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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-985]

Xanthan Gum from the People's Republic of China: Notice of Third Amended Final Determination Pursuant to Court Decision

AGENCY: Enforcement and Compliance, International Trade Administration,
Department of Commerce.

SUMMARY: On February 10, 2020, the Court of Appeals for the Federal Circuit (CAFC) reversed the Court of International Trade's (CIT) decision sustaining the Department of Commerce's (Commerce) use of Thai Fermentation Industry Ltd.'s (Thai Fermentation) financial statements to calculate surrogate financial ratios and reinstated Commerce's prior determination to use Ajinomoto (Thailand) Co., Ltd.'s (Thai Ajinomoto) financial statements to calculate financial ratios. Accordingly, Commerce is issuing a third amended final determination for the less-than-fair-value (LTFV) investigation of xanthan gum from the People's Republic of China (China), and including Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.) and Shandong Fufeng Fermentation, Co., Ltd. (collectively, Fufeng) as subject to the order.

DATES: Applicable February 20, 2020.

FOR FURTHER INFORMATION CONTACT: Thomas Hanna, AD/CVD Operations, Office IV, Enforcement and Compliance, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0835.

SUPPLEMENTARY INFORMATION:

Background

The litigation in this case relates to Commerce's final determination in the LTFV investigation of xanthan gum from China,¹ which was later amended.² In its *Amended Final Determination and Order*, Commerce reached affirmative determinations for mandatory respondents, Fufeng and Deosen Biochemical Ltd. (Deosen).³ CP Kelco U.S., Inc. (CP Kelco U.S.), the petitioner, and Fufeng appealed the *Amended Final Determination and Order* to the CIT, and on March 31, 2015, the CIT sustained, in part, and remanded, in part, Commerce's *Final Determination*, as modified by the *Amended Final Determination*.⁴ Specifically, the CIT remanded, for reevaluation, Commerce's conclusion that the Thai Ajinomoto financial statements constituted a better source for calculating surrogate financial ratios than the Thai Fermentation statements, and granted Commerce's request for a voluntary remand to reconsider its allocation of energy consumed at Fufeng's Neimenggu plant between the production of subject and non-subject merchandise.⁵

Pursuant to a series of remand orders issued by the CIT that resulted in four remand redeterminations, Commerce adjusted its allocation of energy consumed at Fufeng's Neimenggu plant and revised Fufeng's weighted-average dumping margin by using Thai Fermentation's financial statements to derive the surrogate financial ratios.⁶ After using Thai Fermentation's financial statements to calculate surrogate financial ratios, Commerce calculated a weighted-

¹ 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*) and accompanying Issues and Decision Memorandum.

² 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) (*Amended Final Determination and Order*).

³ *Id.*, 78 FR at 43144.

⁴ See *CP Kelco US, Inc. v. United States*, Ct. No. 13-00288, Slip Op. 15-27 (CIT Mar. 31, 2015) (*CP Kelco I*).

⁵ *Id.* at 2-3, 11-15, 32-34.

⁶ *Id.*; see also *CP Kelco US, Inc. v. United States*, Ct. No. 13-00288, Slip Op. 16-36 (CIT Apr. 8, 2016) (*CP Kelco II*); *CP Kelco US, Inc. v. United States*, 211 F. Supp. 3d 1338 (CIT 2017) (*CP Kelco III*); and *CP Kelco US, Inc. v. United States*, Ct. No. 13-00288, Slip Op. 18-36 (CIT Apr. 5, 2018) (*CP Kelco IV*).

average dumping margin of 0.00 percent for Fufeng.⁷ On September 17, 2018, the CIT sustained Commerce’s fourth remand redetermination.⁸ Pursuant to the CIT’s final judgment, Commerce amended the *Final Determination* and *Amended Final Determination and Order* and excluded merchandise produced and exported by Fufeng from the order.⁹

CP Kelco U.S. appealed the CIT’s decision upholding Commerce’s treatment of *Xanthomonas Campestris* (*X. Campestris*) as an asset in its final determination, rather than a direct material input, and Commerce’s use, in its remand redetermination, of Thai Fermentation’s financial statements to calculate surrogate financial ratios rather than Thai Ajinomoto’s financial statements.¹⁰ On February 10, 2020, the CAFC issued an opinion: (1) affirming the CIT’s decision sustaining Commerce’s treatment of *X. Campestris* as an asset; and (2) reversing the CIT’s decision regarding Commerce’s use of Thai Fermentation’s financial statements to calculate surrogate financial ratios and reinstating Commerce’s original determination to use Thai Ajinomoto’s financial statements in calculating those ratios.

On May 8, 2020, in compliance with the order issued by the CAFC, the CIT affirmed Commerce’s third remand redetermination, wherein we “calculated a dumping margin of 8.69% for Fufeng by treating *X. campestris* as an asset, and by using data in Thai Ajinomoto financial statements” to calculate surrogate financial ratios.¹¹ The CIT found that Commerce’s third remand redetermination “comports with the {CAFC’s} decision in its entirety.”¹²

⁷ See Final Results of Fourth Redetermination Pursuant to Court Order, dated July 5, 2018, at 12.

⁸ See *CP Kelco US, Inc. v. United States*, Ct. No. 13-00288, Slip Op. 18-120 (CIT Sept. 17, 2018) (*CP Kelco V*).

⁹ See *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) (*Timken Notice*).

¹⁰ See *CP Kelco US, Inc. v. United States*, 949 F.3d 1348 (Fed. Cir. 2020).

¹¹ See *CP Kelco US, Inc. v. United States*, Ct. No. 13-00288, Slip Op. 20-62 (CIT May 8, 2020).

¹² *Id.* at *4.

Third Amended Final Determination

Because there is now a final and conclusive court decision, Commerce is amending the *Final Determination* and *Amended Final Determination and Order* with respect to Fufeng. The revised weighted-average dumping margin for Fufeng for the period October 1, 2011 through March 31, 2012 is as follows:

Exporter	Producer	Weighted-Average Dumping Margin (Percent)
Neimenggu Fufeng Biotechnologies, Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.)/ Shandong Fufeng Fermentation Co., Ltd.	Neimenggu Fufeng Biotechnologies, Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.)/ Shandong Fufeng Fermentation Co., Ltd.	8.69

As a result of this amended final determination, in which Commerce has calculated an estimated weighted-average dumping margin of 8.69 percent for Fufeng, merchandise from the producer-exporter combination above will be subject to the antidumping duty (AD) order on xanthan gum from China. Additionally, we will instruct United States Customs and Border Protection (CBP) to suspend liquidation of, and to require a cash deposit of 0.00 percent¹³ for, all unliquidated entries of subject merchandise from the producer-exporter combination referenced above which were entered, or withdrawn from warehouse, for consumption after February 20,

¹³ This is the cash deposit rate determined for Fufeng in the 2015-2016 AD administrative review of xanthan gum from China. *See 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, 6514 (February 14, 2018).

2020, which is 10 days after the CAFC's final decision, in accordance with section 516A of the Act.

Results of Discontinued Antidumping Duty Administrative Reviews for Fufeng

In the *Timken Notice*, Commerce amended the final determination in this proceeding and stated that “{a}s a result of this amended final determination, in which Commerce has calculated an estimated weighted-average dumping margin of 0.00 percent for Fufeng, Commerce is hereby excluding merchandise from the above producer-exporter combination from the antidumping duty order.”¹⁴ Commerce explained in the *Timken Notice* that:

{a}s a result of the exclusion, Commerce (1) is discontinuing the ongoing fourth and fifth administrative reviews, in part, with respect to Fufeng's entries during those periods of review; and (2) will not initiate any new administrative reviews of Fufeng's entries pursuant to the antidumping order.¹⁵

When Commerce published the final results of the fourth and fifth administrative reviews of the AD order on xanthan gum from China, merchandise from the above-referenced producer-exporter combination was no longer subject to that order due to the CIT's decision, and the CAFC had not reversed the CIT's decision.¹⁶ However, subsequent to Commerce issuing those final results of reviews, the CAFC reversed the CIT's decision. Based on the CAFC's decision, Fufeng is subject to the AD order on xanthan gum from China. Therefore, we will resume the fourth and fifth administrative reviews of that order with specific regard to Fufeng.¹⁷ We will

¹⁴ *Timken Notice*, 83 FR at 52206.

¹⁵ *Id.*

¹⁶ 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); *Xanthan Gum From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*; 84 FR 64831 (November 25, 2019).

¹⁷ The fourth review covers the period July 1, 2016 through June 30, 2017. The fifth review covers the period July 1, 2017 through June 30, 2018.

not revisit these reviews for any company other than Fufeng.¹⁸ For the fourth review, because we already issued preliminary results covering Fufeng and case briefs regarding those results were filed, we will consider the case briefs as they pertain to Fufeng and issue the final results of review with respect to Fufeng. For the fifth review, because we already selected mandatory respondents, other than Fufeng, and issued final results with respect to those respondents, we will analyze Fufeng's separate rate certification and issue preliminary results regarding Fufeng's separate rate status. We will set a briefing period to allow interested parties to comment on our separate rates determination for Fufeng before issuing the final results of review with respect to Fufeng.

At this time, Commerce remains enjoined by Court order from liquidating entries of subject merchandise that: (1) was produced and exported by Fufeng, and entered, or withdrawn from warehouse, for consumption during the period July 19, 2013 through June 30, 2014 (with the exception of such merchandise entered by the company named in CBP message number 7352304, dated December 18, 2017); (2) was produced and exported by Fufeng, and entered, or withdrawn from warehouse, for consumption during the period July 1, 2014 through June 30, 2015, by East West Technologies Inc.; and (3) was produced and exported by Fufeng, and entered, or withdrawn from warehouse, for consumption during the period July 1, 2014 through June 30, 2015, by LABH Inc., designated as Entry No. 22703189153, with an entry date of July 7, 2014, and Fufeng's Invoice No. MEU14088. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

¹⁸ Fufeng refers to the collapsed entity Inner Mongolia Fufeng Biotechnologies Co., Ltd./ Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd)/ Shandong Fufeng Fermentation Co., Ltd./ Xinjiang Fufeng Biotechnologies Co., Ltd.

Notification to Interested Parties

This notice is issued and published in accordance with section 516A(c)(1) and (e) of the
Tariff Act of 1930, as amended.

Dated: June 29, 2020.

Jeffrey I. Kessler,
Assistant Secretary
for Enforcement and Compliance.

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