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International Trade Administration
Washington, D.C. 20230

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

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

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

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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, 2017, through June 30, 2018. The administrative review covers seven companies or company groupings,[1] including two mandatory respondents, Deosen and Meihua.[2] Commerce

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[1] Those exporters are: (1) A.H.A. International Co., Ltd. (AHA); (2) CP Kelco (Shandong) Biological Company Limited (CP Kelco Shandong); (3) Deosen Biochemical (Ordos) Ltd./Deosen Biochemical Ltd. (Collectively Deosen); (4) Hebei Xinhe Biochemical Co., Ltd.; (5) Inner Mongolia Jianlong Biochemical Co., Ltd. (IMJ)/Jianlong Biotechnology Co., Ltd. (Jianlong); (6) Meihua Group International Trading (Hong Kong) Limited/Langfang Meihua Bio-Technology Co., Ltd./Xinjiang Meihua Amino Acid Co., Ltd. (Collectively Meihua); (7) Shanghai Smart Chemicals Co., Ltd. (Smart Chemicals). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 42974 (September 10, 2018) (*Initiation Notice*). Furthermore, although Inner Mongolia Fufeng Biotechnologies Co., Ltd./Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.) (Neimenggu Fufeng)/ Shandong Fufeng Fermentation Co., Ltd. (Shandong Fufeng)/ Xinjiang Fufeng Biotechnologies Co., Ltd. (Xinjiang Fufeng) (collectively Fufeng) is listed in the *Initiation Notice*, Commerce subsequently discontinues its review of Fufeng as a result of litigation before the Court of International Trade. *See Xanthan Gum from the People's Republic of China: Notice of Court Decision Not in Harmony With Amended Final Determination in Less Than Fair Value Investigation; Notice of Amended Final Determination Pursuant to Court Decision; Notice of Revocation of Antidumping Duty Order in Part; and Discontinuation of Fourth and Fifth Antidumping Duty Administrative Reviews in Part*, 83 FR 52205, 52206 (October 16, 2018)

[2] Deosen refers to a single entity, which includes Deosen Biochemical (Ordos) Ltd and Deosen Biochemical Ltd. (collectively Deosen). Meihua refers to a single entity, which includes Meihua Group International Trading (Hong

preliminarily: (1) finds that Deosen made sales of subject merchandise in the United States at prices below normal value (NV) during the POR; (2) finds that Meihua did not make sales of subject merchandise in the United States at prices below normal value during the POR; (3) grants separate rates to Meihua, Deosen, and CP Kelco Shandong,; (4) determines that Hebei Xinhe Biochemical Co., Ltd. and AHA are part of the China-wide entity; and (5) determines that Jianlong and Smart Chemicals had no reviewable U.S. sales during the POR. Furthermore, although the *Initiation Notice* references Fufeng as subject to this review, Commerce subsequently discontinued its review of Fufeng as a result of litigation before the U.S. Court of International Trade (CIT).[3]

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

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

II. BACKGROUND

On July 19, 2013, Commerce published in the *Federal Register* an AD order on xanthan gum from China.[4] On July 3, 2018, Commerce published in the *Federal Register* a notice of opportunity to request an administrative review of the AD order on xanthan gum from China.[5] Between July 30 and July 31, 2018, Commerce received requests for review from five foreign and domestic interested parties. Additionally, on July 31, 2018, Commerce received a request from CP Kelco U.S., the petitioner, to conduct administrative reviews of numerous producers/exporters of xanthan gum from China, many of which were already the subject of review requests filed by other parties.[6] On September 10, 2018, Commerce published in the *Federal Register* a notice of initiation for companies for which a timely request for an administrative review of the applicable AD order was submitted.[7]

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.

[3] *See Xanthan Gum from the People's Republic of China: Notice of Court Decision Not in Harmony With Amended Final Determination in Less Than Fair Value Investigation; Notice of Amended Final Determination Pursuant to Court Decision; Notice of Revocation of Antidumping Duty Order in Part; and Discontinuation of Fourth and Fifth Antidumping Duty Administrative Reviews in Part*, 83 FR 52205, 52206 (October 16, 2018).

[4] *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*).

[5] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 83 FR 31121 (July 3, 2018).

[6] *See* submission from the petitioner, "Xanthan Gum from the People's Republic of China: Petitioner's Request for Administrative Review," dated July 31, 2018.

[7] *See Initiation Notice*, 83 FR at 45596.

After selecting Deosen and Meihua as mandatory respondents (*see* the "Selection of Respondents" section, below, for details), Commerce issued its AD questionnaire to them on October 26, 2018.[8] From November 2018 through April 2019, Deosen and Meihua submitted timely responses to Commerce's questionnaire and supplemental questionnaires.

On February 12, 2019, Commerce solicited interested party comments regarding the selection of the surrogate country and offered an opportunity to provide surrogate value (SV) data.[9] Interested parties filed surrogate country and SV comments and information in February and March, 2019.[10] In addition, on April 9, 2019, Commerce provided interested parties with an opportunity to provide SV data for inputs for which no SV data had been submitted.[11] In response, the petitioner submitted surrogate country comments on February 19, 2019, as well as additional SV information on February 26, 2019.[12] On February 19, 2019, Meihua submitted surrogate country information.[13] On February 26, 2019, Deosen submitted SV information.[14] On March 1, 2019, Deosen submitted rebuttal comments on surrogate country selection.[15] On March 8, 2019, Deosen submitted SV rebuttal comments in response information put on the record by the petitioner.[16] On April 15, 2019, the petitioner submitted SV information for Meihua's overhead materials.[17] On April 15, 2019 Meihua submitted SV information.[18] For additional information, see the "Normal Value" section below.

III. PERIOD OF REVIEW

The POR is July 1, 2017, through June 30, 2018.

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[8] *See* Letters to Deosen and Meihua regarding issuance of Commerce's AD questionnaire, dated October 26, 2018.
[9] *See* Letter from Commerce, "Antidumping Duty Order on Xanthan Gum from the People's Republic of China: Request for Surrogate Country and Surrogate Value Information," dated February 12, 2019.
[10] *See* submission from the petitioner, "Xanthan Gum from the People's Republic of China: Petitioner's Comments Concerning Surrogate Selection," dated February 19, 2019; submission from Meihua, "Xanthan Gum from the People's Republic of China, A–570–985; Comments on Surrogate Country Selection," dated February 19, 2019; submission from Deosen, "Administrative Review of Antidumping Order on Xanthan Gum from the People's Republic of China: Comments on the Selection of Surrogate Values," dated February 26, 2019; submission from Deosen, "Administrative Review of Antidumping Order on Xanthan Gum from the People's Republic of China: Rebuttal Comments on Surrogate Country Selection," dated March 1, 2019; submission from Meihua, "Administrative Review of Antidumping Order on Xanthan Gum from the People's Republic of China: Rebuttal Comments on the Selection of Surrogate Values," dated March 8, 2019.
[11] *See* Memorandum to the File, "Xanthan Gum from the People's Republic of China: Overhead Materials Surrogate Value Information," dated April 9, 2018.
[12] *See* submission from the petitioner, "Petitioner's Comments Concerning Surrogate Country Selection," dated February 19, 2019; *see also* "Petitioner's Surrogate Value Submission," dated February 26, 2019.
[13] *See* submission from Meihua, "Xanthan Gum from the People's Republic of China. A-570-985; Comments on Surrogate Country Selection," dated February 19, 2019.
[14] *See* submission from Deosen, "Comments on the Selection of Surrogate Values," dated February 26, 2019.
[15] *See* submission from Deosen, "Administrative Review of Antidumping Order on Xanthan Gum from the People's Republic of China: Rebuttal Comments on Surrogate Country Selection," dated March 1, 2019.
[16] *See* submission from Deosen, "Administrative Review of Antidumping Order on Xanthan Gum from the People's Republic of China: Rebuttal Comments on the Selection of Surrogate Values," dated March 8, 2019.
[17] *See* submission from the petitioner, "Petitioner's Comments on Overhead Materials Surrogate Value Information," dated April 15, 2019.
[18] *See* submission from Meihua, "Xanthan Gum from the People's Republic of China, A-570-985; Surrogate Value Information," dated April 15, 2019.

IV. EXTENSION OF THE PRELIMINARY RESULTS

On May 7, 2019, Commerce extended the deadline for the preliminary results by a total of 24 days, until June 5, 2019.[19]

V. SCOPE OF THE ORDER

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

Xanthan gum that has been blended with other product(s) is included in this scope when the resulting mix contains 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.

VI. 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.

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[19] *See* Memorandum to the File, "Xanthan Gum from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated May 7, 2019

On September 13, 2018, Commerce placed on the record CBP data for U.S. imports classified under the HTS subheading identified in the scope of the AD order on xanthan gum from China.[20] At that time, Commerce invited interested parties to submit comments regarding the CBP data for use in respondent selection. No parties commented on CBP data for use in respondent selection.

On October 25, 2018, Commerce determined that it was not practicable to examine more than two respondents in the instant administrative review. Therefore, in accordance with section 777A(c)(2)(B) of the Act, Commerce selected for individual examination the two exporters accounting for the largest volume of xanthan gum exported from China during the POR based on CBP data. Those exporters are, in alphabetical order, Deosen and Meihua.[21] 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. Commerce received no requests for voluntary respondent treatment.

VII. PRELIMINARY DETERMINATION OF NO SHIPMENTS

Smart Chemicals and Jianlong (previously known as IMJ) timely submitted certifications of no shipments during the POR.[22] The results of Commerce's CBP query did not show any POR entries from either Smart Chemicals, Jianlong, or IMJ.[23] In addition, CBP did not identify any entries of subject merchandise from either Smart Chemicals, Jianlong, or IMJ during the POR in response to our no shipment inquiry asking CBP for such information.[24] Given that Smart Chemicals, Jianlong, and IMJ certified that they made no shipments of subject merchandise to the United States during the POR and the CBP information does not call this claim into question, we preliminarily determine that Smart Chemicals, Jianlong, and IMJ did not have any shipments during the POR. However, consistent with Commerce's practice in non-market economy (NME) cases, we will not rescind the review with respect to Smart Chemicals, Jianlong, and IMJ but, rather, we will complete the review and issue instructions to CBP based on the final results of the review.[25]

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[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 13, 2018 (CBP Data Memo).

[21] *See* Memorandum to Robert Bolling, Acting Director, Office IV, Antidumping and Countervailing Duty Operations, "Selection of Respondents for the 2017-2018 Administrative Review of the Antidumping Duty Order on Xanthan Gum from the People's Republic of China," dated October 25, 2018.

[22] *See* letter from Smart Chemicals, "Administrative Review of Antidumping Order on Xanthan Gum from the People's Republic of China: No Shipment Certification," dated September 25, 2018; and letter from Jianlong Biotechnology Co., Ltd., "Xanthan Gum from the People's Republic of China – Notice of No Shipments," dated October 9, 2018.

[23] *See* CBP Data Memo.

[24] *See* Memorandum to the File, "Xanthan gum from the People's Republic of China (China) (A-570-985)," dated April 23, 2019.

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

VIII. 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 NME exporters and/or producers as a single entity if the facts of the case supported such treatment.[26] 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.[27] 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.[28]

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

We find that record evidence supports the continued treatment of the Deosen group of companies as a single entity in this administrative review. Specifically, for the reasons outlined in a separate proprietary memorandum, we have preliminarily determined that Deosen Biochemical Ltd. and Deosen Biochemical (Ordos) Ltd. are affiliated, pursuant to section 771(33)(F) of the Act, and should be treated as a single entity for AD purposes, pursuant to 19 CFR 351.401(f).[29] With respect to the Meihua group of companies, we find that record evidence continues to support single entity treatment. For the reasons outlined in a separate proprietary memorandum, we have preliminarily determined that Meihua Group International Trading (Hong Kong) Limited, Langfang Meihua Biotechnology Co., Ltd., and Xinjiang Meihua Amino Acid Co., Ltd.

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[26] *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).
[27] *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).
[28] *See*, *e.g.*, *Nihon Cement Co., Ltd. v. United States*, Slip Op. 93-80 (CIT May 25, 1993); and *Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan*, 62 FR 51427, 51436 (October 1, 1997).
[29] *See* Memorandum to the File, "Deosen Biochemical Ltd. and Deosen Biochemical (Ordos) Ltd. Affiliation and Single Entity Status," dated concurrently with this memorandum, for a full discussion of the proprietary details of Commerce's analysis.

are affiliated pursuant to section 771(33)(F) of the Act and should be treated as a single entity for AD purposes, pursuant to 19 CFR 351.401(f).[30]

IX. DISCUSSION OF METHODOLOGY

A. Non-Market Economy Country

Commerce considers China to be an NME country.[31] 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.

B. 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.[32] 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.[33] 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 each exporting entity in an NME country under the test established in *Sparklers*,[34] as amplified by *Silicon Carbide*.[35] 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.[36]

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30 *See* Memorandum to the File, "Fifth Administrative Review of Xanthan Gum from the People's Republic of China: Meihua Affiliation and Single Company Status," dated concurrently with this memorandum, for a full discussion of the proprietary details of Commerce's analysis.

