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November 5, 2012

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Import Administration

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

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

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SUMMARY:

We have analyzed the comments and rebuttal comments of interested parties in the final results of the second administrative review of the antidumping duty order covering certain steel threaded rod from the People's Republic of China ("PRC"). The period of review ("POR") covers April 1, 2010, through March 31, 2011. As a result of our analysis, we have made certain changes from the preliminary results. We recommend that you approve the positions described in the "Discussion of the Issues" section of this Issues and Decision Memorandum.

Below is the complete list of the issues in this administrative review for which we received comments by parties:

Comment 1: Surrogate Country Selection

A: Economic Comparability and Significant Producer

B: Data Availability

- (1): Surrogate Value for Steel Inputs
- (2): Surrogate Value for Hydrochloric Acid
- (3): Surrogate Financial Ratios

Comment 2: Correcting the Harmonized Tariff Schedule Numbers Within the Scope

Comment 3: Factors of Production for Control Numbers Not Produced During the POR



## BACKGROUND:

On May 8, 2012, the Department of Commerce (“Department”) published the preliminary results of this administrative review.<sup>1</sup> On July 17, the Department received case briefs from RMB Fasteners Ltd., and IFI & Morgan Ltd. (collectively “RMB/IFI Group”), the mandatory respondent, and from Vulcan Threaded Products Inc. (“Petitioner”). On July 24, the Department received a rebuttal brief from Petitioner. On August 24, 2012, the Department extended the time limit for these final results by 60 days.

## DISCUSSION OF THE ISSUES:

### *Comment 1: Surrogate Country Selection*

#### *A: Economic Comparability and Significant Producer*

- The RMB/IFI Group asserts that, given the Department’s criteria for the selection of surrogate market economy countries as outlined by the Tariff Act of 1930, as amended (“the Act”), and the statutory requirement to ensure dumping margins are calculated as accurately as possible as interpreted by the Court of International Trade (“CIT”),<sup>2</sup> India is the most appropriate surrogate country on the record based upon economic comparability, significant production of comparable merchandise, and access to reliable data.
- The RMB/IFI Group maintains that, although the Import Administration’s Office of Policy (“OP”) did not place India on the list of economically comparable potential surrogate countries, India is the most economically comparable country to the PRC when comparing main economic indicators such as gross domestic product, gross national income (“GNI”), Doing Business Ranking, unemployment, investment, industrial growth rates, and household income.
- The RMB/IFI Group notes that countries not initially listed by the Department are open to consideration in multiple circumstances: when listed countries of economic comparability are not significant producers of comparable merchandise, do not provide a reliable source of publicly available surrogate data, do not have sufficient data available, do not have adequate /available crucial factor price data, or for other reasons.
- The RMB/IFI Group asserts that they must have reasonable opportunity to estimate their costs of production for normal value purposes as to adjust U.S. prices and avoid dumping, and that the lack of this opportunity makes the application of AD laws punitive, rather than remedial, as the proceedings will never be fair without a means of compliance.
- The RMB/IFI Group maintains that the Department gave no advance notice of its decision to not include India on the list of economically comparable countries, and that POR sales are made by the time the OP issues its list, abridging RMB/IFI’s rights to a fair proceeding and opportunity to adjust prices to avoid dumping.

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<sup>1</sup> See *Certain Steel Threaded Rod From the People's Republic of China: Preliminary Results of the Administrative Review, Intent To Rescind, and Rescission, in Part*, 77 FR 27022 (May 8, 2012) (“*Preliminary Results*”).

<sup>2</sup> See *Dorbest Ltd. v. United States*, 462 F. Supp. 2d 1262, 1268 (CIT 2006).

- The RMB/IFI Group argues that pursuant to the Administrative Procedures Act (“APA”), the Department must put any change in practice out for public notice and comment before changing practice.
- The RMB/IFI Group asserts that the Philippines meets the Department’s criteria for economic comparability, is a significant producer of comparable merchandise, has data on the record for this POR, and has quality data superior to Thailand’s for the surrogate values in this review.
- Petitioner notes that India is not on the list of potential surrogate countries for this review, and that the Department followed normal procedures, and found Thailand to be of comparable economic development, to be a significant producer of comparable merchandise, and to have publicly available and reliable data. Therefore, Petitioner counters that non-listed countries are not considered unless every country on the list fails the specified criteria, and Thailand did not fail.
- Petitioner maintains that the Department determines economic comparability on the basis of per capita GNI, that this follows the long-standing practice of the Department, and that this practice has been found to be reasonable and consistent with the Act.
- Petitioner asserts that for the RMB/IFI Group to claim a denial of opportunity to estimate costs presumes an entitlement to the selection of India as surrogate country, and ignores that the selection of the primary surrogate country is based on the record of each review, so no country is pre-ordained to be a surrogate, as the selection of surrogate countries changes from one proceeding to another.
- Petitioner contends that the RMB/IFI Group’s APA argument is flawed and has been rejected by the Department in previous reviews, as the APA does not apply to antidumping proceedings. Petitioner notes that the Department’s decision to not include India on the surrogate country list for review does not represent a change in methodology, but rather a change in result based on the record evidence present in this administrative review.
- Petitioner maintains that the Department considered the surrogate value data in the record of this review and determined Thailand to be the appropriate surrogate, with reliable and complete surrogate value data.

Department’s Position:

Because the PRC is treated as a non-market economy (“NME”), when calculating normal value (“NV”), section 773(c)(4) of the Act requires, to the extent possible, that the Department value the factors of production (“FOPs”) in a surrogate country that is (A) at a level of economic development comparable to the PRC and (B) a significant producer of comparable merchandise.

First, we disagree with the RMB/IFI Group that India should have been selected as the primary surrogate country. At the outset of each administrative proceeding, OP develops a list of possible surrogate countries. The list is comprised of countries that are proximate to the PRC in terms of GNI, and the Department considers all countries on the list to be equal in terms of economic comparability for purposes of evaluating their suitability for use as a surrogate country. The list did not include India because India’s per capita GNI did not fall within the

range of countries proximate to the PRC.<sup>3</sup> The Department finds that the selection of the range of economically comparable countries based on GNI, included in the Surrogate Country Memorandum, is reasonable and consistent with the Act. It is further consistent with the Department's long-standing and predictable practice of selecting economically comparable countries on the basis of absolute GNI.<sup>4</sup> Further, when selecting a primary surrogate country, the Department will normally look first to the list of countries included in the surrogate country memo, as these countries have been determined to be equally comparable to the PRC. The Department may find it is appropriate to rely on data from other countries, if it is determined that none of the countries in the surrogate country memo are viable options because they either are not significant producers of comparable merchandise, do not provide sufficient reliable sources of publicly available surrogate value data, or are otherwise unsuitable.<sup>5</sup> However, as discussed below, those facts are not present in these final results. Thailand has been determined to be economically comparable to the PRC, it is a producer of comparable merchandise to certain steel threaded rod, and data from Thailand are available to value all of the surrogate values in this proceeding.

As to the RMB/IFI Group's claim that the Department's selection of a country other than India as the surrogate country is punitive and denied RMB/IFI of its right to a fair proceeding, we disagree. Each antidumping duty administrative review proceeds *de novo*, and determinations in that review are based upon the record as developed during the course of that particular segment of the proceeding.<sup>6</sup> In each NME review, the Department solicits anew a list of potential surrogate countries, based upon economic comparability. Neither Petitioner nor the RMB/IFI Group could know at the outset of a review, before the development of an administrative record, which country would be selected as the primary source for surrogate value data. The RMB/IFI Group's reliance upon the use of Indian surrogate values is misplaced. Even for a given country, the selection of the best surrogate values to use is subject to change as the record develops. Thus, we find the RMB/IFI Group's argument on this point unconvincing.

The Department further disagrees that it was required to provide notice of its decision to exclude India from the list of potential primary surrogate countries through formal notice-and-rulemaking procedures, pursuant to the APA. Formal rulemaking procedures under the APA do not apply to "interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice." 5 U.S.C. § 553(b)(3)(A). It is well established that the APA does not apply to

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<sup>3</sup> See Department's Surrogate Country Memorandum, dated November 18, 2011.

<sup>4</sup> See, e.g., *Magnesium Metal From the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 75 FR 65450 (October 25, 2010), and accompanying Issues and Decision Memorandum at Comment 4.

<sup>5</sup> See, e.g., *Certain Steel Wheels From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination*, 76 FR 67703, 67708 (November 2, 2011), unchanged in *Certain Steel Wheels From the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Final Determination of Critical Circumstances*, 77 FR 17021 (March 23, 2012).

<sup>6</sup> See *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 accompany Issues and Decision Memorandum at Comment 1; see also *Shandong Huarong Mach. Co. v. United States*, 29 CIT 484, 491 (2005) ("Each administrative review is a separate segment of proceedings with its own unique facts.").

antidumping proceedings because they are largely investigative, and not adjudicatory.<sup>7</sup> Indeed, the CIT has long recognized the Department's discretion to modify its practice and has upheld decisions by the Department to change its policies on a case-by-case basis rather than by rulemaking when it has provided a reasonable explanation for any change in policy.<sup>8</sup> Moreover, while the Department must explain changes in or departures from longstanding practice and methodologies, the Department's decision not to include India on the list of potential surrogate countries in this segment of the proceeding does not represent a change in methodology, but rather a change in facts upon which the Department bases its determination of economic comparability. Specifically, in this review, the Department followed its longstanding practice of basing its surrogate country selection primarily on GNI, and India's exclusion from the list is based on the GNI figures currently available.

Second, as the RMB/IFI Group placed significant surrogate value data from the Philippines on the record following the *Preliminary Results*, we now consider the selection of Thailand versus the Philippines as the primary surrogate country for these final results. In selecting a surrogate country, we have followed our established practice to base our determination on (1) economic comparability based on GNI, relative to that of the PRC; (2) whether that country is a significant producer of comparable merchandise, and (3) the availability of surrogate values within the selected country. This approach is consistent with the Department's regulations (19 CFR 351.408(b)), with Policy Bulletin No. 04.1,<sup>9</sup> and with the approach employed by the Department in all proceedings that involve NMEs,<sup>10</sup> including past proceedings of this case.<sup>11</sup>

The Department determines economic comparability on the basis of per capita GNI.<sup>12</sup> Based on the most current data available from the World Bank (World Development Report 2012), the Department determines that Thailand, with a GNI of 4,210 U.S. Dollars ("USD"), and the Philippines, with a GNI of 2,050 USD, both have GNIs that are proximate to that of the PRC, which has a GNI of 4,260 USD.<sup>13</sup> The Department considers all countries on the OP list of potential surrogate countries to be equal in terms of economic comparability for purposes of evaluating their suitability for use as a surrogate country. In addition, we find that both Thailand

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<sup>7</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316 (1994) at 892 ("Antidumping and countervailing duty proceedings ... are investigatory in nature."); see also *GSA, S.R.L. v. United States*, 77 F. Supp. 2d 1349, 1359 (CIT 1999) (acknowledging that the Department's proceedings are "largely investigative, not adjudicatory").

<sup>8</sup> See *Budd Co., Wheel & Brake Div. v. United States*, 746 F. Supp. 1093, 1100 (CIT 1990) (finding that the Department did not deprive plaintiff of procedural fairness under the APA when it fully explained its decision on the record.); *Sonco Steel Tube Div v. United States*, 694 F. Supp. 959, 966-67 (CIT 1988) (formal rulemaking procedures were not required in determining whether it was appropriate to deduct further manufacturing profit from the exporter's sales price).

<sup>9</sup> See Department's Policy Bulletin No. 04.1, regarding, "Non-Market Economy Surrogate Country Selection Process," (March 1, 2004) ("Policy Bulletin No. 04.1"), available at <http://ia.ita.doc.gov/policy/bull04-1.html>.

<sup>10</sup> 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.

<sup>11</sup> See, e.g., *Certain Steel Threaded Rod From the People's Republic of China: Preliminary Results of the First Administrative Review and Preliminary Rescission, in Part*, 76 FR 26696, 26700 (May 9, 2011), unchanged in *Certain Steel Threaded Rod From the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 68400 (November 4, 2011).

<sup>12</sup> See 19 CFR 351.408(b), and Policy Bulletin No. 04.1.

<sup>13</sup> See Department's Surrogate Country Memorandum.

and the Philippines are significant producers of comparable merchandise. Specifically, certain steel threaded rods are currently classifiable under U.S. Harmonized Tariff Schedule (“HTSUS”) categories 7318.15.5051, 7318.15.5056, 7318.15.5090, and 7318.15.2095 and falls within the subheading 7318.15 (“Threaded Screws and Bolts Nesoi, With or Without Their Nuts or Washers, of Iron or Steel”). During the POR, Thailand and the Philippines exported significant quantities of merchandise within the category 7318.15 which we view as a comparable product within the meaning of Policy Bulletin No. 04.1.<sup>14</sup> Therefore, we find both Thailand and the Philippines are economically comparable to the PRC and are significant producers of comparable merchandise. Accordingly, we will now address the quality of the surrogate value data available for Thailand and the Philippines as no other data for other countries in the Surrogate Country Memorandum have been placed on the record.

*B: Data Availability:*

*(1): Surrogate Value for Steel Inputs*

- The RMB/IFI Group asserts that the wire rod and round bar import values from the Philippines more resemble the Indian values on the record, and the steel input values used in past proceedings.
- The RMB/IFI Group further argues that the Philippine import statistics for steel wire rod of over 14 mm category are aberrant, and argues that the Department should either use a much broader category at the six digit HTS or weight average categories that are not specific to the steel wire rod consumed by the RMB/IFI Group.
- The RMB/IFI Group notes that the Thailand steel wire rod import values came from Japan, Taiwan, and Malaysia, first world economy prices that do not reflect world steel prices and are not comparable to the 2010-2011 world benchmarks previously used by the Department. The RMB/IFI Group asserts that, as the Department has done before in cases of aberrance, Thai steel import data should be disregarded as it appears aberrant, displaying values above recorded benchmarks, as well as above prices offered domestically. The RMB/IFI Group claims to have contacted a large Thai mill for a price quote, which revealed domestic pricing to be significantly below import values.
- The RMB/IFI Group maintains that Petitioner did not rebut the domestic price quotes, and the Department cannot assume that domestic price quotes are unreliable when no effort has been made to rebut them. As such, the RMB/IFI Group asserts that should the Department continue to use Thailand, the Department should apply the price quotes of steel inputs on record.
- Petitioner contends that, by Department standards, evidence needs to confirm that high prices were not market driven, and that nothing in the record of this review supports Thai steel inputs values as aberrational.
- Petitioner notes that Department generally resists the use of price quotes to value factors of production.

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<sup>14</sup> See Department’s Preliminary Surrogate Value Memorandum, dated April 30, 2012, at Exhibit 12.

## Department's Position:

In valuing FOPs, section 773(c)(1) of the Act instructs the Department to use “the best available information” from the appropriate market economy country. The Department’s criteria for selecting surrogate value information are normally based on the use of publicly available information, and the Department considers several factors, including the quality, specificity, and contemporaneity when choosing the most appropriate data.<sup>15</sup> Additionally, it is the Department’s practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing the FOPs on a case-by-case basis. As there is no hierarchy for applying the above-mentioned principles, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the “best” available surrogate value is for each input.<sup>16</sup>

As steel threaded rod is a type of steel fastener drawn from wire rod or round bar, these steel inputs constitute most of the material cost and are the most important factors in proper valuation of steel threaded rod.<sup>17</sup> First, we disagree with the RMB/IFI Group that, because the Thai steel wire rod and round bar import statistics are based on entries from “first world economies” such as Japan, Taiwan and Malaysia, this renders the Thai import value unreliable. In applying the Department’s surrogate value selection criteria, the Department has found in numerous NME cases that import data are reliable information for valuation purposes because they consist of average import prices, are representative of prices within the POR, and are both product-specific and tax-exclusive.<sup>18</sup> With respect to respondent’s argument that the Thai import data for steel wire rod are aberrational, we note that no record evidence supports this finding. As the CIT has indicated, an interested party must introduce evidence in support of any claim that a value is aberrational or distortive.<sup>19</sup> By simply stating that the Thai steel wire rod import value is 40% higher than other values on the record, such as the Indian, Philippine and other values the RMB/IFI Group placed on the record, the RMB/IFI Group has not demonstrated that the differences in values are not market driven or that the value is aberrational or distortive. Rather, the RMB/IFI Group has simply suggested that if the values it has offered are different from the Thai data, then the Thai data must be aberrational.

Moreover, Thai import statistics for steel wire rod are divided by several grades of carbon steel based on carbon content and can be specifically matched to the grade of steel wire rod consumed by the RMB/IFI Group during the POR.<sup>20</sup> Philippine import statistics for steel wire rod, however, consist of broader categories, with low carbon and medium carbon steel wire rod

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<sup>15</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079 (September 8, 2006), and accompanying Issues and Decision Memorandum at Comment 3.

<sup>16</sup> See, e.g., *Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>17</sup> See Department’s Final Analysis Memorandum for RMB/IFI, dated November 5, 2012, at Exhibit 2.

<sup>18</sup> See, e.g., *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 59217 (September 27, 2010), and accompanying Issues and Decision Memorandum at Comment 19.

<sup>19</sup> See *Trust Chem. Co. v. United States*, 791 F. Supp. 2d 1257, 1264-65 (CIT 2011) (“*Trust Chem*”).

<sup>20</sup> See Department’s Final Surrogate Value Memorandum, dated November 5, 2012, at Exhibit 1; the RMB/IFI Group’s Supplemental Section D Questionnaire Response, dated February 27, 2012, at Exhibit SD-2.

grouped together.<sup>21</sup> Thus, the Philippine value is less specific to the specific grade of wire rod consumed by the RMB/IFI Group. Regardless of whether certain Philippine import statistics for steel wire rod are aberrational as alleged by the RMB/IFI Group, we find the Thai import statistics for steel wire rod to be more specific and better suited to value the specific grade of steel wire rod consumed by RMB/IFI.

For valuing steel wire rod and round bar, we have not relied on the price quote offered by the RMB/IFI Group since we find that the price quote is not the best available information for purposes of applying a surrogate value for steel wire rod and round bar when compared to the other sources on the record of this review. In particular, the price quote represents a single sale of one grade of steel wire rod and round bar on a particular day, which occurred after the POR.<sup>22</sup> As a result, the price quote does not constitute contemporaneous broad market averages, which the Department prefers for purposes of FOP valuation.

(2): *Surrogate Value for Hydrochloric Acid*

- The RMB/IFI Group contends that the Thai import statistic for hydrochloric acid (“HCL”) presents both small volume and high average unit value (“AUV”), and is aberrantly high when compared to Global Trade Atlas data on the record.
- The RMB/IFI Group claims that, given the Department’s statements elsewhere that volatile dangerous chemicals are not practically traded in large quantities internationally,<sup>23</sup> and that Thailand imported a small quantity of HCL during the POR, the Department should infer that the HCL was shipped in small units. Whereas the RMB/IFI Group asserts that their processes involve HCL baths, and to fill these baths of HCL with small unit imports would be unreasonable.
- The RMB/IFI Group claims that, according to InfoDrive India data, small unit size sales are shipped by air, inflating the values used for the RMB/IFI Group’s purchases.
- The RMB/IFI Group notes that the Department has recognized HCL is shipped internationally in a wide variety of grades/concentrations. Moreover, the RMB/IFI Group claims that small unit imports are most likely high grade expensive HCL for laboratory or medical use according to InfoDrive India data, which is much more expensive than industrial grade HCL normally purchased in large quantities.
- The RMB/IFI Group contends that the wide array of AUV for Thai HCL import values indicates that the HCL imported was primarily not industrial grade.
- The RMB/IFI Group asserts that the domestic Indian source, Chemical Weekly, provides more specific data for industrial HCL use. Moreover, the RMB/IFI Group contends that the Department should reject import values for HCL, and use Chemical Weekly, as the

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<sup>21</sup> See the RMB/IFI Group’s surrogate value submission, dated June 19, 2012, at Exhibit 2; the RMB/IFI Group’s surrogate value submission, dated March 2, 2012, at Exhibit 5.

<sup>22</sup> See the RMB/IFI Group’s surrogate value submission, dated June 19, 2012, at Exhibit 20.

<sup>23</sup> See *Chlorinated Isocyanurates From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 76 FR 40689, 40695 (July 11, 2011) (“*Chlorinated Isos*”), unchanged in *Chlorinated Isocyanurates From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 76 FR 70957 (November 16, 2011).

Department has done before for reasons similar to those now stated, including a recent instance where India was not the primary surrogate country.<sup>24</sup>

- The RMB/IFI Group maintains that, if import values are still used, the Philippines import data should be used as it reflects larger quantities of imports and current data on the record.
- Petitioner rebuts that the Department has stated the existence of higher prices does not make such high prices aberrational *per se*, and that the burden is on interested parties to provide factual evidence showing the value is aberrational.
- Petitioner contends that the RMB/IFI Group has erroneously equated low import volumes with aberrational values, and rebuts that the Department, as upheld by the CIT, does not consider small quantities inherently distortive, but considers whether or not the relative quantity of imports is distortive. Furthermore, the Petitioner notes that this ruling found it to be the party's burden to introduce evidence in support of an aberrational or distortive value claim.<sup>25</sup>
- Petitioner asserts that there is no particularly high or low value skewing the import data, and that many of the country AUV's are similar to the overall Thai AUV of \$2.94 per kilogram.

#### Department's Position:

Citing *Chlorinated Isos*, the RMB/IFI Group argues that HCL values are distorted because the chemical is volatile and not usually commercially traded. However, unlike in *Chlorinated Isos* where India was the primary surrogate country, we find that record evidence shows that Thailand imports large quantities of HCL, from which we conclude that HCL is commercially traded.<sup>26</sup> While the RMB/IFI Group argued extensively about the composition of Thai import statistics for HCL not being specific and comparable, the information and data relied on by the RMB/IFI Group for these arguments is Infodrive data for Indian imports, not Thai imports. Therefore the RMB/IFI Group's arguments are entirely speculative. We find the record contains no evidence demonstrating that more expensive laboratory and medical grades of HCL distorted the Thai HCL import statistics. In addition, we find that the range of country average unit values ("AUVs") comprising the Thai HCL import statistics indicate that this import value represents a broad market average based on significant commercial quantities, and we therefore do not find that record evidence demonstrates that the Thai import statistics for HCL are aberrational. We also note that the Philippine HCL import statistics which the RMB/IFI Group argue to be accurate and reliable consists of a wider range of country AUVs than Thai HCL import statistics.<sup>27</sup> Overall, we find that both Thailand and the Philippines offer useable surrogate value information for HCL.

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<sup>24</sup> See *Helical Spring Lock Washers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 4175 (January 24, 2008), and accompanying Issues and Decision Memorandum at Comment 4.

<sup>25</sup> See *Trust Chem*, 791 F. Supp. 2d. at 1264-65.

<sup>26</sup> See Department's Preliminary Surrogate Value Memorandum, dated April 30, 2012, at Exhibit 1.

<sup>27</sup> See the RMB/IFI Group's surrogate value submission, dated June 19, 2012, at Exhibit 2.

(3): *Surrogate Financial Ratios*

RMB/IFI:

- The RMB/IFI Group asserts that the submitted financial statement for CEN Engineering (“CEN”) is incomplete and the original language version was not included, and the financial statement itself is not official, rather a translation provided by CEN.
- The RMB/IFI Group contends that CEN’s company website is inaccessible or not public, and that as such participants are unable to better understand CEN’s operations.
- The RMB/IFI Group asserts that, “a significant portion of the Group’s... profit was derived from promoted activities for which concessionary tax rates apply,” which indicates that CEN benefits from countervailable subsidies. The RMB/IFI Group maintains that the Department routinely countervails Thai companies benefitting under the Investment Promotion Act (“IPA”), and that the RMB/IFI Group submitted official confirmation of CEN’s participation in the IPA.
- The RMB/IFI Group maintains that CEN is a holding company for its four business segments. The RMB/IFI Group notes that three of the four aforementioned segments of CEN are in no way comparable. UA Withya Public Company Limited produces and installs transmission line towers, telecommunication towers, and structure steel for electricity substation. Enesol Company Limited distributes electricity and heat, as well as makes power plants. CEN-IMC Company Limited’s business is as a contractor for underground tunneling and other construction tasks.
- The RMB/IFI Group contends that the remaining CEN segment, Rayong Wire Industries Public Company Limited (“RWI”), is the only segment of near comparability, but should not be used for comparison. The RMB/IFI Group claims that RWI manufactures welding wire and high carbon pc-wire that requires relatively high investment, and consumes high carbon rods of very small diameter. The RMB/IFI Group further asserts that high carbon is a more expensive input and manufactured on different machines to different standards.
- The RMB/IFI Group argues that the four contemporaneous financial statements of producers of comparable merchandise from the Philippines placed on the record by RMB/IFI, *i.e.*, APO Industries, Benedicto Steel Corp., Supersonic Manufacturing Inc., and Sterling Steel Inc., better capture the production experience of The RMB/IFI Group.
- Petitioner claims that the financial statement of CEN confirms the company as a producer of comparable merchandise.
- Petitioner asserts that there is nothing on the record of this review that indicates CEN benefitted from countervailable subsidies. Petitioner asserts that the IPA is not mentioned in CEN’s financial statement. In addition, the Petitioner notes that the Department has found that only certain provisions of the IPA may be potentially countervailable, and that the RMB/IFI Group has not quantified the alleged subsidization to show whether or not it would be countervailable by the Department.
- Petitioner notes that the Department has selected and used the financial statement of CEN in other proceedings.
- Petitioner notes that, amongst the four financial statements placed on the record by the RMB/IFI Group for the Philippines, none of the companies produce steel threaded rod.

## Department's Position:

The Department's criteria for choosing financial statements for the calculation of surrogate financial ratios are the availability of contemporaneous financial statements, comparability to the respondent's experience, and publicly available information.<sup>28</sup> Moreover, for valuing overhead, SG&A and profit, the Department uses non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.<sup>29</sup> Further, courts have recognized the Department's discretion when choosing appropriate companies' financial statements to calculate surrogate financial ratios.<sup>30</sup>

With regard to the sole Thai financial statement on the record, we find the CEN financial statement provided by Petitioner to be an official financial statement prepared by the company in English, complete with all relevant reports, notes, charts and original signatures.<sup>31</sup> Additionally, contrary to the RMB/IFI Group's claim, we were able to access CEN's company website.<sup>32</sup> The Department's practice is not to rely on financial statements where there is evidence that the company received countervailable subsidies and there are other more reliable and representative data on the record for purposes of calculating the surrogate financial ratios.<sup>33</sup> Although the RMB/IFI Group alleges that CEN benefitted from countervailable subsidies under the IPA, the financial statement for CEN does not contain any reference to any of the specific programs that were found to be countervailable or that were part of the IPA. The note referenced by the RMB/IFI Group only stated that for 2009, prior to the POR, a subsidiary enjoyed concessionary tax rates from promoted activities. There is no specific information on what these "promoted activities" and "concessionary taxes" are, and we are unable to conclude based on record evidence that CEN benefitted from countervailable subsidies, much less during the POR.<sup>34</sup>

Although the Department may consider how closely the selected company/companies' financial statements approximate the NME producers' experience, the CIT has held that the Department is not required to "duplicate the exact production experience of the Chinese manufacturers."<sup>35</sup> The Department found in the original investigation that downstream products of wire rod that are drawn from wire rod are comparable merchandise to steel threaded rod.<sup>36</sup> While the CEN statement is a consolidated statement, the wire subsidiary produces comparable merchandise (*i.e.*, prestressed concrete wire, which is drawn from wire rod).<sup>37</sup> Of the four Philippine

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<sup>28</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China*, 70 FR 24502 (May 10, 2005), and accompanying Issues and Decision Memorandum at Comment 3.

<sup>29</sup> See 19 CFR 351.408(c)(4).

<sup>30</sup> See, e.g., *FMC Corp. v. United States*, 27 CIT 240, 251 (CIT 2003) (stating that the Department "has wide discretion in choosing among various surrogate sources"), affirmed by *FMC Corp. v. United States*, 87 Fed. Appx. 753 (CAFC 2004).

<sup>31</sup> See Petitioner's surrogate value submission, dated March 2, 2012, at Exhibit 2.

<sup>32</sup> See Department's Final Analysis Memorandum for RMB/IFI at Exhibit 4.

<sup>33</sup> See Omnibus Trade and Competitiveness Act of 1988, H.R. Rep. No. 576, 100th Cong., 2d Sess., at 590-91 (1988).

<sup>34</sup> See Petitioner's surrogate value submission, dated March 2, 2012, at Exhibit 2.

<sup>35</sup> See *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (CAFC 1999).

<sup>36</sup> See *Certain Steel Threaded Rod from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 8907 (February 27, 2009), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>37</sup> See Petitioner's surrogate value submission, dated March 2, 2012, at Exhibit 2.

statements, Supersonic Manufacturing does not produce comparable merchandise (it produces steel wire mesh fencing, which is not drawn from wire rod).<sup>38</sup> The other three Philippine companies produce comparable merchandise (nails that are drawn from wire rod) as well as other products.<sup>39</sup> Although the CEN statement includes other business units that do not make comparable merchandise, the Philippine financial statements placed on the record by the RMB/IFI Group are not necessarily of better quality. Of those Philippine companies that do produce comparable merchandise, they, like CEN, do not break out the percentage of production by specific product in their financial statements, and thus we are unable to determine what percentage of the Philippine companies' business are devoted to production of comparable merchandise. Therefore, the Department finds that both Thailand and the Philippines offer similar quality of financial statements in terms of the production of comparable merchandise. We also find that these financial statements for the Philippines are similar in that they are publicly available, contemporaneous with the POR, and sufficiently detailed to allow the Department to calculate financial ratios.

#### Department's Position for Surrogate Country:

In summary, the Department finds that the Philippines and Thailand are both: (1) at a level of economic development comparable to the PRC and (2) significant producers of comparable merchandise. However, in terms of the quality of data available for surrogate values, Thailand offers superior quality of data for valuing the steel wire rod consumed by the RMB/IFI group and offers usable data to value all FOPs necessary for the final results. On the other hand, the Philippine import statistics for the steel wire rod are less specific. Furthermore, the Philippine surrogate values placed on the record by the RMB/IFI Group do not contain values for certain factors, such as diesel or marine insurance, that are necessary to calculate a dumping margin for the RMB/IFI Group.<sup>40</sup> Therefore, the Department has determined to continue to select Thailand as the primary surrogate country for these final results. Further, it is the Department's well established practice to rely upon the primary surrogate country for all surrogate values, whenever possible, and to only resort to a secondary surrogate country if data from the primary surrogate country are unavailable or unreliable.<sup>41</sup> Accordingly, we have continued to rely on the Thai financial ratios and Thai import statistics for steel wire rod, steel round bar and HCL for these final results.

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<sup>38</sup> See the RMB/IFI Group's surrogate value submission, dated June 19, 2012, at Exhibits 14 and 16.

<sup>39</sup> See *id.* at Exhibits 11, 12, 13 and 16.

<sup>40</sup> See the RMB/IFI Group's surrogate value submission, dated June 19, 2012, at Exhibit 1.

<sup>41</sup> See, e.g., *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results and Partial Rescission of the Seventh Antidumping Duty Administrative Review*, 77 FR 15039 (March 14, 2012), and accompanying Issues and Decision Memorandum at Comment 2A; *Steel Wire Garment Hangers from the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the Second Antidumping Duty Administrative Review*, 76 FR 66903, 66905 (October 28, 2011), unchanged in final *Steel Wire Garment Hangers from the People's Republic of China: Final Results and Final Partial Rescission of Second Antidumping Duty Administrative Review*, 77 FR 12553 (March 1, 2012).

*Comment 2: Correcting the Harmonized Tariff Schedule Numbers Within the Scope*

- Petitioner notes that the *Preliminary Results* identifies subheading 7318.15.5050 as one of the subheadings under which the subject threaded rod may be classified.
- Petitioner states that on July 1, 2009, HTSUS subheading 7318.15.5050 was deleted and replaced with subheadings 7318.15.5051 and 7318.15.5056, and that the scope of the order should change to reflect this.

Department's Position:

Pursuant to a request from U.S. Customs and Border Protection ("CBP"), the Department updated the CBP computer module in July 2009, to reflect the addition of these two new HTS headings. Therefore we agree with Petitioner that the language of the scope should be revised to include the new subheadings and we have thus updated the scope section of the notice of final results.

*Comment 3: Factors of Production for Control Numbers Not Produced During the POR*

- The RMB/IFI Group states that, in the Section D questionnaire response, the RMB/IFI Group requested to be excused from reporting FOPs for merchandise that was not produced during the POR in which it was sold.
- Furthermore, the RMB/IFI Group argues that the control numbers ("CONNUM") the Department substituted for these two unreported models do not account for gauge/thickness, and length in one case, critical factors that determine the amount of steel consumed.
- For the final results, the RMB/IFI Group contends that the Department should rely on the FOP data the RMB/IFI Group provided following *Preliminary Results* for the unreported models.

Department's Position:

Following the *Preliminary Results*, we requested and the RMB/IFI Group provided the FOP data for the two CONNUMs that were not produced during the POR. Therefore we agree with the RMB/IFI Group and have utilized this FOP data for the final results.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions, and adjusting the margin calculation program accordingly. If accepted, we will publish the final results of review and the final dumping margins in the *Federal Register*.

AGREE  DISAGREE

  
\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Import Administration

5 NOVEMBER 2012  
Date