51001.

¹⁷ See JBL Austria's Section A response at A-14 and A-15.

¹⁸ *Id.* at A-19-A-21.

¹⁹ *Id.*

With respect to the German market, JBL Austria reported the following two channels of distribution: (1) direct deliveries to customers in Germany by JBL Austria, invoicing by JBL Austria's affiliate in Germany JBL Ladenburg; and (2) deliveries to German warehouse by JBL Austria and shipping from German warehouse and invoicing by JBL Ladenburg.²⁰ In determining whether separate LOTs exist in the German market, we compared the selling functions performed by JBL Austria and its affiliates JBL Ladenburg on behalf of the German sales. For purposes of examining the different selling activities reported by JBL Austria and its affiliate for sales made through each German channel of distribution, we grouped the selling activities into four selling function categories for analysis: (1) sales and marketing; (2) freight and delivery services; (3) inventory maintenance and warehousing; and (4) warranty and technical support.

We compared the selling activities JBL Austria and its affiliate collectively performed in each channel, and found that there is no significant difference in the selling functions performed between the channels.²¹ As a result, we found that JBL Austria performed the same selling functions for both German market distribution channels. Accordingly, we determined that all German sales constitute one LOT.

The selling function chart submitted by JBL Austria in Revised Exhibit A/B/C-1 of its December 13, 2012, supplemental questionnaire response, shows that for each of the following items, the respondent performed corresponding selling activities at the same or a similar level of intensity in both the U.S. and comparison markets: (1) sales and marketing; (2) freight and delivery services; (3) inventory maintenance and warehousing; and (4) warranty and technical support.

Although in certain instances the level of intensity for freight and delivery services and inventory maintenance differed between the U.S. and comparison markets, that difference alone does not mean these different levels of intensity constitute different marketing stages given that (1) all of the listed selling activities were performed in the U.S. and comparison markets, and (2) in most cases, the respondent performed corresponding selling activities at the same or a similar level of intensity in the U.S. and comparison markets. Thus, while there appears to be a greater focus in the U.S. market on freight and deliveries, based on the totality of the information reported with respect to selling activities and the intensity levels at which these activities were performed, we do not find that the respondent sold foreign like product and the merchandise under consideration at significantly different marketing stages. Therefore, we preliminarily find that, during the POI, the respondent sold the merchandise under consideration and foreign like product at the same LOT. Accordingly, all comparisons of CEP to NV are at the same LOT, and neither a LOT adjustment pursuant to section 773(a)(7)(A) of the Act nor a CEP offset pursuant to section 773(a)(7)(B) of the Act,²² is warranted.

²⁰ See JBL Austria's December 13, 2012 supplemental questionnaire response at 1-5 and Revised Exhibit A/B/C/-1.

²¹ *Id.*

²² See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27372 (May 19, 1997) (“the Department will not make a CEP offset where the Department bases normal value on home market sales at the same LOT as the CEP”).

C. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on packed prices to unaffiliated customers. We made adjustments, where appropriate, from the starting price for rebates and billing adjustments. We also made deductions for movement expenses, including inland freight, customs fees, brokerage and handling, insurance, and warehousing expenses, under section 773(a)(6)(B)(ii) of the Act. Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted third country packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.²³

D. Cost of Production Analysis

Because JBL Austria did not have a viable home market, on September 19, 2012, Petitioner alleged that it made third country sales below the cost of production (“COP”) and, therefore, requested that the Department initiate a sales-below-cost investigation. On October 3, 2012, the Department initiated a sales-below-cost investigation of JBL Austria.²⁴

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses, interest expenses, and comparison market packing costs.²⁵ We examined the cost data and determined that our quarterly cost methodology is not warranted. Therefore, we have applied our standard methodology of using annual costs based on the reported data, as adjusted below.

We relied on JBL Austria’s submitted COP data except as follows: (1) we increased JBL Austria’s reported cost of manufacturing (“COM”) to include certain unreported costs, and (2) we revised JBL Austria’s financial expense rate to exclude investment related items from the numerator.²⁶

2. Test of Comparison Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the sales price of comparison market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were exclusive of any applicable billing adjustments, discounts and rebates, movement charges, and actual direct and indirect selling expenses. In determining whether to disregard comparison

²³ See JBL Calculation Memo at 3.

²⁴ See Memorandum entitled “Petitioner’s Allegation of Sales below the Cost of Production for Jungbunzlauer Austria AG,” dated October 3, 2012.

²⁵ See “Test of Comparison Market Sales Prices” section below for treatment of comparison market selling expenses.

²⁶ See Memorandum entitled “Cost of Production and Constructed Value Adjustments for the Preliminary Determination - Jungbunzlauer Austria AG,” dated January 3, 2013, for further discussion, which is incorporated by reference.

market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product during the POI are at prices less than the COP, we disregarded no below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in substantial quantities. Where 20 percent or more of the respondent's sales of a given product during the POI are at prices less than the COP, we disregard those sales of that product, because we determine that in such instances the below-cost sales represent substantial quantities within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine that such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act. Because we are applying our standard annual-average cost test in this preliminary determination, we have also applied our standard cost-recovery test with no adjustments.

We found that none of JBL Austria's comparison market sales during the POI were at prices less than the COP. We therefore used all sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

Affiliation

Pursuant to the Act and the Department's regulations, the Department will examine whether inputs purchased from or sales made to an affiliate were made at arm's-length before relying on reported costs and sales prices in its margin calculations. Section 771(33) of the Act, in pertinent part, identifies persons that shall be considered "affiliated" or "affiliated persons" as: (1) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person (section 771(33)(F) of the Act); and (2) any person who controls any other person and such other person (section 771(33)(G) of the Act). The Act further states that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person. The Department's regulations at 19 CFR 351.102(b) states that in determining whether control over another person exists within the meaning of section 771(33) of the Act, the Department will not find that control exists unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product. The regulation states that the Department will consider the temporal aspect of a relationship in determining whether control exists; normally, temporary circumstances will not suffice as evidence of control.

In the instant investigation, we examined record evidence to determine whether respondent, JBL Austria was affiliated with any of the following entities during the POI: (1) suppliers of inputs used to produce xanthan gum; (2) reported comparison market customers; and (3) reported U.S. customers that purchased xanthan gum from JBL Austria's U.S. affiliate, Jungbunzlauer Inc. The Department notes that JBL Austria reported as an affiliate, Bank Gutmann, a privately-

owned Austrian bank. As part of our affiliation analysis, the Department examined whether there was evidence to support a finding that JBL Austria was affiliated during the POI with any of its suppliers or downstream customers through Bank Gutmann. As a result of the Department's consideration of record evidence and comments submitted by interested parties, the Department has found no evidence that JBL Austria was affiliated with any of these suppliers or downstream customers during the POI within the meaning of the Act and the Department's regulations. Specifically, the Department finds no evidence that JBL Austria is legally or operationally in control of the suppliers or reported downstream customers at issue, or evidence that these suppliers or customers are in a position to control JBL Austria. For further discussion of the proprietary information considered in the analysis of this issue, see the Preliminary Affiliation Memorandum, which is incorporated by reference.²⁷

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the date of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i) of the Act, we will verify information relied upon in making our final determination.

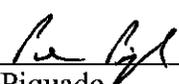
Conclusion

We recommend applying the above methodology for this preliminary determination.

✓

Agree

Disagree



Paul Piquado
Assistant Secretary
for Import Administration

7 JANUARY 2013

(Date)

²⁷ See Memorandum to the file, regarding "Affiliation Analysis for Jungbunzlauer Austria AG" dated concurrently with this memorandum ("Preliminary Affiliation Memorandum").