



A-533-810

Changed Circumstances Review

POR: 7/1/2015 – 6/31/2016

Public Document

E&C/Office I: TES

October 12, 2017

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary

SUBJECT: Decision Memorandum for the Preliminary Results of the
Antidumping Duty Changed Circumstances Review of Stainless
Steel Bar from India

I. SUMMARY

As a result of an adequate allegation from a domestic interested party in this proceeding, the Department of Commerce (the Department) is conducting a changed circumstances review (CCR) of the antidumping duty (AD) order on stainless steel bar (SS Bar) to determine whether either Venus Wire Industries Pvt. Ltd. and its affiliates Precision Metals, Sieves Manufacturers (India) Pvt. Ltd., and Hindustan Inox Ltd. (collectively, Venus Group), or Viraj Profiles Ltd. (Viraj) have resumed dumping SS Bar and whether the AD order should be reinstated for SS Bar from India produced and/or exported by the Venus Group and produced and exported by Viraj. The period of review (POR) is July 1, 2015, through June 30, 2016. We preliminarily find that the Venus Group and Viraj have sold SS Bar at prices below normal value (NV) and that SS Bar produced and/or exported by both companies should be reinstated in the AD order on SS Bar from India.

II. BACKGROUND

On February 21, 1995, the Department published the AD *Order* on SSB from India.¹ On September 14, 2004, the Department conditionally revoked the *Order* with respect to

¹ See *Antidumping Duty Orders: Stainless Steel Bar from Brazil, India, and Japan*, 60 FR 9661 (February 21, 1995) (*Order*).



merchandise produced and exported by Viraj², based on a finding of three years of no dumping.³ On September 13, 2011, the Department conditionally revoked the *Order* with respect to merchandise produced and/or exported by the Venus Group, based on a finding of three years of no dumping.⁴ The Department conditionally revoked the order with respect to respondents based in part upon their agreement to immediate reinstatement in the antidumping duty order if the Department were to find that the companies resumed dumping of SS Bar from India.⁵

On December 12, 2016, based on a properly-filed allegation from the petitioners⁶ that Viraj and the Venus Group have resumed dumping SS Bar in the United States,⁷ the Department initiated a CCR on the AD order on SS Bar from India to determine whether to reinstate the AD order with respect to the Venus Group and/or Viraj.⁸ Accordingly we issued questionnaires to the Venus Group and Viraj. In January and February 2017, the respondents submitted responses to the questionnaire.⁹

In March 2017, April 2017, May 2017, and June 2017 we issued supplemental questionnaires to

² See *Stainless Steel Bar from India: Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part*, 69 FR 55409 (September 14, 2004) (*Viraj Revocation*). The regulatory provision governing partial revocation at the time of Viraj's (and Venus's) revocation was 19 CFR 353.25 (1997). The relevant language remained substantively unchanged when 19 CFR 353.25 was superseded by 19 CFR 351.222 in 1997. See *Antidumping Duties; Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments*, 61 FR 7308 (February 27, 1996) (1996 *Notice of Proposed Rulemaking*); see also *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27325-26, 27399-402 (May 19, 1997) (*Preamble*). The portion of 19 CFR 351.222 related to partial revocations of orders as to specific companies has been revoked for all reviews initiated on or after June 20, 2012. See *Modification to Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders: Final Rule*, 77 FR 29875 (May 21, 2012) (*Revocation Final Rule*).

³ The Department conditionally revoked the Order with respect to merchandise produced and exported by Viraj Alloys, Ltd., Viraj Forgings, Ltd., and Viraj Impoexpo, Ltd., who are collectively now known as Viraj Profiles Limited. In July 2006, Viraj Forgings Ltd. merged with Viraj Alloys Ltd.; in April 2007, Viraj Alloys and Viraj Impoexpo Ltd. merged into Viraj Profiles Ltd. See Letter from the petitioners, "Stainless Steel Bar From India – Petitioners' Request for Changed Circumstances Reviews," dated September 29, 2016 (CCR Request) at Exhibit GEN-1.

⁴ See *Stainless Steel Bar from India: Final Results of the Antidumping Duty Administrative Review, and Revocation of the Order, in Part*, 76 FR 56401 (September 13, 2011) (*Venus Revocation*).

⁵ *Viraj Revocation*, 69 FR at 55411; *Venus Revocation*, 76 FR at 56402.

⁶ Carpenter Technology Corporation, Crucible Industries LLC, Electralloy, a Division of G.O. Carlson, Inc., North American Stainless, Outokumpu Stainless Bar, LLC, Universal Stainless & Alloy Products, Inc., and Valbruna Slater Stainless, Inc. (collectively, the petitioners).

⁷ See Letter from the petitioners, "Stainless Steel Bar from India – Petitioners' Request For Changed Circumstances Reviews," dated September 29, 2016 (CCR Request).

⁸ See *Stainless Steel Bar from India: Initiation of Antidumping Duty Changed Circumstances Review*, 81 FR 91118 (December 16, 2016) (*Initiation*).

⁹ See Letter from the Venus Group, "Submission of Response to Section A of the questionnaire in Changed Circumstances Review," dated January 30, 2017 (Venus AQR), Letter from the Venus Group, "Submission of response to Section C of the questionnaire in Changed Circumstances Review," dated January 30, 2017 (Venus CQR), Letter from the Venus Group, "Response to Section B and Part IV-Section C Questionnaire Response," dated February 10, 2017 (Venus BCQR), Letter from the Venus Group, "Response to Section D questionnaire (Venus Group)," dated February 13, 2017 (Venus DQR), Letter from Viraj, "Stainless Steel Bar from India," dated January 30, 2017 (Viraj AQR), Letter from Viraj, "Stainless Steel Bar from India," dated February 14, 2017 (Viraj BCQR), and Letter from Viraj, "Stainless Steel Bar from India," dated February 22, 2017 (Viraj DQR).

the respondents.¹⁰ We received responses to these questionnaires in March 2017, April 2017, May 2017, and July 2017.¹¹

III. SCOPE OF THE ORDER

The merchandise subject to the *Order* is bar. SS 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. SS bar includes cold-finished SS 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.

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.

IV. AFFILIATION AND COLLAPSING OF VENUS GROUP

Section 771(33) of the Act specifies that the following persons shall be considered to be “affiliated” or “affiliated persons”:

- (A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.
- (B) Any officer or director of an organization and such organization.
- (C) Partners.
- (D) Employer and employee.
- (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.
- (F) Two or more persons directly or indirectly controlling, controlled by, or under

¹⁰ See Letters from the Department to the Venus Group dated March 7, 2017, April 21, 2017, and June 14, 2017 (Venus SQ1, Venus SQ2, and Venus SQ3, respectively), and Letters from the Department to Viraj dated March 9, 2017, May 3, 2017, and June 14, 2017 (Viraj SQ1, Viraj SQ2, and Viraj SQ3, respectively).

¹¹ See Letters from the Venus Group dated March 30, 2017, April 3, 2017, May 15, 2017, May 17, 2017, and July 10, 2017 (Venus SQR1A, Venus SQR1BCD, Venus SQR2ABC, Venus SQR2D, and Venus SQR3, respectively) and letters from Viraj dated April 11, 2017, May 25, 2017, and July 10, 2017 (Viraj SQR1, Viraj SQR2, and Viraj SQR3, respectively).

common control with, any person.

(G) Any person who controls any other person and such other person.

Further, in accordance with 19 CFR 351.401(f)(1) and (2), the Department will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility and there is significant potential for the manipulation of price or production. In regards to significant potential for manipulation of price or production, 19 CFR 351.401(f)(2)(i)-(iii) states that the Department may consider the following factors: (i) level of common ownership, (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm, and (iii) the degree to which operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

Venus Wire Industries Pvt. Ltd. (Venus Wire) reported that it is affiliated with Precision Metals (Precision Metals), Sieves Manufacturers (India) Pvt. Ltd. (Sieves), and Hindustan Inox Ltd. (Hindustan Inox).¹²

In the 2005-2006 AD administrative review of this order, the Department determined that Venus Wire and Precision Metals were affiliated within the meaning of section 771(33) of the Act, and that these two companies should be treated as a single entity for the purposes of that administrative review.¹³ In the 2007-2008 and 2008-2009 administrative reviews of this *Order*, the Department determined that Venus Wire and Sieves are affiliated within the meaning of section 771(33) of the Act, and that these two companies should be treated as a single entity for purposes of those administrative reviews.¹⁴ In the 2009-2010 AD administrative review of this *Order*, which was the review in which we conditionally revoked the Venus Group from the *Order*, the Department re-examined Venus Wire's corporate affiliation relationship with Precision Metals and Sieves and determined that, because the relationships were unchanged from the reviews in which it previously treated these companies as a single entity, the Department continued to treat Venus Wire, Precision Metals, and Sieves as a single entity.¹⁵ Also in the 2009-2010 AD administrative review of this *Order*, the Department determined that Venus Wire and Hindustan Inox were affiliated within the meaning of section 771(33) of the Act, and that these two companies should be treated as a single entity for the purposes of that administrative review.¹⁶ Thus, we treated Venus Wire, Precision Metals, Sieves, and Hindustan Inox as a single

¹² See Venus AQR at A-7.

¹³ See *Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 72 FR 51595, 51596 (September 10, 2007).

¹⁴ See *Stainless Steel Bar from India: Final Results of Antidumping Duty Administrative Review*, 74 FR 47198 (September 15, 2009); see also *Stainless Steel Bar From India: Final Results of Antidumping Duty Administrative Review*, 75 FR 54090 (September 3, 2010).

¹⁵ See *Stainless Steel Bar from India: Preliminary Results of, and Partial Rescission of, the Antidumping Duty Administrative Review, and Intent Not To Revoke the Order, in Part*, 76 FR 12044, 12045-46 (March 4, 2011) (unchanged in final; 76 FR 56401, September 13, 2011).

¹⁶ *Id.*

entity.¹⁷

In this CCR, the Venus Group reported that there were several changes to the overall ownership percentages of Venus Wire, Precision Metals, Sieves, and Hindustan Inox since the 2009-10 period of review (POR).¹⁸ However, the Venus Group further reported that the changes in ownership were almost entirely transfers of shares between the same shareholders who owned shares during the 2009-10 POR.¹⁹ Aside from this, the Venus Group reported no other changes with respect to ownership or structure since the 2009-10 POR.²⁰ Additionally, the Venus Group reported no changes which would cause us to reevaluate our prior findings with respect to collapsing. As a result, we preliminarily determine that the changes to the overall ownership were not so significant to warrant a change in our treatment of these companies relative to the 2009-10 POR. Accordingly, pursuant to section 771(33) of the Act and 19 CFR 451.401(f)(1) and (2), we are preliminarily determining on this basis that we should continue to treat Venus Wire, Precision Metals, Sieves, and Hindustan Inox as a single entity in this review.

V. COST OF PRODUCTION ANALYSIS FOR VENUS GROUP

For the reasons discussed below, we find that Venus Group's unaffiliated suppliers are the producers of certain SS Bar at issue. We further find that, as discussed below, because of the Venus Group's failure to cooperate to the best of its ability, we do not currently have the necessary cost information for the unaffiliated supporters, and, therefore, the use of total adverse facts available (AFA) is appropriate for these preliminary results with respect to the Venus Group.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the AD antidumping and countervailing duty law, including amendments to section 773(b)(2) of the Act, regarding the Department's requests for information on sales at less than cost of production.²¹ The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for the TPEA to each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC.²² Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015. It requires the Department to request constructed value (CV) and cost of

¹⁷ *Id.* at 12046 ("The collapsed entity of Venus Wire, Precision Metals, Sieves, and Hindustan is hereafter referred to as 'Venus'").

¹⁸ *See* Venus SQR1 at 2.

¹⁹ *Id.* at Annexure SQR-4.

²⁰ *Id.*

²¹ *See* Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015). The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

²² *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (Applicability Notice).

production (COP) information from respondent companies in all AD proceedings.²³ Accordingly, the Department requested this information from Venus Group in this proceeding.²⁴

The Act directs the Department to calculate COP and CV on the basis of actual production costs.²⁵ Additionally, section 771(28) of the Act states that “{f}or purposes of section 773, the term “exporter or producer” includes both the exporter of the subject merchandise and the producer of the same subject merchandise to the extent necessary to accurately calculate the total amount incurred and realized for costs, expenses, and profits in connection with production and sale of that merchandise.” The SAA explains that “the purpose of section 771(28)...is to clarify that where different firms perform that production and selling function, Commerce may include the costs, expenses, and profits of each firm in calculating cost of production and constructed value.”²⁶ The intent of this section is to ensure that the Department has the authority to capture all costs in situations where various companies are engaged in the production and sale of the merchandise under consideration. Accordingly, the Department’s determination of who is the producer directly impacts the COP and CV computations.

In *Narrow Woven Ribbons from Taiwan Final*, we determined that the respondent (who processed the merchandise before export to the United States) was not the producer of the subject merchandise, and therefore sought cost data from the unaffiliated suppliers at issue.²⁷ In examining this issue, we looked to the extent to which the ribbon obtained from the unaffiliated suppliers was further manufactured by the respondent. In doing so, we analyzed whether raw materials were added, and whether processing was performed that changed the physical nature and characteristics of the product. We determined that “the record shows that the additional materials used in the further processing were minimal” and that “the further processing performed did not result in significant changes to the essential physical characteristics of the {narrow woven ribbons}.”²⁸ The second part of that analysis was informed by the fact that only six (out of 16) of the Department’s physical characteristics for narrow woven ribbons changed as a result of further processing performed by the respondent.²⁹ However, the Department also noted that the “determination is based on the totality of the record evidence and the facts specific to this case.”³⁰

Here, the Venus Group identified itself as the producer of all of the subject merchandise shipped

²³ *Id.* at 46794-95.

²⁴ *See* Venus DQR.

²⁵ *See* section 773(b)(3)(A) of the Act (COP shall be an amount equal to the sum of “the cost of materials and of fabrication or other processing of any kind employed in producing the foreign like product”); section 773(e)(1) of the Act (CV shall be based on “the cost of materials and fabrication or other processing of any kind employed in producing the merchandise”); and section 773(f)(1) of the Act (in general “costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records...reasonably reflect the costs associated with the production and sale of the merchandise.”)

²⁶ *See* SAA, H.R. Doc. Nos. 103-465, vol. 1, at 835 (1994)

²⁷ *See Notice of Final Determination of Sales at Less Than Fair Value: Narrow Woven Ribbons with Woven Selvedge from Taiwan*, 75 FR 41804 (July 19, 2010) (*Narrow Woven Ribbons Final*), and accompanying Issues and Decision Memorandum at Comment 20.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

to the United States.³¹ As discussed further below, after three supplemental responses the Department was able to determine that one of the raw materials at issue (“stainless steel rounds”) was actually in-scope merchandise, which was supplied by unaffiliated Indian SS bar producers, some of whom already have their own rates under the *Order*. Specifically, the Venus Group clarified that “SS rounds” was the term it used for purchases of stainless steel hot-rolled bars.³² Further, in response to our request that the Venus Group explain whether any of its purchases would have been subject to the *Order* had it re-sold them as purchased to the United States, the Venus Group acknowledged that “since stainless steel hot-rolled bars are also included in the scope of the order, shipment of hot-rolled bars would have {been} considered within the scope of the order,” though it reported that it “did not sell any material in {the} home market or {the} U.S. market any {SS} bars in the purchased condition.”³³

Therefore, the Venus Group confirmed that it purchased in-scope merchandise which, with or without its further processing, would have remained in-scope merchandise upon exportation to the United States. In determining whether the suppliers or the Venus Group is the producer of the SS Bar in question, we looked to the extent to which the SS Bar was further manufactured by the Venus Group. According to the Venus Group, it adds no additional materials to the SS bar purchased and processed by it.³⁴ Moreover, according to the Venus Group, the further processing performed by the Venus Group (which consisted of heat treatment, straightening, peeling, cutting, polishing, and – in some cases, grinding) does not affect three of the six essential physical characteristics (grade, remelting, and shape; the three characteristics which may change by Venus’ further processing are general type of finish, type of final finishing operation, and size).³⁵ Accordingly, consistent with the precedent in *Narrow Woven Ribbons from Taiwan*, we find that the Venus Group cannot be considered the producer of the subject merchandise shipped to the United States; rather, the producers are the manufacturers who supplied the Venus Group with the SS bar.

Thus, consistent with *Narrow Woven Ribbons*, in situations such as this, we require the unaffiliated suppliers’ costs of production of the SS bar sold to the Venus Group. For the reasons discussed below, we do not have this data on the record because the Venus Group did not clearly identify that the “stainless steel rounds” it purchased from unaffiliated suppliers were actually subject merchandise in its original response or in any of its supplemental responses until directly asked in the third supplemental questionnaire.

VI. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

For the reasons discussed below, we determine that the use of total AFA is appropriate for these preliminary results with respect to the Venus Group and Viraj.

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

³¹ See Venus BCQR at Section B, page 33. and Section C, page 49, and Venus DQR at Annexure D-1.

³² See Venus SQR3 at 19.

³³ *Id.* at 20.

³⁴ *Id.* at 19.

³⁵ *Id.*

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.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the antidumping and countervailing duty law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.³⁶ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this review.³⁷

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 doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.³⁸ Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the less than fair value investigation, a previous administrative review, or other information placed on the record.³⁹

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.⁴⁰ Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or

³⁶ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*).

³⁷ *Id.* at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

³⁸ See section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

³⁹ See also 19 CFR 351.308(c).

⁴⁰ See also 19 CFR 351.308(d).

any previous review under section 751 of the Act concerning the subject merchandise.⁴¹ Further, and under the TPEA, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.⁴²

Finally, under the new section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins.⁴³ The TPEA also makes clear that when selecting an AFA margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.⁴⁴

A. Application of Facts Available With an Adverse Inference

The Venus Group

As noted above, the scope of the order includes, in part:

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.

In its Section A response, Venus stated that “the material required for production of the merchandise under review sold in the foreign market and in the U.S. are Stainless Steel Black Bars (round/hex/square) or Stainless Steel Rods in Coil Form.”⁴⁵ On the very same page of its Section A response, Venus stated that “the raw material used in the manufacturing of the subject merchandise is ‘stainless steel wire rods’ and ‘stainless steel rods.’”⁴⁶

Additionally, in a chart provided in Annex A-8, Venus indicated that its production process began with either “Raw Material (S.S. Wire Rods)” or “Raw Material (S.S. Rounds – Hot Rolled).”⁴⁷ In the Section A supplemental, we asked Venus to provide a production chart for each member of the Venus Group. The charts indicated that the production processes at issue began with the following types of raw materials: stainless steel wire rod and stainless steel rounds.⁴⁸

⁴¹ See SAA at 870.

⁴² See section 776(c)(2) of the Act.

⁴³ See section 776(d)(1)-(2) of the Act.

⁴⁴ See section 776(d)(3) of the Act.

⁴⁵ See Venus AQR at A-24.

⁴⁶ *Id.*

⁴⁷ *Id.* at Annex A-8.

⁴⁸ See Venus SQR1A at Annexures SQR 27 and SQR 28.

In its responses to Sections B, C, and D of the questionnaire, the Venus Group identified itself as the manufacturer of all of the subject merchandise sold to the United States and in the home market.⁴⁹ In Section D, we asked that Venus provide a flowchart of its production process, and in response, Venus directed us to Annex A-8 from the Venus AQR.⁵⁰ In its response to Section D of the Department's questionnaire, the Venus Group reported that "the raw material required is Stainless Steel Wire Rod and Stainless Steel Rounds."⁵¹

In its first supplemental response, Venus consistently referred to the raw material inputs as "stainless steel wire rod" and "stainless steel rounds."⁵² The same was largely true in Venus' second supplemental response.⁵³

However, in its second supplemental response addressing a question on production costs, the Venus Group provided supplier invoices for the inputs it purchased; some of these invoices appeared to indicate that the inputs supplied might be SS bars.⁵⁴ Therefore, in a third supplemental questionnaire, when asked about this, the Venus Group reported that "the raw material we bought from affiliated suppliers are 1) Stainless Steel Wire Rods in coil form 2) Stainless Steel Hot Rolled Bars (termed as SS rounds)."⁵⁵

As a result, the Venus Group referred to SS bar as an input in its Section A response,⁵⁶ but did not make it clear until its third supplemental response that the "stainless steel rounds" it purchased were actually in-scope merchandise, SS bar, purchased from unaffiliated Indian SS bar producers, some of whom already have their own rates under the *Order*.

As discussed above, we have determined that the Venus Group cannot be considered the producer of the subject merchandise shipped to the United States; rather, the producers are the manufacturers who supplied the Venus Group with the SS bar. Therefore, consistent with *Narrow Woven Ribbons*, in situations such as this, we require the unaffiliated suppliers' costs of production of the SS bar sold to the Venus Group. We do not have this data on the record because the Venus Group did not clearly identify that the "stainless steel rounds" it purchased from unaffiliated suppliers were actually subject merchandise in its original response or in any of its supplemental responses until directly asked in the third supplemental questionnaire.

Without the unaffiliated suppliers' costs, we do not have the appropriate cost data to calculate an AD margin. For example, we cannot accurately determine which of the Venus Group's home market sales were sold below the cost of production and which were not at prices which permit recovery of all costs within a reasonable period of time and, as a result, we do not have a basis for determining which home market sales are appropriate to use as normal value. Moreover, without the unaffiliated suppliers' costs, we cannot accurately calculate constructed value.

⁴⁹ See Venus BCQR at Section B, page 33. and Section C, page 49, and Venus DQR at Annexure D-1.

⁵⁰ See Venus DQR at 5.

⁵¹ *Id.*

⁵² See, e.g., Venus SQR1BCD at 8, 11-12, and Annexures D1 through D10.

⁵³ See, e.g., Venus SQR2D at 7, 13, and Annexes DR1 through DR5.

⁵⁴ See Venus SQR2 at Annexure 85.

⁵⁵ See Venus SQR3 at 19.

⁵⁶ See Venus AQR at A-24.

Therefore, we preliminarily determine that, because the necessary unaffiliated suppliers' cost data is not on the record, preventing us from being able to calculate an AD margin, total facts available are warranted in accordance with section 776(a)(1) of the Act. We also preliminarily determine that the Venus Group has significantly impeded this proceeding in accordance with section 776(a)(2)(C) of the Act, because it failed to clearly identify that it purchases SS Bar as an input until directly asked in the third supplemental questionnaire. Additionally, because the necessary information is not available on the record as a result of the Venus Group having failed to clearly identify that it purchases SS Bar as an input, we preliminarily determine that the Venus Group failed to cooperate by not acting to the best of its ability, and therefore adverse inferences are warranted in accordance with section 776(b) of the Act. Accordingly, we have selected 30.92 percent as AFA rate for the Venus Group, which was calculated in the 2010-11 review of the *Order*.⁵⁷ Because this dumping margin was applied in a separate segment of the same proceeding, it is not necessary to corroborate this rate.⁵⁸

Nevertheless, we intend to issue a post-preliminary supplemental questionnaire to the Venus Group requesting the bar suppliers' costs as well as information to help us match home-market and U.S. sales from the Venus Group with the suppliers' costs. Assuming we receive this information, we intend to reconsider this issue for the final determination, as appropriate.

Viraj

One of the physical characteristics we requested in our questionnaire is size.⁵⁹ Specifically, we instructed Viraj to "report the exact size of the stainless steel bar."⁶⁰

In the Section D questionnaire, we asked that, "if a physical characteristic identified by the Department is not tracked by the company's normal cost accounting system, calculate the appropriate cost differences for that physical characteristic, using a reasonable method based on available company records (*e.g.*, production records, engineering statistics)."⁶¹ Viraj responded that "there is no cost difference that needs to be reported based on other appropriate basis instead of using actual cost."⁶² Thus, Viraj represented that its normal accounting system and, hence, its reported costs, accounted for differences in costs resulting from differences in all of the physical characteristics identified by the Department, including size.

In the first supplemental questionnaire, we asked Viraj to "describe specifically how you accounted for differences in size in your reported direct labor and variable overhead costs."⁶³ Viraj reported that it reported its costs based on the "cost route" of each product and that "VPL's cost {routes} account for {differences} in cost as to final finishing operations, size as well as

⁵⁷ See *Stainless Steel Bar from India: Final Results of the Antidumping Duty Administrative Review*, 77 FR 39467, 39468 (July 3, 2012).

⁵⁸ See section 776(c)(2) of the Act.

⁵⁹ See questionnaire sent to Viraj dated December 14, 2016, at B-11 to B-12 and C-8.

⁶⁰ *Id.*

⁶¹ *Id.* at D-11.

⁶² See Viraj DQR at 21.

⁶³ See Viraj SQ1 at 12.

shape of the product.”⁶⁴ Thus, Viraj continued to represent that its reported costs accounted for differences resulting from differences in size.

In the second supplemental questionnaire, we asked Viraj for further explanation.⁶⁵ We also instructed Viraj that, if it was not able to report costs on a more specific basis than what it did, Viraj must demonstrate that it reported them on an as specific basis as feasible given its books and records and demonstrate that its reporting methodology does not cause inaccuracies or distortions.⁶⁶ Viraj claimed that it “reports the conversion cost on the shape specific basis as well as size specific basis.”⁶⁷ Viraj claimed that it “created the {cost} routes in such a manner that it considers the cost differential due to size difference” and provided an example of how two different material codes which have the same grade and shape but a different size resulted in different costs.⁶⁸ As a result, Viraj concludes, it reported “the conversion cost on a shape and size-specific basis. In the above way, all costs differences due to different sizes are accounted for.”⁶⁹

Finally, in reviewing Viraj’s explanation and submitted data in response to the second supplemental questionnaire, we observed that it appeared that Viraj did not adequately capture differences in sizes in its reported costs.⁷⁰ In a third supplemental questionnaire, we cited an example of two products that had identical costs and were identical in all respects except with respect to size, but the difference in sizes was very large.⁷¹ We reiterated our request that Viraj report costs on a size-specific basis and instructed Viraj that, if it is unable to capture differences in specific sizes, it must report costs on as specific a basis as is feasible, that it demonstrate that its calculated costs are reasonable based on material costs and processing times, and that it provide documentation supporting its claims (*e.g.*, supplier invoices, production records).⁷² We identified five specific product groups (which we defined based on all physical characteristics except for size) for which we asked Viraj to provide this demonstration.⁷³ Finally, we informed Viraj that “it is critical that you provide cost differences for the physical characteristic of size. If this is not possible, please be sure to explain, in detail, why this is not possible and how any alternative method constitutes a reasonable proxy for this information.”⁷⁴

In its response, Viraj claimed that it inadvertently used the wrong production process route as to some material codes.⁷⁵ Viraj then provided a general explanation about the processes used to produce small, medium, and large size SS bar, but that “sometimes based on customer requirements, based on availability of machines, the SS bright bar of a respective size is

⁶⁴ See Viraj SQR1 at 36.

⁶⁵ See Viraj SQ2 at 7-8.

⁶⁶ *Id.*

⁶⁷ See Viraj SQR2 at 14-15.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ See Viraj SQ3 at 2-3.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ See Viraj SQR3 at 4-6.

produced using a different process.”⁷⁶ Viraj also claimed that “the major part of labor cost is the set up cost for production of a specific grade and size at a particular machine. The production time and efforts for production of the different sizes using the same process do not vary significantly.”⁷⁷ Despite the instructions in our third supplemental questionnaire, Viraj provided no supporting documentation (no supplier invoices, no production records, no analysis of any of the product groups we identified) for their assertions and explanations.

Thus, we find that Viraj did not comply with our requests for information. In particular, we find that Viraj misled the Department by initially falsely claiming that it reported its costs on a size-specific basis. Not only did Viraj not report costs on a size-specific basis, but it provided no argument, evidence, or documentation demonstrating that such reporting was not feasible, nor did it provide any evidence or documentation demonstrating that its methodology did not result in inaccuracies or distortions.

In the SS Bar 2009-10 Review of the *Order*, we based the AD margin for Mukand, Ltd. (Mukand) entirely upon AFA because Mukand failed to provide size-specific costs.⁷⁸ In that review, we explained that

“the product costs a respondent normally reports should reflect cost differences attributable to the different physical characteristics as defined by the Department to ensure that the product-specific costs we use for the sales-below-cost test and CV accurately reflect the corresponding product's physical characteristics. *See* sections 773(b)(1) and 773(e) of the Act. Similarly, the product-specific costs should incorporate differences in variable costs associated with the physical differences in the merchandise in accordance with 19 CFR 351.411(b) to be used in the calculation of the DIFMER adjustment.

For this administrative review, as the record reflects, product size must be accounted for in the COP and the CV because sales prices are compared to production costs on a size-specific basis. These comparisons cannot accurately be made without size-specific COP's. In addition, section 773(a)(6)(C)(iii) of the Act requires that we account for all differences in variable costs of manufacturing attributable to physical differences between the subject merchandise and the foreign like product if similar products are compared. Such comparison criteria are appropriate because physical characteristics provide the Department with a dependable, measurable means of comparing two different products sold in two different markets.”⁷⁹

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *See Stainless Steel Bar from India: Final Results of the Antidumping Duty Administrative Review, and Revocation of the Order, in Part*, 76 FR 56401 (September 13, 2011) (*SS Bar 2009-10 Review*), and accompanying Issues and Decision Memorandum at 23-33.

⁷⁹ *Id.* at 24.

We further explained that:

“The requirement to report product-specific sales and cost data is one of the most basic and significant requirements in performing the dumping analysis and margin calculation. The specific physical characteristics (*e.g.*, size) identified at the beginning of each case, which make up the CONNUM, are those physical characteristics determined to be the most significant in differentiating between products. These are the physical characteristics that define unique products for sales comparison purposes. The level of detail within each physical characteristic (*e.g.*, dimension) of a product reflects the importance the Department places on comparing the most similar products in a price-to-price comparison. Sales prices are compared to product costs on a size specific basis. These comparisons cannot be made without knowing how COP varies with size. Nor can we make accurate price-to-price comparisons of similar merchandise because we do not have accurate data to make a DIFMER adjustment.”⁸⁰

The CAFC upheld our application of AFA to Mukand on the grounds that Mukand did not act to the best of its ability when it failed to provide size-specific costs, holding that “{p}roduct-specific information is a fundamental element in the dumping analysis, and it is standard procedure for Commerce to request product-specific data in antidumping investigations.”⁸¹

Accordingly, similar to the finding for Mukand, we preliminarily determine that Viraj’s reported costs are unreliable for purposes of calculating an AD margin. Because reliable cost data is not on the record, we preliminarily determine that reliance on the facts available is necessary in accordance with section 776(a)(1) of the Act. Further, we preliminarily determine that reliance on the facts available is necessary in accordance with sections 776(a)(2)(A), (B), and (C) of the Act because Viraj made no attempt to comply with the Department’s multiple requests to demonstrate that its costs were reported on as specific a basis as feasible, or that its reporting methodology did not result in inaccuracies or distortions. Accordingly, we preliminarily determine that Viraj has not cooperated by failing to act to the best of its ability in responding to our multiple requests for the size-based cost information, and, therefore, that adverse inferences are warranted in accordance with section 776(b) of the Act. Accordingly, we have selected as AFA for Viraj the rate of 30.92 percent, which we calculated in the 2010-11 review of the *Order*.⁸² Because this dumping margin was applied in a separate segment of the same proceeding, it is not necessary to corroborate this rate.⁸³

⁸⁰ *Id.* at 25-26.

⁸¹ See *Mukand, Ltd., v. United States*, 767 F.3d 1300, 1307 (2014).

⁸² See *Stainless Steel Bar from India: Final Results of the Antidumping Duty Administrative Review*, 77 FR 39467, 39468 (July 3, 2012).

⁸³ See section 776(c)(2) of the Act.

VII. CONCLUSION

We recommend applying the above methodology for these preliminary results.



Agree



Disagree

10/12/2017

X



Signed by: GARY TAVERMAN

Gary Taverman

Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance