



**UNITED STATES DEPARTMENT OF COMMERCE**  
**International Trade Administration**  
Washington, D.C. 20230

A-552-816  
Investigation  
**Public Document**  
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DATE: December 30, 2013

MEMORANDUM TO: Christian Marsh  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

FROM: Abdelali Elouaradia  
Director, Office IV  
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Determination of the  
Antidumping Duty Investigation: Welded Stainless Pressure Pipe  
from the Socialist Republic of Vietnam

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## SUMMARY

The Department of Commerce (“Department”) preliminarily determines that welded stainless pressure pipe (“WSPP”) 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 (“the Act”). The period of investigation (“POI”) is October 1, 2012, through March 31, 2013.

## BACKGROUND

### Initiation

On May 16, 2013, the Department received an antidumping (“AD”) petition concerning imports of WSPP from Vietnam filed in proper form by Bristol Metals, LLC, Felker Brothers Corp., and Outokumpu Stainless Pipe, Inc. (collectively, “Petitioners”). In May 2013, the Department requested information regarding, and clarification of, certain areas of the petition. Petitioners filed timely responses to these requests. The Department initiated an AD investigation of WSPP from Vietnam on June 12, 2013.<sup>1</sup>

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<sup>1</sup> See *Welded Stainless Pressure Pipe From Malaysia, Thailand, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations*, 78 FR 35253 (June 12, 2013) (“Initiation Notice”).



Since the petition only named Sonha International Corporation (“Sonha”) as the only known producer and/or exporter, and we knew of no additional exporters or producers of subject merchandise from Vietnam, we identified Sonha as the sole mandatory respondent. On July 26, 2013, the U.S. International Trade Commission (“ITC”) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of WSPP from Vietnam.<sup>2</sup>

### **Postponement of Preliminary Determination**

On September 19, 2013, and as amended on September 24, 2013, Petitioners made a timely request, pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), for a 50-day postponement of the preliminary determination. On October 22, 2013, the Department fully extended the deadline for issuing the preliminary determination by 50 days.<sup>3</sup>

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.<sup>4</sup> Therefore, all deadlines in this segment of the proceeding have been extended by 16 days. If the new deadline falls on a non-business day, in accordance with the Department’s practice, the deadline will become the next business day. Accordingly, the revised deadline for the preliminary determination of this investigation is now December 30, 2013.<sup>5</sup>

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

Pursuant to section 735(a)(2) of the Act, on November 14, 2013, the mandatory respondent, Sonha International Corporation (“Sonha”), requested that the Department postpone the final determination and extend provisional measures. In accordance with section 733(d) of the Act and 19 CFR 351.210(e), because (1) our preliminary determination is affirmative, (2) the requesting respondent Sonha accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the request and are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the *Federal Register*, and we are extending provisional measures from four months to a period not to exceed six months. Suspension of liquidation will be extended accordingly.

## **SCOPE OF THE INVESTIGATION**

The merchandise covered by this investigation is circular welded austenitic stainless pressure pipe not greater than 14 inches in outside diameter. For purposes of this investigation, references

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<sup>2</sup> See *Welded Stainless Steel Pressure Pipe From Malaysia, Thailand, and Vietnam*, 78 FR 45271 (July 26, 2013).

<sup>3</sup> See *Welded Stainless Pressure Pipe From Malaysia, Thailand, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 78 FR 62583 (October 22, 2013).

<sup>4</sup> See Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, “Deadlines Affected by the Shutdown of the Federal Government,” dated October 18, 2013.

<sup>5</sup> The deadline of December 28, 2013, falls on a Saturday; therefore, the deadline is the next business day, *i.e.* December 30, 2013.

to size are in nominal inches and include all products within tolerances allowed by pipe specifications. This merchandise includes, but is not limited to, the American Society for Testing and Materials (“ASTM”) A–312 or ASTM A–778 specifications, or comparable domestic or foreign specifications. ASTM A–358 products are only included when they are produced to meet ASTM A–312 or ASTM A–778 specifications, or comparable domestic or foreign specifications.

