

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

Coalition of American Flange Producers v. United States
CIT Consol. Court No. 18-00225, Order (June 17, 2020)

I. 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 (CIT) in *Coalition of American Flange Producers v. United States*, Consol. Court No. 18-00225, Slip Op. 20-84 (CIT June 17, 2020) (*Remand Order*). This litigation concerns the antidumping duty (AD) investigation of stainless steel flanges (flanges) from India and Commerce’s application of the “knowledge test” for determining the destination market for certain sales reported by Chandan Steel Limited (Chandan).¹

As set forth in detail below, pursuant to the CIT’s *Remand Order*, we provide additional explanation as to why the sales in question were appropriately not classified as home market sales. As a result, Commerce continues to find that the volume of Chandan’s home market sales of the foreign like product was less than five percent of the aggregate volume of its U.S. sales of subject merchandise, and that the use of third country market sales as the basis for normal value was appropriate.

¹ See *Stainless Steel Flanges from India: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Critical Circumstance Determination*, 83 FR 40745 (August 16, 2018) (*Final Determination*), and accompanying Issues and Decision Memorandum (IDM).

II. BACKGROUND

On August 16, 2017, Commerce received an AD petition concerning imports of flanges from India, filed in proper form on behalf of the Coalition of American Flange Producers and its individual members, Core Pipe Products, Inc. and Maass Flange Corporation (the petitioners).² On September 11, 2017, Commerce initiated a less-than-fair-value (LTFV) investigation of flanges from India.³ The period of investigation (POI) covered July 1, 2016 through June 30, 2017.

On March 28, 2018, Commerce published the *Preliminary Determination* in the LTFV investigation.⁴ Commerce preliminarily determined that India did not constitute a viable home market for Chandan, and, as a result, we relied on Chandan's sales to a third country, [], for normal value, in accordance with section 773(a)(1)(C) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.404.⁵ In reaching this decision, Commerce preliminarily determined that Chandan knew, or should have known, that the ultimate destination of certain flanges sold by Chandan to [], an Indian affiliate of a [], was not the home market; because Chandan's remaining sales to customers in India were less than five percent of its U.S. sales, by volume, we found that Chandan's home market not viable.

² See Petitioners' Letter, "Stainless Steel Flanges from the People's Republic of China and India: Petitions for the Imposition of Antidumping and Countervailing Duties," dated August 16, 2017 (the Petition).

³ See *Stainless Steel Flanges from India and the People's Republic of China: Initiation of Less-Than-Fair-Value Investigations*, 82 FR 42649 (September 11, 2017).

⁴ See *Stainless Steel Flanges from India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 13246 (March 28, 2018) (*Preliminary Determination*).

⁵ See Memorandum, "Preliminary Determination Margin Calculation for Chandan Steel Limited," dated March 19, 2018 at 3 (Preliminary Analysis Memorandum) ("Based on the information Chandan provided, Chandan's sales to [] {have} the largest volume that {is} similar to the subject merchandise exported to the United States").

Between April 30, 2018 and May 4, 2018, Commerce conducted a verification of Chandan's submissions in Mumbai, India.⁶ On August 16, 2018, Commerce published the *Final Determination*, in which it calculated a weighted-average dumping margin for Chandan.⁷

In the *Final Determination*, Commerce continued to find that certain sales reported by Chandan were appropriately classified as third country sales. Specifically, Commerce determined that, pursuant to the "knowledge test," Chandan had reason to know that the sales in question were destined for a foreign market, and that they were not sales in the Indian market.⁸

We stated:

Chandan's aggregate volume of sales of foreign like product in the home market was less than five percent of the company's sales of subject merchandise to the United States. Specifically, we find that the sales contract contains the packing terms that Chandan agreed to with the buyer, which shows an agreement to make the packaging of export quality. Thus, Chandan provided documentary evidence demonstrating that it knew, at the time of the sale, that the ultimate destination was outside of India. Specifically, the sales contract stated that the flanges were to be marked with an affiliate's logo that was outside of India.⁹

As a result of this classification, we continued to find that India did not constitute a viable home market. Accordingly, we calculated a margin for Chandan using its sales to a third country as normal value.¹⁰

The petitioners challenged the *Final Determination* and sought judicial review by the CIT. On June 17, 2020, the CIT remanded the determination to Commerce for further explanation.¹¹ The CIT concluded that Commerce did not address several issues raised by the petitioners¹² that were material to the agency's determination, and, thus, it did not provide a fully

⁶ See Memorandum, "Verification of Sales of Chandan Steel Limited in the Antidumping Duty Investigation of Stainless Steel from India," dated June 6, 2018 (Verification Report).

