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Results of Redetermination Pursuant to Court Remand
Stainless Steel Bar from India

Carpenter Technology Corporation, et al. v. United States and Venus Wire Industries Pvt., et al., Court No. 19-00200, Slip Op. 20-158 (CIT November 4, 2020)

I. SUMMARY

The Department of Commerce (Commerce) prepared these final results of redetermination (Final Remand Results) pursuant to the order of the U.S. Court of International Trade (CIT) in the *Remand Order*.[1] The underlying litigation involves a challenge to the *Final Results* in the 2017-2018 administrative review of the antidumping duty order covering stainless steel bar (SSB) from India.[2]

In these Final Remand Results, Commerce further explains its methodology in applying partial facts available, with an adverse inference (AFA) in the *Final Results*, adopts certain revisions to the partial AFA methodology, and amends the rates assigned to the mandatory respondents and the company not selected for individual examination.

II. BACKGROUND

In the *Final Results*, we determined that the Venus Group[3] was not the manufacturer of the SSB that it purchased from unaffiliated suppliers and processed in India prior to exportation

[1] *See Carpenter Technology Corporation, et al. v. United States*, Court No. 19-00200, Slip Op. 20-158 (CIT November 4, 2020) (*Remand Order*).
[2] *See Stainless Steel Bar from India: Final Results of Administrative Review of the Antidumping Duty Order; 2017-2018*, 84 FR 56179 (October 21, 2019) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).
[3] The Venus Group includes: Venus Wire Industries Pvt. Ltd., and its affiliates: Precision Metals; Sieves Manufacturers (India) Pvt. Ltd.; and Hindustan Inox Ltd.

to the United States.[4] Because the Venus Group did not provide its unaffiliated suppliers' cost data, we determined that the Venus Group failed to cooperate to the best of its ability in responding to our requests for information and selected from among the facts otherwise available, in part, on the record and applied partial AFA, in accordance with sections 776 and 782 of the Tariff Act of 1930, as amended (the Act), with respect to the Venus Group.[5]

The petitioners[6] challenged the *Final Results*, contesting: (1) Commerce's change in its partial AFA methodology in the *Final Results*, and how the revised methodology satisfied the statutory intent; (2) certain alleged errors in Commerce's application of its revised partial AFA methodology; and (3) the antidumping duty rates for the Venus Group, Jindal Stainless (Hisar) Limited (Jindal) (second mandatory respondent), and non-examined company Laxcon Steels Limited (Laxcon), as a result of Commerce's revised partial AFA methodology.[7]

On August 4, 2020, Commerce requested a voluntary remand to reconsider or further explain the application of its partial AFA methodology to address missing cost of production (COP) data from the Venus Group's unaffiliated suppliers, the change in the partial AFA methodology between the *Preliminary Results*[8] and the *Final Results*, and, if appropriate, to reconsider the appropriate antidumping duty rates assigned to Jindal and Laxcon.[9]

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[4] *See Final Results* IDM at Comment 1.
[5] *Id*. at Comment 2.
[6] The petitioners are: Carpenter Technology Corporation; Crucible Industries LLC; Electralloy, a Division of G.O. Carlson, Inc.: North American Stainless; Universal Stainless Alloy Product, Inc.; and Valbruna Slater Stainless, Inc.
[7] *See* Plaintiff's Rule 56.2 Motion for Judgment upon the Agency Record, in *Carpenter Technology Corporation, et al. v. United States*, Court No. 19-00200 (filed May 5, 2020).
[8] *See Stainless Steel Bar from India: Preliminary Results of the Antidumping Duty Order Administrative Review; 2017-2018*, 84 FR 15582 (April 16, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).
[9] *See* Government's Response to Plaintiffs' Motion for Judgment upon the Agency Record, in *Carpenter Technology Corporation, et al. v. United States*, Court No. 19-00200 (filed August 4, 2020).

