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August 5, 2016

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 Second
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 1, 2014 through June 30, 2015. The administrative review covers 13 exporters of subject merchandise,¹ including two mandatory respondents, A.H.A. International Co., Ltd. (“AHA”)/ Deosen and Fufeng.² The Department preliminarily: (1) found that Fufeng did not make sales of subject merchandise in the United States at prices below normal value (“NV”) during the POR; (2) applied total adverse facts available to A.H.A. and Deosen; (3) granted separate rates to Deosen, CP Kelco Shandong, and Smart Chemicals; (4) included Hebei Xinhe Biochemical Co., Ltd. as part of the PRC-wide entity; and (5) determined that three companies, Meihua Group International Trading (Hong Kong) Limited; Langfang Meihua Bio-Technology Co., Ltd.; and

¹ Those exporters are: (1) A.H.A. International Co., Ltd.; (2) CP Kelco (Shandong) Biological Company Limited (“CP Kelco Shandong”); (3) Deosen Biochemical (Ordos) Ltd.; (4) Deosen Biochemical Ltd.; (5) Hebei Xinhe Biochemical Co., Ltd.; (6) Inner Mongolia Jianlong Biochemical Co., Ltd. (“Inner Mongolia Jianlong”); (7) Meihua Group International Trading (Hong Kong) Limited; (8) Langfang Meihua Bio-Technology Co., Ltd.; (9) Xinjiang Meihua Amino Acid Co., Ltd.; (10) Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.) (“Neimenggu Fufeng”); (11) Shandong Fufeng Fermentation Co., Ltd. (“Shandong Fufeng”); (12) Shanghai Smart Chemicals Co., Ltd. (“Smart Chemicals”); and (13) Xinjiang Fufeng Biotechnologies Co., Ltd. (“Xinjiang Fufeng”). See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 53106 (September 2, 2015) (“*Initiation Notice*”).

² Deosen refers to the single entity which includes Deosen Biochemical Ltd. and Deosen Biochemical (Ordos) Ltd. (collectively “Deosen”). Fufeng refers to the single entity which includes Neimenggu Fufeng, Shandong Fufeng and Xinjiang Fufeng (collectively “Fufeng”). See the “Single Entity Treatment” section of this notice for details.



Xinjiang Meihua Amino Acid Co., Ltd, had no reviewable U.S. sales during the POR. Additionally, the Department is preliminarily rescinding this administrative review with respect to Inner Mongolia Jianlong.

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. The rates assigned to each of these companies can be found in the “Preliminary Results of Review” section of the accompanying *Federal Register* notice.

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.³ On July 1, 2015, 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.⁴ Between July 30 and July 31, 2015, the Department received requests for review from six foreign and domestic interested parties. Additionally, on July 30, and July 31, 2015, the Department received a request from CP Kelco U.S., the petitioner in the underlying investigation (“Petitioner”), 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.⁵ On September 2, 2015, 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.⁶

After selecting Neimenggu Fufeng/Shandong Fufeng and AHA as mandatory respondents (*see* the “Selection of Respondents” section, below, for details), the Department issued its AD questionnaire to them on September 29, 2015.⁷ Between November 27, 2015 and December 30, 2015, AHA submitted timely responses to the Department’s original and supplemental questionnaires. On November 13, 2015, based on the information submitted by AHA, the Department issued its AD questionnaire to Deosen⁸ in order to complete the record of the review

³ *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).

⁴ *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 80 FR 37583 (July 1, 2015).

⁵ *See* Submissions from Petitioner, “Xanthan Gum from the People’s Republic of China: Petitioner’s Request for Administrative Review,” dated July 30, 2015 and July 31, 2015.

⁶ *See Initiation Notice*, 80 FR 53106 (September 2, 2015).

⁷ *See* Letters to AHA and Neimenggu Fufeng/ Shandong Fufeng regarding issuance of the Department’s AD questionnaire, dated September 29, 2015.

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

with respect to sales of subject merchandise exported by AHA.⁹ From October 2015 through July, 2016, Neimenggu Fufeng/Shandong Fufeng submitted timely responses to the Department's questionnaire and supplemental questionnaires. From December 2015 through May 2016, Deosen also submitted timely responses to the Department's questionnaire and supplemental questionnaires.

On January 20, 2016, the Department solicited interested party comments regarding the selection of the surrogate country and offered an opportunity to provide surrogate value ("SV") data.¹⁰ Interested parties also filed surrogate country and surrogate value comments and information.¹¹ For additional information, see the "Normal Value" section below.

Period of Review

The POR is July 1, 2014, through June 30, 2015.

Extension of the Preliminary Results

As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government. All deadlines in this segment of the proceeding have been extended by four business days.¹² Additionally, on April 4, 2016, the Department extended the deadline for the preliminary results by a total of 120 days, to August 5, 2016.¹³

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.

⁹ See Letter to Deosen regarding issuance of the Department's AD questionnaire, dated November 13, 2015.

¹⁰ See Letter from the Department, "2014-2015 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 20, 2016.

¹¹ See Submission from Petitioner, "Petitioner's Comments on Surrogate Country Selection and Surrogate Value Information," dated February 9, 2016; Submission from Fufeng, "Neimenggu Fufeng Biotechnologies Co., Ltd. First Surrogate Country and Surrogate Value Submission," dated February 9, 2016; Submission from Deosen, "Response to Request for Surrogate Country and Surrogate Values Comments and Information," dated February 8, 2016, Submission from Petitioner, "Petitioner's Suggested Thai Harmonized Tariff Schedule Classifications for Deosen Biochemical Ltd.'s Factors of Production," dated February 18, 2016, Submission from Fufeng, "Neimenggu Fufeng Biotechnologies Co., Ltd. First Surrogate Value Rebuttal Submission," dated February 17, 2016, Submission from Fufeng, "Neimenggu Fufeng Biotechnologies Co., Ltd. Second Surrogate Value Submission," dated March 8, 2016, Submission from Petitioner, "Petitioner's Surrogate Value Submission," dated March 8, 2016, Submission from Fufeng, "Neimenggu Fufeng Biotechnologies Co., Ltd. Second Surrogate Value Submission," dated July 6, 2016.

¹² See Memorandum to the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement & Compliance, "Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas" (January 27, 2016).

¹³ See Memorandum to Gary Taverman, Associate 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; 2014-2015," dated April 4, 2016.

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 16, 2015, 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.¹⁴ 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 29, 2015, the Department determined that it was not practicable to examine more than two respondents in the instant administrative review. Therefore, in accordance with section 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/Shandong Fufeng.¹⁵ The Department also noted that if it received voluntary responses in

¹⁴ 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 16, 2015.

¹⁵ See Memorandum to Abdelali Elouaradia, Director, Office IV, Antidumping and Countervailing Duty Operations, “Selection of Respondents for the 2014-2015 Administrative Review of the Antidumping Duty Order on Xanthan

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.

In its questionnaire responses, AHA reported that all of its exports of subject merchandise to the United States during the POR were sold by Deosen, to Deosen's U.S. customers.¹⁶ On November 13, 2015, based on the information submitted by AHA, the Department issued its AD questionnaire to Deosen¹⁷ in order to complete the record of the review with respect to sales of subject merchandise exported by AHA.¹⁸

In addition, on September 9, 2015, CP Kelco Shandong submitted a request to be treated as a voluntary respondent.¹⁹ Between October 29 and November 13, 2015, CP Kelco Shandong submitted timely responses to the Department's questionnaire. On December 16, 2015, the Department determined that the additional workload of individually examining a voluntary respondent would be unduly burdensome, given the Department's current resource availability and the number of investigations and reviews it is currently conducting, and would inhibit timely completion of this review.²⁰ On December 22, 2015 CP Kelco filed a complaint with the U.S. Court of International Trade (CIT, or court) claiming (1) that the Department's determination that individually examining CP Kelco as a voluntary respondent would be unduly burdensome and not selecting CP Kelco as a mandatory respondent was unlawful, and (2) that issuing the November 13, 2015 full questionnaire to Deosen prior to selecting Deosen as a mandatory respondent, while CP Kelco's voluntary responses were timely filed prior to the questionnaire being issued, was arbitrary and not in accordance with law.²¹ In its filing, CP Kelco asked the court to require the Department to select CP Kelco as a mandatory respondent.²² On December 23, 2015 the Department filed a motion to dismiss the action for lack of subject matter

Gum from the People's Republic of China," dated September 29, 2015. The Department treated Neimenggu Fufeng and Shandong Fufeng as a single entity for respondent selection purposes because these companies had been collapsed in a prior segment of this antidumping proceeding.

¹⁶ See Submissions from AHA, "Xanthan Gum from China: Section A Response of A.H.A. International Co., Ltd.," dated November 23, 2015 ("AHA-AQR"); "Xanthan Gum from China: Sections C and D Response of A.H.A. International Co., Ltd.," dated November 30, 2015 ("AHA-CDQR"); "Xanthan Gum from China: Section A Supplemental Questionnaire Response of A.H.A. International Co., Ltd.," dated December 30, 2015 ("AHA-1SQR").

¹⁷ The Department treated Deosen Biochemical Ltd. and Deosen Biochemical (Ordos) Ltd. as a single entity in the investigation segment of this proceeding.

¹⁸ See Letter to Deosen regarding issuance of the Department's AD questionnaire, dated November 13, 2015; see also Submissions from Deosen, "Xanthan Gum from China: Deosen's Response to Section A Questionnaire," dated December 9, 2015 ("Deosen-AQR"); "Xanthan Gum from China: Deosen's Response to Section C Questionnaire," dated December 30, 2015 ("Deosen-CQR"); "Xanthan Gum from China: Deosen's Response to Section A Supplemental Questionnaire," dated January 14, 2016 ("Deosen-1SQR"); "Xanthan Gum from China: Deosen's Response to Section C Supplemental Questionnaire," dated February 23, 2016 ("Deosen-2SQR"); and "Xanthan Gum from China: Deosen's Supplemental Questionnaire Response," dated June 7, 2016 ("Deosen-4SQR").

¹⁹ See Submission from CP Kelco Shandong, "CP Kelco (Shandong) Biological Company Limited's Request to be Treated as Voluntary Respondent," dated September 9, 2016.

²⁰ For additional information, see Memorandum to Abdelali Elouaradia, Director, Office IV, Antidumping and Countervailing Duty Operations, "CP Kelco (Shandong)'s Renewed Request for Selection as a Voluntary Respondent," dated December 16, 2015.

²¹ See *CP Kelco (Shandong) Biological Company Limited, and CP Kelco U.S., Inc. v. United States*, Ct. No. 15-328, ECF No. 5, "Complaint" (CIT Dec. 22, 2015) at 14-16.

²² *Id.*, at 17.

jurisdiction or for failure to state a claim upon which relief may be granted.²³ On February 9, 2016, the court granted the Department's motion and dismissed the action finding that the court did not have subject matter jurisdiction under 28 U.S.C. § 1581(i) to review the Department's voluntary respondent decision prior the issuance of the Department's Final Determination.²⁴ Thus, consistent with section 782(a) of the Act, the Department has not considered CP Kelco Shandong's voluntary questionnaire responses.

PRELIMINARY DETERMINATION OF NO SHIPMENTS

Meihua Group International Trading (Hong Kong) Limited, Langfang Meihua Bio-Technology Co., Ltd., and Xinjiang Meihua Amino Acid Co., Ltd. timely submitted a certification of no shipments during the POR.²⁵ Record information, specifically the results of our CBP data query, supports these companies' no shipment claims.²⁶

Consistent with the Department's practice in non-market economy ("NME") cases, it is not appropriate to rescind the review with respect to Meihua Group International Trading (Hong Kong) Limited, Langfang Meihua Bio-Technology Co., Ltd., and Xinjiang Meihua Amino Acid Co., Ltd., but, rather, we will complete the review and issue instructions to CBP based on the final results of the review.²⁷

PRELIMINARY PARTIAL RESCISSION OF ANTIDUMPING DUTY ADMINISTRATIVE REVIEW

The Department preliminarily found Inner Mongolia Jianlong's one sale during the POR to be a non-*bona fide* sale in a concurrent new shipper review ("NSR").²⁸ Because the sale subject to this administrative review is the same sale preliminarily found to be a non-*bona fide* sale in the new shipper review, and there are no other reviewable sales by Inner Mongolia Jianlong during the POR, we are preliminarily rescinding this review with respect to Inner Mongolia Jianlong.²⁹

²³ See *CP Kelco (Shandong) Biological Company Limited, and CP Kelco U.S., Inc. v. United States*, Ct. No. 15-328, ECF No. 15, "Def.'s Mot. Dismiss and Opp'n Pls.' Mot. Prelim. Inj., Appl. TRO, & Pet. Writ Mandamus" (CIT Dec. 23, 2015) ("Def.'s Mot. Dismiss").

²⁴ See *CP Kelco (Shandong) Biological Company Limited, and CP Kelco U.S., Inc. v. United States*, Ct. No. 15-328, ECF No. 30, Slip Op. 16-10 (CIT February 9, 2016) at 19-22.

²⁵ See Submission from Meihua Group International Trading (Hong Kong) Limited, Langfang Meihua Bio-Technology Co., Ltd., and Xinjiang Meihua Amino Acid Co., Ltd., "Xanthan Gum from the People's Republic of China – No Sales Certifications," dated October 1, 2015.

²⁶ See Memorandum to The File, "Automated Commercial System Shipment Query," dated September 16, 2015.

²⁷ See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

²⁸ See *Xanthan Gum From the People's Republic of China: Preliminary Rescission of 2014-2015 Antidumping Duty New Shipper Review*, 81 FR 15240 (March 22, 2016); see also Memorandum to the File, "Inner Mongolia Jianlong Biochemical Co., Ltd.'s New Shipper Review Analysis," dated concurrently with this memorandum.

²⁹ The Department has previously rescinded an antidumping duty administrative review with respect to certain companies, based on the Department's determination in a NSR that the companies had no *bona fide* sales during the POR. See, e.g., *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review; 2013–2014*, 81 FR 17435 (March 29, 2016).

APPLICATION OF ADVERSE FACTS AVAILABLE AND SELECTION OF ADVERSE FACTS AVAILABLE RATE

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

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the antidumping and countervailing duty law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.³⁰ The amendments to the Act are applicable to all determinations made on or after August 6, 2015 and, therefore, apply to this administrative review.³¹

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.³² Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the antidumping duty investigation, a previous administrative review, or other information placed on the record.³³ The SAA explains that the Department may employ an adverse inference “to ensure that the party does not obtain a more

³⁰ See TPEA, Pub. L. No. 114-27, 129 Stat. 362 (2015). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the International Trade Commission. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*). The text of the TPEA may be found at <https://www.congress.gov/bill/114thcongress/house-bill/1295/text/pl>.

³¹ See *Applicability Notice*, 80 FR at 46794-95.

³² See section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

³³ See also 19 CFR 351.308(c).

favorable result by failing to cooperate than if it had cooperated fully.”³⁴ Further, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.³⁵

Section 776(c) of the Act provides that, in general, when the Department relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.³⁶ Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.³⁷ Further, and under the TPEA, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.

Finally, under the new section 776(d) of the Act, the Department may use a dumping margin from any segment of the proceeding under the applicable antidumping order when applying an adverse inference, including the highest of such margins.³⁸ The TPEA also makes clear that, when selecting facts available with an adverse inference, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.³⁹

The Department issued its questionnaire to both Deosen and AHA in order to obtain information with which to calculate an accurate dumping margin with respect to those companies. Neither company could provide usable sales information with which to calculate an accurate dumping margin because they manipulated the sales processes in which they were engaged for the purpose of attaining a lower cash deposit rate for Deosen.⁴⁰ Therefore, we preliminarily determine that information necessary to calculate an accurate dumping margin for Deosen and AHA is not available on the record. We also preliminarily determine that Deosen and AHA withheld information requested by the Department. Specifically, despite the Department’s requests for copies of all sales related documents and agreements between Deosen and AHA, the parties withheld certain sales agreements from the record of the instant administrative review in their questionnaire and supplemental questionnaire responses.⁴¹ In addition, we preliminarily find that Deosen and AHA failed to cooperate to the best of their ability in this proceeding by engaging in

³⁴ See Statement of Administrative Action (SAA), H.R. Doc. No. 103-316, 103d Cong., 2d Session, Vol. 1 (1994) at 870.

³⁵ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products From Japan*, 65 FR 42985 (July 12, 2000); *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (CAFC 2003) (*Nippon Steel*).

³⁶ See also 19 CFR 351.308(d).

³⁷ See SAA at 870.

³⁸ See section 776(d)(1)(B) and 776(d)(2) of the Act; TPEA, section 502(3).

³⁹ See section 776(d)(3)(B) of the Act; TPEA, section 502(3).

⁴⁰ See Memorandum to the File, “Preliminary Results Memorandum: Application of Adverse Facts Available to Deosen Biochemical Ltd./Deosen Biochemical (Ordos) Ltd. and A.H.A. International Co., Ltd.,” dated concurrently with this memorandum (“Preliminary AFA Memorandum”) for the Department’s full analysis, including business proprietary information.

⁴¹ *Id.*

a scheme to misrepresent the true seller of the subject merchandise to avoid payment of accurate cash deposits and by providing incomplete and misleading responses to the Department's requests for information.⁴² Therefore, the Department has preliminarily determined an adverse inference is warranted in selecting from the facts otherwise available pursuant to section 776(b) of the Act.⁴³

Where the Department applies adverse facts available ("AFA") because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record.⁴⁴ In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.⁴⁵

In reviews, the Department normally selects as AFA the highest rate on the record of the proceeding.⁴⁶ The CIT and the Court of Appeals for the Federal Circuit (CAFC) have consistently upheld the Department's practice.⁴⁷ The Department's practice, when selecting an AFA rate from among possible sources of information, has been to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."⁴⁸ The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."⁴⁹

Consistent with the statute, court precedent, and its normal practice, the Department has assigned, as AFA, a rate of 154.07 percent to Deosen and AHA. This is the highest rate on the record of the proceeding, and the rate currently applicable to the PRC-wide entity.⁵⁰ Pursuant to section 776(c)(2) of the Act, there is no requirement to corroborate this rate because the rate has been applied in a separate section of this proceeding.

⁴² *Id.*

⁴³ See, e.g., *Stainless Steel Sheet and Strip in Coils From Japan: Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 18369 (April 11, 2005), unchanged in *Stainless Steel Sheet and Strip in Coils from Japan: Final Results of Antidumping Duty Administrative Review*, 70 FR 37759 (June 30, 2005).

⁴⁴ See also 19 CFR 351.308(c); SAA, at 868-870.

⁴⁵ See SAA, at 870 (1994); accord *Ta Chen Stainless Steel Pipe Inc., v. United States*, 24 CIT 841, 848, 850 (CIT 2000).

⁴⁶ See, e.g., *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 68 FR 19504, 19507 (April 21, 2003).

⁴⁷ See *KYD, Inc. v. United States*, 607 F.3d 760, 766-67 (CAFC 2010) ("KYD"); *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (CAFC 1990) (*Rhone Poulenc*); *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in a less-than-fair-value (LTFV) investigation); *Kompass Food Trading Int'l v. United States*, 24 CIT 678, 684 (2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd. v. United States*, 360 F. Supp. 2d 1339, 1348 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

⁴⁸ See SAA at 870.

⁴⁹ *Id.*

⁵⁰ 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).

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.⁵¹ 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 production.⁵² 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.⁵³

"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.

In the preliminary results of the immediately preceding antidumping duty administrative review of xanthan gum from the PRC (first administrative review), the Department treated Neimenggu Fufeng, Shandong Fufeng, and Xinjiang Fufeng as a single entity (the final results of that review have not yet been issued).⁵⁴ We find that record evidence continues to support treatment of these companies as a single entity in this administrative review. Specifically, for the reasons outlined in a separate proprietary memorandum, the Department has preliminarily determined that Neimenggu Fufeng, Shandong Fufeng, and Xinjiang Fufeng (collectively, "Fufeng") are

⁵¹ 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).

⁵² 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).

⁵³ See, e.g., *Nihon Cement Co., Ltd. v. United States*, Slip Op. 93-80 (CIT May 25, 1993); 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).

⁵⁴ See *Xanthan Gum From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2013-2014*, 80 FR 47464 (August 7, 2015) ("First Review Preliminary Results").

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).⁵⁵

Similarly, the Department treated Deosen Biochemical Ltd. and Deosen Biochemical (Ordos) Ltd. as a single entity in the investigation⁵⁶ and in the first administrative review of this proceeding.⁵⁷ We find that record evidence continues to support treatment of these two companies as a single entity in this administrative review. Specifically, for the reasons outlined in a separate proprietary memorandum, 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).⁵⁸

DISCUSSION OF METHODOLOGY

Non-Market Economy Country

The Department considers the PRC to be a NME country.⁵⁹ 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 and calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

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.⁶⁰ 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.⁶¹ It is the Department's policy to assign all exporters of the merchandise subject to review in NME

⁵⁵ 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.

⁵⁶ 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*").

⁵⁷ See *First Review Preliminary Results*.

⁵⁸ See Memorandum to the file, "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.

⁵⁹ See, e.g., *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).

⁶⁰ 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).

⁶¹ See *Initiation Notice*, 80 FR at 53106.

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*,⁶² as amplified by *Silicon Carbide*.⁶³ 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.⁶⁴

In order to demonstrate separate rate status eligibility, the Department normally requires entities, for whom a review was requested, and who were assigned a separate rate in a previous segment of this proceeding, to submit a separate-rate certification stating that they continue to meet the criteria for obtaining a separate rate.⁶⁵ For entities that were not assigned a separate rate in the previous segment of a proceeding, to demonstrate eligibility, the Department requires a separate rate application.⁶⁶

Five companies timely submitted separate rate applications or certifications: CP Kelco Shandong, Smart Chemicals, Inner Mongolia Jianlong, AHA, and Deosen.⁶⁷ Fufeng, Deosen, and AHA also timely submitted responses to section A of the Department's questionnaire, which is inclusive of information contained in a separate rate application. With respect to Inner Mongolia Jianlong, because we preliminarily determine that Inner Mongolia Jianlong had no *bona fide* U.S. sales of subject merchandise on which to conduct an administrative review, as explained above, we did not conduct a separate rates analysis of Inner Mongolia Jianlong's separate rate application.

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.⁶⁸ Given that there is no evidence of 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.⁶⁹

⁶² 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")

⁶³ 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").

⁶⁴ 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).

⁶⁵ See *Initiation Notice*, 80 FR at 53107.

⁶⁶ *Id.*

⁶⁷ See CP Kelco Shandong's Separate Rate Application, dated October 2, 2015 ("CP Kelco-SRA"); Inner Mongolia Jianlong Biochemical Co., Ltd.'s Separate Rate Application, dated October 2, 2015 ("Inner Mongolia Jianlong-SRA"); Smart Chemicals' Separate Rate Application, dated October 2, 2015 ("Smart Chemicals-SRA"); Deosen's Separate Rate Certification, dated October 27, 2015 ("Deosen-SRC"); and AHA's Separate Rate Certification, dated October 27, 2015 ("AHA-SRC").

⁶⁸ See CP Kelco-SRA.

⁶⁹ 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*:

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*

AHA, Deosen, Fufeng, and Smart Chemicals indicated that they are either Chinese-foreign joint venture companies or wholly Chinese-owned companies.⁷⁰ 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 decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.⁷¹

The evidence provided by AHA, 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.⁷²

b) *Absence of De Facto Control*

As stated in previous cases, there is evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC.⁷³ Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether AHA, Deosen, Fufeng, and Smart Chemicals are, in fact, subject to a degree of government control over export activities which would preclude the Department from assigning separate rates.

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).

⁷⁰ See Submission from Fufeng, "Section A Response for Neimenggu Fufeng Biotechnologies Co., Ltd.," dated October 29, 2015 ("Fufeng-AQR"); see also Smart Chemicals-SRA; Smart Chemicals' Supplemental Separate Rate Questionnaire Response, dated June 8, 2016 ("Smart Chemicals-ISQR"); Inner Mongolia Jianlong-SRA.

⁷¹ See *Sparklers*, 56 FR at 20589.

⁷² See Fufeng-AQR; Smart Chemicals' Separate Rate Application, dated October 2, 2015, and Supplemental Separate Rate Questionnaire Response, dated June 8, 2016; see also Inner Mongolia Jianlong's Separate Rate Application, dated October 2, 2015.

⁷³ See, e.g., *Silicon Carbide*, 59 FR at 22586-87.

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.⁷⁴

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 AHA, 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.⁷⁵

We preliminarily find that the evidence placed on the record of this review by AHA, 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 AHA, Deosen, Fufeng, and Smart Chemicals separate rates.

3) *Companies Not Receiving a Separate Rate*

Hebei Xinhe Biochemical Co. Ltd., which was named in the *Initiation Notice* and for which all review requests were not withdrawn, did not submit 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, the Department considers it to be part of the PRC-wide entity.⁷⁶

⁷⁴ 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); see also *Sparklers*, 56 FR at 20589; *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).

⁷⁵ See Smart Chemicals-SRA; Smart Chemicals-ISQR; Inner Mongolia Jianlong-SRA.

⁷⁶ 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, 2015; therefore, the Department’s new practice applies to this review.

Dumping Margin for the Separate Rate Companies Not Individually Examined

The statute and the Department's regulations do not directly address the establishment of a rate to be applied to companies not selected for individual examination where the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. The Department's practice in cases involving limited selection based on exporters or producers accounting for the largest volumes of trade has been to look to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an investigation. Section 735(c)(5)(A) of the Act instructs that we are not to calculate an all-others rate using any rates that are zero, *de minimis* or based entirely on facts available.

In accordance with the statute, the Department will normally 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 facts available.⁷⁷ Where the rates for the individually examined companies are all zero, *de minimis*, or based entirely on facts available, section 735(c)(5)(B) of the Act also provides that the Department may use "any reasonable method" to establish the rate for separate rate entities, which may include averaging the dumping margins for individually examined respondents.⁷⁸ Consistent with this practice, case law, and the statute,⁷⁹ because we preliminarily calculated a weighted-average dumping margin for Fufeng of zero percent and based Deosen and AHA's dumping margins entirely on facts available, the Department assigned CP Kelco Shandong and Smart Chemicals a dumping margin equal to a simple average⁸⁰ of the dumping margin assigned to Fufeng and the dumping margin assigned to Deosen and AHA.⁸¹

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

⁷⁷ 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).

⁷⁸ See section 735(c)(5)(B) of the Act.

⁷⁹ See, e.g., *Yangzhou Bestpak Gifts & Crafts Co. v. United States*, 716 F.3d 1370, 1378 (Fed. Cir. 2013).

⁸⁰ Because sales data relevant to calculating a weighted-average dumping margin exists for only two companies for these preliminary results (*i.e.*, Fufeng and Deosen), using a weighted average of these two rates risks disclosure of business proprietary information. Therefore we calculated a simple average of the rate calculated for Fufeng and the rate assigned to Deosen.

⁸¹ See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 81 FR 47355 (July 21, 2016); see also *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From Malaysia*, 69 FR 34128 (January 26, 2004).

country; and (2) significant producers of comparable merchandise.⁸² Further, pursuant to 19 CFR 351.408(c)(2), the Department will normally value FOPs in a single country. On January 19, 2016, the Department issued a memorandum identifying six countries as being at the same level of economic development based on 2014 per capita gross national income (GNI) data available in the World Development Report provided by the World Bank as the PRC for the POR, and the Department provided parties an opportunity to comment on this list.⁸³ The countries identified in that memorandum, pursuant to section 773(c)(4) of the Act, are Bulgaria, Ecuador, Mexico, Romania, South Africa, and Thailand.⁸⁴ Petitioner, Fufeng, and Deosen argue that the Department should select Thailand as the primary surrogate country. Our surrogate country analysis is below.

Economic Comparability

Section 773(c)(4)(A) of the Act is silent with respect to how the Department may determine that a country is economically comparable to the NME country. As such, the Department's long standing practice has been to identify those countries which are at a level of economic development similar to the PRC in terms of per capita GNI data available in the World Development Report provided by the World Bank.⁸⁵ The Department is satisfied that those identified countries are equally comparable in terms of economic development and serve as an adequate group to consider when gathering SV data.

Furthermore, providing parties with a range of countries with varying GNIs is reasonable given that any alternative would require a complicated analysis of factors affecting the relative GNI differences between the PRC and other countries, which is not required by the statute. In contrast, by identifying countries that are economically comparable to the PRC based on GNI, the Department provides parties with a predictable practice which is reasonable and consistent with the statutory requirements. We note that identifying potential surrogate countries based on GNI data has been affirmed by the CIT, which found the use of per capita GNI to be a "consistent, transparent, and objective metric to identify and compare a country's level of economic development" and "a reasonable interpretation of the statute."⁸⁶ As the Department's policy is to consider all six of the identified countries to be equally comparable economically to the PRC, we did not use GNI alone as the rationale for selecting among these six countries. Instead, as further discussed below, we evaluated which of these countries is also a significant producer of comparable merchandise and has reliable data.

⁸² 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>.

⁸³ *See* Letter to Interested Parties, "2014-2015 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 20, 2016.

⁸⁴ *Id.*

⁸⁵ *See, e.g., Pure Magnesium from the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 75 FR 80791 (December 23, 2010) and accompanying Issues and Decision Memorandum at Comment 4.

⁸⁶ *See Jiaying Brother Fastener Co. v. United States*, 961 F. Supp. 2d 1323, 1329 (CIT 2014).

Consistent with Department practice, the Department identified a number of countries that are at the same level of economic development as the PRC based on 2014 per capita gross national income (GNI) data available in the World Development Report provided by the World Bank. 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).⁸⁷ The countries identified, namely Bulgaria, Ecuador, Mexico, Romania, South Africa, and Thailand, are not ranked and are considered equivalent in terms of economic comparability. Petitioner, Fufeng, and Deosen argue that the Department should select Thailand as the primary surrogate country because it satisfies the Department’s selection criteria, as detailed below.

Significant Producers of Identical or Comparable Merchandise

Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise; however, neither the statute nor the Department’s regulations defines “significant” or “comparable.” Given the absence of any definition in the statute or regulations, the Department looks to other sources such as the Policy Bulletin for guidance on defining comparable merchandise. The 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.⁸⁸ Moreover, while the legislative history provides that the term “significant producer” includes any country that is a significant “net exporter,”⁸⁹ it does not preclude reliance on additional or alternative metrics. Where there is no production information, the Department has relied upon export data from potential surrogate countries. With respect to comparability of merchandise, the Policy Bulletin states that “in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise.”⁹⁰ 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.⁹¹ Since these characteristics are specific to the merchandise in question, the standard for “significant producer” will vary from case to case.⁹²

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.

⁸⁷ 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 accompanying Issues and Decision Memorandum at Comment 1.

⁸⁸ 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.

⁸⁹ See *Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576* (1988), at 590.

⁹⁰ See Policy Bulletin at 1-2.

⁹¹ *Id.*

⁹² 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 accompanying Issues and Decision Memorandum at Comment 7.

The Department next sought evidence of production of comparable merchandise in the form of 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 previously noted that xanthan gum is only produced in a limited number of countries (*i.e.*, Austria, France, the United States and the PRC).⁹³

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”).⁹⁴ 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 GTA export data placed on the record of this review, we preliminarily find that Thailand is a significant producer of comparable merchandise, *i.e.*, lysine and MSG.⁹⁵ However, the record does not contain GTA export data from Bulgaria, Ecuador, Mexico, Romania, or South Africa; therefore, we are unable to determine whether these countries are significant producers of comparable merchandise.

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.⁹⁶ There is no hierarchy among these criteria, and it is the Department’s practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.⁹⁷ However, the Department’s preference is to satisfy the breadth of these aforementioned selection factors,⁹⁸ and to value all FOPs in the primary surrogate country.⁹⁹

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 respondent’s 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 Thai data generally are publicly available, contemporaneous with the POR, representative of broad-market averages, tax- and duty-

⁹³ 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 5.

⁹⁴ See *Investigation Final Determination* and accompanying Issues and Decision Memorandum at Comment 1.

⁹⁵ See Petitioner’s February 9, 2016 Surrogate Value Submission at Exhibit 1.

⁹⁶ 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).

⁹⁷ See Policy Bulletin.

⁹⁸ *Id.*

⁹⁹ 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.

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. Thailand is at a comparable level of economic development pursuant to 773(c)(4) of the Act; is a significant producer of comparable merchandise; and has publicly available and reliable data for all the identified inputs submitted by interested parties. An explanation of the SV data is provided below in the “Normal Value” section of this memorandum and in the Preliminary Surrogate Value Memorandum.¹⁰⁰

Date of Sale

Pursuant to 19 CFR 351.401(i), the Department starts with a presumption that invoice date is the correct date of sale unless record evidence indicates that the material terms of sale such as price and quantity are established on another date. Fufeng reported that the date of sale was determined by the invoice issued to the unaffiliated U.S. customer. The Department found no evidence contrary to the respondent’s claim 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).¹⁰¹

Comparisons to Normal Value

In accordance with section 773(a) of the Act, to determine whether sales of subject merchandise were made at less than NV by the individually-examined respondents during the POR, the Department compared the EP and constructed export price (“CEP”) to the 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

¹⁰⁰ 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”).

¹⁰¹ 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.

the issue in less-than-fair-value investigations.¹⁰² 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.¹⁰³ 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 administrative review.¹⁰⁴ 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

¹⁰² 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.

¹⁰³ 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).

¹⁰⁴ 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 (November 26, 2013) and accompanying Issues and Decision Memorandum at Comment 4.

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 (0.2, 0.5 and 0.8, respectively). 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 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 Fufeng demonstrate that over 66 percent of the company's U.S. sales pass the Cohen's *d* test, and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods.¹⁰⁵ 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 Fufeng 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) in accordance with section 772(c)(2) of the Act.¹⁰⁶ Where movement expenses were provided by PRC service providers or paid for in an NME currency, we valued these services using surrogate values.¹⁰⁷

¹⁰⁵ See Fufeng's Preliminary Analysis Memorandum.

¹⁰⁶ See section 772(c)(2)(A) of the Act.

¹⁰⁷ See Preliminary Surrogate Value Memorandum for details regarding the surrogate values for movement expenses.

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.¹⁰⁸ The Department explained that when an NME government imposes an export tax, duty, or other charge on subject merchandise, or on inputs used to produce subject merchandise, from which the respondent was not exempted, the Department will reduce the respondent's EP and CEP prices accordingly by the amount of the tax, duty or charge paid, but not rebated.¹⁰⁹ Where the irrecoverable VAT is a fixed percentage of CEP or EP, the Department makes a tax-neutral dumping comparison by reducing the CEP or EP by this percentage.¹¹⁰ 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 Department requested that the mandatory respondents report net un-refunded VAT for the subject merchandise. The PRC VAT schedule placed on the record of this review by Fufeng demonstrates that the VAT rate is 17 percent, and the rebate rate for subject merchandise is 13 percent, under applicable PRC regulations.¹¹¹ Thus, we have determined that the irrecoverable VAT on subject merchandise is the difference of these rates, *i.e.*, four percent, and we have adjusted the U.S. prices for the un-refunded VAT, in order to calculate EP net of VAT by this amount for Fufeng.¹¹² We note that this is consistent with the Department's policy and the intent of the statute, that dumping comparisons be tax-neutral.¹¹³

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.¹¹⁴ Therefore, we calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). Under section 773(c)(3) of the Act, FOPs include, but are not

¹⁰⁸ 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) ("*Methodological Change*").

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ See Submission from Fufeng, "Sections C and D Responses for Neimenggu Fufeng Biotechnologies Co., Ltd. in the Second Administrative Review of Antidumping Duty Order on Xanthan Gum from the People's Republic of China (A-570-985)," dated November 19, 2015 ("Fufeng-CDQR") at Exhibit C-5.

¹¹² See Fufeng's Preliminary Analysis Memorandum.

¹¹³ See *Methodological Change*.

¹¹⁴ 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).

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.¹¹⁵ We used the FOPs reported by Fufeng for materials, energy, labor, by-products, packing and freight. 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.¹¹⁶

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on the FOPs reported by Fufeng for the POR. FOP valuation comments, rebuttal comments, and surrogate value information with which to value the FOPs in this proceeding were filed by Petitioner, Fufeng, and Deosen between February 8, 2016 and July 6, 2016. 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.¹¹⁷ 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 one mandatory respondent for which we calculated a rate is below. A detailed description of all SVs used to calculate the weighted-average dumping margin for this mandatory respondent 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.¹¹⁸ Thus, we based SVs for Fufeng's direct materials and packing materials on these import values.¹¹⁹

Pursuant to section 773(c)(5) of the Act and the Department's long-standing practice, the Department is disregarding SVs if it has a reason to believe or suspect the source data may comprise subsidized prices.¹²⁰ In this regard, the Department has previously found that it is

¹¹⁵ See section 773(c)(3)(A)-(D) of the Act.

¹¹⁶ See Preliminary Surrogate Value Memorandum.

¹¹⁷ 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).

¹¹⁸ See Preliminary Surrogate Value Memorandum.

¹¹⁹ *Id.*

¹²⁰ See section 505 of the Trade Preferences Extension Act of 2015, Pub. Law 114-27 (June 29, 2015) (amending section 773(c)(5) of the Act to permit Department to disregard price or cost values without further investigation if it

appropriate to disregard such prices from India, Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies.¹²¹ Based on the existence of the subsidy programs that were generally available to all exporters and producers in these countries at the time of the POI, the Department finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea and Thailand may have benefitted from these subsidies. Therefore, the Department has not used prices from those countries in calculating the Thai import-based SVs.

Additionally, the Department disregarded data from NME countries when calculating Thai import-based per-unit SVs.¹²² The Department also excluded from the calculation of Thai import-based per-unit SVs imports labeled as originating from an “unidentified” country because the Department could not be certain that these imports were not from either an NME country or a country with generally available export subsidies.¹²³

2. Energy

We valued water using data from Thailand’s Metropolitan Waterworks Authority. We valued coal using Thai GTA import statistics. We valued electricity using data from the Metropolitan Electricity Authority of Thailand. We did not inflate or deflate the energy rates because they are contemporaneous with the POR.¹²⁴

3. Labor

In *Labor Methodologies*,¹²⁵ 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.¹²⁶ Rather, we continue to follow

has determined that certain subsidies existed with respect to those values); *see also Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793, 46795 (August 6, 2015).

¹²¹ *See, e.g., Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination; 2011-2012*, 78 FR 42492 (July 16, 2013), and accompanying Issues and Decision Memorandum at 7-19; *see also Certain Lined Paper Products From Indonesia: Final Results of the Expedited Sunset Review of the Countervailing Duty Order*, 76 FR 73592 (November 29, 2011), and accompanying Issues and Decision Memorandum at 1; *see also Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 46770 (August 11, 2014), and accompanying Issues and Decision Memorandum at 4; *see also Certain Frozen Warmwater Shrimp From Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013), and accompanying Issues and Decision Memorandum at IV.

¹²² *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates From the People’s Republic of China*, 69 FR 75294, 75301 (December 16, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People’s Republic of China*, 70 FR 24502 (May 10, 2005).

¹²³ *Id.*

¹²⁴ *See Preliminary Surrogate Value Memorandum, see also Currency Conversion section below*

¹²⁵ *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (“*Labor Methodologies*”).

¹²⁶ *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.

our practice of selecting the best available information. Therefore, we valued labor using industry-specific labor data from Thailand's National Statistics Office ("NSO"), within the "Manufacture of Other Chemical Products, n.e.c." labor category. We inflated these rates because they were not contemporaneous with the POR.¹²⁷

4. *Movement Services*

As appropriate, 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.*¹²⁸ We valued inland truck freight using data published in the World Bank's *Doing Business 2016: Thailand* for inland transportation and handling relating to importing and exporting a standardized cargo of goods. We did not inflate or deflate this SV because it is contemporaneous with the POR.¹²⁹

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 2016: Thailand*. We valued international ocean freight using rates obtained from Descartes. We valued international air freight using data obtained from DHL Express Worldwide for shipments to the United States. We did not inflate or deflate these SVs because they are contemporaneous with the POR. 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.¹³⁰

5. *Financial Ratios*

The Department's criteria for choosing surrogate financial statements from which we derive the financial ratios are the availability of contemporaneous financial statements, comparability to the respondent's experience, and publicly available information.¹³¹ Pursuant to 19 CFR 351.408(c)(4) and section 773(c)(4) of the Act, 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 these preliminary results, we relied on the audited financial statements of Thai Churos Co., Ltd. and Thai Fermentation Co., Ltd., which are Thai producers of comparable merchandise. We relied on the financial statements of both companies for the fiscal year ending December 31, 2015 because they are contemporaneous with the POR.¹³²

¹²⁷ See Preliminary Surrogate Value Memorandum.

¹²⁸ See *Sigma Corp. v. United States*, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997) ("*Sigma Corp.*").

¹²⁹ See Preliminary Surrogate Value Memorandum.

¹³⁰ *Id.*

¹³¹ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China*, 70 FR 24502 (May 10, 2005) and accompanying Issues and Decision Memorandum at Comment 3.

¹³² *Id.*

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.

RECOMMENDATION

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

August 5, 2016

(Date)