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March 22, 2021

MEMORANDUM TO: Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
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; 2018-2019

I. SUMMARY

We analyzed comments submitted by interested parties in the above-referenced administrative review covering the sole mandatory respondent Meihua¹ and recommend one change from the *Preliminary Results* (see Comment 2 below).² We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is a complete list of the issues for which we received comments from interested parties:

- Comment 1: Whether Commerce Should Have Granted C.P. Kelco (Shandong) Biological Company Limited Voluntary Respondent Status
- Comment 2: Whether Commerce Should Revise its Draft Liquidation Instructions
- Comment 3: Whether Commerce Should Continue to Deduct Section 301 Duties from U.S. Sales Prices

II. BACKGROUND

The Department of Commerce (Commerce) published the *Preliminary Results* on November 23, 2020, in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).³ In accordance with 19 CFR 351.309(c)(1)(ii), we invited interested parties to comment on the *Preliminary Results*. On December 29, 2020, Meihua filed comments⁴ on the *Preliminary*

¹ Meihua refers to the collapsed entity Meihua Group International Trading (Hong Kong) Limited, Langfang Meihua Biotechnology Co., Ltd., and Xinjiang Meihua Amino Acid Co., Ltd.

² See *Xanthan Gum from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review, and Partial Rescission; 2018-2019*, 85 FR 74686 (November 23, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

³ See *Preliminary Results*, 85 FR at 74686.

⁴ See Meihua's Letter, “Xanthan Gum from the PRC; A-570-985; Case Brief,” dated December 29, 2020.

Results, which the petitioners rebutted on January 5, 2021.⁵ The final results of this review are currently due on March 23, 2021.

III. 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 of the United States at subheading 3913.90.20. Although this tariff classification is provided for convenience and customs purposes, the written description of the scope is dispositive.

IV. DISCUSSION OF ISSUES

Comment 1: Whether Commerce Should Have Granted C.P. Kelco (Shandong) Biological Company Limited Voluntary Respondent Status

Meihua

- Commerce appropriately did not select C.P. Kelco (Shandong) Biological Company Limited (C.P. Kelco) as a mandatory or voluntary respondent in this review.⁶
- Taking into consideration CP Kelco's sales volume, and the significant burden on Commerce (Commerce did not have the resources to individually examine all companies under review),⁷ the decision not to treat C.P. Kelco as a voluntary respondent was appropriate.⁸
- Commerce determined that C.P. Kelco's "comparative prices" argument did not warrant it being treated as a voluntary respondent.⁹
- C.P. Kelco received a zero percent dumping margin. Thus, C.P. Kelco cannot make the claim that it was unfairly treated by not being individually examined.

⁵ See Petitioner's Letter, "Xanthan Gum from the People's Republic of China: Petitioner's Rebuttal Brief," dated January 5, 2021.

⁶ Meihua's Case Brief at 2.

⁷ *Id.*; see also Memorandum, "Selection of Respondents for the 2018-2019 Administrative Review of the Antidumping Duty Order on Xanthan Gum from the People's Republic of China," dated November 6, 2019 (Respondent Selection Memorandum).

⁸ See Meihua's Case Brief at 3.

⁹ *Id.*

No other interested parties commented on this issue.

Commerce's Position:

We agree with Meihua. At the time that we selected Meihua as the sole mandatory respondent, we outlined our significant case load which prevented us from individually examining each known exporter/producer and explained our reasons, one of which was resource constraints.¹⁰ We explained in the *Preliminary Results* that nothing had changed regarding the practicality of examining more than one respondent at the time that CP Kelco filed its questionnaire response.¹¹ Thus, we did not grant voluntary respondent treatment to CP Kelco at that time and continue to find that it is not practical to do so.

Comment 2: Whether Commerce Should Revise its Draft Liquidation Instructions

Meihua

- Commerce should revise its draft liquidation instructions to include the full legal names and any abbreviations or short names of the reported importers.

No other interested parties commented on this issue.

Commerce's Position:

We agree with Meihua, in part. Meihua raised this issue with respect to the names of two customers/importers that we listed in the draft liquidation instructions and released for comments. For one of the customers/importers at issue, we used the name of the customer/importer that Meihua reported in its U.S. sales database in our draft liquidation instructions. The name that we used is the name that appears on sales documents.¹² However, the name of the customer/importer also appears on sales documents with one of the words in the name abbreviated.¹³ For clarity, we will also list this version of the customer/importer name in our liquidation instructions.

Meihua reported an abbreviated version of the second customer/importer name at issue in its U.S. sales database. We listed this abbreviated version of the customer/importer name in our draft liquidation instructions. However, the actual full name of the customer/importer is in documents provided by Meihua.¹⁴ For clarity, we will list the actual full customer/importer name in our liquidation instructions.

However, we do not find it necessary to explain in our liquidation instructions that they apply even when other abbreviated and shortened versions of the listed names appear in entry/sales

¹⁰ See Respondent Selection Memorandum.

¹¹ See *Preliminary Results* PDM at 4-5.

¹² See Meihua's Letter, "Xanthan Gum from the PRC; A-570-985; Response to Section A of Initial Questionnaire," dated November 29, 2019 (Meihua's Section A Response), at Exhibit A-13.

¹³ See Meihua's Letter, "Xanthan Gum from the PRC; A-570-985; Response to Supplemental Section C and D Questionnaire," dated March 13, 2020 at Exhibit SC-1; see also Meihua's Section A Response at Exhibit A-13.

¹⁴ See Meihua's Section A Response at Exhibit A-3a.

documents. We believe that including the names noted above in our liquidation instructions allows for the proper application of the customer/importer-specific assessment rates.

Comment 3: Whether Commerce Should Continue to Deduct Section 301 Duties from U.S. Sales Prices

Meihua

- Commerce should not subtract Section 301 duties from U.S. sales prices when calculating dumping margins.
- “United States import duties,” which is one of the items to be subtracted from U.S. prices pursuant to section 772(c)(2)(A) of the Act, refers to “ordinary customs duties” and not duties imposed under Section 301.¹⁵ Similarly, when calculating the amount of antidumping duties, Commerce does not deduct either countervailing or antidumping duties from U.S. prices, as this would lead to the imposition of antidumping duties based on duties.
- Moreover, Commerce should not deduct Section 301 duties from U.S. prices as these duties have been unlawfully imposed on U.S. imports of xanthan gum from China.
- The Section 301 duties emerged out of an investigation into China’s unfair intellectual property policies and practices and are pursuant to Section 301 of the Trade Act. These additional duties were imposed on U.S. imports of xanthan gum from China based on “List 3” of the 301 retaliation against China. The imposition of these additional duties is inappropriate for multiple reasons.¹⁶
- First, the Trade Act of 1974 (Trade Act) does not grant authority to the United States to partake in a broad-ranging trade war for “however long, and by whatever means, it chooses.”
- Second, Section 304 of the Trade Act requires the United States Trade Representative (USTR) to determine what actions are to be taken within twelve months of the initiation of an investigation. USTR failed to issue List 3 within the statutory window. Therefore, “these duties were imposed *ultra vires* and cannot stand.”¹⁷
- Third, List 3 duties, including the duties imposed on xanthan gum, were imposed in violation of the Administrative Procedures Act (APA) because USTR: (1) failed to provide sufficient opportunity for comment (*e.g.*, it required interested parties to submit affirmative and rebuttal comments on the same day); (2) failed to examine applicable factors when making its decision, (*e.g.*, it undertook no analysis of the supposed “increased burden” on U.S. commerce due to the unfair policies and practices that it originally investigated); and (3) failed to associate the record facts to the choices it made. After receiving over 6,000 comments, USTR said nothing about how those comments informed its final promulgation of List 3.¹⁸ This predetermined decision-making by USTR bears no likeness to the standards that the APA requires.
- Therefore, Section 301 duties were unlawfully assessed, and as such, the duties will never be collected and should not be deducted from U.S. prices in Commerce’s dumping

¹⁵ See Meihua’s Case Brief at 7.

¹⁶ *Id.*

¹⁷ *Id.* at 8.

