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November 16, 2020

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

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

I. SUMMARY

In response to requests from interested parties, the Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on xanthan gum from the People's Republic of China (China) for the period of review (POR) from July 1, 2018 through June 30, 2019. The administrative review covers two exporters of subject merchandise,¹ including the sole mandatory respondent Meihua.² Commerce preliminarily: (1) finds that Meihua did not make sales of subject merchandise in the United States at prices below normal value (NV) during the POR; and (2) grants separate rates status to CP Kelco Shandong.

If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR. The rates assigned to each of these companies can be found in the "Preliminary Results of Review" section of the accompanying *Federal Register* notice.

¹ Those exporters are: (1) CP Kelco (Shandong) Biological Company Limited (CP Kelco Shandong); (2) Meihua Group International Trading (Hong Kong)/ Langfang Meihua Bio-Technology Co., Ltd./Xinjiang Meihua Amino Acid Co., Ltd. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 47242 (September 9, 2019) (*Initiation Notice*).

² Meihua refers to a single entity, which includes Meihua Group International Trading (Hong Kong), Langfang Meihua Biotechnology Co., Ltd., and Xinjiang Meihua Amino Acid Co., Ltd. (collectively Meihua). See the "Single Entity Treatment" section of this notice for details.



Interested parties are invited to comment on these preliminary results. Unless otherwise extended, we intend to issue final results no later than 120 days from the date of publication of the accompanying *Federal Register* notice of preliminary results of review, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

On July 19, 2013, Commerce published in the *Federal Register* an AD order on xanthan gum from China.³ On July 1, 2019, Commerce published in the *Federal Register* a notice of opportunity to request an administrative review of the AD order on xanthan gum from China.⁴ On July 30 and July 31, 2019, Commerce received requests for administrative reviews of companies from five foreign and domestic interested parties, including, CP Kelco U.S., Inc. (the petitioner).⁵ On September 9, 2019, Commerce published in the *Federal Register* a notice of initiation of an administrative review of the xanthan gum order with respect to companies for which a timely request for an administrative review was received.⁶

Between September and December 2019, parties withdrew their review requests for all companies except Meihua and CP Kelco Shandong.⁷

In October 2019, interested parties submitted comments on the CBP data and respondent selection.⁸ Commerce selected Meihua as the sole mandatory respondent (*see* the “Selection of

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) (*Order*).

⁴ *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 84 FR 31295 (July 1, 2019).

⁵ *See* Petitioner’s Letter, “Xanthan Gum from the People’s Republic of China: Petitioner’s Request for Administrative Review,” dated July 31, 2019 (Petitioner’s Request); *see also* CP Kelco (Shandong)’s Letter, “Xanthan Gum from the People’s Republic of China: CP Kelco (Shandong) Biological Company Limited’s Request for Administrative Review and Request for Voluntary Respondent Treatment,” dated July 31, 2019; Deosen’s Letter, “Xanthan Gum from the People’s Republic of China, A-570-985: Request for Administrative Review (Administrative Review 7/1/2018 – 6/30/2019),” dated July 30, 2019; Green Health International’s Letter, “Xanthan Gum from China,” dated July 31, 2019; and Meihua’s Letter, “Xanthan Gum from People’s Republic of China, A-570-985; Request for Administrative Review,” dated July 31, 2019.

⁶ *See Initiation Notice*, 84 FR at 47242.

⁷ *See* Green Health International (GHI) and Green Health International Co., Ltd. (Hong Kong)’s Letter, “Xanthan Gum from China,” submitted September 15, 2019 (the document is dated July 31, 2019); Petitioner’s Letter, “Xanthan Gum from the People’s Republic of China: Petitioner’s Withdrawal of Request for Review of Deosen Biochemical Ltd/Deosen Biochemical (Ordos) Ltd.,” dated September 20, 2019; Deosen’s Letter, “Administrative Review of Antidumping Order on Xanthan Gum from the People’s Republic of China: Withdrawal of Review Request and Request to Rescind Review,” dated September 24, 2019; Petitioner’s Letter, “Xanthan Gum from the People’s Republic of China: Petitioner’s Rebuttal Comments on Respondent Selection and Withdrawal of Request for Review of Jianlong Biotechnology Co., Ltd. and Inner Mongolia Jianlong Biochemical Co. Ltd.,” dated September 30, 2019; and Petitioner’s Letter, “Xanthan Gum from the People’s Republic of China: Petitioner’s Partial Withdrawal of Request for Administrative Review” dated December 9, 2019.

⁸ *See* Petitioner’s Letter, “Xanthan Gum from the People’s Republic of China: Petitioner’s Comments on the Department of Commerce’s Corrected U.S. Customs and Border Protection Data Query,” dated October 9, 2019; Meihua’s Letter, “Xanthan Gum from the People’s Republic of China, A-570-985; Comments on CBP Data,” dated October 9, 2019; and CP Kelco (Shandong)’s Letter, “Xanthan Gum from the People’s Republic of China: CP Kelco (Shandong) Rebuttal Comments to Meihua’s Comments on Revised CBP Data,” dated October 22, 2019.

Respondents” section, below, for details), and issued its AD questionnaire to Meihua on November 8, 2019.⁹

From December 2019 through October 2020, Meihua submitted timely responses to Commerce’s questionnaire and supplemental questionnaires.¹⁰ On July 31, 2019, CP Kelco Shandong requested to be treated as a voluntary respondent.¹¹ In November and December 2019, CP Kelco Shandong submitted timely responses to Commerce’s Section A, C and D questionnaires respectively.¹²

In response to requests from Commerce,¹³ in January, February, and October 2020, interested parties submitted comments regarding the surrogate country list, and comments and rebuttal comments on surrogate country and surrogate value (SV) selection, respectively.¹⁴

On March 17, 2020, Commerce extended the deadline for the preliminary results by a total of 120 days, to July 30, 2020.¹⁵ On April 24, 2020, and July 21, 2020, Commerce tolled all

⁹ See Commerce’s Letter Initial AD Questionnaire, dated November 8, 2019.

¹⁰ See Meihua’s Letters, “Xanthan Gum from the PRC; A-570-985; Response to Section A of Initial Questionnaire,” dated November 29, 2019 (Meihua’s Section A Response); “Xanthan Gum from the PRC; A-570-985; Response to Section A of Initial Questionnaire,” dated January 14, 2020 (Meihua’s Supplemental A Response); “Xanthan Gum from the PRC; A-570-985; Response to Sections C and D of Initial Questionnaire,” dated December 23, 2019 (Meihua’s Sections C and D Response); “Xanthan Gum from the PRC; A-570-985; Response to Supplemental Section C and D Questionnaire,” dated March 13, 2020 (Meihua’s Supplemental C and D Response); “Xanthan Gum from the PRC; A-570-985; Response to Supplemental Section C and D Questionnaire,” dated June 11, 2020 (Meihua’s Second Supplemental C and D Response); and “Xanthan Gum from the PRC; A-570-985; Response to Third Supplemental Section C Supplemental Questionnaire,” dated October 19, 2020 (Meihua’s Third Supplemental C Response).

¹¹ See CP Kelco Shandong’s Letter, “Xanthan Gum from the People’s Republic of China: CP Kelco (Shandong) Biological Company Limited’s Request for Administrative Review and Request for Voluntary Respondent Treatment,” dated July 31, 2019.

¹² See CP Kelco Shandong’s Letter, “Xanthan Gum from the People’s Republic of China; Voluntary Section A Questionnaire Response of CP Kelco (Shandong) Biological Company Limited,” dated November 27, 2019; *see also* CP Kelco Shandong’s Letter, “Xanthan Gum from the People’s Republic of China: Voluntary Section C Questionnaire Response to CP Kelco (Shandong) Biological Company Limited,” dated December 20, 2019; and CP Kelco Shandong’s Letter, “Xanthan Gum from the People’s Republic of China: Voluntary Section D Questionnaire Response of CP Kelco (Shandong) Biological Company Limited,” dated December 23, 2019.

¹³ See Letters from Commerce, “Antidumping Duty Administrative Review of Xanthan Gum from the People’s Republic of China: Opportunity to Comment on Surrogate Country List,” dated December 13, 2019 and “Antidumping Duty Administrative Review on Xanthan Gum from the People’s Republic of China: Request for Surrogate Country Comments and Surrogate Value Information,” dated January 15, 2020.

¹⁴ See Letters from Meihua, “Xanthan Gum from People’s Republic of China, A-570-985; Comments on Selection of Surrogate Country,” dated January 27, 2020; “Xanthan Gum from People’s Republic of China, A-570-985; Surrogate Value Information,” dated February 10, 2020 (Meihua’s Surrogate Value Submission); “Xanthan Gum from People’s Republic of China, A-570-985; Rebuttal Surrogate Value Information, Request for Extension and Request for Clarification,” dated February 20, 2020; and “Xanthan Gum from People’s Republic of China; Surrogate Value Information,” dated October 19, 2020 (Meihua’s Second Surrogate Value Submission); *see also* Petitioner’s Letter, “Xanthan Gum from the People’s Republic of China; Petitioner’s Comments Concerning Surrogate Country Selection,” dated January 27, 2020; and “Xanthan Gum from the People’s Republic of China: Petitioner’s Surrogate Value Submission,” dated February 10, 2020 (Petitioner’s Surrogate Value Submission);

¹⁵ See Memorandum “Antidumping Duty Administrative Review of Xanthan Gum from the People’s Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review, dated March 17, 2020.

deadlines in administrative reviews by 50 days and 60 days respectively, thereby extending the deadline for these preliminary results of review until November 17, 2020.¹⁶

III. PERIOD OF REVIEW

The POR is July 1, 2018 through June 30, 2019.

IV. SCOPE OF THE ORDER

The scope of the *Order* covers dry xanthan gum, whether or not coated or blended with other products. Further, xanthan gum is included in 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 fifteen percent or more of xanthan gum by dry weight. Other products with which xanthan gum may be blended include, but are not limited to, sugars, minerals, and salts.

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

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

V. SELECTION OF RESPONDENTS

Section 777A(c)(1) of the Act directs Commerce to calculate an individual weighted-average dumping margin for each known exporter or producer of the subject merchandise. However, section 777A(c)(2) of the Act gives Commerce discretion to limit its examination to a reasonable number of exporters and producers if it is not practicable to make individual weighted average dumping margin determinations because of the large number of exporters and producers involved in the review. When Commerce 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 Commerce to calculate individual weighted-average dumping margins for companies not initially selected for individual examination that voluntarily provide the information requested of the mandatory respondents if: (1) the information is submitted by the due date specified for the mandatory respondents; and (2) the number of such companies that have voluntarily provided such information is not so large that individual examination would be unduly burdensome and inhibit the timely completion of the review.

¹⁶ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19,” dated April 24, 2020; *see also* Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,” dated July 21, 2020.

On November 6, 2019, Commerce determined that it was not practicable to examine more than one respondent in the instant administrative review. Therefore, in accordance with section 777A(c)(2)(B) of the Act, Commerce selected for individual examination the collapsed entity Meihua, the exporter accounting for the largest volume of xanthan gum exported from China during the POR based on CBP data.¹⁷ Commerce 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.¹⁸ Commerce did not select an additional respondent for examination after CP Kelco Shandong filed its questionnaire response because it continued to remain impracticable to examine more than one respondent in the instant administrative review.

