



A-552-820
Investigation
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AD/CVDOps/VII/AH

DATE: May 31, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh *CM*
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Antidumping Duty Investigation of Circular Welded Carbon-
Quality Steel Pipe from the Socialist Republic of Vietnam

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that circular welded carbon-quality steel pipe (CWP) 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 estimated weighted-average dumping margins are shown in the "Preliminary Determination" section of the accompanying *Federal Register* notice.

II. BACKGROUND

On October 28, 2015, the Department received an antidumping duty (AD) petition covering imports of CWP from Vietnam,¹ which was filed in proper form by Bull Moose Tube Company; EXLTUBE; Wheatland Tube, a division of JMC Steel Group; and Western Tube and Conduit (collectively, the petitioners). The Department initiated this investigation on November 17, 2015.²

In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in non-market economy (NME) LTFV

¹ See Petitions for the Imposition of Antidumping and Countervailing Duties: Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman, Pakistan, the Philippines, the United Arab Emirates, and the Socialist Republic of Vietnam, dated October 28, 2015 (the Petitions).

² See *Circular Welded Carbon-Quality Steel Pipe From the Sultanate of Oman, Pakistan, the Philippines, the United Arab Emirates, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations*, 80 FR 73708 (November 25, 2015) (*Initiation Notice*).



investigations.³ The process requires exporters to submit a separate rate application (SRA)⁴ 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 SRAs would be due 30 days after publication of the notice.⁵ As 30 days after publication fell on December 25, 2015, a federal holiday, SRAs were due the following business day, December 28, 2015.⁶ The Department received timely filed SRAs from three companies: SeAH Steel Vina Corp. (SeAH), Vietnam Haiphong Hongyuan Machinery Manufactory Co., Ltd. (Hongyuan) and Hoa Phat Steel Pipe Co. Ltd. (Hoa Phat).

Also in the *Initiation Notice*, the Department notified parties of an opportunity to comment on the scope of this and the concurrent CWP investigations, as well as the appropriate physical characteristics of CWP to be reported in response to the Department's AD questionnaire.⁷ On December 4, 2015, the petitioners submitted comments to the Department regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes. On December 11, 2015, Universal Tube and Plastic Industries, Ltd., Prime Metal Corporation USA and UTP Pipe USA Corporation (collectively, Universal) (*i.e.*, a respondent in the concurrent AD investigation on CWP from the United Arab Emirates (UAE)) filed rebuttal comments. On February 9, 2016, International Industries Limited (*i.e.*, a respondent in the concurrent AD and countervailing duty (CVD) investigations on CWP from Pakistan) submitted comments to the Department regarding the scope of the CWP investigations.⁸ On February 19, 2016, the petitioners also submitted comments to the Department regarding the scope of the CWP investigations.

We also stated in the *Initiation Notice* that we intended to base our selection of mandatory respondents on responses to quantity and value (Q&V) questionnaires to be sent to each potential respondent named in the Petitions.⁹ On November 18, 2015, the Department issued Q&V questionnaires to the three companies that the petitioners identified as potential producers/exporters of CWP from Vietnam.¹⁰ In addition, the Department posted the Q&V questionnaire on its website and, in the *Initiation Notice*, invited parties that did not receive a Q&V questionnaire from the Department to file a response to the Q&V questionnaire by the

³ See *Initiation Notice*, 80 FR at 73713.

⁴ See Policy Bulletin 05.1: Separate Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, April 5, 2005 (Policy Bulletin 05.1), available at <http://enforcement.trade.gov/policy/bull05-1.pdf>.

⁵ See *Initiation Notice*, 80 FR at 73713.

⁶ See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

⁷ See *Initiation Notice*, 80 FR at 73709-73710.

⁸ See March 15, 2016, Memorandum to the File regarding Antidumping Duty Investigations of Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman, the United Arab Emirates, and the Socialist Republic of Vietnam and Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from Pakistan: Scope Comments.

⁹ See *Initiation Notice*, 80 FR at 73713.

¹⁰ See the Petitions at Exhibit I-3; see also Letter to Interested Parties "Antidumping Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam: Quantity and Value Questionnaire," November 18, 2015, and Memorandum to The File, "Antidumping Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam: Respondent Selection: Quantity and Value Questionnaire Recipients," December 11, 2015 (Q&V Recipients Memo).

applicable deadline. On December 1, 2015, the Department received timely filed Q&V questionnaire responses from SeAH, Vietnam Steel Pipe Co., Ltd. (Vinapipe), Hongyuan and Hoa Phat Steel Pipe Co. Ltd. (Hoa Phat).¹¹ On December 16, 2015, based on the responses to the Q&V questionnaires, we selected SeAH and Hongyuan for individual examination as mandatory respondents in this AD investigation.¹²

On December 14, 2015, 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 CWP from Vietnam.¹³

On December 22, 2015, the Department issued its AD NME questionnaires to Hongyuan and SeAH. On January 19, 2016, Hongyuan and SeAH submitted their responses to Section A of the Initial Questionnaire.¹⁴ On February 18, 2016, Hongyuan and SeAH submitted their responses to Sections C and D of the initial questionnaire.¹⁵ Between March 2016 and April 2016, the Department issued supplemental questionnaires to Hongyuan and SeAH. We received responses to these supplemental questionnaires between March 2016 and May 2016. During the same timeframe, the petitioners submitted comments on SeAH's and Hongyuan's responses. On April 22, 2016, the Department requested that SeAH submit a response to Section E of the Initial Questionnaire. On May 13, 2016, SeAH submitted did so.¹⁶

As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government. All deadlines in this segment of the proceeding have been extended by four business days.¹⁷ On March 10, 2016, the petitioners requested that the date for the issuance of the preliminary determination in this investigation be extended until 190 days after the date of initiation. Based on the request, the Department published a postponement of the preliminary determination until no later than May 31, 2016.¹⁸

On April 28, 2016 and May 5, 2016, respectively, Hongyuan and SeAH requested that, in the event of an affirmative preliminary determination, the Department extend the deadline for the

¹¹ See "Antidumping Duty Investigation of Circular Welded Carbon Quality Steel Pipe from the Socialist Republic of Vietnam: Respondent Selection," December 16, 2015 (Respondent Selection Memorandum).

¹² *Id.*

¹³ See *Circular Welded Carbon-Quality Steel Pipe From Oman, Pakistan, the Philippines, the United Arab Emirates, and Vietnam* 80 FR 79093 (December 18, 2015) (*ITC Preliminary Determination*).

¹⁴ See Letter from Hongyuan, "Circular Welded Carbon-Quality Steel Pipe from Vietnam: Section A Questionnaire Response," dated January 19, 2016 (Hongyuan Section A) and letter from SeAH Circular Welded Carbon-Quality Steel Pipe from Vietnam-Response to Section A," dated January 19, 2016 (SeAH Section A).

¹⁵ See Letter from Hongyuan, "Circular Welded Carbon-Quality Steel Pipe from Vietnam: Questionnaire Response – Sections C, D, and Reconciliation" dated February 18, 2016 (Hongyuan Section C and D) and letter from SeAH Circular Welded Carbon-Quality Steel Pipe from Vietnam-Response to Sections C & D," dated January 19, 2016 (SeAH Section C & D).

¹⁶ See "Section E Response of SeAH Steel VINA Corporation," dated May 13, 2016.

¹⁷ See Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement & Compliance, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas," dated January 27, 2016.

¹⁸ See *Circular Welded Carbon-Quality Steel Pipe From the Sultanate of Oman, Pakistan, the United Arab Emirates, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 81 FR 15039 (March 21, 2016).

final determination, and extend provisional measures.¹⁹ On May 5, 2016, the petitioners requested that, in the event of a negative preliminary determination, the Department postpone the final determination.²⁰ On May 18, 2016, SeAH submitted comments regarding the preliminary determination, and on May 20 and 23, 2016, the petitioners submitted comments regarding the preliminary determination.

We are conducting this investigation in accordance with section 733(b) of the Act.

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is April 1, 2015, through September 30, 2015. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was October 2015.²¹

IV. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

Pursuant to section 735(a)(2) of the Act and 19 CFR 351.210(b)(2)(ii), on April 28, 2016 and May 5, 2016, SeAH and Hongyuan requested that the Department extend the final determination deadline, and that provisional measures be extended.²² In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because 1) our preliminary determination is affirmative, 2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise, 3) the requesting exporter has requested extension of provisional measures to a period not more than six months, and 4) no compelling reasons for denial exist, we are granting the respondent's 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.

V. SCOPE COMMENTS

As noted in the *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product coverage.²³

We received several comments concerning the scope of the AD investigations of CWP from Oman, Pakistan, the UAE, and the Socialist Republic of Vietnam and the CVD investigation of

¹⁹ See Letter from Hongyuan, "Circular Welded Carbon-Quality Steel Pipe from Vietnam – Request for Extension of Time for the Final Determination," dated April 28, 2016 and letter from SeAH "Circular Welded Carbon-Quality Steel Pipe from Vietnam – Request for Extension of the Deadline for the Department's Final Determination," dated May 5, 2016.

²⁰ See Letter from the petitioners entitled, "Circular Welded Carbon-Quality Steel Pipe from The Sultanate of Oman, Pakistan, The United Arab Emirates, And The Socialist Republic of Vietnam: Petitioners' Request to Extend Final Determination," dated May 5, 2016.

²¹ See 19 CFR 351.204(b)(1).

²² See Final Determination Extension Request.

²³ See *Initiation Notice*; see also *Antidumping Duties; Countervailing Duties; Final rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

CWP from Pakistan. The Department evaluated these comments and addressed them in a separate memorandum, dated April 1, 2016, which is hereby adopted by this preliminary determination.²⁴ As discussed in the Preliminary Scope Decision Memorandum, we revised the scope language to clarify the inclusion of multi-stenciled pipe.²⁵ This modification applies to this and the concurrent AD investigations and CVD CWP investigations.²⁶

VI. DISCUSSION OF THE METHODOLOGY

A. Non-Market Economy Country

The Department considers Vietnam to be an NME country.²⁷ 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.

B. Surrogate Country and Surrogate Value Comments

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. Specifically, in accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, "to the extent possible, the prices or costs of {FOPs} in one or more ME countries that are— (A) at a level of economic development comparable to that of the {NME} country; and (B) significant producers of comparable merchandise."²⁸ As a general rule, the Department selects a surrogate country that is at the same level of economic development as the NME unless it is determined that none of the countries are viable options because (a) they either are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available surrogate value (SV) data, or (c) are not suitable for use based on other reasons. Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development.²⁹ To determine which countries are at the same level of economic development, the Department generally relies on per capita gross national income (GNI) data from the World Bank's World Development

²⁴ See Department Memorandum, "Antidumping Duty Investigations of Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman, Pakistan, the United Arab Emirates, and the Socialist Republic of Vietnam and Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from Pakistan; Scope Comments Decision Memorandum for the Preliminary Determinations," April 1, 2016 (Preliminary Scope Decision Memorandum).

²⁵ *Id.*

²⁶ *Id.*

²⁷ See the Volume III of the Petitions at 1-2, *see also Initiation Notice*, 80 FR 73711.

²⁸ See Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin 04.1) available on the Department's website at <http://enforcement.trade.gov/policy/bull04-1.html>.

²⁹ See Letter to All Interested Parties "Antidumping Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," February 12, 2016 (Surrogate Country Comment Letter).

Report.³⁰ Further, the Department normally values all FOPs in a single surrogate country.³¹

On December 1, 2015, the Department identified Bangladesh, India, Indonesia, Nigeria, Pakistan and the Philippines as countries that are at the same level of economic development as Vietnam based on per capita 2014 GNI data.³² On February 12, 2016, the Department issued a letter to interested parties soliciting comments on the list of potential surrogate countries and the selection of the primary surrogate country, as well as providing deadlines for submitting surrogate value information for consideration in the preliminary determination.³³

On February 22, 2016, Hongyuan submitted comments on the proposed list of surrogate countries,³⁴ stating that the Department should consider other countries to be at the same level of economic development as Vietnam, and provided World Bank GNI data.³⁵ On February 29, 2016, Hongyuan submitted comments arguing that Ukraine is economically comparable to Vietnam and that Ukraine and India are significant producers of comparable merchandise.³⁶ On March 4, 2016, the petitioners submitted comments arguing that the Department should not consider Ukraine as an appropriate surrogate country, as India is more economically comparable to Vietnam than Ukraine, exports more comparable merchandise than Ukraine, and has better data quality than Ukraine.³⁷

1. *Economic Comparability*

Section 773(c)(4) of the Act states that the Department “shall utilize, to the extent possible, the prices or costs of {FOPs in one or more market economy countries that are . . . at a level of economic development comparable to that of the {NME} country.” However, the applicable statute does not expressly define the phrase “level of economic development comparable” or what methodology the Department must use in evaluating the criterion. 19 CFR 351.408(b) states that in determining whether a country is at a level of economic development comparable to the NME country, the Department will place primary emphasis on per capita GDP as the measure of economic comparability.³⁸ The U.S. Court of International Trade (CIT) has found the use of per capita GNI to be a “consistent, transparent, and objective metric to identify and compare a country’s level of economic development” and “a reasonable interpretation of the statute.”³⁹

³⁰ *Id.*

³¹ *See* 19 CFR 351.408(c)(2).

³² *See* Surrogate Country Comment Letter at Attachment 1.

³³ *Id.*

³⁴ *See* Letter from Hongyuan, “Circular Welded Carbon-Quality Steel Pipe from Vietnam: Comments on Countries of Economically Comparable to Vietnam,” dated February 22, 2016.

³⁵ *Id.*, at Attachment 1.

³⁶ *See* Letter from Hongyuan, “Circular Welded Carbon-Quality Steel Pipe from Vietnam: Comments on Countries that are Significant Producers of Comparable Merchandise,” dated February 29, 2016 (Hongyuan Surrogate Comments).

³⁷ *See* Letter from the petitioners, “Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam: Rebuttal to Haiphong Hongyuan’s Surrogate Country Comments,” dated March 4, 2016.

³⁸ Commerce uses per capita GNI as a proxy for per capita GDP. GNI is GDP plus net receipt of primary income (compensation of employees and property income) from nonresident sources. *See* Policy Bulletin 04.1.

³⁹ *See Jiaxing Brother Fastener Co. v. United States*, 961 F. Supp. 2d 1323, 1329 (CIT 2014).

Therefore, consistent with our practice, and section 773(c)(4) of the Act,⁴⁰ and as stated above, the Department identified Bangladesh, India, Indonesia, Nigeria, Pakistan and the Philippines as countries at the same level of economic development as Vietnam based on 2014 GNI data published in the World Bank Development Indicators database.⁴¹

Unless it is determined that none of the countries identified above are viable options because (a) they either are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available SV data, or (c) are not suitable for use based on other reasons,⁴² we will rely on data from one of these countries.

2. *Significant Producer of Comparable Merchandise*

Section 773(c)(4)(B) of the Act requires the Department, to the extent possible, to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the Department's regulations provide further guidance on what may be considered comparable merchandise. Among the factors we consider in determining whether a country is a significant producer of comparable merchandise is whether the country is an exporter of comparable merchandise. In order to determine whether the above-referenced countries are significant producers of comparable merchandise, the Department's practice is to examine which countries on the surrogate country list exported merchandise comparable to the merchandise under consideration.⁴³ Information on the record indicates that India and Ukraine were significant net exporters of merchandise covered by HTS categories identified in the scope of this investigation.⁴⁴ Accordingly, we preliminarily find that India and Ukraine met the significant producer of comparable merchandise prong of the surrogate country selection criteria.

3. *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 based on data availability and reliability.⁴⁵ 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.⁴⁶ There is no hierarchy among these criteria.⁴⁷ It is the Department's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.⁴⁸

⁴⁰ See Surrogate Country Comment Letter at Attachment 1.

⁴¹ *Id.*

⁴² See Policy Bulletin 04.1.

⁴³ *Id.*

⁴⁴ See Hongyuan Surrogate Comments at Attachment 1.

⁴⁵ See Policy Bulletin 04.1.

⁴⁶ *Id.*

⁴⁷ See, e.g., *Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006) and accompanying Issues and Decision Memorandum at Comment 1.

⁴⁸ See Policy Bulletin 04.1.

The petitioners and SeAH placed certain potential SV data on the record for India, and Hongyuan placed certain potential SV data on the record for India and Ukraine. The petitioners and SeAH placed Global Trade Atlas (GTA) import price data on the record for India,⁴⁹ and Hongyuan placed GTA data on the record for India and Ukraine.⁵⁰

The petitioners provided International Labour Organization (ILO) Yearbook of Labor Statistics, Chapter 6A, Subclass 27 “Manufacture of Basic Metals,” 2005 amount for India to value labor,⁵¹ while Hongyuan provided ILO Yearbook of Labor Statistics, Chapter 6A, Subclass 28, “Manufacture of Fabricated Metal Products, except Machinery and Equipment,” 2005 amount for India to value labor, and Chapter 6A, Subclass 27, “Manufacture of Basis Metals, 2006 amount for the Ukraine to value labor.⁵²

The petitioners provided rates from Indian Ministry of Power Central Electricity Authority published in 2014 to value electricity⁵³ while Hongyuan provided 2011 rates from the Central Electricity Authority from the Government of India⁵⁴ to value electricity in India. The petitioners provided water rates from Maharashtra Industrial Development Corporation⁵⁵ to value water, while Hongyuan provided 2016 rates from the same source⁵⁶ to value water in India.

The petitioners provided trucking rates from Infobanc⁵⁷ to value inland freight in India, while Hongyuan provided trucking rates from Infobanc⁵⁸ and Della Transportation⁵⁹ to value inland freight in India and Ukraine, respectively.

Hongyuan placed information on the record from the LTFV investigation of Oil Country Tubular Goods (OCTG) from India,⁶⁰ and SeAH submitted information on the record from the LTFV review of OCTG from India,⁶¹ to value foreign brokerage and handling in India. SeAH also provided information from Maersk Line World Factbook and Orient Overseas Container Line Limited to value foreign brokerage and handling in India.⁶² The petitioners provided

⁴⁹ See Letter from the petitioners, “Circular Welded Carbon Quality Steel Pipe from the Socialist Republic of Vietnam: Petitioners’ Submission of Surrogate Valuation Data” dated March 7, 2016 (Petitioners SV) and letter from SeAH, “Antidumping Investigation of Circular Welded Carbon Quality Steel Pipe from Vietnam: Submission of Information to Value Factors of Production,” dated March 7, 2016 (SeAH SV).

⁵⁰ See Letter from Hongyuan, “Circular Welded Carbon Quality Steel Pipe from Vietnam: Surrogate Value Comments,” dated March 7, 2016 (Hongyuan SV).

⁵¹ See Petitioners SV at Exhibit II-B.

⁵² See Hongyuan SV at Volume One, Exhibits SV-1 and SV-6 for India, and Volume Two, Exhibits SV-1 and SV-6 for Ukraine.

⁵³ See Petitioners SV at Exhibit II-C-2. This exhibit has just a cover page; however, the Letter from the petitioners, “Circular Welded Carbon Quality Steel Pipe from the Socialist Republic of Vietnam: Petitioners’ Rebuttal Surrogate Value Information” dated March 16, 2016 (Petitioners Rebuttal SV), at Exhibit 2, has the full document.

⁵⁴ See Hongyuan SV at Volume One, Exhibit SV-4.

⁵⁵ See Petitioners SV at Exhibit II-C-3.

⁵⁶ See Hongyuan SV at Volume One, Exhibit SV-5.

⁵⁷ See Petitioners SV at Exhibit III.

⁵⁸ See Hongyuan SV at Volume One, Exhibit SV-7.

⁵⁹ *Id.*, at Volume Two, Exhibit SV-7.

⁶⁰ See Hongyuan SV at Volume One, Exhibit SV-8.

⁶¹ See SeAH SV at Attachment II.

⁶² *Id.*

information from Doing Business in India in order to value foreign brokerage and handling.⁶³

Finally, to value factory overhead, selling, general, and administrative expenses, and profit, the petitioners provided 2014-2015 financial statements from Indian pipe producers Ratnamani Metals and Tubes, Ltd.⁶⁴ and Technocraft Industries India Ltd.,⁶⁵ while Hongyuan provided 2014-2015 financial statements for Indian pipe producers APL Apollo,⁶⁶ Goodluck Steel Tubes, Hariom Pipes, Hi Tech Pipes Limited, JTL Infra Limited, Nezone Tubes Limited, Rama Steel Tubes, Ravindra Tubes Limited, Shri Lakshmi Metal Udyog Limited, Spark Electrodes Private Limited, Surya Global Steel Tubes Ltd., Swastik Pipes Limited, Tamilnadu Steel Tubes Limited, Vallabh Steel Ltd., and Vardhman Industries Limited.⁶⁷

Hongyuan did not provide Ukrainian data to value all FOPs. Based on the foregoing, we find that India best meets our criteria for a surrogate country given the completeness of the data, including financial statement data. Therefore, the Department preliminarily determines, pursuant to section 773(c)(4) of the Act, that it is appropriate to use India as the primary surrogate country because India is (1) at the same level of economic development as Vietnam; (2) a significant producer of merchandise comparable to the merchandise under consideration such that can be determined from the information available; and (3) contains the best available data for valuing FOPs. An explanation of the surrogate values upon which the Department is preliminarily relying can be found in the “Normal Value” section of this memorandum.

C. Separate Rates

In proceedings involving NME countries, the Department maintains a rebuttable presumption that all companies within the country are subject to government control and, therefore, should be assessed a single weighted-average dumping margin.⁶⁸ The Department’s policy is to assign all exporters of merchandise under consideration 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.⁶⁹ The Department analyzes whether each entity exporting the merchandise under consideration is sufficiently independent under a test established in *Sparklers*⁷⁰ and further developed in *Silicon Carbide*.⁷¹ According to this separate rate test, the Department will assign a separate rate in NME proceedings if a respondent can demonstrate the absence of both *de jure* and *de facto* government control over its export activities. If, however, the Department determines that a company is wholly foreign-owned, then a separate rate analysis is not

⁶³ See Letter from the petitioners, “Circular Welded Carbon Quality Steel Pipe from the Socialist Republic of Vietnam: Petitioners’ Surrogate Valuation Information” dated May 2, 2016 (Petitioners May 2 SV)

⁶⁴ See the Petitions at Vol. III, Exhibit III-C-7.

⁶⁵ See Petitioners SV at Exhibit IV.

⁶⁶ See Hongyuan SV at Volume One, Exhibit SV-9.

⁶⁷ See Letter from Hongyuan “Circular Welded Carbon-Quality Steel Pipe from Vietnam: Information for the Preliminary Determination,” dated May 2, 2016 (Hongyuan May 2 SV).

⁶⁸ 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).

⁶⁹ See *Final Determination of Sales at Less Than Fair Value: Sparklers From the People’s Republic of China*, 56 FR 20588, 20589 (May 6, 1991) (*Sparklers*).

⁷⁰ *Id.*

⁷¹ 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*).

necessary to determine whether that company is independent from government control and eligible for a separate rate.

1. Separate Rate Recipients

The Department preliminary determines that SeAH, Hongyuan, and Hoa Phat qualify for a separate rate, as explained below.

a. Wholly Foreign-Owned

SeAH⁷² and Hongyuan⁷³ reported that they are wholly foreign-owned. Therefore, as there is no Vietnamese ownership of these two companies, and because the Department has no evidence indicating that these companies are under the control of the Vietnamese government, further analyses of the *de jure* and *de facto* criteria are not necessary to determine whether they are independent from government control of their export activities. Therefore, we preliminarily determine that Hongyuan and SeAH are eligible for separate rates.

b. Wholly Vietnamese-Owned Companies

Because Hoa Phat⁷⁴ has stated that it is a wholly Vietnamese-owned company, the Department must analyze whether this company can demonstrate that it is sufficiently independent through the absence of both *de jure* and *de facto* governmental control over export activities.

i. Absence of *De Jure* Control

The evidence that Hoa Phat provided supports a preliminary finding of an absence of *de jure* governmental control based on the following factors: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) the existence of applicable legislative enactments decentralizing control of Vietnamese companies; and (3) the implementation of formal measures by the government decentralizing control of Vietnamese companies.⁷⁵

ii. Absence of *De Facto* Control

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

⁷² See Letter from Yieh Phui, "Corrosion-Resistant Steel Products from China; Section A and Double Remedies Supplemental Response," at 1-2 (September 25, 2015).

⁷³ See Letter from Hongyuan, "Circular Welded Carbon-Quality Steel Pipe from Vietnam: Section A Questionnaire Response," at A-11-A-12 and Exhibit 6.

⁷⁴ See Letter from Hoa Phat, "Circular Carbon Quality Steel Pipe from Vietnam; Submission of Separate Rate Application," dated December 29, 2015 (Hoa Phat SRA).

⁷⁵ *Id.*, at 4-7.

regarding disposition of profits or financing of losses.⁷⁶ The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

We determine, that for Hoa Phat, the evidence on the record supports a preliminary finding of *de facto* absence of governmental control based on record statements and supporting documentation showing the following: (1) Hoa Phat sets its own export prices independent of the government and without the approval of a government authority; (2) Hoa Phat retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) Hoa Phat has the authority to negotiate and sign contracts and other agreements; and (4) Hoa Phat has autonomy from the government regarding the selection of management.⁷⁷

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

2. Margin for the Separate Rate Companies

The statute and the Department's regulations do not address the establishment of a separate rate to be applied to individual respondents not selected for individual examination when the Department limits its examination pursuant to section 777A(c)(2) of the Act. 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 facts available, using as guidance section 735(c)(5)(A) of the Act.⁷⁸ However, pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis* or determined based entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters. Therefore, we preliminarily determine the rate for companies entitled to a separate rate to be 0.38 percent, a weighted-average of the dumping margins calculated for the individually examined respondents using each company's publicly ranged values for the merchandise under consideration.⁷⁹

⁷⁶ 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).

⁷⁷ See Hoa Phat SRA at 7-14.

⁷⁸ 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).

⁷⁹ Because there are only two relevant weighted-average dumping margins for this preliminary determination, using a weighted-average of these two rates risks disclosure of business proprietary data. Therefore, in accordance with our normal practice with two respondents, we calculated (A) a weighted-average of the dumping margins calculated for the mandatory respondents; (B) a simple average of the dumping margins calculated for the mandatory respondents; and (C) a weighted-average of the dumping margins calculated for the mandatory respondents using each company's publicly-ranged values for the merchandise under consideration. We compared (B) and (C) to (A)

D. The Vietnam-wide Entity

The record indicates there is one Vietnamese exporter/producer of the merchandise under consideration during the POI that did not respond to the Department's requests for information.⁸⁰ Specifically, the Department did not receive a timely response to its Q&V questionnaire or a separate rate application from Sujia Steel Pipe Company (Sujia).⁸¹ Because the non-responsive Vietnamese company has not demonstrated that it is eligible for separate rate status, the Department considers Sujia to be part of the Vietnam-wide entity. Furthermore, as explained below, we preliminarily determine to calculate the Vietnam-wide rate on the basis of adverse facts available (AFA).

E. Application of Facts Available and Adverse Inferences

Section 776(a)(1) and (2) of the Act provides that, if necessary information is missing from the record, or 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.

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

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the AD and CVD law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.⁸² The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.⁸³

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability

and selected the rate closest to (A) as the most appropriate rate to assign the separate rate company.

⁸⁰ See Respondent Section Memorandum at 2.

⁸¹ *Id.*

⁸² See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) (TPEA). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*).

⁸³ *Id.*, 80 FR at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.

Under section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an AD order when applying an adverse inference, including the highest of such margins. The TPEA also makes clear that when selecting an AFA margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.

1. Use of Facts Available

The Department preliminarily finds that the Vietnam-wide entity, which includes Sujia, did not respond to the Department’s requests for information, failed to provide necessary information, withheld information requested by the Department, failed to provide information in a timely manner, and significantly impeded this proceeding by not submitting the requested information. Moreover, because the Vietnam-wide entity failed to provide any information, section 782(d) of the Act is inapplicable. Accordingly, the Department preliminarily determines that use of facts available is warranted in determining the rate of the Vietnam-wide entity, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act.⁸⁴

2. Application of Facts Available with an Adverse Inference

Section 776(b) of the Act provides that the Department, in selecting from among the facts otherwise available, may use an inference that is adverse to the interests of a party if that party has failed to cooperate by not acting to the best of its ability to comply with a request for information. The Department finds that the Vietnam-wide entity’s failure to provide the requested information constitutes circumstances under which it is reasonable to conclude that the Vietnam-wide entity failed to cooperate to the best of its ability.⁸⁵ The Vietnam-wide entity neither filed documents indicating that it was having difficulty providing the information, nor did it request to submit the information in an alternate form. Therefore, we preliminarily find that an

⁸⁴ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam*, 68 FR 4986, 4991 (January 31, 2003), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

⁸⁵ See *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003) (noting that the Department need not show intentional conduct existed on the part of the respondent, but merely that a “failure to cooperate to the best of a respondent’s ability” existed (*i.e.*, information was not provided “under circumstances in which it is reasonable to conclude that less than full cooperation has been shown.”)).

adverse inference is warranted in selecting from the facts otherwise available with respect to the Vietnam-wide entity in accordance with section 776(b) of the Act and 19 CFR 351.308(a).⁸⁶

3. *Selection and Corroboration of the AFA rate*

When using facts otherwise available, section 776(c) of the Act provides that, where the Department relies on secondary information (such as the Petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.⁸⁷ The SAA clarifies that “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value,⁸⁸ although under the TPEA, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.⁸⁹ To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used, although under the TPEA, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.⁹⁰ Finally, under the new section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins.⁹¹

It is the Department’s practice to select, as AFA, the higher of the: (a) highest margin alleged in the petition; or (b) the highest calculated rate of any respondent in the investigation.⁹² To determine the appropriate rate for the Vietnam-wide entity based on AFA, the Department first examined whether the highest petition margin was less than or equal to the highest calculated margin, and determined that the highest petition margin of 113.18 percent was the higher of the two. Next, in order to corroborate 113.18 percent as the potential Vietnam-wide rate, we first compared it to the highest CONNUM-specific margin calculated for the mandatory

⁸⁶ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003).

⁸⁷ See SAA at 870.

⁸⁸ See *id.* at 870; see also 19 CFR 351.308(d).

⁸⁹ See section 776(c)(2) of the Act; TPEA, section 502(2).

⁹⁰ See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

⁹¹ See section 776(d)(1)-(2) of the Act; TPEA, section 502(3).

⁹² 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).

respondents.⁹³ Neither respondent had a CONNUM-specific margin higher than the petition rate. We next compared the NVs and U.S. prices in the petition with the NVs and U.S. prices calculated for the respondents. We determined the petition values were within the range of the values calculated for the respondents. Therefore, we determine that the petition rate is corroborated by the actual experience of the mandatory respondents.

F. Date of Sale

In identifying the date of sale of the merchandise under consideration, the Department will normally, in accordance with 19 CFR 351.401(i), “use the date of invoice, as recorded in the exporter or producer’s records kept in the normal course of business” unless a different date better reflects the date on which the material terms of sale (*e.g.*, price and quantity) are established.⁹⁴ For SeAH’s sales through its affiliate, SeAH Steel America (SSA), SeAH reported, and we preliminarily determine, that the date of shipment from the Vietnamese factory, which occurred before the invoice date, best reflects the date on which the material terms of sale are established for.⁹⁵ For SeAH’s sales through its affiliate, State Pipe and Supply Co. (State Pipe), SeAH reported, and we preliminarily determine, that SSA’s invoice date to the customer best reflects the date on which the material terms of sale are established. For Hongyuan’s sales through its affiliated importer, Midwest Air Technologies, Inc. (MAT), Hongyuan reported, and we preliminarily determine, that MAT’s invoice date to the customer best reflects the date on which the material terms of sale are established.⁹⁶

G. Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether Hongyuan’s and SeAH’s sales of the subject merchandise from Vietnam to the United States were made at less than normal value, the Department compared the constructed export price (CEP) to the NV as described in the “Constructed Export Price” and “Normal Value” sections of this memorandum.

I. Constructed Export Price

In accordance with section 772(b) of the Act, we calculated CEP for all of SeAH’s and Hongyuan’s U.S. sales because the subject merchandise was first sold to an affiliated purchaser in the United States prior to importation.⁹⁷

We based CEP on a packed price to the first unaffiliated purchaser in the United States. We

⁹³ See Memorandum to Mark Hoadley, “Preliminary Analysis of SeAH Steel Vina Corp. (SeAH),” (SeAH Preliminary Analysis Memorandum) dated May 31, 2016, and Memorandum to Mark Hoadley “Vietnam Haiphong Hongyuan Machinery Manufactory Co., Ltd. Preliminary Analysis Memorandum” (Hongyuan Preliminary Analysis Memorandum), dated May 31, 2016.

⁹⁴ See, *e.g.*, *Notice of Final 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 Comment 1.

⁹⁵ See SeAH Section C at 10-11.

⁹⁶ See Hongyuan’s Section C at C-12.

⁹⁷ *Id.*, at C-11 and SeAH Section C at 8

made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight, marine insurance, U.S. inland freight, U.S. duties, and U.S. brokerage. We based movement expenses on surrogate values where the service was purchased from a Vietnamese company.⁹⁸ In accordance with section 772(d)(1) of the Act, we also deducted, where appropriate, those selling expenses associated with economic activities occurring in the United States. We deducted, where appropriate, rebates, discounts, commissions, advertising expenses, credit expenses, warranty expenses, further manufacturing, inventory carrying costs, and indirect selling expenses. In addition, pursuant to section 772(d)(3) of the Act, we made an adjustment to the starting price for CEP profit.

2. Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using the FOP methodology if the merchandise is exported from an NME country and the information does not permit the calculation of NV using home market prices, third-country prices, or constructed value under section 773(a) of the Act. 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.⁹⁹ 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 limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs.¹⁰⁰

a. Factor Valuation Methodology

In accordance with section 773(c) of the Act, the Department calculated NV based on FOP data reported by SeAH and Hongyuan. To calculate NV, the Department multiplied the reported per-unit factor-consumption rates by publicly available surrogate values. When selecting the surrogate values, the Department considered, among other factors, the quality, specificity, and contemporaneity of the data.¹⁰¹ As appropriate, the Department adjusted input prices by including freight costs to make them delivered prices. Specifically, the Department added a surrogate freight cost, where appropriate, 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.¹⁰² A detailed description of surrogate values used for

⁹⁸ See "Factor Valuation Methodology" section below.

⁹⁹ See, e.g., *Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China*, 71 FR 19695, 19703 (April 17, 2006), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079 (September 8, 2006).

¹⁰⁰ See section 773(c)(3)(A)-(D) of the Act.

¹⁰¹ See, e.g., *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008), and accompanying Issues and Decision Memorandum at Comment 9.

¹⁰² See *Sigma Corp. v. United States*, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997).

the respondent can be found in the Preliminary SV Memorandum.¹⁰³

For the preliminary determination, the Department is using Indian import data, as published by GTA, and other publicly available sources from India to calculate surrogate values for respondents' FOPs. 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, surrogate values which are (1) non-export average values, (2) contemporaneous with, or closest in time to, the POI, (3) product-specific, and (4) tax-exclusive.¹⁰⁴ The record shows that Indian import data obtained through GTA, as well as data from other Indian sources, are broad market averages, product-specific, tax-exclusive, and generally contemporaneous with the POI.¹⁰⁵

The Department continues to apply its long-standing practice of disregarding surrogate values if it has a reason to believe or suspect the source data may be dumped or subsidized.¹⁰⁶ In this regard, the Department has previously found that it is appropriate to disregard such prices from Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies.¹⁰⁷ Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POI, the Department finds that it is reasonable to infer that all exporters from, Indonesia, South Korea and Thailand may have benefitted from these subsidies. Therefore, the Department has not used prices from those countries in calculating Indian import-based surrogate values.

Additionally, the Department disregarded data from NME countries when calculating Indian

¹⁰³ See Memorandum to The File, "Antidumping Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from Vietnam – Surrogate Values for the Preliminary Determination," May 31, 2016 (Preliminary SV Memorandum).

¹⁰⁴ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004).

¹⁰⁵ See Preliminary SV Memorandum.

¹⁰⁶ See Section 505 of the Trade Preferences Extension Act of 2015, Pub. Law 114-27 (June 29, 2015) (amending Section 773(c)(5) of the Act to permit Department to disregard price or cost values without further investigation if it has determined that certain subsidies existed with respect to those values); see also *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793, 46795 (August 6, 2015).

¹⁰⁷ See, e.g., *Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination; 2011-2012*, 78 FR 42492 (July 16, 2013), and accompanying Issues and Decision Memorandum at 7-19; see also *Certain Lined Paper Products From Indonesia: Final Results of the Expedited Sunset Review of the Countervailing Duty Order*, 76 FR 73592 (November 29, 2011), and accompanying Issues and Decision Memorandum at 1; see also *Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 46770 (August 11, 2014), and accompanying Issues and Decision Memorandum at 4; see also *Certain Frozen Warmwater Shrimp From Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013), and accompanying Issues and Decision Memorandum at IV.

import-based per-unit surrogate values.¹⁰⁸ The Department also excluded from the calculation of Indian import-based per-unit surrogate values imports labeled as originating from an “unidentified” country because the Department could not be certain that these imports were not from either an NME country or a country with generally available export subsidies.¹⁰⁹

Pursuant to 19 CFR 351.408(c)(1), where a factor is produced in one or more ME countries, purchased from one or more ME suppliers and paid for in an ME currency, the Department normally will use the prices paid to the ME suppliers if substantially all (*i.e.*, 85 percent or more) of the total volume of the factor is purchased from the ME suppliers. In those instances where less than substantially all of the total volume of the factor is produced in one or more ME countries and purchased from one or more ME suppliers, the Department will weight-average the actual prices paid for the ME portion and the surrogate value for the NME portion by their respective quantities.

SeAH and Hongyuan purchased inputs that are produced in ME countries, from ME suppliers and paid for in an ME currency.¹¹⁰ Except for Hongyuan’s purchases of steel strip, the Department valued those inputs in accordance with 19 CFR 351.408(c).¹¹¹ Hongyuan reported that it purchased steel strip from a market economy country and paid for the merchandise in U.S. dollars.¹¹² The Department finds that these purchases are not ME purchases. Due to the business proprietary nature of these transactions, *see* the Hongyuan’s Preliminary Analysis Memorandum for a full explanation of this issue. We will continue to examine this issue after the Preliminary Determination.

The Department used Indian import statistics from GTA to value raw materials, by-products, packing materials, and certain energy inputs, except as listed below.

In NME AD proceedings, the Department prefers to value labor solely based on data from the primary surrogate country. In *Labor Methodologies*, the Department determined that the best methodology to value labor is to use industry-specific labor rates from the primary surrogate country. Additionally, we determined that best data source for industry-specific labor rate is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of Labor Statistics. We used this source in this investigation.

The petitioners and Hongyuan submitted data from this source, and they both stated that the most recent ILO Chapter 6A data available for India is 2005.¹¹³ The petitioners argue that we should use Subclass 27 (Manufacture of Basic Metals), while the respondents argue we should use Subclass 28 (Manufacture of Fabricated Metal Products, Except Machinery). We find Subclass

¹⁰⁸ *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates From the People’s Republic of China*, 69 FR 75294, 75301 (December 16, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People’s Republic of China*, 70 FR 24502 (May 10, 2005).

¹⁰⁹ *Id.*

¹¹⁰ *See* SeAH Section D at 12 and Hongyuan Section D at D-8.

¹¹¹ *See* Preliminary Surrogate Value Memorandum, SeAH Preliminary Analysis Memorandum, and Hongyuan Preliminary Analysis Memorandum.

¹¹² *See* Hongyuan Section D at D-8

¹¹³ *See* the Petitioners’ SV at Exhibit II and Hongyuan SV at Exhibit SV-6.

27 to be the best available information on the record because Subclass 27 includes more than just the manufacture of basic iron and metals. The U.N. Classifications Registry states that class 2710 (“manufacture of basic iron and metal”) includes “manufacture of primary iron and steel products, *i.e.*, production of:”... (*inter alia*) “pipes and hollow profiles of iron or steel.”¹¹⁴ The circular welded pipe the respondents produce is a product that is properly classified under Subclass 27. This determination is consistent accordance with our decision from *CWP from Vietnam 2012*.

We used 2014 electricity rates from the Indian Ministry of Power Central Electricity Authority to value electricity, and the 2016 water rates from the Maharashtra Industrial Development Corporation.¹¹⁵ We valued truck freight using data from Infobanc.¹¹⁶ We valued domestic brokerage and handling using the average publicly ranged data from an Indian antidumping case because it was the most contemporaneous data with the POI.¹¹⁷ To value factory overhead, selling, general, and administrative expenses, and profit, we used the financial statements of Indian companies Hariom Pipes, Hi Tech Pipes Limited, Ravindra Tubes Limited, Swastik Pipes, Limited, and Vardhman Industries Ltd., all of which are Indian producers of identical or comparable merchandise.¹¹⁸ All 17 financial statements on the record are from the period April 1, 2014 through March 31, 2015. Thus, they are all equally contemporaneous with the POI. However, 12 of these financial statements show evidence of subsidies while the above five financial statements do not show evidence of subsidies.¹¹⁹

3. *Determination of Comparison Method*

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted average dumping margins by comparing weighted-average NVs to weighted-average CEPs (or EPs) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In LTFV investigations, the Department examines whether to compare weighted-average NVs with the CEPs (or EPs) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. In recent investigations, the Department applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.¹²⁰ The Department finds that the differential pricing

¹¹⁴ See Preliminary SV Memorandum.

¹¹⁵ We have 2011 and 2014 electricity rates on the record. We used the 2014 rates because they were the most contemporaneous with the POI. See Preliminary Surrogate Value Memorandum. For water, Hongyuan submitted Tariff Rates for Water from Maharashtra Industrial Development Corporation, dated March 2, 2016. The petitioners submitted undated water rates from the same source. The rates in both submissions appear to be the same. This is the only surrogate value information we have on the record for water, so we are using this data even though it is dated after the POI. See Hongyuan SV at Exhibit SV-5 and Petitioners SV at Exhibit II-C-3.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ See, e.g., *Xanthan Gum From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar From Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); or *Welded Line Pipe From the Republic of Turkey: Final Determination of Sales at Less*

analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. The Department will 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 average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of CEPs (or EPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. For SeAH, purchasers are based on the reported customer codes¹²¹ and for Hongyuan, purchasers are based on the reported consolidated customer codes.¹²² Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the period of investigation based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region and time period, that the Department uses in making comparisons between CEP (or EP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen's *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period 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 used to evaluate the extent to which the prices to the particular purchaser, region or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Than Fair Value, 80 FR 61362 (October 13, 2015).

¹²¹ See SeAH Section C.

¹²² See Hongyuan Supplemental Questionnaire.

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 account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen’s *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, the Department examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative comparison method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison 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 margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

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

4. *Results of the Differential Pricing Analysis*

For SeAH, based on the results of the differential pricing analysis, the Department preliminarily finds that 64.9 percent of the value of U.S. sales pass the Cohen’s *d* test,¹²³ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen’s *d* test and the average-to-average method to those sales which did not pass the Cohen’s

¹²³ See SeAH Preliminary Analysis Memorandum.

d test. Thus, for this preliminary determination, the Department is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for SeAH.

For Hongyuan, based on the results of the differential pricing analysis, the Department preliminarily finds that 2.73 percent of the value of U.S. sales pass the Cohen's *d* test,¹²⁴ and does not confirm the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Thus, the results of the Cohen's *d* and ratio tests do not support consideration of an alternative to the average-to-average method. Accordingly, the Department preliminarily determines to apply the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Hongyuan.

VII. CURRENCY CONVERSION

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

VIII. DISCLOSURE AND PUBLIC COMMENT

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.¹²⁵ Case briefs may be submitted to Enforcement and Compliance's AD and CVD Centralized Electronic Service System (ACCESS) no later than seven days after the date on which the final verification report is issued in this proceeding. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.¹²⁶

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.¹²⁷ This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing must do so in writing within 30 days after the publication of this preliminary determination in the *Federal Register*.¹²⁸ 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, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a date, time, and location to be determined. Parties will be notified of the date, time, and location of any hearing.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS.¹²⁹ Electronically-filed documents must be received successfully in their entirety by

¹²⁴ See Hongyuan Preliminary Analysis Memorandum.

¹²⁵ See 19 CFR 351.224(b).

¹²⁶ See 19 CFR 351.309.

¹²⁷ See 19 CFR 351.309(c)(2) and (d)(2).

¹²⁸ See 19 CFR 351.310(c).

¹²⁹ See 19 CFR 351.303(b)(2)(i).

5:00 p.m. Eastern Time on the due dates established above.¹³¹

IX. VERIFICATION

As provided in section 782(i)(1) of the Act, we intend to verify the information submitted in response to the Department's questionnaires.

X. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

✓
Agree

Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

31 MAY 2016
(Date)

¹³¹ See 19 CFR 351.303(b)(1).