69 FR 55409, September 14, 2004

A-533-810
AR: 2/1/02 - 1/31/03
Public Document
IA/Office 2: JEP

MEMORANDUM TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Jeffrey May
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty Administrative Review on Stainless Steel Bar from India-- February 1, 2002, through January 31, 2003

Summary

We have analyzed the comments of the interested parties in the 2002-2003 administrative review of the antidumping duty order covering stainless steel bar (SSB) from India. As a result of our analysis of the comments received from interested parties, we have made changes in the margin calculations as discussed in the "Margin Calculations" section of this memorandum. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this administrative review for which we received comments from parties:

1. Use of Total Adverse Facts Available (AFA) for Chandan
2. Use of Total AFA for Viraj
3. Revocation for Viraj
4. Cost of Production (COP) Data for VFL
5. Depreciation Expenses for Viraj
6. Interest Expenses for Viraj
7. Waived Interest Expenses for Viraj

Background

On March 8, 2004, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on SSB from India. See Stainless Steel Bar From India; Preliminary Results of Antidumping Duty Administrative Review, Notice of Partial

Rescission of Administrative Review, and Notice of Intent To Revoke in Part, 69 FR 10666 (Mar. 8, 2004) (Preliminary Results). The product covered by this order is SSB. The period of review (POR) is February 1, 2002, through January 31, 2003.

We invited parties to comment on our preliminary results of review. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results.

Margin Calculations

We calculated export price and normal value (NV) using the same methodology stated in the preliminary results, except as follows:

- We increased the COP of bars produced by one of one of Viraj's affiliates, Viraj Forgings, Ltd. (VFL), to account for general and administrative (G&A) and financing expenses. See Comment 4.

- We recalculated Viraj's financing expense ratio to exclude "usance" expenses discovered at verification because these expenses are accounted for in the calculation of imputed credit. See Comment 6.

Discussion of the Issues

Comment 1: *Use of Total Adverse Facts Available (AFA) for Chandan*

In the preliminary results, we determined that it was appropriate to base the dumping margin for Chandan on AFA, in accordance with sections 776(a)(2)(A), (B), and (C) of the Act. We based this conclusion on findings that Chandan's submissions were incomplete and that Chandan was largely unresponsive to the Department's explicit requests for information. As AFA, we assigned Chandan the highest rate ever assigned to any respondent in any segment of this proceeding.

Chandan disagrees with this approach, arguing that the Department overstated the extent of the deficiencies in its responses. Specifically, Chandan notes that the Department's rationale for resorting to AFA in this case relates solely to the company's section D response (i.e., the portion related to COP) and that it completely addressed each of the Department's concerns related to sections B and C (i.e., the portions relating to home market and U.S. sales).

Chandan asserts that it recognizes the Department's authority to use total AFA in situations where only costs are deficient. In this case, however, Chandan disagrees that its cost responses were deficient at all, let alone deficient enough to resort to AFA. According to Chandan, the Department misunderstood and/or mischaracterized Chandan's responses, and it argues that none of the seven bases for resorting to AFA stated in the preliminary results is valid. Specifically, in response to the Department's assertion that Chandan failed to calculate its rolling costs using its own records (the first item cited in the preliminary results), Chandan contends that its methodology (i.e., using charges paid to a subcontractor) was reasonable, given that Chandan: 1) does not keep detailed records; 2) the subcontractor in question operates a facility which is "virtually the same as Chandan's"; 3) the subcontractor recovers "size-wize costs" because it charges different rates for flats, as well as for bar above and below 16 millimeters; and 4) rolling costs are the minor portion of total product cost. Chandan also maintains that in its sixth supplemental response, it did, in fact, reconcile its reported costs to its accounting system (item five), while in its seventh supplemental response, it reported costs for finishing operations (item two), provided further explanation of its yield loss response (item three), and identified the correct size ranges for its products (item four). Moreover, Chandan disagrees that it failed to provide worksheets and other documentation (item six) or fully allocate all costs (item seven), and as evidence it cites various worksheets contained in its sixth and seventh supplemental responses. Thus, Chandan argues that AFA was not warranted here.

According to Chandan, the courts have required the Department to apply the following two-pronged standard in deciding whether to resort to AFA: 1) it must first make an objective showing that a reasonable and responsive exporter would have known that the requested information was required to be maintained; and 2) it must make a subjective showing that the respondent failed to cooperate by promptly producing the requested information because it either failed to maintain required records or failed to put forth its maximum efforts to investigate and obtain the requested information. As support for this assertion, Chandan cites China Steel Corporation v. United States, Slip Op. 2004-6 (CIT 2004). Moreover, Chandan asserts that the courts have also required the Department to base its findings on cooperation on reasoned decision making, including "a reasoned explanation supported by a stated connection between the facts found and the choice made." See, e.g., Steel Authority of India v. United States, 149 F. Supp.2d 921, 929 (CIT 2001). Chandan states that the courts have held that the Department cannot merely recite the relevant standard or repeat its facts available finding, and that unreliable data in and of itself may not prove that an interested party failed to act to the best of its ability. Id. at 930. Rather, the courts have ruled that, when a respondent claims that it is unable to comply with the Department's requests for information, the Department must show that the respondent either could have in fact complied or knowingly placed itself in a condition where it could not comply. Id.

Chandan argues that, when the Department applies these standards to the situation here, it is clear that it cannot find that Chandan did not cooperate to the best of its ability. Chandan asserts that its ability to respond to the Department's questionnaire was hampered by the fact that: 1) it is a small company that does not have elaborate record-keeping capabilities; and 2) this is the first time that it has ever responded to a questionnaire. Chandan asserts that, because it requested the review itself (signaling its intent to cooperate) and because it was in substantial compliance in answering both the initial, and seven supplemental, questionnaires (demonstrating its actual cooperation), the Department was not justified in rejecting its data *in toto*, but rather should have used facts available only to fill any voids in missing data.

Moreover, Chandan asserts that in similar circumstances in the past involving first-time respondents, the Department has accepted incomplete information without resorting to AFA. As proof of this assertion, Chandan cites Stainless Steel Sheet and Strip from the Republic of Korea: Preliminary Results and Partial Recission of Antidumping Duty Administrative Review, 66 FR 41530, 41533 (Aug. 8, 2001) (Sheet and Strip from Korea) (where the Department found that model-specific costs were unuseable, and thus it computed a single COP for all products). Chandan asserts that it provided all data available to it and cooperated to the best of its ability, and thus it deserves no less consideration than that afforded to the respondent in Sheet and Strip from Korea.

The petitioners disagree that Chandan has cooperated to the best of its ability in this review, and they concur with the Department's preliminary decision to base Chandan's margin on AFA. According to the petitioners, requesting a review does not in and of itself establish evidence of cooperation; indeed, the petitioners contend that Chandan's repeated submissions of incomplete and inaccurate data are no less a form of non-cooperation than failing to respond to the Department's questionnaire at all. The petitioners note that the Department afforded Chandan multiple opportunities to provide accurate data, and they speculate that Chandan's refusal to do so stems from its belief that it would fare better withholding information than permitting an accurate calculation of its dumping margin. Thus, the petitioners characterize Chandan's failure to respond as an abuse of the process, and they assert that the Department's determination to apply total AFA was entirely appropriate.

The petitioners also disagree that the deficiencies in Chandan's data are limited to its section D response, because Chandan's cost data is the basis for its difference in merchandise (difmer) adjustments. The petitioners maintain that because Chandan's cost data is replete with errors and omissions, the Department is unable to make accurate price-to-price comparisons in this case. The petitioners contend that this problem is particularly acute for Chandan because it did not sell identical merchandise in the home and U.S. markets during the POR, and thus any margin calculations would include either a difmer adjustment (or where the difmers were consistently over 20 percent) constructed value (CV).

In any event, the petitioners disagree that Chanan's cost data is useable. The petitioners note that much of Chandan's cost response is based on repeated assertions that the company's methodologies are "reasonable," with little explanation and no accompanying support. For example, the petitioners cite Chandan's explanation for its use of surrogate rolling costs in lieu of its actual experience, a departure from the Department's normal practice. The petitioners note that Chandan merely stated that the "experience" of the subcontractor was "virtually the same as Chandan's own experience in the production of subject merchandise" and that it "scrutinized" its books and "derived a rational ratio" for each production quantity. The petitioners point out that Chandan failed to provide any information substantiating its allocations, despite the Department's repeated requests that it do so. The petitioners assert that, upon being notified that its methodology was unacceptable, Chandan failed to correct internal inconsistencies or provide support calculations to demonstrate the validity of the assumptions underlying its decision to base internal costs on the pattern of charges from outside parties; rather, it simply repeated the Department's instructions and then ignored them. The petitioners contend that, as Chandan admits it also had in-house hot-rolling, it is indefensible that Chandan did not rely on its own economic experience, or, at the very least, use its own cost data to corroborate the representativeness of the subcontractor's charges.

Similarly, the petitioners argue that Chandan failed to report all cost differences for its cold-finishing operations, despite its assertions to the contrary. Rather, the petitioners maintain that Chandan again cited its "experience" in observing no cost differences between finishes, and then, when pressed in the seventh supplemental questionnaire, provided cost differences for only certain finishes in very broad size groupings (instead of by control number). Moreover, the petitioners note that even these differences were suspect, given that they were based on average run times which were provided in the narrative response and unaccompanied by an explanation of how they were derived, worksheets showing how they were calculated, or supporting documentation of any sort. According to the petitioners, this piecemeal and incomplete reporting, conducted with a total lack of transparency, is untenable, especially since Chandan submitted eight consecutive responses.

The petitioners also note that Chandan's responses are confusing, contradictory, and riddled with inconsistencies. As an example, they point to Chandan's explanation regarding bright bar yield loss; in its final supplemental response, Chandan stated that this data was reported under the field BYLOSS, despite the fact that it had previously indicated that it had reported yield loss at the billet stage under that heading. The petitioners concede that Chandan did provide a clearer explanation of how yield losses were reflected in its response as part of its case brief, and Chandan also pointed to the document which provided partial (but incomplete) support for the reported yield figures. However, they disagree that the case brief is the appropriate forum for providing explanations that shed light on gross inconsistencies and errors in reporting, especially when, as here, Chandan had ample opportunity to provide full and accurate information in a timely manner. The petitioners note that the lack of transparency in Chandan's response was one of the factors that led the Department to decide not to verify Chandan's data; thus, they note that any explanations contained in Chandan's case brief are new, untested, and unverified.

The petitioners also disagree with Chandan's assertion that it identified the correct size ranges for its products in its seventh supplemental response. They note that Chandan's reassignment of size codes not only contained pervasive errors, but it revealed that Chandan failed to correctly report the COPs that corresponded to these codes. Again, the petitioners point out that the effect of such misdesignations is to create inaccuracies in the cost test, difmers, and CV.

Moreover, the petitioners note that, contrary to Chandan's assertions, it did not in fact reconcile the reported costs to those reflected in its financial statements. They contend that, instead, Chandan merely cited certain worksheets and claimed that it left no costs out of them. The petitioners note that the Department explicitly identified this deficiency to Chandan and requested a complete reconciliation; however, the company refused to comply, stating that it could not do so because it does not keep monthly records. Although Chandan did finally provide a partial explanation in its case brief as to why its worksheets did not reconcile to the company's accounting records (i.e., they did not contain costs for all products sold to all markets during the POR), the petitioners assert that this partial explanation should not be viewed as cooperation by the Department because it was given too late in the process. In any event, the petitioners assert that Chandan has provided no evidence that it has fully allocated all costs, and indeed it has provided ample evidence to the contrary.

Finally, the petitioners disagree that Chandan provided all necessary worksheets to support its cost calculations. They note that Chandan's "proof" of this consists simply of the COP database itself, and a worksheet that shows only aggregate cost headings. According to the petitioners, Chandan provided neither the underlying worksheets necessary to confirm the accuracy of the aggregate values, nor the worksheets required to demonstrate their correct application to specific products. The petitioners note that when the Department requested these worksheets, Chandan either only partially complied (as in the case of revised cost build-ups for the products with the highest sales volumes in the home and U.S. markets) or refused completely (as in the case of the Department's request that it reallocate its rolling costs and provide supporting worksheets). Even more significantly, the petitioners contend that Chandan's refusal to comply with the Department's requests was not limited to withholding worksheets; they note that Chandan ignored the Department's explicit instructions to include certain insurance costs and provident fund expenses in selling, general, and administrative expenses (SG&A).

According to the petitioners, the fact that Chandan's submissions were of low quality and rife with internal inconsistencies provides evidence of a continuing lack of cooperation. The petitioners assert that, given the totality of the deficiencies and in light of the Department's clear warnings on multiple occasions, the application of total AFA is warranted here. The petitioners argue that the combined effect of the errors on COP is cumulative, and thus applying gap-filler measures (which would require information which is not on the record) is not feasible. The petitioners assert that this case stands in clear contrast to the circumstances present in Sheet and Strip from Korea because in that case (unlike here) the overall costs were found to be consistent with those kept by the company in the normal course of business. In contrast, the petitioners argue that here Chandan's mistakes undermine the probity of its response, which should result in the Department's making adverse inferences. The petitioners further assert that, in this respect, using a single cost figure for Chandan's bar products is significantly different from the effect of using an average cost as noted in Sheet and Strip from Korea because in that case, the respondent produced predominantly one grade of product, whereas here Chandan has a wide range of finishes, grades, and sizes within its home market and U.S. sales databases. Thus, the petitioners contend that averaging the reported costs would yield utterly unrepresentative values that would likely reward Chandan and create an inaccurate non-adverse result. The petitioners assert that, because Chandan's behavior rises to the level of obstruction that impeded this proceeding, the Department should continue to apply total AFA for purposes of the final results.

Department's Position:

According to section 776(a) of the Act, the Department shall use the facts otherwise available in reaching a determination if:

1) necessary information is not available on the record; or

2) an interested party or any other person

A) withholds information that has been requested by the administering authority or the Commission under this title;

B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782;

C) significantly impedes a proceeding under this title; or

D) provides such information but the information cannot be verified as provided in section 782(i).

We disagree with Chandan's argument that, for the final results, the Department should either accept its information as reported or apply non-adverse facts available. In this case, we find that Chandan's responses to the Department's original and supplemental questionnaires are so deficient that they are not useable. Specifically, we note that Chandan failed to:

- report costs for the POR, without showing that the costs for the fiscal year did not differ materially from the POR costs. See the Department's seventh supplemental questionnaire dated January 14, 2003, at page 3;

- reconcile its reported costs to those reflected in its accounting system, despite repeated requests that it do so, thereby failing to demonstrate that its costs were completely reported. See Chandan's September 2, 2003, section D response at pages D-30-31 and exhibit D-3; its November 5, 2003, response at pages 13-15 and exhibit D-19 (Chandan's sixth supplemental response); and its January 26, 2004, response at pages 8-9 (Chandan's seventh supplemental response);

- adequately describe its cost collection, allocation methodologies, and accounting system, despite repeated requests that it do so. See Chandan's section D response at pages D-14-19 and D-23-33; Chandan's July 31, 2003, response at pages 5-6 (Chandan's fourth supplemental response); Chandan's sixth supplemental response at pages 3-14; and Chandan's seventh supplemental response at pages 3-12;

- o allocate rolling mill costs using the company's own experience or explain why fees charged by a subcontractor were representative. See Chandan's section D response at pages 18-19 and pages 23-27; Chandan's fourth supplemental response at page 5 and annexures Ia and b; Chandan's sixth supplemental response at pages 5-9; and Chandan's seventh supplemental response at pages 3-4;

- o provide answers to pointed questions by the Department, relying instead on references to previous inadequate answers. See, e.g., Chandan's seventh supplemental response at page 7[1];

- o provide worksheets for many items, including, among others, the calculation of complete costs for the control numbers with the highest volume of sales in the home and U.S. markets. See, e.g., Chandan's section D response at pages D-31-32 and Exhibit D-8; Chandan's sixth supplemental response at pages 4-5 and revised exhibit D-8; and Chandan's seventh supplemental response at page 4 and exhibit D-8-aUSA-HOME MARKET.

- o provide even minimal support documentation for numerous items (e.g., the run time for rolling equipment), instead relying on unsupported assertions and summary figures which it obtained from unspecified "production records"[2]; and

---

[1] In the seventh supplemental questionnaire, we requested for a final time that Chandan explain and justify its cost allocation methodolgies. We notified Chandan that it was inadequate to simply state, as it had previously, that "{t}hose costs that were common were apportioned amongst the various divisions based on some rational basis." See Chandan's sixth supplemental response at page 6. Moreover, we again pointed out to Chandan that all allocations must be based on its own actual production experience during the POR and that it must account for the total cost incurred during the fiscal year. We further instructed Chandan to revise its worksheets and database accordingly, and to provide supporting documentation and worksheets to demonstrate how any allocations were derived. Chandan's answer, contained at page 7 of Chandan's seventh supplemental response, did not contain any of the requested worksheets or supporting documentation, and its explanation of its allocation methodologies was simply: "{h}owever, for a few common expenses, Chandan has derived a rational ratio after considering production quantity of each division and its own production experience."

[2] See, for example, Chandan's seventh supplemental response at pages 1-2. Despite the Department's repeated and specific instructions to account for the necessary differences in costs between finishing operations and sizes, and to provide supporting documentation and worksheets demonstrating its calculations, Chandan largely ignored the Department's directions. Instead, it merely replied that "Chandan's experience shows that. . ." and proceeded to provide unsubstantiated average times for finishing operations which it had heretofore professed an inability to obtain. Not only were

o report SG&A expenses correctly, as evidenced by the fact that: 1) Chandan shifted certain costs into inventory by capitalizing them (see Chandan's section D response at exhibit D-3); 2) refused to include certain insurance and labor expenses identified by the Department (see Chandan's sixth supplemental response at pages 10-11 and seventh supplemental response at pages 11-12); and 3) miscalculated these expenses as a percentage of manufacturing costs, rather than cost of goods sold as instructed by the questionnaire (see the Department's original questionnaire at pages D13-D14; Chandan's section D response at exhibit D-19; and Chandan's seventh supplemental response at pages 11-12).

Based on our analysis of Chandan's cost data, we find that the deficiencies and omissions are so significant that the response is not useable. Although we repeatedly requested that Chandan provide additional data and/or further explanation of its allocation methodologies, it failed to revise its response in any meaningful way. Therefore, we have no confidence that Chandan's product-specific costs are either accurate or a reasonable reflection of the company's own production experience. Moreover, because it failed to reconcile its reported costs to the costs recorded in its own audited accounts (a task required of every respondent in every proceeding, and one which is not difficult given that the reported costs must be based on those recorded in the company's normal books and records), we have no reasonable assurance that the total costs reported are complete.

Cost information is vital to our dumping analysis, because: 1) it provides the basis for determining whether comparison market sales can be used to calculate NV; and 2) in certain instances (e.g., when there are no comparison market sales made at prices above the COP), it is used as the basis of NV itself. In cases involving a sales-below-cost investigation, as in this case, lack of accurate COP/CV information renders a company's response so incomplete as to be unuseable. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Canada , 64 FR 15457 (Mar. 31, 1999); Certain Cut-to-Length Carbon Steel Plate from Mexico: Final Results of Antidumping Duty Administrative Review, 64 FR 76, 82 (Jan. 4, 1999) ; Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand, 63 FR 43661, 43664 (Aug. 14, 1998); Notice of Final Determination of Sales at Less Than Fair

---

these figures not accompanied by any supporting documentation, but there was a similar lack of narrative description on how they were derived. Chandan merely stated: "{a}s stated earlier, Chandan does not book its costs division wise in its accounting records. However, for purposes of the Department's requirement, we have gathered information from the production department and other records and have adopted the following methodology for allocation of costs." No such methodology follows, merely a recitation of finish types and the unsubstantiated figures noted above. Moreover, we note that, even in providing more specific finishing costs, it continued to fail to comply with the Department's instructions because it did not report costs at the level of detail requested by the Department (i.e., on a product-specific basis). Chandan simply grouped costs for products up to 16mm and those over 16 mm.

Value: Certain Steel Concrete Reinforcing Bars from Turkey, 62 FR at 9737, 9737-9738 (Mar. 4, 1997); and Certain Cut-to-Length Carbon Steel Plate From Sweden: Final Results of Antidumping Duty Administrative Review, 62 FR 18396, 18401 (Apr. 15, 1997).

Accordingly, because Chandan failed to submit accurate information which was not only specifically requested by the Department but also fundamental to the dumping analysis, we find that it withheld information necessary to reach a determination and/or significantly impeded the proceeding. Consequently, we have continued to assign Chandan a margin based on total facts available, as required by sections 776(a)(2)(A) and (C) of the Act.

According to section 776(b) of the Act, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. See, e.g., Notice of Final Determination of Sales of Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil, 67 FR 55792, 55794-96 (Aug. 30, 2002). We have determined that Chandan did not act to the best of its ability in this proceeding, as required by section 776(b) of the Act, because we find that the failure to provide the information requested was not beyond the respondent's control.

Regarding Chandan's assertions that it was incapable of providing the information the Department requested, we disagree. Not only did Chandan repeatedly fail to explain its allocation methodologies (actions obviously within Chandan's control), but the documents requested of Chandan are of a type normally generated in the ordinary course of business. For example, we required Chandan to provide simple worksheets reconciling its total reported costs to those reflected in its accounting system. Instead of providing these supporting calculations, Chandan merely submitted a worksheet showing that the total reported costs differed from those on its financial statements. We find that Chandan's explanation – that it does not keep monthly records – to be unconvincing at best.[3] Although Chandan may not book certain costs into its formal accounting system until year end, it does maintain source documentation for these costs throughout the year.[4] In any event, we note that Chandan did not explain

---

[3] Specifically, in its sixth supplemental response at page 14, Chandan stated that "Chandan does not have a system of preparation of monthly accounts. For purpose of finalisation {sic} of accounts, many accounting entries, viz., consumption of raw material, depreciation etc., for the entire fiscal year are passed in the year end. Thus, although for the whole fiscal year, the costs are being correctly and fully booked, COM cannot be generated based on the Monthly Trial Balance because of the non booking of all the costs on monthly basis."

[4] This conclusion is obvious, given that Chandan did, in fact, report costs for particular products, and Chandan appears to believe that these costs related to the costs in its audited financial statements. See Chandan's seventh supplemental response, at page 9, where Chandan stated "We have taken into account all the cost reported in one financial statement which is reported in Exhibit D-3

the apparent discrepancy until the case briefing stage, when it admitted that its worksheet only reflected the costs of subject products sold in the home and U.S. markets. Even assuming that this explanation accounts for the discrepancy, we note that does not remedy the deficiency in Chandan's response – namely, that Chandan failed to reconcile its reported costs to those in its books and records.

Chandan was notified in the Department's original and supplemental questionnaires that failure to submit the requested information by the date specified might result in use of facts available. Generally, it is reasonable for the Department to assume that Chandan possessed the records necessary for this administrative review and that by not supplying the information the Department requested, it failed to cooperate to the best of its ability.

We disagree with Chandan's assertion that the fact that it requested this review demonstrates either that it intended to cooperate in this proceeding or that it did not stand to benefit from withholding documents. Absent reliable data, we cannot accurately determine Chandan's actual dumping liability during the POR. We find Chandan's assertion that it expected to receive a significantly lower rate to be meaningless, because it is based not only on speculation but also on unuseable data.

In addition, we note that section 782(e) of the Act is inapplicable in this case. Pursuant to that section, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Here, the conditions applicable to section 782(e) of the Act have not been satisfied. As described in detail above, Chandan's submissions were so deficient that useable information with respect to Chandan's costs of production was never provided. Given that Chandan's information was so incomplete, it could not serve as a reliable basis for reaching our determination because without this information, we could not reach a reliable determination regarding COP nor could we make the necessary comparison between NV and export price. As described above, we also find that Chandan failed to demonstrate that it acted to the best of its ability in responding to the Department's repeated requests for information. Finally, we note that Chandan's information could not be used without undue

(revised D-17) and there is not a single cost element that has been left out by Chandan for calculation of cost per unit." The fact that the company may not transfer these costs from its cost accounting system into its financial accounting system on a monthly basis is not the type of data limitation that would prevent the company from demonstrating that its costs were completely reported. Thus, we find that the provision of this type of reconciliation was within the company's control; we note that a mere assertion that Chandan completely reported its costs, unaccompanied by a demonstration that it did so, is not sufficient.

difficulty because the cost information – which was unusable – is vitally interconnected with other elements of the dumping determination.

Accordingly, because Chandan failed to put forth its maximum efforts in responding to the Department's requests for information, even though the ability to do so was within its control, we have continued to assign it a dumping margin based on total AFA consistent with section 776(b) of the Act. As AFA, we have used the highest rate ever assigned to any respondent in any segment of this proceeding. This rate is 21.02 percent. We find that this rate, which was the rate alleged in the petition and assigned in the investigation of this proceeding, is sufficiently high as to effectuate the purpose of the facts available rule (i.e., we find that this rate is high enough to encourage participation in future segments of this proceeding). See, e.g., Extruded Rubber Thread from Malaysia; Final Results of Antidumping Duty Administrative Review, 63 FR 12752, 12762-3 (Mar. 16, 1998).

Finally, we disagree with Chandan that the facts here are similar to those in Sheet and Strip from Korea. In that case, we found that the respondent not only cooperated with the Department, but it completely reported all costs. Moreover, we found that the data on the record was, in fact, useable for analysis purposes, which stands in direct contrast our findings here. Given the pervasive deficiencies and the extent of Chandan's lack of cooperation in this review, the use of partial non-adverse facts available is not appropriate.

Comment 2: *Use of Total AFA for Viraj*

On January 16, 2004, Viraj submitted a revised COP database in order to correct certain "minor" errors discovered during its preparations for verification. We accepted this database, verified it, and used it to perform our calculations in the preliminary results. The petitioners argue that this data was both untimely and incomplete, and therefore it should be rejected by the Department for the final results. As a consequence, the petitioners contend that the Department should base the final margin for Viraj on total AFA.

Specifically, the petitioners disagree with Viraj's assertion that the errors in question were minor, because they resulted in Viraj's submission of new sales and cost databases which contained revised: 1) control numbers; and 2) cost information for one of the Viraj Group companies, VFL, including new information concerning VFL's manufacturing processes. The petitioners assert that these new databases were not accompanied by detailed explanatory cost calculations, and even after verification of this data, there continue to be critical gaps in it.

Moreover, the petitioners assert that Viraj's pre-verification submission disclosed for the first time in this review that VFL produced forged bar which is subject to the proceeding. The petitioners assert that the late disclosure of this information is particularly inexcusable given that the Department repeatedly questioned Viraj on the role of VFL in production and Viraj responded only in "cryptic" fashion. According to the petitioners, it is unfathomable that Viraj could "forget" until seven days prior to verification that VFL was forging its heavy bars, especially since the Department determined that the intertwining of company management was so significant that it collapsed these entities.

In any event, the petitioners assert that the data reviewed at verification appears to show that VFL misreported its materials costs, given that the costs for different grades should vary significantly but did not. The petitioners complain that their ability to participate in this process has been impaired because of the late submission of the data in question and the Department's decision at verification to examine, and take supporting documentation for, only one product produced by VFL.

Finally, the petitioners note that, not only did Viraj fail to report cost data at all for a significant portion of its home market database, but the Department also made significant adjustments to Viraj's sales and cost data in its preliminary calculations. According to the petitioners, these facts highlight the pervasive inaccuracies in reporting by Viraj. The petitioners argue that, as a result, the Department's calculations omit certain major elements of Viraj's costs (i.e., VFL's G&A and financing expenses, as well as certain of the financing expenses incurred by another affiliated producer, Viraj Alloys Ltd. (VAL)). The petitioners assert that, because Viraj cold finishes the materials melted and rolled at VAL and heavy forged at VFL, the corrected values will cause upstream revisions to the reported COP data. According to the petitioners, the Department should not be required to make these "substantial" revisions, and instead it should apply total AFA. The petitioners maintain that the errors and omissions in this case are so significant that the Department should find that Viraj has impeded the proceeding. Nonetheless, the petitioners assert that, if the Department does not find that AFA is warranted, it should correct VAL's and VFL's cost data, as discussed in Comments 4 and 7, below.

Viraj disagrees that total AFA is warranted for purposes of the final results. Viraj asserts that, because Viraj's purchases of bar from VFL constituted significantly less than one percent of the company's total purchases during the POR, it inadvertently failed to report the COP for VFL's products and instead reported the transfer prices between the two entities. According to Viraj, the company discovered this error during its preparations for verification and notified the Department of it at the earliest possible moment. Finally, Viraj disagrees with the petitioners' argument that VFL's and VAL's cost data should be adjusted. For further discussion of these issues, see Comments 4 and 7, below.

Department's Position:

We disagree with the petitioners that the use of total AFA is warranted for Viraj for purposes of the final results. In this proceeding, none of the requirements set forth in section 776(a) of the Act is met *in toto*. Specifically, we find that Viraj did not withhold information or fail to provide its responses in a timely manner. Indeed, throughout the course of this review Viraj has demonstrated its willingness to cooperate with the Department's requests for information, and it has attempted to answer each request for information to the best of its ability. Although its responses contained certain minor inaccuracies, we were able to verify the submitted information and are satisfied that accurate and sufficient information exists on the record of this review. Contrary to the implication by the petitioners, we found no evidence that the respondent attempted to mislead the Department or impede the proceeding.

Regarding revised cost data submitted by Viraj, we disagree with the petitioners that it would be appropriate to reject this information now, given that we not only accepted it in January 2004, but we also verified it. Specifically, we disagree with the petitioners that the revisions contained in this database were either so extensive or major that they constituted a wholesale revision of the company's response; as a consequence, we find that it was well within the Department's discretion to accept it either before – or during – verification.[5]

While we recognize the petitioners' concern to participate fully in this proceeding, we disagree that the final results were impacted by timing of the submission of the data in question (i.e., one week prior to verification). We note that seven days is considered to be a sufficient amount of time to analyze and comment on data prior to verification in other types of proceedings (e.g., less than fair value investigations); although we are conducting an administrative review, we find that this is equally true here, where the "new" cost data was limited to only three products out of forty produced by Viraj, and it affected only a portion of the production process for these products. Thus, we find that the petitioners had adequate time to comment on this information prior to verification and to request that the Department focus on certain aspects of it at verification. Despite this, we note that they did not raise this issue until over a month after the verification was completed.[6]

Finally, we disagree with the petitioners that any of the changes made to Viraj's sales and cost data in the preliminary results was significant. For example, we changed the date of sale and shipment for one out of approximately two thousand U.S. sales, based on our verification findings; we also recalculated home market and U.S. credit expenses using verified data on the record in order to apply the Department's standard calculation formula. For a complete list of these changes, see the March 1,

---

[5]In fact, we note that the Department often not only accepts minor revisions to a company's responses at verification, but also permits respondents to submit revised databases, correcting minor errors identified at verification, after the verification is completed. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 69 FR 20594, (Apr. 16, 2004), and accompanying Issues and Decision Memorandum at Comment 23, .

[6] In addition, we note that the petitioners appear to have misunderstood the data examined at verification related to VFL. As noted below by Viraj (see Comment 4), VFL performed only conversion operations on materials provided by other parties. Therefore, the costs for products forged by VFL were limited to labor and overhead, and thus any differences in materials costs for these products would not be captured in them. In light of this, we disagree that the Department's decision at verification to examine, and take supporting documentation for, only one of the three subject products produced by VFL during the POR affected the petitioners' ability to comment meaningfully on the data.

2004, memorandum to the File from Michael Strollo entitled "Calculations Performed for Viraj ImpoExpo Ltd. (Viraj) for the Preliminary Results in the 2002-2003 Antidumping Duty Administrative Review of Stainless Steel Bar from India." We similarly disagree with the petitioners that Viraj's failure to report costs for a small number of hot-rolled products is significant, given that: 1) Type of finish (hot vs. cold) is the most important product matching characteristic; 2) Viraj sold only cold finished products in the United States; and 3) Viraj also sold similar cold finished products in India.

Nonetheless, we agree with the petitioners that the data for VFL's G&A and interest expenses were improperly excluded from the COP of VFL. We disagree, however, that VAL's financing expenses should be increased. For further discussion, see Comments 4 and 7, below.

Comment 3: *Revocation for Viraj*

In the preliminary results, we determined that it was appropriate to revoke the order with respect to Viraj's U.S. exports of subject merchandise, based on Viraj's request, because we found that Viraj had met the requirements of 19 CFR 351.222 (i.e., it had zero or *de minimis* dumping margins for its last three administrative reviews, it sold in commercial quantities in each of these years, and it had submitted the requisite certifications). The petitioners contend that this action is impermissible because there has been no final determination of Viraj's dumping margins in the two previous consecutive reviews.

Specifically, the petitioners note that they have appealed the results of the two previous administrative reviews. According to the petitioners, not only is one of the issues under appeal (i.e., that related to whether Viraj and its affiliated producers should be collapsed for purposes of the dumping analysis) potentially significant enough to reverse the Department's previous findings of no dumping, but it is likely that the Department's decision to collapse the affiliates will be reversed by the courts. The petitioners note that this issue has been remanded to the Department twice, the most recent time in March 2004, and each time the Court of International Trade (CIT) has required the Department to provide additional justification for collapsing the entities concerned.

The petitioners assert that the Department has faced similar circumstances in cases involving pending anti-circumvention claims. The petitioners maintain that, in those cases, the Department has determined that the circumvention issue must be decided with finality before an order can be considered for revocation. As support for this contention, the petitioners cite Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews, and Determination Not to Revoke in Part, 65 FR 9243, 9244-45 (Feb. 24, 2000), where the petitioners contend that the Department's decision not to revoke the order with respect to a given respondent was based on its determination that an anti-circumvention investigation of the company had not yet been resolved. According to the petitioners, the principle here is the same – the Department may not consider revocation until there is a final determination of Viraj's margin for the prior two review periods, which will not occur until after all appeals have been exhausted.

Finally, the petitioners assert that this issue will be moot if the Department takes into account the other comments set forth in their case brief. According to the petitioners, this is because the margin for Viraj calculated here will no longer be zero.

Viraj did not comment on this issue.

Department's Position:

The Department may revoke, in whole or in part, an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia,* that a company requesting revocation must submit the following:

> (1) a certification that the company has sold the subject merchandise at not less than normal value in the current review period and that the company will not sell subject merchandise at less than normal value during the future;
>
> (2) a certification that the company sold commercial quantities of the subject merchandise to the United States in each of the three years forming the basis of the request; and
>
> (3) an agreement to reinstatement of the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than normal value.

See 19 CFR 351.222(e)(1).

Upon receipt of such a request, the Department will consider:

> (1) whether the company in question has sold subject merchandise at not less than normal value for a period of at least three consecutive years;
>
> (2) whether the company has agreed in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Department concludes that the company, subsequent to the revocation, sold the subject merchandise at less than normal value; and
>
> (3) whether the continued application of the antidumping order is otherwise necessary to offset dumping.

See 19 CFR 351.222(b)(2)(i).

In the preliminary results of this review, we noted our intention to revoke the antidumping duty order with respect to Viraj because it had met the requirements of 19 CFR 351.222 (i.e., it had zero or *de minimis* dumping margins for its last three administrative reviews, it sold in commercial quantities in each of these years, and it had submitted the requisite certifications). Because these conditions remain true, we are revoking the order for Viraj's U.S. exports of subject merchandise in these final results.

We disagree with the petitioners that this action cannot be taken before the litigation in previous segments has been concluded. It is not the Department's policy to delay granting revocation because of pending court appeals. See, e.g., Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Review, and Notice of Revocation (in Part), 59 FR 15159, 15166 (Mar. 31, 1994); Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Reviews, 61 FR 4408, 4414 (Feb. 6, 1996). While we acknowledge that the CIT has remanded a portion of one of our prior decisions, it has not yet issued a ruling on our most recent remand redetermination. Moreover, our position in that litigation remains unchanged – namely that the final results were supported by substantial evidence and are fully in accordance with U.S. antidumping law. We note that, even after the remand redetermination, Viraj's margin remains *de minimis*. See Final Results of Redetermination Pursuant to Remand: Slater Steels Corporation v. United States Slip Op. 04-22 (CIT March 8, 2004), (May 7, 2004). In any event, as the CIT has not rendered a final opinion in the cases under litigation that reverses the Department's decisions, we have continued to rely on the margins determined in the segments at issue because we consider them to be valid and reliable.

We also disagree with the petitioners that the circumstances here are similar to those involving pending anti-circumvention claims. As part of its revocation analysis under 19 CFR 351.222(b)(2)(i), the Department must determine whether the continued application of the antidumping order is otherwise necessary to offset dumping. It is entirely reasonable for the Department to consider a company's commercial behavior under the existing antidumping order (and any attempts to evade that antidumping order) in the context of this analysis. In contrast, here we have found that Viraj exported subject merchandise to the United States in commercial quantities for three years, and no party to the proceeding has alleged that Viraj has attempted to circumvent the antidumping order. Thus, we have no reason before us to question that Viraj's past commercial behavior will not be an accurate reflection of its future experience, and we have made our revocation decision accordingly.

Comment 4: *Cost of Production Data for VFL*

The petitioners note that Viraj did not include any G&A or financing expenses in the reported costs of VFL. The petitioners assert that the Department should increase Viraj's costs to include these items, and they provided proposed calculations as part of their case brief. Alternatively, the petitioners note that it may be appropriate to calculate financing expenses for Viraj and its affiliates on a consolidated basis, in light of the fact that the Department collapsed these entities for purposes of its analysis. The petitioners note that the Department must use facts available in determining the consolidated cost of goods sold, however, because Viraj did not report the data that would permit the removal of intra-company transactions. The petitioners claim that this points to another calculation methodological problem caused by Viraj's inadequate reporting, and it underscores the validity of basing Viraj's margin on total AFA.

Viraj disagrees that VFL's costs should be increased by the amount of its G&A and financing expenses. According to Viraj, the majority of VFL's production activity relates to non-subject merchandise. Viraj asserts that VFL incurs only conversion costs related to bar production, and it maintains only negligible inventories of bar. For this reason, Viraj asserts that VFL's G&A expenses do not relate to bar production. Regarding financing expenses, Viraj claims that none of these expenses relate to production for home market sales, given that they consist of: 1) interest tied to export credits; 2) bank charges incurred on non-subject products; and 3) interest on term loans and vehicle leasing. Viraj further claims that VFL has no short-term borrowings and that the Department confirmed this fact pattern at verification.

<u>Department's Position</u>:

We disagree with Viraj that it would be inappropriate to include a portion of VFL's G&A expenses in its costs. G&A expenses encompass a broad range of expense items that are more closely related to the accounting period rather than to any specific product or service. Moreover, G&A expenses relate to the activities of the company as a whole rather than to specific production processes. For example, a company must maintain some level of personnel, facilities, and management to plan and coordinate business strategies, corporate financing, accounting, and personnel functions. The CIT has stated that "'G&A expenses are those expenses which relate to the activities of the company as a whole rather than to the production process'." <u>U.S. Steel Group v. United States</u>, 998 F. Supp. 1151 (CIT 1998) (quoting <u>Rautaruukki v. United States</u>, 19 CIT 438 (1995)). Moreover, the CIT has found that "Commerce's decision that offsets to G&A expenses should also be related to the company's general operations – comprised of all general activities associated with the company's core business, including production of the subject merchandise – is a reasonable application of the statute." <u>U.S. Steel</u>, 998 F. Supp. 1151.

The general activities and period cost concepts have led the Department, with few exceptions, to allocate G&A expenses proportionally based on the cost of sales of specific products. <u>See</u>, <u>e.g.</u>, <u>Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan: Final Results Antidumping Duty Administrative Review</u>, 66 FR 11555 (Feb. 26, 2001) and accompanying Issues and Decision Memorandum at <u>Comment 5</u>. The cost of sales allocation method accounts for the fact that G&A expenses consist of a wide range of different types of costs, unrelated or indirectly related to the production process, and prevents distortions in marginal profits. Therefore, for purposes of the final results, we have allocated VFL's G&A expenses to its production during the

POR using the cost of goods sold shown on VFL's 220-2003 financial statements, and we have increased Viraj's COP for the applicable products accordingly.

We also disagree with Viraj that it would be inappropriate to include VFL's financing expenses in its costs. It is the Department's standard practice to include all financing expenses of a company as part of COP, irrespective of whether these expenses relate to particular markets or to long- or short- term loans. See question III.D.2. of the Department's standard questionnaire. As a consequence, we have increased VFL's costs by the amount of the "secured" and "unsecured" financing expenses shown on its 2002-2003 financial statements. We have not included any bank charges on export sales in these calculations, however, because we consider these expenses to be direct selling expenses unrelated to the products at issue.

Finally, regarding the petitioners' argument that the Department should consider calculating financing expenses on a consolidated basis, we disagree. The Department's longstanding practice with regard to financing expenses is to base net financing expenses on the full-year net interest expense and cost of sales from the audited fiscal year financial statements at the highest level of consolidation which correspond most closely to the POR. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from France, 64 FR 73143, 73152 (Dec. 29, 1999). This practice has been upheld by the CIT. See Gulf States Tube Division of Quanex Corporation v. United States, 981 F. Supp. 630, 647-648 (1997). Because the Viraj group companies do not prepare consolidated financial statements, we have continued to calculate financing expenses at the individual company level, in accordance with our practice.

Comment 5: *Depreciation Expenses for Viraj*

Viraj argues that the Department should base its depreciation expense solely on the amounts reflected on its 2002-2003 financial statements, rather than include an amortized portion of the expense recognized in prior years. Viraj notes that the Department addressed this issue in the final results of the preceding administrative review (see Stainless Steel Bar From India: Final Results of Antidumping Duty Administrative Review, 68 FR 47543 (Aug. 11, 2003) and accompanying Issues and Decision Memorandum at Comment 11) (SSB from India); Viraj implies that the Department's decision taken here is inconsistent with the action taken in the most recently completed segment of this proceeding.

The petitioners contend that Viraj did not report depreciation expenses derived from its audited financial statements in a timely manner. According to the petitioners, this information should have been provided to the Department no later than January 2004, but was not. The petitioners do not address Viraj's argument with respect to depreciation related to prior years.

Department's Position:

We disagree with Viraj. In SSB from India, we stated:

. . . during the POR, VAL changed its depreciation method from the SLM to the WDV method resulting in a one-time adjustment to recognize the cumulative change (i.e., additional depreciation) that would have been recognized in prior years under WDV. VAL reported the current-year depreciation using the WDV method in its current operating expense and reported the prior-year effects as a "below the line item" in its financial statements.

The issue in this case is how to treat a change in accounting method in the context of an antidumping case. Both the SLM and the WDV methods of depreciation are in conformity with Indian GAAP and both appear to reasonably allocate costs to the merchandise under review when the same depreciation methodology is used across the life of an asset. VAL is participating in the seventh review of this order. During those prior reviews, VAL reported its costs using the SLM, which resulted in lower costs of production reported to the Department. As VAL states, under the SLM, the yearly depreciation costs associated with each asset is the same each year over the asset's life. If VAL had used the WDV method, its depreciation costs and, thus, its reported costs, would have been significantly higher in prior years and the future years will be significantly lower. Now that the period is coming to an end where the WDV method results in higher costs than the SLM, VAL is switching methods to the one that will favor it in future periods and recognize in aggregate the cumulative "prior-year effect" as a "below the line item." The result of this change in method will be that, during the pendency of this proceeding, a significant amount of costs associated with the production of the merchandise will never be allocated to product costs. Rather, the entire cumulative adjustment will be expensed in the current year's financial statements . . .

As discussed above, the distinctive effect of the change in accounting method in this case is that significant amounts of production costs will never be allocated to products. This is different from other changes in accounting methodologies that affect the timing of when the cost will be recognized. There are two possible ways in which to correct this problem. The Department could require VAL to continue to report costs using the SLM or the costs in question could be allocated over the remaining estimated useful lives of VAL's assets. We have selected the latter method because we do not have on the record the current periods' depreciation expense under the SLM, nor can we calculate the amount. Since we do not have complete information on VAL's individual fixed assets, we estimated the average remaining life of VAL's fixed assets based on the information we obtained from VAL's prior year financial statements. Then, the additional depreciation was divided by the estimated average remaining life of VAL's fixed assets to calculate the current review period's annual amortization amount. We included an annual amortization expense in the G&A expense rate calculation for the current review. See Cost of Production and Constructed Value Calculation Adjustments for the Final Results dated August 4, 2003, for a detailed discussion of the calculation. In addition, VAL excluded current-year depreciation expenses from the denominator of the G&A expense ratio calculation. Therefore, the Department also included the current-year depreciation expense in the denominator of the G&A expense ratio calculation for the final results.

See SSB from India at Comment 11. In this segment of the proceeding, Viraj again did not provide complete or timely information on VAL's individual fixed assets. We note that there are several years remaining in the estimated average useful life of the assets in question. Consequently, we have continued to recognize an amortized portion of the depreciation associated with these assets which has not been captured in prior segments of this proceeding, consistent with our practice in the prior segment.

Comment 6: *Interest Expenses for Viraj*

For purposes of the preliminary results, we increased Viraj's financing expenses to include certain actual expenses recorded in its accounting system under the category "Interest Usance – Exports." Viraj contends that this action was inappropriate because it results in the double-counting of the company's financing expenses.

Specifically, Viraj contends that the expenses in question represent discounting fees paid to the company's bank which were associated with the bank's providing payment to Viraj in advance of its receipt of funds from customers. Viraj asserts that, at the Department's request, it defined its reported credit period using the date of payment from the customer, rather than the date that it received payment from the bank. Thus, because the Department accounted for both actual interest expenses incurred via discounting fees (as financing expenses) and the opportunity cost related to the time between payment by the bank and payment by the customer (as imputed credit expenses), these expenses were accounted for twice in the dumping analysis.

Viraj asserts that the Department has recognized in other cases that this type of double-counting is impermissible. As support for its assertion, Viraj cites Certain Forged Stainless Steel Flanges: Final Results of Antidumping Duty New Shipper Review, 68 FR 351 (Jan. 3, 2003).

The petitioners disagree that the Department double-counted interest expenses for the preliminary results. Specifically, the petitioners note that the Department has a long-standing practice of including actual period interest expenses as part of the financial expense ratio. The petitioners point out that this is because the financing expenses included in COP represent the actual cost of borrowing used to finance company operations, whereas imputed credit expenses merely reflect the opportunity cost of providing customers with a payment grace period after shipment and invoicing of the goods.

In any event, the petitioners argue that the expenses in question should be reclassified as direct bank fees, rather than treated as interest expenses. The petitioners base this conclusion on the following: 1) at verification, Viraj indicated that it considers these expenses to be direct selling expenses; 2) they relate to penalties charged by the bank for late payments by the company's export customers; and 3) they do not relate to home market sales. The petitioners note that, because the Department discovered these fees at verification, it is not possible to calculate these fees on a transaction-specific basis.

Therefore, the petitioners contend that the Department should allocate these fees over the total weight of all direct exports during the POR and then deduct the resulting per-unit amount from U.S. price.[7] The petitioners maintain that this action would constitute non-adverse facts available and, as such, would be a conservative measure, given that Viraj failed to report these expenses in its questionnaire response.

Department's Position:

During the cost verification conducted in this case, we found that Viraj recorded certain expenses in its accounting system under the account "Interest Usance - Exports" which had not been reported in its questionnaire response. See the February 20, 2004, memorandum from Michael Strollo and Alice Gibbons to Louis Apple entitled "Verification of Cost of Production and Constructed Value Data Submitted by Viraj Alloys Limited and Viraj Impoexpo Limited in the 2002-2003 Antidumping Duty Administrative Review of Stainless Steel Bar from India" (Viraj cost verification report) at page 25. When questioned about the nature of these expenses, company officials stated that they were direct selling expenses and thus had not been reported as part of the company's financing costs. For purposes of the preliminary results, however, we considered these expenses to be financing expenses, rather than direct selling expenses, consistent with their treatment in Viraj's own books and records.

We have re-examined the documentation on the record with respect to these fees, and we agree with Viraj that they are more appropriately classified as direct selling expenses. As the petitioners correctly point out, Viraj submitted sales documentation showing that they relate to penalty interest charges on specific sales transactions. Specifically, this documentation shows that Viraj's bank assesses additional "interest" charges in cases where: 1) the bank discounted the original sales note; and 2) the customer's payment to the bank was overdue. Thus, we find that these fees are more akin to bank charges than interest expenses. Thus, for purposes of the final results, we have no longer included these fees as part of the company's financing expense ratio.

In situations involving discounted receivables, it is the Department's normal practice to: 1) base the date of payment for sales transactions on the date that the respondent receives funds from the bank; and 2) deduct any discounting fees incurred on the sale as a direct selling expense. We find that this practice appropriately measures the opportunity cost associated with extending credit to customers because it accounts for the time between shipment and receipt of funds (as part of credit expenses) and the actual costs associated with the bank's providing advance payment on the sale (as part of direct bank charges). In this case, however, verification documents show that Viraj reported the date that the

[7] In its March 5, 2004, submission (incorporated by reference in the petitioners' case brief), the petitioners argued that these expenses should continue to be treated as part of Viraj's financing expenses. Because the petitioners argued for a different result in their case brief, we have not addressed the March 5 argument further.

customer paid the bank, rather than the date that the bank provided funds to Viraj, as the date of payment in its U.S. sales database. See the February 20, 2004, memorandum to Louis Apple from Michael Strollo and Alice Gibbons entitled "Verification of the Sales Questionnaire Responses by Viraj Alloys Limited and Viraj Impoexpo Limited in the 2002-2003 Antidumping Duty Administrative Review of Stainless Steel Bar from India" (Viraj sales verification report) at exhibits 8-12. Viraj also reported the discounting fees charged by the bank as direct bank charges, but it did not report the additional bank fees charged by the bank on late payments by the customer. Because we do not have either the correct dates of payment on the record or the total bank fees charged on the sales, we are unable to accurately calculate imputed credit and total bank fees here.

We disagree with the petitioners that it would be appropriate to account for the unreported expenses by allocating their aggregate amount over Viraj's total export sales. Because the only date of payment on the record of this case is the date of final payment by the customer, we have continued to calculate credit expenses using this date; thus we have accounted for the opportunity cost associated with extending credit on overdue amounts. For this reason, including the additional expenses proposed by the petitioners would be distortive, and would be tantamount to applying AFA. Because: 1) Viraj has cooperated in this review; and 2) we did not fully consider this issue until we re-examined the documents taken during the sales verification in this case (and thus we never notified Viraj that its data was deficient or afforded it an opportunity to remedy the deficiency), we find that basing the amount of this expense on AFA is not appropriate here.

We disagree with Viraj that it is clear that these expenses are completely accounted for in the credit calculation. Nonetheless, as facts available we have continued to deduct both Viraj's actual reported bank charges and imputed credit expenses computed using the extended period. We believe that this does not significantly mis-state the company's sales-specific financing costs, even in light of the fact that Viraj's bank charged interest at higher rates than that used to impute credit in our calculations, because the reported credit periods are consistently overstated (in some cases by more than two months; see the Viraj sales verification report at exhibits 8-12).

Comment 7: *Waived Interest Expenses*

In July 2002, VAL was declared a "sick industrial company" by the Indian Finance Ministry. Because VAL was not obligated to pay the interest expenses it incurred during the financial year, we did not include these "waived" amounts in the calculation of financing expenses for purposes of the preliminary results.

The petitioners argue that this exclusion was not only improper in general, but it directly contradicts a previous Department decision with respect to Viraj. Specifically, the petitioners assert that in Stainless Steel Wire Rods From India: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 68 FR 26288 (May 15, 2003) and accompanying Issues and Decision Memorandum at Comment 11 (2000 - 2001 SSWR), the Department stated that it was appropriate to calculate interest expenses using all "actual interest expenses incurred" by the company. Therefore, the petitioners request that the Department include Viraj's waived interest expenses here for purposes of the final results.

Viraj asserts that interest which was waived cannot be considered an actual expense, and therefore the Department was correct in its calculation of VAL's interest expense. As support for this assertion, Viraj cites SSB from India at Comment 12.

Department's Position:

As noted above, the Department addressed this issue directly in SSB from India. There we stated:

> According to section 773 (f)(1)(A) of the Act, "costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise" (emphasis added). In the instant case, including the waived interest expense in the interest expense ratio calculation would result in applying costs that do not reasonably reflect the actual costs associated with the production of the merchandise. . .
>
> The petitioners reference Wire Rod where the Department included the waived interest expense in the interest expense ratio calculation. However, the Wire Rod Decision Memorandum did not specifically address this issue. Rather, it broadly stated that, "{a}ctual interest expenses incurred are used for the build-up of net interest expenses to obtain the interest expense ratio used to calculate CV." Unlike Wire Rod, the information on the record of this administrative review was verified and clearly indicates that Viraj did not actually incur this interest expense (i.e., it was waived). . . Since the information on the record in this review clearly demonstrates that these expenses were waived, we allowed the waived interest expense offset to the interest expense ratio calculation for the final results.

See SSB from India at Comment 12. In the instant review, we verified that the expenses in question were in fact waived, and thus that Viraj did not actually pay these expenses. See Viraj cost verification report at page 25 and Exhibit 6. Consequently, we have continued to exclude the waived portion of Viraj's interest expenses from our calculation of Viraj's interest expense ratio, consistent with our practice in the prior segment of this proceeding.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review and the final weighted-average dumping margins for the reviewed firms in the Federal Register.

Agree____ Disagree ____

____

James J. Jochum
Assistant Secretary
for Import Administration

____

(Date)