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**DATE:** December 12, 2018

**MEMORANDUM TO:** Christian Marsh  
Deputy Assistant Secretary  
for Enforcement and Compliance

**FROM:** James Maeder  
Associate Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations  
performing the duties of Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Issues and Decision Memorandum for the Final Results of the  
Antidumping Duty Administrative Review: Xanthan Gum from  
the People's Republic of China; 2016-2017

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## SUMMARY

The Department of Commerce (Commerce) analyzed comments submitted by interested parties regarding the *Preliminary Results*<sup>1</sup> of the fourth administrative review of the antidumping duty order on xanthan gum from the People's Republic of China (China). Commerce continues to find that Meihua Group International Trading (Hong Kong) Limited, Langfang Meihua Biotechnology Co., Ltd., and Xinjiang Meihua Amino Acid Co., Ltd. (collectively, Meihua) did not make sales of subject merchandise below normal value. No comments were received regarding Meihua. Although Commerce calculated an antidumping duty margin for mandatory respondent, Neimenggu Fufeng Biotechnologies Co., Ltd. (a.k.a., Inner Mongolia Fufeng Biotechnologies Co., Ltd.), Xinjiang Fufeng Biotechnologies Co., Ltd., and Shandong Fufeng Fermentation Co., Ltd. (collectively Fufeng) in the *Preliminary Results*,<sup>2</sup> we are discontinuing this review, with respect to Fufeng, in accordance with the Court of International Trade's (CIT) final court decision in *CP Kelco US, Inc. v. United States*.<sup>3</sup> As a result, any comments submitted by interested parties regarding Fufeng are now moot and have not been addressed in this

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<sup>1</sup> See *Xanthan Gum from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review, and Preliminary Determination of No Shipments; 2016-2017*, 83 FR 40229 (August 14, 2018) (*Preliminary Results*) and accompanying preliminary decision memorandum.

<sup>2</sup> *Id.* at 40231.

<sup>3</sup> See *CP Kelco US, Inc. v. United States*, Slip Op. 18-120 (CIT Sept. 17, 2018) (*CP Kelco US*); see also *Xanthan Gum from the People's Republic of China: Notice of Court Decision Not in Harmony With Amended Final Determination in Less Than Fair Value Investigation; Notice of Amended Final Determination Pursuant to Court Decision; Notice of Revocation of Antidumping Duty Order in Part; and Discontinuation of Fourth and Fifth Antidumping Duty Administrative Reviews in Part*, 83 FR 52205, 52206 (October 16, 2018) (*Xanthan Timken*).



memorandum, with the exception of Comment 1 below. We recommend that you approve the position described in the “Discussion of Issue” section of this memorandum.

#### Comment 1: Dumping Margin for Third-Country Exporters of Fufeng Xanthan Gum

### BACKGROUND

Commerce published the *Preliminary Results* on August 14, 2018, in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).<sup>4</sup> In accordance with 19 CFR 351.309(c)(1)(ii), we invited interested parties to comment on the *Preliminary Results*. On September 21, 2018, Fufeng and Tate and Lyle, a U.S. importer, filed case briefs.<sup>5</sup> No other interested party filed comments.

### SCOPE OF THE ORDER

The scope of this order covers dry xanthan gum, whether or not coated or blended with other products. Further, xanthan gum is included in this 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 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-DGlucuronic 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 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.

### DISCUSSION OF ISSUE

#### Comment 1: Dumping Margin for Third-Country Exporters of Fufeng’s Xanthan Gum

##### *Tate and Lyle*

- Tate and Lyle is a U.S. importer of Fufeng-produced xanthan gum via third-country exporter, Greenhealth International Co., Ltd. (Hong Kong) (Greenhealth).

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<sup>4</sup> See *Preliminary Results*.

<sup>5</sup> See Letter from Fufeng to Commerce, re: “Fufeng Case Brief in the Fourth Administrative Review of Antidumping Duty Order on Xanthan Gum from the People’s Republic of China (A-570-985),” dated September 20, 2018 (Fufeng Case Brief); see Letter from Tate and Lyle to Commerce, re: “Xanthan Gum from China – Tate and Lyle Case Brief,” dated September 20, 2018 (Tate and Lyle Case Brief).

