



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

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Investigation  
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DATE: February 14, 2014

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for Preliminary Determination of Less-Than-Fair-Value Investigation: Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam

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## **SUMMARY**

The Department of Commerce (Department) preliminarily determines that certain oil country tubular goods (OCTG) from the Socialist Republic of Vietnam (Vietnam) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is January 1, 2013, through June 30, 2013.

## **BACKGROUND**

### **Initiation**

On July 2, 2013, the Department received an antidumping (AD) petition concerning imports of OCTG from Vietnam filed in proper form by United States Steel Corporation, Vallourec Star L.P., TMK IPSCO, Energex Tube (a division of JMC Steel Group), Northwest Pipe Company, Tejas Tubular Products, Welded Tube USA Inc., Boomerang Tube LLC, and Maverick Tube Corporation (collectively, the Petitioners). In July 2013, the Department requested information regarding, and clarification of, certain areas of the petition. Petitioners



filed timely responses to these requests. The Department initiated a LTFV investigation of OCTG from Vietnam on July 22, 2013.<sup>1</sup>

On July 30, 2013, the Department issued quantity and value (Q&V) questionnaires to the eight companies named in the petition. We received timely responses only from Hot Rolling Pipe Co., Ltd. Vietnam (Hot Rolling Pipe) and SeAH Steel VINA Corporation (SeAH VINA). We selected these two companies as mandatory respondents.<sup>2</sup>

We issued AD questionnaires to these two companies on August 23, 2013. On September 20, 2103, Hot Rolling Pipe informed the Department that it did not intend to respond to the Department's request for information. We received SeAH VINA's section A questionnaire response on September 24, 2013, and its sections C and D responses on October 30, 2013. We issued a supplemental questionnaire to SeAH VINA on December 12, 2013, and received the response to the section A and C portions of the supplemental questionnaire on January 9, 2014. We received the response to the section D portion of the supplemental questionnaire on January 14, 2014. We issued an additional supplemental questionnaire to SeAH VINA on January 28, 2014, and received the response on February 5, 2014.

On August 12, 2013, WSP Pipe Co., Ltd. (WSP), the sole respondent in the concurrent LTFV investigation of OCTG from Thailand, submitted scope comments.<sup>3</sup> Specifically, WSP requested that the Department exclude "pierced billets" from the scope of the investigations. On August 22, 2013, petitioners filed rebuttal comments to WSP's scope comments.<sup>4</sup>

On August 22, 2013, the U.S. International Trade Commission preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of OCTG from Vietnam.<sup>5</sup>

On December 18, 2013, Petitioners filed amendments to the petition, pursuant to section 703(e)(1) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of OCTG from Vietnam.<sup>6</sup>

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<sup>1</sup> See *Certain Oil Country Tubular Goods from India, the Republic of Korea, the Republic of the Philippines, Saudi Arabia, Taiwan, Thailand, the Republic of Turkey, Ukraine, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations*, 78 FR 45505 (July 29, 2013) (*Initiation Notice*).

<sup>2</sup> See Memorandum from Richard Weible, Director, Office VIII, Antidumping and Countervailing Duty Operations, to Gary Taverman, Senior Advisor, Antidumping and Countervailing Duty Operations, Antidumping Duty Investigation of Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Respondent Selection, dated August 23, 2013.

<sup>3</sup> See Letter from WSP to the Department entitled "*Comments on scope of investigations: Antidumping Duty Investigations of Oil Country Tubular Goods from India, Korea, Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine and Vietnam; Countervailing Duty Investigation of Oil Country Tubular Goods from India and Turkey*," dated August 12, 2013 (Scope Comments).

<sup>4</sup> See Letter from petitioners to the Department of Commerce entitled "*Certain Oil Country Tubular Goods from India, Korea, Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine and Vietnam: Rebuttal Comments on Scope of Investigation*," dated August 22, 2013 (Scope Rebuttal Comments).

<sup>5</sup> See *Certain Oil Country Tubular Goods From India, Korea, the Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine, and Vietnam: Determinations*, 78 FR 52213 (August 22, 2013).

<sup>6</sup> See Letter from Petitioners to the Department, "*Amendment to Petition for the Imposition of Antidumping and Countervailing Duties: Oil Country Tubular Goods from Vietnam*" (December 18, 2013) (*Amendment Vietnam*).

On December 31, 2013, the Department requested that SeAH VINA report its shipment data for a three-year period ending in February 2014, the month of the preliminary determination for this LTFV investigation. On January 14, 2014, SeAH VINA submitted its shipment data.

### **Postponement of Preliminary Determination**

On October 31, 2013, the Department fully extended the deadline for issuing the preliminary determination by 50 days.<sup>7</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>8</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. The revised deadline for the preliminary determination of this investigation is now February 14, 2014.<sup>9</sup>

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

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

On February 10, 2014, SeAH VINA requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days (*i.e.*, to 135 days after publication of the preliminary determination). On February 12, 2014, SeAH VINA requested that in the event of an affirmative preliminary determination we also extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a six-month period.

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<sup>7</sup> See *Certain Oil Country Tubular Goods From India, the Republic of Korea, the Republic of the Philippines, Saudi Arabia, Taiwan, Thailand, the Republic of Turkey, Ukraine, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 78 FR 65263 (October 31, 2013).

<sup>8</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>9</sup> Due to the closure of the Federal Government on February 13, 2014, Commerce completed this determination on the next business day (*i.e.*, February 14, 2014). 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).

On February 11, 2014, petitioners requested that in the event of a negative preliminary determination that the Department postpone its final determination by 60 days (*i.e.*, to 135 days after publication of the preliminary determination).

In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because (1) our preliminary determination is affirmative; (2) the requesting producer/exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, we are granting this request and are postponing the final determination until no later than 135 days after the publication of this notice in the *Federal Register*. Suspension of liquidation will be extended accordingly.

## **SCOPE OF THE INVESTIGATION**

The merchandise covered by the investigation is certain oil country tubular goods (OCTG), which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.*, whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (“API”) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the investigation also covers OCTG coupling stock.

Excluded from the scope of the investigation are: casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

The merchandise subject to the investigation is currently classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The merchandise subject to the investigation may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, 7304.59.80.80, 7305.31.40.00, 7305.31.60.90, 7306.30.50.55, 7306.30.50.90, 7306.50.50.50, and 7306.50.50.70.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

### **Scope Comments**

In the *Initiation Notice*, the Department invited interested parties “to raise issues regarding product coverage.”<sup>10</sup>

On August 12, 2013, we received scope comments from WSP requesting that the Department “clarify the scope of these OCTG investigations by excluding certain pierced billets from the scope.”<sup>11</sup> WSP described the merchandise subject to the request as “billets with a chemical composition used to produce a variety of pipe and tube products (including but not limited to OCTG), which have been pierced, but which have not been otherwise further processed prior to importation into the United States.”<sup>12</sup> WSP further described the merchandise as “heated and pierced; it has not been rolled, sized, straightened, cut, etc., prior to importation into the United States.”<sup>13</sup> WSP stated that it did not think that such “pierced billets” constitute “unfinished OCTG, including green tubes” because the billets are not dedicated for use as OCTG or green tubes and can be used for other applications such as diesel sleeves, mine crane rear axles, and mechanical or structural pipe.<sup>14</sup> WSP also claimed that the merchandise in question requires substantial additional processing before it could be considered unfinished OCTG and thus subject to the scope of the investigations.<sup>15</sup>

We received rebuttal comments from Petitioners on August 22, 2013, in which Petitioners claim that the Department should reject WSP’s request and that the merchandise in question is covered by the scope of the investigations.<sup>16</sup> Petitioners state that the scope language of the investigations covers “hollow steel products of circular cross section” that are unfinished and may be used as OCTG, and argue that the merchandise described by WSP fits this physical description and thus is clearly within the scope of the order.<sup>17</sup> Petitioners further state that the inclusion of this merchandise in the scope is consistent with previous practices and decisions by the Department.<sup>18</sup> Petitioners also argue that WSP has provided no information to substantiate the claim that “pierced billets” require substantial additional processing, and moreover that there are many types of unfinished OCTG besides “green tubes” that are covered by the scope.<sup>19</sup> Finally, Petitioners believe that any “pierced billets” imported into the United States would be classified under the heading 7304 of Chapter 73 of the HTS, and that such a classification would indicate that the merchandise was a form of unfinished OCTG and covered by the scope.<sup>20</sup>

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<sup>10</sup> See *Initiation Notice*, 78 FR at 45506.

<sup>11</sup> See Letter from WSP to the Department (Scope Comments), dated August 12, 2013 at 2.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 2-3.

<sup>16</sup> See Letter from Petitioners to the Department, dated August 22, 2013 (Scope Rebuttal Comments) at 2.

<sup>17</sup> *Id.* at 2-3.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 3.

<sup>20</sup> *Id.* at 4.

In response to WSP's arguments, petitioners argued in part that the physical characteristics of the product in question were the same as merchandise covered by the scope of the investigation and that there was no evidence that the merchandise in question required further manufacturing. WSP has not responded to petitioners' arguments, has provided no further information, and subsequently did not respond to the Department's AD Questionnaire. Therefore, we preliminarily find that there is no evidence to suggest the merchandise described by WSP is not covered by the scope of these investigations. We invite parties to comment on this in their briefs so that the issue can be addressed in the Final Determination.

