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DATE: March 15, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Rescission of the 2014-2015 Antidumping Duty New Shipper Review of Xanthan Gum from the People's Republic of China

SUMMARY

In response to a request from Inner Mongolia Jianlong Biochemical Co., Ltd.'s ("IMJ"), the Department of Commerce ("Department") is conducting a new shipper review ("NSR") of the antidumping duty ("AD") order on xanthan gum from the People's Republic of China ("PRC"). The period of review ("POR") is July 1, 2014, through June 30, 2015. As discussed below, the Department of Commerce (the "Department") preliminarily determines that IMJ did not satisfy the regulatory requirements to request a new shipper review ("NSR") and did not make a *bona fide* sale during the period of review ("POR"). As such, the Department is preliminarily rescinding the new shipper review of IMJ.

If these preliminary results of review are adopted in our final results of review, the assessment rate to which IMJ's shipments will be subject will not be affected by this review. However, IMJ's entry is currently covered by the on-going administrative review of the antidumping duty order on xanthan gum from the PRC covering the period July 1, 2014 through June 30, 2015. If these preliminary results of review are adopted in our final results of review, the assessment rate applicable to IMJ's shipments will be determined in that administrative review.¹

Interested parties are invited to comment on the preliminary rescission of this review. We intend to issue the final results or final rescission of the review no later than 90 days from the date the preliminary results are issued, pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended ("the Act").

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 53106 (September 2, 2015).



BACKGROUND

In response to a request from IMJ, the Department initiated an NSR of the antidumping duty order on xanthan gum from the People's Republic of China ("PRC") covering the period July 1, 2014, through June 30, 2015.² The Department issued an antidumping duty questionnaire to IMJ, to which the company responded in a timely manner. Between October 2015 and February 2016, the Department issued supplemental questionnaires to IMJ, to which it also responded in a timely manner. The Department received comments on IMJ's questionnaire and supplemental questionnaire responses from CP Kelco U.S. ("Petitioner") from December 2015 through February 2016. The Department also received comments from interested parties on surrogate country and surrogate value selection from December 2015 through January 2016.

The Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government because of Snowstorm "Jonas." Thus, all of the deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the preliminary results of this review, after the four business-day extension, is February 23, 2016.³ However, on February 17, 2016, the Department extended the time period for issuing the preliminary results of this NSR by a further 21 days, until March 15, 2016.⁴

SCOPE OF THE ORDER

The product covered by the scope of the order is dry xanthan gum, whether or not coated or blended with other products. Further, xanthan gum is included in the order 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 the 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-DGlucuronic acid-(1,2) - a-D-Mannose monosaccharide units. The terminal mannose may be pyruvylated and the internal mannose unit may be acetylated.

² See *Xanthan Gum From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review*, 80 FR 52031 (August 27, 2015) ("Initiation Notice").

³ See Memorandum to the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement & Compliance, regarding "Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm Jonas," dated January 27, 2016.

⁴ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "New Shipper Review of Xanthan Gum from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty New Shipper Review," dated February 17, 2016.

Merchandise covered by the scope of this order is classified in the Harmonized Tariff Schedule (“HTS”) 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.⁵

DISCUSSION OF THE METHODOLOGY

Analysis of Pre-POR Entries of IMJ’s Subject Merchandise

Section CFR 351.214(b)(2)(iv)(A) of the Department’s regulations requires that a request for an NSR contain documentation establishing “the date on which subject merchandise of the exporter or producer making the request was first entered, or withdrawn from warehouse, for consumption, or, if the exporter or producer cannot establish the date of first entry, the date on which the exporter or producer first shipped the subject merchandise for export to the United States.” 19 CFR 351.214(c) of the Department’s regulations further states that the deadline for requesting a new shipper review is one year from the date outlined above.

Subsequent to the initiation of the NSR, IMJ provided information to the Department regarding certain pre-POR shipments of samples of subject merchandise to the United States that it made in January 2014 and March 2014, claiming IMJ received no consideration for the samples shipped.⁶ In its request for an NSR, however, IMJ did not identify or provide documentation relating to these shipments of subject merchandise which came into the United States before the entry of the subject merchandise identified in the request for an NSR.⁷ Additionally, the record indicates that these goods came into the United States for consumption and remained in the United States, and therefore, should have been identified by IMJ in the NSR request.⁸ Even though IMJ may not possess information regarding the entry of these samples, 19 CFR 351.214(b)(2)(iv)(A) requires a request for an NSR to contain documentation establishing “the date on which the exporter or producer first shipped the subject merchandise for export to the United States,” if the “exporter or producer cannot establish the date of first entry.” IMJ failed to provide this documentation to the Department, and hence failed to meet the requirement set forth in 19 CFR 351.214(b)(2)(iv)(A) for its NSR request. Moreover, IMJ shipped the sample subject merchandise to the United States more than one year before the NSR request was made.⁹ Thus, IMJ’s request for an NSR also fails to meet the deadline requirement set out in 19 CFR 351.214(c). Finally, IMJ failed to disclose the volume of all subsequent shipments of subject merchandise after the first shipment and therefore did not satisfy a further documentation requirement set forth in 19 CFR 351.214(b)(2)(iv)(B) for NSRs.

⁵ See Memorandum from Cristian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, “Xanthan Gum from the People’s Republic of China: Issues and Decision Memorandum for the Final Results of the First Antidumping Duty Administrative Review,” dated February 3, 2016 at 2.

⁶ See IMJ’s Section C&D Questionnaire response, dated October 15, 2015, at I-3; see also IMJ’s 3rd Supplemental D Questionnaire response (“3rd Supplemental D Response”), dated February 4, 2016 at SuppD3-6.

⁷ See Letter to the Secretary of Commerce “Re: Xanthan Gum from the People’s Republic of China - Request for New Shipper Review,” dated July 31, 2015.

⁸ See 19 CFR 351.214(b)(2)(iv)(A).

⁹ See IMJ’s 3rd Supplemental D Response, at SuppD3-6.

Even though IMJ states that no consideration was given for the samples shipped to the United States in January 2014 and March 2014,¹⁰ the fact remains that the Department initiated this NSR based on erroneous information, which did not include notification of these shipments that constituted its first entry of subject merchandise to the U.S. In *Marvin Furniture (Shanghai) Co. Ltd. v. United States*, the Court of Appeals for the Federal Circuit upheld the Court of International Trade's (CIT) ruling sustaining the Department's determination to rescind an NSR, based on similar facts (*Marvin* also involved unreported pre-POR entries of subject merchandise that were not sold and a request that did not establish the date of the first entry).¹¹ In its determination, which was affirmed in *Marvin*, the Department stated that a "NSR request must meet all requirements by the filing deadline and contain the correct information so that the Department can determine whether it is appropriate to conduct an NSR. It is important to strictly enforce the regulations for NSRs because initiation makes a difference at the border. As mentioned above, new shippers receive a bonding privilege."¹²

Thus, because IMJ failed to satisfy the regulatory requirements in 19 CFR 351.214(b)(2)(iv)(A), 19 CFR 351.214(c), and 19 CFR 351.214(b)(2)(iv)(B), we recommend rescinding this NSR for IMJ. In addition to this basis for rescinding the NSR, as explained below, we find that record evidence supports rescinding the NSR because the sole sale under review is not a *bona fide* sale.

Bona Fide Sale Analysis

The Department has a practice of examining the *bona fides* of sales in new shipper reviews.¹³ This practice was affirmed by the CIT in order to ensure a respondent does not unfairly benefit from an atypical sale and obtain a lower dumping margin than the respondent's usual commercial practice would dictate.¹⁴ When examining the *bona fides* of sales in new shipper reviews, the Department considers a number of factors, "all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise."¹⁵ In *TTPC*, the CIT affirmed the Department's decision that "any factor which indicates that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant,"¹⁶ and found that "the weight given to each factor investigated will depend on the

¹⁰ *Id.*

¹¹ See *Marvin Furniture (Shanghai) Co. Ltd. v. United States*, 744 F.3d 1319, 1322-1325 (Fed. Cir. 2014) ("*Marvin*").

¹² See *Wooden Bedroom Furniture From the People's Republic of China: Final Rescission of Antidumping Duty New Shipper Review*, 77 FR 21536 (April 10, 2012) and accompanying Issues and Decision Memorandum at 3; see also, *Initiation Notice*.

¹³ See, e.g., *Honey from the People's Republic of China: Rescission and Final Results of Antidumping Duty New Shipper Reviews*, 71 FR 58579 (October 4, 2006) and accompanying Issues and Decision Memorandum at Comment 1b.

¹⁴ See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1344 (CIT 2005) ("*New Donghua*").

¹⁵ See *New Donghua*, 374 F. Supp. 2d 1333, 1342 (CIT 2005) (citing *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002) and accompanying Issues and Decision Memorandum: New Shipper Review of Clipper Manufacturing Ltd.).

¹⁶ See *Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1250 (CIT 2005) ("*TTPC*").

circumstances surrounding the sale.”¹⁷ In evaluating whether a sale in a new shipper review is commercially reasonable or typical of normal business practices, and therefore a *bona fide* sale, the Department often considers, *inter alia*, such factors as: (a) the timing of the sale, (b) the price and quantity of the sale, (c) the expenses arising from the transaction, (d) whether the goods were resold at a profit, and (e) whether the transaction was made on an arm’s length basis.¹⁸ Where the Department finds that a sale is not a *bona fide* sale, the Department will exclude the sale from its calculations.¹⁹ When the new shipper review is based on only one sale and the Department finds that sale is atypical, “exclusion of that sale as non-*bona fide* necessarily must end the review, as no data will remain on the export price side of {the Department’s} antidumping duty calculation.”²⁰

Based on the totality of the circumstances surrounding the sole sale reported by IMJ in its NSR request, we preliminarily determine that the sale at issue is not a *bona fide* sale and should not be used to calculate an assessment rate or a cash deposit rate. Namely, the sales price, in conjunction with the timing of the sale and the facts surrounding the establishment and operations of IMJ’s U.S. reseller, Jianlong USA, call into question whether the sale is indicative of normal business practices. For a full discussion of our preliminary analysis see the *Bona Fide Sales Analysis Memorandum*.²¹ Because we preliminarily find that the single POR sale is not a *bona fide* sale, we cannot rely on this sale to calculate a dumping margin in this NSR. Given the determination that there was no *bona fide* sale during the POR, there is no sale upon which we can base this review and, therefore, the Department is preliminarily rescinding this review.

CONCLUSION

We recommend applying the above methodology for these preliminary results of review.



Agree

Disagree



Paul Piquada
Assistant Secretary
for Enforcement and Compliance

15 MARCH 2016

(Date)

¹⁷ *Id.*, at 1263.

¹⁸ *Id.*, at 1249-1250.

¹⁹ *Id.*, at 1249.

²⁰ *Id.*

²¹ See Memorandum to Abdelali Elouaradia, Director, Office IV, AD/CVD Operations, from Cara Lofaro and Brandon Farlander, International Trade Analysts, Office IV, AD/CVD Operations, entitled “2014-2015 Antidumping Duty New Shipper Review of Xanthan Gum From the People’s Republic of China: Preliminary *Bona Fide* Sales Analysis for Inner Mongolia Jianlong Biochemical Co., Ltd.” dated concurrently with and hereby adopted by this memorandum.