- No antidumping import duties should be imposed on U.S. imports of Fufeng-produced xanthan gum, whether by Tate and Lyle or other importers. The CIT upheld Commerce’s remand finding that Fufeng did not sell xanthan gum at less than fair value during the original investigation; meaning U.S. imports of Fufeng xanthan gum should not be subject to antidumping duties.
- If Commerce determines to apply antidumping import duties on U.S. imports of Fufeng xanthan gum, then the 154.07% China-wide dumping duty margin should not be imposed. The liquidation instructions should state that U.S. imports of Fufeng-produced xanthan gum are subject to the Fufeng dumping rate (1.18% at the *Preliminary Determination*) even if through third-countries.
- The China-wide rate is only applied to companies located in China where there is a presumption of Chinese Government control. The China-wide rate does not apply to companies not located in China who did not fail to answer any Commerce questions. Thus, the China-wide rate may not be applied to U.S. imports of Fufeng-produced xanthan gum purchased from third-countries.
- The China-wide rate is also an adverse facts available (AFA) dumping margin based on an entity’s non-cooperation with Commerce (*i.e.*, failure to answer Commerce requests). Therefore, the AFA rate can only be applied to companies who did not answer any of Commerce’s questions. The China-wide rate/AFA rate cannot be applied to third-country suppliers of Fufeng xanthan gum because there is no evidence of non-cooperation by them.
- Commerce’s practice is to assign non-investigated exporters, who do not receive their own dumping margin, an “all others” rate based on the weighted-average dumping margins of individually-examined companies, excluding any AFA or zero percent rates.
- Third-country exporters of Fufeng xanthan gum should have been assigned the “all others” rate (*i.e.*, 1.18%) that is applied to other separate rate respondents.
- Commerce’s practice regarding market economy exporters should be consistent with third-country exporters of products from non-market-economy countries for whom there is no support for government control or noncooperation. Exporters located in China who are independent of government control should receive a separate rate.
- Section 735(c)(5) of the Act states to do what is “reasonable,” and it is not reasonable to assign as adverse facts, the China wide 154.07% dumping rate to third-country exporters (*e.g.*, Greenhealth).

### **Commerce’s Position:**

We disagree with Tate and Lyle’s position that all U.S. imports of Fufeng-produced xanthan gum should not be subject to antidumping duties. In the *Xanthan Timken*, we stated that “Commerce is hereby excluding merchandise from the above producer-exporter {produced and exported by Fufeng} combination from the antidumping duty order” and that “this exclusion does not apply beyond the producer-exporter combination referenced above.”<sup>6</sup> Tate and Lyle stated that it imported xanthan gum produced by Fufeng and exported via third-country sale by Greenhealth. Therefore, based on the language in the *Xanthan Timken*, such entries are not necessarily excluded from the antidumping duty order on xanthan gum from China.

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<sup>6</sup> See *Xanthan Timken*, 83 FR at 52205.

Additionally, although rates assigned in market-economy country cases apply to exporters or producers, separate rates in non-market economy (NME) cases apply only to exporters (or an exporter in an exporter-producer combination) that have demonstrated that they are sufficiently independent of government control to be entitled to a separate, company-specific rate or where Commerce determines that the exporter is wholly foreign owned.<sup>7</sup> No such determination was made with respect to Greenhealth in this review because no review was requested of Greenhealth.<sup>8</sup> Because Greenhealth is not under review, Commerce is not making any determination as to the appropriate dumping margin to apply to Greenhealth's exports of xanthan gum produced in China, its eligibility for a separate rate, or whether it is wholly foreign owned. Greenhealth has not been granted separate-rate status before this review, based on a separate-rates analysis, or a determination that it is wholly foreign owned, and its status remains unchanged in this review.

Furthermore, we disagree with Tate and Lyle that the China-wide rate may not be applied to U.S. imports of Fufeng-produced xanthan gum purchased from third-countries. Although Tate and Lyle asserts that the premise underlying the China-wide rate is inapplicable to companies outside China, Commerce's position is clear; as stated in the cases cited by Greenhealth, "the {China}-wide rate applies to all entries of subject merchandise" unless Commerce has determined a firm is eligible for a separate rate or is a mandatory respondent.<sup>9</sup> If a third-country exporter of subject merchandise wishes to have its own rate, it is incumbent upon that exporter to request a review. Again, no review was requested for Greenhealth.

Finally, we disagree with Tate and Lyle's implication that the China-wide rate may be applied to Greenhealth's exports as an AFA rate. As noted above, Commerce has made no determination, AFA or otherwise, with respect to Greenhealth because Greenhealth is not under review. Furthermore, no party requested a review of the China-wide entity; therefore, we did not conduct a review of the China-wide entity and the entity's rate is not subject to change.<sup>10</sup>

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<sup>7</sup> See, e.g., *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007).

<sup>8</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 42974 (September 13, 2017).

<sup>9</sup> See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039 (September 24, 2007); see also *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, in Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079 (September 8, 2006); see also *Final Determination of Sales at Less than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006).

<sup>10</sup> See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity (NME) in NME Antidumping Duty Proceedings*, 78 FR 65963, 65970 (November 4, 2013); see, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, and Rescission of New Shipper Review; 2015-2016*, 83 FR 1238, 1239 (January 10, 2018), and accompanying Issues and Decision Memorandum at Comment 5; *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 42974 (September 13, 2017).

**CONCLUSION**

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

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Agree

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Disagree

12/12/2018

**X** 

Signed by: CHRISTIAN MARSH

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Christian Marsh  
Deputy Assistant Secretary  
for Enforcement and Compliance