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July 31, 2017

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James P. Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of Antidumping
Duty Administrative Review: Xanthan Gum from the People's
Republic of China; 2015-2016

SUMMARY

In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on xanthan gum from the People's Republic of China (PRC) for the period of review (POR) July 1, 2015, through June 30, 2016. This administrative review was initiated on 14 companies,¹ but only covers 12 companies, including the two mandatory respondents, Deosen and Fufeng.²

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 62720 (September 12, 2016) (*Initiation Notice*). The companies listed in the *Initiation Notice* are (1) Deosen Biochemical Ltd. (Deosen Zibo); (2) Deosen Biochemical (Ordos) Ltd. (Deosen Ordos); (3) Neimenggu Fufeng Biotechnologies Co., Ltd. (Neimenggu Fufeng); (4) Shandong Fufeng Fermentation Co., Ltd. (Shandong Fufeng); (5) Xinjiang Fufeng Biotechnologies Co., Ltd. (Xinjiang Fufeng); (6) A.H.A. International Co., Ltd. (AHA); (7) CP Kelco (Shandong) Biological Company Limited (CP Kelco Shandong); (8) Hebei Xinhe Biochemical Co. Ltd. (Hebei Xinhe); (9) Jianlong Biotechnology Co., Ltd.; (10) Inner Mongolia Jianlong Biochemical Co., Ltd. Co., Ltd.; (11) Meihua Group International Trading (Hong Kong) Limited; (12) Xinjiang Meihua Amino Acid Co., Ltd.; (13) Langfang Meihua Bio-Technology Co., Ltd.; and (14) Shanghai Smart Chemicals Co., Ltd. (Shanghai Smart).

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 Memorandum to Irene Darzenta Tzafolias, Director, Office VIII, AD/CVD Operations, "Neimenggu Fufeng Biotechnologies Co., Ltd., Xinjiang Fufeng Biotechnologies Co., Ltd., and Shandong Fufeng Fermentation Co., Ltd. Affiliation and Single Entity Status," dated concurrently with this memorandum; Memorandum to the file, "Deosen Biochemical Ltd. and Deosen Biochemical (Ordos) Ltd. Affiliation and Single Entity Status," dated concurrently with this memorandum; and the "Single Entity Treatment" section of this notice for details.



The Department preliminarily determines that (1) Fufeng did not make sales of subject merchandise in the United States at prices below normal value (NV) during the POR; (2) partial adverse facts available (AFA) is warranted with respect to Deosen; (3) Hebei Xinhe remains part of the PRC-wide entity; (4) separate rate status is granted to Deosen, CP Kelco Shandong, Fufeng, Jianlong, Meihua, and Shanghai Smart; and (5) AHA had no shipments to the United States during the POR.

If these preliminarily results are adopted in the final results of this administrative review, the Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR. The preliminary 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. The Department intends to issue the final results no later than 120 days from the date of publication of the accompanying *Federal Register* notice of these preliminary results pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), unless extended.

BACKGROUND

On July 19, 2013, the Department published in the *Federal Register* an AD order on xanthan gum from the PRC.³ On July 5, 2016, 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 for the period of July 1, 2015, through June 30, 2016.⁴ Between July 8 and July 31, 2016, the Department received requests to conduct an administrative review from the petitioner,⁵ AHA,⁶ CP Kelco Shandong,⁷ Deosen,⁸ and Shanghai Smart.⁹

On September 12, 2016, the Department published the notice of initiation of the third administrative review of xanthan gum from the PRC, which covers the POR July 1, 2015, to June 30, 2016.¹⁰ The Department initiated an administrative review of 14 companies.

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*, 81 FR 43584 (July 5, 2016).

⁵ See Letter from the petitioner, “Xanthan Gum from The People’s Republic of China/Request For Administrative Review,” dated July 29, 2016. The petitioner is Archer Daniels Midland Company.

⁶ See Letter from AHA, “Xanthan Gum from the People’s Republic of China: Request for Administrative Review,” dated July 29, 2017.

⁷ See Letter from CP Kelco Shandong, “Xanthan Gum from the People’s Republic of China: Request for Administrative Review,” dated July 29, 2017.

⁸ See Letter from Deosen, “Xanthan Gum from the People’s Republic of China: Request for Administrative Review,” dated July 29, 2017.

⁹ See Letter from Shanghai Smart, “Xanthan Gum from the People’s Republic of China: Request for Administrative Review,” dated July 29, 2017.

¹⁰ See *Initiation Notice*, 81 FR 62720.

After selecting Deosen and Fufeng as mandatory respondents,¹¹ the Department issued the antidumping (AD) questionnaire to them on October 28, 2016.¹² The Department received responses to section A of the AD questionnaire from both Deosen and Fufeng in October 2016, and to sections C and D of the AD questionnaire from both respondents in November 2016. From February through May 2017, the Department issued supplemental questionnaires to Deosen and Fufeng. The Department received responses to the supplemental questionnaires from March through May 2017.

On February 27, 2017, the Department solicited interested party comments regarding the selection of the surrogate country (SC) and offered an opportunity to provide surrogate value (SV) data.¹³ Interested parties filed SC and SV comments and information.¹⁴

On March 23, 2017, the Department postponed the preliminary results from April 3 until July 31, 2017.¹⁵

From June 5 to June 30, 2017, the Department conducted verification of Deosen's and Fufeng's questionnaire responses. As a result of verification findings, on July 14, 2017, the Department requested that Fufeng submit revised packing data.¹⁶ Fufeng timely submitted this data on July 17, 2017.¹⁷ We are issuing our verification reports concurrently with these preliminary results.¹⁸

¹¹ See "Selection of Respondents" section of this memorandum for further discussion.

¹² See Letters to Deosen and Fufeng regarding issuance of the Department's antidumping questionnaire, dated October 28, 2016.

¹³ See Department's Letter: "2015-2016 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 February 27, 2017 (SC Memo).

¹⁴ See "Surrogate Country" section of this memorandum for further discussion.

¹⁵ See Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through Abdelali Elouaradia, Director, Office IV, Antidumping and Countervailing Duty Operations, from Lilit Astvatsatrian and Eli Lovely, International Trade Compliance Analysts, Office IV, "Xanthan Gum from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2015-2016," dated March 23, 2017.

¹⁶ See the Department's letter to Fufeng, dated July 14, 2017.

¹⁷ See Fufeng's submission, "Neimenggu Fufeng Biotechnologies Co., Ltd, Submission of Electronic File for Minor Correction at Verification in the Third Administrative Review of Antidumping Duty Order on Xanthan Gum from the People's Republic of China (A-570-985)," dated July 17, 2017.

¹⁸ See Memorandum to the File, "Verification of the Questionnaire Responses of Neimenggu Fufeng Biotechnologies Co., Ltd. (Neimenggu Fufeng), Xinjiang Fufeng Biotechnologies Co., Ltd. (Xinjiang Fufeng), and Shandong Fufeng Fermentation Co., Ltd. (Shandong Fufeng) (collectively Fufeng) in the 2015-2016 Antidumping Duty Administrative Review of Xanthan Gum from the People's Republic of China (PRC)," dated July 31, 2017; Memorandum to the File, "Verification of the CEP Sales Responses of First Biotech, Inc. in the 2015-2016 Antidumping Duty Administrative Review of Xanthan Gum from the People's Republic of China (PRC)," dated July 31, 2017; Memorandum to the File, "Verification of the Questionnaire Responses of Deosen Biochemical (Ordos) Ltd. (Deosen Ordos) and Deosen Biochemical Ltd. (Deosen Zibo) (collectively Deosen) in the 2015-2016 Antidumping Duty Administrative Review of Xanthan Gum from the People's Republic of China (PRC)," dated July 31, 2017 (Deosen FOP Verification Report); and Memorandum to the File, "Verification of the U.S. Sales Response of Deosen USA, Inc.," dated July 31, 2017 (Deosen US Verification Report).

PERIOD OF REVIEW

The POR is July 1, 2015, through June 30, 2016.

SCOPE OF THE ORDER¹⁹

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

Xanthan gum that has been blended with other product(s) is included in this scope when the resulting mix contains 15 percent or more of xanthan gum by dry weight. Other products with which xanthan gum may be blended include, but are not limited to, sugars, minerals, and salts. Xanthan gum is a polysaccharide produced by aerobic fermentation of *Xanthomonas campestris*. The chemical structure of the repeating pentasaccharide monomer unit consists of a backbone of two P-1,4-D-Glucose monosaccharide units, the second with a trisaccharide side chain consisting of P-D-Mannose-(1,4)- P-D-Glucuronic acid-(1,2) - a-D-Mannose monosaccharide units. The terminal mannose may be pyruvylated and the internal mannose unit may be acetylated.

Merchandise covered by the scope of the order is classified in the Harmonized Tariff Schedule of the United States at subheading 3913.90.20. This tariff classification is provided for convenience and customs purposes; however, the written description of the scope is dispositive.

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 and 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 or 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 exporters or producers subject to the review is not so large that any individual examination would be unduly burdensome and inhibit the timely completion of the review.

On September 16, 2016, the Department placed CBP data for imports made during the POR under the Harmonized Tariff Schedule of the United States (HTSUS) numbers listed in the scope of the order on the record of the review and requested comments on the data for use in

¹⁹ 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) (*Xanthan Gum AD Order*).

respondent selection.²⁰ 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 October 28, 2016, the Department issued the respondent selection memorandum, in which it explained that, because of the large numbers of exporters and producers involved in the review and given the Department's resource constraints, it would not be practicable to examine all companies individually.²¹ Rather, the Department determined that it could only reasonably examine two exporter groupings comprising a total of five companies in this review.²² Pursuant to section 777A(c)(2)(B) of the Act, the Department selected Deosen and Fufeng²³ for individual examination because they are the two largest exporters or producers of the subject merchandise, by volume, from the PRC during the POR based on CBP data.²⁴ The Department also noted that if it received voluntary responses in accordance with section 782(a) of the Act and 19 CFR 351.204(d), then it would evaluate the circumstances at that time in deciding whether to select an additional respondent for examination.

In response to both CP Kelco Shandong's and Meihua's timely requests to be voluntary respondents in this review, the Department issued a memorandum stating that it would not select a voluntary respondent in this review, because doing so would be unduly burdensome and would inhibit the timely completion of this review, pursuant to section 782(a) of the Act.²⁵

PRELIMINARY DETERMINATION OF NO SHIPMENTS

In its timely submitted separate rate certification (SRC), AHA stated that it made one shipment of subject merchandise to an unaffiliated U.S. customer during the POR, and that customer was

²⁰ 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, 2016.

²¹ See Memorandum to Abdelali Elouaradia, Director, Office IV, from Andrew Martinez, International Trade Compliance Analyst, Office IV, "Selection of Respondents for the 2015-2016 Administrative Review of the Antidumping Duty Order on Xanthan Gum from the People's Republic of China," dated October 28, 2016 (Respondent Selection Memo).

²² See Respondent Selection Memo, at 6.

²³ In the second administrative review of the *Xanthan Gum AD Order*, the Department found that Deosen Biochemical Ltd./Deosen Biochemical (Ordos) Ltd. is a single entity and Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd./Shandong Fufeng Fermentation Co., Ltd. are a single entity and, because there were no facts presented on the record of this review which would call into question our prior finding, the Department continues to treat these exporter groupings as single entities for this administrative review, pursuant to section 771(33)(F) of the Act and 19 CFR 351.401(f). See *Xanthan Gum from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipment, and Preliminary Partial Rescission of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 54045 (August 15, 2016), and accompanying Preliminary Decision Memorandum (PDM) (*Xanthan Gum AR2 Preliminary Results*); unchanged in *Xanthan Gum from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, Final Partial Rescission; 2014-2015*, 82 FR 11434, (February 23, 2017) (*Xanthan Gum AR2 Final Results*).

²⁴ See Respondent Selection Memo, at Attachment.

²⁵ See Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Irene Darzenta Tzafolias, Director Office VIII, "CP Kelco (Shandong) Biological Company Limited's and Meihua Group International Trading (Hong Kong)'s Requests for Selection as a Voluntary Respondent," dated May 3, 2017.

another respondent's (*i.e.*, Deosen's) customer, who negotiated the sales terms with Deosen. AHA further stated that if the Department finds this shipment is not a sale made by AHA, then AHA had no sales of subject merchandise to the U.S. market during the POR.²⁶ Record information, specifically the results of our CBP data query, supports this company's no shipment claim and nothing on the record contradicts AHA's claim that its one shipment of subject merchandise to an unaffiliated U.S. customer was Deosen's customer who negotiated the sales terms with Deosen.²⁷

Consistent with the Department's practice in non-market economy (NME) cases, it is not appropriate to rescind the review with respect to AHA at this time, but rather, we will complete the review and issue instructions to CBP based on the final results of the review.²⁸

APPLICATION OF PARTIAL 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.

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.²⁹ The amendments to section 776 of the Act are applicable to all determinations made on or after August 6, 2015 and, therefore, apply to this administrative review.³⁰

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

²⁶ See AHA's SRC, dated October 19, 2016, at 5-6.

²⁷ 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, 2016; See also Deosen FOP Verification Report, at verification exhibits (VEs), 7G, and 7H.

²⁸ See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

²⁹ 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>.

³⁰ See *Applicability Notice*, 80 FR at 46794-95.

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.³¹ 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.³² The SAA explains that the Department may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”³³ Further, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.³⁴

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.³⁵ 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.³⁶ 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.³⁷ The TPEA also makes clear that, when selecting facts available with an adverse inference (*i.e.*, AFA), 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.³⁸

In the prior administrative review of this AD order, the Department found that Deosen shipped its sales to the United States through AHA in order to benefit from AHA’s lower cash deposit rate. We applied an AD margin based on total AFA to Deosen in that review, finding that Deosen manipulated the sales processes with respect to these sales for the purpose of avoiding the appropriate cash deposit rate.³⁹ In the current review, Deosen reported that it sold out of its POR 3 inventory, some of the merchandise that it shipped through AHA at a lower cash deposit

³¹ See section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

³² See also 19 CFR 351.308(c).

³³ See Statement of Administrative Action (SAA), H.R. Doc. No. 103-316, 103d Cong., 2d Session, Vol. 1 (1994) at 870.

³⁴ 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*).

³⁵ See also 19 CFR 351.308(d).

³⁶ See SAA at 870.

³⁷ See section 776(d)(1)(B) and 776(d)(2) of the Act; TPEA, section 502(3).

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

³⁹ See *Xanthan Gum AR2 Final Results*, and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

rate in the prior POR.⁴⁰ We preliminarily determine that it is appropriate to apply facts otherwise available to this subset of sales pursuant to section 776(a) of the Act because, by manipulating the sales process with respect to these sales, Deosen has rendered them unusable for calculating an accurate dumping margin. Specifically, we preliminarily determine that sales information necessary to calculate an accurate dumping margin for Deosen and AHA for that subset of sales is not available on the record.

Moreover, in POR 2 we found, and for this subset of sales in POR 3 we continue to find, that by engaging in a scheme to misrepresent the true seller of the subject merchandise to avoid payment of accurate cash deposits, Deosen failed to cooperate to the best of its ability to comply with a request for information. That activity continued to affect its sales through AHA in this segment of the proceeding. Therefore, we preliminarily determine that an adverse inference is warranted with respect to these sales transactions in selecting from the facts otherwise available pursuant to section 776(b) of the Act.⁴¹

Where the Department applies 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.⁴² 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.⁴³

In reviews, the Department normally selects as AFA the highest rate on the record of the proceeding.⁴⁴ The CIT and the Court of Appeals for the Federal Circuit (CAFC) have consistently upheld the Department's practice.⁴⁵ 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

⁴⁰ Deosen FOP Verification Report, at 2, 4, 5, 10, 18, and 19; and Deosen US Verification Report, at 3 and 7.

⁴¹ 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).

⁴² See also 19 CFR 351.308(c); SAA, at 868-870.

⁴³ See SAA, at 870 (1994); accord *Ta Chen Stainless Steel Pipe Inc., v. United States*, 24 CIT 841, 848, 850 (CIT 2000).

⁴⁴ 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); see also section 776(d) of the Act.

⁴⁵ 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).

timely manner.”⁴⁶ 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.”⁴⁷

Consistent with the statute, court precedent, and our normal practice, we assigned, as AFA, a rate of 154.07 percent to the subset of Deosen’s U.S. sales that were shipped through AHA prior to being sold to Deosen’s unaffiliated U.S. customers. This is the highest rate on the record of the proceeding.⁴⁸ 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 segment of this proceeding.

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 record facts of the case supported such treatment.⁴⁹ 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.⁵⁰ 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.⁵¹

“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)(G) of the Act defines affiliated persons to include “any person who controls any other person and such other 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.

⁴⁶ See SAA at 870.

⁴⁷ *Id.*

⁴⁸ See *Xanthan Gum AD Order*.

⁴⁹ 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).

⁵⁰ 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).

⁵¹ 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).

In the *Xanthan Gum AR1 Preliminary Results* and in the *Xanthan Gum AR2 Preliminary Results* (the immediately preceding review), the Department treated Neimenggu Fufeng, Shandong Fufeng, and Xinjiang Fufeng as a single entity.⁵² 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 business proprietary memorandum, the Department preliminarily determines that Neimenggu Fufeng, Shandong Fufeng, and Xinjiang Fufeng (collectively, Fufeng) are affiliated pursuant to section 771(33)(F) of the Act, and should be treated as a single entity pursuant to 19 CFR 351.401(f).⁵³

Similarly, in the *Xanthan Gum AR1 Preliminary Results* and in the *Xanthan Gum AR2 Preliminary Results*, Department treated Deosen Biochemical Ltd. and Deosen Biochemical (Ordos) Ltd. as a single entity as recently as the first review of this AD order.⁵⁴ 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 business proprietary memorandum, the Department preliminarily determines 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 pursuant to 19 CFR 351.401(f).⁵⁵

DISCUSSION OF THE METHODOLOGY

Non-Market Economy Country Status

The Department considers the PRC to be an NME country.⁵⁶ 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. No party has argued to change, or submitted evidence on the record calling into question, this determination. Therefore, the Department continues to treat the PRC as an NME country for purposes of these preliminary results.

⁵² 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) (*Xanthan Gum AR1 Preliminary Results*); see also *Xanthan Gum AR2 Preliminary Results* and accompanying PDM at 10-11; unchanged in *Xanthan Gum AR2 Final Results*.

⁵³ See Memorandum to Irene Darzenta Tzafolias, Director, Office VIII, 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.

⁵⁴ See *Xanthan Gum AR1 Preliminary Results*; unchanged in *Xanthan Gum from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 82 FR 11428, (February 23, 2017) (*Xanthan Gum AR1 Final Results*); *Xanthan Gum AR2 Preliminary Results* and accompanying PDM at 11; unchanged in *Xanthan Gum AR2 Final Results*; see also *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013) (*Xanthan Gum LTFV Final Determination*).

⁵⁵ 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.

⁵⁶ See, e.g., *Xanthan Gum AR2 Preliminary Results* and accompanying PDM at 11; unchanged in *Xanthan Gum AR2 Final Results*; *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*.

Separate Rates Determination

The Department has the rebuttable presumption that all companies within the NME are subject to government control and, thus, should be assessed a single antidumping duty rate.⁵⁷ In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate-rate status in NME proceedings.⁵⁸ It is the Department's policy to assign all exporters of the merchandise subject to review in an NME proceeding 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 proceeding under the test established in *Sparklers*,⁵⁹ as amplified by *Silicon Carbide*⁶⁰ and further refined by *Diamond Sawblades*.⁶¹ However, if the Department determines that a company is wholly foreign-owned, then an analysis of the *de jure* and *de facto* criteria is not necessary to determine whether it is independent from government control.⁶²

The Department continues to evaluate its practice with regard to the separate-rates analysis in light of the *Diamond Sawblades* antidumping duty proceeding, and the Department's determinations therein. In particular, in litigation involving the *Diamond Sawblades* proceeding, the U.S. Court of International Trade (CIT) found the Department's existing separate-rates analysis deficient in the circumstances of that case, in which a government-owned and controlled

⁵⁷ 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).

⁵⁸ See *Initiation Notice*, 81 FR at 62721.

⁵⁹ 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*).

⁶⁰ 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*).

⁶¹ See Final Results of Redetermination Pursuant to Remand Order for Diamond Sawblades and Parts Thereof from the People's Republic of China (May 6, 2013) in *Advanced Technology & Materials Co., Ltd. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) (*Advanced Technology I*), sustained, *Advanced Technology & Materials Co. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013), aff'd, Case No. 2014-1154 (Fed. Cir. 2014) (*Advanced Technology II*). This remand redetermination is on the Enforcement and Compliance website at

<http://enforcement.trade.gov/remands/12-147.pdf>; see also *Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 77098 (December 20, 2013) and accompanying PDM at 7, unchanged in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014) (*Diamond Sawblades*) and accompanying IDM at Comment 1.

⁶² See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2011-2012 Antidumping Duty Administrative Review and New Shipper Reviews*, 79 FR 4327 (January 27, 2014), and *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007).

entity had significant ownership in the exporter under examination.⁶³ Following the Court’s reasoning, in recent proceedings, the Department has concluded that where a government entity holds a majority ownership share, either directly or indirectly, in the respondent exporter, the majority ownership holding in and of itself means that the government exercises, or has the potential to exercise, control over the company’s operations generally.⁶⁴ This may include control over, for example, the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with normal business practices, the Department would expect any majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profit distribution of the company.

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 SRC 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 (SRA).⁶⁶

As discussed below, of the 14 companies for which the Department has initiated a review, one company⁶⁷ did not file either a SRA or a SRC. As discussed above, one company claimed no shipments during the POR. The remaining 12 companies filed a timely SRA or SRC.⁶⁸

The Department received completed responses to the section A portion of the NME questionnaire from the mandatory respondents, Deosen and Fufeng, which contained information

⁶³ See, e.g., *Advanced Technology I*, 885 F. Supp. 2d at 1349 (“The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it.”); *id.*, at 1351 (“Further substantial evidence of record does not support the inference that SASAC’s {state-owned assets supervision and administration commission} ‘management’ of its ‘state-owned assets’ is restricted to the kind of passive-investor *de jure* ‘separation’ that Commerce concludes.”) (footnotes omitted); *id.*, at 1355 (“The point here is that ‘governmental control’ in the context of the separate-rate test appears to be a fuzzy concept, at least to this court, since a ‘degree’ of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to ‘day-to-day decisions of export operations,’ including terms, financing, and inputs into finished product for export.”); *id.*, at 1357 (“AT&M itself identifies its ‘controlling shareholder’ as CISRI {owned by SASAC} in its financial statements and the power to veto nomination does not equilibrate the power of control over nomination.”) (Footnotes omitted).

⁶⁴ See *Carbon and Certain Alloy Steel Wire Rod from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 79 FR 53169 (September 8, 2014), and accompanying PDM at 5-9.

⁶⁵ See *Initiation Notice*, 81 FR at 62727.

⁶⁶ *Id.*

⁶⁷ This exporter is Hebei Xinhe Biochemical Co. Ltd.

⁶⁸ These companies are (1) Deosen Zibo; (2) Deosen Ordos; (3) Neimenggu Fufeng; (4) Shandong Fufeng Fermentation Co., Ltd.; (5) Xinjiang Fufeng; (6) CP Kelco Shandong; (7) Jianlong Biotechnology Co., Ltd.; (8) Inner Mongolia Jianlong Biochemical Co., Ltd. Co., Ltd.; (9) Meihua Group International Trading (Hong Kong) Limited; (10) Xinjiang Meihua Amino Acid Co., Ltd; (11) Langfang Meihua Bio-Technology Co., Ltd.; and (12) Shanghai Smart.

pertaining to the companies' eligibility for a separate rate.⁶⁹ The Department also received either an SRA or SRC from the following four exporter groupings or exporters (separate-rate applicants): CP Kelco Shandong, Jianlong, Meihua, and Shanghai Smart.

(1) Wholly Foreign-Owned Applicant

CP Kelco Shandong reported that it is wholly foreign-owned by a market-economy (ME) company located in a ME country.⁷⁰ Therefore, as there is no PRC ownership of this company, and because the Department has no evidence indicating that this company is under the control of the PRC government, further analyses of the *de jure* and *de facto* criteria are not necessary to determine whether CP Kelco Shandong is independent from government control of its export activities.⁷¹

Therefore, because the Department finds that CP Kelco Shandong has demonstrated an absence of PRC government control of export activities, the Department preliminarily determines that CP Kelco Shandong is preliminarily eligible for a separate rate.

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

Deosen, Fufeng, Jianlong, Meihua, and Shanghai Smart indicated that they are either Chinese-foreign joint venture companies or wholly Chinese-owned companies.⁷² 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) any other formal measures by the government decentralizing control of companies.⁷³ The evidence provided by mandatory respondents Deosen and Fufeng, and Jianlong, Meihua, and Shanghai Smart supports a preliminary finding of the

⁶⁹ The Department also received a SRC response from Fufeng and a SRA response from Deosen.

⁷⁰ See CP Kelco Shandong's SRA, dated October 19, 2016, at SRA-10 through SRA-15.

⁷¹ See, e.g., *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007); *Brake Rotors from the People's Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review*, 66 FR 1303, 1306 (January 8, 2001), unchanged in *Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review*, 66 FR 27063 (May 16, 2001); *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104, 71104-05 (December 20, 1999).

⁷² See Deosen's October 24, 2016 SRA, at 7 and Deosen's November 28, 2016, Section A Questionnaire Response at 14 (Deosen's Section A Response); Fufeng's October 19, 2016, SRC, at Exhibit 3 and Fufeng's December 5, 2016, Section A Questionnaire Response, at Exhibit A-2 (Fufeng's Section A Response); Jianlong's October 12, 2016, SRA, at SRA-10; Meihua's October 19, 2016, SRC, at 3; and Shanghai Smart's October 13, 2016, SRA, at 6.

⁷³ See *Sparklers*, 56 FR at 20589.

absence of *de jure* government control of export activities based on the following: (1) there is an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of the companies.⁷⁴

b. Absence of *De Facto* Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices (EPs) are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.⁷⁵ 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.⁷⁶ Therefore, 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 which would preclude the Department from assigning separate rates.⁷⁷

The evidence provided by Deosen, Fufeng, Jianlong, Meihua, and Shanghai Smart supports a preliminary finding of the absence of *de facto* government control based on the following: (1) the companies set their own export prices independent of the government and without the approval of a government authority; (2) the companies have authority to negotiate and sign contracts and other agreements; (3) the companies have autonomy from the government in making decisions regarding the selection of management; and (4) there is no restriction on any of the companies' use of export revenue.⁷⁸ Therefore, the Department preliminarily finds that the evidence placed on the record of this review demonstrates an absence of *de jure* and *de facto* government control with respect to the companies' exports of the merchandise under review. Therefore, the Department preliminarily finds that Deosen, Fufeng, Jianlong, Meihua, and Shanghai Smart have established that they each qualify for a separate rate under the criteria established by *Diamond Sawblades*, *Silicon Carbide* and *Sparklers*.

PRC-Wide Entity

The remaining company under review, Hebei Xinhe Biochemical Co., Ltd., failed to establish its eligibility for a separate rate because it did not file an SRA or an SRC with the Department. Hence, the Department preliminarily determines to treat this company as part of the PRC-wide

⁷⁴ See e.g., Deosen's SRA, at 6-9; Deosen's Section A Response, at 2-11; Fufeng's SRC, at 5-6; Fufeng's Section A Response, at 2-10; Jianlong's SRA, at SRA-12; Meihua's SRC, at 6-7; and Shanghai Smart's SRA, at 7-8.

⁷⁵ 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).

⁷⁶ See, e.g., *Silicon Carbide*, 59 FR at 22586-87.

⁷⁷ *Id.*

⁷⁸ See e.g., Deosen's SRA, at 9-17; Fufeng's SRC, at 6-7; Jianlong's SRA, at SRA-13 through SRA-19; Meihua's SRC, at 7-8; and Shanghai Smart's SRA, at 8-13.

entity.

Because no party requested a review of the PRC-wide entity and the Department no longer considers the PRC-wide entity as an exporter conditionally subject to administrative reviews, the Department is not conducting a review of the PRC-wide entity.⁷⁹ Thus, the rate for the PRC-wide entity (*i.e.*, 154.07 percent) is not subject to change pursuant to this review.⁸⁰

Weighted-Average Dumping Margin for Non-Examined Separate-Rate Companies

As stated above in the “Respondent Selection” section, the Department employed a limited examination methodology in this review, as it determined that it would not be practicable in light of its resources to individually examine all companies for which an administrative review was initiated, and selected the two largest exporters by volume as mandatory respondents in this review, Deosen and Fufeng. Four additional exporter groupings or exporters (identified in the “Separate Rates” section above) remain subject to review as non-individually examined, separate-rate respondents.

The statute and the Department’s regulations do not address the establishment of a rate to be applied to individual respondents not selected for individual examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, the Department looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for separate-rate respondents which the Department did not examine individually in an administrative review. Section 735(c)(5)(A) of the Act articulates a preference that the Department is not to calculate an all-others rate using rates for individually examined respondents which are zero, *de minimis*, or based entirely on facts available (FA). Accordingly, the Department’s usual practice in determining the rate for separate-rate respondents not selected for individual examination, has been to average the weighted-average dumping margins for the selected companies, excluding rates that are zero, *de minimis*, or based entirely on FA.⁸¹

In these preliminary results, only one of the two mandatory respondents, Deosen, has a weighted-average dumping margin that is not zero, *de minimis*, or based entirely on FA. Because there is only one relevant weighted-average dumping margin for these preliminary results, we have assigned this margin to the separate rate companies in accordance with the

⁷⁹ 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.

⁸⁰ *See Xanthan Gum AR2 Final Results*, 82 FR at 11436.

⁸¹ *See Longkou Haimeng Mach. Co. v. United States*, 581 F. Supp. 2d 1344, 1357-60 (CIT 2008) (affirming the Department’s determination to assign a 4.22 percent dumping margin to the separate-rate respondents in a segment where the three mandatory respondents received dumping margins of 4.22 percent, 0.03 percent, and zero percent, respectively); *see also Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 36656, 36660 (July 24, 2009).

Department's practice.⁸² The separate rate applicants receiving this rate are identified by name in the "Preliminary Results of the Review" section of the *Federal Register* notice.

Surrogate Country and Surrogate Value Data

On February 27, 2017, the Department sent interested parties a letter inviting comments on: (1) the non-exhaustive list of countries that the Department determined are at the same level of economic development as the PRC based on annual per capita gross national income (GNI), (2) surrogate country selection, and (3) surrogate value (SV) data.⁸³ On March 3, 2017, the petitioners,⁸⁴ Deosen, and Fufeng submitted comments on the list of countries and SVs.⁸⁵ On March 13, 2017, Fufeng submitted SV rebuttal comments.⁸⁶ On July 3, 2017, Meihua submitted SV comments. Although we did not receive Meihua's SV comments in time to consider them for these preliminary results, we will do so for these final results.⁸⁷

Surrogate Country Selection

When the Department investigates imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production (FOPs), valued in a surrogate ME country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.⁸⁸ As a general rule, the Department selects a surrogate country that is at the same level of economic development as the NME country unless it is determined that none of the countries are viable options because either

⁸² See *Drawn Stainless Steel Sinks from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments: 2014-2015*, 81 FR 29528 (May 12, 2016) and accompanying PDM at 10-11; unchanged in *Drawn Stainless Steel Sinks from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; Final Determination of No Shipments; 2014-2015*, 81 FR 54042 (August 15, 2016); and *Stainless Steel Bar from India: Final Results of the Antidumping Duty Administrative Review*, 77 FR 39467 (July 3, 2012) and accompanying IDM at 12.

⁸³ See Department's Letter: "2015-2016 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 February 27, 2017 (SC Memo).

⁸⁴ The petitioners in this review are CP Kelco U.S., Inc (CP Kelco) and Archers Daniels Midland Company (ADM).

⁸⁵ See CP Kelco's March 3, 2017, submission, "Xanthan Gum from the People's Republic of China: Petitioner's Comments on Surrogate Country Selectin & Surrogate Value Information" (Petitioner's SC and SV Comments); Deosen's March 3, 2017, submission, "Xanthan Gum from China: Response to Request for Surrogate Country and Surrogate Values, Comments, and Information" (Deosen's SC and SV Comments); and Fufeng's March 3, 2017, submission, "Neimenggu Fufeng Biotechnologies Co., Ltd. First Surrogate Country & Surrogate Value Submission in the Third Administrative Review of Antidumping Duty Order on Xanthan Gum from the People's Republic of China (A-570-895)" (Fufeng's SC and SV Comments).

⁸⁶ See Fufeng's March 13, 2017, submission, "Fufeng's First Surrogate Value Rebuttal Submission in the Third Administrative Review of Antidumping Duty Order on Xanthan Gum from the People's Republic of China (A-570-985)."

⁸⁷ See Letter from Meihua, "Xanthan Gum from the People's Republic of China, A-570-985, Surrogate Value Information," dated July 3, 2017.

⁸⁸ See Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin 04.1).

(a) they are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available SV data, or (c) are not suitable for use based on other reasons.⁸⁹ Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development.⁹⁰ To determine which countries are at the same level of economic development, the Department generally relies on GNI data from the World Bank's World Development Report.⁹¹ Further, the Department has stated that it prefers to value all FOPs from a single surrogate country.⁹²

On February 8, 2017, the Department identified Brazil, Bulgaria, Mexico, Romania, South Africa, and Thailand, pursuant to section 773(c)(4) of the Act, as countries that are at the same level of economic development as the PRC based on per capita 2015 GNI data available in the World Development Report provided by the World Bank.⁹³ In their SC comments, the petitioners, Deosen and Fufeng all recommend that the Department select Thailand as the primary surrogate country. Our surrogate country analysis is below.

In prior segments of the proceeding (*i.e.*, the LTFV investigation and the first and second administrative reviews), the Department has relied on Thailand as the surrogate country.⁹⁴

As indicated above, when selecting among several potential surrogate countries, the Department's practice, in accordance with section 773(c)(1) of the Act, is to select a country that provides SV data which are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR, and free of taxes and duties.⁹⁵ There is no hierarchy among these criteria. It is the Department's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing the FOPs.⁹⁶

⁸⁹ *Id.*

⁹⁰ See SC Memo.

⁹¹ *Id.*

⁹² See 19 CFR 351.408(c)(2).

⁹³ See Memorandum from Carole Showers, Director, to Eli Lovely, International Trade Compliance Analyst, "Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty order on Xanthan Gum from the People's Republic of China," dated February 8, 2017.

⁹⁴ 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) (*Xanthan Gum LTFV Preliminary Determination*) and accompanying PDM at 7-8, unchanged in *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013) (*Xanthan Gum LTFV Final Determination*); *Xanthan Gum ARI Final Results*; and *Xanthan Gum AR2 Final Results*.

⁹⁵ See, e.g., *First Administrative Review of Certain Polyester Staple Fiber from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 1336 (January 11, 2010), and accompanying IDM at Comment 1.

⁹⁶ See, e.g., *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), and accompanying IDM at 7.

Economic Comparability

As explained in the SC Memo, the Department considers Brazil, Bulgaria, Mexico, Romania, South Africa, and Thailand to be at the same level of economic development as the PRC.⁹⁷ Therefore, we consider all six countries as having satisfied this prong of the surrogate country selection criteria.⁹⁸

Significant Producer of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise; 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. 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.⁹⁹ Moreover, while the legislative history provides that the term "significant producer" includes any country that is a significant "net exporter,"¹⁰⁰ 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."¹⁰¹ 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.¹⁰² Since these characteristics are specific to the merchandise in question, the standard for "significant producer" will vary from case to case.¹⁰³

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

⁹⁷ See Surrogate Country Recommendation Memorandum.

⁹⁸ See Section 773(c)(4)(A) of the Act.

⁹⁹ See, e.g., *Xanthan Gum LTFV Preliminary Determination* and accompanying PDM at 4-7, unchanged in *Xanthan Gum LTFV Final Determination*.

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

¹⁰¹ See Policy Bulletin at 1-2.

¹⁰² *Id.*

¹⁰³ 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 IDM at Comment 7.

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).¹⁰⁴

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).¹⁰⁵ 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.¹⁰⁶ 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 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.¹⁰⁷ 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.¹⁰⁸ However, the Department's preference is to satisfy the breadth of these aforementioned selection factors,¹⁰⁹ and to value all FOPs in the primary surrogate country.¹¹⁰

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

Given the above facts, the Department preliminarily selects Thailand as the primary surrogate country for this administrative review. Thailand is at a comparable level of economic development pursuant to 773(c)(4) of the Act; is a significant producer of comparable

¹⁰⁴ See, e.g., *Xanthan Gum LTFV Preliminary Determination* and accompanying PDM at 5.

¹⁰⁵ See *Xanthan Gum LTFV Final Determination* and accompanying IDM at Comment 1.

¹⁰⁶ See Petitioner's March 3, 2017, SV Submission at Exhibit 1.

¹⁰⁷ 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 IDM at Comment I(C).

¹⁰⁸ See Policy Bulletin.

¹⁰⁹ *Id.*

¹¹⁰ 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 IDM at Comment 9.

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 each company’s Preliminary Surrogate Value Memorandum.¹¹¹

Date of Sale

Pursuant to 19 CFR 351.401(i), the Department normally will use the invoice date as the date of sale unless the Department is satisfied that a different date better reflects the date on which the material terms of the sale are established. Deosen reported the invoice date as the date of sale, claiming that for their U.S. sales of subject merchandise made during the POR, the material terms of sale were established based on the invoice date.¹¹² Fufeng reported either the shipment date or the invoice date as the date of sale, claiming that for their U.S. sales of subject merchandise made during the POR, the material terms of sale were established on either the shipment date or the invoice date.¹¹³ Therefore, in accordance with 19 CFR 351.401(i), and the Department’s long-standing practice in determining the date of sale,¹¹⁴ the Department preliminarily finds that the invoice date is the most appropriate date to use as Deosen’s date of sale and the earlier of the shipment date or invoice date is the most appropriate date to use as Fufeng’s date of sale.

Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether Deosen’s and Fufeng’s sales of the subject merchandise to the United States were made at less than NV, the Department compared the EP (or constructed export price (CEP)) to the NV as described in the “Export Price,” “Constructed Export Price” and “Normal Value” sections of this memorandum.

A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs or CEPs (*i.e.*, the average-to-average (A-A) method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, the Department

¹¹¹ See Memorandum to the File, “Antidumping Duty Administrative Review of Xanthan Gum from the People’s Republic of China: Preliminary Surrogate Value Memorandum-Deosen” (Deosen Preliminary SV Memorandum) and Memorandum to the File, “Antidumping Duty Administrative Review of Xanthan Gum from the People’s Republic of China: Preliminary Surrogate Value Memorandum-Fufeng,” (Fufeng Preliminary SV Memorandum), both dated concurrently with this memorandum.

¹¹² See Deosen’s Section A Response, at 15.

¹¹³ See Fufeng’s Section A Response, 14-15.

¹¹⁴ See, e.g., *Certain Polyester Staple Fiber from the People’s Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review, and Intent To Revoke Order in Part*, 76 FR 40329 (July 8, 2011), unchanged in *Certain Polyester Staple Fiber from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, and Revocation of an Order in Part*, 76 FR 69702 (November 9, 2011); see also *Steel Wire Garment Hangers from the People’s Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the First Antidumping Duty Administrative Review*, 75 FR 68758 (November 9, 2010), unchanged in *First Administrative Review of Steel Wire Garment Hangers from the People’s Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 27994, 27996 (May 13, 2011).

examines whether to compare weighted-average NVs with the EPs or CEPs of individual sales (*i.e.*, the average-to-transaction (A-T) 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 our examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.¹¹⁵

In recent investigations and reviews, the Department applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.¹¹⁶ The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. 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 a respondent’s weighted-average dumping margin.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchaser, region and time period to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the A-A method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, zip codes) 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 based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. 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* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the

¹¹⁵ 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 the accompanying IDM at Comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (Ct. Int’l Trade 2014).

¹¹⁶ See, e.g., *Xanthan Gum LTFV Final Determination; Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); or *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region, or time period differ significantly from the 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 mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass 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 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 A-T method to all sales as an alternative to the A-A method. If the value of sales to purchasers, regions, and 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 A-T method to those sales identified as passing the Cohen's *d* test as an alternative to the A-A method, and application of the A-A 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 A-A 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 A-A method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative comparison 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, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison 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 margins between the A-A method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margins between the A-A method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications 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.¹¹⁷

B. Results of the Differential Pricing Analysis

For Deosen, based on the results of the differential pricing analysis, the Department preliminarily finds that 43.40 percent of the value of Deosen's U.S. sales pass the Cohen's *d* test,¹¹⁸ and confirms the existence of a pattern of prices for comparable merchandise that differ significantly among purchasers, regions or time periods. This result supports consideration of an alternative to the A-A method based on applying the A-T method to those U.S. sales which passed the Cohen's *d* test and the A-A method to those sales which did not pass the Cohen's *d* test. Further, the Department preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the A-A method and the weighted-average dumping margin calculated using the above described alternative method. Thus, for these preliminary results, the Department applied the A-A method for all U.S. sales to calculate the weighted-average dumping margin for Deosen.¹¹⁹

For Fufeng, based on the results of the differential pricing analysis, the Department preliminarily finds that 75.10 percent of Fufeng's U.S. sales pass the Cohen's *d* test,¹²⁰ which confirms the existence of a pattern of prices for comparable merchandise that differ significantly among purchasers, regions or time periods, and supports the consideration of an alternative to the A-A method for all sales. Further, the Department preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the A-A method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the A-T method to all U.S. sales. Thus, for these preliminary results, the Department is applying the A-A method for all U.S. sales to calculate the weighted-average dumping margin for Fufeng.¹²¹

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. For Fufeng's U.S. sales which did not involve its U.S. affiliate, Biotech, the

¹¹⁷ The Department's application of its differential pricing methodology was recently upheld by the Court of Appeals for the Federal Circuit in *Apex Frozen Foods Pvt. Ltd. v. United States*, Court No. 2016-1789 (Fed. Cir. July 12, 2017).

¹¹⁸ See Memorandum to the File, "Preliminary Results Margin Calculation for Deosen" (Deosen Preliminary Calculation Memo), dated July 31, 2017 (Deosen's Preliminary Calculation Memo) at Attachment 3.

¹¹⁹ *Id.*

¹²⁰ See Memorandum, "Preliminary Results Calculation Memorandum for Fufeng" dated July 31, 2017 (Fufeng's Preliminary Calculation Memo) at Attachment III.

¹²¹ *Id.*

Department calculated EP for those sales because they represented the first sale to an unaffiliated party made before the date of importation and the use of CEP was not otherwise warranted for these U.S. sales.¹²² In accordance with section 772(c)(2)(A) of the Act, where appropriate, the Department deducted from the starting price (gross unit price) to unaffiliated purchasers foreign inland freight, foreign brokerage and handling, customs duties, domestic brokerage and handling and other movement expenses incurred in the PRC and the United States for Fufeng's EP sales. For those expenses that were provided by a market economy (ME) provider and paid for in an ME currency, the Department used the reported expense. For the expenses related to those sales that were either provided by an NME vendor or paid for using an NME currency, the Department used SVs as appropriate.¹²³ Additionally, in accordance with section 772(c)(2)(B) of the Act, the Department deducted any irrecoverable value-added tax (VAT) from the starting price as explained below. Finally, we incorporated into our preliminary margin analysis any verification findings and corrections noted in the verification reports. Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price, *see* Fufeng's Preliminary Calculation Mem.¹²⁴

Constructed Export Price

In accordance with section 772(b) of the Act, CEP is "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d)." For all of Deosen's sales¹²⁵ and a portion of Fufeng's sales, the Department based U.S. price on CEP, in accordance with section 772(b) of the Act, because sales of subject merchandise were made in the United States on behalf of the companies located in the PRC by their respective U.S. affiliates to unaffiliated purchasers in the United States.¹²⁶

Where appropriate, the Department made deductions from the starting price (gross unit price) for foreign movement expenses, international movement expenses, U.S. movement expenses, and appropriate selling adjustments, in accordance with section 772(c)(2)(A) of the Act. For certain U.S. sales, Deosen reported an amount for freight revenue. In accordance with our practice,¹²⁷ we capped the freight revenue by the amount of the freight expense.

In accordance with section 772(d)(1) of the Act, the Department also deducted those selling expenses associated with economic activities occurring in the United States. Specifically, the Department deducted, where appropriate, inventory carrying costs, interest revenue, credit expenses, and indirect selling expenses. For those expenses that were provided by an ME provider and paid for in an ME currency, if applicable, the Department used the reported expense. For these expenses that were either provided by an NME vendor or paid for using an

¹²² *See* Fufeng's Section A Response, at 2.

¹²³ *See* Deosen Preliminary SV Memorandum and Fufeng Preliminary SV Memorandum.

¹²⁴ *See* Fufeng Preliminary Calculation Memo.

¹²⁵ Those Deosen US sales for which the Department did not apply AFA.

¹²⁶ *See* Deosen's Section A response, at 15; *see also* Fufeng's Section A Response, at 14.

¹²⁷ *See, e.g., Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent to Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010), and accompanying IDM at Comment 2.

NME currency, the Department used SVs as appropriate.¹²⁸ Additionally, in accordance with section 772(c)(2)(B) of the Act, the Department also deducted any irrecoverable VAT from the starting price as explained below. Finally, we incorporated into our preliminary margin analysis any verification findings and corrections noted in each respondent's verification reports. Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for Deosen and Fufeng, *see* Deosen's Preliminary Calculation Memo and Fufeng's Preliminary Calculation Memo, respectively.

Value-Added Tax

The Department's practice, in NME cases, is to subtract from EP or CEP the amount of any irrecoverable VAT, in accordance with section 772(c)(2)(B) of the Act.¹²⁹ 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.¹³⁰ Where the irrecoverable VAT is a fixed percentage of EP, the Department makes a tax-neutral dumping comparison by reducing the U.S. price by this percentage.¹³¹ Thus, the Department's methodology essentially amounts to performing two steps: (1) determining the amount (or rate) of the irrecoverable VAT tax included in the FOB price of the 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 demonstrates that the VAT rate for xanthan gum is 17 percent.¹³² Deosen and Fufeng also reported that xanthan gum's input VAT rebate rate is 13 percent.¹³³ Thus, for the purposes of these preliminary results of review, for all of Fufeng's sales and all of Deosen's non-AFA sales, the Department reduced the price of each U.S. sale by the irrecoverable VAT rate of 4 percent of entered value.¹³⁴ We note that this is consistent with the Department's policy and the intent of the statute, that dumping comparisons be tax-neutral.¹³⁵

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

¹²⁸ *See* Deosen Preliminary SV Memorandum and Fufeng Preliminary SV Memorandum.

¹²⁹ *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*).

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *See* Fufeng's Section C response, at 41.

¹³³ *See* Deosen's Section C Response, at 37; and Fufeng's Section C response, at 41.

¹³⁴ *See* Deosen's Preliminary Calculation Memo and Fufeng's Preliminary Calculation Memo.

¹³⁵ *See Methodological Change*.

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.¹³⁶ 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 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.¹³⁷ We used the FOPs reported by Deosen and Fufeng for materials, energy, labor, by-products, packing and freight. We also incorporated into our preliminary margin analysis any verification findings and corrections noted in each respondent's verification reports. 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.¹³⁸

Factor Valuation Methodology

In accordance with section 773(c) of the Act, we calculated NV based on the FOPs reported by Deosen and 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 the petitioner, Fufeng, and Deosen between March 3, 2017 and March 31, 2017.¹³⁹ For a detailed discussion of the SVs used in this review, *see* each respondent's Preliminary SV 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.¹⁴⁰ 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 two mandatory respondents for which we calculated a rate is below. A detailed description of all SVs used to calculate the weighted-average dumping margin for each mandatory respondent can be found in the preliminary SV memorandum for each respondent.

¹³⁶ *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).

¹³⁷ *See* section 773(c)(3)(A)-(D) of the Act.

¹³⁸ *See* Deosen Preliminary SV Memorandum and Fufeng Preliminary SV Memorandum.

¹³⁹ As noted above, Meihua's July 3, 2017, SV comments were submitted too late for consideration in these preliminary results, however, we will take them into consideration for the final results.

¹⁴⁰ *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).

1. Direct and Packing Materials

The record indicates that import statistics from the primary surrogate country, Thailand, which are available through the GTA, are generally contemporaneous with the POR, publicly available, product-specific, tax-exclusive, and representative of a broad market average.¹⁴¹ Thus, we based SVs for Deosen's and Fufeng's direct materials and packing materials on these import values, except where noted below.¹⁴²

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.¹⁴³ In this regard, the Department has previously found that it is 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.¹⁴⁴ 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.¹⁴⁵ 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.¹⁴⁶

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs produced in an ME and from an ME supplier in meaningful quantities (*i.e.*, not insignificant quantities), and pays in an ME currency, the Department uses the actual price paid by the respondent to value those inputs,

¹⁴¹ See Deosen Preliminary SV Memorandum and Fufeng Preliminary SV Memorandum.

¹⁴² *Id.*

¹⁴³ 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 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).

¹⁴⁴ 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 IDM 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 IDM 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 IDM at 4; see also *Certain Frozen Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013), and accompanying IDM at IV.

¹⁴⁵ 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).

¹⁴⁶ *Id.*

except when prices may have been distorted by findings of dumping or subsidization.¹⁴⁷ Where the Department finds ME purchases to be of significant quantities (*i.e.*, 85 percent or more), in accordance with our statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs*,¹⁴⁸ the Department uses the actual purchase prices to value the inputs. Alternatively, when the volume of an NME firm’s purchases of an input from ME suppliers during the period is below 85 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, the Department will weight-average the ME purchase price with an appropriate SV, according to the ME purchase’s respective share of the total volume of purchases, unless case-specific facts provide adequate grounds to rebut the presumption.¹⁴⁹ When a firm has made ME input purchases that may have been dumped or subsidized, are not *bona fide*, or are otherwise not acceptable for use in a dumping calculation, the Department will exclude them from the numerator of the ratio to ensure a fair determination of whether valid ME purchases meet the 85 percent threshold.¹⁵⁰ Fufeng provided evidence that it had ME purchases of an input for which it claimed business proprietary treatment.¹⁵¹ The Department addresses Fufeng’s reported ME purchases of this input during the POR that were paid for in ME currency in Fufeng’s Preliminary Calculation Memo. Where appropriate, the Department added freight expenses to the ME prices for this input.¹⁵²

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.¹⁵³

3. Labor

In *Labor Methodologies*,¹⁵⁴ 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.¹⁵⁵ Rather, we continue to follow 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

¹⁴⁷ See, e.g., *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997).

¹⁴⁸ See *Use of Market Economy Input Prices in Nonmarket Economy Proceedings*, 78 FR 46799 (August 2, 2013) (*Antidumping Methodologies: Market Economy Inputs*).

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ See Fufeng’s December 29, 2016 Section D Questionnaire Response at Exhibit D-5.

¹⁵² See Fufeng’s Preliminary Calculation Memo.

¹⁵³ See Deosen Preliminary SV Memorandum and Fufeng Preliminary SV Memorandum; see also “Currency Conversion” section of this memorandum.

¹⁵⁴ See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodologies*).

¹⁵⁵ 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 IDM at 11.

because they were not contemporaneous with the POR.¹⁵⁶

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.*¹⁵⁷ We valued inland truck freight using data published in the World Bank's *Doing Business 2017: 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.¹⁵⁸

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 2017: 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.¹⁵⁹

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 whether they contain publicly available information.¹⁶⁰ 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.¹⁶¹

Currency Conversion

¹⁵⁶ See Deosen Preliminary SV Memorandum and Fufeng Preliminary SV Memorandum.

¹⁵⁷ See *Sigma Corp. v. United States*, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997) ("*Sigma Corp.*").

¹⁵⁸ See Deosen Preliminary SV Memorandum and Fufeng Preliminary SV Memorandum.

¹⁵⁹ *Id.*

¹⁶⁰ 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 IDM at Comment 3.

¹⁶¹ *Id.*

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, as certified by the Federal Reserve Bank, in effect on the date of the U.S. sale.

RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

Agree

Disagree

7/31/2017

X



Signed by: GARY TAVERMAN

Gary Taverman

Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance