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DATE: December 18, 2014

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Results of the 2013
Antidumping Duty New Shipper Review of Xanthan Gum from
the People's Republic of China

SUMMARY

In response to a request from Meihua Group International Trading (Hong Kong) Limited, Langfang Meihua Bio-Technology Co., Ltd., and Xinjiang Meihua Amino Acid Co., Ltd. (collectively, "Meihua"), the Department of Commerce ("Department") is conducting a new shipper review ("NSR") of the antidumping duty ("AD") order on xanthan gum from the People's Republic of China ("PRC"). The period of review ("POR") is July 19, 2013, through December 31, 2013. The Department preliminarily finds that Meihua has not made sales of subject merchandise at less than normal value ("NV"). Interested parties are invited to comment on these preliminary results of review.

Background

On July 19, 2013, the Department published in the *Federal Register* an AD order on xanthan gum from the PRC.¹ On January 10, 2014, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.214(b), the Department received a timely request for a NSR from Meihua. On February 21, 2014, the Department released the results of its U.S. Customs and Border Protection ("CBP") database query related to Meihua's request for a NSR. No parties commented on the results of the query. On February 27, 2014, the Department initiated this NSR on Meihua Group International Trading (Hong Kong) Limited ("Meihua HK"), in order to determine whether imports into the United States of xanthan gum from Meihua

¹ See *Xanthan Gum From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 78 FR 43143 (July 19, 2013).



HK are being sold below NV.² On February 27, 2014, the Department issued its AD questionnaire to Meihua HK. Between March 24, 2014, and December 2, 2014, we received timely questionnaire and supplemental questionnaire responses from Meihua. Between April 23, 2014 and November 18, 2014, CP Kelco US, Inc. (“Petitioner”) and Meihua submitted comments and information regarding surrogate country and surrogate value (“SV”) selection. Petitioner and Meihua submitted pre-preliminary comments on November 24, 2014.

On August 1, 2014, the Department extended the time period for issuing the preliminary results of this NSR by 120 days, until December 18, 2014.³

Scope of the Order

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

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

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

Merchandise covered by the scope of this order is classified in the Harmonized Tariff Schedule (“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.

Single Company Treatment

To the extent that the Department’s practice does not conflict with section 773(c) of the Act, the Department has, in prior cases, treated certain non-market economy (“NME”) country exporters and/or producers as a single company if the facts of the case supported such treatment.⁴ Pursuant to 19 CFR 351.401(f)(1), the Department will treat producers as a single company, or “collapse”

² See *Xanthan Gum From the People’s Republic of China: Initiation of Antidumping Duty New Shipper Review*, 79 FR 11083 (February 27, 2014) (“Initiation Notice”).

³ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations. “New Shipper Review of Xanthan Gum from the People’s Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty New Shipper Review” (August 1, 2014).

⁴ See *Certain Steel Nails From the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances and Postponement of Final Determination*, 73 FR 3928, 3932 (January 23, 2008), unchanged in *Certain Steel Nails From the People’s Republic of China: Amended Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 7254 (February 7, 2008) and *Certain Steel Nails from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008).

them, where: (1) those producers are affiliated; (2) the producers have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and (3) there is a significant potential for manipulation of price or production.⁵ In determining whether a significant potential for manipulation exists, 19 CFR 351.401(f)(2) states that the Department may consider various factors, including: (1) the level of common ownership; (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (3) whether the operations of the affiliated firms are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.⁶

Section 771(33) of the Act identifies persons that shall be considered “affiliated” or “affiliated persons,” including, *inter alia*: (1) members of a family, including brothers and sisters (whether by whole or half blood), spouses, ancestors, and lineal descendants, (2) any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization; (3) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and (4) any person who controls any other person and such other person.⁷ Section 771(33) of the Act further states that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

The Department preliminarily determines that Meihua HK, Langfang Meihua Bio-Technology Co., Ltd., and Xinjiang Meihua Amino Acid Co., Ltd. are affiliated pursuant to sections 771(33)(F) of the Act and that these companies should be treated as a single company for AD purposes pursuant to 19 CFR 351.401(f).⁸ As discussed in more detail in the Affiliation and Single Company Memorandum, these companies are under common control and, therefore, are affiliated in accordance with section 771(33)(F) of the Act (which states that affiliated persons include two or more persons directly or indirectly controlling, controlled by, or under common control with, any person). We also determine that there is a significant potential for the manipulation of price or production among these companies as evidenced by the level of common ownership, the degree of management overlap, and the intertwined nature of the operations of these companies.⁹ Thus we are preliminarily treating these companies as a single company.

⁵ See, e.g., *Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review*, 63 FR 12764, 12774-12775 (March 16, 1998).

⁶ See also, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From Taiwan*, 62 FR 51427, 51436 (October 1, 1997).

⁷ See sections 771(33)(E)-(G) of the Act.

⁸ See the memorandum from Brandon Farlander, International Trade Analyst, AD/CVD Operations Office IV to Abdelali Elouaradia, Director, AD/CVD Operations Office IV regarding “Xanthan Gum from the People’s Republic of China: Affiliation and Single Company Status” dated concurrently with this memorandum (“Affiliation and Single Company Memorandum”).

⁹ See *id.* and 19 CFR 351.401(f)(2).

Bona Fide Sale Analysis

Consistent with the Department's practice, we investigated the *bona fide* nature of the sale(s) made by Meihua during the POR. In evaluating whether or not sales in an NSR are commercially reasonable, and therefore *bona fide*, the Department has considered, *inter alia*, such factors as: (1) the timing of the sales; (2) the prices and quantities of the sales; (3) the expenses arising from the transactions; (4) whether the goods were resold at a profit; and (5) whether the transactions were made on an arm's-length basis.¹⁰ Accordingly, the Department considers a number of factors in its *bona fide* sale analysis, "all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise."¹¹

The Department preliminarily finds that the sale(s) of subject merchandise made by Meihua HK was made on a *bona fide* basis. Specifically, the Department preliminarily finds that: (1) the timing of the sale(s) does not indicate that the sale(s) is not *bona fide*; (2) the price and quantity of the sale(s) are commercially reasonable and not atypical of normal business practices of xanthan gum exporters; (3) there were no extraordinary expenses arising from the transaction(s); (4) the goods were resold by Meihua's unaffiliated U.S. customer at a profit; and (5) the sale(s) was made at arm's length.¹² Therefore, the Department preliminarily finds that Meihua HK's sale(s) of subject merchandise to the United States was *bona fide* for the purposes of this NSR.

DISCUSSION OF THE METHODOLOGY

Non-Market Economy Country Status

The Department considers the PRC to be an NME country.¹³ 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, the Department will continue to treat the PRC as an NME country for purposes of these preliminary results of review. Accordingly, we calculated NV using a factors of production ("FOPs") methodology in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rate

In proceedings involving NME countries, the Department maintains a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single weighted-average dumping margin.¹⁴ In addition, it is the Department's policy

¹⁰ See, e.g., *Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1250 (CIT 2005).

¹¹ See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005) (citing *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002)).

¹² See the *bona fide* analysis memorandum issued concurrently with this memorandum.

¹³ See *Hardwood and Decorative Plywood From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013) and the accompanying Issues and Decision Memorandum at the Background section.

¹⁴ See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, available at <http://enforcement.trade.gov/policy/bull05-1.pdf>.

to assign all exporters of the merchandise subject to review 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. In the *Initiation Notice*, the Department stated that its usual practice, in cases involving NME countries, is to require a company seeking to establish its eligibility for an AD rate separate from the NME-wide entity to provide evidence of both a *de jure* and *de facto* absence of government control over the company's export activities. Further, the Department noted that this NSR of Meihua would proceed if the company provided sufficient indication that it is not subject to either *de jure* or *de facto* government control with respect to its exports of xanthan gum.¹⁵ To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting company in an NME country under the test established in *Sparklers*,¹⁶ as amplified by *Silicon Carbide*.¹⁷ However, if the Department determines that a company is wholly foreign-owned or located in a market economy ("ME") country, then analysis of the *de jure* and *de facto* criteria are not necessary to determine whether the company is independent from government control and eligible for a separate rate.¹⁸

Meihua reported that it is a wholly Chinese-owned company.¹⁹ Therefore, we analyzed whether Meihua demonstrated an absence of both *de jure* and *de facto* governmental control over its export activities.

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.²⁰ The evidence provided by Meihua supports a preliminary finding of a *de jure* absence of government control based on the criteria outlined above.²¹

Absence of De Facto Control

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the export prices ("EP") 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

¹⁵ See *Initiation Notice*, 79 FR at 11084.

¹⁶ 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*").

¹⁷ 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*").

¹⁸ 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).

¹⁹ See Meihua's Section A Response at question 2(a).

²⁰ See *Sparklers*, 56 FR at 20589.

²¹ See Meihua's Section A Response at questions 2(d) through 2(f) and Letter from Meihua to the Secretary of Commerce, the Honorable Penny S. Pritzker regarding, "Xanthan Gum from the People's Republic of China Supplemental Section A Questionnaire Response," dated May 15, 2014 ("*Supplemental Section A response*") at SA1a-SA1h.

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 the disposition of profits or the financing of losses.²² The Department determines that an analysis of *de facto* control is critical in determining whether a respondent is, in fact, subject to a degree of governmental control, which would preclude the Department from assigning the respondent a separate rate. The evidence provided by Meihua supports a preliminary finding of a *de facto* absence of government control based on the criteria outlined above.²³

As a result of our analysis, the Department preliminarily finds that Meihua qualifies for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers*.

Surrogate Country

When the Department investigates imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOPs valued in a surrogate ME country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing 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.²⁴

As a general rule, the Department selects a surrogate country that is at the same level of economic development as the NME unless it is determined that none of the countries are viable options because (a) they either are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available SV data, or (c) are not suitable for use based on other reasons. Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development.²⁵ The Department normally values all FOPs in a single surrogate country.²⁶ Our surrogate country analysis is below.

Petitioner and Meihua both state that the Department should select Thailand as the primary surrogate country because Thailand is at a comparable level of economic development as the

²² See *Silicon Carbide*, 59 FR at 22587; 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).

²³ See Meihua's Section A Response at questions 2(a)(iii)-(v), 2(b)-(c), and 2(g)-(q) and Supplemental Section A response at SA1a-SA1h.

²⁴ See section 773(c)(4) of the Act.

²⁵ See "2013 Antidumping Duty New Shipper Review of Xanthan Gum from the People's Republic of China: Request for Surrogate Country and Surrogate Value Comments and Information," dated April 16, 2014, at 2 of the attachment.

²⁶ See 19 CFR 351.408(c)(2).

PRC, is a significant producer of comparable merchandise, and was found to have reliable data for valuing FOPs in the investigation of xanthan gum from the PRC.²⁷

Economic Comparability

Consistent with Departmental practice, the Department identified a number of countries that are at the same level of economic development as the PRC. The Department determines economic development based on *per capita* gross national income, as reported in the most current annual issue of the *World Development Report* (The World Bank).²⁸ The countries identified, Bulgaria, Colombia, Ecuador, Indonesia, South Africa, and Thailand, are not ranked and are considered equivalent in terms of economic comparability.²⁹ Therefore, all six countries satisfy this prong of the surrogate country selection criteria.³⁰

Significant Producer of 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 Policy Bulletin 04.1, for guidance on defining comparable merchandise.³¹ Policy Bulletin 04.1 states that “[i]n all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise,” but “[i]n cases where the identical merchandise is not produced, the team must determine if other merchandise that is comparable is produced. How the team does this depends on the subject merchandise.”³²

In this case, data regarding the production of identical merchandise in the potential surrogate countries are not available. There is no record evidence showing that any of these countries is a producer of xanthan gum. Consistent with our practice, we also examined data in the Global Trade Atlas (“GTA”) for exports of identical merchandise from the potential surrogate countries.

²⁷ See Submission from Meihua, “Xanthan Gum from the People’s Republic of China: Pre-Preliminary Comments,” dated November 24, 2014; see also Submission from Petitioner, “New Shipper Review for Xanthan Gum from the People’s Republic of China: Petitioner’s Pre-Preliminary Comments,” dated November 24, 2014.

²⁸ See Policy Bulletin 04.1, “Non-Market Economy Surrogate Country Selection Process.” (March 1, 2004) (“Policy Bulletin 04.1”) available at <http://enforcement.trade.gov/policy/bull04-01.html> at 2 (endnotes omitted); see, e.g., *Utility Scale Wind Towers From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 75992 (December 26, 2012), and accompanying Issues and Decision Memorandum at Comment 1. Although 19 CFR 351.408(b) instructs the Department to rely on gross domestic product (“GDP”) data in such comparisons, it is Departmental practice to use “per capita GNI, rather than per capita GDP, because while the two measures are very similar, per capita GNI is reported across almost all countries by an authoritative source (the World Bank), and because the Department finds that the per capita GNI represents the single best measure of a country’s level of total income and thus level of economic development.” See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716 (October 19, 2006) (“*Antidumping Methodologies*”).

²⁹ See Memorandum from Carole Showers, Director, Office of Policy, to Howard Smith, Program Manager, Office IV, “Request for a List of Surrogate Countries for a New Shipper Review of the Antidumping Duty Order on Xanthan Gum from the People’s Republic of China,” dated March 18, 2014.

³⁰ See section 773(c)(4)(A) of the Act.

³¹ See Policy Bulletin 04.1.

³² *Id.*

We found no evidence that any of the potential surrogate countries exported xanthan gum. Petitioner reported that xanthan gum is only produced in a limited number of countries (*i.e.*, Austria, France, the PRC and the United States).³³

On May 7, 2014, Petitioner placed information on the record regarding the production of comparable merchandise in certain potential surrogate countries.³⁴ Specifically, Petitioner provided GTA export data for Indonesia and Thailand for monosodium glutamate (“MSG”) and lysine for the years 2011 through 2013, as well as each month of the POR.³⁵ The Department previously found that MSG and lysine are comparable to xanthan gum for the purposes of surrogate country selection³⁶ and record evidence on this proceeding also supports the conclusion that xanthan gum, MSG and lysine have similar production processes and end uses.³⁷ Both MSG and lysine, like xanthan gum, are added to foods albeit as a flavor enhancer and nutritional supplement, respectively.³⁸ Also, we found that the production processes for MGS and lysine are substantially similar to the production process for xanthan gum and are based on bacterial fermentation.³⁹ 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.⁴⁰ The evidence on the record shows that Indonesia and Thailand had significant exports under the HTS categories covering MSG and lysine. Therefore, we find that Indonesia and Thailand are significant producers of comparable merchandise.

Data Availability

When evaluating SV data, the Department considers several factors including whether the SVs are publicly available, contemporaneous with the POR, represent a broad market average, from an appropriate surrogate country, tax- and duty-exclusive, and specific to the input.⁴¹ The Department’s preference is to satisfy all of these aforementioned selection factors.⁴²

³³ See Submission from Petitioner, “New Shipper Review for Xanthan Gum from the People’s Republic of China: Petitioner’s Comments on Surrogate Country List,” dated April 23, 2014.

³⁴ See Submission from Petitioner, “New Shipper Review for Xanthan Gum from the People’s Republic of China: Petitioner’s Comments on Surrogate Country Selection; Petitioner’s Submission of Surrogate Value Information,” dated May 7, 2014, at Exhibits 18 and 29.

³⁵ The HTS classifies MSG under HTS category 2922.42 and lysine under HTS 2922.41.

³⁶ See *Xanthan Gum from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 78 FR 2252 (January 10, 2013) (“*Xanthan Gum Prelim*”) and accompanying Preliminary Decision Memorandum at 4-7, unchanged in *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33350 (June 4, 2013) (“*Xanthan Gum Final*”).

³⁷ See Submission from Petitioner, “*New Shipper Review for Xanthan Gum from the People’s Republic of China: Final Surrogate Value Submission*,” dated November 18, 2014, Exhibit 1.

³⁸ See *Xanthan Gum Prelim*, and accompanying Preliminary Decision Memorandum at 6, unchanged in *Xanthan Gum Final*.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ See, *e.g.*, *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2010-2011*, 78 FR 17350 (March 21, 2013), and accompanying Issues and Decision Memorandum at Comment I(C).

⁴² *Id.*

The record contains certain SV data from Indonesia and Thailand. The SV data on the record include publicly available, contemporaneous, tax- and duty-free, broad market average GTA import data for every month of the POR. The GTA import data from Thailand are available to value every direct material, packing, and energy input used by Meihua. The record is not as complete with respect to SV data from Indonesia, and, as explained below, we do not believe we have a usable financial statement from Indonesia to value financial ratios.

Accordingly, based on record evidence, the Department preliminarily selects Thailand as the primary surrogate country because: (1) it is at the same level of economic development as the PRC, pursuant to 773(c)(4) of the Act; (2) it is a significant producer of comparable merchandise; and (3) we have reliable data from Thailand with which to value all FOPs.⁴³

Date of Sale

Consistent with the Department's regulations at 19 CFR 351.401(i), Meihua reported the invoice date as the date of sale. We found no evidence that another alternative date better reflects the date on which the material terms of sale are established. Thus, the Department used invoice date as the date of sale for these preliminary results of review in accordance with 19 CFR 351.401(i).

Fair Value Comparisons

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1), in order to determine whether the sale(s) of xanthan gum to the United States by Meihua was made at less than NV, we compared the EP of the sale(s) to NV, as described in the "Export Price" and "Normal Value" sections below.

Differential Pricing Analysis

Pursuant to 19 CFR 351.414(c)(1), the Department calculates dumping margins by comparing weighted-average NVs to weighted-average EPs (or constructed EPs) (the average-to-average method) unless the Department determines that another method is appropriate in a particular situation. In recent investigations, the Department applied a "differential pricing" analysis to determine whether application of average-to-transaction comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.⁴⁴ The Department has found that the differential pricing analysis used in those recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in administrative reviews. In the differential pricing analysis, the Department examines whether there is a pattern of EPs (or constructed EPs) for comparable merchandise that differs significantly among purchasers, regions, or time periods. However, in this review, we do not have two or more sales to compare in order to test whether a pattern of prices that differ significantly exists. Accordingly, we have not conducted a differential pricing analysis. Thus, we determined whether Meihua sold subject merchandise at less than NV using

⁴³ See Memorandum to the File. "Preliminary Surrogate Value Memorandum," dated concurrently with this memorandum ("Preliminary Surrogate Value Memorandum").

⁴⁴ See, e.g., *Xanthan Gum Final; Notice of Affirmative Final Determination of Sales at Less Than Fair Value: Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan*, 79 FR 19868 (April 10, 2014).

the standard comparison method. Specifically, we compared the weighted-average NV to the weighted-average EP in our AD margin calculations.

U.S. Price

Export Price

According to section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or 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, as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, we treated the U.S. sales price as an EP in our calculations because the subject merchandise was sold directly to the unaffiliated customer in the United States prior to importation, and because constructed EP was not otherwise warranted. In accordance with section 772(c)(2)(A) of the Act, in order to calculate the net U.S. price for comparing to NV, we made deductions from the starting price for movement expenses, marine insurance, customs duties, domestic inland freight, and ME brokerage and handling, as applicable.⁴⁵

Normal Value

Section 773(c)(1) of the Act provides that, the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME country and the Department finds that the available 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. When determining NV in a NME context, the Department will base NV on FOP because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. Under section 773(c)(3) of the Act, FOP include, but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; and (3) representative capital costs. In accordance with section 773(c) of the Act and 19 CFR 351.408(c)(1), we calculated NV by multiplying the reported per-unit FOP consumption rates by publicly available SVs.

Factor Valuations

As noted above, when selecting from among the available information for valuing FOP, the Department's practice is to select, to the extent practicable, SVs which are non-export average values, contemporaneous with the POR or closest in time to the POR, product-specific, and tax- and duty-exclusive.⁴⁶ The record shows that import statistics from the primary surrogate country, Thailand, are generally contemporaneous with the POR, product-specific, and tax- and duty-exclusive. Thus, we based SVs for Meihua's FOP (*i.e.*, direct materials and packing

⁴⁵ See the analysis memorandum for Meihua issued concurrently with this memorandum.

⁴⁶ 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).

materials), on weighted-average per-unit import values calculated from Thai import statistics published by GTA.⁴⁷

We disregarded certain import values when calculating SVs. In accordance with legislative history, we continue to apply the Department's long-standing practice of disregarding import prices that we have reason to believe or suspect are subsidized or dumped.⁴⁸ In this regard, the Department previously found that it is appropriate to disregard prices of imports from India, Indonesia, South Korea, and Thailand because it determined that these countries maintain broadly available, non-industry specific export subsidies.⁴⁹ 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.⁵⁰ Rather, the Department bases its decision on information that is available to it at the time it makes its determination. Based on the existence of these subsidy programs, which were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters in India, Indonesia, South Korea and Thailand may have benefitted from these subsidies. Therefore, we have not used prices of Thai imports from India, Indonesia, and South Korea in calculating the import-based SVs. Additionally, in selecting import data for SVs, we disregarded prices from NME countries.⁵¹ Finally, we excluded from our calculation of the average import value imports that were labeled as originating from an "unspecified" country, because we could not be certain that they were not from either an NME country or a country with generally available export subsidies.⁵²

As appropriate, we added freight costs to certain SVs. Specifically, we added surrogate inland freight costs to import values used as SVs using the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest port to the factory that produced the subject merchandise, where appropriate. This

⁴⁷ See Preliminary Surrogate Value Memorandum.

⁴⁸ See Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) at 590.

⁴⁹ 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; *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 66 FR 50410 (October 3, 2001) and accompanying Issues and Decision Memorandum at 23.

⁵⁰ See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988); 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).

⁵¹ See, e.g., *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 74 FR 9591, 9600 (March 5, 2009), unchanged in *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 36656 (July 24, 2009) and *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Notice of Antidumping Duty Order*, 74 FR 46971 (September 14, 2009).

⁵² *Id.*

adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.*⁵³

We valued labor, water, and movement expenses as follows. We valued labor using data from the Thailand National Statistics Office 2007 Industrial Census. We calculated the labor rate based on data reported under the manufacturing classification 2413, "manufacture of plastics in primary forms and of synthetic rubber," (including xanthan gum) which is the classification corresponding to HTS category 3913.90. We inflated the value using the Consumer Price Index for Thailand. We valued water using price data from the Metropolitan Waterworks Authority of Thailand. We valued truck freight using data from the World Bank's publication *Doing Business 2014: Thailand*. We valued brokerage and handling based on a price list of export procedures necessary to export a standardized cargo of goods from Thailand, as published in the World Bank's *Doing Business 2014: Thailand*. We valued international freight using rates obtained from Maersk Line for ocean freight for shipments of chemicals. We used an average of the quoted rates for the specific route (*i.e.*, port of export to port of import) reported by Meihua in its U.S. sales database. We valued marine insurance using a Thai rate from RJG Consultants, which is an ME provider of marine insurance. We then converted the marine insurance rate to a rate per U.S. dollar of insured value.

The Department is directed by 19 CFR 351.408(c)(4) to value overhead, selling, general and administrative expenses ("SG&A"), and profit using non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country. There are a number of contemporaneous financial statements on the record for Thai companies and one set of contemporaneous financial statements on the record for an Indonesian company. After examining these financial statements, we selected the financial statements of Ajinomoto (Thailand) Co., Ltd. ("Ajinomoto"), a Thai producer of MSG and lysine, to value factory overhead, SG&A and profit. As noted above, the Department previously found that MSG and lysine are comparable to xanthan gum for the purposes of surrogate country selection⁵⁴ and record evidence on this proceeding also supports the conclusion that xanthan gum, MSG and lysine have similar production processes and end uses.⁵⁵ The Indonesian company does not appear to be a producer of comparable merchandise (*i.e.*, the majority of its products do not appear to share common inputs and production processes with xanthan gum) and it is not in the primary surrogate country. We did not use the other Thai financial statements on the record to value factory overhead, SG&A and profit because they are either incomplete, or the evidence does not clearly indicate that they are producers of comparable merchandise. For a detailed discussion of our SV selections, *see* the Preliminary Surrogate Value Memorandum.

⁵³ See *Sigma Corp. v. United States*, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997) ("*Sigma Corp.*").

⁵⁴ See *Xanthan Gum Prelim.* and accompanying Preliminary Decision Memorandum at 4-7, unchanged in *Xanthan Gum Final*.

⁵⁵ See Submission from Petitioner, "*New Shipper Review for Xanthan Gum from the People's Republic of China: Final Surrogate Value Submission.*" dated November 18, 2014, Exhibit 1.

Currency Conversion

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

CONCLUSION

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

✓

Agree

Disagree

Ronald K Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

December 18, 2014

(Date)