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

A-533-877
Administrative Review
POR: 03/28/2018 – 09/30/2019
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August 20, 2021

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

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

SUBJECT: Stainless Steel Flanges from India: Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review; 2018-2019

I. SUMMARY

We analyzed the comments filed by interested parties in the administrative review of the antidumping duty (AD) order on stainless steel flanges (flanges) from India covering the period of review (POR) March 28, 2018, through September 30, 2019. As a result of our analysis, we have made no changes to the *Preliminary Results*.[1] We continue to find that it is appropriate to assign a margin to the sole mandatory respondent in this review, Chandan Steel Limited (Chandan), on the basis of facts otherwise available with an adverse inference (AFA). We also continue to find it appropriate to assign Chandan's margin to the non-examined companies.

We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of issues in this administrative review for which we received comments from interested parties:

Comment 1: Application of AFA to Chandan
Comment 2: Selection of the AFA Rate
Comment 3: All-Others Rate for Non-Examined Companies
Comment 4: Export Subsidies Offset

[1] *See Stainless Steel Flanges from India: Preliminary Results of Antidumping Duty Administrative Review; 2018–2019*, 86 FR 11233 (February 24, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

II. BACKGROUND

On February 24, 2021, the Department of Commerce (Commerce) published the *Preliminary Results* of this administrative review and invited interested parties to comment.[2]

On March 16, 2021, Chandan submitted two letters containing untimely new factual information (NFI).[3] Chandan claimed that this information was necessary to correct "clerical errors" in its prior questionnaire responses that it discovered when reviewing the *Preliminary Results*. On March 19, 2021, the Coalition of American Flange Producers (the petitioner) requested that Commerce reject Chandan's submissions.[4] On March 24, 2021, we rejected Chandan's letters and provided Chandan an opportunity to refile the Second Letter after removing the untimely NFI,[5] which Chandan did.[6]

In March 2021, Chandan, the petitioner, and several companies not selected for individual examination in the review (*i.e.*, Balkrishna Steel Forge Pvt. Ltd., Echjay Forgings Private Ltd., Goodluck India Ltd., Hilton Metal Forging Limited, Jai Auto Pvt. Ltd., Jay Jagdamba Forgings Private Limited, Jay Jagdamba Limited, Jay Jagdamba Profile Private Limited, Shree Jay Jagdamba Flanges Pvt. Ltd., and Kisaan Die Tech (KDT) (collectively, Balkrishna *et al.*)) requested a hearing.[7]

On April 2, 2021, we received timely-filed case briefs from Bebitz Flanges Works Private Limited (Bebitz),[8] Chandan,[9] and Pradeep Metals Limited (Pradeep Metals),[10] as well as a joint

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[2] *Id.*

[3] *See* Chandan's Letters, "Certain Stainless Steel Flanges from India (A-533-877) – AR1: Claimed Minor Errors – New Facts To Correct," dated March 16, 2021 (First Letter); and "Claimed Minor Errors In Reporting Comparison Market Sales and Cost Build-Ups – No New Facts Filing," dated March 16, 2021 (Second Letter).

[4] *See* Petitioner's Letter, "Stainless Steel Flanges from India: Request to Reject Chandan's Untimely New Factual Information in its March 16, 2021 Submissions," dated March 19, 2021.

[5] The First Letter consisted of material that, in its entirely, constituted NFI; therefore, we did not afford Chandan an opportunity to refile that letter. *See* Commerce's Letter, "Antidumping Duty Administrative Review of Stainless Steel Flanges from India: Rejection of New Factual Information," dated March 24, 2021.

[6] *See* Chandan's Letter, "Certain Stainless Steel Flanges from India (A-533-877) – AR1: Claimed Minor Errors In Reporting Comparison Market Sales and Cost Build-Ups – No New Facts Filing (Refiled)," dated March 24, 2021 (Chandan March 24 Letter). However, we subsequently discovered that the resubmitted document also contained NFI, and we rejected it as well. *See* below for further discussion.

[7] *See* Chandan's Letter, "Certain Stainless Steel Flanges from India (A-533-877) (AR-1), - Request for Hearing," dated March 23, 2021; *see also* Petitioner's Letter, "Stainless Steel Flanges from India: Request for Hearing," dated March 26, 2021; and Balkrishna *et al.*'s Letter, "Stainless Steel Flanges from India," dated March 26, 2021.

[8] *See* Bebitz's Letter, "Stainless Steel Flanges from India: Case Brief," dated April 2, 2021 (Bebitz Case Brief).

[9] On April 30, 2021, we rejected Chandan's case brief for relying on additional NFI contained in the Chandan March 24 Letter. *See* Commerce's Letter, "Antidumping Duty Administrative Review of Stainless Steel Flanges from India: Rejection of New Factual Information," dated April 30, 2021 (April 30, 2021 Rejection Letter). Therefore, on May 4, 2021, Chandan refiled its case brief after removing the NFI. *See* Chandan's Letter, "Certain Stainless Steel Flanges from India (A-533-877 – AR1), Submission of Case Brief for Chandan Steel (Refile)," dated May 4, 2021 (Chandan Case Brief).

[10] *See* Pradeep Metals' Letter, "Certain Stainless Steel Flanges from India (A-533-877 – AR1), Submission of Case Brief for Pradeep Metals Limited," dated April 2, 2021.

case brief from Balkrishna *et al.* and Bebitz (collectively, Balkrishna *et al.*/Bebitz),[11] On April 9, 2021, the petitioner timely filed its rebuttal brief.[12]

On April 19, 2021, Chandan requested that Commerce reject the petitioner's rebuttal brief because it contained new affirmative arguments which were not in response to its case brief.[13] On April 20, 2021, the petitioner responded to Chandan's request.[14]

On April 30, 2021, we rejected the Chandan March 24 Letter and Chandan's case brief because it contained additional untimely NFI,[15] and, again, we allowed Chandan to refile a redacted version of these documents.[16] On May 4, 2021, Chandan refiled its case brief and March 24, 2021, letter after removing the untimely NFI.[17]

On May 10, 2021, Balkrishna *et al.* submitted a letter in support of Chandan's requests to reject the petitioners' rebuttal brief.[18] On May 10, 2021, we declined to reject the petitioner's rebuttal brief.[19] On May 11, 2021, Commerce held a public hearing, limited to the issues raised in the case and rebuttal briefs.[20]

On June 2, 2021, we extended the deadline for the final results of this review by 57 days, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19

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[11] *See* Balkrishna *et al.*/Babitz's Letter, "Stainless Steel Flanges from India: 'All Other" Case Brief,'" dated April 2, 2021 (Balkrishna *et al.*/Bebitz Case Brief).

[12] On July 19, 2021, we rejected the petitioner's rebuttal brief for containing citations to NFI submitted by Chandan. *See* Commerce's Letter, "Antidumping Duty Administrative Review of Stainless Steel Flanges from India: Rejection of Petitioner's Rebuttal Brief," dated July 19, 2021. On July 21, 2021, the petitioner refiled its rebuttal brief after removing the NFI. *See* Petitioner's Letter, "Stainless Steel Flanges from India: Resubmission of Petitioner's Rebuttal Brief," dated July 21, 2021 (Petitioner Rebuttal Brief).

[13] *See* Chandan's Letter, "Certain Stainless Steel Flanges from India (A-533-877): Objection to affirmative arguments taken by the petitioner in Rebuttal Case brief," dated April 19, 2021.

[14] *See* Petitioner's Letter, "Stainless Steel Flanges from India: Response to Chandan's 'Objection to Affirmative Arguments Taken by the Petitioner in Rebuttal Case Brief,'" dated April 20, 2021.

[15] *See* April 30, 2021 Rejection Letter.

[16] Although Chandan objected to this decision, we did not reconsider it. *See* Chandan's Letters, "Certain Stainless Steel Flanges from India (A-533-877-AR1): Objection to 2nd and 3rd Rejection of New Factual Information," dated April 30, 2021; and "Certain Stainless Steel Flanges from India (A-533-877-AR1): Request For Tolling Of Deadline – Objection to 2nd and 3rd Rejection of New Factual Information," dated May 3, 2021; and Commerce's Letter, "Antidumping Duty Administrative Review of Stainless Steel Flanges from India: Response to Objection to Rejection of New Factual Information," dated May 3, 2021. Subsequently, Balkrishna *et al.* also objected to the decision, and Chandan reiterated its earlier objection. *See* Balkrishna *et al.*'s Letter, "Stainless Steel Flanges from India," dated May 4, 2021; *see also* Chandan's Letter, "Certain Stainless Steel Flanges from India (A-533-877) – AR1: Claimed Minor Errors In Reporting Comparison Market Sales and Cost Build-Ups – No New Facts Re-Filing," dated May 5, 2021.

[17] *See* Chandan Case Brief; *see also* Chandan's Letter, "Certain Stainless Steel Flanges from India (A-533-877) – AR1: Claimed Minor Errors In Reporting Comparison Market Sales and Cost Build-Ups – No New Facts Re-Filing," dated May 4, 2021 (Chandan May 4, 2021 Letter); and *supra* n.9.

[18] *See* Balkrishna *et al.*'s Letter, "Stainless Steel Flanges from India," dated May 10, 2021.

[19] *See* Memorandum, "Antidumping Duty Administrative Review of Stainless Steel Flanges from India: Response to Chandan's Request," dated May 10, 2021; *see also supra* n.12.

[20] *See* Hearing Transcript, "The Administrative Review of the Antidumping Duty Order on Stainless Steel Flanges from India: Public Hearing," dated May 11, 2021.

CFR 351.213(h)(2).[21] Accordingly, the deadline for the final results of this review is August 20, 2021.

III. SCOPE OF THE ORDER

The products covered by this order are certain forged stainless-steel flanges, whether unfinished, semi-finished, or finished (certain forged stainless-steel flanges). Certain forged stainless steel flanges are generally manufactured to, but not limited to, the material specification of ASTM/ASME A/SA182 or comparable domestic or foreign specifications. Certain forged stainless steel flanges are made in various grades such as, but not limited to, 304, 304L, 316, and 316L (or combinations thereof). The term "stainless steel" used in this scope refers to an alloy steel containing, by actual weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements.

Unfinished stainless-steel flanges possess the approximate shape of finished stainless steel flanges and have not yet been machined to final specification after the initial forging or like operations. These machining processes may include, but are not limited to, boring, facing, spot facing, drilling, tapering, threading, beveling, heating, or compressing. Semi-finished stainless steel flanges are unfinished stainless-steel flanges that have undergone some machining processes.

The scope includes six general types of flanges. They are: (1) weld neck, generally used in butt weld line connection; (2) threaded, generally used for threaded line connections; (3) slip-on, generally used to slide over pipe; (4) lap joint, generally used with stub-ends/butt-weld line connections; (5) socket weld, generally used to fit pipe into a machine recession; and (6) blind, generally used to seal off a line. The sizes and descriptions of the flanges within the scope include all pressure classes of ASME B16.5 and range from one-half inch to twenty-four inches nominal pipe size. Specifically excluded from the scope of the order are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A351.

The country of origin for certain forged stainless-steel flanges, whether unfinished, semi-finished, or finished is the country where the flange was forged. Subject merchandise includes stainless steel flanges as defined above that have been further processed in a third country. The processing includes, but is not limited to, boring, facing, spot facing, drilling, tapering, threading, beveling, heating, or compressing, and/or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the stainless-steel flanges.

Merchandise subject to the order is typically imported under headings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings and ASTM specifications are provided for convenience and customs purposes, the written description of the scope is dispositive.

[21] *See* Memorandum, "Stainless Steel Flanges from India: Extension of Deadline for Final Results of Antidumping Duty Administrative Review; 2018-2019," dated June 2, 2021.

IV. DISCUSSION OF THE ISSUES

Comment 1: Application of AFA to Chandan

In the *Preliminary Results*, we found that Chandan failed to provide accurate and complete responses to our requests for information. Commerce issued multiple supplemental questionnaires to Chandan, affording it an opportunity to explain how its reported information was accurate and/or to remedy any deficiencies in that information. Despite these opportunities, however, Chandan's responses contain a number of fundamental reporting deficiencies and errors. Therefore, we found that Chandan withheld information requested by Commerce, failed to provide information in the form and manner requested, and significantly impeded this proceeding.[22] In addition, we found that Chandan had the information within its possession and its failure to provide it demonstrated that Chandan did not participate to the best of its ability. We found that the level of inattentiveness and inaccuracy of Chandan's reporting throughout this review undermines the reliability of the company's responses as a whole and, in accordance with section 776(b) of the Act, warrants the application of an adverse interference in selecting from the facts available.[23]

a. Comparison Market Window Period Sales

The initial AD questionnaire requested that Chandan "report all sales of the foreign like product during the three months preceding the earliest month of U.S. sales, all months from the earliest to the latest month of U.S. sales, and the two months after the latest month of U.S. sales."[24] The sales during the three-month period prior to the POR and the two-month period after the POR are known as "window period" sales. Despite this explicit instruction, Chandan reported to Commerce only the comparison market sales that it made during the POR itself, *i.e.*, not for the window period.[25]

In a supplemental questionnaire, we again asked Chandan to report comparison market sales "for the two months after the latest month of U.S. sales," and to "include sales for three months preceding the earliest month of U.S. sales."[26] In response to these questions, Chandan provided the requested information.[27] However, in a subsequent supplemental questionnaire, we requested

[22] *See Preliminary Results* PDM at 6.
[23] *Id.* at 14-15.
[24] *See* Commerce's Letter, Antidumping Duty Questionnaire, dated March 13, 2020 (AD Questionnaire) at B-1. For example, if Chandan's first U.S. sale took place in March 2018, the questionnaire required it to report "window period" sales in the comparison market from December 2017 through February 2018; if its last U.S. sale occurred in September 2019, the questionnaire required it to report comparison market sales in October and November 2019.
[25] *See* Chandan's Letter, "Certain Stainless Steel Flanges from India (A-533-877), Section-B and Section-C Response," dated June 30, 2020 at Exhibit B-2.
[26] *See* Commerce's Letter, "Antidumping Duty Administrative Review of Stainless Steel Flanges from India: Section B and C Supplemental Questionnaire," dated August 19, 2020 (Commerce August 19, 2020 Supplemental) at 4-7.
[27] *See* Chandan's Letter, "Certain Stainless Steel Flanges from India (A-533-877), Section B & C Supplemental Questionnaire Response for Question 21," dated September 11, 2020 (Chandan September 11, 2020 SBCQR) at attached "CSLHM03" comparison market database.

substantial revisions to Chandan's comparison market sales database.[28] When it responded to this questionnaire, Chandan once again submitted a comparison market database without including sales covering the full five-month window period.[29]

Chandan's Comments

- In the *Preliminary Results*, Commerce does not say, much less demonstrate, that a significant number of U.S. sales are missing window period "matches."[30] Information on the record establishes that all U.S. sales have an appropriate comparison market match,[31] and, thus, Commerce does not need to resort to AFA.
- When Commerce crafts a consolidated comparison market database from Chandan's already-reported sales, it will find that the missing window period sales are not necessary to the analysis, *i.e.*, Chandan's U.S. sales can be compared with the existing comparison market sales on the record. Therefore, at most, Commerce should only use partial AFA with respect to U.S. sales with a nominal pipe size below 1.5 inches.[32]
- When Commerce clarified that products with nominal pipe sizes between 0.5 inches and below 1.5 inches were covered by the scope and requested for Chandan to revise the comparison market database to report those sales, its request did not also specify for Chandan to include window period sales. Therefore, Chandan only reported the POR sales of these products, because the concept of window period sales was still novel to it.[33]
- The Court of International Trade (CIT) has emphasized that Commerce has "an obligation to be precise in its requests to afford companies adequate notice to defend their interests."[34] Accordingly, the CIT has held that claims that respondents should have been familiar with Commerce's procedures and thus should have known are unavailing, and "Commerce cannot expect a respondent to be a mind-reader."[35] Moreover, where Commerce does not provide notice of a concern and opportunity to address that concern, it violates due process.[36]
- Finally, to address the issue of the missing window period sales, Chandan submitted the missing sales data following the *Preliminary Results*. Although, Commerce rejected this

[28] *See* Commerce's Letter, "Antidumping Duty Administrative Review of Stainless Steel Flanges from India: Supplemental Questionnaire," dated November 25, 2020 (Commerce November 25, 2020 Supplemental) at Attachment.

[29] *See* Chandan's Letter, "Certain Stainless Steel Flanges from India (A-533-877), Section B & C Supplemental Questionnaire Response to Questions 1 through 30," dated December 9, 2020 at attached "CSLAR1HM03" comparison market database.

[30] "Matching" in this context refers to determining which comparison market product is the most similar, in terms of physical characteristics, to the U.S. product.

[31] Chandan claims that Commerce can determine this by constructing a (mostly) complete comparison market database using the various databases submitted on the record, *i.e.*, CSLAR1HM03 and CSLHM03; to do this, Commerce would include the POR comparison market sales from CSLAR1HM03 and the window period comparison market sales for products with a nominal pipe size of 1.5 to 24 inches from CSLHM03.

[32] *See* Chandan Case Brief at 7-8 (citing *Diamond Sawblades Manufacturers' Coal v. United States*, 986 F.3d 1351 (Fed. Cir. 2021)). Chandan did not include sales of flanges with a nominal pipe size between 0.5 inches and below 1.5 inches in any of its submitted comparison market databases.

[33] *Id.* at 9.

[34] *Id.* (citing *Sigma Corp. v. United States*, 841 F. Supp. 1255, 1262,1264, 1267- 68 (CIT 1993) (*Sigma*)).

[35] *Id*.

[36] *Id.* at 9-10 (citing *Ta Chen Stainless Steel Pipe v. United States*, 23 CIT 804 (CIT 1999) (*Ta Chen*) ("It is Commerce, not the parties such as respondents, which bears the burden of asking the right questions and making them clear so that a respondent knows precisely what it should submit and address and not have to guess."))

submission, Commerce should accept the missing sales because Court of Appeals for the Federal Circuit (CAFC) precedent supports accepting this correction.[37]

Petitioner's Rebuttal

- The absence of window period sales from the record provides a sufficient basis for Commerce to apply AFA to Chandan. Despite twice directing Chandan to report all comparison market sales for the three months preceding the earliest month of U.S. sales, and two months after the latest month of U.S. sales, Chandan failed to report the full universe of these sales.[38]
- Chandan claims that Commerce should disregard the fact that window period sales are missing because none of its U.S. sales would have matched to such sales. However, Chandan fails to acknowledge the basis for Commerce's findings, the full scope of the issues identified, and the effect of these errors on Commerce's ability to calculate accurate dumping margins. This argument further fails because it is not possible to determine the extent to which the missing window period sales would have been used in the dumping calculation.[39]
- Chandan's speculation as to the effect of the missing sales is unavailing. The fact that it is possible to find a match for each U.S. sale based on the current record is irrelevant, as this does not – and cannot – show that different matches would not have occurred if all window period sales had been reported.[40]
- Chandan's claim that, at most, the missing sales could only have affected a limited number of sales relating to flanges with a nominal pipe size below 1.5 inches is likewise unavailing. The window period sales for such products are not on the record; therefore, it is not possible to identify the sales to which they may have matched in the margin calculation.[41]
- Chandan's cost database is similarly not usable, because it is missing costs for products with a nominal pipe size below 1.5 inches. Because the sales-below-cost test affects which comparison market sales can be used for comparison, Chandan's identification of which sales had identical or similar sales matches is unreliable.[42]

Commerce's Position: We continue to find that Chandan's failure to fully report its comparison market sales supports the application of AFA. We also find that, rejecting such information – which was filed following issuance of the *Preliminary Results* – was appropriate.

Chandan argues that the margin program would not have matched its U.S. sales to the missing window period sales. Specifically, Chandan claims that the databases on the record can be pieced together by consolidating POR comparison market sales from the database

[37] *Id.* at 10 (citing *Timken Corp. v. United States*, 434 F.3d 1345, 1353 (Fed. Cir. 2006) (*Timken*); *NTN Bearing Corp. v. United States*, 74 F.3d 1204 (Fed. Cir. 1995) (*NTN Bearing*); and *Fischer S.A. Comercio, Industria & Agricultura v. United States*, 471 Fed. Appx 892 (Fed. Cir. 2012) (*Fischer*) (finding that a respondent should be permitted to correct errors, even after a preliminary decision, to achieve the statutory mandate to calculate accurately the dumping margin)).
[38] *See* Petitioner Rebuttal Brief at 4.
[39] *Id.* at 4-5.
[40] *Id.* at 6.
[41] *Id.* at 7.
[42] *Id.* at 7-8.

"CSLAR1HM03" and the window period comparison market sales for products with a nominal pipe size of 1.5 to 24 inches from the database "CSLHM03." Even if we were to ignore the fact that Chandan did not provide the information in the form and manner requested, compiling data from the various sources still does not yield a usable database. First, the window period sales provided in CSLHM03 are not accurate; Commerce issued a supplemental questionnaire relating to that database in which we requested substantial revisions to Chandan's data as reported.[43] These adjustments would have impacted the sales reporting in the earlier database and, therefore, the data are not correct. In addition, because Chandan failed to report products with a nominal pipe size of 0.5 inches to less than 1.5 inches in CSLHM03, the window period sales are incomplete.[44] Therefore, consolidating these databases, as proposed by Chandan, would not provide a complete and accurate comparison market database. Accordingly, we continue to find that Chandan failed to report a complete comparison market sales database and the missing data are so essential to the analysis that they render the reported data unusable.

We disagree with Chandan that Commerce did not determine, or demonstrate, that a significant amount of U.S. sales are missing window period matches. In the *Preliminary Results*, we explained that, in administrative reviews, Commerce normally compares the export price (EP) or constructed export price (CEP) of an individual U.S. sale to an average normal value (NV) based on a contemporaneous month in the comparison market. The preferred month for NV is the month in which the particular U.S. sale was made.[45] If, during the preferred month, there are no sales in the foreign market of a product that is identical to the subject merchandise, Commerce may then base NV on identical or similar sales in the "window period," which extends from three months prior to the month of the U.S. sales in question until two months after the final month of U.S. sales.[46] In addition, we explained that making appropriate product comparisons is fundamental to Commerce's dumping analysis, and without them, Commerce cannot calculate an accurate overall dumping margin for a respondent company.[47] Therefore, the requested information is critical to Commerce's price-to-price margin calculation, as the best NV "match" for U.S. sales may be comparison market sales in the window period. Finally, because the comparison market database is missing the full five months of window period sales, we find it significant that U.S. sales in the impacted months are potentially missing the best comparison market match.

Chandan also argues that the missing comparison market sales could only have affected a limited number of flanges with a nominal pipe size below 1.5 inches, that this represents an insignificant amount of sales being affected by the missing window sales, and that, therefore, we should only use partial AFA for the impacted U.S. sales. However, again, these arguments rely on creating a consolidated comparison market database in the manner proposed by Chandan, which does not result in a complete or accurate database. Thus, while it may be possible that these sales can find an alternative match in the comparison market database, it is not necessarily the case that the

[43] *See* Commerce November 25, 2020 Supplemental at Attachment.
[44] *Id.*
[45] *See Preliminary Results* PDM at 7.
[46] *Id*.
[47] *See, e.g.*, *Certain Carbon and Alloy Steel Cut-to-Length Plate from Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 82 FR 16345 (April 4, 2017), and accompanying Issues and Decision Memorandum (IDM) at Comment 2 (stating "the ability to make appropriate product comparisons goes to the heart of {Commerce's} dumping methodology").

match would have been the best match available and yield accurate results. Also, it is the respondent's responsibility to build an accurate record; Chandan's approach improperly places the responsibility on Commerce to cobble together a partially-useable comparison market database by extrapolating data, based on assumption, from incomplete submissions. Thus, Chandan's proposal to piece together record data does not fill the gap in the record created by Chandan's failure to report the sales in question. Accordingly, we find in this instance that several months of missing data is a significant deficiency rather than a minor gap in the record that can be plugged using partial facts available.

Although the initial AD questionnaire and the August 19, 2020 supplemental questionnaire requested Chandan to report window period sales,[48] Chandan claims that the burden was on Commerce to again request window period sales in the November 25, 2020 supplemental questionnaire, at the same time Commerce requested substantial revisions to the comparison market database. In support of its claim, Chandan relies on *Ta Chen*. However, we find Chandan's reliance on *Ta Chen* misplaced. In that case, the CIT explained that:

> The court does not find, however, that Commerce's decision to apply facts available was made in accordance with law. Based on its affiliation finding, Commerce concluded that Ta Chen's sales to Sun should be classified as CEP sales, and applied an adverse facts available margin to these sales because Ta Chen did not provide information on Sun's U.S. sales. {Commerce}, however, never specifically requested this information. When Ta Chen learned that {Commerce} would classify its sales as CEP, the time for Ta Chen to place unsolicited information on the record had passed.
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> …
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> Commerce's preliminary determination that Ta Chen and Sun were affiliated, and its decision to apply an adverse margin because Ta Chen failed to provide information on Sun's U.S. sales, does not constitute notice pursuant to 19 U.S.C. § 1677m(d). Although it is not completely clear that {Commerce} would have rejected the information had Ta Chen tried to submit it after the preliminary results, Commerce's less than open approach to Ta Chen indicates rejection was likely. At oral argument, the government argued that Ta Chen was required to ask {Commerce} to ask Ta Chen to provide Sun's U.S. sales information. But it is Commerce, not the respondent, which bears the burden of asking questions.[49]

In the instant review, we asked Chandan to report window period sales on two separate occasions. These requests were not contingent upon other pending decisions, as in *Ta Chen*. Therefore, we satisfied our obligations, under section 782(d) of the Act,[50] when we issued Chandan a supplemental questionnaire specifically pointing out and requesting window period

[48] *See* AD Questionnaire; *see also* Commerce August 19, 2020 Supplemental.
[49] *See Ta Chen,* 23 CIT 804 at 12-13.
[50] Section 782(d) of the Act provides that, prior to applying facts available, Commerce shall promptly inform the party submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency.

sales. While Chandan claims that the concept of window period sales "was still novel" at the time of our supplemental questionnaire, we disagree. Commerce, as it does in all market economy administrative reviews, requested window period sales in the initial AD questionnaire which was issued eight months prior to the supplemental questionnaire. Moreover, the request for comparison market sales is not highly technical -- we simply requested that Chandan report comparison market sales "for the two months after the latest month of U.S. sales," and to "include sales for three months preceding the earliest month of U.S. sales."[51] In response to our first supplemental questionnaire, Chandan did in fact provide the requested information.[52] Therefore, Chandan was aware of its responsibility to provide these sales when we issued the November 25, 2020 supplemental questionnaire.[53] Moreover, we note that this later questionnaire requested that Chandan provide *additional* sales covered by the scope of the order.[54] Therefore, it is unclear why Chandan found it appropriate to remove the window period sales all together.

Similarly, Chandan's citation to *Sigma* is inapposite. Chandan asserts that, pursuant to the CIT's holding in that case, Commerce cannot expect a respondent to be a "mind reader."[55] However, Commerce had no such expectations. Rather, we expected that Chandan would provide a set of sales as explicitly requested in writing on two prior occasions. In addition, if Chandan was unclear or had any uncertainty about its responsibility to report the requested information, it could have expressed such questions in writing to Commerce, which it did not do.

Chandan also argues that Commerce should accept the window period sales data, which were filed following the *Preliminary Results*, because CAFC precedent supports accepting such a correction. However, Chandan's failure to respond is distinct from the party's request for correction in that case. In *NTN Bearing*, the CAFC explained that:

> Clerical errors are by their nature not errors in judgment but merely inadvertencies. While the parties must exercise care in their submissions, it is unreasonable to require perfection. ITA's refusal to consider NTN's request for correction of clerical errors in this case constituted an abuse of discretion.[56]

In the instant review, Chandan failed to provide several months of sales data. This represents a failure to provide a large portion of the data requested in this proceeding, and it also represents an error of a fundamentally different magnitude than the error in *NTN Bearing*, where the party's clerical error resulted in misclassification of the type and destination market for a small number of sales. Here, Chandan did not provide a substantial amount of information after multiple explicit requests from Commerce for such information. Therefore, Chandan's reliance on *NTN*

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[51] *See* Commerce August 19, 2020 Supplemental at 4-7.
[52] *See* Chandan September 11, 2020 SBCQR at attached "CSLHM03" comparison market database.
[53] Chandan asserts that Commerce clarified the scope in the November 25, 2020 supplemental questionnaire without specifying the reporting period. As an initial matter, Commerce simply restated the unambiguous range of dimensions covered by the scope, which was unchanged from the investigation, in which Chandan participated. Additionally, as noted above, by November 2020, Commerce had requested that Chandan report its window period sales on two occasions.
[54] *See generally* Commerce November 25, 2020 Supplemental.
[55] *See Sigma*, 841 F. Supp. at 1255.
[56] *See NTN Bearing*, 74 F.3d at 1209.

Bearing, and other CAFC/CIT precedent relating to corrections of data, is misplaced.[57] Moreover, we note that Chandan's interpretation would essentially require that Commerce permit any party to correct deficiencies of any magnitude, at any time during an administrative proceeding -- including after Commerce has already rendered a preliminary decision.

Finally, Chandan argues that, at most, Commerce should apply partial AFA. We disagree. Commerce's long-standing practice is to rely on a respondent's reported information when that respondent has only failed to provide a limited amount of information which, alone or in the aggregate, does not render the remaining information unusable.[58] However, as explained in this section and in the related sections below,[59] Chandan has not cooperated to the best of its ability and the current record information is incomplete and cannot be used without undue difficulties.

Accordingly, we find that necessary information is missing from the record, within the meaning of section 776(a)(1) of the Act, because Chandan failed to report complete sales information in its comparison market database, in addition to the other issues identified below. In addition, where Chandan did provide requested data, Chandan failed to report that data in the form or manner required, within the meaning of section 776(a)(2)(B) of the Act, despite the fact that Commerce requested this information on two separate occasions. Further, by excluding these data from its most recent comparison market database, Chandan has also impeded this proceeding, within the meaning of section 776(a)(2)(C) of the Act.

b. Control Number (CONNUM)[60] Cost Reporting

On July 6, 2020, Chandan provided a response to the cost section, *i.e.*, section D, of the AD questionnaire.[61] On September 2, 2020, and November 25, 2020, we issued Chandan supplemental questionnaires regarding its cost reporting.[62] Chandan responded to our requests for information on September 23, 2020, and December 11, 2020, respectively.[63]

[57] In *Timken*, "{t}he respondent misclassified the channel of distribution for 17 sales. In its case brief, following prelim and verification, the company provided corrective information. It was an abuse of discretion not to consider the information," and in *Fischer*, "{t}he respondent miscalculated the gross unit price by relying on an incorrect conversion factor. In its case brief, following prelim, the company provided corrective information. Commerce abused its discretion by not accepting the corrective information." Here, we asked Chandan to report window period sales on two separate occasions. Therefore, these cases are inapposite.
[58] *See, e.g.*, *Stainless Steel Bar from India: Final Results of Antidumping Duty Administrative Review; 2018-2019*, 85 FR 74985 (November 24, 2020), and accompanying IDM at Comment 2; and *Frontseating Service Valves from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 74 FR 10886 (March 13, 2009), and accompanying IDM at Comment 10.
[59] *See* Comment 1 sub-part b through d.
[60] A CONNUM is an identifier for a product, or a group of products, with a unique and specifically-defined set of physical characteristics.
[61] *See* Chandan's Letter, "Certain Stainless Steel Flanges from India (A-533-877), Re-submission of Section-D Response with Corrected Segment Cluster Information," dated July 6, 2020 (Chandan July 6, 2020 DQR).
[62] *See* Commerce's Letters, "Antidumping Duty Administrative Review of Stainless Steel Flanges from India: Section D Supplemental Questionnaire," dated September 2, 2020 (Commerce September 2, 2020 Supplemental); and Commerce November 25, 2020 Supplemental.
[63] *See* Chandan's Letters, "Certain Stainless Steel Flanges from India (A-533-877), Bracketing Final Version of Section D Supplemental Questionnaire Response," dated September 23, 2020 (Chandan September 23, 2020 SDQR); and "Certain Stainless Steel Flanges from India (A-533-877), Section B & C Supplemental Questionnaire Response to Questions 31 through 58," dated December 11, 2020 (Chandan December 11, 2020 SDQR).

In the *Preliminary Results*, we found that Chandan failed to accurately report costs at the CONNUM-specific level. Specifically, we noted discrepancies with the product drawings for the majority of products comprising CONNUM A and CONNUM B, *i.e.*, the CONNUMs with the highest volume of sales in each market. When we reviewed these product drawings, we found that the theoretical weights reported in most of them did not tie to the theoretical weights reported in Chandan's raw material cost allocation, *i.e.*, the figures contained in the product drawings do not match the figures reported in the cost database. Therefore, we found that, in developing its cost reporting methodology, Chandan did not follow the approach that it stated that it used to assign raw material costs, that is, that it purportedly relied on the theoretical weights as supported by the product drawings.[64] We also note that Chandan did not provide calculation worksheets for CONNUM C and CONNUM D, and provided incomplete weighted-average calculation worksheets for CONNUM A and CONNUM B.[65]

Following the *Preliminary Results*, Chandan attempted to submit untimely NFI, which it claimed was necessary to correct "clerical errors" in its prior questionnaire responses that it discovered when reviewing the *Preliminary Results*.[66] On March 24, 2021, we rejected Chandan's letters and provided Chandan an opportunity to refile the Second Letter after removing the untimely NFI,[67] which Chandan did.[68] On April 30, 2021, we rejected Chandan March 24 Letter and case brief as it contained additional untimely NFI.[69] On May 4, 2021, Chandan refiled its case brief and March 24, 2021, letter after removing the untimely NFI.[70]

Chandan's Comments

- Commerce's analysis improperly failed to consider product dimension tolerances when assessing whether Chandan had accurately reported its cost data. Chandan explained that "it got the product weights from the submitted product drawings based on 'references to {business proprietary information}… among other technical parameters. The 'other technical parameters (including dimensional tolerance)' in the product drawings affect weight, a key factor to determine the cost of raw materials."[71] However, Chandan was never given an opportunity to address any questions or concerns.
- Commerce found that the theoretical weights reported for most of the products did not tie to the theoretical weights reported in Chandan's raw material cost allocations. However, the analysis provided in Exhibit CB-8 of Chandan's case brief shows that Commerce erred in not considering the effect of dimensional tolerances for the majority of the products within CONNUMs A and B specified in product drawings.[72]

[64] *See Preliminary Results* PDM at 9.
[65] *Id.*; *see also* Chandan July 6, 2020 DQR at Exhibit D-24; and Chandan September 23, 2020 SDQR at Exhibit D-39.
[66] *See* First Letter; *see also* Second Letter.
[67] The First Letter consisted of material that, in its entirely, constituted NFI; therefore, we did not give Chandan an opportunity to refile that letter.
[68] *See* Chandan March 24 Letter.
[69] *See* April 30, 2021 Rejection Letter.
[70] *See* Chandan Case Brief; *see also* Chandan May 4, 2021 Letter.
[71] *See* Chandan Case Brief at 20-21.
[72] *Id.* at 21-22.

- Commerce also found that no drawings were provided for three products within CONNUMs A and B. However, Chandan provided these drawings.[73]
- In addition, certain products have identical drawings, but are made to different tolerances, thus having different theoretical weights. This fact indicates that the differences in the theoretical weights per the submitted drawings, and the theoretical weights per the submitted production worksheet, are due to product dimensional tolerances.[74]
- The reported total cost for subject flanges reconciles to Chandan's financial statements and is verifiable from source documents. Therefore, the revised submissions do not contain any inconsistences after the corrections presented in Chandan's December 11, 2020 supplemental response.[75]
- Commerce found that Chandan did not provide calculation worksheets for CONNUMs C and D, and provided incomplete weighted-average calculation worksheets for CONNUMs A and B. However, Chandan provided cost build-ups for all products produced in the POR. In addition, in Chandan's March 24, 2021 submission, Chandan provided the compilation of cost build-ups for CONNUMs A to D.[76]
- Commerce found that Chandan did not explain the cost buildup for the highest volume CONNUM sold in the comparison and U.S. markets. However, Chandan explained in detail its methodology to calculate raw material, labor, power, variable overheard, and fixed overhead costs in its initial section D questionnaire, and Chandan provided formula references in each exhibit.[77] Therefore, Chandan thought that the question that Commerce explicitly and specifically asked was answered fully. If Commerce seeks additional information, Chandan is prepared to respond.[78]
- Commerce's practice is to analyze the reported weighted-average CONNUM-specific costs for the purpose of the sales-below-cost test. Therefore, any cost comparison on a product-specific basis is inconsistent with Commerce's established methodology for the dumping margin calculation. In fact, a comparison of the CONNUM-specific cost points to the accuracy of the cost reporting methodology adopted by Chandan.[79]

Petitioner's Rebuttal

- Chandan claims that one can discern that its product weights were properly reported if dimensional tolerances are considered. However, the record does not contain information that demonstrates that the weights were "reported accurately within the dimensional tolerances" that were identified in the specification sheet. Therefore, there is no basis for Commerce to find that Chandan has reported its weights accurately.[80]
- While Chandan highlights that it previously referenced a reliance on "other technical parameters{,}" it did not explain in its questionnaire responses how, or even that, dimensional tolerances were implicated in its cost reporting. Therefore, this argument

[73] *Id.* at 22 and Exhibit CB-9.
[74] *Id.* at 23.
[75] *Id.* at 12-13.
[76] *Id.* at 13-14 (citing Chandan May 4, 2021 Letter at Exhibits CB-1, CB-2, and CB-4).
[77] *Id.* at 14-16 (citing Chandan July 6, 2020 DQR).
[78] *Id.* at 18-19.
[79] *Id.* at 25.
[80] *See* Petitioner Rebuttal Brief at 15-16.

appears to rely on NFI that was not properly submitted to Commerce and thus should be rejected.[81]

- In the initial questionnaire, Commerce directed Chandan to describe how it developed its reported costs and requested additional explanation and supporting documentation in two subsequent questionnaires. However, at no point did Chandan indicate how, or that, dimensional tolerances were used, or explain that the weights identified in the product drawings differed from the weights it used in its reporting.[82]
- Commerce provided Chandan with three opportunities to fully explain its reporting, and Chandan failed to do so. Chandan cannot now claim that its reporting was complete and accurate based on explanations it never provided to Commerce and that cannot be confirmed by the record.[83]
- With respect to Chandan's other cost reporting deficiencies, *i.e.*, its failure to explain the CONNUM cost build up, as requested by Commerce, Chandan points to the explanations provided in its original questionnaire response. Regardless of whether Chandan considered its initial response to be sufficient, Commerce clearly did not, as noted in two subsequent questionnaires. Thus, Chandan was obligated to provide additional information, which Chandan failed to do.[84]
- In the *Preliminary Results*, Commerce found that Chandan: failed to follow basic directions regarding how its data should be reported; failed to explain discrepancies in, and corrections to, its reporting; and stated that it made modifications to reported data when, in fact, it did not do so. Chandan's case brief fails to address these issues.[85]

Commerce's Position: We continue to find that Chandan failed to properly report costs at the CONNUM-specific level. As a result, we continue to find that Chandan's cost reporting deficiencies support the application of AFA.

At the outset, we emphasize that Commerce requires accurate and complete information pertaining to a respondent's cost of producing the merchandise under consideration because such information: (1) provides the basis for determining whether comparison market sales were made in the ordinary course of trade and can be used to calculate NV, pursuant to section 773(b)(1) of the Act; (2) is used to identify similar merchandise sold in the comparison market and to calculate an appropriate difference-in-merchandise adjustment, pursuant to section 773(a)(6)(C) of the Act; and (3) is used to calculate constructed value (CV), pursuant to section 773(e) of the Act. Commerce has explained that, for purposes of sales-below-cost analyses, a lack of accurate cost information renders a company's response so incomplete as to be unusable.[86] Additionally, the CIT has recognized that, because cost information is essential for multiple calculations, "cost information is a vital part of {Commerce's} dumping analysis."[87] Accordingly, Commerce examines and confirms not only that the aggregate pool of costs attributed to the merchandise under consideration is accurate and complete, but also that the costs of production are reasonably

[81] *Id.* at 16.
[82] *Id.* at 17.
[83] *Id.* at 17-18.
[84] *Id.* at 18.
[85] *Id.* at 19.
[86] *See Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023 (September 15, 2005), and accompanying IDM at Comment 1.
[87] *See Mukand, Ltd. v. United States*, Court No. 11-00401, Slip Op. 13-41 (CIT March 25, 2013) at 15.

and accurately allocated to individual CONNUMs. In addition, the CIT recognized that Commerce "'must ensure that {a respondent's} reported costs capture all of the costs incurred by the respondent in producing the subject merchandise' before it can appropriately use that respondent's cost allocation methodology."[88] Therefore, a respondent must provide the information and documentation necessary for Commerce to gain an understanding of a respondent's cost of production (COP) reporting methodology.[89]

Pursuant to section 773(b)(1) of the Act, Commerce compares the respondent's comparison market price to its COP to determine whether the foreign like product was sold at prices above or below the COP.[90] After conducting the cost test, Commerce compares the U.S. price to the comparison market prices that have passed the cost test. Because Chandan's reported per-unit cost data are inaccurate and unreliable, as explained below, we were unable to conduct an accurate cost test here. Therefore, we were unable to determine, with confidence, whether Chandan's comparison market sales were made within the ordinary course of trade.

In situations where a respondent's U.S. price cannot be compared to comparison market prices, *e.g.*, where the relevant comparison market sales are made outside the ordinary course of trade, Commerce may compare the U.S. price to CV, which is another basis for NV.[91] The CV information Chandan reported suffers from the same defects as the COP data it provided because most of the cost elements are the same for determining an accurate COP and an accurate CV. Therefore, Chandan's cost reporting failures have key implications for our margin analysis.

We do not agree with Chandan's characterizations of its responses, or with its explanations as to why the data are reliable. First, Chandan states that it did not improperly report its weights because "it got the product weights from the submitted product drawings based on 'references to {business proprietary information}… among other technical parameters" and these "'other technical parameters (including dimensional tolerance)' in the product drawings affect weight, a key factor to determine the cost of raw materials."[92] In support of its position, Chandan cites Exhibit CB-8 of its case brief. Exhibit CB-8, however, is replication of Attachment 1 of the BPI Addendum to the *Preliminary Results*[93] with two additional fields to report POR production quantity and remarks. The remarks field reports whether or not a product falls within dimensional tolerances. However, the exhibit does not contain information that demonstrates that the weights reported were "reported accurately within the dimensional tolerances" identified in the product drawings. Therefore, Exhibit CB-8 does not actually support Chandan's assertion.

Chandan also asserts that Commerce failed to give it an opportunity to address any concerns regarding its cost of raw material allocation, and it contends that it explained in detail its methodology to calculate its reported costs. This is incorrect. As explained in the *Preliminary Results*, because we found discrepancies in Chandan's reported direct material costs, we

[88] *See Sidenor Indus. SL v. United States*, 664 F. Supp. 2d 1349, 1356 (CIT 2009) (quoting *Myland Indus., Ltd. v. United States*, 31 CIT 1696, 1703 (2007)).
[89] *Id.*, 664 F. Supp. 2d at 1357.
[90] *See* section 773(b) of the Act.
[91] *See* section 773(a)(4) of the Act.
[92] *See* Chandan Case Brief at 20-21.
[93] *See* Memorandum, "Antidumping Duty Administrative Review of Stainless Steel Flanges from India: Business Proprietary Information (BPI) Addendum for Chandan Steel Limited," dated February 17, 2021 (BPI Addendum).

requested Chandan to provide a detailed explanation as to why the information provided in Exhibit D-24, *i.e.*, the cost calculation for the highest volume CONNUM sold in the comparison market (CONNUM A) and U.S. market (CONNUM B), was inconsistent with information provided in other parts of Chandan's questionnaire response.[94] We, specifically, highlighted the difference between certain raw martial costs contained in Exhibit D-24 and the raw material costs in Exhibit D-15. In response, Chandan did not provide any explanation of these discrepancies, and simply stated that "Chandan is resubmitting Exhibit D-24 as Exhibit D-39 to provide information consistent with that provided in other parts of Chandan's questionnaire response."[95] However, a comparison of Exhibits D-24 and D-39 indicates that Chandan did not make any adjustments, as these exhibits are identical.[96] Similarly, in response to other questions in the Commerce September 2, 2020 Supplemental, Chandan stated that "Exhibit D-15 {is} now revised to Exhibit D-27," and later stated, "Chandan is resubmitting Exhibit D-15 of Chandan's DQR as Exhibit D-28."[97] However, we note that neither of these exhibits are the revised Exhibit D-15, and that Chandan actually revised Exhibit D-15 to Exhibit D-32.[98] Although Chandan modified its raw material cost calculation, the initial discrepancies identified between Exhibits D-15 and D-24 continue to exist between Exhibits D-32 and D-39.

In its initial COP database, Chandan reported multiple costs for the same CONNUM, *e.g.*, if a CONNUM was comprised of 20 products, Chandan reported the same CONNUM with 20 different costs.[99] Therefore, we requested that Chandan revise the cost database "to report the weighted-average per-unit cost for each CONNUM," and to "provide a weighted-average calculation worksheet" for CONNUM A and CONNUM B reported in Exhibit D-24, as well as two additional CONNUMs (*i.e.*, CONNUM C and CONNUM D).[100] Chandan explained that it revised the cost database "to report the weighted-average per-unit cost for each CONNUM," and also stated that the weighted-average calculation worksheet for the four requested CONNUMs was "being provided in Exhibit D-39."[101] Chandan did revise its COP database to report a weighted-average per-unit cost for each CONNUM; however, Chandan did not provide weighted-average calculation worksheets for CONNUM C and CONNUM D, and provided incomplete weighted-average calculation worksheets for CONNUM A and CONNUM B. Specifically, Chandan showed the individual product cost per unit calculation for some of the products that make up the CONNUM, but it did not demonstrate how it calculated the CONNUM weighted-average cost; further, as noted below, there were discrepancies in the number of products comprising these CONNUMs. In fact, as explained above, Exhibits D-24 and D-39 are identical, and, therefore, Chandan failed to provide the additional information requested.[102]

Chandan also provided Exhibit D-23, identified as "Breakdown of COM for Subject Merchandise (SM) and Non-Subject Merchandise (NSM)," which includes each product's

[94] *See* Commerce September 2, 2020 Supplemental at 4.
[95] *See* Chandan September 23, 2020 SDQR at 19.
[96] *See* Chandan July 6, 2020 DQR at Exhibit D-24; and Chandan September 23, 2020 SDQR at Exhibit D-39.
[97] *See* Chandan September 23, 2020 SDQR at 5, 9, and Exhibits D-27 and D-28.
[98] *Id.* at Exhibit D-32.
[99] *See* Chandan July 6, 2020 DQR at CSLCOP01.
[100] *See* Commerce September 2, 2020 Supplemental at 4.
[101] *See* Chandan September 23, 2020 SDQR at 20.
[102] *See* Chandan July 6, 2020 DQR at Exhibit D-24; *see also* Chandan September 23, 2020 SDQR at Exhibit D-39.

allocated cost, as well as the CONNUM to which that product is assigned.[103] A comparison between Exhibit D-23 and Exhibit D-39 shows discrepancies in the number of products comprising CONNUM A and CONNUM B, as identified in Exhibit D-39.[104] Therefore, we asked Chandan to explain these discrepancies.[105] Chandan failed to provide an explanation, and only stated that it resubmitted the cost calculation in Exhibit D-56.[106] However, Exhibit D-56 appears to contain the same partial details for CONNUM A and CONNUM B as it did in its prior iteration (as Exhibit D-24 and Exhibit D-39).[107] We also repeated our request for weighted-average calculation worksheets for CONNUM C and CONNUM D.[108] Chandan stated that it was providing "weighted average CONNUM calculation sheet{s}" in Exhibit D-55 and Exhibit D-56.[109] However, this representation was not accurate. Exhibit D-55 contained details relating to Chandan's "Revised G&A and Finance cost," and Exhibit D-56, as explained above, only had partial details relating to *CONNUM A and CONNUM B*, thereby failing to provide information on the weighted-average calculations for CONNUM C and CONNUM D.[110]

Finally, we requested that Chandan "provide a detailed description of how you compiled the CONNUM-specific worksheet in Exhibit D-39," and to "provide all source documentation (*i.e.*, documentation generated in the normal course of business) relied on to compile the worksheet. If referencing other exhibits, please identify what specific details you used in {Exhibit D-39} with page numbers and/or spreadsheet column/row, *i.e.*, cell references."[111] Chandan responded:

> Chandan has compiled the Exhibit D-39 based on the ***product drawings*** and the cycle times that are defined for production of these products. ***These drawings include the details of input weight, forged weight and output weight among other technical parameters required for allocation of cost. All attributes for all products that are produced by Chandan have been populated based on these drawings*** to ensure accuracy in reporting CONNUM characteristics and deciding cost parameters. For example, the raw material cost is prepared by using the steel grade mentioned on the product drawing with the input weight of raw materials and the output weight of the product.[112]

Therefore, again, the record does not support Chandan's assertion that we failed to give Chandan an opportunity to address any concerns regarding its cost of raw material allocation. In fact, we directed Chandan to describe how it developed its reported costs and requested additional explanation and supporting documentation in two subsequent questionnaire responses. However, at no point did Chandan indicate that dimensional tolerances were used, or that the weights

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[103] *Id.* at Exhibit D-23.
[104] *Id.* at Exhibit D-23; *see also* Chandan September 23, 2020 SDQR at Exhibit D-39.
[105] On October 9, 2020, Chandan requested Commerce to allow it to make certain corrections to its COP database. Commerce issued a supplemental questionnaire, at Chandan's request, to allow it to make corrections. *See* Commerce November 25, 2020 Supplemental at 7.
[106] *See* Chandan December 11, 2020 SDQR at 12.
[107] *Id.* at Exhibit D-56.
[108] *See* Commerce November 25, 2020 Supplemental at 12.
[109] *See* Chandan December 11, 2020 SDQR at 13.
[110] *Id.* at Exhibits D-55 and D-56.
[111] *See* Commerce November 25, 2020 Supplemental at 9.
[112] *See* Chandan December 11, 2020 SDQR at 11 (*emphasis added*).

identified in the product drawings differed from the weights it used in its reporting. Rather, it expressly stated that the figures contained in the drawings were the basis for its allocation. Thus, Chandan failed to provide an accurate explanation and supporting documentation to substantiate its cost of raw material allocation.

Chandan also argues that it provided cost build-ups for all products produced in the POR, including the compilation of cost build-ups for CONNUMs A through D, in its March 24, 2021, submission. Chandan also asserts that certain products have identical drawings, but are made to different tolerances, and thus have different theoretical weights. However, Chandan provided the cost build-ups late in the proceeding, *i.e.*, following issuance of the preliminary results, and after Commerce issued two prior requests for such buildups.[113] In fact, through its belated submission of this information, Chandan has shown that it understood Commerce's request but nonetheless failed to provide cost build-ups in the manner requested after two separate requests; importantly, the preliminary application of AFA was necessary to get Chandan to comply with our request for information. Chandan does not explain why it did not provide the cost build-ups when requested. We note that cost build-ups are a set of worksheets and supporting documents that demonstrate how source information from the accounting records was compiled and allocated between products, which is critical in demonstrating that reported costs fairly reflect COP.

In addition, as explained above, we explicitly requested that Chandan "provide a detailed description of how you compiled the CONNUM-specific worksheet," and to "provide all source documentation… relied on to compile the worksheet. If referencing other exhibits, please identify what specific details you used in {Exhibit D-39} with page numbers and/or spreadsheet column/row, *i.e.*, cell references."[114] First, Chandan's acknowledgement that products could have identical drawings, but are made to different tolerances, undermines Chandan's argument that we erred in not accounting for dimensional tolerances. In fact, it is an admission that having the drawing, alone, is not enough to determine the reported theoretical weights. Second, Chandan's explanation that the phrase "among other technical parameters *(including* dimensional tolerances)" indicates that there are other parameters to consider, relating to weight and assignment of raw materials, which Chandan has not provided or explained. Third, our supplemental request for information was Chandan's opportunity to explain that certain products have identical drawings, but are made to different tolerances, and thus have different theoretical weights. However, Chandan failed to provide a detailed explanation and supporting documentation as requested and, therefore, the record does not support Chandan's assertion that products whose production was based on a technical drawing could have different-than-reported theoretical weights due to tolerances and/or "other technical parameters."

Similarly, when Commerce asked Chandan to "provide a detailed description of how you compiled the CONNUM-specific worksheet in Exhibit D-39," and to "identify what specific details you used in {Exhibit D-39} with page numbers and/or spreadsheet column/row, *i.e.*, cell references," Chandan's explanation did not have these details. Consequently, Chandan repeatedly failed to put forth its maximum effort to provide Commerce with full and complete answers to our request for information. Finally, Chandan's representation that "the raw material

[113] The cost build-ups were based on information available on the record. Therefore, we did not reject them.
[114] *See* Commerce November 25, 2020 Supplemental at 9.

cost is prepared by using the steel grade mentioned on the product drawing with the input weight of raw materials and the output weight of the product," was an unambiguous statement that Chandan relied on the product drawing for input and output weights. Therefore, although Chandan states that it was not afforded an opportunity to clarify its statements, Commerce was under no obligation to seek further clarification as to the basis for product weight – because Chandan explicitly stated the purported basis in its questionnaire response – and Chandan had multiple opportunities to provide the requested information.

Finally, Chandan argues that any cost comparison on a product-specific basis is inconsistent with Commerce's established methodology. However, the purpose of obtaining drawings for products was not so that Commerce could conduct a product-specific cost test, as Chandan appears to suggest. It was to ensure that the products and the assigned costs that comprise the eventual CONNUM were correct and reasonable. Chandan does not maintain product-specific costs in its normal books and records, and, therefore, it used an allocation methodology to determine the per-unit costs for each reported CONNUM. These allocations are heavily reliant on weight. For example, Chandan explained that "Chandan determined the reported per-unit cost on the basis of the actual costs recorded in its financial accounting system using absorption cost method" and relied on the weight of a product to allocate raw material costs.[115] Therefore, while Chandan's reported total costs may reconcile to the costs on its financial statements, it does not make these costs accurate at the CONNUM-specific level (which is the unit relied upon for the sales-below-cost analysis), as described above.[116]

Accordingly, because Chandan failed to provide accurate and consistent responses to specific questions, necessary information is not available on the record, and, thus, we continue to find that facts available are warranted in accordance with section 776(a)(1) of the Act. Further, as described above, Chandan withheld information that was requested by Commerce, and it provided inaccurate data in this review, thereby substantially impeding this proceeding. Thus, we continue to find that facts available are also warranted in accordance with sections 776(a)(2)(A) and (C) of the Act.

c. Additional Reporting Issues

In the *Preliminary Results*, we found that Chandan's response contained additional deficiencies relating to its reporting of gross unit price, quantity discounts, other discounts, and duty refunds.[117]

Chandan's Comments

- In the *Preliminary Results*, Commerce found that Chandan reported its gross unit price net of other discounts, and it explained that this contributed to its AFA decision. However, Commerce can easily calculate the gross price before discount by adding the gross unit price and other discounts reported in the comparison market database.[118]

[115] *See* Chandan July 6, 2020 DQR at 35.
[116] *See Hung Vuong Corporation, et al. v. United States*, 483 F.Supp.3d 1321 (CIT 2020) (*Hung Vuong*); and *Xi'an Metals & Minerals Import & Export Co., Ltd. v. United States*, Slip Op. 21-71 (CIT 2021) (*Xi'an Metals*).
[117] *See Preliminary Results* PDM at 10-13.
[118] *See* Chandan Case Brief at 11.

- In the *Preliminary Results*, Commerce found that the reported quantity discounts as a percentage of the gross unit price did not conform to the narrative. Commerce never claims, much less demonstrates, that this error makes a significant difference in the margin calculation. However, Commerce could disallow an adjustment for quantity discounts if it is concerned about Chandan's discount reporting.[119]
- In the *Preliminary Results*, Commerce found that Chandan had not updated its U.S. Customs Duty Refund field in the U.S. sales database. Commerce should simply disregard this field and, thus, an adverse inference is not warranted.[120]
- Chandan erroneously included AD/countervailing duty (CVD) cash deposits in reporting customs duties. Commerce should remove these deposits by applying the effective rate of AD/CVD cash deposit that Chandan paid to the entered value reported in Chandan's U.S. sales database.[121]

Petitioner's Rebuttal

- Chandan faults Commerce for relying on its incorrect gross unit price reporting in the AFA analysis because "gross unit price before discount can be calculated by adding Field 17 and 19.3 that is in the record . . . ."[122] However, in making this argument (*i.e.*, that the information is already on the record and therefore usable), Chandan misunderstands Commerce's finding. Chandan ignores the fact that Commerce requested that Chandan correct its reporting of gross unit price on multiple occasions, and, despite this, Chandan failed to report gross unit price in the form and manner requested. Chandan has not demonstrated why this observation cannot serve as a contributing factor for the application of AFA.[123]
- In a supplemental questionnaire, Commerce requested that Chandan provide documentation to support its reporting of its gross unit price, however, Chandan failed to do so and makes no attempt to address this failure in its case brief.[124] In its questionnaire responses, Chandan did not state that the gross unit price could be calculated based on the information it had submitted, but instead indicated that the data reported for gross unit price was in fact the gross unit price when it was not. Therefore, the misleading nature of Chandan's responses provide a further basis to find Chandan's data unreliable and support the application of AFA.[125]
- Similarly, Chandan failed to make any revisions to its database regarding quantity discounts, despite Commerce's repeated requests. Therefore, Commerce found that Chandan's quantity discounts were unreliable and were not reported in the manner requested. Although Chandan claims that Commerce failed to identify any significant error, Chandan's argument is based on its provision of a revised database following the preliminary results.[126] Chandan failed to report its quantity discounts as directed, despite telling Commerce that it had made the requested modifications. Thus, Chandan not only

[119] *Id.* at 11-12.
[120] *Id.* at 25-26.
[121] *Id.* at 26 and Exhibits CB-5 and CB-6.
[122] *See* Petitioner Rebuttal at 10 (citing Chandan's Case Brief at 11).
[123] *Id.*
[124] *Id.* at 10-11.
[125] *Id.* at 11-12.
[126] *Id.* at 13.

failed to properly report this information, but also affirmatively told Commerce the correct data had been reported when, in fact, it had not.[127]

- In the *Preliminary Results*, Commerce found that the duty refund data reported by Chandan was unreliable and not reported in the manner requested. In response, Chandan argues that this field should simply be disregarded and cannot provide a basis for applying AFA. However, Chandan's argument fails to address Commerce's concerns regarding reliability and further highlights why the application of AFA is necessary.[128] Chandan affirmatively stated that it had made the requested updates, to the duty refund data, despite the fact that it did not make any changes. Such actions indisputably support the application of AFA.[129]

Commerce's Position: We continue to find that Chandan's response contained additional deficiencies that Chandan failed to remedy. Thus, we find that, as described in the *Preliminary Results*, Chandan failed to provide necessary information on a timely basis and in the form and manner requested, and it provided misleading and inaccurate information, significantly impeding this proceeding.

Chandan's arguments regarding its additional reporting issues, in essence, are observations that Commerce could correct Chandan's reporting. For instance, Chandan explains that gross unit price before discounts can be calculated by adding gross unit price and other discounts, while it asserts that Commerce could simply disregard Chandan's comparison market quantity discounts and U.S. sales duty refunds.[130] We agree that such deficiencies could be addressed by Commerce; and we agree that, such reporting deficiencies, taken individually, would not warrant application of total AFA. However, in this case, we disagree that it would be appropriate to examine each deficiency in isolation. Rather, we have identified a number of significant issues that, taken together, render Chandan's data unusable. We find it significant that Chandan's data contained a number of deficiencies – and that Chandan, in several instances explicitly stated that the deficiencies had been addressed when, in fact, they had not.

Here, as noted in the positions to Comments 1(a)-(b), above, necessary information is missing from the record, within the meaning of section 776(a)(1) of the Act because Chandan failed to report complete sales information in its comparison market and U.S. sales databases. Where Chandan did provide requested data, Chandan often failed to report that data in the form or manner required, within the meaning of section 776(a)(2)(B) of the Act, despite the fact that Commerce requested this information on two separate occasions. Further, by excluding these data and/or providing misleading or inaccurate responses to Commerce's questions, Chandan has also impeded this proceeding, within the meaning of section 776(a)(2)(C) of the Act.

In addition, as explained below and in the *Preliminary Results*, we find it significant that Chandan – a large exporter, with prior experience in Commerce proceedings – provided

[127] *Id.* at 14.
[128] *Id.* at 19-20.
[129] *Id.* at 20.
[130] Chandan also acknowledges that it erroneously included AD/CVD cash deposits in reporting customs duties, and it argues that Commerce should remove them. However, because we continue to apply total AFA, this argument is moot.

incomplete and unreliable information,[131] notwithstanding the fact that it was given multiple opportunities to correct its data and generous extensions of time to do so.[132] In light of these considerations, the record demonstrates that Chandan did not cooperate to the best of its ability in this review.

d. Use of Adverse Inference

In the *Preliminary Results*, we determined that the various reporting deficiencies identified above, together with the multiple opportunities to report and/or correct the information, demonstrate that Chandan failed to cooperate to the best of its ability in this review. Accordingly, we applied an adverse inference in selecting from the facts available.[133]

Chandan's Comments

- In *Jindal Poly*, the CIT explained that, "if Commerce determined that {respondent's} questionnaire response was deficient in some regard, or that Commerce needed clarification of the response regarding the adjustments, the agency should have issued a supplemental questionnaire."[134]
- The CAFC has explained that, when it believes there is a discrepancy in submitted documents, Commerce must first give the respondent an opportunity to offer explanation and, if the item is adequately corrected/explained, then AFA would not be warranted.[135]
- Sections 776(a)(2)(A) and (C) of the Act do not apply to Chandan in this case, because Chandan has been fully cooperative in this review. The detailed submissions of Chandan with respect to its COP, and the submission of all source documents as requested by Commerce, indicates that Chandan did not willfully withhold any information or intend to impede Commerce's review.[136]
- Chandan provided revised cost databases and accompanying files in its December 11, 2020 SDQR and its March 24, 2021 submission, which compile and assimilate all data on the record and enables an accurate calculation of the dumping margin. This continuous co-operation by Chandan can in no way be considered to be withholding information that was requested by Commerce, or providing inaccurate data in this review, thereby substantially impeding this proceeding.[137]
- Chandan has acted to the best of its ability during this review, despite being affected by the COVID-19 pandemic, which led to restricted staff, repeated state and/or national

[131] Following the issuance of the *Preliminary Results,* Commerce rejected (1) the March 24, 2021 Letter filed by Chandan, because the letter contained additional untimely NFI, and (2) Chandan's case brief, because it contained revised information regarding its quantity discounts, new information regarding its duty refunds, or references and argument related to such newly submitted data. Therefore, Chandan's unsolicited attempts to revise its data are additional indicators of the unreliably and inaccuracy of the data on record in its current form.
[132] We granted extensions for responding to questionnaires to Chandan on April 15, 2020, May 11, 2020, May 14, 2020, June 26, 2020, August 26, 2020, September 2, 2020, September 9, 2020, September 16, 2020, and December 3, 2020.
[133] *See Preliminary Results* PDM at 13-15.
[134] *See* Chandan Case Brief at 19 (citing *Jindal Poly Films v. United States*, 365 F. Supp. 3d 1379 (CIT 2019) (*Jindal Poly*)).
[135] *Id.* at 20 (citing *Micron Technology v. Samsung Electronics Co., Ltd. and Samsung Semiconductor, Inc.*, 117 F.3d 1386, 1393 (Fed. Cir. 1997) (*Micron*)).
[136] *Id.* at 24.
[137] *Id.*

lockdowns, and multiple members of the team suffering from COVID-19. The detailed submissions of Chandan with respect to its COP (where Chandan provided the cost build-ups for all products), and the submission of all source documents as requested by Commerce, indicates that Chandan did not willfully withhold any information or intended to impede the review.[138]

- Commerce is only authorized to invoke "facts otherwise available" when "necessary information is not available on the record," or when a party: (1) withholds requested information; (2) fails to provide information by established deadlines or in the form or manner requested; (3) significantly impedes the review; or (4) provides information that cannot be verified. However, none of these conditions exist here and, therefore, use of fact available is not warranted.[139]
- Even if the use of facts available is warranted, that alone does not support using AFA. Commerce must make a separate and additional finding that a party failed to cooperate by not acting to the best if its ability to comply with a request for information.[140]
- Commerce must analyze the allegedly deficient response in light of "the respondent's overall conduct, the importance of the information, the particular time pressures of the investigation, and any other information that bears on the issue of whether the deficiency was an excusable inadvertence or a demonstration of disregard for its responsibilities" in the proceeding.[141]
- Even where Commerce properly finds that a respondent failed to act to the best of its ability and that, therefore, an adverse inference can be drawn, Commerce has a continuing obligation to balance the statutory objective to calculate an accurate dumping margin with the goal of inducing compliance. Commerce's discretion is not unbounded, and it must consider whether an adverse rate creates an overly punitive result.[142]
- Chandan cooperated fully, answering all requests for information. Chandan responded, in full, to multiple supplemental questionnaires and at all times tried its best to answer Commerce's explicit, specific questions. There is no evidence on the record to support a finding that Chandan concealed data responsive to Commerce's information requests.[143]

Petitioner's Rebuttal

- Commerce provided Chandan with multiple opportunities to submit clear, complete, and accurate information in the form and manner requested. However, Chandan repeatedly failed to do so with respect to numerous aspects of its reporting.[144]

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[138] *Id.* at 27.
[139] *Id.* at 28 (citing section 776(a)(2) of the Act; and *Gerber Food (Yunnan) Co., Ltd. v. United States*, 387 F.Supp.2d 1270, 1280 (CIT 2005)).
[140] *Id.* at 28 (citing *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1381 (Fed. Cir. 2003) (*Nippon Steel*); and *Ferro Union, Inc. v. United States*, 44 F. Supp. 2d 1310, 1329 (CIT 1999) (*Ferro Union*)).
[141] *Id*. at 28-29 (citing *Nippon Steel*, 337 F.3d at 1378-79; and *Mannesmanrohen-Werke AG v. United States*, 77 F. Supp. 2d 1302, 1314 (CIT 1999) (*Mannesmanrohen-Werke AG*)).
[142] *Id.* at 29 (citing *F.lli De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000) (*F.lli De Cecco*); *Chia Far Indus. Factory Co., Ltd. v. United States*, 343 F. Supp. 2d 1344, 1366 (CIT 2004); *Essar Steel Ltd. v. United States*, 678 F.3d 1268, 1276 (Fed. Cir. 2012); *Diamond Sawblades Mfrs. Coal., v. United States*, Slip Op. 18-146 at 2 (CIT 2018).
[143] *Id.* (citing *Papierfabrik August Koehler SE v. United States*, 7 F. Supp. 3d 1304 (CIT 2014).
[144] *See* Petitioner Rebuttal Brief at 3.

- Chandan's inability or unwillingness to provide all the information requested by Commerce -- including the requisite explanations of, and supporting documentation for, its reporting -- and its failure to submit information in the form and manner requested, demonstrates that Chandan has not cooperated to the best of its ability.[145]
- In addressing individual errors identified by Commerce, Chandan fails to recognize the underlying issues in the information provided and does not demonstrate that these errors are harmless.[146]
- In arguing that the necessary information is available, notwithstanding the issues identified by Commerce, Chandan does not acknowledge the scope and scale of its failures; nor does it recognize how its inability to provide complete and accurate responses has rendered all of its responses unusable.[147]
- Chandan's claim that it was apparently unclear that Commerce wanted Chandan to continue to report the window period sales – despite the fact that Commerce's standard practice and two prior questionnaires made clear that such sales were required – only serves to highlight the extent to which Commerce cannot have faith the Chandan has properly reported the full universe of data.[148]
- The cases relied on by Chandan do not require that Commerce accept new information to fill gaps in the record that have been created by a respondent's failure to provide information that Commerce requested on multiple occasions during the course of the proceeding. Nor do these cases require Commerce to accept information proffered well after its absence was made known, and only after AFA was applied. As a result, Commerce should not permit Chandan to submit the missing window period sales.[149] In the context of Chandan's cost reporting, Commerce noted numerous instances in which Chandan stated that it made revisions to its data that it did not in fact make and also failed to provide explanations and support for changes despite explicit instructions to do so. Chandan committed these same errors in the context of its sales reporting, *e.g.*, in failing to revise gross unit price and discounts reporting despite its assertions to the contrary.
- The issues identified in the *Preliminary Results* and addressed in Chandan's case brief do not encompass all instances in which Chandan failed to provide the information requested and/or provide the information in the form and manner requested.[150]
- Chandan makes various claims in its case brief that, to the extent Commerce believed that information was missing from the record, "per established law, Commerce should issue a supplemental questionnaire to get anything {more} it might feel it needs at this point…"[151] However, Commerce was not required to provide Chandan with unlimited attempts to provide complete and correct data.[152]

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[145] *Id.* at 3-4.
[146] *Id.* at 4.
[147] *Id.*
[148] *Id.* at 8-9.
[149] *Id.* at 9.
[150] *Id.* at 21-26 (citing Petitioner's Letter, "Stainless Steel Flanges from India: Petitioner's Pre-Preliminary Determination Comments," dated January 26, 2021).
[151] *Id.* at 26 (citing Chandan Case Brief at 6).
[152] *Id.* at 26-27 (citing *Maverick Tube Corp. v. United States*, 857 F.3d 1353, 1361 (Fed. Cir. 2017) (rejecting an argument that Commerce was required to provide an opportunity to address a deficiency in a supplemental response where the respondent "had already failed to provide the information requested in Commerce's original

- Chandan argues that the application of an adverse inference was not appropriate because it "cooperated fully, answering all requests for information." In support of this claim, Chandan highlights the responses it did provide and suggests that the standard for applying AFA "implies the respondent's unwillingness to comply or reckless disregard of compliance standards."[153] However, these arguments ignore the record as a whole and misstate the standard for applying AFA.
- The application of AFA does not requires total non-participation or intentional conduct. The CAFC has explicitly stated that "while intentional conduct, such as deliberate concealment or inaccurate reporting, surely evinces a failure to cooperate, the statute does not contain an intent element."[154]
- Chandan's failure to comply with Commerce's clear instructions, despite multiple opportunities to do so, and to provide Commerce with complete and accurate responses has resulted in information missing from the record as a direct result of Chandan's noncooperation. Therefore, Commerce cannot consider Chandan's reporting as a whole to be complete or reliable; nor can it consider Chandan to have done the maximum it is able to do in responding.[155]
- Chandan's actions in this review rise to the level of intentional, or at least "reckless," conduct. For example, there were numerous instances where Chandan affirmatively told Commerce that it made modifications to its database when it did not do so. Consequently, there is little question that Chandan did not cooperate to the best of its ability in this proceeding and that, due its inability or unwillingness to do so, the data it provided cannot be considered complete, accurate, or usable. As such, the application of total AFA is necessary for the final results, and Chandan's arguments to the contrary must be rejected.[156]

Commerce's Position: For these final results, we continue to find that Chandan withheld requested information, failed to provide information in the form and manner requested, and significantly impeded this proceeding. Specifically, Chandan: withheld certain of its sales during the "window" period, despite multiple requests from Commerce and also failed to correct the data reported for the remainder of those sales; failed to provide complete and accurate CONNUM-specific costs; failed to provide certain supporting documentation and worksheets explicitly requested regarding its CONNUM cost build-ups; and failed to correct and/or support its reported gross unit price and its reporting of quantity and "other" discounts and duty refunds.[157] Pursuant to section 776(b) of the Act we also continue to find that Chandan has failed to cooperate to the best of its ability, and that adverse inferences are warranted. Indeed, we find that the deficiencies in Chandan's sales and cost data are so fundamental and pervasive that it is appropriate to base Chandan's final dumping rate on total AFA.

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questionnaire, and the supplemental questionnaire notified {the respondent} of that defect"); and *NSK Ltd. v. United States*, 481 F.3d 1355, 1360 n.1 (Fed. Cir. 2007) (noting that Commerce "satisfied its obligations under section 1677m(d) {of the Act} when it issued a supplemental questionnaire specifically pointing out and requesting clarification of NTN's deficient responses").

[153] *Id.* at 28.

[154] *Id.* (citing *Nippon Steel*, 337 F.3d at 1383).

[155] *Id.* at 29.

[156] *Id.* at 29-30.

[157] *See* Comment 1 at subsection a through c.

First, Commerce repeatedly requested that Chandan report its window sales.[158] This information was in Chandan's possession, and Chandan's failure to correct the deficiencies in that data and to report the revised sales information in its ultimate comparison market database indicates that Chandan did not act to the best of its ability to comply with our requests for information.[159] Second, Chandan failed to provide complete and accurate CONNUM-specific costs. Again, Chandan had complete and accurate information in its possession, and its failure to provide that information to Commerce – whether through inattentiveness, carelessness, or complete disregard for Commerce's requests for information – rendered its entire cost response unusable. Pervasive deficiencies remain, despite Commerce's identification of errors associated with Chandan's assignment of CONNUM costs in each round of supplemental questionnaires. Because Chandan reported costs for numerous products that do not match the underlying documentation, which Chandan itself identified as the basis of its reporting, and Chandan failed to explain these discrepancies despite multiple opportunities, we find that Chandan failed to act to the best of its ability in this review. Third, despite explicit requests from Commerce, Chandan failed to: correct its reported gross unit price; revise/support its reporting of quantity and "other" discounts; and revise/support its reporting of duty refunds; it also provided misleading and inaccurate information. Chandan also had the necessary information within its possession, and its failure to provide it is yet another example of Chandan's failure to act to the best of its ability here. In several instances, Chandan explicitly stated that it made corrections to its reporting, despite the fact that the data in question remained unchanged. This does not reflect the behavior of a party who is cooperating to the best of its ability. Therefore, an adverse inference is warranted (*i.e.*, the application of total AFA), pursuant to section 776(b) of the Act. Accordingly, for the final results, we find no basis to alter our application of total AFA to Chandan.

Chandan argues that it has cooperated to the best of its ability throughout this case, citing the fact that it has responded to all questionnaires issued in this proceeding. Based on the record before us, we disagree. As the CAFC explained in *Nippon Steel*:

> Compliance with the 'best of the ability' standard is determined by assessing whether respondent has put forth its maximum effort to provide Commerce with *full and complete answers to all inquiries* in an investigation. While the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.[160]

The CAFC goes further, noting that section 776(b) of the Act permits Commerce to "use an inference that is adverse to the interests of {a respondent} in selecting from among the facts otherwise available," if Commerce makes the "separate determination that the respondent 'has failed to cooperate by not acting to the best of its ability to comply.' The focus of subsection (b) is respondent's *failure to cooperate to the best of its ability*…."[161] Providing nominal responses (that in numerous instances are incomplete and/or incorrect) to all of the questionnaires issued by

[158] *See Preliminary Results* PDM at 14.
[159] *Id.*
[160] *See Nippon Steel*, 337 F.3d at 1382 (emphasis added).
[161] *Id*. (emphasis in original).

Commerce does not amount to full and complete answers to all inquiries; not does it reflect cooperation or the best of a party's ability.

We find that Chandan did not put forth the "maximum effort" required of it. In determining that these failures require application of an adverse inference, the record contains numerous indications that Chandan's reporting was inattentive and unreliable throughout this segment of the proceeding. For instance, in its initial comparison market sales and cost databases, Chandan omitted all sales of, and costs for, flanges below a certain diameter measurement. However, these flanges unequivocally fall within the description of products covered by the scope of the *Order*.[162] Similarly, Chandan's reporting contained multiple inconsistencies in the assignment of products to particular CONNUMs.[163] Accurate aggregation of product-level costs into CONNUM-level costs is critical because Commerce's comparison market and margin analyses are performed on a CONNUM basis.[164] Mistakes of this magnitude and the resulting reporting failures illustrate the pervasiveness of Chandan's inattentiveness and/or carelessness.

Commerce required substantial revisions to Chandan's questionnaire responses throughout this review. In each supplemental questionnaire, Commerce consistently asked Chandan to provide an explanation for any changes made in response to Commerce's instructions, and to provide supporting documentation for the changes. Despite these explicit requests, Chandan often simply stated that it was updating its reporting without providing the accompanying explanation and/or documentation. Such responses constitute a refusal to provide information in the form and manner requested, and because Chandan was able to provide that information, the responses also show that Chandan failed to cooperate to the best of its ability.[165] As noted above and in the *Preliminary Results*, in some cases Chandan represented that it made corrections to its reporting, despite the fact that the data in question remained unchanged.[166]

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[162] Although Chandan subsequently corrected this omission in response to a Commerce supplemental questionnaire, it again omitted the sales when responding to a later request for information. Both errors highlight Chandan's general pattern of inattentiveness and/or carelessness in responding to our requests for information. Additionally, Chandan's failure to submit fundamental data early in the proceeding – such as through this omission of a meaningful portion of subject sales – limited the time available for Commerce to examine such reporting for accuracy and to issue supplemental questionnaires addressing any deficiencies.

[163] *See* BPI Addendum at Note 4.

[164] As noted above, Commerce conducts the sales-below-cost test on a CONNMUM-specific basis, thereby determining which sales may be used to determine NV, and it also determines its difference-in-merchandise adjustments using CONNUM-specific cost data, thereby determining which comparison market products can be reasonably compared to individual U.S. products.

[165] *See Preliminary Results* PDM at 12-13 ("Chandan reported a field relating to 'U.S. customs duty refund' (*i.e.*, USDUTYREFU) …. Chandan intended that this field constitute an offset to the value reported in the USDUTYU field. In light of reporting inconsistencies we identified during our review, we requested that, for each reported refund, Chandan must 'identify the date that the refund was received and provide documentation to support your reporting,' and to report '0' for any refunds not yet received. In response, Chandan simply stated that it 'has updated the US sales database as instructed.' However, a comparison of the comparison market databases provided with Chandan's September 9, 2020, response and Chandan's December 9, 2020, response indicates that Chandan did not make any adjustments to its reported duty refund. Given the unresolved discrepancies and lack of supporting documentation concerning such refunds, the entry documentation submitted in support of the USDUTYREFU field was unreliable and not reported in the manner in which Commerce requested." (internal citations omitted)).

[166] *See generally* Comment 1(a)-(c); *see also Preliminary Results* PDM at 10 ("Chandan provided a calculation worksheet for the reported 'other discounts' field, and the worksheet demonstrated that Chandan reported 'gross unit

Moreover, we note that between April and December 2020, Commerce provided Chandan with numerous extensions of time to provide its responses in this review.[167] Additionally, as detailed above, we issued multiple rounds of supplemental questionnaires concerning each section of Chandan's response during the course of this review. In fact, Commerce provided Chandan with these extensions and additional opportunities to provide information despite objections from other interested parties.[168] Finally, we emphasize that Chandan participated in the underlying investigation in this proceeding and, therefore, has knowledge and experience regarding the reporting requirements associated with AD proceedings. Further, Chandan was also the largest Indian exporter of subject merchandise to the United States during the POR, by a substantial margin.[169] Therefore, we find it significant that Chandan – a large exporter, with prior experience in Commerce proceedings – provided incomplete and unreliable information, notwithstanding being given multiple opportunities to correct its data and generous extensions of time to do so. In light of these considerations, the record demonstrates that Chandan did not participate to the best of its ability in this review.[170] The level of inattentiveness and inaccuracy of its reporting throughout this review undermines not only the reliability of Chandan's responses, but also Commerce's ability to calculate an accurate margin and, in accordance with section 776(b) of the Act, warrants the application of an adverse interference in selecting from the facts available.

Chandan argues that the CIT has found that "if Commerce determined that {respondent's} questionnaire response was deficient in some regard, or that Commerce needed clarification of the response regarding the adjustments, the agency should have issued a supplemental questionnaire,"[171] and that the CAFC held that Commerce must first give the respondent an opportunity to offer explanation for a discrepancy before applying AFA.[172] While we agree, this requirement does not mean that Commerce must give a respondent unlimited opportunities to remedy deficiencies in its responses. Here, we issued Chandan multiple supplemental questionnaires, affording it an opportunity to explain how its reported information is accurate and/or to remedy any deficiencies in that information. Despite this, however, Chandan's responses continue to contain a number of fundamental reporting deficiencies and errors. Therefore, we satisfied our obligations under section 782(d) of the Act when we issued Chandan

price' less the reported 'other discounts.' Therefore, we asked Chandan to revise its database to 'report the actual gross unit price as the gross unit price, *i.e.*, do not report the price less any discounts, rebates, or any other adjustments' and '{p}lease provide documentation to substantiate your response.' In response, Chandan stated that it 'reported the gross unit price for all transactions without deducting any discounts or rebates.' However, Chandan did not provide any documentation to substantiate its response, and a comparison of the comparison market database provided with Chandan's September 9, 2020, response and the database provided with Chandan's December 9, 2020, response indicates that Chandan did not make any adjustments to its reported gross unit price field") (internal citations omitted).

[167] We granted extensions to Chandan on April 15, 2020, May 11, 2020, May 14, 2020, June 26, 2020, August 26, 2020, September 2, 2020, September 9, 2020, September 16, 2020, and December 3, 2020.

[168] *See, e.g.*, Petitioner September 29, 2020 Comments; and Petitioner's Letter, "Stainless Steel Flanges from India: Comments in Opposition of Additional Extensions," dated December 2, 2020.

[169] *See* Memorandum, "Antidumping Duty Administrative Review of Stainless Steel Flanges from India, 2018-2019: Respondent Selection," dated March 13, 2021 (Respondent Selection Memorandum).

[170] *See Nippon Steel*, 337 F.3d at 1382.

[171] *See* Chandan Case Brief at 19 (citing *Jindal Poly*, 365 F. Supp. 3d at 1387).

[172] *Id.* at 20.

a supplemental questionnaire specifically pointing out Chandan's omissions or deficiencies and requesting window period sales, complete and accurate CONNUM-specific costs and descriptions of its cost reporting methodology, certain supporting documentation and worksheets regarding its CONNUM cost build-ups, and complete and accurate reporting of its comparison market gross unit price, quantity and "other" discounts, and duty refunds for U.S. sales. Accordingly, Commerce was under no obligation to seek further clarification when Chandan had multiple opportunities to provide the requested information.

Chandan cites *Nippon Steel* and *Ferro Union* to argue that Commerce must provide a separate and additional explanation as to how Chandan failed to act to the best of its ability. Again, we agree. In numerous cases, the CIT has explained that Commerce must explain and/or analyze whether the respondent "willfully decided not to cooperate or behaved below the standard of a reasonable respondent" before Commerce can determine that AFA is warranted.[173] That is precisely what we have done here and in the *Preliminary Results*; we have explained why information is missing from the record and/or Chandan withheld information, failed to provide information in the form or manner requested, and significantly impeded the proceeding (within the meaning of section 776(a) of the Act), and why Chandan had the ability and opportunity to provide that information but failed to do so, warranting the use of an adverse inference under section 776(b) of the Act. In accordance with section 776(b) of the Act, we have considered whether Chandan participated "to the best of its ability,"[174] and assessed whether Chandan "has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation.'"[175] Where Commerce has requested particular information, and asked for such information on multiple occasions, the CIT has confirmed that Commerce can reasonably conclude that a party has not acted to the best of its ability.[176]

Here, Chandan's responses continue to contain inconsistent and incomplete data as well as incorrect statements regarding its purported corrections of the data; in numerous instances, Chandan did not provide the information requested until after Chandan's noncooperation formed the basis for an adverse decision in this segment. For this reason, Commerce finds that Chandan's failure to respond demonstrates that it did not meet the standard of a reasonably cooperative respondent and did not act to the best of its ability. Therefore, pursuant to section 776(b) of the Act, Commerce has determined that the application of AFA continues to be appropriate.

Chandan also argues that the courts have held that a respondent can fail to respond, and such

[173] *See China Steel Corp*, 264 F. Supp. 2d at 1360 (citing *Nippon Steel*, 118 F. Supp. 2d at 1379).
[174] *See POSCO v. United States*, 337 F. Supp. 3d 1265, 1273 (CIT 2018).
[175] *Id*.
[176] *Id*. at 1275-76; *see also Hung Vuong*, 483 F. Supp. 3d at 1358 ("The Court concludes that substantial evidence permitted Commerce's decision to resort to facts otherwise available pursuant to § 1677e(a)(2)(B) because it is essentially undisputed that Hung Vuong failed to report its control numbers in the manner Commerce required and because neither of the two exceptions under § 1677m apply here"); and *Xi'an Metals*, Slip Op. 21-71 at 8 ("Given Commerce's longstanding reporting requirements, of which Pioneer was or should have been aware, as well as Commerce's multiple requests for CONNUM-specific FOP information and Pioneer's refusal to develop an alternative reporting methodology, the court sustains Commerce's finding that Pioneer failed to cooperate and to act to the best of its ability, thereby justifying the use of AFA.")

failure is not necessarily grounds for an adverse inference.[177] Chandan also states that the purpose of AFA is to provide an incentive to cooperate, not to punish a respondent.[178] However, Chandan's reliance on *Mannesmannrohren-Werke AG* is misplaced. In that case, Commerce applied AFA because: (1) the respondent failed to respond to a single question within a supplemental questionnaire; and (2) the respondent's response to a different question did not hold true at verification.[179] The CIT remanded this decision to Commerce so that it could explain further how the respondent failed to act to the best of its ability.[180] On remand, Commerce provided an additional justification, which the CIT sustained.[181] Thus, *Mannesmannrohren-Werke AG* does not support Chandan's argument. Rather, it supports Commerce's decision to apply AFA for the final results.

We also find that Chandan's cite to *F.lli De Cecco* is inapposite. In *F.lli De Cecco*, the CIT remanded Commerce's determination to rely on the petition rate in applying AFA and suggested that Commerce apply the highest rate verified for any of the cooperating respondents. On remand, Commerce followed the CIT's suggestion, which the CIT affirmed and the CAFC sustained. In short, at issue in that case was whether Commerce's corroboration of the AFA rate was appropriate. As the CAFC explained,

> the corroboration requirement in {section 776(c) of the Act is} intended for an adverse facts available rate to be a reasonably accurate estimate of the respondent's actual rate, albeit *with some built-in increase* intended as a deterrent to non-compliance.[182]

In other words, the CAFC held that, when Commerce has determined that AFA is appropriate, the rate Commerce applies should be higher than the respondent's estimated rate to deter future non-compliance. This interpretation is supported by the CAFC's additional explanation:

> Thus, we are convinced that it is within Commerce's discretion to choose which sources and facts it will rely on to support an adverse inference when a respondent has been shown to be uncooperative. Particularly in the case of an uncooperative respondent, Commerce is in the best position, based on its expert knowledge of the market and the individual respondent, to select adverse facts that will create the proper deterrent to non-cooperation with its investigations and assure a reasonable margin.[183]

Therefore, *F.lli De Cecco* does not support Chandan's position, and is fully consistent with our decision here. We find that Chandan was uncooperative and did not act to the best of its ability. As a result, to create a proper deterrent against future non-cooperation, Commerce continues to find that applying AFA to Chandan is appropriate.

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[177] *See* Chandan Case Brief at 28-29 (citing *Mannesmanrohen-Werke AG*, 77 F. Supp. 2d at 1314.
[178] *Id*. at 15 (citing *F.lli De Cecco*, 216 F. 3d at 1027, 1032).
[179] *See Mannesmannrohren-Werke AG*, 77 F. Supp. 2d at 1307-08.
[180] *Id.*, 77 F. Supp. 2d at 1325.
[181] *See Mannesmannrohren-Werke AG v. United States*, 120 F. Supp. 2d 1075, 1089-97 (CIT 2000).
[182] *See F.lli De Cecco*, 216 F. 3d at 1032 (emphasis added).
[183] *Id*.

Comment 2: Selection of the AFA Rate

Chandan's Comments

- Commerce has never found a dumping margin remotely close to the 145 percent adverse rate assigned here, which is 39 times higher than the average margin (of 3.74 percent) calculated for Indian respondents under the previous order on stainless steel flanges from India. Most often, Commerce calculated a zero or *de minimis* rate. In addition, if Commerce calculated a dumping margin from Chandan's submitted data, Commerce would again find a zero rate.[184]
- Commerce may not impose draconian penalties for infractions that do not affect Commerce's ability to meet its statutory mandate to calculate an accurate dumping margin.[185]

Petitioner's Rebuttal

- Chandan challenges Commerce's selection of an AFA rate, however, these arguments have no merit, legally or factually, and must be rejected. Chandan's argument is based almost entirely on dumping margins calculated by Commerce under a *different* AD order and, thus, has no bearing on the present proceeding.[186]
- Even if the margins calculated under a different order could provide any insight into the dumping occurring under the current order, it is irrelevant because those margins, at most, would relate to the alleged "commercial reality" of Chandan's sales practices – a factor Commerce is expressly exempt from considering in application of AFA.[187]
- For the reasons provided above, the application of total AFA to Chandan was fully supported and should be continued for the final. However, if Commerce were to determine that the application of total AFA was not appropriate, the agency should, at a minimum, apply partial AFA to Chandan.[188]

Commerce's Position: For purposes of these final results, we continue to select the same rate that we did in the *Preliminary Results*, *i.e.*, 145.25 percent, as the appropriate AFA rate for Chandan.[189] As explained above, Chandan was uncooperative and did not act to the best of its ability in this review. As a result, to create a proper deterrent against future non-cooperation, Commerce continues to find that application of the highest rate assigned under this order is appropriate.

Chandan's arguments that (1) Commerce often found *de minimis* or zero rates under the previous order on stainless steel flanges from India, and (2) had Commerce calculated Chandan's rate in this review, it would have resulted in a zero margin, are without merit. Section 776(b) of the Act provides that Commerce may use an adverse inference in selecting from among the facts

[184] *See* Chandan Case Brief at 30 (asserting that Commerce has calculated a dumping margin 17 times for exporters of stainless steel flanges from India over two decades).
[185] *Id.* (citing *Artisan Manufacturing Corp. v. United States*, 978 F.Supp.2d 1334, 1338 and 1344-45 (CIT 2014); and *Grobest & I-Mei Indus. (Viet.) Co. v. United States*, 815 F. Supp. 2d 1342, 1367 (CIT 2012)).
[186] *See* Petitioner Rebuttal Brief at 30-31.
[187] *Id.* at 32 (citing section 776(d)(3) of the Act).
[188] *Id.* at 32-33.
[189] *See Preliminary Results*, 86 FR at 11234, and PDM at 16-17.

otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information.[190] In doing so, pursuant to section 776(b)(1)(B) of the Act, Commerce is not required to determine, or make any adjustments to, a dumping margin based on assumptions about information an interested party would have provided if the interested party had complied with Commerce's request for information.[191]

When a respondent is not cooperative, such as Chandan in this review, under section 776(d) of the Act, Commerce may use any dumping margin from any segment of a proceeding under an AD order, including the highest dumping margin from any segment (including a rate alleged in the petition, according to section 776(b)(2) of the Act) as the appropriate dumping margin to apply as AFA. Furthermore, pursuant to section 776(d)(3) of the Act, when selecting an AFA margin from among the facts available, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated, or to demonstrate that the dumping margin reflects an alleged commercial reality of the interested party. Accordingly, Commerce is not required to estimate what Chandan's dumping margin would have been had Chandan cooperated or to look to dumping margins calculated for cooperative respondents under a different order.

First, Chandan argues that "Commerce has never found a dumping margin even remotely close to the 145% adverse rate used here."[192] That is plainly incorrect. In the underlying investigation *of this order – i.e.*, the immediately prior segment of *this proceeding* – Commerce assigned a total AFA rate of 145.25 percent to an uncooperative respondent, the Bebitz/Viraj single entity. This decision was upheld by the CIT.[193] Moreover, as explained in the *Preliminary Results*, the AFA rate was corroborated in the less-than-fair-value (LTFV) investigation relying on Chandan's calculated margin in the investigation. In the investigation, we explained that "{t}o corroborate the 145.25 percent AFA rate we selected, we compared the petition rate to the transaction-specific dumping margins for the mandatory respondent, Chandan" and "{w}e found product-specific margins at the petition rate."[194] Therefore, the rate had been corroborated with *Chandan's own* product-specific margins.

With regard to the appropriate rate to apply to Chandan, Commerce's general practice is to select, as an AFA rate, the higher of (1) the highest dumping margin alleged in the petition, or

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[190] *See Preliminary Results* PDM at 16.
[191] *Id.*
[192] *See* Chandan Case Brief at 6.
[193] *See Bebitz Flanges Works Private Limited v. United States*, 433 F.Supp.3d 1297, 1308-09 (CIT 2020) ("The purpose of the adverse inference provision is to provide an incentive for respondents to cooperate with Commerce's investigations and ensure that a party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully… Commerce's application of an adverse inference in this case is consistent with that purpose because it ensures that Bebitz does not obtain a more favorable rate by failing to disclose the full extent of its relationship with Viraj.")
[194] *See Stainless Steel Flanges from India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 13246 (March 28, 2018) (*India Flanges Investigation Prelim*), and accompanying PDM at 22, unchanged in *Stainless Steel Flanges from India: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Critical Circumstance Determination*, 83 FR 40745 (August 16, 2018) (*India Flanges Investigation Final*).

(2) the highest calculated rate of any respondent in the proceeding.[195] Thus, in the *Preliminary Results*, Commerce selected the highest rate alleged in the petition, because it is higher than the only rate calculated in the investigation.[196] In addition, section 776(c)(2) of the Act expressly provides that Commerce is not required to corroborate a dumping margin applied in a separate segment of the same proceeding. Here, the selected rate is also the highest dumping margin applied in a prior segment of this proceeding and has been used as an AFA rate in the LTFV investigation on stainless steel flanges from India.[197] Therefore, Commerce continues to determine that this corroborated[198] petition rate is appropriate for these final results.

Moreover, Commerce's general practice with respect to the assignment of adverse rates is to ensure that the margin is sufficiently adverse so "as to effectuate the statutory purposes of the {AFA} rule to induce the respondent to provide {Commerce} with complete and accurate information in a timely manner."[199] Selecting a rate that was the result of Chandan's normal selling behavior, under a *different* AD order, would not ensure that the margin is sufficiently adverse for purposes of *this proceeding* to effectuate the statutory purposes of AFA; nor would it ensure that Chandan does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. Finally, the corroborated petition rate is sufficiently adverse so as to ensure that Chandan does not obtain a more favorable result through non-cooperation, and is consistent with the purpose of the AFA provisions of the Act. Therefore, Commerce is continuing to apply 145.25 percent as the AFA rate.

Comment 3: All-Others Rate for Non-Examined Companies

In the *Preliminary Results*, we applied Chandan's dumping margin to the companies subject to this review that were not individually examined, consistent with the expected method under section 735(c)(5)(B) of the Act.[200]

Balkrishna et al./Bebitz Comments

- Commerce's preliminary all-others rate is unsupported by substantial evidence and otherwise contrary to law. Commerce should calculate Chandan's dumping margin without adverse inferences for the reasons stated in Chandan's case brief, or should apply a 0.5 percent rate to the all-other respondents.[201]
- The expected method, under section 735(c)(5)(B) of the Act, "will be to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available,

[195] *See Large Diameter Welded Pipe from India: Preliminary Determination of Sales at Less Than Fair Value*, 83 FR 43653 (August 27, 2018), and accompanying PDM at 6, unchanged in *Large Diameter Welded Pipe from India: Final Determination of Sales at Less Than Fair Value; 2017*, 83 FR 56811 (November 14, 2018); *see also Welded Stainless Pressure Pipe from Thailand: Final Determination of Sales at Less Than Fair Value*, 79 FR 31093 (May 30, 2014), and accompanying IDM at 5, and 15-16.
[196] *See Preliminary Results* PDM at 16-17.
[197] *Id.* ("Because the 145.25 percent rate was applied in a separate segment of this proceeding (*i.e.*, it was applied as an AFA rate to Bebitz in the LTFV investigation), Commerce need not corroborate that rate in this review.")
[198] *See Preliminary Results*, 86 FR at 11234, and PDM at 16-17.
[199] *See, e.g.*, *Certain Corrosion-Resistant Steel Products from India: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 84 FR 26819 (June 10, 2019), and accompanying IDM.
[200] *See Preliminary Results* PDM at 18.
[201] *See* Balkrishna *et al.*/Bebitz Case Brief at 1-2.

provided that volume data is available." While this method may be reasonable as a legal matter, it may nonetheless be unreasonable as applied in a particular case. A total AFA rate may not reflect the economic reality of the cooperating non-examined companies and, thus, including such a rate in the all-others rate calculation will not reflect the non-examined companies' dumping margins. [202]

- The non-examined companies in this review have not been uncooperative, and the CIT has found that Commerce may not penalize a cooperative party for non-cooperation by an unaffiliated entity in the same review.[203]
- Even when using facts available, Commerce must still make the separate and additional finding that a party failed to cooperate by not acting to the best of its ability before applying adverse inference. Here, Commerce has made no such finding of non-cooperation by the non-examined respondents. Therefore, any adverse inference made in Chandan's dumping margin calculations may not be applied to the non-examined respondents.[204]
- Commerce cites no evidence to support a 145.25 percent all-others rate, thus rendering the rate unreasonable.[205] In the administrative reviews of the prior order on stainless steel flanges from India, and in the investigation of the current AD order on stainless steel flanges from India, Commerce has not previously found a dumping margin remotely close to the rate applied in the *Preliminary Results*.[206]
- In *Navneet*, the CIT rejected an all-others rate that was "significantly higher than all prior margins calculated for cooperating respondents."[207]
- In determining what is a reasonable rate for the all-other respondents, Commerce must consider "rates assigned to individual examined respondents over the preceding… reviews," excluding rates based on AFA.[208]
- In *Stainless Steel Bar from India*, Commerce selected one mandatory respondent and that respondent received a rate based on total AFA. However, Commerce gave the all-other respondent its own prior margin for consistency with respect to the dumping margin of the respondent over reviews, and found that such a rate was most accurate and that the AFA-based dumping margin applied to the mandatory respondent was not reasonably reflective of the dumping margin of the non-examined respondent. These considerations apply here.[209]

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[202] *Id.* at 2-3 (citing *Navneet Publ'ns (India) Ltd. v. United States*, 999 F. Supp. 2d 1354, 1358 (CIT 2014) (*Navneet*); *Yangzhou Bestpak Gifts & Crafts Co. v. United States*, 716 F.3d 1370, 1378 (Fed. Cir. 2013) (*Bestpak*); and *Albemarle Corp. v. United States*, 821 F.3d 1345, 1354 (Fed. Cir. 2016) (*Albemarle*) (noting that "accuracy and fairness must be Commerce's primary objectives in calculating a separate rate for cooperating exporters").
[203] *Id.* at 3 (citing *SKF USA v. United States,* 675 F. Supp. 2d 1264, 1276 (CIT 2009) (*SKF*); *Amanda Foods (Vietnam) Ltd. v. United States*, 647 F. Supp. 2d 1368, 1381 (CIT 2009) (*Amanda Foods*); and *Baroque Timber Indus. (Zhongshan) Co. v. United States*, 971 F. Supp. 2d 1333, 1343 (CIT 2014) (*Baroque*).
[204] *Id.* at 4 (citing *Nippon Steel,* 337 F.3d at 1381, and *Ferro Union*, 44 F. Supp. 2d at 1329).
[205] *Id.* (citing *Navneet,* 999 F. Supp. 2d at 1378 and *Bestpak*, 716 F.3d at 1363-64).
[206] *Id.* at 5-6.
[207] *Id.* at 6.
[208] *Id*. (citing *Bosun Tools Co. v. United States*, 493 F.Supp.3d 1351 (CIT 2021) (*Bosun III*)).
[209] *Id.* at 7 (citing *Stainless Steel Bar from India: Preliminary Results of Antidumping Duty Administrative Review; 2019– 2020*, 86 FR 11235 (February 24, 2021) (*Stainless Steel Bar from India*), and accompanying PDM at 8-9).

- The all-others rate from the investigation, as revised on remand, is 7.00 percent, when adjusted for export subsidies.[210] Therefore, an increase to 145.25 percent is unreasonable in this first review.

Pradeep's Comments

- Commerce has applied the "expected method" but failed to provide any analysis of whether 145.25 percent is "reasonable" under the Act. The SAA states that, if the expected method "is not feasible or it results in an average that would not be reasonably reflective of potential dumping margins for non-investigated exported or producers, Commerce may use other reasonable methods."[211]
- The courts recognize that while various methodologies are permitted by the Act, it is possible for the application of a particular methodology to be unreasonable in a given case. Therefore, the inclusion of an "expected method" in the Act does not grant Commerce absolute and unbound discretion in the selection of a rate for companies not individually examined, under 735(c)(5)(B) of the Act.[212]
- Applying Chandan's 145.25 percent rate to Pradeep would not be reasonable given that there is no evidence on the record that Pradeep would not cooperate fully in the administrative review, had it been given a chance.[213]
- The CAFC has previously reversed Commerce's application of the "expected method" in the calculation of a rate for non-examined companies. In *Bestpak*, the CAFC rejected Commerce's application of an average of *de minimis* and AFA rates, because the resulting average did not reasonably reflect the potential dumping margins of the non-examined companies.[214]
- The AFA rate assigned to Chandan is neither reflective nor representative of, and bears no relationship to, the potential dumping margins of the companies not individually examined who did not display any lack of cooperation.[215]
- Even if Chandan were non-cooperative, which Chandan disputes in its case brief, the presence of non-cooperating parties "fails to justify {Commerce's} choice of dumping margin for the cooperative uninvestigated respondents."[216]
- Commerce is always obligated to employ methodologies to establish margins as accurately as possible; its methodology must serve to calculate a margin reasonably reflective of the potential dumping margins for non-investigated exporters and producers.[217]

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[210] *Id.* at 7-8 (citing Final Results of Redetermination Pursuant to Court Remand, *Echjay Forgings Private Limited v. United States* Consol. Court No. 18-00230, Slip Op. 20-140, dated February 17, 2021 (*Echjay Remand*) at 26).
[211] *See* Pradeep Case Brief at 2-3 (citing Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. 103-316, vol. 1 (1994) at 873 (SAA)).
[212] *Id.* at 3 (citing *Thai Pineapple Canning Indus. Corp. v. United States*, 273 F.3d 1077 (Fed. Cir 2001), and *Far Indus. Factory Co., Ltd. v. United States,* 343 F. Supp. 2d 1344, 1366 (CIT 2004)).
[213] *Id.* at 4.
[214] *Id.* (citing *Bestpak*, 716 F.3d at 1370).
[215] *Id.* at 5.
[216] *Id.* (citing *Amanda Foods*, 647 F. Supp. 2d at 1381).
[217] *Id.* (citing *Shakeproof Assembly Components, Div. of Ill. Tool Works, Inc. v. United States,* 268 F.3d 1376, 1382 (Fed. Cir. 2001); *Rhone-Poulenc, Inc. v. United States,* 899 F.2d 1185, 1191 (Fed. Cir. 1990); and *Baroque,* 971 F. Supp. 2d at 1342).

- Commerce's reliance on *Albemarle* is misplaced. There, the CAFC found that Commerce did articulate a reason why the expected methodology would not reasonably be reflective of a non-examined company's potential margin, but the CAFC determined that the alternative methodology applied by Commerce was unreasonable. The *Albemarle* decision does not stand for the proposition that the expected methodology is warranted in all instances.[218]
- In the administrative reviews of the prior order on stainless steel flanges from India, and in the LTFV investigation of the current antidumping order on stainless steel flanges from India, Commerce has not previously found a dumping margin remotely close to the rate applied for the *Preliminary Results*.[219]
- The all-others rate for the investigation, as revised on remand, is 7 percent.[220] Therefore, an increase to 145.25 percent is an unreasonable for the first review.
- Chandan's dumping margin should be calculated without adverse inferences and applied to the companies that were not individually examined. Should Commerce continue to apply AFA to Chandan, it should apply a "reasonable method" to derive a rate applicable to the companies not individual examined.[221]

Petitioner Rebuttal Comments

- In *Albemarle*, the CAFC confirmed that Congress "unmistakably explained" that the expected method is the "preferred" method to follow where all calculated margins are zero, *de minimis*, or based on total AFA. The CAFC explained that Commerce "may use an 'other reasonable method,' but only if Commerce reasonable concludes that the expected method is 'not feasible' or 'would not be reasonably reflective of potential dumping.'"[222]
- The respondents claim that Commerce may not rely on a rate based on AFA where the non-individually-examined respondents have been cooperative. However, section 735(c)(5)(B) of the Act explicitly allows for the all-others rate to be based on a facts available rate and the SAA explicitly allows "Commerce to factor both *de minimis* and AFA rates into the calculation methodology" for non-individually examined companies.[223]
- The respondents also argue that the margin for Chandan is inappropriate because it does not reasonably reflect the potential dumping margins of the non-individually-examined respondents. These arguments are misplaced, as they fail to acknowledge important differences in prior cases and do not provide any probative evidence demonstrating that

[218] *Id.* at 5-6 (citing *Albemarle,* 821 F.3d at 1345).
[219] *Id.* at 7.
[220] *Id.* at 7-8 (citing *Echjay Remand* at 26).
[221] *Id.* at 9.
[222] *Id.* at 35 (citing *Albemarle*, 821 F.3d at 1352-54; and *Changzhou Hawd Flooring Co. v. United States*, 848 F.3d 1006, 1012 (Fed. Cir. 2017) (*Changzhou Hawd*) ("Under *Albemarle*, Commerce could not deviate from the expected method unless it found, based on substantial evidence, that the separate-rate firms' dumping is different from that of the mandatory respondents.")).
[223] *Id.* at 35-36 (citing SAA at 873; *Bestpak*, 716 F.3d at 1378; and *Bosun III*, 493 F.Supp.3d at 1351 (affirming Commerce's calculation of the separate rate by averaging the zero and AFA rate applied to the mandatory respondents). In *Bestpak*, the Court ultimately found that Commerce's margin calculation was unreasonable, as applied, given the facts of that case.

Commerce's approach here resulted in a margin that does not reasonably reflect the potential dumping margins of the non-individually-examined respondents.[224]

- In *Navneet*, Commerce had "deviated from the expected methodology and calculated the separate rate based on the mandatory respondents' zero margins and the AFA rate."[225]
- In *Bestpak*, the CAFC highlighted its concern with Commerce's reliance on a rate applied to the China-wide entity in calculating the margin for companies found to be independent from the Chinese government.[226]

- In their arguments, the respondents rely almost exclusively on the margins calculated by Commerce under a different order and based on information from 15 to 22 years ago. Therefore, the respondents have not demonstrated that the expected method is not feasible or would result in margins that do not reasonably reflect potential dumping.[227]
- In *Albemarle*, the CAFC found that "{t}here is no evidence that supports Commerce's determination that averaging the *de minimis* margins assigned to the individually examined respondents in the third review would have resulted in margins for Cherishmet and Shanxi that would not have been reflective of their actual dumping margins."[228] The CAFC explained that, "{h}aving assumed that the individually examined respondents were reasonably representative of Cherishmet and Shanxi in the second review, Commerce lacked any basis to reverse course and conclude that Cherishmet and Shanxi were somehow different in the third review."[229] Therefore, even if the margins from the prior order could be considered relevant, the CAFC has recognized that the rates calculated in prior reviews do not necessarily provide a basis for departing from the expected method.[230]
- Here, no party disputed that Chandan was representative of the non-individually-examined companies in the investigation, and the respondents have not provided a reason as to why Chandan should no longer be considered representative of their potential dumping. Accordingly, the non-examined companies' reliance on the margins previously calculated under a different order fail to demonstrate that the all-others rate calculated in the subject review was not reasonably reflective of the non-individually-examined companies' potential dumping.[231]
- Balkrishna *et al.*/Bebitz argue that Commerce could assign 0.5 percent as the "all-other" rate. This argument appears to be based on the claim that the average rate calculated by Commerce, in prior administrative reviews under a different order, was 0.58 percent. However, the analysis is incomplete and incorrect because non-examined respondents failed to report all of the margins calculated in the reviews under the previous order,[232]

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[224] *Id.* at 36.
[225] *Id.* at 36-37 (citing *Navneet*, 999 F. Supp. 2d at 1358-59).
[226] *Id.* at 37 (citing *Bestpak*, 716 F.3d at 1380).
[227] *Id.*
[228] *Id.* at 38 (citing *Albemarle*, 821 F.3d at 1355).
[229] *Id.* (citing *Albemarle*, 821 F.3d at 1355).
[230] *Id.*
[231] *Id.* at 38-39.
[232] *Id.* at 31 (citing *Forged Stainless Steel Flanges from India and Taiwan*, Inv. Nos. 731-TA-639 and 640, USITC Pub. 3827 (December 2005) (Second Review) (*Forged Stainless Steel Flanges Sunset Review*) at Table I-1). A comprehensive review of the margins calculated under the prior order undertaken by the U.S. International Trade

and point to nothing indicating that this is a reasonable approach.[233] This approach would result in a rate that is well below not only the rate assigned to the mandatory respondent in this review, but also the rates calculated in the underlying LTFV investigation for this order. Accordingly, there is simply no merit to the position that Commerce should apply a margin of 0.5 percent to the non-examined companies.[234]

Commerce's Position: We find that application of the expected method is reasonable here because the record evidence does not rebut the presumption that margin for the mandatory respondent is representative.

Background

In this review, Commerce selected as mandatory respondent the exporter accounting for the largest volume of subject merchandise that could be reasonably examined, consistent with section 777A(c)(2)(B) of the Act.[235] No party argued that Commerce should select respondents for limited examination pursuant to 777A(c)(2)(A) (*i.e.*, based on sampling).[236] Commerce selected Chandan because, based on U.S. Customs and Border Protection (CBP) data, it was the largest exporter, by volume, during the POR.[237] Chandan's total exports, which are business proprietary data, represented a significant volume of exports of subject merchandise entries during the POR. For the final results, pursuant to sections 776(a) and (b) of the Act, Commerce assigned to Chandan the highest margin applied in any segment of the proceeding, 145.25 percent, the petition margin.[238]

Legal Framework

The Act is silent with respect to the calculation of the rate for companies not selected for individual examination in an administrative review. Generally, we have looked to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for the companies not individually examined. Section 735(c)(5)(A) of the Act instructs that we do not calculate an all-others rate using any zero or *de minimis* weighted-average dumping margins or any dumping margins based entirely on facts available. Accordingly, Commerce's normal practice has been to average the rates for the selected respondent(s), excluding rates that are zero, *de minimis*, or based entirely on facts available.[239] However, based on the circumstances of this case, Commerce cannot rely on

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Commission (ITC) in its 2005 sunset review shows that margins of up to 210.00% were applied, including a rate of 162.14% being applied as the "all-others" rate. Thus, the analysis presented regarding the history of margins calculated under the prior order is not an accurate representation of the actual margins calculated.

[233] *Id.* at 39.

[234] *Id.*

[235] *See* Respondent Selection Memorandum.

[236] *Id.* at 4.

[237] *Id.* at Attachment.

[238] *See* Comment 1.

[239] *See, e.g.*, *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Review, and Revocation of Order (in Part); 2011-2012*, 78 FR 42497 (July 16, 2013) (*Shrimp from Thailand*), and accompanying IDM at Comment 3 (citing *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative*

section 735(c)(5)(A) of the Act in its calculation of the review-specific rate for the non-examined companies.[240] Thus, Commerce must rely on the exception to section 735(c)(5)(A) of the Act, in which Congress expressly provided for the scenario that has occurred in this review.

Specifically, section 735(c)(5)(B) of the Act provides that, where all rates are zero, *de minimis*, or based entirely on facts available, we may use "any reasonable method" for assigning a rate to non-selected companies. One method contemplated by section 735(c)(5)(B) of the Act is averaging the estimated weighted-average dumping margins determined for the exporter(s) and producer(s) individually investigated.[241] The SAA expressly allows for an exception to section 735(c)(5)(A) of the Act, with section 735(c)(5)(B) of the Act, which states that if the dumping margin for the exporter(s)/producer(s) individually investigated is determined entirely on the basis of the facts available, or are zero or *de minimis*, Commerce may use any reasonable method to calculate the all-others rate. The SAA states that the expected method in such cases will be to weight average the zero and *de minimis* margins and *margins determined pursuant to facts available*, provided that volume data is available.[242] In this case, Commerce followed the expected method, which has been repeatedly upheld by the courts, including by the CAFC in *Albemarle*.[243] Consistent with *Albemarle* and our practice, Commerce applied the expected method under section 735(c)(5)(B) of the Act to determine a review-specific margin for those companies that are covered by this review, but were not selected for individual examination.[244]

There is a well-established basis, both in law and Commerce's practice, to calculate the non-selected respondents' dumping margin based on the mandatory respondent's margin.[245] Moreover, in this case, and consistent with our practice and the prevailing law, Commerce has

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Reviews and Rescission of Reviews in Part, 73 FR 52823, 52824 (September 11, 2008), and accompanying IDM at Comment 16).

[240] Under section 735(c)(5)(A) of the Act, the all-others rate is normally "an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or de minimis margins, and any margins determined entirely {on the basis of facts available}." Here, the only margin determined for a respondent in this review is Chandan's margin, which is based entirely on AFA.

[241] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 84 FR 64455 (November 22, 2019) (*HWR Pipes and Tubes from Turkey*); *see also Certain Steel Nails from Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2018-2019*, 85 FR 19138 (April 6, 2020) (*Nails from Taiwan*) (applying a rate based on an the mandatory respondents' total AFA rates to the companies not selected for individual examination), unchanged in *Certain Steel Nails from Taiwan: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018-2019,* 85 FR 76014 (November 27, 2020) (*Nails from Taiwan Final*).

[242] *See* SAA at 873.

[243] *See, e.g.*, *Albemarle*, 821 F. 3d at 1352 ("The expected method in such cases will be to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available, provided that volume data is available.")

[244] *See Preliminary Results* PDM at 17-18.

[245] *See Shrimp from Thailand* IDM at Comment 3; *see also Albemarle*, 821 F. 3d at 1352 ("The expected method in such cases will be to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available, provided that volume data is available.")

applied the "expected method" as intended by Congress.[246] For the reasons stated below, we find that the expected method is appropriate here.

The Expected Method Is Lawful

The non-examined respondents[247] mischaracterize Commerce's application of the expected method as an unlawful application of AFA to cooperative respondents. As discussed above, Commerce may apply section 735(c)(5)(B) of the Act, inclusive of AFA rates, as a matter of law. Use of the mandatory respondent's AFA margin as the basis for the rate assigned to the non-examined companies is therefore an operation of law, and not itself the application of AFA pursuant to section 776(b) of the Act. Moreover, courts have consistently upheld the use of the expected method, which may include AFA rates, as lawful.[248]

With regard to the non-examined respondents' reference to *Bestpak*, we disagree with respect to the proposed reading of that case; *Bestpak* did not deny the legality of the expected method.[249] *Bestpak* affirmed that Commerce's methodology could include averaging *de minimis* and AFA rates, and that "{section 735(c)(5)(B) of the Act} and the SAA explicitly allow Commerce to factor both *de minimis* and AFA rates into the calculation methodology."[250] Although the Court in *Bestpak* ultimately found the rate applied in that case unreasonable, it was not because of the use of an AFA rate in the average to determine the rate for non-examined companies.[251] Here, there is no evidence on this record, as discussed below, that the application of the expected method is unlawful or unreasonable.

Similarly, Balkrishna *et al.*/Bebitz's reliance on *SKF* as support for a departure from the expected method is unpersuasive. *SKF* is distinguishable from the instant review because the issue in *SKF* was Commerce's treatment of the mandatory respondent and its supplier, not the non-examined companies under review and the review-specific rate Commerce applied.[252] Therefore, Balkrishna *et al.*/Bebitz's arguments that non-examined respondents have not been uncooperative, and that Commerce may not assign a cooperative non-examined company a rate based on the margin of a non-cooperative unaffiliated mandatory respondent in the same review, is misplaced. The SAA's permissibility of the expected method under section 735(c)(5)(B) of the Act is not precluded by the Court's opinion in *SKF*. As explained below, Commerce selected the largest exporter/producer by volume, under section 777A(c)(2) of the Act for individual

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[246] *See, e.g.*, *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 11679 (March 16, 2018), and accompanying IDM at Comment 5A ("As stated in section 735(c)(5)(A)-(B) of the Act, SAA, and upheld in *Albemarle*, Commerce may use the average of two AFA margins in assigning the rate to non-selected respondents. We believe that this is a reasonable method and the expected method of calculating such a margin, as set forth in the SAA...") (internal citations omitted).
[247] We reference Balkrishna *et al.*, Bebitz, and Pradeep, collectively, as the non-examined respondents.
[248] *See Bosun III*, 493 F.Supp.3d at 1358; *see also Solianus, Inc. and Consolidated Fibers, Inc. v. United States*, 391 F.Supp.3d 1331, 1340 (CIT 2019) (*Solianus*).
[249] *See Bestpak*, 716 F. 3d at 1378.
[250] *Id.*
[251] *Id.* ("Although Commerce may be permitted to use a simple average methodology to calculate the separate rate, the circumstances of this case renders a simple average of a *de minimis* and AFA China-wide rate unreasonable *as applied*. Similarly, a review of the administrative record reveals a lack of substantial evidence showing that such a determination reflects economic reality") (emphasis added).
[252] *See SKF*, 675 F. Supp. 2d at 1272-79.

examination, and we found no evidence to suggest that the mandatory respondent, *i.e.*, Chandan, is not representative of the non-examined companies.

The Application of the Expected Method Is Reasonable

The non-examined respondents argue that Commerce's application of the expected method is unreasonable, as applied, because the rate bears no relation to an actual calculated dumping margin and is not reasonably reflective of potential dumping margins for the non-examined respondents. However, as demonstrated below, the evidence supports a finding that the dumping margin of the mandatory respondent is reasonably representative of the potential dumping margins of then non-examined respondents, in accordance with the expected method under the SAA.

With regard to Balkrishna *et al.*/Bebitz's reference to *Baroque*, the Court ruled that "it is not *per se* unreasonable for Commerce to use a simple average of zero and AFA rates to calculate the separate rate."[253] Commerce recognizes that the Court also requires that the chosen method be reasonable based on the record evidence. In *Qihang Tyre*, the court held that "Commerce ... had a basis, grounded in substantial record evidence and according to a statutorily-authorized method, to conclude that the two *largest exporters were representative of all exporters and producers for which review had been requested*."[254] Similarly, here, we find that Chandan – as the mandatory respondent selected for individual examination in this review – is representative of the dumping behavior during the POR of the other exporters and producers under review.

Pursuant to section 777A(c)(2) of the Act, we limited our examination of exporters or producers accounting for the largest volume of the subject merchandise, based on the CBP data we placed on the record.[255] Because Commerce initiated the review covering 45 companies, which we determined to be a large number, we limited our examination as permitted by the law.[256] As was the case in *Qihang Tyre*, the CBP data on the record here demonstrate that the largest exporter, by volume, "also accounted for a substantial portion of the subject merchandise exports of all exporters and producers for which Commerce had remaining requests for review."[257] Commerce, therefore, had a basis, grounded in substantial record evidence and according to a statutorily-authorized method, to conclude that the largest exporter is representative of all exporters and producers for which a review had been requested.[258] The mandatory respondent in this case, Chandan, represents a substantial portion of exports of subject merchandise, by volume, during the POR.[259]

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[253] *See Baroque*, 971 F. Supp. 2d at 1341.
[254] *See Qingdao Qihang Tyre Co. v. United States*, 308 F. Supp. 3d 1329, 1363 (CIT 2018) (*Qihang Tyre*) (emphasis added).
[255] *See* Respondent Selection Memo.
[256] *Id.*
[257] *See Qihang Tyre*, 308 F. Supp. 3d at 1363.
[258] *Id.*
[259] *See* Respondent Selection Memo; *see also Solianus*, 391 F.Supp.3d at 1339 ("Plaintiffs have offered no reason why the resulting 30.15 percent all-others rate failed to 'reflect{} economic reality' of the 'all-other' firms. The court need not (and will not) take Plaintiffs at their word that '{o}n its face, this rate does not bear a connection to the actual production experience and sales costs of an actual cooperating Korean producer or exporter.' Indeed,

In *Albemarle*, the CAFC opined that "the very fact that the statute contemplates using data from the largest volume exporters suggests an assumption that those data can be viewed as representative of all exporters."[260] The CAFC further stated that "the statute assumes that, absent such evidence, reviewing only a limited number of exporters will enable Commerce to reasonably approximate the margins of all known exporters."[261] In addition, the CIT has explained that, "{t}he representativeness of the investigated exporters is the essential characteristic that justifies an 'all-others' rate based on a weighted average for such respondents."[262] In the instant review, under section 777A(c)(2), we examined a respondent representing a substantial portion of the total volume of subject exports during the POR. Thus, the rate assigned to the mandatory respondent is representative unless substantial evidence shows otherwise, whether we had calculated a zero rate, a *de mininis* rate, or assigned to it a rate based entirely on facts available. Notably, in this case the non-examined respondents do not cite any relevant, probative evidence to demonstrate that Chandan's dumping behavior during the POR is not reasonably reflective of potential dumping margins for non-examined companies during the POR.

Record Evidence Does Not Undermine the Representativeness of the Mandatory Respondent

In *Bosun II*, the Court remanded Commerce's decision to apply the expected method because Commerce "failed to consider evidence indicating that the 41.025 rate is not reasonably reflective of the separate rate respondents' dumping… {and that} Commerce fails to address evidence which detracts from its determination to use the expected method."[263] In *Bosun III*, the Court found that

> Commerce assigns the separate rate respondents a rate derived by the expected method; an average of an AFA rate and a zero rate. Commerce then explains why that rate is reasonably reflective of separate rate respondents' potential dumping. Commerce bases its explanation on record evidence of recent past calculated rates, and Commerce considers and addresses the record evidence that detracts from its determination. Commerce's explanation is reasonable.[264]

{Commerce} has justified the application of the sanctioned methodology to calculating the all-others rate. First, {Commerce} selected Down Nara and Huvis as mandatory respondents in the investigation based on the assumption that, as the largest volume exporters, they were 'representative of the rest of the market.' Additionally, the 45.23 percent AFA rate was corroborated by 'compar{ing} the 45.23 percent margin to the transaction-specific dumping margins that {Commerce} calculated for TCK.' And, in its analysis, Commerce 'found that the dumping margin of 45.23 percent {was} not significantly higher than the highest transaction-specific margin calculated for TCK, and therefore {was} relevant and {had} probative value." Plaintiffs do not dispute these findings… Without more evidence to support the claim that the resulting rate is not fairly representative of 'all other' exporters, the court sustains {Commerce}'s application of the simple average methodology to calculate the all-others rate.") (internal citations omitted).

[260] *See Albemarle*, 821 F. 3d at 1353.

[261] *Id.*

[262] *Id.* (citing *Nat'l Knitwear & Sportswear Ass'n v. United States*, 779 F. Supp. 1364, 1373 (1991)).

[263] *See Bosun III*, 493 F.Supp.3d at 1351 (citing *Bosun Tools Co. v. United States*, 463 F. Supp. 3d 1309, 1319 (CIT 2020) (*Bosun II*)).

[264] *Id.*

Commerce's decision to apply AFA to one of the mandatory respondents in the LTFV investigation has been sustained by the CIT.[265] In the investigation, we calculated a margin of 19.16 percent for Chandan and assigned Bebitz the 145.25 percent AFA rate due to its failure to cooperate.[266] Echjay's rate is currently under appeal and is pending a final decision of the CIT.[267] No party disputed that Chandan was representative of the non-individually examined companies in the investigation, and, here, non-examined respondents have provided no reason as to why Chandan should no longer be considered representative of their potential dumping.

The non-examined respondents also argue that the review-specific rate assigned to them is not in accord with "commercial reality." As an initial matter, there is no statutory requirement that the rate assigned to the non-examined respondents be reflective of "commercial reality." As a result, we take the non-examined respondents' assertion to be an oblique reference to the SAA, and thus that their claim is the rate assigned to them is not reasonably reflective of their potential dumping margins during the POR. However, there is no record evidence to support this assertion. As noted above, Bebitz – a mandatory respondent in the immediately-preceding segment, *i.e.*, the LTFV investigation – was assigned the 145.25 percent AFA rate. The rate was corroborated by comparing "the petition rate to the transaction-specific dumping margins for the mandatory respondent, Chandan" and "{w}e found product-specific margins at the petition rate."[268] Given that the 145.25 percent rate was corroborated with transaction-specific margins of the same company that is the mandatory respondent in this administrative review, we find it reasonable to conclude that the 145.25 percent rate is representative of the dumping of the non-examined respondents because there is evidence that a company makes sales with margins in this range. Additionally, 42 of 44 non-examined companies have never been examined in any segment of the proceeding; thus, there is no evidence on this record that the 145.25 percent rate does not reflect their potential dumping margins.

The only analysis that the non-examined respondents provide relates to margins assigned in various segments under the *previous* order (and they omitted any mention of 145.25 percent AFA rate assigned under this order), which is a distinct proceeding and thus not probative of what rates may be appropriate in the context of the instant proceeding. Specifically, the chart of margins proffered by the non-examined respondents, relating to the AD order on certain forged stainless steel flanges from India, *i.e.*, the previous order, were calculated between 2001 and 2007. Apart from being from a different order, these are calculated margins from over 14 to 20 years ago and cannot reasonably provide insight into current potential dumping margins.[269] In addition, the ITC's 2005 sunset review of the previous order shows that Commerce applied margins up to 210.00 percent, including a rate of 162.14 percent applied to the non-examined companies.[270] As a consequence, the non-examined respondents' characterization of the dumping margins determined in the prior proceeding is not persuasive. Thus, we find no

[265] Balkrishna *et al.*/Bebitz assert that the "all-others" cash deposit rate in the investigation that led to the current order now is based on the experience of two cooperating mandatory respondents and is 7 percent adjusted for export subsidies. *See Echjay Remand* at 26. However, we note these results are not final, as Commerce's remand is pending before the CIT.
[266] *See India Flanges Investigation Final*.
[267] *See Echjay Remand* at 26.
[268] *See India Flanges Investigation Prelim* PDM at 22, unchanged in *India Flanges Investigation Final*.
[269] *See* Table 1 of Balkrishna *et al.*/Bebitz Case Brief at 5; *see also* Table 1 of Pradeep Case Brief at 8.
[270] *See Forged Stainless Steel Flanges Sunset Review* at Table I-1.

evidence that the 145.25 percent margin, also assigned in the investigation segment of this proceeding, has no probative value. Absent any analysis of the rates from the investigation, or acknowledgement of the behavior of the mandatory respondent(s) from segment to segment, the non-examined respondents' arguments portray an alternative and inaccurate history of this proceeding.

Based on Commerce's analysis of all the assigned rates, it is apparent that there is no pattern of low or high margins in this proceeding; this is the first review of this order, and the CIT has sustained both calculated rates and AFA rates for the largest exporters of flanges from India. Thus, the evidence on the record does not show that the assumed representativeness (as recognized in *Albemarle*[271]) for mandatory respondents should not apply. We find that the facts here do not demonstrate that application of the expected method under 735(c)(5)(B) of the Act is unreasonable.

The Court Cases Cited by the Parties Do Not Support Departure from the Expected Method

The non-examined respondents' reference to *Navneet*, as support for departure from the expected method, is unpersuasive. In *Navneet*, the CIT specifically addressed reliance on the expected method and stated that the CAFC never found that Commerce was legally barred from assigning an AFA rate to an unexamined respondent in its separate rate calculations, but rather, "the court found that Commerce could not elevate the averaging methodology of {735(c)(5)(B) of the Act} above other, more reasonable methods when the AFA rate at issue was only applied to adversely increase the margin for cooperative respondents."[272] Here, Commerce did not elevate the averaging methodology of section 735(c)(5)(B) of the Act above other, more reasonable methods because the AFA rate was lawfully applied to an individually-investigated mandatory respondent in the investigation, and in this review, and Commerce's use of the rate for the non-examined companies rate was a function of the expected method and the lawful application of AFA in determining the rate for Chandan.

We also note that the CIT stated that "the all-others rate statute expressly permits the inclusion of facts available rates."[273] The CIT further noted that the CAFC "has already rejected the argument that AFA rates may not be incorporated into the all-others rate."[274] Had Congress intended to disallow AFA rates in this context, it would not have specifically authorized the use of such rates.[275] Moreover, the crux of the CIT's decision in *Navneet* focused on the existence of quantity and value data on the record, and whether review-specific rates in prior reviews versus the review-specific rate in the litigated review, were aberrational due to segment-to-segment fluctuations. None of those conditions are present in this case, as the evidence here does not demonstrate that any rates calculated or assigned in this review or any other segment of this

[271] *See Albemarle*, 821 F. 3d at 1353 ("The very fact that the statute contemplates using data from the largest volume exporters suggests an assumption that those data can be viewed as representative of all exporters. The statute assumes that, absent such evidence, reviewing only a limited number of exporters will enable Commerce to reasonably *approximate* the margins of all known exporters.")
[272] *See Navneet*, 999 F. Supp. 2d at 1361-2.
[273] *Id.*, 999 F. Supp. 2d at 1359.
[274] *Id.* (citing *Bestpak*, 716 F. 3d at 1378 (noting that section 735(c)(5)(B) of the Act and the SAA explicitly allow Commerce to factor both *de minimis* and AFA rates into the calculation methodology)).
[275] *Id.*

proceeding have been "aberrational."

Similarly, the non-examined respondents' reliance on *Amanda Foods* is misplaced. There, the CIT explained that "{a}ll parties agree that the mandatory respondents are presumed to be representative of the respondents as a whole; consequently, the average of the mandatory respondents' rates may be relevant to the determination of a reasonable rate for the {non-examined companies}."[276] Therefore, Commerce's decision "to assign dumping margins to {non-examined companies} based only on the rates they were assigned in prior proceedings" did not provide sufficient evidence to justify departure from the expected method and the Court found that, on remand, "Commerce must either assign to {non-examined companies} the weighted average rate of the mandatory respondents, or else must provide justification, based on substantial evidence on the record, for using another rate."[277] Here, in contrast, Commerce is not departing from the expected method. Additionally, as explained above, the evidence on the record does not show that the presumed representativeness for the mandatory respondent should not apply.[278] Therefore, Commerce's approach in this review, in which we are assigning the non-examined companies a rate based on the expected method, is consistent with *Amanda Foods*.

Employing Other "Reasonable" Methods

The non-examined respondents argue that Commerce could assign 0.50 percent as the "all-others" rate, which is the lowest positive dumping margin Commerce assigned in an administrative review under the previous order. Based on the above analysis, we decline to adopt the non-examined respondents' suggestion to pull rates forward from a prior order. The CAFC opined on pulling rates forward from previous reviews in the same proceeding in *Albemarle*, stating that:

> In light of this established doctrine, it is not open to Commerce to argue that prior review data is reliable simply because it is 'temporally proximate.' The government's rationale contravenes this fundamental premise of periodic administrative reviews that each 'administrative review is a separate exercise of Commerce's authority that allows for different conclusions based on different facts in the record.' That the prior rates were near in time cannot in and of itself justify their use in a subsequent review.[279]

Therefore, "pulling forward" rates within the same proceeding (much less from a *different* proceeding) is an exception to the "expected method" rule and must be justified by the record evidence.[280] Here, there is no such evidence. We find that looking at rates calculated under a

[276] *See Amanda Foods*, 647 F. Supp. 2d at 1418.
[277] *Id.*, 647 F. Supp. 2d at 1420-22.
[278] We also note that Balkrishna *et al.*/Bebitz's assertion that a non-individually examined respondent cannot be assigned a rate that is based on AFA runs directly counter to section 735(c)(5)(B) of the Act.
[279] *See Albemarle*, 821 F.3d at 1357 (citing *Qingdao Sea-Line Trading Co. v. United States*, 766 F. 3d 1378, 1387 (Fed. Cir. 2014)).
[280] *See Changzhou Hawd*, 848 F. 3d at 1008 (citing *Albemarle*, 821 F. 3d at 1348 ("After the Court of International Trade rendered its decision in this case, our court made clear that the 'separate rate' method {of pulling forward

different order, for reviews occurring 14-20 years ago, is an unreliable and speculative approach, and is not in accordance with law. The non-examined respondents have not cited any precedent in support of this approach.

While both *Albemarle* and *Changzhou Hawd* contemplated *de minimis rates*, and this review contemplates the inclusion of rates based entirely on facts available, the congressionally approved "expected method" allows for zero and *de minimis* rates and rates based entirely on facts available, with no preference for one type of rate over another. Thus, the non-examined respondents' assertion that we should depart from the expected method is without merit. Congress did not create a discrete "expected method" for rates based on facts available and one for zero/*de minimis* rates; rather the provision covers rates of all three types.

Finally, we disagree with Balkrishna *et al.*/Bebitz's argument that *Stainless Steel Bar from India*, a case with one mandatory respondent that received a total AFA margin, supports giving the non-examined respondents their prior rates (*i.e.*, the extant all-others rate) in effect before this review.[281] In *Stainless Steel Bar from India*, we explained that:

> As the CAFC recognized, the facts of this case present a 'situation in which there {is} consistency with respect to the dumping margins of the individually examined respondents throughout the reviews.' *In reviews where it has been individually examined over the last ten years, Ambica has consistently received a zero percent dumping margin*.[282]

Here, there is no analogous record evidence – *i.e.*, of historical dumping margins under the same order – to make a similar finding, because this is the first review of the AD *Order*. Therefore, we have a distinct case history as compared to *Stainless Steel Bar from India,* making that case inapposite. Moreover, in the limited case history, another mandatory respondent has received a rate based on total AFA.

As discussed above, and as emphasized in both *Albemarle* and *Changzhou Hawd*, the mandatory respondents' "representativeness of the market" has been demonstrated in this case; Commerce has selected a respondent, based on the CBP data on the record, that accounts for the largest volume of the subject merchandise.[283] Importantly, in *Changzhou Hawd*, the CAFC stated that "the mandatory respondents in this matter are assumed to be representative," and "{u}nder *Albemarle*, Commerce could not deviate from the expected method unless it found, based on substantial evidence, that the separate-rate firms' dumping is different from that of the mandatory respondents."[284] Likewise, here, Commerce has no substantial evidence on this record that the non-examined companies would behave differently from the mandatory

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rates} used by Commerce here is a departure from the congressionally approved 'expected method' applicable when all of the individually investigated firms have a zero or *de minimis* rate, which is the case here, and that certain findings are necessary to justify such a departure. Under the 'expected method,' appellants would be entitled to a *de minimis* rate. Because Commerce did not make the findings needed to justify departing from the expected method, we vacate the Court of International Trade's judgment, and we remand.")

[281] *See* Balkrishna *et al.*/Bebitz Case Brief at 7.

[282] *See Stainless Steel Bar* PDM at 8-9 (emphasis added).

[283] *See* Respondent Selection Memo at Attachment.

[284] *See Changzhou Hawd*, 848 F. 3d at 1012.

respondent, or that the mandatory respondent is otherwise not representative of the market.

To summarize, Chandan was determined to be representative of the non-examined companies in the investigation, *i.e.*, the immediately prior segment, and parties have not presented evidence to suggest that Chandan is not representative now. The only margin determined for a respondent in this review is Chandan's margin, which is based entirely on the basis of an AFA rate that has previously been assigned to a respondent, and which was affirmed by the CIT. In accordance with the CAFC's decision in *Albemarle*, and pursuant to section 735(c)(5)(B) of the Act, we continue to apply this rate to the companies subject to this review that were not individually examined, consistent with the expected method.[285]

Comment 4: Export Subsidies Offset

Bebitz's Comments

- Commerce did not select Bebitz as a mandatory respondent in either this review or in the contemporaneous CVD review. Therefore, Bebitz should be treated the same as the other non-examined respondents. For the final results, Bebitz should have its cash deposit rate adjusted for subsidy offsets.[286]

No other interested parties submitted comments on this issue.

Commerce's Position: Pursuant to section 772(c)(1)(C) of the Act, Commerce adjusts the price used to establish EP and CEP by "the amount of any countervailing duty imposed on the subject merchandise… to offset an export subsidy." With regard to the method of adjusting AD margins to offset CVD export subsidies, Commerce's practice in administrative reviews is to rely on the export subsidy rates found in the most recently completed segment of the companion CVD proceeding (*i.e.*, the most recently *published* CVD final determination or final results of administrative review).[287] This is the procedure we have adhered to here.

Bebitz offered no support for its arguments that Commerce improperly treated Bebitz in the

[285] *See HWR Pipes and Tubes from Turkey* (applying a rate based on the mandatory respondent's total AFA rate to the companies not selected for individual examination); *see also Nails from Taiwan* (applying a rate based on the mandatory respondents' total AFA rates to the companies not selected for individual examination), unchanged in *Nails from Taiwan Final*.

[286] *See* Bebitz Case Brief at 1.

[287] *See, e.g.*, *Aluminum Extrusions From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission, in Part, 2010/12*, 79 FR 96 (January 2, 2014) (Commerce based its subsidy offsets on the rates calculated in the CVD investigation); and *Aluminum Extrusions From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 78784 (December 31, 2014) (*Aluminum Extrusions AD AR2*), and accompanying IDM at Attachment (Commerce based its subsidy offsets on the rates calculated in the previous administrative review). For example, in *Aluminum Extrusions AD AR2*, Commerce adjusted the AD margins using the CVD export subsidy rates found in the final results of *Aluminum Extrusions CVD AR1*, even though the final results of *Aluminum Extrusions CVD AR2* were issued on the same date as the final results of *Aluminum Extrusions AD AR2*. *See Aluminum Extrusions AD AR2*; *see also Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014) (*Aluminum Extrusions CVD AR1*); and *Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78788 (December 31, 2014) (*Aluminum Extrusions CVD AR2*).

Preliminary Results, or that Commerce should change its practice for the final results of this review to apply the export subsidy rates from the concurrent CVD review, rather than the export subsidy rates from the most recently completed segment of the CVD proceeding. Therefore, for the final results of this review, we are continuing to offset the AD margins of the respondent companies, including Bebitz, using the export subsidy rates found in the final determination of the CVD investigation, which is the most recently completed segment of the CVD proceeding for which the final results have been published in the *Federal Register*.

In addition, in the LTFV investigation, we explained that "{w}ith respect to {Bebitz}, we will not provide an offset because we applied total AFA in calculating {Bebitz'} net subsidy rate in the CVD investigation."[288] Therefore, for these final results, as in the investigation and the *Preliminary Results*, we will not provide Bebitz an offset.[289]

V. 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 the administrative review and the final dumping margins in the *Federal Register*.

☒	☐
Agree	Disagree

8/20/2021

X 

Signed by: RYAN MAJERUS

Ryan Majerus
Deputy Assistant Secretary
for Policy and Negotiations

[288] *See India Flanges Investigation Final* IDM at Comment 10.

[289] Bebitz also asserts in its case brief that a company called "BFN Forgings Private Limited" is its successor in interest. Commerce considers the applicability of cash deposit rates after there have been changes in the name or structure of a respondent, such as a merger or spinoff by conducting "successor-in-interest," or "successorship," analyses. Commerce has conducted such analyses both in the context of administrative reviews, and in changed circumstances reviews (CCRs) conducted pursuant to section 751(b)(1) of the Act, and 19 CFR 351.216(d). Here, because no party requested a successorship determination relating to Bebitz (until Bebitz summarily asserted that it underwent a name change in its case brief), we continue to consider Bebitz as the company under review for cash deposit rate purposes. However, Bebitz may file a request for Commerce to conduct a CCR to examine the company's successorship, together with supporting information and documentation. We will evaluate such a request if received.