



A-533-810

Changed Circumstances Review

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April 16, 2018

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
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

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

SUMMARY

We analyzed the case and rebuttal briefs of interested parties in the above-referenced changed circumstances review of the antidumping duty (AD) order on stainless steel bar (SS Bar) 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 review for which we received comments from parties:

1. Whether Adverse Facts Available is Warranted for the Venus Group
2. Whether Adverse Facts Available is Warranted for Viraj

Background

On February 21, 1995, Commerce published the AD order on SS Bar from India.¹ On September 14, 2004, Commerce conditionally revoked the *Order* with respect to merchandise produced and exported by Viraj Alloys, Ltd., Viraj Forgings, Ltd., and Viraj Impoexpo, Ltd. (collectively, Viraj, and known as Viraj Profiles Limited), based on a finding of three years of no

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



dumping.² On September 13, 2011, Commerce conditionally revoked the *Order* with respect to merchandise produced and/or exported by Venus Wire Industries Pvt. Ltd. and its affiliates Precision Metals, Sieves Manufacturers (India) Pvt. Ltd., and Hindustan Inox Ltd. (collectively, the Venus Group), based on a finding of three years of no dumping.³

Pursuant to allegations by the petitioners,⁴ Commerce initiated a changed circumstances review of the Venus Group and Viraj Profiles Ltd. (Viraj) on December 16, 2016.⁵ This changed circumstances review covers SS Bar from India produced and/or exported by the Venus Group and produced and/or exported by Viraj. The period of review is July 1, 2015, through June 30, 2016. On October 18, 2017, Commerce published the *Preliminary Results* of the changed circumstances review and intent to reinstate the Venus Group and Viraj in the AD order on SS Bar from India.⁶

After the *Preliminary Results*, we sent a supplemental questionnaire to the Venus Group.⁷ We received a response from the Venus Group on November 14, 2017.⁸

We invited parties to comment on the *Preliminary Results*. On January 9, 2018, we received case briefs from the Venus Group and Viraj.⁹ On January 19, 2018, we received a rebuttal brief from the petitioners.¹⁰ On March 8, 2018, Commerce held a public hearing at the request of Viraj.

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 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).

⁴ 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).

⁵ See *Stainless Steel Bar from India: Initiation of Antidumping Duty Changed Circumstances Review*, 81 FR 91118 (Dec. 16, 2016) (*Initiation Notice*).

⁶ See *Stainless Steel Bar from India: Preliminary Results of Changed Circumstances Review and Intent To Reinstate Certain Companies in the Antidumping Duty Order*, 82 FR 48483, October 18, 2017 (*Preliminary Results*).

⁷ See Letter to the Venus Group dated October 17, 2017.

⁸ See Letter from Venus dated November 14, 2017 (Venus SQR4).

⁹ See Letter from Venus, "Stainless Steel Bar from India: Administrative Case Brief of Venus Wire Industries Pvt. Ltd.," dated January 9, 2018 (Venus Case Brief), and Letter from Viraj, "Stainless Steel Bar from India: Case Brief," dated January 9, 2018 (Viraj Case Brief).

¹⁰ See Letters from the petitioners, "Petitioners' Rebuttal Brief Regarding Venus," dated January 19, 2018 (Petitioners' Venus Rebuttal Brief), and "Petitioners' Rebuttal Brief Regarding Viraj," dated January 19, 2018 (Petitioners' Viraj Rebuttal Brief).

Scope of the Order

The merchandise subject to the order is SS 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.

Discussion of the Issues

Comment 1: *Whether Adverse Facts Available is Warranted for the Venus Group*

The Venus Group argues that Commerce's preliminary determination to apply total adverse facts available to the Venus Group is in error and should be reversed.

- The Venus Group is the producer of all the subject merchandise it makes from purchased hot rolled stainless steel bar. Commerce's preliminary finding is an unwarranted reversal of well-established Commerce practice in the SS Bar reviews of the Venus Group and a departure from Commerce's previous findings that cold-finishing constitutes a substantial transformation.
 - The Venus Group put Commerce on notice in its Section A response that the Venus Group purchased hot rolled bars which it used as the input in the production process.
 - The Venus Group's use of the "Stainless Steel Rounds" was consistent with how the Venus Group has described hot rolled bar in previous reviews.
 - The Venus Group had no reason to know it had to report unaffiliated suppliers' costs because there simply was no instruction that it do so until the fourth supplemental questionnaire.
 - In the eight administrative reviews Commerce has conducted of the Venus Group, Commerce has never found that the Venus Group was not the producer of all the subject merchandise, despite the Venus Group's purchases of stainless steel rounds from unaffiliated suppliers.

- It is well-established that Commerce cannot depart from its past practice without a reasoned explanation and treating similar situations differently without adequate explanation is arbitrary.¹¹
- The facts underlying *Narrow Woven Ribbons* are vastly different than those at issue in this review.¹²
 - *Narrow Woven Ribbons* was an AD investigation, not the ninth review of a producer, like the Venus Group, who is well-known to Commerce and who Commerce has treated as a producer of all the subject merchandise in the prior eight reviews.
 - In *Narrow Woven Ribbons*, Commerce determined that the further processing did not change the essential physical characteristics of the product. The same cannot be said of the manufacturing process the Venus Group employs, which substantially transforms the hot rolled bars' physical characteristics.
 - The Venus Group's manufacturing process changes half of the essential physical characteristics of the product, whereas only 6 of 16 were changed in *Narrow Woven Ribbons*.
- Commerce has consistently determined that cold-finishing of stainless steel wire rod constitutes a substantial transformation for determining the country of origin in prior proceedings.¹³
 - Most recently, Commerce determined that cold-finishing operations performed in Italy substantially transformed stainless steel wire rod from Spain into stainless steel bar from Italy.¹⁴
 - While the input is different, nearly all the factors Commerce examined in arriving at this conclusion apply when hot rolled bar is the input.
 - Commerce first found that the physical characteristics Commerce considers, such as sizes, tensile strength, coating, and finish all are changed by the drawing process. Commerce found these changes to the physical characteristics significant even though the grade does not change.
 - Commerce noted that the cold working process reduces the diameter and increases hardness, yield and tensile strength, and lowers ductility.
 - The Venus Group reported that the cold-working processes it performs are nearly identical to those performed by the respondent in the *SSB from Spain Scope Ruling*.

¹¹ See *SKF USA v. United States*, 263 F.3d 1369, 1382 (Fed. Cir. 2001) (quoting *Transactive Corp. v. United States*, 91 F.3d 232, 237 (D.C. Cir. 1996)).

¹² 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*), and accompanying Issues and Decision Memorandum at Comment 20.

¹³ See *Final Recommendation Memorandum-Scope Ruling Request by Ishar Bright Steel Ltd. on Whether Stainless Steel Bar is Subject to the Scope of the Antidumping and Countervailing Duty Orders on Stainless Steel Wire Rod from Subject Countries* (February 7, 2005) (*UAE Scope Ruling*); see also *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Bar from Italy*, 66 FR 40214, 40218 (August 2, 2001) (*SS Bar from Italy*) (Commerce addressed a situation where an Italian cold-finishing SS Bar manufacturer processed stainless steel wire rod (SSWR) of French origin as part of a tolling operation and found the SS Bar in question a product of Italy).

¹⁴ See *Scope Request from Rodacciai S.p.A. – Final Scope Ruling Concerning the Stainless Steel Bar from Spain Order* at 25 (July 10, 2015) (*SSB from Spain Scope Ruling*).

- The Venus Group also provided a chart summarizing the differences between hot rolled and cold-finished bars and provided illustrative documentation, in the form of several purchase orders, demonstrating that the properties of material that the Venus Group's customer ordered are acquired during the cold-finishing operation and not from the hot-rolling process.
- The value added by cold-finished is in the range of 30 to 150 percent.
- In the *SSB from Spain Scope Ruling*, in addition to the differences in physical characteristics, Commerce noted that there were different applications for the input and the finished product. The same is true of hot rolled bar and cold-finished stainless steel bar.
- The fact stainless steel wire rod is not subject to the SS Bar order in *SSB from Spain Scope Ruling* is not a significant distinguishing factor. The purpose of Commerce's analysis is to determine whether the Venus Group is a producer or merely an exporter. Given the substantial transformation to the physical characteristics that the manufacturing steps the Venus Group performs create and the arm's length nature of the transaction, the Venus Group's cost of production should be measured based on its direct material costs, not as an exporter.

The Venus Group also argues that, in the alternative, Commerce should use the Venus Group's acquisition costs as neutral facts available.

- Commerce based its decision to apply an adverse inference to the Venus Group on the mistaken premise that the Venus Group had not reported purchasing SS Bar as an input until directly asked in the third supplemental questionnaire.
 - Commerce's questionnaire required the Venus Group to report the quantity and value of purchases of the three most significant inputs but it did not request the Venus Group to identify whether the inputs were from affiliated or unaffiliated parties, nor did the questionnaire instruct the Venus Group to identify whether any of the inputs could be considered subject merchandise.
 - The Venus Group had no reasonable expectation Commerce would change its approach in this review; nothing in the original questionnaires or supplemental questionnaires contained such an instruction.
 - Under these circumstances, the Venus Group cannot be faulted for a lack of cooperation.
- When an unaffiliated third-party supplier refuses to cooperate and the application of adverse facts available has collateral consequences on a cooperating respondent, Commerce has examined whether applying adverse facts available would induce future cooperation.¹⁵
 - Here, the Venus Group took all reasonable steps to induce the cooperation of the unaffiliated suppliers, including immediately contacting them after receiving Commerce's supplemental questionnaire, offering to pay the costs incurred for gathering the information, and indicating that non-cooperation might result in the complete termination of its business with them.

¹⁵ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015*, 82 FR 29033 (June 27, 2017), and accompanying Issues and Decision Memorandum (CSPVs IDM) at 9.

- Commerce cannot apply adverse facts available when doing so has no impact on parties who failed to cooperate. Applying adverse facts available (AFA) to the Venus Group would not impact parties who failed to cooperate; rather, business proprietary evidence on the record indicates that applying adverse facts to the Venus Group would reward parties who failed to cooperate.
- When reliable information on the costs of production are not available from unaffiliated suppliers, Commerce has the authority to use neutral facts available.
 - As neutral facts available, Commerce has used acquisition costs from the unaffiliated suppliers.

Finally, the Venus Group argues that, if Commerce continues to treat the Venus Group as an exporter, Commerce can only do so for sales of stainless steel bar made from hot-rolled bar.

- There is no question that, for the SS Bar the Venus Group manufactured from wire rod, the Venus Group is the only producer of subject merchandise.
 - For such sales, Commerce cannot treat the Venus Group as an exporter and must use the Venus Group's cost of production.
 - Commerce should, at minimum, adjust the margins in the final results to reflect the fact that the Venus Group is the exporter of certain merchandise and the producer of other merchandise.

The petitioners argue that Commerce should continue to apply adverse facts available to all sales by the Venus Group.

- Commerce properly determined that the Venus Group was not the producer of all the subject merchandise.
 - Commerce must base its determination on the facts of the present case, not on prior proceedings; each segment of a proceeding has its own record and stands on their own.¹⁶
 - The fact that Commerce may have treated the Venus Group as the producer of the subject merchandise in a prior proceeding does not prevent Commerce from reversing its prior findings here given the facts presented in this case.
- The Venus Group grossly overstates any admission that it had purchased subject merchandise to process.
 - The Venus Group can only point to one reference to “black bars” with no reference to the term “hot-rolled bars,” as other narrative references in the original response or its first and second supplemental responses are to “rounds” or make no reference to black bars or hot-rolled bars in the narrative. In one instance, the language used by the Venus Group appears to make “rounds” mutually exclusive from bar, as it discussed production of using “rounds” and “forged bars.”
 - The mere insertion of the term “bar” was also insufficient as there was no explanation as to whether the bars were imported, manufactured by an affiliate, toll-produced, or purchased directly from other subject Indian manufacturers.

¹⁶ See, e.g., *Yama Ribbons & Bows Co. v. United States*, 865 F. Supp. 2d 1294, 1299 (CIT 2012), *Peer Bearing Company - Changshan v. United States*, 587 F. Supp. 2d 1319, 1325 (CIT 2008), and *Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Final Results of Antidumping Duty Administrative Review*, 80 FR 19633 (April 13, 2015), and accompanying Issues and Decision Memorandum at 3.

- In order to be responsive, not evasive, the Venus Group had the responsibility to not only clearly inform Commerce at the start of this review that it purchased subject merchandise for finishing and packaging for shipment to the United States from Indian producers.
- The Venus Group fails to acknowledge its history of obfuscation.
 - The use by the Venus Group of terms such as stainless steel “rod” and “rounds” that may be round billets (non-subject) or round black bars (subject), and “rods” that may be wire rod in coils (non-subject) or straightened lengths of bar from rod (subject) has a long history. Thus, not only in this instant review, but in many prior, the Venus Group was likely minimally processing subject merchandise produced by other Indian mills with their own tariff rates.
 - The manner in which the Venus Group has historically described itself and its inputs clearly leaves the reader with the impression that it has hot-rolling ability to process round billets into hot-rolled bar.
 - Only after Commerce issued a third supplemental questionnaire did the Venus Group directly acknowledge that it is purchasing subject hot-rolled bar from other manufacturers and that “rounds” were never round billets, but hot-rolled, black bar.
- Commerce should reject the proposition that the Venus Group has “substantially transformed” one subject product into another.
 - Although the Venus Group claims that the facts of *Narrow Woven Ribbons* are vastly different than those at issue in this case because the number of physical characteristics modified in this case is substantially greater than that in *Narrow Woven Ribbons*, the Venus Group has not pointed to any precedent where the number of characteristics *per se*, and much less, the quasi-threshold that it proposes, are determinative with respect to substantial transformation.
 - Substantial transformation is mutually exclusive with the proposition that two products are both in the scope of a proceeding. Commerce generally finds that “substantial transformation has taken place when the upstream and downstream products fall within two different ‘classes or kinds’ of merchandise,” but that “substantial transformation has not taken place when both products are within the same ‘class or kind’ of merchandise.”¹⁷
 - Even if it were theoretically possible to “substantially transform” one subject product into another subject product (which it is not), the degree of processing in this case belies the possibility. The Venus Group has provided no support to indicate that the value-added in the processing of hot-rolled bar to cold-finished bar is as high as it has claimed. A value-added analysis using The Venus Group’s own data contradicts the Venus Group’s value-added claim.¹⁸
 - The cases of substantial transformation cited by the Venus Group undermine the Venus Group’s case.

¹⁷ See, e.g., *Certain Crystalline Silicon Photovoltaic Products from Taiwan: Final Determination of Sales at Less Than Fair Value*, 79 FR 76966 (December 23, 2014) (*Taiwan Solar*), and accompanying Issues and Decision Memorandum at 19.

¹⁸ See Letter from the petitioners, “Changed Circumstances Review (Venus Group) of Stainless Steel Bar from India – Petitioners’ Comments Regarding the Venus Group in Preparation for the Preliminary Results,” dated August 11, 2017, at 5-6.

- Transformation of wire rod into bar is the transformation of one class or kind of merchandise subject to one scope of proceedings into a different class or kind of merchandise subject to another scope of proceedings. Thus, the scope rulings cited by the Venus Group, such as *Stainless Steel Bar from Spain*, do not prove, but contradicts, the theory proposed by the Venus Group.
- All the product characteristics listed by the Venus Group in its case brief are of no greater avail; one could construct an equally long listing of different characteristics of all cold-finished bar that differs by grade, but that does not mean that one grade is somehow more or less subject merchandise than another grade.

The petitioners further argue that Commerce should not use the acquisition cost of hot-rolled bar as neutral facts available.

- The Venus Group's claim that it should not be subject to any adverse inferences because it was unaware that it should gather costs from its unaffiliated suppliers is based on the incorrect premise that the Venus Group had been forthright and clear in reporting the nature of its input "rounds" both in this and prior segments of the proceeding.
- The Venus Group's claim that Commerce should not apply an adverse inference because there is no collateral consequence of inducing the unaffiliated suppliers of the subject hot-rolled bar to cooperate misses the point that the Venus Group as the exporter was responsible for ensuring that all its suppliers would be cooperative as respondent parties before it chose to export those Indian producer's subject bar after finishing.

Finally, the petitioners argue that Commerce should continue to apply adverse facts available to all sales by the Venus Group and not only to cold-finished bar processed from hot-rolled bar or forged bar.

- The very identification of which products were finished from bar versus processed from wire rod, was only provided in the fourth questionnaire response.
- In the *Preliminary Results*, Commerce determined that total adverse facts available was warranted because the Venus Group significantly impeded this proceeding, due to the obfuscation and delaying tactics by the Venus Group, and that necessary information was not available on the record due to the Venus Group's failure to timely identify its purchases of stainless steel bar until directly asked to do so in a third supplemental questionnaire.
- Once Commerce determined to apply total adverse facts available, it was reasonable for Commerce to reject the Venus Group's data in its entirety.

Commerce's Position: We continue to find that the use of an adverse inference in selecting from the facts otherwise available for all the Venus Group's sales of subject merchandise to the United States is warranted. As discussed in more detail below, we find that the Venus Group is not the manufacturer of the subject merchandise that it purchased from unaffiliated suppliers and processed in India prior to exportation to the United States. Because we have only a very small proportion of the Venus Group's unaffiliated suppliers' costs for the subject merchandise, essential information is missing from the record. Further, the Venus Group and its unaffiliated suppliers have withheld information that we requested, failed to provide the information we requested by the deadlines for submission of the information or in the form and manner we requested, and have significantly impeded this proceeding. Therefore, selecting from the facts otherwise available on the record is necessary. We also find that use of an adverse inference in

selecting from the facts otherwise available is warranted because the Venus Group and its unaffiliated suppliers did not act to the best of their ability in responding to our requests for information, and the Venus Group failed to put forth its maximum efforts to obtain and provide the necessary information we requested.

Relevant to our discussion below is the following background from the *Preliminary Results*.¹⁹ The scope of the order includes, in relevant 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.”²⁰ 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.’”²¹

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).”²² 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.²³

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.²⁴ 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.²⁵ 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.”²⁶

¹⁹ See *Preliminary Results*, 82 FR 48483, and accompanying Preliminary Decision Memorandum at 5-11.

²⁰ 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) at A-24.

²¹ *Id.*

²² *Id.* at Annex A-8.

²³ See Letter from the Venus Group dated March 30, 2017 (Venus SQR1A) at Annexures SQR 27 and SQR 28.

²⁴ See Letter from the Venus Group, “Response to Section B and Part IV-Section C Questionnaire Response,” dated February 10, 2017 (Venus BCQR) at Section B, page 33 and Section C, page 49, and Letter from the Venus Group, “Response to Section D questionnaire (Venus Group),” dated February 13, 2017 (Venus DQR) at Annexure D-1.

²⁵ See Venus DQR at 5.

²⁶ *Id.*

In its first supplemental response, Venus consistently referred to the raw material inputs as “stainless steel wire rod” and “stainless steel rounds.”²⁷ The same was largely true in Venus’ second supplemental response.²⁸

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 Bar.²⁹ 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).”³⁰

As a result, the Venus Group referred to SS Bar as an input in its Section A response,³¹ 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.

The Venus Group argues that its reporting was consistent and clear (“Venus consistently used the term ‘stainless steel rounds’ to refer to the hot rolled bar that it purchased”), and that it cannot be faulted for failing to respond to a question that Commerce did not ask.³² We disagree with the Venus Group’s characterization. As an initial matter, as discussed above, the Venus Group used multiple terms for the same input, and did not make clear until the third supplemental response that one of its inputs was in fact SS Bar. We also disagree with the Venus Group that, despite the Venus Group’s lack of clear reporting, Commerce should have discerned that “stainless steel black bar is synonymous with stainless steel hot rolled bar{.}”³³ The onus is on the respondent to build a clear record, which the Venus Group undoubtedly failed to do in this case.³⁴ In short, we agree with the petitioners that the Venus Group should have clearly indicated in its reporting that one of the inputs at issue was subject merchandise from the beginning of the proceeding. Had the Venus Group done so, Commerce would have requested the information from its unaffiliated supplier at an earlier point in the proceeding.

²⁷ See, e.g., Letter from the Venus Group dated April 3, 2017 (Venus SQR1BCD) at 8, 11-12, and Annexures D1 through D10.

²⁸ See, e.g., Letter from the Venus Group dated May 17, 2017 (Venus SQR2D) at 7, 13, and Annexes DR1 through DR5.

²⁹ See Venus SQR2D at Annexure 85.

³⁰ See Letter from the Venus Group dated July 10, 2017 (Venus SQR3) at 19.

³¹ See Venus AQR at A-24.

³² See Venus Case Brief at 2-5.

³³ *Id.* at 2 n. 5.

³⁴ See, e.g., *Yama Ribbons & Bows Co. v. United States*, 865 F. Supp. 2d 1294, 1299 (CIT 2012), *Peer Bearing Company - Changshan v. United States*, 587 F. Supp. 2d 1319, 1325 (CIT 2008), and *Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Final Results of Antidumping Duty Administrative Review*, 80 FR 19633 (April 13, 2015), and accompanying Issues and Decision Memorandum at 3.

i. *Whether the Venus Group is the Producer of SS Bar It Processed and Exported to the United States*

As discussed in the *Preliminary Results*, after establishing that the Venus Group in fact purchased in-scope SS Bar from unaffiliated Indian SS Bar producers, we preliminarily determined that, consistent with the precedent in *Narrow Woven Ribbons*,³⁵ 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.³⁶ We continue to reach this finding for purposes of this final results.

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.”³⁷ The intent of this section is to ensure that Commerce 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, Commerce’s determination of who is the producer directly impacts the cost of production and constructed value computations.

In *Narrow Woven Ribbons*, 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.³⁸ 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 so doing, 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}.”³⁹ The second part of that analysis was informed by the fact that only six (out of 16) of Commerce’s physical characteristics for narrow woven ribbons changed as a result further processing performed by the respondent.⁴⁰ However, Commerce also noted that the “determination is based on the totality of the record evidence and the facts specific to this case.”⁴¹

³⁵ 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*), and accompanying Issues and Decision Memorandum at Comment 20.

³⁶ See *Preliminary Results*, 82 FR 48483, and accompanying Preliminary Decision Memorandum at 6-7.

³⁷ See SAA, H.R. Doc. Nos. 103-465, vol. 1, at 835 (1994).

³⁸ See *Narrow Woven Ribbons*, 75 FR 41804, and accompanying Issues and Decision Memorandum at Comment 20.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

Based on *Narrow Woven Ribbons*, we continue to find that the Venus Group, which processed the merchandise before export to the United States, is not the producer of the subject merchandise. Here, the Venus Group identified itself as the producer of all of the subject merchandise shipped to the United States.⁴² In addition, as discussed above, 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. Specifically, 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) in 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.”⁴³

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.⁴⁴ 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).⁴⁵ Accordingly, consistent with the precedent in *Narrow Woven Ribbons*, 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.

The Venus Group claims that this review can be distinguished from *Narrow Woven Ribbons* on three grounds: 1) *Narrow Woven Ribbons* was an AD investigation, not the ninth review of a producer, like the Venus Group, which is well-known to Commerce and which Commerce has treated as a producer of all of the subject merchandise in the prior eight reviews; 2) in *Narrow Woven Ribbons*, Commerce determined that the further processing did not change the essential physical characteristics of the product, and the same cannot be said of the manufacturing process the Venus Group employs, which substantially transforms the hot rolled bars’ physical characteristics; and 3) the Venus Group’s manufacturing process changes half of the essential physical characteristics of the product, whereas only 6 of 16 were changed in *Narrow Woven Ribbons*.

With regard to the first point, as the petitioners observed, we must base our determination on the facts of the present case, not on prior proceedings; each segment of a proceeding has its own

⁴² See Venus BCQR at Section B, page 33. and Section C, page 49, and Venus DQR at Annexure D-1.

⁴³ *Id.* at 20.

⁴⁴ *Id.* at 19.

⁴⁵ *Id.*

record and stands on its own.⁴⁶ Thus, regardless of what happened in prior segments of the proceeding, as described above, the facts on the record of this review support our conclusion that the Venus Group is not the producer of the SS Bar it processed and then exported to the United States. Moreover, there does not appear to have been any discussion of this issue in any of the prior reviews in which the Venus Group was under review, and so reliance on those prior reviews is not persuasive. Thus, the Venus Group's first point does not persuade us that this review can be distinguished from *Narrow Woven Ribbons*.

With regard to the second and third points, as an initial matter, the *Narrow Woven Ribbons* analysis, which we are relying on here, does not address whether the merchandise is "substantially transformed" because both products are already found to be within the same "class or kind" of merchandise, *i.e.*, both subject to the SS Bar order. As noted above, there is no dispute that the SS Bar purchased by Venus which it processed remained in-scope merchandise upon exportation to the United States. Therefore, a substantial transformation analysis is not required.⁴⁷ Accordingly, we continue to find *Narrow Woven Ribbons* to be relevant precedent informing our determination in this review.

Pursuant to *Narrow Woven Ribbons*, we analyzed whether raw materials were added, and whether processing was performed that changed the essential physical nature and characteristics of the product, such that the Venus Group could be considered the producer. As the petitioners observe, there is no threshold for the number of characteristics, whether expressed as an absolute or relative number, that may be determinative for our analysis. Moreover, our analysis is based on a totality of the circumstances – here, we find that 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). This, coupled with the fact that the Venus Group does not add any materials to the purchased SS Bar, outweighs the fact that three of the essential physical characteristics may change by Venus' further processing (general type of finish, type of final finishing operation, and size). Therefore, we find that the Venus Group is not the producer.

Finally, the cases cited by the Venus Group in support of its contention that Commerce has previously found cold-finishing constitutes a substantial transformation (*i.e.*, *UAE Scope Ruling*, *SS Bar from Italy*, and *SSB from Spain Scope Ruling*) all involve the transformation of a product belonging to one "class or kind" of product (namely, SSWR) into a product belonging to a different "class or kind" of product (namely, SS Bar). As discussed above, substantial transformation is not the proper analysis where both products at issue fall within the same class or kind of merchandise. Thus, these cases are inapposite. Contrary to the Venus Group's claim that the fact that these cases involve the transformation of SSWR into SS Bar is not a significant

⁴⁶ See, e.g., *Yama Ribbons & Bows Co. v. United States*, 865 F. Supp. 2d 1294, 1299 (CIT 2012), *Peer Bearing Company - Changshan v. United States*, 587 F. Supp. 2d 1319, 1325 (CIT 2008), and *Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Final Results of Antidumping Duty Administrative Review*, 80 FR 19633 (April 13, 2015), and accompanying Issues and Decision Memorandum at 3.

⁴⁷ See, e.g., *Taiwan Solar*, 79 FR 76966, and accompanying Issues and Decision Memorandum at 19. We normally conduct substantial transformation analyses based on the following factors: 1) whether the processed downstream product falls into a different class or kind of product when compared to the upstream product; 2) whether the essential component of the merchandise is substantially transformed in the country of exportation; or 3) the extent of processing.

distinguishing factor, the fact that the transformation is of one “class or kind” or product into a different “class or kind” of product is a crucial factor in distinguishing those cases from the present review, and is not the situation presented by the facts of this review.

For the above reasons, we determine that the Venus Group is not the producer of the subject SS Bar it purchased from unaffiliated suppliers. Rather, the unaffiliated suppliers are the producers of those SS Bar.

ii. Whether Adverse Facts Available is Warranted for the Venus Group

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, Commerce shall select from “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 Commerce, 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 Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce 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, Commerce 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.⁴⁸ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this review.⁴⁹

Section 776(b) of the Act provides that Commerce 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, Commerce 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.⁵⁰ Further, section 776(b)(2) states that an

⁴⁸ 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, Commerce 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*).

⁴⁹ *Id.* at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

⁵⁰ See section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

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.⁵¹

Section 776(c) of the Act provides that, when Commerce 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.⁵² 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 any previous review under section 751 of the Act concerning the subject merchandise.⁵³ Further, and under the TPEA, Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.⁵⁴

Finally, under the new section 776(d) of the Act, Commerce 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.⁵⁵ The TPEA also makes clear that when selecting an AFA margin, Commerce 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.⁵⁶

Because we determined that the Venus Group was not the producer of the subject SS Bar for the *Preliminary Results* and because we did not have the unaffiliated suppliers’ costs on the record of this review, we preliminarily determined the Venus Group’s margin using an adverse inference while selecting from the facts otherwise available (AFA).⁵⁷ While we applied AFA for the *Preliminary Results*, we sent the Venus Group a supplemental questionnaire after the *Preliminary Results* to permit the Venus Group an opportunity to remedy its response by submitting the unaffiliated suppliers’ costs.⁵⁸ We informed the Venus Group that the suppliers “may either provide their responses to you for submission or they may submit their responses to us directly in ACCESS.”⁵⁹

The Venus Group submitted an incomplete and deficient response to the supplemental questionnaire on November 14, 2017, claiming that it was able to get only one of its unaffiliated suppliers, Rajputana Stainless Ltd. (Rajputana), to report its costs.⁶⁰ The Venus Group reported that all of its suppliers except Rajputana refused to co-operate.⁶¹ The Venus Group also submitted documentation purporting to demonstrate its failed efforts to obtain the necessary cost

⁵¹ See also 19 CFR 351.308(c).

⁵² See also 19 CFR 351.308(d).

⁵³ See SAA at 870.

⁵⁴ See section 776(c)(2) of the Act.

⁵⁵ See section 776(d)(1)-(2) of the Act.

⁵⁶ See section 776(d)(3) of the Act.

⁵⁷ See *Preliminary Results*, 82 FR 48483, and accompanying Preliminary Decision Memorandum at 9-11.

⁵⁸ See letter to Venus dated October 17, 2017.

⁵⁹ *Id.* at 1.

⁶⁰ See SQR4 at 1.

⁶¹ *Id.* at 3.

data from its unaffiliated suppliers.⁶² In its response, the Venus Group claimed that its “total purchase volume from these suppliers {who reported their costs} are only a fraction of {Venus’} actual production capacity” and that “these suppliers, who make stainless steel cold finished bars and sell in both the Indian and U.S. markets considers Venus as a competitor and therefore they have very little incentive to co-operate with Venus.”⁶³ Venus further reported that “{s}ince the cost information is not supplied to Venus directly, Venus is not able to revise the cost database with suppliers’ manufacturing cost.”⁶⁴

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.

Because we do not have the cost data for any of the affiliated suppliers except for Rajputana on the record, necessary information is missing from the record pursuant to section 776(a)(1) of the Act. Further, the Venus Group and its unaffiliated suppliers have withheld information that we requested pursuant to section 776(a)(2)(A) of the Act, failed to provide the information we requested by the deadlines for submission of the information or in the form and manner we requested pursuant to section 776(a)(2)(B) of the Act, and have significantly impeded this proceeding pursuant to section 776(a)(2)(C) of the Act. We also continue to find that the Venus Group has significantly impeded this proceeding because, as described above, it failed to clearly identify that it purchases SS Bar as an input until directly asked in the third supplemental questionnaire. Therefore, we determine that selection from among the facts otherwise available is necessary.

In addition, pursuant to section 776(b) of the Act, we find that the Venus Group and its unaffiliated suppliers failed to act to the best of their ability, and therefore the application of facts otherwise available with an adverse inference is warranted. As an initial matter, as discussed above, we find that the Venus Group failed to act to the best of its ability by failing to clearly identify that it purchases SS Bar as an input until directly asked in the third supplemental questionnaire. In addition, contrary to the Venus Group’s claims, we find that the Venus Group did not act to the best of its ability in attempting to obtain its unaffiliated suppliers’ cost data. Because our findings involve discussion of proprietary information, *see* the “Venus Group Final Analysis Memorandum” for further details. Our findings are consistent with the decision of the Court of Appeals for the Federal Circuit (CAFC) in *Mueller* which recognized that Commerce may use an adverse inference in selecting from the facts otherwise available in determining a respondent’s dumping margin in order to induce cooperation by other interested parties whose information is needed to calculate that respondent’s dumping margin, in situations where the respondent has a mechanism to induce the non-cooperating party to cooperate.⁶⁵ Thus, in this

⁶² *Id.* at 3.

⁶³ *Id.*

⁶⁴ *Id.* at 2.

⁶⁵ *See Mueller Comercial De Mexico, S. De R.L. De C.V. v. United States*, 753 F.3d 1227, 1233 (Fed. Cir. 2014) (*Mueller*).

case, we determine that the Venus Group failed to put forth its maximum efforts to obtain and provide the information we requested and thus we have used an adverse inference in selecting from the facts otherwise available for the Venus Group.

Furthermore, the Venus Group suggested that we adjust the margins in the final results to reflect the fact that the Venus Group is the producer of certain SS Bar which it exported to the United States. Although we acknowledge that the Venus Group was the producer of subject merchandise it produced from SSWR, we determine that the extent of the missing cost data is such that we cannot reasonably “plug” the gap. Because our analysis of the Venus Group’s claim involves business proprietary information, please refer to the Venus Group Final Analysis Memorandum. Accordingly, we have used AFA in determining the margin for the Venus Group.

Therefore, we find that it is appropriate to continue to select the rate of 30.92 percent rate, which was calculated in the 2010-11 review of the *Order*,⁶⁶ to apply to all subject merchandise produced or exported by the Venus Group, as we did in the *Preliminary Results*. In accordance with section 776(d) of the Act, we find that it is appropriate to use this margin because it is the highest dumping margin from any segment of a proceeding. Moreover, in accordance with section 776(d)(3) of the Act, Commerce 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. Because this dumping margin was applied in a separate segment of the same proceeding, it is not necessary to corroborate this rate pursuant to section 776(c)(2) of the Act.

Comment 2: *Whether Adverse Facts Available is Warranted for Viraj*

Viraj argues that Commerce’s preliminary determination to use an adverse inference in selecting from the facts otherwise available to Viraj is in error and should be reversed.

- Commerce wrongly claims that Viraj did not account for production cost differences by size.
 - If two sizes go through the same production processes, the costs are the same; only if different sizes go through different processes do they incur different costs. The decision of the U.S. International Trade Commission supports this.⁶⁷
 - The petitioners have not provided any evidence that size matters as to costs or prices. Commerce does not cite any evidence on the record indicating that size matters as to costs or prices, even though Commerce’s decisions must be supported by substantial evidence on the record to be lawful.
 - With respect to Commerce’s assertion that Viraj did not provide documents that costs do not vary by size, Commerce cannot fault a respondent for not providing what it does not have.
 - Commerce’s request that respondents show that what was reported did not produce inaccuracies is asking the respondent to prove the negative, which is an impossible burden.

⁶⁶ See *Stainless Steel Bar from India: Final Results of the Antidumping Duty Administrative Review*, 77 FR 39467, 39468 (July 3, 2012).

⁶⁷ See U.S. International Trade Commission, *Stainless Steel Bar from Brazil, India, Japan and Spain*, Inv. No. 731-TA-678, 679, 681 and 682 (Third Review), July 2012, USITC Pub. 4341, pages I-10 & 11.

- Commerce's characterization of aspects of Viraj's responses being "false" or "misleading" is inaccurate; Viraj found some errors in its initial questionnaire response and corrected them in a supplemental questionnaire response. Such corrections occur all the time in rapid, hugely demanding antidumping cases and are routinely corrected by respondents without objection.
- Under the statute, AFA is only permitted if a respondent did not act to the best of its ability. Viraj acted to the best of its ability.
- The CAFC's decision in *Mukand* supports not applying AFA to Viraj.⁶⁸
 - Unlike the respondent in *Mukand*, Viraj accounted for cost differences by size by accounting for the fact that different sizes go through different production processes. Moreover, the respondent in *Mukand* stated that it could have done more as to reporting cost differences by size.
 - In *Mukand*, in contrast to this review, Commerce continued the supplemental questionnaire process as to the respondent beyond that done for Viraj, Commerce provided specific templates to the respondent to more clearly assess any size-cost differences, and sought to specifically discuss with the respondent the size-cost issue.
- The AFA margin selected by Commerce is not reasonable.
 - Viraj's margin based on its submitted responses is zero, which means the AFA margin is entirely due to the size issue.
 - Size is the least important product characteristic in Commerce's hierarchy.
- Commerce should calculate a dumping margin for Viraj based on its submitted questionnaire responses.
 - If Commerce wants to make any adjustment to the submitted data, any adjustment for size should be based on any Commerce's findings thereon as to other respondents over the years, or the Venus Group in particular.

The petitioners argue that Commerce correctly assigned total adverse facts available to Viraj.

- Viraj failed to comply with Commerce's request for information regarding size-specific costs, despite having four opportunities to do so.
 - Commerce's preliminary decision memorandum fully addresses and discredits Viraj's claim that it reported production cost differences by size and Commerce correctly concluded that Viraj did not comply with its requests for information.
- Viraj's request for the petitioners to demonstrate that size matters to costs or price is a red-herring argument.
 - Viraj was responsible for reporting its costs on a size-specific basis, or demonstrating that it had reported its costs on the most specific basis possible. To argue that the petitioners were required to provide evidence that size matters as to costs or prices is nothing more than an attempt to shift its burden of creating the record to Petitioners.
 - The fact that size appears as part of Commerce's control number is evidence that size has a significant impact on price and cost.
- Viraj's argument that Commerce cannot rely on *Mukand* is unavailing.
 - Viraj not only misled Commerce, but made no attempt to comply with Commerce'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,

⁶⁸ See *Mukand Ltd. v. United States*, 767 F.3d 1300, 1307 (Fed. Cir. 2014) (*Mukand*).

even though Commerce sought this information from Viraj in its original questionnaire and three separate supplemental questionnaires.

- Commerce’s assignment of 30.92 percent to Viraj is reasonable.
 - Under the statute, Commerce has the discretion to apply any rate as it sees fit without regard to what the dumping margin would be if the interested party had cooperated or whether the margin reflects the commercial reality of the respondent.
 - Viraj’s claim that this margin is not reasonable is further unfounded given that Viraj misled Commerce and refused to provide information requested by Commerce on multiple occasions.

Commerce’s Position: We continue to find that the use of an adverse inference in selecting from the facts otherwise available for all Viraj’s sales of subject merchandise is warranted for Viraj. As we explained in the *Preliminary Results*, one of the physical characteristics we requested in our initial questionnaire was size.⁶⁹ Specifically, we instructed Viraj to “report the exact size of the stainless steel bar.”⁷⁰

In the Section D questionnaire, we asked Viraj, “if a physical characteristic identified by Commerce is not tracked by the company’s normal cost accounting system, {to} calculate the appropriate cost differences for that physical characteristic, using a reasonable method based on available company records (*e.g.*, production records, engineering statistics).”⁷¹ Viraj responded that “there is no cost difference that needs to be reported based on other appropriate basis instead of using actual cost.”⁷² 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 Commerce, 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.”⁷³ 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 shape of the product.”⁷⁴ 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.⁷⁵ 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.⁷⁶ Viraj claimed that it “reports the conversion cost on the shape specific basis as

⁶⁹ See Letter to Viraj dated December 14, 2016 (Viraj OQ) at B-9 to B-11 and C-8 to C-9.

⁷⁰ *Id.*

⁷¹ *Id.* at D-11.

⁷² See Letter from Viraj, “Stainless Steel Bar from India,” dated February 22, 2017 (Viraj DQR) at 21.

⁷³ See Letter to Viraj dated March 9, 2017 (Viraj SQ1) at 12.

⁷⁴ See Letter from Viraj dated April 11, 2017 (Viraj SQR1) at 36.

⁷⁵ See Letter to Viraj dated May 3, 2017 (Viraj SQ2) at 7-8.

⁷⁶ *Id.*

well as size specific basis.”⁷⁷ 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.⁷⁸ 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.”⁷⁹

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.⁸⁰ 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.⁸¹ 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).⁸² We specifically asked Viraj to demonstrate “that materials costs did not differ significantly between different sizes within each range and that processing times did not differ significantly between different sizes within each range.”⁸³ 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.⁸⁴ 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.”⁸⁵

In its response to this third supplemental questionnaire, Viraj claimed that it inadvertently used the wrong production process route as to some material codes.⁸⁶ 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 produced using a different process.”⁸⁷ 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.”⁸⁸ Despite the instructions in our third supplemental questionnaire, Viraj provided no supporting documentation (no supplier invoices, no production

⁷⁷ See Letter from Viraj dated May 25, 2017 (Viraj SQR2) at 14-15.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ See Letter to Viraj dated June 14, 2017 (Viraj SQ3) at 2-3.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ See Letter from Viraj dated July 10, 2017 (Viraj SQR3) at 4-6.

⁸⁷ *Id.*

⁸⁸ *Id.*

records, no analysis of any of the product groups we identified) for its assertions and explanations. Neither did Viraj represent that it was unable to submit the requested information in the manner and form it was requested, nor that it was having any other difficulties in responding to the requests for information.

Viraj, therefore, submitted an incomplete response to our multiple requests for information because it did not report its costs on a size-specific basis, as requested.⁸⁹

Viraj claims that, if two sizes go through the same production processes, the costs are the same. However, Viraj has not demonstrated that, if it assigns the same cost to two very differently sized products, its assigned costs reasonably reflect the differences in size. As explained above, we asked Viraj to provide production records demonstrating processing times; if the processing times differed significantly, then the actual costs (as opposed to how Viraj accounts for them in its accounting system) would differ commensurately. Thus, we asked for such records to assess whether processing times differed significantly between different sizes but Viraj failed to provide any such records.⁹⁰

If Viraj had produced such records and they supported Viraj's claim that "the major part of labor cost is the set-up cost for production of a specific grade and size at a particular machine" and that the "production time and efforts for production of the different sizes using the same process do not vary significantly," that may have supported Viraj's claim that if two sizes go through the same production processes, the costs are the same. However, Viraj did not produce any of the records or analysis we requested.

Viraj contends that we do not cite any evidence on the record indicating that size matters as to costs or prices. The burden to demonstrate the reasonableness of a calculation methodology, and to demonstrate that it had trouble responding to the request for information, rests solely on Viraj.⁹¹ We made specific requests of Viraj for information, and provided examples of the types of documentation we were requesting, but Viraj did not provide any documentation of any sort in support of its claims.

Viraj's complaint that Commerce cannot fault a respondent for not providing what it does not have is unavailing. As explained above, we asked Viraj to demonstrate "that materials costs did not differ significantly between different sizes within each range and that processing times did not differ significantly between different sizes within each range" and that Viraj provide documentation supporting this (*e.g.*, supplier invoices, production records).⁹² As explained above, Viraj did not do so, nor did it claim having difficulties in understanding our request or in responding to such request. Viraj has not demonstrated that it did not keep records responsive to our request for information.

As described above, Viraj's original representations were misleading and incomplete. Viraj stated that it reported its costs on a size-specific basis, which implies that those reported costs

⁸⁹ See Viraj OQ at D-11, Viraj SQ1 at 12, Viraj SQ2 at 7-8, and Viraj SQ3 at 2-3.

⁹⁰ See Viraj SQ3 at 2-3 and Viraj SQR3 at 4-6.

⁹¹ See section 782(c)(1).

⁹² See Viraj SQ3 at 2-3.

take into account differences in material costs and processing times associated with different sizes. Although Viraj later asserted that such differences were insignificant, it provided no evidence to support its assertion.

The CAFC's decision in *Mukand* supports using an adverse inference in selecting from among the facts otherwise available to Viraj. 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.⁹³ 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.”⁹⁴

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

⁹³ *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.

⁹⁴ *Id.* at 24.

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.”⁹⁵

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.”⁹⁶

Accordingly, similar to the finding for Mukand, we determine that Viraj’s reported costs are unreliable for purposes of calculating an AD margin. Whether the respondent in *Mukand* acknowledged that it could have done more and the number of supplemental questionnaires sent to that respondent are not relevant as to whether the use of an adverse inference in selecting from among the facts otherwise available with respect to Viraj is appropriate. As detailed above, Viraj misled Commerce in its original response and failed to provide the information we requested. Therefore, necessary information is missing from the record, and, pursuant to section 776(a)(1) and (b)(2)(A), (B), and (C), Commerce will select from the facts otherwise available on the record. Viraj has not demonstrated that the limitations on Commerce’s discretion to select from the facts otherwise available under section 782(d) and 782(e)(1) and (c) of the Act are applicable to its situation. Further, we find that Viraj did not act to the best of its ability in responding to our request for information because Viraj refused to provide the documentation which we requested despite being asked specifically several times, and because Viraj misled Commerce in responding initially that the costs were reported on a size-specific basis only to later clarify that the costs were *not* reported in such manner. Consistent with *Mukand*, which also dealt with a respondent that did not act to the best of its ability with respect to reporting costs on a size-specific basis after being asked by Commerce multiple times for the same information, we are continuing to use an adverse inference in selecting from the facts otherwise available with respect to Viraj.

Finally, Viraj’s arguments regarding whether the rate we selected is reasonable are unavailing. Under section 776(d) of the Act, Commerce 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, based on its evaluation of the situation that gave rise to the use of an adverse inference in selecting from the facts otherwise available.⁹⁷ The TPEA also makes clear that when selecting an AFA margin, Commerce 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.⁹⁸ Accordingly, we have continued to apply the highest dumping margin in the history of the proceeding, 30.92 percent *ad valorem* rate, which we calculated in the 2010-11 review of the *Order*,⁹⁹ to Viraj for

⁹⁵ *Id.* at 25-26.

⁹⁶ See *Mukand, Ltd., v. United States*, 767 F.3d 1300, 1307 (2014).

⁹⁷ See section 776(d)(1)-(2) of the Act.

⁹⁸ See section 776(d)(3) of the Act.

⁹⁹ See *Stainless Steel Bar from India: Final Results of the Antidumping Duty Administrative Review*, 77 FR 39467, 39468 (July 3, 2012).

all subject merchandise produced or exported by Viraj as we did in the *Preliminary Results*.¹⁰⁰

Recommendation

Based on our analysis of the comments received, we recommend adopting all the above positions. If this recommendation is accepted, we will publish the final results of this changed circumstances review in the *Federal Register*.



Agree



Disagree

4/16/2018

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

¹⁰⁰ See *Stainless Steel Bar from India: Final Results of the Antidumping Duty Administrative Review*, 77 FR 39467, 39468 (July 3, 2012).