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November 14, 2016

**MEMORANDUM TO:** Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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

**SUBJECT:** Issues and Decision Memorandum for the Final Results of the Sixth 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<sup>1</sup> in the sixth administrative review of the antidumping duty ("AD") order<sup>2</sup> of certain steel threaded rod ("steel threaded rod") from the People's Republic of China ("PRC"). Following the *Preliminary Results*,<sup>3</sup> based on the analysis of the comments received and the record evidence, we continue to find that Bulgaria is the most appropriate surrogate country, and that the Bulgarian surrogate financial ratios are sufficiently reliable for calculation of an antidumping margin. We have both accepted and rejected certain suggested corrections to the margin program for New Oriental, one of the mandatory respondents. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

## II. Scope of the Order

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

<sup>1</sup> Vulcan Threaded Products Inc. ("Petitioner"), Jiaxing Brother Fastener Co., Ltd., RMB Fasteners Ltd., and IFI & Morgan Ltd. (collectively "RMB/IFI"), Zhejiang New Oriental Fastener Co., Ltd. ("New Oriental").

<sup>2</sup> See *Certain Steel Threaded Rod from the People's Republic of China: Notice of Antidumping Duty Order*, 74 FR 17154 (April 14, 2009) ("*Steel Threaded Rod AD Order*").

<sup>3</sup> See *Certain Steel Threaded Rod from the People's Republic of China: Preliminary Results and Partial Rescission of the Antidumping Duty Administrative Review; 2014-2015*, 81 FR 29843 (May 13, 2016) ("*Preliminary Results*") and accompanying Preliminary Decision Memorandum.



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 13, 2016, the Department published in the *Federal Register* the *Preliminary Results*.<sup>4</sup> The period of review (“POR”) is April 1, 2014, through March 31, 2015. In accordance with 19 CFR 351.309, we invited parties to comment on our *Preliminary Results*. On June 20, 2016, Petitioner and New Oriental submitted case briefs.<sup>5</sup> On June 27, Petitioner, New Oriental, and

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<sup>4</sup> See *Preliminary Results*.

<sup>5</sup> See Letter to the Secretary from Petitioner, “Sixth Administrative Review of Steel Threaded Rod from China:

RMB/IFI submitted rebuttal briefs.<sup>6</sup> On August 10, 2016, the Department extended the deadline for the final results to November 14, 2016.<sup>7</sup>

#### IV. Discussion of the Issues

##### Comment 1: Selection of Surrogate Country

Because the Department treats the PRC as a non-market economy (“NME”), when calculating normal value (“NV”), section 773(c)(4) of the Tariff Act of 1930, as amended (“the Act”), directs the Department to value the factors of production (“FOPs”), to the extent possible, in a surrogate country that is (a) at a level of economic development comparable to the PRC, and (b) a significant producer of comparable merchandise.<sup>8</sup> The Act specifically directs the Department to identify one or more market economy countries that are “at a *level* of economic development comparable to that of the nonmarket economy country.”<sup>9</sup> 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. GNI is the primary indicator of a country’s level of economic development.<sup>10</sup> In determining the appropriate surrogate values (“SVs”), the Department strongly favors selecting all SVs from a single country.<sup>11</sup>

In the *Preliminary Results*, the Department determined that Bulgaria, Ecuador, Mexico, Romania, South Africa, and Thailand were countries at the PRC’s level of economic development.<sup>12</sup> Moreover, the Department analyzed relevant export data and found that these countries are all significant producers of comparable merchandise.<sup>13</sup> Parties did not challenge these findings from the *Preliminary Results*.

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Petitioner’s Case Brief” (June 20, 2016) (“Petitioner’s Case Brief”); Letter to the Secretary from New Oriental, “Steel Threaded Rod from China, New Oriental Case Brief” (June 20, 2016) (“New Oriental’s Case Brief”).

<sup>6</sup> See Letter to the Secretary from Petitioner, “Sixth Administrative Review of Steel Threaded Rod from China: Petitioner’s Rebuttal Brief” (June 28, 2016) (“Petitioner’s Rebuttal Brief”); Letter to the Secretary from New Oriental, “Steel Threaded Rod from China, New Oriental Rebuttal Brief” (June 27, 2016) (“New Oriental’s Rebuttal Brief”), Letter to the Secretary from RMB/IFI, “Steel Threaded Rod from the People’s Republic of China: Rebuttal Brief” (June 27, 2016) (“RMB/IFI Rebuttal Brief”).

<sup>7</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary of AD/CVD Operations, through James C. Doyle, Director, Office V, from Andrew Devine, International Trade Compliance Analyst, “Certain Steel Threaded Rod from the People’s Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review,” (August 10, 2016).

<sup>8</sup> See also Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (“Policy Bulletin 04.1”).

<sup>9</sup> See section 773(c)(4)(A) of the Act (emphasis added).

<sup>10</sup> See, e.g., *Pure Magnesium from the People’s Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 75 FR 80791 (December 23, 2010) (“*Magnesium from the PRC*”) and accompanying Issues and Decision Memorandum at Comment 4.

<sup>11</sup> See 19 CFR 351.408(c)(2).

<sup>12</sup> See *Preliminary Results* and accompanying Decision Memorandum at “Surrogate Country” section.

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

In the *Preliminary Results*, the Department selected Bulgaria as the surrogate country because Bulgaria had the best available data on the record.<sup>14</sup>

#### Petitioner's Comments

- The Department should select Thailand as the primary surrogate country because the Thai tariff codes are more specific regarding the carbon content of wire rod and round bar, the two main inputs of subject merchandise.
- The Department has consistently emphasized carbon content in selecting surrogate steel values throughout the various administrative reviews of the order, and this review should be no different.
- While the Bulgarian wire rod and round bar data cover the full range of diameters used by the respondents, Thailand provides the best available information because Thai wire rod and round bar data are more specific with respect to carbon content.

#### RMB/IFI Group's Comments

- The Department should continue to use Bulgaria as the primary surrogate country because Bulgaria has the best available data on the record.
- Petitioner's arguments are improperly based on the premise that specificity of carbon content is more important than specificity of diameter, because in prior reviews the Department has emphasized that both elements are equally important.
- The Department correctly found that Thai tariff codes are as specific as Bulgarian (*i.e.*, EU) codes regarding carbon content because the respondents do not use inputs described by the additional delineations in the Thai code.
- The Department's finding that Thai tariff codes are as specific as Bulgarian codes regarding carbon content is consistent with prior reviews. Where the tariff codes between two possible surrogate countries are equally specific regarding carbon content, the Department should make its selection based on other factors, including diameter.
- There are serious issues regarding the reliability of Thai import statistics, due to customs value manipulation by Thai officials, as evidenced by a USTR report and the fact that Thai wire rod prices are significantly higher than global averages.
- There is a higher quantity and quality of financial statements available in Bulgaria.

#### New Oriental's Comments

- The Department should continue to use Bulgaria as the primary surrogate country because Bulgaria has the best available data on the record.
- Petitioner's argument that Thai tariff codes are more specific regarding carbon content is irrelevant because Thailand's additional specific tariff categories do not correspond to the steel materials used by New Oriental.
- There are serious concerns regarding the reliability of Thai import statistics, due to broad subsidies, Thai Customs Authority customs value manipulation, and determinations by the Department and the Thai antidumping authority that Thai prices as to steel threaded rod and low carbon steel rod input, respectively, are not fair. These concerns are evidenced by the

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

fact that Thai import values are 46 percent higher than domestic Thai prices and 40 percent higher than the average price from the five other potential surrogate countries.

- The Thai import data for wire rod and round bar are based on imports exclusively from one or two countries, making them not representative.

**Department’s Position:** The Department continues to find, based on our analysis detailed below and pursuant to section 773(c) of the Act, that Bulgaria is most appropriate surrogate country.

When the Department is reviewing 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 FOPs, valued in a surrogate market economy (“ME”) country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.<sup>15</sup> If more than one country meets each of these criteria, “the country with the best factors data is selected as the primary surrogate country.”<sup>16</sup> No parties dispute that both Bulgaria and Thailand are at a level of economic development comparable to the PRC and are significant producers of comparable merchandise. Accordingly, we examine the factors data for the key components of NV available on the record from each country, below.

The *Policy Bulletin* explains 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.”<sup>17</sup>

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 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 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.<sup>18</sup> Moreover, it is the Department’s practice to carefully consider the available evidence in light of

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<sup>15</sup> See Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (“*Policy Bulletin*”).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> 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.

the particular facts of each industry when undertaking its analysis of valuing the FOPs.<sup>19</sup> 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.<sup>20</sup>

Interested parties placed SV data on the record for Bulgaria and Thailand. We examined that data to determine which surrogate country contained the best available information for valuing FOPs.

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 valuation of steel threaded rod. Throughout the respondents’ questionnaire responses, the respondents have consistently stated that they only consume low carbon steel inputs in the production of the subject merchandise.<sup>21</sup> Accordingly, where information is available, the Department sought the best available source to value steel as specifically as possible to the type of steel consumed by the respondents.

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.<sup>22</sup> With respect to the Global Trade Atlas (“GTA”) import data on the record from Bulgaria and Thailand for the POR, the Department finds that both the Bulgarian and 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 the respondents during the POR.<sup>23</sup> Therefore, the Department finds that both countries’ steel import data are specific with regards to carbon content. The Department reached this finding after considering the grades of steel used by the mandatory respondents, as reported, and the various carbon content sub-categories in the two countries’ HTS systems.

New Oriental reports purchasing wire rod inputs with carbon content less than 0.20% and with diameters ranging between 6.5mm and 32mm.<sup>24</sup> New Oriental reports purchasing round bar

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<sup>19</sup> 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.

<sup>20</sup> See, e.g., *Sixth Mushrooms AR* at Comment 1.

<sup>21</sup> See e.g., New Oriental’s January 27, 2016 Supplemental Sections A & C questionnaire responses at 20; RMB/IFI Group’s March 8, 2016, Supplemental questionnaire response at 3.

<sup>22</sup> 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.

<sup>23</sup> See New Oriental’s December 7, 2015, SV submission at Exhibits SV-4a; Petitioner’s December 7, 2015 SV submission at Exhibit 1.

<sup>24</sup> See Letter to the Secretary from New Oriental, “Steel Threaded Rod from China,” (December 12, 2015) (“*New Oriental Surrogate Value Comments*”) at Exhibit SV-3.

inputs with carbon content less than 0.20% and with diameters ranging between 32mm and 62 mm.<sup>25</sup> RMB/IFI reports purchasing wire rod inputs with carbon content less than 0.20%. RMB/IFI reports purchasing round bar inputs with carbon content between 0.09% and 0.20% and with diameters ranging between 20 mm and 70 mm.<sup>26</sup> Additionally, RMB/IFI reports that when purchasing wire rod inputs, its only purchasing criterion regarding carbon content is the 0.20% cap.<sup>27</sup>

Thai HTS numbers specify wire rod inputs within a single diameter range (less than 14 mm) divided into seven different carbon content ranges. In addition, Thai HTS numbers specify round bar inputs within a single carbon content range (not less than 0.08% but not more than 0.23% of carbon) divided into four diameter ranges: diameter not exceeding 30 mm (7214.99.90.010), diameter exceeding 30 mm but not exceeding 40 mm (7214.99.90.013), diameter exceeding 40 mm but not exceeding 60 mm (7214.99.90.016), and diameter exceeding 60 mm (7214.99.90.019).

Bulgarian HTS numbers (which use the EU system) specify wire rod inputs within the two different diameter ranges: less than 14 mm (7213.91), and “other” (*i.e.*, 14 mm or greater; 7213.99). The first diameter range is divided into four different carbon content ranges: 0.06% or less of carbon (7213.91.41), more than 0.06% but less than 0.25% of carbon (7213.91.49), 0.25% or more but not more than 0.75% of carbon (7213.91.70), and more than 0.75% of carbon (7213.91.90). The second diameter range is divided into two carbon content ranges: less than 0.25% of carbon (7213.99.10), and 0.25% or greater of carbon (7213.99.90). Bulgarian HTS numbers specify round bar inputs in two carbon content ranges (less than 0.25%, and greater than or equal to 0.25%) and two diameter ranges within each carbon content range (less than 80 mm, and greater than or equal to 80 mm).

As evidenced above, and as emphasized by Petitioners, the Thai HTS system includes more individual carbon content categories for wire rod with diameters smaller than 14 mm than the Bulgarian system does. However, the existence of more carbon content categories alone does not necessitate a finding that Thai data are more specific. Because neither mandatory respondent specified the carbon content of inputs below certain percentages (*i.e.*, 0.20 percent), further specification of low carbon wire rod below the same percentages in the Thai HTS code does not provide a more precise surrogate value. Wire rod from each of the carbon content categories below those threshold percentages was used in the production of subject merchandise. Because both HTS systems specify wire rod carbon contents roughly equal to and less than the threshold percentages (below 0.23% of carbon in the Thai system and below 0.25% in the Bulgarian system), both systems are equivalently specific regarding wire rod carbon content.

Similarly, the import data for round bar are equivalently specific regarding carbon content in both HTS systems. The Thai round bar HTS categories cover carbon content between 0.08% of carbon and 0.23% of carbon (*i.e.*, roughly equal to inputs used by mandatory respondents), while

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<sup>25</sup> *Id.*

<sup>26</sup> *See* RMB/IFI Rebuttal Brief at 6.

<sup>27</sup> *Id.*

the Bulgarian round bar HTS categories cover carbon content less than 0.25% (*i.e.*, roughly equal to inputs used by mandatory respondents).

Because the Department finds that data from both countries are equivalently specific with respect to carbon content of steel inputs, the analysis must turn to other factors affecting data suitability, primarily the specificity of the data regarding diameter of steel inputs.

Based on the Thai and Bulgarian HTS categories above, the Department finds Bulgarian data are more specific with regard to diameter of steel inputs. With respect to round bar, available data from both countries cover the full range of diameters used by the mandatory respondents. With respect to wire rod, however, the Thai HTS categories only cover the lower range of wire rod diameters used by the mandatory respondents (*i.e.*, less than 14mm), while the Bulgarian HTS categories cover the full range of wire rod diameters used by respondents. Specifically, the Thai HTS data do not cover wire rod inputs reportedly used by respondents with diameters between 14mm and 32mm.<sup>28</sup> The steel input FOPs have overwhelming importance in the NV calculation. Our above analysis of the SVs on the record for those steel inputs leads the Department to conclude that with respect to carbon content, both Thai and Bulgarian data are equivalent. Similarly, the Thai and Bulgarian data are equivalent with respect to round bar diameter information. However, regarding wire rod diameter information, the Bulgarian data are more specific than the Thai data. Given that both respondents consume significantly more wire rod than round bar,<sup>29</sup> the Department has placed more weight on the wire rod finding than the round bar finding, and concluded that the data from Bulgaria are the best available information for surrogate valuation purposes, because the information for valuing the primary inputs is the closest match to respondents' FOPs on the record, and the other FOP SV Bulgarian information is equivalent to the other SV information on the record.

These findings are consistent with the Department's approach in prior administrative reviews of this antidumping order. In prior reviews, the Department has never determined that Thai steel import data are more specific than Bulgarian data with regard to carbon content, having not faced that choice before now. Nor has the Department ever determined that Thai data are more specific than that of any country that uses the EU HTS designations, when the record contained data for the relevant EU HTS codes.<sup>30</sup> In fact, in the most recent review, the Department found that wire rod data from both Thailand and Ukraine, which also uses the EU HTS system, were equivalently specific regarding carbon content.<sup>31</sup> Furthermore, the Department disagrees with the erroneous premise of Petitioner's argument: that specificity of carbon content is more important than specificity of diameter.<sup>32</sup> In prior reviews, the Department has emphasized the

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<sup>28</sup> See New Oriental Surrogate Value Comments at Exhibit SV-3.

<sup>29</sup> See Letter to the Secretary from New Oriental, "Steel Threaded Rod from China," (filed December 21, 2015) ("New Oriental SV Rebuttal Comments") at 5.

<sup>30</sup> Cf. *Certain Steel Threaded Rod from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 69938 (November 12, 2015) ("AR5"), and accompanying Issues and Decision Memorandum at 53 (wherein the Department found that Thai round bar input data was more specific than Ukrainian data because only Ukraine's six-digit "basket category" was on the record, compared to Thailand's ten-digit category).

<sup>31</sup> *Id.*

<sup>32</sup> See Petitioner's June 20, 2016 case brief at 1-6.



importance of both carbon content and diameter, without elevating one factor over the other.<sup>33</sup> The Department again declines to establish a hierarchy of importance between these two factors in this review as there is no evidentiary basis on the record to do so.

The Department has made these findings without addressing in depth RMB/IFI and New Oriental's arguments regarding the reliability of Thai import statistics or the relative quality of Bulgarian financial statements. The Department finds that Bulgaria has the best available data for the reasons articulated above, namely that Bulgarian import data are more specific than Thai import data regarding the diameter of wire rod and round bar inputs used by both mandatory respondents, and not due to any alleged unreliability in the Thai import data or financial statements. In prior reviews, the Department has found that Thai import data and financial statements are both reliable despite RMB/IFI's concerns,<sup>34</sup> and the Department does not now depart from those conclusions.

## **Comment 2: Bulgarian Financial Ratios**

In the *Preliminary Results*, the Department calculated the surrogate financial ratios from the 2014 annual reports of VTPG-Stroyamat ("VTPG") and Special Wires and Nails ("SW&N"). The SW&N annual report classified "Subcontractor" services as selling, general and administrative ("SG&A") expenses, without additional explanation.<sup>35</sup>

### New Oriental's Comments

- If the Department selects Bulgaria as the primary surrogate country and relies on available Bulgarian financial reports to calculate financial ratios, the Department should exclude the line item "subcontractors" from SG&A expenses, as shown in the SW&N financial report, and recognize this cost as direct labor.
- By definition a "subcontractor" is hired by a general contractor to perform a specific task as part of a project. The existence of a subcontractor is dependent on the existence of a contractor first. Based on this definition, the subcontractor should be a direct cost of the product or service sold by SW&N rather than a SG&A expense since SW&N is the original contractor and the service provided by the "subcontractors" must be related to the product or service that SW&N provides to its customers.
- SW&N's financial statement indicates that subcontractor costs are not SG&A expenses. The subcontractor expense is the largest expense in the SG&A category of SW&N's financial report, but it is vague compared to more detailed line item expenses within the SG&A category. Therefore subcontractors cannot reasonably be classified as an SG&A expense.

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<sup>33</sup> See e.g., AR5 at 53.

<sup>34</sup> See *Certain Steel Threaded Rod from the People's Republic of China: Final Results of Antidumping Administrative Review; 2013-2014*, 80 FR 69938 (November 12, 2015), and accompanying Issues and Decision Memorandum at Comments 6 and 7; *Certain Steel Threaded Rod from the People's Republic of China: Final Results of Antidumping Administrative Review; 2012-2013*, 79 FR 71743 (December 3, 2014), and accompanying Issues and Decision Memorandum at Comment 1; *Certain Steel Threaded Rod from the People's Republic of China: Final Results of Third Antidumping Duty Administrative Review; 2011-2012*, 78 FR 66330 (November 5, 2013), and accompanying Issues and Decision Memorandum at Comment 1C.

<sup>35</sup> See *Decision Memorandum for Preliminary Results of Sixth Antidumping Duty Administrative Review: Certain Steel Threaded Rod from the People's Republic of China* (May 5, 2016).

- If the Department cannot determine it is a direct labor cost, subcontractor cost should be excluded from the calculation of surrogate financial ratios. In SW&N’s financial report, “subcontractor” expense is not a regular expense and there is no information indicating that it is related to the essential business of the company.
- It is the Department’s practice to calculate SG&A expense ratio using income and expenses relating to the general operations of the company. The Department should follow its practice and classify “income from service” and “other income” as offsets for SG&A expense in the final determination.
- SW&N’s 2014 financial report appears to have insufficient income and expense information to classify with accuracy, while VTPG 2014 financial report has sufficient information for calculating the financial ratios without flaws. The Department should only calculate the financial ratios based on the 2014 VTPG’s annual reports.

#### Petitioner’s Comments

- The Department properly classified subcontractor services as SG&A expenses. There is no logic to New Oriental’s assertion that the services of a subcontractor must relate to the direct costs of SW&N operations.
- Subcontractors can be engaged in any number of “SG&A-type” activities, such as payroll services, accounting, or security. Nothing on the record supports New Oriental’s implication that these expenses are costs associated with manufacturing.
- There is no basis for classifying subcontractor expense as additional direct labor or omitting such expenses from the SG&A ratio. The Department should reject New Oriental’s arguments with regard to the classification of subcontractor expenses.
- SW&N’s 2013 financial statement reflects similar costs to the 2014 financial statement, indicating that “income from service” and “other revenue” expenses were not extraordinary and should be considered as normal operating costs. However, if the Department agrees with New Oriental’s income items argument, it could recognize adjustments to the excluded income items as reductions and excluded losses as increases to the reported pretax profit.
- If Bulgaria is continued to be used as the primary surrogate country, the Department should continue to use the data of SW&N in the calculation of the surrogate overhead, SG&A, and profit ratios.

#### **Department’s Position:**

The Department disagrees with New Oriental’s arguments regarding the “subcontractor” expense and finds that the surrogate financial ratios calculated in the *Preliminary Results* are correct. The Department therefore finds that excluding certain line items in the SW&N 2014 financial report or excluding the SW&N report in its entirety is unnecessary.

There appears to be no factual basis for the claim made by New Oriental that the term “subcontractors” necessarily refers to direct labor consumed in the production of subject merchandise, rather than SG&A expenses. New Oriental’s interpretation of vague dictionary definitions describing a variety of contractor-subcontractor relationships,<sup>36</sup> and subsequent

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<sup>36</sup> See New Oriental Case Brief at Exhibit 1 (citing, e.g., the definition of “Subcontracting” from

application of this interpretation to the translated financial statements of a Bulgarian wire and nail company, is not evidence to support an exclusion of subcontractor expenses from the surrogate financial ratio calculations. Petitioner correctly asserts that the term “subcontractors” could accurately describe a variety of “SG&A-type” activities, such as payroll services, accounting, security, and office maintenance services, and nothing on the record indicates that this line item directly relates to production. In fact, the record evidence shows that SW&N has spoken to the matter clearly and unmistakably through the simple gesture of listing “subcontractors” in the SG&A section of its financial reports. Lacking any evidence suggesting otherwise, the Department finds no reason to depart from the plain meaning of the financial reports on the record.

However, the Department agrees with New Oriental’s arguments with respect to treatment of “income from service” and “other revenue” in SW&N’s financial reports. New Oriental correctly describes the Department’s policy with respect to SG&A offsets,<sup>37</sup> and the Department has included these two revenue categories as offsets to SG&A expense. The Department disagrees with Petitioner that the revenue line item “book value of assets sold” should be added into SW&N’s profit ratio. The Department’s practice with respect to line items detailed in surrogate financial statements that we determine should not be included in the ratio calculations, such as non-period income or expenses and investment income or expense, is to adjust profit.<sup>38</sup> Given the nature of the information that serves as the source for financial ratio calculations in non-market economy cases (*i.e.*, that it is based on 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.<sup>39</sup> 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.<sup>40</sup> Here, although in the calculation of financial ratios we have labelled “book value of assets sold” as an excluded item, this is because SW&N has already included it in its calculation of profit. As such, we have not included it a second time as suggested by Petitioner, because this would result in double counting this line item in the SW&N’s profit ratio.

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BusinessDictionary.com as “a business practice where main contractor hires additional individuals or companies called subcontractors to help complete a project. The main contractor is still in charge and must oversee hires to ensure project is executed and completed as specified in contract.”).

<sup>37</sup> See New Oriental Case Brief at 3, Exhibit 4; *Boltless Steel Shelving Units Prepackaged for Sale From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 80 FR 51779 (August 26, 2015) (“*Boltless Steel Shelving*”), and accompanying Issues and Decision Memorandum at Comment 8.

<sup>38</sup> See, *e.g.*, *Hand Trucks and Certain Parts Thereof from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 44008 (July 29, 2014) and accompanying Issues and Decision Memorandum at Comment 5.

<sup>39</sup> See, *e.g.*, *Diamond Saw Blades and Parts Thereof from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 78 FR 11143 (February 15, 2013) and accompanying Issues and Decision Memorandum at Comment 16.

<sup>40</sup> 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 6D.

Because the Department finds no error in its inclusion of the subcontractor line item in SG&A expenses, and because there is sufficient income and expense information in the SW&N financial reports, the Department does not need to address New Oriental's arguments regarding calculating surrogate financial ratios based solely on VTPG's financial reports.

### **Comment 3: Treatment of Unrefunded/Irrecoverable Value-Added Tax (“Irrecoverable VAT”)**

#### New Oriental's Comments

- In the *Preliminary Results*, the Department incorrectly deducted alleged irrecoverable VAT from the export price. There is no irrecoverable VAT in the export price because the VAT rate for export of subject merchandise is zero, the reported export price does not include any VAT, and the five percent VAT refund is actually additional income above the export price.
- If any adjustment to the export price regarding VAT should be made, the five percent VAT refund should be added to the export price.

#### Petitioner's Comments

- The Department's clearly-established policy is to reduce the export price by any irrecoverable VAT. The record evidence shows that New Oriental paid a 17 percent VAT on inputs for STR, thus the Department should deduct the unrefunded portion of that VAT (*i.e.*, 12 percent) from the export price.

### **Department's Position:**

The Department finds that the methodology followed in the *Preliminary Results* correctly deducted the irrecoverable VAT from the export price, in keeping with the Department's policy. For the reasons explained below, the Department continues to apply this methodology, adjusting the export price for irrecoverable VAT.

In 2012, the Department announced a change of methodology with respect to the calculation of the export price (“EP”) or constructed export price (“CEP”) to include an adjustment of any irrecoverable VAT in certain NME countries, in accordance with section 772(c)(2)(B) of the Act.<sup>41</sup> In this announcement, the Department stated that when an NME government has imposed an export tax, duty, or other charge on subject merchandise *or on inputs* used to produce subject merchandise, from which the respondent was not exempted, the Department will reduce the respondent's EPs or CEPs accordingly by the amount of the tax, duty or charge paid, but not rebated.<sup>42</sup> In a typical VAT system, companies do not incur any VAT expense; they receive on export a full rebate of the VAT they pay on purchases of inputs used in the production of exports (input VAT), and, in the case of domestic sales, the company can credit the VAT they pay on

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<sup>41</sup> 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 36482, (June 19, 2012) (“*Methodological Change*”).

<sup>42</sup> *Id.*, at 36483. See also *Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 38673 (June 14, 2016) (“*Diamond Sawblades*”), and accompanying Issues and Decision Memorandum at 14.

input purchases for those sales against the VAT they collect from customers.<sup>43</sup> That stands in contrast to China’s VAT regime, in which some portion of the input VAT that a company pays on purchases of inputs used in the production of exports is not recovered.<sup>44</sup> This amounts to a tax, duty or other charge imposed on exports that is not imposed on domestic sales. Where the irrecoverable VAT is a fixed percentage of the U.S. price, the final step in arriving at a tax-neutral dumping comparison is to reduce the U.S. price downward by this same percentage.<sup>45</sup>

Section 772(c)(2)(B) of the Act authorizes the Department to deduct from EP or CEP the amount, if included in the price, of any “export tax, duty, or other charge imposed by the exporting country on the exportation” of the subject merchandise. In this context, irrecoverable VAT, as defined in Chinese law, is a net VAT burden that arises solely from, and is specific to exports.<sup>46</sup> It is VAT paid on inputs and raw materials (used in the production of exports) that is non-refundable and, therefore, a cost. Irrecoverable VAT is, therefore, an “export tax, duty, or other charge imposed” on exportation of the subject merchandise to the United States. Neither the statute nor its legislative history defines the terms “export tax, duty, or other charge imposed” on the exportation of subject merchandise. The Court of International Trade (“CIT”) upheld the Department’s interpretation of these terms as encompassing irrecoverable VAT because the irrecoverable VAT is a cost that arises as a result of export sales.<sup>47</sup> The irrecoverable VAT is set forth in Chinese law and, therefore, can be considered to be “imposed” by the exporting country on exportation of subject merchandise. Further, an adjustment for irrecoverable VAT achieves what is called for under section 772(c)(2)(B) of the Act, as it reduces the gross U.S. price charged to the customer to a net price received. This deduction is consistent with the Department’s longstanding policy, which is consistent with the intent of the statute, that dumping margin calculations be tax-neutral.<sup>48</sup>

The Department’s methodology, as explained above, essentially amounts to performing two basic steps: (1) determining the irrecoverable VAT on subject merchandise, and (2) reducing U.S. price by the amount determined in step one. New Oriental reported that the standard VAT on subject merchandise is 17 percent, and the corresponding VAT rebate rate is five percent.<sup>49</sup> For the final results, therefore, the Department removed from U.S. price an amount calculated based on the difference between these rates (*i.e.*, 12 percent) applied to the export sales value (*i.e.*, U.S. price net of international movement expenses), consistent with the definition of

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<sup>43</sup> *Id.*; see also *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) (“*Wood Flooring*”) and accompanying Issues and Decision Memorandum at Comment 3; *Methodological Change* at 36483.

<sup>44</sup> See New Oriental’s October 5, 2015 Section C questionnaire response, at 29, and Exhibits C-3a and 3b for “Interim Regulations of the People’s Republic of China on Value-added Tax,” and “Details for the Interim Regulation,” respectively.

<sup>45</sup> See *Methodological Change* at 36483.

<sup>46</sup> See *Diamond Sawblades*, at 15.

<sup>47</sup> See *Fushun Jinly Petrochemical Carbon Co., Ltd. v. United States*, Court No. 14-00287, 2016 CIT LEXIS 25, at \*36-37 (CIT March 23, 2016) (“*Fushun Jinly*”).

<sup>48</sup> See *Methodological Change* at 36483; see also *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27369 (May 19, 1997) (citing SAA accompanying the URAA, H.R. Doc. No. 103-106, vol. 1, 827, reprinted in 1995 U.S.C.C.A.N. 3773, 4172).

<sup>49</sup> See New Oriental’s October 5, 2015 Section C questionnaire response, at 30.

irrecoverable VAT under Chinese tax law and regulation.<sup>50</sup> For a discussion of irrecoverable VAT as applied to cost, insurance, and freight (“CIF”) sales, see Comment 4, below.

Irrecoverable VAT is defined as: (1) the free-on-board (“FOB”) value of the exported good, applied to the difference between; (2) the standard VAT levy rate; and (3) the VAT rebate rate applicable to exported goods.<sup>51</sup> The first variable, export value, is unique to each sale, while the rates in (2) and (3), as well as the formula for determining irrecoverable VAT, are each explicitly set forth in Chinese law and regulation.<sup>52</sup>

The Department’s methodology is based on removing irrecoverable VAT on exports, which is product-specific and is explicitly defined in the Chinese tax regulations.<sup>53</sup> The deduction of product-specific irrecoverable VAT from the price of the subject merchandise is a reasonable and accurate methodology because the export tax, duty, or other charge is a product-specific expense that is directly linked with the exportation of the subject merchandise. The Department’s method of relying on the standard formula provided for under Chinese tax law and regulation is straightforward, consistent, and a verifiable method to make this adjustment under section 772(c)(2)(B) of the Act. In that respect, the irrecoverable VAT formula for taxation purposes is solely a function of the rates under Chinese regulation and the sale-specific export value of subject merchandise.

The Department’s analysis is consistent with current VAT policy and the treatment of VAT in recently completed NME cases.<sup>54</sup>

#### **Comment 4: Proposed Changes to the Calculation Methodology for New Oriental’s CIF Sales**

##### New Oriental’s Comments

- The Department erred in its methodology for calculating the marine insurance deduction from the gross unit price for New Oriental’s CIF sales. The Department erroneously deducted total marine insurance for each sale from the gross unit price, rather than deducting a per unit marine insurance value. The error should be corrected in the final results.
- The Department erroneously calculated the unrefunded VAT deduction for CIF sales using the CIF sales price as the tax basis. The Department should revise its calculations to use only the FOB sales price as the tax basis for calculating the unrefunded VAT deduction. This

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<sup>50</sup> See *Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire From the People’s Republic of China*, 79 FR 25572 (May 5, 2014) (“Prestressed Wire”), and accompanying Issues and Decision Memorandum at Comment 3.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> See e.g., *Diamond Sawblades*, and accompanying Issues and Decision Memorandum at 17; *Prestressed Wire*, and accompanying Issues and Decision Memorandum, at Comment 1; *Wood Flooring*, and accompanying Issues and Decision Memorandum at comment 3; *Chlorinated Isocyanurates*, and accompanying Issues and Decision Memorandum at Comment 5A.

revised methodology is supported by the information in New Oriental's questionnaire responses, on the record.<sup>55</sup>

### Petitioner's Comments

- There is no evidence on the record to support New Oriental's assertion that the tax basis for unrefunded VAT is the FOB sales price, rather than the reported CIF gross unit price.

### **Department's Position:**

#### 1) Marine Insurance for CIF Sales

The Department agrees with New Oriental and has corrected this error for these final results. For further discussion of the marine insurance deduction methodology, *see* the Final Calculation Memorandum for New Oriental.<sup>56</sup>

#### 2) Tax Basis for Unrefunded VAT Deduction in CIF Sales

Upon review of the calculation methodology used in the Preliminary Results, the Department agrees with New Oriental's suggested revision to the calculation methodology for the unrefunded VAT deduction for CIF sales. As discussed in Comment 3, above, the Department's policy is to deduct irrecoverable VAT from the export price net of international movement expenses (*i.e.*, the FOB price), rather than the reported gross price. This policy is clearly established.<sup>57</sup>

Petitioner incorrectly argues that there is no evidence on the record to support this revision to the calculation methodology. In its initial section C questionnaire response, New Oriental reported that the VAT is calculated on an FOB basis, and provided requested documentation to support this assertion.<sup>58</sup> Furthermore, this revision brings the methodology used in the instant case in line with the Department's consistent practice in past cases.<sup>59</sup>

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<sup>55</sup> See New Oriental's October 5, 2015 Section C questionnaire response, at 30.

<sup>56</sup> See Memorandum to the File, from Andrew Devine, International Trade Compliance Analyst, through Paul Walker, Program Manager, Enforcement and Compliance, Office V, "Sixth Administrative Review of Certain Steel Threaded Rod from the People's Republic of China: Analysis for the Final Results of New Oriental," (November 14, 2016) ("Final Calculation Memorandum for New Oriental").

<sup>57</sup> See *e.g.*, *Diamond Sawblades*, and accompanying Issues and Decision Memorandum at 16; *Prestressed Wire*, and accompanying Issues and Decision Memorandum, at Comment 1; *Wood Flooring*, and accompanying Issues and Decision Memorandum at Comment 3; *Chlorinated Isocyanurates*, and accompanying Issues and Decision Memorandum at Comment 5A.

<sup>58</sup> See New Oriental's October 5, 2015 Section C questionnaire response, at 29, and Exhibits C-3a and 3b for "Interim Regulations of the People's Republic of China on Value-added Tax," and "Details for the Interim Regulation," respectively.

<sup>59</sup> See *e.g.*, *Diamond Sawblades*, and accompanying Issues and Decision Memorandum at 16; *Prestressed Wire*, and accompanying Issues and Decision Memorandum, at Comment 1; *Wood Flooring*, and accompanying Issues and Decision Memorandum at Comment 3; *Chlorinated Isocyanurates*, and accompanying Issues and Decision Memorandum at Comment 5A.

V. 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  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

14 NOVEMBER 2016  
(Date)