



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-533-877
Investigation
Public Document
E&C/V: BB, CL, PW

August 10, 2018

MEMORANDUM TO: 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

FROM: James C. Doyle
Director, Office V
Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination of
the Antidumping Duty Investigation of Stainless Steel Flanges
from India

I. SUMMARY

The Department of Commerce (Commerce) determines that stainless steel flanges from India are being, or are likely to be, sold in the United States at less-than-fair-value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). We analyzed the comments of the interested parties. As a result of this analysis and based on our findings at verification,¹ we made certain changes to the margin calculations for mandatory respondent, Chandan Steel Limited (Chandan). Additionally, pursuant to sections 776(a)(2)(B)-(C) and 776(b) of the Act, Commerce continues to assign a margin based on total adverse facts available (AFA) to Bebitz Flanges Works Pvt. Ltd. (Bebitz) and Echjay Forgings Pvt. Ltd. (Echjay), two of the mandatory respondents, which withheld necessary information, failed to provide information in the form and manner requested, and significantly impeded the proceeding, and because they failed to act to the best of their abilities in responding to Commerce's information requests. The estimated weighted-average dumping margins are shown in the "Final Determination" section of the accompanying *Federal Register* notice. Below is the complete list of issues in this investigation for which we received comments from interested parties:

¹ See Memorandum, "Verification of the Cost Response of Chandan Steel Limited in the Antidumping Duty Investigation of Certain Stainless Steel Flanges from India," dated May 21, 2018 (Chandan Cost Verification Report); and Memorandum, "Verification of Sales of Chandan Steel Limited in the Antidumping Duty Investigation of Stainless Steel from India," dated June 6, 2018 (Chandan Sales Verification Report).



- Comment 1: Application of Total AFA for Bebitz/Viraj single entity
- Comment 2: Collapsing of Echjay and its Affiliates, and Application of Total AFA to the Echjay Single Entity
- Comment 3: Product Characteristics used in the CONNUM Methodology
- Comment 4: Application of Partial AFA for Packing Costs
- Comment 5: Home Market Sales Viability
- Comment 6: Credit Expenses
- Comment 7: Clarification of the Scope of the Order
- Comment 8: Import Duties
- Comment 9: G&A Expense Ratio Calculation
- Comment 10: Antidumping Duty Cash Deposit Rate offset by the Countervailing Duty Export Subsidy Rate

II. BACKGROUND

A. Case History

On March 28, 2018, Commerce published the *Preliminary Determination* of this antidumping duty (AD) investigation.² On April 18, 2018, Commerce denied a scope exclusion request by Pradeep Metals Limited (Pradeep Metals) and filed our letter explaining the basis for the denial on the record of this investigation.³ During April and May 2018, Commerce verified the cost and sales data reported by Chandan, pursuant to section 782(i) of the Act. In May 2018, Commerce requested and received revised databases from Chandan.⁴ Also in May and June 2018, the petitioners,⁵ the Bebitz/Viraj single entity⁶, Chandan, and the Echjay single entity⁷

² See *Stainless Steel Flanges from India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 13246 (March 28, 2018) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).

³ See Commerce's Letter, "Stainless Steel Flanges from India: Pradeep Metals Scope Exclusion Request," dated April 18, 2018.

⁴ See Chandan's Letter, "Certain Stainless Steel Flanges from India (A-533-877), Chandan Steel Limited's submission for Revised Sales Database," dated May 23, 2018.

⁵ The petitioners are the Coalition of American Flange Producers and its individual members, Core Pipe Products, Inc. and Maass Flange Corporation (collectively, the petitioners).

⁶ In the *Preliminary Determination*, Commerce found that Bebitz USA, Inc. (Bebitz USA), Flanschenwerk Bebitz GmbH (FBG), Viraj Profiles Limited (Viraj), and Viraj USA, Inc. (Viraj USA) are affiliated with Bebitz, and should be treated as a single entity for purposes of this investigation (collectively, Bebitz/Viraj single entity). See PDM at 8-9. As explained below in the "Affiliation and Collapsing" section, we have made no changes to this determination.

⁷ In the *Preliminary Determination*, Commerce found that Echjay Industries Private Limited (Echjay Industries), Echjay Forging Industries Private Limited (Echjay Forgings) and Spire Industries Pvt. Limited (Spire) are affiliated with Echjay, and should be considered as a single entity for purposes of this investigation (collectively, Echjay single entity). See PDM at 9. As explained below in the "Affiliation and Collapsing" section, we have made no changes to this determination.

submitted case briefs⁸ and the petitioners and Chandan submitted rebuttal briefs.⁹ On July 26, 2018, Commerce held a public hearing on this investigation. We have conducted this investigation in accordance with section 733(b) of the Act.

B. *Period of Investigation*

The period of investigation (POI) is July 1, 2016, through June 30, 2017. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the Petition, which was August 2017.¹⁰

III. SCOPE OF THE INVESTIGATION

In accordance with the *Preamble* to Commerce's regulations,¹¹ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).¹² On March 5, 2018, Pradeep Metals filed new factual information requesting certain grades of stainless steel flanges be found outside the scope of the investigation, which, in the *Preliminary Determination*, Commerce determined was untimely filed. On April 2, 2018, Pradeep Metals requested that Commerce treat Pradeep Metals' March 5, 2018, letter, as a scope exclusion request.¹³ On April 18, 2018, Commerce denied Pradeep Metals' request, explaining that the request was made well after the scope comment deadline, which was September 25, 2017, and no party followed the process of requesting permission to submit new additional factual information to amend the scope. Additionally, the factual information presented in the March 5, 2018 letter, was not placed on the record for the companion countervailing duty (CVD) investigation on stainless steel flanges from India, or on the records for the AD/CVD investigations on stainless steel flanges from the People's Republic of China, which have identical scopes. Moreover, the final determination for the CVD investigation on stainless steel flanges from China already had been issued on April 13, 2018 and, thus, any scope issues should have been raised in case briefs in this investigation for consideration at the China CVD final determination.¹⁴ Additionally, no party to

⁸ See Bebitz/Viraj's Case Brief, "Stainless Steel Flanges from India: Bebitz/Viraj Case Brief," dated May 22, 2018; Echjay's Case Brief, "Stainless Steel Flanges from India: Echjay Case Brief," dated May 25, 2018; the Petitioners' Case Brief, "Stainless Steel Flanges from India: Case Brief Regarding Chandan Steel," dated June 18, 2018; and Chandan's Case Brief, "Certain Stainless Steel Flanges from India (A-533-877), Chandan Steel Limited's Filing of Case Brief," dated June 18, 2018.

⁹ See the Petitioners' Rebuttal Brief, "Stainless Steel Flanges from India: Rebuttal Brief as to Bebitz/Viraj," dated May 29, 2018; the Petitioners' Rebuttal Brief, "Stainless Steel Flanges from India: Rebuttal Brief as to Echjay," dated May 31, 2018; the Petitioners' Rebuttal Brief, "Stainless Steel Flanges from India: Rebuttal Brief Regarding Chandan Steel," dated June 25, 2018; and Chandan's Rebuttal Brief, "Certain Stainless Steel Flanges from India (A-533-877), Rebuttal comments to Case Brief on Chandan filed by the Petitioners dated June 19, 2018," dated June 25, 2018.

¹⁰ See the petitioners' submission, "Stainless Steel Flanges from the People's Republic of China and India: Petitions for the Imposition of Antidumping and Countervailing Duties," dated August 16, 2017 (the Petition). See also 19 CFR 351.204(b)(1).

¹¹ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

¹² See *Stainless Steel Flanges from India and the People's Republic of China: Initiation of Less-Than-Fair-Value Investigations*, 82 FR 42649 (September 11, 2017) (*Initiation Notice*).

¹³ See Pradeep Metals' Letter, "Stainless Steel Flanges from India: Request to Treat Factual Information as a Scope Exclusion Request," dated April 2, 2018.

¹⁴ See *Countervailing Duty Investigation of Stainless Steel Flanges from the People's Republic of China: Final Affirmative Determination*, 83 FR 15790 (April 12, 2018).

this investigation submitted comments on Commerce’s preliminary determination regarding the scope of the investigation. As such, we made no changes to the scope language as it appeared in the *Initiation Notice*. For a complete description of the scope of this investigation, *see* Appendix I of the accompanying *Federal Register* notice.

IV. FINAL DETERMINATION OF CRITICAL CIRCUMSTANCES

For the final determination, based on an examination of export data provided by Chandan, we found that Chandan had a massive increase in its shipments to the United States, as defined by 19 CFR 351.206(h). Because the necessary reliable shipment data from the Bebitz/Viraj single entity and the Echjay single entity were not available, we determined that, pursuant to section 776(b) of the Act, both entities shipped stainless steel flanges in “massive” quantities during the comparison period, thereby fulfilling the criteria under section 733(e)(1)(B) of the Act and 19 CFR 351.206(h). Additionally, in regard to companies subject to the “all others” rate, based on data from Global Trade Atlas (GTA), we found that the resulting data were unusable for purposes of our “massive quantities” analysis. Therefore, we based our analysis on Chandan’s data, and we determined that there were massive increases in shipments from the remaining companies, as defined by 19 CFR 351.206(h). Therefore, for this final determination, we continue to find that critical circumstances exist for Chandan, the Bebitz/Viraj single entity, the Echjay single entity, and the “all others” companies under section 733(e)(1)(B) of the Act and 19 CFR 351.206(h).¹⁵

V. AFFILIATION AND COLLAPSING

In the *Preliminary Determination*, Commerce found that Bebitz USA, FBG, Viraj and Viraj USA are affiliated with Bebitz and the Kochar family,¹⁶ pursuant to sections 771(33)(A) and (F) of the Act. In accordance with 19 CFR 351.401(f), we also determined that Bebitz, Bebitz USA, FBG, Viraj, and Viraj USA, should be treated as a single entity for purposes of this investigation, *i.e.*, the Bebitz/Viraj single entity. For this final determination, because no facts have changed and because no party commented on our preliminary finding, we continue to find these companies to be affiliated and a single entity. Much of the relevant information for this determination has been designated by the Bebitz/Viraj single entity as business proprietary information. Therefore, Commerce issued the Bebitz/Viraj Affiliation and Single Entity Memo, a separate business proprietary memorandum that contains a full discussion of our affiliation and collapsing determination.¹⁷

In the *Preliminary Determination*, Commerce found that Echjay Industries, Echjay Forgings and Spire are affiliated with Echjay and the Doshi family,¹⁸ pursuant to sections 771(33)(A) and (F)

¹⁵ See Memorandum, “Antidumping Duty Investigation of Stainless Steel Flanges from the India: Critical Circumstances Analysis,” dated August 10, 2018.

¹⁶ For further discussion, *see* Memorandum, “Antidumping Duty Investigation of Stainless Steel Flanges from India: Preliminary Determination of Affiliation/Single Entity Treatment of Bebitz/Viraj Single Entity,” dated March 19, 2018 (Bebitz/Viraj Affiliation and Single Entity Memo).

¹⁷ See Bebitz/Viraj Affiliation and Single Entity Memo.

¹⁸ For further discussion, please *see* Memorandum, “Antidumping Duty Investigation of Stainless Steel Flanges from India: Preliminary Determination of Affiliation/Single Entity Treatment of Echjay Single Entity,” dated

of the Act. In accordance with 19 CFR 351.401(f), we also determined that Echjay, Echjay Industries, Echjay Forgings and Spire, should be considered as a single entity for purposes of this investigation, *i.e.*, the Echjay single entity. Some of the relevant information for this determination has been designated by the Echjay single entity as business proprietary information. Therefore, Commerce issued the Echjay Affiliation and Single Entity Memo, a separate business proprietary memorandum that contains a full discussion of our affiliation and collapsing determination.¹⁹ Echjay filed comments on our preliminary determination to treat these companies as a single entity pursuant to 19 CFR section 351.401(f). For the reasons articulated in the Echjay Affiliation and Single Entity Memo, and as discussed below in Comment 2, Commerce continues to find these companies affiliated and a single entity.

VI. CHANGES SINCE THE PRELIMINARY DETERMINATION

Based on our review of the record, analysis of the comments from parties, and minor corrections presented at the verifications, we made certain changes to the margin calculations for Chandan. Based on the correction presented at verification, which we find to be minor, we requested that Chandan resubmit its home market and U.S. sales databases incorporating the minor correction accepted during the verification of Chandan.²⁰ As a result, we used Chandan's updated home market and U.S. sales database in our margin calculations. Additionally, we have revised Chandan's general and administrative (G&A) expenses ratio, credit expense, and the financial expense ratio.²¹

VII. USE OF ADVERSE FACTS AVAILABLE

Section 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that if necessary information is not available on the record or if an interested party: (A) withholds information that has been requested by Commerce; (B) fails to provide such information in a timely manner or in the form or manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified as provided for in section 782(i) of the Act, Commerce shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

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

Section 782(d) of the Act provides that, if Commerce determines that a response to a request for information does not comply with the request, Commerce shall promptly inform the

March 19, 2018 (Echjay Affiliation and Single Entity Memo).

¹⁹ See Echjay Affiliation and Single Entity Memo.

²⁰ See Commerce's Letter, "Stainless Steel Flanges from India," dated May 21, 2018.

²¹ See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Chandan Steel Limited," dated August 10, 2018.

person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person an opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, Commerce may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that Commerce shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

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.²² In doing so, 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. Section 776(b)(2) provides that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. In addition, the SAA explains that Commerce may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”²³ Further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.²⁴

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. 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.²⁵ Further, Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.

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 adverse facts available, including the highest of such margins. When selecting an AFA margin, Commerce is not required to estimate what the dumping margin would have been if the interested party failing

²² See section 776(b)(1)(B) of the Act.

²³ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (SAA) at 870.

²⁴ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Preamble*; and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (CAFC 2003) (*Nippon Steel*).

²⁵ See SAA at 870.

to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.

A. *Application of Total AFA for the Bebitz/Viraj Single Entity*

As discussed further in Comment 1 below, for this final determination, we continue to find that necessary information is not on the record, and that the Bebitz/Viraj single entity failed to provide information in the form or manner requested, and significantly impeded this review by failing to provide Commerce with complete and accurate home market and cost databases. As a result, the gaps in the Bebitz/Viraj single entity’s cost and home market sales databases are so extensive as to render them unreliable for the purposes of calculating the Bebitz/Viraj single entity’s estimated weighted-average dumping margin in this investigation. Additionally, we continue to find that the Bebitz/Viraj single entity failed to cooperate to the best of its ability in responding to our information requests. For these reasons, and as discussed below in Comment 1, Commerce continues to find that the application of total facts available with an adverse inference is warranted with respect to the Bebitz/Viraj single entity, pursuant to sections 776(a)(1), 776(a)(2)(B)-(C), and 776(b) of the Act.

B. *Application of Total AFA for the Echjay Single Entity*

As discussed further in Comment 2 below, for this final determination, we continue to find that necessary information is not on the record, and that the Echjay single entity failed to provide information in the form or manner requested and significantly impeded this review by failing to provide Commerce with complete and accurate home market and cost databases. As a result, the gaps in the Echjay single entity’s cost and home market sales databases are so extensive as to render them unreliable for the purposes of calculating its estimated weighted-average dumping margin in this investigation. Additionally, we continue to find that the Echjay single entity failed to cooperate to the best of its ability in responding to our information requests. For these reasons, and as discussed below in Comment 2, Commerce continues to find that the application of total facts available with an adverse inference is warranted with respect to the Echjay single entity, pursuant to sections 776(a)(1), 776(a)(2)(B)-(C), and 776(b) of the Act.

C. *Application of Partial AFA for Chandan*

As discussed further in Comment 4 below, for this final determination, we continue to find that necessary information is not on the record and that Chandan failed to provide information in the form or manner requested by failing to provide Commerce with complete and accurate home market and U.S. packing costs. As a result, the gaps in Chandan’s reported home market and U.S. packing costs are so extensive as to render them unreliable for the purposes of calculating Chandan’s home market and U.S. packing cost in this investigation. For these reasons, and as discussed below in Comment 4, Commerce concludes that the application of partial facts available with an adverse inference is warranted with respect to Chandan, pursuant to sections 776(a)(1), 776(a)(2)(A)-(B), and 776(b) of the Act.

D. *Selection and Corroboration of the AFA Rate*

In relying on AFA, Commerce may rely on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record.²⁶ In selecting an AFA margin, we sought a margin that is sufficiently adverse so as to effectuate the statutory purposes of the AFA rule, which is to induce respondents to provide Commerce with complete and accurate information in a timely manner.²⁷ In an investigation, Commerce's general practice with respect to the assignment of a rate as AFA is to assign the higher of the highest dumping margin alleged in the petition or the highest calculated dumping margin of any respondent in the investigation.²⁸

In the *Preliminary Determination*, we preliminary determined that the highest petition dumping margin of 145.25 percent is appropriate for use as the AFA margin and that it is reliable and relevant.²⁹ No interested party commented on our corroboration analysis in the *Preliminary Determination*. Thus, in accordance with section 776(c)(1) of the Act, we continue to determine that the highest dumping margin contained in the petition, 145.25 percent, has been corroborated to the extent practicable.

VIII. DISCUSSION OF THE ISSUES

Comment 1: Application of Total AFA for Bebitz/Viraj Single Entity

Bebitz/Viraj's Comments:

- AFA is only permitted if a respondent did not act to the best of its ability. In the *Preliminary Determination*, Commerce failed to demonstrate that Bebitz/Viraj did not work to the best of its ability to achieve the impossible under the circumstances.³⁰ Bebitz/Viraj is a small company with no recent experience participating in AD cases.
- Additionally, before the supplemental questionnaires, Bebitz/Viraj had timely filed seven questionnaire responses, acting to the best of its ability under the circumstances. Moreover, up to two months passed before Commerce issued supplemental questionnaires following Bebitz/Viraj's original questionnaire response.³¹ Commerce issued six supplemental questionnaires (totaling 356 questions, including subparts) to Bebitz/Viraj, responses to which were all due within a six business day period.³² Additionally, all of Bebitz/Viraj's initial extension requests were filed well in advance of deadlines; however Commerce denied all extension requests, in full or in part. Thus,

²⁶ See section 776(b) of the Act.

²⁷ See SAA at 870. See also, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers from the Republic of Korea*, 77 FR 75988, 75990 (December 26, 2012).

²⁸ See *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015) and accompanying Issues and Decision Memorandum (IDM) at Comment 20.

²⁹ See PDM at 22-23.

³⁰ See Bebitz/Viraj's Case Brief at 3.

³¹ *Id.* at 2.

³² *Id.*

insufficient time was granted to accommodate the supplemental questionnaire process, undermining the AD process as a whole.³³

- Commerce rejected Bebitz/Viraj's supplemental questionnaires, thereby denying Bebitz/Viraj an opportunity to defend its interests and to respond to criticism made in the *Preliminary Determination*, because the supplemental questionnaires are not on the record, by Commerce's own action.³⁴
- For the reasons stated above, the investigation of Bebitz/Viraj should proceed with additional questionnaires and verification.³⁵ However, absent continuing the investigation for Bebitz/Viraj, a non-adverse dumping rate should apply.³⁶

Petitioners' Comments:

- Bebitz/Viraj's claim that it did act to the best of its ability to cooperate and that Commerce cannot apply AFA based solely on Bebitz/Viraj's failure to submit a timely questionnaire response overlooks the facts of the proceeding. Given Bebitz/Viraj's substantially deficient responses, despite the time and number of opportunities granted, the record supports Commerce's conclusion that Bebitz/Viraj should have been more forthcoming in its response.³⁷
- Many of the facts Bebitz/Viraj relies on in support of its argument that AFA was improperly applied have not been accurately represented.³⁸ By Bebitz/Viraj own admission, its claim that Bebitz has never participated in any AD/CVD investigations and Viraj has not participated in over 20 years is incorrect.³⁹ Moreover, Bebitz/Viraj's claim that it is small company with a small volume of trade is disingenuous.⁴⁰ Bebitz was one of the largest exporters of stainless steel flanges during the POI, without accounting for exports made by Viraj.⁴¹
- Although Commerce may not have granted extension requests in full, Bebitz/Viraj was often provided with the majority of time requested.⁴² On more than one occasion, Bebitz/Viraj filed an extension request almost simultaneously with the deadline to submit the supplemental response, essentially guaranteeing that an extension would be granted.⁴³
- Bebitz/Viraj faults Commerce for not issuing supplemental questionnaires earlier.⁴⁴ However, this not only misstates the record, but also fails to recognize how Bebitz/Viraj's own actions delayed the issuance of supplemental questionnaires.⁴⁵ Specifically, the databases Bebitz and its affiliates submitted were not in accordance with Commerce formatting requirements. Nevertheless, Commerce issued a supplemental

³³ *Id.* at 3.

³⁴ *Id.*

³⁵ *Id.* at 4.

³⁶ *Id.*

³⁷ See the Petitioners' Bebitz/Viraj Case Brief at 1.

³⁸ *Id.* at 2-6.

³⁹ *Id.* at 3.

⁴⁰ *Id.*

⁴¹ *Id.*, citing Bebitz/Viraj's Case Brief at 1.

⁴² *Id.* at 4.

⁴³ *Id.* at 11-12.

⁴⁴ *Id.* at 5.

⁴⁵ *Id.*

questionnaire concerning Bebitz/Viraj's initial Section B through D questionnaire responses on December 15, 2017, only two weeks after Bebitz/Viraj's original response was submitted.⁴⁶

- Commerce directed Bebitz/Viraj to provide a full cost reconciliation in its initial questionnaire, issued on October 3, 2017, and Bebitz/Viraj was provided until February 21, 2018, to submit this information. However, Bebitz/Viraj still failed to do so.⁴⁷ Thus, the record does not support Bebitz/Viraj's claim that it was not provided with a meaningful opportunity to remedy the deficiencies, because Bebitz/Viraj repeatedly failed to provide the requested information.⁴⁸
- Commerce should reject Bebitz/Viraj's arguments and should continue to apply AFA to Bebitz/Viraj in the final determination.⁴⁹

Commerce's Position: We continue to find that the information provided by the Bebitz/Viraj single entity regarding U.S. sales, cost, and home market sales databases is deficient, warranting the application of facts available. As stated in the *Preliminary Determination*, the Bebitz/Viraj single entity deficiencies include: (i) the U.S. sales databases for Bebitz, Bebitz USA, and FBG are inaccurate and unusable because of missing sales/movement expenses and incomplete reconciliations; (ii) incomplete cost reconciliations along with inaccurate cost databases from Bebitz and Viraj; and (iii) missing sales information from Viraj.⁵⁰ As a result, Commerce continues to find that, during the investigation, the Bebitz/Viraj single entity failed to provide the following: (1) complete, reliable U.S. sales databases and reconciliations from Bebitz, Bebitz USA and FBG;⁵¹ (2) complete, reliable cost databases and reconciliations from Bebitz and Viraj;⁵² and (3) a complete sales reconciliation from Viraj and consistent responses regarding missing sales information from Viraj.⁵³

Commerce disagrees with the assertion that Bebitz never participated in any AD/CVD investigations and Viraj has not participated in over 20 years, as Viraj, in fact, requested to participate as a voluntary respondent and was subsequently selected as a mandatory respondent

⁴⁶ *Id.*

⁴⁷ *Id.* at 9-10.

⁴⁸ *Id.* at 10.

⁴⁹ *Id.* at 13.

⁵⁰ See PDM at 10-11.

⁵¹ See Rejection of Bebitz's Supplemental Section C Response; and Bebitz's Section C Response, which includes sales reconciliations from both Bebitz and FBG that do not reconcile total value and volume from their financial statements to the consolidated U.S. sales database, and also missing or incorrectly calculated movement/selling expenses for Bebitz, Bebitz USA and FBG.

⁵² See Rejection of Bebitz's and Viraj's Supplemental Section D Responses; and Bebitz's Section D Response and Viraj's Section D response, which include incomplete cost reconciliations that first only reconciled to the trial balance and, after a second request, only to the POI cost of sales and not to the extended costs reported in the cost database.

⁵³ See Viraj's Supplemental Section B Response, at Exhibit VB1-6; and Viraj's Supplemental Questionnaire Response, at 6-7 and Exhibit B-1. Additionally, see the Bebitz/Viraj Single Entity Affiliation Memo at Attachments 1 and 2. See also Respondent Selection Data Memo; Respondent Selection Memo.

for individual examination in *Stainless Steel Bar*, and Bebitz participated in *Finished Flanges* where Bebitz also requested to participate as a voluntary respondent.⁵⁴

Regarding claims that Bebitz and Viraj are small companies in terms of trade volume, we disagree. To determine the total and relative shipment volumes for each potential respondent, we reviewed the aggregated CBP entry data for each company for imports of subject merchandise attributed to that company into the United States during the POI, and then we selected the top three publicly identifiable exporters/producers of stainless steel flanges from India.⁵⁵ Based on the CBP entry data, we identified the three publicly identifiable exporters/producers—Bebitz, Chandan and Echjay—who accounted for the largest volumes of the subject merchandise entered into the United States from India during the POI.⁵⁶ Thus, the CBP entry data demonstrate that even the volume of merchandise imported by Bebitz alone is significant, and among the largest three volumes during the POI.

Regarding claims that Commerce was delayed in issuing supplemental questionnaires and repeated denials of extension requests, the Bebitz/Viraj single entity ignores the events in this proceeding. First, with regard to the U.S. sales databases and reconciliations from Bebitz and its affiliates, the original responses for U.S. sales, home market sales, and cost of production databases were either missing or severely deficient, and we granted Bebitz and its affiliates an opportunity to remedy these deficiencies.⁵⁷ In response to this opportunity, Bebitz and its affiliates submitted an untimely incomplete response regarding U.S. sales to Commerce's supplemental questionnaire, in contrast to Bebitz's claims that it filed extension requests well in advance of deadlines.⁵⁸ On February 9, 2018, Commerce granted Bebitz's first extension request for the supplemental questionnaire response and set a deadline of 12:00 p.m., February 16, 2018.⁵⁹ Bebitz twice requested that Commerce grant an additional extension of time to submit

⁵⁴ See, e.g., *Finished Carbon Steel Flanges from India: Preliminary Affirmative Countervailing Duty Determination*, 81 FR 85928 (November 29, 2016) (*Finished Flanges*) and accompanying PDM (where Bebitz requested to participate as a voluntary respondent); *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) (*Stainless Steel Bar*) and accompanying PDM (where Viraj participated as a respondent)

⁵⁵ See Respondent Selection Memo at 5.

⁵⁶ *Id.* at 5.

⁵⁷ See PDM at 11-13.

⁵⁸ See Rejection of Bebitz's Supplemental Section C Response; Bebitz's Supplemental Section B Response, dated February 13, 2018; and Viraj's Supplemental Section B Response, dated February 22, 2018.

⁵⁹ See Memorandum, "Investigation of Stainless Steel Flanges from India; Extension for Section C Supplemental Questionnaire from Bebitz/Viraj," dated February 9, 2018. With this extension, Commerce granted Bebitz a total of 11.5 days to respond to the supplemental questionnaire and reminded Bebitz, including its affiliates, that because the preliminary determination was fully extended and Commerce may need to issue an additional questionnaire for further calculation issues, Commerce would most likely not grant additional extensions.

its U.S. sales supplemental questionnaire response, which Commerce denied.^{60, 61} Shortly before the deadline of 12:00 p.m. on February 16, 2018, Bebitz and its affiliates submitted portions of their supplemental questionnaire response but submitted neither the complete narrative response nor sales databases with calculation worksheets by the deadline. Bebitz also failed to notify Commerce that it experienced filing issues until after the deadline.⁶² Bebitz and its affiliates, including Bebitz USA and FBG, did, in fact, receive extensions for submitting a complete response regarding its U.S. sales portion of the Section C supplemental questionnaire, as detailed in Commerce’s March 1, 2018, letter, and failed to do so. As such, pursuant to 19 CFR 351.302(d), we rejected Bebitz and its affiliates’ untimely supplemental response.⁶³

Second, Bebitz and Viraj either failed to provide, or provided incomplete, cost databases and reconciliations. In the cost analysis portion of the Section D questionnaire issued to Bebitz, Commerce requested the following:

*Describe the level of product specificity over which your company’s cost accounting system normally captures production costs. Explain how the product specific costs recorded in your normal accounting system compare to the weighted-average {control number} CONNUM specific costs reported for COP and CV.*⁶⁴

The questionnaire directs the respondent to multiply the control number (CONNUM) specific per-unit production costs by their respective production quantities, and to reconcile the total extended cost⁶⁵ from the database to the total cost of manufacturing (COM) for the POI in their books and records. In response to these specific requests for information, Bebitz simply provided a trial balance (*i.e.*, a list of the closing balances for the general ledger accounts at a certain date and the first step towards preparation of the financial statements) for the POI, and

⁶⁰ See Memorandum, “Investigation of Stainless Steel Flanges from India; Denial of Second Extension Request for Section C Supplemental Questionnaire from Bebitz/Viraj,” dated February 15, 2018 (Commerce Denial of Second Extension for Bebitz’s Supplemental Section C Questionnaire); and Memorandum, “Investigation of Stainless Steel Flanges from India; Denial of Second Extension Request for Section C Supplemental Questionnaire from Bebitz/Viraj Reiteration,” dated February 16, 2018. Although Bebitz and its affiliates, including Viraj, claim that they are either first-time respondents or, as in the case for Viraj, were respondents over twenty years ago, Commerce disagrees with this logic because Viraj participated as a respondent in our proceedings over the last ten years and Bebitz participated in other AD/CVD proceedings. See *Finished Flanges* (where Bebitz requested to participate as a voluntary respondent); and *Stainless Steel Bar from India* (where Viraj participated as a respondent).

⁶¹ See Memorandum, “Investigation of Stainless Steel Flanges from India; Denial of Second Extension Request for Section C Supplemental Questionnaire from Bebitz/Viraj,” dated February 15, 2018 (Commerce Denial of Second Extension for Bebitz’s Supplemental Section C Questionnaire); and Memorandum, “Investigation of Stainless Steel Flanges from India; Denial of Second Extension Request for Section C Supplemental Questionnaire from Bebitz/Viraj Reiteration,” dated February 16, 2018. Although Bebitz and its affiliates, including Viraj, claim that they are either first-time respondents or, as in the case for Viraj, were respondents over twenty years ago, Commerce disagrees because Viraj participated as a respondent in our proceedings over the last ten years and Bebitz participated in other AD/CVD proceedings. See, *e.g.*, *Finished Flanges* (where Bebitz requested to participate as a voluntary respondent); and *Stainless Steel Bar from India* (where Viraj participated as a respondent).

⁶² See Rejection of Bebitz’s Supplemental Section C Response at 1-3.

⁶³ *Id.*

⁶⁴ See Bebitz’s original questionnaire at D-13.

⁶⁵ “Extended costs” refer to the summation of CONNUM-specific production quantity multiplied by the cost of manufacturing.

not a complete cost reconciliation following Commerce's original questionnaire instructions.⁶⁶ As such, Bebitz only provided a partial cost reconciliation and, therefore, did not comply with the reporting requirements laid out in Commerce's questionnaire.

Because Bebitz's cost reconciliation did not comply with the reporting requirements laid out in Commerce's questionnaire, Commerce provided Bebitz with a second opportunity to provide the cost reconciliation in a questionnaire focusing on the deficiencies found in its initial questionnaire responses.⁶⁷ After receiving an extension of time, Bebitz filed its response to our supplemental questionnaire, but again failed to provide a complete reconciliation, as Bebitz only submitted a worksheet entitled "Reconciliation of the Cost of Sales for the FY 2016-17 with POI Cost of Sales."⁶⁸ The document reconciles the fiscal year cost of sales to the POI cost of sales; however, it does not reconcile to the total POI COM extended costs reported on the cost of production constructed value (COPCV) database, as we requested pursuant to our practice.⁶⁹ Importantly, we further note that none of the figures in the worksheet reconcile to the extended amount from the COPCV database.⁷⁰

Bebitz's supplemental questionnaire response also included its January 2018 questionnaire response, which included the initial section D questionnaire response for Viraj, in which Viraj also failed to provide the requested cost reconciliation.⁷¹ Instead, Viraj only pointed to a supplemental exhibit, which is not a reconciliation for the entire cost database, but rather is CONNUM cost buildup for a specific product.⁷² Importantly, none of the figures in the exhibits included in the response tie to the extended amount from the COPCV database. We further note that Bebitz and Viraj revised their COPCV databases on January 19, 2018, and again on January 24, 2018, but provided no corresponding revised worksheets or reconciliations.

Because these responses were incomplete and did not reconcile, Commerce again issued additional cost supplemental questionnaires for Bebitz and Viraj.⁷³ These questionnaires represent the third request for the cost reconciliation to Bebitz and a second request to Viraj for a cost reconciliation. After being granted multiple extensions, in total, of more than two weeks of the deadlines for these questionnaires,⁷⁴ neither company provided reconciliations in their

⁶⁶ See Bebitz's Section D Response at D-12 through D-13; Bebitz's Supplemental Section B to D Response, dated December 1, 2017, at page 25 and Exhibit D-8.

⁶⁷ See Commerce's letter, "Antidumping Duty Investigation of Stainless Steel Flanges from India," presenting deficiency questions on Sections A through D of Bebitz's questionnaire responses, dated December 15, 2017.

⁶⁸ See Bebitz's submission, "Stainless Steel Flanges from India," including Viraj's narrative responses and exhibits, dated January 3, 2018, at 5 and Exhibit S1-6. (Bebitz-Viraj January 3 response); *see also* Commerce's letter, Extension request granted December 29, 2017.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ See Bebitz-Viraj Supplemental Response at 79.

⁷² *Id.* at Exhibit D-9.

⁷³ See Commerce's letter, "Antidumping Duty Investigation of Stainless Steel Flanges from India," dated February 7, 2018, at 7 (question 22), and February 8, 2018, at 4 (question 10).

⁷⁴ See Commerce's letter "Antidumping Duty Investigation of Finished Carbon Steel Flanges from India," dated February 7, 2018; See Commerce's memo "Investigation of Stainless Steel Flanges from India; Extension for Section D Supplemental Questionnaire from Bebitz/Viraj", dated February 15, 2018; See Commerce's memo "Investigation of Stainless Steel Flanges from India; Extension for Supplemental Questionnaire from Bebitz/Viraj",

respective supplemental questionnaire responses.⁷⁵ Additionally, because Bebitz and Viraj failed to provide complete responses to these questionnaires by the deadlines, their incomplete filings were subsequently rejected and removed from the record.⁷⁶ Bebitz's and Viraj's supplemental cost responses were rejected as incomplete and untimely because both companies failed to submit, by the deadline, the requested electronic versions (*e.g.*, Excel format) of exhibits (calculation worksheets), and the exhibits identified in the narrative response.⁷⁷

Despite Commerce's detailed and specific questionnaires and instructions, as well as being afforded additional opportunities and response time, the Bebitz/Viraj single entity failed to report accurate, complete responses, and in a timely manner pursuant to section 776(b) of the Act. The Bebitz/Viraj single entity also failed to follow our procedures, for submitting its response to our requests for information. Therefore, Commerce continues to find that the Bebitz/Viraj single entity failed to cooperate by failing to act to the best of its ability to comply with Commerce's requests for information, as noted above, and that the application of total AFA is warranted.

Comment 2: Collapsing of Echjay and its Affiliates, and Application of Total AFA to the Echjay Single Entity

Echjay's Comments:

- Echjay should not be affiliated and collapsed with Echjay Industries, Echjay Forgings or Spire. Commerce had already rejected collapsing these companies in a prior review of Indian flanges with identical facts. In *Flanges 2006*, Commerce determined that these companies were owned by Doshi family members; however, Commerce also found that, because there were no common shareholders or directors between the companies—nearly identical to the facts in the instant case—a significant potential for manipulation did not exist.⁷⁸

Affiliation

- Commerce found Echjay, Echjay Industries, Echjay Forgings and Spire to be affiliated pursuant section 771(33)(A) and (F) of the Act.⁷⁹ Subsection (A) addresses members of a family and makes no reference to issues of control; therefore, any affiliation finding under (A) does not implicate a controlling, or a potentially controlling, relationship by its terms. Because a showing of control or the potential to control is the standard to collapse two entities, subsection (A) alone cannot support a collapsing analysis. Were a sibling,

dated December 29, 2017; *See* Commerce's memo "Investigation of Stainless Steel Flanges from India; Fourth Extension for Sections B-D Response from Bebitz", dated December 1, 2017.

⁷⁵ *See* Rejection of Bebitz's and Viraj's Supplemental Section D Responses; Bebitz's Section D Response; and Viraj's Section D Response. Bebitz's and Viraj's supplemental Section D responses were rejected because the responses were missing requested calculation worksheets (missing exhibits), were not filed with complete databases and calculation worksheets, *etc.* Additionally, we issued extensive supplemental cost questionnaires because both Bebitz and Viraj's original responses were incomplete.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *See Certain Forged Stainless Steel Flanges from India; Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 11379 (March 7, 2006) (*Flanges 2006*).

⁷⁹ *See* Echjay Affiliation and Single Entity Memo.

or spouse of a sibling, for instance, sufficient to show control, the statute would have so stated.⁸⁰

- Subsection (G) further clarifies the meaning of subsection (A). Subsections (F) and (G) describe relationships and control. (G) covers “any person who controls any other person and such other person.” If subsection (A) were based on control relationships then it would be redundant, given (G), and rendered meaningless. Put another way, subsection (A) by itself does not support a finding that Echjay controls or has the potential to control the other collapsed companies, or vice versa. Siblings in the Doshi family may each own a separate company, but subsection (A) does not render them affiliated if the siblings do not control, or have the potential to control, each other.⁸¹
- Echjay disagrees with Commerce’s finding that a family grouping is a “person” and that person controls a collapsed entity by virtue of majority ownership of the collapsed entity by the collapsed companies. The pertinent statutory affiliation provision, subsection (F), speaks of the singular – *i.e.*, a person, but a family involves persons, thus, (F) does not apply to a family grouping.⁸²
- The view that a “family grouping” is “a person” is also contrary to the explicit wording of subsection (A), which states that “the following persons shall be considered to be ‘affiliated’ or ‘affiliated persons’: (A) Members of a family....” This indicates that a family is “persons.” Indeed, if “a family” was “a person,” there would be no need for the above statutory provision (A) and it would have been worded instead to say that “a family grouping” is a person, rather than that various persons within a family are affiliated.⁸³
- Commerce’s reliance on *Ferro Union*, that a “family grouping” can be “a person” is misplaced.⁸⁴ The Echjay Affiliation and Single Entity Memo takes too much from a single conclusory sentence in *Ferro Union* that did not address the above issues and so did not decide them.⁸⁵
- Subsection (F) of the statute’s affiliation provision finds affiliation if “two or more persons” are “under common control with any person.” Commerce impermissibly ignores limitation posed by the word “common” in the statutory language. Commerce wrongly reads the statute to just say “control,” not “common control.” In this case no family grouping has any collective ownership control of the collapsed companies. With one exception, none of these companies have common shareholders, and with one other exception none of these companies share managers.⁸⁶ In sum, Commerce’s collapsing policy rests on affiliation *based on a control relationship* between the companies to be collapsed, such that affiliation must be found under subsection (F) or (G) of the statute’s affiliation provision in particular.⁸⁷

⁸⁰ See Echjay’s Case Brief at 41.

⁸¹ *Id.* at 41-42.

⁸² *Id.* at 41-44.

⁸³ *Id.*

⁸⁴ See *Ferro Union, Inc. v. United States*, 44 F. Supp. 2d 1310 (CIT 1999) (*Ferro Union*).

⁸⁵ See Echjay’s Case Brief at 44.

⁸⁶ See Echjay’s December 12, 2017 submission at Exhibit AS-9(a) & AS-10(a).

⁸⁷ *Id.* at 52-53, citing, *e.g.*, *Yancheng Baolong Biochemical Products Company, Ltd. v. United States*, 219 F. Supp. 2d 1317, 1320 (CIT 2002).

- Commerce has stated in past cases that common family ownership alone provides an insufficient basis to collapse entities, because it does not necessarily indicate common control.⁸⁸
- The SAA distinguishes between “a firm” and “a family grouping,” noting that there must be a finding, supported by substantial evidence of record, that a firm in a family grouping is in a position to exercise restraint or direction over another firm in that family grouping. Without that evidence of control, two firms in such a family grouping cannot be affiliated.⁸⁹ The SAA only says that a family grouping “often” or “may” mean that one firm within the grouping is in a position to exercise restraint or direction over another firm, such that they are affiliated. In other words, a decision must be based on substantial evidence of record in the specific case, and not just because the SAA used the word “family grouping.” This interpretation has been upheld by the Court.⁹⁰

Collapsing

- Operations between Echjay Industries, Echjay Forgings and Spire cannot be intertwined because there was a hostile family partition, which split family assets.⁹¹ As a result, this case does not involve three companies performing different functions on the same product. In a similar case, *Threaded Rod from India*, Commerce found that, although a family group owned two companies, there were no relationships between the companies, the companies did not share managers, and the companies were competitors—just as Echjay is with its affiliates.⁹²
- Although Commerce maintains that Echjay’s affiliates failed to provide information requested of them, Echjay, in fact, took extra steps that it was not required to do, *i.e.*, forwarding the questionnaire, submitting public data on its affiliates, and submitting the letters its affiliates used to answer the questionnaire.⁹³
- Echjay Forgings has no production or manufacturing facilities. Because there is no retooling ability, Echjay Forgings should not be collapsed with Echjay. Like Echjay Forgings, Spire also had no production facilities during the POR and should not be collapsed with Echjay.⁹⁴
- Section 731 of the Act, with respect to original investigations, states that if Commerce “determines that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value, and {the ITC finds injury}, then there shall be imposed upon such merchandise an antidumping duty, . . . in an amount equal to the amount by which the normal value exceeds the export price (or the constructed export price) for the merchandise.” Because the statute uses the words “is” and “equal,” Commerce must accurately calculate the current dumping margin of a company, and not

⁸⁸ *Id.* at 53-55, citing, *e.g.*, *Catfish Farmers of America v. United States*, 641 F. Supp. 2d 1362, 1371 Slip Op. 09-96 at 12 (CIT 2009).

⁸⁹ *Id.* at 44-47, citing *Delverde, SrL v. United States*, 202 F.3d 1360, 1364 (Fed. Cir. 2000).

⁹⁰ *Id.*, citing *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1351 Slip Op. 03-52 at 18-19 (CIT 2003).

⁹¹ *Id.* at 22.

⁹² *Id.* at 9-10, citing *Final Affirmative Antidumping Duty Determination: Threaded Rod from India*, 79 FR 40714 (July 14, 2014) (*Threaded Rod from India*) and accompanying IDM at Comment 1.

⁹³ *Id.* at 13, 15.

⁹⁴ *Id.* at 22.

invoke methodologies that calculate dumping margins based on speculative hypotheticals regarding manipulation, as it did here.⁹⁵

- The statute has provisions that address manipulation from affiliation; however, collapsing, as applied here, is not one of them. If Commerce is concerned about future manipulation, any concerns can be addressed under the statute and Commerce's existing regulations.

Collapsing versus Cross-ownership

- Commerce did not collapse Echjay with Echjay Industries and Spire in the companion CVD investigation and Commerce fails to adequately justify its differential treatment of Echjay *vis-à-vis* Echjay Industries and Spire in its CVD and AD decisions.⁹⁶

Application of AFA

- As noted above, Echjay has no control or potential to control the other collapsed companies to induce their cooperation. It is inappropriate for Commerce to apply an adverse inference to one party based on the actions of another over whom the party has no control.⁹⁷
- Echjay provided all requested information in its possession. Echjay stated that Commerce should directly issue sections B-D of the questionnaire to Echjay Industries, which Commerce did not do. Commerce did not request Echjay to provide Spire's sections B-D data. There was no refusal by Echjay to provide requested information, much less requested information in its possession.

Petitioners' Comments:

- Commerce properly found that Echjay, Echjay Industries, Echjay Forgings, and Spire are affiliated and were properly collapsed into a single entity.⁹⁸
- Commerce should continue to collapse Echjay, Echjay Industries, Echjay Forgings, and Spire in the final determination. Commerce properly found that the companies are affiliated given that members of the Doshi family hold senior leadership positions in all companies, and are the only shareholders of these companies and, therefore, have direct or indirect control over the major decisions on financing, accounting, income distribution and loss settlement for each of these companies."⁹⁹ Echjay does not dispute that Echjay, Echjay Industries, Echjay Forgings, and Spire are owned by the Doshi family and that members of that family are "affiliated family members under section 771(33)(A) of the Act."¹⁰⁰

⁹⁵ *Id.* at 26-29, citing *Marine Harvest (Chile) v. United States*, Slip Op. 02-134 at 14 (CIT 2002) (where the court stated that it is mindful of the fact that a potential for circumventing the antidumping statute exists when one company that is covered under an antidumping duty order merges with another that is excluded and then attempts to adopt the mantle of the excluded company so as to evade duties, however, the antidumping statute is remedial, not punitive (internal citations omitted)).

⁹⁶ *Id.* at 22.

⁹⁷ *See, e.g., AK Steel*, 675 F. Supp. at 1276-77.

⁹⁸ *See* the Petitioners' Echjay Case Brief at 2.

⁹⁹ *See* Echjay Affiliation and Single Entity Memo at 6.

¹⁰⁰ *Id.* at 4

- Echjay mischaracterizes Commerce’s preliminary collapsing determination. Commerce’s collapsing determination was not solely based on future manipulation. As Commerce explained in its Echjay Affiliation and Single Entity Memo, the agency collapsed Echjay with its affiliates explicitly based on the criteria outlined in 19 CFR 351.401(f).¹⁰¹
- Commerce properly applied AFA to Echjay as a single entity, because it failed to provide complete and accurate responses to multiple requests for information, including an accurate and reliable sales/cost reconciliation, full corporate and affiliation information, and certain full product specifications requested of it, thus warranting the application of AFA.¹⁰²
- Echjay’s complaint on the application of AFA for another party’s actions ignores the fundamental concept that it is a single entity, collapsed with Echjay Industries, Echjay Forgings, and Spire.¹⁰³ As such, the uncooperative actions of Echjay’s affiliates are properly attributable to Echjay.¹⁰⁴

Commerce’s Position: We disagree with the Echjay single entity. The Echjay single entity’s arguments center on the fact that in another case, Commerce did not collapse Echjay with its affiliates.¹⁰⁵ However, with respect to these arguments, we find that the information available on the record of this investigation supports continuing to collapse Echjay and its affiliates. Decisions in other cases involving Echjay and its affiliates bear no weight in the instant investigation, because facts may change and each proceeding and segment of each proceeding stand on their own.¹⁰⁶ Strict adherence to what took place in a different case, as the Echjay single entity contends, ignores the information that is available on the record in this proceeding.¹⁰⁷ Importantly, we find that the facts of the cases are not identical, as the Echjay single entity claims.

Affiliation

In order for Commerce to conduct a collapsing analysis, we first must find affiliation between the parties at issue. In the *Preliminary Determination*, we preliminarily determined that Echjay, Echjay Industries, Echjay Forgings and Spire were affiliated, pursuant to sections 771(33)(A) and (F) of the Act.¹⁰⁸ We first address the Echjay single entity’s arguments concerning affiliation. As explained below, we continue to find that Echjay is affiliated with Echjay Industries, Echjay Forgings, and Spire, pursuant to section 771(33)(A) and (F) of the Act.

Section 771(33) of the Act states, in part, that the following persons shall be considered to be “affiliated” or “affiliated persons”: (A) members of a family, including brothers and sisters

¹⁰¹ *Id* at 14.

¹⁰² *See* PDM at 21.

¹⁰³ *See generally* Echjay Affiliation and Single Entity Memo.

¹⁰⁴ *See* the Petitioners’ Echjay Case Brief at 2.

¹⁰⁵ *See Flanges 2006*.

¹⁰⁶ *See Peer-Bearing Co.-Changshan v. United States*, 587 F. Supp. 2d 1319, 1325 (CIT 2008) (“Indeed, if the facts remained the same from period to period, there would be no need for administrative reviews” (quoting *Shandong Huarong Mach. Co. v. United States*, 29 CIT 484, 491 (CIT 2005)).

¹⁰⁷ *See* section 773(c)(1) of the Act.

¹⁰⁸ *See* PDM at 6-9.

(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, five 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 common control with, any person; and, (G) any person who controls any other person and such other person.¹⁰⁹ Section 771(33) of the Act further states that “a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.”¹¹⁰ “Actual control...is not required by the statute... Rather, a person is considered to be in a position of control if he is legally in a position to exercise restraint or direction over the other person.”¹¹¹ “Person” is defined to include “any interested party as well as any other individual, enterprise, or entity, as appropriate.”¹¹²

The SAA states that the “traditional focus on control through stock ownership fails to address adequately modern business arrangements, which often find one firm “operationally in a position to exercise restraint or direction” over another in the absence of an equity relationship.”¹¹³ The SAA further indicates that control may exist within the meaning of section 771(33) of the Act in the following types of relationships: (1) corporate or family groupings, (2) franchises or joint ventures, (3) debt financing, or (4) close supplier relationships in which either party becomes reliant upon the other.

Additionally, 19 CFR 351.102(b)(3) defines affiliated persons and affiliated parties as having the same meaning as in section 771(33) of the Act and states that to determine whether control exists within the meaning of section 771(33) of the Act, Commerce will consider the same four SAA factors listed above, among other factors. However, Commerce does not find the existence of control based on these factors “unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.” Also, Commerce “will consider the temporal aspect of a relationship in determining whether control exists; normally, temporary circumstances will not suffice as evidence of control.”

We disagree with the Echjay single entity’s argument that Commerce cannot find that a family grouping can be considered a “person.” Echjay, Echjay Industries, Echjay Forgings, and Spire are 100 percent owned by members of the Doshi family.¹¹⁴ Moreover, members of the Doshi family, in their capacity as the only shareholders of Echjay, Echjay Industries, Echjay Forgings, and Spire, hold senior leadership positions in each of these companies, and have both direct and indirect control over the major decisions on financing, accounting, income distribution and loss

¹⁰⁹ See Section 771(33) of the Act.

¹¹⁰ *Id.*

¹¹¹ See *TIJID, Inc. v. United States*, 366 F. Supp. 2d 1286 at 1293 (CIT 2005).

¹¹² See 19 CFR 351.102(b).

¹¹³ See SAA H.R. Doc. 103-316 (vol. I) at 838.

¹¹⁴ See Echjay’s Section A Response at 2 and Exhibit A-18, where Echjay reported that Sarvadaman Doshi is the Chairman and Managing Director for Echjay, Echjay Forgings, it is owned by Deepak Doshi, brother of Sarvadaman Doshi, Echjay Industries is owned the uncle of Sarvadaman Doshi, and Spire is owned by Nagin Doshi, brother of Sarvadaman Doshi. See also Affiliation & Collapsing Mem at 4.

settlement for each of these companies.¹¹⁵ As noted above, section 771(33)(A) of the Act establishes that “[m]embers of a family, including brothers and sisters (whether by the whole or half-blood), spouse, ancestors, and lineal descendants,” are considered to be affiliated persons.¹¹⁶ In addition, the SAA establishes that a “company may be in a position to exercise restraint or direction, for example, through... family groupings,” which applies to section 771(33)(F) of the Act.¹¹⁷ In *Ferro Union*, the CIT stated that the definition of family, as defined in section 771(33)(A) of the Act, is not exclusive to nuclear family members and lineal descendants.¹¹⁸ Although the Echjay single entity argues otherwise, the CIT has also found that for purposes of statutory construction, the term “person” can be construed in the singular or plural, and can include a corporate entity or group.¹¹⁹

Although the Echjay single entity attempts to cast the CIT’s ruling in *Ferro Union* as a single throwaway sentence, in fact, the Court extensively discussed the issue of collapsing and affiliation. Specifically, the CIT noted that the “word ‘including’ ... is an indication that Congress did not intend to limit the definition of ‘family’ to the members in this section.”¹²⁰ Finally, the CIT also found that the language of section 771(33)(F) of the Act, which defines “a person,” “can be interpreted to encompass a ‘family,’ and by “interpreting ‘family’ as a control person, {Commerce} was giving effect to this intent.”¹²¹ The CIT held that because “the new definition of ‘control’ thus permits a finding that several persons or groups are in a position to exercise restraint or direction over a company... it would not violate the statute to find that the {families} in a position to ‘exercise restraint or control over {the respondent},’ in fact control {the respondent}.”¹²²

Since *Ferro Union*, Commerce has found that family groups have “exercised restraint or control” over affiliated companies, pursuant to section 771(33)(A) and (F), in many cases.¹²³ In these

¹¹⁵ See Echjay’s Supplemental Section A Response at 5-8; see also Echjay Affiliation and Single Entity Memo.

¹¹⁶ See Section 771(33)(A) of the Act.

¹¹⁷ See also 19 CFR 351.102.

¹¹⁸ See *Ferro Union*, 44 F. Supp. 2d 1310.

¹¹⁹ See *Dongkuk Steel Mill Co., v. United States*, Court No. 04-000190, Slip Op. 05-75 (CIT 2005) (*Dongkuk*).

¹²⁰ *Id.*, at 1325.

¹²¹ *Id.*, at 1326.

¹²² *Id.*, at 1324.

¹²³ See, e.g., *Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 76970 (December 23, 2014) and accompanying IDM at Comment 16; *Aluminum Extrusions from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 18524 (April 4, 2011) (*Aluminum Extrusions*) and accompanying IDM at Comment 4; *Chlorinated Isocyanurates from the People’s Republic of China: Final Results of New Shipper Review*, 74 FR 68575 (December 28, 2009) (*Isos*) and accompanying IDM at Comment 3; *Stainless Steel Bar from India: Final Results of Antidumping Duty Administrative Review*, 74 FR 47198 (September 15, 2009) (*India Steel Bar*) and accompanying IDM; *Notice of Final Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube from Turkey*, 69 FR 53675 (September 2, 2004) and accompanying IDM at Comment 10 (where Commerce found that the family is the largest shareholder in each company and holds senior leadership positions) (*Pipe and Tube from Turkey*); *Notice of Final Results of Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bar from the Republic of Korea*, 69 FR 19399 (April 13, 2004) and accompanying IDM at Comments 1 and 2 (where Commerce found that because the Chang family was the largest shareholder and held senior leadership positions, the Chang family was in a position to legally and operationally restrain or direct the companies) (*Steel Bar from Korea*), affirmed in *Dongkuk*, Slip Op. 2005-75; *Notice of Final Results of Antidumping Duty Administrative Review:*

cases, Commerce was not required to find that the family group actually acted in concert but rather that there was the potential for the group to act in concert.¹²⁴ Moreover, contrary to the Echjay single entity's assertions, Commerce found in these cases that each family (which are comprised of many "persons") to be a "person," pursuant to section 771(33)(F) of the Act, even though no single individual was in a position to restrain or direct the activities of the specific companies.¹²⁵ Furthermore, in each of these cases, Commerce considered whether there was control through a family group by examining the control factors of each member, (*i.e.*, stock ownership, management positions, board membership), as an aggregate of the group.¹²⁶ As such, and as we found in the *Preliminary Determination*, we continue to find that the members of the Doshi family with their respective ownership and controlling interests in Echjay, Echjay Industries, Echjay Forgings, and Spire to be members of the same family group and, therefore, constitute a "person" within the meaning of sections 771(33)(F) of the Act.¹²⁷ As noted above, members of the Doshi family are in a position to control these companies. By virtue of this control, Echjay, Echjay Industries, Echjay Forgings are, therefore, affiliated with each other, pursuant to section 771(33)(F) of the Act.¹²⁸

Collapsing

Although the Echjay single entity disagrees with our collapsing decision in the *Preliminary Determination*, after considering parties' arguments on this issue, we continue to find that it is appropriate to collapse Echjay and its affiliates for the final determination. Our practice of collapsing affiliated producers is codified in 19 CFR 351.401(f), which states that the Secretary 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 in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production. In identifying a significant potential for the manipulation of price or production, the factors the Secretary may consider include: (i) the 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) whether operations are intertwined, such as through the sharing of sales information,

Structural Steel Beams from the Republic of Korea, 68 FR 2499 (January 17, 2003) and accompanying IDM at Comment 1 (where Commerce found that the Jung brothers are affiliated through their familial relationship and along with other family members, collectively the "Jung" family, control Hyundai Corp. and its U.S. subsidiary); *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from Taiwan*, 67 FR 35474 (May 20, 2002) (*PET Film from Taiwan*) and accompanying IDM at Comment 4 (where Commerce found that Nan Ya was affiliated with several U.S. customers by virtue of common control by members of the same family).

¹²⁴ See *PET Film from Taiwan* at Comment 4.

¹²⁵ See *Steel Bar from Korea* at Comment 1.

¹²⁶ *Id.*; *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil*, 65 FR 5554 (February 4, 2000) (*Brazil Cold-rolled*) and accompanying IDM at Comment 1.

¹²⁷ See section 771(33) of the Act; Echjay Affiliation and Single Entity Memo.

¹²⁸ *Id.*; see also Echjay's Supplemental Section A Response at 5-8.

involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.¹²⁹

The *Preamble* to Commerce's regulations clarifies how Commerce should apply this section in its collapsing analysis, explaining that this list of factors is "non-exhaustive."¹³⁰ The *Preamble* also states that Commerce "has not adopted the suggestion that it will collapse only in 'extraordinary' circumstances. A determination of whether to collapse should be based upon an evaluation of the factors listed in paragraph (f), and not upon whether fact patterns calling for collapsing are commonly or rarely encountered."¹³¹ The *Preamble* states, however, that Commerce must still find that the potential for manipulation of price and production is significant.¹³²

Fresh Cut Flowers details the concerns underlying Commerce's practice of collapsing affiliates, including that Commerce examines the entire respondent, and not only parts of it, due to concerns regarding price and cost manipulation.¹³³ It is Commerce's practice to group affiliated parties to ensure that prices and costs used in the dumping calculation are not influenced by any affiliated relationship.¹³⁴ In *NAACO Materials*, the CIT recognized that the antidumping statute, and Commerce's practice, create a general practice of treating affiliated parties as a single entity where there exists a possibility for manipulation of the prices and costs used in the dumping analysis or where such treatment is otherwise necessary in order to calculate accurately such prices and costs.¹³⁵ In *Queen's Flowers*, the CIT expressly affirmed Commerce's authority to collapse affiliated parties for purposes of an antidumping analysis.¹³⁶

Additionally, Commerce looks for "relatively unusual situations, where the type and degree of relationship is so significant that {it} finds that there is a strong possibility of price

¹²⁹ See 19 CFR 351.401(f).

¹³⁰ See *Preamble*, 62 FR 27296, 27345.

¹³¹ *Id.*

¹³² See *Preamble*, 62 FR at 27345-46. Commerce's practice is consistent with the statement in the *Preamble* that the "significant potential" criteria provided in section 351.401(f) are non-exhaustive. For instance, in *Certain Welded Carbon Standard Steel Pipes and Tubes from India; Final Results of New Shippers Antidumping Duty Administration Review*, 62 FR 47632, 47638 (September 10, 1997), Commerce stated that "{n}ot all of these criteria must be met in a particular case; the requirement is that Commerce determine that the affiliated companies are sufficiently related to create the potential of price or production manipulation." Similarly, in *Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan*, 62 FR 51427, 51436 (October 1, 1997), while it addressed the section 351.401(f) criteria, Commerce made its determination to collapse based on the "totality of the circumstances."

¹³³ See *Certain Fresh Cut Flowers from Colombia; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 42833, 42853 (August 19, 1996).

¹³⁴ See *NACCO Materials Handling Group, Inc. v. United States*, 971 F. Supp. 586, 591-92 (CIT 1997) (*NAACO Materials*).

¹³⁵ *Id.*, at 588-92; See *Queens Flowers de Colombia v. United States*, 981 F. Supp. 617, 622 (CIT 1998).

¹³⁶ See *Queen's Flowers de Colombia v. United States*, 981 F. Supp. 617, 622 (CIT 1997) (*Queen's Flowers*) (Commerce's authority to ignore the separate legal existence of some parties for purposes of calculating dumping margins arises out of the "basic purpose of the statute – determining current margins as accurately as possible," as well as Commerce's responsibility to prevent circumvention of the antidumping law. (internal citations omitted)).

manipulation.”¹³⁷ Although Commerce’s regulations do not address the treatment of non-producing entities (e.g., exporters), where non-producing entities are affiliated, and there exists a significant potential for manipulation of prices and/or export decisions, Commerce has considered such entities, as well as other affiliated entities (where appropriate), as a single entity.¹³⁸

In this case the record evidence supports our finding that it is appropriate to treat Echjay, Echjay Industries, Echjay Forgings, and Spire as a single entity, in accordance with 19 CFR 351.401(f).

Affiliation

As described above, we find that Echjay, Echjay Industries, Echjay Forgings, and Spire are all affiliated with each other. Consequently, the affiliation prerequisite in 19 CFR 351.401(f)(1) for collapsing has been satisfied.

Similarity of Production Facilities and Substantial Retooling

The Echjay single entity argues that we should not collapse Echjay, Echjay Industries, Echjay Forgings and Spire because Commerce declined to do so in *Flanges 2006*. However, the facts in this investigation differ from those in *Flanges 2006*. *Flanges 2006* only concerned Echjay and Echjay Industries, and in that case, we found that the two companies’ production facilities would require substantial retooling to restructure manufacturing priorities.¹³⁹ In that case, we made no mention of restructuring selling priorities.¹⁴⁰ In contrast, here the record evidence indicates that both Echjay and Echjay Industries produced and sold stainless steel flanges during the POI.¹⁴¹

Echjay Forgings stated that it closed its plants and that it is no longer involved in the manufacture of stainless steel flanges, or any other forged products, and has no production facilities.¹⁴² Although record evidence supports Echjay Forgings’ assertions, Echjay and Echjay Forgings both acknowledge that Echjay Forgings sold stainless steel flanges prior to the POI.¹⁴³

¹³⁷ See *Koyo Seiko Co., Ltd. v. United States*, 516 F. Supp. 2d 1323, 1346 (CIT 2007) (*Koyo Seiko*) (citing *Nihon Cement Co. v. United States*, 17 CIT 400, 426 (1993)).

¹³⁸ See, e.g., *Brazil Cold-rolled* at Comment 2; *Automotive Replacement Glass Windshields from the People’s Republic of China*; *Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 25545 (May 7, 2004); *Automotive Replacement Glass Windshields from the People’s Republic of China*; *Final Results of Antidumping Duty Administrative Review*, 69 FR 61790 (October 21, 2004); *Certain Preserved Mushrooms from the People’s Republic of China: Final Results of Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review*, 69 FR 54635 (September 9, 2004) and accompanying IDM at Comment 1. See also *Hontex Enterprises, Inc. v. United States*, 248 F. Supp. 2d 1323, 1343 (CIT 2003) (*Hontex*).

¹³⁹ See *Flanges 2006*.

¹⁴⁰ *Id.* In that review, as here, we found that the board members and managers of Echjay and Echjay Industries constitute the Doshi family, found the Doshi family controlled these companies, and found the companies to be affiliated under sections 771(33)(A) and (F) of the Act. *Id.*

¹⁴¹ See Echjay’s Section A Response at 4-8; Echjay’s Supplemental Section A Response at 12, Exhibit AS-5B; Echjay Affiliation and Single Entity Memo at Attachment I.

¹⁴² See Echjay’s Section A Response at Exhibit A-3(b); Echjay’s Supplemental Section A Response at 13-14 and Exhibit AS-6(b).

¹⁴³ See Echjay’s Supplemental Section A Response at 27.

Although Echjay Forgings did not produce stainless steel flanges during the POI, because it sold stainless steel flanges in the past, we find substantial retooling would not be required to restructure exporting and selling priorities between Echjay and Echjay Forgings.

Record evidence indicates that Spire is a producer and seller of stainless steel flanges. In its October 2017 Section A response, Echjay stated that Spire stopped production of the subject merchandise.¹⁴⁴ In November 2017, Commerce requested a clarification of this statement, because Spire's website indicated it did produce and sell stainless products, including stainless steel flanges.¹⁴⁵ In response, in December 2017, Echjay reiterated its statements concerning Spire's ability to produce stainless steel flanges, and stated it would update Spire's website to reflect this.¹⁴⁶ However, despite Echjay's certified statement that Spire's website would be updated, as of the *Preliminary Determination*, Spire's website continued to identify Spire as a producer of forged products, including stainless steel flanges, as part of Spire's product list.¹⁴⁷ Additionally, while the record evidence does not demonstrate that Spire currently exports stainless steel flanges, Echjay acknowledged in its responses that Spire sold stainless steel flanges in the past.¹⁴⁸ We find that this demonstrates sufficient evidence that Spire is a producer of stainless steel flanges. As such, we find substantial retooling would not be required to restructure exporting and selling priorities between Echjay and Spire.

Thus, we find that the companies' production facilities would require no substantial retooling in order to restructure manufacturing, exporting, and selling priorities between Echjay, Echjay Industries, Echjay Forgings, and Spire. Because of this, we continue to find that this prerequisite in 19 CFR 351.401(f)(1) for collapsing has been satisfied.

Significant Potential for Manipulation of Price or Production - Level of Common Ownership

Based on the record evidence we continue to find that there is significant potential for the manipulation of production or price.¹⁴⁹ Commerce examined, in accordance with 19 CFR 351.401(f)(2)(i), the level of common ownership between the three entities. As noted above, we find the Doshi family to be an affiliated "person" under section 771(33)(F) of the Act. Also, as noted above, the Doshi family owns and controls Echjay, Echjay Industries, Echjay Forgings and Spire, thus, we find these companies to have common ownership, under 19 CFR 351.401(f)(2)(i).

Although the Echjay single entity argues that Commerce should follow *Threaded Rod from India* and not collapse Echjay and its affiliates, we note that in that case, Commerce determined that a family grouping was an affiliated "person" under section 771(33)(A) and (F) of the Act. We also found, under 19 CFR 351.401(f)(2)(i), that there was common ownership because a majority of the shares were owned by a family grouping, and found the companies were owned, directed,

¹⁴⁴ See Echjay's Section A Response at Exhibit A-3(c).

¹⁴⁵ See Commerce's letter, dated November 27, 2017, at 7 and Attachment III.

¹⁴⁶ See Echjay's Supplemental Section A Response at 30.

¹⁴⁷ See Echjay Affiliation and Single Entity Memo at Attachment I.

¹⁴⁸ See Echjay's Supplemental Section A Response at 27.

¹⁴⁹ See *Hontex*, 248 F. Supp. 2d 1323, 1340-42 (noting that the application of collapsing in the NME context may differ from the standard factors listed in the regulation).

and managed by members of a single family grouping, under 19 CFR 351.401(f)(2)(ii).¹⁵⁰ We have made identical findings in this investigation with regard to the Doshi family and Echjay, Echjay Industries, Echjay Forgings and Spire. Thus, *Threaded Rod from India* supports many of the same findings we have made here.

Unlike *Threaded Rod from India*, where there were no common shareholders between the companies, there are significant common shareholders between Echjay, Echjay Forgings, and Spire.¹⁵¹ We have already found that the Doshi family owns and controls Echjay, Echjay Industries, Echjay Forgings and Spire. The Echjay single entity argues that a family partition ensures no cooperation between Echjay and its affiliates. However, the partition between shareholders of Echjay and Echjay Forgings has not been finalized.¹⁵² Moreover, the current family partition does not preclude cooperation among family members in the future. Moreover, in cases such as this one, where the family grouping is the majority owner of all the entities in question, we have found that this ownership structure provides the family grouping the ability and financial incentive to coordinate their actions to act in concert with each other.¹⁵³ In situations where the family grouping enjoys near total ownership and control over the companies, and where each entity is involved in the production or sale of the merchandise under consideration, we find that the family grouping is in a position to have significant influence over the production and sales decisions of each of the entities.¹⁵⁴

Significant Potential for Manipulation of Price or Production – Common Board Members or Managers

We next considered the extent to which there is overlap among the managerial employees or board members of the various companies, in accordance with 19 CFR 351.401(f)(2)(ii). In *Fish Fillets 4*, Commerce found that a family comprising the only shareholders of a group of companies have the ability and financial incentive to coordinate their actions in order to direct those companies to act in concert with each other.¹⁵⁵ Although the Echjay single entity argues there are no overlapping individual board member or managers between Echjay and Echjay Industries, neither the statute nor the regulations require overlapping managers or board members; Commerce's regulations list of factors is a non-exhaustive list of suggested factors for Commerce to consider in determining significant potential for control.¹⁵⁶ As noted above, we find the Doshi family grouping to be a "person" which owns and controls Echjay, Echjay Industries, Echjay Forgings and Spire, and as the Doshi family grouping serves as board members and directors of these companies, we find that there is overlap among the managerial

¹⁵⁰ See *Threaded Rod from India* at Comment 1.

¹⁵¹ See Echjay's Section A Response at Exhibit A-4(a); Echjay's Supplemental Section A Response at Exhibit AS-11.

¹⁵² See Echjay's Section A Response at 10.

¹⁵³ See, e.g., *Aluminum Extrusions* at Comment 4; *India Steel Bar* at Comment 1; *Isos* at Comment 3.

¹⁵⁴ *Id.*

¹⁵⁵ See *Fish Fillets 4* at Comment 1, citing *Notice of Final Results of the Second Administrative Review: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 72 FR 13242 (March 21, 2007) (*Fish Fillets 2*) and accompanying IDM at Comment 1A.

¹⁵⁶ *Id.*

employees or board members of the various companies, in accordance with 19 CFR 351.401(f)(2)(ii).

Another distinguishing fact between this investigation and *Threaded Rod from India* is that Echjay Forgings and Spire share a common director, whereas there were no common directors in *Threaded Rod from India*.¹⁵⁷ In *Ferro Union*, the CIT held that estrangement is not necessary for purposes of determining affiliation,¹⁵⁸ and indeed, the Doshi family does not appear to be legally estranged yet: members of the family hold shares in common with other companies not involved in the sale or production of stainless steel flanges.¹⁵⁹

Significant Potential for Manipulation of Price or Production – Intertwined Operations

With respect to the third factor under 19 CFR 351.401(f)(2), the presence of intertwined operations, there is no information on the record to indicate that the operations of these entities are currently intertwined.

However, the court has recognized that when determining whether there is a significant potential for manipulation, sections 351.401(f)(2)(i) and (ii) are considered by Commerce in light of the totality of the circumstances; no one factor is dispositive in determining whether to collapse affiliated producers/exporters.¹⁶⁰ Additionally, our practice does not require that all three factors be present in order to find potential for manipulation of price or production.¹⁶¹ As noted above, in examining factors that pertain to a significant potential for manipulation, Commerce considers both actual manipulation in the past and the possibility of future manipulation.¹⁶² The *Preamble* underscores the importance of considering the possibility of future manipulation: “a standard based on the potential for manipulation focuses on what may transpire in the future.”¹⁶³ In weighing the three factors, based on the totality of the circumstances, we find that there is significant potential for production and price manipulation between Echjay, Echjay Industries, Echjay Forgings, and Spire.¹⁶⁴

Moreover, while the Echjay single entity argues that Commerce is required to calculate an antidumping duty margin and should examine any issue of manipulation through the administrative review process or through a combination rate, we disagree. In examining these factors as they pertain to a significant potential for manipulation, our practice is to consider both

¹⁵⁷ See Echjay’s Supplemental Section A Response at Exhibits AS-9(a) & AS-10(a).

¹⁵⁸ See *Ferro Union* at 44 F.Supp 2d 1301, 1325-26.

¹⁵⁹ See Echjay’s Section A Response at Exhibit A-4(b).

¹⁶⁰ See *Koyo Seiko*, 516 F. Supp. 2d 1323, 1346, citing *Pipe and Tube from Turkey* at Comment 10.

¹⁶¹ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil*, 64 FR 38756, 38778 (July 19, 1999) (noting that 19 CFR 351.402(f)(2) does not state that all three factors need to be present in order to find a significant potential for the manipulation of price or production).

¹⁶² See *Preamble*, 62 FR at 27346.

¹⁶³ *Id.*

¹⁶⁴ See *Hontex*, 248 F. Supp. 2d 1323, 1340-42 (noting that the application of collapsing in the NME context may differ from the standard factors listed in the regulation). Moreover, as Echjay currently produces and sells stainless steel flanges and Echjay Forgings sold stainless steel flanges prior to the POI, we find that there is significant potential for price manipulation.

actual manipulation in the past and the *potential for future manipulation*.¹⁶⁵ The *Preamble* states that “a standard based on the potential for manipulation focuses on what may transpire in the future.”¹⁶⁶ Moreover, in *Dongkuk*, the CIT noted that in determining whether to collapse two entities: “In examining these factors, Commerce considers both actual manipulation in the past and the *possibility of future manipulation*, which does not require evidence of actual manipulation during the period of review.”¹⁶⁷ In sum, the CIT has upheld Commerce’s practice of determining whether to treat two or more companies as a single entity for antidumping purposes based on a consideration of whether there exists a significant potential for manipulation of prices and/or export decisions.¹⁶⁸ As such, we have continued to collapsing Echjay and its affiliates, based on the potential for future manipulation.

Collapsing *versus* Cross-ownership

We disagree with the Echjay single entity’s argument that, because Commerce did not find Echjay and its affiliates cross-owned in the companion CVD investigation, we cannot collapse them here. The Echjay single entity’s assertion ignores both the substance and the purpose of the different regulations that Commerce applies in AD and CVD proceedings. AD duties are imposed to offset the extent to which foreign merchandise is sold in the United States at prices below normal value.¹⁶⁹ In AD proceedings, a collapsing analysis hinges on whether the two companies have facilities for identical or similar products such that manufacturing priorities could be shifted, or whether two companies both involved in the sale or export of subject merchandise could shift sales and production activity resulting in a significant manipulation of U.S. price.¹⁷⁰ Countervailing duties are levied on subsidized imports to offset the unfair competitive advantages created by foreign government subsidies, whether they are conferred directly on a respondent or are conferred on a company cross-owned by the respondent and attributed to the respondent.¹⁷¹ Commerce only reaches the issue of cross ownership when a company affiliated with the respondent has also received subsidies. A finding of cross-ownership is the mechanism that enables Commerce to attribute to the respondent subsidies granted to another company, *i.e.*, the cross-owned affiliate. Finding cross-ownership in a CVD case does not necessarily lead to a collapsing decision in an AD case, and vice versa.¹⁷² As such, Commerce may make different findings regarding collapsing in an AD and CVD proceeding involving similar or the same respondents.

¹⁶⁵ See *Preamble*, 62 FR at 27346 (emphasis added).

¹⁶⁶ *Id.*

¹⁶⁷ See *Dongkuk*, Slip Op. 2005-75 at 15 (emphasis added).

¹⁶⁸ See *Hontex Enterprises v. United States*, 342 F. Supp. 2d 1225, 1230-34.

¹⁶⁹ See *United States v. American Home Assur. Co.*, 964 F. Supp. 2d 1342, 1353 (Fed. Cir. 2014).

¹⁷⁰ See Section 771(33) of the Act; 19 CFR 351.401(f).

¹⁷¹ See *Wolff Shoe Co. v. United States*, 141 F.3d 1116, 1117 (Fed. Cir. 1998).

¹⁷² See, e.g., *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 75 FR 57444 (September 21, 2010) and accompanying IDM at Comment 21; *Multilayered Wood Flooring from the People’s Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review*; 2013, 81 FR 32291 (May 23, 2016) and accompanying IDM at Comment 1.

Application of AFA

In the *Preliminary Determination*, pursuant to sections 776(a)(2)(A)-(C) of the Act, we applied facts available to the Echjay single entity because Echjay Industries failed to provide necessary information (a home market sales database, cost database, and sales and cost reconciliations), and Echjay Forgings, Echjay Industries, and Spire failed to provide requested accurate production and corporation information by the deadlines, and in the form and manner requested by Commerce.

Commerce stated in the AD questionnaire that responses should be provided from the respondent, including any affiliates involved with production or sales of the products under investigation during the POI. The AD questionnaire was issued in October 2017, and contained a request for a full reconciliation of sales and complete sales databases with a corresponding narrative;¹⁷³ however, Echjay refused to provide such information for this investigation, maintaining that Echjay and Echjay Industries were independent competitors.¹⁷⁴ We again requested full responses to sections B-D of the original questionnaire for Echjay Industries.¹⁷⁵ Echjay reiterated that the questionnaire was not applicable to Echjay Industries, and neither company provided the requested information. Thus, Echjay and Echjay Industries failed to provide the request sales and cost databases for the Echjay single entity that are needed for purposes of calculating a dumping margin. With respect to Spire, Echjay did not provide any of the requested corporate, accounting, production, and sales information.¹⁷⁶ As noted above, we placed information on the record indicating that Spire continues to produce and sell stainless steel flanges; however, Echjay did not respond to any requests for information, such as product specifications, and instead provided a letter from Spire stating that Spire's production facility is not operational.¹⁷⁷ Indeed for many requests for information on Echjay Industries, Echjay Forgings and Spire, Echjay did not provide the requested information and simply stated that the requested information was not applicable with respect to those companies.¹⁷⁸

We continue to find that the Echjay single entity failed to provide complete, accurate, and reliable information. The Echjay single entity bears the burden of creating an accurate and complete record during the course of this investigation.¹⁷⁹ However, the Echjay single entity

¹⁷³ See Commerce's letter to Echjay, dated October 3, 2017, at Appendix V.

¹⁷⁴ *Id.*

¹⁷⁵ See Commerce's Letter to Echjay Forgings Private Limited, Section A Supplemental Questionnaire, dated November 27, 2017 (Echjay's Section A Supplemental Questionnaire) at 7. See also Echjay Affiliation and Single Entity Memo at Attachment 2 for further discussion due to the business proprietary information and Respondent Selection Data Memorandum.

¹⁷⁶ See Echjay's Section A Response at 8-9; and Echjay's Questionnaire at G-10 (General Instructions section where Echjay and all affiliates that produced and/or sold stainless steel flanges in the foreign comparison market and the U.S. market were requested to provide a single narrative response along with sales/cost databases, reconciliations, and calculation worksheets for both the respondent and all affiliates together).

¹⁷⁷ See Echjay's Supplemental Section A Response at Exhibit AS-7B.

¹⁷⁸ *Id.* at 12-15.

¹⁷⁹ See, e.g., *Pipe from the UAE Preliminary Determination*, 77 FR at 32544, quoting *Essar Steel Ltd. v. United States*, 2012 U.S. App. LEXIS 8621 at *22 (Fed. Cir. April 27, 2012) (citing *Zenith Elecs. Corp. v. United States*, 988 F.2d 1573, 1583 (Fed. Cir. 1993)).

failed to meet this burden, despite the opportunities provided by Commerce to do so.¹⁸⁰ The record lacks complete home market and cost databases along with corresponding sales reconciliations from Echjay Industries, as well as production and corporation information from Echjay Industries, Echjay Forgings, and Spire. In keeping with section 782(d) of the Act Commerce provided the Echjay single entity with an opportunity remedy its deficient submissions; however, it failed to remedy its significant deficiencies, as articulated above.¹⁸¹ As such, Commerce finds that the Echjay single entity failed to provide all necessary information that had been requested in the AD questionnaire and supplemental questionnaires by the established deadlines, and significantly impeded the proceeding. Without complete, accurate, and reliable home market sales, U.S. sales, and cost information from the Echjay single entity to calculate a margin in the preliminary determination, we continue to find that application of facts otherwise available, pursuant to sections 776(a)(1) and (2)(A)-(C) of the Act, is warranted, because the Echjay single entity withheld requested information, failed to provide necessary information by the deadlines and in the form and manner requested, and otherwise impeded this proceeding, as detailed above.

Despite Commerce's detailed and specific questionnaires requesting information, the Echjay single entity refused to provide complete and accurate responses, stating that Commerce's questionnaires were not applicable to the Echjay affiliates.¹⁸² The Echjay single entity failed to provide information regarding: (1) an accurate, reliable sales/cost reconciliation regarding its reported sales of subject merchandise to the United States during the POI from Echjay Industries along with requisite sales/cost databases; and (2) full corporate/affiliation information, and full product specifications from Echjay Forgings, Echjay Industries, and Spire. Accordingly, Commerce continues to find, pursuant to section 776(b) of the Act, that the Echjay single entity failed to cooperate to the best of its ability to comply with Commerce's requests for information. Therefore, for this final determination, we continue to find that application of total adverse facts available to the Echjay single entity is warranted.

Comment 3: Product Characteristics used in the CONNUM Methodology

Chandan's Comments:

- Commerce's CONNUM methodology included eight physical characteristics (*i.e.* type, grade, pressure rating, nominal outside diameter, face, finish stage, nominal wall thickness, and weight) to be reported by Chandan.¹⁸³ However, Commerce only used the first six (*i.e.* type, grade, pressure rating, nominal outside diameter, face, and finish stage) in the margin calculation for the *Preliminary Determination*.¹⁸⁴
- Chandan highlighted the abnormal construction of the CONNUM in an *ex-parte* meeting and demonstrated the difference in the cost of manufacture (COM) due to the difference in the physical characteristics of the products in the same CONNUM during

¹⁸⁰ See Echjay's Questionnaire; Echjay's Section A Supplemental Questionnaire.

¹⁸¹ *Id.*

¹⁸² See Echjay's Section A Supplemental Response at 12-15.

¹⁸³ See Chandan's Case Brief at 4.

¹⁸⁴ *Id.* at 5.

verification.¹⁸⁵ Commerce uses the differences in merchandise (DIFMER) adjustment to account for similar products, as opposed to identical products, that are being compared in the home and U.S. market. The DIFMER adjustment itself is a function of Chandan's variable costs. However, in this case, Commerce has calculated the DIFMER for product comparison by computing the weighted average cost for each CONNUM, which has seriously distorted the physical characteristics adjustment allowable per calculation of DIFMER.¹⁸⁶

- Commerce's CONNUM methodology fails to make appropriate adjustment for DIFMER cost differences among products in the product comparison, which is causing the cost among unique products to be combined in one CONNUM, wrongly excluding all low-cost products from the normal value calculation.¹⁸⁷
- Commerce has not provided an explanation¹⁸⁸ why the reported values in fields nominal wall thickness (WALLU/H) and weight (WEIGHTU/H) have not been considered for comparison or computation of normal value in the dumping margin calculation.¹⁸⁹
- Commerce may use information contained in Exhibit D-60¹⁹⁰ to create the cost of production (COP) database with individual product cost for CONNUM utilizing all eight physical characteristics.¹⁹¹ However, at Commerce's request, Chandan stands ready to prepare the COP database using the steps outlined in the case brief.¹⁹²

Petitioners' Comments:

- Chandan's argument that wall thickness and weight have a significant impact on cost is unsupported legally and factually.¹⁹³
- Chandan's argument is not supported by law.¹⁹⁴ Specifically, pursuant to section 771(16)(A) of the Act, Commerce first matches U.S. sales to the "foreign like product" which is "identical" in physical characteristics.¹⁹⁵ Although the statute is silent with respect to the methodology Commerce must use when matching, the courts have found that Commerce has considerable discretion in creating a methodology for identifying foreign like products.¹⁹⁶
- Commerce has interpreted the word "identical" to mean the same with minor differences in physical characteristics, if those minor difference are not commercially significant.¹⁹⁷

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* at 5-6.

¹⁸⁷ *Id.* at 6-11.

¹⁸⁸ *Id.* at 12 (Chandan has not found any explanation on the record).

¹⁸⁹ *Id.* at 12.

¹⁹⁰ *Id.* at 13-15 (Chandan provided steps to derive the COP database from Exhibit D-60).

¹⁹¹ *Id.* at 13.

¹⁹² *Id.* at 15.

¹⁹³ See the Petitioners' Chandan Rebuttal Brief at 2.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* at 2-3, citing *JTEKT Corp. v. United States*, 717 F. Supp. 2d 1322, 1329 (CIT 2010); *SKF USA, Inc. v. United States*, 537 F.3d 1373, 1379 (Fed. Cir. 2008); *Pesquera Mares Australes Ltda. v. United States*, 266 F.3d 1372, 1384 (Fed. Cir. 2001); *Kayo Seiko Co. v. United States*, 66 F.3d 1204, 1209 (Fed. Cir. 1995)).

¹⁹⁷ *Id.* at 3, citing Section 771(16)(A) of the Act; *Union Steel v. United States*, 753 F. Supp. 2d 1317, 1322 (CIT 2011)).

Thus, contrary to Chandan's assertions, similar merchandise may be considered "identical" within the meaning of section 771(16)(A) of the Act.¹⁹⁸

- Commerce does not face restrictions with regard to Chandan's claim that Commerce may not include products with different product codes or different product specifications within the same CONNUM.¹⁹⁹
- Chandan points to *Rautaruukki Oy v. United States*²⁰⁰ to support its contention that products that are not identical cannot be in the same CONNUM.²⁰¹ However, in that case, the Court explained that it had accepted Commerce's position that some specification differences may be important while some may not.²⁰² Commerce in its remand determination also stated that the assigning of different CONNUMs based on product specification difference was common in "steel plate cases on industry purchasing practices."²⁰³ Thus, Commerce's reasoning in that proceeding indicated that it was based on the particular product at issue and does not equate to a general policy for all products.²⁰⁴
- Chandan did not provide an argument regarding the treatment of its products in its brochure. Additionally, Chandan's product brochure shows that there is no distinction made among products based on wall thickness or weight.²⁰⁵ Chandan's brochure identifies type, pressure class, and size range (*i.e.*, diameter), all of which are included in the CONNUM.²⁰⁶
- Chandan has failed to demonstrate why differences in wall thickness and/or weight render products non-identical under Commerce's methodology.²⁰⁷ Chandan does not explain why, or argue, that wall thickness or weight are commercially significant physical differences.²⁰⁸ Chandan bases its argument entirely on differences in cost.²⁰⁹ However, Commerce has repeatedly determined that differences in cost are not the basis for defining CONNUMs or matching sales of non-identical products.²¹⁰
- While Chandan provided various examples, which it asserts reveal that wall thickness, and weight result in significant cost differences, the data presented does not demonstrate that cost differences among products within the same CONNUM are the result of differences in wall thickness and/or weight.²¹¹

¹⁹⁸ *Id.* at 3.

¹⁹⁹ *Id.*

²⁰⁰ *Id.* at 3, citing *Rautaruukki Oy v. United States*, No.97-05-00864, slip op. 99-39 (CIT Apr. 27, 1999).

²⁰¹ *Id.* at 3.

²⁰² *Id.* at 4.

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.* at 4-5.

²⁰⁷ *Id.* at 5.

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.* at 5-6, citing *Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 82 FR 16366 (April 4, 2017) and accompanying IDM at 22.

²¹¹ *Id.* at 6-7.

- Chandan did not submit comments within the timeframe identified by Commerce.²¹² Commerce's deadline for all comments on the product characteristics to be used to develop CONNUMs was September 25, 2017.²¹³ However, Chandan submitted comments more than a month past the deadline in its Section A Questionnaire Response.²¹⁴

Commerce's Position: As an initial matter, Commerce continues to find that Chandan's comments on physical characteristics, which were filed on October 31, 2017, were filed after the September 25, 2017, deadline to file comments and the October 5, 2017, deadline to file rebuttal comments on physical characteristics.²¹⁵ Because Chandan's comments on physical characteristics were untimely filed, and also because Chandan did not file such comments on the record of the companion China AD investigation, as instructed in the *Initiation Notice*, Commerce is not considering Chandan's untimely and improperly filed comments on physical characteristics for the final determination.

Comment 4: Application of Partial AFA for Packing Costs

Chandan's Comments:

- Commerce is incorrect in stating that Chandan did not cooperate to the best of its ability in providing supporting documentation for the reported packing cost because Commerce requested information twice from Chandan and that Chandan withheld that information.²¹⁶
- In Exhibit B-17 and C-17, Chandan provided Commerce with the calculation of actual packing cost from the home and U.S. sales markets, which were derived from the trial balance in Exhibit D-8. Furthermore, all this information was timely submitted to the record.²¹⁷ Thus, Chandan worked to the best of its ability and Commerce's contention that Chandan withheld information is inaccurate and misleading.²¹⁸
- Chandan stated that the missing exhibit (*i.e.*, Exhibit B-35) was inadvertently omitted in splitting documents into smaller sized PDFs, which is required for electric filing on ACCESS.²¹⁹ Thus, there was no deliberate withholding of information, as Commerce suggests.²²⁰
- Given the huge demands and tight deadlines of the questionnaire process, any failure of Chandan to fully, perfectly answer a questionnaire, or multiple questionnaires, does not *ipso facto* mean that it did not try to act to the best of its ability;²²¹ therefore AFA is unlawful when based solely on that criterion.²²²

²¹² *Id.* at 7.

²¹³ *Id.* at 7, citing the *Initiation Notice*.

²¹⁴ *Id.* at 7.

²¹⁵ See Chandan's Section A Response.

²¹⁶ See Chandan's Case Brief at 15.

²¹⁷ *Id.* at 15.

²¹⁸ *Id.* at 15-16.

²¹⁹ *Id.* at 16.

²²⁰ *Id.* at 16.

²²¹ *Id.* at 16, citing *Mannesmannrohr n-Werke AG v. United States*, 77 F. Supp. 2d 1302, 1315-16 (CIT 1999).

²²² *Id.* at 16, citing *Nippon Steel*, 337 F. 3d 1373.

- Chandan has provided the entire general ledgers, production ledgers, standard input-output norms for the POI on the record of this investigation, proving that Chandan has been nothing but fully cooperative, acted to the best of its ability, and had no intent of not providing any details to Commerce.²²³
- Commerce's failure to consider the reported packing costs at verification that are on the record violates its obligation to provide an opportunity to verify the documents already on the record.²²⁴
- Chandan's request was denied by Commerce to submit the missing exhibit, when it came to Chandan's attention.²²⁵ Additionally, Commerce issued post-preliminary determination supplemental questionnaires concerning other issues, which did not provide an opportunity for Chandan to provide accurate and full information, thereby improperly freezing its decision at the preliminary stage of the investigation.²²⁶
- Chandan requests Commerce accept the reported packing cost calculation that is on the record, including the total packing expenses which were verified by the cost verification team in CVE-4.²²⁷ Furthermore, at a minimum, non-adverse facts available are warranted as to the calculation of packing costs.²²⁸

Petitioners' Comments:

- Chandan's argument failed to demonstrate an error in the *Preliminary Determination* and relies on an incorrect understanding of the law and a selective reading of the facts.²²⁹
- The U.S. Court of Appeals for the Federal Circuit (CAFC) has made clear that the application of AFA contains no intent requirement.²³⁰ Furthermore, the Court has recognized that although mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.²³¹ Therefore, whether Chandan deliberately withheld this information or it simply was overlooked, as Chandan suggests, is of no consequence.²³²
- Based on Chandan's responses in the original questionnaire and a supplemental questionnaire, and because Chandan failed to provide appropriate supporting documentation, Commerce's finding that Chandan failed to cooperate to the best of its ability is fully supported.²³³
- Commerce has no requirement to provide Chandan another opportunity to provide missing information.²³⁴ Furthermore, if Commerce were required to provide respondents

²²³ *Id.* at 17.

²²⁴ *Id.* at 18.

²²⁵ *Id.* at 18.

²²⁶ *Id.* at 19.

²²⁷ *Id.* at 19.

²²⁸ *Id.* at 19.

²²⁹ See the Petitioners' Chandan Rebuttal Brief at 9.

²³⁰ *Id.* at 9 (citing *Nippon Steel*, 337 F.3d 1373, 1383).

²³¹ *Id.*

²³² *Id.*

²³³ *Id.* at 11.

²³⁴ *Id.* at 11, citing Section 782 of the Act.

with an unending number of opportunities to remedy deficient responses, there would be no incentive for respondents to provide full information in a timely fashion.²³⁵

- Chandan had an obligation to provide the information requested within the timelines established.²³⁶ Therefore, Commerce is under no obligation to accept untimely information simply because time remains in the proceeding.²³⁷
- The petitioners raised the issue of the missing documentation in its January 30, 2018, comments and again in its pre-preliminary determination comments on February 23, 2018.²³⁸ Furthermore, Chandan did not offer to correct the omission until March 27, 2018, after it resulted in the application of AFA. Therefore, Chandan is incorrect when stating that it attempted to remedy the issue immediately after the inadvertent omission was brought to its attention.²³⁹
- Chandan points to the general ledger data as being verified to support the reported packing expense.²⁴⁰ However, Chandan failed to provide a demonstration of how the general ledger data fully support its reported packing cost.²⁴¹ Thus, the record does not support Chandan's reported packing expenses.²⁴²
- Commerce properly applied AFA with respect to Chandan's packing expenses and should continue to do so for the final determination.²⁴³

Commerce's Position: As an initial matter, Commerce's cost verification team did not verify the packing cost as Chandan suggests.²⁴⁴ Specifically, Chandan suggests the general ledger, which is part of the cost reconciliation, has the necessary information and that this information has been verified. However, Chandan failed to demonstrate, in its case brief, how the general ledger supports its reported packing cost. Thus, the record does not support Chandan's reported packing expenses.

Chandan argues that any failure to fully answer a questionnaire perfectly does not *ipso facto* mean that it did not try to act to the best of its ability and, therefore, AFA is unlawful, because Chandan worked to the best of its ability; however, this argument is unsubstantiated by law. The CAFC has explained that, while the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.²⁴⁵ Thus, the application of AFA contains no intent requirement.²⁴⁶

²³⁵ *Id.*

²³⁶ *Id.* at 12.

²³⁷ *Id.* at 11.

²³⁸ *Id.*

²³⁹ *Id.* at 12.

²⁴⁰ *Id.*

²⁴¹ *Id.* at 13.

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ See Chandan's Letter, "Certain Stainless Steel Flanges from India (A-533-877), Chandan Steel Limited's submission of Cost Verification Exhibits," dated April 18, 2018 (Cost Verification) at CVE-4 (Cost Reconciliation).

²⁴⁵ See *Nippon Steel*, 337 F.3d 1373, 1383.

²⁴⁶ *Id.*

Commerce provided Chandan two opportunities to report packing cost with supporting documentation. First, in the AD questionnaire, we requested that Chandan report its home market and U.S. packing cost.²⁴⁷ However, Chandan's initial response contained only worksheets and no supporting documentation. Therefore, we requested, for the second time, complete supporting documentation, such as calculation worksheets with source documentation for each component of the packing calculation.²⁴⁸ In its response, Chandan only provided the packing cost worksheets from its prior response and stated that it was providing supporting documentation in an exhibit, but did not, in fact, provide the exhibit.²⁴⁹ The missing supporting documentation could have provided Commerce with information needed to determine the accuracy of the reported packing cost calculation. Because this information was missing, Commerce could not rely on Chandan's packing cost calculation. Thus, we continue to find that the necessary information is not on the record, that Chandan withheld requested information, and did not provide requested information by the established deadlines. Accordingly, pursuant to sections 776(a)(1) and 776(b)(2)(A)-(B) of the Act, we find that the use of facts available is appropriate.

Finally, Chandan's claim that it attempted to remedy the issue immediately after the "inadvertent omission" was brought to its attention is not supported by the record. The petitioners raised the issue of the missing documentation twice, in addition to Commerce's request for the missing information.²⁵⁰ However, Chandan did not offer to correct the omission until almost two months after the issue was first raised and only after it resulted in the application of AFA.²⁵¹ Thus, the record demonstrates that Chandan failed to provide timely, complete, and accurate reporting of its home market and U.S. packing costs, even after Commerce twice requested this information. As a result, in accordance with section 776(b) of the Act, we find that Chandan failed to cooperate to the best of its ability and, thus, that the application of partial adverse facts available is warranted.²⁵²

Comment 5: Home Market Sales Viability

Petitioners' Comments:

- The information submitted by Chandan to support its assertion that certain home market sales were for consumption outside of India falls short of demonstrating that Chandan knew, or should have known, when it made the sales, that the merchandise was not for

²⁴⁷ See Chandan's AD Questionnaire, at B-25 to B-26 and C-29.

²⁴⁸ See Commerce's Supplemental Questionnaire to Chandan, dated January 2, 2018, at 7.

²⁴⁹ See Chandan's Sections B-D Response, dated November 30, 2017, at Exhibit B-17; and Chandan's Supplemental A-C Response, dated January 25, 2018, at Exhibit B-17 and Exhibit B-35.

²⁵⁰ See Petitioners' letter, "Stainless Steel Flanges from India: Petitioners' Comments on Chandan's Supplemental Section A, B, and C Questionnaire Response," dated January 30, 2018; Petitioners' letter, "Stainless Steel Flanges from India: Petitioners' Pre-Preliminary Determination Comments Regarding Chandan," dated February 23, 2018. See also Commerce's Letter, "Stainless Steel Flanges from India: Supplemental Questionnaire," dated January 2, 2018.

²⁵¹ See Chandan's letter, (Certain Stainless Steel Flanges from India (A-533-877), Chandan Steel Limited's post-preliminary disclosure comments," dated March 27, 2018.

²⁵² For an explanation of how Commerce has applied partial adverse facts available with respect to Chandan's home market and U.S. packing costs, see the "Calculation of NV Based on Comparison-Market Prices" section in the *Preliminary Determination*.

the home market.²⁵³ Additionally, Chandan does not argue that, at the time it made the sale, it knew or should have known the sales were for export.²⁵⁴ The documentation Chandan provided indicates that Chandan had every reason to believe that these sales were for consumption in India.²⁵⁵

- Commerce has previously found that, under Indian law, a buyer is required to tell a seller that merchandise being purchased is for export and the seller must report such sales as deemed exports.²⁵⁶ However, Chandan has not demonstrated that it knew, or should have known, at the time of sale that its sales were destined for a third country.²⁵⁷
- The reported home market sales for consumption outside of India should be treated as home market sales. Thus, Chandan's home market is viable and normal value should be based on home market sales prices.²⁵⁸
- As this information is not on the record, Commerce should rely on facts available.²⁵⁹ Specifically, Commerce should rely on the average dumping margin calculated in the Petition (*i.e.*, 109.8 percent).²⁶⁰

Chandan's Comments:

- Commerce sales verification team verified the documents related to the sales of the home market sales for consumption outside of India.²⁶¹ Specifically, the sales contract contains the packing type Chandan agreed to with the buyer, which agreed to make the packaging in "Export Quality."²⁶²
- The sales contract indicates that the markings on the flanges will carry the logo and stamping of a petitioner's affiliate company in a third country market (*i.e.*, home market sales for consumption outside of India).²⁶³ Thus, the petitioners are misrepresenting and concealing facts from Commerce with respect to the destination of these sales made to their affiliate in India.²⁶⁴ Additionally, the petitioners never denied that all Chandan sales to their affiliate in India were for export.²⁶⁵
- The petitioners argue that Chandan should have accounted for sales destined for consumption outside India as "Deemed Exports."²⁶⁶ However, no law or legislation in

²⁵³ See the Petitioners' Chandan Case Brief at 4-5.

²⁵⁴ *Id.* at 5.

²⁵⁵ *Id.* at 5.

²⁵⁶ *Id.* at 6, citing *Certain Polyethylene Terephthalate Resin from India: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 13327 (March 14, 2016) and accompanying IDM.

²⁵⁷ *Id.* at 6.

²⁵⁸ *Id.* at 6.

²⁵⁹ *Id.* at 7, citing Section 776 of the Act.

²⁶⁰ *Id.* at 7.

²⁶¹ See Chandan's Rebuttal Brief at 3, citing Verification Exhibit (VE) – 23.

²⁶² *Id.* at 3.

²⁶³ *Id.* at 3.

²⁶⁴ *Id.* at 3.

²⁶⁵ *Id.* at 4.

²⁶⁶ *Id.* at 4.

India mandates such treatment.²⁶⁷ A sale is only accounted as a “Deemed Export” by companies in India when the goods are cleared without payment of taxes to the buyer.²⁶⁸

Commerce’s Position: We disagree with the petitioners that the information Chandan provided is insufficient to result in a determination that certain Chandan home market sales were for consumption outside of India. Specifically, Commerce verified sales documentation of home market sales for consumption outside of the exporting country (*i.e.*, India). Thus, the record indicates Chandan knew which home market sales were destined for export.²⁶⁹

Section 773(a)(1)(B) of the Act states that we may base normal value (NV) on the price at which the foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country, is in the usual commercial quantities and in the ordinary course of trade, if such a price is representative, and the administering authority does not determine that a particular market situation in such other country prevents a proper comparison with the EP or CEP. Furthermore, to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales) we normally compare the respondent’s volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. If we determine that no viable home market exists, we may, if appropriate, use a respondent’s sales of the foreign like product to a third-country market as the basis for comparison market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404. Additionally, to determine whether there was a sufficient volume of sales in the home market or in the third country to serve as a viable basis for calculating NV, we compared Chandan’s volume of home-market and third-country sales of the foreign like product to the respective volume of U.S. sales of the subject merchandise in accordance with sections 773(a)(1)(B) and (C) of the Act. Here, we found that Chandan’s aggregate volume of sales of foreign like product in the home market was less than five percent of the company’s sales of subject merchandise to the United States. Specifically, we find that the sales contract contains the packing terms that Chandan agreed to with the buyer, which shows an agreement to make the packaging of export quality.²⁷⁰ Thus, Chandan provided documentary evidence demonstrating that it knew, at the time of the sale, that the ultimate destination was outside of India. Specifically, the sales contract stated that the flanges were to be marked with an affiliate’s logo that was outside of India. Therefore, in accordance with section 773(a)(1)(C) of the Act, we find that Chandan’s home market sales are not viable.

The petitioners’ argument that Chandan’s home market is viable, and therefore NV should be based on home market sales prices, is unsubstantiated. As a result, Commerce finds the comparison market viable, and because sufficient information is on the record to calculate NV, Commerce finds that it is not appropriate to rely on facts available. Accordingly, the use of AFA is not warranted for the final determination.

²⁶⁷ *Id.* at 4.

²⁶⁸ *Id.* at 4.

²⁶⁹ See Chandan Sales Verification Report at VE – 23.

²⁷⁰ *Id.*

Comment 6: Credit Expenses

Petitioners' Comments:

- Chandan reported that U.S. credit expense (CREDITU) was left blank in the U.S. sales database for transactions for which payment has not yet been received.²⁷¹ Therefore, Commerce should use the date of the final determination, August 10, 2018, as the date of payment.²⁷²

Commerce's Position: We agree with the petitioners, in part, and will set the payment date for the unpaid U.S. sales equal to the signature date of the *Preliminary Determination*. We acknowledge that in the final results of past cases, Commerce has set the payment date for unpaid sales equal to the date of the final determination, to the last date to submit new information, or the date of the last submission, depending on the circumstances.²⁷³ However, Commerce has relied on the preliminary determination date when Commerce has not requested additional information from a respondent following the issuance of the preliminary determination.²⁷⁴ In this case, Commerce did not request additional information and, consequently, Commerce will use the preliminary determination date as the payment date for all unpaid U.S. sales.

Comment 7: Clarification of the Scope of the Order

Petitioners' Comments:

- The scope states that the size and descriptions of flanges within the scope include all pressure classes of ASME B16.5.²⁷⁵ However, it does not include language that states flanges must have a pressure class of ASME B16.5 to fall within the scope.²⁷⁶
- Commerce should confirm that the physical description of the scope is dispositive and that compliance, or non-compliance, with any particular standard does not dictate whether merchandise is in scope.²⁷⁷

Commerce's Position: We agree with the petitioners. The scope states that “Certain forged stainless steel flanges are generally manufactured to, *but not limited to*, the material specification of ASTM/ASME A/SA182 or comparable domestic or foreign specifications” (emphasis added). In the Verification Report, we inadvertently indicated that certain Chandan products were of a

²⁷¹ See the Petitioners' Chandan Case Brief at 10.

²⁷² *Id.* at 11.

²⁷³ See *Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago*, 70 FR 12648 (March 15, 2005) and accompanying IDM at Comment 3; *Notice of Final Results of Antidumping Duty Administrative Review: Individually Quick Frozen Raspberries from Chile*, 70 FR 6618 (February 2, 2005) and accompanying IDM at Comment 11; and *Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel from Germany*, 67 FR 55802 (August 30, 2002) and accompanying IDM at Comment 4.

²⁷⁴ See *Stainless Steel Bar from France: Final Results of Antidumping Duty Administrative Review*, 70 FR 46482 (August 10, 2005) and accompanying IDM at Comment 8.

²⁷⁵ See the Petitioners' Chandan Case Brief at 12.

²⁷⁶ *Id.* at 12.

²⁷⁷ *Id.* at 12.

certain pressure class, and therefore, not covered by the scope.²⁷⁸ This was an unintentional error. We confirm that the physical description of the scope is dispositive and that subject merchandise includes, but is not limited to, merchandise meeting the referenced standards.

Comment 8: Import Duties

Petitioners' Comments:

- Chandan failed to demonstrate that its reported direct material costs include all import duties, as required by Commerce. Chandan stated that “all internal taxes not refunded/allowed credit are reported in cost of materials.” Thus, Chandan’s costs include only import duties not refunded, and as such, do not include the full value of import duties.²⁷⁹
- Chandan’s incomplete reporting is further demonstrated by how the company records the payment of import duties. Specifically, it appears that only non-refunded duties are recorded with material costs.²⁸⁰
- The comparison of the worksheets provided by Chandan showing the total import duty amount incurred on all purchases of raw materials and the duty amount used in the calculation of the duty included in the reported material costs, indicates that Chandan included only a portion of total duties in the reported material cost.²⁸¹
- As the information on the full value of import duties incurred for the direct materials is not on the record, Chandan failed to provide such information in the manner requested by Commerce and has failed to cooperate to the best of its ability in responding to Commerce’s requests. Therefore, Commerce should apply AFA with respect to Chandan’s reporting of import duties. As AFA, Commerce should rely on the amount of duty drawback reported by Chandan in its sales databases and should include duty drawback as an upward adjustment to Chandan’s third country market sales and continue to exclude any such adjustment from its U.S. sales.

Chandan did not comment on this issue.

Commerce’s Position: We disagree with the petitioners. First, Chandan’s statement cited by the petitioners (*i.e.*, that all internal taxes not refunded/allowed credit are reported in cost of materials) refers to internal taxes paid by Chandan in India, while the duties on imported materials (*i.e.*, Basic Custom Duty, or BCD) are included in the cost of materials, as explained by Chandan in its section D response.²⁸² This is further supported by the journal entries provided by Chandan which show that the only taxes not included in the cost of imported materials are taxes related to the CENVAT credit scheme (*i.e.*, VAT). Thus, Chandan normally includes import duties when recording material purchases in inventory and the reported costs include the cost of import duties. Further, the cost reconciliation reviewed at verification did not reveal any under-reported costs or excluded import duties. The duty field provided by Chandan in the cost database was requested by Commerce for informational purposes only and was not used in the

²⁷⁸ See Chandan Sales Verification Report at 5.

²⁷⁹ See the Petitioners’ Chandan Case Brief.

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² See Chandan’s Section D Response at 10-11.

calculation of the cost of production. Chandan does not normally track separately import duties included in the cost of materials, therefore, the duty field was calculated outside of Chandan's normal accounting system using a series of worksheets, and represents the company's estimate of the duties included in the cost of materials.²⁸³ As for the petitioners' comparison of duties from various worksheets used by Chandan in calculating the estimated duties, we find that in these circumstances, it is not unreasonable that the amount of duties paid on materials used only for merchandise under consideration would differ from the amount of duties paid on all imported materials. These estimated per-unit duty amounts were requested by Commerce for the sole purpose of being used in calculating the duty drawback adjustment to the U.S. price. However, since Chandan did not satisfy the requirements for a duty drawback adjustment for the final determination, the estimated duty calculation at issue will not be used. Accordingly, we find that there is no record evidence to support the petitioners' claim that Chandan's reported material costs excluded any import duties and, thus, we find that Chandan cooperated to the best of its ability in responding to all of Commerce's requests with regard to this aspect of the calculation. Therefore, the use of AFA is not warranted for the final determination.

Comment 9: G&A Expense Ratio Calculation

Chandan's Comments:

- Commerce incorrectly recalculated Chandan's general and administrative (G&A) expense ratio in its Cost Verification Report based partially on figures for the POI and partially on figures for the last audited fiscal year, which is inconsistent with Commerce's practice of using the fiscal year amounts in the G&A ratio calculation.²⁸⁴
- Commerce should revise its methodology to calculate the G&A expense ratio based only on the amounts reported in the audited financial statements for the year ended March 31, 2017, and adjust Chandan's reported G&A expense ratio per the calculation provided in Chandan's case brief.²⁸⁵

Petitioners' Comments:

- Chandan's claim is incorrect. A review of the record shows that Commerce's revised G&A expense calculation is based entirely on data for the fiscal year, (*i.e.*, April 1, 2016 through March 31, 2017).²⁸⁶
- Commerce recalculated Chandan's reported G&A expense ratio because Chandan's calculation did not account for the change in finished goods inventory, did not eliminate the full amount of financial costs, excluded "non-cost items," and offset the expenses with consulting income, as noted in the verification report. For the final determination, Commerce should rely on the revised calculation of Chandan's G&A expense ratio based on its verification of Chandan's costs.²⁸⁷

²⁸³ See Chandan's Supplemental Section D Response at Exhibit D-27.1.

²⁸⁴ See Chandan's Case Brief.

²⁸⁵ *Id.*

²⁸⁶ See the Petitioners' Chandan Rebuttal Brief.

²⁸⁷ *Id.*

Commerce's Position: We disagree with Chandan that Commerce did not rely on Chandan's fiscal year costs in calculating the revised G&A expense ratio in the cost verification report. Commerce's adjustments to Chandan's reported G&A expense ratio start with the amounts reported by Chandan for the fiscal year, as is evident from the company's calculation submitted on November 30, 2017, in exhibit D-21. Further, all of Commerce's adjustments are also based on the fiscal year amounts, as exhibit D-21 shows.²⁸⁸

Chandan's audited financial statements do not separately identify selling and G&A expenses. To calculate the submitted POI COM, the company needed to remove selling and G&A expenses from the total costs. To classify the POI expenses as either selling or G&A, Chandan reviewed the details of each expense account and allocated the corresponding amounts to either COM, G&A or selling expenses. In its G&A expense ratio contained in the submission dated November 30, 2017, Chandan allocated its total fiscal year expenses to selling and G&A using its POI experience of allocating such expenses. Chandan's reported G&A expense ratio, as verified by Commerce and described in the verification report, follow the same allocation methodology.²⁸⁹ However, Chandan's proposed recalculation of its G&A expense ratio as contained in its case brief uses a different methodology. Specifically, in its proposed recalculation, Chandan assigned certain expense accounts entirely to either G&A or selling expenses.²⁹⁰ Thus, rather than including in the G&A expenses the corresponding amounts that were treated as G&A in calculating the POI COM, Chandan assigned the fiscal year expense amounts to G&A, selling and COM using a different methodology. Such use of inconsistent methodologies is not reasonable. For example, portions of "Insurance expenses" and "Traveling and conveyance expenses" were treated and verified as G&A for purposes of calculating the POI COM, however they were completely excluded from the fiscal year G&A expenses in calculating Chandan's recalculated G&A expense ratio.²⁹¹

Moreover, in Chandan's proposed recalculation, the financial expenses deducted from the total costs in arriving at the denominator of the G&A expense ratio were offset by exchange gains, even though such gains were not part of the total costs. Since the exchange gains are recorded in the revenue section of the income statement, they were not deducted from the total POI costs in determining the POI COM. As such, the denominator of the G&A expense ratio in Chandan's proposed calculation is on a different basis from the COM to which the ratio is applied.

Therefore, for the final determination, we relied upon the G&A methodology originally reported by Chandan in its response dated November 30, 2017. We adjusted the denominator of Chandan's G&A expenses ratio to include the change in finished goods inventory and to exclude the correct amount of financial expenses. We adjusted the numerator of the ratio by including charitable donations and company's contributions under "corporate social responsibility" because such expenses relate to the general operations of the company. We disallowed the offset to the G&A expenses for consulting income, because it was recorded as revenue from operations

²⁸⁸ See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination - Chandan Steel Limited," dated August 10, 2018.

²⁸⁹ *Id.*

²⁹⁰ See Cost verification at Exhibit 6.

²⁹¹ See Cost Verification at Exhibits 4 and 6.

(i.e., sales of services) on the income statement and as such, represents revenue from a separate line of business (consulting services), rather than non-operating or other income related to the general operations of the company. For details, see Final Cost Calculation Memorandum.²⁹²

Comment 10: Antidumping Duty Cash Deposit Rate offset by the Countervailing Duty Export Subsidy Rate

Bebitz/Viraj's Comments:

- Commerce should reduce the antidumping duty cash deposit rate by the CVD export subsidy rate, which is done when AFA is applied.²⁹³

Echjay's Comments:

- In other cases, even when Commerce imposed a total AFA AD rate, it then also offset that rate for the CVD export subsidy for the AD cash deposit. Thus, Commerce should offset here.²⁹⁴

Commerce's Position: Commerce agrees with respondents, in part, that it is Commerce's practice, in AD investigations, to initially calculate a dumping margin and then to offset that figure by any export subsidy cash deposit rate calculated in the concurrent CVD investigation in the cash deposit instructions to CBP.²⁹⁵ Section 772(c)(1)(C) of the Act directs Commerce to increase EP or CEP by the amount of the countervailing duty "imposed" on the subject merchandise "to offset an export subsidy." The basic theory underlying this provision is that in parallel AD and CVD investigations, if Commerce finds that a respondent received the benefits of an export subsidy program, it is presumed the subsidy contributed to lower-priced sales of subject merchandise in the United States market. Thus, the subsidy and dumping are presumed to be related, and the imposition of duties against both would in effect be "double-application" – a or imposing two duties against the same situation. Section 772(c)(1)(C) of the Act therefore requires that Commerce factor the affirmative export subsidy determination into the AD calculations to prevent this "double-application" of duties.

Commerce has interpreted the term "imposed" to mean "assessment" in past investigations, and the CIT has affirmed this interpretation.²⁹⁶ Commerce also has recognized, however, that cash deposit rates are estimates of the AD duties which may ultimately be assessed, and are applied in investigations to provide the United States with security for the collection of AD duties, if appropriate, at some future point. Cash deposit rates become final assessment rates when

²⁹² See Memorandum to Neal M. Halper from Laurens van Houten, Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Chandan Steel Limited, dated August 10, 2018 (Final Cost Calculation Memorandum).

²⁹³ See Bebitz/Viraj's Case Brief at 4.

²⁹⁴ See Echjay's Case Brief at 5.

²⁹⁵ See *Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006) and accompanying IDM at Comment 1.

²⁹⁶ See *Notice of Final Determination of Sales at Less Than Fair Value: Honey from Argentina*, 66 FR 50612 (October 4, 2001); see also *Serampore Industries v. United States*, 675 F. Supp. 1354, 1360 (CIT 1987).

administrative reviews are not requested,²⁹⁷ are subject to modification, and, as noted above, serve a different purpose than assessment rates. However, they are calculated on the basis of all of the information on the record and, in most respects, are calculated in the same manner as assessment rates determined in reviews. Therefore, Commerce has recognized that although the statute is silent as to the application of export subsidy offsets during an investigation, the same underlying theory of “double-application” which applies to the imposition of duties also applies to Commerce’s calculation of a cash deposit rate.²⁹⁸ Thus, Commerce’s longstanding practice in an investigation is to offset the AD cash deposit rate by the export subsidy cash deposit rate.²⁹⁹

Commerce is continuing to follow that practice here, where there are concurrent AD and CVD investigations of the merchandise under consideration, pursuant to section 772(c)(1)(C) of the Act. Additionally, Commerce adheres to this practice regardless of whether the export subsidy rate is based on AFA. Therefore, for the final determination, Commerce will offset the AD cash deposit rate by the export subsidy rate calculated in the concurrent CVD investigation for Chandan and all others rate by the CVD “all other” subsidy rate, and the Echjay single entity’s AD cash deposit rate will be offset by the export subsidy rate for those programs which it used. With respect to Bebitz/Viraj single entity, we will not provide an offset because we applied total AFA in calculating the entity’s net subsidy rate in the CVD investigation.

IX. Conclusion

We recommend applying the above methodology for this final determination.

☒

Agree

☐

Disagree

8/10/2018

X

James Maeder

Signed by: JAMES MAEDER

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

²⁹⁷ See 19 CFR 351.212(c).

²⁹⁸ See *Utility Scale Wind Towers From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 75992 (December 26, 2012) and accompanying IDM at Comment 5.

²⁹⁹ See *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Final Affirmative Determination of Sales at Less than Fair Value*, 83 FR 16296 (April 16, 2018).