



A-533-810
Administrative Review
POR: 2/1/2017 – 1/31/2018
Public Document
E&C/OI: HP

October 15, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

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

I. SUMMARY

We analyzed the case and rebuttal briefs of interested parties in the above-referenced administrative review of the antidumping duty (AD) order on stainless steel bar (SS bar) from India. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this review for which we received comments from parties:

1. Whether the Venus Group¹ is the Producer of Subject Merchandise
2. Whether Partial Adverse Facts Available (AFA) is Warranted for the Venus Group
3. Whether to Make Certain Adjustments to the Margin Program for These Final Results
4. Whether AFA is Warranted for Jindal Stainless (Hisar) Limited (JSHL)
5. Whether Commerce Overstated the Degree to which JSHL’s Questionnaire Responses were deficient
6. Whether the AFA Rate Selected for JSHL is Unlawful
7. Whether Commerce can Apply a partial AFA rate to a Non-Selected Respondent

¹ The Venus Group of companies (Venus Wire Industries Pvt. Ltd., and its affiliates Precision Metals, Hindustan Inox Ltd., and Sieves Manufactures (India) Pvt. Ltd.) (collectively, the Venus Group).



II. BACKGROUND

On February 21, 1995, Commerce published the AD order on SS bar from India.² On April 16, 2019, we published the *Preliminary Results* of the administrative review in the AD order on SS bar from India.³

We invited parties to comment on the *Preliminary Results*. On May 31, 2019, we received case briefs from the Venus Group, JSHL and Laxcon Steels Limited (Laxcon).⁴ On June 14, 2019, we received rebuttal briefs from the petitioners,⁵ and from Laxcon.⁶ On July 15, 2019, Commerce held a public hearing at the request of JSHL and the Venus Group.⁷

III. SCOPE OF THE ORDER

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

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

² See *Antidumping Duty Orders: Stainless Steel Bar from Brazil, India, and Japan*, 60 FR 9661 (February 21, 1995) (Order).

³ See *Stainless Steel Bar from India: Preliminary Results of the Antidumping Duty Order Administrative Review; 2017-2018*, 84 FR 15582 (April 16, 2019) (*Preliminary Results*).

⁴ See Venus Group's Letter, "Antidumping Duty Investigation of Stainless Steel Bar from India: Venus Group Case Brief," dated May 31, 2019 (Venus Group's Case Brief), JSHL's Letter, "Stainless Steel Bar from India: Jindal Stainless (Hisar) Limited's Case Brief," dated May 31, 2019 (JSHL Case Brief), and Laxcon's Letter, "Stainless Steel Bar from India: Laxcon Case Brief," dated May 31, 2019 (Laxcon Case Brief).

⁵ 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 (collectively, Petitioners).

⁶ See Petitioners' Letters, "Petitioners' Rebuttal Brief Concerning the Venus Group," dated June 14, 2019 (Petitioners' Venus Group Rebuttal Brief), "Petitioners' Rebuttal Brief Concerning Jindal Stainless (Hisar) Limited," dated June 14, 2019 (Petitioners' JSHL's Rebuttal Brief), and "Petitioners' Rebuttal Brief Concerning Laxcon Steels Limited," dated June 14, 2019 (Petitioners' Laxcon Rebuttal Brief), *see also* Laxcon's Letter, "Stainless Steel Bar from India: Laxcon Rebuttal Brief," dated June 14, 2019 (Laxcon's Rebuttal Brief).

⁷ See JSHL's Letter, "Stainless Steel Bar From India; Jindal Stainless (Hisar) Limited's Request for a Hearing," dated May 15, 2019, and Venus Group's Letter, "Stainless Steel Bar from India: Request for Hearing," dated May 16, 2019; *see also* Hearing Transcript, dated July 15, 2019, Bar Code "3866774-01".

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. CHANGES SINCE THE PRELIMINARY RESULTS

Based on our review of the record, analysis of the comments received from interested parties, we made certain changes to the margin calculation with respect to the Venus Group. As a result, for these final results, we calculated a margin of 5.35 percent for the Venus Group, 52.84 percent for JSHL, and 5.35 percent for Laxcon. For further details, please *see* below.

V. USE OF ADVERSE FACTS AVAILABLE

Section 776(a) of the Tariff Act of 1930, as amended (the Act) provides that, subject to section 782(d) of the Act, Commerce shall select from “facts otherwise available” if: (1) necessary information is not on the record; or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

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

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.⁸ 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.⁹

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.¹⁰ Secondary information is defined as information derived from the petition that gave rise to the

⁸ See section 776(b)(1)(B) of the Act.

⁹ See 19 CFR 351.308(c).

¹⁰ See 19 CFR 351.308(d).

investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.¹¹ Further, Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.¹²

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.¹³ 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.¹⁴

A. *Application of Partial AFA for the Venus Group*

As discussed further under Comments 1 and 2 below, for these final results, we continue to find that necessary information is not on the record, and that the Venus Group withheld information requested by Commerce and significantly impeded the proceeding by failing to provide Commerce with its unaffiliated suppliers’ cost of production (COP) information on the record of this administrative review. As a result, 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 sold below the COP and which were not at prices which permit recovery of all costs within a reasonable period of time and, as a result, we do not have a basis for determining which home market sales are appropriate to use as normal value. Moreover, without the unaffiliated suppliers’ costs, we cannot accurately calculate constructed value. In addition, pursuant to section 776(b) of the Act, we continue to find that the Venus Group failed to act to the best of its ability to provide the requested information. For these reasons, and as discussed further below in Comments 1 and 2, we continue to find that the application of partial facts available with an adverse inference (AFA) is warranted with respect to the Venus Group, pursuant to sections 776(a)(1), 776(a)(2)(A) and (C), and 776(b) of the Act.

B. *Application of Total AFA for JSHL*

As discussed further under Comments 3 and 4 below, for these final results, we continue to find that necessary information is not on the record, that JSHL withheld information requested by Commerce, failed to provide information in a form or manner requested, and significantly impeded the proceeding. As we discuss in more detail below, JSHL did not provide information requested, despite numerous requests from Commerce, pertaining to unexplained changes to information in its cost database, and failed to act to the best of its ability to provide the requested information. For these reasons, and as discussed further below in Comments 3 and 4, we

¹¹ See 19 CFR 351.308(c); see also Statement of Administrative Action Accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316, 103d Cong., 2d Session, Vol. 1 (1994) at 870.

¹² See section 776(c)(2) of the Act.

¹³ See section 776(d)(1)-(2) of the Act.

¹⁴ See section 776(d)(3) of the Act.

continue to find that the application of total AFA is warranted with respect to JSHL, pursuant to sections 776(a)(1), 776(a)(2)(A)-(C), and 776(b) of the Act.

VI. DISCUSSION OF THE ISSUES

Comment 1: Whether the Venus Group is the Producer of Subject Merchandise

The Venus Group's Arguments

- Commerce's Preliminary Results determination that the Venus Group was not the "producer" of the merchandise that it exported to the United States is in error.¹⁵
- The Venus Group is the producer of subject merchandise.
 - Commerce ignored its regulations instructing on the proper evaluation of whether stainless steel rounds (SSRs) are within the scope of the *Order*.¹⁶
 - Two key characteristics that place the SSRs purchased by the Venus Group outside the scope of the *Order* are "having a uniform solid cross section along their whole length" and "in straight lengths."¹⁷
 - Commerce has failed to discharge its obligation to interpret the scope of the *Order*.
- SSRs are "semi-finished products" which are specifically excluded from the scope of the *Order*.¹⁸
 - A principal reason that the SSRs purchased by the Venus Group do not meet the standards for straightness and consistency is that they are not themselves a finished product, but must instead go through further processing in order to meet industry specifications.¹⁹
 - In the 2008-2009 administrative review,²⁰ the petitioners alleged that the Venus Group and another respondent inappropriately weight-averaged the undervalued remelted billets with the cost of purchased *semi-finished stainless steel rounds/rods*. As the Venus Group's production process has not changed since the time of that review, the SSRs referenced in that review are identical to those purchased in this review.
 - The issue of semi-finished products also arose in the context of *Stainless Steel Bar from France*.²¹ In that review, the question was whether the product sold from a respondent to its affiliated entity for further processing was subject merchandise or a semi-finished product.²² Commerce concluded in that review that the products sold were semi-finished products.
- The remaining factors upon which Commerce relied to make its determination are unpersuasive.²³

¹⁵ See Venus Group's Case Brief at 2.

¹⁶ *Id.*

¹⁷ *Id.* at 3.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See *Stainless Steel Bar from India: Final Results of Antidumping Duty Administrative Reviews*, 75 FR 54090 (September 3, 2010), and accompanying Issues and Decision Memorandum (IDM) at Comment 4.

²¹ See Notice of Final Determination of Sales at Less Than Fair Value: *Stainless Steel Bar from France*, 67 FR 3143 (January 23, 2002) (*Stainless Steel Bar from France*).

²² See Venus Group's Case Brief at 8.

²³ *Id.*

- Language used by the Venus Group and its unaffiliated suppliers to characterize SSRs does not constitute a scope determination.²⁴ Scope language requirements contemplate far more than the mere terminology that may be used to identify a product, and that terminology may actually be of no use at all.²⁵
- The U.S. Court of International Trade (CIT) recently considered whether certain washers were “helical” spring lock washers within the scope of the order at issue. In that case, Commerce successfully argued “that there is no reference {in product descriptions} to the helical name does not strip AREMA washers of their helical function,” and that the washer’s product specifications rendered it within the scope of the order even where the terminology used to describe the product did not suggest that it was within the scope of the order.²⁶ The use of the term “hot rolled bar” is no more sufficient a justification for subjecting the SSRs to the *Order* than not using the term “helical” was to exclude the washers from the order at issue in that case.²⁷
- In its scope memorandum, Commerce cited no statutory or regulatory basis on which to make its determination. Where the sources of information in subsection 19 CFR 351.225(k)(1) are not sufficient, Commerce must consider the factors under subsection 19 CFR 351.225 (k)(2).²⁸
- Commerce’s reliance on the Harmonized Tariff Schedule of the United States (HTSUS) subheadings as support for its determination that these inputs are subject merchandise is unjustifiable.²⁹
- The sources of information that Commerce relied on in its scope determination are not enumerated in subsection (k)(1) of the relevant regulation.³⁰
- The physical characteristics of SSRs are different from SS bar, especially when considered in light of industry standards.³¹
- Even if Commerce concludes that SSRs are subject merchandise, the Venus Group is still the producer of merchandise under consideration.³²
 - Relying solely on the precedent in *Narrow Woven Ribbons*³³ to conclude that the Venus Group is not the “producer” of subject merchandise is incorrect.³⁴
 - In a prior scope ruling, Commerce concluded that the process of transforming stainless steel wire rod (SSWR) into SS bar was sufficient to alter the essential physical characteristics of the SSWR even though, as here, no additional materials were added to the SSWR.³⁵

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 10.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 10.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ See *Notice of Final Determination of Sales at Less Than Fair Value: Narrow Woven Ribbons with Woven Selvedge from Taiwan*, 75 FR 41804 (July 19, 2010) (*Narrow Woven Ribbons*), and accompanying IDM at Comment 20.

³⁴ See Venus Group’s Case Brief at 13.

³⁵ *Id.* at 20.

- Commerce’s analysis of the Venus Group’s manufacturing process abandons this quantitative aspect of its *Narrow Woven Ribbons* decision, and does not discuss how many physical characteristics of SSRs are changed by the Venus Group during manufacturing.³⁶
- Commerce has previously considered purchasers of SSRs to be “Producers” under nearly identical circumstances.³⁷
 - In the 2013-2014 administrative review of SS bar from India,³⁸ a respondent, Bhansali Bright Bar, reported its inputs as subject merchandise; notwithstanding that its manufacturing process is effectively the same as the Venus Group’s manufacturing process, the respondent in that case was not directed by Commerce to submit the COP information from its unaffiliated suppliers.
 - The Venus Group has relied on scope rulings from Commerce that concluded that the conversion of stainless-steel wire rod into SS bar constituted a “substantial transformation.”³⁹ The analysis performed by Commerce in these prior scope proceedings supports the Venus Group’s position that its processing is sufficiently robust to be deemed a producer of the subject merchandise.
 - In the *CCR Final Results*,⁴⁰ Commerce took the position that a “substantial transformation” test does not apply when the input and output products are part of the same “class or kind” of merchandise. In *Diamond Sawblades*,⁴¹ Commerce determined that the “controlling factor in a substantial transformation is not whether there is a change in class of kind of merchandise; rather, Commerce examined where the essential quality of the imported product was imparted, as well as the extent of manufacturing and processing in the exporting country and in the third country.”⁴²
 - Commerce has not explained why the analysis in the wire rod scope determination is substantially different such that it is wholly inapplicable in this case.⁴³
- Commerce improperly disregarded its prior practice of treating the Venus Group as the producer of subject merchandise.⁴⁴
 - Until the challenge to the *CCR Final Results* this proceeding, in every administrative review in which the Venus Group participated, Commerce found the Venus Group to be a “producer” of subject merchandise.
 - In *Shikoku Chems. Corp. v United States*, 795 F. Supp. 417, 422 (CIT 1992),

³⁶ *Id.*

³⁷ *Id.* at 19.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ 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*), 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 IDM (*CCR Final Results*).

⁴¹ See *Final Determination of Sales At Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People’s Republic of China*, 71 FR 29303 (May 22, 2006) (*Diamond Sawblades*).

⁴² *Id.* at 21.

⁴³ *Id.* at 21-22.

⁴⁴ *Id.* at 22.

the Court has previously recognized five consecutive segments of a proceeding as being sufficient for Commerce to have established a practice that became law of the proceeding from which it could not depart.⁴⁵

The Petitioners' Rebuttal Arguments:

- Commerce correctly determined that the manufacturer of the hot-rolled bar (or SSRs) input remained the producer of the SS bar exported to the United States, not the Venus Group.⁴⁶
 - The plain language of the scope demonstrates that “hot-rolled bars are subject merchandise.”⁴⁷ The Venus Group itself previously confirmed that the SSRs (or hot-rolled bars) it purchased “are also included in the scope of the order” but has now reversed itself in this administrative review.
- SSRs are not the “semi-finished products” that are specifically excluded from the scope of the *Order*.⁴⁸
 - The Venus Group fails to recognize that almost any steel product is an intermediate product at any given time. Here, a stainless steel billet or bloom is an intermediate product between the melted steel and a hot-rolled bar.⁴⁹ A hot-rolled bar is an intermediate product between a bloom/billet and a cold-finished bar.⁵⁰
 - Semi-finished products that are expressly excluded from the scope include the upstream product, namely stainless blooms and billets that are used to produce hot-rolled bar.⁵¹
- The Venus Group’s citation to the 2008-2009 administrative review is unavailing.⁵²
 - In that review, neither the petitioners nor Commerce had discovered that “steel rounds” were in fact, hot-rolled, black bar.⁵³
 - The Venus Group’s citation to *Stainless Steel Bars from France* is similarly misplaced. That case did not use the term “semi-finished” to determine whether a product was subject merchandise or outside of the scope of the *Order*, but rather, to identify where in the production chain the product was first sold to unaffiliated customers.
- The clarification obtained from vendor documents is not “mere terminology.”⁵⁴
 - Despite the plain language of the scope of the *Order*, which explicitly includes “hot-rolled bar,” the Venus Group wrongly argues that the scope of the *Order* “covers ‘stainless steel bar,’ not ‘hot-rolled bar.’”⁵⁵
 - To support its claim, the Venus Group incorrectly concludes from its misinterpretation of *Helical Spring Washers*⁵⁶ that commercial invoices and order forms do not indicate

⁴⁵ *Id.*

⁴⁶ See Petitioners’ Venus Group Rebuttal Brief, at 2.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* at 7.

