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October 31, 2011

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

SUBJECT: Certain Steel Threaded Rod from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the 2008-2010 Administrative Review

SUMMARY:

We have analyzed the comments submitted in the administrative review of certain steel threaded rod from the People's Republic of China ("PRC"). As a result of our analysis, we have made changes from the Preliminary Results.[1] We recommend that you approve the positions described in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this review for which we received comments on the Preliminary Results:

Comment 1: Rescission of Review With Respect to Gem-Year
Comment 2: Application of AFA to Shanghai Recky
Comment 3: No Shipments Certification from New Oriental
Comment 4: Wage Rate
Comment 5: Excluding Sterling Tool's Financial Statement
Comment 6: Correction of Error in Financial Ratios for Nasco Steels Private Limited
Comment 7: Surrogate Value for Hydrochloric Acid
Comment 8: Adding Harmonized Tariff Schedule Numbers to the Scope
Comment 9: Zeroing

[1] See Certain Steel Threaded Rod from the People's Republic of China: Preliminary Results of the First Administrative Review and Preliminary Rescission, in Part, 76 FR 26696 (May 9, 2011) ("Preliminary Results").

BACKGROUND:

The merchandise covered by this administrative review is certain steel threaded rod from the PRC as described in the "Scope of the Order" section in the Preliminary Results. The period of review ("POR") is October 8, 2008, to March 31, 2010. On May 9, 2011, the Department published the Preliminary Results. In accordance with 19 CFR 351.309(c)(ii), we invited parties to comment on our Preliminary Results.

On May 31, 2011, Jiaxing Brother Fastener Co., Ltd. ("Brother") and its affiliates[2] (collectively the "RMB/IFI Group"), filed surrogate value ("SV") information. On June 22, 2011, Gem-Year Industrial Co., Ltd. ("Gem-Year"), the RMB/IFI Group, and Vulcan Threaded Products Inc. ("Petitioner") filed case briefs regarding the Department's Preliminary Results.

On June 22, 2011, Hubbell Power Systems, Inc. ("Hubbell") submitted its case brief. On June 23, 2011, Petitioner filed a request to strike portions of Hubbell's case brief. On June 24, 2011, the Department sent a letter to Hubbell regarding the redaction of new information from Hubbell's case brief. On June 28, 2011, Hubbell resubmitted its case brief without certain factual statements, per the Department's request.

On June 30, 2011, the Department placed certain wage rate data on the record of this administrative review and invited interested parties to comment on these data. On July 5, 2011, the Department received rebuttal comments from Petitioner and Hubbell. On July 7, 2011, the Department placed entry documents from U.S. Customs and Border Protection ("CBP") regarding Zhejiang New Oriental Fastener Co., Ltd. ("New Oriental") on the record of this review. On July 14, 2011, Petitioner filed comments on these entry documents. On July 14, 2011, Gem-Year filed comments on the Department's collection of new factual information.

Comment 1: Rescission of Review With Respect to Gem-Year

Hubbell:

- Administrative reviews not only set the liquidation rates for suspended entries, but also set cash deposit rates going forward.[3]
- The Department should resume its review of Gem-Year. Stainless Steel Plate from Belgium,[4] Carbazole Violet Pigment from India,[5] and Gerdau Ameristeel[6] all stand for the proposition that suspended entries are not necessary for the Department to conduct a review, as cash deposit rates will also be set by the review, not just liquidation rates.

[2] RMB Fasteners Ltd. and IFI & Morgan Ltd.
[3] See section 751(a)(2)(C) of the Tariff Act of 1930, as amended ("the Act").
[4] See Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review, 70 FR 72789 (December 7, 2005) ("Stainless Steel Plate from Belgium").
[5] See Carbazole Violet Pigment 23 From India: Final Results of Antidumping Duty Administrative Review, 73 FR 74141 (December 5, 2008), and accompanying Issues and Decision Memorandum ("Carbazole Violet Pigment from India").
[6] See Gerdau Ameristeel Corp. v. United States, 519 F.3d 1336 (Fed. Cir. 2008) ("Gerdau Ameristeel").

- As interpreted by the Court of International Trade ("CIT") in East Sea Seafoods, the Court of Appeals for the Federal Circuit ("Federal Circuit") concluded in Allegheny Ludlum that the Department was not forbidden from conducting a review for a company with sales and exports but no entries during the POR. [7]
- The facts in Tissue Paper from the PRC[8] were dissimilar from this case in that the respondent in Tissue Paper from the PRC certified no entries and then was discovered to have liquidated entries of subject merchandise during the POR.
- The Department should consider Gem-Year's separate rate application. The Department has cited no deficiencies with Gem-Year's separate rate application, and Transcom[9] and Sigma[10] uphold a party's right to rebut the presumption of government control in non-market economy ("NME") cases.
- The Department does not have a basis to apply adverse facts available ("AFA") to Gem-Year, as it fully cooperated in the review.
- The Department's regulations require a respondent to have no "entries, exports, or sales of the subject merchandise" in order for the Department to rescind an administrative review.[11] The record demonstrates that Gem-Year has sales of subject merchandise during the POR.
- The record demonstrates that Gem-Year's products were sold in the United States, and the Department should complete its administrative review of Gem-Year.
- Transcom and Sigma uphold a party's right to rebut the presumption of government control in non-market economy cases, and Petitioner's assertion that Gem-Year does not qualify to participate in this review as a separate rate respondent is without basis.
- Gem-Year has actively participated in this review, and the Department may not apply total AFA to Gem-Year because of its response to all of the Department's requests for information.

Gem-Year:

- The Department's referral of Gem-Year's entries to CBP for further review indicates that antidumping duties could be collected on the entries.
- The determination of appropriate assessment rates and the calculation of cash deposit rates going forward are equally important, and the Department is statutorily bound to calculate a company-specific cash deposit rate for the company.[12]
- The Department must review more than one company,[13] and the Department is left with only one participating mandatory respondent should it refuse to review Gem-Year.

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[7] See East Sea Seafoods LLC v. United States, 714 F. Supp. 2d 1243, 1248 n.3 (CIT 2010) ("East Sea Seafoods") (interpreting Allegheny Ludlum Corp. v. United States, 346 F.3d 1368, 1374 (Fed. Cir. 2003) ("Allegheny Ludlum")).

[8] See Certain Tissue Paper Products from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 73 FR 18497 at 18500 (April 4, 2008) ("Tissue Paper from the PRC"), unchanged in Certain Tissue Paper Products from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review, 73 FR 58113 (October 6, 2008) ("Tissue Paper from the PRC Final Results").

[9] See Transcom, Inc. v. United States, 182 F.3d 876, 883 (Fed. Circuit 1999).

[10] See Sigma Corp. v. United States, 117 F.3d 1401, 1405 (Fed. Circuit 1997).

[11] See 19 CFR 351.213(d)(3).

[12] See the Act.

- In the event the Department does not complete an individual review of Gem-Year, the Department should apply the rate calculated for the sole participating mandatory respondent (de minimis) to Gem-Year as neutral facts available. The Department has no basis upon which to apply AFA to Gem-Year.
- Hubbell did submit information regarding the liquidation status of its entries, and the Department improperly rejected that information from the record of this review. In addition, in Carbon Steel Plate from Italy, the Department specifically noted that no new information had been placed on the record since the preliminary results in that case, indicating that parties were permitted to place information on the record regarding the suspension status of their entries subsequent to the preliminary results.[14]
- The Department's referral of Gem-Year's entries to CBP indicates that antidumping duties may still be collected on the entries, meaning that Gem-Year should be entitled to participate in this review.
- Gem-Year argues that the Department's placement of new factual information regarding New Oriental on the record subsequent to the receipt of case briefs indicates that the Department had time to review the new factual information contained in Hubbell's original case brief.

Petitioner:

- As in Tissue Paper from the PRC,[15] the Act as well as the Department's past practice support rescinding the review with respect to companies that lack suspended entries during the POR.
- Given that Gem-Year was selected and then de-selected as a mandatory respondent, the Department should not assess its eligibility for a separate rate. The Department should rescind the review with respect to Gem-Year, as Gem-Year cannot be eligible for a separate rate but ineligible for review as a mandatory respondent.
- The Department adequately explained its decision to cease its review of Gem-Year and preliminarily rescind this review with respect to Gem-Year.
- The Department's referral of Gem-Year's POR sales to CBP is not an indication that the Department believes antidumping duties may still be collected on these entries, but rather this referral was made to support any efforts by CBP to investigate and enforce trade laws.
- Gem-Year is not eligible to participate in this review as a separate rate applicant, and should remain subject to the PRC-wide rate.
- In Gerdau Ameristeel, the entries in question were only liquidated pending court appeal, after the underlying administrative review had ended. The Federal Circuit) determined that the appeal could continue because the rate at which entries were liquidated was not at issue in the appeal.[16] These facts differ markedly from this case, where Gem-Year has no suspended entries upon which to collect antidumping duties.

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[13] See Carpenter Technology Corp. v. United States, 774 F. Supp. 2d 1343 (CIT 2011).

[14] See Certain Cut-to-Length Carbon-Quality Steel Plate Products From Italy: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 39299, 39302-03 (July 12, 2006) ("Carbon Steel Plate from Italy").

[15] See Tissue Paper from the PRC, 73 FR at 18500.

[16] See Gerdau Ameristeel, 519 F. 3d at 1341.

- The CIT decision in East Sea Seafoods specifically stated that "nothing in {its remand decision} required {the Department} to conduct an administrative review of a company without POR entries."[17]
- While the Department considered both suspended and liquidated entries in calculating cash deposit rates in Stainless Steel Plate from Belgium, the Department adjusted its calculation for the respondents' per-unit assessment rates to reflect the fact that all entries were not suspended.[18] In Carbazole Violet Pigment from India, the Department calculated an assessment rate for the liquidated entries in case CBP had an opportunity to seek payment of antidumping duties.[19]
- In Tissue Paper from the PRC, both respondents did, in fact, certify that they had POR shipments, and the Department rescinded its review of Guilin Qifeng upon discovering that all of its entries had been liquidated.[20]
- The Department properly determined that Gem-Year is not eligible to participate in this review as either a mandatory or separate rate respondent.

Department's Position:

The Department continues to find that Gem-Year is not eligible to participate in this review as either a mandatory respondent or a separate rate applicant due to its lack of suspended entries, and reaffirms our decision in the Preliminary Results to rescind this review with respect to Gem-Year. As noted by Petitioner, the Department's practice is to only conduct review for companies with suspended entries, and that practice is clearly stated in Tissue Paper from the PRC.[21] Despite Hubbell's arguments to the contrary, the facts of Tissue Paper from the PRC are similar to the case at hand. We agree with Petitioner that respondent Guilin Qifeng in Tissue Paper from the PRC initially certified that it had sales during the POR, and it was later discovered that all of these entries had been liquidated upon entry.[22] Therefore, the facts of this case are entirely within the practice established in Tissue Paper from the PRC, where the Department made clear that it would only conduct reviews for parties with suspended entries.