Excluded from the scope are: (1) welded stainless mechanical tubing, meeting ASTM A–554 or comparable domestic or foreign specifications; (2) boiler, heat exchanger, superheater, refining furnace, feedwater heater, and condenser tubing, meeting ASTM A–249, ASTM A–688 or comparable domestic or foreign specifications; and (3) specialized tubing, meeting ASTM A269, ASTM A–270 or comparable domestic or foreign specifications.

The subject imports are normally classified in subheadings 7306.40.5005, 7306.40.5040, 7306.40.5062, 7306.40.5064, and 7306.40.5085 of the Harmonized Tariff Schedule of the United States (HTSUS). They may also enter under HTSUS subheadings 7306.40.1010, 7306.40.1015, 7306.40.5042, 7306.40.5044, 7306.40.5080, and 7306.40.5090. The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of these investigations is dispositive.

### **Scope Comments**

In accordance with the preamble to the Department’s regulations,<sup>6</sup> in our *Initiation Notice* we 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 publication of the *Initiation Notice*. No interested party submitted comments.

### **NON-MARKET ECONOMY COUNTRY**

The Department considers Vietnam to be a non-market economy (“NME”) country.<sup>7</sup> In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Therefore, we continue to treat 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 (“FOPs”), valued in a surrogate market economy (“ME”) country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4)

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<sup>6</sup> See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

<sup>7</sup> See *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Results of the Eighth Antidumping Duty Administrative Review and Ninth New Shipper Reviews, Partial Rescission of Review, and Intent to Revoke*, 77 FR 56180, 56181 (September 12, 2012), unchanged in *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2010-2011*, 78 FR 17350 (March 21, 2013).

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.<sup>8</sup>

Both Petitioners and Sonha stated that the Department should select India as the surrogate country in this investigation. Petitioners stated while both India and Pakistan are the two countries that are closest to Vietnam in terms of economic comparability, India is the most appropriate surrogate country because it is also a significant producer of comparable merchandise (*i.e.*, welded stainless pressure pipe), and contains readily available surrogate value (“SV”) data.<sup>9</sup> Sonha stated that India is economically comparable to Vietnam, is a significant producer of comparable merchandise (*i.e.*, welded stainless steel pipe), and offers the best quality SV data sources.<sup>10</sup> For the reasons detailed below, we agree and have selected India as the surrogate country.

### **Economic Comparability**

As explained in its Surrogate Country List,<sup>11</sup> the Department considers Bangladesh, Pakistan, Nicaragua, India, Bolivia, and the Philippines all equally comparable to Vietnam in terms of economic development.<sup>12</sup> Therefore, we consider all six countries identified in the Surrogate Country List as having met this prong of the surrogate country selection criteria.

### **Significant Producers of Identical or 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. As a proxy for domestic production, export data from the Global Trade Atlas (“GTA”) statistics identify exports of merchandise under consideration from India as 13,128,016 kilograms of stainless steel pipes, tubes and hollow profiles which are classified under HTS 7306.40 and include the merchandise under consideration, during the POI.<sup>13</sup> GTA data further indicate that during the POI, the quantity of stainless steel pipes, tubes and hollow profiles classified under HTS 7306.40 and exported by the Philippines was 9,442,152 kilograms.<sup>14</sup> Additionally, export data from the United Nations Comtrade ([www.comtrade.un.org](http://www.comtrade.un.org)) show that during the POI, exports from Nicaragua under HTS 7306.40 were insignificant, and Bangladesh, Bolivia and Pakistan had no exports under this HTS classification.<sup>15</sup> Based on information on the record, the Department has

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<sup>8</sup> See *Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process* (March 1, 2004) (“*Policy Bulletin*”).

<sup>9</sup> See Petitioners’ August 15, 2013, submission at 2-4.

<sup>10</sup> See Sonha’s August 15, 2013, submission at 2-7.

<sup>11</sup> See Letter from Robert Bolling to all Interested Parties, “Welded Stainless Pressure Pipe from the Socialist Republic of Vietnam, Investigation: Request for Surrogate Country and Surrogate Values Information,” dated August 1, 2013, at Attachment I, which contains the Memorandum to Robert Bolling from Carole Showers, “Request for a List of Surrogate Countries for an Antidumping Duty Investigation of Welded Stainless Pressure Pipe (“WSPP”) from the Socialist Republic of Vietnam,” dated July 29, 2013 (“Surrogate Country List”).

<sup>12</sup> See Surrogate Country List.

<sup>13</sup> See Sonha’s August 15, 2013, submission at Exhibit 1.

<sup>14</sup> See *id.*

<sup>15</sup> See *id.*

determined that India and the Philippines are significant producers of comparable merchandise under consideration. After determining which potential surrogate countries are significant producers of 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 SV data, the Department considers several factors, including whether the SVs are publicly available, contemporaneous with the POI, representative of a broad market average, tax and duty-exclusive, and specific to the inputs being valued. There is no SV information on the record for Bangladesh, Indonesia, Nicaragua, Pakistan, or the Philippines. In contrast, the record contains usable Indian SVs for almost every FOP.

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, resorting to an alternative surrogate country which is not as economically comparable to Vietnam as the countries in the Surrogate Country Memorandum is not necessary.

### **SURROGATE VALUE COMMENTS**

FOP valuation comments and SV information with which to value the FOPs in this proceeding were filed on August 29, 2013, by Petitioner and Sonha. On September 17, 2013, Petitioner and Sonha filed rebuttal surrogate factor valuation comments. For a detailed discussion of the SVs used in this proceeding, *see* the "Factor Valuations" section below and the Prelim SV Memo.

### **SEPARATE RATE**

There is a rebuttable presumption that all companies within Vietnam are subject to government control and, thus, should be assessed a single AD rate.<sup>16</sup> It is the Department's policy to assign all exporters of the merchandise subject to investigation in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in *Sparklers*,<sup>17</sup> as amplified by

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<sup>16</sup> *See Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 77 FR 46044, 46048 (August 2, 2012), unchanged in *Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 77 FR 75980 (December 26, 2012).

<sup>17</sup> *See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*").

*Silicon Carbide*.<sup>18</sup> However, if the Department determines that a company is wholly foreign-owned or located in an ME, then a separate rate analysis is not necessary to determine whether it is independent from government control.<sup>19</sup>

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.<sup>20</sup> The process requires exporters to submit a separate-rate status application (“SRA”) and to demonstrate an absence of both *de jure* and *de facto* government control over their export activities. In the *Initiation Notice* we stated that the SRA would be due 60 days after publication of the notice, which was August 12, 2013.

In this investigation, two entities timely submitted SRAs: mandatory respondent Sonha and Mejonson Industrial Vietnam Co., Ltd. (“Mejonson”).

### **Separate Rate Respondents**

#### *1) Wholly Foreign-Owned*

Mejonson reported that it is wholly-owned by a company located in an ME country.<sup>21</sup> Therefore, there is no Vietnamese ownership of Mejonson and, because the Department has no evidence indicating that Mejonson is under the control of Vietnam, a separate rates analysis is not necessary.<sup>22</sup> Accordingly, the Department has preliminarily granted separate rate status to Mejonson.

#### *2) Joint Ventures Between Vietnamese and Foreign Companies or Wholly Vietnamese-Owned Companies*

Sonha stated that it is a wholly Vietnamese-owned company.<sup>23</sup> In accordance with our practice, the Department has analyzed whether this company has demonstrated the absence of *de jure* and *de facto* governmental control over its respective export activities.

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<sup>18</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People’s Republic of China*, 59 FR 22585 (May 2, 1994) (“*Silicon Carbide*”).

<sup>19</sup> 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).

<sup>20</sup> See *Initiation Notice*, 77 FR at 39214-15.

<sup>21</sup> See Mejonson’s Separate Rate Application (“SRA”), dated August 12, 2013.

<sup>22</sup> 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); *Brake Rotors From the People’s Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review*, 66 FR 1303, 1306 (January 8, 2001), unchanged in *Brake Rotors From the People’s Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review*, 66 FR 27063 (May 16, 2001); *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People’s Republic of China*, 64 FR 71104 (December 20, 1999).

<sup>23</sup> See Sonha’s Section A Response (“AQR”), dated August 7, 2013.

a) *Absence of De Jure Control*

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.<sup>24</sup>

The evidence provided by Sonha supports a preliminary finding of an absence of *de jure* government control based on the following: (1) the respondent does not have restrictive stipulations associated with their individual exporter's business and export licenses; (2) the respondent has provided evidence of legislative enactments decentralizing control of the company; and (3) the respondent has provided evidence of formal measures by the government decentralizing control of the companies.<sup>25</sup>

b) *Absence of De Facto Control*

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices ("EPs") are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.<sup>26</sup>

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 government control over export activities which would preclude the Department from assigning separate rates. For Sonha, we determine that the evidence on the record supports a preliminary finding of an absence of *de facto* government control based on record statements and supporting documentation showing the following: (1) the respondent sets its own EPs independent of the government and without the approval of a government authority; (2) the respondent retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) the respondent has the authority to negotiate and sign contracts and other agreements; and (4) the respondent has autonomy from the government regarding the selection of management.<sup>27</sup>

The evidence placed on the record of this review by Sonha demonstrates an absence of *de jure* and *de facto* government control with respect to its exports of the merchandise under consideration, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. Therefore, we are preliminarily granting Sonha a separate rate.

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<sup>24</sup> See *Sparklers*, 56 FR at 20589.

<sup>25</sup> See Sonha's Section A Response, dated August 7, 2013.

<sup>26</sup> 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).

<sup>27</sup> See Sonha's Section A Response, dated August 7, 2013.

## **Dumping Margin for the Separate Rate Company**

Normally, the Department's practice is to assign to separate rate entities that were not individually examined a rate equal to the weighted-average of the rates calculated for the individually examined respondents, excluding any rates that are zero, *de minimis*, or based entirely on adverse facts available ("AFA").<sup>28</sup> Consistent with this practice, the Department has assigned Mejonson a rate of 17.72 percent, which is equal to the rate calculated for the mandatory respondent.<sup>29</sup>

### **DATE OF SALE**

Sonha reported that the date of sale was determined by the issuance of the "commercial VAT invoice." Furthermore, Sonha stated that in the ordinary course of business it also prepares an "internal sales invoice" prior to its issuance of the "commercial VAT invoice"; however, the essential terms of sale may change after the generation of the "internal sales invoice."<sup>30</sup> Additionally, Sonha demonstrated that, during the POI, the price and quantity of merchandise under consideration changed between the issuance of the "internal sales invoice" and the "commercial VAT invoice."<sup>31</sup> According to Sonha, although it revises the "internal sales invoice" to reflect any changes to the final price and quantity, it does not change the date of the document.<sup>32</sup> Finally, Sonha claims that its "commercial VAT invoice" is the basis for all accounting records and that the "internal sales invoice" is not recorded in its accounting ledgers, and cannot be matched to its audited accounting data.<sup>33</sup>

Petitioners, however, state that the Department should select the commercial invoice date, which Sonha refers to as the "internal sales invoice," as the basis for the date of sale. Petitioners note that Sonha is able to link the "commercial VAT invoice" to the "internal sales invoice", and argue that, therefore, the information contained in the "internal sales invoice" is verifiable. Petitioners further contend that the "internal sales invoice" reflects the date on which the buyer and seller established the material terms of sale.

In identifying the date of sale of the subject merchandise or foreign like product, the Department's regulations provide that 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, but 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.<sup>34</sup> The

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<sup>28</sup> 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).

<sup>29</sup> See Memorandum from Litit Astvatsatrian, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to the File, "Welded Stainless Steel Pipe from the Socialist Republic of Vietnam: Calculation of the Margin for Separate Rate Recipient," dated December 30, 2013.

<sup>30</sup> See Sonha's Section A Response, dated August 7, 2013 at 24.

<sup>31</sup> See Sonha's September 9, 2013, supplemental section A response ("SAQR"), at 8-10 and Exhibit SA-6.

<sup>32</sup> See *id.*

<sup>33</sup> See Sonha's September 9, 2013, submission at 9.

<sup>34</sup> See 19 C.F.R. 351.401(i).

record of this investigation indicates that Sonha’s “internal sales invoice” does not reflect the date on which the material term of sale of quantity was established. During the POI, Sonha revised the sales quantities of merchandise under consideration after the issuance of the “internal sales invoice,” and these changes were memorialized in a second commercial invoice, which Sonha refers to as the “commercial VAT invoice.”<sup>35</sup> Accordingly, the Department has preliminarily selected the date of this second commercial invoice, “the “commercial VAT invoice,” as the appropriate date of sale.

## **DISCUSSION OF METHODOLOGY**

### **Fair Value Comparisons**

In accordance with section 777A(d)(1) of the Act, the Department compared the weighted-average price of the U.S. sales of the merchandise under consideration to the weighted-average NV to determine whether the mandatory respondents sold merchandise under consideration to the United States at LTFV during the POI.<sup>36</sup>

### **Export Price**

In accordance with section 772(a) of the Act, the Department defined the U.S. price of merchandise under consideration based on the export price (“EP”) of the U.S. sales reported by Sonha, 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.<sup>37</sup> The Department calculated the EP by making deductions, as appropriate, from the reported U.S. price for movement expenses (*i.e.*, domestic inland freight, domestic brokerage and handling, marine insurance, and international freight), and billing adjustments.<sup>38</sup> The Department based movement expenses on SVs where the service was purchased from a Vietnamese company or paid for in a non-market economy currency.<sup>39</sup>

### **Normal Value**

Section 773(c)(1) of the Act provides that the Department shall determine the 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 the 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. Therefore, in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c), the Department calculated NV based on FOPs. Under section 773(c)(3) of the Act, FOPs include, but are not

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<sup>35</sup> See Sonha’s September 9, 2013, submission at Exhibit SD-6.

<sup>36</sup> See “U.S. Price,” and “Normal Value” sections.

<sup>37</sup> See Sonha’s August 28, 2013, section C Response (“CR”) at C-15.

<sup>38</sup> See section 772(c)(2)(A) of the Act.

<sup>39</sup> See “Factor Valuations” section below.

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.<sup>40</sup>

### **Factor Valuations**

In accordance with section 773(c) of the Act, the Department calculated NV based on the FOPs reported by the individually examined respondent. To calculate NV, the Department multiplied the reported per-unit factor-consumption rates by publicly available SVs. When selecting the SVs, the Department selects, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POI, and exclusive of taxes and duties.<sup>41</sup>

As appropriate, the Department adjusted input prices by including freight costs to render them delivered prices. Specifically, the Department added a surrogate freight cost, where appropriate, to SVs 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. This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (Fed. Cir. 1997). Additionally, where necessary, the Department adjusted SVs for inflation, exchange rates, and taxes, and the Department converted all applicable FOPs to a per-kilogram basis.

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 or subsidization.<sup>42</sup> Where the Department finds 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*,<sup>43</sup> the Department uses the actual purchase prices to value the inputs.

For this preliminary determination, the Department used Indian import data, as reported by the Indian Customs Department and published by GTA, and other publicly available sources, as explained below, from India to calculate SVs for Sonha's FOPs and certain movement expenses. In accordance with section 773(c)(1) of the Act, the Department applied the best available information for valuing FOPs by selecting, to the extent practicable, SVs which are: (1) non-export average values; (2) contemporaneous with, or closest in time to, the POI; (3) product-specific; and (4) tax-exclusive.<sup>44</sup> The record shows that Indian import data obtained through

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<sup>40</sup> See section 773(c)(3)(A)-(D) of the Act.

<sup>41</sup> See, e.g., *Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

<sup>42</sup> See, e.g., *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997).

<sup>43</sup> See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717-18 (October 19, 2006) ("*Antidumping Methodologies: Market Economy Inputs*").

<sup>44</sup> 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

GTA, as well as data from other Indian sources, are product-specific, tax-exclusive, and generally contemporaneous with the POI.<sup>45</sup> In those instances where the Department could not obtain information contemporaneous with the POI with which to value FOPs, the Department adjusted the SVs using, where appropriate, India's producer price index as published in the International Monetary Fund's International Financial Statistics.

Furthermore, with regard to India 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.<sup>46</sup> Therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.<sup>47</sup> 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.<sup>48</sup> 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.<sup>49</sup> Therefore, we have not used prices from these countries either in calculating the India import-based SVs or in calculating ME input values.

The Department used Indian Import Statistics from GTA to value the raw material inputs and packing material inputs that Sonha used to produce merchandise under consideration during the POI, except where listed below.

We valued water using data from Maharashtra Industrial Development Corporation (). This source provides industrial water rates within Maharashtra province for "inside industrial areas"

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*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).

<sup>45</sup> See Prelim Surrogate Value Memo.

<sup>46</sup> See, e.g., *Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4-5; *Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review*, 70 FR 45692 (August 8, 2005), and accompanying 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.

<sup>47</sup> 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.

<sup>48</sup> 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, 30763 (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).

<sup>49</sup> 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) ("*Chlorinated Isos Prelim*"), 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).

and “outside industrial areas” from April 2009 through June 2009, which we adjusted using WPI data.

We valued electricity using data published by India’s Central Electricity Authority. 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 dates within the POI, we did not adjust for inflation.

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 2013: India* by the World Bank.<sup>50</sup>

We valued nitric acid using prices published in *Chemical Weekly*.

We valued truck freight using data from the website, [www.infobanc.com/logistics/logtruck.htm](http://www.infobanc.com/logistics/logtruck.htm).

We valued marine insurance using an Indian rate from RJG Consultants, which is an ME provider of marine insurance. We then converted the insurance rate to a per U.S. dollar rate of insured value.<sup>51</sup>

We valued international freight using information from the Descartes Carrier Rate Retrieval Database for ocean freight for shipment of metals. We used an average of the quoted rates for the specific routes (*i.e.*, port of export to port of import) reported by Sonha in its U.S. sales database.<sup>52</sup>

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME AD proceedings.<sup>53</sup> 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.<sup>54</sup> 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”).<sup>55</sup> The latest year for which ILO Chapter 6A reports national data for India is 2005.

The Department finds the two-digit description under Division 28 (*i.e.*, 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

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<sup>50</sup> See Prelim Surrogate Value Memo at Exhibit 8.

<sup>51</sup> See Sonha’s August 29, 2013, SV submission at Exhibit 12.

<sup>52</sup> See Prelim Analysis Memo.

<sup>53</sup> See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (“*Labor Methodologies*”).

<sup>54</sup> See *Labor Methodologies*, 76 FR at 36093.

<sup>55</sup> See *Labor Methodologies*, 76 FR at 36093.

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 SV 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 for the industry being examined.

Therefore, for the preliminary determination, we calculated the labor inputs using the data for average monthly industrial labor rate prevailing during 2005 in India, corresponding to the “Manufacturing” economic sector, and adjusted to current price levels using the Indian Consumer Price Index (“CPI”). A more detailed description of the labor rate calculation methodology is provided in the SV Memo.<sup>56</sup>

To value factory overhead, selling, general, and administrative expenses, and profit, the Department used the contemporaneous audited financial statements of Bhandari Foils & Tubes Limited (2013), which is an Indian producer of identical merchandise.<sup>57</sup>

### **Currency Conversion**

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

### **Determination of Comparison Method**

Pursuant to 19 CFR 351.414(c)(1), the Department calculates dumping margins by comparing weighted-average NVs to weighted-average constructed export prices (“CEPs”) or EPs (the average-to-average or A-to-A method), unless the Secretary determines that another method is appropriate in a particular situation. In recent AD proceedings, the Department examined whether to use the average-to-transaction (“A-to-T”) method as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. In order to determine which comparison method to apply, in recent proceedings, the Department applied a “differential pricing” (“DP”) analysis for determining whether application of A-to-T comparisons is appropriate pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.<sup>58</sup> The Department finds the DP analysis used in this preliminary determination and other recent proceedings may be instructive for purposes of examining whether to apply an alternative

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<sup>56</sup> See Prelim Surrogate Value Memo at Exhibit 2.

<sup>57</sup> See Prelim Surrogate Value Memo at page 6 and Exhibit 6.

<sup>58</sup> See, e.g., *Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 78 FR 69371 (November 19, 2013), and accompanying Preliminary Decision Memorandum.

comparison method in this AD investigation.<sup>59</sup> The Department intends to continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the A-to-A method in calculating weighted-average dumping margins.

The DP analysis used in this preliminary determination requires a finding of a pattern of EPs (or CEPs) for comparable merchandise that differs significantly among purchasers, regions, or time periods.<sup>60</sup> If such a pattern is found, then the DP analysis evaluates whether such differences can be taken into account when using the A-to-A method to calculate the weighted-average dumping margin. The DP analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the customer codes as reported. Regions are defined using the reported destination code (*i.e.*, zip codes of the headquarters of the end customer), which are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POI being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region, and time period, that the Department uses in making comparisons between EP and NV for the individual dumping margins.

In the first stage of the DP analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen's *d* test is applied when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is calculated to evaluate the extent to which the net prices to a particular purchaser, region or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large. Of these thresholds, the large threshold

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<sup>59</sup> See, e.g., *Hardwood and Decorative Plywood From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013), and accompanying Issues and Decision Memorandum at Comment 5; *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2011-2012*, 78 FR 40692 (July 8, 2013); *Certain Activated Carbon From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 26748 (May 8, 2013); *Certain Steel Threaded Rod From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 21101 (April 9, 2013) (*Steel Threaded Rod*); *Polyester Staple Fiber From Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 17637 (March 22, 2013) (*Polyester Staple Fiber*).

<sup>60</sup> As noted above, the DP analysis has been utilized in recent AD investigations and several recent AD administrative reviews to determine the appropriate comparison methodology. See, e.g., *Steel Threaded Rod; Circular Welded Carbon Steel Pipes and Tubes From Thailand: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 21105 (April 9, 2013); *Polyvinyl Alcohol From Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2010-2012*, 78 FR 20890 (April 8, 2013); and *Polyester Staple Fiber*.

(*i.e.*, 0.8) provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

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

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of EPs (or CEPs) that differ significantly such that an alternative comparison method should be considered, then in the second stage of the DP analysis, we examine whether using only the A-to-A method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the A-to-A method only. If the difference between the two calculations is meaningful, then this demonstrates that the A-to-A method cannot account for differences such as those observed in this analysis and, therefore, an alternative method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if: 1) there is a 25 percent relative change in the weighted-average dumping margin between the A-to-A method and the appropriate alternative method where both rates are above the *de minimis* threshold; or 2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described DP approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.

### **Results of the DP Analysis**

Based on the results of the DP analysis, the Department finds that 94.40 percent of Sonha's EPs pass the Cohen's *d* test, and confirm the existence of a pattern of EPs for comparable merchandise that differ significantly among purchasers, regions, or time periods. Further, the Department determines that the A-to-A method can appropriately account for such differences because there is not a meaningful difference in the weighted-average dumping margins when calculated using the A-to-A method and an alternative method based on the A-to-T method

applied to the U.S. sales which pass the Cohen's *d* test. Accordingly, the Department has determined to use the A-to-A method for all U.S. sales to calculate the preliminary weighted-average dumping margin for Sonha.<sup>61</sup>

## VIETNAM-WIDE ENTITY

Upon initiation of this investigation, as explained above, we provided opportunity for all companies to complete the separate-rates application.<sup>62</sup> In NME proceedings, "'rates' may consist of a single dumping margin applicable to all exporters and producers."<sup>63</sup> As explained above in the "Separate Rates" section, all companies within Vietnam are considered to be subject to government control unless they are able to demonstrate an absence of government control with respect to their export activities. Companies subject to government control are thus assigned a single AD rate distinct from the separate rates determined for companies that are found to be independent of government control with respect to their export activities. We consider the influence that the government has been found to have over the economy to warrant determining a rate for the country-wide entity that is distinct from the rates found for companies that have provided sufficient evidence to establish that they operate freely with respect to their export activities.

In the petition, only one exporter of WSPP from Vietnam was identified. Accordingly, there was no consideration by the Department whether to limit examination of all known exporters and producers. As such, the Department sent its antidumping questionnaire to Sonha because we believed at that time that it was the only exporter of subject merchandise. Subsequently, as stated above, Mejonson filed an SRA, resulting in two companies that are actively participating in this investigation. Concurrent with this memorandum, the Department is placing on the record CBP data documenting U.S. imports of WSPP from Vietnam, which reveal several other exporters of WSPP to the United States. These other exporters of WSPP to the United States were not considered for individual examination and did not file SRAs. Therefore, the Department preliminarily determines that there were Vietnamese exporters of the merchandise under consideration during the POI that are not eligible for a separate rate. Thus, consistent with the presumption of government control, we preliminarily determine that the Vietnam-wide entity made shipments of subject merchandise, which were entered for consumption during the POI.<sup>64</sup> As a result, the Department must determine what rate to assign to the Vietnam-wide entity in this investigation.

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<sup>61</sup> 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 During an Antidumping Investigation; Final Modification*, 71 FR 77722 (December 27, 2006). In particular, the Department compared monthly weighted-average EPs with monthly weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.

<sup>62</sup> See *Initiation Notice*, 78 FR at 35257.

<sup>63</sup> See 19 CFR 351.107(d).

<sup>64</sup> See *Preliminary Determination of Sales at Less Than Fair Value: Steel Wire Garment Hangers from the People's Republic of China*, 73 FR 15726, 15731 (March 25, 2008) ("Hangers Prelim"), unchanged in *Steel Wire Garment Hangers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 47587, 47591 (August 14, 2008) ("Hangers Final") (where the Department followed a similar approach in an NME AD investigation).

The Department's presumption that these entries involve companies which were subject to Vietnamese government control has not been rebutted, and thus we are preliminarily assigning a single weighted-average dumping margin to the Vietnam-wide entity. In this investigation, the Department determines that a reasonable method to calculate the dumping margin for the Vietnam-wide entity is to take the simple average of: (A) the calculated weighted-average dumping margin for Sonha; and (B) the simple average of the petition rates, *i.e.*, 89.4 percent to 90.8 percent, which fall within the range of Sonha's individual transaction-specific dumping margins.<sup>65</sup> Accordingly, we determine that the single rate applicable to the Vietnam-wide entity is 53.91 percent. The rate for the Vietnam-wide entity applies to all entries of the merchandise under investigation with the exception of those entries produced and exported by Sonha and Mejonson.

## VERIFICATION

As provided in section 782(i)(1) of the Act, we intend to verify the information from Sonha.

We intend to 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.

## CONCLUSION

We recommend applying the above methodology for this preliminary determination.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

\_\_\_\_\_  
Christian Marsh  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

\_\_\_\_\_  
(Date)

<sup>65</sup> *Id.*