⁷ See *Final Determination* IDM at 37.

⁸ *Id.*

⁹ *Id.* (citing *Verification Report* at VE-23).

¹⁰ See Preliminary Analysis Memorandum at 3.

¹¹ See generally *Remand Order*.

¹² See *Remand Order* at 13-17.

reasoned explanation for its decision.¹³ In particular, the CIT held that Commerce failed to address certain detracting evidence relating to its knowledge test determination for Chandan's sales to []. First, Commerce did not discuss the implications of a [], obtained at verification, which contained a provision calling for []. Second, Commerce did not adequately discuss Chandan's treatment of the challenged sales as, generally, third country market sales, rather than sales specifically to the [], despite Commerce's finding that the logo provision [] indicated that the sales were for export. Third, Commerce did not sufficiently address the final payment and delivery terms of the challenged sales, which were denominated in rupees and set for delivery in [].

On August 25, 2020, Commerce released the draft results of redetermination for comment.¹⁴ On August 28, 2020, the petitioners commented on the Draft Results.¹⁵

III. ANALYSIS

A. Applicable Law and Commerce Practice

Section 773(a)(1)(B) of the Act states that Commerce may base normal value on the price at which the foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade, if such a price is representative, and the administering authority does not determine that a particular market situation in such other country prevents a proper comparison with the export price or constructed export price. Furthermore, sections 773(a)(1)(A) and (B) of

¹³ *Id.* at 2.

¹⁴ See Draft Results of Redetermination Pursuant to Court Remand, *Coalition of American Flange Producers v. United States*, CIT Consol. Court No. 18-00225, Order (June 17, 2020), dated August 25, 2020 (Draft Results).

¹⁵ See Petitioners' Letter, "Stainless Steel Flanges from India: Comments on Draft Results of Redetermination Pursuant to Court Remand," dated August 28, 2020 (Petitioners' Comments).

the Act direct Commerce to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales). If Commerce determines that no viable home market exists, we may, if appropriate, use a respondent's sales of the foreign like product to a third country market as the basis for comparison market sales, in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

To associate sales with the correct destination market – *i.e.*, to designate transactions as sales in the home market, to a third country, or to the United States – we apply the “knowledge test.” In applying the knowledge test, Commerce considers both a seller's actual knowledge and imputed knowledge (*i.e.*, that it should have known) of the final destination of the subject merchandise at the time of sale.¹⁶ Commerce's standard for the knowledge test is to consider, in addition to the seller's representations, documentary or physical evidence regarding the destination of the merchandise because this type of evidence is more probative, reliable, and verifiable than statements or declarations.¹⁷ In prior cases, Commerce has considered whether the relevant party prepared or signed any certificates, shipping documents, contracts, or other such documents stating that the merchandise was destined for an export market.¹⁸ Commerce will also consider whether the relevant party used any packaging or labeling stating that the

¹⁶ See *Grain-Oriented Electrical Steel from the Czech Republic: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 58324 (September 29, 2014), and accompanying IDM at Comment 2.

¹⁷ See *Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Final Results of Antidumping Duty Administrative Review*, 76 FR 36086 (June 21, 2011), and accompanying IDM at 5.

¹⁸ See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Synthetic Indigo from the People's Republic of China*, 64 FR 69727 (December 14, 1999), unchanged in *Synthetic Indigo from the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 25706 (May 3, 2000).

merchandise was destined for another market,¹⁹ or whether the features, brands, or specifications of the merchandise indicated that it was destined for that market.²⁰

B. Discussion

In our *Final Determination*, we found that Chandan reasonably classified the sales to [] as export sales, despite not knowing the particular destination of such sales.²¹ We noted that the packing terms that Chandan agreed to with the buyer (packaging of export quality) and the sales contract marking provision (*i.e.*, that the products were to carry the logo of the customer's []) supported our finding that the goods were destined for export. We have evaluated the totality of the evidence on the record, with particular attention to the evidence highlighted by the CIT, and we continue to find that our conclusion is supported by the record.

As an initial matter, while Commerce highlighted the packaging/marketing requirements in our *Final Determination*, various other considerations supported the conclusion that the sales were destined for export. First, Chandan initially negotiated the sales with a customer, [], that is based in [], and it initially quoted the sales price in U.S. dollars for delivery to [].²² Although the customer ultimately requested that the prices be converted into rupees and delivered to its [] affiliate [], we find the circumstances surrounding the negotiations (*i.e.*, that they took place with a [] company and initially contemplated []) relevant to

¹⁹ See *Certain Pasta from Italy: Termination of New Shipper Antidumping Duty Administrative Review*, 62 FR 66602 (December 19, 1997).

²⁰ See, e.g., *GSA, S.R.L. v. United States*, 77 F. Supp. 2d 1349 (CIT 1999).

²¹ See *Final Determination* IDM at 37.

²² See Chandan's Letter, "Certain Stainless Steel Flanges from India (A-533-877), Comments on Volume of home market sales destined for consumption in home market," dated October 18, 2017, at 2) (Chandan October 18, 2017 Letter) at 2.

Chandan's knowledge regarding the ultimate destination of the merchandise.²³ These circumstances indicate that, from the initial stages of the negotiations for this transaction, Chandan viewed the sales as export sales; thus, there is a valid basis for finding that Chandan knew, or should have known, that the sales were destined for a location outside of India at the time that it made the sales.

In addition, Chandan stated that it had "reason to believe that the sales ... are exported for consumption to countries other than India,"²⁴ and the documents prepared for these sales support Chandan's statement. In particular, the purchase order for these goods specifies that the goods must carry mill testing reports that accord to an accepted standard that is common for goods destined for the member states of European Union (EU) or members of the Gulf Cooperation Council (GCC).²⁵ Further, these documents specified that the goods would be shipped with []. Finally, Chandan noted that [] did not sell any traded goods in the Indian market during the year ended March 31, 2015 or the year ended March 31, 2016, but it sold traded goods in export markets; thus, it is reasonable to conclude that []'s main business for sales of traded merchandise was focused on exports.²⁶

²³ *Id.*

²⁴ Chandan's Letter, "Certain Stainless Steel Flanges from India (A-533-877), Rebuttal comments to Case Brief on Chandan filed by Petitioners dated June 19, 2018," dated June 25, 2018 (Chandan Rebuttal Brief) at 1-2. Chandan repeatedly emphasized that it did not know the ultimate disposition of the merchandise and asserted that Commerce should solicit such information from the petitioners, since the sales were made to an affiliate of one of the petitioners. Specifically, Chandan argued that "the petitioners are misrepresenting and concealing facts from the Department with respect to the destination of these sales made by their affiliate in India since the sales transaction involved an affiliate of the petitioner{s}." *Id.* at 3. The focus of the knowledge test, however, relates to a party's knowledge at the time of sale; therefore, the ultimate disposition of the merchandise was not required for our analysis, and we did not solicit such information. The petitioners did not elect to submit evidence regarding the final destination of the merchandise, even though this would have been permitted under 19 CFR 351.301.

²⁵ *Id.* at 2.

²⁶ *Id.* Commerce's knowledge test is generally "linked to specific sales, rather than to a company's general export practices." *See, e.g., Grain-Oriented Electrical Steel from the Czech Republic: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 58324 (September 29, 2014), and accompanying IDM at Comment 2. However, we nonetheless find it relevant that, for an extended period prior to the sales in question, [] did not sell traded goods in India.

While no one single factor may be considered dispositive, we find that, when considered in its totality, the record supports our conclusion regarding Chandan’s knowledge of the ultimate destination for the merchandise. Below, we discuss the particular evidence highlighted in the *Remand Order*, in turn.

Export Packaging/Standards

The CIT directs us to consider the petitioners’ assertion that the contract provision for [] cannot support a determination that the sales were destined for export, because certain home market sales carry such a provision as well.²⁷ The petitioners specifically cited Chandan’s contract with [], which provides for [], notwithstanding the fact that it is a sale to an Indian entity. We disagree with petitioners that the []

[] in the [] contract fatally detracts from our conclusion that the disputed sales are export sales. While the [] provision in the [] contract alone may not conclusively demonstrate exportation of the merchandise, when viewed in light of other record information, these provisions are consistent with our conclusion.

Further, and perhaps most important, the petitioners’ comparison between the [] sales and the [] sale presupposes that Commerce made an affirmative determination that the [] sale was a “home market” sale. However, because Chandan’s home market was not viable, in accordance with 773(a)(1)(C) of the Act and 19 CFR 351.404, Commerce had no reason to question Chandan’s knowledge of ultimate destination for any sales made to other customers in India.²⁸ Instead, Commerce turned its attention to information related to the comparison markets

²⁷ See *Remand Order* at 25.

²⁸ The ultimate destination of these sales would have only been relevant to Commerce’s analysis had Chandan: (1) sold them to a specific export market (including the United States), which could have impacted the comparison

used in our dumping margin analysis, *i.e.*, the United States and []. Therefore, we disagree that the documentation regarding the [] sale necessarily detracts from Commerce’s conclusions with respect to the sales to [].

Logo

The CIT also directs us to address petitioners’ question as to whether a [] can be suggestive of an export sale without also indicating consumption in the [] market.²⁹ Here, we did not identify record evidence indicating that use of such a logo requires finding shipment to a *particular* destination, and the petitioners point to none. Nonetheless, we note that – even if the sales were classified as sales to the [] market, it would not alter our ultimate conclusion here with respect to the selection of [] as the appropriate comparison market. Specifically, we selected [] as the comparison market due to the substantial similarity of the merchandise sold in that market and the U.S. market.³⁰

Sales Terms

Finally, the CIT directs us to address the petitioners’ assertion that the final terms of sale (denominated in rupees, with a delivery point in []), suggest that the sales were home market sales.³¹ These factors may weigh in favor of finding a domestic sale in many instances. However, in light of the various factors considered above, as well as the fact that the sales were negotiated with [] of an India-based affiliate, which for extended

market selected or the U.S. transactions reported; or (2) reported a viable home market, based in part on the existence of misclassified export sales. However, there is no indication on the record that the sale to [] was made to a specific export market, and, as noted above, Chandan reported that its home market was not viable.

²⁹ See *Remand Order* at 25.

³⁰ See Preliminary Analysis Memorandum at 3 (“Based on the information Chandan provided, Chandan’s sales to [] {have} the largest volume that {is} similar to the subject merchandise exported to the United States”); see also Chandan’s Letter, “Certain Stainless Steel Flanges from India (A-533-877), Chandan Steel Limited’s Submission of Response to Section A - Supplementary Questionnaire dated November 15, 2017,” dated November 20, 2017 (Chandan November 20, 2017 Letter), at Exhibit A-15 (providing information on product similarity).

³¹ See *Remand Order* at 25.

periods prior to the POI did not sell [], we find that the record indicates otherwise.³² Under these unique facts, we find that the revised sales terms do not evince home market sales.

To summarize, we continue to conclude that Chandan knew, or should have known, at the time of sale that the sales in question were destined for export. Because treatment of the disputed sales as export transactions means that Chandan's sales in the home market represent less than five percent of its U.S. sales of subject merchandise, our finding that the Indian home market was no longer a viable comparison market and use of third country market for normal value in this investigation was appropriate.

IV. COMMENTS FROM INTERESTED PARTIES

The Petitioners' Comments

- The record does not support the conclusion that Chandan's home market is viable. Specifically, the evidence in this investigation does not demonstrate that Chandan knew, or should have known, when it made the sales to [], that the goods were ultimately destined for export.³³
- In addition to the packaging and logo requirements Commerce relied on in making its final determination, Commerce points to three pieces of evidence to support its conclusion: (1) the fact that Chandan initially negotiated the sale with a [] in U.S. dollars and for delivery to []; (2) the sale required a mill test certificate for a standard that is common outside of India; and (3) [] did not have any

³² The petitioners assert that the financial statement relating to [] sales is irrelevant because it relates to a prior period, and was obtained after the fact – *i.e.*, it does not evince Chandan's knowledge at the time of sale. We agree that the knowledge test focuses on particular sales – not the general export behavior of a reseller. However, this information is not irrelevant to showing Chandan's knowledge at the time of sale, because it demonstrates that India was not a target market for the customer over an extended period of time prior to the sales in question.

³³ See Petitioners' Comments at 3-4.

home market sales of traded goods during the 2015 or 2016 fiscal year. However, none of these facts, in isolation or considered together, demonstrate that Chandan knew or should have known that its sales to [] were for export.³⁴

- With respect to the initial negotiation terms, Chandan has provided no reason why the terms of the initial price offer provide a better indication of Chandan’s knowledge regarding the ultimate destination of the sale than the final sales terms. Rather, the information provided by Chandan indicates that Chandan would not have had reason to believe that the sales were for export based on this information. Notably, it was “upon the insistence of the customer” that the sales terms were changed to be [

].³⁵ Additionally, Chandan expressly stated that its sales to [] should not be treated as [].³⁶ Given that Chandan itself is apparently of the position that initially quoting a sale to [], it is unclear why these considerations would necessarily suggest to Chandan that it is a sale for export.³⁷

- With respect to the mill test certificate, Chandan has provided no indication that these certifications would not be used for sales in India. In fact, in sales documentation for a home market sale included in Chandan’s sales verification exhibits, the sales contract provided by Chandan includes [

].³⁸ Although Commerce notes that the sales document also “specified that the goods would be shipped with [

³⁴ *Id.* at 4.

³⁵ *Id.* at 4-5 (citing Chandan October 18, 2017 Letter at 2).

³⁶ *Id.* at 5 (citing Chandan’s Letter, “Certain Stainless Steel Flanges from India (A-533-877), Chandan Steel Limited's submission of response to supplementary questionnaire of section A, B and C,” dated January 2, 2018 at 2).

³⁷ *Id.* at 5.

³⁸ *Id.* (citing *Verification Report* at VE-23).

].³⁹ In other words, this mill test requirement is not indicative of whether a sale is for the home market or export.⁴⁰

- With respect to information regarding [] lack of domestic sales of traded goods in the past, as noted above, Commerce's test is focused on what Chandan knew at the time it made the sales at issue. The record does not suggest, nor does Chandan argue, that it knew this information at the time it made the sales in question. In fact, Chandan stated that this information was not available freely to the public and was obtained by Chandan after paying a fee to the Government of India. This strongly suggests that Chandan did not have the information at the time of the sale and instead obtained it for the purpose of the investigation. Thus, regardless of whether this information can be considered relevant given that it pre-dates the POI, given that there is no indication that Chandan had this information at the time it made the sale, it is not relevant to Commerce's determination of what Chandan knew when it made the sale.⁴¹
- Commerce's response regarding the export packaging requirement for the [] sales is unconvincing. In the Draft Results, Commerce downplayed the fact that a certain sale to an Indian customer also had export packaging requirements and argued that such a comparison was of little import because Commerce did not make a conclusive determination that the comparison sale was a home market sale. However, it is Commerce's practice to accept sales made to customers in the home market as home market sales unless there is reason to believe they should not be treated as such. Here, no

³⁹ *Id.* (citing Draft Results at 7).

⁴⁰ *Id.*

⁴¹ *Id.* at 5-6.

party argued that the other sales to Indian customers should be treated as export sales, and Commerce made no finding otherwise.

- Commerce’s interpretation of the logo requirement remains unsupported by the evidence.

While it could be reasonable for Commerce to conclude that requiring the marking of [] indicates that the sale was [], Chandan has stated that this sale should not be considered a sale to []. It is unclear why the logo could reflect an export sale without being associated with a particular market.

Commerce’s Position:

We continue to find that the record of this investigation, when considered in its totality, supports the conclusion that Chandan knew, or should have known, when it made the sales to [], that the goods were ultimately destined for export. Therefore, we continue to find Chandan’s home market not viable. Accordingly, for these final results of redetermination we have made no changes from our Draft Results.

The petitioners argue that Commerce places too much weight on the fact that Chandan initially negotiated the sales in question with a [] in U.S. dollars and for delivery to []. However, a party’s mere disagreement with Commerce’s weighing of the evidence does not mean that our conclusions are not supported by substantial evidence.⁴² The fact that negotiations took place with a company in [] – and the fact that the shipment implicated a within-India affiliate of this company – is a meaningful aspect of this fact pattern

⁴² See *Venus Wire Indus. Pvt. v. United States*, Ct. No. 18-00113, Slip Op. 20-118 (CIT August 14, 2020) at 26 (“While Venus may disagree with Commerce’s conclusion, ‘mere disagreement with Commerce’s weighing of the evidence{} . . . mistakes the function of the court, which is to determine whether the Remand Results are supported by substantial evidence, . . . not to ‘reweigh the evidence or . . . reconsider questions of fact anew.’” (quoting *Haixing Jingmei Chem. Prod. Sales Co. v. United States*, 335 F. Supp. 3d 1330, 1346 (CIT 2018) (*Haixing Jingmei*)); see *Haixing Jingmei*, 335 F. Supp. at 1364 (“That there is a possibility of drawing two inconsistent conclusions from the evidence does not preclude the agency’s finding from being supported by substantial evidence.” (citing *Matsushita Elec. Indus. Co. v. United States*, 750 F.2d 927, 933 (Fed. Cir. 1984)).

because it is indicative of an export sale. We find that this negotiation process is distinct when compared with, for instance, a scenario where a company conducts negotiations directly with an Indian company with no foreign operations, affiliates or exports; in the former case, the evidence is consistent with export operations. Additionally, as noted above, even if the sales were classified as sales to the [] market, it would not alter our ultimate conclusion in this instance with respect to the selection of [] as a comparison market because [] remains the third country market with sales of the most similar merchandise.⁴³

The petitioners also argue that the fact that the sales required mill testing reports that accord to a standard that is common for goods destined for member states of EU or the GCC is not determinative, because this provision was not exclusive to export sales. Although we agree that the mill test requirements are consistent with export sales *and* the sale that the petitioners identified (the []), this fact is nonetheless consistent with our finding that the ultimate destination of the [] was an export market, which is based on various other factors discussed above (*e.g.*, the location of the party with which negotiations took place, export packaging requirements, logo requirements for a [] company, *etc.*).

⁴³ See Chandan November 20, 2017 Letter, at Exhibit A-15; *see also* 19 CFR 351.404(e)(1-3) (“For purposes of calculating normal value based on prices in a third country, where prices in more than one third country satisfy the criteria of section 773(a)(1)(B)(ii) of the Act and this section, the Secretary generally will select the third country based on the following criteria: (1) The foreign like product exported to a particular third country is more similar to the subject merchandise exported to the United States than is the foreign like product exported to other third countries; (2) The volume of sales to a particular third country is larger than the volume of sales to other third countries; (3) Such other factors as the Secretary considers appropriate.”); *see also, e.g., Polyethylene Terephthalate Sheet from the Sultanate of Oman: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 84 FR 12513 (March 3, 2020), and accompanying PDM at 9-10 (selecting the smaller United Kingdom market as the appropriate comparison market because the respondent sold a greater range of models to the United Kingdom, and the matches to U.S. sales made using those models were generally more similar than the matches made using Canadian sales), unchanged in *Polyethylene Terephthalate Sheet from the Sultanate of Oman: Final Determination of Sales at Less Than Fair Value*; 85 FR 44278 (July 22, 2020); and *Certain Frozen Warmwater Shrimp from India: Preliminary Results of Antidumping Duty Administrative Review; 2016–2017*, 83 FR 10665 (March 12, 2018), and accompanying PDM at 12 (selecting third country comparison markets based on sales of products which were the most similar to the subject merchandise), unchanged in *Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review; 2016–2017*, 83 FR 32835 (July 16, 2018).

The petitioners also argue that Chandan did not have knowledge *at the time of sale* regarding [] lack of export sales and emphasize that Chandan supported its argument on this point with evidence that appears to have been obtained after the sale. However, we do not presume that Chandan's knowledge regarding the customer's sales patterns was obtained at the time it acquired the financial statement. Rather, we reasonably conclude that Chandan had knowledge of the sales behavior of its customers (and particular knowledge regarding these sales, given all of the factors explained above, including the particular negotiation history). As such, the financial statement, which Chandan obtained later, further substantiates in this instance the earlier claims Chandan made regarding the destination of these sales.⁴⁴ We find that the timing of Chandan's acquisition of the financial statement, and the precise period covered by the statement (*i.e.*, prior to the POI), do not undermine this conclusion.

Next, the petitioners take issue with Commerce's finding that the sales terms for a different sale to a customer in India provide only limited guidance on the [] sale because we did not make a market determination regarding the [] sale. The petitioners assert that Commerce implicitly found the [] to be a home market sale because Commerce presumes such sales are properly reported as home market sales unless there is an indication otherwise. Here, Commerce did not state that it had any reason to believe that the [] sale identified by the petitioners, or any other sales to customers in India, should not be considered home market sales; thus, they were treated as home market sales. While we agree with the petitioners that Commerce did not question the reported destination for such sales, we did not conduct the same extensive analysis for all sales to customers in India that we did for the []

⁴⁴ The petitioners imply that acquisition of the financial statement informed Chandan's knowledge regarding the destination market for the sale. However, the opposite could very well be true, *i.e.*, Chandan believed the sale to be an export sale and then sought corroborating information.

sales in question because those sales were not at issue and the home market was not viable.

Thus, we cannot place the same amount of weight on the facts related to the [] as those related to the [] sales, which were heavily scrutinized and for which we had extensive contextual information.

Finally, the petitioners dispute Commerce's interpretation of the logo requirement for the sales to []. Specifically, the petitioners question whether the logo must be associated with sales outside of India, and if so, why the logo does not demonstrate that the sale was to []. In other words, the petitioners assert that the logo should not be associated with *any* particular market. However, of the various sales we examined in this proceeding, there was only one set of transactions that required the logo in question. Logo requirements for the remaining sales, to Indian customers and customers abroad, had some variation of a [].⁴⁵ We find that a requirement for a [] is consistent with a sale destined for outside of India. Based on record evidence, we do not find it reasonable to speculate whether such a logo *must* be associated with sales to [], to another market [], or to some other destination.

While no one single factor is dispositive in applying the knowledge test to these circumstances, we find that, when considered in its totality, the record supports our conclusion regarding Chandan's knowledge of the ultimate destination for the merchandise. Here, the various factors discussed above – *i.e.*, the location of the party with which negotiations took place, the relationship between the [] and the Indian affiliate [], the export packaging requirements, the logo requirements for a [] company, and the required

⁴⁵ See Verification Report at VE-23 at 36 and 101.

specifications that are common in the EU/GCC – are consistent with a finding that Chandan knew, or had reason to know, that the sales were for export.

The petitioners call into question various aspects of Commerce’s analysis to suggest that the [] sales were destined for the home market.⁴⁶ While the facts of this case are not individually dispositive, on balance, we find that the record as a whole supports our finding.⁴⁷ As such, we continue to find that the sales were not home market sales and that the Indian market is not viable.

⁴⁶ We agree with Chandan that the petitioners likely had (or could have obtained) knowledge of the actual destination of the merchandise at issue, as the transactions involved an affiliate of the petitioning coalition. *See* Chandan October 18, 2017 Letter. The petitioners did not provide any such evidence. Thus, Commerce is unable to know, based on the record of the investigation, the actual destination market or weigh that information together with the other information on the record. Nonetheless, this fact does not prevent us from examining the circumstances that formed the basis for Chandan’s knowledge at the time of sale.

⁴⁷ *See, e.g., Downhole Pipe & Equip., LP v. United States*, 34 F. Supp. 3d 1310, 1315 (CIT 2014) (“{T}he possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence.”).

V. FINAL RESULTS OF REDETERMINATION

Pursuant to the *Remand Order*, Commerce has reconsidered record evidence relating to our application of the knowledge test relating to Chandan’s sales to []. For the reasons discussed above, we continue to find that Chandan knew, or should have known, at the time of the sales, that the ultimate destination was outside of India. Therefore, we continue find that Chandan’s home market is not viable and that the use of third country sales data for our margin analysis was appropriate.

10/6/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance