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Administrative Review
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September 8, 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: Issues and Decision Memorandum for the Final Results of the
Antidumping Duty Administrative Review of Stainless Steel Bar
from India

SUMMARY

We have analyzed the case and rebuttal briefs of interested parties in the administrative review of the antidumping duty (AD) order on stainless steel bar (SSB or subject merchandise) from India. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this administrative review for which we received comments and rebuttal comments from parties.

Comment 1a: Whether There Are Inaccuracies and Discrepancies in Bhansali's Reporting

Comment 1b: Whether the Application of Adverse Facts Available, or Partial Facts Available is Warranted

Comment 2: Whether Bhansali Submitted Untimely Factual Information

Comment 3: Whether the Department Erred in the Treatment of Bhansali's Home Market Billing Adjustments

BACKGROUND

On March 9, 2015, the Department of Commerce (Department) published the preliminary results of the administrative review of the antidumping duty order on SSB from India.¹

¹ See *Stainless Steel Bar From India: Preliminary Results, and Rescission, in Part, of Antidumping Duty Administrative Review; 2013–2014*, 80 FR 12439 (March 9, 2015) (*Preliminary Results*).



Following the *Preliminary Results*, the Department issued an additional supplemental questionnaire to Bhansali Bright Bars Pvt. Ltd., (Bhansali), the only respondent in this administrative review, on March 20, 2015, and received a response on April 2, 2015.² We received comments from Bhansali and the petitioner following Bhansali's April 2, 2015, supplemental questionnaire response.³ We received timely filed case and rebuttal briefs from both parties.⁴

On June 17, 2015, the Department issued a memorandum extending the deadline for issuing the final results of this administrative review by 60 days from July 7, 2015, to September 8, 2015, as permitted by section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).⁵

SCOPE OF ORDER

The merchandise subject to the order is stainless steel bar. Stainless steel bar means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut-to-length flat-rolled products (*i.e.*, cut-to-length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes, and sections.

² See Letter from Bhansali, "Bhansali Bright Bars Pvt Ltd Response to Section ABC 2nd Supplementary Questionnaire of the Departments Anti-Dumping Duty," dated April 2, 2014. Following the release of the *Preliminary Results*, the Department suspended the Briefing Schedule; see Memorandum from Joseph Shuler, International Trade Analyst, to the File, "Suspension of the Briefing Schedule," (Suspension of the Briefing Schedule Memorandum), dated March 10, 2015. See also Memorandum from Joseph Shuler, International Trade Analyst, to the File, "Resumption of the Briefing Schedule," dated April 30, 2015.

³ See Letter from the petitioner to the Department, "Stainless Steel Bar from India: Petitioner's Comments on Bhansali's Supplemental Questionnaire Response," April 10, 2015; see also, Letter from Bhansali to the Department, "Bhansali's Rebuttal Comments of Petitioner's Comment dated April 10, 2015," April 22, 2015; see also, Letter from the petitioner to the Department, "2013/2014 Administrative Review of Stainless Steel Bar From India—Summary of Bhansali's Uncooperative Behavior," April 27, 2015; see also, Letter from Bhansali to the Department, "Bhansali's Rebuttal Comments of Petitioner's Comment dated April 27, 2015," May 10, 2015.

⁴ See Letter from the petitioner to the Department, "Petitioner's CB," (Petitioner's CB), May 11, 2015; see also, Letter from Bhansali to the Department, "Certain Stainless Steel Bar Product from India: Bhansali's CB," (Bhansali's CB), May 11, 2015; see also Letter from the petitioner to the Department, "Petitioner's Rebuttal Brief," (Petitioner's RB), May 22, 2015; see also, Letter from Bhansali to the Department, "Bhansali's Rebuttal Comments of Petitioner's CB dated May 11, 2015," (Bhansali's RB), May 25, 2015.

⁵ See Memorandum to Christian Marsh, Deputy Assistant Secretary, from Joseph Shuler, International Trade Analyst, "Stainless Steel Bar from India: Extension of Time Limit for Final Results of Antidumping Administrative Review," dated June 17, 2015.

Imports of these products are currently classifiable under subheadings 7222.10.00, 7222.11.00, 7222.19.00, 7222.20.00, 7222.30.00 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of the *order* is dispositive.

DISCUSSION OF THE ISSUES

Comment 1a: Whether There Are Inaccuracies and Discrepancies in Bhansali's Reporting

The Petitioner's Comments

The petitioner highlights several instances of changes occurring between Bhansali's initial home market sales dataset (filed July 7, 2014,) and the supplemental home market sales dataset (filed January 9, 2015,) where certain fields were improperly reported by Bhansali (discussed *infra*). According to the petitioner, among these alleged changes, Bhansali did not report additional transportation expenses (such as inland freight) from its sales to the first unaffiliated customer, as well as indirect selling expenses and inventory carrying costs in separate fields, on behalf of each affiliate.⁶

The petitioner argues that Bhansali has demonstrated uncooperative behavior in its numerous reporting inaccuracies and in its submissions filed prior to April 2015. Bhansali reported that it sold merchandise to its affiliated parties, who then resold the merchandise to affiliated and unaffiliated customers. The petitioner contends that Bhansali should have properly reported (1) sales to unaffiliated customers; (2) sales to affiliates that consume the merchandise; (3) sales from affiliated customers to unaffiliated customers; (4) sales from affiliated customers to affiliated customers that consume the merchandise; and (5) affiliates' resales to unaffiliated customers. Failing to do so, the petitioner contends, results in failing to properly report its home market sales.⁷

The petitioner contends that Bhansali has improperly reported home market selling expenses, as discussed individually below, and that this improper reporting demonstrates inaccuracies and errors that render Bhansali's entire response in this administrative review totally unfit for analysis and, therefore, not useable.

- *Warehousing Expenses*

Bhansali made changes to its warehousing expenses, even though Bhansali and its affiliates do not qualify for an adjustment for these expenses (these expenses, the petitioner argues, should have been included as indirect selling expenses).⁸ Bhansali reported that its affiliated resellers simply store their inventory until it is resold, based on demand. Bhansali claimed warehousing expenses for its affiliated resellers, even though none of Bhansali's affiliates demonstrated that they hold specific merchandise exclusively for a particular customer; therefore, the petitioner

⁶ See the petitioner's CB at 20.

⁷ See the petitioner's CB at 17-18.

⁸ See the petitioner's CB at 20.

continues, Bhansali is not entitled to report warehousing expenses as a direct selling expense.⁹ Bhansali did not submit indirect selling expenses for its affiliated resellers.

Bhansali reported certain returns and, therefore, according to the petitioner, should have reported corresponding warehousing expenses related to the repair or replacement of the returned item, in addition to movement expenses incurred.¹⁰

For U.S. sales, the petitioner argues that Bhansali did not properly report certain returns as warranty expenses, which it should have done if those sales were returned, in whole. The failure to appropriately report U.S. warranty expenses could result in a higher U.S. net price.¹¹

The petitioner concludes that Bhansali has withheld information from the Department and the Department should disregard the warehousing expenses that Bhansali reported for its affiliated resellers.¹²

- *Packing*

Bhansali's datasets (from July 7, 2014 to January 9, 2015,) showed no changes to the packing variable even though Bhansali reported that its affiliates divide the purchases into different lots on receipt of the merchandise, and would, therefore, assume additional packing costs on resale. Further, Bhansali's packing list documents for certain sales are inadequate, because they are illegible and from an unknown source.¹³ The petitioner concludes that Bhansali has withheld this information.

- *Inland Insurance*

Bhansali did not report additional inland insurance for each transit segment that it incurred.¹⁴ Bhansali failed to report any additional direct selling, movement costs, or other expenses incurred by each affiliate in the sales process; therefore, the petitioner contends, Bhansali has not provided reliable home market datasets for the Department's analysis.¹⁵

- *Billing Adjustments*

The petitioner references specific instances of egregious reporting errors by Bhansali. First, referencing a certain billing adjustment, the petitioner contends that it is an unsupported adjustment and the value of the adjustment exceeds the value of the home market sale.¹⁶ The petitioner argues that the Department should disallow this billing adjustment.

⁹ See the petitioner's CB at 26.

¹⁰ See the petitioner's CB at 27.

¹¹ See the petitioner's CB at 31-32.

¹² The discussion of specific home market selling expenses often includes business proprietary information which cannot be discussed in this public memorandum. See the relevant footnotes for additional details.

¹³ See the petitioner's CB at 28-29, citing to Appendix SB5.

¹⁴ See the petitioner's CB at 21.

¹⁵ See the petitioner's CB at 21.

¹⁶ See the petitioner's CB at 22.

- *Inland Freight*

The petitioner argues that Bhansali incorrectly allocated inland freight for certain home market sales, conflating or mixing sales from Bhansali to its affiliate with sales to the ultimate customer, when it should have reported these inland freight expenses separately (*i.e.*, from Bhansali to affiliate; sales between affiliates; and, finally sales to the unaffiliated customer).¹⁷ The petitioner argues that Bhansali calculated inland freight expenses incorrectly and the Department should find that Bhansali withheld information regarding specific inland freight expenses for its home market sales.¹⁸

- *Insurance Expenses*

Bhansali inflated its insurance expenses by basing its insurance rate on overstated invoice value.¹⁹ Therefore, the Department should find that Bhansali has submitted unverifiable insurance expenses for its sales of merchandise that were resold by its affiliated parties.

- *Commission Expenses*

The petitioner argues that the Department should not accept Bhansali's statement that, for its home market sales, it does not have commission agreements with any of its agents. Unless a minimum of information is provided regarding how Bhansali agrees to pay commissions to its agents, the Department cannot determine if these payments are legitimate.²⁰ The petitioner urges the Department to find that Bhansali has withheld basic information regarding its commission expenses.²¹

- *Credit Expenses*

The petitioner alleges several deficiencies regarding Bhansali's documentation of its credit expenses. Specifically, the bank letter provided by Bhansali does not specify a period in which any cited interest rate is valid; is incomplete; does not consider short-term loans; and, is not applicable to Bhansali's affiliates' resales.²² Accordingly, the information provided by Bhansali is not useful in verifying Bhansali's stated credit expense and Bhansali has withheld this information.

¹⁷ See the petitioner's CB at 22-23.

¹⁸ The petitioners have designated this method as business proprietary; *also see* the petitioner's CB at 23 for details.

¹⁹ See the petitioner's CB at 24.

²⁰ See the petitioner's CB at 24.

²¹ See the petitioner's CB at 25.

²² The petitioner notes that the bank letter does not contain the appendix referenced in the body of the letter and notes that short-term loans are those with terms of less than 365 days. See the petitioner's CB at 25.

- *Short-term Interest Expenses*

Bhansali's U.S. short-term interest rate does not appear to be based on a short-term loan denominated in U.S. dollars and the Department should not rely on Bhansali's reported interest rate.²³

- *Miscellaneous Issues*

The petitioner argues that Bhansali incorrectly included in its indirect selling expenses certain credit and bank expenses which should have been included with the interest expenses reported in its cost dataset (*i.e.*, INTEX).²⁴ Moreover, Bhansali included excise taxes in the amount it used to calculate inventory carrying costs, and failed to provide inventory carrying costs for each affiliate reseller.²⁵ In addition, Bhansali's sales trace documents were incomplete as filed because they did not include the customer order, invoice, packing list, customer payment, accounting record of payment, and shipping documents.²⁶ Therefore, Bhansali has withheld information requested by the Department.

The petitioner also reasons that Bhansali's explanation of why its sales invoice numbers do not always increase chronologically is illogical. The petitioner contends that certain of Bhansali's sales in the home market were marked "non-excise," which is an indication that these resellers knew the merchandise would be exported; such sales would properly not be included in the home market sales dataset.²⁷ Bhansali reported that it could not provide exact sizes for sales of merchandise sold as "mixed lots," and the petitioners cite Bhansali's failure to document this claim as another example of Bhansali's failure to respond to the Department's questionnaires to the best of its ability.²⁸ Further, the petitioner continues that certain of Bhansali's sales orders do not reflect that sales may be amended up until the time of invoicing.²⁹

- *General Sales and Cost Issues*

The petitioner cites to contrasting costs between Bhansali's sections B and C responses and its section D response as evidence that Bhansali has submitted inaccurate and unverifiable cost data which precludes the Department from conducting the administrative review of the respondent.³⁰

²³ See the petitioner's CB at 33-34. The petitioners cite to one U.S. Bhansali sale but the documentation provided by Bhansali appears to be correct. For instance, the terms of payment are not consistent with how the petitioners have characterized it; and the petitioners reported a conversion rate that appears to be inconsistent with the rate listed in the documents provided by Bhansali supporting this sale. Finally, the petitioners reported a different interest rate for Bhansali than Bhansali reported (appearing to transpose the numbers of the tenth and hundredth positions).

²⁴ See the petitioner's CB at 27-28.

²⁵ See the petitioner's CB at 28.

²⁶ See the petitioner's CB at 29.

²⁷ See the petitioner's CB at 30.

²⁸ See the petitioner's CB at 31.

²⁹ See the petitioner's CB at 32 where petitioners cite to Appendix SC5. An examination of this invoice indicates that Bhansali has properly reported this sale date; this invoice reflects changes to the sale only prior to the final invoice date, which is accurately reflected in the U.S. dataset that Bhansali submitted.

³⁰ See the petitioner's CB at 34.

The petitioner cites to Bhansali's alleged failure to properly document its selling expenses that render Bhansali's responses so wholly inaccurate and incomplete that the Department cannot rely on the home market sales data provided by the respondent.³¹

Bhansali's Rebuttal Comments

Bhansali claims that the petitioner is misleading the Department in its characterization of its home market sales expenses and offers that its selling expenses have been properly and fully explained and that it has provided documentation of these calculations to the Department.³²

- *Warehousing Expenses*

Bhansali explains that its affiliates who re-sell the subject merchandise do so based on consumer demand and that the warehousing expenses that it reported are relevant to these sales and, therefore, appropriate. Additionally, Bhansali has substantially documented its warehousing expenses, including these expenses as related to affiliated parties. Were Bhansali not to report these expenses, then they would not be included in the calculations.³³

- *Insurance Expenses*

Bhansali offers that it has provided substantial evidence of its insurance expenses supporting its calculations and that its calculation of its insurance expense has been done correctly, accounting for affiliated re-sales.³⁴

- *Billing Adjustments*

Bhansali explains that it occasionally remedies errors in billing and provides adjustments to sales that it reported under this variable. Bhansali insists that it has provided complete documentation of its billing adjustments, including screen shots from the computer program used to enter these adjustments.³⁵

- *Inland Freight*

Bhansali has provided substantial evidence in the form of copies of tax and freight invoices to support its inland freight calculation. These calculations are appropriate and include all relevant affiliates.

³¹ See the petitioner's CB at 18.

³² See Bhansali's RB at 13 and referencing Bhansali's letter to the Department, "Bhansali's Rebuttal Comments of Petitioner's Comment dated April 27, 2015," dated May 10, 2015, (Bhansali May 10 RC) at pages 15-19. Bhansali has bracketed most of its rebuttal comments in this section as business proprietary information.

³³ See Bhansali's RB at 40; Bhansali's entire explanation of its warehousing expenses for its affiliate resellers is marked as proprietary information on this page and, thus, cannot be detailed in this memorandum.

³⁴ See Bhansali's RB at 42; again, Bhansali has provided a response which it designated as proprietary information in its rebuttal brief and its explanation qualifying its insurance expenses cannot be fully explained here.

³⁵ See Bhansali's RB at 41.

- *Commission Expenses*

Bhansali maintains that it has provided the Department with relevant documentation showing that its commission expenses tie with its corresponding sales documents.³⁶ Bhansali reports that under the “Income tax or Companies Act,” there is no legal mandate to sign a commission agreement with the commission agent, and Bhansali does not have one. Bhansali has demonstrated in its provided documentation that it deducted relevant taxes from these commissions.³⁷

- *Credit Expenses and Short-term Interest Expenses*

Bhansali provided a bank letter, on bank letterhead, that provides the specifics of Bhansali’s interest terms and conditions and this information is also relevant to its short-term interest rates.³⁸

Petitioner’s Rebuttal Comments

The petitioner continues to urge the application of adverse facts available (AFA) to Bhansali in this review, suggesting that Bhansali’s reported billing adjustment is another example where Bhansali has reported inaccurate, unverifiable, and misleading information to the Department.³⁹

The petitioner cites Bhansali’s explanation of its billing adjustment for a certain sale, arguing that Bhansali’s methodology is simply wrong and that Bhansali did not properly report the essential facts of this sale as revealed after Bhansali’s adjustment.⁴⁰ The petitioner concludes, again, that these are mere examples of Bhansali’s inaccurate reporting of its home market sales variables and reason for the Department to conclude that Bhansali’s reporting is unreliable, and constitutes a withholding of information and a pattern of uncooperative behavior.⁴¹

Department’s Position

We agree with Bhansali that the statements made regarding its home market sales and cost data in the original questionnaire response and in additional supplemental questionnaire responses are supported by sales documentation that it placed on the record of this review, with the exception of certain billing adjustments and certain cost data, noted below.⁴²

We do not agree with the petitioner’s allegations of inaccuracies and inconsistencies in Bhansali’s reporting of sales for this administrative review. For example, in asserting that

³⁶ See Bhansali’s RB at 14; *see also* Bhansali May 10 RC at 17.

³⁷ See Bhansali’s RB at 42.

³⁸ See Bhansali’s RB at 43.

³⁹ See the petitioner’s rebuttal brief, “Petitioner’s Rebuttal Brief,” May 22, 2015 (Petitioner’s RB).

⁴⁰ See Petitioner’s RB at 3-5.

⁴¹ See Petitioner’s RB at 5-6.

⁴² For those adjustments and explanation, *see* Memorandum to Neal Halper, Director, Office of Accounting, from Stephanie Arthur, Senior Accountant, “Cost of Production and Constructed Value Calculation Adjustments for the Final Results – Bhansali Bright Bars Pvt. Ltd.,” (Final Accounting Cost Calculation Memo) dated concurrently with this memorandum.

Bhansali's home market sales reporting is not reliable, the petitioner alleged that Bhansali's sales orders do not increase chronologically and indicated that Bhansali did not adequately respond with convincing documentation to explain the "unusual reporting of invoice numbers."⁴³ The petitioner also alleges that certain home market sales appear to be sales for export because they were made on a non-excise basis. Bhansali provided information demonstrating how sales to its affiliates were invoiced and identified for reporting purposes, including the range of invoice numbers used depending on the location of its affiliate's warehouse and whether those sales were made on an excise or a non-excise basis, as Bhansali reported that certain home market sales to affiliates can properly be made on either basis according to Indian tax law.⁴⁴ We have examined Bhansali's invoicing and its explanation of its invoicing methodology, and find the information to be reasonable and accurate. In order to provide clarification of its invoicing methodology, Bhansali reported the warehouse location and the fiscal year in which the invoice was made.⁴⁵ We find that Bhansali has adequately explained its invoicing methodology and provided adequate documentation supporting its statements about the reporting of sales. Further, we have reviewed Bhansali's affiliated sales information and find the information that Bhansali provided to be supported by its sales documents.⁴⁶ We do not agree with the petitioner in its characterization of the method in which Bhansali should have reported its affiliated home market sales. Bhansali responded on behalf of itself and its appropriate affiliated companies and provided its home market sales, related expenses on behalf of itself and those affiliates, and the financial statements which we reviewed to reconcile these home market sales.⁴⁷ For example, in Section A of the original questionnaire, we simply ask the respondent to "{p}rovide a list of affiliates that purchased and resold the foreign like product in the foreign market. Also, please state the approximate percentage of your sales of the foreign like product in the foreign market which were made by these affiliates."⁴⁸ We agree with Bhansali that, in its questionnaire response and subsequent questionnaire responses, it responded appropriately; Bhansali also provided a reconciliation of its sales to affiliates that ties with its financial statements.⁴⁹

Regarding the petitioner's concern with Bhansali's reporting method of its home market selling expenses, we find that Bhansali has adequately explained its reporting methodology and provided adequate documentation supporting its statements about the reporting. Because of the extensive business proprietary nature of the respondent's comments on these issues, we address certain issues in Bhansali's Final Calculation Memorandum (regarding the respondents financial ratios)⁵⁰ and in the Final Accounting Cost Calculation Memo (regarding certain excluded transactions) which we do not divulge here.

⁴³ See the petitioner's CB at 30; see Bhansali's RB at 47.

⁴⁴ See Bhansali's RB at 47.

⁴⁵ See Letter from Bhansali to the Department, "Bhansali Bright Bars Pvt Ltd Response to Section ABC Supplementary Questionnaire of the Department's Anti-Dumping Duty," (Bhansali ABC QR) January 9, 2015 at 8-9.

⁴⁶ See Bhansali's May 26, 2014 Section A Questionnaire Response (Section A QR) at 3-4 and Appendix A4; *see also* Bhansali ABC QR at 4.

⁴⁷ See Bhansali's Section A QR at 4-10 and appendices A4, A6-A14.

⁴⁸ See April 14, 2014 Letter from the Department to Bhansali, "Request for Information; Antidumping Duty Administrative Review," Section A at A-11.

⁴⁹ See Bhansali ABC QR at Appendix SB1.

⁵⁰ See Final Accounting Cost Calculation Memo; *see also* Memorandum from Joseph Shuler, International Trade Analyst, through Dana Mermelstein, Program Manager, to the File, "Final Results Calculation memorandum for Bhansali," (Bhansali's Final Calculation Memorandum) dated concurrently with this memorandum

Similarly, with regard to the petitioner's arguments on warehousing expenses, insurance expenses, inland freight, commission expenses, warranty expenses, credit and short-term interest expenses, and other miscellaneous issues, we agree with Bhansali, and not with the petitioner's characterization that Bhansali's reporting is so fundamentally flawed, or that Bhansali's behavior in this proceeding demonstrated an unwillingness to cooperate less than fully, or that Bhansali's reporting demonstrates the sort of miscellaneous and broad errors as alleged by the petitioner.⁵¹ For instance, Bhansali explained that its affiliated resellers are traders who manage their entire operation from the warehouse and therefore these warehousing expenses are directly or indirectly related to the warehousing of subject merchandise. Therefore, we agree with Bhansali.⁵² Bhansali also reported that its unaffiliated insurance provider covers all home market sales from the plant to the customer's destination and provided supporting documentation validating its explanation.⁵³ Bhansali reported that it does not have any existing commission agreements with any of its agents for its home market sales, but instead that they are paid on an *ad hoc* basis, and provided the sample calculation which allowed us to verify Bhansali's response. We have no reason to doubt Bhansali's credibility that it does not maintain commission contracts.⁵⁴

Although we find that Bhansali has, in general, properly reported information requested by the Department, we find that certain billing adjustments reported by Bhansali present anomalies because they result in a negative net price for the entire sales transaction. We do not find that these anomalies demonstrate a lack of cooperation because Bhansali responded to our questions about these adjustments.⁵⁵ However, for the final results of review, we have not included in our calculation of normal value the sales which result in negative prices due to these billing adjustments.⁵⁶

Bhansali demonstrated its willingness to cooperate in this administrative review by providing timely responses to our questionnaires and by providing supporting documentation for the sales information it reported on behalf of itself and its affiliates.⁵⁷ We, therefore, do not agree with the petitioner's claim that Bhansali has willfully withheld information that the Department requested.

⁵¹ See generally Bhansali's RB. Although most of the discussion in Bhansali's brief is business proprietary, we agree with Bhansali that their responses are supported by evidence on the administrative record. See, e.g., Bhansali ABC QR at 12 (and Appendix S5) for its explanation of its warehousing expenses; at 13 where it addresses its insurance expenses; at 11 for billing adjustments; at Appendix SB15(a) and SB15(b) for inland freight; at 13 (and Appendix SB19) for its commission expenses; and 14 (and Appendix SB20) for credit and short-term interest expenses.

⁵² See Bhansali's ABC QR at 12 and Appendix S5.

⁵³ See Bhansali's ABC QR at 13 and Appendix B9.

⁵⁴ See Bhansali's ABC QR at 13 and Appendix SB18.

⁵⁵ See Bhansali's ABC QR at 11.

⁵⁶ See *Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review*, 63 FR 12764, 12781 (March 16, 1998) at Comment 17, where we allowed the respondent's adjustments but "disregarded those sales which result in negative prices due to these adjustments and have not included these in the calculation of NV." See also Bhansali's Final Calculation Memorandum for Bhansali at 3 for program language.

⁵⁷ See Bhansali's RB at 47.

Comment 1b: Whether the Application of Adverse Facts Available, or Partial Facts Available is Warranted

The petitioner's comments

According to the petitioner, the alleged deficiencies in Bhansali's reported sales and cost data, considered collectively with what petitioner characterizes as an attempt to mislead the Department regarding the date that the audited 2013-2014 financial statements were available, justify the application of total adverse facts available for Bhansali or, alternatively, the application of partial adverse facts available. The petitioner argues that Bhansali actively misled the Department about the date when its 2013-2014 audited financial statements became available for submission in spite of the Department's multiple requests for them. The petitioner maintains that the financial statements were actually available as early as September 5, 2014, based on the signed audit report, but that Bhansali willfully withheld them until the April 2, 2015, sections A-C supplemental questionnaire response. The first such attempt to obtain the 2013-2014 financial statements, argues the petitioner, was in the original section A questionnaire issued in April 2014, wherein the Department instructed Bhansali to submit audited financial statements for the two most recently completed fiscal years. According to the petitioner, the Department also attempted to obtain the 2013-2014 financial statements in the original section D questionnaire (issued along with the section A questionnaire in April 2014), in which Bhansali was instructed to reconcile the per-unit costs "to the accounting records used by your company to prepare the financial statements," and to further "demonstrate how the general and administrative (G&A) expenses and the cost of goods sold (COGS) used in the ratio reconcile to your company's audited fiscal year financial statement."⁵⁸

The petitioner points out that, while Bhansali did not submit the fiscal year 2013-2014 financial statements with its original July 7, 2014, section D response, it nonetheless stated "all figures are from the audited financial statements for the fiscal year 2013-2104" for the reported G&A, financial expenses, and COGS. The petitioner argues that the Department attempted a third time to obtain the 2013-2014 audited financial statements in its September 22, 2014, supplemental section D questionnaire, but that Bhansali did not submit them with its November 2, 2014, response, stating that as of that date the audit was not yet complete and that the deadline for submitting the audited financial statements to the Government of India was November 30, 2014.

In its fourth attempt, asserts the petitioner, the Department asked Bhansali to submit copies of its financial statements to support the figures presented in the home market and U.S. sales reconciliations in the second A-C supplemental questionnaire response filed on January 9, 2015. The petitioner notes that Bhansali did not include the financial statements in that submission, and alleges that Bhansali again chose not to provide its 2013-2014 financial statements with the January 17, 2015, second supplemental section D response.

According to the petitioner, there are numerous discrepancies between the audited 2013-2014 financial statements that were finally submitted by Bhansali in its post-preliminary April 2, 2015.

⁵⁸ See Petitioners' CB at 11, citing the Department's April 14, 2014 section D questionnaire.

response and the version submitted in the November 2, 2014 supplemental section D response.⁵⁹ The petitioner argues that, by withholding the 2013-2014 audited financial statement statements for nearly seven months after they were made available (*i.e.*, from the September 5, 2014, signature date until the April 2, 2015, submission), Bhansali deprived the Department of the opportunity to examine and question these discrepancies.

The petitioner argues that, because Bhansali withheld the final audited financial statements, the company has submitted inconsistent and inaccurate home market sales, U.S. sales, and cost files because the information in those files was based on the earlier version of the financial statements that was submitted in November 2014. The petitioner asserts that the total revenues reported in Bhansali's sales reconciliation do not reconcile with the 2013-2014 final audited financial statements submitted in April 2015. With respect to Bhansali's affiliated home market resellers, the petitioner argues that there is no reconciliation between the sales revenue reported in each affiliated resellers' audited financial statements and the reported home market sales data and that without such a reconciliation the Department cannot confirm that home market sales have been fully and accurately reported. The petitioner also maintains that, as with the sales reconciliations, the record is also devoid of a cost reconciliation from the final audited 2013-2014 financial statements to the reported costs as required by the section D questionnaire. The petitioner also argues that, in an untimely and unsolicited manner, Bhansali attempted to partially revise the costs by submitting new G&A expenses, financial expenses, and COGS with its April 2, 2015, supplemental A-C response. According to the petitioner, Bhansali revised its home market sales and U.S. sales databases in that submission. The petitioner argues that none of this information was requested by the Department and that Bhansali was being untruthful in stating in the July 7, 2014, original section D response that the G&A and interest expenses were "from the audited 2013-2014 financial statements," and that the company's April 2, 2015, submission (wherein the signed September 2014 auditors' report was provided) confirmed that these statements were false.

The petitioner contends that Bhansali has made various statements and claims throughout the course of this review that demonstrate that it attempted to mislead the Department. For example, the petitioner notes that Bhansali, in an April 22, 2015, rebuttal letter to the Department,⁶⁰ stated that it was "unable to submit the Audited Financial Statements" to the Department until April 2, 2015, "even though the Audited Financial Statements were signed on 5th September 2014," because the tax audit and the filing of its income tax returns were pending.⁶¹ The petitioner maintains that Bhansali was, in fact, able to submit the financial statements and that tax matters have no bearing on the finalizing of the audited financial statements. In addition, the petitioner notes that Bhansali claimed that "it was under the impression that it had already submitted the Audited Financial Statement along with 1st Section D supplemental filed in November 2014."⁶² The petitioner argues that Bhansali's statement is unconvincing given that the respondent explained that "audited is not yet finalized," even though its 2013-2014 audited financial

⁵⁹ Because much of this information is business proprietary, refer to the petitioners' CB at 6-9 for further details regarding these alleged inconsistencies.

⁶⁰ Bhansali's April 22, 2015 letter was filed in response to an April 10, 2015 filing by the petitioners addressing the company's April 2, 2015 section A-C supplemental response.

⁶¹ See Petitioners' CB at 14, citing Bhansali's April 22, 2015 submission.

⁶² *Id.*

statements had been signed by the auditors in September 2014, nearly two months prior to the November 2014 submission.⁶³

The petitioner also takes issue with Bhansali's statement in its April 22, 2015, letter that the company did not submit the final audited financial statements with the January 9, 2015, sections A-C supplemental response because "there was no difference between the sales revenue reported in the financial statement submitted in November 2, 2014, and the Audited Financial Statement."⁶⁴ According to the petitioner, even if the sales revenue did not change (which they allege it did), this did not relieve Bhansali of the obligation to provide the final audited financial statements. The petitioner argues that the sales revenue from the final 2013-2014 audited financial statements did *not* in fact reconcile with the unaudited versions provided by Bhansali. The petitioner notes that Bhansali claimed in its April 22, 2015, rebuttal letter that there was not a specific question in the second supplemental section D questionnaire issued by the Department on December 22, 2014, (to which Bhansali filed a response on January 20, 2015,) asking for the financial statements. The petitioner asserts that this statement ignores the fact that the Department made prior requests for this information. The petitioner contends that, given the attention placed on the submission of audited financial statements by the Department, Bhansali, or any respondent, should have understood that the Department's reference to the financial statements was to the audited versions, particularly since the draft versions were already on the record.

As to the reported cost data, the petitioner alleges information on the record demonstrates that there is no relationship between the control number characteristics and the reported costs. According to the petitioner, there also appears to be a problem with Bhansali's reported purchases of input steel wire rods and bars.⁶⁵ In addition, as discussed above, the petitioner argues that while Bhansali submitted new costs in its April 2, 2015, supplemental sections A-C response, it failed to provide a reconciliation of the costs in its financial statements with the newly submitted data and to demonstrate that production quantities reconcile to production records.

The petitioner argues that the Department should apply total AFA to determine the dumping margin for Bhansali. According to the petitioner, Bhansali has withheld information or failed to provide the requested information in a timely manner, has provided incomplete, contradictory, and misleading information, and has significantly impeded this proceeding. The petitioner argues that Bhansali has failed to cooperate by not acting to the best of its ability and that an adverse inference is therefore warranted. As discussed below, the petitioner highlights information on the record pertaining to Bhansali's submission of its POR financial statements and to alleged deficiencies in the company's sales and cost data. The petitioner asserts that this information demonstrates a pattern of unresponsiveness and failure to act and that, as such, the Department should rely on total AFA or, at a minimum, partial adverse facts available.

⁶³ *Id.*

⁶⁴ *Id.* at 15.

⁶⁵ Much of this discussion involves information that is business proprietary in nature. Refer to petitioners' BPI CB at pages 35-36.

The petitioner argues that section 776(a) of the Tariff Act of 1930 (as amended), (the Act), requires the application of facts available if certain conditions are present, primarily that necessary information is not on the record, and the record demonstrates that the criteria on which to apply AFA, or partial facts available, are present in this review.⁶⁶

The petitioner continues that in *Nippon*, the court determined that it is appropriate for the Department to resort to other sources of information if the respondent fails to provide information, for any reason, because it requires the respondent act to the best of its ability to do the maximum that it is able to do.⁶⁷ Sections 782(d) and (e) of the Act provide for the use of total facts available when a party's response to a request for information is deficient.

The petitioner argues that Bhansali's refusal to provide its 2013-2014 audited financial statements to the Department in a timely manner demonstrates that necessary information is not on the record because Bhansali waited until seven months after they were first available before providing them to the Department. Further, the petitioner asserts that because Bhansali did not base its home market, U.S. sales, and cost reporting on the audited financial statements, the Department is unable to confirm the accuracy of Bhansali's reporting, and that while Bhansali attempted to correct for the differences between its prior reconciliation and the reconciliation with the audited financial statements, this was unsolicited and untimely filed and therefore, Bhansali has submitted inconsistent data to the Department. Finally, the petitioner argues that because of this delay, the Department has been prevented from the opportunity to issue supplemental questionnaires regarding possible differences in reporting.⁶⁸

The petitioner continues that Bhansali's failure to properly report its affiliates' indirect selling expenses, inventory carrying costs, additional warehousing expenses, packing, and additional inland insurance, separately, is another example of Bhansali's failure to provide complete and accurate responses to the Department's questionnaires. This failure demonstrates the criteria necessary for the application of AFA: that is, needed information is missing from the record.⁶⁹

These actions by Bhansali, the petitioner continues, constitute a deliberate withholding of information and have subsequently significantly impeded the proceeding. Further, the record is so materially incomplete that the Department should not attempt to remedy these gaps. The petitioner argues that it is the Department's practice to completely reject a respondent's questionnaire response if it is fundamentally lacking essential components or riddled with inaccuracies or errors.⁷⁰ The petitioner further argues that the Department generally reserves the

⁶⁶ See the petitioner's CB at 36-37, citing to sections 782(d) and (e) and section 776(b); among the other criteria included in the petitioners CB calling for the application of AFA: an interested party, or any other person, withheld requested information; failed to adhere to deadlines; failed to submit information in the form and manner requested; significantly impedes a proceeding; and provides unverifiable information.

⁶⁷ See the petitioner's CB at 37 and 45, citing to *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon*); see also *Mukand, Ltd. v. United States*, 767 F. 3d 1300, 1304, 1306-7 (Fed. Cir. 2014) (*Mukand*).

⁶⁸ See the petitioner's CB at 39; and 41-42 where the petitioners continue that Bhansali submitted unsolicited new factual information in the form of its revised G&A expenses, interest expenses and costs of goods sold.

⁶⁹ See the petitioner's CB at 40-41.

⁷⁰ See the petitioner's CB at 43-44, citing to *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from India*, 64 FR 73126, 73130 (Dec. 29, 1999), amended, 65 FR 6585 (Feb. 10, 2000), affirmed, *Steel Authority of India v. United States*, 25 CIT 482,487, 149, Supp.2d 921,928 (2001).

use of partial facts available to fill minor gaps due to deficiencies, and usually only when the responses are otherwise substantially complete and useable.⁷¹ The petitioner urges the Department to reject Bhansali's submissions in their entirety and apply total AFA.

The petitioner argues that the application of adverse inferences is warranted not only because the respondent has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information, but also because it is reasonable that the Department should have expected a more cooperative response.⁷² In other words, it asserts that Bhansali failed to respond to the best of its ability; therefore, the application of AFA is warranted. And, the petitioner states, there is precedent to apply AFA in the circumstance where the respondent is capable of providing the requested data and is aware of the need for that information. Similar to *Fujian Machinery*, Bhansali knew of the Department's requests for its audited financial statements, and this documentation was within Bhansali's ability to provide it to the Department.⁷³ Accordingly, the Department should rely on the highest margin found in any segment of this proceeding.⁷⁴

If the Department does not assign total AFA to Bhansali, then it should assign partial facts available. Specifically, the Department should apply partial FA to Bhansali's sales reconciliation by relying on the single highest home market price for all home market sales; re-set certain home market selling expenses to zero; rely on the highest submitted cost for all control numbers; and, add the highest reported packing costs to COP.⁷⁵

Bhansali's rebuttal comments

Bhansali disputes the petitioner's characterization of its behavior in this review, stating that it has provided the information requested by the Department in a timely manner and has not impeded this proceeding. In addition, Bhansali contends that it has worked diligently to provide all the necessary information, including screen shots, or other documents supporting its various claims (such as expense reporting, accounting, customer order, etc.). In addition, Bhansali argues that all of the information it has provided can be substantiated and verified.⁷⁶

Bhansali argues that despite initial deficiencies in the initial questionnaire response, the petitioner is requesting the Department to apply AFA even though Bhansali remedied these deficiencies in supplemental questionnaire responses. If the Department were to apply AFA to Bhansali, it would, in Bhansali's view, subvert the entire supplemental questionnaire process.⁷⁷

⁷¹ See the petitioner's CB at 44.

⁷² See the petitioner's CB at 45 citing to *Nippon Steel*, 337 F.3d at 1382.

⁷³ See the petitioner's CB at 46, citing to *Final Results of Redetermination Pursuant To Court Remand, Fujian Machinery & Equip. Imp. & Exp. Corp. v. United States*, CIT Court No. 99-08-00532 (Feb. 20, 2002) at Comment 5, *aff'd Fujian Machinery & Equip. Imp. & Exp. Corp. v. United States*, 27 CIT 1059, 276 F. Supp. 2d 1371 (2003) (*Fujian Machinery*).

⁷⁴ See the petitioner's CB at 47.

⁷⁵ See the petitioner's CB at 49-50 where the petitioner proposes a number of partial FA adjustments the Department should make in regard to Bhansali's home market, U.S. sales, and reported costs, some of which are characterized as business proprietary.

⁷⁶ See Bhansali RB at 7.

⁷⁷ See Bhansali RB at 7.

Bhansali argues that the Department requested the “two most recently completed fiscal years’...audited, consolidated and unconsolidated financial statements...” to which it provided the 2011-2012 and 2012-2013 audited records in the section A questionnaire response as well as the 2013-2014 unaudited financial statements, disclosing that the audited version was not yet available.⁷⁸ Bhansali disagrees with the petitioner’s position that this constitutes the first time the Department requested the 2013-2014 audited financial statements.⁷⁹ Further, Bhansali argues against the petitioner’s allegation that the Department requested the 2013-2014 audited financial statements four times.⁸⁰

Bhansali notes that the financial statements it submitted with its section A response were the audited financial statements for the two most recently completed fiscal years, as requested by the Department. Bhansali acknowledges that it indicated in its July 7, 2014, section D response that the figures for the G&A and financial expense ratios were from the “audited” financial statements, but it intended to state that the amounts were from the “unaudited” accounts. Bhansali argues that it did not submit the 2013-2014 audited financial statements with its January 20, 2015 response to the second supplemental section D questionnaire because there was no specific request from the Department.

Bhansali refutes the petitioner’s argument that it intentionally withheld its audited 2013-2014 financial statements. Bhansali reports that its audited 2013-2014 financial statements were signed in September 2014 but not available until the completion of its tax audit in November 2014. When Bhansali submitted its January 9, 2015, supplemental questionnaire response, it explains that it inadvertently overlooked that it had not previously submitted the audited POR financial statements, precisely because there were no questions directly related to the audited financial statements. Bhansali continues that there was no difference in sales revenue as reflected in the draft financial statements previously provided as compared to the audited financial statements.⁸¹ Bhansali argues that it has demonstrated its cooperation in replying to the Department’s questionnaires by always responding timely, providing documents in the form and manner requested by the Department, and not withholding any information that was requested. Further, Bhansali has not provided any information which the Department cannot verify.⁸²

Bhansali argues that *Mukand*, which the petitioner cites, is dissimilar to the circumstances of the instant review: first, Bhansali has provided all the information necessary for the Department to determine an antidumping margin; and second, Bhansali has reported its costs on a CONNUM-specific basis. In *Mukand*, the respondent was afforded several opportunities to provide size-specific cost information and refused to do so, leading the Department to conclude that the respondent’s response was so incomplete that it could not be used and to apply AFA.⁸³

⁷⁸ See Bhansali’s RB at 27.

⁷⁹ See Bhansali’s RB at 27.

⁸⁰ See Bhansali’s RB at 35.

⁸¹ See Bhansali’s RB at 7.

⁸² See Bhansali’s RB at 27.

⁸³ See Bhansali’s RB at 31.

Bhansali concedes that it inadvertently stated that its G&A expense, interest expense and COGS were from the “audited” rather than the “unaudited” financial statements; it clarified that this information could not have been from the audited 2013-2014 financial statements because those were not yet available. Bhansali reports that in the section D questionnaire response, it stated that these ratios were based on the 2013-2014 financial year which should have been clear that they were not yet based on the audited documents.⁸⁴

Bhansali maintains that only after the Department requested the audited financial statements in a supplemental questionnaire did Bhansali realize that it had not previously provided them, and in its response, provided them along with a reconciliation of the draft financial statements with the audited version.⁸⁵ Accordingly, these audited 2013-2014 financial statements were provided directly at the Department’s request, along with the associated reconciliation between the draft and audited financial statements; therefore, they are timely and not unsolicited.⁸⁶ When the Department suspended the briefing schedule on March 10, 2015, Bhansali explains that it knew that it would receive an additional supplemental questionnaire.⁸⁷ Bhansali notes that it filed the audited financial statements in response to that supplemental questionnaire, dated April 2, 2015.

Bhansali also disputes the petitioner’s claim that its draft and audited financial statements reflect significant distortions between them. Bhansali contends that it provided a reconciliation between the draft and audited financial statements and provided new financial ratios to the Department, which explain the otherwise minor and limited differences between the statements.⁸⁸ Bhansali argues that its revised financial ratios are insignificant and have no bearing on the antidumping margin. Even if the situation called for the application of partial facts available, to which Bhansali argues it does not, it asserts that the Department would simply use Bhansali’s revised financial ratios.⁸⁹

Bhansali disputes the petitioner’s claim that it has not fully disclosed all affiliated-provided loans, arguing that it has provided all the requested information regarding these transactions.⁹⁰

Bhansali insists that its revised financial ratios, which account for the differences between the draft and audited financial statements, are comprehensive adjustments based on Bhansali’s audited 2013-2014 financial statements.⁹¹ In addition, Bhansali reports that because there were no changes to sales revenue between its draft and audited financial statements, there is no need to adjust from prior reporting. Bhansali continues that for these reasons, the petitioner’s argument that Bhansali has not submitted a U.S. or home market sales and cost dataset relying on the

⁸⁴ Though it stated this in Appendix D14-B; *see* Bhansali’s RB at 23; *see also* DQR at 1 where Bhansali initially states that the audited financial statements have not been finalized.

⁸⁵ *See* Bhansali’s RB at 8.

⁸⁶ *See* Bhansali’s RB at 22.

⁸⁷ *See* Suspension of the Briefing Schedule Memorandum in which the Department states that it intends to issue a supplemental questionnaire to Bhansali.

⁸⁸ *See* Bhansali’s RB at 8, those most of this discussion has been marked as business proprietary by Bhansali. *See* Bhansali’s RB at 8 for additional detail on the expenses accounted for in the audited financial statements.

⁸⁹ *See* Bhansali’s RB at 19-20.

⁹⁰ The petitioner alleged that Bhansali has withheld financial information regarding loans. *See* the petitioner’s CB at 8, *see also* Bhansali’s RB at 20-21 and Sec D QR at Appendix 31.

⁹¹ *See* Bhansali’s RB at 9 and 21-22.

audited 2013-2014 financial statements as baseless; and continues to state the sales revenue between the draft and audited financial statements remained the same (including sales to affiliates').⁹²

Bhansali disputes that it has not provided a sales reconciliation for its home market resellers that is based on the audited 2013-2014 financial statements. Bhansali directly references the January 9, 2015, supplemental questionnaire response in which it provided a reconciliation to the audited balance sheet (including for its home market resellers) and claims that the petitioner's argument is without merit.⁹³

Bhansali reiterates that, when asked to provide the 2013-2014 financial statements in the March 20, 2015, sections A-C supplemental questionnaire, it provided them as requested, along with reconciliation of the final audited statements with the draft financial statements. Bhansali disputes the petitioner's characterization of certain differences between the draft and final versions of the financial statements as "discrepancies." Bhansali addresses each of the alleged inconsistencies in its case brief, downplaying the significance of the specific items to which the petitioner refers.⁹⁴ For example, Bhansali asserts that, contrary to the petitioner's claims, there is no difference in home market or U.S. sales revenue when comparing the relevant audited and unaudited accounts. Bhansali argues that the Department has all the information regarding the differences between the audited and unaudited balance sheet and income statement and that these differences are fully reflected in the submitted databases. Further, Bhansali asserts that the submission of the revised G&A and interest expense ratios is not new or untimely as the petitioners allege because such changes were necessary to reflect changes from the draft financial statements to the requested final versions. Bhansali argues that the overall change in costs is insignificant and has no impact at all on the dumping margin.

Bhansali continues that it has fully complied with the Department's requirements in reporting its sales to affiliated parties and to the first unaffiliated customer. For example, Bhansali recalls its attempts to make its sales reporting less confusing, including adding a new seller field for clarity to its home market sales dataset. Bhansali claims that it has properly reported all affiliated parties transactions and clarified its reporting in supplemental questionnaires responses.⁹⁵

Bhansali argues that the circumstances in this review are far removed from the *Nippon* case cited by the petitioner. The statute requires more than mere failure to comply with a Department's request for information; it is unreasonable to expect perfection in a respondent's submissions; simple inadvertence is insufficient to apply AFA; and, the Department must consider the totality of the situation, to evaluate what is realistically possible for a party to do and what it did in the review process.⁹⁶ In further evaluating *Mukand*, Bhansali argues that the Department gave the respondent four opportunities to provide requested information and even then the respondent

⁹² See Bhansali's RB at 9.

⁹³ See Bhansali's RB at 10.

⁹⁴ Much of this information is business proprietary. Refer to the BPI version of Bhansali's rebuttal brief at pages 8-37 for further details regarding these alleged inconsistencies.

⁹⁵ See Bhansali's RB at 10-13; much of Bhansali's rebuttal comments in this section is classified as business propriety because Bhansali cites to specific examples of sales to certain affiliates and how those sales were coded in the sales dataset.

⁹⁶ See Bhansali's RB at 32.

refused to do so; whereas Bhansali has demonstrated its willingness to respond to the Department's questionnaires in a timely and cooperative manner.⁹⁷

Bhansali disputes the petitioner's argument that the Department requested the 2013-2014 financial statements on multiple occasions. Bhansali maintains that the first time the Department specifically requested the final audited financial statements was in the September 22, 2014, section D supplemental (to which Bhansali filed a response on November 2, 2014). Bhansali asserts that the second time the Department specifically requested those financial statements was in the post-preliminary March 20, 2015, sections A-C supplemental, and that it provided them with its April 2, 2015, response as requested by the Department. Bhansali claims that it was not able to submit the audited financial statements with its November 2, 2014, response, even though they were signed in September 2014, because the tax audit and tax return was pending with the Indian government.

Bhansali's Cost Data

Regarding the alleged deficiencies in the submitted cost data, Bhansali maintains that the petitioner is trying to mislead the Department. The respondent highlights several items in its section D responses that it believes establish the petitioner's allegations as meritless.⁹⁸ In addition, Bhansali points out that, in response to a specific request from the Department, it revised its entire allocation methodology for variable overhead expenses in its January 20, 2015, section D supplemental response. The company asserts that this is but one example that demonstrates that Bhansali has cooperated fully with the Department's requests.

Department's Position

For the reasons detailed below, we do not find that Bhansali's reporting in this administrative review warrants the application of facts available.

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, the Department shall apply "facts otherwise available" if: (1) necessary information is not on the record; or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

⁹⁷ See Bhansali's RB at 32.

⁹⁸ Much of this information is business proprietary. Refer to the BPI version of Bhansali's rebuttal brief at pages 49-52.

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information.

In its May 26, 2014, section A response, Bhansali provided its audited financial statements for the 2011-2012 and 2012-2013 fiscal years. At the time of that submission, Bhansali stated that its audited 2013-2014 financial statements were not available. The Department first requested that Bhansali submitted the complete audited financial statements for 2013-2014 in its September 22, 2014, supplemental section D questionnaire.⁹⁹ In its November 2, 2014, response to that questionnaire, Bhansali provided a draft version of the 2013-2014 financial statements, stating that an audit was still pending with the Indian Government.¹⁰⁰ In its March 20, 2015, post-preliminary second sections A-C supplemental questionnaire, the Department requested the final audited financial statements for 2013-2014 for the second time.¹⁰¹ Bhansali provided them as requested on April 2, 2015, along with the notes and auditors' report (which had been signed in September 2014).¹⁰²

The petitioner cites to *Mukand* and *Nippon* in urging the Department to reject Bhansali's reporting and to apply total facts available on the basis of Bhansali's alleged withholding of information and Bhansali's failure to act to the best of its ability in this administrative review.¹⁰³ In addition, the petitioner cites to *Fujian Machinery* to note that Bhansali should have known that the Department would have required Bhansali's submission of the audited financial statements and did not, proactively, provide them.¹⁰⁴ We disagree with the petitioner. The facts in these cases are not similar to this proceeding. For example, in *Mukand*, the Department requested size-specific production cost data from the respondent multiple times in separate questionnaires, provided the respondent multiple opportunities to provide alternative cost data, or to contact the Department in the event that it was unable to provide the information requested.¹⁰⁵ Similarly, in *Nippon*, the Department determined that the respondent's failure to provide timely conversion factors warranted an adverse inference.¹⁰⁶ Further, the circumstances of this review are not similar to *Fujian Machinery* because in that case the Department determined that the respondent failed verification in several aspects related to the reporting of U.S. sales.¹⁰⁷ The facts here do not support such a determination.

⁹⁹ See letter from the Department to Bhansali, "2013-2014 Review of Antidumping Duty Order on Stainless Steel Bar from India," September 22, 2014 at 3.

¹⁰⁰ See Bhansali's November 2, 2014 supplemental section D response at 1, and provided the audited financial statements for its affiliated companies.

¹⁰¹ See letter from the Department to Bhansali, "Antidumping Duty Administrative Review of Stainless Steel Bar from India: Second Sections A-C Supplemental Questionnaire," March 20, 2015 at 1.

¹⁰² See letter from Bhansali to the Department, "Bhansali Bright Bars Pvt Ltd Response to Section ABC 2nd Supplementary Questionnaire of the Departments Anti-Dumping Duty," April 2, 2015 (Bhansali April 2 SQR) at Annexure R1 along with the reconciliation between the draft and audited 2013-2014 financial statements at Annexure R2.

¹⁰³ *Nippon*, 337 F. 3d 1373; see also *Mukand*, 767 F. 3d 1300.

¹⁰⁴ *Fujian Machinery*, 276 F. Supp. 2d 1371.

¹⁰⁵ *Mukand*, 767 F. 3d at 1300.

¹⁰⁶ *Nippon*, 337 F. 3d at 1373.

¹⁰⁷ *Fujian Machinery*, 276 F. Supp. at 1374-5.

Here, Bhansali provided audited financial statements and draft 2013-2014 financial statements. Bhansali's explanation regarding its 2013-2014 audited financial statements is reasonable and, when the Department requested them in a later supplemental questionnaire, Bhansali provided them along with a reconciliation between the draft and audited versions.¹⁰⁸ Bhansali provided its draft financial statements permitting the analysis of Bhansali's cost data and to determine if there needed to be any adjustment to Bhansali's financial ratios and did not impede this proceeding. Therefore, Bhansali has been cooperative and responsive to the Department's requests for information.

We do not agree with the petitioner that Bhansali purposefully withheld the final audited financial statements for 2013-2014. Bhansali explained on the record that although the 2013-2014 audit report was signed in September 2014, it was not available for release or available for submission to the Department because it was still pending an audit with the government authority.¹⁰⁹ Bhansali ultimately provided its audited 2013-2014 financial statements as specifically requested, along with a detailed reconciliation of the audited with the unaudited statements and a revised cost file demonstrating the increase in G&A and financial expenses.¹¹⁰ We note that, while there was a small difference in certain fixed overhead items when comparing the draft and final versions of the 2013-2014 financial statements that Bhansali did not account for in its revised cost file, we have all the information we need to adjust for these items and we have done so for the final results.¹¹¹ Accordingly, under section 776(a) of the Act, we do not find that necessary information is missing from the record, or that Bhansali withheld such information.

Further, we do not agree that Bhansali's cost data reflect the discrepancies alleged by the petitioner. Our review of Bhansali's reported cost data reveals that, despite the petitioner's assertions otherwise, there is a relationship between the product characteristics and the reported cost of manufacturing. For example, in response to a request from the Department, Bhansali completely revised its reporting methodology for labor and variable overhead expenses so that these costs were allocated based on machine time (rather than on quantity), thereby allocating a proportionally greater share of these expenses to products for which the processing time was longer (*e.g.*, for smaller diameter products).¹¹² In addition, we do not agree that there are discrepancies with Bhansali's reported purchases of input steel wire rods and bars as alleged by the petitioner.¹¹³

Accordingly, we do not find that Bhansali's behavior in this administrative review permits the application of facts available as identified under section 776(a) of the Act. We do not find that necessary information is missing from the record, or that Bhansali purposefully withheld such information. Furthermore, as explained above, Bhansali has demonstrated its willingness to cooperate by providing timely responses to the Department's requests for information, including

¹⁰⁸ See Bhansali April 2 SQR and Annexures R1 and R2.

¹⁰⁹ See Bhansali's November 2, 2014 supplemental section D response at Appendix S1B (documentation relating to the pending Indian Government audit).

¹¹⁰ See Bhansali April 2 SQR and Annexures R1 and R2.

¹¹¹ See Final Accounting Cost Calculation Memo at 1.

¹¹² See Bhansali's January 20, 2015 supplemental section D response at 2-3.

¹¹³ Certain information related to Bhansali's purchase and use of input wire rods and bars is business proprietary in nature and is discussed further in the Final Accounting Cost Calculation Memo.

supplemental responses where requested. The Department only uses “adverse inferences” under section 776(b) of the Act if it 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 finds that Bhansali cooperated and responded to the best of its abilities, including its timely responses to the Department’s supplemental questionnaires and other requests for additional information. Therefore, the application of AFA under section 776(b) of the Act is unwarranted.

Comment 2: Whether Bhansali Submitted Untimely Factual Information

Petitioner’s Arguments

The Department should reject as new information Bhansali’s reconciliation of its audited and unaudited financial statements; its revised cost allocations for fiscal year 2013-2014; its revised G&A and interest expenses; its revised COGS; and, the revised COP dataset, home market dataset and U.S. sales dataset. Additionally, Bhansali filed new factual information in its April 22, 2015, submission, including a correction to its reference to “audited” financial statements in its July 7th section D Response, where those statements were not yet final. Because this information was unsolicited and provided after the preliminary results, the petitioner urges the Department to reject it under 19 CFR 351.302(d).¹¹⁴

Bhansali’s Rebuttal

Bhansali claims that none of the information referenced by petitioner is new factual information. All of the information submitted by Bhansali in its April 2 and April 22 submissions was specifically requested by the Department.

Department’s Position

We do not agree with the petitioner that Bhansali submitted unsolicited and untimely information as Bhansali responded to a direct request for its audited financial statements from the Department.¹¹⁵ Furthermore, when Bhansali provided updated financial ratios as well as a reconciliation between its draft and audited financial statements for the POR this was not untimely because the Department suspended the briefing schedule following the preliminary results, specifically mentioned the outstanding supplemental questionnaire to Bhansali, and indicated that we would resume the briefing schedule following the submission of Bhansali’s response.¹¹⁶ The regulations for time limits for submission of factual information require at 19 CFR 351.301(c)(ii) that supplemental questionnaire responses are due on “the date specified by the Secretary.” Because this information was timely submitted in response to the Department’s request, it was not untimely filed and should not be rejected pursuant to 19 CFR 351.302(d).

¹¹⁴ See the petitioner’s CB at 50-51.

¹¹⁵ See the Department’s letter to Bhansali, “Antidumping Duty Administrative Review of Stainless Steel Bar from India: Second Sections A-C Supplemental Questionnaire,” March 20, 2015 at question 1 where we directly request Bhansali’s 2013-2014 financial statements.

¹¹⁶ See Memorandum from Joseph Shuler, International Trade Compliance Analyst, to the File, “Suspension of the Briefing Schedule,” March 10, 2015.

Comment 3: Whether the Department Erred in the Treatment of Bhansali's Home Market Billing Adjustments

Bhansali's Arguments

Bhansali argues that the Department erred in adding the Billing Adjustment variable to Normal Value rather than subtracting it. The Department added this variable in its preliminary results calculation and should, instead, subtract this variable to arrive at the appropriate adjustment for the calculation of normal value for the final results.¹¹⁷

The petitioner did not comment on this issue.

Department's Position:

We agree with Bhansali that the billing adjustment variable for home market sales should be subtracted instead of added in the calculation program and we made this correction for the final results.¹¹⁸


RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final results of this review and the final weighted-average dumping margin in the *Federal Register*.

✓

Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

8 SEPTEMBER 2015
(Date)

¹¹⁷ See letter from Bhansali to the Department, "Bhansali's Rebuttal Comments of Petitioner's Case Brief dated May 11, 2015," May 25, 2015, (Bhansali's RB) at 7-8.

¹¹⁸ See Bhansali's RB at 41 for the types of adjustments included under this variable; *see also* Bhansali's Final Calculation Memorandum at 3 for an explanation of this proprietary information and our methodology for excluding certain of these adjustments. *See Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review*, 63 FR 12764, 12781 (March 16, 1998) at Comment 17 where we "disregarded those sales which result in negative prices due to these adjustments and have not included these in the calculation of NV."