## **NON-MARKET ECONOMY COUNTRY**

The Department considers Vietnam to be a non-market economy (NME) country.<sup>21</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. No information or argument has been presented to demonstrate that Vietnam should not be considered to be an NME. 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) 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>22</sup>

Both Petitioners and SeAH VINA argue that the Department should select India as the surrogate country in this investigation because India is a significant producer of comparable merchandise and has readily available surrogate value (SV) data.<sup>23</sup> For the reasons detailed below, we selected India as the surrogate country.

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<sup>21</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).

<sup>22</sup> See *Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process* (March 1, 2004) (*Policy Bulletin*).

<sup>23</sup> See Petitioners' January 10, 2014, submission at 2-4 and SeAH VINA's January 10, 2014, submission at 2.

## **Economic Comparability**

As explained in its Surrogate Country List,<sup>24</sup> the Department considers Bangladesh, Bolivia, India, Nicaragua, Pakistan, and the Philippines all to be at a level of economic development comparable to Vietnam. 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 requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise. As a proxy for domestic production, we examined export data using the Global Trade Atlas (GTA) (for India, Nicaragua, and the Philippines) and the United Nations Comtrade website ([www.comtrade.un.org](http://www.comtrade.un.org)) (for Pakistan, Bolivia, and Bangladesh) for HTSUS numbers 7304.29, 7305.20, and 7306.29, which are comparable to the merchandise under consideration.<sup>25</sup> The data from the two sources demonstrate that India, Nicaragua, the Philippines, and Pakistan were exporters of comparable merchandise during the POI. We thus consider these countries to be “significant producers” of comparable merchandise.<sup>26</sup> The two sources we examined also showed that Bangladesh and Bolivia had no exports of comparable merchandise during the months of the POI for which data were available, and thus were not significant producers of comparable merchandise. 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, Bolivia, Nicaragua, Pakistan, or the Philippines. In contrast, the record contains usable Indian SVs for every FOP for which we need a SV.

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<sup>24</sup> See Letter from Robert James, Program Manager, Office VI, Antidumping and Countervailing Duty Operations, to all Interested Parties, “Re: Antidumping Duty Investigation of Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam (Vietnam),” dated January 7, 2014 at Attachment I, which contains the Memorandum to Robert James, Program Manager, Office VI, Antidumping and Countervailing Duty Operations, from Carole Showers, Director, Office of Policy, “Request for a List of Surrogate Countries for an Antidumping Duty Investigation of Oil Country Tubular Goods (“OCTG”) from the Socialist Republic of Vietnam (“Vietnam”),” dated December 20, 2013 (Surrogate Country List).

<sup>25</sup> See Memorandum from Fred Baker, Import Compliance Analyst, Office VI, Antidumping and Countervailing Duty Operations, to Richard Weible, Director, Office VI, Antidumping and Countervailing Duty Operations, Antidumping Duty Investigation of Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Selection of a Surrogate Country, dated February 13, 2014 (Surrogate Country Memorandum).

<sup>26</sup> *Id.* See also *Conference Report accompanying H.R. 3, the 1988 Omnibus Trade & Competitiveness Act, H. Rep. No. 100-576, at 590 (1988) (Conference Report).*

Because India is the only country listed on the Surrogate Country Memorandum found to be 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 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 List is not necessary.

## **SURROGATE VALUE COMMENTS**

Petitioners and SeAH VINA filed FOP valuation comments and SV information with which to value the FOPs in this proceeding on January 17, 2014. On January 27, 2014, Petitioners and SeAH VINA 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 SV Memorandum.<sup>27</sup>

## **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>28</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>29</sup> as amplified by *Silicon Carbide*.<sup>30</sup> However, if the Department determines that a company is wholly foreign-owned or located in an ME, then an analysis of the *de jure* and *de facto* criteria as set forth in *Sparklers* and *Silicon Carbide* is not necessary to determine whether it is independent from government control.<sup>31</sup>

In the *Initiation Notice*, the Department notified parties of the application process by which exporters may obtain separate-rate status in NME investigations.<sup>32</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*

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<sup>27</sup> See Memorandum from Fred Baker, Import Compliance Analyst, Office VI, Antidumping and Countervailing Duty Operations, to the File, Subject: Surrogate Values for the Preliminary Determination, dated February 13, 2014 (SV Memorandum)

<sup>28</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>29</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*").

<sup>30</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>31</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>32</sup> See *Initiation Notice*, 78 FR at 45511.

we stated that the SRA would be due 60 days after publication of the notice, which was September 27, 2013.

In this investigation, only SeAH VINA submitted a timely SRA. SeAH VINA also provided evidence that it is wholly owned by individuals or companies located in an ME. Therefore, because it is wholly foreign-owned and the Department has no evidence indicating that it is under the control of the government of Vietnam, an analysis of the *de jure* and *de facto* criteria is not necessary to determine whether SeAH VINA is independent from government control.<sup>33</sup> Accordingly, the Department has preliminarily granted a separate rate to SeAH VINA.

## VIETNAM-WIDE ENTITY

As indicated in our *Initiation Notice*, the Department required that Vietnam respondents submit a response to both the Q&V questionnaire and the separate rate application by their respective deadlines in order to receive consideration for separate rate status. As stated above, we issued our request for Q&V information to eight known Vietnamese producers or exporters of OCTG. We received two timely-filed Q&V responses from companies to whom we sent a Q&V questionnaire. Thus, although all known producers and exporters were given an opportunity to provide Q&V information, not all producers and exporters did so.<sup>34</sup> We have treated these Vietnamese producers and exporters who did not respond to the Department's Q&V questionnaire as part of the Vietnam-wide entity because they do not qualify for a separate rate.<sup>35</sup> Additionally, one party, Hot Rolling Pipe, who did respond to the Department's Q&V questionnaire and who was selected as a mandatory respondent in the investigation, ceased participating in the investigation and did not respond to the Department's further requests for information. Accordingly, Hot Rolling Pipe does not qualify for a separate rate, and we have treated this company too as part of the Vietnam-wide entity.

## DATE OF SALE

19 CFR 351.401(i) states that, “[i]n identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business.” Additionally, the Secretary may use a date other than the date of invoice if the Secretary is

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<sup>33</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104 (December 20, 1999) (determining that the respondent was wholly foreign-owned, and thus, qualified for a separate rate).

<sup>34</sup> The following six companies did not file timely responses to the Q&V questionnaire: Vietubes Corporation Ltd., Jiangsu Shined Petroleum Equipment Manufacturing Co., Ltd., PVD Offshore Services Company Limited, Sujia Steel Pipe (Vietnam) Co., Ltd., Lida Pipe (Vietnam) Co., Ltd., and Borun OCTG Co., Ltd. Vietnam.

<sup>35</sup> See, e.g., *Prestressed Concrete Steel Wire Strand From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 74 FR 68232, 68236 (December 23, 2009) (*PC Strand from the PRC*) unchanged in *Prestressed Concrete Steel Wire Strand From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 28560 (May 21, 2010); see also *Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Preliminary Partial Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China*, 70 FR 77121, 77128 (December 29, 2005), unchanged in *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006).

satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.<sup>36</sup> The Court of International Trade (the Court) has stated, “a party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to ‘satisfy’ the Department that ‘a different date better reflects the date on which the exporter or producer establishes the material terms of sale.’”<sup>37</sup> The date of sale is generally the date on which the parties agree upon all material terms of the sale. This normally includes the price, quantity, delivery terms and payment terms.<sup>38</sup>

SeAH VINA reported its sale dates based on the date its U.S. affiliate issued an invoice to the unaffiliated U.S. customer. No information on the record demonstrates that any other date better reflects the date on which the material terms of sale were established. Therefore, consistent with 19 CFR 351.401(i), the Department has preliminarily determined that the invoice date is the date that best reflects when the material terms of sale are set, and used it as the date of sale in this preliminary determination. However, if for any individual sale the shipment date preceded the invoice date, then the Department used the shipment date as the 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 SeAH VINA had sold the merchandise under consideration to the United States at LTFV during the POI.<sup>39</sup>

### **U.S. Price**

SeAH VINA reported that all of its U.S. sales during the POI were CEP in accordance with section 772(b) of the Act. Section 772(b) of the Act defines CEP as “the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with producer or exporter, . . . .” We preliminarily determine that SeAH VINA’s sales are CEP sales because all of SeAH VINA’s sales to the United States were made to its U.S. subsidiary, which resold the merchandise to unaffiliated customers. Accordingly, we based CEP on prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign movement expenses, international movement expenses, and U.S. movement expenses, in accordance with section 772(c)(2)(A) of the Act. We based movement expenses on either SVs if the expense was paid to an NME company in

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<sup>36</sup> See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (Ct. Int’l. Trade 2001) (quoting 19 CFR 351.401(i)) (*Allied Tube*).

<sup>37</sup> See *Allied Tube*, 132 F. Supp. 2d at 1090-1092.

<sup>38</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000) and accompanying Issues and Decision Memorandum at Date of Sale, Comment 1.

<sup>39</sup> See “U.S. Price,” and “Normal Value” sections.

Vietnamese dong, or actual expenses if they were paid for in an ME currency. See SV Memorandum for details regarding the SVs used for movement expenses.

In accordance with section 772(d)(1) of the Act, we also deducted, where appropriate, those selling expenses associated with economic activities occurring in the United States. We made adjustments, where appropriate, for billing adjustments, discounts, credit expenses, further processing, inventory carrying costs, and indirect selling expenses. In addition, pursuant to section 772(d)(3) of the Act, we made an adjustment to the starting price for CEP profit based on information included in financial statements from the surrogate country.<sup>40</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 an NME 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 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>41</sup>

### **Factor Valuations**

In accordance with section 773(c) of the Act, the Department calculated NV based on the FOPs that SeAH VINA reported. To calculate NV, the Department multiplied the reported per-unit FOP-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>42</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.

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<sup>40</sup> See SV Memorandum.

<sup>41</sup> See section 773(c)(3)(A)-(D) of the Act.

<sup>42</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.

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>43</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>44</sup> the Department uses the actual purchase prices to value the inputs. In this preliminary determination the Department valued some of SeAH VINA's inputs using purchase prices from ME suppliers because these purchases meet the criteria described above.

Except where the Department valued inputs using ME purchase prices, it 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 SeAH VINA'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) contemporaneous with, or closest in time to, the POI; (2) product-specific; and (3) tax-exclusive; (4) representative of a broad market average; (5) publicly available.<sup>45</sup> The record shows that Indian import data obtained through GTA, as well as data from other Indian sources, are product-specific, tax-exclusive, generally contemporaneous with the POI, representative of a broad market average, and publicly available.<sup>46</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 wholesale price index as published in the International Monetary Fund's *International Financial Statistics*.<sup>47</sup>

Furthermore, with regard to Indian import-based SVs, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, Thailand, and South Korea may have been subsidized because we have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies.<sup>48</sup> Therefore, it is reasonable to infer that all exports to all

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<sup>43</sup> See, e.g., *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997).

<sup>44</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*"). The Department's modifications to those criteria as described in *Use of Market Economy Input Prices in Nonmarket Economy Proceedings*, 78 FR 46799 (August 2, 2013), do not apply in this investigation because we initiated it prior to September 3, 2013.

<sup>45</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 *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>46</sup> See SV Memorandum.

<sup>47</sup> *Id.*

<sup>48</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,

markets from these countries may be subsidized.<sup>49</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>50</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 generally available export subsidies.<sup>51</sup> Therefore, we have not used data 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 SeAH VINA 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" and "outside industrial areas" from April 2009 through June 2009. These rates were still current as of December 2013, and, therefore, we did not inflate them.

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, 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 2014: India* by the World Bank.<sup>52</sup>

We valued truck freight using data from the website <http://logistics.infobanc.com/logtruck.htm>.

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19-20.; Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand, 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at 23.

<sup>49</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>50</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>51</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).

<sup>52</sup> See SV Memorandum at Exhibit 8.

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). The latest year for which ILO Chapter 6A reports national data for India is 2005.

The Department finds the two-digit description under Division 27 (*i.e.*, Manufacture of Basic Iron and Metal) of the ISIC-Revision 3 to be the best available information on the record because it is most specific to the industry being examined, and is, therefore, derived from industries that produce comparable merchandise. Accordingly, relying on Chapter 6A of the Yearbook, the Department calculated the labor input using labor data reported by India to the ILO under Division 27 of ISIC-Revision 3 standard, in accordance with section 773(c)(4) of the Act. A more detailed description of the labor rate calculation methodology is provided in the SV Memorandum. We find that this information constitutes the best available information on the record because it is the most contemporaneous data available for the POI and, thus, more accurately reflective of actual wages in India 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 for Division 27, 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 Memorandum.<sup>55</sup>

To value factory overhead, selling, general, and administrative expenses, and profit, the Department used the contemporaneous audited financial statements of Bhushan Steel Limited, Welspun Corporation Limited, and APL Apollo Tubes Limited, all of which are Indian producers of OCTG.<sup>56</sup>

### **Application of Adverse Facts Available**

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

Information on the record of this investigation indicates that the Vietnam-wide entity was unresponsive to the Department’s requests for information. Specifically, as discussed above,

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<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 *id.* at 76 FR at 36093.

<sup>55</sup> See SV Memorandum at Exhibit 2.

<sup>56</sup> *Id.* at page 6 and Exhibit 6.

certain companies did not respond to our questionnaires requesting Q&V information. Further, Hot Rolling Pipe, after being selected as a mandatory respondent and having been issued an AD questionnaire by the Department, stated that it would no longer participate in this investigation. As a result, pursuant to section 776(a)(2)(A) of the Act, we find that the use of FA is appropriate to determine the rate for the Vietnam-wide entity.<sup>57</sup>

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information.<sup>58</sup> We find that, because the Vietnam-wide entity did not respond to our requests for information, it has failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the FA, an adverse inference is appropriate.

### **Rate for the Vietnam-Wide Entity**

When employing an adverse inference, section 776(b) of the Act indicates that the Department may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the margin is sufficiently adverse "as to effectuate the statutory purposes of the AFA rule to induce respondents to provide the Department with complete and accurate information in a timely manner."<sup>59</sup> As guided by the SAA, the information used as AFA should ensure an uncooperative party does not benefit by failing to cooperate than if it had cooperated fully.<sup>60</sup> 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.<sup>61</sup> As AFA, we have preliminarily assigned a rate of 111.47 percent to the Vietnam-wide entity, the highest margin alleged in the petition, as corrected by the petitioners prior to our initiation of the investigation.<sup>62</sup>

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<sup>57</sup> See *PC Strand from the PRC*, 74 FR at 68236.

<sup>58</sup> See also *Statement of Administrative Action accompanying the Uruguay Round Agreements Act (URAA)*, H.R. Doc. 103-316, 870 (1994) (SAA); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000).

<sup>59</sup> See *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55796 (August 30, 2002); see also *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

<sup>60</sup> See SAA at 870.

<sup>61</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>62</sup> See Petitioner's July 12, 2013, submission at Exhibit VIII-15 and *Initiation Notice*, 78 FR 35257.

## Corroboration

Section 776(c) of the Act provides that, when the Department relies upon secondary information, rather than information obtained in the course of the investigation, as FA, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the merchandise subject to this investigation, or any previous review under section 751 concerning the merchandise subject to this investigation.”<sup>63</sup> To “corroborate” means the Department will satisfy itself that the secondary information to be used has probative value by examining the reliability and the relevance of the information. Independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. The AFA rate the Department used is drawn from the July 12, 2013, amended petition at Exhibit VIII-15. To corroborate the AFA rate we have selected, we compared it to transaction-specific dumping margins we found for the participating mandatory respondent SeAH VINA. We found that the rate of 111.47 percent is reliable and relevant because it is within the range of the SeAH VINA’s transaction-specific dumping margins.<sup>64</sup> Accordingly, we find the rate of 111.47 percent is corroborated within the meaning of section 776(c) of the Act.<sup>65</sup> The rate for the Vietnam-wide entity applies to all entries of OCTG except for entries produced and exported by SeAH VINA.

## **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 export price (EP) or weighted-average CEPs (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>66</sup> The Department finds that the DP analysis used in this preliminary determination and other recent proceedings may be instructive for purposes of examining whether to apply an alternative comparison method in this LTFV investigation.<sup>67</sup> The Department intends to continue to

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<sup>63</sup> See *Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate From the People’s Republic of China*, 73 FR 6479, 6481 (February 4, 2008), quoting the SAA at 870.

<sup>64</sup> See page 52 of the margin calculation output, found in Attachment 2 of the Memorandum from Fred Baker, Analyst, to the File, Analysis for the Preliminary Determination of the Antidumping Duty Investigation of Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam (Vietnam): SeAH Steel VINA Corporation (SeAH VINA), dated February 13, 2014.

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

<sup>66</sup> 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).

<sup>67</sup> 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); *Final Determination of Sales at Less Than Fair Value: Silica Bricks and Shapes From the People’s Republic of China*, 78 FR 70918 (November 27, 2013).

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 differ significantly among purchasers, regions, or time periods.<sup>68</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), 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* coefficient is calculated when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is used 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 (*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, and the sales were 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.

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

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<sup>68</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*.

identified pattern of prices 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 Differential Pricing Analysis**

Based on the results of the DP analysis, the Department finds that 85.3 percent of SeAH VINA's U.S. sales pass the Cohen's *d* test, and confirm the existence of a pattern of CEPs for comparable merchandise that differ significantly among purchasers, regions, or time periods. Further, the Department determines that the average-to-average method can account for such differences because there is not a meaningful difference in the resulting weighted average dumping margins when calculated using the average-to-average method and the alternative method based on the average-to-transaction method applied to all U.S. sales. Accordingly, the Department has determined to use the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for SeAH VINA.

## 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.

## **CRITICAL CIRCUMSTANCES**

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist in an LTFV investigation if there is a reasonable basis to believe or suspect that: (A) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period. For the reasons explained below, we are preliminarily determining that critical circumstances do not exist for SeAH VINA, but that they do exist for the Vietnam-wide entity.

### *A History of Dumping and Material Injury*

In order to determine whether there is a history of dumping pursuant to section 733(e)(1)(A)(i) of the Act, the Department generally considers current or previous AD duty orders on subject merchandise from the country in question in the United States and current orders in any other country with regard to imports of subject merchandise.<sup>69</sup> No parties have made any claims regarding completed AD proceedings for OCTG from Vietnam, and the Department is not aware of the existence of any active AD orders on OCTG from Vietnam in other countries. As a result, the Department does not find that there is a history of injurious dumping of OCTG from Vietnam pursuant to section 733(e)(1)(A)(i) of the Act.

### *Knowledge that Exporters Were Dumping*

The Department generally bases its decision with respect to knowledge on the weighted-average dumping margins calculated in the preliminary determination and the ITC's preliminary injury determination.<sup>70</sup> The Department normally considers margins of 25 percent or more for EP sales and 15 percent or more for CEP sales sufficient to impute importer knowledge of sales at LTFV.<sup>71</sup> SeAH VINA had only CEP sales. The weighted-average dumping margin calculated

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<sup>69</sup> See, e.g., *Certain Oil Country Tubular Goods From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination*, 74 FR 59117, 59120 (November 17, 2009) unchanged in *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010).

<sup>70</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From Mexico*, 77 FR 17422, 17425 (March 26, 2012).

<sup>71</sup> *Id.*

for SeAH VINA does not exceed the threshold sufficient to impute knowledge of dumping (*i.e.*, 15 percent for CEP sales). Therefore, we determine that there is insufficient basis to find that importers should have known that SeAH VINA was selling the merchandise under consideration at less than its fair value.

Moreover, for the reasons discussed above, the Department has preliminarily determined a rate for the Vietnam-wide entity of 111.47 percent. This rate for the Vietnam-wide entity exceeds both the 25 percent threshold for EP sales and the 15 percent threshold for CEP sales. Therefore, the Department is preliminarily imputing knowledge of sales at LTFV to importers subject merchandise from the Vietnam-wide entity.

In this investigation there are no entities other than SeAH VINA that qualify for a separate rate. Therefore, we do not need to make a knowledge determination with respect to any entities other than SeAH VINA and the Vietnam-wide entity.

Finally, because the ITC preliminarily found a reasonable indication that an industry in the United States is materially injured by imports from Vietnam of OCTG, the Department has determined that importers knew or should have known that there was likely to be material injury by reason of sales of OCTG at LTFV by SeAH VINA and the Vietnam-wide entity.

#### *Massive Imports of the Subject Merchandise Over a Relatively Short Period*

Pursuant to 19 CFR 351.206(h), the Department will not consider imports to be massive unless imports during a relatively short period (comparison period) have increased by at least 15 percent over imports in an immediately preceding period of comparable duration (base period). The Department normally considers the comparison period to begin on the date that the proceeding began (*i.e.*, the date the petition was filed) and to end at least three months later.<sup>72</sup> Furthermore, the Department may consider the comparison period to begin at an earlier time if it finds that importers, exporters, or foreign producers had a reason to believe that proceedings were likely before the petition was filed.<sup>73</sup> In addition, the Department expands the periods as more data are available.

Petitioners maintain that importers, exporters, or foreign producers, through industry media and conferences, had reason to believe that the petitions were likely two months before they were filed. As such, Petitioners argue that the comparison period should begin in May 2013, not in July 2013, when the petitions were filed. Furthermore, supported by import data published by the Department's Bureau of Census and the U.S. International Trade Commission, Petitioners claim that imports of OCTG from Vietnam increased by 23.96 percent between the base and comparison periods.<sup>74</sup>

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<sup>72</sup> See 19 CFR 351.206(i). Since the Department typically uses monthly import/shipment data in its analysis, if a petition is filed in the first half of the month, the Department's practice has been to consider the month in which the petition was filed as part of the comparison period.

<sup>73</sup> *Id.*

<sup>74</sup> See Amendment Vietnam at 4.

After reviewing the information Petitioners submitted to support their claims that parties had advance knowledge of the petitions, we have determined parties did not have reason to believe that petitions were likely until they were filed in July 2013. Petitioners have presented evidence which they claim shows that certain parties considered these proceedings likely or even “imminent.” The evidence also refers specifically to AD and CVD proceedings. Specifically, Petitioners presented evidence of the following:

- March 2013 – Two trade lawyers publish an article in Global Trade Monitor (GTM), a publication of their own law firm, stating proceedings against Korea may come as soon as the end of the month. Their analysis also presents data for India, Turkey, Ukraine, and Vietnam.<sup>75</sup>
- March 2013 – The president of the American Institute for International Steel (AIIS) mentions the possibility of proceedings against India, Turkey, Vietnam, and “others” during an AIIS luncheon in Houston.<sup>76</sup>
- April 2013 – An article in American Metal Market (AMM) reports that proceedings against Korea are imminent, and mentions the possibility of proceedings against “other Asian” and “Eastern European” countries.<sup>77</sup>
- May 2013 – Another article in AMM reports that proceedings against Korea will be filed in July, and mentions the possibility of proceedings against India, the Philippines, and Turkey, among other countries.<sup>78</sup>
- June 2013 – A third AMM article reports that a “suspension deal” is possible for Korea, and that the end of June (the end of the fiscal quarter) will be a “decisive day” for the U.S. industry to decide whether proceedings should be filed against Korea, India, Turkey, Ukraine, and Vietnam.<sup>79</sup>

However, all the evidence provided is speculative and also demonstrates that much doubt still existed. For example, while the GTM article states proceedings against Korea might be filed by “the end of the month,” it also notes “rumors” of such filings might be “empty threats.”<sup>80</sup>

Likewise, the AMM articles use words such as “imminent” when discussing proceedings against Korea, but also refer to the U.S. industry as “mulling” the possibility of filing a petition.<sup>81</sup> The articles also quote industry insiders noting that such “rumors” have been circulating for years and that U.S. producers must first decide whether their profits will prevent an affirmative injury determination before filing.<sup>82</sup> In sum, we preliminarily find that the evidence does not rise to the level of showing that importers or foreign exporters or producers had reason to believe, prior to the filing of the petitions, that a proceeding was likely. Therefore, we have relied on the periods before and after the filing of the petitions in July in determining whether imports have been massive (*i.e.*, December 2012 through June 2013 compared with July 2013 through January 2014).

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<sup>75</sup> *Id.* at Exhibit Supp. VIII-19.

<sup>76</sup> *Id.* at Exhibit Supp. VIII-20.

<sup>77</sup> *Id.* at Exhibit Supp. VIII-21.

<sup>78</sup> *Id.* at Exhibit Supp. VIII-22.

<sup>79</sup> *Id.* at Exhibit Supp. VIII-23.

<sup>80</sup> *Id.* at Exhibit Supp. VIII-19.

<sup>81</sup> *Id.* at Exhibit Supp. VIII-21.

<sup>82</sup> *Id.* at Exhibit Supp. VIII-22.

SeAH VINA provided its shipment data from October 2010 through December 2013.<sup>83</sup> After analyzing the data submitted, we determine imports from SeAH VINA were not massive (*i.e.*, did not increase by more than 15 percent between the base and comparison periods) over a relatively short period of time within the context of 19 CFR 351.206(h).

Because the Vietnam-wide entity failed to respond to our initial Q&V questionnaire, the Department, pursuant to section 776(a) of the Act has based its critical circumstances determination on FA. Further, because this entity did not act to the best of its ability to respond to the Department's questionnaires, we have, pursuant to section 776(b) of the Act, used an adverse inference in selecting from FA. *See, e.g., 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). Therefore, we have preliminarily determined that imports from the Vietnam-wide entity were massive over a relatively short period of time within the context of 19 CFR 351.206(h).

Furthermore, we examined GTA to determine whether there were additional imports of subject merchandise during the base and comparison periods for the Vietnam-wide entity. We confirmed thereby that there was a massive increase in such shipments.<sup>84</sup>

#### *Determination of Critical Circumstances*

Following the analysis above, the Department preliminarily determines that critical circumstances do not exist for SeAH VINA. In addition, the Department preliminarily determines that critical circumstances exist for the Vietnam-wide entity.

## **VERIFICATION**

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

We intend to issue 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.

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<sup>83</sup> The Department's long-standing practice in critical circumstances determinations is to examine the longest period for which information is available up to the date of the preliminary determination. *See, e.g., Certain Steel Wheels Final Determination*, and accompanying Issues and Decision Memorandum at Comment 6 and *Solar Cells Final Determination*, and accompanying Issues and Decision Memorandum at Comment 10.C.

<sup>84</sup> *See Memorandum from Fred Baker, Import Compliance Analyst, Office VI, Office of Antidumping and Countervailing Duty Enforcement, to Richard Weible, Director, Office VI, Office of Antidumping and Countervailing Duty Enforcement, Preliminary Affirmative Determination of Critical Circumstances in Part*, dated February 13, 2014.

## CONCLUSION

We recommend applying the above methodology for this preliminary determination.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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