



A-570-985

Admin Review

POR: 07/01/2019 – 06/30/2020

Public Document

E&C/IV: KJ, AA

July 30, 2021

MEMORANDUM TO: Christian Marsh
Acting 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 Seventh
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, 2019, through June 30, 2020. Commerce preliminarily finds that one of the two mandatory respondents selected for individual examination, Fufeng,¹ did not make sales of subject merchandise in the United States at prices below normal value (NV) during the POR. Commerce preliminarily based the dumping margin for the other mandatory respondent, Meihua² on total adverse facts available (AFA). In addition, Commerce preliminarily finds that two companies, in addition to the mandatory respondents, are eligible for separate rates, one company had no shipments of subject merchandise to the United States during the POR, and four companies are not entitled to separate rates and, thus, are part of the China-wide entity. Commerce rescinded this review with respect to one company.

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

¹ Fufeng refers to the collapsed entity, Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.), Shandong Fufeng Fermentation Co., Ltd., and Xinjiang Fufeng Biotechnologies Co., Ltd. (collectively, Fufeng). *See* the "Single Entity Treatment" section of this notice for details.

² Meihua refers to the collapsed entity, Meihua Group International Trading (Hong Kong) Limited, 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.



subject merchandise during the POR. The rates determined for companies in this review 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 of review no later than 120 days from the date of publication of the accompanying *Federal Register* notice of the 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, 2020, Commerce published in the *Federal Register* a notice of opportunity to request an administrative review of the *Order*.⁴ Between July 17 and 31, 2020, Commerce received requests to conduct administrative reviews of ten companies, including the mandatory respondents.⁵ On September 3, 2020, Commerce published in the *Federal Register* a notice of initiation of an administrative review of the *Order* with respect to the companies for which timely requests for an administrative review were received.⁶ In September and October 2020, Commerce received separate rate certifications (SRCs) from three companies,⁷ separate rate applications (SRAs) from two companies,⁸ and no – shipment certifications from two companies.⁹ Commerce received timely withdrawal of review requests with respect to CP Kelco

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*, 85 FR 39531 (July 1, 2020).

⁵ See Petitioner’s Letter, “Xanthan Gum from the People’s Republic of China: Petitioner’s Request for Administrative Review,” dated July 31, 2020 (Petitioner’s Request); see also Meihua’s Letter, “Xanthan Gum from People’s Republic of China, A-570-985; Request for Administrative Review,” dated July 17, 2020; Deosen’s Letter, “Xanthan Gum from the People’s Republic of China, A-570-985: Request for Administrative Review (Period of Review: 7/1/2019 – 6/30/2020),” dated July 30, 2020; 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, 2020; Fufeng’s Letter, “Request for Administrative Review of the Antidumping Duty Order on Xanthan Gum from the People’s Republic of China,” dated July 31, 2020; and Nanotech Solution SDN BHD’s Letter, “A-570-985, Xanthan Gum from the People’s Republic of China: Request for Administrative Review (Period 7/1/2019 – 6/30/2020),” dated July 31, 2020.

⁶ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 54983 (September 3, 2020) (*Initiation Notice*).

⁷ See Meihua’s Letter, “Xanthan Gum from the PRC; A-570-985; Separate Rate Certification,” dated September 28, 2020 (Meihua SRC); see also CP Kelco Shandong’s Letter, “Xanthan Gum from the People’s Republic of China: CP Kelco (Shandong) Biological Company Limited’s Separate Rate Certification,” dated October 5, 2020 (CP Kelco Shandong SRC); and Fufeng’s Letter, “Separate Rate Certification for Fufeng in the Seventh Administrative Review of Antidumping Duty Order on Xanthan Gum from the People’s Republic of China (A-570-985),” dated October 13, 2020 (Fufeng SRC).

⁸ See Jianlong’s Letter, “Xanthan Gum from the People’s Republic of China – Separate Rate Application,” dated October 2, 2020 (Jianlong SRA); see also Deosen’s Letter, “Xanthan Gum from the People’s Republic of China: Separate Rate Application,” dated October 14, 2020 (Deosen SRA).

⁹ See Shanghai Smart Chemicals Co. Ltd.’s Letter, “Administrative Review of Antidumping Order on Xanthan Gum from the People’s Republic of China: No Shipment Certification,” dated September 28, 2020; see also Deosen’s Letter, “Xanthan Gum from the People’s Republic of China: No Shipment Certification,” dated October 2, 2020.

(Shandong) Biological Company Limited (CP Kelco Shandong)¹⁰ and Deosen Biochemical (Ordos) Ltd. (Deosen Ordos)/Deosen Biochemical Ltd. (Deosen Biochemical) (collectively, Deosen).¹¹ See the “Partial Rescission of Administrative Review” section, below, for details.

On September 30, 2020, Meihua submitted comments on CBP data and respondent selection.¹² No other parties commented on the CBP data or respondent selection. Commerce selected Meihua and Fufeng as mandatory respondents (see the “Selection of Respondents” section, below, for details), and issued its AD Questionnaire to Meihua and Fufeng on October 28, 2020.¹³ From November 2020 through July 2021, Meihua and Fufeng submitted timely responses to Commerce’s questionnaires and supplemental questionnaires.¹⁴ In response to requests from Commerce,¹⁵ in February, March, June, and July 2021, interested parties submitted comments regarding the surrogate country list and comments on surrogate country and surrogate value (SV) selection.¹⁶

¹⁰ See CP Kelco Shandong’s Letter, “Xanthan Gum from the People’s Republic of China: CP Kelco (Shandong) Biological Company Limited’s Withdrawal of Request for Administrative Review,” dated December 1, 2020.

¹¹ See Deosen’s Letter, “Xanthan Gum from the People’s Republic of China, A-570-985: Withdrawal of Request for Administrative Review (Administrative Review 7/1/2019 – 6/30/2020),” dated December 2, 2020.

¹² See Meihua’s Letter, “Xanthan Gum from the PRC; A-570-985; Comments on CBP Data,” dated September 30, 2020.

¹³ See Commerce’s Letters, “Administrative Review of the Antidumping Duty Order on xanthan gum from the People’s Republic of China: Request for Information,” dated October 28, 2020 (AD Questionnaire).

¹⁴ See Meihua’s Letters, “Xanthan Gum from the PRC; A-570-985; Response to Section A of Initial Questionnaire,” dated November 18, 2020 (Meihua AQR); “Xanthan Gum from the PRC; A-570-985; Response to Section C of the Department’s Initial Questionnaire,” dated December 11, 2020; “Xanthan Gum from the PRC; A-570-985; Response to Section D of the Department’s Initial Questionnaire,” dated December 18, 2020; “Xanthan Gum from the PRC; A-570-985; Response to Supplemental Section A Questionnaire,” dated January 7, 2021 (Meihua Supp AQR); “Xanthan Gum from the PRC; A-570-985; Response to Supplemental Section C/D Questionnaire,” dated March 8, 2021; “Xanthan Gum from the PRC; A-570-985; Response to Second Supplemental Section C/D Questionnaire,” dated June 4, 2021 (Meihua 2nd Supp CDQR); “Xanthan Gum from the PRC; A-570-985; Response to Third Supplemental Section C/D Questionnaire,” dated June 16, 2021; “Xanthan Gum from the PRC; A-570-985; Response to Second Supplemental Surrogate Values and Section C Questionnaire,” dated July 6, 2021; see also Fufeng’s Letters, “Fufeng Section A Response in the Seventh Administrative Review of Antidumping Duty Order on Xanthan Gum from the People’s Republic of China (A-570-985),” dated December 1, 2020 (Fufeng AQR); “Fufeng Supplemental Section A Response in the Seventh Administrative Review of Antidumping Duty Order on Xanthan Gum from the People’s Republic of China (A-570-985),” dated January 19, 2021 (Fufeng Supp AQR); “Fufeng Sections C, D and Appendices V – VII Response in the Seventh Administrative Review of Antidumping Duty Order on Xanthan Gum from the People’s Republic of China (A-570-985),” dated December 21, 2020 (Fufeng CDQR); “Fufeng’s Supplemental Section C & D Response in the Seventh Administrative Review of Antidumping Duty Order on Xanthan Gum from the People’s Republic of China (A-570-985),” dated March 8, 2021 (Fufeng 1st Supp CDQR); and “Fufeng 2nd Supplemental Section D Response in the Seventh Administrative Review of Antidumping Duty Order on Xanthan Gum from the People’s Republic of China (A-570-985),” dated May 21, 2021;

¹⁵ See Memoranda, “Xanthan Gum from the People’s Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information,” dated January 25, 2021 (Policy Memorandum) and “Seventh Administrative Review of the Antidumping Duty Order on Xanthan Gum from the People’s Republic of China: Extension of the Deadlines to Submit Comments on Surrogate Country Selection, Surrogate Values, and Rebuttal Comments,” dated February 4, 2021.

¹⁶ See Meihua’s Letters, “Xanthan Gum from People’s Republic of China, A-570-985; Comments on Economic Comparability,” dated February 1, 2021 (Meihua Economic Comparability); “Xanthan Gum from People’s Republic of China, A-570-985; Comments on Selection of Surrogate Country,” dated February 16, 2021; “Xanthan Gum from People’s Republic of China, A-570-985; Surrogate Value Information,” dated February 23, 2021; “Xanthan Gum from People’s Republic of China, A-570-985; Rebuttal to Petitioner’s Final Submission of Surrogate Value

III. PERIOD OF REVIEW

The POR is July 1, 2019, through June 30, 2020.

IV. EXTENSION OF THE PRELIMINARY RESULTS

On March 5, 2021, Commerce extended the deadline for the preliminary results of this review by a total of 119 days, to July 30, 2021.¹⁷

V. 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-D-Glucuronic acid-(1,2) -a-D-Mannose monosaccharide units. The terminal mannose may be pyruvylated and the internal mannose unit may be acetylated.

Merchandise covered by the scope of 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. PARTIAL RESCISSION OF ADMINISTRATIVE REVIEW

Information,” dated July 12, 2021 (Meihua Rebuttal to Petitioner’s 2nd SV Submission); *see also* Fufeng’s Letters, “Fufeng’s Comments on the List of Economically Comparable Countries: Seventh Administrative Review of the Antidumping Duty Order on Xanthan Gum from the People’s Republic of China (A-570-985),” dated February 1, 2021 (Fufeng Economic Comparability); “Fufeng’s Surrogate Country Comments: Seventh Administrative Review of the Antidumping Duty Order on Xanthan Gum from the People’s Republic of China,” dated February 16, 2021; “Fufeng’s First Surrogate Value Comments: Seventh Administrative Review of the Antidumping Duty Order on Xanthan Gum from the People’s Republic of China,” dated February 23, 2021 (Fufeng SV Submission); “Fufeng’s Final Surrogate Value Rebuttal Comments: Seventh Administrative Review of the Antidumping Duty Order on Xanthan Gum from the People’s Republic of China,” dated July 12, 2021 (Fufeng Rebuttal to Petitioner’s 2nd SV Submission); *see also* Petitioner’s Letters, “Xanthan Gum from the People’s Republic of China: Petitioner’s Surrogate Value Submission,” dated February 23, 2021 (Petitioner SV Submission); “Xanthan Gum from the People’s Republic of China: Petitioner’s Surrogate Value Submission for Meihua Group International Trading (Hong Kong) Limited,” dated March 4, 2021 (Petitioner SVs for Meihua); and “Xanthan Gum from the People’s Republic of China: Petitioner’s Surrogate Financial Ratios,” dated June 30, 2021 (Petitioner’s 2nd SV Submission).

¹⁷ *See* Memorandum, “Xanthan Gum from the People’s Republic of China: Extension of Deadline for Preliminary Results of the 2019-2020 Antidumping Duty Administrative Review,” dated March 5, 2021.

All requests for review of CP Kelco Shandong have been timely withdrawn.¹⁸ Accordingly, Commerce is rescinding this review with respect to CP Kelco Shandong. While Deosen timely withdrew its request for an AD administrative review of its own shipments,¹⁹ the petitioner did not withdraw its request for an AD administrative review of Deosen.²⁰ Therefore, we are not rescinding this review with respect to Deosen. For further details, see the accompanying *Federal Register* notice.

VII. PRELIMINARY DETERMINATION OF NO SHIPMENTS

Shanghai Smart Chemicals Co. Ltd. and Deosen Biochemical reported that they made no shipments of subject merchandise to the United States during the POR.

To confirm the no-shipment claims, we obtained information related to entries of subject merchandise from CBP.²¹ Based on the no-shipment certifications and information obtained from CBP, we preliminarily determine that Shanghai Smart Chemicals Co. Ltd. did not have any shipments of subject merchandise to the United States during the POR.²² Although Deosen Biochemical submitted a no-shipment certification, we preliminarily determine that the information on the record demonstrates that the Deosen Biochemical had shipments of subject merchandise to the United States during the POR.²³

Consistent with Commerce’s practice in non-market economy (NME) cases, we have not rescinded this review with respect to Shanghai Smart Chemicals Co. Ltd. but will continue our review of this company and issue instructions to CBP based on the final results of the review.²⁴

VIII. 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

¹⁸ See CP Kelco Shandong’s Letter, “Xanthan Gum from the People’s Republic of China: CP Kelco (Shandong) Biological Company Limited’s Withdrawal of Request for Administrative Review,” dated December 1, 2020.

¹⁹ See Deosen’s Letter, “Xanthan Gum from the People’s Republic of China, A-570-985: Withdrawal of Request for Administrative Review (Administrative Review 7/1/2019 – 6/30/2020),” dated December 2, 2020; see also the “Partial Rescission of Review” section of the accompanying *Federal Register* notice.

²⁰ See Petitioner’s Request.

²¹ See Memoranda, “Antidumping Duty Administrative Review of Xanthan Gum from the People’s Republic of China: Automated Commercial System Shipment Query,” dated September 23, 2020 (CBP Data); and Memorandum, “Xanthan Gum from China exported by Shanghai Smart Chemicals Co. Ltd. during the period 07/01/2019 through 06/30/2020,” dated April 22, 2021.

²² See Memorandum, “Xanthan Gum from China exported by Shanghai Smart Chemicals Co. Ltd. during the period 07/01/2019 through 06/30/2020,” dated April 22, 2021.

²³ See CBP Data.

²⁴ See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011); see also *Certain Activated Carbon from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review, and Preliminary Determination of No Shipments; 2019-2020*, 86 FR 33988 (June 28, 2021) (completing, rather than rescinding, a review of six for companies for which Commerce preliminarily found no shipments).

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.

On October 26, 2020, Commerce determined that it was not practicable to examine more than two respondents in the instant administrative review. In accordance with section 777A(c)(2)(B) of the Act, Commerce selected for individual examination Meihua and Fufeng, the two exporters accounting for the largest volume of xanthan gum exported from China to the United States during the POR, based on CBP data.²⁵ Although CP Kelco Shandong requested voluntary respondent treatment, it failed to respond to Commerce's questionnaire as required by section 782(a) of the Act and 19 CFR 351.204(d).²⁶ Therefore, CP Kelco Shandong was not considered as a possible voluntary respondent.

IX. APPLICATION OF FACTS AVAILABLE WITH ADVERSE INFERENCES

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

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

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, Commerce is not required to determine, or make any adjustments to, a weighted average dumping margin based on any

²⁵ See Memorandum, "Selection of Respondents for the 2019-2020 Administrative Review of the Antidumping Duty Order on Xanthan Gum from the People's Republic of China," dated October 26, 2020.

²⁶ 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, 2020.

assumptions about information an interested party would have provided if the interested party had complied with the request for information.²⁷ Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the AD investigation, a previous administrative review, or other information placed on the record.²⁸ The SAA explains that Commerce may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”²⁹ Further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.³⁰

Section 776(c) of the Act provides that, in general, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.³¹ Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.³² Further, Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding under section 776(c)(2) of the Act.

Finally, under section 776(d) of the Act, Commerce may use a dumping margin from any segment of the proceeding under the applicable antidumping order when applying an adverse inference, including the highest of such margins.³³ When selecting facts available with an adverse inference, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.³⁴

Commerce issued its questionnaire to Meihua in order to obtain information with which to calculate an accurate dumping margin.³⁵ However, Meihua knowingly reported incorrect sales information to Commerce, despite certifying to the accuracy of such information.³⁶ Specifically, Meihua provided Commerce with inaccurate data pertaining to certain adjustments needed to calculate an accurate net U.S. price and an accurate dumping margin. Additionally, Meihua withheld relevant information from Commerce about these adjustments and failed to disclose certain information regarding documentation for the reported sales (the nature of which is

²⁷ See sections 776(b)(1)(B) and 776(d)(3)(A) of the Act.

²⁸ See 19 CFR 351.308(c).

²⁹ See Statement of Administrative Action (SAA), H.R. Doc. No. 103-316, 103d Cong., 2d Session, vol. 1 (1994) at 870.

³⁰ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); and *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (CAFC 2003).

³¹ See 19 CFR 351.308(d).

³² See SAA at 870.

³³ See sections 776(d)(1)(B) and 776(d)(2)-(3) of the Act.

³⁴ See section 776(d)(3)(B) of the Act.

³⁵ See AD Questionnaire.

³⁶ See Memorandum, “Seventh Antidumping Duty Administrative Review of Xanthan Gum from the People’s Republic of China: Preliminary Application of Adverse Facts Available to Meihua,” dated concurrently with this memorandum (Meihua Preliminary AFA Memorandum) for Commerce’s full analysis, including business proprietary information.

business proprietary) which calls into question the reliability of the sales information reported by Meihua.³⁷ This information was available to Meihua at the time that it responded to Commerce's AD Questionnaire. In the AD Questionnaire, Commerce informed Meihua that "it is essential and in your interest that Commerce receive complete information early in the proceeding to ensure a thorough and accurate analysis and to provide all parties the fullest opportunity to review and comment on your submission and Commerce's analysis."³⁸ We preliminarily find that Meihua should have informed Commerce of the relevant information (which cannot be discussed in detail in this memorandum because it is business proprietary information) earlier in this review in its response to Commerce's AD questionnaire.³⁹ Meihua's failure to disclose this information regarding its reported U.S. sales prevented Commerce from properly analyzing, and prevented interested parties from fully analyzing and commenting on, Meihua's U.S. sales database. Furthermore, as noted above, Meihua's reporting failure, and certain proprietary information regarding documentation related to the reported U.S. sales, raises questions concerning the reliability of the reported sales information.

Therefore, pursuant to sections 776(a)(1) and (2)(A)-(C) of the Act, we preliminarily determine that it is appropriate to base Meihua's dumping margin on facts available because: (1) information necessary to calculate an accurate dumping margin for Meihua is not available on the record; (2) Meihua did not fully disclose information regarding the U.S. sales data that it reported and thus, in that sense, it withheld information that had been requested; (3) Meihua failed to provide information within the deadlines established, or in the form and manner requested by Commerce; and (4) Meihua significantly impeded this proceeding.

Additionally, we find that Meihua failed to act to the best of its ability to comply with a request for information because it withheld relevant information from Commerce and knowingly failed to disclose that certain reported information was inaccurate. Therefore, Commerce has preliminarily determined that an adverse inference is warranted in selecting from the facts otherwise available pursuant to section 776(b) of the Act in determining Meihua's dumping margin.⁴⁰ Because our analysis involves the discussion of business proprietary information, we have included a full discussion of our preliminary analysis in Meihua's Preliminary AFA Memorandum.

Selection of AFA Rate

Where Commerce applies AFA because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, Section 776(b) of the Act and 19 CFR 351.308(c)(1) authorizes Commerce to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record.⁴¹ In

³⁷ *Id.*

³⁸ See AD Questionnaire

³⁹ Commerce was not aware of the information at issue until June 4, 2021. See Meihua 2nd Supp CDQR; see also Petitioner's Letter, "Xanthan Gum from the People's Republic of China: Pre-Preliminary Comments," dated July 14, 2021.

⁴⁰ See, e.g., *Stainless Steel Sheet and Strip in Coils from Japan: Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 18369 (April 11, 2005), unchanged in *Stainless Steel Sheet and Strip in Coils from Japan: Final Results of Antidumping Duty Administrative Review*, 70 FR 37759 (June 30, 2005).

⁴¹ See 19 CFR 351.308(c); and SAA at 868-870.

selecting a rate for AFA, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.⁴²

In reviews, Commerce normally selects as AFA the highest rate on the record of the proceeding.⁴³ The CIT and the Court of Appeals for the Federal Circuit (CAFC) have consistently upheld Commerce's practice.⁴⁴ Commerce's practice, when selecting an AFA rate from among possible sources of information, has been to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide Commerce with complete and accurate information in a timely manner."⁴⁵ Commerce's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."⁴⁶

Consistent with the statute, court precedent, and its normal practice, Commerce has assigned, as AFA, a rate of 154.07 percent to Meihua. This is the highest rate on the record of the proceeding.⁴⁷ Pursuant to section 776(c)(2) of the Act, there is no requirement to corroborate this rate because the rate has been applied in a separate segment of this proceeding.

X. 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.⁴⁸ 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

⁴² See SAA at 870 (1994); accord *Ta Chen Stainless Steel Pipe Inc., v. United States*, 24 CIT 841, 848, 850 (CIT 2000).

⁴³ See, e.g., *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 68 FR 19504, 19507 (April 21, 2003).

⁴⁴ See *KYD, Inc. v. United States*, 607 F.3d 760, 766-67 (CAFC 2010) (KYD); *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (CAFC 1990) (*Rhone Poulenc*); *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in a less-than-fair-value investigation); *Kompass Food Trading Int'l v. United States*, 24 CIT 678, 684 (2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd. v. United States*, 360 F. Supp. 2d 1339, 1348 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

⁴⁵ See SAA at 870.

⁴⁶ *Id.*

⁴⁷ See *Xanthan Gum from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, and Preliminary Partial Rescission of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 54045 (August 15, 2016) unchanged in *Xanthan Gum from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, Final Partial Rescission; 2014-2015*, 82 FR 11434 (February 23, 2017).

⁴⁸ 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).

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.⁴⁹ 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.⁵⁰

“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 have previously determined that the Meihua group of companies should be treated as a single entity⁵¹ and that the Fufeng group of companies should be treated as a single entity.⁵² Record evidence does not indicate any changes with respect to either group of companies with respect to single entity treatment.⁵³ As such, pursuant to section 771(33)(F) of the Act and 19 CFR 351.401(f), 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 a single entity and we have continued to treat Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.), Shandong Fufeng Fermentation Co., Ltd., and Xinjiang Fufeng Biotechnologies Co., Ltd. as a single entity.

XI. DISCUSSION OF METHODOLOGY

Non-Market Economy Country

⁴⁹ 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).

⁵⁰ 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).

⁵¹ See *Xanthan Gum from the People’s Republic of China: Preliminary Results of the Antidumping Duty Administrative Review, and Partial Rescission; 2018-2019*, 85 FR 74686 (November 23, 2020), and accompanying Preliminary Decision Memorandum (PDM), unchanged in *Xanthan Gum from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2018-2019*, 86 FR 16189 (March 26, 2021), and accompanying IDM.

⁵² See *Xanthan Gum from the People’s Republic of China: Preliminary Results of the Antidumping Duty Administrative Review, and Preliminary Determination of No Shipments; 2016-2017*, 83 FR 40229 (August 14, 2018), and accompanying PDM, changed in *Xanthan Gum from the People’s Republic of China: Amended Final Results of Antidumping Duty Administrative Review; 2016-2017*, 86 FR 26905 (May 18, 2021), and accompanying IDM.

⁵³ See Meihua AQR; and Meihua Supp AQR; see also Fufeng AQR; and Fufeng Supp AQR.

Commerce considers China to be an NME country.⁵⁴ 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 using a factors of production (FOP) methodology in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rates

In all proceedings involving NME countries, 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 unless the company can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its exports.⁵⁵ 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.⁵⁶ 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*,⁵⁷ as amplified by *Silicon Carbide*.⁵⁸ 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.⁵⁹ We note that none of the companies that requested separate rate status in this administrative review are wholly foreign-owned companies.

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.⁶⁰ In

⁵⁴ 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).

⁵⁵ 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).

⁵⁶ See *Initiation Notice*, 85 FR 54983.

⁵⁷ 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*).

⁵⁸ 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*).

⁵⁹ 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).

⁶⁰ 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); 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*

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.⁶¹ 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.⁶² 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.⁶³ 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 an SRA from the entity.⁶⁴

Jianlong Biotechnology Co. Ltd. (formerly, Inner Mongolia Jianlong Biochemical Co., Ltd.) (Jianlong), Deosen, Meihua, and Fufeng submitted timely SRAs and SRCs.⁶⁵ Our analysis of their separate rate information is below.

Separate Rate Analysis

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.

⁶¹ 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).

⁶² 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.

⁶³ See *Initiation Notice*, 85 FR 54983.

⁶⁴ *Id.*

⁶⁵ See Jianlong SRA; Deosen SRA; CP Kelco Shandong SRC; Meihua SRC; and Fufeng SRC.

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

Jianlong, Deosen, Meihua, and Fufeng all reported that they are either joint ventures between Chinese and foreign companies or wholly Chinese-owned companies.⁶⁶ 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.

1) 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.⁶⁷ The evidence provided by Jianlong, Deosen, Meihua, and Fufeng supports a preliminary finding of an absence of *de jure* government control of their 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.⁶⁸

2) 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 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.⁶⁹ 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.⁷⁰ 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 them separate rates.⁷¹

⁶⁶ See Meihua SRC at 2; Meihua AQR at A-3-A-5; Deosen SRA at 11 and SRA-4; Fufeng SRC; Fufeng AQR; and Jianlong SRA at Exhibit 3.

⁶⁷ See *Sparklers*, 56 FR at 20589.

⁶⁸ See Meihua SRC at 7; Deosen SRA at 10-13; Fufeng SRC at 5; Fufeng AQR; and Jianlong SRA at 6-8.

⁶⁹ 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).

⁷⁰ See, e.g., *Silicon Carbide*, 59 FR at 22587.

⁷¹ *Id.*

Although certain of Jianlong and Deosen’s shareholders are partially or majority owned by Chinese government entities,⁷² the level of government ownership does not indicate that the government exercises, or has the potential to exercise, control over the company’s operations in general, nor is there evidence of such control with respect to the companies’ business decisions on production, development, management selection, operations, sales processes, or profit distribution. In particular, the evidence provided by Jianlong, Deosen, Meihua, and Fufeng supports a preliminary finding of the absence of *de facto* government control of their export activities based on record information indicating that these companies: (1) set their own EP independent of the government and without the approval of a government authority; (2) have the authority to negotiate and sign contracts and other agreements; (3) have autonomy from the government in making decisions regarding the selection of management; and (4) have no restrictions on their use of export revenue.⁷³ Therefore, we preliminarily find that record evidence demonstrates an absence of *de facto* government control with respect to Jianlong, Deosen, Meihua, and Fufeng’s exports of the merchandise under review.

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

3) Companies Not Receiving a Separate Rate

A.H.A. International Co., Ltd., Hebei Xinhe Biochemical Co., Ltd., Greenhealth International Co., Ltd. (Hong Kong), and Nanotech Solutions SDN BHD, failed to file an SRA in accordance with Commerce’s requirements. Hence, we preliminarily determine to treat these companies 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. Thus, the dumping margin for the China-wide entity (*i.e.*, 154.07 percent) is not subject to change in this review.

Dumping Margin for the Separate Rate Companies Not Individually Examined

The statute and Commerce’s regulations do not address the establishment of a dumping margin for companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Commerce’s practice has been to look to section 735(c)(5) of the Act for guidance regarding establishing a dumping margin for respondents which were not individually examined in an administrative review. 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

⁷² See Jianlong SRA at 9-12 and Exhibit 3; *see also* Jianlong’s Letter, “Xanthan Gum from the People’s Republic of China – Supplemental Questionnaire,” dated June 8, 2021 at 2-5 and Exhibit SQ-4A-SQ-4G); Deosen SRA at 13-14 and Exhibit SRA-4; and Deosen’s Letter, “Xanthan Gum from the People’s Republic of China: Separate Rate Application Supplemental Questionnaire Response,” dated June 10, 2021 at Exhibit SRA-19.

⁷³ See Meihua SRC at 7-8; Deosen SRA at 13-20; Fufeng SRC at 5-6; Fufeng AQR; and Jianlong SRA at 9-14.

respondents, excluding any dumping margins that are zero, *de minimis*, or based entirely on facts available. 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 to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.”

The SAA accompanying the Uruguay Round Agreements Act explains that the “expected method” under section 735(c)(5)(B) of the Act “will be to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available, provided that volume data is available.”⁷⁴ Given that Fufeng’s preliminary dumping margin is zero percent and Meihua’s preliminary dumping margin of 154.07 percent is based on total AFA, we assigned a dumping margin equal to the simple average of these two dumping margins to the non-individually examined companies to which we granted separate rate status, consistent with the guidance in section 735(c)(5)(B) of the Act.⁷⁵

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 FOPs, valued in a surrogate market economy (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 value, to the extent possible, FOPs using prices 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.⁷⁶ Further, pursuant to 19 CFR 351.408(c)(2), Commerce will normally value FOPs using prices from a single country.

Where Commerce determines that more than one country is at a level of economic development comparable to that of the NME country and a significant producer of comparable merchandise, it then examines the availability and quality of the SV data on the record from each potential surrogate country in order to select a single primary surrogate country.

On January 25, 2021, Commerce issued a memorandum (Policy Memorandum) wherein it listed six countries at the same level of economic development as China based on 2019 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, Malaysia, Mexico, Romania, Russia, and Turkey.⁷⁷ We provided interested

⁷⁴ See SAA at 883.

⁷⁵ See *Albemarle Corp. v. United States*, 821 F.3d 1345 (Fed. Cir. 2016); see also *Xanthan Gum from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 82 FR 11428 (February 23, 2017), and accompanying IDM at Comment 4.

⁷⁶ 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>.

⁷⁷ *Id.*

parties with an opportunity to comment on this list.⁷⁸ The petitioner did not comment on economic comparability, but Fufeng and Meihua each agree that Brazil, Malaysia, Mexico, Romania, Russia, and Turkey are economically comparable to China and are significant producers of merchandise comparable to xanthan gum.⁷⁹ In its comments, Fufeng noted that Commerce should not limit the surrogate country to one of the six countries identified in its memorandum.⁸⁰ 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 country 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 that are 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.⁸¹

As stated above, we determined that Brazil, Malaysia, Mexico, Romania, Russia, and Turkey are at the same level of economic development as China in terms of per capita GNI.⁸² 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.⁸³ While the legislative history indicates that

⁷⁸ See Policy Memorandum.

⁷⁹ See Meihua Economic Comparability; and Fufeng Economic Comparability.

⁸⁰ See Fufeng Economic Comparability.

⁸¹ See Policy Memorandum.

⁸² *Id.* at Exhibit 1.

⁸³ 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) (*Investigation Preliminary Determination*), 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*).

the term “significant producer” includes any country that is a significant “net exporter,”⁸⁴ 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, in the *Policy Bulletin* Commerce stated that “in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise.”⁸⁵ 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.⁸⁶ Since these characteristics are specific to the merchandise in question, the standard for “comparable merchandise” will vary from case to case.⁸⁷

A comparison of the quantities of comparable merchandise produced in each of the potential surrogate countries in relation to world production of comparable merchandise was not possible because the record does not contain production quantities of comparable merchandise from each of the potential surrogate countries. Therefore, we examined export data from the potential surrogate countries, which is one of the alternative metrics that we consider in determining whether a country is a significant producer of comparable merchandise.⁸⁸ Consistent with our practice, we first searched Global Trade Atlas (GTA) for data on exports of identical merchandise (xanthan gum) from the potential surrogate countries. We found no such data. This is consistent with interested parties’ prior explanations that xanthan gum is only produced in a limited number of countries (*i.e.*, Austria, France, the United States, and China).⁸⁹

Next, we searched GTA for data on exports from the potential surrogate countries under the HTS categories that cover merchandise that Commerce previously found to be comparable to xanthan gum, *i.e.*, l-lysine (lysine) and monosodium glutamate (MSG).⁹⁰ 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 on the record of this review, we preliminarily find that the six countries identified as being economically comparable to China are significant producers of comparable merchandise. Because there is more than one potential surrogate country at a level of economic development comparable to that of China that is a significant producer of comparable merchandise, we examined the availability and quality of

⁸⁴ See *Conference Report to the 1988 Omnibus Trade & Competitiveness Act*, H.R. Rep. No. 100-576 (1988) at 590.

⁸⁵ See *Policy Bulletin* at 1-2.

⁸⁶ *Id.*

⁸⁷ 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.

⁸⁸ 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), 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), and accompanying IDM.

⁸⁹ See, *e.g.*, *Investigation Preliminary Determination PDM* at 5.

⁹⁰ See *Investigation Final Determination IDM* at Comment 1.

the SV data on the record from each potential surrogate country to select a single primary surrogate country.

Data Availability

Commerce considers several factors when evaluating SV data, including whether SV data are publicly available, contemporaneous with the period under consideration, representative of a broad-market average, tax and duty-exclusive, and specific to the input being valued.⁹¹ There is no hierarchy among these criteria;⁹² however, Commerce's preference is to satisfy the breadth of the aforementioned selection factors,⁹³ and to value all FOPs in one surrogate country.⁹⁴

The record contains usable SV data from only one of the six countries on the list of potential surrogate countries, namely Malaysia.⁹⁵ Complete SV data from the other countries on the list (*i.e.*, Brazil, Mexico, Romania, Russia, and Turkey), are not on the record, nor has any party argued to use SV data from any of these countries to value FOPs. *See* the Preliminary Surrogate Value Memorandum.⁹⁶

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 reported FOPs, except railway freight expenses (for which there are no Malaysian SV data on the record). For details on the selected SVs, *see* the "Normal Value" section of this memorandum and the Preliminary Surrogate Value Memorandum.

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. Fufeng reported either the earlier of the shipment date or 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.⁹⁷ In the absence of record evidence to the contrary, and in accordance with 19 CFR

⁹¹ *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).

⁹² *See Policy Bulletin.*

⁹³ *Id.*

⁹⁴ *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.

⁹⁵ *See* Meihua SV Submission; Petitioner SV Submission; and Fufeng SV Submission; and Petitioner SVs for Meihua.

⁹⁶ *See* Memorandum, "Seventh Administrative Review of the Antidumping Duty Order on Xanthan Gum from the People's Republic of China: Preliminary Surrogate Value Memorandum," dated concurrently with this memorandum (Preliminary Surrogate Value Memorandum).

⁹⁷ *See* Fufeng AQR; Fufeng Supp AQR; Fufeng CDQR; and Fufeng 1st Supp CDQR.

351.401(i), and Commerce's long-standing practice in determining the date of sale,⁹⁸ 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 Fufeng's sales of subject merchandise to the United States were made at less than NV, Commerce compared EPs (or constructed export prices (CEPs)) to NV as described in the "Export Price," "Constructed 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 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.⁹⁹ 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.¹⁰⁰ Commerce finds the differential pricing analysis used in those

⁹⁸ 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).

⁹⁹ 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.

¹⁰⁰ 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).

numerous investigations and reviews is instructive for purposes of examining whether to apply an alternative comparison method in this administrative review.¹⁰¹

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.

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*

¹⁰¹ 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.

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 of review, including arguments for modifying the group definitions used in this proceeding.

Results of the Differential Pricing Analysis

We found that a total of 94 percent of Fufeng's EP and CEP sales pass the Cohen's *d* test. This confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods.¹⁰² However, 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. Accordingly, we have preliminarily used the standard method in comparing Fufeng's 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

¹⁰² See Memorandum, "Antidumping Duty Administrative Review of Xanthan Gum from the People's Republic of China: Preliminary Results Margin Calculation for Fufeng," dated concurrently with this memorandum (Preliminary Calculation Memorandum for Fufeng).

subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States,” as adjusted under section 772(c) of the Act. Because Fufeng reported sales prices which meet the above EP definition, we treated such sales as EP sales. We calculated the net price for these sales by making deductions, as appropriate, from the reported gross U.S. price for domestic and international movement expenses (*i.e.*, domestic and foreign inland freight, domestic and foreign brokerage and handling, marine insurance, and international freight) in accordance with section 772(c)(2) of the Act.¹⁰³ Where movement expenses were provided by Chinese service providers or paid for in an NME currency, we valued these services using SVs.¹⁰⁴

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).” We considered certain of Fufeng’s sales to be CEP sales, in accordance with section 772(b) of the Act, because the subject merchandise was sold by affiliates of Fufeng in the United States to unaffiliated U.S. purchasers.

Where appropriate, we made deductions from the starting price (gross unit price) for foreign, international, and U.S. movement expenses, and appropriate selling expenses, 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. We deducted the reported expense from the starting price if the expense was for a service that was provided by an ME provider and paid for in an ME currency. We deducted a surrogate expense from the starting price if the expense was for a service that was either provided by an NME vendor or paid for using an NME currency. We used an SV to value the expense.¹⁰⁵

Value-Added Tax

Commerce’s practice in NME cases is to subtract the amount of any un-refunded (irrecoverable) value-added tax (VAT) from EP or CEP, in accordance with section 772(c)(2)(B) of the Act.¹⁰⁶ Commerce has 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 by

¹⁰³ See section 772(c)(2)(A) of the Act.

¹⁰⁴ See Preliminary Surrogate Value Memoranda for details regarding the surrogate values for movement expenses.

¹⁰⁵ See Preliminary Calculation Memorandum for Fufeng.

¹⁰⁶ 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*).

the amount of the tax, duty or charge paid, but not rebated.¹⁰⁷ Where the irrecoverable VAT is a fixed percentage of CEP or EP, Commerce uses a tax-neutral dumping comparison by reducing the CEP or EP by this percentage.¹⁰⁸ 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.

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 Fufeng demonstrates that the VAT rate is 13 percent or less and the rebate rate for export sales of subject merchandise is 13 percent.¹⁰⁹ Based on this evidence, there is no irrecoverable VAT on subject merchandise. Therefore, we did not adjust Fufeng's U.S. prices for VAT.

Normal Value

Section 773(c)(1) of the Act provides that Commerce shall determine 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.¹¹⁰ Therefore, we calculated NV based on FOPs reported by Fufeng 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.¹¹¹ We used quantities/distances (as appropriate) reported by Fufeng for materials, energy, labor, by-products, packing, and freight in our NV calculations. In accordance with section 773(c) of the Act and 19 CFR 351.408(c)(1), we calculated the cost of FOPs by multiplying each of the reported per-unit FOP consumption quantities by the relevant publicly available SV.¹¹² We summed the surrogate input cost and surrogate freight cost for transporting the input to Fufeng to derive the total cost of each input used by Fufeng 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 period under consideration or closest in time

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ See Fufeng CQR at Exhibits C-8A-C8D; and Fufeng 1st Supp CDQR at Exhibits SC-14A-SC-14C.

¹¹⁰ 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).

¹¹¹ See section 773(c)(3)(A)-(D) of the Act.

¹¹² See Preliminary Surrogate Value Memorandum.

to that period, product-specific, and tax-exclusive.¹¹³ 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. As noted above, we adjusted input prices by including freight costs to make them delivered prices. An overview of the SVs that we used to calculate the weighted-average dumping margin is below. A detailed description of all of the SVs that we used to calculate the weighted-average dumping margin is in the Preliminary Surrogate Value Memorandum.

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.¹¹⁴ Thus, we based SVs for direct and packing materials on Malaysian import values.¹¹⁵

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.¹¹⁶ In this regard, Commerce has previously found that it is appropriate to disregard prices from India, Indonesia, Thailand, and the Republic of Korea (Korea) because it determined that these countries maintain broadly-available, non-industry specific export subsidies.¹¹⁷ Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, it is reasonable to infer that all exporters in India, Indonesia, Thailand, and Korea may have benefitted from subsidies. Therefore, we have not used prices from these countries to calculate Malaysian import-based SVs. Additionally, we disregarded imports from NME and "unidentified" countries when calculating Malaysian import-based per-unit SVs.¹¹⁸ We disregarded imports from "unidentified" countries because we could

¹¹³ 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).

¹¹⁴ See Preliminary Surrogate Value Memorandum.

¹¹⁵ *Id.*

¹¹⁶ 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).

¹¹⁷ See, e.g., *Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13257 (March 19, 2010), and accompanying IDM at 4-5; *Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review*, 70 FR 45692 (August 8, 2005), and accompanying IDM at 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009), and accompanying IDM at 17, 19-20; *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand*, 66 FR 50410 (October 3, 2001), and accompanying IDM at 23.

¹¹⁸ 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.

not be certain that these imports were not from either an NME country or a country with generally available export subsidies.¹¹⁹

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 selling, general, and administrative (SG&A) expense ratio.¹²⁰

Labor

In *Labor Methodologies*,¹²¹ 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.¹²² Rather, it follows the practice of selecting the best available information for valuing FOPs. Here, we valued labor using the 2018 mean monthly earnings of manufacturing employees in Malaysia from ILOSTAT, the International Labor Organization's Department of Statistics.¹²³ Because ILOSTAT labor rates are reported on a monthly basis, we converted the rates to hourly rates under the premise that there are 8 working hours per day and 24 working days per month. We inflated the labor rate to a POR rate.¹²⁴

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 Malaysia 2020*.¹²⁵

There are no Malaysian SVs for rail freight expense 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.¹²⁶ Brazil is one of the potential surrogate countries from the Policy Memorandum.

We valued international ocean freight expenses using rates from Descartes.¹²⁷

¹¹⁹ *Id.*

¹²⁰ See Preliminary Surrogate Value Memorandum

¹²¹ See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodologies*).

¹²² 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.

¹²³ See Petitioner SV Submission at Exhibit 3 and Meihua SV Submission at Exhibit SV-5.

¹²⁴ See Preliminary Surrogate Value Memorandum.

¹²⁵ See Petitioner SV Submission at Exhibit 7; Meihua SV Submission at Exhibit SV-6 and SV-9; and Fufeng SV Submission at Exhibit 1.

¹²⁶ See Petitioner SV Submission at Exhibit 8 and Meihua SV Submission at Exhibit SV-8.

¹²⁷ See Fufeng SV Submission at Exhibit 6D.

We valued marine insurance using a rate offered by RJG Consultants, which is an ME provider of marine insurance. The rate is a 2014 per dollar value of the shipment rate, which we inflated to a POR rate.¹²⁸

We calculated foreign (China) inland freight SVs using the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest port to the factory that produced the subject merchandise. This adjustment is in accordance with the CAFC's decision in *Sigma Corp.*¹²⁹

Financial Ratios

Record information for valuing financial ratios include 2020 financial statements for the following Malaysian companies: (1) Ajinomoto (Malaysia) Berhad (Ajinomoto), a large multinational producer of food seasonings,¹³⁰ and (2) Arkema Thiochemicals SDN. BHD., (Arkema), a chemical manufacturer.¹³¹ We preliminarily find Ajinomoto's financial statements to be the best available information for calculating surrogate financial ratios because they are from a company that produces comparable merchandise (*i.e.*, MSG) among its products.¹³² The record does not indicate that Arkema produces products comparable to xanthan gum.¹³³

Arkema's financial statements indicate its principal activities are "research, development and manufacturing of chemicals and related products."¹³⁴ Meihua and Fufeng provided evidence on the record indicating that the chemicals Arkema produces are not comparable to xanthan gum because Arkema's chemicals do not undergo a fermentation process as do xanthan gum and MSG.¹³⁵ Based on this evidence, and Commerce practice of valuing overhead and SG&A expenses, and profit using publicly available information gathered from producers of comparable merchandise in the surrogate country, we have preliminarily valued factory overhead, SG&A expenses, and profit using the 2020 audited financial statements of Ajinomoto, a Malaysian producer of MSG, a product comparable to subject merchandise.¹³⁶

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.

¹²⁸ See Preliminary Surrogate Value Memorandum.

¹²⁹ See *Sigma Corp. v. United States*, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997) ("*Sigma Corp.*").

¹³⁰ See Fufeng SV Submission at Exhibit 8; Meihua SV Submission at Exhibit SV-4; and Petitioner SV Submission at Exhibit 10.

¹³¹ See Petitioner 2nd SV Submission at Exhibit 1.

¹³² See Fufeng SV Submission at Exhibit 8; Meihua SV Submission at Exhibit SV-4; and Petitioner SV Submission at Exhibit 10.

¹³³ 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.

¹³⁴ See Petitioner 2nd SV Submission at Exhibit 1.

¹³⁵ See Meihua Rebuttal to Petitioner's 2nd SV Submission; and Fufeng Rebuttal to Petitioner's 2nd SV Submission.

¹³⁶ See Preliminary Surrogate Value Memorandum.

XII. RECOMMENDATION

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

☒

Agree

☐

Disagree

7/30/2021

X



Signed by: CHRISTIAN MARSH
Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance