thickness (gage 7)

The pipe subject to this investigation is currently classifiable in Harmonized Tariff Schedule of the United States (''HTSUS'') statistical reporting numbers 7306.19.1010, 7306.19.1050, 7306.19.5110, 7306.19.5150, 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, 7306.30.5090, 7306.50.1000, 7306.50.5050, and 7306.50.5070. However, the product description, and not the HTSUS classification, is dispositive of whether the merchandise imported into the United States falls within the scope of the investigation.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–811]

Circular Welded Carbon-Quality Steel Pipe From the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* June 1, 2012.

SUMMARY: The Department of Commerce (Department) preliminarily determines that circular welded carbon-quality steel pipe (certain steel pipe) from the Socialist Republic of Vietnam (Vietnam) is being, or is likely to be, sold in the United States at less-than-fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (Act). The estimated margins of sales at LTFV are shown in the ''Preliminary Determination'' section of this notice.

Pursuant to requests from interested parties, we are postponing for 60 days the final determination and extending provisional measures from a four-month period to not more than six months. Accordingly, we will make our final determination not later than 135 days after publication of the preliminary determination.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2924 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Initiation

On October 26, 2011, the Department received a petition concerning imports of certain steel pipe from Vietnam filed in proper form by Allied Tube and Conduit, JMC Steel Group, Wheatland Tube Company, and the United States Steel Corporation (petitioners).[1]

On November 15, 2011, the Department initiated an antidumping duty (AD) investigation on certain steel pipe from Vietnam.[2] Additionally, in the *Initiation Notice,* the Department notified parties of the application process by which exporters and producers may obtain separate-rate status in non-market economy (NME) investigations such as this investigation.[3]

On December 12, 2011, the United States International Trade Commission (the Commission) issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Vietnam of certain steel pipe. The Commission published its preliminary determination in the **Federal Register** on December 16, 2011.[4]

Questionnaire

On December 21, 2011, the Department issued to Vietnam Haiphong Hongyuan Machinery Manufactory Co., Ltd. (Haiphong Hongyuan) and SeAH Steel VINA Corporation (SeAH VINA) the NME AD questionnaire with product characteristics used in the designation of control numbers (CONNUMs) and assigned to the merchandise under consideration. Between January 18, 2012, and May 2, 2012, Haiphong Hongyuan and SeAH VINA submitted responses to the Department's original and supplemental sections A, C, and D questionnaires. On May 9 and 10, 2012, SeAH VINA submitted additional factor values for materials that it had previously classified as indirect rather than direct raw materials. On May 11, 2012, petitioners submitted comments on those submissions from SeAH VINA.

Period of Investigation

The period of investigation (POI) is April 1, 2011, through September 30, 2011.[5]

Scope of Investigation

The products covered by this investigation are circular welded carbon-quality steel pipe from Vietnam. For a full description of the scope of the investigation, as set forth in the *Initiation Notice* see the ''Scope of the Investigation'' in Appendix I of this notice.

Scope Comments

The Department set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of the date of signature of the Initiation Notice. *See Initiation Notice,* 76 FR at 72164. We received comments from SeAH VINA, a Vietnamese producer, on December 5, 2011, and we received rebuttal comments from petitioners Allied Tube and Conduit, JMC Steel Group, and Wheatland Tube Company on December 14, 2011. After reviewing all comments, we have adopted the ''Scope of the Investigations'' section of this notice, in Appendix I. The Department also set aside a period of time for parties to comment on product characteristics for use in the AD duty questionnaire and indicated that in order to consider such comments, they should be submitted no later than December 9, 2012. *See Initiation Notice,* 76 FR at 72164–5. On December 9, 2011, we received comments from a UAE producer named Universal Tube and Plastics Industries, Ltd. and its U.S. affiliate, Prime Metal Corporation USA.

As noted above, on December 5, 2011, SeAH VINA, a mandatory respondent in this investigation and the concurrent CVD investigations of certain steel pipe from Vietnam, filed comments arguing that the treatment of double and triple stenciled pipe in the scope of these investigations differs from previous treatment of these products under other orders on circular welded pipe. Specifically, SeAH VINA claims that the Brazilian, Korean, and Mexican orders on these products exclude ''Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind used for oil and gas pipelines * * *'' *See* SeAH VINA comments (December 5, 2011); *see also Certain Circular Welded Non-Alloy Steel Pipe from Brazil, Mexico, the Republic of Korea, and Taiwan; and Certain Circular Welded Carbon Steel*

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[1] *See* Circular Welded Carbon-Quality Steel Pipe From India, Oman, the UAE, and Vietnam: Antidumping and Countervailing Duty Petitions, filed on October 26, 2011 (the petition).

[2] *See Circular Welded Carbon-Quality Steel Pipe From India, the Sultanate of Oman, the United Arab Emirates, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations,* 76 FR 72164 November 22, 2011) (*Initiation Notice*).

[3] *See id.,* 76 FR at 72169.

[4] *See* Investigation Nos. 701–TA–482 and 731–TA–1191–1194 (Preliminary), *Circular Welded Carbon-Quality Steel Pipe From India, Oman, the United Arab Emirates, and Vietnam,* 76 FR 78313 (December 16, 2011).

[5] *See* 19 CFR 351.204(b)(1).

Pipes and Tubes From Taiwan: Final Results of the Expedited Third Sunset Reviews of the Antidumping Duty Order, 76 FR 66899, 66900 (Oct. 28, 2011). According to SeAH VINA: (i) If the term ''class or kind of merchandise'' has meaning, it cannot have a different meaning when applied to the same products in two different cases; and (ii) the distinction between standard and line pipe reflected in the Brazil, Korean and Mexican orders derives from customs classifications administered by U.S. Customs and Border Protection (CBP) and, thus, is more administrable.

On December 14, 2011, Allied Tube and Conduit, JMC Steel Group, and Wheatland Tube (collectively, Certain Petitioners), responded to SeAH VINA's comments stating that the scope as it appeared in the *Initiation Notice* reflected Petitioners' intended coverage. Certain Petitioners contend that pipe that is multi-stenciled to both line pipe and standard pipe specifications and meets the physical characteristics listed in the scope (*i.e.,* is 32 feet in length or less; is less than 2.0 inches (50mm) in outside diameter; has a galvanized and/or painted (*e.g.,* polyester coated) surface finish; or has a threaded and/or coupled end finish) is ordinarily used in standard pipe applications. Certain Petitioners state that, in recent years, the Department has rejected end-use scope classifications, preferring instead to rely on physical characteristics to define coverage, and the scope of these investigations has been written accordingly. Therefore, Certain Petitioners ask the Department to reject SeAH VINA's proposed scope modification.

