Republic. *Intended Use:* See notice at 77 FR 39683, July 5, 2012.

Docket Number: 12–028. *Applicant:* Air Force Institute of Technology, Wright-Patterson AFB, OH 45433–7765. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* See notice at 77 FR 39683, July 5, 2012.

Docket Number: 12–031. *Applicant:* Penn State College of Medicine, Hershey, PA 17033. *Instrument:* Electron Microscope. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* See notice at 77 FR 39683, July 5, 2012.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States at the time the instrument was ordered. *Reasons:* Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: July 26, 2012.

Gregory W. Campbell,

Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. 2012–18951 Filed 8–1–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–981]

Utility Scale Wind Towers From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

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

DATES: *Effective Date:* August 2, 2012

SUMMARY: The Department of Commerce (the ''Department'') preliminarily determines that utility scale wind towers (''wind towers'') from the People's Republic of China (''PRC'') are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Tariff Act of 1930, as amended (''the Act''). The preliminary dumping margins are shown in the ''Preliminary Determination'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian, Shawn Higgins, Thomas Martin, or Trisha Tran, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6412, (202) 482–0679, (202) 482–3936, or (202) 482–4852, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 29, 2011, the Department received a petition, filed by the Wind Tower Trade Coalition (''Petitioner'') in proper form, concerning imports of wind towers from the PRC.[1] In January 2012, the Department requested information regarding, and clarification of, certain areas of the petition. Petitioner filed timely responses to these requests. The Department initiated an antidumping duty (''AD'') investigation of wind towers from the PRC on January 24, 2012.[2]

In the petition, Petitioner requested that the Department consider expanding the period of investigation (''POI'') to include more than two fiscal quarters (*i.e.,* the period normally covered in an investigation involving a non-market economy (''NME'') country), because a POI of normal duration may not capture a large number of wind tower sales. Accordingly, in the *Initiation Notice,* the Department stated that it would give further consideration to the duration of the POI.[3]

In the *Initiation Notice,* the Department stated that it intended to issue its quantity and value (''Q&V'') questionnaire to the exporters/producers named in the petition and to select respondents based on data provided in the responses to the Q&V questionnaire.[4] On January 19, 2012, the Department requested Q&V information from 48 companies identified in the petition as potential exporters of wind towers from the PRC.[5] The Department received timely responses to its Q&V questionnaire from seven companies. The Department concluded from its review of these responses that the six-month POI data ensure a sufficient number of sales for its analysis.[6] Accordingly, the Department, pursuant to 19 CFR 351.204(b)(1), determined to follow its normal practice of using the six-month POI.[7] After further examining the responses to the Q&V questionnaire, the Department selected as mandatory respondents the two companies reporting the largest quantity of wind tower sales to the United States during the POI (*i.e.,* Chengxi Shipyard Co., Ltd. (''CXS'') and Titan Wind Energy (Suzhou) Co., Ltd. (''Titan'')).[8]

On March 8, 2012, the Department issued the AD questionnaire to both CXS and Titan. In April and May 2012, CXS and Titan submitted timely responses to the Department's AD questionnaire and Petitioner submitted comments regarding those responses. From April through July 2012, the Department issued supplemental questionnaires to CXS and Titan. From May through July 2012, CXS and Titan submitted timely responses to the Department's supplemental questionnaires and Petitioner submitted comments regarding several of those responses.

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

On February 13, 2012, CS Wind requested to be treated as a voluntary respondent in this investigation.[9] CS Wind, however, withdrew its request for treatment as a voluntary respondent on April 30, 2012.[10]

[1] *See* Petition for the Imposition of Antidumping and Countervailing Duties: Utility Scale Wind Towers from the People's Republic of China and The Socialist Republic of Vietnam (December 29, 2011) (''petition'').

[2] *See Utility Scale Wind Towers From the People's Republic of China and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations,* 77 FR 3440 (January 24, 2012) (''*Initiation Notice*'').

[3] *Id.,* 77 FR at 3441.

[4] *Id.,* 77 FR at 3445.

[5] The Department requested this information on the day after the *Initiation Notice* was signed.

[6] *See* Memorandum from Abdelali Elouaradia, Director, AD/CVD Operations, Office 4, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Respondent Selection in the Antidumping Duty Investigation of Utility Scale Wind Towers from the People's Republic of China'' (March 7, 2012) (''Respondent Selection Memorandum'') at 5.

[7] *Id.*

[8] *Id.* at 4–6; section 777A(c)(2) of the Act.

[9] *See* Letter from CS Wind to the Secretary of Commerce, ''Request To Be Voluntary Respondent in the Antidumping Duty Investigation on Utility Scale Wind Towers from the People's Republic of China'' (February 13, 2012).

[10] *See* Letter from CS Wind to the Secretary of Commerce, ''CS Wind China's Withdrawal of Request for Treatment as a Voluntary Respondent in the Antidumping Duty Investigation of Utility Scale Wind Towers from the People's Republic of China'' (April 30, 2012).

On February 13, 2012, the U.S. International Trade Commission (''ITC'') preliminarily determined that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of wind towers from the PRC.[11]

In the *Initiation Notice,* the Department notified parties that in order to obtain separate rate status in this investigation, exporters must file timely separate rate applications and timely responses to the Q&V questionnaire.[12] In March 2012, the Department received, and accepted, separate rate applications from four companies. From April 2012 through June 2012, the Department issued supplemental questionnaires to, and received responses from, the companies applying for a separate rate.

On March 16, 2012, the Department identified potential surrogate countries for use in this investigation and invited interested parties to comment on primary surrogate country and surrogate value selection.[13] In April and May 2012, interested parties submitted comments on the appropriate primary surrogate country and surrogate values.

On May 3, 2012, Petitioner made a timely request, pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(b)(2) and (e), for a 50-day postponement of the preliminary determination.[14] On May 17, 2012, the Department fully extended the deadline for issuing the preliminary determination.[15]

In June 2012, Petitioner filed comments for the Department to consider in its preliminary determination.[16] No other party submitted comments regarding the preliminary determination.

[11] *See Utility Scale Wind Towers From China and Vietnam,* 77 FR 9700 (February 17, 2012).

[12] *See Initiation Notice,* 77 FR at 3445.

[13] *See* Letter from Robert Bolling, Program Manager, Office 4, AD/CVD Operations, to All Interested Parties, ''Antidumping Investigation of Utility Scale Wind Towers from the People's Republic of China: Request for Surrogate Country and Surrogate Value Comments and Information'' (March 16, 2012).

[14] *See* Letter from Petitioner to the Secretary of Commerce, ''Certain Utility Scale Wind Towers from the People's Republic of China: Request to Fully Extend Preliminary Determination'' (May 3, 2012).

[15] *See Utility Scale Wind Towers From the People's Republic of China and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations of Antidumping Duty Investigations,* 77 FR 29315 (May 17, 2012).

[16] *See* Letter from Petitioner to the Secretary of Commerce, ''Utility Scale Wind Towers from the People's Republic of China: Petitioner's Pre-Preliminary Comments'' (June 29, 2012).

Period of Investigation

The POI is April 1, 2011 through September 30, 2011. This period corresponds to the two most recent fiscal quarters prior to the month in which the petition was filed (*i.e.,* December 2011).[17]

Scope of the Investigation

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

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

Wind towers and sections thereof are included within the scope whether or not they are joined with non-subject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff System of the United States (''HTSUS'') under subheadings 7308.20.0020[18] or 8502.31.0000.[19] Prior to 2011, merchandise covered by this investigation was classified in the HTSUS under subheading 7308.20.0000 and may continue to be to some degree. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

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

[18] Wind towers are classified under HTSUS 7308.20.0020 when imported as a tower or tower section(s) alone.

[19] Wind towers may also be classified under HTSUS 8502.31.0000 when imported as part of a wind turbine (*i.e.,* accompanying nacelles and/or rotor blades).

Scope Comments

In accordance with the preamble to the Department's regulations, the Department set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice.*[20]

On February 7, 2012, the Department received timely comments on the scope of the investigation from Petitioner.[21] Specifically, Petitioner requested that the scope cover all future generations of utility scale wind towers, regardless of the type of the future tower (*e.g.,* lattice mast, space frame tower, *etc.*), that are designed to support turbine generators with a capacity in excess of 100 kW.[22] Petitioner argued that, in a previous case, the Department included scope language that covered future generations of semiconductors.[23] Petitioner also stated that wind tower generating capacities have been consistently increasing, generator efficiencies have been improving, and turbine heights have been rising to altitudes with much stronger winds.[24] Petitioner contends, in fact, that the next generation of wind towers will be over 100 meters in height and capable of supporting generators with capacities of 7.0 megawatts and larger.[25] Accordingly, Petitioner proposed including language in the scope stating that ''{f}uture utility scale wind tower configurations that meet the minimum height requirement and are designed to support wind turbine electrical generators greater than 100 kW are also included within the scope.''[26]

Section 731 of the Act requires the Department to define the scope of merchandise subject to investigation in

[20] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997); *Initiation Notice,* 77 FR at 3441.

[21] *See* Letter from Petitioner to the Secretary of Commerce, ''Certain Utility Scale Wind Towers from the People's Republic of China and the Socialist Republic of Vietnam: Scope Comments'' (February 7, 2012) (''Scope Comments''). No other parties provided comments.

[22] *Id.* at 2.

[23] *Id.* at 2–3; *Initiation of Antidumping Duty Investigation: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea,* 57 FR 21231 (May 19, 1992) (''*Semiconductors*'').

[24] *See* Scope Comments at 3.

[25] *Id.*

[26] *Id.* at 2.

each AD investigation. If the Department initiates an investigation based upon a petition, it will continue to review the scope of the merchandise described in the petition to determine the scope of the final order.[27]

Generally, the Department prefers to define product coverage by the physical characteristics of the merchandise subject to investigation.[28] In this proceeding, a wind tower section subject to this investigation ''consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell* * *.'' Consequently, to revise the scope language as proposed by Petitioner would expand product coverage beyond the physical characteristics of merchandise currently subject to this investigation by including all products meeting the minimum height and power generating capacity defined in the scope, regardless of physical characteristics. Moreover, in *Semiconductors,* the Department did not cover future generations of semiconductors as claimed by Petitioner but, rather, covered future packaging and assembling of dynamic random access semiconductors. What distinguishes the instant investigation from *Semiconductors* is that, while the Department never contemplated future generations of semiconductors, Petitioner's admitted intention in the instant investigation is to ''cover all future generations of utility scale wind towers regardless of the type of future tower.'' [29] This would result in an open-ended scope, potentially covering products whose physical characteristics differ significantly from the physical characteristics of the merchandise subject to this investigation. Therefore, for this preliminary determination, the Department has not adopted the revised scope language proposed by Petitioner.

Non-Market Economy Country

The PRC has been treated as an NME in every proceeding conducted by the Department.[30] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME shall remain in effect until revoked by the administering authority. The Department has not revoked the PRC's status as an NME. Therefore, the Department has treated the PRC as an NME in this preliminary determination and, accordingly, applied the NME methodology.

Surrogate Country

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

A. Economic Comparability

The Department identified Colombia, Indonesia, Peru, the Philippines, South Africa, Thailand, and Ukraine as countries equally comparable to the PRC in terms of economic development.[31] Consistent with its practice, as reflected in the Policy Bulletin 04.1, the Department found that Colombia, Indonesia, Peru, the Philippines, South Africa, Thailand, and Ukraine are countries that are at a level of economic development comparable to that of the PRC and, therefore, satisfy the first criterion of section 773(c)(4) of the Act.[32]

B. Significant Producer of Comparable Merchandise

In order to identify which countries export merchandise comparable to the merchandise under consideration, the Department obtained export data for the six-digit tariff sub-headings listed in the description of the scope of this investigation (*i.e.,* 7308.20 and 8502.31) for each of the seven potential surrogate countries.[33] After reviewing this export data, the Department preliminarily determined that (1) Columbia, Indonesia, Peru, South Africa, Thailand and Ukraine are significant producers of merchandise comparable to the merchandise under consideration and (2) the Philippines is not a significant producer of merchandise comparable to the merchandise under consideration.[34]

C. 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.[35] 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.[36] The record of this investigation contains publicly-available South African and Ukrainian surrogate value data for FOPs.[37] Petitioner contends that the Department should select South Africa as the primary surrogate country because South African surrogate values, including financial statements for South African producers of merchandise comparable to wind towers, are available for all FOPs.[38] After reviewing the surrogate value data on the record, the Department has found that Ukraine provides the most specific information to value each respondent's most significant input (*i.e.,* steel plate). Accordingly, the Department can more accurately value each company's steel plate FOP by using the more specific Ukrainian surrogate value information than by using the single basket category

[27] *See Antidumping Duties; Countervailing Duties,* 62 FR at 27323.

[28] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China,* 73 FR 31970 (June 5, 2008), and accompanying Issues and Decision Memorandum at Comment 1.

[29] *See* Scope Comments at 2.

[30] *See, e.g., Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 74 FR 9591, 9593 (March 5, 2009), unchanged in *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 36656 (July 24, 2009).

[31] *See* Memorandum from Carole Showers, Director, Office of Policy, Import Administration, to Robert Bolling, Program Manager, Office 4, Import Administration, ''Request for a List of Surrogate Countries for an Antidumping Duty Investigation of Utility Scale Wind Towers, from the People's Republic of China'' (January 27, 2012).

[32] *See* Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (''Policy Bulletin 04.1''); Memorandum from Trisha Tran, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to Abdelali Elouaradia, Director, AD/CVD Operations, Office 4, ''Antidumping Duty Investigation of Utility Scale Wind Towers from the People's Republic of China: Selection of a Surrogate Country'' (July 26, 2012) (''Surrogate Country Memorandum'') at 5.

[33] *Id.* at 5–7.

[34] *Id.* at 7.

[35] *See* Policy Bulletin 04.1; Surrogate Country Memorandum at 7–8.

[36] *See* Policy Bulletin 04.1; Surrogate Country Memorandum at 7–8.

[37] *See* Surrogate Country Memorandum at 8.

[38] *See* Letter from Petitioner to the Secretary of Commerce, ''CS Wind's Surrogate Country Comments: Antidumping Duty Investigation on Utility Scale Wind Towers from the People's Republic of China'' (April 25, 2012).

available for South Africa.[39] Therefore, the Department has preliminarily determined that Ukraine offers the best available surrogate value data because (1) it is most specific to the respondents' primary input and (2) specificity of the surrogate value for the primary input in this proceeding outweighs the Department's preference to value all inputs in a single country.[40]

For the reasons above, the Department has preliminarily determined, pursuant to section 773(c)(4) of the Act, that it is appropriate to use Ukraine as the primary surrogate country because Ukraine is (1) at a level of economic development comparable to the PRC and (2) a significant producer of merchandise comparable to the merchandise under consideration.[41] Moreover, the Department has reliable, POI-contemporaneous Ukrainian data that are more specific, compared to the data on the record from alternative countries, to the respondents' FOPs.[42] Therefore, the Department has calculated NV using Ukrainian prices when available and appropriate to value the FOPs of CXS and Titan.[43]

For the final determination in this investigation interested parties may submit publicly available information to value the FOPs within 40 days after the publication of this preliminary determination.[44]

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.[45] 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.[46] The Department analyzes whether each entity exporting the merchandise under consideration is sufficiently independent under a test established in *Sparklers*[47] and further developed in *Silicon Carbide.*[48] 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 necessary to determine whether that company is independent from government control and eligible for a separate rate.

A. Separate Rate Recipients

1. Joint Ventures Between Chinese and Foreign Companies or Wholly Chinese-Owned Companies

Two separate rate applicants that are receiving a separate rate (*i.e.,* Sinovel Wind Group Co., Ltd. (''Sinovel'') and Guodian United Power Technology Baoding Co., Ltd. (''Guodian'')) and the mandatory respondents (*i.e.,* CXS and Titan) provided evidence that they are either joint ventures between Chinese and foreign companies or are wholly Chinese-owned companies.[49] The Department has analyzed whether Sinovel, Guodian, and the mandatory respondents have demonstrated an absence of *de jure* and *de facto* government control over their respective export activities.[50]

a. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) legislative enactments decentralizing control over export activities of the companies; and (3) other formal measures by the government decentralizing control over export activities of companies.[51]

The evidence provided by Sinovel, Guodian, and the mandatory respondents supports a preliminary finding of an absence of *de jure* government control based on the following: (1) an absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) the existence of applicable legislative enactments decentralizing control of the companies; and (3) the implementation of formal measures by the government decentralizing control of Chinese companies.[52]

b. Absence of *De Facto* Control

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices (''EP'') are set by, or are subject to the

[39] *See* Surrogate Country Memorandum at 8–9.

[40] *See* Surrogate Country Memorandum at 8–9; *High Pressure Steel Cylinders From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 77 FR 26739 (May 7, 2012), and accompanying Issues and Decision Memorandum at Comment 1.

[41] *See* Surrogate Country Memorandum at 9–10.

[42] *Id.* at 8–10.

[43] *See* Memorandum from Lilit Astvatsatrian and Trisha Tran, International Trade Compliance Analysts, AD/CVD Operations, Office 4, to Robert Bolling, Program Manager, AD/CVD Operations, Office 4, ''Utility Scale Wind Towers from the People's Republic of China: Preliminary Determination Surrogate Value Memorandum'' (July 26, 2012) (''Surrogate Value Memorandum'').

[44] *See* 19 CFR 351.301(c)(3)(i). In accordance with 19 CFR 351.301(c)(1), for the final determination of this investigation, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by any other interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value information. *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2. Additionally, for each piece of factual information submitted with surrogate value rebuttal comments, the interested party must provide a written explanation of what information that is already on the record of the ongoing proceeding the factual information is rebutting, clarifying, or correcting.

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

[46] *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*'').

[47] *Id.*

[48] *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*'').

[49] *See* Letter from Sinovel to the Secretary of Commerce, ''Utility Scale Wind Towers from the People's Republic of China: Submission of Separate-Rate Application and Required Supporting Documents'' (March 21, 2012) (''Sinovel's SRA''); Letter from Guodian to the Secretary of Commerce, ''Separate Rate Application and Required Supporting Documentation'' (March 23, 2012) (''Guodian's SRA''); Letter from CXS to the Department of Commerce, ''Utility Scale Wind Towers from the People's Republic of China: Section A Questionnaire Response of Chengxi Shipyard Co., Ltd.'' (April 5, 2012) (''CXS's Section A'') at 7–17, Exhibits A.4, A.9–A.18; Letter from CXS to the Department of Commerce, ''Utility Scale Wind Towers from the PRC: Supplemental Section A Questionnaire Response of Chengxi Shipyard Co., Ltd.'' (May 17, 2012) (''CXS's Section A Supplemental'') at 1–42, Exhibits A.36–A.61; Letter from CXS to the Department of Commerce, ''Utility Scale Wind Towers from the PRC: Part Two of Supplemental Sections A and C Questionnaire Response of Chengxi Shipyard Co., Ltd.'' (June 25, 2012) (''CXS's Sections A&C Supplemental'') at 1–17, Exhibits A.73–A.76; Letter from Titan to the Secretary of Commerce, ''Utility Scale Wind Towers from the People's Republic of China: Section A Questionnaire Response of Titan Wind Energy (Suzhou) Co., Ltd.'' (April 5, 2012) (''Titan's Section A'') at 10–20, Exhibits A–3–A–11.

[50] *See* ''Companies Not Receiving a Separate Rate'' section below for a discussion of AVIC.

[51] *See Sparklers,* 56 FR at 20589.

[52] *See* Sinovel's SRA; Guodian's SRA; CXS's Section A at 7–10, Exhibits A.9–A.10; CXS's Section A Supplemental at 1–6; CXS's Sections A&C Supplemental at 1–9, Exhibits A.73–A.76; Titan's Section A at 10–14, Exhibits A–3–A–4.

approval of, a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.[53] The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.

The Department has received no comments challenging the claims of Sinovel, Guodian, and Titan that they operate free of *de facto* government control. However, Petitioner argues that CXS is controlled by the central government both directly, as a matter of national security, and indirectly, through the State-Owned Assets Supervision and Administration Commission of the State Council (''SASAC'') and CXS's ultimate corporate parent, China State Shipbuilding Corporation (''CSSC'').[54] First, Petitioner contends that the central government directly controls CSSC and its subsidiaries, such as CXS, because CSSC and its subsidiaries are among the largest naval warship builders in the PRC and, therefore, vital to the PRC's national security.[55] Moreover, Petitioner claims that the central government directly controls companies such as CXS in order to further its goal of developing the PRC's green energy sector for national security purposes.[56] Although Petitioner provides no evidence that the central government sets EPs or otherwise controls export activities, Petitioner suggests that CXS's claim that it cannot provide the Department with certain documents related to CSSC's management, board of supervisors, and affiliates because they contain business secrets specific to the defense industry is further evidence of both (1) the degree to which the government is involved in the operations of CSSC and CXS and (2) the fundamental role of these companies in the maintenance of the PRC's national security.[57] Second, with regard to indirect control by the central government, Petitioner asserts that CSSC, which is directly administered by SASAC, is the controlling shareholder of CXS because the record of this investigation demonstrates that CSSC owns over 61 percent of China CSSC Holdings Limited (''CSSC Holdings'') and CSSC Holdings owns 100 percent of CXS.[58] This, in Petitioner's view, is consistent with CXS's responses to the Department's supplemental questionnaires in which CXS admitted that the ''actual controller'' of CXS is CSSC, not CSSC Holdings.[59] For these reasons, Petitioner contends that the Department should find that CXS is part of the PRC-wide entity.

The Department, after considering Petitioner's comments, has preliminarily determined that the record of this investigation does not demonstrate that the government controls, either directly or indirectly, CXS's export functions. The information provided by Petitioner in support of its claim that the government directly controls CXS does not address the separate rate test's primary focus ''on controls over the decision-making process on export-related investment, pricing, and output decisions at the individual firm level''; rather it addresses only CSSC's importance to the PRC's national security and the government's general control over companies, such as CSSC, that are members of defense-related industries.[60] Similarly, the documents containing defense industry secrets that CXS's was unable to provide to the Department are not specific to CXS's day-to-day export activities but, instead, relate specifically to CSSC.[61] Further, the Department has found no evidence on the record that the government's influence extends through SASAC, CSSC, and CSSC Holdings to the day-to-day export activities of CXS. CXS has provided information demonstrating its ability to set its own EPs, to negotiate and sign agreements, to select management, and to decide how to dispose of profits and finance losses.[62] Therefore, the Department has preliminarily determined that the evidence on the record supports a preliminary finding that CXS is not subject to *de facto* government control of its export functions.

The evidence provided by Sinovel, Guodian, and Titan also supports a preliminary finding of an absence of *de facto* government control based on record statements and supporting documentation showing that the companies: (1) Set their own EPs independent of the government and without the approval of a government authority; (2) have the authority to negotiate and sign contracts and other agreements; (3) maintain autonomy from the government in making decisions regarding the selection of management; and (4) retain the proceeds of their respective export sales and make independent decisions regarding disposition of profits or financing of losses.[63]

Therefore, the evidence placed on the record of this investigation by Sinovel, Guodian, and the mandatory respondents demonstrates an absence of *de jure* and *de facto* government control under the criteria identified in *Sparklers* and *Silicon Carbide.* Accordingly, the Department has preliminarily granted separate rates to Sinovel, Guodian, and the mandatory respondents.[64]

2. Wholly Foreign-Owned

One separate rate applicant in this investigation (*i.e.,* CS Wind), provided evidence in its separate rate application that it is wholly owned by individuals and companies located in ME countries.[65] Moreover, the Department

[53] *See Silicon Carbide,* 59 FR at 22586–87; *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).

[54] *See* Letter from Petitioner to the Secretary of Commerce, ''Utility Scale Wind Towers from the People's Republic of China: Response to Chengxi Shipyard Co., Ltd. Supplemental Section A Questionnaire Response And Separate Rate Request'' (May 25, 2012) at 1–7.

[55] *Id.* at 4–6.

[56] *Id.* at 6.

[57] *Id.* at 4–6.

[58] *Id.* at 2–4.

[59] *Id.* at 3–4.

[60] *See* Import Administration's Policy Bulletin No. 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 on the Department's Web site at *http://ia.ita.doc.gov/policy/bull05–1.pdf*, at 1; *Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 14514 (March 31, 2009), and accompanying Issues and Decision Memorandum at Comment 11 (finding that ownership and/or theoretical control by the government is not sufficient to deny a separate rate; rather, the evidence on the record must demonstrate that the government controls the individual export decisions of the respondent).

[61] CXS was unable to provide (1) Appointment letters and evaluations of CSSC's management, (2) the identities of the members of CSSC's board of supervisors, and (3) a complete list of all CSSC's affiliates. With regard to the third item, CSSC has provided a signed certification stating that no affiliates of CSSC, except for CXS and one of CXS's subsidiaries, are involved in the export and/or production of the merchandise under consideration. *See* CXS's Section A Supplemental at Exhibit A.51.

[62] *See* CXS's Section A at 11–17, Exhibits A.4, A.10–A.18; CXS's Section A Supplemental at 7–42, Exhibits A.36–A.61; CXS's Sections A&C Supplemental at 9–17.

[63] *See* Sinovel's SRA; Guodian's SRA; Titan's Section A at 14–20, Exhibits A–4–A–11.

[64] *See* ''Preliminary Determination'' section below.

[65] *See* Letter from CS Wind Corporation to the Secretary of Commerce, ''CS Wind Corporation Separate Rate Application in the Antidumping Duty Investigation of Utility Scale Wind Towers from the People's Republic of China'' (March 26, 2012); Letter from CS Wind China Co., Ltd. to the

has no evidence indicating that CS Wind is under the control of the PRC government. For these reasons, it is not necessary for the Department to conduct a separate rate analysis to determine whether CS Wind is independent from government control.[66] Therefore, the Department has preliminarily granted a separate rate to CS Wind.

B. Companies Not Receiving a Separate Rate

The Department has not granted a separate rate to AVIC International Renewable Energy Co., Ltd. (''AVIC'') because it failed to submit a timely response to the Department's supplemental separate rate questionnaire[67] and withdrew its participation in this AD investigation.[68]

Margin for the Separate Rate Companies

Normally, the Department's practice is to assign to separate rate entities that were not individually examined a rate equal to the average of the rates calculated for the individually examined respondents, excluding any rates that are zero, *de minimis,* or based entirely on adverse facts available (''AFA'').[69] Consistent with this practice, the Department has assigned Sinovel, Guodian, and CS Wind a rate of 26.25 percent, which is equal to an average of the rates calculated for the mandatory respondents.[70]

The PRC-Wide Entity

The record indicates that, in addition to AVIC, there are other PRC exporters and/or producers of the merchandise under consideration during the POI that did not respond to the Department's requests for information. Specifically, the Department did not receive responses to its Q&V questionnaire from over 30 PRC exporters and/or producers of merchandise under consideration that were named in the petition and to whom the Department issued the questionnaire.[71] Because AVIC and these non-responsive PRC companies have not demonstrated that they are eligible for separate rate status, the Department considers them part of the PRC-wide entity.

Application of Facts Available and Adverse Facts Available

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

The Department has found that the PRC-wide entity 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. The PRC-wide entity neither filed documents indicating it was having difficulty providing the information nor requested that it be allowed to submit the information in an alternate form. As a result, the Department has preliminarily determined, pursuant to sections 776(a)(2)(A)-(C) of the Act, that it may use facts otherwise available to determine the rate for the PRC-wide entity.[72]

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 has found that the PRC-wide entity's failure to provide the requested information constitutes circumstances under which it is reasonable to conclude that less than full cooperation has been shown.[73] Therefore, the Department has preliminarily found that the PRC-wide entity has failed to cooperate to the best of its ability to comply with requests for information and, consequently, the Department may employ an inference that is adverse to the PRC-wide entity in selecting from among the facts otherwise available.

Section 776(b) of the Act states that the Department, when employing an adverse inference, may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate based on AFA, the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. The Department's practice is to select, as an AFA rate, the higher of: (1) the highest dumping margin alleged in the petition, or (2) the highest calculated dumping margin of any respondent in the investigation.[74] In this investigation, the petition dumping margin is 213.54 percent.[75] This rate is higher than any of the weighted-average dumping margins calculated for the companies individually examined.

Corroboration of Information

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is defined as ''information derived from the petition that gave rise to the investigation or review, the final

Secretary of Commerce, ''CS Wind China Separate Rate Application in the Antidumping Duty Investigation of Utility Scale Wind Towers from the People's Republic of China'' (March 26, 2012).

[66] *See, e.g., Seamless Refined Copper Pipe and Tube from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 75 FR 26716, 26720 (May 12, 2010), unchanged in *Seamless Refined Copper Pipe and Tube From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 75 FR 60725 (October 1, 2010).

[67] *See* Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to AVIC, ''Supplemental Separate Rate Questionnaire in the Antidumping Duty Investigation of Utility Scale Wind Towers from the People's Republic of China'' (April 5, 2012).

[68] *See* Letter from AVIC to the Secretary of Commerce, ''Utility Scale Wind Towers from the People's Republic of China: Notice of Intent to Not Participate in Antidumping Investigation and Request of Removal from Public Service List and APO Service List'' (April 30, 2012).

[69] *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).

[70] *See* Memorandum from Thomas Martin, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to the File, ''Utility Scale Wind Towers from the People's Republic of China: Calculation of the Preliminary Margin for Separate Rate Recipients'' (July 26, 2012).

[71] *See* Respondent Selection Memorandum at 1–2. The Department also posted a copy of the Q&V questionnaire on its Web site.

[72] *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).

[73] *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'')).

[74] *See Certain Stilbenic Optical Brightening Agents From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 77 FR 17436, 17438 (March 26, 2012).

[75] *See Initiation Notice,* 77 FR at 3445.

determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.'' [76]

The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value.[77] The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.[78] To corroborate secondary information, the Department will, to the extent practicable, determine whether the information used has probative value by examining the reliability and relevance of the information.

In order to determine the probative value of the dumping margins in the petition for use as AFA for purposes of this preliminary determination, the Department examined information on the record and found that it was unable to corroborate the margin contained in the petition. Therefore, for the preliminary determination, the Department has assigned to the PRC-wide entity the rate of 72.69 percent, which is the highest transaction-specific dumping margin for a mandatory respondent.[79] It is unnecessary to corroborate this rate because it was obtained in the course of this investigation and, therefore, is not secondary information.[80]

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.'' The date of sale is generally the date on which the parties agree upon all substantive terms of the sale. This normally includes the price, quantity, delivery terms and payment terms.[81] Because CXS and Titan demonstrated that the substantive terms of sale were agreed upon on the invoice date, the Department has preliminarily determined to use invoice date as the date of sale.

Fair Value Comparisons

In accordance with section 777A(d)(1) of the Act, the Department compared the weighted-average price of the U.S. sales of the merchandise under consideration to the weighted-average NV to determine whether the mandatory respondents sold merchandise under consideration to the United States at LTFV during the POI.[82]

Export Price

In accordance with section 772(a) of the Act, the Department defined the U.S. price of merchandise under consideration based on the EP of the U.S. sales reported by CXS and Titan. The Department calculated the EP based on the prices at which merchandise under consideration was sold to unaffiliated purchasers in the United States. The Department preliminarily determined that the base rings sold by CXS and Titan during the POI are not covered by the scope of the investigation because they consist of only a single steel plate.[83] Therefore, the Department did not include the base rings sold by CXS and Titan to the United States during the POI in the calculations of the weighted-average dumping margins.

The Department made deductions, as appropriate, from the reported U.S. price for movement expenses (*i.e.,* domestic and foreign inland freight, domestic and foreign brokerage and handling, marine insurance, and international freight).[84] The Department based movement expenses on surrogate values where the service was purchased from a PRC company.[85] The Department also adjusted U.S. price, where applicable, by the value of certain materials provided free-of-charge by U.S. customers.

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 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.[86] 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.[87]

Factor Valuation Methodology

In accordance with section 773(c) of the Act, the Department calculated NV based on FOP data reported by the individually examined respondents. 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.[88] 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

[76] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act (''SAA''), H. Doc. No. 316, 103d Cong., 2d Session at 870 (1994).

[77] *Id.*

[78] *Id.*

[79] *See, e.g., Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 76 FR 64318, 64322 (October 18, 2011) (assigning as an AFA rate the highest calculated transaction-specific rate among mandatory respondents).

[80] *See* section 776(c) of the Act and 19 CFR 351.308(c) and (d); *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China,* 73 FR 35652, 35653 (June 24, 2008), and accompanying Issues and Decision Memorandum at Comment 1.

[81] *See, e.g., Carbon and Alloy Steel Wire Rod From Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review,* 72 FR 62824 (November 7, 2007), and accompanying Issue and Decision Memorandum at Comment 1; *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.

[82] *See* ''Export Price'' and ''Normal Value'' sections below.

[83] The scope of this investigation states that ''a wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell* * *.'' *See* ''Scope of the Investigation'' section above.

[84] *See* section 772(c)(2)(A) of the Act.

[85] *See* ''Factor Valuation Methodology'' section below.

[86] *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).

[87] *See* section 773(c)(3)(A)-(D) of the Act.

[88] *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.

distance from the domestic supplier to the respondent's factory or the distance from the nearest seaport to the respondent's factory.[89] A detailed description of all surrogate values used for CXS and Titan can be found in the Surrogate Value Memorandum.

For this preliminary determination, except as noted below, the Department used Ukrainian import data, as reported by the State Customs Committee of Ukraine and published by Global Trade Atlas (''GTA''), and other publicly available sources from Ukraine to calculate surrogate values for CXS's and Titan'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, 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.[90] The record shows that Ukrainian import data obtained through GTA, as well as data from other Ukrainian sources, are product-specific, tax-exclusive, and generally contemporaneous with the POI.[91] In those instances where the Department could not obtain information contemporaneous with the POI with which to value FOPs, the Department adjusted the surrogate values using, where appropriate, the Ukrainian producer price index as published in the International Monetary Fund's (''IMF'') International Financial Statistics.

When calculating Ukrainian import-based, per-unit surrogate values, the Department disregarded import prices that it has reason to believe or suspect may be subsidized. It is the Department's practice, guided by the legislative history, not to conduct a formal investigation to ensure that such prices are not subsidized; rather, the Department bases its decision on information that is available to it at the time it makes its determination.[92] In this case, the Department has reason to believe or suspect that prices of exports from India, Indonesia, South Korea, and Thailand may have been subsidized. The Department has found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, consequently, it is reasonable to infer that all exports from these countries to all markets may be subsidized.[93] Therefore, the Department has not used data from these countries in calculating Ukraine's import-based surrogate values.

Additionally, the Department disregarded data from NME countries when calculating Ukraine's import-based per-unit surrogate values. The Department also excluded from the calculation of Ukraine's import-based per-unit surrogate values imports that were 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.[94]

When a respondent sources inputs that were produced in an ME from an ME supplier in meaningful quantities (*i.e.,* not insignificant quantities) and pays in an ME currency, the Department uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted by findings of dumping in the PRC and/or subsidies.[95] CXS and Titan claimed that certain of their reported inputs were purchased in ME countries and paid for in ME currencies. However, CXS and Titan were unable to demonstrate that these inputs were produced in ME countries. Therefore, the Department did not use CXS's and Titan's reported ME purchase prices to value those inputs; rather, the Department based the value of these inputs on surrogate values.[96]

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME AD proceedings.[97] In *Labor Methodologies,* the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing from the International Labor Organization (''ILO'') Yearbook of Labor Statistics (''Yearbook'').

In this preliminary determination, the Department valued labor using the methodology described in *Labor Methodologies.* Specifically, to value the respondents' labor input, the Department relied on labor cost data reported by Ukraine to the ILO in Chapter 6A of the Yearbook. Although the Department found that the two-digit description under ISIC-Revision 3–D (''28-Manufacture of fabricated metal products, except machinery and equipment'') is the best available information on the record with which to value labor because it is specific to industries that produce merchandise comparable to the merchandise under consideration, Ukraine has never reported Chapter 6A data specific to this two-digit description. Ukraine did, however, report total manufacturing labor cost data in 2006. Accordingly, the Department relied on Chapter 6A of the Yearbook to calculate the labor value using total manufacturing labor cost data reported by Ukraine to the ILO in

[89] *See Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–08 (Fed. Cir. 1997).

[90] *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).

[91] *See* Surrogate Value Memorandum at 1–8.

[92] *See* Omnibus Trade and Competitiveness Act of 1988, Conference Report, H.R. Rep. 100–576 at 590 (1988); *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); *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 73 FR 24552, 24559 (May 5, 2008), unchanged in *PET Film,* 73 FR at 55039.

[93] *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; *Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order,* 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4–5; *Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review,* 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review,* 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19–20; *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 ''II. Programs Determined to Confer Subsidies.''

[94] *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).

[95] *See* 19 CFR 351.408(c)(1); *Antidumping Duties; Countervailing Duties,* 62 FR at 27366; *Hand Trucks and Certain Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 77 FR 41744 (July 16, 2012), and accompanying Issues and Decision Memorandum at Comment 1.

[96] *See* Surrogate Value Memorandum at 3–4.

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

2006.[98] Because these labor cost data are not contemporaneous with the POI, the Department adjusted the average value for inflation using the Ukrainian consumer price index as published in the IMF's International Financial Statistics.[99]

The ILO data from Chapter 6A of the Yearbook reflects all costs related to labor, including wages, and indirect labor costs such as benefits, housing, and training. The financial statements used to calculate the surrogate financial ratios included itemized details regarding the indirect labor costs incurred. Therefore, the Department has made adjustments to the surrogate financial ratios.[100]

The Department valued electricity using the average of the monthly POI tariff rates from the National Electricity Regulatory Commission of Ukraine.[101] The Department did not adjust the value for inflation because these tariff rates were current during the POI.

The Department valued water using Utilities Ministry of Ukraine data published on the World of Public Services Web site, available at *http://gkh.com.ua/gkh/full-news-gkh/view11692.*[102] The Department did not adjust the value for inflation because these water rates were current during the POI.

The Department valued truck freight using Ukrainian January 2012 data published on the Web site of Della Trucking, a Ukrainian trucking company, available at *www.della-ua.com.*[103] The Department deflated this rate using the Ukrainian producer price index as published in the IMF's International Financial Statistics.[104]

The Department was unable to identify a surrogate value explicitly for inland water freight in Ukraine. Therefore, the Department valued inland water freight using South African data in an article published by the Human Sciences Research Council, a South African research agency.[105] The Department adjusted this rate for inflation using the South African producer price index as published in the IMF's International Financial Statistics.[106]

The Department valued international ocean freight from the PRC to the United States using data obtained from the Descartes Carrier Rate Retrieval Database (''Descartes''), available at *www.descartes.com.*[107]

The Department valued marine insurance using a marine insurance rate offered by RJG Consultants.[108] RJG Consultants is an ME provider of marine insurance. The rate is a percentage of the value of the shipment; therefore, the Department did not inflate or deflate the rate.

The Department valued brokerage and handling using a price list for export procedures necessary to export a standardized cargo of goods from Ukraine in a 20-foot container.[109] The price list was published in the World Bank publication, *Doing Business 2012: Ukraine.* The Department adjusted this rate by the ratio of the capacity of a 40-foot high flat rack relative to the cargo weight of a 20-foot container in order to derive the per-unit brokerage and handling cost for a 40-foot high flat rack.[110] The Department did not inflate this rate since it is contemporaneous with the POI.

The Department was unable to identify surrogate financial statements for a Ukrainian producer of the merchandise under consideration or merchandise comparable to the merchandise under consideration. Therefore, the Department used audited financial statements from Mazor Group Limited, a South African producer of merchandise comparable to the merchandise under consideration, to value factory overhead, selling, general, and administrative expenses, and profit.[111] These financial statements cover the fiscal year ending February 2012 and, therefore, are contemporaneous with the POI.

Currency Conversion

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

Verification

As provided in section 782(i)(1) of the Act, the Department intends to verify the information submitted by CXS and Titan.

Combination Rates

As announced in the *Initiation Notice,*[112] the Department has calculated combination rates for the respondents that are eligible for a separate rate in this investigation. This practice is described in Policy Bulletin 05.1.[113]

Preliminary Determination

The Department has preliminarily determined that the following weighted-average dumping margins exist for the period April 2011 through September 2011:

Exporter	Producer	Weighted-Average Dumping Margin (%)
Chengxi Shipyard Co., Ltd	Chengxi Shipyard Co., Ltd	30.93
Titan Wind Energy (Suzhou) Co., Ltd	Titan (Lianyungang) Metal Product Co., Ltd	20.85
Titan Wind Energy (Suzhou) Co., Ltd	Titan Wind Energy (Suzhou) Co., Ltd	20.85
CS Wind Corporation	CS Wind China Co., Ltd	26.25
Guodian United Power Technology Baoding Co., Ltd	Guodian United Power Technology Baoding Co., Ltd	26.25
Sinovel Wind Group Co., Ltd	Sinovel Wind Group Co., Ltd	26.25
PRC-Wide Entity		72.69

[98] *See, e.g., Galvanized Steel Wire From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 76 FR 68407, 68419 (November 4, 2011), unchanged in *Galvanized Steel Wire From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 77 FR 17430 (March 26, 2012); section 773(c)(4) of the Act; Surrogate Value Memorandum at 5, Attachment 6.

[99] *See* Surrogate Value Memorandum at Attachment 3.

[100] *Id.* at Attachment 7.

[101] *Id.* at 4–5, Attachment 4.

[102] *Id.* at 5, Attachment 5 (last visited on July 20, 2012).

[103] *Id.* at 7, Attachment 10 (last visited on July 20, 2012).

[104] *Id.* at Attachment 3.

[105] *See* Francois J. Botes, ''The Impact of Transport Pricing Practices in South Africa on Freight Transport Costs'' Human Sciences Research Council—Centre for Poverty and Growth (2005); Surrogate Value Memorandum at 8.

[106] *See* Surrogate Value Memorandum at Attachment 12.

[107] *Id.* at 7–8, Attachment 11 (last visited on July 20, 2012).

[108] *Id.* at 8, Attachment 13.

[109] *Id.* at 7, Attachment 8.

[110] *Id.* at 7, Attachments 8–9.

[111] *Id.* at 6, Attachment 7.

[112] *See Initiation Notice,* 77 FR at 3445–46.

[113] *See* Policy Bulletin 05.1.

Disclosure

In accordance with 19 CFR 351.224(b), the Department will disclose the calculations performed in this investigation to parties within five days of the date of publication of this notice in the **Federal Register**.

Suspension of Liquidation

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

Pursuant to 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit equal to the weighted-average amount by which NV exceeds U.S. price, adjusted where appropriate for export subsidies, as follows: (1) The separate rate for the exporter/producer combinations listed in the table above will be the rate the Department has determined in this preliminary determination; (2) for all combinations of PRC exporters/producers of merchandise under consideration which have not received their own separate rate above, the cash-deposit rate will be the rate for the PRC-wide entity; and (3) for all non-PRC exporters of merchandise under consideration which have not received their own separate rate above, the cash-deposit rate will be the rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter.

For exporter/producer combinations receiving a separate rate based on the rates calculated for the mandatory respondents in an AD determination, it is the Department's practice to instruct CBP to require a cash deposit equal to the amount by which the NV exceeds the U.S. price, reduced by the lesser of the export subsidy rate applicable to each exporter or the average of the export subsidy rates applicable to the mandatory respondents on which the separate rate in the AD determination is based.[114] In this case, the average of the export subsidy rates applicable to the mandatory respondents on which the separate rate is based is 0.0075 percent, which is lower than CS Wind's 0.03 percent export subsidy rate and the 0.015 percent export subsidy rate applicable to Sinovel and Guodian,[115] However, because this rate is less than 0.01 percent, the Department will not adjust CS Wind, Sinovel, and Guodian's cash deposit rate for export subsidies.

With regard to CXS, a mandatory respondent in this AD investigation that received the ''All Others Rate'' in the companion CVD case, the Department will instruct CBP to require a cash deposit equal to the amount by which the NV exceeds the U.S. price, reduced by the export subsidy rate applicable to CXS (*i.e.,* 0.015 percent).

These cash deposit instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, the Department has notified the ITC of this preliminary affirmative determination of sales at LTFV. Section 735(b) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation, of the merchandise under consideration within 45 days of the Department's final determination.

Public Comment

Case briefs or other written comments may be submitted to the Department no later than seven days after the date on which the final verification report is issued in this proceeding. Rebuttal briefs, limited to the issues raised in case briefs, may be submitted no later than five days after the deadline for case briefs.[116] A table of contents, list of authorities used, and an executive summary of issues should accompany any briefs submitted to the Department. The executive summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, the Department will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Interested parties, who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Standard Time, within 30 days after the date of publication of this notice.[117] 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 time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

In June 2012, Titan and CXS requested, pursuant to section 735(a)(2) of the Act, that the Department postpone its final determination by 60 days.[118] Additionally, Titan and CXS requested, pursuant to 19 CFR 351.210(e)(2), that the Department extend the application of the provisional measures from a four-month period to a six-month period. In accordance with section 735(a) of the Act and 19 CFR 351.210(b), the Department is granting these requests to postpone the final determination until no later than 135 days after the publication of this notice in the **Federal Register** because (1) The preliminary determination is affirmative, (2) the requesting exporters account for a

[114] *See Certain Steel Wheels From the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Final Determination of Critical Circumstances,* 77 FR 17021, 17026 (March 23, 2012); *Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

[115] In the companion countervailing duty (''CVD'') investigation, the Department preliminarily determined that the merchandise under consideration exported by CS Wind, a mandatory respondent in the CVD investigation and separate rate recipient in this preliminary AD determination, benefitted from an export subsidy of 0.03 percent. *See Utility Scale Wind Towers From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination,* 77 FR 33422, 33432 (June 6, 2012). The Department, however, did not find evidence in the preliminary CVD determination that Titan, the other mandatory respondent in the CVD investigation and a mandatory respondent in this AD investigation, benefitted from an export subsidy. To calculate the ''All Others Rate'' in the preliminary CVD determination, the Department used a simple average of the rates of the two mandatory respondents. Therefore, the ''All Others Rate'' included an export subsidy rate equal to the average of the CVD export subsidy rates applicable to the mandatory respondents (*i.e.,* 0.015 percent).

[116] *See* 19 CFR 351.309(c)(1)(i) and (d).

[117] *See* 19 CFR 351.310(c).

[118] *See* Letter from Titan to the Secretary of Commerce, ''Utility Scale Wind Towers from the People's Republic of China; Request to Extend Final Determination'' (June 15, 2012); Letter from CXS to the Secretary of Commerce, ''Utility Scale Wind Towers from the People's Republic of China: Request by Chengxi Shipyard Co., Ltd. For Postponement of the Final Determination'' (June 21, 2012).

significant proportion of exports of the merchandise under consideration, and (3) there are no compelling reasons to deny these requests. Suspension of liquidation will be extended accordingly. The Department is further extending the application of the provisional measures from a four-month period to a six-month period.

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

Dated: July 26, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–18929 Filed 8–1–12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–812]

Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

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

DATES: *Effective Date:* August 2, 2012.

SUMMARY: We preliminarily determine that steel wire garment hangers 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 estimated margins of sales at LTFV are shown in the ''Preliminary Determination'' section of this notice. Pursuant to a request from an interested party, we are postponing the final determination by 60 days and extending provisional measures from a four-month period to not more than six months. Accordingly, we will make our final determination not later than 135 days after publication of the preliminary determination.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik or Bob Palmer, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6905 or 482–9068, respectively.

SUPPLEMENTARY INFORMATION:

Initiation

On December 29, 2011, the Department of Commerce (the ''Department'') received an antidumping duty (''AD'') petition concerning imports of steel wire garment hangers from Vietnam filed in proper form on behalf of M&B Metal Products Company, Inc.; Innovative Fabrication LLC/Indy Hanger; and US Hanger Company, LLC (collectively, ''Petitioners'').[1] On January 18, 2012, the Department initiated an AD investigation of steel wire garment hangers from Vietnam.[2] Additionally, in the *Initiation Notice,* the Department notified parties of the application process by which exporters and producers may obtain separate-rate status in non-market economy (''NME'') investigations.[3]

On February 13, 2012, the United States International Trade Commission (''ITC'') issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Vietnam of steel wire garment hangers.[4]

Period of Investigation

The period of investigation (''POI'') is April 1, 2011, through September 30, 2011. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (December 29, 2011).[5]

Scope of the Investigation

The merchandise subject to this investigation is steel wire garment hangers, fabricated from carbon steel wire, whether or not galvanized or painted, whether or not coated with latex or epoxy or similar gripping materials, and whether or not fashioned with paper covers or capes (with or without printing) or nonslip features such as saddles or tubes. These products may also be referred to by a commercial designation, such as shirt, suit, strut, caped, or latex (industrial) hangers.

Specifically excluded from the scope of the investigation are (a) Wooden, plastic, and other garment hangers that are not made of steel wire; (b) steel wire garment hangers with swivel hooks; (c) steel wire garment hangers with clips permanently affixed; and (d) chrome plated steel wire garment hangers with a diameter of 3.4 mm or greater.

The products subject to the investigation are currently classified under U.S. Harmonized Tariff Schedule (''HTSUS'') subheadings 7326.20.0020 and 7323.99.9080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Scope Comments

In accordance with the preamble to the Department's regulations,[6] in our *Initiation Notice* we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice.*[7] The Department did not receive any scope comments from interested parties.

Quantity and Value and Respondent Selection

In the *Initiation Notice,* the Department stated that the quantity and value (''Q&V'') data received from Vietnamese exporters/producers will be used as the basis to select the mandatory respondents.[8] The Department also stated that it requires that the respondents submit a response to both the Q&V questionnaire and the separate rate application by the respective deadlines in order to receive consideration for separate rate status. Of the 44 Q&V questionnaires sent, the Department received seven Q&V responses[9] and two unsolicited Q&V responses.[10] The Department rejected two untimely or improperly filed Q&V responses from Angang Clothes Rack Manufacture Co. (''Angang'') and

[1] *See* ''Petitions for the Imposition of Antidumping Duties on Steel Wire Garment Hangers From Taiwan and Antidumping and Countervailing Duties on Steel Wire Garment Hangers from the Socialist Republic of Vietnam,'' filed on December 29, 2011 (the ''Petition''). A countervailing duty (''CVD'') petition was also filed on steel wire garment hangers from Vietnam.

[2] *See Steel Wire Garment Hangers From the Socialist Republic of Vietnam and Taiwan: Initiation of Antidumping Duty Investigations,* 77 FR 3731 (January 25, 2012) (''*Initiation Notice*'').

[3] *See id.,* 77 FR at 3735–36.

[4] *See* Investigation Nos. 701–TA–487 and 731–TA–1197–1198 (Preliminary), *Steel Wire Garment Hangers From Taiwan And Vietnam,* 77 FR 9701 (February 17, 2012).

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

[6] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[7] *See Initiation Notice,* 77 FR at 3732.

[8] *See id.,* 77 FR at 3735.

[9] We received Q&V responses from the following companies to which we issued a Q&V questionnaire: Triloan Hangers, Inc.; Tan Minh Textile Sewing Trading Co., Ltd.; Nam A. Hamico Export Joint Stock; Minh Quang Steel Joint Stock Company; Ju Fu Co. Ltd.; Linh Sa Hamico Company, Ltd.; CTN Limited Company. Additionally, we note that Petitioners provided several addresses for multiple companies, which resulted in the issuance of more than one Q&V questionnaires to the same companies.

[10] We received an unsolicited Q&V response from South East Asia Hamico Export Joint Stock Company (''Hamico''). Further, while we did not issue a Q&V questionnaire to T.J. Co., Ltd. (''TJ''), it filed a Q&V response on behalf of itself and its two claimed affiliates, Infinite Industrial Hanger Co., Ltd. and Tan Dinh Enterprise, both to which we issued a Q&V questionnaire.