⁵³ *Id.*

⁵⁴ *Id.* at 13.

⁵⁵ *Id.*

⁵⁶ See *United Steel and Fasteners, Inc. v. United States*, 203 F. Supp. 3d 1235, 1244 (CIT 2017) (*Helical Spring Washers*).

that its purchases of SSRs are purchases of hot-rolled bar.⁵⁷ Contrary to the Venus Group's claim, however, just as the failure to insert the term "helical" on each and every document does not make the washers in question "non-helical," the combination of information, from product orders to invoices to communications, to input pictures, to import tariff categories, and to an understanding of the vendors' hot-mill capabilities, provides a totality of evidence that the "rounds" in question are indeed hot-rolled bars subject to this administrative review.

- Commerce did not fail to follow its regulations.⁵⁸
 - Differences in degrees of straightening, in the degree of concentricity, in the types of customers, etc., did not excuse the Venus Group or the respondent in *Stainless Steel Bar from France* from reporting all bar, whether hot-rolled or cold-rolled bar.⁵⁹
- Based on the test articulated in *Narrow Woven Ribbons*, Commerce properly determined that the Venus Group is not the producer of subject merchandise.⁶⁰
 - Commerce properly applied the test articulated in *Narrow Woven Ribbons*, and looked at the extent of the processing performed by the Venus Group to the SSRs, including whether raw materials were added, and examined whether the processing resulted in significant changes to the essential physical characteristics of the exported merchandise such that the Venus Group could be considered the producer of the subject merchandise.
 - Commerce also found significant that the Venus Group did not add any materials to the purchased SSRs that it processed.
- Commerce's reliance on *Narrow Woven Ribbons* is correct.⁶¹
 - The Venus Group failed to recognize that for hot-rolled bar that is cold-finished, only two or three physical characteristics remain constant, whereas five to six have changed.⁶²
 - The Venus Group is incorrect to conclude that all the physical characteristics have equal weight. Whereas in *Narrow Woven Ribbons*, the product has many differing but highly staggered (16) processes that weave a pattern of changes, the two physical characteristics of SS bar that always remain stable, the grade and melt, far outweigh all other attributes.⁶³
 - The Venus Group provided no precedent where the number of characteristics is determinative with respect to further manufacturing.⁶⁴
- Commerce's methodology in a previous proceeding is not controlling.⁶⁵
 - The Venus Group's citation of the 2013-2014 review where Bhansali Bright Bars Pvt. Ltd. reported its purchases of "hot rolled/black bar" as raw materials, without the

⁵⁷ See Petitioners' Venus Group Rebuttal Brief at 13.

⁵⁸ *Id.* at 14.

⁵⁹ *Id.* at 15.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* at 17-18.

⁶⁴ *Id.*

⁶⁵ *Id.* at 19.

- participation of the supplier hot-rolling mills, is unpersuasive because that case has been superseded by Commerce's post-*Narrow Woven Ribbons* practice.⁶⁶
- As Commerce has held, it is not obligated to "accept an incorrect methodology and perpetuate a mistake because it was accepted" in previous proceedings.⁶⁷
 - Commerce's prior scope rulings do not support a conclusion that the Venus Group is the producer of the foreign like product.⁶⁸
 - The Venus Group's reliance on Commerce's prior scope rulings to support its case that it has "substantially transformed" the SSRs is unavailing.
 - *Diamond Sawblades, Erasable Programmable Read Only Memories from Japan, and 3.5" Microdisks and Coated Media Thereof from Japan*, are inapplicable because Commerce applied the substantial transformation test in those cases to determine the country of origin of the finished product, which is not an issue in this case.⁶⁹
 - Thus, Commerce's prior scope determinations, which involve country of origin issues, have no probative value here and do not support the Venus Group's argument.

Commerce's Position: As discussed in more detail below, we continue to find that for certain sales, the Venus Group is not the manufacturer of subject merchandise because the SSRs that it purchased from unaffiliated suppliers and further processed in India prior to exportation to the United States are themselves subject merchandise, and that the Venus Group's further processing of the SSRs does not establish that it is the producer.

Whether the SSRs Purchased by the Venus Group are Subject Merchandise

As we discussed in the *Preliminary Results*,⁷⁰ the scope of the *Order* includes, in relevant part:

articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold drawn, cold rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. 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

⁶⁶ *Id.*

⁶⁷ *Id.*; see also *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 24085 (May 24, 2019), and accompanying IDM at Comment 8.

⁶⁸ *Id.*

⁶⁹ *Id.* at 22.

⁷⁰ See *Preliminary Results*.

cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes, and sections.

In response to Commerce's section A questionnaire, the Venus Group reported that during the POR, it sold stainless steel cold-finished bars produced from (i) SSWR (coil form) or (ii) SSRs (in cut lengths).⁷¹ The Venus Group indicated that SSRs are also referred to as "hot-rolled stainless steel bar" or "black bar."⁷²

As we indicate in the Stainless Steel Rounds Analysis Memorandum,⁷³ to determine whether the Venus Group is the producer of subject merchandise for certain sales, we first evaluated whether the Venus Group's purchases of SSRs, which are further processed by the Venus Group before export to the United States, are in fact purchases of subject merchandise.⁷⁴ As we further explained in the Stainless Steel Rounds Analysis Memorandum, and we point out above, the scope of the *Order* defines stainless steel bar as "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."⁷⁵ The scope of the *Order* states further that SS bar includes "cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process."⁷⁶ Therefore, based on the plain language of the scope, articles of hot-rolled stainless steel in straight lengths, with a uniform solid cross section along their whole length in the shape of circles, are subject merchandise, whether they are further processed into other types of subject SS bar or not.

To determine whether the SSRs purchased by the Venus Group are within the scope language, we examined record evidence, including invoices for the Venus Group's purchases of the raw material inputs (hot-rolled bar and wire rod) during the POR from various unaffiliated suppliers. In some cases, the invoices identify the hot-rolled bars purchased and the corresponding technical specifications as required by the buyer, the Venus Group.⁷⁷ These documents indicate that various unaffiliated suppliers sold "rounds" or "hot-rolled bars" using subcategories of the Indian HTS that mirror the HTSUS 8 to 10-digit subcategories relevant to this case. As noted above, the Venus Group also refers to SSRs as "hot-rolled stainless steel bar" or "black bar."⁷⁸ Additionally, the Venus Group provided photographs of the SSRs, which further confirm that the

⁷¹ See the Venus Group's section A questionnaire response, dated July 31, 2018 (Venus Group's AQR).

⁷² *Id.*

⁷³ See Memorandum, "Preliminary Results of Administrative Review; Stainless Steel Bar from India: Re: Analysis of the Venus Group's Input Stainless Steel Rounds," dated April 9, 2019 (Stainless Steel Rounds Analysis Memorandum).

⁷⁴ *Id.*

⁷⁵ See *Order* (emphasis added).

⁷⁶ *Id.* (emphasis added).

⁷⁷ See Venus Group's Letter, "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 Group's SQR2), at 2.

⁷⁸ See Venus Group AQR.

SSRs are subject merchandise because they are straight hot-rolled bars.⁷⁹ We further compared the photographs of the SSRs to photographs the Venus Group provided of its finished SS bar, and find that both products constitute articles of stainless steel in straight lengths, with a uniform solid cross section along their whole length in the shape of circles.⁸⁰

Moreover, as further discussed below, we find that any slight differences between the raw material SSRs and the finished SS bar in terms of degrees of straightness or curvature does not render the SSRs outside of the scope of the *Order*, which is intended to cover stainless steel bar at various stages of the manufacturing process. This is evident from the scope language, which identifies stainless steel articles “that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished,” as well as “cold-finished stainless steel bars that are turned or ground in straight lengths...produced from hot-rolled bar{.}”

Also relevant to this discussion is the information provided in the International Trade Commission (ITC) Report⁸¹ covering SS bar from Brazil, India, Japan and Spain. The ITC Report discusses the manufacturing process and physical characteristics of SS bar as it applies to this proceeding,⁸² and further supports finding SSRs or “hot-rolled bar” are within the scope of the *Order*. For example, excerpts from the ITC Report indicate the following:

Bar is distinguished from rod and wire in that bar is cut in straight lengths as opposed to being coiled. However, small-diameter bar can be produced from rod or wire by the processes of straightening and cutting-to-length. Although there are no dimensional limitations of the subject product specified in the scope, round bar is generally available from about 0.032 inch (1/32 inch (0.8128 mm)) through 25 inches (635 mm) in diameter.

The subject product includes stainless steel concrete reinforcing bar, which has indentations, ribs, grooves, or other deformations produced during the rolling process.

The material inputs for the production of stainless steel bars are semifinished stainless steel billets. Most manufacturers of stainless steel bars follow an integrated production process that consists of three stages: (1) melting and casting; (2) hot-forming; and (3) finishing. Some manufacturers purchase stainless steel billets on the open market for transformation into bar.

The bar mills may also be used to produce nonsubject product such as stainless steel angle and wire rod, as well as products of other (non-stainless steel) alloys.

⁷⁹ See Venus Group’s AQR, at Exhibit 14.

⁸⁰ Compare Venus Group AQR, at Exhibit A-14 with Exhibit A-9.

⁸¹ See U.S. International Trade Commission, *Stainless Steel Bar from Brazil, India, Japan, and Spain*, Inv. No. 731-TA-678, 679, 681 and 682 (Third Review), July 2012, USITC Pub. 4341 (ITC Report).

⁸² *Id.*

Regardless of the hot-forming method chosen, the hot-formed product, termed “black bar,” has a tight, dark oxide scale on the surface that must be removed for the steel to have the corrosion resistance of stainless steel.

Round bars are cold finished by either bar-to-bar processing or coil-to-bar processing depending upon the diameter. Bar-to-bar processing, used for bar larger than about 1 inch in diameter, consists of straightening, turning, and either planishing and centerless grinding or belt polishing to yield a bright finish and close dimensional tolerance. Coil-to-bar processing includes straightening the product and cutting to length, followed by turning, planishing, centerless grinding, or polishing.⁸³

Contrary to the Venus Group’s contention, the ITC Report affirms that “stainless steel rounds” or “hot-rolled bars” are not excluded from the scope of the *Order*, because they are specifically identified as a hot-formed product, termed “black bar.”⁸⁴ The ITC Report is therefore consistent with our reading of the scope language, and supports that these “black bar” products are within the scope of the *Order*.

As we indicate above, the Venus Group acknowledges that the terms SSR and “black bar” are interchangeable terms used to identify hot-rolled bar.⁸⁵ This understanding is further supported by emails placed on the record by the Venus Group from several of its unaffiliated suppliers in which various unaffiliated suppliers indicate that they supplied “hot rolled bars” and “wire rods” to the Venus Group during the POR.⁸⁶ Thus, SSRs and “black bars” are not distinct products from hot-rolled bar. They are one and the same, and the record demonstrates that the Venus Group, and its unaffiliated suppliers recognize that the terms are interchangeable.⁸⁷ Therefore, based on the plain language of the scope of the *Order*, SSRs are “hot-rolled bars” which are within the scope of the *Order*.

Further, as detailed in the Stainless Steel Rounds Analysis Memorandum, in response to our second supplemental questionnaire, the Venus Group reported that based on consideration of the composition of the steel and the nominal diameter, the SSRs or “hot-rolled bars” it purchases from its unaffiliated suppliers likely would be currently classifiable under HTSUS subheadings 7222.11.00.57, 7221.11.00.59, 7221.11.00.82 and 7221.11.0084 of the HTSUS 2018 if they were to be exported directly to the United States.⁸⁸ Although we recognize that the HTSUS tariff codes “are provided for convenience and customs purposes and are not dispositive,” we find that this is additional evidence that the hot-rolled bars fall within the hot-worked forms and chemistries of subject merchandise, as illustrated in the HTSUS tariff codes.

⁸³ See ITC Report at I-11.

⁸⁴ *Id.*

⁸⁵ See the Venus Group’s AQR, at 38.

⁸⁶ See Venus Group’s SQR2, at Exhibits A-30, A-32 and A-33.

⁸⁷ *Id.*

⁸⁸ *Id.* at 2.

The Venus Group argues that SSRs do not conform to hot-rolled bar specifications for two reasons; first, because of non-uniformity in size throughout the length, ovality, and curvature beyond the tolerance of industry standards, and second, because the SSRs are not in “straight lengths.”⁸⁹ An examination of the ITC Report indicates that “{b}ar is distinguished from rod and wire in that bar is cut in straight lengths as opposed to being coiled.”⁹⁰ As we indicate in Stainless Steel Rounds Analysis Memorandum:

assuming *arguendo* that all of the Venus Group’s purchases of stainless steel rounds have varying degrees of straightness, we find that the scope of the *Order* does not identify the requisite degree of straightness as a physical characteristic of subject merchandise. We agree with the petitioners’ contention that this term is used to distinguish the hot-rolled bar input from the stainless steel wire rod input. The petitioners provided on the record a declaration from an U.S. industry expert supporting the petitioners’ contention that the term “straight lengths” is used to distinguish hot-rolled bar from stainless steel wire rod.⁹¹ Specifically, the U.S. industry expert indicated “{t}hat is the simplest form of stainless steel bar, where the grade (chemistry) determines that it is stainless steel and the form, in straight lengths, makes it bar (distinguishable from similar material in irregularly wound coils, *i.e.*, stainless steel wire rod).”⁹² The Venus Group has not placed anything on the record to dispute the petitioners’ interpretation of the scope of the *Order*.

The ITC Report supports the U.S. industry expert’s opinion that the term “straight” is used to distinguish hot-rolled bar from SSWR, and that it is not used in the context suggested by the Venus Group (*e.g.*, the Venus Group contends that the SSRs are not in “straight lengths”). Therefore, when reviewing the totality of the evidence on the record (*i.e.*, product orders, invoices to communications, photographs, import tariff categories, and an understanding of the vendors’ hot-mill capabilities) we find that SSRs or “hot-rolled bars” are subject merchandise. Contrary to the Venus Group’s assertion, we have not simply relied on terminology, but have considered the record *in toto* in reaching our decision.

With regard to the Venus Group’s argument that Commerce failed to discharge its obligation to interpret the scope of the *Order*, we disagree. As we indicated in the Stainless Steel Rounds Analysis Memorandum, the Venus Group requested that Commerce evaluate the record and determine whether the SSRs are within the scope of the antidumping duty *Order* on SS bar from India.⁹³ As outlined in the Stainless Steel Rounds Analysis Memorandum and above, we reviewed the evidence on the record, and based on that evidence we determined that SSRs or hot-rolled bars are within the scope of the *Order*.⁹⁴ The ITC Report covering SS bar provides

⁸⁹ See Venus Group’s AQR.

⁹⁰ See ITC Report at I-18, I-19

⁹¹ See Petitioners’ Letter, “Stainless Steel Bar from India – Petitioners’ Filing of New Factual Information to Rebut the July 31, 2018 AQR Submitted by the Venus Group,” at Appendix 2, dated August 24, 2018 (Petitioners’ NFI).

⁹² *Id.*

⁹³ See Venus Group’s Letter, “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, at 14 and 15.

⁹⁴ See Stainless Steel Rounds Analysis Memorandum.

more information supporting the analysis outlined in the Stainless Steel Rounds Analysis Memorandum.⁹⁵ Thus, we disagree with the Venus Group's assertion that we failed to discharge our obligation to interpret the scope of the *Order*.

With regard to the Venus Group's argument that the physical characteristics for SSRs are different from SS bar, as we indicated in the Stainless Steel Rounds Analysis Memorandum, we found for the *Preliminary Results*, and we continue to find for these final results, that the scope of the *Order* does not identify the requisite degree of uniformity as a physical characteristic of subject merchandise. The scope refers to "articles of stainless steel in straight lengths ... 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." The scope language makes no reference to uniformity tolerances based on industry standards, as the Venus Group claims. Thus, the scope of the *Order* does not specify the required degree of uniformity of cross section, nor does it provide benchmarks for how the bar cross section was formed, or its exact uniformity measured, either in numerical terms or by reference to commercial/industrial standards (e.g., ASTM A484).⁹⁶ Therefore, we interpret these terms in accordance with their plain meaning. Contrary to the Venus Group's assertion, this does not mean that Commerce has left these terms undefined.

Further, the ITC Report also supports our conclusion that the scope does not require a degree of uniformity as a requisite physical characteristic of subject merchandise:

Although there are no dimensional limitations of the subject product specified in the scope, round bar is generally available from about 0.032 inch (1/32 inch (0.8128 mm)) through 25 inches (635 mm) in diameter.

As a practical matter, all stainless steel bar is descaled in some manner. Hot-finished is mostly limited to large diameter (over about 8 inches (203.2 mm) bar, which is usually rough-turned, and to flats and reinforcing bar, which are blasted and/or pickled to remove surface imperfections. Most domestically produced hot-finished stainless steel bar is an intermediate product that is captively consumed in integrated manufacturing operations to produce cold-finished stainless steel bar. Hot-finished stainless steel bar which sold on the open market is used for applications where surface appearance is not critical or where the cold-finishing steps will be performed by end-users during the downstream fabrication processing.⁹⁷

The ITC Report demonstrates that the physical characteristics associated with "black bar" or "hot-rolled bar" are recognized as "intermediate products" used in the process to produce either hot-finished stainless steel bar (with imperfections) or finished SS bar, but are not themselves

⁹⁵ See ITC Report.

⁹⁶ *Id.*

⁹⁷ See ITC Report at I-10.

excluded from the scope of the *Order*, even though they are identified as “intermediate products.”⁹⁸

Further, the Venus Group indicates that “{m}aterials rejected for not meeting required chemical, mechanical, and physical characteristics are sold as sub-prime material in the home market for non-defined end applications.”⁹⁹ This suggests that the inputs in question that do not meet industry standards for various tolerances are considered sub-prime products that would be sold as such in various markets, and would not be used by the Venus Group in its further processing of subject merchandise. In any event, the scope of the *Order* does not indicate that sub-prime products are not within the scope of the *Order*. Thus, we find nothing to indicate that the input in question (hot-rolled bar) would not be subject to the scope of *Order* merely because it may not meet certain tolerances under the industry standards.

Additionally, we disagree with the Venus Group that the SSRs satisfy the narrow exclusion from the scope of the *Order* for “semi-finished products.” The scope language exclusion states, “{e}xcept as provided above, the term {SS bar} does not include stainless steel semi-finished products...” We interpret this language to mean that products that otherwise meet the definition of SS bar in the first scope paragraph are subject to the *Order*. As explained above, we continue to find that based on the plain language of the scope of the *Order*, SSRs meet the definition of SS bar, and thus, do not fall within the exclusion in the scope. Moreover, although “semi-finished products” are not defined in the scope, the ITC Report explains that semi-finished products excluded from the *Order* are those such as billets, seamless tubes, and bars that have been produced from flat-rolled products (*i.e.*, from plate or from strip).¹⁰⁰ The ITC Report supports a finding that SSRs, or “hot rolled bars,” are “intermediate products” used in the process to produce hot-finished stainless steel bar or finished SS bar and, therefore, are within the scope of the *Order*,¹⁰¹ and are not “semi-finished products” which satisfy the scope exclusion. Thus, contrary to the Venus Group’s assertion, we find that the SSRs do not comprise the semi-finished products that are specifically excluded from the scope of the *Order*.

Further, in response to a supplemental questionnaire, where Commerce asked the Venus Group whether it believed that SSRs were semi-finished products excluded from the scope of *Order*, the Venus Group replied, “{t}he Venus Group’s position that stainless steel rounds are non-subject merchandise is not dependent on a determination that they are “semi-finished,” which appears to be the premise of {Commerce’s} question. Rather, the Venus Group’s position is that stainless steel rounds are non-subject merchandise because they are not in ‘straight lengths’ and do not have ‘a uniform solid cross section along their whole length’ as required by the scope.”¹⁰² In our supplemental questionnaire, we requested that the Venus Group provide documentation or evidence that would indicate that SSRs are semi-finished products.¹⁰³ The Venus Group has not provided any documentation or evidence on the record that indicates that SSRs meet the

⁹⁸ *Id.*

⁹⁹ See Venus Group’s AQR, at 36.

¹⁰⁰ See ITC Report at I-18, I-19; IV-10.

¹⁰¹ *Id.*

¹⁰² See Venus Group’s SQR2, at 3.

¹⁰³ *Id.*

definition of the semi-finished products that are specifically excluded from the scope of the *Order*.

In addition, in its section A questionnaire response at Exhibit 13-A, the Venus Group submitted information about the industry standards used in the manufacturing of various types of SS bar. In those documents, it identifies “billets and blooms” as semi-finished products typically produced by rolling or continuous casting.¹⁰⁴ The SSRs that the Venus Group purchases from unaffiliated suppliers have been produced by those unaffiliated suppliers from the billets and blooms, *i.e.*, from the semi-finished products that are specifically excluded from the scope of the *Order*. Thus, the literature provided by the Venus Group supports the ITC Report and other information on the record that SSRs are not “semi-finished” products as the Venus Group now contends, and, therefore, are not excluded from the scope of the *Order* under the specific exclusion for semi-finished products. Further, contrary to the Venus Group’s contention, it is possible to recognize that the SSRs are not final products (by the plainest understanding of that term) and also conclude that they are not the semi-finished products specified by the scope of the *Order*, *i.e.*, they are “intermediate products” as contemplated by the ITC Report.¹⁰⁵

With regard to the Venus Group’s citation of the 2008-2009 administrative review of stainless steel bar from India, and determinations in other previous proceedings such as *Stainless Steel Bar from France*, we find that we must base our determination on the facts of the present case, not on prior proceedings; each segment of a proceeding has its own record and stands on its own.¹⁰⁶ Thus, regardless of Commerce’s decisions in prior segments of the proceeding, the facts on the record of this review support our conclusion that the Venus Group is not the producer of the SS bar that it processed and then exported to the United States. We do not act arbitrarily when, based on a current segment’s record, Commerce’s analysis of a respondent’s responses leads it to a factual determination that differs from a prior administrative review. As the Court recently recognized, “{a respondent} may not, however, rely on Commerce’s factual conclusions from prior reviews in the instant review because each review is separate and based on the record developed before the agency in the review.”¹⁰⁷ Here, we analyzed the evidence on the record and reached a determination based on those facts. A difference from prior factual findings does not indicate a lack of substantial evidence on the record. Moreover, Commerce did not address this issue in any of the prior reviews in which the Venus Group was under review. The information provided for Commerce’s consideration in this review had not been provided in prior administrative reviews; therefore, Commerce’s decisions in those prior reviews are not persuasive. Additionally, we agree with the petitioners that the treatment of the phrase “semi-finished product” in the 2008-2009 review and in *Stainless Steel Bar from France*, does not

¹⁰⁴ See Venus Group’s AQR at Exhibit 13-A, at 549.

¹⁰⁵ See ITC Report at I-18.

¹⁰⁶ See, *e.g.*, *Yama Ribbons & Bows Co., Ltd. v. United States*, 865 F. Supp. 2d 1294, 1299 (CIT 2012), *Peer Bearing Company - Changshan v. United States*, 587 F. Supp. 2d 1319, 1325 (CIT 2008), and *Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Final Results of Antidumping Duty Administrative Review*, 80 FR 19633 (April 13, 2015), and accompanying IDM at 3.

¹⁰⁷ See *Hyundai Heavy Indus., Co., Ltd. v. United States*, 332 F. Supp. 3d 1331, 1342 (CIT 2018) (citing, *e.g.*, *Jiaying Bro. Fastener Co., Ltd. v. United States*, 822 F.3d 1289, 1299 (Fed. Cir. 2016); *Shandong Huarong Mach. Co. v. United States*, 29 CIT 484, 491 (May 2, 2005) (“{A}s Commerce points out, ‘each administrative review is a separate segment of {the} proceeding{ } with its own unique facts. Indeed, if the facts remained the same from period to period, there would be no need for administrative reviews’”) (quotation omitted)).

control our interpretation in this review. Whether the term may have been used interchangeably with the terms hot-rolled bar, or intermediate products, does not detract from our finding here that the exclusion does not encompass hot-rolled bar.

Whether the Venus Group is the Producer of the SSRs

With regard to the Venus Group's argument that Commerce should find that it is the producer of subject merchandise even if Commerce concludes that SSRs are subject merchandise, we disagree. As discussed in the *Preliminary Results*, after establishing that the Venus Group in fact purchased in-scope SS bar from unaffiliated Indian SS bar producers, we determined that, consistent with the precedent in *Narrow Woven Ribbons*,¹⁰⁸ 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.¹⁰⁹ We continue to reach this finding for purposes of these final results.

Section 771(28) of the Act states that “{f}or purposes of section 773, the term ‘exporter or producer’ includes both the exporter of the subject merchandise and the producer of the same subject merchandise to the extent necessary to accurately calculate the total amount incurred and realized for costs, expenses, and profits in connection with production and sale of that merchandise.” The SAA explains that “the purpose of section 771(28) . . . is to clarify that where different firms perform that production and selling function, Commerce may include the costs, expenses, and profits of each firm in calculating cost of production and constructed value.”¹¹⁰ The intent of this section is to ensure that Commerce has the authority to capture all costs in situations where various companies are engaged in the production and sale of the merchandise under consideration. Accordingly, Commerce's determination of who is the producer directly impacts the COP and constructed value computations.

In *Narrow Woven Ribbons*, we determined that the respondent (who processed the merchandise before export to the United States) was not the producer of the subject merchandise, and therefore we sought cost data from the unaffiliated suppliers at issue.¹¹¹ In examining this issue, we looked to the extent to which the ribbon obtained from the unaffiliated suppliers was further manufactured by the respondent. In so doing, we analyzed whether raw materials were added, and whether processing was performed that changed the physical nature and characteristics of the product. We determined that “the record shows that the additional materials used in the further processing were minimal” and that “the further processing performed did not result in significant changes to the essential physical characteristics of the {narrow woven ribbons}.”¹¹² 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 of further

¹⁰⁸ See *Notice of Final Determination of Sales at Less Than Fair Value: Narrow Woven Ribbons with Woven Selvedge from Taiwan*, 75 FR 41804 (July 19, 2010) (*Narrow Woven Ribbons*), and accompanying IDM at Comment 20.

¹⁰⁹ See *Preliminary Results*, 82 FR 48483, and accompanying Preliminary Decision Memorandum at 6-7.

¹¹⁰ See SAA, H.R. Doc. Nos. 103-465, vol. 1, at 835 (1994).

¹¹¹ See *Narrow Woven Ribbons*, 75 FR 41804, and accompanying IDM at Comment 20.

¹¹² *Id.*

processing performed by the respondent.¹¹³ However, we also noted that the “determination is based on the totality of the record evidence and the facts specific to this case.”¹¹⁴

Based on *Narrow Woven Ribbons*, we continue to find that the Venus Group, which processed the merchandise before export to the United States, is not the producer of the subject merchandise. Here, the Venus Group identified itself as the producer of all of the subject merchandise shipped to the United States.¹¹⁵ In determining whether the suppliers or the Venus Group is the producer of the SS bar in question, we looked to the extent to which the SS bar was further manufactured by the Venus Group. According to the Venus Group, it adds no additional materials to the SS bar purchased and processed by it.¹¹⁶ Moreover, according to the Venus Group, the further processing performed by the Venus Group (which consists of heat treatment, straightening, peeling, polishing, cutting, and – in some cases, grinding) does not affect the two most important physical characteristics as reported in our questionnaire (grade and melting) out of the eight characteristics, nor does it affect shape (the sixth characteristic).¹¹⁷ Accordingly, consistent with the precedent in *Narrow Woven Ribbons*, we continue 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.

With regard to the Venus Group’s argument that Commerce erred by failing to conduct a “substantial transformation” test, we disagree. In support, the Venus Group relies on *Diamond Sawblades from China*, *Erasable Memories from Japan* and *3.5’ Microdisks and Coated Media from Japan*. With regard to *Diamond Sawblades from China*, although Commerce applied the substantial transformation test in that case, even though both the input and output fell into the same class or kind of merchandise, Commerce did so to identify the appropriate country of origin of the finished product, which is not the case in this proceeding.¹¹⁸ Similarly, we find the Venus Group’s reliance on *Erasable Memories from Japan* and *3.5’ Microdisks and Coated Media from Japan*, is not applicable because, again, the “substantial transformation” issues in these cases involved a country of origin issue.¹¹⁹ Here, in contrast, we do not need to determine the country of origin; there is no dispute that the input purchased and the merchandise exported are both manufactured in India, and moreover, subject to the *Order*, based on the Venus Group’s responses to Commerce’s questionnaires. Thus, there is no need for Commerce to apply its substantial transformation test to the input supplied to the Venus Group by the suppliers in question. Thus, we continue to find that Commerce’s practice in *Narrow Woven Ribbons*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ See Venus Group’s AQR at 43.

