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Remand – Slip Op. 20-118
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Results of Redetermination Pursuant to Court Remand
Stainless Steel Bar from India
***Venus Wire Industries Pvt. Ltd. v. United States*,**
Consolidated Court No. 18-00113, Slip Op. 20-118 (CIT August 14, 2020)

A. Summary

The Department of Commerce (Commerce) has prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (the Court) in *Venus Wire Industries Pvt. Ltd. v. United States*, Court No. 18-00113, Slip Op. 20-118 (August 14, 2020) (*Remand Order*). These final results of redetermination concern *Stainless Steel Bar from India: Final Results of Changed Circumstances Review and Reinstatement of Certain Companies in the Antidumping Duty Order*, 83 FR 17529 (April 20, 2018), and accompanying Issues and Decision Memorandum (*Final Results*) with respect to the reinstatement of Venus Wire Industries Pvt. Ltd. and its affiliates Precision Metals; Sieves Manufacturers (India) Pvt. Ltd.; and Hindustan Inox Ltd. (collectively, Venus or the Venus Group) under the antidumping duty order on stainless steel bar (SSB) from India.[1]

In the *Remand Order*, the Court remanded the *Final Results* of the changed circumstances review (CCR) to Commerce in order to reconsider its use of total adverse facts available (AFA) pursuant to section 776(a) and (b) of the Tariff Act of 1930, as amended (the Act).[2] We address the *Remand Order*, under respectful protest,[3] as discussed below.

[1] *See Antidumping Duty Orders: Stainless Steel Bar from Brazil, India, and Japan*, 60 FR 9661 (February 21, 1995) (*Order*).
[2] *See Remand Order* at 21.
[3] *See Viraj Group Ltd. v. United States*, 343 F.3d 1371, 1376-77 (Fed. Cir. 2003).

B. Background

1. Commerce's Final Results

In the *Final Results,* we determined that Venus was not the manufacturer of the SSB that it purchased from unaffiliated suppliers and processed in India prior to exportation to the United States.[4] Because most of the unaffiliated suppliers did not provide their costs, we applied total AFA with respect to Venus.[5]

Venus challenged the *Final Results*, contesting Commerce's determinations: (1) that it was not the producer of subject merchandise using inputs produced from subject inputs purchased from unaffiliated suppliers; and (2) to use AFA to determine Venus' margin.[6]

2. First Remand

The Court remanded the *Final Results* to Commerce in order to explain or reconsider its use of the "NWR test" over the substantial transformation test.[7] In addition, the Court deferred consideration of Commerce's determination to use AFA with respect to Venus pending Commerce's redetermination on remand.[8] Commerce filed its redetermination pursuant to remand on March 31, 2020, providing additional explanation for using the NWR test instead of the "substantial transformation test" and continuing to find that Venus was not the producer of certain subject merchandise (making no change from the *Final Results*).[9]

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[4] *See Final Results*, 83 FR 17529, and accompanying Issues and Decision Memorandum (IDM) at Comment 1.
[5] *Id*.
[6] *See Venus Wire Industries Pvt. Ltd. v. United States*, Court No. 18-00113, Slip Op. 19-170 (CIT December 20, 2019) at 2-3.
[7] *Id.* at 15-21. The "NWR test" refers to the analysis we used to determine whether a respondent was the producer of subject merchandise in *Notice of Final Determination of Sales at Less Than Fair Value: Narrow Woven Ribbons with Woven Selvedge from Taiwan*, 75 FR 41804 (July 19, 2010), and accompanying IDM at Comment 20.
[8] *See Results of Redetermination Pursuant to Court Remand Stainless Steel Bar from India*, Court No. 18-00113, Slip Op. 19-170, dated March 31, 2020 (First Remand Redetermination).
[9] *See*, *generally*, First Remand Redetermination.

In the *Remand Order*, the Court sustained Commerce's use of the NWR test over the substantial transformation test, and, importantly, our determinations that Venus was not the producer of the subject merchandise and that Venus' unaffiliated suppliers of stainless steel rounds were the producers of subject merchandise.[10] However, the Court remanded the *Final Results* to Commerce in order to reconsider its determination to use total AFA as the basis of Venus' margin, holding that Commerce's two rationales were insufficiently supported by record evidence.[11]

With respect to our determination that total AFA was warranted on the basis of Venus' failure to obtain cost information from its unaffiliated suppliers, the Court held that Commerce "created an arbitrary linguistic line" when measuring the degree to which Venus cooperated to the best of its ability in attempting to obtain its suppliers' costs.[12] The Court further held that Commerce did not adequately consider evidence "tending to show" that Venus' efforts failed "because of circumstances beyond Venus' control," and that Commerce failed to demonstrate that Venus "could" induce its unaffiliated suppliers' cooperation, instead making an inappropriate assumption that Venus had leverage over its unaffiliated suppliers.[13] The Court points out that, while it was not required to do so, Commerce did not consider an "evasion rationale" in applying the standard set forth in *Mueller Comercial de Mexico, S. de R.L. De C.V. v. United States,* 753 F.3d 1227 (Fed. Cir. 2014) (*Mueller*), and that such record evidence could be relevant to determining whether an exporter can induce an unaffiliated supplier to cooperate.[14]

[10] *See Remand Order* at 21, 26.
[11] *Id.* at 29-30, 38, 41.
[12] *Id.* at 33-34.
[13] *Id.* at 35-36.
[14] *Id.* at 36-37, 37 n.33.

With respect to our determination that Venus failed to report to Commerce that it purchased subject merchandise from its unaffiliated suppliers until its third supplemental questionnaire response, the Court held that Commerce's request for Venus to confirm that it purchased subject merchandise as an input was a "clarification," and that Commerce "cannot fault Venus for failing to answer a question before it was requested to do so."[15] The Court further held that Commerce's "obfuscation" rationale did not sufficiently address contrary record information and, as such, was not supported by record evidence.[16] The Court remanded to Commerce for reconsideration of its use of total AFA to determine Venus' margin.[17]

On October 19, 2020, we released the draft results of redetermination to interested parties for comment.[18] We received comments from the petitioners[19] and Venus[20] on October 26, 2020.

C. Analysis

We respectfully disagree with the Court's finding that "Commerce's determination that Venus failed to act to the best of its ability to obtain its unaffiliated suppliers' cost information is unsupported by substantial evidence and otherwise not in accordance with law,"[21] and with the Court's finding that "Commerce created an arbitrary linguistic line when it measured Venus' degree of cooperation based on Venus' use of a certain word in its emails to unaffiliated

[15] *Id.* at 39.
[16] *Id.* at 39-41.
[17] *Id.* at 40-41.
[18] *See Draft Results of Remand Redetermination*, Venus Wire Industries Pvt. Ltd. v. United States, Consolidated Court No. 18-00113, Slip Op. 20-118, dated October 16, 2020.
[19] *See* Petitioners' Letter, "Stainless Steel Bar From India – Petitioners' Comments on Draft Results of Redetermination Pursuant to Court Remand," dated October 26, 2020. The petitioners are Carpenter Technology Corporation; Crucible Industries LLC; Electralloy, a Division of G.O. Carlson, Inc.; North American Stainless; Universal Stainless & Alloy Products, Inc.; and Valbruna Slater Stainless, Inc.
[20] *See* Venus' Letter, "Stainless Steel Bar from India: Comments on Draft Remand Determination," dated October 26, 2020.
[21] *Id.* at 38.

suppliers."[22] As the Court observed, in *Mueller*, the Court of Appeals for the Federal Circuit (CAFC) found, as an element of its decision to uphold Commerce's use of AFA in that case, that

> "{t}here is potentially greater support for Commerce's use of an evasion or inducement rationale in this case than in {*Changzhou Wujin Fine Chemical Factory Co. v. United States*, 701 F.3d 1367 (CAFC 2012) (*Changzhou*)}. While the cooperating plaintiffs in *Changzhou* did not have any mechanism to force the noncooperating party's cooperation (since the cooperating parties did not purchase goods from the non-cooperating party)… Mueller had an existing relationship with supplier Ternium. Therefore, Mueller could potentially have refused to do business with Ternium in the future as a tactic to force Ternium to cooperate."[23]