On November 4, 2020, the CIT granted Commerce's motion for a voluntary remand finding that there was a compelling justification for the remand request, that the need to accurately calculate margins was not outweighed by the interest in finality, and that the scope of the requested remand was appropriate.[10] Specifically, the CIT remanded the *Final Results* to Commerce to further explain or reconsider its partial AFA methodology in the *Final Results*.[11]

On December 18, 2020, Commerce released its *Draft Results of Redetermination* to interested parties for comment.[12] On December 30, 2020, Commerce received comments from the petitioners[13] and the Venus Group.[14]

III. ANALYSIS

As indicated above, Commerce requested a voluntary remand to reconsider or further explain the application of its partial AFA methodology to address missing COP data from the Venus Group's unaffiliated suppliers, the change in the partial AFA methodology between the *Preliminary Results* and the *Final Results*, and, if appropriate, to reconsider the appropriate antidumping duty rates assigned to Jindal and Laxcon.[15] For the reasons explained below, in these Final Remand Results, Commerce further explains its partial AFA methodology in the *Final Results*, adopts certain revisions to the partial AFA methodology, and amends the rates assigned to the mandatory respondents and the company not selected for individual examination.

[10] *See Remand Order*.
[11] *Id*.
[12] *See* Draft Results of Redetermination Pursuant to Court Remand, Court No. 19-00200, Slip Op. 20-158, dated December 18, 2020 (*Draft Results of Redetermination*).
[13] *See* Petitioners' Letter, "Stainless Steel Bar From India – Petitioners' Comments on Draft Remand Results of Redetermination," dated December 30, 2020 (Petitioners' Comments).
[14] *See* Venus Group' Letter, "Stainless Steel Bar from India: Comments on Draft Remand Determination," dated December 30, 2020 (Venus Group's Comments)
[15] *Id*.

A. Commerce's Partial AFA Methodology

1. Preliminary Results

In the *Preliminary Results,* we explained that the Venus Group purchased stainless steel wire rod (SSWR) in coil form and stainless steel rounds (SSRs) or hot-rolled stainless-steel bars (hot-rolled bars) from unaffiliated suppliers during the period of review (POR).[16] In the *Preliminary Results*, we determined that for certain sales, the Venus Group was not the manufacturer of subject merchandise because the SSRs that it purchased from unaffiliated suppliers and further processed in India prior to exportation to the United States were, themselves, subject merchandise.[17] Further, we stated in the *Preliminary Results* that, because the necessary unaffiliated supplier's cost data for producing SSRs was not on the record, even after making specific request directly to the Venus Group to provide such information, the application of partial facts available was warranted, in accordance with sections 776(6)(1) and (2)(A) and (C) of the Act.[18] As a result, in the *Preliminary Results*, we determined that selection from among the facts otherwise available, in part, was necessary.[19]

Furthermore, in the *Preliminary Results*, we explained that because the SSWR input was not itself subject merchandise, and because the Venus Group provided the requested information in accordance with 782(e) of the Act, we could rely on the acquisition cost for purposes of determining COP and calculate a margin.[20] Thus, we noted that for the portion of the Venus Group's sales and cost databases that represented sales of subject merchandise produced using

[16] *See Preliminary Results*.
[17] *Id.*
[18] *Id.*
[19] *Id*.
[20] *Id*.

the SSWR input, we could calculate a margin for these U.S. sales.[21]

In addition, in the *Preliminary Results*, we explained that for the U.S. sales of subject merchandise products produced using the SSRs or hot-rolled bar inputs, we would assign an AFA rate.[22] We stated further that the AFA rate assigned was one of the highest transaction-specific rates (non-aberrational) calculated for the U.S. sales of subject merchandise produced using the SSWR input.[23] As such, in the *Preliminary Results*, using partial AFA, we calculated a dumping margin for exports of subject merchandise produced and/or exported by the Venus Group of 77.49 percent.[24] We explained that, because we identified the partial AFA rate using information obtained from the record of the administrative review, per section 776(c)(2) of the Act, we were not required to corroborate the information upon which we relied.[25]

2. Final Results

As indicated above and in the *Final Results*, the Venus Group reported that it sold SSB produced from SSWR in coil form or from SSRs[26] in cut lengths.[27] In the *Final Results*, we explained the following:

> {A}s we indicated in the *Preliminary Results,* the Venus Group purchased SSWR in coil form and hot-rolled stainless steel bars (hot-rolled bars) from unaffiliated suppliers during the {period of review}. Because the SSWR input is not itself subject merchandise, and because the Venus Group provided the requested information in accordance with section 782(e) of the Act, we can rely on the reported cost of the SSWR coil input plus conversion costs for purposes of determining {cost of production} and calculating a margin. Thus, for these final results of review, we have revised our approach to the application of AFA to the U.S. sales of subject merchandise produced using the SSRs or hot rolled bar inputs. Rather than assigning the highest (non-aberrational) transaction-specific

[21] *Id*.
[22] *Id*.
[23] *Id*.
[24] *Id*.
[25] *Id*.
[26] As explained in the *Final Results*, the Venus Group indicated that SSRs are also referred to as "hot-rolled stainless steel bar" or "black bar." *See Final Results* IDM at Comment 1.
[27] *See Final Results* IDM at Comment 1.

> margin to these sales, we have calculated a "surrogate" {cost of production} for these sales. We calculated this surrogate {cost of production} by examining the below-cost sales of {stainless steel} bar produced using the SSWR input. For these sales, we identified the highest difference (as a percentage of acquisition cost) between the Venus Group's acquisition cost, plus Selling, General & Administrative (SG&A) costs, and the sales price. We then applied this percentage to the acquisition cost, plus SG&A, of the SSRs or hot rolled bar inputs. We conducted the sales-below cost on the basis of this "surrogate" {cost of production}, and we applied the margin program to the appropriate U.S. sales. This approach is consistent with *Glycine from India* and *Pipes and Tubes from India*.[28]

3. Further Explanation for Methodology in the Final Results

Pursuant to the *Remand Order*, we provide further explanation for the partial AFA methodology in the *Final Results*. As an initial matter, we have not reconsidered our determination to apply partial AFA in determining the rate for the Venus Group for the reasons explained in the *Preliminary Results* and *Final Results*. For the reasons discussed below, we continue to use the partial AFA methodology to address missing COP data from the Venus Group's unaffiliated suppliers that were used in the *Final Results*, with some modifications.

As discussed above, there is available record information concerning the SSWR input that the Venus Group purchased from unaffiliated suppliers during the POR. Unlike the SSRs material input, the SSWR input is not, itself, subject merchandise. In addition, the Venus Group provided the requested acquisition cost information for its purchases of the SSWR input, in accordance with section 782(e) of the Act. Therefore, we continue to find it is appropriate to rely on the reported cost of the SSWR coil input plus conversion costs for purposes of determining COP and calculating a margin for sales that used SSWR as the input to produce the subject merchandise.[29]

[28] *Id.* at Comment 2.
[29] *Id.*

As we further explained in the *Final Results*, however, because we do not have the cost data for the other material input, SSRs, which the Venus Group purchased from unaffiliated suppliers, and which we determined to be subject merchandise, we do not have the appropriate cost data to calculate a margin for sales that used SSRs to produce the finished product.[30] For the reasons discussed in the *Preliminary Results* and the *Final Results*, selection of facts from the available record information with an adverse inference pursuant to section 776(a)-(b) of the Act is warranted to fill the gaps in the record with respect to the missing cost data. Furthermore, in determining which facts to rely upon for partial AFA, we are informed by the decision of the Court of Appeals for the Federal Circuit (Federal Circuit) in *Mueller*, which recognized that Commerce may use an adverse inference in selecting from the facts otherwise available in determining a respondent's dumping margin in order to induce cooperation by other interested parties whose information is needed to calculate that respondent's dumping margins, in situations where the respondent has the ability to induce the non-cooperating party to cooperate.[31] In so doing, Commerce may rely on inducement or deterrence considerations in determining the dumping margin for the respondent "as long as the application of those policies is reasonable on the particular facts and the predominant interest in accuracy is properly taken into account."[32] To strike a reasonable balance between inducement and deterrence considerations,[33] as well as the need to take accuracy concerns into account based on the

[30] *Id*. at Comments 1 and 2.
[31] *See Mueller Comercial de Mexico, S. de R.L. de C.V. v. United States*, 753 F.3d 1227, 1233, 1236 (Fed. Circ. 2014) (*Mueller*).
[32] *Id*. at 1233. Although *Mueller* involved the application of AFA for a cooperating party, we find the Federal Circuit's language relevant for our application of partial AFA for a non-cooperating party like the Venus Group where the application of AFA is related to the failure to secure the cooperation of unaffiliated suppliers.
[33] *See F. lli De Cecco di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed. Circ. 2000) (*De Cecco*) (explaining that, under the relevant statutory framework, "{Congress} intended for an adverse facts available rate to be a reasonably accurate estimate of the respondent's actual rate, albeit with some built-in increase intended as a deterrent to non-compliance.")

particular facts of this record, we look to the COP information we have on the record to fill the gap of the missing COP information concerning purchases of SSRs from unaffiliated suppliers. In striking this balance, we continue to find that the most reasonable approach in applying partial AFA is to calculate a surrogate COP by examining the below-cost sales of SSB produced using the SSWR input.[34]

Specifically, we continue to find that, rather than assigning the highest (non-aberrational) transaction-specific margin to the Venus Group's U.S. sales, as we did in the *Preliminary Results*, calculating a surrogate COP for the sales in question is a better proxy that reasonably reflects costs associated with the production of merchandise subject to this administrative review, and reflects a built-in increase to deter non-compliance. Under this methodology, we calculate the partial AFA based on the highest percentage losses (sales below cost) of sales that used the input SSWR and applied those percentage losses to the Venus Group's acquisition cost for purchases of SSRs. We find that this approach results in an appropriate rate for the Venus Group because it is precisely proportional to the missing cost information for SSRs and, in this instance, relies upon data provided by the Venus Group with respect to the COP for the other input, SSWR, while taking into consideration losses on home market sales of SSBs. We also find that this approach yields an estimated COP for the unaffiliated suppliers in question and prevents the use of an acquisition price, which may be below these unaffiliated suppliers' COP. As noted in the *Final Results*, this approach is consistent with the methodology used in *Glycine from India* and *Pipes and Tubes from India*.[35]

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[34] *Id*. at Comment 1.

[35] *See Glycine from India: Final Determination of Sales at Less Than Fair Value*, 84 FR 18487 (May 1, 2019) (*Glycine from India*), and accompanying IDM at Comment 1; and *Welded Carbon Steel Standard Pipes and Tubes from India: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 33916 (July 16,

In addition, we find that this approach results in an appropriate partial AFA rate because, after making certain modifications to the methodology discussed below, it results in a partial AFA rate that provides the Venus Group and its unaffiliated suppliers with an incentive to cooperate in future segments of this proceeding.[36] Specifically, with the implemented changes discussed below, the Venus Group's rate for this POR will change from 5.35 percent to 24.60 percent.[37] We believe that this revised rate will potentially induce the Venus Group in future segments to source from producers of subject merchandise that will cooperate in these proceedings by providing necessary information to it and, subsequently, Commerce. This is so because the increase in the Venus Group's antidumping duty liability for its export sales to the United States, as we have here, will adversely affect the Venus Group's purchases from its unaffiliated suppliers and, thus, the unaffiliated suppliers' continued ability to sell their merchandise to the Venus Group for export sales to the United States. We find that our approach is consistent with our obligations to ensure accurate results, while bearing in mind the need for inducement measures in situations where interested parties have failed to cooperate.[38]

B. Modifications to Partial AFA Methodology

After further review, we find that the partial AFA methodology as applied in the *Final Results* contained certain errors that should be corrected in these Final Remand Results. First, we find that the partial AFA methodology failed to incorporate all of the Venus Group's U.S. sales, which affected the calculated margin. As stated above, in applying partial AFA, we find

2019), and accompanying PDM, and adopted in *Welded Carbon Steel Standard Pipes and Tubes from India: Final Results of Antidumping Duty Administrative Review; 2017-201*8, 85 FR 2715 (January 16, 2020) (*Pipes and Tubes from India*), and accompanying IDM at Comment 2.

[36] *See De Cecco*, 216 F.3d at 1032 (explaining that the purpose of section 776(b) of the Act "is to provide respondents with an incentive to cooperate, not to impose punitive, aberrational, or uncorroborated margins.").

[37] *See* Memorandum, "Remand Order Final Calculation Memorandum," dated concurrently with these Final Remand Results (Remand Order Final Calculation Memorandum).

[38] *See, e.g.*, *Mueller*, 753 F.3d at 1233.

that the selected AFA methodology must be reasonable on the particular facts, while considering deterrence and inducement, and the need for accuracy. With this in mind, based on the particular facts of this record, we find that it is reasonable to ensure that all of the Venus Group's U.S. sales are included in calculating the Venus Group's dumping margin. Moreover, we have no reason to disregard any of the Venus Group's U.S. sales. For these reasons, we deleted the programming language that improperly disregarded the majority of the Venus Group's U.S. sales for these Final Remand Results.[39]

Second, after further review, we find that the partial AFA methodology as applied in the *Final Results* did not match sales and costs by manufacturer as required by the statute and Commerce's normal practice. Specifically, it is generally our practice to confine our comparisons to sales of merchandise produced by the same producer or manufacturer under section 773(a)(1)(B)(i) of the Act and the statutory definition of the foreign like product (*see* section 771(16) of the Act).[40] Additionally, because Commerce matches sales by, among other criteria, manufacturer, it is vital to match margin information by manufacturer, in accordance with section 773(f)(1) of the Act.[41] Here, we find that a comparison by manufacturer or producer is appropriate because we are able to identify the manufacturers or producers that produced SSRs in the sales and cost databases.[42] Thus, for these Final Remand Results, we considered

[39] *See* Remand Order Final Calculation Memorandum.
[40] *See Notice of Final Results of the Eighth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination to Revoke in Part*, 70 FR 71464 (November 29, 2005) (*Narrow Woven Ribbon*s), and accompanying IDM at 8 (where the corrections of ministerial errors includes matching "sales by specific manufacturer as it has in previous reviews."); *see also Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Review in Part*, 72 FR 58053 (October 12, 2007) (*Ball Bearings Final Results*), and accompanying IDM at Comment 6.
[41] *See Narrow Woven Ribbons* IDM at Comment 19; *see also Ball Bearings Final Results*.
[42] *See* Remand Order Preliminary Calculation Memorandum at venusHM03, venusus03, and venuscop3; *see also Narrow Woven Ribbons* IDM at Comment 19.

manufacturer codes when comparing U.S., home market and cost databases in our analysis.[43] As explained in the Remand Order Final Calculation Memorandum, we activated the appropriate programming language to calculate a margin based on a comparison of sales made by the same producer.[44]

Third, after review of the partial AFA methodology we applied in the *Final Results*, we also determine that it is appropriate not only to increase total COP but also to increase the other components of cost (*i.e.*, variable cost of manufacturing (VCOM), fixed overhead, variable overhead) when implementing the partial AFA methodology. We find that making this change in the programming language is appropriate because the VCOM variable is used to calculate a difference-in-merchandise (DIFMER) adjustment when matching U.S. sales to similar home market sales by control numbers. Because the DIFMER adjustment is subtracted from home market prices as part of our calculation of normal value, we find that making these changes to the programming language provides the most accurate results when applying partial AFA. Therefore, to ensure more accuracy in applying the partial AFA methodology, we made changes to the programming language to increase these cost components for these Final Remand Results.[45]

C. Rates for Jindal and Laxcon

In light of the changes discussed above, we revised the Venus Group's margin from 5.35 percent to 24.60 percent. Accordingly, we considered whether it was appropriate to amend the dumping margins applied to the other mandatory respondent, Jindal, and the non-selected company, Laxcon, in the *Final Results*.

[43] *See* Remand Order Final Calculation Memorandum.
[44] *Id.*
[45] *Id.*

Jindal received a total AFA rate in the *Final Results*. As we explained in the *Final Results,* in selecting an AFA rate for Jindal, section 776(b)(2) of the Act provides that Commerce may rely on information on the record, including information from another respondent.[46] In selecting the AFA rate, in the *Final Results*, we assigned to exports of subject merchandise produced and/or exported by Jindal one of the highest transaction-specific margins that we calculated for the Venus Group, 52.84 percent.[47] Because we implemented the changes outlined above to the Venus Group's computer programs for these Final Remand Results, we calculated a revised weighted-average margin for the Venus Group of 24.60 percent. Consequently, the highest (non-aberrational) transaction-specific rate we calculated for the Venus Group for these Final Remand Results is 92.10 percent, which we have assigned as the revised total AFA rate for Jindal.

With regard to Laxcon, as we explained in the *Final Results*, Commerce's usual practice in determining the rate for a respondent not selected for individual examination in an administrative review is to rely on section 735(c)(5) of the Act for guidance and average the weighted-average dumping margins for the selected company(ies), excluding rates that are zero, *de minimis* margins, or based entirely on facts available.[48] Following this statutory guidance, because we calculated a margin for the Venus Group which was not based entirely on AFA, zero, or *de minimis*, and a margin for Jindal, which is based on total AFA, we applied the rate calculated for the Venus Group to Laxcon, the non-selected respondent, 5.35 percent.[49] Because we implemented the changes outlined above to the Venus Group's computer programs for these

[46] *See Final Results* IDM at Comment 6.
[47] *Id.*
[48] *Id.* at Comment 7.
[49] *Id.*

Final Remand Results, we calculated a revised weighted-average margin for the Venus Group of 24.60 percent. Accordingly, the antidumping duty margin rate for Laxcon is 24.60 percent, which is the revised dumping margin for the Venus Group.

IV. COMMENTS ON THE DRAFT RESULTS OF REDETERMINATION

Petitioners' Comments

- The petitioners state that, on remand, Commerce has correctly applied its partial AFA methodology by deleting the programming language that improperly disregarded the majority of the Venus Group's U.S. sales, and matched sales and costs by manufacturer as required by the statute and Commerce's normal practice, and also increased all components of cost (*i.e.*, VCOM, fixed overhead, variable overhead) rather than just total COP.[50]
- The petitioners assert that Commerce's partial AFA methodology is reasonable, given the particular facts, because it reflects some "built-in increase" intended as a deterrent to non-compliance, which was not in the *Final Results*.[51] In addition, the petitioners assert that, given the modifications to the Venus Group's dumping margin, Commerce properly revised the dumping margins assigned to both Jindal and Laxcon.[52]
- The petitioners indicate that they support Commerce's *Draft Results of Redetermination* in its entirety because Commerce's reasoning is supported by substantial evidence and is otherwise in accordance with the law.[53] The petitioners indicate further that Commerce

[50] *See* Petitioners' Comments at 2.
[51] *Id*.
[52] *Id*.
[53] *Id*.

should affirm its *Draft Results of Redetermination* for the final results of redetermination.[54]

The Venus Group's Comments

- The Venus Group notes that it objected before the CIT to Commerce's request for a voluntary remand, because Commerce did not indicate any specific error in the *Final Results*.[55]
- The Venus Group argues that in the *Draft Results of Redetermination*, Commerce again fails to identify any specific error in its prior results.[56]
    - Rather, according to the Venus Group, Commerce indicates in the *Draft Results of Redetermination*, that "calculating a surrogate COP for the sales in question is a better proxy that reasonably reflects costs associated with the production of merchandise subject to this administrative review, and reflects a built-in increase to deter non-compliance."[57]
    - The Venus Group asserts that Commerce further indicates that "this revised rate will potentially induce the Venus Group in future segments to source from producers of subject merchandise that will cooperate in these proceedings by providing the necessary information to it and subsequently, Commerce."[58] The Venus Group contends that neither of these statements indicates where Commerce found legal or factual error with its prior determination.[59] Rather, according to

[54] *Id*. at 3.
[55] *See* Venus Group's Comments.
[56] *Id*.
[57] *Id.* at 2.
[58] *Id*.
[59] *Id*.

the Venus Group, Commerce simply decided to take a remand to change its findings,[60] which is contrary to the principle of finality that is a core principle of administrative decision making.[61]

- The Venus Group argues further that in this case, without professing error, Commerce has effectively conducted a "do over," which should not be permitted.[62]

- The Venus Group contends that Commerce's decision to reconsider its prior determination, and to increase the Venus Group's dumping margin from 5.35 percent to 24.60 percent, is fundamentally unfair to the Venus Group.[63]
  - The Venus Group argues that, in reliance on the margin of 5.35 percent, the Venus Group elected not to contest the final results of this administrative review, concluding that the cost of litigation likely outweighed the value that could be obtained from challenging, for example, Commerce's decision to make an adverse facts available determination – a decision that has been overturned by the CIT in separate litigation on highly analogous facts.[64]
  - The Venus Group argues that Commerce has now changed the rules of the game after the deadline for a summons and complaint has passed, which is fundamentally unfair to the Venus Group.[65]

[60] *Id.*
[61] *Id*.
[62] *Id*.
[63] *Id.*
[64] *Id* at 3 (citing *Venus Wire Industries Pvt. Ltd., et al. v. United States*, Court No. 18-00113, Slip Op. 20-118 (CIT August 14, 2020).
[65] *Id*.

- The Venus Group argues further that what Commerce has done is effectively require every party to every proceeding to file a protective summons and complaint on the off chance that Commerce will change its decision in a voluntary remand,[66] which is not the way that litigation should be conducted, is not conducive to effective administrative decision making, and is a waste of judicial resources.[67]

Commerce's Position: We disagree with the Venus Group. As an initial matter, the CIT granted Commerce's motion for a voluntary remand, finding that there was a compelling justification for the remand request, that the need to accurately calculate margins was not outweighed by the interest in finality, and that the scope of the requested remand was appropriate.[68] Specifically, in the *Remand Order*, the CIT remanded the *Final Results* to Commerce "for further explanation or reconsideration of its selection of partial AFA in the *Final Results*."[69] In the *Draft Results of Redetermination*, which are unchanged in these Final Remand Results, consistent with the *Remand Order*, we further explained our partial AFA methodology that we relied upon in the *Final Results*. Specifically, we indicated that, rather than assigning the highest (non-aberrational) transaction-specific margin to the Venus Group's U.S. sales, as we did in the *Preliminary Results*, calculating a surrogate COP for the sales in question is a better proxy that reasonably reflects costs associated with the production of merchandise subject to this administrative review, and reflects a built-in increase to deter non-compliance. Further, consistent with the *Remand Order*, we explained that under this methodology, we calculated the

[66] *Id*.
[67] *Id*.
[68] *See Remand Order* at 8-9.
[69] *Id.* at 10.

partial AFA based on the highest percentage losses (sales below cost) of sales that used the input SSWR and applied those percentage losses to the Venus Group's acquisition cost for purchases of SSRs. We further explained that we found that this approach resulted in an appropriate rate for the Venus Group because it was precisely proportional to the missing cost information for SSRs and, in this instance, relied upon data provided by the Venus Group with respect to the COP for the other input, SSWR, while taking into consideration losses on home market sales of SSBs. Moreover, in the *Draft Results of Redetermination*, unchanged in these Final Remand Results, we stated that we found that this approach yielded an estimated COP for the unaffiliated suppliers in question and prevented the use of an acquisition price, which may be below these unaffiliated suppliers' COP. We received no comments from interested parties rebutting Commerce's further explanation for adopting this partial AFA methodology.

Consistent with the *Remand Order*, we also further stated in the *Draft Results of Redetermination* (unchanged in these Final Remand Results) that, upon further review, we found that the partial AFA methodology as applied in the *Final Results* contained certain errors that should be corrected. Specifically, we explained that the partial AFA methodology failed to incorporate all of the Venus Group's U.S. sales, which affected the calculated margin, and because we had no reason to disregard any of the Venus Group's U.S. sales, we deleted the programming language that improperly disregarded the majority of the Venus Group's U.S. sales.

In addition, in the *Draft Results of Redetermination*, unchanged in these Final Remand Results, we explained that after further review, we found that the partial AFA methodology as applied in the *Final Results* did not match sales and costs by manufacturer as required by the statute and Commerce's normal practice. Further, because our general practice is to confine our

comparisons to sales of merchandise produced by the same producer or manufacturer under section 773(a)(1)(B)(i) of the Act and the statutory definition of the foreign like product (*see* section 771(16) of the Act), it is vital to match margin information by manufacturer, in accordance with section 773(f)(1) of the Act.

Finally, in the *Draft Results of Redetermination*, unchanged in these Final Remand Results, we explained that, after further review of the partial AFA methodology we applied in the *Final Results*, we found it appropriate not only to increase total COP but also to increase the other components of cost (*i.e.*, VCOM, fixed overhead, variable overhead) when implementing the partial AFA methodology. Specifically, we explained that making this change in the programming language was appropriate, because the VCOM variable is used to calculate a DIFMER adjustment when matching U.S. sales to similar home market sales by control numbers. Further, because the DIFMER adjustment is subtracted from home market prices as part of our calculation of normal value, we found that making these changes to the programming language provided the most accurate results when applying partial AFA. Thus, to ensure more accuracy in applying the partial AFA methodology, which provides for accurately calculated margins, we made the appropriate changes to the programming language to increase these cost components for these Final Remand Results. We received no comments from interested parties rebutting Commerce's identification of certain errors as a result of its further review of the application of its partial AFA methodology.

As we indicate above, the Venus Group does not attempt to rebut Commerce's application of the revised partial AFA methodology, nor its finding that its partial AFA methodology contained certain errors that should be corrected. Rather, the Venus Group complains that Commerce requested a voluntary remand to simply change its findings in the

Final Results. As the Venus Group acknowledged, it was afforded the opportunity to object to Commerce's request for a voluntary remand before the CIT, but the CIT found compelling justification for the remand request, that the need to accurately calculate margins is not outweighed by the interest in finality, and that the scope of the requested remand is appropriate. Thus, the CIT granted Commerce's request for a voluntary remand instructing Commerce to further explain or reconsider its selection of partial AFA in the *Final Results*. In these Final Remand Results, we complied with the CIT's directive pursuant to the *Remand Order*. We note that the Venus Group acknowledges that it elected not to challenge Commerce's application of partial AFA in the *Final Results*. To the extent the Venus Group raises arguments regarding Commerce's partial AFA determination, the Venus Group's decision not to contest Commerce's partial AFA determination, and the CIT's decision in separate litigation involving different facts and a different determination by Commerce, we have not addressed these arguments because they raise claims that are not in dispute in this litigation.

V. FINAL RESULTS OF REDETERMINATION

Pursuant to the *Remand Order*, we have further explained our methodology in applying partial AFA in the *Final Results*, adopted certain revisions to the partial AFA methodology, and amended the rates assigned to the mandatory respondents and the company not selected for individual examination. Consequently, we made changes to the *Final Results* in these final results of redetermination. Should the CIT affirm these results of redetermination, Commerce will issue an amended final results and corresponding assessment instructions to CBP. Further, because the cash deposit rate for the Venus Group established in the *Final Results* has been superseded in a subsequent segment of the proceeding, Commerce will not revise its cash deposit

rate in any amended final results.[70] For Jindal and Laxcon, however, we intend to revise their cash deposit rates in any amended final results because the rates for these companies have not been superseded in a subsequent segment of the proceeding.

Dated: January 27, 2021

/S/ Christian Marsh

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Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

[70] *See Stainless Steel Bar from India: Final Results of Antidumping Duty Administrative Review; 2018-2019*, 85 FR 74985 (November 24, 2020), and accompanying IDM.