31 *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination.* 82 FR 50858, 50861 (November 2, 2017) and accompanying Preliminary Decision Memorandum (PDM) at *China's Status as a Non-Market Economy*.

32 *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).

33 *See Initiation Notice*, 82 FR at 42974.

34 *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*)

35 *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*).

36 *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*).

Commerce continues to evaluate its practice with regard to the separate rates analysis in light of the diamond sawblades from China AD proceeding, and its determinations therein.[37] In particular, in litigation involving the diamond sawblades from China proceeding, the 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.[38] 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.[39] 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.

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.[40] 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.[41]

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[37] *See* Final Results of Redetermination pursuant to *Advanced Technology & Materials Co., Ltd., et al. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) (*Advanced Technology I*), and available at http://enforcement.trade.gov/remands/12-147.pdf, *aff'd Advanced Technology & Materials Co., Ltd., et al. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013), *aff'd Advanced Technology & Materials Co., Ltd., et al. v. United States*, Case No. 2014-1154 (Fed. Cir. 2014) (*Advanced Technology II*); *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), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

[38] *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); *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).

[39] *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.

[40] *See Initiation Notice*, 82 FR at 42974.

[41] *Id.*

Deosen, Meihua, and CP Kelco Shandong timely submitted separate rate applications or certifications.[42] Our analysis of their separate rate information is below.

C. <u>Separate Rate Analysis</u>

1) *Wholly Foreign-Owned Applicant*

CP Kelco Shandong reported that it is wholly foreign-owned by a market-economy (ME) company located in an ME country.[43] 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.[44]

Therefore, because we find that CP Kelco Shandong has demonstrated an absence of Chinese government control of 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*

Deosen and Meihua reported that they are either Chinese-foreign joint venture companies or wholly Chinese-owned companies.[45] In accordance with our practice, we analyzed whether these companies demonstrated an absence of *de jure* and *de facto* governmental control over their export activities.

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[42] *See* Deosen Biochemical Ltd. and Deosen Biochemical (Ordos) Ltd.'s Separate Rate Certification (Deosen's SRC), dated October 10, 2018; Meihua's Separate Rate Certification (Meihua's SRC), dated October 1, 2018; CP Kelco Shandong's Separate Rate Application (CP Kelco's SRA), dated October 10, 2018.
[43] *See* CP Kelco Shandong's SRA, dated October 10, 2018 at SRA-6 and SRA-10 thru SRA-11.
[44] *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); and *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).
[45] *See* letter from Deosen, "Administrative Review of Antidumping Order on Xanthan Gum from the People's Republic of China: Supplemental Separate Rate Certification," dated October 10, 2018 (Deosen's Supplemental SRA); letter from Deosen, "Administrative Review of Antidumping Order on Xanthan Gum from the People's Republic of China: Deosen's Response to Section A Questionnaire," dated November 23, 2018; letter from Fufeng, "Separate Rate Certification for Fufeng in the Fifth Administrative Review of Antidumping Duty Order on Xanthan Gum from the People's Republic of China (A-570-985)," dated October 3, 2018; letter from Meihua, "Xanthan Gum from the People's Republic of China, A-570-985; Separate Rate Certification," dated October 1, 2018; and Meihua's submission, "Xanthan Gum from the People's Republic of China, A-570-985; Section A," dated November 23, 2018 (Meihua's Section A Response).

a) *Absence of De Jure Control*

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.[46] The evidence provided by Deosen and Meihua supports a preliminary finding of the 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.[47]

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.[48] 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.[49] 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.[50]

The evidence provided by Deosen and Meihua 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.[51]

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[46] *See Sparklers*, 56 FR at 20589.
[47] *See* Deosen's SRC; Fufeng's SRC; Deosen's Supplemental SRA; Meihua's SRC; and Meihua's Section A Response.
[48] *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).
[49] *See*, *e.g.*, *Silicon Carbide*, 59 at FR 22587.
[50] *Id.*
[51] *See* letter from Deosen, "Administrative Review of Antidumping Order on Xanthan Gum from the People's Republic of China: Supplemental Separate Rate Certification," dated October 10, 2018 (Deosen's Supplemental SRA); letter from Fufeng, "Separate Rate Certification for Fufeng in the Fifth Administrative Review of Antidumping Duty Order on Xanthan Gum from the People's Republic of China (A-570-985)," dated October 3, 2018; letter from Meihua, "Xanthan Gum from the People's Republic of China, A-570-985; Separate Rate Certification," dated October 1, 2018; and Meihua's submission, "Xanthan Gum from the People's Republic of China, A-570-985; Section A," dated November 23, 2018 (Meihua's Section A Response)..