¹¹⁶ *Id.* at 19.

¹¹⁷ *Id.* Although the Venus Group claims that the shape may change, this claim is based on its assertion that the SSRs “have oval shapes at many places throughout the bars, which are converted to uniform shape.” *Id.* The physical characteristic “shape” is used to distinguish bars that are round, square, rectangular, pentagonal, hexagonal, etc. See Commerce’s Questionnaire, dated June 26, 2018. What the Venus Group describes is really a straightening operation which is part of the cold-drawing process. Thus, we continue to find that the shape of the bar is not actually affected by the process the Venus Group performs.

¹¹⁸ See *Diamond Sawblades from China*, IDM at Comment 4.

¹¹⁹ See *Erasable Programmable Read Only Memories from Japan; Final Determination of Sales at Less Than Fair Value*; 51 FR 39680 (October 30, 1986 (*Erasable Memories from Japan*)) and *3.5” Microdisks and Coated Media Thereof from Japan; Final Determination of Sales at Less Than Fair Value*, 54 FR 6433 (February 10, 1989) (*3.5’ Microdisks and Coated Media from Japan*).

provides the appropriate analysis.

With regard to the Venus Group's argument that Commerce has not explained why the analysis in the wire rod scope determination is substantially different such that it is wholly inapplicable in this case, we disagree. For instance, we reasonably determined that the Venus Group is not the producer of subject merchandise because the hot-rolled bar it purchases is subject merchandise, a point of factual difference from SSWR, which is not subject to the *Order*. Further, as we explained in the *Preliminary Results* and reiterate above, the Venus Group's processing of the in-scope merchandise does not alter the top two most important physical characteristics as reported in our questionnaire (grade and melting) out of the eight characteristics, nor does it affect shape (the sixth characteristic). Thus, for the reasons outlined above, we continue to find that hot-rolled bar purchased by the Venus Group is subject to the scope of the *Order*, and that the Venus Group's further processing does not satisfy the test articulated in *Narrow Woven Ribbons*.

We conclude that the prior scope determinations cited by the Venus Group do not speak to the factual issues on the record before Commerce for this administrative review, and we determine that the input the Venus Group purchased remains of the same class of kind of merchandise following the Venus Group's treatment of the input.

Comment 2: Whether Partial Adverse Facts Available is Warranted for the Venus Group

The Venus Group's Arguments

- Commerce's preliminary determination to apply partial AFA to the Venus Group in place of the missing COP information from the Venus Group's unaffiliated suppliers is unsupported by law and the factual record.
- If Commerce continues to take the position that the Venus Group is not the producer of subject merchandise, Commerce should use the application of neutral facts available to value the Venus Group's purchases of SSRs.¹²⁰
 - In this case, the most appropriate non-AFA application would be to use the Venus Group's acquisition cost, because there is no basis for Commerce to conclude that the Venus Group's arm's length purchases from its unaffiliated suppliers were made at less than its suppliers' cost of production.¹²¹
 - The Venus Group attempted all possible steps to induce its unaffiliated suppliers to provide the COP information requested by Commerce. The Venus Group requested cooperation from its unaffiliated suppliers frequently, by email, phone correspondence, and even travelled across the country to meet in-person. The Venus Group also offered to pay for the cost of preparing the COP data. These requests were expressly refused or ignored by all but one unaffiliated supplier.
 - Commerce, in the *Preliminary Results*, did not point out that the period of review of this administrative review runs from February 2017 through January 2018, and the preliminary results of the changed circumstances review (CCR) were issued in October 2017.¹²² Even if the Venus Group had considered the preliminary results of the CCR

¹²⁰ See Venus Group's Case Brief at 24.

¹²¹ *Id.* at 25.

¹²² *Id.* at 27.

issued in October 2017 to reflect a final decision, there were only three months, from November 2017 to January 2018, for the Venus Group to effect a change in its sourcing patterns during this POR.¹²³

- The Venus Group's monthly purchasing information shows that, subsequent to the *CCR Preliminary Results* in October 2017, it is moving away from purchasing SSRs from certain of its unaffiliated suppliers.
- Even though the Venus Group's threats to its unaffiliated suppliers were real, its unaffiliated suppliers still did not cooperate.
 - *Mueller*¹²⁴ does not stand for the blanket proposition that Commerce may use an adverse inference in determining a respondent's dumping margin whenever a respondent does not submit its suppliers' COP data. The *Mueller* holding is significantly more restrained.¹²⁵
 - In *Mueller*, the Court explained that Commerce "may rely on such {inducement/evasion} policies as part of a margin determination for a cooperating party...as long as the application of those policies is reasonable on the particular facts and the predominant interest in accuracy is properly taken into account as well."¹²⁶ Importantly, the Court specifically cautioned that where a cooperating entity lacks the power to control "non-cooperating suppliers, a resulting adverse inference is potentially unfair to the cooperating party."
 - Further, in *Mueller*, the Court advised that "Commerce cannot confine itself to a deterrence rationale and also must carry out a case-specific analysis of the applicability of deterrence and similar policies," and also should evaluate whether there is a "direct adverse effect" on the non-cooperating party.
 - In *Itochu Bldgs. Prods. Co. v. United States (Itochu)*, the Court remanded the case to Commerce because it did not conduct the case-specific analysis required by *Mueller*.¹²⁷
 - In *Itochu*, the Court correctly applied *Mueller*, concluding that Commerce's application of AFA against the respondent was in error.¹²⁸ The Venus Group also cites to other cases to support its position.¹²⁹
 - Commerce failed to make a finding that the Venus Group had sufficient control over its unaffiliated suppliers such that the Venus Group could induce their cooperation and the evidence does not support such a finding.
 - The supplier emails rejecting the Venus Group's requests confirm that the Venus Group held no leverage over its unaffiliated suppliers to induce their compliance. Commerce failed to make a finding that the Venus Group's unaffiliated suppliers attempted to evade a higher antidumping duty rate by using the Venus Group as an exporter and the evidence does not support such a finding. Commerce failed to make a finding that the application of an AFA margin to the Venus Group would directly and adversely affect its non-cooperating unaffiliated suppliers' interests and the evidence does not support such a

¹²³ *Id.*

¹²⁴ See *Mueller Commercial De Mexico, S. De R.L. De C.V. v. United States*, 753 F.3d 1227, 1233 (Fed. Cir. 2014) (*Mueller*).

¹²⁵ *Id.*

¹²⁶ *Id.* at 31 and 32.

¹²⁷ *Id.* at 32 (citing Slip Op. 17-73 (CIT June 22, 2017)).

¹²⁸ *Id.*

¹²⁹ *Id.* at 34-35.

finding. In fact, the application of an AFA margin to the Venus Group helps the non-cooperating suppliers who also compete against the Venus Group for sales of SS bar in various markets.¹³⁰

- The Venus Group’s timely and repeated requests for assistance from Commerce are further evidence that it acted to the best of its ability.¹³¹
 - Commerce’s unwillingness or perhaps inability to provide the Venus Group with practical advice on how to obtain this information from its unaffiliated suppliers is further evidence that the company acted to the “best of its ability;” if Commerce had no ideas for how the Venus Group could induce cooperation given its lack of commercial leverage, the Venus Group could not be expected to have those ideas either.

The Petitioners’ Rebuttal Arguments:

- Commerce’s preliminary decision to apply AFA in place of the COP information from the Venus Group’s unaffiliated suppliers is supported by substantial evidence and in accordance with law.¹³²
 - The Venus Group’s claims that Commerce’s conclusion did not recognize that the Venus Group had only three months in the POR to effect a change in its purchasing practices is also unpersuasive.¹³³
 - As Commerce found, there is no evidence that the Venus Group had significantly changed its purchasing pattern from the uncooperative suppliers.
- Commerce did not misapply the *Mueller* precedent¹³⁴
 - Commerce relied on *Mueller* for the proposition that Commerce may use an adverse inference in selecting from among 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, such as those involving a producer/supplier-exporter relationship.¹³⁵
 - As in *Mueller*, the Venus Group had an existing relationship with its suppliers through its procurement of subject merchandise as an input and therefore had a mechanism to induce cooperation—namely, it could have “refused to do business” with its suppliers “in the future as a tactic to force” the supplier to cooperate.¹³⁶
 - In this case, the Venus Group did not provide sufficient evidence on the record to demonstrate that it lacked such power to induce cooperation from its non-cooperating suppliers. Commerce properly relied on *Mueller* and applied AFA to the Venus Group.
 - Without the unaffiliated producers/suppliers’ COP data, Commerce did not have the information necessary to calculate a dumping margin for the Venus Group.
 - Because the necessary unaffiliated supplier’s cost data is not on the record, Commerce appropriately determined that the application of partial FA was warranted.

¹³⁰ *Id.*

¹³¹ *Id.* at 35.

¹³² See Petitioners’ Venus Group Rebuttal Brief at 25.

¹³³ *Id.* at 29.

¹³⁴ *Id.*

¹³⁵ *Id.* at 30.

¹³⁶ *Id.*

- The Venus Group failed to act to the best of its ability.¹³⁷
 - The statute permits Commerce to use facts otherwise available when a respondent fails to provide necessary information that was requested by Commerce.
 - As the Federal Circuit held, “the mere failure of a respondent to furnish requested information—for any reason—requires Commerce to resort to other sources of information to complete the factual record on which it makes its determination.”¹³⁸
 - Here, as partial AFA, Commerce properly applied the highest transaction-specific margin of 77.49 percent calculated for the Venus Group’s sales that used wire rod as an input for those sales that used hot-rolled bar (or SSRs) as an input for the preliminary results.

Commerce’s Position: We continue to find that because we do not have the Venus Group’s unaffiliated suppliers’ COP data on the record of this review, and because we find that the Venus Group has failed to cooperate to the best of its ability, selection from among the facts otherwise available, in part, with an adverse inference (partial AFA) is necessary.¹³⁹

As outlined above and in the *Preliminary Results*, we requested that the Venus Group provide its unaffiliated suppliers’ cost data for purchases of in-scope merchandise used to produce subject merchandise.¹⁴⁰ Neither the Venus Group nor its unaffiliated suppliers provided the necessary COP information on the record of this administrative review. Without the unaffiliated suppliers’ costs, we do not have the appropriate cost data to calculate an AD margin. For example, we cannot accurately determine which of the Venus Group’s home market sales were sold below the COP and which were not at prices which permit recovery of all costs within a reasonable period of time and, as a result, we do not have a basis for determining which home market sales are appropriate to use as normal value. Moreover, without the unaffiliated suppliers’ costs, we cannot accurately calculate constructed value.

Because we do not have the cost data for any of the unaffiliated suppliers of SSRs on the record, necessary information is missing from the record pursuant to section 776(a)(1) of the Act. Further, we find that the Venus Group withheld information that we requested pursuant to section 776(a)(2)(A) of the Act and significantly impeded this proceeding pursuant to section 776(a)(2)(C) of the Act, because, as described above, the Venus Group failed to provide the COP information as requested.

In addition, pursuant to section 776(b) of the Act, we continue find that the Venus Group failed to act to the best of its ability, and, therefore the application of facts otherwise available with an adverse inference is warranted. Specifically, contrary to the Venus Group’s claims, we find that the Venus Group did not act to the best of its ability in attempting to obtain its unaffiliated suppliers’ COP data. 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

¹³⁷ *Id.* at 31.

¹³⁸ *Id.* at 32.

¹³⁹ See *Preliminary Results*, and accompanying Preliminary Decision Memorandum (PDM) at 7-10.

¹⁴⁰ *Id.* at 7-8.

calculate that respondent's dumping margin, in situations where the respondent has the ability to induce the non-cooperating party to cooperate.¹⁴¹ Thus, in this case, as discussed further below, we determine that the Venus Group had the ability to induce its unaffiliated suppliers to cooperate with Commerce's request and failed to put forth its maximum efforts to obtain and provide the necessary information we requested. Thus, we continue to use an adverse inference in selecting from the facts otherwise available for the Venus Group.

Furthermore, as we explained in the *Preliminary Results*, we will continue to rely 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.¹⁴² As we indicated in the *Preliminary Results*, the Venus Group purchased SSWR in coil form and hot-rolled stainless steel bars (hot-rolled bars) 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 reported cost of the SSWR coil input plus conversion costs for purposes of determining COP and calculating a margin. Thus, for these final results of review, we have revised our approach to the application of AFA to the U.S. sales of subject merchandise produced using the SSRs or hot rolled bar inputs. Rather than assigning the highest (non-aberrational) transaction-specific margin to these sales, we have calculated a "surrogate" COP for these sales. We calculated this surrogate COP by examining the below-cost sales of SS bar produced using the SSWR input. For these sales, we identified the highest difference (as a percentage of acquisition cost) between the Venus Group's acquisition cost, plus Selling, General & Administrative (SG&A) costs, and the sales price. We then applied this percentage to the acquisition cost, plus SG&A, of the SSRs or hot rolled bar inputs. We conducted the sales-below cost on the basis of this "surrogate" COP, and we applied the margin program to the appropriate U.S. sales. This approach is consistent with *Glycine from India* and *Pipes and Tubes from India*.¹⁴³

Therefore, for these final results, we have identified the partial AFA rate using information obtained from the record of this review; thus, per section 776(c)(2) of the Act, we are not required to corroborate the information on which we have relied.

With regard to the Venus Group's argument that Commerce misapplied *Mueller*, we disagree. We relied on *Mueller* for the proposition that we may use an adverse inference in selecting from among the facts otherwise available where a respondent has the ability to induce a non-responsive party to cooperate in providing the necessary information for purposes of determining that respondent's dumping margin.¹⁴⁴

¹⁴¹ See *Mueller*.

¹⁴² See section 782(e)(1)-(5) of the Act.

¹⁴³ See *Glycine from India: Final Determination of Sales at Less Than Fair Value*, 84 FR 18487 (May 1, 2019), and accompanying Issues and Decision Memorandum at Comment 1 (*Glycine from India*), and *Welded Carbon Steel Standard Pipes and Tubes from India: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 33916 (July 16, 2019), and accompanying PDM (*Pipes and Tubes from India*). For further details, see "Administrative Review of the Antidumping Duty Order on Stainless Steel Bar from India: Final Analysis Memorandum for the Venus Group," dated concurrently with this memorandum.

¹⁴⁴ See *Preliminary Results*, and accompanying PDM at 10.

To be clear, we find the history of the Venus Group’s involvement in Commerce’s reviews of the *Order* to be relevant to our determination that it failed to act to the best of its ability in this review. The Venus Group is an experienced respondent, and successfully obtained a partial revocation from the *Order* based on a previous changed circumstances review in 2011.¹⁴⁵ Five years later, in 2016, the petitioners requested that Commerce conduct another changed circumstances review to determine whether the Venus Group should be reinstated in the *Order*. During the period examined in the changed circumstances review, July 1, 2015 through June 31, 2016, the Venus Group purchased what it acknowledged to be subject merchandise (hot-rolled bars) from numerous suppliers.¹⁴⁶ Pursuant to Commerce’s request, the Venus Group requested COP information from its unaffiliated suppliers after Commerce’s *CCR Preliminary Results* in October 2017, but was unsuccessful in obtaining the information.¹⁴⁷ As a result, in the *CCR Final Results* in April 2018, Commerce found that the Venus Group had failed to put forth its maximum efforts to obtain and provide the information we requested. Thus, we applied partial AFA for the Venus Group.¹⁴⁸

In this review, which covers the period February 1, 2017 through January 31, 2018, the Venus Group purchased subject merchandise (hot-rolled bar) from numerous suppliers who are known exporters to the United States and are subject to the *Order*.¹⁴⁹ During the time that it made the purchases, the Venus Group had acknowledged during the changed circumstances review that it was purchasing subject merchandise from these suppliers. Therefore, we find that throughout the duration of the review period, the Venus Group knew or should have known of its obligations to secure COP information from its unaffiliated suppliers for purposes of cooperating in Commerce’s proceedings. Additionally, the Venus Group self-requested this review of itself in February 2018, and had 90 days to withdraw its review request. Within this 90-day period, the Venus Group learned of the *CCR Final Results* and Commerce’s determination that the Venus Group had not acted to the best of its ability to provide its suppliers’ COP information. With this knowledge, the Venus Group did not withdraw its review request, but continued with the review.

¹⁴⁵ See *Stainless Steel Bar from India: Final Results of the Antidumping Duty Administrative Review, and Revocation of the Order, in Part*, 76 FR 56401 (September 13, 2011).

¹⁴⁶ 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 (Oct. 18, 2017) (*CCR Preliminary Results*), and accompanying PDM at 7, unchanged 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) (*CCR Final Results*), and accompanying IDM at Comment 1.

¹⁴⁷ See *CCR Final Results*.

¹⁴⁸ *Id.* See Memorandum, “Stainless Steel Bar from India; 2017-2018: Preliminary Results Analysis Memorandum for Venus Wire Industries Pvt. Ltd., and its affiliated Hindustan Inox Ltd., Precision Metals and Sieves Manufacturers (India) Pvt. Ltd. (collectively, the Venus Group): Placement of Information on the Record,” dated April 9, 2019 (Memo to the File).

¹⁴⁹ Proprietary details regarding these suppliers, which further inform our partial AFA determination for the Venus Group, are discussed in “Administrative Review of the Antidumping Duty Order on Stainless Steel Bar from India: Preliminary Analysis Memorandum for the Venus Group, dated April 9, 2019 (Preliminary Results Analysis Memorandum), dated April 9, 2019. Proprietary details regarding the relevant suppliers identified in the changed circumstances review, which also further informs our partial AFA determination for the Venus Group, are discussed in Memo to the File.

Based on the above, and with the understanding that the Venus Group is an experienced respondent familiar with the record-keeping requirements in Commerce’s proceedings, who acknowledged purchasing subject merchandise from known exporters to the United States during the period of review, and who self-requested this review, we find that the Venus Group did not put forth its maximum efforts to obtain and provide the suppliers’ COP information. For example, we would expect a respondent in the Venus Group’s situation to take a number of steps to ensure that it could obtain the COP information, including, but not limited to: securing the cooperation of the supplier, or obtaining the requested information, at the time the Venus Group agreed to purchase the hot-rolled bars; removing that supplier from its list of suppliers for failing to provide the requested information; and/or increasing its purchases of non-subject merchandise inputs, SSWR, to avoid the issue of obtaining the suppliers’ COP information.¹⁵⁰ As discussed in the *Preliminary Results Analysis Memorandum*, throughout the duration of the review period the Venus Group continued to purchase hot-rolled bar from its largest unaffiliated suppliers, who did not provide the requested information.

In *Mueller*, the Court explained what a respondent in such a situation must do to induce cooperation:¹⁵¹

...Mueller had an existing relationship with supplier Ternium. Therefore, Mueller could potentially have refused to do business with Ternium in the future as a tactic to force Ternium to cooperate. In fact, the relationship between Mueller and Ternium is similar to the relationship between the importer and exporter in *KYD, Inc. v. United States*, 607 F. 3d 760, 768 (Fed. Cir. 2010). There, King Pac and KYD had an existing relationship as importer-exporter, and this court found that KYD could have used this relationship to induce King Pac to cooperate.

We note that the Court found support for “Commerce’s use of an evasion or inducement rationale” in applying an adverse inference.¹⁵² In *Mueller*, the Court explained that if a foreign exporter selected an unaffiliated importer and claimed that the importer was uncooperative, then that could “result {} in easy evasion of the means Congress intended for Commerce to use to induce cooperation with its antidumping investigations.”¹⁵³ As the Court explained, even if “there are alternative methods for addressing evasion,” Commerce can apply adverse facts available for “enforcement of the antidumping provisions.”¹⁵⁴

In this case, as we indicate above, although the Venus Group claimed that it exercised all of its options to induce cooperation from its unaffiliated suppliers, including the threat of cessation of future business if its unaffiliated suppliers did not provide responses to Commerce’s request for COP information, we continue to find that the Venus Group did not give its maximum effort in responding to Commerce’s request for COP information. The Venus Group relies heavily on the

¹⁵⁰ See Venus Group’s AQR, at A-36.

¹⁵¹ See *Mueller*, 753 F.3d at 1235.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

CAFC's cautioning *dicta* in *Mueller*, regarding instances in which a responding entity lacks the power to induce cooperation from non-responding parties.¹⁵⁵ However, we find that the Venus Group failed to demonstrate that it lacked such power, relying mostly on communications indicating a potential for a change in future business relationship, instead of indicating a robust refusal to do business in the future as envisioned by *Mueller*. Here, the Venus Group had prior notice from the changed circumstances review of its obligation to obtain the information, yet it still did not demonstrate any significant change in its supplier relationships to induce cooperation.

Further, as we explained in the *Preliminary Results Analysis Memorandum*, the Venus Group acknowledges that its largest unaffiliated suppliers were known exporters to the United States, and these unaffiliated suppliers were subject to their own margins under the *Order*.¹⁵⁶ Therefore, it is reasonable to expect that, before requesting an administrative review of itself, the Venus Group would have prepared for such review by ensuring that it would have obtained its largest unaffiliated suppliers' full cooperation in the current review. Because the Venus Group continued to purchase hot-rolled bar from its largest unaffiliated suppliers throughout the review, we continue to find that the Venus Group's mere reliance on letters or emails to its unaffiliated suppliers did not serve as a strong inducement to cooperate; and, therefore, the Venus Group did not act to the best of its ability, in accordance with section 776(b) of the Act, in attempting to obtain its unaffiliated suppliers COP data. Thus, we find that the Venus Group's explanation of its attempt to induce cooperation is not persuasive, and that it did not fulfill its obligation to use its maximum effort to obtain its unaffiliated suppliers' COP information during the review period.

With regard to the Venus Group's references to the *Itochu*¹⁵⁷ and *Xiping* cases, we find those cases are distinguishable. In *Itochu*, the CIT noted that Commerce had not made a finding that the respondent had sufficient control to induce the cooperation of its supplier, that the respondent's supplier attempted to evade a higher rate by using the respondent as an exporter, or that application of an AFA margin to the respondent would directly and adversely affect the supplier's interests. However, the CIT also recognized the broader approach discussed in *Mueller* in which Commerce may use "an evasion or inducement rationale" in applying AFA to a cooperating respondent, when the cooperating respondent is in a position to induce a non-cooperating party.¹⁵⁸ As described above, we continue to adhere to the applicable guidance from *Mueller* find that the Venus Group was in a position to induce its unaffiliated suppliers to cooperate with Commerce's requests. Additionally, we note that *Itochu* is also distinguishable because the CIT held that Commerce never made a finding that the respondent failed to cooperate with Commerce's requests.¹⁵⁹ In contrast, in this case Commerce has made a finding that the Venus Group failed to cooperate with Commerce's requests to obtain its unaffiliated suppliers' COP information.

¹⁵⁵ *Id.*

¹⁵⁶ See *Preliminary Results Analysis Memorandum*, at 4.

¹⁵⁷ See *Itochu Bldgs. Prods. Co. v. United States*, Slip Op. 2017-73 (CIT June 22, 2017 (*Itochu*)), and *Xiping Opeck v. United States*, 34 F. Supp. 3d 1331 (2014) (*Xiping*).

¹⁵⁸ See *Itochu*, at 15-16.

¹⁵⁹ *Id.*

Similarly, *Xiping* is distinguishable in that the CIT found that Commerce needed to further explain its inducement/evasion considerations prior to applying AFA.¹⁶⁰ In this case, however, Commerce has sufficiently explained that the Venus Group could have induced its unaffiliated suppliers to cooperate with Commerce's requests by threatening to refuse to do business with them, and following through on those threats – a concept recognized in *Mueller*. Therefore, as described above, Commerce has properly evaluated the considerations articulated in *Mueller* and properly applied partial AFA to the Venus Group as a result of the Venus Group's failure to cooperate to the best of its ability in obtaining its unaffiliated supplier's COP information.

Comment 3: Whether to Make Certain Adjustments to the Margin Program for the Final Results

The Venus Group's Arguments:

- Commerce must make certain adjustments to its preliminary results margin calculation.¹⁶¹
 - In its *Preliminary Results Calculation Memorandum*, Commerce stated that while it normally uses invoice date as the date of sale, per its regulations, it can also use a date other than the date of invoice if a different date “better reflects the date on which the exporter or producer establishes the material terms of sale.”¹⁶²
 - In its initial section C questionnaire response, the Venus Group reported that invoice date is the same as shipment date and in the first submitted U.S. sales file, that was the manner in which the Venus Group reported its sales.¹⁶³ In its second submitted U.S. sales file, however, the date in the pay date field was accidentally pasted over the date in the invoice date field, such that for nearly all records in the U.S. sales database, the reported invoice date was erroneously identified as the same date as the payment date.¹⁶⁴
 - For the final results, Commerce should revise the Venus Group's U.S. sales file.

The Petitioners' Rebuttal Arguments:

- The Venus Group's suggested corrections to the preliminary results margin program is correct only if both fields (SALINDTU AND SHIPDATU) had been reported accurately.¹⁶⁵
 - The Venus Group explicitly recognizes that the payment date field was incorrectly reported in the field for the invoice date.
 - Thus, the true date of invoicing must lie between the date of shipment and the date (of payment) reported under invoice date.¹⁶⁶

¹⁶⁰ See *Xiping*, 34 F. Supp. 3d at 1350-1352.

¹⁶¹ See Venus Group's Case Brief at 37.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ See Petitioners' JSHL Rebuttal Brief at 3.

¹⁶⁶ *Id.*

Commerce’s Position: We have reviewed the record and we agree with the Venus Group’s suggested changes to the margin program and have made such changes for these final results.¹⁶⁷

Comment 4: Whether AFA is Warranted for JSHL

- Commerce’s preliminary application of AFA to JSHL because of an alleged failure to provide certain information which allegedly significantly impeded the proceeding¹⁶⁸ is not supported by the statute, the facts on the record, or Commerce precedent.
 - Commerce’s ability to use AFA is constrained by section 776 of the Act, which requires Commerce to inform the respondent of any deficiency and provide opportunity to remedy or explain.
 - AFA or adverse inferences are not warranted because there is no missing information; the record contains the necessary information to calculate an individual margin for JSHL.¹⁶⁹
 - Commerce’s principal basis for application of AFA is that JSHL made unrequested and unexplained changes to four product characteristics affecting the cost database that rendered the sales database incomplete.¹⁷⁰
 - JSHL provided complete sales and cost databases, and every item requested by Commerce with possible exception of a simple clarification on the corrections of certain product characteristics, is on the record.
 - JSHL’s changes to the cost and sales database consisted of corrections to product characteristics; any changes to product characteristic coding are a result of re-examining the specific product against the Commerce’s instructions.
 - A deficiency in clarity does not equate to withholding information that justifies an adverse inference, as Commerce contends.¹⁷¹ The statute does not require a respondent to justify each correction of its reported data; even if the narrative explanation was less than explicit, JSHL supported its explanations with calculation worksheets and exhibits.¹⁷²
 - The statute mandates that Commerce consider information that does not meet all the applicable requirements established by the administering authority, provided that “the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination.”¹⁷³
 - The CIT has stated that perfection is not the standard and inadvertent errors are not a basis to conclude that a respondent has failed to act to the best of its abilities.¹⁷⁴

¹⁶⁷ On May 31, 2019, in a separate submission, the Venus Group identified several errors in its reported U.S. sales file that are additional to the errors identified in its case brief. Upon review of the facts on the record, we agree with the Venus Group and have made the suggested corrections for these final results. *See* the Venus Group’s Letter, “Antidumping Duty Investigation of Stainless Steel Bar from India: Request to Submit Corrected Information,” dated May 31, 2019.

¹⁶⁸ *See* JSHL’s Case Brief at 16.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*; *see also Preliminary Results*, and accompanying PDM at 10-12.

¹⁷¹ *Id.* at 20.

¹⁷² *Id.*

¹⁷³ *Id.*; *see also* 19 U.S.C. § 1677m(e); and 19 C.F.R. § 351.301(c).

¹⁷⁴ *Id.*; *see also Husteel Co. v. United States*, 98 F. Supp. 3d 1315, 1356 (CIT Sept. 2, 2015).

- In *Polyester Staple Fiber from Taiwan*,¹⁷⁵ Commerce accepted explanations that were not perfectly comprehensive but still usable, and in declining the application of AFA, Commerce found that “the full extent of the changes is not entirely clear in every instance. However, the respondent’s explanation overall provided a sufficient basis for understanding the basic changes incorporated into the revised databases.”¹⁷⁶
- In *Frontseating Service Valves from China*,¹⁷⁷ Commerce found unreported factors of production at verification and still did not resort to total AFA, finding that the information on the record was sufficient to serve as a reliable basis to determine an antidumping margin.¹⁷⁸
- In *Ripe Olives from Spain*,¹⁷⁹ Commerce found total AFA was not warranted, in light of the respondent’s cooperation and despite the Petitioners’ argument.¹⁸⁰

The Petitioners’ Rebuttal Arguments:

- Commerce’s application of AFA is fully warranted and it should affirm the assignment of total AFA for JSHL in these final results.
 - Section 782(d) of the Act requires Commerce to first promptly notify the party of the nature of the deficiency and provide an opportunity for the party to remedy or explain.¹⁸¹
 - If the party’s remedy or explanation does not satisfy one of the five requirements necessary for consideration under this legal standard, Commerce may “disregard all or part of the original and subsequent responses.”¹⁸²
 - Section 776(b) of the Act further provides that an adverse inference may be used when the respondent “has failed to cooperate by not acting to the best of its ability.”¹⁸³ This standard requires a respondent to “do the maximum it is able to do” in responding to a request for information.¹⁸⁴
 - The CIT has held that purposefully withholding information requested or providing misleading information is grounds for the application of facts available under section 776(a)(2) of the Act, as well as grounds for the application of adverse facts available under section 776(1)(A) of the Act.¹⁸⁵
- Total AFA is fully warranted in this review because JSHL provided data that is unreliable and unusable and has not cooperated to the best of its ability.

¹⁷⁵ See *Certain Polyester Staple Fiber from Taiwan*, 65 FR 16877 (March 30, 2000) (*Polyester Staple Fiber from Taiwan*) and accompanying IDM.

¹⁷⁶ See JSHL Case Brief at 17.

¹⁷⁷ See *Frontseating Service Valves from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 74 FR 10886 (March 13, 2009) (*Frontseating Service Valves from China*) and accompanying IDM at Comment 9.

¹⁷⁸ See JSHL Case Brief at 18.

¹⁷⁹ See *Ripe Olives from Spain: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 28193 (June 18, 2018) (*Ripe Olives from Spain*) and accompanying IDM.

¹⁸⁰ See JSHL Case Brief at 19.

¹⁸¹ See Petitioners’ JSHL Rebuttal Brief.

¹⁸² *Id.*

¹⁸³ See Petitioners’ JSHL Rebuttal Brief at 22.

¹⁸⁴ *Id.* at 22-23; see also *Nippon Steel Corp. v. United States*, 337 F.3d 1382, 1382-1383 (Fed. Cir. 2003) (*Nippon Steel*).

¹⁸⁵ See Petitioners’ JSHL Rebuttal Brief at 23; see also *Shanghai Taoen Int’l Trading Co. v. United States*, 360 F. Supp. 2d 1339, 1343 n.6, 1344-45, 1348 n.13 (CIT 2005).

- First, JSHL’s refusal to explain the unrequested changes to four control number characteristics impeded Commerce’s evaluation of the accuracy and reasonableness of the cost data.¹⁸⁶
- Second, JSHL’s refusal to explain why cost information for certain control numbers was missing in the supplemental response and its continued failure to report the costs for the missing sales that were sold but not produced, hindered Commerce’s investigation.
- Third, Commerce concluded that the combination of the cost issues “render JSHL’s cost reporting incomplete and unreliable.”¹⁸⁷
- Finally, Commerce found that JSHL’s failure to explain the changes to four product characteristics impeded Commerce’s ability to conduct a proper sales-below-cost test and its ability to ensure the margin program can make proper matches between US sales and home market sales based on product description.
- JSHL had three opportunities to respond to Commerce’s request for necessary information.
- In *Polyester Staple Fiber from Taiwan*, Commerce declined to apply total AFA because many of the respondents’ revisions were responsive to concerns raised by the petitioners and were made at Commerce’s request. The respondent also provided sufficient basis for understanding the changes in the revised databases.¹⁸⁸
- In *Frontseating Valves from China*, Commerce did not determine that the respondent failed to cooperate to the best of its ability. Commerce was able to value two missing production inputs using information on the record.¹⁸⁹
- In *Ripe Olives from Spain*, Commerce declined to apply AFA because the record was sufficient to calculate a dumping margin.¹⁹⁰
- The withholding of key explanations requested by Commerce is strictly a result of JSHL’s refusal to provide them and warrants the assignment of total adverse facts available.¹⁹¹
- Under the Nippon Steel standard, JSHL’s failure to put forth “maximum effort” also warrants total AFA.¹⁹²

Commerce’s Position: We continue to find that because JSHL failed to provide necessary information, withheld information requested by Commerce, failed to provide such information in the form or manner requested by Commerce, and significantly impeded the proceeding, the application of facts available in accordance with sections 776(a)(1) and (2)(A), (B), and (C) of the Act is appropriate for these final results. Additionally, because we find that JHSL failed to cooperate by not acting to the best of its ability in providing the requested information, application of AFA in accordance with section 776(b) of the Act is warranted.

As we indicate in the *Preliminary Results*, and as discussed in further detail in Comment 5

¹⁸⁶ See Petitioners’ JSHL Rebuttal Brief at 23.

¹⁸⁷ See *Preliminary Results* and accompanying PDM at 12.

¹⁸⁸ See Petitioners’ JSHL Rebuttal Brief at 27.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.* at 30.

¹⁹² *Id.* at 30-31; see also *Nippon Steel*, 337 F.3d at 1382.

below, JSHL provided an unreliable cost database.¹⁹³ Specifically, in response to several supplemental questionnaires, JSHL made unrequested and unexplained changes to certain product characteristics.¹⁹⁴ For example, as we discussed in detail in the *Preliminary Results*, JSHL reported that it had discovered several errors in its cost database and it explained that it was correcting one product characteristic (SIZE) as a result.¹⁹⁵ However, JSHL's revised cost file 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). When we asked JSHL to explain these changes in a second supplemental questionnaire, it provided largely incomplete answers to our request for an explanation of the changes it made to its cost file.¹⁹⁶ For further details on JSHL's unresponsive answers to our request, *see* Comment 5 below. Therefore, we continue to find that JSHL's cost file reflects changes from the initial questionnaire to the supplemental questionnaire that were unrequested and are unexplained.¹⁹⁷ As such, we continue to find that with no explanation from JSHL of why it found it necessary to revise the cost and sales reporting for these four product characteristics, and a further explanation of these revisions, we cannot evaluate whether the changes were necessary, appropriate, or reliable, and whether they should be accepted. Further, without this explanation, Commerce was not able to ask any follow-up questions to ensure the revisions were accurate, or determine whether further revisions to JSHL's reporting were needed.

In addition, as we indicate further in the *Preliminary Results*, and as discussed in further detail in Comment 5 below, JSHL provided an incomplete cost database.¹⁹⁸ Specifically, JSHL reported certain CONNUMs in its sales files; however, it did not identify those CONNUMs or report cost information for those CONNUMs in its cost database. When we requested that JSHL address the discrepancy, it did not explain the discrepancy, including why the cost information was missing from its earlier responses, nor does it explain why the corrections were necessary at such a late stage in the review, at the third opportunity to provide information. While JSHL explains that certain CONNUMs were sold but not produced, it did not explain why the cost information was missing for the remaining CONNUMs.¹⁹⁹ Again, we continue to find that without the explanation we requested, we cannot evaluate whether the newly provided cost and sales information are reliable, especially in comparison with the previously provided sales and cost data.

As such, we continue to find that, collectively, these unexplained changes to the cost database render JSHL's cost reporting incomplete and unreliable. Because JSHL's COP data is unreliable and 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; as a result, we continue to find that we do not have a basis for determining which home market sales are appropriate to use as normal value, and we continue to find that JSHL's

¹⁹³ *See Preliminary Results*, and accompanying PDM, at 11.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* at 11-12.

¹⁹⁹ We point out that in the hearing held on July 22, 2019, JSHL stated that, "Jindal did not provide a clear explanation of these changes. That is clear. All right." *See* Hearing Transcript, dated July 22, 2019, Bar Code "3866774-01," at 32.

COP data is so deficient that it does not permit the calculation of CV. Therefore, we continue to find 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 FA is warranted in accordance with section 776(a)(1) of the Act. We continue to find that JSHL withheld information that was requested by Commerce, that it failed to provide information in the form or manner requested, and that it significantly impeded this proceeding, in accordance with sections 776(a)(2)(A)-(C) of the Act because it failed to provide the requested information despite multiple opportunities to do so. In addition, we continue to find that JSHL did not cooperate to the best of its ability in failing to provide the necessary COP data.

Further, we continue to find that not only do these unexplained changes affect our ability to conduct a proper sales-below-cost test and to 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, we also are unable to rely on the U.S. and home market sales data to calculate a margin. Therefore, we continue to find that, because the necessary product characteristics data is missing, the application of FA is warranted in accordance with section 776(a)(1) and (2)(A), (B), and (C) of the Act. In addition, as indicated above, we continue to find that JSHL did not cooperate to the best of its ability in failing to provide the necessary explanation of the changes it made to the product characteristics. As such, an adverse inference is warranted in the application of FA, in accordance with section 776(b)(1) of the Act.

With regard to JSHL's reliance on *Polyester Staple Fiber from Taiwan* to support its argument that JSHL is unaware of any case where interested parties have not made changes to product codes as the data is more refined during the course of the proceeding, we disagree in part. In *Polyester Staple Fiber from Taiwan*, although the respondent made revisions to its databases, Commerce found that the respondent's explanation for such changes provided a sufficient basis for understanding the basic changes incorporated into the revised sales databases.²⁰⁰ As further explained in *Polyester Staple Fiber from Taiwan*, Commerce did not find the respondent's information so incomplete that it could not serve as a reliable basis for reaching a final determination.²⁰¹ As we describe above, contrary to the facts in *Polyester Staple Fiber from Taiwan*, we found JSHL's cost and sales database to be incomplete and unreliable because JSHL did not provide an adequate explanation for changes it made to its product characteristics. Thus, while we agree with JSHL that it is not unusual for respondents to make changes to product codes as the data are more refined during the course of proceeding, these changes, however, must be fully explained and if applicable, supported by documentation placed on the record. Therefore, we find that the facts in this proceeding are different from the facts outlined in *Polyester Staple Fiber from Taiwan*.

With regard to JSHL's reliance on *Frontseating Valves from China*, we disagree. Commerce in that case, found that AFA was not warranted because it did not reach a finding that the respondent did not cooperate to the best of its ability to provide the requested information by the

²⁰⁰ See *Polyester Staple Fiber from Taiwan*.

²⁰¹ *Id.*

deadlines established by Commerce, and that information was verified.²⁰² We explained further in that case, that although at verification Commerce found that the respondent did not report two minor production inputs prior to verification, the information on the record was sufficient to serve as a reliable basis for determining dumping margins for the respondent in that case.²⁰³ We concluded in that case that because the respondent provided the necessary information, the application of AFA was not warranted.²⁰⁴ Again, we find that the facts outlined in *Frontseating Valves from China* are not similar to the facts found in this proceeding.

Similarly, we find JSHL's reliance on *Ripe Olives from Spain* not applicable because in that case, Commerce found the respondent "placed the requested information on the record in a timely manner, did not impede the proceeding, and the information provided was verified."²⁰⁵ Commerce further found that the information on the record was sufficient to calculate the respondent's margin.²⁰⁶ Thus, Commerce did not determine that the respondent in that case failed to cooperate by not acting to the best of its ability to comply with the requested information.²⁰⁷

For the reasons outlined above, we continue to find that total AFA is warranted with respect to JSHL.

Comment 5: Whether Commerce Overstated the Degree to which JSHL's Questionnaire Responses were Deficient

JSHL's Arguments

- JSHL's cost database was accurate and complete, home market and U.S. sales were accurately reported, and Commerce could have issued further supplemental questionnaires.
 - Commerce stated in the *Preliminary Results* that JSHL failed to explain changes that it made to four product characteristics in the cost file in JSHL's first supplemental questionnaire response; CFINISH, SURF, GRADE, and COLDRED.²⁰⁸
 - In the second supplemental questionnaire, Commerce noted these undisclosed, unexplained, and undocumented changes, and asked JSHL to explain them and revise the sales databases in their entirety.²⁰⁹ In response, JSHL confirmed that changes/corrections had been made to four product characteristics but JSHL inadvertently had not mentioned such corrections in response to the initial supplemental questionnaire.²¹⁰
 - Commerce claims that such changes were not requested; however, with respect to the four corrected characteristics, JSHL was asked by Commerce to "Please explain these

²⁰² See *Frontseating Service Valves from China*, IDM at 30.

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ See *Ripe Olives from Spain*, and accompanying IDM at Comment 14.

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ See JSHL's Case Brief at 5.

²⁰⁹ *Id.*

²¹⁰ *Id.* at 6.

discrepancies and revise your sales databases in its entirety.”²¹¹ Moreover, any time a company files a response, it must certify that the information is complete and accurate to the best of its knowledge.²¹²

- JSHL adequately described how physical characteristics impact the costs of products produced in response to separate question in Commerce’s second supplemental questionnaire.²¹³ JSHL may have misunderstood the original question about certain changes in product characteristics, but JSHL had previously explained that different shape and size difference are caused by different yields and burning loss, therefore raw material costs could not be the same.²¹⁴
- JSHL provided COP for all subject merchandise produced during the POR.²¹⁵
- The section D questionnaire also requires explanations for how control number specific per unit costs are developed, and how normal cost accounting determines the costs of manufacturing. JSHL provided detailed explanations and over 147 exhibits in response to Commerce’s section D questionnaire.²¹⁶
- JSHL provided a detailed response to each question, and Commerce does not mention in the decision memo or elsewhere that JSHL did not provide such information.²¹⁷
- It is unprecedented to use AFA based on a response perceived by Commerce to be “vague”.²¹⁸
- JSHL’s section D questionnaire response and the two supplemental responses show how the cost database was created, which product characteristics were used, and how costs were calculated.²¹⁹ The totality of the record proves that JSHL provided accurate information in the format requested.²²⁰
- Commerce misunderstood the nature of the cost information for certain control numbers. Commerce alleges that JSHL failed to provide cost information requested in the second supplemental questionnaire for several control numbers in the U.S. and home market.²²¹
- Commerce found this to be non-responsive because it does not explain why the cost information was missing in the supplemental response, nor does it explain why the corrections were necessary at such a late stage in the review, in the third opportunity to provide information.²²²
- JSHL noted in the initial section D response that it would provide control number information only for products that it produced during the POR; in its second supplemental response, JSHL stated clearly that the missing control numbers were not produced during the POR.²²³

²¹¹ *Id.*

²¹² *Id.* at 7; *see also* 19 CFR 351.303(g).

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.* at 8-9.

²¹⁶ *Id.* at 9

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

²²³ *Id.*

- JSHL notes that Commerce did not request information regarding the missing control numbers in its first supplemental questionnaire. Commerce could have requested JSHL to supply additional cost data if necessary.²²⁴ When a respondent has products that were sold but not produced during the POR, Commerce traditionally does its own analysis and assigns costs using the closest control numbers.²²⁵
- In *Frontseating Service Valves from China*,²²⁶ the respondent attempted to supply factors of production (FOP) information which was outside the POR; Commerce held that the company should only supply FOP information for products produced during the POR.
- In *Circular Welded Carbon Steel Pipes and Tubes from Thailand*,²²⁷ Commerce stated that its preference in assigning substitute cost where necessary is to use the most similar product available. Therefore, Commerce used normal model match criteria to determine substitute costs for products sold, but not produced, during the period.
- In *Stainless Steel Sheet and Strip in Coils from Mexico*,²²⁸ Commerce reached a similar conclusion, noting that in *PRC Bags*, assigning characteristics based on the most similar-like product for purposes of valuing the factors of production was based on the circumstance where the production cost data was missing for certain control numbers despite sales of those control numbers being made.
- While JSHL recognizes that there are differences between the FOP and Commerce's cost methodology, the concept underlying the above examples are valid.²²⁹
- JSHL did not provide an entirely new cost file as alleged. Per the specific instructions from Commerce in the second supplemental questionnaire, JSHL relocated job works expenses from variable overhead to labor, variable and fixed overhead.²³⁰ Thus, the total costs did not change from the first to the second supplemental response.²³¹
- JSHL accurately reported home market and U.S. sales
 - Commerce ruled that the U.S. and HM database were deficient because of unexplained changes to made to four product characteristics, and as a result, for purposes of these preliminary results, Commerce was unable to rely on the U.S. and home market sales data to calculate a margin.²³²
 - While there may have been inadvertent miscommunications with Commerce in general, the sales databases were manifestly complete; Commerce's only claim of deficiency is that there was an alleged partial failure to explain certain changes in product characteristics.²³³
 - JSHL explained its general methodology of how it prepared its sales and cost databases and provided multiple worksheets in support.²³⁴

²²⁴ *Id.* at 11-12.

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*; see also *Circular Welded Carbon Steel Pipes and Tubes from Thailand*, 77 FR 61738 (October 11, 2012) and accompanying IDM at 24. (*Circular Welded Carbon Steel Pipes and Tubes from Thailand*).

²²⁸ See *Stainless Steel Sheet and Strip in Coils from Mexico*, 76 FR 2332 (January 13, 2011) and accompanying IDM at 5 (*Stainless Steel Sheet and Strip in Coils from Mexico*).

²²⁹ See JSHL's Case Brief at 13.

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.* at 14.

²³³ *Id.*

²³⁴ *Id.*

- Commerce could have issued additional questionnaires before or after the preliminary results.
 - Pursuant to its statutory obligation to provide a respondent with an opportunity to remedy and explain deficiencies, Commerce did not promptly notify JSHL of its concerns or afford adequate opportunity to remedy those specific concerns.²³⁵
 - There was a three-month gap between the filing of JSHL’s first supplemental response and the issuance of Commerce’s second supplemental questionnaire.²³⁶
 - This was sufficient time for Commerce to ask additional questions and provide meaningful comments regarding concerns with JSHL’s questionnaire response.²³⁷
 - JSHL acknowledges that the second supplemental response was filed a few weeks before the preliminary results. However, this significant delay does not meet the statutory mandate to properly inform JSHL of deficiencies.²³⁸
 - The only real issue other than the CONNUMs is what Commerce believed to be a vague response about changes to certain product characteristics.²³⁹
 - JSHL has tried to the best of its ability to cooperate and provided thousands of pages of information, worksheets, and detailed databases.²⁴⁰
 - In accordance with its statutory mandate, if Commerce still has questions it may issue a supplemental questionnaire.²⁴¹

The Petitioners’ Rebuttal Arguments:

- JSHL impeded Commerce’s investigation by failing to provide the necessary information in the form and manner requested, despite multiple requests.
 - JSHL’s assertion that it “has provided detailed and accurate information with respect to all sections of the questionnaire” and has “acted to the best of its ability and provided complete...databases”²⁴² mischaracterizes its behavior, misstates record evidence, and places the blame on Commerce for JSHL’s failure.²⁴³
- Commerce should confirm in the final results that JSHL’s cost database is unreliable, inaccurate, and unusable because it included unrequested and unexplained changes to certain product characteristics.
 - JSHL’s first supplemental questionnaire response reported that it had discovered several errors in the original cost database provided and explained that it was correcting for the SIZE characteristic as reported for control numbers.²⁴⁴
 - JSHL did not disclose changes to the other four product characteristics.²⁴⁵
 - Without any disclosure or explanation by JSHL of why and how it changed the control number coding, Commerce cannot know if these differences are accurate.

²³⁵ *Id.* at 15.

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.* at 15-16.

²⁴⁰ *Id.* at 16.

²⁴¹ *Id.*

²⁴² *Id.* at 22.

²⁴³ *See* Petitioners’ JSHL Rebuttal Brief at 4.

²⁴⁴ *Id.* at 11.

²⁴⁵ *See* Petitioners’ JSHL Rebuttal Brief at 5.

- Commerce asked for an explanation of these changes in its second supplemental questionnaire.²⁴⁶ JSHL responded that they had “...inadvertently not reported all the correction made in the last supplementary. JSHL however reviewed the whole data and control numbers and reconfirmed that there is no more discrepancy in the control number reporting after the reply to last supplementary”²⁴⁷ This is unresponsive to Commerce’s request to explain the changes.
- Commerce accurately stated in the *Preliminary Results* that the changes were unrequested. Commerce did not request that JSHL make changes to its cost database.²⁴⁸
- The certification is not approval from the agency to make undisclosed and undocumented changes in the record.²⁴⁹
- Commerce should confirm that JSHL withheld other requested cost data.
 - Commerce asked in its second supplemental questionnaire for an explanation of missing cost information for products sold in the U.S. and in the home market, and a resubmission of the cost data including these missing costs.²⁵⁰
 - In response, JSHL stated that the cost of certain control numbers was not provided because they were not produced during the POR, and that for the remaining control numbers, the cost was provided in the file.²⁵¹
 - This response did not explain why cost information was missing in the supplemental questionnaire response, nor why it was necessary to provide at this stage of the review in the third opportunity to provide information.
 - JSHL was notified in the original section D questionnaire to submit the costs for all control numbers sold in the U.S. and home market sales databases, and Commerce timely notified JSHL of the missing control number costs in its second supplemental questionnaire.²⁵²
 - Commerce met its statutory obligation of twice notifying JSHL to submit this cost data in the initial section D questionnaire and the second supplemental questionnaire.²⁵³
 - Finally, JSHL incorrectly claims that Commerce did not provide clear guidance to JSHL regarding what to do with respect to control numbers not produced in the POR.²⁵⁴
 - JSHL was twice asked to submit the costs for the missing control numbers and directed to contact Commerce officials if it needed any assistance or had any questions regarding the questionnaires.²⁵⁵
 - Because JSHL failed to provide a meaningful explanation of these changes, Commerce cannot have any confidence that the U.S. and home market sales files accurately reflect the control numbers.

²⁴⁶ *Id.* at 10.

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.* at 14.

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ *Id.* at 17

²⁵⁴ *Id.*

²⁵⁵ *Id.*

- Thus, Commerce cannot determine which home market sales are usable to calculate normal value, and further, an accurate dumping margin.²⁵⁶

Commerce’s Position: We disagree with JSHL that we overstated the degree to which JSHL’s questionnaire responses were deficient. In order to establish the basis for this determination, we provide a timeline of events, including the timing of information revealed for the first time to Commerce. As discussed above and in more detail below, JSHL provided unreliable and incomplete information to Commerce concerning its cost and sales databases.²⁵⁷

Chronology

- On June 26, 2018, we issued the initial questionnaire to JSHL. In the initial questionnaire, at page D-15, we instructed JSHL to report its cost data as it pertains to the product characteristics outlined in the questionnaire in Appendix V.²⁵⁸
- On August 20, 2018, JSHL provided its initial questionnaire response, providing a cost database, and corresponding U.S. sales and home market sales files with the previously identified product characteristics.²⁵⁹ JSHL indicated that the product characteristics identified by Commerce “align{ed} closely” with the way JSHL tracked the product characteristics in its normal accounting system.²⁶⁰
- On October 12, 2018, we issued our supplemental questionnaire and provided JSHL with 17 days to respond to the supplemental questionnaire.²⁶¹ Specifically, we asked JSHL to “{i}dentify all physical characteristics not tracked in JSHL’s normal accounting system” and to “{e}xplain how you accounted for the cost differences for each of the physical characteristics for the reported CONNUMs, and how the costs vary by each physical characteristic. Be sure to address the ranges within each characteristic. If you believe that there is an insignificant cost difference between products for differences in that characteristic, quantify such differences and explain your reasons for not reporting a cost difference.”²⁶² We granted JSHL an additional 15 days to respond to Commerce’s supplemental questionnaire.²⁶³
- On November 13, 2018, JSHL responded to our supplemental questionnaire and on page 33 indicated that it had discovered several errors in the cost database provided with the initial questionnaire response and explained that it was correcting for the

²⁵⁶ *Id.*

²⁵⁷ See *Preliminary Results*, and PDM, at 11.

²⁵⁸ See Commerce’s Sections A-E Questionnaire dated June 26, 2018, at Appendix V. See also question III.A.3 of the Section D (“If a physical characteristic identified by Commerce is not tracked by the company’s normal cost accounting system, calculate the appropriate cost differences for that physical characteristic, using a reasonable method based on available company records (*e.g.*, production records, engineering statistics). The starting point for any such calculation must be the product specific costs as recorded in your normal cost accounting system. If there is a physical characteristic not tracked by the company for which the company believes that there is an insignificant cost difference between products, identify the particular physical characteristic, quantify, and explain your reasons for not reporting a cost difference.”).

²⁵⁹ See JSHL’s Sections B-D Questionnaire Response, dated August 20, 2018.

²⁶⁰ *Id.* at page 33, JSHL states: “The product group cost sheets used to develop the CONNUM-specific per unit costs align closely with the physical characteristics identified by the Department.”

²⁶¹ See JSHL’s Supplemental Questionnaire, dated October 12, 2018.

²⁶² *Id.* at 26 and 27.

²⁶³ See Commerce’s Letters to JSHL, dated October 26, 2018, and November 5, 2018.

SIZE physical characteristic as reported for in the control numbers in the initial questionnaire response.²⁶⁴ JSHL states only that it revised the information with regard to the SIZE physical characteristic, and that it made other changes to the cost database with regard to scrap, a cost that had erroneously been added to the file, and a formula error involving variable overhead.²⁶⁵ However, JHSL made a number of additional changes in its cost database for four additional physical characteristics which were not identified or explained. JSHL made corresponding alterations to its U.S. sales and home market sales files, but it did not explain why it made changes to the other four physical characteristics.²⁶⁶

- On March 13, 2019, we issued a second supplemental questionnaire to JSHL inquiring about undisclosed changes to the control numbers for the cost, U.S. sales, and home market sales files. Specifically, we indicated that, “{a}n examination of the new cost of production (COP) file Jindal_COP2 shows that you have not disclosed, explained, or documented all changes made to four other product characteristics in your COP, U.S. sales and home sales files: CFINISH (cold finished other than cold/drawn-cold-rolled); SURF (surface treatment; GRADE (grade); and COLDRED (cold reduced). Please explain these discrepancies and revise your sales databases in its entirety.”²⁶⁷
- On March 27, 2019, in response to our second supplemental questionnaire, JSHL stated that, “JSHL submits that the company has inadvertently not reported all the correction made in the last supplementary. JSHL however re-reviewed the whole data and CONNUMs and reconfirmed that there is no more discrepancy in the CONNUM reporting after the reply to last supplementary.”²⁶⁸ JHSL did not provide any further explanation for the discrepancies.
- Also in our March 13, 2019, 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 in its entirety, including cost for these...CONNUMs.”²⁶⁹
- In its March 27, 2019 response to our inquiry concerning the missing cost information, JSHL responded with the following: “{o}ut of {BPI number} of CONNUMs mentioned by the Department, cost of {BPI number} was not provided because these CONNUMs are not produced in the POR.... For remaining CONNUMs, costing is provided in the costing file.”²⁷⁰ However, JSHL did not

²⁶⁴ See JSHL’s Letter, “Administrative Review concerning Stainless Steel Bar from India: Reply to supplementary questionnaire dated 12.10.2018 – Section question 15b &31e and section D,” dated November 13, 2018 (JSHL SQR) at 33-34.

²⁶⁵ See JSHL SQR at 34.

²⁶⁶ See JSHL’s Letter, “Administrative Review concerning Stainless Steel Bar from India: Reply to supplementary questionnaire dated 12.10.2018 – Sections A, B &C (Except question 15b &31e),” dated November 8, 2018 (JSHL A-C SQR), at 22 and 33.

²⁶⁷ See JSHL’s Letter, “Administrative Review concerning Stainless Steel Bar from India: Supplementary to Section A-D – issued on March 13, 2019,” dated March 27, 2019 (JSHL 2SQR) at 17.

²⁶⁸ *Id.* at 18.

²⁶⁹ *Id.*

²⁷⁰ *Id.*

explain why the cost information for the remaining CONNUMs was not provided in its initial questionnaire response, or otherwise provide explanations for the cost information.

As we explained in the *Preliminary Results*, we continue to find JSHL's response to our inquiry concerning previously undisclosed changes to the control numbers for the cost, U.S. sales and home market sales files, to be largely incomplete because it did not explain the specific changes it made to the data files as it pertains to changes to four other physical characteristics (CFINISH, SURF, GRADE, and COLDRED) as instructed in the supplemental questionnaire.²⁷¹ Therefore, we continue to find that the cost database and U.S. sales and home market sales files reflect changes from the initial questionnaire to the supplemental questionnaire that were unrequested and remain unexplained, despite our request for further explanation.²⁷² As such, we continue to find that with no explanation from JSHL of why it found it necessary to revise the cost and sales reporting for these four product characteristics, and a further explanation of these revisions, we cannot evaluate whether the changes were necessary, appropriate, or reliable, and whether they should be accepted. Further, without this explanation, Commerce was not able to ask any follow-up questions to ensure the revisions were accurate, or determine whether further revisions to JSHL's reporting was needed.

Further, as noted above, JSHL reported certain CONNUMs in its sales files, however, did not identify those CONNUMs or report cost information for those CONNUMs in its cost database. When we requested that JSHL address this discrepancy, it did not explain the discrepancy, including why the cost information was missing from its earlier responses, nor does it explain why the corrections were necessary at such a late stage in the review, in the third opportunity to provide information. Specifically, while JSHL explains that certain CONNUMs were sold but not produced, it did not explain why the cost information was missing for the remaining CONNUMs. Again, we continue to find that without the explanation we requested, we cannot evaluate whether the newly provided cost and sales information is reliable, especially in comparison with the previously provided sales and cost data.

As we explained in the *Preliminary Results*, these unexplained changes to the databases render JSHL's sales and cost reporting incomplete and unreliable. Because the COP data is incomplete, we are unable to determine which of JSHL's home markets 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, we continue to find that JSHL's COP data is so deficient that it does not permit the calculation of constructed value. Further, we continue to find that not only do these unexplained changes affect our ability to conduct a proper sales-below-cost test and determine which home market is usable for purposes of calculating normal value; we further find that they also affect our ability to analyze the U.S. and home market sales databases as it pertains to having proper matches, based on product descriptions, of U.S. sales and home market sales.

Together, these unexplained changes to the COP database, which also affect the U.S. and home market sales databases, renders JSHL's COP, U.S., and home market databases unreliable and

²⁷¹ *Id.*

²⁷² See *Preliminary Results*, and accompanying Preliminary Decision Memorandum at 11.

therefore unusable. Further, with regard to the missing COP data, we continue to find that JSHL failed to provide the requested explanation of why such new cost reporting was necessary, and therefore, JSHL provided data that is unreliable and unusable. Moreover, because JSHL provided data that is unreliable and unusable, we continue to find that JSHL did not cooperate to the best of its ability. For these reasons, we disagree with JSHL's assertion that we overstated the degree to which JSHL's questionnaire responses were deficient.

Additionally, we disagree with JHSL's argument that Commerce's certification regulation, 19 CFR 351.303(g), required JHSL to submit the unrequested changes. This provision does not act as a blank check to allow respondents to continuously make revisions to their reporting, which conflicts with earlier reporting, and which is unexplained. Further, as noted above, JHSL did not adequately respond to Commerce's requests to provide missing explanations. We also disagree with the implication that any issues with JHSL's reporting can be blamed on Commerce's supposed failure to identify these issues at earlier points in the review. JHSL, as the respondent most familiar with its books and records, and its reporting to Commerce, is responsible for providing timely and accurate responses to Commerce. Additionally, as described above, Commerce met its statutory obligation of notifying JSHL of deficiencies in its reporting and allowing an opportunity to remedy or explain. However, as indicated above, JHSL did not provide the requested explanations. Therefore, as discussed in more detail in Comment 4, Commerce properly determined that AFA was warranted with respect to JHSL.

Comment 6: Whether the AFA Rate Selected for JSHL is Unlawful

JSHL's Arguments:

- Commerce, unfairly and without explanation, selected a non-probative rate.
 - Commerce relied upon a rate from the Venus Group using information from the record of this review, a rate which they are not required to corroborate per section 776(c)(2) of the Act.²⁷³
 - This approach is unfair and illogical; Commerce cannot pick at will a high transaction without explaining why they have chosen that transaction and why it is probative.²⁷⁴
 - Should Commerce continue to apply total AFA, it should use a more probative rate, a rate found in a past proceeding.²⁷⁵
 - This case has numerous *de minimis* margins and several very low margins, therefore a more probative rate would be 9.86 percent which was calculated in the *SS bar from India* 2009-2010 administrative review.²⁷⁶
 - The Venus Group rate is not probative because it is based on unusually high partial facts available rate.²⁷⁷

²⁷³ See JSHL's Case Brief at 21.

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ *Id.*

The Petitioners' Rebuttal Arguments:

- Commerce properly assigned JSHL total AFA based on a calculated margin for Venus Group.
 - JSHL is incorrect that the AFA rate assigned in the *Preliminary Results* is unlawful.
 - Commerce acted reasonably and appropriately to assign a total AFA margin based on one of the highest transaction-specific margins calculated for Venus Group, taking care to remove from consideration margins based on extremely low, non-commercial quantities.²⁷⁸
 - Commerce is not required to further corroborate this margin because it is based on the record of this review.²⁷⁹
- JSHL's argument that Commerce should use a "more probative rate found in a past proceeding" such as the 9.86% rate from the SS bar from India 2009-2010 administrative review is unreasonable and should be dismissed.
 - This would reward JSHL's uncooperative behavior; the 9.86 rate is non-AFA and is even lower than the 12.45 percent "all others" rate that currently applies.²⁸⁰
 - When selecting total AFA, Commerce "must ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully" and that the selected margin is at a level "to deter future uncooperative behavior."²⁸¹
 - As authorized by the statute, Court decisions, and Commerce precedent, Commerce should uphold in the final results the total AFA margin of 95.21 percent.²⁸²

Commerce's Position: We disagree with JSHL. In selecting an AFA rate, section 776(b)(2) of the Act provides that Commerce may rely on information on the record, including information from another respondent. Additionally, Commerce has the discretion to select a total AFA rate which "ensure{s} that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully" and that the selected margin is at a level "to deter future uncooperative behavior."²⁸³ Under section 776(d) of the Act, 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. Accordingly, we have continued to apply the highest transaction-specific dumping margin that we calculated for the Venus Group in this review.²⁸⁴ Further, this is consistent with Commerce's past practice,²⁸⁵ and JSHL has not provided any reason to find that this rate, which is based on information for a respondent who was partially

²⁷⁸ See Petitioners' JSHL Rebuttal Brief at 31.

²⁷⁹ *Id.*

²⁸⁰ *Id.* at 32.

²⁸¹ *Id.*

²⁸² *Id.* at 33.

²⁸³ See *PAM. SPA and JCM. Ltd. v. United States*, 31 CIT 1008 (2001) (citing *F.lli de Cecco DiFilippo Fara S, Martino S.p.A. v. United States*, 216 F.3d at 1032).

²⁸⁴ As we indicated in the *Preliminary Results*, we have excluded the highest transaction-specific margin based on extremely low quantities.

²⁸⁵ See *Certain Cold Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review; 2016-2017*, 83 FR 51661 (October 12, 2018) and accompanying PDM; *Certain Cold Rolled Steel Flat Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Review; 2016-2017*; 84 FR 24083 (May 17, 2019, and accompanying IDM at Comment 2.

cooperative for the current review period, is not appropriate. As we indicated in the *Preliminary Results*, because we have relied on information obtained from the record of this administrative review in determining the AFA rate for JSHL, per section 776(c)(1) of the Act, we are not required to corroborate the information on which we have relied. We find that the AFA rate calculated for JSHL is appropriate to ensure that JSHL does not receive a rate that is more favorable to it than if it had fully cooperated with Commerce's multiple requests.

Comment 7: Whether Commerce can Apply a Partial AFA rate to a Non-Selected Respondent

Laxcon's Arguments:

- Commerce unlawfully applied AFA by assigning to Laxcon the all-others rate, which is based on the rate assigned to the Venus Group, and is based on partial AFA.²⁸⁶
 - Indirectly applying AFA rates to Laxcon violates Commerce practice.²⁸⁷
 - All AFA should be removed from the Venus dumping margin before it can be used as the all-others rate.
 - The 77.49 margin is essentially total AFA since all margins previously calculated in this proceeding have been between zero and 12 percent.
 - Commerce's classification of partial AFA and not total AFA for the Venus Group is inconsistent with the language used in the preliminary results and with past practice.²⁸⁸
- Laxcon's request for an administrative review was conditioned on Laxcon receiving its own dumping margin.²⁸⁹
 - Commerce should not have continued the review of Laxcon if Commerce could not meet the conditions of Laxcon's review request by determining an individual margin for Laxcon.
 - Commerce should now terminate its review of Laxcon.
 - Commerce may use facts available from the previous review and apply the previous all others rate of 12 percent because it is not based on AFA.
- Commerce's current respondent selection policy is to allow only two mandatory respondents.²⁹⁰
 - Laxcon understood that the two mandatory respondents in this review would cooperate, and they in fact did so.
 - Commerce is now advising that it is not accepting the questionnaire responses of either mandatory respondent selected in this proceeding.
 - Because Commerce is not using either mandatory respondent's questionnaire responses, Commerce should select the next largest exporter as a mandatory respondent, which is Laxcon.
 - Selecting Laxcon as a new mandatory respondent is consistent with Commerce's mandatory selection practice in many other cases.

²⁸⁶ See Laxcon's Case Brief at 2.

²⁸⁷ *Id.*; see also *MacLean Fogg Co. v. United States*, 753 F. 3d 1237, 1246 (Fed.Cir. 2014); *MacLean-Fogg Co. v. United States*, 100 F. Supp. 3d 1349 (CIT August 2015).

²⁸⁸ *Id.* at 2-3; see also *Mukand, Ltd.v. United States*, 767 F. 3d 1300 (Fed. Cir. 2014).

²⁸⁹ See Laxcon's Case Brief at 2-3.

²⁹⁰ *Id.*

- Commerce should accept JSHL's and the Venus Group's questionnaire responses and should not apply AFA to them.²⁹¹
 - If Commerce does not accept JSHL's and the Venus Group's responses without AFA, then Commerce should issue questionnaires to Laxcon immediately.²⁹²

The Petitioners' Rebuttal Arguments:

- The dumping margin assigned to Laxcon should be affirmed in the final results²⁹³
 - The Venus Group's dumping margin is not based on total AFA and it is the only appropriate margin to for determining Laxcon's dumping rate.²⁹⁴
 - Commerce properly applied the general rule of determining the dumping margin for Laxcon, consistent with the statute and its well-established practice.²⁹⁵
 - Because the Venus Group's dumping margin was the only calculated dumping margin that was not zero, *de minimis*, or based on total AFA, the 77.49 percent rate assigned to the Venus Group was correctly assigned to Laxcon.
 - The 77.49 percent rate is an actual, calculated margin based on the Venus Group's sales of subject merchandise and based on its own data.²⁹⁶
 - As a calculated rate, the 77.49 percent rate by definition is not a total AFA, nor can it be "effectively total AFA." While this rate includes an element of partial AFA, this does not render the rate unusable for determining the dumping margin for non-examined companies.²⁹⁷
 - Commerce has a long-established practice of assigning a non-examined company a dumping margin based on a mandatory respondent's rate that includes partial AFA.²⁹⁸
 - Contrary to Laxcon's claim, Commerce did not apply AFA to it as it did not determine that Laxcon was uncooperative nor was the rate based on the level of cooperation. Rather, as the Venus Group's affirmative dumping margin was the only rate that was not based on total AFA, Commerce properly assigned Laxcon the rate calculated for the Venus Group, consistent with its long-standing practice of determining rates for non-individually examined respondents.²⁹⁹
 - Laxcon has failed to provide any valid reason for Commerce to refrain from using the Venus Group's calculated rate.³⁰⁰
- There is no basis to terminate the review of Laxcon or to select Laxcon as a mandatory respondent.
 - Laxcon was aware early on in the proceeding that Commerce had not selected Laxcon as a mandatory respondent and would not issue a questionnaire to Laxcon.³⁰¹

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ See Petitioners' Laxcon Rebuttal Brief, at 3.

²⁹⁴ *Id.* at 4.

²⁹⁵ *Id.*

²⁹⁶ *Id.*

²⁹⁷ *Id.* at 5.

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ *Id.*

³⁰¹ *Id.*

- Laxcon knew that it would not receive its own calculated rate and it could have withdrawn its request for an administrative review at that time.³⁰²
- Having failed to do so, it is entirely inappropriate now for Laxcon to argue that Commerce should terminate its administrative review or issue it a questionnaire simply because it is unsatisfied with its dumping margin.³⁰³
- Moreover, claims that Commerce should “just apply” the prior all-others rate of 12 percent should be rejected, as it would be equivalent to a termination of the administrative review, given that Laxcon has been subject to the “all-others rate” prior to this review.³⁰⁴

Commerce’s Position: We disagree with Laxcon’s argument that it is contrary to law to assign it the Venus Group’s calculated rate simply because the rate includes an element of AFA. As we indicated in the *Preliminary Results*, the Act and Commerce’s regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act.

Generally, 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 companies that were not selected for individual review in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally “an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.” Accordingly, Commerce’s usual practice in determining the rate for a respondent not selected for individual examination has been to average the weighted-average dumping margins for the selected companies, excluding rates that are zero, *de minimis* margins, or based entirely on FA.³⁰⁵ Following this statutory guidance, because we calculated a margin for the Venus Group which was not based entirely on AFA, and a margin for JSHL, which is based on AFA, we continue to find that applying the rate calculated for the Venus Group is appropriate. As noted above, we have revised the methodology in determining the Venus Group’s margin and have accounted for certain minor errors, which resulted in a change in the margin for the Venus Group. Thus, for these final results, we will apply to Laxcon the Venus Group’s revised calculated rate of 5.35 percent.

With regard to Laxcon’s argument that Commerce should have terminated its review of Laxcon if Commerce’s intent was not to select it as a mandatory respondent, we disagree.³⁰⁶ On February 27, 2018, Laxcon requested an administrative review of its sales to the United States.³⁰⁷ Based on similar requests for administrative review, on April 16, 2018, we initiated an

³⁰² *Id.* at 6.

³⁰³ *Id.*

³⁰⁴ *Id.*

³⁰⁵ See *Multilayered Wood Flooring from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016-2017*, 84 FR 38002-38005 (August 5, 2019), and accompanying IDM at Comment 3.

³⁰⁶ See Laxcon’s Case Brief at 2.

³⁰⁷ See Laxcon’s “RE: Stainless Steel Bar from India: New Shipper Review,” dated February 28, 2018.

administrative review of the antidumping duty order on SS bar from India.³⁰⁸ In the *Initiation Notice*, we alerted interested parties that, pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review.³⁰⁹ We further stated that, “{t}he regulation provides that Commerce may extend this time if it is reasonable to do so.”³¹⁰ On June 22, 2018, we issued the Respondent Selection Memorandum³¹¹ announcing that “Commerce’s resources reasonably permit individual examination of two respondents.”³¹² We selected for individual examination JSHL and the Venus Group.³¹³ Laxcon could have withdrawn its request for review upon learning that it was not selected as a mandatory respondent. Laxcon could also have requested an extension of time to extend the 90-day withdrawal deadline if it had good reason for such a request. Further, Laxcon could have complied with the requirements of section 782 of the Act to be considered as a voluntary respondent. Because Laxcon did not do any of these things, we find Laxcon’s argument in this regard entirely without merit.

With respect to Laxcon’s argument that Commerce may use facts available from the previous review and apply the previous all-others rate of 12 percent because it is not based on AFA, we find this line of argument unpersuasive. As we indicate above, Laxcon could have withdrawn its request for the administrative review prior to the 90-day withdrawal deadline and it did not do so. Thus, by applying the previous “all-others” rate of 12 percent to Laxcon, we essentially would be terminating the administrative review with regard to Laxcon, as it was previously subject to the “all-others” rate of 12 percent prior to this administrative review. Thus, we find Laxcon’s argument without merit.

³⁰⁸ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 16298, (April 16, 2018) (*Initiation Notice*).

³⁰⁹ *Id.*

³¹⁰ *Id.*

³¹¹ See Memorandum, “Selection of respondents for Individual Examination,” dated June 22, 2018 (Respondent Selection Memorandum).

³¹² *Id.*

³¹³ *Id.* at 1-2.

VII. RECOMMENDATION

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

☒

Agree

☐

Disagree

10/15/2019

X 

Signed by: JEFFREY KESSLER
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance