promised content should be limited to five pages total, including footnotes. Case and rebuttal briefs must be submitted to the Department electronically using IA ACCESS.39

In accordance with section 774 of the Act, the Department will hold a public hearing, if timely requested, to afford interested parties an opportunity to comment on issues raised in case briefs, provided that such a hearing is requested by an interested party by electronically filing the request via IA ACCESS.40 If a timely request for a hearing is made in this investigation, we intend to hold the hearing two days after the deadline for filing a rebuttal brief. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled date.

Any interested party may request a hearing within 30 days of publication of this notice.41 Hearing requests should contain the following information: (1) The party’s name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.42

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.


Paul Piquado, Assistant Secretary for Import Administration.

[FR Doc. 2012–18900 Filed 8–1–12; 8:45 am]

BILLING CODE 3510–05–P

DEPARTMENT OF COMMERCE
International Trade Administration

[\text{A–552–814}]

Utility Scale Wind Towers 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.

SUMMARY: The Department of Commerce (“Department”) preliminarily determines that utility scale wind towers (“wind towers”) from the Socialist Republic of Vietnam (“Vietnam”) are being, or are 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 (“the Act”). The preliminary margins of dumping are shown in the “Preliminary Determination” section of this notice.

DATES: Effective Date: August 2, 2012.

FOR FURTHER INFORMATION CONTACT: Charles Riggle, Magd Zalok or LaVonne Clark, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0650, (202) 482–4162, or (202) 482–0721, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 29, 2011, the Department received a petition concerning imports of wind towers from Vietnam filed in proper form by the Wind Tower Trade Coalition (“Petitioner”).1 In January 2012, the Department issued requests for information regarding, and clarification of, certain areas of the Petition. Petitioner timely filed responses to these requests. The Department initiated an antidumping duty (“AD”) investigation of wind towers from Vietnam on January 18, 2012.2
In the *Initiation Notice*, the Department noted that Petitioner listed only two known Vietnamese exporters/ producers in the Petition: CS Wind Vietnam Co., Ltd. (“CS Wind Vietnam”) and Vina-Halla Heavy Industries Ltd. (“Vina-Halla”). Accordingly, the Department stated that it would send its AD questionnaire to these two companies. Moreover, in its Petition, Petitioner requested that the Department consider expanding the period of investigation (“POI”) to include more than two fiscal quarters, the period normally covered in an investigation involving a non-market economy (“NME”) country, because a POI of normal duration may not capture a large number of wind tower sales. Accordingly, in the *Initiation Notice*, the Department stated that it would give further consideration to the duration of the POI.

On February 16, 2012, the Department issued the AD questionnaire to CS Wind Vietnam and Vina-Halla and, in a separate questionnaire issued to both companies on the same date, requested quantity and value (“Q&V”) information to evaluate Petitioner’s claim with respect to expanding the POI. On March 1, 2012, the Department received a Q&V response from CS Wind Group. The Department did not receive a Q&V response from Vina-Halla. Based on CS Wind Group’s Q&V response, the Department concluded that the six-month POI data ensure a sufficient number of sales for its analysis.

Accordingly, pursuant to 19 CFR 351.204(b)(1), the Department determined to follow its normal practice and use the six-month POI.

In March and April 2012, CS Wind Group submitted timely responses to the Department’s AD questionnaire. The Department did not receive responses to its AD questionnaire from Vina-Halla. Petitioner submitted comments regarding those responses in April and May 2012. The Department issued supplemental questionnaires to CS Wind Group from May to July 2012. CS Wind Group submitted timely responses to the Department’s supplemental questionnaires, and Petitioner submitted comments thereon, from May through July 2012.

In the *Initiation Notice*, the Department notified parties that they had an opportunity to comment on the scope of the investigation as well as the appropriate physical characteristics of wind towers to be reported in response to the Department’s AD questionnaire. In February 2012, Petitioner and CS Wind Group submitted comments to the Department regarding the scope and the physical characteristics of merchandise under consideration to be used for reporting purposes.

On February 13, 2012, the U.S. International Trade Commission (“ITC”) preliminarily determined that there is a reasonable indication that an industry in the United States is threatened with injury by reason of imports of wind towers. On January 17, 2012, the Department identified potential surrogate countries for use in the investigation. On March 15, 2012, the Department invited interested parties to comment on surrogate country and surrogate value selection. From April through May 2012, interested parties submitted comments and rebuttal comments on the appropriate surrogate country and surrogate values.

On May 3, 2012, Petitioner made a timely request pursuant to section 733(c)(1)(A) of the Act, and 19 CFR 351.205(b)(2) and (9) for a 50-day postponement of the preliminary determination. On May 17, 2012, the Department published a notice of postponement of the due date of the preliminary AD determination. The Department concluded that it would send its AD questionnaire to those entities which had not responded to its initial questionnaire.

On June 29, 2012, Petitioner and CS Wind Group filed comments for the Department to consider in its preliminary determination.

Period of Investigation

The POI is April 1, 2011, through September 30, 2011. This period corresponds to the two most recent fiscal quarters prior to the month in which the Petition was filed, December 2011.

Scope of the Investigation

The merchandise covered by this investigation are certain wind towers, whether or not tapered, and sections thereof. Certain wind towers are designed to support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts (“kW”) and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (i.e., where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (e.g., flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with nonsubject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise. Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof.

Merchandise covered by the investigation are currently classified in the Harmonized Tariff System of the United States (“HTSUS”) under subheadings 7308.20.0020 or 7308.20.0010 when imported as a tower or tower section(s) alone.
kW are also included within the scope.”

Section 731 of the Act requires the Department to define the scope of merchandise subject to investigation in each AD investigation. If the Department initiates an investigation based upon a petition, it will continue to review the scope of the merchandise described in the petition to determine the scope of the final order.24

Generally, the Department prefers to define product coverage by the physical characteristics of the merchandise subject to investigation.25 In this proceeding, a wind tower section subject to this investigation “consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell * * *.” Consequently, to revise the scope language as proposed by Petitioner would expand product coverage beyond the physical characteristics of merchandise currently subject to this investigation to all products meeting the minimum height and power generating capacity defined in the scope, regardless of physical characteristics. Moreover, in Semiconductors, the Department did not cover future generations of semiconductors as claimed by Petitioner but, rather, covered future packaging and assembling of dynamic random access memory. What distinguishes the instant investigation from Semiconductors is that, while the Department never contemplated future generations of semiconductors, Petitioner’s admitted intention in the instant investigation is to “cover all future generations of utility scale wind towers regardless of the type of future tower.”26 This would result in an opened scope, potentially covering products whose physical characteristics differ significantly from the physical characteristics of the merchandise subject to this investigation. Therefore, for this preliminary determination, the Department has not adopted the revised scope language proposed by Petitioner.

Non-Market Economy Country

For purposes of initiation, Petitioner treated Vietnam as an NME.27 The Department considers Vietnam to be an NME.28 In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME shall remain in effect until revoked by the Department.29 Therefore, the Department continues to treat Vietnam as an NME for purposes of this preliminary determination.

Surrogate Country

Section 773(c)(1) of the Act directs the Department to base normal value (“NV”), in most cases, on the NME producer’s factors of production (“FOPs”) valued in a surrogate market economy (“ME”) country or countries considered appropriate by the Department. In accordance with section 773(c)(4) of the Act, the Department will value FOPs using “to the extent possible, the prices or costs of factors of production in one or more market economy countries that are—(A) at a level of economic development comparable to that of the nonmarket economy country, and (B) significant producers of comparable merchandise.” Further, pursuant to 19 CFR 351.408(c)(2), the Department will normally value FOPs in a single surrogate country.

In its Surrogate Country Memorandum, the Department identified Bangladesh, India, Indonesia, Nicaragua, Pakistan, and the Philippines as being equally comparable to Vietnam in terms of economic development.30 Petitioner argues that India should be selected as the surrogate country because India is a significant producer of comparable merchandise, it has a large wind energy industry, and it is the best source for quality surrogate value data and usable financial statements.31

CS Wind Group, while agreeing that India provides the most appropriate primary surrogate country to value FOPs in this investigation, contends that

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16 Wind towers may also be classified under HTSUS 8502.31.0000 when imported as part of a wind turbine (i.e., accompanying nacelles and/or rotor blades).
19 Id. at 2.
20 Id. at 2–3; Initial Antidumping Duty Investigation: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea, 57 FR at 21231 (May 19, 1992) (“Semiconductors”).
21 See Scope Comments at 1.
22 Id.
23 See Scope Comments at 1.
26 See Scope Comments at 2.
27 See Volume IV of the Petition at 9–10; see also Initiation Notice, 77 FR at 3444.
Ukraine also maintains a sizeable industry producing substantial quantities of comparable merchandise and offers reliable, quality data to value certain major inputs.\textsuperscript{32} Petitioner argued that Ukraine is not on the list of potential surrogate countries and, therefore, is not an appropriate source for surrogate values.\textsuperscript{33}

**Economic Comparability**

The Department considers all six countries listed in the Surrogate Country Memorandum as having satisfied the economic comparability prong of the surrogate country selection criteria. Unless the Department finds that all of the countries determined to be equally economically comparable are not significant producers of comparable merchandise, do not provide a reliable source of publicly available surrogate data or are unsuitable for use for other reasons, the Department will rely on data from one of these countries.\textsuperscript{34} CS Wind Group has recommended that Ukraine also be considered as a potential surrogate country. However, Ukraine is not one of the potential countries included in the Surrogate Country Memorandum, nor is the Ukrainian gross national income ("GNI") within the range of the GNI's for the countries included in the Surrogate Country Memorandum. Therefore, the Department finds that Ukraine is not as economically comparable as the countries in the Surrogate Country Memorandum, and will not be considered as a potential surrogate country.

Once the countries that are economically comparable to Vietnam have been identified, the Department determines whether each economically comparable country is a significant producer of comparable merchandise.\textsuperscript{35}

**Significant Producer of Comparable Merchandise**

Section 773(c)(4)(B) of the Act directs the Department, to the extent possible, to value FOPs in a surrogate country that is a significant producer of comparable merchandise. The record contains evidence of production of identical or comparable merchandise in India, Indonesia, Nicaragua and Pakistan. As a proxy for domestic production, export data from the United Nations Comtrade (www.comtrade.un.org) show that India, Indonesia, Nicaragua and Pakistan export towers under a Harmonized Tariff System ("HTS") category that would include merchandise under consideration.\textsuperscript{36} However, these data also indicate that Nicaragua’s and Pakistan’s exports were negligible.\textsuperscript{37} The Global Trade Atlas ("GTA") statistics further identify exports of merchandise for consideration from India of over 4,700,000 kilograms of towers classified under HTS 7308.20.19, which included the subject merchandise, during the most recent six-month period for which the GTA India data are available.\textsuperscript{38} Based on information on the record, the Department has determined that India and Indonesia are significant producers of comparable merchandise under consideration.\textsuperscript{39} After determining which potential surrogate countries are significant producers of identical or comparable merchandise, the Department then selects the primary surrogate country based upon whether data for valuing the FOPs are both available and reliable.

**Data Availability**

If more than one potential surrogate country satisfies the statutory requirements for selection as a surrogate country, the Department selects the primary surrogate country from among the potential surrogate countries based on data availability and reliability. When evaluating surrogate value data, the Department considers several factors, including whether the surrogate values are publicly available, contemporaneous with the POI, representative of a broad market average, tax and duty-exclusive, and specific to the inputs being valued.\textsuperscript{40} There is no surrogate value information on the record for Bangladesh, Indonesia, Nicaragua, Pakistan, and the Philippines. In contrast, the record contains usable Indian surrogate values for almost every FOP.\textsuperscript{41} Because India is the only country listed on the Surrogate Country Memorandum found to be both economically comparable to Vietnam, a significant producer of comparable merchandise, and for which we have reliable data to value almost every one of the FOPs, we have selected India as the primary surrogate country. Because India satisfies the Department’s criteria for the selection of a primary surrogate country, resort to an alternative surrogate country which is not as economically comparable to Vietnam as the countries in the Surrogate Country Memorandum, is not necessary.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final determination in an AD investigation, interested parties may submit publicly available information to value the FOPs within 40 days after the date of publication of the preliminary determination.\textsuperscript{42}

**Single Entity Treatment**

To the extent that the Department’s practice does not conflict with section 773(c) of the Act, the Department will collapse two or more affiliated entities in a proceeding involving an NME country if the facts of the case warrant such treatment.\textsuperscript{43} Pursuant to 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 Recession, in Part, 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2. Additionally, for each piece of factual information submitted with surrogate value rebuttal comments, the interested party must provide a written explanation of what information that is already on the record of the ongoing proceeding the factual information is rebutting, clarifying, or correcting.

\textsuperscript{32} See Letter from CS Wind Group to the Department, regarding “CS Wind Group’s Surrogate Country Comments: Antidumping Duty Investigation on Utility Scale Wind Towers from the Socialist Republic of Vietnam” (April 25, 2012).

\textsuperscript{33} See Letter from Petitioner to the Department, regarding “Utility Scale Wind Towers from the Socialist Republic of Vietnam: Submission of Additional Comments in Connection with the Department of Commerce’s Surrogate Country Selection” (May 23, 2012).


\textsuperscript{35} See Steel Wheels from PRC Preliminary Determination, 76 FR at 67078-09, unchaged in Steel Wheels from PRC Final Determination.

\textsuperscript{36} See Petitioner’s April 25, 2012, submission at Exhibit 1.

\textsuperscript{37} See id.

\textsuperscript{38} See CS Wind Group’s April 25, 2012, submission at Exhibit 2.


\textsuperscript{40} See CS Wind Group’s April 25, 2012, letter at 2-7.

\textsuperscript{41} 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 Recession, in Part, 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2. Additionally, for each piece of factual information submitted with surrogate value rebuttal comments, the interested party must provide a written explanation of what information that is already on the record of the ongoing proceeding the factual information is rebutting, clarifying, or correcting.

\textsuperscript{42} See, e.g., Certain Steel Nails From the People’s Republic of China: Preliminary Determination of Continued
351.401(f)(1), the Department will treat producers as a single entity, or "collapse" them, where: (1) Those producers are affiliated; (2) the producers have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and (3) there is a significant potential for manipulation of price or production. In determining whether a significant potential for manipulation exists, 19 CFR 351.401(f)(2) states that the Department may consider various factors, including: (1) The level of common ownership; (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (3) whether the operations of the affiliated firms are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

Section 771(33) of the Act identifies persons that shall be considered "affiliated" or "affiliated persons," including, inter alia, (1) any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization; or (2) two or more persons directly or indirectly controlling, controlled by, under common control with, any person. Section 771(33) of the Act further states 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.

The Department has preliminarily determined that CS Wind Vietnam and CS Wind Corporation, the Korean parent company of CS Wind Vietnam, are affiliated pursuant to sections 771(33)(E) and (F) of the Act and that these companies should be treated as a single entity for AD purposes. In summary, the Department has preliminarily determined that CS Wind Vietnam and CS Wind Corporation meet the statutory definition of "affiliated persons" under sections 771(33)(E) and (F) of the Act. Furthermore, the Department has preliminarily found a significant potential for manipulation of production and sales decisions between CS Wind Corporation and CS Wind Vietnam. Accordingly, the Department has determined it appropriate to treat CS Wind Corporation and CS Wind Vietnam as a single entity in this proceeding.

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single weighted-average dumping margin. It is the Department's policy to assign all exporters of merchandise under investigation that are 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. The Department analyzes whether each entity exporting the subject merchandise is sufficiently independent under a test arising from Sparklers, further developed in Silicon Carbide. In accordance with the separate rates criteria, the Department assigns separate rates in NME cases if respondents can demonstrate the absence of both de jure and de facto governmental control over their export activities. If, however, the Department 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.

CS Wind Group, the respondent in this investigation, provided information indicating that it is a wholly-owned foreign enterprise. Accordingly, a separate rate analysis is not necessary for this company.

Companies not Receiving a Separate Rate

The Department has not granted a separate rate to Vina-Halla because the company failed to submit a timely response to the Department's questionnaires which requested information regarding separate rate eligibility. As indicated above, CS Wind Vietnam and Vina-Halla are the only producers/exporters identified in the Petition. The Department stated in the Initiation Notice that it would request information regarding separate rate eligibility in the questionnaire being sent to the two known exporters/producers identified in the Petition (i.e., CS Wind Vietnam and Vina-Halla).

The Vietnam-Wide Entity

As noted above, Vina-Halla did not respond to the Department's questionnaires. Since Vina-Halla has not demonstrated that it is eligible for separate rate status, it is part of the Vietnam-wide entity. Thus, the record indicates that the Vietnam-wide entity withheld information requested by the Department.

Application of Facts Available and Adverse Facts Available

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 in reaching the applicable determination. As discussed above, Vina-Halla did not respond to the Department's questionnaires, failed to establish its eligibility for a separate rate and, thus, the Department preliminarily finds that Vina-Halla is a part of the Vietnam-wide entity. Therefore, we find that the Vietnam-wide entity withheld information requested by the Department, failed to provide information in a timely manner, and significantly impeded the proceeding by not submitting the requested information. The Vietnam-wide entity did not file documents indicating that it was having difficulty providing the requested information nor did it request that it be allowed to submit the


See sections 771(33)(E)–(F) of the Act.

See Single Entity Memorandum.

See Id.

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 PRC Final Determination").


See Sparklers, 56 FR at 20588.

See Silicon Carbide, 59 FR at 22585.

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).


information in an alternate form. As a result, pursuant to sections 776(a)(2)(A)-(C) of the Act, we find that the use of facts otherwise available is appropriate to determine the rate for the Vietnam-wide entity.54

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an inference that is adverse to a party if the party failed to cooperate by not acting to the best of its ability to comply with requests for information.55

The Department finds that the Vietnam-wide entity has failed to cooperate to the best of its ability to comply with the Department's requests for information and, therefore, the Department has employed an adverse inference that a failure to cooperate exist.56

When employing an adverse inference, section 776(b) of the Act states 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. In selecting a rate based on adverse facts available ("AFA"), the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.57 It is the Department’s practice to select, as an AFA rate, the higher of the: (a) Highest dumping margin alleged in the petition, or (b) highest calculated dumping margin of any respondent in the investigation.58

The dumping margins alleged in the Petition are 140.54 percent and 143.29 percent.59 Either of these rates is higher than the calculated rate for CS Wind Group. Thus, as AFA, the Department’s practice would be to assign the rate of 143.29 percent to the Vietnam-wide entity.56

Corroboration of Information

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corrobore 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 merchandise subject to this investigation, or any previous review under section 751 concerning the merchandise subject to this investigation.”60 To “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value.61

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.62 To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.63

In order to determine the probative value of the dumping margins in the Petition for use as AFA for purposes of this preliminary determination, we examined information on the record and found that we were unable to corroborate either of the dumping margins contained in the Petition. Therefore, for the preliminary determination, we have assigned the Vietnam-wide entity the rate of 59.91 percent, the highest transaction-specific dumping margin for the mandatory respondent, CS Wind Group.64 No corroboration of this rate is necessary because we are relying on information obtained in the course of this investigation, rather than secondary information from the Petition.65

Date of Sale

Pursuant to 19 CFR 351.401(i), “in identifying the date of sale of the subject merchandise 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 normal course of business.” 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.66

Sales during the POI were made pursuant to long-term contracts, and/or purchase orders. Petitioner maintains that CS Wind Group’s date of sale involving one of its customers should be based on the purchase order date because: (1) Once production begins (i.e., at the production release date) upon request, the material terms appear to be fixed, pursuant to a long-term agreement, and are reflected in the purchase order; (2) certain terms under the contract make it unlikely that changes are made after the purchase order date; and (3) CS Wind Group has


57 See SAA at 870.


59 See, e.g., Carbon and Alloy Steel Wire Rod From Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review, 72 FR 62824 (November 7, 2007), and accompanying Issues and Decision Memorandum at Comment 1. Notice of Determinations 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.
In Allied Tube & Conduit Corp. v. United States, the U.S. Court of International Trade noted that 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.’” After examining the record, the Department has determined that there is insufficient evidence demonstrating that a date other than the commercial invoice date better reflects that date on which the material terms of sale were established.

**Fair Value Comparisons**

In accordance with section 777A(d)(1) of the Act, to determine whether CS Wind Group sold merchandise under consideration to the United States at LTFF during the POI, we compared the weighted-average price of U.S. sales of subject merchandise to the weighted-average NEV, as described in the U.S. Price and “Normal Value” sections of this notice.

**U.S. Price**

The Department considered the prices of U.S. sales reported by CS Wind Group to be export prices (“EP”) in accordance with section 772(a) of the Act, because these are the prices at which the subject merchandise was first sold before the date of importation by the exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. We calculated the EP based on the packed prices at which merchandise under consideration was sold for exportation to the United States. We made deductions from U.S. price for movement expenses (i.e., foreign inland freight from the plant to the port of exportation and domestic brokerage), in accordance with section 772(c)(2)(A) of the Act. Where foreign inland freight or foreign brokerage and handling fees were provided by Vietnamese service providers or paid for in Dong, we based those charges on surrogate value rates.

Where applicable, we also adjusted the U.S. price by the value of certain materials provided free of charge.

**Normal Value**

Section 773(c)(1) of the Act provides that the Department shall determine NV using an 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 FOPs 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. Thus, we calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.406(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.

CS Wind Group reported FOP offsets for steel and aluminum scrap. However, because the net total weight of the material inputs and the scrap offsets is less than the total weight of the finished product (exclusive of lifting and transport equipment), we have disallowed CS Wind Group’s scrap offsets for purposes of the preliminary determination.

**Factor Valuation Methodology**

In accordance with section 773(c) of the Act, we calculated NV based on FOP

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68 Id. at 23–25.
69 Id. at 25–27.
71 See CS Wind Group’s May 7, 2012, Supplemental Response at Exhibits S1–1 through S1–3; CS Wind Group’s June 6, 2012, Supplemental Response at 1–2; and Exhibits SS–1 through SS–5; and CS Wind Group’s June 12, 2012, Supplemental Response at 3–11, and Exhibits SS–1 through SS–10.
73 See Allied Tube & Conduit Corp. v. United States, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).
74 See Memorandum from Magd Zalok, International Trade Compliance Analyst, to the File, regarding “Preliminary Determination on CS Wind Group’s Date of Sale” (May 17, 2012).
75 In this preliminary determination, the Department applied the weighted-average dumping margin calculation method adopted in Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification, 77 FR 8101 (February 14, 2012). In particular, the Department compared monthly weighted-average export prices with monthly weighted-average normal values and granted offsets for non-dumped comparisons in the calculation of the weighted average dumping margin.
76 See “Factor Valuation Methodology” section below for further discussion of surrogate value rates.
78 See section 773(c)(3)(A)–(D) of the Act.
79 See Memorandum from Magd Zalok and LaVonne Clark to the File, regarding “Analysis for the Preliminary Determination of Utility Scale Wind Towers from the Socialist Republic of Vietnam: CS Wind Group” (July 26, 2012) (“Analysis Memorandum”) at Attachment V for the Department’s comparison of the net total weight of the material inputs and the scrap offsets to the total weight of the finished product.
data reported by CS Wind Group for the POI. To calculate NV, we multiplied the reported per-unit factor consumption rates by publicly available surrogate values (except as discussed below). In selecting the surrogate values, we considered, among other factors, 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 a surrogate freight cost to surrogate input values using the shorter of the reported distance from the domestic supplier to the respondent’s factory or the distance from the nearest seaport to the respondent’s 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). A detailed description of all surrogate values used for CS Wind Group can be found in the surrogate values memorandum.

