



A-570-985  
Administrative Review  
POR: 07/01/16 – 6/30/17  
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May 10, 2021

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

**FROM:** Scot Fullerton  
Associate Deputy Assistant Secretary  
for Antidumping Duty and Countervailing Duty Operations

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

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## I. SUMMARY

After analyzing comments submitted by Fufeng<sup>1</sup> in the above-referenced administrative review, we made certain changes to the preliminary results of review. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is a list of issues raised by Fufeng. The period of review is July 1, 2016, through June 30, 2017.

### List of Issues

Comment 1: Ministerial Errors in the Margin Calculation  
Comment 2: Ministerial Errors in the Liquidation Instructions  
Comment 3: Surrogate Value for Sodium Hypochlorite  
Comment 4: Value Added Tax Deduction

## II. BACKGROUND

Commerce published the *Preliminary Results* of this review on August 14, 2018.<sup>2</sup> On September

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<sup>1</sup> Fufeng refers to the collapsed entity Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.), Shandong Fufeng Fermentation, Co., Ltd., and Xinjiang Fufeng Biotechnologies Co., Ltd. (collectively, Fufeng).

<sup>2</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.



21, 2018, Fufeng, a mandatory respondent, and Tate and Lyle, a U.S. importer, filed case briefs.<sup>3</sup> No other interested parties filed comments on the *Preliminary Results*.

Pursuant to a series of remand orders and the Court of International Trade (CIT)'s final judgment regarding the underlying less-than-fair-value (LTFV) investigation, Commerce amended its final determination and prior amended final determination and order on xanthan gum from China (*Order*) and excluded merchandise produced and exported by Fufeng from the *Order*.<sup>4</sup> Accordingly, on December 19, 2018, Commerce published the *Final Results* of this review, in which it discontinued the review of Fufeng during the pendency of the appeals process.<sup>5</sup>

On February 10, 2020, the Court of Appeals for the Federal Circuit (CAFC) reversed the CIT's decision that resulted in the exclusion of Fufeng from the *Order*.<sup>6</sup> Accordingly, Commerce issued a third amended final determination in the LTFV investigation of xanthan gum from China, in which it found Fufeng subject to the *Order* and announced its intention to resume the instant review of Fufeng.<sup>7</sup> Commerce is now amending its final results of this administrative review by completing the administrative review with respect to Fufeng.

### III. SCOPE OF THE ORDER

The scope of the *Order* covers 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 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

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<sup>3</sup> See Fufeng's Letter, "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.

<sup>4</sup> 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*); see also *CP Kelco US, Inc. v. United States*, Ct. No. 13-00288, Slip Op. 15-27 (CIT March 31, 2015); *CP Kelco US, Inc. v. United States*, Ct. No. 13-00288, Slip Op. 16-36 (CIT April 8, 2016); *CP Kelco US, Inc. v. United States*, 211 F. Supp. 3d 1338 (CIT 2017); *CP Kelco US, Inc. v. United States*, Ct. No. 13-00288, Slip Op. 18-36 (CIT April 5, 2018); *CP Kelco US, Inc. v. United States*, Ct. No. 13-00288, Slip Op. 18-120 (CIT September 17, 2018); and *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 (October 16, 2018).

<sup>5</sup> See *Xanthan Gum from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; Final Determination of No Shipments, Partial Discontinuation of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 65143 (December 19, 2018) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

<sup>6</sup> See *CP Kelco US, Inc. v. United States, Neimenggu Fufeng Biotechnologies Co., Ltd., Shandong Fufeng Fermentation Co., Ltd.*, 949 F.3d 1348 (Fed. Cir. 2020).

<sup>7</sup> See *Xanthan Gum from the People's Republic of China: Notice of Third Amended Final Determination Pursuant to Court Decision*, 85 FR 40967 (July 8, 2020).

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 the *Order* is classified in the Harmonized Tariff Schedule (HTS) 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. CHANGES SINCE THE PRELIMINARY RESULTS OF REVIEW**

We made the following changes to the preliminary dumping margin calculations: (1) we revised the margin program based on certain corrections made relating to ministerial errors in margin calculations (*see* Comment 1 below); (2) we made corrections relating to ministerial errors regarding liquidation instructions (*see* Comment 2 below); and (3) we revised the margin program based on corrections relating to surrogate values (*see* Comment 3 below).

#### **V. DISCUSSION OF ISSUES**

##### **Comment 1: Ministerial Errors in the Margin Calculation**

*Fufeng*

- Commerce erred by: (1) using a Thai bhat, rather than a U.S. dollar, surrogate value for corn (which overstated the value of corn);<sup>8</sup> (2) including an additional “INTNFRTU\_IN” variable in the formula used to calculate international freight expenses; and (3) identifying the importer, rather than the customer, as the purchaser in its “Cohen’s D” test.

No other interested parties commented on this issue.

##### **Commerce’s Position:**

We agree with Fufeng and have corrected these errors in the final results of review. Specifically, we used a U.S. dollar corn surrogate value, removed the additional “INTNFRTU\_IN” variable in the formula used to calculate international freight expenses, and used the customer, rather than the importer, as the purchaser in our “Cohen’s D” test.<sup>9</sup>

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<sup>8</sup> See Fufeng Case Brief at 1-5.

<sup>9</sup> See Memorandum, “2016-2017 Antidumping Duty Administrative Review of Xanthan Gum from the People’s Republic of China: Amended Final Results Analysis Memorandum for Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.), Shandong Fufeng Fermentation, Co., Ltd., and Xinjiang Fufeng Biotechnologies Co.,” dated concurrently with this memorandum (Fufeng Final Analysis Memorandum) at 2.

## Comment 2: Ministerial Errors in the Liquidation Instructions

*Fufeng*

- Commerce failed to list the name of one importer/customer in the liquidation instructions for Fufeng and failed to include both names used by another importer/customer in those instructions. Commerce should correct these errors for the final results of review.<sup>10</sup>

No other interested parties commented on this issue.

**Commerce's Position:** We agree. The missing name is the name of an importer/customer for certain sales under review and both names of the other customer/importer in question were identified for that company in documents for POR sales of subject merchandise. Thus, we made these corrections for the final results of review and our instructions to Customs and Border Protection will include these names.

## Comment 3: Surrogate Value for Sodium Hypochlorite

*Fufeng*

- Commerce should adjust the import values that it used to value sodium hypochlorite to account for the concentration level of the sodium hypochlorite used by Fufeng.
- The Thai HTS subheading description for those imports indicates the sodium hypochlorite is in a pure form.
- Several other Thai HTS subheading descriptions on the record include concentration levels. Thus, where the concentration level is not specified, as is the case for sodium hypochlorite, it is reasonable to infer that the sodium hypochlorite is undiluted.
- Commerce has made such an adjustment in prior segments of this proceeding.

No other interested parties commented on this issue.

**Commerce's Position:** We agree with Fufeng's comments on this SV and have made this adjustment for the final results of review. In *Xanthan Gum from China 2013-14*,<sup>11</sup> Commerce determined that imports under the Thai HTS subheading for sodium hypochlorite were not in a diluted form and should be considered pure. The description for this subheading, Thai HTS 2828.90.10, does not include information regarding concentration levels, while Thai HTS subheadings for other chemicals specifically include concentration levels. Thus, we continue to find that this HTS subheading covers an undiluted form of the input. Since record evidence indicates that Fufeng used a diluted form of sodium hypochlorite, we adjusted the surrogate used to value sodium hypochlorite to account for the concentration level used by Fufeng.<sup>12</sup>

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<sup>10</sup> See Fufeng Case Brief at 5-7.

<sup>11</sup> 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), and accompanying IDM at Comment 12.

<sup>12</sup> See Fufeng Final Analysis Memorandum at 2-3.

#### Comment 4: Value Added Tax Deduction

##### *Fufeng*

- Commerce should not have deducted a 4 percent value added tax (VAT) from the prices of Fufeng's U.S. sales of xanthan gum.
- The statute directs Commerce to reduce the prices of sales of subject merchandise to the United States by any taxes, duties, or other charges imposed upon exportation of the merchandise. However, VAT was not imposed on the xanthan gum that Fufeng exported to the United States.
- According to the CIT, VAT is a domestic tax that is related to production costs rather than a tax imposed upon exportation of a product.
- Additionally, in *Qingdao Qihang*,<sup>13</sup> the CIT held that it is unlawful, and *ultra vires* of the statute, to deduct VAT from the prices of U.S. sales of subject merchandise.
- Consistent with the CIT's ruling in *China Mfrs. Alliance*,<sup>14</sup> if Commerce did not make a finding that the Chinese government imposed a tax, of whatever nature, of 4 percent on the exportation of xanthan gum, it cannot reduce the prices of Fufeng's U.S. sales of xanthan gum by 4 percent. Commerce never made such a finding in this review.
- Even if a VAT adjustment was permissible, Commerce's 4 percent adjustment does not accurately reflect the amount of irrecoverable VAT. The difference between the VAT paid on inputs (17 percent) and the VAT refunded upon exportation (13 percent) will not be 4 percent because the 17 percent rate is applied to the value of inputs while the 13 percent rate is applied to the FOB value of the xanthan gum that was exported. 4 percent of the FOB value of xanthan gum overstates the amount of irrecoverable VAT, and exceeds the amount of VAT actually paid, because VAT is paid on the value of inputs but the FOB value of xanthan gum is greater than the value of inputs.
- Lastly, the 4 percent adjustment does not account for the fact that Fufeng did not pay any VAT on corn, a primary input of xanthan gum, or soybeans.

No other interested parties commented on this issue.

**Commerce's Position:** After making the adjustments described in the positions to Comments 1 through 3 above, Fufeng's calculated weighted-average dumping margin is *de minimis*. Therefore, whether or not a VAT adjustment is made has no effect on the resulting dumping margin. Consequently, we made no changes to the VAT adjustment in these final results of review.

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<sup>13</sup> See *Qingdao Qihang Tyre Co., Ltd., et al. v. United States*, Consol. Court No. 16-00075; Slip Op. 18-176 (CIT Dec. 21, 2018) (*Qihang Qihang*).

<sup>14</sup> See *China Manufacturers Alliance, LLC et al. v. United States*, 205 F. Supp. 3d 1325 (CIT 2017) (*China Mfr. Alliance*).

## VI. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of this review in the *Federal Register*.



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Agree

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Disagree

5/10/2021

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Signed by: CHRISTIAN MARSH

Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance