UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-570-985
Sunset Review
Public Document
AD/CVD OIV: MZ

DATE: September 19, 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 Expedited First Sunset Review of the Antidumping Duty Order on Xanthan Gum from the People's Republic of China

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Summary

In this first sunset review of the antidumping duty order covering xanthan gum from the People's Republic of China (China), Archer Daniels Midland Company (ADM) and CP Kelco U.S., Inc. (CP Kelco), domestic producers of xanthan gum, submitted adequate and timely notices of intent to participate, as well as, an adequate and timely substantive response. No respondent interested party submitted a substantive response. Accordingly, we conducted an expedited (120-day) sunset review pursuant to section 751(c)(3)(B) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.218(e)(1)(ii)(C)(2). In accordance with our analysis of ADM's and CP Kelco's adequate substantive response, we recommend that you approve the positions described in the instant memorandum. The following is a complete list of issues in the instant sunset review for which we received a substantive response:

1. Likelihood of continuation or recurrence of dumping; and
2. Magnitude of the dumping margin likely to prevail.

Background

On June 1, 2018, the Department of Commerce (Commerce) published the notice of initiation of the first sunset review of the antidumping duty order on xanthan gum from China, pursuant to section 751(c) of the Act.[1] On June 15, 2018, and June 18, 2018, pursuant to 19 CFR

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[1] *See Initiation of Five-Year (Sunset) Review*, 83 FR 25436 (June 1, 2018).

351.218(d)(1)(i), Commerce received timely and complete notices of intent to participate in the sunset review from ADM and CP Kelco.[2] ADM and CP Kelco claimed interested party status pursuant to section 771(9)(C) of the Act. On July 2, 2018, pursuant to 19 CFR 351.218(d)(3)(i), ADM and CP Kelco filed a timely and adequate substantive response.[3] Commerce did not receive substantive responses from any respondent interested party. On July 20, 2018, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from respondent interested parties.[4] As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the antidumping duty order on xanthan gum from China.

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 3913.90.20.15.[5] This tariff classification is provided for convenience and customs purposes; however, the written description of the scope is dispositive.

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[2] *See* Letter from ADM to Commerce re, "Five-Year ("Sunset") Review Of Antidumping Duty Order On Xanthan Gum from The People's Republic Of China / Domestic Industry Notice Of Intent To Participate In Sunset Review," dated June 15, 2018, and Letter from CP Kelco to Commerce re, "Xanthan Gum from the People's Republic of China: CP Kelco U.S., Inc.'s Notice Of Intent To Participate," dated June 18, 2018.

[3] *See* Letter from ADM and CP Kelco to Commerce re, "Five-Year (Sunset) Review of Antidumping Duty Order on Xanthan Gum from the People's Republic of China / Domestic Industry Substantive Response," dated July 2, 2018 (ADM and CP Kelco Substantive Response).

[4] *See* Commerce's Letter to the U.S. International Trade Commission, "Sunset Reviews Initiated on June 1, 2018," dated July 20, 2018.

[5] *See* Memorandum to the File, "Xanthan Gum from the PRC, Modification of the Case Reference File in ACE, HTS Number Added," dated February 20, 2014 (HTS Number Addition Memorandum).

History of the Proceeding

Investigation and Order

On June 4, 2013, Commerce published its final affirmative determination in the less than fair value (LTFV), investigation of xanthan gum from China in the *Federal Register*.[6] Following the publication of Commerce's final determination, the International Trade Commission (ITC) found that the U.S. industry was threatened with material injury by reason of imports of subject merchandise.[7] On July 19, 2013, Commerce published the antidumping duty *Order* on xanthan gum from China.[8] Commerce determined dumping margins ranging from 12.90 percent to 154.07 percent.[9]

Subsequent Administrative, New Shipper, Changed Circumstances, and Circumvention Reviews

Since the issuance of the *Order*, Commerce has completed three antidumping duty administrative reviews and one antidumping duty new shipper review.[10] The fourth antidumping duty administrative review is ongoing.[11] The dumping margins assigned in the first, second, and third administrative reviews, ranged from 0.00 percent to 154.07 percent, 0.00 percent to 154.07 percent, and 0.00 percent to 154.07 percent, respectively. We calculated a zero percent dumping margin in the new shipper review. The China-wide rate in the first administrative review was 154.07 percent, which continued to be the China-wide rate across the second and the third administrative reviews.[12] Commerce has not conducted circumvention inquiries or issued scope

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[6] *See Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 78 FR 33351 (June 4, 2013) (*Final Determination*).
[7] *See Xanthan Gum from Austria and China*, USITC Publication 4411, Investigation Nos. 731-TA-1202-1203 (Final) (July 2013).
[8] *See Xanthan Gum from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 78 FR 43143 (July 19, 2013) (*Order*).
[9] *Id.*
[10] *See Xanthan Gum from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; *2013-2014*, 82 FR 11428 (February 23, 2017); *Xanthan Gum from the People's Republic of China: Final Determination of No Shipments*, *Final Partial Rescission; 2014-2015*, 82 FR 11434 (February 23, 2017); *Xanthan Gum from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 83 FR 6513 (February 14, 2018); *Xanthan Gum from the People's Republic of China: Final Results of 2013 Antidumping Duty New Shipper Review*, 80 FR 29615 (May 22, 2015). Commerce rescinded the only other new shipper review initiated in this proceeding. *See Xanthan Gum from the People's Republic of China: Rescission of 2014-2015 Antidumping Duty New Shipper Review*, 81 FR 56586 (August 22, 2016).
[11] *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).
[12] Note, the China-wide entity rate in the *First Administrative Review* equals the China-wide entity rate of 154.07 percent. Commerce subsequently eliminated the conditional review of the non-market economy (NME) entity. With respect to AD administrative reviews for which the notice of opportunity to request an administrative review is published on or after December 4, 2013, the review of the China-wide entity is now no longer conditional, but subject to request. Further, the "inclusion of initiated companies within the NME entity does not result in a review of the NME entity or in a change of the NME entity rate." *Antidumping Proceedings: Announcement of Change in*

rulings in connection with the *Order*.

Duty-Absorption

There have been no final duty absorption findings concerning the *Order*.

Discussion of the Issues

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 a continuation or recurrence of dumping. If Commerce determines that revocation of the *Order* would be likely to lead to a continuation or recurrence of dumping, then, pursuant to section 752(c)(3) of the Act, Commerce shall provide the ITC with the magnitude of the margin of dumping likely to prevail if the *Order* were revoked.

As explained in the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, Commerce normally determines that revocation of an antidumping duty 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; (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly; or (d) there are declining import volumes accompanied by the continued existence of dumping margins after the issuance of the order."[13] 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 less than fair value.[14]

Alternatively, Commerce normally will determine that revocation of an antidumping duty 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.[15] Consistent with

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Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings, 78 FR 65963 (November 4, 2013). This change in policy did not apply to the *First Administrative Review*, because an opportunity to request an administrative review was published prior to that date. *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 78 Fed. Reg. 72,636 (December 3, 2013).

[13] *See* Statement of Administrative Action Accompanying the Uruguay Round Agreements Act (SAA), H.R. Rep. No. 103-316, Vol. 1 (1994), at 889-90; H. Rep. No. 103-826, pt. 1 (1994), at 63-64 (House Report); S. Rep. No. 103-412 (1994), at 52 (Senate Report); *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*").

[14] *See* SAA at 890; *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) (*Folding Gift Boxes*) and accompanying Issues and Decision Memorandum at Comment 1.

[15] *See* SAA at 889-890; *see also Sunset Policy Bulletin*, 63 FR at 18872- 73.

the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the SAA, the House Report, and the Senate Report, Commerce will make its likelihood determination on an order-wide, rather than company-specific, basis.[16]

Sections 752(c)(1)(A) and (B) of the Act provide that, in determining whether revocation of the *Order* would be likely to lead to a continuation or recurrence of dumping, 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 antidumping duty order. 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 a period after initiation but before issuance of the order, as the initiation of an investigation may dampen import volumes and, thus, skew the comparison.[17]

If Commerce determines that revocation of an order would be likely to lead to a continuation or recurrence of dumping, generally Commerce provides the ITC with the magnitude of the margin of dumping likely to prevail based on the dumping margin(s) from the final determination in the investigation because this is the only calculated dumping margin that reflects the behavior of exporters without the discipline of an order in place.[18] However, in certain circumstances, Commerce may determine that a more recently calculated dumping margin 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 or "if dumping margins have declined over the life of an order and imports have remained steady or increased, {Commerce} may conclude that exporters are likely to continue dumping at the lower rates found in a more recent review").[19]

Regarding the margin of dumping likely to prevail, in the *Final Modification for Reviews,* Commerce announced that in five-year (*i.e.*, sunset) reviews, it will not rely on weighted-average dumping margins that were calculated using the methodology determined to be World Trade Organization (WTO)-inconsistent, *i.e.*, zeroing/the denial of offsets, and that was subject to the *Final Modification for Reviews*.[20] Commerce also noted that "only in the most extraordinary circumstances will Commerce rely on margins other than those calculated and published in prior determinations."[21] Commerce further stated that, apart from the "most extraordinary

