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Administrative Review
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November 18, 2020

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

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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 Group[1] is the Producer of Subject Merchandise
2. Whether Partial Adverse Facts Available (AFA) is Warranted for the Venus Group
3. Whether Commerce Erroneously Calculated the AFA Adjustment it Intended to Make in Calculating the Venus Group's Dumping Margin
4. Whether Commerce Should Apply Total AFA to the Venus Group
5. Whether Commerce Should Match Sales by Manufacturer

[1] The Venus Group includes: Venus Wire Industries Pvt. Ltd., and its affiliates: Hindustan Inox; Precision Metals; and Sieves Manufacturers (India) Pvt. Ltd.

II. BACKGROUND

On February 21, 1995, Commerce published the AD *Order* on SS bar from India.[2] On March 3, 2020, we published the *Preliminary Results* of the administrative review of the *Order*.[3]

We invited parties to comment on the *Preliminary Results*. On April 2, 2020, the petitioners submitted a request for a hearing.[4] On June 16, 2020, we received case briefs from the Venus Group[5] and the petitioners.[6] On June 30, 2020, we received rebuttal briefs from the Venus Group and the petitioners.[7] On August 13, 2020, the petitioners withdrew their request for a hearing.[8]

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.

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[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; 2018-2019*, 85 FR 12520 (March 3, 2020) (*Preliminary Results*).

[4] The petitioners are: Carpenter Technology Corporation; Crucible Industries LLC; Electralloy, a Division of G.O. Carlson, Inc.; North American Stainless; Universal Stainless Alloy Product, Inc.; and Valbruna Slater Stainless, Inc. (collectively, petitioners). *See* Petitioners' Letter, "Stainless Steel Bar from India – Petitioners' Request for a Hearing," dated April 2, 2020.

[5] Commerce rejected the Venus Group's June 16, 2020 case brief because it contained untimely filed new factual information. *See* Commerce's Letter, "Rejection of Untimely New Factual Information," dated June 24, 2020. On June 26, 2020, the Venus Group refiled its case brief. *See* Venus Group's Letter, "Antidumping Duty Investigation of Stainless Steel Bar from India: Re-Submission of Venus Group Case Brief," dated June 26, 2020 (Venus Group's Case Brief).

[6] *See* Petitioners' Letter, "Petitioners' Case Brief Regarding the Venus Group," dated June 16, 2020 (Petitioners' Case Brief).

[7] *See* Petitioners' Letters, "Petitioners' Rebuttal Brief,," dated June 30, 2020 (Petitioners' Rebuttal Brief); *see also* Venus Group's Letter, "Stainless Steel Bar from India: Venus Group Rebuttal Brief," dated June 30, 2020 (Venus Group's Rebuttal Brief).

[8] *See* Petitioners' Letter, "Stainless Steel Bar from India – Withdrawal of Hearing Request," dated August 13, 2020.

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 and 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 17.24 percent for the Venus Group. Specifically, we made changes to the Venus Group's direct material costs and we matched sales by manufacturer. For further details, *see* Comments 4 and 5 below.

V. APPLICATION OF FACTS AVAILABLE AND ADVERSE INFERENCES

As discussed further in Comments 1, 2, and 4, 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 in accordance with sections 776(a) and (b) of the Act,

A. Use of Facts Available

As noted in the *Preliminary Results*, certain information regarding the COP of unaffiliated producers is not on the record of this proceeding. Without the unaffiliated suppliers' COP data, we do not have all the necessary cost data to calculate an AD margin. For example, we cannot accurately determine whether certain of the Venus Group's home market sales were sold below the COP or 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 whether these home market sales are appropriate to use as normal value. Moreover, without the unaffiliated suppliers' costs, we do not have all the necessary information to calculate constructed value.

B. Application of Facts Available with a Partial Adverse Inference for the Venus Group

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. Specifically, we continue to find that the Venus Group's reported requests for cooperation with 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. For these reasons, and as discussed further below in Comments 1, 2 and 4, we continue to find that the application of partial facts available with an adverse inference (partial 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. However, as discussed in Comment 4, we disagree with the petitioners that total AFA is warranted as the Venus Group provided timely responses to all of Commerce's questionnaires and all other information necessary to calculate an accurate dumping margin was provided.

VI. DISCUSSION OF THE ISSUES

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

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 misapplies the scope of the *Order*, relies on groundless support, and ignores multiple longstanding Commerce rulings that undermine its analysis.[9]
- The Venus Group is the producer of SS bar.
  - Commerce's preliminary conclusion that the Venus Group is not the producer rests on two separate conclusions: first, that stainless steel rounds (SSRs) purchased by the Venus Group themselves constitute subject merchandise, and second, that the Venus Group does not sufficiently "further manufacture" the SSRs into SS bar.[10]
  - 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."[11] The presence of these characteristics in the language of the *Order* presupposes that certain SS bars may lack those characteristics, and as a result, must be excluded from the scope of the *Order*.[12]
  - Through the submission of testing documentation provided by a third party, the Venus Group demonstrated that the SSRs that it purchased were not "straight," either by a simple dictionary definition of that term or by reference to industrial standards, nor did they have a "uniform solid cross section along their whole length.[13]
  - Commerce, in the *Preliminary Results*, did not address the information submitted by the Venus Group and define these key requirements. First, because the two key terms are undefined in the *Order*, it is not clear how Commerce could have determined that the SSRs are within the scope of *Order* or even meaningfully analyzed the Venus Group's argument that SSRs are not with the scope of the *Order*. Second, by effectively not defining these terms, Commerce has abdicated its responsibility to interpret the scope of this *Order*.[14]
  - According to *Supreme Inc*.,[15] Commerce has the sole authority to interpret the scope of *Order*.[16] In this regard, Commerce has failed to discharge its obligation to interpret the scope of the *Order*, but has nevertheless reached a conclusion that the Venus Group's inputs are subject merchandise.
  - In this case, Commerce has refused to provide any guidance as to how these terms are defined and has refused to articulate the standards against which it has assessed the evidence.[17]

[9] *See* Venus Group's Case Brief at 1.
[10] *Id*. at 2.
[11] *Id*. at 3.
[12] *Id.*
[13] *Id.*
[14] *Id*. at 3 and 4.
[15] *See Supreme Inc., v. United States*, 190 F Supp. 3d 1185, 1195 (CIT 2016) (*Supreme Inc.*)
[16] *Id*. at 4.
[17] *Id*.

- 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]
    - The issue of semi-finished products also arose in the context of the *Stainless Steel Bar from France*.[20] 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.[21]
    - Commerce concluded in that review that the products sold were semi-finished products.
    - These are precisely the same operations that the Venus Group performs on the SSRs that it purchases from its unaffiliated suppliers. Applying the same logic, Commerce should therefore conclude that the SSRs purchased by the Venus Group are semi-finished products, which means that they are not subject to the scope of the *Order*.[22]
- Commerce's reliance on *Narrow Woven Ribbons*[23] is erroneous.[24]
    - Other than prior segments of this proceeding, the Venus Group has not found any other instance in which the analysis in *Narrow Woven Ribbons* has been applied for this proposition,[25] and yet there are numerous cases where exporters purchased subject merchandise and perform some processing on that merchandise prior to export. For example, there have been cases involving finished products "and parts/components thereof," in which respondents purchase parts and components for assembly into finished products that, if exported directly to the United States, would be considered subject merchandise.[26]
    - In none of those cases has Commerce applied the *Narrow Woven Ribbons* precedent to determine that the exporter was in fact the producer of the subject merchandise.
    - On the basis of the *Narrow Woven Ribbons* test, Commerce determined that the Venus Group is not the "producer" of subject merchandise shipped to the United States, and that the "producers" are the manufacturers who supplied the Venus Group with SSRs. Both the Venus Group and the U.S. Court of International Trade (CIT) have rejected Commerce's reliance on and application of the narrow application of the *Narrow Woven Ribbons* test to determine whether the Venus Group is the producer of the SS bar at issue to be arbitrary.[27]

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[18] *Id*.
[19] *Id*. at 4 and 5.
[20] *Id*. at 5; *see also* 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*).
[21] *See* Venus Group's Case Brief at 5.
[22] *Id*. at 6.
[23] *See Notice of Final Determination of Sales at Less Than Fair Value: Narrow Woven Ribbons with Woven Selvedge from Taiwan*, 75 FR 41804 (July 19, 2010) (*Narrow Woven Ribbons*), and accompanying Issues and Decision Memorandum (IDM) at Comment 20.
[24] *See* Venus Group's Case Brief at 6.
[25] *Id*.
[26] *Id*.
[27] *Id*. at 7*; see also Venus Wire Industries Pvt. Ltd. v. United States*, Court No. 18-00113 Slip Op. 19-170 at 20 (December 20, 2019).

- Commerce's rejection of substantial transformation for the *Narrow Woven Ribbons* test is inappropriate
  - Commerce's sole basis for rejecting the substantial transformation test because it claims that the substantial transformation test is inapplicable where input and output products are within the same "class or kind" of merchandise. Commerce relied on this same reasoning in the *CCR Final Results* and the U.S. Court of International Trade (CIT) rejected the argument.[28]
  - Having identified instances where Commerce used the substantial transformation test where input and output products are within the same class or kind of merchandise, the Court cautioned Commerce that its current argument rejecting the applicability of the substantial transformation test "runs counter to decades of agency practice."[29]
  - The Court addressed four instances where Commerce has, in fact, used a substantial transformation test where the input and output products were in the same class or kind of merchandise. Citing *Diamond Sawblades,*[30] the Venus Group argues that Commerce determined that even though the upstream and downstream products remained within the same class or kind of merchandise, substantial transformation had still occurred.
  - According to the Venus Group, in *Diamond Sawblades*, Commerce determined that "the controlling factor in a substantial transformation determination is not whether there is a change in class or kind of merchandise; rather, Commerce examined where the essential quality of the imported product imparted, as well as the extent of manufacturing and processing in the exporting country and in the third country."[31]
  - The Venus Group argues that these cases thus belie any conclusion that the Venus Group cannot be the producer of SS bar because transformation from one class or kind of product into another class or kind of product is the determinative factor for whether Commerce applies the substantial transformation test of the *Narrow Woven Ribbons* test.
  - The Venus Group claims that the CIT's holding in the Venus Group's appeal of the *CCR Final Results* supports the Venus Group's position here.[32] According to the Venus Group, the Court ultimately decided that Commerce "had{d} not adequately addressed why the substantial transformation test is irrelevant under the circumstances presented by this case."[33]

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[28] *See Stainless Steel Bar from India: Preliminary Results of Changed Circumstances Review and Intent to Reinstate Certain Companies in the Antidumping Duty Order*, 82 FR 48483, (October 18, 2017), and accompanying Decision Memorandum, dated October 12, 2017 (*CCR Preliminary Results)*, and adopted in *Stainless Steel Bar from India: Final Results of Changed Circumstances Review and Reinstatement of Certain Companies In the Antidumping Duty Order*, 83 FR 17529 (April 20, 2018), and accompanying IDM (*CCR Final Results*); *see also Venus Wire Industries Pvt. Ltd. v. United States*, Court No. 18-00113 Slip Op. 19-170 at 20 (December 20, 2019) (*Venus Wire Indus*).

[29] *See* Venus Group's Case Brief at 7.

[30] *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*); *see also3.5" Microdisks and Coated Media Thereof from Japan*, 54 FR 6433, 6433-35 (February 10, 1989) (*3.5" Microdisks and Coated Media from Japan*), and accompanying IDM; and *Erasable Programmable Read Only Memories from Japan; Final Determination of Sales at Less than Fair Value*, 51 FR 39680, 39692 (October 30, 1986) (*Erasable Memories from Japan*).

[31] *See* Venus Group's Case Brief at 8.

[32] *See Venus Wire Indus.*

[33] *Id*. at 8 and 9.

- In reaching that decision, according to the Venus Group, the CIT stressed that Commerce had used a substantial transformation test in prior cases where the input and output products were within the same class of kind merchandise, and that the *Narrow Woven Ribbons* and substantial transformation tests were broadly focused on the same type of analysis. Therefore, the Venus Group claims, Commerce's attempt in that proceeding to dismiss the substantial transformation test and use the *Narrow Woven Ribbons* test was found to be arbitrary by the CIT – Commerce's *Preliminary Results* relies on that same faulty analysis and is equally arbitrary.[34]

- SS Bar Scope Rulings.[35]
  - In various SS bar scope rulings, Commerce concluded that the transformation of stainless-steel wire rod (SSWR) into SS bar constituted a "substantial transformation,"[36] using processes that are almost identical to those used by the Venus Group to convert SSRs into SS bar. 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.
  - Since these cases cannot be rejected as "inapposite" simply because the input and output products were not the same "class or kind" of merchandise, Commerce must squarely address the substance of its prior analysis and explain how its conclusion could be different here. In other words, Commerce must be able to explain how a cold-rolling process is sufficient to "substantially transform" SSWR into SS bar, but that a nearly identical process is not sufficient "further manufacturing" to produce the subject merchandise from SSRs.[37]
  - The CIT agreed with the Venus Group and advised "{i}t is also not clear that the application of the *Narrow Woven Ribbons* test to the SS bar manufactured from SSWR would not product the same results as occurred with the test that was applied to the SS bar manufactured from SSRs.[38]
  - The CIT further cautioned that any attempt by Commerce to argue that it relied on the substantial transformation test because SSWR and SS bar are in different classes or kinds of merchandise undermines its argument that the substantial transformation test is inapplicable but for the need to conduct a country origin analysis. Therefore, as the Court explained, "Commerce's use of the substantial transformation test in connection with one input (SSWR) but not the other (SSRs) is, without further explanation, arbitrary." The *Preliminary Results* lack that further explanation.

- The Venus Group is the producer under the *Narrow Woven Ribbons* test.[39]
  - Commerce's argument, that the Venus Group is not the producer of SS bar because it "adds no additional materials to the SS bar it purchased and processed," is meritless.
  - Commerce ignores the fact that the Venus Group's manufacturing process does in fact consume additional inputs such as power, fuel, labor, lubricants and grinding wheels in the process of producing SS bars from SSRs. While these additional materials are not physically incorporated into the finished product, they are nevertheless consumed in the

[34] *Id*. at 9 (citing *Venus Wire Indus.*)
[35] *Id*.
[36] *Id*.
[37] *Id*. at 10.
[38] *Id*.
[39] *Id*. at 11.

process that transforms SSRs into SS bar.[40] Nowhere in the *Preliminary Results* does Commerce offer any rationale to explain why this difference is meaningful.
    - Furthermore, the focus on the incorporation of additional raw materials into the finished product ignores the fact that the physical and mechanical properties of a metal product may be drastically altered without the addition of new materials.[41]
    - In a prior scope ruling under the *Order*, the production process analyzed by Commerce resulted in a reduction in the diameter of the SSWR and cold working to increase hardness, yield and tensile strength and lower ductility.[42] Commerce concluded that the process of transforming SSWR into SS bar was sufficient to alter the essential physical characteristics of the wire rod even though, as here, no additional materials were added to the SSWR. For example, cold-formed SS bar is produced by subjecting hot-rolled bar to additional processing (cold working, cold drawing or cold finishing).[43]
    - Because the cold-working process results in a bar with a greatly superior surface and mechanical properties than the hot rolled bar, the cold-formed bar is used in applications for which the hot rolled bar is not suitable.[44]
    - The cold working process there, like the one utilized in this case by the Venus Group to transform SSRs into SS bar, does not rely on additional materials to effectuate the significant change in the physical characteristics of the input. Nevertheless, in those cases Commerce determined that the input was substantially transformed by the process alone. Commerce cannot ignore the implication of these cases – namely, that substantial physical changes can be affected on an input even where no new materials are added.
- The Venus Group's further processing changes the physical characteristics of the SSRs.[45]
    - In the *Preliminary Results*, Commerce noted that the respondent's further processing of an input in *Narrow Woven Ribbons*, affected a change in only 6 of 16 of Commerce's physical characteristics, which it found insufficient to deem the respondent the producer of the exported merchandise. Surprisingly, Commerce's analysis of the Venus Group's manufacturing process abandons this quantitative assessment from the *Narrow Woven Ribbons* decision, and fails to evaluate, from a quantitative standpoint, the number of physical characteristics of SSRs changed by the Venus Group during manufacturing.[46]
    - Unlike the respondent in *Narrow Woven Ribbons* who changed only 6 of 16 physical characteristics of the input it further processed, the Venus Group's manufacturing process changes at least 5 and sometimes as many as 6 of the 8 product characteristics in Commerce's control number.[47]
    - Rather than identifying the number of physical characteristics changed by the Venus Group's manufacturing process and evaluating the impact of that on its analysis,

[40] *Id*. at 11 and 12.
[41] *Id.* at 12.
[42] *Id.*; *see also* Memorandum, "Scope Ruling Request by Ishar Bright Steel Ltd. on Whether Stainless Steel Bar is Subject to the Scope of the Antidumping and Countervailing Duty Orders on Stainless Steel Wire Rod from Subject Countries," dated February 7, 2005. (Ishar Bright SSWR Scope Ruling).
[43] *See* Venus Group's Case Brief at 12.
[44] *Id*.
[45] *Id*. at 13.
[46] *Id*.
[47] *Id*. at 13 and 14 (citing *Narrow Woven Ribbons*).

Commerce simply states that certain physical characteristics changed by the Venus Group's manufacturing process are "of lesser importance than grade and melting."[48]

- The Venus Group does not deny that grade and melting remain the same, and the fact that these two factors do not change should be less relevant to Commerce analysis of the extent of the Venus Group's further manufacturing activities. For example, a producer could purchase a SSRs and, through extensive further processing, convert that SSR into a door handle.[49]
- The Venus Group submits that Commerce would have to view that transformation as significant – yet the grade and remelt characteristics of the SSR and the door handle would remain the same, since they cannot be changed. Thus, of the eight product characteristics for the merchandise under investigation, only six can be changed, and the Venus Group changed at least five and, in some cases, all six of them in converting SSRs into SS bar.[50]
- In short, even under the *Narrow Woven Ribbons*, Commerce must conclude that the processing performed by the Venus Group was sufficient "further processing" to deem the Venus Group the producer of SS bar it exported to the United States.[51]

Petitioners' Rebuttal Arguments:

- Commerce properly determined that the Venus Group is not the producer of SS bar that were manufactured from purchases of hot-rolled bar (or SSRs).[52]
  - The plain language of the scope demonstrates that hot-rolled bars (or SSRs) are subject merchandise.[53]
  - Commerce correctly determined that SSRs are subject merchandise within the scope of the *Order*, consistent with its prior findings.
  - More significantly, the Venus Group previously confirmed that hot-rolled bars (or SSRs) it purchased "are also included in the scope of the order," although it reversed its position after being reinstated back under the order.[54]
  - In its case brief, the Venus Group has presented essentially the same arguments as in the prior administrative review.
  - As Commerce found in the prior administrative review, however, none of the Venus Group's arguments have any merit.
- Claims that SSRs are not "straight" or do not have a "uniform solid cross section" are unfounded.[55]
  - The Venus Group's claim that SSRs it purchased are outside the scope of the *Order* because they are not "in straight lengths" and do not have "a uniform solid cross section along their whole length" are unavailing.[56]
  - The Venus Group contends that "{t}he presence of these characteristics in the language of the order presupposes that certain SS Bars may lack those characteristics and as a

[48] *Id*. at 14.
[49] *Id*.
[50] *Id*.
[51] *Id*. at 14 and 15.
[52] *See* Petitioners' Rebuttal Brief at 3.
[53] *Id*.
[54] *Id.* at 4.
[55] *Id*.
[56] *Id*.

result, must be excluded from the scope of the order." Thus, under the Venus Group's logic, the term "stainless steel rounds" identifies a commercially distinguishable long product that is something other than the hot-rolled (black) bar. But, as Commerce found in the prior review, "SSRs and 'black bars' are not distinct products from hot-rolled bar" and that they are "one and the same." Commerce further noted that the Venus Group and its unaffiliated suppliers "recognize that the terms are interchangeable."[57]

- The Venus Group wrongly asserts that the absence of any definitions concerning the "uniformity" tolerances or the requisite degree of "straightness" of the subject merchandise in the scope language means that the SSRs purchased by the Venus Group cannot be deemed within the scope of the *Order*.[58]
- As Commerce stated in the prior review, however, "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 the scope of the *Order*, which is intended to cover SS bar at various stages of the manufacturing process.[59]
- Commerce also noted that the International Trade Commission (ITC)'s report in a prior sunset review further supported the U.S. industry's expert's opinion that the term "straight" is in fact used to distinguish hot-rolled bar (or SSRs) from SSWR.
- In addition, with regard to "uniformity" in solid cross section, Commerce states that "the scope language makes no reference to uniformity tolerances based on industry standards" and therefore "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 of by reference to commercial/industrial standard (*e.g.*, ASTM A484)."[60]
- Thus, Commerce interpreted the terms in accordance with their plain meaning, and stated that "{c}ontrary to the Venus Group's assertion, this does not mean that Commerce has left these terms undefined."
- Given the overwhelming support for Commerce's interpretation of the scope of the *Order* in its prior findings, the Venus Group's contention that Commerce "failed to discharge its obligation to interpret the scope of this order" is therefore unfounded.
- Commerce properly interpreted the scope of the *Order* in the prior review and clearly explained why all SSRs or hot-rolled bars are within the scope of the *Order*. Thus, there is no reason for Commerce to re-visit its interpretation of the scope in this proceeding.[61]

- SSRs are not the "semi-finished products" that are specifically excluded from the scope of the *Order*.[62]
  - The Venus Group claims that SSRs should be treated as non-subject merchandise "because they constitute 'semi-finished product' which are explicitly excluded from the scope of the order."[63]
  - Because hot-rolled bar (or SSRs/black bar) is explicitly covered by the scope of the *Order*, it is illogical to conclude that the very same product is also excluded from the scope as a "semi-finished steel." Rather, the "semi-finished" products that are expressly

[57] *Id*. at 4 and 5.
[58] *Id*. at 5.
[59] *Id.*
[60] *Id.* at 6.
[61] *Id*.
[62] *Id*.
[63] *Id*.

excluded from the scope includes the upstream product, namely stainless blooms and billets that are used to produce hot-rolled bar.[64]

- Furthermore, even within a general class of goods falling in the same scope and like product, the terminal point of end-use does not define a "semi-finished product." A steel product when sold to a service center is almost always the precursor to some further manufacturing before the sale to an end-user. It cannot be the case that a product sold to an end-user for immediate industrial application is in scope, but a product sold to service centers is out of scope because its intermediate status makes it a "semi-finished product."[65]
- If that were the case, Commerce would need to define any imported good that undergoes further manufacturing in the United States as a semi-finished product not covered by the scope of the *Order*.[66]
- As Commerce stated in the prior administrative review, "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."[67]

- The Venus Group's citation to *Stainless Steel Bars from France* is misplaced.[68]
  - 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 very wording cited says that "the initial production of the merchandise" was a "semi-finished product."[69] The reason this was not a contradiction, which would have indicated that subject merchandise was a semi-finished product, is because the term was used too loosely.[70]
  - The deciding element was not the degree of manufacturing, but the fact that the sale of hot-rolled bar was made between affiliated parties, and thus, could not establish normal value.[71]
  - It is clear in the discussion in that case that the affiliate's operations to finish the incoming black bar into the finished product as sold at arm's length were not selling expenses but further processing expenses.
  - The Venus Group has misinterpreted this precedent that its analysis would lead to even cold-rolled bar that underwent subsequent annealing to be considered non-subject merchandise, simply because it underwent an additional manufacturing operation prior to the first arms-length sale. This interpretation is incorrect.[72]
  - That decision's use of the term "semi-finished" was taken entirely out of context of the final determination. Here, it was not meant as a term of art for a scope determination,

[64] *Id*. at 7.
[65] *Id*. at 8.
[66] *Id*. at 8.
[67] *Id*.
[68] *Id*.
[69] *Id*. at 9.
[70] *Id*.
[71] *Id*. at 10.
[72] *Id*. at 11.

but in the common sense of a product that "was still to be finished," because it was produced at two points in the spectrum of SS bar between two affiliated facilities.[73]

- Based on the test articulated in *Narrow Woven Ribbons,* Commerce properly determined that the Venus Group is not the producer of subject merchandise.[74]
  - That Commerce has not applied the test established in *Narrow Woven Ribbons* in other cases than this proceeding does not make the test inappropriate for use in this administrative review.
  - Contrary to the Venus Group's assertions, 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 physical nature and characteristics of the exported merchandise such that the Venus Group could be considered the producer of the subject merchandise.[75]
  - Based on record evidence, Commerce determined that the further processing performed by the Venus Group (which consisted of heat treatment, straightening, peeling, polishing, cutting, and in some cases, grinding) does not affect the two most important physical characteristics (grade and melting) of the eight characteristics or affect shape (the sixth characteristic).
  - Commerce also found significant that the Venus Group did not add any materials to the purchased SSRs that it processed.
  - Notably, Commerce stated that "the facts of this case are similar to the *CCR Final Results* where we reinstated the Venus Group into the AD order" and concluded that "the Venus Group cannot be considered the producer of the subject merchandise shipped to the United States."[76]
- Commerce properly determined that the substantial transformation test did not apply to this case.[77]
  - As Commerce explained in the prior segments of this proceeding, the substantial transformation test is not the appropriate test when both the input and the finished product both fall within the same class or kind of merchandise and there is no country of origin at issue.[78]
  - For that reason, all of the cases it cites to support its argument are inapposite here, because in each instance, the upstream and downstream products were produced or processed in different countries.[79]
  - For example, in *Diamond Sawblades* in-scope diamond segments from China were processed into finished sawblades by attaching to a core in a third country. In *3.5" Microdisks and Coated Media Thereof from Japan*, in-scope coated media from Japan was further processed into 3.5" microdisks in third countries prior to importation to the United States. In all cases cited by the Venus Group, the question at issue was whether

[73] *Id*.
[74] *Id*.
[75] *Id*. at 10 and 11.
[76] *Id*. at 12.
[77] *Id*.
[78] *Id*.
[79] *Id*.

the processed downstream product moved the product out of the scope or fell into a different class or kind of product when compared to the upstream product.[80]
    - Notably, although the upstream and downstream products may have fallen within the same class or kind, the question of whether the further processed product remained in-scope merchandise was in dispute.[81] Importantly, Commerce's substantial transformation analysis for country-of-origin purposes reflect the agency's concerns that are specific to enforcement of an antidumping and countervailing duty order.[82]
    - Here, there is no dispute that the input (SSRs) and output (SS bar) are both subject to the AD *Order* against India, Thus, given that there are no issues regarding scope or country of origin in the instant case, Commerce properly determined that the substantial transformation test was not applicable to this proceeding, just as it found in the prior segment of this proceeding.[83]
- Commerce's prior scope rulings have no probative value in this case.[84]
    - The Venus Group's reliance on Commerce's prior scope rulings to support its case that it has "substantially transformed" the SSRs is without merit.
    - Commerce addressed this issue in the *CCR Final Results* and correctly determined that the Venus Group could not be the producer because the SSRs it purchased from unaffiliated suppliers are also in-scope merchandise and the further processing it performed is minimal.[85]
    - Because both the SSRs purchased by the Venus Group and the merchandise exported to the United States fall within the same class or kind of merchandise (and are both subject merchandise from India), Commerce determined that the "substantial transformation" test was not the proper analysis.[86]
    - Commerce found the scope rulings concerning the transformation of SSWR to SS bar inapposite because they involved the transformation of one "class or kind" of product (wire rod) into a product in a different "class or kind" of product (SS bar).[87]
    - In addition, unlike in this review, the scope determinations cited by the Venus Group involve cases where the input (wire rod) and the finished product (SS bar) were manufactured in different countries, which necessitated a substantial transformation analysis to determine whether a product's country of origin had changed as a result of the further processing that occurred in a third country prior to export to the United States.[88] This is another crucial factor that distinguishes the scope rulings from this administrative review.
    - 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 arguments.
- The Venus Group is not the producer under the *Narrow Woven Ribbon* test.[89]

[80] *Id*. at 13.
[81] *Id*.
[82] *Id*. at 13 and 14.
[83] *Id*. at 14.
[84] *Id*.
[85] *Id*.
[86] *Id*.
[87] *Id*. at 15.
[88] *Id*.
[89] *Id*.

- Commerce's focus on the addition of materials during the production process is appropriate and not misleading.
- The Venus Group claims that Commerce wrongly ignored the fact that its manufacturing process "does in fact consume additional inputs such as power, fuel, labor, lubricants and grinding wheels in the process of producing SS bars from SS rounds."[90]
- First, when wire rod is drawn to length through a bar drawing mill, it not only decreases in diameter, but is changed from a rod in coils to a straight length of bar. Second, each and every one of the multiple types of cold-finishing operations, many of which are complementary, change the mechanical properties of bar.[91] A half inch diameter cold-drawn bar that has been annealed, and a four inch diameter centerless ground bar that has been quenched and tempered will have vastly different mechanical properties, even if made from the same grade (*e.g.*, 420, 303, 316L, *etc.*), but are both indisputably in-scope merchandise.[92]
- Each type of cold-finishing and each type of heat treatment imparts unique physical properties, magnified in the various combinations thereof across hundreds of resulting control numbers.
- Finally, if the formation of cold-finished (bright) bar from hot-rolled (black) bar were so transformative, then all hot-rolled bar, of any concentricity and any straightness, would be changed into a separate category of product.[93]
- The logical conclusion of the Venus Group's argument is that there should be two Commerce scope definitions and two class-or-kind definitions, where hot-rolled bar and cold-finished bar were completely separate and distinguishable. That is not, and cannot, be the case.[94]

- The Venus Group's further processing does not change the essential physical characteristics of the SSRs.[95]
  - The Venus Group wrongly assumes that all the physical characteristics have equal weight. The two physical characteristics of SS bar that always remain constant, the grade and melt, far outweigh all other attributes.
  - Commerce properly determined that because "the top two most important physical characteristics and shape do not change as a result of the further processing, the Venus Group's further processing functions do not significantly alter the physical characteristics of the finished product."[96]
  - In fact, it is the grade chemistry and melt that (1) make stainless steel the type of metal subject to the *Order*, (2) distinguish first and foremost the differences among subject products and (3) drive costs.[97]
  - Further, the grade chemistry and melt establish the most fundamental attributes whereby both hot-rolled and cold-finished bar are in the scope of this *Order*—they are stainless steel that has been processed into lengths, not coils.[98]

[90] *Id.*
[91] *Id*. at 16.
[92] *Id*.
[93] *Id*.
[94] *Id.*
[95] *Id*.
[96] *Id.* at 17.
[97] *Id*.
[98] *Id*.

- The Venus Group's claims that the fact that two characteristics do not change is a weakness of the analysis, but the opposite is true. Those two characteristics both quantitatively and qualitatively tower over the remaining characteristics, both individually and collectively.[99]
- In addition, the Venus Group provided no precedent where the number of characteristics *per se*, are determinative with respect to further manufacturing. As Commerce held in the *CCR Final*, "there is no threshold for the number of characteristics, whether expressed as an absolute or relative number that may be determinative for our analysis."[100]
- Accordingly, under the *Narrow Woven Ribbons* standard and based on the totality of the record evidence, as well as the facts specific to this case, Commerce properly determined that the further processing performed by the Venus Group is not sufficient to deem it the producer of the subject merchandise.[101]

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 subject merchandise, and that the Venus Group's further processing of the SSRs does not establish that it is the producer. We also find that the facts on the record are essentially the same as the facts in the immediately preceding administrative review with regard to these issues, and the arguments presented by the Venus Group do not give us cause to reverse our earlier findings.

Whether the SSRs Purchased by the Venus Group are Subject Merchandise

As we discussed in the *Preliminary Results*,[102] 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

[99] *Id*.
[100] *Id*. at 18.
[101] *Id*.
[102] *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).[103] The Venus Group indicated that SSRs are also referred to as "hot-rolled stainless steel bar" or "black bar."[104]

As 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 sold 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."[105] 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."[106] Therefore, we continue to find that, 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.

As noted above, the Venus Group also refers to SSRs as "hot-rolled stainless steel bar" or "black bar."[107] Additionally, the Venus Group provided the same photographs of the SSRs that it provided in the prior administrative review, which further confirms that the SSRs are subject merchandise because they are straight hot-rolled bars.[108] Just as we did in the prior administrative review, in this review, we also compared the photographs of the SSRs to photographs the Venus Group provided of its finished SS bar, and continue to 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.[109]

Moreover, as further discussed below, we continue to 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 SS 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{.}"

[103] *See* Venus Group's Section A Questionnaire Response, dated August 20, 2019 (Venus Group AQR).
[104] *Id*.
[105] *See Order* (emphasis added).
[106] *Id.* (emphasis added).
[107] *See* Venus Group AQR.
[108] *See* Venus Group AQR at Exhibit 14.
[109] *See* Venus Group AQR at Exhibit A-9 and Exhibit A-14.

Also relevant to this discussion is the information provided in the ITC Report[110] 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,[111] 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.
>
> 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.[112]

Contrary to the Venus Group's contention, the ITC Report affirms that SSRs 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."[113] The ITC Report is therefore consistent with our reading

[110] *See 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).
[111] *Id*.
[112] *See* ITC Report at I-11.
[113] *Id*.

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.[114] This understanding is further supported by a letter placed on the record by the Venus Group from one of its unaffiliated suppliers in which the unaffiliated supplier indicates that it supplied "hot rolled bars" to the Venus Group.[115] Thus, SSRs and "black bars" are not distinct products from hot-rolled bar. As such, we continue to find that they are one and the same, and the record demonstrates that the terms are interchangeable.[116] 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*.

The Venus Group continues to argue 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."[117] These are the same arguments the Venus Group made in the prior administrative review. We continue to find that an examination of the ITC Report indicates that, "Bar is distinguished from rod and wire in that bar is cut in straight lengths as opposed to being coiled."[118] Further, in the prior administrative review, we addressed whether SSRs are subject to the scope of the *Order*. That analysis is also pertinent to this administrative review in this regard. Therefore, as we indicated in the *Final Results 2017-2018*:[119]

> 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. 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)." The Venus Group has not placed anything on the record to dispute the petitioners' interpretation of the scope of the *Order*. (Internal citations omitted).

The ITC Report supports Commerce's position 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

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[114] *See* Venus Group's AQR at 38.
[115] *See* Venus Group's Section D Supplemental Questionnaire Response, dated January 10, 2020 at Exhibit D-28.c.
[116] *Id*.
[117] *See* Venus Group AQR.
[118] *See* ITC Report at I-18, I-19.
[119] *See Stainless Steel Bar from India: Final Results of Administrative Review of the Antidumping Duty Order; 2017-2018*, 84 FR 56179 (October 21, 2019), and accompanying IDM at Comment 1 *(Final Results 2017-2018).*

reviewing the totality of the evidence on the record (*i.e.*, letter from an unaffiliated supplier, photographs, 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 again 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 outlined above, although we had thoroughly evaluated in the prior administrative review whether SSRs or hot-rolled bars are within the scope of the AD *Order*, we nevertheless reviewed the evidence on the record of this administrative review, and based on the evidence, we continue to find that SSRs or hot-rolled bars are within the scope of the *Order*.[120] It is important to point out that, in the prior administrative review, the Venus Group did not challenge our finding that SSRs are within the scope of the AD *Order*. Therefore, we continue to find that the Venus Group is not the producer of subject merchandise when SSRs are used as the input to produce SS bar.

Further, as we indicated in the prior administrative review, the ITC Report covering SS bar provides more information supporting the analysis outlined in the *Final Results 2017-2018*.[121] The Venus Group has not offered any new evidence to consider in this administrative review that alters our analysis with regard to this issue. 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, 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, we continue to find that 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).[122] Therefore, we continue to 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.

[120] *See Final Results 2017-2018.*
[121] *See* ITC Report.
[122] *Id.*

> 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.[123]

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 SS bar (with imperfections) or finished SS bar, but are not themselves excluded from the scope of the *Order*, even though they are identified as "intermediate products."[124]

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."[125] 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 continue 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 continue to 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).[126] The ITC Report supports a finding that SSRs, or "hot rolled bars," are "intermediate products" used in the process to produce hot-finished SS bar or finished SS bar and, therefore, and are within the scope of the *Order*,[127] 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*. The Venus Group

[123] *See* ITC Report at I-10; *see also Final Results 2017-2018*.
[124] *Id.*
[125] *See* Venus Group's AQR at 36.
[126] *See* ITC Report at I-18, I-19; IV-10.
[127] *Id*.

has not provided any documentation or evidence on the record that indicates that SSRs meet the definition of the semi-finished products that are specifically excluded from the scope of the *Order*.

In addition, the Venus Group submitted, in its section A questionnaire response at Exhibit 13-A, 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.[128] 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 continues to contend, 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.[129]

With regard to the Venus Group's citation of the 2008-2009 administrative review of SS bar from India, and determinations in other previous proceedings such as *Stainless Steel Bar from France*, we continue to 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.[130] 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 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 CIT 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."[131] Here, we analyzed the evidence on the record and reached a determination based on those facts. We point out that, those facts are essentially the same facts presented and addressed in detail in the prior administrative review with regard to this issue, and therefore, our determination in this case is consistent with our determination in the prior administrative review. As we indicate above, the Venus Group did not challenge our determination in the prior administrative review that SSRs are within the scope of the *Order*.

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[128] *See* Venus Group's AQR at Exhibit 13-A at 549.
[129] *See* ITC Report at I-18.
[130] *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.
[131] *See Hyundai Heavy Indus., Co., Ltd. v. United States*, 332 F. Supp. 3d 1331, 1342 (CIT 2018) (citing, *e.g.*, *Jiaxing 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) ("as 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)).

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 control our interpretation in this review. That 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

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*,[132] the Venus Group is not 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.[133] 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."[134] 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.[135] 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}."[136] 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 processing performed by the respondent.[137] However, we also noted that the "determination is based on the totality of the record evidence and the facts specific to this case."[138]

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[132] *See Narrow Woven Ribbons* IDM at Comment 20.
[133] *See Preliminary Results*, 82 FR 48483, and accompanying Preliminary Decision Memorandum (PDM) at 6-7.
[134] *See* SAA, H.R. Doc. Nos. 103-465, vol. 1 at 835 (1994).
[135] *See Narrow Woven Ribbons*, 75 FR 41804, and accompanying IDM at Comment 20.
[136] *Id*.
[137] *Id*.
[138] *Id.*

Based on *Narrow Woven Ribbons*, we continue to find that the Venus Group, which processed the merchandise before export to the United States, is not the producer of the subject merchandise. Here, the Venus Group identified itself as the producer of all of the subject merchandise shipped to the United States.[139] 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.[140] 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).[141] 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.

As emphasized in *Narrow Woven Ribbons*, our determination is based on the totality of the record and the facts specific to this case; therefore, we never applied a bright line rule requiring changes to a majority of the essential physical characteristics for the exporter to be considered the producer. With regard to the Venus Group's argument surrounding the relevance of additional metallurgical changes to SSRs and the consumption of other inputs (*i.e.*, labor, fuel, power, *etc*.) in determining the producer, we find that the Venus Group wrongly assumes that all the physical characteristics have equal weight, and as we indicate above, the further processing performed by the Venus Group does not affect the two most important physical characteristics (grade and melting) of the eight characteristics reported or affect shape (the sixth characteristics). Therefore, we are not persuaded by the Venus Group's argument in this regard. Moreover, the test in *Narrow Woven Ribbons* analyzes whether raw materials were added and the Venus Group, although it argues that it adds other inputs, does not dispute the fact that no raw materials are added to the SSRs.

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 continues to rely 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.[142] Similarly, we find the Venus Group's reliance on *Erasable Memories from Japan* and *3.5"'*

[139] *See* Venus Group AQR at 43.
[140] *Id.* at 19.
[141] *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 characteristics "shape" is used to distinguish bars that are round, square, rectangular, pentagonal, hexagonal, etc. *See* Commerce's Questionnaire, dated July 10, 2019. 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.
[142] *See Diamond Sawblades from China* at Comment 4.

Microdisks and Coated Media from Japan, is not applicable because, again, the "substantial transformation" issues in these cases involved a country of origin issue.[143] 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, we continue to find that 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. As such, we continue to find that Commerce's practice in *Narrow Woven Ribbons* provides the appropriate analysis.

With regard to the Venus Group's argument that the CIT found Commerce's attempt in the *CCR Final Results* to be arbitrary with respect to why the substantial transformation test is irrelevant under the circumstances presented in that case and that Commerce relies on that same faulty analysis in this case, we point out that the CIT remanded the *CCR Final Results* to Commerce in order to address "why the substantial transformation test is irrelevant under the circumstances presented by this case."[144] Per the CIT's directive, we explained, and reiterate here, that Commerce's practice is to use the substantial transformation test for scope determinations involving country of origin issues, or in anti-circumvention proceedings pursuant to section 781 of the Act, which also involve situations where the country of origin is in dispute, but do not use the substantial transformation test to determine the producer of merchandise that is made in the subject country from an input product that is the same class or kind of product as the imported article.[145] Specifically, we provided the following explanation, which we adopt herein:

> {O}ur practice has been and continues to be that we use the substantial transformation test only for scope determinations involving country of origin issues or in anti-circumvention proceedings pursuant to section 781 of the Act, which also involve situations where the country of origin is in dispute, whereas we use the {*Narrow Woven Ribbons*} Test in situations where Commerce must determine the producer of subject merchandise that is made in the subject country from an input product that is the same class or kind of merchandise as the imported article (the "output" product). Specifically, as described below, we find the {*Narrow Woven Ribbons*} Test to be inapplicable to situations where the input product and output product are not within the same class or kind of merchandise. The substantial transformation test is inapplicable where country of origin is not in question. Similarly, as described above, where the input and output products are not within the same class or kind of merchandise but country of origin is in question, in practice, we generally find that the {*Narrow Woven Ribbons*} test is inapplicable, because the substantial transformation test considers whether the input product has been substantially transformed such that the country of origin is the country in which the output product was manufactured. The {*Narrow Woven Ribbons*} test is applicable only to that limited set of circumstances where the input product and output product are in the same class or kind of merchandise, and there is no dispute

[143] *See Erasable Memories from Japan* and *3.5" Microdisks and Coated Media from Japan*.
[144] *See* Results of Redetermination Pursuant to Court Remand, Court No. 18-00113, Slip Op. 19-170 (CIT December 20, 2019).
[145] *Id.*

regarding the country of origin.[146]

On August 24, 2020, the CIT released its public opinion sustaining, in part, and remanding, in part, the *CCR Final Results*. Specifically, the CIT sustained our determination to apply the test established in *Narrow Woven Ribbons* in determining the producer of the subject merchandise and our determination that the entity in question, the Venus Group, was not the producer of the vast majority of the subject merchandise it shipped to the United States.[147] As such, we continue to find that Commerce's practice in *Narrow Woven Ribbons* provides the appropriate analysis, and based on that analysis, the Venus Group is not the producer of subject merchandise when the input is SSRs.

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. As we explain above, 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 or kind of merchandise following the Venus Group's treatment of the input.

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

Venus Group's Arguments

- In the *Preliminary Results,* Commerce concluded that the Venus Group did not act to the "best of its ability" to obtain this information, and applied an adverse "facts available" margin for that portion of the Venus Group's sales that were produced from SSRs from the non-cooperating unaffiliated suppliers.[148]
- Based on the statutory purpose of the law, agency precedent, and controlling case law, Commerce's decision to apply partial AFA is in error, and if Commerce continues to take the position that the Venus Group is not the producer of the subject merchandise, Commerce

[146] *See* Results of Redetermination Pursuant to Court Remand at 14-15, Court No. 18-00113, Slip Op. 19-170 (CIT December 20, 2019).
[147] *See Venus Wire Industries Pvt. Ltd., et al., v. United States*, Slip Op. 20-118, Court Number 18-00113 (CIT August 14, 2020) (*Venus Wire Industries*).
[148] *See* Venus Group's Case Brief at 15.

should use the application of neutral facts available to value the Venus Group's purchases of SSRs.[149]

- In this case, the most appropriate non-AFA would be 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 suppliers' COP.[150]
- 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 cross country to meet in-person. The Venus Group explained to its unaffiliated suppliers that they could provide the COP data directly to Commerce, and even offered to pay for separate counsel in order to facilitate the submission and appease concerns of confidentiality. The Venus Group also offered to pay for the cost of preparing the COP data. These requests were expressly refused or ignored by all unaffiliated supplier.[151]
- Commerce's conclusion in the *Preliminary Results* that it found "no evidence" that the Venus Group changed its purchasing practice during the administrative review is problematic.[152]
- That the Venus Group continued to purchase from certain unaffiliated suppliers in some quantities is not surprising – indeed, were the Venus Group to end all purchases from these unaffiliated suppliers at once, it would equally lack the leverage to compel their unaffiliated suppliers cooperation in this proceeding.[153]
- The Venus Group must identify new suppliers committed to providing the Venus Group with their COP data, ensure that they are capable of supplying SSRs at required volumes, qualify those suppliers through tests, and then negotiate acceptable commercial terms.[154]

- The precedent in *Mueller*[155] does not support Commerce's application of AFA.[156]
  - *Mueller* 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.[157]
  - In *Mueller*, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) explains 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."[158] Importantly, the Court specifically cautioned that where a

[149] *Id*.
[150] *Id*.
[151] *Id*.
[152] *Id*. at 16.
[153] *Id*.
[154] *Id*.
[155] *Id.* at 18. *See Mueller Commercial De Mexico, S. De R.L. De C.V. v. United States*, 753 F.3d 1227, 1233 (Fed. Cir. 2014) (*Mueller*).
[156] *See* Venus Group's Case Brief at 18.
[157] *Id*.
[158] *Id*. at 19.

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 Federal Circuit 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 CIT remanded the case to Commerce because it did not conduct the case-specific analysis required by *Mueller*.[159]
- In that case, the respondent made several requests for factors of production data from its unaffiliated suppliers by phone and via email, but was not able to obtain the requested information. Commerce nevertheless applied AFA to the respondent because it determined that the respondent failed to act to the best of its ability because it was not able to provide its unaffiliated suppliers' COP.[160]
- In *Itochu*, the CIT correctly applied *Mueller*, concluding that Commerce's application of AFA against the respondent was in error.[161] The Venus Group also cites to other cases to support its position.[162]
- Commerce' failure to conduct the case-specific inquiry demanded by *Mueller* in the *Preliminary Results* also diverges from other proceedings where Commerce applied the correct methodology.
- Here, Commerce must reach the same conclusion as in those cases because Commerce failed to conduct the required case-specific analysis before it applied AFA to the Venus Group for its unaffiliated suppliers' refusal to cooperate; moreover, the record demonstrates that an adverse inference against the Venus Group is not warranted.[163]
- 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.[164] In fact, the Venus Group's purchases constituted a small percentage of each supplier's total annual sales, which diminished any leverage the Venus Group had over its suppliers.
- 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 AD 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 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.[165]

[159] *Id*. (citing Slip Op. 17-73 (CIT June 22, 2017)).
[160] *Id*. at 20.
[161] *Id*.
[162] *Id*.
[163] *Id*. at 21.
[164] *Id*.
[165] *Id*.

- In sum, Commerce's decision to apply an adverse inference to the Venus Group because of its unaffiliated suppliers' failure to cooperate is devoid of any case-specific analysis of the relationship between the Venus Group and its unaffiliated suppliers.

Petitioners' Rebuttal Arguments:

- The record evidence regarding the Venus Group's attempts to obtain its unaffiliated suppliers' costs is inadequate.[166]
  - The Venus Group asserts that it "attempted all possible steps to induce its unaffiliated suppliers to provide the Venus Group with the requested cost data," but the record demonstrates that the Venus Group's was far from adequate.[167] In fact, it appears that the Venus Group made no attempt to obtain the COP data from various unaffiliated suppliers from whom it purchased SSRs during the POR.[168]
  - Thus, as Commerce found, there is no evidence that the Venus Group had significantly changed its purchasing pattern from the uncooperative suppliers.
- *Mueller* precedent supports Commerce's application of AFA.[169]
  - 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.[170]
  - 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 supplies "in the future as a tactic to force" the supplier to cooperate.[171]
  - Further, contrary to the Venus Group's contention, the application of an AFA margin to the Venus Group would directly and adversely affect its non-cooperating unaffiliated suppliers' interest as they would lose a significant customer for their SSRs/hot-rolled bar, as well as a means through which they can sell their subject merchandise to the United States without being subject to antidumping duties or potential scrutiny by Commerce in a future administrative review.[172]
  - 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.
  - By failing to do its part of incentivizing its unaffiliated suppliers to provide the requested cost data, Commerce properly relied on the Federal Circuit's decision in *Mueller* and applied AFA to the Venus Group.[173]
  - Commerce's determination is also consistent with the CIT's holding in other cases *w*here the court upheld Commerce's use of an adverse inference when the cooperating party did

[166] *See* Petitioners' Rebuttal Brief at 21.
[167] *Id*.
[168] *Id*.
[169] *Id*. at 22.
[170] *Id*. at 23.
[171] *Id*.
[172] *Id*.
[173] *Id*. at 24.

not sufficiently induce its supplier to provide the requested information, despite having the ability to do so.[174]
- Without the unaffiliated producers/suppliers' costs, Commerce did not have the information necessary to calculate a dumping margin for the Venus Group.[175]
- Because the necessary unaffiliated supplier's cost data is not on the record, Commerce appropriately determined that the application of partial AFA was warranted.
- As discussed in the petitioners' case brief, however, the application of total AFA is warranted in this review. If Commerce determines not to apply total AFA, Commerce should continue to apply partial AFA to address the Venus Group's missing unaffiliated suppliers' cost data.[176]
- In doing so, Commerce should apply the highest non-aberrational transaction-specific margin calculated for the Venus Group's sales of SS bar produced from SSWR, instead of applying the surrogate COP methodology employed in the *Preliminary Results*.[177]

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.[178]

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.[179] 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 all of the necessary cost data to calculate an AD margin. For example, we cannot accurately determine whether certain of the Venus Group's home market sales were sold below the COP or 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 whether these home market sales are appropriate to use as normal value. Moreover, without the unaffiliated suppliers' costs, we do not have all the necessary information to 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

[174] *Id*. at 24 and 25.
[175] *Id*. at 25.
[176] *Id*.
[177] *Id*.
[178] *See Preliminary Results* PDM at 6-9.
[179] *Id*. at 7-8.

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 Federal Circuit in *Mueller* which recognized that Commerce may use an adverse inference in selecting from the facts otherwise available in determining a respondent's dumping margin in order to induce cooperation by other interested parties whose information is needed to calculate that respondent's dumping margin, in situations where the respondent has the ability to induce the non-cooperating party to cooperate.[180] 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.[181] As we indicate in the *Preliminary Results*, the Venus Group purchased SSWR in coil form and hot-rolled SS 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. As such, for these final results, as partial AFA, we identified the highest difference (as a percentage of acquisition cost) between the Venus Group's acquisition cost plus selling, general and administrative (SG&A) costs, and the sales price. We 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 used the appropriate home market sales in the margin program. This approach is consistent with the *Final Results 2017-2018*,[182] *Glycine from India*, and *Pipes and Tubes from India*.[183]

Therefore, for these final results, we have identified the partial AFA rate using information obtained from the record of this review, and 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.[184]

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[180] *See Mueller*.
[181] *See* section 782(e)(1)-(5).
[182] *See Final Results 2017-2018*. As discussed below in Comment 3, we made certain changes to our methodology from the previous review to improve accuracy in applying partial AFA.
[183] *See Glycine from India: Final Determination of Sales at Less Than Fair Value*, 84 FR 18487 (May 1, 2019), and accompanying IDM 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*).
[184] *See Preliminary Results* PDM at 8.

As we explained in the *Final Results 2017-2018*, 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.[185] 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.[186] 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.[187] 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 total AFA to the Venus Group.[188]

In the prior administrative review, which covers the period February 1, 2017 through January 31, 2018, the Venus Group again purchased subject merchandise (hot-rolled bar) from numerous suppliers.[189] In the *Final Results 2017-2018*, we found that 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, yet the Venus Group failed to do so.

In the current administrative review, which covers the period February 1, 2018 through January 2019, the Venus Group continued to purchase subject merchandise (SSRs or hot-rolled bar) from unaffiliated suppliers.[190] Although the Venus Group claimed that it exercised all of its options to encourage its unaffiliated suppliers to cooperate with the Venus Group in this review, we are unpersuaded that the Venus Group acted to the best of its ability to induce the cooperation of its suppliers to secure the information necessary for our analysis.[191]

Based on the above and as discussed in detail in the Venus Group Final Calculation Memorandum, with the understanding that the Venus Group is an experienced respondent familiar with the record-keeping and reporting requirements in Commerce's proceedings, we find that the Venus Group did not put forth its maximum efforts to obtain and provide the suppliers' COP information. 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

[185] *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).
[186] *See CCR Preliminary Results* PDM at 7, unchanged in *CCR Final Results* IDM at Comment 1.
[187] *See CCR Final Results*.
[188] *Id.*
[189] *See Final Results 2017-2018*.
[190] For proprietary details regarding these suppliers, which further inform our partial AFA determination for the Venus Group, *see* Memorandum, "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 (Venus Group Final Calculation Memorandum).
[191] *See* Venus Group Final Calculation Memorandum.

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.[192] It is reasonable for Commerce to 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; and/or substantially increasing its purchases of non-subject merchandise inputs, SSWR, to avoid the issue of obtaining the suppliers' COP information. As discussed in the Venus Group Final Calculation Memorandum, the Venus Group purchased hot-rolled bar from its largest unaffiliated suppliers, who did not provide the requested information. As discussed above, this is not the Venus Group's first time being individually examined and, more importantly, with its participation in multiple reviews, the Venus Group is aware of the type of cost data requested by Commerce in order to calculate a dumping margin.

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

> … 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.[193]

We note that the Federal Circuit found support for "Commerce's use of an evasion or inducement rationale" in applying an adverse inference.[194] In *Mueller*, the Federal Circuit 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."[195] As the Federal Circuit explained, even if "there are alternative methods for addressing evasion," Commerce can apply AFA for "enforcement of the antidumping provisions."[196]

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 Federal Circuit's cautioning *dicta* in *Mueller*, regarding instances in which a responding entity

[192] *Id*.
[193] *See Mueller*, 753 F.3d at 1235.
[194] *Id*.
[195] *Id*.
[196] *Id*.

lacks the power to induce cooperation from non-responding parties.[197] However, for the reasons discussed in the Venus Group Final Calculation Memorandum, we find that the Venus Group failed to demonstrate that it lacked such power and acknowledges that it continues to do business with the same non-cooperative suppliers, notwithstanding any threats to the contrary.[198] Here, the Venus Group had prior notice from the changed circumstances review, and the prior administrative review, of its obligation to obtain the information, yet we find that it did not demonstrate any significant change in its supplier relationships to induce cooperation.

In sum, we continue to find that the Venus Group's reliance on its correspondence with its 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 for 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.[199]

Furthermore, although the CIT has recognized that "*Mueller* does not require Commerce to consider inducement and evasion in tandem,"[200] the facts of this review allow us to consider both inducement and evasion. As explained above, due to the Venus Group's communications falling well short of threatening to stop business as *Mueller* suggested[201] and the Venus Group's continued purchasing behavior, it is clear that the message the Venus Group relays to its suppliers is not one of attempted inducement, but rather that it is business as usual even if they do not cooperate. Also, the Venus Group has failed to provide record evidence that indicates it has taken steps or attempted to find or negotiate with other suppliers of SSRs who may be more willing to cooperate. Therefore, Commerce's decision to apply partial AFA based on deterring noncooperation is well founded in the facts of this administrative review. In addition, Commerce's evasion concerns are also equally relevant.[202]

With regard to the Venus Group's references to the *Itochu Bldgs. Prods. Co. v. United States* (*Itochu*) and *Xiping Opeck v. United States* (*Xiping*) cases, we find those cases are distinguishable.[203] In *Itochu*, the CIT noted that Commerce had not made a finding that the

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[197] *Id*.

[198] *See* Venus Group's Letter, "Antidumping Duty Administrative Review of Stainless Steel Bar from India: Venus Group's Response to the Department's Supplemental Section D Questionnaire," dated January 10, 2020 at 11 ("The Venus Group advised each supplier that unless it cooperated with the request, the Venus Group would no longer purchase the stainless steel hot rolled bars/rounds from the supplier. In fact, The Venus Group has reduced its reliance on such uncooperative suppliers since the Department's Changed Circumstances Review in 2016 as demonstrated in Exhibit D-28.a.").

[199] Due to its proprietary nature, Commerce expands on its reasoning for applying partial AFA in the Venus Group's final calculation memorandum. *See* Venus Group Final Calculation Memorandum.

[200] *See Venus Wire Industries*, Slip Op 20-118 at 36.

[201] *See Mueller*, 753 F.3d at 1235 (explaining that Mueller could potentially have refused to do business with Ternium in the future as a tactic to force Ternium to cooperate).

[202] Proprietary details regarding evasion concerns, which further inform our partial AFA determination for the Venus Group, are discussed in the Venus Group's final calculation memorandum. *See* Venus Group Final Calculation Memorandum.

[203] *See* Venus Group's Case Brief at 32-33 (citing Slip Op. 17-73 (CIT June 22, 2017)), and (citing 34 F. Supp. 3d 1331, 1351 (CIT 2014)).

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.[204] 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.[205] 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.

Similarly, *Xiping* is distinguishable in that the CIT found that Commerce needed to further explain its inducement/evasion considerations prior to applying AFA.[206] 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 Commerce Erroneously Calculated the AFA Adjustment it Intended to Make in Calculating the Venus Group's Dumping Margin

Venus Group's Arguments:

- The *Preliminary Results* contains methodological errors with regard to Commerce's calculation of the Venus Group's margin.[207]
    - In the Preliminary Results Calculation Memorandum, Commerce stated that, "as partial AFA, for these preliminary results, we have identified the highest difference (as a percentage of acquisition cost) between the Venus Group's acquisition cost plus SG&A costs, and the sales price. We 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 used the appropriate home market sales in the margin program."[208]
    - Instead of using the program language consistent with the *Final Results* of the 2017-2018 administrative review, however, Commerce used different programming language

[204] *See* Slip Op. 17-73 (CIT June 22, 2017).
[205] *Id.*
[206] *See* 34 F. Supp. 3d at 1351.
[207] *See* Venus Group's Case Brief at 23.
[208] *Id.*; *see also* Preliminary Results Calculation Memorandum, "Administrative Review of the Antidumping Duty Order on Stainless Steel Bar from India: Preliminary Analysis Memorandum for the Venus Group," dated February 26, 2020 (Preliminary Results Calculation Memorandum).

and therefore, was not consistent with its approach as it indicated in the Preliminary Results Calculation Memorandum.[209]
    - Commerce must correct this error to be consistent with the methodology in the *Final Results* of the 2017-2018 administrative review.[210]

Petitioners' Rebuttal Arguments:

- If Commerce does not rely on total AFA, and decides against the use of the highest calculated transaction-specific margin, then Commerce should continue to apply a partial AFA cost increase to all components of the Venus Group's cost.[211]
    - The Venus Group argues that Commerce's methodology for applying partial AFA in the *Preliminary Results* was erroneous. The Venus Group's argument is unavailing.[212]
    - If, *arguendo*, total AFA or the highest calculated margin as partial AFA are not the means applied to remedy the extensive deficiencies in the Venus Group's response, then Commerce should continue to apply the AFA cost increase to all components of the COP.[213]
    - The Venus Group failed to articulate any reason why the various components of Commerce's margin calculation should use inconsistent cost information.[214]
    - The Venus Group's argument that Commerce's intent in the *Preliminary Results* was to be consistent with the 2017-2018 administrative review is misplaced.
    - Contrary to the Venus Group's argument, however, Commerce only stated that its methodology for calculating the partial AFA percentage cost increase—by identifying "the highest difference (as a percentage of acquisition cost) between the Venus Group's acquisition cost plus SG&A costs, and the sales price" – is consistent with the previous review.[215]
    - Commerce did not state that it will only increase the total COP, but not other components of cost such as the variable COP, in order to be consistent with the previous review, and only a tortured reading could infer such a meaning from Commerce's words.[216]
    - In any case, consistency with previous segments is not Commerce's paramount concern. As Commerce stated in *OCTG from Korea*, "Commerce is not obligated to accept an incorrect methodology and perpetuate a mistake because it was accepted in previous proceedings."[217]
    - In the *Preliminary Results*, having determined that it is appropriate to increase the cost of merchandise produced from SSRs, Commerce correctly increased all cost elements (*i.e.*, variable cost of manufacture, total cost of manufacture, total COP), to ensure that all components of the margin calculation (*e.g.*, the sales-below cost test, the calculation

[209] *See* Venus Group's Rebuttal Brief at 23.
[210] *Id*. at 24.
[211] *See* Petitioners' Rebuttal Brief at 26.
[212] *Id*.
[213] *Id*.
[214] *Id*. at 27.
[215] *Id*. at 29.
[216] *Id*.
[217] *Id. See also Certain Oil Country Tubular Goods from Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 24085 (May 24, 2019), and accompanying IDM (May 17, 2019) at Comment 8 (*OCTG from Korea*).

of DIFMERs, the calculation of cost differences for the assignment of similar home market products to U.S. products) use consistent cost information.[218]

- Commerce should continue to increase the variable cost of manufacture and total cost of manufacture, along with the total COP for the final results.[219]

Commerce's Position: We disagree with the Venus Group. In our Preliminary Results Calculation Memorandum, we indicated the following:

> "... 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 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*."[220]

As such, consistent with our description in the Preliminary Results Calculation Memorandum, and the *Preliminary Results*, we find that we applied partial AFA correctly in our programming language. We therefore find no inconsistencies between our description above and our application of partial AFA.[221] The Venus Group takes issue with the fact that the programming language we implemented in the current administrative review is slightly different from the programming language that we used in the prior administrative review when implementing partial AFA. Specifically, when applying partial AFA in the prior administrative review, we increased total COP, but not the other components of cost such as variable cost of manufacture. However, when applying partial AFA in the current administrative review for these final results, we determined upon further review that it was appropriate not only to increase total COP, but the other components of cost (VCOM, fixed overhead, variable overhead) as well. We find this change in the programming language to be appropriate because the VCOM variable is used to calculate a difference in merchandise (DIFMER) adjustment when matching U.S. sales to similar home market sales by control numbers, and because the DIFMER adjustment is subtracted from home market prices as part of our calculation of normal value, not making these changes to the programming language does not provide the most accurate results when applying partial AFA. Therefore, to ensure that the application of the partial AFA decision was accurate and reflective of the description above, we made certain changes to the programming language in this administrative review, which remain consistent with our partial AFA methodology as outlined in the *Preliminary Results*; we therefore disagree with the Venus Group's assertion that we made methodological errors.

[218] *Id*. at 31.
[219] *Id*.
[220] *See* Preliminary Calculation Memorandum at 4 and 5.
[221] *Id*.

Comment 4: Whether Commerce should apply total AFA to the Venus Group

Petitioners' Arguments:

- In light of the extent and history of the errors and omissions of the Venus Group's response, Commerce should apply total AFA against the Venus Group.[222]
    - As revealed by the combination of: (1) certain unilateral and unwarranted changes made to the COP; and (2) the failure to document other necessary and warranted changes, the Venus Group has elevated the totality of circumstances to now constitute what must be considered a willful lack of cooperation.[223]
    - That lack of cooperation has resulted in the submission of cost data that are unreliable. In order to rely on a response, all major elements thereof – home market sales, U.S. sales, COP, and constructed value must be complete and accurate.[224]
    - The absence of true SSRs production costs was compounded in both the original section D questionnaire response, and the first section D supplemental questionnaire response by: (1) the failure to include ending inventory of work-in-progress (WIP) in the calculation of direct material costs; (2) the failure to properly account for total general and administrative costs; and (3) the failure to provide complete explanation and documentation of each of the Venus Group member's operations, even when directly requested in questions 15, 16, 18, and 21.a of Commerce's January 10, 2020 section D supplemental questionnaire.[225]
    - While the Venus Group documented the inclusion of the WIP adjustment for the Venus Group production, no documentation was provided to show the inclusion of this adjustment for non-Venus Group production.[226]
    - Finally, the Venus Group, without informing or seeking guidance from Commerce in advance, revised the "true" grade of material. It compounded that error by failing to fully explain, document or provide a detailed worksheet for this change to the direct material cost field. The inclusion of "grade-specific" costs is further compounded, as it is bundled with the ending WIP change in the direct material cost field.[227]
    - Accordingly, the Venus Group's cost data cannot be deemed reliable and should not be used for the final results.[228]
- Total AFA is warranted in this administrative review.[229]
    - The record in this proceeding demonstrates that the Venus Group has met the standard for the application of total AFA in this case.[230] The inclusion of unsolicited changes to the cost file in the Venus Group's cost database and other issues undermine the reliability of the responses as a whole. As Commerce has previously explained, "the failure to provide accurate cost information renders a company's response so

[222] *See* Petitioners' Case Brief at 3.
[223] *Id*.
[224] *Id*.
[225] *Id*.
[226] *Id*. at 4.
[227] *Id*.
[228] *Id*. at 5.
[229] *Id*. at 6.
[230] *Id*. at 7.

incomplete as to be unusable." In addition, the courts have recognized that cost information is a vital part of Commerce's dumping analysis.[231]

- The Venus Group's direct material costs are unreliable and unusable.[232]
  - Commerce, in its final supplemental questionnaire instructed the Venus Group to "{p}lease revise Exhibit D-23 for direct material cost by including the ending work-in-process as part of your formula for reporting direct material costs. Provide a revised cost file if needed."[233]
  - In its final March 13, 2020, supplemental questionnaire cost response, the Venus Group claims it undertook this revision but then also unilaterally changed the direct material costs supposedly to report the costs for "unique steel grades (example, AISI 304L and AISI 304 separately)."[234]
  - The Venus Group did not document or distinguish how it undertook the calculation of material costs by "unique" steel grades, making any understanding of this change impossible. More importantly, this change to the direct material costs was not requested by Commerce and appears to not be warranted, as it had claimed previously to have reported costs on a grade-specific basis.[235]
  - The segregation of costs by grade can be readily seen in the Venus Group's first supplemental cost file. Whatever new unexplained and undocumented changes made by the Venus Group to the direct material cost field in its second supplemental costs files are not related to reporting the costs by grade, as the previous costs files already reflected these changes.[236]
  - Since the Venus Group did not fully explain or document its changes to the direct material cost field in its second supplemental cost files, neither Commerce nor the petitioners understand why or how the direct material field was changed in the last response.[237] What is clear is that the last change made by the Venus Group goes beyond distinguishing the direct material cost field cost by grade, as that distinction was already reflected in the previous cost file. The impact of this unsolicited change to the margin is reflected in very significant changes among a large range of direct material cost field revisions and would reduce the margin.[238]
  - Thus, whatever changes the Venus Group made to its direct material cost was clearly done so in an effort to reduce its dumping margin. This change, however, was not permissible because it was not requested by Commerce. More troubling is that the Venus Group did so without adequate explanation or documentation for the change and had previously informed Commerce in its first cost supplemental response that this information was on the record.[239]
  - Further, Commerce asked the Venus Group to incorporate the ending WIP inventory in its direct material cost field. While the Venus Group provided worksheets showing

[231] *Id*. (citing *Mukand, Ltd. v. United States*, Court No., 11-00401, Slip Op. 13-41, 2013 at 8 (CIT 2013 (CAFC 2014)).
[232] *Id*. at 8.
[233] *Id*.
[234] *Id*.
[235] *Id*. at 9.
[236] *Id*. at 9 and 10.
[237] *Id*. at 8 and 9.
[238] *Id*. at 9.
[239] *Id*.

this inclusion for product where the Venus Group was the manufacturer, it did not provide worksheets for products for non-Venus Group manufacturers. Thus, Commerce does not know if and how the requested WIP inventory adjustment was accounted for in the cost file for non-Venus Group manufacturers. Such unsolicited and unexplained changes renders the Venus Group's latest cost response unreliable and unusable. Moreover, it now appears that the previously reported data are also incorrect.[240]

  - As a result, there is no usable cost data on the record for Commerce's dumping calculation. Where a respondent makes a unilateral and unsolicited change to its data, Commerce has previously applied total AFA against the respondent. This same approach should be applied here.[241]

- The Venus Group failed to account for all general and administrative expenses.[242]
  - According to the Venus Group's questionnaire response, Venus Wire was "involved in the development, manufacture, and sales of the merchandise under review."[243]
  - Venus Wire provided pickling services to one of the entities that make up the Venus Group, Precision, and also provided annealing and drawing to Precision, shared personnel for sales and marketing, finance, and documentation with Precision, and produced wire rods, a "significant input" into the merchandise under investigation. Given Venus Wire's involvement as a parent company, Commerce directed the Venus Group to allocate the Venus Wire's general and administrative expenses to the other companies.[244]
  - In response, the Venus Group "allocated certain administrative expenses of the Venus Wire Industries Private Limited."[245] As a result, the Venus Group did not take into account all general and administrative expenses, thereby understating its costs.[246]
- Other information requested by Commerce are missing from the record.[247]
  - The Venus Group did not fully respond to certain of Commerce's requests for information. Further, it made unilateral and unsolicited changes to its direct material costs without any explanation or documentation and the withholding of information specifically requested by Commerce clearly demonstrates that the Venus Group has failed to cooperate to the best of its ability.[248] Moreover, the Venus Group has also impeded Commerce's investigation by failing to account for all general and administrative (G&A) expenses. All of these facts renders the Venus Group's reported costs unreliable and prevents Commerce from calculating an accurate dumping margin for the final results.[249]
- The use of the highest calculated wire-rod-to-bar product margin is a superior form of AFA than Commerce's surrogate cost methodology.[250]

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[240] *Id*. at 10.
[241] *Id*.
[242] *Id*.
[243] *Id*.
[244] *Id* at 11.
[245] *Id*.
[246] *Id*.
[247] *Id*.
[248] *Id*. at 12.
[249] *Id*.
[250] *Id*. at 13.

- The petitioners urge Commerce to utilize its prior methodology of assigning the highest, non-aberrational transaction-specific margin for the Venus Group's wire rod-to-bar as a plug for its bar-to-bar sales for the final results.[251]
- Commerce's current surrogate COP methodology as applied in the *Preliminary Results* is flawed, because it fails to match sales by manufacturer. Thus, the impact of the current facts available method is incorrectly diminished even further.[252]
- Most critically, Commerce's surrogate COP methodology is inadequate because it is not sufficient to induce cooperation by the Venus Group and its suppliers in future segments of the proceeding consistent with the purpose of the AFA statute to deter behavior that impedes Commerce's investigation.[253]
- Specifically, the current methodology can easily be manipulated by the Venus Group, as it increases or decreases its purchases of SSWR versus purchases of black bar, based on how the United States product mix determines home-market product matches and correlated costs.[254] In contrast, the use of the highest, non-aberrational calculated margin for wire rod-to-bar sales is less susceptible to manipulation, because it is the ultimate result of all elements of the U.S. price among all potentially dumped sales, home-market sales across all product classes, and costs for the entire foreign like product.[255]
- In contrast, the facts-available methodology employed in the *Preliminary Results* is an inherently inferior methodology to Commerce's long-established practice of assigning the highest non-aberrational transaction specific margin to a portion of a respondent's U.S. sales.[256]
- Accordingly, the petitioners urge Commerce to adopt its previous partial AFA methodology and apply the highest transaction-specific margin calculated for the Venus Group's wire rod-to-bar sales to the portion of U.S. sales that were produced using purchased SSRs inputs.[257]

- Other significant flaws in the reporting of the COP affect all products, including those made from SSWR.[258]
  - The Venus Group's failure to provide the upstream COP, in light of its failure to eliminate, or even to substantially minimize its consumption of black bar "rounds" from uncooperative producers of the subject merchandise supplying the Venus Group, warrants, at a minimum, the application of AFA for that issue, *per se*.[259]
  - Whether, as the petitioners recommend, applying the highest, non-aberrational transaction-specific margin for sales using SSWR as the input, or on the application of an adjustment based on the spread of reported costs, both methods depend on the existing cost structure reported by the Venus Group.[260] That cost structure, however, is intrinsically flawed for reasons other than the unreported source producer's cost to

[251] *Id*.
[252] *Id*. at 14.
[253] *Id*. at 15.
[254] *Id*.
[255] *Id*.
[256] *Id*.
[257] *Id*.
[258] *Id*. at 20.
[259] *Id*.
[260] *Id*.

produce SSRs.[261] As discussed previously, all of the Venus Group's reported costs are unreliable. If, *arguendo*, Commerce does not rely on total AFA, Commerce must take into account the errors and omissions in the Venus Group's cost data.[262]

- Specifically, because the Venus Group failed to explain or document its unilateral and unsolicited changes to the direct material cost for "grade-specific" costs in its second supplemental cost files, there is no way to understand the changes made to the direct material cost field in the Venus Group's last response.[263]
- What is known is that the last change made by the Venus Group goes beyond distinguishing the direct material cost by grade, as that distinction was already reflected in the previous cost files.[264] Accordingly, for the final results, Commerce should reject the Venus Group's unsolicited, unexplained and undocumented change to the direct material cost variable in the cost file.[265]
- Should Commerce rely on partial AFA, it should rely on the prior submitted Venus Group cost files (VENUSCP02, VENUSCP02_MFR); while not fully accurate, it appears to be a more accurate choice as compared to the latest file, which includes undocumented changes.[266]
- In addition, Commerce should also take into account the Venus Group's failure to account for all G&A expenses. For the final results, the remaining portion of Venus Wire's administrative expenses should also be accounted for in the cost file.[267]
- Thus, Commerce should include the full Venus Wire's administrative expenses in Precision Metal's G&A ratio.

Venus Group's Rebuttal Arguments:

- A complete AFA determination as to the Venus Group is not warranted.[268]
  - In order for Commerce to apply AFA, in addition to demonstrating that the record is missing information, Commerce must also show that the interested party "failed to cooperate by not acting to the best of its ability to comply with a request for information.[269]
  - In determining whether a party cooperated to the best of its ability, the courts have instructed that Commerce cannot apply AFA for a mere "failure to respond, but only under circumstances in which it is reasonable for Commerce to expect that more forthcoming responses should have been made; *i.e*., under circumstances in which it is reasonable to conclude that less than full cooperation has been shown."[270]

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[261] *Id*.
[262] *Id*.
[263] *Id*.
[264] *Id*. at 20 and 21.
[265] *Id*. at 21.
[266] *Id*.
[267] *Id*.
[268] *See* Venus Group's Rebuttal Brief at 1.
[269] *Id*. at 2.
[270] *Id*. (citing *Nippon Steel Corp. v United States*, 337 F.3d 1373, 1381 (CAFC 2003) (stating that "failure to respond, but only under circumstances in which it is reasonable for Commerce to expect that more forthcoming responses should have been made; *i.e.*, under circumstances in which it is reasonable to conclude that less than full cooperation has been shown.").

- As the Federal Circuit has confirmed, "the purpose of section 1677e(b) is to provide respondents with an incentive to cooperate, not to impose punitive, aberrational, or uncorroborated margins."[271]
- Total AFA is warranted only if the information on the record is so incomplete that it cannot serve as a reliable basis for the AD duty calculations.[272]
- The Court of Appeals for the Federal Circuit has observed that Commerce "applies total AFA when none of the reported data is reliable or useable, for example, the data contains pervasive and persistent deficiencies that cut across the entire record."[273] Similarly, Commerce explains that total AFA is only warranted "when the missing information is core to the antidumping analysis and leave little room for the substitution of partial facts without undue difficulty."[274]

- The issues identified by the petitioners, even if true, do not rise to the level that the application of AFA is warranted.[275]
  - The change to the direct material cost field resulted from Commerce's request for WIP inventory adjustments.
  - The petitioners begin their total AFA argument by claiming that the Venus Group made a unilateral and unsolicited change to its direct material cost field and further claims that as a result, there are "no usable cost data on the record." The petitioners' argument is false.[276]
  - Per Commerce's specific request, the Venus Group submitted a revised cost file to include ending work-in-process as part of the formula for reporting direct material costs in accordance with Commerce's instructions.[277] The Venus Group reported the unique grade-wise closing quantity and value of the WIP in the direct material cost at Exhibit D-23 of its supplemental section D questionnaire response.
  - The Venus Group valued its closing WIP based on the weighted-average purchase price during the POR. Because the opening WIP rate during the POR was lower (for some steel grades) and the weighted-average purchase price for raw materials during the POR was higher, the revision to the cost file in the second supplemental questionnaire response resulted in a higher valuation of closing WIP inventory and a decrease in the direct material cost where the closing WIP quantity was higher than the purchased quantity.[278]
  - However, the closing WIP adjustment to the cost file was made at the request of Commerce and the outcome of that adjustment was beyond the Venus Group's control. This does not represent an intentional effort by the Venus Group to reduce its margin as the petitioners suggest.[279]
- The Venus Group correctly included WIP inventory.[280]

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[271] *Id*.
[272] *Id*. at 3.
[273] *Id*.
[274] *Id*.
[275] *Id*.
[276] *Id*.
[277] *Id*.
[278] *Id*.
[279] *Id.* at 4.
[280] *Id*.

- The petitioners allege that Commerce does not know whether the WIP inventory adjustment was accounted for in the cost file for non-Venus Group manufacturers. The Venus Group applied the WIP adjustment across all of its product notwithstanding products where the Venus Group was the manufacturer (*i.e.*, subject merchandise manufactured from SSWR) or products where the Venus Group's unaffiliated suppliers were the manufacturers (*i.e.*, subject merchandise manufactured from SSRs).[281] The Venus Group did not differentiate between products manufactured from SSWR and products manufactured from SSRs in the direct material cost worksheet included in Exhibit D-23 of the second supplemental questionnaire response.[282]
- The Venus Group reported the grade-wise cost of raw-material and applied the WIP adjustment across all grades.[283]
- In the regular course of business, the Venus Group considers all in-process material as WIP without distinguishing whether the product is produced from SSWR or SSRs. The WIP valuation was calculated based on the unique steel grade, not the raw material form.
- Once the SS bar is produced, without reviewing the entire process record, it is impossible to know whether the SS bar was manufactured from SSWR or SSR. In the process of the WIP valuation, assigning classification based on the raw material form was neither practicable nor required by Commerce's question.[284]

- Venus Wire fully reported G&A expenses.[285]
  - The petitioners' claim that Venus Wire manufactured the subject merchandise and that all of its G&A expenses have not been reported is false and not supported by the evidence on the record.[286]
  - In its section A questionnaire response, the Venus Group expressly states that Venus Wire "did not manufacture the subject merchandise during the period of review." Venus Wire had no sales of subject merchandise to either the U.S. market or third country markets. Moreover, it had only minor sales of the subject merchandise, supplied by Precision Metals, in the home market.[287]
  - Although Venus Wire does not itself manufacture subject merchandise, it is partially involved in the manufacture of stainless steel wires and wire rods. In its reporting of G&A expenses, the Venus Group included a certain percentage of the cost of certain Venus Wire expenses, in addition to its own expenses.[288]
  - The Venus Group has included a certain percentage of Venus Wire's directors' remuneration and certain office expenses because Venus Wire directors also have duties for some of Precision Metals functions, and Precision Metal shares the same office (accounting and administration office) with Venus Wire.[289]
  - Because Venus Wire manufactures its own products and did not manufacture subject merchandise, it would be unreasonable to include all of its G&A expenses in this

[281] *Id*.
[282] *Id*. at 4 and 5.
[283] *Id*. at 5.
[284] *Id*.
[285] *Id*.
[286] *Id*.
[287] *Id*.
[288] *Id*. at 6.
[289] *Id*.

calculation.[290] The Venus Group therefore allocated a certain percentage of these expenses to the production of the subject merchandise. However, should Commerce disagree with this reporting approach, the correct response would not be for Commerce to impose a total AFA margin, but instead to include the remainder of Venus Wire's G&A expenses.[291]

- In sum, the issues identified by the petitioners as warranting the imposition of AFA either directly resulted from directives from Commerce, or were reasonable and transparent approaches to reporting data for this administrative review.[292] Either separately or together, they do not support the imposition of an AFA determination.

- Commerce's approach to applying partial AFA in the *Preliminary Results* was reasonable and consistent with precedent.[293]
  - The petitioners take issue with Commerce's partial AFA methodology. Specifically, the petitioners reject Commerce's surrogate COP methodology as inferior to a methodology that would assign the highest non-aberrational transaction-specific margin, which was once the AFA methodology used in these proceedings.[294]
  - The petitioners' argument lacks merit, and ignores the fact that in the prior administrative review, Commerce appropriately rejected that methodology in favor of the methodology using in the *Preliminary Results* of this review. The petitioners have offered no compelling reason for a reversal of that decision.[295]
  - Commerce's *Preliminary Results* follow the AFA methodology approach that Commerce began using in these proceedings in the final results of the 2017-2018 administrative review.[296] In that segment of these proceedings, Commerce changed its AFA methodology approach to rely on the well-reasoned analysis in *Glycine from India* and *Pipes and Tubes from India*.[297]
  - That methodology represented Commerce's then-current approach to an AFA calculation, and reflected a change from the preliminary results of the same review. The Venus Group also notes that Commerce has used this methodology in other subsequent reviews.[298]
  - For the *Preliminary Results* of this review, rather than assigning the highest (non-aberrational) transaction-specific margin to U.S. sales missing COP data, Commerce again calculated a "surrogate" COP for the home market sales of SS bar produced using the SSR input for which the COP was not reported, in a manner consistent with the final results of the 2017-2018 administrative review.[299]
  - The petitioners object to this methodology because they prefer the outcome of a methodology that Commerce has already determined is not best suited to Commerce's objectives.[300]

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[290] *Id*.
[291] *Id*.
[292] *Id*.
[293] *Id*. at 6 and 7.
[294] *Id*. at 7.
[295] *Id*.
[296] *Id*.
[297] *Id*. at 7 and 8.
[298] *Id*. at 8.
[299] *Id*.
[300] *Id*.

- With regard to AFA, it is well-settled that Commerce has "broad discretion to change its methodology."[301] The possibility that Commerce could have exercised its discretion to select a higher value as AFA is an insufficient basis for challenging Commerce's exercise of discretion. The agency is not required to select data that yields the highest possible margin when choosing AFA.
- Commerce's only relevant statutory obligation here with regard to AFA is to use it in a manner that is intended to induce cooperation from non-cooperative parties.
- Commerce's AFA methodology here is well-reasoned, and satisfies its statutory obligation to use AFA in a manner intended to induce cooperation from non-cooperative parties. That the petitioners prefer a different methodology is of no consequence with regard to whether Commerce's chosen methodology is consistent with its statutory authority and satisfies its policy objective of inducing cooperation.[302]

Commerce's Position: We find that total AFA is not warranted with regard to the Venus Group and, therefore, calculated the final margin for the Venus Group using partial AFA. Sections 776(a)(1) and (2) of the Act provide that, if necessary information is not available on the record or if an interested party or any other person (A) withholds information that has been requested by the administering authority, (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to sections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under this subtitle, or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall use, subject to section 782(d) of the Act, the facts otherwise available in reaching the applicable determination.[303]

Section 782(e) of the Act states that Commerce shall not decline to consider information deemed "deficient" under section 782(d) of the Act if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; (5) the information can be used without undue difficulties.

In the instant administrative review, the Venus Group provided responses to our questionnaires by the established deadlines.[304] Subsequently, we issued several supplemental questionnaires, including two post-preliminary results supplemental questionnaires.[305] The Venus Group also

[301] *Id*.
[302] *Id*. at 9.
[303] *See* sections 776(a)(1) and (2) of the Act.
[304] *See* Venus Group's Letter, "Antidumping Duty Investigation of Stainless Steel Bar from India: Venus Group's Response to Section A of the Department's Questionnaire," dated August 20, 2019; Venus Group's Letter, "Antidumping Duty Investigation of Stainless Steel Bar from India: Venus Group's Response to Sections C-D of the Department's Questionnaire," dated September 3, 2019; Venus Group's Letter, "Antidumping Duty Investigation of Stainless Steel Bar from India: Venus Group's Response to Section B and Section D Cost Reconciliation of the Department's Questionnaire," dated September 6, 2019.
[305] *See* Commerce's Letters, Sections A-C Supplemental Questionnaire, dated November 26, 2019*; see also* Section D Supplemental Questionnaire, dated December 10, 2019; Section D Supplemental Questionnaire, dated January 3, 2020; Sections C-D Supplemental Questionnaire, dated February 27, 2020, Sections B and D Supplemental Questionnaire, dated March 5, 2020, and Section A Supplemental Questionnaire, dated May 11, 2020.

provided responses to our supplemental questionnaires by the established deadlines.[306] Thus, following the statutory requirements in section 782(d) of the Act, we provided the Venus Group with opportunities to respond to our requests for additional information and the Venus Group fully complied with our requests. As such, we find that the Venus Group did not entirely withhold information we requested, fail to provide requested information by the deadlines for the submission of the information or in the form and manner requested, or significantly impede a proceeding. Consequently, we do not find evidence on the record to warrant applying total AFA as the petitioners suggest.

Further, with regard to the Venus Group's WIP inventory adjustment, we find that the Venus Group correctly applied the formula for calculating direct material cost or DIRMAT, as we requested. Upon further review, however, we partially agree with the petitioners that the Venus Group's calculation of WIP does not consider any distinction as to whether the producer is the Venus Group or its unaffiliated suppliers. To address this, for these final results, we adjusted the Venus Group's direct material cost or DIRMAT to take into account whether the producer is the Venus Group or its unaffiliated suppliers.[307]

With regard to the petitioners' argument that Venus Wire did not fully report G&A expenses, we disagree. The Venus Group indicated in its response that, "Venus Wire Industries Pvt. Ltd. ("Venus Wire") did not manufacture the subject merchandise during the period of review ("POR"). Only Venus Wire's affiliates Precision Metals ("Precision"), Hindustan Inox Ltd. ("Hindustan"), and Sieves Manufactures (India) Pvt. Ltd. ("Sieves") manufactured the subject merchandise."[308] However, the record reflects that Venus Wire does share some administrative expenses with Precision and it allocated the appropriate share of these expenses to the G&A expenses of Precision.[309] As such, we are satisfied with how the Venus Group allocated its G&A expenses. The term "Venus Group" refers to Venus Wire, Precision, Hindustan, and Sieves collectively.[310]

Further, in response to our section D supplemental questionnaire, the Venus Group reiterated that, "… the Venus Group confirms that Venus Wire did not supply any wire rod for the production of the foreign like product or subject merchandise during the POR."[311] The Venus

[306] *See* Venus Group's Letter, "Antidumping Duty Administrative Review of Stainless Steel Bar from India: Venus Group's Response to the Department's Supplemental Sections A-C Questionnaire," dated December 24, 2019; Venus Group's Letter, "Antidumping Duty Administrative Review of Stainless Steel Bar from India: Venus Group's Response to the Department's Supplemental Section D Questionnaire," dated January 10, 2020; Venus Group's Letter, "Antidumping Duty Investigation of Stainless Steel Bar from India: Venus Group's Response to The Department's Supplemental Questionnaire Sections B-D," dated March 13, 2020; Venus Group's Letter, "Antidumping Duty Investigation of Stainless Steel Bar from India: Venus Group's Response to The Department's Post-Preliminary Supplemental Questionnaire," dated May 21, 2020.
[307] For further details, *see* Venus Group Final Calculation Memorandum.
[308] *See* Venus Group's Letter, "Antidumping Duty Investigation of Stainless Steel Bar from India: Venus Group's Response to Section A of the Department's Questionnaire," dated August 20, 2019 at 1.
[309] *See* Venus Group's Letter, "Antidumping Duty Administrative Review of Stainless Steel Bar from India: Venus Group's Response to Commerce's Supplemental Section D Questionnaire," dated January 10, 2020 at page 23.
[310] *See* Venus Group's Letter, "Antidumping Duty Investigation of Stainless Steel Bar from India: Venus Group's Response to Section A of the Department's Questionnaire," dated August 20, 2019.
[311] *See* Venus Group's Letter, "Antidumping Duty Administrative Review of Stainless Steel Bar from India: Venus Group's Response to the Department's Supplemental Section D Questionnaire," dated January 10, 2020.

Group stated further that, "Venus Wire is not an integrated mill and, therefore, it did not produce any stainless steel wire rod during the POR or during the window periods. In addition, as explained in response to question 7, Venus Wire did not supply stainless steel wire rod to Precision Metals for the production of subject merchandise during the POR, nor did Venus Wire produce the subject merchandise."[312] Consequently, we find no evidence on the record that it was necessary for the Venus Group to report G&A expenses for Venus Wire separately, and, therefore, are satisfied that the Venus Group reported its G&A expenses pursuant to the instructions in Commerce's questionnaire and our supplemental questionnaires.

Comment 5: Whether Commerce should match sales by manufacturer

Petitioners' Arguments:

- Commerce must match sales by the true manufacturer.[313]
  - In the *Preliminary Results*, Commerce continued to find that the Venus Group is not the manufacturer of merchandise produced from the SSRs inputs. In such cases, the company that supplied the Venus Group with the SSRs input is the true manufacturer under the field called "PRODUCER."[314]
  - For merchandise produced from SSWR, the Venus Group indicated itself as the manufacturer, while for merchandise produced from SSRs, the Venus Group indicated the supplier of SSRs as the manufacturer. Thus, both the Venus Group's home market and U.S. sales databases comprised sales by different manufacturers; likewise, the cost database is comprised of COP information for various manufacturers.[315]
  - Whereas in most cases, matching by manufacturer can be accomplished using the manufacturer fields (MFRH/U), in this case those fields only indicate the nominal manufacturer/producer as proffered by the Venus Group. Thus, in this case, only the field "PRODUCER" indicates the true producers of the merchandise under consideration in the sales database.[316]
  - Citing *Cold-Drawn Mechanical Tubing from Germany*, the petitioners argue that Commerce' practice to match products by manufacturer is consistent with the statutory definition of the foreign like product as being "produced in the same country by the same person" as subject merchandise.[317]
  - In the *Preliminary Results*, however, Commerce did not account for the fact that the Venus Group's sales and cost databases included information from different manufacturers by activating the relevant programming language.[318]
  - The proper recognition of the true manufacturers in the programming will have a significant impact on the accuracy and completeness of the calculation margin for the final results of this administrative review.[319]

[312] *Id*.
[313] *Id*.
[314] *Id*. at 15 and 16.
[315] *Id*. at 16.
[316] *Id*.
[317] *Id*. at 17 and 18*; see also Final Affirmative Determination in the Antidumping Duty Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Federal Republic of Germany*, 83 FR 16326 (April 16, 2018), and accompanying IDM (*Cold-Drawn Mechanical Tubing from Germany*).
[318] *See* Petitioners' Case Brief at 18.
[319] *Id*. at 19.

Venus Group's Rebuttal Arguments:

- Commerce must reject the petitioners' request to calculate producer-specific dumping margins.[320]
  - Although the Venus Group treated SSRs as subject merchandise for the purpose of responding to Commerce's questionnaires in the *Preliminary Results*, it continues to challenge Commerce's interpretation of the scope of the *Order*.[321]
  - We contend that SSRs constitute "semi-finished products" which are explicitly excluded from the scope of the *Order*.[322]
  - Commerce should therefore conclude that SSRs are not within the scope of the *Order* and thus, that the Venus Group is the producer of SS bar it manufactures from SSRs.[323]
- The petitioners cannot ask Commerce to conduct an administrative review for companies for which no review was requested.[324]
  - As the petitioners are undoubtedly aware, the U.S. AD law operates a "review on request" system under which Commerce will only conduct an administrative review for producers for whom an appropriate request has been submitted.[325]
  - In this review, the petitioners requested an administrative review for only seven companies (five of which are Venus Group entities), and Commerce initiated reviews for only those seven companies.[326]
  - Under the logic of the petitioners' argument, the Venus Group is not the "true producer" of the SS bar produced from SSRs; rather the suppliers of that SSR are the "true producers."[327] Assuming that to be true, then the petitioners are in effect asking Commerce to calculate separate dumping margins for non-Venus Group companies, which were not named in Commerce's notice of initiation.[328]
  - Calculating dumping margins for producers for which a review has not been requested is beyond the scope Commerce's authority, which is likely why Commerce did not adopt this novel approach in its *Preliminary Results*.[329]
  - The petitioners' approach is also contrary to the facts of the record. The implication of the petitioners' approach is that each of these SSR suppliers is in effect the seller of the SS bar produced by the Venus Group from its SSRs.
  - This is contrary to the Venus Group's explanation that its sales process is handled by its own employees or by its commissioned sales agent; there is no indication that the Venus Group's suppliers are responsible for setting these prices, or that they are otherwise involved in these sales.[330]
  - It would therefore be contrary to logic for Commerce to calculate dumping margins for companies that are not involved in setting U.S. prices.

[320] *See* Venus Group's Rebuttal Comments at 9.
[321] *Id*. at 10.
[322] *Id*.
[323] *Id*.
[324] *Id*. at 11.
[325] *Id*.
[326] *Id.* at 11 and 12.
[327] *Id*. at 12.
[328] *Id*.
[329] *Id*.
[330] *Id*.

- The petitioners rely heavily on the *Cold-Drawn Mechanical Tubing from Germany* precedent to support the position that Commerce should calculate manufacturer-specific dumping margins, but that case is distinguishable from the present case on two grounds.[331]
- First, in that case, Commerce's decision was to drop the Salzgitter sales altogether from the dumping calculation, rather than weighting together separate Benteler-to-Benteler and Salzgitter-to-Salzgitter margins, as the petitioners propose here.[332]
- Second, *Cold-Drawn Mechanical Tubing from Germany*, as an investigation, in which Commerce is tasked with calculating a dumping margin for the respondent that will be used as a cash deposit rate until actual liability is calculated in the first administrative review.[333]
- In order to calculate a margin specifically for Benteler, it was therefore appropriate for Commerce to exclude the sales of Salzgitter product.[334] But here, Commerce's responsibility is to calculate dumping liability for the 2018-2019 POR for the Venus Group companies named in the initiation.[335] The *Cold-Drawn Mechanical Tubing from Germany* case does not give Commerce authority to reach beyond its notice of initiation to calculate liability for companies not subject to this administrative review.[336]
- Therefore, the petitioners' argument that Commerce should calculate producer-specific margins for companies not subject to this administrative review is neither consistent with Commerce's regulations not its practice, and should be rejected.[337]

Commerce's Position: We agree with the petitioners and for these final results we considered manufacturer codes when determining U.S., home market and cost databases for use in our analysis. Because it is our practice to confine our comparisons to sales of merchandise produced by the same producer or manufacturer, we find that a comparison by manufacturer or producer is appropriate because we are able to identify the manufacturers or producers that produced SSRs in the sales and cost databases. Thus, for the final results, we calculated normal value in accordance with section 773(a)(1)(B)(i) of the Act and the statutory definition of the foreign like product (*see* section 771(16) of the Act). Accordingly, Commerce will activate the appropriate programming language to calculate a margin based on sales made by the same producer.

We disagree with the Venus Group's contention that the petitioners' approach would provide producer-specific dumping margins for all the companies it believes to be "producers" of the subject merchandise. Because Commerce matches sales by, among other criteria, manufacturer, it is vital to match Commerce margin information by manufacturer.[338] Matching sales by specific manufacturer is a well-established practice, and it does not provide producer-specific

[331] *Id*. at 13.
[332] *Id*.
[333] *Id*.
[334] *Id*.
[335] *Id*.
[336] *Id*.
[337] *Id*. at 14.
[338] *See Narrow Woven Ribbons* at Comment 19*; see also* N*otice of Final Results of the Eighth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination to Revoke in Part*, 70 FR 71464 (November 29, 2005), and accompanying IDM at 8, (where the corrections of ministerial errors includes matching "sales by specific manufacturer as it has in previous reviews.")

dumping margins as the Venus Group contends because we are simply matching U.S. sales of merchandise produced by a particular producer only to home market sales of merchandise produced by the same producer, in accordance with section 773(f)(1) of the Act.[339] Thus, we are not persuaded by the Venus Group's argument in this regard.

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

11/18/2020

X

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

[339] *Id.*; *see also Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Review in Part*, 72 FR 58053 (October 12, 2007), and accompanying IDM at Comment 6.