

**FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND**

*Jiaxing Brother Fastener Co., Ltd., (a/k/a Jiaxing Brother Standard Part Co., Ltd.),  
IFI & Morgan Ltd., and RMB Fasteners Ltd. v. United States*  
Slip Op. 20-11 (January 29, 2020), Court No. 15-00313

**I. SUMMARY**

The Department of Commerce (Commerce) has prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (CIT) in *Jiaxing Brother Fastener Co., Ltd., (a/k/a Jiaxing Brother Standard Part Co., Ltd.), IFI & Morgan Ltd., and RMB Fasteners Ltd. v. United States*, Court No. 15-00313, Slip Op. 20-11 (CIT January 29, 2020) (Remand Order). This litigation pertains to Commerce's calculation of the RMB/IFI Group's<sup>1</sup> surrogate financial ratios in the fifth administrative review of the antidumping duty (AD) order on certain steel threaded rod (STR) from the People's Republic of China (China).<sup>2</sup> Specifically, the litigation relates to Commerce's inclusion of certain labor costs in the numerator of the selling, general, and administrative (SG&A) financial ratio calculation, in view of the data used to value labor hours. On January 29, 2020, the CIT remanded the *Final Results* to Commerce for further explanation or consideration of the calculation of surrogate financial ratios.<sup>3</sup> In accordance with the CIT's instructions, and as discussed further below,

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<sup>1</sup> The "RMB/IFI Group" refers, collectively, to RMB Fasteners Ltd., IFI & Morgan Ltd., and Jiaxing Brother Standard Part Co., Ltd. However, because in non-market economy administrative reviews Commerce only reviews exporters (and not producers), the calculated weighted-average dumping margin was assigned only to RMB Fasteners Ltd. and IFI & Morgan Ltd.

<sup>2</sup> See *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) (*Final Results*) and accompanying Issues and Decision Memorandum (IDM).

<sup>3</sup> See Remand Order at 2.

Commerce determines that it is appropriate to continue to include the above-referenced labor costs in the SG&A calculation.

## II. BACKGROUND

On November 12, 2015, Commerce published the *Final Results* of the fifth administrative review of the AD order on STR from China, covering the period of review (POR) of April 1, 2013 through March 31, 2014.<sup>4</sup> In the *Final Results*, Commerce reaffirmed its decision to select Thailand as the primary surrogate country.<sup>5</sup> Commerce determined that, although it considered Ukraine and Thailand to be at comparable levels of economic development to China in terms of per capita gross national income (GNI) and to be significant producers of STR, steel import data from Thailand were more specific than data from Ukraine.<sup>6</sup> Therefore, Commerce selected Thailand as the primary surrogate country.

Commerce valued hours of labor with data from the National Statistical Office of Thailand's Labor Force Survey of the Whole Kingdom (NSO data or NSO) from the second and third quarters of 2013, because it found the data to be more industry-specific and contemporaneous with the POR than the alternative data on the record, *i.e.*, International Labor Organization Chapter 6A data (ILO data).<sup>7</sup> In addition, Commerce derived surrogate financial ratios from the financial statements of three Thai companies.<sup>8</sup> In the calculation of surrogate financial ratios, Commerce categorized SG&A labor-related line items as SG&A expenses. As a result, the SG&A surrogate financial ratio numerator included these line items' values, along

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

<sup>5</sup> See Remand Order at 4-5.

<sup>6</sup> *Id.* at 4.

<sup>7</sup> *Id.* at 20.

<sup>8</sup> *Id.* (noting that Commerce relied on the financial statements of the following three companies: LS Industries Co., Ltd. (LSI), Sahasilp Rivet Industrial Co., Ltd. (Sahasilp), and Thai Mongkol Fasteners Co., Ltd. (Thai Mongkol)).

with other SG&A expenses, and the denominator represented the total cost of manufacturing, *i.e.*, the sum of raw materials, manufacturing labor, energy, manufacturing overhead, and finished goods.<sup>9</sup> On January 29, 2020, the CIT issued the Remand Order, in which it concluded that “Commerce’s selection of Thailand as the primary surrogate country is sustained” and that “Commerce’s calculation of Plaintiffs’ STR factor of production is sustained.”<sup>10</sup> However, the CIT found that “Commerce’s calculation of Plaintiffs’ surrogate financial ratios as related to labor is remanded for further explanation or reconsideration” and that Commerce should explain “the basis for finding record evidence that allows it to conclude that it could capture, and not overstate, labor costs by applying the NSO quarterly data and, as a result, decline to adjust the surrogate financial ratios.”<sup>11</sup>

The CIT found that Commerce’s decision not to make any adjustments to the calculation of the surrogate financial ratios was inadequately explained and did not appear to be supported by record evidence.<sup>12</sup> The CIT stated that “it is unclear on what basis Commerce determined that the NSO quarterly data is exclusive of SG&A labor, because the NSO quarterly data only identify individual data line items for ‘manufacturing’ activities, and there is no reference to ‘administrative and support activities’ ....”<sup>13</sup> The CIT also stated that “[a]lthough Commerce notes that it relies on the same NSO quarterly data to calculate labor hours as in the previous administrative review... the two proceedings are not the same. Here, unlike the previous administrative review, the record contains only excerpted data, not the full NSO reports.”<sup>14</sup> The

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<sup>9</sup> *Id.* at 20-21.

<sup>10</sup> *Id.* at 25.

<sup>11</sup> *Id.* at 24.

<sup>12</sup> *Id.* at 21.

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

<sup>14</sup> *Id.* at 21-22.

CIT noted that “Commerce’s determination cannot be sustained on this record,” and instructed that “{o}n remand, Commerce may wish to reopen the record.”<sup>15</sup>

On February 25 and 26, 2020, Commerce opened the record and placed the following reports from Thailand’s NSO on the record for interested parties to comment: “The Labor Force Survey Whole Kingdom – Quarter 4: October – December 2013,” “The Labor Force Survey Whole Kingdom – Quarter 1: January – March 2014,” “The Labor Force Survey Whole Kingdom – Quarter 2: April - June 2013,” and “The Labor Force Survey Whole Kingdom – Quarter 3: July – September 2013.”<sup>16</sup> Commerce received no comments.

On April 1, 2020 we released the draft results.<sup>17</sup> On April 7, 2020, the petitioner timely submitted comments on the draft results.<sup>18</sup>

### **III. ANALYSIS**

#### **A. Applicable Law and Regulations**

Section 773(c) of the Act provides that, for purposes of calculating normal value (NV), Commerce will value the factors of production (FOPs) in non-market economy (NME) cases using the best available information regarding the value of such factors in a market economy (ME) country or countries considered to be appropriate by the administering authority. Section 773(c)(4) of the Act requires that, when valuing FOPs, Commerce utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) at a comparable level of

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<sup>15</sup> *Id.*

<sup>16</sup> See Memorandum, “Steel Threaded Rod from the People’s Republic of China: Placing Documents on the Record,” dated February 25, 2020; and Memorandum, “Steel Threaded Rod from the People’s Republic of China: Placing Documents on the Record,” dated February 26, 2020 (collectively, 2013-14 NSO Reports).

<sup>17</sup> See Draft Results of Redetermination Pursuant to Remand Order *Jiaying Brother Fastener Co., Ltd., (a/k/a Jiaying Brother Standard Part Co., Ltd.), IFI & Morgan Ltd., and RMB Fasteners Ltd. v. United States*, dated April 1, 2020.

<sup>18</sup> See Petitioner’s Letter, “Steel Threaded Rod from China: Comments on Draft Results on Redetermination pursuant to Court Remand,” dated April 7, 2020.

economic development, and (2) significant producers of comparable merchandise. Pursuant to 19 CFR 351.408(c)(4), Commerce will normally value overhead, SG&A expenses, and profit using “nonproprietary information gathered from producers of identical or comparable merchandise in the surrogate country.”<sup>19</sup> Additionally, Commerce weighs the available information with respect to each input value on a case-by-case basis and then makes a product-specific determination as to what constitutes the “best” available surrogate value (SV) for each input.<sup>20</sup>

On June 21, 2011, in *Labor Methodologies*, in response to a request for comments on the means by which Commerce could “best capture all relevant costs in its wage rate calculation in NME antidumping proceedings,”<sup>21</sup> Commerce revised its labor cost calculation methodology in NME antidumping proceedings to rely on ILO Chapter 6A (Labor Cost in Manufacturing) data, rather than Chapter 5B (Wages in Manufacturing) data, for the primary surrogate country.<sup>22</sup> As explained in *Labor Methodologies*, “Commerce has decided to change to the use of Chapter 6A data, on the rebuttable presumption that Chapter 6A data better accounts for all direct and indirect labor costs.”<sup>23</sup> This methodological change did not prompt Commerce to preclude all other sources, *i.e.*, other than Chapter 6A data, for evaluating labor costs in NME antidumping

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<sup>19</sup> See 19 CFR 351.408(c)(4).

<sup>20</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), and accompanying IDM at Comment 1.

<sup>21</sup> See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodologies*).

<sup>22</sup> See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 56158 (September 12, 2011), and accompanying IDM at Comment 2.I. Due to concerns that reliance on data from Chapter 5B of the ILO may under-count the NME producer’s labor costs, Commerce was considering alternative data sources for valuing labor to ensure all labor costs incurred by the NME producer are accounted for in the NV calculation.

<sup>23</sup> See *Labor Methodologies*, 76 FR at 36093.

proceedings. Rather, Commerce continued to follow its practice of selecting the best available information to determine SVs for inputs such as labor.<sup>24</sup>

As part of this revised methodology, Commerce stated that “{i}f there is evidence submitted on the record by interested parties demonstrating that the NME respondent’s cost of labor is overstated, Commerce will make the appropriate adjustments to the surrogate financial statements subject to the available information on the record. Specifically, when the surrogate financial statements include disaggregated overhead and SG&A expense items that are already included in the ILO’s definition of Chapter 6A data, Commerce will remove these identifiable cost items.”<sup>25</sup> This methodology guides Commerce’s approach to valuing SG&A and labor when relying on ILO data, or another source, such as NSO data.<sup>26</sup>

## **B. Discussion**

For these final results of redetermination, for the reasons stated below, Commerce has continued to calculate the respondent’s surrogate financial ratios for overhead, SG&A expenses, and profit using the 2013 financial statements of LSI, Sahasilp, and Thai Mongkol. After re-examining the record information, as supplemented,<sup>27</sup> we find that it is not appropriate to remove SG&A labor-related costs from the numerator of the surrogate financial ratio calculation. Additionally, because the NSO data is industry-specific and contemporaneous with the POR, we continue to rely on the NSO data to value labor.

With respect to the labor-related SG&A costs, as discussed above, Commerce treated labor in the financial ratio calculations in the same manner as the surrogate companies

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<sup>24</sup> See *Certain Polyester Staple Fiber from the People’s Republic of China: Final Results of the Antidumping Duty Administrative Review; 2012-2013*, 80 FR 4542 (January 28, 2015), and accompanying IDM at Comment 5.

<sup>25</sup> See *Labor Methodologies*, 76 FR at 36094.

<sup>26</sup> See *Elkay Mfg. Co. v. United States*, Court No. 13-00176; Slip Op. 14-150 (CIT 2015), Final Results of Redetermination Pursuant to Court Remand, dated April 22, 2015, available at <https://enforcement.trade.gov/remands/14-150.pdf> (*Sinks Remand*).

<sup>27</sup> See 2013-14 NSO Reports.

disaggregated their labor costs. As such, when calculating the surrogate SG&A ratio, Commerce treated LSI's "Salary and Bonus" and "Social Security and Compensation," Sahasilp's "Salaries, wages, and additional benefits," "Bonus," and "Social Security," and Thai Mongkol's "Salary and employee expenses," "Allowance and employee welfare," and "Social security fund contribution," as SG&A expenses, mirroring the manner in which LSI, Sahasilp, and Thai Mongkol treated these expenses in their own financial statements.<sup>28</sup> Specifically, these expenses were classified in the portion of LSI's, Sahasilp's, and Thai Mongkol's financial statements entitled "Selling Expenses and Administration Costs," which covers SG&A costs, rather than expenses that pertain specifically to the production of merchandise.<sup>29</sup> In addition, these expenses were separated in LSI's financial statements from "Direct Wages" and "Outsourced Wage," in Sahasilp's financial statements from "Direct labor cost" and "Social security fund contribution," and in Thai Mongkol's financial statement from "Direct labor cost" and "Indirect labor cost," which were classified under the portion of LSI's, Sahasilp's, and Thai Mongkol's financial statements that covers "Cost of Sales"<sup>30</sup> (*i.e.*, production expenses). Accordingly, Commerce followed its practice by classifying expenses in the financial ratio calculations as they are classified in the surrogate company's own financial statements.<sup>31</sup> On remand, we have reexamined the LSI, Sahasilp, and Thai Mongkol financial statements and find that there is no evidence in the financial statements that would support allocating all manufacturing *and* SG&A labor costs to labor, as the RMB/IFI Group has proposed.

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<sup>28</sup> See Final Surrogate Value Memo at Exhibit 13.

<sup>29</sup> *Id.* (showing that the surrogate financial statements categorized the line items at issue under the headings "Selling Expenses" and "Selling and Administration Cost," referred collectively here as "selling and administration costs").

<sup>30</sup> *Id.* (showing that the surrogate financial statements categorized these line items under the headings "Details of Cost of Sales," "Cost of Sales," and "Production Costs," referred collectively here as "cost of sales").

<sup>31</sup> See *Final Results* IDM at Comment 9 subsection B.

Further, under the FOP methodology for calculating NV, labor expenses capture the labor cost only for manufacturing—obtained by multiplying a respondent’s reported direct and indirect labor hours to manufacture subject merchandise by the surrogate labor rate (*e.g.*, the NSO data labor rate or the ILO data labor rate). The RMB/IFI Group did not report labor hours associated with its selling and administrative staff, as this is not requested by our NME questionnaire.<sup>32</sup> Lastly, administrative and sales personnel are not employed in manufacturing products, and, thus, the wages, benefits, and expenses for these non-manufacturing personnel are appropriately considered SG&A expenses; as noted above, such costs are captured by the three financial statements on the record in the categories related to SG&A expenses.

With respect to the double counting of particular costs, *i.e.*, the labor-related SG&A costs and the labor costs covered by the NSO data, Commerce has further evaluated the NSO data and finds that these data do not provide the information necessary to make accurate adjustments to either the labor wage rate or to the surrogate financial ratio calculations to account for any potential overstatement in the labor wage rate.<sup>33</sup> Specifically, the record does not demonstrate the extent to which such costs are captured by the NSO data. Although the NSO data lists the number of employees by nine occupations within the “manufacturing” sector and these included occupations related to SG&A activities, which may suggest that the NSO data cover indirect labor hours, we cannot discern a relationship between those occupational groupings and the average wages reported in Table 15 that it had used to derive labor hours. Specifically, there is a mismatch in numbers of persons surveyed in Table 8 compared to Table 15, and the lesser number of persons surveyed in the calculation of the Table 15 average wage rate indicated that

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<sup>32</sup> See Commerce’s Letter, “Certain Steel Threaded Rod from the People’s Republic of China: Antidumping Duty Request for Information,” dated July 11, 2014 (Questionnaire).

<sup>33</sup> See 2013-14 NSO Reports.



some persons surveyed for occupation in Table 8 were excluded from the calculation of the average wage rate. Therefore, record evidence does not support a finding that the labor rate was higher, or by what amount it would be higher, in comparison to what the labor rate would have been if derived solely from production labor.

This approach is consistent with past practice and CIT precedent. In the *Sinks Remand*,<sup>34</sup> Commerce determined that it was appropriate to treat the labor-related SG&A expenses in the surrogate financial statements as SG&A expenses in the numerator of the financial ratio calculation. Commerce found that “[t]hough the record supports that the NSO data includes labor expenses for persons engaged in various manufacturing and non-manufacturing activities, there is not substantial evidence establishing that, as the CIT held, ‘the NSO labor rate was higher – or by what percentage it was higher – than it would have been had it been derived solely from Thai data on production labor rather than from a combination of Thai data on production labor and various types of non-production labor.’”<sup>35</sup> The CIT sustained Commerce’s analysis in the *Sinks Remand* in *Elkay II*,<sup>36</sup> which was sustained by the U.S. Court of Appeals for the Federal Circuit.<sup>37</sup>

Commerce finds the *Elkay II* decision and the *Sinks Remand* instructive for purposes of this remand redetermination. Here, as in the *Sinks Remand*, we find that the labor rate contained in the NSO data was derived from an *average* remuneration paid for persons engaged in various manufacturing- and non-manufacturing-related activities.<sup>38</sup> In addition, we find that the NSO

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<sup>34</sup> See *Sinks Remand* at 10.

<sup>35</sup> *Id.* at 7-10.

<sup>36</sup> See *Elkay Manufacturing Company v. United States*, 180 F. Supp. 3d 1245, 1257 (CIT 2016) (*Elkay II*).

<sup>37</sup> See *Guangdong Dongyuan Kitchenware Indus. Co. v. Elkay Mfg. Co.*, 702 Fed. Appx. 981 (Fed. Cir. Nov. 13, 2017) (non-precedential).

<sup>38</sup> See 2013 NSO Reports; see also *Sinks Remand* at 7-10 (emphasis added).

rate is likely to be a much broader average than one representing only wages and salaries, because the 2013 NSO data include items such as bonuses, social security, worker's compensation fund, and health insurance, *etc.*<sup>39</sup> However, we find that the record lacks evidence to support a finding that the NSO labor rate in Table 15 was higher – or at a different percentage – than would have resulted had it been derived solely from data on production labor.

This approach is also consistent with the CIT's recent opinion in a proceeding relating to this order on STR from China. In *Jiaxing I*,<sup>40</sup> covering the preceding AD administrative review of this order, the CIT remanded for further explanation or reconsideration Commerce's calculation of surrogate financial ratios as related to labor. In *Jiaxing II*, the CIT affirmed Commerce's remand determination, and held that “{o}n remand, Commerce reasonably declined to adjust the surrogate financial ratios to remove SG&A labor related line items from the numerator because the record did not enable Commerce to determine whether such an adjustment would appropriately compensate for {RMB/IFI's} unreported SG&A labor hours when using the NSO data value labor hours.”<sup>41</sup> The CIT found that

Commerce reasonably declined to assume that the NSO data would accurately compensate for, and not overstate, respondents' unreported SG&A labor hours. Without an indication of the extent to which the NSO data also covered SG&A labor, Commerce reasonably declined to transfer the surrogate financial statements' SG&A labor-related line items to the denominator in the surrogate financial ratio calculation.<sup>42</sup>

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<sup>39</sup> See 2013 NSO Reports; see also *Elkay Manufacturing Company v. United States*, 34 F. Supp. 3d 1369, 1381 (CIT 2016).

<sup>40</sup> See *Jiaxing Brother Fastener Co., Ltd., (a/k/a Jiaxing Brother Standard Part Co., Ltd.), IFI & Morgan Ltd., and RMB Fasteners Ltd. v. United States*, 380 F. Supp. 3d 1343 (2019) (*Jiaxing I*) (pertaining to *Certain Steel Threaded Rod from the People's Republic of China: Final Results of the Antidumping Duty Administrative review; 2012-2013*, 79 FR 71743 (December 3, 2014)).

<sup>41</sup> See *Jiaxing Brother Fastener Co., Ltd., (a/k/a Jiaxing Brother Standard Part Co., Ltd.), IFI & Morgan Ltd., and RMB Fasteners Ltd. v. United States*, Court No. 14-00316, Slip Op. 20-13 (CIT February 3, 2020) (*Jiaxing II*) at 13.

<sup>42</sup> See *Jiaxing II* at 14.

Thus, because the underlying basis for the NSO data calculation could not be identified with confidence, the CIT determined that Commerce appropriately retained the labor-related SG&A items in the numerator of the calculation. As a result, in *Jiaxing II*, the CIT sustained Commerce's calculation of surrogate financial ratios as related to labor when confronted with analogous record information.

Here, we did not remove SG&A labor-related lines from the numerator of the surrogate financial ratio calculations because there was no evidence on the record indicating that such expenses were fully captured by the NSO data. Further, because we cannot quantify the amount by which the NSO labor rates contain non-manufacturing wage figures, there is no evidentiary basis for the RMB/IFI Group's proposed adjustment to the surrogate financial ratio calculations (allocating all SG&A costs to labor, which would move SG&A labor costs from the numerator to the denominator), nor is there evidentiary basis to determine whether such an adjustment would accurately compensate for an overstatement in the NSO wage rate. As a result, the RMB/IFI Group's proposed adjustment could itself introduce a distortion into the calculation, for example, by resulting in an undervaluation of the labor-related SG&A expenses.

In sum, in *Labor Methodologies*, Commerce addressed concerns of double-counting labor costs when it stated that it would adjust "the surrogate financial ratios when the available record information – in the form of itemized indirect labor costs – demonstrates that labor costs are overstated."<sup>43</sup> However, after reexamining the record of this review, Commerce finds that there is no basis to evaluate whether the RMB/IFI Group's proposed adjustment to the ratio appropriately compensates for any overstatement in the wage rate.

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<sup>43</sup> See *Labor Methodologies*, 76 FR at 36092-94.

For this final remand redetermination, and consistent with our approach in *Jiaxing II*, Commerce continues to include the line items in question in the numerator of the SG&A financial ratio calculation. This is consistent with our practice, consistent with the record evidence, and avoids potentially introducing a different distortion into the calculation to compensate for an unquantifiable overstatement of the wage rate, if any such overstatement even exists.

In addition, because it is Commerce's statutory obligation to calculate dumping margins as accurately as possible, for these final results of redetermination, we have valued labor using manufacturing-specific quarterly NSO data for the POR (*i.e.*, the second, third, and fourth quarters of 2013, and first quarter of 2014).<sup>44</sup>

#### **IV. COMMENTS FROM INTERESTED PARTIES**

##### *Petitioner's Comments*

- Commerce decision to further explain its calculations, rather than recalculate the SG&A ratio, was appropriate and consistent with the Court's remand order.<sup>45</sup>

*No other party commented on the Draft Results of Redetermination.*

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<sup>44</sup> To calculate the total labor cost for employees and private employees in the "manufacturing" industry for each available quarter of the POR, Commerce calculated a total labor cost, which includes average wage, bonus, other income, overtime, food, clothes, housing, and other costs. See Memorandum, "Administrative Review of Certain Steel Threaded Rod from the People's Republic of China: Surrogate Values for the Draft Remand Results," dated April 1, 2020; and Memorandum, "Administrative Review of Certain Steel Threaded Rod from the People's Republic of China: Draft Remand Results Analysis Memorandum for RMB/IFI Group," dated April 1, 2020 (RMB/IFI Analysis Memorandum); see also 2013-14 NSO Reports.

<sup>45</sup> See Petitioner's Draft Remand Comments, "Steel Threaded Rod from China: Comments on Draft Results of Redetermination Pursuant to Court Remand," dated April 7, 2020.

**Commerce Position:**

Because we received no comments disagreeing with the methodology set forth in the Draft Results of Redetermination, we continue to include the line items in question in the numerator of the SG&A financial ratio calculation.

**V. FINAL RESULTS OF REDETERMINATION**

Pursuant to the CIT's order, and based on the analysis of the information available on the record, for this final remand redetermination Commerce has made no changes to the calculation methodology of surrogate financial ratios as they pertain to certain labor-related line items,<sup>46</sup> and will continue to include such line items in the numerator of the SG&A financial ratio calculation. Accordingly, we have made no further adjustment to RMB/IFI Group's margin of 39.53 percent.<sup>47</sup>

4/23/2020

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Signed by: JEFFREY KESSLER

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Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

<sup>46</sup> As noted above, we placed additional information on the record to ensure full contemporaneity with the POR. In the underlying review, only two quarters of data were on the record.

<sup>47</sup> See RMB/IFI Analysis Memorandum.