We agree with Certain Petitioners that the Department seeks to define the scopes of its proceedings based on the physical characteristics of the merchandise. *See Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China,* 73 FR 31970 (June 5, 2008), and accompanying Issues and Decision Memorandum at Comment 1. Moreover, we disagree with SeAH VINA's contention that once a ''class or kind of merchandise'' has been established that the same scope description must apply across all proceedings involving the product. For example, as the Department has gained experience in administering AD duty and countervailing duty orders, it has shifted away from end use classifications to scopes defined by the physical characteristics. *Id.* Thus, proceedings initiated on a given product many years ago may have end use classifications while more recent proceedings on the product would not. *Compare, e.g., Countervailing Duty Order: Oil Country Tubular Goods from Canada,* 51 FR 21783 (June 16, 1986) (describing subject merchandise as being ''intended for use in drilling for oil and gas'') *with Certain Oil Country Tubular Goods From the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 75 FR 3203 (January 20, 2010) (describing the subject merchandise in terms of physical characteristics without regard to use or intended use). Finally, Certain Petitioners have indicated the domestic industry's intent to include multi-stenciled products that otherwise meet the physical characteristics set out in the scope. Therefore, the Department is not adopting SeAH VINA's proposed modification of the scope.

Respondent Selection

In the *Initiation Notice,* the Department stated its intent to limit the number of quantity and value (Q&V) questionnaires sent to exporters or producers to those companies identified in the petition.[6] On November 16, 2011, the Department sent Q&V questionnaires to the ten companies identified in the petition as exporters or producers of certain steel pipe from Vietnam. The Department also posted the Q&V questionnaire for this investigation on its Web site at *http://ia.ita.doc.gov/ia-highligHTSUS-and-news.html.* Of the ten companies to which the Department sent Q&V questionnaires, the Department received six Q&V responses.[7] In addition, the Department also received two unsolicited Q&V responses.[8]

Based on the responses submitted to the Department, on December 20, 2011, the Department selected Vietnam Haiphong and SeAH VINA as the only mandatory respondents for individual examination in this investigation. These two respondents account for the largest volumes of subject merchandise sold to the United States during the POI that can be reasonably examined.[9]

Surrogate Country Comments

On March 27, 2012, the Department determined that Bangladesh, India, Indonesia, Nicaragua, Pakistan, and the Philippines are countries comparable to Vietnam in terms of economic development.[10] On March 28, 2012, the Department requested comments from the interested parties regarding the selection of a surrogate country. We received comments from Haiphong Hongyuan, SeAH VINA, and petitioners on April 18, 2012. We returned petitioners' comments on April 24, 2012, because they were not properly filed, and gave petitioners an opportunity to correct the errors and resubmit them. Petitioners responded in an April 26, 2012, submission, but did not resubmit their comments.

For a detailed discussion of the selection of the surrogate country, *see* ''Surrogate Country'' and ''Surrogate Country Selection'' sections below.

Surrogate Value Comments

On April 25, 2012, petitioners, Haiphong Hongyuan and SeAH VINA submitted surrogate factor valuation comments and data. On April 30, May 2, and May 3, 2012, respectively, petitioners, Haiphong Hongyuan and SeAH VINA and submitted rebuttal comments. Petitioners submitted further comments on May 9, 2012, to which SeAH VINA responded on May 11, 2012.

Separate Rate Applications

Between February 1, 2012, and March 28, 2012, the Department received separate rate applications from three companies in addition to those from the two mandatory respondents.[11] *See* the ''Separate Rates'' section below for the full discussion of the treatment of the separate rate applicants.

Postponement of Preliminary Determination

On February 29, 2012, petitioners filed a timely request to postpone the issuance of the preliminary determination. On March 16, 2012, the Department published in the **Federal**

[6] *See Initiation Notice,* 76 FR at 72168.

[7] The Department received responses from Huu Lien Asia Corporation, Daiwa Lance International Co., Ltd., Hoa Phat Steel Pipe Co., Ltd., Hoa Sen Group, SeAH Steel VINA Corporation, and Vietnam Steel Pipe Co., Ltd.

[8] The Department received unsolicited Q&V responses from Vietnam Haiphong Hongyuan Machinery Manufactory Co., Ltd., and Sun Steel Joint Stock Co. (SUNSCO).

[9] *See* ''Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Richard Weible, Director, Office 8; Antidumping Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam: Respondent Selection,'' (Respondent Selection Memo) dated December 20, 2011.

[10] *See* ''Memorandum from Carole Showers, Director, Office of Policy, to Robert James, Program Manager, Office 7: Request for a List of Surrogate Countries for an Antidumping Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam,'' dated March 27, 2012 (Surrogate Country List).

[11] The following companies filed separate-rate applications: Haiphong Hongyuan, SeAH VINA, Huu Lien Asia Corporation, Hoa Phat Steel Pipe Co., Ltd., and SUNSCO.

Register a notice postponing the preliminary AD duty determination for this investigation of certain steel pipe from Vietnam.[12]

Non-Market-Economy Country

For purposes of initiation, petitioners treated Vietnam as an NME country.[13] The Department considers Vietnam to be an NME country. 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 Department.[14] Therefore, we continue to treat Vietnam as an NME country for purposes of this preliminary determination.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base normal value (NV), in most circumstances, on the NME producer's factors of production (FOP), valued in a surrogate market economy (ME) country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.[15] Once the Department has identified the countries that are economically comparable to Vietnam, it identifies those countries which are significant producers of comparable merchandise. From the list of countries which are both economically comparable and significant producers the Department will select a primary surrogate country based upon whether the data for valuing FOPs are both available and reliable.

Economic Comparability

As explained in our Surrogate Country List, the Department considers Bangladesh, India, Indonesia, Nicaragua, Pakistan, and the Philippines all comparable to Vietnam in terms of economic development.[16] Therefore, we consider all six countries as having satisfied this prong of the surrogate country selection criteria.[17]

Significant Producers of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the Department's regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, the Department looks to other sources such as the Policy Bulletin for guidance on defining comparable merchandise.[18] The Policy Bulletin states that ''the terms 'comparable level of economic development,' 'comparable merchandise,' and 'significant producer' are not defined in the statute.'' The Policy Bulletin further states that ''in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise.'' Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.[19] Further, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.[20] ''In cases where identical merchandise is not produced, the team must determine if other merchandise that is comparable is produced. How the team does this depends on the subject merchandise.'' [21] In this regard, the Department recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

> In other cases, however, where there are major inputs, *i.e.,* inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, e.g., processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.[22]

Further, the statute grants the Department discretion to examine various data sources for determining the best available information.[23] Moreover, while the legislative history provides that the term ''significant producer'' includes any country that is a significant ''net exporter,'' [24] it does not preclude reliance on additional or alternative metrics. To evaluate this factor we obtained export data using the Global Trade Atlas (GTA) for HTSUS numbers 7306.19, 7306.30, and 7306.50, which are comparable to the merchandise under consideration because circular welded pipe falls within these HTSUS categories. The GTA data demonstrate that all six of the countries identified in the Surrogate Country List were exporters of comparable merchandise during the POI, and thus ''significant producers'' of comparable merchandise under the legislative history. In particular, the selected surrogate country, India, had 156,174 metric tons of exports during the period of April through August, 2011.[25]

Data Availability

On April 25, 2012, petitioners Allied Tube and the JMC Group submitted surrogate value (SV) data for the Department's consideration, all of which were for Indonesia. On April 25, 2012, Haiphong Hongyuan and SeAH VINA submitted factor values for India. On April 30, 2012, petitioners submitted comments on the respondents' suggestion of India as the surrogate country. On May 2, 2012, Haiphong Hongyuan and SeAH VINA submitted comments on petitioners' April 25, 2012, submission. We received further comments from petitioners on May 9, 2012. Allied Tube and the JMC Group provided publicly available and contemporaneous Indonesian SVs with

[12] *See Circular Welded Carbon-Quality Steel Pipe From India, the Sultanate of Oman, the United Arab Emirates, and the Socialist Republic of Vietnam: Postponement of Preliminary Determination of Antidumping Duty Investigations,* 77 FR 15718 (March 16, 2012).

[13] *See* the petition, Vol. 2 at II–8; *see also Initiation Notice,* 76 FR at 72167.

[14] *See Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 30758, 30760 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 60632 (October 25, 2007).

[15] *See* Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin) available on the Department's Web site at *http://ia.ita.doc.gov/policy/index.html.*

[16] *See* Surrogate Country List.

[17] *See* section 773(c)(4)(A) of the Act.

[18] *See* Policy Bulletin.

[19] The Policy Bulletin also states that ''if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise,'' at note 6.

[20] *See Sebacic Acid from the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 62 FR 65674 (December 15, 1997) and accompanying Issues and Decision Memorandum at Comment 1 (to impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute).

[21] *See* Policy Bulletin, at 2.

[22] *See id.,* at 3.

[23] *See* section 773(c) of the Act; *Nation Ford Chem. Co.* v. *United States,* 166 F.3d 1373, 1377 (Fed. Cir. 1999).

[24] *See* Conference Report accompanying H.R. 3, the 1988 Omnibus Trade & Competitiveness Act, H. Rep. No. 100–576, at 590 (1988) (Conference Report).

[25] As of this writing, data for the final month of the POI, September 2011, were not available.

which to value the respondents' reported factors of production. They also provided the financial statements for an Indonesian producer of identical merchandise, and for an Indonesian pipe servicer. Respondents provided full SV data from India, and the financial statements of four Indian producers of identical or comparable merchandise.

When evaluating SV data, the Department considers several factors including whether the SV data are publicly available, contemporaneous with the POI, represent a broad-market average, from an approved surrogate country, tax- and duty-exclusive, and specific to the input. There is no hierarchy among these criteria. It is the Department's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.[26]

In this case, the record contains no data for Bangladesh, Nicaragua, Pakistan or the Philippines. Accordingly, these countries will not be considered for surrogate country selection purposes at this time.

Surrogate Country Selection

For this preliminary determination, the Department has selected India as the surrogate country for valuing FOPs. While we have found, as stated above, that both India and Indonesia are economically comparable to Vietnam, and that both countries are significant producers of comparable merchandise, we find that the SV data on the record for India is superior to that of the data for Indonesia. There are two reasons for this determination. First, we find the GTA data with respect to India are stronger than with respect to Indonesia. Specifically, one of the respondents imported the main input material in the making of subject merchandise, steel strip, under an HTS number that during the POI had extremely low imports into Indonesia (500 kilograms). In contrast, India imported nearly three million kilograms of that HTS number during the five months for which we currently have data (after removing NME countries and countries with non-industry-specific export subsidies). Second, we have on the record the financial statements of four Indian producers of pipe, whereas we have on the record the financial statements of only one Indonesian producer of pipe. The latter is a consolidated financial statement of a large conglomerate, and includes the financial data of subsidiary companies involved in fields far different from pipe production (*e.g,* telecommunications). Furthermore, the financial statements of the four Indian companies are more contemporaneous to our POI than is the financial statement of the Indonesian producer of pipe.

In accordance with 19 CFR 351.301(c)(3)(i), for the final determination interested parties may submit publicly available information to value the FOPs within 40 days after the date of publication of the preliminary determination.[27]

Targeted Dumping

Targeted Dumping Allegations

The statute allows the Department to employ an alternative dumping margin calculation methodology in an AD investigation under the following circumstances: (1) There is a pattern of export prices (EP) or constructed export prices (CEP) for comparable merchandise that differ significantly among purchasers, regions, or periods of time; and (2) the Department explains why such differences cannot be taken into account using the standard average-to-average or transaction-to-transaction methodology.[28]

On April 3, 2012, the Department received petitioning firm Wheatland Tube's (Wheatland's) allegations of targeted dumping by Haiphong Hongyuan and SeAH VINA using the Department's targeted dumping test as established in *Steel Nails from the UAE*[29] as clarified in *Multilayered Wood Flooring from the People's Republic of China.*[30] In its allegations, Wheatland asserted that there are patterns of U.S. sales prices for comparable merchandise that differ significantly among purchasers, time periods, and regions.

On April 11, 2012, Haiphong Hongyuan submitted comments on the allegation, arguing that Wheatland computation was flawed. In response, on April 17, 2012, Wheatland submitted a revised computation, arguing that the computation again showed there were patterns of U.S. sales prices for comparable merchandise that differ significantly among purchasers, time periods, and regions. On April 20 and May 9, 2012, Haiphong Hongyuan submitted comments on Wheatland's revised calculation, arguing that it constitutes a new allegation, and is therefore untimely, given that the deadline for the allegation was April 8, 2012. However, we regard Wheatland's April 16, 2012, submission as a revision to a timely-filed allegation, rather than a new, untimely allegation. Therefore, we have analyzed targeted dumping with respect to Haiphong Hongyuan in this preliminary determination based on Wheatland's April 16, 2012, submission. We have also analyzed targeted dumping in this investigation with respect to SeAH VINA based on petitioners' April 2, 2012, submission. On May 2 and May 11, 2012, SeAH VINA submitted comments on the targeted dumping allegation.

Targeted Dumping Test

We conducted a targeted dumping analysis for Haiphong Hongyuan and SeAH VINA by time period, customer and region using the methodology we adopted in *Steel Nails from the UAE* and most recently articulated in *Wood Flooring from the PRC.* The methodology we employed involves a two-stage test; the first stage addresses the pattern requirement and the second stage addresses the significant-difference requirement.[31] In this test, we made all price comparisons on the basis of identical merchandise (*i.e.,* by CONNUM). We based all of our targeted dumping calculations on the U.S. net price, which we determined for U.S. sales by Haiphong Hongyuan and SeAH VINA in our standard margin calculations.

Price Comparison Method

The Department preliminarily has found a pattern of prices for comparable merchandise that differs significantly by

[26] *See* Policy Bulletin.

[27] In accordance with 19 CFR 351.301(c)(1), for the final determination of this investigation, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by any other interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value information. *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum (*Glycine from the PRC*) at Comment 2.

[28] *See* section 777A(d)(1)(B) of the Act.

[29] *See Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value,* 73 FR 33985 (June 16, 2008) (*Steel Nails from the UAE*) and accompanying Issues and Decision Memorandum at Comments 1–9; *see also Proposed Methodology for Identifying and Analyzing Targeted Dumping in Antidumping Investigations; Request for Comment,* 73 FR 26371 (May 9, 2008).

[30] *Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 76 FR 64318 (October 18, 2011) (*Wood Flooring from the PRC*).

[31] *See Steel Nails from the UAE,* and accompanying Issues and Decision Memorandum at Comments 3 and 6; and *Wood Flooring from the PRC,* and accompanying Issues and Decision Memorandum at Comment 4.

time period, customer, and region (*i.e.,* targeted dumping). We determine preliminarily, however, that these price differences can be taken into account using the standard average-to-average methodology because both the standard and alternative methodologies yielded zero or *de minimis* margins for both respondents. Accordingly, for this preliminary determination we have applied the standard average-to-average methodology to all U.S. sales reported by Haiphong Hongyuan and SeAH VINA.[32]

Separate Rates

In proceedings involving NME countries, there is a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single AD rate.[33] It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.[34] However, if the Department determines that a company is wholly foreign-owned or located in a ME country, then a separate rate analysis is not necessary to determine whether that company is independent from government control.[35]

In the *Initiation Notice,* the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME investigations.[36] The process requires exporters and producers to submit a separate rate status application.[37]

Separate Rate Recipients

1. Wholly Foreign-Owned

Three separate rate applicants in this investigation (Foreign-Owned SR Applicants), provided evidence that they are wholly owned by individuals or companies located in MEs in their separate rate applications.[38] Therefore, because they are wholly foreign-owned and the Department has no evidence indicating that they are under the control of the government of Vietnam, a separate rates analysis is not necessary to determine whether these companies are independent from government control. *See Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China,* 64 FR 71104 (December 20, 1999) (determining that the respondent was wholly foreign-owned, and thus, qualified for a separate rate). Accordingly, the Department has preliminarily granted a separate rate to these Foreign-Owned SR Applicants. *See Preliminary Determination Margins* section below.

2. Wholly Vietnamese-Owned Companies

Because Hoa Phat and Huu Lien Asia (Huu Lien) have stated that they are wholly Vietnamese-owned companies, the Department must analyze whether these companies can demonstrate that they are sufficiently independent through the absence of both *de jure* and *de facto* governmental control over export activities.

a. Absence of *De Jure* Control

The evidence that Hoa Phat and Huu Lien provided supports a preliminary finding of *de jure* absence of governmental control based on the following factors articulated in *Sparklers from the PRC:* (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) the existence of applicable legislative enactments decentralizing control of Vietnamese companies; and (3) the implementation of formal measures by the government decentralizing control of Vietnamese companies, *See* Hoa Phat's February 1, 2012, submission at 2–4 and Huu Lien's March 21, 2012, submission at 4–8.

b. Absence of *De Facto* Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental 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.[39] The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

We determine that for Hoa Phat and Huu Lien the evidence on the record supports a preliminary finding of *de facto* absence of governmental control based on record statements and supporting documentation showing the following: (1) Each exporter sets its own export prices independent of the government and without the approval of a government authority; (2) each exporter retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) each exporter has the authority to negotiate and sign contracts and other agreements; and (4) each exporter has autonomy from the government regarding the selection of management. *See* Hoa Phat's February 1, 2012, submission at 4 through 10 and Huu Lien's March 21, 2012, submission at 9–17.

The evidence that Hoa Phat and Huu Lien placed on the record of this investigation demonstrates an absence of *de jure* and *de facto* government control with respect to each of the exporter's exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers from the PRC* and *Silicon Carbide from the PRC.* As a result, we have preliminarily determined that it is appropriate to grant Hoa Phat and Huu Lien a margin

[32] *See Steel Nails from the UAE,* 77 FR at 17031.

[33] *See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 55039, 55040 (September 24, 2008) (*PET Film from the PRC*).

[34] *See, e.g., Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991) (*Sparklers from the PRC*) as amplified by *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 from the PRC*), and 19 CFR 351.107(d).

[35] *See, e.g., PET Film from the PRC.*

[36] *See Initiation Notice,* 76 FR at 72169.

[37] *See* Policy Bulletin 05.1: Separate Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, (April 5, 2005), (Policy Bulletin 05.1) available at *http://ia.ita.doc.gov.* Policy Bulletin 05.1 states, at 6: ''{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise *both* exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation'' (emphasis added).

[38] Those companies were Haiphong Hongyuan, SeAH VINA, and Sun Steel Joint Stock Company.

[39] *See Silicon Carbide,* 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995).

based on the experience of the investigated companies.

Calculation of Separate Rate

Normally the separate rate is determined based on the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding *de minimis* margins or margins based entirely on adverse facts available (AFA). *See* section 735(c)(5)(A) of the Act. However, section 735(c)(5)(B) of the Act provides that ''{i}f the estimated weighted average dumping margins established for all exporters and producers individually investigated are zero or *de minimis* margins, or are determined under section 776 {*i.e.,* facts available}, the administering authority may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the weighted average dumping margins determined for the exporters and producers individually examined.'' Additionally, the Department does not consider the use of an AFA rate in such an average to be an application of an adverse inference because the statute explicitly permits such averaging. Moreover, the Court of International Trade has upheld the Department's use of AFA and *de minimis* rates to determine a rate to be applied to uninvestigated companies.[40]

Therefore, as an alternative to an average of the margins calculated for individually examined companies, we have calculated a separate rate using a simple average of the zero margins calculated for Haiphong Hongyuan and SeAH VINA, and the 27.96 percent petition rate. We preliminarily determine the rate for companies entitled to a separate rate as 9.32 percent. *See* the ''Application of Adverse Facts Available'' section, *infra.*

Companies Not Receiving a Separate Rate

In the *Initiation Notice,* the Department requested that all companies wishing to qualify for separate rate status in this investigation submit a separate rate status application. *See Initiation Notice,* 76 FR at 72169. The following three exporters submitted a timely response to the Department's Q&V questionnaire, but did not provide a separate rate application: (1) Daiwa Lance International Co., Ltd.; (2) Hoa Sen Group; (3) Vietnam Steel Pipe Co. Ltd. (a/k/a Vinapipa), and therefore have not demonstrated their eligibility for separate rate status in this investigation. As a result, the Department is treating these Vietnamese exporters as part of the Vietnam-wide entity.

Application of Adverse Facts Available, Vietnam-Wide Entity and Vietnam-Wide Rate

As stated above, we issued our request for Q&V information to ten potential Vietnamese producers/exporters of certain steel pipe. While information on the record of this investigation indicates that there are other producers/exporters of certain steel pipe in Vietnam, we received only six timely-filed solicited Q&V responses from companies to whom we sent a Q&A questionnaire. (In addition, as noted above, we also received two timely-filed, unsolicited Q&V responses, which we considered for respondent selection purposes.) Thus, although all producers/exporters were given an opportunity to provide Q&V information, not all producers/exporters did so.[41] We have treated these Vietnamese producers/exporters who did not respond to the Department's Q&V letter as part of the Vietnam-wide entity because they do not qualify for a separate rate.[42] For a detailed discussion, *see* the ''Separate Rate'' section above.

Section 776(a)(2) of the Act provides that, if an interested party: (A) Withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the AD statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available (FA) in reaching the applicable determination.

Information on the record of this investigation indicates that the Vietnam-wide entity was unresponsive to the Department's requests for information. Specifically, as discussed above, certain companies did not respond to our questionnaires requesting Q&V information. As a result, pursuant to section 776(a)(2)(A) of the Act, we find that the use of FA is appropriate to determine the Vietnam-wide rate.[43]

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information.[44] We find that, because the Vietnam-wide entity did not respond to our requests for information, it has failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the FA, an adverse inference is appropriate.

When employing an adverse inference, section 776(b) of the Act indicates that the Department may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the margin is sufficiently adverse ''as to effectuate the statutory purposes of the AFA rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' [45] As guided by the SAA, the information used as AFA should ensure an uncooperative party does not benefit by failing to cooperate than if it had cooperated fully.[46] It is the Department's practice to select, as AFA, the higher of the: (a) Highest margin alleged in the petition; or (b) the highest calculated rate of any respondent in the

[40] *See Laizhou Auto Brake Equipment Co.* v. *United States,* Court No. 06–00430, Slip Op. 08–71 (Ct. Int'l Trade, 2008) at 24–25.

[41] The following four companies were not responsive to the Department's request for Q&V information: Hyundai-Huy Hoang Pipe, Tianjin Lida Steel Pipe Group, Vietnam Germany Steel Pipe, and Vingal Industries Co., Ltd.

[42] *See, e.g., Prestressed Concrete Steel Wire Strand From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 74 FR 68232, 68236 (December 23, 2009) (*PC Strand from the PRC*) unchanged in *Prestressed Concrete Steel Wire Strand From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 75 FR 28560 (May 21, 2010); *see also Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Preliminary Partial Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China,* 70 FR 77121, 77128 (December 29, 2005), unchanged in *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 (May 22, 2006).

[43] *See PC Strand from the PRC,* 74 FR at 68236.

[44] *See also* Statement of Administrative Action accompanying the Uruguay Round Agreements Act (URAA), H.R. Doc. 103–316, 870 (1994) (SAA); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation,* 65 FR 5510, 5518 (February 4, 2000).

[45] *See Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil,* 67 FR 55792, 55796 (August 30, 2002); *see also Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909, 8932 (February 23, 1998).

[46] *See* SAA at 870.

investigation.[47] As AFA, we have preliminarily assigned a rate of 27.96 percent to the Vietnam-wide entity, the highest margin alleged in the petition, as corrected by the Department at our initiation of this investigation.[48]

Corroboration

Section 776(c) of the Act provides that, when the Department relies upon secondary information, rather than information obtained in the course of the investigation, as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning the merchandise subject to this investigation, or any previous review under section 751 concerning the merchandise subject to this investigation.'' [49] To ''corroborate'' means the Department will satisfy itself that the secondary information to be used has probative value. Independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information. The AFA rate the Department used is drawn from the petition, as adjusted to reflect Court of Appeals for the Federal Circuit's decision in *Dorbest Ltd.* v. *United States,* 604 F.3d 1363, 1372 (Fed. Cir. 2010) (*Dorbest*).[50] To corroborate the AFA margin we have selected, we compared it to model-specific margins we found for the participating mandatory respondent SeAH VINA. We found the margin of 27.96 percent has probative value because it is in the range of the SeAH VINA's model-specific margins. Accordingly, we find the rate of 27.96 percent is corroborated within the meaning of section 776(c) of the Act.[51] The Vietnam-wide entity rate applies to all entries of certain steel pipe except for entries from Haiphong Hongyuan, SeAH VINA, and the three other producers/exporters receiving a separate rate.

Date of Sale

19 CFR 351.401(i) states that, ''{i}n identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business.'' Additionally, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.[52] The Court of International Trade (the Court) has stated, ''a party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to 'satisfy' the Department that 'a different date better reflects the date on which the exporter or producer establishes the material terms of sale.' '' [53] The date of sale is generally the date on which the parties agree upon all substantive terms of the sale. This normally includes the price, quantity, delivery terms and payment terms.[54]

Both Haiphong Hongyuan and SeAH VINA reported their dates of sale based on the date their U.S. affiliates issued an invoice to the unaffiliated U.S. customer. No information on the record demonstrates that any other date better reflected the date on which the material terms of sale were established. Therefore, consistent with 19 CFR 351.401(i), the Department has preliminarily determined that the invoice date is the date that best reflects when the material terms of sale are set, and used it as the date of sale in this preliminary determination.

Fair Value Comparisons

To determine whether sales of certain steel pipe to the United States by Haiphong Hongyuan and SeAH VINA were made at LTFV, we compared CEP to NV, as described in the ''U.S. Price,'' and ''Normal Value'' sections of this notice. Specifically, we compared NV to weighted-average CEPs in accordance with section 777A (d)(1) of the Act.

U.S. Price

Both Haiphong Hongyuan and SeAH VINA reported that all of their U.S. sales during the POI were CEP in accordance with section 772(b) of the Act. We based CEP on prices to the first unaffiliated purchaser in the United States.

Where appropriate, we made deductions from the starting price (gross unit price) for foreign movement expenses, international movement expenses, and U.S. movement expenses, in accordance with section 772(c)(2)(A) of the Act. We based movement expenses on either SVs if the expense was paid to an NME company in Vietnamese dong, or actual expenses if they were paid for in a market-economy currency. *See* ''Memorandum from Fred Baker to the File, Re: Surrogate Values Used in the Preliminary Determination'' (SV Memorandum), dated concurrently with this notice for details regarding the SVs used for movement expenses.

In accordance with section 772(d)(1) of the Act, we also deducted, where appropriate, those selling expenses associated with economic activities occurring in the United States. We deducted, where appropriate, rebates, discounts, commissions, advertising expenses, credit expenses, warranty expenses, further processing, inventory carrying costs, and indirect selling expenses. In addition, pursuant to section 772(d)(3) of the Act, we made an adjustment to the starting price for CEP profit.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOP methodology because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.[55]

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

[48] *See Initiation Notice* at 76 FR 72168.

[49] *See Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate from the People's Republic of China,* 63 FR 6479, 6481 (February 4, 2008), quoting the SAA at 870.

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

[51] *Id.*

[52] *See* 19 CFR 351.401(i); *see also Allied Tube & Conduit Corp.* v. *United States,* 132 F. Supp. 2d 1087, 1090 (Ct. Int'l. Trade 2001) (quoting 19 CFR 351.401(i)) (*Allied Tube*).

[53] *See Allied Tube,* 132 F. Supp. 2d at 1090–1092.

[54] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Turkey,* 65 FR 15123 (March 21, 2000) and accompanying Issues and Decision Memorandum at Date of Sale, Comment 1.

[55] *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 (April 17, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value, and Affirmative*

Factor Valuation Methodology

In accordance with section 773(c) of the Act, we calculated NV based on FOP data Haiphong Hongyuan and SeAH VINA reported for the POI. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available SVs, except for certain inputs for which the Department determined that usage of market-economy (ME) prices was warranted, as described below. In selecting the SVs, among other criteria, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to the SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–08 (Fed. Cir. 1997).[56]

For this preliminary determination, we used Indian import statistics to calculate SVs for the mandatory respondents' FOPs (direct materials, energy inputs, and packing materials). In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, SVs which are non-export average values, most contemporaneous with the POI, product-specific, and tax-exclusive.[57]

Furthermore, with regard to the Indian import-based SVs, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, Thailand and South Korea may have been subsidized because we have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies.[58] Therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.[59] Further, guided by the legislative history, it is the Department's practice not to conduct a formal investigation to ensure that such prices are not subsidized.[60] Rather, the Department bases its decision on information that is available to it at the time it makes its determination. Additionally, consistent with our practice, we disregarded prices from NME countries and excluded imports labeled as originating from an ''unspecified'' country from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.[61] Therefore, we have not used prices from these countries either in calculating the Indian import-based SVs or in calculating ME input values.[62]

SeAH VINA reported that certain of its raw material inputs were sourced from an ME country and paid for in an ME currency. When a respondent sources inputs from an ME supplier in meaningful quantities, we use the actual price paid by the respondent for those inputs, except when prices may have been distorted by dumping or subsidies.[63] Where we found ME purchases to be of significant quantities (*i.e.,* 33 percent or more), in accordance with our statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs,*[64] we used the actual purchases of these inputs to value the inputs.

Accordingly, we valued certain of SeAH VINA's inputs using the ME prices paid for in an ME currency for the inputs where the total volume of the input purchased from all ME sources during the POR exceeded or was equal to 33 percent of the total volume of the input purchased from all sources during the period. Where ME purchases constituted less than 33 percent of the total volume of input purchased, we weight-averaged the ME purchase prices with an appropriate SV. Where appropriate, we added freight to the ME prices of inputs. For a detailed description of the actual values used for the ME inputs reported, *see* the SV Memorandum and the SeAH VINA Analysis Memo.

Previously, the Department used regression-based wages that captured the worldwide relationship between per capita GNI and hourly manufacturing wages, pursuant to 19 CFR 351.408(c)(3), to value the respondent's cost of labor. However, on May 14, 2010, the Federal Circuit in *Dorbest* invalidated 19 CFR 351.408(c)(3). As a consequence of the Federal Circuit's ruling in *Dorbest,* the Department no longer relies on the regression-based wage rate methodology described in its regulations.

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME AD proceedings.[65] In *Labor Methodologies,* the Department explained that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country.[66] Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of Labor Statistics (Yearbook).[67] The latest year for which ILO Chapter 6A reports national data for India is 2005. The Department finds the two-digit description under Division 27 (Manufacture of Basic Metals) of the ISIC-Revision 3 to be the best available information on the record because it is most specific to the industry being

Critical Circumstances, in Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006).

[56] A detailed description of all SVs used can be found in the SV Memorandum.

[57] *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).

[58] *See, e.g., Certain Cut-to-Length Carbon Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review,* 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum 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 Issues and Decision Memorandum 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 Issues and Decision Memorandum at 23.

[59] *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China,* 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 7.

[60] *See* Conference Report, at 590; *see also Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 30758 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 60632 (October 25, 2007).

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

[62] *See id.*

[63] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27366 (May 19, 1997).

[64] *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments,* 71 FR 61716, 61717 (October 19, 2006) (*Antidumping Methodologies: Market Economy Inputs*).

[65] *See Labor Methodologies.*

[66] *See Labor Methodologies,* 76 FR at 36093.

[67] *See id.*

examined, and is therefore derived from industries that produce comparable merchandise. Accordingly, relying on Chapter 6A of the Yearbook, the Department calculated the labor input using labor data reported by India to the ILO under Division 27 of ISIC-Revision 3 standard, in accordance with Section 773(c)(4) of the Act. A more detailed description of the labor rate calculation methodology is provided in the Preliminary Surrogate Value Memorandum. We find that this information constitutes the best available information on the record because it is the most contemporaneous data available for the POI and, thus, more accurately reflective of actual wages in India.

Therefore, for the preliminary determination, we calculated the labor inputs using the data for average monthly industrial wages prevailing during 2005 in India, corresponding to ''Manufacturing'' economic sector. For the preliminary determination, the calculated industry-specific wage rate is 2.16 Rs./hour. Because the Indian financial statements on the record do not itemize the indirect costs reflected in Chapter 6A data, we find that the facts and information on the record do not warrant or permit an adjustment to the surrogate financial statements.[68] A more detailed description of the wage rate calculation methodology is provided in the Surrogate Values Memorandum.

To value factory overhead, selling, general, and administrative expenses, and profit, we relied on the financial statements of Crimson Metal Engineering Company, Ltd., Rajasthan Tube Manufacturing Company, Ltd., APL Apollo Tubes Limited, and Nezone Tubes Limited, all Indian producers of identical or comparable merchandise.

For further details regarding the calculation of the surrogate financial rations, *see* the Surrogate Values Memorandum.

Currency Conversion

We 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 dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information upon which we will rely in making our final determination.

Combination Rates

In the *Initiation Notice,* the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation.[69] All separate rates the Department now assigns to exporters will be specific to those producers that supplied the exporter during the POI. This practice applies both to mandatory respondents receiving an individually-calculated separate rate, as well as the pool of non-investigated firms receiving the average of rates applied in this investigation. This practice is referred to as the application of ''combination rates,'' because such rates apply to the specific combination of exporters and their supplying producers. The cash-deposit rate assigned to an exporter will apply only to merchandise *both* exported by the firm in question and produced by a firm that supplied the exporter during the POI.

Preliminary Determination

The weighted-average dumping margins are as follows:

Exporter	Producer	Weighted-average margin (percent)
SeAH Steel VINA Corporation	SeAH Steel VINA Corporation	0.00
Vietnam Haiphong Hongyuan Machinery Manufactory Co., Ltd.	Vietnam Haiphong Hongyuan Machinery Manufactory Co., Ltd.	0.00
Sun Steel Joint Stock Company	Sun Steel Joint Stock Company	9.32
Huu Lien Asia Corporation	Huu Lien Asia Corporation	9.32
Hoa Phat Steel Pipe Co	Hoa Phat Steel Pipe Co	9.32
Vietnam-Wide Rate[70]		27.96

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct CBP to suspend liquidation of all entries of certain steel pipe from Vietnam as described in the ''Scope of Investigation'' section, entered, or withdrawn from warehouse, for consumption from Haiphong Hongyuan, SeAH VINA, the Separate-Rate Respondents, and the Vietnam-wide entity on or after the date of publication of this notice in the **Federal Register**. Additionally, we will instruct CBP to require an AD cash deposit or the posting of a bond for each entry equal to the weighted-average amount by which the NV exceeds U.S. price, as indicated above.[71]

Additionally, the Department has preliminarily determined in its concurrent countervailing duty investigation of circular welded pipe from Vietnam that subject merchandise exported by Haiphong Hongyuan benefitted from export subsidies.[72] With respect to Haiphong Hongyuan, as it currently has a weighted-average dumping margin of zero, consideration of adjusting its cash deposit rate is moot.

For SeAH VINA, we will make no adjustment to its cash deposit rate as we found no countervailable export subsidies for the company in the CVD investigation. *Id.*

For the remaining separate rate respondents not subject to individual investigation who are receiving the All Others rate in the CVD investigation, we will instruct CBP to require an antidumping duty cash deposit or posting of a bond equal to the amount by which the NV exceeds the U.S. price, as indicated above, reduced by the

[68] *See id.* at 36094.

[69] *See Initiation Notice,* 76 FR at 72169; Policy Bulletin 05.1.

[70] Vietnam-Wide entity includes: Hyundai-Huy Hoang Pipe, Tianjin Lida Steel Pipe Group, Vietnam Germany Steel Pipe, and Vingal Industries Co., Ltd.

[71] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 From India,* 69 FR 67306, 67307 (November 17, 2007).

[72] *See Circular Welded Carbon Quality Steel Pipe from the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Antidumping Duty Determination,* 77 FR 19211 (March 30, 2012).

lesser of the average export subsidy rates determined in the CVD investigation or the average of the CVD export subsidy rates applicable to the mandatory respondents upon which the separate rate dumping margins are based.[73]

For all other entries of circular welded pipe from Vietnam, the following cash deposit or bonding instructions apply: (1) The rate for the exporter/producer combinations listed in the chart above will be the rate we have determined in this preliminary determination; (2) for all Vietnam exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the Vietnam-wide rate; and (3) for all non-Vietnam exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the rate applicable to Vietnam exporter/producer combination that supplied that non-Vietnam exporter. These suspension-of-liquidation instructions will remain in effect until further notice.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On May 18, 2012, Haiphong Hongyuan requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days (135 days after publication of the preliminary determination) and extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a six-month period. Also on May 18, 2012, SeAH VINA requested that the Department postpone its final determination by 60 days. On the same day, petitioners Allied Tube and Conduit, JMC Steel Group, and Wheatland Tube also requested that the Department postpone its final determination by 60 days. In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because (1) our preliminary determination is affirmative; (2) the requesting producer/exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, we are granting this request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly. We are also granting the request to extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2) from a four-month period to a six-month period.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we will notify the Commission of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the Commission to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of certain steel pipe, or sales (or the likelihood of sales) for importation, within 45 days of our final determination.

Public Comments

Parties may submit case briefs or other written comments to the Assistant Secretary for Import Administration no later than seven days after the date on which the Department issues the final verification report in this proceeding. Parties may submit rebuttal briefs, limited to issues raised in case briefs, no later than five days after the deadline date for case briefs. *See* 19 CFR 351.309. A table of contents, list of authorities used and an executive summary of issues should accompany any briefs parties submit to the Department. Parties should limit this summary to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). The Department's electronic records system, IA ACCESS, must successfully receive in its entirety any electronically filed document by 5 p.m. Eastern Standard Time (ET) within 30 days after the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain the party's name, address, telephone number, the number of participants, and a list of the issues to be discussed. If any party requests a hearing, we will inform parties of the scheduled date of the hearing, which we will hold at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. *See* 19 CFR 351.310. Parties should confirm by telephone the date, time, and location of the hearing.

We will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: May 21, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I—Scope of the Investigation

This investigation covers welded carbon-quality steel pipes and tube, of circular cross-section, with an outside diameter (''O.D.'') not more than 16 inches (406.4 mm), regardless of wall thickness, surface finish (*e.g.,* black, galvanized, or painted), end finish (plain end, beveled end, grooved, threaded, or threaded and coupled), or industry specification (*e.g.,* American Society for Testing and Materials International (''ASTM''), proprietary, or other) generally known as standard pipe, fence pipe and tube, sprinkler pipe, and structural pipe (although subject product may also be referred to as mechanical tubing). Specifically, the term ''carbon quality'' includes products in which: (a) Iron predominates, by weight, over each of the other contained elements; (b) the carbon content is 2 percent or less, by weight; and (c) none of the elements listed below exceeds the quantity, by weight, as indicated:

(i) 1.80 percent of manganese;
(ii) 2.25 percent of silicon;
(iii) 1.00 percent of copper;
(iv) 0.50 percent of aluminum;
(v) 1.25 percent of chromium;
(vi) 0.30 percent of cobalt;
(vii) 0.40 percent of lead;
(viii) 1.25 percent of nickel;
(ix) 0.30 percent of tungsten;
(x) 0.15 percent of molybdenum;
(xi) 0.10 percent of niobium;
(xii) 0.41 percent of titanium;
(xiii) 0.15 percent of vanadium;

[73] In this case, the Department only found countervailable export subsidies of 8.06 percent applicable to Haiphong Hongyuan.

(xiv) 0.15 percent of zirconium.

Subject pipe is ordinarily made to ASTM specifications A53, A135, and A795, but can also be made to other specifications. Structural pipe is made primarily to ASTM specifications A252 and A500. Standard and structural pipe may also be produced to proprietary specifications rather than to industry specifications. Fence tubing is included in the scope regardless of certification to a specification listed in the exclusions below, and can also be made to the ASTM A513 specification. Sprinkler pipe is designed for sprinkler fire suppression systems and may be made to industry specifications such as ASTM A53 or to proprietary specifications. These products are generally made to standard O.D. and wall thickness combinations. Pipe multi-stenciled to a standard and/or structural specification and to other specifications, such as American Petroleum Institute (''API'') API–5L specification, is also covered by the scope of this investigation when it meets the physical description set forth above, and also has one or more of the following characteristics: Is 32 feet in length or less; is less than 2.0 inches (50 mm) in outside diameter; has a galvanized and/or painted (*e.g.,* polyester coated) surface finish; or has a threaded and/or coupled end finish.

The scope of this investigation does not include: (a) Pipe suitable for use in boilers, superheaters, heat exchangers, refining furnaces and feedwater heaters, whether or not cold drawn; (b) finished electrical conduit; (c) finished scaffolding; [74] (d) tube and pipe hollows for redrawing; (e) oil country tubular goods produced to API specifications; (f) line pipe produced to only API specifications; and (g) mechanical tubing, whether or not cold-drawn. However, products certified to ASTM mechanical tubing specifications are not excluded as mechanical tubing if they otherwise meet the standard sizes (*e.g.,* outside diameter and wall thickness) of standard, structural, fence and sprinkler pipe. Also, products made to the following outside diameter and wall thickness combinations, which are recognized by the industry as typical for fence tubing, would not be excluded from the scope based solely on their being certified to ASTM mechanical tubing specifications:

1.315 inch O.D. and 0.035 inch wall thickness (gage 20)
1.315 inch O.D. and 0.047 inch wall thickness (gage 18)
1.315 inch O.D. and 0.055 inch wall thickness (gage 17)
1.315 inch O.D. and 0.065 inch wall thickness (gage 16)
1.315 inch O.D. and 0.072 inch wall thickness (gage 15)
1.315 inch O.D. and 0.083 inch wall thickness (gage 14)
1.315 inch O.D. and 0.095 inch wall thickness (gage 13)
1.660 inch O.D. and 0.047 inch wall thickness (gage 18)
1.660 inch O.D. and 0.055 inch wall thickness (gage 17)
1.660 inch O.D. and 0.065 inch wall thickness (gage 16)
1.660 inch O.D. and 0.072 inch wall thickness (gage 15)
1.660 inch O.D. and 0.083 inch wall thickness (gage 14)
1.660 inch O.D. and 0.095 inch wall thickness (gage 13)
1.660 inch O.D. and 0.109 inch wall thickness (gage 12)
1.900 inch O.D. and 0.047 inch wall thickness (gage 18)
1.900 inch O.D. and 0.055 inch wall thickness (gage 17)
1.900 inch O.D. and 0.065 inch wall thickness (gage 16)
1.900 inch O.D. and 0.072 inch wall thickness (gage 15)
1.900 inch O.D. and 0.095 inch wall thickness (gage 13)
1.900 inch O.D. and 0.109 inch wall thickness (gage 12)
2.375 inch O.D. and 0.047 inch wall thickness (gage 18)
2.375 inch O.D. and 0.055 inch wall thickness (gage 17)
2.375 inch O.D. and 0.065 inch wall thickness (gage 16)
2.375 inch O.D. and 0.072 inch wall thickness (gage 15)
2.375 inch O.D. and 0.095 inch wall thickness (gage 13)
2.375 inch O.D. and 0.109 inch wall thickness (gage 12)
2.375 inch O.D. and 0.120 inch wall thickness (gage 11)
2.875 inch O.D. and 0.109 inch wall thickness (gage 12)
2.875 inch O.D. and 0.134 inch wall thickness (gage 10)
2.875 inch O.D. and 0.165 inch wall thickness (gage 8)
3.500 inch O.D. and 0.109 inch wall thickness (gage 12)
3.500 inch O.D. and 0.148 inch wall thickness (gage 9)
3.500 inch O.D. and 0.165 inch wall thickness (gage 8)
4.000 inch O.D. and 0.148 inch wall thickness (gage 9)
4.000 inch O.D. and 0.165 inch wall thickness (gage 8)
4.500 inch O.D. and 0.203 inch wall thickness (gage 7)

The pipe subject to this investigation is currently classifiable in Harmonized Tariff Schedule of the United States (''HTSUS'') statistical reporting numbers 7306.19.1010, 7306.19.1050, 7306.19.5110, 7306.19.5150, 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, 7306.30.5090, 7306.50.1000, 7306.50.5050, and 7306.50.5070. However, the product description, and not the HTSUS classification, is dispositive of whether the merchandise imported into the United States falls within the scope of the investigation.

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BILLING CODE 3510–DS–P

[74] Finished scaffolding is defined as component parts of a final, finished scaffolding that enters the United States unassembled as a ''kit.'' A ''kit'' is understood to mean a packaged combination of component parts that contain, at the time of importation, all the necessary component parts to fully assemble a final, finished scaffolding.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–852]

Circular Welded Carbon-Quality Steel Pipe From India: Preliminary Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (the Department) preliminarily determines that circular welded carbon-quality steel pipe from India is being, or is likely to be, sold in the United States at less than fair value (LTFV) as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The estimated margin of sales at LTFV is listed in the ''Suspension of Liquidation'' section of this notice. Interested parties are invited to comment on this preliminary determination.

DATES: *Effective Date:* June 1, 2012.

FOR FURTHER INFORMATION CONTACT: Steve Bezirganian and Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–1131 and (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 26, 2011, the Department received petitions concerning imports of circular welded carbon-quality steel pipe (certain steel pipe) from India, the Sultanate of Oman (Oman), the United Arab Emirates (UAE), and the Socialist Republic of Vietnam (Vietnam) filed in proper form on behalf of Allied Tube and Conduit, JMC Steel Group, Wheatland Tube Company, and United States Steel Corporation (collectively, Petitioners).[1]

On November 15, 2011, the Department initiated the antidumping duty investigations on certain steel pipe from India, Oman, the UAE, and Vietnam.[2]

We noted in the *Initiation Notice* that this investigation covers merchandise

[1] *See* Circular Welded Carbon-Quality Steel Pipe from India, Oman, the UAE, and Vietnam: Antidumping and Countervailing Duty Petitions, filed on October 26, 2011 (hereinafter, the Petitions).

[2] *See Circular Welded Carbon-Quality Steel Pipe from India, the Sultanate of Oman, the United Arab Emirates, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations,* 76 FR 72164 (November 22, 2011) (*Initiation Notice*).