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November 3, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the Fifth Administrative Review of the Antidumping Duty Order on Certain Steel Threaded Rod from the People's Republic of China

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I. Summary

We analyzed the comments of the interested parties[1] in the fifth administrative review of the antidumping duty ("AD") order[2] of certain steel threaded rod ("steel threaded rod") from the People's Republic of China ("PRC"). Following the *Preliminary Results*,[3] based on the analysis of the comments received and the record evidence, we continued to find that one of the mandatory respondents, Gem-Year, failed to cooperate by not acting to the best of its ability to comply with requests for information, warranting the application of facts otherwise available with adverse inferences, pursuant to sections 776(a)-(b) of the Tariff Act of 1930, as amended ("Act"). As such, we continue to treat Gem-Year as part of the PRC-wide entity. However, based on the analysis of the comments received, we now find that the other mandatory respondent, the RMB/IFI Group, cooperated to the best of its ability and submitted accurate, reliable sales and factors of production ("FOP") data to calculate a dumping margin for the final results.[4] Additionally, we find that the RMB/IFI Group is eligible for a separate rate. We

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[1] Vulcan Threaded Products Inc. ("Petitioner"), Jiaxing Brother Fastener Co., Ltd., RMB Fasteners Ltd., and IFI & Morgan Ltd. (collectively "RMB/IFI Group"), Gem-Year Industrial Co., Ltd. ("Gem-Year"), Hubbell Power Systems, Inc. ("HPS"), and Brighton Best International ("BBI").
[2] *See Certain Steel Threaded Rod from the People's Republic of China: Notice of Antidumping Duty Order*, 70 FR 17154 (April 14, 2009) ("*Steel Threaded Rod AD Order*").
[3] *See Certain Steel Threaded Rod from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review; 2013-2014*, 80 FR 26222 (May 7, 2015) ("*Preliminary Results*") and accompanying Preliminary Decision Memorandum.
[4] *See* Memorandum to Paul Walker, Program Manager, Office V, from Julia Hancock, Senior Case Analyst, Office V, Re: Certain Steel Threaded Rod from the People's Republic of China: Final Results Analysis Memorandum of the RMB/IFI Group, (November 3, 2015) ("The RMB/IFI Group Final Results Analysis Memo").

recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

II. Scope

The merchandise covered by the order is steel threaded rod. Steel threaded rod is certain threaded rod, bar, or studs, of carbon quality steel, having a solid, circular cross section, of any diameter, in any straight length, that have been forged, turned, cold–drawn, cold–rolled, machine straightened, or otherwise cold–finished, and into which threaded grooves have been applied. In addition, the steel threaded rod, bar, or studs subject to the order are non–headed and threaded along greater than 25 percent of their total length. A variety of finishes or coatings, such as plain oil finish as a temporary rust protectant, zinc coating (*i.e.*, galvanized, whether by electroplating or hot-dipping), paint, and other similar finishes and coatings, may be applied to the merchandise.

Included in the scope of the order are steel threaded rod, bar, or studs, in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 1.80 percent of manganese, or
- 1.50 percent of silicon, or
- 1.00 percent of copper, or
- 0.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 1.25 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.012 percent of boron, or
- 0.10 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.41 percent of titanium, or
- 0.15 percent of vanadium, or
- 0.15 percent of zirconium.

Steel threaded rod is currently classifiable under subheadings 7318.15.5051, 7318.15.5056, 7318.15.5090, and 7318.15.2095 of the United States Harmonized Tariff Schedule ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Excluded from the scope of the order are: (a) threaded rod, bar, or studs which are threaded only on one or both ends and the threading covers 25 percent or less of the total length; and (b) threaded rod, bar, or studs made to American Society for Testing and Materials ("ASTM") A193 Grade B7, ASTM A193 Grade B7M, ASTM A193 Grade B16, or ASTM A320 Grade L7.

III. Background

On May 7, 2015, the Department published in the *Federal Register* the *Preliminary Results*.[5] The period of review ("POR") is April 1, 2013, through March 31, 2014. The following events occurred since we issued the *Preliminary Results*: On June 18, 2015, the Department extended the final results to October 19, 2015.[6] On October 9, 2015, the Department extended the final results to November 3, 2015.[7]

In accordance with 19 CFR 351.309, we invited parties to comment on our *Preliminary Results*. On June 22, 2015, Petitioner, Gem-Year, the RMB/IFI Group, HPS, and BBI submitted case briefs,[8] and Petitioner submitted a rebuttal brief on July 13, 2015.[9] Additionally, on September 9, 2015, the Department held a public hearing where counsel for Gem-Year, Hubbell, Petitioner, and the RMB/IFI Group presented issues raised in their case and rebuttal briefs.

IV. Determination of the Methodology for the RMB/IFI Group

Given that the Department is now calculating a margin for RMB/IFI, described below is the methodology employed.

<u>Date of Sale</u>

The RMB/IFI Group reported that the date of sale was determined by the invoice issued by the exporters to their unaffiliated United States customers. In this case, as the Department found no evidence contrary to the RMB/IFI Group's claim that invoice date was the appropriate date of sale, the Department used invoice date as the date of sale for these final results in accordance with 19 CFR 351.401(i).[10]

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[5] *See Preliminary Results.*
[6] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary of AD/CVD Operations, through James C. Doyle, Director, Office V, from Julia Hancock, Senior International Trade Analyst, "Subject: Certain Steel Threaded Rod from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review," (June 18, 2015).
[7] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary of AD/CVD Operations, through James C. Doyle, Director, Office V, from Julia Hancock, Senior International Trade Analyst, "Subject: Certain Steel Threaded Rod from the People's Republic of China: Second Extension of Deadline for Final Results of Antidumping Duty Administrative Review," (October 9, 2015).
[8] *See* Letter to the Secretary from Petitioner, "Fifth Administrative Review of Steel Threaded Rod from China: Petitioner's Case Brief" (June 22, 2015) ("Petitioner's Case Brief"); Letter to the Secretary from Gem-Year, "Steel Threaded Rod from China; Case Brief" (June 22, 2015) ("Gem-Year's Case Brief"); Letter to the Secretary from RMB/IFI Group, "Steel Threaded Rod from the People's Republic of China: RMB Fasteners Ltd. and IFI & Morgan Ltd. Case Brief" (June 22, 2015) ("the RMB/IFI Group's Case Brief"); Letter to the Secretary from HPS, "Case Brief of Hubbell Power Systems, Inc.; Steel Threaded Rod from the People's Republic of China" (June 22, 2015); Letter to the Secretary from BBI, Steel Threaded Rod from China: BBI Case Brief" (June 22, 2015).
[9] *See* Letter to the Secretary from Petitioner, "Fifth Administrative Review of Certain Steel Threaded Rod from China: Petitioner's Rebuttal Brief" (July 13, 2015) ("Petitioner's Rebuttal Brief").
[10] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand*, 69 FR 76918 (December 23, 2004) and accompanying Issues and Decision Memorandum at Comment 10.

Fair Value Comparisons

To determine whether sales of steel threaded rod to the United States by the RMB/IFI Group were made at less than NV, the Department compared the export price ("EP") to normal values ("NV"), as described in the "U.S. Price," and "Normal Value" sections below.

A. *Determination of Comparison Method*

Pursuant to 19 CFR 351.414(c)(1), the Department calculates individual dumping margins by comparing weighted-average NVs to weighted-average EPs or constructed export prices ("CEPs") (the average-to-average ("A-A") method) unless the Secretary determines that another method is appropriate in a particular case. In AD investigations, the Department examines whether to compare weighted-average NVs to the EPs or CEPs of individual transactions (the average-to-transaction ("A-T") method) as an alternative comparison method using an analysis consistent with section 777A(d)(l)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative reviews ("ARs"), the Department finds that the issue arising under 19 CFR 351.414(c)(1) in ARs is, in fact, analogous to the issue in AD investigations.[11] In recent investigations and reviews, the Department applied a "differential pricing" analysis for determining whether application of A-T comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.[12] The Department finds the differential pricing analysis used in those recent investigations and reviews may be instructive for purposes of examining whether to apply an alternative comparison method in this AR. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the A-A method in calculating weighted-average dumping margins.

The differential pricing analysis used in these final results requires a finding of a pattern of EPs (or CEPs) for comparable merchandise that differs significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the A-A method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer code. Regions are defined using the reported destination code (*e.g.*, zip codes or cities) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time

[11] *See Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012).
[12] *See, e.g., Polyester Staple Fiber from Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 17637 (March 22, 2013), unchanged in *Polyester Staple Fiber From Taiwan: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 38938 (June 28, 2013).

period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen's *d* test is applied when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is calculated to evaluate the extent to which the net prices to a particular purchaser, region or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.,* 0.8) threshold.

Next, the "ratio test" – the second stage of the analysis – assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the A-T method to all sales as an alternative to the A-A method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an A-T method to those sales identified as passing the Cohen's *d* test as an alternative to the A-A method, and application of the A-A method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the A-A method.

If both tests in the first stage (*i.e.,* the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, we examine whether using only the A-A method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the A-A method only. If the difference between the two calculations is meaningful, this demonstrates that the A-A method cannot account for differences such as those observed in this analysis, and, therefore, an alternative method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if (1) there is a 25 percent relative change in the weighted-average dumping margin between the A-A method and the appropriate alternative method where both rates are above the *de minimis* threshold, or (2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

B. *Results of the Differential Pricing Analysis*

For the RMB/IFI Group, based on the results of the differential pricing analysis, the Department finds that 50.6 percent of the RMB/IFI Group's export sales pass the Cohen's *d* test and therefore confirm the existence of a pattern of EPs for comparable merchandise that differ significantly among purchasers, regions, or time periods. However, when comparing the weighted-average dumping margins calculated using the average-to-average method for all U.S. sales with the margin calculated using the average-to-transaction method for those sales that pass the Cohen's *d* test, there is not a meaningful difference in the results (*e.g.*, relative margin change greater than or equal to 25%). Accordingly, the Department determines to use the average-to-average method in making comparisons of EP and NV for the RMB/IFI Group.[13]

U.S. Price – Export Price

For the RMB/IFI Group's EP sales, we used the EP methodology, pursuant to section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation. Where appropriate, we made deductions from the starting price (gross unit price) for foreign movement expenses, foreign brokerage and handling, and international movement expenses, in accordance with section 772(c) of the Act.[14]

On June 19, 2012, the Department announced a change of methodology regarding the calculation of EP and CEP to include an adjustment for the amount of any unrefunded value added tax ("VAT") in certain NMEs, in accordance with section 772(c)(2)(B) of the Act.[15] Information placed on the record of this review demonstrates that the VAT rate during the POR was 17 percent, and that there was a VAT rebate rate of five percent applicable to exports of the merchandise under consideration.[16] For these final results, in order to calculate a price net of VAT, we adjusted the net price reported by the RMB/IFI Group for the unrefunded VAT.[17]

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using an FOPs methodology if: (1) the merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or

[13] In these final results, 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 Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012). In particular, the Department compared monthly weighted-average EPs with monthly weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.
[14] *See* the RMB/IFI Group Final Results Analysis Memo.
[15] *See Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481 (June 19, 2012).
[16] *See* the RMB/IFI Group's September 5, 2014 submission at Exhibit C-4.
[17] *See* the RMB/IFI Group Final Results Analysis Memo.

constructed value under section 773(a) of the Act. When determining NV in an NME context, the Department will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. 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. The Department based NV on FOPs reported by the RMB/IFI Group for materials and labor.

Factor Valuations

In accordance with section 773(c) of the Act, for subject merchandise produced by the RMB/IFI Group, the Department calculated NV based on the FOPs reported by the RMB/IFI Group for the POR. The Department used Thai import data and other publicly available Thai sources in order to calculate SVs for the RMB/IFI Group's FOPs. To calculate NV, the Department multiplied the reported per-unit FOP quantities by publicly available SVs. The Department's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.[18]

As appropriate, the Department adjusted input prices by including freight costs to render them delivered prices. Specifically, the Department added to Thai import SVs the reported surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where it relied on an import value. This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (Fed. Cir. 1997). Additionally, where necessary, the Department adjusted SVs for inflation and exchange rates, taxes, and the Department converted all applicable FOPs to a per-kilogram basis.

Furthermore, with regard to the Thai import-based SVs, we disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from India, Indonesia, and South Korea may have been subsidized because we found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies.[19] Therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.[20] Further, guided by the legislative history, it is the Department's

[18] *See, e.g., Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 48195 (August 18, 2008) and accompanying Issues and Decision Memorandum at Comment 2.

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

[20] *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.

practice not to conduct a formal investigation to ensure that such prices are not subsidized.[21] Rather, the Department bases its decision on information that is available to it at the time it makes its determination. Additionally, consistent with our practice, we disregarded prices from NME countries and excluded imports labeled as originating from an "unspecified" country from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.[22] Therefore, we have not used prices from these countries either in calculating the Thai import-based SVs or in calculating ME input values.

The Department used Thai Import Statistics from the Global Trade Atlas to value the raw material, packing material and energy inputs that the RMB/IFI Group used to produce subject merchandise during the POR, as well as the byproduct the RMB/IFI Group produced, except where listed below.[23]

The Department valued water using data from Thailand's Board of Investment.[24] This source provides water rates for industrial users that are exclusive of value added taxes. We valued electricity using data from Electricity Generating Authority of Thailand Annual Report 2012.[25]

We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in Thailand. 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 Thailand that is published in *Doing Business 2012: Thailand* by the World Bank.[26] We used Thai transport information in order to value the freight-in cost of the raw materials. The Department determined the best available information for valuing truck freight to be from *Doing Business 2012: Thailand*.[27] This World Bank report gathers information concerning the distance and cost to transport products in a 20-foot container from the largest city in Thailand to the nearest seaport. We calculated the per-unit inland freight costs using the distance from Thailand's largest city, Bangkok, to the nearest seaport. The inland freight costs in the World Bank report are for shipping a 20-foot container. To value marine insurance, the Department used rates from P.A.F Shipping Insurance. These rates are basic coverage rates for international shipments.

[21] *See* Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988); *see also Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 30758, 30763 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 60632 (October 25, 2007).
[22] *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, 75300 (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).
[23] *See* Final Surrogate Values Memo.
[24] *Id*. at Exhibit 5.
[25] *Id*. at Exhibit 11.
[26] *Id*. at Exhibit 8.
[27] *Id*. at Exhibit 7.

In *Labor Methodologies*,[28] the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of Labor Statistics. In *Labor Methodologies*, the Department decided to change to the use of ILO Chapter 6A data from the use of ILO Chapter 5B data, on the rebuttable presumption that Chapter 6A data better account for all direct and indirect labor costs.[29] The Department did not, however, preclude all other sources for evaluating labor costs in NME antidumping proceedings. Rather, we continue to follow our practice of selecting the "best information available" to determine SVs for inputs such as labor. As explained further below, we find that Thai NSO quarterly manufacturing-specific data for the POR are the best available information for valuing labor for this segment of the proceeding. Additionally, where the financial statements used to calculate the surrogate financial ratios include itemized detail of labor costs, the Department made adjustments to certain labor costs in the surrogate financial ratios.[30]

To value factory overhead, selling, general, and administrative expenses, and profit, the Department used the simple average of the financial statements of three Thai companies, as explained further below, which are producers of comparable merchandise.

Currency Conversion

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

V. Discussion of the Issues

Comment 1: Application of Total Adverse Facts Available ("AFA") to Gem-Year

In the *Preliminary Results*, the Department found that Gem-Year failed to cooperate to the best of its ability in participating in the review, warranting the application of facts otherwise available with adverse inferences, pursuant to sections 776(a)-(b) of the Act.[31] Specifically, Gem-Year failed to provide information regarding numerous factors of production ("FOPs") in the form and manner requested by the Department.[32] Additionally, the Department found that Gem-Year significantly impeded the proceeding by not providing accurate or complete responses to the Department's questions about certain FOPs and the production and sales of subject merchandise. Due to its lack of preparedness, Gem-Year significantly delayed the Department's completion of its verification of Gem-Year, and as such, the Department was unable to verify the accuracy and

[28] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) ("*Labor Methodologies*").
[29] *Id.*, 76 FR at 36093.
[30] *Id.*, 76 FR at 36093-94.
[31] *See* Preliminary Decision Memorandum at 1.
[32] *Id.*, at 7.

completeness of the information in Gem-Year's questionnaire responses.[33]

Gem-Year's Comments

- The application of total AFA to Gem-Year was inappropriate because the factual and legal contexts of the case justify Gem-Year's actions, and Gem-Year acted to the best of its ability. Specifically, normal value ("NV") calculations in NME cases are complex and the Department should not expect or require total accuracy from Gem-Year. The subject merchandise is simple, with relatively few inputs, and the production process has not changed since the LTFV investigation in 2009.
- The application of AFA is inappropriate because Gem-Year acted to the best of its ability in cooperating with the Department in the review,[34] furnishing relevant data, and complying with all of the Department's requests at verification. Furthermore, the Department did not demonstrate that Gem-Year was willful or acted below the standard of a reasonable respondent in not providing complete and accurate responses.[35]
- Gem-Year disputes each of the concerns identified in the Department's Gem-Year Verification Report,[36] specifically, the facts identified below do not materially impact NV and the calculation of the dumping margin:
    - *FOP Data from Two Accounting Periods* – Gem-Year made the extraordinary effort to comply with the Department's request for data from two accounting periods (2009 and the POR[37]), which was not requested until mid-way through this review. At no point prior to verification did the Department determine which was the appropriate FOP reporting period, and thus, Gem-Year had to prepare for two FOP verifications based on an abbreviated schedule that is typically allotted to a single FOP verification. Contrary to the Department's claim that it was unable to complete verification due to Gem-Year's unpreparedness, the Department did not conduct verification in a reasonable manner, failed to realize the volume of information it requested to verify, and used its time unwisely.[38]
    - *Undisclosed Electronic Production Records* – Contrary to the Department's claim that it did not discover that Gem-Year maintained product-specific production records in its electronic system until verification, Gem-Year did disclose in its responses that it maintained electronic production records prior to verification.[39] Although it is true that the Department did not determine until verification that Gem-Year maintained electronic product-specific production records, Gem-Year

[33] *Id*.

[34] *See Nippon Steel Corp. v. United States*, 146 F. Supp. 2d 835 (CIT 2001) ("*Nippon Steel*"); *Mannesmannrohren-Werke AG v. United States,* 77 F. Supp. 2d 1302, 1313-14 (CIT 1999) ("*Mannesmannrohen-Werke*").

[35] *See Reiner Brach GmbH & Co. KG v. United States,* 206 F. Supp. 2d 1323 (CIT 2002) ("*Reiner Brach*").

[36] *See* Memorandum to the File, from Jerry Huang and Julia Hancock, Senior International Trade Compliance Analysts, Office V, "Verification of the Sales and Factors of Production Responses of the Gem-Year Industrial Co., Ltd. in the Fifth Administrative Review of Certain Steel Threaded Rod from the People's Republic of China" (April 30, 2015) ("Gem-Year Verification Report").

[37] Gem-Year states that it originally reported FOPs from similar CONNUMs produced during the POR following the Department's prior practice. *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, 77378 (December 28, 2005) ("*PSF LTFV Prelim Determination*").

[38] *See Zenith Elecs. Corp. v. United States*, 77 F. 3d 426 (Fed. Cir. 1996).

[39] *See* Gem-Year's March 6, 2015, submission at 5-6 (answer to question 11).

states that the Department fails to explain how the use of these product-specific production records could have resulted in more accurate FOP reporting. Moreover, these product-specific production records could not be used to calculate FOPs on a product-specific basis because it would result in distorted production yield ratios.

- *Verification Procedures*—Contrary to the Department's preliminary finding that it was unable to verify Gem-Year's FOPs (*i.e.*, wire rod, labor, energy, *etc*.), this is incorrect. Gem-Year informed the Department that all production and accounting records were maintained in its electronic system, which Gem-Year made available, including through a dedicated computer, to the Department at verification.[40] However, instead of utilizing electronic copies of records, the Department insisted in reviewing hard-copy source documentation (*i.e.*, inventory records) even though the Department was informed prior to verification that these documents did not exist for the 2009 reporting period. Gem-Year should not be faulted because of a disagreement regarding verification procedures since the Department refused to verify "original" source documentation in its electronic system that it deemed as non-primary source documentation. These disagreements, and the Department's unreasonable demands, resulted in significant delays in Gem-Year's verification. However, Gem-Year was able to complete verification of all reported FOPs for either the 2009 and/or POR reporting periods. Thus, Gem-Year should not be punished by applying AFA to its FOPs due to the Department's unreasonable verification procedures that significantly impeded the verification.[41]
- *Verification of Gem-Duo[42]'s FOPs*—At verification, the Department claimed that Gem-Duo did not report electricity for its packing workshop; however, Gem-Duo did not report consumption of electricity used in its packing workshop because the subject merchandise sold to the United States was packed by Gem-Year and not Gem-Duo.[43] Additionally, contrary to the Department's claim that Gem-Duo did not report all categories of indirect labor in its calculation, these indirect labor categories were included in Gem-Duo's questionnaire responses and the Department collected the information to make the necessary adjustments to Gem-Duo's indirect labor FOP for the final results.[44]
- *Jinn-Well's[45] Unreported Production and Sale of In-Scope Merchandise* — Contrary to the Department's claim that Gem-Year failed to disclose that its affiliate, Jinn-Well, produced and sold in-scope merchandise to Gem-Year in 2009, Jinn-Well did not sell in-scope merchandise during this period. Jinn-Well's

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[40] *See, e.g., Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 76970 (December 23, 2014) and accompanying Issues and Decision Memorandum.
[41] *See Rubberflex Sdn. Bhd. and Rubfil Sdn. Bhd v. United States*, 59 F. Supp. 2d 1338 (CIT 1999); *Shakeproof Assembly Components, Division of Illinois Tool Works, Inc. v. United States*, 268 F. 3d 1376 (Fed. Cir. 2001).
[42] Gem-Duo Co., Ltd. ("Gem-Duo"). Gem-Duo is Gem-Year's affiliate, which the Department also verified since it produced in-scope merchandise for Gem-Year.
[43] *See* Gem-Year's March 6, 2015, submission at 3 (answer to question 7).
[44] *See* Gem-Year's January 26, 2015, submission at Ex. 2 (page 10) and Ex. 5 (page 10).
[45] Gem-Year's alleged affiliate, Jinn-Well Auto Parts (Zhejiang) Co. Ltd. ("Jinn-Well").

total volume of the alleged in-scope merchandise is insignificant compared to the total volume of Gem-Year's and its affiliate's total sales for this period. In fact, the record evidence shows that Jinn-Well's sales are not in-scope merchandise because the product is made of B7 wire rod and is not headed, which excludes the merchandise from the scope.[46]

- *Unreported Sale of Subject Merchandise*—Contrary to the Department's claim, Gem-Year properly did not report a U.S. sale of subject merchandise because it was returned to Gem-Year, and thus, was not a reportable transaction, pursuant to the Department's questionnaire requirements.[47] Additionally, the record evidence shows that this was not a reviewable transaction.
- *Date of Sale*— While the Department takes issue that Gem-Year reported the invoice date rather than the earlier shipment date as the date of sale, Gem-Year notes this does not change the universe of sales for the POR.[48] Thus, this omission has no effect on Gem-Year's dumping margin for the final results.
- *Gem-Year's Unreported FOPs*— While the Department faults Gem-Year for not reporting lubricant and oxalic acid as FOPs, which it collected information on at verification, Gem-Year notes that the inclusion of these FOPs would have little impact in the calculation of NV. Gem-Year points out that it is the Department's practice to disregard such insignificant inputs in the calculation of the margin, pursuant to 19 CFR 351.413.
- *Gem-Duo's Unreported FOPs*—While the Department faults Gem-Duo for not reporting lubricant, oxalic acid, cooling oil, coal, water, and the electricity for pumping water as FOPs, which it collected information on for some of these FOPs at verification, Gem-Year notes that the inclusion of these FOPs would have little impact in the calculation of NV.[49] Moreover, the Department typically disregards such insignificant inputs in the calculation of the margin, pursuant to 19 CFR 351.413.
- *Gem-Duo's Unreported Packing Materials*—While the Department faults Gem-Duo for not reporting the packing materials used to ship the nuts (a component of the subject merchandise) to Gem-Year, these packing materials were not used in the final packing of the subject merchandise shipped to the United States. Also, these packing materials were part of an internal transfer of the nuts between Gem-Duo and Gem-Year and, since these materials were re-used, it is proper to not include the consumption of these packing materials since the materials are part of factory overhead in the surrogate financial ratios.[50]
- *Gem-Duo's Unreported Distance*—While the Department faults Gem-Year for not reporting the distance between it and Gem-Duo, the freight cost for transferring the nuts is an intra-company transfer and should be valued as factory overhead in the surrogate financial ratios.

[46] *See Steel Threaded Rod AD Order*, 70 FR at 17154.
[47] *See* Gem-Year Verification Report at 25.
[48] *Id.*, at 15 and 17.
[49] *Id.*, at 22-23.
[50] *See* Gem-Year's January 26, 2015, submission at 2.

- *Gem-Year's Scrap*—Although the Department found that Gem-Year did not report its scrap correctly because it included scrap from machines, this is not factually correct. The Department did note at verification that Gem-Year sold machines as scrap; however, Gem-Year's reported scrap was from prior to the POR and the record evidence does not demonstrate that the reported scrap included scrap sales from machines.

- Even if AFA is appropriate, the Department's choice of applying total AFA to Gem-Year has no rational linkage to Gem-Year. The application of total AFA must relate proportionally to the respondent's behavior and the Department may not apply total AFA where Gem-Year made its best effort to cooperate with the review.[51]

<u>HPS' Comments</u>

- Gem-Year's decision to not report the FOPs and sales of certain merchandise of its affiliate, Jinn-Well, does not merit the application of AFA because the record evidence shows that this merchandise is outside the scope of the *Order.* Moreover, the total sales quantity of this merchandise is insignificant compared to Gem-Year's total sales quantity of subject merchandise to the United States during the POR.

<u>Petitioner's Comments</u>

- The Department properly applied AFA to Gem-Year because Gem-Year's questionnaire responses were incomplete and unreliable and because Gem-Year withheld information throughout the review and significantly impeded the Department's review. These facts merit application of total AFA for the final results.
    - *Merchandise Sold But not Produced during the POR* – Gem-Year sold subject merchandise during the POR that Gem-Year produced prior to the POR. Gem-Year does not contest these facts and even acknowledges that it produced very little of the subject merchandise during the POR.
    - *Failure to Report FOPs of Gem-Duo* – Initially, Gem-Year did not report FOPs for Gem-Duo, an affiliated producer of subject merchandise, despite specific instructions from the Department.
    - *Reporting of Two FOP-Periods* – The record does not support Gem-Year's claim that it made "extraordinary efforts" by reporting FOPs for two accounting periods, 2009, when Gem-Year produced most of the subject merchandise sold during the POR, and the POR itself. Gem-Year merely did what other respondents routinely do by supplying the Department with requested information. More importantly, while Gem-Year claims that it submitted voluminous questionnaire responses, the Department was required to issue additional questionnaires to obtain the information requested in the original questionnaire and, even then, there remained significant omissions in Gem-Year's responses.
    - *Product-Specific Production Records* – Contrary to Gem-Year's claim that the Department had knowledge that Gem-Year maintained electronic product-specific production records prior to verification, the record was at best ambiguous about the existence of electronic records. At verification, the Department learned that

[51] *See e.g., Steel Authority of India, Ltd. v. United States,* 149 F. Sup. 2d 921 (CIT 2001); *Borden v. United States,* 4 F. Supp 2d 1221 (CIT 1998).

Gem-Year maintained detailed daily production reports for each stage of production.

- *Verification Procedures* – The Department was unable to complete verification for Gem-Year because Gem-Year was not prepared despite having the verification agenda two weeks prior to verification. Specifically, Gem-Year failed to provide complete verification packages for a number of critical FOPs, including wire rod, which prevented reconciliation of Gem-Year's FOP data to its accounting records and financial statement. The Department also found that Gem-Year did not report a number of FOPs for itself and Gem-Duo, as well as failing to report a U.S. sale of subject merchandise. Based on these omissions and without complete verifiable data for its FOPs, the Department was correct to find that it did not have reliable data to calculate a margin for Gem-Year for the *Preliminary Results*.
- *Reporting of Jinn-Well's Sales and FOPs* – The Department did not discover until the last day of verification that Gem-Year's affiliate, Jinn-Well, produced and sold subject merchandise during 2009, which was one of Gem-Year's FOP reporting periods. Additionally, Gem-Year's failure to disclose the full extent of Jinn-Well's production experience calls into question the reliability and accuracy of Gem-Year's responses regarding its corporate structure and affiliates. Thus, the Department was correct to find that it does not have complete and reliable information regarding its separate rate analysis.
- *Proportionality of AFA*– Because Gem-Year's questionnaire responses were incomplete, inaccurate, and unverifiable, and because Gem-Year withheld information up to the last day of verification, the Department properly applied total AFA to Gem-Year in the *Preliminary Results*.

Department's Position: As explained in detail below, the Department continues to find that it is appropriate to apply total AFA to Gem-Year for these final results.

Section 776(a)(1) and 776(a)(2)(A)-(D) of the Act, provides that, if necessary information is not available on the record or if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified as provided for in section 782(i) of the Act, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.[52]

[52] On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the AD and countervailing duty (CVD) law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act. *See Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Dates of Application of TPEA Amendments*). Therefore, the amendments to section 776 of the Act apply to these final results.

Further, section 776(b)(1) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available. In addition, the SAA explains that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[53] Further, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.[54] In applying AFA, the Department is not required under section 776(b)(1)(B) of the Act to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.

In selecting from among the facts otherwise available, pursuant to section 776(b) of the Act, an adverse inference is warranted when the Department has determined that a respondent has "failed to cooperate by not acting to the best of its ability to comply with a request for information."[55] In such a case, the Act permits the Department to use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.[56] Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[57] The Court of Appeals for the Federal Circuit ("Federal Circuit"), in *Nippon Steel*, provided an explanation of the "failure to act to the best of its ability," stating that the ordinary meaning of "best" means "one's maximum effort," and that the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do.[58] The Federal Circuit acknowledged, however, that while there is no willfulness requirement, "deliberate concealment or inaccurate reporting" would certainly be sufficient to find that a respondent did not act to the best of its ability, although it indicated that inadequate inquiries to respond to agency questions may suffice as well.[59] Compliance with the "best of its ability" standard is determined by assessing whether a respondent has put forth its maximum effort to provide the Department with full and complete answers to all inquiries in an investigation.[60] The Federal Circuit further noted that, while the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.[61]

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[53] *See Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. 103-316, Vol. 1, 103d Cong. at 870 (1994) ("SAA").
[54] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products From Japan*, 65 FR 42985 (July 12, 2000); *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997); *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) ("*Nippon Steel*").
[55] *See* section 776(b) of the Act.
[56] *Id.; see also* SAA at 870.
[57] *See* SAA at 870.
[58] *See Nippon Steel*, 337 F.3d at 1382.
[59] *Id.*, at 1380.
[60] *Id.*, at 1382.
[61] *Id*.

In the *Preliminary Results*, the Department found that, despite the Department's detailed and specific questionnaires and instructions in the verification outline, Gem-Year gave insufficient attention to its statutory duty to reply accurately and completely to requests for information regarding its claimed affiliates, and the production and sales data of subject merchandise.[62] Specifically, Gem-Year failed to provide information regarding numerous FOPs in the form and manner requested by the Department.[63] Additionally, the Department found that Gem-Year significantly impeded the proceeding by not providing accurate or complete responses to the Department's questions about certain FOPs, and the production and sales of Gem-Year's subject merchandise. Due to its lack of preparedness, Gem-Year significantly delayed the Department's completion of its verification of Gem-Year, and as such, the Department was unable to verify the accuracy and completeness of the information in Gem-Year's questionnaire responses.[64] Because of Gem-Year's failure to cooperate to the best of their ability in participating in the review, the Department preliminarily found that such circumstances warrant the application of facts otherwise available with adverse inferences, pursuant to sections 776(a)-(b) of the Act.

By way of background, while Gem-Year portrays itself as fully cooperating with the Department, in fact, Gem-Year has been attempting to evade the antidumping duty order on steel threaded rod since the issuance of the order. The Department discovered, and Gem-Year itself acknowledged, that it was engaged in a scheme to circumvent the antidumping duty order.[65] Moreover, throughout the course of this review, as discussed in the *Preliminary Results* and further below, Gem-Year has been evasive in its responses and frequently provided the information that the Department requested in an incomplete manner. While Gem-Year disputes the many significant deficiencies the Department observed during the verification of Gem-Year's responses, or claims such deficiencies are immaterial to the Department's dumping analysis with respect to Gem-Year, the Department disagrees with Gem-Year in each account. For the reasons explained below, the Department finds that Gem-Year's failure to provide complete and accurate information was so pervasive that it warrants use of facts otherwise available with adverse inferences with respect to Gem-Year, pursuant to section 776(a)-(b) of the Act.

First, the Department disagrees with Gem-Year that it acted to the best of its abilities simply because Gem-Year claims that it made extraordinary effort to comply with the Department's request for data, which stemmed from two accounting periods (2009 and the POR), and faults the Department for not making the request for additional data until mid-way through this review. The Department notes that the unique circumstances of Gem-Year's production and sales of subject merchandise examined in this review, does not stem from the Department's actions, rather they are the results of Gem-Year and its customer's unusual interactions. Section D of the Department's antidumping duty questionnaire provides:

[62] *See* Preliminary Decision Memorandum at 1.
[63] *Id.*, at 7.
[64] *Id*.
[65] *See Certain Steel Threaded Rod From the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 78 FR 12718 (February 25, 2013); *see also* Gem-Year's Verification Report at 16-17.

> *Normally, you should calculate the per-unit factor amounts based on the actual inputs used by your company during the POR as recorded under your normal accounting system. If you believe that using POR factors is inappropriate (for example, because of the seasonal nature of production), if you sold some models/products during the POR but did not produce them during the POR, or if you have any questions regarding the appropriate calculation period, please contact the official in charge before preparing your response to this section of the questionnaire*.[66]

Despite specific instructions in the questionnaire to do so, Gem-Year failed to contact the Department prior to submitting its original response, to notify the Department that Gem-Year produced the majority of the subject merchandise under review in 2008 and 2009, several years prior to the POR, and had no production of subject merchandise during the POR when the subject merchandise was sold.[67] Instead, in its original Section D database, Gem-Year unilaterally decided, without consulting the Department, to report FOPs as if they had been produced in the POR, even though very little of Gem-Year's U.S. sales of subject merchandise during the POR were produced during the POR.[68] As a result, the Department had to make several subsequent requests to ascertain when the subject merchandise under review was actually produced.[69] Ultimately, the Department requested that Gem-Year provide FOPs both from the period comprising the majority of the production (2009) as well as from the POR, in order to determine the most accurate consumption of the FOPs used to produce Gem-Year's U.S. sales of subject merchandise during the POR.[70] Thus, the burden and the delay arose from Gem-Year's failure to contact the Department at the outset of the review, and its late notification of this unusual production and sales situation, that prevented the Department from requesting appropriate information early in order to properly account for the production and sale of the subject merchandise under review, causing significant delay to this proceeding.

Next, while Gem-Year complains that it had to prepare for two FOP verifications based on an abbreviated schedule that is typically allotted to a single FOP verification, and asserts that Department officials failed to realize the volume of information requested to verify and used the time for verification unwisely, we also disagree. With respect to the time allotted for verification, we note that the Department prepared a reasonable verification schedule based on the resources available to the Department and did so in consultation with Gem-Year's counsel.

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[66] *See* Gem-Year's Questionnaire at D-1 and D-2, emphasis added.
[67] *See* Gem-Year's Sections C & D Questionnaire Response (September 5, 2014) ("Gem-Year's Sections C & D Response").
[68] *Id.*
[69] *See* Letter to Gem-Year from Scot Fullerton, Program Manager, Office V, "Antidumping Administrative Review of Certain Steel Threaded Rod from the People's Republic of China" (November 14, 2014); Letter to Gem-Year from Scot Fullerton, Program Manager, Office V, "Antidumping Administrative Review of Certain Steel Threaded Rod from the People's Republic of China: Section D Supplemental Questionnaire" (December 22, 2014) ("Gem-Year First Supplemental Questionnaire"); Memorandum to the File from Jerry Huang, Senior Case Analyst, "Fifth Antidumping Administrative Review of Certain Steel Threaded Rod from the People's Republic of China: Reporting FOPs from Calendar Year 2009 and Extension of Deadline" (January 9, 2015); Letter to Gem-Year from Scot Fullerton, Program Manager, Office V, "Antidumping Administrative Review of Certain Steel Threaded Rod from the People's Republic of China: Second Section D Supplemental Questionnaire" (February 13, 2015) ("Gem-Year Second Supplemental Questionnaire").
[70] *Id.*

The Department sent a team of three officials to the verification, whereas the Department typically only sends two, and the Department officials made every attempt possible during the verification to review as much of the material Gem-Year was able to present. Gem-Year, as the holder of the information, received the verification outline two weeks prior to verification, and made no attempt to alert the Department that the scope of the verification was unrealistic given the allotted time, as it now claims. At no time prior to or during verification did Gem-Year request the Department postpone or extend the verification. As such, the Department finds no merit in Gem-Year's belated argument that there was not enough time to properly verify Gem-Year's responses.

Thirdly, the Department disagrees with Gem-Year's assertion that the reason the Department officials were unable to verify Gem-Year's FOP information was because of Department officials' refusal to review electronic records, and their unreasonable insistence to review hard-copy source documentation. The Department provided in the verification outline specific instructions to Gem-Year explaining verification procedures and the sets of documents Gem-Year was required to prepare. For example, to verify the reported consumption of wire rod, the subject merchandise's main input, the verification outline provides:

> *For each of the pre-selected models identified in Attachment II, prepare a set of document packages to support the reported per-unit consumption amount of each material. Review the methodology used to report the per-unit consumption amounts reported in your Section D response and supplemental responses. The packages should include all purchase, inventory, production, and accounting records necessary to tie the reported per-unit amounts to the general ledger, such as:*
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> 1. *Production records;*
> 2. *Material purchases and freight invoices;*
> 3. *Material inventory subsidiary ledgers;*
> 4. *Gross weight of inputs;*
> 5. *Allocation of material inputs to subject merchandise;*
> 6. *Yield rates calculations (e.g., yield loss analysis, including how you have accounted for yield losses in your reported factors of production database); and*
> 7. *Spoilage, waste and scrap generation records.*
>
> *Prepare two sets of documents to support the reported per-unit consumption amount of material inputs. The package should include all purchase, inventory, production, and accounting records necessary to tie the per-unit amount reported to the general ledger. Be prepared to discuss the specifications used in the processing of certain steel threaded rod ("CSTR").*

It is clear that the Department provided specific instructions to Gem-Year to prepare the necessary packages to tie the FOPs that Gem-Year reported to its books and records, such that the Department could reconcile the reported figures from original source documents to appropriate accounting sub-ledgers, then to the general ledger, and finally to audited financial statements. The Department officials conducting the verification again reviewed and explained to Gem-Year at the start of the verification the procedures and necessary documents. Gem-Year did not indicate to Department officials at the outset of the verification that the verification instructions were unclear or unreasonable, or notified the Department officials that the necessary documents were unavailable. Yet, when the Department officials began to verify Gem-Year's reported FOP consumption figures, Gem-Year provided incomplete information and was not prepared to present the information necessary to tie the reported figures to Gem-Year's accounting system and financial statements.

Gem-Year erroneously suggests that the dispute over the Department's verification procedures centered on its electronic production record system, which tracks the consumption of the main input steel wire rod. As an initial matter, it was not until verification that Gem-Year fully detailed its electronic production record system that provides more product-specific tracking of wire rod consumption. However, as explained in the verification report, not only was Gem-Year unprepared to reconcile its wire rod consumption, in every other major category of FOPs, from other material inputs, to labor, to energy, Gem-Year was also generally unprepared to reconcile any of its reported consumption according to the procedure established in the Department's verification outline.[71] Recognizing the amount of effort necessary to prepare and reconcile a large amount of data over an extended period of time, the Department identified in advance, based on its normal practice, a single month from each reporting year (2009 and the POR) on which Gem-Year could focus its efforts. After tremendous effort by the Department officials at verification to provide further on-site instructions, and extending the time to review Gem-Year's verification packages for FOP consumptions, Gem-Year was only able to provide the required full FOP reconciliation information for the preselected month from 2009, but not for the preselected month from the POR.[72] To consider FOP information verified, the Department generally examines the preselected month from a reporting period identified prior to verification and further examines a randomly selected month chosen during verification, which the Department in this case was unable to do. In short, Gem-Year demonstrated a willful disregard for the Department's instructions and a lack of preparedness that significantly impeded the verification. The Department finds Gem-Year's reported FOP consumptions (materials, labor and energy) for the production of subject merchandise unverified and unreliable for the Department's dumping analysis.

Beyond Gem-Year's failure to allow the Department to verify and substantiate its FOP reporting, the Department also discovered during verification that Gem-Year failed to reported numerous factors of production that should have been reported to the Department prior to verification, and disagrees that these findings are insignificant and immaterial to the Department's dumping analysis.[73] In the Department's Section D questionnaire, the Department provided specific instructions for reporting all FOPs consumed in the production of the subject merchandise:

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[71] *See* Memorandum to the File, from Jerry Huang and Julia Hancock, Senior International Trade Compliance Analysts, Office V, "Verification of the Sales and Factors of Production Responses of the Gem-Year Industrial Co., Ltd. in the Fifth Administrative Review of Certain Steel Threaded Rod from the People's Republic of China" (April 30, 2015) ("Gem-Year Verification Report").
[72] *Id*., at 30-42.
[73] *Id*., at 2-3.

> *Unless otherwise instructed by the Department, you should report factors information for all models or product types in the U.S. market sales listing submitted by you (or the exporter) in response to Section C of the questionnaire, including that portion of the production that was not destined for the United States. The reported amounts should reflect the factors of production used to produce one unit of the merchandise under consideration.*
>
> *If you believe that your company uses any raw materials that should be classified as factory overhead expenses rather than valued as factors of production and directly included in normal value, please: (1) notify the Department official in charge, and (2) identify these materials in your first Section D questionnaire response. Your first Section D questionnaire response should contain a comprehensive list of all such materials you consider to be part of factory overhead. Please provide this information to the Department immediately, as this will afford your company and the Department sufficient time to evaluate your company's specific use of the raw material and to determine the most appropriate manner in which the raw material should be valued.*
>
> *If you have any questions regarding how to compute the factors of the merchandise under consideration, please contact the official in charge before preparing your response to this section of the questionnaire.*[74]

As noted in the *Preliminary Results*, and the Department's verification report, Department officials discovered that Gem-Year failed to report Gem-Year's consumption of lubricant and oxalic acid as FOPs, and Gem-Duo's consumption of lubricant, oxalic acid, cooling oil, coal, water, certain electricity, labor, packing material and freight expense for the production of subject merchandise.[75] Gem-Year's response to this long list of factors that it failed to report to the Department is simply that either these inputs should be considered as a part of the manufacturing overhead, or that these inputs are too insignificant to report. However, given the Department's specific reporting instructions, Gem-Year nevertheless failed to explain and substantiate to the Department prior to verification that any of these inputs should be considered a part of overhead, or are insignificant and therefore should be excused from reporting. While the Department gathered certain information about the consumption of these inputs during the verification, the Department does not consider the data collected to be complete and verified, as the Department did not learn about the consumption of these inputs until well into the verification and the Department officials could only conduct a cursory survey of the consumption of these unreported inputs. Given the absence of information, the Department has no basis on which to conclude that the unreported inputs constitute mere "insignificant adjustments" under 19 CFR 351.413, as Gem-Year urges. Moreover, the sheer number of these unreported FOPs and, in most instances, their consumption in plain view of the Department officials conducting the plant tour, without the benefit of years of experience that Gem-Year's officials possess operating the factory, is further evidence that Gem-Year's behavior was

[74] *See* Gem-Year's Questionnaire at D-1.
[75] *See* Gem-Year Verification Report at 2-3.

unreasonable and that it failed to acted to the best of its ability to submit complete and accurate responses to the Department.

Next, the Department disagrees with Gem-Year with respect to its failure to disclose Gem-Year's affiliate Jinn-Well as a producer of in-scope merchandise. In the Department's original Section A questionnaire, the Department provided instructions for reporting information related to Gem-Year's eligibility for separate rate, and corporate structure and affiliations to the Department.[76] The instructions from the questionnaire specifically ask:

> *Provide a list of all the manufacturing facilities, sales office locations, research and development facilities and administrative offices involved in the manufacture and sale of the merchandise under consideration operated by your company. Please give a full address for each facility, and briefly describe the purpose of each.*

In Gem-Year's original Section A questionnaire response, Gem-Year provided information on certain alleged affiliates and subsidiaries with respect to ownership, management, and scope of business.[77] Gem-Year only disclosed to the Department that Gem-Year and Gem-Duo were involved in the production of in-scope merchandise. For factors reporting, Section D of the original questionnaire instructs:

> *If you produce the merchandise under consideration at more than one facility, you must report the factor use at each location. You must also report the output of the merchandise under consideration at each of the various facilities during the POR.*[78]

Despite clear instructions in the questionnaire to do so, Gem-Year did not initially report the FOPs for any of its alleged affiliates, including the affiliated producer it acknowledged, Gem-Duo. Prior to verification, the Department requested full and complete FOP information in the first supplemental Section D questionnaire from what the Department understood to be all production facilities that produced in-scope merchandise based on Gem-Year's questionnaire responses,[79] and scheduled the verification based on that information. At verification, the Department officials reviewed Gem-Year's responses regarding its alleged affiliates and subsidiaries and asked whether Jinn-Well, a subsidiary of Gem-Year, produced merchandise that met the description of the scope of the Order. Gem-Year officials admitted during verification that Jinn-Well was, in fact, a producer of in-scope merchandise, based on the record Gem-Year provided at verification.[80] In its case brief, Gem-Year argues that because the amount of production was small and the product in question should be excluded from the scope, Gem-Year should be excused from reporting this affiliate. However, the Department finds these arguments unavailing, first because the Department is unable to determine how much in-scope merchandise Jinn-Well actually produced as Gem-Year withheld that information from Department's

[76] *See* Gem-Year's Questionnaire at A-2 – A-6.
[77] *See* Gem-Year's Section A Questionnaire Response (August 22, 2014) ("Gem-Year's Section A Questionnaire Response").
[78] *See* Gem-Year's Questionnaire at D-2.
[79] *See* the Department's supplemental Section D questionnaire, dated December 22, 2014.
[80] *See* Gem-Year Verification Report, at 6 and Exhibit VE XIII-C.

examination. The Department maintains that Gem-Year should have informed the Department early in the review, and certainly by the outset of verification, that Jinn-Well was a producer of in-scope merchandise, as provided in the original questionnaire. Gem-Year elected to withhold that information and the Department officials did not learn about Jinn-Well's production of in-scope merchandise until the last day of verification, and had no way to verify that Gem-Year's assertion that Jinn-Well produced only a small amount of in-scope merchandise was accurate. Similarly, Gem-Year's claim that the relevant Jinn-Well merchandise was of a grade of steel similar to the B7 product excluded from the scope of the antidumping order was made for the first time in its case brief, and therefore the Department was unable to verify or otherwise examine that claim. The Department finds that Gem-Year's belated assertion that Jinn-Well's product should be considered outside the scope is unsubstantiated and unreliable.

As explained in the Department's questionnaire to Gem-Year, the Department bases its calculation of NV on the consumption of FOPs used in producing the subject merchandise.[81] As noted previously, when multiple production facilities are involved in such production, the Department requires FOP information from all production facilities to derive a weighted-average FOP usage rate for the whole entity.[82] Because Gem-Year failed to report that its subsidiary, Jinn-Well, was involved in the production of in-scope merchandise, the Department was denied the opportunity to issue supplemental questionnaires to Gem-Year and its subsidiary, Jinn-Well, to examine the full extent of Jinn-Well's production. As a result, the Department could not determine whether it should solicit FOP information from Jinn-Well in order to calculate Gem-Year's NV. Therefore, the Department finds that Gem-Year failed to report all of its production facilities used in producing in-scope merchandise, and thus, the Department does not have complete, accurate and reliable data upon which to calculate Gem-Year's NV. In the comment below, the Department will further address the implication of the Department's discovery with respect to Jinn-Well as it related to the Department's separate rate analysis.

Finally, the Department disagrees with Gem-Year with respect to the accuracy of its sales reporting and by-product offset reporting. While Gem-Year claims that its inaccurate date of sale reporting does not change the universe of sales, the Department still finds that Gem-Year should have reported an accurate date of sale, further indicating that Gem-Year's cooperation was inadequate. With respect to the purported returned sale, during verification when the Department officials discovered this sale, Gem-Year stated that this sale was completed, delivered to and paid by Gem-Year's customer.[83] Gem-Year claimed that the final U.S. customer refused to pay the antidumping duty, and it was eventually repurchased back by Gem-Year after the POR. The Department continues to find that Gem-Year should have notified the Department about this sale prior to verification to allow the Department to examine the circumstances of the sale fully and determine whether this sale should be treated as a returned sale with respect to the Department's dumping analysis. Because we were unable to verify the accuracy of Gem-Year's U.S. sales database, the Department cannot determine whether the total quantity and value of sales reported in the U.S. sales database is overreported or underreported. Additionally, the Department cannot determine the accuracy of the total value, gross unit price

[81] *See* Gem-Year's Questionnaire at D-1.
[82] *Id.*, at D-2.
[83] *See* Gem-Year Verification Report at 25-26.

and expenses reported in the U.S. sales database. Therefore, the Department finds that the Department does not have reliable sales data upon which to compare to NV and calculate an antidumping duty margin for Gem-Year.

With respect to the steel scrap offset claimed by Gem-Year, the Department notes that the explanation provided by Gem-Year in its case brief differs from the account given by the Gem-Year official in charge of scrap to the Department officials conducting verification.[84] Gem-Year reported a steel scrap for offset for both the 2009 and POR reporting period.[85] At verification, Gem-Year stated that it generated steel scrap from its regular production as well as steel scrap from routine machinery wear and tear.[86] For the POR, at verification Gem-Year stated that the tracking of steel scrap was more detailed and specific, but for 2009, a Gem-Year official confirmed that the company did not track in detail the different types of steel scrap that were generated and sold, so the figures for steel scrap sold were not just steel scrap from production, but could include steel scrap from broken machines.[87]

In conclusion, despite the Department's detailed and specific questionnaires and instructions in the verification outline, and questions and instructions at verification as to what procedures and documentation were necessary to successfully complete the verification process, Gem-Year gave insufficient attention to its statutory duty to reply accurately and completely to requests for information as described above and in the *Preliminary Results*. Accordingly, the Department continues to find the use of facts otherwise available is warranted with respect to Gem-Year pursuant to sections 776(a)(2)(A), (B), (C) and (D) of the Act and that Gem-Year failed to cooperate to the best of its ability pursuant to section 776(b) of the Act.

Comment 2: Application of the PRC-Wide Rate to Gem-Year and Not Granting a Separate Rate

<u>HPS' Comments</u>

- At verification, the Department examined Gem-Year's corporate structure, organization, and separate rate information. Based on the verified information, the Department did not find any evidence that Gem-Year, Gem-Duo, or any other affiliates, including Jinn-Well, was under the state control of the PRC government based on involvement in the production, sale, or export of the subject merchandise.
- Application of the PRC-wide rate to Gem-Year is unlawful because Gem-Year demonstrated its independence from the PRC-wide entity, and the PRC-wide rate is unreasonable. The Department should apply the existing separate rate margin of 55.16 percent to Gem-Year for the final results.
- The presumption that all exporters are part of the PRC-wide entity until each exporter demonstrates independence from state control has recently been called into question.[88]

[84] *Id*., at 38-39; *see also* Gem-Year's Case Brief at 20.
[85] *See* Gem-Year's Sections C and D Response; *see also* Gem-Year's Supplemental Section D Response, dated January 26, 2015.
[86] *See* Gem-Year Verification Report at 38-39.
[87] *Id*.
[88] *See, e.g., Qingdao Taifa Grp. Co. v. United States*, 760 F. Supp. 2d 1379, 1382 (CIT 2010) ("*Taifa 2010*").

Without a finding of government control over Gem-Year, the application of the PRC-wide rate to Gem-Year is unlawful.[89] The Department improperly conflated the issues of AFA and separate rate analysis by assigning the PRC-wide rate to Gem-Year rather than simply applying AFA and assigning a separate rate when there is no evidence that Gem-Year is under the PRC government's control.

- The Department acted unreasonably in applying the highest rate alleged in the petition without determining that the rate was a reasonable estimate of Gem-Year's individual calculated rate. In prior reviews, importer-specific rates have ranged from *de minimis* to 55.16 percent, casting doubt on the reasonableness of the PRC-wide rate of 206 percent. While the Department may apply an AFA rate on a respondent, it may not impose a rate that is far beyond the amount sufficient to deter respondents from future non-cooperation.[90]

<u>Gem-Year's Comments</u>

- The Department's choice of AFA rate has no rational linkage to Gem-Year.
- Regardless of the alleged deficiencies in Gem-Year's reporting of its affiliate, Jinn-Well's, production and selling activities involving in-scope merchandise, this does not justify denying Gem-Year a separate rate for the final results.
- Throughout the course of this review and during verification, the Department gathered a multitude of information from Gem-Year and its affiliates, including Jinn-Well, showing the ultimate owners are the Tsai family, whom are from Taiwan. Thus, due to the fact that Gem-Year and its affiliates are wholly-foreign owned, there is no basis for finding that the PRC government, either through *de facto* or *de jure*, has operational control of Gem-Year's export activities.

<u>Petitioner's Comments</u>

- Contrary to HPS' claims, it is the Department's practice that each respondent must establish separate rate status in each review. As the Department has previously explained,[91] the fact that Gem-Year received a separate rate in prior reviews is not relevant to this proceeding because Gem-Year did not demonstrate that it qualified for a separate rate in this review.
- As discussed above in Comment 1, Gem-Year failed to provide complete and reliable information regarding its corporate structure and affiliation information, which prevented the Department from conducting a separate rate analysis of Gem-Year.
- Contrary to HPS' arguments, the Department did not assign an AFA rate of 206 percent to Gem-Year but rather assigned the PRC-wide rate (*i.e.,* 206 percent) to Gem-Year due to the many deficiencies, as discussed above in Comment 1.
- Both *Shandong Huarong 2003* and *Foshan Shunde 2011*, in fact, support denying a separate rate to Gem-Year. In *Shandong Huarong 2003*, the Court of International Trade (CIT) found

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[89] *See, e.g., Hubbell Power Systems, Inc. v. United States*, 884 F. Supp. 2d 1283 (CIT 2012) ("*Hubbell*"); *Shandong Huarong Gen. Grp. v. United States*, 27 CIT 1568 (CIT 2003) ("*Shandong Huarong 2003*"); *Sigma Corp. v. United States*, 117 F.3d 1401 (Fed. Cir. 1997); *Foshan Shunde Yongjian Housewares & Hardware Co. v. United States*, 2011 Ct. Int'l Trade LEXIS 123, at *47 (CIT Oct. 12, 2011) ("*Foshan Shunde 2011*").
[90] *See Dongguan Sunrise Furniture Co. v. United States*, 931 F. Supp. 2d 1346, 1350 (CIT 2013) ("*Dongguan Sunrise*").
[91] *See Fresh Garlic From the People's Republic of China: Final Results and Partial Rescission of the 19th Antidumping Duty Administrative Review; 2012-2013*, 80 FR 34141 (June 15, 2015) and accompanying Issues and Decision Memorandum at Comment 2 ("*Fresh Garlic from PRC Final Results 2012-2013*").

that a separate rate cannot be denied when there is no deficiency in the separate rate information, which is not the case for Gem-Year.[92] Additionally, in *Foshan Shunde 2011*, the court remanded the decision because the Department did not indicate there was a gap in the separate rate information unlike, here, where there are deficiencies in Gem-Year's corporate structure and affiliation information.[93]

- Contrary to HPS' arguments, the findings of *Hubbell* are not applicable, here, because it was Gem-Year's responsibility to demonstrate its eligibility for a separate rate which it did not do by withholding information regarding its separate rate status.[94]
- Unlike in *Taifa* where the Court found that the Department could not deny the respondent a separate rate when it wrongly assumed partial government ownership was a basis for government control, the facts, here, are that the record is incomplete regarding Gem-Year's separate rate information.[95]
- Contrary to HPS' arguments, the Department will only consider whether the 206 percent rate is the appropriate rate for the PRC-wide entity when the PRC-wide entity is under review, which is not the case here.[96]

Department's Position:
For the *Preliminary Results*, the Department determined that Gem-Year should be part of the PRC-wide entity as a part of the application of AFA.[97] As explained above in Comment 1, the Department continues to find that total AFA should be applied to Gem-Year for the final results. Consistent with that finding, because Gem-Year has not demonstrated eligibility for a separate rate, the company should be part of the PRC-wide entity.

There is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate.[98] In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings.[99] It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity

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[92] *See Shandong Huarong 2003*, 27 CIT at 1594.
[93] *See Foshan Shunde 2011*, 2011 Ct. Int'l Trade LEXIS at *35-36.
[94] *See Hubbell*, 884 F Supp. 2d 1283.
[95] *See Qingdao Taifa Grp. Co. v. United* States, 637 F. Supp. 2d 1231 (Ct. Int'l Trade 2009).
[96] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 4, 2013) ("*Conditional Review of the NME Entity*").
[97] *See Preliminary Results*, 80 FR at 26223.
[98] *See, e.g., 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, 53082 (September 8, 2006); *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China*, 71 FR 29303, 29307 (May 22, 2006).
[99] *See Initiation Notice*, 79 FR at 30809-10.

in an NME country under the test established in *Sparklers*,[100] as amplified by *Silicon Carbide*.[101] However, if 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.[102]

In order to demonstrate separate-rate status eligibility, the Department requires entities, for which a review was requested, and which were assigned a separate rate in a previous segment of this proceeding, to submit a separate rate certification stating that they continue to meet the criteria for obtaining a separate rate.[103] For entities that were not assigned a separate rate in the previous segment of a proceeding, to demonstrate eligibility, the Department requires a separate rate application. For Gem-Year, the Department determined at the conclusion of the third administrative review of this order that Gem-Year is a part of the PRC-wide entity.[104] Moreover, in the immediately preceding review of this order, the Department also did not grant Gem-Year a separate rate.[105] Accordingly, Gem-Year was required to submit a separate rate application for this review, and it did so and submitted a response to the Department's Section A of the antidumping duty questionnaire relating to its separate rate status. Based on Gem-Year's response, which indicated that Gem-Year is a publicly-traded PRC company,[106] not a wholly foreign-owned company, the Department attempted to conduct an analysis of whether Gem-Year can demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports.

The Department disagrees with Gem-Year and HPS that Gem-Year has demonstrated that it is entitled to a separate rate. As noted extensively above, during the Department's verification of Gem-Year's response, the Department discovered numerous deficiencies that significantly impact the Department's dumping analysis and the separate rate inquiry in particular. Specifically, Gem-Year did not inform the Department at any point prior to verification that its affiliate, Jinn-Well, was a manufacturer of in-scope merchandise, which at the last day of verification, Gem-Year officials admitted that Jinn-Well in fact was. Gem-Year's failure to disclose with respect to Jinn-Well not only affects the accurate reporting of Gem-Year's FOPs used in the production of its U.S. sales of subject merchandise during the POR, it also undermines the Department's ability to conduct a separate rate analysis for Gem-Year. The Department's questionnaire makes clear that adequate responses are a prerequisite for separate rate treatment:

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[100] *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*").
[101] *See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*").
[102] *See Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007) ("*Wax Candles from the PRC*").
[103] *See Initiation Notice*, 79 FR at 30810.
[104] *See Certain Steel Threaded Rod From the People's Republic of China: Final Results of Third Antidumping Duty Administrative Review; 2011–2012*, 78 FR 66330, 66333 (November 5, 2013).
[105] *See Certain Steel Threaded Rod From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013*, 79 FR 71743 (December 3, 2014).
[106] *See* Gem-Year's Section A Questionnaire Response, at 2.

> *The Department presumes that a single weighted-average dumping margin is appropriate for all exporters in a non-market economy country. The Department may, however, consider requests for separate rates from individual exporters. Individual exporters requesting a separate rate must respond to the following questions in order for the Department to consider fully the issue of separate rates.*[107]

To examine Gem-Year's corporate structure and affiliations for the separate rate analysis, the Department specifically instructed Gem-Year:

> *The remaining questions must be answered by all companies (exporters and manufacturers), whether or not the company is requesting a separate rate.*[108]

Thus, the Department's questionnaire was clear that, the Department needed to fully examine the operations of not just the exporter (Gem-Year), but also the manufacturers (Gem-Duo and Jinn-Well) in order to properly conduct a separate rate analysis. The Department's finding at verification with regard to Jinn-Well indicates that Gem-Year's original response concerning its subsidiaries is not reliable and is incomplete. Gem-Year's failure to disclose the full production and sales activities of its affiliates, including Jinn-Well, prevented the Department from issuing supplemental questionnaires to request details of Jinn-Well's production and examine the company with respect to its operations and management in detail. As such, the Department finds the separate rate information submitted by Gem-Year to be unreliable and incomplete, as a whole.

As noted above, the Department finds that Gem-Year failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information within the meaning of section 776(b) of the Act, and that the application of AFA is warranted. The Department notes that Gem-Year has been a party to a number of segments of the steel threaded rod antidumping duty proceeding. Yet Gem-Year's behavior displays little regard for its statutory obligation to put forth its maximum effort to provide the Department with full and complete answers to all inquiries in a particular segment, including inquiries pertinent to the Department's separate rate analysis.

Contrary to Gem-Year and HPS's assertions, the Department did not improperly conflate the AFA analyses relating to sales and FOP data and separate rate information by assigning the PRC-wide rate to Gem-Year. Rather the application of AFA is relevant to the separate rate analysis because of Gem-Year's either willful disregard of or carelessness in following the Department's reporting instructions, including in its separate rate responses. As a result, the Department determines that it cannot rely upon the separate rate information submitted by Gem-Year. The Department finds that the present circumstances with regard to Gem-Year can be distinguished both from *Shandong Huarong 2003* and *Foshan Shunde 2011*. In *Shandong Huarong 2003*, the CIT found that a separate rate cannot be denied when there is no deficiency in the separate rate information, which as noted above, is not the case for Gem-Year.[109]

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[107] *See* Gem-Year's Questionnaire at A-4.
[108] *Id.*, at A-5.
[109] *See Shandong Huarong 2003*, 27 CIT at 1594.

Additionally, in *Foshan Shunde 2011*, the court remanded the Department's original decision because the Department did not indicate there was a gap in the separate rate information, whereas here, there are deficiencies in Gem-Year's corporate structure and affiliation information.[110]

With respect to HPS' and Gem-Year's criticisms of the PRC-wide entity rate, the Department disagrees. Consistent with the *Conditional Review of the NME Entity*, the Department will only consider the appropriateness of the rate for the PRC-wide entity when the PRC-wide entity is under review, which is not the case here. That notice clarifies that, in a situation where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, "because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review…."[111] Moreover, contrary to HPS's contention that courts have called into question the Department's separate rate practice, the application of a PRC-wide entity rate to all parties not eligible for a separate rate has been repeatedly affirmed by the Federal Circuit.[112]

In sum, the separate rate information provided by Gem-Year could not be relied upon by the Department for the reasons explained above. Therefore, as part of applying total AFA to Gem-Year for these final results, the Department continues to find that Gem-Year is not entitled to a separate rate. Accordingly, it is being placed in the PRC-wide entity.[113]

Comment 3: Opportunity to Submit Information on Corroborating PRC-Wide Rate

After issuance of the *Preliminary Results*, BBI requested that the Department extend the deadline to submit factual information, pursuant to 19 CFR 351.301(c)(5), regarding the PRC-wide rate of 206 percent. However, on June 9, 2015, the Department issued a letter denying BBI's request because the deadline to submit factual information had occurred 70 days prior.[114]

<u>BBI's Comments</u>

- The Department should grant interested parties an opportunity to submit factual information on the PRC-wide rate of 206 percent.
- While the Department's regulations require submission of all factual information within 30 days prior to the deadline for the preliminary results, BBI did not have knowledge regarding

[110] *See Foshan Shunde 2011*, 2011 Ct. Int'l Trade LEXIS at *35-36.
[111] *See Conditional Review of the NME Entity*, 78 FR at 65970.
[112] *See Michaels Stores, Inc. v. United States*, 766 F.3d 1388, 1392 (Fed. Cir. 2014); *Transcom, Inc. v. United States*, 294 F.3d 1371, 1373 (Fed. Cir. 2002); *Sigma Corp. v. United States*, 117 F.3d 1401, 1405-06 (Fed. Cir. 1997).
[113] *See Conditional Review of the NME Entity*, 78 FR at 65970 ("In administrative reviews of AD orders from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, the Department will issue a final decision indicating that the company in question is part of the NME entity.").
[114] *See* Memorandum to the File, from Julia Hancock, Senior Case Analyst, Office V, "Fifth Administrative Review of Certain Steel Threaded Rod from the People's Republic of China: Brighton Best International's Request to Submit Factual Information" (June 9, 2015) ("Brighton Best Factual Information Deadline Memo").

the necessity for submitting factual information on the PRC-wide rate until after the issuance of the *Preliminary Results*.

- The Department's practice and court precedent support allowing the submission of new factual information when their relevance becomes known after the factual information deadline passed.[115]
- The Department's regulations allow the Department to accept new factual information after the deadline when there is a showing of good cause. The *Preliminary Results* of this administrative review established good cause by applying the PRC-wide rate to imports not previously subject to that rate, and being the first notice thereof.
- The Department has sufficient time to consider new factual filings because the Department's final results are only partially extended.
- The PRC-wide rate is not probative for this administrative review and should be corrected.[116]
- While the Department found individual antidumping margins sufficient to corroborate the 206 percent rate in the less-than-fair-value ("LTFV) investigation, there is no claim that the corroborating individual margins were non-aberrant. Long-established Departmental practice and court precedent requires the use of only non-aberrant dumping margins in corroborating AFA margin calculations.
- The Department should include the full record of the original LTFV investigation in this review in order to facilitate analysis of whether or not any of the 206 percent antidumping margins were aberrant.
- The courts have held that where an AFA antidumping margin far exceeds prior verified antidumping margins, the AFA margin is not in accordance with the antidumping statute. Because the Department calculated significantly lower dumping margins for individual respondents in earlier reviews, the PRC-wide rate of 206 percent is impermissible under court precedent.

<u>Petitioner's Comments</u>

- BBI does not qualify as an interested party under the Department's regulations and therefore the Department should reject its case brief.[117]
- Any entity wishing to participate in antidumping duty proceedings must file a letter of appearance, which must identify how that entity qualifies as an interested party under section 771(9) of the Act.
- The Department's regulations list nine different types of entities that qualify as "interested parties" under the Act.[118] The list does not include a "U.S. purchaser" of the subject merchandise, as reported by BBI.[119]

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[115] *See* Memorandum to the File, from Julia Hancock, Senior Case Analyst, Office V, "Fifth Administrative Review of Certain Steel Threaded Rod from the People's Republic of China" (May 8, 2015) ("Factual Information Deadline Memo"); Letter to the Secretary from BBI, "Steel Threaded Rod from the People's Republic of China: Request to Extend Factual Information Deadline," (June 4, 2015).
[116] *See* Letter to Secretary Pritzker, "Steel Threaded Rod from China: BBI Case Brief" (June 22, 2015) ("BBI Case Brief") at 1.
[117] *See* 19 CFR 351.102(b)(29).
[118] *Id.*
[119] *Id.*

- Because BBI failed to identify itself as a qualifying interested party, the Act and implementing regulations prohibit BBI's participation in this proceeding. The Department should disregard BBI's case brief and remove BBI from the service list.

Department's Position: The Department finds that BBI is an "interested party," as contemplated in the Act, and the Department's decision to decline to extend the deadline to submit factual information after the deadline passed, as requested by BBI, after the preliminary results was appropriate.

On June 4, 2015, BBI submitted a letter to the file announcing its entry of appearance ("EOA") and request to join the public service list for this administrative review.[120] This letter satisfied the legal requirements for a letter of appearance under 19 CFR 351.103(d)(1), and identified BBI as an "interested party" under 19 CFR 351.102(b)(29). While Petitioner claims that BBI does not qualify as an interested party as it identified itself as a "U.S. purchaser," the Department notes that the record evidence shows that BBI qualifies as an interested party, pursuant to 19 CFR 351.102(b)(29).[121] Therefore, the Department will consider BBI's properly-submitted case brief.

Additionally, the Department finds that BBI failed to submit factual information regarding the PRC-wide rate prior to the Department's deadline, which was March 31, 2015 (*i.e.,* 30 days prior to the preliminary results, which was April 30, 2015) and that the Department properly declined to extend this deadline.[122] The Department's regulations clearly compel rejection of factual information submitted after relevant case deadlines, as specified in *Definition of Factual Information*.[123]

BBI, citing only vaguely to "Commerce and court precedent," argues that the Department denied BBI the opportunity to provide facts regarding the "probativeness" of the PRC-wide rate, and that submission of new facts is appropriate when their relevance first becomes known.[124] BBI asserts that relevance of facts related to the 206 percent rate first became known when the preliminary decision issued, as that decision was the first notice of the application of said rate.[125] To the contrary and as BBI noted in its case brief, Petitioner first alleged this rate in the petition filed more than seven years ago,[126] which was found to be the PRC-wide rate and was corroborated in the less-than-fair value ("LTFV") investigation.[127] Moreover, the PRC-wide entity's current rate, 206.00 percent, is the only rate ever determined for the PRC-wide entity in

[120] *See* Letter to the Secretary from BBI, "Steel Threaded Rod from the People's Republic of China: Request to Extend Factual Information Deadline," (June 4, 2015).
[121] Because of the business proprietary nature of this information, please s*ee* the Department's memo to file regarding BBI's qualification as an interested party, dated November 3, 2015.
[122] 19 CFR 351.301(c)(5).
[123] *See* Factual Information Deadline Memo; *Definition of Factual Information and Time Limits for Submission of Factual Information*, 78 FR 21246 (April 10, 2013) ("*Definition of Factual Information*").
[124] *See* Letter to Secretary Pritzker, "Steel Threaded Rod from China: BBI Case Brief" (June 22, 2015) ("BBI Case Brief") at 3.
[125] *Id*.
[126] *Id.*, at 1.
[127] *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), at 8910.

this proceeding, and the Department has assigned this rate in every previous review, including the most recently completed review.[128] Thus, the Department finds that BBI had seven years' notice that the PRC-wide rate of 206 percent was potentially applicable to any respondent that fails to demonstrate independence from the PRC-wide entity. Nevertheless, BBI declined to submit factual information regarding this 206 percent rate until after the issuance of the *Preliminary Results*. As such, the Department finds no compelling reason or good cause to alter its practice of accepting factual information from interested parties based on specified deadlines, pursuant to its regulations.

Finally, the Department's change in policy regarding conditional review of the PRC-wide entity applies to this AR.[129] Under this policy, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. Because no party requested a review of the PRC-wide entity in this review, the entity is not under review and the entity's rate is not subject to change.

Comment 4: Application of Total AFA to the RMB/IFI Group

<u>RMB/IFI Group's Comments</u>

- This administrative review was not conducted in a transparent manner and the RMB/IFI Group was denied a reasonable opportunity to participate in this proceeding and to understand the Department's concerns.
- The Department refused to meet with the RMB/IFI Group to discuss discrepancies in the *Preliminary Results* and issue a post-preliminary results memorandum regarding new facts and comments submitted after the *Preliminary Results*.[130]
- The RMB/IFI Group's FOP methodology does not lead to a mathematically impossible result that underreports its steel consumption by control number ("CONNUM"). The facts of the record establish that the RMB/IFI Group: 1) sells merchandise by "piece;" 2) does not maintain the actual finished production weights of each product during the POR or by each production run; and 3) does not maintain productions records, such as bills of materials, on a product-specific basis.[131]
- In each prior segment and this one, the RMB/IFI Group has reconciled its FOPs and demonstrated that it reported all steel inputs in its allocation methodology. Instead, the Department erroneously assumed that the RMB/IFI Group's steel consumption was not accurately allocated resulting in less input quantity than output quantity. Specifically, each product has a standard tolerance (maximum and minimum diameters acceptable per piece) in the steel threaded rod industry. This standard tolerance is applied on a uniform basis to all CONNUMs, which was accepted in all prior segments, to ensure that more steel input is allocated to larger products and less steel input is allocated to smaller products.[132]

[128] *See Certain Steel Threaded Rod From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013*, 79 FR 71743, at 71744.
[129] *See Conditional Review of the NME Entity*, 78 FR at 65970.
[130] *See* the RMB/IFI Group's Case Brief at 2-3.
[131] *Id.*, at 4.
[132] *Id.*, at 4-6 (*citing* to the RMB/IFI Group's Post-Prelim Comments at Exhibit 1).

- The Department incorrectly compared actual input weight than the calculated standard weight because the calculated standard weight is based on the largest diameter in the range of tolerance. The Department should have compared the actual input weight to the sample actual weight of certain CONNUMs, which shows that the actual input weight is greater and the FOP allocation methodology is reasonable.[133]
- Contrary to the Department's findings in the preliminary results, the RMB/IFI Group explained in its questionnaire responses that it did not weigh the finished products in its normal course of business during the POR. Therefore, the RMB/IFI Group did not have complete records based upon actual weight of the finished products to report the FOPs on this basis.[134]
- Contrary to the Department's reasoning in the *Preliminary Results*, the record shows that the RMB/IFI Group's FOP methodology, which results in less actual input weight in comparison to the calculated standard finished product weight, is the same methodology used since the LTFV investigation. The facts of this segment are the same in each prior segment and there is nothing new regarding the RMB/IFI Group's FOP methodology. In the second AR, the Department raised the issue of whether the RMB/IFI Group's FOP methodology resulted in underreporting of steel consumption and the RMB/IFI Group explained that due to the range of tolerance used to the calculate the standard weight, the calculated standard weight will be greater than the actual weight.[135]
- Contrary to the Department's finding in the *Preliminary Results*, the RMB/IFI Group's U.S. sales data is reliable and accurate and should be used to calculate a margin. The only issue is regarding the net or standard weights, which are the maximum weight of each product. These net or standard weights are used to calculate the surrogate values for movement expenses, which are conservative weights resulting in higher surrogate values.[136]
- There is no basis to apply AFA to the RMB/IFI Group's U.S. sales data because the net weights are already adverse and reported consistently with the FOP data.

<u>Petitioner's Comments</u>

- The Department should continue to apply total AFA to the RMB/IFI Group for the final results.
- The Department did not deprive the RMB/IFI Group an opportunity to understand the Department's concerns regarding the accuracy of the RMB/IFI Group's FOP methodology. The Department is required to meet its statutory case deadlines and thus is not required to issue multiple supplemental questionnaires that request the same information requested in the original questionnaire.[137, 138]

[133] *Id*., at 6-8 (*citing* to the RMB/IFI Group's Post-Prelim Comments at Exhibits 1 and 2, and the RMB/IFI Group's Second Supplemental D Response at Exhibit SD2-6).
[134] *Id*., at 12-4 (citing to the RMB/IFI Group's Second Supplemental D Response at questions 5a, 5c, and 6b).
[135] *Id*., at 16-20 (*citing* to the RMB/IFI Group's Post-Prelim Comments at Exhibits 3, 5, 6, 7, 8, and 9).
[136] *Id*., at 22-3.
[137] *See Artisan Mfg. Corp. v. United States*, 978 F. Supp. 2d 1334, 1342 (CIT 2014).
[138] *See* Petitioner's Rebuttal Brief at 20-1 (*citing* to the RMB/IFI Group's Questionnaire requesting worksheets for the most significant FOPs and steel scrap, and the Department's Supplemental D Questionnaire) and at 22 (provided a chart identifying the RMB/IFI Group's Section D responses and the items that were not provided by the RMB/IFI Group that had been requested by the Department).

- Despite three opportunities granted it, the RMB/IFI Group has not explained the underlying discrepancies in its Section D database and provided the Department accurate data to calculate NV for the RMB/IFI Group for the final results.
- Additionally, the burden rests with the RMB/IFI Group and not the Department to substantiate an adequate record for the Department to rely on to calculate NV.[139]
- Despite clear requests from the Department to revise its broad FOP allocation methodology in the first supplemental, the RMB/IFI Group ignored the Department's instructions and continued to use a methodology based on "standard" weights.[140]
- Again, despite the Department's request in the second supplemental that the RMB/IFI Group needed to revise its FOP allocation methodology, the RMB/IFI Group chose to not revise the methodology and continued to report less input to produce the finished merchandise and steel scrap. Even though the Department warned the RMB/IFI Group that it would not accept as an answer that this methodology had been used in previous segments, the RMB/IFI Group stated that it saw no need to revise the FOP methodology because the Department had accepted this FOP methodology as accurate in past segments.[141]
- The Department is within its rights to request that the RMB/IFI Group develop a different FOP methodology for this review because the facts of each segment are different and unique.[142]
- Contrary to the RMB/IFI Group's claims, the Department is not required to issue a post-preliminary memorandum in administrative reviews. The Department was also correct to place the factual information regarding the RMB/IFI Group's FOP methodology from pervious reviews on the record at the preliminary results to demonstrate the inaccuracy in the methodology that the RMB/IFI Group continues to use.[143]
- The record demonstrates that the RMB/IFI Group's FOP methodology is inaccurate because it results in less input weight being consumed to produce the weight of finished product and steel scrap. This methodology underreports the RMB/IFI Group's FOP consumption.[144]
- The RMB/IFI Group's FOP methodology fails to account for yield loss in the production of the subject merchandise that consumes steel wire rod and round bar.
- The RMB/IFI Group's FOP methodology is unreasonable because the standard or calculated weight that is the basis for allocating cost is always greater than the actual weight of the finished product.[145]

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[139] *See, e.g, US Magnesium LLC v. United States*, No. 14-00038,2015 Ct. IntT Trade LEXIS at * 10 (CIT 2015).
[140] *See* Petitioner's Rebuttal Brief at 23 and footnote 82 (*citing* the RMB/IFI Group's 1st Supplemental D Response).
[141] *Id.*, at 23 and footnote 84.
[142] *See, e.g., Fujian Mach. And Equip. Imp & Exp. Corp. v. United States*, 178 F. Supp. 2d. 1305, 1307 (CIT 2001); *Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 Fed. Reg. 3,201 (January 20, 2010) and accompanying Issues and Decision Memorandum at Comment 2.
[143] *See* Petitioner's Rebuttal Brief at 24 (citing to the Preliminary Decision Memo and significant deficiencies in the RMB/IFI Group's FOP allocation methodology that was not remedied in its questionnaire responses).
[144] *See* Petitioner's Rebuttal Brief at 25 (*citing* to the RMB/IFI Group's Section D Response at Exhibit D-4, and Preliminary Decision Memo at 23-4).
[145] *Id.*, at 25-6 (*citing* to the RMB/IFI Group's 2nd Supplemental D Response at 10-1, Preliminary Decision Memo at 22-3).

- Contrary to the RMB/IFI Group's claim, it is the respondent's and not the Department's responsibility to demonstrate that its FOP methodology is accurate and provide the best methodology for reporting its consumption. Despite being given multiple opportunities, the RMB/IFI Group failed to provide an accurate, reliable, and alternative methodology to the Department.

Department's Position: After careful consideration of all the record evidence and the comments submitted by interested parties after the *Preliminary Results*, the Department agrees with the RMB/IFI Group that it cooperated to the best of its ability and submitted an accurate, reasonable FOP allocation methodology.[146] Additionally, the Department finds that the RMB/IFI Group also provided accurate U.S. sales data and thus, as discussed below, the Department has the necessary information to calculate a dumping margin for the RMB/IFI Group for the final results. Our decision to accept RMB/IFI's FOP and U.S. sales data renders moot its challenges to the *Preliminary Results* and the procedures the Department employed.

As explained below, in the *Preliminary Results*, the Department found that the RMB/IFI Group had given incomplete responses regarding the reasonableness and accuracy of its FOP allocation methodology.[147] In its questionnaire responses, the RMB/IFI Group stated that it is possible to have less input weight, which is based on actual quantities, than the finished product weight, which is calculated and booked in its accounting record on the basis of standard weight, using the largest diameter in the range of tolerance.[148] However, the RMB/IFI Group failed to explain, as specifically requested by the Department, how its FOP allocation methodology is mathematically accurate and reasonable when less input weight generates the total output weight of the finished steel threaded rod and the claimed by-product offset, steel scrap.[149] Thus, the Department applied total AFA to the RMB/IFI Group in the *Preliminary Results*, which the Department now finds was inappropriate.

Specifically, the Department notes that the only records available to the RMB/IFI Group were the standard weights for the finished steel threaded rod, which is how the weight of each product is tracked in its production and cost accounting records in the normal course of business.[150] The Department finds that the RMB/IFI Group developed a FOP allocation methodology based on the production and cost accounting records that were available to it during the POR.[151] Although Petitioner is correct that there is a difference between the standard weights and actual weights of the sample CONNUMs, the Department finds that this difference does not impugn the reasonableness and accuracy of the RMB/IFI Group's FOP allocation methodology since these were the weights available to it in its normal course of business. While the Department, in the *Preliminary Results*, raised concerns regarding the underreporting of the FOPs, the RMB/IFI Group has further explained that when the input weight (in kg) of the steel inputs is compared to the actual weight (in kg) of the sample CONNUMS there is no underreporting.[152] In reviewing

[146] *See* Preliminary Decision Memo at 18-29.
[147] *Id.*, 22-3.
[148] *See* the RMB/IFI Group's 2nd Supplemental D Response at 4-5.
[149] *See* Preliminary Decision Memo at 22-3.
[150] *Id.*, at 20; the RMB/IFI Group's Supplemental D Response at 10-11 and Exhibits SD-7 and SD-12.
[151] *Id.*
[152] *See* the RMB/IFI Group's Post-Prelim Comments at Exhibit 2.

the record, the Department finds that the correct weight basis to test the accuracy of the RMB/IFI Group's FOPs is to compare the actual input weight (in kg) of the steel inputs to the actual weight (in kg), including a deduction for steel scrap. After conducting this analysis, the Department finds that there is no underreporting of the steel FOPs or yield loss.[153] Additionally, the RMB/IFI Group also explained that the standard weight ratio is only used to allocate the total actual steel wire rod consumption across all products to obtain the allocated actual input consumption for that CONNUM.[154] Based on our review of the record, which we explain further below, the Department finds that it is not appropriate to apply AFA to the RMB/IFI Group for the final results because the discrepancy between the standard and actual weights does not inaccurately skew the RMB/IFI Group's dumping margin.

The Department's concerns with RMB/IFI's methodology arose from RMB/IFI's responses to the Department's NME questionnaire and supplemental questionnaires, from which the Department was unable to discern how it was possible for less input weight being consumed to generate the total output weight of the finished steel threaded rod and the claimed by-product offset, steel scrap.[155]

Although RMB/IFI's argument that it was denied an opportunity to understand the Department's concerns is moot given the change in the Department's determination, the Department notes that the RMB/IFI Group's contention that it was denied an opportunity to participate in this proceeding is meritless. The Department conducted this administrative review based on the statute and regulations that govern the Department's antidumping law. After selecting the RMB/IFI Group as a mandatory respondent in July 2014, the Department issued the NME antidumping questionnaire to the RMB/IFI Group and granted multiple extensions to the RMB/IFI Group for it to submit responses to Sections A-D of the questionnaire.[156]

Once the Department received the RMB/IFI Group's original questionnaire responses in August and September 2014, the Department issued a total of four supplemental Section A questionnaires, four supplemental Section C questionnaires, and three supplemental Section D questionnaires.[157] While the RMB/IFI Group is correct that it is an experienced respondent that participated in every segment of this proceeding since the LTFV investigation, it has on multiple occasions failed to provide the complete information requested in the original questionnaire. Thus, the Department, in this segment and prior segments, issued supplemental questionnaires requesting the same information that was previously requested in the original questionnaire.[158] Additionally, as required by the Department's regulations and antidumping statute, the Department also notified the RMB/IFI Group of concerns and deficiencies that the Department

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[153] *Id*.
[154] *Id*.
[155] *Id*., at 23-4.
[156] *See* Preliminary Decision Memo at 18 (specifically for Section D, the Department granted after two extensions the RMB/IFI Group a total of 66 days to respond to the Section D questionnaire).
[157] *Id.*, at 18-29.
[158] *Id.*, at 18; the Department's First Supplemental Section D Questionnaire (December 19, 2014) at 4 ("the Department's Supp D Questionnaire"); Memorandum to File from Julia Hancock, Senior Case, Re: Placing the RMB/IFI Group's Responses from the Fourth AR on the Record, (May 4, 2015) at Attachments 4 and 7.

noted regarding the RMB/IFI Group's FOP allocation methodology in two supplemental Section D questionnaires.[159]

Although, the RMB/IFI Group is correct that the Department had accepted its FOP allocation methodology as accurate and reasonable in past segments of this case, the Department notes that it cautioned the RMB/IFI Group in the second Section D deficiency questionnaire that it still had concerns regarding the FOP methodology used in this administrative review.[160] Specifically, each case segment is separate and unique, and the Department must consider the facts on the record of each segment in determining whether a respondent, such as the RMB/IFI Group, provided an accurate, reasonable methodology for calculating its antidumping duty margin for that case segment.[161] The Department notes that the RMB/IFI Group pointed out that the Department verified its FOP allocation methodology in prior segments, such as the third administrative review.[162]

Although the RMB/IFI Group stated that the Department requested clarification on this issue in the second administrative review, the Department notes that, only here, unlike in the second administrative review, the Department specifically requested that the RMB/IFI Group address how less input weight was being consumed than the total output weight of the finished steel threaded rod and claimed by-product offset, steel scrap.[163] In the second supplemental questionnaire, the Department specifically issued a chart to the RMB/IFI Group outlining for two sample CONNUMs in which it appeared less input weight was being consumed to generate the total output weight of the finished steel threaded rod and claimed by-product offset.[164] When the Department requested that the RMB/IFI Group address the mathematical accuracy of its FOP methodology and pointed to this chart, the Department specifically requested that the RMB/IFI Group explain how less input weight could be consumed to generate the total output of the finished steel thread and claimed by-product offset.[165] However, in response, the Department notes that, while the RMB/IFI Group stated that less input could be consumed to generate the total output of the finished steel threaded rod because the calculated standard weight is always greater than the actual weight based on using the largest standard tolerance, the RMB/IFI Group did not address the mathematical accuracy regarding finished product weight and steel scrap.[166] Thus, because the RMB/IFI Group did not address how its FOP methodology was reasonable and accurate for less input weight consumed to generate total output weight of finished steel

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[159] *See* the Department's Supp D Questionnaire at questions 6, 10, 11, 12, 14, 27, and 29 (General Section); the Department's 2nd Supplemental Section D Questionnaire, (February 10, 2015) at 4-5 (questions 1(a-c) of Factors of Production Calculation Methodology and Cost Reconciliation section).
[160] *See* the Department's 2nd Supplemental Section D Questionnaire at 4-5 (questions 1(a-c) of Factors of Production Calculation Methodology and Cost Reconciliation section).
[161] *See, e.g., Fujian Mach. And Equip. Imp & Exp. Corp. v. United States*, 178 F. Supp. 2d. 1305, 1307 (CIT 2001); *Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 3201 (January 20, 2010) and accompanying Issues and Decision Memorandum at Comment 2.
[162] *See* the RMB/IFI Group's Case Brief at 18.
[163] *See* the Department's 2nd Supplemental Section D Questionnaire at 4-5 (questions 1(a-c); the RMB/IFI Group's 2nd Supplemental Section D Response at 3-4.
[164] *See* the Department's 2nd Supplemental Section D Questionnaire at 4-5.
[165] *Id*.
[166] *See* the RMB/IFI Group's 2nd Supplemental D Response at 3-4.

threaded rod and steel scrap, the Department, as explained above, applied total AFA to the RMB/IFI Group in the *Preliminary Results*.[167]

The Department also disagrees with the RMB/IFI Group that it was not allowed to fully to participate in this administrative review because, at the *Preliminary Results*, it issued its decision regarding the fact that it found the RMB/IFI Group's FOP methodology unreasonable and at the same time, placed on the record for comment, including submission of factual information, the RMB/IFI Group's responses from prior segments.[168] Contrary to the RMB/IFI Group's argument, it was not inappropriate for the Department to place factual information on the record at the *Preliminary Results*, as allowed under the Department's regulations.[169] Specifically, the Department placed this factual information on the record to allow interested parties, including the RMB/IFI Group, to comment on the RMB/IFI Group's FOP allocation methodology, keeping in mind that this methodology had been used since the LTFV investigation.[170] The Department notes that the RMB/IFI Group took advantage of this opportunity and submitted comments, including factual information, on the prior responses that the Department placed on the record regarding the RMB/IFI Group's FOP allocation methodology.[171] As discussed below, these comments have been useful in reconsidering the Department's decision to apply facts available to the RMB/IFI Group and determining that the RMB/IFI Group's FOP allocation methodology is accurate and reasonable.

The Department also disagrees with the RMB/IFI Group that it was denied a reasonable opportunity to participate in this review when the Department chose to not hold a disclosure meeting after the issuance of the *Preliminary Results*. Pursuant to 19 CFR 351.224(b), the Department informed the RMB/IFI Group that it would not hold a disclosure meeting because, such meetings are held solely to discuss calculations related to the review and given that no calculations were performed in the preliminary results, there was no basis for holding the requested disclosure meeting.[172] However, in the Disclosure Request Memo, the Department noted that the RMB/IFI Group would have the opportunity to present arguments regarding the Department's findings in the *Preliminary Results* in its case brief, which the RMB/IFI Group did and the Department considered for these final results.[173]

Finally, the Department disagrees with the RMB/IFI Group that it deprived the RMB/IFI Group of an opportunity to participate in this review by refusing to issue a post-preliminary results memo, as requested by the RMB/IFI Group in its post-preliminary comments. While the

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[167] *See* Preliminary Decision Memo at 18-30.
[168] *Id.*, at 18-30; May 5, 2015, Memos; Memorandum to the File from Julia Hancock, Senior Case Analyst, Re: Fifth Administrate Review of Certain Steel Threaded Rod from the People's Republic of China, (May 8, 2015) ("Factual Information Comment Memo").
[169] *See Factual Information Comment Memo*.
[170] *See* Preliminary Decision Memo at 25-6 and footnote 137.
[171] *See* the RMB/IFI Group's Post-Preliminary Results New Fact Rebuttal and Comments, (May 18, 2015) ("the RMB/IFI Group's Post-Prelim Comments").
[172] *See* Memorandum to the File from Julia Hancock, Senior Case Analyst, Re: Fifth Administrate Review of Certain Steel Threaded Rod from the People's Republic of China: Disclosure Meeting Request (May 11, 2015) ("Disclosure Request Memo").
[173] *Id*.

RMB/IFI Group requested that the Department issue a post-preliminary results memorandum based on the comments and factual information that it submitted, the Department's regulations provide that comments concerning ministerial errors made in the preliminary results of an administrative review should be included in a party's case brief.[174] Specifically, the Department's regulations at 19 CFR 351.224(e) only provide for issuing amended preliminary determinations in antidumping duty investigation, which is not the case here. Accordingly, the Department finds that it was appropriate to not issue a post-preliminary results memorandum but instead consider the RMB/IFI Group's post-preliminary comments along with its case brief in the final results of this administrative review, pursuant to 19 CFR 351.224 and 351.309.

However, the Department also notes that, in *Welded Austenitic from the PRC*, the Department accepted the respondent's FOP allocation methodology when the methodology was based on the respondent's accounting records and the respondent did not maintain actual weights but had to develop a theoretical weight methodology for FOPs and sales to be on a consistent basis.[175] The Department's findings of *Welded Austenitic from the PRC* are applicable to this case because, there, the respondent used a theoretical weight to develop its FOP methodology because only theoretical output weights were recorded in the records available to the respondent in the normal course of business.[176]

Similar to *Welded Austenitic from the PRC*, the Department recognizes, as explained by the RMB/IFI Group in its questionnaire responses and post-preliminary comments, that the RMB/IFI Group books the production quantity of products by "piece" in its production records.[177] Additionally, the Department notes, as explained by the RMB/IFI Group in its submissions, that the RMB/IFI Group does not weigh or record the actual weight of each product in its production or accounting records, instead, the RMB/IFI Group records the standard weight of each product, which is the quantity in piece multiplied by the calculated unit weight for each product.[178] Although Petitioner is correct, which the RMB/IFI Group concedes, that there is a difference between the standard weights and actual weights of sample CONNUMs that are on the record, the Department finds that the standard weights are the records that were available to the RMB/IFI Group in the normal course of business.[179]

However, similar to *Welded Austenitic from the PRC*, the Department finds that the RMB/IFI Group sufficiently explained why it would appear that the input weight of steel wire rod, which is on an actual weight basis, is underreported compared to the standard finished weight of steel threaded rod.[180] Because the standard finished weight is calculated based on the largest diameter in the range of tolerance and, as the RMB/IFI Group explained, the standard weight of finished product will always be greater than the actual weight of finished product, the Department finds

[174] 19 CFR 351.224(c).
[175] *See Circular Welded Austenitic Stainless Pressure Pipe From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 76 FR 43981 (July 22, 2011) and accompanying Issues and Decision Memorandum at Comment 1 ("*Welded Austenitic from the PRC*").
[176] *Id*.
[177] *See* the RMB/IFI Group's Supplemental Section D Response at 16-7 and Exhibits SD-7 and SD-12.
[178] *Id*.
[179] *See* the RMB/IFI Group's Second Supplemental D Response at Exhibit SD2-6.
[180] *See Welded Austenitic from the PRC* at Comment 1.

that the input weight of steel wire rod will be less than the standard finished weight of steel threaded rod.[181] However, as the record evidence demonstrates for sample CONNUMs, when the input of weight of steel wire rod is compared to the actual weight of the finished steel threaded rod, the input weight will always be greater since both are on the same weight basis.[182]

While Petitioner is correct that there is a difference between the actual and standard weights of the sample CONNUMs of steel threaded rod on the record, as noted above, the Department now finds that this difference does not demonstrate that the RMB/IFI Group's FOP methodology is unreasonable or inaccurate.

After review of the record evidence and careful consideration of the comments by interested parties, the Department finds that the RMB/IFI Group's FOP allocation methodology is accurate and reasonable. As the Department found in *Welded Austenitic from the PRC*, the Department finds that the RMB/IFI Group's FOP allocation methodology is consistent with records that were available to the RMB/IFI Group that its keeps in its normal course of business.[183] More importantly, the Department finds that the FOP allocation methodology is on a consistent basis where both the numerator and denominator are based on actual quantities.[184] Additionally, the Department finds that the RMB/IFI Group has allocated its total actual steel consumption to all CONNUMs on a consistent basis, which it supported with an accurate reconciliation to its cost accounting system, unlike *Steel Wire Garment Hangers from the PRC*.[185] Finally, the Department finds that the RMB/IFI Group's FOP allocation methodology, which is reported based on per-unit of consumption (kg) per thousand pieces of steel threaded rod, is on the same basis as the RMB/IFI Group's U.S. data that is also reported on a piece basis.[186] Therefore, for all of the above reasons, the Department finds that the RMB/IFI Group's FOP allocation is accurate and reasonable for calculating an antidumping margin for the final results.

Accordingly, for all of the above reasons, the Department finds that there is no basis to apply facts available to the RMB/IFI Group because the RMB/IFI Group's FOP data and U.S. sales data are complete, reliable, and accurate to calculate a margin for the RMB/IFI Group in the final results. Specifically, the Department now finds that the RMB/IFI Group, pursuant to sections 776(a)(1) and 776(a)(2)(A-C) of the Act, did not withhold information that had been requested by the Department, did not fail to provide such information in a timely manner or in the form or manner requested, and did not significantly impede this proceeding. In addition, the Department finds that there is no reason to apply an adverse inference to the RMB/IFI Group, pursuant to section 776(b) of the Act, because the RMB/IFI Group cooperated to the best of its ability by providing complete, reliable, and accurate responses, including data to calculate its margin for the final results.

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[181] *See* the RMB/IFI Group's Supplemental Section D Response at 16-7 and Exhibits SD-5 and 6; the RMB/IFI Group's Second Supplemental D Response at Exhibit SD2-6.
[182] *Id.;* the RMB/IFI Group's Post-Prelim Comments at 8-9 and Exhibit 2.
[183] *See Welded Austenitic from the PRC* at Comment 1.
[184] *See* the RMB/IFI Group's Supplemental D Response at Exhibits SD-5 and SD-6.
[185] *Id.; Steel Wire Garment Hangers from the PRC* at Comment 1.
[186] *See Welded Austenitic from the PRC* at Comment 1; the RMB/IFI Group's Supplemental Section C Response, (December 14, 2014) a 6-7.

Comment 5: Application of the PRC-Wide Rate to the RMB/IFI Group and Not Granting a Separate Rate

The RMB/IFI Group's Comments

- The Department's finding that the RMB/IFI Group is part of the PRC-wide entity is unsupported by substantial evidence because the Department never identified any deficiency in its Section A responses.
- The reliability of the RMB/IFI Group's questionnaire FOP and sales data responses is completely irrelevant to state control or the separate-rate analysis.
- The CIT has found that the Department may not draw improper overly broad adverse inferences solely upon the lack of reliability regarding a respondent's FOP and sales data. Because the Department has not identified any deficiency regarding the RMB/IFI Group's separate rate information, which was found reliable in the past five proceedings, the Department must take this into account in determining the margin to assign to the RMB/IFI Group.[187]
- The PRC-wide rate is unreasonable, punitive and not a "reasonable accurate estimate of {RMB/IFI GROUP's} actual rate" because it is based on Indian surrogate values, and prior calculated rates for the RMB/IFI Group were far below the PRC-wide rate.[188]
- The prior rates, 19.68 to 47.62 percent, calculated for the RMB/IFI Group based upon Thai surrogate value data are nowhere close to the PRC-wide rate of 206 percent assigned to the RMB/IFI Group in the preliminary results.

Petitioner's Comments

- The Department should continue to deny the RMB/IFI Group a separate rate for the final results and place the RMB/IFI Group in the PRC-wide entity.
- Besides the RMB/IFI Group's failure to provide accurate and reliable U.S. sales and FOP information to calculate an accurate margin, the RMB/IFI Group's Section A and supplemental Section A responses are incomplete and inaccurate.
- Based on the glaring deficiencies in the entirety of the RMB/IFI Group's responses, the Department was correct to reject all of the RMB/IFI Group's information and place it in the PRC-wide entity, which it should continue to do so for the final results.

Department's Position: The Department finds that application of the PRC-wide entity rate is inappropriate for the RMB/IFI Group. In light of the Department's decision not to apply AFA to the RMB/IFI Group, as discussed above in Comment 4, and based on the RMB/IFI Group's submissions, the Department determines that the RMB/IFI Group is eligible for a separate rate.

In the *Preliminary Results*, the Department applied total AFA to the RMB/IFI Group and thus denied it a separate rate because the Department found the RMB/IFI Group's questionnaire

[187] *See Foshan Shunde Yongjian Housewares & Hardwares Co., Ltd. v. United States*, Slip Op. 11-123 (CIT 2011) at 16 ("*Foshan Shunde 2011*").
[188] *See Gallant Ocean (Thail.) Co. v. United States*, 602 F. 3d 1319, 1323 (Fed. Cir. 2010) ("*Gallant Ocean*"); *Albemarle Corp. v. United States*, 931 F. Supp. 2d 1280, 192 (CIT 2013) ("*Albermarle Corp.*").

responses, in totality, unreliable.[189] However, since the *Preliminary Results*, and after careful review of the record evidence and comments submitted by interested parties, the Department now finds that the RMB/IFI Group's sales and FOP data is accurate and reliable to calculate a margin for the final results.[190] Therefore, the Department must consider whether it is appropriate to grant the RMB/IFI Group a separate rate for the final results.

There is a rebuttable presumption that all companies within the PRC are subject to government control and thus, should be assessed a single antidumping duty rate.[191] In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings.[192] It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in *Sparklers*,[193] as amplified by *Silicon Carbide*.[194] However, if 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.[195]

In order to demonstrate separate-rate status eligibility, the Department normally requires entities for whom a review was requested, and who were assigned a separate rate in a previous segment of this proceeding, to submit a separate rate certification stating that they continue to meet the criteria for obtaining a separate rate.[196] For entities that were not assigned a separate rate in the previous segment of a proceeding, to demonstrate eligibility, the Department requires a separate rate application.

The Department received a separate rate certification and a completed response to the Section A portion of the NME questionnaire from the RMB/IFI Group, which contained information pertaining to the company's eligibility for a separate rate. In its Section A response, the RMB/IFI Group reported that it is wholly-owned by individuals or companies located in a market economy ("ME") country.[197] Therefore, because it is wholly foreign-owned, and we

[189] *See Preliminary Results*, 80 FR at 26222.
[190] For further discussion, *see* Comment 4.
[191] *See, e.g., 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, 53082 (September 8, 2006); *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China*, 71 FR 29303, 29307 (May 22, 2006).
[192] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 79 FR at 30809 (May 29, 2014) ("*Initiation Notice*").
[193] *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*").
[194] *See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*").
[195] *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) ("*Wax Candles from the PRC*").
[196] *See Initiation Notice*, 79 FR at 30809.
[197] *See RMB Fasteners Ltd. and IFI & Morgan Ltd. Section A Response* (August 22, 2014).

have no evidence indicating that it is under the control of the PRC government, a separate rate analysis is not necessary to determine whether this company is independent from government control.[198]

Although Petitioner alleged that the RMB/IFI Group provided incomplete information in its Section A responses, the Department finds that this is not the case. Regarding Petitioner's allegation that the RMB/IFI Group did not provide the requested documentation for an affiliate's sample sales package, the Department finds that the affiliate, in question, provided sales invoices and payment documentation demonstrating that this sale was a non-scope sale.[199] Additionally, contrary to Petitioner's allegation, the Department finds that the RMB/IFI Group did provide the financial statements, for which only unaudited statements were available, for this affiliate in its questionnaire responses.[200] Moreover, regarding Petitioner's allegation that the RMB/IFI Group did not demonstrate with supporting documentation whether this affiliate had operations in mainland China, the Department finds that the RMB/IFI Group explained that this affiliate, which is registered outside the PRC, can have operations in the PRC and that there is no record evidence demonstrating this affiliate was involved in the production and sale of subject merchandise to the United States.[201] Finally, regarding Petitioner's allegation that the RMB/IFI Group provided inconsistent statements about whether an affiliate was in operation, the Department finds that the RMB/IFI Group clarified that the Department was mistaking this affiliate for another company and that this affiliate was not in operation during the POR.[202] The Department finds that, as a whole, the RMB/IFI Group's Section A responses are complete and reliable, demonstrating that it is a wholly-foreign owned company, and that the record evidence does not demonstrate there are discrepancies regarding its sale/production activities of subject merchandise, nor its numerous affiliates, during the POR. Accordingly, we will grant a separate rate to the RMB/IFI Group for the final results.

Comment 6: Selection of Surrogate Country

RMB/IFI Group's Comments

- The Department should select Ukraine as the primary surrogate country because Ukraine is within the acceptable gross national income ("GNI") range, its harmonized tariff schedule ("HTS") reflects important differences in the low-carbon steel wire rod FOP, and there is abundant reliable data for similar companies.
- While Ukraine was not on the Department's surrogate country list, Ukraine's GNI is within the band of economic comparability presented by the list.[203] The export data on the record

[198] *See, e.g., Wax Candles from the PRC*, 72 FR at 52356.
[199] *See* the RMB/IFI Group's 4th Supplemental Section A Response, (March 16, 2015) at 3 and Exhibit 4SA-4.
[200] *Id.*, at 15; the RMB/IFI Group's 3rd Supplemental Section A Response, (February 12, 2015) at Exhibit 3SA-34 and 3SA-35. The Department notes that there was a question regarding the English translation name of this affiliate and whether the submitted financial statement applied to this affiliate, which the RMB/IFI Group clarified in its response.
[201] *See* the RMB/IFI Group's 4th Supplemental Section A Response at 8-9.
[202] *Id.*, at 16.
[203] *See* RMB/IFI Group Surrogate Country Comments at Exhibit 1 (September 19, 2014) ("World Bank GNI Data").

shows that Ukraine is a significant producer of subject merchandise.[204] Finally, Ukraine has the best available data for the following reasons:

- The Ukrainian tariff schedule provides classifications for the low-carbon steel wire rod input specific to the type used by the RMB/IFI Group.[205] The Ukrainian schedule, while not divided into as many carbon grades as the Thai schedule, are divided into several grades based on carbon content and can be specifically matched to the grade of steel wire rod consumed by the RMB/IFI Group.
- There are also Ukrainian domestic prices for wire rod and round bar rod available from the Ukrainian research group Metal Expert. The Department has previously found this source to be authoritative.[206] The data is specific to the diameter and carbon content for the RMB/Group's low-carbon wire rod and round bar FOPs. The values are actual transaction prices, inclusive of 20 percent value-added tax ("VAT") and reflect the prices charged by Ukrainian "stockists," who typically mark up prices for products bought from producers by four percent. The quality of the domestic Ukrainian data is high because the Department recognizes the source as reliable and the information includes details on the sources of the steel, its product characteristics, and the structure of the reported prices. The Metal Expert steel prices also corroborate the Global Trade Atlas ("GTA") POR import data for Ukraine. These prices also closely correspond with world prices for steel.[207]
- There is also a surrogate financial statement from the Ukrainian company PJSC Dneprometiz, which is a leading manufacturer of fasteners, nails, steel wire, and nettings. In previous proceedings, the Department has found these products to be merchandise comparable to subject merchandise. [208] The CIT has also supported the Department's finding that producers of steel wire are comparable to the RMB/IFI Group's production of subject merchandise.[209] Further, the production processes that PJSC Dneprometiz utilizes are also comparable to those of the RMB/IFI Group.
- While the financial statement predates the POR, this fact is far less critical than the comparability of the company and the reliability of the statement.[210]

- Thailand is an unsuitable primary country surrogate for the following reasons:
  - There is a definitive finding that Thailand is dumping steel threaded rod in the United States at rates as high as 74.90 percent.[211]

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[204] *Id.*, at Exhibit 2 ("GTA Export Data").
[205] *See* RMB/IFI Group Surrogate Country Comments at Exhibit 14.
[206] *See Certain Nails from the People's Republic of China: Preliminary Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 77 FR 53845 (September 4, 2012).
[207] *See* RMB/IFI Group Surrogate Country Comments at Exhibit 11.
[208] *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).
[209] *See Jiaxing Brother Fastener Co., Ltd. v. United States*, 751 F. Supp. 2d 1345, at 1358-1359 (CIT 2010).
[210] *See, e.g., Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 26712 (May 9, 2014).
[211] *See Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014) ("*Steel Threaded Rod from Thailand*").

- The legislative history indicates that Congress intended the Department to exclude prices that the Department believes or suspects may be dumped or subsidized.[212] Congress did not intend that the Department would need to go as far as to conduct actual investigations. Thailand's prices are not reliable or representative because the producing industry proposed as a basis for the normal value is dumping and has refused to cooperate in the Department's investigations.

- Thailand is also an unsuitable primary surrogate country due to customs data manipulation for the following reasons:
  - Thailand's import data is unreliable in its entirety because the Thai Customs authority manipulates the entered values of imported merchandise, rendering all of the Thai import data unreliable for purposes of calculating SVs.[213] The United States Trade Representative's ("USTR") National Trade Estimate Reports on Foreign Trade Barriers routinely highlights concerns over the Thai Customs Authority's repeated use of arbitrarily high import values.[214] The Department itself has published its concerns with Thailand's customs valuation practices.[215]
  - The Department must consider government intervention in the surrogate country that increases potential surrogate values to be equally as distortive as government actions that presumably decrease surrogate values.[216]
  - In previous segments of this proceeding, this same issue was raised regarding pervasive Thai customs manipulation. The Department's reasoning in *Xanthan Gum from China* missed several key issues and is unreliable as precedent for this critical issue. Using Thai import data in this proceeding runs afoul of the Department's statutory imperative to "ensure that dumping margins are calculated as accurately as possible."[217] In fact, the Senate Committee on Finance has stated that they are "particularly concerned that imports from certain non-market economy countries… not be unfairly disadvantaged" by methodologies that utilize surrogate market economies to determine applicable pricing information.[218]
  - The Thai Customs' manipulation of import prices is also analogous to the Department practice discussed above concerning dumped and subsidized imports. In this case, the USTR documents satisfy this "reason to believe or suspect" standard with regard to price manipulation by Thai Customs, but the Department continues to use Thai import data. This change in burden of proof is arbitrary and capricious.
  - The different Thai domestic price sources indicates that the domestic price available in Thailand is consistently and considerably lower than the import value of steel wire rod.

[212] *See Drawn Stainless Steel Sinks from the People's Republic of China: Antidumping Duty Investigation Preliminary Determination*, 77 FR 60673 (Oct. 4, 2012) (citing to H.R. Conf. Rep. No. 100-576, at 590 (1988)).
[213] *See* RMB/IFI GROUP Preliminary Rebuttal Surrogate Values Brief, at 2-5 and Exhibits 1-2.
[214] *Id.*, at Exhibits 2-5.
[215] *Id.*, at Exhibit 6.
[216] *See Yantai Oriental Juice Co., et. al. v. United States*, 26 C.I.T. 605, 612-613 (CIT 2001) ("*Yantai Oriental Juice*").
[217] *See Dorbest Ltd. v. United States*, 462 F. Supp. 2d 1262, 1268 (CIT 2006).
[218] *See* S. Rep. No. 100-71 at 106 (1987) (Committee on Finance).

- Thailand is also an unsuitable primary surrogate country because it is unreasonable to assume that a NME respondent would select the most expensive market to acquire its inputs or to conduct its production. In particular, the shift away from choosing India as the primary surrogate country for PRC cases has undermined the remedial purpose of the antidumping laws.
- If Ukraine is not selected as a surrogate country, there is surrogate value data on the record for the Philippines.

<u>Petitioner's Comments</u>

- Ukraine is not on the Department's list of countries at the same level of economic development as China.
- Because Thailand remains the best candidate for primary surrogate country, it is unnecessary to consider Ukraine.
- The Department should reject the RMB/IFI Group's arguments regarding Thailand's unsuitability as primary surrogate country because those arguments are without merit.
- The dumping allegation against a Thai producer of STR has no bearing on the use of Thai import data as surrogate values for steel wire rod. Similarly, the Department has considered and rejected the RMB/IFI Group's repeated claims that the Thai import data are inherently unreliable.[219]
- Finally, the RMB/IFI Group's argument that an NME respondent should be allowed to select its own home market is ridiculous. Selection of the surrogate country is governed by the statute and by the Department's established policy regarding the quality of available factors data. These factors are the criteria for surrogate country selection, not the preferences of the respondent.

Department's Position: The Department finds that based on our analysis detailed below, pursuant to section 773(c) of the Act, Thailand is most appropriate primary surrogate country.

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production ("FOPs"), valued in a surrogate ME country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.[220] If more than one country meets each of these criteria, "the country with the best factors data is selected as the primary surrogate country."[221] Accordingly, we examine each factor below.

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[219] *See Certain Steel Nails from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the Fifth Antidumping Duty Administrative Review* (March 30, 2015) at 11-13.
[220] *See* Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) ("*Policy Bulletin*").
[221] *Id.*

A. Comparable Level of Economic Development

The Department identified Bulgaria, Colombia, Ecuador, Indonesia, South Africa, and Thailand as countries whose per capita gross national incomes are at the same level of economic development as the PRC.[222] Section 773(c)(4)(A) of the Act is silent with respect to how or on what basis the Department may make this determination, but it is the Department's long standing practice to use *per capita* gross national income ("GNI") data reported in the World Bank's World Development Report.

The RMB/IFI Group argues that although Ukraine is not on the surrogate country list in the current review, it is within the band of countries the Department identified as being at the same level of economic development as the PRC. In the event that the Department does not select Ukraine as the surrogate country, the RMB/IFI Group contends the Philippines should be selected.

As a general rule, the Department selects a surrogate country that is at the same level of economic development as the NME unless it is determined that none of the countries are viable options because: (a) they either are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available SV data, or (c) are not suitable for use based on other reasons. As explained in the Department's *Policy Bulletin*, "{t}he surrogate countries on the (non-exhaustive) surrogate country list are not ranked."[223] This lack of ranking reflects the Department's long-standing practice that, for the purpose of surrogate country selection, the countries on the list "should be considered equivalent" from the standpoint of their level of economic development, based on *per capita* GNI, as compared to the PRC's level of economic development.[224] This also recognizes that the "level" in an economic development context necessarily implies a range of *per capita* GNI, not a specific *per capita* GNI.[225] The Department's long-standing practice of selecting, if possible, a surrogate country from a non-exhaustive list of countries at the same level of economic development as the NME country, or another country at the same level of economic development, fulfills the statutory requirement to value FOPs using data from "one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country . . . ."[226] In this regard, "countries that are at a level of economic development comparable to that of the NME country" necessarily includes countries that are at the same level of economic development as the NME country.

Because the non-exhaustive list is only a starting point for the surrogate country selection process, the Department considers other countries at the same level of economic development that interested parties propose, as well as other countries that are not at the same level of economic development as the NME country, but nevertheless still at a level comparable to that of

[222] *See* Memorandum to All Interested Parties, Re: Certain Steel Threaded Rod from the People's Republic of China: Request for Surrogate Country and Surrogate Value Comments and Information, (July 14, 2014) at Attachment 1 (page 2) ("Surrogate Country List").
[223] *Id.*
[224] *Id.*
[225] *Id.*
[226] *See* section 773(c)(4) of the Act.

the NME country.. Of the countries on the Surrogate Country List, interested parties only submitted data from Thailand for consideration regarding surrogate valuation purposes.[227] Additionally, Thailand satisfies the statute's requirement that the surrogate country be at a comparable level of economic development.

The Department notes that interested parties also submitted data from both Ukraine and the Philippines for consideration regarding surrogate country and valuation purposes. In the Surrogate Country List, the list of countries (Bulgaria, Colombia, Ecuador, Indonesia, South Africa, and Thailand) comprised a GNI band (GNI 2012) that ranged from $3,420-$7,610 GNI (U.S. dollars ("USD")), with the PRC's GNI being in the middle at $5,740.[228] The Department finds that Ukraine's GNI ($3,500) is within the GNI band of countries that are considered to be at the same level of economic development to the PRC and thus satisfies the statute's requirement.[229] Additionally, the Department notes that there is data from Ukraine on the record to calculate surrogate values for all of the RMB/IFI Group's FOPs.[230]

However, the Department finds that the other surrogate country proposed by the RMB/IFI Group, the Philippines, is not at the same level of economic development to the PRC because the Philippines' GNI ($2,470) is below the lowest country's GNI (Indonesia, GNI $3,420) within the GNI band of potential surrogate countries.[231] Although the RMB/IFI Group is correct in its surrogate country comments that the Department previously considered the Philippines to be at a same level of economic development to the PRC in prior reviews, each case segment is separate and unique, and the Department must consider the facts on the record of each segment in making an accurate, reasonable determination for that case segment.[232] Although the Philippines may be at a comparable level of economic development to the PRC, it is no longer at the same level of economic development since its *per capita* GNI is almost $1000 below the lowest country's *per capita* GNI within the GNI band of the Surrogate Country List.[233] The Department's practice is to select a surrogate country at the same level of economic development as the NME country.[234] Unless it is determined that none of these countries that are at the same level of economic development are viable options because (a) they either are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available SV data, or (c) are not suitable for use based on other reasons, the Department will rely on data from one of these countries.[235] Since the Department has data on the record for all FOPs from two countries, Thailand and Ukraine, that are at the same level of economic development as the PRC

[227] *See* Surrogate Country List.
[228] *Id.*
[229] *See* the RMB/IFI Group's Surrogate Country Comments at Exhibit 1.
[230] *See* the RMB/IFI Group's Surrogate Value Comments, (October 31, 2014) at Exhibits 5-17.
[231] *See* the RMB/IFI Group's Surrogate Country Comments at Exhibit 1; Surrogate Country List at Attachment 1 (page 2).
[232] *See, e.g., Fujian Mach. And Equip. Imp. & Exp. Corp. v. United States*, 178 F. Supp. 2d 1305, 1307 (CIT 2001).
[233] *See* Surrogate Country List at Attachment 1 (page 2).
[234] *See Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 61172 (October 9, 2015), and accompanying Issues and Decision Memorandum at Comment 1.
[235] *See Multilayered Wood Flooring From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Results of New Shipper Review; 2012-2013*, 80 FR 41476 (July 15, 2015) and accompanying Issues and Decision Memorandum at Comment 11.

and both are viable options, the Department will not consider the Philippines for surrogate country selection purposes.[236]

B. Significant Producers of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the Department's regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, the Department looks to other sources such as the *Policy Bulletin* for guidance on defining comparable merchandise. The *Policy Bulletin* states that "in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise."[237] Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.[238] Further, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.[239] "In cases where the identical merchandise is not produced, the Department must determine if other merchandise that is comparable is produced. How the Department does this depends on the subject merchandise."[240] In this regard, the Department recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

> In other cases, however, where there are major inputs, *i.e.*, inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, *e.g.*, processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.[241]

Further, the statute grants the Department discretion to examine various data sources for determining the best available information.[242] Moreover, while the legislative history provides

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[236] Moreover, even if the Department was to consider the Philippines to be a potential surrogate country, the Department notes that there are no financial statements on the record from the Philippines to calculate surrogate financial ratios. *See* the RMB/IFI Group's Surrogate Value Comments (the Department notes that no financial statements were submitted for the Philippines and no other submission was submitted by the RMB/IFI Group containing Philippines data).
[237] *See Policy Bulletin* at 2.
[238] The *Policy Bulletin* also states that "if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise." *Id.* at note 6.
[239] *See Sebacic Acid from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 65674, 65675-76 (December 15, 1997) (Where the Department found that to "impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.").
[240] *See Policy Bulletin* at 2.
[241] *Id.*, at 3.
[242] *See* section 773(c) of the Act; *see also Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1990).

that the term "significant producer" includes any country that is a "significant net exporter,"[243] it does not preclude reliance on additional or alternative metrics.

In this case, because production data of comparable merchandise are not available, we analyzed exports of comparable merchandise from the seven countries that are the same level of economic development as the PRC, as a proxy for production data. We examined the 2013[244] export data on the record from UNComTrade for HTS 7318.15: Threaded Screws And Bolts, Whether/Not With Their Nuts/Washers, Of Iron/Steel. UnComTrade reported the following export volumes for 2013: (1) Bulgaria (881,839 kg); (2) Colombia (348,289 kg); (3) Ecuador (25,157 kg); (4) Indonesia (12,748,289 kg); (5) South Africa (15,212,405 kg);[245] (6) Thailand (92,419,391 kg); and (7) Ukraine (9,134,783 kg).[246] The Department has found the export data for this HTS category, the parent category of the HTS category for in-scope merchandise, to be a reliable measure of export of comparable merchandise.[247]

Based on this analysis, all countries identified in the Surrogate Country List and Ukraine had significant exports of comparable merchandise, and the Department considers them to have met the significant producer criteria because these countries are significant exporters of comparable merchandise.[248] Because none of the potential surrogate countries have been disqualified through the above analysis, the Department looks to the availability of SV data to determine the most appropriate surrogate country.

C. Data Availability

The *Policy Bulletin* states that, if more than one country meets the economic comparability and significant producer of comparable merchandise criteria, "then the country with the best factors data is selected as the primary surrogate country."[249] Importantly, the *Policy Bulletin* explains further that "data quality is a critical consideration affecting surrogate country selection" and that "a country that perfectly meets the requirements of economic comparability and significant producer is not of much use as a primary surrogate if crucial factor price data from that country are inadequate or unavailable."[250]

Section 773(c)(1) of the Act instructs the Department to value the FOPs based upon the best available information from an ME country or a countries that the Department considers appropriate. When considering what constitutes the best available information, the Department considers several criteria, including whether the SV data are contemporaneous, publicly

[243] *See* Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).
[244] The Department notes that the record does not contain annual 2013 export data for South Africa but POR export data for South Africa from GTIS is on the record, which we have used to determine whether South Africa is a significant producer. *See* the RMB/IFI Group's Surrogate Country Comments at Exhibit 2.
[245] *Id*.
[246] *See* RMB/IFI Group's January 3, 2014, submission at Exhibit 2.
[247] *See e.g.*, *STR AR4 Final* and accompanying Issues and Decision Memo at Comment 1.
[248] *Id*.
[249] *See Policy Bulletin*.
[250] *Id*.

available, tax and duty exclusive, represent a broad-market average, and are specific to the input. The Department's preference is to satisfy the breadth of the aforementioned selection criteria.[251] Moreover, it is the Department's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing the FOPs.[252] The Department must weigh the available information with respect to each input value and make a product-specific and case-specific decision as to what constitutes the "best" available SV for each input.[253]

No party placed FOP information on the record for Bulgaria, Colombia, Ecuador, Indonesia, or South Africa. Moreover, no party argued that these countries be selected as the surrogate country. As a result, we have not considered Bulgaria, Colombia, Ecuador, Indonesia, or South Africa for surrogate country selection purposes. Interested parties have placed SV data on the record for Thailand and Ukraine. We examined that data to determine which surrogate country contained the best available information for valuing FOPs.

The Department disagrees with the RMB/IFI Group's assertion that Thai SV data, in general, are unreliable. First, while the RMB/IFI Group notes that the Department found affirmative evidence of dumping in *Steel Threaded Rod from Thailand*, that case concerns exports of steel threaded rod from Thailand to the United States, and is not an analysis on the dumping of imports into Thailand from other countries, which is the relevant consideration because the information from Thailand on the record to value SVs is Thai import data.[254] Further, while the RMB/IFI Group cites to several CVD proceedings as support for its proposition that governments can exert control in industries so as to distort import prices, the Department finds that there is no support for the RMB/IFI Group's argument in this proceeding. Because the Department has neither conducted any CVD investigation on Thai steel threaded rod nor found the relevant Thai industry to be subsidized or distorted by the Thai government, the Department cannot reach such a conclusion, as argued by the RMB/IFI Group. Also, the RMB/IFI Group's reliance on *Yantai Oriental Juice* is not appropriate in this case as there is no record evidence showing any distortion that would increase import prices into Thailand by any subsidy.[255]

When calculating import-based, per-unit SVs, the Department disregards import prices that it has reason to believe or suspect may be dumped or subsidized.[256] The RMB/IFI Group correctly

[251] *See, e.g., Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 51940, 51943 (August 19, 2011) and accompanying Issues and Decision Memorandum at Comment 2.

[252] *See Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006) ("*Sixth Mushrooms AR*") and accompanying Issues and Decision Memorandum at Comment 1; *see also Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002) and accompanying Issues and Decision Memorandum at Comment 2.

[253] *See, e.g., Sixth Mushrooms AR* at Comment 1.

[254] *See Steel Threaded Rod From Thailand*; *see also* Memorandum to the File through Paul Walker, Program Manager, Office V, from Julia Hancock, Case Analyst, Re: Certain Steel Threaded Rod from the People's Republic of China: Surrogate Values Memo (November 3, 2015) ("Surrogate Value Memo").

[255] *See Yantai Oriental Juice*.

[256] *Id.* (citing Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at

notes that the Department's practice when valuing FOPs using import statistics for any surrogate country is to exclude imports from countries such as Indonesia, South Korea and India that maintain broadly available, non-industry specific export subsidies.[257] The Department also excludes imports from Thailand in the calculation of SVs when using import data for other surrogate countries because there is reason to believe its exports benefitted from export subsidies.[258] Nevertheless, the Department does not find that the broadly available, non-industry specific export subsidies offered to Thai companies impact the SVs in this case, as the Department is using Thai import data to value SVs, which do not benefit from such export subsidies. Moreover, the Department has never previously determined that Thailand is itself unsuitable as a surrogate country because of the presence of export subsidies.[259]

Under Section 773(c)(5) of the Act, as amended by the TPEA, the Department has discretion to disregard price or cost values without further investigation if it "has determined that broadly available export subsidies existed or particular instances of subsidization occurred with respect to those price or cost values or if those price or cost values were subject to an antidumping order."[260] Regarding the alleged manipulation of Thai import prices, although the reports cited by the RMB/IFI Group indicate that the United States has expressed concern over the practices of Thailand's Customs Department officials, we cannot conclude from the reports that the entirety of the Thai import data under consideration should be rejected as unreliable. As indicated in *Xanthan Gum from the PRC*, while these reports express concern about Thailand's Customs Department's valuation of imports, they do not provide conclusive evidence to reject the entirety of the Thai import data as unreliable.[261] More to the point, even though the RMB/IFI Group argues that customs value manipulations are pervasive, the Department finds that the RMB/IFI Group failed to provide any specific, documentary evidence to demonstrate how any of the Thai import data submitted for this review were manipulated by Thai Customs. Neither did the RMB/IFI Group provide or identify any record evidence demonstrating that the specific Thai import data, particularly for the primary inputs, submitted for use in this review are unreliable. In sum, the Department finds that there is no specific and credible record evidence that would lead to the conclusion that the Thai import data, in totality or used in this review specifically, are inappropriate for consideration for surrogate valuation purposes.

Finally, the Department finds that the RMB/IFI Group did not provide any court precedent that would permit the Department to diverge from the statutory requirements of selecting the primary surrogate country, which the record evidence demonstrates that Thailand fulfills. Although the RMB/IFI Group contends it is unreasonable to expect an NME respondent to price its cost of

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590). As discussed below, this practice was recently codified with the passage of the TPEA.

[257] *Id*.

[258] *See*, *e.g.*, *Certain Frozen Warmwater Shrimp From Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013) ("*Shrimp From Thailand*").

[259] *See*, *e.g.*, *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part; 2010-2011*, 78 FR 22513 (April 16, 2013) ("*Tires Final Results 2010-2011*") and accompanying Issues and Decision Memorandum at Comment 4.

[260] *See Dates of Application of TPEA Amendments* (indicating that the TPEA amendment to section 773(c)(5) of the Act applies to these final results).

[261] *See Xanthan Gum from the PRC*, 78 FR 33350 (June 4, 2013) and accompanying Issues and Decision Memorandum at Comment 1.

manufacture ("COM") in the most expensive market, the Department notes that its surrogate country determination is a fact-based, investigative determination carried out pursuant to existing policies and regulations, which, as explained above, is made based on the facts on a case-by-case basis. Each review proceeds *de novo* and determinations in that review are based upon the specific record developed during the course of that particular segment of the proceeding.[262] Contrary to what is suggested by the RMB/IFI Group, the Department cannot predetermine the outcome of a review, such as the selected surrogate country, and ignore the relevant record evidence placed before the Department in each review.

As mentioned above, when considering what constitutes the best available information, the Department evaluates several criteria, including whether the SV is: publicly available; contemporaneous with the POR; representative of a broad-market average; from an approved surrogate country; tax- and duty-exclusive; and specific to the input,[263] and the Department's preference is to satisfy the breadth of the aforementioned selection criteria.[264] Moreover, it is the Department's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing the FOPs.[265] As there is no hierarchy for applying the above mentioned principles, the Department must weigh the available information with respect to each input and make a product-specific and case-specific decision as to what constitutes the "best" available SV for each input.[266]

1) Steel Inputs

As steel threaded rod is drawn from wire rod or round bar, these steel inputs constitute most of the material cost and are the most important factors for surrogate country selection purposes in proper valuation of steel threaded rod.[267] Throughout the RMB/IFI Group's questionnaire responses, the RMB/IFI Group has consistently stated that it only consumes low carbon steel inputs in the production of the subject merchandise.[268] The Department specifically asked RMB/IFI Group whether it consumed other grades of steel (*i.e.*, mid-carbon steel) as an input,

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[262] *See*, *e.g.*, *Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 14499 (March 12, 2012) and accompanying Issues and Decision Memorandum at Comment 1; *see also Shandong Huarong Mach. Co. v. United States*, 29 CIT 484, 491 (2005) ("{E}ach administrative review is a separate segment of proceedings with its own unique facts.").
[263] *See, e.g., 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) and accompanying Issues and Decision Memorandum at Comment 3.
[264] *See, e.g., Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 51940, 51943 (August 19, 2011) and accompanying Issues and Decision Memorandum at Comment 2.
[265] *See*, *e.g.*, *Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006) ("*Mushrooms from the PRC*") and accompanying Issues and Decision Memorandum at Comment 1; *Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002) and accompanying Issues and Decision Memorandum at Comment 2.
[266] *See Mushrooms from the PRC* and accompanying Issues and Decision Memorandum at Comment 1.
[267] *See* RMB/IFI Group Final Results Analysis Memo at Exhibit 1.
[268] *See* RMB/IFI Group's February 5, 2015, Supplemental Section D questionnaire response at 16.

and RMB/IFI Group confirmed that it did not.[269] The RMB/IFI Group also provided a range in terms of the carbon content of the type of steel it used,[270] which was confirmed by a sample mill certificate from its steel supplier and a definition of low-carbon steel.[271] Thus, the record evidence clearly indicates that the RMB/IFI Group only purchased and used low-carbon steel within the defined range of carbon content in the production of subject merchandise. Accordingly, where information is available, the Department sought the best available source to value steel as specific as possible to the type of steel consumed by the RMB/IFI Group.

In applying the Department's SV selection criteria, the Department has found in numerous NME cases that import data are reliable information for valuation purposes because they consist of average import prices, are representative of prices within the POR, and are both product-specific and tax-exclusive.[272] With respect to the GTA import data on the record from Thailand and Ukraine for the POR, the Department finds that the Thai import statistics are divided by different grades of steel based on carbon content and can be specifically matched to the grade of steel wire rod and round bar consumed by RMB/IFI Group during the POR to the ten-digit level.[273] With respect to Ukrainian GTA data, the Department notes that it found the import data from Ukraine for the RMB/IFI Group's steel input were broad basket categories in the last review.[274] Again, in this review, the Ukrainian GTA data that are on the record for purposes of valuing the RMB/IFI Group's steel input are not as specific, since the data are reported to the eight-digit HTS level, whereas the Thai import data that are reported to the more specific 10-digit level.[275] The Department notes that the Thai import data and the Ukrainian import data for wire rod both provide specific breakouts for carbon content and diameter that is specific to the grade of the RMB/IFI Group's steel input.[276] However, for round bar, the Department finds that the Thai import data are specific to the percentage of carbon content and diameter of the grade for the RMB/IFI Group's steel input, whereas the Ukrainian import data are a broad basket category that is not subdivided by carbon content.[277] While the RMB/IFI Group states that the Ukrainian tariff schedule is divided by different grades of steel, the Department finds the record does not contain any information identifying whether the Ukrainian import data are for low-carbon, medium-carbon, or high-carbon round bar. [278] Thus, the Department finds that the Ukrainian import data for round bar are not specific to the RMB/IFI Group's steel input.

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[269] *Id*.
[270] *See* RMB/IFI Group's December 12, 2014, Supplemental Section C questionnaire response at Exhibit SC-5.
[271] *Id.;* Surrogate Value Memo.
[272] *See, e.g., Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 59217 (September 27, 2010) and accompanying Issues and Decision Memorandum at Comment 19.
[273] *See* Petitioner's October 31, 2014, SV submission at Exhibits 1 and 2; Surrogate Value Memo at Exhibit 1.
[274] *See Certain Steel Threaded Rod from the People's Republic of China: Certain Steel Threaded Rod From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013*, 79 FR 71743 (December 3, 2014) and accompanying Issues and Decision Memorandum at Comment 1 ("*Fourth AR Steel Threaded Rod China Final*").
[275] *See* the RMB/IFI Group's October 31, 2014, SV Submission at Exhibit SV-5.
[276] *Id*.; Petitioner's October 31, 2014, SV submission at Exhibits 1 and 2; Surrogate Value Memo at Exhibit 1.
[277] *Id*.
[278] *See* the RMB/IFI Group's Case Brief at 30; the RMB/IFI Group's October 31, 2014, SV Submission at Exhibit SV-5.

The RMB/IFI Group also placed on the record Metal Expert data from Ukraine to value steel wire rod and round bar from September 2012 and April 2013.[279] We find that the Metal Expert data are publicly available and representative of a broad-market average. Further, the Metal Expert data covers a carbon content range (0.14-0.22 percent) that matches the RMB/IFI Group's reported carbon content range for steel wire rod and round bar.[280] The Metal Expert data is also specific to the diameter for the grade of steel wire rod and round bar used by the RMB/IFI Group. Accordingly, the Department finds that the Metal Expert data are specific to the types of steel wire rod and round bar used by RMB/IFI Group in the production of the subject merchandise. Thus, the Thai GTA import data and the Ukrainian Metal Export data are the two data sources on the record that are most specific to the grade of steel inputs consumed by RMB/IFI Group. In terms of public availability, specificity, tax exclusivity, and broad market average representation, the Department also finds that the Thai import statistics and Ukrainian Metal Expert data meet the Department's criteria in selecting SVs. However, the Department finds that Ukrainian Metal Expert data is not as contemporaneous since the data covers only one month of the POR, April 2013, whereas the Thai import data covers the entire POR.

With respect to the RMB/IFI Group's argument that the Thai GTA import data for steel wire rod and round bar are contradicted by other pricing information and it is illogical for any exporter to source its input from the most expensive market, the Department does not find the any legal support for this supposition that the Department must choose the least expensive surrogate country in calculating NV for dumping analysis. Rather, as explained above, the Department's selection criteria for surrogate country are 1) comparable level of economic development, 2) significant producer of comparable merchandise, and 3) data availability for selecting surrogate value. In considering the quality of data, the Department does consider lower prices cited by RMB/IFI Group to the extent as evidence demonstrating that the Thai GTA information is distorted or unrepresentative. Consistent with the Department's practice,[281] and as the CIT has held, however, an interested party must introduce evidence in support of any claim that a value is aberrational or distortive.[282] If a party presents sufficient evidence to demonstrate a particular SV is aberrational or distortive, and thus not reliable, the Department will assess all relevant price information on the record, including appropriate benchmark data, in order to accurately value the input in question.[283] The Department relied upon Thai import data to value low-carbon steel wire rod at about 940 U.S. dollars per metric ton ("USD/MT"), while the RMB/IFI Group provided four different Thai domestic price sources for steel wire rod from Asian Metal Market, Thai Bureau of Trade and Economic Indices, domestic sales and export sales of steel wire rod from Tata Steel, and a steel wire rod price quote from Tata Steel that range from 620-770 USD/MT.[284] The Department notes that the RMB/IFI Group also provided global and third-country prices of steel wire rod from the following sources: 1) World Bank benchmark price of

[279] *See* the RMB/IFI Group's March 31, 2015, SV Submission at Exhibits SV20-21.
[280] *See* RMB/IFI Group's March 31, 2015, SV Submission at Exhibits SV-20 and 21.
[281] *See, e.g., Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 36630 (June 28, 2010) and accompanying Issues and Decision Memorandum at Comments 3 and 4.
[282] *See Trust Chem. Co. v. United States*, 791 F. Supp. 2d 1257, 1264-65 (CIT 2011) ("*Trust Chem*").
[283] *Id*.
[284] *See* Surrogate Value Memo at Exhibit 1; the RMB/IFI Group Final Analysis Memo at Exhibit 2; the RMB/IFI Group's March 31, 2015, SV Submission at Exhibits 7-10.

steel wire rod of 790 USD/MT; 2) a MEPS International Ltd. reported average world steel wire rod price of 680 USD/MT; and 3) Asian Metal Market various monthly average export prices in 2013 from Brazil (665 USD/MT), Taiwan (385 USD/MT), China (530 USD/MT), and Turkey (606 USD/MT).[285]

It is important to note that, while the RMB/IFI Group points to generic steel wire rod prices from within Thailand and other generic third-country export/global prices that are lower than the Thai SV the Department used for low carbon steel wire rod, none of these are appropriate apples-to-apples comparisons because they are not specific to the types of low-carbon steel wire rod that the Department is using as a SV for these final results. Even at face value, the Department finds the information placed on the record by the RMB/IFI Group simply demonstrates that it was able to collect certain prices for generic steel wire rod that are lower than the Thai GTA import prices specific to its inputs. In *Camau Frozen Seafood Processing*, the Court noted that data may not be aberrational due to the sole fact that the data is the lowest or highest on the record.[286] In contrast, the Court found that data may found to be aberrational when the data was significantly different than other data on the record due to a particular reliability issue, such as concerns regarding low volume size.[287] In analyzing whether a given value is aberrational or distortive, the Department typically compares the prices for an input from the POR and prior years in all countries found to be at a level of economic development comparable to the NME country under review.[288] The RMB/IFI Group did not provide annual data from prior years for the specific HTS categories as an appropriate basis of comparison to demonstrate that the value used by the Department is aberrational or distortive. Accordingly, the Department finds that the RMB/IFI Group has not met the burden of evidentiary support for its argument that the Thai steel wire rod and round bar SVs are aberrational or distortive such that they should be rejected as unreliable.[289]

2) Surrogate Financial Ratios

The Department's criteria for choosing financial statements for the calculation of the surrogate financial ratios are based on the availability of contemporaneous financial statements, comparability to the respondent's production experience, and publicly available information.[290] Moreover, for valuing overhead, selling, general and administrative ("SG&A") expenses, and profit, the Department uses non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.[291] Further, the courts have recognized the

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[285] *See* the RMB/IFI Group's March 31, 2015, SV Submission at Exhibit 11.
[286] *See Camau Frozen Seafood Processing Imp. Exp. Corp. v. United States*, 929 F. Supp. 2d 1352, 1356 & n.9 (Ct. Int'l Trade 2013).
[287] *Id*.
[288] *See, e.g., Certain Preserved Mushrooms from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 55808 (September 11, 2012) and accompanying Issues and Decision Memorandum at Comments 3 and 4.
[289] *See Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review*, 77 FR 40854 (July 11, 2012) and accompanying Issues and Decision Memorandum at Comment 5; *Trust Chem*, 791 F. Supp. 2d at 1264-65.
[290] *See, e.g., 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) and accompanying Issues and Decision Memorandum at Comment 3.
[291] *See* 19 CFR 351.408(c)(4).

Department's discretion when choosing appropriate companies' financial statements to calculate the surrogate financial ratios.[292]

In the original less-than-fair value investigation, the Department found that downstream products that are drawn from wire rod are comparable merchandise to steel threaded rod.[293] With respect to the available financial statements placed on the record from Ukraine, although the RMB/IFI Group submitted the financial statements for a Ukrainian company, Dneprometiz, that produces comparable merchandise, these financial statements are from 2011 and thus not contemporaneous with the POR.[294] The Department finds that there are multiple financial statements that are available on the record from Thailand from producers of comparable merchandise that are contemporaneous with the POR and are usable for calculating the surrogate financial ratios.[295] Specifically, Petitioner provided the fiscal year ("FY") 2013 financial statements of Sahasilp Rivet Industrial Co., Ltd. ("Sahasilp") and Thai Mongkol Fasteners Co., Ltd. ("Thai Mongkol"), which both are producers of comparable merchandise (*i.e.*, nails and fasteners) to steel threaded rod.[296] Additionally, there is a third set of FY 2013 Thai financial statements, L.S. Industry Co., Ltd. ("L.S. Industry"), submitted by the RMB/IFI Group on the record and the Department notes that this company is also a producer of comparable merchandise (*i.e.*, nails). [297] For further discussion of the Department's selection of financial statements used to calculate the surrogate financial ratios in the final results, *see* Comment 9.

In sum, the Department finds that only Thailand offers multiple financial statements that mirror the production experience of the RMB/IFI Group, are publicly available, contemporaneous with the POR, and sufficiently detailed and reliable, to allow the Department to accurately calculate the surrogate financial ratios.

Department's Position: While the Department finds that Thailand and Ukraine all satisfy the same level of economic development comparable to the NME country and significant-producer criteria for surrogate country selection purposes, in terms of the overall quality of data available for SVs, Thailand offers superior quality of data for the surrogate financial ratios. Accordingly, the Department finds that selecting Thailand as the primary surrogate country would allow the Department to best approximate the production experience of the RMB/IFI Group. Therefore, the Department has determined to select Thailand as the primary surrogate country for these final results.

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[292] *See, e.g., FMC Corp. v. United States*, 27 CIT 240, 251 (2003) (stating that the Department "has wide discretion in choosing among various surrogate sources"), *aff'd FMC Corp. v. United States*, 87 Fed. Appx. 753 (Fed. Cir. 2004).
[293] *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 at Comment 1.
[294] *See* the RMB/IFI Group's October 31, 2014, SV submission at Exhibits SV-7, 8, and 13.
[295] *See* Petitioner's October 31, 2014, SV submission at Exhibits 8-9; the RMB/IFI Group's March 31, 2015, at Exhibit 1.
[296] *Id.*
[297] *See* the RMB/IFI Group's March 31, 2015, SV Submission at Exhibit SV-1.

Comment 7: Surrogate Value for Steel Wire Rod and Round Bar

The RMB/IFI Group's Comments

- If the Department selects Thailand as the primary surrogate country and relies on Thai data to value the steel wire rod and round bar FOPs for the RMB/IFI Group, the Department should rely on the Thai domestic price data on the record. The Department has often stated a preference for domestic data especially when, like in the present case, the import data is significantly higher than the domestic price data.[298] The Department is not at liberty to ignore a respondent's own experience or the nature of the FOP for which a surrogate value is sought.[299] In other words, distorted prices are not appropriate surrogate values.
- The Department should value the RMB/IFI Group's steel wire rod and round bar FOPs using Thai domestic price data from the Asian Metal Market. The Asian Metal Market is a public source that tracks the prices of various metals in Asia. The domestic price data for steel wire rod is specific to the diameter of wire rod used by the RMB/IFI Group and is also specific to the carbon content for low-carbon wire rod. This information is more specific than the Thai import data because it specifies the actual diameters of the wire rod while the import data only provides that the diameter is under 14 mm. While the source is not contemporaneous with the POR, the Department can inflate the data, pursuant to its practice.
- There is also domestic price data on the record from TATA Steel (Thailand) ("TATA Steel"), a significant producer of steel wire rod in Thailand. In TATA Steel's public annual report, it provides domestic and export sales data for wire rod that is a reliable source for low-carbon wire rod. The data are published, public, and demonstrative of actual prices for a producer of steel threaded rod in Thailand.

Petitioner's Comments

- As explained above in Comment 6, if the Department chooses to calculate a margin for the RMB/IFI Group for the final results, Thailand has the best available information on the record for selecting the surrogate values for valuing the RMB/IFI Group's FOPs.

Department's Position: In valuing the FOPs, section 773(c)(1) of the Act instructs the Department to use "the best available information" from an appropriate ME country.[300] With respect to SV selection, "it is the Department's stated practice to use investigation or review period-wide price averages, prices specific to the input in question, prices that are net of taxes and import duties, prices that are contemporaneous with the period of investigation or review, and publicly available data."[301] As a consequence, the Department first attempts to find publicly available SVs from the primary surrogate country that are contemporaneous and representative of the FOPs being valued. In applying the Department's SV selection criteria, as mentioned above, the Department has found in numerous NME cases that the import data from GTA

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[298] *See Hebei Metals & Minerals Imp. & Exp. Corp. v. United States*, 366 F. Supp. 2d 1264, 1274 (CIT 2005).
[299] *See, e.g., Zhengzhou Harmoni Spice Co., Ltd., et. al. v. United States*, 617 F. Supp. 2d 1281, 1300 (CIT 2009); *Nation Ford Chemical v. United States*, 166 F. 3d 1373 (Fed. Cir. 1999).
[300] *See* 19 CFR 351.408(c)(2) ("{T}he Secretary normally will value all factors in a single surrogate country.") .
[301] *See* Policy Bulletin 04.1; *see also Diamond Sawblades and Parts Thereof from the People's Republic of China, Final Determination in the Antidumping Duty Investigation*, 71 FR 29303 (May 22, 2006) ("*Sawblades*") and accompanying Issues and Decision Memorandum at Comment 11.

represent the best available information for valuation purposes because they represent an average of multiple price points within a specific period and are tax-exclusive.[302]

Consistent with the Court's reasoning in *Zhengzhou Harmoni*, *Nation Ford* and *Rhodia*, the Department sought the best available information to duplicate the production experience of the RMB/IFI Group by valuing the RMB/IFI Group's reported steel wire rod input as closely as possible to the type of steel wire rod based on the criteria outlined above. The following data is on the record from Thailand to value the RMB/IFI Group's steel wire rod and round bar FOPs: 1) Thai import data from GTA that is specific to the carbon content and diameter of the RMB/IFI Group's steel wire rod and round bar; 2) the Thai domestic price data for steel wire rod and round bar from the Asian Metal Market; and 3) domestic price and export price data from TATA Steel for steel wire rod. While RMB/IFI Group cites to *Yantai Oriental Juice* and *Hebei Metals* in arguing domestic prices are more appropriate than import prices in valuing a SV when the import price is significantly higher, the Department notes that there are other criteria we must consider in selecting surrogate values. With respect to the export sales data for wire rod based on the TATA financial statement, the Department's affirmative finding that Thai steel threaded rod industry is dumping to the United States call into question the reliability of Thai export prices related to steel threaded rod. However, as explained above in Comment 6, such concerns do not extend to import prices of goods sold into Thailand, therefore the Department finds that the import prices in Thailand to be more reliable than export prices from Thailand. Moreover, with respect to TATA's domestic price data in its financial statement, the Department's preference is to rely on surrogate data that represents a broad-market average as opposed to data from a single company's experience that is not reflective of the entire industry. Accordingly, the Department does not find the domestic price from TATA to be the best available information as compared to the Thai import statistics for steel wire rod that are a broad-market average. Finally, even the RMB/IFI Group itself concedes that the steel wire rod data in TATA's financial statements are overly broad and not specific to the carbon content range of low-carbon wire rod used by RMB/IFI Group, although it argues such data is a conservative estimate.[303] Moreover, with respect to the export price quotes from TATA for medium-carbon and low-carbon wire rod, the Department notes that these price quotes are for a very narrow range of medium-carbon and low-carbon wire rod based on a single diameter.[304] In contrast, the HTS categories used by the Department for valuing the steel wire rod SV are POR import data that provide better coverage of the type of wire rod reported by the RMB/IFI Group based on low-carbon content and diameter.[305] Moreover, as the TATA price quotes were offered as a price for export, there is reason to question its reliability because of evidence that the price may be distorted due to the existence of Thai export subsidies.[306] For these reasons, the Department does not find either the TATA price data or the export price quotes for wire rod to be the best available information to value the RMB/IFI Group's wire rod input.

[302] *See, e.g., Sawblades,* and accompanying Issues and Decision Memorandum at Comment 11.
[303] *See* the RMB/IFI Group's Case Brief at 55.
[304] *See* the RMB/IFI Group's March 31, 2015, SV Comments at SV-10.
[305] *See* Surrogate Value Memo at Exhibit 1.
[306] *See Tires Final Results 2010-2011,* and accompanying Issues and Decision Memorandum at Comment 4.

Next, while the RMB/IFI Group argues that domestic price data for steel wire rod from Asian Metal Market are specific to the diameter of wire rod used by the RMB/IFI Group and are also specific to the carbon content for low-carbon wire rod, the Department disagrees. Specifically, the RMB/IFI Group points to the domestic price data from Asian Metal Market that are from a very narrow selection of three specific diameters and a single grade of low carbon wire rod, when the RMB/IFI Group reported to the Department usage of a much wider range of diameter and grade of low carbon wire rod.[307] In contrast, the HTS categories used by the Department for valuing the steel wire rod SV are import data that provide better coverage of the type of wire rod reported by the RMB/IFI Group based on low-carbon content and diameter.[308] Moreover, the import data the Department selected are contemporaneous with the POR, while the Asian Metal Market data are not. Accordingly, for purposes of these final results, and as outlined above, the Department finds that import data corresponding to the three HTS categories the Department used from the previous administrative review are the most suitable to the input in question, are from the primary surrogate country, are contemporaneous, and represent the best available information for valuing the RMB/IFI Group's wire rod consumption.

Comment 8: Surrogate Value for Labor

The RMB/IFI Group's Comments

- In past reviews, the Department valued labor using data published in the 2007 Census of the Government of Thailand's National Statistical Office ("NSO"). In this review, the RMB/IFI Group submitted 2011 industry-specific data from Thailand's NSO 2012 Census for the fabricated-metal products industry ("Thai NSO 2011 fabricated metal products labor data").
- The Department should revise its assumption that the labor data is based on 24 working days a month and 8 working hours each day. The 2012 Census data shows that the hourly rate should be based upon the actual hours that the rate is based upon. There is other record evidence demonstrating that the average Thai worker works on average between 45-60 hours per week.

Petitioner's Comments

- If the Department chooses to calculate a margin for the RMB/IFI Group for the final results, Thailand has the best available information on the record for selecting the surrogate values for valuing the RMB/IFI Group's FOPs.

Department's Position: The Department disagrees with the RMB/IFI Group that we should value labor using Thai NSO 2011 fabricated metal products labor data. The following labor values are on the record from Thailand: 1) Thai NSO quarterly manufacturing-specific data from the NSO for the POR ("Thai NSO POR-specific manufacturing labor data"); 2) Thai NSO 2011 fabricated metal products labor data; and 3) International Labor Organization ("ILO")'s Chapter 5B 2003 fabricated metal products data. In *Labor Methodologies*,[309] the Department announced that it will rely on labor cost data reported under International Labor Organization ("ILO")'s

[307] *See* RMB/IFI Group's April 16, 2014, SV submission at Exhibit SV-4.
[308] *See* Surrogate Value Memo at 3 and Exhibit 3.
[309] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor,* 76 FR 36092-36093 (June 21, 2011) ("*Labor Methodologies*").

Chapter 6A, as its primary data source.[310] Additionally, we stated 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.[311] Although the POR Manufacturing-Specific NSO data are not from the ILO, we find that this fact does not preclude us from using this source for valuing labor. In *Labor Methodologies*, we decided to change to the use of ILO Chapter 6A from the use of ILO Chapter 5B data, on the rebuttable presumption that Chapter 6A data better account for all direct and indirect labor costs. We did not, however, preclude all other sources for evaluating labor costs in NME AD proceedings. Rather, we continue to follow our practice of selecting the best available information to determine SVs for inputs such as labor.

For these final results, we did not select the 2003 ILO data because the information is more than 10 years old and this Chapter 5B data are not the more comprehensive Chapter 6A data the Department prefer. Instead, we have valued labor using manufacturing-specific data from the quarterly-specific POR data (second and third quarter of 2013) from the Government of Thailand, National Statistical Office, Labor Force Survey of Whole Kingdom. To calculate the total labor cost for employees and private employees in the "manufacturing" industry for each available quarter of the POR, the Department calculated a total labor cost, which includes average wage, bonus, other income, overtime, food, clothes, housing, and other costs.[312] When compared to the 2011 Thai NSO fabricated metal products data offered by the RMB/IFI Group, the Department finds that the POR labor data are more contemporaneous and otherwise meet the Department's selection criteria as a surrogate value as well as the 2011 Thai NSO fabricated metal products data. While the RMB/IFI Group argues that the Department should devise the labor calculation for the final results based on 45-60 hours per week, the Department disagrees, as this assumption is based on a different survey data than the data the Department is relying on for the final results. Because the 45-60 hours per week labor hours figure is the survey data for one sub industry code, the RMB/IFI Group has not provided and the Department does not possess the appropriate information to combine these two different surveys.

Comment 9: Surrogate Financial Ratios and Treatment of Labor Expenses

<u>The RMB/IFI Group's Comments</u>

- If the Department chooses Ukraine as the primary surrogate country, the Department should calculate the surrogate financial ratios using the FY 2011 financial statement for PJSC Dneprometiz, which is a producer of fasteners, steel wire, and nails.
- If the Department chooses Thailand as the primary surrogate country, the Department should calculate the surrogate financial ratios using the FY 2013 financial statement for a Thai company, L.S. Industry, which was used in the prior review.
- Petitioner submitted the FY 2013 financial statements for three Thai producers, Hitech Fastener Manufacturer (Thailand) Co., Ltd. ("Hitech"), Thai Mongkol, and Sahasilp, but the Department has reason to believe that Sahasilp and HiTech receive countervailable subsidies. The suspension of Sahasilp's website also raises questions regarding the financial situation of the company and whether it is still in production.

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[310] *Id.*
[311] *Id.*
[312] *See* Surrogate Value Memo at Exhibit 9.

- Additionally, the Department should determine that Sahasilp and Thai Mongkol are not producers of comparable products.
- In calculating the surrogate financial ratios, the Department should classify any labor costs delineated in the financial statement as "labor" if these expenses are also included in the expenses included in the surrogate value for labor. Specifically, the Thai NSO 2011 fabricated metal products labor data includes all types of labor, including production, selling, and administrative labor costs. By doing this, the Department will avoid double-counting.

<u>Petitioner's Comments</u>

- As explained above in Comment 6, if the Department chooses to calculate a margin for the RMB/IFI Group for the final results, Thailand has the best available information on the record for selecting the surrogate values for valuing the RMB/IFI Group's FOPs.

Department's Position:

A. Selection of Surrogate Financial Statements

In accordance with 19 CFR 351.408(c)(4), the Department normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country to value manufacturing overhead, general expenses, and profit.[313] Additionally, for purposes of selecting surrogate producers, the Department examines how similar a proposed surrogate producer's production experience is to the NME producer's production experience.[314] However, the Department is not required to "duplicate the exact production experience of" an NME producer, nor must it undertake "an item-by-item analysis in calculating factory overhead."[315] Additionally, the Department has a strong preference to value all FOPs in a single surrogate country pursuant to 19 CFR 351.408(c)(2), as well as a practice "to only resort to a secondary surrogate country if data from the primary surrogate country are unavailable or unreliable."[316] Further, courts have recognized the Department's discretion when choosing appropriate companies' financial statements to calculate surrogate financial ratios.[317]

The record contains multiple FY 2013 financial statements from Thailand and a single FY 2011 financial statement from Ukraine. Because, as noted in Comment 6 above, the Department selected Thailand as the primary surrogate country in this review, we have determined not to use

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[313] *See Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews*, 72 FR 52049 (September 12, 2007) and accompanying IDM at Comment 2.
[314] *See Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010) and accompanying IDM at Comment 13.
[315] *See Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1999)*; see also Magnesium Corp. of Am. v. United States*, 166 F.3d 1364, 1372 (Fed. Cir. 1999).
[316] *See Jiaxing Brother Fastener Co. v. United States*, 11 F. Supp. 3d 1326, 1332-33 (CIT 2014) ("*Jiaxing Brother*") quoting *Sodium Hexametaphosphate From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 59375 (September 27, 2012) ("*Sodium Hex*") and accompanying IDM at Comment I.
[317] *See, e.g., FMC Corp. v. United States*, 27 CIT 240, 251 (CIT 2003) (holding that the Department can exercise discretion in choosing between reasonable alternatives), *aff'd FMC Corp. v. United States*, 87 F. App'x 753 (Fed. Cir. 2004).

the single FY 2011 financial statement from PJSC Dneprometiz because this financial statement is not from the primary surrogate country. As noted above, the Department has a strong preference, reflected in 19 CFR 351.408(c)(2), to value all FOPs in a single surrogate country and to "to only resort to a secondary surrogate country if data from the primary surrogate country are unavailable or unreliable."[318] Because we do not find that surrogate financial data from Thailand, our primary surrogate country, are unavailable or unreliable, the Department does not consider the financial statement from Ukraine, which unlike the Thai financial statements on the record is not contemporaneous with the POR, to be a better SV source than the financial statements from Thailand.

For Thailand, the Department has the following four financial statements on the record: 1) FY 2013 financial statement for Hitech, a producer of screws; 2) FY 2013 financial statement for L.S. Industry, a nail and steel chain producer; 3) FY 2013 financial statement for Sahasilp, a producer of screw, rivets, bolts, etc.; and 4) FY 2013 financial statement for Thai Mongkol, a fastener producer.[319] The Department finds that all of these financial statements are publicly available, complete, and audited.[320]

The RMB/IFI Group contends that the Department should not use the FY 2013 financial statements for Hitech and Sahasilp because there is record evidence to believe or suspect that both companies benefitted from countervailable subsidies (*i.e.*, investment promotions).[321] For Hitech, the Department is not considering these financial statements because they indicate that there is reason to believe or suspect that Hi-Tech benefitted from a countervailable subsidy. Specifically, the notes of the FY 2013 financial statements list that Hi-Tech received a BOI investment promotion.[322] However, for Sahasilp, the Department notes that the RMB/IFI Group only provided a printout from Thailand's Board of Investment ("BOI") that lists Sahasilp's name but this same printout also indicates, "Account Suspended."[323] The Department reviewed the FY 2013 financial statement for Sahasilp and finds there is no record evidence, such as a reference to a BOI program, in these financial statements to indicate that the Department should have reason to believe or suspect that Sahasilp benefitted from a countervailable subsidy.

While the RMB/IFI Group also argues that there is reason to question the financial situation of Sahasilp since the company's webpage was suspended, the Department notes that the webpage printout for Sahasilp that is on the record of this review was accessed in October 2014 and the Sahasilp financial statement is from FY 2013.[324] The Department finds that the RMB/IFI Group's arguments regarding Sahasilp's financial situation and whether it was in production in

[318] *See Jiaxing Brother* quoting *Sodium Hex* and accompanying IDM at Comment I.
[319] *See* Petitioner's October 31, 2014, SV Comments at Exhibits 8 and 9.
[320] *Id.*; see also RMB/IFI Group's March 31, 2015 submission at Exhibit 1.
[321] *See* the RMB/IFI Group's November 7, 2014, Rebuttal SV Comments at Exhibits 15 and 17.
[322] *See* Petitioner's October 31, 2014, SV submission at Exhibit 8 (Note 1 of Hi-Tech's FY 2013 financial statement); *Steel Wire Garment Hangers From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 65616, 65618 (November 5, 2014) and accompanying Preliminary Decision Memorandum.
[323] *See* the RMB/IFI Group's November 7, 2014, Rebuttal SV Comments at Exhibit SV-17.
[324] *Id*., at SV 17.

2013 is speculative and not supported by record evidence. Therefore, the Department finds that the record evidence does not support disregarding Sahasilp's FY 2013 financial statement.

The RMB/IFI Group also raises questions regarding whether Sahasilp and Thai Mongkol are producers of comparable merchandise because the websites of each company show that both produce numerous non-comparable products, such as automotive parts, machinery, and furniture.[325] Although the regulations do not define what constitutes "comparable merchandise," it is the Department's practice to, where appropriate, apply a three-prong test that considers: (a) physical characteristics; (b) end uses; and (c) production process.[326] Additionally, for purposes of selecting surrogate producers, the Department examines how similar a proposed surrogate producer's production experience is to the NME producer's production experience.[327] However, the Department is not required to "duplicate the exact production experience of an NME producer", nor must it undertake "an item-by-item analysis in calculating factory overhead."[328]

We note that the statute does not define "comparable merchandise." It is the Department's practice, where appropriate, when determining whether the company is a producer of comparable merchandise to consider all information on the record.[329] While instances where information as to inputs and production is on the record for a producer of comparable merchandise, such information may be useful in determining whether it is appropriate to use. However, the absence of such information does not exclude a producer of comparable merchandise from consideration. While Sahaslip's and Thai Mongkol's financial statements do not indicate the types of inputs they consume in their production processes, the record does contain information as to kinds of merchandise they produce (*e.g.*, nails, fasteners, nuts, bolts, springs, etc.), merchandise the Department has found to be comparable to steel threaded rod.[330] In the original antidumping duty investigation of steel threaded rod from the PRC, the Department found that downstream products of wire rod that are drawn from wire rod are comparable merchandise to steel threaded rod.[331] The website printout for Thai Mongkok indicates that this company has wire-cutting and threading machines that are typical of a company that uses wire rod in its production processes.[332] Additionally, the website printout for Sahasilp states that this company produces

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[325] *See* the RMB/IFI Group's November 7, 2014, Rebuttal SV Comments at Exhibits 15 and 17.
[326] *See, e.g., Certain Woven Electric Blankets from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 38459 (July 2, 2010) and accompanying Issues and Decision Memorandum at Comment 2.
[327] *See Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping,* 75 FR 20335 (April 19, 2010) and accompanying Issues and Decision Memorandum at Comment 13.
[328] *See Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (CAFC 1999); *see also Magnesium Corp. of Am. v. United States*, 166 F.3d 1364, 1372 (CAFC 1999).
[329] *See Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, 2012–2013*, 80 FR 13332 (March 13 2015) ("*Hangers 5th AR*") and accompanying Issues and Decision Memorandum at Comment 3.
[330] *Id*.
[331] *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 at Comment 1.
[332] *See* Petitioner's October 31, 2014, SV Comments at Exhibit 10.

merchandise, such as springs, from high-carbon steel wire.[333] Therefore, we find that Sahaslip and Thai Mongkol produce comparable merchandise for purposes of determining financial ratios for respondents.

The Department notes that no interested party raised arguments that the third company, L.S. Industry, which produces nails and steels chains, does not produce comparable merchandise. Thus, the Department finds that L.S. Industry produces comparable merchandise, as we did in the prior review.[334] Accordingly, for the final results, we will use the FY 2013 financial statements from L.S. Industry, Sahasilp, and Thai Mongkol, because they are complete, audited, publicly available, and from the primary surrogate country and are otherwise suitable for calculating the surrogate financial ratios.[335]

B. Treatment of Labor Expenses

The Department disagrees with the RMB/IFI Group that various expenses identified in the financial statements for L.S. Industry, Sahasilp, and Thai Mongkol should be classified as labor expenses instead of selling, general, and administrative ("SG&A") expenses.[336] In *Labor Methodologies*, the Department addressed concerns of double-counting labor costs when it stated that it would adjust "the surrogate financial ratios when the available record information—in the form of itemized indirect labor costs—demonstrates that labor costs are overstated."[337] In our review of the record, we have determined that the labor costs in the NV calculation are not overstated. Given the nature of the information that serves as the source for financial ratio calculations in NME cases (*i.e.*, surrogate financial data from a company that is not a party to the proceeding), we cannot "go behind" a surrogate financial statement to determine precisely what each item includes or to what activity it relates.[338] Therefore, when assigning the various line items to particular categories for our financial ratio calculations, we prefer to rely on the classification of these items from the surrogate financial statement, unless there is good reason to believe the classification is not accurate.[339] Accordingly, it is the Department's practice to treat

[333] *Id.*, at Exhibit 9.
[334] *See Fourth AR Steel Threaded Rod China Final* and accompanying Issues and Decision Memorandum at Comments 1 and 3.
[335] *See* Surrogate Value Memorandum.
[336] *See* the RMB/IFI Group's November 7, 2014, Rebuttal SV Comments at Exhibit SV-14 (Thai Mongkol: the following expenses are reported by the RMB/IFI Group as direct labor instead of SG&A expenses (salary and employee expenses, allowance and employee welfare, social security fund contribution, compensation fund, training and seminar, and entertainment expenses); Sahasilp: the following expenses are reported by the RMB/IFI Group as direct labor instead of SG&A expenses (salaries, wages, and additional benefits; bonus; social security and compensation funds; entertainment; and employment welfare); the RMB/IFI Group's March 31, 2015, SV Submission at Exhibit 1 (L.S. Industry, which lists the following as SG&A: salary and bonus, social security and compensation, insurance premium and entertainment expenses).
[337] *See Antidumping Methodologies in Proceeding Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092, 36094 (June 21, 2011) ("*Labor Methodologies*").
[338] *See, e.g., Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2009-2010*, 78 FR 11143 (February 15, 2013) and accompanying Issues and Decision Memorandum at Comment 16.
[339] *See, e.g., Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 79 FR 4875 (January 30, 2014) and accompanying Issues and Decision Memorandum at Comment 6.D.

labor in its financial ratio calculations in the same manner as the surrogate company disaggregates its labor costs.[340] Thus, we will treat SG&A labor as a SG&A expense in each company's surrogate financial ratio calculations.

The Department disagrees with the RMB/IFI Group's interpretation of *Labor Methodologies* that because the Department found that the International Labor Orgaization ("ILO") Chapter 6A data cover all types of labor, the Department will remove all labor items from SG&A to avoid double-counting regardless of the data source.[341] Contrary to the RMB/IFI Group's suggestion that due to this it is the Department's practice to remove all labor items from SG&A to avoid double-counting, *Labor Methodologies* states that the Department will make such an adjustment only when the financial statements allow such an adjustment and the record evidence demonstrates that the surrogate financial ratios are overstated.[342] As explained in *Wooden Bedroom Furniture 2012 Final Results*, the labor expenses included in the denominator of the surrogate financial ratios are direct and indirect expenses related to manufacturing labor.[343] Additionally, the Department notes that administrative and sales personnel are not employed in manufacturing products, and thus the wages, benefits, and expenses for these non-manufacturing personnel are appropriately considered SG&A expenses.[344]

Contrary to the RMB/IFI Group's suggestion that the SG&A labor expenses in each company's financial statements should be treated as labor because the Thai NSO 2011 fabricated-metal labor data includes both production and selling/administrative labor, the Department notes that it has not selected the Thai NSO 2011 fabricate-metal labor data as the best available information to value the RMB/IFI Group's direct and indirect labor FOPs. Instead, as explained above in Comment 8, the Department selected the Thai NSO POR-specific manufacturing labor data as the best available information for valuing the RMB/IFI Group's direct and indirect labor FOPs. Unlike the Thai NSO 2011 fabricated-metal labor data, which includes both manufacturing and SG&A labor, the Thai NSO POR Manufacturing-Specific labor data, which is the selected labor SV for these final results, do not include SG&A labor because the Department previously found this labor source identifies individual data line items for "manufacturing" and "administrative and support activities."[345] In the prior review, the Department found for the same NSO source, which is being used as the labor SV for these final results, that there were separate data line items for "manufacturing" and "administrative and support activities" line items.[346] Therefore, the Department found that this NSO labor source did not include SG&A, which still holds true

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[340] *See* Surrogate Value Memo; *Drawn Stainless Steel Sinks from the People's Republic of China: Investigation, Final Determination*, 78 FR 13019 (February 26, 2013) and accompanying Issues and Decision Memorandum at Comment 4 ("*Stainless Steel Sinks*").
[341] *See Labor Methodologies*, 76 FR at 36093-94.
[342] *Id*.
[343] *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review: 2012*, 79 FR 51954 (September 2, 2014) ("*Wooden Bedroom Furniture 2012 Final Results*") and accompanying Issues and Decision Memorandum at Comment 6.
[344] *Id.; see also Steel Hangers AR4 Final Results* and accompanying Issues and Decision Memorandum at Comment 7.
[345] *See Fourth AR Final Results of Steel Threaded Rod* and accompanying Issues and Decision Memorandum at Comment 3; the RMB/IFI Group's March 31, 2015, SV Comments at Exhibit SV-4.
[346] *Id*.

for the Thai NSO POR-specific manufacturing labor data since the line items for this data source are only specific to "manufacturing."[347]

Accordingly, the SG&A labor expenses listed in the FY 2013 financial statements for L.S. Industry, Sahasilp, and Thai Mongkol are for personnel not employed in manufacturing products, and thus these expenses are appropriately considered SG&A expenses. Specifically, for L.S. Industry, the Department finds that it has properly classified the expenses, (*i.e.,* direct labor, and outsourced wages), identified in the financial statement as direct labor and other expenses, such as salary and bonus, as SG&A expenses.[348] Additionally, for Sahasilp, the Department finds that it has properly classified the expenses (*i.e.,* direct labor cost, and social security fund contribution), identified in the financial statement as direct labor and other expenses, such as bonus and employment welfare, as SG&A expenses.[349] Finally, for Thai Mongkol, the Department finds that it has properly classified the expenses (*i.e.,* direct labor cost and indirect labor cost), in the financial statement as direct labor and other expenses, such as salary and employee expenses, as SG&A expenses.[350]

VI. Conclusion

Based on our analysis of the comments received, we recommend adopting all of the above positions. 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 Enforcement and Compliance

3 November 2015
(Date)

[347] *See Fourth AR Final Results of Steel Threaded Rod* and accompanying Issues and Decision Memorandum at Comment 3; Petitioner's October 31, 2014, SV Comments at Exhibit 6.
[348] *See* Petitioner's October 31, 2014, SV Comments at Exhibit 8.
[349] *Id.*
[350] *Id.*