We disagree with Hubbell's interpretation of Stainless Steel Plate from Belgium, Carbazole Violet Pigment from India, Allegheny Ludlum, and Gerdau Ameristeel. In Stainless Steel Plate from Belgium and Carbazole Violet Pigment from India, the respondents had some suspended entries, making it possible for the Department to conduct an administrative review and instruct CBP to collect antidumping duties due on the suspended entries.[23] In this case, Gem-Year has no suspended entries from the POR, preventing the Department from collecting antidumping duties due. In Gerdau Ameristeel, the Federal Circuit simply ruled that an appeal regarding *future* antidumping duty deposit rates could continue despite *past* entries being liquidated.[24] Again, this

[17] See East Sea Seafoods 714 F. Supp. 2d at 1248.
[18] See Stainless Steel Plate from Belgium, 70 FR 72789 at Comment 7.
[19] See Carbazole Violet Pigment from India, 73 FR 74141 at Comment 1.
[20] See Tissue Paper from the PRC Final Results, 73 FR at 58113-58114.
[21] See Tissue Paper from the PRC, 73 FR at 18500.
[22] Id.
[23] See Stainless Steel Plate from Belgium, 70 FR 72789 at Comment 7 and Carbazole Violet Pigment from India 73 FR 74141 at Comment 1.
[24] See Gerdau Ameristeel, 519 F. 3d at 1341.

is not inconsistent with the Department's practice of only conducting reviews for parties with suspended entries, as the respondent did have suspended entries during the conduct of the review upon which the Department could assess antidumping duties due. Finally, while the CIT correctly noted in East Sea Seafoods that nothing in Allegheny Ludlum forbids the Department from reviewing a company without entries, the Federal Circuit nonetheless upheld the Department's policy of rescinding administrative reviews when there are no entries.[25]

While the Department did provide information regarding Gem-Year's sales during the POR to CBP,[26] the Department did not provide this information for the purposes of assessment of antidumping duty deposits or final duties, but rather for CBP to determine whether it was appropriate to conduct its own investigative or enforcement activities.[27] The Department made no instructions to CBP regarding actions to take with regard to Gem-Year's POR entries. Therefore, despite the Department's provision of information regarding Gem-Year's POR entries to CBP, the Department is still left without evidence of suspended entries upon which to collect antidumping duties due.

The Department also agrees with Petitioner that if a respondent is not eligible to participate in a review as a mandatory respondent, it is also not eligible to become a separate rate respondent. No assessment of the eligibility of a respondent with no shipments during a POR is made, and, in fact, the review is rescinded with respect to such companies. This is the exact approach the Department indicated it would take with respect to Gem-Year in the Preliminary Results. Contrary to Gem-Year and Hubbell's statements that the Department is applying AFA to Gem-Year, the Department is actually rescinding this review with respect to Gem-Year because there is no evidence on the record that Gem-Year's entries during the POR have been suspended.[28] The Department is making no determination as to an appropriate antidumping duty rate to apply to Gem-Year's entries, and therefore is not applying AFA to Gem-Year in this review.

The Department agrees with Petitioner that there is no basis for Gem-Year's assertion that the Department is required by law to start a review of more than one respondent. As noted by Petitioner, the Department selected three mandatory respondents in this review, clearly undertaking an exhaustive effort to review the selected companies. The Department also provided a detailed explanation of why it was necessary to limit the number of companies selected for individual examination under section 777A(c)(1) of the Act.[29] However, because Gem-Year was ultimately ineligible to participate in the review and Shanghai Recky withdrew its participation in the review, the Department was left with only one participating mandatory respondent. At the time that Shanghai Recky withdrew from the review, seven months after the review began, the Department determined that it did not have sufficient time remaining to select and review another respondent prior to the Preliminary Results.

[25] See Allegheny Ludlum, 346 F. 3d at 1374.
[26] See Preliminary Results, 76 FR at 26697.
[27] See section 777(b)(1)(A)(ii) of the Act.
[28] See Preliminary Results, 76 FR at 26697.
[29] See Memorandum to James Doyle, Office Director, from Steven Hampton, Case Analyst, Regarding First Administrative Review of Steel Threaded Rod from the People's Republic of China: Selection of Respondents for Individual Review, dated September 24, 2010.

Finally, with respect to Gem-Year's argument that Hubbell should be permitted to submit new information regarding the status of Gem-Year's entries during the POR, we note that Hubbell missed the deadline for providing new factual information. Furthermore, Hubbell did not provide a reason as to why it missed this deadline. With respect to the new information regarding New Oriental placed on the record by the Department, we note that it is within the Department's discretion to place new information on the record at any time if we deem it relevant and necessary to the review. In contrast, Gem-Year and Hubbell had been put on notice in November 2010 that the Department intended to rescind the review with respect to Gem-Year if it did not provide evidence that it had suspended entries during the POR.[30] Only in June 2011 did Hubbell attempt to provide new factual information regarding the status of its entries. The Department finds no compelling reason to accept this new factual information from Hubbell, given the lack of an explanation as to why the information could not have been timely submitted in the seven months between the Department signaling its intent to rescind this review with respect to Gem-Year and the submission of Hubbell's case brief.

Comment 2: Application of AFA to Shanghai Recky

Petitioner:

- Given Shanghai Recky's failure to cooperate by not acting to the best of its ability to comply with the Department's request for information, the Department correctly determined that is should apply AFA to Shanghai Recky. As AFA, the Department determined that Shanghai Recky should be treated as part of the PRC-wide entity.[31]

Department's Position:

After the Department selected Shanghai Recky as a mandatory respondent, Shanghai Recky informed the Department that it would be "unable" to participate in the review as a mandatory respondent.[32] Shanghai Recky did not respond to the Department's sections A, C and D questionnaire. The Department preliminarily applied total AFA to Shanghai Recky in the Preliminary Results.[33] No party has placed any information or argument on the record to challenge the Department's position with respect to Shanghai Recky. Therefore, the Department agrees with Petitioner that it is proper to continue to apply total AFA to Shanghai Recky and include Shanghai Recky as a part of the PRC-wide entity.[34]

[30] See Letter from Paul Walker, Acting Program Manager, to Gem-Year, Regarding Request for Documentation of Suspended Entries, dated November 5, 2010.
[31] See Preliminary Results, 76 FR at 26698.
[32] See Letter from Shanghai Recky Regarding Participation in the 2008-2010 Administrative Review, dated December 29, 2010.
[33] See Preliminary Results, 76 FR at 26699.
[34] Id. at 26698.

Comment 3: No Shipments Certification from New Oriental

Petitioner:

- In light of the entry packages placed on the record of this review showing that New Oriental did have shipments of subject merchandise during the POR, the Department should reject New Oriental's no shipments certification and investigate whether the company and its counsel submitted false certifications.

Department's Position:

The Department has determined that New Oriental's no shipment certification was erroneous, and has declined to accept this no shipment certification. As New Oriental provided no explanation of its failure to supply the Department with a separate rate application or certification, as required of respondents wishing to qualify for a separate rate, the Department has applied total AFA to New Oriental in these final results.

Comment 4: Wage Rate

The RMB/IFI Group:

- In accordance with the Department's selection of India as the primary surrogate country in this case, the Department should use Indian wage rates for the industrial sector covering the production of steel threaded rod to value labor.[35]
- The Department's determination to include in its calculation of the labor wage rate any country that exports comparable products is not in accordance with the decision in Dorbest or the Department's statutory obligations.[36]
- Of the eight countries selected as part of the labor wage rate, only four are in the top 50 exporters of subject merchandise, and India was excluded from the Department's calculation of the labor wage rate because of a small difference in labor classification. The Department's determination to use only wage rate data from ISIC Revision 3 to ensure consistency between reporting categories is not supported by substantial evidence.
- The Department's preference for "earnings" over "wages" results in impermissible double-counting of bonuses and other forms of compensation that the Department accounts for in its surrogate financial ratios. In addition, the Department's preference for earnings data over wage data led the Department to impermissibly exclude contemporaneous, specific information from several countries.
- The wage rate data placed on the record indicates that, while the consumer price index ("CPI") used to inflate the wage rate data consistently rises, wages themselves may rise or fall in any given year. Because the CPI does not reflect the movement of wages, the Department should not use any data more than three years prior to the POR in calculating the labor wage rate.

[35] See 19 CFR 351.408(c)(2) and Globe Metallurgical Inc. v. United States, Slip Op. 2008-105 (CIT Oct. 1, 2008).
[36] See Dorbest Ltd. v. United States, 604 F.3d 1363 (Fed. Cir. 2010) and section 773(c)(4) of the Act.

Department's Position:

We agree with the RMB/IFI Group, in part. The day before submission of case briefs in this administrative review, the Department published its revised methodology for calculating a surrogate value for labor.[37] Subsequent to the submission of case briefs, the Department placed labor wage rate data on the record for India, from Chapter 6A of the International Labor Organization's ("ILO") Yearbook of Labor Statistics, and provided an opportunity for parties to comment on this data. Consistent with our revised methodology, we determine that these data represent the best available information on the record with which to value labor. Therefore, we have revised our labor wage rate to include data for only India, our primary surrogate country and, as admitted by the RMB/IFI Group, a significant producer of subject merchandise. As explained in Labor Methodologies, this labor wage rate value is fully consistent with section 773(c) of the Act, and how the Department values all other factors of production.

In addition, the Department has revised its calculation of surrogate financial ratios consistent with Labor Methodologies to exclude items incorporated in the labor wage rate data in Chapter 6A of the ILO data. Therefore, bonuses and other forms of compensation included in the ILO's calculation of wages are now excluded from our calculation of labor in our surrogate financial ratios.

The Department continues to inflate the labor wage rate to be contemporaneous with the POR. As was stated in the Preliminary Surrogate Value Memo,[38] it is the Department's practice to inflate all non-contemporaneous surrogate values to be contemporaneous with the POR. However, the Chapter 6A labor wage rate data used by the Department in these final results are from 2005, which is three years prior to the beginning of the POR.

Comment 5: Excluding Sterling Tool's Financial Statement

The RMB/IFI Group:

- The Department cannot include the financial statements of an automotive parts manufacturer like Sterling Tools ("Sterling") in its calculation of surrogate financial ratios. The RMB/IFI Group submitted detailed statements from three industry experts in the fastener business, noting that the automotive industry requires stronger raw materials (medium carbon or alloy), more custom applications, special dies and molds, cold-forging and heat treatment, and high quality control – unlike the producers of low carbon steel threaded rod.[39]
- In terms of processing, Sterling indicates that it "is engaged in the manufacture of high tensile fasteners."[40] The subject merchandise does not include high tensile fasteners,

[37] See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, 76 FR 36092 (June 21, 2011) ("Labor Methodologies").
[38] See Memorandum to The File from Toni Dach, International Trade Analyst, Regarding 2008-2010 Administrative Review of Certain Steel Threaded Rod from the People's Republic of China: Surrogate Values for the Preliminary Results, dated May 2, 2011 ("Preliminary Surrogate Value Memo").
[39] Id.
[40] Id. at Exhibit 3, page 52.

which must be heat treated – an extra production step involving expensive equipment that strengthens the steel for use in different sectors of the economy for different purposes. Sterling mentions that the only raw materials it consumes are "cold head quality."[41] Cold head steel raw materials are "cold forged." Cold forging is a more expensive and sophisticated strengthening process that is not needed or used to manufacture low carbon steel threaded rod.[42] Moreover, "cold head" denotes that this steel is intended for heading, as in the head of a screw. The subject merchandise is not manufactured from this specialty steel; it is manufactured from low carbon steel wire rod and bar. Further, Sterling must maintain a huge inventory to satisfy its various automotive customers. Sterling is cold forging and heading high tensile fasteners exclusively for a very demanding and diverse consumer products industry, unlike the RMB/IFI Group.

- Sterling benefits from countervailable subsidies, and, as such, is less representative of the comparable industry than other statements of record submitted by the RMB/IFI Group; both export incentives in the current period and past Export Promotion Capital Goods ("EPCG") benefits that are still benefiting the company in the current period. The CIT upheld the Department's position that, once subsidized, a company is tainted ever more and unusable for antidumping duty margin calculation purposes.[43] Lakshmi benefitted from other countervailable subsidies according to the 2009-2010 annual report submitted by Petitioner.
- The Department has a long history of countervailing EPCG programs in India and in fact disqualified Wellspun Power for having benefited from this very program in the steel threaded rod investigation.[44]
- Although it is clear that Sterling is benefiting currently from previous disqualifying events, as sustained by the CIT with respect to Deepak, any prior event from a countervailable program taints and disqualifies a company's financial statements from use in the Department's antidumping duty calculations.
- Sterling benefitted from an "export incentive."[45] India's export incentive programs have been pervasively countervailed and export subsidy programs are countervailable per se.

Petitioner:

- Regarding respondents' arguments as to the unsuitability of Sterling's financial statements the Department considered and rejected them and the CIT sustained the Department.[46]

[41] Id. at Exhibit 3, page 54.
[42] See, e.g., Letter from Brother Regarding Rebuttal to Petitioner's Surrogate Value Submission, dated March 14, 2011 at Exhibit 6.
[43] See Jiaxing Brother Fasteners Co., Ltd. v. United States, 751 F. Supp. 2d 1345, 1353 (CIT 2010) ("Jiaxing Brother").
[44] See Certain Steel Threaded Rod from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 8907 (February 27, 2009), and accompanying Issues and Decision Memorandum ("Steel Threaded Rod Investigation") at Comment 1.
[45] See Petitioner Surr. Value Submission at Exhibit 3, page 47.
[46] See Jiaxing Brother, 751 F. Supp. 2d at 1355.

Department's Position:

19 CFR 351.408(c)(4) stipulates that the Department will value materials and overhead, general expenses, and profit using "nonproprietary information gathered from producers of identical or comparable merchandise in the surrogate country."

It is the Department's practice in NME proceedings to obtain surrogate financial ratios using, whenever possible, surrogate-country producers of identical or comparable merchandise, provided that the surrogate data are not distorted or otherwise unreliable. The Department also selects surrogate financial statements that are publicly available, comparable to the respondent's experience, and contemporaneous with the period being reviewed or investigated. The Department also has an established practice of rejecting financial statements of surrogate producers whose production process is not sufficiently comparable to the respondent's production process, whose financial statements are incomplete, who are not profitable or are designated as "sick" by the surrogate country government, and/or where the statements show that the company benefited from subsidy programs which the Department has found to be countervailable.

Record evidence demonstrates that Sterling does in fact produce comparable steel threaded fasteners. As the Department stated in the investigation, "The Department finds that the production of fasteners is a significant portion of the business of Lakshmi Screws, Sterling Tools, and Nasco Steel."[47] In addition, the Department recognized the affidavits and evidence placed on the record by the RMB/IFI Group regarding high-tensile fasteners, which are the same affidavits and evidence placed on the record of this review,[48] and stated: "While high-tensile fasteners for the automotive industry may be different than the fasteners produced by the RMB & IFI Group in terms of raw materials and process, pursuant to section 773(c)(1) of the Act, record evidence demonstrates that both Lakshmi Screws and Sterling Tools nevertheless produce steel threaded fasteners, and thus, of the remaining financial statements, are manufacturers of products that are comparable, albeit more specialized."[49] Additionally, when the Department's determination regarding the appropriate financial statements to utilize in the investigation was challenged, the CIT concluded that the Department's decision to use the financial statements from Sterling was supported by substantial evidence on the record and was in accordance with the law.[50]

Contrary to the RMB/IFI Group's claim, there is no evidence on the record that the aforementioned subsidies are in fact countervailable. With respect to the RMB/IFI Group's argument that Sterling benefits from "export incentives," the Department notes that its practice is to exclude only financial statements that show evidence of subsidization involving programs that the Department has determined to be countervailable. General "export incentives" are not

[47] See Steel Threaded Rod Investigation, 74 FR 8907 at Comment 1.
[48] See Brother May 31, 2011, Surr. Value Submission at Exhibit 6.
[49] See Steel Threaded Rod Investigation, 74 FR 8907 at Comment 1.
[50] See Jiaxing Brother, 751 F. Supp. 2d at 1355.

grounds for the Department to exclude a financial statement for subsidization.[51] Regarding the EPCG subsidy program, which the Department has found to be countervailable, it is evident from the face of the financial statement that Sterling Tools only received EPCG subsides in prior accounting periods and there is no evidence that Sterling Tools continues to benefit from the EPCG scheme in the current accounting period. This is in contrast to the Department's finding in the steel threaded rod investigation, where Deepak's financial statement identified its participation in the DEPB program without regard to year.[52] Contrary to RMB/IFI's assertion, Jiaxing Brother does not designate financial statements with evidence of *prior* subsidization as "forever tainted," it merely defers to the Department's discretion to select the best financial statements from a range available, including the exclusion of a statement containing evidence of countervailable subsidies without evidence of when the subsidies were received.[53] In this case, the evidence in Sterling's financial statement indicates that the countervailable subsidies mentioned were received in prior accounting periods, leaving Sterling without countervailable subsidies during the relevant accounting period.[54]

Therefore, the Department continues to use Sterling's financial statement to calculate surrogate financial ratios in these final results. There is ample evidence and precedent that Sterling Tools is a producer of merchandise comparable to steel threaded rod, and no evidence that Sterling Tools currently benefits from countervailable subsidies.

Comment 6: Correction of Error in Financial Ratios for Nasco Steels Private Limited

The RMB/IFI Group:

- The Department made a clerical error in its calculation of the surrogate financial ratios for Nasco Steels Private Limited ("Nasco") by including lifetime depreciation for certain fixed assets, rather than annual depreciation.

Department's Position:

The Department agrees with the RMB/IFI Group that we inadvertently included lifetime depreciation for Nasco rather than annual depreciation for certain fixed assets. We have corrected this error for these final results.

[51] See, e.g., Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results And Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 19174 (April 17, 2007), and accompanying Issues and Decision Memorandum at Comment 1.
[52] See Steel Threaded Rod Investigation 74 FR 8907 at Comment 1.
[53] See Jiaxing Brother 751 F. Supp. 2d at 1353.
[54] See Petitioner Surr. Value Submission at Exhibit 3.

Comment 7: Surrogate Value for Hydrochloric Acid

The RMB/IFI Group:

- In Helical Spring Lock Washers,[55] the Department used Chemical Weekly as its preferred source for hydrochloric acid because it represented a preferred specific domestic price for the input.
- The Department has previously found that Chemical Weekly is an appropriate source for valuing hydrochloric acid. The argument presented by the respondent in the Nails from PRC case is that it uses generic industrial hydrochloric acid rather than specialty varieties, which is equally true for the RMB/IFI Group because the RMB/IFI Group only uses it for rust cleaning purposes for plating.
- The RMB/IFI Group placed Infodrive data on the record to demonstrate that the Indian import statistics for hydrochloric acid are "overwhelmed" by specialty types of hydrochloric acid.[56]

No other parties commented on this issue.

Department's Position:

As the Department noted in the Preliminary Results, the Chemical Weekly data specify that they are for "naked" hydrochloric acid, but the RMB/IFI Group has not demonstrated that this description most closely matches the hydrochloric acid it consumes.[57] Thus, we do not conclude that the Chemical Weekly data are more specific than the Indian import data. Furthermore, consistent the Department's practice in selecting the best available information for valuing factors of production,[58] the Indian import data are country-wide and tax-exclusive, while the Chemical Weekly data are tax-inclusive and only represent prices in Chennai.

With respect to the Infodrive data placed on the record by the RMB/IFI Group, the RMB/IFI Group alleges that the Infodrive data show that the Indian Harmonized Tariff Schedule ("HTS") category for hydrochloric acid is "overwhelmed" by "high-value" or "specialty" types of hydrochloric acid. However, it is the Department's practice to consider Infodrive data only if the following three conditions are met: 1) direct and complete evidence from Infodrive showing that imports from a particular country do not contain the product in question; 2) a significant portion of the overall imports under the relevant HTS category is represented by the Infodrive data; and 3) distortions of the average unit value ("AUV") in question can be demonstrated by Infodrive data.[59] We note however, because no total quantities were provided by RMB IFI, we cannot

[55] See, e.g., Helical Spring Lock Washers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 4175 (January 24, 2008) ("Helical Spring Lock Washers").
[56] See Brother May 31, 2011, Surr. Value Submission at Exhibit 5.
[57] See Preliminary Surrogate Value Memo at 5.
[58] See Preliminary Results, 76 FR at 26701.
[59] See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, 73 FR 49162 (August 20, 2008) ("WBF from China"), and accompanying Issues and Decision Memorandum at Comment 1; Lightweight Thermal Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 57329 (October 2, 2008) ("Thermal Paper from China"), and accompanying Issues and Decision Memorandum at Comment 9.

determine whether a significant portion of the GTA imports are represented by the Infodrive data. Given that there was no analysis provided demonstrating that the Infodrive data closely matches the GTA import statistics, the Department will continue to use Indian import data to value hydrochloric acid.

Comment 8: Adding Harmonized Tariff Schedule Numbers to the Scope

Petitioner:

- In the Preliminary Results, the Department included the scope of the order which contains a section listing the subheadings of the Harmonized Tariff Schedule of the United States ("HTS") under which subject threaded rod may be classified. The HTS subheadings identified in the Preliminary Results are 7318.15.5050, 7318.15.2095, and 7318.15.5090. These are the same subheadings that were included in the original order when it was published.
- On July 1, 2009, HTS subheading 7318.15.5050 was replaced with two new subheadings: 7318.15.5051 for "Continuously threaded rod: Of alloy steel" and 7318.15.5056 for "Continuously threaded rod: Other" (i.e., of carbon steel). The scope of the order should be revised to reflect this change, and the Department should ensure that this correction is reflected in the final results.

No other parties commented on this issue.

Department's Position:

Pursuant to a request from CBP, the Department updated the CBP computer module in July 2009, to reflect the addition of these two new HTS headings. Therefore, we agree with Petitioner that the language of the scope should be revised to include the new subheadings.

Comment 9: Zeroing

The RMB/IFI Group:

- In Dongbu Steel,[60] the Federal Circuit has explicitly rejected the Department's policy of zeroing negative margins in administrative reviews while not zeroing negative margins in investigations.
- The Federal Circuit held that the Department's inconsistent interpretation of section 771(35) of the Act during different phases of an antidumping duty assessment was not reasonable.[61] The Dongbu Court stated that "once Commerce announced its new interpretation of {section 771(35) of the Act} – even though Commerce intended the new interpretation to apply only to investigations – it may not rely on an entirely inconsistent

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[60] See Dongbu Steel Co., Ltd. v. United States, 635 F.3d 1363 (Fed. Cir. 2011).
[61] Id. at 1373.

interpretation of the exact same statutory provision to justify zeroing in {administrative reviews}."[62] The zeroing of negative margins in this review would constitute an unlawful arbitrary interpretation of section 771(35) and cannot be applied to the RMB/IFI Group.

Department's Position:

We have not changed our calculation of the weighted-average dumping margin, as suggested by the RMB/IFI Group, in these final results.

Section 771(35)(A) of the Act defines "dumping margin" as the "amount by which the normal value exceeds the {export price (EP)} or {constructed export price (CEP)} of the subject merchandise" (emphasis added). Outside the context of antidumping investigations involving average-to-average comparisons, the Department interprets this statutory definition to mean that a dumping margin exists only when NV is greater than EP or CEP. We disagree with the RMB/IFI Group that our zeroing practice is an unreasonable interpretation of the Act. Because no dumping margin exists with respect to sales where normal value is equal to or less than EP or CEP, the Department will not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The Federal Circuit has held that this is a reasonable interpretation of section 771(35) of the Act.[63]

Section 771(35)(B) of the Act defines weighted-average dumping margin as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer." The Department applies this section by aggregating all individual dumping margins, each of which is determined by the amount by which NV exceeds EP or CEP, and dividing this amount by the value of all sales. The use of the term "aggregate dumping margins" in section 771(35)(B) of the Act is consistent with the Department's interpretation of the singular "dumping margin" in section 771(35)(A) of the Act as applied on a comparison-specific level and not on an aggregate basis. At no stage of the process is the amount by which EP or CEP exceeds the NV permitted to offset or cancel the dumping margins found on other sales.

This does not mean that non-dumped transactions are disregarded in calculating the weighted-average dumping margin. It is important to note that the weighted-average margin will reflect any non-dumped transactions examined during the POR; the value of such sales is included in the denominator of the weighted-average dumping margin, while no dumping amount for nondumped transactions is included in the numerator. Thus, a greater amount of non-dumped transactions results in a lower weighted-average margin.

The Federal Circuit explained in Timken that denial of offsets is a "reasonable statutory interpretation given that it legitimately combats the problem of masked dumping, wherein certain profitable sales serve to mask sales at less than fair value."[64] As reflected in that opinion, the

[62] Id. at 1370.
[63] See, e.g., Timken Co. v. United States, 354 F. 3d 1334, 1342 (Fed. Cir. 2004) ("Timken"); Corus Staal BV v. Department of Commerce, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005) ("Corus I"); and SKF USA Inc. v. United States, 630 F.3d 1365 (Fed. Cir. 2011) ("SKF III").
[64] See Timken, 354 F.3d at 1342.

issue of so-called masked dumping was part of the policy reason for interpreting the statute in the manner chosen by the Department. No U.S. court has required the Department to demonstrate "masked dumping" before it is entitled to invoke this interpretation of the statute and deny offsets to dumped sales.[65]

In 2007, the Department implemented a modification of its calculation of weighted-average dumping margins when using average-to-average comparisons in antidumping investigations.[66] With this modification, the Department's interpretation of the statute with respect to non-dumped comparisons was changed within the limited context of investigations using average-to-average comparisons. Adoption of the modification pursuant to the procedure set forth in section 123(g) of the Uruguay Round Agreements Act was specifically limited to address adverse WTO findings made in the context of antidumping investigations using average-to-average comparisons. The Department's interpretation of the statute was unchanged in other contexts.

It is reasonable for the Department to interpret the same ambiguous language differently when using different comparison methodologies in different contexts. In particular, the use of the word "exceeds" in section 771(35)(A) of the Act can reasonably be interpreted in the context of an antidumping investigation to permit negative average-to-average comparison results to offset or reduce the amount of the aggregate dumping margins used in the numerator of the weighted-average dumping margin as defined in section 771(35)(B) of the Act. The average-to-average comparison methodology typically applied in antidumping duty investigations averages together high and low prices for directly comparable merchandise prior to making the comparison. This means that the determination of dumping necessarily is not made for individual sales, but rather at an "on average" level for the comparison. For this reason, the offsetting methodology adopted in the limited context of investigations using average-to-average comparisons is a reasonable manner of aggregating the comparison results produced by this comparison method. Thus, with respect to how negative comparison results are to be regarded under section 771(35)(A) of the Act, and treated in the calculation of the weighted average dumping margin under section 771(35)(B) of the Act, it is reasonable for the Department to consider whether the comparison result in question is a product of an average-to-average comparison or an average-to-transaction comparison.

In U.S. Steel, the Federal Circuit considered the reasonableness of the Department's interpretation not to apply zeroing in the context of investigations using average-to-average comparisons, while continuing to apply zeroing in the context of investigations using average-to-average transaction comparisons pursuant to the provision at section 777A(d)(1)(B) of the Act.[67] Specifically, in U.S. Steel, the Federal Circuit was faced with the argument that, if zeroing was never applied in investigations, then the average-to-transaction comparison methodology would be redundant because it would yield the same result as the average-to-average comparison methodology. The Court acknowledged that the Department intended to continue to use zeroing in connection with the average-to-transaction comparison method in the context of those

[65] See, e.g., Timken, 354 F.3d at 1343; see also NSK Ltd. v. United States, 510 F.3d 1375, 1379-80 (Fed. Cir. 2007).
[66] See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation, 71 FR 77722 (December 27, 2006) ("Final Modification for Antidumping Investigations").
[67] See U.S. Steel Corp., v. United States, 621 F. 3d 1351 (Fed. Cir. 2010) ("U.S. Steel").

investigations where the facts suggest that masked dumping may be occurring.[68] The Court then affirmed as reasonable Commerce's application of its modified average-to-average comparison methodology in investigations in light of Commerce's stated intent to continue zeroing in other contexts.[69]

In addition, the Federal Circuit recently upheld, as a reasonable interpretation of ambiguous statutory language, the Department's continued application of "zeroing" in the context of an administrative review completed after the implementation of the Final Modification for Antidumping Investigations.[70] In that case, the Department had explained that the changed interpretation of the ambiguous statutory language was limited to the context of investigations using average-to-average comparisons and was made pursuant to statutory authority for implementing an adverse WTO report. We find that our determination in this administrative review is consistent with the Federal Circuit's recent decision in SKF III.

Furthermore, in Corus I, the Federal Circuit acknowledged the difference between antidumping duty investigations and administrative reviews, and held that section 771(35) of the Act was just as ambiguous with respect to both proceedings, such that the Department was permitted, but not required, to use zeroing in antidumping duty investigations.[71] That is, the Court explained that the holding in Timken – that zeroing is neither required nor precluded in administrative reviews – applies to antidumping duty investigations as well. Thus, Corus I does not preclude the use of zeroing in one context and not the other.

We disagree with Respondent's argument that the Federal Circuit's recent decision in Dongbu requires the Department to change its methodology in this administrative review. The holdings of Dongbu and the recent decision in JTEKT Corporation v. United States, 642 F. 3d 1378 (Fed. Cir. 2011) ("JTEKT") were limited to finding that the Department had not adequately explained the different interpretations of section 771(35) of the Act in the context of investigations versus administrative reviews, but the Federal Circuit did not hold that these differing interpretations were contrary to law. Importantly, the panels in neither Dongbu nor JTEKT overturned prior Federal Circuit decisions affirming zeroing in administrative reviews, including SKF III, which we discuss above, in which the Court affirmed zeroing in administrative reviews notwithstanding the Department's determination to no longer use zeroing in certain investigations. Unlike the determinations examined in Dongbu and JTEKT, the Department here is providing additional explanation for its changed interpretation of the statute subsequent to the Final Modification for Antidumping Investigations – whereby we interpret section 771(35) of the Act differently for certain investigations (when using average-to-average comparisons) and administrative reviews. For all these reasons, we find that our determination is consistent with the holdings in Dongbu, JTEKT, U.S. Steel, and SKF III.

Accordingly, and consistent with the Department's interpretation of the Act described above, in the event that any of the export transactions examined in this review are found to exceed NV, the

[68] Id. at 1363.
[69] Id.
[70] See SKF III, 630 F. 3d at 1375.
[71] See Corus I, 395 F. 3d at 1347.

amount by which the price exceeds NV will not offset the dumping found in respect of other transactions.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions, and adjusting the margin calculation program accordingly. If accepted, we will publish the final results of review and the final dumping margins in the Federal Register.

AGREE_____ DISAGREE_____

_____
Paul Piquado
Assistant Secretary
for Import Administration

_____
Date