¹⁸ *Id.*

margin calculations. Doing so would merely aggravate the impact of the illegally imposed Section 301 duties.¹⁹

- Even if Section 301 duties were lawful, antidumping duties should not be imposed on other trade corrective duties.²⁰

Petitioner's Rebuttal

- Commerce should treat Section 301 duties as U.S. import duties that are deducted from U.S. prices in calculating dumping margins pursuant to section 772(c)(2)(A) of the Act.
- Section 301 duties are unlike antidumping duties which are special duties that are not deducted from U.S. prices in calculating dumping margins.
- Section 301 duties are not imposed to protect a single enterprise or industry like antidumping duties but are based on “a concern that certain acts, policies, and practices of the Government of China are unreasonable or discriminatory and burden or restrict U.S. commerce.”²¹
- The Court of Appeals for the Federal Circuit (CAFC) noted in *Wheatland Tube Co. v. United States*, that normal U.S. customs duties “have no termination provision,” while “special dumping duties” “provide only temporary relief from the injurious effects on imports.”
- In contrast to the antidumping duties or Section 201 duties examined by the CAFC in *Wheatland Tube*, Section 301 duties are indefinite; there is no termination provision for Section 301 duties.²² Thus, unlike antidumping and section 201 duties, section 301 duties are not meant to provide temporary relief from the damaging effects of imports.
- Hence, there is no reason to treat Section 301 duties as anything other than normal customs import duties that should be deducted from U.S. prices in calculating the dumping margin.²³

Commerce's Position:

We agree with the petitioner that Section 301 duties do not constitute “special duties,” but rather are considered normal U.S. import duties. Therefore, we properly deducted them from U.S. prices pursuant to section 772(c)(2)(A) of the Act in calculating Meihua's dumping margin.

Section 301 duties are imposed without a termination provision. These duties are imposed to address a variety of unfair trading acts, policies, and practices of U.S. trading partners.²⁴ As explained in *Wheatland*,²⁵ special dumping duties are intended to provide temporary relief, while normal U.S. customs duties have no termination provision and are indefinite.²⁶ Section 301

¹⁹ *Id.* at 9.

²⁰ *Id.* at 6.

²¹ See Petitioner's Rebuttal Brief at 1-2.

²² *Id.* at 2; see also *Wheatland Tube Co v. United States*, 495 F.3d 1355, 1362-63 (Fed. Cir. 2007) (*Wheatland*).

²³ See Petitioner's Rebuttal Brief at 1-2.

²⁴ See *Notice of Modification in Section 301 Action: China Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 83 FR 47974 (September 21, 2018) (effective as of September 24, 2018) (*Section 301 Modification*).

²⁵ See *Wheatland*, 495 F.3d at 1362-63.

²⁶ *Id.*

duties have no specified termination provision.²⁷ Therefore, because they are indefinite, Section 301 duties meet the definition of normal U.S. import duties under section 772(c)(2)(A) of the Act.²⁸

Additionally, as a factual matter, Section 301 duties were imposed during the POR and, pursuant to the statute, Commerce is bound to consider these normal U.S. import duties in its dumping margin calculations. Any argument concerning the legality of the imposition of Section 301 duties is not properly raised before Commerce because Commerce is not the authority imposing these duties. Furthermore, there is nothing on the record that substantiates Meihua's claim that Section 301 duties are either unlawful or "special" and thus should not be deducted in calculating net U.S. prices. Therefore, we have continued to deduct Section 301 duties from U.S. prices in our dumping margin calculations, in accordance with section 772(c)(2)(A) of the Act.

Lastly, we note that since we calculated a 0.00 percent dumping margin for Meihua, not deducting Section 301 duties from U.S. prices would have no effect on Meihua's dumping margin.

V. RECOMMENDATION

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



Agree

Disagree

3/22/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

²⁷ See Section 301 Modification.

²⁸ Additional factors were analyzed in the *Wheatland* decision, including whether there is a remedial purpose to the duties and whether the duties address injury to the domestic industry. However, because Meihua only raised the temporal aspect of the Section 301 duties, we did not analyze the other *Wheatland* factors here.