A-570-932
POR 4/1/15 - 3/31/16
**Public Document**
E&C/V: CC

November 1, 2017

**MEMORANDUM TO:** Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

**FROM:** James Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

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

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## I. Summary

We analyzed the comments of the interested parties[1] in the seventh 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 an analysis of the comments received and the record evidence, we find that Jiaxing Brother Fastener Co., Ltd., RMB Fasteners Ltd., and IFI & Morgan Ltd. (RMB/IFI) had a single shipment (*i.e.*, suspended AD/CVD entry) during the period of review (POR) for which it had knowledge of the subject merchandise's sale to the United States, that Tianjin Port Free Trade Zone and Star Pipe International Trade Co., Ltd. (Tianjin Star) qualifies for a separate rate, and that Zhejiang New Oriental Fastener Co., Ltd., (New Oriental), Zhejiang Heiter Industries Co., Ltd. (Zhejiang Heiter Industries), and Zhejiang Heiter Mfg & Trade Co. Ltd. (Zhejiang Heiter Mfg) do not qualify for

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[1] Vulcan Threaded Products Inc. (the petitioner), Jiaxing Brother Fastener Co., Ltd., RMB Fasteners Ltd., and IFI & Morgan Ltd. (collectively, RMB/IFI), and Tianjin Port Free Trade Zone Star Pipe International Trade Co., Ltd. (Tianjin Star).
[2] *See Certain Steel Threaded Rod from the People's Republic of China: Notice of Antidumping Duty Order*, 74 FR 17154 (April 14, 2009) (*Order*).
[3] *See Certain Steel Threaded Rod from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review, and Rescission of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 21189 (May 5, 2017) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum.

a separate rate and are therefore part of the PRC-wide entity. We 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

The period of review (POR) is April 1, 2015, through March 31, 2016. On May 5, 2017, the Department published in the *Federal Register* the *Preliminary Results*. In accordance with 19 CFR 351.309, we invited parties to comment on our *Preliminary Results*. On June 12, 2017, the petitioner submitted its case brief.[4] On June 16, 2017, the Department released draft CBP instructions.[5] On June 21, 2017, RMB/IFI and Tianjin Star submitted rebuttal briefs.[6] On September 1, 2017, the Department extended the deadline for the final results to November 1, 2017.[7]

We note that no party submitted comments on the Department's preliminary determination to treat New Oriental, Zhejiang Heiter Industries, and Zhejiang Heiter Mfg. as part of the PRC-wide entity. Therefore, for these final results, we continue to find that New Oriental, Zhejiang Heiter Industries, and Zhejiang Heiter Mfg. are part of the PRC-wide entity.

We also note that no party submitted comments on the draft CBP instructions.

## IV. Discussion of the Issues

### Comment 1: Circumvention Concerns and Treatment of RMB/IFI

In the *Preliminary Results*, the Department preliminarily found that RMB/IFI had no shipments during the POR.[8] Specifically, we reviewed CBP entry documentation and RMB/IFI's responses, queried CBP as to whether RMB/IFI had any entries, and determined that the entries attributed to RMB/IFI during the POR either pertain to: (a) non-subject merchandise, (b) a sale that the Department reviewed in the immediately preceding POR, or (c) merchandise sold to a party in a third country which subsequently re-sold it to the United States without RMB/IFI's prior knowledge.[9] Consistent with our practice, the Department did not rescind the review with respect to RMB/IFI in the *Preliminary Results*, but stated that we intended to complete the review and issue appropriate instructions to CBP based on the final results.[10]

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4 *See* the petitioner's June 12, 2017 submission.
5 *See* Memo to the File, from Courtney Canales, International Trade Compliance Analyst, "Certain Steel Threaded Rod from the People's Republic of China: Cash Deposit and Liquidation Instructions for the Preliminary Results," dated June 16, 2017.
6 *See* RMB/IFI's June 21, 2017 submission; Tianjin Star's June 21, 2017 submission.
7 *See* Memorandum to Scot T. Fullerton, Director, Office VI, from Courtney Canales, 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," dated September 1, 2017.
8 *See* PDM at 5.
9 *See* Memorandum to the file, "Summary of Information Regarding Entries Attributed to IFI & Morgan Ltd. and RMB Fasteners Ltd.," dated May 1, 2017 (Summary of entries for RMB/IFI).
10 *See* PDM at 5; *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694, 65694-65695 (October 24, 2011).

*The Petitioner's Comments*:

- The *Order* has a history of circumvention and other customs irregularities since it was issued in 2009.[11] Such irregularities have persisted through the current review. In this review, both mandatory respondents requested to not be reviewed; New Oriental because it only exported a few in-scope products during the POR,[12] and RMB/IFI based on its certification of no shipments.[13]
- These irregularities underscore the extent to which the CBP Type 03 dataset does not represent the universe of subject STR entering during the POR. More specifically, HTS 7318.15.5056, one of four HTS subheadings identified in the scope exclusive to subject merchandise, totaled a quantity of 1,515,000 kg during the POR.[14] This quantity is much larger than the quantity used by the Department to select respondents in its respondent selection memo.[15] Such duty collection concerns throughout the history of this AD order are especially pronounced in AR7 and should be considered by the Department when evaluating the petitioner's arguments below.
- The *Preliminary Results* erroneously concluded that RMB/IFI did not have shipments during the POR. The Department has established a hierarchy to be used when weighing conflicting evidence under the knowledge test involving sales to third countries. The Department's "practice has been to rely upon documentary or physical evidence that the party knew or should have known its goods were destined for the United States, because this type of evidence is more probative, reliable and verifiable than unsubstantiated statements."[16] In this review, the Department faces RMB/IFI's self-serving and unsubstantiated statements that it did not have knowledge of POR shipments to the United States, while documentary evidence provided by the petitioners demonstrates that RMB/IFI knew or should have known that it had shipments destined for the United States.[17]
- The Department nevertheless preliminarily chose to disregard RMB/IFI's POR shipments because the STR was sold to a party in a third country which subsequently re-sold it to the United States without RMB/IFI's prior knowledge.[18] Moreover, the Department appears to

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[11] *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) (*Circumvention Final Determination*).

[12] *See* New Oriental's September 14, 2016 submission.

[13] *See* RMB/IFI's July 5, 2016 submission.

[14] *See* the petitioner's February 6, 2017 submission at Exhibit 7.

[15] *See* Memorandum to James C. Doyle, Director, Office V, from Courtney Canales, International Trade Compliance Analyst, "Seventh Antidumping Duty Administrative Review of Certain Steel Threaded Rod from the People's Republic of China: Respondent Selection," dated August 29, 2016 (Respondent Selection Memo); Memorandum to the File, from Andrew Devine, International Trade Compliance Analyst, "Certain Steel Threaded Rod from the People's Republic of China: Second Release of Customs Data for Respondent Selection Purposes," dated July 8, 2016 (CBP Data Memo).

[16] *See Aluminum Extrusions from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission, in Part, 2010/12*, 79 FR 96 (January 2, 2014) accompanying Issues and Decision Memorandum Comment 2.

[17] *See* the petitioner's June 12, 2017 submission at 7. We note that this evidence is proprietary, and will be summarized in a separate memo. *See* Memo to the File, from Courtney Canales, International Trade Analyst, "Certain Steel Threaded Rod from the People's Republic of China: Business Proprietary Memorandum accompanying the Issues and Decision Memorandum for the Final Results of the Seventh Administrative Review," dated concurrently with this memo (BPI Memo).

[18] *See* PDM at 5.

have created a *de minimis* test for the determination of whether a party knew or should have known its goods were destined for the United States.[19]

- In sum, the record compels rejection of RMB/IFI's claim of no shipments, and thus, the Department is required by statute to conduct an administrative review and calculate a margin for "each entry of subject merchandise."[20] Indeed, the CIT in the first review of the *Order* required the Department to review an entry that was not reflected in the Type 03 CBP data.[21] Application of the unexacting statutory standard for reviewability and the knowledge test refutes the basis on which the Department preliminarily rescinded AR7 with respect to RMB/IFI.

*RMB/IFI's Comments*:

- Essentially, the petitioner's entire argument is based on the mere fact that RMB/IFI made some sales to a country, or countries, physically near the United States, and that fact alone indicates that any STR produced by RMB/IFI that entered the United States in the POR was an RMB/IFI sale to the United States. The record strongly refutes this absurd and strained reading.
- The petitioner characterizes the amount of the entries attributable to RMB/IFI as somehow significant, when it is not. This suggests there has been no commercial attempt at intentional U.S. sales by RMB/IFI. An analysis of the quantities imported is indicative of RMB/IFI's affirmations that it did not direct sales to the United States.[22]
- Second, the petitioner points to information from a previous review concerning certain customers which they assert is evidence that RMB/IFI knowingly directed STR to the U.S. market in this review. Distributors, by their very nature, distribute. It is not reasonable to punish RMB/IFI merely because it sold to some international distributors, and there is absolutely no legal precedent for that radical proposition.
- Third, the petitioner insinuates that because RMB/IFI was aware of certain allegations made by the petitioner in a previous review, that RMB/IFI somehow was aware that sales to an international distributer must translate into POR entries is an unsupported insinuation. There is no record evidence of any kind that RMB/IFI had reason to believe that its foreign sales were not entirely intended for consumption in those foreign countries.
- Fourth, RMB/IFI explained in its response to supplemental questions that upon review of all of its own shipping documents, as opposed to the reshipping documents of unaffiliated entities of record, it actually knew that the place of delivery was in the United States in a previous segment. There is no such evidence on the record of this review, so the comparison is totally devoid of merit.
- Fifth, and finally, the petitioner attempts to make an issue out of the fact that RMB/IFI sold otherwise subject merchandise to a country other than the United States. U.S. antidumping

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[19] *See* Memo to the File, from Courtney Canales, International Trade Compliance Analyst, "Seventh Administrative Review of Certain Steel Threaded Rod from the People's Republic of China: Summary of Information Regarding Entries Attributed to IFI & Morgan Ltd. and RMB Fasteners Ltd.," dated May 1, 2017 (Prelim BPI Memo). As noted below, we discuss this issue further in the BPI Memo.

[20] *See* 19 USC 1675(a)(2)(A).

[21] *See Hubbell*, 884 F. Supp. 2d at 1287-91.

[22] *See* RMB/IFI's January 26, 2017 submission at 8-9, with reference to Attachments 8-10. Again, this information is proprietary and will be summarized in the BPI Memo.

duty orders do not extend beyond its borders and RMB/IFI has every right to continue doing business with other countries.

- The petitioner suggests that sales made by unreviewed exporters, exporters for whom no party requested review, which reside in a third country, be liquidated at the PRC-wide entity rate. There are several problems with this suggestion; specifically the third country reseller is not under review, and because it is not in the PRC, cannot be collapsed with the PRC-wide entity. Moreover, some of the merchandise is non-subject, and the subject entries were properly entered under RMB/IFI's rate.

**Department's Position:** We agree, in part, and disagree, in part, with the petitioner and conclude that RMB/IFI had one "shipment" or suspended AD/CVD entry for which it had knowledge of the subject merchandise's sale to the United States and which is subject to this review. In addition, on the matter of the alleged Custom's irregularities, the Department takes such allegations seriously, and we share with CBP any such evidence gathered in the course of our proceedings. Furthermore, the Department fully complies with each CBP request for information, in accordance with U.S. law.[23] At the core of the petitioner's concerns in this instance is that not all subject merchandise has been properly reported to CBP and that certain entries were improperly entered in the United States. As such, these concerns are best addressed directly under CBP's authority under section 592 of the Act to investigate fraud, gross negligence, and negligence.[24] However, the Department shares the petitioner's concern regarding the importance of fully enforcing its antidumping and countervailing duty orders, and with that in mind has examined the record evidence in this review.

The petitioner argued that the quantity of entries into the United States under HTS 7318.15.5056 is greater than the quantity appearing in the CBP data used for respondent selection, which is an indication that there are irregularities in the correct reporting of subject merchandise, and therefore, the correct amount of antidumping duties would not be collected by CBP under this order. We disagree that record information indicates incorrect amounts of duties necessarily have been collected. At the outset, we note that the HTS numbers listed in the scope – 7318.15.5051, 7318.15.5056, 7318.15.5090 and 7318.15.2095 – are all "basket" categories covering a wide range of products. To provide one example, the first two items listed under each HTS description are screws and bolts; however, subject STR is "non-headed" (see above for the description of the scope of this order). For convenience purposes, we list the descriptions of each HTS below:

7318.15.5051 Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel, Threaded articles, Other screws and bolts, whether or not with their nuts or washers, Studs, Continuously threaded rod of alloy steel.

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[23] *See, e.g.*, *Dynamic Random Access Memory Semiconductors from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 76 FR 2336 (January 13, 2011), and accompanying Issues and Decision Memorandum at Comment 4.

[24] *See Globe Metallurgical Inc., v. United States*, 722 F. Supp. 2d 1372, 1381 (CIT 2010) (in which the Court of International Trade found that CBP is better positioned to address country-of-origin issues, consistent with 19 U.S.C. 1592).

7318.15.5056 Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel, Threaded articles, Other screws and bolts, whether or not with their nuts or washers, Studs, Other, Other.

7318.15.5090 Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel, Threaded articles, Other screws and bolts, whether or not with their nuts or washers, Studs, Other, Other.

7318.15.2095 Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel, Threaded articles, Other screws and bolts, whether or not with their nuts or washers, Bolts and bolts and their nuts or washers entered or exported in the same shipment, Other.

Although the petitioner has made arguments concerning only HTS 7318.15.5056, we note that these HTS numbers have nearly identical descriptions of the products they cover, and in fact, HTS 7318.15.5056 and HTS 7318.15.5090 are identical. Without additional information, there is no basis to conclude that there are irregularities in the correct reporting of subject merchandise under HTS 7318.15.5056.

The scope states that the HTS numbers are provided for convenience and customs purposes, and that the written description of the merchandise is dispositive when determining which merchandise is subject. The description of the scope covers STR of a certain chemical composition, whereas the HTS descriptions cover many general products, and are not exclusive to subject merchandise as the petitioner suggests. In addition, there are a number of listed STR exclusions in the scope, such as ASTM A193 Grade B7, ASTM A193 Grade B7M, ASTM A193 Grade B16, and ASTM A320 Grade L7. These products could be entered under the HTS numbers listed in the scope. Moreover, the Department has made several scope rulings on STR products and found those products not to be covered by the scope.[25] These products could also be entered under the HTS numbers listed in the scope. In sum, the HTS numbers enumerated in

[25] *See*, *e.g.*, Memorandum to Christian Marsh, Deputy Assistant Secretary, from Toni Dach, Senior International Trade Analyst, "Certain Steel Threaded Rod from the People's Republic of China: IMSS Scope Ruling," dated October 22, 2013; Memorandum to Christian Marsh, Deputy Assistant Secretary, from Jerry Huang, Case Analyst, "Certain Steel Threaded Rod from the People's Republic of China: Powerline Hardware, LLC Final Scope Ruling," dated May 13, 2011; Memorandum to John M. Andersen, Acting Deputy Assistant Secretary, from Toni Dach, Senior International Trade Analyst, "Certain Steel Threaded Rod from the People's Republic of China: Mid-State Bolt & Nut Company, Inc. Final Scope Ruling," dated October 14, 2009; Memorandum to Edward Yang, Acting Deputy Assistant Secretary, from Kabir Archuletta, Case Analyst, "Certain Steel Threaded Rod from the People's Republic of China: Elgin Fastener Group Final Scope Ruling," dated August 10, 2010; Memorandum to Gary Taverman, Associate Deputy Assistant Secretary, from Justin Neuman, Senior International Trade Analyst, "Antidumping Duty Order on Steel Threaded Rod from the People's Republic of China: Final Scope Ruling on Engineered Steel Coil Rod," dated April 10, 2017; *A.L. Patterson, Inc., v. United States*, 585 Fed. Appx. 778, 785-86 (Fed. Cir. 2014) (although in the initial scope ruling the Department found engineered coil rod to be covered by the scope, the CAFC found this product to not be covered by the scope).

the scope cover many products which are not subject merchandise, and therefore, we would expect to find that the quantities imported into the United States from the PRC under these HTS codes would be greater than the quantities of subject merchandise. As such, we find the fact that the quantity imported under HTS 7318.15.5056 is greater than the quantity of subject merchandise does not, standing alone, demonstrate that the CBP data we used for respondent selection was inaccurate or that there is misreporting of entries of subject merchandise which would result in an under-collection of antidumping duties.

Regarding the knowledge test, in the *Preliminary Results* we stated that "a review of the CBP entry documentation, as well as RMB/IFI's responses, indicates that the entries attributed to it during the POR either pertain to non-subject merchandise, to a sale that the Department reviewed in the immediately preceding POR, or to merchandise sold to a party in a third country which subsequently re-sold it to the United States without RMB/IFI's prior knowledge."[26] We also clarify that, contrary to RMB/IFI's comments, the Department does, in fact, apply a knowledge test in NME cases where the sales are made to entities outside the NME.[27]

The Department's "knowledge test" standard for establishing the party that is the proper respondent is well-established.[28] In general, the Department's practice has been to consider documentary or physical evidence that the party knew or should have known its goods were destined for the United States, because this type of evidence is more probative, reliable and verifiable than unsubstantiated statements or declarations.[29] This is not the only type of evidence that the Department will consider. An admission by the producer or a representative of the producer to the Department that it knew of the ultimate U.S. destination can also establish knowledge.[30] In some situations, the Department might find other evidence to be relevant to the knowledge issue. In prior determinations, for example, the Department has considered whether the relevant party prepared or signed certificates, shipping documents, contracts, or other such documents stating that the merchandise was destined for the United States.[31] The Department has also considered whether the relevant party used packaging or labeling stating that the

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[26] *See* PDM at 5. *See also* Memorandum to the file, "Summary of Information Regarding Entries Attributed to IFI & Morgan Ltd. and RMB Fasteners Ltd.," dated May 1, 2017.

[27] *See, e.g.*, *Certain Steel Nails from the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review*, 76 FR 16379 (March 23, 2011), and accompanying Issues and Decisions Memorandum at Comment 9; *see also* PDM at 5.

[28] *See Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Final Results of Antidumping Duty Administrative Review*, 76 FR 36086 (June 21, 2011), and accompanying Issues and Decisions Memorandum at Comment 1.

[29] *See Wonderful Chemical Industrial, Ltd. v. United States*, 259 F. Supp. 2d 1273, 1279-80 (CIT 2003).

[30] In *Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Order in Part*, 64 FR 69694 (December 14, 1999), the individual who had been the world-wide sales manager for the relevant company during the POR told the Department that he knew that the merchandise was destined for the United States. CBP entry information corroborated the admissions of this individual. Therefore, based on this information, including the statements of admission, the Department found that the company had knowledge of the ultimate U.S. destination.

[31] *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Synthetic Indigo from the People's Republic of China*, 64 FR 697236, 69727 (December 14, 1999).

merchandise was destined for the United States.[32] Additionally, the Department has examined whether the features, brands, or specifications of the merchandise indicated that it was destined for the United States.[33] These factors considered by the Department in past knowledge determinations were relied upon by the Department in this administrative review to determine whether RMB/IFI knew or should have known that the goods were destined for the United States.

It is important to note that a general knowledge or belief on the part of a producer that an exporter generally sells to the United States is insufficient to establish knowledge with respect to particular sales. Rather, the standard for making a knowledge determination is that the producer must have reason to know at the time of the sale that that specific merchandise was destined for the United States.[34] The possibility that the producer may have speculated that the goods might ultimately be destined for the United States is insufficient for a knowledge determination. As described below, none of the normal factors indicative of knowledge are present for RMB/IFI in this review. In the absence of such evidence, we find that the record does not support a finding that RMB/IFI either knew or should have known at the time of the sale that its sales of STR to a third country reseller were ultimately destined for the United States.

Specifically, the record is devoid of documentary evidence that indicates RMB/IFI's POR sales to Canada were destined for the United States. Instead, the sales trace documents submitted by RMB/IFI, including packing lists, commercial invoices, bills of lading, and payment documentation, only indicate that sales were destined for a third country customer.[35] Further, there were no unique features of the merchandise, such as product specifications, that would otherwise indicate that it was destined for the United States.[36] Moreover, we have examined the documentary evidence purported by the petitioner to demonstrate that RMB/IFI knew or should have known that its sales to Canada were destined for the United States, and find that this evidence does not indicate that RMB/IFI knew or should have known that it had shipments destined for the United States.[37] In fact, contrary to the petitioner's assertions, RMB/IFI's statements regarding its lack of knowledge are reinforced by documentary evidence.

The petitioner argues that RMB/IFI should have known the ultimate purchaser of the merchandise, citing record evidence the petitioner submitted from a prior review. However, this information does not lead us to conclude that RMB/IFI knew that its Canadian sales were intended for the United States in this review, much less that it is circumventing the order in this review. Each review proceeds *de novo* and determinations in that review are based upon the

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[32] *See Certain Pasta from Italy: Termination of New Shipper Antidumping Duty Administrative Review*, 62 FR 66602 (December 19, 1997).
[33] *See*, *e.g.*, *GSA, S.R.L. v. United States*, 77 F. Supp. 2d 1349, 1355 (CIT 1999).
[34] *See Final Results of Antidumping Duty Administrative Review: Certain In-Shell Raw Pistachios from Iran*, 70 FR 7470 (Feb. 14, 2005) (*Pistachios*) and accompanying Issues and Decisions Memorandum at Comment 1; *see also Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium from the Russian Federation*, 66 FR 49347 (September 27, 2001) and accompanying Issues and Decision Memorandum at Comment 3.
[35] *See* RMB/IFI's April 5, 2017 submission, generally.
[36] *Id*.
[37] *See* BPI Memo.

specific record developed during the course of that particular segment of the proceeding.[38] The petitioner stated that it raised circumvention issues as well as sales to a third country reseller regarding RMB/IFI in the last review.[39] While the Department requested supplemental information from RMB/IFI on these issues in the prior review, and RMB/IFI responded to the Department's supplemental questions, the petitioner did not raise that issue in its case briefs for that prior review.[40] As such, the Department does not find this to be an outstanding issue from the last review.[41] In this review, the petitioner raised an issue with respect to sales to a third country reseller, the Department issued supplemental questions to RMB/IFI,[42] and RMB/IFI responded to our questions in a timely manner, and in the form requested.[43]

Additionally, nowhere on the record of this proceeding is there a statement from RMB/IFI admitting, indicating, or even implying actual knowledge by RMB/IFI of a destination in the United States for any of the merchandise sold by RMB/IFI to a third country reseller. Rather, RMB/IFI has expressly denied actual knowledge of a destination in the United States for any of the merchandise sold to the third country reseller.[44] We also note that we have not applied any kind of a *de minimis* test in reaching our findings on this matter, as suggested by the petitioner. Rather, we found that the quantity and nature of the entries by the reseller supported RMB/IFI's assertion that it did not have knowledge of the final destination of its sales to the third country reseller. In sum, we find that the record of this review is devoid of the factors, as developed in other proceedings, which would indicate knowledge on the part of RMB/IFI that its sales to a third country reseller were destined for the United States.

Regarding entries made by third party resellers and the liquidation rate, consistent with the Department's refinement to its assessment practice in NME cases, we completed the review with respect to RMB/IFI.[45] The *NME Assessment Practice* states: "For entries that are not reported in the reviewed company's U.S. sales databases submitted to the Department during an administrative review, or otherwise determined not covered by the review (*i.e.*, the reviewed exporter claims no shipments), the Department will instruct CBP to liquidate such entries at the NME-wide rate as opposed to the company-specific rate declared by the importer at the time of entry." As such, we will liquidate any subject entries at the PRC-wide entity's rate, with the one exception discussed below, and any entries of non-subject merchandise that have been properly declared as such.

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[38] *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.").

[39] *See* the petitioner's February 6, 2016 submission at Exhibits 3 and 4.

[40] *See Certain Steel Threaded Rod from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 83800 (November 22, 2016) and accompanying Issues and Decision Memorandum.

[41] *See* BPI Memo for additional discussion of this issue.

[42] *See* the Department's March 22, 2017 letter.

[43] *See* RMB/IFI's April 5, 2017 submission.

[44] *See* RMB/IFI's April 5, 2017 submission at 2.

[45] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011) (*NME Assessment Practice*).

CBP data also showed a single suspended AD/CVD entry for which RMB/IFI stated its knowledge of sale to the United States. The Department disagrees with RMB/IFI that this entry should not be considered a "shipment" for this POR.

In general, the Department looks at entries during the POR when it examines a respondent in an administrative review. The purpose of the administrative review is to assess antidumping duties for the entries during the POR. Therefore, the preferred approach to define U.S. sales which will be included in the Department's dumping analysis is to include those sales associated with the entries of subject merchandise during the POR. However, many situations arise where a respondent is unable to report information regarding the entry of its subject merchandise into the United States or is unable to link its U.S. sales with corresponding suspended AD/CVD entries. In such situations, the Department will use a respondent's U.S. sales of subject merchandise during the POR as a proxy for the sales associated with the respondent's entries of subject merchandise during the POR. Furthermore, in a given proceeding, the Department will use a consistent approach from review to review.

For RMB/IFI in this proceeding, the Department has relied on the second approach to defining the universe of U.S. sales during a POR to determine the appropriate assessment rate for antidumping duties. As such, RMB/IFI has reported sales during the POR as a proxy for the sales associated with entries during the period because RMB/IFI was unable to link its U.S. sales with specific entries. Further, in its September 22, 2016 submission, RMB/IFI states that "it has no control over or access to confidential entry data which may or may not suggest that the Group made reviewable sales in this segment—this is part of the difficulties {it} has in responding to the questionnaire."[46] Accordingly, it is not the practice in this proceeding for RMB/IFI to report sales associated with entries during a POR, but to rely on sales during the POR as a proxy to calculate the amount of antidumping duties, if any, to be assess on suspended AD/CVD entries during the POR.

For the instant review, RMB/IFI has a suspended AD/CVD entry for which antidumping duties must be assessed based on a dumping analysis of RMB/IFI's sales of subject merchandise during the POR. However, RMB/IFI has reported that it had no sales of subject merchandise during the POR. Furthermore, there are no other respondents in this review who are eligible for a separate rate and for whom a weighted-average dumping margin has been calculated. Accordingly, the Department has pulled forward RMB/IFI's calculated weighted-average dumping rate from the amended final results of the immediately preceding administrative review as its weighted-average dumping margin in the final results of this review. This rate from the previous review is zero percent.[47]

[46] *See* RMB/IFI's submission to the Department, "Steel Threaded Rod from the People's Republic of China - Notice of Difficulty Responding to the Questionnaire" (September 22, 2016) at 2.
[47] *See Certain Steel Threaded Rod from the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 1698 (January 6, 2017).

**Comment 2: Proper Classification and Collection of Antidumping Duties on Tianjin Star's Entries**

In the *Preliminary Results*, the Department preliminarily granted Tianjin Star a separate rate.[48] However, because of an issue regarding a potential discrepancy between certain of Tianjin Star's entry documentation and the CBP entry documentation on the record, the Department issued Tianjin Star a post-*Preliminary Results* questionnaire.[49] Tianjin Star responded that, prior to our supplemental, its importer had already taken appropriate measures to correct certain entries.[50] It also provided entry documentation for one of its Type 3 entries, as requested (thus establishing eligibility for a separate rate).[51]

*The Petitioner's Comments*:

- While the petitioner commends Tianjin Star's importer for endeavoring to correct its erroneous entries, this circumstance presents an AD under-collection concern. The Department should work with CBP to identify other entries by Tianjin Star and apply the margin calculation methodology used in *Shrimp from China*[52] (which would include AFA).

*Tianjin Star's Comments*:

- The Department should disregard the petitioner's arguments that the Department needs to "ensure complete AD collection" for all Tianjin Star's STR that entered during this POR, as they are entirely inapposite to the circumstances of this case. Tianjin Star has cooperated to the best of its ability in this administrative review.

**Department's Position:** We do not have the information which was present in *Shrimp from China* to perform the calculation the petitioner suggests. More specifically, because Tianjin Star is not a mandatory respondent, like the company in *Shrimp from China*, we do not have the universe of Tianjin Star's entries, which would be critical in determining the amount of antidumping duties owed. To receive a separate rate, Tianjin Star is not required to provide the Department with its universe of entries, but is instead required only to provide evidence that it had a sale or entry during the POR, which Tianjin Star provided.[53] Nor did the petitioner suggest that the Department collect such information to perform this type of exercise. However, when there are allegations of misclassification, the under-collection of AD duties is always a concern to the Department. Thus, to address the remaining misclassification concerns raised by the petitioner, we will provide to CBP all record information relevant to this issue, as appropriate, to assist that agency in fulfilling its statutory mission relating to AD/CVD administration and enforcement.

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[48] *See* PDM at 6 - 8.
[49] *See* the Department's letter dated May 15, 2017.
[50] *See* Tianjin Star's May 25, 2017 submission.
[51] *Id*.
[52] *See Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results of Administrative Review; 2012-2013*, (79 FR 57872) September 26, 2014 (*Shrimp from China*) and accompanying Issues and Decision Memorandum at Comment 1.
[53] *See* Tianjin Star's May 25, 2017 submission at Exhibit S-1.

Tianjin Star stated that its importer has undertaken steps to ensure proper reclassification of its entries.[54] Moreover, it is a separate rate applicant that has otherwise cooperated fully in this review, and provided evidence of a suspended entry in this POR, thus alleviating the concerns we noted in the *Preliminary Results*.[55] In the *Preliminary Results*, we assigned this company a separate rate, and in the absence of any calculated rates in the current segment, we reached back to the immediately preceding AR for a calculated above-*de minimis* rate and assigned that rate to Tianjin Star. For these final results, and based on the record evidence, we have made no changes to this determination.

## 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

11/1/2017

X

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

[54] *See* Tianjin Star's May 25, 2017 submission.
[55] *Id*.