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[16] *See* SAA at 879; *see also* House Report at 56.
[17] *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 Issues and Decision Memorandum at Comment 1.
[18] *See* SAA at 890; *Sunset Policy Bulletin,* 63 FR at 18873; *see, 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 Issues and Decision Memorandum at Comment 2 (*Persulfates from China*).
[19] *See* SAA at 890-91; *Sunset Policy Bulletin*, 63 FR at 18873.
[20] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101, 8109 (February 14, 2012) (*Final Modification for Reviews*).
[21] *Id.*

circumstances," it would "limit its reliance to margins determined or applied during the five-year sunset period that were not determined in a manner found to be WTO-inconsistent" and that it "may also rely on past dumping margins recalculated pursuant to Section 129 proceedings, dumping margins determined based on the use of total adverse facts available (AFA), and dumping margins where no offsets were denied because all comparison results were positive."[22]

Below we address the comments submitted by ADM and CP Kelco.

Likelihood of Continuation or Recurrence of Dumping

Domestic Interested Parties' Comments

- Since the *Order* was issued, dumping of xanthan gum from China continued at above *de minimis* levels in each administrative review period.[23] This demonstrates that dumping is likely to continue or recur if the *Order* were revoked.[24]
- Following issuance of the *Order*, imports of the subject merchandise have declined significantly. In 2012 (*i.e.*, the year preceding the issuance of *Order*), U.S. imports of xanthan gum from China totaled 16,789,722 kilograms,[25] whereas, U.S. imports of xanthan gum from China have remained well below that level since imposition of the *Order*, falling in 2016 to as low as 10,148,981 kilograms (*i.e.*, a decline of 40 percent).[26]

Commerce's Position

Consistent with the legal framework laid out above and section 752(c)(1)(A) of the Act, we first considered the weighted-average dumping margins determined in the investigation and subsequent reviews in this proceeding. In the investigation and all subsequent administrative reviews of the *Order*, Commerce found dumping above *de minimis* levels. In each segment of the proceeding conducted since the investigation, Commerce found that certain companies did not dump subject merchandise. However, as noted above, a dumping margin of "zero or *de minimis* shall not by itself require" Commerce to determine that revocation of an AD order would not likely lead to a continuation or recurrence of sales at less than fair value.[27] Furthermore, our sunset determination is conducted on an order-wide basis.[28] All of the dumping margins under this *Order* are post *Final Modification for Reviews*, such that none of the rates calculated in this proceeding involved the zeroing/the denial of offsets. According to the

[22] *Id.* at 8103.
[23] *See, e.g.*, ADM and CP Kelco Substantive Response at 4-6.
[24] *Id*.
[25] *Id.* at 5 and Attachment 1, showing the import data for xanthan gum for 2012, based USITC Publication 4411, as well as, Attachment 2, showing the import volumes for the years 2014 through 2017, based on Commerce and the ITC tariff trade data specific to the 10-digit harmonized tariff schedule (HTS) for xanthan gum (*i.e.*, HTS 3913.90.20.15), which, according to ADM and CP Kelco, did not become active until 2014.
[26] *Id*.
[27] *See Folding Gift Boxes*, 72 FR at 16765, and accompanying Issues and Decision Memorandum at Comment 1.
[28] *See* SAA at 879.

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."[29]

Pursuant to section 752(c)(1)(B) of the Act, we also considered the volume of imports of subject merchandise in determining whether revocation of the *Order* is likely to lead to continuation or recurrence of dumping. As noted above, when analyzing import levels for the first sunset review, Commerce's practice is to compare the volume of U.S. imports of xanthan gum from China during the one-year period immediately preceding the initiation of the investigation (*i.e.*, the underlying investigation was initiated in June 2012) to the volume of U.S. imports of xanthan gum from China since the issuance of the *Order* (*i.e.*, the order was issued in July 2013).

The HTS of the United States in existence at the time of Commerce's investigation in this proceeding, HTS number 3913.90.20, is a basket category. ADM and CP Kelco reported that the xanthan gum-specific HTS category, HTS number 3913.90.20.15, was not used until 2014. Therefore, ADM and CP Kelco provided International Trade Commission (ITC) Dataweb import volumes for 2014 through 2017 based on HTS number 3913.90.20.15 and compared those volumes to the U.S. import volume for xanthan gum during calendar year 2012. ADM and CP Kelco derived the 2012 import volume for xanthan gum from the ITC's final report in its investigation of xanthan gum from China.[30] These data show that the volume of U.S. imports of xanthan gum from China during calendar years 2014 through 2017 declined from 12,709,481 kilograms in 2014 to 10,148,981 kilograms in 2016, increasing to 12,127,189 kilograms in 2017, as compared to 16,789,722 kilograms in 2012. While the base period used in this comparison, calendar year 2012, is not the one-year period immediately preceding the June 25, 2012, initiation of the investigation, we note again that the HTS number in place at the time we initiated the underlying investigation was a basket category and that the information that petitioners provided is the only information on the record to demonstrate pre-order import volumes. Therefore, based on available data, we find ADM's and CP Kelco's comparison appropriate. This comparison shows that the volume of U.S. imports of xanthan gum in each of the years examined was approximately 60 to 76 percent of the base period import volume. As noted above, the SAA provides that "declining import volumes accompanied by the continued existence of dumping margins after the issuance of an order may provide a strong indication that, absent an order, dumping would be likely to continue, because the evidence would indicate that the exporter needs to dump to sell at pre-order volumes."[31] Hence, record evidence indicates that Chinese exporters are not able to maintain pre-*Order* import levels without selling subject merchandise at dumped prices.[32] Therefore, pursuant to section 752(c)(1) of the Act, and based on evidence that there were lower levels of imports in each of the years examined in this sunset review compared to the base year, accompanied by the continued existence of dumping after

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[29] *See* SAA at 890; *see also* House Report at 63-64.
[30] *See* ADM and CP Kelco Substantive Response at Attachments 1 and 2. The LTFV investigation was initiated in June 2011. *See Xanthan Gum from Austria and the People's Republic of China: Initiation of Antidumping Duty Investigations*, 77 FR 39210 (July 2, 2012).
[31] *See* SAA at 889, the House Report at 63, and the Senate Report at 52.
[32] *See, e.g., Certain Activated Carbon from the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order*, 77 FR 33420 (June 6, 2012), and accompanying Issues & Decision Memorandum at Comment 1.

issuance of the *Order*, we recommend finding that dumping is likely to continue or recur if the *Order* is revoked.

Magnitude of the Dumping Margin Likely to Prevail

Domestic Interested Parties' Comments

- Commerce should report to the ITC the dumping margins in the investigation of up to 154.07 percent as the magnitude of dumping likely to prevail because these rates: (1) are the only rates that reflect the behavior of exporters without the discipline of an order; and (2) are in accordance with the Act and the *Sunset Policy Bulletin*.

Commerce's Position

Pursuant to section 752(c)(3) of the Act, Commerce shall provide to the ITC the magnitude of the margin of dumping that is likely to prevail if the *Order* were revoked. Normally, Commerce will select a weighted-average dumping margin from the investigation to report to the ITC.[33] Commerce's preference is to select a dumping margin from the LTFV investigation because it is the only calculated rate that reflects the behavior of the producers and exporters without the discipline of an *Order* or suspension agreement in place.[34] Under certain circumstances, however, Commerce may select a more recent rate to report to the ITC. Finally, as explained above, in accordance with the *Final Modification for Reviews*, Commerce will not rely on weighted-average dumping margins that were calculated using the zeroing methodology found to be WTO-inconsistent and that was subject to the *Final Modification for Reviews*.[35]

Commerce relied on adverse facts available, in accordance with section 776(a)-(b) of the Act, in assigning a margin to the China-wide entity in the *Final Determination*. This rate was based on the petition and did not involve the practice of zeroing.[36] Thus, we determine that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping at the magnitude of weighted-average margins up to 154.07 percent. Consistent with section 752(c)(3) of the Act, Commerce will report to the ITC the margin from the *Final Determination* as the margin of dumping that is likely to prevail if the *Order* were revoked.

Final Results of Review

We determine that revocation of the *Order* on xanthan gum from China would be likely to lead to continuation or recurrence of dumping and that the magnitude of the dumping margin likely to prevail would be at a rate up to 154.07 percent.

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[33] *See SAA* at 890; *see also*, *e.g.*, *Persulfates from China*, 73 FR at 11868, and accompanying Issues and Decision Memorandum at Comment 2.

[34] *See Persulfates from China*, 73 FR at 11868, and accompanying Issues and Decision Memorandum at Comment 2.

[35] *See Final Modification for Reviews*, 77 FR at 8103.

[36] *See Final Determination*, 78 FR at 33350, and accompanying Issues and Decision Memorandum at "Application of Facts Available and Adverse Facts Available," unchanged in *Order*, 78 FR at 43143.

Recommendation

Based on our analysis of the substantive response received, we recommend adopting the above positions. If these recommendations are accepted, we will publish these final results of this sunset review in the *Federal Register* and notify the ITC of Commerce's determination.

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Agree Disagree

9/19/2018

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Signed by: CHRISTIAN MARSH

Christian Marsh
Deputy Assistant Secretary
for Enforcement and Compliance