investigation but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 69.98 percent, as discussed in the ''All Others Rate'' section, below. These suspensions of liquidation instructions will remain in effect until further notice.

### All Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding any zero or *de minimis* margins and any margins determined entirely under section 776 of the Act. No respondent has participated in this investigation. Therefore, because the only dumping margins for this preliminary determination are found in the petition, the all others rate is a simple average of these values, which is 69.98 percent.[36]

### ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination. In accordance with section 735(b)(2) of the Act, if the Department's final determination is affirmative, the ITC will determine before the latter of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of hangers from Taiwan are materially injuring, or threatening material injury to, the U.S. industry.

### Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs to the Department no later than forty days after the publication of this preliminary determination. Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs.[37] A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department.[38] Executive summaries should be limited to five pages total, including footnotes. Case and rebuttal briefs must be submitted to the Department electronically using IA ACCESS.[39]

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

Any interested party may request a hearing within 30 days of publication of this notice.[41] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.[42]

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

Dated: July 27, 2012.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

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

BILLING CODE 3510–DS–P

[36] *See* Initiation Checklist at Attachment V; *see, e.g., Certain Steel Nails from the United Arab Emirates: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 77 FR 27421 (May 10, 2012) (where the Department determined the all others rate using a simple average).

[37] *See* section 351.309(d) of the Department's regulations.

[38] *See* section 351.309(c)(2) of the Department's regulations.

[39] Electronic filing requirements via IA ACCESS can be found at section 351.303 of the Department's regulations; *see also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[40] *Id.*

[41] *See* section 351.310(c) of the Department's regulations.

[42] *See* section 351.310(d) of the Department's regulations.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–552–814]**

## Utility Scale Wind Towers From the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

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

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

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

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

**SUPPLEMENTARY INFORMATION:**

### Background

On December 29, 2011, the Department received a petition concerning imports of wind towers from Vietnam filed in proper form by the Wind Tower Trade Coalition (''Petitioner'').[1] In January 2012, the Department issued requests for information regarding, and clarification of, certain areas of the Petition. Petitioner timely filed responses to these requests. The Department initiated an antidumping duty (''AD'') investigation of wind towers from Vietnam on January 18, 2012.[2]

[1] The Wind Tower Trade Coalition is comprised of Broadwind Towers, Inc., DMI Industries, Katana Summit LLC, and Trinity Structural Towers, Inc. *See* Petitions for the Imposition of Antidumping and Countervailing Duties on Utility Scale Wind Towers from the People's Republic of China and Antidumping Duties on Utility Scale Wind Towers from 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*'') at Volume I, Exhibit I–14 of the Petition.

In the *Initiation Notice,* the Department noted that Petitioner listed only two known Vietnamese exporters/producers in the Petition: CS Wind Vietnam Co., Ltd. (''CS Wind Vietnam'') and Vina-Halla Heavy Industries Ltd. (''Vina-Halla''). Accordingly, the Department stated that it would send its AD questionnaire to these two companies.[3] Moreover, in its Petition, Petitioner requested that the Department consider expanding the period of investigation (''POI'') to include more than two fiscal quarters, the period normally covered in an investigation involving a non-market economy (''NME'') country, because a POI of normal duration may not capture a large number of wind tower sales. Accordingly, in the *Initiation Notice,* the Department stated that it would give further consideration to the duration of the POI.[4]

On February 16, 2012, the Department issued the AD questionnaire to CS Wind Vietnam and Vina-Halla and, in a separate questionnaire issued to both companies on the same date, requested quantity and value (''Q&V'') information to evaluate Petitioner's claim with respect to expanding the POI. On March 1, 2012, the Department received a Q&V response from CS Wind Group.[5] The Department did not receive a Q&V response from Vina-Halla. Based on CS Wind Group's Q&V response, the Department concluded that the six-month POI data ensure a sufficient number of sales for its analysis.[6] Accordingly, pursuant to 19 CFR 351.204(b)(1), the Department determined to follow its normal practice and use the six-month POI.[7]

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

In the *Initiation Notice,* the Department notified parties that they had an opportunity to comment on the scope of the investigation as well as the appropriate physical characteristics of wind towers to be reported in response to the Department's AD questionnaire.[8] In February 2012, Petitioner and CS Wind Group submitted comments to the Department regarding the scope and the physical characteristics of merchandise under consideration to be used for reporting purposes.

On February 13, 2012, the U.S. International Trade Commission (''ITC'') preliminarily determined that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Vietnam of wind towers.[9]

On January 27, 2012, the Department identified potential surrogate countries for use in the investigation.[10] On March 15, 2012, the Department invited interested parties to comment on surrogate country and surrogate value selection.[11] From April through May 2012, interested parties submitted comments and rebuttal comments on the appropriate surrogate country and surrogate values.

On May 3, 3012, 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.[12] On May 17, 2012, the Department published a notice of postponement of the due date of the preliminary AD determination on wind towers from Vietnam.[13]

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

**Period of Investigation**

The POI is April 1, 2011, through September 30, 2011. This period corresponds to the two most recent fiscal quarters prior to the month in which the Petition was filed, December 2011.[14]

**Scope of the Investigation**

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

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

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

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

Merchandise covered by the investigation are currently classified in the Harmonized Tariff System of the United States (''HTSUS'') under subheadings 7308.20.0020[15] or

[3] *See Initiation Notice,* 77 FR at 3441, *See also* Volume I of the Petition.

[4] *See Initiation Notice,* 77 FR at 3441.

[5] The Department has preliminarily determined that CS Wind Vietnam and CS Wind Corporation, the Korean parent of CS Wind Vietnam, (collectively, ''CS Wind Group'') should be treated as a single entity for AD purposes. *See* Memorandum from Magd Zalok, International Trade Analyst, through Charles Riggle, Program Manager, AD/CVD Operations, Office 4, to Abdelali Elouaradia, Director, AD/CVD Operations, Office 4, regarding ''Affiliation and Single Entity Status of CS Wind Group Vietnam Co., Ltd. and CS Wind Group Corporation'' (July 26, 2012) (''Single Entity Memorandum'').

[6] *See* Memorandum to the File, regarding ''Six-Month Period of Investigation'' (March 12, 2012).

[7] *Id.*

[8] *See Initiation Notice,* 77 FR at 3441.

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

[10] *See* Memorandum from Carol Showers, Director, Office of Policy, to Charles Riggle, Program Manager, Office 4, regarding ''Request for a List of Surrogate Countries for an Antidumping Duty Investigation of Utility Scale Wind Towers ('Wind Towers') from the Socialist Republic of Vietnam ('Vietnam')'' (January 27, 2012) (''Surrogate Country Memorandum'').

[11] *See* Letter to All Interested Parties, regarding ''Utility Scale Wind Towers from the Socialist Republic of Vietnam ('Vietnam') Investigation: Request for Surrogate Country and Surrogate Value Comments and Information'' (March 15, 2012).

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

[13] *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).

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

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

8502.31.0000.[16] Prior to 2011, merchandise covered by the investigation were 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.

**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.*[17]

On February 7, 2012, the Department received timely comments on the scope of the investigation from Petitioner.[18] 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.[19] Petitioner argued that, in a previous case, the Department included scope language that covered future generations of semiconductors.[20] 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.[21] 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 megawatt and larger.[22] 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.'' [23]

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

Generally, the Department prefers to define product coverage by the physical characteristics of the merchandise subject to investigation.[25] In this proceeding, a wind tower section subject to this investigation ''consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell * * *.'' Consequently, to revise the scope language as proposed by Petitioner would expand product coverage beyond the physical characteristics of merchandise currently subject to this investigation 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 memory. What distinguishes the instant investigation from *Semiconductors* is that, while the Department never contemplated future generations of semiconductors, Petitioner's admitted intention in the instant investigation is to ''cover all future generations of utility scale wind towers regardless of the type of future tower.'' [26] This would result in an 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**

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

**Surrogate Country**

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

In its Surrogate Country Memorandum, the Department identified Bangladesh, India, Indonesia, Nicaragua, Pakistan, and the Philippines as being equally comparable to Vietnam in terms of economic development.[30] Petitioner argues that India should be selected as the surrogate country because India is a significant producer of comparable merchandise, it has a large wind energy industry, and it is the best source for quality surrogate value data and usable financial statements.[31] CS Wind Group, while agreeing that India provides the most appropriate primary surrogate country to value FOPs in this investigation, contends that

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

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

[18] *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.

[19] *Id.* at 2.

[20] *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*'').

[21] *See* Scope Comments at 3.

[22] *Id.*

[23] *Id.* at 2.

[24] *See Preamble,* 62 FR at 27323.

[25] *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.

[26] *See* Scope Comments at 2.

[27] *See* Volume IV of the Petition at 9–10; *see also Initiation Notice,* 77 FR at 3444.

[28] *See, e.g., Polyethylene Retail Carrier Bags From the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 74 FR 56813 (November 3, 2009), unchanged in *Polyethylene Retail Carrier Bags From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value,* 75 FR 16434 (April 1, 2010).

[29] *See 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, 30760 (June 4, 2007) (''*CFS Paper from PRC Preliminary Determination*''), 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) (''*CFS Paper from PRC Final Determination*'').

[30] *See* Surrogate Country Memorandum.

[31] *See* Letter from Petitioner to the Department, regarding ''Utility Scale Wind Towers from the Socialist Republic of Vietnam: Surrogate Country Comments'' (April 25, 2012).

Ukraine also maintains a sizeable industry producing substantial quantities of comparable merchandise and offers reliable, quality data to value certain major inputs.[32] Petitioner argued that Ukraine is not on the list of potential surrogate countries and, therefore, is not an appropriate source for surrogate values.[33]

*Economic Comparability*

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

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

*Significant Producer of Comparable Merchandise*

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

*Data Availability*

If more than one potential surrogate country satisfies the statutory requirements for selection as a surrogate country, the Department selects the primary surrogate country from among the potential surrogate countries based on data availability and reliability. When evaluating surrogate value data, the Department considers several factors, including whether the surrogate values are publicly available, contemporaneous with the POI, representative of a broad market average, tax and duty-exclusive, and specific to the inputs being valued.[39] There is no surrogate value information on the record for Bangladesh, Indonesia, Nicaragua, Pakistan, and the Philippines. In contrast, the record contains usable Indian surrogate values for almost every FOP.[40]

Because India is the only country listed on the Surrogate Country Memorandum found to be both economically comparable to Vietnam, a significant producer of comparable merchandise, and for which we have reliable data to value almost every one of the FOPs, we have selected India as the primary surrogate country. Because India satisfies the Department's criteria for the selection of a primary surrogate country, resort to an alternative surrogate country which is not as economically comparable to Vietnam as the countries in the Surrogate Country Memorandum, is not necessary.

In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in an AD investigation, interested parties may submit publicly available information to value the FOPs within 40 days after the date of publication of the preliminary determination.[41]

**Single Entity Treatment**

To the extent that the Department's practice does not conflict with section 773(c) of the Act, the Department will collapse two or more affiliated entities in a proceeding involving an NME country if the facts of the case warrant such treatment.[42] Pursuant to 19 CFR

[32] *See* Letter from CS Wind Group to the Department, regarding ''CS Wind Group's Surrogate Country Comments: Antidumping Duty Investigation on Utility Scale Wind Towers from the Socialist Republic of Vietnam'' (April 25, 2012).

[33] *See* Letter from Petitioner to the Department, regarding ''Utility Scale Wind Towers from the Socialist Republic of Vietnam: Submission of Additional Comments in Connection with the Department of Commerce's Surrogate Country Selection'' (May 23, 2012).

[34] *See Certain Steel Wheels From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination,* 76 FR 67702, 67708 (November 2, 2011) (''*Steel Wheels from PRC Preliminary Determination*''), unchanged in *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 (March 23, 2012) (''*Steel Wheels from PRC Final Determination*'').

[35] *See Steel Wheels from PRC Preliminary Determination,* 76 FR at 67708–09, unchanged in *Steel Wheels from PRC Final Determination.*

[36] *See* Petitioner's April 25, 2012, submission at Exhibit 1.

[37] *See id.*

[38] *See* CS Wind Group's April 25, 2012, submission at Exhibit 2.

[39] *See* Import Administration's Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004), available on the Department's Web site at *http://ia.ita.doc.gov/policy/index.html.*

[40] *See* CS Wind Group's April 25, 2012, letter at 2–7.

[41] In accordance with 19 CFR 351.301(c)(1), for the final determination of this investigation, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by any other interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value information. *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final 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.

[42] *See, e.g., Certain Steel Nails From the People's Republic of China: Preliminary Determination of*

Continued

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

Section 771(33) of the Act identifies persons that shall be considered ''affiliated'' or ''affiliated persons,'' including, *inter alia,* (1) any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization; or (2) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.[43] Section 771(33) of the Act further states that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

The Department has preliminarily determined that CS Wind Vietnam and CS Wind Corporation, the Korean parent company of CS Wind Vietnam, are affiliated pursuant to sections 771(33)(E) and (F) of the Act and that these companies should be treated as a single entity for AD purposes.[44] In summary, the Department has preliminarily determined that CS Wind Vietnam and CS Wind Corporation meet the statutory definition of ''affiliated persons'' under sections 771(33)(E) and (F) of the Act.[45] Furthermore, the Department has preliminarily found a significant potential for manipulation of production and sales decisions between CS Wind Corporation and CS Wind Vietnam.[46] Accordingly, the Department has determined it appropriate to treat CS Wind Corporation and CS Wind Vietnam as a single entity in this proceeding.

**Separate Rates**

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single weighted-average dumping margin.[47] It is the Department's policy to assign all exporters of merchandise under investigation that are in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.[48] The Department analyzes whether each entity exporting the subject merchandise is sufficiently independent under a test arising from *Sparklers,*[49] as further developed in *Silicon Carbide.*[50] In accordance with the separate rates criteria, the Department assigns separate rates in NME cases if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over their export activities. If, however, the Department determines that a company is wholly foreign owned, then a separate rate analysis is not necessary to determine whether it is independent from government control.[51]

CS Wind Group, the respondent in this investigation, provided information indicating that it is a wholly-owned foreign enterprise.[52] Accordingly, a separate rate analysis is not necessary for this company.

**Companies not Receiving a Separate Rate**

The Department has not granted a separate rate to Vina-Halla because the company failed to submit a timely response to the Department's questionnaires which requested information regarding separate rate eligibility. As indicated above, CS Wind Vietnam and Vina-Halla are the only producers/exporters identified in the Petition. The Department stated in the *Initiation Notice* that it would request information regarding separate rate eligibility in the questionnaire being sent to the two known exporters/producers identified in the Petition (*i.e.,* CS Wind Vietnam and Vina-Halla).[53]

**The Vietnam-Wide Entity**

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

**Application of Facts Available and Adverse Facts Available**

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

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

*Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances and Postponement of Final Determination,* 73 FR 3928, 3932 (January 23, 2008), unchanged in *Certain Steel Nails From the People's Republic of China: Amended Preliminary Determination of Sales at Less Than Fair Value,* 73 FR 7254 (February 7, 2008) and *Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances,* 73 FR 33977 (June 16, 2008).

[43] *See* sections 771(33)(E)–(F) of the Act.

[44] *See* Single Entity Memorandum.

[45] *Id.*

[46] *Id.*

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

[48] *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*''), as amplified by *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 Sparklers,* 56 FR at 20588.

[50] *See Silicon Carbide,* 59 FR at 22585.

[51] *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).

[52] *See* CS Wind Group's March 20, 2012, letter at A–11.

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

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

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an inference that is adverse to a party if the party failed to cooperate by not acting to the best of its ability to comply with requests for information.[55] The Department finds that the Vietnam-wide entity's failure to provide the requested information constitutes circumstances under which it is reasonable to conclude that less than full cooperation has been shown.[56] Therefore, because the Vietnam-wide entity did not respond to the Department's 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 facts otherwise available, an adverse inference is appropriate.

When employing an adverse inference, section 776(b) of the Act states that the Department may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate based on adverse facts available (''AFA''), the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.[57] It is the Department's practice to select, as an AFA rate, the higher of the: (a) Highest dumping margin alleged in the petition, or (b) highest calculated dumping margin of any respondent in the investigation.[58] The dumping margins alleged in the Petition are 140.54 percent and 143.29 percent.[59] Either of these rates is higher than the calculated rate for CS Wind Group. Thus, as AFA, the Department's practice would be to assign the rate of 143.29 percent to the Vietnam-wide entity.

**Corroboration of Information**

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, 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 merchandise subject to this investigation, or any previous review under section 751 concerning the merchandise subject to this investigation.''[60] To ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value.[61] Independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.[62] To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.[63]

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

**Date of Sale**

Pursuant to 19 CFR 351.401(i), ''in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business.'' The date of sale is generally the date on which the parties agree upon all substantive terms of the sale. This normally includes the price, quantity, delivery terms and payment terms.[66]

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

[54] *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 Antidumping Duty 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).

[55] *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).

[56] *See Nippon Steel Corp.* 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'')).

[57] *See* SAA at 870.

[58] *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).

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

[60] *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), and accompanying Issues and Decision Memorandum at Comment 2 (quoting SAA at 870).

[61] *See* SAA at 870.

[62] *Id.*

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

[64] *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).

[65] *See* section 776(c) of the Act and 19 CFR 351.308(c) and (d); *see also 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.

[66] *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 Date of Sale, Comment 1.

provided no evidence to contradict its agreement with said customer that the material terms of sale change after the purchase order is issued.[67] Petitioner further maintains that information on the record also shows that price adjustments, revising the commercial invoice price for said customer, followed the shipment of some towers. Petitioner, therefore, argues that, to the extent that the Department does not believe that the price is fixed before the commercial invoice is issued, it appears that the shipment of the towers may have occurred prior to the issuance of the final adjustment invoice of the tower. Accordingly, Petitioner argues that the shipment date may serve as an appropriate date of sale.[68] Finally, Petitioner argues that the pro forma invoice, which is issued at the time of shipment to said customer, may be the appropriate date of sale because it appears to be the final iteration of the material terms of sale pursuant to the contractual agreement between CS Wind Group and said customer.[69]

The relevant question in considering whether the purchase order date better reflects the date on which the exporter established the material terms of sale, and thus is the appropriate date of sale, is whether the material terms of sale were subject to change on the purchase order date. The date of sale is the date when the material terms of sale are established and final—that is, no longer subject to change.[70] CS Wind Group provided evidence that the material terms of purchase orders can and do change up until issuance of the commercial invoice.[71] Moreover, record evidence does not suggest that the shipments of towers have occurred prior to the issuance of the commercial invoice to said customer to warrant the use of the shipment date as the date of sale.[72]

In *Allied Tube & Conduit Corp.* v. *United States,* the U.S. Court of International Trade noted that a ''party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to 'satisfy' the Department that 'a different date better reflects the date on which the exporter or producer establishes the material terms of sale.' '' [73] After examining the record, the Department has determined that there is insufficient evidence demonstrating that a date other than the commercial invoice date better reflects that date on which the material terms of sale were established.[74]

## Fair Value Comparisons

In accordance with section 777A(d)(1) of the Act, to determine whether CS Wind Group sold merchandise under consideration to the United States at LTFV during the POI, we compared the weighted-average price of U.S. sales of subject merchandise to the weighted-average NV, as described in the U.S. Price and ''Normal Value'' sections of this notice.[75]

## U.S. Price

The Department considered the prices of U.S. sales reported by CS Wind Group to be export prices (''EP'') in accordance with section 772(a) of the Act, because these are the prices at which the subject merchandise was first sold before the date of importation by the exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. We calculated the EP based on the packed prices at which merchandise under consideration was sold for exportation to the United States. We made deductions from U.S. price for movement expenses (*i.e.,* foreign inland freight from the plant to the port of exportation and domestic brokerage), in accordance with section 772(c)(2)(A) of the Act. Where foreign inland freight or foreign brokerage and handling fees were provided by Vietnamese service providers or paid for in Dong, we based those charges on surrogate value rates.[76] Where applicable, we also adjusted the U.S. price by the value of certain materials provided free of charge.

## Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.[77] Thus, we calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). Under section 773(c)(3) of the Act, FOPs include, but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs.[78]

CS Wind Group reported FOP offsets for steel and aluminum scrap. However, because the net total weight of the material inputs and the scrap offsets is less than the total weight of the finished product (exclusive of lifting and transport equipment), we have disallowed CS Wind Group's scrap offsets for purposes of the preliminary determination.[79]

## Factor Valuation Methodology

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

[67] *See* Petitioner's June 15, 2012, letter at 10–22.

[68] *Id.* at 23–25.

[69] *Id.* at 25–27.

[70] *See 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).

[71] *See* CS Wind Group's May 7, 2012, Supplemental Response at Exhibits S1–1 through S1–3; CS Wind Group's June 6, 2012, Supplemental Response at 1–2, and Exhibits S5–1 through S5–5; and CS Wind Group's June 12, 2012, Supplemental Response at 3–11, and Exhibits S6–1 through S6–10.

[72] *See* CS Wind Group's June 12, 2012, Supplemental Response at 3–11, and Exhibits S6–1 through S6–10.

[73] *See Allied Tube & Conduit Corp.* v. *United States,* 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

[74] *See* Memorandum from Magd Zalok, International Trade Compliance Analyst, to the File, regarding ''Preliminary Determination on CS Wind Group's Date of Sale'' (May 17, 2012).

[75] In this preliminary determination, the Department applied the weighted-average dumping margin calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012). In particular, the Department compared monthly weighted-average export prices with monthly weighted-average normal values and granted offsets for non-dumped comparisons in the calculation of the weighted average dumping margin.

[76] *See* ''Factor Valuation Methodology'' section below for further discussion of surrogate value rates.

[77] *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).

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

[79] *See* Memorandum from Magd Zalok and LaVonne Clark to the File, regarding ''Analysis for the Preliminary Determination of Utility Scale Wind Towers from the Socialist Republic of Vietnam: CS Wind Group'' (July 26, 2012) (''Analysis Memorandum'') at Attachment V for the Department's comparison of the net total weight of the material inputs and the scrap offsets to the total weight of the finished product.

data reported by CS Wind Group for the POI. To calculate NV, we multiplied the reported per-unit factor consumption rates by publicly available surrogate values (except as discussed below). In selecting the surrogate values, we considered, among other factors, the quality, specificity, and contemporaneity of the data.[80] As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added a surrogate freight cost to surrogate input values using the shorter of the reported distance from the domestic supplier to the respondent's factory or the distance from the nearest seaport to the respondent's factory where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–08 (Fed. Cir. 1997). A detailed description of all surrogate values used for CS Wind Group can be found in the surrogate values memorandum.[81]

For the preliminary determination, except as noted below, we used Indian import data, as reported by the Indian Customs Department and published by GTA, and other publicly available sources from India in order to calculate surrogate values for CS Wind Group's FOPs (*e.g.,* direct materials, packing materials) and certain movement expenses. In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, surrogate values which are non-export average values, contemporaneous with, or closest in time to, the POI, product-specific, and tax-exclusive.[82] The record shows that Indian import data obtained through GTA, as well as data used from other Indian sources are product-specific, tax-exclusive, and generally contemporaneous with the POI.[83] In those instances where we could not obtain publicly available information contemporaneous with the POI with which to value FOPs, we adjusted the surrogate values using, where appropriate, the Indian Producer Price Index (''PPI'') or, for the purposes of valuing labor, the Consumer Price Index (''CPI''), as published in the *International Financial Statistics* by the International Monetary Fund (''IMF'').

In calculating Indian import-based per-unit surrogate values, we have disregarded import prices that we have reason to believe or suspect may be subsidized. Guided by the legislative history, it is the Department's practice not to conduct a formal investigation to ensure that such prices are not subsidized.[84] Rather, the Department bases its decision on information that is available to it at the time it makes its determination.[85] We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. The Department has found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports from these countries to all markets may be subsidized.[86] Therefore, we have not used prices from these countries in calculating India's import-based surrogate values.

Additionally, in calculating India's import-based per-unit surrogate values, we disregarded prices from NME countries. Finally, we excluded from our calculation of India's import-based per-unit surrogate values imports that were labeled as originating from an ''unspecified'' country because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.[87] Detailed calculations are provided in the Surrogate Values Memo.

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities (*i.e.,* not insignificant quantities) and pays in an ME currency, the Department uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted by findings of dumping in Vietnam and/or subsidies.[88] Where the Department finds ME purchases to be of significant quantities (*i.e.,* 33 percent or more), in accordance with its statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs,*[89] the Department uses the actual purchase prices to value the inputs. Information reported by CS Wind Group demonstrates that an input was sourced from an ME country and paid for in ME currencies.[90] The information reported by CS Wind Group also demonstrates that such an input was purchased in significant quantities (*i.e.,* 33 percent or more) from ME suppliers; hence, the Department used CS Wind Group's actual ME purchase prices to value this input.[91] Where appropriate, freight expenses were added to the ME price of the input. For certain other inputs claimed by CS Wind Group as ME purchases, the Department has preliminarily determined not to use such prices because they have been distorted by subsidization.[92]

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME AD proceedings.[93]

[80] *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.

[81] *See* Memorandum from LaVonne Clark to The File, regarding ''Antidumping Duty Investigation of Utility Scale Wind Towers from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Determination'' (July 26, 2012) (''Surrogate Values Memo'').

[82] *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).

[83] *See* Surrogate Values Memo.

[84] *See* Omnibus Trade and Competitiveness Act of 1988, Conference Report, H.R. Rep. 100–576 at 590 (1988); *see also CFS Paper from PRC Preliminary Determination,* 72 FR at 30763 (June 4, 2007), unchanged in *CFS Paper from PRC Final Determination.*

[85] *See 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 from PRC Final Determination.*

[86] *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; *see also 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.''

[87] *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)

[88] *See, e.g., Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27366 (May 19, 1997).

[89] *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments,* 71 FR 61716, 61717–61718 (October 19, 2006) (''*Antidumping Methodologies: Market Economy Inputs''*).

[90] *See* Analysis Memorandum at Attachment III.

[91] *Id.*

[92] *Id at 4–5.*

[93] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies:*

Continued

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.[94] 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).[95] The latest year for which ILO Chapter 6A reports national data for India is 2005.

The Department finds the two-digit description under Division 28 (Manufacture of Fabricated Metal Products, except Machinery and Equipment) of the ISIC-Revision 3 to be the best available information on the record because it is most specific to the industry being examined, and is, therefore, derived from industries that produce comparable merchandise. Accordingly, relying on Chapter 6A of the Yearbook, the Department calculated the labor input using labor data reported by India to the ILO under Division 28 of ISIC-Revision 3 standard, in accordance with section 773(c)(4) of the Act. A more detailed description of the labor rate calculation methodology is provided in the Surrogate Values Memo. We find that this information constitutes the best available information on the record because it is the most contemporaneous data available for the POI and, thus, more accurately reflective of actual wages in India.

Therefore, for the preliminary determination, we calculated the labor inputs using the data for average monthly industrial labor rate prevailing during 2005 in India, corresponding to ''Manufacturing'' economic sector, adjusted to current price levels using the Indian CPI. For the preliminary determination, the calculated industry-specific labor rate is 60.81 rupees (''Rs'')/hour. Because the Indian financial statements on the record do not itemize the indirect costs reflected in Chapter 6A data, we find that the facts and information on the record do not warrant or permit an adjustment to the surrogate financial statements.[96] A more detailed description of the labor rate calculation methodology is provided in the Surrogate Values Memo.[97]

We valued electricity using data published by India's Central Electricity Authority.[98] The average cost was 3.80 Rs./kWh in 2008. We selected these data because they were representative of broad market average prices, publicly available, and tax-exclusive. Because the rates listed in this source became effective on a variety of different dates, we did not adjust it for inflation.

We valued oxygen and argon using data from Bhoruka Gases Limited. Because prices are not contemporaneous with the POI, we inflated such prices using the PPI rate for India, as published in the *International Financial Statistics* by the IMF.[99]

We valued truck freight using data from a Web site *www.infobanc.com/logististics/logtruck.htm.* We did not inflate the value for truck freight since it is contemporaneous with the POI.[100]

We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in India. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in India that is published in *Doing Business 2010: India,* published by the World Bank. The price is for 2009. We inflated the value for brokerage and handling using the PPI rate for India.[101]

To value factory overhead, selling, general, and administrative expenses, and profit, we used the financial statements of ISGEC Heavy Engineering Ltd., a producer of comparable merchandise. These financial statements cover the fiscal year ending in September 2011 and, therefore, are contemporaneous.[102]

**Currency Conversion**

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

**Verification**

As provided in section 782(i)(1) of the Act, we intend to verify the information submitted by CS Wind Group.

**Combination Rates**

In the *Initiation Notice,* the Department stated that it would calculate combination rates for the respondents that are eligible for a separate rate in this investigation.[103] This practice is described in Policy Bulletin 05.1.[104]

**Preliminary Determination**

The weighted-average dumping margins are as follows:

| Exporter | Producer | Weighted-average margin (percent) |
|---|---|---|
| The CS Wind Group** | The CS Wind Group | 52.67 |
| Vietnam-Wide Entity | | 59.91 |

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

**Disclosure**

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

**Suspension of Liquidation**

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

The Department will instruct CBP to require a cash deposit equal to the

*Valuing the Factor of Production: Labor,* 76 FR 36092 (June 21, 2011) (''*Labor Methodologies*'').

[94] *See Labor Methodologies,* 76 FR at 36093.

[95] *See Labor Methodologies,* 76 FR at 36093.

[96] *See Labor Methodologies,* 76 FR at 36094.

[97] *See* Surrogate Values Memo at Exhibit 4.

[98] *Id.* at Exhibit 5.

[99] *See* Surrogate Values Memo at Exhibits 2 and 5.

[100] *See* Surrogate Values Memo at Exhibit 7.

[101] *See* Surrogate Values Memo at Exhibits 2 and 8.

[102] *See* Surrogate Values Memo at Exhibit 9.

[103] *See Initiation Notice,* 77 FR at 3446.

[104] *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), available on the Department's Web site at *http://ia.ita.doc.gov/policy/bull05–1.pdf.*

weighted-average amount by which NV exceeds U.S. price, as follows: (1) The 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 Vietnamese exporters of merchandise under consideration which have not received their own rate, the rate will be the rate for the Vietnam-wide entity; and (3) for all non-Vietnamese exporters of merchandise under consideration which have not received their own rate, the rate will be the rate applicable to the Vietnamese exporter/producer combination that supplied that non-Vietnamese exporter.

**International Trade Commission Notification**

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of wind tower from Vietnam, or sales (or the likelihood of sales) for importation, of the merchandise under consideration within 45 days of our final determination.

**Public Comment**

Case briefs or other written comments may be submitted to the Department no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline for case briefs.[105] A table of contents, list of authorities used, and an executive summary of issues should accompany any briefs submitted to the Department. The executive summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Interested parties, who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Standard Time, within 30 days after the date of publication of this notice.[106] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we intend to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

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

Pursuant to section 735(a)(2) of the Act, on June 8, 2012, we received a request from CS Wind Group that the Department postpone its final determination by 60 days.[107] Additionally, consistent with 19 CFR 351.210(e)(2), CS Wind Group requested that the Department extend the application of the provisional measures from a four-month period to a six-month period. In accordance with section 735(a) of the Act and 19 CFR 351.210(b), we are granting these requests and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register** because: (1) Our preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the merchandise under consideration; and (3) no compelling reasons for denial exist. Suspension of liquidation will be extended accordingly. We are further extending the application of the provisional measures from a four-month period to a six-month period.

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

Dated: July 26, 2012.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

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**BILLING CODE 3510–DS–P**

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

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

[107] *See* Letter from CS Wind Group to the Department, regarding ''Request to Postpone the Final Determination: Antidumping Duty Investigation on Utility, Scale Wind Towers from the Socialist Republic of Vietnam (Case No. A–552–814),'' dated June 8, 2012.

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

### Multistakeholder Meetings To Develop Consumer Data Privacy Code of Conduct Concerning Mobile Application Transparency

**AGENCY:** National Telecommunications and Information Administration, U.S. Department of Commerce.

**ACTION:** Notice of open meetings.

**SUMMARY:** The National Telecommunications and Information Administration (NTIA) will convene meetings of a privacy multistakeholder process concerning mobile application transparency.

**DATES:** The meetings will be held on August 22, 2012, and August 29, 2012, from 9:30 a.m. to 1 p.m., Eastern Daylight Time; and on September 19, 2012, October 10, 2012, November 7, 2012, November 30, 2012, and December 18, 2012, from 9:30 a.m. to 4 p.m., Eastern Time. Please refer to NTIA's Web site, *https://www.ntia.doc.gov/other-publication/2012/privacy-multistakeholder-process-mobile-application-transparency*, for the most current information.

**ADDRESSES:** The meetings will be held in the Auditorium of the U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street and Constitution Avenue NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** John Verdi, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 4725, Washington, DC 20230; telephone (202) 482–8238; email *jverdi@ntia.doc.gov*. Please direct media inquiries to NTIA's Office of Public Affairs, (202) 482–7002.

**SUPPLEMENTARY INFORMATION:**

*Background:* On February 23, 2012, the White House released *Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy* (the ''Privacy Blueprint'').[1] The Privacy Blueprint directs NTIA to convene multistakeholder processes to develop legally enforceable codes of conduct that specify how the Consumer Privacy Bill of Rights applies in specific business contexts.[2] On June 15, 2012,

[1] The Privacy Blueprint is available at *http://www.whitehouse.gov/sites/default/files/privacy-final.pdf.*

[2] *Id.*