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 the companies' exports of the merchandise under review.

Based on the absence of both *de jure* and *de facto* government control with respect to the companies' exports of the merchandise under review, we preliminarily find that Deosen and Meihua have established that they each qualify for a separate rate under the criteria established by *Sparklers* and *Silicon Carbide*.

3) *Companies Not Receiving a Separate Rate*

Hebei and AHA failed to file the separate rate application (SRA) in accordance with Commerce's regulations. Hence, we preliminarily determine to treat these company as part of the China-wide entity.

Because no party requested a review of the China-wide entity and Commerce no longer considers the China-wide entity as an exporter conditionally subject to administrative reviews, Commerce is not conducting a review of the China-wide entity.[52] Thus, the rate for the China-wide entity (*i.e.*, 154.07 percent) is not subject to change pursuant to this review.[53]

D. Dumping Margin for the Separate Rate Companies 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 volumes 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 rates calculated for the individually examined respondents, excluding any rates that are zero, *de minimis*, or based entirely on facts available.[54] Where the rates for the individually examined companies are all zero, *de minimis*, or based entirely on facts available, section 735(c)(5)(B) of the Act provides that Commerce may use "any reasonable method" for assigning the rate to all other respondents.

[52] On November 4, 2013, Commerce 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 3, 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 5, 2016. Therefore, Commerce's new practice applies to this review.

[53] *See Fourth Review Final Results*, 83 FR 65143 (December 19, 2018).

[54] *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).

In these preliminary results, Commerce has calculated a rate for the mandatory respondent Deosen which is not zero, *de minimis*, or based entirely on facts available and a rate for Meihua that is zero. Therefore, in accordance with section 735(c)(5)(A) of the Act and its prior practice, Commerce has preliminarily assigned Deosen's calculated rate (*i.e.*, 46.65 percent) as the separate rate for non-examined separate rate exporters.

E. 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 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.[55] Further, pursuant to 19 CFR 351.408(c)(2), Commerce will normally value FOPs in a single country.

On November 13, 2018, we issued a memorandum listing six countries at the same level of economic development as China based on 2017 per capita gross national income (GNI) data available in the World Development Report provided by the World Bank. We provided interested parties an opportunity to comment on this list.[56] The countries identified in that memorandum, pursuant to section 773(c)(4) of the Act, are Brazil, Kazakhstan, Malaysia, Mexico, Romania, and Russia.[57] The petitioner contends that Commerce should select Malaysia as the primary surrogate country because, in addition to being economically comparable to China and a significant producer of comparable merchandise, it has comprehensive and reliable SV data for nearly all of the SVs, including corn, that were required in all of the prior segments of this proceeding.[58] Meihua argued that Commerce should select Thailand as the primary surrogate country; Deosen agrees with Meihua that Thailand should be considered for selection, but maintains that Brazil be considered the best alternative rather than Malaysia because Brazil is the most significant exporter of comparable merchandise.[59] Our surrogate country analysis is below.

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[55] 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.

[56] *See* Letter to Interested Parties, "Fifth Administrative Review of the Antidumping Duty Order on Xanthan Gum from the People's Republic of China: Request for Surrogate Country and Surrogate Value Comments and Information," dated February 12, 2019.

[57] *Id.*

[58] *See* Letter from the petitioner, "Xanthan Gum from the People's Republic of China: Petitioner's Comments Concerning Surrogate Country Selection," dated February 19, 2019.

[59] *See* Letter from the Meihua, "Xanthan Gum from the People's Republic of China, A–570–985; Comments on Surrogate Country Selection," dated February 19, 2019; *see* letter from Deosen, "Administrative Review of Antidumping Order on Xanthan Gum from the People's Republic of China: Comments on the Selection of Surrogate Values," dated February 26, 2019; *see* letter from Deosen, "Administrative Review of Antidumping Order on Xanthan Gum from the People's Republic of China: Rebuttal Comments on Surrogate Country Selection," dated March 1, 2019.

1) *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 options because: (a) they either are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available SV data, or (c) are not suitable for use based on other reasons. Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development.[60]

As stated above, we determined that Brazil, Kazakhstan, Malaysia, Mexico, Romania, and Russia are each at the same level of economic development as China in terms of per capita GNI during the POR.[61]

Accordingly, unless we find that all the countries determined to be equally economically comparable are not significant producers of comparable merchandise, do not provide a reliable source of publicly available surrogate data, or are unsuitable for use for other reasons, we will rely on data from one of these countries. Thus, while Meihua submitted comments in support of selecting Thailand as the surrogate country, as detailed below, because surrogate value data from countries determined to be equally economically comparable to China are on the record, we have not relied on data from Thailand in determining surrogate values.

2) *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.[62] While the legislative history indicates the term "significant producer" includes any country that is a significant "net exporter,"[63] it does not preclude reliance on additional or alternative metrics to identify a "significant producer". Where 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

[60] *See* Policy Memorandum.
[61] *Id*. at Exhibit 1.
[62] *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*).
[63] *See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No.* 100-576 (1988), at 590.

cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise."[64] 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) and factor intensities.[65] Since these characteristics are specific to the merchandise in question, the standard for "comparable merchandise" will vary from case to case.[66] 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. Consistent with our practice, we first searched for Global Trade Atlas (GTA) export data for identical merchandise (*i.e.*, 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).[67]

First, we note that the Ajinomoto (Malaysia) Berhad financial statements indicate that Ajinomoto (Malaysia) Berhad is a producer of monosodium glutamate (MSG).[68] Commerce has previously determined that MSG is a comparable merchandise to xanthan gum.[69] This record evidence indicates that Malaysia is a significant producer of comparable merchandise.

In addition, consistent with the methodology employed by Commerce, in order to determine whether the above-referenced countries are significant producers of comparable merchandise, Commerce in this instance has defined exports of comparable merchandise according to the first six digits under which the merchandise is classified under the HTS, in this case item number 3913.90.[70] After reviewing the export data submitted by parties, Commerce preliminarily determines that Brazil and Malaysia are significant producers of comparable merchandise (*i.e.*,

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[64] *See Policy Bulletin* at 1-2.
[65] *Id.*
[66] *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.
[67] *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.
[68] *See* letter from Petitioner, "Xanthan Gum from the People's Republic of China: Petitioner's Surrogate Value Submission," dated February 26, 2019.
[69] *See Investigation Final Determination* and accompanying IDM at Comment 1.
[70] *See Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 76 F 15295 (March 21, 2011) and accompanying IDM at Comment 1; *see also Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 80 FR 17409 (April 1, 2015) and accompanying PDM; unchanged in *Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Final Determination of Sales at Less Than Fair Value* 80 FR 51779; and *Certain Polyethylene Terephthalate Resin from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 80 FR 62024 (October 15, 2015) and accompanying PDM, unchanged in *Certain Polyethylene Terephthalate Resin from the People's Republic of China: Final Determination of Sales at Less Than Fair Value* (81 FR 13331) March 14, 2016.

exported merchandise under the six-digit basket HTS code included in the scope), and therefore, satisfy the second criterion of section 773(c)(4) of the Act.[71]

3) *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 and duty-exclusive, and specific to the input.[72] There is no hierarchy among these criteria;[73] however, Commerce's preference is to satisfy the breadth of these aforementioned selection factors,[74] and to value all FOPs in one surrogate country.[75]

The record has usable data for valuing the respondent's FOPs from two of the six countries on the list of potential surrogate countries, Brazil and Malaysia. Both the Brazilian and Malaysian data generally are publicly available, contemporaneous with the POR, representative of broad-market averages, and tax- and duty-exclusive.

With respect to financial statements, the record contains the 2018 financial statements for the Malaysian company Ajinomoto (Malaysia) Berhad – a large producer of MSG[76], which Commerce has previously determined to be a comparable product.[77] The record also contains the 2017 financial statement from Cargil Agricola S.A., Brazilian, a large multinational producer of citric acid and other food, agricultural, financial, and industrial products[78] Because the Malaysian financial statements are from a company producing merchandise Commerce has previously determined to be comparable to xanthan gum, and this company produces comparable merchandise as one of only a few products, we preliminary find the Malaysian financial statements are more specific to xanthan gum producers than the Brazilian 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; is a significant producer of comparable merchandise; and has publicly available and reliable data for all of the FOP reported

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[71] *See* submission from the petitioner, "Xanthan Gum from the People's Republic of China: Petitioner's Comments Concerning Surrogate Country Selection," dated February 19, 2019 at Exhibit I; *see also* submission from Deosen, "Administrative Review of Antidumping Order on Xanthan Gum from the People's Republic of China: Rebuttal Comments on Surrogate Country Selection," dated March 1, 2019 at Exhibit SCR-2
[72] *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).
[73] *See Policy Bulletin*.
[74] *Id.*
[75] *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.
[76] *See* letter from Petitioner, "Xanthan Gum from the People's Republic of China: Petitioner's Surrogate Value Submission," dated February 26, 2019.
[77] *See Investigation Final Determination* and accompanying IDM at Comment 1.
[78] *See* letter from Deosen, "Administrative Review of Antidumping Order on Xanthan Gum from the People's Republic of China: Deosen's Pre-preliminary Comments," dated April 25, 2019 at Exhibit PC-2.

by the mandatory respondents. For details on the selected SVs, see the "Normal Value" section of this memorandum and the Preliminary Surrogate Value Memoranda.[79]

F. 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. Both Deosen and Meihua reported the earlier of shipment date or 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.[80] Therefore, in accordance with 19 CFR 351.401(i), and Commerce's long-standing practice in determining the date of sale,[81] 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.

G. 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 and Meihua's sales of the subject merchandise to the United States were made at less than NV, Commerce 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.

1) *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 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

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[79] *See* Memorandum to the File, "Antidumping Duty Administrative Review of Xanthan Gum from the People's Republic of China: Deosen's Preliminary Surrogate Value Memorandum," dated concurrently with this memorandum (Deosen's Preliminary Surrogate Value Memorandum); and "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 (Meihua's Preliminary Surrogate Value Memorandum) (collectively, Preliminary Surrogate Value Memoranda).
[80] *See* Deosen's letter, "Administrative Review of Antidumping Order on Xanthan Gum from the People's Republic of China: Deosen's Response to Section C Questionnaire," dated December 17, 2018; *see also* Meihua's letter, "Xanthan Gum from the People's Republic of China A-570-985; Response to Sections C and D Supplemental Questionnaire," dated March 18, 2019.
[81] *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).

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.[82] 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.[83] 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.[84] 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, 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.

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[82] *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.
[83] *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); *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).
[84] *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.

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 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.

2) *Results of the Differential Pricing Analysis*

The results of the differential pricing analysis for Deosen demonstrates that over 66 percent of U.S. sales pass the Cohen's *d* test and confirms the existence of a pattern of prices that differs significantly among purchasers, regions, or time periods.[85] However, we find that there is not a meaningful difference in the weighted-average dumping margins calculated using the average-to-average comparison method and the average-to-transaction comparison method when both methods are applied to all sales.[86] Accordingly, we have preliminarily determined to use the standard method in making comparisons of U.S. prices to NV for Deosen.

For Meihua, the results of the differential pricing analysis demonstrate that over 66 percent of U.S. sales pass the Cohen's *d* test and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods.[87] However, we find that there is not a meaningful difference in the weighted-average dumping margins calculated using the average-to-average comparison method and the average-to-transaction comparison method when both methods are applied to all sales.[88] Accordingly, we have preliminarily determined to use the standard method in making comparisons of U.S. prices to NV for Meihua.

H. U.S. Price

1) *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, international freight, and U.S. duties) in accordance with section 772(c)(2) of the Act.[89] Where movement expenses were provided by Chinese service providers or paid for in an NME currency, we valued these services using SVs.[90]

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[85] *See* Memorandum to the File, "Preliminary Results Margin Calculation for Deosen," dated concurrently with this memorandum (Deosen's Preliminary Calculation Memorandum).
[86] *Id.*
[87] *See* Memorandum to the File, "Preliminary Results Margin Calculation for Meihua," dated concurrently with this memorandum (Meihua's Preliminary Calculation Memorandum).
[88] *Id.*
[89] *See* section 772(c)(2)(A) of the Act.
[90] *See* Preliminary Surrogate Value Memoranda for details regarding the surrogate values for movement expenses.

2) *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 Deosen's sales, we based U.S. prices on CEP, in accordance with section 772(b) of the Act, because sales of subject merchandise were made in the United States by U.S. affiliates of Deosen to unaffiliated purchasers in the United States.[91]

Where appropriate, we 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.

In accordance with section 772(d)(1) of the Act, we also deducted from the starting price selling expenses associated with economic activities occurring in the United States. Specifically, we deducted from the starting price, where appropriate, inventory carrying costs, credit expenses, and indirect selling expenses. For expenses that were provided by an ME provider and paid for in an ME currency, if applicable, we used the reported expense. For expenses that were either provided by an NME vendor or paid for using an NME currency, Commerce used SVs to value the expense as appropriate.[92] Additionally, in accordance with section 772(c)(2)(B) of the Act, we deducted any irrecoverable value-added tax (VAT) from the starting price as explained below. 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, *see* Deosen's Preliminary Calculation Memorandum.

3) *Value-Added Tax*

Commerce's recent practice in NME cases is to subtract from EP or CEP the amount of any un-refunded (irrecoverable) 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.

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[91] *See* Deosen's Section A Response.
[92] *See* Deosen Preliminary Surrogate Value Memorandum.
[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.*

Commerce requested that the mandatory respondents report net un-refunded VAT for the subject merchandise. The Chinese VAT schedule placed on the record of this review by Deosen and Meihua demonstrates that the VAT rate is 17 percent, and the rebate rate for subject merchandise is 13 percent, under applicable Chinese regulations.[96] Thus, we have determined that the irrecoverable VAT on subject merchandise is the difference of these rates, *i.e.*, four percent, and we have adjusted the U.S. prices for the un-refunded VAT, in order to calculate EP and CEP, as appropriate, net of VAT for Deosen and Meihua.[97] This is consistent with Commerce's policy and the intent of the statute, that dumping comparisons be tax-neutral.[98]

I. 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 Deosen and 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 (4) representative capital costs.[100] We used the FOPs reported by Deosen and 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 FOP and freight costs to derive NV.

1) *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-

[96] *See* submission from Deosen, "Administrative Review of Antidumping Duty Order on Xanthan Gum from the People's Republic of China: Deosen's Response to Section C Questionnaire," dated December 17, 2018; *see also* submission from Meihua, "Xanthan Gum from the People's Republic of China, A-570-985; Response to Section C and D Supplemental Questionnaire," dated March 28, 2019.
[97] *See* Deosen's Preliminary Calculation Memorandum; *see also* Meihua's Preliminary Calculation Memorandum.
[98] *See Methodological Change*.
[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).
[100] *See* section 773(c)(3)(A)-(D) of the Act.
[101] *See* Preliminary Surrogate Value Memoranda.

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 respondents is below. A detailed description of all SVs used to calculate the weighted-average dumping margins is in the Preliminary Surrogate Value Memoranda.

a) *Direct and Packing Materials*

GTA import prices for the primary surrogate country, Malaysia, are generally contemporaneous with the POR, publicly available, product-specific, tax-exclusive, and representative of a broad market average.[103] Thus, we based SVs for Deosen and 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 India, Indonesia, the Republic of Korea, and Thailand because we have determined that these countries maintain broadly available, non-industry specific export 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 India, Indonesia, the Republic of Korea, and Thailand may have benefitted from subsidies. Therefore, we have not used prices from these countries in calculating the Malaysian and Brazilian import-based SVs. Additionally, we disregarded imports from NME and "unidentified" countries when calculating Thai import-based per-unit SVs.[107] We disregarded imports from "unidentified"

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[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).
[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; *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; and *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.

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]

b) *Energy*

Ajinomoto (Malaysia) Berhad, 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 manufacturing overhead ratio.[109]

c) *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, preclude other sources for valuing labor.[111] Rather, we continue to follow our practice of selecting the best available information. Here, we valued labor using labor data from ILOSTAT. We inflated these rates because they were not contemporaneous with the POR.[112]

d) *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 Business 2018: Malaysia*. For Meihua, 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. For Deosen, we valued international ocean freight using Descartes' ocean freight rates. We valued marine insurance using RJG Consultants' marine insurance coverage rates.[113] We valued air freight using DHL worldwide export rates.[114]

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*.[115]

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[108] *Id*.
[109] *See* Preliminary Surrogate Value Memoranda.
[110] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011).
[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 accompanying IDM at 11.
[112] *See* Preliminary Surrogate Value Memoranda.
[113] *See* Deosen Preliminary Surrogate Value Memorandum.
[114] *See* Preliminary Surrogate Value Memoranda.
[115] *See Sigma Corp. v. United States*, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997) (*Sigma Corp.*).

e) *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 2018 audited financial statements of Ajinomoto (Malaysia) Berhad.[116]

J. <u>Currency Conversion</u>

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.

X. RECOMMENDATION

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

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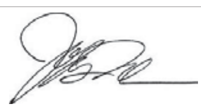
Agree Disagree

6/4/2019

X 

Signed by: JEFFREY KESSLER