VI. SINGLE ENTITY TREATMENT

To the extent that Commerce's practice does not conflict with section 773(c) of the Act, Commerce has, in prior cases, treated certain non-market economy (NME) exporters and/or producers as a single entity if the facts of the case supported such treatment.¹⁹ Pursuant to 19 CFR 351.401(f)(1), Commerce 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.²⁰ In determining whether a significant potential for manipulation exists, 19 CFR 351.401(f)(2) states that Commerce 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.²¹

"Collapsing" starts with a determination as to whether two or more companies are affiliated. Section 771(33)(F) of the Act defines affiliated persons to include "two or more persons directly or indirectly controlling, controlled by, or under common control with, any person." Section 771(33) of the Act further provides that a person shall be considered to control another person if

¹⁷ See Memorandum, "Selection of Respondents for the 2018-2019 Administrative Review of the Antidumping Duty Order on Xanthan Gum from the People's Republic of China," dated November 6, 2019.

¹⁸ *Id.*

¹⁹ 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); *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).

²⁰ See, e.g., *Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review*, 63 FR 12764, 12774-75 (March 16, 1998).

²¹ See, e.g., *Nihon Cement Co., Ltd. v. United States*, Slip Op. 93-80 (CIT May 25, 1993); *Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan*, 62 FR 51427, 51436 (October 1, 1997).

the person is legally or operationally in a position to exercise restraint or direction over the other person.

We have previously determined that the Meihua group of companies should be treated as a single entity.²² Record evidence does not indicate any changes with respect to the Meihua group of companies when it comes to single entity treatment.²³ As such, we have continued to treat Meihua Group International Trading (Hong Kong) Limited, Langfang Meihua Biotechnology Co., Ltd., and Xinjiang Meihua Amino Acid Co., Ltd. as affiliated parties pursuant to section 771(33)(F) of the Act and a single entity for AD purposes pursuant to 19 CFR 351.401(f).

VII. DISCUSSION OF METHODOLOGY

Non-Market Economy Country

Commerce considers China to be an NME country.²⁴ In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Therefore, we continue to treat China as an NME country for purposes of these preliminary results and calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rates

Commerce maintains a rebuttable presumption that all companies within an NME are subject to government control and, thus, should be assessed a single weighted-average dumping margin.²⁵ In the *Initiation Notice*, Commerce notified parties of the application process by which exporters or exporter/producers may obtain separate rate status in NME proceedings.²⁶ It is Commerce's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, Commerce analyzes

²² See *Xanthan Gum from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review, and Preliminary Determination of No Shipments; 2017-2018*, 84 FR 26813 (June 10, 2019) (*Xanthan Gum Prelim 2017-2018*), and accompanying PDM; unchanged in *Xanthan Gum from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 84 FR 64831 (November 25, 2019) (*Xanthan Gum Final 2017-2018*), and accompanying IDM.

²³ See Meihua's Section A Response and Meihua's Supplemental A Response.

²⁴ See, e.g., *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Preliminary Results of the First Administrative Review, Preliminary Rescission, in Part, and Extension of Time Limits for the Final Results*, 76 FR 62765, 62767-68 (October 11, 2011), unchanged in *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review*, 77 FR 21734 (April 11, 2012).

²⁵ 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).

²⁶ See *Initiation Notice*, 84 FR at 47242.

each exporting entity in an NME country under the test established in *Sparklers*,²⁷ as amplified by *Silicon Carbide*.²⁸ However, if Commerce determines that a company is wholly foreign-owned, then a separate rate analysis is not necessary to determine whether it is independent from government control.²⁹

Commerce continues to base its practice with regard to the separate rates analysis on the results of the diamond sawblades from China AD proceeding, and its determinations therein.³⁰ In particular, in litigation involving the diamond sawblades from China proceeding, the United States Court of International Trade (CIT) found Commerce's existing separate rates analysis deficient in the circumstances of that case, in which a government-owned and controlled entity had significant ownership in the respondent exporter.³¹ Following the CIT's reasoning, in recent proceedings, we have 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.³² 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, we 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.

²⁷ 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*).

²⁸ 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*).

²⁹ See, e.g., *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007) (*Wax Candles*).

³⁰ 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) (*Diamond Sawblades*); see also *Advanced Technology & Materials Co., Ltd., et al. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) (*Advanced Technology I*), affirmed in *Advanced Technology & Materials Co., Ltd., et al. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013), *aff'd* Case No. 2014-1154 (Fed. Cir. 2014). This remand redetermination is on the Enforcement and Compliance website at <http://enforcement.trade.gov/remands/12-147.pdf>; and *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), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

³¹ See, e.g., *Advanced Technology I*, 885 F. Supp. 2d at 1349 (CIT 2012) ("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); and 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."); and 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).

³² 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 Preliminary Decision Memorandum (PDM) at 5-9.

In order to demonstrate separate rate eligibility, Commerce normally requires entities, for which a review was requested, and that were assigned a separate rate in a previous segment of the proceeding, to submit a separate-rate certification stating that they continue to meet the criteria for obtaining a separate rate.³³ In order for entities that were not assigned a separate rate in the previous segment of the proceeding to demonstrate eligibility for a separate rate, Commerce requires a separate rate application from the entity.³⁴

Meihua and CP Kelco Shandong timely submitted separate rate applications or certifications.³⁵ Our analysis of their separate rate information is below.

Separate Rate Analysis

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.³⁶ No record evidence undermines this reporting. Therefore, as there is no Chinese ownership of this company, and because Commerce has no evidence indicating that this company is under the control of the Chinese 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.³⁷

Therefore, because we find that CP Kelco Shandong has demonstrated an absence of Chinese government control of its export activities, we preliminarily determine that CP Kelco Shandong is eligible for a separate rate.

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

Meihua reported that it is a wholly Chinese-owned company.³⁸ In accordance with our practice, we analyzed whether Meihua demonstrated an absence of *de jure* and *de facto* governmental control over its export activities.

a) Absence of De Jure Control

³³ See *Initiation Notice*, 84 FR at 47242.

³⁴ *Id.*

³⁵ See Meihua's Separate Rate Certification (Meihua's SRC), dated October 9, 2019; CP Kelco Shandong's Separate Rate Application (CP Kelco's SRA), dated October 9, 2019.

