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April 30, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for Preliminary Results of Fifth
Antidumping Duty Administrative Review: Certain Steel
Threaded Rod from the People's Republic of China

SUMMARY

In response to requests from interested parties, the U.S. Department of Commerce ("Department") is conducting the fifth administrative review ("AR") of the antidumping duty order on certain steel threaded rod from the People's Republic of China ("PRC") for the period of review ("POR") April 1, 2013, through March 31, 2014.¹ The Department preliminarily determines that the two mandatory respondents, Gem-Year Industrial Co., Ltd. ("Gem-Year"), and RMB Fasteners Ltd., IFI & Morgan Ltd., and Jiaying Brother Standard Part Co., Ltd. (collectively, "the RMB/IFI Group"), failed to cooperate to the best of their ability in participating in the review, warranting the application of facts otherwise available with adverse inferences, pursuant to sections 776(a)-(b) of the Tariff Act of 1930, as amended ("Act"). As a part of the application of adverse facts available ("AFA"), we preliminarily determine to treat Gem-Year and the RMB/IFI Group as part of the PRC-wide entity.

If these preliminary results are adopted in our final results of 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. Interested parties are invited to comment on these preliminary results. We intend to issue final results no later than 120 days from the date of publication of this notice, unless extended, pursuant to section 751(a)(3)(A) of the Act.

¹ See *Certain Steel Threaded Rod from the People's Republic of China: Notice of Antidumping Duty Order*, 70 FR 17154 (April 14, 2009) ("Order").



Background

On May 29, 2014, the Department initiated an AR of the antidumping duty order on certain steel threaded rod from the PRC for the period April 1, 2013, through March 31, 2014 based on timely requests from interested parties.² On July 11, 2014, the Department issued its non-market economy (“NME”) antidumping questionnaire to Gem-Year and the RMB/IFI Group. Between September 22, 2014, and March 19, 2015, the Department issued multiple supplemental questionnaires and received partial and incomplete responses from both Gem-Year and the RMB/IFI Group, as discussed below. The Department twice extended the deadline for these preliminary results by a total of 120 days.³ The revised deadline for the preliminary results of this review is now April 30, 2015.

Verification

Between March 16, and March 20, 2015, the Department verified the questionnaire responses of Gem-Year and its alleged affiliate⁴, Gem-Duo Co., Ltd. (“Gem-Duo”).⁵ On April 30, 2015, the Department issued the verification report for Gem-Year and Gem-Duo to interested parties.⁶

Respondent Selection

Section 777A(c)(1) of the Act directs the Department to calculate an individual weighted-average dumping margin for each known exporter or producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters and producers if it is not practicable to make individual

² See, e.g., *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 79 FR 30809 (May 29, 2014) (“*Initiation Notice*”); Petitioner’s Request for Fifth Administrative Review: Certain Steel Threaded Rod from the People’s Republic of China, (April 28, 2014); the RMB/IFI Group’s Request for Administrative Review: Steel Threaded Rod from the People’s Republic of China, (April 30, 2014); Gem-Year’s Request for Administrative Review: Certain Steel Threaded Rod from the People’s Republic of China, (April 30, 2014); Haiyan Dayu Fasteners Co., Ltd.’s Request for Administrative Review: Steel Threaded Rod from the People’s Republic of China, (April 30, 2014); and Hubbell Power Systems, Inc.’s Request for Administrative Review: Steel Threaded Rod from the People’s Republic of China, (April 29, 2014).

³ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through James C. Doyle, Director, Office V, from Julia Hancock, Senior Case Analyst, Office V, “Certain Steel Threaded Rod from the People’s Republic of China: Extension of Deadline of Preliminary Results of Antidumping Duty Administrative Review” (November 17, 2014); Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through James C. Doyle, Director, Office V, from Julia Hancock, Senior Case Analyst, Office V, “Certain Steel Threaded Rod from the People’s Republic of China: Second Extension of Deadline of Preliminary Results of Antidumping Duty Administrative Review” (January 9, 2015).

⁴ Because the Department is not granting Gem-Year a separate rate as we find Gem-Year’s responses unreliable, the Department is not conducting an affiliation analysis of Gem-Year and its alleged affiliated parties.

⁵ See Letter to Gem-Year Industrial Co. Ltd. from Scot T. Fullerton, Program Manager, Office V, Re: Antidumping Administrative Review of Certain Steel Threaded Rod from the People’s Republic of China: Verification Outline (March 2, 2015) (“*Verification Outline*”).

⁶ See Memorandum to the File, from Jerry Huang and Julia Hancock, Senior International Trade Compliance Analysts, Office V, “Verification of the Sales and Factors of Production Responses of the Gem-Year Industrial Co., Ltd. in the Fifth Administrative Review of Certain Steel Threaded Rod from the People’s Republic of China” (April 30, 2015) (“*Gem-Year Verification Report*”).

weighted-average dumping margin determinations because of the large number of exporters and producers involved in the review.

On June 11, 2014, the Department placed CBP data for the Harmonized Tariff Schedule (“HTS”) numbers listed in the scope of the *Order* on the record of the review and requested comments on the data for use in respondent selection.⁷ On June 18, 2014, the Department received comments from Vulcan Threaded Products Inc. (“Petitioner”), and Gem-Year. No other party submitted comments. Having considered the large number of exporters for which an AR was initiated, the Department’s limited resources, and the fact that the RMB/IFI Group and Gem-Year, in total, accounted for an overwhelming proportion of the volume of exports/shipments/sales of subject merchandise reported in the CBP data, the Department selected Gem-Year and the RMB/IFI Group as the two mandatory respondents in this AR.⁸

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

⁷ See Memorandum to the File, from Steven Hampton, “Certain Steel Threaded Rod from the People’s Republic of China: Customs Data of U.S. Imports of Certain Steel Threaded Rod” (June 11, 2014) (“CBP Release”); *Order*, 70 FR at 17154.

⁸ See Memorandum to James C. Doyle, Director, Office V, from Julia Hancock, Senior Case Analyst, Office V, “Fifth Administrative Review of Steel Threaded Rod from the People’s Republic of China: Respondent Selection” (July 10, 2014).

- 0.10 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.41 percent of titanium, or
- 0.15 percent of vanadium, or
- 0.15 percent of zirconium.

Steel threaded rod is currently classifiable under subheading 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

Non-Market Economy Country

The Department considers the PRC to be an NME country.⁹ In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding contested such treatment. Therefore, we continue to treat the PRC as a NME country for purposes of these preliminary results.

PRC-Wide Entity

Upon initiation of this AR, we provided the opportunity for all companies upon which we initiated a review to complete either the separate rate application or certification.¹⁰ Seven of the nine reviewed companies did not submit either a separate rate application or certification, and therefore, we determine that they are part of the PRC-wide entity.¹¹ In addition, as we explain further below in the “Separate Rates” section and “Application of Facts Available and Use of Adverse Inference” section, the two mandatory respondents, Gem-Year and the RMB/IFI Group, failed to cooperate to the best of their ability in participating in the review, warranting the application of facts otherwise available with adverse inferences, pursuant to sections 776(a)-(b)

⁹ See, e.g., *Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Preliminary Results of the First Administrative Review, Preliminary Rescission, in Part, and Extension of Time Limits for the Final Results*, 76 FR 62765, 62767-68 (October 11, 2011), unchanged in *Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review*, 77 FR 21734 (April 11, 2012).

¹⁰ The separate-rate certification and separate-rate applications applicable to this proceeding were available at: <http://ia.ita.doc.gov/nme/nme-sep-rate.html>.

¹¹ These seven companies are: 1) Fastco (Shanghai) Trading Co., Ltd.; 2) Haiyan Dayu Fasteners Co., Ltd.; 3) Jiaxing Brother Standard Part; 4) Midas Union Co., Ltd.; 5) New Pole Power System Co. Ltd.; 6) Shanghai P&J International Trading Co., Ltd.; and 7) Zhejiang Morgan Brother Technology Co., Ltd.

of the Act. Accordingly, the two mandatory respondents, Gem-Year and the RMB/IFI Group, did not provide reliable, usable data to calculate their respective antidumping duty margins and therefore, we determine that they are part of the PRC-wide entity.

The Department's change in policy regarding conditional review of the PRC-wide entity applies to this AR.¹² Under this policy, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. Because no party requested a review of the PRC-wide entity in this review, the entity is not under review and the entity's rate is not subject to change. Further, as explained below in the "Separate Rates" section, the Department preliminarily finds that the two mandatory respondents, Gem-Year and the RMB/IFI Group, and remaining companies for which a review was requested do not qualify for a separate rate, and as such, are part of the PRC-wide entity. Pursuant to our change in policy regarding conditional review of the PRC-wide entity, the entity is not under current review. As such, the PRC-wide rate from the previous AR (*i.e.*, the fourth administrative review) remains unchanged, and the PRC-wide entity is receiving a margin of 206 percent.¹³

Separate Rates

There is a rebuttable presumption that all companies within the PRC are subject to government control and thus, should be assessed a single antidumping duty rate.¹⁴ In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings.¹⁵ It is the Department'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, the Department analyzes each exporting entity in an NME country under the test established in *Sparklers*,¹⁶ as amplified by *Silicon Carbide*.¹⁷ However, if the Department determines that a company is wholly foreign-owned, then a separate rate analysis is not necessary to determine whether it is independent from government control.¹⁸

¹² See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963, 65970 (November 4, 2013) ("Conditional Review of the NME Entity").

¹³ See, *e.g.*, *id.*; *Certain Steel Threaded Rod From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013*, 79 FR 71743, 71744 and accompanying Issues and Decision Memorandum ("4th AR STR Final Results").

¹⁴ 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, 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).

¹⁵ See *Initiation Notice*, 79 FR at 308109-10.

¹⁶ 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").

¹⁷ See *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").

¹⁸ See *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007) ("Wax Candles from the PRC").

In order to demonstrate separate-rate status eligibility, the Department normally requires entities, for whom a review was requested, and who were assigned a separate rate in a previous segment of this proceeding, to submit a separate rate certification stating that they continue to meet the criteria for obtaining a separate rate.¹⁹ For entities that were not assigned a separate rate in the previous segment of a proceeding, to demonstrate eligibility, the Department requires a separate rate application.

Although both mandatory respondents, Gem-Year and the RMB/IFI Group, submitted responses to the Section A portion of the NME questionnaire, as explained below under the “Application of Facts Available and Use of Adverse Inference” section, we preliminarily determine that neither Gem-Year nor the RMB/IFI Group are eligible for a separate rate. Additionally, none of the seven companies that were not selected as mandatory respondents submitted a separate rate application or certification and are also not preliminarily eligible for a separate rate.

Application of Facts Available and Use of Adverse Inference

Section 776(a)(1) and 776(a)(2)(A)-(D) of the Act, provides that, if necessary information is not available on the record or if an interested party: (A) withholds information that has been requested by the Department; (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, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that if an interested party “promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner,” the Department shall consider the ability of the interested party and may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department 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, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department 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

¹⁹ See *Initiation Notice*, 79 FR at 30810.

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.

Further, section 776(b) of the Act provides that, if the Department 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, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available. In addition, the SAA explains that the Department may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”²⁰ Further, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.²¹

A. Application of Facts Available and Use of Adverse Inference to Gem-Year

1. Application of Facts Available

The Department finds that the use of facts otherwise available is warranted with respect to Gem-Year, pursuant to section 776(a) of the Act.

As discussed below, pursuant to sections 776(a)(2)(A), (B), (C) and (D) of the Act, the Department determines that the use of facts otherwise available is warranted with respect to Gem-Year. During the course of this review, the Department discovered that Gem-Year withheld certain information that was requested by the Department. Specifically, Gem-Year failed to provide information regarding numerous factors of production (“FOPs”) in the form and manner requested by the Department. Gem-Year significantly impeded the proceeding by not providing accurate or complete responses to the Department’s questions about certain FOPs and the production and sales of Gem-Year’s subject merchandise. Due to its lack of preparedness, Gem-Year significantly delayed the Department’s completion of its verification of Gem-Year, and as such, the Department was unable to verify the accuracy and completeness of the information in Gem-Year’s questionnaire responses.

a. Incomplete Responses

Pursuant to 776(a)(2)(B) and (C) of the Act, the Department finds that the application of facts available is warranted because Gem-Year failed to provide information requested by the Department in the form and manner requested, and significantly impeded this review.

In its original questionnaire responses in this review, despite specific instructions detailed in the antidumping duty questionnaire, Gem-Year did not follow those instructions in several key areas, such as full and accurate reporting of sales and FOP information. Specifically, on July 11, 2014,

²⁰ See *Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. 103-316, Vol. 1, 103d Cong. at 870 (1994) (“SAA”).

²¹ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products From Japan*, 65 FR 42985 (July 12, 2000); *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (CAFC 2003) (“*Nippon Steel*”).

the Department issued the NME questionnaire to Gem-Year.²² Section D of the questionnaire provides:

Normally, you should calculate the per-unit factor amounts based on the actual inputs used by your company during the POR as recorded under your normal accounting system. If you believe that using POR factors is inappropriate (for example, because of the seasonal nature of production), *if you sold some models/products during the POR but did not produce them during the POR*, or if you have any questions regarding the appropriate calculation period, please contact the official in charge before preparing your response to this section of the questionnaire.²³

Despite specific instructions in the questionnaire to do so, Gem-Year failed to contact the Department prior to submitting its original response, resulting in its failure to notify the Department that Gem-Year produced the majority of the subject merchandise under current review in 2008 and 2009, which is prior to the POR.²⁴ Instead, in its original Section D database, Gem-Year unilaterally decided, without consultation with the Department, to report FOPs as if they had been produced in the POR, even though very little of Gem-Year's U.S. sales of subject merchandise during the POR were produced during the POR.²⁵ As a result, the Department had to make several subsequent requests to ascertain when the subject merchandise under review was actually produced.²⁶ Ultimately, the Department requested that Gem-Year provide FOPs both from the period comprising the majority of the production (2009) as well as from the POR, in order to determine the most accurate consumption of the FOPs used to produce Gem-Year's U.S. sales of subject merchandise during the POR.²⁷

Additionally, Section D of the original questionnaire instructs:

If you produce the merchandise under consideration at more than one facility, you must report the factor use at each location. You must also report the output of the merchandise under consideration at each of the various facilities during the POR.²⁸

²² See Letter to Gem-Year from Scot Fullerton, Program Manager, Office V, "Questionnaire" (July 11, 2014) ("Gem-Year's Questionnaire").

²³ See Gem-Year's Questionnaire at D-1 and D-2, emphasis added.

²⁴ See Gem-Year's Sections C & D Questionnaire Response (September 5, 2014) ("Gem-Year's Sections C & D Response").

²⁵ *Id.*

²⁶ See Letter to Gem-Year from Scot Fullerton, Program Manager, Office V, "Antidumping Administrative Review of Certain Steel Threaded Rod from the People's Republic of China" (November 14, 2014); Letter to Gem-Year from Scot Fullerton, Program Manager, Office V, "Antidumping Administrative Review of Certain Steel Threaded Rod from the People's Republic of China: Section D Supplemental Questionnaire" (December 22, 2014) ("Gem-Year First Supplemental Questionnaire"); Memorandum to the File from Jerry Huang, Senior Case Analyst, "Fifth Antidumping Administrative Review of Certain Steel Threaded Rod from the People's Republic of China: Reporting FOPs from Calendar Year 2009 and Extension of Deadline" (January 9, 2015); Letter to Gem-Year from Scot Fullerton, Program Manager, Office V, "Antidumping Administrative Review of Certain Steel Threaded Rod from the People's Republic of China: Second Section D Supplemental Questionnaire" (February 13, 2015) ("Gem-Year Second Supplemental Questionnaire").

²⁷ *Id.*

²⁸ See Gem-Year's Questionnaire at D-2.

Despite clear instructions in the questionnaire to do so, Gem-Year did not initially report the FOPs for its alleged affiliated producer, Gem-Duo, which also produced subject merchandise in 2009 (the period comprising the majority of production of subject merchandise) as well as during the POR.²⁹

Further, Gem-Year reported the FOPs and U.S. sales information for only a portion of the finished product. The Department previously determined based on a scope inquiry that the entire product was subject to the *Order*.³⁰ Based on the scope ruling, the Department finds that Gem-Year had knowledge that the entirety of the product was subject to the *Order* when it received the initial questionnaire.

Moreover, in numerous supplemental questionnaire responses to the Department's very specific FOP questions, Gem-Year did not provide complete answers, as requested. For example, although Gem-Year argues certain of its production records that it maintains for every stage of production could form the basis of more specific FOP reporting, it neither provided specific examples of those records from 2009 or the POR nor stated the duration it keeps these records.³¹ Specifically, Section D of the questionnaire directs:

If you are not reporting factors of production (FOPs) using actual quantities consumed to produce the merchandise under investigation on a CONNUM-specific basis, please provide a detailed explanation of all efforts undertaken to report the actual quantity of each FOP consumed to produce the merchandise under investigation on a CONNUM-specific basis. Additionally, please provide a detailed explanation of how you derived your estimated FOP consumption for merchandise under investigation on a CONNUM-specific basis and explain why the methodology you selected is the best way to accurately demonstrate an accurate consumption amount.³²

In its original Section C & D response, Gem-Year provided a weight-based allocation across all its products to derive FOP ratios by the stage of production instead of reporting the consumption of FOPs for the subject merchandise on a CONNUM-specific basis.³³ When the Department requested that Gem-Year explain its allocation methodology, Gem-Year stated it was unable to report the consumption of the main input at the product-specific level because Gem Year's production records do not identify the share of the main input consumed by different products.³⁴ In the same response, Gem-Year claimed that it maintained production records for one year only.³⁵ However, in its later supplemental Section D response, Gem-Year revised its statement

²⁹ See Gem-Year's Sections C & D Response.

³⁰ *Id.*; Memorandum to the File from Jerry Huang, Senior Case Analyst, "Fifth Administrative Review of Certain Steel Threaded Rod from the People's Republic of China: Placing of Scope Ruling on the Record" (November 21, 2014) at Attachment (Memorandum to Susan Kuhbach, Acting Deputy Assistant Secretary, AD/CVD Operations, through James C. Doyle, Director, Office 9, from Kabir Archuleta, Case Analyst, "Certain Steel Threaded Rod from the People's Republic of China: Hubbell Power Systems, Inc., Final Scope Ruling" (September 10, 2010)).

³¹ See Gem-Year First Supplemental Questionnaire; Gem-Year Second Supplemental Questionnaire.

³² See Gem-Year's Questionnaire at D-2.

³³ See Gem-Year's Sections C & D Response.

³⁴ See Gem-Year's First Supplemental Section D Questionnaire Response, (January 26, 2015) ("Gem-Year's First Supplemental Section D Questionnaire Response") at 7-8.

³⁵ *Id.*

regarding how long it maintained production records.³⁶ In the revision, Gem-Year stated that while it maintained hard copy versions of the production records for only one year, it kept production records in its electronic production record system going back to 2009. Gem-Year provided a sample of these records, but not from the reported FOP periods of 2009 or the POR, but instead from after the POR.³⁷

Further, prior to verification, Gem-Year did not report to the Department whether it maintained electronic copies of its production records for every stage of production. At verification, the Department discovered that Gem-Year maintained daily production reports that reported the quantities of input and output tracked by batch number, which are product-specific and specific to the order confirmation received from the sales department, for each stage of production (*i.e.*, the records were traced from the first stage of production to the final packaged product).³⁸ These production reports are stored indefinitely by Gem-Year in its electronic production record system.³⁹ Gem-Year explained that it generates these daily production reports when the sales department issues an order confirmation for each sale to the production department and the production department will then issue a batch number for each specific product that needs to be produced for that specific sale.⁴⁰ Gem-Year stated that it knew about these product-specific records and even considered using the records to calculate the FOPs, but argued that this method would result in skewed results because the main input for a certain batch number could also be used to produce other products. According to Gem-Year, because the main input is not tracked in the records, the yield loss captured will not be accurate.⁴¹ Gem-Year made this decision not to provide the Department such records without notifying or consulting the Department beforehand. In other words, Gem-Year never informed the Department of the existence of such detailed records nor explained its effort to calculate its consumption using these production records, despite the Department's specific requests to report on a CONNUM-specific basis. As a result, the Department could not inquire, assess or validate the accuracy and reasonableness of Gem-Year's allocation methodology prior to verification.⁴²

Again, Gem-Year's failure from the outset to follow the specific, explicit instructions in the Department's original NME questionnaire resulted in this review being significantly impeded, as the Department had to make multiple subsequent requests to correct major deficiencies in Gem-Year's FOP reporting methodology and U.S. sales information, causing significant delays to the review.

b. Unreported FOPs

Pursuant to 776(a)(2)(A) and (C) of the Act, the Department finds that application of facts available is warranted because Gem-Year failed to report many FOPs consumed in the production of its subject merchandise.

³⁶ See Gem-Year's Second Supplemental Section D Questionnaire Response at 5 (May 6, 2015).

³⁷ *Id.*

³⁸ See Gem-Year Verification Report at 12-15.

³⁹ *Id.*, at 12-13

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² See Gem-Year's Questionnaire at D-2; Gem-Year First Supplemental Questionnaire.

In the Department's original section D questionnaire, we provided specific instructions for reporting all FOPs consumed in the production of the subject merchandise.

Unless otherwise instructed by the Department, you should report factors information for all models or product types in the U.S. market sales listing submitted by you (or the exporter) in response to Section C of the questionnaire, including that portion of the production that was not destined for the United States. The reported amounts should reflect the factors of production used to produce one unit of the merchandise under consideration.

If you believe that your company uses any raw materials that should be classified as factory overhead expenses rather than valued as factors of production and directly included in normal value, please: (1) notify the Department official in charge, and (2) identify these materials in your first Section D questionnaire response. Your first Section D questionnaire response should contain a comprehensive list of all such materials you consider to be part of factory overhead. Please provide this information to the Department immediately, as this will afford your company and the Department sufficient time to evaluate your company's specific use of the raw material and to determine the most appropriate manner in which the raw material should be valued.

If you have any questions regarding how to compute the factors of the merchandise under consideration, please contact the official in charge before preparing your response to this section of the questionnaire.⁴³

Gem-Year submitted a FOP database in its original Sections C & D questionnaire response to the Department listing all FOPs that it claimed were used in producing the subject merchandise.⁴⁴ In the Department's first supplemental Section D questionnaire to Gem-Year, we also requested that Gem-Year report FOPs consumed by its alleged affiliate, Gem-Duo, for production of in-scope merchandise that was not previously reported by Gem-Year.⁴⁵ In its first supplemental Section D response, Gem-Year stated it reported all FOPs consumed by Gem-Duo, except FOPs for packing materials and packing labor, because Gem-Year claimed that Gem-Duo did not produce subject merchandise.⁴⁶ Prior to verification, the Department had FOP databases for Gem-Year and Gem-Duo on the record that supposedly included all FOPs that were used to produce the subject merchandise sold by Gem-Year during the POR. The Department was aware that the only FOPs that Gem-Year was not reporting were Gem-Duo's FOPs for packing materials and packing labor because Gem-Year claimed that Gem-Duo did not incur such FOPs to produce subject merchandise.

However, at verification, during a tour of Gem-Year's production facilities, we observed certain materials that were being used in the production of subject merchandise that had not previously

⁴³ See Gem-Year's Questionnaire at D-1.

⁴⁴ See Gem-Year's Sections C & D Response.

⁴⁵ See Gem-Year First Supplemental Questionnaire.

⁴⁶ See Gem-Year's First Supplemental Section D Questionnaire Response.

been reported to the Department in Gem-Year's questionnaire responses or as minor corrections.⁴⁷ Similarly, when we conducted a tour of Gem-Duo's production facilities, we also observed the same unreported materials consumed in the production process of merchandise under consideration.⁴⁸ Further, during the plant tour, we discovered that Gem-Duo did not report the energy factors used to dry wire rod in the production process.⁴⁹ As we continued the plant tour at Gem-Duo and visited its threading workshop, we observed a lubricant was used in the processing of wire rod that also was not reported in the FOP database.⁵⁰ Finally, while Gem-Year previously stated that Gem-Duo did not produce and pack the final subject merchandise, at verification, company officials explained that Gem-Duo did produce a part of the final subject merchandise, which Gem-Duo packed in packing materials and then shipped to Gem-Year to be further processed.⁵¹ However, Gem-Duo did not report packing materials, packing labor or freight expenses in either its 2009 or POR databases.⁵²

The Department notes that the original questionnaire clearly instructed that all FOPs must be reported and that any ambiguity on whether materials may be considered as factory overhead needed to be reported for the Department's evaluation. Gem-Year failed to follow the Department's clear instructions.⁵³ Therefore, the Department finds that Gem-Year and Gem-Duo failed to report all FOPs used in producing the subject merchandise, and thus the Department does not have reliable FOP data upon which to calculate normal value.

c. Unreported Subsidiary Involved in the Production of In-scope Merchandise

Pursuant to 776(a)(2)(A) and (C) of the Act, the Department finds that application of facts available is warranted because Gem-Year failed to report that one of its subsidiary companies, Jinn-Well Auto Parts Co., Ltd. ("Jinn-Well"), was a producer of in-scope merchandise.

In the Department's original questionnaire, we provided instructions for reporting information related to Gem-Year's eligibility for separate rate, and corporate structure and affiliations to the Department.⁵⁴ The instructions from the questionnaire specifically ask:

Provide a list of all the manufacturing facilities, sales office locations, research and development facilities and administrative offices involved in the manufacture and sale of the merchandise under consideration operated by your company. Please give a full address for each facility, and briefly describe the purpose of each.⁵⁵

In Gem-Year's original Section A questionnaire response, Gem-Year provided information on certain alleged affiliates and subsidiaries with respect to ownership, management, and scope of

⁴⁷ See Gem-Year Verification Report at 22-23.

⁴⁸ *Id.*, at 24.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*, at 39.

⁵² *Id.*

⁵³ See Gem-Year's Questionnaire at D-1.

⁵⁴ See Gem-Year's Questionnaire at A-2 – A-6.

⁵⁵ *Id.*, at A-5 – A-6.

business.⁵⁶ Gem-Year claimed that only Gem-Year and Gem-Duo were involved in the production of in-scope merchandise.⁵⁷ The Department requested full and complete FOP information from what the Department understood as all production facilities that produced in-scope merchandise based on Gem-Year's claim and scheduled the verification based on that information. At verification, we reviewed Gem-Year's responses regarding its alleged affiliates and subsidiaries. We asked whether Jinn-Well, a subsidiary of Gem-Year, produced merchandise that met the description of the scope of the *Order*.⁵⁸ Gem-Year admitted that Jinn-Well was, in fact, a producer of in-scope merchandise.⁵⁹

As explained in the Department's questionnaire to Gem-Year, the Department bases its calculation of normal value ("NV") on the consumption of FOPs used in producing the subject merchandise.⁶⁰ As noted previously, when multiple production facilities are involved in such production, the Department requires FOP information from all production facilities to derive a weighted-average FOP usage rate for the whole entity.⁶¹ Because Gem-Year failed to report that its subsidiary, Jinn-Well, was involved in the production of in-scope merchandise, the Department was prevented the opportunity to issue supplemental questionnaires to Gem-Year and its subsidiary, Jinn-Well, to fully examine the full extent of Gem-Year's and all its subsidiaries', including Jinn-Well's, production. As a result, the Department could not determine whether it should solicit FOP information from Jinn-Well in order to calculate Gem-Year's NV. Therefore, the Department finds that Gem-Year failed to report all of its production facilities used in producing in-scope merchandise, and thus the Department does not have complete, accurate and reliable data upon which to calculate Gem-Year's NV for these preliminary results.

Further, Gem-Year's failure to disclose that Jinn-Well is a producer of in-scope merchandise not only affects the accurate reporting of Gem-Year's FOPs used in the production of its U.S. sales of subject merchandise during the POR, it also undermines the Department's separate rate analysis for Gem-Year. The Department noted:

The Department presumes that a single weighted-average dumping margin is appropriate for all exporters in a non-market economy country. The Department may, however, consider requests for separate rates from individual exporters. Individual exporters requesting a separate rate must respond to the following questions in order for the Department to consider fully the issue of separate rates.⁶²

Regarding corporate structure and affiliations, the Department further noted:

⁵⁶ See Gem-Year's Section A Questionnaire Response (August 22, 2014) ("Gem-Year's Section A Questionnaire Response").

⁵⁷ *Id.* at 11-12.

⁵⁸ See *Order*, 74 FR at 17155.

⁵⁹ See Gem-Year Verification Report at 5-6.

⁶⁰ See Gem-Year's Questionnaire at D-1.

⁶¹ *Id.*, at D-2.

⁶² *Id.*, at A-4.

The remaining questions must be answered by all companies (exporters and manufacturers), whether or not the company is requesting a separate rate.⁶³

Gem-Year reported in its original questionnaire response that it is a joint venture, partially owned by Chinese entities.⁶⁴ The Department requires information to examine whether *de jure* or *de facto* control by the government exists such that Gem-Year is entitled a separate rate from the PRC-wide entity. As noted above, the Department's analysis includes Gem-Year, as well as its alleged affiliates and subsidiaries. The Department's finding at verification with regard to Jinn-Well indicates that Gem-Year's original response concerning its subsidiaries is not reliable and incomplete. As such, it calls into question the reliability and completeness of the separate rate information submitted for Gem-Year, as a whole. Gem-Year's failure prevented the Department from issuing supplemental questionnaires to query the details of Jinn-Well's production and examine the company with respect to its operations and management in detail. Therefore, the Department finds that Gem-Year failed to provide a full response in regards to its corporate structure and affiliations, and the Department does not have reliable and complete information to conduct a separate rate analysis for Gem-Year.

d. Unverified FOPs

Pursuant to 776(a)(2)(C) and (D) of the Act, the Department finds that application of facts available is warranted because Gem-Year failed to prepare and the Department was unable to verify most of the FOPs consumed in producing the subject merchandise.

In the verification outline, the Department provided detailed instructions on the required source documents necessary to examine how the data reported in the FOP databases can be traced to Gem-Year's accounting system and financial statement so that the Department can determine whether the FOP reporting is reliable:

For each of the pre-selected models identified in Attachment II, prepare a set of document packages to support the reported per-unit consumption amount of each material. Review the methodology used to report the per-unit consumption amounts reported in your Section D response and supplemental responses. The packages should include all purchase, inventory, production, and accounting records necessary to tie the reported per-unit amounts to the general ledger, such as:

1. Production records;
2. Material purchases and freight invoices;
3. Material inventory subsidiary ledgers;
4. Gross weight of inputs;
5. Allocation of material inputs to subject merchandise;
6. Yield rates calculations (e.g., yield loss analysis, including how you have accounted for yield losses in your reported factors of production database); and

⁶³ *Id.*, at A-5.

⁶⁴ See Gem-Year's Section A Questionnaire Response.

7. Spoilage, waste and scrap generation records.⁶⁵

From the start of the FOP portion of Gem-Year's and Gem-Duo's verification, we found that neither Gem-Year nor Gem-Duo were prepared. Specifically, neither Gem-Year nor Gem-Duo prepared, nor were ready to present, complete packages of the information requested by the Department, including source FOP documents for the selected months of 2009 and the POR.⁶⁶ Consequently, we were unable to verify and substantiate the majority of the FOPs, such as wire rod, energy, labor and the post-production FOPs that occurred during the POR. As a result, we were unable to determine whether the databases Gem-Year reported were reliable.⁶⁷ Therefore, the Department does not have reliable data upon which to calculate Gem-Year's NV.

e. Unreported Sales/Expense for Returned Sale

Pursuant to 776(a)(2)(A), (C) and (D) of the Act, the Department finds that application of facts available is warranted because Gem-Year failed to report a complete sales database for the subject merchandise during the POR.

The Department requested in the original antidumping questionnaire to Gem-Year to provide a sales reconciliation:

Please provide a reconciliation of the sales reported in your U.S. sales database to the total sales listed in your financial statements. Provide supporting documentation (e.g., general ledger, sub-ledger, etc.) for each step in the reconciliation. The reconciliation should include the following:

1. A demonstration of how the POR financial statements' sales totals tie to the general ledger sales revenue accounts.
2. A worksheet demonstrating how the general ledgers' sales revenue accounts in step one, above, tie to the sales reported in the U.S. sales database. The worksheet should identify the total quantity and value of all sales in the fiscal years overlapped by the POR and identify the quantity and value of each category of non-subject merchandise sales that are excluded from your reported sales of subject merchandise (e.g., domestic sales, sales outside the POR, sales to foreign markets other than the United States, etc.).
3. A detailed narrative explaining how all worksheets and supporting documentation tie together.
4. An explanation of the means used to identify and exclude all these non-subject merchandise sales (e.g., internal country code, product description, etc.).

⁶⁵ See Verification Outline at 14.

⁶⁶ See Gem-Year Verification Report at 31-37.

⁶⁷ *Id.*

5. A product list, with product codes and descriptions, of all products excluded from the reported sales of subject merchandise.⁶⁸

Gem-Year submitted its Section C questionnaire response to the Department and made no mention of any returned sales.⁶⁹ In the verification outline, the Department also instructed Gem-Year to prepare a verification package for its sales reconciliation by reviewing the reconciliation worksheets and programs that tie the sales system/journal to the general ledger and into the financial statements sales total. In the quantity and value reconciliation, the Department requested Gem-Year to:

“Review any instance where post-sale adjustments have been made to either price or quantity. Demonstrate that those transactions affecting the sales and quantity (i.e., those transactions affected in terms of price and quantity after invoicing) are reflected accurately in your responses.”⁷⁰

At verification, Gem-Year also did not mention any additional sales as we conducted sales reconciliation. The Department later discovered an unreported sale of subject merchandise that occurred during the POR.⁷¹ Gem-Year stated that it sold this shipment of subject merchandise during the POR, but when it arrived at the port in the United States, the U.S. importer refused to take the shipment. Gem-Year asserted that, after delays and negotiations, it had to purchase and bring the shipment back to the PRC.⁷² When we asked Gem-Year why this sale was not reported in the U.S. sales database or its questionnaire responses as a sales return and noted in the sales reconciliation, Gem-Year stated that they considered this sale to be a non-subject sale, as it should be treated as a returned sale.⁷³ Nevertheless, this sale (including any related expenses incurred) was never reported to the Department prior to verification and the Department could not query further and determine whether Gem-Year accounted for all sales of subject merchandise or all the expenses incurred for this or other sales.⁷⁴ Because we were unable to verify the accuracy of Gem-Year’s U.S. sales database, the Department cannot determine whether the total quantity and value of sales reported in the U.S. sales database is overreported or underreported. Additionally, the Department cannot determine the accuracy of the total value, gross unit price and expenses reported in the U.S. sales database. Therefore, the Department finds that the Department does not have reliable sales data upon which to compare to NV and calculate an antidumping duty margin for Gem-Year for these preliminary results.

2. *Use of Adverse Inference*

In selecting from among the facts otherwise available, pursuant to section 776(b) of the Act, an adverse inference is warranted when the Department has determined that a respondent has “failed to cooperate by not acting to the best of its ability to comply with a request for

⁶⁸ See Gem-Year’s Questionnaire at Appendix V.

⁶⁹ See Gem-Year’s Sections C & D Response.

⁷⁰ See Verification Outline at 14.

⁷¹ See Gem-Year Verification Report at 27.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ See Gem-Year’s Sections C & D Response.

information.”⁷⁵ In such a case, the Act permits the Department to use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.⁷⁶ Adverse inferences are appropriate “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”⁷⁷ The Court of Appeals for the Federal Circuit (“Federal Circuit”), in *Nippon Steel*, provided an explanation of the “failure to act to the best of its ability,” stating that the ordinary meaning of “best” means “one’s maximum effort,” and that the statutory mandate that a respondent act to the “best of its ability” requires the respondent to do the maximum it is able to do.⁷⁸ The Federal Circuit acknowledged, however, that while there is no willfulness requirement, “deliberate concealment or inaccurate reporting” would certainly be sufficient to find that a respondent did not act to the best of its ability, although it indicated that inadequate responses to agency inquiries “would suffice” as well.⁷⁹ Compliance with the “best of its ability” standard is determined by assessing whether a respondent has put forth its maximum effort to provide the Department with full and complete answers to all inquiries in an investigation.⁸⁰ The Federal Circuit further noted that, while the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.⁸¹

Within the meaning of section 776(b) of the Act, the Department preliminarily finds that Gem-Year failed to cooperate by not acting to the best of its ability to comply with the Department’s requests for information, as noted above, and that the application of AFA is warranted. In sum, despite the Department’s detailed and specific questionnaires and instructions in the verification outline, and questions and instructions at verification as to what procedures and documentation were necessary to successfully complete the verification process, Gem-Year gave insufficient attention to its statutory duty to reply accurately and completely to requests for information regarding its claimed affiliates, the production and sales of subject merchandise. For all of the aforementioned reasons, the Department finds that Gem-Year failed to cooperate to the best of its ability, pursuant to section 776(b) of the Act. Therefore, we are applying total AFA to Gem-Year for these preliminary results and it is being placed in the PRC-wide entity since it is not entitled to a separate rate, as explained above. Accordingly, since Gem-Year is being placed in the PRC-wide entity, it is receiving the rate of 206 percent, which is the rate for the PRC-wide entity from the previous AR. This rate remains unchanged pursuant to our current policy, which states that there is no conditional review of the PRC-wide entity.⁸²

⁷⁵ See section 776(b) of the Act.

⁷⁶ *Id.*; see also SAA at 870.

⁷⁷ See SAA at 870.

⁷⁸ See *Nippon Steel*, 337 F.3d at 1382.

⁷⁹ *Id.*, at 1380.

⁸⁰ *Id.*, at 1382.

⁸¹ *Id.*

⁸² See *Conditional Review of the NME Entity*, 78 FR at 65963.

B. *Application of Facts Available and Use of Adverse Inference to the RMB/IFI Group*

1. *Facts*

On July 11, 2014, the Department issued the NME questionnaire to the RMB/IFI Group.⁸³ The Section D questionnaire requests respondents that are unable to provide:

actual quantities consumed to produce the merchandise under investigation on a CONNUM-specific basis... {to please} provide a detailed explanation of all efforts undertaken to report the actual quantity of each FOP consumed to produce the merchandise under investigation on a CONNUM-specific basis. Additionally, please provide a detailed explanation of how you derived your estimated FOP consumption for merchandise under investigation on a CONNUM-specific basis and *explain why the methodology you selected is the best way to accurately demonstrate an accurate consumption amount*. For the most significant material input, for electricity, and for labor, please reconcile with worksheets the estimated consumption of these FOPs for a specific CONNUM to your cost-of-production (COP) ledger or the equivalent production ledger.⁸⁴

Additionally, Section D of the NME questionnaire requests respondents to “report each raw material used to produce a unit of the merchandise under consideration.”⁸⁵ After granting the RMB/IFI Group two extensions for a total of 66 days to respond to the Section D questionnaire, the RMB/IFI Group submitted its Section D response. In its response, the RMB/IFI Group claimed that it allocates the total consumption of its main inputs (*i.e.*, wire rod and round bar) to the group of products that consumed these inputs based on the production weight of these product groups per its cost accounting records.⁸⁶ The RMB/IFI Group explained that it allocated the total consumption of the main inputs and other inputs by the production weight of the subject products and that this ratio was multiplied by the weight of the CONNUM to obtain the actual unit consumption per-CONNUM.⁸⁷

Based on these statements and pursuant to section 782(c)(1) of the Act, the Department attempted to analyze the RMB/IFI Group’s Section D response according to the allocated weight-based methodology proposed by the RMB/IFI Group. In its first deficiency supplemental Section D questionnaire, the Department requested that the RMB/IFI Group answer numerous questions that had previously been requested in the Section D questionnaire, such as providing worksheets for reconciling the most significant inputs, labor, and energy in the cost reconciliation; worksheets showing the allocation/calculation for each FOP reported in the Section D database along with supporting source documents; and calculation worksheets for the

⁸³ See Letter to the RMB/IFI Group from Scot Fullerton, Program Manager, Office V, “Questionnaire” (July 11, 2014) (“RMB/IFI Group’s Questionnaire”), *emphasis added*.

⁸⁴ See RMB/IFI Group’s Questionnaire at D-2.

⁸⁵ *Id.*, at D-7.

⁸⁶ See RMB/IFI Group’s Section D Questionnaire Response at 10 (September 15, 2014) (“RMB/IFI Group’s Section D Response”).

⁸⁷ *Id.*, at 10-12.

claimed offset for steel scrap.⁸⁸ Because the RMB/IFI Group did not adequately respond to the questions in the Section D questionnaire, the Department itself placed on the record information from the previous AR regarding the overall calculation of the RMB/IFI Group's FOP methodology, such as calculation worksheets and source documents for each FOP.⁸⁹ Additionally, in the first deficiency supplemental Section D questionnaire it issued to the RMB/IFI Group, the Department requested that the RMB/IFI Group answer numerous questions regarding the FOP weight-based allocation methodology used in calculating its FOPs.⁹⁰

After granting the RMB/IFI Group two extensions, the Department had to reject, and request that the RMB/IFI Group resubmit, its response because virtually all exhibits were not translated.⁹¹ The RMB/IFI Group submitted a properly filed supplemental Section D response a total of 45 days after receiving the Department's Section D Deficiency Questionnaire.⁹² In the RMB/IFI Group's Supplemental Section D response, when the Department requested that the RMB/IFI Group explain the difference between the standard and/or actual production records maintained by the production and accounting departments, the RMB/IFI Group stated that there is no difference between the two departments. Specifically, the RMB/IFI Group stated that the production department records the standard weight in its production records.⁹³ The RMB/IFI Group indicated it calculated the standard weight by multiplying the calculated unit weight of each product by the production quantity in pieces.⁹⁴ According to the RMB/IFI Group, it booked the standard weight of each product in the "finished goods monthly report" and that its accounting department uses this standard weight in such documents as the cost sheet and the finished goods sub-ledger.⁹⁵

Additionally, the Department's first deficiency supplemental Section D questionnaire requested that the RMB/IFI Group explain how it allocated the consumption of FOPs it used in different stages of production, such as the zinc plating stage. In reply, the RMB/IFI Group stated that it

⁸⁸ See the Department's First Supplemental Section D Questionnaire to the RMB/IFI Group at questions 1-12 (Questions Previously Requested in Section D Questionnaire) (December 19, 2014) ("Department's Section D Deficiency Questionnaire").

⁸⁹ See Memorandum to the File from Julia Hancock, Senior Case Analyst, "Fifth Administrative Review of the Antidumping Duty Order on Certain Steel Threaded Rod from the People's Republic of China: Placing Public Version Responses on the Record from the 4th Administrative Review," at Attachment 6 (Public Version of March 10, 2014, Supplemental Section D Response at questions 4, 5, and 10) (December 22, 2014).

⁹⁰ See Department's Section D Deficiency Questionnaire at questions 6, 10, 11, 12, 14, 27, and 29 (General Section).

⁹¹ See Memorandum to the File from Julia Hancock, Senior Case Analyst, Office V, "Administrative Review of Steel Threaded Rod from the People's Republic of China: Extension Request for Supplemental Section D Questionnaire Regarding Jiaying Brother Fastener Co. Ltd., RMB Fasteners Ltd. & IFI & Morgan Ltd." (January 2, 2015); Letter to the RMB/IFI Group from Scot T. Fullerton, Program Manager, Office V, "Certain Steel Threaded Rod from the People's Republic of China: Request for Extension of Deadline to Respond to Supplemental Section D Questionnaire" (January 8, 2015); Letter to the RMB/IFI Group from Scot T. Fullerton, Program Manager, Office V, "Antidumping Administrative Review of Certain Steel Threaded Rod from the People's Republic of China: Rejection of Section D Supplemental Questionnaire" (February 2, 2015) ("Rejection Letter of the RMB/IFI Group's SSDQR").

⁹² See RMB/IFI Group's Supplemental Section D Questionnaire Response (February 2, 2015) ("RMB/IFI Group's Supplemental Section D Response").

⁹³ See RMB/IFI Group's Supplemental Section D Response at 10-11 (questions 5 and 6(a) of General Section).

⁹⁴ *Id.*, at 11.

⁹⁵ *Id.*

allocated the total consumption of FOPs by dividing the total POR consumption of these FOPs by the total production weight of all products produced in that stage to obtain a ratio.⁹⁶ They multiplied this ratio by the production weight of each product to obtain what they reported as the actual consumption ratio of that FOP for each CONNUM. The RMB/IFI Group provided examples of production and accounting records showing the standard production weight's calculation and booking in the finished goods monthly inventory report. The standard production weight from the finished goods monthly inventory report is then booked by the accounting department in the cost sheet, the finished goods sub-ledger, and the cost of production sub-ledger.⁹⁷

In the RMB/IFI Group's Supplemental Section D Response, the RMB/IFI Group again explained that the production weight booked in the production and accounting records is a standard production.⁹⁸ Although the Department requested multiple times that the RMB/IFI Group revise its allocation methodology to use the actual production weight if its allocation methodology was based on a standard production weight, the RMB/IFI Group did not follow the Department's instructions. Instead, the RMB/IFI Group stated that the "calculated... {or} actual production weight" was used in the allocation methodology.⁹⁹

When the Department again requested that the RMB/IFI Group revise its allocation methodology using an actual weight conversion factor if there were any variation between an actual weight and standard weight conversion factor, the RMB/IFI Group did not do so.¹⁰⁰ Instead, the RMB/IFI Group explained that the calculated production weight that is booked in the production records, which it twice stated in same questionnaire was the standard weight, is based on multiplying the quantity in pieces by the calculated unit weight.¹⁰¹ According to the RMB/IFI Group, the calculated unit weight for each product is based on multiplying the surface area of each product by the standard length of each product and then multiplied by the density of steel.¹⁰² The RMB/IFI Group finally noted that there is a "slight" difference in the production weight for each product for each production run.¹⁰³ However, the RMB/IFI Group stated that the difference in the weight of a specific product between each production run is minor and thus, there is no need for the RMB/IFI Group to weigh each product by each production run.¹⁰⁴ Accordingly, the RMB/IFI Group stated that the basis for allocation in the normal course of business is the "calculated weight... {or} actual weight," which the RMB/IFI Group also stated in the same response was the standard weight, and that there is no other weight basis that the RMB/IFI Group could use to allocate its FOPs.¹⁰⁵

⁹⁶ See RMB/IFI Group's Supplemental Section D Response at 16-17 (question 10(a) of General Section).

⁹⁷ *Id.*, at 16-17 and Exhibits SD-7 and SD-12.

⁹⁸ *Id.*, at 10-11 (questions 5 and 6(a) of General Section).

⁹⁹ *Id.*, at 17-28 (questions 10(c), 11(c), 12(c), 27(c), and 29(c) of General Section).

¹⁰⁰ *Id.*, at 13-14 (question 5(d) of General Section).

¹⁰¹ RMB/IFI Group's Supplemental Section D Response at 10-11 (questions 5 and 6(a) of General Section) and 13 (question 5(d) of General Section).

¹⁰² *Id.*, at 13 (question 6(d) of General Section).

¹⁰³ *Id.*, at 13-14 (question 5(d) of General Section).

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*, at 10-11 (questions 5 and 6(a) of General Section) and 13-14 (question 5(d) of General Section).

After reviewing the RMB/IFI Group's Supplemental Section D Response to determine the accuracy and reasonableness of the allocated FOP weight-based methodology and the RMB/IFI Group's varying statements on which weight (standard or actual) is the basis for the allocation methodology, the Department issued a second deficiency questionnaire.¹⁰⁶ In the Department's Second Supplemental Section D Questionnaire, the Department noted that the allocation worksheets that RMB/IFI Group provided demonstrated that the total weight of direct material inputs is *less* than the total output weight of the finished steel threaded rod and the claimed by-product offset, steel scrap.¹⁰⁷ The Department pointed out that it "appears to be mathematically impossible" to use *less* total weight of direct material inputs to produce *a greater* total output weight of the finished steel threaded rod.¹⁰⁸ Accordingly, the Department requested that the RMB/IFI Group revise its allocation of the FOPs to accurately reflect the quantity of each FOP that was used to produce a unit, *i.e.*, one kilogram ("kg"), of the subject merchandise. The Department also placed on the record information that the RMB/IFI Group acknowledged during its verification in the third AR, that steel wire rod added substantial weight to the finished product and that steel scrap is generated during the production process.¹⁰⁹

The Department expressly cautioned in the Second Supplemental Section D Questionnaire that it would "not accept {as a} response that this FOP allocation methodology is reasonable given that it has been used in previous administrative reviews" and that the RMB/IFI Group needed to "address the mathematical accuracy of {its} FOP calculations."¹¹⁰ Additionally, the Department issued numerous questions regarding: 1) the calculation for the calculated unit weight of products and the actual components (*i.e.*, length, diameter, density, etc.) of products; 2) the difference between the calculated unit weight and actual unit weight of products; 3) the actual components of products, booking of the standard weight and actual weight of products in RMB/IFI Group's production/accounting records; and 4) how the RMB/IFI Group's FOP weight-based allocation methodology is a reasonable, accurate methodology when it is based on a standard weight and not actual weight.¹¹¹

After granting two extensions, the RMB/IFI Group submitted its response to the Department's Second Supplemental Section D Questionnaire a total of 29 days after the questionnaire was issued.¹¹² In the RMB/IFI Group's Second Supplemental Section D Response, and despite the Department's explicit instructions to not provide as a response that the Department accepted such a methodology in previous ARs, the RMB/IFI Group responded that its reported FOP

¹⁰⁶ See Department's Second Supplemental Section D Questionnaire to the RMB/IFI Group, (February 10, 2015) ("Department's 2nd Supplemental Section D Questionnaire").

¹⁰⁷ *Id.*, at 4-5 (question 1 of Factor of Production Calculation Methodology and Cost Reconciliation section); RMB/IFI Group's Supplemental Section D Response at Exhibit SD-6.

¹⁰⁸ *Id.*

¹⁰⁹ See Department's 2nd Supplemental Section D Questionnaire at 4-5 (questions 1(a-c) of Factors of Production Calculation Methodology and Cost Reconciliation section); Memorandum to the File from Julia Hancock, Senior Case Analyst, "Placing Public Version of RMB/IFI Group's Verification Report from 3rd Administrative Review on the Record, at Attachment 1, p. 15 (January 28, 2015).

¹¹⁰ See Department's 2nd Supplemental Section D Questionnaire at 5 (question 1 of Factors of Production Calculation Methodology and Cost Reconciliation section).

¹¹¹ *Id.*, at 4-8 (questions 1-8 of Factors of Production Calculation Methodology and Cost Reconciliation section).

¹¹² See RMB/IFI Group's Second Supplemental Section D Questionnaire Response (March 11, 2015) ("RMB/IFI Group's 2nd Supplemental Section D Response").

allocation methodology was accepted before in previous segments.¹¹³ The RMB/IFI Group stated that it calculates the standard weight of each product “using the largest diameter in the range of tolerance... {and that this results in the standard or} calculated weight always being {greater} than the actual weight.”¹¹⁴ Accordingly, the RMB/IFI Group stated that this results in the weight of the FOPs being less than the finished product. However, while it conceded the weight of the reported inputs was less than the finished product, it continued to maintain that this methodology was reasonable since it follows the RMB/IFI Group’s cost accounting system.¹¹⁵ It then concluded that although the Department specifically requested that it revise the allocation methodology to accurately capture the consumed FOPs, it saw no need to revise its FOP weight-based allocation methodology even while acknowledging that this methodology results in fewer inputs being consumed to generate the finished product based on weight.¹¹⁶

Further, in its Second Supplemental Section D Response, when the Department again requested that the RMB/IFI Group address the mathematical accuracy of its FOP weight-based allocation methodology, and that it specifically address how less input weight could be consumed to generate a greater total output weight of the finished product and steel scrap, the RMB/IFI Group’s response again did not follow the Department’s instructions.¹¹⁷ Specifically, the RMB/IFI Group’s response never addressed how less input weight could be consumed to generate both the greater total output weight of the finished product and steel scrap.¹¹⁸ Such an explanation from the RMB/IFI Group is important because the RMB/IFI Group acknowledged in the Third AR during its verification that steel wire rod adds substantial weight to the finished product.¹¹⁹ In other words, the RMB/IFI Group’s FOP weight-based allocation methodology would result in an accurate capture of yield loss only if *more* input weight for the FOPs, such as steel wire rod, would be consumed to generate *less* output weight of the finished product and steel scrap. However, that is not the case in this proceeding, and the RMB/IFI Group never addressed how *less* input being consumed could generate *more* weight of the finished product and steel scrap, as requested by the Department. The Department notes that the RMB/IFI Group has reported more than two hundred different CONNUMs in its FOP database and that yield loss can vary significantly across products, which affects the RMB/IFI Group’s most significant input, steel wire rod, and raises the question of whether the RMB/IFI Group’s allocated FOP data is accurate and reliable.¹²⁰

¹¹³ *Id.*, at 3-4 (question 1a of Factors of Production Calculation Methodology and Cost Reconciliation section).

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ RMB/IFI Group’s 2nd Supplemental Section D Response at 3-4 (questions 1a and 1b of Factors of Production Calculation Methodology and Cost Reconciliation section).

¹¹⁸ *Id.*

¹¹⁹ See Memorandum to the File from Julia Hancock, Senior Case Analyst, “Certain Steel Threaded Rod from the People’s Republic of China: Placing of the RMB/IFI Group’s Business Proprietary Versions of the Verification Reports from the Investigation and 3rd Administrative Review for the Preliminary Results of the 5th Administrative Review,” at Attachments 1 and 2 (April 30, 2015) (“RMB/IFI Group’s Verification Report Memo”).

¹²⁰ See *Non-Malleable Cast Iron Pipe Fittings from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 69546 and accompanying Issues and Decision Memorandum at Comment 1 (“*Pipe Fittings from the PRC*”); *Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People’s Republic of China: Final Results of Antidumping Duty Administrative*, 74 FR 11085 (March 16, 2009) and accompanying Issues and Decision Memorandum at Comment 1 (“*Tables from the PRC*”); and *Freshwater*

In explaining the reasonableness and accuracy of its FOP weight-based allocation methodology, the RMB/IFI Group again stated that its FOP weight-based allocation methodology using a calculated or standard weight is the most reasonable basis for allocating the FOPs available to the RMB/IFI Group.¹²¹ Specifically, the RMB/IFI Group again indicated that it does not track the consumption of its FOPs on a product-specific basis and thus needs to allocate its FOPs on a consistent denominator basis.¹²² The RMB/IFI Group noted that it could have allocated its FOPs using pieces as the denominator but that this is not a reasonable methodology because products reported on a piece basis would vary in size and input consumption.¹²³ Accordingly, the RMB/IFI Group again stated that because it does not weigh or maintain the actual weights of finished products in its accounting and production records, its FOP weight-based allocation methodology using the calculated or standard weight as the denominator is the most reasonable methodology available to the RMB/IFI Group.¹²⁴

Contrary to the RMB/IFI Group's assertions regarding the reasonableness of its methodology, the Department preliminarily finds that the record evidence shows that the calculated or standard weight of finished products that is the basis for allocating costs in the RMB/IFI Group's accounting and production records is greater than the actual output weights of the finished products on the record.¹²⁵ Such a discrepancy is mathematically impossible. Because the RMB/IFI Group states that it cannot report the consumption of its FOPs on a product-specific basis and must allocate its FOPs, the Department preliminarily finds, as pointed out in supplemental questionnaires issued to the RMB/IFI Group, that the calculated or standard weight used in its allocation is not accurate, irrespective of whether that weight is used in its cost accounting system. Specifically, the calculated or standard weight used in the allocation methodology results in a reporting methodology that consistently underreports FOP, given the mathematical impossibility that one cannot generate one kilogram of steel and in addition generate steel scrap by consuming less than one kilogram of inputs. Products that use steel wire rod or round bar as the primary input, where the production process involves drawing, and cutting wire, and threading of the finished product, result in yield loss. As such, the Department preliminarily finds that the RMB/IFI Group's statement that its FOP weight-based allocation methodology is accurate when its consumption is less than the total weight of the finished product and results steel scrap is unconvincing. Due to yield loss, it is unlikely a company making steel intensive products, such as steel threaded rod, would have input consumption data

Crawfish Tail Meat from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review, 70 FR 58672, 58675-6 (October 7, 2005) (unchanged in *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 7013 (February 10, 2006) (“*Crawfish from the PRC*”).

¹²¹ RMB/IFI Group's 2nd Supplemental Section D Response at 10-11 (question 5c of Factors of Production Calculation Methodology and Cost Reconciliation section).

¹²² *Id.*, at 12 (question 6b of Factors of Production Calculation Methodology and Cost Reconciliation section).

¹²³ *Id.*, at 12-13 (question 6b of Factors of Production Calculation Methodology and Cost Reconciliation section).

¹²⁴ *Id.*

¹²⁵ *Id.*, at Exhibits SD2-6, SD2-7, and SD2-8.

that was 100 percent of its output (*i.e.*, one kg of raw materials to produce one kg of output), let alone less than 100 percent.¹²⁶

As explained in Section D of the Department's questionnaire, the RMB/IFI Group has a responsibility to demonstrate how its FOP weight-based allocation methodology was the best way to calculate actual consumption.¹²⁷ However, despite giving the RMB/Group multiple chances to revise its FOP database in accordance with the Department's requirements, it chose not to do so. Therefore, the Department finds that it does not have a reliable FOP database to calculate the RMB/IFI Group's antidumping duty margin for the preliminary results.

The Department also notes the differences in the standard and actual weights not only affect the entirety of the RMB/IFI Group's FOP weight-based allocation methodology but also raise questions regarding the accuracy of the reported gross and net weights reported in the RMB/IFI Group's U.S. sales database. In the RMB/IFI Group's U.S. sales database, the Department requested that the RMB/IFI Group report both the gross weight and net weight of each sale since the RMB/IFI Group reported the sales quantity in thousands of pieces but also reported NME domestic movement expenses, which would need to be converted to the same basis as the U.S. price and quantity of the RMB/IFI Group's U.S. sales.¹²⁸ However, the Department notes that RMB/IFI Group explained that the net weight recorded in the packing list for the RMB/IFI Group's U.S. sales is based on calculating the unit standard weight of each product to obtain the net weight of product.¹²⁹ The Department finds that the difference in the actual and standard weight of the finished product also affects the accuracy of the reported gross and net weights reported in the RMB/IFI Group's U.S. sales database. The record shows that the RMB/IFI Group also uses the standard weight in calculating the net weight of the product recorded in the packing list, not the actual weight of the finished product.

2. *Application of Facts Available*

The Department finds that the use of facts otherwise available is warranted with respect to the RMB/IFI Group, pursuant to section 776(a) of the Act. Pursuant to section 776(a)(2) of the Act, the Department finds that the information necessary to calculate a reliable margin is not available on the record with respect to the RMB/IFI Group. As stated in section 773(c)(1) of the Act, the Department shall determine the NV of the subject merchandise based on the FOPs utilized in producing the merchandise. As explained above, in the RMB/IFI Group's Section D Questionnaire, the RMB/IFI Group was instructed to report the "actual quantities consumed to produce the merchandise under investigation on a CONNUM-specific basis," and was instructed that if it was unable to do so to explain why the estimated FOP methodology it selected was "the best way to accurately demonstrate an accurate consumption amount."¹³⁰ However, in the

¹²⁶ See *Steel Wire Garment Hangers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2012–2013*, 80 FR 13332 (March 13, 2015) and accompanying Issues and Decision Memorandum at Comment 1 ("*Steel Wire Garment Hangers Final 2012-2013*").

¹²⁷ See RMB/IFI Group's Questionnaire at D-2.

¹²⁸ See RMB/IFI Group's Supplemental Section C Questionnaire Response (December 14, 2014) at 6-7 (questions 12 and 13) ("*RMB/IFI Group's Supp. C Response*").

¹²⁹ *Id.*, at 3.

¹³⁰ See RMB/IFI Group's Questionnaire at D-2.

RMB/IFI Group's Section D Response, because of its claim that it did not maintain records that tracked consumption on a product-specific basis, the RMB/IFI Group stated that it had allocated consumption for its FOPs based on the production weight of the subject products and this ratio was multiplied by the weight of the CONNUM to obtain the actual unit consumption per-CONNUM.¹³¹

After reviewing the RMB/IFI Group's weight-based allocation of its FOPs to obtain what it claimed to be an accurate, reasonable allocation that reflected actual FOPs for each CONNUM, the Department issued two deficiency questionnaires specifically inquiring into the RMB/IFI Group's FOP reporting methodology. The Department explicitly made clear to the RMB/IFI Group that while it has accepted the RMB/IFI Group's FOP weight-based allocation methodology in prior segments, each case segment is separate and unique, and the Department must consider the facts on the record of each segment in determining whether a respondent, such as the RMB/IFI Group, provided an accurate, reasonable methodology for calculating its antidumping duty margin for that case segment.¹³² Notwithstanding the RMB/IFI Group's statement that the Department has verified its FOP weight-based allocation methodology in previous segments and accepted this methodology as accurate,¹³³ the Department must consider the facts presented in each case, especially where new facts are presented, as here, which call into question a reporting methodology. In such cases, the Department must consider whether a change in the reporting methodology may deliver a more reliable result that is supported by record evidence.¹³⁴

The Department finds that the RMB/IFI Group did not comply with the Department's multiple requests in two deficiency questionnaires to revise its FOP weight-based allocation methodology to use an actual weight basis because the reported methodology uses a standard or calculated weight basis, which varies from the actual weight of the finished product.¹³⁵ Additionally, the Department also finds that the RMB/IFI Group did not comply with the Department's request to revise its FOP weight-based allocation methodology because it results in a mathematical impossibility of less input weight being consumed to generate greater finished product weight and steel scrap. Instead, the RMB/IFI Group ignored the Department's express instructions and claimed that its FOP methodology is reasonable since the Department has accepted this methodology in previous ARs even though it results in less input weight to produce the total production weight of the finished product, which is not mathematically accurate.¹³⁶

¹³¹ See RMB/IFI Group's Section D Response at 10-12.

¹³² See, e.g., *Fujian Mach. And Equip. Imp. & Exp. Corp. v. United States*, 178 F. Supp. 2d 1305, 1307 (2001); *Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 3201 (January 20, 2010) and accompanying Issues and Decision Memorandum at Comment 2 ("Ironing Tables 2010 Final").

¹³³ See RMB/IFI Group's Verification Report Memo at Attachments 1 and 2.

¹³⁴ See *Ironing Tables 2010 Final* and accompanying Issues and Decision Memorandum at Comment 2.

¹³⁵ See RMB/IFI Group's Supplemental Section D Response at 17-28 (questions 10(c), 11(c), 12(c), 27(c), and 29(c) of General Section).

¹³⁶ See RMB/IFI Group's 2nd Supplemental Section D Response at 3-4 (questions 1a and 1b of Factors of Production Calculation Methodology and Cost Reconciliation section).

Although the Department has previously accepted the RMB/IFI Group's production records and cost accounting system, the Department finds that the current record shows that there is a clear difference between the actual weight and the calculated or standard weight of products that form the basis of the RMB/IFI Group's cost accounting system.¹³⁷ Accordingly, the Department preliminarily finds that the standard or calculated weight, which forms the basis for allocating consumption to groups of products in the RMB/IFI Group's cost accounting system, is not accurate because it overstates the production weight of products and thus the RMB/IFI Group's FOP weight-based allocation methodology is not reliable. Based on the Department's finding that the RMB/IFI Group's cost accounting system is not accurate due to the difference in the actual and standard weights of sample CONNUMs on the record, the Department finds that the necessary information, *i.e.*, accurate FOPs utilized in producing the subject merchandise, is not available on the record for the preliminary results.

Therefore, for the preliminary results, we find that application of facts otherwise available, pursuant to subsections 776(a)(1) and 776(a)(2)(A),(B) and (C) of the Act, is warranted based on the RMB/IFI Group's submissions. Specifically, the Department finds that necessary information was not available on the record, the RMB/IFI Group withheld information requested by the Department, failed to provide information by the specified deadlines, and significantly impeded the proceeding. The Department's findings are demonstrated, in part, on the RMB/IFI Group's failure to provide an accurate and reasonable FOP weight-based allocation methodology, such as by using an actual weight basis for allocating consumption, despite the Department providing several opportunities to the RMB/IFI Group to remedy deficiencies in its submissions and numerous deadline extensions.¹³⁸

Further, by not informing the Department that there are clear differences between the actual weight and calculated or standard weight of products until its last questionnaire response and not revising its FOP methodology using an actual weight, the RMB/IFI Group failed to provide information within the deadlines established by the Department in this AR, and significantly impeded our ability to calculate an accurate margin for the RMB/IFI Group. The Department notes that using the standard or calculated weight as the weight-basis understates the consumption ratio for the RMB/IFI Group's most significant inputs, steel wire rod and round bar, that account for the supermajority of the total weight of the finished products of all low-carbon steel threaded products even before the total consumption of these FOPs are allocated to each CONNUM.¹³⁹ This error is prevalent throughout the RMB/IFI Group's FOP weight-based allocation methodology used for allocating the total consumption of each FOP for the POR to each CONNUM, of which there are over two hundred CONNUMs. Taken together, we preliminarily find that the RMB/IFI Group's data is unreliable. The scale of the problem is such

¹³⁷ See Placing of the RMB/IFI Group's BPI Responses from Investigation-4th AR Memo at Attachments 1-15; RMB/IFI Group's Verification Report Memo at Attachments 1-2; RMB/IFI Group's Supplemental Section D Response at Exhibit SD-6; RMB/IFI Group's 2nd Supplemental Section D Response at Exhibits SD2-6 through SD2-8.

¹³⁸ See sections 776(a)(1) and 776(a)(2)(A), (B), and (C) of the Act.

¹³⁹ See the RMB/IFI Group's Supplemental Section D Response at Exhibit SD-6; the RMB/IFI Group's 2nd Supplemental Section D Response at 4-5 (questions 1(a-c) of the Factors of Production Calculation Methodology and Cost Reconciliation section).

that the Department cannot use the RMB/IFI Group's questionnaire responses to determine an accurate and reliable dumping margin.¹⁴⁰ Therefore, we must resort to facts available.

As discussed above, section 782(c)(1) of the Act provides that if an interested party "promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative form in which such party is able to submit the information," the Department may modify the requirements to avoid imposing an unreasonable burden on that party. Section 782(c)(2) of the Act similarly provides that the Department shall consider the ability of the party submitting the information and shall provide such interested party assistance that is practicable. Pursuant to section 782(c)(1) of the Act, in its original Section D response, the RMB/IFI Group promptly notified the Department of its inability to submit the FOP information in the requested form and manner and suggested an alternate methodology to the Department. However, the RMB/IFI Group bore the responsibility to report complete and accurate information pursuant to this alternate methodology.

In accordance with section 782(d) of the Act, as discussed above, the Department issued multiple deficiency questionnaires to the RMB/IFI Group specifically inquiring into the RMB/IFI Group's FOP weight-based allocation methodology, a full accounting of the differences in actual and standard or calculated weights of products, and confirming the weight basis used in its production and cost accounting records. These inquiries provided the RMB/IFI Group ample opportunity to provide accurate and complete FOP data, and alerted the RMB/IFI Group that its derivation of its reported FOPs and accuracy of its methodology was a matter of critical interest to the Department.

Additionally, where the request for information was clear and relates to one of the central issues in an antidumping case, the Court of International Trade ("CIT") has found that the respondent has "a statutory obligation to prepare an accurate and complete record in response to questions plainly asked by Commerce."¹⁴¹ Further, the CIT has stated that the terms of sections 782(d) and (e) do not give rise to an obligation for the Department to permit a remedial response from the respondent where the respondent has not met all of the criteria of 782(e).¹⁴²

This is not a case where the request for information was not clear and the respondent, especially an experienced respondent such as the RMB/IFI Group, can claim that it was unaware of its obligation to submit the data and thus required further notification by the Department. Record evidence clearly shows that the RMB/IFI Group was aware of its obligation to report its FOPs

¹⁴⁰ See *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 36656 (July 24, 2010) and accompanying Issues and Decision Memorandum at Comment 16.

¹⁴¹ See *Tung Mung Dev. Co. v. United States*, 25 CIT 752, 758 (CIT 2001) ("*Tung Mung*"); *Reiner Brach GmbH & Co. KG v. United States*, 206 F. Supp. 2d 1323, 1332-3 (CIT 2002) (stating that, where the initial questionnaire was clear as to the information requested, where Commerce questioned the respondent regarding the information, and where Commerce was unaware of the deficiency, Commerce is in compliance with 782(d), and it is the respondent's obligation to create an accurate record and provide Commerce with the information requested).

¹⁴² See *Tung Mung*, 25 CIT at 789 (stating that the remedial provisions of 782(d) are not triggered unless the respondent meets all of the five enumerated criteria of 782(e)).

based on the “actual inputs” used to produce the subject merchandise. It is also clear on the record from the RMB/IFI Group’s responses that it was aware of the requirement to report its FOPs on the most accurate and reliable basis possible.¹⁴³ Therefore, the Department finds that the RMB/IFI Group had ample notification of the centrality of the issue, as well as ample opportunity to provide an accurate, reasonable FOP weight-based allocation methodology that was mathematically accurate, as requested in the deficiency questionnaires, but it chose to not do so.

In the present case, complete and accurate information regarding the FOPs used to produce the subject merchandise by the RMB/IFI Group was not submitted by the deadline established for in its submissions. The Department afforded the RMB/IFI Group numerous opportunities to provide complete and accurate information for the calculation of its antidumping margin. This information is critical because it affects the Department’s ability to ascertain whether the RMB/IFI Group has accurately reported its FOPs. Specifically, because the RMB/IFI Group failed to provide its FOP weight-based allocation methodology on an actual weight basis, as twice requested by the Department, in a timely manner, the Department did not have the opportunity to obtain and analyze these data.

Although the Department has previously accepted weight-based FOP allocations, such as in *Hangers from the PRC* and in *Washers*, the Department finds that such a standard is premised on accepting only accurate allocations, weight-based or otherwise.¹⁴⁴ In this proceeding, the Department finds that using the RMB/IFI Group’s reported weight-based FOP allocation is not appropriate because it results in inaccurate allocations, which is why the facts of this case, as compared to *Hangers from the PRC*, and *Washers* are dissimilar. Unlike here, in *Hangers from the PRC*, the Department did not find that the respective respondent’s weight-based allocation is inaccurate or unreasonable resulting in an understatement of all FOPs.¹⁴⁵ Moreover, unlike in *Activated Carbon from the PRC*, where the Department used the respective respondent’s data because the majority of NVs was reliable, in this case, the distortions in the RMB/IFI Group’s FOP allocation methodology renders the overwhelming majority of NVs, and thus the entirety of its Section D responses, unreliable.¹⁴⁶

Based on our analysis of the above points, the Department finds that, pursuant to sections 776(a)(2)(A) through (C) of the Act, the RMB/IFI Group withheld information specifically requested by the Department in its initial questionnaire and deficiency questionnaires, failed to submit information by the deadlines required, and significantly impeded the proceeding. The information withheld was significant, impacting the supermajority of the RMB/IFI Group’s cost

¹⁴³ See the Department’s Supplemental Section D Questionnaire and the Department’s 2nd Supplemental Section D Questionnaire.

¹⁴⁴ See, e.g., *Helical Spring Lock Washers From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 4175 (January 24, 2008) (“*Washers*”); *Steel Wire Garment Hangers from the People’s Republic of China*, 73 FR 47587 (August 14, 2008) and accompanying Issues and Decision Memorandum at Comment 8A (“*Hangers from the PRC*”).

¹⁴⁵ See *Hangers from the PRC* and accompanying Issues and Decision Memorandum at Comment 8A.

¹⁴⁶ See *Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People’s Republic of China*, 72 FR 9508 (March 2, 2007) and accompanying Issues and Decision Memorandum at Comment 7 (“*Activated Carbon from the PRC*”).

of materials, and fundamental to the Department's analysis of determining whether the RMB/IFI Group's FOPs are accurate and reliable. Moreover, the impact of this information is pervasive enough to conclude that the RMB/IFI Group's Section D responses, as a whole, are unreliable.¹⁴⁷ Therefore, pursuant to sections 776(a)(2)(A) through (C) of the Act, the Department is applying total facts available to the RMB/IFI Group for these preliminary results.

3. *Use of Adverse Inference*

Section 776(b) of the Act provides that, if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available.¹⁴⁸ In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act ("SAA") explains that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."¹⁴⁹ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.¹⁵⁰ It is the Department's practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.¹⁵¹

The Act provides that the Department shall determine NV of the merchandise subject to the proceeding based on the FOPs utilized in producing the merchandise, pursuant to section 773(c)(1) of the Act. The record in this case shows that the RMB/IFI Group's FOPs have not been reported accurately. First, the RMB/IFI Group reported that it records the production weight of products based on a standard or calculated weight, which is the basis for allocating cost of inputs to groups of products in its cost accounting system. The RMB/IFI has stated that the standard or calculated weight is based on a larger diameter in the range of tolerance for each product than the diameter used for producing each product by the RMB/IFI Group, which overstates the standard or production weight recorded in its cost accounting system. Second, the RMB/IFI Group has stated that it cannot track consumption of FOPs on a product-specific basis in its production and accounting records and thus must allocate its FOPs to obtain actual consumption per CONNUM. However, the Department finds that the weight basis, standard or

¹⁴⁷ See *Pipe Fittings from the PRC*, 71 FR 69546 Comment 1; *Tables from the PRC*, 74 FR 11085 at Comment 1; *Crawfish from the PRC*, 70 FR 58672, 58675-6; *Activated Carbon from the PRC*, 72 FR 9508 at Comment 7.

¹⁴⁸ See also 19 CFR 351.308(a); *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

¹⁴⁹ See H.R. Doc. 103-316, Vol. 1 (1994) at 870; *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

¹⁵⁰ See, e.g., *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003); *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Preamble*, 62 FR at 27340.

¹⁵¹ See, e.g., *Steel Threaded Rod From Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Issues and Decision Memorandum at page 4, unchanged in *Steel Threaded Rod From Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

calculated weight, that the RMB/IFI Group uses for allocating its FOPs results in a mathematical impossibility, (*i.e.*, less input weight is consumed to generate the total production weight of the finished product and steel scrap). The difference in the actual and standard weights for the few sample CONNUMs on the record and the understating of the consumption of the most significant inputs, steel wire rod and round bar, demonstrates that the RMB/IFI Group's reported FOP allocation methodology has not accurately captured the actual consumption of the inputs used to manufacture the subject merchandise and thus is unreliable.

The Department notes that the RMB/IFI Group had the burden on demonstrating that its FOP methodology was the most complete and accurate methodology possible, which is not the case. Despite the Department's very specific questions, the RMB/IFI Group gave insufficient attention to its obligation to reply accurately and completely to requests from the Department and to provide an accurate and reliable FOP database.¹⁵² Because the RMB/IFI Group failed to do the maximum it was able to do based on data that it had in its possession, the Department finds that the RMB/IFI Group failed to cooperate to the best of its ability, pursuant to section 776(b) of the Act. Therefore, the Department finds it appropriate to apply total AFA to the RMB/IFI Group for these preliminary results because we do not have the necessary, reliable information to calculate an accurate margin for the RMB/IFI Group. Therefore, we are applying total AFA to the RMB/IFI Group for these preliminary results and it is being placed in the PRC-wide entity since it is not entitled to a separate rate, as explained above. Pursuant to our change in policy regarding conditional review of the PRC-wide entity, the entity is not under current review. As such, the PRC-wide rate from the previous AR (*i.e.*, the fourth administrative review) remains unchanged, and the PRC-wide entity is receiving a margin of 206 percent.¹⁵³

¹⁵² See *Activated Carbon from the PRC*, 72 FR 9508 and accompanying Issues and Decision Memorandum at Comment 27.

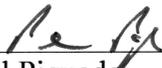
¹⁵³ See *Conditional Review of the NME Entity*, 78 FR at 65963.

Conclusion

We recommend applying the above methodology for these preliminary results.

✓
Agree

Disagree


Paul Piquado
Assistant Secretary
for Enforcement and Compliance

30 APRIL 2015
(Date)