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July 31, 2015

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
Antidumping Duty Administrative Review of Xanthan Gum from
the People's Republic of China

SUMMARY

In response to requests from interested parties, the Department of Commerce (“Department”) is conducting an administrative review of the antidumping duty (“AD”) order on xanthan gum from the People’s Republic of China (“PRC”) for the period of review (“POR”) from July 19, 2013 through June 30, 2014.¹ The administrative review covers eight exporters of subject merchandise, including two mandatory respondents, Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.) and Deosen Biochemical Ltd. The Department preliminarily finds that four companies, including two companies that we are treating as a single entity with a mandatory respondent, have established their eligibility for separate rate status. In addition, the Department preliminarily finds that mandatory respondent Deosen Biochemical Ltd. sold subject merchandise in the United States at prices below normal value during the POR, but that Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.) did not. Finally, of the companies for which a

¹ The POR for this administrative review begins on July 19, 2013, the date the International Trade Commission (“ITC”) published its final determination of threat of material injury in the underlying investigation and the date from which merchandise subject to the AD order on xanthan gum from the PRC remains suspended from liquidation pursuant to the underlying investigation. The ITC’s finding was not accompanied by a finding that injury would have resulted but for the imposition of suspension of liquidation. See *Xanthan Gum From Austria and China*, 78 FR 43226 (July 19, 2013). Accordingly, merchandise subject to the investigation remains suspended from liquidation beginning on July 19, 2013, the date the ITC published its final determination, 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, 43144 (July 19, 2013), and this date serves as the first day of the POR for this administrative review.



review was requested, the Department is preliminarily treating Hebei Xinhe Biochemical Co. Ltd. as part of the PRC-wide entity, and the Department preliminarily finds that A.H.A. International Co., Ltd. (“AHA”) had no reviewable transactions of subject merchandise during the POR.

If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (“CBP”) to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. Unless otherwise extended, we intend to issue final results no later than 120 days from the date of publication of the accompanying *Federal Register* notice of preliminary results of review, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the “Act”).

BACKGROUND

On July 19, 2013, the Department published in the *Federal Register* an AD order on xanthan gum from the PRC.² On July 1, 2014, the Department published in the *Federal Register* a notice of opportunity to request an administrative review of the AD order on xanthan gum from the PRC.³ Between July 18 and July 30, 2014, the Department received requests for review from eight foreign and domestic interested parties. Additionally, on July 18, 2014, the Department received a request from CP Kelco U.S. (“Petitioner”), the petitioner in the underlying investigation, to conduct administrative reviews of numerous producers/exporters of xanthan gum from the PRC, many of which were already the subject of review requests filed by other parties. On August 29, 2014, the Department published in the *Federal Register* a notice of initiation for companies for which a timely request for an administrative review of the applicable AD order was submitted.⁴

Period of Review

The POR is July 19, 2013, through June 30, 2014.

Extension of the Preliminary Results

On March 2, 2015, the Department extended the deadline for the preliminary results by a total of 120 days, to July 31, 2015.⁵

² See *Xanthan Gum From the People’s Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 78 FR 43143 (July 19, 2013).

³ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 79 FR 37289 (July 1, 2014).

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 79 FR 51548 (August 29, 2014) (“Initiation Notice”).

⁵ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Xanthan Gum from the People’s Republic of China: Extension of Deadline for Preliminary Results of Administrative Review; 2013-2014, dated March 2, 2015.

SCOPE OF THE ORDER

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

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

Xanthan gum is a polysaccharide produced by aerobic fermentation of *Xanthomonas campestris*. The chemical structure of the repeating pentasaccharide monomer unit consists of a backbone of 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.

SELECTION OF RESPONDENTS

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 review. When the Department limits the number of exporters examined in a review pursuant to section 777A(c)(2) of the Act, section 782(a) of the Act directs the Department to calculate individual weighted-average dumping margins for companies not initially selected for individual examination that voluntarily provide the information requested of the mandatory respondents if: (1) the information is submitted by the due date specified for the mandatory respondents and (2) the number of such companies that have voluntarily provided such information is not so large that individual examination would be unduly burdensome and inhibit the timely completion of the review.

On September 9, 2014, the Department placed on the record CBP data for U.S. imports classified under the HTS subheading identified in the scope of the AD order on xanthan gum from the PRC.⁶ At that time, the Department invited interested parties to submit comments regarding the CBP data for use in respondent selection. The Department received no comments on the CBP data or respondent selection.

On September 23, 2014, the Department determined that it was not practicable to examine more than two respondents in the instant administrative review. Therefore, in accordance with section

⁶ See Memorandum to the File, “Antidumping Duty Administrative Review of Xanthan Gum from the People’s Republic of China: Automated Commercial System Shipment Query,” dated September 9, 2014.

777A(c)(2)(B) of the Act, the Department selected for individual examination the two exporters accounting for the largest volume of xanthan gum exported from the PRC during the POR based on CBP data. Those exporters are, in alphabetical order, AHA and Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.)/Shandong Fufeng Fermentation Co., Ltd. (“Fufeng”).⁷ The Department also noted that if it received voluntary responses in accordance with section 782(a) of the Act and 19 CFR 351.204(d), then it would evaluate the circumstances at that time in deciding whether to select an additional respondent for examination.

The Department issued its AD questionnaire to AHA and Fufeng on September 25, 2014. Between October 28 and November 14, 2014, AHA submitted timely responses to the Department’s questionnaire. On February 26, 2015, the Department issued its AD questionnaire to Deosen Biochemical Ltd. and Deosen Biochemical (Ordos) Ltd. (collectively, “Deosen”) in order to complete the record of the review with respect to sales reported by AHA.⁸ Between October 27, 2014 and July 27, 2015, Fufeng submitted timely responses to the Department’s original and supplemental questionnaires, and between March 24 and July 1, 2015, Deosen submitted timely responses to the Department’s original and supplemental questionnaires.

Based on our analysis of the CBP data and the descriptions of AHA’s and Deosen’s sales processes contained in each company’s original and supplemental questionnaire responses, we preliminarily find that Deosen is the exporter for sales originally attributed to AHA.⁹ Specifically, we preliminarily find that Deosen is responsible for negotiating and setting the terms of sale and directing the activity of AHA with regard to subject merchandise manufactured by Deosen.¹⁰ Therefore, we are treating Deosen, rather than AHA, as a mandatory respondent for individual examination in this review.

In addition, on September 8, 2014, CP Kelco (Shandong) Biological Company Limited (“CP Kelco Shandong”) submitted a request to be treated as a voluntary respondent. Between October

⁷ See Memorandum to Abdelali Elouaradia, Director, Office IV, Antidumping and Countervailing Duty Operations, “Selection of Respondents for the 2013-2014 Administrative Review of the Antidumping Duty Order on Xanthan Gum from the People’s Republic of China,” dated September 23, 2014. The Department treated Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.) and Shandong Fufeng Fermentation Co., Ltd. as a single entity for respondent selection purposes because these companies had been collapsed in a prior segment of this antidumping proceeding.

⁸ The Department treated Deosen Biochemical Ltd. and Deosen Biochemical (Ordos) Ltd. as a single entity in the investigation segment of this proceeding.

⁹ See Memorandum to the File, “Preliminary Results Analysis Memorandum for Deosen Biochemical Ltd./Deosen Biochemical (Ordos) Ltd.,” dated concurrently with this memorandum; see also Submissions from AHA, “Xanthan Gum from the People’s Republic of China: Response to Section A of the Department’s Questionnaire,” dated October 28, 2014 (“AHA” Section A Response); “Xanthan Gum from the People’s Republic of China: Response to Section C Questionnaire,” dated November 14, 2015. See also Submissions from Deosen, “Xanthan Gum from the People’s Republic of China: Response to the Department’s Section A Questionnaire,” dated March 24, 2015 (“Deosen Section A Response”); “Xanthan Gum from the People’s Republic of China: Response to the Department’s Section C Questionnaire,” dated April 7, 2015; “Xanthan Gum from the People’s Republic of China: Response to the Department’s Section A Supplemental Questionnaire,” dated May 8, 2015; “Xanthan Gum from the People’s Republic of China: Response to the Department’s Section C Supplemental Questionnaire,” dated May 27, 2015 (“Deosen Supplemental C Response”); and “Xanthan Gum from the People’s Republic of China: Response to the Department’s Sections C and D Supplemental Questionnaire,” dated July 1, 2015.

¹⁰ *Id.*

16 and November 3, 2014, CP Kelco Shandong submitted timely responses to the Department's questionnaire. However, the companies selected for individual examination, Deosen and Fufeng, are participating in this review.

With respect to the acceptance of CP Kelco Shandong's voluntary response, the Department's examination of Deosen has been especially complicated due to the necessary analysis of the questionnaire responses of both AHA and Deosen. Furthermore, analysis of both Deosen and Fufeng has been complicated due to each company's multiple production facilities and factors of production. As a result, we are unable to calculate an individual dumping margin for a voluntary respondent, in addition to individual dumping margins for the two companies individually examined in this review. The additional workload of individually examining a voluntary respondent would be unduly burdensome, given the Department's current resource availability, and would inhibit timely completion of this review. Thus, consistent with section 782(a) of the Act, the Department has not considered CP Kelco Shandong's unsolicited questionnaire responses.

PRELIMINARY DETERMINATION OF NO SHIPMENTS

As stated above, based on our analysis of CBP data and the questionnaire responses of AHA and Deosen, we preliminarily find that Deosen is the exporter for the POR sales originally reported by, and attributed to, AHA. We note that AHA had no reported sales during the POR other than those now attributed to Deosen. As a result, we preliminarily find that AHA did not have any reviewable transactions during the POR.

Consistent with the Department's announced refinement to its assessment practice in non-market economy ("NME") cases, it is not appropriate to rescind the review with respect to AHA but, rather, we will complete the review and issue instructions to CBP based on the final results of the review.¹¹

SINGLE ENTITY 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 NME exporters and/or producers as a single entity if the facts of the case supported such treatment.¹² Pursuant to 19 CFR 351.401(f)(1), the Department will treat producers as a single entity, or "collapse" 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

¹¹ See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

¹² 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).

production.¹³ 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.¹⁴

“Collapsing” starts with a determination as to whether two or more companies are affiliated. Section 771(33)(F) of the Act defines affiliated persons to include “two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.” Section 771(33) of the Act further provides 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 previously treated Deosen Biochemical Ltd. and Deosen Biochemical (Ordos) Ltd. as a single entity in the investigation segment of this proceeding.¹⁵ We find that record evidence continues to support treatment of these two companies as a single entity in this administrative review.¹⁶ Thus, the Department has preliminarily determined that Deosen Biochemical Ltd. and Deosen Biochemical (Ordos) Ltd. are affiliated pursuant to section 771(33)(G) of the Act and should be treated as a single entity for AD purposes pursuant to 19 CFR 351.401(f).

In addition, the Department previously treated Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.) and Shandong Fufeng Fermentation Co., Ltd. as a single entity in the investigation segment of this proceeding.¹⁷ We find that record evidence continues to support treatment of these two companies as a single entity in this administrative review, and also supports treating an additional company, Xinjiang Fufeng Biotechnologies Co., Ltd., as part of the same single entity.¹⁸ Thus, the Department has preliminarily determined that Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.), Shandong Fufeng Fermentation Co., Ltd., and Xinjiang Fufeng Biotechnologies Co., Ltd. (collectively, “Fufeng”) are affiliated pursuant to section 771(33)(F) of the Act and should be treated as a single entity for AD purposes pursuant to 19 CFR 351.401(f).

¹³ 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).

¹⁴ 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).

¹⁵ See *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013) (“*Investigation Final Determination*”).

¹⁶ See Memorandum to Abdelali Elouaradia, Director, Office IV, AD/CVD Operations, “Xanthan Gum from the People’s Republic of China: Deosen Biochemical Ltd. Affiliation and Single Entity Status,” dated concurrently with this memorandum, for a full discussion of the proprietary details of the Department’s analysis.

¹⁷ See *Investigation Final Determination*.

¹⁸ See Memorandum to Abdelali Elouaradia, Director, Office IV, AD/CVD Operations, “Xanthan Gum from the People’s Republic of China: Fufeng Affiliation and Collapsing Memorandum,” dated concurrently with this memorandum, for a full discussion of the proprietary details of the Department’s analysis.

DISCUSSION OF METHODOLOGY

Non-Market Economy Country

The Department considers the PRC to be a NME country.¹⁹ 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 these preliminary results.

Separate Rates

The Department maintains a rebuttable presumption that all companies within an NME are subject to government control and, thus, should be assessed a single weighted-average dumping margin.²⁰ In the *Initiation Notice*, the Department notified parties of the application process by which exporters or exporter/producers may obtain separate rate status in NME proceedings.²¹ It is the Department's policy 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. 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*,²² as amplified by *Silicon Carbide*.²³ However, if the Department determines that a company is wholly foreign-owned, then a separate rate analysis is not necessary to determine whether it is independent from government control.²⁴

As noted above, the Department initiated this review with respect to eight companies.²⁵ In this review, three entities timely submitted separate rate applications or certifications: CP Kelco

¹⁹ 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).

²⁰ 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).

²¹ See *Initiation Notice*, 79 FR at 51549.

²² 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")

²³ 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").

²⁴ 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).

²⁵ The eight companies are: A.H.A. International Co., Ltd., CP Kelco (Shandong) Biological Company Limited, Deosen Biochemical Ltd., Deosen Biochemical (Ordos) Ltd., Hebei Xinhe Biochemical Co., Ltd., Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.), Shandong Fufeng Fermentation Co., Ltd., and Shanghai Smart Chemicals Co., Ltd.

Shandong, Deosen, and Shanghai Smart Chemicals Co. Ltd. (“Smart Chemicals”).²⁶ AHA, Deosen, and Fufeng also timely submitted responses to section A of the Department’s questionnaire, which is inclusive of information contained in a separate rate application.²⁷ However, because we have preliminarily determined that AHA did not have any reviewable transactions during the POR, as discussed above, we have not analyzed AHA’s questionnaire responses with respect to separate rate eligibility.

Separate Rate Analysis

1) Wholly Foreign-Owned

CP Kelco Shandong reported that it is wholly-foreign owned by a company located in a market economy (“ME”) country.²⁸ 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 government, a separate rates analysis is not necessary.²⁹ Accordingly, the Department is preliminarily granting separate rate status to CP Kelco Shandong.

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

Fufeng, Deosen, and Smart Chemicals indicated that they are either Chinese-foreign joint venture companies or wholly Chinese-owned companies.³⁰ In accordance with our practice, the Department analyzed whether these companies demonstrated the absence of *de jure* and *de facto* governmental control over their export activities.

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

²⁶ See CP Kelco Shandong’s Separate Rate Application, dated October 28, 2014; Deosen’s Separate Rate Certification, dated October 28, 2014; Smart Chemicals’ Separate Rate Application, dated October 29, 2014; and Smart Chemicals’ Supplemental Separate Rate Response, dated July 1, 2015.

²⁷ See AHA Section A Response; see also Deosen Section A Response; submission from Fufeng, “Section A Response for Neimenggu Fufeng Biotechnologies Co., Ltd. in the First Administrative Review of Antidumping Duty Order on Xanthan Gum from the People’s Republic of China (A-570-985),” dated October 27, 2014 (“Fufeng Section A Response”).

²⁸ See CP Kelco Shandong’s Separate Rate Application, dated October 28, 2014.

²⁹ 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).

³⁰ See Smart Chemicals’ Separate Rate Response, dated October 29, 2014, and Supplemental Separate Rate Response, dated July 1, 2015; see also Deosen Section A Response; Fufeng Section A Response.

decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.³¹

The evidence provided by Deosen, Fufeng, and Smart Chemicals supports a preliminary finding of an absence of *de jure* government control based on the following: (1) the respondent does not have restrictive stipulations associated with its individual exporter's business and export licenses; (2) the respondent provided evidence of legislative enactments decentralizing control of companies; and (3) the respondent provided evidence of formal measures by the government decentralizing control of companies.³²

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.³³

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 Deosen, Fufeng, 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 respondent sets its own EPs independent of the government and without the approval of a government authority; (2) the respondent has the authority to negotiate and sign contracts and other agreements; (3) the respondent has autonomy from the government regarding the selection of management; and (4) the respondent retains the proceeds from its sales and make independent decisions regarding disposition of profits or financing of losses.³⁴

The evidence placed on the record of this review by Deosen, Fufeng, and Smart Chemicals demonstrates an absence of *de jure* and *de facto* government control with respect to the companies' exports of the merchandise under review, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. Therefore, we are preliminarily granting Deosen, Fufeng, and Smart Chemicals a separate rate.

³¹ See *Sparklers*, 56 FR at 20589.

³² See Smart Chemicals' Separate Rate Response, dated October 29, 2014, and Supplemental Separate Rate Response, dated July 1, 2015; see also Deosen Section A Response; Fufeng Section A Response.

³³ 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).

³⁴ See Smart Chemicals' Separate Rate Response, dated October 29, 2014, and Supplemental Separate Rate Response, dated July 1, 2015; see also Deosen Section A Response; Fufeng Section A Response.

3) Companies Not Receiving a Separate Rate

The record indicates that there is one PRC exporter of the merchandise under consideration during the POR, Hebei Xinhe Biochemical Co. Ltd., which was named in the *Initiation Notice* and for which all review requests were not withdrawn and did not claim that it made no shipments of subject merchandise during the POR, but from which the Department received neither a separate rate application or certification. Because Hebei Xinhe Biochemical Co. Ltd. has not demonstrated that it is eligible for separate rate status, the Department finds that it has not rebutted the presumption of government control and, therefore, considers it to be part of the PRC-wide entity.³⁵

Dumping Margin for the Separate Rate Companies Not Individually Examined

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").³⁶ Consistent with this practice, because we preliminarily determine that the weighted-average dumping margin calculated for Fufeng is zero, the Department has assigned CP Kelco Shandong and Smart Chemicals a margin equal to the weighted-average dumping margin calculated for Deosen.

Surrogate Country

When the Department investigates 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 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.³⁷ Further, pursuant to 19 CFR 351.408(c)(2), the Department will normally value FOPs in a single country. On January 22, 2015, the Department issued a memorandum identifying six countries as being at the

³⁵ On November 4, 2013, the Department announced a change in practice with respect to the conditional review of the NME entity for antidumping duty administrative reviews for which the notice of opportunity to request an administrative review is published on or after December 4, 2013. See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Proceedings*, 78 FR 65963 (November 4, 2013). The opportunity to request this administrative review was published on July 1, 2014; therefore, the Department's new practice applies to this review.

³⁶ 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).

³⁷ For a discussion of our practice, see also *Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process* (March 1, 2004) ("Policy Bulletin"), available at <http://enforcement.trade.gov/policy/bull04-1.html>.

same level of economic development as the PRC for the POR.³⁸ The countries identified in that memorandum are Bulgaria, Ecuador, Romania, South Africa, Thailand, and Ukraine.³⁹ Petitioner, Fufeng, and AHA argue that the Department should select Thailand as the primary surrogate country. Deosen did not comment on surrogate country selection. Our surrogate country analysis is below.

Economic Comparability

Consistent with Department practice, the Department identified a number of countries that are at the same level of economic development as the PRC. The Department determined economic comparability based on per capita gross national income, as reported in the most current annual issue of the *World Development Report* (The World Bank).⁴⁰ The countries identified, namely Bulgaria, Ecuador, Romania, South Africa, Thailand, and Ukraine, are not ranked and are considered equivalent in terms of economic comparability.

Significant Producers of Identical or Comparable Merchandise

While the statute does not define “significant” or “comparable,” the Department’s practice is to evaluate whether production is significant based on characteristics of world production of, and trade in, comparable merchandise (subject to the availability of data on these characteristics) and to determine whether merchandise is comparable on a case-by-case basis.⁴¹ Where there is no production information, the Department has relied upon export data from potential surrogate countries. With respect to comparability of merchandise, in all cases, if identical merchandise is produced in a country, the country qualifies as a producer of comparable merchandise. Where there is no evidence of production of identical merchandise in a potential surrogate country, the Department has determined whether merchandise is comparable to the subject merchandise on the basis of similarities in physical form and the extent of processing or on the basis of production factors (physical and non-physical) and factor intensities. Since these characteristics are specific to the merchandise in question, the standard for “significant producer” will vary from case to case.⁴²

A comparison of production quantities of the comparable merchandise from each potential surrogate country in relation to world production was not possible because the record does not contain production quantities of comparable merchandise from each potential surrogate country. The Department next sought evidence of production of comparable merchandise in the form of

³⁸ See Letter to Interested Parties, “2013-2014 Antidumping Duty Administrative Review of Xanthan Gum from the People’s Republic of China: Request for Surrogate Country and Surrogate Value Comments and Information,” dated January 22, 2015.

³⁹ *Id.*

⁴⁰ See Policy Bulletin 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 the accompanying Issues and Decision Memorandum at Comment 1.

⁴¹ See, e.g., *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) and accompanying Preliminary Decision Memorandum at 4-7, unchanged in *Investigation Final Determination*.

⁴² See Policy Bulletin at 1-2; see also, e.g., *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 Comment 7.

export data, which is one of the factors we consider in determining whether a country is a significant producer of comparable merchandise. 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 exports of xanthan gum. Further, interested parties have noted that xanthan gum is only produced in a limited number of countries (*i.e.*, Austria, France, the United States and the PRC).

Next, we analyzed GTA export data for the potential surrogate countries for the HTS categories which the Department has previously found to cover merchandise comparable to xanthan gum, *i.e.*, l-lysine (“lysine”) and monosodium glutamate (“MSG”).⁴³ Lysine is 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”). Based on the GTA export data, we preliminarily find that Bulgaria, Ecuador, Romania, South Africa, Thailand, and Ukraine are significant producers of comparable merchandise, *i.e.*, lysine and/or MSG.⁴⁴

Data Availability

When evaluating surrogate value (“SV”) data, the Department considers several factors including whether SV data are publicly available, contemporaneous with the POR, representative of a broad-market average, tax and duty-exclusive, and specific to the input.⁴⁵ The Department’s preference is to satisfy the breadth of these aforementioned selection factors,⁴⁶ and to value all FOPs in the primary surrogate country.⁴⁷

We considered the SV data on the record and found that Thailand is the only potential surrogate country for which the record contains usable data for valuing nearly all of the respondents’ FOPs. Further, we find that the Thai data and Thai financial statements on the record are of an acceptable quality for use as SVs. The data generally are publicly available, contemporaneous with the POR, representative of broad-market averages, tax- and duty-exclusive, and specific to the inputs being valued. Thus, the Department finds that the Thai SV data satisfy the criteria for selecting SVs.

Given the above facts, the Department preliminarily selects Thailand as the primary surrogate country for this administrative review. An explanation of the SV data is provided below in the “Normal Value” section of this memorandum and in the Preliminary Surrogate Value Memorandum.⁴⁸

⁴³ See *Investigation Final Determination* and accompanying Issues and Decision Memorandum at Comment 1.

⁴⁴ See Petitioner’s February 19, 2015 Surrogate Value Submission at Exhibit 1.

⁴⁵ 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).

⁴⁶ *Id.*

⁴⁷ 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.

⁴⁸ See Memorandum to the File, “Antidumping Duty Administrative Review of Xanthan Gum from the People’s Republic of China: Preliminary Surrogate Value Memorandum,” dated concurrently with this memorandum (“Preliminary Surrogate Value Memorandum”).

Date of Sale

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

Comparisons to Normal Value

To determine whether the mandatory respondents' sales of subject merchandise were made at less than NV, the Department compared the export price ("EP") and constructed export price ("CEP") to NV, as described in the "Export Price," "Constructed Export Price," and "Normal Value" sections, below.

Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs) (the average-to-average method) unless the Department determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, the Department examines whether to compare weighted-average NVs to the prices of individual export transactions (the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative reviews, the Department finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.⁵⁰ In recent investigations and reviews, 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.⁵¹ The Department finds the differential pricing analysis used in those recent investigations and reviews may be instructive for purposes of examining whether to apply an alternative comparison method in this

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.

⁵⁰ See *Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum at Comment 1.

⁵¹ See *Hardwood and Decorative Plywood From the People's Republic of China: Antidumping Duty Investigation*, 78 FR 25946 (May 3, 2013), unchanged in *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); see also *Certain Steel Threaded Rod From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012*, FR 78 21101 (April 9, 2013), unchanged in *Certain Steel Threaded Rod From the People's Republic of China: Final Results of Third Antidumping Duty Administrative Review; 2011–2012*, 78 FR 66330 (November 5, 2013); see also *Certain Lined Paper Products From the People's Republic of China: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review; 2011–2012*, 78 FR 34640 (June 10, 2013) unchanged in *Certain Lined Paper Products From the People's Republic of China: Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review; 2011–2012*, 78 FR 65274 (October 31, 2013).

administrative review.⁵² The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating weighted-average dumping margins.

The differential pricing analysis used in these preliminary results requires a finding of a pattern of prices for comparable merchandise that differs significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported customer names. Regions are defined using the reported destination code (*i.e.*, city name, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen's *d* coefficient is calculated when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is calculated to evaluate the extent to which the net prices to a particular purchaser, region, or in a time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant, and the sales in the test group were found to have passed the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and in time periods that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application

⁵² See, e.g., *Activated Carbon From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 26748 (May 8, 2013), unchanged in *Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 70533 (Nov. 26, 2013), and accompanying Issues and Decision Memorandum at Comment 4.

of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and in time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, the Department examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if: 1) there is a 25 percent relative change in the weighted-average dumping margin between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

Interested parties may present arguments in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

Results of the Differential Pricing Analysis

The results of the differential pricing analysis for Deosen demonstrate that between 33 percent and 66 percent of the company's U.S. sales pass the Cohen's *d* test. As such, the Department finds that these results support consideration of an alternative to the average-to-average method. Further, we preliminarily determine that the average-to-average method cannot appropriately account for such differences because there is a meaningful difference in the weighted-average dumping margins when calculated using the average-to-average method and an alternative method based on the average-to-transaction method applied to the U.S. sales which pass the Cohen's *d* test and the average-to-average method applied to the U.S. sales which do not pass the Cohen's *d* test. Accordingly, the Department has preliminarily determined to use the mixed alternative method in making comparisons of EP and CEP to NV for Deosen.

The results of the differential pricing analysis for Fufeng demonstrate that over 66 percent of the company's U.S. sales pass the Cohen's *d* test. As such, the Department finds that these results support consideration of an alternative to the average-to-average comparison method. However,

we preliminarily determine that the average-to-average method can appropriately account for such differences because there is no meaningful difference in the weighted-average dumping margins when calculated using the average-to-average method and an alternative method based on the average-to-transaction method. Accordingly, the Department has preliminarily determined to use the average-to-average method in making comparisons of EP to NV for Fufeng.

U.S. Price

Export Price

In accordance with 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. Because Deosen and Fufeng each reported sales prices which meet the above EP definition, we treated such sales as EP sales. We calculated the net price for these sales by making deductions, as appropriate, from the reported gross U.S. price for domestic and international movement expenses (*i.e.*, domestic and foreign inland freight, domestic and foreign brokerage and handling, marine insurance and international freight).⁵³ Where movement expenses were provided by PRC service providers or paid for in an NME currency, we valued these services using surrogate values.⁵⁴

Constructed Export Price

In accordance with section 772(b) of the Act, 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).” Because Deosen reported sales prices which meet the above CEP definition, we treated such sales as CEP sales. We based CEP on prices to the first unaffiliated purchaser in the United States. We calculated the net price for these sales by making deductions, as appropriate, from the reported gross U.S. price for domestic and international movement expenses (*i.e.*, domestic and foreign inland freight, domestic and foreign brokerage and handling, marine insurance and international freight) and U.S. movement expenses.⁵⁵ Where movement expenses were provided by PRC service providers or paid for in an NME currency, we valued these services using surrogate values.⁵⁶

In accordance with section 772(d)(1) of the Act, we also deducted from the starting price those selling expenses associated with economic activities occurring in the United States where appropriate. We deducted, where appropriate, commissions, inventory carrying costs, credit

⁵³ See Section 772(c)(2)(A) of the Act.

⁵⁴ See Preliminary Surrogate Value Memorandum for details regarding the surrogate values for movement expenses.

⁵⁵ See Section 772(c)(2)(A) of the Act.

⁵⁶ See Preliminary Surrogate Value Memorandum for details regarding the surrogate values for movement expenses.

expenses, and selling expenses. For those expenses that were incurred from an ME provider and paid for in an ME currency, we used the reported expense, as appropriate.

Value Added Tax

The Department's recent practice in NME cases is to subtract from EP or CEP the amount of any un-refunded (irrecoverable) value added tax ("VAT"), in accordance with section 772(c)(2)(B) of the Act.⁵⁷ Where the irrecoverable VAT is a fixed percentage of the U.S. price, the Department makes a tax-neutral dumping comparison by reducing the U.S. price by this percentage.⁵⁸ Thus, the Department's methodology essentially amounts to performing two basic steps: (1) determining the amount (or rate) of the irrecoverable VAT on subject merchandise, and (2) reducing U.S. price by the amount (or rate) determined in step one.

The PRC VAT schedule placed on the record of this review demonstrates that the VAT rate is 17 percent, and the rebate rate for subject merchandise is 13 percent.⁵⁹ Thus, we have determined that the irrecoverable VAT on subject merchandise is the difference of these rates, four percent, and we have reduced the U.S. price by this amount for Deosen. Fufeng indicated that it has no irrecoverable VAT on subject merchandise during the POR; therefore, we have not reduced Fufeng's U.S. price for irrecoverable VAT.⁶⁰

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 in an NME context on FOPs because the presence of government controls on various aspects of NME countries renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.⁶¹ 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.⁶² 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.⁶³

⁵⁷ See *Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481, 36483-84 (June 19, 2012).

⁵⁸ *Id.*

⁵⁹ See Submission from Fufeng, "Section C Response for Neimenggu Fufeng Biotechnologies Co., Ltd. in the First Administrative Review of Antidumping Duty Order on Xanthan Gum from the People's Republic of China," dated November 13, 2014 ("Fufeng Section C Response") at Exhibit C-4; see also Deosen Supplemental C Response at Exhibit SC-11.

⁶⁰ See Fufeng Section C Response at 38-41 and Exhibit C-5.

⁶¹ See, e.g., *Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products From the People's Republic of China*, 71 FR 19695, 19703 (April 17, 2006), unchanged in *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 (September 8, 2006).

⁶² See section 773(c)(3)(A)-(D) of the Act.

⁶³ See Preliminary Surrogate Value Memorandum.

Factor Valuations

FOP valuation comments, rebuttal comments, and surrogate value information with which to value the FOPs in this proceeding were filed by Petitioner, Fufeng, and AHA between February 19, 2015 and July 28, 2015. For a detailed discussion of the SVs used in this review, *see* the Preliminary Surrogate Value Memorandum.

As noted above, when selecting from among the available information for valuing FOPs, the Department's practice is to select, to the extent practicable, SVs which are publicly available, broad market averages, contemporaneous with the POR or closest in time to the POR, product-specific, and tax-exclusive.⁶⁴ In those instances where we could not value FOPs using publicly available information contemporaneous with the POR, we adjusted the SVs using inflation indices. In addition, as discussed in more detail below, where appropriate, the Department adjusted input prices by including freight costs to make them delivered prices. An overview of the SVs used to calculate weighted-average dumping margins for the mandatory respondents is below. A detailed description of all SVs used to calculate the weighted-average dumping margins for the mandatory respondents can be found in the Preliminary Surrogate Value Memorandum.

1. Direct and Packing Materials

The record indicates that import statistics from the primary surrogate country, Thailand, which are obtained through GTA, are generally contemporaneous with the POR, publicly available, product-specific, tax-exclusive, and representative of a broad market average.⁶⁵ Thus, we based SVs for the mandatory respondents' direct materials and packing materials on these import values and, where appropriate, valued other items, such as certain movement expenses, using other publicly available Thai data on the record.⁶⁶

We disregarded certain import values when calculating SVs. In accordance with the legislative history of the Omnibus Trade and Competitiveness Act of 1988, we continued to apply the Department's long-standing practice of disregarding import prices that we have reason to believe or suspect are subsidized or dumped.⁶⁷ 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.⁶⁸ Further, guided by the legislative history, it is the Department's practice not

⁶⁴ *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).

⁶⁵ *See* Preliminary Surrogate Value Memorandum.

⁶⁶ *Id.*

⁶⁷ *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.

⁶⁸ *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;

to conduct a formal investigation to ensure that such prices are not subsidized.⁶⁹ 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, that 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, or South Korea in calculating the import-based SVs. Additionally, in selecting Thai import data for SVs, we disregarded Thai imports from NME countries.⁷⁰ 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.⁷¹

2. Energy

We valued water using data from Thailand’s Metropolitan Waterworks Authority.⁷² We valued coal using Thai GTA import statistics.⁷³ We valued electricity using data from the Metropolitan Electricity Authority of Thailand.⁷⁴ We valued steam using data from the 2013 annual report of the Thai company Glow Energy Public Company Limited.⁷⁵ We did not inflate or deflate the energy rates because they are contemporaneous with the POR.⁷⁶

We valued compressed air using a value derived from an article written for a publication of the University of Kassel.⁷⁷ Although this value is not from any of the countries identified in the Surrogate Country section, above (*i.e.*, Bulgaria, Ecuador, Romania, South Africa, Thailand, or Ukraine), we nevertheless preliminarily find that it is the only surrogate value on the record that

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.

⁶⁹ 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).

⁷⁰ 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).

⁷¹ *Id.*

⁷² See Petitioner’s February 19, 2015 Surrogate Value Submission at Exhibit 6; see also AHA’s February 19, 2015 Surrogate Value Submission at Exhibit 4.

⁷³ See Preliminary Surrogate Value Memorandum.

⁷⁴ See AHA’s February 19, 2015 Surrogate Value Submission at Exhibit 3.

⁷⁵ See Petitioner’s February 19, 2015 SV Submission at Exhibit 4; see also AHA’s February 19, 2015 SV Submission at Exhibit 8.

⁷⁶ See Preliminary Surrogate Value Memorandum.

⁷⁷ See Petitioner’s July 1, 2015 Surrogate Value Submission at Exhibits 12-13.

is specific to the compressed air input.⁷⁸ Thus, we find that this value is the best available information on the record with which to value compressed air.

3. Labor

In *Labor Methodologies*,⁷⁹ the Department determined that the best methodology to value labor is to use industry-specific labor rates from the primary surrogate country. The Department does not, however, preclude other sources for evaluating labor costs.⁸⁰ Rather, we continue to follow our practice of selecting the best available information. Therefore, we valued labor using Thailand's National Statistics Office ("NSO") data.⁸¹ The International Labour Organization ("ILO") cites these data as the source of its Thai labor data. The record contains contemporaneous NSO data from the general manufacturing category, as well as non-contemporaneous NSO data from an industry-specific category.⁸² We used NSO data for general manufacturing wages, rather than the industry-specific NSO labor data because the Department has previously determined that general manufacturing wages in Thailand have increased much more than the rate of inflation (*i.e.*, Consumer Price Index) during this same approximate time frame.⁸³ Accordingly, we are preliminarily using the contemporaneous general manufacturing labor rates, which do not need to be adjusted for inflation, rather than the non-contemporaneous industry-specific labor rates, which would need to be adjusted for inflation.⁸⁴

4. Movement Services

As appropriate, we added freight costs to SVs. Specifically, we added surrogate inland freight costs to import values used as SVs. We calculated freight 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 adjustment is in accordance with the CAFC's decision in *Sigma Corp.*⁸⁵

⁷⁸ The record of this review also contains a Thai GTA import value for oxygen. However, we have previously found that GTA data does not typically cover imports of air conveyed by pipeline and is, therefore, not representative of costs for piped compressed air. See *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances, in Part*, 75 FR 57449 (September 21, 2010); see also *Investigation Final Determination and accompanying Issues and Decision Memorandum* at Comment 14.

⁷⁹ See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) ("*Labor Methodologies*").

⁸⁰ See *Steel Wire Garment Hangers From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012–2013*, 79 FR 65616 (November 5, 2014) and *Issues and Decision Memorandum* at 11.

⁸¹ See Petitioner's July 1, 2015 Surrogate Value Submission at Exhibit 14.

⁸² See AHA's February 19, 2015 Surrogate Value Submission at Exhibit 5; Fufeng's February 19, 2015 Surrogate Value Submission at Exhibit 4; Fufeng's July 1, 2015 Surrogate Value Submission at Exhibit 2; and Petitioner's July 1, 2015 Surrogate Value Submission at Exhibit 14.

⁸³ See *Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part*, 80 FR 34893 (June 18, 2015) and *accompanying Issues and Decision Memorandum* at Comment 13.

⁸⁴ See Preliminary Surrogate Value Memorandum.

⁸⁵ See *Sigma Corp. v. United States*, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997) ("*Sigma Corp.*").

We valued truck freight using data published in the World Bank's *Doing Business 2015: Thailand* for inland transportation and handling relating to importing and exporting a standardized cargo of goods. We did not inflate or deflate the SV because it is contemporaneous with the POR.⁸⁶

We valued brokerage and handling expenses using a price list for charges related to importing/exporting a standardized cargo of goods in and out of Thailand, as published in the World Bank's *Doing Business 2015: Thailand*. We did not inflate or deflate the SV because it is contemporaneous with the POR.⁸⁷

We valued marine insurance using a rate offered by RJG Consultants, which is an ME provider of marine insurance. The rate is a percentage of the value of the shipment; therefore, we did not inflate or deflate the rate.⁸⁸

We valued international ocean freight using rates obtained from Maersk Line. The rates are for shipping routes between the PRC and the United States for a 10-ton, 20-foot container. We did not inflate or deflate the rate because it is contemporaneous with the POR.⁸⁹

5. *Financial Ratios*

Pursuant to 19 CFR 351.408(c)(4), the Department is directed to value overhead expenses, selling, general, and administrative ("SG&A") expenses, and profit using non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country. To value factory overhead, SG&A, and profit for the preliminary results, the Department used the audited financial statements of Thai Churos Co., Ltd. and Thai Fermentation Co., Ltd., which are Thai producers of comparable merchandise.⁹⁰

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.

⁸⁶ See Preliminary Surrogate Value Memorandum.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

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

July 31, 2015

(Date)