³⁶ See CP Kelco Shandong's SRA at SRA-6 through SRA-9; and at SRA-17 through SRA-21.

³⁷ See, e.g., *Wax Candles*, 72 FR at 52356; *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 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).

³⁸ See Meihua's SRC; and Meihua's Section A Response.

Commerce 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.³⁹ The evidence provided by Meihua supports a preliminary finding of the absence of *de jure* government control of its 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 companies; and (3) there are formal measures by the government decentralizing control of companies.⁴⁰

b) Absence of De Facto Control

Typically, Commerce 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.⁴¹ As stated in previous cases, there is evidence that certain enactments of the Chinese central government have not been implemented uniformly among different sectors and/or jurisdictions in China.⁴² Therefore, Commerce 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 Commerce from assigning separate rates.⁴³

The evidence provided by Meihua supports a preliminary finding of the absence of *de facto* government control based on the following: (1) Meihua sets its own export prices independent of the government and without the approval of a government authority; (2) Meihua has the authority to negotiate and sign contracts and other agreements; (3) Meihua has autonomy from the government in making decisions regarding the selection of management; and (4) there is no restriction on Meihua's use of export revenue.⁴⁴ Therefore, we preliminarily find that the evidence placed on the record of this review demonstrates an absence of *de facto* government control with respect to Meihua's exports of the merchandise under review.

Based on the absence of both *de jure* and *de facto* government control with respect to Meihua's exports of the merchandise under review, we preliminarily find that Meihua has established that it qualifies for a separate rate under the criteria established by *Sparklers* and *Silicon Carbide*.

³⁹ See *Sparklers*, 56 FR at 20589.

⁴⁰ See Meihua's SRC; see also Meihua's Section A Response.

⁴¹ See *Silicon Carbide*, 59 FR at 22587; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544 (May 8, 1995).

⁴² See, e.g., *Silicon Carbide*, 59 at FR 22587.

⁴³ *Id.*

⁴⁴ See Meihua's SRC; see also Meihua's Section A Response.

Dumping Margin for the Separate Rate Company Not Individually Examined

The statute and Commerce’s regulations do not directly address the establishment of a rate to be applied to companies not selected for individual examination where Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Commerce’s practice in cases involving limited selection based on exporters or producers accounting for the largest volume of trade has been to look to section 735(c)(5) of the Act for guidance. Section 735(c)(5)(A) of the Act provides that Commerce will base the all-others rate in an investigation on the weighted average of the dumping margins calculated for the individually examined respondents, excluding any dumping margins that are zero, *de minimis*, or based entirely on facts available.⁴⁵ Where the dumping margins for the individually examined companies are all zero, *de minimis*, or based entirely on facts available, section 735(c)(5)(B) of the Act provides that Commerce may use “any reasonable method” for assigning the rate to all other respondents.

Consistent with the Court of Appeals for the Federal Circuit’s decision in *Albemarle*,⁴⁶ we have preliminarily determined that a reasonable method for assigning a dumping margin to the non-individually examined separate-rate company, CP Kelco Shandong, under section 735(c)(5)(B) of the Act, is to assign it the zero percent dumping margin calculated for the sole mandatory respondent, Meihua. This is the only dumping margin determined in this review and thus, it is appropriate to apply this dumping margin to CP Kelco Shandong.

Surrogate Country

When Commerce 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 Commerce. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, Commerce shall utilize, to the extent possible, the prices to value FOPs from 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.⁴⁷ Further, pursuant to 19 CFR 351.408(c)(2), Commerce will normally value FOPs in a single country.

On December 13, 2019, we issued a memorandum listing six countries at the same level of economic development as China based on 2018 per capita gross national income (GNI) figures available in the World Development Report provided by the World Bank. The countries identified in that memorandum, pursuant to section 773(c)(4) of the Act, are Brazil, Bulgaria, Malaysia, Mexico, Russia, and Turkey.⁴⁸ We provided interested parties an opportunity to

⁴⁵ See, e.g., *Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People’s Republic of China*, 71 FR 77373, 77377 (December 26, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People’s Republic of China*, 72 FR 19690 (April 19, 2007).

⁴⁶ See *Albemarle Corp. v. United States*, 821 F. 3d 1345 (Fed. Cir. 2016) (*Albemarle*).

⁴⁷ For a discussion of our practice, see also Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (*Policy Bulletin*), available at <http://enforcement.trade.gov/policy/bull04-1.html>.

⁴⁸ *Id.*

comment on this list.⁴⁹ Both the petitioner and Meihua agree that Brazil, Bulgaria, Malaysia, Mexico, Russia, and Turkey are economically comparable to China and are significant producers of merchandise comparable to xanthan gum.⁵⁰ Our surrogate country analysis is below.

Same Level of Economic Development

As a general rule, Commerce selects a surrogate country that is at the same level of economic development as the NME unless it is determined that none of the countries are viable surrogate countries because: (a) they either are not significant producers of comparable merchandise; (b) do not provide sufficient reliable sources of publicly available SV data; or (c) are not suitable for use based on other reasons. Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development.⁵¹

As stated above, we determined that Brazil, Bulgaria, Malaysia, Mexico, Russia, and Turkey are at the same level of economic development as China in terms of per capita GNI.⁵² Accordingly, unless we find that all of these countries are not significant producers of comparable merchandise, do not provide a reliable source of publicly available surrogate data, or are unsuitable for use as a surrogate country for other reasons, we will rely on data from one of these countries to value FOPs.

Significant Producers of Identical or Comparable Merchandise

Section 773(c)(4)(B) of the Act requires Commerce to value FOPs in a surrogate country that is a significant producer of comparable merchandise; however, neither the statute nor Commerce's regulations defines "significant" or "comparable." Given the absence of any definition in the statute or regulations, Commerce looks to other sources, such as the *Policy Bulletin*, for guidance on defining comparable merchandise. Commerce'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.⁵³ While the legislative history indicates the term "significant producer" includes any country that is a significant "net exporter,"⁵⁴ it does not preclude reliance on additional or alternative metrics to identify a "significant producer." Where

⁴⁹ See Commerce's Letter, "Antidumping Duty Administrative Review of Xanthan Gum from the People's Republic of China: Opportunity to Comment on the Surrogate Country List," dated December 13, 2019 (Policy Memorandum).

⁵⁰ See Commerce's Letter, "Xanthan Gum from the People's Republic of China: Petitioner's Comments Concerning Surrogate Country Selection," dated January 27, 2020; see also Meihua's Letter, "Xanthan Gum from the People's Republic of China, A-570-985; Comments on Selection of Surrogate Country," dated January 27, 2020.

⁵¹ See Policy Memorandum.

⁵² *Id.* at Exhibit 1.

⁵³ See, e.g., *Xanthan Gum from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 78 FR 2252 (January 10, 2013), and accompanying PDM at 4-7, unchanged in *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013) (*Investigation Final Determination*).

⁵⁴ See *Conference Report to the 1988 Omnibus Trade & Competitiveness Act*, H.R. Rep. No. 100-576 (1988) at 590.

there is no production information, Commerce has relied upon export data from potential surrogate countries to determine whether the country is a “significant producer” of comparable merchandise. 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.”⁵⁵ Where there is no evidence of production of identical merchandise in a potential surrogate country, Commerce 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) as well as factor intensities.⁵⁶ Since these characteristics are specific to the merchandise in question, the standard for “comparable merchandise” will vary from case to case.⁵⁷ 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. Therefore, Commerce sought evidence of production of comparable merchandise in the form of export data, which is one of the alternative metrics that we consider in determining whether a country is a significant producer of comparable merchandise.⁵⁸ Consistent with our practice, we first searched for Global Trade Atlas (GTA) export data for identical merchandise (xanthan gum) from the potential surrogate countries and found none. 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 China).⁵⁹

Next, we searched GTA data of the potential surrogate countries looking for exports under the HTS categories that cover merchandise which Commerce previously found to be comparable to xanthan gum, *i.e.*, l-lysine (lysine) and monosodium glutamate (MSG).⁶⁰ Lysine is categorized under HTS 2922.41 (*i.e.*, “Lysine and Its Esters, Salts Thereof”), and MSG is categorized under HTS 2922.42 (*i.e.*, “Glutamic Acid and Its Salts”). Based on the export data that we examined on the record of this review, we preliminarily find that the six countries identified by Commerce as economically comparable to China are significant producers of comparable merchandise.⁶¹

Data Availability

Commerce considers several factors when evaluating SV data, including whether SV data are publicly available, contemporaneous with the POR, representative of a broad-market average, tax

⁵⁵ See *Policy Bulletin* at 1-2.

⁵⁶ *Id.*

⁵⁷ 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.

⁵⁸ See *Xanthan Gum Prelim 2017-2018* and accompanying PDM, unchanged in *Xanthan Gum Final 2017-2018* and accompanying IDM.

⁵⁹ See, *e.g.*, *Xanthan Gum from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 78 FR 2252 (January 10, 2013), and accompanying PDM at 5.

⁶⁰ See *Investigation Final Determination* and accompanying IDM at Comment 1.

⁶¹ See Meihua’s Letter, “Xanthan Gum from the People’s Republic of China, A-570-985; Comments on Selection of Surrogate Country,” dated January 27, 2020 at Exhibit SC-I.

and duty-exclusive, and specific to the input.⁶² There is no hierarchy among these criteria;⁶³ however, Commerce's preference is to satisfy the breadth of these aforementioned selection factors,⁶⁴ and to value all FOPs in one surrogate country.⁶⁵

The record contains usable data for valuing the respondent's FOPs from two of the six countries on the list of potential surrogate countries, Malaysia and Mexico.⁶⁶ Complete SV data for the other countries on the list (*i.e.*, Brazil, Bulgaria, Russia, and Turkey), are not on the record, nor has any party argued in favor of using SV data from any of these countries to value FOPs. Therefore, we have not considered relying on these other countries as the primary surrogate country in this review.

The Malaysian SV data generally are publicly available, contemporaneous with the POR, representative of broad-market averages, and tax – and duty-exclusive. While the Mexican SV data are also generally publicly available, mostly contemporaneous with the POR, representative of broad-market averages, and tax – and duty – exclusive, we find that the Mexico SV import data are not as specific to inputs as the Malaysian SV import data (*i.e.*, six-digit HTS level for Mexico vs. ten-digit HTS level for Malaysia).⁶⁷ Therefore, because they are more specific, the Malaysian SV import data better meet our selection criteria for valuing FOPs.

With respect to financial statements, the record contains the 2019 financial statements for the following Malaysian companies:⁶⁸ (1) Ajinomoto (Malaysia) Berhad (Ajinomoto), a large multinational producer of food seasonings;⁶⁹ 2) Hovid Berhad, a manufacturer of pharmaceutical and herbal products;⁷⁰ 3) Arkema Thiochemicals SDN. BHD., (Arkema), a chemical manufacturer;⁷¹ and 4) PPB Group Berhad, a company with business units in agribusiness, consumer products, film distribution, and real estate.⁷²

The record also contains 2017, 2018, and 2019 consolidated financial statements for the following Mexican companies: (1) Mexican Company Orbia Advance Corporation, S.A.B. de C.V. (formerly Mexichem, S.A.B. de C.V.) and Subsidiaries (Orbia), a supplier of goods and solutions in multiple sectors such as construction, infrastructure, agriculture and irrigation,

⁶² 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).

⁶³ See *Policy Bulletin*.

⁶⁴ *Id.*

⁶⁵ 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.

⁶⁶ See Meihua's Surrogate Value Submission; Petitioner's Surrogate Value Submission; and Meihua's Second Surrogate Value Submission.

⁶⁷ See Petitioner's Surrogate Value Submission at Exhibits 1 and 2; see also Meihua's Surrogate Value Submission at Exhibit SV-2; and Meihua's Second Surrogate Value Submission at Exhibit SVA-1(b).

⁶⁸ Meihua also submitted financial ratio calculations based on financial statements for Guan Chong Berhad. See Meihua's Second Surrogate Value Submission at Exhibit SVA- Exhibit SVA-12(b). However, financial statements for Guan Chong Berhad are not on the record. Therefore, we have not considered these ratio calculations.

⁶⁹ See Meihua's Surrogate Value Submission at Exhibit SV-7.

⁷⁰ See Petitioner's Surrogate Value Submission at Exhibit 9.

⁷¹ *Id.* at Exhibit 10.

⁷² See Meihua's Second Surrogate Value Submission at Exhibit SVA-12(a)

health, transportation, telecommunications, energy, and petrochemicals;⁷³ and 2) Grupo Pochteca, S.A.B. de C.V. and Subsidiaries (Pochteca), a company whose activities include the commercialization of raw materials for the chemical, coating, plastic and food industries, as well as the transformation and commercialization of paper, cardboard, graphic arts and personal and home care products.⁷⁴ The record also contains the 2018 and 2019 consolidated financial statements of Alpek, S. A. B. de C. V. (Alpek), a Mexican company operating in two business segments, polyester and plastics and chemicals.⁷⁵

We preliminarily find Ajinomoto's financial statements to be the best available information for calculating surrogate financial ratios because they are complete, fully translated and from a company that produces comparable merchandise (*i.e.*, MSG) as well as other products.⁷⁶ The record does not indicate that Hovid Berhad, Arkema, or PPB Group Berhad produce products comparable to xanthan gum. Hovid Berhad operates in various industries that appear unrelated to xanthan gum or comparable products⁷⁷ (*i.e.* plastic manufacturing, investment holding, marketing (*i.e.*, E-commerce marketing in health food products, consumer products, supplements and herbal products), agribusiness (*i.e.* cultivation of crops and livestock), and research and development in chemicals (the exact chemical products are not specified), medical products, and pharmaceuticals.⁷⁸ Arkema's financial statements indicate its principal activities are research, development and manufacturing of chemicals and related products, without specifying what chemicals and related products are produced.⁷⁹ Therefore, there is insufficient evidence to conclude that Hovid Berhad or Arkema produce merchandise comparable to xanthan gum or evidence that they produce merchandise requiring a fermentation process such as required in the production of xanthan gum and MSG. PPB Group Berhad's financial statements indicate that it operates in a variety of industries that appear unrelated to xanthan gum or comparable products, including agribusiness (*i.e.* flour milling, feed milling, and livestock farming), consumer products (*i.e.* bakery goods, oils, and frozen foods), film distribution, and real estate.⁸⁰

The Mexican company Orbia's financial statements indicate that it operates in the following industries: construction, agriculture and irrigation (*i.e.*, irrigation drippers), health, transportation, telecommunications, energy, and petrochemicals.⁸¹ These products are not comparable to xanthan gum, and there is insufficient evidence to conclude that Orbia produces merchandise comparable to xanthan gum. Therefore, we did not consider Orbia's financial statements to be the best available information for calculating surrogate financial ratios. The financial statements of the Mexican company Pochteca were not fully translated. Therefore, Commerce did not consider using them to calculate surrogate financial ratios.⁸² Finally, the Mexican company

⁷³ See Meihua's Second Surrogate Value Submission at Exhibit SVA-6(a).

⁷⁴ *Id.* at Exhibit SVA-6(b).

⁷⁵ *Id.* at Exhibit SVA-6(c).

⁷⁶ See Meihua's Surrogate Value Submission at Exhibit SV-7.

⁷⁷ See Petitioners Surrogate Value Submission at Exhibit 9.

⁷⁸ See *Xanthan Gum from the People's Republic of China: Final Results of 2013 Antidumping Duty New Shipper Review*, 80 FR 29615 (May 22, 2015), and accompanying IDM at Comment 3. In the past we have determined that pharmaceutical production is not comparable to xanthan gum production.

⁷⁹ See Petitioner's Surrogate Value Submission at Exhibit 10.

⁸⁰ See Meihua's Second Surrogate Value submission at Exhibit SVA-12(a).

⁸¹ See Meihua's Second Surrogate Value Submission at Exhibit SVA-6(a).

⁸² *Id.* at Exhibit SVA-6(b).

Alpek is involved in two business segments, polyesters and plastics and chemicals (*i.e.*, products with a wide variety of applications for the oil, pharmaceutical, automotive and consumer goods industries).⁸³ However, Alpek's financial statements do not indicate which chemicals the company produces. Therefore, there is insufficient evidence for finding these chemical products comparable to xanthan gum. Consequently, we also did not consider Alpek's financial statements to be the best available information for calculating surrogate financial ratios. In conclusion, the Mexican companies' financial statements do not indicate that they are producers of merchandise comparable to xanthan gum. Therefore, we do not find it appropriate to base surrogate financial ratios on these financial statements.

Given the foregoing, we preliminarily select Malaysia as the primary surrogate country. Malaysia is at the same level of economic development as China; it is a significant producer of comparable merchandise; and the record contains publicly available and reliable data from Malaysia for all of the FOPs reported by Meihua, except railway freight expenses (for which there are no Mexican SV data on the record either). For details on the selected SVs, *see* the "Normal Value" section of this memorandum and the Preliminary Surrogate Value Memorandum.⁸⁴

Date of Sale

Pursuant to 19 CFR 351.401(i), Commerce starts with a presumption that invoice date is the date of sale unless record evidence indicates that the material terms of sale, such as price and quantity, are established on another date. Meihua reported either the shipment date or the earlier of the invoice date as the date of sale, claiming that for its U.S. sales of subject merchandise during the POR, the material terms of sale were established on either the shipment date or the invoice date.⁸⁵ In the absence of record evidence to the contrary, and in accordance with 19 CFR 351.401(i), and Commerce's long-standing practice in determining the date of sale,⁸⁶ Commerce preliminarily finds that the earlier of the shipment date or invoice date is the most appropriate date to use as the 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 Meihua's sales of the subject merchandise to the United States were made at less

⁸³ *Id* at Exhibit SVA-6(c).

⁸⁴ *See* Memorandum, "Antidumping Duty Administrative Review of Xanthan Gum from the People's Republic of China: Meihua's Preliminary Surrogate Value Memorandum," dated concurrently with this memorandum (Preliminary Surrogate Value Memorandum).

⁸⁵ *See* Meihua's Supplemental C and D Response.

⁸⁶ *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).

than NV, Commerce compared EPs to the NVs as described in the “Export Price” and “Normal Value” sections of this memorandum.

Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates dumping margins by comparing weighted-average NVs to weighted-average EPs (or constructed export prices (CEPs) (the average-to-average method) unless Commerce determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, Commerce examines whether to compare weighted-average NVs to the prices of individual export transactions (the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce’s examination of this question in the context of administrative reviews, Commerce 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.⁸⁷ Commerce has applied a “differential pricing” analysis to determine whether application of average-to-transaction comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.⁸⁸ Commerce finds the differential pricing analysis used in those recent investigations and reviews may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review.⁸⁹ Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and based on Commerce’s additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating weighted-average dumping margins.

The differential pricing analysis used in these preliminary results requires a finding of a pattern of prices for comparable merchandise that differs significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers,

⁸⁷ See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012), and accompanying IDM at Comment 1.

⁸⁸ See *Hardwood and Decorative Plywood from the People’s Republic of China: Antidumping Duty Investigation*, 78 FR 25946 (May 3, 2013), unchanged in *Hardwood and Decorative Plywood from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013); see also *Certain Steel Threaded Rod from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 21101 (April 9, 2013), unchanged in *Certain Steel Threaded Rod from the People’s Republic of China; Final Results of Third Antidumping Duty Administrative Review; 2011-2012*, 78 FR 66330 (November 5, 2013); see also *Certain Lined Paper Products from the People’s Republic of China: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 34640 (June 10, 2013) unchanged in *Certain Lined Paper Products from the People’s Republic of China: Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 65274 (October 31, 2013).

⁸⁹ See, e.g., *Certain Activated Carbon from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 26748 (May 8, 2013), unchanged in *Certain Activated Carbon from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 70533 (November 26, 2013), and accompanying IDM at Comment 4.

regions, time periods, and comparable merchandise. Purchasers are based on the reported customer names. Regions are defined using the reported destination code (*i.e.*, city name, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that Commerce uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is calculated to evaluate the extent to which the net prices to a particular purchaser, region, or in a time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant, and the sales in the test group were found to have passed the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and in time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and in time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen’s *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, Commerce examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful

difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if: (1) there is a 25 percent relative change in the weighted-average dumping margin between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold; or 2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

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

Results of the Differential Pricing Analysis

The results of the differential pricing analysis demonstrate that a total of 55.4 percent of Meihua's EP sales pass the Cohen's *d* test, which confirm the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods.⁹⁰ We also note that there is not a meaningful difference in the weighted-average dumping margins calculated using the average-to-average comparison method and the mixed comparison method when both methods are applied to all sales. Accordingly, we have preliminarily used the standard method in comparing U.S. prices to NV.

U.S. Price

Export Price

In accordance with section 772(a) of the Act, EP is "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States," as adjusted under section 772(c) of the Act. Because Meihua reported sales prices which meet the above EP definition, we treated such sales as EP sales. We calculated the net price for these sales by making deductions, as appropriate, from the reported gross U.S. price for domestic and international movement expenses (*i.e.*, domestic and foreign inland freight, domestic and foreign brokerage and handling, marine insurance and international freight) in accordance with section 772(c)(2) of the Act.⁹¹ Where movement expenses were provided by Chinese service providers or paid for in an NME currency, we valued these services using SVs.⁹²

⁹⁰ See Memorandum, "Antidumping Duty Administrative Review of Xanthan Gum from the People's Republic of China: Preliminary Results Margin Calculation for Meihua," dated concurrently with this memorandum.

⁹¹ See section 772(c)(2)(A) of the Act.

⁹² See Preliminary Surrogate Value Memoranda for details regarding the surrogate values for movement expenses.

Value-Added Tax

Commerce's recent practice in NME cases is to subtract from EP or CEP the amount of any un-refunded (irrecoverable) value-added tax (VAT), in accordance with section 772(c)(2)(B) of the Act.⁹³ Commerce 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, Commerce will reduce the respondent's EP and CEP prices accordingly by the amount of the tax, duty or charge paid, but not rebated.⁹⁴ Where the irrecoverable VAT is a fixed percentage of CEP or EP, Commerce makes a tax-neutral dumping comparison by reducing the CEP or EP by this percentage.⁹⁵ Thus, Commerce's methodology essentially amounts to performing two basic steps: (1) determining the amount (or rate) of the irrecoverable VAT on subject merchandise; and (2) reducing U.S. price by the amount (or rate) determined in step one.

The Chinese VAT schedule placed on the record of this review indicates that agricultural products sold by the agricultural producers that produced them are exempt from VAT.⁹⁶ Because corn is the primary input for xanthan gum, and Meihua purchased corn from such agricultural producers,⁹⁷ we did not adjust U.S. price for irrecoverable VAT.⁹⁸

Normal Value

Section 773(c)(1) of the Act provides that Commerce shall determine the NV using an FOP methodology if the merchandise is exported from an NME country and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Commerce 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 Commerce's normal methodologies.⁹⁹ Therefore, we calculated NV based on FOPs reported by Meihua for the POR, 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

⁹³ 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*).

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ See Meihua's Section C Response at Exhibits C-6 to C-10a and C-10b.

⁹⁷ *Id.* at 38 and Exhibit C-10c.

⁹⁸ See *Fresh Garlic from the People's Republic of China: Preliminary Results, Preliminary Rescission, and Final Rescission, in Part, of the 24th Antidumping Duty Administrative Review; 2017-2018*, 85 FR 2400 (January 15, 2020), and accompanying PDM at page 37-38.

⁹⁹ 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).

(4) representative capital costs.¹⁰⁰ We used the FOPs reported by Meihua for materials, energy, labor, by-products, packing and freight. In accordance with section 773(c) of the Act and 19 CFR 351.408(c)(1), we calculated the cost of FOPs by multiplying the reported per-unit FOP consumption rates by publicly available SVs.¹⁰¹ We summed the surrogate input cost and surrogate freight costs for transporting the input to Meihua to derive the total cost of inputs used by Meihua to produce xanthan gum.

Factor Valuations

As noted above, when selecting from among the available information for valuing FOPs, Commerce'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.¹⁰² In those instances where we could not value FOPs using publicly available information that is contemporaneous with the POR, we inflated/deflated the SVs using indices. We adjusted input prices by including freight costs to make them delivered prices. An overview of the SVs used to calculate weighted-average dumping margins for the mandatory respondent is below. A detailed description of all SVs used to calculate the weighted-average dumping margin is in the Preliminary Surrogate Value Memorandum.

1. Direct and Packing Materials

GTA import prices from the primary surrogate country, Malaysia, are generally contemporaneous with the POR, publicly available, product-specific, tax-exclusive, and representative of a broad market average price.¹⁰³ Thus, we based SVs for Meihua's direct and packing materials on Malaysian import values.¹⁰⁴

Pursuant to section 773(c)(5) of the Act and Commerce's long-standing practice, we disregarded import prices if we had reason to believe or suspect they may be subsidized prices.¹⁰⁵ In this regard, Commerce has previously found that it is appropriate to disregard such prices from China, Georgia, India, Indonesia, South Korea, Moldova, Thailand, and Vietnam because we have determined that these countries maintain broadly available, non-industry specific export

¹⁰⁰ See section 773(c)(3)(A)-(D) of the Act.

¹⁰¹ See Preliminary Surrogate Value Memorandum.

¹⁰² 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).

¹⁰³ See Preliminary Surrogate Value Memoranda.

¹⁰⁴ *Id.*

¹⁰⁵ 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 Commerce 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).

subsidies.¹⁰⁶ Based on the existence of subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, we find that it is reasonable to infer that all exporters from China, Georgia, India, Indonesia, South Korea, Moldova, Thailand, and Vietnam may have benefitted from subsidies. Therefore, we have not used prices from these countries in calculating the Malaysian import-based SVs. Additionally, we disregarded imports from NME and “unidentified” countries when calculating Malaysian import-based per-unit SVs.¹⁰⁷ We disregarded imports from “unidentified” countries because we could not be certain that these imports were not from either an NME country or a country with generally available export subsidies.¹⁰⁸

2. Energy

Ajinomoto, the source of surrogate financial ratios, did not identify energy costs in its financial statements. Consequently, we have not included the reported energy FOPs in our NV calculations, but have instead incorporated energy costs in the other operating expenses captured in the SG&A ratio.¹⁰⁹

3. Labor

In *Labor Methodologies*,¹¹⁰ Commerce determined that the best methodology to value labor is to use industry-specific labor rates from the primary surrogate country. Commerce does not, however, necessarily exclude other sources for valuing labor.¹¹¹ Rather, it follows the practice of selecting the best available information for valuing FOPs. Here, we valued labor using data from ILOSTAT. We did not inflate or deflate the labor data because they are contemporaneous with the POR.¹¹²

4. Movement Services

We used various sources to value movement services. We valued inland truck freight and brokerage and handling expenses using a price list for charges related to importing/exporting a standardized cargo of goods in and out of Malaysia, as published in the World Bank’s *Doing*

¹⁰⁶ 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.

¹⁰⁷ See *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 1.

¹⁰⁸ *Id.*

¹⁰⁹ See Preliminary Surrogate Value Memorandum

¹¹⁰ See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodologies*).

¹¹¹ 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.

¹¹² See Preliminary Surrogate Value Memorandum.

Business 2020 Malaysia.¹¹³ There are no Malaysian SVs for rail freight on the record. Thus, we relied on the only rail freight SV on the record, rail freight rates from the United States Department of Agriculture for Brazil Soybean Transportation.¹¹⁴ We did not inflate or deflate these SVs because they are contemporaneous with the POR.¹¹⁵ We valued international ocean freight and marine insurance (based on the volume of containers) using the actual amounts paid as both were purchased from market economy entities.¹¹⁶

We calculated inland freight SVs for China 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.*¹¹⁷

5. *Financial Ratios*

Pursuant to 19 CFR 351.408(c)(4), Commerce values overhead, selling, general and administrative (SG&A) expenses, and profit using publicly available information gathered from producers of comparable merchandise in the surrogate country. To value factory overhead, SG&A expenses, and profit for these preliminary results, we relied on the 2019 audited financial statements of Ajinomoto, a Malaysian producer of MSG, a product comparable to subject merchandise.¹¹⁸

Currency Conversion

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

¹¹³ See Petitioner's Surrogate Value Submission at Exhibit 6; see also Meihua's Surrogate Value Submission at Exhibit SV-5.

¹¹⁴ See Petitioner's Surrogate Value Submission at Exhibit 11; see also Meihua's Surrogate Value Submission at Exhibit SV-5.

¹¹⁵ See Preliminary Surrogate Value Memorandum.

¹¹⁶ See Meihua's Sections C and D Response at 2-4, Exhibit C-3, and Exhibit C-4.

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

¹¹⁸ See Preliminary Surrogate Value Memorandum.

VIII. RECOMMENDATION

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

Agree

Disagree

11/16/2020

X 

Signed by: JEFFREY KESSLER
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance