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

A-570-985
Investigation
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January 3, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Determination of the Antidumping Duty Investigation of Xanthan Gum from the People's Republic of China

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## SUMMARY

The Department of Commerce ("Department") preliminarily determines that xanthan gum from the People's Republic of China ("PRC") is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("the Act"). The period of investigation ("POI") is October 1, 2011, through March 31, 2012.

## BACKGROUND

Initiation

On June 5, 2012, the Department received a petition concerning imports of xanthan gum from the PRC filed in proper form by CP Kelco U.S. ("Petitioner").[1] On July 2, 2012, the Department published a notice of initiation for the antidumping duty ("AD") investigation of xanthan gum from the PRC.[2]

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[1] *See* "Petitions for the Imposition of Antidumping Duties on Xanthan Gum from the People's Republic of China and Austria," filed June 5, 2012 ("Petition").
[2] *See Xanthan Gum From Austria and the People's Republic of China: Initiation of Antidumping Duty Investigations*, 77 FR 39210 (July 2, 2012) ("*Initiation Notice*").

On July 26, 2012, the International Trade Commission ("ITC") determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of xanthan gum from the PRC.[3]

Period of Investigation

The POI is October 1, 2011, through March 31, 2012. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was June 2012.[4]

Postponement of Preliminary Determination

On October 12, 2012, Petitioner made a timely request pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(b)(2) and (e) for a 50-day postponement of the preliminary determination. On October 26, 2012, the Department published in the *Federal Register* a notice extending the time period for issuing the preliminary determination by 50 days, until January 1, 2013.[5] On October 31, 2012, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29, through October 30, 2012. Thus, the preliminary determination deadline has been extended by two additional days, until January 3, 2013.[6]

## SCOPE OF THE INVESTIGATION

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

Xanthan gum that has been blended with other product(s) is included in this scope when the resulting mix contains 15 percent or more of xanthan gum by dry weight. Other products with which xanthan gum may be blended include, but are not limited to, sugars, minerals, and salts.

Xanthan gum is a polysaccharide produced by aerobic fermentation of *Xanthomonas campestris*. The chemical structure of the repeating pentasaccharide monomer unit consists of a backbone of two P-1,4-D-Glucose monosaccharide units, the second with a trisaccharide side chain consisting of P-D-Mannose-(1,4)- P-DGlucuronic acid-(1,2) - a-D-Mannose monosaccharide units. The terminal mannose may be pyruvylated and the internal mannose unit may be acetylated.

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[3] *See Investigation Nos. 731-TA-1202-03 (Preliminary): Xanthan Gum from Austria and China*, 77 FR 43857 (July 26, 2012).

[4] *See* 19 CFR 351.204(b)(1).

[5] *See Xanthan Gum From Austria and the People's Republic of China: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 77 FR 65361 (October 26, 2012).

[6] As explained in the memorandum from the Assistant Secretary from Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29, through October 30, 2012. Thus, all deadlines in this segment of the proceeding have been extended by two days. *See* Memorandum to the Record from Paul Piquado, Assistant Secretary for Import Administration, regarding "Tolling of Administrative Deadlines as a Result of the Government Closure During Hurricane Sandy," dated October 31, 2012.

Merchandise covered by the scope of this investigation is classified in the Harmonized Tariff Schedule ("HTS") 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.

## RESPONDENT SELECTION

Section 777A(c)(1) of the Act directs the Department to calculate an individual weighted-average dumping margin for each known exporter or producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters and producers if it is not practicable to make individual weighted average dumping margin determinations because of the large number of exporters and producers involved in the investigation.

On June 26, 2012, the Department requested quantity and value ("Q&V") information from seven companies that Petitioner identified as potential exporters/producers of xanthan gum from the PRC and for which Petitioner provided complete address information.[7] The Department also posted the Q&V questionnaire on its website and, in the *Initiation Notice*, invited parties that did not receive a Q&V questionnaire to file a response to the Q&V questionnaire by the applicable deadline if they wished to be included in the pool of companies from which mandatory respondents would be selected. On July 16, 2012, the Department received timely filed Q&V questionnaire responses from seven exporters/producers.

On August 2, 2012, the Department determined that it was not practicable to examine more than two respondents in the instant investigation. Therefore, the Department selected, based on Q&V data, the two exporters accounting for the largest volume of xanthan gum exported from the PRC during the POI, which are Neimenggu Fufeng Biotechnologies Co., Ltd. ("Fufeng") and Deosen Biochemical Ltd. ("Deosen").[8]

## NON-MARKET ECONOMY COUNTRY

The Department considers the PRC to be a non-market economy ("NME") country.[9] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Therefore, we continue to treat the PRC as an NME country for purposes of this preliminary determination.

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[7] The Department has confirmed that six of the Q&V questionnaires that were issued were actually delivered.

[8] *See* Memorandum from Abdelali Elouaradia to Christian Marsh, "Respondent Selection in the Antidumping Duty Investigation of Xanthan Gum from the People's Republic of China," dated August 2, 2012.

[9] *See Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Results of the First Administrative Review, Preliminary Rescission, in Part, and Extension of Time Limits for the Final Results*, 76 FR 62765, 62767-68 (October 11, 2011), unchanged in *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review*, 77 FR 21734 (April 11, 2012).

