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Administrative Review
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August 19, 2021

MEMORANDUM TO: Ryan Majerus
Deputy Assistant Secretary
for Policy and Negotiations

FROM: Scot Fullerton
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Antidumping Duty Administrative Review of Stainless Steel Bar
from India; 2019-2020

I. SUMMARY

The Department of Commerce (Commerce) analyzed the case and rebuttal briefs submitted by interested parties in the administrative review of the antidumping duty (AD) order on stainless steel bar (SS bar) from India covering the period of review (POR) from February 1, 2019 through January 31, 2020. We made no changes since the preliminary results as a result of our analysis. We continue to find that the application of total adverse facts available (AFA) is appropriate for Precision Metals, and its affiliated companies including Venus Wire Industries Pvt. Ltd., Hindustan Inox and Sieves Manufacturers (India) Pvt. Ltd. (collectively, the Venus Group).

We recommend that you approve the positions we developed in the “Discussion of Issues” section of this memorandum. Below is a complete list of the issues for which we received comments from interested parties:

- Comment 1: Whether Commerce Should Continue to Apply Total Adverse Facts Available to the Venus Group
- Comment 2: Whether Commerce Should Continue to Apply the Rate Applied to Mukand in the 2010-2011 the Administrative Review as the AFA Rate to the Venus Group



II. BACKGROUND

On February 24, 2021, Commerce published in the *Federal Register* the preliminary results of the 2019-2020 administrative review of the antidumping duty order on SS Bar from India.¹ We invited interested parties to comment on the *Preliminary Results*. On March 26, 2021, the Venus Group submitted a timely filed case brief.² The petitioners³ submitted a timely filed rebuttal brief on April 2, 2021.⁴

III. SCOPE OF THE ORDER

The merchandise subject to the *Order*⁵ is SS Bar. SS Bar means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SS Bar includes cold-finished SS bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

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

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

IV. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Commerce relied on “facts otherwise available,” including “adverse facts available” (AFA), in the *Preliminary Results*.⁶ As discussed further in Comment 1, for these final results, Commerce

¹ See *Stainless Steel Bar from India: Preliminary Results of Antidumping Duty Administrative Review; 2019-2020*; 86 FR 11235 (February 24, 2021), and accompanying Preliminary Decision Memorandum (PDM) (*Preliminary Results*).

² See Venus Group’s Letter, “Antidumping Duty Investigation of Stainless Steel Bar from India - Venus Group Case Brief,” dated March 26, 2021 (Venus Group’s Case Brief).

³ Carpenter Technology Corporation, Crucible Industries LLC, Electralloy, a Division of G.O. Carlson, Inc., North American Stainless, Universal Stainless & Alloy Products, Inc., and Valbruna Slater Stainless, Inc. (collectively, the petitioner).

⁴ See Petitioner’s Letter, “Stainless Steel Bar from India Petitioners’ Rebuttal Brief,” dated April 2, 2021 (Petitioner’s Rebuttal Brief).

⁵ See *Antidumping Duty Orders: Stainless Steel Bar from Brazil, India and Japan*, 60 FR 9661 (February 21, 1995) (*Order*).

⁶ See *Preliminary Result PDM* at 3-7.

continues to rely on total AFA with respect to the Venus Group for this segment of the proceeding.

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Tariff Act of 1930 (the Act) provide that, if necessary information is not available on the record, or if an interested party: (1) withholds information requested by Commerce; (2) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding; or (4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, Commerce shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination.

Moreover, section 776(b) of the Act provides that, if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting from the facts otherwise available.⁷ In doing so, Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.⁸ In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) explains that Commerce may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”⁹ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference in selecting from the facts available.¹⁰

V. DISCUSSION OF THE ISSUES

Comment 1: Whether Commerce Should Continue to Apply Total Adverse Facts Available to the Venus Group

*Venus Group’s Arguments*¹¹

- Commerce should consider the special circumstances that prevailed during the lock-down period before declaring the Venus Group a non-cooperative respondent. Further, the Venus Group submitted section B and a partial section D response.

⁷ See 19 CFR 351.308(a); see also *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

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

⁹ See SAA, H.R. Doc. 103-316, Vol. 1 (1994) at 870; see also *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

¹⁰ See, e.g., *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (CAFC 2003) (*Nippon Steel*); *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); and *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997).

¹¹ See Venus Group’s Case Brief at 4-7.

- Commerce has full discretion with regard to accepting or rejecting a respondent's late submissions. Commerce should review each situation separately and make determinations on a case by case basis. The Venus Group has repeatedly explained its need for extensions due to the lock down in India. Commerce also acknowledged the seriousness of the situation by tolling its determination by 110 days.
- Pursuant to Section 782(d) of the Act, when Commerce determines that a response to a request for information does not comply with the request, Commerce will inform the party submitting the response and will provide the party an opportunity to remedy or explain the deficiency to the extent practicable. In this case, the Venus Group was not provided with such an opportunity.
- Commerce should not equate the Venus Group's behavior with that of Mukand, the mandatory respondent whose AFA rate Commerce used as a total AFA rate for the Venus group. Mukand had more egregious violations than the Venus Group, and should not be subject to the same treatment and rate.
- Commerce based its decision to apply AFA on the determination that Venus Group should have known to complete the initial multipart questionnaire within a limited time frame. Commerce does not acknowledge that Venus Group would have had to report market sales up to March 31, 2020. Venus would not be able to collect the data before April 2020. This also coincided with a lock down in Mumbai which lasted until the middle of July.
- Commerce also does not acknowledge that there were several additional questions different from the 2018-19 administrative review questionnaire. The Venus Group could not have anticipated that Commerce would revise its questionnaire in this administrative review. Further, Commerce acknowledges that the Venus Group submitted section A, section B, and section C responses as timely. Rejection of Section B was technical since it was combined with Section D.
- The Venus Group participated in over ten antidumping review proceedings and Commerce has never found Venus Group to be a non-cooperative respondent. In the current review, the Venus Group was faced with extraordinary circumstances including shutdowns, travel restrictions, a flood in Mumbai, a fire in its Hindustan's & Sieves building, and did not receive additional time compared to previous reviews. Commerce itself has tolled its deadlines by 110 days in recognition of the difficulties associated with COVID-19 related issues. As such, Commerce used its discretion arbitrarily in its *Preliminary Results* with regard to the application of total AFA to the Venus Group.

*Petitioners' Rebuttal Arguments*¹²

- The Venus Group failed to timely file its sections B and D response after Commerce provided the Venus Group 58 days to file its questionnaire response, which included two extensions to the original deadline. Further, language in the second extension granted by Commerce put, or should have put, the Venus Group on notice that future extension requests may be rejected in whole or in part, and that this may result in total AFA.

¹² See Petitioner's Rebuttal Brief at 2-15.

- It is Commerce’s longstanding practice to reject and remove untimely submissions from the record.¹³ Further, the Court of Appeals for the Federal Circuit (CAFC) explained that it is not up to the parties to establish Commerce’s deadlines or to dictate to Commerce whether and when Commerce actually needs the requested information” nor is Commerce required to justify its rejections of untimely filed submissions.¹⁴
- It is the obligation of the parties to meet Commerce’s deadlines so that Commerce can conduct the appropriate analysis of the record information. As the Court of International Trade (CIT) has found, it is not an abuse of discretion for Commerce to strictly enforce its regulatory time limits when it does so consistently with its regulations, as is the case here.¹⁵
- Commerce’s decision to deny the Venus Group’s third extension request was consistent with the regulations and, therefore, within its recognized discretion to set and enforce time limits. Given that the Venus Group had a total of 58 days after two granted extensions, Commerce’s decision to enforce its final deadline was neither arbitrary nor an abuse of discretion.
- The existence of the ongoing COVID-19 pandemic in general does not constitute extraordinary circumstances to prevent the respondent from submitting the questionnaire response by the applicable deadline.
- The Venus Group did not assert that any of the personnel responsible for the submission of the section D response were themselves ill. The fact that undermines the Venus Group’s extraordinary circumstances argument is that the respondent was able to gather data for sections B and C which required sales and cost data from the same accounting system from which the section D cost data would be obtained.
- The Venus Group also contends that Commerce’s own decision to toll its determinations by 110 days indicates that Commerce is applying a different set of standards to itself than the respondents who are in a similar or worse situation. Commerce has examined similar arguments before, for example in *Common Alloy Aluminum Sheet from India*, and decided that Commerce’s decision to toll deadlines does not somehow excuse the respondent’s failure to meet Commerce’s deadlines.¹⁶
- The Venus Group also misinterprets Section 782(d) of the Tariff Act of 1930, as amended (the Act), which requires Commerce to provide notice to a party that Commerce has found its response to be deficient, and that Commerce shall to the extent practicable, provide the party with an opportunity to remedy or explain the deficiency. The Venus Group claims that this requirement was not followed, but this is incorrect because the statutory requirement is predicated on a party having a response on the record of the proceeding in the first place. In the current segment, there was no section D response on the record as it was not timely filed. If a party could remedy an untimely submission by belatedly filing at a time of its choosing, deadlines would be rendered meaningless.¹⁷

¹³ See, e.g., *Large Residential Washers from Mexico: Final Results of Antidumping Duty Administrative Review*; 2016-2017, 83 FR 11963 (March 19, 2018).

¹⁴ See *Gongtai Peak Honey Indus. v. United States*, 777 F.3d 1343, 1352 (Fed. Cir. 2015); see also *Bebitz Flanges Works Private Ltd. v. United States*, 433 F. Supp. 3d 1297, 1305 (CIT 2020).

¹⁵ See *Dongtai Peak Honey Indus. Co. v. United States*, 971 F. Supp. 2d 1234, 1242 (CIT 2014).

¹⁶ See Petitioner’s Rebuttal Brief at 5 (citing *Common Alloy Aluminum Sheet from India: Final Affirmative Determination of Sales at Less Than Fair Value*, 86 FR 13282 (March 8, 2021) (*Common Alloy Aluminum Sheet from India*), and accompanying IDM at Comment 1).

¹⁷ Petitioner’s Rebuttal Brief at 9.

- Section 776(a)(2) of the Act requires Commerce to resort to facts available if one of the enumerated conditions is met, including failure to provide information requested by Commerce by the deadline established, or in the form and manner requested.
- Pursuant to Section 776(b)(1), if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.
- Despite the existence of any deficiency, Commerce must consider the submitted information if it were submitted by the established deadline, can be verified, is not so incomplete that it cannot be used, demonstrated the interested party acted to the best of its ability in submitting the information and meeting applicable requirements *and* can be used without undue difficulties.
- The CAFC has held that a party has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation, which includes providing complete, accurate, and timely responses to Commerce's requests for information. Moreover, Commerce does not need to identify intentional non-cooperation on the part of the respondent before applying AFA.
- In applying an adverse inference, Commerce is not required to determine, or make any adjustment to, a weighted average dumping margin based on any assumptions about information the interested party would have provided if the interested party had complied with the request for information.
- The record evidence demonstrates that the Venus Group failed to timely provide a complete questionnaire response. As a result, the Venus Group failed to comply with Commerce's request for information to the best of its ability. Commerce cannot calculate a valid dumping margin without sections B and D of Venus Group's questionnaire. Thus, the Venus Group's failure to provide information requested by the established deadline, the Venus Group has significantly impeded Commerce's proceeding by failing to provide such information by the established deadline.
- Commerce provided the Venus Group with an additional 21 days, from the original 37-day deadline, to timely respond to the initial questionnaire. The Venus Group failed to provide a complete response by the extended deadline even when it was notified that future requests for an extension of time may be denied in part or in whole. Commerce also noted that the Venus Group is an experienced respondent who know or should have known that it would be required to complete the initial multi-part questionnaire when it submitted its request for review.
- The Venus Group's claim that Commerce does not acknowledge the sequence of events is unpersuasive. Neither the fact that the Venus Group needed to collect home-market sales up to March 31, 2020, nor the fact that the questionnaire had several different questions from the prior segment demonstrate why it would not be able to meet Commerce's deadline of August 20, 2020.
- It is not unusual for Commerce to apply AFA to parties for failure to respond in a timely manner. For example, in *Stainless Steel Bar from Spain*,¹⁸ where Commerce applied total AFA to a respondent for its failure to timely respond to a supplemental questionnaire.

¹⁸ See Petitioner's Rebuttal Brief at 13-14 (citing *Stainless Steel Bar from Spain: Final Results of Antidumping Duty*

Commerce Position: We continue to find that the Venus Group failed to submit the entirety of its response to sections B and D of the initial questionnaire by the deadline.¹⁹ For the reasons explained in the *Preliminary Results* and discussed below, Commerce continues find that necessary information is not available on the record because the Venus Group withheld information requested by Commerce and failed to provide such information by the deadlines for submission of the information in accordance with sections 776(a)(1) and (2)(A) and (B) of the Act. In addition, we continue to find that the Venus Group significantly impeded the proceeding in accordance with section 776(a)(2)(C) of the Act, and that the Venus Group failed to cooperate to the best of its ability in accordance with section 776(b) of the Act. As such, we continue to find that application of total AFA is warranted.

The Venus Group argues that Commerce did not consider the circumstances that prevailed during the lockdown period before declaring the Venus Group a non-cooperative respondent. We disagree.

As an initial matter, Commerce considered the circumstances presented in the Venus Group's extension requests in determining whether good cause existed to provide two extension requests which gave the Venus Group an additional 21 days to respond to sections B and D.²⁰ Finding that good cause did exist to extend the timeline for the Venus Group to file its response beyond the allotted time, Commerce provided the Venus Group 21 additional days to respond to sections B and D of the initial questionnaire.²¹ In the letter granting the second extension to the Venus Group, we made note of the impending statutory deadlines and that future requests would be considered in light of those deadlines.²² Commerce then weighed the Venus Group's circumstances against its need to enforce deadlines when it rejected the third extension requested by the Venus Group.²³ Our August 19, 2020, letter rejecting the Venus Group's third extension request provides our reasoning for rejecting the submission as well as the consequences in the event a submission is filed after the deadline:

Commerce has already granted two extensions totaling 21 days, giving Venus Group 58 days overall to file its section D response. Commerce needs this initial questionnaire response in order to evaluate it in a timely matter and to issue and receive any

Administrative Review; 2015-2016, 82 FR 29826 (June 30, 2017) (*Stainless Steel Bar from Spain*), and accompanying IDM at Comment 2).

¹⁹ In this review, Commerce treated the response to sections B and D of the initial questionnaire as a single response with a single deadline. See *Preliminary Results* PDM at 6 (explaining “{s}ections B and D came in together in a combined submission. As such, because the Venus Group failed to file the section D response in its entirety on the due date, as required by 19 CFR 351.303(b), the combined sections B and D questionnaire response was rejected as untimely filed.”)

²⁰ See Commerce's Letter, “Antidumping Duty Investigation of Stainless Steel Bar from India: Section B and D Questionnaire Responses Second Extension Request,” dated August 11, 2020 (Second Extension Request); see also Commerce's Letter, “Administrative Review of the Antidumping Duty Order on Stainless Steel Bar from India: Sections B, C, and D Questionnaire Responses First Extension Request,” dated July 28, 2020.

²¹ *Id.*

²² See Second Extension Request.

²³ See Commerce's Letter, “Administrative Review of the Antidumping Duty Order on Stainless Steel Bar from India: Third Extension Request for the Section D Questionnaire Response,” dated August 19, 2020 (Rejection of Third Extension Request).

supplemental questionnaires. Accordingly, the Venus Group's response to section D of the initial questionnaire **remains due no later than 5:00 pm Eastern Time on Thursday, August 20, 2020.**

Pursuant to 19 CFR 351.302(d), any information submitted after the applicable deadlines will be considered untimely and rejected. In such a case, we may have to use the facts available as required by section 776(a) of the Tariff Act of 1930, as amended, for the preliminary results of this administrative review.²⁴

On August 20, 2020, Commerce denied the Venus Group's request for reconsideration of the denial of a third extension request, stating that we had previously advised the Venus Group to "...take note that future requests for an extension of time should be submitted with the understanding that the request may be denied in part or in whole."²⁵ Later that same day, the Venus Group submitted certain parts of its section B and D response, and submitted the remainder of its section B and D response on August 27, 2020, a week after the deadline.²⁶ On September 30, 2020 Commerce rejected the entirety of the section B and D response, including the portions timely filed, stating "we are unable to accept these submissions because this questionnaire response was not filed in its entirety by 5:00pm Eastern Time on the due date (*i.e.*, August 20, 2020), as required by 19 CFR 351.303(b)(1){.}"²⁷

In the September 30th letter, we explained our reasoning for rejecting the Venus Group's submission, noting that we have already considered the circumstances associated with the COVID-19 pandemic in providing the Venus Group with an additional 21 days to respond:

Furthermore, we note the Venus Group was granted the 21-day extension it originally requested and the facts surrounding its August 18 and 19 requests, including the difficulties presented by the COVID-19 pandemic, had already been considered in the first two extension requests that were granted. As a result, your August 20, 26, and 27, 2020, submissions responding to sections B and D of the initial questionnaire were untimely filed.²⁸

Section 351.302(b) of Commerce's regulations provides that, unless expressly precluded by statute, Commerce may, for good cause, extend any time limits established under the regulations. The CAFC in *Dongtai Peak* held, in part, that Commerce is not required to demonstrate good cause for rejecting a respondent's untimely submission.²⁹ Commerce has broad discretion to establish its own rules governing administrative procedures, including the establishment and

²⁴ *Id.*

²⁵ See Commerce's Letter, "Antidumping Duty Investigation of Stainless Steel Bar from India: Venus Group's Request for Reconsideration of the Commerce's Denial of Third Extension Request for Section D Response" dated August 20, 2020.

²⁶ See Venus Group's Letter, "Antidumping Duty Investigation of Stainless Steel Bar from India: Supplement to Venus Group's Response to Section D of the Department's Questionnaire," dated August 28, 2020.

²⁷ See Commerce's Letter, "Administrative Review of the Antidumping Duty Order on Stainless Steel Bar from India: Rejection of Untimely Filed Submissions," dated September 30, 2020 (Untimely Filed Submissions Rejection).

²⁸ See Untimely Filed Submissions Rejection.

²⁹ See *Dongtai Peak Honey Indus. Co. v. United States*, 777 F.3d 1343, 1352 (CAFC 2015) (*Dongtai Peak*).

enforcement of time limits, and Commerce’s policy of setting time limits is reasonable and necessary to complete its work administering the antidumping and countervailing duty laws across multiple cases.³⁰ In establishing its deadlines and granting extension requests, Commerce must balance its workload across numerous cases.³¹ Thus, were Commerce to continuously grant multiple extensions across numerous cases, it would not be able to meet its statutory deadlines.³²

Commerce’s rejection of the third extension request by the Venus Group clearly stated that any information submitted after the applicable deadlines would be considered untimely and rejected pursuant to 19 CFR 351.302(d).³³ As described above, Commerce considered the circumstances faced by the Venus Group when providing it with multiple extensions amounting to an additional 21 days to respond to sections B and D of the initial questionnaire. Thus, in weighing the third request for an extension, along with the statutory deadlines and resource constraints in this and other cases, Commerce appropriately determined not to grant the third request. This decision was well within Commerce’s broad discretion. Further, it was within Commerce’s discretion to reject the response when the Venus Group failed to submit the entirety of its response by the

³⁰ See *Yantai Timken Co. v. United States*, 31 C.I.T. 1741, 1755 (CIT 2007); see also affirmed by *Yantai Timken Co. v. United States*, 300 Fed. Appx. 934, 2008 WL 5079598 (CAFC 2008); *Maverick Tube Corp. v. United States*, 107 F.Supp.3d 1318, 1331 (CIT 2015) (holding that “strict enforcement of time limits and other requirements is neither arbitrary nor an abuse of discretion when Commerce provides a reasoned explanation of its decision”); *Dongtai Peak*, 777 F.3d at 1352; *Bebitz Flanges Works Private Ltd. v. United States*, 433 F. Supp. 3d 1297, 1305 (CIT 2020); and *PSC VSMPO-Avisma Corp. v. United States*, 688 F.3d 751, 760-1 (CAFC 2012) (holding that it is “fully within Commerce’s discretion to ‘set and enforce deadlines{,}’”).

³¹ See *Yantai Timken Co.*, 31 C.I.T. at 1755, (explaining that “Courts have acknowledged ‘Commerce’s policy of setting time limits to be reasonable’ and necessary to ‘complete its work’”) (internal citation omitted); see also *Coalition for Preservation of American Brake Drum and Rotor Aftermarket Mfrs. v. United States*, 44 F.Supp.2d 229, 237 (CIT 1999) (citing *Vermont Yankee Nuclear Power Corp.*, 435 U.S. 519, 544-45 (1978)) (“Well-settled principles of administrative law afford an agency broad discretion to fashion its own rules of administrative procedure, including the authority to establish and enforce time limits concerning the submission of written information and data.”); *Tatung Co. v. United States*, 18 C.I.T. 1137, 1140 (CIT 1994) (“Due to stringent time deadlines and the significant limitations on Commerce’s resources, ‘it is vital that accurate information be provided promptly to allow the agency sufficient time for review.’”) (internal citation omitted); *Silicon Metal from the Republic of Kazakhstan: Final Affirmative Countervailing Duty Determination*, 86 FR 11725 (February 26, 2021), and accompanying IDM at 17 (“{t}imely filings and timely extension requests contribute to Commerce’s efficient administration of the numerous cases before it and the AD/CVD laws. Conversely, untimely filings and last-minute extension requests hinder the efficient conduct of our proceedings, and require that Commerce devote additional time and resources to addressing such untimely filings and last-minute requests. Additionally, although the burden associated with a single late-filed questionnaire response may be perceived as minimal, that burden is not minimal when aggregated across all proceedings.”)

³² As stated in the Memorandum, “Antidumping Duty Administrative Review Stainless Steel Bar from India 2019-2020; Respondent Selection,” dated June 2, 2020, in this review Office I was conducting numerous concurrent AD and CVD reviews including but not limited to “AD and CVD administrative reviews of oil country tubular goods from Turkey and ripe olives from Spain, AD administrative reviews of diamond sawblades from China, welded carbon steel pipe and tube from India, certain cut-to-length carbon-quality steel plate from South Korea, circular welded non-alloy steel pipe from South Korea, polyester staple fiber from South Korea, and stilbenic optical brightening agents from Taiwan, CVD administrative reviews of softwood lumber from Canada and tool chests and cabinets from China, AD and CVD investigations of forged steel fluid end blocks from India and Italy, AD and CVD investigations of corrosion inhibitors from China, and AD and CVD investigations of mattresses from Turkey and China, respectively. Furthermore, this office is involved in ongoing litigation, as well as multiple scope rulings, changed circumstance reviews, anti-circumvention reviews, and sunset reviews.”

³³ See Rejection of Third Extension Request.

deadline.³⁴

Commerce's analysis with regard to application of AFA in the *Preliminary Results* was based on the determination that necessary information is not available on the record because the Venus Group withheld information requested by Commerce and failed to provide such information by the deadlines for submission of the information in accordance with sections 776(a)(1) and (2)(A) and (B) of the Act. In addition, we found that the Venus Group significantly impeded the proceeding in accordance with section 776(a)(2)(C) of the Act, and that the Venus Group failed to cooperate to the best of its ability in accordance with section 776(b) of the Act. We continue to reach these findings in these final results. As discussed above, the Venus Group was a non-cooperative respondent who did not respond to Commerce's request for information to the best of its ability, and significantly impeded the current proceeding, as the section B and D response, which was not submitted in its entirety by the deadline, contained information without which Commerce cannot conduct its dumping analysis.³⁵ As in *Dongtai Peak*, the Venus Group here "was well aware of the established deadlines in this case"; Commerce advised the Venus Group "of the importance of submitting its documents in a timely manner"; and the Venus Group "was aware of the consequences of its not doing so."³⁶

The Venus Group argues that it acted to the best of its ability to meet Commerce's deadline and therefore Commerce should not apply total AFA.³⁷ However, as previously stated, Commerce cannot conduct its full dumping analysis and calculate a valid dumping margin without the information included in sections B and D of the initial questionnaire. As such, the Venus Group significantly impeded Commerce's proceeding by failing to provide such information by the established deadline.

Section 776(b) of the Act provides that an adverse inference may be used when a respondent has failed to cooperate by not acting to the best of its ability. The CAFC in *Nippon Steel* described the "best of its ability" standard as a two-pronged test:³⁸

To conclude that an importer has not cooperated to the best of its ability and to draw an adverse inference under section 1677e(b), Commerce need only make two showings. First, it must make an objective showing that a reasonable and responsible importer would have known that the requested information was required to be kept and maintained under the applicable statutes, rules, and regulations. Second, Commerce must then make a subjective showing that the respondent under investigation not only has failed to promptly produce the requested information, but further that the failure to fully respond is the result of the respondent's lack of cooperation in either: (a) failing to keep and maintain all required records, or (b) failing to put forth its maximum efforts to investigate and obtain the requested information from its records.³⁹

³⁴ See *Untimely Filed Submissions Rejection*.

³⁵ See *Preliminary Results* PDM at 3-7.

³⁶ See *Dongtai Peak*, 777 F.3d at 1353.

³⁷ See Venus Group's Case Brief at 1.

³⁸ See *Nippon Steel*, 337 F.3d at 1382-83.

³⁹ *Id.*

We disagree with the Venus Group and continue to find that it did not put forth its maximum efforts to investigate and obtain the requested information from its records. For support of its position, the Venus Group reiterates general pandemic lockdown conditions considered by Commerce when we extended the deadline to respond by 21 days. Commerce need not identify intentional non-cooperation on the part of the respondent before applying AFA.⁴⁰ Information on the record demonstrates that the Venus Group failed to timely provide a complete initial questionnaire response, as a result, failing to comply with Commerce's request for information. In the *Preliminary Results*, we explained that the Venus Group was well aware that it may be selected as a mandatory respondent when it submitted its self-request for review, and as an experienced respondent that has participated in prior reviews, the Venus Group knew or should have known that it would be required to complete the initial multipart questionnaire and begin to prepare its response within a limited time frame.⁴¹

The Venus Group claims that Commerce's position in the *Preliminary Results* does not acknowledge the sequence of events. This claim is based on the assertion that the Venus Group was required to report home market sales up to March 31, 2020, and that the Venus Group was presented with several questions different from previous reviews. Neither assertion demonstrates that the Venus Group could not have expended more effort in order to provide Commerce with section B and D response to the initial questionnaire which was due on August 20, 2020. The Venus Group had a total of 58 days to provide the response to Commerce's questionnaire, which included extensions totaling 21 days. As a company experienced with the deadlines associated with requests for information in administrative reviews and considering it self-requested the review initiated by Commerce, the two extensions provided the Venus Group with sufficient opportunity to provide a timely response to Commerce's questionnaire. The sequence of events does not undermine any of the factors which lead Commerce to determine that the Venus Group did not put forth its maximum efforts to investigate and obtain the information from its records, as requested by Commerce.

The Venus Group further argues that Commerce did not provide the Venus Group any opportunity to remedy or explain the Venus Group's inability to provide the section D data, as required by section 782(d) of the Act. Section 782(d) of the Act provides that if a response is found to be deficient, Commerce "shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency." The Act's requirement is based on a review of timely filed responses where Commerce finds a deficiency.⁴² The CIT explained that it is a permissible construction of the statute that Commerce is required to consider deficient documents under 782(d) only if those documents are (1) placed on the record, and (2) not retained solely for the purpose of referencing the reason that a document was rejected.⁴³ As is the case here, the requirement does not apply where a party files an untimely response which is rejected and stricken from the record pursuant to 19 CFR 351.303(b)(1).⁴⁴

⁴⁰ See, e.g., *Tianjin Machinery Imp. & Exp. Corp. v. United States*, 353 F. Supp. 2d 1294, 1305 (CIT 2004).

⁴¹ See *Preliminary Results* PDM at 7.

⁴² See, e.g., *Large Residential Washers From Mexico: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 11963 (March 19, 2018), and accompanying Issues and Decision Memorandum (March 12, 2018).

⁴³ See *Ferrostaal Metals GmbH v. United States*, Slip Op. 21-54, 2021 WL 1784419 at 6 (CIT 2021).

⁴⁴ *Id.*

Finally, the Venus Group makes several comparisons that we find inapplicable to the above analysis. The Venus Group compares the additional 21 days it received with Commerce's decision to toll its deadlines by 110 days. We have rejected this argument in other cases,⁴⁵ stating that Commerce's decision to toll deadlines does not somehow excuse the respondent's failure to meet Commerce's deadlines in this review.⁴⁶ The Venus Group also compares itself to Mukand Inc. in the 2010-2011 administrative review to show that the current circumstances were more dire, and the Venus Group's behavior was less egregious in the current review. Whether other entities in other cases had submissions that were more untimely or had subjectively less serious circumstances for which an extension was granted is irrelevant to our determination. Here, the Venus Group failed to submit a complete response in its entirety by the deadline, disregarding Commerce's rejection of its third extension request. As the CAFC explained in *Dongtai Peak*, it is not up to the Venus Group to establish Commerce's deadlines or to dictate to Commerce whether and when Commerce actually needs the requested information.⁴⁷

For the reasons above, we continue to find that application of total AFA is warranted.

Comment 2: Whether Commerce Should Continue to Apply the Rate Applied to Mukand in the 2010-2011 the Administrative Review as the AFA Rate Applied to the Venus Group

*Venus Group's Arguments*⁴⁸

- To remedy the application of AFA where the Venus Group acted to the best of its ability, the Venus Group should be assigned the calculated dumping margin which was assigned to the Venus Group during the 2018-19 administrative review, 16.48 percent.

*Petitioners' Rebuttal Arguments*⁴⁹

- Commerce Assigned the Venus Group a dumping margin of 30.92 as total AFA. Specifically, Commerce stated that it has "selected the dumping margin of 30.92 percent, as calculated for Mukand, Ltd. in the final results of the 2010-2011 administrative review, as the AFA rate, which is the highest calculated dumping margin from any segment of the proceeding."⁵⁰
- The 30.92 percent rate, however, is not the highest calculated dumping margin from any segment of the proceeding, rather the highest dumping margin is the 52.84 percent margin assigned to Jindal Stainless (Hisar) Limited in the 2017-2018 administrative review. As such, Commerce should assign a total AFA dumping margin of at least 52.84 percent to the Venus Group.
- The petitioner acknowledges that the final results of the 2017-2018 is currently subject to appeal and remand. Should the Court sustain Commerce's remand results in the ongoing

⁴⁵ See, e.g., *Common Alloy Aluminum Sheet from India: Final Affirmative Determination of Sales at Less Than Fair Value*, 86 FR 13282 (March 8, 2021), and accompanying Issues and Decision Memorandum at 7.

⁴⁶ *Id.*

⁴⁷ See *Dongtai Peak*, 777 F.3d at 1352.

⁴⁸ See Venus Group's Case Brief at 7-8.

⁴⁹ See Petitioner's Rebuttal Brief at 2-15.

⁵⁰ See *Preliminary Results PDM* at 8.

appeal prior to the deadline for the final results of this review, Commerce should rely on the revised dumping margin calculated for Jindal as the appropriate total AFA margin for the Venus Group in the final results of this review.

Commerce Position: In the *Preliminary Results*, Commerce selected the dumping margin of 30.92 percent, as calculated for Mukand, Ltd in the final results of the 2010-2011 administrative review, as the AFA rate, which is the highest calculated dumping margin from any segment of the proceeding.⁵¹ The Venus Group argues that AFA was wrongly applied, and Commerce should pull forward the calculated rate from the previous review. The petitioner argues that the highest calculated dumping margin to date in this proceeding is 52.84 percent, the calculated margin for Jindal Stainless (Hisar) Limited (Jindal) in the 2017-2018 administrative review. The total AFA rate applied to Jindal suggested by the petitioner has changed to 92.10 percent on remand.⁵²

As discussed above under Comment 1, we continue to find that AFA is warranted in determining the appropriate rate for the Venus Group in these final results. Pursuant to 776(d)(1) of the Act, Commerce may choose from any dumping margin from any segment of the proceeding under the applicable antidumping order in assigning a dumping margin based on an adverse inference. Under 776(c)(2) of the Act, Commerce need not corroborate a rate applied from among previous rates of the same proceeding. Further, section 776(d)(2) of the Act provides that Commerce may apply any dumping margin from any segment of the proceeding, including the highest such margin, based on an evaluation of the situation that resulted in the use of adverse inferences.

As stated above, Commerce continues to find that the Venus Group did not cooperate to the best of its ability. Commerce, in evaluating the facts of this particular review and the situation that resulted in the application of total AFA described above in Comment 1, continues to find that application of the 30.92 percent rate applied as the AFA rate to the Venus Group in the *Preliminary Results* is appropriate. As this rate was applied in a separate segment of the same proceeding, Commerce is not required to corroborate the 30.92 percent rate. We have considered the petitioner's argument that Commerce should select the 92.10 percent rate applied to Jindal in the 2017-2018 administrative review, after litigation, which was based on the Venus Group's own highest transaction-specific margin.⁵³ We have also considered the weighted-average dumping margin for the Venus Group in that review, which was based in part on AFA, 24.60 percent⁵⁴ and the weighted-average dumping margin for the Venus Group in the subsequent review covering the 2018-2019 period of review, 16.48 percent, which was also based in part on AFA.⁵⁵ Based on our evaluation of the circumstances in this administrative review, we find that continuing to select the 30.92 percent rate as AFA, among any dumping margin from any segment of this proceeding, is a reasonable deterrent to the Venus Group's non-

⁵¹ *Id.*

⁵² See *Stainless Steel Bar from India: Notice of Court Decision Not in Harmony With the Results of the Antidumping Duty Administrative Review; Notice of Amended Final Results*, 86 FR 31281 (June 11, 2021) (2017-2018 Final Results).

⁵³ Section 776(d)(2) of the Act.

⁵⁴ See 2017-2018 Final Results.

⁵⁵ See *Stainless Steel Bar from India: Amended Final Results of Antidumping Duty Administrative Review; 2018-2019*, 85 FR 86532 (December 30, 2020).

cooperation.⁵⁶

XII. RECOMMENDATION:

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

☒

Agree

☐

Disagree

8/19/2021

X



Signed by: RYAN MAJERUS
Ryan Majerus
Deputy Assistant Secretary
for Policy and Negotiations

⁵⁶ See *F.lli De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (CAFC 2000).