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

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

SUBJECT: Decision Memorandum for the Preliminary Results of
Antidumping Duty Administrative Review: Stainless Steel Bar
from India: 2017-2018

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on stainless steel bar (SS Bar) from India covering the period of review (POR) February 1, 2017, through January 1, 2018. We selected two companies for individual examination in this administrative review: Jindal Stainless Hisar Ltd. (JSHL), and Venus Wire Industries Pvt. Ltd., and its affiliates including Hindustan Inox Ltd., Precision Metals and Sieves Manufacturers (India) Pvt. Ltd. (collectively, the Venus Group). We preliminarily determine that JSHL and the Venus Group made sales of the subject merchandise at prices below normal value (NV). We are conducting this administrative review of the order in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.213.

II. BACKGROUND

On February 21, 1995, we published in the *Federal Register* an AD order on SS Bar from India.¹ On January 26, 2018, Laxcon Steel requested an administrative review.² On February 26, 2018,

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

² See Letter to Commerce from Laxcon Steel, "Stainless Steel Bar from India: New Shipper Review, Annual



Jindal Stainless Limited requested an administrative review.³ On February 27, 2018, JSHL requested an administrative review.⁴ On February 28, 2018, the Venus Group requested an administrative review.⁵

On April 16, 2018, Commerce initiated this administrative review.⁶ On May 1, 2018, we released entry data we obtained from U.S. Customs and Border Protection (CBP) for comment by interested parties regarding our selection of respondents for this review.⁷ On May 9, 2018, Carpenter Technology Corporation, Crucible Industries LLC, Electralloy, a Division of G.O. Carlson, Inc., North American Stainless, Outokumpu Stainless Bar, LLC, Universal Stainless & Alloy Products, Inc., and Valbruna Slater Stainless Inc. (the petitioners) submitted comments.⁸ On June 22, 2018, we selected JSHL and the Venus Group as mandatory respondents for individual examination in this review.⁹

On June 26, 2018, Commerce issued the AD questionnaire to JSHL and the Venus Group.¹⁰ JSHL and the Venus Group submitted timely questionnaire responses.¹¹ Commerce issued supplemental questionnaires to JSHL¹² and the Venus Group¹³ and received timely responses.¹⁴

Review Request,” dated January 26, 2018.

³ See Letter to Commerce from Jindal Stainless Limited, “Stainless Steel Bar from India,” dated February 26, 2018.

⁴ See Letter to Commerce from Jindal Stainless (Hisar) Limited, “Stainless Steel Bar from India,” dated February 27, 2018.

⁵ See Letter to Commerce from the Venus Group, “Stainless Steel Bar from India –Request for administrative Review,” dated February 28, 2018.

⁶ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 16298 (April 16, 2018) (*Initiation Notice*).

⁷ See Letter to All Interested Parties, “Release of U.S. Customs and Border Protection Data,” dated May 1, 2018.

⁸ See Letter from the petitioners to Commerce, “Stainless Steel Bar from India: Petitioners' Comments on Customs and Border Protection Data,” dated May 9, 2018.

⁹ See Memorandum, “Antidumping Duty Administrative Review: Stainless Steel Bar from India: Respondent Selection Memorandum,” dated June 22, 2018.

¹⁰ See Questionnaires sent to JSHL and Venus Group, dated June 26, 2018.

¹¹ See Questionnaire responses from JSHL, dated July 31, 2018 (AQR) and August 20, 2018 (BQR, CQR, and DQR), and from the Venus Group, dated July 31, 2018, and August 10, 2018 (Venus AQR, Venus BCQR).

¹² See Letters from Commerce to JSHL, dated October 12, 2018 (JSHL ABCSQ1), and March 13, 2019 (JSHL DSQ2).

¹³ See Letters from Commerce to the Venus Group, dated October 12, 2018, and October 29, 2018, November 28, 2018 (Venus SQ, Venus SQ2, and Venus SQ3), and December 11, 2018 (Venus SQ4).

¹⁴ See Letter from JSHL, “Administrative Review concerning Stainless Steel Bar from India: Reply to supplementary questionnaire,” dated 12.10.2018 - Section A, B & C (Except question 15b & 31e),” dated November 8, 2018 (JSHL ABCSQR1), Letter from JSHL, “Administrative Review concerning Stainless Steel Bar from India: Reply to supplementary questionnaire,” dated 12.10.2018 - Section question 16b & 31e and section D November 13, 2018 (JSHL DSQR1); Letter from JSHL, “RE: Administrative Review concerning Stainless Steel Bar from India: Supplementary to Section A-D - issued on March 13, 2018,” dated March 27, 2019 (JSHL SQR2); Letter from the Venus Group, “Antidumping Duty Investigation of Stainless Steel Bar from India: Venus Group’s Response to Sections A-C of the Department’s Questionnaire,” dated November 14, 2018 (Venus SQRABC), Letter from the Venus Group, “Antidumping Duty Investigation of Stainless Steel Bar from India: Venus Group’s Response to Sections D of the Department’s Questionnaire,” dated November 30, 2018 (Venus DQR), Letter from the Venus Group, “Antidumping Duty Investigation of Stainless Steel Bar from India: Venus Group’s Response to the Department’s Second Supplemental Section A Questionnaire,” dated December 12, 2018 (Venus SQR2), Letter from the Venus Group, “Antidumping Duty Investigation of Stainless Steel Bar from India: Venus Group’s Response to the Department’s Supplemental Section A and D Questionnaire,” dated December 21, 2018 (Venus

On March 25, 2019, we received pre-preliminary comments from the petitioners concerning the Venus Group, and JSHL, requesting that Commerce consider such comments for the preliminary results.¹⁵ Because these comments were filed three weeks prior to the issuance of the preliminary results, we have not considered them for these preliminary results.

III. SCOPE OF ORDER

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

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

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

IV. COST OF PRODUCTION ANALYSIS FOR THE VENUS GROUP

For the reasons discussed below, we find that the Venus Group's unaffiliated suppliers are the producers of certain SS Bar at issue. We further find that, as discussed below, because of the Venus Group's failure to cooperate to the best of its ability, we do not have information regarding the unaffiliated suppliers' cost of production which is necessary for conducting the sales-below-cost test. Therefore, the use of partial adverse facts available (AFA) is appropriate for these preliminary results with respect to the Venus Group.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the antidumping and

SQR3).

¹⁵ See Letters from the petitioners, "Administrative Review of Stainless Steel Bar from India – Petitioners' Pre-Preliminary Comments Concerning the Venus Group," and "Administrative Review of Stainless Steel Bar from India- Petitioners' Pre-Preliminary Comments Concerning Jindal," dated March 25, 2019.

countervailing duty law, including amendments to section 773(b)(2) of the Act, regarding Commerce's requests for information on sales at less than cost of production (COP).¹⁶ The 2015 law does not specify dates of application for those amendments. On August 6, 2015, Commerce published an interpretative rule, in which it announced the applicability dates for the TPEA to each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC.¹⁷ Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire had not been issued as of August 6, 2015. It requires Commerce to request constructed value (CV) and COP information from respondent companies in all AD proceedings.¹⁸ Accordingly, Commerce requested this information from Venus Group in this proceeding.¹⁹

The Act directs Commerce to calculate COP and CV on the basis of actual production costs.²⁰ Additionally, section 771(28) of the Act states that “{f}or purposes of section 773, the term ‘exporter or producer’ includes both the exporter of the subject merchandise and the producer of the same subject merchandise to the extent necessary to accurately calculate the total amount incurred and realized for costs, expenses, and profits in connection with production and sale of that merchandise.” The SAA explains that “the purpose of section 771(28) ...is to clarify that where different firms perform that production and selling function, Commerce may include the costs, expenses, and profits of each firm in calculating cost of production and constructed value.”²¹ The intent of this section is to ensure that Commerce has the authority to capture all cost situations where various companies are engaged in the production and sale of the merchandise under consideration. Accordingly, Commerce's determination of who is the producer directly impacts the COP and CV computations.

In the prior segment of this proceeding, the changed circumstances review which reinstated the Venus Group into the AD order,²² we adopted an approach from *Narrow Woven Ribbons Final* to determine that the Venus Group (which processed the merchandise before export to the United States) was not the producer of the subject merchandise, and, therefore, we sought cost data from

¹⁶ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015). The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

¹⁷ See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (Applicability Notice).

¹⁸ *Id.* at 46794-95.

¹⁹ See Venus SQ and Venus DQR.

²⁰ See section 773(b)(3)(A) of the Act (COP shall be an amount equal to the sum of “the cost of materials and of fabrication or other processing of any kind employed in producing the foreign like product”); section 773(e)(1) of the Act (CV shall be based on “the cost of materials and fabricator other processing of any kind employed in producing the merchandise”); and section 773(f)(1) of the Act (in general “costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records...reasonably reflect the costs associated with the production and sale of the merchandise.”).

²¹ See SAA, H.R. Doc. Nos. 103-465, vol. 1, at 835 (1994).

²² See *Stainless Steel Bar from India: Preliminary Results of Changed Circumstances Review and Intent to Reinstate Certain Companies in the Antidumping Duty Order*, 82 FR 48483, (October 18, 2017), and accompanying decision memorandum, dated October 12, 2017 (*CCR Preliminary Results*), and adopted in *Stainless Steel Bar from India: Final Results of Changed Circumstances Review and Reinstatement of Certain Companies In the Antidumping Duty Order*, 83 FR 17529 (April 20, 2018), and accompanying Issues and Decision Memorandum for the Antidumping Duty Changed Circumstances Review of Stainless Steel Bar from India (*CCR Final Results*).

the unaffiliated suppliers at issue.²³ In *Narrow Woven Ribbons Final*, we examined the extent to which the ribbon obtained from the unaffiliated suppliers was further manufactured by the respondent. In doing so, we analyzed whether raw materials were added, and whether processing was performed that changed the physical nature and characteristics of the product. We determined that “the record shows that the additional materials used in the further processing were minimal” and that “the further processing performed did not result in significant changes to the essential physical characteristics of the {narrow woven ribbons}.”²⁴ The second part of that analysis was informed by the fact that only six (out of 16) of Commerce’s physical characteristics for narrow woven ribbons changed as a result further processing performed by the respondent.²⁵ However, Commerce also noted that the “determination is based on the totality of the record evidence and the facts specific to this case.”²⁶

In this review, like in the changed circumstances review, in determining whether the suppliers or the Venus Group is the producer of the SS Bar in question, we looked to the extent to which the SS Bar was further manufactured by the Venus Group. According to the Venus Group, it adds no additional materials to the SS Bar it purchased and processed.²⁷ Moreover, the further processing performed by the Venus Group (which consisted of heat treatment, straightening, peeling, polishing cutting, and – in some cases, grinding) does not affect the top two most important physical characteristics as reported in our questionnaire (grade and melting) out of eight characteristics, nor does it affect shape (the sixth characteristic).²⁸ The physical characteristics that may change, according to the Venus Group, as a result of further processing are of lesser importance than grade and melting (whether the product was cold-drawn, general type of finish, size, heat treatment, and surface treatment).²⁹ Because we find that the top two most important physical characteristics and shape do not change as a result of the further processing, the Venus Group’s further processing functions do not significantly alter the physical characteristics of the finished product. Moreover, the facts of this case are similar to the changed circumstances review where we reinstated the Venus Group into the AD order;³⁰ the only difference being that we have since modified the model-match characteristics to distinguish more

²³ See *id.*; see also *Notice of Final Determination of Sales at Less Than Fair Value: Narrow Woven Ribbons with Woven Selvedge from Taiwan*, 75 FR 41804 (July 19, 2010) (*Narrow Woven Ribbons Final*) and accompanying Issues and Decision Memorandum at Comment 20.

²⁴ *Narrow Woven Ribbons Final* at Comment 20.

²⁵ *Id.*

²⁶ *Id.*

²⁷ See Venus SQ4 at 7.

²⁸ *Id.* Although the Venus Group claims that the shape may change, this claim is based on its assertion that the SS rounds “have oval shapes at many places throughout the bars, which are converted to uniform shape.” *Id.* The shape physical characteristic is used to distinguish bars that are round, square, rectangular, pentagonal, hexagonal, etc. See Commerce’s Questionnaire, dated June 26, 2018. What Venus describes is really a straightening operation which is a part of the cold drawing process. Thus, we find that the shape of the bar is not actually affected by the processes the Venus Group performs.

²⁹ See Venus SQ4 at 7.

³⁰ See *CCR Preliminary Results*, and *CCR Final Results*. In the *CCR Preliminary Results*, we determined that the Venus Group added no additional materials to the SS Bar it purchased and processed. Additionally, we determined that the further processing performed by the Venus Group (which consisted of heat treatment, straightening, peeling, cutting, polishing, and – in some cases, grinding) does not affect three of the six essential physical characteristics (grade, remelting, and shape; the three characteristics which may change by the Venus Group’s further processing are general type of finish, type of final finishing operation, and size).

precisely one of the lesser important physical characteristics (specifically, instead of Type of Final Finishing Operation, we now ask that respondents separately report whether the bar was cold drawn or cold rolled, whether it was cold finished other than cold drawn or cold rolled, and whether it underwent certain surface treatments).³¹ Accordingly, consistent with our findings in the changed circumstances review and *Narrow Woven Ribbons Final*, we find that the Venus Group cannot be considered the producer of the subject merchandise shipped to the United States; rather, the producers are the manufacturers who supplied the Venus Group with the SS Bar, and therefore, we require the unaffiliated suppliers' COP of the SS Bar sold to the Venus Group. For the reasons discussed below, we do not have this data on the record.

V. APPLICATION OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

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

Sections 776(a)(1) and (2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply "facts otherwise available" if necessary information is not available on the record or if an interested party or any other person: (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.

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

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so 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.³² Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the less than fair value investigation, a previous administrative review, or other information placed on the record.³³

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,

³¹ See Commerce's Questionnaire, dated June 26, 2018.

³² See section 776(b)(1)(B) of the Act.

³³ See also 19 CFR 351.308(c).

corroborate that information from independent sources that are reasonably at its disposal.³⁴ 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.³⁵ Further, Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.³⁶

Finally, under section 776(d) of the Act, Commerce may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins.³⁷ When selecting an AFA margin, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.³⁸

A. Application of Partial AFA to the Venus Group

On July 10, 2018, the Venus Group provided a letter to Commerce explaining that it would have difficulty in responding to Commerce’s questionnaire if Commerce concluded that the Venus Group’s unaffiliated suppliers are the producers of certain SS Bar at issue.³⁹

In response to Commerce’s section A questionnaire, the Venus Group identified itself as the producer of all of the subject merchandise shipped to the United States.⁴⁰ The Venus Group explained that during the POR, it purchased stainless steel wire rods (SSWR) in coil form and “hot-rolled stainless-steel bars” (hot-rolled bars) and “stainless steel rounds”⁴¹ from unaffiliated suppliers during the POR; the Venus Group further processes these inputs into cold-finished SS Bar.⁴² It argued in its initial section A questionnaire response that because the stainless steel rounds it purchased from unaffiliated suppliers during the POR do not conform to hot-rolled bar specifications due to non-uniformity in size throughout the length, ovality and curvature beyond the tolerance of industry standards, they are not subject merchandise.⁴³

In our supplemental questionnaire to the Venus Group, we requested that the Venus Group provide its unaffiliated suppliers’ cost data for certain inputs used to produce subject merchandise.⁴⁴ The Venus Group responded that it objected to the manner in which Commerce concluded that the stainless steel rounds it uses to produce subject merchandise are subject

³⁴ See also 19 CFR 351.308(d).

³⁵ See 19 CFR 351.308(c); see also SAA at 870.

³⁶ See section 776(c)(2) of the Act.

³⁷ See section 776(d)(1)-(2) of the Act.

³⁸ See section 776(d)(3) of the Act.

³⁹ See Letter from the Venus Group to Commerce, “Stainless Steel Bar from India: Notification of Potential Difficulty in Responding to Department’s Questionnaire,” dated July 10, 2018.

⁴⁰ See Venus AQR.

⁴¹ The Venus Group, in its responses, uses the terms “stainless steel rounds,” or “hot-rolled rounds,” interchangeably, to describe this input.

⁴² *Id.*

⁴³ See the Venus Group’s section A questionnaire response, dated July 31, 2018 (Venus Group QRA).

⁴⁴ See SQ, at 4.

merchandise themselves, and indicated that it was unable to provide its unaffiliated suppliers COP data.⁴⁵ In addition, the Venus Group argued that even if Commerce finds that the “stainless steel rounds” are subject merchandise, Commerce should not seek COP information from its unaffiliated suppliers, and should rely on the acquisition cost of its purchases of stainless steel rounds.⁴⁶ The Venus Group states specifically that Commerce has found that the conversion of SSWR to SS Bar constitutes a “substantial transformation.”⁴⁷ The Venus Group asserts that the conversion of stainless steel rounds or hot-rolled bar to SS Bar is nearly as extensive, and should lead Commerce to conclude that the Venus Group is the producer of these products such that the cost information from unaffiliated suppliers is not required.⁴⁸

In its supplemental questionnaire response, the Venus Group requested that Commerce evaluate the evidence on the record and determine whether the stainless steel rounds input it purchases from unaffiliated suppliers were subject merchandise.⁴⁹ Per the Venus Group’s request, we evaluated the evidence on the record to determine whether “stainless steel rounds,” or “hot-rolled bars” are within the scope of the order. Based on our analysis of the facts on the record, we preliminarily find that “stainless steel rounds” or “hot-rolled bars” as an input are subject merchandise within the scope of SS Bar order.⁵⁰ We provide a detailed analysis in a separate memorandum.⁵¹ As such, for certain sales, based on our discussion above, we have determined that the Venus Group cannot be considered the producer of the subject merchandise shipped to the United States; rather, the producers are the manufacturers who supplied the Venus Group with the SS Bar. Therefore, as we indicate above, consistent with the prior changed circumstances review and *Narrow Woven Ribbons Final*, we require the unaffiliated suppliers’ COP of the SS Bar sold to the Venus Group.⁵²

In its response to our October 12, 2018, supplemental questionnaire, the Venus Group state that that prior to this administrative review, it contacted its unaffiliated suppliers in an effort to obtain the COP of the stainless steel rounds input it purchased during the POR.⁵³ The Venus Group provided on the record various emails that it sent to its unaffiliated suppliers prior to receiving Commerce’s questionnaire and throughout the course of the administrative review requesting the suppliers’ COP data.⁵⁴ It also provided response emails from its unaffiliated suppliers indicating that, with one exception, they would not comply with the Venus Group’s request to provide the COP information for the input they sold to the Venus Group.⁵⁵ Although one of the Venus Group’s unaffiliated suppliers provided its COP information on the record, we are unable to use

⁴⁵ See Venus SQRABC.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ See Memorandum, “Preliminary Results of Administrative Review; Stainless Steel Bar from India: Re: Analysis of the Venus Group’s Input Stainless Steel Rounds,” dated concurrently with this memorandum.

⁵¹ *Id.*

⁵² See *Narrow Woven Ribbons Final* at Comment 20. See also *CCR Preliminary Results* and *CCR Final Results*.

⁵³ See Venus SQRABC.

⁵⁴ *Id.*

⁵⁵ *Id.*

it because it represents a small number of sales and we are unable to extract the proportion of the cost data relative to the missing data.⁵⁶

On October 12, 2017, we issued our decision memorandum for the preliminary results of the AD changed circumstances review of stainless steel bar from India.⁵⁷ In the *CCR Preliminary Results*, we determined that the Venus Group's unaffiliated suppliers were the producers of certain SS Bar at issue, and we applied AFA to the Venus Group because it did not provide the necessary cost information from its unaffiliated suppliers.⁵⁸ For purposes of these preliminary results, we find that the *CCR Preliminary Results*, published on October 12, 2017, constitutes prior notice to the Venus Group that it had an obligation to submit the COP data from its unaffiliated suppliers. The Venus Group acknowledges this fact in responding to our supplemental questionnaire that, "{s}ince early this year, after the publication of the results of the changed circumstances review, Venus Group has been in contact with all of these suppliers to ask them to provide cost of production information for this administrative review."⁵⁹ It further stated that, "{i}n early May 2018, even prior to the issuance of the . . . questionnaire in this review, Venus Group contacted its suppliers by email to request the submission of cost data."⁶⁰ Therefore, the record indicates that the Venus Group understood after the publication *CCR Preliminary Results* that it had an obligation to obtain its unaffiliated suppliers' COP information for the input in question for any subsequent administrative review. As we indicate above, on October 12, 2018, we requested the Venus Group to provide its unaffiliated suppliers' COP information.⁶¹ The Venus Group and its unaffiliated suppliers have not provided the requested COP information on the record of this administrative review.⁶²

For purposes of conducting the sales-below-cost test, we require COP data for the production of the stainless rounds that the Venus Group purchases as inputs to its production of SS Bar. Without the unaffiliated suppliers' COP data, we do not have the appropriate cost data to calculate an AD margin. For example, we cannot accurately determine which of the Venus Group's home market sales were made below the COP and were not at prices which permit recovery of all costs within a reasonable period of time and, as a result, we do not have a basis for determining which home market sales are appropriate to use as normal value. Moreover, without the unaffiliated suppliers' costs, we cannot accurately calculate CV.

Therefore, we preliminarily determine that, because the necessary unaffiliated suppliers' cost data is not on the record, and this prevents us from being able to calculate an AD margin, the application of partial facts available is warranted in accordance with sections 776(a)(1) and

⁵⁶ For further details, see Memorandum to the File, "Preliminary Results of Antidumping Duty Administrative Review for Stainless Steel Bar from India; Preliminary Analysis Memorandum for the Venus Group," dated concurrently with this memorandum (Preliminary Results Calculation Memo). See also section 782(e)(5) of the Act, which provides that Commerce may decline to rely on information if it cannot be used without undue difficulties.

⁵⁷ See *Stainless Steel Bar from India: Preliminary Results of Changed Circumstances Review and Intent to Reinstate Certain Companies in the Antidumping Duty Order*, 82 FR 48483, (October 18, 2017), and accompanying decision memorandum, dated October 12, 2017 (*CCR Preliminary Results*).

⁵⁸ *Id.*

⁵⁹ See Venus SQRABC.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

(2)(A) and (C) of the Act. Therefore, we determine that selection from among the facts otherwise available, in part, is necessary.

In addition, pursuant to section 776(b) of the Act, we find that the Venus Group and its unaffiliated suppliers failed to act to the best of their ability to provide certain information, and, therefore, the application of facts otherwise available with an adverse inference is warranted. Specifically, we find that the Venus Group did not act to the best of its ability in attempting to obtain its unaffiliated suppliers' cost data, and that its unaffiliated suppliers failed to act to the best of their ability by providing the requested information. Because our findings involve discussion of proprietary information, see "Preliminary Results Calculation Memo" for further details. Our findings are consistent with the decision of the Court of Appeals for the Federal Circuit (CAFC) in *Mueller* which recognized that Commerce may use an adverse inference in selecting from the facts otherwise available in determining a respondent's dumping margin in order to induce cooperation by other interested parties whose information is needed to calculate that respondent's dumping margin, in situations where the respondent has a mechanism to induce the non-cooperating party to cooperate.⁶³ Thus, in this case, we determine that the Venus Group failed to put forth its maximum efforts to obtain and provide the necessary COP data from its unaffiliated suppliers. As such, an adverse inference is warranted in the application of facts available, in accordance with section 776(b)(1) of the Act.

Furthermore, as explained below, we are relying on AFA only in part because we find that the Venus Group cooperated to the best of its ability in providing the remaining information on the record, and because such information is timely submitted, complete and verifiable, and can be used without undue difficulties.⁶⁴

B. Application of AFA to JSHL

A review of the record demonstrates that JSHL, despite repeated requests, has failed to provide necessary information in the form or the manner requested by Commerce.⁶⁵ As discussed in more detail below, on three occasions, Commerce requested information from JSHL, requested information that was missing from the initial response and the supplemental response, requested explanations for the basis of JSHL's reporting, and requested that JSHL explain and document unrequested changes to information that was previously reported. These requests applied to information in all three databases provided by JSHL: the home market sales database; the U.S. sales database; and, the cost database. JSHL's failure to provide information that is reliable, accurate, and usable, despite three opportunities to do so, leads us to conclude, for purposes of these preliminary results, that necessary information is not available on the record. As such, JSHL has withheld information that was requested, and we determine that the application of facts available (in accordance with sections 776(a)(1) and (2)(A), (B), and (C) of the Act) is appropriate. Moreover, because we provided JSHL with several opportunities to provide the missing information, to clarify the information on the record, and to correct errors in its home-

⁶³ See *Mueller Commercial De Mexico, S. De R.L. De C.V. v. United States*, 753 F.3d 1227, 1233 (Fed. Cir. 2014) (*Mueller*).

⁶⁴ See section 782(e)(1)-(5).

⁶⁵ See JSHL AQR, BQR, CQR, and DQR; JSHL ABCSQR1; JSHL DSQR1; and JSHL DSQR2.

market sales, U.S. sales, we find that JSHL has not acted to the best of its ability to comply with our requests for information, and we determine that the application of adverse inferences is warranted, in accordance with section 776(b)(1) of the Act. As explained in detail below, JSHL has provided unreliable, inaccurate, and unusable home-market sales, U.S. sales, and cost databases.⁶⁶

Incomplete Cost Database

In its cost database submitted with the first supplemental questionnaire response (DSQR1), JSHL made unrequested and unexplained changes to certain product characteristics. At that time, JSHL reported that it had discovered several errors in the cost database provided with the initial questionnaire response and explained that it was correcting for the SIZE characteristic as reported for CONNUMs in the initial questionnaire response.⁶⁷ However, this cost file also contained changes to four other product characteristics: CFINISH (cold-rolled other than cold/drawn-cold-rolled; SURF (surface treatment); GRADE (grade); and COLDRED (cold reduced).⁶⁸ In the second supplemental questionnaire, we asked JSHL to explain these changes.⁶⁹ JSHL responded that it had “inadvertently not reported all the corrections made in the last supplementary,” and further noted that it had “re-reviewed the whole data and CONNUMs and reconfirmed that there is no more discrepancy” in its reporting.⁷⁰ We find that this answer is unresponsive to our request to JSHL to explain the changes. Therefore, the cost file reflects changes from the initial questionnaire to the supplemental questionnaire that were unrequested and are unexplained. With no explanation from JSHL of why it found it necessary to revise the cost reporting for these four product characteristics, we cannot evaluate whether the changes were necessary or appropriate, and we cannot determine whether the information was reported “in the form and manner requested,” pursuant to section 776(a)(2)(B) of the Act. Moreover, because JSHL has provided data that is unreliable and unusable, we find that JSHL has not cooperated to the best of its ability, and the application of an adverse inference is warranted, pursuant to section 776(b)(1) of the Act.

In our second supplemental questionnaire, we made the following request of JSHL: “{i}n DSQR1, you did not report cost information for {a BPI number of} CONNUMs sold in the United States and in the home market. Please explain this discrepancy and resubmit your cost data in its entirety, including cost for these . . . CONNUMs.”⁷¹ We provided JSHL a list of the CONNUMs for which cost had not been reported. JSHL responded with the following: “{o}ut of {number} of CONNUMs mentioned by the Department, cost of {a number} was not provided because these CONNUMs are not produced in the POR For remaining CONNUMs, costing is provided in the costing file.”⁷² Again, we find that this answer is not responsive because it provides no explanation for why the cost information was missing in the supplemental response; neither does it provide any explanation of why it was necessary to provide this entirely new cost

⁶⁶ See JSHL AQR, BQR, CQR, and DQR; JSHL ABCSQR1; JSHL DSQR1; and JSHL DSQR2.

⁶⁷ See DSQR1 at 33-34.

⁶⁸ See JSHL DSQR2; see also cost database submitted with DSQR1, COP 02.

⁶⁹ See Letter to JSHL, “Stainless Steel Bar from India: Sections A-D Second Supplemental Questionnaire for Jindal Stainless Hisar Limited,” dated March 13, 2019 (JSHL Second Supplemental Questionnaire).

⁷⁰ See DSQR2 at 18.

⁷¹ See (JSHL Second Supplemental Questionnaire).

⁷² See DSQR2 at 18.

information for the relevant CONNUMs at this stage of the review, in the third opportunity to provide information. Without such an explanation, we cannot evaluate whether the newly provided cost information is reliable, especially in comparison with previously provided cost information. Without providing the requested explanation of why such new cost reporting was necessary, we cannot determine whether the information was reported “in the form and manner requested,” pursuant to section 776(a)(2)(B). As a result, we find that JSHL has provided data that is unreliable and unusable. Moreover, because JSHL has provided data that is unreliable and unusable, we find that JSHL has not cooperated to the best of its ability, and the application of an adverse inference is warranted, pursuant to section 776(b)(1) of the Act.

Together, these unexplained changes to the cost database render JSHL’s cost reporting incomplete and unreliable. Because the COP data is incomplete, we are unable to determine which of JSHL’s home market sales were made below the COP and were not at prices which permit recovery of all costs within a reasonable period of time and, as a result, we do not have a basis for determining which home market sales are appropriate to use as normal value. Moreover, the COP data is so deficient that it does not permit the calculation of CV. Therefore, we preliminarily determine that, because the necessary cost data is missing from the record, and this prevents us from being able to calculate an AD margin, the application of facts available is warranted in accordance with section 776(a)(1) of the Act. We preliminarily determine that JSHL withheld information that has been requested by Commerce in accordance with section 776(a)(2)(A). We also preliminarily determine that JSHL has significantly impeded this proceeding in accordance with section 776(a)(2)(C) of the Act because it failed to provide the requested information despite multiple opportunities to do so. In addition, we find that the JSHL did not cooperate to the best of its ability in failing to provide the necessary COP data. As such, an adverse inference is warranted in the application of facts available, in accordance with section 776(b)(1) of the Act.

Incomplete Sales Databases

As discussed above, JSHL made unrequested and unexplained changes to four product characteristics (CFINISH, SURF, GRADE, and COLDRED). Not only do these unexplained changes affect our ability to conduct a proper sales-below-cost test and determine which home market sales are usable for purposes of calculating normal value, but they also affect our ability to analyze the U.S. and home market sales databases and to ensure that the margin program can make proper matches, based on product description, of U.S. sales to home market sales. As a result, for purposes of these preliminary results, we are unable to rely on the U.S. and home market sales data to calculate a margin. Therefore, we preliminarily determine that, because the necessary product characteristics data is missing from the record, and this information is necessary to our calculation of the margin, the application of facts available is warranted in accordance with section 776(a)(1) and (2)(A), (B), and (C) of the Act. In addition, we find that JSHL did not cooperate to the best of its ability in failing to provide the necessary explanation of changes to the product characteristics. As such, an adverse inference is warranted in the application of facts available, in accordance with section 776(b)(1) of the Act.

C. Selection of AFA Rates

Section 776(b) of the Act authorizes Commerce to use, as AFA, information derived from the petition, the final determination from the investigation, a previous administrative review, or any other information placed on the record. In selecting a rate for AFA, Commerce has the discretion to apply any dumping margin from any segment of the proceeding, including the highest of such margins.⁷³

Venus Group

As we indicate above, the Venus Group purchased SSWR in coil form and hot-rolled stainless-steel bars (hot-rolled bars)⁷⁴ from unaffiliated suppliers during the POR. Because the SSWR input is not itself subject merchandise, and because the Venus Group provided the requested information in accordance with section 782(e) of the Act, we can rely on the acquisition cost for purposes of determining COP and calculating a margin. Thus, for the portion of the Venus Group's sales and cost databases that represents sales of subject merchandise produced using the SSWR input, we are able to calculate a margin for these U.S. sales.⁷⁵ For the U.S. sales of subject merchandise products produced using the stainless steel rounds or hot-rolled bar inputs, we have assigned an AFA rate. The AFA rate we have assigned is one of the highest transaction-specific rate calculated for the U.S. sales of subject merchandise produced using the SSWR input.⁷⁶ Therefore, for these preliminary results, using partial AFA, we have calculated a dumping margin for exports of subject merchandise produced and/or exported by the Venus Group the rate of 77.49 percent.⁷⁷ Because we have identified the partial AFA rate using information obtained from the record of this review, per section 776(c)(2) of the Act, we are not required to corroborate the information on which we have relied.

JSHL

For the preliminary results, as total AFA, we have assigned to exports of subject merchandise produced and/or exported by JHSL one of the highest transaction-specific margins that we calculated for the Venus Group.⁷⁸ This rate is 95.21 percent. Because we have relied on information obtained from the record of this review in determining the AFA rate for JSHL, per section 776(c)(2) of the Act, we are not required to corroborate the information on which we have relied.

⁷³ See section 776(d)(1)-(2) of the Act.

⁷⁴ The Venus Group, in its responses, uses the terms "stainless steel rounds," or "hot-rolled rounds" to describe this input.

⁷⁵ See Venus SQR3.

⁷⁶ The record indicates that the highest transaction-specific margin calculated involves a transaction made in extremely low quantities, not in commercial quantities, and therefore, we used the second highest transaction-specific margin that was based on an average-to-average methodology. For further details, see Preliminary Results Calculation Memo.

⁷⁷ For further details on this rate, see Preliminary Results Calculation Memo.

⁷⁸ As noted above, we have excluded the highest transaction-specific margin based on extremely low quantities.

VI. RATE FOR RESPONDENT NOT SELECTED FOR INDIVIDUAL EXAMINATION

The statute and Commerce's regulations do not directly address the establishment of a rate to be applied to individual companies not selected to for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, when calculating the margin for non-selected respondents, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for a respondent not selected for individual examination in an administrative review. Section 735(c)(5)(A) of the Act states that the all-others rate shall be an amount equal to the weighted average of the dumping margins established for the individually-examined respondents, excluding any zero and *de minimis* weighted-average dumping margins, as well as any weighted-average dumping margins based on total facts available. Accordingly, our usual practice for calculating the margin for non-selected respondents in administrative reviews has been to average the rates for the selected companies excluding zero, *de minimis*, and rates based entirely on facts available.⁷⁹

Here, we have calculated a margin for the Venus Group which is not based entirely on facts available, and a margin for JSHL which is based entirely on facts available. Therefore, we are applying to Laxcon Steels Limited, the respondent not selected for individual examination, the rate calculated for the Venus Group, a dumping margin of 77.49 percent.

VII. DISCUSSION OF THE METHODOLOGY

As discussed above, we have relied on the Venus Group's reported sales and cost information where it used SSWR as the input to produce subject merchandise. As such, for sales and cost information that the Venus Group identified using SSWR as the input, we followed the methodology outlined below.

(1) Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether the respondent's sales of the subject merchandise from India in the United States were made at less than NV, Commerce compared the constructed export price (CEP) to NV as described in the "Constructed Export Price" and "Normal Value" sections of this memorandum.

A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average export prices (EPs) or CEPs (*i.e.*, the average-to-average (A-A) method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, Commerce examines

⁷⁹ See *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum at Comment 16.

whether to compare weighted-average NVs with the EPs or CEPs of individual sales (*i.e.*, the average-to-transaction (A-T) method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of administrative reviews, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.⁸⁰

In recent investigations and recently completed administrative reviews of this order, Commerce applied a "differential pricing" analysis for determining whether application of the A-T method is appropriate in a particular situation, pursuant to section 777A(d)(1)(B) of the Act and 19 CFR 351.414(c)(1).⁸¹ Commerce finds that the differential pricing analysis used in recent investigations and reviews may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the A-A method in calculating weighted-average dumping margins for respondents.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of EPs or CEPs for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchaser, region and time period to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the A-A method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, zip codes) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between EP or CEP and NV for the individual dumping margins.

⁸⁰ See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010-2011*, 77 FR 73415 (December 10, 2012) and accompanying Issues and Decision Memorandum at Comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014).

⁸¹ See, e.g., *Truck and Bus Tires from the People's Republic of China: Preliminary Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances, and Postponement of Final Determination*, 81 FR 61186 (September 6, 2016), and accompanying Preliminary Decision Memorandum at 22, unchanged in *Truck and Bus Tires from the People's Republic of China: Final Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances*, 82 FR 8599 (January 27, 2017); *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews and Rescission of Administrative Review, in Part; 2014-2015*, 81 FR 12870 (March 11, 2016) (2014-15 Prelim); and Preliminary Decision Memorandum at 6, unchanged in *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2014-2015*, 81 FR 62712 (September 12, 2016) (2014-15 Final).

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the A-T method to all sales as an alternative to the A-A method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an A-T method to those sales identified as passing the Cohen’s *d* test as an alternative to the A-A method, and application of the A-A method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the A-A method.

If both tests in the first stage (*i.e.*, the Cohen’s *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, Commerce examines whether using only the A-A method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative comparison method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the A-A method only. If the difference between the two calculations is meaningful, then this demonstrates that the A-A method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if (1) there is a 25 percent relative change in the weighted-average dumping margins between the A-A method and the appropriate alternative method where both rates are above the *de minimis* threshold, or (2) the resulting weighted-average dumping margins between the A-A method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

B. Results of the Differential Pricing Analysis

Venus Group

For the Venus Group, based on the results of the differential pricing analysis, Commerce preliminarily finds that 49.59 percent of the value of U.S. sales pass the Cohen's *d* test,⁸² confirming the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for these preliminary results, Commerce is applying the average-to-average comparison method to all U.S. sales to calculate the weighted-average dumping margin for Venus Group.

VIII. DATE OF SALE

Section 351.401(i) of Commerce's regulations states that, "in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business." The regulation provides further that Commerce may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.⁸³ Commerce has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.⁸⁴

Venus Group

For its comparison market and U.S. sales, the Venus Group reported that quantity can change up until the Venus Group issues its tax and commercial invoice.⁸⁵ Therefore, consistent with our practice, we are relying on the invoice date for home-market, and U.S. sales.

⁸² See Preliminary Results Calculation Memo.

⁸³ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)) (*Allied Tube*).

⁸⁴ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

⁸⁵ See Venus AQR at A-26.

IX. PRODUCT COMPARISONS

In accordance with section 771(16) of the Act, we considered all products meeting the physical description of merchandise covered by the “Scope of the Order” section above, produced and sold by the respondents in the comparison market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales of subject merchandise. Specifically, we made comparisons to weighted-average comparison market prices, where applicable, that were based on all sales which passed the cost-of-production (COP) test of the identical product during the relevant or contemporary month.

X. EXPORT PRICE AND CONSTRUCTED EXPORT PRICE

Section 772(a) of the Act defines export price (EP) as “the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c)” of section 772 of the Act. Section 772(b) of the Act defines CEP as “the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d)” of section 772 of the Act. As explained below, we based the U.S. price on EP the Venus Group.

The Venus Group classified all of its sales of SS Bar to the United States in the POR as EP sales. We calculated EP based on the packed, delivered prices to unaffiliated purchasers in the United States. We adjusted these prices for movement expenses, including foreign inland freight, international freight, marine insurance, foreign and U.S. brokerage and handling, and U.S. customs duties, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including credit expenses, warranty expenses, and indirect selling expenses. We also made an adjustment for profit, in accordance with section 772(d)(3) of the Act.

The Venus Group claimed an adjustment for duty drawback (DDB) based upon the Duty Drawback Scheme of the Government of India (GOI).⁸⁶ Commerce applies a two-pronged test to determine whether to grant a respondent a DDB adjustment pursuant to section 772(c)(1)(B) of the Act. Specifically, Commerce grants a respondent a DDB adjustment if it finds that: (1) import duties and rebates are directly linked to, and are dependent upon, one another, and (2) the company claiming the adjustment can demonstrate that there are sufficient imports of raw materials to account for the duty drawback received on exports on the manufactured product.⁸⁷

⁸⁶ See Venus CQR and Venus SQRABC.

⁸⁷ See *Steel Wire Rope from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 61 FR 55965, 55968 (October 30, 1996).

However, the Venus Group did not provide information on its DDB programs that was sufficient to demonstrate whether its import duties and corresponding rebates were linked to, and dependent upon, one another (*i.e.*, no license or government document linking the duties paid by the Venus Group and the rebates that relieve the Venus Group from the duties paid). The Venus Group also did not demonstrate that there were sufficient imports of the imported material to account for the amount of import duty refunded or exempted for the export of the manufactured product. Therefore, because the Venus Group did not provide sufficient evidence to pass Commerce's two-pronged test, we have not increased U.S. price by the amount of drawback claimed by the Venus Group.

XI. NORMAL VALUE

A. Comparison Market Viability

To determine whether there was a sufficient volume of sales in India 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.

In this administrative review, we preliminarily determine that for the Venus Group, the volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales of subject merchandise. Therefore, we used home market sales as the basis for NV in accordance with section 773(a)(1)(B) of the Act.

B. Affiliated Party Transactions and Arm's-Length Test

Commerce may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales were made at arm's-length prices.⁸⁸

Commerce excludes home market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because Commerce considers them to be outside the ordinary course of trade. Consistent with 19 CFR 351.403(c) and (d) and our practice, "the Department may calculate normal value based on sales to affiliates if satisfied that the transactions were made at arm's length."⁸⁹

⁸⁸ See 19 CFR 351.403(c).

⁸⁹ See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1365 (CIT 2003), *aff'd*, 306 F. Supp. 2d 1291 (CIT 2004) (citing *Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 55352, 55355 (September 7, 2011) (*Mexican Pipe*)).

The Venus Group reported that sales of the foreign like product to all affiliated customers in the home market constituted more than five percent of total sales in the home market; therefore, it reported sales made by affiliated customers to unaffiliated customers in the home market.⁹⁰

The Venus Group states that its unaffiliated customers in India have neither resold the product in the U.S market nor consumed it in the production of non-subject merchandise.⁹¹ The Venus Group reported that it purchased raw materials (SSWR and hot-rolled rounds) from unaffiliated suppliers located in India and abroad to produce the subject merchandise.⁹² Therefore, we have not conducted the arm's-length test with respect to the Venus Group.

C. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, we will calculate NV based on sales of foreign like products at the same level of trade (LOT) as the EP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁹³ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁹⁴ To determine whether the comparison-market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale. To determine whether home market sales are at a different LOT than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. When we are unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT, we may compare the U.S. sales to sales at a different LOT in the comparison market. When this occurs and the difference in LOT is demonstrated to affect price comparability based on a pattern of consistent price differences between sales at different LOTs in the market in which NV is determined, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

Venus Group

During the POR, the Venus Group reported that it sold SS Bar through two channels of distribution.⁹⁵ Specifically, the Venus Group reported that in the home market it sold SS Bar to unaffiliated original equipment manufacturers (OEMs), and to affiliated or unaffiliated resellers.⁹⁶ We compared the selling activities between the channels of distribution, and we find that both channels of distributions constitute a single home market LOT. For example, in both channels of distributions, the Venus Group sales either did not involve at all or involve lower levels of, *e.g.*, sales forecasting, strategic/economic planning, personnel training/exchange,

⁹⁰ See Venus BQR, at B-3.

⁹¹ *Id.*

⁹² See Venus DSQR, at 3.

⁹³ See 19 CFR 351.412(c)(2).

⁹⁴ *Id.*; see also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (November 19, 1997).

⁹⁵ See the Venus Group's AQR, at Exhibit A-3 (Selling Functions Chart).

⁹⁶ *Id.*

engineering services, advertising, sales promotion, distribution/dealer training, procurement/sourcing services, provide rebates, provide warranty service, provide guarantees, perform repacking. Similarly, during the POR, the Venus Group reported that it sold SS Bar to OEMs, trading companies, service centers, and processors in the United States through one channel of distribution,⁹⁷ and thus, we find that it constitutes a single LOT for the reported EP sale. We preliminarily determine that the selling activities associated with the EP sales were the same as those associated with the comparison market sales. Specifically, in both channels of distribution, the Venus Group provides certain selling functions at similar levels of intensity.⁹⁸ As a result, we preliminarily determine that the LOT for the EP sale was the same as the LOT for the home market sales.⁹⁹ Therefore, for these preliminary results, we did not make a LOT adjustment pursuant to section 773(a)(7)(A) of the Act and 19 CFR 351.412(e), because both LOTs are identical (*i.e.*, one level of trade in the comparison and U.S markets).

D. Cost of Production Analysis

As discussed above, the TPEA requires Commerce to request cost information from respondent companies in all antidumping proceedings.¹⁰⁰ As such, Commerce requested cost information from the Venus Group and it submitted timely responses (for the subject merchandise produced using the SSWR input). We examined the Venus Group's cost data and determined that our quarterly cost methodology is not warranted and, therefore, we applied our standard methodology of using annual costs based on the reported data.

1. Calculation of Cost of Production

We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative and financial expenses, in accordance with section 773(b)(3) of the Act. We relied on the COP data submitted by the Venus Group in its questionnaire responses for the COP calculation.

2. Test of Comparison Market Sales Prices

As required under sections 773(b)(1) and (2) of the Act, we compared the weighted average of the COP for the POR to the per-unit price of the comparison market sales of the foreign like product to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below cost test by subtracting from the gross unit price any applicable movement charges, discounts, billing adjustments, direct and indirect selling expenses, and packing expenses.

⁹⁷ *Id.* at 32 and Exhibit A-3.

⁹⁸ *Id.*

⁹⁹ See Preliminary Analysis Memorandum for further details.

¹⁰⁰ See *Applicability Notice* at 46794-95.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where 20 percent or more of a respondent's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because (1) they were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act and (2) based on our comparison of prices to the weighted average of the COPs, they were at prices which would not permit the recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act.

The results of our cost tests for the Venus Group demonstrate that, for home market sales of certain products, more than 20 percent were sold at prices below the COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we excluded these below-cost sales from our analysis and used the remaining above-cost sales to determine NV.

E. Calculation of Normal Value Based on Comparison Market Prices

For those comparison products for which there were sales at prices above the COP for the respondents, we based NV on home market prices. We calculated NV based on prices to unaffiliated customers in India and prices to affiliated customers which were determined to be at arm's length.¹⁰¹ We adjusted the starting price for foreign inland freight pursuant to section 773(a)(6)(B)(ii) of the Act. We made adjustments for differences in circumstances of sale (for imputed credit expenses, warranty expenses, and other selling expenses) in accordance with section 773(a)(6)(c)(iii) of the Act and 19 CFR 351.410.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like products and the subject merchandise.¹⁰²

XII. CURRENCY CONVERSION

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. These exchange rates are available on the Enforcement and Compliance's website at <http://enforcement.trade.gov/exchange/index.html>.

¹⁰¹ See the "Affiliated Party Transactions and Arm's-Length Test" section above.

¹⁰² See 19 CFR 351.411(b).

XIII. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.



Agree



Disagree

4/9/2019

X

Gary Taverman

Signed by: GARY TAVERMAN

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