Likewise, in this case, Venus had an existing relationship with its unaffiliated suppliers. As in *Mueller*, where the CAFC held that "if Mueller and other entities were not willing to export goods produced by Ternium, this would potentially induce Ternium to cooperate," Venus could have refused to do business with its affiliated suppliers in the future as a tactic to force them to cooperate.[24] However, in its letters to it suppliers, Venus stated that it "[

]" (emphasis added).[25] As we stated in the underlying results of review, "we determine that the Venus Group's letters did not serve as a strong inducement to cooperate and, therefore, the Venus Group did not act to the best of its ability in attempting to obtain the suppliers' costs."[26] There is a significant difference between informing a supplier that a failure to cooperate will result in a loss of business and informing the supplier that a failure to cooperate [ ] result in a loss of business: the former clearly lays out

[22] *See Remand Order* at 33.
[23] *See Mueller*, 753 F.3d at 1235.
[24] *Id.*, 753 F.3d at 1235.
[25] *See* Venus' Letter, "Stainless Steel Bar from India: Request for Extension to 4th Supplemental Response," dated November 14, 2017 (SQR4) at Exhibit 1.
[26] *See* Memorandum, "Stainless Steel Bar from India: Final Results Analysis Memorandum for Venus Wire Industries Pvt. Ltd. and its affiliates Precision Metals, Sieves Manufacturers (India) Pvt. Ltd., and Hindustan Inox Ltd.," dated April 16, 2018 at 3.

unequivocal consequences to a failure to cooperate whereas the latter describes consequences [ ]. Indeed, our experience with this antidumping duty order has shown that Venus did not demonstrate any significant change in its supplier relationships subsequent to this CCR.[27] Therefore, we respectfully disagree with the Court's holding that Commerce's determination that Venus failed to cooperate by not acting to the best of its ability in attempting to obtain the unaffiliated suppliers' costs, within the meaning of section 776(a) and (b) of the Act, was unsupported by substantial evidence and not in accordance with law.

The Court also held that "Commerce did not adequately consider evidence tending to show that Venus's efforts to induce cooperation failed, at least in part, because of circumstances beyond Venus's control; to wit, the suppliers' own concerns that providing the cost information did not serve the suppliers' respective interests," citing the reasons provided by Venus' [ ] for their reticence with respect to submitting their actual costs.[28] We respectfully disagree, because, in our view, the reasons provided by Venus' suppliers for not supplying their actual costs are not convincing. For example, one of the reasons [

].[29] However, these reasons [

[27] *See Stainless Steel Bar from India: Final Results of Administrative Review of the Antidumping Duty Order; 2017-2018*, 84 FR 56179 (October 21, 2019) (*SSB AR2017-18*) and accompanying IDM at 27 ("{W}e find that the Venus Group failed to demonstrate that it lacked such power, relying mostly on communications indicating a potential for a change in future business relationship, instead of indicating a robust refusal to do business in the future as envisioned by *Mueller*. Here, the Venus Group had prior notice from the changed circumstances review of its obligation to obtain the information, yet it still did not demonstrate any significant change in its supplier relationships to induce cooperation.").
[28] *See Remand Order* at 35.
[29] *See* SQR4 at Exhibit 1.

].[30] While it is true that [

] as the Court observed, [ ][31]

[

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[

]."[32] However, this is merely an assertion, one that is contradicted by the fact that we statutorily require actual costs. Similarly, [

]."[33] This is simply a matter of [

]; indeed, if a party could be found to be acting to the best of its ability by [ ], any party could refuse to respond to Commerce's requests for information by [ ] and Commerce would have no means for applying an adverse inference.[34] Moreover, [ ] did not

[30] *See, e.g.*, [

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[31] *See Remand Order* at 35 (at n.30).

[32] *See* SQR4 at Exhibit 1.

[33] *Id*.

[34] Such a position could erode Commerce's ability to incentivize parties to cooperate in its proceedings. As recognized by the Court of Appeals for the Federal Circuit, "{b}ecause Commerce lacks subpoena power, Commerce's ability to apply adverse facts is an important one." *Essar Steel Ltd. v. United States*, 678 F.3d 1268, 1276 (Fed. Cir. 2012). Thus, "{t}he purpose of the adverse facts statute is 'to provide respondents with an incentive to cooperate' with Commerce's investigation." *Id.* (quoting *F.lli De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000)).

explain why it would be reticent to submit its costs directly to Commerce, [

].[35]

With respect to [ ], as the Court observed, [ ] expressed concern that [ ] but, after Venus attempted to alleviate that concern, it appeared that [ ] might cooperate.[36] Indeed, [ ] stated that it is "[

],"[37] indicating that, contrary to [ ] statement, it had reason to cooperate rather than not cooperate. However, [ ] ultimately did not submit its costs, stating that "[

]."[38] However, we do not excuse parties from responding to our requests for information [

]. [ ] also did not explain why it would be reticent to submit its costs directly to Commerce, [ ].[39]

Accordingly, we continue to determine that Venus provided inadequate levels of inducement to its suppliers to provide their costs and, not surprisingly, those suppliers provided less than convincing excuses for failing to provide their costs, with the exception of Rajputana Stainless Ltd. (Rajputana). The record does not demonstrate what inducement Venus gave to

[35] *See*, *e.g.*, [
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[36] *See Remand Order* at 35.
[37] *See* SQR4 at Exhibit 1.
[38] *Id*.
[39] *See* [
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Rajputana in order to convince the latter to submit its costs,[40] but the fact is that one of Venus' suppliers provided its costs, making the failure of the other suppliers all the more glaring.

Finally, the Court found that "while *Mueller* does not require Commerce to consider inducement and evasion rationales in tandem, record evidence demonstrating that an unaffiliated supplier is not evading its own antidumping rate by supplying subject merchandise to an exporter with a lower rate is relevant to whether an exporter may reasonably be able to induce cooperation from that supplier"[41] and that "record evidence suggests that Venus's ability to induce cooperation from its largest supplier was unsupported by any need for that company to evade its own higher dumping margin."[42] While we acknowledge that [

],[43]

the same is not true with respect to [

][44]

and [

]."[45] Thus, Venus' [ ] largest

suppliers had reason to attempt to evade their dumping margins.

For the aforementioned reasons, we respectfully disagree with the Court that the use of total AFA with respect to Venus is unsupported by substantial evidence and in accordance with law.

[40] *See* SQR4 at Exhibit 1, which shows, with respect to Rajputana, an email from the director of the APO/Dockets Unit explaining to Rajputana one of the steps it must take to submit its response.
[41] *See Remand Order* at 36.
[42] *Id.*, at 37.
[43] *See, e.g.*, [ ].
[44] *See* SQR4 at 2.
[45] *See* [ ].

With respect to the issue of Venus' obfuscation of the fact that it purchased subject merchandise from its unaffiliated suppliers, we have no further evidence beyond what we have already cited, which the Court has determined is insufficient.

However, to comply with the *Remand Order*, under respectful protest,[46] we have not relied on total AFA in determining the dumping margin for Venus.

D. Conclusion

We have calculated an antidumping duty margin for Venus using: (1) Venus' actual costs for the subject merchandise Venus produced from stainless steel wire rod; (2) the actual costs reported by Rajputana Stainless Ltd. (Rajputana), the sole unaffiliated supplier which provided its actual costs, for the subject merchandise Venus purchased from Rajputana; and (3) the acquisition cost Venus paid to the other unaffiliated suppliers as the non-adverse facts available on the record in place of those suppliers' actual costs for the subject merchandise Venus purchased from them.

The methodology we used to calculate Venus' margin is described in the Draft Calculation Memorandum.[47] Using the methodology described above and in the Draft Calculation Memorandum, we calculated an antidumping duty margin of 0.64 percent for Venus. This is unchanged in these final results of redetermination.

[46] *See Viraj*, 343 F.3d at 1376-77.
[47] *See* Memorandum, "Changed-Circumstances Review of the Antidumping Duty Order on Stainless Steel Bar from India: Draft Remand Calculation Memorandum for Venus," dated concurrently with these draft results of redetermination (Draft Calculation Memorandum).

E. Comments on Draft Results of Redetermination

Comment 1: *Model-Match by Producer*

Venus argues that Commerce improperly collapsed it into a single entity and calculated Venus' margin by including the producer as part of the model-matching criteria for purposes of conducting the cost-of-production test.

- Commerce has "in effect, collapsed" the Venus Group into a single entity.
- This methodology is inconsistent with the approach taken by Commerce in the final results of the 2017-18 administrative review, where Commerce calculated a single dumping margin for Venus and did not include producer or manufacturer as part of the model-matching criteria for purposes of conducting the cost-of-production test.
- Commerce offered no explanation for treating this situation differently from the final results of the 2017-18 administrative review.
- Numerous courts have held that it is well-established that an agency action is arbitrary when the agency offers insufficient reasons for treating similar situations differently.[48]

Commerce's Position: With respect to Venus' argument that we improperly collapsed it into a single entity, in the underlying CCR, we preliminarily collapsed Venus Wire, Precision Metals, Sieves, and Hindustan Inox.[49] No party challenged this determination for the final results of the CCR; we made no change in our final results of that review. Venus has not meaningfully developed its argument, and has not provided any argument or rationale, for us not

[48] *See* the Venus Group's Letter, "Comments on Draft Remand Redetermination," dated October 26, 2020 (Venus Comments).
[49] *See Stainless Steel Bar from India: Preliminary Results of Changed Circumstances Review and Intent To Reinstate Certain Companies In the Antidumping Duty Order*, 82 FR 48483 (October 18, 2017) and IDM at 4-5 (unchanged in the *Final Results*).

to collapse these four entities.[50] Accordingly, we continue to find it appropriate to collapse these entities.

With respect to the use of manufacturer codes in calculating Venus' margin, we disagree with Venus, and continue to determine that our calculation for the draft results of redetermination properly matched costs by manufacturer when merging the cost database with the sales databases and properly matched U.S. sales to home-market sales by manufacturer, in accordance with our practice. Each of the definitions of "foreign like product" in section 771(16) of the Act instructs that foreign like product must be produced "by the same person" as the subject merchandise.[51] Following this instruction, when we compare prices of U.S. sales of subject merchandise to the prices of sales of the foreign like product, we match those sales by manufacturer. Moreover, our long-standing practice in applying this rule is to use "manufacturer codes when determining U.S. and home market sales and cost databases for use in our analysis."[52]

In this CCR, we have no evidence on the record suggesting that Venus is affiliated with, much less should be collapsed with, its unaffiliated suppliers. In fact, no party has argued that

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[50] *See* Venus Comments. *See also United States v. Great Am. Ins. Co. of New York*, 738 F.3d 1320, 1328 (Fed. Cir. 2013) ("{i}t is well established that arguments that are not appropriately developed in a party's briefing may be deemed waived").

[51] *See* section 771(16) of the Act.

[52] *See Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Federal Republic of Germany: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 16326 (April 16, 2018) and IDM at Comment 2 (citing *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 2081, 2127 (January 15, 1997) ("We agree with respondents and have considered manufacturer codes when establishing U.S. and HM sales and cost databases for use in our analysis. Not using manufacturer codes in the preliminary analysis was an inadvertent error."); *see also Certain Carbon and Alloy Steel Cut-to-Length Plate from the Federal Republic of Germany: Final Determination of Sales at Less Than Fair Value*, 82 FR 16360 (April 4, 2017) and IDM at Comment 2 ("We disagree with Salzgitter's claims that it was "unreasonably burdensome" for SMSD to report the manufacturer for these sales, as discussed below, information which is vital to the Department's margin calculations because products are matched by manufacturer.") and Comment 3 ("the Department conducts the cost test on a manufacturer-specific basis as well as a product-specific (CONNUM-specific) basis."); see also Notice of Final Determination of Sales at Less Than Fair Value: Narrow Woven Ribbons with Woven Selvedge from Taiwan, 75 FR 41804 (July 19, 2010) and IDM at Comment 19 ("the Department matches products by manufacturer").

they should be so collapsed, and we have not collapsed those entities. Thus, in keeping with the statutory instruction and precedent cited above, we compared Venus' U.S. sales of merchandise produced by a particular manufacturer to Venus' home market sales of merchandise produced by that same manufacturer. Thus, for example, we compared Venus' U.S. sales of merchandise produced by Rajputana only to Venus' home market sales of merchandise produced by Rajputana and we did not include in our calculation of normal value for such U.S. sales the prices of home market sales of merchandise produced either by Venus itself or by any of its other unaffiliated suppliers.

Lastly, with respect to arguments concerning the methodology used in the 2017-18 administrative review, the final results of that review are in litigation and the CIT recently issued an order granting Commerce's request for a voluntary remand, which will address, in part, the matching sales by manufacturer at issue here.[53]

Accordingly, with respect to this issue, we calculated Venus' margin in this changed circumstances review by matching sales by manufacturer and have not modified it for these final results of redetermination.

Comment 2: *Total or Partial AFA For Venus' Failures*

The petitioners argue that Commerce should continue to apply AFA to Venus, either wholly or in part.

- The Court did not direct Commerce not to apply AFA or FA.
- Venus did not act to the best of its ability to obtain cost information from its unaffiliated suppliers.

[53] *See Carpenter Technology Corporation et al. v. United States*, Court No. 19-200, Slip. Op. 20-158 (Nov. 4, 2020).

- Venus failed to cooperate to the best of its ability by obfuscating its use of subject merchandise.
- The draft results are inconsistent with and fail to give effect to the AFA section of the statute.
- Commerce should, at a minimum, apply partial AFA to those elements of Venus' response that are deficient.

Commerce's Position: As stated above, we have not relied on AFA in determining the dumping margin for Venus, under respectful protest.

We agree with the petitioners that this Court did not direct Commerce to reverse its determination to apply total AFA or to apply neutral facts available.[54] However, as explained above, upon review of the record evidence in light of this Court's holdings in its *Remand Opinion*, we are unable to provide additional analysis or record support beyond what was established in the final results of the CCR with respect to our prior determination that Venus willingly obfuscated its purchases of subject merchandise. Similarly, we are unable to provide additional analysis or record support beyond our disagreements noted above with respect to the evasion and inducement prongs of our analysis under *Mueller*, such that, within the confines established by the Court's holdings, we could continue to determine that AFA is warranted for Venus' purchases from its unaffiliated suppliers.

With respect to the petitioners' argument that our draft results do not give effect to the AFA provisions of the statute, we consider this argument moot because we are no longer applying AFA to Venus and, therefore, there is no concern as to whether those provisions are

[54] *See* Petitioners' Letter, "Petitioners' Comments on Draft Results of Redetermination Pursuant to Court Remand," dated October 26, 2020.

being given effect. Thus, for the reasons stated above, we are no longer relying on AFA with respect to Venus, whether total or partial, to comply with the Court's holdings in its *Remand Order*. Accordingly, we have not modified our draft results calculation of Venus' margin for these final results of redetermination.

F. Final Results of Redetermination

Pursuant to the *Remand Order*, we have recalculated Venus' margin in accordance with the discussion above. Should the Court affirm these final results of redetermination, Commerce intends to publish notice of amended final results in the *Federal Register*. As a result of our recalculation, the Venus Group will remain reinstated in the *Order*. In addition, because Venus' cash deposit rate has changed in a subsequent review period, Commerce does not intend to alter Venus' cash deposit rate as a result of any amended final results.[55]

Dated: November 9, 2020

11/9/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

[55] *Id*.