

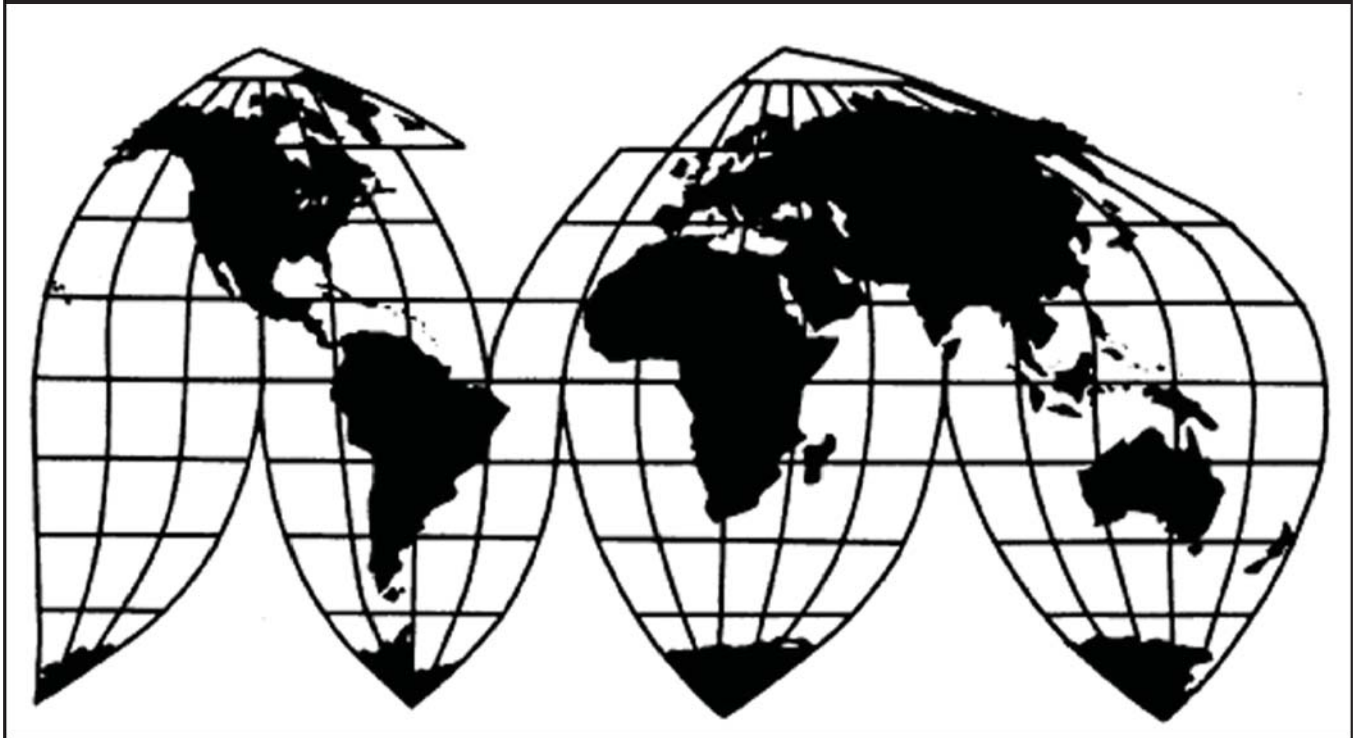
Xanthan Gum from Austria and China

Investigation Nos. 731-TA-1202-03 (Preliminary)

Publication 4342

July 2012

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation Nos. 731-TA-1202-03 (Preliminary)

XANTHAN GUM FROM AUSTRIA AND CHINA

DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Austria and China of xanthan gum, provided for in subheading 3913.90.20 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).²

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in the investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

BACKGROUND

On June 5, 2012, a petition was filed with the Commission and Commerce by CP Kelco U.S., Atlanta, GA, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of xanthan gum from Austria and China. Accordingly, effective June 5, 2012, the Commission instituted antidumping duty investigation Nos. 731-TA-1202-03 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of July 12, 2012 (77 FR 34997). The conference was held in Washington, DC, on June 26, 2012, and all persons who requested the opportunity were permitted to appear in person or by counsel.

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

² Commissioner Deanna Tanner Okun did not participate in these investigations.

VIEWS OF THE COMMISSION

Based on the record in the preliminary phase of these investigations, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of xanthan gum from Austria and China that are allegedly sold in the United States at less than fair value (“LTFV”).¹

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping and countervailing duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determinations, whether there is a reasonable indication that a domestic industry is materially injured or threatened with material injury, or that the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.² In applying this standard, the Commission weighs the evidence before it and determines whether “(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”³

II. BACKGROUND

A. In General

The petitions in these investigations were filed on June 5, 2012, by CP Kelco U.S. (“CP Kelco” or “Petitioner”), the largest domestic producer of xanthan gum in the United States. Petitioner appeared at the staff conference and submitted a postconference brief.

Jungbunzlauer Austria AG (“JBL”), the sole Austrian producer of xanthan gum, and Jungbunzlauer Inc., a U.S. importer of the subject merchandise (collectively “Austrian Respondents”), appeared at the staff conference and submitted a joint postconference brief. Fufeng Group, Ltd., Deosen Corporation, Ltd., Hebei Xinhe Biochemical Corporation, Ltd., Chinese producers of xanthan gum, and A.H.A. International Corporation., a Chinese exporter of the subject merchandise (collectively “Chinese Respondents”), appeared at the staff conference and filed a postconference brief. FMC Corporation (“FMC”), a U.S. importer of the subject merchandise, appeared at the staff conference and filed a postconference statement. U.S. importer and purchaser of subject merchandise, TIC Gums, filed a postconference brief.

In these investigations, U.S. industry data are based on the questionnaire responses of the three U.S. producers, CP Kelco, Archer Daniels Midland (“ADM”), and Tate & Lyle, that accounted for all of U.S. production during the period of investigation. U.S. import data are based on questionnaire responses from importers whose imports are believed to account for the vast majority of subject imports during the period of investigation.⁴ The Commission received questionnaire responses from four Chinese producers

¹ Commissioner Deanna Tanner Okun did not participate in these investigations.

² 19 U.S.C. § 1673b(a) (2000); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-04 (Fed. Cir. 1986); Aristech Chem. Corp. v. United States, 20 CIT 353, 354-55 (1996).

³ American Lamb Co., 785 F.2d at 1001; see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

⁴ Confidential Staff Report (“CR”) and Public Staff Report (“PR”) at I-1. The Commission received a questionnaire from a U.S. importer accounting for *** percent of reported exports of Austrian subject merchandise to the United States and questionnaires from U.S. importers accounting for *** percent of reported exports to United States from China. CR at IV-1- IV-3; PR at IV-1.

of the subject product as well as an additional exporter of Chinese xanthan gum⁵ and a questionnaire response from the sole Austrian producer of the subject product.⁶

III. DOMESTIC LIKE PRODUCT

A. In General

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”⁷ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Tariff Act”), defines the relevant domestic industry as the “producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”⁸ In turn, the Tariff Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation”⁹

B. Product Description

In its notice of initiation, Commerce defined the imported merchandise within the scope of these investigations as follows:

Dry xanthan gum, whether or not coated, blended with other products (“blends”), 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 products is included in this scope when the resulting mix contains 15 percent or more xanthan gum to dry weight. Other products with which xanthan gum may be blended include, but are not limited to, sugars, minerals, and salts.¹⁰

Xanthan gum is a polysaccharide produced by the fermentation of a carbohydrate source using the strain of bacteria known as *Xanthomonas campestris*.¹¹ Xanthan gum is sold in the form of a milled, granular powder and in a variety of grades. Due to its unique molecular structure, it is a naturally-derived stabilizer of water-based solutions that is used primarily for its thickening, stabilizing, and suspension properties in a wide variety of products and industries.¹²

⁵ CR at VII-6; PR at VII-3. There is at least one other known producer in China and may be others. Cargill Inc. did not respond to the Commission’s foreign producer questionnaire.

⁶ CR at II-V-3; PR at VII-2.

⁷ 19 U.S.C. § 1677(4)(A).

⁸ 19 U.S.C. § 1677(4)(A).

⁹ 19 U.S.C. § 1677(10).

¹⁰ 77 Fed. Reg. 39210 (July 2, 2012).

¹¹ Specifically, the chemical properties of xanthan gum include high viscosity at low shear rates; high viscosity at low concentration; ability to withstand temperature extremes; and relative insensitivity to pH, enzymes, and shear degradation. CR at I-5-I-6; PR at I-4-I-6.

¹² Petition at 20; Petitioner’s Postconference Brief at 13.

Xanthan gum is principally used by three major end-use industries: oil drilling and industrial applications, which accounted for *** percent of the U.S. xanthan gum market in 2011; food and beverages, which accounted for *** percent; and consumer applications, which accounted for *** percent.¹³

C. Parties' Arguments¹⁴

Petitioner argues that the Commission should define a single domestic like product coextensive with the scope of the investigations. Respondents have raised no objection to Petitioner's proposed definition of the domestic like product.

D. Analysis

As discussed below, we find a single domestic like product, xanthan gum, that is coextensive with the scope of the investigations.

Physical Characteristics and End Uses. All grades of xanthan gum are derived from fermentation of the bacteria *Xanthomonas campestris* and, as such, each grade shares the same basic physical characteristics and chemical composition.¹⁵ The different grades of xanthan gum primarily are used for a variety of purposes in three end-use industries: food and beverage, oil and industrial applications, and consumer applications (e.g., cosmetics and pharmaceutical products).¹⁶ The various grades differ somewhat in terms of purity level or grain size according to the specific needs of purchasers or specific regulatory standards for the end-use application. The various grades of xanthan gum used in the three major end-use applications generally serve as thickening or stabilizing agents.¹⁷

Interchangeability. There is somewhat limited interchangeability among the various grades of xanthan gum because lower-level purity grades (such as those used in the oil segment) cannot be used in products that require higher purity levels due to government regulations (such as food products).¹⁸ The

¹³ CR/PR at Table IV-3.

¹⁴ The decision regarding the appropriate domestic like products in an investigation is a factual determination, and the Commission has applied the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis. *See, e.g., Cleo, Inc. v. United States*, 501 F.3d 1291, 1299 (Fed. Cir. 2007); *NEC Corp. v. Department of Commerce*, 36 F. Supp. 2d 380, 383 (Ct. Int'l Trade 1998); *Nippon Steel Corp. v. United States*, 19 CIT 450, 455 (1995); *Torrington Co. v. United States*, 747 F. Supp. 744, 749 n.3 (Ct. Int'l Trade 1990), *aff'd*, 938 F.2d 1278 (Fed. Cir. 1991) ("every like product determination 'must be made on the particular record at issue' and the 'unique facts of each case'"). The Commission generally considers a number of factors, including the following: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes, and production employees; and, where appropriate; (6) price. *See Nippon*, 19 CIT at 455 n.4; *Timken Co. v. United States*, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996).

¹⁵ CR at I-5; PR at I-5.

¹⁶ CR at I-6; PR at I-5. For ease of reference, these three segments are generally referred to as food, oil, and consumer throughout the remainder of the opinion.

¹⁷ CR at I-6; PR at I-5.

¹⁸ Petitioner's Postconference Brief at 15.

record indicates that the higher purity level grades of xanthan gum, which are used in food or consumer applications, can be substituted for lower purity level grades of xanthan gum in oil applications.¹⁹

Channels of Distribution. The different grades of xanthan gum are generally sold in the same channels of distribution, with most xanthan gum being sold directly to end-users and the remainder to distributors.²⁰

Manufacturing Facilities, Production Processes, and Employees. All xanthan gum is made in similar manufacturing facilities, using similar production processes and employees.²¹ The production process for xanthan gum may vary slightly depending on the grade being produced, such as one requiring additional enzymes or a different particle size. Additionally, government regulations require that the manufacture of food grade xanthan gum occur in an environment designed to limit microbiological contamination.²² Nevertheless, all xanthan gum products can be produced on the same production lines that are GMP (good manufacturing processes) because these lines satisfy the necessary quality control requirements.²³

Producer and Customer Perceptions. The limited evidence in this preliminary phase indicates that all grades of xanthan gum are perceived by both producers and customers to be the same product, although certain food and consumer product grades must meet the necessary regulatory requirements.²⁴

Price. The record indicates that prices vary among the end-use industries. Food grades and consumer grades are required to be free from microbacterial contamination. As such, these grades are generally higher priced than oil grades.²⁵

Conclusion. For the reasons discussed, we define the domestic like product as certain xanthan gum consistent with the scope of these investigations.

IV. DOMESTIC INDUSTRY

The domestic industry is defined as the domestic “producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”²⁶ In defining the domestic industry, the Commission’s general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market. In these investigations, the domestic industry consists of three domestic producers: CP Kelco, ADM, and Tate & Lyle.

We must determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to section 19 U.S.C. § 1677(4)(B). Subsection 1677(4)(B) allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are

¹⁹ CR at I-6; PR at I-5.

²⁰ Petitioner’s Postconference Brief at 16; Transcript at 135 (Rainville); CR/PR at Table II-1.

²¹ Petitioner’s Postconference Brief at 18-19.

²² Petitioner’s Postconference Brief at 18-19; CR/PR at I-9-I-10.

²³ Petitioner’s Postconference Brief at 19.

²⁴ Petitioner’s Postconference Brief at 19.

²⁵ CR/PR at Table IV-8; Petitioner’s Postconference Brief at 19.

²⁶ 19 U.S.C. § 1677(4)(A).

related to an exporter or importer of subject merchandise or which are themselves importers.²⁷ Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each investigation.²⁸ We find that CP Kelco is a related party subject to possible exclusion under the related parties provision both because it is an importer of subject merchandise and because of its corporate affiliation with a foreign producer of subject merchandise. Petitioner imports subject merchandise from its subsidiary CP Kelco Shandong Biological Co., Ltd., a Chinese producer of xanthan gum.

Petitioner contends that appropriate circumstances do not exist to exclude it from the industry given its predominance as a U.S. producer, its continued expansion and investment in U.S. operations, and its role as the petitioner in these investigations.²⁹ Respondents have not argued for Petitioner's exclusion from the industry for purposes of the preliminary phase investigations.³⁰

1. Analysis

Petitioner was the *** domestic producer in 2011, accounting for *** percent of domestic production.³¹ According to Petitioner, it invested in the Chinese production facility "as its initial attempt to compete with low-priced subject imports by providing a sourcing alternative for the lowest-priced applications."³² Petitioner's imports of subject merchandise from China were *** pounds in 2009, *** pounds in 2010, and *** pounds in 2011. Its imports of subject merchandise were *** pounds in January-March 2011 ("interim 2011") and *** pounds in January-March 2012 ("interim 2012"). Petitioner's ratio of total subject imports to domestic production was *** percent in 2009, *** in 2010,

²⁷ 19 U.S.C. § 1677(4)(B).

²⁸ The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude a related party include the following: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and (3) the position of the related producer vis-a-vis the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry. *See, e.g., Torrington Co. v. United States*, 790 F. Supp. 1161 (Ct. Int'l Trade 1992), *aff'd without opinion*, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interest of the related producer lies in domestic production or importation. These latter two considerations were cited as appropriate factors in *Allied Mineral Products, Inc. v. United States*, 28 CIT 1861, 1865 (2004) ("The most significant factor considered by the Commission in making the 'appropriate circumstances' determination is whether the domestic producer accrued a substantial benefit from its importation of the subject merchandise."); *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 12 (Ct. Int'l Trade 2001) ("the provision's purpose is to exclude from the industry headcount domestic producers substantially benefitting from their relationships with foreign exporters."); *aff'd*, 34 Fed. Appx. 725 (Fed. Cir. 2002); S. Rep. No. 249, 96th Cong. 1st Sess. at 83 (1979) ("where a U.S. producer is related to a foreign exporter and the foreign exporter directs his exports to the United States so as not to compete with his related U.S. producer, this should be a case where the ITC would not consider the related U.S. producer to be a part of the domestic industry").

²⁹ Petitioner's Postconference Brief at 21-24.

³⁰ Chinese Respondents indicated, however, they may change their position in any final phase investigations. Chinese Respondents' Postconference Brief at 4 n.1.

³¹ CR/PR at Table III-2.

³² Petition at 24.

and *** in 2011. This ratio was *** and *** percent in interim 2011 and interim 2012, respectively.³³ Petitioner's operating margins were in line with the rest of the domestic industry.^{34 35 36}

Although CP Kelco continues to operate its Chinese facility as part of an overall production strategy, we find that Petitioner's principal interest lies in domestic production given that it produced far more xanthan gum domestically than it imported and continued to ***.³⁷ There is no indication that its imports shielded it from injury by subject imports. Additionally, CP Kelco is the largest domestic producer and the party seeking relief from subject imports in these investigations. No party argues for its exclusion from the domestic industry. Given these facts, we find that appropriate circumstances do not exist to exclude CP Kelco as a related party.

Thus, consistent with our definition of the domestic like product, we define the domestic industry to include all U.S. producers of xanthan gum.

V. CUMULATION³⁸

A. Legal Framework

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports, section 771(7)(G)(i) of the Tariff Act requires the Commission to cumulate subject imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and the domestic like product in the U.S. market.³⁹ In assessing whether subject imports compete with each other and with the domestic like product, the Commission has generally considered four factors, including the following:

- (1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
- (2) the presence of sales or offers to sell in the same geographic markets of subject imports from different countries and the domestic like product;

³³ CR/PR at Table III-7.

³⁴ CR/PR at Table VI-2.

³⁵ Consistent with her practice in past investigations and reviews, Commissioner Aranoff does not rely on individual-company operating income margins, which reflect a domestic producer's financial operations related to production of the domestic like product, in assessing whether a related party has benefitted from importation of subject merchandise. Rather, she determines whether to exclude a related party based principally on its ratio of subject imports to domestic production and whether its primary interests lie in domestic production or importation.

³⁶ For purposes of the preliminary phase of these investigations, Commissioner Pinkert does not rely upon related Petitioner's financial performance as a factor in determining whether there are appropriate circumstances to exclude it from the domestic industry. In his view, the present record is not sufficient to link Petitioner's profitability on its U.S. operations to any specific benefit it derives from importing or from its Chinese production.

³⁷ CR/PR at Table VI-7.

³⁸ Negligibility under 19 U.S.C. § 1677(24) is not an issue in these investigations. During the 12-month period prior to the filing of the petitions, subject imports from Austria and China accounted for 16.3 percent and 68.2 percent of total imports of xanthan gum, compiled from official import statistics, respectively. INV-KK-074 (July 17, 2012) at IV-5; PR at IV-2.

³⁹ 19 U.S.C. § 1677(7)(G)(i).

- (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
- (4) whether the subject imports are simultaneously present in the market.⁴⁰

Although no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.⁴¹ Only a “reasonable overlap” of competition is required.⁴²

B. Discussion

In these investigations, the threshold criterion is satisfied because Petitioner filed the antidumping duty petitions with respect to Austria and China on the same day. None of the cumulation exceptions apply.⁴³ Subject imports from Austria and China are therefore eligible for cumulation. We consequently examine whether there is a reasonable overlap of competition between subject imports from Austria and China, as well as between subject imports and the domestic like product.⁴⁴

⁴⁰ See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Invs. Nos. 731-TA-278 to 280 (Final), USITC Pub. 1845 (May 1986), aff'd, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int'l Trade), aff'd, 859 F.2d 915 (Fed. Cir. 1988).

⁴¹ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

⁴² The Statement of Administrative Action (“SAA”) states that “the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition.” SAA on Uruguay Round Agreements Act (“URAA”), H.R. Rep. 103-316, Vol. I at 848 (1994) (citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int'l Trade 1988)), aff'd, 859 F.2d 915 (Fed. Cir. 1988). See also, e.g., Goss Graphic Sys., Inc. v. United States, 33 F. Supp. 2d 1082, 1087 (Ct. Int'l Trade 1998) (“cumulation does not require two products to be highly fungible”); Wieland Werke, AG, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

⁴³ See 19 U.S.C. § 1677(7)(G)(ii).

⁴⁴ Petitioner argues that the prerequisites for cumulation for purposes of present material injury are satisfied in these investigations. Petitioner’s Postconference Brief at 18. Respondents do not challenge Petitioner’s position that cumulation for purposes of determining present material injury is appropriate. Chinese Respondents have indicated their position may change in any final phase investigations. Chinese Respondents’ Postconference Brief at 4 n.1.

1. Fungibility

There is a reasonable degree of fungibility among the subject imports from each country and the domestic like product. The questionnaire responses indicate that market participants perceive domestic xanthan gum and the subject imports to be interchangeable. All responding producers and the majority of importers of the subject merchandise from Austria and China indicated that subject imports from each country are “always” or “frequently” interchangeable with domestically produced xanthan gum.⁴⁵

The record supports a finding of a reasonable overlap of competition in the end-use market segments. Domestically produced xanthan gum, subject imports from Austria, and subject imports from China were all present in substantial volumes in the food segment of the U.S. market.⁴⁶ U.S. shipments of U.S. producers and U.S. shipments of subject imports from China were present in substantial volumes in the oil segment. Although only a *** of Austrian subject imports were sold in the oil segment, Austrian Respondents testified at the hearing that their product was qualified for use in that segment, but their prices were too high.⁴⁷ Also, as discussed earlier, food and consumer grades of xanthan gum may be used in oil applications. The much smaller consumer segment of the U.S. market was dominated by domestic production although subject imports from China were also present in this segment. There were no shipments of imports from Austria to this segment.⁴⁸ For these reasons, the record supports a finding of a reasonable overlap of competition between and among subject imports and the domestic like product in the end-use segments of the U.S. market.

2. Geographic Overlap

The record reflects that the market for xanthan gum is nationwide and that the domestic product and subject merchandise from both countries are sold throughout the United States.⁴⁹

3. Channels of Distribution

The record indicates that subject imports from both countries and the domestic like product were sold to end-users and distributors throughout the period of investigation, with most being sold to end-users.⁵⁰

⁴⁵ CR/PR at Table II-2.

⁴⁶ The vast majority of subject imports from Austria (***) were sold to the food segment of the U.S. market. A little less than half of domestic producer’s U.S. shipments and roughly a third of U.S. shipments of subject imports from China were sold in the food segment. CR/PR at Table IV-3.

⁴⁷ Transcript (Rainville) at 147-148.

⁴⁸ CR/PR at Table IV-3.

⁴⁹ CR/PR at Table II-1.

⁵⁰ CR/PR at Table II-1.

4. Simultaneous Presence

Subject imports from both countries and the domestic like product were present throughout the period of investigation and interim period 2012 (January-March 2012).⁵¹

B. Conclusion

For the reasons discussed above, we find that the record warrants a finding of a reasonable overlap of competition between and among the subject imports from Austria and China and the domestic like product. We therefore cumulatively assess the volume and effects of subject imports from Austria and subject imports from China.

VI. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF CUMULATED SUBJECT IMPORTS

A. Legal Standard

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of the imports under investigation.⁵² In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.⁵³ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁵⁴ In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.⁵⁵ No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁵⁶

Although the statute requires the Commission to determine whether there is a reasonable indication that the domestic industry is “materially injured by reason of” unfairly traded imports,⁵⁷ it does not define the phrase “by reason of,” indicating that this aspect of the injury analysis is left to the

⁵¹ CR at IV-14; PR at IV-4; CR/PR at Tables IV-9 and C-1.

⁵² 19 U.S.C. §§ 1671b(a), 1673b(a).

⁵³ 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each {such} factor ... {a}nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B).

⁵⁴ 19 U.S.C. § 1677(7)(A).

⁵⁵ 19 U.S.C. § 1677(7)(C)(iii).

⁵⁶ 19 U.S.C. § 1677(7)(C)(iii).

⁵⁷ 19 U.S.C. §§ 1671b(a), 1673b(a).

Commission's reasonable exercise of its discretion.⁵⁸ In identifying a causal link, if any, between subject imports and material injury to the domestic industry, the Commission examines the facts of record that relate to the significance of the volume and price effects of the subject imports and any impact of those imports on the condition of the domestic industry. This evaluation under the "by reason of" standard must ensure that subject imports are more than a minimal or tangential cause of injury and that there is a sufficient causal, not merely a temporal, nexus between subject imports and material injury.⁵⁹

In many investigations, there are other economic factors at work, some or all of which may also be having adverse effects on the domestic industry. Such economic factors might include nonsubject imports; changes in technology, demand, or consumer tastes; competition among domestic producers; or management decisions by domestic producers. The legislative history explains that the Commission must examine factors other than subject imports to ensure that it is not attributing injury from other factors to the subject imports, thereby inflating an otherwise tangential cause of injury into one that satisfies the statutory material injury threshold.⁶⁰ In performing its examination, however, the Commission need not isolate the injury caused by other factors from injury caused by unfairly traded imports.⁶¹ Nor does the

⁵⁸ Angus Chemical Co. v. United States, 140 F.3d 1478, 1484-85 (Fed. Cir. 1998) ("The statute does not 'compel the commissioners' to employ {a particular methodology}."), aff'g 944 F. Supp. 943, 951 (Ct. Int'l Trade 1996).

⁵⁹ The United States Court of Appeals for the Federal Circuit ("Federal Circuit"), in addressing the causation standard of the statute, observed that "{a}s long as its effects are not merely incidental, tangential, or trivial, the foreign product sold at less than fair value meets the causation requirement." Nippon Steel Corp. v. USITC, 345 F.3d 1379, 1384 (Fed. Cir. 2003). This was further ratified in Mittal Steel Point Lisas Ltd. v. United States, 542 F.3d 867, 873 (Fed. Cir. 2008), where the Federal Circuit, quoting Gerald Metals, Inc. v. United States, 132 F.3d 716, 722 (Fed. Cir. 1997), stated that "this court requires evidence in the record 'to show that the harm occurred "by reason of" the LTFV imports, not by reason of a minimal or tangential contribution to material harm caused by LTFV goods.'" See also Nippon Steel Corp. v. United States, 458 F.3d 1345, 1357 (Fed. Cir. 2006); Taiwan Semiconductor Industry Ass'n v. USITC, 266 F.3d 1339, 1345 (Fed. Cir. 2001).

⁶⁰ Statement of Administrative Action ("SAA") on Uruguay Round Agreements Act ("URAA"), H.R. Rep. 103-316, Vol. I at 851-52 (1994) ("The Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports."); S. Rep. 96-249 at 75 (1979) (the Commission "will consider information which indicates that harm is caused by factors other than less-than-fair-value imports."); H.R. Rep. 96-317 at 47 (1979) ("in examining the overall injury being experienced by a domestic industry, the ITC will take into account evidence presented to it which demonstrates that the harm attributed by the petitioner to the subsidized or dumped imports is attributable to such other factors;" those factors include "the volume and prices of nonsubsidized imports or imports sold at fair value, contraction in demand or changes in patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry"); accord Mittal Steel, 542 F.3d at 877.

⁶¹ SAA at 851-52 ("The Commission need not isolate the injury caused by other factors from injury caused by unfair imports."); Taiwan Semiconductor Industry Ass'n v. USITC, 266 F.3d 1339, 1345 (Fed. Cir. 2001) ("The Commission need not isolate the injury caused by other factors from injury caused by unfair imports Rather, the Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports." (emphasis in original)); Asociacion de Productores de Salmon y Trucha de Chile AG v. United States, 180 F. Supp. 2d 1360, 1375 (Ct. Int'l Trade 2002) ("The Commission is not required to isolate the effects of subject imports from other factors contributing to injury" or make "bright-line distinctions" between the effects of subject imports and other causes.); see also Softwood Lumber from Canada, Inv. Nos. 701-TA-414 and 731-TA-928 (Remand), USITC Pub. 3658 at 100-01 (Dec. 2003) (Commission recognized that "{i}f an alleged other factor is found not to have or threaten to have injurious effects to the domestic industry, i.e., it is not an 'other causal factor,' then there is nothing to further examine regarding attribution to injury"), citing Gerald Metals, Inc. v. United States, 132 F.3d 716, 722 (Fed. Cir. 1997) (the statute "does not suggest that an importer of LTFV goods can escape countervailing duties by finding some tangential or minor cause unrelated to the LTFV goods that contributed to the harmful effects on domestic market prices.").

“by reason of” standard require that unfairly traded imports be the “principal” cause of injury or contemplate that injury from unfairly traded imports be weighed against other factors, such as nonsubject imports, which may be contributing to overall injury to an industry.⁶² It is clear that the existence of injury caused by other factors does not compel a negative determination.⁶³

Assessment of whether material injury to the domestic industry is “by reason of” subject imports “does not require the Commission to address the causation issue in any particular way,” as long as “the injury to the domestic industry can reasonably be attributed to the subject imports” and the Commission “ensure{s} that it is not attributing injury from other sources to the subject imports.”⁶⁴ ⁶⁵ Indeed, the Federal Circuit has examined and affirmed various Commission methodologies and has disavowed “rigid adherence to a specific formula.”⁶⁶

The Federal Circuit’s decisions in Gerald Metals, Bratsk, and Mittal Steel all involved cases where the relevant “other factor” was the presence in the market of significant volumes of price-competitive nonsubject imports. The Commission interpreted the Federal Circuit’s guidance in Bratsk as requiring it to apply a particular additional methodology following its finding of material injury in cases involving commodity products and a significant market presence of price-competitive nonsubject imports.⁶⁷ The additional “replacement/benefit” test looked at whether nonsubject imports might have replaced subject imports without any benefit to the U.S. industry. The Commission applied that specific additional test in subsequent cases, including the Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago determination that underlies the Mittal Steel litigation.

⁶² S. Rep. 96-249 at 74-75; H.R. Rep. 96-317 at 47.

⁶³ See Nippon Steel Corp., 345 F.3d at 1381 (“an affirmative material-injury determination under the statute requires no more than a substantial-factor showing. That is, the ‘dumping’ need not be the sole or principal cause of injury.”).

⁶⁴ Mittal Steel, 542 F.3d at 877-78; see also id. at 873 (“While the Commission may not enter an affirmative determination unless it finds that a domestic industry is materially injured ‘by reason of’ subject imports, the Commission is not required to follow a single methodology for making that determination {and has} broad discretion with respect to its choice of methodology.”) citing United States Steel Group v. United States, 96 F.3d 1352, 1362 (Fed. Cir. 1996) and S. Rep. 96-249 at 75.

⁶⁵ Commissioner Pinkert does not join this paragraph or the following three paragraphs. He points out that the Federal Circuit, in Bratsk, 444 F.3d 1369, and Mittal Steel, held that the Commission is required, in certain circumstances when considering present material injury, to undertake a particular kind of analysis of nonsubject imports, albeit without reliance on presumptions or rigid formulas. Mittal Steel explains as follows:

What Bratsk held is that “where commodity products are at issue and fairly traded, price-competitive, nonsubject imports are in the market,” the Commission would not fulfill its obligation to consider an important aspect of the problem if it failed to consider whether nonsubject or non-LTFV imports would have replaced LTFV subject imports during the period of investigation without a continuing benefit to the domestic industry. 444 F.3d at 1369. Under those circumstances, Bratsk requires the Commission to consider whether replacement of the LTFV subject imports might have occurred during the period of investigation, and it requires the Commission to provide an explanation of its conclusion with respect to that factor. 542 F.3d at 878.

⁶⁶ Nucor Corp. v. United States, 414 F.3d 1331, 1336, 1341 (Fed. Cir. 2005); see also Mittal Steel, 542 F.3d at 879 (“Bratsk did not read into the antidumping statute a Procrustean formula for determining whether a domestic injury was ‘by reason’ of subject imports.”).

⁶⁷ Mittal Steel, 542 F.3d at 875-79.

Mittal Steel clarifies that the Commission’s interpretation of Bratsk was too rigid and makes clear that the Federal Circuit does not require the Commission to apply an additional test nor any one specific methodology; instead, the court requires the Commission to have “evidence in the record ‘to show that the harm occurred ‘by reason of’ the LTFV imports,’” and requires that the Commission not attribute injury from nonsubject imports or other factors to subject imports.⁶⁸ Accordingly, we do not consider ourselves required to apply the replacement/benefit test that was included in Commission opinions subsequent to Bratsk.

The progression of Gerald Metals, Bratsk, and Mittal Steel clarifies that, in cases involving commodity products where price-competitive nonsubject imports are a significant factor in the U.S. market, the Court will require the Commission to give full consideration, with adequate explanation, to non-attribution issues when it performs its causation analysis.

The question of whether the material injury threshold for subject imports is satisfied notwithstanding any injury from other factors is factual, subject to review under the substantial evidence standard. Congress has delegated this factual finding to the Commission because of the agency’s institutional expertise in resolving injury issues.⁶⁹

B. Conditions of Competition and the Business Cycle

The following conditions of competition inform our analysis of whether there is a reasonable indication of material injury by reason of cumulated subject imports.

1. Demand Conditions

Demand for xanthan gum is driven by demand in the major end-use segments of the U.S. market: food and beverage, oil and industrial, and consumer.⁷⁰ During most of the period of investigation, food and beverage accounted for the largest segment of the U.S. market for xanthan gum, followed by oil and industrial, with the consumer segment accounting for the smallest portion of the market.⁷¹

Demand for xanthan gum, as measured by apparent U.S. consumption, increased markedly from 2009 to 2010, but was relatively stable between 2010 and 2011. Apparent U.S. consumption of xanthan gum increased from *** pounds in 2009 to *** pounds in 2010 and increased again to *** pounds in 2011. During interim 2012, apparent U.S. consumption was higher (*** pounds) than in interim 2011 (*** pounds).⁷²

Demand in the oil segment fueled the increase in demand during the period of investigation, with the quantity of xanthan gum sold to this segment nearly doubling from 2009 to 2011. The oil segment, as

⁶⁸ Mittal Steel, 542 F.3d at 873 (quoting from Gerald Metals, 132 F.3d at 722), 875-79 & n.2 (recognizing the Commission’s alternative interpretation of Bratsk as a reminder to conduct a non-attribution analysis).

⁶⁹ Mittal Steel, 542 F.3d at 873; Nippon Steel Corp., 458 F.3d at 1350, citing U.S. Steel Group, 96 F.3d at 1357; S. Rep. 96-249 at 75 (“The determination of the ITC with respect to causation is ... complex and difficult, and is a matter for the judgment of the ITC.”).

⁷⁰ As explained previously in note 16, these segments often are referred to simply as food, oil and consumer throughout the remainder of the opinion.

⁷¹ CR/PR at Table IV-3.

⁷² CR/PR at Table C-1.

a share of the total U.S. market for xanthan gum, increased from *** percent in 2009 to *** percent in 2010 and to *** percent in 2011. The oil segment's share was higher in interim 2012 (*** percent) than in interim 2011 (*** percent).⁷³ Overall sales of xanthan gum to the food segment increased from 2009 to 2010 but declined in 2011. As a share of the total U.S. market, the food segment increased from 2009 to 2010 but declined in 2011 and was higher in interim 2012 than in interim 2011.⁷⁴ The consumer segment represented a small and declining share of the U.S. xanthan gum market.⁷⁵

Respondents argue that rapidly rising prices for guar gum, another hydrocolloid, have caused purchasers to seek less expensive substitutes, such as xanthan gum.⁷⁶ Petitioner argues that the substitutability of xanthan gum for guar gum is limited, and that recent high prices for guar gum have not greatly impacted demand for xanthan gum.⁷⁷ We intend to examine the substitutability between guar gum and xanthan gum and the extent to which guar gum prices have affected demand for xanthan gum in any final phase investigations.

2. Supply Conditions

Xanthan gum is manufactured in only four countries, the United States, Austria, China, and France, all of which export xanthan gum.⁷⁸ During the period of investigation, the U.S. xanthan gum market was supplied by the domestic industry, subject imports, and nonsubject imports.⁷⁹ The domestic industry was the second largest supplier of the U.S. market throughout the period of investigation.⁸⁰

As noted earlier, there were three domestic producers during the period of investigation: CP Kelco, ADM, and Tate & Lyle. Tate & Lyle shut down its xanthan gum operations in 2009.⁸¹ ***.⁸² As a result of the ***, domestic production capacity decreased from *** pounds in 2009 to *** pounds in 2010 and 2011. Despite these declines, domestic production capacity exceeded apparent U.S. consumption throughout the period.⁸³

The domestic industry's market share declined from *** percent in 2009 to *** percent in 2011; it was *** percent in interim 2012 compared to *** percent in interim 2011. Cumulated subject imports' market share, in contrast, which was already at a substantial *** percent in 2009, increased to *** percent in 2011; it was higher in interim 2012 (*** percent) than in interim 2011 (*** percent). Nonsubject imports' market share fluctuated but declined overall from *** percent in 2009 to *** percent in 2011; it was *** higher in interim 2012 than in interim 2011.

⁷³ CR/PR at Table IV-3.

⁷⁴ CR/PR at Table IV-3.

⁷⁵ CR/PR at Table IV-3.

⁷⁶ Transcript at 103 (Bowman).

⁷⁷ Transcript at 103 (Bowman).

⁷⁸ TIC's Postconference Brief at 2.

⁷⁹ CR/PR at Table C-1.

⁸⁰ CR/PR at Table C-1.

⁸¹ The Tate & Lyle production facility was set up as a pilot program for new production technology. See Chinese Respondents' Brief at 27 and Exhibit 5. *** U.S. Producer Questionnaire Response.

⁸² CR at III-2; PR at III-1.

⁸³ CR/PR at Table C-1.

The domestic industry and subject imports both supplied large quantities of xanthan gum to the food and oil segments of the U.S. market, and also supplied the smaller consumer segment. At the same time, the small amounts of nonsubject imports were sold mostly in the food and consumer segments of the market.⁸⁴

Respondents maintain that there was a shortage of domestically produced xanthan gum during the period of investigation and that CP Kelco, in particular, turned away customers because of an inability to supply orders.⁸⁵ The record on this issue is mixed. One importer reported difficulty in obtaining a high viscosity grade of xanthan gum from domestic producers in a timely manner and another importer reported that there was a limited supply of the domestic product during the period of investigation.⁸⁶ In contrast, *** that they had refused, declined, or had been unable to supply xanthan gum during the period.⁸⁷ CP Kelco also stated, however, that it experienced a backlog of orders in April 2011 due to a fire in one of its plants, but the back orders were resolved the following month.⁸⁸ We intend to examine the possible existence of a shortage of domestically produced xanthan gum and its effects on the U.S. market in any final phase investigations.⁸⁹

3. Other Conditions

The degree of substitutability between xanthan gum produced domestically and xanthan gum imported from Austria and China depends on such factors as quality (e.g., certification) and the conditions of sale (e.g., lead times, customer service). Based on the information reported in these investigations, we find a reasonable degree of substitutability between domestically produced xanthan

⁸⁴ INV-KK-074 at CR/PR at Table IV-3a. There were no sales of nonsubject imports to the oil segment of the market during the period of investigation. Id.

⁸⁵ See TIC's Postconference Brief at Exhibit 3; ***.

⁸⁶ CR at II-3; PR at II-2.

⁸⁷ CR at II-3; PR at II-2.

⁸⁸ Petitioner's Postconference Brief at 8.

⁸⁹ Respondents claimed that CP Kelco has refused to supply private label products to customers, thus limiting the availability of the domestic product in the U.S. market. FMC's Postconference Statement at 1-3; Transcript at 158 (Johnston). CP Kelco, however, disputes this claim. CP Kelco's Postconference Brief at Exhibit 20. We intend to further examine the availability of private label products and their role in the U.S. market for xanthan gum in any final phase investigations.

Respondents also argue that there is a shortage of domestic product and domestic producers are unable to supply the entire U.S. market. As the Commission previously has noted, "there is no short supply provision in the statute" and "the fact that the domestic industry may not be able to supply all of demand does not mean the industry may not be materially injured or threatened with material injury by reason of subject imports." Softwood Lumber from Canada, Inv. Nos. 701-TA-414 and 731-TA-928 (Article 1904 NAFTA Remand) at 108, n. 310 (December 2003). See also, Certain Activated Carbon from China, Inv. No. 731-TA-1103 (Preliminary), USITC Pub. 3852 (May 2006) at 19, n. 134; Certain Orange Juice from Brazil, Inv. No. 731-TA-1089 (Final), USITC Pub. 3838 (March 2006) at 20 n. 143; Certain Lined Paper School Supplies, Inv. Nos. 701-TA-442-443 (Preliminary) and 731-TA-1095-1097 (Preliminary), USITC Pub. 3811 (October 2005) at 23, n. 155; Metal Calendar Slides from Japan, Inv. No. 731-TA-1094 (Preliminary), USITC Pub. 3792 (August 2005) at 9, n. 45 ("To the extent that Respondents claim that the Commission is legally unable to make an affirmative finding of material injury by reason of subject imports because the domestic industry is incapable of supplying domestic demand, they are incorrect."). We intend to examine the issue of possible shortages of U.S. product in any final phase investigations.

gum and subject xanthan gum for the same application. All U.S. producers and a majority of importers reported that they were “always” or “frequently” interchangeable.⁹⁰

U.S. producers and nearly half of importers indicated that price is an important factor in purchasing decisions.⁹¹ U.S. producers *** and most responding importers reported selling both on a spot basis and on a short-term contract basis. Some importers also reported selling on a long-term contract basis.⁹²

U.S. produced and subject xanthan gum are mostly sold from inventory rather than produced to order.⁹³ Delivery lead times for material in inventory ranged from *** days for CP Kelco, and *** for ADM. Most importers of the subject product reported delivery lead times of one to seven days for the material held in inventory and from 14 to 19 days for products produced to order or ordered directly from the subject producers’ inventory.⁹⁴ We intend to examine the issue of sale from inventories and delivery lead times in any final phase investigations.

Raw material costs account for a relatively small share of the cost of xanthan gum. Raw material costs increased from *** percent of the cost of goods sold (“COGS”) in 2009 to *** percent in 2011. In interim 2012, these costs were slightly lower *** than in interim 2011 ***. The increase in raw material costs over the period of investigation is due in large part to the increase in the price of corn, the major raw material used in the production of xanthan gum. The price of corn was more than 25 percent higher in the 2011/12 crop year than in crop years 2009/10 and 2010/11.⁹⁵

Finally, Respondents testified at the conference that the price for xanthan gum is a “global” price because large, global purchasers typically buy xanthan gum for delivery to their facilities throughout the world in the same transaction.⁹⁶ We intend to examine this issue more fully in any final phase investigations.

C. Volume of Subject Imports

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”⁹⁷

Subject imports were already present in large volumes and accounted for a significant portion of apparent U.S. consumption at the beginning of the period in 2009, and they increased substantially thereafter. Subject imports’ share of the U.S. market *** percent in 2009 to *** percent in 2010 and to

⁹⁰ CR/PR at Table II-2, CR at II-10; PR at II-7. In any final phase investigations, we intend to re-examine the issue of substitutability of domestic and subject xanthan gum within specific applications. In particular, we will examine quality issues related to the Chinese product, the length of time necessary to qualify xanthan gum for customers, and the ability of customers to shift between suppliers. We also intend to examine substitutability questions not directly linked to quality (e.g., whether there is substantial differentiation based on application and the ***). TIC’s Postconference Brief at 6-7.

⁹¹ CR at II-11; PR at II-7.

⁹² CR at V-2; PR at V-2.

⁹³ CR at II-9; PR at II-6.

⁹⁴ CR at II-9; PR at II-6.

⁹⁵ CR/PR at V-1; CR/PR at Figure V-1.

⁹⁶ Transcript at 115-116 (Mazulli), 125-126 (Eshaghpour).

⁹⁷ 19 U.S.C. § 1677(7)(C)(i).

*** percent in 2011. Subject imports' market share was higher in interim 2012 (*** percent) than in interim 2011 (*** percent).⁹⁸ The volume of subject imports' U.S. shipments by quantity rose from *** pounds in 2009 to *** pound in 2010 to *** pounds in 2011, and was higher in interim 2012 (*** pounds) than in interim 2011 (*** pounds).⁹⁹ The volume of subject imports' U.S. shipments thus increased by *** percent from 2009 to 2011, outpacing the *** percent increase in apparent U.S. consumption for the same period.¹⁰⁰ In contrast, despite the growth in demand, the domestic industry's market share declined by *** percentage points from 2009 to 2011.

Between 2010 and 2011, the volume of U.S. shipments of subject imports increased less than the prior year in absolute terms (an *** between 2009 and 2010 compared to a *** between 2010 and 2011).¹⁰¹ In terms of market share, however, the increase between 2010 and 2011 was more significant than the increase in the prior year and had demonstrable negative effects on the domestic industry as discussed throughout this opinion. Between 2009 and 2010, the domestic industry lost *** percentage points of market share while U.S. shipments of subject imports gained *** percentage points and nonsubject imports lost *** percentage points.¹⁰² Between 2010 and 2011, the domestic producers lost 3.2 percentage points of market share while the subject imports *** percentage points and nonsubject imports *** percentage points.¹⁰³ Thus, the domestic industry's loss of market share between 2010 and 2011 corresponds almost exactly to the gain experienced by subject imports during the same time frame.

Subject imports' already substantial volumes and market penetration increased throughout the period. Subject imports penetrated each end-user segment of the U.S. market to the detriment of the domestic industry. In the rapidly growing oil segment and in the consumer segment, subject imports gained market share at the expense of the domestic industry in each year of the period. In the food segment, subject imports lost market share from 2009 to 2010 but regained most of the share from 2010 to 2011.¹⁰⁴

⁹⁸ CR/PR at Table C-1. Subject imports also increased relative to U.S. production. The ratio of subject imports to domestic production increased from *** percent in 2009 to *** percent in 2010, and to *** percent in 2011. It was higher in interim 2012 (*** percent) than in interim 2011 (*** percent). CR/PR at Table IV-12.

⁹⁹ CR/PR at Table C-1.

¹⁰⁰ CR/PR at Table C-1.

¹⁰¹ CR/PR at Table C-1.

¹⁰² CR/PR at Table C-1.

¹⁰³ CR/PR at Table C-1.

¹⁰⁴ Subject imports' market share in the oil segment increased by *** percentage points from 2009 to 2011; it was *** percentage points higher in interim 2012 than in interim 2011. With no nonsubject imports in this segment, the subject imports' increase in market share in this segment came completely at the expense of the domestic industry. INV-KK-074 at Table IV-3a; CR/PR at Table IV-3a.

In the food segment, subject imports' market share *** percentage points from 2009 to 2011 but *** percentage points from 2010 to 2011 and *** percentage points between the interim periods. The domestic industry's market share in the food segment *** percentage points from 2009 to 2010 and then *** percentage points from 2010 to 2011; it was stable between the interim periods. Nonsubject imports' share of the food and beverage segment *** percentage points from 2009 to 2011; it was stable between the interim periods. INV-KK-074 at Table IV-3a; CR/PR at Table IV-3a.

In the consumer segment, subject imports' share increased by *** percentage points from 2009 to 2011 and was *** percentage points higher in interim 2012 than in interim 2011. The domestic industry's market share of this segment declined by *** percentage points from 2009 to 2011; it was *** percentage points lower in interim 2012 than in interim 2011. Nonsubject imports' market share of this segment remained stable overall from 2009 to 2011 and between the interim periods. INV-KK-074 at Table IV-3a; CR/PR at Table IV-3a.

For purposes of the preliminary phase of these investigations, we find that the volume of the subject imports is significant both in absolute terms and relative to consumption and production in the United States.

D. Price Effects of the Cumulated Subject Imports

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of subject imports,

the Commission shall consider whether – (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.¹⁰⁵

In these preliminary phase investigations, the record indicates that subject imports and domestically produced xanthan gum are substitutable in the same application and that price is an important factor in purchasing decisions.

The Commission collected quarterly pricing data on three products.¹⁰⁶ All three U.S. producers and 11 importers provided usable pricing data for sales of the requested products, although not all firms reported pricing for all products for all quarters. Pricing data reported by these firms accounted for approximately 99.1 percent of U.S. producers' shipments of xanthan gum, all U.S. shipments of imports from Austria, and 74.3 percent of U.S. shipments of imports from China during January 2009 through March 2012.¹⁰⁷

We find that there has been significant underselling by the cumulated subject imports during the period of investigation. The pricing data show that subject imports undersold the domestic like product in 78 of 108 price comparisons or nearly three-fourths of the time.¹⁰⁸ Furthermore, the margins of underselling were substantial, with most margins exceeding 20 percent.¹⁰⁹ Given the number of instances of underselling, the magnitude of underselling margins, and the fact that price is an important consideration in purchasing decisions, we find the underselling to be significant.¹¹⁰

¹⁰⁵ 19 U.S.C. § 1677(7)(C)(ii).

¹⁰⁶ 19 U.S.C. § 1677(7)(C)(iii).

¹⁰⁷ CR/PR at Table V-4.

¹⁰⁸ Calculated from CR/PR at Tables V-I-V-6 as revised by INV-KK-075 and INV-KK-076.

¹⁰⁹ CR at V-4; PR at V-3.

¹¹⁰ Petitioner requested that we exclude from the pricing data: (1) ***; and (2) CP Kelco's own imports from its Chinese affiliate. In support of the latter request, Petitioner contends that reported instances of overselling by Chinese imports are in fact prices of imports from its Chinese affiliate and are not representative of subject import prices. Petitioner's Postconference Brief at 33-36. We have not made either of the requested exclusions in our examination of the pricing data as these ***. In any final phase investigations, we invite the parties to address the appropriateness of excluding the prices of subject merchandise imported by a domestic producer in general and whether we should exclude pricing data for Petitioner's subject imports.

Prices for all three domestically produced products fluctuated within a fairly narrow range throughout the 13 quarter period of examination showing no discernible trend.¹¹¹ Thus, we do not find evidence of significant price depression. We also do not find that subject imports had a significant price suppressing effect during the period.¹¹² Over the period of investigation, the domestic industry's ratio of COGS to net sales decreased overall, as did the ratio of raw materials to net sales, though there were increases in these ratios between 2010 and 2011.¹¹³

Nevertheless, the record in these preliminary investigations indicates that, in the face of widespread underselling by subject imports, the domestic industry had to sacrifice market share in order to maintain its prices. Therefore, for purposes of the preliminary phase of these investigations, we find that the significant price underselling by subject imports led to lost volume and market share for the domestic industry, with additional adverse effects detailed below.¹¹⁴

E. Impact of the Cumulated Subject Imports¹¹⁵

Section 771(7)(C)(iii) of the Act provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a

¹¹¹ CR at V-4; PR at V-3. The wide range of prices reported by the various firms with respect to each of the pricing products which may be due to overly broad product descriptions. Parties are requested to provide more specific pricing products in their written comments on the questionnaires in any final phase investigations.

¹¹² Commissioner Pinkert joins his colleagues in finding that underselling by the subject imports contributed to the domestic industry's declining market share. As explained below, however, he also finds that the subject imports have had significant adverse price effects in that they appear to have suppressed domestic prices in the second half of the period under examination.

Subject imports increased, and gained market share, during both of the full-year intervals for which the Commission collected data. During the second full-year interval, from 2010 to 2011, total COGS increased by *** percent while total net sales revenue – apparently under pressure from undersold subject imports – increased by only *** percent. The COGS/sales ratio thus increased from *** percent to *** percent, suggesting that the domestic industry was experiencing a cost/price squeeze. The interim data, which cover only one quarter, show only limited improvement in the COGS/sales ratio. CR/PR at Table C-1.

¹¹³ The ratio of COGS to net sales decreased from *** percent in 2009 to *** percent in 2010, and increased to *** percent in 2011. The ratio of COGS to net sales was *** percent in interim 2011 and *** percent in interim 2012. The ratio of raw materials to net sales decreased from *** percent in 2009 to *** percent in 2010, and then increased to *** percent in 2011. The ratio of raw materials to net sales was *** percent in interim 2011 and *** percent in interim 2012. CR/PR at Table VI-1.

¹¹⁴ Chinese Respondents have argued that underselling alone cannot have adverse price effects. Chinese Respondents' Postconference Brief at 13-14. Chinese Respondents' argument misses the point, because it ignores the fact that underselling when coupled with evidence of adverse effects can properly be a basis for a finding of material injury. See Sodium Nitrite from China and Germany, Inv. Nos. 701-TA-453 and 731-TA-1136-37 (Final), USITC Pub. 4029 (August 2008) at 28. See also Small Diameter Graphite Electrodes from China, Inv. No. 731-TA-1143 (Final), USITC Pub. 4062 (February 2009) at 16-19.

¹¹⁵ In its notice initiating an antidumping investigation on xanthan gum from Austria, Commerce reported an estimated dumping margin of 145.20 percent. In the antidumping investigation on xanthan gum from China, Commerce reported an estimated dumping margin of 154.07 percent. 77 Fed. Reg. 39210 (July 2, 2012).

bearing on the state of the industry.”¹¹⁶ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development, and factors affecting domestic prices. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”¹¹⁷

Over the period of investigation, some of the domestic industry’s performance indicators were positive or stabilized, but the record also shows some declines, particularly from 2010 to 2011. The industry increased its production of xanthan gum by *** percent from 2009 to 2011, from *** pounds in 2009 to *** pounds in 2011.¹¹⁸ The industry’s production was also *** percent higher in interim 2012 (*** pounds) than in interim 2011 (*** pounds). The domestic industry’s U.S. shipments fluctuated, increasing by *** percent from 2009 to 2010, but decreasing by *** percent from 2010 to 2011 as the industry lost market share to subject imports. The domestic industry’s U.S. shipments were *** percent higher in interim 2012 than in interim 2011, which was far less than the *** percent increase in apparent U.S. consumption between the two interim periods.¹¹⁹ As production increased, the domestic industry’s capacity utilization rate steadily *** percent in 2009 to *** percent in 2010 and to *** percent in 2011.¹²⁰ The domestic industry’s capacity utilization *** in interim 2012 (*** percent) than in interim 2011 (*** percent). One contributing factor to *** capacity utilization, however, was the closure of two domestic facilities during the period. The domestic industry’s production capacity *** percent from 2009 to 2010, due to the closure of Tate & Lyle and the shutdown of one of CP Kelco’s production lines in San Diego. ***¹²¹ CP Kelco also attributed the shutdown of its production line to competition with subject imports.¹²²

¹¹⁶ 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 885 (“In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.”)

¹¹⁷ 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851, 885; Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386, 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 25 n.148 (Feb. 1999).

¹¹⁸ CR/PR at Table C-1.

¹¹⁹ The domestic industry’s U.S. shipments increased from *** pounds in 2009 to *** pounds in 2010 and declined to *** pounds in 2011. CR/PR at Table C-1. The industry’s U.S. shipments were *** pounds in interim 2012 and *** pounds in interim 2011. Id.

The domestic industry’s exports constituted approximately *** of the industry’s total shipments during the period. Id. We intend to examine the role of these exports in the industry’s overall performance and financial condition. We request that the parties provide in their written comments on the draft questionnaires in any final phase investigations what they believe is the appropriate approach to examine the industry’s exports’ performance.

Inventories as a ratio to total shipments were *** throughout the period, decreasing from *** percent in 2009 to *** percent in 2010, and increasing to *** percent in 2011. Inventories as a ratio to total shipments were *** percent in interim 2011 and *** percent in interim 2012. CR/PR at Table C-1. As noted earlier, we intend to examine the role of inventories, particularly the disparate delivery lead times from inventory of U.S. producers, importers and subject producers, in any final phase of these investigations.

¹²⁰ CR/PR at Table C-1.

¹²¹ *** U.S. Producer’s Questionnaire Response, section II-2.

¹²² Petitioner’s Postconference Brief at Exhibit 20. Parties dispute whether the shutdown of Tate & Lyle and the curtailment of production at and eventual shutdown of CP Kelco’s San Diego line were caused by subject imports or other factors. We will examine this issue further in any final phase investigations.

With respect to employment, the number of production and related workers, hours worked, and wages paid declined between 2009 to 2011, by *** percent, *** percent, and *** percent, respectively.¹²³ These declines occurred primarily between 2009 and 2010 with the closure of Tate & Lyle and the shutdown of CP Kelco's San Diego production line. Hourly wages and worker productivity increased by *** percent and *** percent from 2009 to 2011, and both were *** percent higher in interim 2012 than in interim 2011.¹²⁴

The record indicates that the domestic industry ceded market share to subject imports in an effort to raise or maintain domestic prices. Although the domestic industry was able to maintain and/or raise prices to some extent over the period, the decline in market share held by domestic producers negatively affected the domestic industry's financial performance. The domestic industry's loss in market share, together with increases in raw materials costs, direct factory costs and other factory costs over the period took their toll on the domestic industry's profitability.¹²⁵ The domestic industry's net sales revenues declined from *** in 2009 to *** in 2010, but then improved to *** in 2011, for an overall decline of *** percent from 2009 to 2011. Net sales revenue was *** percent higher in interim 2012 (***) than in interim 2011 (***)¹²⁶ The domestic industry's operating income improved from *** in 2009 to *** in 2010, and then declined to *** in 2011, a decline of *** percent from 2010 to 2011. Operating income was *** in interim 2011 and *** in interim 2012.¹²⁷ The operating income margin increased from negative *** percent in 2009 to positive *** percent in 2010 and then fell to a positive *** percent in 2011, and remained steady at a positive *** percent in both interim periods.¹²⁸ At the same time, the industry's capital expenditures fell overall by *** percent from 2009 to 2011, but were higher in interim 2012 than in interim 2011.¹²⁹ Research and development expenses declined from *** in 2009 to *** in 2011, but were higher in interim 2012 (***) than in interim 2011 (***)¹³⁰

As described above, the record in these preliminary investigations indicates that, in face of widespread underselling by increasing volumes of subject imports, the domestic industry is sacrificing market share in order to maintain and/or increase its prices.¹³¹ In particular, the domestic industry's loss of *** percentage points of market share between 2010 and 2011 corresponds to a significant decline in the domestic industry's profitability, as the industry's gross profits declined by *** percent, its operating income ***, and its operating income margin declined from *** percent in 2010 to *** percent in 2011.¹³² Thus, the significant increase in volume and pervasive underselling by subject imports has contributed to the domestic industry's declining market share and corresponding declines in employment

¹²³ The number of production workers was *** in 2009 and *** in both 2010 and 2011, and was *** in interim 2011 and *** in interim 2012. Hours worked were *** in 2009, *** in 2010, and *** in 2011; and were *** in both interim 2011 and interim 2012. Wages paid were *** in 2009, *** in 2010, and *** in 2011; and were *** in interim 2011 and *** in interim 2012. CR/PR at Table C-1.

¹²⁴ CR/PR at Table C-1.

¹²⁵ CR/PR at Table VI-1; CR at VI-4; PR at VI-2. We intend to explore ***.

¹²⁶ CR/PR at Table C-1.

¹²⁷ CR/PR at Table C-1.

¹²⁸ CR/PR at Table C-1.

¹²⁹ CR/PR at Table C-1. The industry's capital expenditures were *** in 2009, *** in 2010, and *** in 2011; and were *** in interim 2011 and *** in interim 2012. Id.

¹³⁰ CR/PR at Table VI-4.

¹³¹ As noted above, Commission Pinkert finds significant adverse price effects as well. In his view, these effects contributed to the reduction in the operating margin experienced by the domestic industry in 2011.

¹³² CR/PR at Table C-1.

and profitability, indicating a nexus between subject imports and the financial performance experienced by the domestic industry during the period of investigation.

We have considered the role of other factors, such as nonsubject imports, so as not to attribute injury from other factors to subject imports.¹³³ Unlike the subject imports, nonsubject imports were minimal in both absolute and relative terms. The quantity of nonsubject imports' U.S. shipments was *** pounds in 2009, *** pounds in 2010, and *** pounds in 2011 and was *** pounds in interim 2011 and *** pounds in interim 2012.¹³⁴ Nonsubject imports' share, by quantity, of apparent U.S. consumption fell from *** percent in 2009 to *** percent in 2011, and was *** percent in interim 2011 and *** percent in interim 2012.¹³⁵ As noted above, nonsubject imports also lost market share to subject imports over the period of investigation. Thus, nonsubject imports do not appear to have played a role in the condition of the domestic industry.

Consequently, we conclude for purposes of these preliminary phase investigations that there is a causal nexus between cumulated subject imports and the observed declines in domestic industry performance. In light of this, we conclude that, for purposes of the preliminary phase of these investigations, the subject imports have had significant adverse impact on the domestic industry.

CONCLUSION

For the foregoing reasons, and based on the record in the preliminary phase of these investigations, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly dumped xanthan gum from Austria and China.

¹³³ Commissioner Pinkert invites parties to comment on the applicability of Bratsk/Mittal Steel to the facts of this case.

¹³⁴ CR/PR at Table C-1.

¹³⁵ CR/PR at Table C-1.

PART I: INTRODUCTION

BACKGROUND

These investigations result from a petition filed by CP Kelco U.S. (“CP Kelco US”), Atlanta, GA, on June 5, 2012, alleging that an industry in the United States is materially injured and threatened with material injury by reason of less-than-fair-value (LTFV) imports from Austria and China of xanthan gum.¹ Information relating to the background of the investigations is provided below.^{2 3}

Effective date	Action
June 5, 2012	Petition filed with Commerce and the Commission; institution of Commission investigations (77 FR 34997, June 12, 2012)
June 26, 2012	Commission’s conference
July 2, 2012	Commerce’s notice of initiation (77 FR 39210, July 2, 2012)
July 19, 2012	Commission’s vote
July 20, 2012	Commission’s determinations to Commerce
July 27, 2012	Commission’s views to Commerce

SUMMARY DATA

A summary of data collected in the investigations is presented in appendix C, table C-1. U.S. industry data are based on questionnaire responses of three firms that accounted for 100 percent of U.S. production of xanthan gum during January 2009-March 2012. U.S. imports are based on questionnaire responses of 16 firms that accounted for the majority of reported subject imports of xanthan gum during the period examined. Foreign industry data are based on questionnaire responses of six firms: one from Austria and five from China.

STATUTORY CRITERIA AND ORGANIZATION OF THE REPORT

Statutory Criteria

Section 771(7)(B) of the Tariff Act of 1930 (the “Act”) (19 U.S.C. § 1677(7)(B)) provides that in making its determinations of injury to an industry in the United States, the Commission—

shall consider (I) the volume of imports of the subject merchandise, (II) the effect of imports of that merchandise on prices in the United States for domestic like products, and (III) the impact of imports of such

¹ Xanthan gum agents are organic products normally used in the production of food and beverages, consumer applications, and oilfield and industrial applications. Xanthan gum is provided for in subheading 3913.90.20 of the Harmonized Tariff Schedule of the United States (“HTSUS”), a residual or “basket” category covering polysaccharides and their derivatives. The subheading has a normal trade relations tariff rate of 5.8 percent *ad valorem* applicable to imports from Austria and China.

² *Federal Register* notices cited in the tabulation are presented in app. A.

³ App. B lists witnesses that appeared at the conference.

merchandise on domestic producers of domestic like products, but only in the context of production operations within the United States; and . . . may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports.

Section 771(7)(C) of the Act (19 U.S.C. § 1677(7)(C)) further provides that--

In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States is significant.

. . .

In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether . . . (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.

. . .

In examining the impact required to be considered under subparagraph (B)(i)(III), the Commission shall evaluate (within the context of the business cycle and conditions of competition that are distinctive to the affected industry) all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to

. . .

(I) actual and potential declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity, (II) factors affecting domestic prices, (III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, (IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and (V) in {an antidumping investigation}, the magnitude of the margin of dumping.

Organization of the Report

Part I of this report presents information on the subject merchandise, dumping margins, and domestic like product. *Part II* of this report presents information on conditions of competition and other relevant economic factors. *Part III* presents information on the condition of the U.S. industry, including data on capacity, production, shipments, inventories, and employment. *Parts IV and V* present the volume of subject imports and pricing of domestic and imported products, respectively. *Part VI* presents information on the financial experience of U.S. producers. *Part VII* presents the statutory requirements and information obtained for use in the Commission's consideration of the question of threat of material injury as well as information regarding nonsubject countries.

U.S. MARKET SUMMARY

Xanthan gum is a hydrocolloid primarily used for its thickening and stabilizing properties in three market sectors: food and beverage products, consumer goods and pharmaceutical products, and oilfield and industrial uses. The U.S. producers of xanthan gum during the period examined were CP Kelco U.S. (“CP Kelco US”), Archer Daniels Midland Co. (“ADM”), and Tate & Lyle Ingredients Americas LLC (“Tate & Lyle”). Leading subject producers of xanthan gum include Jungbunzlauer Austria AG (“JBL Austria”), ***. The U.S. importer of xanthan gum from Austria is Jungbunzlauer Inc. (“JBL US”). The leading importers of xanthan gum from China are ***. Leading importers of xanthan gum from nonsubject countries in 2011 (France) include ***.

Apparent U.S. consumption of xanthan gum totaled approximately *** in 2011. Currently, two firms are known to produce xanthan gum in the United States. U.S. producers’ U.S. shipments of xanthan gum totaled *** in 2011, and accounted for *** percent of apparent consumption by quantity and *** percent by value. U.S. shipments of imports from subject sources totaled *** in 2011 and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value. U.S. shipments of imports from nonsubject sources totaled *** in 2011 and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value.

RELATED INVESTIGATIONS

Xanthan gum has not been the subject of any prior countervailing or antidumping duty investigations in the United States.

THE NATURE AND EXTENT OF SALES AT LTFV

Table I-1 presents information from Commerce on the final dumping margins for the subject countries. The period of investigation for the Austria dumping investigation is April 1, 2011, through March 1, 2012, and for the China dumping investigation is October 1, 2011 through March 31, 2012.⁴

Table I-1

Xanthan gum: Commerce’s estimated initiation dumping margins, by sources

Country	Type of comparison	Estimated dumping margin (percent ad valorem)
Austria	Export price to constructed value	Austria..... 145.20
China	Export price to normal value	China..... 154.07
Source: Commerce’s notice of initiation of antidumping duty investigations published in the <i>Federal Register</i> (77 FR 39210, July 2, 2012).		

THE SUBJECT PRODUCT

Scope

The imported product subject to these investigations is defined by Commerce as–

dry xanthan gum, whether or not coated or blended with other products. Further, xanthan gum is included in these investigations regardless of physical form, including, but not limited to, solutions, slurries, dry powders of any particle size, or unground fiber.

⁴ 77 FR 39210, July 2, 2012.

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-D-Glucuronic acid-(1,2)-α-D-Mannose monosaccharide units. The terminal mannose may be pyruvylated and the internal mannose unit may be acetylated.*

Merchandise covered by the scope of these investigations is classified in the Harmonized Tariff Schedule 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.

Tariff Treatment

During the period of investigation, xanthan gum was provided for in Harmonized Tariff Schedule of the United States (“HTS”) subheading 3913.90.20, polysaccharides and their derivatives. This is a residual or “basket” category covering products in addition to the subject product. The subheading has a normal trade relations tariff rate of 5.8 percent *ad valorem* applicable to imports from Austria and China.

Physical Characteristics and Uses

Xanthan gum is a polysaccharide that is produced from the fermentation of the *Xanthomonas campestris* bacteria.⁵ It has desirable chemical properties for multiple product applications due to its unique molecular structure as a naturally derived stabilizer of water-based solutions.⁶ It is marketed in the form of a milled, granular powder that is extracted from the production process. It has a high viscosity⁷ at low concentration levels, meaning that small concentrations of xanthan gum can be very effective in thickening a liquid. Xanthan gum also has a high degree of shear-thinning⁸ at low shear rates. When a shear force⁹ is applied to the liquid, such as through stirring or shaking, the viscosity decreases, allowing for easier flow of the solution.¹⁰ Xanthan gum also has properties that allow solutions to continually reform to the initial viscosity level when shear force is removed.¹¹ Xanthan gum exhibits little sensitivity to a solution’s pH levels, temperatures, cold water solubility, or ionic strength.¹² These attributes combine to make xanthan gum unique when compared with other hydrocolloids, such as gelatin, agar gum, or

⁵ Petition, Vol. I, p. 5.

⁶ F. Garcia-Ochoa, et al. “Xanthan gum: production, recovery, and properties.” *Biotechnology Advances*, Vol. 18. (2000): 551.

⁷ Viscosity describes a fluid’s resistance to flow. A fluid with high viscosity does not flow quickly.

⁸ Shear-thinning refers to the lowering of the viscosity when a shear force is applied to the fluid.

⁹ Shear force occurs when a force is applied parallel to the plane of contact.

¹⁰ Petition, Vol. I, p. 8.

¹¹ Xanthan gum is characterized as having a high elastic modulus and low degree of thixotropy. These are the technical measurements to describe the resilience and response to the addition or removal of shear force. Petition, p. 8-9; Conference Transcript, p. 34 (Viala).

¹² Petition, Vol. I, p. 9.

pectin.¹³ However, there appears to be at least a limited degree market substitution between xanthan gum and other hydrocolloids, particularly guar gum and carboxymethylcellulose (CMC).¹⁴

Xanthan gum is a hydrocolloid used for its thickening and stabilizing properties, used primarily in three sectors: oilfield and industrial uses, food and beverage products, and consumer goods and pharmaceutical products.¹⁵ For each grade, the product retains its functional chemical properties. However, there is differentiation since each use must follow certain regulatory standards. These grades primarily address how the xanthan gum is recovered from the manufacturing process, and the levels of impurities remaining in the product.¹⁶ As a result, xanthan gum produced for use in food and beverage or consumer goods and pharmaceuticals can often be marketed for industrial purposes, but not vice versa.¹⁷ Additionally, there are consumer demands for various other specifications such as additional coating of the product, granule size, the use of non-Genetically Modified Organisms (GMO) feedstocks, and packaging of the xanthan gum.¹⁸ These specifications affect the application's properties such as, how the xanthan gum dissolves in the solution, the clarity solution with the dissolved xanthan gum, viscosity of the solution in certain environments, and convenience for the end user's manufacturing process.

Xanthan gum is used for industrial purposes, such as oilfield drilling, fabric and home care products, and paint and coating products. The chemical's structural properties are useful in oilfield drilling when a rheology agent or viscosifier is required under extreme conditions.¹⁹ Xanthan gum's ability to create suspension to water-based drilling fluid allows for the removal of rock and debris from the drilling area.²⁰ Additionally, xanthan gum is used in other household and industrial chemical products for its suspension properties.²¹ Xanthan gum, again, serves as a suspension agent, allowing for an equal distribution of components within a product that would otherwise separate due to different densities. Xanthan gum is particularly well suited for these products due to its insensitivity to alkaline conditions, which is an environment that other stabilizers cannot effectively perform.²²

Xanthan gum is a common component in food and beverage systems, particularly condiments, beverages, syrups, baked goods and bakery products, and prepared foods. It is also used as a stabilizer and thickener for foods without affecting flavor.²³ In condiments, its shear-thinning qualities allow for easy pouring characteristics, while its viscosity keeps ingredients from separating in the packaging.²⁴ Xanthan gum also provides elasticity to dough and baked products, allowing for the entrapment of air in the finished baked good. It is often used as a replacement to gluten to provide structure to the baked good.²⁵ It is also used as a stabilizer for beverages, such as fruit juices, dairy products, and low-sugar

¹³ Petition, p. 10; Petition, Exhibit 18; Conference Transcript, p. 31 (Viala).

¹⁴ Conference Transcript, p. 98 (Viala); Respondent TIC Gum's postconference brief, Appendix, p. 8; Chinese Respondents' postconference brief, pp. 38-39; Petitioner's postconference brief, p. 21.

¹⁵ Petition, Vol. I, p. 6.

¹⁶ Petitioner's postconference brief, p. 17.

¹⁷ Petition, pp. 20-21

¹⁸ Conference Transcript, p. 43 (Viala); Conference Transcript, pp. 69-72 (Bowman and Viala); Respondent TIC Gum's postconference brief, appendix p. 4.

¹⁹ Petition, p. 14.

²⁰ Petition, p. 14.

²¹ Examples of such products include home care and fabric cleaners, paints and coatings, and agricultural chemicals; Petition, p. 15.

²² Petition, p. 15.

²³ Petition, Exhibit 18.

²⁴ Petition, p. 13.

²⁵ Petition, p. 13.

beverages.²⁶ It is used, particularly, in low-sugar or sugar-free beverages to provide the texture that an artificial sweetener cannot mimic.²⁷ Xanthan gum's low inclusion rates for food and beverages (from about 0.05% to 0.2%) allows for it to be easily included into a recipe for its structural functionality.²⁸

Xanthan gum is used for a number of consumer goods applications as well. These products include toothpaste, sun screen, and pharmaceuticals, such as amoxicillin.²⁹ The product provides thickening and stabilizing properties to these products. It keeps ingredients from separating while in the packaging, for instance. This is important, in that it keeps the ingredients of the products evenly distributed for all applications, instead of having certain ingredients settle based on relative density.³⁰

Manufacturing Process

Xanthan gum is produced from the fermentation of the bacteria strain *Xanthomonas campestris*. The production process requires maintaining the bacteria strain used for culture; providing carbohydrate, nitrogen, and micronutrient sources to initiate the fermentation process; extracting and refining the xanthan gum from the culture; milling the product into a powder; and finally packaging it for distribution.³¹

The production process begins with fermentation of the bacteria. First, selected strains of *Xanthomonas campestris* must be properly maintained and stored for continuous production. A small amount of the strain is expanded in a shake flask, and then further reproduced in a seed tank for scalable expansion, to create the inoculum for large bioreactors.³² Next it is placed in a bioreactor where it interacts with a carbohydrate source (typically a corn derivative, such as corn starch), a nitrogen source (such as casein hydrolysates, soybean meal, or distillers' solubles), micro-minerals, and water.³³ At the end of this step xanthan gum broth is produced, which contains xanthan, bacterial cells, and other chemicals.³⁴

Recovery of the xanthan gum begins by removing the cell debris using either filtration or centrifugation.³⁵ Next alcohol (such as isopropanol, ethanol, or acetone) is added to broth to separate the xanthan gum from water, creating a xanthan gum fiber. The resulting residual mixture of alcohol, water, cellular debris, and nutrients is distilled to recover the alcohol; while the other residual material is sent to a water waste treatment facility.

²⁶ Petition, p. 13; F. Garcia-Ochoa, et al. "Xanthan gum: production, recovery, and properties." *Biotechnology Advances*, Vol. 18. (2000): 551.

²⁷ Petition, p. 13-14; Conference Transcript, p. 113 (Marzulli).

²⁸ F. Garcia-Ochoa, et al. "Xanthan gum: production, recovery, and properties." *Biotechnology Advances*, Vol. 18. (2000): 551.

²⁹ Petition, p. 12.

³⁰ Petition, p. 12.

³¹ Petition, Vol. I, pp. 15-17; F. Garcia-Ochoa, et al. "Xanthan gum: production, recovery, and properties." *Biotechnology Advances*, Vol. 18. (2000): 551, 556.

³² Petition, Vol. I, p. 16.

³³ Petition, Vol. I, p. 16; Petition, Exhibit 16; F. Garcia-Ochoa, et al. "Xanthan gum: production, recovery, and properties." *Biotechnology Advances*, Vol. 18. (2000): 551.

³⁴ F. Garcia-Ochoa, et al. "Xanthan gum: production, recovery, and properties." *Biotechnology Advances*, Vol. 18. (2000): 551.

³⁵ F. Garcia-Ochoa, et al. "Xanthan gum: production, recovery, and properties." *Biotechnology Advances*, Vol. 18. (2000): 551.

The xanthan gum fiber is then dried, milled to a particular granule size, and packaged into specified quantities.³⁶ The product may also be coated with non-water soluble material, such as cottonseed oil or lecithin, to aid in the dispersal of the xanthan gum particles when placed in a solution.³⁷ At this point, the xanthan gum is marketable.

Xanthan gum production requires that facilities meet standards set by the Environmental Protection Agency for wastewater.³⁸ For industrial grade xanthan gum, this is the main regulatory concern with the production process. In order for xanthan gum to qualify as “food grade,” the FDA requires certain processes and tests be done, as does the USDA for certain meat and dairy products.³⁹ First, the FDA requires that the strain of *Xanthomonas campestris* be nonpathogenic and nontoxic to humans and animals. Second, it requires that the recovery process renders no viable cells of the strain. There are also specifications that the residual isopropyl used in the recovery process must not exceed 750 parts per million; the final product must meet certain viscosity properties; the product must also pass two specified laboratory tests; and finally, the product must have proper labeling and use information.⁴⁰

DOMESTIC LIKE PRODUCT

The Commission’s determination regarding the appropriate domestic products that are “like” the subject imported product is based on a number of factors, including (1) physical characteristics and uses; (2) common manufacturing facilities and production employees; (3) interchangeability; (4) customer and producer perceptions; (5) channels of distribution; and, where appropriate, (6) price.

Petitioner argued that the Commission should find a single domestic like product that is coterminous with the scope. Petitioner concludes that there is a continuum of domestically produced products corresponding to the scope of the investigations, with no clear dividing lines based on chemical or physical form, grade, or product type. Petitioner cites xanthan gum’s unique structure which enables the molecule to provide its functional benefits across a vast array of end use applications; significant interchangeability among different grades of xanthan gum across end use applications; similar channels of distribution for xanthan gum to all end use applications; perception of xanthan gum as part of a continuum due to its interchangeability across applications and because the xanthan gum structure-function remains the same regardless of the end-use market segment; common manufacturing facilities, the same general production process, and the same employees; and price overlap among markets with variation in average unit values depending on regulatory restriction, packaging, and end use application.⁴¹

³⁶ Petition, p. 17; F. Garcia-Ochoa, et al. “Xanthan gum: production, recovery, and properties.” *Biotechnology Advances*, Vol. 18. (2000): 551.

³⁷ Petitioner’s Response to Supplemental Questions Concerning Volume II and III of the Petition, p. 12

³⁸ Conference Transcript, p. 40 (Viala).

³⁹ 21 C.F.R 172.695 (2011); Conference Transcript, p. 40 (Viala).

⁴⁰ 21 C.F.R 172.695 (2011).

⁴¹ Petition, pp. 19-23.

Interchangeability and Customer and Producer Perceptions

Information with respect to interchangeability and customer and producer perceptions concerning xanthan gum can be found in Part II of this report, *Conditions of Competition in the U.S. Market*.

Channels of Distribution

Xanthan gum is primarily sold directly to end-user food and beverage, consumer, pharmaceutical, oilfield or industrial product producers. Information on xanthan gum channels of distribution is presented in Part II of this report, *Conditions of Competition in the U.S. Market*.

Price

Detailed information on the pricing of xanthan gum is presented in Part V of this report, *Pricing and Related Information*.

PART II: CONDITIONS OF COMPETITION IN THE U.S. MARKET

INTRODUCTION

Xanthan gum is a natural, biodegradable hydrocolloid with unique thickening and stabilizing properties which allow it to be used in a variety of industries. The industries produce consumer products (including oral care, personal care and pharmaceutical products), certain food and beverages, and oil and industrial goods.¹

CHANNELS OF DISTRIBUTION

Shipments of U.S.-produced xanthan gum and imports from Austria, China, and nonsubject sources have gone principally to end users rather than distributors during 2009-11, and interim 2011 and 2012 (table II-1).

Table II-1

Xanthan gum: U.S. producers' and importers' shares of reported U.S. shipments, by source and channel of distribution, January 2009-March 2012

* * * * *

GEOGRAPHIC DISTRIBUTION

U.S. producers and importers of xanthan gum from Austria and China sell throughout the continental United States and in Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands. Among 15 responding importers, four sell throughout the United States, six sell throughout the continental United States and five only sell in one or more specific areas of the United States.

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Supply

Domestic Production

Based on available information, the U.S. industry has the ability to respond to changes in demand with large changes in the quantity of shipments of xanthan gum to the U.S. market. The main contributing factors to this degree of responsiveness of supply are ***.

Industry capacity

The U.S. industry's annual capacity *** million pounds in 2009 to *** million in 2010 and remained at that level in 2011. ***, production *** from 2009 to 2011- thus capacity utilization *** from *** percent in 2009, *** percent in 2011. The rate was *** percent in interim 2012 as compared with *** percent in interim 2011.

¹ See Petition, p. 6.

Alternative markets

During 2009-11, U.S. producers' exports ranged from a high of *** percent of total shipments in 2009 to *** in 2010. During interim 2012, exports were equal to *** in interim 2011.²

Inventory levels

The industry's ratio of end-of-period inventories (to total shipments) *** from *** percent of in 2009 to *** percent in 2010 and then *** to *** percent in 2011. During January-March 2012, it was *** percent as compared with *** percent in January-March 2011.

Production alternatives

Kelco produces ***. The other U.S. producer, ADM, ***.

Supply constraints

Neither of the U.S. producers reported that they had refused, declined or been unable to supply xanthan gum since January 1, 2009. However, one importer and reseller, ***, reported that it has not been able to get any high viscosity grade xanthan gum from Kelco or ADM in a timely manner during the last two years. Another importer, ***, reported that there has been a limited domestic supply and some supply constraints from foreign producers during the last 3 to 4 months.

Subject Imports From Austria

Based on available information, the only Austrian producer, Jungbunzlauer, has the ability to respond to changes in demand with *** changes in the quantity of shipments of xanthan gum to the U.S. market. The main contributing factors to this degree of responsiveness of supply are ***.

Industry capacity

Jungbunzlauer's capacity was *** million pounds annually during 2009-11. It is projected to reach *** in 2012 and to ***. Its capacity utilization rate *** from *** percent in 2009 to *** percent in 2010 and was at *** percent in 2011. During January-March 2012, capacity utilization was *** percent as compared to *** percent in January-March 2011. It is projected to be *** percent for 2012 and *** percent for 2013.

Alternative markets

The majority of Jungbunzlauer's shipments are ***.³ Home market shipments accounted for less than *** percent of total shipments annually during 2009-11 and interim 2012 and interim 2011, and are projected to remain below *** percent for all of 2012 and 2013. Exports to markets other than the United States ranged from a low of *** percent of total shipments in 2009 to *** percent in 2011. During January-March 2012, they were equal to *** percent of total shipments as compared with *** percent in January-March 2011. They are projected to account for *** percent of total shipments in 2012 and *** percent in 2013.

² Some U.S. exports ***.

³ In addition to the United States, Jungbunzlauer ***.

Inventory levels

Jungbunzlauer's ratio of end-of-period inventories to total shipments was *** percent in 2009, *** percent in 2010, and *** percent in 2011. During interim 2012, the ratio was *** percent as compared with *** percent in interim 2011. The ratio is projected to be *** percent and *** percent for 2012 and 2013, respectively.

Production alternatives

Jungbunzlauer ***.

Supply constraints

***.

Subject Imports From China⁴

Available information indicates that the Chinese industry has the ability to respond to changes in demand with moderate changes in the quantity of shipments of xanthan gum to the U.S. market. The main contributing factors to this degree of responsiveness of supply are moderately high capacity utilization rates, the existence of large alternative markets, and moderate inventory levels.

Industry capacity

Industry capacity for Chinese producers was *** million pounds in 2009, *** million pounds in 2010, and *** million pounds in 2011. It is projected to reach *** million pounds in 2012 and *** million pounds in 2013. Its capacity utilization rate *** from *** percent in 2009 to *** percent in 2010 and then *** to *** percent in 2011. During January-March 2012, capacity utilization was *** percent as compared to *** percent in January-March 2011. Capacity utilization is projected to be *** percent in 2012 and *** percent in 2013.

Alternative markets

The majority of shipments of Chinese is either to its home market or to non-U.S. export markets.⁵ Home market shipments accounted for *** percent of its total shipments in 2009, *** percent in 2010, and *** percent in 2011. During January-March 2012, they were *** percent of total shipments as compared with *** percent in January-March 2011. They are projected to account for *** percent of total shipments in 2012 and *** percent in 2013. Exports to markets other than the United States ranged from a low of *** percent of total shipments in 2011 to *** percent in 2009. During January-March 2012, they were equal to *** percent of total shipments as compared with *** percent in January-March 2011. They are projected to account for *** percent of total shipments in 2012 and *** percent in 2013.

⁴ Data on imports from China were obtained from Commission questionnaire responses.

⁵ In addition to the United States, China's export markets include the Middle East, the European Union, Latin America, South Asia, Russia, Canada, and South Africa.

Inventory levels

The ratio of end-of-period inventories to total shipments for Chinese producers *** from *** percent in 2009 to *** percent in 2010 and to *** percent in 2011. During January-March 2012, it was *** percent as compared with *** percent in January-March 2011.

Production alternatives

None of the Chinese producers reported producing other products on the machinery and equipment used to produce xanthan gum.

Supply constraints

Three importers of Chinese material reported that they have experienced shortages of Chinese-produced xanthan gum since January 1, 2009. *** reported that there has been a shortage of xanthan gum in the U.S. market starting in 2008/09. Recent limits on its ability to source Chinese material driven by crossover demand resulting from the guar gum shortage⁶ has created a very tight supply. *** reported that lead times for imports from its Chinese supplier have been longer during the past six months. *** reported that the rise in the price of oil and increased activity in this industry has driven up the demand for xanthan gum.

U.S. Demand

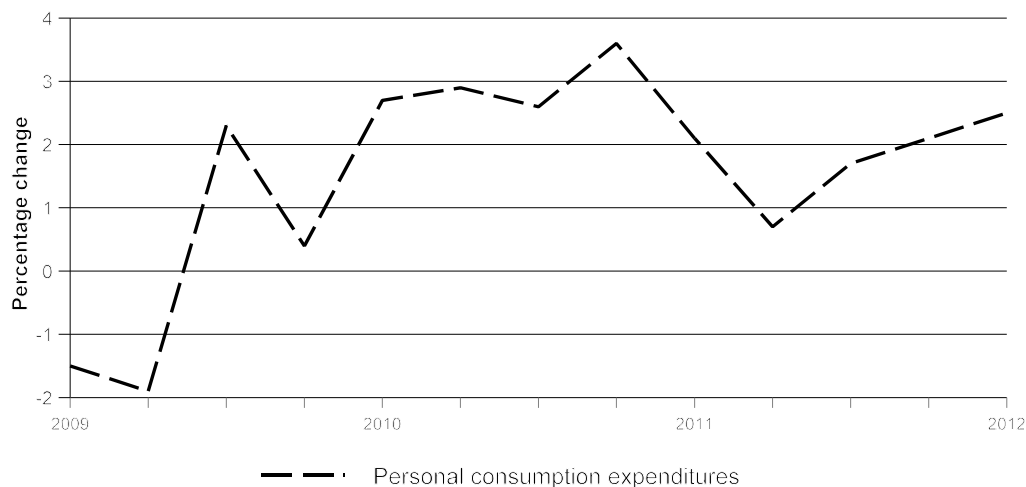
The demand for xanthan gum is driven by demand in major end-use markets including the consumer products market, the food and beverages market, and oil and industrial applications.⁷ The overall demand, as measured by personal consumption expenditures,⁸ declined during the first two quarters of 2009 and then increased in all quarters from July-September 2009 through January-March 2012 (figure II-1).

⁶ At the conference, the attorney representing the Chinese producers stated that guar gum, a substitute for xanthan gum in some applications, has recently been in short supply and its price has risen sharply resulting in increased use of xanthan gum as a substitute in some applications. Conference transcript p. 14 (Barringer).

⁷ Although xanthan gum accounts for a relatively small share of the cost of end-use products in which it is used, evidence of the availability of substitute products as discussed later in this section suggests that demand is moderately sensitive to changes in price.

⁸ At the conference, the vice president of marketing for Kelco stated that demand for xanthan gum tends to follow consumer spending trends. Conference transcript p. 78 (Bowman).

Figure II-1
Percent changes in real personal consumption expenditures, by quarters, January 2009-March 2012



Source: Bureau of Economic Analysis, U.S. Department of Commerce.

Apparent Consumption

The quantity of apparent consumption of xanthan gum *** from *** million pounds in 2009 to *** million pounds in 2010 and to *** million pounds in 2011. During January-March 2012, apparent consumption was *** million pounds as compared with *** million pounds in January-March 2011.

Demand Perceptions

*** U.S. producers and 11 of 14 responding importers reported that demand for xanthan gum has increased since January 1, 2009. One importer each reported that demand had fluctuated, that it was unchanged, or had decreased. Firms reporting an increase in demand frequently cited increases in uses for food, beverages, and consumer goods markets. Some firms also cited an increase in oil drilling activity, while others reported that this industry’s activity has fluctuated. The one firm reporting a decrease in demand stated that xanthan gum is not one of the company’s important product lines.

Firms were asked whether the xanthan gum market is subject to business cycles or conditions of competition (including seasonal business) distinctive to xanthan gum. Both U.S. producers and 4 of 14 importers reported that the market is subject to business cycles or distinct conditions of competition, while 10 others reported that the industry is not subject to such cycles or conditions. In answering “yes,” some of the responses cited fluctuations in demand in the oil market due to frequent changes in oil prices. One importer reported that oil drilling is more common in the first and fourth quarters of the year due to colder weather. Another importer reported that demand for xanthan gum is stronger in the early spring due to increased demand for its use in salad dressings, sauces, and beverages.

Substitute Products

When asked if there are substitutes for xanthan gum, *** U.S. producers and 7 of 15 responding importers answered “no,” whereas 8 importers answered “yes.” The most frequently cited substitute was guar gum for use in a variety of applications including drilling fluids and in fracturing, bakery and dairy

products, sauces, cat litter, and pet foods. Six importers reported that variations in the price of guar gum affected the demand and/or price of xanthan gum. They reported that sharp increases in the price of guar gum during the past two years has led to reduced demand for guar gum and increased demand for xanthan gum.⁹

Cost Share

When producers and importers were asked to estimate the cost share of xanthan gum as a percentage of the cost of end-use products, most indicated that the share is small. One producer *** reported that it accounts for 3.0 percent of the cost of dressings and sauces, 4.0 percent of the cost of toothpaste, and 4.0 percent of the cost of drilling mud. One importer *** reported that it accounts for about 2.0 percent of the cost of food and beverage products and industrial applications, and 3.0 percent of the cost of oilfield applications. Another importer *** reported that xanthan gum accounts for 0.5 percent of the cost of dressings, relishes, and condiments. Another importer *** reported that it accounts for 15.0 percent of the cost of drilling fluid systems, 0.5 percent of the cost of cementing, and 0.1 percent of the cost of fracturing.

SUBSTITUTABILITY ISSUES

The degree of substitution between domestic and imported xanthan gum depends upon such factors as relative prices, quality (e.g., grade standards, reliability of supply, defect rates, etc.), and conditions of sale (e.g., price discounts/rebates, lead times between order and delivery dates, payment terms, product services, etc.). Based on available data, staff believes that there is fairly close substitutability between U.S.-produced xanthan gum and imports from Austria and China.

Lead Times

U.S.-produced and imported xanthan gum from the subject countries is most commonly sold from inventories rather than produced to order. Kelco reported that *** and ADM reported that ***. The importer of product from Austria reported that ***. Among importers from China, 7 of 9 responding producers reported that 80 to 100 percent of their sales are from inventory.

Among U.S. producers, delivery lead times for material in inventory ranged from *** days for Kelco, and from *** days for ADM. ADM reported that the delivery lead time is *** days for xanthan gum produced to order. Most importers from the subject countries reported delivery lead times of 1 to 7 days for material held in inventory and from 14 to 19 days for products produced to order or ordered from their foreign manufacturer's inventory.

Factors Affecting Purchasing Decisions

Petitioners and respondents differ in their views on the factors affecting purchasing decisions. The petitioner has argued that the growth in the market share of imports from Austria and China has been due to the low prices of these imports.¹⁰ The Chinese producers have argued that the growth in Chinese imports was due to a rapid expansion in oilfield demand that the domestic industry did not service

⁹ Guar gum was discussed as a substitute at the conference. Conference transcript p.14 (Barrington), p. 32 (Viala).

¹⁰ Petitioner's postconference brief, p. 31.

because it was focused on other market segments.¹¹ The Austrian producer reported that it is not the low priced supplier in the U.S. market. It reported that it makes a premium product and that it has a reputation for quality and reliability.¹²

Comparisons of Domestic Products and Subject and Nonsubject Imports

To determine whether U.S.-produced xanthan gum can generally be used in the same applications as imports from Austria and China, U.S. producers and importers were asked whether the products can “always,” “frequently,” “sometimes,” or “never” be used interchangeably. U.S. producers and a majority of importers reported that they are “always” or “frequently” interchangeable (table II-2). Several importers provided additional comments on the comparisons. *** stated that xanthan gum is a complex product, and even if two suppliers offer the same specification, it might happen that one xanthan gum works in a specific application, and the other does not. *** stated that the quality of the imported product from China has always been inferior to the U.S.-produced product, a problem that is a concern to domestic food manufacturers. *** reports that imports from China have been more readily available than U.S.-produced products where supply is limited. *** reported that although there has been a growing demand for Chinese-produced xanthan gum, there are certain applications where the U.S.- or Austrian-produced gum is needed due to certain problems with the Chinese product. *** reported that it imports a special category of high priced material from China that is not available in sufficient volume from U.S. producers.

Table II-2
Xanthan gum: Perceived degree of interchangeability of product produced in the United States and in other countries, by country pairs

Country pair	U.S. producers ¹				U.S. importers			
	A	F	S	N	A	F	S	N
U.S. vs. Austria	***	***	***	***	3	2	0	0
U.S. vs. China	***	***	***	***	4	3	5	0
U.S. vs. nonsubject	***	***	***	***	2	2	1	0
Austria vs. China	***	***	***	***	2	2	3	0
Austria vs. nonsubject	***	***	***	***	2	1	1	0
China vs. nonsubject	***	***	***	***	2	3	1	0

Note: “A” = Always, “F” = Frequently, “S” = Sometimes, and “N” = Never.
¹Producer responses includes Tate and Lyle which stopped producing xanthan gum in July 2009.
Source: Compiled from data submitted in response to Commission questionnaires.

Firms were also asked how often differences in factors other than price between the U.S.-produced products and imports from Austria and China were a significant factor in their sales of xanthan gum (table II-3). U.S. producers reported that ***. In contrast, three importers reported that these factors are “always” or “frequently” important in sales of imports from Austria, and three reported that they are “sometimes” or “never” a factor in sales of imports from Austria. A majority of importers reported that such factors are “always” or “frequently” important in sales of imports from China.

*** provided additional comments. *** stated that there has been a perception of quality problems with the Chinese product among certain U.S. purchasers in the consumer end-use segment of the market. However, as a result of low prices, Chinese products are now succeeding in penetrating that

¹¹ Chinese producers’s postconference brief , p. 2.

¹² Conference transcript, p. 136 (Rainville).

market segment. *** reported that the lead time for Chinese manufacturers are shorter than for U.S.-produced products, larger quantities are available, and more product varieties are available to suit their needs. *** reported that imports from China have advantages over the U.S.-produced product in consistent quality, customer service, warehousing, just-in-time delivery, technical service, and R&D support. *** reported that in the case of the U.S. industry, there has been a steady downsizing of the support efforts over the last ten years with the reduction of sales/marketing support, laboratory support, inventory support, production selection, and quality. It reported that it has never had quality problems with the Chinese-made material. *** reported that gum imported from Austria and China has been more readily available than American-sourced material in recent years. It also mentioned that Austrian-sourced material can be labeled GMO free, a critical factor for certain customers.

Table II-3
Xanthan gum: Perceived importance of factors other than price between product produced in the United States and in other countries, by country pairs

Country pair	U.S. producers				U.S. importers			
	A	F	S	N	A	F	S	N
U.S. vs. Austria	***	***	***	***	1	2	2	1
U.S. vs. China	***	***	***	***	2	6	3	1
U.S. vs. nonsubject	***	***	***	***	1	3	1	1
Austria vs. China	***	***	***	***	2	2	2	1
Austria vs. nonsubject	***	***	***	***	1	1	2	1
China vs. nonsubject	***	***	***	***	1	3	1	1

Note: "A" = Always, "F" = Frequently, "S" = Sometimes, and "N" = Never.

¹Producer responses includes Tate and Lyle, which stopped producing xanthan gum in July 2009.

Source: Compiled from data submitted in response to Commission questionnaires.

PART III: U.S. PRODUCERS' PRODUCTION, SHIPMENTS, AND EMPLOYMENT

The Commission analyzes a number of factors in making injury determinations (see 19 U.S.C. §§ 1677(7)(B) and 1677(7)(C)). Information on the alleged margin of dumping was presented earlier in this report and information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V. Information on the other factors specified is presented in this section and/or Part VI and (except as noted) is based on the questionnaire responses of three firms that accounted for 100 percent of U.S. production of xanthan gum during 2011.

U.S. PRODUCERS

U.S. producers of xanthan gum, their production locations, corporate affiliation, position with respect to the petition, and share of 2011 U.S. production are shown in table III-1.

Table III-1

Xanthan gum: U.S. producers, position with respect to the petition, production locations, share of 2011 U.S. production, and corporate affiliation

Firm	Position on petition	Production location(s)	Share of 2011 production (percent)	Corporate affiliation
ADM	***	Decatur, IL	***	None
CP Kelco	Support	San Diego, CA Okmulgee, OK	***	J.M. Huber Corp., Edison, NJ
Tate & Lyle ¹	***	Decatur, IL	***	Tate & Lyle PLC, London, UK
Total			100.0	
¹ Tate & Lyle ***. US producer questionnaire response, section II-2. Source: Responses to the Commission questionnaires, public conference, and petition.				

U. S. CAPACITY, PRODUCTION, AND CAPACITY UTILIZATION

Table III-2 presents U.S. producers' production capacity, production, and capacity utilization for xanthan gum. Capacity utilization *** during 2009-11, from approximately *** percent in 2009 to about *** percent in 2010, before rising to above *** percent in 2011.

***.¹ ***.² ***.³

¹ ***'s U.S. Producer Questionnaire Response, section II-2.

² ***'s U.S. Producer Questionnaire Response, section II-2.

³ ***'s U.S. Producer Questionnaire Response, section II-2.

Table III-2
Xanthan gum: U.S. capacity, production, and capacity utilization, 2009-11, January-March 2011, and January-March 2012

* * * * *

***.⁴

*** reported that it *** on the same equipment and machinery used in the production of xanthan gum and/or using the same production and related workers employed to produce xanthan gum.⁵ *** reported that *** other products on the same equipment and machinery used in the production of xanthan gum.⁶

*** reported that ***.⁷ ***.⁸ *** further reported that its overall capacity is generally limited by ***.⁹ *** reported that its capacity constraint was ***.¹⁰ *** were not involved in a toll agreement nor did they produce xanthan gum in a foreign trade zone.¹¹

U.S. PRODUCER'S SHIPMENTS

Table III-3 presents U.S. producers' xanthan gum shipments during the period examined. In 2009, *** had the largest share (*** percent) of commercial U.S. shipments, followed by *** with *** percent, and *** with *** percent of commercial U.S. shipments. In 2010, *** had the largest share (*** percent) of commercial U.S. shipments, followed by *** with *** percent, and *** with *** percent.¹² In 2011, *** retained the largest share (*** percent) of commercial U.S. shipments, followed by *** with *** percent. The established balance of commercial U.S. shipments continued through the interim periods, with *** at *** percent and *** at *** percent during interim January-March 2011 and *** at *** percent and *** at *** percent during interim January-March 2012.¹³

Table III-3
Xanthan gum: U.S. producer's shipments, by type, 2009-11, January-March 2011, and January-March 2012

* * * * *

The individual company unit values of commercial U.S. shipments were as follows: in 2009, ***; in 2010, ***; in 2011, ***. During the January-March interim periods, the individual company unit values of U.S. commercial shipments were as follows: ***.¹⁴

⁴ ***'s U.S. Producer Questionnaire Response, section I-6.

⁵ ***'s U.S. Producer Questionnaire Response, section II-3.

⁶ ***'s U.S. Producer Questionnaire Response, section II-3.

⁷ ***'s U.S. Producer Questionnaire Response, section II-4.

⁸ Ibid.

⁹ Ibid.

¹⁰ ***'s U.S. Producer Questionnaire Response, section II-4.

¹¹ U.S. Producer Questionnaire Responses, section II-5 and section II-6.

¹² ***.

¹³ US producer questionnaire responses, section II-8a.

¹⁴ Ibid.

*** reported internal consumption of xanthan gum during the period for which data were collected. *** accounted for *** of export shipments as follows: *** percent with a unit value of \$*** in 2009; *** percent with a unit value of \$*** in 2010; *** percent with a unit value of \$*** in 2011; *** percent with a unit value of \$*** during interim January-March 2011; and *** percent with a unit value of \$*** in interim January-March 2012. *** reported its export markets as follows: ***. ***'s export shipment unit values were as follows: \$*** in 2009; \$*** in 2010; \$*** in 2011; \$*** during interim January-March 2011; and \$*** during interim January-March 2012. *** reported export markets in ***.¹⁵

Table II-4 presents U.S. producers' U.S. shipments by end use application.

Table III-4
Xanthan gum: U.S. producers' U.S. shipments, by end use, 2009-11, January-March 2011, and January-March 2012

* * * * *

Changes in demand for the major end-use applications for xanthan gum, which are food and beverage, consumer applications, and oilfield & industrial applications, may affect a U.S. producer's U.S. shipments, export shipments, and shipment unit values. Food demand may be affected by dieting fads, such as the Atkins diet; consumer applications by personal care preferences and pharmaceutical dispensations; oil drilling demand varies with changes in U.S. rig count.

U.S. PRODUCER'S INVENTORIES

Table III-5 presents data on U.S. producers' inventories during the period examined. In the aggregate, U.S. producers' inventory levels increased irregularly, by *** percent, during 2009-11 and rose by *** percent during interim January-March 2011-12. Specifically, CP Kelco's inventories ***, ADM's inventories ***. Tate & Lyle's inventories were *** pounds in 2009 and were ***.

Table III-5
Xanthan gum: U.S. producer's end-of-period inventories, 2009-11, January-March 2011, and January-March 2012

* * * * *

U.S. EMPLOYMENT, COMPENSATION, AND PRODUCTIVITY

Table III-6 presents U.S. producers' aggregate employment-related data during the period of investigation. Specifically, ***'s average number of production and related workers (PRWs) and hours worked by PRWs *** steadily by *** PRWs, or by *** percent, from *** PRWs to *** PRWs, during 2009-11, and *** by *** PRWs, or by *** percent, in interim January-March 2012 as compared with interim January-March 2011. However, as PRWs *** during 2009-11, hourly wages paid to ***'s PRWs *** irregularly, by \$*** or *** percent, during 2009-11, before *** by \$*** or *** percent in interim January-March 2012 as compared with interim January-March 2011. The productivity of ***'s PRWs ***, by *** percent, from *** pounds per hour in 2009 to *** pounds per hour in 2011, and *** to *** pounds per hour during interim January-March 2012 as compared with *** pounds per hour during interim January-March 2011. ***'s corresponding unit labor costs ***, by \$*** per pound, from \$***

¹⁵ Ibid.

per pound in 2009 to \$*** per pound in 2011, and *** by \$*** per pound to \$*** during interim January-March 2012 as compared with \$*** per pound in interim January-March 2011.

Table III-6

Xanthan gum: Average number of production and related workers, hours worked, wages paid to such employees, hourly wages, productivity, and unit labor costs, 2009-11, January-March 2011, and January-March 2012

* * * * *

, ***'s average number of production and related workers (PRWs) and hours worked by PRWs *** by *** PRWs, or by *** percent, from *** PRWs to *** PRWs, during 2009-11, and *** by *** PRWs, or by *** percent, in interim January-March 2012 as compared with interim January-March 2011. As PRWs *** during 2009-11, hourly wages paid to ***'s PRWs ***, by \$ or *** percent, during 2009-11, and *** by \$*** or *** percent in interim January-March 2012 as compared with interim January-March 2011. The productivity of ***'s PRWs ***, by *** percent, from *** pounds per hour in 2009 to *** pounds per hour in 2011, and *** pounds per hour during interim January-March 2012 as compared with *** pounds per hour during interim January-March 2011. ***'s corresponding unit labor costs ***, by \$*** per pound, from \$*** per pound in 2009 to \$*** per pound in 2011, and *** \$*** per pound to \$*** during interim January-March 2012 as compared with \$*** per pound in interim January-March 2011.

In 2009, *** employed *** PRWs at average wages of \$*** per hour. These PRWs produced *** pounds of xanthan gum per hour at a unit labor cost of \$*** per pound.

PRODUCERS' IMPORTS AND NON-IMPORT PURCHASES

***.¹⁶ ***.¹⁷

Table III-7 presents ***.

Table III-7

Xanthan gum: Producers' production of xanthan gum and direct subject imports of xanthan gum, by firm, 2009-11, January-March 2011, and January-March 2012

* * * * *

¹⁶ ***'s importer questionnaire response, section II-6a.

¹⁷ ***'s importer questionnaire response, section II-4.

PART IV: U.S. IMPORTS, APPARENT CONSUMPTION, AND MARKET SHARES

U.S. IMPORTERS

The Commission sent questionnaires to 29 firms believed to be importers from Austria, China, and nonsubject sources of xanthan gum, based on proprietary information provided by Customs. Questionnaire responses were received from 16 companies, including from the vast majority of importers from Austria and China.¹ Fifteen firms imported the subject merchandise during January 2009-March 2012, and two imported from other sources.

U.S. importers responding to the questionnaires were located in Delaware, Georgia, Illinois (2), Massachusetts, Maryland, Minnesota, New Jersey (2), New York, Ohio, Pennsylvania, and Texas (5). No U.S. importers entered the subject product into or withdrew it from bonded warehouses, entered the subject product into or withdrew it from foreign trade zones, or imported the subject product under the temporary importation under bond (TIB) program.²

Table IV-1 lists all responding U.S. importers and their quantity of imports, by source, in 2011. *** importers accounted for *** percent of total reported imports in 2011; ***. ***.

Table IV-1
Xanthan gum: Reported U.S. imports, by importer and by source of imports, 2011

* * * * *

U.S. IMPORTS

Xanthan gum is provided for in a basket subheading for polysaccharides and their derivatives in official U.S. import statistics (HTS subheading 3913.90.20), and thus the subheading is overly broad. Data on U.S. imports of xanthan gum presented in this report are from responses to Commission questionnaires. During January 2009-March 2012, responding firms' U.S. imports of xanthan gum from Austria accounted for *** percent of the quantity of reported xanthan gum exports to the United States from Austria, and approximately *** percent of reported exports to the United States from China. Based on official U.S. import statistics for the basket subheading 3913.90.20, responding firms' U.S. imports of xanthan gum from Austria accounted for between *** percent (during interim January-March 2011) and *** (during 2011) percent of the quantity of official U.S. import statistics for Austria, and responding firms' U.S. imports of xanthan gum from China accounted for between *** percent (during interim January-March 2011) and *** percent (during 2011) of the quantity of official U.S. import statistics for China. Based on total official U.S. import statistics for 2009-11 and the interim January-March 2011-12 periods, responding firms' U.S. imports of xanthan gum from Austria accounted for between *** percent (during interim January-March 2012) and *** percent (during 2009) of the quantity of total official U.S. import statistics, and responding firms' U.S. imports of xanthan gum from China accounted for between *** percent (during 2009) and *** percent (during interim January-March 2012) of the quantity of official U.S. import statistics.

¹ In addition to the 16 responses, the Commission received responses from 12 firms indicating that they did not import xanthan gum during the period of investigation. These firms indicated that they imported other chemicals, e.g., dextran and hyaluronic acid, under the basket HTS subheading 3913.90.20, polysaccharides and their derivatives. ***.

² Importer questionnaire responses, sections I-8; I-9; and I-10.

Table IV-2 presents data on U.S. imports of xanthan gum. The volume of U.S. imports of xanthan gum from Austria ***, while the value of U.S. imports of xanthan gum from Austria *** throughout the period examined. Both the volume and value of U.S. imports of xanthan gum imported from China *** the period examined. Both the volume and value of imports of xanthan gum from nonsubject countries *** during the period for which data were gathered. However, while unit values for imports of xanthan gum from Austria and nonsubject sources were in the range of \$*** to \$*** during January 2009-March 2012, the unit values for imports of xanthan gum from China were in the range of \$*** to \$*** during January 2009-March 2012.

Table IV-2
Xanthan gum: U.S. imports, by sources, 2009-11, January-March 2011, and January-March 2012

* * * * *

NEGLIGENCE

The statute requires that an investigation be terminated without an injury determination if imports of the subject merchandise are found to be negligible.³ Negligible imports are generally defined in the Tariff Act of 1930, as amended, as imports from a country of merchandise corresponding to a domestic like product where such imports account for less than 3 percent of the volume of all such merchandise imported into the United States in the most recent 12-month period for which data are available that precedes the filing of the petition or the initiation of the investigation. However, if there are imports of such merchandise from a number of countries subject to investigations initiated on the same day that individually account for less than 3 percent of the total volume of the subject merchandise, and if the imports from those countries collectively account for more than 7 percent of the volume of all such merchandise imported into the United States during the applicable 12-month period, then imports from such countries are deemed not to be negligible.⁴ Imports from Austria accounted for 16.3 percent of total imports of xanthan gum by quantity during June 2011-May 2012.⁵ During the same period, imports from China accounted for 68.2 percent, by quantity, of total U.S. imports of xanthan gum compiled from official Commerce statistics.⁶

CUMULATION CONSIDERATIONS

In assessing whether imports compete with each other and with the domestic like product, the Commission has generally considered four factors: (1) the degree of fungibility, including specific customer requirements and other quality related questions; (2) the presence of sales or offers to sell in the same geographical markets; (3) common channels of distribution; and (4) simultaneous presence in the market. Channels of distribution are discussed in *Part I* of this report; fungibility, geographical markets and presence in the market are discussed below.

³ Sections 703(a)(1), 705(b)(1), 733(a)(1), and 735(b)(1) of the Act (19 U.S.C. §§ 1671b(a)(1), 1671d(b)(1), 1673b(a)(1), and 1673d(b)(1)).

⁴ Section 771(24) of the Act (19 U.S.C. § 1677(24)).

⁵ Based on basket HTS subheading 3913.90.20 during June 2011-May 2012.

⁶ Based on questionnaire data for the period January 2011-March 2012, imports from Austria accounted for *** percent of total imports of xanthan gum, by quantity, and imports from China accounted for *** percent.

Fungibility and Presence in the Market

Tables IV-3 through IV-8 presents U.S. producers' U.S. commercial shipments and U.S. importers' U.S. shipments of xanthan gum by end use applications. The data indicate that during the period of investigation, U.S.-produced xanthan gum, as well as imports from Austria and China were present, to varying degrees, in all three end-use segments of the xanthan gum market; however, U. S. producers' U.S. shipments were significant in *** end uses, U.S. shipments of imports from Austria were predominately shipped to *** end uses, and U.S. shipments of imports from China were predominately shipped to *** end uses. Additional discussion of fungibility is presented in *Part II*.

Table IV-3

Xanthan gum: U.S. shipments of domestically produced and imported products, by end use, 2009-11, January-March 2011, and January-March 2012

* * * * * * *

Table 3a presents the market share totals accounted for by shipments of U.S.-produced product, Austrian imports, Chinese imports, and nonsubject imports by each end use.

Table IV-3a

Xanthan gum: U.S. shipments of domestically produced and imported products, by end use, 2009-11, January-March 2011, and January-March 2012

* * * * * * *

Table IV-4

Xanthan gum: U.S. producers' U.S. shipments, by end use, 2009-11, January-March 2011, and January-March 2012

* * * * * * *

Table IV-5

Xanthan gum: U.S. shipments of imports from Austria, by end use, 2009-11, January-March 2011, and January-March 2012

* * * * * * *

Table IV-6

Xanthan gum: U.S. shipments of imports from China, by end use, 2009-11, January-March 2011, and January-March 2012

* * * * * * *

Table IV-7

Xanthan gum: U.S. shipments of imports from all other sources, by end use, 2009-11, January-March 2011, and January-March 2012

* * * * * * *

Table IV-8
Xanthan gum: U.S. shipments of imports from all sources, by end use, 2009-11, January-March 2011, and January-March 2012

* * * * *

Geographical Markets

Xanthan gum products produced in the United States are reportedly shipped nationwide. While imports of xanthan gum from the subject countries may enter select Customs districts, such products are then generally sold nationwide.⁷ Table IV-9 presents information on shares of U.S. imports of xanthan gum entered by regions during 2009-11. Imports of xanthan gum from Austria principally enter through Customs districts in the East and MidWest while imports of the subject product from China principally enter through Customs districts in the South.

Table IV-9
Xanthan gum: U.S. imports by sources and Customs districts, 2009-11.

Region	Austria			China		
	2009	2010	2011	2009	2010	2011
Shares of total quantity (percent)						
East ¹	43.1	42.8	44.8	27.4	26.8	13.4
South ²	3.4	5.1	3.9	39.0	37.2	50.0
Mid West ³	36.8	39.3	36.6	24.2	16.5	20.5
West ⁴	16.7	12.9	14.7	9.4	19.5	16.1
Total	100.0	100.0	100.0	100.0	100.0	100.0

¹ Includes Baltimore, MD; Boston, MA; Buffalo, NY; Charleston, NC; Charlotte, NC; New York, NY; Norfolk, VA; Philadelphia, PA; Ogdensburg, NY; and Savannah, GA.
² Includes Dallas/Fort Worth, TX; El Paso, TX; Houston/Galveston, TX; Laredo, TX; Miami, FL; Mobile, AL; New Orleans, LA; and San Juan, PR.
³ Includes Chicago, IL; Cleveland, OH; Detroit, MI; and St. Louis, MO.
⁴ Includes Anchorage, AK; Great Falls, MT; Los Angeles, CA; San Diego, CA; San Francisco, CA; and Seattle, WA.

Source: Compiled from official Commerce statistics (HTS 3913.90.20).

APPARENT U.S. CONSUMPTION

Data on apparent U.S. consumption of xanthan gum are based on U.S. producers' and importers' shipments as reported in the Commission's questionnaires. Data on apparent U.S. consumption of xanthan gum are presented in table IV-10.

The quantity of U.S. producer's U.S. shipments *** from 2009-11, and *** in interim January-March 2012 as compared to interim January-March 2011. Aggregate quantities of U.S. shipments of subject imports *** from 2009 to 2011, and *** during interim January-March 2012 as compared to interim January-March 2011. The quantity of U.S. shipments of imports from Austria ***, *** percent,

⁷ ***.

from *** pounds in 2009 to *** pounds in 2011. The quantity of U.S. shipments of imports from China *** , by *** percent, from *** pounds in 2009 to *** pounds in 2011.

Table IV-10

Xanthan gum: U.S. producers' U.S. shipments, U.S. shipments of imports, by sources, and apparent U.S. consumption, 2009-11, January-March 2011, and January-March 2012

* * * * *

U.S. MARKET SHARES

Data on market shares in the U.S. market for xanthan gum are presented in table IV-11. The market share of the quantity of U.S. producers' U.S. shipments *** percentage points, from *** percent during 2009 to *** percent during 2011. The corresponding market share value of U.S. producers' U.S. shipments *** percentage points from 2009 to 2011, from *** percent in 2009 to *** percent in 2011. The market share of U.S. producers' U.S. shipments *** percentage points, from *** percent during interim January-March 2011 to *** percent of market share during interim January-March 2012.

The market share of the quantity of U.S. shipments of imports from Austria *** percentage points, from *** percent of apparent consumption quantity in 2009 to *** percent of apparent consumption in 2011. The market share of the quantity of U.S. shipments of imports from Austria *** percentage points, from *** percent during interim January-March 2011 to *** percent of apparent consumption during interim January-March 2012. The market share of the value of U.S. shipments of imports from Austria *** percentage points, from *** percent of apparent consumption value in 2009 to *** percent of apparent consumption value in 2011. The market share of the value of U.S. shipments of imports from Austria *** percentage points, from *** percent during interim January-March 2011 to *** percent of apparent consumption value during interim January-March 2012.

The market share of the quantity of U.S. shipments of imports from China *** percentage points, from *** percent in 2009 to *** percent of apparent consumption quantity in 2011. The market share of the quantity of U.S. shipments of imports from China *** percentage points, from *** percent during interim January-March 2011 to *** percent of apparent consumption during interim January-March 2012. The market share of the value of U.S. shipments of imports from China *** percentage points, from *** percent of apparent consumption value in 2009 to *** percent of apparent consumption value in 2011. The market share of the value of U.S. shipments of imports from China *** percentage points, from *** percent during interim January-March 2011 to *** percent of apparent consumption value during interim January-March 2012.

Table IV-11

Xanthan gum: Apparent U.S. consumption and market shares, 2009-11, January-March 2011, and January-March 2012

* * * * *

RATIO OF SUBJECT IMPORTS TO U.S. PRODUCTION

Information concerning the ratio of subject imports to U.S. production of xanthan gum is presented in table IV-12. Aggregate subject imports were equivalent to *** percent of U.S. production during 2009. This level *** percent during 2010 and to *** percent during 2011 and was *** percent during January-March 2012. U.S. imports from China accounted for *** in the aggregate ratios during the period examined.

Table IV-12

Xanthan gum: U.S. production and ratio of U.S. imports to U.S. production, by sources, 2009-11, January-March 2011, and January-March 2012

* * * * *

PART V: PRICING AND RELATED INFORMATION

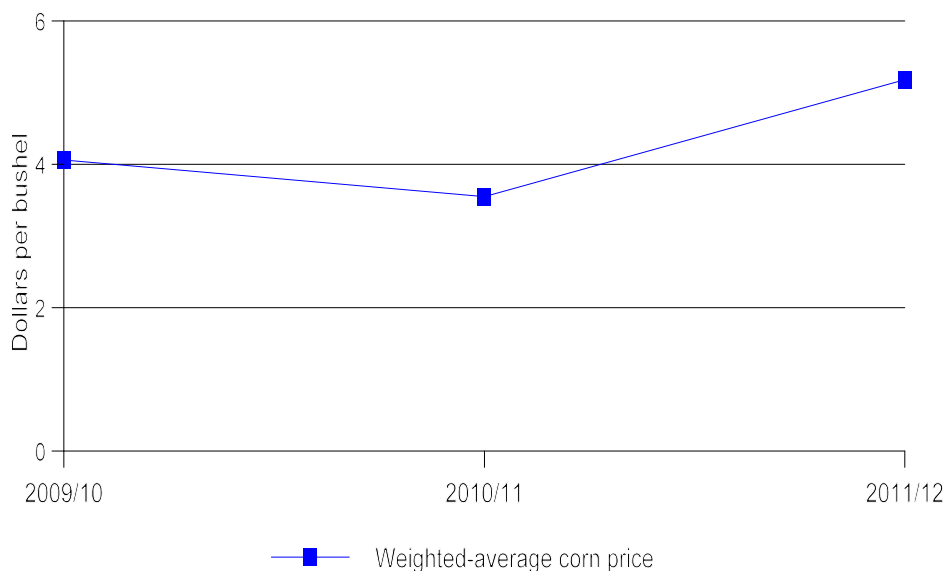
FACTORS AFFECTING PRICES

Raw Material Costs

Raw material costs account ***. A major raw material used in xanthan gum is corn. The price of corn was substantially higher (more than 25 percent) during the 2011/12 crop year than in the 2009/10 and 2010/11 crop years (figure V-1).

Figure V-1

Corn: Weighted-average farm price by market year, 2009/10-2011/12



Source: Department of Agriculture Economic Research, <http://www.ers.usda.gov/data>.

U.S. Inland Transportation Costs

U.S. producers reported that U.S. inland shipping costs account for 2 percent or less of the total delivered price of xanthan gum. Among importers of product from the subject countries, although estimates ranged from 1 percent to as much as 12 percent, the majority of importers reported estimates ranging from 1 percent to three percent. Both U.S. producers reported that ***. Among 13 responding importers, 11 reported that they arrange transportation, and two reported that their customers arrange transportation.

The majority of sales by U.S. producers and importers involve shipping distances of 1,000 miles or less. Kelco reported that *** percent of its shipments fall within this range, and ADM reported that *** percent of its shipments within 1,000. Among 12 responding importers, 11 reported that 85 to 100 percent of their shipments are within 1,000 miles.

PRICING PRACTICES

Pricing Methods

Producers and importers reported that prices are determined by transaction-by-transaction negotiations, contracts, and price lists. Kelco reported that it uses ***. ADM, the other U.S. producer, reported that it uses ***. Among 15 responding importers, the majority use a combination of transaction-by-transaction negotiations and contracts with some also using price lists.

Among U.S. producers, ADM *** basis and Kelco quotes prices on *** basis. Importers reported quoting prices of imports from Austria and China are quoted on both an f.o.b. and delivered basis.

Both U.S. producers and the importer of product from Austria sell ***. Contract terms for imports from China are generally similar to those for U.S. producers and the importer of Austrian products. However, in the case of some long-term contracts, prices can be renegotiated.

Sales Terms and Discounts

Kelco offers ***. Among 14 responding importers, 7 reported that they do not have a discount policy. Among the remaining importers, some offer quantity and/or total volume discounts; one offers discounts based on customer relationships, and one offers discounts based on total purchases of xanthan gum and other hydrocolloids from one of its customers.

PRICE DATA

The Commission asked U.S. producers and importers of xanthan gum to provide quarterly data for the total quantity and value of selected products that were shipped to unrelated customers in the U.S. market during January 2009-March 2012. Pricing data were requested for the following products:

Product 1.–Consumer xanthan gum that, at a minimum, meets typical food grade requirements globally including the Food Chemicals Codex, 21 C.F.R § 172.695 and JEFCA. Applications include oral care, personal care, cosmetic and pharmaceutical. Microbiological count or Total Plate Count (“TPC”) limits range from Not More Than (“NMT”) 500 to as high as 2,000 Colony Forming Units per gram (“CFU/g”) for bacteria. Yeast and mold counts are typically NMT 100 CFU/g. The 1 percent KCI viscosity profiles typically range from 1,200 to 1,600 cP (test is 1 percent gum in 1 percent KCI solution, 60 rpm reading). Alcohol levels are NMT 750 ppm for countries complying with C.F.R § 172.695.

Furthermore, some variants of this product are tested to comply with United States Pharmacopeia (“USP”) <467> Residual Solvents and with purity criteria defined in the most current editions of the *National Formulary*, *Japanese Pharmaceutical Excipients*, and the *European Pharmacopoeia*. Other certifications include certification with widely recognized Kosher and Halal organizations and ECOCERT, and have a Chemical Abstract Service (CAS) number 98112-77-7.

Product 2.–Food and Beverage xanthan gum meets food grade requirements as dictated by the Food Chemicals Codeex, 21 C.F.R § 172.695 and JEFCA. Applications include, but are not limited to, basic food and beverage applications including baking, condiments, instant beverages, and reduced calorie beverages. Microbiological counts are typically NMT than 2,000 CFU/g for PC and NMT 100 CFU/g for yeast and mold. The 1 percent KCI viscosity profiles are basic and may range from 1,200 - 1,600 cP or from 1,300-1,700 cP (test is 1 percent gum in 1 percent KCI solution, 60rpm reading).

Alcohol levels are NMT 750 ppm for countries complying with CFR.

Other certifications include certification with Kosher and Halal organizations.

Product 3.— xanthan gum intended for **Oilfield and Industrial** applications. The functionality provided in oilfield is viscosity, with 0.28 percent gum in seawater viscosities at 3 rpm at Not Less Than (“NLT”) 16.0 Fann dial readings and at 6 rpm NLT 18 Fann dial readings. These represent fitness to use. Typical household care applications include laundry products, liquid dish detergent, surfactant-containing systems, and hard surface cleaners. General industrial applications include fire fighting foams, agricultural chemicals, industrial and institutional cleaners, and architectural paints and coatings. These industries are heavily regulated due to waste water and sewer regulations. Characteristic viscosity ranges typically run from 800 -1,200 cP (test is 1 percent gum in DI water, 60 rpm reading). Despite being used for oilfield and industrial applications, a number of regulatory bodies still dictate what is considered a product that provides fitness to use. The TSCA Inventory is a common example of regulatory oversight. Microbiological requirements are not normally required in the Oilfield and Industrial segment. The specifications required for this set of applications are measured on a lot by lot basis. Chemical Abstract Service (CAS) number 98112-77-7.

Three¹ U.S. producers and 11 importers provided usable pricing data for sales of the requested products, although not all firms reported pricing for all products for all quarters. No prices of product 1 from Austria were reported as there were no sales of consumer grade xanthan gum in the U.S. market. . Pricing data reported by these firms accounted for approximately 99.1 percent of U.S. producers’ shipments of xanthan gum, all U.S. shipments of imports from Austria, and 74.3 percent of shipments of imports from China during January 2009 through March 2012.

Price Trends

Quarterly producer and importer prices and shipment quantities for January 2009 through March 2012 for the three pricing products on sales to distributors and end users are shown in tables V-1 through V-6 and in figure V-2. U.S. producer prices for all three products fluctuated within a fairly narrow band throughout the 13 quarter period showing no discernible trend. Prices of product 2 from Austria also fluctuated with no clear overall trend during this period. However, prices of product 3 on sales to both distributors and end users *** during 2009, and were generally *** during the remainder of the period. Usable Chinese price data for product 1 were reported in 1 quarter on sales to distributors and in 3 quarters on sales to end users. Prices of products 2 and 3 imported from China fluctuated with no overall trend during the 13 quarter period. A summary of price ranges and percentage changes in prices is shown in table V-7.

Table V-1

Xanthan gum: Weighted-average f.o.b. prices and quantities of product 1 sold to distributors and margins of underselling/(overselling), by quarters, January 2009-March 2012

* * * * *

¹ Tate and Lyle, which stopped producing xanthan gum in July of 2009, reported price data for sales during 2009 and 2010. Its prices were ***.

Table V-2

Xanthan gum: Weighted-average f.o.b. prices and quantities of product 1 sold to end users and margins of underselling/(overselling), by quarters, January 2009-March 2012

* * * * *

Table V-3

Xanthan gum: Weighted-average f.o.b. prices and quantities of product 2 sold to distributors and margins of underselling/(overselling), by quarters, January 2009-March 2012

* * * * *

Table V-4

Xanthan gum: Weighted-average f.o.b. prices and quantities of product 2 sold to end users and margins of underselling/(overselling), by quarters, January 2009-March 2012

* * * * *

Table V-5

Xanthan gum: Weighted-average f.o.b. prices and quantities of product 3 sold to distributors and margins of underselling/(overselling), by quarters, January 2009-March 2012

* * * * *

Table V-6

Xanthan gum: Weighted-average f.o.b. prices and quantities of product 3 sold to end users and margins of underselling/(overselling), by quarters, January 2009-March 2012

* * * * *

Figure V-2

Xanthan gum: Weighted-average prices and quantities of domestic and imported product, by quarters, January 2009-March 2012

* * * * *

Table-V-7

Xanthan Gum : Summary of weighted-average f.o.b. prices for products 1-3 from the United States Austria, and China, January 2009-March 2012

* * * * *

Price Comparisons

Margins of underselling and overselling by product are presented in tables V-8 and V-9. Prices for xanthan gum imported from Austria were *** those for the U.S.-produced product in *** of *** quarterly comparisons for the three products, by margins ranging from *** percent to *** percent and prices of imports from China were *** in *** of *** comparisons by margins ranging from *** percent to *** percent.

Table-V-8

Xanthan gum : Instances of underselling of imports from Austria and China to distributors and the range of margins, by products, January 2009-March 2012

* * * * *

Table-V-9

Xanthan gum : Instances of underselling and overselling of imports from Austria and China to end users and the range of margins, by products, January 2009-March 2012

* * * * *

LOST SALES AND LOST REVENUES

In its petition, Kelco reported 6 instances of lost sales due to competition from Austrian imports and 21 instances of lost sales due to competition from imports from China, and 1 instance of lost revenues involving Austria and 3 involving China where it had to reduce or roll back prices of xanthan gum.² The 27 lost sales allegations were valued by Kelco at \$*** million and involved about *** pounds³ and the 4 lost revenues allegations were valued by Kelco at about \$*** and involved over *** pounds of xanthan gum. The staff attempted to contact all purchasers named in the allegations, and 11 purchasers provided responses to the allegations on 12 lost sales allegations and one lost revenue allegation. A summary of the allegations and responses is presented in tables V-10 and V-11.

Table V-10

Xanthan gum: U.S. producers' lost sales allegations

* * * * *

Table V-11

Xanthan gum: U.S. producers' lost revenue allegations

* * * * *

* * * * *

² The petitioner also provided additional lost sales and lost revenue allegations, where contact information was not accurate.

³ Quantities are most commonly reported in kilograms in this industry.

PART VI: FINANCIAL EXPERIENCE OF THE U.S. PRODUCERS

INTRODUCTION

Three U.S. firms provided usable financial data on their xantham gum operations. These data are believed to account for all U.S. xantham gum operations. One firm, ***, reported a small amount of internal consumption accounting for a weighted-average *** percent of total net sales value during the period for which data were requested. These data are not shown separately in this section of the report. No firms reported transfers to related firms or tolling operations. ADM reported a fiscal year end of June 30, CP Kelco reported a fiscal year end of December 31, and Tate & Lyle reported a fiscal year end of March 31.

OPERATIONS ON XANTHAM GUM

Income-and-loss data for U.S. firms on their operations on xantham gum are presented in table VI-1, while selected financial data, by firm, are presented in table VI-2. The responding U.S. producers experienced *** in both net sales quantity and value from 2009 to 2011, and *** in net sales quantity and value in January-March 2012 as compared to January-March 2011. From 2009 to 2011, operating income *** from an ***; however, operating income *** in 2011 as compared to 2010. Between the comparable interim periods, operating income *** in January-March 2011 as compared to January-March 2012, with a related operating margin of *** percent for both periods. The per-unit net sales value *** from 2009 to 2011, and also between the comparable interim periods. Per-unit operating costs and expenses (cost of goods sold (“COGS”) and selling, general, and administrative (“SG&A”) expenses, combined) initially *** in 2010, then *** than per-unit net sales value, which led to a *** in per-unit operating income in 2011 as compared to 2010. Between the comparable interim periods, the per-unit net sales value *** than per-unit operating costs and expenses, which led to a *** in per-unit operating income in January-March 2012 as compared to January-March 2011.

Table VI-1

Xantham gum: Results of operations of U.S. producers, 2009-11, January-March 2011, and January-March 2012

* * * * *

Table VI-2

Xantham gum: Results of operations of U.S. producers, by firm, 2009-11, January-March 2011, and January-March 2012

* * * * *

From 2009 to 2011, per-unit raw material and direct labor costs *** by \$*** and \$***, respectively, while other factory costs *** by \$*** during this time. Between the comparable interim periods, per-unit raw material and direct labor costs *** by \$*** and \$***, respectively, while other factory costs *** by \$***. Thus, the overall change in per-unit COGS during the period examined is primarily the result of ***, which represented *** percent of total COGS and *** percent of overall operating costs and expenses during the period examined.¹ In addition, the domestic xantham gum

¹ For the U.S. industry as a whole, depreciation expense represented *** percent of reported other factory costs during the period examined. For ***, depreciation expense represented *** percent of reported other factory costs

(continued...)

industry's SG&A expenses represented *** percent of overall operating costs and expenses during the period examined, and are also a factor in the industry's reported financial performance.^{2 3}

VARIANCE ANALYSIS

The variance analysis presented in table VI-3 is based on the data in table VI-1. The analysis shows that the *** in operating income from 2009 to 2011 is primarily attributable to *** price and net cost/expense variances (that is, prices *** while net costs/expenses ***). Between the comparable interim periods, the *** in operating income is primarily attributable to *** price variance that offset *** net cost/expense variance (that is, prices *** more than costs/expenses ***).⁴

Table VI-3

Xantham gum: Variance analysis on operations of U.S. producers, 2009-11, and January-March 2011-12

* * * * *

CAPITAL EXPENDITURES AND RESEARCH AND DEVELOPMENT EXPENSES

The responding firms' aggregate data on capital expenditures and research and development ("R&D") expenses are shown in table VI-4. Two firms (***) provided data on both capital expenditures and R&D expenses. Capital expenditures *** irregularly from 2009 to 2011, then *** between the comparable interim periods. *** reported the majority of capital expenditures and R&D expenses during the period for which data were requested. ***'s capital expenditures primarily reflect ***. Further, ***'s R&D expenses primarily reflect ***.⁵

Table VI-4

Xantham gum: Capital expenditures and research and development expenses of U.S. producers, 2009-11, January-March 2011, and January-March 2012

* * * * *

¹(...continued)

during the period examined, while depreciation expense represented *** percent of reported other factory costs for *** during the period examined.

² For ***, SG&A expenses represented *** percent of reported operating costs and expenses during the period examined, while SG&A expenses represented *** percent of reported operating costs and expenses for *** during the period examined.

³ ***.

⁴ A variance analysis is calculated in three parts; sales variance, cost of sales variance, and SG&A expense variance. Each part consists of a price variance (in the case of the sales variance) or a cost variance (in the case of the cost of sales and SG&A expense variance) and a volume variance. The sales or cost variance is calculated as the change in unit price times the new volume, while the volume variance is calculated as the change in volume times the old unit price. Summarized at the bottom of the table, the price variance is from sales; the cost/expense variance is the sum of those items from COGS and SG&A variances, respectively; and the volume variance is the sum of the lines under price and cost/expense variance. The net volume component is generally the smallest component.

⁵ E-mail correspondence from ***, July 2, 2012.

ASSETS AND RETURN ON INVESTMENT

The Commission's questionnaire requested data on assets used in the production, warehousing, and sale of xantham gum to compute return on investment ("ROI"). Data on the U.S. producers' total assets and their ROI are presented in table VI-5. From 2009 to 2011, the total assets for xantham gum irregularly *** from \$*** million in 2009 to \$*** million in 2011, and the ROI irregularly *** from *** percent in 2009 to *** percent in 2011.

Table VI-5

Xantham gum: Asset values and return on investment of U.S. producers, 2009-11

* * * * *

CAPITAL AND INVESTMENT

The Commission requested U.S. producers of xantham gum to describe any actual or potential negative effects of imports of xantham gum from Austria or China on their firms' growth, investment, ability to raise capital, development and production efforts, or the scale of capital investments. Responses provided by U.S. producers follow.

Actual Negative Effects

* * * * *

Anticipated Negative Effects

* * * * *

PART VII: THREAT CONSIDERATIONS AND INFORMATION ON NONSUBJECT COUNTRIES

Section 771(7)(F)(i) of the Act (19 U.S.C. § 1677(7)(F)(i)) provides that—

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the subject merchandise, the Commission shall consider, among other relevant economic factors¹--

(I) if a countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement), and whether imports of the subject merchandise are likely to increase,

(II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports,

(III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,

(IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices, and are likely to increase demand for further imports,

(V) inventories of the subject merchandise,

(VI) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products,

(VII) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission

¹ Section 771(7)(F)(ii) of the Act (19 U.S.C. § 1677(7)(F)(ii)) provides that “The Commission shall consider *** . . . as a whole in making a determination of whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted under this title. The presence or absence of any factor which the Commission is required to consider . . . shall not necessarily give decisive guidance with respect to the determination. Such a determination may not be made on the basis of mere conjecture or supposition.”

under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both),

(VIII) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and

(IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).²

Subsidies are not relevant to these investigations; information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V; and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in Part VI. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows.

THE INDUSTRY IN AUSTRIA

The Commission received a questionnaire response from the only known manufacturer/exporter of xanthan gum in Austria: Jungbunzlauer Austria AG ("JBL Austria"). The firm reported ***.³ The firm also reported ***.⁴ JBL Austria reported that *** percent of the firm's total sales in its most recent fiscal year was represented by sales of xanthan gum.⁵ JBL Austria produces ***.⁶ The firm reported xanthan gum exports to third country markets ***.⁷ JBL Austria exports xanthan gum to *** and *** inventories of xanthan gum in the United States, since 2009.⁸

Table VII-3 presents data for reported Austrian production and shipments of xanthan gum. Austrian production capacity ***, as production *** and end-of period inventories *** during 2009-11. Both Austrian home market sales and exports to the United States *** from 2009-11, and *** during interim January-March 2012 as compared with interim January-March 2011. Austrian exports to all other export markets *** during 2009-11, and *** during interim January-March 2012 as compared with interim January-March 2011. JBL accounted for *** percent of total production of xanthan gum in

² Section 771(7)(F)(iii) of the Act (19 U.S.C. § 1677(7)(F)(iii)) further provides that, in antidumping investigations, ". . . the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other WTO member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry."

³ JBL Austria's foreign producer questionnaire response, section II-2. JBL Austria has ***. JBL Austria's foreign producer questionnaire response, section I-4.

⁴ JBL Austria's foreign producer questionnaire response, section II-3.

⁵ JBL Austria's foreign producer questionnaire response, section II-7.

⁶ JBL Austria's foreign producer questionnaire response, section II-6.

⁷ JBL Austria's foreign producer questionnaire response, section II-10a.

⁸ JBL Austria's foreign producer questionnaire response, section I-3 and section II-7.

Austria in 2011 and JBL accounted for *** percent of the exports of xanthan gum to the United States from Austria in 2011.⁹

Table VII-1
Xanthan gum: Austrian production capacity, production, shipments, and inventories, 2009-11, January-March 2011, January-March 2012, and projected 2012-13

* * * * *

Table VII-2 presents export shipments to the United States of Austrian xanthan gum by end uses.

Table VII-2
Xanthan gum: Austrian producers' export shipments to the United States, by end use, 2009-11, January-March 2011, and January-March 2012

* * * * *

THE INDUSTRY IN CHINA

The Commission received a questionnaire responses from *** known manufacturer/exporters of xanthan gum in China: ***. Three firms, *** together accounted for *** percent of reported xanthan gum production capacity in China in 2011. Of these, *** percent of reported capacity. *** does not produce xanthan gum; however it exports xanthan gum produced by ***.

*** reported that ***. The firm reported ***.¹⁰ *** reported that *** percent of the firm's total sales in its most recent fiscal year was represented by sales of xanthan gum.¹¹ *** produce products other than xanthan gum on the same equipment and machinery used in the production of xanthan gum and reported exports of xanthan gum to third-country markets including ***.¹² *** exports xanthan gum to *** in the United States.¹³ *** inventories of xanthan gum in the United States, *** since 2009.¹⁴

*** reported that its production lines in ***.¹⁵ *** reported constraints on its production capacity as ***.¹⁶

*** reported that ***.¹⁷ *** reported that *** percent of the firm's total sales in its most recent fiscal year was represented by sales of xanthan gum.¹⁸ *** produce products other than xanthan gum on the same equipment and machinery used in the production of xanthan gum and reported exports of

⁹ JBL Austria's foreign producer questionnaire response, section II-10a.
¹⁰ ***'s foreign producer questionnaire response, section II-3.
¹¹ ***'s foreign producer questionnaire response, section II-7.
¹² ***'s foreign producer questionnaire response, section II-6 and section II-11a.
¹³ ***'s foreign producer questionnaire response, section I-3.
¹⁴ ***'s foreign producer questionnaire response, section II-8.
¹⁵ ***'s foreign producer questionnaire response, section II-2.
¹⁶ ***'s foreign producer questionnaire response, section II-5.
¹⁷ ***'s foreign producer questionnaire response, section II-3.
¹⁸ ***'s foreign producer questionnaire response, section II-7.

xanthan gum to third-country markets including ***.¹⁹ *** exports xanthan gum to *** in the United States.²⁰ *** inventories of xanthan gum in the United States, *** since 2009.²¹

*** reported that constraints to its production capacity were ***.²²

*** reported that ***.²³ *** reported that *** percent of the firm's total sales in its most recent fiscal year was represented by sales of xanthan gum.²⁴ *** on the same equipment and machinery used in the production of xanthan gum ***.²⁵ *** reported exports of xanthan gum to third-country markets including ***.²⁶ *** exports xanthan gum to *** in the United States.²⁷ *** inventories of xanthan gum in the United States, *** since 2009.²⁸

*** reported that constraints to its production capacity were ***.²⁹

*** reported that in January 2009 ***.³⁰ *** reported that *** percent of the firm's total sales in its most recent fiscal year was represented by sales of xanthan gum.³¹ *** products other than xanthan gum on the same equipment and machinery used in the production of xanthan gum.³² *** reported exports of xanthan gum to third-country markets including ***.³³ *** exports xanthan gum to *** in the United States.³⁴ *** inventories of xanthan gum in the United States, *** since 2009.³⁵

*** reported that constraints to its production capacity were ***.³⁶

Table VII-3 presents data for reported Chinese production and shipments of xanthan gum.

Table VII-3
Xanthan gum: Chinese production capacity, production, shipments, and inventories, 2009-11, January-March 2011, January-March 2012, and projected 2012-13

* * * * *

Table VII-4 presents export shipments to the United States of Chinese xanthan gum by end uses.

¹⁹ ***'s foreign producer questionnaire response, section II-6 and section II-11a.

²⁰ ***'s foreign producer questionnaire response, section I-3.

²¹ ***'s foreign producer questionnaire response, section II-8.

²² ***'s foreign producer questionnaire response, section II-5.

²³ ***'s foreign producer questionnaire response, section II-2.

²⁴ ***'s foreign producer questionnaire response, section II-7.

²⁵ ***'s foreign producer questionnaire response, section II-4 and section II-5.

²⁶ ***'s foreign producer questionnaire response, section II-11a.

²⁷ ***'s foreign producer questionnaire response, section I-3.

²⁸ ***'s foreign producer questionnaire response, section II-8.

²⁹ ***'s foreign producer questionnaire response, section II-5.

³⁰ ***'s foreign producer questionnaire response, section II-2.

³¹ ***'s foreign producer questionnaire response, section II-7.

³² ***'s foreign producer questionnaire response, section II-6.

³³ ***'s foreign producer questionnaire response, section II-11a.

³⁴ ***'s foreign producer questionnaire response, section I-3.

³⁵ ***'s foreign producer questionnaire response, section II-8.

³⁶ ***'s foreign producer questionnaire response, section II-5.

Table VII-4
Xanthan gum: Chinese producers' export shipments to the United States, by end use, 2009-11, January-March 2011, and January-March 2012

* * * * *

According to ***,³⁷
 According to ***, a significant ***,³⁸ ***,³⁹
 ***,⁴⁰ ***,⁴¹
 ***,⁴² ***,⁴³
 ***,⁴⁴ ***,⁴⁵
 According to ***,⁴⁶

SUBJECT COUNTRIES COMBINED

Data for the combined xanthan gum operations in the two subject countries are presented in table VII-5.

Table VII-5
Xanthan gum: Subject countries' production capacity, production, shipments, and inventories, 2009-11, January-March 2011, January-March 2012, and projected 2012-13

* * * * *

**U.S. INVENTORIES OF XANTHAN GUM
 FROM AUSTRIA AND CHINA**

Reported inventories held by U.S. importers of xanthan gum from Austria and China are shown in table VII-6. U.S. importers' inventories of imports from Austria *** during 2009-11, and continued to *** in interim 2012 as compared with interim 2011. Such *** in Austrian inventories correlate to *** in the ratios of such imports to both imports and U.S. shipments of imports during 2009-11, and *** in interim 2012 as compared to interim 2011. With regard to China, U.S. importers' end-of period inventories of imports and their ratio to U.S. shipments of imports *** during 2009-11, and *** in interim 2012 as compared to interim 2011. However, the ratio of inventories of imports from China to imports *** during 2009-11 and *** in interim 2012 as compared with interim 2011. The resultant aggregate of U.S. importers' end-of period inventories of subject imports *** during 2009-11, while the ratios of said aggregated subject inventories to imports *** and ratio of U.S. shipments of imports *** during 2009-11.

³⁷ ***.
³⁸ ***.
³⁹ ***.
⁴⁰ ***.
⁴¹ ***.
⁴² ***.
⁴³ ***.
⁴⁴ ***.
⁴⁵ Ibid.
⁴⁶ Ibid.

Aggregate subject import inventories ***, whereas the ratios of aggregate subject import inventories to both imports and U.S. shipments of imports *** in interim 2012 as compared to interim 2011.

Table VII-6

Xanthan gum: U.S. importers' end-of-period inventories of imports, by source, 2009-11, January-March 2011, and January-March 2012

* * * * *

U.S. IMPORTERS' IMPORTS SUBSEQUENT TO MARCH 31, 2012

The Commission requested importers to indicate whether they imported or arranged for the importation of xanthan gum from Austria or China after March 31, 2012. Of the *** responding importers, *** reported imports of xanthan gum from the subject countries during that period. Importers and the quantity of xanthan gum scheduled to be imported subsequent to March 31, 2012, are shown in the tabulation below.

* * * * *

DUMPING IN THIRD-COUNTRY MARKETS

There are no known xanthan gum third-country import relief investigations or extant antidumping duty orders on the subject product from Austria or China.⁴⁷

NONSUBJECT COUNTRIES AND THE GLOBAL MARKET

Beyond the domestic industry and the subject countries' industries, France is the only other major commercial producing country of xanthan gum, with two commercial factories operated by Cargill and Danisco (now DuPont).⁴⁸ In 2011, based on official statistics of the Department of Commerce, the United States imported 5.0 million pounds under HTS subheading 3913.90.20 from France.⁴⁹ As such France was the third largest foreign supplier, behind China and Austria of xanthan gum to the United States in 2011. However, while xanthan gum is imported under this tariff code, the code is a basket category for polysaccharides and their derivatives. U.S. imports from France accounted for 9.6 percent of total U.S. imports by quantity under the 3913.90.20 basket subheading.

⁴⁷ Respondents' foreign producer questionnaire responses (section II-6).

⁴⁸ Food Navigator-USA.com. "Cargill Launches xanthan gum made in China." June 24, 2008; Food Navigator-USA.com "Competition in xanthan gum market sees jobs go." November 15, 2004; Conference Transcript, p. 75 (Viala).

⁴⁹ USITC Dataweb, accessed July 6, 2012.

Exports from France, by market, are presented in table VII-7.

Table VII-7
Xanthan gum: Exports from France, by market, 2009-11

Market	2009	2010	2011
Quantity (1,000 pounds)			
United States	3,369	3,876	4,370
United Kingdom	1,594	1,706	2,262
Japan	1,336	1,448	2,028
Germany	1,887	2,110	2,008
Israel	148	154	1,770
Brazil	1,316	1,246	1,713
China	1,199	1,102	1,171
Canada	77	908	952
Italy	690	723	952
All other markets	7,802	7,917	8,031
Total	19,418	21,191	25,258
Source: The Global Trade Atlas, HS 3913.90			

APPENDIX A
***FEDERAL REGISTER* NOTICES**

**INTERNATIONAL TRADE
COMMISSION**

**[Investigation Nos. 731-TA-1202-1203
(Preliminary)]**

**Xanthan Gum From Austria and China;
Institution of Antidumping Duty
Investigations and Scheduling of
Preliminary Phase Investigations**

AGENCY: United States International
Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigation Nos. 731-TA-1202-03 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Austria and/or China of xanthan gum, provided for in subheading 3913.90.20 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by July 20, 2012. The Commission's views are due at Commerce within five business days thereafter, or by July 27, 2012.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

DATES: *Effective Date:* June 5, 2012.

FOR FURTHER INFORMATION CONTACT: Cynthia Trainor (202-205-3354), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://>

www.usitc.gov). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on June 5, 2012, by CP Kelco US, Atlanta, GA.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Investigations has scheduled a conference in connection with this investigation for 9:30 a.m. on June 26, 2012, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the conference should be filed with the Office of the Secretary (William.bishop@usitc.gov and Sharon.bellamy@usitc.gov) on or before June 22, 2012. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has

testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before June 29, 2012, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at <http://edis.usitc.gov>.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: June 6, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012-14158 Filed 6-11-12; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-433-811, A-570-985]

Xanthan Gum From Austria and the People's Republic of China: Initiation of Antidumping Duty Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* July 2, 2012.

FOR FURTHER INFORMATION CONTACT: Karine Gziryan or Maisha Cryor at (202) 482-4081 or (202) 482-5831, respectively (Austria), AD/CVD Operations, Office 4; or Brandon Farlander or Erin Kearney at (202) 482-0182 or (202) 482-0167, respectively (the People's Republic of China (the "PRC")), AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petitions

On June 5, 2012, the Department of Commerce (the "Department") received antidumping duty ("AD") petitions concerning imports of xanthan gum from Austria and the People's Republic of China ("PRC") filed in proper form by CP Kelco U.S. ("Petitioner").¹ Petitioner is a domestic producer of xanthan gum. On June 8, 2012, the Department requested additional information and clarification of certain areas of the Petitions. Petitioner filed responses to these requests on June 13, 2012 (hereinafter, "Supplement to the Austria Petition" and "Supplement to the PRC Petition"). Additionally, on June 13, 2012, Archer Daniels Midland, a domestic producer of xanthan gum,

¹ See Petitions for the Imposition of Antidumping Duties on Xanthan Gum from the People's Republic of China and Austria, filed on June 5, 2012 (the "Petitions").

submitted information regarding its 2011 production of xanthan gum (hereinafter, "ADM production letter"). On June 19, 2012, Petitioner submitted additional information regarding its constructed value surrogate financial ratios.

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the "Act"), Petitioner alleges that imports of xanthan gum from Austria and the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that such imports are materially injuring, or threatening material injury to, an industry in the United States. Also, consistent with section 732(b)(1) of the Act, the Petitions are accompanied by information reasonably available to Petitioner supporting its allegations.

The Department finds that Petitioner filed these Petitions on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and has demonstrated sufficient industry support with respect to the initiation of the AD investigations that Petitioner is requesting. See the "Determination of Industry Support for the Petitions" section below.

Period of Investigation

Because the Petitions were filed on June 5, 2012, the period of investigation ("POI") for the PRC investigation is October 1, 2011, through March 31, 2012. The POI for the Austria investigation is April 1, 2011, through March 31, 2012.²

Scope of the Investigations

The products covered by these investigations are xanthan gum from Austria and the PRC. For a full description of the scope of the investigations, see the "Scope of the Investigations," in Appendix I of this notice.

Comments on Scope of Investigations

During our review of the Petitions, we discussed the scope with Petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments by July 16, 2012, 5:00 p.m.

² See 19 CFR 351.204(b)(1).

Eastern Standard Time, 20 calendar days from the signature date of this notice. All comments must be filed on the records of the Austria and the PRC AD investigations. All comments and submissions to the Department must be filed electronically using Import Administration's Antidumping Countervailing Duty Centralized Electronic Service System (IA ACCESS).³ An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by the time and date noted above. Documents excepted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the deadline noted above.

The period of scope comments is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determinations.

Comments on Product Characteristics for Antidumping Questionnaires

The Department requests comments from interested parties regarding the appropriate physical characteristics of xanthan gum to be reported in response to the Department's AD questionnaires. This information will be used to identify the key physical characteristics of the merchandise under consideration in order to report the relevant factors and costs of production accurately as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as (1) general product characteristics and (2) the product-comparison criteria. We find that it is not always appropriate to use all product characteristics as product-comparison criteria. We base product-comparison criteria on meaningful commercial differences among products.

³ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011) for details of the Department's electronic filing requirements, which went into effect on August 5, 2011. Information on help using IAACCESS can be found at <https://iaaccess.trade.gov/help.aspx> and a handbook can be found at <https://iaaccess.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf>.

In other words, while there may be some physical product characteristics utilized by manufacturers to describe xanthan gum, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, we must receive comments filed in accordance with the Department's electronic filing requirements, available at 19 CFR 351.303(g), by July 16, 2012. Additionally, rebuttal comments must be received by July 23, 2012.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the "industry."

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply

the same statutory definition regarding the domestic like product (*see* section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.⁴

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioner does not offer a definition of the domestic like product distinct from the scope of the investigations. Based on our analysis of the information submitted on the record, we have determined that xanthan gum constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product.⁵

In determining whether Petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the "Scope of the Investigations," in Appendix I of this notice. To establish industry support, Petitioner provided its own 2011 production of the domestic like product. In addition, we received a letter from the only other producer in the U.S. stating its 2011 production of the domestic like product.⁶

⁴ *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (Ct. Int'l Trade 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (Ct. Int'l Trade 1988)).

⁵ For a discussion of the domestic like product analysis in this case, *see* Antidumping Duty Investigation Initiation Checklist: Xanthan Gum from Austria ("Austria Initiation Checklist") at Attachment II, and Antidumping Duty Investigation Initiation Checklist: Xanthan Gum from the PRC ("PRC Initiation Checklist") at Attachment II, dated concurrently with this notice and on file electronically via IA ACCESS. Access to documents filed via IA ACCESS is also available in the Central Records Unit (CRU), Room 7046 of the main Department of Commerce building.

⁶ This producer expressed neither support for nor opposition to the Petition. Hence, the Department considers this producer to be neutral. *See* Volume I of the Petitions at 2 and Exhibit I-1, and Supplements to the Austria and PRC Petitions at 3, and Supplement to the Austria Petition at Exhibit I-2, and Supplement to the PRC Petition at Exhibit

Our review of the data provided in the Petitions, supplemental submissions, and other information readily available to the Department indicates that Petitioner has established industry support.⁷ First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling).⁸ Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.⁹ Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.¹⁰ Accordingly, the Department determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

The Department finds that Petitioner filed the Petitions on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the AD investigations that it is requesting the Department initiate.¹¹

Allegations and Evidence of Material Injury and Causation

Petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value ("NV"). In addition, Petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

I-2, and ADM production letter; *see also* Austria Initiation Checklist at Attachment II and PRC Initiation Checklist at Attachment II.

⁷ *See* Austria Initiation Checklist at Attachment II and PRC Initiation Checklist at Attachment II.

⁸ *See* section 732(c)(4)(D) of the Act; *see also* Austria Initiation Checklist at Attachment II and PRC Initiation Checklist at Attachment II.

⁹ *See* Austria Initiation Checklist at Attachment II and PRC Initiation Checklist at Attachment II.

¹⁰ *See id.*

¹¹ *See id.*

Petitioner contends that the industry's injured condition is illustrated by reduced market share, lost sales and revenues, reduced production, reduced shipments, reduced capacity utilization rate, underselling and price depression and suppression, reduced workforce, decline in financial performance, and an increase in import penetration.¹² We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.¹³

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which the Department based its decision to initiate investigations of imports of xanthan gum from Austria and the PRC. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in greater detail in the Austria Initiation Checklist and the PRC Initiation Checklist.

Export Price

Austria

Petitioner calculated export price ("EP") using U.S. imports from Austria during the POI under the Harmonized Tariff Schedule of the United States ("HTSUS") subheading 3913.90.20. To confirm the accuracy and reliability of the use of U.S. import statistics under this HTSUS subheading, Petitioner compared the U.S. import quantity by port for HTSUS subheading 3913.90.20 to the quantity of imports of xanthan gum from Austria captured in ship manifest data. Petitioner reviewed the manifest description of each shipment and correlated it to the import quantities from the U.S. import statistics under HTSUS subheadings 3913.90.20 such that the quantities are nearly identical for the POI. In addition, the ship manifest data also demonstrated that only food grade xanthan gum was imported from Austria into the United States during the POI. For this reason, Petitioner calculated the average unit value for the POI as the basis for U.S. price.¹⁴ As such, the EP provided by Petitioner is conservative.

¹² See Volume I of the Petitions at 26–48.

¹³ See Austria Initiation Checklist at Attachment III and PRC Initiation Checklist at Attachment III.

¹⁴ See Volume III of the Petitions at 7–8 and Exhibits III–9 and III–10.

The PRC

Petitioner calculated EP based on purchased prices for xanthan gum during the POI from a Chinese producer.¹⁵ The terms of sale for these invoices were FOB China port but Petitioner did not make an adjustment for domestic brokerage and handling expenses or freight charges to the port. As such, the EP provided by Petitioner is conservative.

Normal Value

Austria

Pursuant to sections 773(a)(4) and 773(e) of the Act, Petitioner based NV on constructed value ("CV") because it stated that Austrian home market and third-country market export pricing were not reasonably available to it.¹⁶ Petitioner calculated NV based on consumption rates of its own xanthan gum production facility in Oklahoma.¹⁷ Petitioner asserts that, to the best of its knowledge, the production methods and consumption rates of its own domestic xanthan gum production facility are similar to the production methods and consumption rates of the Austrian producer.¹⁸

Petitioner valued all raw material factors of production ("FOP") using publicly available Austrian import statistics from the Global Trade Atlas ("GTA").¹⁹ Petitioner relied on the POI for which data were available (*i.e.*, April 2011 through February 2012). Petitioner excluded from these GTA import statistics imports from countries previously determined by the Department to be NME countries.²⁰ In addition, Austrian imports from India, Indonesia, the Republic of Korea, and Thailand were excluded, as the Department has previously excluded prices from these countries because they maintain broadly available, non-industry-specific export subsidies.²¹ Also, if imports were labeled as originating from an "unspecified" country, they were excluded from the average value, because Petitioner could not be certain that they were not from

¹⁵ See Volume II of the Petitions at 10 and Exhibit II–10; *see also* Supplement to the PRC Petition at 5 and Exhibit 5.

¹⁶ See Volume III of the Petitions at 4; *see also* Supplement to the Austria Petition at 5 and Exhibit 5.

¹⁷ See Volume III of the Petitions at 4 and Exhibits III–1.

¹⁸ See Volume III of the Petitions Exhibit III–1; *see also* Supplement to the Austria Petition at 7.

¹⁹ See Volume III of the Petitions at 4 and Exhibit III–2; *see also* Supplement to the Austria Petition at 13 and Exhibits 11 and 12.

²⁰ See Volume III of the Petitions at Exhibit III–2.

²¹ See Volume III of the Petitions at Exhibit III–2.

either an NME country or a country with generally available export subsidies.²² For Austrian import values reported in Euros, Petitioner converted these values to U.S. dollars ("USD") using the POI-average Euros/USD exchange rate, as reported on the Department's Web site.²³

Petitioner valued labor utilized in the production of xanthan gum based upon data collected by the International Labor Organization ("ILO") Geneva under the sub-classification of "24 Manufacture of Chemicals and Chemical Products."²⁴ Petitioner utilized the total labor cost in manufacturing category. Because the data were collected in 2004, Petitioner inflated the reported hourly wage rate by the consumer price index inflation ("CPI") rate in effect during the POI for Austria as reported by the International Monetary Fund ("IMF") and converted the wage rate from Euro/hour to USD/hour using the POI-average exchange rate, as reported on the Department's Web site.²⁵

Petitioner derived an electricity surrogate value using rates from November 2011 as reported in Europe's Energy Portal, which was then converted from Euros to USD using the POI-average exchange rate, as reported on the Department's Web site.²⁶ Petitioner derived a steam surrogate value using data from the same source and time period as the surrogate value for electricity.²⁷ Petitioner converted the steam surrogate value from Euros to USD using the POI-average exchange rate, as reported on the Department's Web site.²⁸

Petitioner stated that, to the best of its knowledge, the Austrian producer packages xanthan gum in cartons stacked on wooden pallets wrapped in plastic.²⁹ Surrogate values for packing

²² See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 24552, 24559 (May 5, 2008), unchanged in *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, 2008). See Volume III of the Petitions at Exhibit III–2.

²³ See Volume III of the Petitions at Exhibit III–4; *see also* Supplement to the Austria Petition at 4 and Exhibit 7.

²⁴ See Volume III of the Petitions at 4–5 and Exhibit III–3.

²⁵ See Volume III of the Petitions at 4–5 and Exhibit III–3 and III–4 and Supplement to the Austria Petition at 6 and Exhibit 6.

²⁶ See Volume III of the Petitions at 5 and Exhibits III–5; *see also* Supplement to the Austria Petition at 14 and Exhibits 11–13.

²⁷ See Volume III of the Petitions at 5 and Exhibits III–5; *see also* Supplement to the Austria Petition at 14 and Exhibits 11–13.

²⁸ See Volume III of the Petitions at 5 and Exhibits III–5; *see also* Supplement to the Austria Petition at 14 Exhibits 11–13.

²⁹ See Volume III of the Petitions at 6.

materials were derived from publicly available Austrian import statistics obtained from the GTA.³⁰

Petitioner relied on the 2011 financial performance data of its own domestic xanthan gum facility to value factory overhead, selling, and administrative expenses (“SG&A”), and profit.³¹

Based on our review of Petitioner’s submissions, the Department determines that the CV used by Petitioner is acceptable for purposes of initiation.³²

The PRC

Petitioner states that the Department has long treated the PRC as a non-market economy (“NME”) country and this designation remains in effect today.³³ In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status for the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product is appropriately based on FOP valued in a surrogate market-economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties, including the public, will have the opportunity to provide relevant information related to the issues of the PRC’s NME status and the granting of separate rates to individual exporters.

Petitioner contends that Thailand is the appropriate surrogate country for the PRC because: (1) It is at a level of economic development comparable to that of the PRC; and (2) it is a significant producer of comparable merchandise.³⁴ Further, surrogate values data from Thailand are available and reliable.³⁵ Moreover, Petitioner notes that the Department has previously used Thailand as the surrogate country in previous investigations involving the PRC.³⁶ In addition, Petitioner states that there are no known producers of xanthan gum from Thailand but there are Thai exports of comparable merchandise, which demonstrates that Thailand is a significant producer of

comparable merchandise.³⁷ Based on the information provided by Petitioner, we believe that it is appropriate to use Thailand as a surrogate country for initiation purposes. After the initiation of the investigation, interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOP within 40 days from the date of publication of the preliminary determination.

Petitioner calculated the NV and dumping margins for the U.S. price, discussed above, using the Department’s NME methodology as required by section 773(c) of the Act, 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. Petitioner calculated NV based on consumption rates of its own xanthan gum production facility in the PRC.³⁸ Petitioner asserts that, to the best of Petitioner’s knowledge, production methods and consumption rates of its own Chinese xanthan gum production facility are similar to the production methods and consumption rates of other Chinese producers.³⁹

Petitioner valued all raw material FOP using publicly available surrogate country data; specifically, Petitioner used Thai import statistics from the GTA.⁴⁰ Petitioner relied on the POI for which data were available (*i.e.*, October 2011 through March 2012). Petitioner excluded from these GTA import statistics imports from countries previously determined by the Department to be NME countries. In addition, imports from India, Indonesia, the Republic of Korea, and Thailand were excluded, as the Department has previously excluded prices from these countries because they maintain broadly available, non-industry-specific export subsidies.⁴¹ Also, if imports were labeled as originating from an “unspecified” country, they were excluded from the average value, because Petitioner could not be certain that they were not from either an NME country or a country with generally available export subsidies.⁴²

For Thai import values reported in baht, Petitioner converted these values to USD per kilogram using the POI-average Thai baht/USD exchange rate, as reported on the Department’s Web site.⁴³

Petitioner converted ethanol (ethyl alcohol) from liters to kilograms because the Thai surrogate value for ethanol was reported in liters but Petitioner’s NV model for ethanol is in kilograms.⁴⁴

Consistent with the Department’s new methodology for the valuation of labor in non-market economies, Petitioner valued labor utilized in the production of xanthan gum based upon data collected by the ILO and disseminated in Chapter 6A of the ILO Yearbook of Labor Statistics.⁴⁵ Petitioner utilized the total labor cost in manufacturing category. Petitioner converted the monthly wage rate to an hourly wage based upon Yearbook of Labor Statistics data for 2005 (the most recently published). Because the data were collected in 2005, Petitioner also inflated the reported wage rate by the consumer price index inflation rate in effect during the POI as reported by the IMF.⁴⁶

Because Petitioner could not segregate energy costs from the surrogate financial statement, Petitioner accounted for the electricity, steam, and water costs in the calculation of surrogate financial ratios.⁴⁷ This is consistent with the Department’s recent decision in *Citric Acid and Certain Citrate Salts from the People’s Republic of China: Final Affirmative Determination of Sales at Less than Fair Value*, 74 FR 16838 (April 13, 2009), and accompanying Issues and Decision Memorandum at Comment 2.

Petitioner stated that, to the best of its knowledge, Chinese producers regularly package xanthan gum in 25 kilogram sacks.⁴⁸ Surrogate values for packing materials were derived from publicly

China: Preliminary Determination of Sales at Less Than Fair Value, 73 FR 24552, 24559 (May 5, 2008), unchanged in *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, 2008). See Volume II of the Petitions at Exhibit II-3.

⁴³ See Volume II of the Petitions at 7–8 and Exhibit II-5.

⁴⁴ See Supplement to the PRC Petition at 5–6 and Exhibit 6.

⁴⁵ See Volume II of the Petitions at 7–8 and Exhibit II-4.

⁴⁶ See Volume II of the Petitions at Exhibit II-4.

⁴⁷ See Volume II of the Petitions at 10 and Exhibit II-11; see also Supplement to the PRC Petition at Exhibit 9.

⁴⁸ See Volume II of the Petitions at 9 and Exhibit II-11.

³⁰ See Volume III of the Petitions at Exhibit III-2.

³¹ See Volume III of the Petitions at 5–6 and Exhibits III-6, III-7, and III-8; see also Supplement to the Austrian Petition at 7–12 and Exhibit 10.

³² See Austrian Initiation Checklist.

³³ See Volume II of the Petitions at 4.

³⁴ See Volume II of the Petitions at 4–5 and Exhibit II-1.

³⁵ See Volume II of the Petitions at 5.

³⁶ See Volume II of the Petitions at 5, citing *Sodium Hexametaphosphate From the People’s Republic of China: Preliminary Results of Second Antidumping Duty Administrative Review*, 77 FR 17013, 17015 (March 23, 2012).

³⁷ See Volume II of the Petitions at 5–6 and Exhibit II-1.

³⁸ See Volume II of the Petitions at 6–9 and Exhibits II-11; see also Supplement to the PRC Petition at Exhibit 9.

³⁹ See Volume II of the Petitions at 6 and Exhibit II-2.

⁴⁰ See Volume II of the Petitions at 6–7, and Exhibit II-3; see also Supplement to the PRC Petition at 5–6 and Exhibits 7 and 9.

⁴¹ See Volume II of the Petitions at Exhibit II-3; see also Supplement to the PRC Petition at Exhibit 9.

⁴² See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of*

available Thai import statistics obtained from the GTA.⁴⁹

Petitioner used the financial statements of Ajinomoto (Thailand) Co., Ltd. (“Ajinomoto”) to value factory overhead, SG&A, and profit. Petitioner identified Ajinomoto as a Thai producer of l-lysine (“lysine”) and monosodium glutamate (“MSG”), which are comparable merchandise.⁵⁰ According to Petitioner, lysine and MSG are both produced via fermentation, use similar production equipment as that required to produce xanthan gum, and the raw material inputs are similar or identical to those used to manufacture xanthan gum.⁵¹ However, as discussed above, Petitioner could not segregate energy costs from the calculation of surrogate financial ratios; therefore, Petitioner did not incorporate energy inputs into the calculation of NV in the cost of manufacturing.⁵²

Based on our review of Petitioner’s submissions, the Department determines that the surrogate values used by Petitioner are reasonably available and, thus, acceptable for purposes of initiation.⁵³

Fair Value Comparisons

Based on the data provided by Petitioner, there is reason to believe that imports of xanthan gum from Austria and the PRC are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of EP to CVs in accordance with section 773(a)(4) of the Act, the estimated dumping margin for xanthan gum from Austria is 145.20 percent.⁵⁴ Based on comparisons of EPs to NVs in accordance with section 773(c) of the Act, the estimated dumping margin for xanthan gum from the PRC is 154.07 percent.⁵⁵

Initiation of Antidumping Investigations

Based upon the examination of the Petitions on xanthan gum from Austria and the PRC, we find that the Petitions meet the requirements of section 732 of the Act. Therefore, we are initiating AD investigations to determine whether

⁴⁹ See Volume II of the Petitions at Exhibits II-3 and II-11; see also Supplement to the PRC Petition at Exhibit 9.

⁵⁰ See Volume II of the Petitions at 8-9 and Exhibit II-8.

⁵¹ See Volume II of the Petitions at 9 and Exhibits II-8 and II-12; see also Supplement to the PRC Petition at Exhibit 9.

⁵² See Volume II of the Petitions at 10 and Exhibit II-11; see also Supplement to the PRC Petition at Exhibit 9.

⁵³ See PRC Initiation Checklist.

⁵⁴ See Supplement to the Austria Petition at 13 and Exhibit 12.

⁵⁵ See the PRC Initiation Checklist.

imports of xanthan gum from Austria and the PRC are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Targeted Dumping Allegations

On December 10, 2008, the Department issued an interim final rule for the purpose of withdrawing 19 CFR 351.414(f) and (g), the regulatory provisions governing the targeted dumping analysis in AD investigations, and the corresponding regulation governing the deadline for targeted dumping allegations, 19 CFR 351.301(d)(5).⁵⁶ The Department stated that “{w}ithdrawal will allow the Department to exercise the discretion intended by the statute and, thereby, develop a practice that will allow interested parties to pursue all statutory avenues of relief in this area.”⁵⁷

In order to accomplish this objective, if any interested party wishes to make a targeted dumping allegation in either of these investigations pursuant to section 777A(d)(1)(B) of the Act, such allegations are due no later than 45 days before the scheduled date of the country-specific preliminary determination.

Respondent Selection

Austria

For the Austria investigation, although the Department normally relies on import data from U.S. Customs and Border Protection (“CBP”) to select respondents in AD investigations involving market-economy countries, the HTSUS category under which xanthan gum may enter is a basket category. Therefore, the CBP data cannot be isolated to identify imports of subject merchandise during the POI. Accordingly, the Department must rely on an alternate methodology for respondent selection, as described below.

The Petitions name one company as a producer and/or exporter in Austria of xanthan gum: Jungbunzlaer Austria AG (“JBL”).⁵⁸ The Petitions identify this one company as accounting for virtually all of the imports of xanthan gum from Austria. Moreover, we currently know of no further exporters or producers of subject merchandise. Accordingly, the

⁵⁶ See *Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations*, 73 FR 74930 (December 10, 2008).

⁵⁷ See *id.*, 73 FR at 74931.

⁵⁸ See Volume I of the Petitions at Exhibit I-5.

Department is selecting JBL as the mandatory respondent in this investigation pursuant to section 777A(c)(1) of the Act. We will consider comments from interested parties on this respondent selection. Parties wishing to comment must do so within five days of the publication of this notice in the **Federal Register**.⁵⁹

The PRC

For the PRC investigation, the Department will request quantity and value information from known exporters/producers identified with complete contact information in the Petitions.⁶⁰ The quantity and value data received from NME exporters/producers in the PRC will be used as the basis to select the mandatory respondents.

The Department requires that respondents submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status.⁶¹ On the date of the publication of this initiation notice in the **Federal Register**, the Department will post the quantity and value questionnaires, along with the filing instructions, on the Import Administration Web site at <http://ia.ita.doc.gov/ia-highlights-and-news.html>, and a response to the quantity and value questionnaire is due no later than July 16, 2012.

Interested parties must submit applications for disclosure under administrative protective order (“APO”) in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Department’s Web site at <http://ia.ita.doc.gov/apo>.

Separate Rates

In order to obtain separate-rate status in NME investigations, exporters and producers must submit a separate-rate status application.⁶² The specific requirements for submitting the separate-rate application in this investigation are outlined in detail in the application itself, which will be

⁵⁹ See *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea and Mexico Initiation of Antidumping Duty Investigations*, 76 FR 23281, 23285 (April 26, 2011).

⁶⁰ See Volume I of Petitions at 25 and Exhibit I-2; see also Supplement to the PRC Petition at 7 and Exhibit 8.

⁶¹ See, e.g., *Circular Welded Austenitic Stainless Pressure Pipe from the People’s Republic of China: Initiation of Antidumping Duty Investigation*, 73 FR 10221, 10225 (February 26, 2008).

⁶² See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries (April 5, 2005) (“Separate Rates and Combination Rates Bulletin”), available on the Department’s Web site at <http://ia.ita.doc.gov/policy/bull05-1.pdf>.

available on the Department's Web site at <http://ia.ita.doc.gov/ia-highlights-and-news.html> on the date of publication of this initiation notice in the **Federal Register**. The separate-rate application will be due 60 days after publication of this initiation notice. In the PRC investigation, for exporters and producers who submit a separate-rate status application and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for consideration for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents. As noted in the "Respondent Selection" section above, the Department requires that respondents submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. The quantity and value questionnaire will be available on the Department's Web site at <http://ia.ita.doc.gov/ia-highlights-and-news.html> on the date of the publication of this initiation notice in the **Federal Register**.

Use of Combination Rates in an NME Investigation

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. The Separate Rates and Combination Rates Bulletin states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.

See Separate Rates and Combination Rates Bulletin at 6 (emphasis added).

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petitions have been provided to the Government of the PRC and

Austrian authorities. Because of the large number of producers/exporters identified in the Petitions, the Department considers the service of the public version of the Petitions to the foreign producers/exporters satisfied by the delivery of the public version to the Government of the PRC and Austrian authorities, consistent with 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine no later than July 20, 2012, whether there is a reasonable indication that imports of xanthan gum from Austria and the PRC are materially injuring or threatening material injury to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634 (Jan. 22, 2008). Parties wishing to participate in these investigations should ensure that they meet the requirements of these procedures (e.g., the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an AD/countervailing duty ("CVD") proceeding must certify to the accuracy and completeness of that information.⁶³ Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any AD/CVD proceedings initiated on or after March 14, 2011.⁶⁴ The formats for the revised certifications are provided at the end of the *Interim Final Rule*. The Department intends to reject factual

⁶³ See section 782(b) of the Act.

⁶⁴ See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule*, 76 FR 7491 (February 10, 2011) (*Interim Final Rule*) amending 19 CFR 351.303(g)(1) & (2) and supplemented by *Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings: Supplemental Interim Final Rule*, 76 FR 54697 (September 2, 2011).

submissions in any proceeding segments initiated on or after March 14, 2011, if the submitting party does not comply with the revised certification requirements.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: June 25, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I

Scope of the Investigations

The scope of these investigations covers dry xanthan gum, whether or not coated or blended with other products. Further, xanthan gum is included in these investigations 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-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 these investigations is classified in the Harmonized Tariff Schedule 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.

[FR Doc. 2012-16183 Filed 6-29-12; 8:45 am]

BILLING CODE 3510-DS-P

APPENDIX B
CALENDAR OF PUBLIC CONFERENCE

CALENDAR OF PUBLIC PRELIMINARY CONFERENCE

Those listed below appeared as witnesses at the United States International Trade Commission’s preliminary conference:

Subject: Xanthan Gum from Austria and China
Inv. Nos.: 731-TA-1202 and 1203 (Preliminary)
Date and Time: June 26, 2012 - 9:30 a.m.

Sessions were held in connection with these preliminary investigations in the Main Hearing Room (Room 101), 500 E Street, S.W., Washington, D.C.

OPENING REMARKS:

Petitioner (**Matthew J. Clark**, Arent Fox LLP)
Respondents (**William H. Barringer**, Curtis, Mallet-Prevost, Colt & Mosle LLP)

**In Support of the Imposition of
Antidumping Duty Orders:**

Arent Fox LLP
Washington, D.C.
on behalf of

CP Kelco U.S. (CP Kelco)

E. Charles Bowman, Vice President of Marketing,
CP Kelco

Didier Viala, Vice President of Innovation & Capabilities,
CP Kelco

James P. Dougan, Senior Economist, Economic Consulting
Services, LLC

Matthew J. Clark)
Matthew L. Kanna) – OF COUNSEL
Nancy A. Noonan)

**In Opposition to the Imposition of
Antidumping Duty Orders:**

Vorys, Sater, Seymour and Pease LLP
Washington, D.C. on
behalf of

Jungbunzlauer Austria AG (“JBL Austria”)
Jungbunzlauer Inc. (“JBL Inc.”)

Daniel J. Rainville, President, JBL Inc.

Dr. Patrick Magrath, Economic Consultant,
Magrath & Otis LLC

Frederick P. Waite

)

) – OF COUNSEL

Kimberly R. Young

)

Curtis, Mallet-Prevost, Colt & Mosle LLP
Washington, D.C.
on behalf of

Chinese Respondents

Noel Marzulli, Consultant-Agent, Deosen USA, Inc.

Dr. Bert Eshaghpour, President, Wego Chemical
& Mineral Corp.

Geary Johnston, Unitech Asia Pacific

William H. Barringer

)

Daniel L. Porter

) – OF COUNSEL

Matthew P. McCullough

)

**In Opposition to the Imposition of
Antidumping Duty Orders (continued):**

**Barnes, Richardson & Colburn
Washington, D.C.
on behalf of**

FMC Corporation (“FMC”)

Thomas V. Vakerics) – OF COUNSEL

REBUTTAL/CLOSING REMARKS:

Petitioner (**Matthew J. Clark** Arent Fox LLP; **Charles Bowman**, CP Kelco;
and **Didier Viala**, CP Kelco)

Respondents (**Frederick P. Waite**, Vorys, Sater, Seymour & Pease LLP;
and **Daniel L. Porter**, Curtis, Mallet-Prevost, Colt & Mosle LLP)

-END-

APPENDIX C
SUMMARY DATA FOR XANTHAN GUM

CSOBAs: Summary tables		
Table No.	Imports	Countries cumulated
C-1	Market shares for subject country imports are based on shipments of U.S. imports.	Austria and China

Table C-1
Xanthan gum: Summary data concerning the U.S. market, 2009-11, January-March 2011, and
January-March 2012

* * * * *

