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May 2, 2018

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
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Certain Steel Threaded Rod from China: Decision Memorandum for the Preliminary Results of the 2016-2017 Antidumping Duty Administrative Review

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SUMMARY

The Department of Commerce (Commerce) is conducting the eighth administrative review of the antidumping duty (AD) order on certain steel threaded rod (STR) from the People's Republic of China (China) covering the period of review (POR) April 1, 2016, through March 31, 2017.[1] Because Fastenal Canada Ltd. (Fastenal Canada) did not respond to Commerce's questionnaire, we preliminarily determine that use of facts available with an adverse inference is warranted, pursuant to sections 776(a) and 776(b) of the Tariff Act of 1930, as amended (the Act). As adverse facts available (AFA), we are assigning to Fastenal Canada the highest rate from any segment of this proceeding which, in this case, is 206.00 percent, as established in the investigation. Consistent with our practice, because we find that the record reflects that Fastenal Canada is not a Chinese exporter, we are not treating it as a part of the China-wide entity but, rather, are assigning Fastenal Canada a rate as a market economy reseller.[2] Moreover, we

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[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 26444, 26448-50 (June 7, 2017) (*Initiation Notice*).
[2] *See, e.g.*, *Uncovered Innerspring Units from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review; 2015–2016*, 81 FR 78116 (November 7, 2016) and accompanying Preliminary Decision Memorandum, unchanged in *Uncovered Innerspring Units from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2015–2016*, 82 FR 13975 (March 16, 2017) and accompanying Issues and Decision Memorandum (collectively, *Innersprings*).

preliminarily find that mandatory respondent IFI & Morgan Ltd. and RMB Fasteners Ltd., (RMB/IFI)[3] did not have any shipments of subject merchandise during the POR.

If we adopt these preliminary results in the final results of the review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR. We invite interested parties to comment on these preliminary results. We expect to issue final results no later than 120 days from the date of publication of this notice pursuant to section 751(a)(3)(A) of the Act.

Background

On April 28, 2017, Commerce received a request from the petitioner[4] to conduct an administrative review of 173 companies.[5] On June 7, 2017, Commerce published in the *Federal Register* the notice of initiation of the eighth administrative review of the AD order on STR from China with respect to 173 companies.[6] On July 7, 2017, RMB/IFI submitted a no shipments certification.[7] On July 31, 2017, Commerce released entry data from CBP for respondent selection purposes and solicited comments from interested parties.[8] Between August 8 and August 14, 2017, the petitioner and RMB/IFI provided comments on the CBP Data, respectively.[9] On August 15, 2017, the petitioner withdrew its request for review of 168 companies.[10] Therefore, of the 173 companies for which a review was initiated, only the following companies continue to be under review: Jiaxing Brother Standard Part Co., Ltd.; RMB/IFI; Brother Holding Group Co. Ltd.; Zhejiang Morgan Brother Technology Co. Ltd.; and, Fastenal Canada. Of these companies, only RMB/IFI and Fastenal Canada had entries listed in the CBP data; thus, we issued the antidumping duty questionnaire to these companies.[11]

On October 5, 2017 Fastenal Canada stated it would not participate in this administrative review.[12] On October 13, 2017 RMB/IFI indicated it would have difficulty responding to the original questionnaire, and provided additional information demonstrating that it did not have sales of subject merchandise to the United States during the POR.[13] On October 30, 2017, the

[3] Commerce determined that these companies constituted a single entity in the investigation on steel threaded rod from China. *See Certain Steel Threaded Rod from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 58931 (October 8, 2008), unchanged in *Certain Steel Threaded Rod from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 8907 (February 27, 2009) (*Final Determination*). We have received no information in this review to call into question that finding.
[4] Vulcan Threaded Products Inc. (Vulcan) (the petitioner).
[5] *See* the petitioner's submission dated April 28, 2017.
[6] *See Initiation Notice*.
[7] *See* RMB/IFI's July 8, 2017 submission.
[8] *See* Memo to the File, "Eighth Administrative Review of the Antidumping Duty Order on Certain Steel Threaded Rod from the People's Republic of China: Customs Data for Respondent Selection Purposes," dated July 31, 2017 (CBP Data).
[9] *See, e.g.,* the petitioner's August 8, 2017 submission.
[10] *See* the petitioner's submission dated August 15, 2017.
[11] *See* Commerce's letter to Fastenal Canada, dated September 26, 2017; Commerce's letter to RMB/IFI, dated September 26, 2017.
[12] *See* Memo to the File, dated October 21, 2017, containing the Letter from Fastenal Canada, dated October 5, 2017.
[13] *See* RMB/IFI's October 13, 2017 submission.

petitioner placed submissions made by RMB/IFI in prior reviews on the record of this review.[14] On January 23, 2018, Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through 22, 2018.[15] On February 2 and February 12, 2018, for RMB/IFI's entries listed in the CBP data, Commerce placed CBP entry packages on the record of this review, and requested that RMB/IFI reconcile this information with its no shipments certification.[16] RMB/IFI responded to these questionnaires on February 9 and February 15, 2018.[17]

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 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.

[14] *See* the petitioner's October 30, 2017 submission.
[15] *See* Memorandum for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "*Deadlines Affected by the Shutdown of the Federal Government*" (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.
[16] *See* Commerce's letters to RMB/IFI dated February 2 and February 12, 2018.
[17] *See* RMB/IFI's February 9 and February 15, 2018 submission.

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.

DISCUSSION OF THE METHODOLOGY

Partial Rescission

As noted above, on August 15, 2017, the petitioner withdrew its request for review on 168 companies.[18] Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation. The petitioner's withdrawal of the review request was submitted within the deadline set forth under 19 CFR 351.213(d)(1). Thus, all administrative review requests have been timely withdrawn for 168 companies. Accordingly, Commerce is rescinding this review, in part, with respect to 168 companies, in accordance with 19 CFR 351.213(d)(1). As such, the following companies remain under review: Jiaxing Brother Standard Part Co., Ltd.; RMB/IFI; Brother Holding Group Co. Ltd.; Zhejiang Morgan Brother Technology Co. Ltd.; and, Fastenal Canada.

Facts Otherwise Available

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

Section 782(d) of the Act provides that, if Commerce determines that a response to a request for information does not comply with the request, Commerce shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person an opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, Commerce may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

[18] *See* the petitioner's August 15, 2017 submission.

Section 782(e) of the Act states that Commerce shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the less-than-fair-value (LTFV) investigation, a previous administrative review, or other information placed on the record.

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise. However, pursuant to section 776(c)(2), Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.

Under section 776(d) of the Act, Commerce may use any dumping margin from any segment of the proceeding when applying an adverse inference, including the highest of such margins. Section 776(d) of the Act also provides that when selecting an AFA margin, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.

A. Use of Facts Available

Fastenal Canada did not respond to Commerce's antidumping duty questionnaire.[19] Accordingly, we find pursuant to section 776(a)(1) of the Act, that necessary information is not available on the record of this proceeding. Further, based upon Fastenal Canada's failure to submit responses to Commerce's questionnaire, Commerce finds that Fastenal Canada withheld requested information, failed to provide the information in a timely manner and in the form requested, and significantly impeded this proceeding, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act. Therefore, Commerce must rely on the facts otherwise available in order to determine the dumping margin for Fastenal Canada.

[19] *See* Memo to the File, dated October 21, 2017, containing the Letter from Fastenal Canada, dated October 5, 2017.

B. Use of Adverse Facts Available

Section 776(b) of the Act states that if Commerce "finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority . . ., the administering authority . . . may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available."[20] Use of AFA is appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[21]

As previously stated, Fastenal Canada declined to respond to Commerce's questionnaire, nor did Fastenal Canada request an extension of time to respond. We find that Fastenal Canada's failure to respond demonstrates a failure to act to the best of its ability in complying with Commerce's requests. Accordingly, pursuant to section 776(b) of the Act, we find it appropriate to use an adverse inference in selecting from among the facts available.

In addition, consistent with our practice, because the record reflects that Fastenal Canada is not a Chinese exporter,[22] we are not treating it as a part of the China-wide entity, but rather are assigning Fastenal Canada a rate as a market economy reseller.[23] Therefore, because Fastenal Canada is not a Chinese exporter, Commerce preliminarily finds that it is appropriate to apply AFA only to Fastenal Canada's exports of subject merchandise (*i.e.*, Chinese-origin STR).

C. AFA Rate

In relying on AFA, Commerce may rely on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record.[24] In selecting an AFA rate, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.[25] Under section 776(d) of the Act, Commerce may use any dumping margin from any segment of the proceeding when applying an adverse inference, including the highest of such margins. Therefore, we are assigning to Fastenal Canada's exports an individual rate of 206.00 percent based on total AFA, which is the highest margin applied in any segment of the proceeding.[26] Pursuant to section 776(c)(2) of the Act, Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding. Therefore, we have not corroborated the rate assigned to Fastenal Canada in this review.

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[20] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316 at 870 (1994) (SAA).
[21] *Id.*
[22] *See* Commerce's letters dated February 2 and February 12, 2018, which indicate the address of Fastenal Canada.
[23] *See Innersprings* (where Commerce treated a Malaysian company under review as a third country reseller).
[24] *See* section 776(b) of the Act.
[25] *See* SAA at 870.
[26] *See Final Determination* at "Final Determination Margins."

No Shipments

On July 7, 2017, RMB/IFI filed a no-shipment certification indicating that it did not export subject merchandise to the United States during the POR. On October 13, 2017, RMB/IFI provided further information that it did not have sales of subject merchandise to the United States during the POR.[27] During the course of this review, Commerce has examined this no shipments claim.

In order to examine this claim, and because the CBP entry data showed that RMB/IFI had entries during the POR, we placed complete entry packages for the shipments identified for RMB/IFI from the CBP data during the POR, and requested that RMB/IFI reconcile the information from the entry packages with its claim of no shipments.[28] RMB/IFI commented on the CBP entry package data and provided information consistent with its no shipment certification, *i.e.*, that its entries during the POR were of non-subject merchandise.[29] Although the petitioner submitted a letter to Commerce to rebut, clarify, or correct the no shipment information filed by RMB/IFI, the information submitted by the petitioner does not pertain to entries attributed to RMB/IFI in this administrative review.[30]

Based on the record evidence submitted, we preliminarily determine that RMB/IFI had no shipments of subject merchandise to the United States during the POR. Specifically, a review of the CBP entry documentation, as well as RMB/IFI's responses, indicates that the entries attributed to it during the POR pertain to non-subject merchandise.[31] Lastly, based on our practice, we find that it is appropriate not to rescind the review, in part, and to complete the review with respect to RMB/IFI and issue appropriate instructions to CBP based on the final results of the review.[32] Per our NME reseller policy and given the record evidence that RMB/IFI had no shipments during the POR, any subject merchandise entries attributed to RMB/IFI that entered during the POR would be assessed at the China-wide rate.[33]

NME Country Status

In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is a non-market economy (NME) country shall remain in effect until revoked by Commerce.[34] No

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[27] *See* RMB/IFI's October 13, 2017 submission.
[28] *See* Commerce's letters to RMB/IFI dated February 2 and February 12, 2018.
[29] *See* RMB/IFI's February 9 and February 15, 2018 submission.
[30] *See* the petitioner's October 27, 2017 submission.
[31] *See* Commerce's letters to RMB/IFI dated February 2 and February 12, 2018.
[32] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694, 65694-65695 (October 24, 2011).
[33] *Id*.
[34] *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 FR 50858, 50861 (November 2, 2017) (citing Memorandum to Gary Taverman, "China's Status as a Non-Market Economy," dated October 26, 2017), unchanged in *Certain Aluminum Foil From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018).

party in this segment of the proceeding has contested this treatment. Therefore, we continue to treat China as an NME country for purposes of these preliminary results.

Separate Rates

Pursuant to section 771(18)(C)(i) of the Act, a designation of a country as an NME remains in effect until it is revoked by Commerce. Accordingly, there is a rebuttable presumption that all companies within an NME are subject to government control, and thus, should be assessed a single AD rate.[35] In the *Initiation Notice*, Commerce notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings.[36] It is Commerce's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, Commerce analyzes each exporting entity in an NME country under the test established in *Sparklers*,[37] as amplified by *Silicon Carbide*.[38] However, if Commerce determines that a company is wholly foreign-owned by individuals or companies located in a market economy (ME), then a separate rate analysis is not necessary to determine whether it is independent from government control.[39] In this review, no company under review submitted a separate rate application or certification. As such, we have not granted any company under review a separate rate in this proceeding. However, as noted above, because we find that Fastenal Canada is located outside of China, we have not conducted a separate rate analysis for this company.

As noted in the *Initiation Notice*, in proceedings involving NME countries, such as the instant proceeding, companies must submit a separate rate application/certification or no shipments certification.[40] As RMB/IFI timely submitted a no shipments certification,[41] which we have preliminarily accepted, it is not necessary to determine whether it is eligible for a separate rate.

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[35] *See Notice of Final Determination of Sales at Less than Fair Value, and Affirmative Critical Circumstances, in Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079, 53082 (September 8, 2006); *Final Determination of Sales at Less than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303, 29307 (May 22, 2006).
[36] *See Initiation Notice*.
[37] *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified by *Notice of Final Determination of Sales at Less than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*), and 19 CFR 351.107(d).
[38] *See Silicon Carbide*, 59 FR at 22586.
[39] *See*, *e.g.*, *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 9278, 9284 (February 20, 2008), unchanged in *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sale at Less than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008).
[40] *See Initiation Notice*.
[41] *See* RMB/IFI's July 8, 2017 submission.

Companies Considered as Part of the China-Wide Entity

The petitioner did not withdraw its review request for Jiaxing Brother Standard Part Co., Ltd., Brother Holding Group Co. Ltd, and Zhejiang Morgan Brother Technology Co. Ltd. Because these companies did not apply for a separate rate, they are considered a part of the China-wide entity for their exports of subject merchandise exported to the United States during the POR. As noted above, because no review was requested of the China-wide entity, the pre-existing China-wide rate of 206.00 percent will apply to entries of the entity's subject merchandise into the United States during the POR.

RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

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Agree Disagree

5/3/2018

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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