U.S. Customs and Border Protection

REVOCATION OF AMSPEC LLC (CHRISTIANSTED, ST. CROIX, USVI) AS A CUSTOMS-ACCREDITED LABORATORY AND CUSTOMS-APPROVED GAUGER

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice of revocation of AmSpec LLC (Christiansted, St. Croix, USVI) as a Customs-accredited laboratory and Customs-approved gauger.

SUMMARY: Notice is hereby given, pursuant to the U.S. Customs and Border Protection (CBP) regulations, that CBP has revoked the accreditation and approval for AmSpec LLC's Christiansted, St. Croix, USVI, laboratory and gauging facility to test petroleum and petroleum products for customs purposes and to gauge petroleum and petroleum products for customs purposes.

DATES: The effective date of revocation is October 24, 2024.

FOR FURTHER INFORMATION CONTACT: Dr. Eugene Bondoc, Laboratories and Scientific Services, U.S. Customs and Border Protection, CB–03 Mail Stop #1110, Washington, DC 20229–1110, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given, in accordance with the provisions of Sections 151.12(k)(2)(i) and 151.13(i)(2)(i) of Title 19, Code of Federal Regulations (CFR), that CBP has revoked the accreditation and approval of the AmSpec, LLC laboratory and gauging facility at 9010 Estate Cottage, Suite 3, Christiansted, St. Croix, USVI 00820, to test petroleum and petroleum products and to gauge petroleum and petroleum products for customs purposes. The duration of the revocation of accreditation and approval is indefinite.

Inquiries regarding the entity's status as an approved gauger and/or as an accredited laboratory may be directed to CBP by calling (202) 344–1060 or by sending an email to *CBPGaugersLabs@cbp.dhs.gov*. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories*.

Dated: November 15, 2024.

LARRY D. FLUTY,
Assistant Commissioner,
Laboratories and Scientific Services.

AGENCY INFORMATION COLLECTION ACTIVITIES:

Revision; Automated Clearinghouse

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than December 23, 2024) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Please submit written comments and/or suggestions in English. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/*.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (89 FR 76864) on September 19, 2024, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in

accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Automated Clearinghouse.

OMB Number: 1651–0078.

Form Number: 400, 401.

Current Actions: This submission will extend the collection's expiration with an increase in the estimated annual burden hours. CBP Form 401's corresponding burden has been added to the collection. No change to the program or method of collection.

Type of Review: Revision.

Affected Public: Companies enrolled in the Automated Broker Interface (ABI).

Abstract: The Automated Clearinghouse (ACH) allows participants in the Automated Broker Interface (ABI) to transmit daily statements, deferred tax, and bill payments electronically through a financial institution directly to a CBP account. ACH debit and credit allow the payer to exercise more control over the payment process. In order to participate in ACH debit or credit, companies must complete CBP Form 400 (for debit) or 401 (for credit), *ACH Application.* Participants also use this form to notify CBP of changes to bank information or contact information. The ACH procedure is authorized by 19 U.S.C. 58a–58c and 66 and provided for by 19 CFR 24.25 and 24.26. CBP Forms 400 and 401 are accessible at *https://www.cbp.gov/newsroom/publications/forms.*

Type of Information Collection: Form 400 ACH Debit.

Estimated Number of Respondents: 6,710.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 6,710.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 559.

Type of Information Collection: Form 401 ACH Credit.

Estimated Number of Respondents: 144.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 144.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 12.

Dated: November 18, 2024.

SETH D. RENKEMA,
Branch Chief,
Economic Impact Analysis Branch,
U.S. Customs and Border Protection.

AGENCY INFORMATION COLLECTION ACTIVITIES:

Extension; Application for Identification Card (CBP Form 3078)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than December 23, 2024) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Please submit written comments and/or suggestions in English. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/*.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (89 FR 78324) on September 25, 2024, allowing for a 60-day comment period. This notice allows for an additional

30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Application for Identification Card (CBP Form 3078).

OMB Number: 1651–0008.

Form Number: 3078.

Current Actions: CBP proposes to extend the expiration date of this information collection. There is no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: CBP Form 3078, *Application for Identification Card,* is completed for the purpose of collecting an applicant's information to conduct a meaningful background investigation to determine whether the applicant meets the criteria to obtain an Identification Card that is used to gain access to CBP Customs Security Areas (CSA). This form collects biographical information and is usually completed by airport employees, CBP Security Area Identification, Warehouse Officer or Employee, Container Station Employee, Foreign Trade Zone Employee, CES Employee, licensed Cartmen or Lightermen whose duties require receiving, transporting, or otherwise handling imported merchandise which has not been released from CBP custody. This form may be submitted electronically or to the local CBP office at the port of entry that the respondent will be requesting access to the Federal Inspection Section (FIS). Form 3078 is authorized by 19 U.S.C. 66, 1551, 1555, 1565, 1624, 1641; and 19 CFR 112.41, 112.42, 118, 122.182, and 146.6. This form is accessible at:

https://www.cbp.gov/newsroom/publications/forms?title=3078&=Apply.

Type of Information Collection: Form 3078.

Estimated Number of Respondents: 200,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 200,000.

Estimated Time per Response: 17 minutes.

Estimated Total Annual Burden Hours: 56,667.

Dated: November 18, 2024.

SETH D. RENKEMA,
Branch Chief,
Economic Impact Analysis Branch,
U.S. Customs and Border Protection.

U.S. Court of International Trade

Slip Op. 24–122

AMERICAN KITCHEN CABINET ALLIANCE, Plaintiff, v. United States, Defendant, and SCIOTO VALLEY WOODWORKING, INC. D/B/A VALLEYWOOD CABINETRY, Defendant-Intervenor.

Before: Lisa W. Wang, Judge
Court No. 23–00140
PUBLIC VERSION

[Remanding in part and sustaining in part the evasion determination of the U.S. Customs and Border Protection under the Enforce and Protect Act.]

Dated: October 31, 2024

Luke A. Meisner, Schagrin Associates, of Washington, DC, argued for plaintiff American Kitchen Cabinet Alliance. With him on the brief was *Roger B. Schagrin.*

Ashley Akers, Trial Attorney, Civil Division, U.S. Department of Justice, of Washington, DC, argued for the defendant. With her on the brief were *Brian M. Boynton,* Principal Deputy Assistant Attorney General, *Patricia M. McCarthy, Director,* and *L. Misha Preheim*, Assistant Director. Of counsel were *Tamari Lagvilava* and *John Flanagan*, Office of the Chief Counsel, U.S. Customs and Border Protection, of Washington, DC.

Stephen Brophy, Husch Blackwell, LLP, of Washington, DC, argued for defendant-intervenor Scioto Valley Woodworking, Inc. With him on the brief were *Jeffrey S. Neeley* and *Jamie Shookman*.

OPINION AND ORDER

Wang, Judge:

This action arises out of the negative evasion determination of the U.S. Customs and Border Protection ("CBP" or "Customs") under the antidumping duty ("AD") and countervailing duty ("CVD") orders on wooden cabinets and vanities ("WCV") from the People's Republic of China ("China"). Customs' Final Administrative Determination in Enforce and Protect Act (EAPA) Case No. 7705 (June 12, 2023) ("Final Administrative Determination"), Appx3915–3940 and Appx168259–168284; *see Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Antidumping Duty Order*, 85 Fed. Reg. 22,126 (Dep't of Commerce Apr. 21, 2020); *Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Countervailing Duty Order*, 85 Fed. Reg. 22,134 (Dep't of Commerce Apr. 21, 2020) (collectively, "AD/CVD Orders").

Plaintiff American Kitchen Cabinet Alliance ("AKCA") challenges two aspects of Customs' Final Administrative Determination as arbitrary, capricious, and an abuse of discretion: (1) Customs' conclusion that the "record contains *no evidence* that WCV produced in China were transshipped through Malaysia"; and (2) Customs' decision to refrain from applying adverse inferences in the proceeding. Pl.'s Mem. Supp. Mot. J. Agency R. ("AKCA Br."), ECF No. 29 at 11, 29 (emphasis in original). The United States ("government") and Defendant-Intervenor Scioto Valley Woodworking, Inc. ("Scioto") ask the court to sustain Customs' final determination. *See* Def.'s Resp. Pl.'s Mot. J. Agency R. ("Def.'s Resp. Br."), ECF No. 34; Def.-Int.'s Resp. Pl.'s Mot. J. Agency R. ("Def.-Int.'s Resp. Br."), ECF No. 45.

BACKGROUND

AKCA is a coalition of domestic producers of WCV. Final Administrative Determination, Appx3917. Scioto is a U.S. importer of WCV and is wholly owned by the Chinese company, Qingdao Haiyan Group Co. Ltd. ("Haiyan Group"). *Id.*, Appx3933. Alno Industry SDN BHD ("Alno") is a Malaysian company—also wholly owned by the Haiyan Group—and a supplier of WCV to Scioto. *Id.*

Customs' Office of Trade, Trade Remedy Law Enforcement Directorate ("TRLED") is responsible for the investigation of allegations of evasion under the Enforce and Protect Act ("EAPA") and for making initial determinations of evasion. *See* 19 U.S.C. § 4371(a)(3); 19 C.F.R. § 165.1. If TRLED makes an affirmative evasion determination, EAPA permits an administrative appeal of that determination. *See* 19 U.S.C. § 1517(f)(1). Administrative appeals of EAPA determinations are administered by Customs' Office of Regulations and Rulings ("R&R") applying a de novo standard of review. *See id.*; 19 C.F.R. § 165.1. R&R has sixty days to complete its review. *See* 19 U.S.C. § 1517(f)(2).

In April 2020, after petitions from AKCA, the U.S. Department of Commerce ("Commerce") issued AD and CVD orders on imports of WCV from China. *See* AD/CVD Orders. On February 3, 2022, AKCA filed an EAPA allegation against Scioto alleging that Scioto entered WCV of Chinese origin into the United States by means of transshipment through Malaysia to evade the payment of AD and CVD duties on WCV from China. AKCA EAPA Allegation (Feb. 3, 2022), Appx1001, Appx1006.

AKCA's allegations relied in part from information that it had received from Cabinets to Go ("CTG"), an unaffiliated customer of Alno and an importer and distributor of WCV in the United States. *Id.*, Appx1007. Alno represented to CTG that the WCV exported to

CTG in the United States were manufactured in Malaysia. *Id*. In July 2021, CTG conducted an independent inspection of Alno's manufacturing facilities in Malaysia. *Id*., Appx1007–1008. CTG's inspection found that the WCV shipped by Alno to CTG were manufactured in China, not Malaysia. *Id*. CTG subsequently filed a civil lawsuit against Scioto, Alno, and the Haiyan Group in the United States District Court for the Middle District of Tennessee alleging breach of contract and breach of warranty, and requesting an award of punitive or treble damages for violations of the Tennessee Consumer Protection Act. *Id*., Appx1008, Appx1034–1047. As part of this lawsuit, the Haiyan Group provided information in court showing that Alno's shipments to CTG were manufactured in China rather than in Malaysia, contrary to what Alno had previously represented to CTG. *Id*., Appx1008, Appx80008; *see* Def.'s Resp. Br. at 3.

CTG subsequently shared this information with AKCA.

I. Trade Remedy Law Enforcement Directorate's Investigation and Initial Affirmative Evasion Determination

On March 30, 2022, Customs' TRLED initiated a formal investigation under EAPA, 19 U.S.C. § 1517, to determine whether WCV imported by Scioto had been entered into the United States by means of evasion. Final Administrative Determination, Appx3918–3919. On July 6, 2022, TRLED issued a notice of initiation of its investigation, which notified the parties that Customs had imposed interim measures on Scioto's imports based upon reasonable suspicion that Scioto, as the U.S. importer, entered covered merchandise into the customs territory of the United States through evasion. *Id*. The entries subject to Customs' EAPA investigation were those entered for consumption or withdrawn from a warehouse for consumption from March 9, 2021—one year before Customs' acknowledged receipt of the allegation—through the pendency of Customs' investigation, known as the period of investigation ("POI"). *Id*., Appx3919. During this period, Scioto, entered WCV into the United States from Alno with a declared country of origin of Malaysia and without payment of any AD/CVD duties. *Id*.

TRLED focused its analysis on Scioto, Scioto's relationship with Alno—its affiliated Malaysian supplier, and Alno's non-affiliated transactions:

> The evidence demonstrates that Alno *can* produce wooden cabinets and vanities. However, Alno itself has admitted in court documents that it transshipped Chinese-origin cabinets and vanities through Malaysia to [a company] during the [POI] for

> this EAPA investigation. The questions before CBP, then, are whether Alno manufactured all the cabinets and vanities it exported to Scioto, or whether Alno exported transshipped, Chinese-origin cabinets and vanities to Scioto during the POI.

TRLED Notice of Determination as to Evasion ("TRLED Not. of Det."), EAPA Case No. 7705, Appx3735 (emphasis in original).

On January 31, 2023, following the submission of written arguments from interested parties and an on-site verification of Alno's facilities in Malaysia, TRLED issued its final determination of evasion. *Id.*, Appx3732–3757; *see* TRLED Regulatory Audit and Agency Advisory Services, On-Site Verification Report ("TRLED Verification Rep."), EAPA Case No. 7705, Appx3605–3661. TRLED found that there was substantial evidence that Scioto entered merchandise covered by the AD/CVD Orders into the United States through evasion. TRLED Not. of Det., Appx3736–3742.

In making this conclusion, TRLED focused on four main considerations:

1. Common Ownership and Control of Alno and Scioto: TRLED concluded that "Alno is a Malaysian company owned and controlled by a Chinese company, is operated under Chinese management, and is supplied by Chinese suppliers." *Id.*, Appx3736. TRLED found that the Haiyan Group's ownership of both Scioto and Alno allowed it "discretion over the budgets for both companies' operations, production, shipping schedules for all goods produced, and the purchase prices." *Id.*, Appx3735.
2. Contemporaneous Evidence of Transshipment by Alno: TRLED also found that "evidence on the record shows that Alno transshipped Chinese origin wooden cabinets into the United States." *Id.*, Appx3736. TRLED's findings relied, in part, on information provided to AKCA by CTG, which included "direct admissions of facts that implicate Scioto in an evasion scheme."[1] *Id.* Alno admitted to Customs officials that "it transshipped to one of its customers ... but claims that it produced all the cabinets and vanities in Malaysia to all the other customers." *Id.*, Appx 3737.
3. Reliability of Documentation Submitted by Alno: TRLED found that "[e]vidence on the record shows that Alno had provided

[1] Specifically, TRLED cited to information that in August 2021, CTG requested the Haiyan Group to certify that the WCV products shipped to CTG were "manufactured in Malaysia, and not China. On or about August 24, 2021, Jason Delves, CEO of Cabinets to Go, received a telephone call from Amanda Li and Sabrina Lee, two Haiyan representatives, who advised they could not certify as to the country of origin because the product and/or component parts of the product, had been manufactured in China." AKCA EAPA Allegation, Appx1007–1008.

inaccurate information from [[
]] that is unreliable."[2] TRLED Not. of Det., ECF No. 52–32, Appx168205. TRLED identified several additional discrepancies with Alno's invoice documentation, the two most significant examples involved "glass door" inputs that were "either not declared or declared as hardware/screws," TRLED Not. of Det., Appx3740–3741, and a container expressly identified as containing finished goods for "transshipment to [[
]]" that was listed as [[ ]].[3] TRLED Not. of Det., ECF No. 52–32, Appx168207.

4. Adverse Inferences: TRLED found that Alno failed to cooperate to the best of its ability with TRLED's request for information during the on-site verification of Alno's facilities in Malaysia and applied adverse inferences against Alno and Scioto. TRLED Not. of Det., Appx3742.

II. Administrative Review by Customs' Office of Regulations & Rulings and Reversal of TRLED's Evasion Determination

On March 15, 2023, Scioto filed a request for R&R to conduct a de novo administrative review of TRLED's affirmative evasion determination. Final Administrative Determination, Appx3919. In its request, Scioto stated that it did not enter covered merchandise into the United States through evasion because the WCV it imported during the relevant period of investigation were manufactured in Malaysia by Alno, instead of being manufactured in China. *Id.*, Appx3920. On March 30, 2023, AKCA filed a response to Scioto's request for a review. *Id.*, Appx3919. On June 12, 2023, R&R issued a determination in which it reversed TRLED's initial finding of evasion and found that there was no substantial evidence of evasion. *Id.*

Specifically, R&R concluded that "the record contains no evidence that WCV produced in China were transshipped through Malaysia and imported into the United States by Scioto." *Id.*, Appx3925. In reaching its conclusion, R&R relied on the following findings:

1. Relevance of CTG to the Proceeding: R&R's de novo administrative review was limited to Scioto, not CTG, because the "facts related to CTG's conduct and transactions [are not] relevant to our decision as to whether Scioto engaged in evasion, given that the record is devoid of any evidence of a relationship between Scioto and CTG." Final Administrative Determination, Appx3926.

[2] Confidential information omitted.

[3] Confidential information omitted.

2. Adverse Inferences: R&R found that the use of adverse inferences against Alno and Scioto was not warranted because "when the record is examined as a whole, it supports a conclusion that they [Scioto and Alno] cooperated and complied with requests for information ... [as] the information was ultimately provided to CBP." *Id.*
3. Alno's Production Capabilities: R&R found that Alno's production and employment records were direct evidence of actual production of WCV in Malaysia. *Id.* R&R further relied on Customs' on-site verification as corroboration that Alno had WCV production capabilities. *Id.*, Appx3932–3937.
4. Common Ownership: R&R found that evidence of common ownership of Scioto and Alno by a Chinese national does not necessarily prove that the goods associated with these entries were produced in China rather than Malaysia. *Id.*, Appx3933.

This appeal followed.

JURISDICTION AND STANDARD OF REVIEW

The court has jurisdiction pursuant to 28 U.S.C. § 1581(c) and 19 U.S.C. § 1517(g)(1). 19 U.S.C. § 1517(g)(2) directs the court to examine "whether the Commissioner fully complied with all procedures under subsections (c) and (f)" and "whether any determination, finding, or conclusion is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 19 U.S.C. § 1517(g)(2). "While the agency bases its [subsection (c) and subsection (f)] determination[s] ... on substantial evidence and the court reviews the agency's actions to assess whether they are arbitrary and capricious, 'both standards require an assessment based on a reasonableness standard.'" *CEK Grp. LLC v. United States*, 633 F. Supp. 3d 1369, 1373 (CIT 2023) (quoting *Ad Hoc Shrimp Trade Enf't Comm. v. United States*, 632 F. Supp. 3d 1369, 1374 (CIT 2023)).

The scope of the arbitrary and capricious standard is narrow; courts are not to substitute their judgment for that of the agency. *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). But Customs must have "examine[d] the relevant data and articulate[d] a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'" *Id*. (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)). The U.S. Court of Appeals for the Federal Circuit has explained:

> Courts have found an agency's decision to be arbitrary and capricious when the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its

> decision that runs counter to the evidence before the agency, or [the decision] is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."

Ala. Aircraft Indus., Inc. v. United States, 586 F.3d 1372, 1375 (Fed. Cir. 2009) (alteration in original) (quoting *Motor Vehicle Mfrs. Ass'n of U.S.*, 463 U.S. at 43).

Under EAPA, when an interested party requests administrative review of a TRLED determination, R&R reviews the determination de novo. 19 U.S.C. § 1517(f)(1). R&R must "review the entire administrative record upon which the initial determination was made .... " 19 C.F.R. § 165.45. Moreover, "[a] determination not based on the whole record should be remanded for reconsideration." *Ad Hoc Shrimp Trade Enf't Comm.*, 632 F. Supp. 3d at 1375; *see also Shanxi Hairui Trade Co. v. United States*, 503 F. Supp. 3d 1307, 1311 (CIT 2021), *aff'd*, 39 F.4th 1357 (Fed. Cir. 2022) ("[W]hen addressing a substantial evidence issue raised by a party, the court analyzes whether the challenged agency action was reasonable given the circumstances presented by the whole record."); *JSW Steel (USA) Inc. v. United States*, 466 F. Supp. 3d 1320, 1328–29 (CIT 2020).

DISCUSSION

In this challenge, AKCA made an EAPA allegation of evasion against Scioto, a U.S. importer, arguing that Scioto engaged in a transshipment scheme with its affiliated foreign supplier, Alno, to evade the payment of AD and CVD duties on WCV from China. Customs found in its Final Administrative Determination that there was no evidence of evasion by Scioto.

AKCA challenges two aspects of Customs' Final Administrative Determination as arbitrary, capricious, and an abuse of discretion: (1) R&R's conclusion that the "record contains *no evidence* that WCV produced in China were transshipped through Malaysia"; and (2) R&R's reversal of TRLED's application of adverse inferences. *See* AKCA Br. at 16, 29 (emphasis in original). The government and Scioto ask that the court sustain Customs' final determination. *See* Def.'s Resp. Br.; Def.-Int.'s Resp. Br.

I. Customs Failed to Consider Material Evidence On the Record

The first issue is whether Customs properly considered the record in making its negative evasion determination. Under EAPA, Customs is responsible for determining whether "covered merchandise" has entered the United States through "evasion." *See* 19 U.S.C. § 1517(c)(1)(A). "Covered merchandise" is merchandise that is subject

to an AD or CVD order. *Id*. § 1517(a)(3). The statute defines "evasion" as:

> [E]ntering covered merchandise into the customs territory of the United States by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material, and that results in any cash deposit or other security or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise.

Id. § 1517(a)(5)(A). One example of evasion under EAPA is "transshipment," which includes a scheme where "goods are manufactured in one country and imported through an intermediary country to evade duties imposed on goods originating from the manufacturing country." *Skyview Cabinet USA, Inc. v. United States*, No. 2023–91, Slip Op. at 6 (CIT 2023).

The statute defines evasion as *any* materially false information, data, or act, or *any* material omission, that results in *any* cash deposit or other amount of AD or CVD duties being reduced or not applied on covered merchandise. 19 U.S.C. § 1517(a)(5)(A) (emphases added). The term "any" is "generally used in the sense of 'all' or 'every' and its meaning is most comprehensive." *Barseback Kraft AB v. United States*, 121 F.3d 1475, 1481 (Fed. Cir. 1997) (quoting *Fleck v. KDI Sylvan Pools, Inc.*, 981 F.2d 107, 115 (3rd Cir. 1992)); *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1308 (Fed. Cir. 2001) (same); *Cook v. Wilkie*, 908 F.3d 813, 818 (Fed. Cir. 2018) (same); *see also United States v. Rosenwasser*, 323 U.S. 360, 363 (1945) (explaining that the use of the word "any" leaves "no doubt as to Congressional Intent[ ]"). Thus, a finding by Customs of information, data, or an act that is material and false, or a finding by Customs of a material omission, must result in a finding of evasion under the statute. 19 U.S.C. § 1517(a)(5)(A). Customs' determination for each finding of evasion must be based on substantial evidence. *Id*. § 1517(c)(1)(A).

In this proceeding, Customs recognizes the standard required in making a negative evasion determination because it concluded that there was "*no evidence* that WCV produced in China were transshipped through Malaysia and imported into the United States by Scioto." Final Administrative Determination, Appx3925 (emphasis added). Customs came to its negative evasion determination only by making a sweeping conclusion about evidence on the record. Despite its statement, Customs failed to address material evidence in its analysis that detracted from its finding that no evasion had taken

place by Scioto. *Princeton Vanguard, LLC v. Frito-Lay N. Am., Inc.*, 786 F.3d 960, 970 (Fed. Cir. 2015) ("[S]ubstantial evidence review 'requires an examination of the record as a whole, taking into account both the evidence that justifies and detracts from an agency's opinion.'") (quoting *Falkner v. Inglis*, 448 F.3d 1357, 1363 (Fed. Cir. 2006)). Customs' failure to include such evidence in its analysis is unreasonable. *See Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488 (1951) (finding that "[t]he substantiality of evidence must take into account whatever in the record fairly detracts from its weight").

A. Customs failed to examine the extent of the Haiyan Group's operational control of Scioto and Alno

AKCA argues that "[d]ue to the Haiyan Group's ownership of Scioto and Alno, it has total control and discretion over the companies' operations, production, shipping schedules, purchase prices, sales prices, and profit generated." AKCA Br. at 30. TRLED similarly addressed the Haiyan Group's financial and operational control of Alno and Scioto in evaluating Scioto's relationship with Alno, particularly as it related to past acts of evasion by Alno. TRLED Not. of Det., Appx3735–3736.

The government argues that AKCA's position regarding "close connections with China" is not "conclusive evidence of transshipment" and "would require inference upon inference for CBP to find evasion on this record." Def.'s Resp. Br. at 24–25. The government contends it is not "dispositive that Alno has close connections with China" and that R&R adequately addressed close connections with China because it "determined that evidence of common ownership by a Chinese national did not necessarily prove that the goods associated with the entries were produced in China rather than Malaysia." *Id*. at 25, 31. Scioto similarly argues that "neither the existence of a Chinese parent company, nor the purchase of Chinese raw materials, relates to where productions of the *finished goods* occurred." Def.-Int.'s Resp. Br. at 31 (emphasis in original).

In making its findings, Customs must examine the relevant data on the record, and articulate a satisfactory explanation for its action, including addressing material evidence on the record which detracts from its conclusion. *Motor Vehicle Mfrs. Ass'n of U.S.*, 463 U.S. at 43; *Ala. Aircraft Indus.*, 586 F.3d at 1375. In the Final Administrative Determination, R&R failed to consider the level of control that the Haiyan Group exerted over both Scioto and Alno, and failed to consider Scioto's ownership of Alno during a time when Alno was engaged in evasion of the AD/CVD Orders. *See* Final Administrative Determination, Appx3933. Customs' focus only on the Haiyan Group's ownership share of these entities renders its analysis unreasonable. *Id*.

In its administrative review, R&R treated Scioto and Alno as separate and independent entities, but evidence obtained by TRLED during its investigation and cited by AKCA shows that Scioto and Alno were interrelated companies operating under the singular direction of the Haiyan Group. TRLED Not. of Det., Appx3735–3736; AKCA Br. at 29–30. Specifically, Scioto reported in its August 25, 2022 response to Customs' request for information ("RFI") that as "the 100% owners of Scioto, Haiyan Group has general oversight with respect to overall business strategy and operations." Scioto Final Response to Request for Information ("Scioto RFI Response"), Appx3260. Scioto further described the operational control of the Haiyan Group over itself and Alno:

- "*Haiyan Group ultimately has final say over what products can be produced in Malaysia by Alno and in what order purchase orders are produced and shipped to Scioto from Alno*, after consultation with Scioto regarding the demand for goods. Scioto can request certain SKUs in purchase orders or to request certain orders to come more quickly, but they are at Haiyan Group's discretion for this production to go as planned. Haiyan Group, Haiyan Drouot, and Alno also have other customers in the U.S. to which they have sold directly without the involvement of Scioto in the sales, production, or shipment process." *Id.*, Appx3261 (emphasis added).
- "Haiyan Group also sets the price that goods are sold to Scioto from both Haiyan Drouot or Alno and also *can make the final determinations on what goods are shipped to Scioto from Haiyan Drouot or Alno and how and when these shipments are made to Scioto from Haiyan Drouot or Alno*." *Id.*, Appx3267 (emphasis added).
- "A budget needs to be reviewed and approved by Haiyan Group biweekly or every 2 weeks and if approved, Haiyan Group is responsible for transferring the funds into the account payables bank account for any Scioto expenses to be paid." *Id.*, Appx3260.
- "Haiyan Group is involved in *setting the purchasing price for Scioto and also the terms of sale for purchases from Alno to Scioto*. Haiyan Group was previously involved in setting the purchasing price for Scioto and also the terms of sale for purchases from Qingdao Haiyan Drouot to Scioto." *Id.* (emphasis added).

Given these admissions by Scioto and record evidence obtained by TRLED during its investigation that the Haiyan Group exercised

"ultimate" operational control over Alno and Scioto, Customs' focus on only the Chinese ownership component of the relationship is unreasonable and renders its determination unsupported by substantial evidence. *See* Final Administrative Determination, Appx3933 (concluding that "common ownership by a Chinese national does not necessarily prove that the goods associated with these entities were produced in China rather than Malaysia").

Missing from Customs' analysis is an explanation of the Haiyan Group's decision-making authority with respect to products shipped by Alno from not only its Malaysian WCV facilities, but from the Haiyan Group's Chinese WCV facilities that may have been transshipped through Malaysia. That is because, "[a]s a starting point, Alno was a known quantity for transshipment; it had admittedly engaged in a transshipment scheme with another importer, Cabinets to Go [CTG]." Def.'s Resp. Br. at 5.

By its own admission, Alno did not make these decisions independently because it was the Haiyan Group who had ultimate control to make the "final determinations" as to Alno's production and shipment of WCV. *See* Scioto RFI Response, Appx3260–3261. The Haiyan Group controlled decision-making as to which goods were shipped to its U.S. subsidiary and importer, Scioto, from its Malaysian subsidiary, Alno, or from its Chinese subsidiary, Haiyan Drouot. *Id*. The Haiyan Group similarly controlled decision-making as to which goods were shipped to CTG, an unaffiliated U.S. importer, from Alno during the time period when Alno admitted that transshipped goods were sent to CTG. *Id*.; *see also* AKCA EAPA Allegation, Appx1008.

Further, Scioto reported that from the beginning of Customs' POI on March 9, 2021, until July 1, 2022, "*Scioto owned Alno* [and the] Haiyan Group still funded Alno's operations and directed Alno on how to produce the goods made at Alno's facilities, when and how to the [sic] ship the goods from, and how to package the goods made at Alno." Scioto RFI Response, Appx3268 (emphasis added).

In its Final Administrative Determination, R&R failed to examine the relevance of Scioto's ownership and control of Alno when disregarding the relevance of Alno's behavior as a "known quantity for transshipment." *See* Def.'s Resp. Br. at 5. Specifically, R&R stated in its findings that it would limit its review to transactions involving Alno and Scioto, and not those between Alno and CTG, because no allegation was made with respect to CTG, an unaffiliated U.S. importer. Final Administrative Determination, Appx3926. Customs found that "given that the record is devoid of any evidence of a relationship between Scioto and CTG," none of the facts related to "CTG's conduct and transactions [are] relevant to our decision as to

whether Scioto engaged in evasion." *Id.*

R&R, however, neglected to consider AKCA's argument that the issue is not with "CTG's conduct," but *Alno's* conduct with respect to the previous transshipment transactions. *See id.*; AKCA Br. at 30. Alno's past conduct is relevant to Customs' evaluation of Scioto because Scioto owned Alno during the time when Alno "admitted" to evading the AD/CVD Orders. Final Administrative Determination, Appx3926 ("Alno admitted in response to CBP's RFI that it transshipped WCV to [Co.], but it did not so admit with regards to Scioto's importations."). R&R concluded that it would not consider Alno's past acts of evasion "given that the record is devoid of any evidence of a relationship between Scioto and CTG," but such a conclusion should not have been the end of R&R's analysis. *Id.* There may not have been a relationship between Scioto and CTG, but as it takes two to tango, there is evidence of a relationship between Scioto and Alno. The existence of an interrelated company relationship warrants Customs' examination of the relevance of Alno's past acts of evasion in the context of Customs' current examination of Scioto. *See Phoenix Metal Co., Ltd. v. United States*, No. 2300048, 2024 WL 2891503, at *4 (CIT 2024) (finding past transshipment by "interrelated" companies a relevant consideration for an evasion determination).

In other words, it was Alno's parent companies, Scioto and the Haiyan Group, who "directed" Alno on where Alno should ship its and other manufacturers' goods during the time when Alno was engaged in transshipping goods from China through Malaysia to CTG in the United States. Scioto RFI Response, Appx3268. Evidence contained in AKCA's allegation to Customs further stated that it was "two Haiyan representatives," and not Alno representatives, who told CTG that the Haiyan Group and its subsidiaries could not certify the country of origin of the products exported to CTG "because the product and/or component parts of the product[ ] had been manufactured in China." AKCA EAPA Allegation, Appx1007–1008.

To impute operational independence between Scioto, Alno, and the Haiyan Group, as Customs has done in its Final Administrative Determination, runs counter to record evidence that: (1) the U.S. importer Scioto owned and controlled Alno for much of the POI, which includes the period when Alno was engaged in a transshipment scheme; and (2) Scioto and Alno were operationally controlled by the Haiyan Group. Given these factors, Customs' failure to examine Alno's previous acts of evasion renders its determination unreasonable. *Ala. Aircraft Indus.*, 586 F.3d at 1375.

B. Customs' discussion of Alno's "disclosure" of an additional warehouse failed to consider the contents inside the warehouse

AKCA argues that Customs failed to address evidence that Alno transshipped Chinese WCV to Scioto following the discovery of an "additional warehouse" during Customs' verification. AKCA Br. at 30. AKCA cites TRLED's verification findings in claiming that the warehouse "was filled with finished goods from China and Malaysia that were packaged identically and ready for shipment," and that "CBP officials had no way to differentiate the country of origin of these finished WCV. *Id.* (citing TRLED Not. of Det., Appx3736–3737).

The government addresses the issue of an "additional warehouse" only in the context of Customs' decision not to apply adverse inferences against Scioto. Specifically, the government argues that while Alno did not initially disclose an additional warehouse, "the distinction here is that R&R concluded that the acknowledged error was not nefarious and did not amount to warranting an adverse inference, as it has the discretion to do." Def.'s Resp. Br. at 19. Scioto similarly contends that "the [g]overnment correctly notes" that "R&R already considered and rejected" arguments about the disclosure of the additional warehouse, and that AKCA is "simply asking the Court to reweigh the evidence." Def.-Int.'s Resp. Br. at 24.

AKCA's argument, however, is not rooted in the disclosure of the warehouse itself, but the contents contained within the warehouse that should have warranted review by R&R. On this claim, R&R failed to examine the issue except to acknowledge that Alno "brought CBP officials to the warehouse location."[4] Final Administrative Determination, Appx3927. R&R does not address the contents of the additional, finished goods warehouse, concluding only that "Alno has the capability to, and *likely did*, produce the WCV in Malaysia." *Id.*, Appx3928 (emphasis added). "'Mere speculation' is not substantial evidence." *OSI Pharms., LLC v. Apotex Inc.*, 939 F.3d 1375, 1382 (Fed. Cir. 2019) (quoting *Intell. Ventures I LLC v. Motorola Mobility LLC*, 870 F.3d 1320, 1331 (Fed. Cir. 2017)); *Spurlock v. Dep't of Just.*, 894 F.2d 1328, 1330 (Fed. Cir. 1990) ("Exaggeration, inherent improbability, self-contradiction, omissions in a purportedly complete account, imprecision, and errors detract from the weight to be accorded the evidence upon which an administrative board bases its decision.");

[4] Customs' statement was made in context of Alno's disclosure of the additional warehouse. Final Administrative Determination, Appx3927 ("On balance, in our view, the facts discussed above do not support a conclusion that Alno did not cooperate by not acting to the best of its ability to comply with a request for information, especially given that Alno did in fact disclose the additional finished goods warehouse and subsequently brought CBP officials to the warehouse location.").

Dixon v. Dep't of Transp., F.A.A., 8 F.3d 798, 804 (Fed. Cir. 1993) (courts "must canvas the entire record").

Customs' reliance on speculation without an examination of AKCA's arguments and record evidence is unreasonable. *Princeton Vanguard, LLC v. Frito-Lay N. Am., Inc.*, 786 F.3d 960, 970 (Fed. Cir. 2015) ("Just as it may not short-cut its legal analysis, the Board may not short-cut its consideration of the factual record before it."); *Packard Press, Inc. v. Hewlett-Packard Co.*, 227 F.3d 1352, 1357 (Fed. Cir. 2000) ("Judicial review under the substantial evidence standard can only take place when the agency explains its decisions with sufficient precision, including the underlying factfindings and the agency's rationale.") (internal citations omitted).

R&R failed to examine and explain photographic and other evidence on the record showing that the additional warehouse contained several boxes "with no marking" of any sort, and importantly, without a country of origin marking. TRLED Verification Rep., Attach. 7 at photos 5 and 6, Appx3648, Appx168147. Customs investigators also found in the warehouse, stray "[c]abinet doors in box[es] with no writing on it." *Id.* at photo 7, Appx3649, Appx168148.

The photographic evidence obtained by TRLED supported its finding that the additional warehouse was "filled with finished goods from China and Malaysia that were packaged identically and ready for shipment," and that "CBP officials had no way to differentiate the country of origin of the finished packaged cabinets and vanities." TRLED Not. of Det., Appx3736–3737. Further, TRLED found that Alno "does not track raw materials in any way and cannot identify which raw materials go into which finished goods," and Alno "does not separate Chinese, Malaysian, or any other materials in any way." TRLED Verification Rep., Appx3609.

In sum, TRLED identified three categories of items in the additional warehouse at verification: (1) WCV goods from China; (2) WCV goods from Malaysia; and (3) WCV goods with no country of origin marking. For this third category of goods (i.e., those with no markings), even if the documentation submitted by Alno is accurate and reliable, Customs has offered no explanation as to why boxes and pieces of WCV without country of origin or other markings are considered Malaysian-origin goods when those goods are commingled with similarly unmarked Chinese-origin goods, or why such an omission is not material to Customs' evasion determination. In a warehouse where potentially transshipped goods are commingled with non-transshipped and unlabeled goods, the burden is on the warehouse owner to demonstrate to Customs a clear delineation between

the three categories of goods. Customs' review of TRLED's determination is conducted de novo, but the evidence which underpins TRLED's finding cannot itself be summarily disregarded. *See Dixon*, 8 F.3d at 804.

C. Customs' treatment of documentation submitted by Alno and Scioto was reasonable

Finally, AKCA argues that: (1) Customs "misinterpreted" evidence submitted by Scioto for foreign product inbound delivery ("FPID") sheets; and (2) Customs erred in finding that Alno's documentation was reliable. AKCA Br. at 34, 40. The government and Scioto argue that (1) AKCA's arguments amount to a "mere disagreement" with R&R's interpretation that the FPIDs adequately distinguished between WCV manufactured in Malaysia and the "transshipped wooden cabinets"; and (2) "R&R reviewed the record as a whole, addressed the parties' positions on all issues," and discussed the "major" evidence in concluding that Alno's documentation was reliable. Def.'s Resp. Br. at 27–30; Def.-Int.'s Resp. Br. at 32–33. For the reasons that follow, the court affirms Customs' findings on these two issues.

It is not the court's role to second-guess agency decision-making so long as the agency provides a reasoned analysis for its choices after considering the full gambit of record evidence, including those facts that detract from its findings. *See Motor Vehicle Mfrs. Ass'n of U.S.*, 463 U.S. at 43; *Wheatland Tube Co. v. United States*, 161 F.3d 1365, 1369 (Fed. Cir. 1998); *Mittal Steel Galati S.A. v. United States*, 502 F. Supp. 2d 1295, 1313 (CIT 2007).

With respect to its treatment of Alno's submission of FPID sheets, Customs addressed each of the arguments raised by AKCA and concluded that the "record demonstrates that the FPID are used for purchased and manufactured finished goods inventory." Final Administrative Determination, Appx3928. In making this finding, Customs evaluated Alno's production tracking inspection reports and production schedules, finding that "Scioto and Alno linked certain production batches in production documentation from Alno's factory and warehouse to specific entries of WCV imported by Scioto, which provides evidence that the WCV were produced in Malaysia." *Id.*, Appx3930. AKCA would prefer Customs to find otherwise, but "the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Consolo v. Fed. Mar. Comm'n*, 383 U.S. 607, 620 (1966); *SeAH Steel VINA Corp. v. United States,* 950 F.3d 833, 842–43 (Fed. Cir. 2020).

Similarly, Customs' determination that Alno's documentation was reliable is reasonable. Customs, not the court, is in the best position to determine the reliability of the documentation and information submitted to it, and to make the appropriate determination. *Catfish Farmers of Am. v. United States*, No. 2016–29, Slip Op. at 9 (CIT 2016) (where an agency "has conflicting evidence on the record and substantial evidence exists on both sides of an issue, the standard compels deference to [the agency], provided [the agency] has reasonably explained its determination"). AKCA lists "myriad discrepancies" in support of its argument that Alno altered its documentation, arguing for some of its claims that "R&R is just flatly wrong." AKCA Br. at 42. ACKA's disagreement with Customs, however, is not a basis for disturbing the agency's findings. *Consolo v. Fed. Mar. Comm'n*, 383 U.S. at 620; *SeAH Steel VINA Corp,* 950 F.3d at 842–43.

Despite AKCA's assertion that Customs failed to address discrepancies in Alno's submitted documentation, R&R explained its conclusions on Alno's unit transfer prices, "vague invoice descriptions", "inconsistent units" of tracking merchandise, and the overall evaluation of the reliability of Alno's documentation. Final Administrative Determination, Appx3935–3937. In doing so, Customs provided a rational connection between the facts and its conclusion. *See Motor Vehicle Mfrs. Ass'n of U.S.*, 463 U.S. at 43.

II. Customs Acted Within its Discretion in Finding that the Application of Adverse Inferences Was Unwarranted

The second issue is whether Customs acted within its discretion in refraining from applying adverse inferences to Scioto. AKCA argues that R&R's decision not to apply adverse inferences against Alno and Scioto was "arbitrary, capricious, and an abuse of discretion" because it "failed to address the problems that occurred during verification, failed to consider important aspects of the record evidence, and made conclusions that were simply unsupported by the record evidence." AKCA Br. at 16.

The government contends that "CBP acted well within its authority when it determined that it was inappropriate to apply adverse inferences." Def.'s Resp. Br. at 13. With respect to the additional warehouse, packing checklists, and missing emails, the government contends that "R&R considered each of these circumstances and ultimately concluded that the record 'examined as a whole' supports a conclusion that Alno 'cooperated and complied with requests for information made by CBP such that application of a wholesale adverse inference to Scioto is not justified.'" *Id.* at 18 (citing Final Administrative Determination, Appx168270). Scioto similarly argues

that "the record demonstrates cooperation and significant involvement by both Alno and Scioto throughout the investigation." Def.-Int.'s Resp. Br. at 23.

EAPA permits Customs to "use an inference that is adverse to the interests of" a party in certain circumstances:

> If [Customs] finds that a party or person ... has failed to cooperate by not acting to the best of the party or person's ability to comply with a request for information, the Commissioner may, in making a determination [of evasion] ... use an inference that is adverse to the interests of that party or person in selecting from among the facts otherwise available to make the determination.

19 U.S.C. § 1517(c)(3)(A); 19 C.F.R. § 165.6(a). The adverse inference "may be used ... without regard to whether another person involved in the same transaction or transactions under examination has provided the information sought by the Commissioner, such as import or export documentation." 19 U.S.C. § 1517(c)(3)(B); 19 C.F.R. § 165.6(c).

The application of "adverse inferences" first requires Customs to make a finding that a party failed to cooperate to the best of its abilities or failed to comply with a request for information. 19 U.S.C. § 1517(c)(3). Even if such a finding is made, Customs has discretion to choose whether to use an adverse inference in making an evasion determination given the permissive language of the statute (i.e., "may"). *Id.*; *see also Assan Aluminyum Sanayi v. Ticaret A.S.*, 624 F. Supp. 3d 1343, 1378 (CIT 2023) (discussing the use of the "permissive term 'may,' which stands in contraposition to [a statute's] use of the mandatory term 'shall'"); *Dorbest Ltd. V. United States*, 462 F. Supp. 2d 1262, 1318 (same).

In this challenge, Customs did not make a finding that Scioto and Alno failed to act to the best of its abilities or failed to comply with a request for information:

> [W]hile Alno and Scioto may not have acted perfectly in responding to information requests by CBP, in our view, when the record is examined as a whole, it supports a conclusion that they cooperated and complied with requests for information made by CBP such that application of a wholesale adverse inference to Scioto is not justified. This is especially so given there is record evidence that the information requested was ultimately provided to CBP.

Final Administrative Determination, Appx3926.

So long as the agency's findings are not arbitrary, capricious, or an abuse of discretion, and the agency includes a reasoned analysis or explanation for its choice, the court may not second-guess its decision. *Motor Vehicle Mfrs. Ass'n of U.S.*, 463 U.S. at 43; *Wheatland Tube Co.*, 161 F.3d at 1369. In other words, if Customs provides an analysis which has a rational connection to the facts found, the court must sustain its decision.

Under this standard, the court can find no error with Customs' determination that adverse inferences were not warranted. R&R adequately explained its decision not to apply adverse inferences and based its analysis on rational, reasoned connections to the facts. AKCA argues that R&R erred in failing to consider various "problems" that occurred during verification and other important aspects of the record, including: (1) Alno's failure to disclose an additional warehouse during verification; (2) R&R "excus[ing]" Alno from its failure to provide all the packing check-lists requested by TRLED; and (3) R&R's acceptance of Alno's explanation for certain missing documentation and emails. AKCA Br. at 16–24.

Contrary to AKCA's claims, R&R addressed each of these issues in concluding that:

> [W]hile Alno and Scioto may not have acted perfectly in responding to information requests by CBP, in our view, when the record is examined as a whole, it supports a conclusion that they cooperated and complied with requests for information made by CBP such that application of a wholesale adverse inference to Scioto is not justified.

Final Administrative Determination, Appx3926.

First, despite not addressing the contents within the warehouse, Customs did address Alno's failure to initially *disclose* its additional warehouse. *See* Final Administrative Review, Appx3926–3927. Specifically, Customs determined that Alno "misunderstood" the question posed by Customs investigators, and "when Alno realized that CBP also wanted information on this warehouse, Alno disclosed the existence of the warehouse to CBP and further provided CBP with access to the warehouse." *Id.*, Appx3927. Customs concluded that "[o]n balance, in our view, the facts ... do not support a conclusion that Alno did not cooperate by not acting to the best of its ability ... given that Alno did disclose the additional finished goods warehouse and subsequently brought CBP officials to the warehouse location." *Id.*

Second, Customs addressed Alno's failure to provide missing packing checklists when requested to do so. *See id.* Customs found that although "Alno did not act perfectly, in that there were delays– of

indeterminate length pursuant to the record before us– in providing certain Packing Check-Lists, but when Alno found the relevant documents, later during the course of the verification, it produced them to CBP 'unsolicited.'" *Id*. Customs found that such a delay did not warrant the application of adverse inferences because although Alno did not act to "perfection," it did "act[ ] to the best of its ability." *Id*.

Third, Customs addressed Alno's failure to provide Customs with access to certain email files. *Id*., Appx3927–3928. Customs found that there was insufficient evidence to verify Alno's claims of "server issues," and that consequently it was difficult to draw any conclusion on this claim by AKCA. *Id*. While Customs officials were unable to verify the source of the email attachments provided by Alno, they explained that "[t]here is no proof on the record that the person from the parent company forwarded an email to CBP officials containing different attachments from those accompanying the original email." *Id*., Appx3928. Customs ultimately concluded that it would not rely on the email and attachments for purposes of a determination. *Id*.

Based on these findings, Customs concluded that the use of adverse inferences against Alno and Scioto was not warranted. AKCA's disagreement with Customs' findings is not a basis for disturbing the agency's conclusion.

CONCLUSION

For the foregoing reasons, Customs' negative determination of evasion is sustained in part and remanded in part for further proceedings not inconsistent with this opinion.

Upon consideration of the papers and proceedings herein, it is hereby:

ORDERED that Customs' Final Determination of Evasion is remanded in part for a reconsideration not inconsistent with this opinion; it is further

ORDERED that Customs shall file a remand redetermination within forty-five (45) days following the date of this Opinion and Order; it is further

ORDERED that the deadlines provided in CIT Rule 56.2(h) shall govern thereafter.

Dated: October 31, 2024
New York, New York

/s/ Lisa W. Wang
LISA W. WANG, JUDGE

Slip Op. 24–124

GARG TUBE EXPORT LLP and GARG TUBE LIMITED, Plaintiffs, v. UNITED STATES, Defendant. and NUCOR TUBULAR PRODUCTS INC. and WHEATLAND TUBE, Defendant-Intervenors.

Before: Claire R. Kelly, Judge
Court No. 21–00169
PUBLIC VERSION

[Sustaining the Department of Commerce's final remand redetermination.]

Dated: November 7, 2024

Ned H. Marshak, *Dharmendra N. Choudhary*, and *Jordan C. Kahn*, Grunfeld Desiderio Lebowitz Silverman & Klestadt, LLP, of New York, NY and Washington, D.C., for plaintiffs Garg Tube Export LLP and Garg Tube Limited.

Robert R. Kiepura, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, D.C., for defendant United States. Also on the brief were *Brian M. Boynton*, Principal Deputy Assistant Attorney General, *Patricia M. McCarthy*, Director, and *Franklin E. White, Jr.*, Assistant Director. Of counsel were *Jospeh Grossman-Trawick* and *Shelby M. Anderson*, Office of the Chief Counsel for Trade Enforcement & Compliance, U.S. Department of Commerce.

Robert E. DeFrancesco, III, *Alan H. Price*, and *Theodore P. Brackemyre*, Wiley Rein LLP, of Washington, D.C., for defendant-intervenor Nucor Tubular Products Inc.

Roger B. Schagrin, *Alessandra A. Palazzolo*, *Christopher T. Cloutier*, *Elizabeth J. Drake*, *Jeffrey D. Gerrish*, *Luke A. Meisner*, *Michelle R. Avrutin*, *Nicholas J. Birch*, and *William A. Fennell*, Schagrin Associates, of Washington, D.C., for defendant-intervenor Wheatland Tube.

OPINION

Kelly, Judge:

Before the Court is the U.S. Department of Commerce's Final Remand Results Pursuant to Court Remand, July 8, 2024, ECF No. 77–1 ("*Second Remand Results*") in the 2018–2019 administrative review of the antidumping duty ("ADD") order on welded carbon steel standard pipes and tubes from India. *See Welded Carbon Steel Standard Pipes and Tubes From India*, 86 Fed. Reg. 14,782 (Dep't Commerce Mar. 19, 2021) ("*Final Results*"), as amended by the Final Results of Redetermination Pursuant to Court Remand, Mar. 20, 2023, ECF No. 42–2 ("*First Remand Results*"). In *Garg Tube Export LLP v. United States*, 698 F.Supp.3d 1230 (Ct. Int'l Trade 2024) ("Garg I"), the Court remanded to Commerce to reconsider or further explain its decision to apply an adverse inference when selecting facts otherwise available. *Garg I*, 698 F.Supp.3d at 1242. The Court sustained Commerce's use of its differential pricing methodology because Plaintiffs Garg Tube Export LLP and Garg Tube Limited ("Garg")

failed to challenge its use before the agency. *Id.* On remand, Commerce, under respectful protest,[1] applies partial facts otherwise available without an adverse inference to determine the cost of production for the merchandise pursuant to Section 776(a) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1677e(a).[2] *Second Remand Results* at 2–3. For the reasons that follow, Commerce's redetermination is sustained.

BACKGROUND

The Court presumes familiarity with the facts of this case as set out in its previous opinion ordering remand to Commerce, *see Garg I*, 698 F.Supp.3d at 1234– 35, and now recounts only those facts relevant to the Court's review of the Second Remand Results. On October 10, 2019, Plaintiffs Garg Tube Export LLP and Garg Tube Limited's ("Garg") filed its Section A Questionnaire Response to Commerce's July 15, 2019, administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Review*, 84 Fed. Reg. 33,739 (Dep't Commerce July 15, 2019); [Garg] Sect. A Resp. To Origin. Questionnaire at 1, PDs 38–41, CDs 5–8, bar code 3898821–01 (Oct. 10, 2019). In the questionnaire, Garg reported that it had an unaffiliated supplier without knowledge of the destination of the pipe and tube that it sold to Garg.[3] *See* [Garg] Sect. A Resp. To Origin. Questionnaire at 38, PDs 38–41, CDs 5–8, bar code 3898821–01 (Oct. 10, 2019). Commerce requested the cost information directly from the unaffiliated supplier, and asked Garg to obtain the information from the supplier as well. *See* re: Letter from Commerce to [Garg's] Suppliers Requesting Costs at 1, PDs 136–38, CDs 63–65 bar codes 3971275–01, 3971278–01, 3971282–01 (May 5, 2020); [Commerce's] Order for [Garg] Suppl. Questionnaire at 1, PD 94, CD 35, bar code 3922259–01 (Dec. 19, 2019).

In the preliminary results, Commerce relied upon partial facts otherwise available with adverse inferences to fill the gap in information that was not supplied by Garg's unaffiliated supplier. *See Welded Carbon Steel Standard Pipes and Tubes from India; 2018–2019*, 85 Fed. Reg. 44,860 (Dep't of Commerce, July 20, 2020) ("*Preliminary Results*") and accompanying Preliminary Decision Memo. at 9. ("Prelim. Decision Memo."). Commerce continued to

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[1] The Court of Appeals for the Federal Circuit ("Court of Appeals") has upheld Commerce's right to file remand results under protest while still preserving its right to appeal. *Viraj Grp., Ltd. v. United States*, 343 F.3d 1371, 1376 (Fed. Cir. 2003).

[2] Further citations to the Tariff Act of 1930, as amended, are to the relevant provisions of Title 19 of the U.S. Code, 2018 edition.

[3] The unaffiliated, uncooperative supplier at issue is [[ ]]. *See* Second Remand Results at 3.

apply adverse inferences in selecting facts otherwise available in its final determination, published on March 19, 2021, finding that Garg did not act to the best of its ability "in attempting to obtain the supplier's costs" because the efforts made by Garg "did not serve as a strong inducement for the supplier in question to cooperate." *See Final Results* and accompanying Issues and Decision Memo. for the Final Results of the [ADD} Admin. Review; 2018–2019, A-533–502, (Mar. 19, 2021), ECF No. 24–5 at 41. ("Final Decision Memo"). Commerce used adverse inferences when selecting from facts otherwise available for the missing supplier's costs invoking *Mueller Comercial de Mexico, S. de R.L. De C.V. v. United States*, 753 F.3d 1227, 1232 (Fed. Cir. 2014), and further made a cost-based particular market situation adjustment to calculate Garg's dumping margin. Final Decision Memo. at 19–23; 38–42.

On February 2, 2023, Commerce requested remand for its determination to comply with the Court of Appeals' decision in *Hyundai Steel Co., Ltd. v. United States*, 19 F.4th 1346 (Fed. Cir. 2021), and the Court granted the request. *See* Def.'s Consent Mot. To Remand at 1, Feb. 2, 2023, ECF No. 37; Order at 1, Feb. 3, 2023, ECF No. 40. Commerce filed its first remand results on March 20, 2023. *See generally First Remand Results*. Garg filed a Motion for Judgment on the Agency Record and Comments on the Remand determination on July 31, 2023, challenging Commerce's application of adverse inferences when selecting among the facts otherwise available, arguing that it was not supported by substantial evidence and contrary to law. Pl. Mot. J. Agency R. and Cmts. on Remand Redetermination at 18–28, Jul. 31, 2023, ECF No. 53. Garg also challenged Commerce's application of its differential pricing methodology, claiming that its use of and calculations pursuant to the Cohen's d test was in error and unsupported by substantial evidence, and further that it had exhausted its administrative remedies with respect to the challenge. *Id.* at 28–36.

The Court remanded Commerce's decision in part, concluding that Commerce's application of facts otherwise available with adverse inferences was not reasonable on the record. *Garg I*, 698 F.Supp.3d at 1237. The Court explained that Commerce failed to indicate whether it sought to apply adverse inferences under 19 U.S.C. §§ 1677e(a) or 1677e(b). *Id.* The Court rejected Defendant's position that Commerce's invocation of Section 1677e(b) was reasonably discernible, concluding that the presence of conflicting language as to which provision was applied undermined Defendant's position. *Id.* at 1238. To the extent that Commerce relied upon 19 U.S.C. § 1677e(b), record

evidence did not support Defendant's position that Garg "needed to compel its unaffiliated supplier to submit the information as a condition of conducting business." *Id.* (citing Prelim. Decision Memo. at 10–11; Final Decision Memo. at 42). Likewise, to the extent it relied upon Section 1677e(a) Commerce failed to explain how "applying an adverse inference will lead to an 'accurate rate, promote cooperation, and thwart duty evasion.'" *Id.* (citing *Canadian Solar International Limited v. United States*, 415 F.Supp.3d 1326, 1333 (Ct. Int'l Trade 2019) ("*Canadian Solar II*")) (citing *Mueller*, 753 F.3d at 1232–36). On remand, the Court instructed Commerce to invoke and explain the specific statutory provision on which it relies in making its determination. *Id.* at 1239.

Commerce filed the *Second Remand Results* on July 8, 2024. *See generally Second Remand Results*. Commerce reconsidered its determination and, under respectful protest, modified Garg's dumping margin calculations. *Second Remand Results* at 3. Commerce employed 19 U.S.C. § 1677e(a), relying on partial facts otherwise available without an adverse inference to fill the gap in information. *Id.* Commerce concluded that it could not find that Garg had control over or was able to induce the cooperation of the supplier, and therefore could not apply an adverse inference under Section 1677e(a). *Id.* at 11. Further, Commerce found in its remand redetermination that Garg "cooperated to the best of its ability to comply with Commerce's requests for the COP [cost of production] information," and thus it could not apply adverse inferences under Section 1677e(b). *Id.* at 10. Because it did not have evidence to support an application of adverse inferences under either Section 1677e(a) or 1677e(b), Commerce relied only on partial facts otherwise available without an adverse inference pursuant to Section 1677e(a). *Id.*

On August 7, 2024, Garg and Defendant-Intervenor Nucor Tubular Products, Inc. ("Nucor") submitted their comments in response to the *Second Remand Results*. *See generally* [Garg's] Cmts. [Second Remand Results], Aug. 7, 2024, ECF No. 79 ("Garg Cmts."); [Nucor's] Cmts. [Second Remand Results], Aug. 7, 2024, ECF No. 80 ("Nucor Cmts."). On September 20, 2024, Defendant filed its comments in support of the *Second Remand Results*. *See generally* [Defendant's] Reply to Cmts. [Second Remand Results], Sept. 20, 2024, ECF No. 84 ("Defendant's Reply to Cmts."). Also on September 20, 2024, Garg and Nucor submitted their replies to comments on the *Second Remand Results*. *See generally* [Garg's] Reply to Cmts. [Second Remand Results], Sept. 20, 2024, ECF No. 85 ("Garg Reply to Cmts."); [Nucor's] Reply to Cmts. [Second Remand Results], Sept. 20, 2024, ECF No. 83 ("Nucor Reply to Cmts.").

JURISDICTION AND STANDARD OF REVIEW

This Court has jurisdiction pursuant to 19 U.S.C. § 1516a(a)(2)(B)(iii) and 28 U.S.C. § 1581(c), which grant the Court authority to review actions contesting the final determination in an administrative review of an antidumping ("AD") order. "The court shall hold unlawful any determination, finding, or conclusion found ... to be unsupported by substantial evidence on the record, or otherwise not in accordance with law." 19 U.S.C. § 1516a(b)(1)(B)(i). "The results of a redetermination pursuant to court remand are also reviewed for compliance with the court's remand order." *Xinjiamei Furniture (Zhangzhou) Co., Ltd. v. United States*, 968 F.Supp.2d 1255, 1259 (Ct. Intl Trade 2014) (internal citations and quotations omitted).

DISCUSSION

Plaintiff asks the Court to sustain Commerce's remand redetermination calculating Garg's rate using partial facts otherwise available without an adverse inference, Garg Cmts. at 2, 11, and once again asks this Court to set aside Commerce's application of its differential pricing methodology in calculating the dumping margin. Garg Cmts. at 2–11. Plaintiff claims that the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 144 S.Ct. 2244 (2024) ("*Loper Bright*") excuses its failure to exhaust administrative remedies with regard to its challenge to Commerce's differential pricing methodology. *Id.* at 3–4. Commerce reconsidered its prior decision to use facts otherwise available with adverse inferences when calculating Garg's weighted-average dumping margin. *See generally Second Remand Results*. Under respectful protest, Commerce uses facts otherwise available without an adverse inference to supply missing cost of production information because it could not identify record evidence that Garg had sufficient leverage over its supplier to warrant an adverse inference. *Second Remand Results* at 12. Nucor disagrees with Commerce's decision to use facts otherwise available without an adverse inference because it believes Commerce could have supported a decision to apply an adverse inference using the *Mueller* framework under 19 U.S.C. § 1677e(a). *See Mueller*, 753 F.3d at 1232; Nucor Cmts. at 1. Defendant argues that Commerce's Second Remand Redetermination complied with this Court's remand order and is supported by substantial evidence, and that Plaintiff failed to exhaust its administrative remedies concerning Commerce's differential pricing methodology. Defendant's Reply to Cmts. at 4–15.

I. Partial Facts Otherwise Available without an Adverse Inference

In its remand redetermination Commerce, under respectful protest, uses facts otherwise available without employing adverse inferences pursuant to 19 U.S.C. § 1677(a). *Second Remand Results* at 3, 10. Commerce concedes that on this record it lacks support to establish that Garg failed to cooperate to the best of its ability or possessed sufficient leverage to induce cooperation to warrant an adverse inference. *Second Remand Results* at 12. Nucor believes Commerce could have supported its redetermination "consistent with the *Mueller* framework." Nucor Cmts. at 3. Plaintiff asks the Court to sustain the remand redetermination. Garg Cmts. at 2. For the reasons that follow, Commerce's remand redetermination is sustained.

In determining a dumping margin, Commerce relies on information submitted by respondents. *See Nan Ya Plastics Corp., Ltd. v. United States*, 810 F.3d 1333, 1338 (Fed. Cir. 2016). Where information necessary to Commerce's calculation is not supplied by parties or is otherwise unavailable on the record, Commerce applies 19 U.S.C. § 1677e(a) to fill the gap in information. 19 U.S.C. § 1677e(a); *see also Mueller*, 753 F.3d at 1232; *Canadian Solar Int'l Ltd. v. United States*, 378 F.Supp.3d 1292, 1316 (Ct. Int'l Trade 2019). Typically, Commerce fills the gap using "facts otherwise available" and selects facts from the record. *See* 19 U.S.C. § 1677e(a).

Where "an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information," however, the statute permits Commerce to apply "an inference that is adverse to the interests of the party in selecting among the facts otherwise available." 19 U.S.C. § 1677e(b); *see also Xiping Opeck Food Co., Ltd. v. United States*, 222 F.Supp.3d 1141, 1157 (Ct. Int'l Trade 2017) (holding that Commerce may apply an adverse inference where an interested party has failed to cooperate). A party acts to the 'best of its ability' when it puts forth "its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation." *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003). The purpose of 19 U.S.C. § 1677e(b) is to "encourage future cooperation by 'ensuring that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'" *Fine Furniture (Shanghai) Ltd. v. United States*, 748 F.3d 1365, 1373 (Fed. Cir. 2014) (quoting Uruguay Round Agreements Act ("URAA"), Statement of Administrative Action, H.R. Doc. No. 103 – 316, vol. 1, at 870 (1994), *reprinted in* 1994 U.S.C.C.A.N. 4040, 4199

("SAA")); *see also KYD, Inc. v. United States*, 607 F.3d 760, 768 (Fed. Cir. 2010) ("Congress intended for Commerce to use [adverse inferences] to induce cooperation with its antidumping investigations").

Whether a party has failed to use its best efforts is context specific. *See e.g.*, *Jinko Solar Imp. & Exp. Co., Ltd. v. United States*, 701 F.Supp.3d 1367, 1394 (Ct. Int'l Trade 2024). In *Jinko*, although the respondent did not have control over its supplier, the record demonstrated that it knew of the supplier's repeated failure to cooperate and "continue[d] to purchase from a supplier who it kn[ew] ha[d] been noncompliant in the past." *Id.* The Court explained that the respondent made no showing it had attempted to induce cooperation, and therefore did not satisfy the requirement to "put forth maximum effort" under Section 1677e(b).[4] *Id.* Consequently, the Court sustained Commerce's application of an adverse inference under 19 U.S.C. § 1677e(b) because the respondent failed to cooperate pursuant to its statutory obligation. *Id.*

The Court of Appeals has stated that in limited circumstances Commerce may, under 19 U.S.C. § 1677e(a), also apply adverse inferences absent a showing that a respondent had failed to use its best efforts under 19 U.S.C. § 1677e(b). *Mueller*, 753 F.3d at 1232–35. *Mueller* acknowledges that Commerce could rely on the combined policy rationales of fostering accuracy and inducing compliance or thwarting duty evasion. *Id.* at 1232–33;[5] *see also Risen Energy Co., Ltd. v. United States*, 477 F.Supp.3d 1332, 1341–45 (Ct. Int'l Trade 2020). As to accuracy, in *Mueller* the Court concluded that Commerce failed to support a determination that an adverse inference would foster greater accuracy and thus remanded to Commerce. *Mueller*, 753 F.3d at 1232–33 (explaining that record evidence demonstrated that Mueller's discount was far less than what would be remedied by the rate Commerce proposed and that Commerce failed to explain why a larger data set would undermine accuracy); *see also Canadian Solar II*, 415 F.Supp.3d at 1334–35 (holding that Commerce failed to meet the accuracy analysis requirements set forth in *Mueller* when applying facts otherwise available with an adverse inference under Section 1677e(a)). As Commerce had relied on both accuracy and inducement/anti-evasion rationales, the Court of Appeals remanded

[4] Although the Court explained it is not its "role . . . to imagine efforts [the respondent] could have made to try to secure compliance," it offered examples of efforts the respondent could have taken, for example, "incentivizing compliance with suppliers, i.e., offer[ing] to pay more or establish[ing] an agreement to keep information confidential." *Jinko*, 701 F.Supp.3d at 1394.

[5] *Mueller* addressed both the accuracy and inducement rationales but explained that Commerce used both to justify its approach and therefore if either rationale fell short it would remand to Commerce. *Mueller*, 753 F.3d at 1232.

due to Commerce's failure to support its accuracy rationale. *Mueller*, 753 F.3d at 1232–33.

Nonetheless, the Court of Appeals went on to opine on the rationale of inducing compliance or thwarting duty evasion, explaining that Commerce may "rely on such policies as part of a margin determination for a cooperating party like Mueller, 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 as well." *Mueller* 753 F.3d 1227 at 1233. Explicating the inducement rationale, the Court added, for inducement purposes, it is "potentially unfair to the cooperating party" if the party has "no control over the non-cooperating suppliers." *Id.* at 1235.

Here, in its remand redetermination, Commerce applies facts otherwise available without an adverse inference. *See Second Remand Results* at 11. First, Commerce determines that "Garg Tube cooperated to the best of its ability to comply with Commerce's requests" and an application of adverse inferences under Section 1677e(b) is not supported by the record. *Id.* at 10. Commerce then concludes that it is unable to impose an adverse inference using Section 1677e(a). *Id.* at 11. Commerce takes note of this Court's decision in *Garg I*, which invoked the Court of Appeals admonition in *Mueller* that "if the cooperating entity has no control over the non-cooperating suppliers, a resulting adverse inference is potentially unfair to the cooperating party." *Garg I*, 698 F. Supp. 3d at 1239 (quoting *Mueller*, 753 F.3d at 1235). Commerce takes note of the *Mueller* framework for applying an adverse inference under Section 1677e(a), noting that "Commerce must [also] further support its determination by addressing the factors invoked by *Mueller*, including how applying an adverse inference will lead to an 'accurate rate, promote cooperation, and thwart duty evasion.'" *Second Remand Results* at 9. Ultimately, Commerce concludes that Garg was not in the position to induce cooperation and therefore it cannot apply an adverse inference using Section 1677e(a).[6] *Id.* at 12. Commerce's remand redetermination on this issue is reasonable on this record.

In making its redetermination under respectful protest Commerce expresses concern that "a respondent's significant and continued use of non-cooperative suppliers provides a cloak of invisibility which may shield the suppliers unfair pricing behavior" and without appli-

[6] Although Commerce does not explicitly state, it is reasonably discernible from its invocation of the *Mueller* factors that it concludes the record lacks evidence supporting an adverse inference to thwart duty evasion or lead to a more accurate rate. *Second Remand Results* at 9, 12. Neither Commerce nor Nucor point to any evidence that would support a conclusion that imposing an adverse inference would improve accuracy or thwart duty evasion. *See generally* Defendant's Reply to Cmts;Nucor Cmts.; Nucor Reply to Cmts.

cation of an adverse inference, there is no incentive for the respondent or suppliers to provide Commerce with the requested information. *Second Remand Results* at 14–15. Commerce notes that it will be "difficult, if not impossible, for Commerce to identify substantial evidence of the respondent's market power or leverage over the supplier." *Id.* at 13. However, *Mueller* requires leverage to proceed with an adverse inference under using Section 1677e(a). *Mueller*, 753 F.3d 1227 at 1233.

Nonetheless, as Commerce seems to acknowledge, Garg's lack of leverage in this review may not excuse its failure to secure information in future reviews. Commerce notes that Garg could "modify its business practices in order to obtain complete [cost of production] information from its unaffiliated suppliers in any future segments. . ." *Id.* at 14. Indeed, this Court has explained that although a respondent may not have leverage over a supplier for past sales, it may have leverage over future sales and therefore where there are repeat customer supplier relationships, more is required than simply claiming a lack of leverage. *See Jinko*, 701 F.Supp.3d at 1393 (requiring respondents demonstrate efforts to leverage relationships).

Thus, Nucor's complaint "that Commerce has now asked the same companies for the same cost information in multiple reviews across multiple years" falls short.[7] Nucor Cmts. at 2. Here, Commerce concedes that although Garg had been asked for Supplier A's information in the prior review, this review "was initiated well before the issuance of the final results of the immediately preceding review." *Second Remand Results* at 16. Therefore, Commerce's remand redetermination on this issue is sustained.

II. Differential Pricing

Garg challenges Commerce's continued application of differential pricing methodology in calculating the dumping margin, arguing that Commerce erred by applying the Cohen's d test and in calculating the Cohen's d denominator. Garg Cmts. at 2–3; *see also* Pl. Mot. J. Agency R. and Cmts. on Remand Redetermination at 28–36, Jul. 31, 2023, ECF No. 53. In *Garg I*, the Court found that Garg failed to exhaust its administrative remedies in challenging the differential price methodology used by Commerce. *Garg I*, 698 F.Supp.3d at 1240. Accordingly, Commerce continued to apply the Cohen's d test in its redeter-

[7] Nucor also argues that Commerce's analysis regarding [[ ]] "should not be viewed in isolation" from the missing information from Garg's other suppliers. Nucor Cmts. at 2. Commerce explains in its remand redetermination that Garg's business relationships with other suppliers and their failures to cooperate with Commerce's requests for information "have no bearing on Garg Tube's ability to induce cooperation over [[ ]], the supplier relevant to these final results of redetermination." *Second Remand Results* at 18.

mination. *Second Remand Results* at 20. Garg now argues its failure to exhaust does not thwart its challenge because *Loper Bright* acts as an intervening legal authority, and "renders the exhaustion requirement inapplicable." Garg Cmts. at 3 (citing *Loper Bright*, 144 S.Ct. 2244 (2024)). Specifically, Garg argues that when *Loper Bright* overruled *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) it called into question this Court's approval of the differential pricing methodology which is still on appeal in *Stupp*.[8] *Garg Cmts.* at 3–4. Defendant argues that Plaintiff fails to show how Loper Bright would materially alter any issue in this case. Defendant's Reply to Cmts. at 12–13.

Before an action may be heard by the Court, parties must exhaust their administrative remedies. 28 U.S.C. § 2637; *see Corus Staal BV v. United States*, 502 F.3d 1370, 1379 (Fed. Cir. 2007); *see also Boomerang Tube LLC v. United States*, 856 F.3d 908, 912–13 (Fed. Cir. 2017) (citing *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 172 (2016), for the assertion that the word "shall" connotes a requirement in the context of 28 U.S.C. § 2637(d)). The exhaustion doctrine functions to "promote[] judicial efficiency and conserve judicial resources, by affording the agency the opportunity to rectify its own mistakes (and thus to moot controversy and obviate the need for judicial intervention)." *Ta Chen Stainless Steel Pipe, Ltd. v. United States*. 342 F.Supp.2d 1191, 1206 (Ct. Int'l Trade 2004) (alterations in original). The Supreme Court has explained "[a] reviewing court usurps the agency's function when it sets aside the administrative determination upon a ground not theretofore presented and deprives the [agency] of an opportunity to consider the matter, make its ruling, and state the reasons for its action." *Unemployment Comp. Cmm'n of Alaska v. Aragon*, 329 U.S. 143, 155 (1946); *see also Gerber Food*

[8] In *Stupp*, the Court of Appeals considers again Commerce's differential pricing methodology. *Stupp Corp. v. United States*, 5 F.4th 1341, 1346 (Fed. Cir. 2021). In the methodology, after identifying distinct product groups, Commerce segments those groups by time, customer and region to create several test and comparison groupings .*Id.* Commerce then applies three tests, the Cohen's d test, the ratio test and the meaningful difference test. *Id.* The Court of Appeals had previously concluded that Commerce's meaningful difference analysis was reasonable using *Chevron*. *ApexFrozen Foods Priv. Ltd. v. United States*, 862 F.3d 1337, 1348 (Fed. Cir. 2017). In *Stupp*, the Court of Appeals sustained Commerce's use and application of its methodology for all but the "Cohen's d test," which evaluates whether the test group differs significantly from the comparison group. *Id.* The Court of Appeals explained "SeAH argues that the data in this case did not satisfy the conditions required to achieve meaningful results from the Cohen's d test: in particular, the requirements that the test groups and the comparison groups be normally distributed, of sufficient size, and of roughly equal variances." *Id.* at 1357. The Court agreed with SeAH andvacated and remanded to Commerce to clarify its determination stating, "the evidence and arguments before us call into question whether Commerce's application of the Cohen's d test to the data in this case violated the assumptions of normality, sufficient observation size, and roughly equal variances associated with that test." *Id.* at 1360.

(Yunnan) Co. Ltd., 601 F.Supp.2d at 1379 (citing *Aragon*, 329 U.S. at 155).

Parties are excused from the exhaustion requirement when an intervening judicial decision materially affects an issue before the Court. *See Siemens Gamesa Renewable Energy v. United States*, 621 F.Supp.3d 1337, 1348 (Ct. Int'l Trade 2023) (citing *Hormel v. Helvering*, 312 U.S. 552, 558–59 (1941); *Gerber Food (Yunnan) Co.*, 601 F.Supp.2d. at 1380); *cf. Papierfabrik Aug. Koehler AG v. United States*, 36 CIT 1632, 1635 (Ct. Int'l Trade 2012) ("the intervening judicial decision exception applies because there was a change in the controlling law on the use of zeroing"). To apply, the judicial decision must interpret existing law that would "materially alter the result" of the case. *See Gerber Food (Yunnan) Co.*, 601 F.Supp.2d at 1380 (citing *Hormel*, 312 U.S. at 558–59).

In *Loper Bright*, the Supreme Court overruled *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) holding that courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority.[9] *Loper Bright*, 144 S.Ct. at 2273.[10] Courts exercise their independent judgment in deciding statutory meaning. *Id.* at 2263. In doing so, courts use traditional tools of statutory interpretation, *id.* at 2266, specifically courts examine the "statute's text, structure, and legislative history, and apply the relevant canons of interpretation." *Delverde, SrL v. United States*, 202 F.3d 1360, 1363 (Fed. Cir. 2000); *see also e.g. Ventura Coastal LLC v. United States*, No. 23–9 (Ct. Int'l Trade Nov. 7, 2024). Starting with the text, the plain meaning of the word is ascertained in context. *Yates v. United States*, 574 U.S. 528, 537 (2015). Dictionary definitions, although helpful, are not solely dispositive, and must be weighed considering the statute as a whole. *Id.*

In ascertaining the meaning of a statute courts may conclude that Congress explicitly delegated authority to the agency to give meaning to the terms so long as it is consistent with the Constitution. *Loper Bright*, 144 S.Ct. at 2273. When a statute is best interpreted to

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[9] Under *Chevron* a reviewing court would

> first assess "whether Congress has directly spoken to the precise question at issue." If, and only if, congressional intent [was] "clear," that [was] the end of the inquiry. But if the court determine[d] that "the statute [was] silent or ambiguous with respect to the specific issue" at hand, the court [would], at *Chevron's* second step, defer to the agency's interpretation if it "[was] based on a permissible construction of the statute."

Loper Bright, 144 S. Ct. (citing *Chevron*) (citations omitted).

[10] Although *Loper Bright* involved review under the Administrative Procedure Act ("APA"), 5 U.S.C. § 551 *et seq.*, while this Court reviews this redetermination under 28 U.S.C. § 2640, the logic of *Loper Bright* applies here because, similar to the APA, 28 U.S.C. § 2640 directs review to 19 U.S.C. § 1516a(a)(2)(B)(iii) providing that the court will set aside a determination found to be "contrary to law." *See* 28 U.S.C. § 2640 and 19 U.S.C. § 1516a(a)(2)(B)(iii).

delegate discretionary authority to an agency a court must "interpret the statute to effectuate Congress's will, subject to constitutional limitations. *Id.* at 2263 (citing *Batterton v. Francis*, 432 U.S. 416, 425 (1977)). Or Congress may give an agency flexibility by its use of open-ended terms such as "reasonable" or "appropriate." *Loper Bright*, 144 S.Ct. at 2263 (quoting *Michigan v. EPA*, 576 U.S. 743, 752 (2015)).

Here, Garg's argument that the intervening decision in *Loper Bright* excuses its duty to exhaust its remedies must fail because *Loper Bright* does not materially alter the result in this case. Garg argues neither this Court nor the Court of Appeals may defer to Commerce's adoption of its differential pricing methodology as its interpretation of 19 U.S.C. § 1677f-1(d)(1)(B) in *Stupp*, which is still on appeal, now that *Chevron* has been overruled.[11] Garg Cmts. at 4. Therefore, Garg asserts that under *Loper Bright*, the Court of Appeals would no longer uphold Commerce's differential pricing methodology. Garg Cmts. at 4. However, Garg's argument fails because Congress afforded flexibility to Commerce under 19 U.S.C. § 1677f-1(d)(B) by inserting the phrase "differ significantly," and therefore the decision in *Loper Bright* does not materially alter an issue in this case. *See* 19 U.S.C. § 1677f-1(d)(1)(B).

In 1993 as part of the URAA, Congress implemented subsection (d) of 19 U.S.C. Section 1677f-1. *See generally* URAA Statement of Administrative Action, H.R. Doc. No. 103 – 316, vol. 1 (1994), *reprinted in* 1994 U.S.C.C.A.N. 4040, 4178 ("SAA")). This subsection was added to address targeted dumping (where an exporter sells at one price to certain customers or regions and higher prices to other customers or regions). *Id.* at 4177–78. Under subsection (d) Commerce could compare average normal values to individual export prices ("A-T"), minimizing the likelihood of targeted dumping. *Id.* at 4177—78. Subsection (d) allows Commerce to use the A-T methodology whenever it establishes that there is a pattern of prices that differ significantly, and it explains why A-A would be unable to account for such differences in sales prices. *Id.* at 4178.

(B) Exception

> The administering authority may determine whether the subject merchandise is being sold in the United States at less than fair value by comparing the weighted average of the normal values to the export prices (or constructed export prices) of individual transactions for comparable merchandise, if—

[11] The Court of Appeals' most recent decision in *Stupp* does not mention *Chevron*.*Stupp v. United States*, 5 F.4th 1341. *Stupp* does however rely upon its prior determination in *Apex Frozen Foods v. United States*, 862 F.3d at 1348, which did invoke *Chevron*.

> (i) there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and
> (ii) the administering authority explains why such differences cannot be taken into account using a method described in paragraph (1)(A)(i) or(ii).

19 U.S.C. § 1677f-1(d)(B).

The text of the statute and its legislative history indicate that Congress gave Commerce flexibility by its use of the open-ended term "differ significantly." *Loper Bright*, 144 S.Ct. at 2263. The word "significantly" is an open-ended qualifier, akin to "appropriate" or "reasonable." *See Kisor v. Wilkie*, 588 U.S. 558, 632 (2019) (discussing open-ended terms like "reasonable," "appropriate," "feasible," or "practicable"); *see also* Loper Bright 144 S.Ct. at 2263. Congress' mandate to Commerce to assess not merely whether prices differ, but whether they differ "significantly" necessarily affords Commerce flexibility to assess the degree of difference depending on the particular context. Moreover, Congress prefaced its direction to Commerce with the word "may,"[12] making clear that Commerce would be exercising discretion in determining whether prices "differ significantly." *See* 19 U.S.C. § 1677f-1(d)(1)(B).

The URAA's SAA confirms Congress' delegation under Section 1677f-1. The SAA is the authoritative expression by the United States concerning the interpretation of the statute. *See* 19 U.S.C. § 3512 ("The [SAA] . . . shall be regarded as an authoritative expression by the United States concerning the interpretation and application of the Uruguay Round Agreements and this Act in any judicial proceeding . . ."). In the SAA Congress acknowledges the contextual nature of determinations under Section 1677f-1, explaining that the statute provides for Commerce to proceed on a case-by-case basis.

> In addition, the Administration intends that in determining whether a pattern of significant price differences exist Commerce will proceed on a case-by-case basis, because small differences may be significant for one industry or one type of product, but not for another.

1994 U.S.C.C.A.N. at 4178. The mandate to proceed "case by case" confirms the flexibility provided by the words of the statute. Therefore, the words of the statute as well as the SAA make clear that

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[12] The Merriam-Webster dictionary defines the word "may" as "have permission to" or "be free to." May, merriam-webster.com, https://www.merriamwebster.com/dictionary/may (last visited Nov. 4, 2024).

Congress delegated to Commerce the power to use its discretion when determining whether prices differ significantly under 19 U.S.C. § 1677f-1.

Finally, the context in which the phrase "differ significantly" appears within the statute supports the conclusion that Congress meant to afford flexibility to Commerce. Section 1677f-1, which sets forth the sampling and averaging process, grants a great deal of discretion to Commerce. Subsection (a) allows for averaging and sampling and allows Commerce to "decline to take into account adjustments which are insignificant." 19 U.S.C. §1677f-1(a). Further, the selection of averages and statistically valid samples "shall rest exclusively with" Commerce. 19 U.S.C. §1677f-1 (b). Commerce is given discretion to use a sample where it is not "practicable" to make individual weighted average margin determinations." 19 U.S.C. § 1677f-1 (c)(2). Thereafter, Congress sets forth the general rule for determinations of less than fair value subject to the exception considered here. Thus, this subsection of the statute, read along with the section as a whole, confirms that Congress meant to afford the agency with flexibility and discretion in making the relevant determination. Therefore, although *Loper Bright* overruled *Chevron*, and the Court of Appeals previously relied upon *Chevron* to sustain Commerce's differential pricing methodology, for this section of the Tariff Act, *Loper Bright* affects no material issue in this case.

CONCLUSION

For the foregoing reasons, the Court sustains Commerce's remand redetermination. Judgment will be entered accordingly.

Dated: November 7, 2024
New York, New York

/s/ Claire R. Kelly
Claire R. Kelly, Judge

Slip Op. 24–125

VENTURA COASTAL, LLC, Plaintiff, v. UNITED STATES, Defendant, and LOUIS DREYFUS COMPANY SUCOS S.A., Defendant-Intervenor.

Before: Claire R. Kelly, Judge
Court No. 23–00009
PUBLIC VERSION

[Sustaining in part and remanding in part the Department of Commerce's final determination.]

Dated: November 7, 2024

Daniel B. Pickard, *Mert E. Arkan*, *David B. Sessions*, and *Claire M. Webster*, Buchanan Ingersoll & Rooney PC, of Washington, D.C., for plaintiff Ventura Coastal, LLC.

Anne M. Delmare, Trial Attorney, Commercial Litigation Branch, Civil Division, of Washington, D.C., for defendant United States. On the brief were *Brian M. Boynton*, Principal Deputy Assistant Attorney General, *Patricia M. McCarthy*, Director, and *L. Misha Preheim*, Assistant Director. Of Counsel was *JonZachary Forbes*, Office of the Chief Counsel for Trade Enforcement & Compliance, U.S. Department of Commerce, of Washington, D.C.

Gregory J. Spak, *Jessica E. Lynd*, and *Cristina M. Cornejo*, White & Case LLP, of Washington, D.C., for defendant-intervenor Louis Dreyfus Company Sucos S.A.

OPINION AND ORDER

Kelly, Judge:

Before the Court is Plaintiff Ventura Coastal, LLC's ("Ventura") motion for judgment on the agency record, Aug. 3, 2023, ECF No. 30 ("Pl. Mot."), challenging the U.S. Department of Commerce's ("Commerce") final determination in its antidumping duty ("AD") investigation on certain lemon juice from Brazil. *See Certain Lemon Juice From Brazil*, 87 Fed. Reg. 78,939 (Dep't Commerce Dec. 23, 2022) (final determination) ("*Final Results*") and accompanying issues and decision memo. ("Final Decision Memo."). Ventura alleges that Commerce's (i) determination finding no affiliation between Louis Dreyfus Company Sucos S.A.'s ("LDC") and its supplier ("Supplier A"),[1] is contrary to law and unsupported by substantial evidence; (ii) use of information from the fiscal year ("FY") 2020 financial statements was arbitrary and capricious; and, (iii) Commerce's exclusion of certain administrative expenses from LDC's general and administrative ("G&A") rate calculation was not supported by substantial evidence. Finally, Ventura seeks correction of certain ministerial errors. For the following reasons, the Court sustains in part and remands in part Commerce's *Final Results*.

[1] LDC's supplier is [[ ]].

BACKGROUND

On December 29, 2021, Ventura petitioned Commerce and the International Trade Commission to investigate whether the United States lemon juice industry was materially injured or threatened with material injury by dumped lemon juice imports from Brazil and South Africa. *See* Petition for Imposition of [AD]: Lemon Juice From Brazil and South Africa at 1–4, PDs 1–13, CDs 1–23, bar codes 4195689–01–23 (Dec. 29, 2021).[2] Commerce published its notice of initiation for an antidumping duty investigation into imported lemon juice from Brazil on January 19, 2022, covering a period of investigation ("POI") of October 1, 2020 to September 30, 2021. *Lemon Juice From Brazil and South Africa*, 87 Fed. Reg. 3,768 (Dep't Commerce Jan. 25, 2022) (initiation of less-than-fair-value investigations); Final Decision Memo. at 1. Mandatory respondents consisted of Citrus Juice Eireli ("Citrus Juice") and LDC. Commerce Memo. re [AD] Invest. Certain Lemon Juice From Brazil: Resp't Select. Memo. at 4–5, PD 58, CD 63, bar code 4210197–01 (Feb. 8, 2022).

Commerce requested information from the respondents by issuing a questionnaire. *See generally* [Commerce] Request for Information, PD 59, bar code 4211690–01 (Feb. 14, 2022) ("Initial Questionnaire"). Section A of the Initial Questionnaire requires the respondent to disclose all "suppliers, (sub)contractors, lenders, exporters, distributors, resellers, and other persons involved in the development, production, sale and/or distribution" of the investigated merchandise which "Commerce may also consider affiliated with [respondent]." Initial Questionnaire at A-6. That same section also requests a respondent to provide "financial statements or other relevant documents (i.e., profit and loss reports) of all affiliates involved in the production or sale of the subject merchandise in the foreign market and the U.S. market, of all affiliated suppliers to these affiliates, and of the parent(s) of these affiliates[.]" *Id.* at A-10.

LDC answered Commerce's Initial Questionnaire in multiple submissions. In its response to Section A, LDC disclosed its lemon supplier, Supplier A, which was not identified as an affiliate in its affiliation charts and lists, and provided its contractual agreement with Supplier A. *See* [LDC] Resp. Suppl. Sect. A Questionnaire at Supp. A-5, A-27–A-32, PD 114, CD 94, bar code 4230977–01 (Apr. 8, 2022) ("LDC Suppl. AQR"); [LDC] Resp. Sect. A Questionnaire at A-8–A-10, Exh. A2, PD 77, CD 65–66 bar code 4222047–01 (Mar. 14, 2022)

[2] On March 28, 2023, Defendant filed indices to the public and confidential administrative records underlying Commerce's final determination. *See* ECF No. 25–1–2. Citations to administrative record documents in this opinion are to the numbers Commerce assigned to such documents in the indices, and all references to such documents are preceded by "PD" or "CD" to denote public or confidential documents.

("LDC AQR"); [LDC] Resp. Sect. D Questionnaire at D-4–D-5, Exh. D03, PD 116, CDs 104, 106–107, bar codes 4231456–01, 03–04 (Apr. 11, 2022) ("LDC DQR").

LDC reported purchases from Supplier A as purchases from an affiliated supplier in its Section D response to Commerce's questionnaire despite also emphasizing that Supplier A was not affiliated with LDC. LDC DQR at D-6–D-7, Exh. D7; *see also* [LDC] Resp. Suppl. D Questionnaire at Exh. Supp. D-1–D-5, D-8–D15, D-17–D18, PD, CD 163, bar code 4248998–05 (June 3, 2022) ("LDC Suppl. DQR").[3] LDC also disclosed financial statements of other affiliated entities involved in the production or sale of the subject merchandise in both the foreign and U.S. market; however, LDC indicated that its own 2021 annual financial statements were neither finalized nor audited at the time of submission of the questionnaire responses, and that it would supplement the responses when the statements became available. LDC AQR at A-27.

Commerce posted the preliminary determination on August 4, 2022. *See Certain Lemon Juice From Brazil*, 87 Fed. Reg. 47,697 (Dep't Commerce Aug. 4, 2022) (preliminary determination) ("*Preliminary Results*") and accompanying prelim. decision memo. ("Prelim. Decision Memo."). Commerce calculated LDC's cost of production ("COP") "based on the sum of the costs of materials and fabrication for the foreign like product, plus amounts for [G&A] expenses and financial expenses." Prelim. Decision Memo. at 14. Commerce used data submitted by LDC, except for adjustments to LDC's net realizable value cost allocations for lemon co-products "to reflect sales values from a period prior to the [AD] allegation" and certain G&A expenses and rates. Prelim. Decision Memo. at 15.

Although Commerce did not specifically address whether LDC is affiliated with Supplier A, *see generally* Prelim. Decision Memo., it applied Section 773(f)(3) of the Tariff Act of 1930,[4] as amended 19 U.S.C. § 1677b(f)(3), to adjust LDC's "reported direct material costs" for the subject merchandise "obtained from an affiliated supplier to reflect an arm's-length value." Prelim. Decision Memo. at 15. Commerce calculated a preliminary dumping margin of 4.45 percent for LDC, 21.49 percent for Citrus Juice, and 12.97 percent for all non-

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[3] In a later submission to Commerce, LDC explained that considering the contract with Supplier A and "out of an abundance of caution," LDC "included [Supplier A] on the Major Inputs Purchases from Affiliated Parties Chart in Exhibit D7 and Exhibit Supp. D15 pursuant to question 7 of the Section D Questionnaire," but that LDC was not affiliated with Supplier A. Rebuttal Br. [LDC] at 4, PD 304, CD 287, bar code 4310013–01 (Nov. 10, 2022) ("LDC Rebuttal Br.").

[4] Further citations to the Tariff Act of 1930, as amended, are to the relevant provisions of Title 19 of the U.S. Code, 2018 edition.

individually examined companies.[5] *Preliminary Results*, 87 Fed. Reg. at 47,697.

LDC placed its 2021 financial statements on the record at verification, after Commerce issued the *Preliminary Results*. *See* Final Decision Memo. at 15; Commerce Memo. re Verif. Cost Resp. [LDC] at 1–25, PD 259, CD 295, bar code 4303216–01 (Oct. 21, 2022) ("Cost Verif. Rep."). Both LDC and Ventura submitted their administrative case briefs to Commerce on November 2, 2022, with rebuttal briefs filed on November 10, 2022. *See generally* [LDC] Case Br., PD 271, CDs 299–300, bar codes 4307868–01–02 (Nov. 2, 2022) ("LDC Admin. Br."); [Ventura's] Case Br. [re LDC], PD 270, CDs 297–98, bar codes 4307862–01–02 (Nov. 2, 2022) ("Ventura Admin. Br."); LDC Rebuttal Br.; [Ventura] Rebuttal Br. [re LDC], PD 282, CD 303, bar code 4309935–01 (Nov. 10, 2022) ("Ventura Rebuttal Br."). In its brief, Ventura alleged that LDC and Supplier A were affiliates requiring additional cost adjustments,[6] and further that adjustments to LDC's reported costs for verification findings were necessary. Ventura Admin. Br. at 2–6.

On December 23, 2022, Commerce published the *Final Results*. *See* 87 Fed. Reg. at 78,939. Commerce determined that LDC is not affiliated with Supplier A under 19 U.S.C. § 1677(33)(G), but rather that LDC and Supplier A's relationship "is market-based and the transactions between them are at arm's length." Final Decision Memo. at 13. Commerce found record evidence indicating that: LDC is not reliant on Supplier A given LDC's alternative sources for purchasing major inputs; the contractual terms between the two showed no obligations towards each other beyond those contained in the terms; and "neither cost nor sales verifications found any evidence of affiliation or non-arm's length transactions between those two parties." *Id.* at 12–13. Commerce also found that LDC and Supplier A are not affiliated as partners under 19 U.S.C. § 1677(33)(C), as their relationship is contractual, and they do not "jointly own anything pursuant to the terms of their contract and do not engage in joint selling activities." *Id.* at 13.

[5] Commerce used a constructed export price ("CEP") profit rate value of [[ ]] and a constructed value ("CV") profit rate value of [[ ]] in its preliminary margin calculation. *See* [COP] and [CV] Calc. Adj. For Prelim. Determ. at 2, PD 222, CD 231, bar code 4269754–01 (July 28, 2022) ("Prelim. Cost Memo."); Prelim. Margin Progr. & Prelim. Margin Log at line 8689, CDs 219, 224, bar code 4269727–08 (July 28, 2022).

[6] Specifically, Ventura alleged that LDC's [[ ]] with [[ ]] "rendered the two entities affiliated parties" under 19 U.S.C. § 1677(33). Pl. Mot. at 8–9 (citing Ventura Admin. Br. at 2–6). Thus, Ventura requested Commerce to adjust "all lemons obtained during the POI from [[ ]] to market price, not just the [[ ]]." Ventura Admin. Br. at 1.

Commerce further concluded that the record did not support a finding that certain parent or holding companies rendered services to LDC requiring adjustment to its G&A expense rate. *Id.* at 20–21. Commerce continued to use LDC's 2020 financial statements as a basis for calculating both the G&A expense rate calculation and material price difference adjustments associated with lemons. *Id.* at 15–18. Commerce assessed a final dumping margin of 0.00 percent for LDC, and 22.31 percent for Citrus Juice and all non-individually examined companies.[7] *Final Results*, 87 Fed. Reg. at 78,940.

Ventura filed this action contesting the *Final Results*. *See generally* Summs., Jan. 18, 2023, ECF No. 1; Compl., Feb. 16, 2023, ECF No. 14. On August 3, 2023, Ventura filed the instant motion. *See generally* Pl. Mot. Defendant and LDC filed their responses in opposition to Ventura's motion on November 1, 2023, to which Ventura replied on December 29, 2023. *See generally* Def. Resp.; LDC Resp; Pl.'s Reply Supp'n [Pl. Mot.], Dec. 29, 2023, ECF No. 37. On May 17, 2024, the Court heard oral argument on the issues presented in Ventura's motion. *See generally* Oral Arg., May 17, 2024, ECF No. 65. On July 8, 2024, the Court instructed the parties to submit supplemental briefs addressing the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 144 S.Ct. 2244 (2024) as well as the Court of Appeals for the Federal Circuit's opinion in *Comm. Overseeing Action for Lumber Int'l Trade Investigations or Negots. v. United States*, 66 F.4th 968 (Fed. Cir. 2023) ("COALITION"). *See generally* Supp. Authority Order, July 8, 2024, ECF No. 70. On August 13, 2024, Ventura, Defendant, and LDC submitted their supplemental briefs regarding subsequent authority. *See generally* [Ventura's] Supp. Br. On Subsequent Auth., Aug. 13, 2024, ECF No. 73; Def.'s Resp. [Supp. Auth. Order], Aug. 13, 2024, ECF No. 75 ("Def Supp. Br."); [LDC's] Supp. Br. Re. Not. Supp. Auth., Aug. 13, 2024, ECF No. 76 ("LDC Supp. Br."). The parties submitted their responses to the supplemental briefs on August 30, 2024. [Ventura's] Supp. Resp, Aug. 30, 2024, ECF No. 80 ("Ventura Supp. Resp."); Def.'s Supp. Reply [Supp. Auth. Order], Aug. 30, 2024, ECF No. 81 ("Def. Supp. Resp."); [LDC's] Supp. Resp. Re Not. Supp. Auth., Aug. 30, 2024, ECF No. 82 ("LDC Supp. Resp.").

JURISDICTION AND STANDARD OF REVIEW

This Court has jurisdiction pursuant to 19 U.S.C. § 1516a(a)(2)(B)(i) and 28 U.S.C. § 1581(c), which grant the Court

[7] To calculate the final margins, Commerce used the value [[ ]] for the CV profit rate and [[ ]] for the CEP profit rate. *See* [COP] and [CV] Calc. Adj. For Final Determ. at 3–4, Attach. 4, PD 300, CD 336, bar code 4323023–01 (Dec. 19, 2022) ("Final Cost Memo."); Final Determ. Analysis Memo. [LCD] at Attach. 4:8689, PD, 297 CD 313, bar code 4322790–05 (Dec. 21, 2022).

authority to review actions contesting the final determination in an administrative review of an AD order. The Court will uphold Commerce's determination unless it is "unsupported by substantial evidence on the record, or otherwise not in accordance with law." 19 U.S.C. § 1516a(b)(1)(B)(i). The Court reviews the record made before the agency as a whole and may not supply a reasoned basis for the agency's action that the agency itself has not given. *See* 19 U.S.C. § 1516a(b)(1)–(2); *SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947). The Court will, however, "uphold a decision of less than ideal clarity if the agency's path may reasonably be discerned." *Bowman Transp., Inc. v. Arkansas-Best Freight Sys., Inc.,* 419 U.S. 281, 286 (1974).

DISCUSSION

Ventura challenges Commerce's final determination, arguing that: (1) Commerce's affiliation analysis and determination under 19 U.S.C. § 1677(33)(C) and (G) is unsupported by substantial evidence and otherwise not in accordance with law; (2) Commerce's reliance on LDC's FY 2020 financial statements for only certain portions of LDC's COP calculations was arbitrary and capricious; and (3) Commerce's calculation of LDC's G&A expense rate is unsupported by substantial evidence and otherwise not in accordance with law. Pl. Mot. at 23–39. Additionally, Ventura requests that should the Court remand the *Final Results*, Commerce should be instructed to correct "all ministerial errors" in the margin calculation. *Id.* at 42–43. Defendant and LDC counter that Commerce's determination was supported by substantial evidence and in accordance with law. Def. Resp. at 10–30; LDC Resp. at 17–33. Defendant and LDC further argue that Ventura failed to exhaust its administrative remedies with respect to its challenges to the reliance and temporal aspects of the affiliation analysis, as well as its allegations of ministerial errors. Def. Resp. at 10–13, 18–19, 30–31; LDC Resp. at 3, 21 n.3, 33–34. For the reasons that follow, the Court sustains in part and remands in part Commerce's *Final Results*.

I. Commerce's Affiliation Determination

Ventura challenges Commerce's affiliation analysis under both 19 U.S.C. § 1677(33)(G) and (C). Pl. Mot. at 23–42. Defendant responds that Ventura's arguments under Section 1677(33)(G) were not raised before Commerce and therefore cannot be raised in this Court. Def. Resp. at 10–13. Defendant also contends that Ventura's arguments under both Sections 1677(33)(G) and (C) are without merit. *Id.* at 13–27.

A. Affiliation Under 19 U.S.C. § 1677(33)(G)

Ventura argues that Commerce's determination that LDC and Supplier A are not affiliated under 19 U.S.C. § 1677(33)(G) is contrary to law and unsupported by substantial evidence, because Commerce: (a) failed to consider whether Supplier A was reliant on LDC and whether LDC had the ability to control Supplier A; and (b) failed to consider "the temporal aspect of the parties' relationship, in contravention of 19 C.F.R. § 351.102(b)(3)." Pl. Mot. at 23–42. Defendant argues that Ventura has failed to exhaust both these arguments. Def. Resp. 10–13. Further, Defendant argues that in any event, Ventura's claim fails because Commerce specifically addressed whether Supplier A was reliant on LDC, and Ventura fails to identify any information regarding the temporal nature of the relationship that Commerce declined to consider. *Id.* at 16–17, 19.

1. Exhaustion of Administrative Remedies

Defendant claims that Ventura failed to exhaust its administrative remedies for its challenge to Commerce's affiliation analysis under 19 U.S.C. § 1677(33)(G), which examines reliance as an indicator of control and thus party affiliation. *See* Def. Resp. at 10–13, 18–24; *see also* LDC Resp. at 21 n.3. Ventura responds that it expressly raised the argument that Commerce must consider whether Supplier A was reliant upon LDC in addition to whether LDC was reliant on Supplier A in its administrative case brief. Pl. Reply at 2–3 (citing Ventura Admin. Br. at 3, 5). Further, Ventura argues that its administrative case brief discussed affiliation through control numerous times, and that its citation to 19 C.F.R. § 351.102(b)(3)—requiring Commerce to consider the temporal aspect of a relationship in determining whether there is control between the parties—raised the temporal aspect of control in the affiliation analysis.[8] Pl. Reply at 4. Ventura has sufficiently raised the argument of reliance before Commerce; however, it did not raise the issue of whether temporal nature of the relationship affected the control analysis.

Before an action may be heard by the Court, parties must exhaust their administrative remedies. 28 U.S.C. § 2637; *see Corus Staal BV v. United States*, 502 F.3d 1370, 1379 (Fed. Cir. 2007). The Supreme

[8] The temporal aspect of control requires the Court to examine "the nature of entities' contacts over time, and must determine how such contacts potentially impact each entity's business decisions. Sporadic or isolated contacts between entities, absent significant impact, would be less likely to lead to a finding of control." *Hontex Enterprises, Inc. v. United States*, 287 CIT 272, 296, 248 F.Supp.2d 1323, 1344 n.17(2004) discussing Antidumping Duties; Countervailing Duties, 62 Fed. Reg. at 27,296, 27,298 (ITA May 19, 1997) ("The Department normally will not consider firms to be affiliated where the evidence of 'control' is limited [however], the Department cannot rule out the possibility that a short-term relationship could result in control.")

Court has explained "[a] reviewing court usurps the agency's function when it sets aside the administrative determination upon a ground not theretofore presented and deprives the [agency] of an opportunity to consider the matter, make its ruling, and state the reasons for its action." *Unemployment Comp. Cmm'n of Alaska v. Aragon*, 329 U.S. 143, 155 (1946); *see also Gerber Food (Yunnan) Co. Ltd. v. United States*, 33 CIT 186, 195, 601 F. Supp. 2d 1370, 1379 (2009) (citing *Aragon*, 329 U.S. at 155). Parties must raise not only issues for agency consideration but the specific arguments they wish the agency to consider. *See* 19 C.F.R. § 351.309(c)(2) ("The case brief must present all arguments that continue in the submitter's view to be relevant to the Secretary's final determination."). "[S]imple fairness to those who are engaged in the tasks of administration, and to litigants, requires as a general rule that courts should not topple over administrative decisions unless the administrative body not only has erred but has erred against objection made at the time appropriate under its practice." *Dorbest Ltd. v. United States*, 604 F.3d 1363, 1375 (Fed. Cir. 2010) (quoting *United States v. L.A. Tucker Truck Lines*, 344 U.S. 33, 37 (1952)).

Here, Ventura raised the issue of whether Supplier A was reliant on LDC in its administrative case brief.[9] Specifically, Ventura explained that "Commerce shall evaluate [a close supplier] relationship and consider if the supplier has become reliant upon the buyer" before explicitly raising LDC's reliance on Supplier A. Ventura Admin. Br. at 3; *id.* at 5 ("[LDC] is reliant on [Supplier A's land] to produce lemons . . ."). Indeed, Commerce acknowledged as a threshold issue, "whether either the buyer or seller has . . . become reliant on the other." Final Decision Memo. at 12. Thus, the issue of reliance as an indicator of control under 19 U.S.C. § 1677(33)(G) was raised before Commerce and is appropriate for the Court to review on the merits.

However, Ventura failed to exhaust administrative remedies with respect to Commerce's failure to assess the temporal aspect of the parties' relationship in its affiliation analysis under 19 U.S.C. § 1677(33)(G). First, Ventura's claim that it raised the temporal nature of the relationship by referencing various authorities fails to persuade. Pl. Reply at 3–4 (citing Ventura Admin. Br. at 3 n.5). Ventura's administrative case brief cited *U.S. Steel Corp. v. United States*, 179 F.Supp.3d 1114, 1132 (Ct. Int'l Tr. 2016) (citing 19 C.F.R. § 351.102 (b)). That Ventura's case brief cited a case, that itself cites a regula-

[9] In its administrative case brief, Ventura argued "Per the terms of the [[ ]] LDC has a [[ ]] because LDC is [[ ]]. According to LDC, it is not unusual for one concern to have [[ ]]."Ventura Admin. Br. at 3.

tion discussing the temporal nature of parties' relationship, is insufficient to exhaust the argument that here, the temporal nature of the parties' relationship supports a determination that one of the parties controlled the other. *See* Ventura Admin. Br. at 3 n.5.

Ventura's argument that Commerce's regulations require it to consider the temporal nature of the relationship also fails. Pl. Mot. at 30–32. Ventura claims that Commerce's failure to consider the temporal nature of the relationship raises a question of law which Ventura may raise before the Court. Pl. Mot. at 30–32; *see* 19 U.S.C. § 1516a(a)(B) (listing reviewable determinations by Commerce in relation to an AD investigation). Commerce's regulations provide that it "will consider the temporal aspect of a relationship in determining whether control exists," but that generally, "temporary circumstances will not suffice as evidence of control." 19 C.F.R. § 351.102(b)(3). However, Commerce need not explicitly acknowledge or discuss every piece of evidence in the record of an investigation before making its determination. *See, e.g., Am. Honey Producers Ass'n v. United States*, 653 F.Supp.3d 1329, 1340 (Ct. Int'l Trade 2023) (ruling that Commerce did not need to explicitly address or rely on unused data submitted by the plaintiff when it adopted a reasonable methodology to test the respondent's COP); *Torrington Co. v. United States*, 16 CIT 220, 224, 790 F. Supp. 1161, 1167 (Ct. Int'l Trade 1992) (finding that Commerce did not need to explicitly address apparent conflicts between data on the record when it chose to rely on one set of data over the other in its determination), *aff'd* 991 F.2d 809 (Fed. Cir. 1993); *Granges Metallverken AB v. United States*, 13 CIT 471, 478–79, 716 F. Supp. 17, 24 (Ct. Int'l Trade 1989) (stating that Commerce did not need to separately address an implicit element of its fungibility analysis in its determination). Ventura cannot now complain that Commerce failed to explicitly discuss an argument it failed to raise before the agency. *See* 19 C.F.R. § 351.309(c)(2) (requiring that an interested party's case brief before Commerce must include "all arguments that continue in the submitter's view to be relevant" to the final determination). Thus, the Court will only consider the reliance component of Commerce's affiliation analysis under Subsection (G) in the instant matter.

2. The Merits of Affiliation Under 19 U.S.C. § 1677(33)(G)

Ventura argues Commerce's affiliation analysis is contrary to law and unsupported by substantial evidence because it failed to address whether an affiliation exists through a close supplier relationship,

where Supplier A is reliant on LDC.[10] Pl. Mot. at 23–30. Defendant and LDC argue Commerce's affiliation determination is supported by substantial evidence because Commerce considered the close supplier relationship between Supplier A and LDC when reaching its conclusion. Def. Resp. at 13–18; LDC Resp. at 17–23.

In an antidumping determination, Commerce compares the normal value of each entry of the subject merchandise to the U.S. Price (export price). 19 U.S.C. § 1675(a)(2)(A). Normal value is "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 and, to the extent practicable, at the same level of trade as the export price." 19 U.S.C. § 1677b. In making this comparison for purposes of normal value, Commerce may only consider a company's sales to affiliates if Commerce is "satisfied that the price is comparable to the price at which the exporter or producer sold the foreign like product to a person who is not affiliated with the seller." 19 C.F.R. § 351.403(c). Commerce excludes non arms-length sales from the calculation of normal value. 19 U.S.C. § 1677b(f)(2). Likewise, where there is a transaction between affiliated persons, Commerce applies the major input rule, found in 19 U.S.C. § 1677b(f)(3), providing that:

> If, in the case of a transaction between affiliated persons involvingthe production by one of such persons of a major input to the merchandise, the administering authority has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the cost of production of such input, then the administering authority may determine the value of the major input on the basis of the information available regarding such cost of production, if such cost is greater than the amount that would be determined for such input under [19 U.S.C. § 1677b(f)(2)].

An "affiliated person," defined by Section 1677(33)(G), is "[a]ny person who controls any other person and such other person." 19 U.S.C. § 1677(33)(G). Moreover, a person is considered to control another if the controlling person "is legally or operationally in a position to exercise restraint or direction over the other person." 19 U.S.C. § 1677(33). When analyzing affiliation under Section 1677(33)(G), Commerce will consider, among other factors, the presence of "close supplier relationships." 19 C.F.R. § 351.102(b)(3). The legislative history to the statute explains that a "close supplier rela-

[10] Specifically, Ventura cites the terms of the [[ ]] agreements as evidence of LDC's control over [[ ]]. Pl. Mot. at 25.

tionship" is one where "the supplier or buyer becomes reliant upon the other." Statement of Administration Action for the Uruguay Round Agreements Act, H.R. Rep. No. 103–316 (1994), *as reprinted* in 1994 U.S.C.C.A.N. 4040, 4174–75 ("SAA"). In evaluating a close supplier relationship, Commerce may find control sufficient to establish affiliation under Section 1677(33) if the record indicates that "the relationship has the potential to impact decisions concerning the product, pricing or costs" of such merchandise. 19 C.F.R. § 351.102(b)(3).

Moreover, Section 351.102(b)(3) indicates that Commerce shall evaluate such a relationship and consider if the supplier has become reliant upon the buyer. 19 C.F.R. § 351.102(b)(3);[11] *see also U.S. Steel Corp. v. United States*, 179 F.Supp.3d 1114, 1132 (Ct. Int'l Trade 2016) (remanding for further consideration and explanation after Commerce failed to analyze whether close supplier relationships made one party reliant on the other through one party's control over the other).

Here, Commerce identified the correct legal standard in explaining that "the threshold issue" with respect to close supplier relationships "is whether either the buyer or seller has . . . become reliant on the other." Final Decision Memo. at 12. However, Commerce failed to consider whether LDC has the ability to control Supplier A, and, consequently, whether Supplier A is reliant upon LDC. Although Commerce's reliance analysis in the final determination discusses the potential reliance of LDC on Supplier A, it fails to consider or acknowledge the supplier's reliance on LDC. *See* Final Decision Memo. at 12 ("we agree with LDC that when a buyer has other supply options, the buyer is not reliant on its supplier. Record evidence supports finding that LDC had other sources for purchasing major input other than this particular supplier"). Ventura points to record evidence suggesting mutual reliance among the parties, in that certain percentages of LDC's total purchases of lemons during the POI

[11] Commerce's regulations shed further light on the meaning of "reliant" in the context of the statute:

> "Affiliated persons" and "affiliated parties" have the same meaning as in section [19 U.S.C. § 1677(33)]. In determining whether control over another person exists, within the meaning of [19 U.S.C. § 1677(33)], the Secretary will consider the following factors, among others: Corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The Secretary will not find that control exists on the basis of these factors unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product. The Secretary will consider the temporal aspect of a relationship in determining whether control exists; normally, temporary circumstances will not suffice as evidence of control.

19 C.F.R. § 351.102(b)(3).

were procured or otherwise grown by Supplier A.[12] *See* Pl. Mot. at 9 (citing Ventura Admin. Br. at Exh. 1). Commerce fails to address the evidence demonstrating Supplier A's reliance on LDC, rendering Commerce's analysis and determination unsupported by the record. *See* Final Decision Memo. at 11–13.

In support of its determination that the parties were not affiliated under Section 1677(33)(G), Commerce notes that the contractual terms between LDC and its supplier "indicate no obligation toward each other beyond those spelled out by the terms of the contract," and that the parties recognize each other's sovereignty. Final Decision Memo. at 12. Commerce's statement that the parties have no obligation to each other beyond the contract is conclusory. Commerce offers no explanation for how the terms of the contract demonstrate a lack of Supplier A's reliance on LDC. *See generally* Final Decision Memo.; Def. Resp. Indeed, the agreements between LDC and Supplier A suggest the relationship has the potential to impact production, pricing, or cost decisions through LDC's control over its supplier.[13] *See* LDC DQR at Exh. D3.

Although Commerce determined that LDC had other supplier options, Final Decision Memo at 12 n.79 (first citing LDC DQR at Exh. D7; and then citing [LDC's] Supp. [DQR] at Exh. Supp. D15, PDs 155–56, CDs 159–77, bar code 4248998–01 (June 3, 2022) ("LDC SDQR")), it ignored evidence that would suggest that, even with the availability of other suppliers, Supplier A may have been reliant upon the LDC. Commerce must provide a reasonable explanation based on the evidence that supports its determination, *see CS Wind Vietnam v. United States*, 832 F.3d 1367, 1376 (Fed. Cir. 2016), as well as the evidence that detracts from its determination. *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474, 488 (1951). Commerce's failure to do so here warrants remand. On remand, Commerce must consider

[12] Specifically, Ventura cites record evidence indicating that, of the lemons making up [[ ]], approximately [[ ]]percent of LDC's total purchases of lemon during the POI were attributable to [[ ]]. Pl. Mot. at 9 (citing Ventura Admin. Br. at Exh. 1).

[13] Ventura contends Commerce failed to address the following:

> The existence of an [[
>
>]].

Pl. Mot. at 29 (citing LDC DQR at Exh. D3).

whether LDC controlled its supplier through Supplier A's reliance on LDC.[14]

B. Affiliation under 19 U.S.C. § 1677(33)(C)

Ventura argues that Commerce's determination that LDC and Supplier A were not partners is contrary to law and unsupported by substantial evidence. Pl. Mot. at 32–42. Specifically, Ventura contends that Commerce ignored the plain language of 19 U.S.C. § 1677(33)(C), which identifies "partners" as affiliates, when it determined that partners must engage in joint ownership or jointly sales. Pl. Mot. at 33–34; Ventura. Supp. Br. at 5–6. Ventura argues the word partners refers to "one associated with another, especially in action" and "one, or two or more people . . . that do business together." *Id.* (citing Merriam Webster.com and Britannica.com). Further, Ventura argues the Court should not defer to Commerce's interpretation of the term "partners" because Congress did not delegate to Commerce the authority to give meaning to the word "partners." Ventura. Supp. Br. at 1–6 (discussing *Loper Bright*, 144 S.Ct. at 2263). Finally, Ventura argues that in articulating a standard for "partners," Commerce failed to engage in reasoned decision making. *Id.* at 7. Defendant and LDC respond that Congress delegated to Commerce the authority to give meaning to the term "partners." Def. Supp. Br. at 4–8; LDC Supp. Br. at 6–8 (citing *Loper Bright*, 144 S.Ct. at 2263); Def. Supp. Reply Br. at 3–4. LDC argues that even if the Court did not defer to Commerce's interpretation of the word "partners", that interpretation is especially useful to the Court in its analysis. LDC Supp. Br. at 8–10 (citing *Loper Bright*, 144 S.Ct. at 2251, 2262–63, 2267).

Courts exercise their independent judgment in deciding statutory meaning. *Loper Bright, 144 S.Ct.* at 2262.[15] In doing so, courts use traditional tools of statutory interpretation, *id.* at 2266, specifically courts examine the "statute's text, structure, and legislative history, and apply the relevant canons of interpretation." *Delverde, SrL v. United States*, 202 F.3d 1360, 1363 (Fed. Cir. 2000). Starting with the

[14] Because the Court remands Commerce's determination under Section 1677(33)(G), the parties are free to raise any specific arguments regarding that section of the statute on remand, including the temporal nature of the relationship. *See* 19 C.F.R. § 351.102(b)(3) ("The Secretary will consider the temporal aspect of a relationship in determining whether control exists; normally, temporary circumstances will not suffice as evidence of control"); *see also Antidumping Duties; Countervailing Duties,* 62 Fed. Reg. 27,296, 27,298 (Dept' Commerce May 19, 1997) (explaining that Commerce will consider "the temporal aspect of control" when evaluating whether an affiliate controls another).

[15] Although *Loper Bright* involved review under the Administrative Procedure Act ("APA"), 5 U.S.C. § 551 *et seq.*, while this Court reviews this determination under 28 U.S.C. § 2640, the logic of *Loper Bright* applies here because, similar to the APA, 28 U.S.C. § 2640 directs review to 19 U.S.C. § 1516a(a)(2)(B)(iii) providing that the court will set aside a determination found to be "contrary to law." *See* 28 U.S.C. § 2640 and 19 U.S.C. § 1516a(a)(2)(B)(iii).

text, the plain meaning of the word is ascertained in context. *Yates v. United States*, 574 U.S. 528, 537 (2015). Dictionary definitions, although helpful, are not solely dispositive, and must be assessed considering the statute as a whole. *Id.* In exercising their judgment, courts may determine that Congress explicitly delegated authority to an agency to give meaning to a particular statutory term. *Loper Bright*, 144 S.Ct. at 2263 (citing *Batterton v. Francis*, 432 U.S. 416, 425 (1977)). Additionally, Congress may supply an open-ended term or phrase such as "reasonable" or "appropriate" that "leaves agencies with flexibility." *Id.* (citing *Michigan v. EPA*, 576 U.S. 743, 752, (2015)). However, for a court to conclude that an agency has the power to give meaning to the words of the statute, the source of the agency's authority must be found in the words of the statute; it cannot be presumed by virtue of silence or ambiguity. *Id.* (overruling *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)).[16] Even where a statute implicates technical expertise "it does not follow that Congress has taken the power to authoritatively interpret the statute from the courts and given it to the agency, Congress expects courts to handle technical statutory questions."[17] *Id.* at 2267. Nonetheless, the Court may be guided by the agency's "body of experience and informed judgment" in making its independent determination,[18] *Id.* at 2267 (citing *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)). Although *Loper Bright* acknowledges that agencies may be empowered to make "fact bound determinations," an agency's power to apply the law to particular facts does not undermine the Court's duty to address questions of statutory meaning. *Id.* at 2259 (discussing *Gray v. Powell*, 314 U.S. 402, 411–14 (1941) and *NLRB V. Hearst Publications, Inc.*, 322 U.S. 111, 131–32 (1944)).

Here, Congress identified "partners" as affiliated parties under Section 1677(33)(C), but it did not define the term "partners." 19 U.S.C. § 1677(33)(C). The statute contains no indication that Congress expressly delegated to Commerce the authority to give meaning

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[16] Under Chevron a reviewing court would

> first assess "whether Congress has directly spoken to the precise question at issue." If, and only if, congressional intent [was] "clear," that [was] the end of the inquiry. But if the court determine[d] that "the statute [was] silent or ambiguous with respect to the specific issue" at hand, the court [would], at Chevron's second step, defer to the agency's interpretation if it "[was] based on a permissible construction of the statute."

Loper Bright, 144 S. Ct. at 2254 (citations omitted).

[17] Although Defendant correctly notes that precedent that predates *Chevron* have given great weight to Commerce's determinations of a technical nature, Def. Supp.Resp. at 4–5, *Loper Bright* explains that courts will give weight to those determinations only to the extent that the reasoning underlying them has the power to persuade. *Loper Bright*, 144 S.Ct. at 2267 (citing *Skidmore*, 323 U.S. at 140 (1944)).

[18] Such consideration of the agency's views rests not on deference but on persuasion.

to the word "partners." *See Loper Bright*, 144 S.Ct. at 2263. The statute contains no open-ended terms that would give flexibility to the agency. *See Loper Bright*, 144 S.Ct. at 2263 (citing *Michigan v. EPA*, 576 U.S. at 752) (identifying words "appropriate" or "reasonable" as terms that would give flexibility to the agency); *see also e.g.*, *Garg Tube and Export v. United States*, No. 21–169 (Ct. Int'l Trade Nov. 7, 2024) (identifying the words "differ significantly" as open-ended terms).

Additionally, despite Defendant and LDC's arguments, *Loper Bright* does not suggest that Commerce's authority to issue regulations to implement the statute under 19 U.S.C. § 3513(a)(2), is a delegation of authority to give meaning to statutory terms. Indeed, Defendant and LDC's argument that 19 U.S.C. § 3513(a)(2) empowers Commerce to give meaning to the statute proves too much. *See* Def. Supp. Br. at 4–8; LDC Supp. Br. at 6–7. General rulemaking authority does not empower an agency to give meaning to the law. Under this theory Commerce would have the power to give meaning to every statutory term rendering *Loper Bright* meaningless. Even under *Chevron*, an agency's notice and comment rulemaking went to whether the agency's interpretation was made with the force of law, not whether the agency was empowered with authority to make that interpretation. *See United States v. Mead Corp.*, 533 U.S. 218, 229 (2001).[19] Thus, the Court must give meaning to the word "partners" in 19 U.S.C. § 1677(33)(C).

The word partners in the context of 19 U.S.C. § 1677(33)(C) means a for profit cooperative endeavor in which parties share in risk and reward. Dictionary definitions suggest a broad view of "partners." For example, Black's law dictionary defines "partner" as "[s]omeone who shares or takes part with another, esp[ecially] in a venture with

[19] For similar reasons, Defendant's argument that the special fast track procedures of the Uruguay Round Agreements Act ("URAA") weigh in favor of finding a delegation also fail. Def. Supp. Br. 5–6. Defendant states that as part of the fast track process "Congress expressly approved the Statement of Administrative Action" ("SAA") providing "[i]n practice, the Administration will endeavor to amend or issue the regulations . . . [19 U.S.C. § 3513(a)(2)] provides the authority for such new or amended regulations to be issued, ..." Def. Supp. Br. at 6. Defendant argues that the Court of Appeals applying this statutory framework in *COALITION* the Court "concluded that 19 U.S.C. § 3513(a)(2) granted Commerce 'regulatory-implementation power' to carry out the URAA." Def. Supp. Br at 6. (citing *COALITION*, 66 F.4th at 977. Defendant's citation to *COALITION* is inapposite as in that case the Court of Appeals relied on both § 3513(a) and 19 U.S.C. 1677f-1(e). *COALITION*, 66 F.4th at 977–78 ("It is also evident as a logical matter why an expedited-review process 'may be necessary to ensure that' the individualized-determination preference of § 1677f-1(e) is 'appropriately implemented.'") (quoting 19 U.S.C. § 3513(a)(2)). To the extent *COALITION* stood for a broader proposition that Commerce could give meaning to the words of a statute absent an express delegation or words bestowing flexibility by virtue of its rulemaking authority alone, that proposition would now seem to be precluded by *Loper Bright*. *Loper Bright*, 144 S.Ct. at 2263.

shared benefits and shared risks; an associate or colleague," and as "[o]ne of two or more persons who jointly own and carry on a business for profit." *Partner*, Black Law's Dictionary (11th ed. 2019). Merriam-Webster provides multiple definitions, including "one associated with another especially in an action," and "a member of a partnership especially in a business." *Partner*, Merriam-Webster's Dictionary, https://www.merriam-webster.com/dictionary/partner (last visited Nov. 4, 2024).

The definitions also suggest that the cooperative endeavor is itself an entity or association. For example, Barron's Dictionary of Business and Economics Terms provides that a partner, is "a member of a partnership, which may be a syndicate, association, pool, joint venture, or other unincorporated organization." Barron's Dictionary of Business and Economics Terms (5th ed. 2012). Likewise, the Uniform Partnership Act ("UPA") defines a partnership as "an association of two or more persons to carry on as co-owners a business for profit." Unif. Partnership Act § 6(1) (1914). Thus, a partnership requires not only the sharing of risk and reward but also a cooperative endeavor, e.g., an association, joint venture, or unincorporated organization.

The view of partners, as members of a cooperative endeavor sharing in risk and reward, makes sense in the context of the statute. Congress defined affiliates in 19 U.S.C. § 1677(33) to include partners, amongst a list of other relationships:

(33) Affiliated persons

> The following persons shall be considered to be "affiliated" or "affiliated persons":
>
> (A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.
>
> (B) Any officer or director of an organization and such organization.
>
> (C) Partners.
>
> (D) Employer and employee.
>
> (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.
>
> (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

> (G) Any person who controls any other person and such other person.
>
> For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

19 U.S.C. § 1677. The use of the word affiliates in Title 19 suggests that Congress sought to identify affiliates in cases where a party relationship might have an impact on price. *See e.g.* 19 U.S.C. § 1677b(f)(3) (the major input rule providing for transactions between affiliated persons involving the production of a major input to Commerce may under certain circumstances adjust the cost of that input). Further, the SAA explains that in broadening the definition of affiliates in the URAA, Congress sought to better conform the statute to market realities and the myriad of ways in which parties' relationships might affect pricing. SAA at 4174–75.

Commerce's view of the word "partners" as those who "jointly own anything" or "engage in joint selling activities," *Final Decision Memo.* at 13, is helpful but inadequate. As discussed above the 19 U.S.C. § 1677(33) targets relationships which might affect price. Joint selling and joint ownership are indeed two relationships that may affect price because they involve entities cooperating for profit by sharing risk and reward, but they are not the only arrangements that do so. Parties may form a cooperative business endeavor to engage in joint ownership and joint selling. But parties might also form a cooperative business endeavor to engage in other activities that involve the sharing of risk and reward.

The plain meaning of the word partners requires Commerce to analyze not only whether entities are involved in joint selling or joint ownership but also whether they more generally form a cooperative endeavor in which they share risk and reward. Here, Commerce determines that LDC and Supplier A are not partners because they did not "jointly own" or engage in "joint selling activities" beyond those provided for in a contractual relationship.[20] *See* Final Decision Memo. at 13. Therefore, the Court must remand to Commerce to

[20] Commerce states:

> We also find that LDC and its supplier are not affiliated as partners within the meaning of section 771(33)(C) of the Act. Record evidence supports that this is a contractual relationship. LDC and its supplier donot jointly own anything pursuant to the terms of their contract and do not engage in joint selling activities. Therefore, we conclude that LDC and its supplier are not affiliated as partners within the meaning of section 771(33)(C) of the Act.

Final Decision Memo. at 13 (footnotes omitted).

apply the definition articulated by the Court, namely whether LDC and Supplier A formed a cooperative business endeavor in which they shared risk and reward.

II. Cost of Production Calculations

Ventura challenges Commerce's use of data from the FY 2021 audited financial statements to calculate LDC's COM expenses, arguing that Commerce arbitrarily and capriciously relied on data that it had determined was unreliable for other purposes. Pl. Mot. at 36–39. Defendant responds that Commerce did not rely on FY 2021 statements in its COM calculations, but rather Commerce used the cost of fruit for the POI, which was on the record, to calculate and make necessary adjustment to COM. Def. Resp. at 27–28 (first citing Final Cost Memo. at 2; and then citing [LDC's] Cost Verif. Exhs. at CVE-6, PD 242, CD 267, bar code 4287519–04 (Sept. 23, 2022) ("Cost Verif. Exhs.")). For the reasons that follow, Commerce's determination is supported by substantial evidence and sustained.

Agency action is arbitrary and capricious where the agency fails to consider an important aspect of the issue presented, fails to explain its reasoning in light of the record, or reaches a result that is so implausible "that it could not be ascribed to a difference in view or the product of agency expertise." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Agency action is also arbitrary where it treats similar situations differently without explanation. *See Solarworld Americas, Inc. v. United States*, 182 F.Supp.3d 1372, 1379 (Ct. Int'l Trade 2016) (citing *SKF USA Inc. v. United States*, 263 F.3d 1369, 1382 (Fed. Cir. 2001)); *see also West Deptford Energy, LLC v. FERC*, 766 F.3d 10, 21 (Fed. Cir. 2014).

Here, Commerce, provided with both LDC's FY 2021 and FY 2020 financial statements, used the FY 2020 financial statement to calculate the period cost calculations, which includes the G&A expense rate.[21] *See* Final Decision Memo. at 15. Commerce explained that the FY 2021 put on the record at the time of verification financial statements that did not give interested parties sufficient time to review the information, and that "the record does not contain sufficient detail to allow Commerce to identify or discern the proper expenses that should be included in the G&A expense rate for this proceeding if [it] use[d] the 2021 financial statements." *Id.*

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[21] LDC explains that it "makes monthly accounting provisions for its fruit purchases but does not obtain the final price until the year-end." LDC Resp. at 26 (first citing Cost Verif. Rep. at 8, 21; and then citing Cost Verif. Exhs. at CVE-6). LDC then "adjusts the total for the year by either a negative or a positive value." *Id.* (citing first citing Cost Verif. Rep. at 8, 21; and then citing Cost Verif. Exhs. at CVE-6). Because LDC did not initially report these price adjustments as part of the COM, "Commerce added the entire amount (related to lemons and oranges) to G&A." *Id.* (citing Prelim. Decision Memo. at 14).

For the COM expenses, Commerce used POI costs that it derived from "source documents." *See* Final Decision Memo. at 17 (citing Cost Verif. Exhs. at CVE-6). Although Commerce's explanation could be clearer, it is reasonably discernible that Commerce refers to source documents to mean those reflecting monthly purchases occurring in the POI, which includes the year 2021. *See id.* (citing Cost Verif. Exhs. at CVE-6). In other words, these source documents include documents other than the audited financial statements compiled at the end of a fiscal year. Specifically, Commerce relied on the values contained on page 17 of Exhibit 6 in the Cost Verification Exhibits. *See* Final Decision Memo. at 17; Cost Verif. Exhs. at CVE-6:17. That the source documents from which these numbers were derived would also be source documents for the FY 2021 audited financial statements does not mean that Commerce used the 2021 financial statements to obtain the prices of lemons from 2021. Indeed, Commerce defines COM as the "cost of materials, labor, variable overhead, and fixed overhead incurred to produce the finished goods during the POI." LDC DQR at D-32. The POI at issue here spans from October 1, 2020, through September 30, 2021. Final Decision Memo. at 1. Necessarily, the COM will include some costs from 2021 and, not surprisingly, those costs will also be reflected in the FY 2021 financial statements. Accordingly, the COM calculation is reasonable and thus sustained.

III. G&A Expense Rate

Ventura claims that Commerce's exclusion of costs of certain LDC affiliates when calculating LDC's G&A expense rate is not supported by substantial evidence. Pl. Mot. at 39–42. Ventura argues Commerce relied on deficient and incorrect submissions by LDC concerning its affiliates and parents, and that its failure to adhere to established agency practice is arbitrary and capricious. Pl. Reply at 16–21. Defendant and LDC counter that Commerce's determination followed established practice and is supported by substantial evidence because no adjustments to LDC's G&A expenses were required, as all expenses associated with any affiliates were already included in LDC's G&A expense calculation. Def. Resp. at 28–29; LDC Resp. at 28–33. For the following reasons Commerce's determination is sustained.

Commerce calculates the normal value of subject merchandise by making a comparison between the export price or CEP and normal value. *See* 19 U.S.C. § 1677b(a). Commerce calculates CEP by determining the sum of (1) the cost of materials and fabrication for producing the subject merchandise, or (2) the costs incurred by the exporter for selling, profits, and G&A expenses. 19 U.S.C. §

1677b(e)(1)–(2). Finally, Commerce's regulations instruct it not to "double-count adjustments" when determining adjustments for the merchandise's normal value, export price, or CEP. *See* 19 C.F.R. § 351.401(b)(2).

When calculating CEP by way of selling, profits, and G&A expenses, Commerce's practice is to calculate G&A expense ratios "based on a respondent company's unconsolidated financial statements plus a portion of the parent company's G&A expenses if the parent performed administrative services on behalf of the respondent." *Outboard Engines from Japan*, 70 Fed. Reg. 326 (Dep't Commerce January 4, 2005) (notice of final determination of sales at less than fair value) and accompanying issues and decision memo. at Comment 20; *see also Certain Cold-Rolled Steel Flat Products from the Russian Federation*, 81 Fed. Reg. 49,950 (Dep't Commerce July 29, 2016) (final determination of sales at less than fair value) and accompanying issues and decision memo. at Comment 15 ("*Cold-Rolled Steel* Final Decision Memo."). However, Commerce will not include a parent company's expenses in a respondent's G&A expense ratio if the parent company charged the respondent for services provided, and the respondent included those charges in its reported costs. *Common Alloy Aluminum Sheet from Slovenia*, 86 Fed. Reg. 13,305 (Dep't Commerce March 8, 2021) (final determination of sales at less than fair value) and accompanying issues and decision memo. at Comment 6.

As a matter of practice, Commerce solicits financial documents of affiliates involved in the production of merchandise from respondents and seeks additional documentation where it has reason to believe that an affiliate is providing services to the respondent company. *See Cold-Rolled Steel* Final Decision Memo. at Comment 15 (concluding from review of documentation that further financial records were needed); *Large Diameter Welded Pipe From Canada*, 84 Fed. Reg. 6,378 (Dep't Commerce Feb. 27, 2019) (final determination of sales at less than fair value) and accompanying issues and decision memo. at Comment 6 (concluding the purpose of the holding company was relevant because the parent company's financial statements showed "expenses incurred by the company for the benefit of its subsidiaries").

Here, Commerce's decision not to adjust LDC's G&A expenses for purposes calculating CEP is reasonable and consistent with past practice. In the initial questionnaire, Commerce requested information relevant to the POI, including the financial documents of "all affiliates involved in the production or sale of the subject merchandise in the foreign market and the U.S. market, of all affiliated suppliers

to these affiliated, and of the parent(s) of these affiliates." Initial Questionnaire at A-6. Commerce reviewed the companies involved in the production and sale of the subject merchandise at issue. *See* Cost Verif. Rep. at 3–4.1[22] Commerce subsequently sought additional information in a supplemental questionnaire. Final Decision Memo. at 20; LDC's SDQR at Supp. D-23 to Supp. D-24; *see also* LDC's SDQR at Exhibit Supp. D 13. Based on the information submitted, Commerce concluded that companies within LDC's corporate structure "charge[d] each other where services are provided to other LDC companies." *See* Final Decision Memo. at 20; *see also* LDC SDQR at Supp. D-23–D-24 (stating that "administrative and accounting services" provided by LDC Brasil are "subject to a Cost-Sharing Agreement" which are reported in the G&A expenses); *id.* at Exh. Supp. D-13 (referencing the Cost-Sharing Agreement between LDC and LDC Brasil). Thus, Commerce concluded that LDC's reported G&A costs included "the costs of services provided by any affiliated companies, including their parent company." Final Decision Memo. at 20.

Ventura's challenge, that Commerce failed to request necessary financial documents, fails to persuade. Ventura contends that Commerce departed from established practice by failing to request LDC's affiliates financial statements. Pl. Mot. at 41–42; Pl. Reply at 18. Commerce's actions are arbitrary and capricious when it treats similar situations differently without explanation. *Consol. Bearings Co. v. United States*, 348 F.3d 997, 1007 (Fed. Cir. 2003). Commerce requested financial statements from LDC, its parent and other affiliates involved in the production of merchandise. Initial Questionnaire at A-6. Commerce received the requested documents, and after issuing a supplemental questionnaire received statements from an affiliate, that was not LDC's parent but had provided administrative services and charged for those services. *See* LDC SDQR at Supp D-23–D-24; Final Decision Memo. at 20. Commerce, upon reviewing the financial submissions, found there is "no record evidence that the ultimate parent company or any other LDC holding companies provided any services to LDC." Final Decision Memo. at 20. Thus, it is discernible that Commerce's review of the financials it requested, and the corpo-

[22] Commerce established that LDC is "wholly owned by Louis Dreyfus Company Juices Holding B.V., which is a subsidiary of the Louis Dreyfus Company Group." Cost Verif. Rep. at 3. LDC identified [[ ]] as an "affiliated supplier." Cost Verif. Rep. at 4. LDC also identified LDC Brasil [[ ]]." *Id.* LDC reported that "[[ ]]." *Id.* Commerce examined LDC Brasil's total shared service expenses that it "allocated to juice for ([[ ]] BRL) and compared the amount to the total fees recognized by LDC Sucos [[ ]] BRL . . . for service fees (LDC Sucos pays LDC Brasil periodically but overestimated the accrual at year end)." *Id.*

rate structure led it to believe that it did not need to review further financial documents from the ultimate parent company or holding companies. *See* Final Decision Memo. at 21 (citing Initial Questionnaire at A-10) (explaining that LDC was not required to submit financial statements of affiliates that were not involved in production of the subject merchandise); *see also id.* (explaining that Commerce saw no evidence that administrative services were provided by LDC's parent company); *Bowman Transp., Inc. v. Arkansas-Best Freight Sys., Inc.*, 419 U.S. 281, 285–86 (1974) (upholding a decision of "less than ideal clarity" when the agency's analytical pathway to its conclusion is reasonably discernible). Commerce's measured approach is reasonable and consistent with past practice. Accordingly, Commerce's determination on the issue is sustained.

IV. Ministerial Errors

Finally, Ventura requests that any remand order "contain clear instructions to correct for all errors in the margin calculation." Pl. Mot. at 42. Specifically, Ventura claims that Commerce, in response to Ventura's and LDC's submissions and rebuttal comments concerning ministerial errors in the margin calculations, failed to remedy an error in its programming instructions.[23] *Id.* at 43. Defendant and LDC argue that Ventura failed to exhaust its administrative remedies concerning its request. Def. Resp. at 30–31; LDC Resp. at 33–35.

Here, Ventura failed to raise its claims of ministerial errors before Commerce and thus has not exhausted its administrative remedies. After issuing the *Final Results* and Final Decision Memorandum on December 19, 2022, Commerce notified the parties of the deadlines to submit comments and rebuttals for any significant ministerial errors in the determination, which were December 27, 2022, and January 3, 2023, respectively. *See* Commerce Memo. re: Deadline to File Cmts. On Significant Ministerial Errors, PD 299, bar code 4322995–01 (Dec. 21, 2022). LDC timely submitted its ministerial error comments concerning a currency and measurement conversion issue. *See* Letter White & Case LLP, to Sec'y Commerce re: Pet.'s Ministerial Error Cmts. at 1–5, PD 302, CD 337, bar code 4325020–01 (Dec. 27, 2022) ("LDC Error Cmts."). On January 3, 2023, the deadline for rebuttal comments, Ventura filed its response to LDC's alleged errors and, for

[23] Ventura contends that Commerce "[[

]]," which it speculates stems from "inadvertent duplication" under 19 C.F.R. § 351.224(f) that "results in an implied profit rate of [[ ]] percent for Commerce's analysis of dumping" by LDC. Pl. Mot. at 43.

the first time, raised the errors alleged in its motion. *See* Letter Buchanan Ingersoll Rooney, to Sec'y Commerce re: [LDC Error Cmts.] at 1–3, PD 303, CD 338, bar code 4326924–01 (Jan. 3, 2023) ("Ventura Error Resp."). After LDC contested the timeliness of Ventura's alleged errors in a letter, Commerce removed both Ventura's rebuttal comments and LDC's letter from the official and public records of the investigation. *See* Letter White & Case LLP, to Secy' Commerce, re: [Ventura Error Resp.], PD 305, bar code 4327896–01 (Jan. 6, 2023); Commerce Memo. re: Removal of Document from the Record at 1–2, PD 305, bar code 4331391–01 (January 13, 2023).

The record reflects that Ventura failed to timely raise its allegations of ministerial error within the timeframe allotted by Commerce. *See* 19 C.F.R. § 351.224(c)(2) (providing time limits for submitting comments regarding ministerial errors). Moreover, Ventura failed to request an extension of time to submit its comments as permitted by Commerce's regulations. *See generally* Pl. Mot.; Pl. Reply; *see also* 19 C.F.R. § 351.224(c)(4); 19 C.F.R. § 351.302(c). Accordingly, Ventura's failure to raise its alleged errors in accordance with Commerce's deadlines precludes the Court's ability to reach the merits of Ventura's claim. However, if Commerce reconsiders its affiliation determination pursuant to the Court's remand instructions and finds that LDC and Supplier A are affiliated, and consequently revises its calculations that implicate the present ministerial errors raised by Ventura, then the parties can raise those issues before Commerce at the appropriate time of the proceeding.

CONCLUSION

For the foregoing reasons, the Court sustains Commerce's determination concerning cost of production calculations, and G&A expense ratios for the *Final Results*. Commerce's affiliation determination under 19 U.S.C. § 1677(33)(G) and 19 U.S.C. § 1677(33)(C) are remanded for further explanation or reconsideration. Therefore, it is

ORDERED that Commerce's *Final Results*, *see* ECF No. 25–3, is remanded for further explanation or reconsideration consistent with this opinion, and it is further

ORDERED that Commerce shall file its remand redetermination with the Court within 90 days of this date; and it is further

ORDERED that the parties shall have 30 days to file comments on the remand redetermination; and it is further

ORDERED that the parties shall have 30 days to file their replies to the comments on the remand redetermination; and it is further

ORDERED that the parties shall file the joint appendix within 14 days after the filing of replies to the comments on the remand redetermination; and it is further

ORDERED that Commerce shall file the administrative record within 14 days of the date of filing its remand redetermination.
Dated: November 7, 2024
New York, New York

/s/ Claire R. Kelly
CLAIRE R. KELLY, JUDGE

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