## SURROGATE COUNTRY

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base normal value ("NV"), in most circumstances, on the NME producer's factors of production ("FOPs"), valued in a surrogate market economy ("ME") country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.[10]

Petitioner submits that Thailand is economically comparable to the PRC, and is a significant producer of comparable merchandise (*i.e.*, monosodium glutamate and l-lysine) with publicly available data with which to obtain surrogate values. Therefore, Petitioner proposes Thailand as an appropriate primary surrogate country for this investigation. Fufeng and Deosen propose that the Department should select the Philippines as the surrogate country in this investigation because the Philippines is economically comparable to the PRC, and is a producer of comparable merchandise (*i.e.*, carrageenan) with publicly available data with which to obtain surrogate values. Parties did not comment on whether other countries are suitable surrogate countries.

Economic Comparability

As explained in its Prelim Surrogate Country Memo,[11] the Department considers Colombia, Indonesia, Peru, the Philippines, South Africa, Thailand, and Ukraine all equally comparable to the PRC in terms of economic development.[12] Therefore, we consider all seven countries identified in the Surrogate Country Memo as having met this prong of the surrogate country selection criteria.

Significant Producers of Identical or Comparable Merchandise

Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the Department's regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, the Department looks to other sources such as the *Policy Bulletin* for guidance on defining comparable merchandise. The *Policy Bulletin* states that "in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise."[13] Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in

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[10] *See also Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process* (March 1, 2004) ("*Policy Bulletin*").
[11] *See* Memorandum to the File from Erin Kearney, International Trade Analyst, AD/CVD Operations, Office 4, "Antidumping Duty Investigation of Xanthan Gum from the People's Republic of China: Selection of a Surrogate Country," dated January 3, 2013 ("Prelim Surrogate Country Memo").
[12] *See* Prelim Surrogate Country Memo.
[13] *See Policy Bulletin,* at 2.

selecting a surrogate country.[14] Further, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.[15] "In cases where the identical merchandise is not produced, the Department must determine if other merchandise that is comparable is produced. How the Department does this depends on the subject merchandise."[16] In this regard, the Department recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

> In other cases, however, where there are major inputs, *i.e.*, inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, *e.g.*, processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.[17]

Further, the statute grants the Department discretion to examine various data sources for determining the best available information.[18] Moreover, while the legislative history provides that the term "significant producer" includes any country that is a significant "net exporter,"[19] it does not preclude reliance on additional or alternative metrics.

In this case, record evidence shows that none of the potential surrogate countries is a producer of xanthan gum, and production data of identical merchandise for these countries was not available. Further, Petitioner, Fufeng, and Deosen have all noted that xanthan gum is only produced in a limited number of countries (*i.e.*, Austria, France, the United States and the PRC). Consistent with our practice, we first researched export data using the Global Trade Atlas ("GTA") for identical merchandise from the potential surrogate countries. We found that none of the potential surrogate countries had significant exports of xanthan gum.

Next, we analyzed GTA export data for the potential surrogate countries for the HTS categories which parties had proposed as comparable merchandise. Petitioner argued that l-lysine ("lysine")[20] and monosodium glutamate ("MSG")[21] are comparable to xanthan gum. Lysine is

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[14] The *Policy Bulletin* also states that "if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise." *See id.*, at note 6.

[15] *See Sebacic Acid from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 65674, 65675-76 (December 15, 1997) ("{T}o impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.").

[16] *See Policy Bulletin,* at 2.

[17] *See id.,* at 3.

[18] *See* section 773(c) of the Act; *see also Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1990).

[19] *See* Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576 ("Conference Report"), at 590 (1988).

[20] Lysine is an amino acid, which is used as a nutritional supplement. *See* Submission from Petitioner, "Rebuttal Comments Concerning Surrogate Country Selection," dated October 24, 2012 ("Petitioner SC Rebuttal"), at Exhibit 5.

[21] MSG is a monosodium salt of glutamic acid, which is used as a flavor enhancer in food. *See* Petitioner SC Rebuttal, at Exhibit 5.

categorized under HTS 2922.41 (*i.e.*, "Lysine and Its Esters, Salts Thereof"), and MSG is categorized under HTS 2922.42 (*i.e.*, "Glutamic Acid and Its Salts"). Fufeng and Deosen argued that carrageenan[22] is comparable to xanthan gum. Carrageenan is categorized under HTS 1302.39 (*i.e.*, "Mucilages and Thickeners, Whether Or Not Modified, Derived From Vegetable Products, Nesoi").

As noted above, although we find that none of the seven potential surrogate countries is a significant producer of identical merchandise, the GTA export data show that Indonesia, the Philippines, and Thailand are significant producers of carrageenan, and that Indonesia, Peru, the Philippines, South Africa, and Thailand are significant producers of lysine and/or MSG.

Based on record evidence, we then considered the comparability of carrageenan, MSG, and lysine to xanthan gum in terms of physical characteristics, end uses, and production processes.[23] We found that xanthan gum and carrageenan are both polysaccharide hydrocolloids with properties that promote thickening and stabilization of liquids.[24] We found that the end uses of xanthan gum and carrageenan are similar in that each can be used in food and consumer products to provide thickening, stabilizing, and texture-enhancing properties.[25]

Rather than being polysaccharide hydrocolloids like xanthan gum, MSG is a glutamic acid salt, and lysine is an amino acid, meaning that they have different chemical structures. Nevertheless, we found that, as is xanthan gum in many applications, MSG and lysine are added to foods, albeit as a flavor enhancer and nutritional supplement, respectively. Furthermore, and notably, we found that the production processes for MSG and lysine are substantially similar to the production process for xanthan gum and are based on bacteria fermentation. Specifically, these products use similar types of manufacturing facilities (*e.g.*, labs for maintaining specialized microorganisms and fermentation tanks), types of materials (*e.g.*, carbon/carbohydrate source and specialized bacterial microorganisms), and amounts of energy required for production.[26] In contrast, the production process for carrageenan involves neither bacteria nor fermentation, and is not energy-intensive. Rather, carrageenan production typically involves harvesting and sun-drying of seaweed, which is then ground, filtered, washed, and separated to extract the carrageenan.[27]

Because the manufacture of xanthan gum is highly dependent on the machinery and energy utilized at the manufacturing facility, as well as the use of biotechnology, we find that it is reasonable for this particular product to determine merchandise comparability in terms of similar production process. Accordingly, we find that MSG and lysine are comparable to xanthan gum

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[22] Carrageenan is a polysaccharide extracted from seaweed, commonly used gelling and thickening of liquids. *See* Submission from Fufeng, "Neimenggu Fufeng Surrogate Country Comments," originally dated October 19, 2012, and refiled October 25, 2012 ("Fufeng SC Comments"), at Exhibit 1.

[23] *See* Prelim Surrogate Country Memo for further discussion of the Department's practice regarding identifying comparable merchandise.

[24] *See* Petition, at Volume I, pages 7-11; *see also* Fufeng SC Comments at Exhibit 1; Prelim Surrogate Country Memo.

[25] *See* Petition at Volume I, pages 11-15; *see also* Fufeng SC Comments at Exhibits 1-2; Prelim Surrogate Country Memo.

[26] *See* Prelim Surrogate Country Memo.

[27] *See* Prelim Surrogate Country Memo.

for the purposes of surrogate country selection and, thus, that Indonesia, Peru, the Philippines, South Africa, and Thailand are significant producers of comparable merchandise, based on export data.

Data Availability

When evaluating surrogate value data, the Department considers several factors including whether surrogate value data is publicly available, contemporaneous with the POI, representative of a broad-market average, from an approved surrogate country, tax and duty-exclusive, and specific to the input. There is no hierarchy among these criteria. It is the Department's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.[28] We considered the surrogate value data placed on the record by interested parties, and because there are currently no data or surrogate financial statements on the record for Colombia, Indonesia, Peru, South Africa, or Ukraine, we have not considered these countries for primary surrogate country selection purposes at this time. Accordingly, we have evaluated available data for Thailand and the Philippines.

The Department evaluates potential surrogate values based on a well established set of criteria which include a strong preference for valuing all FOPs in the primary surrogate country.[29] Here, the Department finds that Thailand specifically satisfies the criteria for the Department's preference for valuing all FOPs in the primary surrogate country. Specifically, the record of this proceeding indicates that Thai data for valuing the FOPs employed by the respondents are readily available and sufficient. We have determined that relying upon Thailand as the primary surrogate country would allow the Department to use contemporaneous, publicly-available data to value a great number of FOPs. Surrogate values from Thailand exist for virtually all of the direct material, packing and energy FOPs for the POI.

Although the record of this proceeding indicates that contemporaneous, publicly-available Philippine data for valuing most of the respondents' FOPs are also available, the only surrogate financial statements on the record from the Philippines are those of carrageenan manufacturers. As noted above, we find that MSG and lysine are more comparable to xanthan gum than is carrageenan, due to the similarities in production processes between xanthan gum, MSG, and lysine. The only financial statements on the record for a producer of MSG or lysine are those of a Thai manufacturer. As such, we find that Thailand better meets the criteria for valuing all FOPs in the primary surrogate country.

The Department finds Thailand to be a reliable source for surrogate value data because Thailand is at a comparable level of economic development pursuant to 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has publicly available and reliable data. Given the above facts, the Department has preliminarily selected Thailand as the primary

[28] *See Policy Bulletin.*

[29] *See, e.g., Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part*, 77 FR 63791 (October 17, 2012), and accompanying Issues and Decision Memorandum at Comment 9.

surrogate country for this investigation.[30] A detailed explanation of the surrogate value data is provided below in the "Normal Value" section of this memorandum and in the Preliminary Surrogate Value Memorandum.[31]

## SURROGATE VALUE COMMENTS

FOP valuation comments and surrogate value information with which to value the FOPs in this proceeding were filed on October 26, 2012, by Petitioner, Fufeng, and Deosen. On November 2, 2012, Petitioner, Fufeng, and Deosen filed rebuttal surrogate factor valuation comments. On November 6, 2012, Petitioner filed additional surrogate value information. For a detailed discussion of the surrogate values used in this proceeding, *see* the "Factor Valuations" section below and the Prelim Surrogate Value Memo.

## SEPARATE RATE

There is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single AD rate.[32] It is the Department's policy to assign all exporters of the merchandise subject to investigation in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in *Sparklers*,[33] as amplified by *Silicon Carbide*.[34] However, if the Department determines that a company is wholly foreign-owned or located in an ME, then a separate rate analysis is not necessary to determine whether it is independent from government control.[35]

In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate-rate status in NME investigations.[36] The process requires exporters to submit a separate-rate status application ("SRA") and to demonstrate an absence of both *de jure* and *de facto* government control over their export activities. The SRA for this investigation was posted on the Department's website at http://ia.ita.doc.gov/ia-

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[30] *See* Prelim Surrogate Country Memo.

[31] *See* Memorandum to the File from Brandon Farlander and Erin Kearney, International Trade Analysts, AD/CVD Operations, Office 4, "Antidumping Duty Investigation of Xanthan Gum from the People's Republic of China: Preliminary Surrogate Value Memorandum," dated January 3, 2013 ("Prelim Surrogate Value Memo").

[32] *See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079, 53082 (September 8, 2006); *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China*, 71 FR 29303, 29307 (May 22, 2006).

[33] *See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*")

[34] *See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*").

[35] *See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007).

[36] *See Initiation Notice*, 77 FR at 39214-15.

highlights-and-news.html. In the *Initiation Notice* we stated that the SRA would be due 60 days after publication of the notice, which was August 31, 2012.

In this investigation, five entities timely submitted SRAs: A.H.A. International Co., Ltd. ("A.H.A."), CP Kelco (Shandong) Biological Company Limited ("CP Kelco (Shandong)"), Hebei Xinhe Biochemical Co. Ltd. ("Hebei Xinhe"), Shandong Fufeng Fermentation Co., Ltd. ("Shandong Fufeng"), and Shanghai Smart Chemicals Co. Ltd. ("Smart Chemicals").[37] Shandong Fufeng also claimed affiliation with mandatory respondent Fufeng, and submitted responses with Fufeng. Based on our analysis of this information, we have found affiliation and preliminarily collapsed Fufeng and Shandong Fufeng.[38]

Separate Rate Respondents

*1) Wholly Foreign-Owned*

CP Kelco (Shandong) reported that it is wholly-owned by a company located in an ME country.[39] Therefore, there is no PRC ownership of CP Kelco (Shandong) and, because the Department has no evidence indicating that CP Kelco (Shandong) is under the control of the PRC, a separate rates analysis is not necessary.[40] Accordingly, the Department has preliminarily granted separate rate status to CP Kelco (Shandong).

*2) Joint Ventures Between Chinese and Foreign Companies or Wholly Chinese-Owned Companies*

A.H.A., Hebei Xinhe, and Smart Chemicals stated that they are either joint ventures between Chinese and foreign companies or are wholly Chinese-owned companies.[41] In accordance with our practice, the Department has analyzed whether these separate rate respondents have demonstrated the absence of *de jure* and *de facto* governmental control over their respective export activities.

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[37] An additional company, Cargill Bioengineering (Zibo) Co., Ltd., submitted a separate rate application, but it was rejected by the Department for being untimely. *See* Letter from the Department to Cargill Bioengineering (Zibo) Co., Ltd., "Quantity and Value Response and Separate Rate Application in the Investigation of Xanthan Gum from the People's Republic of China," dated October 12, 2012. The Department stated that quantity and value responses were due no later than July 16, 2012, and SRA responses were due no later than August 31, 2012. Cargill Bioengineering (Zibo) Co., Ltd. submitted both responses on October 5, 2012.

[38] *See* Memorandum to the File, "Fufeng Affiliation and Collapsing Memorandum," dated January 3, 2013.

[39] *See* CP Kelco (Shandong)'s Separate Rate Application, dated August 31, 2012.

[40] *See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China,* 72 FR 52355, 52356 (September 13, 2007); *Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review*, 66 FR 1303, 1306 (January 8, 2001), unchanged in *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review*, 66 FR 27063 (May 16, 2001); *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China*, 64 FR 71104 (December 20, 1999).

[41] *See* Separate Rate Responses of A.H.A., Hebei Xinhe, and Smart Chemicals, dated August 31, 2012.

a) *Absence of De Jure Control*

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.[42]

The evidence provided by A.H.A., Hebei Xinhe, and Smart Chemicals supports a preliminary finding of an absence of *de jure* government control based on the following: (1) the respondents do not have restrictive stipulations associated with their individual exporter's business and export licenses; (2) the respondents have provided evidence of legislative enactments decentralizing control of the companies; and (3) the respondents have provided evidence of formal measures by the government decentralizing control of the companies.[43]

b) *Absence of De Facto Control*

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices ("EPs") are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[44]

The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control over export activities which would preclude the Department from assigning separate rates. For A.H.A., Hebei Xinhe, and Smart Chemicals, we determine that the evidence on the record supports a preliminary finding of an absence of *de facto* government control based on record statements and supporting documentation showing the following: (1) the respondents set their own EPs independent of the government and without the approval of a government authority; (2) the respondents retain the proceeds from their sales and make independent decisions regarding disposition of profits or financing of losses; (3) the respondents have the authority to negotiate and sign contracts and other agreements; and (4) the respondents have autonomy from the government regarding the selection of management.[45]

The evidence placed on the record of this review by A.H.A., Hebei Xinhe, and Smart Chemicals demonstrates an absence of *de jure* and *de facto* government control with respect the companies' exports of the merchandise under review, in accordance with the criteria identified in *Sparklers*

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[42] *See Sparklers*, 56 FR at 20589.
[43] *See* Separate Rate Responses of A.H.A., Hebei Xinhe, and Smart Chemicals.
[44] *See Silicon Carbide*, 59 FR at 22586-87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).
[45] *See* Separate Rate Responses of A.H.A., Hebei Xinhe, and Smart Chemicals.

and *Silicon Carbide*. Therefore, we are preliminarily granting A.H.A., Hebei Xinhe, and Smart Chemicals a separate rate.

*3) PRC-Wide Entity*

The record indicates that there are PRC exporters of the merchandise under consideration during the POI that did not respond to the Department's requests for information. Specifically, the Department did not receive responses to its Q&V questionnaire from four PRC exporters and/or producers of merchandise under consideration that were named in the petition and to whom the Department issued the Q&V questionnaire.[46] Because these non-responsive PRC companies have not demonstrated that they are eligible for separate rate status, the Department considers them part of the PRC-wide entity.

Dumping Margin for the Separate Rate Companies

Normally, the Department's practice is to assign to separate rate entities that were not individually examined a rate equal to the weighted average of the rates calculated for the individually examined respondents, excluding any rates that are zero, *de minimis*, or based entirely on adverse facts available ("AFA").[47] Consistent with this practice, the Department has assigned A.H.A., CP Kelco (Shandong), Hebei Xinhe, and Smart Chemicals a rate of 74.67 percent, which is equal to an average of the rates calculated for the mandatory respondents.[48]

## DATE OF SALE

Respondents reported that the date of sale was determined by the invoice issued to the unaffiliated U. S. customer. In this investigation, as the Department found no evidence contrary to the respondents' claims that invoice date was the appropriate date of sale. Therefore, the Department used invoice date as the date of sale for this preliminary determination in accordance with 19 CFR 351.401(i).[49]

## FAIR VALUE COMPARISONS

In accordance with section 777A(d)(1) of the Act, the Department compared the weighted-average price of the U.S. sales of the merchandise under consideration to the weighted-average

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[46] *See* Memorandum to the File, "Issuance of Quantity and Value Questionnaires," dated July 20, 2012. We did not receive responses from Shanghai Echem Fine Chemicals Co., Ltd., Sinotrans Xiamen Logistics Co., Ltd., Zibo Cargill Huang Helong Bioengineering Co., Ltd., or Shandong Yi Lian Cosmetics Co., Ltd.

[47] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 71 FR 77373, 77377 (December 26, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007).

[48] *See* Memorandum from Brandon Farlander, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to the File, "Xanthan Gum from the People's Republic of China: Calculation of the Final Margin for Separate Rate Recipients" (January 3, 2013).

[49] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10.

NV to determine whether the mandatory respondents sold merchandise under consideration to the United States at LTFV during the POI.[50]

Export Price

In accordance with section 772(a) of the Act, the Department defined the U.S. price of merchandise under consideration based on the EP of the U.S. sales reported by Fufeng and Deosen, because these are the prices at which the subject merchandise was first sold before the date of importation by the exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States.[51] The Department calculated the EP by making deductions, as appropriate, from the reported U.S. price for movement expenses (*i.e.*, domestic and foreign inland freight, domestic and foreign brokerage and handling, marine insurance and international freight).[52] The Department based movement expenses on surrogate values where the service was purchased from a PRC company.[53]

Constructed Export Price

In accordance with section 772(b) of the Act, constructed export price ("CEP") is "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d)." For Deosen, which reported both EP and CEP sales, we based CEP on prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign movement expenses, international movement expenses, U.S. movement expenses, and appropriate selling expenses, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, we also deducted those selling expenses associated with economic activities occurring in the United States where appropriate. We deducted, where appropriate, commissions, inventory carrying costs, credit expenses, and indirect selling expenses. Where foreign movement expenses, international movement expenses, or U.S. movement expenses were provided by PRC service providers or paid for in PRC currency, we valued these services using surrogate values.[54] For those expenses that were provided by an ME provider and paid for in an ME currency, we used the reported expense.[55]

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[50] *See* "U.S. Price," and "Normal Value" sections.
[51] *See* Letter to the Department from Fufeng, "Section C Response for Neimenggu Fufeng Biotechnologies Co., Ltd. in Antidumping Duty Investigation on Xanthan Gum from the People's Republic of China (A-570-985)," dated September 20, 2012, at 15; *see also* Letter to the Department from Deosen, "Section C Response for Deosen Biochemical: Xanthan Gum from China," dated September 20, 2012, at C-8.
[52] *See* section 772(c)(2)(A) of the Act.
[53] *See* "Factor Valuations" section below.
[54] *See* Prelim Surrogate Value Memo for details regarding the surrogate values for movement expenses.
[55] *See* Memorandum to The File, through Charles Riggle, Program Manager, Office 4, from Erin Kearney, International Trade Analyst, "Analysis Memorandum for the Preliminary Results of the Antidumping Duty Investigation of Xanthan Gum from the People's Republic of China: Deosen Biochemical Ltd., dated January 3, 2013 ("Deosen Analysis Memo").

Due to the proprietary nature of certain adjustments to U.S. price, a detailed description of all adjustments made to U.S. price for Deosen is provided in the Deosen Analysis Memo.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies. Therefore, in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c), the Department calculated NV based on FOPs. Under section 773(c)(3) of the Act, FOPs include, but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs.[56]

Factor Valuations

In accordance with section 773(c) of the Act, the Department calculated NV based on the FOPs reported by the individually examined respondents. To calculate NV, the Department multiplied the reported per-unit factor-consumption rates by publicly available surrogate values. When selecting the surrogate values, the Department selects, to the extent practicable, surrogate values which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POI, and exclusive of taxes and duties.[57]

As appropriate, the Department adjusted input prices by including freight costs to render them delivered prices. Specifically, the Department added a surrogate freight cost, where appropriate, to surrogate values using the shorter of the reported distance from the domestic supplier to the respondent's factory or the distance from the nearest seaport to the respondent's factory. This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (Fed. Cir. 1997). Additionally, where necessary, the Department adjusted surrogate values for inflation and exchange rates, taxes, and the Department converted all applicable FOPs to a per-kilogram basis.

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities (*i.e.*, not insignificant quantities) and pays in an ME currency, the Department uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted by findings of dumping or subsidization.[58] Where the Department finds ME purchases to be of significant quantities (*i.e.*, 33 percent or more), in accordance with our statement of policy as outlined in *Antidumping Methodologies: Market*

[56] *See* section 773(c)(3)(A)-(D) of the Act.

[57] *See, e.g., Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

[58] *See, e.g., Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997).

*Economy Inputs*,[59] the Department uses the actual purchase prices to value the inputs or movement expenses. Information reported by Fufeng demonstrates that certain movement expenses were sourced from and produced in an ME country and paid for in ME currencies.[60] The information reported by Fufeng also demonstrates that such movement expenses were purchased in significant quantities (*i.e.*, 33 percent or more) from ME suppliers; hence, the Department has used Fufeng's actual ME purchase prices to value these movement expenses.[61]

For this preliminary determination, the Department used Thai import data, as reported by the Thai Customs Department and published by GTA, and other publicly available sources, as explained below, from Thailand to calculate surrogate values for Fufeng's and Deosen's FOPs and certain movement expenses. In accordance with section 773(c)(1) of the Act, the Department applied the best available information for valuing FOPs by selecting, to the extent practicable, surrogate values which are (1) non-export average values, (2) contemporaneous with, or closest in time to, the POI, (3) product-specific, and (4) tax-exclusive.[62] The record shows that Thai import data obtained through GTA, as well as data from other Thai sources, are product-specific, tax-exclusive, and generally contemporaneous with the POI.[63] In those instances where the Department could not obtain information contemporaneous with the POI with which to value FOPs, the Department adjusted the surrogate values using, where appropriate, Thailand's producer price index as published in the International Monetary Fund's International Financial Statistics.

Additionally, the Department disregarded data from NME countries when calculating Thailand's import-based per-unit surrogate values. The Department also excluded from the calculation of Thailand's import-based per-unit surrogate values imports that were labeled as originating from an "unidentified" country because the Department could not be certain that these imports were not from either an NME country or a country with generally available export subsidies.[64]

Furthermore, with regard to the Thai import-based SVs, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, India, and South Korea may have been subsidized because we have found in other proceedings that these countries maintain broadly available, non-

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[59] *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717-18 (October 19, 2006) ("*Antidumping Methodologies: Market Economy Inputs*").

[60] *See* Fufeng's Section C Questionnaire Response, dated September 21, 2012, at 2.

[61] *See id.*

[62] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004).

[63] *See* Prelim Surrogate Value Memo.

[64] *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates From the People's Republic of China*, 69 FR 75294, 75301 (December 16, 2004) ("*Chlorinated Isos Prelim*"), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China*, 70 FR 24502 (May 10, 2005).

industry-specific export subsidies.[65] Therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.[66] Further, guided by the legislative history, it is the Department's practice not to conduct a formal investigation to ensure that such prices are not subsidized.[67] Rather, the Department bases its decision on information that is available to it at the time it makes its determination.[68] Additionally, consistent with our practice, we disregarded prices from NME countries and excluded imports labeled as originating from an "unspecified" country from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.[69] Therefore, we have not used prices from these countries either in calculating the Thai import-based SVs or in calculating ME input values.

The Department used Thai Import Statistics from GTA to value the raw material inputs, certain energy inputs, and packing material inputs that Fufeng and Deosen used to produce subject merchandise during the POI, except where listed below.

We valued water using data from Thailand's Metropolitan Waterworks Authority.[70] This source provides water rates for commerce, government agency, state enterprise, and industry users that are publicly available, contemporaneous with the POI, and exclusive of value added taxes.

We valued electricity and steam using data from the Electricity Generating Authority of Thailand, Glow Energy Public Company Limited 2011 annual report.[71] This source provides rates for electricity to industrial customers and rates for steam, which are publicly available and contemporaneous with the POI.

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[65] *See, e.g., Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4-5; *Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review*, 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19-20.

[66] *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 7.

[67] *See* Conference Report, at 590; *see also Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 30758, 30763 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 60632 (October 25, 2007).

[68] Deosen argues that the Department should include Indonesian data because (i) the World Trade Organization suggest that Indonesia does not maintain export subsidies; (ii) the United States Trade Representative reports that Indonesia does not maintain export subsidies and (iii) the Department found that respondent in a 2001 *Certain Hot-Rolled Carbon Steel Flat Products from Indonesia* proceeding did not utilize the cited export subsidy program. *See* Letter to the Department from Deosen, "Deosen Biochemical's Comments for the Preliminary Determination: Xanthan Gum from China," dated November 26, 2012, at 17-24. We disagree with Deosen because the Department has no evidence that a finding of termination has been made within the context of a countervailing duty proceeding for the cited subsidy program.

[69] *See Chlorinated Isos Prelim*, 69 FR at 75300.

[70] *See* Prelim Surrogate Value Memo at Exhibit 4.

[71] *See* Prelim Surrogate Value Memo at Exhibits 3 and 5.

We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in Thailand. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in Thailand that is published in *Doing Business 2012: Thailand* by the World Bank.[72]

We used Thai transport information in order to value the freight-in cost of the raw materials. The Department determined the best available information for valuing truck freight and rail freight to be from the Thailand Board of Investment. This report provides information concerning the truck and rail transportation costs from Bangkok, Thailand to five other Thai cities. We calculated surrogate inland truck rates on a per-kilogram, per-kilometer basis and rail freight rates on a per-metric-ton, per-kilometer basis.[73]

We valued marine insurance using a Thai rate from RJG Consultants, which is an ME provider of marine insurance. We then converted the insurance rate to a rate per U.S. dollar of insured value.[74]

We valued international freight using information from the Descartes Carrier Rate Retrieval Database for ocean freight for shipment of chemicals. Because only Deosen reported international freight, we used an average of the quoted rates for the specific routes (*i.e.*, port of export to port of import) reported by Deosen in its U.S. sales database.[75]

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping proceedings.[76] In *Labor Methodologies*, the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization ("ILO") Yearbook of Labor Statistics ("Yearbook").

In this preliminary determination, the Department calculated the labor input using the wage method described in *Labor Methodologies*. To value the respondent's labor input, the Department relied on data reported by Thailand to the ILO in Chapter 6A of the Yearbook. Although the Department further finds the two-digit description under ISIC-Revision 3 ("Manufacture of Chemicals and Chemical Products") to be the best available information on the record because it is specific to the industry being examined, and is, therefore, derived from industries that produce comparable merchandise, Thailand has not reported data specific to the two-digit description since 2000. However, Thailand did report total manufacturing wage data in 2005. Accordingly, relying on Chapter 6A of the Yearbook, the Department calculated the labor input using total labor data reported by Thailand to the ILO, in accordance with section 773(c)(4)

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[72] *See* Prelim Surrogate Value Memo at Exhibit 8.
[73] *See* Prelim Surrogate Value Memo at Exhibits 9-10.
[74] *See* Prelim Surrogate Value Memo at Exhibit 11.
[75] *See* Deosen Analysis Memo.
[76] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) ("*Labor Methodologies*").

of the Act.[77] A more detailed description of the wage rate calculation methodology is provided in the Prelim Surrogate Value Memo.

To value factory overhead, selling, general, and administrative expenses, and profit, the Department used the audited financial statements of Ajinomoto (Thailand) Co., Ltd., which is a Thai producer of comparable merchandise.

Currency Conversion

Where necessary, the Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the date of the U.S. sale, as certified by the Federal Reserve Bank.

## DETERMINATION NOT TO APPLY AN ALTERNATIVE COMPARISON METHODOLOGY

The statute allows the Department to employ an alternative comparison methodology in an AD investigation under the following circumstances: (1) there is a pattern of EPs or CEPs for comparable merchandise that differ significantly among purchasers, regions, or periods of time; and (2) the Department explains why such differences cannot be taken into account using the average-to-average or transaction-to-transaction methodology.[78] On September 28, 2012, Petitioner alleged targeted dumping with respect to sales made by Fufeng[79] and Deosen[80] to certain U.S. customers and regions, and in certain time periods. In order to determine whether the respondents engaged in targeted dumping, the Department conducted the targeted dumping analysis first established in *Steel Nails,*[81] and as modified in *Wood Flooring.*[82] We made all price comparisons in the test using prices for comparable merchandise (*i.e.*, by control number or CONNUM). The test procedures are the same for targeted-dumping allegations involving purchasers, regions, and time periods. We based all of our targeted-dumping calculations on the net U.S. price that we determined for U.S. sales by Fufeng and Deosen in our margin calculations.

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[77] *See Labor Methodologies,* 76 FR at 36094, n.11; *see also Small Diameter Graphite Electrodes From the People's Republic of China: Preliminary Results and Partial Rescission of Administrative Review*, 77 FR 13284, 13292-93 (March 6, 2012) (relying upon national data reported by ILO Chapter 6A in the absence of Chapter 6A industry-specific data), unchanged in *Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of Administrative Review*, 77 FR 40854 (July 11, 2012).

[78] *See* section 777A (d)(1)(B) of the Act.

[79] *See* Letter from Petitioner to the Department, "Xanthan Gum from the People's Republic of China: Targeted Dumping Allegation Against Neimenggu Fufeng Biotechnologies Co., Ltd.," dated September 28, 2012.

[80] *See* Letter from Petitioner to the Department, "Xanthan Gum from the People's Republic of China: Targeted Dumping Allegation Against Deosen Biochemical Ltd.," dated September 28, 2012.

[81] *See Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value*, 73 FR 33985 (June 16, 2008) ("*Steel Nails*"), and accompanying Issues and Decision Memorandum at Comments 1-9.

[82] *See Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 11, 2011), as amended, 76 FR 76690 (December 8, 2011) ("*Wood Flooring*").

As a result of our analysis, we preliminarily determine that for Fufeng there is a pattern of prices for U.S. sales of comparable merchandise that differ significantly among certain purchasers, regions, and time periods, in accordance with section 777A(d)(1)(B)(i) of the Act and our practice. With regard to Deosen, we preliminarily determine that there is a pattern of prices for U.S. sales of comparable merchandise that differ significantly among purchasers, regions or time periods, in accordance with section 777A(d)(1)(B)(i) of the Act and our practice.

We find, however, that the pattern of significant price differences for both respondents can be taken into account using the average-to-average methodology because there is not a meaningful difference in the weighted-average dumping margins when calculated using the average-to-average methodology and the average-to-transaction methodology. As a result, based on the data before us, the average-to-average methodology does not meaningfully mask the amount of dumping for either respondent. Accordingly, for this preliminary determination we have used the average-to-average methodology to calculate the weighted-average dumping margins for Fufeng and Deosen.[83]

## APPLICATION OF FACTS AVAILABLE AND ADVERSE FACTS AVAILABLE

Section 776(a) of the Act provides that the Department shall apply "facts otherwise available" if (1) necessary information is not on the record or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

The Department has preliminarily found that the PRC-wide entity withheld information requested by the Department, failed to provide information in a timely manner, and significantly impeded this proceeding by not submitting the requested information. The PRC-wide entity neither filed documents indicating it was having difficulty providing the information nor requested that it be allowed to submit the information in an alternate form. As a result, the Department has preliminarily determined, pursuant to sections 776(a)(2)(A)-(C) of the Act, that it may use facts otherwise available to determine the rate for the PRC-wide entity.[84]

Furthermore, section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not

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[83] *See, e.g., Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From Indonesia: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 24885, 24888 (May 6, 2010), unchanged in *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From Indonesia: Final Determination of Sales at Less Than Fair Value*, 75 FR 59223 (September 27, 2010), and *Polyethylene Retail Carrier Bags From Indonesia: Final Determination of Sales at Less Than Fair Value,* 75 FR 16431 (April 1, 2010), and accompanying Issues and Decision Memorandum at Comment 1.

[84] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam*, 68 FR 4986, 4991 (January 31, 2003), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. The Department preliminarily finds that the PRC-wide entity has failed to cooperate to the best of its ability to comply with requests for information because it has failed to respond to requests for information, and, consequently, the Department has employed an inference that is adverse to the PRC-wide entity in selecting from among the facts otherwise available.

Section 776(b) of the Act states that the Department, when employing an adverse inference, may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate based on AFA, the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. The Department's practice is to select, as an AFA rate, the higher of: (1) the highest dumping margin alleged in the petition, or (2) the highest calculated weighted-average dumping margin of any respondent in the investigation.[85] In this investigation, the highest petition dumping margin is 154.07 percent.[86] This rate is higher than any of the weighted-average dumping margins calculated for the companies individually examined.

## CORROBORATION OF SECONDARY INFORMATION

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.[87] To corroborate means that the Department will satisfy itself that the secondary information to be used has probative value.[88] To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.[89] Independent sources used to corroborate such evidence may include, for example, published

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[85] *See Certain Stilbenic Optical Brightening Agents From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 17436, 17438 (March 26, 2012).
[86] *See Initiation Notice*, 77 FR at 39214.
[87] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) ("SAA").
[88] *See id.*
[89] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.[90]

In order to determine the probative value of the margins in the petition for use as AFA for purposes of this preliminary determination, we compared the petition rate to the margins we calculated for the individually examined respondents. We determined that the petition margin of 154.07 percent is reliable and relevant because it is within the range of the product-specific dumping margins on the record for an individually examined exporter of subject merchandise.[91] Thus, the highest petition margin has probative value. Accordingly, we have corroborated the 154.07 percent petition margin to the extent practicable within the meaning of section 776(c) of the Act.[92]

## POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

Pursuant to section 735(a)(2) of the Act, between November 28, 2012, and December 10, 2012, Petitioner, Fufeng, and Deosen each requested that the Department postpone the final determination. In accordance with section 733(d) of the Act and 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) the requesting exporters Fufeng and Deosen account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the requests and are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the *Federal Register*. Suspension of liquidation will be extended accordingly.

## VERIFICATION

As provided in section 782(i)(1) of the Act, we intend to verify the information from Fufeng and Deosen.

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[90] *See* SAA, at 870; *see also Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada*, 70 FR 12181, 12183 (March 11, 2005).

[91] *See* Deosen Analysis Memo, at Attachment 1: SAS Margin Output.

[92] *See* section 776(c) of the Act and 19 CFR 351.308(c) and (d); *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China*, 73 FR 35652, 35653 (June 24, 2008), and accompanying Issues and Decision Memorandum at Comment 1.

We will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

**CONCLUSION**

We recommend applying the above methodology for this preliminary determination.

✓ Agree  Disagree

Paul Piquado
Assistant Secretary
for Import Administration

3 JANUARY 2013
(Date)