For a preliminary determination, except as noted below, we used Indian import data, as reported by the Indian Customs Department and published by GTA, and other publicly available sources from India in order to calculate surrogate values for CS Wind Group’s FOPs (e.g., direct materials, packing materials) and certain movement expenses. 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, surrogate values which are non-export avocational with, or closest in time to, the POI, product-specific, and tax-exclusive. The record shows that Indian import data obtained through GTA, as well as data used from other Indian sources are product-specific, tax-exclusive, and generally contemporaneous with the POI. In those instances where we could not obtain publicly available information contemporaneous with the POI with which to value FOPs, we adjusted the surrogate values using, where appropriate, the Indian Producer Price Index (“PPI”) or, for the purposes of valuing labor, the Consumer Price Index (“CPI”), as published in the International Financial Statistics by the International Monetary Fund (“IMF”).

In calculating Indian import-based per-unit surrogate values, we have disregarded import prices that we have reason to believe or suspect may be subsidized. 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. Rather, the Department bases its decision on information that is available to it at the time it makes its determination. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. The Department has found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports from these countries to all markets may be subsidized.

Therefore, we have not used prices from these countries in calculating India’s import-based surrogate values.

Additionally, in calculating India’s import-based per-unit surrogate values, we disregarded prices from NME countries. Finally, we excluded from our calculation of India’s import-based per-unit surrogate values imports that were labeled as originating from an “unspecified” country because the Department could not be certain that they were not from either an NME country or a country with general export subsidies. Detailed calculations are provided in the Surrogate Values Memo. Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities (i.e., not insignificant quantities) and pays in an ME currency, the Department uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted by findings of dumping in Vietnam and/or subsidies. Where the Department finds ME purchases to be of significant quantities (i.e., 33 percent or more), in accordance with its statement of policy as outlined in Antidumping Methodologies: Market Economy Inputs, the Department uses the actual purchase prices to value the inputs. Information reported by CS Wind Group demonstrates that an input was sourced from an ME country and paid for in ME currencies. The information reported by CS Wind Group also demonstrates that such an input was purchased in significant quantities (i.e., 33 percent or more) from ME suppliers; hence, the Department used CS Wind Group’s actual ME purchase prices to value this input. Where appropriate, freight expenses were added to the ME price of the input. For certain other inputs claimed by CS Wind Group as ME purchases, the Department has preliminarily determined not to use such prices because they have been distorted by subsidization.

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME AD proceedings.
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. 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). The latest year for which ILO Chapter 6A reports national data for India is 2005.

The Department found the two-digit description under Division 28 (Manufacture of Fabricated Metal Products, except Machinery and Equipment) of the ISIC-Revision 3 to be the best available information on the record because it is most specific to the industry being 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 28 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 Surrogate Values Memo. 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 the average monthly industrial labor rate prevailing during 2005 in India, corresponding to “Manufacturing” economic sector, adjusted to current price levels using the Indian CPI. For the preliminary determination, the calculated industry-specific labor rate is 60.81 rupees (“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. A more detailed description of the labor rate calculation methodology is provided in the Surrogate Values Memo.

We valued electricity using data published by India’s Central Electricity Authority. The average cost was 3.80 Rs./kWh in 2008. We selected these data because they were representative of broad market average prices, publicly available, and tax-exclusive. Because the rates listed in this source became effective on a variety of different dates, we did not adjust it for inflation. We valued oxygen and argon using data from Bhoruka Gas Limited. Because prices are not contemporaneous with the POI, we inflated such prices using the PPI rate for India, as published in the International Financial Statistics by the IMF.

We valued truck freight using data from a Web site www.infobanc.com/logistics/logtruck.htm. We did not inflate the value for truck freight since it is contemporaneous with the POI. We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in India. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in India that is published in Doing Business 2010: India, published by the World Bank. The price is for 2009. We inflated the value for brokerage and handling using the PPI rate for India.

To value factory overhead, selling, general, and administrative expenses, and profit, we used the financial statements of ISGEC Heavy Engineering Ltd., a producer of comparable merchandise. These financial statements cover the fiscal year ending in September 2011 and, therefore, are contemporaneous.

Currency Conversion
Where necessary, 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 submitted by CS Wind Group.

Combination Rates
In the Initiation Notice, the Department stated that it would calculate combination rates for the respondents that are eligible for a separate rate in this investigation. This practice is described in Policy Bulletin 05.1.

Preliminary Determination
The weighted-average dumping margins are as follows:

<table>
<thead>
<tr>
<th>Exporter</th>
<th>Producer</th>
<th>Weighted-average margin (percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>The CS Wind Group**</td>
<td>The CS Wind Group</td>
<td>52.67</td>
</tr>
<tr>
<td>Vietnam-Wide Entity</td>
<td></td>
<td>59.91</td>
</tr>
</tbody>
</table>

** The CS Wind Group consists of CS Wind Vietnam Co., Ltd. and CS Wind Corporation.

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

Suspension of Liquidation
In accordance with section 733(d) of the Act, the Department will instruct U.S. Customs and Border Protection (“CBP”) to suspend liquidation of all entries of wind towers from Vietnam, as described in the “Scope of the Investigation” section, entered or withdrawn from warehouse for consumption on or after the date of publication of this notice in the Federal Register.

The Department will instruct CBP to require a cash deposit equal to the...
This notice is issued in accordance with section 733(f) of the Act, which requires the ITC 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 wind towers from Vietnam, or sales (or the likelihood of sales) for importation, of the merchandise under consideration which have not received their own rate, the rate will be the rate applicable to the Vietnamese exporter/producer combination that supplied that non-Vietnamese exporter.

**International Trade Commission Notification**

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. Section 733(f)(2) of the Act requires the ITC 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 wind tower from Vietnam, or sales (or the likelihood of sales) for importation, of the merchandise under consideration within 45 days of our final determination.

**Public Comment**

Case briefs or other written comments may be submitted to the Department no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline for case briefs. A table of contents, list of authorities used, and an executive summary of issues should accompany any briefs submitted to the Department. The executive summary should be limited 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”). An electronically filed document must be received successfully in its entirety by the Department’s electronic records system, IA ACCESS, by 5 p.m. Eastern Standard Time, within 30 days after the date of publication of this notice. Requests should contain the party’s name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we intend to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

**Postponement of Final Determination and Extension of Provisional Measures**

Pursuant to section 735(a)(2) of the Act, on June 8, 2012, we received a request from CS Wind Group that the Department postpone its final determination by 60 days. Additionally, consistent with 19 CFR 351.210(e)(2), CS Wind Group requested that the Department extend the application of the provisional measures from a four-month period to a six-month period. In accordance with section 735(a) of the Act and 19 CFR 351.210(h), we are granting these requests and are postponing the final determination until no later than 135 days after the publication of this notice in the Federal Register because: (1) Our preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the merchandise under consideration; and (3) no compelling reasons for denial exist. Suspension of liquidation will be extended accordingly. We are further extending the application of the provisional measures from a four-month period to a six-month period.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act. Dated: July 26, 2012.

Paul Piquado, Assistant Secretary for Import Administration.

**BILLING CODE 3510–OS–P**

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105 See 19 CFR 351.309(c)(1)(i) and (d).

106 See 19 CFR 351.310(c).